

NO. 125656

IN THE
SUPREME COURT OF ILLINOIS

MARY REHFELD,	)	On Review of the Opinion of the
	)	Appellate Court, Third Judicial
<i>Plaintiff-Appellant,</i>	)	District, Case No. 3-18-0354
)	
v.	)	There on Appeal from the
	)	Circuit Court, Will County,
DIOCESE OF JOLIET,	)	Illinois, Twelfth Judicial Circuit,
	)	Case No. 2017-L-1000
<i>Defendant-Appellee.</i>)	
	)	Honorable Raymond J. Rossi,
	)	Trial Judge Presiding

BRIEF OF PLAINTIFF-APPELLANT

E-FILED
4/29/2020 8:58 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

JULIE B. PORTER (#6243787)
Salvatore Prescott Porter & Porter,
PLLC
1010 Davis Street
Evanston, IL 60201
P: (312) 283-5711
F: (312) 724-8353
porter@sppplaw.com

*Counsel for Plaintiff-Appellant
Mary Rehfield*

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

1. The Appellate Court erred because reviewing Mrs. Rehfield’s retaliation claims will not require Illinois courts to meddle in religious decision-making; the case turns on neutral legal principles that do not require ecclesiastical abstention	6
<i>Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.</i> , 2016 IL App (1st) 143045.....	6
<i>Ervin v. Lilydale Progressive Missionary Baptist Church</i> , 351 Ill. App. 3d 41 (1st Dist. 2004)	7
<i>Bivin v. Wright</i> , 275 Ill. App. 3d 899 (5th Dist. 1995).....	8
<i>Duncan v. Peterson</i> , 359 Ill. App. 3d 1034 (2d Dist. 2005).....	9
<i>Duncan v. Peterson</i> , 408 Ill. App. 3d 911 (2d Dist. 2010).....	9
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)	7
<i>Apostolic New Life Church of Elgin v. Dominquez</i> , 292 Ill. App. 3d 879 (2d Dist. 1997)	7
<i>Michael v. Precision Alliance Group, LLC</i> , 2014 IL 117376	10
<i>Davis v. Times Mirror Magazines, Inc.</i> , 297 Ill. App. 3d 488 (1st Dist. 1998).....	11
<i>Williams v. Palmer</i> , 177 Ill. App. 3d 799 (3d Dist. 1988).....	12
<i>Gabriel v. Immanuel Evangelical Lutheran Church, Inc.</i> , 266 Ill. App. 3d 456 (4th Dist. 1994).....	12
<i>Minker v. Baltimore Annual Conference of United Methodist Church</i> , 894 F.2d 1354 (D.C. Cir. 1990)	12

2. The Appellate Court failed to consider Mrs. Rehfield’s whistleblower status and why ecclesiastical abstention is against public policy in this context.....13

Hosanna–Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171 (2012) 13

Palmateer v. Int’l Harvester Co., 85 Ill. 2d 124 (1981) 16

Roberts v. U.S., 445 U.S. 552 (1980) 16

3. The fact that Mrs. Rehfield had a contract with the Diocese does not preclude her from pursuing a retaliatory-discharge claim17

Palmateer v. Int’l Harvester Co., 85 Ill. 2d 124 (1981) 17

Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143 (1984)..... 18

Boyles v. Greater Peoria Mass Transit Dist., 113 Ill. 2d 545 (1986) 19

Kelsay v. Motorola, Inc., 74 Ill. 2d 172 (1978)..... 18

Bell v. Don Prudhomme Racing, Inc., 405 Ill. App. 3d 223 (4th Dist. 2010)..... 17

Darchak v. City of Chicago Bd. of Educ., 580 F.3d 622 (7th Cir. 2009) 20

Bajalo v. Northwestern Univ., 369 Ill. App. 3d 576 (1st Dist. 2006) 20

Krum v. Chicago Nat’l League Ball Club, Inc., 365 Ill. App. 3d 785 (1st Dist. 2006)..... 20

Taylor v. Bd. of Educ. of City of Chicago, 2014 IL App (1st) 123744 20

Zimmerman v. Buchheit of Sparta, Inc., 164 Ill. 2d 29 (1994) 21

NATURE OF THE CASE

Mary Rehfield, a Principal for St. Raphael Catholic School in the Diocese of Joliet, brought this case to recover damages caused by her unlawful termination. The Diocese fired Mrs. Rehfield in retaliation for her reporting criminal conduct to police. The Circuit Court—invoking the ecclesiastical-abstention doctrine, and finding that it must refrain from adjudicating Mrs. Rehfield’s Illinois Whistleblower Act and retaliatory-discharge claims because her employer was a religious institution—dismissed her Amended Complaint with prejudice. The Appellate Court of Illinois, Third District, affirmed.

ISSUES PRESENTED FOR REVIEW

1. Whether a religious employer has the unfettered discretion to fire an employee, without any review from this state’s courts, even though the employee alleges that she was fired in retaliation for reporting criminal conduct to police.

2. Whether having an employment contract precludes an employee who is fired in retaliation for reporting criminal conduct to police from suing for retaliatory discharge.

JURISDICTION

This Court has jurisdiction over Mrs. Rehfield's appeal pursuant to Supreme Court Rule 315. By Order dated March 25, 2020, this Court granted Mrs. Rehfield's Petition for Leave to Appeal.

STATEMENT OF FACTS

Mary Rehfield has been a dedicated and compassionate educator for more than 43 years, serving as Principal for approximately 18 of those years. A-2 ¶ 6. Mrs. Rehfield had a decorated career, and in 2012, the Diocese hired her to serve as Principal of St. Raphael Catholic School in Joliet. A-2 ¶ 7. The Diocese hired Mrs. Rehfield because St. Raphael was in desperate need of a new sense of leadership and order. *Id.* Mrs. Rehfield designed and implemented new programs at St. Raphael and created changes to the curriculum, some of which were then adopted in other schools throughout the Diocese. A-2, A-3 ¶¶ 9-10. Mrs. Rehfield exceeded expectations, and her achievements and dedication were rewarded with a nomination for Outstanding Principal of the Year in 2016-17. A-3, A-4 ¶ 13.

In or around January 2016, one of the teachers at St. Raphael learned of an issue between two students in which one of the students was being bullied at school. A-4 ¶ 15. The teacher addressed the issue and thought that she had it resolved, but soon thereafter, the teacher

received an email from William MacKinnon, the father of the student who had been picked on. *Id.* The email was rude enough in tone that the teacher notified Mrs. Rehfield of the correspondence. *Id.* ¶ 16. Mrs. Rehfield, in turn, notified her supervisor, Daniel Bachner. *Id.* Bachner advised Mrs. Rehfield to respond to MacKinnon directly, which she did. *Id.* at ¶¶ 16-17.

MacKinnon not only persisted in contacting the school, but his behavior also escalated, becoming more threatening and erratic. *Id.* at ¶ 18. Mrs. Rehfield contacted the police and notified them about MacKinnon's behavior; the police concluded that no further action was warranted at that time. *Id.* One month after her first call to the police, Mrs. Rehfield called again after receiving another threatening communication from MacKinnon. A-5 ¶ 19. Because MacKinnon lived outside of Illinois, the police sent a certified letter to MacKinnon warning him not to trespass at St. Raphael, and—acting on the police's advice—Mrs. Rehfield distributed a photograph of MacKinnon to faculty and staff at St. Raphael. *Id.*

Although MacKinnon did not appear on campus that year, the following school year, Bachner received a ranting voicemail from a man who was later identified as MacKinnon. *Id.* at ¶ 20. The school leaders, Mrs. Rehfield, and the police all discussed MacKinnon and what to do

next. *Id.* at ¶ 21. Although they agreed that it was unnecessary to communicate the issue to parents at that time, a local news outlet learned of MacKinnon's actions through court documents and published a story about his contact with St. Raphael. A-5, A-6 ¶¶ 21-24.

Following the publication of the article about MacKinnon, Mrs. Rehfield sent a letter to parents to explain what had occurred, and the school then held an open meeting to discuss the situation and provide an update. A-7 ¶¶ 25-28. Just days after the meeting with parents, the Diocese fired Mrs. Rehfield. *Id.* at ¶¶ 32-33. The Diocese provided no basis for her termination. A-9 ¶¶ 34-35. The only precipitating event was Mrs. Rehfield's report of MacKinnon to police, leading her to conclude that the Diocese terminated her in retaliation for making that report. *Id.*

When Bachner told Mrs. Rehfield that she was terminated, she was completely stunned. A-8 ¶ 33. Mrs. Rehfield would not only be removed immediately, but she also would not be able to lead the school the following year, for which she already had accepted a contract. *Id.* Moreover, Mrs. Rehfield planned to finish her career at St. Raphael, and she and Bachner had discussed the expectation that she would remain at the school until she turned 70. *Id.* Mrs. Rehfield cared for her husband's serious medical needs, and she relied on her income in order to ensure his continued care. *Id.* The blow of being terminated for doing

what she knew was right and appropriate under the law was devastating to Mrs. Rehfield, and she continues to suffer to this day. A-9 ¶¶ 34-35.

Mrs. Rehfield sued the Diocese for violating the Illinois Whistleblower Act and for common-law retaliatory discharge. A-1. The Circuit Court dismissed the case with prejudice, holding that: (1) Mrs. Rehfield could not bring a retaliatory-discharge claim because she had an employment contract with the Diocese, and (2) the ecclesiastical-abstention doctrine barred the Court from addressing either of her claims. A-21, A-22. Mrs. Rehfield appealed to the Appellate Court of Illinois, Third District. A-24. Although Mrs. Rehfield appealed both erroneous findings by the Circuit Court, the Appellate Court addressed only the second, concerning ecclesiastical abstention, “because we find that it is dispositive.” A-28.

STANDARD OF REVIEW

The standard of review on a motion to dismiss is *de novo*. *See, e.g., Bouton v. Bailie*, 2014 IL App (3d) 130406, ¶ 7.

