

# IN THE SUPREME COURT OF TEXAS

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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  
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**Argued April 12, 2007**

JUSTICE MEDINA delivered the opinion of the Court, in which JUSTICE HECHT, JUSTICE O'NEILL, JUSTICE WAINWRIGHT, JUSTICE BRISTER, and JUSTICE WILLETT joined.

CHIEF JUSTICE JEFFERSON filed a dissenting opinion, in which JUSTICE GREEN joined, and in Parts II-A, III, and IV of which JUSTICE JOHNSON joined.

JUSTICE GREEN filed a dissenting opinion.

JUSTICE JOHNSON filed a dissenting opinion.

This appeal concerns the tension between a church's right to protection under the Free Exercise Clause of the First Amendment and a church member's right to judicial redress under a claim for intentional tort. U.S. CONST. amend. I; *see also* TEX. CONST. art. I, § 6. The court of appeals generally affirmed the judgment in favor of the church member, concluding, among other

things, that the church was judicially estopped to claim First Amendment protection. 174 S.W.3d 388, 405-07. We conclude, however, that the church was not judicially estopped to assert its constitutional rights. We further conclude the case, as tried, presents an ecclesiastical dispute over religious conduct that would unconstitutionally entangle the court in matters of church doctrine and, accordingly, reverse the court of appeals' judgment and dismiss the case.

## I

On Saturday June 8, 1996, Tom and Judy Schubert left town, leaving their three teenage children at home. While the Schuberts were away, their seventeen-year-old daughter, Laura, spent much of her time at the family's church, Pleasant Glade Assembly of God,<sup>1</sup> participating in church-related activities.

On Friday evening, before her parents left town, Laura attended a youth group activity at Pleasant Glade in preparation for a garage sale the next day. The atmosphere during this event became spiritually charged after one of the youth announced he had seen a demon near the sanctuary. The youth minister, Rod Linzay, thereupon called the group together to hear the story, and after hearing it, agreed that demons were indeed present. Linzay instructed the youth to anoint everything in the church with holy oil and led a spirited effort throughout the night to cast out the demons. Finally, on Saturday morning at about 4:30 a.m., Linzay gathered the exhausted youth together to

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<sup>1</sup> The Assembly of God Church is "[t]he largest denomination to stem from the Pentecostal movement of the early twentieth century . . . American Pentecostal leaders agreed to form a simple fellowship of churches within the name 'Assemblies of God' as a scriptural designation . . . Assemblies of God describe themselves as 'Pentecostal in experience, evangelical in outlook, and fundamental in their approach to the Bible.'" THE NEW INTERNATIONAL DICTIONARY OF THE CHRISTIAN CHURCH 78-79 (1978). The Church believes in the literal teachings of the Bible with respect to spirits, demons, demon possession, and the "casting out" of demons. WHERE WE STAND: THE OFFICIAL POSITION PAPERS OF THE ASSEMBLIES OF GOD 15-23 (1994).

announce that he had seen a cloud of the presence of God fill the church and that God had revealed a vision to him. Although exhausted, the young people assisted with the garage sale later that morning.

At the Sunday morning worship service the next day, several young people gave testimonials about the spiritual events of the preceding day. At the conclusion of the service, the youth, including Laura and her brother, prayed at the altar. During these prayers, Laura's brother became "slain in the spirit,"<sup>2</sup> collapsing to the floor where church members continued to pray into the early afternoon.

Later that afternoon, Laura returned to church for another youth activity and the Sunday evening worship service. During the evening service, Laura collapsed. After her collapse, several church members took Laura to a classroom where they "laid hands" on her and prayed. According to Laura, church members forcibly held her arms crossed over her chest, despite her demands to be freed. According to those present, Laura clenched her fists, gritted her teeth, foamed at the mouth, made guttural noises, cried, yelled, kicked, sweated, and hallucinated. The parties sharply dispute whether these actions were the cause or the result of her physical restraint.

