

Flynn v. Estevez, 2015 WL 4878787 (2015)

2015 WL 4878787 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Fourth Judicial Circuit
Duval County

Patrick FLYNN, as Parent and Guardian of S.F., Plaintiff,
v.
Felipe ESTEVEZ, Bishop of the Diocese of St. Augustine, Defendant.

No. 162015CA002524.
July 24, 2015.

Order Denying Plaintiff's Motion for Temporary Injunctive Relief and Dismissing Amended Petition with Prejudice

Tad Delegal, Esquire, for plaintiff.

Dennis Guidi, Esquire, for defendant.

Karen K. Cole, Judge.

*1 This case¹ came before the Court for:

(a) an evidentiary hearing on Plaintiff's Motion for Temporary Injunctive Relief, and

(b) a non-evidentiary hearing on Bishop Felipe J. Estevez. Bishop of the Diocese of St. Augustine, a Corporation Sole[s]. Motion to Dismiss the Amended Petition for Injunctive and Declaratory Relief.

This case presents the Court with a conflict between parents who object to immunizing their child against communicable diseases and a parochial school which requires such immunizations as a condition of admission. S.F., a minor, has applied for admission to Holy Spirit Catholic School. S.F. has not been immunized against communicable diseases. Holy Spirit Catholic Church has advised S.F.'s parents that it will accept S.F. as a student but only if his parents allow him to receive immunizations.

Section 1003.22 of the Florida Statutes is entitled. "School-entry health examinations; immunization against communicable diseases; exemptions; duties of Department of Health." Subsection (4) of that statute requires that public and private schools "establish and enforce as policy that, prior to admittance to or attendance in a public or private school, grades kindergarten through 12 each child present or have on file with the school a certificate of immunization for the prevention of those communicable diseases for which immunization is required by the Department of Health...."

There are various statutory exemptions² to this requirement.³ One exemption, known as the "religious exemption," exempts a student from the statutory immunization requirements if "the parent of the child objects in writing that the administration of immunizing agents conflicts with his or her religious tenets or practices...." Section 1003.22(5)(a). Fla. Stat. Plaintiff Patrick Flynn, S.F.'s father, has provided Holy Spirit Catholic School and Bishop Estevez a written objection pursuant to this exemption. In his amended petition, he seeks a declaratory judgment adjudicating the rights of and obligations of the parties; declaring invalid the school's decision not to admit S.F. because he has not received

Flynn v. Estevez, 2015 WL 4878787 (2015)

immunizations; enjoining the school from continuing to deny S.F. access to the school; and awarding him costs and attorney's fees⁴ as allowed by law.

*2 A temporary injunction such as that sought here by Plaintiff may issue only when the party seeking the temporary injunction establishes that:

- (1) he or she has a substantial likelihood of success on the merits;
- (2) he or she has no adequate remedy at law;
- (3) he or she will suffer irreparable harm if the court does not issue the injunction: and
- (4) issuance of the temporary injunction will promote the public interest.

See, e.g., *Liberty Counsel v. Florida Bar Board of Governors*, 12 So.3d 183 (Fla. 2009).

Plaintiff in this case has not proved, and cannot prove, the existence of three of the four required factors.

Plaintiff does not have a substantial likelihood of success on the merits

The United States Supreme Court has long held that it is within the police power⁵ of a state to require compulsory vaccination of those living within its borders. See, e.g., *Zucht v. King*, 260 U.S. 174, 176 (1922). A recent federal appellate decision, now before the United States Supreme Court, has held that a state may “constitutionally require that all children be vaccinated in order to attend public school” and is not required to provide for a religious exemption to that requirement. *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015). *pet. for cert. docketed*, no. 14-1445 (U.S. June 9, 2015). Florida, however, has chosen to provide such an exemption. The challenge in the present case is how to determine the appropriate manner in which to resolve the conflict between the right of a parent to claim the statutory religious exemption and the right of a church to determine the manner in which it will operate its church school.

Plaintiff Patrick Flynn testified that he and his wife believe it essential to provide a Catholic education to their children. He objects to introducing vaccines into a child's body, believing that to do so would offend God. When advised that S.F. would not be admitted to Holy Spirit because S.F. was not immunized. Mr. Flynn appealed to the Diocese and tried to discuss the issue with the Bishop, but his efforts did not alter the school's stance on the issue. Bishop Estevez's legal position as Bishop is that immunizations of children attending Catholic schools is an issue of faith, discipline, and Catholicism which can only properly be determined by the church and not by the civil courts.

The church autonomy doctrine is necessarily involved in the resolution of the dispute before the court. That doctrine is based on the Free Exercise [of Religion] Clause of the First Amendment to the United States Constitution. That clause prevents secular courts from reviewing disputes (hat require an analysis of theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required. Under the doctrine, secular courts must accept the decision by the highest ecclesiastical authority on such matters. *Malichi v. Archdiocese of Miami*, 945 So.2d 526, 529 (Fla. 1st DCA 2006).

