

WM
STATE OF INDIANA)
COUNTY OF VANDERBURGH)

) SS: VANDERBURGH CIRCUIT COURT

PRESBYTERY OF OHIO VALLEY, INC.)
d/b/a PRESBYTERY OF OHIO VALLEY,)
d/b/a OHIO VALLEY PRESBYTERY, and)
SYNOD OF LINCOLN TRAILS OF THE)
PRESBYTERIAN CHURCH (U.S.A.), INC.,)
d/b/a SYNOD OF LINCOLN TRAILS, INC.,)

Plaintiffs)

v.)

OPC, INC. f/k/a OLIVET PRESBYTERIAN)
CHURCH, INC., d/b/a OLIVET)
PRESBYTERIAN CHURCH, d/b/a OLIVET)
EVANGELICAL PRESBYTERIAN CHURCH,)
and d/b/a OLIVET PRESBYTERIAN CHURCH)
OF EVANSVILLE; OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH OF EVANSVILLE,)
INC., d/b/a OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH; EVANGELICAL)
PRESBYTERIAN CHURCH, d/b/a)
EVANGELICAL PRESBYTERIAN CHURCH)
OF AMERICA,)

Defendants)

FILED
VANDERBURGH CIRCUIT COURT
MAR 09 2010

Aaron K. Rish
CLERK

CAUSE NO. 82C01-0707-MF-343

**ENTRY OF FINAL JUDGMENT WITH FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

The Court, having reviewed the pleadings, briefs, and the affidavits submitted by the parties, and having heard oral argument on the issues, now enters final judgment in favor of Defendants, Olivet Evangelical Presbyterian Church of Evansville, Inc., d/b/a Olivet Presbyterian Church, together with the merger of former corporations of the Olivet Presbyterian Church, Inc. and OPC, Inc. (hereinafter "Olivet"), and against the Plaintiffs, Presbytery of Ohio Valley, Inc., d/b/a Presbytery of Ohio Valley, d/b/a Ohio Valley Presbytery and Synod of

Lincoln Trails of the Presbyterian Church (U.S.A.), Inc., d/b/a Synod of Lincoln Trails, Inc. (hereinafter collectively referred to as "Plaintiffs" and/or "PC(USA)"). Accordingly, the Court issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Olivet Presbyterian Church traces its beginnings to mission work in 1891 of the Jefferson Avenue Cumberland Presbyterian Church and Free Methodist Church with the start of a mission Sunday School. This evolved into the Olive Street Cumberland Presbyterian Church organizing on or about June 7, 1900 with 35 charter members.

2. In 1906, the name was changed to Olive Street Presbyterian Church and in 1912 with the combination of another congregation, the name simply changed to the Olivet Presbyterian Church of Evansville.

3. During 1968 the congregation sought to move from its downtown location to its current location at property commonly known as 5600 Oak Hill Road, Evansville, Vanderburgh County, Indiana. The Olivet congregation has resided in the same location since constructing its church building near the corner of Oak Hill Road and St. George Road in the northern part of Vanderburgh County.

4. On Sunday, July 30, 2006, the congregation of Olivet Presbyterian Church voted overwhelmingly (98%) to ask the Presbytery to permit them to disaffiliate from the ecclesiastical governance of the Presbyterian Church (USA) and seek an association with another Presbyterian body more in keeping with their corporate expression of belief.

5. This litigation arises as a result of the decision of the congregation of Olivet Presbyterian Church to disaffiliate from the governance of the PC(USA) with its property that was bought and paid for by the Olivet congregation. Simply put, PC(USA) seeks through this

litigation to take control of the building and real property at 5600 Oak Hill Road as well as the congregation bank accounts and any other property.

6. The further significance of the dispute before the Court is demonstrated in paragraph 89 of the Stipulation. The appraised value of the real estate on January 15, 2008 was approximately \$1,000,000.00 and the appraisal does not include the value of any personalty, bank accounts or other property not consisting of the real estate. The parties further stipulated that a current appraisal has not been performed and the parties further agreed the old appraised value may not reflect the current price a willing buyer might pay for the real estate. There is no disagreement that Plaintiffs have not paid any meaningful monetary amount towards the real estate, personalty, bank accounts or other property associated with Olivet while the congregation of well over 100 individuals have made the financial contributions throughout the years. The Plaintiffs through this lawsuit seek to take full control of the real estate, personalty, fixtures, bank accounts and other property of Olivet for no financial consideration and to the exclusion of all of those individuals who have contributed their monetary assets to this property.

7. As will be further detailed in the Conclusions of Law, this Court will find that Indiana law falls in line with a majority of the jurisdictions in the United States and will apply the Neutral Principles Approach as set forth by the United States Supreme Court. In applying the neutral principles, the Court looks to the deed, documents of ownership, corporate documents of the parties and provisions of the Constitution of the PC(USA). As will be further detailed in the Conclusions of Law, the evidence shows that the deed and documents of ownership specifically provide that the real and personal property at issue in this case are held solely by the Olivet congregation rather than in trust for the PC(USA).

8. The facts presented to the Court indicate that after a lengthy period (many years) of discernment by Olivet, the congregation sought an association with another Presbyterian body more in keeping with its corporate expression of belief. Even the PC(USA) Constitution and Book of Order permits and acknowledges the possibility of movement away from its denomination. The Olivet congregation presented evidence summarizing issues and concerns beginning at least in 1994 and continuing through the time of the congregation's vote in 2006 to move to the Evangelical Presbyterian Church denomination ("EPC").

9. Consistent with the Neutral Principles Analysis (outlined in the Conclusions of Law), the Court is encouraged to look at a number of neutral legal principles including what property is owned by the Olivet congregation and how title is held to that property.

