

FILE

IN THE IOWA DISTRICT COURT
FOR BUENA VISTA COUNTY

THE PROSPECT HILL PRESBYTERY OF THE PRESBYTERIAN CHURCH (U.S.A.), and REV. DUANE QUEEN, as CHAIR OF THE ADMINISTRATIVE COMMISSION appointed by the PRESBYTERY with respect to the RIVERSIDE PRESBYTERIAN CHURCH, LINN GROVE, IOWA,	:	EQUITY NO. EQCV026725
	:	
Plaintiffs,	:	ANSWER
	:	and
vs.	:	COUNTERCLAIMS
	:	
RUSSELL WESTBROOK, DENNIS SOMERS, And SESSION OF RIVERSIDE PRESBYTERIAN CHURCH, LINN GROVE, IOWA,	:	
	:	
Defendants.	:	

FILED
 07 MAR 30 AM 10:15
 CLERK OF DISTRICT COURT
 BUENA VISTA COUNTY, IOWA

ANSWER

COME NOW the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, and for their Answer to the Plaintiffs' Petition state to the Court the following:

1. Defendants admit paragraph 1 of the Petition and further state that the Presbyterian Church (U.S.A.) is an unincorporated association whose members include residents and citizens of the State of Iowa.

2. Defendants admit paragraph 2 of the Petition.

3. Defendants admit paragraph 3 of the Petition accurately quotes a portion of the Historic Principles of Church Government set forth in G-1.0400 the *Book of Order*. Said Historic Principles state, concerning ecclesiastical matters of the "one Church of Christ," the following:

[A] larger part of the Church, or representation of it, should govern a smaller, or determine matters which arise therein; that in like manner, a representation of the whole should govern and determine in regard to every part, and to all parts united: that is, that a majority should govern; and consequently that appeals may be carried from lower to governing bodies, till they be finally decided by the collected wisdom and the united voice of the whole Church.

Defendants deny the remaining allegations in paragraph 3 of the Petition.

4. Defendants admit paragraph 4 of the Petition.

5. Defendants admit paragraph 5 of the Petition.

6. Defendants admit paragraph 6 of the Petition.
7. Defendants deny paragraph 7 of the Petition.
8. Defendants admit paragraph 8 of the Petition accurately alleges that presbyteries like Prospect Hill Presbytery have various responsibilities under G-11.0103 of the *Book of Order*. Defendants deny the remaining allegations in paragraph 8 of the Petition to the extent said allegations misstate the nature and extent of the aforementioned responsibilities of presbyteries pursuant to the *Book of Order*.
9. Defendants admit paragraph 9 of the Petition.
10. Defendants admit paragraph 10 of the Petition.
11. Defendants admit paragraph 11 of the Petition accurately quotes G-8.0201 of the *Book of Order*, but deny that said provision is legally enforceable against Defendants.
12. Defendants admit paragraph 12 of the Petition accurately quotes a portion of G-8.0301 of the *Book of Order*, but deny that said provision is legally enforceable against Defendants.
13. Defendants deny paragraph 13 of the Petition.
14. Defendants deny paragraph 14 of the Petition.
15. Defendants admit representatives of Riverside Presbyterian Church were provided notice of the August 14, 2006 special meeting of Prospect Hill Presbytery, but deny the remaining allegations of paragraph 15 of the Petition.
16. Defendants admit an Administrative Commission was formed at the August 14, 2006 special meeting of Prospect Hill Presbytery and charged with the tasks listed in subparagraphs 16(A) through 16(E) of the Petition, but deny the remaining allegations of paragraph 16 of the Petition.
17. Defendants admit paragraph 17 of the Petition.
18. Defendants admit paragraph 18 of the Petition accurately quotes the letter sent by the Session of Riverside Presbyterian Church to the Prospect Hill Presbytery on August 19, 2006, but deny the remaining allegations of paragraph 18 of the Petition.
19. Defendants admit paragraph 19 of the Petition.
20. Defendants admit paragraph 20 of the Petition.
21. Defendants admit paragraph 21 of the Petition.

22. Defendants admit Dennis Somers has not supplied membership records of Riverside Presbyterian Church to the Administrative Commission of Prospect Hill Presbytery, but deny the remaining allegations of paragraph 22 of the Petition.

23. Defendants admit paragraph 23 of the Petition.

24. Defendants admit they have not delivered to Prospect Hill Presbytery or its Administrative Commission the property listed in paragraph 24 of the Petition, but deny the remaining allegations of paragraph 24 of the Petition.

