

ORIGINAL

In The Supreme Court Of Ohio

HUDSON PRESBYTERIAN CHURCH)

CASE NO. 09-0550

Plaintiff-Appellee)

v.)

On Appeal from the Summit County Court
of Appeals, Ninth Appellate District

EASTMINSTER PRESBYTERY)

Court of Appeals Case No. 24279

Defendant-Appellant)

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MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEE HUDSON PRESBYTERIAN CHURCH

CLERK OF COURT
SUPREME COURT OF OHIO

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I. EXPLANATION OF WHY THIS CASE DOES NOT PRESENT A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST OR INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellant Eastminster Presbytery's first three propositions of law are asking this Court to review case specific evidentiary issues ancillary to the dispute between the parties, which centers on the application of Ohio trust law. The rather unique evidentiary circumstances in this case are unlikely to occur repeatedly, if ever again, and present no question of public or great general concern. Eastminster's fourth proposition of law purports to present an issue of church property law. However, because Eastminster failed to present any admissible evidence to support the existence of its claimed trust, its fourth proposition of law cannot be reached or reviewed by this Court. It is simply moot at this point because there is no purported trust document properly in the record before this Court. Therefore, Eastminster's fourth proposition of law presents no issue for this Court's review at all.

Eastminster's first three assignments of error center around only one of approximately 175 exhibits submitted to the trial court with the parties' cross motions for summary judgment. The exhibit Eastminster claims was mishandled was Exhibit 150, which purported to be a short excerpt from the UPCUSA 1981 Book of Order¹. Ironically, Eastminster quoted from that exhibit *but failed to ever cite* to it in its own Motion. Appellant's evidentiary failure surrounding Exhibit 150 is a perfect microcosm of this case, which, on appeal, has focused less on the facts than on Eastminster's inability to properly submit and reference Civ.R. 56 evidence.

¹ The UPCUSA was a predecessor denomination to the PCUSA, of whom Eastminster is a regional representative.

The excerpt from the 1981 Book of Order (Exhibit 150) was properly excluded first by the magistrate, then by trial court judge, and then by the court of appeals. Eastminster claims that “the lower courts established a rule that on motions for summary judgment, courts can, *sua sponte*, throw out evidence even where there is a stipulation by the parties to the authenticity of the evidence offered for consideration, no dispute amongst the parties as to this stipulation, nor any objection or motion by either party to reject the evidence.” (Eastminster's Memorandum, at 3). That is simply false. While the parties had agreed to submit a joint exhibit binder to the trial court for ease of reference, to avoid duplication and for sequential numbering of exhibits, each party still had the responsibility of ensuring the legal propriety and sufficiency of their own exhibits. The parties “discussed” stipulating to the authenticity of the documents in that joint submission but no stipulation was ever finalized or filed. *Hudson Presbyterian Church v. Eastminster Presbytery*, Summit App. No. 24279, 2009-Ohio-446, ¶16. Exhibit 150, the Book of Order, was one of Eastminster's contributions to the binder. Both the trial court and the court of appeals found that the exhibit and affidavit quoting from it (but failing to attach or authenticate it, or even mention “Exhibit 150”) were inadmissible because they failed to satisfy Evidence Rules 1002 and 1004 and did not constitute Civ. R. 56(C) and (E) evidence.

Eastminster now argues to this Court that appellee Hudson Presbyterian Church’s (“HPC”) exhibits were equally deficient. That issue was *not* raised in the courts below and is, thus, also not properly before this Court. And in any event, Eastminster forgets that HPC’s Motion for Summary Judgment also relied upon deposition testimony, “record” evidence such as deeds and articles of incorporation, and affidavits regarding financial ownership clear of a trust (Ex. 114). The deposition testimony, alone, by Eastminster's own General Presbyter, was sufficient to establish that “there is no written express trust document between Hudson Presbyterian Church and Eastminster Presbytery”

and “there is no document that says trust between HPC and Eastminster Presbytery.” (Schomer Depo., filed 3/26/07 at pp.181-182). Eastminster’s statement that “HPC did not offer a single affidavit or other piece of evidence supporting its claim that there was no binding trust provision in the Book of Order” is utterly false. (Eastminster’s Memorandum at 5.)

