

**IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA, FIRST DISTRICT
TALLAHASSEE, FLORIDA**

CASE NO: 16-2015-CA-002524-XXXX-MA

DIVISION: CV-B

APPEAL NO: 1D15-3923

**PATRICK FLYNN, as Parent
and Guardian, Etc.,
Appellant,**

VS

**FELIPE ESTEVEZ, Bishop of the
Diocese, Etc.,
Appellee.**

APPELLANT'S REPLY BRIEF

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PREFACE

The Appellant, Patrick Flynn, as Parent and Guardian, was the Plaintiff in the circuit case proceedings below. The Appellee, Felipe Estevez, Bishop of the Diocese, Etc., was the Defendant. The parties shall be referred to herein as the “Appellant” and “Appellee” respectively. References to the Record on Appeal shall be preceded by the prefix “R” followed by the page number. References to the Supplemental Record on Appeal shall be preceded by the prefix “SV1” followed by the page number. References to Appellant’s Initial Brief shall be preceded by the prefix “IB” followed by the page number. References to Appellee’s Answer Brief shall be preceded by the prefix “AB” followed by the page number.

STANDARD OF REVIEW

Appellee cites four Florida Courts of Appeal cases stating that a complaint for declaratory relief is reviewed on the abuse of discretion standard. Appellee also observes that Appellant’s argument cites cases involving motions for declaratory relief, while Appellee’s cite cases concerning complaints for declaratory relief, as occurs in this appeal. However, Appellant not only contends that the motion/complaint distinction is immaterial, but respectfully points out a more critical distinction between the parties’ cited cases, i.e., that Appellant’s cited cases concern disputes over matters of law—contract interpretation in *Schneberger v. Schneberger*, 979 So. 2d 981 (Fla. 4th DCA 2008), and, directly on point with this appeal, statutory interpretation in *Raymond James Fin. Servs. v. Phillips*, 110 So.3d 908 (Fla. 2nd DCA 2011). Furthermore, *Raymond* was appealed to the state Supreme Court, giving us superseding authority to resolve remaining doubt, if any, to wit: “Questions of statutory interpretation are reviewed by this Court de novo. *Maggio v. Fla. Dep’t of Labor & Emp’t Sec.*, 899 So.2d 1074, 1076 (Fla.2005).” *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 190 (Fla., 2013). The sole issue in this appeal concerns the proper interpretation of Florida’s statutory vaccine religious exemption law, specifically, whether or not said law applies to, and is enforceable against, Appellee’s Catholic school. As a matter of law, the answer to that question is either ‘yes’ or ‘no’. Therefore, the standard of review

must be de novo. However, if the First District Court of Appeals nevertheless determines that the abuse of discretion standard applies, Plaintiff-Appellant contends that the court below abused its discretion in dismissing Plaintiff-Appellant's claim seeking declaratory relief.

Argument

The mere assertion of the phrase, "Church Autonomy Doctrine" (hereinafter "Doctrine") does not require its application; judicial analysis is required:

The doctrine prevents secular courts from reviewing disputes requiring an analysis of "theological controversy, church discipline, *ecclesiastical government* [sic], or the conformity of the members of the church to the standard of morals required," and under the doctrine, secular courts must accept the decision by the highest ecclesiastical authority on such matters. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733, 20 L.Ed. 666 (1871) (emphasis added). When analyzing jurisdiction under the church autonomy doctrine, courts must consider the nature and substance of the claim to determine if the claim involves a prohibited inquiry. *Patton v. Jones*, ___ S.W.3d ___, ___, 2006 WL 2082974 at *3 (Tex.App. July 28, 2006) (citations omitted).

Malichi v. Archdiocese of Miami, 945 So.2d 526, 529 (Fla. App., 2006). First, is the Appellee-Bishop the "highest ecclesiastical authority" on this matter? E.g., the United States Conference of Catholic Bishops has endorsed refusing vaccines "manufactured using fetal tissue from induced abortions."¹ Local Bishops may have authority over local school policies within their diocese generally, it is unlikely that local Bishops are the highest ecclesiastical authority on the question

¹ Conscience Exemption for Vaccines Based on Fetal Tissue from Abortions, United States Conference of Catholic Bishops, <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/upload/Vaccines-Conscience-Exemption-updated-April-2015.pdf>

of whether or not the Catholic religion is opposed to vaccine religious exemptions generally, and whether or not that objection is a religious tenet of the Church. The Record is silent on this point, so Appellee's Doctrine argument must fail.

