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**SUPREME COURT OF NEW YORK
KINGS COUNTY**

Wilson v. Kilkenny¹
(decided May 15, 2006)

Wilson, a non-custodial father, brought a petition in Kings County Supreme Court seeking to have his daughter's name legally changed as well as to have her birth and baptismal certificates amended to reflect his fatherhood.² He contented that the changes would "substantially promote the best interests of the child."³ While the birth certificate issue was declared moot and the name change issue was denied on the merits, the court found that the request to alter the baptismal certificate was an affront to "the bedrock principle of church and state separation."⁴ The court identified the issue as a religious dispute⁵ in which the court could not interfere pursuant to the First Amendment.⁶ The First Amendment requires that "[g]overnment in our democracy, state and national, must be neutral in matters of religious . . . practice."⁷ The court found that to order the Catholic Church to alter the baptismal certificate would result in

¹ No. 8386/05, 2006 N.Y. Misc. LEXIS 1145, *1 (Sup. Ct. May 15, 2006).

² *Id.*, at *2.

³ *Id.*, at *1.

⁴ *Id.*, at *6.

⁵ *Id.*, at *9.

⁶ U.S. CONST. amend. I states in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"

⁷ *Wilson*, 2006 N.Y. Misc. LEXIS 1145, at *7 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 103-04, (1968)).

an “ ‘unhallowed perversion’ ” of a religious matter by the court.⁸ Therefore, the court left the decision on the matter to the Catholic Church.⁹

Born on April 29, 2003, Claudia Rose Kilkenny is the child of Sean Wilson and Caroline Kilkenny.¹⁰ Following the birth, the unwed parents entered into a stipulation of settlement agreement granting custody of the child to the mother and visitation rights to the father.¹¹ It was agreed that Claudia would be raised Roman Catholic.¹² However, Wilson did not find it agreeable that the child’s name, baptismal, and birth certificates failed to reveal that he was the father.¹³ He filed the instant action requesting that the court order three forms of relief including the issuance of a birth certificate amended to reflect his fatherhood; the issuance of an amended baptismal certificate by the Catholic Church changing the name of the child to “Claudia Maureen Wilson” or alternatively naming him as the father; and the legal name change of the child to either “Claudia Maureen Wilson” or “Claudia Kilkenny Wilson.”¹⁴

The court quickly resolved the birth certificate issue as moot because Caroline Kilkenny had already filed an amended birth certificate with the New York State Department of Health.¹⁵

⁸ *Id.*, at *8 (quoting *Engel v. Vitale*, 370 U.S. 421, 432 (1962)).

⁹ *Id.*, at **9-10.

¹⁰ *Id.*, at *3.

¹¹ *Id.*

¹² *Wilson*, 2006 N.Y. Misc. LEXIS 1145, at *4.

¹³ *Id.*, at *5.

¹⁴ *Id.*, at **1-2.

¹⁵ *Id.*, at *2. The mother, at the time of the proceeding, was seeking to have the baptismal certificate amended as well, which the court admitted may render the issue academic. *See id.*, at **9-10.

Additionally, despite the father's "self-suffering assertions of religious devotion, piety, and . . . [h]istrionics . . . worthy of a Harlequin Romance novel,"¹⁶ the court ruled that Claudia's interests would not be substantially promoted by the changing of her surname from that of her custodial parent and therefore denied the father's request.¹⁷

The court determined Wilson's request for an order that the Catholic Church alter the baptismal certificate "flies in the face of the United States Constitution."¹⁸ The decision in *Wilson* regards any intermeddling with the Catholic Church's issuance of a baptismal certificate as violative of the restrictions imposed on the courts by the First Amendment.¹⁹ The importance of such restrictions, according to the court, is that improper intermingling of church and state is to the detriment of both.²⁰ The duty of the state, in the understanding of the court, is to remain " 'neutral in its relations with groups of religious believers' " and its " 'power is no more to be used so as to handicap religions, than it is to favor them.' "²¹ Attempting to avoid any First Amendment entanglements, the court chose to remove itself from the controversy, finding that the dispute over the child's information as it appears on the baptismal certificate lies entirely

¹⁶ *Id.*, at *1.

¹⁷ *Wilson*, 2006 N.Y. Misc. LEXIS 1145, at *13 ("Petitioner . . . has failed to present any valid reason why the best interests of the child would be served by changing the child's surname Petitioner's [achievements] are laudable, but do not overcome the fact that Mr. Wilson has never had custody of Claudia.")

¹⁸ *Id.*, at *6.

¹⁹ *Id.*, at *10.

²⁰ *Id.*, at *8 ("[A] union of government and religion tends to destroy government and to degrade religion.") (quoting *Engel*, 370 U.S. at 431).

