

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PILGRIM'S REST BAPTIST CHURCH,
a/k/a PILGRIM REST MISSIONARY
BAPTIST CHURCH, NATHAN MAYFIELD,
and STEPHON BLACKWELL,

Supreme Court Case No. 151680

Plaintiffs/Appellees,

Court of Appeals Case No. 318797

v

Kent County Circuit Court No.11-12242-CZ

ARTHUR PEARSON, SR.,

Defendant/Appellant.

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PLAINTIFFS/APPELLEE'S RESPONSE TO
APPLICATION FOR LEAVE TO APPEAL
WITH PROOF OF SERVICE

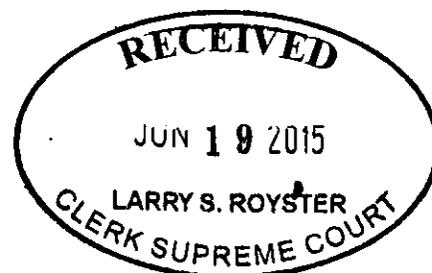


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STATEMENT OF BASIS OF JURISDICTION

The Plaintiffs/Appellees agree with the Statement of Basis of Jurisdiction.

STATEMENT IDENTIFYING JUDGMENT APPEALED FROM

The Plaintiffs/Appellees agree with the Statement Identifying Judgment Appealed from.

STATEMENT OF QUESTIONS INVOLVED

The headings for Argument contained in the Table of Contents for the Defendant/Appellant's Application for Leave to Appeal, do not correspond with the Statement of Questions Involved, which were:

I. WHETHER THE LOWER COURTS CLEARLY ERRED IN FAILING TO FIND WHETHER THE CHURCH ACTED.

Defendant/Appellant answers: "Yes"
Plaintiffs/Appellees answer: "No"
The Court of Appeals answered: "No"
The Trial Court answered: "No"

II. WHETHER THE LOWER COURTS CLEARLY ERRED IN FAILING TO REVIEW THE PASTOR'S CONTRACT, OTHER GOVERNANCE DOCUMENTS, AND PAST CHURCH PRACTICES TO DETERMINE DECISION-MAKING AUTHORITY ALLOCATION IN THE CHURCH?

Defendant/Appellant answers: "Yes"
Plaintiffs/Appellees answer: "No"
The Court of Appeals answered: "No"
The Trial Court answered: "No"

Since the headings for Argument relate to the standards for review by the Michigan Supreme Court, the Plaintiffs/Appellees will similarly address them.

RESPONSE TO STATEMENT OF APPLICATION

In his Application for Leave to Appeal, Defendant/Appellant Arthur Pearson, Sr., who was convicted by the Kent County Circuit Court of embezzlement from Pilgrim Rest Missionary Baptist Church, continues his quest to obscure that fact and attempt to avoid the consequences of his action.

The Defendant/Appellant refuses to recognize the reality of the events which took place after embezzlement charges were filed against him in the Kent County Circuit Court, following the release of a detailed CPA report clearly documenting the embezzlement. Amazingly, he still refers to the embezzlement charges as mere "allegations." Defendant/Appellant was ordered, as a condition of his bond, not to set foot on the Church's property and the Church voted to terminate him at a properly convened meeting of the Church membership.

Defendant/Appellant Pearson wrongly suggests that the decision of the Court of Appeals in Case No. 318797, somehow implicates the interests of law abiding religious leaders, ministerial employees, and church members. None of the grounds indicated in the Statement of Application are actually present in this case:

1. The decision of the Court of Appeals is not clearly erroneous as explained below.
2. The decision will not result in manifest injustice as the outcome reflects the appropriate consequences for the Defendant/Appellant's action.
3. Based upon a proper analysis, the decision does not conflict with *Borgman v Bultema*, 213 Mich 684 (1921) and *Vincent v Raglin*, 114 Mich App 242 (1982).
4. The appeal does involve legal principles of major constitutional significance to the State of Michigan's jurisprudence, but the decision reflects the correct treatment of those principles.
5. The case does not have significant public interest and policy ramifications for religious institutions and ministerial employees, since it involves one of those rare occasions where a minister engages in criminal behavior during the course of their employment.

Whether the Michigan Supreme Court should review the standards for secular court involvement in the affairs of religious institutions, this case is not the appropriate vehicle for considering such important issues. Common sense and sound public policy dictate that church leaders who steal from their congregations should be prosecuted and once convicted by the criminal justice system, forfeit the right to hold church office.

COUNTER-STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

The controversy in this case began when the Defendant/Appellant resisted the efforts of Church leadership, as they sought to uncover, document, and prosecute his embezzlement of Church funds.

The Defendant/Appellant overstates the importance of one event – a November 13, 2011, meeting of the Church members. The Plaintiffs/Appellees' contend that the vote against the Defendant/Appellant's termination was skewed by the participation of many people who were not members.

What is important, is that **after** the November 13, 2011, meeting:

1. An accountant's report was completed which documented the full scope of the embezzlement by the Defendant/Appellant and a Church secretary.
2. The Kent County Prosecutor's Office filed embezzlement charges against the Defendant/Appellant and the Church secretary.

The Plaintiffs/Appellees lawfully and peacefully utilized the powers granted to them by State law, filed a civil action against the Defendant/Appellant and worked with the criminal justice system. The Defendant/Appellant was suspended by the Trustees (Corporate Board of Directors), restrained from setting foot on the Church's property by the District Court (later extended by the Circuit Court), and terminated by a vote of the Church membership.

The Defendant/Appellant has never accepted responsibility for his actions and maintains the untenable position that he did not embezzle Church funds, even after his conviction by a no contest plea and sentence to forty-eight months' probation and payment of restitution in the amount of \$167,452.81. Exhibit A, is a copy of the Judgment of Sentence on the embezzlement charge against the Defendant/Appellant and the factual basis for his plea may be used to defend against his claim pursuant to MRE 410(2). Despite having ample opportunity in both the criminal court and this case, to demonstrate that he did not embezzle funds, the Defendant/Appellant has never offered any such evidence.

