

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MICHELLE FITZGERALD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:19-cv-04291-RLY-TAB
)	
RONCALLI HIGH SCHOOL, INC., and)	
the ROMAN CATHOLIC)	
ARCHDIOCESE OF)	
INDIANAPOLIS, INC.,)	
)	
Defendants.)	

PLAINTIFF’S SUPPLEMENTAL BRIEF

The record in *Starkey v. Roman Catholic Archdiocese of Indianapolis* showed that Lynn Starkey was a minister. Op.12. But the ministerial exception requires an individualized, fact-intensive inquiry. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2064, 2069 (2020). Because on *this* record, the key facts relied on in *Starkey* are disputed—or entirely absent—*Starkey* does not change the result here: Summary judgment is improper.

The Seventh Circuit based its holding on four considerations: (1) Starkey had religious responsibilities, (2) Starkey’s failure to perform those responsibilities did not undermine her ministerial role, (3) Roncalli held Starkey out as a minister, and (4) Starkey did not show that Roncalli’s ministerial contracts were pretextual. Fitzgerald’s evidence raises material factual disputes on each point.¹

¹ Roncalli criticizes Fitzgerald’s declaration as “self-serving.” *See, e.g.*, Dkt. 129 at 8. But “[d]eposition testimony, affidavits, responses to interrogatories, and other written statements by their nature are self-serving.” *Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013). “[T]he term

1. The Seventh Circuit relied on evidence showing that Starkey “was entrusted with communicating the Catholic faith to children, supervising guidance counselors, and advising the principal on matters related to the school’s religious mission.”

Op.13. The record here supports a different conclusion.

At Roncalli, Starkey performed religious duties: As a music teacher, she prepared “students for the music that was used during the all-school liturg[ies],” and she later became a New Testament teacher and a certified catechist. Op.2-3. Fitzgerald never had comparable roles. SA.20.

Nor did Fitzgerald have or perform the religious duties that the Seventh Circuit concluded Starkey had as a guidance counselor. “[M]ore than once [Starkey] delivered a morning prayer over the school’s public address system.” Op.3. Fitzgerald never did. SA.20. Starkey’s evidence did not rebut that she was expected to communicate the Catholic faith to students and pray with them, in line with her ministry description. Op.12-13. But here, Fitzgerald and other counselors testified that Roncalli did *not* entrust them with those or any other religious duties; the ministry description did not reflect their actual job duties. SA.17-20, 28-31, 36-37. Fitzgerald often missed all-school liturgies and did not sit with students when she did attend. *Compare* Op.4-5, *with* SA.20, App.210. And while *Starkey* relied on another counselor’s testimony that praying with students “was a regular part of her job,” Op.3, Fitzgerald’s evidence contradicts that description, SA.30, 77; *see also* Dkt. 126 at 11.

‘selfserving’ must not be used to denigrate perfectly admissible evidence through which a party tries to present its side of the story at summary judgment.” *Id.*

As “Co-Directors of Guidance,” Starkey and Fitzgerald had different responsibilities. Fitzgerald was responsible for “coordinating standardized testing,” SA.14-15, 31, and attending the CollegeBoard Fall Counselor Workshop, App.40, 576, wholly secular activities that took up the bulk of her role as Co-Director. *See* SA.14-15. Nor was supervising other counselors a religious duty: Fitzgerald did not “help[] develop ... religious components” for evaluating counselors, and her evidence shows factual disputes about whether Roncalli truly considered religious criteria in CEAP or otherwise. *Compare* Op.13, *with* SA.16-17.

Fitzgerald’s evidence also raises material factual disputes about the Administrative Council. Fitzgerald did not participate in discussions about “how Roncalli should present itself as a Catholic option for faith formation and religious education,” nor was she expected to give input on religious matters. *Compare* Op.5-6, *with* SA.9-12, App.200, 368-69; *see also* Dkt. 126 at 14-15, 21. Indeed, the Council “did not play a role in Roncalli’s ministry or religious mission;” rather, some individual Council members—and not Fitzgerald—had unrelated religious duties. SA.9-10. And Fitzgerald and multiple other employees disagreed with Weisenbach’s contention that the Council (and Department Chairs) were “responsible for 95%”—or any—“of Roncalli’s daily ministry.” *Compare* Op.5, *with* SA.9, 46, 52.

2. Although Starkey argued that she was not a minister because “she did not act in a ministerial capacity, even if she were entrusted to do so,” the Seventh Circuit reasoned that “an employee is still a minister if she fails to adequately perform the religious duties she was hired and entrusted to do.” Op.14. But here, the record

shows that Fitzgerald *did* adequately perform her duties; none of them were religious.