Assuming, *arguendo*, Appellee is the highest ecclesiastical authority on the matter, the court "must consider the nature and substance of the claim." Appellee's concern for the "common good" is clearly about the health and welfare of students, a matter that falls squarely within the state's police powers to regulate, (IB p. 12), and the purpose of the religious exemption is to balance "public health and welfare" with parents' free exercise rights, *Dept. of Health v. Curry*, 722 So.2d 874, 877 (Fla. App. 1 Dist. 1998). (IB pp. 9-14). Moreover, a determination as to whether or not Appellee's objection to vaccine religious exemptions is religious in nature is moot, since the Appellee's participation in the Florida Tax Credit Scholarship Program requires Appellee to comply with provisions of Florida law applicable to private schools, (IB pp. 22-23), which includes the statutory vaccine religious exemption. Appellee's Answer Brief does not refute Appellant's statutory construction law analysis, (IB pp. 5-9), which confirms the application of Florida's statutory vaccine religious exemption law, as worded, to all schools, public and private, including Appellee's Catholic school. Finally, the Doctrine would only apply if there would otherwise be a violation of the Appellee's First Amendment rights (*see* Doctrine cases discussed *infra*), and Appellant's Initial Brief dispels all

doubt on that question in its Free Exercise and Establishment clause analyses, (IB pp. 9-24). But assuming, *arguendo*, that any doubt should remain, an analysis of the elements necessary to invoke the Doctrine reveals that the Doctrine does not, and cannot, apply to the facts in the case at bar. Reviewing each of these in turn:

1) Theological controversy: Contrary to Appellee's assertions, the parties' dispute is not theological in nature. Appellee's "common good" concern, (SV1. pp. 16, 48), is, objectively as required by *Seeger*, (IB p. 11), a public health and welfare matter that fails to become a protected religious tenet merely by Appellee's framing it as such. *Curry* explains that the vaccine religious exemption balances "public health and welfare" and "a parent's fundamental [free exercise] right." *Department of Health v. Curry*, 722 So.2d 874, 877 (Fla.App. 1 Dist. 1998).

2) Church discipline: The case at bar does not concern a church discipline matter.

3) Ecclesiastical government: Assuming Appellee's objection to vaccine religious exemptions is a governance matter concerning school enrollment policy, it is not ecclesiastical, as it concerns public health and welfare, and not any inherently religious concern. In contrast, the Doctrine was applied in *Malichi* to an internal church employee's worker's compensation dispute, which matter was addressed by canonical law. The case at bar does not concern an internal dispute, nor one addressed by canonical law or any equivalent religious law. Rather, it concerns one

Bishop's unilateral declaration in an abrupt change of policy reversing a years-long prior policy. Thus, the parties' dispute does not concern ecclesiastical government.

4) Conformity to the standard of morals: Assuming, *arguendo*, that Appellee's concern for the "common good" and its new policy rejecting religious vaccine exemptions is a new moral standard, it lacks the substance necessary to rise to a level that would invoke the Doctrine. Where was this alleged moral standard in the years preceding the new policy? What was the moral basis for the abrupt policy change? The record is silent on these questions, save Appellee's characterization of his concern as a "tenet," (SV1 p. 6), which, when taken alone, is insufficient to make Appellee's common good concern theological or ecclesiastical in nature.

Florida Appellate courts have addressed the Doctrine in four cases:

1) *Malichi v. Archdiocese of Miami*, 945 So.2d 526, 529 (Fla. App., 2006), discussed *supra*.

2) *Favalora v. Sidaway*, 995 So.2d 1133 (Fla. App., 2008): Here, the Archbishop of the Catholic Archdiocese of Miami unsuccessfully sought to invoke the Doctrine to quash a motion to dismiss his complaint. *Favalora* is particularly instructive:

A First Amendment violation does not occur any time a case requires a court to examine church law or policies. *See Malichi v. Archdiocese of Miami*, 945 So.2d 526, 529 (Fla. 1st DCA 2006) (explaining that "[t]he subject of a priest's employment relationship with his church is not *per se* barred by the church autonomy doctrine"). The Archdiocese is not immune from suit merely because it is a religious organization.

Indeed, such immunity and preferential treatment for a religious organization might itself violate the Establishment Clause.

