

IN THE SUPREME COURT OF FLORIDA

FATHER JOHN GALLAGHER,

Petitioner,

vs.

Case No. SC18-865

L.T. No. 4D17-2579

DIOCESE OF PALM BEACH, INC.,

Respondents.

JURISDICTIONAL BRIEF OF RESPONDENTS

Mark E. Chopko – pro hac vice
mchopko@stradley.com
Stradley Ronon Stevens & Young, LLP
1250 Connecticut Ave., N.W., Ste. 500
Washington, DC 20036

J. Patrick Fitzgerald
Florida Bar No. 248681
jpf@jpfitzlaw.com

Roberto J. Diaz
Florida Bar No. 84890
rjd@jpfitzlaw.com

Maura F. Jennings
Florida Bar No. 836591
mfj@jpfitzlaw.com

J. Patrick Fitzgerald and Associates
110 Merrick Way, Ste 3B
Coral Gables, FL 33134-5236

Elaine D. Walter
Florida Bar No. 873381
ewalter@gaebemullen.com
Michael A. Mullen
Florida Bar No. 305731
mmullen@gaebemullen.com
Joseph M. Winsby
Florida Bar No. 73965
jwinsby@gaebemullen.com
Gaebe, Mullen, Antonelli & DiMatteo
420 South Dixie Highway, Third Floor
Coral Gables, Florida 33146
Tel: 305.667.0223/Fax: 305.284.9844

*Attorneys for Respondent
Diocese of Palm Beach, Inc.*

RECEIVED, 06/12/2018 05:28:29 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS.....	iii
I. STATEMENT OF THE CASE AND FACTS	1
II. SUMMARY OF ARGUMENT.....	3
III. ARGUMENT	4
A. Relevant Law Related to Express and Direct Conflict.	4
B. The Fourth DCA Opinion Does Not Contradict or Misapply a Rule of Law Meriting Review.....	5
1. The Fourth DCA Opinion is Consistent with the First Amendment Law in <i>Malicki v. Doe</i>	5
2. The Fourth DCA Opinion is Consistent with the First Amendment law in <i>Doe v. Evans</i>	8
3. The Fourth DCA Opinion does not conflict with the analysis that allowed the defamation claims in <i>LeGrande v. Emmanuel</i> and <i>Bilbrey v. Myers</i> to proceed.	9
IV. CONCLUSION.....	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF COMPLIANCE	11

TABLE OF CITATIONS

Page

CASES

<i>Ansin v. Thurston</i> , 101 So. 2d 808 (Fla. 1958)	5
<i>Bilbrey v. Myers</i> , 91 So. 3d 887 (Fla. 5th DCA 2012)	9
<i>Doe v. Evans</i> , 814 So. 2d 370 (Fla. 2002)	8, 9
<i>Gandy v. State</i> , 846 So. 2d 1141 (Fla. 2003)	4
<i>Hardee v. State</i> , 534 So. 2d 706 (Fla. 1988).....	5
<i>LeGrande v. Emmanuel</i> , 889 So. 2d 991 (Fla. 3d DCA 2004).....	9
<i>Malicki v. Doe</i> , 814 So. 2d 347 (Fla. 2002).....	passim
<i>Mancini v. State</i> , 312 So. 2d 732 (Fla. 1975)	5
<i>N.L.R.B. v. Catholic Bishop of Chicago</i> , 440 U.S. 490 (1979)	7
<i>Reaves v. State</i> , 485 So. 2d 829 (Fla. 1986)	3
<i>Serbian Eastern Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976).....	6

OTHER AUTHORITIES

Art. V, § 3(b)(3), Fla. Const.....	4
------------------------------------	---

TREATISES

21 C.J.S. Courts § 462.....	5
-----------------------------	---

I. STATEMENT OF THE CASE AND FACTS

Father John Gallagher is an Irish-born ordained Catholic priest incardinated with the Diocese of Palm Beach since 2000. (A4.) In 2015, the Diocese chose not to name him a Pastor for a second time. (A5, A6.) In response, he took a leave of absence rather than accept his priestly assignment and complained to numerous Church officials that he was being treated unfairly. (A4-A5.) He repeatedly and wrongly claimed that he was being demoted by his Bishop for exposing a cover-up of a sexual abuse incident that, as found in the public record and attached to his own complaint, had been referred to the Palm Beach County sheriff's office within 24 hours of the incident occurring, resulting in the arrest, conviction, and deportation of the offending priest with full cooperation from Father Gallagher and the Diocese. (A5.) When Father Gallagher took to the airwaves in his native Ireland to disparage his own Bishop and Diocese, as well as the Pope and the Catholic Church, about this incident, the Diocese responded that he was not telling the truth and that he was not yet suited to be a Pastor. (A6.)

