

IN THE SUPREME COURT OF THE UNITED STATES

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| ST. CHRISTOPHER’S Preparatory | § | |
| High School, Reverend James Dugan, | § | |
| Sister Mary Alice McCormick, IHM | § | |
| | § | |
| Petitioner | § | No. 08-332 |
| | § | |
| v. | § | |
| | § | |
| Julie BRETTER and Stanley Bretter, | § | |
| In their own right and as the Parents | § | |
| And Guardians of Peter Bretter, a Minor, | § | |
| | § | |
| Respondent | § | |

WRIT OF CERTIORARI

Comes now, Petitioner, St. Christopher’s Preparatory High School petitioning this Court for a Writ of Certiorari to the Supreme Court of the State of Concord. Upon consideration of Petitioner’s argument, certiorari is hereby **GRANTED** for argument concerning the following questions:

1. Whether the lower court erred in applying the deference rule to Respondents’ defamation and negligent infliction of emotional distress claims, thus violating the First Amendment?

long-standing doctrine known as the deference rule: a common-law principle under which civil courts refuse to exercise jurisdiction over cases that would require them to decide ecclesiastical questions. For the following reasons, we find that the lower court erred in its holding that the deference rule applies in this case. We therefore reverse and remand the case to the trial court for further pre-trial proceedings consistent with this opinion.

The trial court granted preliminary objections in the nature of demurrer, so the salient facts are derived solely from the complaint. We accept as true “all well-pleaded facts set forth in the complaint and all inferences fairly deductible from those facts.” *Krentz v. Consol. Rail Corp.*, 910 A.2d 20, 26 (Pa. 2006) (internal quotation marks omitted). The salient facts are derived from the complaint and are as follows.

Factual Background

In September of 2008, Peter Bretter (“Bretter”) was a sixteen-year-old tenth-grade student at St. Christopher’s Preparatory High School (“the School”), a parochial school located in LaPlume, Daulton County, in the State of Concord. Bretter was an honor role student, a member of the state champion baseball team, and a new member of the Celibacy Club, a school organization which promotes the idea of celibacy and helps students avoid the pressures of pre-marital sex. Compl. ¶ 12 (filed Nov. 16, 2008). Bretter was also engaged in a relationship with another tenth-grade student, Sarah Marshall (“Marshall”). *Id.* ¶ 14.

In the afternoon hours of Thursday, September 24, 2008, Sister Mary Alice McCormick was walking back to her classroom from lunchroom duty. *Id.* On the day in question, she acted as a proctor for the eleventh-grade students as they ate lunch from 11:50 A.M. to 12:10 P.M. *Id.* After the eleventh-graders left the lunchroom, the tenth-graders come to the cafeteria to eat. *Id.*

¶ 13. This is the lunch period that Sister Mary Alice regularly proctored, but switched responsibilities with another teacher and covered the eleventh grade lunch period instead.

According to the complaint, Bretter and Marshall decided to forgo their scheduled lunch period so they could “talk about the state of their relationship.” *Id.* ¶ 17. Rather than attend lunch with their class, the two students decided to go a place where they would not be seen. *Id.* Believing that Sister Mary Alice would be proctoring her regular lunch period, they chose to use her classroom for their discussion. *Id.* ¶ 21. The two students opened the door, turned off the lights and went to the back of the room. *Id.* After several minutes, Bretter and Marshall were interrupted by someone entering the room. *Id.* The person, who the students later learned was Sister Mary Alice, entered the room, turned the light on, shrieked, turned the light off, and left the room closing the door on her way out. Bretter claims Sister Mary Alice was in the room for less than five seconds. *Id.* ¶¶ 21-22.