ARGUMENT

Countless Illinois citizens go to work each day for employers who have a religious mission. They serve their communities by working in hospitals, senior-care facilities, day-care centers, social-service organizations, and—as in this case—schools. Educators like Mrs.

Rehfield are entrusted with the health and safety of hundreds of thousands of students across all religious affiliations. They take that trust seriously, especially today, as headlines involving harm to young people at schools are painfully frequent. Mrs. Rehfield never thought she might have to choose between calling the police to report MacKinnon and her job. Yet that is precisely what the Diocese has argued, what the Circuit Court held in dismissing Mrs. Rehfield's Amended Complaint, and what the Appellate Court endorsed by affirming the dismissal: even if the Diocese did retaliate against Mrs. Rehfield for reporting criminal conduct to police, it does not matter, and its conduct is beyond scrutiny, simply because it is a religious institution. This Court can and should correct the dangerous and erroneous precedent that the lower courts set.

1. The Appellate Court erred because reviewing Mrs. Rehfield's retaliation claims will not require Illinois courts to meddle in religious decision-making; the case turns on neutral legal principles that do not require ecclesiastical abstention

Ecclesiastical abstention, grounded in the First Amendment's religion clauses, deprives civil courts of jurisdiction to resolve controversies over matters of church doctrine. *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App (1st) 143045, ¶¶ 49-50. Ecclesiastical abstention does not apply, however, if resolution of a legal claim is possible without inquiring into religious principles or

doctrines. *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 43 (1st Dist. 2004) (“[A] court may resolve a dispute that arises within a church if the dispute does not require determination of any doctrinal issue.”). If a court can resolve the pertinent legal question by reference to “neutral principles of law,” as it would any other secular dispute, then the First Amendment is not implicated, and the case may proceed. *Jackson*, 2016 IL App (1st) 143045, ¶ 50; *see also Jones v. Wolf*, 443 U.S. 595, 602-03 (1979) (upholding “neutral principles of law” approach to resolving dispute over ownership of church property); *Apostolic New Life Church of Elgin v. Dominquez*, 292 Ill. App. 3d 879, 884 (2d Dist. 1997) (applying “neutral principles of law” approach in church-property dispute because court was not required to “decide a religious matter involving church doctrine, polity, and practice”).

Although Illinois courts invoke ecclesiastical abstention in employment-discrimination cases, they have declined to abstain from adjudicating other types of legal disputes between religious institutions and their former employees. In *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, for example, the Appellate Court declined to abstain from a suit by a former pastor who claimed that his termination violated church bylaws. The court in *Jackson* explained that ecclesiastical abstention would be improper because “deciding whether

or not defendants violated the bylaws in the present case will not require inquiry into a religious doctrine.” *Jackson*, 2016 IL App (1st) 143045, ¶ 54. Rather, the court would “need only look to the plain text of the church’s bylaws and the relevant facts to determine whether or not defendants breached their oral agreement by failing to comply with its bylaws.” *Id.*

Along the same lines, the court in *Ervin v. Lilydale Progressive Missionary Baptist Church* concluded that it retained jurisdiction over a former pastor’s suit claiming that he had been improperly terminated by a vote of the church’s board members rather than the congregation. The court held that “[t]he first and fourteenth amendments do not forbid judicial determination of whether the proper church authority made the decision to remove the pastor,” because a court “does not need to interpret religious law to decide the dispute.” 351 Ill. App. 3d at 46.

In addition to contract and property disputes, Illinois courts have likewise addressed tort claims involving religious institutions by invoking neutral legal principles. *Bivin v. Wright*, 275 Ill. App. 3d 899 (5th Dist. 1995), involved a lawsuit by church members claiming to have been harmed by a minister’s inappropriate sexual conduct. Reversing the trial court’s dismissal of the suit, the court explained, “Inquiring into whether the church was negligent in its failure to protect plaintiffs from

the sexual misconduct of its minister may not call into question the church's religious beliefs or practices or subject them to analysis or scrutiny." *Id.* at 903-04.

Similarly, in *Duncan v. Peterson*, 359 Ill. App. 3d 1034 (2d Dist. 2005), the court declined to abstain from adjudicating a claim that a senior church pastor had defamed another pastor by disseminating letters purporting to revoke his ordination. According to the court, abstention would be improper because the court is "not required to look at religious doctrine or the biblical underpinnings of The Moody Church's right to revoke an ordination to determine whether defendants' conduct invaded Duncan's privacy by publishing false information." *Id.* at 1046. *See also Duncan v. Peterson*, 408 Ill. App. 3d 911, 91518 (2d Dist. 2010) (post-trial, revisiting ecclesiastical-abstention issue in same case and again determining that doctrine did not apply because—even though not a case involving church property—the "general subject matter of the dispute does not involve internal church matters").

Without considering any of these cases, the Appellate Court affirmed the Circuit Court's abstention, reasoning that Mrs. Rehfield was not a secular employee and that the Diocese could terminate her "for any reason" because judicial review "would involve court scrutiny of the Diocese's motivations, objectives, and principles." A-12, 13. The

Appellate Court also stated that it “decline[d] to employ the neutral principles of law approach” because “this case involved the Diocese’s subjective decision to terminate Rehfield’s employment and did not involve church charters, constitutions and bylaws, deeds, State statutes, or other evidence that would resolve the matter.” *Id.*

But this Court has never held that the neutral-principles approach applies only when courts are interpreting documents like charters or bylaws, or that it cannot apply in an employment context. The motivating principle of cases like *Jackson*, *Ervin*, *Bivin*, and *Duncan* is that the Illinois courts can address the parties’ dispute without second-guessing religious choices. And that is the case here, too: Mrs. Rehfield’s claims are readily resolvable upon neutral legal principles without infringing upon questions of church doctrine or beliefs. Mrs. Rehfield is suing the Diocese for the common-law tort of retaliatory discharge and for retaliation under the Illinois Whistleblower Act. The only question that must be resolved is whether Mrs. Rehfield can establish a causal connection between her discharge and her protected activities in contacting police. *See Michael v. Precision Alliance Group, LLC*, 2014 IL 117376, ¶ 31 (in retaliatory-discharge case, “the ultimate issue is the employer’s motive in discharging the employee”). Here, Mrs. Rehfield had a history of superlative performance reviews, and the Diocese

nominated her for Outstanding Principal of the Year in the very school year that she was discharged, A-3 ¶¶ 12-13; the Diocese had already renewed Mrs. Rehfield's contract for the following school year, A-4 ¶ 14; her superiors had expressed an intention to retain Mrs. Rehfield as Principal for years to come, A-8 ¶ 33; and the discharge occurred just days after Mrs. Rehfield notified school parents about the suspected criminal activity, *id.* ¶ 32. Moreover, the Diocese did not claim at the time of Mrs. Rehfield's termination—and has never claimed—that Mrs. Rehfield's dismissal had anything whatsoever to do with religious issues or her suitability, from a religious perspective, to continue as Principal. *Id.* The issue here is squarely whether the Diocese retaliated against Mrs. Rehfield for reporting to police, and that question can be resolved by reference to the same neutral legal principles that govern claims against secular employers. *See Davis v. Times Mirror Magazines, Inc.*, 297 Ill. App. 3d 488, 494 (1st Dist. 1998) (considering employee performance reviews, employer comments, and the timing of the discharge in deciding whether a discharge was retaliatory). To the extent that this Court has any hesitation that the causation inquiry might begin to intrude upon matters of church doctrine or organization, those concerns can be mitigated by the trial judge through control of discovery and the flow of evidence. *See generally Minker v. Baltimore Annual*

Conference of United Methodist Church, 894 F.2d 1354, 1360-61 (D.C. Cir. 1990) (concluding that limited discovery involving a minister's breach-of-contract claim would not create an excessive entanglement with the church's religious beliefs).

Moreover, the cases that the Appellate Court relied upon—*Williams v. Palmer*, 177 Ill. App. 3d 799 (3d Dist. 1988), and *Gabriel v. Immanuel Evangelical Lutheran Church, Inc.*, 266 Ill. App. 3d 456 (4th Dist. 1994)—did not involve the whistleblower-retaliation context that is at issue in this case. *Williams* involved a decision by the Methodist Church about who should be the pastor at a particular church, and *Gabriel* involved a decision by a Lutheran school about whether to hire plaintiff as a teacher. If this were merely a question about whether Mrs. Rehfield was a suitable person to be hired as principal of a Catholic school, then she concedes that the ecclesiastical-abstention doctrine would apply. But that is not this case. Here, Mrs. Rehfield alleges a distinct tort having nothing to do with religious doctrine—that the Diocese fired her in retaliation for her reporting a parent's threatening conduct to police.

Mrs. Rehfield is not asking this Court to make St. Raphael hire people of a certain religion or sex or age or faith, but rather, to hold it accountable for retaliating against her for reporting MacKinnon's

conduct to the police. Courts are well-equipped to assess her claims without any need to meddle into the Diocese's religious practices or tenets. Accordingly, the Appellate Court's decision should be reversed, and Mrs. Rehfield's claims should be reinstated.

2. The Appellate Court failed to consider Mrs. Rehfield's whistleblower status and why ecclesiastical abstention is against public policy in this context

The Appellate Court ignored the key issue in this case: the fact that Mrs. Rehfield was a whistleblower, who alleges that she was fired in retaliation for reporting criminal conduct to police. This is an open issue both in federal courts and in Illinois. In 2012, the United States Supreme Court formally recognized the existence of a "ministerial exception," grounded in the First Amendment's religion clauses, that acts as an affirmative defense for religious institutions accused of violating employment-discrimination laws in the selection of ministers. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012). *Hosanna-Tabor's* holding was very narrow, however. In the opinion's penultimate paragraph, the Supreme Court took pains to explain that its decision extends only to employment-discrimination suits, and, even then, only suits brought by church ministers:

The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.

Id. at 196. The Supreme Court expressly reserved the question whether religious ministers may bring other types of lawsuits, including suits grounded in tort law. And the Court was clear that non-ministers remain free to pursue all employment-related claims against religious employers.

