

NORTH CAROLINA

McDOWELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

**07 CVS 490**

**FIRST PRESBYTERIAN CHURCH OF  
MARION, NORTH CAROLINA, INC.,**  
Plaintiff

vs.

**PRESBYTERY OF WESTERN  
NORTH CAROLINA, INC.,**  
Defendant

**PLAINTIFF'S BRIEF  
OPPOSING DEFENDANT'S  
MOTION FOR  
SUMMARY JUDGMENT**

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COMES NOW Plaintiff and submits this Brief in opposition to Defendant's Motion for Summary Judgment, on the grounds that there are genuine issues of material fact in serious dispute that will require determination by a jury.

**STATEMENT OF THE FACTS**

Plaintiff church was organized in 1845 in Marion, NC. In 1950, the members of the local church chose to incorporate as a religious non-profit corporation. Plaintiff's Certificate of Incorporation, filed 3 May 1950 with the N.C. Secretary of State, includes the following among the objects and purposes for which the corporation was formed:

(b) To possess, acquire, sell, alien and mortgage **property, real and personal for the absolute, sole and exclusive benefit of the members of The First Presbyterian Church of Marion, North Carolina, Incorporated, without any right, title, interest or estate, legal or equitable, existing in favor of any other ecclesiastical body whatever;** and with the exclusive right of the civil Courts to determine who are the members of said corporation. [emphasis added]

A copy of Plaintiff's complete Certificate of Incorporation from 3 May 1950 is attached to this Brief as Exhibit A and incorporated herein by reference.

Within days after the incorporation, at a called congregational meeting on 7 May 1950, the members of the local church unanimously adopted the following resolution regarding the title and ownership of their local church property:

**BE IT RESOLVED:** that the Trustees of the First Presbyterian Church of Marion NC be and hereby are authorized and directed to execute and deliver to the First Presbyterian Church of Marion, NC Incorporated, a deed conveying in fee simple to said corporation all the real property located in McDowell County, NC held by said Trustees of the First Presbyterian Church of Marion, North Carolina, said deed be drawn in such manner as to insure the absolute ownership of said property by said corporation as against any claim that any Presbytery, Synod or General Assembly or any other ecclesiastical body whatsoever, may make. [emphasis added]

A copy of the resolution is attached to this Brief as *Exhibit B* and incorporated herein by reference.

As of the present, Plaintiff's real property assets consist primarily of its sanctuary, pastorium, fellowship hall and education buildings contiguously located in Marion, NC and a tract of land outside the city limits known as the Charles Barnes farm property that was left to the local church by inheritance in 1961. Plaintiff's personal property assets consist primarily of some money in the bank and miscellaneous items in the church buildings. Plaintiff is also the beneficiary of an on-going trust established years ago by a local church member.

When Plaintiff incorporated in 1950, it was affiliated with the Presbyterian Church in the United State ("PCUS"). PCUS in 1950 had a detailed set of governing documents, including its Book of Church Order, but those governing documents did not include any clause or language that imposed any sort of trust on the property of local churches in favor of the denomination.

From its creation in 1845 until its incorporation in 1950, and from its incorporation through the present, Plaintiff has engaged in at least 33 real estate transactions, including purchasing additional real estate, receiving gifts of real estate, conveying title to real estate, entering into leases as a lessor, and borrowing money secured by mortgages. The presbytery was not in any way involved in any of the Plaintiff's 33 real estate transactions.

In 1983, the Presbyterian Church (USA) came into being when two branches of the denomination (one of which was the PCUS) merged. One year before the merger, PCUS amended its governing documents and for the final year of its existence, the Book of Church Order for the PCUS included for the first time a property trust clause reciting that a trust in favor of the denomination was imposed on all property held by local churches. When the denominational merger occurred in 1983, the new Book of Order for the fledgling PC(USA) included a property trust clause that was similar to the one-year-old property trust clause in the PCUS Constitution.

At a congregational meeting held on 24 June 1984, the membership of Plaintiff approved a "Resolution on Church Property Provisions" that had been prepared by and presented to the local church by the regional presbytery (i.e., the defendant herein). A copy of this resolution is attached as Exhibit C to this brief and incorporated herein by reference. Affidavits of 12 persons who were active members of Plaintiff church in 1984 were attached to the Complaint and are submitted to accompany this Brief, each reciting information on the topic of the intent of the local church in approving the resolution.

#### STATEMENT OF THE CASE

Plaintiff filed the Complaint that instituted this civil action on 2 July 2007 in McDowell County Superior Court and that same day obtained an Immediate Temporary Restraining Order to maintain the *status quo* regarding its property. Defendant filed an Answer and a Counterclaim on 30 August 2007. On 31 August 2007, the parties executed an Agreement in lieu of injunctive relief that provided *inter alia* for the Temporary Restraining Order to be dissolved. A Consent Order Dissolving the Temporary Restraining Order was then filed on 4 September 2007. Plaintiff filed a Reply to the Counterclaim on 20 September 2007.

Defendant filed the Motion for Summary Judgment which is presently before the Court. The parties engaged in an unsuccessful mediation settlement conference on 14 January 2008.