The burden was thus on Eastminster to respond with admissible Civ.R. 56 evidence. It failed to do so. Simply stated, Supreme Court examination of Eastminster’s failure to authenticate its submission to a binder of joint exhibits is not of great public or general interest, and does not involve a substantial constitutional question. And without any evidence properly in the record as to the claimed trust provision upon which Eastminster relies, Eastminster’s fourth proposition of law dealing with the interpretation of that provision cannot not even be addressed by this Court.

In any event, the trial court did address the language from the Book of Order which Eastminster claims to have created a trust in its favor and found the substantive language legally insufficient to create a trust in Ohio.² While much of Eastminster’s memorandum to this Court is couched in religious liberties language, this case does not involve issues of freedom of religion, free exercise, or anything other than property ownership. Notably absent from Eastminster’s memorandum are any citations to the extensive body of case law which controls church property disputes in Ohio, including Ohio Supreme Court precedent (and including prior case law involving Eastminster itself when another local church changed its denominational affiliation³). The

² “Defendant’s claim of trust is found only in the brief wording in the Book of Order. Far more than such is required to demonstrate the elements of an express trust between parties.” (10/23/07 Mag. Dec. at p.13.)

³ *Christinsen v. Rounfort* (1984), 20 Ohio App.3d 107, finding no trust interest in the deeds, articles of incorporation, or in the act of joining the UPCUSA, and awarding declaratory judgment to the local church.

significance of the omission is that it avoids the legal analytical framework under which the case below was properly decided.

In church property disputes, Ohio is a “neutral principles” state, applying the same laws and legal methodology to decide property disputes between religious organizations as it would between any other types of organization. *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio v. Keleman* (1970), 21 Ohio St.2d 154; *Morrow v Hill* (1977) 51 Ohio St. 2d 74; *Bartholomew v. Lutheran Congregation* (1880), 35 Ohio St. 567; *Keyser v. Stansifer* (1834), 6 Ohio 363; *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God* (1989), 61 Ohio App.3d 526; *Upper Ohio Valley Presbytery, Inc. v. The Covenant Presbyterian Church of Steubenville, Ohio* (Aug. 15, 1988), 7th Dist. No. 87-J-3, 1988 Ohio App. LEXIS 3452. Pertinent to this case is the settled principle that “Ohio law does not reveal a recognition of an implied trust theory of real property when a local church joins a church hierarchy.” *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio v. Keleman* (1970), 21 Ohio St.2d 154, 160.

The evidence below—even considering the claimed trust clause in the Book of Order—evidenced no express trust between the parties: 1) there had never been a transfer of the subject property into a trust for Eastminster; 2) HPC never signed any trust document; and 3) three separate mortgages between the parties evidenced the parties' intent that in the event HPC ever left the PCUSA the loan balance would be accelerated but HPC would keep its property. The Ninth District Court of Appeals addressed each of the elements of trust creation in Ohio and concluded that Eastminster's argument failed because “the mere assertion that property is held in trust without the transfer of the legal interest or title to the property cannot create an express trust.” *Hudson Presbyterian Church v. Eastminster Presbytery*, Summit App. No. 24279, 2009-Ohio-446, ¶24. The

courts below properly considered the ordinary indicia of ownership and applied neutral principles of law in accord with this Court's well settled precedent.

Eastminster claims that the courts below misapplied *Jones v. Wolf* (1979), 443 U.S. 595, but ignores the fact that *Jones* requires any such claimed trust to be set forth in “*legally cognizable form*” - which Eastminster failed to establish. *Jones*, at 606. Eastminster avoids this discussion in its memorandum because the findings below are perfectly consistent with the longstanding law on this point. Ever since the magistrate issued his initial decision, Eastminster has been attempting to misdirect attention by emphasizing the idiosyncratic evidentiary issue surrounding Eastminster's own flawed submission of Exhibit 150.

Contrary to appellant's representations, this case is hardly “iconic.” (Eastminster's Memorandum at 2). There are currently zero other cases in Ohio involving local churches departing the PCUSA. There is one involving an Episcopal church. This is not “numerous,” as suggested by Eastminster. (Id.) While churches certainly are leaving the PCUSA, most leave without having to litigate, and those that do certainly do not experience the same evidentiary scenario as complained of by Eastminster here. It is because protestant churches change denominational affiliations with some regularity that there exists a well-developed body of law to address this situation. Notably, Eastminster does not call for a change in the application of the neutral principles doctrine.

