

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY DISTRICT COURT
STATE OF OKLAHOMA **FILED**

JUN 17 2016

JOHN DOE (a pseudonym for the Plaintiff),)

)

Plaintiff,)

vs.)

)

THE FIRST PRESBYTERIAN CHURCH USA)

OF TULSA, OKLAHOMA,)

and JAMES D. MILLER)

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ-2014-02210

Judge Daman H. Cantrell

**ORDER ON HEARING DEFENDANTS' MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

INTRODUCTION

This case may well be one of first impression across the country as it deals with tortious and contractual claims involving the baptism of a convert to Christianity. It certainly is a singular case in Oklahoma jurisprudence as both sides acknowledge. Plaintiff wants redress for alleged harms that he experienced in Syria as a result of reprisal for his conversion, while Defendants claim the First Amendment to the U.S. Constitution keeps Plaintiff from having those claims heard in this Court. The issues in this particular motion, as opposed to the earlier one disposed of by the Court are even more novel and unique. However, this Court must use the rule of law to begin the process of sorting out these significant issues.

BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff brought suit on June 9, 2014, claiming negligence, breach of contract, and outrage against Defendants because of violence he claimed to have occurred after the publication about his baptism had reached relatives in Syria, contrary to an agreement he thought had been reached with Defendants. On July 2, 2014, Defendants filed a motion to dismiss, as per Okla. Stat. tit. 12, § 2012(B)(6). This Court denied that motion to dismiss on October 24, 2014, particularly citing to an Oklahoma court for authority that this Court may adjudicate a case involving religious entities if it can avoid delving into religious doctrine.¹ Now, Defendants bring a separate and allowable motion to dismiss under 12 O.S. § 2012(B)(1) for lack of subject matter jurisdiction. However, deciding this matter from the viewpoint of subject matter jurisdiction raises other unique issues about whether religious doctrine is implicated in this Case.

DISCUSSION

I. The Standard for Dismissal for Lack of Subject matter Jurisdiction Has an Exception for True Ecclesiastical Jurisdiction

At this point of litigation, Defendants may raise a motion to dismiss for lack of subject matter jurisdiction.² As the Oklahoma Supreme Court has said, “The state judiciary’s subject matter jurisdiction is derived from the State Constitution which gives Oklahoma courts unlimited original jurisdiction over all justiciable matters

¹ John Doe v. First Presbyterian Church (U.S.A.) and James Miller, CJ-2014-02210, 5 (Oct. 24, 2014), *citing* Griffin v. Cudjoe, 2012 OK CIV APP 46, 276 P.3d 1069 (upholding subject matter jurisdiction of property claims against a church).

² 12 O.S. § 2012(B)(1).

unless otherwise provided by law.”³ This Court indeed must acknowledge it has subject matter jurisdiction when pleadings “show that the court has power to proceed in a case of the character presented, or power to grant the relief sought.”⁴ Also, this Court must dismiss whenever a party shows it does not have subject matter jurisdiction.⁵ That is, the party disputing subject matter jurisdiction must show how the earlier pleadings were incorrect in their assertions.

This standard, however, has a growing exception recognized in state and more so in federal law in the context of claims involving a religious institution like a church. A Court may not have subject matter jurisdiction in clear instances where there is ecclesiastical jurisdiction, or where a religious institution maintains its discipline of its beliefs and practices.⁶ However, it has been difficult for courts to separate the ecclesiastical from the secular. This Court does not have jurisdiction over ecclesiastical matters but does have jurisdiction over secular matters. Courts have called this the “church autonomy doctrine,”⁷ but the word “church” implies it applies only to Christian churches. It does not. Therefore, this Court will call it the “religious autonomy doctrine.”

Again, it appears that a non-member’s claims of torts and breach of contract in the context of baptism is a case of first impression in Oklahoma and beyond. Therefore, this Court must resolve the issue of whether the publication on the World

³ *Reeds v. Walker*, 2006 OK 43, ¶11, 157 P.3d 100, *citing* OKLA. CONST. ART. 7, § 7(a).

⁴ *State ex rel. Oklahoma Bar Association v. Mothershed*, 2011 OK 84, ¶47, 264 P.3d 1197, 1215.

⁵ 12 O.S. § 2012 (F)(3).

⁶ *See, e.g., Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238 (10th Cir. 2010), *cert. denied*, 132 S.Ct. 1088 (2012).