Fitzgerald received consistently positive evaluations, App.609-17, with Weisenbach expressing “great admiration and respect” for Fitzgerald’s work. App.616. His evaluations never mentioned Fitzgerald performing religious duties or that she should. App.609-17. The same is true of her CEAP evaluations, which included observations of Fitzgerald’s meetings with students and parents. SA.140; App.529-71. None criticized her failure to engage in religious conversations, but instead praised her strategies for meeting students’ “academic needs.” App.529. If Fitzgerald were truly expected—but had failed—to perform religious duties, surely her evaluations would have reflected that. But they show just the opposite.

Nor can Roncalli show that it mistakenly believed Fitzgerald *was* incorporating religion in her work. The checklists describing what counselors must cover during annual appointments—developed before Fitzgerald’s tenure—never mention religion. SA.4, 6. The videos shown before senior appointments likewise did not discuss religion or spirituality. SA.4; Dkt. 125 at iii. Even after a religion teacher told Weisenbach that the guidance counselors “were not praying with students or talking about God or religion during counseling appointments,” he did not instruct Fitzgerald to “pray with students,” discuss religion, or perform her work from a religious perspective. SA.8. Likewise, Weisenbach knew that Fitzgerald was not performing religious functions on the Administrative Council, *see* SA.9-12, yet he praised her work and never told her to take on religious responsibilities. App.610-11, 613, 615.

3. The Seventh Circuit’s conclusion that Roncalli held Starkey out as a minister also does not control. Op.13. Although contract terms or job titles can support an inference that an employer has held an employee out as a minister, *see id.*, evidence of how an employee is actually held out to the community carries more weight. *Cf. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 191 (2012). Fitzgerald has shown that Roncalli never held her out as a minister. It communicated her role to students, teachers, and parents the way that any public school would describe its guidance counselors. For example, the list of guidance-department services on Roncalli’s website did not mention religious counseling, nor did it describe any counselors as ministers or religious leaders. SA.118-22,124-25, 127-28, 136. Students “weren’t encouraged to go to Ms. Fitzgerald or the other guidance counselors with religious questions” or to pray with their counselors. SA.56; *see also* SA.60, 62-63, 72-73. Instead, Roncalli communicated that the department’s role was “to get the college acceptance rate as high as possible.” SA.56; *see also* SA.35.

4. In all, Fitzgerald’s evidence shows that she did not perform religious duties, was not expected to perform religious duties, and was not held out as performing religious duties. So a reasonable jury could infer that Roncalli’s formal documents labeling her a minister were merely pretextual. Put another way, because the only step Roncalli took to make Fitzgerald a minister was to insert form language into employment documents, its reliance on that language during litigation—*not* when

Fitzgerald was employed—is not an “honest one[.]” See *Sterlinski v. Cath. Bishop of Chicago*, 934 F.3d 568, 571 (7th Cir. 2019).²

Beyond the incongruity between Roncalli’s employment documents and Fitzgerald’s actual job duties, Fitzgerald’s evidence of how the documents were presented to employees supports the inference that Roncalli used them as legal loopholes: Fitzgerald was expected to sign the ministry contract before she received the ministry description or faculty handbook, and without the opportunity to provide input on the contract language. SA.3, 18, 30-31, 37. Roncalli did not discuss the new documents with the counselors or provide training on them. *Id.* And multiple counselors confirmed that their duties remained secular after the ministry contracts were introduced. *Id.*

Starkey’s pretext argument failed because it relied on the Archdiocese’s lawyers’ earlier conclusion that counselors were not ministers. Op.15. Fitzgerald, on the other hand, has introduced ample evidence to support an inference that Roncalli imposed the ministry contract as pretext to protect itself from legal liability. At this stage, the Court must draw this reasonable inference in Fitzgerald’s favor.

* * *

Even in *Starkey*, “[i]t [was] a stretch to call a high school guidance counsellor a minister.” Op.24 (Easterbrook, J., concurring). That is more so here. When the evidence is viewed in Fitzgerald’s favor, as it must be at summary judgment, a

² Because what matters is what an employee *does*, *Morrissey-Berru*, 140 S. Ct. at 2064, not whether an employer’s description is pretextual, it is doubtful that *Sterlinski*’s pretext analysis survives *Morrissey-Berru*. See *Sterlinski*, 934 F.3d at 571. In any event, Fitzgerald has introduced evidence to satisfy either standard for showing that Roncalli’s formal documents did not make her a minister.

reasonable jury could conclude that Fitzgerald did not—and was not expected to—play any important religious role, so any attempt to classify her as a minister is pretextual. *Starkey*'s distinct record does not change that conclusion.

Respectfully submitted,

/s/ Bradley Girard

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August 17, 2022