

IN THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI

FIRST PRESBYTERIAN CHURCH
OF CORINTH, MISSISSIPPI

PLAINTIFF

v.

CIVIL ACTION NO. CV07-053-TJG

PRESBYTERY OF SAINT ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.

DEFENDANT

MOTION FOR EXTENSION OF TEMPORARY RESTRAINING
ORDER AND ENTRY OF PRELIMINARY INJUNCTION

In accordance with Mississippi Rule of Civil Procedure 65(b), First Presbyterian Church of Corinth, Mississippi ("First Presbyterian") moves the Court for entry of an Order Granting an Extension of Temporary Restraining Order and Entry of Preliminary Injunction against the Presbytery of Saint Andrew, Presbyterian Church U.S.A., Inc. ("St. Andrew" or "Presbytery"). In support of its Motion, First Presbyterian states the following:

1. First Presbyterian filed its Complaint on February 5, 2007, asking this Court to: (1) declare that First Presbyterian owns its church property free and clear of any interests asserted by the Presbytery or the Presbyterian Church (USA) ("PCUSA"); and (2) enjoin the Presbytery from taking any retaliatory action that would affect First Presbyterian's Pastor, Officers, Members, or property.
2. Immediately after filing its Complaint, First Presbyterian sought, and this Court issued, a Temporary Restraining Order ("TRO") to preserve the *status quo* until the parties could

appear before the Court on February 15, 2007 to determine whether a preliminary injunction should be granted. *See* Temporary Restraining Order issued February 5, 2007.

3. On February 14, 2007, (the day before the TRO expired) the Presbytery removed this case to federal court asserting, incorrectly, that the federal court had subject matter jurisdiction under 28 U.S.C § 1331. *See* Notice of Removal. Consequently, the scheduled hearing did not take place and First Presbyterian could not obtain an extension of the TRO.

4. On February 16, 2007, the Presbytery sent a letter to its Minister Members and Sessions stating that it removed this case from state court because it didn't think this Court would adequately protect its rights. *See* Letter to Minister Members and Sessions, attached as Exhibit "A." Specifically, the letter stated that the Presbytery believes this Court violated its Constitutional rights by granting First Presbyterian's TRO without notice, and that the Presbytery's rights would not be adequately protected by this Court during the course of litigation. *Id.* ("Because these rights were disregarded, and believing they would be respected by the federal court, our first response has been to file a Notice of Removal. . . .")

5. On February 19, 2007, First Presbyterian filed a Motion for a Temporary Restraining Order in federal court. *See* Motion for Temporary Restraining Order. In its Brief in Support of this Motion, First Presbyterian noted that the court lacked federal question jurisdiction because all of First Presbyterian's claims arise exclusively under Mississippi law. Nevertheless, because First Presbyterian needed immediate injunctive relief that it could not request from the state court, it asked the federal court to maintain the *status quo* until the court determined whether it had subject matter jurisdiction.

6. On February 20, 2007, before First Presbyterian filed its Motion to Remand, the federal court remanded the case back to this Court *sua sponte*. *See* Remand Order. In its Order,

the court stated that "it is clear from the complaint...that plaintiff seeks a determination of [its] property rights based solely upon Mississippi law." *Id.* Therefore, there was no federal question and no subject matter jurisdiction. *Id.* at p. 1.

7. In addition to rejecting the Presbytery's frivolous federal question argument, the court also implied that the Presbytery filed its Notice of Removal in a bad-faith attempt to preclude First Presbyterian from requesting an extension of the February 5, 2007, TRO. The court explained:

[T]he timing of the instant removal raises suspicions as to whether it was made in good faith. That is, this case was removed the day before the expiration of a temporary restraining order which had been issued by the Circuit Court of Alcorn County prohibiting defendant from taking any actions (such as changing the locks on church property) which might disturb the *status quo* prior to the property issues being decided.

Id. at p. 4.

8. Because the court concluded that it did not have subject matter jurisdiction, it held that it could not rule on First Presbyterian's Motion, and that First Presbyterian would have to request injunctive relief from the Alcorn County Circuit Court. *Id.*

9. To avoid the costs of drafting additional Motions and attending another hearing, First Presbyterian renewed its request that the Presbytery simply agree not to take the types of retaliatory action described in First Presbyterian's Complaint. Once again, however, the Presbytery refused to enter into such an agreement.

10. As a result, just as it did when it filed the subject lawsuit on February 5, 2007, First Presbyterian needs immediate injunctive relief to prevent the Presbytery from taking retaliatory action that would cause irreparable harm.

11. Therefore, for the reasons stated in its verified Complaint and its Brief in Support of Motion for Temporary Restraining Order submitted to the federal court, First Presbyterian respectfully requests that the Court grant it immediate injunctive relief.

