

IN THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI

**FIRST PRESBYTERIAN CHURCH
OF CORINTH, MISSISSIPPI**

PLAINTIFF

v.

CIVIL ACTION NO. CV07-053AA

**PRESBYTERY OF SAINT ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.**

DEFENDANT

**RESPONSE TO DEFENDANT'S MOTION TO TRANSFER
CASE TO THE CHANCERY COURT OF ALCORN COUNTY**

INTRODUCTION

After an unsuccessful attempt to remove this case to federal court, the Presbytery of St. Andrew ("the Presbytery") now seeks to have the case transferred to Chancery Court. Evidently, the Presbytery still believes that its rights will not be adequately protected by the Circuit Court of Alcorn County. *See* Letter to Presbytery from Reverend Greg Goodwiller, attached as Exhibit "A" ("Because [the Presbytery's Constitutional] rights were disregarded, and believing they would be respected by the federal court, our first response has been to file a notice of removal..."). First Presbyterian Church of Corinth ("Corinth") does not dispute that this lawsuit could have been filed in Chancery Court; rather, Corinth submits that, through pendent jurisdiction, this lawsuit can also be maintained in Circuit Court. As set forth below, the Presbytery's Motion should be denied because some of Corinth's claims are legal in nature and, thus, within this Court's general jurisdiction.

ARGUMENT

A. LEGAL FRAMEWORK

Circuit Courts are courts of general jurisdiction, which means that they have original jurisdiction in all civil and criminal matters that are not vested in some other court. Miss. Const. art. VI, § 156 (1890). Chancery Courts, on the other hand, are courts of limited or special jurisdiction. Miss. Const. art. VI, § 160 (1890). The only grants of jurisdiction to Chancery Courts relevant to this case are: (1) jurisdiction over suits to try title, cancel deeds or clouds upon title, and to decree and to displace possession; and (2) all matters in equity. Therefore, the issue before this Court is whether any of Corinth's claims are outside the narrow scope of these two limited grants of jurisdiction to the Chancery Court and, thus, within the Circuit Court's subject matter jurisdiction.

Subject matter jurisdiction is determined by looking at "face of the complaint and its well pleaded allegations...." *City of Durant v. Humphreys Co. Mem'l Hosp.*, 587 So. 2d 244 (Miss. 1991). For purposes of determining whether the court has subject matter jurisdiction, the well-pleaded allegations in the complaint must be accepted as true. *Hood v. Mississippi Dep't of Wildlife Conservation*, 571 So. 2d 263 (Miss. 1990). If the complaint provides an independent basis for a court to assume jurisdiction, then the court may assert pendent jurisdiction over claims of which it has no original jurisdiction. *Tillotson v. Anders*, 551 So. 2d 212 (Miss. 1989). Moreover, a court may retain pendent jurisdiction even if, prior to trial, it dismisses all claims within its jurisdiction and is left with claims that are exclusively within the jurisdiction of another court. *Penrod Drilling Co. v. Bounds*, 433 So. 2d 916 (Miss. 1983).

Therefore, if this Court finds that Corinth has asserted a type claim not exclusively within the Chancery Court's jurisdiction, then the Court has subject matter jurisdiction over the entire lawsuit. In determining whether it has jurisdiction, this Court should be guided by the

Mississippi Supreme Court's pronouncement that "it is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law since circuit courts have general jurisdiction but chancery courts enjoy only limited jurisdiction." *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656, 661 (Miss. 2005). Furthermore, "[i]n cases in which some doubt exists as to whether a complaint is legal or equitable in nature, the better practice is to try the case in circuit court." *Southern Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1089-90 (Miss. 1999).

B. THIS COURT HAS SUBJECT MATTER JURISDICTION BECAUSE CORINTH'S COMPLAINT ALLEGES CLAIMS NOT WITHIN THE CHANCERY COURT'S LIMITED JURISDICTION

In its Complaint, Corinth asks the Court to declare, through application of "neutral principles" of law, that the trust provision in the Presbyterian Church U.S.A.'s ("PCUSA") Constitution does not create a legally enforceable trust in favor of the Presbytery or the PCUSA. See Corinth's Complaint at ¶¶ 24-39.