Church members, moreover, disagreed about whether Laura's actions were a ploy for attention or the result of spiritual activity. Laura stated during the episode that Satan or demons were trying to get her. After the episode, Laura also allegedly began telling other church members about

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<sup>2</sup> Lloyd McCutchen, Pleasant Glade's senior pastor, explained "slain in the spirit" as:

[A] biblical experience related in several accounts of the Bible. When this happens, a person often faints into semi-consciousness, and sometimes lies down on the floor of our church. It is our belief that this is a positive experience in which the holy spirit comes over a person and influences them. It is our belief that the holy spirit is not the only spirit that can influence a person. Evil spirits can move and can torment persons.

a “vision.” Yet, her collapse and subsequent reaction to being restrained may also have been the result of fatigue and hypoglycemia. Laura had not eaten anything substantive that day and had missed sleep because of the spiritual activities that weekend. Whatever the cause, Laura was eventually released after she calmed down and complied with requests to say the name “Jesus.”

On Monday and Tuesday, Laura continued to participate in church-related activities without any problems, raising money for Vacation Bible School and preparing for youth drama productions. Her parents returned from their trip on Tuesday afternoon.

On Wednesday evening, Laura attended the weekly youth service presided by Rod Linzay. According to Linzay, Laura began to act in a manner similar to the Sunday evening episode. Laura testified that she curled up into a fetal position because she wanted to be left alone. Church members, however, took her unusual posture as a sign of distress. At some point, Laura collapsed and writhed on the floor. Again, there is conflicting evidence about whether Laura’s actions were the cause or result of being physically restrained by church members and about the duration and force of the restraint. According to Laura, the youth, under the direction of Linzay and his wife, Holly, held her down. Laura testified, moreover, that she was held in a “spread eagle” position with several youth members holding down her arms and legs. The church’s senior pastor, Lloyd McCutchen, was summoned to the youth hall where he played a tape of pacifying music, placed his hand on Laura’s forehead, and prayed. During the incident, Laura suffered carpet burns, a scrape on her back, and bruises on her wrists and shoulders. Laura’s parents were subsequently called to the church. After collecting their daughter, the Schuberts took her out for a meal and then home. Laura did not mention her scrapes and bruises to her parents that night.

In July, Laura's father, himself an Assembly of God pastor and missionary, met twice with Senior Pastor McCutchen to discuss the June incidents and the youth ministry. Following those conversations, Senior Pastor McCutchen took the matter to the board of deacons and met with Linzay to discuss theology. Linzay assured McCutchen "that neither he nor Holly believe that Christians can be demon possessed." After meeting with Linzay, McCutchen spent an hour with the youth group to clarify the biblical doctrine of angels, fallen angels, and demonic possession. McCutchen reported his actions to Laura's father in a letter on July 22.

A few days later, Laura's father responded to McCutchen's letter, discussing at length Laura's version of the spiritually charged atmosphere surrounding the weekend of June 7-9 and the following Wednesday evening youth service on June 12. In addition, he stated that Laura "ha[d] started having terrible nightmares" and had felt "that a demon [was] in her room at night." Because missionaries "can not get into local church affairs," Laura's father concluded by asking the senior pastor to investigate the matter further, adding "I am placing this situation in your hands and hope God gives you wisdom." The Schuberts subsequently left Pleasant Glade to attend another church.

Over the next months, several psychologists and psychiatrists examined Laura, documenting her multiple symptoms, such as angry outbursts, weight loss, sleeplessness, nightmares, hallucinations, self-mutilation, fear of abandonment, and agoraphobia. Despite the psychiatric counseling, Laura became increasingly depressed and suicidal, eventually dropping out of her senior year of high school and abandoning her former plan to attend Bible College and pursue missionary work. Finally, in November 1996, Laura was diagnosed as suffering from post-traumatic stress disorder, which the doctors associated with her physical restraint at the church in June 1996. One

of the expert witnesses at trial testified that Laura would “require extensive time to recover trust in authorities, spiritual leaders, and her life-long religious faith.” Ultimately, Laura was classified as disabled by the Social Security Administration and began drawing a monthly disability check.

