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SUMMIT COUNTY
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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

HUDSON PRESBYTERIAN CHURCH)	CASE NO. CV 2006 09 6162
)	
Plaintiff)	JUDGE SPICER
)	
-vs-)	
)	
EASTMINSTER PRESBYTERY, et al.)	<u>ORDER</u>
)	
Defendants)	

- - -

This matter is before the Court upon objections to the Magistrate's Decision issued on October 30, 2007. It is also before the Court upon Eastminster Presbytery's Motion to Consider Additional Evidence, namely the joint exhibits originally submitted to the Magistrate for consideration. For good cause shown, the Court grants Eastminster's motion, and will consider these materials as it reviews the parties' objections.

Factual Background

Hudson Presbyterian Church ("Hudson Presbyterian") is a non-profit corporation with real and personal property located in Hudson, Ohio. At the time of its formation, Hudson Presbyterian associated with a larger, national denomination known as the United Presbyterian Church in the United States of America. Subsequently, this organization combined with another denomination to form a successor organization, The Presbyterian Church (USA) (hereafter referred to as "PCUSA").

In the fall of 2006, Hudson Presbyterian decided to disaffiliate from PCUSA, and its regional representative, Eastminster Presbytery (“Eastminster”). Hudson Presbyterian alleges that Eastminster then attempted to interfere with and prevent its disaffiliation, and gain control over its property. Accordingly, Hudson Presbyterian filed the instant action seeking a declaratory judgment that it has the right to disaffiliate and that Eastminster had no interest in its real or personal property.

Eastminster filed an answer as well as its own counterclaim for a declaratory judgment that Hudson Presbyterian’s acts of disaffiliation were invalid and Hudson Presbyterian’s property is held in trust for PCUSA, which Eastminster may administer for its benefit.

Additionally, the Ohio Attorney General was joined to the action as a party defendant. The Attorney General argued that Hudson Presbyterian held its property in a charitable trust in order to provide the public with a PCUSA church.

The matter was referred to the Magistrate for decision, and the parties filed Motions for Summary Judgment upon their respective positions. On October 30, 2007, the Magistrate issued his Decision. The Magistrate denied both Eastminster and the Attorney General’s Motions for Summary Judgment, and granted Summary Judgment in favor of Hudson Presbyterian, finding it was entitled to the requested declaratory relief.

Summary Judgment Standard

Pursuant to Civ.R. 56 (C), summary judgment is proper when (1) there is no genuine issue of material fact, and (2) viewing the evidence most strongly in favor of the party opposing the motion, the moving party is entitled to judgment as a matter of law. *Turner v. Turner* (1993), 67 Ohio St.3d 337. The burden is on the moving party to show that there is an absence of genuine issues of material fact. *Mitseff v. Wheeler* (1988), 39 Ohio St.3d 112. The nonmoving

party then must offer specific facts showing that a genuine issue exists for trial. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The nonmoving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidence that shows the existence of a genuine dispute over material facts. *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

Standing

In his Decision, the Magistrate found the record in the case was barren of evidence that Eastminster and PCUSA themselves are independent legal entities capable of pursuing legal actions, or that Eastminster was empowered in anyway to pursue a claim for declaratory relief on PCUSA's behalf. Eastminster has lodged several objections to these findings and the conclusion drawn thereon.

After due consideration, the Court finds that the Magistrate erred. First, Eastminster submitted a copy of its own Articles of Incorporation in the joint exhibit. Secondly, while no evidence was presented that PCUSA was actually incorporated, the evidence presented throughout the joint exhibits does permit the inference that PCUSA was nevertheless a national association. "Any unincorporated association may contract or sue in behalf of those who are members and, in its own behalf, be sued as an entity under the name by which it is commonly known and called." R.C. 1745.01.

There was also evidence in the record that PCUSA is the successor organization to the United Presbyterian Church (USA), and that Eastminster is currently a presbytery under PCUSA with the authority to pursue its interests. Moreover, in its complaint, Hudson Presbyterian alleged that Eastminster is the regional representative body for PCUSA.