Following the conclusion of the criminal proceedings, the Plaintiffs/Appellees filed a Motion for Partial Summary Disposition, seeking to head off any counterclaim by the Defendant/Appellant, based upon the alleged "employment contract" and a Motion for Leave to File Second Amended Complaint. The Defendant/Appellant then filed his Counterclaim and Plaintiffs/Appellees' responded with their Motion to Dismiss it.

The Defendant/Appellant's Counterclaim against the Plaintiffs/Appellees, sought \$1 million in damages under six theories:

- I. Breach of Contract;
- II. Promissory Estoppel and Unjust Enrichment;
- III. Fraud, Intentional or Innocent Misrepresentation and Concealment;
- IV. Tortious Interference with Contract and Advantageous Business Relationship and Expectancy;
- V. Intentional Inflection of Severe Emotional Distress; and
- VI. Civil Conspiracy.

The Plaintiffs/Appellees filed their answer asserting the following Affirmative Defenses:

1. Appellant's embezzlement caused the Appellees' to take the action complained of, which was wholly justified under the circumstances.

2. Appellant's claims are barred by the ministerial exception doctrine set forth in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S.Ct. 694, 181 L Ed 2d 650 (2012).

The Plaintiffs/Appellees disputed the enforceability of the "Employment Contract" upon which the Defendant/Appellant filed his Counterclaim, as set forth in the Brief in Support of Plaintiff's Motion for Partial Summary Disposition dated August 7, 2013 (see Register of Actions, Item No. 25). They contended the Defendant/Appellant was properly suspended from his employment, after the embezzlement charges were filed against him. Furthermore, he was barred from coming to the Church effective February 27, 2012, (see Exhibit B), which prohibition continues for the 48-month period of his probation (see Exhibit C).

On June 9, 2012, the congregation of Pilgrim Rest Missionary Baptist Church voted to terminate the employment of the Defendant/Appellant. The vote was 215 members in favor of termination and 7 members against. This fact was verified in the trial court below in the Brief in Support of Plaintiff's Motion to Dismiss Counterclaim and Response to Motion to Amend Counterclaim by the Affidavit of Nathan Mayfield. (See Register of Actions Item No.11).

The Defendant/Appellant filed a Claim of Appeal regarding the Opinion and Order of the trial court dated October 7, 2013, which dismissed the entire case. The Plaintiffs/Appellees' filed a Cross-Appeal, to the extent that the trial court's Opinion and Order deprived them of the opportunity to amend their Complaint and pursue recovery of the embezzled funds from both Defendant/Appellant and his wife and to impose a constructive trust on their home, since part of the embezzled funds were used for partial payment of the mortgage on the home.

ARGUMENT

Standard of Review

The Plaintiffs/Appellees cited as grounds for relief, MCR 2.116(C)(8), being that the Defendant/Appellant's Counterclaim failed to state a claim upon which relief can be granted. When considering a motion pursuant to MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Radtke v Everett*, 442 Mich 368, 373 (1993). The motion should be granted when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163 (1992).

In *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S.Ct. 694, 181 L Ed 2d 650 (2012), the Court noted in footnote 4 at p. 709, that the ministerial exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. The issue presented by the exception is "whether the allegations the plaintiff makes entitled him to relief," not whether the Court has power to hear the case. Some cases cited by the Plaintiffs/Appellees regarding the religion clauses of the First Amendment, which hold that they bar claims such as the Defendant/Appellant made in this case, were decided pursuant to MCR 2.116(C)(8).

The Court of Appeals noted on pp. 3 – 4 of its opinion that there were two cases consolidated for hearing, that the trial court had considered all claims pursuant to MCR 2.116(C)(8), and recited the standard of review as follows:

The trial court concluded that all the claims from both cases were non-justiciable under MCR 2.116(C)(8) because of the ecclesiastical abstention doctrine. On appeal, the parties address the merits of the claims. To the extent that the claims are non-justiciable, the argument on the merits is irrelevant. To the extent that the claims are justiciable, it is proper that the merits on those claims be addressed first by the trial court, and not this Court. Therefore, this Court will only address whether the claims are justiciable, and we will not address the merits of the claims.

“Whether subject-matter jurisdiction exists is a question of law for the court.”
Dep’t of Natural Res v Holloway Constr Co, 191 Mich App 704, 705; 478 NW2d 677 (1991). “Accordingly, the issue is reviewed de novo.” *Id.*

A. THE DECISION OF THE COURT OF APPEALS IS NOT CLEARLY ERRONEOUS, DOES NOT RESULT IN MANIFEST INJUSTICE, AND DOES NOT CONFLICT WITH *BORGMAN v BULTEMA AND VINCENT v RAGLIN*.

With regard to the claims of the Defendant/Appellant, the Court of Appeals first discussed the constitutional limitations on the involvement of the civil courts in Church affairs.

It is well settled that courts, both federal and state, are severely circumscribed by the First and Fourteenth Amendments to the United States Constitution and art 1, § 4 of the Michigan Constitution of 1963 in resolution of disputes between a church and its members. *Maciejewski v Breitenbeck*, 162 Mich App 410, 413-414; 413 NW2d 65 (1987). Such jurisdiction is limited to property rights which can be resolved by application of civil law. *Id.* At 414. Whenever the court must stray into questions of religious doctrine or ecclesiastical polity the court loses jurisdiction. *Id.* Religious doctrine refers to ritual, liturgy of worship and tenets of the faith. *Id.* Polity refers to organization and form of government of the church. *Id.* Under the ecclesiastical abstention doctrine, apparently derived from both First Amendment religion clauses, ‘civil courts may not redetermine the correctness of an interpretation of canonical text or some decision relating to government of the religious polity.’ *Smith v Calvary Christian Church*, 462 Mich 679, 684; 614 NW2d 590 (2000) (footnote omitted), quoting *Paul v Watchtower Bible & Tract Society*, 819 F2d 875, 878 n 1 (CA 9, 1987). (COA Opinion, p. 4)

Given the nature of the Defendant/Appellant’s claim, it was clear to the Court of Appeals that the First Amendment protection enjoyed by Pilgrim Rest Missionary Baptist Church prevented the civil courts from hearing them, citing the same case as the trial court.

