

Appendix D

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000459-OA

PRESBYTERIAN CHURCH (U.S.A.)

PETITIONER

v. AN ORIGINAL ACTION
ARISING FROM JEFFERSON CIRCUIT COURT
ACTION NO. 15-CI-2975

HONORABLE BRIAN C. EDWARDS,
JUDGE, JEFFERSON CIRCUIT COURT

RESPONDENT

AND

REVEREND ERIC HOEY

REAL PARTY IN INTEREST

ORDER
GRANTING IN PART PETITION FOR WRIT OF PROHIBITION

** ** * ** * ** *

BEFORE: COMBS, DIXON, AND THOMPSON, JUDGES.

Petitioner, Presbyterian Church (U.S.A.), (Church) filed a petition for a writ to prohibit the trial court from enforcing an order that lifted a stay of

discovery. The Church further requests that this Court direct the trial court to dismiss the underlying case on the basis of immunity under the ecclesiastical abstention doctrine. Having considered the petition for writ of prohibition, the response, and being otherwise sufficiently advised, the Court ORDERS that the petition be, and it is hereby, GRANTED IN PART to the extent that the trial court should limit discovery to that which is necessary to resolve the immunity issue.

The Presbyterian Ministry Agency (PMA) is an agency that carries out initiatives of the General Assembly of the Church. In 2007, the PMA hired Respondent, Reverend Eric Hoey, as Director of Evangelism and Church Growth. In 2013, Rev. Hoey and other reverends incorporated an entity separate and apart from the Church called the Presbyterian Centers for New Church Innovation, Inc. (PCNCI). Church funds were transferred to PCNCI from PMA as result of grants requested by Rev. Hoey and others. In 2014, the Church issued a written warning to Rev. Hoey, which included findings that: (1) he failed to properly manage ministers under his supervision; (2) he failed to timely inform his supervisors that he and his staff had incorporated PCNCI without authorization; and (3) he contributed to a culture of noncompliance with PMA and Church policies. The Church further determined that Rev. Hoey had violated its written Ethics Policy. The Church conducted disciplinary proceedings, which resulted in the termination of Rev. Hoey's employment on June 1, 2015.

Rev. Hoey filed a complaint against the Church in Jefferson Circuit Court alleging defamation. Rev. Hoey's case was consolidated for discovery purposes with a similar defamation case filed by Reverend Roger Dermody, which was assigned to a different division of the Jefferson Circuit Court¹. On July 8, 2015, the Church filed a motion for summary judgment. On July 14, 2015, the trial court entered an order staying litigation pending further orders. The Church subsequently noticed the summary judgment motion for submission on September 1, 2015. In response, Rev. Hoey filed a motion to lift the stay of discovery and set time for responsive pleadings. Rev. Hoey served written discovery requests upon the Church.

On March 17, 2016, the trial court entered an order allowing Rev. Hoey to have 40 days to respond to the summary judgment motion. The trial court further lifted the previous stay of discovery and ordered the Church to respond to Rev. Hoey's discovery requests. The trial court stated that "the parties may appropriately prosecute the matter." On March 23, 2016, the Church filed a notice of appeal from the order of March 17, 2016. *Presbyterian Church (U.S.A.) v. Hoey*, 2016-CA-000424-MR. On April 5, 2016, the Church filed a motion for interlocutory relief from the order of May 17, 2016. *Presbyterian Church (U.S.A.) v. Hoey*, 2016-CA-000458-I. Also on April 5, 2016, the Church filed the present

¹ The two cases were not ultimately consolidated for trial purposes.

petition for writ of prohibition seeking relief from the order of March 17, 2016.

Presbyterian Church (U.S.A.) v. Edwards, 2016-CA-000459-OA.

An extraordinary writ may be granted upon a showing that:

(1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004). Extraordinary relief is available under the certain special cases exception from an order allowing discovery in violation of established law because “[o]nce the information is furnished, it cannot be recalled.” *Bender v. Eaton*, 343 S.W.3d 799, 802 (Ky. 1961).

It is well-established that immunity protects its possessor from all of the burdens of defending the suit including broad-reaching discovery. *Breathitt County Bd. Of Educ. v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009). Limited discovery is permitted on the issue of immunity. *See Rowan County v. Sloas*, 201 S.W.3d 469, 473 (Ky. 2006). Our review of the record indicates that the discovery ordered in this case has clearly exceeded the scope of ecclesiastical immunity because the discovery pertains to the merits of underlying case. We conclude that the trial court abused its discretion by allowing such broad-reaching discovery

prior to its determination of the immunity issue. The trial court should limit discovery to the issue of immunity.

Accordingly, the Court ORDERS that the petition for writ of prohibition be, and it is hereby, GRANTED IN PART.

ENTERED: 11/21/14

Sara Combs
JUDGE, COURT OF APPEALS