²¹ *Id.*, at *7 (quoting *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947)).

within the purview of the Catholic Church, and that it is the Catholic Church and not the court that must be the ultimate arbiter.²²

It is well settled that the First Amendment requires the separation of church and state, but its scope does have limits set by the establishment and free exercise clauses. In *Everson v. Board of Education*,²³ the United States Supreme Court held that the Establishment Clause did not preclude a statewide school bussing program, which paid for the bussing of parochial as well as public schoolchildren.²⁴ The Court reasoned that denying funds for the bussing of parochial schoolchildren, while paying for bussing to nonreligious institutions, effectively restricted the free exercise of religion by denying practitioners benefits which are enjoyed by the community at large.²⁵ In an effort to serve the intent of the Establishment Clause, care should be taken not to confuse church and state interaction with state promotion of the church—lest the courts “inadvertently prohibit [the state] from extending . . . benefits to all its citizens without regard to their religious belief.”²⁶

Likewise, in *Zorach v. Clauson*²⁷ the Supreme Court recognized that the First Amendment does not serve as an absolute bar to church and state interaction, but it instead “studiously defines the manner, the specific ways, in which there shall be no concern or

²² *Wilson*, 2006 N.Y. Misc. LEXIS 1145, at **9-10.

²³ *Everson*, 330 U.S. 1.

²⁴ *Id.* at 17.

²⁵ *Id.* at 16.

²⁶ *Id.*

²⁷ 343 U.S. 306 (1952).

union or dependency one on the other.”²⁸ The *Zorach* Court found that a New York City “released time” program which, without the expenditure of public funds, allowed public school children to attend off site religious instruction upon the request of parents, did not violate the First Amendment.²⁹ The Court rejected the “obtuse reasoning” of the program’s opponents who would “press the concept of separation of Church and State to [the] extremes” and separate the two in all respects.³⁰ Also, the Court held such an application may impinge upon the free exercise of religion by disallowing students to observe religious obligations unmolested by the state.³¹ Overall, the Court found that an absolute bar to interaction on all levels is simply undesirable, causing “the state and religion [to] be aliens to each other—hostile, suspicious and even unfriendly.”³²

Both *Zorach* and *Everson* recognize that overzealous application of the First Amendment would render many of the commonplace interactions between church and state unconstitutional. Police and fire protection as well as sanitation and other services rendered to religious institutions could be denied on the grounds that they violate the First Amendment.³³ The state may interact with the church where the state can maintain objectivity in its relationship with the church and neither establishes dogma nor prevents adherents

²⁸ *Id.* at 312.

²⁹ *Id.* at 308-09, 315.

³⁰ *Id.* at 313.

³¹ *Id.*

³² *Zorach*, 343 U.S. at 312.

³³ *See id.* at 312-13 (“Policemen who helped parishioners into their places of worship would violate the Constitution.”); *Everson*, 330 U.S. at 17-18 (stating that police and fire protection as well as sanitation would be denied parochial schools if there was a total separation of church and state).

exercising their beliefs.³⁴

It is, however, sometimes difficult to determine when the line between an objective relationship between church and state and genuine interference has been crossed. Such an issue arises in cases where there is a dispute which takes place within a religious institution. Over the course of the past two centuries, the Supreme Court has attempted to determine when and how the courts may decide such matters. In the 1872 decision *Watson v. Jones*,³⁵ resulting from a property dispute between two feuding factions of a Kentucky congregation, the Supreme Court recognized:

The right to . . . create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members . . . is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.³⁶

This decision formed the cornerstone of the doctrine of complete deference,³⁷ whereby the courts are obliged to defer to the hierarchy of the religious institution for decisions on “questions of discipline, or of faith, or ecclesiastical rule, custom, or law . . . [and] must accept such decisions as final, and as binding on them, in their application to the case before them.”³⁸

³⁴ *Everson*, 330 U.S. at 18.

³⁵ 80 U.S. (13 Wall) 679 (1872).

³⁶ *Id.* at 728-29.

³⁷ *See* *First Presbyterian Church v. United Presbyterian Church*, 464 N.E.2d 454, 459 (N.Y. 1984).

³⁸ *Watson*, 80 U.S. (13 Wall) at 727.

Nearly a century after *Watson*, the Supreme Court refined its position in *Presbyterian Church v. Hull Church*,³⁹ another congregational property dispute. This decision allowed the courts to resolve such disputes without offending the First Amendment, provided the court could extricate the legal issue from the matrix of religious doctrine and would later form the basis for the “neutral principles of law” analysis.⁴⁰

The “neutral-principles of law” analysis was further expounded a decade later by *Jones v. Wolf*.⁴¹ The decision calcified the approach by specifically allowing the courts to analyze religious documents, such as church constitutions, and apply secular legal principals in resolving the dispute.⁴² The court is, of course, constrained at all times from rendering a decision on any issue religious in nature.⁴³ Should interpretation of religious principles become necessary in the resolution of the matter, the court would then defer, as in *Watson*, to the religious authority for decision on the issue.⁴⁴

While *Jones* held the neutral principles of law approach to be constitutional, it did not require that it be used by state courts to the exclusion of other methods, but rather allowed adoption of any rule

³⁹ 393 U.S. 440 (1969).