Defendant Pearson’s counterclaims include breach of contract, promissory estoppel and unjust enrichment, fraud, tortious interference with contract, intentional infliction of emotional distress, and civil conspiracy. But, all of defendant Pearson’s claims as pleaded make reference to the employment contract between defendant Pearson and the church. We affirm the trial court’s summary disposition of these claims. When the claim involves the provision of the very services . . . for which the organization enjoys First Amendment protection, then any claimed contract for such services likely involves its ecclesiastical policies,

outside the purview of civil law. *Dlaikan v Roodbeen*, 206 Mich App 591, 593; 522 NW2d 719 (1994). (COA Opinion, p. 4)

The Court of Appeals did not discuss the case of *Borgman v Bultema*, 213 Mich 684; 182 NW 91 (1921). That case involved the First Christian Reformed Church of Muskegon, a branch or local church of a hierarchical religious denomination, the Christian Reformed Church. The plaintiffs, representatives of the duly constituted and legal consistory of the Church and the Classis, the Church's immediate governing body, filed a bill:

...to restrain the defendants from acting, or claiming to act, as the minister and consistory of said First Church, and from holding, managing, and controlling the said real estate as such minister and consistory, or from performing the duties of their respective offices, on the theory that they have been duly and legally removed from their respective offices, and consequently have no lawful right to further act in that respect. (*Borgman*, p. 688)

The trial court granted the bill, noting:

Under well-established rules of law, acquiesced in by all our courts, and which, as I understand it, no one disputes, where property is dedicated to the use of a religious denomination, it cannot thereafter be diverted to the use of those who depart from that faith, but must remain for the use and benefit of those who still adhere to the faith. (*Borgman*, p. 689).

In affirming the trial court, the Court of Appeals quoted the following:

'The pastor of a church in his pastoral office performs a spiritual function. Spiritualities are beyond the reach of the temporal courts.

'It follows that a church which has employed a pastor, though the employment be for a fixed term and at a fixed salary, may at any time, so far as the civil courts are concerned, depose him from his spiritual office, subject only to inquiry by the courts as to whether the church or its appointed tribunal has proceeded according to the law of the church. * * * And in the case of a church organized on the congregational plan the inquiry is limited to the determination whether in fact the church has acted as a congregation.'

Barton et al. v. Fitzpatrick et al., 187 Ala. 273, 65 South. 390.

'The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters.

‘To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty untrammelled by state authority.

‘On this principle, the action of the church authorities in the deposition of pastors and the expulsion of members is final.

The Defendant/Appellant completely misses the point of the *Borgman* case, which actually supports the decision of the Court of Appeals in this case. *Borgman* did not endorse a suit by a defrocked minister who was fired for his breach of secular laws against theft. It upheld the right of a church to control its real property by barring others from the premises, just as the Court of Appeals upheld Pilgrim Rests’ right to pursue its conversion claim against the Defendant/Appellant. Presumably, Pilgrim Rest could also ask a Court to enjoin the Defendant/Appellant from its premises, but the criminal courts have already done that.

The Court of Appeals did consider the case of *Vincent v Raglin*, 114 Mich App 242; 318 NW2d 629 (1982), and distinguished it, noting:

Defendant Pearson relies upon *Vincent v Raglin*, 114 Mich App 242; 318 NW2d 629 (1982), for the proposition that if it was not the “action of the church,” the ministerial exception and ecclesiastical abstention doctrine are inapplicable. Defendant Pearson’s reliance on *Vincent* is misplaced because the Court in *Vincent* simply determined whether the church had taken a certain course of action, and here the determination would be whether the church exceeded its authority in acting, which is non-justiciable because it would require the court to determine if the church violated its own polity. (COA Opinion, p. 4)

The Plaintiffs/Appellees would also point out that although in *Vincent v Raglin*, 114 Mich App 242 (1982) some of the claims brought by the pastor were allowed, no First Amendment issues were raised in that case. *Vincent* is easily distinguishable from this case on its facts. In *Vincent*, there was no evidence the Plaintiff had done anything wrong and:

...there was sufficient evidence from which a jury could reasonably conclude that various trustees, deacons, and other members of the church had conspired to

accomplish a lawful purpose (dismissal of the pastor) by unlawful means. (*Vincent*, p. 251)

Here, the Defendant/Appellant had committed embezzlement and the Plaintiffs/Appellees always sought to use lawful measures to restrain, suspend and then terminate him.

Ultimately, the Court of Appeals correctly determined that an adjudication of the Defendant/Appellant's claims would necessitate a foray into religious polity and ecclesiastical policies, directly implicating the Church's constitutional protection and such matters fall outside the jurisdiction of the Michigan Courts.

Therefore, because determining whether the board of trustees had the authority to suspend and eventually terminate defendant Pearson would require determinations of religious polity, the civil courts do not have jurisdiction. Additionally, the claims brought by defendant Pearson involve the provision of his services as pastor to the church, which is the essence of the church's constitutionally protected function, and "any claimed contract for such services likely involves its ecclesiastical policies, outside the purview of civil law." *Dlaikan*, 206 Mich App at 593. The trial court's summary disposition is affirmed in regard to defendant Pearson's claims. (COA Opinion p.4)

The Defendant/Appellant cites a number of cases from other jurisdictions, but on the above point, *Abrams v Watchtower & Bible*, 306 Ill App 3d 1006; 715 NE 2d 798 (1999) supports the Court of Appeals' exercise of the ecclesiastical abstention doctrine. The Plaintiff in that case had sought to appeal the dismissal of a complaint for conspiracy to invade privacy, negligent infliction of emotional distress, and defamation. The Appellate Court upheld the dismissal, because of the ecclesiastical abstention doctrine.

