IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

TIMOTHY LAIDLAW,	:	DECEMBER TERM 2014
	:	NO. 00864
Appellant,	:	
	:	1475 EDA 2017
v.	:	
	:	
CONVERGE MIDATLANTIC,	:	
CONVERGE WORLDWIDE,	:	
GRACE POINT CHURCH, and	:	
CHRISTOPHER C. MCCLOSKEY,	:	
	:	
Appellees.	:	

RAU, J.

OPINION

I. Statement of the Case

This case is the response of a wounded husband to an affair between his spouse and another man, their pastor. Appellant Timothy Laidlaw brings assorted claims against First Baptist Church of Newtown, Inc. ("Grace Point") and Grace Point's pastor, Christopher McCloskey ("Pastor McCloskey") seeking monetary damages for the alleged pain and humiliation he experienced when his wife and their pastor had an extramarital affair. Appellant's wife, referred to under the pseudonym Jane Doe,[1] chose not to join any

[1] Appellant Timothy Laidlaw originally filed this action under a pseudonym, John Doe. This Court scheduled a Rule to Show Cause Hearing as to whether he should be allowed to proceed under a pseudonym because Pennsylvania Rules of Civil Procedure 1018 and 1024 require the use of parties' real names in every case caption and in pleading verifications and because the courts have a general presumption of openness. Before the Hearing, Appellant's counsel sent a letter stating that Appellant agreed to proceed using his real name. This Court then directed Appellant to file an amended complaint replacing all John Doe pseudonyms with Appellant's real name. Any remaining references to "John Doe" in the record or the pleadings are references to Timothy Laidlaw. References to "Jane Doe" are to Mr. Laidlaw's spouse who continues to be referred to by all parties and the Court under a pseudonym. See Pa.R.C.P. 1018, 1024(a)–(c); Judge Rau's Orders, Feb. 21, 2017 and Mar. 30, 2017.

aspect of the suit and does not want to be involved in the litigation.

Appellee Pastor McCloskey periodically provided religious counseling to Appellant Laidlaw and his wife during the decade prior to the affair, beginning with Grace Point's requisite premarital counseling, and later during especially difficult times in the couple's challenging marriage. The counseling ended before the extramarital affair began.

When Appellant Laidlaw discovered the relationship between his wife and Pastor McCloskey, Appellant immediately informed Grace Point's church elders who suspended Pastor McCloskey the same day. The church elders demanded his resignation shortly thereafter. The church elders wrote a letter to the congregation disclosing their pastor's "inappropriate relationship with a woman in [the] church body" and his "moral failure." The elders implored church members to "pray for all affected parties, including the woman and her family, as well as [Pastor McCloskey and his family]." Neither Appellant nor his wife was mentioned by name in the letter. Appellant acknowledges that the letter contained only "factually correct" statements.

In thirteen separately styled claims against Appellees Pastor McCloskey and/or Grace Point, Appellant Laidlaw seeks monetary damages for the betrayal he experienced and the alleged harm to his marriage and personal happiness that resulted from Ms. Doe's relationship with their pastor. In the Amended Complaint, Appellant reveals extremely private details of his own intimate relationship with his spouse and graphic details of her intimate relationship with Pastor McCloskey that were previously not public. His numerous tort claims include breach of fiduciary duty, negligent and intentional infliction of emotional distress, fraudulent misrepresentation, vicarious liability, negligent hiring and supervision, defamation, and false light.

This Court granted summary judgment against Appellant on all claims because

modern law does not provide a legal cause of action for a man to recover monetary damages for his wife's extramarital affair. Such "heart balm" claims existed at common law when the law considered a woman the property or "chattel" of her husband. See Fadgen v. Lenkner**,** 365 A.2d 147, 149 (Pa. 1976). Heart balm torts were eliminated by statute and case law decades ago as outmoded remnants of a time when a married woman was considered "no more capable" of consenting to something adverse to her husband's interests "than was [her husband's] horse." See id. at 149–50, 150 n.5 (quoting Prosser, Law of Torts, § 124 at 875 (4th ed. 1971)).

In addition to Appellant's claims being obsolete under modern law as disguised heart balm torts, the First Amendment precludes the Court's intrusion in church matters. Moreover, Appellant presented insufficient evidence to meet the elements of each of his claims. Accordingly, this Court granted summary judgment in favor of Appellees Grace Point and Pastor McCloskey. This appeal followed.

II. Procedural Posture

Appellant Timothy Laidlaw pursues claims for breach of fiduciary duty and "intentional/negligent infliction of emotional distress" against Appellees Pastor McCloskey and Grace Point. Am. Compl. ¶¶ 63–73, 84–89, 98–99. In addition, Appellant alleges a claim of fraudulent misrepresentation against Pastor McCloskey. Id. at ¶¶ 74–83. Finally, Appellant brings several claims against Grace Point: vicarious liability, negligent hiring and supervision, defamation, and false light. Id. at ¶¶ 90–97, 100–14.[2]

[2] Appellant also purports to maintain a negligent failure to rescue claim against Pastor McCloskey and Grace Point. See Appellant's Statement of Errors Complained of on Appeal ¶ 7. However, the Honorable Judge Ceisler sustained Grace Point's preliminary objections as to Appellant's negligent failure to rescue claim against both defendants, dismissing it with prejudice on May 15, 2015, and Appellant did not appeal that ruling. See Judge Ceisler's Order, May 15, 2015. Appellant's May 3, 2017 appeal challenges only this Court's April 5, 2017 grant of summary judgment. See Notice of Appeal 1, 5. The Court notes that Appellant's negligent failure to rescue claim appears in his Amended Complaint at paragraphs 113–16 and is mistakenly titled "Count VI" when it is, in fact, the eighth count alleged. (Appellant's true "Count VI" for false

On October 3, 2016, after the close of discovery, Appellee Grace Point moved this Court for summary judgment seeking dismissal of all claims against Grace Point. See Def.'s Mot. Summ. J. Appellee Pastor McCloskey joined Grace Point in moving for summary judgment on the grounds that Appellant's claims sound in the statutorily-barred alienation of affections.[3] Id. at ¶ 14. Although Pastor McCloskey did not file a separate joinder motion or sign Grace Point's Motion for Summary Judgment, both the heading and first sentence of Subsection A of Grace Point's summary judgment motion make clear that Pastor McCloskey intended to join Grace Point in moving for summary judgment on the alienation of affections basis.[4] Id. Appellant acknowledged this in his response to the motion: "Throughout Defendant Grace Point's Motion for Summary Judgment, Defendant McCloskey attempts to join in Moving Defendant's Motion." See Pl.'s Resp. Def.'s Mot. Summ. J. 12 n.1.

On January 3, 2017, the Court granted summary judgment in favor of Appellees Grace Point and Pastor McCloskey, dismissing Appellant's Complaint in its entirety. See Judge Rau's Order, Jan. 3, 2017. On January 24, 2017, Appellant moved for reconsideration of this Court's January 3, 2017 Order granting summary judgment. Pl. Mot. Recon. On February 1, 2017, this Court vacated its January 3, 2017 grant of summary judgment pending a decision on Appellant's Motion for Reconsideration. See Judge Rau's

light, at paragraph 98, was not dismissed on preliminary objections.) Appellant initially brought claims against Defendant Baptist General Conference d/b/a Converge Worldwide, but those claims were dismissed when this Court granted that defendant's Motion for Summary Judgment. See Judge Rau's Order, Nov. 9, 2016.

[3] In addition to joining Grace Point on the alienation of affections grounds, Pastor McCloskey argued a First Amendment defense in his response to Appellant Laidlaw's Motion for Summary Judgment against the pastor, which was denied. See Def.'s Resp. Opp. Pl.'s Mot. Summ. J. 40–41; Judge Rau's Order, Dec. 5, 2016.

[4] The section heading reads: "Grace Point and McCloskey are entitled to summary judgment, as a matter of law, as to all claims, because plaintiff's claims are based upon alienation of affection, which has been statutorily abolished in Pennsylvania pursuant to 23 PA. Cons. Stat. Section 1901." The first sentence reiterates: "For purposes of Subsection A only, McCloskey joins Grace Point in moving for summary judgment on the basis of 23 Pa.C.S.A. § 1901."

Order, Feb. 1, 2017. On April 5, 2017, the Court denied Appellant's Motion for Reconsideration and once again entered summary judgment in favor of Defendants as to all claims. See Judge Rau's Order, Apr. 5, 2017. Appellant now appeals.

III. Undisputed Facts

Appellant Timothy Laidlaw first encountered his wife, Jane Doe, in late 2003 in a chance meeting at a bar. See Doe Dep. 29:2–6, Aug. 24, 2016. At the time, Appellant was not a religious man—he was "still searching." See Laidlaw Dep. 39:2–3; Doe Dep. 30:20–22. Appellant Laidlaw worked and continues to work as a union sheet metal worker. Laidlaw Dep. 12:4–11. Ms. Doe is a Christian who for many years attended Grace Point Church (then called First Baptist of Newtown)[5] and served on the worship team. Doe Dep. 29:9–11, 31:10–12. As a college student, she majored in Bible studies with a minor in Christian Counseling and later earned a graduate degree in Marriage and Family Counseling. Id. at 16:15–19. The first night they met, Ms. Doe told Appellant that she attended Grace Point. Appellant surprised Ms. Doe by showing up at Grace Point for church service the next morning. Id. 29:9–23. Approximately nine years later, Appellant described his thinking during that first visit to Grace Point in 2003: "I was not a believer when I walked through the door of that old church, but I was very interested in a hot little brunette named [Ms. Doe]." See Laidlaw Dep. 39:2–11.

After a brief separation initiated by Ms. Doe because Appellant Laidlaw was not a Christian, the couple reunited in 2004. Appellant began attending Grace Point regularly with Ms. Doe. See Laidlaw Dep. at 22:4–11; Doe Dep. 30:1–31:9, 40:15–20. Appellant

[5] Grace Point, also called First Baptist Church of Newtown at Grace Point, describes itself as a "community of faith" in which "a group of people have voluntarily joined together to encourage and support one another as [they] worship God, grow in [their] understanding of His love for [them], and seek to tell others about the salvation and peace, they, too can find through faith in Jesus Christ." See Grace Point Relational Commitments Ex. A, at 1.

testified that, about six months after his first visit to Grace Point, he "felt God's presence calling [him] and [he] became a believer in Jesus Christ." Laidlaw Dep. 39:17–40:2. Around that time, the couple met Appellee Pastor McCloskey, then an Associate Pastor, who had been at Grace Point since 1991. See Laidlaw Dep. 47:18–20; McCloskey Dep. 17:7–8, 22:9–12, Aug. 10, 2016. The new couple—especially Appellant Laidlaw—became friends with Pastor McCloskey. See Laidlaw Dep. 119:1–4, 182:18–23. Ms. Doe believed that Appellant Laidlaw felt comfortable with Pastor McCloskey because he was one of the first pastors Appellant had spoken with at Grace Point, the two were close in age, and they shared experience as "blue collar" tradespeople. Doe Dep. 40:7–23; see McCloskey Dep. 15:4–11.

Sometime in 2004, Appellant and Ms. Doe decided to marry and chose Pastor McCloskey to perform the marriage. See Doe Dep. 40:7–14; Laidlaw Dep. 47:12–16. To be married at Grace Point, couples had to undergo religious premarital counseling. Laidlaw Dep. 46:24–47:6. Premarital counseling was provided to the congregation as part of Grace Point's commitment to "preserving marriages and preventing divorce" and, like all of its counseling, was "spirit-guided," "biblical counseling" based on "scriptural principles rather than those of secular psychology or psychiatry." Grace Point Relational Commitments Ex. A, at 7, 10. Grace Point's Pastoral Counseling and Referral Policy states:

> "We believe that the Bible provides thorough guidance and instruction for faith and life…Therefore, our counseling shall be based on scripture principle rather than those of secular psychology or psychiatry. The pastors and elders of this church are not trained or licensed as psychotherapists or mental health professionals, nor should they be expected to follow the methods of such specialists."

Ex. B, at 1 ("Biblical Mandate" No. 2).

Appellant and Ms. Doe decided to have Pastor McCloskey, who had a Bachelor's

degree in Bible and a Masters in Divinity, provide their mandatory premarital religious counseling. Pastor McCloskey had no training in mental health counseling.[6] See McCloskey Dep. 15:4–11, 31:3–8, 34. In the three months leading up to their wedding in 2005, Appellant and Ms. Doe attended four or five sessions of religious premarital counseling with Pastor McCloskey at Grace Point. Laidlaw Dep. 46:9–14. The primary goal of the counseling was to determine compatibility within the relationship. Id. at 46:1–8, 51:17–18. In the sessions, Appellant and Ms. Doe took a personality test and reviewed the results. They discussed communication, forgiveness, their shared Christianity, and their ideas about childrearing. See Laidlaw Dep. 48:7–14, 51:7–20, 62:2–5; Doe Dep. 42:18–24, 43:1. When asked to recall the "personal parts" of their premarital counseling discussions, Appellant Laidlaw remembered that Ms. Doe said she valued intimacy and sought a husband who would be a good provider and the spiritual head of the household. Laidlaw Dep. 58:16–18, 59:1–4, 60:10–14.

After scoring "high enough in the compatibility factor" on their personality tests to satisfy Pastor McCloskey, Appellant Laidlaw and Ms. Doe married in April 2005 in a ceremony performed by Pastor McCloskey. See Laidlaw Dep. 61:19–62:5; Doe Dep. 39:20–40:1. They moved in together at the time of their marriage and three months later Ms. Doe became pregnant. See Laidlaw Dep. 64:10–19; Doe Dep. 49:10–14; Laidlaw Dep. 63:13–14, 65:21–22. Ms. Doe stopped working outside of the home, switching to a life as a full-time homemaker. See Laidlaw Dep. 78:4–6.

Beginning in the first year of their marriage, and on several other occasions over the next decade, Appellant Laidlaw and Ms. Doe sought Christian counseling from Pastor

[6] The record shows that Pastor McCloskey took one class "related to counseling" that did not discuss the "protocols" of counseling but instead focused on understanding the "biblical basis" for family and marriage relationships, and understanding people in general. See McCloskey Dep. 34:3–21.

McCloskey and from other Christian counselors not affiliated with Grace Point. See Laidlaw Dep. 70:11–13 ("The counseling was sporadic, stretched out over the ten years."), 71:9–20; 72:5–7; Doe Dep. 50–51, 87–88. Over that period, Appellant and Ms. Doe attended a total of about four rounds of pastoral counseling with Appellee Pastor McCloskey, each consisting of three or four sessions. See Laidlaw Dep. 73:1–17. From Appellant's perspective, the counseling always revolved around Ms. Doe's complaints that he was inattentive at home, not meeting her needs, and "intimacy stuff" in general, now that "the courting was over." See Laidlaw Dep. 73:21–24, 74:1–4, 75:5–11, 76:6–18. For Ms. Doe, her primary motivations for seeking pastoral counseling were Appellant Laidlaw's anger issues (outbursts, angry words, critical remarks, and name calling), his frustration with Ms. Doe's reaching out to her parents and sister to discuss her concerns about their marriage, and her desire for more frequent intimacy. Doe Dep. 52:9–19, 53:4–7, 61:6–13.

Appellant Laidlaw attended counseling at Ms. Doe's request, but he was never comfortable attending counseling sessions with Pastor McCloskey. See Laidlaw Dep. 78:18–79:24; Doe Dep. 57:7–15. Although Appellant was "not a fan of counseling" at all, he would have preferred to attend Christian counseling with an outside counselor because he "considered [Pastor McCloskey] a friend at the time." Laidlaw Dep. 79:3–9. Despite Appellant Laidlaw's concerns, he went ahead with the sessions with Pastor McCloskey: "him being a friend and a pastor, I overcame that and just trusted him." See id. at 118:18–119:4. Appellant Laidlaw considered himself a "closer friend with [Pastor McCloskey] than [Ms. Doe] ever was." Id. at 182:18–23. Sharing a feeling of "closeness" with the couple, Pastor McCloskey referred them to an outside Christian counselor on multiple occasions. See Laidlaw Dep. 78:18–79:9.

