



FIKE v. UNITED METHODIST CHILDREN'S HOME OF VIRGINIA

514 F. Supp. 254 (1981) | Cited 0 times | E.D. Virginia | May 5, 1981

ORDER

This action is now before the Court on remand from the Fourth Circuit. A brief statement of the procedural history of this case would be appropriate.

Plaintiff originally filed this action, pursuant to 42 U.S.C. § 2000e-5(f), claiming that he was dismissed from employment by the United Methodist Children's Home of Virginia, Inc. (UMCH) on account of his religion. Simply stated, plaintiff, who is a Methodist layman, claimed that he was dismissed from his position as the Executive Director of UMCH, so that he could be replaced by an ordained Methodist minister. In his complaint plaintiff alleged four grounds for recovery. His first claim was that he had been dismissed from employment on the basis of his religion in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)1. As second and third grounds for recovery, plaintiff claimed that he was the third party beneficiary of two contracts entered into by UMCH with State and federal agencies. In dismissing plaintiff on the basis of his religion, plaintiff claimed that UMCH breached provisions of those contracts specifically prohibiting UMCH from discriminating on the basis of religion in the hiring, retention, and promotion of employees. His final claim for relief was that UMCH had violated his rights under the establishment of religion and free exercise clause of the First and Fourteenth Amendments.

By order entered 7 July 1980 the Court dismissed this action on the ground that "(plaintiff)'s complaint lacks the essential element in a suit based on religious discrimination" discrimination on the basis of one's religion. *Fike v. United Methodist Children's Home of Virginia, Inc.*, 493 F. Supp. 935, 938 (E.D.Va.1980). The Court concluded that:

The discrimination here, if at all, is between gradations of membership in the United Methodist Church, i. e., between a lay member and an ordained minister.

....

The discrimination alleged by plaintiff is no more significant, from a religious standpoint, than discrimination against one with a master's degree in favor of one with a doctorate. Though a Methodist layman is, or may be assumed to be, a religious person, and a Methodist minister is, or may be assumed to be, a religious person, the difference between their respective status as layman or minister is not a religious difference. Here, discrimination based on such difference in status is not discrimination based on religion.



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Id.

On appeal, the Fourth Circuit in an unpublished opinion reversed and remanded, stating:

In his complaint, plaintiff alleged that the Home was engaged in "state action" because a majority of its children are wards of the state, a substantial portion of the Home's income derives from the government, and its employment and child care practices are regulated by the state and federal governments. A reasonable inference to be drawn from these allegations, as plaintiff argues, is that the Home is a secular institution. In light of the allegations and that inference, we conclude that the motion to dismiss, which presupposes the correctness of plaintiff's position, was improvidently granted. We remand the case to the district court for at least a preliminary determination as to whether the Home is a secular or sectarian institution.

Fike v. United Methodist Children's Home of Virginia, Inc., No. 80-1513, slip op. at 2 (4th Cir. 1 April 1981).

The Court recognizes that granting a motion to dismiss, in the words of the Fourth Circuit's opinion, Id. slip op. at 2, "presupposes the correctness of plaintiff's position" as to "state action." But with proper respect to the Fourth Circuit, the dismissal of this action in the trial court did not presuppose any inaccuracy in plaintiff's position on State action. On the basis of the complaint and without reference to "matters outside the pleading," Fed.R.Civ.P. 12(b), the Court accepted then and accepts now, for purposes of ruling on a motion to dismiss, plaintiff's allegations as to State action. Nonetheless, State action was irrelevant to this Court's dismissal of the action. If there were no discrimination on the basis of religion, it was the Court's opinion that plaintiff had failed to state a claim for which relief could be granted, notwithstanding State action. A review of the complaint and the briefs submitted by the parties would appear to bear out the appropriateness of this reasoning.