This case presents no matters of great public or general interest, nor does it involve a substantial constitutional question which needs further exposition or resolution by this Court. The proper law was applied in the proper manner below, yielding a solid and fair result in accordance with longstanding Ohio law. Review will avail nothing for the jurisprudence of Ohio, and jurisdiction should be denied, accordingly.

II. STATEMENT OF THE CASE AND FACTS

HPC is an Ohio not-for-profit corporation operating as a religious organization in voluntary association with a presbyterian denomination (currently the EPC). This litigation centers around HPC's decision to voluntarily change its denominational affiliation, and the impact, if any, on the property to which it holds title in its corporate name, and its personal property assets.

HPC was originally affiliated with the Presbyterian Church USA ("PCUSA") which is a voluntary religious association organized in a connectional structure with ascending representative levels of ecclesiastical "judicatories" or "governing bodies." These include the Session (local church), presbytery, synod, and General Assembly. A connectional church is one in which there are connections with higher structural groups in the church, but reservations of powers to the local church. In an official description of its structure, the PCUSA notes that "[o]ur polity is presbyterial - as distinguished from hierarchical, episcopal, or congregational." (Exhibit 41.)

The Presbytery is made up of representatives from individual churches and minister members. (Schomer Depo., filed 3/26/07, p. 57.) Churches are not members of the Presbytery - the "connection" is made by common representative members from the local churches participating in the Presbytery entity. (Id. at 58.) In fact, the General Presbyter of Eastminster Presbytery has agreed that "the control of a local church is a function of that local church's Session." (Schomer Depo. at 57.) He also admitted that "[t]he Presbyterian Church in the United States of America, through its practice and polity, recognizes that individual or particular churches may leave the denomination known as the PC(USA)." (Schomer Depo, p. 85).

The Constitution of the PCUSA consists of the Book of Order (Exhibit 7) and the Book of Confessions (Joint Exhibit 8). Both are ecclesiastical documents. (Schomer depo, p. 67.) The Book of Order yields to civil law. (Id. at 79.)

HPC owns the land at issue under two warranty deeds duly recorded in Summit County which convey no interest to Eastminster. When the HPC members expanded the church building in the 1990s, HPC entered into three separate commercial loan transactions with Eastminster and PCUSA. A mortgage was given. Each time, the mortgages stated in nearly identical language: “This note and the obligation which it secures shall become due and payable immediately upon the promissor congregation’s ceasing to be connected with the Presbyterian Church (USA), Inc. * * *.” (Exhibit⁴ 22.) Thus, each recognized HPC's right to disaffiliate and retain its property; the penalty for disaffiliation was acceleration of the mortgage, not forfeiture of the property.

HPC Articles of Incorporation provide that it may “voluntarily associate with a denomination such as the Presbyterian Church USA.” (Ohio Secretary of State’s Public Records; see also Exhibit 3, Art. 3.) Its By-Laws state that it “is in voluntary association with the Presbyterian Church (USA)* * *.” (Exhibit 5, Art. 1.2.)

Contrary to the statements made by Eastminster in its Memorandum to this Court, these documents are not the only evidence that no trust over HPC's property exists in favor of Eastminster. Eastminster's own the General Presbyter, Rev. Schomer, testified that: 1) “there is no written express trust document between Hudson Presbyterian Church and Eastminster Presbytery”; and 2) “there is no document that says trust between HPC and Eastminster Presbytery.” (Schomer Depo., filed 3/26/07 at pp.181-182). The property deeds themselves are free of any trust language, restrictions, reverts, or anything else favoring Eastminster. (Id.)

HPC initiated this declaratory judgment action against Eastminster Presbytery seeking a declaration from the court that it, not Eastminster, was the legal owner of its church building and

⁴References to “Exhibits” refer to those filed in the trial court on 4/16/2007.

other property, and that no express or implied trust existed. Discovery was conducted and the parties filed cross-motions for summary judgment which were referred to the Magistrate. Additionally, the parties submitted a joint exhibit binder to the Magistrate. While the parties “discussed” stipulating to the authenticity of the documents in that joint submission, no stipulation was finalized. *Hudson Presbyterian Church*, 2009-Ohio-446, at ¶16.

Based on *all* of the evidentiary materials submitted by HPC, including depositions and affidavits, the magistrate, then the trial court, and finally the court of appeals ruled in favor of HPC. All did so correctly because: 1) there was un-refuted deposition testimony that “there is no written express trust document between Hudson Presbyterian Church and Eastminster Presbytery”; 2) the Book of Order proffered by Eastminster in opposition was unauthenticated and properly excluded; and 3) even if the Book of Order were considered its terms are insufficient to establish a trust under Ohio civil law.