Based upon the foregoing, there was sufficient evidence that both PCUSA and Eastminster had the capacity to pursue legal actions, and that Eastminster was properly authorized to pursue PCUSA's property interests through the declaratory judgment action in this case. As such, the Magistrate erred to the extent that his Decision is based upon these findings and conclusions of law, and the Court sustains Eastminster's objections to such.

Authority to Resolve the Case

Eastminster has put forward several objections centering upon the Court's authority to resolve the present dispute. More specifically, Eastminster contends that pursuant to *Jones v. Wolf* (1979), 443 U.S. 595; 99 S. Ct. 3020; 61 L. Ed. 2d 775, the Magistrate should have deferred to the hierarchical structure of PCUSA, and Eastminster's authority within that structure to declare that a schism had occurred. Eastminster states it has a right to identity which members of Hudson Presbyterian's congregation constituted the "True Church" within the PCUSA, with the ensuing right to entrust Hudson Presbyterian's property to them.

After review, the Court finds that *Jones v. Wolf* does not support the proposition that a court is per se obligated to give deference to the decision of a religious tribunal. In *Jones*, a local church decided to disaffiliate from its general, denominational church, following a majority vote by the congregation. The general church then sought to assert control over the local church's property. The state court applied a "neutral principles of law" analysis to determine that the property belonged to the local church. The general church then sought to declare which members constituted the "true" congregation of the local church with authority to control the local church's property.

Upon review, the U.S. Supreme Court stated the issues as whether a state could resolve a church property dispute using the “neutral principles of law” doctrine or whether a state court is compelled to defer to the decision of a religious tribunal. The U.S. Supreme Court stated “the state has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.” The U.S. Supreme Court then held a state court may use the “neutral principles of law” doctrine to resolve church property disputes, and would only have to defer to the religious tribunal when resolution would require deciding an ecclesiastical question.

Moreover, the Supreme Court found that the state court did not have to automatically defer to a religious tribunal’s declaration as to who constituted the “true” congregation in a property dispute. Rather, a state court could make this determination applying state law, unless under the facts of the particular case the question had become inextricably intertwined with religious doctrine.

As Ohio employs the “neutral principles of law doctrine,” the Court finds that the Magistrate did not err by not automatically deferring to Eastminster’s determination of the issues, but instead examining them under state law. For greater ease of consideration, the Court will examine the issues of property ownership and disaffiliation separately.

Right to Property

In conformity with the “neutral principles of law” doctrine, the Magistrate was required to examine the ordinary indicia of property rights to decide whether Eastminster had any property interest in the real and personal property in dispute. See *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154; 256 N.E.2d 212; 1970 Ohio Lexis 449. More specifically, the question presented for consideration was whether such property was held in trust for Eastminster’s benefit as the local presbytery for PCUSA.

The law recognizes two major types of trusts, express and implied. Implied trusts are divided into constructive and resulting trusts. *Phillips v. Althoff*, 3rd District App. No. 1-90-91, 991 Ohio App. Lexis 3947 (internal citations omitted)

“Express trusts are those intentionally created by the direct and positive act of the settler by some writing, deed, will or oral declaration, and are distinguishable from the implied trusts or trusts by operation of law, resulting and constructive, in that resulting trusts are founded upon the intention, implied in law, of the parties to the transaction, and constructive trusts are founded upon fraud or wrongdoing irrespective of the intention of the parties concerned.” *Id.*

In *Kelemen*, the Ohio Supreme Court continued it’s holding that Ohio did not recognize “an implied-trust theory of real property when a local church joins a church hierarchy.... Therefore, in the absence of a conveyance of property by legal instruments or the existence of an express trust, the title to a property is vested in the corporation.” *Kelemen* at 161.

Express Trust

“While its elements have been variously stated to constitute an express trust there must be an explicit declaration of trust, or circumstances which show *** that a trust was intended to be created, accompanied with an intention to create a trust, followed by an actual conveyance or transfer of lawful, definite property or estate or interest, made by a person capable of making a transfer thereof, for a definite term, vesting the legal title presently in a person capable of holding it, to hold as trustee for the benefit of a cestui que trust or purpose to which the trust fund is to be applied; or a retention of title by the owner under circumstances which clearly and unequivocally disclose an intent to hold for the use of another.” *Ulmer v. Fulton*, 129 Ohio St. 323; 195 N.E. 557; 1935 Ohio Lexis 341; *Hatch v. Lallo*, 9th Dist. App. No. 20642, 2002 Ohio 1376.