10. Olivet owns certain personal property and fixtures, including but not limited to various bank accounts listed as follows:

- (a). Olivet Evangelical Presbyterian at Old National Bank, Account #103102377;
- (b). Olivet Evangelical Presbyterian at Old National Bank, Account #107967578
- (c). Women of Olivet Presbyterian Church at Old National Bank, Account #404034225.
- (d). Olivet Preschool at Old National Bank, Account #409009563

As indicated by the Affidavit of Denise Atkins, an official of Old National Bank, and further supported by the Alex Merwin Affidavit, the accounts are not joint, nor are there contingent beneficiaries, any trust interest for any person or entity or any other interests identified in the

accounts other than being solely held by the corporation, the Olivet Evangelical Presbyterian Church, Inc. and/or the one bank account maintained for the Olivet Preschool.

11. The Plaintiffs admit that ownership of the real property is in the name of Olivet Presbyterian Church of Evansville, Indiana. (Complaint ¶31). The deed to the parcel of property at issue is a warranty deed executed on June 14, 1968 and recorded June 17, 1968 at Volume 519, Page 264-265 as Document Number 68-09033 in the records of the Recorder of Vanderburgh County. The warranty deed identifies the sole grantee as the Olivet Presbyterian Church of Evansville, Indiana. The deed conveys no interest to the POV, the Synod or the PC(USA) or any predecessor denomination. There are no restrictions, reservations, reversions and/or trusts identified. (Stipulation of Documents #36). It is legally described as follows:

A part of the Southeast quarter of the Northeast quarter of Section Three (3) Township Six (6) South, Range Ten (10) West in Vanderburgh County, Indiana and more particularly described as follows:

Beginning at a point on the South line of the Southeast quarter of the Northeast quarter of said section a distance of Six hundred sixty three and seventy five hundredths (663.75) feet South Eighty-Nine (89) degrees fifty six (56) minutes Thirty (30) seconds West of the Southeast corner thereof; thence North Zero (0) degrees zero (0) minutes Twenty three (23) seconds East a distance of Thirteen hundred fifty six and eleven hundredths (1356.11) feet to a point on the North line thereof; thence North Eighty nine (89) degrees Forty eight (48) minutes East along said North line a distance of six hundred sixty two and twenty five hundredths (662.25) feet to the Northeast corner of said quarter quarter section; thence South Twenty-five (25.0) feet; thence South Eighty nine (89) degrees Forty nine (49) minutes West a distance of Four hundred (400.0) feet; thence South and parallel to the East line thereof a distance of Five Hundred (500.0) feet; thence North Eighty Nine (89) degrees Forty eight (48) minutes East a distance of Four Hundred (400.0) feet to a point on said East line; thence South along said East line a distance of Six hundred thirty two and seventy five hundredths (632.75) feet; thence South Eighty Nine (89) degrees Fifty six (56) minutes Thirty (30) seconds West a distance of Six hundred thirty eight and seventy-five hundredths (638.75) feet; thence South and parallel to the East line of said quarter quarter section a distance of Two hundred (200.0) feet; thence South Eighty nine (89) degrees Fifth six (56) minutes Thirty (30) seconds West a distance of Twenty five (25.0) feet to the place of beginning and containing Thirteen and thirteen hundredths (13.13) acres more or less.

LESS AND EXCEPT any of that portion conveyed to the Board of Commissioners, Vanderburgh County, Indiana in Warranty Deed recorded September 17, 2004 as Document No. 2004R00032813.

(Hereinafter referred to as the "Olivet Real Estate").

12. There is no dispute that the Olivet Real Estate was purchased by the Olivet congregation with donations from the congregation long before the corporate existence of the PC(USA) or the Plaintiffs and that no monetary consideration was provided by PC(USA) and/or the Plaintiffs, or its predecessors, for the purchase of the Olivet Real Estate and/or improvements. It is further undisputed that the Olivet Real Estate and improvements have been continuously owned by Olivet since its purchase to the current time.

13. At all relevant times, the record title to the Oak Hill Road Real Estate has been and continues to be held in the name of the Olivet congregation. The Oak Hill Road Real Estate was purchased by the Olivet congregation with donations and money borrowed from financial institutions. The Plaintiffs did not contribute funds to the purchase of the Oak Hill Road Real Estate. From time to time, the Oak Hill Road Real Estate has been improved, and funding for the improvements came from loans from financial institutions, contributions from the Olivet congregation, and loans from the Synod and Presbytery. *See*, Stipulation of Facts, ¶¶ 22-24.

14. Following the Neutral Principles Analysis, the title to real estate is demonstrated through the deed. The deed is set forth above and clearly provided that the real property belongs to Olivet.

15. The next analysis under the Neutral Principles Analysis is the examination of the mortgages. The original Olivet purchase mortgage, which has been satisfied for quite some time, did not involve the Plaintiffs and/or PC(USA) and is not at issue. In the Complaint, Count II, the Plaintiffs put at issue certain notes and mortgages which were held by both Plaintiffs and

which were obviously acceptable to both Plaintiffs and the PC(USA) or they would not have been entered into at the time noted on the notes and mortgages. The Plaintiffs did not put these notes and mortgages to issue during the summary judgment hearing. Olivet points to the existence of these undisputed notes and mortgages indicating Olivet is "mortgagor." Olivet asserts and the Court finds that this is another indicia applicable under the Neutral Principle Analysis that the Plaintiffs have acknowledged the full ownership interest in the real property held by Olivet. Standing alone, it would be insufficient; but it is an indicia of ownership since mortgagees do not have a real estate title interest in property unless or until there is a foreclosure. If the mortgagees (both Plaintiffs) owned the property in trust, this would be inconsistent with the mortgage form utilized and recorded by both Plaintiffs.

Both the mortgage for the POV and the Synod indicate sole ownership in Olivet Presbyterian Church of Evansville, Indiana and do not recite any trust provisions in the POV or the Synod. The language contained in both mortgages states ownership in the Mortgagee (i.e. Olivet) and even states the Mortgagor may part with title. In paragraph 8 in each mortgage, it states in pertinent part:

The Mortgagee (either the POV or the Synod) at its option, may extend the time for the payment of the indebtedness or reduce the payments thereon, or accept a renewal note or notes therefore, without consent of any junior lien holder, and without the consent of the mortgagor (Olivet) if the mortgagor (Olivet) has then parted with title to the mortgaged premises...

