

IN THE SUPREME COURT
STATE OF GEORGIA

PRESBYTERY OF GREATER)
ATLANTA, INC.)
)
Appellant,)
)
v.) SUPREME COURT DOCKET
) NO. S11G0587
TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)
)
Appellee.)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing SUPPLEMENTAL BRIEF OF
PRESBYTERY OF GREATER ATLANTA, INC. IN RESPONSE TO
BRIEF OF AMICUS CURIAE THE TRUSTEES REID MEMORIAL
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SUPPLEMENTAL BRIEF OF PRESBYTERY OF GREATER ATLANTA,
INC. IN RESPONSE TO BRIEF OF AMICUS CURIAE THE TRUSTEES
REID MEMORIAL CHURCH

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AMICUS CURIAE THE TRUSTEES REID MEMORIAL CHURCH

COMES NOW Appellant, Presbytery of Greater Atlanta, Inc., pursuant to Rule 24 of the Rules of the Supreme Court of Georgia, and files this Supplemental Brief in Response to Brief of Amicus Curiae The Trustees Reid Memorial Church ("Trustees").

I. The Trustees' Amicus Brief was Filed Without Consultation with or the Authorization of the Reid Memorial Presbyterian Church Session or Congregation

On page 4 of the Amicus Brief, the Trustees admit that Reid Memorial Presbyterian Church is a member church of the PCUSA and that it has not voted to

seek to disassociate from the Presbyterian Church (U.S.A.) ("PCUSA") or the Northeast Georgia Presbytery (i.e., Appellant's counterpart in the northeast region). Nowhere in their Amicus Brief do the Trustees claim that the Session or congregation of Reid Memorial Presbyterian Church authorized the filing of the Amicus Brief. In fact, Appellant has learned that the trustees filed the Amicus Brief without consulting or obtaining the authorization of the Session or congregation of Reid Memorial Presbyterian Church of Augusta, Georgia. In accordance with the PCUSA Book of Order, the Session, not the Trustees, is the governing body of the church. (R. Book of Order §G-10.0102). Any statements in the Amicus Brief that imply or expressly state that the Amicus Brief reflects the position of the Session and congregation of Reid Memorial Presbyterian Church are misleading.

II. Although the Trustees May Have an Interest in the Case at Bar, They are Not Parties to this Case

To the extent that the Trustees are associated with Reid Memorial Presbyterian Church, which is a PCUSA church, it is understandable that they would be interested in the outcome of the case at bar; however, neither Reid Memorial Presbyterian Church nor the Trustees are a party to the case at bar. The record in this case is devoid of any evidence whatsoever relating to Reid Memorial Presbyterian Church or the Trustees, what actions they took or did not take with

regard to reunion or with regard to the property provisions of the Book of Order or whether or how their assent¹ to the trust clause was conveyed.

Because neither the Trustees nor Reid Memorial Presbyterian Church is a party to the case at bar and because there is no evidence regarding the Trustees or Reid Memorial in the record of this case, the Trustees' bold declaration on page 4 of the Amicus Brief that they are "entitled to the final judgment of this Court, declaring for all purposes, that their independent real property ownership is a matter of right..." is both legally incorrect and perplexing.

Interestingly, the history of the Trustees and Reid Memorial Presbyterian Church sets forth a statement of facts that illustrates superbly why denominations perceived a need for church property trust clauses. Robert A. Reid's will published his desire that the Trustees incorporate "as Trustees of a Presbyterian church in connection with the **present general assembly of the Presbyterian Church in the southern states**" to hold certain real property for the building of a church "of the Presbyterian denomination aforesaid." Cumming v. The Trustees of the Reid Memorial Church, 64 Ga. 105, 1879 WL 2670, at *1 (Ga. 1879)(**Emphasis added**). At the time of the making and administration of Mr. Reid's will, the

¹ As set out in detail in Appellant's previously filed briefs, Appellant does not contend or concede that assent, as that term has been used by Appellee or the Trustees, is legally controlling or relevant under current, binding church property trust precedent in Georgia; however, the Trustees make factual allegations in the Amicus Brief relating to assent that are found nowhere in the record of this case and which cannot be considered.

present general assembly of the Presbyterian Church in the southern states was the general assembly of the PCUS. In the Amicus Brief, the Trustees hedge by suggesting that the benefactor, Mr. Reid, merely desired the creation of a church of the "Presbyterian persuasion," but that language is purposely evasive of the fact that the benefactor desired that the land be used for a PCUS church, not merely a church of the Presbyterian "persuasion."

If the Court accepts the argument the Trustees now make, the Trustees and Reid Memorial Presbyterian Church could leave the PCUSA denomination, retain control of the church property and use the property to operate a church of a denomination other than the PCUSA denomination, all in violation of the testamentary wishes of Mr. Robert Reid as stated in his will, and without regard to the loyal PCUSA congregants who wish to continue to worship there as a PCUSA church.