Thereafter, Laura and her parents sued Pleasant Glade, the senior pastor, the youth minister, and other members of the church, alleging negligence, gross negligence, professional negligence, intentional infliction of emotional distress, false imprisonment, assault, battery, loss of consortium, and child abuse. The Schuberts further claimed that the defendants’ conduct had caused Laura “mental, emotional and psychological injuries including physical pain, mental anguish, fear, humiliation, embarrassment, physical and emotional distress, post-traumatic stress disorder[,] and loss of employment.” The Schuberts’ petition detailed the June spiritual events at the church leading to Laura’s breakdown.

In response, Pleasant Glade and the other defendants sought a protective order and moved to dismiss the Schuberts’ lawsuit as an unconstitutional burden on their religious practices, describing the litigation as “a dispute regarding how services should be conducted within a church, including the practice of ‘laying on of hands.’” The trial court denied both motions.

In the mandamus proceeding that followed, the court of appeals granted the church’s request for relief, agreeing that the Schuberts’ “religious” claims were barred by the First Amendment because they “involve[d] a searching inquiry into Assembly of God beliefs and the validity of such beliefs.” *In re Pleasant Glade Assembly of God*, 991 S.W.2d 85, 89 (Tex. App.–Fort Worth 1998, orig. proceeding). The court defined “religious” claims to include the Schuberts’ claims of negligence, gross negligence, professional negligence, intentional infliction of emotional distress,

child abuse, and loss of Laura's consortium. *Id.* at 90. The church did not ask for mandamus protection from Laura's claims of false imprisonment and assault, and those claims were not included in the court's definition of religious claims. *Id.* at 88 n.3.

Following the mandamus proceeding, the trial court signed a protective order, prohibiting the Schuberts from inquiring into or debating the religious teachings, practices, or beliefs of the Pentecostal or Assembly of God churches. Laura's remaining claims proceeded to trial, where a jury found that Laura had been assaulted and falsely imprisoned by the senior pastor, the youth minister, and several church members. The jury apportioned liability among these defendants, attributing fifty percent to the senior pastor, twenty-five percent to the youth minister, and the remainder to the other defendants. Finally, the jury awarded Laura damages of \$300,000 for her pain and suffering, loss of earning capacity, and medical expenses. Following the verdict, Laura moved for judgment, and Pleasant Glade moved for judgment notwithstanding the verdict, asserting once again its free exercise rights under the state and federal constitutions. The trial court rendered judgment on the jury's verdict of false imprisonment, awarding Laura the damages found by the jury and adding Pleasant Glade as a judgment debtor with joint and several liability for the amounts apportioned to its senior pastor and youth minister. Pleasant Glade and the other defendants appealed.

The court of appeals eliminated the damages awarded for lost earning capacity, concluding that these damages were too remote and speculative, but otherwise affirmed the trial court's judgment in Laura's favor. 174 S.W.3d at 399, 408. Regarding the First Amendment claim, the court concluded that the church and pastors were judicially estopped to assert their constitutional rights because they had taken a contrary position in the previous mandamus proceeding by allowing

Laura's claims of assault, battery, and false imprisonment "to go forward." *Id.* at 407.

## II

The doctrine of judicial estoppel "precludes a party from adopting a position inconsistent with one that it maintained successfully in an earlier proceeding." 2 ROY W. McDONALD & ELAINE G. CARLSON, TEXAS CIVIL PRACTICE § 9.51 at 576 (2d ed. 2003). Contradictory positions taken in the same proceeding may raise issues of judicial admission but do not invoke the doctrine of judicial estoppel. *See Galley v. Apollo Associated Servs., Ltd.*, 177 S.W.3d 523, 529 (Tex. App.—Houston [1st Dist.] 2005, no pet.) ("Judicial estoppel does not apply to contradictory positions taken in the same proceeding"). The doctrine is not strictly speaking estoppel, but rather is a rule of procedure based on justice and sound public policy. *Long v. Knox*, 291 S.W.2d 292, 295 (Tex. 1956). Its essential function "is to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage." *Andrews v. Diamond, Rash, Leslie & Smith*, 959 S.W.2d 646, 650 (Tex. App.—El Paso 1997, writ denied); *Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 396 (5th Cir. 2003) (noting basis for estoppel is the assertion of a position clearly inconsistent with a previous position accepted by the court); *Tenneco Chem. v. William T. Burnett & Co.*, 691 F.2d 658, 665 (4th Cir. 1982) (finding "the determinative factor is whether the appellant intentionally misled the court to gain an unfair advantage").