*3 In *Malichi*, the First District Court of Appeal held that the church autonomy doctrine prevented a Florida court from awarding an injured priest worker's compensation benefits from his employer, the Catholic Church. Although Chapter

Flynn v. Estevez, 2015 WL 4878787 (2015)

440 of the Florida Statutes, which governs such benefits, provides no express exemption for churches, the appellate court held that to permit courts to apply that chapter to claims of injured priests “would excessively interfere with the Archdiocese’s ministry because the Archdiocese would necessarily have to defend itself regarding these claims.” *Id.* at 531. That would require civil courts to determine the good faith or credibility of the Archdiocese or its priests, something the court found was barred by the church autonomy doctrine.

Civil courts must accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. *Southeastern Conference Association of Seventh-Day Adventists, Inc., v. Dennis*, 862 So.2d 842,844 (Fla. 4th DCA 2003). Civil courts uniformly recognize the Catholic Church as a hierarchical church. *Bleich v. Maimonides School*, 447 Mass. 38, 46, 849 N.E.2d 185, 191 (2006)(Roman Catholic Church is a hierarchically organized religion).⁶ Moreover, parochial schools organized and directed by the Catholic Church are an extension of the Church itself. In *Americans United for Separation of Church and State v. Oakey*, 339 F.Supp. 545, 551 (D. Vt. 1972). the United States District Court for the District of Vermont explained the connection between the Catholic Church and its schools:

[R]oman Catholic parochial schools ... are a part of the religious mission of the Catholic Church. All the church schools are vehicles for transmitting the faith of the sponsoring church to the next generation.

Clearly, involvement with this vital and valuable religious activity results in an involvement with the religion itself. Any intrusion, however small, into these parochial schools by the state must be viewed in the light of the neutrality envisioned by the First Amendment. The Vermont [statute at issue] will thrust the state not only directly into the physical plants of the schools but also into their operation and control. As such it surely involves excessive entanglement between government and religion.

Id.

Unlike the present case, which involves a decision to admit a student, the case of *Connor v. Archdiocese of Philadelphia*, 601 Pa. 577, 975 A.2d 1084 (S.Ct. Pa. 2009), involved a decision to expel a student. In that case, parents of a student at a parochial elementary school sought money damages for defamation following what they contended was the wrongful expulsion of their son from the school. Although the parties disagreed regarding the extent to which pursuing the defamation claims would involve the slate in church matters.⁷ all parties and the Supreme Court of Pennsylvania recognized that the expulsion decision itself was not a matter which civil courts could properly review. To explain, the Court quoted the following passage from *Gaston v. Diocese of Allentown*, 712 A.2d 757, 760-61 (Pa. Super. 1998).

*4 [A]n expulsion decision ratified by a bishop... is, in our opinion, not receptive to application of neutral principles of law. The Catholic school’s disciplinary code and review of expulsion involve matters of church doctrine....[T]his court is loath to interfere with a bishop’s decision on student expulsion. [Citation omitted.]

The parochial school, synonymous with the installation of dogma and discipline in its students, is an integral part of the Roman Catholic Church. The school is a repository for Catholic tradition and scripture: it is so intertwined with the church doctrine that separation is neither pragmatic nor possible. Intrusion into the bishop’s decision on matters concerning parochial school discipline and expulsion places this court perilously close to trespassing on sacred ground.

The *Connor* court approved that part of the conclusions of the Superior Court panel below it that said:

It is clear from *Gaston* that it is not within the purview of the courts of this Commonwealth, under the guise of a tort action, to review a decision to expel a student from a parochial school.... Clearly, under

Flynn v. Estevez, 2015 WL 4878787 (2015)

the deference rule, we may not review the question of whether a student was appropriately expelled from or otherwise disciplined by a school operated solely by a religious organization.

601 Pa. at 605, 975 A.2d at 605.

In *Phillips v. City of New York*, a case currently before the United States Supreme Court on petition for certiorari, the United States District Court for the Eastern District of New York held that the Free Exercise Clause of the First Amendment did not provide a right for religious objectors to be exempt from New York's compulsory inoculation law. It wrote:

Plaintiffs argue that the vaccination program at issue denies their children the constitutional right to free exercise of religion, but not only has the Supreme Court strongly suggested that religious objectors are not constitutionally exempt from vaccinations [citation omitted], courts in this Eastern District have resolutely found there is no such constitutional exemption.

Id. at 312.

The State of Florida by statute has provided parents what the Free Exercise Clause of the First Amendment does not: a right based on religious beliefs to exempt their school-age children from mandatory statutory immunization. In the case at bar, the Court is presented with a conflict between a *statutory* right provided to parents and a *Constitutional* right provided to a church. A statute must always yield to the Constitution.

The Florida statute on immunizations, including the sections on religious exemptions, remains valid and enforceable except that the exemption cannot be applied to a church in such a manner as to constitute a governmental intrusion into the church's right to determine the operation of its parochial schools. Where that conflict arises, the statute is unconstitutional as applied, and the civil courts may not insert themselves into the operations of the church to compel it to exempt a student on religious grounds from mandatory immunization, nor to admit an unimmunized student to the school.

