

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)

Plaintiff,)

v.)

Civil Action File No.
07-CV-4142-M

PRESBYTERY OF GREATER)
ATLANTA, INC.,)

Defendant.)

ORDER

The above-styled case came for a hearing before this court on January 20, 2009, with both parties represented by council.

This case involves a dispute over the ownership, use, and control of local church property. On one side of the dispute is the local Timberridge congregation and corporate titleholder to the property, Timberridge Presbyterian Church, Inc., formerly affiliated with the Presbyterian Church (U.S.A.) (a.k.a. PCUSA), and on the other side is the Presbytery of Greater Atlanta, Inc. (PGA), a regional governing body of the PCUSA. Despite multiple motions in two suits, the parties agree and the court concurs that all motions are governed by a single issue, whether, under the facts presented, the express trust provision in Section G-8.021 of the Book of Church Order of the PCUSA is legally valid and enforceable against property held by or for Timberridge Presbyterian Church, Inc.

After hearing oral argument and review of the law and the record, including all briefs and proposed orders, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The undisputed facts show that Timberridge Presbyterian Church (TPC) is a Presbyterian church which, until recently, was a member of the Presbyterian Church (U.S.A.) (a.k.a. PCUSA) which in turn made TPC a member of the Presbytery of Greater Atlanta (PGA).

The PCUSA is a hierarchal organization which is governed by a Constitution comprised of the Book of Confessions and the Book of Order. The PCUSA has a representative form of government.

TPC became a part of the PCUS (the Southern division of the Presbyterian Church) in 1880. From that time until June 10, 1983, TPC operated under the Book of Confessions and Book of Order of the PCUS.

In June of 1982, the PCUS amended the property provisions of its Constitution by adding Section 6-3 to the Book of Order, which stated:

All property held by or for a particular church, 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 the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

It is unclear to the Court whether a representative of TPC other than its minister attended the meeting of the PCUS at which the property trust provision was adopted.

On June 10, 1983, the PCUS and the United Presbyterian Church in the United States of America (UPCUSA) (the northern division of the Presbyterian Church) entered into a reunion to form the Presbyterian Church (U.S.A.) (a.k.a. PCUSA).

It is clear that there were several meetings involved in the process of reunion which were attended by representatives of TPC. At one meeting there were two representatives and the

church's minister. At the other meeting there was one representative and the church's minister. The representatives had the power to vote on matters that were considered during these meetings.

While the minutes of these meetings do not reflect how the representatives of TPC voted, the minutes do reflect that a large majority of the representatives voted in favor of reunion.

As a part of this reunion process, the PCUSA adopted a Book of Order. As a member of the PCUSA, TPC was bound by the reunited PCUSA Book of Order.

Several sections of the reunited PCUSA Book of Order are relevant to the determination of this case.

The first relevant section is a property trust clause contained in Section G-8.0201 which provides:

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.).

Section G-8.0201 of the reunited PCUSA Book of Order is almost identical to Section 6-3 of the old Book of Order used by PCUS and TPC before reunion.

In connection with Section G-8.0201, quoted above, Section G-8.031 of the reunited PCUSA Book of Order states:

Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

The next relevant section is Section G-8.0701 which contains a provision that authorized churches, for a period of eight years from the date of reunion (1983), to opt out of a property

provision if the church was not subject to a similar provision under its former Constitution.

(Emphasis added).

The final relevant section is Article XIII of the Articles of Agreement governing the reunion of the UPCUSA and the PCUS, located in Appendix B of the reunited PCUSA Book of Order, which provides that a particular church could, within a period of eight years from the date of reunion, petition to leave the denomination with its property.

On June 1, 1984, TPC formed Timberridge Presbyterian Church, Inc. (TPC, Inc.), pursuant to Section G-7.041 of the PCUSA Book of Order. This Georgia non-profit corporation was formed, among other reasons, to be "a church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Atlanta.