The doctrine does not apply to the church's free exercise claim here for at least three reasons: (1) the asserted inconsistency did not arise in a prior proceeding, but in this same case; (2) the church did not gain any advantage from the asserted inconsistency; and, most importantly, (3) the church has consistently asserted its First Amendment rights throughout this case, including the mandamus



proceeding in which it sought relief from certain tort claims implicating church beliefs and practices. See *In re Pleasant Glade Assembly of God*, 991 S.W.2d at 89.

In that proceeding, the court of appeals agreed with the church that the Schuberts' claims of negligence, professional negligence, intentional infliction of emotional distress, and child abuse involved "not only the appropriateness of attempting to cast demons out of Laura" but also how the pastors' "prayers and comments about demons from June 7 to June 12 affected Laura." *Id.* Whether the defendants had intentionally or negligently misapplied church doctrine to Laura during these events was not a justiciable controversy, according to the court, because the "First Amendment [gave] Pleasant Glade the right to engage in driving out demons." *Id.* Pleasant Glade, however, did not seek mandamus relief for Laura's "pure bodily injury claims of assault, battery and false imprisonment." It is this omission from Pleasant Glade's mandamus petition that the court of appeals now views as an estoppel to the church's present First Amendment claim.

Pleasant Glade's petition for writ of mandamus, however, stated in relevant part:

Plaintiff, Laura Schubert, a teenager, does bring a *secular complaint* against the church and its pastors. It begins when, according to her own pleading, she "collapsed" while standing at the altar of the church during a church service. She alleges she was physically grasped, taken and held on the floor of the Church against her will. *This was allegedly done as part of an "exorcism" in an alleged attempt to exorcise a demon from her. However, this religious context is actually irrelevant.* Since Laura Schubert alleges she was held on the floor against her will, she brings claims for assault, battery, and false imprisonment. *This is a "bodily injury" claim . . . Relators, the church and the pastors, concede that this is a "secular controversy" and does not come within the protection of the First Amendment. That is, no church or pastor can use the First Amendment as an excuse to cause bodily injury to any person . . . .*

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. . . If this were the sum total of this dispute, Relators would not be here before this Court . . . No religious beliefs would be implicated. The First Amendment and the

free exercise of religion would simply not be an issue. *Therefore, Relators do not request that this Court issue mandamus to stop litigation of this “secular controversy for bodily injury.”*

(emphasis added). From this, it would appear that Pleasant Glade viewed Laura’s claims of emotional damages as religious in nature; whereas any claim for physical injury, the church deemed secular. Based on this characterization, Pleasant Glade only sought mandamus relief for Laura’s emotional injuries.

The court of appeals, however, observed that “[h]aving obtained, in the prior mandamus proceeding, the dismissal of all but Laura’s assault and false imprisonment claims, which they swore under oath should ‘go forward’ because they were purely secular and entitled to no First Amendment protections, [Pleasant Glade] cannot now ‘play fast and loose’ with the judicial system by taking the opposite position in this appeal to suit their own purposes.” 174 S.W.3d at 407. The court then held the “church and pastors [were] [judicially] estopped from asserting in this appeal that they are entitled to First Amendment protections with regard to Laura’s assault and false imprisonment claims.” *Id.*

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. It is not apparent, therefore, how Pleasant Glade’s previous concession that Laura’s purely physical injuries were secular, rather than religious in nature, is inconsistent with the church’s present position. Pleasant Glade argues on appeal that the First Amendment protects it from liability for Laura’s emotional injuries connected with its religious practices, and the court of appeals agreed in

its mandamus opinion that the conduct alleged in the Schuberts' petition was "inexorably intertwined with Pleasant Glade's religious beliefs" and thus protected under the First Amendment. *In re Pleasant Glade Assembly of God*, 991 S.W.2d at 90.

