

ORIGINAL

**IN THE
SUPREME COURT OF NORTH DAKOTA**

Supreme Court No. 990222
Cass County Civil No. 96-88

990222

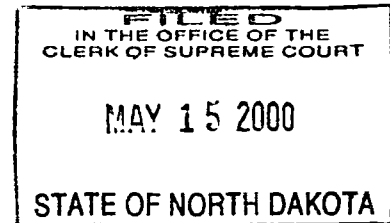
State of North Dakota ex rel.
Heidi Heitkamp, Attorney General,

Plaintiff-Appellee,

-vs-

Family Life Services, Inc., d/b/a
Family Life Credit Services, et al.

Defendants-Appellants.



ON APPEAL FROM THE JUDGMENT
OF THE CASS COUNTY DISTRICT COURT,
THE HONORABLE DONOVAN FOUGHTY, PRESIDING

REPLY BRIEF OF APPELLANT DAROLD LARSON

Darold Larson
418 12th Street North
Fargo, ND 58102
(701) 298-7682

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	7

TABLE OF AUTHORITIES

Cases

Jesus Center v. Farmington Hills Zoning
544 N.W.2d 698, 703 (Mich.App. 1996) 3

McCabe v. N.D. Workers Compensation Bureau
1997 ND 145, 567 N.W.2d 201..... 5

Other

Revised Model Nonprofit Corporation Act (A.B.A. 1988) 5

ARGUMENT

In responding to the State's brief, I will not address in detail the characterization of Family Life Services, Inc. ("FLS") as a "business." For a rebuttal of the State reinvention of FLS as an "ordinary business operation," St.Brief at 37, *see* Reply Brief of Gary Chaffin, pp. 3-10.

I did not establish a business; I established a ministry whose purpose was to win souls and to support itself in its outreach to the victims of the abortion holocaust. FLS was one arm of this ministry under the overall governance of Help and Caring Ministries ("HCM") as set out in the Help and Caring Constitution. I J.A. 283-290. The Constitution, which predated the incorporation of FLS, states clearly that one aspect of the ministry is:

As a ministry outreach of the Church of Jesus Christ, to form, develop and provide a broad range of religious counseling and support services, available to individuals and families, in particular (but not limited to) . . . budgeting and credit counseling (Psalms 72:4, Malachi 3:8-10 and Proverbs 3:9-10)

I. J.A. 285. FLS was a ministry because it was established to be one, and governed as such. The religious aspects are central, not incidental. As the HCM Constitution states: "The Christian, spiritual, religious affairs of the ministry Corporation shall always supersede and take precedence over the business affairs of this Corporation." I J.A. 286. Under the State's control FLS has degenerated spiritually. Instead of a total closure of business during Bible Study, the phones — for "business reasons" — continue to be answered. Judge Foughty deliberately excluded the

ministry leadership from conducting its own Bible Study, even though the State had no legitimate secular interest in determining who should control Bible teaching in the ministry. The Attorney General supported him in this decision. In the first days of the receivership Mr. Huey gave the receiver written permission to conduct a shorter Bible Study than had occurred previously. The receiver also secularized FLS by adopting a health care plan that pays for abortion, while abandoning the Christian Brotherhood plan previously sponsored by the ministry, which paid for no abortions. Thus, the “secular” FLS of which the State speaks in its brief is a creation of its own actions and desires, but has no relationship to the ministry reality before it took over.

The State in its brief is relentless in its effort to pick apart the religious and pro-life character of FLS. See, in particular, St. Brief at 18-20, 37-40. For instance, while nitpicking the FLS brief about the “role of religion at FLS,” *Id.* at 38, it says that the trial court only found that FLS adopted a statement of faith, but not that it adheres to it. Likewise it claims that pro-life findings are only a repetition of what FLS claims about itself, not what the court itself found. However, the State omits the finding in ¶ 185: “The evidence is clear that the Boards of HCM and FLS and the branch office managers are pro-life Christians.” I J.A. 498. See Reply Brief of Gary Chaffin at 3-4 for further findings of the trial court as to the religious and pro-life character of HCM and FLS. The FLS statement that FLS adheres to “the historic fundamentals of the faith” is

taken directly from the HCM Constitution: “The Corporation shall adhere to the historic fundamentals of the faith based on the inspiration of the Bible[.]” I J.A. 285, Article II (“Statement of Faith”). There is something perplexing and profoundly disturbing in the State expending its resources to destroy the truth about the fundamental and pervasive Christian character and motivation of a pro-life ministry. “It is not the position of the courts to second guess what activities are sufficiently religious to qualify for free exercise protection.” *Jesus Center v. Farmington Hills Zoning*, 544 N.W.2d 698, 703 (Mich.App. 1996).

This same motivation is seen in the State’s effort to ascribe any religious ministry that occurred at FLS solely to personal decisions by employees. *See, e.g.*, St. Brief at 38. As most people would understand, it is the ministry itself that establishes the goals and purposes which the employees fulfill. The evidence is clear that when allowed to manage the ministry on their own under the receiver, the employees abandoned two of its keystone religious commitments, a business-free Bible Study and a health care plan that paid for no abortions. *See* Opening Brief of Help and Caring Ministries at 16-25. If the State succeeds in isolating HCM and FLS from the religious vision and commitment that founded them, they may very likely fade as vigorous Christian ministries, being shrunk spiritually to fit the secular image of their work the Attorney General so ardently seeks to vend to this Court. The HCM logo, which is used by all

the agencies, including FLS, expresses the heart, soul and purpose of this ministry in all its “broad range of counseling and support services:”

There's a V which represents the word of God so it's our objective and purpose to win souls for Christ, that we reestablish the families today that are standing on the word of God and I believe the mother and father's arms are raised up like this in praise to God so that became our logo and each one of the agencies then used this as being a part or an associate of Help and Caring Ministries.