At this point, the complaint varies greatly from the account the principal of the School, Rev. James Dugan (“the Principal” or “Rev. Dugan”) gave in the letter that was sent to the parents of the students at St. Christopher’s. The complaint alleges, and we must accept as true, that the two students were innocently embracing each other - Bretter was sitting at a desk in the back of the classroom while Marshall sat on his lap. *Id.* ¶ 23. The purpose of the embrace, according to the complaint, was that Marshall had just convinced Bretter to re-join the Celibacy Club of which Marshall was the president. *Id.* Bretter admitted to school administrators that he intended to engage in sexual activity with Marshall and that he brought a condom to the classroom, but he adamantly denies that any sexual activity was occurring when Sister Mary Alice walked into the room. *Id.*

After Sister Mary Alice left the classroom, she proceeded immediately to Rev. Dugan's office. *Id.* ¶ 27. Upon hearing that Sister Mary Alice thought she saw Bretter and Marshall engaged in sexual activity, the two walked to the classroom together. *Id.* When they arrived, however, no one was in the room, but a condom was found on the floor. *Id.* Rev. Dugan proceeded back to his office to call the two students out of class via the overhead speaker system. *Id.* ¶ 29. The two students arrived at the Rev. Dugan's office minutes later where, according to the complaint, both students were expelled for "having sexual relations" in the classroom. *Id.* ¶ 29-30. Neither student was permitted to address the accusation or provide any explanation for their actions. Rather, Rev. Dugan immediately called the students' parents and the students were sent home without further discussion. *Id.* ¶ 31.

The next week, all parents and guardians of St. Christopher's students were sent a letter signed by, *inter alia*, Rev. Dugan and Sister Mary Alice. R. at 34(a)-35(a). The letter, which identified the two students by name, explained to the parents the following: 1) that Bretter and Marshall had been expelled the week before for "engaging in sexual relations" on school property; 2) that Sister Mary Alice personally observed the students engaging in "sexual relations" in her classroom; 3) that the act was further evidence by "a prophylactic [found] on the floor" of the classroom; and 4) that the Bishop of the archdiocese ratified the decision. R. at 35(a). The letter also described further action administrators had taken to reinforce school policies. Notably, the letter included a citation to an amendment in the student handbook, which described the Catholic Church's definitions of sexual activity and sexual relations. *Id.*

In addition to sending the above letter to every parent or guardian of St. Christopher's students, Rev. Dugan and Sister Mary Alice made an unspecified number of oral statements to members of the church parish, including the principal of the public school, that Bretter would be

attending for the remainder of the school year. Compl. ¶ 38. These statements “indicated that Bretter had been expelled for engaging in sexual relations on school property” and that Bretter was “someone who seemed to pressure young females into sexual activity.” *Id.* ¶ 42.

October 6, 2008, the week following his expulsion from St. Christopher’s, Bretter was enrolled in the local public school district. Before attending his first class, Bretter was asked to report to the principal’s office on his first morning for an orientation meeting. *Id.* ¶ 45. During the meeting, the principal asked Bretter about the incident, indicated that he had spoken to Rev. Dugan and expressed concerns about Bretter’s future interaction with the female students at the public school. *Id.* Embarrassed by the questions the principal asked him and “ashamed that he had gained a reputation for treating females with disrespect and sexual pressure,” Bretter refused to attend classes at the public school for “fear that everyone in the school had heard about the untruthful account of the events of September 24.” *Id.* ¶ 46.

On November 16, 2008, Bretter’s parents, Julie and Stanley Bretter (“Appellants”) filed suit in the Court of Common Pleas of Daulton County in their own right and on behalf of Bretter (collectively, “Bretter”) against St. Christopher’s Preparatory High School, Rev. Dugan, Sister Mary Alice McCormick (collectively, “the School”) seeking in excess of \$30,000 compensatory damages and \$30,000 in punitive damages. In the complaint, Appellants set forth three counts based on the letter from Rev. Dugan and Sister Mary Alice (the “Letter”), and the oral communications (“Post-expulsion Communication” or “Communications”), two counts of defamation and one count of negligent infliction of emotional distress.