Appellant Laidlaw and Ms. Doe attended their final round of pastoral counseling with

Pastor McCloskey in the spring of 2013. See Doe Dep. 85–87; Laidlaw Dep. 90:1–6, 92:7–93:1; McCloskey Dep. 41:5–17. In this last round of counseling, Pastor McCloskey met individually with Appellant Laidlaw and Ms. Doe for about an hour each. Laidlaw Dep. 92:7–12. Pastor McCloskey then referred them to an outside Christian counselor. Laidlaw Dep. 92:7–93:1; Doe Dep. 86:23–24, 87:1–19; McCloskey Dep. 178:18–179:8. Pastor McCloskey also referred Ms. Doe to an individual counselor at her request. See Doe Dep. 87:8–12; McCloskey Dep. 121:2–11.

It was in the summer after the final round of counseling that Ms. Doe and Pastor McCloskey began to communicate by phone, and then by email. See Doe Dep. 96–98; McCloskey Dep. 123–126. At first, they discussed Pastor McCloskey's concerns about his teenage daughter, and then Ms. Doe recommended a book she had been reading on prayer. See Doe Dep. 96–98; McCloskey Dep.124–126. After several weeks of email correspondence about the prayer book, the substance of their emails turned more personal, and they both began to view and trust each other as friends. See Doe Dep. 97–100 ("I had grown to trust him as a friend as well. So that's how the affair started…"); McCloskey Dep. 125–128:14 ("a friendship sparked between us"), 182:17–184:2.

Eventually, in September 2013, the two agreed to meet at Pastor McCloskey's office to talk in person, and did so on more than one occasion. See Doe Dep. 98:16–22. Neither Ms. Doe nor Pastor McCloskey ever testified that they were engaged in counseling when they began their consensual affair. There was no evidence presented that their meetings at Pastor McCloskey's office involved any counseling. Their meetings, which began more than three months after all counseling ended, were voluntary, between two competent and consenting adults who had a deepening emotional relationship with one another. See Doe Dep. 97–100; McCloskey Dep. 125–128:14, 182:17–184:2.

At some point during this time, Pastor McCloskey told Ms. Doe he was falling in love with her, and Ms. Doe responded that she, too, was developing feelings for him. See Doe Dep. 98:23, 99:23–24, 100:14–22. They continued to call, text, and email each other regularly, with Pastor McCloskey using his cell phone, office phone, and both personal and Grace Point email accounts. See Doe Dep. 98:11–22, McCloskey Dep. 269–271; see also Laidlaw Dep. 153:20–24. In addition to regular communication, Ms. Doe and Pastor McCloskey had occasional physical contact (holding hands, hugging, kissing) and on three occasions engaged in sexual intimacy. See Doe Dep. 107:13–18, 119:20–24; McCloskey Dep. 274:5–20, 250:8–14, 280. Some physical contact (kissing) occurred in secret on Grace Point property, and all sexual acts occurred off of Grace Point's property. See id.

Reflecting on their affair later, Ms. Doe and Pastor McCloskey agreed that their relationship was primarily emotional, rather than physical. Ms. Doe explained that "a deep friendship had developed" and that, although she did develop romantic feelings for Pastor McCloskey, the physical aspect of their relationship "was never a big part of it for [her]." Doe Dep. 100:9,102–103:2. Pastor McCloskey similarly stated, "this was an emotional relationship that, unfortunately, had some physical manifestations." McCloskey Dep. 283:3–7.

They also agreed in their testimony that the relationship was one of mutual affection, with no force or coercion involved. Ms. Doe called it her "affair" with Pastor McCloskey, and explained that, although she felt guilty because it was "selfish and wrong," she did not attempt to end the relationship because Pastor McCloskey was meeting so many of her needs that "had not been fulfilled for so long." Doe Dep. 100:1–10, 102, 104:15–18. Specifically, Ms. Doe "could talk to him in a way that [she] had never been able to talk to [Appellant]. He listened in a way that [Appellant] hadn't…he encouraged me

in all those things." Id. at 102:15–18. While she believed that Pastor McCloskey was the initial pursuer, she soon was sending him cards because she "felt like she had fallen in love with him." Id. at 104:1–5, 116:20.

Pastor McCloskey likewise described the relationship as one between "fully, voluntarily, mutually consenting adults." See McCloskey Dep. 144:12–16, 151:22–24. At one point, Pastor McCloskey suggested to Ms. Doe that their affair was "wrong" and the relationship could have "no good outcome." Doe Dep. 105:15–23; see also Doe Dep. 109:9–10 ("…there was a time when he said he wanted to take a break like it was getting too heated"). Despite his reservations, the pair continued to communicate. See Doe Dep. 105:15–106:5.

As members of Grace Point, Appellant Laidlaw, Ms. Doe, and Appellee Pastor McCloskey were subject to Grace Point's guiding documents, which set out the responsibilities and behavior expected of anyone who chooses to attend Grace Point's services.[7] See Grace Point Constitution Ex. C, at 4-5; Grace Point Relational Commitments Ex. A, at 1. Grace Point's Constitution sets out the responsibility of all its members, including its pastors, "to abstain from whatever is unbecoming a Christian knowing that our bodies, our minds, our spirits and our fellowship are sacred trusts from God." Ex. C, at 3–5. Grace Point's Relational Commitments also included "guidelines for how our [church] leaders will counsel others." Ex. A, at 1. One of these, the "Commitment to Biblical Counseling," explains that pastoral duties at Grace Point include the expectation that church leaders "treat counselees with every respect and courtesy, and to avoid even the appearance of impropriety or impurity." Id. at 10. Grace Point's Pastoral Counseling

[7] After attending Grace Point regularly for many years, Appellant eventually decided to become a member through Grace Point's formal membership process. Grace Point's guiding documents therefore applied to Appellant throughout his involvement with the church. See Laidlaw Dep. 337:14–338:17.

and Referral Policy mandates that "[p]astors will be discreet and professional in all counseling relationships, particularly when counseling individuals of the opposite sex." Ex. B, at 2 (No. 6). Although the couple's counseling had ended before the affair began, given these expectations, Pastor McCloskey still felt that he had failed Ms. Doe and Appellant as their pastor by engaging in the affair. McCloskey Dep. 242:6–13, 276:12–15; see also id. 123–126, Doe Dep. 96–98.

Appellant Laidlaw discovered the affair in May 2014 when he found an email from Pastor McCloskey's private account to Ms. Doe asking whether Appellant would be home from work that day. Laidlaw Dep. 181:11–17, 194:17–24. Within hours of finding the email, Appellant called Pastor McCloskey's spouse and spoke briefly with Pastor McCloskey. See Laidlaw Dep. 178:11–20, 180–188. Appellant then called his friend, Grace Point worship leader Daryll Benjamin, and one of Grace Point's elders,[8] Glenn Ely, to tell him "what his pastor was doing." See id. Appellant, Benjamin, Ely, and another church elder, Keith Brown, met at the church late that night to discuss the email Appellant had found. Id. at 180. Appellant made copies of the email before leaving home and distributed them to the elders at the meeting. Id. at 190:15–191:4. Appellant recalls that Elder Glenn Ely was in "shock" and "disbelief" and was "more worried about [Appellant's] marriage than anything." See id. at 179:14–18.

During the meeting that night, Grace Point's elders called Pastor McCloskey and, after a short conversation, suspended him from his position as Grace Point's pastor. Id. at 191:16–192:16, 193:8–16. One of the elders told Appellant Laidlaw that the elder planned to inform church staff in the morning. Appellant voiced no objection. Id. at 258. Benjamin

[8] According to Grace Point's Constitution, the church elders are "chiefly responsible for the spiritual oversight, care, and feeding of the church. As spiritual leaders of the church, they are to govern in such a way as to help the church fulfill its scriptural purpose." Ex. C, at 8, June 5, 2011.

told Appellant that he planned to tell the worship band it was Appellant's spouse who had been involved with the pastor to explain Appellant's absence from band. See Laidlaw Dep. 256. Again, Appellant Laidlaw did not object. Id. After returning from the late night meeting with Grace Point's elders, Appellant Laidlaw told Ms. Doe: "I gave the church the email and…it's out there now, you know…everybody is going to know whatever happened." Laidlaw Dep. 196:15–23.

Six days later, the Grace Point elders mailed a letter to all of Grace Point's members announcing their "deep grief over the moral failure" of Pastor McCloskey. See Letter Ex. D, at 1, May 27, 2014 ("the Letter"). The Letter shared the "awful news" that Pastor McCloskey "admitted" that he had engaged in "marital infidelity" for several months. Id. The Letter stated that Pastor McCloskey had been involved in an "inappropriate relationship with a woman in [the] church body." Pastor McCloskey would be removed from his position, the Letter explained, "as permitted by [Grace Point's] policy for moral failure of pastors." The Letter concluded with a request to church members to "pray for all affected parties, including the woman and her family, as well as [Pastor McCloskey and his family]." Id. at 2. The Letter did not name Ms. Doe nor Appellant; they were referenced anonymously. Beginning with Appellant's own disclosure to several members, the identity of the woman involved in the affair spread quickly through the church. See Laidlaw Dep. 256–259. The Letter did not state that Pastor McCloskey had provided pastoral counseling to Appellant and Ms. Doe. Appellant admits that the contents of the Letter were "factually correct." See Laidlaw Dep. 260:13–17.

Through an agreement with Grace Point, Appellant had the opportunity to confront Pastor McCloskey face-to-face in the presence of the church elders, and in exchange agreed not to attend Pastor McCloskey's public apology to the Grace Point congregation.

See id. 295:14–18.

After revealing the affair, Appellant Laidlaw felt compelled to remove his family from Grace Point. See Laidlaw Dep. 330–31. Ms. Doe would have stayed at Grace Point if not for Appellant's desire to leave. Doe Dep. 147:13–20. Appellant Laidlaw then instituted this civil action seeking redress from the civil courts for what he believed was the unacceptable behavior of his pastor, the spiritual head of Grace Point. See Laidlaw Dep. 197:17–18; see generally Am. Compl.

Ms. Doe is not a party to this action and does not wish to be involved. Doe Dep. 14. Ms. Doe testified:

> "to be honest…the whole lawsuit is uncomfortable for me. It's not something that I want to participate in and I didn't really want to talk a whole lot about it…I never wanted a lawsuit to be filed…because I wanted to forgive each other and move on and work on our marriage. This feels like a huge gaping wound that doesn't have the ability to heal…and continually gets reopened because there's a lawsuit pending."

Id.

IV. Standard of Review on Summary Judgment

Grace Point moved for summary judgment based on Rule 1035.2(1), which enables parties to move for summary judgment before or after the close of discovery if they believe they are entitled to judgment as a matter of law "when there is no genuine issue of material fact as to a necessary element of the case of action".[9] See Def.'s Mot. Summ. J. ¶¶ 5-6;

[9] In its Motion for Summary judgment, Appellee Grace Point relied only on this first grounds for summary judgment: 1035.2(1).) See Def.'s Mot. Summ. J. ¶¶ 5-6; Rule 1035.2(1). However, Grace Point argued in its Brief in Support of its Motion for Summary Judgment that Grace Point should prevail as a matter of law on both grounds contained in Rule 1035.2(1) and (2). See Def.'s Mot. Summ. J. 9–11. The second basis for summary judgment (Rule 1035.2(2)) may be raised only after the close of discovery where "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." See Pa.R.C.P. 1035.2(2). Because the parties concluded discovery before Grace Point filed its Motion for Summary Judgment, the Court notes that its opinion is based not only on what evidence could or could not have been produced, but on what was in fact produced in discovery.

Rule 1035.2(1). Pastor McCloskey joined in Grace Point's Motion. The moving party bears the burden of showing that no genuine issue of material fact exists. Marks v. Tasman, 589 A.2d 205, 206 (Pa. 1991). Appellant Laidlaw—the non-moving party to the summary judgment motion—must demonstrate with actual evidence either that there are disputed facts on a necessary element or that there is sufficient evidence on issues essential to his case on which he bears the burden of proof such that a jury could return a verdict in his favor. See Hoffman v. Pellak, 764 A.2d 64, 65–66 (Pa. Super. 2000). The non-moving party "may not rest upon the mere allegations or denials of the pleadings" in responding to summary judgment but must instead identify actual evidence in the record. Pa.R.C.P. 1035.3(2).

This Court granted summary judgment as a matter of law since Appellant's claims are abolished heart balm torts and precluded by the First Amendment's deference rule as improper state intrusion in church matters. Even if the claims were permitted as a matter of law, Appellant provided insufficient evidence to satisfy the required elements of his claims.

V. All of Appellant's claims must be dismissed as vestiges of abolished heart balm torts: alienation of affections and criminal conversation.

Appellant Timothy Laidlaw attempts to resurrect the long-abolished heart balm torts of alienation of affections and criminal conversation by disguising them as causes of action for intentional infliction of emotional distress (IIED), negligent infliction of emotional distress (NIED), breach of fiduciary duty, fraudulent misrepresentation, defamation, and false light. However, it is clear from Appellant's Amended Complaint that his claims are merely seeking redress for a consensual affair between his wife, who is not a party to this case, and Appellee Pastor McCloskey. Such a lawsuit is impermissible, as this Commonwealth has long held that these claims are against public policy, abolished as vestiges of a time

when "a wife, like a servant, was the personal property (chattel as it were) of the husband." Fadgen v. Lenkner**,** 365 A.2d 147,149 (Pa. 1976).

A. Causes of action for criminal conversation and alienation of affections have been abolished.

In 1935, the Pennsylvania legislature abolished by statute causes of action for alienation of affections and breach of promise to marry. See Act of June 22, 1935 P.L. 450. In 1976, the Pennsylvania Supreme Court in Fadgen v. Lenkner abolished all causes of action associated with a third party's interference in a marital relationship. 365 A.2d 147. Causes of action for alienation of affections, criminal conversation, and breach of promise to marry—referred to as "heart balm" torts—were developed at common law, during a time when a husband had an exclusive property right to the services and companionship of his wife and children, in order to prevent third parties from disrupting the marital and familial unit. See Fadgen**,** 365 A.2d at 151; Davis M. Cotter, Heart Balm Torts, 27 Fam. Advoc. 14, 14 (2005) (citing W. Page Keeton et al., Prosser and Keeton on the Law of Torts §§ 124, 125 (5th ed. 1984)). These claims were dubbed heart balm torts because they were a kind of financial salve for "lovers and sweethearts…who ha[d] experienced genuine pain and agony because of the defection of their opposites." See Pavlicic v. Vogtsberger, 136 A.2d 127, 130 (Pa. 1957). The Fadgen Court reasoned that heart balm torts must be abolished because they were: (a) rooted in the antiquated notion that a husband had an exclusive property interest in his wife's person and services; (b) susceptible to being used as a tool for revenge; and (c) incapable of compensating the aggrieved party. See 365 A.2d at 149, 151.

At common law, only a husband could bring claims arising from a third party's interference with the marital relationship, such as criminal conversation and alienation of affections. Whereas alienation of affections merely required proof that a third party had

diverted a wife's affections away from the marital relationship, criminal conversation carried the additional burden of showing sexual intercourse between the third party and the plaintiff's wife. Antonelli v. Xenakis, 69 A.2d 102, 103–04 (Pa. 1949) ("The lack of necessity for a physical debauchment distinguishes alienation of affections from criminal conversation. And, a single act of adultery is sufficient to entitle the husband of the woman to damages in an action against the adulterer for criminal conversation even though the husband sustains no further loss."). Another distinction between the two causes of action was the type of damages associated with criminal conversation. In Antonelli, the Pennsylvania Supreme Court held that certain damages related to "injury to the husband's social position, irreparable disgrace in the community where he lived and was engaged in business and dishonor to himself and his family… [are] peculiarly associated with an action for criminal conversation." 69 A.2d at 104; see also Matusak v. Kulczewski, 145 A. 94, 95 (Pa. 1928) ("[G]rounds for recovery in an action for criminal conversation are the violation of the right of consortium, loss of services, injury to social position, impairment of family honor, and mental suffering coming from the spouse's infidelity.").

