

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

MICHELLE BOLEN,

Plaintiff,

v.

Case No. 1616-CV03466

CATHOLIC DIOCESE OF KANSAS CITY-ST. JOSEPH,  
and CAROL LENZ,

Defendants.

**DEFENDANTS' ANSWER TO FIRST AMENDED PETITION**

Defendants Catholic Diocese of Kansas City – St. Joseph (“Diocese”) and Carol Lenz (“Lenz”) answer plaintiff Michelle Bolen’s petition as follows:

Answer to Allegations about Parties

1. Defendants admit paragraph 1.
2. Answering paragraph 2, defendants admit that the Diocese is a Missouri non-profit corporation, that it was an employer of plaintiff, that it maintains its principal place of business in Kansas City, Jackson County, Missouri, and that it is a “citizen” of Missouri. Defendants deny that the Diocese “operates” parishes, including St. Therese Catholic Church and School. Because defendants are uncertain as the meaning of the allegation that the Diocese “constitutes the Roman Catholic Church in portions of western Missouri,” defendants lack sufficient information to admit or deny that allegation.
3. Defendants admit paragraph 3, except that defendants deny that Ms. Lenz resides in Kansas City, Missouri.

Answer to Allegations about Jurisdiction and Venue

4. Answering paragraph 4, defendants admit that as currently pled, plaintiff's petition is between citizens of the same state, and that plaintiff's claims arise under Missouri law. Defendants further admit as currently pled, the federal courts would not have subject matter jurisdiction. Defendants deny that this Court has subject matter jurisdiction over this case to the extent that deciding the case would require this Court to interpret religious doctrine, rule on theological matters, or delve into the legitimacy of the religious beliefs of any defendant or person acting on behalf of a defendant. The Court is barred from inquiring into such matters under the First Amendment to the United States Constitution, and under Article I, Section 5 of the Missouri Constitution.

5. Answering paragraph 5, defendants admit that this Court has personal jurisdiction over both defendants, subject to the constitutional constraints referenced in the preceding paragraph.

6. Defendants deny that venue is proper in Jackson County, Missouri.

Answer to Allegations about Facts

7. Answering paragraph 7, defendants admit that plaintiff worked at St. Therese Catholic School beginning in approximately August 2000, as an Assistant Director in its Early Childhood Center. Defendants deny the remaining allegations of paragraph 7.

8. Answering paragraph 8, defendants admit that plaintiff became a teacher at St. Therese Catholic School in or around August, 2005 and that she was most recently a first grade teacher. Defendants deny the remaining allegations of paragraph 8.

9. Defendants admit paragraph 9.

10. Answering paragraph 10, defendants admit that Fr. Cisetti told plaintiff she had made the right choice by not having an abortion. Defendants deny the remaining allegations of paragraph 10 in that they do not accurately portray the conversation between plaintiff and Fr. Cisetti.

11. Answering paragraph 11, defendants admit that the Catholic Church's opposition to abortion is well known. Defendants deny the remaining allegations of paragraph 11.

12. Defendants deny paragraph 12.

13. Defendants deny paragraph 13.

14. Answering paragraph 14, defendants admit that during the first meeting between plaintiff and Fr. Cisetti, he informed plaintiff that he wanted to set up a meeting with Ms. Lenz, and that the three of them later met. Defendants deny that the ensuing meeting took place on March 6. Defendants deny the remainder of the allegations of paragraph 14 in that they do not accurately portray the substance of the conversation during that meeting.

15. Defendants deny paragraph 15, because it does not accurately or completely state the substance of the meeting it describes.

16. Answering paragraph 16, defendants admit that on March 17, 2015, Ms. Lenz emailed plaintiff to set up another meeting. Defendants deny the remaining allegations of paragraph 16, because they do not accurately or completely state the substance of the meeting described.

17. Defendants lack sufficient information to admit or deny paragraph 17.

18. Defendants deny paragraph 18, except that defendants admit that Ms. Lenz sent plaintiff an email on March 19, 2015 regarding plaintiff's tardiness.

19. Defendants deny paragraph 19.

20. Defendants deny paragraph 20.

21. Answering paragraph 21, defendants admit that an email was sent to the St. Therese school staff regarding plaintiff's pregnancy. Defendants deny the remaining allegations of paragraph 21, in part because plaintiff had input into the content of the referenced email, approved its content before it was sent, and praised Fr. Cisetti for its content after it was sent.

22. Defendants deny paragraph 22.

23. Answering paragraph 23, defendants admit that plaintiff was placed on a performance improvement plan on or about March 31, 2015, but deny the implication that such was in reaction to plaintiff's alleged resistance to what she now claims to be "discriminatory and retaliatory behavior."

