

IN THE SUPREME COURT OF THE STATE OF NEVADA

TEMPLE EMANU-EL,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
MICHAEL BOVIT,
Real Party in Interest.

No. 46270

FILED

DEC 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges the district court's jurisdiction of the dispute's subject matter.¹

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.² A petition for a writ of prohibition is addressed to the sound discretion of this court.³ Further, such a writ may issue only when there is no plain speedy, and adequate remedy at law.⁴

¹Although petitioner does not challenge any specific district court orders, based on the arguments raised in its petition, petitioner contests the district court's order denying its motion to dismiss, which argued that the district court lacked jurisdiction of the dispute's subject matter.

²NRS 34.320.

³Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁴NRS 34.330.

Petitioner, a religious corporation, argues that the district court's exercise of jurisdiction in this case is unconstitutional because this dispute is ecclesiastical, concerning a religious congregation's decision to terminate real party in interest's employment.⁵ Although petitioner's assertion—that the district court's exercise of jurisdiction over a dispute involving church governance might unconstitutionally entangle it in religion—seems correct, petitioner misunderstands this controversy, as real party in interest is not challenging his termination, or the reasons for it. Instead, he asserts a claim for breach of contract based on petitioner's alleged failure to provide him certain severance benefits under the terms of their agreement, and claims for intentional infliction of emotional distress, invasion of privacy, conspiracy, and surreptitious intrusion of privacy in violation of NRS 200.650—that is, claims that do not contest the legitimacy of petitioner's decision to terminate real party in interest's employment, but rather, how his termination was consummated. Petitioner thus mischaracterizes the issue.

Indeed, although the governing decisions of religious congregations may be protected from state interference, “churches are

⁵See U.S. Const. amend. I; Nev. Const. art. 1, § 4; see also Watson v. Jones, 80 U.S. 679, 733 (1871) (providing that where a dispute is “purely ecclesiastical in its character,” including “theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,” the civil courts exercise no jurisdiction); Mt. Zion Bapt. Ch. v. Second Bapt. Ch., 83 Nev. 367, 369, 432 P.2d 328, 329 (1967) (recognizing that, under the First Amendment to the United States Constitution, governing decisions of religious congregations are protected from state or federal interference); Kraft v. Grace Church, No. 01-CV-7871, 2004 WL 540327, at *1 (S.D.N.Y. March 17, 2004) (“[T]he Free Exercise Clause of the United States Constitution . . . bars courts from adjudicating a dispute . . . regarding the reasons for a church's decision to terminate one of its ministers.”).

not—and should not be—above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts.”⁶ Here, real party in interest’s complaint raises the issue whether petitioner failed to comply with the terms of the employment agreement. Resolving this issue requires the district court to interpret a contract, not theological issues or moral principles. Similarly, real party in interest’s tort claims require the district court to apply neutral principles of law without regard to religious institutions or doctrine. Therefore, as real party in interest’s claims can be resolved without impermissibly entangling the district court in religion, the district court’s exercise of jurisdiction appears proper.⁷

In addition, we note that “[w]henver it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the

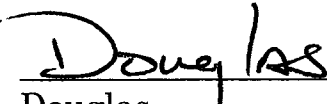
⁶Rayburn v. General Conf. of Seventh-Day Adventists, 772 F.2d 1164, 1171 (4th Cir. 1985); see also Mt. Zion Bapt. Ch., 83 Nev. at 369, 432 P.2d at 329 (recognizing that, while “courts frequently declare that they have no power to decide religious questions, . . . that does not mean that courts will not assume jurisdiction over religious institutions”).


⁷See Minker v. Baltimore Annual Conf., 894 F.2d 1354, 1359 (D.C. Cir. 1990) (“A church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court.”); Odenthal v. MCSDA, 649 N.W.2d 426, 435 (Minn. 2002) (“There is no entanglement problem . . . when the dispute can be resolved according to neutral principles of law—that is, by rules or standards that have been developed and are applied without particular regard to religious institutions or doctrines.”) (internal quotations omitted); Malicki v. Doe, 814 So.2d 347, 364 (Fla. 2002) (providing that the Establishment Clause does not bar causes of action where the imposition of tort liability “has a secular purpose and the primary effect of imposing tort liability based on the allegations of the complaint neither advances nor inhibits religion”).

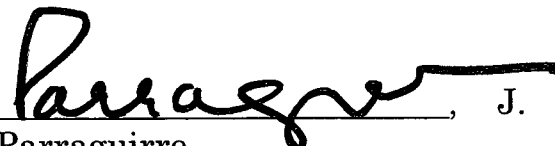
action.”⁸ Therefore, if the district court, once it reaches the merits of the dispute, finds itself entangled in questions of petitioner’s religious doctrines and theology, it can dismiss the action, or either party can challenge the district court’s exercise of jurisdiction at that time.

We therefore,

ORDER the petition DENIED.⁹

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Winograd & Blanck
Wm. Patterson Cashill
Washoe District Court Clerk

⁸NRCP 12(h)(3); Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

⁹In light of this order, we deny as moot petitioner’s motion for a stay and real party in interest’s request for enlargement of time to respond to petitioner’s motion for stay.