Given the above state of the law, the Court can only conclude that Plaintiff has not sustained his burden of proving that he is substantially likely to prevail on the merits of the case.

Plaintiff has no adequate remedy at law

The Court can conceive of no remedy apart from an injunction which will result in the enrollment of Plaintiff's child in Holy Spirit Catholic School. The Plaintiff thus has no adequate remedy at law if the court does not issue an injunction.

Plaintiff or his minor child will suffer irreparable harm if the court does not issue the injunction

*5 Because "mandatory vaccination as a condition for admission to school does not violate the Free Exercise [of Religion] Clause," *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015), *pet. for cert. docketed*, no. 14-1445 (U.S. June 9, 2015), denial of admission to Holy Spirit Catholic School under the circumstances presented in this case does not constitute irreparable harm. The Plaintiff's child may attend public school, where he may avail himself of Florida's

Flynn v. Estevez, 2015 WL 4878787 (2015)

religious exemption from mandatory statutory immunization, or he may attend another private (including religious) school which permits him to claim such exemption.

Issuance of the requested temporary injunction will not promote the public interest

Plaintiff has not demonstrated the manner in which issuance of a temporary injunction requiring the Catholic diocese and, specifically, Holy Spirit Catholic Church, to enroll his unvaccinated son will promote the public interest. The public interest lies in the opposite direction, as schoolchildren and others are less likely to contract communicable diseases, some of them potentially fatal, if all K-12 students are immunized against such diseases.

The Fourth Circuit Court of Appeals in the federal court system has noted the “compelling interest of society in lighting the spread of contagious diseases through mandatory inoculation programs.” *Workman v. Mingo County Board of Education*, 419 Fed. Appx. 348 (4th Cir.) at page 6 of print-out, *cert. denied*, 132 S.Ct. 590 (2011).

As Plaintiff has proved only one prong of the four-pronged test for issuance of a temporary injunction, the Court may not issue such injunction.

Further, because the Amended Complaint cannot be amended to allege facts which would permit a civil court to issue a permanent injunction or to grant the other relief requested by Plaintiff, the Court will dismiss the Amended Complaint without leave to amend.

ACCORDINGLY, it is **ORDERED** that:

- (1) The Plaintiff's Motion for Temporary Injunctive Relief is denied.
- (2) Bishop Felipe J. Estevez, Bishop of the Diocese of St. Augustine, a Corporation Sole[s]. Motion to Dismiss the Amended Petition for Injunctive and Declaratory Relief is granted, and the Amended Petition for Injunctive and Declaratory Relief is dismissed without leave to amend.

ENTERED on July 24, 2015, in Jacksonville, FL.

<<signature>>

Circuit Judge Karen K. Cole

Copies to:

Tad Delegal, Esquire

Attorney for Plaintiff

Dennis Guidi, Esquire

Attorney for Defendant

Footnotes

- 1 Counsel and their clients attended the hearing. The Court has carefully considered the excellent written and verbal argument of counsel for Plaintiff and counsel for Defendant, and has supplemented counsel's research efforts with its own.
- 2 By statute, all exemptions are temporarily revoked in the event of a communicable disease emergency. [Section 1003.22\(9\), Fla. Stat.](#) During such an emergency. “[t]hose children identified as not being immunized against the disease for which the emergency has been declared shall be temporarily excluded from school by ... the governing authority of the private school, until such time as is specified by the county health department director or administrator.”
- 3 “The parent of any child attending a public or private school shall be exempt from the school immunization requirements upon meeting any of the exemptions in accordance with the provisions of [s. 1003.22\(5\)](#).” Subsection 3(b) of section 1002.20 (“K-12 student and parent rights”), Fla. Stat.
- 4 Courts may only award attorney's fees when such fees are authorized either by statute or by contract. The amended petition in this case does not identify the basis of the request for attorney's fees.
- 5 The phrase “police power” has nothing to do with police or other law enforcement authorities. It is a phrase used by scholars and courts when referring to the capacity of a state to regulate behavior and enforce order to safeguard the health, safety, and general welfare of those living in the state.
- 6 After the hearing in this case, the parties agreed that the Bishop's counsel could submit for the Court's use in deciding the pending issues relevant portions of the Catholic church's Code of Canon Law, Church Law, which delineates the authority of a Bishop, and the avenues by which church members may seek redress as to matters decided by a Bishop. Those provisions, which plainly evidence a hierarchical decision-making process, are attached as an exhibit to this order.
- 7 The Court ultimately determined that “neutral principles of law” would be applied to the tort claims without excessively entangling the state in the affairs of the church. It plainly distinguished, however, pursuing money damages for defamation (permissible) from reviewing a Bishop's or parochial school's original decision to expel the student (impermissible). Even the *Connor* parents did not challenge the decision to expel their child, [975 A.2d at 1101](#), and restricted their request for judicial involvement to their claims for money damages.