

Judicial Council Decision No. 1094

IN RE: Appeal of Wesley Kendall

DIGEST

The weight of the evidence presented to the Trial Court is sufficient to sustain the four charges of sexual misconduct, five charges of sexual harassment and two charges of disobedience to the Order and Discipline of The United Methodist Church of which Dr. Wesley Kendall was found guilty. There were no such errors of Church law as to vitiate the verdict and/or the penalty. The Rocky Mountain Annual Conference is directed to determine whether the expenses incurred between May 19, 2005, and June 12, 2005, submitted by Dr. Wesley Kendall were reimbursable under his accountable reimbursement plan, and if so, disburse such funds to Dr. Kendall.

STATEMENT OF FACTS

In the spring of 2005, Dr. Wesley Kendall was the senior pastor of the First United Methodist Church of Cheyenne, Wyoming. In response to five letters written by women associated with the Church, the district superintendent of the Wyoming/Northeast Colorado District of the Rocky Mountain Annual Conference filed a complaint against Dr. Kendall on May 16, 2005. The bishop of the Rocky Mountain Annual Conference initiated a supervisory response. On May 19, 2005, the bishop, with the recommendation of the executive committee of the Board of Ordained Ministry, suspended Dr. Kendall.

On June 12, 2005, Dr. Kendall and the district superintendent entered into a Statement of Resolution, which among other things provided that Dr. Kendall would request the retired relationship at the 2005 Annual Conference, would not perform any ministerial duties while in the retired relationship, would submit to being evaluated by a psychologist/psychiatrist retained by the Annual Conference with any recommendations to be reviewed by the bishop, cabinet and executive committee of the board of ordained ministry, and would write a letter of explanation and apology to the congregation of the Church in which he would accept responsibility for his actions outlined in the five letters. The Statement of Resolution also provided that the Statement could be made public at the discretion of the bishop. In the Statement of Resolution, Dr. Kendall acknowledged that he had received copies of the five letters referenced in the complaint and that he would not directly or indirectly contact the authors of those letters. Dr. Kendall acknowledged that any violation of the Statement of Resolution would be grounds for the chargeable offense of disobedience to the Order and Discipline of The United Methodist Church.

On May 12, 2006, the bishop granted Dr. Kendall's request to be released from the Statement of Resolution. Thereafter, on June 14, 2006, the bishop, with the recommendation of the executive committee of the Board of Ordained Ministry, suspended Dr. Kendall and referred the complaint against Dr. Kendall as a judicial complaint. On January 25, 2007, the Committee on Investigation of the Rocky Mountain Annual Conference found reasonable grounds to support chargeable offenses and referred a bill of charges and specifications for trial.

Dr. Wesley Kendall was convicted after trial held May 22-24, 2007 on four counts of sexual harassment, five counts of sexual misconduct, and two counts of disobedience to the Order and Discipline of The United Methodist Church under ¶ 2702 of the *2004 Book of Discipline*. After due deliberation, the Trial Court imposed penalties under ¶ 2711.3 of the *2004 Discipline*, that included termination of Dr. Kendall's annual conference membership and revocation of his credentials of ordination. Dr. Kendall sought review of the verdict and penalty of the Trial Court before the Western Jurisdiction Committee on Appeals. The Committee on Appeals rendered its decision on October 25, 2007, finding that the weight of the evidence was sufficient to sustain the charges and, further, that there were no such errors of church law as to vitiate the verdict and/or the penalty. Dr. Kendall now appeals to the Judicial Council.

Jurisdiction

The Judicial Council has jurisdiction under ¶ 2715 of the *2004 Book of Discipline*.

Analysis & Rationale

Our review of the trial and the appellate process is limited by the provisions of ¶ 2715.7 of the *2004 Discipline*, which provides that an appellate body is required to determine two questions only:

- a. Does the weight of the evidence sustain the charge or charges?
- b. Were there such errors of church laws as to vitiate the verdict and/or the penalty?