Mrs. Rehfield's case presents this Court with the opportunity to address the very issue that the Supreme Court expressly identified as an unsettled legal question. Mrs. Rehfield's claims are not rooted in employment discrimination, but instead are based on the tortious and retaliatory conduct by the Diocese in terminating her for contacting the police about a parent who had threatened Diocese personnel.

There are particularly strong policy reasons for treating whistleblower-retaliation claims as distinct from the employment-discrimination claims at the heart of the ministerial exception and typical ecclesiastical-abstention matters. Laws protecting whistleblowers from retaliation in employment do not merely (or even primarily) benefit the employees themselves. Instead, the laws shield

employees in order to incentivize the whistleblowing activities that can implicate public safety and the enforcement of criminal laws.

Notably, even counsel for the church in *Hosanna-Tabor* agreed that whistleblower claims should be distinguished from employment-discrimination claims due to the weighty social interests involved. At oral argument, Justice Sotomayor asked, “How about a teacher who reports sexual abuse to the government and is fired because of that reporting?” In response, the church’s counsel openly acknowledged that the government’s interest in protecting ministers from discrimination is distinct from the government’s interest in protecting children from sexual violence:

If the government’s interest is in protecting ministers from discrimination, we are squarely within the heart of the ministerial exception. If the government’s interest is something quite different from that, like protecting the children, then you can assess whether that government interest is sufficiently compelling to justify interfering with the relationship between the church and its ministers. But the government’s interest is at its nadir when the claim is: We want to protect these ministers as such.

Tr. of Oral Arg. at 5-7, *Hosanna-Tabor*, 565 U.S. 171 (2012) (No. 10-553).

Mrs. Rehfield’s lawsuit exemplifies this distinction. She observed conduct that she not only believed was criminal, but also that potentially threatened the safety of teachers, students, and staff members at her school. Reporting that conduct to the police was the right and lawful

response. *See Roberts v. U.S.*, 445 U.S. 552, 557 (1980) (“Concealment of crime has been condemned throughout our history. The citizen’s duty to ‘raise the ‘hue and cry’ and report felonies to the authorities’ was an established tenet of Anglo-Saxon law at least as early as the 13th century.”). Yet the Diocese reacted by unlawfully terminating Mrs. Rehfield’s employment as a punishment for her behavior. Stretching the ecclesiastical-abstention doctrine to reach claims of this sort, as the lower courts did here, would insulate religious institutions everywhere from accountability or recourse when those institutions actively work to suppress the reporting of wrongdoing. Such a result is well outside *Hosanna-Tabor*’s narrow holding and limited logic and is contrary to Illinois public policy. *See Palmateer v. Int’l Harvester Co.*, 85 Ill. 2d 124 (1981) (“There is no public policy more basic, nothing more implicit in the concept of ordered liberty, than the enforcement of a State’s criminal code. There is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens.”).

Put differently, the Appellate Court’s opinion is grounded heavily in its conclusion that Mrs. Rehfield “was not a secular employee” and constituted “a member of the clergy.” A-39. Mrs. Rehfield does not concede that point. But even if she were a minister—and this is the key

issue—it should not matter. Whether or not serving in a ministerial role, no employee of a religious institution should be fired for reporting a crime to police. There is ample room in the law to protect religious institutions’ constitutional freedoms and likewise protect citizens and promote well-established public policy.

3. The fact that Mrs. Rehfield had a contract with the Diocese does not preclude her from pursuing a retaliatory-discharge claim

Under Illinois common law, an employee may bring a claim for retaliatory discharge if she was: (1) discharged, (2) in retaliation for her activities, and (3) the discharge violates a clear public-policy mandate. *See Bell v. Don Prudhomme Racing, Inc.*, 405 Ill. App. 3d 223, 231 (4th Dist. 2010). In this case, Mrs. Rehfield has alleged that the Diocese fired her in retaliation for reporting MacKinnon’s conduct to the police. Illinois law and public policy favor “the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy.” *Palmateer*, 85 Ill. 2d at 132. Although the Circuit Court held that it did not have jurisdiction to hear either of Mrs. Rehfield’s claims because of the ecclesiastical-abstention doctrine, it first stated that Mrs. Rehfield could not pursue her common law retaliatory-discharge claim because she was not an at-will employee. This conclusion—not addressed by the Appellate Court—is incorrect.

Although this Court has had multiple chances to embrace the view that common law retaliatory-discharge claims are limited to at-will employees, it has never done so. Just three years after the decision in *Palmateer*, this Court was presented with a case involving union employees covered by a collective-bargaining contract in which the defendants explicitly argued “that the action for retaliatory discharge was created to protect *only* ‘at-will’ employees...who would otherwise be without a remedy for a vengeful discharge.” *Midgett v. Sackett-Chicago, Inc.*, 105 Ill. 2d 143, 149 (1984) (emphasis added). This Court rejected that argument, however, and stated, “in order to provide a complete remedy it is necessary that the victim of a retaliatory discharge be given an action in tort, independent of any contract remedy the employee may have based on the collective bargaining agreement.” *Id.*

If the contractual remedy were all that could be pursued under the contract’s terms, then employees would be unable to seek additional compensation, such as punitive damages. The Illinois Supreme Court found that such a result would undermine the power and purpose of the retaliatory-discharge tort, and it went on to cite its decision in *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172 (1978), stating:

In the absence of the deterrent effect of punitive damages there would be little to dissuade an employer from engaging in the practice of discharging an employee for filing a

workmen's compensation claim.... The imposition on the employer of the small additional obligation to pay a wrongfully discharged employee compensation would do little to discourage the practice of retaliatory discharge, which mocks the public policy of this State.... In the absence of other effective means of deterrence, punitive damages must be permitted.

Midgett, 105 Ill. 2d at 149. Thus, even when an employee was protected by a union contract and therefore not at-will, this Court allowed the retaliatory-discharge claim to proceed.

Two years later, this Court was again presented with an opportunity to state unequivocally that only at-will employees could bring retaliatory-discharge claims, and again, it declined to do so. In *Boyles v. Greater Peoria Mass Transit Dist.*, 113 Ill. 2d 545 (1986), an employee and member of a collective-bargaining unit brought a retaliatory-discharge claim, alleging that she had been fired after filing a claim under the Workers Compensation Act. The defendants in that case specifically argued that “plaintiff’s complaint failed to state a cause of action against them because, they claimed, the tort of retaliatory discharge is available only to persons employed at will, and not to employees, such as the plaintiff, who were protected by a collective-bargaining agreement.” *Id.* at 548. Further complicating matters, the defendant in *Boyles* was a public entity and immune from punitive damages, thus distinguishing it from *Midgett*. Yet even without punitive

damages, this Court again allowed the retaliatory-discharge claim to proceed, despite the fact that the individual was not employed at-will. *Id.* at 555-56.

Although the Circuit Court did not refer to any case law in reaching its conclusion, the Diocese cited four cases below in arguing that retaliatory discharge does not extend to employees with a contract: *Darchak v. City of Chicago Bd. of Educ.*, 580 F.3d 622 (7th Cir. 2009); *Bajalo v. Northwestern Univ.*, 369 Ill. App. 3d 576 (1st Dist. 2006); *Krum v. Chicago Nat'l League Ball Club, Inc.*, 365 Ill. App. 3d 785 (1st Dist. 2006); and *Taylor v. Bd. of Educ. of City of Chicago*, 2014 IL App (1st) 123744.

The first three, *Darchak*, *Bajalo*, and *Krum*, are clearly distinguishable from Mrs. Rehfield's case because they all involved employees who were not rehired or whose contract was not renewed. None of the cases involved employees who were actually terminated, which is critical for a retaliatory-discharge claim. In *Darchuk*, a teacher hired on a one-year contract complained when her contract was not renewed for subsequent years. 580 F.3d at 626-27. In *Bajalo*, a medical researcher was not invited back to continue her research. 369 Ill. App. 3d at 580-89. In *Krum*, an athletic trainer sued his baseball-team

employer for not hiring him again for future seasons. 365 Ill. App. 3d at 787.

All of these cases are different from Mrs. Rehfield's, because Mrs. Rehfield was actually fired from her job. Mrs. Rehfield is not complaining about a failure to renew her contract; the Diocese *did* renew her contract. A-4 ¶ 14. But then it fired her, prohibiting her from fulfilling that contract by acting as Principal during the 2017-18 school year. A-8 ¶¶ 32-33. Unlike the plaintiffs in the cases cited above, Mrs. Rehfield alleges actual termination. Though courts have been unwilling to extend the retaliatory-discharge tort to claims of failure-to-renew or failure-to-rehire, that is simply not this case.

Unfortunately, in deciding *Taylor*, the Appellate Court of Illinois, First District, misread these decisions involving failure-to-renew and failure-to-rehire claims, and in doing so, mistakenly held that only at-will employees can bring a retaliatory-discharge claim. 2014 IL App (1st) 123744, at ¶ 34. In *Taylor*, the court incorrectly concluded that courts have “confin[ed] the [retaliatory-discharge] tort to the discharge of an at-will employee.” *Id.* But in making that assertion, the *Taylor* court cited just three cases: *Bajalo*, *Krum*, and a third, *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29 (1994), which involved a claim of retaliatory demotion rather than termination. Although all three cases held that the

retaliatory-discharge tort should not be expanded beyond situations where an employee was fired, not one of them held that retaliatory discharge applies only to at-will employees. It is not clear why the *Taylor* court said otherwise, but these cases do not stand for the proposition that only at-will employees can sue for retaliatory discharge.

This Court need not and should not compound the First District's obvious error by reading a requirement into the retaliatory-discharge tort that is not there. There is no good reason why the tort should be limited in such a way. The purpose of the law is to protect employees from being terminated when that termination violates the clear public policy of Illinois, and the protection should extend to any employee, regardless of whether the employee is at-will or happens to have an employment contract.