## ARGUMENT

The only point that is clear in this area of law is that **decisions in church property disputes are very fact specific.** The appellate courts have consistently scrutinized the language in the deeds and other relevant documents when there are competing claims for ownership of the local church's property. When the local church has been affiliated with a hierarchical (connectional) denomination, and when the intent was not overwhelmingly clear in the deeds and other relevant documents, the courts have looked at whether the local church demonstrated through a pattern of behavior that it was **congregational as to property matters** while being **connectional as to ecclesiastical matters.**

### Fact-specific Analysis

Even before the neutral principals of law doctrine was adopted either by the United States Supreme Court or the North Carolina Supreme Court, North Carolina case law dealing with church property ownership disputes focused its analysis on two major areas: an evaluation of the language in the deeds and other relevant church documents, and a determination of whether the local church was hierarchal (connectional) or congregational.

There are four main categories of documents that must be examined, in the proper context of the timing of each, in the case involving First Presbyterian Church of Marion, North Carolina, Inc. ("FPC Marion") presently before the Court, as follows:

- (1) FPC Marion's deeds and other recorded real estate documents throughout its history.
- (2) FPC Marion's incorporation documents, including its customized Certificate of Incorporation.
- (3) FPC Marion's congregational resolutions and minutes of various meetings.
- (4) The constitution of the denomination, first the PCUS and then the PC (USA).

It is extraordinarily significant to note the sharp contrast between the governing documents of the denomination in 1950 when FPC Marion incorporated and the governing documents of the

successor denomination that came into existence in 1983, 33 years after FPC Marion incorporated.

Part (1): Deeds and Real Estate Documents

It is uncontroverted that the presbytery is not a grantee in any of the deeds acquired by FPC Marion since its creation in 1842. The local church (through its trustees before its incorporation) is the only grantee on all of its deeds. Further, it is uncontroverted that the presbytery never signed (for permission or any other reason) any of FPC Marion's various mortgages/deeds of trust since its creation in 1842. The pattern is obvious: FPC Marion has always acted solely in a congregational ... not hierarchical ... manner regarding its property.

The first deed owned by the local church was for the tract where the sanctuary building is located. It was purchased by the local church in 1845 and title was placed in the names of two persons as "**Trustees for the Presbyterian Church at Marion, McDowell County of the County of McDowell in the State of North Carolina.**" This deed is recorded in McDowell County Deed Book 2 at Page 60 and it does not convey any interest to the denomination or presbytery. After the local congregation adopted its Resolution on 7 May 1950 (Exhibit B), the current deed for this tract was recorded on 5 June 1950 in McDowell County Deed Book 115 at Page 349, placing the title in the name of **The First Presbyterian Church of Marion, North Carolina, Inc.**

The deed by which Plaintiff initially acquired title for the contiguous tract where its educational building is now located came in May of 1957 from various members of the Hudgins family. The grantee on this deed, which is recorded in McDowell County Deed Book 143 at Page 303, is **The First Presbyterian Church of Marion, North Carolina, Inc.** This deed does not convey any interest to either the denomination or the presbytery, which is consistent with the strong language in the Plaintiff's Certificate of Incorporation.

The holographic Last Will and Testament of Charles F. Barnes was dated March 1, 1960 and filed for probate on October 20, 1961. It included section XVI that includes in relevant part: "I give and bequeath unto **The First Presbyterian Church of Marion, NC** all of my land and

buildings located on Airport Road and known as the Charlie Barnes Farm, to be used for whatever purpose the Elders or the Governing body of the church approves, pertaining to the church and its works ....” After the Barnes Estate was closed, the Trustees of Plaintiff church signed a deed dated 15 February 1962 that named as the **grantee: The First Presbyterian Church of Marion, North Carolina, Inc.** The deed recites it was made pursuant to congregational action, and it does not convey any interest to either the denomination or the presbytery, which is consistent with the strong language in the Plaintiff’s Certificate of Incorporation.

The deed by which Plaintiff initially acquired title for the contiguous tract where its fellowship hall building is now located came in December 1972 from the McDowell County Board of Education. The grantee on this deed, which is recorded in McDowell County Deed Book 230 at Page 650, is **The First Presbyterian Church of Marion, North Carolina, Inc.** It does not convey any interest to either the denomination or the presbytery, continuing and maintaining the history and action of the local church, consistently with the strong language in the Plaintiff’s Certificate of Incorporation.

Copies of all of the various deeds, mortgages, deeds of trust, leases and other real estate transactions of FPC Marion were attached as exhibits to the verified Complaint in this cause, which Plaintiff requests the Court to treat as an affidavit in support of its opposition to Defendant’s motion for summary judgment.

#### Part (2): FPC Marion’s Incorporation Documents

Plaintiff’s powerfully stated and customized incorporation documents were adopted by the local congregation in 1950, at a time when the PCUS denomination did not have a property trust clause in its governing documents. This clear statement of intent to own its property emphatically shows the congregational nature of the local church in regard to its property even while it maintained its ecclesiastical affiliation with the hierarchical PCUS denomination. What else could the local church have done to express its clear intent of exclusive congregational ownership and control of all of its property that to include in its Certificate of Incorporation this statement of its objects for incorporating:

(b) To possess, acquire, sell, alien and mortgage property, real and personal for the **absolute, sole and exclusive benefit of the members** of The First Presbyterian Church of Marion, North Carolina, Incorporated, **without any right, title, interest or estate, legal or equitable, existing in favor of any other ecclesiastical body whatever....** [emphasis added]

The concluding phrase in this quoted section (b) is also quite significant in reflecting the congregational status, intent and attitude of the local church toward its property: “... **with the exclusive right of the civil Courts to determine who are the members of said corporation.**” [emphasis added]. The implication is clear that if the denomination should ever in the future challenge the exclusive congregational ownership and control of the local church’s property by trying to ex-communicate certain members and recognize others as members, the civil courts and not the ecclesiastical system should control in deciding who the members are.