⁷ *Id.* at 1242 (citations omitted).

Wide Web of the name of a baptized adult who is not a member of that church would be an ecclesiastical act protected by the religious autonomy doctrine.

II. This Court Does Not Have Subject Matter Jurisdiction Over the Claims for Liability Over the Administration of Baptism

This Court does not have subject matter jurisdiction over the claims for liability over the administration of baptism because a closer look at Presbyterian polity shows that the publication of the baptism is required part of making public a profession of faith, and thus federal and state law do not allow this Court to meddle with religious beliefs. That is, it meets the federal test under the religious autonomy doctrine for when a secular court must not consider certain tortious and contractual claims against a religious institution. This is consistent with state law.

A. Presbyterian Polity: The Church's Practice of the Sacrament of Baptism Gives It Ecclesiastical Jurisdiction Over Questions About That Practice.

It appears from the record that Plaintiff John Doe is not a "baptized member" or an "active member" of the First Presbyterian Church (U.S.A.) of Tulsa, Oklahoma, though he was baptized.⁸ Therefore, one might assume Defendants have no ecclesiastical jurisdiction over him or this case. A closer look at Presbyterian polity and federal and state law requires a holding that they do have ecclesiastical jurisdiction over someone they had baptized. It is part of the religious belief of the Defendants that their baptism's requirements must be fulfilled.

⁸ G-1.0401-1.0402, BOOK OF ORDER 2015-2017, 22 The Presbyterian Church (U.S.A.) Part II, <http://pcusa.org>.

To begin, a fair reading of the Book of Order for the Presbyterian Church (U.S.A.) gives us instruction on what the Church means in its pleadings by “ecclesiastical jurisdiction.” The term means “a shared power, to be exercised jointly by presbyters gathered in councils.”⁹ The Church defines ecclesiastical jurisdiction within the bounds of the practice of the faith:

Councils of this church have **only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline.** They may frame statements of faith, bear testimony against error in doctrine and immorality in life, resolve questions of doctrine and discipline, give counsel in matters of conscience, and decide issues properly brought before them under the provision of this *Book of Order*. They may authorize the administration of the sacraments in accordance with the Directory for Worship. They have power to establish plans and rules for the rules for the worship, mission, government, and discipline of the church and to do those things necessary to the peace, purity, unity, and progress of the church under the will of Christ. They have responsibility for the leadership, guidance, and government of that portion of the church that is under their jurisdiction [*emphasis added*].¹⁰

The Defendants argue that the publication of the baptism on the World Wide Web is a question of faith and polity. At first glance, publication on the Web does not appear from a plain reading of Church doctrine to be part of the sacramental nature of baptism.¹¹ Defendants pleaded to the contrary in what may be the most important and dispositive paragraph in this case:

The Book of Order is Part II of the Constitution of the Presbyterian Church (U.S.A.). It requires that baptisms be recorded in the minutes of the Church Session and be made publically available as part of the Parish Register. In accordance with longstanding custom and practice of the Church, Parish Register updates, including baptismal records,

⁹ *Id.* at F-3.0208, 14.

¹⁰ *Id.* at G-3.0102, 42.

¹¹ *See id.* at W-2.300 *et seq.*, where there is no explicit mention of publication online as an essential part of the sacrament of baptism.

are included in the Order of Worship. The Order of Worship is a weekly publication of the Church. This publication is always distributed to attendees of worship services, is delivered to individuals who are unable to attend services in person, and is made available on the Church website. This is the practice and custom because of the Presbyterian belief that Baptism, as one of two sacraments of the Presbyterian Church, is a declaration of faith to be celebrated publically. This has been the custom and practice of the Church for decades.¹²

In pleadings and oral arguments, Defendants' counsel has been fond of saying Plaintiff had complained "about getting what he asked for." From the record, it appears he only asked for baptism as a way of assuring him of going to Heaven in the possible event he would be killed in Syria because of his new faith or because of the ongoing conflict. And, he asked for discretion so as to minimize the chance of a quicker trip than normal to Heaven. By the admission of both parties, he did not ask to become a full member and otherwise be bound further by the numerous rules of the church and its denomination. Therefore, it could be assumed he may not have understood fully the requirements of baptism by the First Presbyterian Church (U.S.A.) of Tulsa. It is unclear to this Court if Plaintiff had been exposed to the detailed Constitution of the Presbyterian Church (U.S.A.), which includes a Book of Order. Still, his baptism placed him squarely under the rules the Defendants have had for baptism..