Below, the Diocese argued that Mrs. Rehfield could not pursue this claim because it paid her the money owed under the 2017-18 employment contract. Yes, the Diocese paid Mrs. Rehfield that money, but her claim is not for those wages. This is a tort claim, and Mrs. Rehfield is suing to redress the harms that the Diocese caused by firing her, forcing her to leave St. Raphael before the end of the school year, prohibiting her from returning to campus to preside during the 2017-18 school year (as she had already contracted to do), and causing her considerable distress. She

also seeks punitive damages, which are appropriate to deter employers from firing employees in violation of Illinois public policy. *See Boyles*, 113 Ill. 2d at 551 (discussing deterrent effect of retaliatory-discharge claims). If the Diocese's position on this issue prevailed, then the Diocese and any other employer could terminate an employee for reporting crime, filing a claim for workers' compensation, filing an EEOC charge, or assisting in state or federal investigations—and, so long as that employee has a contract, the employee would have no retaliatory-discharge remedy. Such a result cannot be squared with the purpose of common-law retaliatory discharge.

Mrs. Rehfield correctly and specifically pled the elements of the retaliatory-discharge tort, as set forth above, and there is no sound basis to preclude her from proceeding on that claim. Thus, as a matter of law, Mrs. Rehfield should not be barred from bringing a retaliatory-discharge claim on the basis that she had a written contract.

CONCLUSION

Plaintiff-Appellant respectfully requests that this Court reverse the Appellate Court's judgment affirming the Circuit Court's judgment and order Plaintiff-Appellant's Amended Complaint to be reinstated.

Dated: April 29, 2020

Respectfully submitted,

s/ Julie B. Porter
JULIE B. PORTER (#6243787)
Salvatore Prescott Porter & Porter,
PLLC
1010 Davis Street
Evanston, IL 60201
P: (312) 283-5711
F: (312) 724-8353
porter@sppplaw.com

Counsel for Plaintiff-Appellant
Mary Rehfield

CERTIFICATE OF COMPLIANCE

I, Julie B. Porter, certify that this brief conforms to the requirements of Rules 315 and 341(a) and (b). The length of this brief is 24 pages excluding the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and the Rule 342(a) appendix.

s/ Julie B. Porter
Julie B. Porter

CERTIFICATE OF SERVICE AND NOTICE OF FILING

I certify under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on April 29, 2020, a copy of the foregoing Brief of Plaintiff-Appellant and the attached Appendix was filed and served upon the Clerk of the Illinois Supreme Court via the efileIL system through an approved electronic filing service provider and was served on counsel of record below in the manner indicated:

Via Email

Nicholas Anaclerio
Michelle Olson
Vedder Price P.C.
222 North LaSalle Street, Suite 2600
Chicago, IL 60601-1003
nanaclerio@vedderprice.com
molson@vedderprice.com

Based upon this Court's April 2, 2020 Order regarding COVID-19, Appellant will not send any paper copies of this filing to this Court unless so requested.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

s/ Julie B. Porter

NO. 125656

IN THE
SUPREME COURT OF ILLINOIS

MARY REHFELD,	)	On Review of the Opinion of the
	)	Appellate Court, Third Judicial
<i>Plaintiff-Appellant,</i>	)	District, Case No. 3-18-0354
)	
v.	)	There on Appeal from the Circuit
	)	Court, Will County, Illinois,
DIOCESE OF JOLIET,	)	Twelfth Judicial Circuit, Case No.
	)	2017-L-1000
<i>Defendant-Appellee.</i>)	
	)	Honorable Raymond J. Rossi,
	)	Trial Judge Presiding

PLAINTIFF-APPELLANT'S APPENDIX

JULIE B. PORTER (#6243787)
 Salvatore Prescott Porter & Porter,
 PLLC
 1010 Davis Street
 Evanston, IL 60201
 P: (312) 283-5711
 F: (312) 724-8353
 porter@sppplaw.com

*Counsel for Plaintiff-Appellant
 Mary Rehfield*

TABLE OF CONTENTS

Date	Document	Page
2/27/18	Plaintiff's First Amended Complaint	A-1
5/14/18	Transcript of Circuit Court Decision	A-14
6/6/18	Notice of Appeal	A-24
12/10/19	Appellate Court, Third District Opinion	A-28
	Index to Record on Appeal	A-41

IN THE CIRCUIT COURT OF WILL COUNTY, ILLINOIS
 LAW DIVISION

MARY REHFELD,)	
Plaintiff,)	
)	
vs.	)	Case No. 2017-L-1000
)	
DIOCESE OF JOLIET,	)	JURY TRIAL DEMANDED
Defendant.)	

FIRST AMENDED COMPLAINT

Plaintiff MARY REHFELD, by and through her counsel, Salvatore Prescott & Porter, PLLC, brings this First Amended Complaint against her former employer, Defendant DIOCESE OF JOLIET, and states as follows.

I. INTRODUCTION

1. Plaintiff MARY REHFELD served for over 40 years as a dedicated and compassionate educator, most recently as Principal of St. Raphael Catholic School in Naperville, Illinois. In early 2017, the DIOCESE OF JOLIET abruptly terminated her, because she had reported threatening conduct from a parent to the police. After the police investigated the incident, and indeed, issued an arrest warrant for the individual who made the threats, the DIOCESE retaliated against REHFELD, making her a scapegoat for a situation they found embarrassing and problematic. REHFELD now brings this action for compensatory and punitive damages stemming from the unlawful termination.

II. JURISDICTION AND VENUE

2. This action arises under Illinois common law. Jurisdiction is proper under 735 ILCS §§ 5/1-108 and 5/2-209.

3. Venue is proper in this Court because the actions that give rise to this suit occurred in this county.

III. PARTIES

4. Plaintiff MARY REHFIELD is a 66-year-old woman, and the former Principal of St. Raphael Catholic School. She lives in Bartlett, Illinois.

5. Defendant DIOCESE OF JOLIET is located in Will County, at 16555 Weber Road, Crest Hill, Illinois.

IV. FACTUAL ALLEGATIONS

6. REHFIELD served as an educator for more than 43 years, with nearly 18 of those years as a principal throughout Illinois. During that time, REHFIELD has consistently received high marks for her work, including earning several awards and distinctions.

7. In 2012, REHFIELD was hired as the Principal of St. Raphael Catholic School. St. Raphael educates students from preschool through eighth grade with an average enrollment of 310 students. The school has approximately 25 teachers and staff members.

8. Before REHFIELD was hired, St. Raphael had experienced difficulties with a small group of parents who viewed themselves as in charge, often interfering with the orderly administration of the school.

9. Bringing order to the school administration was one of the main reasons REHFIELD was brought to St. Raphael—given her long experience, the

DIOCESE wanted REHFIELD to assume control of what had become an untenable situation. REHFIELD did just that.

10. During her time at St. Raphael, REHFIELD successfully designed and implemented a number of programs to improve the education experience for her students. For example, she piloted an online communication program for parents and teachers, which was subsequently adopted by the entire DIOCESE. She also adopted a new science curriculum, redesigned procedures involving reading and learning behavior specialists, initiated an anti-bullying campaign, and introduced several data-driven curriculum changes.

11. REHFIELD was also active in the community, often attending events on behalf of St. Raphael to encourage more families to send their children to the school. She appeared on local podcasts about Catholic education and Naperville Community television. She also hosted open houses to introduce St. Raphael to interested families. Students affectionately referred to REHFIELD as “Mrs. St. Raphael.”

12. REHFIELD’s annual reviews recognized that she “is a good communicator,” “works well with parish staff, faculty, and school families,” and she is “very proactive in lifting the bar high, expecting and inviting an atmosphere to reach one’s highest potential.”

13. REHFIELD led St. Raphael with expertise, creativity, and compassion, forming strong relationships with faculty, students, and families. Her

work was so well received that she was nominated by St. Raphael's pastor, Father Daniel Bachner, for Outstanding Principal of the Year for the 2016-2017 school year.

14. As of May 2017, REHFIELD was in strong standing at St. Raphael's, having received a glowing performance review and been offered (and accepted) a contract for the 2017-2018 school year.

Rude Emails from a Parent in Early 2016

15. In or around January 2016, the mother of one of the students at St. Raphael contacted a teacher to alert the teacher that her daughter had been picked on at school. The teacher addressed the issue and believed it to be resolved, but on or about January 27, 2016, the teacher received an email from the student's father, William MacKinnon, who lived in Massachusetts.

16. MacKinnon stated, in substance, that he wanted the teacher to ensure that his daughter was no longer bullied. The email was rude in tone, but not threatening. The teacher elevated the issue to REHFIELD, who promptly consulted with Fr. Bachner.

17. With Fr. Bachner's agreement, REHFIELD responded to MacKinnon, telling him that he was welcome to raise any concerns he had about his daughter. REHFIELD also requested that MacKinnon bring future concerns directly to REHFIELD's attention and asked that he communicate in a more collegial manner. MacKinnon responded to REHFIELD and apologized for the tone of his email.

18. Soon afterward, MacKinnon sent several additional emails to the same teacher. The teacher informed REHFIELD of these additional emails. This

time, REHFIELD perceived the emails as a potential threat. After consulting with Fr. Bachner, and with his approval, REHFIELD contacted the police. The police advised REHFIELD that no further action needed to be taken at that time.

19. About a month later, in spring 2016, REHFIELD received an additional, concerning email from MacKinnon. REHFIELD again notified the police. After consultation with the police and Fr. Bachner, and with their approval, a photo of MacKinnon was distributed to the faculty and the parish staff with instructions to call 911 if MacKinnon was seen on campus. MacKinnon was not seen on campus during the 2015-2016 school year.

The Threats from MacKinnon Escalate

20. On or about February 7, 2017, Fr. Bachner received a voicemail from a person later determined to be MacKinnon. It was a several-minute-long rant about priests and the Church. To the extent that it was threatening, the threat was to Fr. Bachner. When REHFIELD learned about the voicemail, she promptly contacted police and requested that they review the matter. The police issued an arrest warrant for MacKinnon.

21. Following the voicemail and subsequent arrest warrant, REHFIELD consulted with Fr. Bachner as well as the superintendent, Fr. John Belmonte. REHFIELD was very sensitive to the issue of communicating with parents and students appropriately, with a focus on ensuring safety and also on avoiding unnecessary distress.