When the PC(USA) was formed more than 30 years later, the local church did not amend its Certificate of Incorporation or amend its deeds to accept the claim of a property trust clause by the new denomination. Before the current civil action was filed, FPC Marion adopted Articles of Amendment to its Certificate of Incorporation, which was filed 17 May 2007 with the North Carolina Secretary of State, that reinforces its intent to maintain its demonstrated pattern of exclusive ownership and control over its properties. The Articles of Amendment contained several technical updates that are consistent with the provisions of NCGS Chapter 55A. Significantly, however, it repeated the strongly-worded section (b) quoted above from 1950 regarding its objects and supplemented it with the addition of the following sentence: “**In accordance with established law, this non-profit religious corporation shall be subject to the legal concept of neutral principles of law, and no ecclesiastical body shall have any authority over the issues, properties or other matters regarding this non-profit religious corporation.**”

#### Part (3): FPC Marion’s Resolutions and Minutes

Approximately one year after the formation of PC(USA), the local church was presented with a one-page document “Resolution on Church Property Provisions” (*Exhibit C*) that had been prepared by the presbytery. This Resolution was adopted by the congregation on 24 June 1984, with the belief that by adopting it, they were reinforcing the validity of their own

incorporation documents that totally rejected the concept of a trust against their property in favor of the denomination.

The Resolution was in the form of a template with blanks to be filled in with the name and location of the church. The wording of the first numbered paragraph of the resolution is clear and easy to read and understand. It supported a continuation of the same policy and practice followed by Plaintiff church since its creation in 1845 of treating its property in a congregational manner, in particular that it did not need the permission of any arm of the denomination to engage in property transactions. This first paragraph clearly reinforced the congregational nature of the local church's ownership and control of its own property and was perfectly consistent with its actions spanning a period of more than 140 years.

However, the language in the second numbered paragraph of the resolution is not clear. It is not easy to understand. One possible interpretation of the second paragraph (which is the position taken by the presbytery, since it stands to gain by this interpretation) is that the local church was dramatically changing and reversing its long-held independent ownership and control of its own property, thereby completely reversing the emphatic customized language adopted by Plaintiff when it incorporated and issued its new deeds in 1950. If this interpretation of the confusing language of the second numbered paragraph is accurate, the effect of the first number paragraph is eviscerated and it would make no sense for the local congregation to have adopted the first paragraph.

The language in the second numbered paragraph could have been written in a clear, easy to understand manner. It could have said: the congregation voted to impose a trust in favor of the denomination on all property held by the congregation. There would have been no question of intent or effect if the wording had been clearly presented. However, it was not. There is absolutely no reference in the second numbered paragraph to a property trust clause. Those words are not used. Because of the lengthy, awkward wording of the second paragraph, the laymen of the local church would have had to have a copy of the "Form of Government of the Presbyterian Church (U.S.A.)" in one hand and a copy of the "Chapter 6 of the Book of Church Order of the former Presbyterian Church in the United States as that chapter existed on June 10,

1983" in their other hand in order to have any clue as to what this paragraph was attempting to say.

The wording of the second numbered paragraph that follows the introductory phrase could easily be interpreted by a non-lawyer to reinforce the congregational sole ownership of its property: " ... **this congregation voted to hold its property and exercise its privileges of incorporation and property ownership ...**" The confusing hyper-technical part follows that phrase. Did this quoted excerpt mean that the local congregation was affirming the position so strongly and clearly stated in its own incorporation 34 years earlier? Plaintiff congregation had incorporated at a time when incorporation by local churches was rare. The incorporation documents for Plaintiff church contained strong, clear, emphatic words regarding the objects for which the church was incorporated in 1950:

**"... to possess ... property, real and personal for the absolute, sole and exclusive benefit of the members of the First Presbyterian Church of Marion, North Carolina Incorporated, without any right, title, interest or estate, legal or equitable, existing in favor of any other ecclesiastical body whatever ...."**

Twelve persons who were members of FPC Marion, all of whom were present on 24 June 1984 when the local church adopted the Resolution on Church Property Provisions, have submitted their personal affidavits saying they and the local church thought this Resolution was re-affirming their ownership of their local property, consistently with action, behavior and policy throughout their long history.

The wording of the minutes of FPC Marion's congregational meeting on 24 June 1984 (attached as *Exhibit D*) is extremely significant and supports the position that the congregation did not understand the meaning of the second paragraph of the Resolution. After reciting that the Session (equivalent of an executive committee) had studied the Resolution and recommended adoption, the minutes state a summary of what the congregation thought they were doing, namely: "... requesting that Concord Presbytery grant exemption from the provisions of securing the permission of Presbytery before selling, encumbering, or leasing church property." The sentence ends there!