Nor is it apparent how Pleasant Glade has obtained an unfair advantage by omitting the assault and false imprisonment claims from its mandamus request. But aside from that, even assuming the church's mandamus and appellate contentions were contradictory, the mandamus proceeding is a part of this case, not some prior proceeding. Judicial estoppel does not apply to contradictory positions taken in the same proceeding. *Galley*, 177 S.W.3d at 529; *see Starcrest Trust v. Berry*, 926 S.W.2d 343, 355 (Tex. App.—Austin 1996, no writ); *Estate of Dewitt*, 758 S.W.2d 601, 603 (Tex. App.—Amarillo 1988, writ denied).

In conclusion, it is not apparent why Pleasant Glade's failure to ask for additional mandamus relief should foreclose its present request for appellate review. Certainly, the doctrine of judicial estoppel does not require this. Thus, we hold that the church is not estopped to assert its First Amendment defense.

### III

Because Pleasant Glade is not judicially estopped, we 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." The church relies on *Paul v. Watchtower Bible & Tract Society of New York, Inc.*, 819 F.2d 875 (9th Cir. 1987), for this proposition.

In *Paul*, the Ninth Circuit was asked to determine whether the Jehovah's Witness' practice

of shunning was protected by the Free Exercise Clause. 819 F.2d at 878. After being excommunicated from the church, the plaintiff brought suit against the congregation, alleging common law torts of defamation, invasion of privacy, fraud, and outrageous conduct. *Id.* at 877. Because the church’s practice of shunning was exclusively based on their interpretation of canonical text, the court found “[t]he harms suffered by Paul as a result of her shunning by the Jehovah’s Witnesses are clearly not of the type that would justify the imposition of tort liability for religious conduct.” *Id.* at 883. In particular, the Ninth Circuit held that “[i]ntangible or emotional harms cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for its practice – or against its members.” *Id.* Therefore, “[a] religious organization has a defense of constitutional privilege to claims that it has caused intangible harms – in most, if not all, circumstances.” *Id.*

Laura asserted, however, that the events at the church caused her both physical and emotional injury, and the church concedes that the First Amendment does not protect it from Laura’s claim of physical injury. But Laura’s case was not about her physical injuries. Although she suffered scrapes and bruises during these events, her proof at trial related solely to her subsequent emotional or psychological injuries. Laura testified about her fear and anxiety during these events, recalling that she had hallucinated, had trouble breathing, feared that her leg might be broken, and feared that she might die. Her memory of the experience also included many details. She could name the people who held her, where they had placed their hands, and even in whose lap her head rested during part of her ordeal. She also remembered being given water to drink, being walked with, and having a cold compress held to her forehead. Her final memory of the Wednesday evening episode was of

her parents coming to take her home and walking with her father in the sanctuary. She could not recall events after that, including her family's stop at a restaurant for dinner on the way home. Laura did not assert that the church-related events had caused her any physical impairment or disfigurement. She did not complain of physical injury that night, and her scrapes and bruises went unnoticed until the next morning when she showed them to her parents. Her medical proof at trial was also not about physical injury but about her psychological evaluations and treatment. Under this record, any claim of physical pain appears inseparable from that of her emotional injuries.

Indeed, her case at trial was not significantly different from what she would have presented under her claim of intentional infliction of emotional distress, a claim the court of appeals agreed should be dismissed. *In re Pleasant Glade Assembly of God*, 991 S.W.2d at 90. We have previously said that adjudication of this type of claim “would necessarily require an inquiry into the truth or falsity of religious beliefs that is forbidden by the Constitution.” *Tilton v. Marshall*, 925 S.W.2d 672, 682 (Tex. 1996). This type of 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. *See Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940) (holding that the intangible harms caused by playing religious records to the public is insufficient to impose civil or criminal liability); *see also Murphy v. I.S.K. Con. of New Eng., Inc.*, 571 N.E.2d 340, 348 (Mass. 1991) (holding that the intangible harms caused by using “offensive” religious scriptures is not actionable).