Id. at 1135. Again, Appellee may not unilaterally, by mere assertion, invoke the Doctrine; judicial analysis is required. *Favalora* provides still further insight:

The mere fact that this case may require inquiry into the applicable church law does not constitute "excessive entanglement" under the First Amendment . . . The lower court is not being called upon to resolve any disputed intra-organizational issue of governance, and the plaintiff's secular tort claims are not barred by the First Amendment. See also *Rapp v. Jews for Jesus, Inc.*, 944 So.2d 460 (Fla. 4th DCA 2006) (explaining that the First Amendment does not bar tort claims).

Id. at 1134. The case at bar does not concern an inquiry into church law, only an incidental policy. But even if the religious exemption dispute were an inquiry into church law, it does not concern "disputed intra-organizational issues of governance." Thus, application of the statutory vaccine religious exemption law to Appellee's Catholic school does not violate Appellee's First Amendment rights, and the Doctrine does not apply.

3) *Bilbrey v. Myers*, 91 So. 3d 887 (Fla. App., 2012): In this case concerning tort claims between ministers in the same church, the court ruled that tort claims are not barred by the Doctrine (though the dismissal of two claims was affirmed where the alleged facts did not rise to an actionable level). If a tort claim between ministers in the same church does not invoke the Doctrine, the case at bar involving an outside party over a matter with only a *di minimus* effect on the Church's administrative operations, that of reporting once annually student

immunization statuses (each student is either fully immunized, medically exempt, or religiously exempt), does not invoke the Doctrine, either. *Bilbrey* discusses the “‘neutral principles’ approach,” *Id.* at 891, applied in *Malachi*. The Doctrine was not invoked—the Defendant’s First Amendment rights not violated—by allowing a tort claim of negligent hiring, since it “could be resolved by the neutral application of principles of tort law.” Nor did this violate “the Establishment Clause because the imposition of tort liability in these circumstances had a secular purpose neither advanced nor inhibited by religion.” *Id.* This court need only apply neutral statutory construction principles (IB pp. 5-9), and note the fact that the legislature’s enactment of the vaccine religious exemption law neither advanced nor inhibited religion, (See IB pp. 10-22) (Free Exercise and Establishment Clause Analyses). So, even if Appellee’s objection to religious exemptions was a bona fide religious belief, the Doctrine could not apply, as there is no First Amendment violation.

4) *Galilean Family Worship Ctr. v. Cent. Fla. Dist. Church*, 111 So.3d 304 (Fla. App., 2013): In *Galilean*, one church party is a member of the other church party, and the Doctrine did not apply to a tort conversion claim. Even though this concerned an intra-organizational issue of church governance where dismissal of some claims was affirmed, the conversion claim was not barred by the Doctrine. Applying the statutory vaccine religious exemption to Appellee’s Catholic school

would be far less intrusive than the application of a tort conversion claim in *Galilean*, and so would not violate the Doctrine. Thus, Appellee’s argument fails.

Further Response to Appellee’s Answer Brief

Appellee claims that Appellant’s “demand for declaratory relief [] fails” because Appellant’s claim for an injunction at trial should fail, due to the parties’ contractual relationship, (AB p. 16). However, Appellee cites no legal authority for this proposition. Accordingly, Appellee’s argument fails.

Appellee declares that both parties’ claims are “essentially religious.” (AB p. 180). As discussed *supra*, Appellee’s claims is not religious, but even if it were, it does not rise to the level of a protected religious belief. (IB pp. 10-22). Appellant’s claim does concern Appellant’s protected religious beliefs opposed to immunizations (though Appellee’s religious beliefs are not in dispute), but as explained in *Curry*, scrutiny of Appellant’s beliefs is beyond the reach of the court, due to the legislature’s wording of Florida’s vaccine religious exemption law.

Appellee argues that this Court can’t resolve a religious controversy, (AB pp. 18-19). However, the case at bar does not constitute a religious controversy, only a dispute about the application of the state’s vaccine religious exemption statute to a private Catholic school.

Appellee argues that the Catholic School’s rejection of vaccine religious exemptions “necessarily turns on question of internal church governance, organiza-

tion and discipline,” which “in turn [] are governed by ecclesiastical rule, custom and law,” (AB p. 20). However, the Record and Appellee’s Answer Brief are devoid of reference to any specific ecclesiastical rule, custom or law governing the acceptance of vaccine religious exemptions—indeed, the Record reveals that the policy is brand new (SV1 . 45), and is about the “common good.” The case at bar does not concern church governance, organization and discipline.