Father Gallagher expressly recognized the internal nature of his dispute with his Bishop by bringing the matter to the Church, and he blamed his lack of positive response on corruption. (A5.) Father Gallagher told an interviewer on Irish radio that he exposed the workings of the diocese and Vatican and their lack of transparency in complying with policies and procedures in exposing pedophiles.

(A5.) Father Gallagher said the Church had proven it did not have integrity, honor, and a moral compass to self-police, and the powers-that-be are corrupt all the way through to the Bishop. (A5-A6.)

Responding to the public slander, the Diocese issued statements to its priests and parishioners to correct the record and address any confusion sown by his comments, chastising its priest for his untruthfulness and engaging in conduct unfit for a priest. (A6.) According to Father Gallagher, it is those responses, not his own behaviors, that damaged his reputation and greatly diminished his ability to serve in his “chosen profession” as a priest, causing him damage in lost income and distress. (A6.) He sued the Diocese, i.e., his supervising ecclesiastical authority, for defamation, seeking compensatory and punitive damages. (A7.)

After the trial court denied the Diocese’s motion to dismiss Father Gallagher’s complaint based on the ecclesiastical abstention doctrine, the Diocese successfully petitioned the Fourth District Court of Appeal for a Writ of Prohibition on the same grounds. (A7.) The Fourth DCA’s Opinion (“Opinion”) correctly recognizes that proceeding with Father Gallagher’s claim would necessarily require a court to interfere with the Diocese’s vocational decisions to hire, retain and discipline its subordinate (and insubordinate) priest Father Gallagher, and intrude upon the Diocese’s reasoning for such decisions. (A9, A12.) Father Gallagher’s dispute demands that the court question why the Diocese passed over Father Gallagher for

the position of pastor, and whether there was a valid religious reason for the diocese's decision. (A10.) Father Gallagher challenges the truthfulness of Diocese's statement that professional help is a necessary disciplinary step before he could resume "priestly ministry," and alleges damages that are distinctively about his priestly employment. (A12.) Consistent with cases across Florida (and every other jurisdiction), the Fourth DCA granted the Petition and directed dismissal of the complaint to avoid entangling the courts in the Diocese's ministerial decisions, the interpretation and application of canon law and Church doctrine, and internal priestly discipline, which the civil courts must abstain from reviewing and deciding. (A13.)

II. SUMMARY OF ARGUMENT

Because no direct and express conflict "appear[s] within the four corners" of the Opinion, *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986), this Court lacks conflict jurisdiction (the only basis pleaded) and should reject Father Gallagher's attempt to evade proper application of the ecclesiastical abstention doctrine. Father Gallagher fails to show, and cannot show, how the Opinion's law conflicts with the law of other Florida cases addressing ecclesiastical abstention. Instead, the Opinion is in concert with Florida law, which holds that matters of internal clergy discipline are off-limits to civil courts. No contrary authority in Florida is cited or is known to exist.

Of the four cases that Father Gallagher contends create decisional conflict with the Opinion, none involved a dispute directly between a priest/minister and his superior, as exists here. That distinction alone is crucial to and dispositive of this jurisdictional question. Examining the cases in more detail confirms that the Opinion is consistent with the Florida law on ecclesiastical abstention cited by Father Gallagher. To the extent Father Gallagher presses for an opposite reading, he is both mistaken and wrong.

III. ARGUMENT

A. Relevant Law Related to Express and Direct Conflict.

“The jurisdiction of this Court extends only to the narrow class of cases enumerated in Article V, Section 3(b) of the Florida Constitution.” *Gandy v. State*, 846 So. 2d 1141, 1143 (Fla. 2003). Specifically, the Florida Constitution states that the Court “[m]ay review any decision of a district court of appeal that ... expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” Art. V, § 3(b)(3), Fla. Const. The Court’s “jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the

same facts as a prior case.” *Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975). “In this second situation, the facts of the case are of the utmost importance.” *Id.*