The next sentence starts off: "**Thus the church shall hold title to its property** under the Form of Government provisions of **Chapter VI of the Book of Church Order of the former Presbyterian Church in the United States.**" [emphasis added] What is missing? It is of extraordinary significance that the date of June 10, 1983 is missing from the minutes!

It is uncontroverted that before the creation of the PC(USA) in 1983, FPC Marion was affiliated with PCUS. It is also uncontroverted that for the relevant period of 140 years ... from the date FPC Marion was established in 1842 until 1982 ... the governing documents (different names at different times) of the PCUS did not include a property trust clause. There was a scant one year period, from 1982 through 1983, when the Book of Church Order of the former PCUS did include a property trust clause. All of the presbyterians who had grown up in the PCUS did so under a Book of Church Order that did not have a property trust clause. Did the membership understand that the second paragraph of the June 1984 Resolution purported to impose a property trust clause in favor of the denomination ... exactly the opposite of what they had affirmed time and again? The context of all the evidence makes it very clear that they did not.

Thus, there is an issue of fact which a jury must decide. What does the body of North Carolina case law provide for guidance in this hotly contested area?

As controversy within the PC(USA) increased over the years, FPC Marion periodically reinforced its congregational nature of dealing with its properties, repeating its intent to independently own and control its properties with no interference from the presbytery or denomination. In a meeting of the Session on 29 February 1990, there was discussion about the "Property Exemption" available to presbyterian churches. While the Session Minutes of 29 February 1990 are capable of different interpretations, a copy those minutes is attached as Exhibit E to reflect the commonly-held FPC Marion opinion that its property was exempt from a property trust clause in favor of the denomination.

In subsequent minutes that were approved on 9 September 1990 (copy attached as Exhibit F), the topic arose again in the Session of FPC Marion. "... a session discussion reveals some members with grave doubts of the continuing of local atonomy [sic], and the safety of local

church property.” The minutes continue with a notation that apparently reflected the prevailing view in the congregation that all local property was solely owned and exclusively controlled by the local church, exempt from the PC(USA)’s purported property trust clause, as follows:

“Most of the Session feels a sense of confidence in our traditional Presbyteryn [sic] Heritage and freedoms. We lean strongly on the “Property Exception clause or paragraph in our church Book of Order G-8-0701-Page 40. This church filed for this property “Exception” status June 1984, at the urging of Presbytery. ... The validity of the property “Exception” clause was re-affirmed as recently, by Presbytery, February of this year. ....”

Two points seem quite obvious by these Minutes. First, the members of the Session believed that FPC Marion was exempt from onerous and objectionable denominational rules that challenged the autonomy of the local church’s ownership and control of its property. Second, these members felt confident that the presbytery and denominational officials would honor their “traditional presbyterian heritage and freedoms.” The **traditional presbyterian heritage and freedoms** that these members grew up under were before there was a property trust clause, which was added to the PCUS constitution in 1982 and became a part of the constitution of the newly-formed PC(USA) constitution in 1983.

In July 2005, the Session of FPC Marion once again felt it necessary to re-state its long objection and opposition to the concept of a property trust clause. The Session passed a resolution that was mailed with a cover letter from the FPC Marion pastor to the Presbytery of Western North Carolina on 18 July 2005. A copy of both the letter and resolution are attached as Exhibit G. It is obvious from reading both the letter and resolution that the local Session was acting out of concern for all other churches. Nowhere does either the letter or resolution indicate this issue impacts the local church other than out of concern for all other local presbyterian churches. The FPC Marion Session members were obviously convinced that FPC Marion was exempt from the property trust clause, just as they had always felt since the 24 June 1984 Resolution was adopted 21 years earlier. This resolution of the Session is perfectly consistent with the language in the FPC Marion incorporation documents of 1950 and the views expressed by the twelve individual affidavits referred to above.

#### Part (4): Constitution of the Denomination

The previous paragraphs contain the essence of the stark contrast between the three relevant denominational governing documents, referred to for convenience as their constitutions. In summary, the relevant essence that is critical for understanding and evaluation of the case presently before the court is the progression of different presbyterian constitutions. First, the PCUS constitution from 1842 through 1982 did not have a property trust clause. FPC Marion incorporated while this version of the PCUS constitution was in effect. Second, the PCUS amended its constitution in 1982, inserting for the first time a property trust clause. This constitution was in effect for only one year, until 1983. Third, the PC(USA) constitution took over in June 1983 when it came into being upon the merger of PCUS and another branch of the presbyterian denomination.

#### CASE LAW ANALYSIS

This case before the Court involves a church property dispute with unique facts not found in any of the other church property cases reported by North Carolina appellate courts. There are seven appellate cases that provide guidance to the ultimate issue before the Court in this case, but none of them have facts that match the facts involving FPC Marion. All but one of the seven appellate cases involve a local church that voted to withdraw from a hierarchical denomination, something FPC Marion has not done. Six out of the seven appellate cases were instituted by the hierarchal denomination that claimed ownership for itself of local church property.