III. Allegations of Facts Appearing in Briefs Should Not Be

Considered on Appellate Review

Under Georgia law, allegations of facts appearing only in briefs and unsupported by evidence in the record will not be considered on appellate review. Hallisy v. Snyder, 219 Ga. App. 128, 129 (1995). Accordingly, the purported excerpt from the minutes of the Northeast Georgia Presbytery that is attached to

the Amicus Brief as Exhibit "A," which allegedly lists churches within that presbytery that exercised the opt out under the property provisions of the Book of Order has never been authenticated, is not a part of the record in the case and cannot be considered. The same is true of the PCUSA membership statistics and allegations of "exit penalties" cited on pages 5 and 6 of the Amicus Brief. Not only are the statistics and alleged "exit penalties" unauthenticated and irrelevant to the resolution of the legal issues presented by the case at bar, no evidence relating to those allegations was presented below; thus, the allegations are not part of the record on this case and cannot be considered by this Court.

IV. The Trustees Rehash the Three Primary Arguments Advanced by

Appellee

The Trustees make the same three arguments that Appellee has made throughout this case. The first of those arguments is that the "opt out" provision means something other than what the unambiguous language says. Appellant has addressed that argument throughout the course of these proceedings and in previous briefs and will not belabor the point except to state that the "opt out" provision in the Book of Order only allowed a church to opt out of the property provisions to which it was not previously subject under the PCUS Book of Church Order. Appellee was subject to a property trust clause in the PCUS Book of Church Order; therefore, it was not able to opt out of the trust clause. It could only

opt out of the provision requiring it to obtain the permission of the Presbytery prior to selling, mortgaging, encumbering or leasing property. If Appellee wished to leave the denomination with its property, it could have done so by filing a petition to leave at any time within eight years of the date of reunion. Having failed to do so, it became subject to the provisions of the Book of Order, including the property trust clause.

The Trustees' second argument, also made by Appellee, is that the PCUSA is something less than a hierarchical denomination. The Trustees admit in their brief that PCUSA is a hierarchical denomination but then set about explaining that it is not really hierarchical; rather, it is a "hybrid" governed by a system of "courts" that is "unique" and should be placed on a "spectrum" of church governance closer to congregational. The Trustees' argument is unpersuasive because the Courts of this country have recognized since at least 1871 that the Presbyterian Church (both the PCUS and the PCUSA) is a hierarchical denomination. Watson v. Jones, 80 U.S. 679, 683 (1871). Furthermore, the case law of this state and of the country is well established-for purposes of resolving church property disputes, there are two types of church entities: hierarchical (sometimes referred to as connectional) and congregational. A "spectrum" of hierarchy has not been recognized by any court of law as far as Appellant is aware.

The third argument made by the Trustees relates to whether the Book of Order property trust clause received any “local assent, either formal or inferential.” Appellee made the same argument about local church assent and Appellant has addressed it at length in previous briefs; however on page 11 of the Amicus Brief the Trustees imply that Appellant has suggested that an “ultra-vires,” pre-reunion action was required by local churches in order to leave the denomination with church property or to opt out of what they were able to opt out of. That allegation is incorrect and such an argument has never been advanced by the Appellant in this litigation.

In short, the Trustees use inflammatory language to paint a picture of “grass roots” local churches that fell victim to a bait and switch scam by a monolithic denomination and who are now leaving the denomination through “hemorrhagic attrition.” But the Trustees cannot have it both ways. They admit that the Book of Order property provisions did not appear “by accident or natural evolution” and were “hard-fought;” and, if that is true, how can they also argue bait and switch? Moreover, the argument rings hollow because the PCUSA denomination operates through a representational form of governance of which local church representatives are a part. The Trustees have rehashed the same arguments advanced by the Appellee and those arguments are as flawed now as they were when Appellee made them. The Trustees, like Appellee, were fully aware of what

it meant to be a hierarchical church when they made the decision not to leave the PCUSA within eight years of reunion.

V. Conclusion

It is only when the burden of being part of a hierarchical organization is felt that some members of some churches may wish to disavow the denomination, having benefited for decades from their association with the largest mainstream Presbyterian denomination in this country, having been provided with PCUSA trained clergy, having been able to attract members because of the church's membership in the PCUSA, having been able to use the national denominational symbol recognized the world over, and having benefitted in many other ways from the relationship.

The southern churches' "hard fought" point, as the Trustees refer to it, at the time of merger was to be exempt from obtaining the permission of presbyteries before they sold, mortgaged, encumbered or leased their property. They won that point and are not required to seek the presbyteries' permission if they exercised that opt out. The PCUS and the PCUSA followed exactly the directions of the United States Supreme Court in Jones v. Wolf, 443 U.S. 595 (1979) to establish a property trust clause with the intent of ensuring that the PCUS and PCUSA faithful could continue to spread the word in cases of schism or dissociation. Having followed the rule of the United States Supreme Court, Appellant submits that the

Court must overrule the Court of Appeals and uphold the PCUSA property trust clause.

Respectfully submitted, this 4th day of November, 2011.

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