(Stip Doc's, #43 and #44). This language in the mortgage again would not be consistent if either party felt that a trust provision existed in the ownership of the real estate held in trust for the benefit of these mortgagees.

16. The next indicia of a Neutral Principle Analysis would be the corporate status of Olivet. Olivet is a not-for-profit corporation in the State of Indiana and established the following

civil incorporation history. While the real property continued to be titled Olivet Presbyterian Church of Evansville, Indiana, as it had since June 1968, the Olivet congregation incorporated through filing its Articles of Incorporation with the Indiana Secretary of State forming Olivet Presbyterian Church, Inc. on or about November 28, 1994. (Stip Doc's, #38 and #39). The Articles of Incorporation indicate that the corporation was a "religious corporation, which is organized primarily or exclusively for religious purposes." (Stip Doc's, #38). The By-laws indicate that the congregation name shall be the Olivet Presbyterian Church of Evansville, Indiana and it incorporates under the laws of the State of Indiana through its corporate entity known as Olivet Presbyterian Church, Inc. (Article 1, Section 1 of the May 1998 By-laws – Stip Doc's, #42). Olivet, in its By-laws, indicated that it was a congregation of the Presbyterian Church (USA) and recognized church governance as the constitution.

17. The facts providing indicia of support for Olivet concerning the Articles of Incorporation and the By-laws are that nowhere in the Articles of Incorporation or in the By-laws was any statement made that the real or personal property was being placed in trust for the benefit of any of the Plaintiffs and/or the PC(USA). Further, nowhere in the Articles of Incorporation or By-laws was it stated that membership was irrevocable. In fact, Article 11 indicates that the By-laws shall be reviewed annually by the Session and that the By-laws may be amended at any stated or called meeting of the congregation by two-thirds vote of members present provided sufficient notice. (Article 11, Section 2 – Stip Doc's, #42). The record indicates that the By-laws were amended from time to time. (Stip Doc's, #37B, C, D, #42, and #54).

18. Further indicia of a Neutral Principles Analysis in favor of Olivet is that there are no specific set of By-laws prescribed by the Book of Order or other authority of Plaintiffs. Also,

I.C. § 23-17-1-1(3), *et seq.* indicates that a non-profit corporation has the statutory right to make and amend by-laws. Neither side has been able to provide any authority for requirement for any specific set of by-laws and this Court must conclude that none exists.

19. As pointed out in the briefs, the Plaintiffs' governance, through the Book of Order, does contemplate individuals or groups leaving the denomination and it provides for that.

20. The Neutral Principle Analysis that Plaintiffs assert is that the By-laws indicate that they are a congregation of the Presbyterian Church (USA) and recognized church governance as the constitution while they voluntarily chose to be affiliated with such denomination. Also, Plaintiffs point out that the By-laws state that they will not be changed so as to be inconsistent with the church constitution while they voluntarily chose to be affiliated with such denomination. Olivet contradicts these assertions by Plaintiffs through indicating that there is no specific set of by-laws prescribed by the Book of Order, the Book of Order contemplates individuals and/or congregations leaving the denomination and finally, it is undisputed that one of the checklist items prescribed by the Plaintiffs to effect Olivet's disassociation was that Olivet change their By-laws.

21. Finally, Olivet indicates that there is no indicia of transferring property interests in their Articles of Incorporation or By-laws and to assert any sort of knowing transfer through the By-laws is not demonstrated by any written record and/or testimony presented by either party. Olivet agreed to abide by the governance of the church so long as they were a member, but church governance permits their departure and all agree they have departed and are following a new Presbyterian Church governance. As Olivet has indicated, they had a voluntary right to put it in and have the same voluntary right to take it out regarding when they follow or recognize church governance.

22. The Articles of Incorporation were amended through filing Articles of Amendment with the Indiana Secretary of State on or about November 6, 2006, when the Session and the congregation realized they would be leaving Plaintiffs. (Stip Doc's, #59). In September 2006, the By-laws were amended to include Olivet Presbyterian Church of Evansville, Indiana becoming a congregation of the Evangelical Presbyterian Church. (Article 1, Section 2 – Stip Doc's, #54 and #59). This action was consistent with the previous congregation actions during the summer and the requirements imposed by PC(USA). The By-laws were accepted at a September 17, 2006 called congregation meeting pending acceptance into the Evangelical Presbyterian Church. (Merwin Affidavit, ¶ 12). These Articles of Amendment are dated September 18, 2006 to coincide with correspondence from the Evangelical Presbyterian Church accepting both the congregation and the pastor at Olivet into the Evangelical Presbyterian Church. (Stip Facts, ¶ 69). The Articles of Amendment were certified by the Indiana Secretary of State on or about November 6, 2006 (Stip Doc's, #59) and the corporation became known as OPC, Inc. and continued its address at 5600 Oak Hill Road, Evansville, Indiana 47711. At the time of the Articles of Amendment, OPC, Inc. was simply listed as an Indiana non-profit corporation. The church revised its By-laws again in December 2006, indicating that the Olivet Presbyterian Church of Evansville, Indiana corporation was now a congregation of the Evangelical Presbyterian Church. (Stip Doc's, #60).

23. Olivet Evangelical Presbyterian Church of Evansville, Inc. was formed through Articles of Incorporation being filed with the Indiana Secretary of State on February 14, 2007. (Stip Doc's, #64; Merwin Affidavit, ¶ 12). The requisite capital, federal employer identification number and other authorizations along with the first meeting were preformed in order to move the Olivet congregation to a different Presbyterian denomination. (Merwin Affidavit, ¶ 12).