CHIEF JUSTICE JEFFERSON's dissent asserts, however, that a court should use an instruction to separate the “damages only for the mental anguish the plaintiff would have suffered had the tort been committed by a secular actor in a secular setting.” \_\_\_ S.W.3d. at \_\_\_ (Jefferson, C.J.,

dissenting). However, even Laura's psychological expert, Dr. Arthur Swen Helge, admitted that he could not separate the damages resulting from Laura's physical restraint and the psychological trauma resulting from the discussion of demons at the church.<sup>3</sup> Because of Dr. Helge's inability to separate these damages, the church repeatedly objected that the witness not be allowed to testify.<sup>4</sup>

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<sup>3</sup> Before Dr. Helge was permitted to testify, he was questioned about the basis of his opinion:

Q. Okay. In the – the course of gathering this information from Laura, did she tell you about chasing demons, being told about demons, being terrified about demons?

A. Yes.

Q. And was that in the medical records that you wrote down, the statements about demons?

A. . . . I'm certain there's probably some reference to demons in there.

Q. And in the medical records you read, you saw those, too, references to demons and the spiritual activities that were going on at the church?

A. Yes.

Q. Okay. Do you believe that those traumatized Laura?

A. I believe that experience traumatized her.

Q. Okay. So, this – when you say Laura has been traumatized, you're talking about, in part, the experience about being told about demons, demons in her presence, demons around her, they need to get rid of demons, chase them away, beat on the walls of the church, anoint things with oil, that whole Friday night length of activity, you believe that's part of Laura Schubert being traumatized?

A. Yes, I do.

Q. Okay. Have you been asked to separate out – in order to render your opinion today, have you been asked to separate out what type of trauma Laura suffered from being told about demons as opposed to just physical activities, being held down on the floor, that sort of thing? Have you been asked to make that separation?

A. No.

Q. And it would be kind of hard for you to make that separation after having been given all the medical records that have all this spiritual matter in it, and having that all entered into your mind? . . . That would be hard – pretty hard to do, wouldn't it?

A. Yes.

<sup>4</sup> The church objected:

Q. Your Honor, . . . at this point, we would ask that Your Honor sustain our objection and exclude this witness from testifying about any trauma that Laura suffered because the witness has indicated that he has included both First Amendment protected activities, and the physical activities, and formed them into one opinion.

Even if a jury could parse the emotional damages attributable solely to secular activity, which is doubtful, in *Westbrook v. Penley*, we emphasized that even though the elements of a common law tort may be *defined* by secular principles without regard to religion, it does not necessarily follow that *application* of those principles to impose civil tort liability would not run afoul of protections the constitution affords to a church’s right to construe and administer church doctrine. 231 S.W.3d 389, 400 (Tex. 2007). In this case, although Laura’s secular injury claims might theoretically be tried without mentioning religion, the imposition of tort liability for engaging in religious activity to which the church members adhere would have an unconstitutional “chilling effect” by compelling the church to abandon core principles of its religious beliefs. *See id.* at 397 (“While it might be theoretically true that a court could decide whether Westbrook breached a secular duty of confidentiality without having to resolve a theological question, that doesn’t answer whether its doing so would unconstitutionally impede the church’s authority to manage its own affairs.”); *see also Paul*, 819 F.2d at 881 (noting that “[i]mposing tort liability for shunning on the Church would in the long run have the same effect as prohibiting the practice and would compel the Church to abandon part of its religious teachings”).

According to Pentecostal religious doctrine, whenever a person is believed to be under

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Q. Your Honor, . . . [w]e’d like to renew our motion to exclude the testimony of Dr. Helge. It’s clear that not only has he mixed in the religious activities and included criticisms of telling Laura what to think, which is almost the definition of religious teaching, is telling a person what to think, and how to think. He has confused that in . . . [H]e has impermissibly combined protected religious activities with other activities, and so his opinion in testifying here in court would actually undercut the Court of Appeals opinion, circumvented, and effectively defeated by simply considering a lot of matters outside the courtroom and rendering an opinion about trauma, even if that trauma comes from religious experience.

“spiritual influence,” the church “lays hands” on the person and anoints oil to combat “evil forces.”

*See supra* note 2. Senior Pastor McCutchen, in an affidavit supporting the church’s motion for summary judgment, explained the practice:

. . . Many people did “lay hands” on Laura Schubert and pray [sic] for her, according to the custom of our church. This type of activity happens on a very regular basis in our church, since we believe in the physical conduct of laying hands on persons in order to pray for them.