These questions must be determined by a review of the record adduced at the trial, and the arguments of counsel for the church and for the respondent. The right to present evidence is exhausted when the case has been heard on the merits by the Trial Court. However, questions of church law may be carried on appeal through the appellate process and, ultimately, to the Judicial Council.

I. Weight Of The Evidence.

Paragraph 2711.2 of the *2004 Discipline* provides that “[t]he burden of proof for a vote to convict shall be clear and convincing.” Whether the weight of the evidence sustains the charge or charges is to be determined by the jurisdictional committee on appeals and the Judicial Council “by the record of the trial and the argument of counsel for the Church and for the respondent.” ¶ 2715.7 of the *2004 Discipline*. The Trial Court, having had an opportunity to hear testimony in person, is in the best position to evaluate the credibility of the witnesses. The role of the jurisdictional committee on appeals and the Judicial Council is to evaluate whether the evidence determined to be credible by the Trial Court is clear and convincing in establishing the charge or charges.

Our review of the Trial Court record leads us to the conclusion that the weight of the evidence adduced before the Trial Court is sufficient to sustain the charges against the

respondent and the verdict and penalty of the Trial Court. We further conclude that there were no such errors of church law as to vitiate the verdict and/or the penalty.

II. Alleged Errors Of Church Law.

Dr. Kendall alleges numerous errors of Church law which he asserts should vitiate the verdict and/or the penalty. These alleged errors include matters that purportedly occurred during the period of supervisory response and the operation of the Statement of Resolution, matters that occurred prior to the trial, and matters that occurred in connection with the trial. Because the scope of appellate review is limited, it is essential that the person charged, the Church, the presiding officer and the Trial Court prepare as extensive and complete record of proceedings as possible in order to facilitate our review. A presiding officer of a Trial Court should endeavor to rule on each question of law presented in much the same manner as a civil court judge sitting with a jury. ¶ 2710 of the *2004 Discipline*.

A. During The Period Of Supervisory Response and Statement of Resolution.

Dr. Kendall alleges seven violations of church law during the period of the supervisory response and the operation of the Statement of Resolution. Dr. Kendall previously asked questions of law related to these alleged violations of church law during the 2006 Rocky Mountain Annual Conference. In Decision 1064 the Judicial Council stated that the questions of law raised during the 2006 session of the Rocky Mountain Annual Conference were improper because they related to matters which were the subject of judicial or administrative processes and the questions raised could only be addressed by appeal to the appropriate administrative or judicial bodies.

Dr. Kendall properly raised these matters before the presiding officer. The presiding officer declined to rule on several questions believing he did not have jurisdiction. To the contrary, ¶ 2708.3 of the *2004 Discipline* provides that “[a]ll appeals of any procedural or substantive matters that have occurred prior to referral of the charges to the trial must be appealed to the presiding officer of the Trial Court before the convening of the trial.” The presiding office should have ruled on each of these matters.

1. The Suspension Of June 14, 2006.

The resident bishop of the Rocky Mountain Annual Conference suspended Dr. Kendall on June 14, 2006, after granting his requested release from the terms of the Statement of Resolution. When Dr. Kendall was released from the Statement of Resolution, the complaint previously pending returned to the status of being in supervisory response. The suspension was imposed under the authority of ¶ 361.1(c) of the *2004 Discipline*. No error of church law occurred in this suspension.

2. Receipt Of Five Letters Which Prompted The Initial Complaint From The District Superintendent.

The May 16, 2005 letter of complaint filed by the district superintendent referenced five

letters which served as the bases for the complaint. Dr. Kendall was entitled to receive these five letters at the same time he received the letter of complaint. In Decision 974, the Judicial Council declared that “[a]t the initiation of the supervisory process the respondent has a right not only to examine but to possess the written complaint and any supporting material accompanying it.” Dr. Kendall should have been provided with the five letters when he was provided with a copy of the May 16, 2005 letter of complaint as a matter of fair process. The failure to do so was an error of church law.

