

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 73

Index No.: 528307/2021

Motion Date: 3-13-23

Mot. Seq. No.: 4

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RB, an infant, by her guardian, ISAAC BIRNHACK,

Plaintiff,

-against-

**DECISION/ORDER**

BAIS YAAKOV D'CHASSEDEI GUR, MAYER  
GELBART, MICHAEL STERNBUCH, YEHUDA  
SEGAL, SHLOMO ROTTENBERG, USHER JALAS,  
and JOHN DOES NOS. 1-10, BOARD OF  
DIRECTORS OF BAIS YAAKOV D'CHASSEDEI  
GUR, in their individual Capacity and as members of  
the Board of Directors of Bais Yaakov D'Chassidei Gur,

Defendants.

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Upon the following papers, listed on NYSCEF as document numbers 31-37 were read on  
this motion:

The defendants seek, inter alia, an order pursuant to CPLR 3211(a)(2) dismissing the  
complaint against them for lack of subject matter jurisdiction, on the grounds that the court is  
prohibited from resolving the issues raised in the action because they require consideration  
of religious doctrine. In support of the motion, pursuant to CPLR 2214(c), the defendants  
incorporated by reference the letters and affidavits previously filed, under NYSCEF Doc. Nos. 9,  
16, 21 and 22.

In plaintiff's Amended Complaint (NYSCEF Doc. No. 6), it is alleged that the defendant  
Bais Yaakov D'Chasidei Gur ("the School") improperly disciplined the infant plaintiff through  
alleged suspension because of her "family's allegiance to Rabbi Shaul Alter", who the defendants  
considered to be an illegitimate rival to the established Rabbi of Gur, Rabbi Y.A. Alter. The  
School is operated by the adherents of Rabbi Y.A. Alter.

In support of the motion, the defendants submitted the affidavits of Abraham Schmidt and Yehuda Segal, both of whom sit on the educational board of Bais Yaakov, explaining the reasons for the infant plaintiff's suspension. They both state that Bais Yaakov is an educational institution of the Ger Community whose educational philosophy is premised upon the importance of teaching their students in the religious teachings and tenants of the Ger movement. They state that one of these tenants is respect and reverence for the one and only Ger Rabbi, Rabbi Y. A. Alter, who they claim is the one true spiritual leader of the Ger movement and who is recognized as such by all the Ger Chassidim worldwide. They state that some of the parents of the students of Bais Yaakov, including the infant plaintiff's legal guardian, have decided to shift their allegiance and loyalties to Rabbi Shaul Alter, who leads a dissident group of the Ger community who have disparaged Rabbi Y. A. Alter in numerous ways. They maintain that this has caused enormous problems for the School because a vast majority of the parents of the girls who attend the school continue to support Rabbi Y. A. Alter. They state that many of the parents have threatened to stop sending their daughters to Bais Yaakov if the girls from the families loyal to Rabbi Shaul Alter are permitted to remain at the school because these parents do not want their daughters exposed to the ideas espoused by Rabbi Shaul Alter. They maintain that these ideas undercut and mock the way they want their daughters educated. They maintain that allowing the dissident students to remain at school will make it impossible for Bais Yaakov to inculcate traditional Ger values to the other students, the very reason that the parents have enrolled them in Bais Yaakov.

Schmidt and Segal further stated that Rabba Shaul Alter is propounding a fundamentally different religious philosophy than the one taught by the Rabbi Y. A. Alter and accepted by the school and the vast majority of the Ger Chassidim. They maintain that Rabbi Shaul Alter's views differ in critical areas, including the use of the Internet and technology, the nature of rabbinic authority and a person's religious obligation to submit to such authority and the matter of learning the Talmud. The defendants also point out that the families loyal to Rabbi Shaul Alter were warned that if they were their daughters associated with Rabbi Shaul Alter, their daughters would be suspended or expelled from the school.

In response, the plaintiff Isaac Bernhack submitted his own affidavit stating that the premise of defendants' argument for suspending the infant plaintiff, that there can merely one

Grand Rabbi, is not true and that such belief is not a critical component of the Ger religious observance.

“The First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs” (*Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282, 286, 849 N.Y.S.2d 463, 879 N.E.2d 1282; see *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151). However, “[c]ivil disputes involving religious parties or institutions may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution” (*Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d at 286, 849 N.Y.S.2d 463, 879 N.E.2d 1282; see *Hafif v. Rabbinical Council of Syrian & Near E. Jewish Communities in Am.*, 140 A.D.3d 1017, 1017, 34 N.Y.S.3d 160; *Drake v. Moulton Mem. Baptist Church of Newburgh*, 93 A.D.3d 685, 686, 940 N.Y.S.2d 281; *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 A.D.3d 403, 406, 873 N.Y.S.2d 148).

Here, the defendants’ demonstrated that the claims asserted by the plaintiff are nonjusticiable, as they cannot be resolved based on neutral principles of law. The pivotal issues issue raised in this action is whether there can be only one true Ger Rabbi, who the defendants claim is Rabbi Y.A. Alter, and whether the infant plaintiff’s suspension from Bais Yaakov was justified considering her allegiance to Rabbi Shaul Alter and his teachings. Resolution of these issue would necessarily involve impermissible inquiries into religious doctrine or practice (*Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d at 286–287, 849 N.Y.S.2d 463, 879 N.E.2d 1282; see *Drake v. Moulton Mem. Baptist Church of Newburgh*, 93 A.D.3d 685, 686, 940 N.Y.S.2d 281).

Accordingly, it is hereby

**ORDERED** that defendants’ motion to dismiss the complaint pursuant to CPLR 3211(a)(2) for lack of subject matter jurisdiction is **GRANTED.**

This constitutes the decision and order of the Court.

Dated: April 28, 2023

**PPS**

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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK  
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