“[F]or purposes of determining conflict jurisdiction, this Court is limited to the facts which appear on the face of the opinion.” *Hardee v. State*, 534 So. 2d 706, 708 n.* (Fla. 1988). Even in so-called misapplication conflict cases, decisions made on “plainly different facts” are not subject to express and direct conflict review. *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958) (denying writ where petitioner contended that decision below was “not in accord with the rule of the case relied upon by the district court, and ... conflict[ed] with two subsequent decisions ... [that the court] did not purport to overrule.”). Indeed, an actual “conflict of decisions . . . must be on a question of law involved and determined, and such that one decision would overrule the other if both were rendered by the same court; in other words, the decisions must be based practically on the same state of facts and announce antagonistic conclusions.” *Id.* (quoting 21 C.J.S. Courts § 462) (ellipses in original, emphasis added).

B. The Fourth DCA Opinion Does Not Contradict or Misapply a Rule of Law Meriting Review

1. ***The Fourth DCA Opinion is Consistent with the First Amendment Law in Malicki v. Doe.***

Petitioner erroneously claims (Br. at 5) that the Fourth DCA Opinion conflicts with the ecclesiastical abstention analysis in *Malicki v. Doe*, 814 So. 2d 347, 356

(Fla. 2002). In fact, the Opinion is consistent with it. Importantly, the question presented in *Malicki* was whether the First Amendment bars a third-party tort action against a religious institution grounded on an alleged tortious act by one of its clergy. *Id.* at 350. *Malicki* borrows heavily from the United States Supreme Court’s analysis in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976), and confirms that abstention is required where adjudication of a civil claim would result in “extensive inquiry into religious law and policy.” Immediately after quoting *Serbian* at length, *Malicki* emphasizes that “intrachurch disputes, however, must be distinguished from disputes between churches and third parties.” *Malicki*, 814 So. 2d at 356. While the First Amendment forbids a civil court from inquiring into and adjudicating intrachurch disputes, *id.*, a civil court may adjudicate a secular claim such as for a clergy member’s sexual assault and battery brought by third party (even if a parishioner) against the employing religious organization. *Id.* at 357. This distinction is entirely consistent with the Fourth DCA Opinion, which concerns an intrachurch dispute: one between a priest and the Diocese with direct authority over him, wherein the priest’s behavior is considered insubordinate and inappropriate by the Diocese, and against whom the priest claims retaliatory defamation for the Diocese’s response to the priest’s own public disparagement of the Diocese. The intrachurch nature is unmistakable and dispositive.

As a priest suing his religious superior for a dispute arising between them, Father Gallagher's claim is structurally and factually different from the claim at issue in *Malicki*. Ignoring this, Father Gallagher tries to avoid that rule by suggesting that the "extensiveness" of the expected religious inquiry into his claims is not too great. (Br. at 6, 8-9). This both misses the structural point and misconstrues the law. At its core, the test for abstention is whether the court will intrude on management of the church's own ecclesiastical affairs or become entangled in an essentially religious controversy if it exercises jurisdiction over the claim. *Malicki*, 814 So. 2d at 357. Civil inquiry into the ecclesiastical relationship between a priest and his bishop triggers abstention; indeed, First Amendment law instructs that courts should refrain from such an inquiry at the outset. *See N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (forbidding the exercise of civil jurisdiction over challenged labor practices filed against religious schools, explaining that "the very process of inquiry leading to findings and conclusions" risks impinging on rights guaranteed by the Religion Clauses).

Father Gallagher also incorrectly claims that Fourth DCA Opinion conflicts with *Malicki* because the court failed to address the neutral principles doctrine. (Br. at 5). The Fourth DCA Opinion both discusses the neutral principles doctrine and goes on to explain why Father Gallagher's dispute cannot be decided on neutral

principles of secular law. (A9.) No conflict exists between *Malicki* and the Fourth DCA Opinion.

2. ***The Fourth DCA Opinion is Consistent with the First Amendment law in Doe v. Evans.***

The issue presented in *Doe v. Evans* also did not involve a dispute between a priest and his direct religious authority. 814 So. 2d 370 (Fla. 2002). There, a parishioner sued a diocese for damages arising out of sexual misconduct by the diocese's pastor during marital counseling. Thus, the resolution of the dispute in *Doe*, like *Malicki*, did not depend on inquiry by the civil courts into religious law and polity. *Doe*, 814 So. 2d at 376-77. Stated differently, the disputed conduct in *Doe* arose in the context of a relationship between a parishioner and pastor, *id.*, not in the context of a "ministerial" relationship between a pastor and his diocese. The contested factual issues presented by Father Gallagher's defamation claim and the Diocese's asserted defenses thereto – displeasure with his re-assignment, engaging in conduct unfit for a priest, lacking in truthfulness – fall squarely within the ministerial relationship between Father Gallagher and the Bishop, who is ecclesiastically responsible for evaluating and judging Father Gallagher's priestly performance. The Fourth DCA Opinion recognizes that adjudication of Father Gallagher's defamation claim would require a civil court to impermissibly intrude on those evaluations and judgments.