24. Defendants deny paragraph 24.

25. Answering paragraph 25, defendants lack sufficient information to admit or deny whether plaintiff had a prenatal appointment on April 29, 2015. Plaintiff had not followed the required procedures for requesting time off from her teaching duties, and had not notified any of her supervisors that she was even leaving the school or why she would be away, in violation of school policies and procedures. Defendants admit that Ms. Lenz did not know where plaintiff had gone, and learned about plaintiff's absence from another teacher, but Ms. Lenz did not know why plaintiff was absent. Defendants further admit that plaintiff was sent an email noting her violation of the school's policies and procedures. Defendants lack sufficient information to admit or deny how this made plaintiff feel.

26. Answering paragraph 26, defendants admit that in late April, 2015, plaintiff wrote a letter to Fr. Cisetti expressing concerns over the performance of another teacher at St. Therese who taught plaintiff's son. Plaintiff's letter speaks for itself, and defendants therefore deny paragraph 26 to the extent it mischaracterizes that letter.

27. Answering paragraph 27, defendants admit that Ms. Lenz requested plaintiff to discuss her concerns over her son's teacher directly with that teacher, which were the same instructions Ms. Lenz gave to any parent who was complaining about a teacher. Defendants deny the remaining allegations of paragraph 27.

28. Answering paragraph 28, defendants admit that on or about May 1, 2015, plaintiff was notified that her contract would not be renewed for the 2015-16 school year. Defendants deny the remaining allegations of paragraph 28.

29. Answering paragraph 29, defendants admit that plaintiff's employment terminated at the end of her contracted term. Defendants deny the remaining allegations of paragraph 29.

30. Answering paragraph 30, defendants admit that plaintiff requested a service letter from the Diocese. Defendants deny the remaining allegations of paragraph 30.

Answer to Allegations of Count I

31. Defendants restate and incorporate by reference their responses to paragraphs 1 through 30.

32. Answering paragraph 31, defendants admit that the Diocese was an "employer" as that term is defined in Mo. Rev. Stat. § 188.100.1.

33. Defendants admit paragraph 33.

34. Defendants admit paragraph 34.

35. Defendants deny paragraph 35.

36. Answering paragraph 36, defendants admit that plaintiff's pregnancy out of wedlock would become known. Defendants deny the implication of paragraph 36 that plaintiff's decision to bear her child contributed in any way to the non-renewal of her teaching contract employment.

37. Defendants deny paragraph 37.

38. Defendants deny paragraph 38.

39. Defendants deny paragraph 39.

40. Defendants deny paragraph 40.

41. Defendants deny paragraph 41.

42. Answering paragraph 42, defendants deny that the Diocese has terminated any employees "for carrying a child while being unwed." Defendants lack information sufficient to admit or deny the remaining allegations of paragraph 42, because they are phrased in an argumentative way that makes it impossible to respond to them.

43. Defendants deny paragraph 43.

44. Defendants deny paragraph 44.

45. Answering paragraph 45, defendants state that it does not allege any facts, but is instead a prayer for relief. Defendants deny that plaintiff is entitled to any relief by virtue of the allegations in Count I.

Answer to Allegations of Count II

46. Defendants restate and incorporate by reference their responses to paragraphs 1 through 45.

47. Answering paragraph 47, defendants admit that the Diocese was an “employer” as that term is defined in Mo. Rev. Stat. § 188.100.1.

48. Defendants admit paragraph 48.

49. Defendants deny paragraph 49, and specifically deny that any of the actions alleged in paragraph 49 violated the Missouri Abortion Act of 1986.

50. Answering paragraph 50, defendants admit that plaintiff’s employment terminated by virtue of the non-renewal of her contract. Defendants deny the remaining allegations of paragraph 50.

51. Defendants deny paragraph 51.

52. Defendants deny paragraph 52.

53. Defendants deny paragraph 53.

54. Defendants deny paragraph 54.

55. Defendants deny paragraph 55.

56. Answering paragraph 56, defendants state that it does not allege any facts, but is instead a prayer for relief. Defendants deny that plaintiff is entitled to any relief by virtue of the allegations in Count II.

Answer to Allegations of Count III

57. Defendants restate and incorporate by reference their responses to paragraphs 1 through 56.

58. Defendants admit paragraph 58.

59. Defendants admit paragraph 59.

60. Defendants admit paragraph 60.

61. Defendants deny paragraph 61.

62. Defendants deny paragraph 62.

63. Answering paragraph 63, defendants state that it does not allege any facts, but is instead a prayer for relief. Defendants deny that plaintiff is entitled to any relief by virtue of the allegations in Count III.

Answer to Allegations of Count IV

64. Defendants restate and incorporate by reference their responses to paragraphs 1 through 63.

65. Defendants deny paragraph 65.

66. Answering paragraph 66, defendants admit that plaintiff's employment terminated after the expiration of her contract, but deny that any report by plaintiff of conduct by another teacher contributed in any way to the non-renewal of plaintiff's contract.

67. Defendants deny paragraph 67.

68. Defendants deny paragraph 68.

69. Defendants deny paragraph 69.

70. Answering paragraph 70, defendants state that it does not allege any facts, but is instead a prayer for relief. Defendants deny that plaintiff is entitled to any relief by virtue of the allegations in Count IV.



