

STANDARDS OF CARE ARE RISING FOR 'SPONSORING ORGANIZATION'

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Florida Baptist Convention Found Liable in Abuse Case ...though abuser was not an employee of the Convention

Article in the Orlando Sentinel :

http://articles.orlandosentinel.com/2012-05-17/news/os-baptist-sex-abuse-verdict-20120517_1_triangle-community-church-douglas-w-myers-church-planter

Brief Facts

Douglas W. Myers was a Baptist pastor and church planter. Myers allegedly received training and funds from the Florida Baptist Convention (Convention), and others, in connection with planting two churches in Florida. Myers plead guilty to sexually abusing a 13 year-old boy from the church he planted/pastored in Florida.

The boy's family sued the Convention and two other sponsoring entities: Lake County Baptist Association and Bay Street Baptist Church. The case went to trial against the Convention after Lake County and Bay Street settled out of court.

Though all parties agreed that Myers was not an employee of the Convention, the jury found the Convention partially liable for the sexual abuse.

Why this Case is Significant

Many lawsuits attempt to reach 'sponsoring entities', regional associations, denominational offices, and entities within operational structures for the sake of financial contribution when there is an abuse allegation.

To successfully hold a denomination or association liable, Plaintiffs utilize a two-pronged analysis: first, there must be relationship (usually employment) between the entity and the abuser; second, the entity 'knew or should have known' information suggesting risk of abuse.

The significance in this Florida case relates to the first prong: Myers was not an employee of the Convention. Can the Convention be held liable for the behavior of a non-employee? The jury said 'yes'.

For many organizations/denominations, the first prong is easy to satisfy. The Catholic Church is unquestionably hierarchical – the clergy members are 'employees' of the hierarchical church with regional diocesan offices and primary headquarters in the Holy See, Vatican City. Baptists are on the other end of the spectrum: congregational. Put differently, the various Baptist conventions and associations claim no right to control church-level decisions or leadership – on paper or in practice. Most US denominations

fall on the spectrum between Catholic (highly structured control - on paper and in practice) and the Baptists (no attempt to control - on paper or in practice). Most denominations have a structure ... but behave congregationally. These denominations often mistakenly believe that their refusal to exercise top-down influence insulates them from liability. Many have been rudely informed by juries that when they have a right to exercise authority – it is reasonable and expected that they exercise it; their choice not to do so does not remove them from responsibility or liability.

In any case, Baptist conventions and associations have the best argument against liability, given that there is no ‘structure’ creating relationship for the purpose of liability – and that position was clearly presented by the Florida Baptist Convention in this lawsuit. Nevertheless, the jury rejected this argument and found the FBC partially responsible for the abuse.

Why the Convention was Held Liable

To understand why the jury held the Convention responsible, more facts are necessary. Myers had been associated with churches in Maryland and Alabama prior to planting two churches in Florida. Allegedly, there were reports at both the Maryland and Alabama churches that Myers engaged in behaviors that gave rise to a suspicion of sexual abuse, prior to Myers application to plant churches in Florida.

Before planting churches in Florida, Myers applied for and received sponsorship (training and funding) from the Florida Baptist Convention, Lake County Baptist Association and Bay Street Baptist Church. Part of the approval process included a criminal background check on Myers run by FBC (or one of the other entities).

At trial, the Convention argued that the Convention had run a criminal background check – and, given its lack of employment relationship with Myers, that should have been sufficient. The jury disagreed. The jury indicated that the Convention should have checked Myers’ references, which would have revealed the prior bad acts (and thereby disqualified him for training/funding to engage in church planting as a Baptist).

Another way to characterize the jury’s decision is this: notwithstanding the fact that Myers was not an employee of the Convention, it was reasonable to expect the Convention to check Myers’ references (i.e. undertake screening *beyond* a background check). In the legal world, this is called a ‘standard of care’. It was reasonable to expect the Convention to screen this applicant (including reference checks) before providing training/funding.

What are the Ramifications?

According to media reports, the lawyer for the Convention called the jury’s ruling “new law”. More accurately, the jury simply expanded what it believed was reasonable for an entity like the Convention. This is not “new law”; but a new expectation – and not unique to Florida.