#### Neutral Principals of Law

In the seminal case of *Atkins v. Walker*, 281 NC 306, 200 S.E.2d 641 (1973), the North Carolina Supreme Court adopted the **neutral principals of law** doctrine for use in dealing with property disputes involving churches. The United States Supreme Court had adopted this doctrine just a few years earlier in the case of *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969), stating, *inter alia*, as follows:

“... The First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principals of law, developed for use in all property disputes, which can be applied without “establishing” churches to which property is awarded.”

As was true in the six North Carolina appellate cases referred to above involving hierarchical denominations, the Plaintiff in the cited U.S. Supreme Court case was the hierarchical denomination that claimed ownership over the property of a local church. In adopting the neutral principals of law doctrine for North Carolina in 1973, the N.C. Supreme Court in *Atkins* was considering a property ownership dispute between two factions of the same local church that was affiliated with a non-hierarchical denomination. In reaching its decision, the *Atkins* Court quoted extensively from *Presbyterian Church v. Hull Church* but also spoke of the differences between a congregational church structure and a hierarchal (or “connectional”) church structure. The North Carolina Supreme Court stated in *Atkins*: “A denomination may be, in its government, congregational in part and connectional in part.” 284 NC 306 at 646.

#### Relevant North Carolina Case Law

##### *WNC Conference v. Tally (1948)*

The denomination sued a withdrawing local church for ownership of church property in *Western North Carolina Conference v. Tally*, 229 NC 1, 47 S.E.2d 467 (1948). The trial court submitted to the jury the issue of whether the local church was hierarchal (connectional) or congregational. The NC Supreme Court ruled that because the language of the deed was so clearly in favor of the denomination, it was immaterial and unnecessary for the jury to decide whether the local church was hierarchal (connectional) or congregational. Logically, if the deed language had not been so clear, the jury would have decided whether the local church was hierarchical or congregational as to its property.

Significance of WNC Conference to the FPC Marion case:

1. Hierarchical denomination sues for control of the local church's property.
2. The language in the local church's deeds control. It reveals the intent of the parties, which in the facts here mean that a trust is established in favor of the denomination.

\* Look at the deed language to glean the intent of the parties.

*Wyche v. Alexander (1972)*

A presbytery sued a local Presbyterian Church in *Wyche v. Alexander*, 15 N.C. App. 130, 189 S.E.2d 608 (1972) after the local church attempted to withdraw from the denomination and join a competing Presbyterian denomination. The presbytery had dissolved the local church, triggering a take-over of the property by the denomination. The language in the deed to the local church captured the initial focus of the NC Court of Appeals:

The church property was deeded to the Westminster Trustees, Defendant's predecessors in interest, in 1892 for a nominal consideration for the benefit of the parent church by a seminary (Scotia Seminary – the predecessor in interest to Barber-Scotia College) operated by the parent denomination.

The parties stipulated that the deed and the constitution in the *Book of Order* were the "controlling documents necessary to decision" under the facts of that case. While the *Wyche* court held that the construction of the stipulated documents was a question of law for the Court and not a question of fact for the jury, the facts are significantly and materially different from those presently before the Court. After all, the *Wyche* opinion recites that the church property was deeded to the local church trustees "for the benefit of the parent church by a seminary ... operated by the parent denomination." The *Wyche* court distinguishes the facts from those of the U.S. Supreme Court case of *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969) and applies the provisions of the Book of Order which the parties had stipulated could control along with the deed.

Significance of *Wyche* to the FPC Marion case:

1. Hierarchical denomination (presbyterian) sues for actual ownership (not just control) of the local church's property after the local church was dissolved.
2. The parties stipulated that the deed and denomination's constitution would control.
3. The local church received their deed from the denomination's seminary "for a nominal consideration for the benefit of the parent church."
4. The language in the deed is so clear that there was no issue of fact for a jury to decide.

**\* Even in a case where the hierarchical denomination is Presbyterian, look at the language in the deed to glean intent.**

*AME Zion v. Union Chapel (1983)*

Ten years after the NC Supreme Court adopted the neutral principals of law doctrine for North Carolina, the Court of Appeals considered another case where a hierarchal denomination sued a local church for possession and control of local church property. After chiding the trial judge for being "apparently entirely unaware of the underlying nature of the claim being adjudicated," the Court of Appeals provided helpful guidance in the case of *African Methodist Episcopal Zion Church v. Union Chapel AME Zion Church*, 64 N.C. App. 391, 308 S.E.2d 73 (1983). In *AME Zion*, the denomination had a trust clause. The grantee in the first tract at issue was somewhat vague and general, and neither of the two deeds made reference to the trust clause or indicated that the property was held in trust for the benefit of the denomination. In setting aside the results of this bench trial and remanding the case, the Court of Appeals stated that "upon remand, the major question to be answered, although now following the *Hull Memorial Presbyterian Church* guidelines, is whether the defendant local church was in fact in a hierarchal relationship with plaintiff parent body with respect to property matters." [emphasis added in this brief] The court also spoke of the importance of the intent of the parties as expressed in the documents of conveyance.

The AME Zion opinion has been quoted in subsequent cases as standing for the proposition that a local church in a hierarchal denomination "may have retained sufficient independence from the general church so that it reserved its right to withdraw at any time, and,

presumably take along with it whatever property it independently owned prior to and retained during its limited affiliation with the general church.” See *Looney v. Community Bible Holiness Church*, 103 N.C. App. 169, 405 S.E.2d 811 (1991).