B. THE APPLICATION FOR LEAVE TO APPEAL DOES NOT INVOLVE LEGAL PRINCIPLES OF MAJOR CONSTITUTIONAL SIGNIFICANCE TO MICHIGAN JURISPRUDENCE OR SIGNIFICANT PUBLIC INTEREST AND POLICY RAMIFICATIONS FOR RELIGIOUS INSTITUTIONS AND MINISTERIAL EMPLOYEES.

1. The Adverse Actions Taken Against the Defendant/Appellant Represented the Proper Actions of the Church.

On page 6 of the Defendant/Appellant's Application, it is alleged that there were nine members of the Pilgrims Rest Baptist Church Board of Trustees as of December 27, 2011, and that seven of the nine members voted to suspend the Defendant/Appellant. Actually, Exhibit 9 of the Defendant/Appellant's Application indicates that there were eight Trustees at that time (Hayward Ware was not a Trustee), but it is clear that the vast majority of the Trustees then in office voted to suspend the Defendant/Appellant.

Pilgrim Rest is governed by the Michigan Nonprofit Corporation Act, MCL 450.2101, et.seq., as provided in MCL 450.2123. The Bylaws state in Article II, Section 8 (Defendant/Appellant's Exhibit 13), that the Trustees of Pilgrim Rest serve as the Corporate Board of Directors, thus fulfilling the requirements of MCL 450.2501.

The applicable part of the statute by which Defendant/Appellant Pearson was suspended, MCL 450.2535(1) states as follows:

- (1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders or members may be removed, with or without cause, only by vote of the shareholders or members. The authority of the officer to act as an officer may be suspended by the board for cause.

Defendant/Appellant was elected by the members to serve as the Pastor/President of the Plaintiff Pilgrim Rest Corporation and was therefore required to adhere to the duties of a corporate officer set forth in the Act and at common law. The statutory standard of behavior is set forth at MCL 450.2541(1), which states:

- (1) A director or an officer shall discharge the duties of that position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

In addition, there are common law duties which have long been recognized. The executive employees of a corporation owe a strict fiduciary duty to the corporation they serve. In *L.A. Young Spring & Wire Corp v Falls*, 307 Mich 69 (1943), the court stated at pp. 101 – 102, that:

The duties and obligations of defendant executives as officers and directors and as trusted employees were substantially the same.

Directors and executive employees of a corporation owe a strict and full measure of duty to their principal. In *McKey v. Swenson*, 232 Mich. 505, 516, 205 N.W. 583, 587, we said: 'The fiduciary relation of directors to a corporation, the rule of common honesty, the measure of fidelity exacted, and the mastery of right over sordid motives and betrayals of trust have been so uniformly expounded by the courts that it would be but calling a roll of courts to cite the authorities.' See, also, *American Circular Loom Co. v. Wilson*, *supra*; *Farwell v. Pyle-National Electric Headlight Co.*, 289 Ill. 157, 124 N.E. 449, 10 A.L.R. 363; *Whitten v. Wright*, 206 Minn. 423, 289 N.W. 509; *Nebraska Power Co. v. Koenig*, 93 Neb. 68, 139 N.W. 839; *Pratt v. Shell Petroleum Corp.*, *supra*; *Irving Trust Co. v. Deutsch*, 2 Cir., 73 F.2d 121; 13 Am.Jur. p. 959, § 1007.

The evidence of embezzlement by the Defendant/Appellant which existed on December 27, 2011, clearly provided cause for his suspension.

The Plaintiffs/Appellees do not disagree that the removal of the Defendant/Appellant required a vote of the church members. What the Defendant/Appellant fails to recognize is that the members could meet more than once to consider the matter and on June 9, 2012 they did vote to terminate the Defendant/Appellant as pastor.

The members were not required by statute to have cause for terminating the Defendant/Appellant when they voted to do so on June 9, 2012. In the event it was determined that the alleged "employment contract" was binding on the Church, there was clearly adequate cause for Defendant/Appellant's termination by the members, since he had been bound over to Circuit Court on the embezzlement charges and had not reported for work since February 27, 2012.

The Defendant/Appellant strings together a number of citations in an attempt to support his allegation that there is an abundance of legal authority where civil courts have carried out their

adjudicate a lawsuit brought by a former minister against their church, but will enforce the decision of the church's membership, if assistance is needed from the Civil Courts.

The cases cited by the Defendant/Appellant all underscore the reluctance of the Courts to get involved in the dismissal of a Church minister and their refusal to open the door to lawsuits by dismissed ministers. In *Tibbs v Kendrick*, 93 Ohio App 3d 35; 637 NE 2d 397 (1994), the Court emphasized it was the membership's prerogative to terminate the pastor. In *Gillespie v Elkins Southern Baptist Church*, 177 W.VA 89; 350 SE 2d 715 (1986), the Appeals Court reversed the trial court which permitted a dismissed pastor to sue for wrongful discharge. In *Hemphill v Zion Hope Primitive Baptist Church of Pensacola, Inc.*, 447 So 2d 976 (Fla App, 1984), the Court held that an injunction could be issued to restrain a pastor who had been discharged, from assuming or exerting any authority as pastor. *People ex rel Muhammad v Muhammad-Rahmah*, 289 Ill App 3d 740, 682 NE 2d 336 (1997) is inapplicable to this case, as it concerned a Not for Profit corporation operating under the Illinois Statute.

2. The Ministerial Exception Required the Lower Court to Dismiss the Defendant/Appellant's Counterclaims.

The U.S. Supreme Court has ruled that there is a ministerial exception grounded in the religion clauses of the First Amendment, which prevents the Defendant/Appellant from filing suit based upon the actions of the Trustee Board and the Congregation, *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S.Ct. 694, 181 L Ed 2d 650 (2012).