Following the proper Indiana statutes, the Olivet congregation sought to merge OPC, Inc. into Olivet Evangelical Presbyterian Church of Evansville, Indiana and provided the board of directors of both corporations with the required notice and announcements. (Merwin Affidavit, ¶ 12). Meetings of both board of directors occurred. At the meeting of each corporation, the merger was approved and the Articles of Merger were signed on March 4, 2007. (Merwin Affidavit, ¶ 12). The merging corporation being OPC, Inc., an Indiana non-profit corporation, incorporated on the 28th day of November, 1994 and the surviving corporation being the Olivet Evangelical Presbyterian Church of Evansville, Inc., an Indiana non-profit corporation incorporated on the 14th day of February, 2007.

24. The Neutral Principles Analysis provides some indicia of ownership of the property through the civil corporate status. The Articles of Merger and the Certificate of Merger issued by the Indiana Secretary of State indicating the successful merger of OPC, Inc. into the surviving entity, Olivet Evangelical Presbyterian Church of Evansville, Inc., were issued March 7, 2007. As provided by law and the merger articles:

Upon the effective date of the merger, the surviving corporation shall be vested with all the rights, privileges, immunities, powers and franchises and all property, real and person, and all accounts, contract rights and other choices and action of the Merging Corporation without the necessity of any further act or deed.

(Merwin Affidavit, ¶ 12).

25. The next indicia under a Neutral Principles Analysis is to look at other written documents. Based upon a review of the record, there is no written express trust existing between Olivet and the Plaintiffs. (Merwin Affidavit, ¶ 3). No written and signed express trust has been presented by either party and thus the Court concludes one must not exist. This indicia favors Olivet's position. An express trust is one created by the direct and positive act of the settlor by some writing, deed, will or oral declaration. I.C. § 30-4-2-1(a). Plaintiffs indicate that the

Indiana trust provisions relied upon by Defendants were not passed until after purchase of the property. However, nothing prohibited a trust clause being inserted in the Olivet deed, which does not exist. Further, nothing prohibited Defendants from making a written expression signed by the appropriate official of the church indicating that the property was put in trust after passage of the Indiana trust statutes in 1971 and certainly none of the Plaintiffs nor PC(USA) appear to have sought to have Olivet make such a written expression since 1971.

26. Looking at the Neutral Principles Analysis, the basis of Plaintiffs' assertion of a trust interest in all of the property of Olivet is based upon an interpretation of the Book of Order. The Plaintiffs' church constitution, as evidenced through the Book of Order, provides an indicia of ownership in the church under a Neutral Principles Analysis.

27. While examining the church constitution as part of the Neutral Principles Analysis, it was in 1983 that the United Presbyterian Church in the United States of America (PCUS) "Southern Branch" and the United Presbyterian Church in the USA (UPCUSA) "Northern Branch" combined and became the Presbyterian Church (USA). Olivet church through these combinations became a member of the PC(USA). The affiliation of Olivet Presbyterian Church of Evansville, Indiana with the PC(USA) was viewed as a "reunion" of two national level denominations according to Session minutes of the Olivet congregation dated August 25, 1983 (Stip Doc's, #37F), which was the same time of the adoption of the current version of the Book of Order. The Court finds no particular indicia of ownership arising out of the merger of these two national branches and/or the adoption of the Book of Order at the time. Actions by parties to attempt to impose a trust upon property owned by others are inconsistent with the civil law approach and/or a Neutral Principles Analysis of the manner in which property

is put in trust for another and thus, no indicia is gleaned from the merger events and the adoption of the current version of the Book of Order.

28. Both parties outline significant steps taken in the discernment and in the eventual departure of Olivet from the Plaintiffs, which are more fully outlined in the briefs, the Stipulation of Facts (Stip Facts, ¶ 53 through ¶ 81) and/or in the affidavits, all of which were a part of the record submitted on summary judgment. In pertinent part, this may be summarized that on June 9, 2006, the Olivet Session (Board of Directors) presented its recommendation for dismissal to the congregation for prayer and discernment and with Plaintiff representatives being present. Four town meetings with POV representatives took place in July. (Stip Facts, ¶ 57 and ¶ 58; Merwin Affidavit, ¶ 12). At the annual Olivet congregation meeting on July 30, 2006, a vote in favor of dismissal to the Evangelical Presbyterian Church with property and finances passed 116 for and 2 against. POV representatives were present and witnessed the voting and no dispute exists between the parties concerning these facts. (Merwin Affidavit, ¶ 12). Various meetings and correspondence occurred between the Plaintiffs' task force and representatives of the Olivet congregation regarding how matters should proceed. The Plaintiffs' task force outlined various steps to be completed in their meeting on August 17, 2006, including but not limited to revision of the Articles of Incorporation and church By-laws (Stip Facts, ¶ 67; Merwin Affidavit, ¶ 12). Delays occurred waiting for the new denomination's approval. Delays occurred due to changes in the language of resolutions presented at various assemblies. One of these changes included the original Olivet proposed resolution to be dismissed never being presented to any assembly and never acted upon.

29. The Court finds paragraph 77 of the Stipulation of Facts of significance, which states in part as follows:

The parties disagree regarding the adequacy, extent or appropriate procedure for the presentation of the Olivet petition and the Presbytery resolution, but on December 7, 2006, the Presbytery adopted a resolution by which it agreed to release Olivet congregation from membership in the PC(U.S.A.) into membership in the EPC, effective immediately, subject to the following conditions:

* * *

The fact that the parties disagree on this fact is significant. Further demonstrating the parties' disagreement regarding the adequacy, extent or appropriate procedure during this Presbyterian assembly of representatives from various Plaintiff congregations, is the Affidavit of William Rasch. (Affidavit of William Rasch).

30. Under a Neutral Principles Analysis, it is difficult for the Court to glean any indicia of ownership where the parties disagree regarding the adequacy, extent or appropriate procedure for the presentation of the Olivet petition and the Presbytery action..." As will be further detailed in the Conclusions of Law, a vote by a body of members made up from various churches must inextricably involve matters of church belief which are inconsistent with a neutral principles approach.

31. The parties agree through their Stipulation at paragraph 88 that the Olivet congregation has consistently made clear its intention to continue its affiliation and worship under the Evangelical Presbyterian Church, and never expressed nor has it implemented any plans to abandon the real estate titled in its name since 1968.

