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Teacher Can't Sue Church School for FEHA Violations

By Helene Wasserman

A California Court of Appeal has ruled that a religious school teacher who was living "out of wedlock" with her boyfriend as they raised their child cannot state a claim against the church for wrongful termination based upon marital status discrimination. *Henry v. Red Hill Evangelical Lutheran Church of Tustin*, No. G044556 (Fourth Dist., Div. Three Dec. 9, 2011).

The plaintiff taught preschool at the church school from August 2002 until her termination in May 2009. During that time, in addition to teaching preschool, she also became the Director of the preschool. Each year, she signed a document setting forth the professional expectations for teachers, which included the expectation to serve as "a Christian role model" for the students and their parents, "both in and out of school." Indeed, when giving her weekly tour of the preschool to prospective parents, she emphasized the "Christian-based, Bible-based values of the school." As part of the curriculum, plaintiff taught religion to the preschoolers and, once a week, attended chapel with her class.

When the plaintiff applied for the position, she was married. She subsequently divorced. Later during her employment, she gave birth to a child fathered by her boyfriend. Prior to giving birth, the plaintiff and her boyfriend were living together, but she did not know whether the principal of the school was aware of that fact.

After parents learned of and expressed disapproval over the plaintiff's "living situation," the school principal met with the plaintiff and asked whether she intended to marry her boyfriend. She indicated that she did, but was not sure when. Ultimately, the school terminated the plaintiff's employment "for living with her boyfriend and raising their son together without being married." The focus was the living arrangement.

The plaintiff sued the church alleging that her termination was wrongfully based on her marital status, in violation of the California Fair Employment and Housing Act (FEHA), Title VII, and the California Constitution. The trial court ordered the trial bifurcated so that the church presented its defenses first. After trial, the court ruled in favor of the church, finding that the church is a religious institution and that the plaintiff's employment was terminated because she violated a church precept.

The appellate court affirmed. Preliminarily, the court addressed whether the church is an employer under the FEHA. The FEHA expressly excludes nonprofit religious associations from the definition

of employer. The plaintiff argued that the FEHA does not exclude “nonprofit public benefit corporations formed by, or affiliated with, a particular religion and that operates an educational institution as its sole or primary activity.” On this basis, she asserted that the school was not exempted. The court disagreed, noting that the school did not have an independent legal status apart from the church.

Next, the court analyzed the plaintiff’s claim for wrongful termination in violation of public policy. The only public policy asserted was the FEHA, which expressly excludes the church from being considered an employer. The trial court had found that the plaintiff was terminated because she violated a church precept. The church acknowledged that she was not terminated because she had a child out of wedlock or because she remained unmarried. She was terminated because she continued to live with her boyfriend in a sexual relationship while unmarried. The trial court found, and the appellate court agreed, that the church’s decision was based on a matter of religion, not marital status. As such, there was no public policy violated.

Finally, the court disagreed with the plaintiff’s assertion that the ministerial exception to the FEHA – which protects religious organizations from normally attendant adverse consequences of employment discrimination – does not apply. Because the plaintiff’s position as a church preschool teacher involved her providing students with “the groundwork upon which the whole religious doctrine may be built,” the court found that her functions were ministerial in nature.

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