The original Articles of Incorporation of TPC, Inc. contain several references to the PCUSA. Article IV provided in pertinent part that the purpose of the corporation is to be a church institution which is a member of the Presbytery of Atlanta of the PCUSA or any successor Presbytery thereof. Article VIII provided that the members of the corporation would be the active members of the Church as defined by the PCUSA Book of Order. Article VII provided that the Elders in active service to TPC were to serve as the Board of Trustees (i.e. Directors) of the corporation. Art. IX provided that any bylaws adopted by the Trustees shall not conflict with the Articles of Incorporation or with the Book of Order of the PCUSA. Finally, Article X provided that the Articles of Incorporation could only be amended by a vote of a majority of the members of the corporation

As to the real property which is the subject of this case, TPC acquired the real property upon which the church and its cemetery are, and had for many years, been situated through the

following four deeds: August 15, 1970 Deed from J. J. Green and H. B. Green to TPC its "successors and assigns"; May 23, 1980 Deed from Fay Smith Brannan and Ellen Smith to TPC its "heirs and assigns"; May 23, 1980 Deed from Brenda Brannan Taylor and Eugenia Brannan Bogart to TPC its "heirs and assigns"; October 30, 1987 Deed from Nan T. McGarity to TPC its "heirs and assigns."

In 1999, through the execution and delivery of two warranty deeds, the church and cemetery property that had been conveyed through the four original deeds was, in its entirety, conveyed from TPC to TPC, Inc. and "its successors, heirs and assigns."

TPC has, throughout its history as both a PCUS church and as a PCUSA church, participated in the governance of the denomination and attended meetings, voted at PGA meetings, called only pastors who were ordained by the PCUS and PCUSA; and used the registered mark of the PCUSA.

On November 15, 1987 at an annual meeting of the congregation, TPC voted to take the property exemption as provided in the Book of Order.

On November 18, 1987, a letter was written to the Atlanta Presbytery (now PGA) to officially inform them that TPC had "voted to take the property exemption as provided in the Book of Order (G-8.0700)." The letter asked the Atlanta Presbytery to "Please make record of this vote in any appropriate way."

TPC never received a response to this letter.

In September 2007, TPC wanted to initiate a capital campaign to raise funds to make renovations to existing buildings. Recognizing that the denomination claims that all property is held in trust for the PCUSA, the trustees of TPC felt it necessary to seek declaratory relief from the court to determine whether TPC or PCUSA through PGA had the ultimate right to determine

ownership, use, and control of the property upon which TPC church buildings and other facilities were located.

As a result, TPC, Inc. filed the present action seeking a declaratory judgment and injunction against PGA, Inc. PGA, Inc. timely filed an answer and counterclaim and Judge Arch McGarity of the Superior Court of Henry County granted a Temporary Injunction enjoining PGA, Inc. from interfering with the use of said church property by TPC, Inc.

Subsequently, PGA, Inc. filed a separate action against TPC (an independent Presbyterian Church) in the Superior Court of Henry County, civil action file number 08-CV-0379-M, seeking ejection and injunctive relief.

CONCLUSIONS OF LAW

The PCUSA is a hierarchal church as defined in Watson v. Jones, 80 U.S. 679, 722 (1871) and not a congregational church as defined in Kedroft v. St. Nicholas Cathedral of the Russian Orthodox Church, 344 U.S. 94, 110 (1952). Accord Crumbley v. Solomon, 243 Ga. 343, 343 (1979).

In Georgia, church property disputes between a hierarchical general church (i.e., the denomination) and a local church must be resolved by application of "neutral principles of law." Crumbley v. Solomon, 243 Ga. 343, 343 (1979). Under the neutral principles of law doctrine, the court must consider the following: 1) deeds to the property, 2) corporate documents, 3) the denomination's constitution or other rules of governance, and 4) state statutes.

A. NEUTRAL PRINCIPLES DISCUSSED

(1) DEEDS

None of the deeds to TPC or TPC, Inc. contain an express trust clause in favor of PGA or

the denomination. However, all of said deeds contain language vesting title in TPC or TPC, Inc. and "its successors and assigns," "its heirs and assigns," or "its successors, heirs and assigns."

Citing Crumbley v. Solomon, 243 Ga. 343 (1979), PGA contends that language such as "its successors and assigns," in a deed vesting title in a local church includes the denomination if the denomination's constitution contains a trust in favor of the denomination.

The court does not agree with this contention. While the ruling in the Crumbley case was in favor of the denomination, such ruling did not turn on the language "its successors and assigns" in the deed.

However, the deeds are only one of the neutral principles to be considered.

(2) CORPORATE DOCUMENTS

TPC, Inc. was formed on June 1, 1984 in compliance with the PCUSA Book of Order, and was formed, among other reasons, to be a "church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Greater Atlanta.

As shown by the findings of fact, the Articles of Incorporation of TPC, Inc. make several connectional references to PCUSA and its Book of Order.