25. Defendants deny paragraph 25 of the Petition.

Affirmative Defense

26. Plaintiffs' claim for injunctive relief hinges, in part, on their allegation that, under the *Book of Order*, Riverside Presbyterian Church and its members have no independent right to disassociate from the Presbyterian Church (U.S.A.) to associate with another denomination. Defendants assert, however, that Plaintiffs' interpretation and application of the *Book of Order* conflict with key provisions of the Constitution of the Presbyterian Church (U.S.A.) (which is comprised of the *Book of Order* and the *Book of Confessions*) and with certain principles drawn from the *Holy Bible*, i.e., the ultimate authority to which the *Book of Order* and the *Book of Confessions* must be subordinate. The Court does not have subject matter jurisdiction over the interpretation and application of the *Book of Order*, the *Book of Confessions*, and the *Holy Bible* or over other ecclesiastical matters. Nor, therefore, does the Court have subject matter jurisdiction over Riverside Presbyterian Church's and its members' choice to disassociate from the Presbyterian Church (U.S.A.) to associate with another denomination. Rather, the Court can only (with respect to Plaintiffs and Defendants) determine secular matters such as who owns the Church Building and the Manse.

WHEREFORE, the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, respectfully request that the Court dismiss the Plaintiffs' Petition, tax costs against Plaintiffs, and grant said Defendants such other and further relief as the Court deems just and equitable under the circumstances.

COUNTERCLAIMS

COME NOW the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, and for their Counterclaims to the Plaintiffs' Petition state to the Court the following:

26. Defendants incorporate all of the factual allegations set forth in the Petition that have been admitted in the above-stated Answer.

27. On or before 1916, a church was formed in Linn Grove, Iowa, under the name "Riverside Presbyterian Church."

28. On February 9, 1925, Riverside Presbyterian Church adopted Articles of Incorporation that, on February 12, 1925, were filed with the office of the Buena Vista County Recorder at Miscellaneous Book 7, page 280-1. Said Articles designated the name of the corporation as "Riverside Presbyterian Church of Linn Grove, Iowa," (hereinafter "Riverside Presbyterian Church") and stated that the Articles would "be in force for a period of fifty (50) years." The Articles further stated the Board of Trustees of Riverside Presbyterian Church held real estate "in trust for the Corporation" and could only convey, mortgage, or otherwise encumber said real estate if "first authorized by a majority vote at a lawful meeting of the Corporation." The Articles did not grant the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or any of said associations' predecessors any interest in or control over any property, real or personal, owned by Riverside Presbyterian Church.

29. On February 28, 1925, via a warranty deed recorded in the office of the Buena Vista County Recorder at Book 4, page 88, Riverside Presbyterian Church obtained the following described real estate in Linn Grove, Buena Vista County, Iowa:

The South 66 feet of that portion of Lot 6 in Block 1 of Buland's Addition to the Incorporated Town of Linn Grove, Iowa, lying East of the West 121 feet and 3 inches thereof.

Subsequently, on October 4, 1955, via a warranty deed recorded in the office of the Buena Vista County Recorder at Book 21, page 321, Riverside Presbyterian Church obtained the following described real estate in Linn Grove, Buena Vista County, Iowa:

The West One Hundred Twenty-One Feet Three Inches (121' 3") of Lot Six (6), Block One (1), Buland's Addition to the Town of Linn Grove, Iowa.

Said real estate is hereinafter referred to as the "Church Building" and is collectively described as follows:

LOT SIX (6), BLOCK ONE (1), BULAND'S ADDITION TO THE CITY OF LINN GROVE, BUENA VISTA COUNTY, IOWA, EXCEPT A PORTION OF LOT 6 DESCRIBED AS FOLLOWS: Bounded by a line running One Hundred and Nine Feet and Nine Inches (109' 9") West from the Northeast Corner of said Lot Six (6), Thence South Sixty-six Feet (66'), Thence East One Hundred and Twenty-one Feet (121'), Thence North to the Point of Beginning.

30. On February 8, 1916, via a warranty deed recorded in the office of the Buena Vista County Recorder at Book X, page 318, Riverside Presbyterian Church obtained the following described real estate in Linn Grove, Buena Vista County, Iowa:

LOT FIVE (5), BLOCK THREE (3), IN O.L. HESLA'S SECOND ADDITION TO THE CITY OF LINN GROVE, IOWA.

Said real estate is hereinafter referred to as the "Manse."

31. All deeds concerning the Church Building and the Manse were originally titled solely in (and at all times have remained titled solely in) "Riverside Presbyterian Church of Linn Grove, Iowa" or "Linn Grove Riverside Presbyterian Church" or "The Trustees of the Riverside Presbyterian Church of Linn Grove, Iowa." (The Manse was also titled in "The Trustees of the Penial Presbyterian Church of Douglas Township in Clay County, State of Iowa" and "The Trustees of the Zion Presbyterian Church of Douglas Township in Clay County, State of Iowa." Said churches, however, are now defunct having previously merged into Riverside Presbyterian Church.) The conveyance language in said deeds is unambiguous; does not contain any reservations or trusts; does not refer to the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or any of said associations' predecessors; and does not contain any language creating or accepting any trust over the Church Building or the Manse in favor of said associations or their predecessors.