The fact that the wife consented to the adulterous relationship was not a defense to criminal conversation because under the common law, "a wife was not competent to give her consent so as to defeat her husband's interest." Fadgen**,** 365 A.2d at 149–50; see also id. at 150 n.5 ("[I]t was considered that she was no more capable of giving a consent which would prejudice the husband's interests than was his horse." (quoting Prosser, Law of Torts, § 124 at 875)). Even if the wife initiated the extramarital affair, the third party would still be liable because a man's weakness in the face of seduction was not a defense. Fadgen**,** 365 A.2d at 149–50 ("[T]he man who breaks up the home of his neighbor by debauching his wife, rendering his children worse than motherless, is not excused

because he is weak, and, being tempted by the woman, falls." (quoting Seiber v. Pettit, 49 A. 763, 765 (Pa. 1901))). It was not until 1959, in Karchner v. Mumie, that the Pennsylvania Supreme Court finally recognized a plaintiff-wife's right to bring a claim for criminal conversation. See Fadgen, 365 A.2d at 148–49 ("The Court reasoned that the Married Women's Property Act of June 8, 1893, P.L. 344, As amended by the Act of May 17, 1945, P.L. 625, mandated the extension to married women of the right to bring such an action on their own behalf.") (citing Karchner, 156 A.2d 537, 538–39 (Pa. 1959)).

The Pennsylvania legislature abolished the alienation of affections cause of action 82 years ago. Pennsylvania's Supreme Court likewise ended the criminal conversation cause of action more than 40 years ago in Fadgen, reasoning that criminal conversation was rooted in the sexist notion that a husband had an exclusive right to his wife, who, like property, had no ability to make autonomous decisions. Id. at 149–50. Acknowledging criminal conversation's fundamentally sexist foundation, the Fadgen Court explained that even allowing both husbands and wives to bring this action could not correct the flawed basis upon which criminal conversation was founded. See 365 A.2d at 149 ("Still, the Court's extension to married women of the right to bring such a cause of action only delayed what today demands; that is, the total abolition of a pious yet unrighteous cause of action.").

The Fadgen Court also found that revenge and pecuniary gain frequently motivated "actions for interference with domestic relations which carry an accusation of sexual misbehavior—that is to say, criminal conversation, seduction, and to some extent alienation of affections." Id. at 151 (quoting Prosser, Law of Torts, § 124 at 875). Bringing claims for criminal conversation and alienation of affections may reveal the salacious details of the plaintiff's spouse's relationship with the defendant, exposing the pair to

embarrassment, humiliation, and possibly community condemnation. Fadgen**,** 365 A.2d at 151 ("A variety of authorities have noted how seriously prone to abuse this sort of action is where 'the threat of exposure, publicity, and notoriety is more than sufficient to breed corruption, fraud, and misdealings on the part of unscrupulous persons in bringing unjustified and malicious suits.'") (quoting Greer, Criminal Conversation: Civil Action for Adultery, 25 Baylor L. Rev. 495, 499 (1973)). In completely abolishing the cause of action for criminal conversation, the Fadgen Court determined that plaintiffs should not be able to use the court system as a tool for embarrassing an adulterous spouse or the defendant for having an affair. 365 A.2d at 151.

B. Courts reject plaintiffs' efforts to bring heart balm claims disguised as other torts.

A plaintiff cannot circumvent the prohibition against heart balm torts like criminal conversation and alienation of affections by repackaging them as some other tort, such as fraud, IIED, or wrongful interference with an existing contractual relationship. In deciding whether a facially legitimate claim is actually a disguised action for criminal conversation or alienation of affections, courts have looked to the complaint's underlying factual allegations and the type of damages sought, and have rejected causes of action brought under another name that stem from heart balm torts. See Atkinson v. Evans, 787 A.2d 1033, 1034–35 (Pa. Super. 2001), aff'd, 813 A.2d 643 (Pa. 2002).

In Atkinson, plaintiff-husband sued the man with whom his wife was having an affair for wrongful interference with an existing contractual relationship. In his complaint, the plaintiff alleged that the defendant had induced the plaintiff's wife, who was not a party to the suit, to breach a postnuptial contract requiring her to end her extramarital affair with the defendant. Id. After the trial court sustained the defendant's preliminary objections on the basis of legal insufficiency of the pleading, the plaintiff appealed. Id. at 1034. On appeal,

the Atkinson Court rejected the appellant's claim for wrongful interference with an existing contractual relationship after analyzing the underlying factual allegations and damages sought in the complaint:

> "The background which we draw from the factual averments of Atkinson's complaint is that…[i]n 1996, the Atkinsons separated as the result of an 'affair' between [Ms. Atkinson] and defendant appellee….[T]he Atkinsons entered into a post-nuptial agreement…[in which Ms. Atkinson] agreed to terminate any relationship with [defendant appellee], to resist any future contact with him and, finally, agreed 'not to engage in any other adulterous relationship.'…Finally, it is averred that…[defendant appellee, aware of the postnuptial agreement] induced [Ms. Atkinson] to breach her agreement….The complaint averred specific conduct on the part of [defendant appellee] which would, indisputably, be acts which placed [Ms. Atkinson] in clear violation of her agreement. Damages are sought as a consequence of [defendant appellee's] interference which has caused [appellant, Mr. Atkinson] the loss of his marriage, psychological damage and career impairment."

Id. at 1034–35.

The Atkinson Court held that the averments in the complaint were "clearly within [the] terms" of the abolished criminal conversation and alienation of affections torts, and that Mr. Atkinson could not use the facade of an modern, actionable tort—such as wrongful interference with the existing contractual relationship—to establish a cause of action that, at its core, flowed from abolished heart balm torts. Id. at 1035. In repudiating the appellant's attempt to bring such a suit, the Superior Court declared:

> "Whether we agree or not, judicial decision of a generation ago, and legislation long preceding that decision (together with abandonment of adultery as a crime) have made it clear that the policy of this Commonwealth is that tort claims, based upon enabling or consorting with an unfaithful spouse in derogation of duties of marital fidelity, are not actionable."

Id. at 1036.

C. Appellant's case must be dismissed as an attempt to pursue claims for alienation of affections and criminal conversation.

Appellant Laidlaw's case should be dismissed as an attempt to revive the torts of criminal conversation and alienation of affections. While Appellant's Amended Complaint

avers breach of fiduciary duty, intentional infliction of emotional distress (IIED), negligent infliction of emotional distress (NIED), fraudulent misrepresentation, vicarious liability, negligent hiring and supervision, defamation, and false light, these claims all stem from Ms. Doe's consensual affair with Pastor McCloskey. Appellant Laidlaw's alleged injuries are similar to the type of damages associated with criminal conversation. Just as the Fadgen Court cautioned this case may have been motivated by revenge to embarrass Ms. Doe and Pastor McCloskey.

i. The Amended Complaint's factual averments reveal that this lawsuit stems from an affair.

The allegations and undisputed evidence in this case make clear that Ms. Doe's affair with Appellee Pastor McCloskey is at the heart of Appellant's lawsuit. All claims flow from it. See Atkinson, 787 A.2d at 1035.

Appellant's Amended Complaint contains the following factual averments, which arise from Pastor McCloskey's affair with Appellant's wife, Ms. Doe:

- "Defendant McCloskey, however, in a very calculated and manipulative manner, used the very personal and confidential information he learned from Timothy Laidlaw and Jane Doe during counseling sessions to exploit the vulnerabilities of Timothy Laidlaw's wife, Jane Doe, first in an emotional way and then in a physical, sexual way, all for his own personal gratification." Am. Compl. ¶ 21.

- "McCloskey also kissed Jane Doe and engaged in sexual acts with her…." Id. at ¶ 31.

- "Following that meeting, Defendant McCloskey arranged several meetings in a park with Jane Doe, wherein he would use the information he learned from Timothy Laidlaw during counseling sessions to further exploit Jane Doe's vulnerabilities, talking with her, holding her hand and walking around the park." Id. at ¶ 31.

- "McCloskey convinced Jane Doe again to meet him in the park several times between December of 2013 and March of 2014, wherein he again engaged in sexual activity with her." Id. at ¶ 32.

- "By using specific information revealed to him by Timothy Laidlaw and Jane Doe, taking advantage of Jane Doe's vulnerabilities and by persuading Jane Doe to enter a sexual relationship with him…contrary to the interest of Timothy Laidlaw." Id. at ¶ 68.

- "Defendant McCloskey knew or should have known the likelihood that his abuse of his counselor relationship with Timothy Laidlaw and Jane Doe for his own sexual gratification would result in the exacerbation of the marital and family discord and mental anguish of Timothy Laidlaw." Id. at ¶ 70.

Appellant Laidlaw attempts to obfuscate the truth that his claims are rooted in his spouse's extramarital affair by alleging that Pastor McCloskey used confidential information learned during counseling session to exploit Ms. Doe's "vulnerabilities." Id. at 5, 7. However, he never sets forth exactly what he claims Ms. Doe's "vulnerabilities" are, and there is no evidence to suggest that Ms. Doe, who has a master's degree in Marriage and Family Counseling, is incompetent to make decisions on her own behalf. See Doe Dep. 16:18–19. Appellant Laidlaw's repeated suggestions that Ms. Doe—a healthy, highly educated, competent adult—lacked the capacity to understand what she was undertaking when she began an intimate relationship with Pastor McCloskey is wholly unsupported by the facts of record. There is likewise no evidence of the so-called confidential information Appellant supposedly shared with Pastor McCloskey that allegedly enabled Pastor McCloskey to take advantage of Ms. Doe's "vulnerabilities." See Am. Compl. ¶ 68–69; see also id. at 5, 7, 21. What is clear from the record is that Ms. Doe was a willing participant in her relationship with Pastor McCloskey,[10] and any indication that she lacked the capacity to consent due to her "vulnerabilities" smacks of the same antiquated principles this Commonwealth eschewed by eradicating the criminal conversation and alienation of affections causes of action. See Fadgen**,** 365 A.2d at 147 ("[I]t was thought at common law that a wife was not competent to give her consent so as to defeat her husband's interest.").

[10] See supra pp. 10-11; infra note 14.

Likewise, the facts Appellant articulates in support of his allegations all derive from an intimate affair between his wife and their pastor. There is no evidence of coercion. There is no evidence of trickery. There is no evidence showing lack of competence. There is no evidence that defamatory statements were made or that someone was portrayed in an inaccurate light. There is simply evidence that Appellant's wife's affection turned toward another man, and that the two had a brief, consensual affair.

This case presents allegations and facts similar to what the Atkinson Court encountered when it rejected a claim for wrongful interference with an existing contractual relationship, finding that it actually stemmed from an extramarital affair between the appellant's wife and appellee. See 787 A.2d at 1035. In Atkinson, the appellant alleged that the defendant-appellee used his knowledge of the postnuptial agreement between appellant and appellant's wife to induce her into breaching the agreement by having an affair. Id. Here, Appellant Laidlaw alleges that Pastor McCloskey used confidential information to manipulate Ms. Doe into engaging in an intimate relationship with him. Just as the Atkinson Court found that Mr. Atkinson's claim was really "based upon enabling or consorting with an unfaithful spouse in derogation of duties of marital fidelity," here Appellant's claims originate from the fact that his wife and pastor engaged in an intimate, sexual relationship behind his back. See id. at 1036.

ii. The damages Appellant seeks resemble those sought in heart balm actions.

The damages alleged by Appellant Laidlaw in his Complaint reflect the injuries that have been "peculiarly associated with an action for criminal conversation." See Antonelli, 69 A.2d at 104. In 1928, Pennsylvania's Supreme Court held that the "grounds for recovery in an action for criminal conversation [were] the violation of the right of consortium, loss of services, injury to social position, impairment of family honor, and

mental suffering coming from the spouse's infidelity." Matusak, 145 A. at 95. The Fadgen Court explained that the damages associated with criminal conversation are "injury of the plaintiff's social position, irreparable disgrace in the community where he or she lives or was in business and dishonor to the plaintiff and the plaintiff's family." 365 A.2d at 150. In Atkinson, where the appellant alleged that the appellee interfered in his marriage, the appellant sought recovery for his "loss of his marriage, psychological damage, and career impairment." 69 A.2d at 104.

Here, Appellant Laidlaw seeks monetary compensation for alleged damages similar to those that this Commonwealth's appellate courts have ruled are uniquely associated with the abolished criminal conversation claim. Appellant alleges damages that stem from the extramarital relationship—nothing more:

- "As a result, Timothy Laidlaw and his family have suffered on a daily basis as his relationship with his wife Jane Doe has only been further damaged, his Church relationships have been destroyed and his kids have been witnesses to the turmoil at home and elsewhere." Am. Compl. ¶ 13.

- "Humiliation, embarrassment, loss of self-esteem, disgrace, guilt, shame and loss of enjoyment of life." Id. at ¶ 57(a).

- "Family and marital discord." Id. at ¶ 57(b).

- "Severe mental anguish and trauma necessitating psychological, psychiatric and/or medical care and treatment in the past, present and future." Id. at ¶ 57(d).

- "…Plaintiff may suffer a loss in earning capacity in a presently undeterminable amount as well as past lost wages." Id. at ¶ 58.

- "…Plaintiff has suffered and will continue to suffer from an inability to engage in normal social, recreational and family activities resulting in the loss of enjoyment of life, the loss of happiness and the loss of the pleasures of life all of which will be to his and her family's financial detriment." Id. at ¶ 61.

Like the plaintiffs in Antonelli, Matusak, Fadgen, and Atkinson, Appellant Laidlaw alleges injuries that are inextricably connected to his wife's affair: damage to his

relationship with his wife, destruction of his church relationships, disgrace, humiliation, and embarrassment, and other mental, emotional, psychological, and fiscal injuries. This Commonwealth has long rejected civil compensation for the aggrieved spouse after a consensual extramarital affair.

iii. Appellant's lawsuit unnecessarily discloses embarrassing personal information about Ms. Doe and Pastor McCloskey.

By initiating this lawsuit, Appellant Laidlaw not only seeks monetary damages from Pastor McCloskey and Grace Point for Pastor McCloskey's consensual, intimate relationship with Appellant's wife, but has also publicized to the world the intimate details of Ms. Doe's extramarital affair with Pastor McCloskey. By bringing this suit, Appellant publically exposes his wife's marital indiscretions and invades her and Pastor McCloskey's privacy by subjecting them to discovery about the intensely personal details of their affair through depositions,[11] interrogatories, and requests for production. The fact that Ms. Doe is not a party to this case calls into question Appellant's motive in bringing the lawsuit, which potentially embarrasses his wife by describing the private details of her intimate relationship with another man in a public forum without her consent. Ms. Doe's testimony made clear that she wanted nothing to do with the current litigation: she didn't want the lawsuit filed, she didn't want to talk about the affair, and instead wanted for the two of them to forgive each other and focus on repairing their marriage. Doe Dep. 14:4–15:3.

The fact that Ms. Doe is not a party to the suit, Appellant's inclusion of detailed descriptions of the sexual acts between Ms. Doe and Pastor McCloskey, and the probing

[11] In Ms. Doe's deposition, attorneys questioned her at length about the nature and frequency of her physical intimacy with Pastor McCloskey. See, e.g., Doe Dep. 106:6–107:16. The parties—especially Appellant—spent a great deal of deposition time and dedicated large portions of the voluminous pleadings in this case to the precise nature of the sexual activity between Ms. Doe and Pastor McCloskey. This Court finds these specific details of the physical relationship between Pastor McCloskey and Ms. Doe irrelevant and wholly unnecessary to discuss.

and embarrassing questions asked about their sexual relationship all bolster the Fadgen Court's warning that "actions for interference with domestic relations which carry an accusation of sexual misbehavior" are often brought as retaliation against cheating spouses and their sexual partners. See 365 A.2d at 151. Sadly, it is Appellant's own publication of the intimate details of his marriage and his wife's affair that has likely caused further damage to them both, rather than remedying the harm they suffered prior to this lawsuit.

VI. Even if Appellant's claims were not abolished by law as heart balm torts, the First Amendment's deference rule would bar them because they require the state's excessive entanglement in religion. Moreover, Appellant has presented insufficient evidence on several non-religious elements of his claims.

Even if Appellant's claims were not barred as obsolete heart balm torts, the First Amendment to the United States Constitution requires this Court to dismiss them because they would constitute impermissible state intrusion upon religion. Appellant's claims against his church and pastor for the affair are wholly based in religious doctrine, perceived social pressures from his religious community, and his own faith—his personal faith in his pastor and in his church. Therefore, the Court would be forced to interpret and evaluate church canons, discipline, and faith to determine the merit of his claims. See U.S. CONST. amend. I.