On November 28, 2008, the School filed preliminary objections on the following grounds: (1) lack of subject-matter jurisdiction and (2) failure to state a claim upon which relief may be granted. To support the claim that the court lacked subject matter jurisdiction, the

School cited the deference rule, arguing that Bretter's claims require the civil trial court to examine Catholic Church doctrine in order to exercise jurisdiction. The School relied on *Gaston v. Diocese of Allentown*, 712 A.2d 757 (Pa. Super. Ct. 1998), where the Pennsylvania Superior Court held that the deference rule required dismissal of negligent and intentional infliction of emotional distress claims, stating that the rule prevented the trial court from exercising subject-matter jurisdiction when a parochial school expelled one of its students. Based on *Gaston*, the trial court granted the School's preliminary objection and dismissed Bretter's complaint, holding that "plaintiff's allegations require this court to look into the appropriateness of Catholic principles with regard to the means by which school officials implemented a disciplinary determination." Trial Ct. Op., 08-cv-111, 3 (Dec. 3, 2003).

Bretter appealed to the Superior Court of Concord. A unanimous three-judge panel affirmed the decision of the trial court, holding that this and *Gaston*, were "nearly identical in fact and applicability of the deference rule." *Bretter v. St. Christopher's*, 000 A.2d 111, 113 (Concord Super. Ct. 2008). The panel found that Bretter's claims were based directly upon the School's decision to expel Mr. Bretter from the school for a violation of school rules that were "steeped in religious belief. *Id.* at 115. Further, the expulsion was an ecclesiastical disciplinary decision that must not be second-guessed by the courts. *Id.* The panel also found that the injury suffered by Bretter resulted from the propagation of information wholly within the parish community. *Id.* at 116.

Bretter now asks this Court to reverse the Superior Court's decision to dismiss his complaint. We granted allocatur in this case and rephrased the question as such: "Whether the Superior Court erred in applying the deference rule to Respondent's claims?" Our review of this case is plenary. *Mull v. Concord*, 000 A.2d 645, 658 (Concord 2005).

Discussion

The history of the deference rule is long and fraught with pitfalls. The United States Supreme Court first considered a civil court's role in disputes regarding a religious entity in *Watson v. Jones*, 80 U.S. 679 (1872). In *Watson*, there was a property dispute between a Presbyterian church and the national denomination, the General Assembly of the Presbyterian Church in the United States. In May of 1865, shortly after the Civil War ended, the national denomination required that all members of the religion renounce slavery as evil. *Id.* at 680. A local church in Kentucky developed a rift among its pro- and anti-slavery members. *Id.* The pro-slavery members were in control of church operations and refused to publicly renounce slavery. The anti-slavery members sued, raising the question of which group had the right to use the church property. *Id.* at 693. The district court, sitting in diversity jurisdiction, found for the anti-slavery faction holding that the pro-slavery sect had essentially seceded from the national denomination and therefore forfeited their rights to use the church property. *Id.* at 701. On appeal to the United States Supreme Court, the pro-slavery group argued that the national denomination had forfeited control of the church property when it required the church members to renounce slavery, for renouncing slavery was a departure from the basic principles of their faith and the beliefs on which the local church was founded. *Id.* at 712.

Speaking for the Court, Justice Miller narrowed the case to the fact that there were two opposing religious beliefs at issue and the question before the Court required a determination as to which belief was valid and appropriate. *Id.* at 717. The Court held that in property disputes like the one before the Court, the determination of which belief structure local churches must adhere to is, and ought to be, solely controlled by the national denomination, which is superior to

the local churches. *Id.* It is within this framework that the Court first articulated the deference rule, as follows:

[W]henever the questions of discipline, or of faith, or of ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Id. at 727. Justice Miller explained that this new American rule, which differs from the European rule, was of paramount importance when viewed in the context of the First Amendment. In language often repeated, Justice Miller reasoned,:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no hearsay, and is committed to support no dogma, the establishment of no sect. The right to...create tribunals for the decision of controverted questions of faith within an association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general associations, is unquestioned....But it would be a vain consent [to such bodies] and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.