III. ARGUMENT REGARDING EASTMINSTER'S PROPOSITIONS OF LAW

A. Rebuttal to Appellant's First Proposition of Law:

THE TRIAL COURT HAS BROAD DISCRETION IN THE ADMISSION AND EXCLUSION OF EVIDENCE INCLUDING THE EXCLUSION OF UNAUTHENTICATED EVIDENCE SUA SPONTE ABSENT EXPRESS STIPULATION BETWEEN THE PARTIES ON THE RECORD. (*State v. Hymore* (1967), 9 Ohio St. 2d 122, 128 approved and followed.)

Eastminster concedes that: “It is settled law that on a motion [for] summary judgment, an Ohio court is not required to accept evidence that does not conform to Civ.R. 56(C).” Indeed, that is “settled law” and presents no reason for this Court to accept jurisdiction over this matter. Accord *Eschen v. Suico*, Lorain App. No. 07CA009304 2008-Ohio-4294, ¶10; *State v. Chandathany*, Medina App. No. 02CA0081-M, 2003-Ohio-1593, ¶5, fn. 1.

Eastminster next asserts that the rule is different when the parties stipulate to the authenticity of evidence. That may be true, but that is not this case. Eastminster's quote from the Court of Appeal's decision is, at best, incomplete:

At a March 28, 2007 hearing before the magistrate, HPC's attorney responded to the magistrate's inquiry about the status of discovery as follows: "Your Honor, what we've *discussed* so far is *essentially* stipulating to the authenticity of documents. And right now this *appears* to be the binder of documents that we will be submitting. With all due apologies to the court, *wef[ve] got about 120 documents.*" Apart from the tenuous conclusion that an "essential[] stipulati[on]" to authenticity equates to a comprehensive and binding stipulation, HPC's attorney indicated that they had approximately 120 documents in the binder of documents to be submitted. *The parties' joint exhibit binder ultimately contained over 160 exhibits.* It is unclear which of the exhibits the parties already had at the time they appeared before the magistrate and which exhibits they collected after the hearing. Accordingly, the record does not support Eastminster's conclusion that the parties stipulated to all of the exhibits. The trial court had the discretion to conclude that the parties did not stipulate to Exhibit 150 and to consider Exhibit 150's admissibility sua sponte. *Id.*

(Emphasis added.) *Hudson Presbyterian Church v. Eastminster Presbytery*, Summit App. No. 24279, 2009-Ohio-446, ¶16. *Discussing* "essentially stipulating" to 120 documents and actually stipulating to them are two different things. Especially where the 120 documents under "*discussion*" are not individually identified on the record and 160 documents are actually filed. Neither the parties, nor the trial court, nor the court of appeals now know whether what is now "Exhibit 150" was in the 120 documents for which the parties were *discussing* a stipulation. The numbering of Exhibit 150 suggests that it probably was not. Regardless, there was no stipulation in the record so obviously the "stipulation" was "discussed" but never finalized. The court of appeals therefore correctly concluded that the trial court had discretion to exclude Exhibit 150 for want of authentication.

Eastminster's first proposition of law highlights why this Court should decline jurisdiction: this case presents issues of fact not law. And the issues of fact presented are so odd and case specific

that the chance that they will ever arise again is, at best, minimal. This Court should decline jurisdiction.

B. Rebuttal to Appellant's Second Proposition of Law:

AN AFFIDAVIT ATTESTING TO THE CONTENTS OF A WRITING IS INADMISSABLE WHERE THE ORIGINAL WRITING IS AVAILABLE BUT NEITHER PRODUCED, NOR ATTACHED TO THE AFFIDAVIT. (Evid.R. 1002 and 1004 applied.)

Eastminster's second proposition of law is virtually incomprehensible. But that is intentional. Eastminster is attempting to obfuscate a real issue. The real issue is whether the affidavit of Rev. Tammen “set[s] forth such facts as would be admissible in evidence” and whether “[s]worn or certified copies of all papers or parts of papers referred to in” the affidavit are “attached or served with the affidavit.” Civ.R. 56(E). The affidavit complies with neither Civ. R. 56(E) requirement which requirements are also conspicuously absent from Eastminster's quotation of that rule.