The First Amendment mandates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Id. While the First Amendment has often prevented a particular religion from intruding into this nation's secular governments, it also serves as an essential guardian against the State's intrusion upon organized religion and the religious freedom of individual Americans. In this case, the First Amendment prohibits Appellant's claims if they would require a judge or jury to "intrude into the sacred precincts" of religion. See Connor v. Archdiocese of Philadelphia,

975 A.2d 1084, 1103 (Pa. 2009).

The specific constitutional limitations on this Court in deciding Appellant's claims arise from the deference rule, first articulated in 1871 by the Supreme Court of the United States. See Watson v. Jones, 80 U.S. 679 (1871). The deference rule, which has since become a pillar of First Amendment jurisprudence, prohibits unjustifiable intrusion by civil courts into "questions of discipline, or of faith, or ecclesiastical rule, custom, or law" of organized religions:

> "All who unite themselves to … [a religious association] do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Watson, 80 U.S. at 727, 729. See Presbytery of Beaver–Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church, 489 A.2d 1317, 1319 (1985) (explaining that "[w]hile the Watson Court did not fasten their [deference] rule to the First Amendment, it was so profound a wisdom that subsequent courts found it a matrix for their First Amendment considerations."). Decades before the United States Supreme Court laid out the deference rule in Watson, the Supreme Court of Pennsylvania likewise announced the importance of civil courts' deference to ecclesiastical courts in ecclesiastical matters:

> "The decisions of ecclesiastical courts, like those of every other judicial tribunal, are final; as they are the best judges of what constitutes an offence against the word of God, and the discipline of the church . . . Any other than those courts must be incompetent judges of matters of faith, discipline and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals."

German Reformed Church v. Com. ex rel. Seibert, 3 Pa. 282, 282, 291 (Pa. 1846).

To decide whether the deference rule applies to Appellant's claims, the Court follows the Pennsylvania Supreme Court's guidance in Connor to:

> "(1) examine the elements of each of the plaintiff's claims;
> (2) identify any defenses forwarded by the defendant; and
> (3) determine whether it is reasonably likely that, at trial, the fact-finder would ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiff's claims without intruding into the sacred precincts."

975 A.2d at 1103 (internal quotations omitted). Appellant sued his church and pastor seeking money damages because his wife had an affair with the pastor. Applying Connor's "claim-by-claim, element-by-element" approach to the deference rule, this Court now analyzes each of Appellant's claims to the extent permitted by the Constitution and finds that the deference rule bars all claims. Id. at 1102.

A. Breach of Fiduciary Duty

Appellant Laidlaw claims that Pastor McCloskey and Grace Point each owed Appellant a fiduciary duty, and breached that duty. For a fiduciary duty to exist between parties, they must first be in a fiduciary relationship.[12] Pennsylvania courts have held that fiduciary relationships can arise in two ways. The first is as a matter of law, such as between an attorney and client, guardian and ward, or principal and agent. Basile v. H & R Block, Inc., 777 A.2d at 102. Here there is no evidence to support, nor does Appellant allege, that either the pastor or church owed Appellant a fiduciary duty as a matter of law.

Where there is no fiduciary duty as a matter of law, as here, plaintiffs sometimes present evidence sufficient to convince a court that a fiduciary relationship arose "based on

[12] Because the existence of a confidential relationship is one basis for a fiduciary duty, Pennsylvania courts have for decades used the terms "fiduciary relationship" and "confidential relationship" interchangeably. See Basile v. H & R Block, Inc., 777 A.2d 95, 101–02 (Pa. Super. 2001). See, e.g., Com., Dep't of Transp. v. E-Z Parks, Inc., 620 A.2d 712, 717 (Pa. Cmwlth. 1993); Gaines v. Krawczyk, 354 F. Supp. 2d 573, 582 (W.D. Pa. 2004) and Doe v. Liberatore, 478 F. Supp. 2d 742, 765 (M.D. Pa. 2007) (both interpreting and applying Pennsylvania law).

the facts and circumstances apparent on the record." See id. A fact-based fiduciary relationship is "not confined to any specific association," but rather "appears when the circumstances make it certain the parties do not deal on equal terms" in that "on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed." See Leedom v. Palmer, 117 A. 410, 411 (Pa. 1922). Such an imbalance exists "when it is established that one occupies a superior position over the other; intellectually, physically, governmentally, or morally, with the opportunity to use the superiority to the other's disadvantage." See Weir by Gasper v. Estate of Ciao, 556 A.2d 819, 825 (Pa. 1989); see also Basile, 777 A.2d at 102 ("If a person solicits another to trust him in matters in which he represents himself to be expert as well as trustworthy and the other is not expert and accepts the offer and reposes complete trust in him, a fiduciary relation is established.") (citing with approval Burdett v. Miller, 957 F.2d 1375, 1381 (7th Cir. 1992)). Once triggered, the holder of a fiduciary duty must "act in good faith for the other's interest." Basile, 777 A.2d at 102 (internal quotations omitted).

The essence of Appellant's claim is—at best—that his occasional religious counseling sessions with Appellee Pastor McCloskey created a permanent fiduciary relationship, imposing upon the pastor a perpetual legal duty to refrain from ever having an intimate relationship with Appellant's spouse and entitling Appellant to monetary compensation for any inappropriate conduct between the pastor and Ms. Doe.

Grace Point moves for summary judgment as to this and all claims on the basis that the First Amendment and its guardian, the deference rule, require this Court to dismiss the fiduciary duty claim because a jury would be required to "intrude into sacred precincts" to decide the merits. Def.'s Mot. Summ. J. ¶ 26 (quoting Connor, 975 A.2d at 1103). Pastor McCloskey has raised the same defense, asserting that the First Amendment bars the

court from evaluating whether Pastor McCloskey violated Grace Point's Constitution, policy, or procedures, or his pastoral duties. Def.'s Resp. Opp. Pl.'s Mot. Summ. J. 40–41 (referencing Grace Point's Constitution Ex. C, June 5, 2011).

In his attempt to counter the Appellees' First Amendment defense and to prove the merits of his claim, Appellant relies completely upon inapposite cases involving sexual abuse of children and of women with serious mental health issues. This case, by contrast, involves two competent and consenting adults who developed a romantic relationship.

For reasons the Court cannot discern, Appellant argues vehemently in support of his breach of fiduciary duty claim that Ms. Doe's relationship with Pastor McCloskey was not consensual. See Pl.'s Resp. Def.'s Mot. Summ. J. 13. In fact, the record shows that it was only Appellant Laidlaw who did not consent to the relationship. To demonstrate the non-consensual nature of the relationship, Appellant points only to his spouse's deposition testimony: "[Plaintiff's attorney]: As you sit here today, do you believe that Mr. McCloskey used information he learned during your counseling sessions to pursue you for his own gratification? [Ms. Doe]: Yes." Doe Dep. 155:14–18. Appellant repeatedly alleges that Pastor McCloskey misused confidential information, engaged in exploitation, and preyed upon Ms. Doe's sexual "vulnerability."[13] Based on the testimony of both parties to the relationship, the relationship was consensual: there was no force or coercion, and both people were willing participants.[14] The only people capable of determining whether a

[13] In one example, Appellant explained that his belief that Pastor McCloskey had preyed upon Ms. Doe arose from the fact that Pastor McCloskey has fulfilled her unmet needs for intimacy in ways that Appellant did not—through "a lot of letters, compliments, affirmations, how great she was spiritually. All the things she needed to hear he was laying it out there for her." Laidlaw Dep. 159:13–160:15.

[14] See, e.g., Doe Dep. 100:1–10, 102:15–18, 104:15–18 (stating that she believed her "affair" with Pastor McCloskey was "selfish" but explaining that she "felt like she had fallen in love with him"—that he listened to and encouraged her in a way that Appellant had not and met "so many of her needs that had been unfulfilled for so long."); McCloskey Dep. 194:20–195:24 (explaining that his relationship with Ms. Doe was "not forced…it was just two adults relating to each other as friends…it was just an organic thing that happened").

romantic relationship between two competent adults is consensual are those two adults. That Appellant Laidlaw himself did not consent to his spouse's relationship with Pastor McCloskey does not render the affair "non-consensual." See Pl.'s Resp. Def.'s Mot. Summ. J. 13.

i. Claim Against Pastor McCloskey for Breach of Fiduciary Duty

Appellant Laidlaw argues that Pastor McCloskey owed him a fiduciary duty that continued after biblical counseling ended and entitled him to recover money damages for humiliation when his wife and Pastor McCloskey later had an affair. See Pl.'s Sur-Reply Def.'s Mot. Summ. J. 3. Appellant suggests that "Pennsylvania recognizes a cause of action for breach of fiduciary duty arising out of sexual misconduct of a pastor in a counseling relationship." Pl.'s Resp. Def.'s Mot. Summ. J. 13. He insists that his claim for breach of fiduciary duty is different from a clergy malpractice action, which he concedes requires excessive entanglement of church and state and is thus not cognizable in Pennsylvania. Id. at 20. However, this Court has already dismissed Appellant's fiduciary duty claim as an obsolete heart balm tort, no matter how Appellant attempts to style or name it. Further, the fiduciary duty claim as framed by Appellant would require the Court to interpret church policies and procedures, which the deference rule prohibits.

In support of his claim for the existence of a fiduciary relationship with Pastor McCloskey, Appellant Laidlaw points to evidence that Pastor McCloskey served as a pastor and "spiritual advisor" and provided religious counseling to Appellant and Ms. Doe to prepare for their marriage and at several difficult points in their marriage. See id. at 14, 23. Appellant does not dispute that all counseling had ended before the affair began. See Laidlaw Dep. 90:1–6, 92:7–93:1. He argues that Pastor McCloskey's alleged fiduciary duty nonetheless required the pastor to adhere to the Baptist General Conference's

recommended policies regarding sexual misconduct[15] and to "help provide a safe environment free from harassment and sexual misconduct." Id. at 22. To prove that Pastor McCloskey then breached that duty, Appellant points to Pastor McCloskey's belief that he harmed and "failed Appellant as a pastor" when he engaged in an intimate relationship with Ms. Doe, and that he "takes responsibility for those actions." See Pl.'s Resp. Def.'s Mot. Summ. J. 14 (quoting McCloskey Dep. 151:22–152:3, 192:22–24, 341:15–19).

The First Amendment requires that courts, as arms of the state, refrain from injecting themselves into church matters and interpreting church policies and procedures. In this case, Appellant alleges that Pastor McCloskey's affair with Appellant's wife violated the pastor's religious duties. The First Amendment forbids a court to define what a church's canons and doctrine require of its pastors, or whether a pastor has fulfilled those religious duties.

a. The deference rule bars Appellant's fiduciary duty claim against Pastor McCloskey because it relies completely upon alleged violations of church canons and religious duties.

After extensive review, the Court finds no case in which a congregant who previously engaged in counseling with his pastor later brings a claim for breach of fiduciary duty based on the pastor's intimate relationship with the congregant's spouse.[16] Nor has

[15] The document that Appellant refers to as "Grace Point Sexual Misconduct Policy" is in fact the "Recommended Policy Statement on Sexual Misconduct for Local Churches of the Baptist General Conference." It is undisputed in the record that Grace Point was neither required to adopt nor did adopt this document. See Schultz Dep. 22–23, 27, May 12, 2016; Ely Dep. 33–34, Aug. 8, 2016 (summarized in Grace Point's Mot. Summ. J at ¶¶ 33–36). Appellant argues that Stephen Schultz of Converge (d/b/a Baptist General Conference) testified to the contrary, but the portions of Mr. Schultz's deposition that Appellant cites establish only that, by virtue of Grace Point's membership in Converge Mid-Atlantic, Grace Point was required to affirm "Converge's mission and purpose statements." See Pl.'s Resp. Def.'s Mot. Summ J. 24–25 (referencing Schultz Dep. 26:12–24). The Court finds no evidence whatsoever in the record showing that Grace Point was required to or did affirm or adopt the "Recommended Policy Statement on Sexual Misconduct for Local Churches of the Baptist General Conference."

[16] The Court notes that the plaintiff-congregant's husband was a party to Podolinski v. Episcopal Diocese of Pittsburgh, but only for loss of consortium with plaintiff, a derivative claim. See 23 Pa.D.&C.4th 385, 413–14 (C.P. Armstrong 1995).

the Pennsylvania Supreme Court or Superior Court decided the more general question of whether a pastor who provides counseling services to a congregant owes that congregant a continuing fiduciary duty. Having never addressed such a claim, Pennsylvania's Supreme Court and Superior Court have had no reason to analyze whether the deference rule would bar the claim.

Applying Connor's element-by-element approach to determine whether the deference rule applies, we first examine the elements Appellant must prove in order to establish his claim for breach of fiduciary against Pastor McCloskey. See 975 A.2d at 1103. First, Appellant is required to prove that a fiduciary relationship existed between Appellant and Pastor McCloskey. This will require Appellant to present evidence that, in the relationship between Pastor McCloskey and Appellant, Pastor McCloskey possessed an "overmastering influence" over Appellant, or that Appellant was weak, dependent, or justifiably trusted Pastor McCloskey such that Pastor McCloskey "occupied a superior position" over Appellant. See Leedom, 117 A. at 411; Weir, 556 A.2d at 825.

Appellant's attempt to prove that a fiduciary relationship existed between him and Pastor McCloskey would unavoidably require the jury to intrude upon "sacred precincts" in violation of the First Amendment, and the deference rule therefore bars the claim. See 975 A.2d at 1103. Crucially, Appellant must prove to the jury that Pastor McCloskey exerted an "overmastering influence" over Appellant even after the religious counseling had ended, or that Appellant's trust in Pastor McCloskey at that time was "justifiably reposed." See Leedom, 117 A. at 411. Appellant testified that he placed his trust in Pastor McCloskey as a pastor and spiritual advisor, counselor, and friend. See Laidlaw Dep. 119:1–4, 182:18–23; see also Pl.'s Resp. Def.'s Mot. Summ. J. 23, 94.

If Appellant were allowed to proceed to trial on his breach of fiduciary duty claim,

the jury would be asked to determine whether Appellant's trust in Pastor McCloskey—Appellant's pastor, counselor, and friend—was justified, placing Pastor McCloskey in a superior position to Appellant. To submit this question to the jury is to ask the jury, an arm of the state, to entangle themselves in religion by evaluating the merit of Appellant's faith and the wisdom of his decision to trust, seek religious counseling from, and confide in his pastor. A Michigan court articulated precisely the constitutional bar Appellant now faces in his claim for breach of fiduciary duty:

> "In order for the plaintiff's cause of action to meet constitutional muster, the jury would have to be able to determine that a fiduciary relationship existed and premise this finding on neutral facts. The insurmountable difficulty facing plaintiff, this court holds, lies in the fact that it is impossible to show the existence of a fiduciary relationship without resort to religious facts. In order to consider the validity of the plaintiff's claims of dependency and vulnerability, the jury would have to weigh and evaluate, inter alia, the legitimacy of the plaintiff's beliefs, the tenets of the faith insofar as they reflect upon a priest's ability to act as God's emissary and the nature of the healing powers of the church. To instruct a jury on such matters is to venture into forbidden ecclesiastical terrain [...]. In this case plaintiff cannot establish any imbalance of power in the relationship or explain why she would repose trust in [her pastor] without resorting to the fact that [he] was her pastor."

Teadt v. Lutheran Church Missouri Synod, 237 Mich. App. 567, 580 (1999) (upholding dismissal of plaintiff's breach of fiduciary duty claim on summary judgment where a plaintiff sued her pastor for engaging in a sexual relationship with her after the pastor assumed the role of pastoral counselor to plaintiff) (internal brackets and quotations omitted). A jury would have to interpret religious canons and beliefs to determine whether Appellant's trust in his pastor reasonably established a fiduciary duty in the context of their religion. Such an intrusion by the courts into religious doctrine and practice is constitutionally prohibited.

Stripped of its religious foundation, the pastoral counseling relationship between Appellant and Pastor McCloskey was one of equals—in fact, the evidence presented shows it was a friendship and that the religious counseling had ended by the time of the affair. See Laidlaw Dep. 90:1–6, 92:7–93:1, 119:1–4, 182:18–23; Doe Dep. 85–87;

McCloskey Dep. 41:5–17. In other words, this Court cannot conceive of how Appellant could establish any imbalance of power in his relationship with Pastor McCloskey, even before the religious counseling ended, without resorting to the fact that Pastor McCloskey was just that—his pastor. That all counseling had ended before the affair further hobbles Appellant's claim.