Our current culture is angry about the widespread victimization of children – and angry at entities that defend themselves by claiming ‘no responsibility’. Legislatures are listening to angry constituents and introducing legislation to expand liability and statutes of limitation. Current legal culture is finding means to assign fault for sexual abuse beyond the perpetrator or direct employers of the perpetrator.

The direct impact of this ruling for churches will relate to church planting and missionaries, particularly where sponsoring organizations do little to screen, beyond a minimal criminal background check.* Further, church planters and missionaries are not easily supervised, once commissioned. The Florida jury is communicating what our culture is demanding: churches and ministries must undertake reasonable screening before sponsoring – or bare responsibility for their failure to do so.

Legal Analysis

Frankly, this ruling is appropriate – and we will see more like it.

Question: Why did the association undertake a criminal background check on Myers?

Answer: Making *reasonable effort* to access past criminal behavior of a potential church planter helps determine if Myers could be a risk to children (or adults, for that matter).

No one argues that it was reasonable to undertake a criminal background check on a church planter seeking funds from the Convention, an association or a sponsoring church. The sponsoring entities recognized that they should undertake *some* level of vetting before providing Myers with the means to engage the community (which includes children). When we screen, what are we looking for? Is the applicant a thief? Does the applicant have a history with drugs, weapons, etc.? Is the applicant a sexual predator?

At trial, the Convention argued that it completed a background check; a reasonable effort to learn of foreseeable risks — including harm to a child. The jury, however, agreed with the victim that the Convention *did not do enough*. Put differently, the background check was a good start, but the Convention should have checked references and called prior churches to determine whether Myers was a risk to children before approving him (giving him the means to engage the public).

This is a new standard of care. If Baptist conventions and associations continue to use this planting model for growth (which they will), conventions and associations must add additional screening elements (including reference checks).

IF the association and sponsoring church had checked Myers references and called prior church employers, undoubtedly they would not have sponsored him: problem solved.

IF the association and sponsoring church had checked Myers references and called prior church employers *but learned nothing of import before sponsoring him*: problem solved. The association and sponsoring church are responsible for information that they knew or (with reasonable effort) could have known. If the Convention had taken these extra steps and learned nothing suggesting risk, no liability is supported. The key is 'what

you knew or should have known'. The Florida jury's decision is in line with our cultural climate – sponsoring entities must make 'reasonable' effort to screen applicants effectively, and what is 'reasonable' includes more than a criminal background check.

**Given that less than 10% of sexual abusers will ever encounter the criminal justice system, a criminal background check alone cannot be considered a stand-alone screening system for ministry applicants.*

About Gregory Love and Kimberlee Norris:

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, they represent ministry and secular organizations such as churches, non-profits (adoption and foster care), private schools, camps, churches and para-church ministries.

MinistrySafe/Abuse Prevention Systems

In addition to an active law practice, Love and Norris are co-founders and Directors of MinistrySafe and Abuse Prevention Systems, entities dedicated to sexual abuse awareness and prevention. MinistrySafe and Abuse Prevention Systems provide Sexual Abuse Awareness Training (live and online) and assist child care entities and organizations in the design and implementation of safety systems which reduce the risk of child sexual abuse. Love and Norris are frequent speakers before educational entities, youth and children's ministries, youth camps, day care, and adoption and foster care organizations. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administration (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), Presbyterian General Assembly, Youth Ministry Institute (YMI), Kanakuk Kamps, Young Life, Hawaiian Islands Ministries, and Texas Alliance for Children and Families, and are featured writers for the upcoming NACBA resource entitled *Professional Practices in Church Administration*. Both serve as guest lecturers at Southwestern Baptist Theological Seminary, and are actively involved in High School and Children's Ministries at Christ Chapel Bible Church in Fort Worth, Texas.

MinistrySafe is endorsed by Philadelphia Insurance Companies and the American Camp Association. MinistrySafe's Sexual Abuse Awareness Training is an approved training by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is also an approved CEU for the Association of Christian Schools International (ACSI).