

DIANA ZALESKI
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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HUDSON PRESBYTERIAN
CHURCH,

Plaintiff,

vs.

EASTMINSTER PRESBYTERY,

Defendant.

Case No: 2006 09 6162

JUDGE SPICER
MAGISTRATE SHOEMAKER

MOTION FOR
TEMPORARY
RESTRAINING ORDER

Eastminster Presbytery respectfully requests the Court's interim relief through a temporary restraining order prohibiting Hudson Presbyterian from undertaking any action which would alter the status quo. Pursuant to a motion filed by Hudson Presbyterian, this Court issued a temporary restraining order enjoining Eastminster Presbytery from carrying out its rights and obligations as the presbytery.

While Hudson Presbyterian couches its argument as a dispute between two separate and unrelated business entities, such is not the case. The dispute focuses solely on an ecclesiastical matter within a hierarchical church. The dispute is between a local congregation, Hudson Presbyterian, and the governing

body with full authority over its operations, Eastminster Presbytery. This Court is not the proper venue for such a dispute. Nevertheless, because Hudson Presbyterian has chosen this venue, Eastminster Presbytery is compelled to file this motion.

While Eastminster Presbytery has been enjoined from fulfilling its obligations as the regional presbytery, Hudson Presbyterian continues to take unauthorized actions to the detriment of congregation members, Eastminster Presbytery, and PCUSA. Basic principles of fairness dictate that Hudson Presbyterian also be enjoined pending a final determination of this matter.

This motion is supported by the affidavit of Meta Cramer, Clerk of the Eastminster Presbytery.

STATEMENT OF FACTS

1. **Presbyterian Church (U.S.A.) is a hierarchical church**

The Presbyterian Church (U.S.A.) "PCUSA," is a recognized Presbyterian denomination in the United States. As a hierarchical church, PCUSA and its representative bodies are regulated pursuant to the Constitution of PCUSA, referred to as the Book of Order. Representative bodies include the General Assembly, the synod, regional presbyteries, and local sessions. The Constitution expressly provides:

The jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with acts of each subject to review by the next governing body.

See Constitution, G-9.0103.

Hudson Presbyterian incorporated on or about July 1, 1982, and voluntarily chose to associate with PCUSA. In essence, Hudson Presbyterian entered into a contract with PCUSA and its governing bodies. In doing so, Hudson Presbyterian submitted to the authority and form of government as set forth in the Constitution of the PCUSA (which predates 1982), and under the further authority of Eastminster Presbytery. Eastminster Presbytery is the regional governing body for the PCUSA in northeast Ohio.

As stated previously, all of the entities - Hudson Presbyterian, Eastminster Presbytery, and PCUSA - are regulated pursuant to the Constitution of PCUSA, referred to as the Book of Order.

2. Authority of Hudson Presbyterian under the Constitution

Pursuant to the Constitution, a particular church in the PCUSA can be organized only by the authority of a presbytery. The Constitution is clear - local churches "shall function under the provisions of [the] Constitution." See Constitution, G-7.0101.

While local churches are free to hold congregational meetings, the business at such meetings is expressly limited by the Constitution. Specifically, business at Hudson Presbyterian's congregational meetings is limited to (a) matters related to the electing of elders, deacons, and trustees; (b) matters related to the calling of a pastor or pastors; (c) matters related to the pastoral

relationship, such as changing the call, or requesting or consenting or declining to consent to dissolution; (d) matters related to buying, mortgaging, or selling real property; (e) matters related to the permissive powers of a congregation, such as the desire to lodge all administrative responsibility in the session, or the request to presbytery for exemption from one or more requirements because of limited size. See Constitution, G-7.0304a-b.

Currently, Hudson Presbyterian holds title to property located at 201 West Streetsboro Street in Hudson, Ohio. While Hudson Presbyterian is authorized to hold title to property, the Constitution clearly provides that:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Compare G-7.0402 with G-8.0201.

More importantly, Hudson Presbyterian's relationship with the PCUSA can be severed only by constitutional action on the part of Eastminster Presbytery. See Constitution, G-8.0601.

3. Authority of Eastminster Presbytery under the Constitution

Eastminster Presbytery is responsible for the mission and government of all PCUSA local congregations within northeast Ohio. Accordingly, Eastminster Presbytery has the authority to (a) organize new churches, (b) divide, dismiss, or dissolve churches in consultation with their members, (c) ordain, receive,

dismiss, install, remove, and discipline ministers, (d) establish the pastoral relationship and to dissolve it at the request of one or both of the parties, and (e) assume original jurisdiction in any case in which it determines that a session cannot exercise its authority. See Constitution, G-11.0103h, i, n, o, and s.