The letters were supplied to Dr. Kendall on June 12, 2005, prior to his execution of the Statement of Resolution. Providing the letters at that time remedied the failure to do so previously. Dr. Kendall had the opportunity to review the letters at that time and he voluntarily entered into the Statement of Resolution with knowledge of the contents of the letters.

The error of church law that occurred due to the failure to deliver the five letters to Dr. Kendall with the letter of complaint was harmless in light of subsequent events. Dr. Kendall was not prejudiced in any way by this error and, under the circumstances, the error is not sufficient to vitiate the verdict or the penalty.

3. *Lack Of Reimbursement For Unidentified Post-Suspension Expenses.*

Paragraph 362.1(c) of the 2004 Discipline provides that “[d]uring the suspension, salary, housing, and benefits provided by a pastoral charge will continue at a level no less than on the date of suspension.” Dr. Kendall submitted unspecified expenses for reimbursement which were incurred during the period between his suspension on May 19, 2005, and June 12, 2005, when the Statement of Resolution became effective. If such expenses were properly reimbursable under Dr. Kendall’s accountable reimbursement plan, funds should have been disbursed to Dr. Kendall in reimbursement. A pastor’s accountable reimbursement plan is a portion of his salary set aside for that purpose. The fact that a pastor is suspended does not preclude the pastor incurring reimbursable expenses. The Rocky Mountain Annual Conference is directed to determine whether the expenses were reimbursable under Dr. Kendall’s accountable reimbursement plan and, if so, disburse such funds to Dr. Kendall.

While an error of church law may have been committed if the expenses are determined to be reimbursable under the accountable reimbursement plan, such error can be fairly and effectively remedied at this point and does not vitiate the verdict or the penalty.

4. *Breach of Confidentiality of Proceedings.*

Dr. Kendall asserts that the district superintendent violated the confidentiality provision of ¶ 362.1(b) of the *2004 Discipline*. On June 16, 2005, the district superintendent responded to questions from the Cheyenne, Wyoming newspaper and granted an interview. Paragraph 362.1(b) would preclude such a response but for the fact that Dr. Kendall waived its confidentiality provisions when he entered into the Statement of Resolution. The Statement of Resolution provided that “this agreement may be made public, in whole or in part, at the sole discretion of the resident bishop.” The information provided by the district superintendent to the local newspaper was contained in the Statement of Resolution and the resident bishop exercised the discretion granted to him to permit the district superintendent to make that information public. No error of church law was committed.

5. *Request For Reconsideration.*

Dr. Kendall asserts that the resident bishop erred in denying his January 12, 2006 request for reconsideration which was made while he was under the terms of the Statement of Resolution. Dr. Kendall’s basis for requesting reconsideration was that he was not provided with the letters of the women which served as the basis of the May 16, 2005 complaint of the district superintendent when he was provided with a copy of the complaint. The resident bishop properly denied the request for reconsideration because Dr. Kendall had been provided copies of the letters at the time he entered into the Statement of Resolution, and had been in possession of the letters throughout the period of the Statement of Resolution. At the point Dr. Kendall requested reconsideration, no decisions had been made for which reconsideration could be requested.

6. *Length Of The Supervisory Response.*

Dr. Kendall asserts that the length of the period of supervisory response violated ¶ 362.1 of the *2004 Discipline*. Paragraph 362.1(d) of the *2004 Discipline* provides that the resident bishop shall perform one of three enumerated actions within 120 days after the initiation of the supervisory response if resolution has not been achieved. The period of the supervisory response was initiated in May of 2005 after the resident bishop received the complaint from the district superintendent. The 120-day period enumerated in ¶ 362.1(d) was stayed once Dr. Kendall and the district superintendent entered into the Statement of Resolution. When Dr. Kendall’s request for release from the Statement of Resolution was granted, the period of supervisory response resumed. The resident bishop then referred the matter as a judicial complaint within the balance of the 120-day period once the period of supervisory response resumed. No error of church law was committed.