Significance of *AME Zion* to the FPC Marion case:

1. Hierarchical denomination sued for possession and control of the local church’s property after the local church withdrew from the denomination.
2. The hierarchical denomination had a property trust clause.
3. The major question is whether the local church was in a hierarchical relationship with the denomination in regard to its property, or whether it was congregational as to its property.
4. The language in the deed must be analyzed to learn the intent of the parties.

**\* Even where the denomination is hierarchical and has a property trust clause, look at the language in the deeds and other relevant documents and analyze whether the local church conducted itself in a hierarchical manner or congregational manner for its properties.**

*Looney v. Community Bible Holiness Church (1991)*

Probably the most often cited North Carolina case on this topic of church property disputes was decided in 1991. A hierarchal denomination sued a local church for ownership of local church property after the local church withdrew from the denomination. The local church prevailed at the trial in *Looney v. Community Bible Holiness Church*, 103 N.C. App. 169, 405 S.E.2d 811 (1991). At trial, Judge I. Beverly Lake, Jr. submitted two issues to the jury. The first issue asked: “Is the plaintiff Church of God a connectional church organization?” The jury answered Yes. The second issue was: “Was the defendant local church prior to August 1988 in a connectional relationship with the plaintiff parent church with respect to property matters? To that issue, the jury answered No.

In *Looney*, trustees for the local church acquired title to the subject land in 1950. Five years later, the local congregation “began to affiliate themselves with the Church of God denomination for the purposes of fellowship.” The trustees then signed a new deed placing title to the church property in the names of three persons as trustees for the Community Church of

God. After a conflict with internal church policy sixteen years later, the local church withdrew from the hierarchal denomination and re-chartered their church under the name of Community Bible Holiness Church. The hierarchal denomination had its state trustees sign a new deed conveying to themselves title to the local church property, thus setting up a legal fight.

While the *Looney* opinion does not recite anything about a denominational constitution, it does recite that the hierarchal denomination's General Assembly Minutes (which the court later refers to as the church "discipline") require all local church property to be titled in local trustees and that "all such property shall be used, managed, and controlled for the sole and exclusive use and benefit of the Church of God." *id*, 405 S.E.2d at 813. That is the equivalent of a property trust clause. In reaching its decision, the *Looney* Court stated:

The discipline of the denominational church manifest an implied assent of local churches to denominational control of local church property. This evidence, if not contradicted, would make the plaintiff's case.

*Id*, 405 S.E.2d at 813.

The result of the case, however, is that the "implied assent" of the governing documents was contradicted by local church's evidence. While the hierarchical denomination's "discipline" is relevant, the Court clearly establishes that it does not control the result. All the evidence must be considered.

The primary focus of the *Looney* court dealt with the nature of the deeds and property transactions. Because the grantees in the deeds were the trustees of the local church and not of the denominational church, the Court held that such evidence created a **jury question** as to whether the local church was connectional or congregational **as to its property**, as distinguished from its ecclesiastical matters of worship, doctrine, etc. The intent of the local church regarding its properties, as deduced from its deeds, was critical to the analysis. The *Looney* opinion includes the following:

When the defendant local church affiliated with the plaintiff denominational church, the property was deeded to trustees of ... the local church, not to the

denominational church or the trustees of ... the denominational church. This pattern was followed in all property transactions during the entire period of affiliation. Thus, this evidence created a jury question as to whether *as to church property* the local church intended to establish a connectional relationship with the denominational church. 405 S.E.2d at 813.

Significance of *Looney* to the FPC Marion case:

1. Hierarchical denomination sued for ownership and control of the local church's property after the local church withdrew from the denomination.
2. The hierarchical denomination had a property trust clause.
3. A jury must decide whether *as to locally owned church property* the local church is in a hierarchical relationship with the denomination, or whether the local church is congregational as to its property.
4. The nature of the various property transactions must be analyzed to determine whether the local church was hierarchical or congregational as to its properties and to determine the intent of the parties.

**\* Even where the denomination is hierarchical and has a property trust clause, look at the pattern of behavior and the relevant documents in order to analyze whether the local church is hierarchical or congregational as to its properties. Clearly, the denominational governing documents do not control on this issue.**

**\* Whether the local church was hierarchical or congregational as to its property is a question for the jury to decide.**

*Fire Baptized Holiness Church v. McSwain* (1999)

Yet another hierarchal denomination filed a civil lawsuit in 1996 against a local church that withdrew from the denomination. The local church prevailed both at the trial and in the appeal of *Fire Baptized Holiness Church v. McSwain*, 134 N.C. App. 676, 518 S.E.2d 558 (1999). The opinion provides background explaining the hierarchal structure of the denomination and tracks the history of the local church property. In the *Fire Baptized* case, the denomination sometimes gave money to the local church for various expenses, including a \$1,000.00 gift toward the down payment on the purchase of replacement property. The opinion also referred to and quoted from the governing documents of the denomination that called for a

specific entry on each deed for local church property that it “shall be for the use and benefit of the ministry and membership of the Fire Baptized Holiness Church of God of the Americas.” The deeds at issue did not have such a recital.