The Magistrate examined the property deeds for the two parcels,¹ the associated mortgage instruments, as well as bank statements reflecting the personal property. He properly found that these instruments reflected that the real and personal property at issue was held by Hudson Presbyterian in fee simple, and that neither these documents nor the parties' subsequent actions support in any manner an express trust in favor of PCUSA.

The Magistrate also examined Hudson Presbyterian's Articles of Incorporation as they were originally filed on July 1, 1982.² Eastminster claims the purpose clause in this document establishes an express trust because at the time Hudson Presbyterian's Articles of Incorporation were filed, the Constitution of PCUSA's predecessor expressly provided in Chapter Eight of its Book of Order that its member churches would hold all property in trust for its benefit.

In examining this issue, the Magistrate actually made two separate findings, either of which were sufficient in themselves to grant Summary Judgment on Hudson Presbyterian's behalf.

Existence and Content in the 1981 Book of Order

The Magistrate first held that Eastminster had only submitted the Book of Order containing such language from 2005, and had failed to provide evidence that any Book of Order existed at the time Hudson Presbyterian filed its articles, much less providing evidence of its contents at that time (henceforth, the Court will refer to the purported Book of Order existing at the time Hudson Presbyterian filed its Articles of Incorporation as the "1981 Book of Order.")

¹ In his Decision, the Magistrate mistakenly identified the second parcel as permanent parcel number PP 380-HU-0012-02-12, when it should have been correctly identified as PP-380-HU-0012-02-010. Notwithstanding this typographical error, the Magistrate's analysis is correct in all other respects.

² Eastminster objects that the Magistrate does not state whether he is analyzing the original or amended articles. The Court finds that it nevertheless is apparent that the Magistrate was analyzing the original articles.

The Magistrate also did not analyze the effect of the original by-laws on the questions presented. Eastminster has suggested that the language in the original by-laws provide proof that Hudson Presbyterian submitted itself to PCUSA's Constitution. As Hudson Presbyterian's Articles of Incorporation would control if any conflict were found with the by-laws, the Court finds no error.

Eastminster has filed several objections to these factual findings and the legal conclusion drawn from them. Eastminster contends that the Magistrate had ample evidence before him in the form of several affidavits establishing that the 1981 Book of Order was indeed in existence on the date that Hudson Presbyterian filed its articles. Moreover, Eastminster argues that the affidavits of the Reverend Meta Cramer and Reverend Mark A. Tammen establish the language used in the 1981 Book of Order creating a trust.

After due consideration, the Court agrees that Eastminster had submitted evidence to show that the 1981 Book of Order was in existence when Hudson Presbyterian filed its Articles of Incorporation, and sustains Eastminster's objection on this ground. The Court cannot however agree that Eastminster has also provided admissible evidence of its contents.

Evid.R. 1002 provides,

“to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio.”

In conjunction with this rule, Evid.R. 1004 provides that the contents of a document may be shown with other evidence when (1) all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; (2) the original is not obtainable; (3) the original is in possession of the opponent; or (4) the writing, recording, or photograph is not closely related to a controlling issue. As Eastminster neither had established one of the foregoing as a basis for the consideration of Cramer and Tammen's affidavit, nor had even pointed out these affidavits in their brief, the Court finds that the Magistrate correctly focused upon whether the original document had indeed been submitted.

To this issue, Eastminster contends that excerpts from the 1981 Book of Order were filed with the Court as Joint Exhibit 150, which was not objected to by Hudson Presbyterian. While the parties agreed to file joint exhibits, Eastminster was still charged with submitting admissible evidence to support its claim. In this case, Exhibit 150 contains no information pertaining to its date, and the Magistrate was correct in finding that Eastminster had failed to discharge this responsibility.

