

Washington Rejects Clergy Negligent Supervision/Retention Claims in Church Quarrel

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A woman elder, a church employee, vehemently disagreed with her senior pastor's position on a particular issue. She insisted on pushing her position until the Session finally fired her. Then she sued the church. But the Court agreed with the church that the government has no business telling the church how to manage its leadership.

On October 4, 2012, the Supreme Court of Washington decided the case in *Erdman v. Chapel Hill Presbyterian Church*. The Court's holding appears to bar most, if not all, negligent supervision and retention claims against churches, which could really limit lawsuits against churches in that jurisdiction and perhaps in others.

Angela Erdman, an ordained elder, was the executive for stewardship and reported to the senior pastor, Mark Toone. She disagreed with Dr. Toone over the church's promotion of religious tours. The quarrel ripened as her view was considered by the church and then rejected. Not only did the Session investigate the matter, but Ms. Erdman filed a grievance with the Presbytery, which investigated her allegations against Dr. Toone, but concluded they could not reasonably be proved.

Ultimately, Ms. Erdman filed a lawsuit against the church and Dr. Toone, asserting claims that included negligent retention, negligent supervision, and Title VII sex discrimination claims. The trial court believed it did not have enough facts to consider whether Ms. Erdman was subject to the ministerial exception, and dismissed the other claims because of deference to the hierarchically organized church tribunal that had heard the matter.

Ms. Erdman won a reversal at the Court of Appeals, but lost again before the Washington Supreme Court.

The Supreme Court declined to address the Title VII issues and remanded on the basis that the record was not yet sufficiently developed to decide whether the ministerial exception applied to Ms. Erdman.

The Court considered and rejected the negligent supervision and retention claims. It said that both claims implicate the First Amendment. First, a religious organization was free to choose and retain its spiritual leaders. Second, this particular church was part of a hierarchy, and its religious tribunal should be given deference.

On the negligent retention claim, the Court concluded that courts may not decide what makes an individual competent to serve as a minister. That would require judicial inquiry into church doctrine, and would end up with the courts approving one model for church hiring and retention.

The Court also held that inquiry into claims of negligent supervision can result in violations of both establishment and free exercise clauses. Because church discipline is related to religious doctrine, courts that reviewed church discipline would become entangled in religious doctrine. The Court hinted that negligent supervision claims would be barred even in serious matters such as sexual misconduct cases.

The Court found no room for a “neutral principles” analysis in the case of civil court tort claims challenging the church’s authority to hire and control ministers.

The Court went on to defer to the ecclesiastical tribunal decisions made by the Session and Presbytery as binding, because Ms. Erdman’s allegations involved matters of church discipline and ecclesiastical law.

Three of the justices concurred in this opinion. Another judge concurred because Ms. Erdman had submitted her claim to the Presbytery and had not internally appealed its decision, but would not have reached the other analysis. One judge agreed with the result, but dissented on the issue of the negligent supervision/retention claims, specifically wanting judicial consideration of sexual misconduct claims.

The holding in this case draws its analysis partly from *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, a 2012 U.S. Supreme Court case, and partly from older church autonomy law. The opinion is somewhat surprising in light of the willingness of many recent courts to receive negligent supervision or retention claims, especially in sexual abuse cases, and it will be interesting to see what effect *Hosanna-Tabor* has on the further development of tort law against religious institutions.