

Presbytery stated clerk received a written statement that alleged specific offenses made by McNeill.

On February 5, 2010, Presbytery called a special meeting for the purpose of establishing an Investigating Committee (IC). The special meeting took place on February 16, 2010, and an IC composed of five persons (four ruling elders and one teaching elder) was elected.

On September 21, 2010, the IC filed the following two charges against McNeill:

Charge 1: *You, Laurie McNeill, on or about October 17, 2009, did commit the offense of participating in a same-sex ceremony, in which two women, namely yourself and Lisa Lynn Gollihue, were married under the laws of the Commonwealth of Massachusetts in violation of W-4.9001 of the Book of Order, and thereafter representing to your then congregation and others that such ceremony was a "marriage" all in violation of the Constitution of the Presbyterian Church (U.S.A.).*

Charge 2: *You, Laurie McNeill, during the period beginning at least as early as October 17, 2009 and continuing until the date hereof, did commit the offense of being involved in a relationship described as a "happy marriage" with Lisa Lynn Gollihue, a person of the same sex as yourself, in violation of G-6.0106(b) of the Book of Order, in failing to live a life either in fidelity in marriage between a man and a women [sic] or chastity in singleness, all in violation of the Constitution of the Presbyterian Church (U.S.A.).*

Following a trial on January 29, 2011, the Permanent Judicial Commission of the Presbytery of Newark (PPJC) issued its Decision and Order finding McNeill not guilty on all charges. Appellant filed a Notice of Appeal with SPJC on March 22, 2011, citing multiple errors of constitutional interpretation by the PPJC. On the same date, Appellant filed a request that the SPJC issue a stay that would bar McNeill from a transfer of her membership from Presbytery to the Presbytery of Hudson River. In the absence of the required three signatures of the SPJC in the allotted time period, the stay request was denied.

On April 6, 2011, the Executive Committee of SPJC determined that all preliminary questions were satisfied and, after challenges and rescheduling, a hearing was set for December 9, 2011, in Latham, New York. Following this appeal hearing, SPJC affirmed the Decision and Order of PPJC.

The Notice of Appeal of Appellant was submitted to this Commission on January 25, 2012.

Specifications of Error

Specification of Error No. 1: (Appellant's Specifications of Error Nos. 5, 8, 9, 10, 26, 28) The SPJC erred in determining that W-4.9001 of the Book of Order does not prohibit someone who is a minister of the Word and Sacrament (now a teaching elder) to be the subject of a marriage ceremony, that, while legally recognized by the state in which it took place, was not a contract,

covenant, and commitment between a woman and a man, in accordance with Scripture and Confessions.

This Specification of error is not sustained.

See Discussion under Specification of Error No. 2.

Specification of Error No. 2: (Appellant's Specifications of Error No. 6, 29) The SPJC erred in determining that the Constitution of the PC(U.S.A.) does not regulate the conduct of ordained officers of the PC(U.S.A.) in services conducted outside the auspices of the PC(U.S.A.).

This Specification of error is not sustained.

The Directory for Worship "...sets standards and presents norms for the conduct of worship in the life of congregations and governing bodies of the Presbyterian Church (U.S.A.)." In this case the service of worship did not occur in a PC(U.S.A.) church nor was it conducted under the auspices of the PC(U.S.A.); therefore, the Directory for Worship does not apply. The Constitution is silent regarding the marriage of an officer of the PCUSA in civil marriage ceremonies. Further, Scripture and Confessions were not argued as part of the trial record and, therefore, could not be considered on appeal.

Specification of Error No. 3: (Appellant's Specifications of Error Nos. 5, 7, 27) The SPJC erred in determining that it is not an offense against the Constitution of the PC(U.S.A.) for someone who is a minister of the Word and Sacrament (now a teaching elder) to describe a lawful same-gender marriage as a marriage.

This Specification of error is not sustained.

The stipulated facts from the record reflect that, although Appellee did describe herself as married, she made it clear that the PC(U.S.A.) did not recognize her marriage.