32. All Findings of Fact may be deemed Conclusions of Law

CONCLUSIONS OF LAW

1. The Court finds there is ample United States Supreme Court precedent and Indiana Court precedent for concluding that this Court has jurisdiction to hear church property

disputes. This Court further concludes that the more reasoned and proper approach under both Federal and Indiana jurisprudence is to apply the Neutral Principles Doctrine.

2. This Court has three significant United States Supreme Court precedents as guidance for evaluating the facts of this dispute along with considerable state court law. While there is evidence that Indiana Courts have utilized both the “neutral principles approach” and the “polity approach” in determining ownership of church property, this Court is applying the neutral principles approach as described and discussed in the United States Supreme Court precedent Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) and Jones v. Wolf, 443 U.S. 595 (1979). The majority view throughout the United States appears to follow the neutral principles approach.

Plaintiffs urge the Court to apply the “polity” approach” citing United States Supreme Court precedent in Watson v. Jones, 80 U.S. 679 (1871) While Watson v. Jones has not been overruled, it has been significantly further clarified and defined in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) and in Jones v. Wolf, 443 U.S. 595 (1979). It is significant that Watson v. Jones was decided well before the application of the Bill of Rights, including the First Amendment, to the various states through the Fourteenth Amendment. The Blue Hull U.S. Supreme Court precedent indicates that the First Amendment is to be applied through the states and generally holds that each of the individual states can apply a polity, neutral principles or other test, but the Court notes that the neutral principle test is a very good and logical one. If a religious organization wants to establish a trust interest in a property, they must do so through neutral principles and not through the courts being required to evaluate ecclesiastical views.

3. Plaintiffs seek to have this Court adopt the “polity approach”, recognizing the hierarchy of governing bodies within a religious organization through reliance upon Presbytery of Indianapolis v. First United Presbyterian Church of Indianapolis, 238 N.E.2d 479 (Ind. Ct. App. 1968). The only United States Supreme Court precedent available to the Presbytery of Indianapolis court at the time of its decision was the 1874 decision in Watson v. Jones. Shortly after this decision, the 1969 United States Supreme Court decision emerged in Blue Hull, 393 U.S. 440 (1969). This Court today is further influenced by the second United States Supreme Court opinion offered ten years later in 1979, Jones v. Wolf.

Two (2) Indiana Court of Appeals decisions were issued after the United States Supreme Court precedent in Blue Hull, 393 U.S. 440 (1969), and of course after the previous 1968 decision in the Presbytery of Indianapolis, 238 N.E.2d 479, (Ind. Ct. App. 1968).

Courts in Indiana may consider and rule upon property disputes between church bodies. Smart v. Indiana Yearly Conference of the Wesleyan Methodist Church of America, 271 N.E.2d 713 (Ind. 1971).

...adjudicating church property disputes by relying on formal title will ensure an almost even handed administration of justice since the necessary evidence will almost always be admissible. The formal title approach will seldom involve civil courts in deciding what the polity of a given church is, a determination which will almost inevitably involve ecclesiastical considerations. One final advantage inherent in this approach is that it invites and encourages religious organizations to title their property as clearly and unambiguously as possible. Merryman v. Price, 259 N.E.2d 883, 893 (Ind. Ct. App. 1970).

The nature of the dispute must be considered to determine if the issue is doctrinal, or non-doctrinal, such as property or contractual legal issues. Courts must carefully avoid addressing doctrinal matters, but can hear non-doctrinal property and contractual disputes. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393

U.S. 440, 449 (1969). In that same year (1971), the Court of Appeals decided Merryman v. Price, 259 N.E.2d 883 (Ind. Ct. App. 1971). There, the Court of Appeals stated that

[t]he total impact of the Mary Elizabeth Blue Hull case is decided by the Supreme Court of the United States and by the Supreme Court of Georgia on remand as to render impotent the implied trust in so far as such theory is based upon principles of ecclesiastical law, church doctrine, or church discipline. It is clear that the civil courts cannot rely upon ecclesiastical law of the church to impose an implied trust upon real estate.

Id. at 893. The Court went on to describe the benefits of using a neutral principles approach.

This approach has the advantage of almost never involving a civil court with the vexing problem of whether preferred evidence is admissible under the First Amendment. Further adjudicating church property disputes by relying on formal title will insure an almost evenhanded administration of justice since the necessary evidence will almost always be admissible. The formal title approach will seldom involve a civil court in deciding what the polity of a given church is, a determination which will almost inevitably involve ecclesiastical considerations. One final advantage inherent in this approach is that it invites and encourages religious organizations to title their property as clearly and unambiguously as possible.

Id. at 893.

4. The crux of the U.S. Supreme Court case relied upon by the PC(USA), Watson v. Jones, was the determination by the Court of what faction of Presbyterians was the true church to whom real estate was deeded. The Court, even in that precedent cited by Plaintiffs, started with the deed in determining ownership of real estate as was also the case in Hinkle Creek Friends Church v. Western Yearly Meeting of Friends Church, 469 N.E.2d 40 (Ind. Ct. App. 1984). The Hinkle court began with examination of the deed language which supported the Court's conclusion. 469 N.E.2d 2d at 43-44.

5. The Supreme Court of Indiana has utilized the "neutral principals" doctrine after Blue Hull with Smart v. Indiana Yearly Conference of the Wesleyan Church of America, 271 N.E.2d 713 (1971). In Smart, the organized general church took conveyance of the property in

the organized general church's name with the consent of the local church congregation, while the local congregation paid the consideration. Since there was no agreement that the general church would hold the land in some capacity solely for the benefit of the local church congregation, the general church was declared the owner of the real estate.