A key tenet of the Presbyterian Church is that baptism makes one part of "the visible Church."¹³ Indeed, the Internet makes one visible. At first glance, it appeared that the act of baptism was functionally different than the publication about the

¹² Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction 1-2 (Oct. 16, 2015).

¹³ PRES. CHURCH (U.S.A.) CONST., PART I, BOOK OF CONFESSIONS, THE WESTMINSTER CONFESSION OF FAITH, CH. XXX, ART. 6.154 (2014), <http://index.pcusa.org>.

baptism. Since Defendants' counsel pleaded the Book of Order often, it seemed reasonable to consult it. The detailed description of presentation for, administration of, and publication about baptism appears to be the Presbyterian way of telling the world that one has become a Christian. The Church does maintain membership rolls,¹⁴ which are separate from the Register of Baptisms.¹⁵ The publicly available list in question is the Order of Worship, whereby the Church lists those who have been baptized, among other things. This public dissemination is a key part of how the Church requires a conversion and baptism to be "visible" to the world.

This Court does not hint at deciding whether something is sacramental, but rather must make a factual determination about the sincere representation of the Church as far as the sacramental nature of the act of baptism. Again, this has been a tricky issue to consider. Suppose someone being baptized slips and falls on an object negligently left near the baptismal font. The church's negligence would not be related to the act of baptism itself. Also, it would be stretching credulity to separate somehow the secular from the sacred in any action of a Church. Religious organizations have respected and essential roles in society, but they do not have complete immunity from tortious liability simply because they are religious organizations, under the First and Fourteenth Amendments of the U.S. Constitution.¹⁶ Still, the record appears clear enough now that the baptism in

¹⁴ BOOK OF ORDER at G-10.0302a.

¹⁵ *Id.* at (2).

¹⁶ Defendants and Plaintiffs pleaded more than enough cases, so recitation is not necessary. Yet, each of those cases misses the point of *this* case, which directly involves a sacrament.

question and the Defendants' stated beliefs about that baptism include the publication of Plaintiff's name publicly.

B. State and Federal Law:

Defendants place enormous weight upon the Oklahoma Supreme Court's cases in *Hadnot v. Shaw*¹⁷ and *Guinn v. Church of Christ of Collinsville*¹⁸ for the premise that this Court may not hear tort claims against them because the acts involved the publication process after the ordinance of baptism had been administered. The Oklahoma Supreme Court in *Hadnot* deferred to the jurisdiction of the Church to handle its own discipline cases against members who had not rejected that jurisdiction. In *Guinn*, the Court upheld the First Amendment rights of the congregation while the Plaintiffs were members but allowed tort claims to be brought when they no longer were members. In the present Case, Plaintiff never officially became a member of the First Presbyterian Church of Tulsa, and therefore he had not agreed to submit complete jurisdiction to the Church or any other entity associated with it. Plaintiff chose to come to this Court to plead for relief. At first glance, that would seem dispositive for the issue in favor of Plaintiff. As noted, this Court has in fact ruled in favor of Plaintiff in an earlier motion to dismiss based on 12(b)(6) issues.

However, the pertinent federal case law on subject matter jurisdiction leads to a different conclusion in the instant motion. In a case arising here in Tulsa, the Tenth Circuit Court of Appeals recognized the so-called "church autonomy doctrine" as a reason for upholding summary judgment in favor of the Roman Catholic

¹⁷ *Hadnot v. Shaw*, 1992 OK 21, 826 P.2d 978 (1992).

¹⁸ *Guinn v. Church of Christ of Collinsville*, 1989 OK 8, 775 P.2d 766.

Diocese of Tulsa in an employment case.¹⁹ The *Skrzypczak* Court looked to another ruling from the Tenth Circuit and a case from the Third Circuit for the premise that a summary judgment motion should be decided upon whether Plaintiff's claims would be allowed because of the First Amendment.²⁰ The other Tenth Circuit case – *Bryce v. Episcopal Church in the Diocese of Colorado* – relied upon the U.S. Supreme Court's holding in *Wisconsin v. Yoder* that the application of the religious autonomy doctrine must pass “a threshold inquiry” about “whether the alleged misconduct is ‘**rooted in religious belief.**’”²¹ Thus, the simple dispositive issue is whether the public dissemination of Plaintiff's name as a baptized person is “rooted in religious belief” of Plaintiffs. As the discussions, *supra*, explain, the detailed sacrament of baptism – including each and every step of it – is “rooted in religious belief.”