In order to “set forth such facts as would be admissible in evidence,” the Tammen affidavit purporting to set forth provisions from the 1981 Book of Order must comply with Evid.R. 1002 and 1004. Evid. R. 1002 states that “[t]o prove the content of a writing, recording, or photograph, the *original* writing, recording, or photograph is required, except as otherwise provided in these rules or by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio.” (Emphasis added.) Evid.R. 1004 allows for other evidence of the contents of a document under certain circumstances where the original is unavailable.

Here, the 1981 Book of Order was not attached to Tammen's affidavit, nor did Eastminster ever even claim that the 1981 Book of Order was unavailable. Moreover, the Tammen Affidavit never even referenced Exhibit 150. The court of appeals correctly reasoned:

Eastminster failed to explain why it was necessary to rely on Reverend Tammen's affidavit to prove the content of the 1981 Book of Order. Indeed, Eastminster indicated during a November 9, 2006 hearing that it at least had a copy of the entire 1981 Book of Order in its possession. The trial court did not abuse its discretion in refusing to consider Reverend Tammen's affidavit as evidence of the content of the 1981 Book of Order based on Eastminster's failure to comply with the Best Evidence Rule. Eastminster's first assignment of error is overruled.

Hudson Presbyterian Church, 2009-Ohio-446, at ¶ 19. The Tammen affidavit therefore violated Civ.R. 56(E) on two grounds: 1) the document quoted but not referenced in the affidavit was not attached; and 2) Tammen's statement as to the contents of the 1981 Book of Order was inadmissible under Evid.R. 1002 because Eastminster failed to either produce the original or explain its unavailability. The law is well settled on both points. Accord *Hoaglin Holdings v. Goliath Mortg., Inc.*, Cuyahoga App. No. 83657 2004-Ohio-3473, ¶17 (“Oral testimony about the contents of the writing is not admissible unless the writing itself is lost, destroyed or otherwise unavailable. Evid.R. 1004.”); *Wall v. Firelands Radiology* (1995), 106 Ohio App. 3d 313, 337 (“However, Civ.R. 56(E) requires the attachment to the affidavit of an exhibit 'referenced' by an affidavit. The letter was not attached thereto or served therewith as required by Civ.R. 56(E). Therefore, the trial court did not err in sustaining appellees' motion to strike this paragraph.”)

Once again, no issue of law needing this Court's review is presented. The trial court's exclusion of the Tammen affidavit was based on nothing more than non-compliance with the well settled requirements of Civ.R. 56. This Court should decline jurisdiction.

C. Rebuttal to Appellant's Third Proposition of Law:

A TRIAL COURT PROPERLY GRANTS SUMMARY JUDGMENT IN FAVOR OF THE MOVING PARTY WHERE ITS MOTION FOR SUMMARY JUDGMENT IS SUPPORTED BY DEPOSITION TESTIMONY AND THE ONLY EVIDENCE OFFERED IN RESPONSE IS NEITHER ADMISSIBLE NOR PROPER UNDER CIV.R. 56(E). (*Dresher v. Burt* (1996), 75 Ohio St. 3d 280 applied.)

Eastminster never raised this argument at either the trial court level or on appeal. It is well settled that where an issue “was neither raised * * * in the court of appeals nor addressed by the court of appeals * * * [it] may not be raised in this court for the first time.” *Portage County Bd. of Comm'rs v. City of Akron* (2006), 109 Ohio St. 3d 106, 123; accord *Wireman v. Keneco Distribs.* (1996), 75 Ohio St. 3d 103, 108; *BancOhio Nat'l Bank v. Rubicon Cadillac, Inc.* (1984), 11 Ohio St. 3d 32, 33 (“This court cannot address a proposition which was not raised at the intermediate level.”); *Moats v. Metropolitan Bank of Lima* (1974), 40 Ohio St. 2d 47, 50. There is no reason for this Court to expend its time and effort to address an issue which was not even important enough for Eastminster to have raised it below. Nor would it be just or fair to allow Eastminster to raise this new issue at this late date. For this reason alone, Eastminster's third proposition of law fails.