Beyond the foregoing, Eastminster claims that it submitted evidence that the Seventh District Court of Appeals specifically found in *Upper Ohio Valley Presbytery, Inc. v. Covenant Presbyterian Church of Steubenville, Ohio*, 7th Dist. App. No. 87-J-3, 1988 Ohio App. Lexis 3452, that an express trust provision was included in the 1981 Book of Order. Eastminster contends that the Magistrate should have taken judicial notice of this fact in his Decision. After due consideration, the Court notes:

“An Ohio trial court may not take judicial notice of proceedings in other cases even if such cases were between the same parties and before the same court. More particularly, a trial court can only take note of its own factual findings based on the evidence before the court until appropriate precedent has been established within its own appellate district or by the Supreme Court of Ohio.” *Maurer v. Center Twp.*, 6th Dist. App. No. WD-01-069, 2002 Ohio 4475. (internal citations omitted)

Accordingly, the Magistrate would have been without authority to accord judicial notice of the factual findings in the Seventh District case, and as such, the Magistrate did not err by failing to take judicial notice of this purported fact.

Language in Articles of Incorporation

The Magistrate’s second finding upon the issue of whether the Articles of Incorporation created an express trust involved analysis of the following language contained in the original Articles of Incorporation:

“The purpose or purposes for which said corporation is formed are:

2. To voluntarily associate together for divine worship and godly living, agreeably to the Holy Scriptures, submitting to the authority and form of government as set forth in the Constitution (as amended) of the United Presbyterian Church in the United States of America, and under further authority of Eastminster Presbytery.”

The Magistrate found that by stating its association with the national church was voluntary, Hudson Presbyterian was also free to dissociate from it at anytime. The Magistrate concluded that this evidence did not create any type of property interest in PCUSA.

Eastminster objects that the Magistrate has wrongly construed this language. Eastminster contends the word “voluntarily” only modifies the following phrase “associate together for divine worship...” and does not modify the remainder of the sentence, especially the following independent clause “submitting to the authority...” As such, Eastminster claims that the term “voluntarily associate” relates to the congregation gathering to worship, and not to Hudson Presbyterian’s ability to dissociate from the PCUSA. Rather, Eastminster claims that by including the independent clause “submitting to the authority...,” Hudson Presbyterian bound itself to the PCUSA’s Constitution with all its attendant governing requirements, including holding its property in trust.

After due consideration, the Court first notes that the phrase “submitting to the authority...” is not an independent clause with a separate meaning from the beginning of the sentence. Accordingly, the word “voluntarily” also modifies that phrase as well as the first, and as such, Hudson Presbyterian was free to dissociate with PCUSA at any time. The above quoted language does not obligate Hudson Presbyterian to implement PCUSA’s Constitution and hold all its property in trust.

Constructive and Charitable Trusts

Both Eastminster and the Ohio Attorney General advance several objections to the Magistrate's Decision on the grounds that the evidence established that Hudson Presbyterian held its property in a constructive or charitable trust.

In examining this issue, the Magistrate stated,

“Additionally, Ohio law has continued to follow the law set out in the Summit County case Serbian Orthodox Church v. Kelemen (1970, 21 Ohio St. 2d 154), which is that Ohio does not recognize the concept implied trust concept [sic] in a church scenario such as found in this case... Likewise, the Defendant fails to provide any credible evidence of constructive trust. Ohio has adopted the concept known as “Neutral Principles of Law,” which the parties have addressed and referred to by citation. The Ohio Attorney General has chosen to enter this matter. His position shows he agrees with the Defendant. The Attorney General's position is equally flawed and is devoid of evidence to support the Defendant.”

A constructive trust has been defined by the Ohio Supreme Court as

“[A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice... A constructive trust is imposed ‘not because of the intention of the parties but because the person holding the title to property would profit by a wrong, or would be unjustly enriched if he were permitted to keep the property.’” *Univ. Hosps. of Cleveland v. Lynch*, 96 Ohio St. 3d 118; 2002 Ohio 3748; 772 N.E.2d 105 (internal citations omitted)

Eastminster claims these elements are satisfied because it contributed substantial resources to establish Hudson Presbyterian at its formation. The submitted evidence however also shows that Hudson Presbyterian has subsequently funded its own operations. One can only infer that Eastminster's initial contributions were gifts to a separate legal entity, evidently with the understanding that they would be used to establish a church within PCUSA's predecessor organization. Hudson Presbyterian established such a church. While it subsequently decided over twenty years later to disaffiliate with PCUSA, its decision hardly renders its receipt and retention of the initial contributions in any way inequitable, such that a trust is required to be established.

