Commission on Human Rights and Opportunities, ex rel	:
Andrea J.R. Sokolowski, Complainant	: CHRO No. 1110391
v.	:
Trinity Christian School, Respondent	: February 1, 2013

RULING ON RESPONDENT'S MOTION TO DISMISS

Background

Andrea J. R. Sokolowski (complainant) filed an Affidavit of Illegal Discriminatory Practice (the complaint) with the Connecticut Commission on Human Rights and Opportunities (the CHRO) on April 19, 2011. In the complaint she alleged that Trinity Christian School (respondent) had terminated her employment based on her sex, marital status and pregnancy in violation of the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §§ 46a-60(a)(1), 46a-60(a)(7) (CFEPA) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. (Title VII).

On October 19, 2012 respondent filed a motion to dismiss the complaint contending that the CHRO lacked subject matter jurisdiction over it "pursuant to the ministerial exception under the First Amendment to the United States Constitution" which bars the application of federal and state civil rights laws to ministerial employees of religious institutions.

Complainant opposed the motion arguing that the ministerial exception was inapplicable to her claim as she had been employed by respondent as an assistant to a full-time salaried pre-school teacher, and as a child care provider in its before and after school program, not as its minister. The CHRO opposed the motion as well, pointing out that although respondent asserted that complainant had been its minister and claimed to have held her out as such, it had not described her specific duties. Courts, the CHRO argued, are not required to accept automatically a religious employer's characterization of an employee's ministerial status.

For reasons more fully discussed hereinafter, the motion to dismiss is DENIED.

Subject Matter Jurisdiction - Motion to Dismiss

"Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. 1 Restatement (Second), Judgments § 11. *Craig v. Bronson*, 202 Conn. 93, 101, 520 A.2d 155 (1987). Jurisdiction of the subject-matter is the power to hear and determine cases of the general class to which the proceedings in question belong. *Henry F. Raab Connecticut, Inc. v. J.W. Fisher Co.,* 183 Conn. 108, 111-12, 438 A.2d 834 (1981); *E.M. Loew's Enterprises, Inc. v. International Alliance of Theatrical Stage Employees*, 127 Conn. 415, 420, 17 A.2d 525 (1941); *Case v. Bush,* 93 Conn. 550, 552, 106 A. 822 (1919); *People v. Western Tire Auto Stores, Inc.,* 32 Ill.2d 527, 530, 207 N.E.2d 474 (1965). A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v. State*, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, *cert. denied*. 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant, and every reasonable inference is to be drawn in his favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998).

The Ministerial Exception

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." "Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers." *Hosanna-Tabor Evangelical Lutheran Church & Sch. V. E.E.O.C.*, 132 S.Ct. 694, 702 (2012). The ministerial exception is grounded in the First Amendment and represents the conclusions that "the imposition of secular standards on a church's employment of its ministers will burden the free exercise of religion" and that "the state's interest in eliminating employment

discrimination is outweighed by a church's constitutional right of autonomy in its own domain." *Rweyemamu v. Comm'n on Human Rights & Opportunities*, 98 Conn.App. 646, 652, 911 A.2d 319 (2006).

In the memorandum of law it submitted in support of its dismissal motion, respondent asserted that whether complainant "was a minister as contemplated by the ministerial exception" was the only issue present for purposes of deciding the motion, citing *Daynor v Archdiocese of Hartford*, 301 Conn. 759 (2011) for the proposition that the ministerial exception is a jurisdictional issue.

Respondent's reliance on *Daynor* is misplaced. To the extent that the case held that the ministerial exception operates as a jurisdictional bar in employment disputes involving churches and their ministerial employees, the Supreme Court's decision in *Hosanna-Tabor* overruled that holding.

Noting that a conflict existed among the Courts of Appeals regarding whether the ministerial exception functioned as a "jurisdictional bar" preventing courts from hearing such claims, or as a "defense on the merits" available to the defendant in an employment discrimination claim, the Supreme Court concluded that the exception "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar" and that trial courts have the authority to consider discrimination claims and to decide whether the claim can proceed or is barred by the ministerial exception[1]. *Hosanna-Tabor* at 708 n.4.

[1] The Court described the First Amendment interest protected by the ministerial exception broadly as "the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission." *Id.* at 710. It did not, however, suggest that the First Amendment provided religious organizations with blanket immunity, or that invoking the ministerial exception would automatically result in its application. Although the Court declined to lay down a test for identifying ministers, it did provide guidance, articulating a lengthy list of factors that it had taken into consideration and, within that context, its rationale for determining that the exception applied to the plaintiff employee in *Hosanna-Tabor*.

Complainant has stated a prima facie case of employment discrimination under the cited statutes. The motion to dismiss is denied.

It is so ordered this 1st day of February 2013.

_____
Ellen E. Bromley,
Presiding Human Rights Referee

cc.

Barbara Ruhe, Esq.-via fax only
Glen Terk, Esq.-via fax only
David Kent, Esq.-via fax only