

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

New Hope Family Services, Inc. v. Poole

No. 19-1715-cv, United States Court of Appeals for the Second Circuit (July 21, 2020)

SUMMARY

The Second Circuit held that a religious adoption agency stated plausible First Amendment Free Exercise and Free Speech claims against New York's enforcement of an anti-discrimination regulation (18 NYCRR § 421.3(d)) requiring it to serve same-sex and unmarried couples or close its adoption ministry. The court ruled that dismissal was premature because the pleadings raised a sufficient suspicion of religious hostility, given the permissive statutory language, the agency's long-standing refusal-and-referral practice, and statements by state officials suggesting religious beliefs could not be carried into the public sphere. The case was remanded for further proceedings, including consideration of a preliminary injunction, applying the neutrality and general applicability test under *Employment Division v. Smith* and *Lukumi v. Hialeah*.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Reena Raggi; José A. Cabranes; Edward R. Korman
JURISDICTION	Federal
DECIDED	July 21, 2020
DOCKET	19-1715-cv
DISPOSITION	reversed_in_part_vacated_in_part_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of New York (D'Agostino, J.) granting dismissal pursuant to Fed. R. Civ. P. 12(b)(6) and denying preliminary injunction as moot.
STANDARD OF REVIEW	de novo for dismissal for failure to state a claim
PRECEDENTIAL VALUE	Published
PARTIES	New Hope Family Services, Inc. v. Sheila J. Poole, in her official capacity as Acting Commissioner for the Office of Children and Family Services for the State of New York

TOPICS

constitutional law

first amendment

free speech

civil procedure

motions to dismiss

appellate procedure

standard of review

civil rights

PRACTICE AREAS

Civil Rights

First Amendment

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing New Hope's Free Exercise claim under the First Amendment.
2. Whether the district court erred in dismissing New Hope's Free Speech claim (compelled speech and expressive association).

HOLDINGS

1. The district court erred in dismissing New Hope's Free Exercise claim because the pleadings, when viewed in the light most favorable to New Hope, raise a plausible suspicion of religious hostility, and thus the claim should not have been dismissed at the pleadings stage.
2. The district court erred in dismissing New Hope's compelled speech claim because the pleadings plausibly allege that OCFS's actions compel New Hope to speak in favor of adoptions by unmarried and same-sex couples, contrary to its religious beliefs, and the government speech doctrine does not apply at this stage.
3. The district court erred in dismissing New Hope's expressive association claim because the pleadings plausibly allege that OCFS's enforcement of the regulation impairs New Hope's ability to advocate its religious values and may cause it to discipline employees who share those beliefs, thereby affecting the composition of the association.

KEY QUOTATIONS

“The pleadings, if accepted as true and viewed in the light most favorable to New Hope, do not permit a court to conclude as a matter of law that 18 NYCRR § 421.3(d), as promulgated and enforced by OCFS, was neutral and not based on some hostility to New Hope’s religious beliefs.” (at 32)

“It is hardly evident from the pleadings that OCFS, in requiring New Hope to conform its policies to 18 NYCRR § 421.3(d), would permit New Hope to counsel unmarried and same-sex couples that it is in the best interests of a child to be adopted by a heterosexual married couple and not in the best interests of a child to be adopted by an unmarried or same-sex couple.” (at 53-54)

“We agree that New Hope’s Free Exercise and Free Speech claims should not have been dismissed at the pleadings stage and, therefore, that its preliminary injunction motion is not moot.” (at 2)

FACTUAL BACKGROUND

New Hope Family Services is a private, Christian adoption agency that has operated in New York for over 50 years. It receives no government funding. Based on its religious beliefs, New Hope will not place children with

unmarried or same-sex couples; instead, it refers such couples to other agencies. In 2018, OCFS informed New Hope that this policy violates a state anti-discrimination regulation (18 NYCRR § 421.3(d)) and ordered it to either change its policy or close its adoption operation. New Hope sued, alleging violations of its Free Exercise and Free Speech rights.

PROCEDURAL HISTORY

New Hope filed a complaint in the Northern District of New York alleging violations of its First and Fourteenth Amendment rights. The district court granted OCFS's motion to dismiss for failure to state a claim and denied New Hope's motion for a preliminary injunction as moot. New Hope appealed.

DISPOSITION

reversed_in_part_vacated_in_part_and_remanded

REMAND INSTRUCTIONS

We remand the case to the district court for further proceedings consistent with this opinion, including whether to grant New Hope a preliminary injunction preventing OCFS from mandating the closure of New Hope's adoption operation while the merits of this case are litigated. Pending the district court's ruling on that preliminary injunction motion, the narrow injunction granted by this court shall remain in effect.

CASES CITED

- Employment Div. v. Smith, 494 U.S. 872 (1990)
- Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993)
- Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, Masterpiece Cakeshop v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719 (2018)
- Obergefell v. Hodges, 135 S. Ct. 2584 (2015)
- Fulton v. City of Philadelphia, 922 F.3d 140 (3d Cir. 2019)
- Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205 (2013)
- Matal v. Tam, 137 S. Ct. 1744 (2017)
- Walker v. Texas Div., Sons of Confederate Veterans, Inc., 576 U.S. 200 (2015)
- Pleasant Grove City v. Summum, 555 U.S. 460 (2009)
- Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550 (2005)
- Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000)
- Rumsfeld v. Forum for Acad. and Institutional Rights, Inc., 547 U.S. 47 (2006)
- Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020)