⁴⁰ *Id.* at 449 (“[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.”).

⁴¹ 443 U.S. 595, 602-03 (1979).

⁴² *Id.*

⁴³ *Id.* at 603.

⁴⁴ *Id.* at 604.

that was consistent with the First Amendment.⁴⁵ Satisfied that there was no “constitutional barrier,” the New York Court of Appeals first applied the neutral principles of law approach in *Avitzur v. Avitzur*.⁴⁶ However, the neutral principles of law approach was not explicitly adopted by the court until the decision of *First Presbyterian Church v. United Presbyterian Church*.⁴⁷

First Presbyterian, like the formative Supreme Court cases, arose from a schism between factions of a congregation which resulted in competing claims of control over church property between the plaintiff church and the defendant, the national denominational order.⁴⁸ That the disputants were religious institutions in a matter involving church property did not necessarily demand that the court dismiss the action. Instead, as the issue was essentially a property matter involving no interpretation of church dogma, the court rendered a decision.

The *First Presbyterian* court found neutral principles approach more flexible than the complete deference standard established by *Watson* in that disputes involving all religions could be resolved uniformly in accordance with secular principles of law.⁴⁹

⁴⁵ *Id.* at 602. “[T]he First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, ‘a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters’” *Id.* (quoting *Md. & Va. Churches v. Church of God at Sharpsburg Inc.*, 396 U.S. 367, 368 (1970)).

⁴⁶ 446 N.E.2d 136, 139 (N.Y. 1983). The decision in *Avitzur* is important because it established the neutral principals of law approach as valid in New York, and perhaps equally important for the purposes of *Wilson*, applied the principles to a non-property related matter. *Id.* at 138-39.

⁴⁷ *First Presbyterian Church*, 464 N.E.2d at 459-60.

⁴⁸ *Id.* at 456.

⁴⁹ *Id.* at 460.

The neutral principles approach protects the interests of both church and state more readily than blind deference to the highest church authority.⁵⁰ Under the neutral principles approach, the state is able to protect its legitimate interests while the church (or more accurately, the appropriate decision making organ) retains the ability to interpret dogma unmolested by the state.⁵¹ Furthermore, the state avoids the conflict of effectively lending support to one of the religious disputants, the church hierarchy, over the other in violation of the First Amendment.⁵²

It is without question that the decision in *Wilson* conforms with both the Federal and New York State Constitutions.⁵³ Given the language of both with respect to religious liberty, they would seem to grant identical freedoms. Therefore, in denying the petitioner, the court certainly avoided rendering a decision over a religious matter, which would be repugnant to both the federal and state constitutions. However, in this case, though the father contended that the best interests of the child required favorable judgment on all three claims,⁵⁴ the court did not review the possibility that such a principle may govern the issuance of a baptismal certificate by the Catholic Church. The secular principles of law that governed its decision,

⁵⁰ *Id.*

⁵¹ *Jones*, 443 U.S. at 604.

⁵² *First Presbyterian Church*, 464 N.E.2d at 460.

⁵³ Compare U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”) with N.Y. Const art. I § 3 (“The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind”). Both documents allow for the free exercise of religion and restrict the state from promotion of religion.

⁵⁴ *Wilson*, 2006 N.Y. Misc. LEXIS 1145, at *1.

with respect to the name change issue, may have been applied to the issuance of the baptismal certificate, therefore enabling the court to address the merits of the father's claim without offending either the federal or state constitutions.

That the church has a legitimate interest in matters of a spiritual nature, and that the state likewise has an interest in those temporal matters that fall within its jurisdiction is without question. Many times, however, these interests are found tightly woven, with secular and dogmatic issues part of the same fabric. The neutral principles approach serves to disentangle the strands and determine if the issue is in fact religious or secular at its heart.

To conform to the precedent set by *First Presbyterian*, through its use of the neutral principles approach, a New York court must review the pertinent church rules so as to verify whether neutral principles of law could have been applied. This case lacks a determination of whether the naming of the child in the Catholic Church is so intertwined with dogma that neutrality would be impossible. The threshold issue is not whether the issue involves religious actors or documents, but whether judicial intervention in a dispute involving ecclesiastical institutions may be accomplished through a secular application of neutral principles of law. That is, should the action be boiled down to a purely secular matter, the courts may then exercise authority over the matter within the tolerances of the First Amendment.

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