Moreover, Appellant could not cure the claim's constitutional defect by presenting evidence that his trust in Pastor McCloskey arose in part from secular considerations, in addition to religious ones. Here, Appellant makes no claim that he trusted Pastor McCloskey because of any education, training, or licensing as a mental health professional that Pastor McCloskey may have had—and the record indicates that he had none.[17] See McCloskey Dep. 15:4–11, 31:3–8, 34; Grace Point Pastoral Counseling and Referral Policy Ex. B, at 1. But even if Appellant presented evidence that secular considerations contributed to his trust in Pastor McCloskey, the Court could not, within the bounds of the First Amendment, ask the jury to parse these out from Appellant's religious reasons for trusting his pastor. Borrowing the language of an Illinois court in a factually analogous case:

> "[P]laintiff alleged that in divulging confidences to the Pastor, he relied on the Pastor's representations concerning his professionalism, training, skill, and experience, as well as [his] commitment to God and religion. We consider it imprudent for a court to attempt to dissect the secular from the sectarian in this equation."

Amato v. Greenquist, 287 Ill. App. 3d 921, 932–33 (1997) (affirming the trial court's dismissal of appellant's breach of fiduciary duty claim against his pastor for failure to state

[17] As noted above, Pastor McCloskey obtained a Bible degree from the Philadelphia Bible College and a Masters in Divinity from Bethel Seminary of the East. His religious training included one class related to "understanding" family, marriage, and people, "the biblical basis of those relationships" and how to approach them. McCloskey Dep. 34:3–21. The record includes ample evidence of Pastor McCloskey's training as a pastoral counselor, and none whatsoever of any training in mental health counseling.

a claim where the pastor and appellant's wife began a sexual relationship while he served as her counselor, and the pastor subsequently began counseling appellant—incidentally, one of the only cases this Court found in which a spouse, rather than the person involved in the sexual relationship with a pastor, lodged such a claim) (internal quotations omitted).

Regardless of any secular considerations that may have bolstered Appellant's trust in his pastor as his counselor, Appellant's claim for breach of fiduciary duty is barred by the deference rule because "when a parishioner lodges such a claim, religion is not merely incidental to a plaintiff's relationship with a defendant, it is the foundation for it…[t]he fiduciary relationship is inescapably premised upon the cleric's status as an expert in theological and spiritual matters." See id. at 932.

b. Appellant relies on inapposite, factually distinct cases to prove the merits of his claim and counter Appellees' First Amendment defense.

Even if the First Amendment's deference rule did not bar the claim at the outset, Appellant's claim fails on the merits. Appellant attempts to create a fiduciary duty when his pastor no longer provided counseling to him or his wife, claiming that he should receive money damages because his wife and pastor had a consensual relationship. Appellant relies for support on three factually-distinct cases from sister Courts of Common Pleas. See, e.g., Pl.'s Resp. Def.'s Mot. Summ. J. 13, 18–20 (citing Podolinski, 23 Pa.D.&C.4th 385 (C.P. Armstrong 1995); Morrison v. Diocese of Altoona-Johnstown, 68 Pa.D.&C.4th 473 (C.P. Westmoreland 2004); Nardella v. Dattilo, 36 Pa.D.&C.4th 364 (C.P. Dauphin 1997). These nonbinding cases are neither persuasive nor relevant to the scenario presented in this case: a consensual relationship between two competent adults, one a pastor and one a congregant, that arose after counseling had ended.

The inapposite decisions on which Appellant relies arise in very different contexts: against the diocese where a priest engaged in child sex abuse (Morrison); where a married

congregant sued her priest/counselor for misleading her into believing that a physical relationship with the priest during her counseling sessions was not wrong in the eyes of the church (Podolinski); and where a congregant sued her priest for developing a sexual relationship with her during counseling for the traumatic loss of her mother when the congregant was suffering from the serious mental health instability of dissociative personality (Nardella). See Morrison, 68 Pa.D.&C.4th at 486, 491; Podolinski, 23 Pa.D.&C.4th at 399–400; Nardella, 36 Pa.D.&C.4th at 366–67, 381.

Significantly, although the three Common Pleas cases involved sexual contact and/or a romantic relationship between a cleric and a member of his flock, none involved a claim by someone outside of that sexual relationship—that is, someone other than the person with whom the cleric had sexual contact, as here. Appellant Laidlaw's outdated argument seems to be that, because his wife was allegedly taken advantage of by their pastor, Appellant should get monetary compensation. This Court found no modern case compensating a husband for his wife's alleged sexual victimization by another.

The distinct procedural posture of these Common Pleas cases is apparent from the outset; all three analyzed preliminary objections, whereas this case was dismissed on summary judgment. See Podolinski, 23 Pa.D.&C.4th 385; Morrison, 68 Pa.D.&C.4th 473; Nardella, 36 Pa.D.&C.4th 364. Of course, the scope of review on summary judgment is more probing than that of the preliminary objection stage, when the trial court must take a plaintiff's allegations as true and "determine…whether the law says with certainty that no recovery is possible." Smith v. Weaver, 665 A.2d 1215, 1217 (Pa. Super. 1995).

Any persuasive value of these Common Pleas opinions is further reduced by the individual facts of the underlying cases, each distinguishable from this case, and the courts' exclusive reliance on cases from other jurisdictions as the bases for the opinions.

When the Podolinski Court found no First Amendment bar and allowed the plaintiff's fiduciary duty to proceed to discovery, it noted the absence of Pennsylvania appellate authority and instead based its conclusion entirely on the holdings of the Colorado Supreme Court. Id. at 396, 400–01 (citing Destefano v. Grabrian, 763 P.2d 275 (Colo. 1988) and Moses v. Diocese of Colorado, 863 P.2d 310 (Colo. 1993)) (in both cases, the Court sustained claims against a cleric for breach of fiduciary duty brought by the person directly involved in an allegedly improper sexual relationship with the cleric).

The First Amendment bars Appellant's claim for breach of fiduciary duty against Pastor McCloskey because it would require the Court to infringe upon a church's religious canons, policies, and teachings. Appellant fails to present any pertinent precedent that would override that constitutional prohibition.

ii. Claim Against Grace Point for Breach of Fiduciary Duty

In his claim against Grace Point, Appellant asserts that Grace Point is vicariously liable for any breach of fiduciary duty by Pastor McCloskey, and that Grace Point owed and breached an independent fiduciary duty to Appellant by allowing Pastor McCloskey to provide religious counseling to him. See, e.g., Pl.'s Resp. Def.'s Mot. Summ. J. 21. The Court will address Appellant's vicarious liability claim below. See infra Section VI(D).

As the basis for Grace Point's independent fiduciary duty to Appellant, he asserts that a fiduciary relationship was formed "by virtue of [Grace Point's] placing Defendant McCloskey in a position to serve as [Appellant's] counselor." Am. Compl. ¶ 85. He claims that Grace Point breached its fiduciary duty in the way it responded after learning of the relationship between Ms. Doe and Pastor McCloskey. Specifically, Appellant asserts that Grace Point "did not follow its procedures in regards for their intolerance for sexual

misconduct."[18] Pl.'s Resp. Def.'s Mot. Summ. J. 24. In addition, Appellant claims that Grace Point breached its fiduciary duty to him by disseminating Appellant's "private and sensitive information" (i.e., Grace Point's letter to its congregation about the affair) and in allowing Pastor McCloskey to apologize to the congregation before his departure from Grace Point without forcing him to state that he had counseled Appellant and Ms. Doe. Id. at 26; Am. Compl. ¶¶ 49–50.

a. Appellant's breach of fiduciary duty claim against Grace Point is barred by the First Amendment's deference rule.

As with Appellant's claim against Pastor McCloskey, Appellant's claim for breach of fiduciary duty against Grace Point is constitutionally barred by the deference rule. Appellant seeks monetary damages because a pastor allegedly breached the church's Constitution and policies in his conduct toward another, non-party congregant. Moreover, Appellant asks a civil court to determine whether church policy was violated. Even when framed narrowly, there is no appellate authority to support Appellant's argument that such a claim is permissible under the First Amendment; the cases of child sex abuse and other sexual coercion on which Appellant relies are wholly irrelevant. The Pennsylvania Supreme Court's guidance in Connor instructs that the deference rule bars such a claim.

Again, the Court begins with Connor's first step: reviewing the elements the Appellant must prove. See 975 A.2d at 1103. Just as in his fiduciary duty claim against Pastor McCloskey, Appellant here must prove that a fiduciary relationship (and therefore duty) existed by presenting evidence that Grace Point had an "overmastering influence" on

[18] Appellant further argues that it should not matter whether Grace Point actually adopted Converge's religious policies, which Appellant claims Grace Point violated. What matters, Appellant argues, is that the policies existed: "the policies that were already in place, irrespective of their roots in Converge Mid-Atlantic or Grace Point…were not followed…[Grace Point], which stood in a fiduciary position and owed duties to Appellant, failed to follow the policies and procedures set in place."). See Pl.'s Resp. Def.'s Mot. Summ. J. 21.

Appellant or that Appellant had a justified trust in Grace Point, that Grace Point breached that duty, and that the breach caused him injury. See Leedom, 117 A. at 411.

Next, the Court must ask if a jury would be able to decide whether Appellant carried his burden on each element of his fiduciary duty claim against Grace Point without intruding into the sacred precincts of religion. See 975 A.2d at 1103. Here, too, Appellant's claim fails Connor's test, and the deference rule must apply to safeguard the First Amendment. In his efforts to prove the claim's first element—the existence of a fiduciary relationship—Appellant is unable to prove Grace Point's overmastering influence over him, or his justified trust in it, without resorting to evidence of his own faith and religious facts. See Leedom, 117 A. at 411. The Court's earlier analysis of why Appellant's attempt to prove the existence of a fiduciary relationship with Pastor McCloskey would trigger the deference rule applies with equal force here and will not be repeated. See supra Section VI(A)(i).

In addition, Appellant is unable to prove the breach element of his claim without asking the jury to commit the same unconstitutional intrusion upon religion. Appellant claims that, in responding to the revelation of Pastor McCloskey and Ms. Doe's relationship to the church elders, Grace Point did not follow its internal procedures; Appellant offers Grace Point's constitution and Converge documents as proof.[19] See Pl.'s Resp. Def.'s Mot. Summ. J. 24 (referencing Grace Point Constitution Ex. C, at 3–5). Appellant also points to evidence in the record that Grace Point sent a letter to its members describing Pastor McCloskey's extramarital relationship with an unnamed

[19] The Court again notes Appellant's attempts to paint Converge's "Recommended Policy Statement on Sexual Misconduct for Local Churches of the Baptist General Conference" as one of Grace Point's policy documents. The Court has already rejected this characterization, supra note 15, finding no evidence in the record that supports Appellant's allegation that Grace Point adopted or affirmed the document as its own.

woman in the congregation, and allowed Pastor McCloskey to address the congregation without requiring him to disclose that he had provided counseling to Appellant. See id. at 26; Am. Compl. ¶¶ 49–50. In presenting this evidence of religious canons, Appellant contends that he "is not asking the fact-finder to assess the standard of reasonableness of [Grace Point's] policies…but whether Grace Point followed the rules it said it would follow." See Pl.'s Resp. Def.'s Mot. Summ. J. 21. Asking a civil court to analyze whether a church adhered to its wholly religious, internal policies and constitution, and to judge whether a church's response to an internal dispute adequately fulfills those policies, necessarily triggers impermissible meddling in religion by the court.

Ultimately, Appellant asks the Court to punish a church, based on a jury's interpretation of the church's own religious constitution and the church's duties under it, for the church's decision not to force its pastor to recite a specific phrase (that he had counseled Appellant) to the church's congregation. It is hard to conceive of a deeper entanglement in Grace Point's internal matters of "discipline, faith, internal organization, or ecclesiastical rule, custom, or law." See Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich, 426 U.S. 696, 713 (1976). Because a jury would be unable to decide at least the first two elements of Appellant's claim (fiduciary relationship and breach) without intruding upon religion, the deference rule bars the claim.

In Podolinski, on which Appellant relies, the court rejected fiduciary duty claims brought by a congregant against her church and church officials for a priest's sexual contact with her. See 23 Pa.D.&C.4th at 397–98, 411. Unlike Appellant Laidlaw, Ms. Podolinski sought damages for her own alleged sexual victimization—not that inflicted upon another. She asserted that the church defendants owed her a fiduciary duty "by virtue of the church cannons" and because they held the defendant-priest out as a "skilled

counselor." Id. at 398, 411. The Podolinski Court found the mere fact that the defendants were church officials (in positions superior to the priest/counselor) an insufficient basis for a fiduciary relationship, calling the assertion "absurd." Id. at 397. Although the Podolinski Court dismissed the claim without analyzing whether church officials were made fiduciaries by virtue of church canons, the court warned that "such a suggestion by plaintiff is equivalent to her asking the court to enforce her rights under church law, not the civil law." Id.

On the breach element, Ms. Podolinski argued that the church defendants' "fail[ure] to adhere to church canons when dealing with her complaint" against the defendant-priest constituted a breach of that duty. Id. at 396. Because Ms. Podolinski complained of the "manner and outcome of the [church's] investigatory and disciplinary procedures" in response to her grievance against the priest, the court held that deciding the claim's breach element would "necessarily involve an inquiry into the propriety of the decisions of church authorities on matters of discipline, internal organization, ecclesiastical rule, custom, and law" which was "exactly the inquiry that the First Amendment prohibit[ed]." Id. at 411 (quoting Serbian, 426 U.S. at 713).

Here, Appellant claims that a fiduciary relationship existed between himself and Grace Point based on Grace Point's placement of Pastor McCloskey "in a position to serve as [Appellant's] counselor, a position inducing reliance and trust." See Am. Compl. ¶ 85. Appellant's attempts to justify the basis for this "reliance and trust" between himself and the pastor or Grace Point would necessarily trigger the deference rule. See id.; Podolinski, 23 Pa.D.&C.4th at 397. Appellant seeks to premise Grace Point's breach on the manner and outcome of the church's response to his complaint about Pastor McCloskey's relationship with Ms. Doe, which in turn was based on church doctrine and policy. Here,

as in Podolinski, the deference rule is triggered and bars the Court's intrusion upon a church's handling of religious matters. See 23 Pa.D.&C.4th at 411.

Morrison and Liberatore—the child sex abuse cases described above and referenced throughout Appellant's voluminous pleadings—present no reasoning to the contrary and are wholly inapposite. See Morrison, 68 Pa.D.&C.4th 473; Liberatore, 478 F. Supp. 2d 742. Unlike these cases, this matter does not involve criminal conduct—no sexual abuse of a child or anyone else. Moreover, Appellant has presented no evidence whatsoever that either he or Ms. Doe is not a competent adult.

B. Negligent/Intentional Infliction of Emotional Distress (NIED and IIED)

In addition to Appellant's claims for IIED and NIED being dismissed as obsolete heart balm torts, the claims fail because the First Amendment's deference rule bars them both. Further, Appellant fails to prove even those elements that do not implicate religion.

i. Appellant's IIED claims fail under the deference rule and because Appellant was not present during Pastor McCloskey's and Ms. Doe's intimate moments.

Appellant brings claims for IIED against Appellees Pastor McCloskey and Grace Point. Am. Comp. ¶ 97. While the Pennsylvania Supreme Court has not explicitly adopted the definition of IIED set out in Section 46 of the Restatement of Torts (Second) (1965), the Commonwealth's appellate courts have frequently relied on Section 46 when analyzing IIED claims. See Johnson v. Caparelli, 625 A.2d 668, 671 (Pa. Super. 1993) (citing, e.g., Kelly v. Resource Housing of America, Inc., 615 A.2d 423, 426 (Pa. Super. 1992); Ford v. Isdaner, 542 A.2d 137, 139 (Pa. Super. 1988), allocatur denied, 554 A.2d 509 (Pa. 1988)). Under Section 46, the plaintiff in an IIED claim must establish that one of the following applies:

> "(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress.