### Answer to Allegations of Count V

71. Defendants restate and incorporate by reference their responses to paragraphs 1 through 70.

72. Defendants deny paragraph 72.

73. Defendants deny paragraph 73.

74. Defendants deny paragraph 74.

75. Defendants deny paragraph 75.

76. Defendants deny paragraph 76.

77. Answering paragraph 77, defendants state that it does not allege any facts, but is instead a prayer for relief. Defendants deny that plaintiff is entitled to any relief by virtue of the allegations in Count V.

### First Affirmative Defense

Counts I and II of plaintiff's petition fail to state a claim upon which relief can be granted against defendant Carol Lenz. Ms. Lenz is not an "employer" within the meaning of Mo. Rev. Stat. § 188.100.1, and plaintiff's petition fails to allege any facts in support of plaintiff's bald legal assertion that Ms. Lenz "aided, abetted, incited, and compelled" any actions that plaintiff alleges to have violated Mo. Rev. Stat. § 188.105.

### Second Affirmative Defense

Counts I and II of plaintiff's petition fail to state a claim upon which relief can be granted against the Diocese. The facts alleged by plaintiff, even if construed in the light most favorable to plaintiff, do not support an inference that her contract was non-renewed because she did not have an abortion, or that she was retaliated against for not participating in abortion.

Rather, the facts alleged by plaintiff reflect that she was praised for not participating in abortion, and that her refusal to participate in abortion played no role in the decision not to renew her teaching contract. Further, plaintiff may not rely upon the Missouri Abortion Act to evade the constitutional prohibition against this Court's interpretation of religious doctrine, or ruling on theological matters.

### Third Affirmative Defense

This Court may not exercise jurisdiction in this case to the extent that it would require this Court to interpret religious doctrine, rule on theological matters, or delve into the legitimacy of the religious beliefs of any defendant or person acting on behalf of a defendant. The Court is barred from inquiring into such matters under the First Amendment to the United States Constitution, and under Article I, Section 5 of the Missouri Constitution. This specifically precludes the Court from determining whether plaintiff's pregnancy out of wedlock contributed to the decision not to renew plaintiff's contract, because her contract included a provision in which she acknowledged that she was "directly involved in the formation of youth in the name of the Catholic Church. In carrying out these solemn responsibilities as a Teacher, I will conduct myself in a manner that does not contradict her doctrinal and moral teachings." The Catechism of the Catholic Church prohibits sexual relations between an unmarried man and an unmarried woman. Permitting plaintiff to pursue a claim under the Missouri Abortion Act would inextricably intertwine the Court in the religious doctrine of the Church by effectively making it impossible for the Church to enforce its religious doctrines against persons who choose to be employed by the Diocese. Plaintiff's case presents a "heads I win, tails you lose" dilemma for the Diocese, in violation of the United States and Missouri Constitutions.

#### Fourth Affirmative Defense

Plaintiff has failed to mitigate her damages, by refusing to seek alternative employment for which she was qualified.

#### Fifth Affirmative Defense

Plaintiff is not permitted to recover punitive damages, because such are not authorized under the Missouri Abortion Act, and plaintiff's claim under the Missouri Service Letter Law arises solely from the content of the service letter delivered to plaintiff. Mo. Rev. Stat. § 290.140.2 explicitly prohibits a claim for punitive damages "based upon the content of any such [service] letter."

#### Sixth Affirmative Defense

Plaintiff is not entitled to any injunctive relief because plaintiff has unclean hands due to her own misconduct while employed by the Diocese. For instance, plaintiff misrepresented her the extent of her past tardiness after she was confronted with a single incident of it in March, 2015, plaintiff refused to sign her performance improvement plan to acknowledge her receipt of it, plaintiff was insubordinate after being directed to meet with Ms. Lenz about the concerns plaintiff had expressed about the teacher of her own child, plaintiff violated the Diocese's Code of Ethics by sharing confidential information with another parent, and plaintiff left the children in her classroom unattended and unsupervised on a number of occasions.

#### Seventh Affirmative Defense

Count IV of plaintiff's first amended petition fails to state a claim upon which relief can be granted, because it does not show that plaintiff reported serious misconduct that constituted a violation of law and of well-established and clearly mandated public policy, i.e., a

constitutional provision, a statute, a regulation promulgated pursuant to statute, or a rule created by a governmental body.

Eighth Affirmative Defense

Count V of plaintiff's first amended petition fails to state a claim upon which relief can be granted, because the facts pled by plaintiff show that her pregnancy out of wedlock was not a "private affair." It was well-known to plaintiff's co-workers that she was not married, and plaintiff's pregnancy was or would be readily apparent to those co-workers. Count V further fails to state a claim because it does not allege any facts in support of the bare elements of the cause of action under which plaintiff attempts to sue.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2016, I electronically filed the foregoing with the clerk of the court by using the Missouri eFiling System which will send a notice of electronic filing to the following:

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