Likewise, the Indiana Court of Appeals was utilizing and applying the "neutral principals" doctrine during a similar time period in Merryman v. Price, 259 N.E. 883 (Ind. Ct. App. 1970). Herein, a quiet title action was brought by trustees of a local church against officials of a general church. The Indiana Court of Appeals held that where the local church officials made their *prima facie* case with reference to the legal title to the church property and where the positions of the officials of the general church could not be sustained without reference to ecclesiastical law, church discipline and/or church doctrine, title was properly quieted in the trustees of the local church. With roots in both Smart and Merryman, the Indiana courts have applied the "neutral principles of law" doctrine in numerous cases including: Draskovich v. Pasalich, 280 N.E.2d 69, 76-81 (Ind. Ct. App. 1972); United Methodist Church v. St. Louis Crossing Independent Methodist Church, 276 N.E.2d 916 (Ind. Ct. App. 1972); Marich v. Kragulac, 415 N.E.2d 91 (Ind. Ct. App. 1981); Grutka v. Clifford, 445 N.E.2d 1015 (Ind. Ct. App. 1983); Hinkle Creek Friends Church v. Western Yearly Meeting of Friends Church, 469 N.E.2d 40 (Ind. Ct. App. 1984); Emberly Community Church v. Bloomington District Missionary and Church Extension Society, Inc., 482 N.E.2d 288 (Ind. Ct. App. 1985); Konkle v. Henson, 672 N.E.2d 450 (Ind. Ct. App. 1996); Stewart v. Kingsley Terrace Church, 767 N.E.2d 542 (Ind. Ct. App. 2002); Brazauskas v. Fort Wayne-South Bend Diocese, 796 N.E.2d 286 (Ind. 2003); West v. Wadlington, 908 N.E.2d 1157 (Ind. Ct. App. 2009).

6. This Court holds that the better constitutionally appropriate method of resolving a church property dispute is to look to the ordinary indicia of property rights, and this means applying a neutral principal approach. While Indiana's preferred and accepted method of deciding disputes concerning church property is "neutral principals", other jurisdictions have also specifically adopted this approach: See, See Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, 489 A. 2d 1317 (Pa. 1985); Presbytery of Riverside v. Community Church of Palm Springs, 152 Cal. Rptr. 854, cert denied 444 U.S. 974 (1979); York v. First Presbyterian Church of Anna, 474 N.E.2d 716 (Ill. Ct. App. 1984); Presbytery of Elijah Paris Lovejoy v. Jaeggi, 682 S.W.2d 465 (Mo. 1984); First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States of America, 464 N.E.2d 454 (N.Y. 1984); Foss v. Dykstra, 342 N.W.2d 220 (S.D. 1983); Trinity Presbyterian Church v. Tankersley, 374 So.2d 861 (Ala. 1979), cert denied, 445 U.S. 904 (1980).

The Court is further cautioned by the United States Supreme Court to avoid addressing doctrinal matters. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969). The First Amendment prohibits any inquiry by the court into religious doctrine or practice as the courts have "no role in determining ecclesiastical questions in the process of resolving property disputes." *Id* at 447. Indiana is bound to interpret state statutes and state laws and recognize the separation between church and state. U.S. Const. amend. I; Ind. Const. art. 1, §§ 2-7.

7. The Book of Order is cited by both parties and contains contradictory terms as it relates to this property dispute. Generally, the Presbyterian Church (USA) Book of Order is an ecclesiastical set of rules. Unless one is sitting as an ecclesiastical judge, little reference is needed to the Book of Order and that book so states:

G-9.0102 [Chapter IX, Paragraph 1(a)]

Governing Bodies of the Church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying His will in relation to truth and service, order and discipline.

Blue Hull establishes the “neutral principles” doctrine for church property disputes especially where it states “[t]he First Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, state, religious organizations and individuals must construe relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions. *Id.* at 449.

8. Ten years after Blue Hull, the U.S. Supreme Court again visited church property ownership disputes and affirmed the neutral principles approach, clarifying the role of the court in looking to property deeds, titles, articles of incorporation and other ordinary indicia of ownership to reach a decision. In Jones v. Wolf, 443 U.S. 595 (1979), the Vineville Presbyterian Church (local congregation) voted 164 to 94 to separate from the PCUS. The Augusta-Macon Presbytery (same entity as one of the entities herein) appointed a commission which declared that the minority faction was the “true congregation” and claimed the minority had authority to exercise control over the church corporation property. *Id.* at 598. The minority then sought control of the church’s real and personal property in court. The trial court, affirmed by the Georgia Supreme Court, rejected the minority’s argument and held that control remained with the majority (local congregation). The U.S. Supreme Court upheld the Georgia Supreme Court’s application of the neutral principles of law. *Id.* at 599. Noting that “the neutral-principles analysis shares the peculiar genius of private law systems in general-flexibility in ordering private rights and obligations to reflect the intentions of the parties,” *Id.* at 603, The Court declared that “the neutral-principles approach...obviates entirely the need for an analysis or

examination of ecclesiastical polity or doctrine in settling church property disputes.” *Id.* at 605. Ultimately, it was the property deeds, articles of incorporation, and majority vote that prevailed, and the majority of the congregation retained control of the property.

9. Likewise, the Indiana Supreme Court in Smart v. Indiana Yearly Conference of the Wesleyan Methodist Church of America, 271 N.E.2d 713 (Ind. 1971) held that where the organized general church (Wesleyan Methodist Church of America) who actually took the named title conveyance of the property with the consent of the local church which paid the consideration, Wesleyan Methodist Church of America (the general church) remained owner of the real estate where there was no agreement that the general church would hold the land in some capacity solely for the benefit of the local church. This Indiana Supreme Court holding is consistent with recognizing the title owner as superior under a “neutral principles” analysis. In the case at bar, the local congregation is the title owner and thus prevails.

10. Olivet is the sole owner of the parcel of property which comprises the land upon which the church building sits. (Complaint, ¶7; Stip Facts, ¶21). Neither the Plaintiffs nor the PC(USA) are referenced in the warranty deed. (*Id.*). The Deed does not create a trust nor a beneficial interest in any entity other than Olivet. (*Id.*). There is no reverter clause or reserved interest in any third party. (*Id.*). Therefore, the first and most significant aspect of the neutral principles inquiry establishes that Olivet is the proper and sole title owner to the property.