22. REHFIELD sought input, advice, and support from the police, Fr. Bachner, and Fr. Belmonte. Based on these communications, REHFIELD again distributed a photograph of MacKinnon to staff at St. Raphael and informed them to call 911 if they saw MacKinnon. REHFIELD likewise distributed the photograph to staff at the church, telling them the same. The police and Fr. Bachner advised REHFIELD that it was unnecessary and even inappropriate to communicate about this matter with parents, under all the circumstances.

23. Because the police took action on the information provided by REHFIELD, the press was able to access information about MacKinnon's case on the public docket. As a result, on or about May 8, 2017, the *Naperville Sun* ran a story called "Man vowed to 'terrorize' Naperville school: authorities." The story stated—inaccurately—that on February 7, MacKinnon left a message for REHFIELD threatening to terrorize the school and its staff.

24. The article was wrong in several respects, including that the voicemail was to Fr. Bachner, not to REHFIELD, and that, in the message, MacKinnon did not vow to terrorize St. Raphael. The message certainly concerned REHFIELD, and she took it seriously, but it was not accurate to cast it as a threat to the school and its students and staff.

REHFIELD Explains the Situation to Parents

25. Once the article appeared, concerned parents inquired to REHFIELD and others associated with St. Raphael. The next day, on or about May 9, after conferring with Fr. Bachner, Fr. Belmonte, and others, REHFIELD sent a letter to parents explaining the situation.

26. A meeting was held a few days after the article appeared so that REHFIELD could provide an update to the parents. The meeting also provided an opportunity for the police to explain their process, and parents could ask the police questions.

27. Before the meeting, on or about May 10, 2017, a discussion was held to set an agenda for the parents' meeting and to address the substance of what the parents would be told. Attendees at the meeting included REHFIELD, Fr. Bachner, and Fr. Belmonte, as well as assistant principal Jen Timmons. DIOCESE administrator Mike Bava and DIOCESE attorney Maureen Harton participated by phone.

28. During the meeting, participants specifically discussed what message REHFIELD should relay to parents. REHFIELD agreed to follow the advice from her superiors and the DIOCESE's legal counsel about what to tell the parents.

29. The meeting with the parents was volatile, explosive, and aggressive toward REHFIELD. Some parents expressed anger that they were not informed earlier; some called for REHFIELD's termination. It was not surprising that

the meeting was emotional, especially given the misinformation that had been printed in the newspaper.

30. What was surprising, however, was that Fr. Bachner and Fr. Belmonte sat by silently while parents excoriated REHFIELD, even though both knew that the steps REHFIELD had taken were fully vetted and supported by the DIOCESE.

31. Despite the lack of support or clarification from Fr. Bachner or Fr. Belmonte, REHFIELD remained calm and professional, addressing parents' questions. Indeed, in the days following the meeting, she received an outpouring of support, including letters from parents praising her efforts and apologizing for the way some had behaved at the meeting.

The DIOCESE Retaliates Against REHFIELD

32. Just days after the meeting with the parents, the DIOCESE terminated REHFIELD, despite the fact that REHFIELD had already been offered and had accepted a contract to return for the following school year.

33. This demand that she leave came as a total shock to REHFIELD. Indeed, REHFIELD and Fr. Bachner had previously discussed the expectation on all sides that REHFIELD would remain Principal at St. Raphael until she turned 70 years' old. REHFIELD relied on income from her employment for living expenses and her husband's serious medical needs. REHFIELD does not have sufficient savings to meet those expenses without continuing to work.

34. It was clear to REHFIELD and others that the DIOCESE forced her out in retaliation for reporting the MacKinnon incident to police, as a way of shifting blame off of the DIOCESE and onto REHFIELD.

35. This incident has caused REHFIELD considerable distress. Since the DIOCESE terminated REHFIELD, her doctor has prescribed and she has been required to take anxiety medication and regularly see a psychologist. She is very concerned about how she will meet her own and her husband's medical needs.

36. Despite her best efforts, REHFIELD has been unable to secure alternative employment, and given her age, she does not anticipate being able to find another job.

COUNT I

Retaliatory Discharge

37. REHFIELD incorporates the foregoing allegations here.

38. Illinois courts have recognized that the tort of retaliatory discharge lies in protecting public policy, and there is clear public policy favoring investigation and prosecution of criminal offenses.

39. In this case, REHFIELD was an exemplary Principal at St. Raphael Catholic School, earning praise and honors from parents, students, and her staff, as well as from her supervisors.

40. In contacting the police about MacKinnon's threats, REHFIELD did what she believed was the right thing to do to protect her students and necessary under the law.

41. REHFIELD consistently consulted with the DIOCESE regarding the correct action to take in response to MacKinnon, but despite approval to take action and contact law enforcement, the DIOCESE unlawfully retaliated against REHFIELD when the information became public.

42. Because of the DIOCESE's actions in terminating REHFIELD, other staff and faculty members are likely to be more reluctant to come forward and report potentially unlawful or criminal conduct. This is especially problematic in the field of education, where principals, administrators, and teachers have legal obligations to report certain conduct to authorities.

43. The DIOCESE's termination of REHFIELD is in direct conflict with the public policy of the State of Illinois.

44. REHFIELD has suffered significant financial and emotional distress as a result of her termination. Moreover, she fears that she may not be able to find new employment in light of her termination.

Count II Illinois Whistleblower Act

45. REHFIELD incorporates the foregoing allegations here.

46. The Illinois Whistleblower Act provides that an employer may not retaliate against an employee for disclosing information to a law enforcement agency where the employee has reasonable cause to believe the information discloses a violation of a State or federal law, rule, or regulation.

47. In contacting the police about MacKinnon's threats, REHFIELD did what she believed was the right thing to do to protect her students and necessary under the law.

48. REHFIELD consistently consulted with the DIOCESE regarding the correct action to take in response to MacKinnon, but despite approval to take action and contact law enforcement, the DIOCESE unlawfully retaliated against REHFIELD when the information became public.

49. The DIOCESE's termination of REHFIELD is in direct conflict with the Illinois Whistleblower Act's protections for employees who disclose information to law enforcement personnel.

50. REHFIELD has suffered significant financial and emotional distress as a result of her termination. Moreover, she fears that she may not be able to find new employment in light of her termination.

WHEREFORE, Plaintiff MARY REHFIELD requests judgment in her favor and against Defendant DIOCESE OF JOLIET, as follows:

- a. Compensatory damages in an amount to be determined at trial;
- b. Punitive damages;
- c. Attorneys' fees, costs, and expenses;
- d. Pre-judgment and post-judgment interests interest; and
- e. To grant further relief as this Court should find just and proper.

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, MARY REHFELD, by and through her attorneys, Salvatore Prescott & Porter, PLLC, and hereby demands a jury trial in the above-captioned matter.

Dated: February 27, 2018

By: s/ Julie B. Porter
JULIE B. PORTER (#6243787)
KYLE A. PALAZZOLO (#6295329)
Salvatore Prescott & Porter, PLLC
1010 Davis Street
Evanston, IL 60201
P: (312) 283-5711
F: (312) 724-8353
porter@spplawyers.com
palazzolo@spplawyers.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing were served via US Mail First Class and electronic filing to:

J. Kevin Hennessy
Nicholas Anaclerio
Caralyn Olie
Vedder Price P.C.
222 North LaSalle Street, Suite 2600
Chicago, IL 60601-1003
khennessy@vedderprice.com
nanaclerio@vedderprice.com
colie@vedderprice.com

s/ Julie B. Porter

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MARY REHFELD

Plaintiff/Petitioner

Reviewing Court No: 3-18-0354Circuit Court No: 2017L001000Trial Judge: RAYMOND ROSSI

v.

DIOCESE OF JOLIET

Defendant/Respondent

E-FILED
Transaction ID: 3-18-0354
File Date: 8/13/2018 8:42 AM
Barbara Trumbo, Clerk of the Court
APPELLATE COURT 3RD DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1Date ofProceedingTitle/DescriptionPage No.

05/14/2018

REPORT OF PROCEEDING - BY STEVE
VITHOULKAS

R 2-R 10

FILED

2018 JUL -3 PM 2:25

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF WILL)

4 IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
5 WILL COUNTY, ILLINOIS

6 MARY REHFELD,

7 Plaintiff,)

8 -vs-)

9 DIOCESE OF JOLIET,

10 Defendant.)

11 NO. 2017 L 1000

12 REPORT OF PROCEEDINGS had at the hearing of the
13 above-entitled cause before the Honorable RAYMOND E. ROSSI,
14 on the 14th day of May, A.D., 2018.

15 APPEARANCES:

16 MR. KYLE PALAZZOLO, Attorney At Law
17 Appeared on behalf of the Plaintiff;

18 MR. NICHOLAS ANACLERIO, Attorney At Law
19 Appeared on behalf of the Defendant.

20
21
22 STEVE VITHOULKAS, CSR, RPR, RMR
23 Will County Courthouse
24 Joliet, IL 60432

1 THE COURT: 39, 17 L 1000. 39? Rehfield.

2 MR. PALAZZOLO: Good morning, Judge. Kyle Palazzolo on
3 behalf of the plaintiff.

4 MR. ANACLERIO: Good morning, your Honor. Nick
5 Alaclerio appearing on behalf of the defendant, the Diocese
6 of Joliet.

7 THE COURT: I have paperwork and I have read through
8 it, and if you wish to supplement or otherwise make a
9 record, I ask that you do so in short order.

10 MR. ANACLERIO: I'll try and be concise, your Honor.
11 Not exactly a garden variety motion but one that we believe
12 is straightforward and the outcome of which is clear and
13 certain. Two independent reasons mandate the dismissal of
14 this lawsuit. The first, and we believe the more
15 fundamental and more important, is ecclesiastical
16 abstention.