Plaintiff's claim of religious discrimination under Title VII clearly does not depend upon a showing of State action. ¹ See 42 U.S.C. § 2000e-2(a)(1). The Court recognizes that State action might have become an issue if the Court had addressed defendant's claim that UMCH was a "religious corporation" exempt from the operation of Title VII. See 42 U.S.C. § 2000e-1. It was not necessary, however, for the Court to address that claim.

Plaintiff's two third-party beneficiary claims, whether asserted as direct federal claims or as pendent State claims, derive exclusively from contract provisions prohibiting UMCH from discriminating in employment practices on the basis of religion. ² Absent discrimination on the basis of religion, there is no breach of contract and, therefore, no cause of action, regardless of State involvement.

Plaintiff's claim under the First Amendment is not quite so simple. There is no jurisdictional basis for this claim stated in the Complaint, but it is under this claim that State action arguably becomes relevant. See Complaint, P 13. In his response to UMCH's motion to dismiss, however, plaintiff



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explicitly limited the significance of this claim:

Should the Court find that the defendant is a religious organization which is exempted (sic) from the anti-discrimination provision of the Federal Civil Rights Statute, it is the position of the plaintiff that the defendant would be violating the Establishment Clause of the First and Fourteenth Amendments to the United States Constitution.^{3"}

Plaintiff's Responsive Brief, Part IV, at 22. See also Id. at 28. As previously stated, the Court did not need to address the religious exemption issue in its earlier decision. Religious exemption under Title VII would only be an issue if there were allegations supporting a claim of invidious religious discrimination. Therefore, based upon this reasoning and upon plaintiff's own assertion, the Court was not called upon to address the First Amendment claim and, thus, State action again was not an issue of any legal significance.

Even if the Court had felt called upon to address the First Amendment claim, the Court would have had, and continues to have, serious problems with plaintiff's standing to raise that claim. Plaintiff has not attempted to show how his First Amendment rights have been violated by the conduct of UMCH. Indeed, in this regard plaintiff has only alleged that he has "a federal remedy (under 42 U.S.C. § 1983) to contest the religious discrimination engendered by the defendant's unconstitutional conduct." Plaintiff's Responsive Brief, Part IV, at 27. Thus, it is fairly apparent that arguments about establishment of religion and infringement of the free exercise thereof is either a sham claim inserted by plaintiff for dramatic effect only, or it was simply another basis for asserting his claim of "religious discrimination" on being replaced by an ordained minister. If the trial court correctly ruled that this was not religious discrimination, then the presence or absence of State action is, again, irrelevant.

In summary, it is still the firm opinion of the Court that State action is irrelevant with respect to plaintiff's first three claims for the reasons stated above. Accordingly, the Court believes that these claims should be dismissed for the reasons stated in the Court's earlier opinion. With respect to the fourth claim, which alone potentially involves State action, the Court has three views. First, based upon plaintiff's own assertion, this claim is unnecessary to the resolution of this case. Second, in any event, the Court does not believe plaintiff has standing to raise this claim. Finally, in consideration of argument in plaintiff's Brief, this claim is at best a convoluted Title VII claim for religious discrimination. If any one of these views is correct, State action is again not a legally relevant issue in this case and, therefore, the Court's earlier opinion may be, in essence, restated.

The Fourth Circuit has directed this Court to conduct an evidentiary hearing on the issue of State action. This the Court is bound to do. Based upon the Court's opinion as to the relevancy of the issue, such a hearing would seem to be futile, i. e. irrelevant.

The parties are DIRECTED to obtain an appropriate date from the Court for oral argument in order



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to advise the Court how to proceed on remand.

And it is so ORDERED.

1. This Court assumes that even under the Fourth Circuit's mandate the Title VII claim is not revived since it never was dependent upon State action vel non.
2. Again State action vel non is wholly irrelevant to the third-party beneficiary claims and this Court assumes they are not revived on remand.
3. Arguably, plaintiff may intend by this statement to say that, if UMCH is determined to be exempt from Title VII, such exemption would be a violation of the Establishment Clause. This argument, of course, would not assist plaintiff because the Court has not made such a determination of exemption with respect to UMCH.