Specification of Error No. 4: (Appellant's Specification of Error 2) The SPJC erred in determining that it is not an offense against the Constitution of the PC(U.S.A.) for a minister of the Word and Sacrament (now a teaching elder) to conduct a marriage ceremony, that, while legally recognized by the state in which it took place, was not a contract, covenant, and commitment between a woman and a man.

This Specification of error is not sustained.

There is no evidence in the record that a PC(U.S.A.) minister conducted a same-gender ceremony under the facts of this case. In fact, the parties stipulated that "No Presbyterian minister of Word and Sacrament officiated in any part of the marriage ceremony."

Specification of Error No. 5: (Appellant's Specification of Error No. 17) The SPJC erred in determining that it was not clear in what circumstance or to whom G-6.0106b applied and that

G-6.0106b was only applicable in the context of an examination and, therefore, could not be enforced in a disciplinary process.

This Specification of error is not sustained.

See Discussion under Specification of Error No. 6.

Specification of Error No. 6: (Appellant's Specifications of Error Nos. 12, 13, 14, 15, 19, 30) The SPJC erred in determining that the evidence presented and stipulated to was insufficient to determine that the accused was in violation of G-6.0106b.

This Specification of error is not sustained.

The record does not reflect that the PPJC's Decision was "plainly wrong or manifestly unjust" *King*, Disc. Case 218-06, p. 312 (GA PJC 2007) (quoting *Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery*, Minutes, 2006, p. 493, and *Hardwick v. Permanent Judicial Commission of the Synod of North Carolina*, Minutes, 1983, p. 45) in determining that the evidence did not support a finding beyond a reasonable doubt that McNeill committed an offense.

Specification of Error No. 7: (Appellant's Specifications of Error Nos. 20, 24, 27, 30, 31, 32) The SPJC erred in failing to interpret G-6.0106b and W-4.9001 in light of Scripture and Confessions.

This Specification of error is not sustained.

See Discussion under Specification of Error No. 9.

Specification of Error No. 8: (Appellant's Specification of Error No. 22) The SPJC erred in determining that there was no specific reference to Scripture or Confessions in the record.

This Specification of error is not sustained.

See Discussion under Specification of Error No. 9.

Specification of Error No. 9: (Appellant's Specifications of Error Nos. 21, 23, 25) The SPJC erred in determining that, by failing to offer evidence of specific references to Scripture and Confessions at trial, Appellant waived such arguments.

This Specification of error is not sustained.

Appellant charged Appellee for violating two specific provisions of the *Book of Order*. In the trial before PPJC, Appellants neither argued nor presented evidence of violations of Scripture or Confessions. An appellate body cannot find that a trial court erred by not considering argument or evidence when neither the argument nor the evidence was presented to the trial court. Further, it is impermissible for an appellate body to consider new arguments and

evidence on appeal, except on application as set out in D-14.0502. No such application was made in this case. By not arguing or presenting evidence of violations of Scripture or Confessions at the trial level, Appellant waived making such arguments and presenting such evidence on appeal.

Specification of Error No. 10: (Appellant's Specification of Error No. 1) The SPJC erred in determining that a violation of the Constitution must be proven beyond a reasonable doubt, based on the facts, to support a finding of an offense.

This Specification of error is not sustained.

See Discussion under Specification of Error No. 11.

Specification of Error No. 11: (Appellant's Specifications of Error Nos. 3, 4, 11, 16, 18) The SPJC erred in determining that the facts as stipulated did not prove beyond a reasonable doubt the commission of an act or omission by an officer of the church that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.).

This specification of error is not sustained.

D-11.0401 states that "The accused in a disciplinary case is presumed to be innocent until the contrary is proved, and unless guilt is established beyond a reasonable doubt, the accused is entitled to be found not guilty." Further, "Factual determinations made by a trier of fact are accorded a presumption of correctness. These determinations are not to be disturbed on appeal unless they are 'plainly wrong, without supporting evidence or manifestly unjust.'" (King)

Decision

This case illustrates the tortuous place in which the PC(U.S.A.) finds itself on the matter of same-gender marriage. Previous cases, which dealt with teaching elders officiating at such services, state that unions between same-gender couples, whether legally recognized or not, cannot be declared to be marriages under the current interpretation of W-4.9001. Our *Constitution*, specifically this section of the Directory for Worship, did not anticipate the range of issues facing the church today surrounding same-gender relationships. In light of the number of cases coming before this Commission and the convoluted grounds upon which cases are brought and decided, it would be beneficial for the church to provide a definitive position regarding participation of officers in same-gender ceremonies whether civil or religious.