T26:5592. The *Help & Caring Ministries and Associate Agencies Purpose of Existence*, which names all the affiliated outreaches of the ministry, including FLS, states clearly: “To Help Nurture People Into the Kingdom of God Through Jesus Christ Our Lord.” I J.A. 295. That is our purpose. That indeed is the reason why this ministry exists. And that is why it is a religious organization whose spiritual and religious mission always takes precedence. Not because the court says it or does not say it, and not because the Attorney General admits it or denies it, but because it is indeed the truth. The State can crush this ministry, it can seize its assets and deliver them to state-friendly clerics, but it can never remove this purpose of existence from our hearts.

The State, of course, as it has done throughout this case, directly attacks the governing structure of the ministry. St.Brief at 3-5. The State condemns a form of organization which is thoroughly Biblical and in which the lines of authority run to a minister obeying a divine call, and whose successor is similarly chosen. See Opening Brief of Help and Caring Ministries § II(F) (“Biblical succession”) at 11-14. If this form of

ministry government, which is employed, for instance, by the Catholic Church and other Episcopal hierarchies, is inconsistent with state nonprofit law, then obviously the state law has to be construed — consistent with the First Amendment — to exclude from its ambit civil determination of the forms of ministry government. “[I]f a statute is capable of two constructions, one that would render it of doubtful constitutionality and one that would not, the constitutional interpretation must be selected.” *McCabe v. N.D. Workers Compensation Bureau*, 1997 ND 145, ¶ 10, 567 N.W.2d 201. The *Revised Model Nonprofit Corporation Act* (A.B.A. 1988), section 1.80, reads as follows: “If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this Act on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the constitution of this state or both.” *Id.* at 48-49. Surely such a provision must be read into state nonprofit law as a narrowing construction to render it constitutional. The Revised Model Act, in fact, does *not* authorize the Attorney General to bring an action to remove a director of a religious corporation, and further allows the bylaws of a religious corporation to “prohibit a court from removing corporate directors.” *Id.*, section 8.10 and official comment, pp. 189-191.

The cautiousness with which the authors of the model act treated religious corporations stands in marked contrast to the aggressiveness of the Attorney General in this case.

The Attorney General's criticism of the management agreements is truly remarkable in light of his successfully citing in a related case the management agreement with the Perry Center as authority for the receiver to control its property. If these management agreements are valid when wielded derivatively by the State, why are they invalid when utilized by the ministry itself? Likewise, how can the State equitably criticize me for using the withheld commission revenue ("benevolence fund") as a general FLS asset, when the receiver upon taking control simply returned these funds directly to the branches for whatever unrestricted use they might desire? The State's statement in its brief that the ministry parsonage and the ministry center that houses the mercy ministries were acquired with funds "transferred from FLS" is a demonstration of the assistance that FLS gave to the rest of the ministry. St. Brief at 5. Why then does the state later argue, in an attempt to downgrade the pro-life character of FLS, that the evidence for such support is "weak and confusing"? St. Brief at 20.

The briefs of Lyn Sahr, Gary Chaffin, and Dennis Uchtman amply demonstrate the pro-life character of this ministry and the responsible approach they took towards its mission. The charges in the factual section of the State's brief about personal use of ministry property, income from Diamond Card, and the "flagrant example," St. Brief at 14, of the purchase of a used car for my wife's use in the ministry were all addressed in my opening brief and do not have to be reexamined here.

The State never really addressed my brief at all, but simply launched into its own version of reality, hoping perhaps to obliterate the remembrance of what I had written by not addressing it. Some of the allegations are simply false, for example the careless charge that FLS suffered from financial distress because of the “drain that Larson and other insiders put on its financial resources.” I do not know who these “other insiders” might be, but in my case, the record showed that Diamond Card commission revenues were 4% of FLS revenue, not 10%, as the State claims. St.Brief at 13. Brief of Darold Larson at 24. Likewise, a chart prepared by the State shows that my expense reimbursements for 1995 were approximately \$720 per month, not \$1000. I J.A. 241-245.

CONCLUSION

It was always my desire as administrator of Family Life Services to be obedient to the law, because only in that way would FLS be able to expand, extend its services across the country, and be the nucleus for pro-life ministry centers on the model we had already created in Fargo and Grand Forks. T23:5104-5105. “Throughout this trial I have never suggested that, to my knowledge, that either I or Family Life Services or Help & Caring Ministries does not have to abide by civil law.” T30:6847. What I ask on this appeal is that Help and Caring Ministries, Family Life Services, and myself be neither above the law nor below it, but accountable to the law, as it is in truth, and I ask the same of the Attorney General.

Respectfully submitted this 15th day of May, 2000.



Darold Larson
418 12th Street North
Fargo, ND 58102
(701) 298-7682