Id. at 728. Although the *Watson* Court was steadfast and comprehensive in its holding, the Court treaded carefully to not preempt all possible situations in which a religious body or member of the same might seek relief in the courts. The Court illustrated several situations in which the courts may be permitted to exercise subject-matter jurisdiction in a case. *Id.* at 733.

Although the language of *Watson* was steeped in Constitutional ideals, the holding did not explicitly rest on Constitutional grounds, which remained so for nearly eighty years. Finally, in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), the Court gave the deference rule Constitutional legitimacy. In *Kedroff*, the Court cited the First Amendment as the basis by which the New York Court of Appeals erred for it

“intrud[eded] for the benefit of one segment of a church the power of the state into forbidden area of religious freedom contrary to the principles of the First Amendment.” 344 U.S. at 119.

In its most recent deference rule case, the High Court’s decision in *Jones v. Wolf* solidified the holding in previous cases that a court may not hear a cases in which the neutral principles of law cannot be employed to decide the case. 443 U.S. 595, 603 (1979). This idea of neutral principles of law requires that the substantive law of the case -i.e. contract, property, or trust law- must be all that is required to determine who will prevail. *Id.* See also *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282, 291 (Pa. 1846) (holding that ecclesiastical courts are the best judges of what constitutes an offense against the word of God and the discipline of the church and that secular courts must abstain from intruding in matters of faith, discipline, and doctrine).

In 1985, the Pennsylvania Supreme Court was confronted with a case in which the deference rule, as articulated in *Watson*, required examination. In *Presbytery of Beaver-Bulter of the United Presbyterian Church in the United States of America v. Middlesex Presbyterian Church*, property rights of a local church were challenged by the national denomination. The court described the perpetual validity of both the deference rule and the neutral principles of law approaches. 489 A.2d 1317, 1321 (Pa. 1985). Speaking for the court, Justice McDermott, in language repeated often in deference rule cases across the nation, held that “[courts] can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar enters the Temple to decide what the Temple believes, he can leave behind only his views.” *Id.* Following *Beaver-Butler*, Pennsylvania trial courts have repeatedly employed the “neutral principles of law” approach to resolve church property disputes. See *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005).

It is imperative to note that the courts have applied secular principles of law to certain suits brought against Roman Catholic schools. *See, e.g., Vojtaseck v. Diocese of Allentown*, 916 A.2d 637 (Pa. Super. Ct. 2006) (allowing civil suit brought against Catholic school and diocese alleging sexual abuse by school's vice-principle); *Bishop Leonard Regional Catholic Sch. v. Unemployment Comp. Bd. Of Review*, 593 A.2d 28 (Pa. Commw. Ct. 1991) (allowing a civil suit seeking unemployment benefits for a teacher who had been discharged). One such area was recognized by the United States Supreme Court in *Kedroff*. There, the Court specifically identified "[f]reedom to select the clergy" as having "federal constitutional protection as a part of the free exercise of religion against state interference." *Kedroff*, 344 U.S. at 116.

Given the fact that both parties dedicated a large portion of their respective briefs to discussion of *Gaston*, we begin our analysis with a review of that case. The factual similarities between *Gaston* and the case *sub judice* are undeniable. In *Gaston*, a Roman Catholic elementary school expelled a brother and sister after the administration labeled them "disciplinary problems." *Gaston*, 712 A.2d at 758. Early in the school year, the children's parents complained to school administrators about a class that their son was taking, but was asked to not discuss with them. *Id.* After the parents sent a formal letter to the school principal criticizing the course, the principal reported the letter to the police, stating that the parents had threatened her. *Id.* That same day, the children were expelled. The parents filed suit and the school filed preliminary objections seeking dismissal for lack of subject-matter jurisdiction. Applying the deference rule, the trial court sustained the objections and dismissed the complaint. The Superior Court affirmed, citing the Pennsylvania Supreme Court's decision in *Beaver-Butler* and the United States Supreme Court's decisions in *Watson*, *Kedroff*, and *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440