3. ***The Fourth DCA Opinion does not conflict with the analysis that allowed the defamation claims in LeGrande v. Emmanuel and Bilbrey v. Myers to proceed.***

Father Gallagher points to two defamation cases that he believes the Fourth DCA should have distinguished, but did not, thereby creating a “decisional conflict”: *LeGrande v. Emmanuel*, 889 So. 2d 991 (Fla. 3d DCA 2004), and *Bilbrey v. Myers*, 91 So. 3d 887 (Fla. 5th DCA 2012). (Br. at 7-8, 10). Neither case creates “decisional conflict” regarding the proper role of a court in determining its jurisdiction to hear a defamation case between a priest and his ecclesiastical superior, because neither case involved a claim of defamation alleged by a priest against his ecclesiastical superior. Indeed they are properly characterized as third party disputes, like the above cases. In *LeGrande*, the reverse pattern of *Doe v. Evans*, a minister sued two parishioners for their slander about his alleged criminal theft of cash and the harm to him when 60% of his congregants left. 889 So. 2d at 994. In *Bilbrey*, like *Evans*, a former church member sued the church and his pastor for alleged defamation about his sexuality. 91 So. 3d at 891-92 (“The First Amendment does not grant Myers, as pastor of FPC, carte blanche to defame church members and ex-members.”). When compared to the case at bar, there is no difficulty in harmonizing *LeGrande* and *Bilbrey* – the structural and factual bases of the cases are not on all fours. Moreover, both cases explicitly approve the First

Amendment law summarized in *Malicki* and *Doe*, which, as discussed above, are consistent with the Fourth DCA Opinion.

IV. CONCLUSION

For the foregoing reasons, express and direct conflict does not exist, and the Court should decline to review the Fourth District Court of Appeal's decision.

Respectfully submitted,

Mark E. Chopko – *pro hac vice*
mchopko@stradley.com
Stradley Ronon Stevens & Young, LLP
1250 Connecticut Ave., N.W., Ste 500
Washington, DC 20036
Tel: 202-419-8410

J. Patrick Fitzgerald
Florida Bar No. 248681
jpf@jpfitzlaw.com

Roberto J. Diaz
Florida Bar No. 84890
rjd@jpfitzlaw.com

Maura F. Jennings
Florida Bar No. 836591
mfj@jpfitzlaw.com

J. Patrick Fitzgerald and Associates
110 Merrick Way Ste 3B
Coral Gables, FL 33134-5236
Tel: 305-443-9162

Elaine D. Walter
Florida Bar No. 873381
ewalter@gaebemullen.com
Michael A. Mullen
Florida Bar No. 305731
mmullen@gaebemullen.com

Joseph M. Winsby
Florida Bar No. 73965
jwinsby@gaebemullen.com
Gaebe, Mullen, Antonelli & DiMatteo
420 South Dixie Highway, Third Floor
Coral Gables, FL 33146
Tel: 305-667-0223

*Attorneys for Respondent
Diocese of Palm Beach*

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by e-mail and/or e-

Portal on June 12, 2018 to:

Theodore Babbitt, Esq.
tedbabbitt@Babbitt-Johnson.com
dcodding@babbitt-johnson.com
Babbitt & Johnson, P.A.
1641 Worthington Road, Suite 100
West Palm Beach, FL 33409
Tel: 561-684-2500

Philip M. Burlington, Esq.
pmb@FLAppellateLaw.com
Nichole J. Segal, Esq.
njs@FLAppellateLaw.com
kbt@FLAppellateLaw.com
Burlington & Rockenbach, P.A.
444 W Railroad Ave., Ste. 350
West Palm Beach, FL 33401-4112
Tel: 561-721-0400

/s/ Elaine D. Walter
Fla. Bar No. 873381
ewalter@gaebemullen.com
ymarrero@gaebemullen.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this response was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Elaine D. Walter