In addition to the trust clause, the PCUSA Constitution also contains provisions that purport to give the Presbytery the authority to: (a) determine which members of Corinth constitute the "true" members of the church and are, therefore, entitled to Corinth's property; (b) determine use and ownership of Corinth's property; (c) prevent Corinth from disaffiliating with the PCUSA; (d) terminate the pastoral relationship between Reverend Don Elliott and Corinth; and (e) remove Corinth's governing body. See e.g. Book of Order at Clauses G-8.0601, G-8.0600, and G-8.0301.

Corinth asks this Court to declare that none of these provisions are legally enforceable and that, as a church voluntarily associated with the PCUSA, Corinth is only bound by the provisions of the PCUSA Constitution to the extent, and for as long as, it agrees to be bound by them. Thus, in addition to asking the Court to declare that the Presbytery and the PCUSA do not

have any interests in its property, Corinth is also asking the Court to find that no contractual or other legal relationship exists between Corinth and the Presbytery and/or the PCUSA.

Under Mississippi law, it is well settled that Circuit Courts have original jurisdiction to determine the existence of a contractual or legal relationship and/or whether a contract has been breached. *Southern Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999). Therefore, this Court has original jurisdiction to determine whether, under the subject provisions of the PCUSA Constitution, the Presbytery has any legal authority (contractual or otherwise) to determine which members of Corinth's congregation constitute the true church, to determine ownership of Corinth's property, or otherwise interfere with the daily operations of Corinth. Because the Court has original jurisdiction over these claims, it has pendent jurisdiction over Corinth's other claims, which arise out of the same nucleus of facts. *See Penrod Drilling Co. v. Bounds*, 433 So. 2d 916 (Miss. 1983). Specifically, this Court has pendent jurisdiction over Corinth's request for declaratory judgment that the Presbytery does not have any legal interests in Corinth's property, and Corinth's request for injunctive relief to prevent the Presbytery from interfering with Corinth's property rights or daily operations until the Court rules on the other issues.

Finally, it is important to note that, under the neutral principles approach adopted by the Mississippi Supreme Court, this Court can determine property and contract rights between a church and a denomination without violating the First Amendment. *See Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 3024 (1979); *see also Church of God Pentecostal Inc., v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 206 (Miss. 1998).

CONCLUSION

In its Complaint, Corinth claims that there is no contract or other legal relationship between it and the Presbytery or the PCUSA, and that the Presbytery does not have the legal

authority to take the actions described in this Response. Because this Court has subject matter jurisdiction over these claims, it can assert pendant jurisdiction over the remaining claims and, therefore, has subject matter jurisdiction over the entire lawsuit. Consequently, the Presbytery's Motion to Transfer the Case to Chancery Court should be denied.

THIS the 6th day of April, 2007.

Respectfully submitted,

FIRST PRESBYTERIAN CHURCH OF
CORINTH, MISSISSIPPI

By Its Attorneys,
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC

By: 

J. SCOTT NEWTON

Walker W. Jones, III (MSB No. 3303)
Barry W. Ford (MSB No. 5403)
J. Scott Newton (MSB No. 8875)
David A. Rueff, Jr. (MSB No. 10750)
Everett E. White (MSB No. 101875)
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
MAILING: Post Office Box 14167
Jackson, Mississippi 39236-4167
PHYSICAL: 4268 I-55 North, Meadowbrook Office Park
Jackson, Mississippi 39211-6391
Telephone: (601) 351-2400
Telecopier: (601) 351-2424

CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the foregoing *Response to Defendant's Motion to Transfer Case to the Chancery Court of Alcorn County* by mailing same, via U.S. First Class Mail, postage prepaid, to the following:

J. Hale Freeland, Esq.
MARKOW, WALKER, REEVES & ANDERSON, P.A.
Post Office Box 50
Oxford, Mississippi 38655-0050

COUNSEL FOR DEFENDANT

THIS the 6th day of April, 2007.