(1969) (holding that the “neutral principles of law” must be the only thing the court needs to decide a case). The *Gaston* Court held that, since the decision to expel the children was not reviewable under the deference rule, then neither should any decision stemming from the expulsion. *Gaston*, 712 A.2d at 784. The court further held:

[This] is a claim that hints at tort law, but is based on an expulsion decision ratified by a bishop; it is, in our opinion, not receptive to application of neutral principles of law. The Catholic school’s disciplinary code and review of expulsion involve matters of church doctrine.... [T]his court is loath to interfere with a bishop’s decision on student expulsion. The parochial school, synonymous with the installation of dogma and discipline in its students, is an integral part of the Roman Catholic Church. The school is a repository for Catholic tradition and scripture; it is so intertwined with church doctrine that separation is neither pragmatic nor possible. Intrusion into the bishop’s decision on matters concerning parochial school discipline and expulsion places this court perilously close to trespassing on sacred ground.

Id. at 760-61 (citations omitted).

Here, because this is an issue of first impression in our state, the trial court and the Superior Court relied on the reasoning in *Gaston*, the most factually similar case. As in *Gaston*, the Superior Court here relied on the holdings of *Beaver-Butler*, *Watson*, *Kedroff*, and *Mary Elizabeth*. The court below reiterated the fact that no court in this State has ever held that the neutral principles of law approach was proper in a case, other than those dealing with property rights of a local church. *Bretter*, 000 A.2d at 119. While we generally find Pennsylvania court decisions very persuasive, we would be abdicating our role as the highest court in Concord if we were to ignore other approaches to this complicated issue.

Exhaustive research on the subject of the deference rule both in sister jurisdictions and the federal courts reveals a clear and discernable split amongst courts as to the proper method for determining if the deference rule or the neutral principles of law rule applies to cases such as this. As has been described, decisions that have historically fallen under the protection of the

deference rule include those dealing with religious dogma, ecclesiastical discipline, or membership decisions, especially decisions made by religious figures that are subject to some level of review within the religious organization. *See e.g., Beaver-Butler*, 489 A.2d at 1321; *Presbytery of Donegal v. Calhoun*, 513 A.2d 531 (Pa. Commw. Ct. 1986); *Conference of African Union First Colored Methodists Protestant Church v. Shell*, 659 A.2d 77 (Pa. Commw. Ct. 1995). In these cases and many others, courts refuse to exercise subject-matter jurisdiction, based on the deference rule, if the harm suffered by the plaintiff was derivative of a decision based in religious dogma or ecclesiastical discipline.

In recent years, however, courts in our sister state jurisdictions and federal circuits have developed a different analysis by which a court will determine if it is within their power to exercise subject-matter jurisdiction. Examination of cases from around the nation have illustrated that the most thorough and persuasive analyses are yielded by a claim-by-claim, element-by-element approach to the question of whether to apply the deference rule. *See e.g., Petruska v. Gannon Univ.*, 462 F.3d 294, 309-10 (3d Cir. 2006) (determining on an element-by-element basis if the deference rule is applicable to a claim); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F.Supp.2d 732 (D.N.J. 1999) (considering each element of every claim, along with elements of complete defenses, in isolation when determining applicability of the deference rule); *Olson v. First Church of Nazarene*, 661 N.W.2d 254 (Minn. Ct. App. 2003) (holding the proper determination for applicability of the deference rule includes viewing each claim in isolation); *Roman Catholic Diocese of Jackson v. Morrison*, 905 So.2d 1213, 1239 (Miss. 2005) (holding that “each cause of action asserted against a religious organization claiming First Amendment protection must be evaluated according to its particular facts”).

Therefore, we conclude that in determining whether to apply the deference rule, the fact-finding court must: (1) examine the elements of each of the plaintiff's claims; (2) identify and examine any defenses forwarded by the defendant; and (3) determine whether it is reasonably likely that, at trial, the fact-finder would ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiff's claim or defendant's defense without "intruding into the sacred precincts." *Beaver-Butler*, 489 A.2d at 1321.

