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Education

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 By Arthur S. Leonard

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Joshua Payne-Elliott (right) and his husband Layton.
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On November 23 a unanimous three-judge panel of the Court of Appeals of Indiana reversed a trial court's decision to dismiss a [lawsuit by Joshua Payne-Elliott](#) against the Roman Catholic Archdiocese of Indianapolis. Payne-Elliott was fired in June 2019 by Cathedral High School, where he had worked as a social studies and language teacher since 2006, after the Archdiocese threatened to terminate Cathedral High's recognition as a "Catholic school" if it continued to employ Payne-Elliott, who married his same-sex partner in 2017. The Roman Catholic Church has generally taken the position that it is privilege to discharge any employees who enter into same-sex marriages.

Madam Mayor (Erica Green), Thank You For Coming Out
(While Staying In)



Thank You for Coming Out

00:00

00:00

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The Archdiocese made the same threat against Brebeuf Jesuit Preparatory School, where Payne-Elliott's husband, Layton, is a teacher. The Jesuits, showing more backbone than the Brothers of Holy Cross, who operate Cathedral High, have refused to fire Payne-Elliott's husband, and reportedly the Archdiocese is taking steps to suspend Brebeuf's recognition as a "Catholic school."

Payne-Elliott sued the Archdiocese on July 10, 2019 for interfering with his contractual and employment relationship with Cathedral High School. The Archdiocese immediately filed a motion to dismiss the lawsuit on August 21, 2019, arguing that its action was completely protected by the First Amendment, which it claims prohibits the courts from interfering with "internal church matters."

The first judge assigned to hear the case, Stephen Heimann, denied the Archdiocese's motion on May 1, 2020, writing: "Without further discovery and with all reasonable inferences in Payne-Elliott's favor, it is possible that Payne-Elliott could prove that at the time of his termination, the Archdiocese was not justified in taking the action it had taken and could have reversed those actions."

When a defendant responds to a lawsuit by filing a motion to dismiss, the trial court is supposed to reject the motion unless the plaintiff's complaint fails to allege facts sufficient to support a plausible legal claim against the defendant. Consistent with the rules governing motions to dismiss, Judge Heimann did not take into account any evidentiary materials submitted by the Archdiocese, focusing solely on the allegations in Payne-Elliott's complaint.

The Archdiocese then filed an answer to the complaint and a motion for reconsideration of Judge Heimann's refusal to grant the motion to dismiss, which Judge Heimann essentially ignored. The judge rejected a subsequent motion asking him to certify an appeal of his refusal

to dismiss the case, insisting that “evidence needs to be garnered through discovery” in order to determine whether the Archdiocese’s actions were constitutionally protected. The Archdiocese then appealed directly to the Indiana Supreme Court, asking it to dismiss the case or remove Judge Heimann from presiding. The Supreme Court granted an “emergency writ” staying discovery, and Judge Heimann then recused himself from the case after holding a hearing on the recusal motion.

The Archdiocese’s litigation tactics apparently sought to avoid at all costs having its decision-makers subjected to being examined under oath by Payne-Elliott’s lawyers, and its attitude throughout has been that it is free to do whatever it wants, regardless of civil law, as long as its motivation is religious.

The Indiana Supreme Court appointed a new trial judge, Lance Hamner, with a direction for him to rule anew on the Archdiocese’s motion to dismiss. Judge Hamner then granted the motion, stating that the court lacked jurisdiction over this legal claim against the Archdiocese, and that the complaint should be dismissed “for failure to state a claim upon which relief can be granted.” Payne-Elliott appealed, and the Court of Appeals panel unanimously reversed Judge Hamner’s ruling on November 23, bringing the case back to life.

Writing for the Court of Appeals, Judge Elizabeth Tavitas found that the trial court clearly has jurisdiction to try this case. The tort of intentional interference with contractual relations is well recognized under Indiana law, and there is no plausible argument that the court lacks the authority to decide a case raising such a claim. Furthermore, rejecting a motion to dismiss is not to discount the Archdiocese’s First Amendment arguments, but merely to correctly classify them as defenses, which are generally not relevant in deciding a motion to dismiss a case on jurisdictional grounds.

However, the Archdiocese’s arguments would be relevant to a motion for summary judgment. Judge Tavitas pointed out that by taking account of the Archdiocese’s First Amendment defense in deciding the motion to dismiss, Judge Hamner erred by not treating the motion as a motion for summary judgment. In deciding a motion for summary judgment, a court is supposed to determine whether there are material factual disputes that need to be resolved before it can issue a ruling on the merits of the case. And, customarily summary judgment does not take place until the parties have had an opportunity to conduct discovery concerning the facts, which Payne-Elliott was never allowed to do in this case.

In other words, Judge Heimann’s original decision rejecting the Archdiocese’s motion to dismiss the case was correct on all counts. And focusing in on the First Amendment question, factual discovery would be necessary to determine whether the “ministerial exception” recognized by the US Supreme Court applies to his position. Although the Supreme Court has broadly defined this “exception” from compliance with civil law regarding religious school teachers who could be deemed to be “ministers” due to their religious functions, the question of whether a high school teacher of purely secular subjects with no religious duties can be swept into the “exception” solely on the Church’s theory that all religious school teachers are role models for Catholic living who must comply in every particular with Catholic doctrine, including opposition to same-sex marriage, has yet to be decided by the Supreme Court.

Furthermore, ruled the Court of Appeals, Judge Hamner had wrongfully dismissed this case “with prejudice,” which means Payne-Elliott would not be allowed to file an amended

complaint that could attempt to cure any flaws that had caused the case to be dismissed. This was erroneous, ruled the Court of Appeals, because Indiana's court rules allow a plaintiff whose initial complaint is dismissed a right to file an amended complaint within 10 days after receiving the court's notice that it has dismissed the case.

Thus, the Court of Appeals reversed Judge Hamner's ruling in all respects and sent the case back to the trial court. A November 23 news report about the ruling in the [Indianapolis Star](#) did not indicate whether the case will go back to Judge Hamner, or whether a different judge will be appointed to preside over what promises to be a contentious courtroom battle.

This ruling is not an ultimate victory for Payne-Elliott, since the Archdiocese is likely to fight every step of the way to block discovery, and will urge the Indiana courts to uphold its claim of total autonomy on all "internal church matters." But Payne-Elliott can argue that this is not, strictly speaking, a purely "internal church matter," since the Archdiocese does not own and operate Cathedral High School, and its action of threatening the high school, which is owned by Brothers of Holy Cross, is going outside the church to interfere with a contract to which the Archdiocese is not a party. Expect the Indiana Supreme Court to see this case again, and maybe eventually the US Supreme Court.

Payne-Elliott is represented by Indianapolis lawyers Kathleen Ann DeLaney and Christopher S. Sake. Lambda Legal's Southern Regional Office filed an amicus brief in support of Payne-Elliott's appeal.