In that case, the Equal Employment Opportunity Commission and Cheryl Perich brought suit against Hosanna-Tabor Evangelical Lutheran Church and School, alleging violations of the Americans with Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act. Hosanna-Tabor moved for summary judgment, invoking what is known as the "ministerial

Americans with Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act. Hosanna-Tabor moved for summary judgment, invoking what is known as the “ministerial exception,” to argue that the suit was barred by the First Amendment, because the claims at issue concerned the employment relationship between a religious institution and one of its ministers.

Much of the case involved an issue concerning whether or not Perich was a minister, an issue not present in this case. Defendant/Appellant was the Pastor of Pilgrim Rest Missionary Baptist Church and meets the definition of a minister. The United States Supreme Court held, in *Hosanna-Tabor*, that:

The First Amendment provides, in part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” We have said that these two Clauses “often exert conflicting pressures.” *Cutter v. Wilkinson*, 554 U.S. 709, 719, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005), and that there can be “internal tension...between the Establishment Clause and the Free Exercise Clause,” *Tilton v. Richardson*, 403 U.S. 672, 677, 91 S.Ct. 2091, 29 L.Ed.2d 790 (1971). *Id* at 702.

Until *Hosanna-Tabor* was decided, the U.S. Supreme Court had not yet had an occasion to consider whether the freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment. It noted that since the passage of Title VII of the Civil Rights Act of 1964 and other employment discrimination laws, the Courts of Appeals had uniformly recognized the existence of a “ministerial exception.” The Court stated, “We agree that there is such a ministerial exception” (*Id* at p. 705 – 706) and reversed the Sixth Circuit’s decision to vacate the trial court’s grant of summary judgment in favor of Hosanna-Taber.

The Court recognized that decisions in this area confirm that it is impermissible for the government to contradict a church’s determination of who can act as its ministers, then held:

The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter “strictly ecclesiastical,” *Kedroff [v Saint Nicholas Cathedral of Russian Orthodox*

Church in North America, 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 (1952)]
344 U.S. 94, at 119, 73 S.Ct. 143 — is the church's alone (*Id* at p. 709).

Admittedly, *Hosanna-Tabor* involved an employment discrimination suit and the court noted it was not addressing the issue of whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. The Plaintiffs/Appellees contend that the doctrine also applies in such cases and for that reason, the counterclaims should have been dismissed.

Within the Sixth Circuit, it has been held that the First Amendment barred claims brought by a minister and his wife against a religious organization, alleging breach of contract, promissory estoppel, intentional infliction of emotional distress, and loss of consortium in connection with the termination of the minister's employment. *Lewis v. Seventh Day Adventists Lake Region Conference*, 978 F2d 940 (1992). The Court noted at pp. 941 – 942, that:

The Supreme Court has long held that on matters of church discipline, faith, practice, and religious law, the Free Exercise Clause requires civil courts to refrain from interfering with the determinations of the “highest of these church judicatories to which the matter has been carried.” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727, 20 L.Ed. 666 (1871).

The court in *Lewis* goes on to cite additional Supreme Court precedent, a prior decision of the Sixth Circuit, and cases from other Circuits which support its decision.

The Michigan Supreme Court has not yet considered the application of *Hosanna-Tabor* in cases filed by ministers whose employment was terminated by their Church, but the Supreme Courts of three other states have considered such cases and found that the holding in *Hosanna-Tabor* barred a lawsuit by the former minister.

In *Dayner v Archdiocese of Hartford*, 301 Conn 759 (2011), the former principal of a Catholic parish school brought an action for breach of implied contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, wrongful termination a violation of

public policy, negligent infliction of emotional distress, and tortious interference with business expectancies. The Court found that each and every one of the Counts was barred by the ministerial exception. *Id* at pp. 785 – 789.

In *DeBruin v St. Patrick Congregation*, 343 Wis2d 83 (2012), a ministerial employee brought an action against her church alleging breach of contract and promissory estoppel. The Court noted that the First Amendment gives St. Patrick the absolute right to terminate DeBruin for any reason, or for no reason, as it freely exercises its religious views. *Id* at p. 104. The Court stated:

Furthermore, while *Hosanna-Tabor* did not arise in a contract context, which the Supreme Court noted, *Id* at 710, the First Amendment protections that drove the result in *Hosanna-Tabor* are the same protections that bear on DeBruin’s claim for damages to compensate her for the denial of prospective employment.

Accordingly, we conclude that DeBruin’s complaint, viewed through a First Amendment lens, failed to state a claim upon which a court may grant relief. *Id* at pp. 106-107.

In *Erdman v Chapel Hill Presbyterian Church*, 175 Wash2d 659 (2012), a former employee of a church sued the church and the minister, alleging that the church was liable on theories of negligent retention, negligent supervision, and Title VII sex discrimination claims. The Court held:

The First Amendment establishment and free exercise clauses bar Ms. Erdman’s claims that Chapel Hill negligently retained and supervised Senior Pastor Toone. As recently reaffirmed by the United States Supreme Court in *Hosanna-Tabor*, the church alone has the authority to select and control who will be its ministers, as a strictly ecclesiastical matter. *Id* at p. 683.

Chapel Hill claimed the ministerial exception also applied to Erdman’s Title VII claim, but the matter was remanded because the record was not developed sufficiently to make a determination of whether Erdman was a minister.

Even prior to the ruling in *Hosanna-Tabor*, the Michigan Court of Appeals held that a religious employee may not sue their church on three separate occasions. In *Weishuhn v Catholic Diocese of Lansing*, 287 Mich App 211 (2010), a teacher sued the church that employed her, alleging violations of the Whistleblower's Protection Act and Civil Rights Act for retaliatory termination. The trial court granted the church summary disposition and the Court of Appeals held that the teacher was a ministerial employee, thus her claims were subject to the ministerial exception and therefore, she was barred from bringing them. The Court went so far as to hold:

Termination of a ministerial employee by a religious institution is an absolutely protected action under the First Amendment, regardless of the reason for doing so. *Id* at p. 227.