The Articles of Incorporation not only contained references to the PCUSA Book of Order, but incorporated provisions of the PCUSA Book of Order when defining certain terms such as "member" of the corporation. Accordingly, the Court finds that the TPC, Inc. corporate documents evidence a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church (i.e., TPC) and that it subjected itself to the rules of governance of the PCUSA by referencing the PCUSA Book of Order in its Articles of Incorporation.

(3) DENOMINATIONAL CONSTITUTION

It is clear that Sections G-8.0201 and G-8.0301 of the PCUSA Book of Order (as quoted in the findings of fact) created a trust in favor of the denomination as to any property held by the local church.

TPC contends that such sections do not apply to it because TPC elected to opt out of these property trust provisions pursuant to Section G-8.0701 of PCUSA Book of Order.

Section G-8.0701 states:

The provisions of this chapter shall apply to all particular churches of the Presbyterian Church (U.S.A.) except that any church which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and The United Presbyterian Church of the United States of America to form the Presbyterian Church (U.S.A.) shall be excused from that provision of this chapter if the congregation shall, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote. The particular church voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.). This paragraph may not be amended.

TPC did have a congregation meeting on November 15, 1987 with a quorum present.

The relevant portion of the minutes reads as follows:

3. Discussion of the Property Exemption Clause

Arnold Grogan made a motion to table discussion until further information could be procured. The motion was seconded by Rick LeCates; motion failed. Dick LeCates moved for Timberridge to take the exemption as provided in the Book of Order. Motion seconded by Beverly Burham; motion carried.

(Note: these minutes were provided to the court at the hearing upon the court's request).

TPC wrote a letter to PGA on November 18, 1987 saying TPC "voted to take the property exception as provided in the Book of Order (G-8.0700)."

PGA contends that the "opt out" provision only opted the local church out of any property provision of the Book of Order if the church was not subject to a similar provision in the PCUS constitution to which it was subject immediately before reunion.

Section 6-3 of the PCUS Book of Church Order, to which TPC was subject immediately before reunion, did contain a property trust clause in favor of the denomination. Moreover, a comparison of the property provision contained in the PCUS constitution and the PCUSA constitution reveals only one significant difference, which is that under the PCUSA Book of Order a local church must seek the written permission of the presbytery before it may sell, mortgage, otherwise encumber or lease its real property. PCUSA Book of Order § G-8.0501. There was no similar provision in the PCUS Book of Church Order. Accordingly, the Court concludes that the "opt out" provided in Book of Order § 8.0701, which was exercised by TPC, Inc. on November 18, 1987, was not effective to opt it out of the property trust provisions of the PCUSA Book of Order. It was effective only to opt the church out of the requirement that it seek permission of the presbytery before selling, mortgaging, encumbering or leasing its real property.

The TPC argues that because it did not expressly consent to the inclusion of the property trust clauses in either the PCUS constitution or the PCUSA constitution, those provisions are not applicable to Plaintiff's property. There is no evidence in the record regarding how the TPC representatives voted when the questions of the adoption of the PCUS trust clause and reunion were put to the presbytery for a vote. The record reflects, however, that the pastor and two Timberridge representatives attended the January 26, 1982 Presbytery meeting at which the presbytery voted in favor of the property chapter in the PCUS Book of Church Order. The record also reflects that TPC's pastor and one representative were present at the February 8, 1983 presbytery meeting at which the presbytery voted on whether or not reunion between the

northern and southern church should occur. The vote was in favor of reunion. The Court concludes that the PCUSA operates under a representational form of governance and that express assent from a particular church was not required in order to subject that church to the constitution of the denomination.

The church was not without a means of leaving the denomination with its property if it wished. At the time of reunion between the northern and southern churches, the churches signed the Articles of Agreement, which was an agreement governing the reunion of the northern and southern churches into the PCUSA. Article XIII of the Articles of Agreement provided that any southern church that wished to leave the PCUSA denomination with its property could petition the presbytery to leave and the petition would be granted as a matter of course. As a former PCUS church, TPC could have submitted a petition under Article XIII but did not do so.

4) STATE STATUTES

The TPC contends that in order for the Court to find that an express trust exists on the church property, the requirements of O.C.G.A. § 53-12-20, regarding express trusts, must be met. PGA, on the other hand, contends that O.C.G.A. § 53-12-20 is inapplicable and that O.C.G.A. § 14-5-46 applies in this case. O.C.G.A. § 14-5-46 (§ 22-5507 of the former Code) provides:

All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies.