The judge in this Cleveland County case instructed the jury to answer two issues. The first issue for the jury was whether the denomination was a connectional church organization, to which the jury responded that it was. The second issue for the jury asked **whether the local church was in a connectional relationship with the denomination with respect to property matters** before it withdrew from the denomination. The jury found as a fact that the local church in Shelby was not in a connectional relationship with the denomination in regard to property matters.

The *Fire Baptized* opinion declares: “In deciding these [church property dispute] issues, a central question is whether the church is connectional or congregational.” Under the facts of *Fire Baptized*, the Court stated: “There seems to be little dispute that the denomination and the [local] ... church were generally in a connectional relationship prior to the Shelby church’s split from the denomination.” That having been said, the Court went on to say: “The question before us is whether this [connectional relationship] is dispositive of the issue of property ownership, or whether the relationship could be connectional in some respects and congregational in others.” The *Fire Baptized* Court placed primary significance on the language in the deeds and the behaviors of the local church in property transactions as it favorably quoted from the *Looney* decision. The *Fire Baptized* opinion points out the fact-specific nature of this process as it stated: “This court found no error in the [*Looney*] verdict based on ‘the nature of the property transactions themselves.’” citing *Looney*, 405 S.E.2d at 813.

The Court of Appeals reinforced and applied the neutral principles of law doctrine as it made it crystal clear that the hierarchical denomination’s governing documents, in the face of other conflicting evidence, do not control on the question of whether the local church is part connectional (as to ecclesiastical matters) and part congregational (as to its local property matters):

“Because *Looney* established that a church could be congregational as to property matters though connectional in other ways, the denomination’s argument that the jury’s finding of a connectional relationship was enough, standing alone, to justify judgment for the denomination is unconvincing.”

518 S.E.2d at 560

After pointing out that the local church did not use the language in its deeds required by the hierarchal denomination’s governing documents, the Court went on to say:

As was true in *Looney*, ‘the discipline of the denominational church manifests an implied assent of local churches to denominational control of local church property. This evidence, if not contradicted, would make the plaintiff’s case.’ Similarly to *Looney*, this evidence was contradicted. The question at trial then became one of the Shelby Church’s desire for independence prior to its ultimate succession from the denomination, and this question was one of fact to be resolved by the jury.”

518 S.E.2d at 561

The *Fire Baptized* Court then went on to clarify that this congregational principle of local property ownership, free from control by a hierarchical denomination, applies to property acquired by the local church both before and during its affiliation with the denomination.

Significance of *Fire Baptized* to the FPC Marion case:

1. Hierarchical denomination sued for actual ownership of the local church’s property after the local church withdrew from the denomination.
2. The hierarchical denomination had a property trust clause.
3. The nature of the various property transactions and other relevant documents, including denominational rules, must be analyzed, but the issue for a jury to decide is whether the local church was hierarchical or congregational as to its properties and to determine the intent of the parties.

**\* A jury must examine FPC Marion’s deeds and other real estate documents, its incorporation documents, its minutes and resolutions, and the evolving denominational documents in order to determine whether FPC Marion has been congregational or hierarchical as to its properties.**

*Daniel v. Wray* (2003)

The most recent reported case in North Carolina that deals with ownership of church property was filed in Carteret County in May 2000. There are few similarities but there are dramatic distinctions between the FPC Marion situation before the Court and the facts of *Daniel v. Wray*, 158 N.C. App. 161, 580 S.E.2d 711 (2003). A "loyal" faction of local Episcopalians joined with a denominational bishop and the regional diocese of East Carolina of the Protestant Episcopal Church in the United States of America in filing a civil case in the controversy that involved a competing faction of the St. Andrews Episcopal Church in Morehead City. The two competing factions each claimed ownership of the local church property, one having withdrawn from the denomination and the other remaining loyal to the denomination.

In *Daniel*, the diocese of East Carolina established St. Andrews Episcopal Church of Morehead City as both a missionary congregation and a parish in 1952. "As a parish within the diocese' boundaries, St. Andrews was bound by the Constitutions and Canons of that diocese, as well as the constitutions and Cannons of PE-CUSA." As part of the establishment of the new parish and the new church in 1952, the diocese trustees signed a deed to the local Episcopal Church. Included in the language in the deed was a recital pursuant to one of the Canons of the Protestant Episcopal Church in the United States of America, namely:

"The purpose of this conveyance is to transfer the above described property ... for the construction of a church or place of worship and for the purpose of church use, and consent and approval for such construction by the bishop of the diocese and the trustees is hereby freely given." 580 S.E.2d at 714

When the majority of the local St. Andrew's Episcopal Church voted in 2000 to withdraw from the denomination, the dissenting members in the minority joined with the diocese and claimed ownership of all property for the benefit of the hierarchal denomination. This was done pursuant to one of the Canons of the denomination that provided for all property to be held in trust for the parent body upon withdrawal.

The *Daniel* Court stresses the distinguishing facts from both *Looney* and *Fire Baptized* by reciting those two cases dealt with local churches that withdrew from their denomination, while *Daniel* dealt with a controversy between competing factions of the local church, each faction claiming ownership of the same property. In *Daniel*, the denomination created both a parish and a local church at the same time, conveying title to land pursuant to episcopal canons that had been owned by the denomination to the new local church. The Court pointed out that the local church elected delegates to participate in various conventions where revised canons were adopted and "did not contest the adoption of those canons thereafter."