[] Within our church, it is not unusual for a person to be “slain in the spirit.” This is a biblical experience, related in several accounts of the Bible. When this happens, a person often faints into semi-consciousness, and sometimes lies down on the floor of our church. It is our belief that this is a positive experience in which the holy spirit comes over a person and influences them. It is our belief that the holy spirit is not the only spirit that can influence a person. Evil spirits can move and can torment persons. Also, it is possible that a person (particularly a young dramatic person such as Laura Schubert) can take advantage of the attention that this activity brings. They can fake the entire experience in order to draw attention to themselves.

[] When a person comes forward in the service and begins having one of these experiences, it is sometimes difficult to discern whether: (1) the person is having a positive experience with the holy spirit, (2) whether there might be evil spirits engaged in warfare against the holy spirit, (3) whether there are emotional issues [sic] involved, or (4) whether the person is faking the entire process in order to gain attention. Discerning between these various influences and factors is a matter on which even pastors within the church might disagree . . . .

Clearly, the act of “laying hands” is infused in Pleasant Glade’s religious belief system. JUSTICE GREEN maintains in his dissent, however, that we “can and should decide cases like this according to neutral principles of tort law . . . [i]f a plaintiff’s case can be made without relying on religious doctrine.” \_\_\_ S.W.3d at \_\_\_ (Green, J., dissenting) (citing *Employment Div. Dep’t of Human Resources v. Smith*, 494 U.S. 872, 876-90 (1990)). But, contrary to JUSTICE GREEN’s view, Laura’s claims also involve church beliefs on demonic possession and how discussions about demons at the



church affected Laura emotionally and psychologically.

Before the mandamus proceeding, the Schuberts sought discovery about the defendants' beliefs and practices, and, even before the litigation, Tom Schubert and Senior Pastor McCutchen discussed demonic possession and the appropriateness of exorcism in the church. This discussion caused McCutchen to meet with Rod Linzay to confirm the youth minister's theological understanding of church tenets, including the "laying of hands." In their original petition, the Schuberts alleged that Laura was in serious emotional and physical distress during the Wednesday night youth service and did not want anyone touching her or praying for her. They further alleged she was restrained and held to the floor against her will and that an exorcism was performed in which the youth minister led the youth group in prayer, demanding that the Devil leave Laura's body. The Schuberts alleged that this restraint caused Laura's emotional injuries. However, because the religious practice of "laying hands" and church beliefs about demons are so closely intertwined with Laura's tort claim, assessing emotional damages against Pleasant Glade for engaging in these religious practices would unconstitutionally burden the church's right to free exercise and embroil this Court in an assessment of the propriety of those religious beliefs. *See United States v. Ballard*, 322 U.S. 78, 86-88 (1944); *see also Tilton*, 925 S.W.2d at 682.

Although the Free Exercise Clause does not categorically insulate religious conduct from judicial scrutiny, it prohibits courts from deciding issues of religious doctrine. *See Serbian E. Orthodox Diocese for the U.S. and Can. v. Milivojevich*, 426 U.S. 696, 709-10 (1976); *see also Westbrook*, 231 S.W.3d at 396. CHIEF JUSTICE JEFFERSON asserts, however, that we go too far in protecting religious doctrine in this case, and, in effect, eliminate mental anguish as an element of

damage against tortfeasors who allege their conduct was motivated by religious conviction. \_\_\_ S.W.3d at \_\_\_ (Jefferson, C.J., dissenting). That, of course, is not our intent.