17 At its core, this lawsuit is challenging the
18 Diocese's discretion with respect to a ministerial employee,
19 one whose job responsibilities were fundamental to the
20 religious education leadership of the St. Rafael School.
21 The law is very well established, the 1st Amendment
22 liberties that the Diocese is entitled to rely upon preclude
23 judicial intervention in employment decisions related to
24 people who, like Mary Rehfield, had ecclesiastical

1 ministerial responsibilities.

2 We are not talking about somebody at a low level
3 of authority or responsibility. We are talking about
4 somebody whose core responsibilities as the principal of the
5 school was religious education and inculcation and
6 leadership in all of those respects under the direction,
7 leadership of the pastor, Fr. Bachner. So the authorities
8 that we've cited, and I won't go through a lengthy
9 recitation of them, but they begin with U.S. Supreme Court
10 authority and are followed down the line at this very
11 procedural stage, motion to dismiss stage, and Illinois
12 authorities say that a lawsuit, such as this one, that
13 attempt to usurp a religious institution's authority to make
14 decisions with respect to the employment of individuals who
15 speak for it is simply not permissible.

16 So we believe that the ecclesiastical abstention
17 doctrine, the 1st Amendment to the constitution, the 14th
18 Amendment as it's applied to the states, as well as the
19 Illinois constitution all make it abundantly clear that the
20 Court's authority in this case and responsibility is to
21 dismiss and to not second-guess the judgment of the Diocese
22 when it comes to Mary Rehfield's non renewal or discharge.
23 She's, in her briefs, tried to make a distinction between
24 authorities that involve non renewal of employment contracts

1 versus discharge. We frankly think that for all purposes,
2 that is a distinction without a difference.

3 The employment action here, which was to relieve
4 her of responsibilities and yet pay her out over the terms
5 of the existing and the renewed contract, that is one which
6 the 1st Amendment precludes by judicial intervention to
7 second-guess. Secondly, and as an independent ground
8 mandating the dismissal of this lawsuit, Mary Rehfield was
9 at all times a contracted employee. She was not an at will
10 employee.

11 Illinois authorities, particularly to the Supreme
12 Court of the state, make it clear that the common law tort
13 of retaliatory discharge and in statutory retaliatory
14 discharge settings applies only to individuals who are
15 employed at will who may be discharged or who may resign for
16 any reason or no reason. As the principal of St. Rafael's
17 School, Mary Rehfield had a contract at all times for
18 specific terms under specific circumstances, many of which
19 recognized, acknowledged, imposed the ecclesiastic
20 responsibilities that she held and she was supposed to
21 discharge.

22 So under numerous Illinois authorities, which,
23 frankly, are not in dispute and are not inconsistent, but
24 principal of those is the Taylor decision that we've cited

1 to your Honor. Mary Rehfield, as a contracted employee, is
2 not somebody who has a retaliatory discharge claim as a
3 matter of law. Both the contracted nature of Ms. Rehfield's
4 employment and the high level ecclesiastic and ministerial,
5 educational, religious educational functions that Mary
6 Rehfield held and was supposed to discharge are established
7 now in sworn proofs before the Court. Pursuant to 2-619,
8 Fr. Bachner's declaration, Nancy Siemers' declaration make
9 clear both that she was a ministerial employee and that she
10 was a contracted employee.

11 Those fundamental facts are now incontestable
12 because there has been no effort to refute them or to
13 counter them in any way, and that's just simply the case.
14 These are true facts. As a consequence, a dismissal with
15 prejudice and without leave to amend further, the complaint
16 has been amended at least once, is the appropriate
17 disposition here, and we would submit, your Honor, the only
18 appropriate disposition under the facts that are before your
19 Honor.

20 THE COURT: Thank you. Counsel?

21 MR. PALAZZOLO: I'll be brief, your Honor. I'll start
22 first with the ministerial exception. And we believe that
23 this is precisely the type of case that the U.S. Supreme
24 Court left open in the Hosanna-Tabor decision. The Court

1 there was reviewing whether or not an individual could be
2 terminated, and in discussing cases involving the Civil
3 Rights Act, there have been protections given to religious
4 entities in order to ensure that they can terminate and not
5 hire individuals based on their religious beliefs.

6 But in discussing cases that could still be
7 brought by employees of religious institutions, they
8 specifically noted the fact that they were leaving open the
9 question of a case just like this where a principal felt
10 that she was doing the right thing, what was required of her
11 in order to report an incident to the police and was
12 retaliated against by the Diocese. Her termination is one
13 where this Court is well-equipped to review claims of
14 retaliatory discharge, and under the Illinois Whistle-Blower
15 Act, in order to ensure that religious employers are not
16 terminating people who act in accordance with the law, who
17 work to ensure that state laws are complied with, that the
18 criminal statutes are enforced.

19 And we believe that this is not a case that should
20 be -- should be forth-hold by the ministerial exception.
21 Also with respect to Miss Rehfield's job duties and the
22 course of her employment, there is a test that's put forth
23 in considering whether an employee is covered by the
24 ministerial exception. It is a fact-intensive inquiry. We

1 do believe that there should be discovery on this issue,
2 that we should have the opportunity to have depositions to
3 talk about what her job duties were.

4 There is a four-part test that we've discussed
5 briefly in the Hosanna-Tabor case, and the documents that
6 are submitted, the affidavits as well as Miss Rehfield's job
7 duties, they do show that there -- that she was a lay
8 principal, that she had an educational function, and we
9 believe that additional information would demonstrate that
10 she may not be covered by this exception and that the motion
11 to dismiss stage is not the appropriate place to rule on
12 this issue.

13 With respect to the at will employment and
14 retaliatory discharge, we do believe that those cases that
15 discuss rehire, they are distinguishable. We believe that
16 this was a difference here and that this Court is not bound
17 by the decision in Taylor and the other Appellate Court
18 decisions that deal with retaliatory discharge and failure
19 to renew or rehire.

20 THE COURT: All right. Thank you. The Court finds
21 plaintiff was employed pursuant to a contract as stated in
22 the amended complaint, and the amended complaint does not
23 allege she was employed at will. Common law retaliatory
24 discharge claims may only be asserted by employees

1 terminable at will. The Court abstains and must abstain
2 from exercising its jurisdiction over both of the
3 plaintiff's claims in accordance with the doctrine of
4 ecclesiastic abstention.

5 Plaintiff was employed in a ministerial role as a
6 spiritual and educational leader of St. Rafael School, and
7 as such being responsible for the instruction, development
8 and implementation of Catholic religious programming for
9 both students and staff, the implementation of diocesan
10 principles and the religious growth of school staff.
11 Accordingly, Counts 1 and 2 of the amended complaint are
12 dismissed -- are dismissed with prejudice.

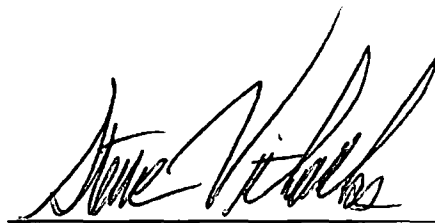
13 MR. ANACLERIO: Thank you, your Honor.

14 MR. PALAZZOLO: Thank you, your Honor.

15 (AND THOSE WERE ALL THE PROCEEDINGS HAD.)
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17
18
19
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21
22
23
24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF W I L L)

3
4
5
6
7 I, STEVE VITHOULKAS, Official Court Reporter for
8 the 12th Judicial Circuit, Will County, Illinois, do hereby
9 certify the foregoing to be a true and accurate transcript
10 of the electronic recording of the proceedings of the
11 above-entitled cause, which recording contained a
12 certification in accordance with rule or administrative
13 order.

14
15
16
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21 STEVE VITHOULKAS
22 Official Court Reporter.
23
24

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Will County Circuit Clerk

Twelfth Judicial Circuit Court

Electronically Filed

2017L1000

Filed Date: 6/11/2018 9:24 AM

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☒ Appeal

☐ Interlocutory Appeal

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☐ Cross Appeal

2. Name of Each Person Appealing:

Name: Mary Rehfield

First
Middle
Last

☒ Plaintiff-Appellant

OR

☐ Defendant-Appellant

☐ Petitioner-Appellant

☐ Respondent-Appellant

Name: _____

First
Middle
Last

☐ Plaintiff-Appellant

OR

☐ Defendant-Appellant

☐ Petitioner-Appellant

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May 14, 2018
Date

Date

Date

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Julie B. Porter
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Evanston, IL 60201
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(312) 283-5711
Telephone

Additional Appellant Signature

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Julie B. Porter
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2019 IL App (3d) 180354

Opinion filed December 10, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

MARY REHFELD,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
)	
	)	Appeal No. 3-18-0354
v.	)	Circuit No. 17-L-1000
)	
DIOCESE OF JOLIET,	)	Honorable
	)	Raymond E. Rossi,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.
Presiding Justice Schmidt and Justice Carter concur in the judgment and opinion.

OPINION

¶ 1 In 2012, the plaintiff, Mary Rehfield, was hired by the defendant, Diocese of Joliet, as the principal of St. Raphael Catholic School. In 2017, the Diocese terminated Rehfield following a number of issues that arose with a parent of a student. Rehfield filed a two-count complaint against the Diocese alleging retaliatory discharge and violation of the Whistleblower Act (740 ILCS 174/1 *et seq.* (West 2016)). The Diocese filed a combined motion to dismiss, which the trial court granted. Rehfield appeals.

¶ 2 **FACTS**

¶ 3 In November 2017, Rehfield filed an action against the Diocese initially only alleging a

single count of retaliatory discharge. The following relevant facts were set forth in her complaint.

¶ 4 In 2012, Rehfield was hired as the principal of St. Raphael Catholic School, which was operated by St. Raphael Parish, an agent of the Diocese. Rehfield reported to Father Daniel Bachner, an ordained Roman Catholic priest and pastor of St. Raphael Parish. Beginning with Rehfield's employment in 2012, Rehfield and the Diocese entered into one-year employment contracts. Rehfield's annual reviews stated that she was a good communicator, worked well with others, and invited and expected an atmosphere to reach one's highest potential.