Appellee cites *Gaston v. Diocese of Allentown*, 712 A.2d 757 (Pa. Super. 1998), (AB p. 21), upholding a Catholic school student expulsion. However, the case at bar does not concern the “Catholic School’s disciplinary code” or the School’s “dogma and discipline in its students,” and as a brand new exemption policy, does not concern the Catholic school as a “repository for Catholic tradition and scripture,” *id.* at 760, (AB p. 21). As discussed *supra*, greater intrusions upon churches than the application of the state statutory vaccine religious exemption law to a private Catholic school have been held not to constitute excessive entanglement or trigger application of the Doctrine.

Appellee cites *Mammon v. SCI Funeral Services of Florida, Inc.*, ___ So.3d ___, 2016 Fla. App. LEXIS 7967 (Fla. 4th DCA 5/25/16), concerning a dispute over “Jewish burial customs and traditions.” However, Appellee’s brand new vaccine religious exemption policy does not concern a “custom” or “tradition.”

Appellee argues without clear explanation or support that “Appellant’s ‘secular purpose’ analysis is simply inapplicable in the instant case.” However, Appellant’s unrefuted substantive arguments show otherwise, regarding the Doctrine, *supra*, and the Free Exercise and Establishment Clauses, (IB pp. 10-22).

Appellee cites *Curry* to claim that Appellee’s beliefs may not be scrutinized. However, *Curry* applies to vaccine religious exemption applicants only, and not to Appellee’s claimed objection to religious exemptions.

Appellee claims that the court in *Berg v. Glen Cove City Sch. Dist.*, 853 F. Supp. 651, 655 (E.D.N.Y. 1994) “did not need to weigh the sincerity of the *Bergs*’ beliefs against those of the Rabbi.” However, *Berg* did apply scrutiny pursuant to New York’s vaccine religious exemption law (which, unlike Florida’s law, allows scrutiny of the applicant’s beliefs) to determine the religious nature and sincerity of the *Berg*’s beliefs, and found that “they adhere to their own concept of being Jewish . . . The basis for their opposition to immunization was their interpretation of passages from certain Hebrew scripture,” despite a Rabbi’s testimony that “there is nothing in the teaching of the Jewish religion that would proscribe immunization for children.” *Id.* at 655. *Berg* stands for the proposition that the First Amendment protects sincere religious beliefs, even though a religious leader may disagree.

Appellee cites Michigan’s *Dlaikan v. Roodbeen*, 522 N.W.2d 719, 720 (1994) for the proposition that “civil courts lack jurisdiction to over the denial of

admission by a religious school.” (AB p. 24). However, in the case at bar, Appellant’s youngest child was initially admitted to Appellee’s Catholic school, but later rejected due solely to the parents’ exercise of a vaccine religious exemption. Furthermore, *Dlaikan* concerned “likely . . . ecclesiastical policies,” whereas the case at bar does not. Therefore, Appellee’s reliance on additional unpublished cases that followed *Dlaikan* (i.e., *In re: Vida and Winkler*), do not support Appellee’s argument.

Appellee mischaracterizes the parties’ dispute as a “religious controversy between the Bishop and a parishioner about Catholic Church policy,” (AB p. 27), and insists that this Court accept that characterization without explanation or support. However, proper characterization requires judicial analysis.

Appellee desperately asserts that “the Legislature did not write the [vaccine religious exemption] statute the way Appellant now wants to have it interpreted,” (AB p. 27), and that Appellant “seeks a revision of the statute,” (AB p. 28). However, Appellee offers no legal authority to rebut Appellant’s statutory construction law analysis. (IB pp. 5-9).

Appellee argues: “The Bishop maintains the ultimate ecclesiastic right to control and mandate the policies (including admissions standards) for schools in the Diocese, which are subject to the authority of the Catholic Church under Canon Law.” (AB p. 28). However, the Bishop must also abide by applicable state law,

which necessarily requires allowing enrolled students' parents to exercise a statutory vaccine religious exemption, which is not an ecclesiastical matter, only a *de minimus* administrative task that requires annually documenting student immunization status. This task does not involve a matter of church doctrine.