In the case *sub judice*, Bretter has asked us to consider three claims – two counts of defamation and one count of negligent infliction of emotional distress. Count I alleges that Rev. Dugan and Sister Mary Alice knowingly made false oral statements to members of St. Christopher's parish, including the principal of the local public school, regarding Mr. Bretter's expulsion for "having sexual relations on school property.," causing reputational, psychological, and physical damages. Compl. ¶ 38. Count II alleges that Rev. Dugan and Sister Mary Alice knowingly made false written statements in the form of a letter that was distributed to the parents or guardians of all St. Christopher's students. *Id.* Also, the letter identified Mr. Bretter as having been expelled for "having sexual relations on school property." *Id.* These actions, Bretter claims, caused reputational, psychological, and physical damages. *Id.* Count III alleges that Rev. Dugan and Sister Mary Alice negligently inflicted emotional distress upon Mr. Bretter by making the above statements, causing reputational, psychological, and physical damages. *Id.*

The School did not file an answer to the complaint before the preliminary objections were sustained by the trial court, but it is reasonably foreseeable that truth would be raised as a complete defense to the defamations claims. Therefore, we will consider the elements of defamation and the truth defense, along with any and all facts that a fact-finder would reasonably require to determine liability. The parties agree that, if the defamation claims proceed to trial,

the only element at issue will be the first element of defamation, the truth or falsity of the statements in the Letter and Post-Expulsion Communications. The School concedes the other elements of the tort: (2) they published the Letter; (3) the Letter and Post-Expulsion Communication applied to Bretter; (4) the recipients of the Letter understood their defamatory meaning; (5) the recipients understood that the Letter and Post-Expulsion Communication applied to the Bretter; (6) Bretter suffered harm as a result of the Letter and Post-Expulsion Communication; and (7) the School abused any potentially applicable conditional privilege.

The School argues that the Post-Expulsion Communications (including the Letter and oral statements) materialized solely out of the need to inform the parish community that a student was being expelled for violations of Church doctrine. As such, those Communications are beyond examination by civil courts. The School further contends that the Communications clearly set forth religious authority for the expulsion, citing the Church's stance on pre-marital sex. For the purpose of preliminary objections, the School's arguments are unpersuasive. First, the purpose of the Communications is irrelevant under the element test. Rather, the gravamen of the case is whether the elements of the claim require the trial court to examine and rule on religious matters. Here, Bretter's claims do not require an examination of religious doctrine to determine the truth or falsity of the claims in the Communications, both written and verbal.

Bretter is challenging the truth of the statement that Bretter was "having sexual relations" in school, not the truth of the statements that Bretter sinned or that Bretter strayed from God's teachings. In this respect, it is wise to remember the bifurcation of freedoms under the First Amendment: the freedom to believe and the freedom to act. While the freedom to believe is "absolute," the United States Supreme Court has held that, "in the nature of things, the second [freedom to act] cannot be. Conduct remains subject to regulation for the protection of society."

Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940). Recognizing this distinction, courts have refused to apply the deference rule where conduct is at issue, emphasizing the action taken and the reason for such action. See *Duncan v. Peterson*, 835 N.E.2d 411, 422 (Ill. 2005) (separating the religious reason for revoking a priest's ordination from the conduct in carrying out the disciplinary proceedings); *Madsen v. Erwin*, 481 N.E.2d 1160, 1167 (Mass. 1985) (holding torts that are centered on conduct subject to regulation).

