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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION

2007 APR 10 AM 11:08

CLERK OF COURT

DR. SHERI L. KLOUDA,
Plaintiff

vs.

SOUTHWESTERN BAPTIST
THEOLOGICAL SEMINARY and
LEIGHTON PAIGE PATTERSON,
Defendants

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Civil Action No. 4-07CV-161-A

MOTION OF DEFENDANT LEIGHTON PAIGE PATTERSON TO DISMISS
PURSUANT TO RULE 12(b)(1) AND,
ALTERNATIVELY, PURSUANT TO RULE 12(b)(6)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Issue

Does any civil court have jurisdiction of the claims alleged in the amended complaint brought by a former professor, whose status is that of a "minister" in the School of Theology of the seminary, whose status is a "church," since all claims are predicated on an ecclesiastical decision not to grant tenure and not to renew the professor's contract based on a religious opinion and the publication of that decision and opinion and, alternatively, if the Court does have jurisdiction of these claims, do not the religion and speech clauses of the First Amendment to the United States Constitution as well as other legal impediments defeat all of them?

Summary of Amended Complaint

1. Plaintiff, who formerly taught Old Testament Languages in the School of Theology of Southwestern Baptist Theological Seminary (hereafter "the seminary"), sues the seminary and its president Leighton Paige Patterson (hereafter "the president") because, according to the amended complaint, plaintiff was told by the president that "he would not renew her contract to teach or

recommend her for tenure . . . based on his interpretation of Scripture” that “women are prohibited from teaching or ruling in any capacity over men,” which is a different “interpretation of Scripture from his predecessor and the Board of Trustees.” Amended Complaint, Paragraphs 10, 11 and 33.

2. The amended complaint alleges six claims predicated on the president’s communication to plaintiff, namely, (1) breach of contract, (2) fraud and/or fraud in the inducement, (3) promissory estoppel and/or equitable estoppel, (4) declaratory judgment, (5) defamation, and (6) vicarious liability/respondeat superior/vice-principal liability. Amended Complaint, Paragraphs 39 - 83.

Dismissal Appropriate Pursuant to Rule 12(b)(1)

3. All of plaintiff’s claims against the seminary and its president are outside the subject-matter jurisdiction of a civil court based on the longstanding doctrine of ecclesiastical abstention or church-autonomy doctrine since these claims are peculiarly ecclesiastical in nature because they arise out of the termination of a relationship between plaintiff, who enjoys the status of a “minister,” and the seminary, which has the status of a “church,” and they fall within the “area of religious instruction” that “government is to be entirely excluded from.”

Dismissal Appropriate to Rule 12(b)(6)

4. In the alternative, should the Court find that it has jurisdiction over the claims alleged in the amended complaint, these are defeated by the religion and speech clauses of the First Amendment to the United States Constitution and other legal impediments established by the allegations in the amended complaint itself.

5. The breach of contract claim should be dismissed because the amended complaint alleges an “oral contract” that the plaintiff’s “contract would be renewed on a yearly basis in the

event her performance evaluations warranted such renewal,” which is an unenforceable contract that is not to be performed within one year that Section 26.01(6) of the Texas Business & Commerce Code, more popularly known as the statute of frauds, requires be in writing and also reveals a lack of agreement on essential terms - - namely, the amount to be paid, the criteria for performance evaluation, and the identity of the person who would make the evaluations and determine if the contract warranted a renewal. Furthermore, these general statements, which the plaintiff contends constitute a binding contract, have repeatedly been found to be too general to create an enforceable future employment contract. Amended Complaint, Paragraphs 18 and 40.

6. The claims of fraud and/or fraud in the inducement should be dismissed because the amended complaint admits (1) that the plaintiff had been teaching at the seminary since the “spring of 2000”; (2) that she was promoted by the board of trustees “as an assistant professor of Old Testament Languages in April 2002,” which is a “tenure track position”; (3) that she continued in that position “for almost four years”; (4) that she was notified by the president, who became president in June 2003, in April of 2006 that he would not renew her contract or recommend her for tenure; and (5) that she left the seminary for another seminary in August of 2006. These are the same facts alleged in support of the breach of contract claim which are defeated by Section 26.01(6) of the Texas Business & Commerce Code. Additionally, these facts are too indefinite to be actionable, plus partial performance defeats them. Amended Complaint, Paragraphs 9, 15, 24, 35 and 38.

7. The claims of promissory estoppel and/or equitable estoppel should be dismissed because these claims are also defeated by Section 26.01(6) of the Texas Business & Commerce Code. Furthermore, the amended complaint admits that the plaintiff was promoted to a tenure-track position after having already taught at the seminary for two years rendering her allegations of

detrimental reliance too general and indefinite to be actionable. Finally, these claims cannot be enforced since the seminary and its president based their ministry selection decisions on theological grounds. Amended Complaint, Paragraphs 15 and 24.

8. The declaratory judgment claim should be dismissed because no court can “declare that plaintiff had full standing and capacity to serve” in a ministry capacity with an ecclesiastical organization since this is not a proper subject for declaratory relief. Amended Complaint, Paragraph 71.

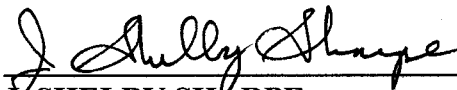
9. The defamation claim should be dismissed because the language alleged to be defamatory that it was a “mistake” for the plaintiff to be teaching men in the School of Theology and that this was a “momentary lax of the parameters” is not legally capable of a defamatory meaning because the language constitutes expressions of opinion that cannot be proven true or false, which are also protected religious speech, and to enter judgment on this claim would “prefer one religion [religious beliefs] over another” as well as punish the president for “professing religious beliefs.”

Argument and Authorities

10. The legal arguments and authorities in support of the motion are set forth in the accompanying brief.

WHEREFORE, PREMISES CONSIDERED, Defendant Leighton Paige Patterson requests the Court to grant this motion to dismiss and dismiss all of plaintiff’s claims against him in the amended complaint.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion to dismiss has been served by certified mail, return receipt requested, and/or regular mail, this 10th day of April, 2007 on the following:

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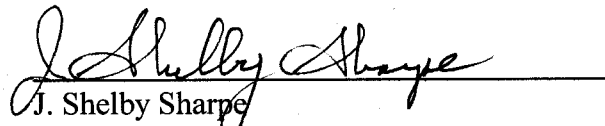
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