Appellee argues that Appellant's reliance on *Seeger* is misplaced. However, *Seeger* has been cited and applied in dozens of First Amendment cases, including some concerning a determination about the religious nature and sincerity of vaccine religious exemption applicants' beliefs, specifically. *See, e.g., Mason v. General Brown Cent. School Dist.*, 851 F.2d 47, 51 (2nd Cir. 1988), which held that "it is sufficient if the belief 'occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.'" (*quoting United States v. Seeger*, 380 U.S. 163, 166, 85 S.Ct. 850, 854 (1965)); and *Lewis v. Sobol*, 710 F.Supp. 506 (S.D.N.Y., 1989), in which the court, explaining what beliefs are protected by the First Amendment, stated: "*See also United States v. Seeger*, 380 U.S. 163, 178, 85 S.Ct. 850, 860, 13 L.Ed.2d 733 (1965) (the term "religious training and belief" in a congressional statute [is] not limited to "those believing in a traditional God")." *Lewis* added in footnote 13: "Although *Seeger* was decided on statutory and not constitutional grounds, the Court's determination is nonetheless a helpful guide." *Id.* at 517. Thus, *Seeger* is clearly relevant and applicable here.

Appellee dismisses Appellant's list of state and federal vaccine religious exemption cases, (IB pp. 25-28), and cites *Curry* to avoid scrutiny of his own beliefs. However, the case at bar does not concern Appellant's religious beliefs opposed to immunizations, it concerns the application of a state statute to Appellee's Catholic school. This requires judicial analysis of Appellee's claimed religious belief to determine if it is protected by law as discussed *supra* and in Appellant's Initial Brief.

Appellee references the 2nd Cir. *Phillips* case but makes no clear connection to the disputed issue in this case. (AB p. 32).

Appellee states that the "civil court" cannot "weigh the sincerity of the Bishop's belief" without engaging in "improper entanglement into constitutionally-protected religious doctrine." (AB p. 33). If that were true, this Court would not be able to support Appellee's Doctrine claim. Appellee wants a "per curium affirmed" without judicial scrutiny, despite the fact that judicial scrutiny is required.

Appellee argues that its participation in the FTCS Program does not waive its Constitutional protections concerning application of the religious exemption to Catholic schools, by referring to "standards or curriculum for private schools." (AB p. 35). However, the parties' dispute does not concern a "standard or curriculum." Appellee's reference to source of funds, (AB p. 36), is immaterial, as applicable analyses concern statutory construction rules and the First Amendment.

Appellee's assertion on Appellant's equal protection clause analysis "fails because there is no factual or legal basis for it," (AB p. 37), strains credulity, as Appellant's argument is supported by facts and law, (IB pp. 23-24), while Appellee's contrary claim stands as an assertion without legal authority or facts.

Appellee's claim that this case presents "a conflict between a statutory right provided to parents and a Constitutional right provided to a church," (AB p. 38), is incorrect. For reasons stated *supra* and in Appellant's Initial Brief, this case concerns Appellant's statutory and First Amendment rights, and not a protected Constitutional right of Appellee. Allowing Appellee's claim that his rejection of the religious exemption is a "tenet" "would be . . . in effect to permit every citizen to become a law unto himself." *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1878) (upholding a state law prohibiting religious-based polygamy).

Finally, Appellee asserts that Appellant cannot request money damages for violation of Appellant's First Amendment rights on Appeal. However, Appellant's Complaint and Amended Complaint left the door open with, "and such other and further relief as the Court may deem appropriate." (R. pp. 3 and 10-11 respectively). Furthermore, Appellant cited precedent in which a court awarded money damages when a school failed to honor a valid statutory religious exemption, (IB p. 29), (*Lewis v. Sobel*, 710 F. Supp. 506 (S.D.N.Y. 1989)).

CONCLUSION

The Church Autonomy Doctrine does not apply to the facts in this case. Application of Florida's vaccine religious exemption statute to Appellee's private Catholic school would not violate Appellee's First Amendment rights.

Appellee's objection to the exemption is not a religious tenet, but assuming *arguendo* that it was, enforcement of the exemption law against Appellee's Catholic school would not rise to the level of a First Amendment violation.

For Appellee to prevail, Appellee must show that Florida's vaccine religious exemption law is unconstitutional as applied to Appellee's Catholic school "beyond a reasonable doubt." Appellee has not met this standard.

The trial court erred when it granted Appellee's motion to dismiss Appellant's claim for declaratory relief. Florida's vaccine religious exemption statute is enforceable against Appellee's private Catholic school. Appellant therefore respectfully requests that this Court reverse the judgment against Appellant in the court below; enter a ruling declaring Appellant's right as a matter of law to exercise a statutory religious exemption at Appellee's private Catholic School; and remand the case to the trial court for a determination of damages to be awarded to Appellant, against Appellee, for Appellee's violation of Appellant's Constitutionally protected right to refuse vaccines on religious grounds, and for such further and other relief as this Honorable Court may deem just and proper.

Respectfully submitted on this 5th day of July, 2016.

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