12. Specifically, First Presbyterian requests that the Court extend the TRO it issued on February 5, 2007, until the parties can appear before the Court to determine whether a preliminary injunction should be issued.

13. Under Mississippi Rule of Civil Procedure 65(b), a court may, for good cause and on a timely motion, extend a TRO issued without notice for ten (10) days. Here, there is good cause to extend the TRO because First Presbyterian currently has no protection against the Presbytery's retaliatory action. Moreover, First Presbyterian's request is timely in light of the Presbytery's removal on February 14, 2007.

14. First Presbyterian also requests a Preliminary Injunction to maintain the *status quo* until the Court rules on the property issues. Because this is an urgent matter, First Presbyterian requests that the Court set its Motion for a Preliminary Injunction as soon as it can be heard.

THIS the 20th day of February, 2007.

Respectfully submitted,

FIRST PRESBYTERIAN CHURCH OF
CORINTH, MISSISSIPPI

By Its Attorneys,
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC

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CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the foregoing *Motion for Extension of Temporary Restraining Order* by mailing same, via U.S. First Class Mail, postage prepaid, to the following:

J. Hale Freeland, Esq.
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COUNSEL FOR DEFENDANT

THIS the 2nd day of February, 2007.



WALKER W. JONES, III



THE PRESBYTERY OF ST. ANDREW PRESBYTERIAN CHURCH (U.S.A.)

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February 16, 2007

Minister Members and Sessions of the Presbytery of St. Andrew:

I am writing to update you on matters related to First Presbyterian Church in Corinth.

As you know, the day before our presbytery meeting last week in Leland, FPC filed a lawsuit against the presbytery, and a Temporary Restraining Order (TRO) was issued *ex parte* (which means that we were not granted the usual "due process" of a hearing on the matter). This was a most unusual legal maneuver which prevented the presbytery from appearing in court or even discussing the issues raised by our church in Corinth. The Complaint and the TRO filed by the session severely limit the presbytery's ability to fulfill its constitutional responsibility to provide care and oversight to its minister members and congregations as delineated in G-11.0103b, e, f, g, i, n, o, s, and y. The *Book of Order* establishes limits for how we may deal with our ministers and congregations. We have and will continue to act within those limits.

Accordingly, at our meeting on February 6, 2007, the Presbytery of St. Andrew took the only actions it was allowed to take on that day – it authorized our presbytery's attorney to answer the suit, and it authorized me, in consultation with the moderators of the Presbytery and Council, to speak on the presbytery's behalf in the matter. The authority granted to me in that action is limited by the presbytery to answering the lawsuit.

The Complaint filed in the State court goes to the heart of the principles upon which our nation was founded; namely, whether our government can interfere with or make determinations concerning our faith and its practice. This case, and the TRO without notice to anyone prevent us from assembling and exercising our religious freedom as protected by the First Amendment to the United States Constitution, and denied us our right to even speak in court about this as protected by the Fourteenth Amendment to the Constitution.

Because these rights were disregarded, and believing they would be respected by the Federal court, our first response has been to file a Notice of Removal of the case from the Circuit Court of Alcorn County to the Federal Court (Mississippi Northern District). That Notice, as well as the texts of the Temporary Restraining Order and the Complaint are attached to the e-mail version of this communication, and are available through the Presbytery Office.

Let me be clear about the presbytery's intentions, as I understand them. We do not want our brothers and sisters in Corinth to depart from our communion, and on your behalf I will do everything in my power to keep as many of their members as possible within our fold. At the same time, these are *church* matters, and our strong desire is for the courts to determine that churches must follow and abide by our Constitution even as their members struggle with matters of conscience related to their church membership and denominational loyalties.

Gregory A. Goodwiller
Executive Presbyter
and Stated Clerk

R. Milton
Resource Center
and Home

EXHIBIT "A"

Houston Kelly
Associate Executive
Camp and Conference
Center

Thomas A. Cheatham
Associate Executive
Campus Ministry



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Please keep the session and members of First Presbyterian Church in your prayers at this time. They need our encouragement and support. I would remind you of the statement passed by the presbytery at its recent meeting regarding church property: “the presbytery will deal with property issues on a case-by-case basis, being mindful of our ultimate unity in Christ.”

“Being mindful” of that unity which far transcends any denominational boundaries and differences, I will continue to seek to faithfully apply our constitution and fulfill the responsibilities of my office as we move forward in this matter.

In Christ’s Service,

Gregory A. Goodwiller
Executive Presbyter and Stated Clerk

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R. Milton Winter
*Resource Center Director
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Ann Houston Kelly
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