¶ 5 In January 2016, a teacher at the school was contacted by the mother of one of her students and was told the student was being bullied. The teacher addressed the issue and believed the issue was resolved. Soon thereafter, the teacher received an email from the same student's father, William MacKinnon, wherein he wanted the teacher to ensure that his daughter was no longer being bullied. The teacher found the email to be rude in tone, but not threatening, and notified Rehfield of the correspondence. Rehfield notified Father Bachner of the email. Father Bachner advised Rehfield to respond to MacKinnon directly and ask that all future communication be directed to Rehfield in a collegial manner. Rehfield complied with Father Bachner's direction. MacKinnon responded to Rehfield and apologized for the tone of his email.

¶ 6 Soon thereafter, MacKinnon sent several additional emails to the same teacher. The teacher informed Rehfield of these emails. Rehfield perceived the emails as a potential threat. Rehfield consulted Father Bachner, and with his approval, notified the police of MacKinnon's communication. The police concluded that no further action was warranted at that time. One month later, Rehfield received what she perceived to be a threatening email from MacKinnon and notified the police. Under the advice of the police, Rehfield, with Father Bachner's approval, distributed a photo of MacKinnon to faculty and staff at the school with instructions to call the

police if MacKinnon was seen on campus.

¶ 7 Nearly a year later, in February 2017, Father Bachner received a voicemail from MacKinnon. The voicemail was several minutes long and described as a rant concerning priests and the church. The threat in the voicemail was directed toward Father Bachner. When Rehfield learned of the voicemail, she contacted the police and requested that they review the matter. As a result, the police issued an arrest warrant for MacKinnon.

¶ 8 Following the issuance of the arrest warrant, Rehfield consulted with Father Bachner, superintendent Father John Belmonte, and the police. Based on these communications, Rehfield again distributed a photograph of MacKinnon to staff at the school and informed them to call the police if they saw him. Rehfield also distributed the photograph to staff at the church, telling them the same. The police and Father Bachner advised Rehfield that it was unnecessary and inappropriate to communicate about the matter with parents under the circumstances.

¶ 9 Due to the public nature of the issuance of the arrest warrant, the local press obtained information about MacKinnon's actions through public records. In May 2017, the Naperville Sun ran a story called "Man vowed to 'terrorize' Naperville school: authorities." The story inaccurately stated, among other things, that MacKinnon left the message for Rehfield and that the message contained threats to terrorize the school and its staff. Concerned parents contacted Rehfield and others associated with the school. After consulting with Father Bachner, Father Belmonte, and others, Rehfield sent a letter to parents explaining the situation with MacKinnon.

¶ 10 An open meeting was scheduled to address this situation with parents. Before the meeting, Rehfield, Father Bachner, Father Belmonte, assistant principal Jen Timmons, Diocese administrator Mike Bava, and Diocese attorney Maureen Harton discussed the agenda for the open meeting and the message Rehfield should relay to parents. The open meeting was described

as volatile, explosive, and aggressive toward Rehfield. Some parents expressed anger that they were not informed of the situation earlier and some called for Rehfield's termination.

¶ 11 In June 2017, the Diocese terminated Rehfield's employment contract for the remainder of the 2016-2017 school year and notified Rehfield that she would not be able to lead the school the following year even though she had already accepted a contract for the 2017-2018 school year. Rehfield was shocked at the Diocese's actions. Rehfield alleged that Father Bachner agreed that she would remain principal at the school until she turned 70 years old. At the time Rehfield filed her complaint, she was 66 years old.

¶ 12 Rehfield argued that she consistently consulted with the Diocese regarding the correct action to be taken in response to MacKinnon, but despite the approval she received to take action and contact the police, the Diocese unlawfully retaliated against her when the information became public. She believed her actions were necessary under the law and to protect her students. Rehfield also argued other staff and faculty members were likely to be more reluctant to come forward and report potentially unlawful or criminal conduct.

¶ 13 Rehfield alleged that she suffered significant financial and emotional distress and feared she might not be able to find new employment in light of her termination. Her doctor prescribed her anxiety medication and recommended that she regularly see a psychologist. Rehfield had serious concerns about how she would meet her and her husband's medical needs. She attempted to secure alternative employment but was unsuccessful. Given her age, she did not anticipate being able to find another job.

¶ 14 In December 2017, the Diocese filed a combined motion to dismiss Rehfield's complaint. The Diocese argued, pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)), Rehfield's complaint for retaliatory discharge should be dismissed

because her employment was pursuant to an employment contract and retaliatory discharge claims are only available to at-will employees. Second, under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2016)), the Diocese again reiterated that Rehfield was a contractual employee and not able to claim retaliatory discharge. The Diocese also argued that Rehfield's complaint should be dismissed pursuant to the doctrine of ecclesiastical abstention because she was employed in a ministerial role, and for that reason, the Diocese had the discretion to manage and terminate her employment without court interference.

¶ 15 Attached to the Diocese's combined motion to dismiss were affidavits from Father Bachner and Nancy Siemers, the director of human resources for the Diocese. Father Bachner's affidavit provided that Rehfield was a contractual employee and she was never an employee at-will. Each of Rehfield's employment contracts specified duration of time, compensation, and other terms of the agreement. During the 2016-2017 school year, when he relieved Rehfield of her employment responsibilities, she was under contract. The 2016-2017 contract ran from July 1, 2016, through June 30, 2017. Rehfield was terminated on June 9, 2017. However, St. Raphael Parish continued to pay Rehfield all compensation under the terms of her 2016-2017 contract. Additionally, at the time of these filings, the St. Raphael Parish continued to pay Rehfield for the 2017-2018 contract that she accepted prior to her termination.

¶ 16 Father Bachner's affidavit also provided excerpts from the Diocese's Handbook of School Policies that was incorporated by reference into Rehfield's employment contracts. The handbook set forth the following qualifications for principal:

“A person seeking a position as principal in the elementary schools of the Diocese of Joliet shall be a committed, practicing Catholic. In addition she or he shall possess, at a minimum the following:

- > a commitment to nurturing the Catholic Identity of the school
- > a Master's Degree in education with an emphasis or endorsement in administration, supervision or curriculum
- > an administrative certificate Type 75 from the State of Illinois
- > at least five years teaching experience, preferably in a Catholic school; with knowledge and exposure that is sufficiently broad to provide an understanding of the preschool through grade eight structure; and
- > the ability to function as the spiritual and educational leader in an elementary school.”

¶ 17

The handbook assigned the following responsibilities to the principal:

- “> providing an atmosphere in the school which is identifiably Catholic
- > developing and participating in ongoing programs to insure religious and professional growth of the staff
- > establishing an instructional program which includes religious education to meet the needs of students
- > assisting teachers in achieving the goals of Catholic education through supervision and classroom visitation
- > hiring qualified teachers and providing them with effective leadership
- > evaluating teacher performance according to diocesan procedures
- > fostering good communication with parents, parish community and other publics to promote good will

- > attending professional meetings, diocesan meetings and regional meetings
- > sending required reports and requested information to the Catholic Schools Office and/or other appropriate agencies
- > maintaining current student and school records
- > developing the school budget
- > serving as the executive officer of the local school board
- > giving frequent reports to the pastor, local board and parents regarding progress of the school, its activities and its students
- > insuring that maintenance of the building, health, safety and well-being of students and teachers be maintained.”

¶ 18 Siemers’ affidavit reiterated that Rehfield was always a contractual employee, she was fully compensated under the 2016-2017 contract, and St. Raphael Parish continued to pay her under the 2017-2018 contract.

¶ 19 In February 2018, Rehfield amended her complaint to add a count pursuant to the Whistleblower Act (740 ILCS 174/1 *et seq.* (West 2016)). Rehfield reiterated, that when she contacted the police regarding MacKinnon’s threats, she believed she was doing the right thing to protect her students and it was necessary under the law. Rehfield also reiterated that she consistently consulted with the Diocese regarding the correct action to take in response to MacKinnon, but despite the Diocese’s approval to take action and contact the police, the Diocese unlawfully retaliated against her when the information became public. Rehfield alleged that her termination was in direct conflict with the Whistleblower Act’s protections for employees who disclose information to law enforcement personnel.

¶ 20 In March 2018, the Diocese amended its combined motion to dismiss. In response to

Rehfield’s new count under the Whistleblower Act, the Diocese argued that it should also be dismissed pursuant to section 2-619(a)(9) of the Code because of the doctrine of ecclesiastical abstention.

¶ 21 In April 2018, Rehfield filed her opposition to the Diocese’s combined motion to dismiss. Rehfield contended Illinois law was unclear as to whether employees employed under a contract can seek relief for common law retaliatory discharge. Additionally, she argued that her position was not covered by the “ministerial exception.”

¶ 22 In May 2018, the trial court granted the Diocese’s combined motion to dismiss and dismissed Rehfield’s amended complaint with prejudice. In issuing its ruling, the court stated:

“The Court finds [Rehfield] was employed pursuant to a contract as stated in the amended complaint, and the amended complaint does not allege she was employed at will. Common law retaliatory discharge claims may only be asserted by employees terminable at will. The Court abstains and must abstain from exercising its jurisdiction over both of [Rehfield’s] claims in accordance with the doctrine of ecclesiastic abstention.

[Rehfield] was employed in a ministerial role as a spiritual and educational leader of St. Raphael School, and as such being responsible for the instruction, development and implementation of Catholic religious programming for both students and staff, the implementation of diocesan principles and the religious growth of the school staff. Accordingly, Counts 1 and 2 of the amended complaint are dismissed—are dismissed with prejudice.”

¶ 23 This appeal followed.

¶ 24 ANALYSIS

¶ 25 On appeal, Rehfield argues that the trial court erred as a matter of law when it granted the Diocese’s combined motion to dismiss. Specifically, she takes issue with the court’s finding that (1) she could not pursue a claim for retaliatory discharge as a contractual employee and (2) the ecclesiastical abstention doctrine barred her claims. The Diocese argues that the court’s rulings were proper. We first address Rehfield’s second argument because we find that it is dispositive.