A church organist filed a complaint alleging discrimination against her church in *Assemany v Archdiocese of Detroit*, 173 Mich App 752 (1988). The Court determined that the ministerial exception applied, as the church organist was intimately involved in propagation of religious doctrine and observance and conduct of religious liturgy by the congregation. The Court held:

His Title VII discrimination claim is therefore barred by the free exercise clause of the First Amendment of the United States Constitution. *Id* at p. 763.

In *Porth v Roman Catholic Diocese of Kalamazoo*, 209 Mich App 630 (1995), an elementary school teacher sued her Roman Catholic diocese and others, alleging that their refusal to renew her teaching contract at a parish school, on the basis that she was not Catholic, constituted employment discrimination in violation of State law. Interestingly, the lower court found plaintiff's claim barred by the ministerial exception, but the Court of Appeals did not decide on its applicability, accepting plaintiff's factual assertion that her primary duties were secular in nature. Instead, the Court stated:

Accordingly, we hold that by operation of the Supremacy Clause of the United States Constitution, U.S. Const., art. VI, §2, the Religious Freedom Restoration Act

of 1993 bars application of the Michigan Civil Rights Act to defendants' conduct.
Id at p. 640.

Counsel for the Plaintiffs/Appellees has been unable to find any published case which holds that the doctrines set forth in *Hosanna-Tabor* and the line of cases setting forth the ministerial exception, do not bar all of the claims brought by the Defendant/Appellant in this case. Indeed, the Defendant/Appellant has resorted to citing outdated treatises, which make arguments that have not generally been adopted by the Courts. Defendant/Appellant cited cases involving non-ministerial employees which would have no application to the facts of this case.

RELIEF REQUESTED

WHEREFORE the Plaintiffs/ Appellees respectfully request that this Honorable Court deny the Defendant/Appellant's Application for Leave to Appeal.

RESPECTFULLY SUBMITTED,

Dated: June 18, 2015

/s/ Bernard C. Schaefer (P40114)
Bernard C. Schaefer (P40114)
Attorney for Plaintiffs/Appellees
161 Ottawa NW, Suite 212
Grand Rapids, Michigan 49503
(616) 272-4361
attorney@bernardschaefer.com

PROOF OF SERVICE

Bernard Schaefer, attorney for Plaintiffs/Appellees, states that on Thursday, June 18, 2015, he served a copy of Plaintiffs/Appellees' Response to Application for Leave to Appeal, on:

Jerry L. Ashford
Attorney for Defendant/Appellant
2 Woodward Ave, Ste. 500
Detroit, MI 48226

via U.S. Mail to his address of record on June 18, 2015.

/s/ Bernard Schaefer (P40114)
Bernard Schaefer (P40114)

| | | |
|--------------------------|---|-----------------|
| STATE OF MICHIGAN | JUDGMENT OF SENTENCE | CASE NO. |
| JUDICIAL DISTRICT | <input type="checkbox"/> COMMITMENT TO JAIL | 12-02101-FH |
| 17TH JUDICIAL CIRCUIT | **Amended Court Costs 8-5-13** | |

OF M. 10025J Court address 180 OTTAWA AVE NW, GRAND RAPIDS MI 49503 Court telephone no. 616-632-5480

Police Report No. _____

THE PEOPLE OF The State of Michigan _____

V

Defendant name, address, and telephone no.
ARTHUR LEE PEARSON

| | | |
|----------------------------|-----|-------------------|
| CTN/TCN 41 11 015784 99 | SID | DOB 04/01/1973 |
|----------------------------|-----|-------------------|

THE COURT FINDS:

1. Defendant was found guilty on 01/23/2013 of the crime(s) as stated below:
Date

| Count | CONVICTED BY | | | DISMISSED BY* | CRIME | CHARGE CODE(S) MCL citation/PACC Code |
|-------|--------------|-------|------|---------------|---|--|
| | Plea* | Court | Jury | | | |
| 1 | NC | | | | EMBEZZLEMENT-\$50,000 OR MORE BUT LESS THAN \$100,000 | 750.1746 |
| | | | | | | |
| | | | | | | |

*For plea: insert "G" for guilty plea, use "NC" for nolo contendere, or "MI" for guilty but mentally ill. For dismissal; insert "D" for dismissed court or "NP" for dismissed by prosecutor/plaintiff.

X represented by an attorney: **STEVEN FISHMAN**

2. Defendant advised of right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.
3. Conviction reportable to Secretary of State**. Defendant's driver license number is: P625071497258
4. Sanctions reportable to State Police**. Revoked. Suspended _____ Restricted _____ days.
5. HIV testing and sex offender registration is completed. *** (see back)
6. Defendant has been fingerprinted according to MCL 28.243.

IT IS ORDERED:

- Probation is revoked.
8. Deferred status is revoked. HYTA status is revoked.
9. Defendant is sentenced to jail as follows: Report at _____

| Count | Date Sentence Begins | Sentenced | | Credited | | To Be Served | | Release Authorized for the Following Purpose | Release Period <i>Printed & Filed</i> |
|-------|----------------------|-----------|------|----------|------|--------------|------|--|---|
| | | Mos. | Days | Mos. | Days | Mos. | Days | | |
| | | | | | | | | <input type="checkbox"/> Upon payment of fine and costs..... <input type="checkbox"/> To work or seek work..... <input type="checkbox"/> For attendance at school..... <input type="checkbox"/> For medical treatment..... <input type="checkbox"/> Other: _____ | AUG 05 2013 JUDGE LEIBER 17TH CIRCUIT COURT |

10. Defendant shall pay:

| State Minimum | Crime Victim | Restitution | Court Costs | Oversight Fee | Fine | Other Costs |
|---------------|--------------|--------------|-------------|---------------|------|-------------|
| \$68.00 | \$130.00 | \$167,452.81 | \$350.00 | \$480.00 | \$ | \$ |

The due date for payment is Date of Sentence. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed. Only the fine and some costs may be satisfied by serving time in jail.

Defendant shall serve _____ days in jail beginning _____ for failure to pay on time.