32. Riverside Presbyterian Church acquired and/or built the Church Building and the Manse without any financial donations from the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or said associations' predecessors.

33. On January 19, 1975, Riverside Presbyterian Church adopted new Articles of Incorporation that, on January 30, 1975, were filed with the office of the Iowa Secretary of State at Book 6T, page 328. Said Articles were adopted merely to renew the former Articles and did not grant the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or any of said associations' predecessors any interest in or control over any property, real or personal, owned by Riverside Presbyterian Church.

34. On June 28, 2006, the Session of Riverside Presbyterian Church unanimously voted to recommend to the church's members that said church disaffiliate from the Presbyterian Church (U.S.A.) and become affiliated with another religious denomination.

35. On July 30, 2006, at a special meeting of the members of Riverside Presbyterian Church, said members unanimously voted (74 to 0) to disaffiliate from the Presbyterian Church (U.S.A.) and become affiliated with another religious denomination.

36. On August 27, 2006, at a special meeting of the members of Riverside Presbyterian Church, said members unanimously voted (82 to 0) to become affiliated with the Presbyterian Church in America.

37. On December 6, 2006, Riverside Presbyterian Church adopted Restated Articles of Incorporation that, on December 13, 2006, were filed with the office of the Iowa Secretary of State as Document No. W00509546. Said Restated Articles state the following:

The Corporation is a member church in the Presbyterian Church in America. Regardless of such affiliation, any and all property, whether real or personal, now owned or hereafter acquired by the Corporation shall remain the sole property of the Corporation, and the Presbyterian Church in American or any affiliate, subsidiary, assignee, or successor thereof shall not obtain any right, title, or interest in such property absent a written instrument of conveyance from the Corporation. Notwithstanding any other provisions of these Articles, this Article may only be amended with a two-thirds vote of all adult members of the Corporation.

Said Restated Article further state the following:

All title to real estate shall be taken in the corporate name. Any property owned by the Corporation may be sold, transferred, gifted, or otherwise conveyed after approval by the Board of Directors and after

approval by a majority of the adult members of the Corporation present at a meeting called for such purpose after at least two (2) weeks notice. All instruments pertaining to real estate shall be signed by the president or vice president of the Corporation and attested to by the secretary.

38. Prospect Hill Presbytery has attempted, since learning that Riverside Presbyterian Church was disaffiliating from the Presbyterian Church (U.S.A.) to become affiliated with another religious denomination, to interfere with the church's use and enjoyment of its property and with the church's lawful and orderly business. Prospect Hill Presbytery has, for example, done the following:

- a. Attempted to prohibit Riverside Presbyterian Church's pastor (Reverend Russell Westbrook) from having any contact with members of the church;
- b. Attempted, without invitation from Riverside Presbyterian Church, to have Prospect Hill Presbytery's representatives lead a Sunday morning worship service at the church;
- c. Demanded that Riverside Presbyterian Church's pastor vacate the Manse or, in lieu thereof, pay Prospect Hill Presbytery rent in an amount equal to thirty percent (30%) of his salary;
- d. Attempted to permanently dissolve the relationship between Riverside Presbyterian Church and its pastor; and
- e. Demanded that the church's acting Clerk of Session (Dennis Somers) "turn over all building keys and provide access to all church property and church records with the next seven (7) days."

39. Prospect Hill Presbytery's actions are consistent with the aggressive tactics formulated by the Presbyterian Church (U.S.A.) to dissuade churches from disaffiliating with the denomination. Those tactics, which are outlined in various memoranda prepared by the Department of Constitutional Services of the Office of the

General Assembly of the Presbyterian Church (U.S.A.), include freezing the assets of a local church by filing notice of *lis pendens*, directing the church's banks and other financial institutions not to release the church's holdings until the institutions have received further notice from the presbytery, and even changing the church's locks and securing its grounds.

40. Prospect Hill Presbytery and the Presbyterian Church (U.S.A.) do not have any legally enforceable interest in the Church Building, the Manse, or any other real or personal property either titled in or currently in the possession of Riverside Presbyterian Church.

41. Riverside Presbyterian Church has never, with respect to any of its real and personal property, executed a written instrument evidencing the existence of a trust for the benefit of the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or any of said associations' predecessors.

42. Riverside Presbyterian Church has never, with respect to any of its property, indicated an intention to create a trust for the benefit of the Presbyterian Church (U.S.A.), Prospect Hill Presbytery, or any of said associations' predecessors.