7. *Legality Of The Statement Of Resolution.*

Dr. Kendall asserts that the Statement of Resolution was not authorized as part of the supervisory response process because it is not one of the three options enumerated as an outcome of the supervisory response process in ¶ 362.1(d) of the *2004 Discipline*. We find no merit in

this assertion. The Statement of Resolution was appropriately entered into by Dr. Kendall and the district superintendent during the supervisory response process. Paragraph 362.1(b) of the *2004 Discipline* provides:

The supervisory response may include a process that seeks a just resolution If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties.

The Statement of Resolution was not only authorized, but required by ¶362.1(b) and suspended the supervisory response during its operation. When Dr. Kendall obtained release from the Statement of Resolution, the supervisory response resumed. No error of church law was committed by the parties entering into the Statement of Resolution.

B. During The Period Following The Initiation Of The Judicial Complaint.

Dr. Kendall asserts that the individual appointed to serve as counsel for the church was not permitted to be counsel by ¶ 2708.7 of the *2004 Discipline*. Dr. Kendall did not raise this objection in a timely fashion with the presiding officer of the Trial Court and the objection cannot be raised for the first time at this stage of the proceedings. ¶ 2708.3 of the *2004 Discipline*. Because of his failure to raise this objection at trial, there is nothing preserved in the record for our review.

Dr. Kendall also asserts that there are twenty instances in either the bill of specifications and charges, or in the briefs of counsel for the church where statements are made which he argues were not established by the evidence presented to the Trial Court. The Trial Court heard the evidence presented before it and reached its verdict based on that evidence – not based on the briefs of the parties.

The bill of specifications and charges serve the purpose of putting the person on trial on notice of what the church intends to prove. The bill of specifications and charges likewise is not evidence. If items outlined in the bill of specifications and charges are not established, the Trial Court is competent to reach such a conclusion and then determine whether the evidence that was presented at trial established the charges. The weight of the evidence here sustained the charges.

C. During The Trial Of The Judicial Complaint.

Dr. Kendall identifies thirteen additional errors that he asserts was made by the presiding officer of the Trial Court in the conduct of his trial. The Judicial Council has reviewed each of the assignments of error with respect to rulings made by the presiding officer during the course of the trial. The presiding officer ruled correctly on each issue. No errors of church law were committed by the presiding officer during the presentation of evidence at trial.

III. Confidentiality Of The Trial Record.

Finally, Dr. Kendall asserts that his rights were violated when the resident bishop of the Rocky Mountain Annual Conference issued a statement to the clergy members of the Annual Conference announcing the decisions of the Trial Court and the Western Jurisdiction Committee on Appeals. Dr. Kendall argues that the release of such a statement violated ¶ 2713.5 of the 2004 *Discipline*. Paragraph 2713.5 provides that following the conclusion of a trial, the secretary of the Trial Court is to send all trial documents to the secretary of the annual conference and that “such documents are to be held in a confidential file and shall not be released for other than appeal or new trial purposes without a signed release from both the clergyperson charged and the presiding officer of the trial that tried the case.” Paragraph 2713.5 has not been violated and does not prevent the Annual Conference from releasing a statement which factually states the outcome of any trial or appeal.

Decision

The weight of the evidence presented to the Trial Court is sufficient to sustain the four charges of sexual misconduct, five charges of sexual harassment and two charges of disobedience to the Order and Discipline of The United Methodist Church of which Dr. Wesley Kendall was found guilty. There were no such errors of Church law as to vitiate the verdict and/or the penalty. The Rocky Mountain Annual Conference is directed to determine whether the expenses incurred between May 19, 2005, and June 12, 2005, submitted by Dr. Wesley Kendall were reimbursable under his accountable reimbursement plan, and if so, disburse such funds to Dr. Kendall.

April 29, 2008

Shamwange P. Kyungu was absent. C. Rex Bevins, the first clergy alternate, participated in this decision.