(a) to a member of such person's immediate family *who is present at the time*, whether or not such distress results in bodily harm, or

(b) to any other person who is present at the time, if such distress results in bodily harm."

Id. at 671–72 (emphasis added). The Superior Court has explained that, for an IIED claim to be successful, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." See Johnson, 625 A.2d at 672 (citing Comment (d), § 46); see also Hoy v. Angelone, 720 A.2d 745, 753–54 (Pa. 1998) (explaining that it is insufficient that a defendant "has acted with intent which is tortious or even criminal, or that he has intended to inflict emotional distress," but rather, IIED is "reserved by the courts for only the most clearly desperate and ultra extreme conduct.").

Here, Appellant Laidlaw seems to argue that he should be able to recover monetary compensation from Pastor McCloskey because Appellant "suffered"—in the form of his wife's affair—"at the hands of [his] religious clergy, whom [he] trusted with sensitive, personal, marital information." See Pl.'s Reply Def.'s Mot. Summ. J. 36. Against Grace Point, Appellant argues that the church's "disregard of its policies" and its actions in the wake of the affair were "utterly intolerable and atrocious." See id. Yet again, Appellant's argument boils down to a claim that he should be paid by the pastor and the church for the affair between his wife and Pastor McCloskey and the church's response to it.

The Court first applies Connor's elemental analysis to determine if the First Amendment's deference rule bars Appellant Laidlaw's claim and holds that it must. Regardless of whether Appellant attempts to prove his IIED claim under part (1) or (2) of Section 46—that is, as the subject of the alleged conduct or as a third person where the conduct was allegedly directed toward Ms. Doe, his immediate family member—he must

prove that the conduct of Pastor McCloskey and that of Grace Point was outrageous, "utterly intolerable," and "atrocious." See § 46; Johnson, 625 A.2d at 672. This he cannot do without resorting to religious facts that would compel the factfinder to intrude upon the "sacred precincts of religion." See Connor, 975 A.2d at 1103. Extramarital affairs are, as a matter of law, not actionable. See supra Section V. Thus, Appellant is left only with the fact that his wife's affair was with their pastor and with Appellant's displeasure with the church's response to the affair. Thus, any argument by Appellant will necessarily arise from religious facts, allegations of broken religious rules and doctrine, and perceived social pressure within his chosen religious community—all of which would require the factfinder to make judgments impermissible under the First Amendment. See id.

If Appellant Laidlaw claims that he should recover under IIED for any conduct by Pastor McCloskey or Grace Point toward Ms. Doe, his claim would not only be barred by the deference rule but also on the merits, based on the non-religious fact that he did not witness the intimate moments between his wife and the pastor. See Johnson, 625 A.2d at 672. When a plaintiff making an IIED claim is someone other than the target of the alleged outrageous conduct, the plaintiff must have been present to witness the alleged outrageous conduct committed against a third person. Johnson, 625 A.2d at 668-69, 672 (affirming the dismissal of the plaintiff-parents' IIED claim where they sued their priest and church after the priest allegedly sexually abused their minor son because neither parent was present to witness the alleged sex abuse of their child). Physical presence is "an essential element" in cases where the outrageous conduct is directed at a third party because "the emotional effects are generally lessened where the individual learns of the outrageous conduct…by means other than through his or her own personal observations." Id. at 673.

Under Johnson, Appellant cannot establish a claim for IIED because he was not present when Pastor McCloskey and Ms. Doe were intimate with each other. Appellant alleges that Pastor McCloskey's conduct with Ms. Doe caused Appellant to suffer severe emotional distress. Am. Compl. ¶¶ 57, 61. Just as the Johnson Court found that the priest had directed his illegal conduct toward the minor child and not the parents, here, Pastor McCloskey's romantic inclinations were directed at Ms. Doe and not at Appellant. See 625 A.2d at 671. Appellant was not physically present when Pastor McCloskey and Ms. Doe were intimate. Instead, he learned of the affair only when he found a message from Pastor McCloskey while reading Ms. Doe's email—"by means other than through his…own personal observations." See Am. Compl. ¶¶ 34–35; Johnson, 625 A.2d at 673. Thus, Appellant cannot establish the requisite elements of his IIED claim.

Dismissal of Appellant's IIED claim is even clearer here than in Johnson because, although the Johnson Court dismissed the parents' IIED claim because they were not present when the priest allegedly sexually abused their minor son, the court did find the priest's alleged criminal conduct outrageous. See id. at 672. Here, the alleged "outrageous" conduct was merely an extramarital affair between two capable, consenting adults—conduct wholly distinct and dissimilar to the criminal sexual abuse of a minor that formed the basis of the Johnson claim.

ii. Appellant's NIED claim is likewise barred by the deference rule.

Appellant Laidlaw also brings claims for NIED against both Appellees Pastor McCloskey and Grace Point. Am. Compl. ¶ 97. To prove a claim for NIED in Pennsylvania, a plaintiff must prove one of the following: (1) that the defendant has a contractual or fiduciary duty toward the plaintiff; (2) that the plaintiff suffered a physical impact; (3) that the plaintiff "was in a 'zone of danger' and at risk of an immediate physical

injury;" or (4) that the plaintiff "had a contemporaneous perception of tortious injury to a close relative." Doe v. Philadelphia Cmty. Health Alternatives AIDS Task Force, 745 A.2d 25, 27–28 (Pa. Super. 2000), aff'd, 767 A.2d 548 (Pa. 2001).

Here, Appellant argues that his claim fits the first scenario because both Pastor McCloskey and Grace Point allegedly owed him a fiduciary duty. See Pl.'s Resp. Def.'s Mot. Summ. J. 37. For the First Amendment and other reasons described at length above, see supra Section VI(A), neither Pastor McCloskey nor Grace Point owed a fiduciary duty to Appellant, so Appellant's claim for NIED based on an alleged fiduciary duty is dismissed.

Additionally, Appellant Laidlaw cannot establish a claim for NIED on any other ground because this case involves a broken heart, not "physical impact," risk of physical injury, or witnessing an injury to a close relative. See id.

C. Fraudulent Misrepresentation

Appellant Laidlaw makes a claim for fraudulent misrepresentation against Pastor McCloskey. See Am. Compl. ¶¶ 74–83. Pennsylvania's Supreme Court has identified the elements that a plaintiff must prove in any claim for fraudulent misrepresentation:

> (1) a representation;
> (2) which is material to the transaction at hand;
> (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false;
> (4) with the intent of misleading another into relying on it;
> (5) justifiable reliance on the misrepresentation; and
> (6) a resulting injury proximately caused by the reliance.

Gibbs v. Ernst, 647 A.2d 882, 889 (Pa. 1994) (citing W. Page Keaton, Prosser and Keaton on the Law of Torts § 105 and the Restatement (Second) of Torts § 525 (1977)); see also Thomas v. Seaman, 304 A.2d 134, 137 (Pa. 1973) ("Fraud is composed of a misrepresentation fraudulently uttered with the intent to induce the action undertaken in

reliance upon it, to the damage of its victim.").

Appellant alleges that Pastor McCloskey fraudulently misrepresented to him "that he would never harm or betray him." Id. at ¶ 75. Pastor McCloskey made this statement, Appellant alleges, knowing it was false and misleading, "to obtain information from [Timothy Laidlaw] that he could use to seduce Ms. Doe." Id. at ¶¶ 77, 79.

In addition to its heart balm defense, Grace Point has moved for summary judgment on all of Appellant's claims, asserting that they are barred by the First Amendment and, alternatively, fail on the merits. See Def.'s Mot. Summ. J. ¶ 13. Since making his allegations in December 2014, Appellant has neither argued nor put forth any evidence or precedent in favor of his claim for fraudulent misrepresentation against Pastor McCloskey. In fact, Appellant made only one passing reference[20] to the claim in all of his voluminous pleadings, and did so only after summary judgment was granted against him. This Court finds that Appellant has provided no actual evidence in support of his allegations, as the law requires in response to a motion for summary judgment.

Even if Appellant could point to evidence in the record supporting his claim, it is "reasonably likely" that Appellant's attempts to prove the second and fourth elements—materiality and justifiable reliance—would trigger the deference rule. See Connor 975 A.2d at 1103. The extent to which Pastor McCloskey's alleged representation (that he would not "harm or betray" Appellant) was material to Appellant's decision to disclose personal information is a question that would inherently require the jury to parse out and weigh Appellant's religious and non-religious reasons for trusting Pastor McCloskey enough to

[20] In Appellant's Statement of Errors Complained of on Appeal, he recites the claims he brought in his original Complaint, including Fraudulent Misrepresentation and Negligent Failure to Rescue, the latter of which was dismissed on preliminary objections on May 15, 2015. See Pl.'s Statement of Errors ¶ 7 (referring to Count II of Appellant's 2014 complaint); Judge Ceisler's Order, May 15, 2015 (sustaining Grace Point's preliminary objections as to Negligent Failure to Rescue). This Court finds nowhere else where Appellant argues in support of or even references his 2014 claim for Fraudulent Misrepresentation. See id. at 5–7.

share personal information with him. As discussed above, the Court concludes that to ask a jury "to attempt to dissect the secular from the sectarian" among Appellant's reasons for confiding in Pastor McCloskey would intrude upon sacred precincts. See Amato, 287 Ill. App. 3d at 932–33. Relatedly, Appellant's attempt to prove that his reliance on Pastor McCloskey's representation was justified would create the same constitutional problem.

Moreover, Appellant has presented no evidence for his claim to survive Grace Point's motion for summary judgment. Although this Court will not analyze any element that requires unconstitutional intrusion into religion, it is clear that Appellant failed to present any evidence whatsoever on at least two elements, neither of which requires any such intrusion. On the first element (a representation), the Court finds no evidence that Pastor McCloskey ever told Appellant that he "would not harm or betray" him, as Appellant alleges. See Gibbs, 647 A.2d at 889. Perhaps most glaring is Appellant's failure to present any evidence that, if and when Pastor McCloskey told Appellant he would not harm or betray him, Pastor McCloskey knew the statement was false and uttered it with the intent to mislead Appellant into relying on it. See id. Absent this evidence, the Appellees are entitled to judgment as a matter of law. See, e.g., David Pflumm Paving & Excavating, Inc. v. Found. Servs. Co., A.2d 1164, 1171 (Pa. Super. 2003) ("Where a plaintiff asserts fraudulent misrepresentation without showing that the defendant intended to mislead the plaintiff into reliance on the misrepresentation, the defendant is entitled to judgment as a matter of law.").

D. Vicarious Liability

Appellant Laidlaw seeks to hold Grace Point liable for the conduct of Pastor McCloskey, its employee. Having found that none of Appellant's claims against Pastor McCloskey survive summary judgment, the Court need not address Appellant's claim for

vicarious liability against Grace Point. Here, too, Appellant relies on the alleged breach of fiduciary duty by Pastor McCloskey—a claim dismissed in Section VI(A)(i), supra—as the "harm" for which Grace Point is vicariously liable. Thus, there is no legal liability on the part of Pastor McCloskey to attribute to Grace Point. Nevertheless, a succinct summary of the claim's constitutional problems and lack of merit follows.

In Pennsylvania, an employer can be held vicariously liable to an injured third party for the negligent acts and, in certain circumstances, intentional acts of its employee when those acts "were committed during the course of and within the scope of the employment." See R.A. ex rel. N.A. v. First Church of Christ, 748 A.2d 692, 699 (Pa. Super. 2000) (quoting Fitzgerald v. McCutcheon, 410 A.2d 1270, 1271 (Pa. Super. 1979) and Restatement (Second) of Agency § 228 (1958)). An employee's conduct is considered "within the scope of employment for purposes of vicarious liability if:

> (1) it is of a kind and nature that the employee is employed to perform;
> (2) it occurs substantially within the authorized time and space limits;
> (3) it is actuated, at least in part, by a purpose to serve the employer; and
> (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer."

Id.

To make out a claim for vicarious liability, Appellant must first show that Pastor McCloskey committed a negligent or intentional act that resulted in a legally cognizable injury to Appellant. See R.A., 748 A.2d at 699. Appellant argues that the injury against him for which Grace Point should be liable is Pastor McCloskey's alleged breach of fiduciary duty—that is, Pastor McCloskey's affair with Ms. Doe. As explained above, Appellant's claim for breach of fiduciary duty by Pastor McCloskey fails as an obsolete heart balm tort and under the First Amendment.

In addition to Appellant's inability to demonstrate an injury recognized under modern

law and without offending the First Amendment, he has also failed to present evidence on several of Fitzgerald's requirements to show that Pastor McCloskey was acting within the scope of his employment as a pastor, or as a biblical counselor, when he engaged in an affair with Appellant's spouse. See id. First, it is self-evident that Grace Point did not employ Pastor McCloskey to engage in extramarital relationships with the spouses of Grace Point's congregants, including those who had received pastoral counseling services from the church in the past. See generally Grace Point Relational Commitments Ex. A; Grace Point Pastoral Counseling and Referral Policy Ex. B. The second prong is the only element on which Appellant has presented evidence; it is undisputed that Pastor McCloskey used his Grace Point office phone and email account to communicate with Ms. Doe during their affair. See McCloskey Dep. 269, 271:12–272:14. However, it is not at all clear that the complained of conduct occurred "substantially" within Grace Point's property or "authorized time." See Fitzgerald, 410 A.2d at 1271. In fact, it is undisputed that much of the communication between Pastor McCloskey and Ms. Doe occurred via text message from their personal phones, through private email accounts, and in-person off Grace Point property. See Doe Dep. 107:13–18; McCloskey Dep. 250:16–253:9, 269:19–270:7, 274:5–20. Moreover, it is undisputed that the sexual acts engaged in by Ms. Doe and Pastor McCloskey—which Appellant places at the center of so many of his claims—occurred off of Grace Point property. See McCloskey Dep. 250:16–251:10, 274:5–20; Doe Dep. 107:3–109:3. The fourth prong is irrelevant because it is undisputed that no force was used in this case. See Doe Dep. 100:1–10, 102, 104:1–5, 15–18.

Appellant's attempts to support his claim through analogy to vicarious liability claims arising from criminal sexual abuse of children or mentally ill people are not persuasive. See, e.g., Pl.'s Resp. Def.'s Mot. Summ. J. 133 (citing Patel v. Himalayan Int'l. Inst. of

Yoga Sci. & Philosophy of the U.S., 1999 U.S. Dist. LEXIS 22532, at **30–32 (E.D. Pa. 1999) and Nardella, 36 Pa.D.&C.4th at 377–78). As discussed above, these cases are factually distinct and inapposite to the case at bar where it is undisputed that Pastor McCloskey used no force in his relationship with Ms. Doe, and that their relationship was not one of sexual abuse but rather one between two consenting and competent adults. See Doe Dep. 100:1–10, 102, 104:1–5, 15–18.

Because this Court found that Appellant's claims against Pastor McCloskey do not survive summary judgment, his vicarious liability claim necessarily disappears since it stems entirely from his claims against the pastor. Appellant has shown no legally recognized harm by Pastor McCloskey to even attempt to attribute to Grace Point. Appellant also failed to show that Pastor McCloskey was operating within the scope of employment when he engaged in the affair. Accordingly, Appellant's vicarious liability claim against Grace Point is dismissed.

E. Negligent Hiring and Supervision

Appellant Laidlaw further alleges that Grace Point is liable for the negligent hiring and supervision of Pastor McCloskey. Am. Compl. ¶¶ 90–97. Appellant argues that Grace Point failed to adequately supervise Pastor McCloskey to prevent the "exploitation of [Appellant] and Jane Doe" and the sexual relationship between Pastor McCloskey and Ms. Doe. Am. Compl. ¶ 91. At the outset, the Court must emphasize that Appellant is without standing to bring any claim for alleged exploitation or harm to Ms. Doe, who is not a party. In addition to Appellant Laidlaw's lack of standing to obtain money damages for alleged harm to his wife, there is ample, undisputed evidence in the record showing that the relationship between Ms. Doe and Pastor McCloskey was consenting, voluntary, and one of mutual affection. See, e.g., Doe Dep. 100:1–10, 102, 104:1–18, 116:20.