We do not mean to imply that “under the cloak of religion, persons may, with impunity,” commit intentional torts upon their religious adherents. *See Cantwell*, 310 U.S. at 306. Freedom to believe may be absolute, but freedom of conduct is not, and “conduct even under religious guise remains subject to regulation for the protection of society.” *Tilton*, 925 S.W.2d at 677; *see generally Bowie v. Murphy*, 624 S.E.2d 74, 79-80 (Va. 2006) (defamation claim that deacon had been falsely accused of assaulting a church member); *Jones v. Trane*, 591 N.Y.S.2d 927, 931 (N.Y. 1992) (sexual misconduct of priest); *Strock v. Pressnell*, 527 N.E.2d 1235, 1237 (Ohio 1988) (minister’s affair with wife of couple in marital counseling); *Hester v. Barnett*, 723 S.W.2d 544, 558-59 (Mo. Ct. App. 1987) (minister spread false accusations after family counseling); *Christofferson v. Church of Scientology*, 644 P.2d 577, 601-02 (Or. Ct. App. 1982) (fraudulent misrepresentations), *cert. denied*, 459 U.S. 1206 (1983). Moreover, religious practices that threaten the public’s health, safety, or general welfare cannot be tolerated as protected religious belief. *See Tilton*, 925 S.W.2d at 677 (recognizing that free exercise clause does not protect actions “in violation of social duties or subversive to good order”); *see also Cantwell*, 310 U.S. at 306 (noting that religious solicitation does not disrupt the public’s peace and good order); *Sands v. Living Word Fellowship*, 34 P.3d 955, 958 (Alaska 2001) (religious conduct must not “pose some substantial threat to public safety, peace or order”); *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 774 (Okla. 1989) (finding disciplinary action against parishioner not a threat to public safety, peace, or order). But religious practices that might offend the rights or sensibilities of a non-believer outside the church are entitled

to greater latitude when applied to an adherent within the church. See *Smith v. Calvary Christian Church*, 614 N.W.2d 590, 593 (Mich. 2000) (tort claim rejected because of church member's consent to religious discipline as a matter of law); *Guinn*, 775 P.2d at 774 ("people may freely consent to being spiritually governed by an established set of ecclesiastical tenets defined and carried out by those chosen to interpret and impose them"). Particularly, when the adherent's claim, as here, involves only intangible, emotional damages allegedly caused by a sincerely held religious belief, courts must carefully scrutinize the circumstances so as not to become entangled in a religious dispute. *Murphy*, 571 N.E.2d at 346-48 (rejecting plaintiffs' claims of intentional infliction of emotional distress caused by scriptural passages that referred to women as evil and inferior to men); *Molko v. Holy Spirit Assn.*, 762 P.2d 46, 64 (Cal. 1988) (denying plaintiff's false imprisonment claim against church for telling plaintiff her family "would be damned in Hell forever" if she left the church); *Lewis v. Holy Spirit Assn. for the Unification of World Christianity*, 589 F. Supp. 10, 12 (D. Mass. 1982) (rejecting claim for "brainwashing and indoctrination" that led to plaintiff's "severe psychiatric disorders"); *Christofferson*, 644 P.2d at 580 (denying plaintiff's claim against church's alleged "scheme to gain control of [plaintiff's] mind"). And while we can imagine circumstances under which an adherent might have a claim for compensable emotional damages as a consequence of religiously motivated conduct, this is not such a case.

The "laying of hands" and the presence of demons are part of the church's belief system and accepted as such by its adherents. These practices are not normally dangerous or unusual and apparently arise in the church with some regularity. They are thus to be expected and are accepted by those in the church. That a particular member may find the practice emotionally disturbing and

non-consensual when applied to her does not transform the dispute into a secular matter. “Courts are not arbiters of religious interpretation,” and the First Amendment does not cease to apply when parishioners disagree over church doctrine or practices because “it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith.” *Thomas v. Review Bd.*, 450 U.S. 707, 716 (1981). Because determining the circumstances of Laura’s emotional injuries would, by its very nature, draw the Court into forbidden religious terrain, we conclude that Laura has failed to state a cognizable, secular claim in this case. *See Ballard*, 322 U.S. at 86.

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The Free Exercise Clause prohibits courts from deciding issues of religious doctrine. Here, the psychological effect of church belief in demons and the appropriateness of its belief in “laying hands” are at issue. Because providing a remedy for the very real, but religiously motivated emotional distress in this case would require us to take sides in what is essentially a religious controversy, we cannot resolve that dispute. Accordingly, we reverse the court of appeals’ judgment and dismiss the case.

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David M. Medina  
Justice

Opinion delivered: June 27, 2008