¶ 26 Section 2-619 of the Code lists several different grounds for which an involuntary dismissal may be granted. See 735 ILCS 5/2-619(a)(1) to (a)(9) (West 2016). Under subsection (a)(9), the subsection that applies in this case, a defendant may obtain an involuntary dismissal of a claim asserted against him if the claim is barred by other affirmative matter, which avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2016)). An “affirmative matter” is something in the nature of a defense that negates the cause of action completely. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). Thus, the moving party admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter to defeat the plaintiff’s claim. *Id.* The defendant has the burden of producing the affirmative matter, and if such production is satisfied, the burden then shifts to the plaintiff to show that the affirmative matter is either unfounded or requires the resolution of essential, material facts before it is proven. *In re Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 55.

¶ 27 In ruling upon a section 2-619 motion to dismiss, the court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. On appeal, a dismissal pursuant to section 2-619 is reviewed *de novo*. When we conduct *de novo* review, we perform the same analysis as the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43.

¶ 28 Generally, the court, as a governmental agency of the State, is tasked with resolving

disputes. *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 713 (1991). Nonetheless, in matters of internal church disputes, its authority to do so is narrowly circumscribed by the first amendment's guarantee that the right to the free exercise of religion will not be abridged. *Id.* "The ecclesiastical abstention doctrine provides that civil courts may not determine the correctness of interpretations of canonical text or some decisions relating to government of the religious polity; rather, courts must accept as given whatever the religious entity decides." *Duncan v. Peterson*, 408 Ill. App. 3d 911, 915 (2011). However, where doctrinal controversy is not involved in a church dispute, the court may use the "neutral principles of law" approach, where the court examines pertinent church charters, constitutions and bylaws, deeds, State statutes, and other evidence and resolves the matter the same as it would a secular dispute. *Tanios*, 213 Ill. App. 3d at 713-15. Thus, the application of the ecclesiastical abstention doctrine depends on the subject matter of dispute. *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 421 (2008).

¶ 29 Here, the subject matter of the dispute is the Diocese's termination of Rehfield's employment as principal. In *Williams v. Palmer*, 177 Ill. App. 3d 799 (1988), this court addressed whether the ecclesiastical abstention doctrine applied to employment disputes. The plaintiff in *Williams* was an ordained minister of the United Methodist Church, and prior to April 1984, served as pastor at a church in Chillicothe, Illinois. *Id.* at 800. He was later assigned to churches in Bryant and White Chapel, Illinois. *Id.* The plaintiff filed a complaint against the Central Illinois Conference of the United Methodist Church for breach of contract for failing to follow certain provisions set forth in a document entitled the "Book of Discipline" and tortious interference with his contractual rights. *Id.* at 801. The trial court dismissed the plaintiff's complaint for lack of subject-matter jurisdiction. *Id.* at 804-05. On appeal, this court affirmed the trial court's dismissal, holding that "[a]ppointment is undoubtedly an ecclesiastical matter to

which judicial deference is mandated by the First Amendment.” *Id.* at 805.

¶ 30 Along those same lines, relying on *Gabriel v. Immanuel Evangelical Lutheran Church, Inc.*, 266 Ill. App. 3d 456 (1994), the Diocese argues that its subjective employment decisions, even if involving no religious beliefs, are not subject to court review.

¶ 31 In *Gabriel*, the plaintiff sued a church for breach of contract after it withdrew its offer to employ her as a parochial school kindergarten teacher. *Id.* at 457. The teacher alleged that the parties had entered into a contract, which was binding under civil contract law after the church made her an offer and she accepted the offer by signing it. *Id.* at 458. The trial court dismissed the complaint, finding that the ecclesiastical abstention doctrine applied because the contract in question was a religious document, replete with references to church doctrine, religious teachings, and church policies. *Id.* The court noted that such review would be impermissible as it would consist of scrutinizing the church’s decision-making process and subjective criteria used in reaching its decision. *Id.* On appeal, the Fourth District Appellate Court stated:

“The decision of who should be appointed to speak for the church is an ecclesiastical matter to which judicial deference is mandated by the first amendment. [Citation.] Plaintiff is not a secular employee. Under the structure of the Missouri Synod, plaintiff is a parochial teacher who is designated as a commissioned minister of religion. The church’s ‘Diploma of Vocation,’ which articulates the attributes of the ‘call,’ obligates plaintiff to a number of ecclesiastical duties and beliefs. While plaintiff is not ‘clergy,’ it has been stated ‘[a]s a general rule, if the employee’s primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be

considered “clergy.” ’ [Citation.] It also does not matter that subjective employment-related decisions involve no religious beliefs. The first amendment precludes governmental interference with ecclesiastical hierarchies, church administration, and appointment of clergy. A church may adopt its own idiosyncratic reasons for appointing pastors and claim autonomy in the elaboration and pursuit of that goal. [Citation.] The factors relied upon by the church need not be independently ecclesiastical in nature; they need only be related to a pastoral appointment determination. [Citation.].” *Id.* at 459-60.

The *Gabriel* court concluded, that since the matter of whether to employ the plaintiff as a parochial school teacher was an ecclesiastical issue into which a civil court may not inquire, the trial court properly dismissed the complaint. *Id.* at 460.

¶ 32 Employing the reasoning from *Williams* and *Gabriel*, Rehfield was not a secular employee. The Diocese’s handbook stated the principal was tasked with, among other things, (1) providing an atmosphere in the school which was identifiable as Catholic; (2) developing and participating in ongoing programs to insure religious and professional growth of the staff; (3) establishing an instructional program which included religious education to meet the needs of students; (4) assisting teachers in achieving the goals of Catholic education through supervision and classroom visitation; and (5) fostering good communication between parents, parish community, and other publics to promote good will. The job requirement of principal also required that the principal (1) be a committed, practicing Catholic; (2) be committed to nurturing the Catholic identity of the school; and (3) have the ability to function as the spiritual and educational leader in an elementary school. Thus, it is evident that Rehfield was a member of the clergy. *Id.* Based on the circumstances here, due to the wide discretion provided to churches by

the ecclesiastical abstention doctrine when managing its representatives, the Diocese could terminate Rehfield, as a member of the clergy, for any reason without court interference as review of that decision would involve court scrutiny of the Diocese's motivations, objectives, and principles. See *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1360 (D.C. Cir. 1990) ("any inquiry into the Church's reasons for asserting that [the minister] was not suited for a particular pastorate would constitute an excessive entanglement in its affairs").

¶ 33 Based on the foregoing, the ecclesiastical abstention doctrine applied to Rehfield's claims. Further, since this case involved the Diocese's subjective decision to terminate Rehfield's employment and did not involve church charters, constitutions and bylaws, deeds, State statutes, or other evidence that would resolve the matter the same as it would a secular dispute, we decline to employ the neutral principals of law approach. See *Tanios*, 213 Ill. App. 3d at 713-15. Last, because we find the ecclesiastical abstention doctrine applied to Rehfield's claims, we need not address the first issue she raises, namely whether claims for common law retaliatory discharge are available to contractual employees. Thus, the trial court did not err when it granted the Diocese's motion to dismiss and dismissed Rehfield's complaint with prejudice.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 36 Affirmed.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MARY REHFELD

Plaintiff/Petitioner

Reviewing Court No: 3-18-0354Circuit Court No: 2017L001000Trial Judge: RAYMOND ROSSI

v.

DIOCESE OF JOLIET

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 2

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
11/21/2017	<u>COMPLAINT</u>	C 4-C 14
11/21/2017	<u>JURY DEMAND</u>	C 15
11/22/2017	<u>SUMMONS ISSUED</u>	C 16
12/04/2017	<u>SUMMONS RETURNED</u>	C 17-C 19
12/28/2017	<u>APPEARANCE NICHOLAS ANACLERIO FOR DIOCESE OF JOLIET</u>	C 20
12/28/2017	<u>APPEARANCE CARALYN OLIE FOR DIOCESE OF JOLIET</u>	C 21
12/28/2017	<u>APPEARANCE J. KEVIN HENNESSY FOR DIOCESE OF JOLIET</u>	C 22
12/29/2017	<u>NOTICE (WITH COURT APPEARANCE DATE)</u>	C 23-C 24
12/29/2017	<u>DEFENDANT'S COMBINED 735 ILCS 5-615 AND 2-619 MOTION TO DISMISS COMPLAINT</u>	C 25-C 30
12/29/2017	<u>DEFENDANT'S MEMORANDUM IN SUPPORT</u>	C 31-C 45
12/29/2017	<u>SUPPORTING DOCUMENT(S) EXHIBIT(S)</u>	C 46-C 73
01/05/2018	<u>SEE ORDER SIGNED</u>	C 74
02/27/2018	<u>NOTICE (WITH COURT APPEARANCE DATE)</u>	C 75-C 76
02/27/2018	<u>PLAINTIFF'S AGREED MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND RESET BRIEFING SCHEDULE</u>	C 77-C 79
02/27/2018	<u>FIRST AMENDED COMPLAINT</u>	C 80-C 92
03/02/2018	<u>SEE ORDER SIGNED</u>	C 93

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 2

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
06/16/2018	<u>DEFENDANT'S COMBINED MOTION TO DISMISS AMENDED COMPLAINT</u>	C 94-C 100
03/16/2018	<u>DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS COOMBINED MOTION TO DISMISS AMENDED COMPLAINT</u>	C 101-C 144
04/16/2018	<u>PLAINTIFF'S OPPOSITON TO DEFENDANT'S COMBINED MOTION TO DISMISS AMENDED COMPLAINT</u>	C 145-C 161
04/30/2018	<u>DEFENDANT'S REPLY IN SUPPORT OF ITS COMBINED MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT</u>	C 162-C 197
05/01/2018	<u>SEE ORDER SIGNED</u>	C 198
05/14/2018	<u>SEE ORDER SIGNED</u>	C 199
06/07/2018	<u>REQUEST</u>	C 200
06/11/2018	<u>NOTICE OF APPEAL FILED</u>	C 201-C 204
	<u>17L1000 DOCKETING DUE DATES 3-18-0354</u>	C 205-C 206
	<u>17L1000 DOCKET 3-18-0354</u>	C 207-C 209