Concurring Opinion

We write this concurring opinion because we believe that the Church is entitled to know both the type of conduct which we as a Judicial Council have found sufficient to sustain charges of sexual misconduct and harassment, and so the public will know the seriousness with which we regard such charges when established by clear and convincing evidence.

In 1996, the Rocky Mountain Annual Conference adopted its “Policy and Procedures When Responding To Clergy Sexual Misconduct.” That policy defines sexual misconduct as “an abuse of power in which the clergy violates the sacred trust of their pastoral office by engaging in sexual conduct or activity (not limited to sexual intercourse) with any person with whom they have a ministerial relationship.” That policy defines sexual harassment as “a form of sexual misconduct and is defined as any unwanted sexual advance or demand, either verbal or physical, which is reasonably perceived as demeaning, intimidating or coercive.”

The Trial Court found that Dr. Kendall engaged in sexual conduct or activity while he was in a ministerial relationship with each of four different women who were either members of First United Methodist Church of Cheyenne, Wyoming, or who were on the staff of the church. The sexual conduct or activity included inappropriate and provocative comments suggesting sexual activity between the women and Dr. Kendall, and inappropriate touching of the women including placing his hands on their bodies in inappropriate ways, engaging in full, frontal hugs accompanied by “moans” of a sexual nature, and holding their hands in inappropriate settings beyond when they attempted to remove their hands from his.

The Trial Court, with respect to five different women, some of whom were Dr. Kendall’s parishioners and some of whom were his subordinates on staff, found that Dr. Kendall engaged in unwanted sexual advances or demands which were reasonably perceived by the women to be demeaning, intimidating and/or coercive. Much of the conduct referenced in the sexual misconduct charges was also used to establish the sexual harassment charges, but in addition, the Trial Court found that Dr. Kendall made advances that included touching them in sexually charged ways, demeaning them in comments made in the presence of others or to third parties about them, on one occasion asking one of the women to demonstrate how flexible she was and, on another occasion asking another of the women if they could go back to her house and get naked.

The testimony of the witnesses was not rebutted by Dr. Kendall. The evidence established Dr. Kendall’s guilt of sexual misconduct and harassment as charged by clear and convincing evidence.

Dr. Kendall was also convicted of two charges of disobedience to the Order and Discipline of The United Methodist Church. Dr. Kendall violated the terms of the Statement of Resolution which was entered into under the authority of ¶ 362.1(b) of the *2004 Discipline*. The Statement of Resolution provided that violation of its terms would be disobedience of the Order and Discipline of The United Methodist Church. Dr. Kendall also breached the confidentiality of a clergy-parishioner communication violation of the Order and Discipline of The United Methodist Church. The testimony, which was not rebutted, established by clear and convincing evidence the charges of disobedience to the Order and Discipline of The United Methodist Church.

The penalty imposed by the Trial Court also was fully supported by the weight of the evidence. In addition to the egregious nature of the conduct engaged in by Dr. Kendall which caused serious harm to the women involved and to the community at the Church, the evidence demonstrated that Dr. Kendall had a history of engaging in sexual misconduct and harassment prior to the events which led to the charges. The psychiatrist, retained by the Rocky Mountain Annual Conference with Dr. Kendall’s consent, testified that Dr. Kendall “had demonstrated some significant boundary violations . . . which involved sexualized behavior And that he had minimal understanding of the dynamics leading to boundary violations, which were more than one. And as a result, it is also my opinion that he shouldn’t be returning to the practice of

ministry” because he was at risk to engage in future sexual misconduct.

Because the evidence presented is sufficient to sustain the charges and because there were no errors of Church law sufficient to vitiate the verdict and/or the penalty as outlined in the decision of the Judicial Council, we join in affirming the decision of the Trial Court and the Western Jurisdiction Committee on Appeals.

Rodolfo C. Beltran
Keith D. Boyette
Mary A. Daffin
James W. Holsinger, Jr.