J. SCOTT NEWTON



THE PRESBYTERY OF ST. ANDREW PRESBYTERIAN CHURCH (U.S.A.)

24 CR 231 Oxford, MS 38655
voice (662) 234-6069, fax (662) 234-4150
toll free (877) 727-7372

February 16, 2007

Minister Members and Sessions of the Presbytery of St. Andrew:

I am writing to update you on matters related to First Presbyterian Church in Corinth.

As you know, the day before our presbytery meeting last week in Leland, FPC filed a lawsuit against the presbytery, and a Temporary Restraining Order (TRO) was issued *ex parte* (which means that we were not granted the usual "due process" of a hearing on the matter). This was a most unusual legal maneuver which prevented the presbytery from appearing in court or even discussing the issues raised by our church in Corinth. The Complaint and the TRO filed by the session severely limit the presbytery's ability to fulfill its constitutional responsibility to provide care and oversight to its minister members and congregations as delineated in G-11.0103b, e, f, g, i, n, o, s, and y. The *Book of Order* establishes limits for how we may deal with our ministers and congregations. We have and will continue to act within those limits.

Accordingly, at our meeting on February 6, 2007, the Presbytery of St. Andrew took the only actions it was allowed to take on that day – it authorized our presbytery's attorney to answer the suit, and it authorized me, in consultation with the moderators of the Presbytery and Council, to speak on the presbytery's behalf in the matter. The authority granted to me in that action is limited by the presbytery to answering the lawsuit.

The Complaint filed in the State court goes to the heart of the principles upon which our nation was founded; namely, whether our government can interfere with or make determinations concerning our faith and its practice. This case, and the TRO without notice to anyone prevent us from assembling and exercising our religious freedom as protected by the First Amendment to the United States Constitution, and denied us our right to even speak in court about this as protected by the Fourteenth Amendment to the Constitution.

Because these rights were disregarded, and believing they would be respected by the Federal court, our first response has been to file a Notice of Removal of the case from the Circuit Court of Alcorn County to the Federal Court (Mississippi Northern District). That Notice, as well as the texts of the Temporary Restraining Order and the Complaint are attached to the e-mail version of this communication, and are available through the Presbytery Office.

Let me be clear about the presbytery's intentions, as I understand them. We do not want our brothers and sisters in Corinth to depart from our communion, and on your behalf I will do everything in my power to keep as many of their members as possible within our fold. At the same time, these are *church* matters, and our strong desire is for the courts to determine that churches must follow and abide by our Constitution even as their members struggle with matters of conscience related to their church membership and denominational loyalties.

Gregory A. Goodwiller
*Executive Presbyter
and Stated Clerk*

R. Milton Winter
*Resource Center Director
and Historian*

Ann Houston Kelly
*Associate Executive
and Conference
Minister*

Thomas A. Cheatham
*Associate Executive
Campus Ministry*

EXHIBIT "A"



THE PRESBYTERY OF ST. ANDREW PRESBYTERIAN CHURCH (U.S.A.)

24 CR 231 Oxford, MS 38655
voice (662) 234-6069, fax (662) 234-4150
toll free (877) 727-7372

February 16, 2007 – page two

Please keep the session and members of First Presbyterian Church in your prayers at this time. They need our encouragement and support. I would remind you of the statement passed by the presbytery at its recent meeting regarding church property: “the presbytery will deal with property issues on a case-by-case basis, being mindful of our ultimate unity in Christ.”

“Being mindful” of that unity which far transcends any denominational boundaries and differences, I will continue to seek to faithfully apply our constitution and fulfill the responsibilities of my office as we move forward in this matter.

In Christ’s Service,

Gregory A. Goodwiller
Executive Presbyter and Stated Clerk

Gregory A. Goodwiller
*Executive Presbyter
and Stated Clerk*

R. Milton Winter
*Resource Center Director
and Historian*

Ann Houston Kelly
*Associate Executive
Hopewell Camp and Conference
Center*

Thomas A. Cheatham
*Associate Executive
Campus Ministry*