After the faction withdrew, the denominational canons provided for the parish to be dissolved, vesting title with the denomination. The diocese then recognized the remnant of loyal members as the true church and declared them to be the official St. Andrew's church. Under this fact pattern, the Court of Appeals held the canons of the church to control the issue of church property.

The St. Andrew's episcopal church had a split, with competing factions claiming ownership of the local property. There is no split in FPC Marion, and there are not competing factions claiming ownership of local property. The majority at St. Andrew's withdrew from the episcopal denomination. Nobody at FPC Marion has withdrawn from the presbyterian denomination. The denomination conveyed the land where the church is located to the St. Andrew's congregation, pursuant to cited episcopal canons. The presbyterian denomination had absolutely nothing to do with the properties acquired by FPC Marion, and nowhere in any of the deeds for FPC Marion is there any direct or indirect reference to any denominational constitutional provision.

While one member of FPC Marion attended at least two denominational meetings, there is no suggestion that the subject of those meetings was limited to or even focused on property issues. Further, FPC Marion freely acknowledges that it is affiliated with the PC(USA) for ecclesiastical matters. Attending internal denominational meetings is perfectly consistent with the hierarchical affiliation for ecclesiastical purposes. Most importantly, FPC Marion has repeatedly reinforced its emphatic position that it owns and controls its local property free from

any and all control, influence and interference from the denomination and presbytery. The differences between the facts regarding the St. Andrew's episcopal church in *Daniels* and the facts regarding FPC Marion are material and significant.

The *Daniels* Court does not over-rule or disavow either *Looney* or *Fire Baptized*. It does not diminish the significance of examining the deeds and other relevant documents and it does not negate or criticize the analysis of whether a local church affiliated with a hierarchical denomination can be connectional as to ecclesiastical matters while being autonomous and congregational as to property matters. The cases are still very fact-specific.

Significance of *Daniel* to the FPC Marion case:

1. Hierarchical denomination joined with one faction of a split church to get ownership of local church property that also was claimed by the other faction that withdrew.
2. The hierarchical denomination had a property trust clause.
3. The denomination was the previous owner of the local property and conveyed it to the local church pursuant to denominational canons.
4. The local church never objected to the denominational canons regarding the property trust clause or anything else and did not display a pattern of behavior reflecting a congregational approach to its property before the split.

**\* The facts of each case involving a church property dispute will determine the approach by the court. The facts of the FPC Marion case are completely distinguishable from the facts in *Daniels*.**

Approach to Summary Judgment

It is well established that Summary Judgment, as provided by Rule 56(c) of the North Carolina Rules of Civil Procedure, is appropriate only where it is perfectly clear that is no genuine issue of material fact. *Dendy v. Watkins*, 288 NC 447, 219 S.E.2d 214 (1975). The burden of proof for the motion for summary judgment is on the moving party to establish there is no pending issue as to any material fact. *Steelcreek Development Corporation v. Jones*, 300 NC 631, 268 S.E.2d 205 (1980). All inferences in the evidence are resolved against the moving

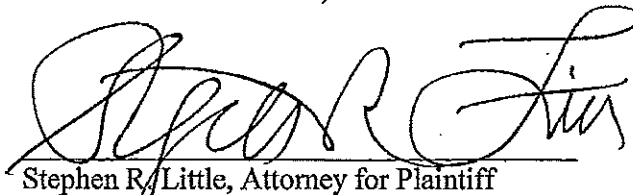
party who seeks summary judgment, and the moving party must establish its claim beyond any doubt with respect to any material facts. *Kidd v. Early*, 289 NC 343, 222 S.E. 2d 392 (1976). Where the slightest doubt exists as to the propriety of a summary judgment motion, the motion should be denied. *Bolkman v. DP Associates*, 48 N.C. App. 155, 268 S.E.2d 265 (1980). **Even if the evidence before the Court is uncontroverted, a motion for summary judgment should be denied if different conclusions can be drawn from the record before the Court.** *Carlton v. Carlton*, 74 N.C. App. 690, 329 S.E. 2d 682 (1985). The party moving for summary judgment must show not only that there are no factual issues in dispute, but that there are **no contrary inferences possible** from the evidence. *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 329 S.E. 2d 728 (1978).

#### Conclusion

The facts presently before the Court show that there is a genuine issue of material fact for a jury to decide as to whether FPC Marion demonstrated a pattern of behavior establishing it to be congregational as to its property while being connectional as to ecclesiastical matters. Another genuine issue of material fact that must be decided by a jury is whether FPC Marion signed the 24 June 1984 Resolution with the intent of becoming exempt from the denominational property trust clause. This is not a case for which summary judgment is appropriate.

Respectfully submitted on this 8th day of February, 2008

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Plaintiff's Brief Opposing Defendant's Motion for Summary Judgment was served on the Defendant in this action by delivering a copy as follows to:

C. Frank Goldsmith, Esq.  
Attorney for Defendant  
57 South Main Street  
Marion, NC 28752

By hand delivery to the attorney or his office on 11 February 2008.

Certified on this 11 day of February 2008.

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