Charges in this case were filed solely under W-4.9001 and G-6.0106b. Based on the charges filed, the record does not reflect that PPJC's Decision was "plainly wrong, without supporting evidence or manifestly unjust ." (*King*) . The facts of this case do not support disciplinary action under these provisions of the *Book of Order*. Nothing in this decision modifies standards and norms of the church's understanding of marriage.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Northeast is hereby sustained.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Newark report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

Absences and Non-Appearances

Commissioners Mary Charlotte McCall and Patrick Notley did not participate in the hearing or deliberations.

Concurring Opinion of Michael Lukens, Meta Cramer and Terry Epling

We concur with the majority in this Decision.

Within a strong affirmation of the majority opinion, it must, nonetheless, be asserted once again that the General Assembly of the Presbyterian Church (U.S.A.) needs to respond to the urgent need for definitive legislation on issues regarding marriage. For too long, this Commission has been burdened across a large range of conflicts with argumentation based on oblique, obfuscating, and indirect citations rather than clear directive, which is frustrating to the Commission as it seeks to promote the peace, unity and purity of the church and confusing to the whole church. This range encompasses the Reformed theological understanding of the nature of marriage, the authority and boundaries of teaching elders in conducting and participating in marriage ceremonies within the life of the church and in secular life, and the framing bases in Scripture and Confessions for assessing pastoral accountability.

Given the enormous cost for the spiritual health of the church, the strife that tears at the unity of the church, and the excessive expenditure of limited resources in the adjudication of a continuing stream of cases, it is critical that the General Assembly exercise its responsibility to deal definitively with these questions.

Concurrence of Barbara Bundick and Helen Heffington

We concur with the majority decision. However, the lack of action by the General Assembly on the definition of marriage, while frustrating, is not the point of this case.

There was no evidence of sexual activity here. Appellee entered into her civil marriage on October 17, 2009, when former G-6.0106b was in effect. Since PPJC refused to presume sexual activity, there was no evidence that G-6.0106b had been violated. While it is tempting to assume that "happily married" persons are engaging in sexual activity, it would be inappropriate to reach a guilty verdict exclusively on a presumption. See *Wier v. Second Presbyterian Church*, Minutes, 2002. Defendants in disciplinary cases are presumed innocent until proven guilty (D-11.0401), and have a right to remain silent. (D-10.0203c). If a rebuttable presumption of sexual activity were allowed, a defendant would have to waive the right to remain silent in order to rebut the presumption. The PPJC verdict was therefore supported by the evidence and was properly sustained by SPJC.

Concurring Opinion of Meta Cramer

We concur totally with the Decision in this case and support all the arguments provided. Clearly the *Directory for Worship* does not reach to services of worship held outside of Presbyterian Churches without absurd consequences. For example, some faithful Presbyterians choose to be married in a civil ceremony only, or under the auspices of a church which may define marriage in a slightly different way. Presbyterians may worship in churches that do not share our theology of the Word or the sacraments without being accused of an offense.

However, "the Directory for Worship reflects the conviction that the life of the church is one, and that its worship, witness, and service are inseparable. [I]t describes the theology that underlies Reformed worship." (Preface, Directory for Worship) Here is suggested an integrity of theology, worship, and life.

It is troubling that the Appellee in this case, by virtue of being a subject in a marriage ceremony held in a church over which the Directory for Worship has no jurisdiction, succeeded in doing for herself what she would be unable (under *Spahr* and *Southard*) to do for others, i.e., enter into a marriage that, while not recognized by the Presbyterian Church (U.S.A.), is legally recognized under the laws of the Commonwealth of Massachusetts.

