

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY

STATE OF OKLAHOMA

KIRK OF THE HILLS CORPORATION, an
Oklahoma not-for-profit corporation church,)
)
Plaintiff,)
)
vs.)
)
THE PRESBYTERIAN CHURCH (U.S.A.), an)
unincorporated association, and (TULSA))
EASTERN OKLAHOMA PRESBYTERY OF)
THE PRESBYTERIAN CHURCH U.S.A., f/k/a)
PRESBYTERY OF TULSA or PRESBYTERY)
OF EASTERN OKLAHOMA, an Oklahoma not-)
for-profit corporation church,)
)
Defendants.)
)

Case No. CJ-2006-05063
Judge Jefferson D. Sellers

**DEFENDANT EASTERN OKLAHOMA PRESBYTERY'S RESPONSE
AND OBJECTIONS CONCERNING MOTION TO SETTLE JOURNAL ENTRY**

Introduction

The court ruled from the bench on September 9, 2008 on the pending summary judgment motions. At that time, the court instructed the undersigned to submit a proposed Journal Entry of Judgment.

Although all parties agree that the Court's rulings on September 9, 2008, constitute an appealable final judgment, the parties are unable to agree on the language for the Judgment. Thus, Defendant Eastern Oklahoma Presbytery ("EOP") filed its Motion to Settle Journal Entry on September 19, 2008. Attached to this motion are Exhibit A – EOP's proposed Judgment, which has been approved by Defendant Presbyterian Church (U.S.A.) (hereinafter, "Proposal A") – and Exhibit B, which is Plaintiff's proposed Judgment (hereinafter "Proposal B").

The Court directed the parties to file any objections regarding the proposed judgments on September 25, 2008. EOP's comments and objections regarding Proposal A and Proposal B are as follows:

Requirements for a Judgment

1 A judgment must contain a statement of the disposition of the action and the relief awarded. 12 O.S. § 696.3(A)(2) Proposal A states that Defendants' motions for summary judgment are granted and Plaintiff's motion for summary judgment is denied and then states the relief awarded, *i.e.*, that the real and personal property at issue is "transferred and conveyed to Eastern Oklahoma Presbytery of The Presbyterian Church U.S.A. in trust for the use and benefit of the Presbyterian Church (U.S.A.)" Proposal B, on the other hand, does not enumerate the "relief awarded "

Description of Land

2. This is a quiet title action initiated by Plaintiff. Attached to Plaintiff's Petition is the legal description of the subject real property. Normally, the final judgment in a quiet title action specifically identifies the real estate affected. Proposal B, however, fails to identify the subject real property. Proposal A sets forth the legal description of the real property subject to the Judgment. Thus, when the Judgment is filed in the land records, everyone is accurately notified regarding the real property affected

Description of Action Taken

3 This quiet title action has drawn national attention and considerable local newspaper and television coverage. Many lay people are keenly interested in the rulings of this Court, indeed, in the exact rulings of the Court and what those rulings actually mean. Proposal B says that some summary judgment motions were granted and one motion was denied. Proposal A, on the other hand, gives enough factual information -- in a non-biased, non-slanted manner --

to allow a reader to understand the action taken by this Court. The mere fact that summary judgment was rendered tells the non-lawyer reader little. Proposal A, for example, accurately states that this Court has deferred to the conclusions of the Administrative Commission and that the property is held by EOP in trust for the use and benefit of PCUSA. Proposal A also advises the reader that the ruling is the same whether a "hierarchical deference" approach is used or a "neutral principles of law" approach is used.

"Final" Judgment

4 While both Proposal A and Proposal B purport to be a "final judgment," Proposal B leaves some wiggle room. Proposal B leaves the door slightly ajar for an argument either (a) that the judgment does not resolve all claims among all parties and thus, is not a final judgment, or (b) that the judgment has concluded all claims among all parties and thus, Defendants' collateral issues (such as damages or rental for Plaintiff's use and occupancy of the real and personal property for over two years) are foreclosed and can no longer be asserted.