Until all payments ordered in this case are fully satisfied, defendant must notify the Circuit Court Clerk in writing of any change of address within 10 days of same.

- X 11. Defendant shall be placed on probation for 48 months and abide by the terms of probation. (See separate order.)
12. Defendant shall complete the following rehabilitative services.
 Alcohol Highway Safety Education Treatment (outpatient, inpatient, residential, mental health.)
 Specify: _____
13. The vehicle used in the offense shall be immobilized or forfeited. (See separate order.)
14. The concealed weapon board shall: suspend for _____ days permanently revoke the concealed weapon license, permit number _____, issued by _____ County.
- X 15. Other: 100 HOURS WORK CREW; RESTITUTION: PILGRIM REST MISSIONARY BAPTIST CHURCH

7-18-13 Date (SEAL) HONORABLE DENNIS LEIBER P22889

MCL 765.15(2), MCL 769.1K, MCL 769.16a, MCL 775.22, MCL 780.766,

MCL 780.826, MCR 6.427

| | | |
|---|--|------------------------|
| STATE OF MICHIGAN 1 ST DISTRICT COURT | ORDER OF SPECIAL CONDITIONS OF BOND | CASE NUMBER: 12FY16 |
|---|--|------------------------|

Address: Kent County Courthouse, 180 Ottawa NW, Suite 2200, Grand Rapids, MI 49503-2751 Phone: 616-632-5650

Defendant: Arthur Pearson DOB: 4, 1, 73

Defendant's Address: _____

It is the order of the Court that the defendant:

LEIN Conditions and/or conditions entered in local law enforcement network: _____

_____ Have no direct or indirect contact (by phone, mail or through any other person) with the following person(s), nor be found at or near his/her/their home(s) or business(es).

Name: _____

Not be at the following address(es): 510 FRANKLIN ST SE plus 1 Block any direction

_____ Shall not be found standing, loitering or congregating upon division Ave., or within the blocks bounded by and inclusive of Jefferson Ave. and Grandville Ave., Fulton St. and 28th St., nor in any lot therein provided for the purpose of parking motor vehicles.

_____ Not possess any firearms or dangerous weapons while this case is pending.

_____ Observe a curfew of _____ m to _____ m and be inside the home during that time.

Defendant physical information (mandatory for no-contact and other LEIN entry)

Race: _____ Sex: M/F Height: _____ Weight: _____ lbs. Hair: _____ Eyes: _____

Non-LEIN Conditions: _____

Report to Court Services (632-5350) or _____ report to COMIT supervision (632-5645) weekly and remain under their supervision as directed until final disposition of this case.

_____ Not use intoxicating liquors and submit to a breathalyzer as ordered by the Court COMIT/ Court Services; and not use or possess any illegal drugs or misuse prescription drugs and submit to drug testing as ordered by the Court or COMIT/Court Services.

_____ Undergo substance abuse assessment as directed by the Court within 48 hours and follow all recommendations made.

_____ Participate in drug/alcohol education/treatment as ordered by the Court. COMIT/Court Services or any assessing agency.

_____ Participate in counseling or medical treatment as ordered by this Court.

_____ Seek/maintain employment or attend a course of study or vocational training.

_____ Go to school as directed by the Court and be prepared to show proof of the attendance.

Live at: _____ and follow the rules established by (person/facility): _____ mother/father/guardian.

Not engage in any assaultive, threatening or intimidating behavior.

Other conditions: NOT TO LIQUIDATE ANY ASSETS OVER \$500 W/OUT ADVANCE notice & agreement of court service; no gaming

I understand the conditions of my bond. I agree to follow these conditions whether or not I am released and if released a violation of these conditions can result in my arrest without warrant; my bond amount may be forfeited; and new conditions/bond amounts established. I also understand that I can be found in contempt of Court and punished accordingly for violating any of the conditions. Co-signer understands that any violation of these conditions can result in forfeit of the bond, including any money that may have been posted on defendant's behalf and any un-posted amount of such bond as well.

Defendant: [Signature] Date: 2/27/12 Judge: [Signature] Date: 2/27/12

Co-signer: _____ Date: _____

Copy delivered/faxed/mailed to Defendant by [Signature]
Effective Date: 2/27/12
Expiration Date: 11/27/12



On 2/27/12
Release Auth. MCL765.6b
rev. 2/2009

Approved, SCAO
CFJ-178

Original - Court
1st copy - Probation Department
2nd copy - Defendant
3rd copy - Prosecutor

| | | |
|--|---------------------------|----------------------------------|
| STATE OF MICHIGAN 17th Circuit Court - Kent County | ORDER OF PROBATION | CASE NO. (1)1202101-FH |
|--|---------------------------|----------------------------------|

ORI: MI410025J Court Address: Courthouse, 180 Ottawa Avenue NW Suite 2400
Grand Rapids Michigan 49503

Court Telephone: (616)632-5480

| | | | | | |
|---|---|--|-----|-----------------|-------------------|
| THE PEOPLE OF THE STATE OF MICHIGAN Kent County | V | Defendant's name, address and telephone no. Pearson, Arthur Lee 2055 Fawnwood Dr. Kentwood Michigan 49508 | | | |
| | | CTN 41-11015784-99 | TCN | SID 4365777A | DOB 04/01/1973 |

| | |
|---|---|
| Probation Officer: BRIAN D BROWN | Term: 4 year(s) Sentence Date: 07/18/2013 |
| Offenses: (1) 750.1746 - Embezzlement - \$50,000 Or More But Less Than \$100,000 | |

| | | |
|---|---|--|
| <input type="checkbox"/> Judgment of guilt is deferred under: | <input type="checkbox"/> MCL 333.7411, Controlled Substance Act | <input type="checkbox"/> MCL 750.350a, Parental Kidnapping Act |
| | <input type="checkbox"/> MCL 762.14, Youthful Trainee Status | <input type="checkbox"/> MCL 600.1070, Drug Treatment Court |

IT IS ORDERED that the defendant be placed on probation under the supervision of the above named probation officer for the term indicated, and the defendant shall:

- Not violate any criminal law of any unit of government.
- Not leave the state without the consent of this court.
- Make a truthful report to the probation officer monthly, or as often as the probation officer may require, either in person or in writing, as required by the probation officer.
- Notify the probation officer immediately of any change of address or employment status.