Additionally, Eastminster Presbytery is authorized to appoint an administrative commission with the full power of a local congregation's Session if the Presbytery determines that that the Session is unable or unwilling to manage wisely the affairs of its church. This commission then assumes original jurisdiction of the existing session, if any, which ceases to act until such time as the Presbytery shall otherwise direct. See G-11.0103(s).

As stated previously, only Eastminster Presbytery has the authority to sever the relationship between Hudson Presbyterian and PCUSA. See Constitution, G-8.0601.

4. Actions of Hudson Presbyterian to disaffiliate with PCUSA

Hudson Presbyterian has called a congregational meeting for October 8, 2006. The purpose of the congregational meeting is to act on the recommendation of Hudson Presbyterian's Session to disaffiliate with the PCUSA.

To address the potential schism within Hudson Presbyterian **and in accordance the Constitution**, the Presbytery has called for a Special Meeting for October 6, 2006. However, as a result of Hudson Presbyterian filing a Complaint and Motion for a Temporary Restraining Order, Eastminster Presbytery has been

enjoined from carrying out its rights and fulfilling its obligations under the Constitution. This despite the fact that the remedies sought focus solely on ecclesiastical matters of this hierarchical church.

The Session of Hudson Presbyterian continues to take unauthorized actions to the detriment of congregation members, Eastminster Presbytery, and the PCUSA. Specifically, Hudson Presbyterian may attempt to transfer title of its property despite the fact that all property held by Hudson Presbyterian is held in trust for the use and benefit of the PCUSA.

Time is of the essence. If Hudson Presbyterian is not enjoined from undertaking further unauthorized actions, Eastminster Presbytery and PCUSA will be irreparably harmed.

LEGAL ARGUMENT

1. Irreparable harm and lack of adequate legal remedy

As stated previously, the Constitution clearly provides that all property held by Hudson Presbyterian is held in trust for the use and benefit of PCUSA. Any actions taken by Hudson Presbyterian which impact the title of the property would severely harm Eastminster Presbytery and PCUSA.

Additionally, while Hudson Presbyterian has called a congregational meeting to vote on the recommendation of its Session, Eastminster Presbytery has been enjoined from participating in this meeting or contacting those who will vote at this meeting. This, despite the fact that Eastminster Presbytery has the

right as well as the obligation to participate to ensure the good of the PCUSA as a whole is protected.

Clearly, the purpose of injunctive relief is to maintain the status quo. As such, if Eastminster Presbytery is enjoined from carrying out its duties as a presbytery, Hudson Presbyterian must be enjoined as well.

2. **Strong likelihood of success on the merits**

This Court lacks jurisdiction over this dispute. In resolving disputes between members of a church, a civil court must follow a two-step analysis in determining whether it has subject matter jurisdiction over the controversy. Turchyn v. Nakonachny (2004), 157 Ohio App.3d 284; Tibbs v. Kendrick (1994), 93 Ohio App.3d 35. First, the court must determine whether the church is a hierarchical or congregational church. Id. If the church is hierarchical, the court must decline jurisdiction. If the church is congregational, the court must determine whether the controversy involves ecclesiastical or secular issues. If the controversy is determined to be ecclesiastical, the court must decline jurisdiction. Id.

As set forth in detail above, PCUSA is a hierarchical church. Accordingly, this Court lacks jurisdiction over this controversy.

Even if this Court has jurisdiction over this dispute, the evidence before this Court clearly provide that all property held by local congregations is held in trust for the use and benefit of PCUSA. The Ohio Supreme Court has held that civil courts may look to documents that reflect the "ordinary indicia of property

rights" - including church constitutions. Serbian Orthodox Church v. Kelemen (1970), 21 Ohio St.2d 154; Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God (1989), 61 Ohio App.3d 526. While Ohio law does not support the theory of implied trust, underlying documents may show the existence of an express or constructive trust, or similar interest, which are recognized in Ohio. Fairborn Church of God, 61 Ohio App.3d at 538.

3. Conclusion

In weighing the benefit of relief to Eastminster Presbytery against potential harm to Hudson Presbyterian, there is no comparison. Eastminster Presbytery has already been enjoined from undertaking any actions as they relate to Hudson Presbyterian. This, despite the fact that the presbytery has the duty and obligation to oversee such actions. Accordingly, fairness and the law dictate that Hudson Presbyterian be enjoined from undertaking any action which would alter or impact the status quo.

Eastminster Presbytery requests this Court to waive any bond requirement as it is well within the discretion of this Court to require no bond at all. See Vanguard Transportation System v. Edwards Transfer & Storage Co. (1996), 109 Ohio App.3d 786.

DATED this 5 day of October, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 5 day of October, 2006, by U.S. ordinary mail and facsimile delivery upon the following:

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One of the Attorneys for Eastminster
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