In both Carnes v. Smith, 236 Ga. 30 (1976) and Crumbley, the Georgia Supreme Court cited prior Code Section 22-5507(which is the current O.C.G.A. §14-5-46). Carnes, 236 Ga. at 38; Crumbley, 243 Ga. at 345. No Georgia case cites O.C.G.A. § 53-12-20 as being controlling, or even applicable to, a church property trust dispute. Based on the foregoing, the Court concludes that O.C.G.A. § 53-12-20 is not controlling and that O.C.G.A. § 14-5-46 specifically contemplates that conveyances of real property to churches shall be given effect in accordance with the mode of church governance or rules of discipline of such church. In the case at bar, the denomination's constitution provides that the property of an individual church shall be held in trust for the greater church.

5) NEUTRAL PRINCIPLES CONCLUSION

Even though the deeds to TPC do not contain an express trust clause to the PCUSA or PGA, it is clear that the law of this state requires that the property conveyed by such deeds be subject to the constitution of the PCUSA.

Furthermore, TPC through its actions, as well as the Articles of Incorporation of TPC, Inc., obviously intended to be bound by said constitution.

Therefore, after considering the neutral principles in this case, along with the ruling in Crumbley v. Solomon, 243 Ga. 343, 346 (1979) and the rationale used therein, the Court finds that the local church held its property in trust for the greater church.

B. CONTROL OF THE CORPORATION

A related issue in this case is whether the pastor, elders or members of the TPC are authorized to continue to control TPC, Inc. The record reflects that after the TPC Pastor and Session renounced the jurisdiction of the PCUSA, they continued to control TPC, Inc., the church corporation. PGA contends that they had no authority to do so.

TPC, Inc. was formed on June 1, 1984 and, as discussed above, its Articles of Incorporation exhibit an intention that the corporation was to be the civil arm of a PCUSA church and that it was to conduct its business in compliance with the PCUSA Book of Order. The Articles in Incorporation of TPC, Inc. were amended on April 24, 2008, months after the Pastor and Session had renounced the jurisdiction of the PCUSA and had declared that the entire church had unilaterally "disaffiliated" from the denomination. The Amended Articles of Incorporation deleted any and all references to the PCUSA.

St. Mary of Egypt Orthodox Church, Inc. v. Townsend, 243 Ga. App. 188 (2000) is instructive on this issue. In St. Mary, a suspended rector and members of the parish who chose to follow the suspended rector attempted to continue to exercise control over the parish corporation. The Georgia Court of Appeals held that the parish statutes and the corporate bylaws and articles of incorporation, when read in conjunction, created a corporation that was a subsidiary parish under the authority of the parent church. St. Mary, 243 Ga. App. at 194.

As discussed above, the PCUSA Book of Order requires individual churches to incorporate if civil law allows. TPC, Inc. was formed in accordance with that provision of the Book of Order. Furthermore, TPC, Inc.'s Articles of Incorporation reference the PCUSA, the presbytery and the PCUSA Book of Order and provide that the bylaws of the corporation shall not be inconsistent with the PCUSA Book of Order. The Court concludes that TPC, Inc. was formed as a PCUSA related entity and that the members of the TPC, its pastor and Elders were no longer authorized to control the corporation, or to amend the Articles of Incorporation of TPC, Inc., once they "disaffiliated" from the PCUSA.

DISPOSITION OF PENDING MOTIONS

The central issue in this case was whether or not the local church held property in trust for the general church. Having found in favor of the general church on that issue, the pending motions are disposed of as follows:


Defendant's Motion to Dismiss is hereby denied¹;

For the reasons set forth in this order, Plaintiff's Motion for Summary Judgment is hereby denied;

For the reasons set forth in this order, Defendant's Cross Motion for Summary Judgment is hereby granted;

and Plaintiff's Motion for Order of Contempt is hereby denied².

SO ORDERED, this 6th day of March, 2009.


Honorable A. Quillian Baldwin, Jr.
Sitting By Designation for Henry County Superior
Court

¹ Counsel's oral argument went directly to the merits of this case, and, having disposed of the issues on the merits on summary judgment, the Court denies PGA's Motion to Dismiss.

² The TPC filed a motion for contempt contending that PGA's filing of a separate but related Petition seeking to eject the TPC and seeking related injunctive relief was a violation of the TRO entered in this case. Pretermitted the issue of the validity of the TRO, the Court interprets the TRO to prohibit PGA from physically interfering with the church's possession and use of the property, not from seeking legal remedy through the courts. Accordingly, the Court finds there was no violation of the TRO.