A charitable trust is defined by R.C. 109.23 as

“any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose.”

The Attorney General argues that a charitable trust was formed because the contributions to Hudson Presbyterian from its formation onward were made with the understanding that Hudson Presbyterian was a PCUSA church. Accordingly, the Attorney General contends that those contributions can only be used to support a PCUSA church, and must be held in trust for the benefit of PCUSA.

Contrary to the Attorney General's objection, the Magistrate specifically considered his arguments. The Magistrate recognized they were logically related to Eastminster's arguments and considered both together. Moreover, while not laid out in painstaking detail, the Magistrate's Decision also correctly recognized the Attorney General's argument implicitly conflicted with established Ohio law, which rejects the doctrine of an implied trust, i.e. the notion a religious organization by affiliating with a larger organization has impliedly bound itself

to hold the property it acquires in trust for the benefit of that larger organization. See *Kelemen* at 161.

Yet, the logical outcome of the Attorney General's argument would require a local church to hold donated property in trust for the larger, national denomination simply because it was affiliated with it at the time it received the gift. It is in essence the implied trust theory implemented through the guise of charitable trust law. Additionally, the Attorney General has not provided any evidence that Hudson Presbyterian expressly agreed to hold any donated property in such a charitable trust. As such, the Court finds that the Magistrate did not err in his determination of these issues, and denies Eastminster and the Attorney General's objections to this portion of his Decision. Moreover, the Court finds that the Attorney General's other objections have been rendered moot by the balance of this Decision.

Right to Disaffiliate

Eastminster also objects to that portion of the Magistrate's Decision finding that Hudson Presbyterian had the right to disaffiliate from PCUSA. Eastminster's first argument reprises the same argument Eastminster advanced in favor of an express trust, namely that Hudson Presbyterian was obligated by the purposes clause in its Articles of Incorporation to abide by PCUSA's Constitution. Upon review, the Court finds that the evidence established that Hudson Presbyterian is an incorporated non-profit corporation, and as analyzed supra, its Article of Incorporation permitted it to freely associate or dissociate with PCUSA.

Eastminster however also challenges the corporate acts - the amendment to its articles and by-laws - whereby Hudson Presbyterian effected its disaffiliation. More specifically, Eastminster claims that any amendment to the articles of a non-profit corporation requires a majority of the voting members; and in contradiction to this requirement, the amendment to Hudson Presbyterian's Articles was actually passed by its Session, or its Board of Trustees,


and not the actual church members. Accordingly, Eastminster argues Hudson Presbyterian's amendments to its articles and by-laws were illegal and void, and thus the original articles and by-laws remain in full force and effect, binding Hudson Presbyterian to the PCUSA's Constitution.

After due consideration, the Court finds that Eastminster has not advanced any basis to show how it has standing to challenge the amendment to the articles and by-laws of a separate, independent legal entity. Moreover, even if Eastminster has such standing, the evidence in the record shows that the proposal to disaffiliate was first formulated by the Session, and submitted to a vote by the congregation, which approved the proposal, all as outlined by the Magistrate in his Decision. Accordingly, one can only conclude that the amendments to the Articles and the by-laws to conform therewith are valid and legal. The Court denies the objections to this portion of the Magistrate's Decision.

Conclusion

Based upon the foregoing, the Court grants Eastminster's Motion to Consider Additional Evidence being the exhibits originally filed with the Magistrate. The Court grants in part and denies in part the objections the Magistrate's Decision, while affirming the Magistrate's ultimate resolution of this matter, which denied both Eastminster and the Attorney General's Motion for Summary Judgment and granted Summary Judgment in Hudson Presbyterian's for declaratory relief and charging costs to Eastminster. **This is a final, appealable order.**

It is so Ordered.



JUDGE MARY F. SPICER

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