11. Indiana real estate law governs whether title to real estate has been transferred. If the real estate property owned by Olivet Presbyterian Church of Evansville, Indiana is to be placed in trust, it ought to be done through real estate transfer by the property owners. Plaintiffs’ initial admission concedes that Olivet never did so. (Complaint, ¶ 31). While Plaintiffs suggest the Trust Code requiring a writing was passed in Indiana after Olivet’s original purchase of the

property in 1968, nothing prohibited either party from inserting a trust clause in its deed or signing a written trust agreement placing the property in trust as required for real property being transferred into a trust through a written instrument bearing the signature of the authorized owner of the real estate, I.C. § 30-4-2-1, *et seq.* Also, the Indiana Statute of Frauds has prohibited parole evidence to demonstrate transfer of title to real property to contradict a writing, I.C. § 32-21-1-13 and requires the conveyance to be made by a deed in writing and properly signed.

12. Given the significant repetition of both United States Supreme Court and Indiana case law suggesting that the deed carries a superior position in disputes of this nature and given the Indiana statute's preference for a document in writing signed by a party being bound, the Court can only conclude from the facts presented by the parties that Olivet prevails when applying the "neutral principles" approach. The evidence shows that the deed and documents of ownership specifically provide that the real and personal property at issue in this case are held solely by the Olivet congregation rather than by the Plaintiffs or the PC(USA).

13. The "general laws" element of the neutral principles doctrine supports Olivet's position with respect to its property ownership and affiliation as it is a general non-profit corporation duly incorporated in accordance with the provisions of I.C. § 23-17-1-1, *et seq.* with the authority to own real or personal property.

14. The Articles of Incorporation for the Presbyterian Church (USA), the parent organization for the Plaintiffs, filed December 22, 1966 in the Commonwealth of Pennsylvania (Stip Doc's, #71) indicate that in Article 4 of the PC(USA) Articles of Incorporation that:

The corporation does not contemplate pecuniary gain or profit, incidental or otherwise...

(Stip Doc's, #71). Neither Plaintiffs nor PC(USA) have provided any evidence of pecuniary contribution to the purchase of real estate, the improvements and/or the financial accounts of

Olivet. Given the PC(USA)'s statement in its own Articles of Incorporation, neither the Plaintiffs nor the PC(USA) should profit from obtaining Olivet's property without value through imposition of some sort of implied trust without written document or signature or otherwise.

15. The Articles of Incorporation for Olivet have been cited earlier through the Statement of Facts. Neither in the original Articles of Incorporation filed in 1984 nor in any of the amendments can one find a statement placing either the real or personal property of Olivet in trust and bearing the signature of an authorized agent for Olivet as provided for the formal creation of a trust pursuant to I.C. § 30-4-2-1. Likewise, in the amendment of the Articles of Incorporation to OPC, Inc. and/or in the merger of OPC, Inc. into Olivet Evangelical Presbyterian Church there is no statement placing in trust either the real or personal property of Olivet bearing the signature of an authorized agent on behalf of Olivet. *Id.*

16. Further applying the "neutral principles" approach, Olivet, as a corporate citizen of Indiana, is entitled to neutral application of Indiana law and in particular I.C. § 23-17-4-2, *et seq.* These statutes have never been interpreted to allow one entity to, by the adoption of a rule, impose a trust upon the property of another.

17. Applying another "neutral principle" approach, both mortgages for the Presbytery Plaintiff and the Synod Plaintiff indicate sole ownership in Olivet Presbyterian Church of Evansville, Indiana and do not recite any trust interest in either Plaintiffs. The language contained in both mortgages state ownership in the mortgagor (i.e. Olivet) and even state the mortgagor may part with title. This language in the mortgages is inappropriate at best and more likely indicative of Olivet's ownership since no reference is made to a trust provision in the ownership of the ownership. In the mortgage documents, which are neutral civil legal documents, the Plaintiffs, the Presbytery of Ohio Valley and the Synod of Lincoln Trails, have

repeatedly acknowledged their non-ownership in the property without any reference to claimed ownership through any sort of trust.

18. While the Plaintiffs seek to impose a trust in all real property and all accounts of Olivet, the only evidence submitted concerning title to bank accounts is that of the Denise Atkins affidavit and/or the Merwin affidavit (¶ 8). These establish that title to all of the accounts is entirely in the name of Olivet and reflects no trust interest. The bank accounts are all evidenced by documents which may be characterized as documents properly reviewable by a court under the neutral principles of law doctrine and the Court finds nothing in the documents which can be construed as giving an interest in any entity other than Olivet Evangelical Presbyterian Church, Inc.

19. Both parties cite various portions of the PC(USA) Book of Order in support of their respective positions.

Plaintiffs' case significantly relies upon G-8.0201, added to the Book of Order in 1981, which states:

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, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Plaintiffs rely heavily upon this and other provisions of Chapter 8 in the Book of Order in asserting its trust interests.

The Olivet Defendants reply asserting that the Book of Order is an ecclesiastical document which by its very terms is not supposed to have civil law jurisdiction citing G-9.0102 stating:

Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying this will in relation to truth and service, order and discipline.

Both parties assert many other provisions of the Book of Order all of which are a part of the record. Olivet also cites the Affidavits Alex Merwin and William Rasch. Irrespective of the affidavits, the Court concludes that wading into various portions of the Book of Order which may or may not be conflicting requires this Court to determine ecclesiastical questions in the process of resolving property disputes which is prohibited by the First Amendment to the United States Constitution. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 447 (1969). Plaintiffs ask this Court to hold that pursuant to G-8.0201, the Olivet property is held in trust for the use and benefit of the Presbyterian Church (USA) and yet Defendants assert that G-8.0201 is not a settlor's declaration but an assertion by an entity that does not hold title to any of the property at issue in the instant case and which never held property at issue in the present case. Plaintiffs assert the actions of its Presbytery consisting of voting members of various churches must be upheld while Defendants cite Chapter G-9.0102, stating governing bodies of the church (i.e., a Presbytery) have only ecclesiastical jurisdiction. As further example, G-1.0307 of the Book of Order states: "That all church power, whether exercised by the body in general or in the way of representation by delegated authority is only ministerial and declarative..." At G-1.0308 it states "An ecclesiastical discipline must be purely moral or spiritual in its object and not intended with any civil effects..." This conflict and the other potentially conflicting provisions in the Book of Order appear to this Court to force an evaluation or determination of ecclesiastical questions or interpretations in the process of resolving this property dispute. This Court declines to do so, based upon the First Amendment to the United States Constitution, the Indiana State

Constitution, U.S. Supreme Court precedent and state court precedent. "Civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." Jones v. Wolf, 443 U.S. 595, 606 (1979).