5. Pay the following to the court:

| | |
|------------------------------|---------------------|
| Fine..... | \$ |
| Costs..... | \$350.00 |
| Restitution..... | \$167,452.81 |
| Crime Victim Assessment..... | \$130.00 |
| Attorney Fee..... | \$ |
| State Costs..... | \$68.00 |
| Drug Court Fee..... | \$ |
| Other..... | \$0.00 |
| TOTAL..... | \$168,000.81 |

- a. The due date for payment is _____
- b. Total amount due may be paid in installments of \$ _____ per _____ starting on _____ and paid in full by the due date stated on the judgement of sentence or by _____
Fines, costs and fees not paid within 56 days of the date owed or of any installment payment date are subject to a 20% late penalty on the amount owed.

- Pay a supervision fee to the Department of Corrections in the amount of \$ 480.00. The fee is payable immediately.
 Total amount due may be paid in installments of \$ 10 per month starting on _____ payable to the State of Michigan.

- 04.18 You must not engage in any assaultive, abusive, threatening, or intimidating behavior.
- 04.2 You must not change residence unless you first obtain written permission from the field agent.
- 04.20 You must not use any object as a weapon. You must not own, use, or have under your control or area of control a weapon of any type or any imitation of a weapon. You must not be in the company of anyone you know to possess these items.
- 04.21 You must contact the supervising field agent no later than the first business day following your placement on probation or release from jail.
- 04.22 You must comply with written or verbal orders made by the field agent.
- 04.23 You must allow the field agent into your residence at any time for probation supervision.
- 04.24 You must submit to a search of your person and property, including but not limited to your vehicle, residence, and computer, without need of a warrant if the field agent has reasonable cause to believe you have items which violate the conditions of your probation.
- 04.25 You must report any arrest or police contact, loss of employment, or change of residence to the field agent within 24 hours, weekends and holidays excepted.

Approved, SCAO
CFJ-178

Original - Court
1st copy - Probation Department
2nd copy - Defendant
3rd copy - Prosecutor

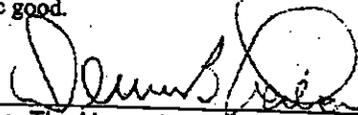
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|---|--------------------|---------------------------|
| STATE OF MICHIGAN 17th Circuit Court - Kent County | ORDER OF PROBATION | CASE NO. (1)1202101-FH |
|---|--------------------|---------------------------|

- 15. 04.5 You must not have verbal, written, electronic, or physical contact with Pilgrim Rest Missionary Baptist either directly or through another person and you must not be within 500 feet of their residence, school, or place of employment.
- 16. 06.3 You must not work in a position where you have direct control over, or access to, another person's money.
- 25. 09.31 You must complete 100 hours of work crew within 4 months from the date of this order.
- 17. 06.4 You must make genuine efforts to find and maintain legitimate employment of a minimum of 30 hours per week, unless engaged in an alternative program approved by the field agent. You must provide ongoing verification of employment or alternative program to the field agent. You shall not give reason to be terminated or voluntarily terminate your employment or alternative program, unless you first obtain written permission from the field agent.
- 18. 08.1 You must pay restitution in the amount of \$ 167,452.81 as follows: to Pilgrim Rest Missionary Baptist at the rate of \$3,500 per month . You must execute a wage assignment to pay restitution if you are employed and miss two regularly scheduled payments.
- 19. 08.11 You must consent to assignment of wages until court ordered assessments are paid in full, unless otherwise directed by the field agent.
- 20. 08.18 You must pay \$ 68 State Cost as ordered by the Court.
- 21. 08.19 You must comply with DNA testing as ordered by the court.
- 22. 08.2 You must pay a crime victim's assessment in the amount of \$ 130 as ordered by the court.
- 23. 08.4 You must pay court costs of \$ 350 as ordered by the court.
- 24. 09.22 Possession of a Medical Marijuana Card issued to you under the Michigan Medical Marijuana Act or having applied for a Medical Marijuana Card will not allow you to use marijuana while under Kent County Circuit Court probation supervision. You are not to use or possess marijuana, controlled substances, drug paraphernalia or be with anyone you know to possess those items unless you have specific written permission from the judge.
- 26. 09.76 You may not participate in any fundraising activities either personally or in association with any churches or non-profit organizations.

Failure to comply with this order may result in a revocation of probation and incarceration.

IT IS FURTHER ORDERED that the Probation Officers of this Court are hereby authorized and empowered to effect the apprehension, detention, and confinement of the defendant on reasonable cause to believe he/she has violated a condition of his/her probation or for conduct inconsistent with the public good.

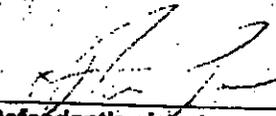
07/18/2013
Date


Judge The Honorable Dennis B. Leiber

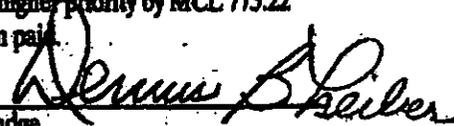
P22889
Bar-No.

I have read or heard the above order of probation and have received a copy. I understand and agree to comply with this order.

7/18/13
Date


Defendant's signature

Payments on the probation supervision fee specified in Paragraph 6 are **SUSPENDED** until victim payments, fines and costs assigned higher priority by MCL 775.22 have been paid.


Circuit Judge

If the judgment of guilt is deferred as stated above, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a.

CC 243a (3/06) ORDER OF PROBATION MCL 600.4803, MCL 769.1a, MCL 771.1 et seq., MCL 775.22, MCL 780.826, MCR 6.445, 18 USC 922(g)(8)(c)
Pearson, Arthur Lee- 865767 07/18/2013 11:29:09