For the abovementioned reasons, this case is not one in which a case on the merits would require the trial court to decide matters of faith or tread on "sacred precincts." The School cites no relevant religious authority to justify the Communications. The School does, however, argue that the expulsion was motivated by the Catholic Church's steadfast stance on pre-marital sexual activity. The School offers Section 12 of the student handbook in support of their argument. Each St. Christopher's student is provided with a copy of the student handbook and is required to sign the last page in acknowledgement of their commitment to adhere to the rules contained therein. In this Court's opinion, the student handbook, specifically Section 12, contradicts the School's argument that this case would require examination of Catholic beliefs about what constitutes pre-marital sexual relations. It clearly states the school's definitions of "sexual relations" and "sexual activity." The School defines "sexual relations" as what the secular person would define as sexual intercourse. Alternatively, the School defines "sexual activity" as all other activity between two people that is not sexual intercourse. Therefore, at trial, the Bretter would offer evidence that the two students were not engaged in intercourse, that School officials conducted no investigation as to the truth of the matter, and that school officials knew this when the Communications were made. The School would offer evidence that the communications accurately described the conduct in the classroom that day. We are therefore

confident that the trial court can “rel[y] exclusively on objective, well-established concepts of law familiar to lawyers and judges” to resolve Bretter’s claims. *See Wolf*, 443 U.S. at 603.

At this point in the proceedings, we conclude that the trial court may apply neutral principles of law to determine whether the Communications were defamatory. We therefore hold that the Superior Court erred in determining that the trial court is without the ability to exercise subject-matter jurisdiction. Simply put, it does not appear that this case will not require Caesar to enter the Temple and decide what the Temple believes. *See Beaver-Butler*, 489 A.2d at 1320.

For the foregoing reasons, the decision of the Supreme Court of the State of Concord is **REVERSED** and **REMANDED** for reconsideration consistent with this opinion.

J. KIMBLE and **TASKER**, dissenting.

Justice Kimble, dissenting.

The majority’s holding adopts a test today which disturbs over a century of deference rule jurisprudence and impermissibly intrudes into the Constitutionally protected realm of religion. This new test requires courts to determine whether the deference rule applies to claims in civil court. Further, the majority bases this decision on our sister jurisdictions’ narrow approach in a very limited number of cases. For these foregoing reasons, I respectfully dissent.

The majority gives improper weight to key facts in this case. First, it is irrelevant what happened in the classroom leading to the young man’s expulsion. Sister Mary Alice saw what she described to Rev. Dugan as sexual relations. From the description of what she saw in the classroom and the object found in the classroom, Rev. Dugan made a determination, within his

discretion, that the activity between the two students was sufficiently antithetical to “Christ’s teachings and moral values...in contemporary society” so as to warrant expulsion. (R. at 66.) Subsequently, a letter was sent to the faith community of St. Christopher’s detailing the issue, the disciplinary steps that the school took with respect to Mr. Bretter, and made suggestions to parents of St Christopher’s to help avoid a repeat occurrence. While both sides agree that there are no issues of privilege between the school and the parents –some parents of students are not members of the parish- there are protections afforded this type of ecclesiastical determination.

The majority aptly illustrates the history of the deference rule and its application around the nation. The majority’s opinion, however, runs afoul of the overall message that these cases send. It is appropriate to distinguish, as the majority does, the cases dealing with property disputes and selecting clergy or employees, as such cases are sufficiently dissimilar from this case and have emerged with distinct jurisprudence.

Beginning with *Watson v. Jones* and later in *Kedroff v. St Nicholas Cathedral of Russian Orthodox Church*, the United States Supreme Court’s deference rule has long stood for the proposition that civil courts may not hear matters involving “questions of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.” *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976). In short, civil courts lack subject matter jurisdiction to hear cases seeking to challenge church decisions on such issues. *Watson*, 80 U.S. at 729. By freely choosing to associate with a certain religious organization, a person effectively consents to be bound by decisions made by the ecclesiastical government of the association. *Id.* Therefore, all decisions made by such bodies are not subject to court review.