20. Plaintiffs cite I.C. § 23-10-2-14 in support of their position that the Olivet property should revert to the larger denomination because of a "dissolution." The dissolution Plaintiffs assert is the action allowing Olivet to disaffiliate from the PC(USA) and affiliate with the EPC. Paragraph 88 of the Stipulation of Facts states the parties' agreement that:

The Olivet congregation has consistently made clear its intention to continue its affiliation and worship under the EPC, but not the PC(U.S.A.), and never expressed, nor has it implemented, any plans to abandon the Oak Hill Road Real Estate.

As part of this argument, Plaintiffs assert further provisions of the Book of Order for this Court to interpret and evaluate, G-8.0601, G-11.0103-I and G-8.0401, to which the Court declines based upon the ecclesiastical considerations stated above. Further inconsistent with any suggestion of dissolution or abandonment is the parties' stipulated fact that the Plaintiffs sought to lease property to Olivet as described in the Stipulation at paragraphs 82 through 86. Indiana Code § 23-10-2-14 applies to church property which has been truly abandoned, which is not the case with the Olivet property. There is no evidence that Olivet dissolved and in fact, the evidence is that it merged with a new corporate entity affiliated with another denomination affiliated with the Presbyterian Church. Olivet merely disaffiliated from the PC(USA). The real property has never been abandoned nor has the congregation disbanded or dissolved. In fact, this litigation itself is evidence that the property ownership is being contested rather than abandoned.

21. Insufficient evidence has been presented to establish in this case the existence of either an express trust or an implied trust of any sort. An express trust is one created by the direct and positive act of the settlor by some writing, deed, or declaration provided in some

legally cognizable form signed or expressed by an individual authorized to do so. Holsapple v. Shrontz, 117 N.E.2d 547, 549 (Ind. Ct. App. 1970); Betsner v. Betsner, 151 N.E. 343, 345 (Ind. Ct. App. 1926). Likewise, there has been insufficient proof of an implied trust or a constructive trust since the proof necessary to establish an implied trust must likewise be clear and unequivocal. Philbin v. Carr, 75 Ind. App. 560, 584; 129 N.E. 19, 27 (Ind. Ct. App. 192); Flying Squadron Foundation v. Crippen, 169 N.E. 843 (Ind. 1930); Auten v. Sevier, 202 N.E.2d 274 (Ind. Ct. App. 1964); Workman v. Douglas, 419 N.E. 2d 1340 (Ind. Ct. App. 1981). Likewise, there has been insufficient evidence to establish a constructive trust since a constructive trust is not actually a trust but a common law remedy created by equity. A constructive trust must arise when persons have obtained money or property which does not equitably belong to them and which they cannot in good conscience retain or withhold from another who is beneficially entitled to it. Constructive trusts are generally designed to prevent unjust enrichments and fraud and to satisfy the ends of justice, and such a basis has not been proven here. Plaintiffs have not met their burden of proof to show that a trust, either express or implied, has been created or was intended to be created by Olivet or its predecessors. The greater weight of the evidence as shown through the deed and documents of ownership is that the Olivet Real Estate and the personal property is held solely by Olivet unencumbered by any interest of the Plaintiffs and/or the PC(USA).

22. If it were intended that the Olivet Real Estate and personal property were to be held in trust for PC(USA), the same could have been done by revising the deed and documents of ownership. Such was the charge of the United States Supreme Court in Blue Hull, that the parties organize their relationship to establish the trust clearly so Courts would not be forced to weigh conflicting evidence. The fact that this was not done allows an inference that the parties,

or at a minimum Olivet, did not intend for an implied or express trust to be established. Insufficient evidence has been provided by PC(USA) to show that the property at issue in this case is held in trust. The best evidence of ownership is presented by Olivet in the language of the deed and the documents of ownership.

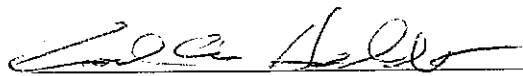
23. The law as applied to the facts are with Olivet and against Plaintiffs and/or PC(USA).
24. All Conclusions of Law may be deemed Findings of Fact.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there is no just reason to delay the entry of a final and appealable judgment as follows:

1. The Olivet Real Estate and personal property shall, and is hereby, determined to be owned solely by Olivet;
2. No express or implied trust has been created in favor of Plaintiffs and/or PC(USA) concerning the Olivet Real Estate and personal property;
3. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count 1 of Plaintiffs' Complaint declaring and quieting title for all real and personal property in Olivet and finding no trust, express, implied or constructive, in favor of Plaintiffs. Issues related to the mortgage liens, if any, are not resolved by this decision (See paragraph 75 of Plaintiffs' Complaint);
4. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count II of Plaintiffs' Complaint as Olivet assumed control over its own property that is not held in trust for Plaintiffs and/or PC(USA) and Olivet has not been unjustly enriched nor have they converted Plaintiffs' property;
5. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count III of Plaintiff's Complaint as this Court has found for Olivet on

Counts I and II of Plaintiffs' Complaint, rendering the issue moot. Because the real and personal property at issue has been determined to belong to Olivet, Plaintiffs had no rights with regard to the property which could be the subject of a contract.

DATED: March 9, 2010


CARL HELDT, JUDGE
VANDERBURGH CIRCUIT COURT