5 Proposal A specifically states that the Judgment is final (and thus appealable) in accordance with 12 O.S. § 994(A) and specifically states that there are collateral issues yet to be resolved. To be sure, this is a quiet title action and the Court intends this Judgment to be appealable at this time. The Court affirmed title in EOP and granted Defendants' summary judgment motions. Collateral issues remain, however. For example, now that the Court has ruled that the property belongs to EOP and PCUSA, there is the matter of the damages/rental owed the Defendants for the Plaintiff's two-year use and occupancy of the property.¹

¹ This is a substantial claim. Here, the church is approximately 100,000 sq. ft. with a parking garage in a prime Tulsa location. Moreover, the facility is in excellent shape and completely furnished. If the rental rate for land, building and furnishings was calculated at \$12 per square foot (which would be below the commercial rate in the area for Class A space), the annual rental would be \$1,200,000. Thus, the past due rental of the subject space with furnishings for the relevant two-year time period would be in the neighborhood of \$2,400,000.

Additionally, the entitlement to costs and attorneys' fees has not been determined. For these reasons, Proposal A states that the Judgment is final in accordance with the provisions of 12 O.S. § 994(A) and that collateral issues relating to the primary issue of who owns the property, remain to be resolved by this Court.²

Stay of Execution

6. Proposal B states that the 20-day stay of execution runs from the date the Judgment is filed (and presumably, starts running on the filing date). EOP believes that statement is not consistent with the Court's intent. EOP would have been entitled to immediate enforcement upon the Court's pronouncement in this quiet title action pursuant to 12 O.S. § 696.2(E), but for the Court's granting of a 20-day stay. Proposal A correctly states that the stay expires on September 29, 2008, not 20 days from the filing of the Judgment.³

² For further illustration, it is anticipated that there may be an issue concerning the exact personal property to be delivered to EOP. Plaintiff refused to identify the personal property at issue in this case during discovery. For example, Plaintiff had cash of \$52,218.09 in one of its bank accounts on August 31, 2006. Recently, a new church corporation, Joppa Church Corporation, was formed on May 27, 2008. And there are instructions on the web to:

"Please make all future contributions to Joppa Church Corporation instead of the Kirk of the Hills. Joppa Church is a new non-profit organization that has been set up to receive contributions that are secure from the Presbytery."

At another location on the same website, the members of Kirk Church are advised:

"All automatic bank draft donations and credit card giving to the Kirk of the Hills Corporation have been suspended. A new corporation, Joppa, has been created for future giving to the church."

It is therefore suspected that Kirk Church members are attempting to make Plaintiff "judgment-proof" and that there may be disagreements concerning the personal property that Plaintiff has been ordered to deliver to EOP.

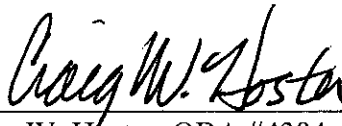
³ The Court has extended the stay of execution to October 6, 2008.

Necessary Language

7. Plaintiff will argue that Proposal A goes beyond the actual wording of the Judge on September 9, 2008. Plaintiff is correct. However, none of the language of Proposal A is inconsistent with the Court's September 9 pronouncements. And, indeed, the Court instructed counsel to prepare an appropriate Judgment. Counsel was not directed to merely parrot back the exact words uttered during the hearing. It is respectfully submitted that Proposal A is an appropriate Judgment given the Court's rulings and the issues and circumstances of this case. The "additional language" is not surplusage; it is necessary to set forth and explain the rulings.

WHEREFORE, Defendant EOP requests that the Court enter an appropriate final judgment and respectfully submits that Proposal A, which has been approved as to form by EOP and PCUSA, is an appropriate Judgment for entry in this action.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this 25th day of September , 2008, true and correct copies of the within and foregoing document were mailed via first-class mail, with sufficient postage duly prepaid, to:

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