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Court greenlights fired gay teacher's lawsuit against Catholic school

by Dan Morris-Young

Seattle — A motion to dismiss a lawsuit against Eastside Catholic School by an administrator fired in December after his same-sex marriage came to light has been rejected by King County Superior Court in Seattle.

In a ruling read from the bench Friday, Judge Catherine Shaffer said it did not appear that proceeding with the case would interfere with the school's First Amendment rights, and that if facts outlined in the complaint by Mark Zmuda could be proven, "it looks like we would be entitled to relief," Zmuda attorney Rick Friedman told *NCR*.

In a statement emailed to *NCR*, the law firm representing Eastside Catholic said: "We are disappointed the Court denied Eastside Catholic's Motion to Dismiss. However, we vow to renew our motion based on evidence the Court was not permitted to consider at this stage of the litigation. Specifically, as described in Eastside Catholic's Answer, Mr. Zmuda's responsibilities were inextricably tied to the magisterium of the Church. Although the Court was not permitted to consider Mr. Zmuda's religious responsibilities as part of its ruling, we will re-file our motion as a Motion for Summary Judgment so that the Court can consider this additional dispositive evidence."

Filed March 7, Zmuda's suit names Eastside Catholic as well as the Seattle archdiocese. The archdiocese has maintained it does not have administrative control of the school and, thus, was not party to the dismissal of Zmuda.

Located in the Seattle suburb of Sammamish, Eastside enrolls students in grades 6 through 12.

In their March filing, Zmuda's attorneys had charged that the popular educator's termination had violated

state law, was carried out "to make an example out of" him, and went against policies of the Eastside Catholic's employee handbook.

In its motion dismissed Friday, Eastside Catholic's attorneys argued that "the court does not have jurisdiction to adjudicate the plaintiff's claims without violating the First Amendment" and that hearing it would "impermissably entangle the court in Catholic doctrine."

Among statements in Zmuda's filing:

- Because its handbook and website have stated that the school "would not discriminate on the basis of an employee or applicant's race, religion, creed, color, sex, age, national origin, marital status, sexual orientation, or any other status or condition protected by local state or federal laws" ... "ECS should have reasonably expected that its employees would rely on these promises of non-discrimination and exercise their legal rights to marry";
- During a meeting in November with Eastside administrators, Zmuda was told his marriage last summer to his longtime partner was "none of their (ECS's) business" and that he "had 'full support' from the ECS administration";
- The school president told Zmuda about a week later that he would be "terminated unless he filed for a divorce," but also that "if he were to divorce his husband, ECS would pay the costs of holding a 'commitment ceremony' in place of a wedding";
- On Dec. 16, the school president told Zmuda that she had met with Archbishop J. Peter Sartain "and others" to discuss the situation, that "Mr. Zmuda would be terminated because of his status as a married gay man," and that the decision "came from the archbishop, and not the school."
- The school president called a faculty meeting Dec. 19 "to inform ECS employees of Mr. Zmuda's termination" during which she "confirmed ... the decision to terminate Mr. Zmuda was made by the archdiocese and that her 'hands were tied'."

A 47-page response to the lawsuit prepared by school attorneys disputes Zmuda's contention that his job duties -- which included that of swim coach -- were "purely administrative and unrelated to any religious practice or activity."

It states that the employee handbook makes it clear that employees are to uphold Catholic teaching and practice in all aspects of their work.

The response also said Zmuda was asked to remove "inappropriate" Facebook photos brought to school officials' attention by concerned parents in January 2013, and that the educator had referred to his same-sex spouse as "friend" and also "roommate" on school contact forms.

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Titled "Eastside Catholic School's Answer and Affirmative Defenses," the document addresses each numbered paragraph of the lawsuit.

In the wake of Zmuda's dismissal, Sr. Mary Tracy, a Holy Names of Jesus and Mary sister, resigned as school president and CEO in January.

Announcement of Zmuda's firing in December led to:

- A Jan. 15 statement by Sartain supporting Eastside's decision to ask for Zmuda's resignation, saying

it was not discriminatory but in line with clear church teaching and the school's mission;

- A sit-in by Eastside students as well as a petition drive asking Zmuda's reinstatement which had been signed by more than 33,000 before it was delivered to Sartain;
- Protests from many parents and alumni;
- An open letter in March to Pope Francis, the U.S. bishops, Sartain and the Eastside Catholic trustees from the Seattle University student government asking for "dialogue centered first and foremost on affirmation, inclusion and invitation to greater understanding."

Meanwhile, in a text to *NCR* today, Mercer Island School district public information officer Randy Bolerjack confirmed that Zmuda has been hired as associate principal of Mercer Island High School effective July 1.

Mercer Island is located in Lake Washington and is considered a suburb of Seattle.

A news release on the school district's website said Zmuda had been selected from a slate of 60 candidates.

Zmuda has been vice principal at Eastside.

Attorney Friedman declined to share contact information for Zmuda. "Mark is trying to keep his head down and move forward," Friedman said. "He does not want to back down on the case. It is important to him. But, he does not want to turn himself into a public figure as it were."

Friedman said a meeting is scheduled May 30 with "lawyers for all sides" to calendar "the start of discovery, taking depositions, and so on."

[Dan Morris-Young is *NCR*'s West Coast correspondent.]

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