This Commission is bound by the charges brought by the Complainants/Appellants. Therefore, this case is limited to considering the application of W-4.9001 and G-6.106b. The Commission was restricted to these particular matters of polity and could consider neither Scriptural and Confessional arguments nor standards of pastoral accountability rooted in the Constitutional questions for ordination. It is conceivable that, had the charges referenced Scripture and/or Confessions or the ordination question concerning the peace, unity, and purity of the church, the argument and outcome of this case may have been different.

Dissent of Flor Vélez-Díaz and Robin Roberts

The Presbyterian Church (U.S.A.) is, and has been for quite some time, conflicted with respect to the topic of marriage. There is great appreciation for the faithfulness, respect and love that all Presbyterians share for the Word of God; however they may interpret it. There is equal concern for the peace and future of our church, mission and witness, when faced with difficult

cases such as this one. A great deal of the issues presented in this case, creates a struggle within our soul.

First of all, it would make sense to presume that married people do engage in sexual acts with one another. All presumptions are rebuttable with evidence to the contrary, but in the context of a disciplinary case, it cannot be expected that such evidence would be provided given that the person alleged against has the right to remain silent. (D-10.0203c)

Second, the argument that the Directory for Worship, which is an integral part of our Book of Order, does not provide grounds for which to regulate the conduct of our officers outside the context of worship, is also troublesome given that “This Directory for Worship reflects the conviction that the life of the Church is one, and that its worship, witness and service are inseparable.” (Preface). It also states in Section W-1.1005 that “a Christian’s personal response to God is in community” and that “the Christian community worships and serves God in shared experiences of life, in personal discipleship, in mutual ministry, and in common ministry in the world.” How can any officer of the church, or any member for that matter, separate his or her life as being within the church in part, and outside the church in part, or as was argued in this case, single in the eyes of the church and married in the eyes of the state? Our life as Christians is integrally a part of the church, or as stated in W-1.1005, “A Christian’s personal response to God is in community”.

Third of all, although the controversial G-6.0106b provision in our Book of Order is no longer in place, it was when the charges were brought in this case. It is perfectly understandable that not all Presbyterians can agree with all aspects of our Constitution and that there is, and must be, freedom of conscience within our community to foster discussion and growth within its members. By the same token, all officers and members of the PCUSA have willingly agreed to uphold the Constitution of the PCUSA as a manifestation of order based in Scripture. Any and all differences and objections that we may have with the expressions within that document must be channeled in such a way as to continue fostering upholding it. Efforts to amend the Constitution should be made in a way that builds the body of Christ as a whole. There is concern that the divisions within the church which have brought about cases like this one, might not encourage conversation within the church, more likely, bring about division of the body of Christ.

Christians have a responsibility, in fact a duty, to our brothers and sisters in Christ, to promote the peace, unity and purity of the church. This responsibility is a two way street and is better achieved by dialogue than by litigation.

Although we cannot agree with the outcome of the case, we are convinced of the integrity of all the members of this Commission and of the faithful and prayerful consideration that was given to this matter in reaching the decision.

May Christ be with us always.

Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Disciplinary Case 221-02 Presbyterian Church (U.S.A.) through the Presbytery of Newark, Appellant (Complainant) v. Laurie McNeill, Appellee (Accused) made and announced at Louisville, KY this 29th day of October 2012.

Dated this 28th day of October, 2012.

Bradley C. Copeland Moderator
Permanent Judicial Commission of the General Assembly

Jay Lewis, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by Federal Express Next Day Air, directing Joyce Lieberman to deposit it in the mail at Louisville, KY, this 28th day of October, 2012.

Whitman Briskey., Counsel for Appellant (Complainant)
Mark Schneider, Counsel for Appellee (Accused)
Stated Clerk, Synod of the Northeast
Stated Clerk, Presbytery of Newark
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to Joyce Lieberman, on October 28, 2012.

Jay Lewis, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Louisville, KY on October 29, 2012, Disciplinary Case 221-02, Presbyterian Church (U.S.A.) through the Presbytery of Newark, Appellant (Complainant) v. Laurie McNeill, Appellee (Accused), and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, KY on October 28, 2012.

Joyce Lieberman, Assistant Stated Clerk