

NJ Supreme Court to Hear Case of Pregnant, Unmarried, Catholic School Teacher Being Fired

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Nathaniel Hawthorne wrote: “[The scarlet letter] had the effect of a spell, taking her out of the ordinary relations with humanity, and enclosing her in a sphere by herself.” The same could be said of Victoria Crisitello, who, like Hester Prynne in Hawthorne’s “The Scarlet Letter,” found herself faced with the ramifications of violating religious code when the Catholic school in which she worked learned that Crisitello—an unmarried teacher—was pregnant. The school terminated her employment for engaging in pre-marital sex. Crisitello’s pregnancy was her Scarlet Letter, the only visible indicia that she engaged in conduct forbidden by the school, and a Scarlet Letter that, by definition, no male could wear. The New Jersey Supreme Court will soon decide whether her discrimination claims may move forward or are barred by the First Amendment.

Crisitello worked as an art teacher at St. Theresa School in Kenilworth (“the School”). She never taught classes about religion and did not serve as a member of the clergy. The School, however, did require its “lay faithful” teachers to avoid engaging in conduct that may result in “scandal” or harm the Catholic Church. In 2014, Crisitello informed the School’s principal that she was pregnant. Shortly thereafter, the School, which claims that it knew Crisitello was unmarried, terminated Crisitello’s employment based on a Catholic tenet prohibiting pre-marital sex, notwithstanding that neither the employee handbook nor any code of conduct at the School specifically prohibited pre-marital sex. The School’s written policy, however, required all teachers “whether employed in the areas of ministry or other kinds of services” to adhere to a code not “contrary to the discipline and teachings of the Catholic Church[.]” Crisitello acknowledged that she knew her conduct was “not acceptable” to the Catholic Church. The School replaced Crisitello with a married woman with children.

Crisitello sued, alleging that the School violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, by terminating her on the basis of sex, marital status, and pregnancy. Although the trial court granted summary judgment in favor of the School, the Appellate Division reversed. *Crisitello v. St. Theresa School*, No. A-4713-18T3 (App. Div. Nov. 19, 2020).

Two key issues were raised on appeal: (1) whether the “ministerial exception” of the First Amendment, which bars claims against religious institutions by employees who engage in religious functions, barred Crisitello’s action; and (2) whether there was sufficient evidence that the School’s proffered reason for termination—that Crisitello engaged in pre-marital sex—was pretext for terminating her based on pregnancy.

As for the first issue, the trial court did not have the benefit of reviewing the U.S. Supreme Court's decision in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), a decision rendered while the parties' appeal was pending in the Appellate Division.

The *Guadalupe* decision broadened the scope of the ministerial exception to include teachers that had the responsibility of educating students in the faith notwithstanding that they may lack a clerical title.

Although the School argued that Crisitello was part of the Church personnel tasked to be a "Christian Witness," expected to model the Church's teachings, and expected to bring faith and religious truth into the classroom, the Appellate Division rejected the application of the ministerial exception. The Appellate Division determined that Crisitello was merely a lay art teacher, and that there was no evidence that she performed religious duties at the School. According to the Appellate Division, the mere fact that faculty members are to serve as exemplars of practicing Christians is insufficient to transform a lay art teacher into a "minister" under the First Amendment, essentially imposing a boundary on the U.S. Supreme Court's decision.

As for the second issue, the Appellate Division explained that when a religious employer uses pre-marital sex as the reason for termination, uneven enforcement of that policy, such as solely against women based on pregnancy alone, is evidence of pretext. Recognizing that Crisitello adduced evidence that no effort was made to determine whether any employees other than a pregnant lay teacher violated the School's pre-marital sex prohibition, the Appellate Division held there was sufficient evidence of pretext to warrant vacating the award of summary judgment to the School, and allowing the jury to decide the issue of pretext.

In May, the New Jersey Supreme Court agreed to hear the School's appeal, which may be a signal that the highest court in New Jersey intends to address the application of *Guadalupe* to determine how First Amendment protection should be applied here and in future cases. The Appellate Division declined to expand *Guadalupe* to include within the ministerial exception a lay art teacher not responsible for performing any religious duties at the school. Unlike Crisitello, the teachers in *Guadalupe* performed "vital religious duties" because they were responsible for "providing instruction in all subjects, including religion." If the New Jersey Supreme Court continues to focus on the specific facts of *Guadalupe*, as the Appellate Division appears to have done, an expansion of *Guadalupe* to include teachers who performed no specific religious duties may stretch the bounds of the U.S. Supreme Court decision.

On the other hand, such an expansion may be precisely what the *Guadalupe* court envisioned when it stated in the closing paragraph of the opinion:

When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow.

Moreover, such an expansion is consistent with LAD's religious exception, which recognizes that a religious school cannot be sued for "following the tenets of its religion in establishing and utilizing criteria for employment of an employee[.]" N.J.S.A. 10:5-12. Children attend St. Theresa School for the purpose of obtaining an education that, at its core, is faith-based learning

that incorporates the Church's teachings into the classroom. Crisitello, as a teacher in a grammar school setting, is the face of the School and is tasked to be a "Christian Witness." The Appellate Division's decision may not have given sufficient consideration to plaintiff's role in this regard.

As for the pretext issue, the Appellate Division placed great emphasis on the fact that the school failed to investigate other employees on whether they engaged in pre-marital sex. This approach would seemingly create an obligation on religious employers to engage in intrusive inquisitions into highly personal matters to ensure employees are compliant with religious doctrine, which appears impractical and will inappropriately invade the private sphere of the lives of their employees. In fact, a sweeping investigation into an all-female teaching staff, as the Appellate Division suggests should have been done at the School, to determine violations of a pre-marital sex policy would, in effect, target protected classes such as marital status and pregnancy. Such an investigation, therefore, does not facially appear to further the LAD's purpose.

Even if the Supreme Court does not expand the application of *Guadalupe*, it will likely take a close look at the pretext issue. The Appellate Division discounted as irrelevant evidence that the School operated under the same Archdiocesan code as a sister school that terminated a male teacher who was not married after he informed the school that his girlfriend was pregnant. In addition, three married, pregnant teachers at St. Theresa School have not been terminated. Should the Supreme Court consider these facts, there may be sufficient evidence to eliminate any indicia of pretext, which could serve as a basis for reversal. If the Supreme Court does reverse, that reversal may be limited to that aspect of the Appellate Division's opinion finding sufficient evidence of pretext to warrant denial of the School's motion for summary judgment. However, if that is the case, then the Appellate Division's interpretation of *Guadalupe* will remain the current law of the land in New Jersey.

The religious community will no doubt be watching this case closely to see whether the New Jersey Supreme Court accepts the more limited interpretation of *Guadalupe* adopted by the Appellate Division, or whether it takes a more expansive view of the landmark decision. In the end, perhaps Hawthorne encapsulates the only real certainty to be derived here: "The scarlet letter was her passport into regions where other women dared not tread." Crisitello's termination and lawsuit—a long and difficult journey most people dare not tread—has culminated into an appeal with potentially sweeping implications for religious organizations and their employees. Only that much is certain.

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