Granted, these kinds of claims from the Tenth and Third Circuits have been in the context of employment of ministers. However, the sacraments of a church could be considered more sacred to a church that whether a minister qualifies to serve that church. In *Purdum v. Purdum*, a Kansas appellate court dismissed a tort claim involving the Roman Catholic sacrament of marriage because it did not want to meddle in the religious beliefs.²²

¹⁹ *Skrzypczak*, 611 F.3d at 1238.

²⁰ *Id.* at 1241-42, quoting *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002); and *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006). To be fair, the *Petruska* Court believed it had the authority to consider the claims before it. “The exception may serve as a barrier to the success of a plaintiff's claims, but it does not affect the court's authority to consider them.” *Id.* at 303.

²¹ *Bryce*, 289 F.3d at 657, quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.3d.2d 15 (1972) (emphasis added).

²² *Purdum v. Purdum*, 48 Kan.App.2d 938, 301 P.3d 718 (Kan.Ct.App. 2013).

As a result, a secular Court like this one must not consider claims like torts or breaches of contract that arise out of a sacrament **because a sacrament is part of the most sacred beliefs of that religious institution.**²³ This rule of law is consistent with Oklahoma law, in that the Oklahoma Supreme Court has been careful not to interfere with the inner workings of a religious institution when it deals with their members. Even though the issue of tort and contract claims involving a sacrament may be a case of first impression in Oklahoma, it appears consistent with available Oklahoma Supreme Court authority. Defendants' deeply held religious belief about the **visible, public nature of baptism** must not be disturbed by this Court.

CONCLUSION

The simple fact is that this country has the rule of law, which means among other things it protects freedom of religion. It is up to each person when deciding upon accepting or rejecting religion to know the consequences of exercising that freedom of religion. In the 21st Century, religious persecution rages around the world against people of all religions.²⁴ The United States claims to stand against that as a matter of policy.²⁵ Anyone accepting and practicing any religion stands a

²³ A sacrament may be defined as “[a] religious ceremony or act of the Christian Church that is regarded as an outward and visible sign of inward and spiritual divine grace, in particular.” OXFORD DICT. (2016), http://www.oxforddictionaries.com/us/definition/american_english/sacrament.

²⁴ See, e.g., Jonathan Fox, *Equal Opportunity Oppression: Religious Persecution Is a Global Problem*, FOREIGN AFF. (Aug. 31, 2015), <https://www.foreignaffairs.com/articles/2015-08-31/equal-opportunity-oppression>.

²⁵ See *Religious Freedom*, U.S. Dep’t of State, Office of Int. Religious Freedom, <http://www.state.gov/j/drl/irf/>.

chance of being mistreated somewhere by someone for that religion. This is true, regardless of whether it involves Christianity.

This Court does not have subject matter jurisdiction to parse out any liability arising from the free exercise of the deeply held sacrament of Christian baptism. The Presbyterian Church (U.S.A.) indeed has a court system for bringing claims against a church or its minister.²⁶ It falls upon that body of Christians to decide whether it would do its best to make whole someone who claims to have been wronged by taking part of its sacrament. This Court hopes that today's decision, as part of what may be long string of decisions from higher courts, supports a simple rule of law: Any governmental body within the United States will not trouble the religious beliefs and practices of its people unnecessarily. Ecclesiastical jurisdiction about matters relating to sacraments belongs to that religious institution which practices that sacrament and its deeply held religious beliefs in the way that it does.

IT IS THEREFORE ORDERED, that the motion for dismissal of all claims for lack of subject matter jurisdiction for **DEFENDANTS** on all claims is hereby **GRANTED**.



Judge of the District Court

Daman H. Cantrell

Dated:

6/17/16

²⁶ See, e.g., *General Assembly Permanent Judicial Commission*, Presbyterian Church (U.S.A.) (2016), <http://oga.pcusa.org/section/committees/gajpic/>.

Certificate of Mailing

I hereby certify that I have on June 17th, 2016, mailed a true and correct copy of the above decision to the following persons, and a true and correct copy was filed in the above case:

Steven Stidham
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John Tucker
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A handwritten signature in black ink, appearing to read "Melissa Norris". The signature is written in a cursive style with large, rounded loops for the letters.

Melissa Norris, Deputy Court Clerk