As in all negligence claims, the proponent of a claim for negligent hiring and/or supervision must establish the defendant's duty, breach, causation, and "actual loss or damage." Brezenski v. World Truck Transfer, Inc., 755 A.2d 36, 40 (Pa. Super. 2000) (citing Martin v. Evans, 711 A.2d 458 (Pa. 1998)). In the context of employment, Pennsylvania has adopted two Restatement sections that codify what has long been the state's tort common law: that employers have a "duty to exercise reasonable care in selecting, supervising and controlling employees." Id. at 42 (citing Restatement (Second) of Torts, § 317 (1965) and Restatement (Second) of Agency, § 213 (1958)).

Of these two Restatement bases, Appellant appears to rely solely upon Section 317, which applies to acts performed by an employee acting outside the scope of his employment. See Pl.'s Resp. Def.'s Mot. Summ. J. 52, 53, 60, 123, 124, 131 (each citing Section 317, with no citation of Section 213[21] in Appellant's Response, Sur-Reply, or Motion for Reconsideration). Section 317 states:

> "A master is under a duty to exercise reasonable care so as to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or […] creat[ing] an unreasonable risk of bodily harm to them, if
>
> > (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control."

Restatement (Second) of Torts, § 317 (1965); see also Dempsey v. Walso Bureau, Inc., 246 A.2d 418, 419–20 (Pa. 1968) (emphasizing the admission that the employee was acting outside the scope of his employment at the time of the incident in "determin[ing]

[21] Section 213 states: "A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: (a) in giving improper or ambiguous orders of in failing to make proper regulations; or (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others; (c) in the supervision of the activity; or (d) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control." Restatement (Second) of Agency, § 213 (1958).

whether the requirements of Section 317 have been satisfied").[22]

In a claim against an employer under Section 317, like Appellant's, "it must be shown that the employer knew or, in the exercise of ordinary care, should have known of the necessity for exercising control of his employee." See Dempsey, 246 A.2d at 422. The Pennsylvania Supreme Court has broken down this inquiry into two questions: (1) what was the defendant's conduct prior to the incident at issue and did it "indicate a propensity for [the alleged bad conduct]?" and (2) did the employer know, or in the exercise of ordinary care, should it have known of [the defendant's] prior conduct? See id.; see also Fletcher v. Baltimore & Potomac R. Co., 168 U.S. 135 (1897) (holding, long before the creation of Section 317, that an employer can be liable for its employee acting outside the scope of employment where the employer knew of the employee's dangerous conduct but failed to prevent injury to third persons).

In arguing that Grace Point failed to adequately supervise Pastor McCloskey to prevent the "exploitation of [Appellant]" (and the intimate relationship between Pastor McCloskey and Ms. Doe), Appellant alleged thirteen ways in which Grace Point was negligent or reckless, including by "failing to provide for the safety and protection" of Appellant and Ms. Doe,[23] and providing Pastor McCloskey with "ready access to vulnerable and dependent church couples" when Grace Point knew or should have known of Pastor McCloskey's "tendencies to exploit" his pastoral counseling relationships.[24] Am.

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[22] Because Appellant has argued repeatedly that Pastor McCloskey's actions were within the scope of his employment, and that Grace Point is therefore vicariously liable for his alleged wrongdoing, the Court assumes that these claims are posited as alternative theories of liability, at least one of which must necessarily fail on the merits. See, e.g., Pl.'s Resp. Def.'s Mot. Summ. J. 131–36 (outlining Appellant's claim for vicarious liability against Grace Point based on Pastor McCloskey's conduct being "within the course and scope of his employment").

[23] Again, this line of argument, like so many of Appellant's claims, erroneously assumes he has standing to bring a claim for a legal injury against Ms. Doe. He does not.

[24] In her May 15, 2015 Order, Judge Ceisler sustained Grace Point's preliminary objections as to several of these allegations, striking them with prejudice. See Judge Ceisler's Order (striking Am. Compl. ¶ 51

Compl. ¶¶ 91, 96.

Despite Appellant's duty at this stage to present evidence supporting his claims, he has failed to even articulate the precise basis for his negligent hiring/supervision claim. There is also no evidence whatsoever of any misconduct by Appellee Pastor McCloskey in his sixteen year tenure at Grace Point leading up to the relationship with Ms. Doe. Thus, in addition to his lack of standing to bring any claim based on harm done to Ms. Doe, Appellant produced no evidence in support of his allegations and summary judgment is therefore appropriate.

Even if Appellant had produced the required supporting evidence, his claim would still be left without an alleged harm because the Court has dismissed every claim against Pastor McCloskey. Appellant cites breach of fiduciary duty as the harm that Grace Point (through Pastor McCloskey) inflicted upon Appellant. Because this Court already dismissed Appellant's breach of fiduciary duty claim, Appellant's negligent hiring/supervision claim must fail.

Finally, the Court holds that, for many of the same reasons discussed in earlier sections, the First Amendment's deference rule bars Appellant's claim for negligent hiring/supervision against Grace Point as an attempt to have a civil court interpret, dictate, and enforce the proper relationship between a church and its pastor as it relates to that pastor's consenting relationships with other, capable adults. Applying Connor, the threshold question in Section 317 of whether Pastor McCloskey, Grace Point's employee, harmed Appellant would require the jury to impermissibly intrude upon religious precincts.

("Defendants Grace Point…knew or should have known through the exercise of reasonable care the necessity of exercising control over Defendant McCloskey by reason of his past conduct."); ¶ 52 ("Defendant Grace Point…knew or should have known that Defendant McCloskey was in the habit of conducting himself in a manner likely to cause harm."); and ¶ 96(l)–(m) ("The negligence, carelessness, and recklessness of Defendant Grace Point…included…negligent hiring of Defendant McCloskey; and negligent review of Defendant McCloskey's work history")).

See 975 A.2d at 1109. The primary harm on which Appellant bases his claim seems to be an alleged breach of fiduciary duty—a claim the Court already dismissed on constitutional grounds and as a thinly veiled heart balm. See Pl.'s Resp. Def.'s Mot. Summ. J. 124.

Appellant's contention that applying the deference rule to his claim would "mean that no religious institution could ever be liable for negligent supervision or hiring of their employees, i.e. in priest or clergy abuse of children" is baseless and unconvincing. See Pl.'s Resp. Def.'s Mot. Summ. J. 31. Sexual abuse of a child by clergy or anyone else is a crime in criminal courts and a legally recognized harm in civil courts. The evidence shows that Pastor McCloskey's conduct toward Appellant was neither. Critically, the testimony of both Ms. Doe and Pastor McCloskey makes clear that this case arises from a consensual relationship between two capable adults. See, e.g., Doe Dep. 100:1–10, 102:15–18, 104:15–18; McCloskey Dep. 194:20–195:24; see also supra note 14, summarizing the evidence of consent. Appellant's personal belief to the contrary and his citation of cases involving criminal sex abuse of children by clergy do not, by virtue of their repetition, render the situation otherwise.

Appellant complains of conduct that, when stripped of its religious context and implications, is not a legally cognizable harm to Appellant: that Pastor McCloskey engaged in an intimate relationship with Appellant's spouse. Although this conduct is understandably upsetting and abhorrent to Appellant, it is not a harm against which the law protects. See supra Section V (explaining abolished heart balm torts).

In addition to Grace Point's valid constitutional defense, Appellant's claim fails on the merits. In his negligent supervision claim, as codified in Section 317, Appellant has failed to present any evidence on the notice element, which does not require the factfinder to intrude upon religion. See Restatement (Second) of Torts, § 317. Pastor McCloskey

had a Bachelor's degree in Bible and a Master's in Divinity, underwent a multi-step interview and screening process, and had logged sixteen years of pastoral service at Grace Point unmarred by misconduct or scandal leading up to his relationship with Ms. Doe. See McCloskey Dep. 12, 19–20, 31–32, 76–77. Appellant presented no evidence that either before or after Grace Point hired Pastor McCloskey, it knew or should have known of the need to control Pastor McCloskey in his relationship with Appellant or any other congregants. See § 317(b); Dempsey, 246 A.2d at 422. There is no evidence in the record of any misconduct by Pastor McCloskey in his sixteen year tenure at Grace Point leading up to the complained of conduct. See McCloskey Dep. 321:12-20; see generally id. 19–20, 76:19–79:21 (describing the pastor's tenure and roles at Grace Point). It is undisputed that Ms. Doe and Pastor McCloskey worked hard to keep their relationship secret, and that no one at Grace Point[25] knew of the affair prior to May 21, 2014, when Appellant discovered it. See Laidlaw Dep. 180–81; Doe Dep. 112; McCloskey Dep. 355–56. Regardless of how Appellant attempts to frame Pastor McCloskey's "misconduct"—as misusing information obtained through pastoral counseling, fraudulent misrepresentation, breach of fiduciary duty, NIED, IIED—there is simply no evidence that Pastor McCloskey had previously engaged in that conduct. Therefore, there was no evidence of notice to Grace Point or propensity by Pastor McCloskey, and Appellant's claim must fail. See Dempsey, 246 A.2d at 422.

Finally, Appellant has presented no law that would support his claimed right to recover monetary damages simply because he was humiliated and hurt by a relationship

[25] The record shows that, prior to Appellant's discovery of the relationship, Pastor McCloskey's spouse learned that he had been engaged in an inappropriate relationship with Ms. Doe. However, Pastor McCloskey's spouse did not uncover the full extent of the relationship (i.e., its duration or physical nature) and there is no evidence that she served in an official capacity with Grace Point, other than as a member. See Doe Dep. 109:2–112:21; McCloskey Dep. 262:13–266:15.

someone had with his wife. This claim is accordingly dismissed.

F. Defamation

Appellant Laidlaw brings a claim for defamation against Grace Point based on a letter the church sent to its members about the affair between Pastor McCloskey and Ms. Doe. Appellant has admitted the truth of the Letter's contents. The Letter did not name him or his wife. Nonetheless, Appellant alleges that Grace Point defamed him in the church community, "mak[ing] plaintiff and his wife/family appear to be at fault for the resignation of Defendant McCloskey." See Am. Compl. ¶¶ 109–11. The truth of the statements immunize Grace Point completely from liability since truth is a complete defense to defamation. In addition, Appellant Laidlaw fails to meet other essential elements to prove defamation and his claim is barred by the First Amendment's deference rule.

In Pennsylvania, a defamation action "is based on a violation of the fundamental right of an individual to enjoy a reputation unimpaired by false and defamatory attacks." Berg v. Consol. Freightways, Inc., 421 A.2d 831, 833 (Pa. Super. 1980). Pennsylvania law sets out a complex statutory definition for defamation claims. See generally 42 Pa.C.S. §§ 8341–8345. In relevant part, the statute requires the plaintiff to prove:

> "(1) The defamatory character of the communication.
> (2) Its publication by the defendant.
> (3) Its application to the plaintiff.
> (4) The understanding by the recipient of its defamatory meaning.
> (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
> (6) Special harm resulting to the plaintiff from its publication."[26]

Weaver v. Lancaster Newspapers, Inc., 926 A.2d 899, 903 (Pa. 2007) (citing 42 Pa.C.S. §

[26] A plaintiff is also required to prove, when the issue is properly raised, that the defendant abused a conditional privileged occasion. § 8343(a)(7). This requirement is not relevant here because Appellant has made no such allegation against Grace Point.

8343(a)). Initially, whether a statement is capable of defamatory meaning is a question of law that the Court must decide. Bell v. Mayview State Hosp., 853 A.2d 1058, 1061–62 (Pa. Super. 2004). "If the Court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial." Livingston v. Murray, 612 A.2d 443, 446 (Pa. Super. 1992). Likewise, where a plaintiff claims that the offending communication, although not directly defamatory, nevertheless implies a defamatory meaning, the court must decide "whether the language used in the objectionable [statement] could fairly and reasonably be construed to have the meaning imputed by the innuendo. If the words are not susceptible of the meaning ascribed to them by the plaintiff…and do not sustain the innuendo, the case should not be sent to a jury." See Sarkees v. Warner-West Corp., 37 A.2d 544, 546 (Pa. 1944).

In determining whether a statement is capable of a defamatory meaning, the Court analyzes whether the statement "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third parties from associating or dealing with him." Tucker v. Philadelphia Daily News, 848 A.2d 113, 124 (Pa. 2004) (quoting Restatement (First) of Torts, § 559 (1989)). The offending statements must also have caused damage to the plaintiff; "[i]t is not enough that the victim of the 'slings and arrows of outrageous fortune', be embarrassed or annoyed, he must have suffered that kind of harm which has grievously fractured his standing in the community of respectable society." Scott-Taylor, Inc. v. Stokes, 229 A.2d 733, 734 (Pa. 1967).

If the plaintiff can satisfy this burden, the defendant may raise affirmative defenses, including that the defamatory communication in question was true or that the subject matter was of public concern. See § 8343(b). Truth is an absolute defense to a defamation claim. See Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 770 (1986);

Spain v. Vicente, 461 A.2d 833, 836 (Pa. Super. 1983).

At the heart of Appellant Laidlaw's defamation claim is his firm belief—woven throughout several of his claims—that Grace Point should have announced to its congregation in the wake of the affair that Pastor McCloskey had previously provided biblical counseling to Appellant and Ms. Doe. Grace Point's May 27, 2014 Letter to its members forms the primary basis for the claim. See Ex. D. Unfortunately for Appellant, his hope that Grace Point would have responded differently to the affair does not constitute the basis for a defamation claim.

In the Letter, Grace Point informed its congregation that the church elders had agreed to suspend Pastor McCloskey—and then demanded his resignation—after learning that he had been involved in an inappropriate relationship with a married member of Grace Point. See id. Appellant argues that the Letter "did not come close" to describing "the events as they occurred," in that it called the relationship a "consensual affair"[27] between the Pastor and an unnamed parishioner, and did not disclose that Pastor McCloskey had provided counseling to the unnamed woman and her spouse or that Pastor McCloskey "used the information that he gained during his counseling sessions to exploit the wants and needs of Jane." See Pl.'s Resp. Def.'s Mot. Summ. J. 48. Appellant further alleges that the Letter "cast blame on Jane" for Pastor McCloskey's actions and that, as a result, Appellant's relationship with his wife is now further damaged. See id. at 10. Appellant claims that, after he discovered the relationship between Ms. Doe and Pastor McCloskey, he endured embarrassment and ridicule and decided to leave Grace Point, losing many of

[27] Appellant's claim that Grace Point called the relationship a "consensual affair" in its Letter is mistaken. See Pl.'s Resp. Def.'s Mot. Summ. J. 48; Pl.'s Mot. Recon. 106. In fact, the Letter does not include this language. In the Letter, Grace Point refers to the relationship as "marital infidelity" by Pastor McCloskey and "inappropriate," warranting "church discipline" (explained infra note 28) on both parties involved. See Letter Ex. D.

the relationships he valued there, while Pastor McCloskey was "allowed to resign with his credibility and dignity intact." See id. at 10–11.

In addition to Grace Point's defenses based on statutorily barred heart balm torts and the First Amendment's deference rule, Grace Point also argues that Appellant failed to prove the merits of the claim and asserts the affirmative defense of truth: that the allegedly defamatory statements were true. See Def.'s Mot. Summ. J. 37. Appellant has admitted that each of the statements contained in the Letter was "factually correct" but opined that the Letter was "not truth"—presumably because it did not include the fact that Pastor McCloskey had provided counseling to Appellant and Ms. Doe. See Pl.'s Resp. Def.'s Mot. Summ. J. 48 (citing Laidlaw Dep. 262:13–17).