43. Riverside Presbyterian Church is the sole and rightful owner of the Church Building, the Manse, and the other real and personal property currently in its possession.

Counterclaim I

Quiet Title

43. Pursuant to section 649.1 of the Code of Iowa, "[a]n action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession."

44. Defendants are credibly informed that Plaintiffs and/or the Presbyterian Church (U.S.A.) may make some claim to the Church Building and the Manse adverse to the Riverside Presbyterian Church's title thereto.

45. All claims referenced above in paragraph 44 are wholly without right, but constitute clouds on Riverside Presbyterian Church's title to the Church Building and the Manse that said corporation desires to remove.

WHEREFORE, the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, respectfully request that the Court quiet and confirm Riverside Presbyterian Church's title and estate in the Church Building and the Manse as an absolute title and fee simple in said corporation; forever bar and estop Plaintiffs and the Presbyterian Church (U.S.A.) from having or claiming any right, title, or interest thereto; tax costs against Plaintiffs; and grant the Defendants and Riverside Presbyterian Church such other and further relief as the Court deems just and equitable under the circumstances.

Counterclaim II

Declaratory Judgment

46. Pursuant to Iowa Rule of Civil Procedure 1.1101, an action for declaratory relief is appropriate to determine the "rights, status, and other legal relations" of parties to a dispute.

47. Based on the above and foregoing facts and circumstances, an actual controversy exists as to the validity of Plaintiffs' and the Presbyterian Church (U.S.A.)'s attempts to assert, by trust or otherwise, an interest in the Church Building, the Manse, and other real and personal property titled in or currently in the possession of Riverside Presbyterian Church.

48. Defendants seek a declaration of Riverside Presbyterian Church's rights to the property described in paragraph 47 so that said corporation can function according to its Restated Articles of Incorporation without any competing claims of title to its real and personal property.

WHEREFORE, the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, respectfully request that the Court declare that Plaintiffs and the Presbyterian Church (U.S.A.) have no legal, equitable, or other interest in any real or personal property either titled in or currently in the possession of Riverside Presbyterian Church; tax costs against Plaintiffs; and grant the Defendants and Riverside Presbyterian Church such other and further relief as the Court deems just and equitable under the circumstances.

Counterclaim III
Permanent Injunction

49. Pursuant to Iowa Rule of Civil Procedure 1.1501, an "injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action."

50. Based on the above and foregoing facts and circumstances, unless permanently restrained, Plaintiffs and the Presbyterian Church (U.S.A.) will interfere with Riverside Presbyterian Church's use and enjoyment of its property and its orderly and lawful business.

51. The acts thus threatened by Plaintiffs and the Presbyterian Church (U.S.A.) will work irreparable injury to Defendants and Riverside Presbyterian Church, for which said parties have no adequate remedy at law.

WHEREFORE, the Defendants, Russell Westbrook, Dennis Somers, and the Session of Riverside Presbyterian Church, Linn Grove, Iowa, respectfully request that the Court enter a permanent injunction restraining Plaintiffs and the Presbyterian Church (U.S.A.) from taking any actions to interfere with Riverside Presbyterian Church's use and enjoyment of its real and personal property and its orderly and lawful business; tax costs against Plaintiffs; and grant the Defendants and Riverside Presbyterian Church such other and further relief as the Court deems just and equitable under the circumstances.

Respectfully submitted,

WOLFF, WHORLEY,
DE HOOGH & SCHREURS



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ATTORNEYS FOR DEFENDANTS

Original filed.

Copy to:

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Storm Lake, IA 50588

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing
Instrument was served upon all parties to the
above cause to each of the attorneys of record
herein at their respective addresses disclosed
on the pleading on March 27, 2007

By: U.S. Mail facsimile
 Hand delivered Overnight courier
 Other

Signature

Joshyn Hofland

Verification

We are the authorized representatives and agents of the Defendants in the above-entitled action. Each of us has read the foregoing Answer and Counterclaim and know its contents. The matters alleged therein are true from our personal knowledge or stated upon our best information and belief to be true and correct.

Russell Westbrook
Rev. Russell Westbrook, Individually
and as Moderator of the Session of
Riverside Presbyterian Church,
Linn Grove, Iowa

Dennis Somers
Dennis Somers, Individually and
as Clerk of Session of Riverside
Presbyterian Church, Linn Grove,
Iowa

On this 27th day of March, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared REVEREND RUSSELL WESTBROOK, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Tim A. Wittmaack
Notary Public in and for said State

On this 27th day of March, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DENNIS SOMERS, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Tim A. Wittmaack
Notary Public in and for said State