

# IN THE SUPREME COURT OF TEXAS

=====  
No. 05-0916  
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PLEASANT GLADE ASSEMBLY OF GOD, REVEREND LLOYD A. MCCUTCHEN,  
ROD LINZAY, HOLLY LINZAY, SANDRA SMITH,  
BECKY BICKEL, AND PAUL PATTERSON, PETITIONERS,

v.

LAURA SCHUBERT, RESPONDENT

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS  
=====

**Argued April 12, 2007**

JUSTICE JOHNSON, dissenting.

I dissent for the reasons stated below, as well as for the reasons stated by Chief Justice Jefferson in parts II-A, III, and IV of his dissent, which I join.

Pleasant Glade's<sup>1</sup> position on damages in its mandamus action and in this appeal is set out by the Court as follows:

Pleasant Glade's mandamus petition, however, merely distinguished Laura's bodily injury claims from her emotional damage claims. That distinction is consistent with its present appellate contention that the award of damages for Laura's emotional injury is barred by the First Amendment. . . . Pleasant Glade argues on

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<sup>1</sup>Laura's suit was against Pleasant Glade Assembly of God Church, its senior pastor, youth minister, and several individual members of the church. All the defendants will be referred to collectively as "Pleasant Glade" or "the church."

appeal that the First Amendment protects it from liability for Laura’s emotional injuries connected with its religious practices . . . .

. . . .

. . . [W]e next consider whether the church’s religious practice of “laying hands” is entitled to First Amendment protection. Pleasant Glade contends the First Amendment protects it against claims of intangible harm derived from its religious practice of “laying hands.”

\_\_\_ S.W.3d at \_\_\_. In its brief on the merits, Pleasant Glade specifically disclaims seeking to avoid liability for bodily injuries to Laura:

Petitioners have never claimed that the First Amendment somehow gives them immunity to commit intentional *bodily* injury. Instead, the First Amendment protections prevent religious beliefs and conduct from being put “on trial” to see if psychologists and the general public (the jury) agree with their practices. Tort liability certainly does not disappear. But, it must be limited.

. . . .

. . . If a church or pastor is sued for bodily injury, such as a car wreck or a broken arm, then the First Amendment does not apply.

In this regard, it is notable that Pleasant Glade does *not* make two claims in its appeal that bear on this case. First, the church’s position is not that the “laying on of hands” doctrine encompasses forcefully and physically restraining persons and holding them down on the floor for extended periods of time against their will as the evidence here would have allowed the jury to believe was done. Although Senior Pastor McCutchen, in his affidavit, does not specifically disclaim extended physical restraint as being part of the doctrine of “laying on of hands,” he intimates as much:

I certainly did not hold Laura Schubert down on the floor of the church, or ever hold her against her will. I did not instruct or direct any one else to do so. I did not see or hear any one else direct people to hold Laura Schubert against her will.

He does not assert in the affidavit that such courses of conduct *do* come within the doctrine. And second, Pleasant Glade does not urge on appeal that damages for physical injuries and pain Laura suffered because of the intentional acts to restrain her are precluded by the First Amendment.

The Court rightly says that freedom of belief may be absolute, but freedom of conduct is not. \_\_\_ S.W.3d \_\_\_. It then bypasses the difference between Laura's physical pain damages and her mental and emotional anguish by misreading the trial record as containing proof related solely to her subsequent emotional or psychological injuries. Laura testified that while she was going through the two episodes

I was feeling pain. I was feeling--the only thing, I felt like somebody was going to break my leg. I felt like I could not breathe. . . . I had known that I had had the carpet burns and stuff, and I showed them to [my mother]. . . . [T]hey saw the bruises on my shoulders. . . . I lifted up the back of my shirt and showed her all the carpet burns that were on the back of it.

The difficulty with the Court's conclusion and holding is pointed out by Chief Justice Jefferson: Laura claimed damages for physical injuries and pain as well as mental anguish; Pleasant Glade disclaims immunity from damages for physical injuries; there is legally sufficient evidence Laura suffered physical injuries, physical pain, and mental anguish; physical pain and mental anguish were submitted together in one damages subpart, and the jury found one damages amount; and the church does not challenge the legal sufficiency of the evidence as to physical pain.

Laura's testimony was evidence of, and raised the inference that, she suffered physically and endured both physical pain and mental anguish as a result of the restraints and her struggles against

them. Her parents testified that she was bruised and scraped. Not only was there direct evidence of physical injury and pain from the restraints, but it was within the knowledge of the jurors, and the jurors were entitled to infer, that physical pain would accompany the extended forceful physical restraints that resulted in bruises and scrapes. The church did not object to the joint submission of physical pain and mental anguish damages with only one answer blank. Accordingly, the evidence is measured against the charge given. *See St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 530 (Tex. 2002) (noting that when the charge is submitted without objection, the sufficiency of the evidence is measured against the charge given). I would hold that there is legally sufficient evidence to support damages for physical injury and pain even if all evidence of Laura's subsequent and ongoing intangible psychological injuries were to be disregarded. Thus, the judgment for damages from physical pain and mental anguish should be upheld.

The Court says that intangible, psychological injury, without more, "cannot ordinarily serve as a basis for a tort claim against a church or its members for its religious practices." \_\_\_ S.W.3d at \_\_\_. I agree. But rather than preclude recovery for physical injuries and pain such as are involved in this case in which there are also claims for subsequently-occurring emotional injuries that relate to both the physical restraint and religious practices, I would preclude damages for those emotional injuries for which there is any evidence of causation by religious beliefs or teachings. This would prevent the "entanglement" with First Amendment issues with which the Court is properly concerned. I would not make that preclusion an affirmative defense as Chief Justice Jefferson advocates because it is hard to see how such an affirmative defense would work in a practical sense. It would require presenting evidence of and, at least to some degree, evaluating the religious beliefs

involved. And religious beliefs in many, if not most, instances are not just beliefs—they are among individuals’ most deeply-held convictions. Asking jurors to separate themselves from convictions as to their own or another’s religious beliefs and to dispassionately evaluate damages related to those beliefs, in my view, asks too much of them.

I would hold that whether alleged mental and emotional damages resulted to any degree from religious beliefs and teachings should be determined by the trial court as a matter of law. Evidence of religious practices and beliefs should be precluded by means of pretrial hearings or motions in limine, as was done for the most part in this case. If the question could not be decided until after all the evidence was presented, the trial court could either direct a verdict as to damages other than those from physical injury and pain or submit separate questions as to each element of damages so the First Amendment issue as to emotional or psychological damages could be properly isolated. The trial court could then consider granting judgment notwithstanding the verdict as to emotional damages. Limiting evidence and submitting a separate damage question for physical injuries and pain protects all interests involved: the individual claiming damages, the church, and members of the church.

I would affirm the judgment of the court of appeals.

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Phil Johnson  
Justice

**OPINION DELIVERED:** June 27, 2008