The primary evidence underlying Appellant's defamation claim is the text of the Letter itself, over which there is no dispute. The Letter reads:

> "The elder team comes to you in deep grief over the moral failure of our senior pastor, Chris McCloskey. […]
>
> We are sorely troubled to share with you the awful news that Chris admitted after being confronted just days ago: that he has been, for several months, engaged in marital infidelity. The elders deemed that the situation required him to be removed from his position. He was involved in an inappropriate relationship with a woman in our church body, which was emotional in nature (involving email and texting) and included some in-person encounters. The extent and nature of the relationship has been confirmed by the woman's admissions **after being confronted by her husband**. Chris was immediately placed on administrative leave pending final action. We want you to know that the contents of this paragraph have been read by Chris to confirm their accuracy.
>
> Chris has chosen to resign his position in ministry. His resignation letter to the elders, which he agreed could be released with this letter, is enclosed. The elders have accepted Chris' resignation effective May 26, [2014] and have chosen to suspend his ordination certificate, as permitted by our policy for moral failure of pastors ordained by our body. Our ultimate goal is to assist Chris to be restored to spiritual and relational wholeness and perhaps, by God's grace and in the future discretion of our leaders, to a position in some form of ministry, but not at Grace Point. Nevertheless, our Relational Commitments also direct us to impose church

> discipline[28] on both Chris and the woman, and we will soon do so with the goal of redemption and reconciliation. […]
>
> We recognize that you are feeling (or will soon most likely feel) shock, hurt, anger, sadness, and/or confusion. Our elder team is praying (and, as some are able, also fasting) as this letter is being mailed to you, and **we implore you to be faithful to pray for all affected parties, including the woman and her family**, as well as Chris, [Pastor McCloskey's spouse], and their daughters as they make plans for transition."

Ex. A, May 27, 2014 (emphasis added and paragraphs discussing scripture omitted). The Letter did not name Appellant (or Ms. Doe), and referred to them only twice, bolded above. See id. The Court emphasizes that its analysis focuses on these two small portions of the letter that applied to Appellant, and their context in the Letter's full text—not on statements that applied only to Ms. Doe, who is not a party to this action.

Appellant argues that Grace Point's dissemination of these two short phrases, unaccompanied by a statement that Pastor McCloskey had provided religious marriage counseling to Appellant, created a meaning defamatory to Appellant, making him an outcast in the Grace Point community. See Pl.'s Resp. Def.'s Mot. Summ. J. 10. In other words, Appellant asserts that the Letter's defamatory meaning arose not from what Grace Point said about him, but from what Grace Point did not say about his (and Ms. Doe's) relationship with Pastor McCloskey.

In addition, although neither Appellant nor Ms. Doe was named in the Letter, Appellant testified that word had spread quickly through the church of the relationship between Ms. Doe and Pastor McCloskey, so Appellant's identity as "the husband"

[28] The Letter's reference to "church discipline" is fully explained in Grace Point's "Commitment to Accountability and Church Discipline" document, which states that church members agree to submit themselves to "restorative discipline" with the goal of "restoring someone to a close walk with Christ, protecting others from harm, and showing respect for the honor and glory of God's name." See Grace Point Relational Commitments Ex. A, at 12–13 (scriptural citations omitted). Church discipline includes "giving love within our church whenever a sin seems too serious to overlook," through individual discussions with the sinner and "public and private admonitions." See id. at 13–14.

referenced in the Letter was known (or became known) throughout the church. See Laidlaw Dep. 196:15–23, 256; Pl.'s Resp. Def.'s Mot. Summ. J. 49 (citing Laidlaw Dep. 245–46). Appellant admitted that he printed and distributed copies of his wife's email, revealing the affair to several people. On the day he learned of the affair, Appellant also gave church elders permission to tell the worship band of Ms. Doe's relationship with the Pastor. See Laidlaw Dep. 190:15–191:4, 196:15–23, 256–59; Def.'s Mot. Summ. J. ¶ 92. It is undisputed that several congregants knew before Grace Point mailed the Letter that it was Appellant's wife who had the extramarital relationship. Appellant himself publicized the information to some and gave Grace Point permission to reveal it to others. However, there is no evidence supporting Appellant's claim that Grace Point attempted to cast blame upon him or Ms. Doe—by name or by anonymous reference—for the affair. See Pl.'s Resp. Def.'s Mot. Summ. J. 10; Letter Ex. D.

First and foremost, Appellant's claim must fail because non-religious evidence in the record proves Grace Point's complete, affirmative defense: that its statements about Appellant were true.[29] See Def.'s Mot. Summ. J. ¶¶ 104–05; Laidlaw Dep. 271. Nearly all of the Letter's statements that Appellant complains of relate to his spouse, rather than to him, including the description of the relationship between Ms. Doe and Pastor McCloskey as "marital infidelity" and as "an inappropriate relationship with a woman in our church body." See Pl.'s Resp. Def.'s Mot. Summ. J. 10. The only statements that related to

[29] Appellant asserts that, in overruling Grace Point's preliminary objections to the defamation count of Appellant's original Complaint, this Court determined that the Letter contained "untrue and grossly under-inclusive details" about the relationship between Pastor McCloskey and Ms. Doe, and thereby constituted defamation against Appellant [Timothy Laidlaw]." See Pl.'s Resp. Def.'s Mot. Summ. J. 47 (presumably referring to Judge Ceisler's May 15, 2015 Order overruling preliminary objections). The merits of a claim's factual basis are not decided on preliminary objections. A claim survives preliminary objections if the Appellant's allegations, taken as true, set out a facially viable claim. By contrast, the analysis on summary judgment requires actual evidence. Appellant's attempts to conflate the two standards and hold the Court at summary judgment to its ruling on preliminary objections are wholly unfounded.

Appellant were that he confronted his spouse about the relationship and a request that the church pray for him. Appellant makes no complaint about the prayer request and admitted in his deposition that the other statement was true—that is, that he had confronted Ms. Doe about the relationship. See Laidlaw Dep. 271. Therefore, because truth is an absolute defense to a defamation claim, Appellant's claim must fail. See Philadelphia Newspapers, Inc., 475 U.S. at 770.

In addition to the complete defense of truth, which alone is fatal to Appellant's defamation claim, the First Amendment's deference rule bars the claim. The Pennsylvania Supreme Court explained that defamation claims related to the relationship between a church and its choice to hire, retain, or terminate its pastor have received special attention under the deference rule: "The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." See Connor, 975 A.2d at 1109 (quoting Downs v. Roman Catholic Archbishop of Balt., 683 A.2d 808, 812–13 (Ct. Spec. App. 1996) (internal quotations omitted).

This Court finds Connor's warning highly pertinent to Appellant's defamation claim, which, at its core, is a disagreement with his church about how it responded to and communicated with its congregation about its pastor's religious misconduct. At the heart of Appellant's defamation claim—and most of his claims—is his deeply-held belief that his church responded inappropriately when it failed to tell its congregation that Pastor McCloskey had provided religious marriage counseling to Ms. Doe, and allowed Pastor McCloskey to leave his position in the church with his "dignity intact," in that much of the congregation was unaware that counseling had taken place. See Pl.'s Resp. Def.'s Mot.

Summ. J. 10. The United States Supreme Court explained in Watson that such dissatisfaction with the matters of church discipline is not the province of the Courts: "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories…the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." See 80 U.S. at 727.

The Pennsylvania Supreme Court's staunch protection of the church-minister relationship, together with Connor's element-by-element analysis, bars Appellant's defamation claim against Grace Point. See id. at 1102, 1109. Analyzing each element of Appellant's defamation claim reveals that, at a minimum, elements (1) (the defamatory character of the communication), (2) (the understanding by the recipient of its defamatory meaning), and (6) (special harm resulting to the plaintiff from its publication) would require the factfinder to impermissibly intrude upon the sacred precincts of religion, and more specifically, upon Appellant's faith and that of his fellow Grace Point members. See § 8343(a).

All three of these elements invoke the alleged damage to Appellant's reputation at Grace Point as a result of the Letter's statements about him—an alleged injury that arises from and exists only within the Grace Point religious community. In an initial determination of defamatory meaning by the Court[30] and the subsequent submission to the jury, Appellant's defamation claim would require the fact-finder to assess whether the two statements in question harmed Appellant's reputation so as to "lower him in the estimation of the community or to deter third persons from associating with him" and "grievously fractured his standing" at Grace Point and in broader "respectable society." See Tucker,

[30] For a detailed explanation of this threshold analysis, see supra pp. 59-60.

848 A.2d at 124; Scott-Taylor, Inc., 229 A.2d at 734. The Court and/or jury would be forced to evaluate how Grace Point congregants might perceive and react to the disclosure that Appellant had confronted his spouse about her extramarital relationship with their pastor. As outsiders to Grace Point without personal knowledge of the moral and spiritual values around which Grace Point is centered, the factfinder would be left to tread blindly into the sacred teachings of religion, evaluating and applying Grace Point's canons and faith-based documents to speculate about whether Appellant's reputation was harmed by disclosure that his spouse had an affair with a Grace Point pastor, and how that harm might be lessened by the disclosure of the pastor's prior counseling relationship with Appellant.[31] See, e.g., Grace Point Constitution Ex. C, at 3–4 (defining "Christian Conduct" and what is "unbecoming a Christian" within Grace Point); Grace Point Relational Commitments Ex. A, Grace Point Pastoral Counseling and Referral Policy Ex. B. This Court and a jury, acting as arms of the government, would be both ill-equipped and beyond their constitutional province to decide if Appellant has met his burden on these elements.

In sum, in addition to the fact that Appellant's defamation claim is at essence a heart balm tort, it must be dismissed because Appellant admits the statements in question are true, and truth is a complete defense to defamation. Moreover, his claim is precluded by the First Amendment's deference rule because analysis of the claim would necessarily intrude upon the sacred canons of religion.

[31] Appellant has failed to present any evidence of the defamatory character of Grace Point's statements. Even a limited foray into the merits of this element of his defamation claim further illustrates why this issue may not be sent to a jury without violating the constitutional bar. While the complained of statements do not appear defamatory or even capable of defamatory meaning, to so hold would be to presume to understand and accurately weigh the religion-driven reputational pressures of a pious member of Grace Point, a community created in and wholly focused on religion. This is the canonical domain in which Appellant brings his claim, and into which this Court may not intrude.

G. False Light

Appellant Laidlaw also brings a false light claim very similar to his defamation claim. A publication can be actionable as the tort of false light in Pennsylvania if the publication "is not true, is highly offensive to a reasonable person and is publicized with knowledge or in reckless disregard of its falsity." Larsen v. Philadelphia Newspapers, Inc., 543 A.2d 1181, 1188 (Pa. Super. 1988) (referencing Comments (a), (c), and (d) of Restatement (Second) of Torts § 652E (1977)). In addition, the publication must cause the subject mental suffering, shame, or humiliation to a person of ordinary sensibilities." Id. (quoting Hull v. Curtis Publishing Co., 125 A.2d 644, 646 (Pa. Super. 1956)).

Where all of the information released is true, as Appellant admits it was here, a false light claim can still be established "if the information tends to imply falsehoods." See Santillo v. Reedel, 634 A.2d 264, 267 (Pa. Super. 1993). Appellant takes issue with what Grace Point did not say in the Letter, relying on a theory of implied falsehoods. See Laidlaw Dep. 260; see, e.g., Pl. Resp. Def.'s Mot. Summ. J. 38, 42. "In order to prevail on this theory of false light invasion of privacy, [plaintiff] must show discriminate publication of true statements" by defendants such that they "created a false impression by knowingly or recklessly publicizing selective pieces of true information." Santillo, 634 A.2d at 267. Put another way, a plaintiff must show that defendants made "discrete presentation of information in a fashion which rendered the publication susceptible to inferences casting [plaintiff] in a false light." Id. (quoting Larsen, 543 A.2d at 1189 (internal brackets omitted); see also Krajewski v. Gusoff, 53 A.3d 793, 809 (Pa. Super. 2012) (holding that false light does not require "that every single statement is itself false, but rather that the scenario depicted created a false impression, even if derived from true statements").

Appellant alleges that Grace Point published statements about him that were highly

offensive to a reasonable person "in an effort to show that [he] and his family/wife [were] to blame for the resignation of Defendant McCloskey." See Pl.'s Resp. Def.'s Mot. Summ. J. 41; Am. Compl. ¶ 103. Appellant argues that Grace Point's statements about Pastor McCloskey's "marital infidelity" and his "inappropriate relationship with a woman in our church body" were "untruthful, incomplete, and inaccurate" in that they did not "expressly portray an accurate account of the relationship between [Ms. Doe] and Defendant McCloskey." Pl.'s Resp. Def.'s Mot. Summ. J. 41–42.[32]

Nowhere does Appellant clearly articulate what false light, if any, the Letter cast upon Appellant himself. To make the Letter true, Appellant asserts, Grace Point should have included in the Letter Appellant's personal belief that Ms. Doe was "manipulated" into the relationship with Pastor McCloskey. See id. at 46. Appellant further alleges that Grace Point knew or should have known that its statements about Ms. Doe's relationship with Pastor McCloskey were false because of Appellant's "constant protest" and his request to church leadership that Pastor McCloskey be required to tell the "full truth" to the congregation. See id. at 43–44; Laidlaw Dep. 220–221; Pl.'s Mot. Recon. ¶ 106 ("…the letter quite actually describes Defendant McCloskey's actions as engaging in a concensual [sic] affair. This is in direct contradiction to Plaintiff's request of [sic] that the truth be told").

The facts Appellant points to in support of his claim for false light are nearly identical to those discussed at length in the Court's analysis of his defamation claim. Grace Point's Letter to its congregation forms the basis for the claim. See Pl.'s Resp. Def.'s Mot. Summ. J. 41–42.

[32] The Court reiterates that, just as it was Appellant Laidlaw's and not Ms. Doe's reputation that mattered in his defamation claim, here again it is the impression created about Appellant and not about Ms. Doe that is relevant in his false light claim.

Turning to the constitutional question of whether the deference rule bars Appellant Laidlaw's claim, the Court again concludes that it must. Like his defamation claim, Appellant's false light claim arises from his belief that Grace Point mishandled its response to and discipline of its pastor's religious misconduct. Rather than repeat its Connor deference analysis, the Court incorporates its entire First Amendment inquiry from the Defamation section above. See supra Section VI(F) at 67–70, especially note 31. Because Appellant admits that the Letter contains only true statements about him, he must rely on the implied falsehoods theory to prove that Grace Point knowingly or recklessly published only certain pieces of true information, leaving out others, thereby creating a false impression about Appellant. See Santillo, 634 A.2d at 267. Essentially, Appellant claims that Grace Point placed him in a false light (or created a false impression)—without ever mentioning his name—by suggesting through its statements and omissions that he was married to a woman who had engaged in an extramarital relationship with their pastor, rather than (as Appellant would have preferred) that he was married to a woman who had engaged in an extramarital relationship with their pastor *after the pastor had provided religious marriage counseling to the couple*. Thus, Appellant's claim requires the factfinder to determine whether this distinction is the "highly offensive" kind contemplated by the false light cause of action—one significant enough to render "false" the impression the Letter created about Appellant. Such a distinction could only arise from religious considerations, and would therefore require the factfinder to wade into sacred precincts. See Connor, 975 A.2d 1084, 1103. The Court must therefore dismiss the claim to effectuate the First Amendment's protections.

VII. Conclusion

Every day, the citizens of this Commonwealth face myriad difficulties, pains, and sadness. Over centuries, Pennsylvania's courts and legislature have made careful choices as to what kinds of harms the courts can adequately and appropriately address, and which are better left to other means of resolution. This Court is sympathetic to the heartache, betrayal, and loss of faith that Appellant has experienced in the wake of his spouse's affair with their pastor. But not all that is unfair or painful has a remedy in a court of law. Decades ago, our Commonwealth decided that its courts would no longer serve as a source of relief for a person whose spouse had strayed from a marriage, and would no longer punish and levy damages on the third person who had interfered with that marriage. Pennsylvania's statutory abolition of heart balm torts barred not only those claims specifically alleged, but also claims under any other name if the claims, like Appellant's, sought redress for alienation of affections or any heart balm tort.

Moreover, Appellant now asks this Court and would eventually ask a jury to evaluate what he perceives as the wrongs committed against him in the context of his personal faith, Grace Point's canons, morals, and religious culture, and Christianity more broadly. This, the government cannot and will not do. The First Amendment prohibits excessive entanglement with religion to preserve separation of church and state. In addition, the Pennsylvania Supreme Court has explained that courts are and always will be ill-equipped to intervene in these most personal matters of faith:

> "The wisdom of the Watson Court is as clear now as it ever was: the right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life."

Presbytery of Beaver-Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church, 489 A.2d 1317, 1320 (Pa. 1985).

Finally, even if Appellant's claims were not abolished causes of action arising from antiquated values, and did not require state intrusion into religious institutions, Appellant has failed to provide sufficient evidence to support each claim.

Accordingly, Appellant's claims are dismissed in their entirety.

BY THE COURT:

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Lisa M. Rau, J.

DATED: July 19, 2017