Had Eastminster timely raised this issue in the trial court (or even in the Court of Appeals) HPC would have reminded Eastminster that the binder of documents was not the *only* evidence submitted. HPC submitted the deposition of Rev. Schomer, the General Presbyter of Eastminster Presbytery, who testified that: 1) “there is no written express trust document between Hudson Presbyterian Church and Eastminster Presbytery”; and 2) “there is no document that says trust between HPC and Eastminster Presbytery.” (Schomer Depo., filed 3/26/07 at pp.181-182). HPC extensively quoted his testimony in its Motion for Summary Judgment. (Apr. 16 2007 Motion for Summary Judgment by HPC at pp. 8, 10, 13, 15-22, 31, 40, 43.) Thus, HPC met its initial burden

on summary judgment to point to evidence in the record establishing that no trust existed. See *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 293.

Then the burden shifted to Eastminster to, as proponent of the claimed trust, prove its existence by “clear and convincing” evidence. See, e.g., *Estate of Cowling v. Estate of Cowling* (2006), 109 Ohio St. 3d 276, 281. “Where the non-moving party faces a heightened burden of proof, such as clear and convincing evidence, he must show in opposition to the motion for summary judgment that he can produce evidence which, if believed, will meet the higher standard.” *Inge v. Rock Fin. Corp.* (C.A. 6, 2004), 388 F.3d 930, 938; *Dupler v. Mansfield Journal Co.* (1980), 64 Ohio St. 2d 116, syllabus. Eastminster's evidence failed under the Rules of Evidence and did not comply with Civ.R. 56(E). Thus, Eastminster produced no admissible evidence in opposition to HPC's motion, to say nothing of clear and convincing admissible evidence, in support of the claimed trust. Eastminster's third proposition of law is factually and legally incorrect. It presents no reason for this Court to accept jurisdiction.

D. Rebuttal to Appellant's Fourth Proposition of Law:

A CLAIM OF TRUST IN FAVOR OF A RELIGIOUS DENOMINATION OVER PROPERTY HELD SOLELY IN THE NAME OF A LOCAL CHURCH MUST BE IN A FORM LEGALLY COGNIZABLE UNDER OHIO TRUST LAW AS GENERALLY APPLIED TO ALL OTHER CIVIL LITIGANTS. (*Jones v. Wolf* (1979), 443 U.S. 595 applied.)

First, this proposition of law is not properly before this Court as the claimed trust provision Eastminster relies upon is not properly in the record on appeal. Second, Eastminster misstates the holding of *Jones v. Wolf* (1979), 443 U.S. 595, and misapplies the facts. The *dicta* relied upon by Eastminster was in the context of a series of hypothetical situations. The Supreme Court of the United States actually stated:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, ***the constitution of the general church can be made to recite an express trust in favor of the denominational church.*** * *

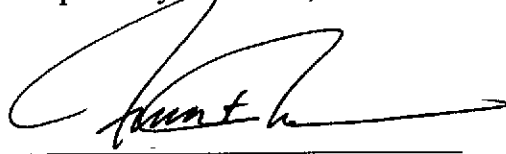
* Civil courts will be bound to give affect to the result indicated by the parties, ***provided it is embodied in some legally cognizable form.***

(Emphasis added.) *Jones v. Wolf* (1979), 443 U.S. 595, 606. Here, even if the terms of the Book of Order were considered the elements necessary for creation of a trust are not met: 1) there is no definite beneficiary, nor any definite purpose for the trust; 2) it does not provide for or designate trustees, or terms of the trust; 3) it purports to create a trust held by Eastminster, for Eastminster, which violates the doctrine of merger of title; and 4) here is no conveyance from the settlor. *Ulmer v. Fulton* (1935), 129 Ohio St. 323; *First Nat'l Bank of Middletown v. Gregory* (1983), 13 Ohio App. 3d 161, 163. Further, the Book of Order language proffered by Eastminster violates the Statute of Frauds. R.C. 1335.04. HPC did not sign the Book of Order. And there is no document signed by HPC which incorporates the Book of Order by reference. Therefore, there is no trust document cognizable under Ohio civil law and no enforceable trust at issue. Additionally, clear evidence of the result intended by the parties was presented in the mortgages, which showed the parties intended HPC would keep its property in the event of disaffiliation. This issue was therefore settled in favor of HPC's position by the Supreme Court of the United States in *Jones v. Wolf* and Eastminster present no reason for this Court to revisit the issue.

IV. CONCLUSION

For the foregoing reasons, this case does not present any issue of public or great general interest. Accordingly, appellee Hudson Presbyterian Church respectfully submits that this Court should decline jurisdiction.

Respectfully submitted,



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