Additionally, the Court has held that the establishment clause ensures that courts, including state courts, may not interfere with ecclesiastical matters. *Jones v. Wolf*, 443 U.S. 595,

602 (1979). Courts have, however, carved out two exceptions to the deference rule: 1) when there is a property dispute; and 2) where there are allegations of acts against of immorality contrary to public welfare, acts of immorality, or where there is excessive interference with areas of paramount state concern. *Id.* See, e.g., *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986) (refusing to extend the neutral principles of law approach to cases other than property disputes); *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007) (holding that tort cases are inappropriate cases for application of the deference rule if they interfere with the church's ability to maintain its internal affairs); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997) (holding that decisions of internal discipline taken against a clergyman are beyond the jurisdiction of secular courts).

In a case nearly identical to the case *sub judice*, the Pennsylvania Superior Court in *Gaston v. Archdiocese of Allentown*, 712 A.2d 757 (Pa. Super. Ct. 1998) held that courts should refuse to interfere with the parochial schools' decisions related to their administration and enforcement of disciplinary determinations. The United States Supreme Court in *Lemon v. Kurtzman*, commented that "parochial schools [constitute] an integral part of the religious mission of the Catholic Church." 403 U.S. 602, 616 (1971). While *Gaston* is not binding on this Court, it is persuasive for two reasons. First, Pennsylvania historically has been in the forefront of deference rule jurisprudence. In fact, the Commonwealth's jurisprudence was so notable in this area that the United States Supreme Court in *Watson* professed itself unable to "better close [its] review of the authorities than in the language of the Supreme Court of Pennsylvania," in the case of *German Reform Church v. Siebert*, 3 Barr. 282 (Pa. 1846). *Watson*, 80 U.S. at 732. Second, the facts in *Gaston* are a near mirror image to those presented here. In *Gaston*, the court stated:

The parochial school, synonymous with the installment of dogma and discipline in its students, is an integral part of the Roman Catholic Church. The school is a repository for Catholic tradition and scripture; it is so intertwined with church doctrine that separation is neither pragmatic nor possible. Intrusion into the bishop's decision on matters concerning parochial school discipline and expulsion placed this court perilously close to trespassing on sacred ground.

Gaston, 712 A.2d at 761. Consistent with *Gaston*, the issue here is not whether the expulsion was proper, for Bretter has conceded that he would certainly be barred from challenging it by the deference rule. He does propose, however, that his civil claims are somehow independent from that disciplinary decision and thus can be resolved through the application of neutral principles of law. That is not the case.

Here, while Bretter claims he is not seeking review of the expulsion itself, he is in fact contesting the justification for the expulsion. If truth of the statement -that the two students were engaged in "sexual relations"- is the only issue that is contested in the defamation claims, then Bretter is challenging Rev. Dugan's very justification for expelling him. If, on the other hand, the students were not so engaged, there would have been no other reason to expel them. In the letter to the parents and guardians of the students, Rev. Dugan clearly linked the decision to expel Bretter to religious determinations about sexual contact among students at the school. The decision was also adequately linked to the Church's teachings on pre-marital sexual activity. The letter makes clear that Rev. Dugan's decision to expel Bretter, and the communication of that decision within the school community, were inextricably intertwined with religious doctrine. It is for these reasons that, regardless of the test employed by the courts, Bretter's claim must be dismissed under the deference rule.

Also, Rev. Dugan's determination that the students were engaged in sexual activity, in violation of Catholic beliefs about pre-marital sexual relationships, is an example of beliefs that the deference rule was created to protect. Rev. Dugan decided that Bretter's conduct violated

Catholic dogma and warranted discipline. He further decided that the decision to expel Bretter needed to be communicated to the parents of St. Christopher and to his parish. This decision is protected by the deference rule. Therefore, any disciplinary decision, and the means by which school officials carry out that decision, is equally as protected under the deference rule as the beliefs they are founded on. Further, as the School properly notes, a finding that the trial court should exercise subject matter jurisdiction over this case would allow plaintiffs, who cleverly word their complaints, to have ecclesiastical determinations second-guessed by civil courts.

For the reasons set forth in this opinion, I respectfully dissent.