

**CARROLLTON PRESBYTERIAN  
CHURCH**

**SUIT NO. 565482, SECTION 26**

**19<sup>th</sup> JUDICIAL DISTRICT COURT**

**VERSUS**

**EAST BATON ROUGE PARISH**

**THE PRESBYTERY OF SOUTH  
LOUISIANA OF THE  
PRESBYTERIAN CHURCH (USA)**

**STATE OF LOUISIANA**

**WRITTEN REASONS ON CARROLLTON PRESBYTERIAN CHURCH'S  
REQUEST FOR A PRELIMINARY INJUNCTION**

This is a church property dispute. Before the court is a petition for preliminary injunction filed by Carrollton Presbyterian Church ("Carrollton"), seeking to enjoin The Presbytery of South Louisiana ("PSL") from taking certain actions that may interfere with Carrollton's use, enjoyment or disposition of local church property. On February 13, 2009, this court ordered that a Temporary Restraining Order issue against the PSL. The TRO was subsequently extended and remains in effect. A hearing on the preliminary injunction was held on March 2 and March 3, 2009. The PSL removed this case to the United States District Court for the Middle District of Louisiana. The suit was subsequently remanded to this court on June 3, 2009. For the reasons that follow, this court will issue a preliminary injunction on behalf of Carrollton and against the PSL.

**Facts**

Carrollton Presbyterian Church was first organized in 1855 in New Orleans. Exhibit P-1. Carrollton's articles of incorporation grant full, sole and exclusive responsibility of the ownership and control of the local church property to the local corporate board of directors, subject only under specified circumstances to the authority of the corporate membership. Exhibit P-1. All of the acts of conveyance involving Carrollton identify the grantee as "Carrollton Presbyterian Church," without any mention of a national denomination or middle denomination governing body. Exhibits P-2 through P-5. All acts of conveyance granted to Carrollton Presbyterian Church all right, title and interest of the grantor—without any reversionary clauses, use restrictions, reservations of rights, or trust language. Exhibits P-2 through P-5. The land on which Carrollton's sanctuary sits was conveyed in 1922 by the grantor, the Presbyterian Board of Domestic Missions for the State of Louisiana, without any language stating any reservation of rights, use restrictions or trust, after Carrollton and another church that consolidated with Carrollton paid the grantor the full purchase price initially

paid by the grantor. Exhibits P-2 through P-5. All property, both immovable and movable, real and personal, and all improvements thereon, was paid for by financial contributions made by individual members of Carrollton or by donations made exclusively to Carrollton, without any financial assistance, loans, guarantees, or financial contributions by the PSL, or any other entity. See March 3 Hearing Transcript at pp. 22 and 23.

In 1983 the Presbyterian Church of the United States (PCUS) merged with the United Presbyterian Church of the United States of America (UPCUSA) to form the Presbyterian Church of the United States of America (PCUSA). At the time of the merger, individual churches like Carrollton who had formerly been members of the PCUS were allowed the option, if timely exercised under the exception provision of § G-8.0701 of the new PCUSA Book of Order, to fall back on dissimilar property provisions of the 1982/1983 edition of the former PCUS Book of Church Order. In 1984, Carrollton timely voted to exercise the exception provided under § G-8.0701. Section 6-8 of the PCUS Book of Church Order recognizes Carrollton's ability to buy, sell, or mortgage its property with only the approval of the congregation, without any permission being required by the presbytery, synod or General Assembly. Exhibit P-6. Other provisions in the Book of Church Order, including Section 6-3, purport to create a trust in favor of the PSL.

#### Law

Louisiana Code of Civil Procedure Article 3601 provides that "An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases provided by law." Generally speaking, the party seeking the injunction must: (1) establish a *prima facie* showing that it will prevail on the merits of the suit; (2) show that it is threatened with irreparable harm and is without an adequate remedy at law; (3) show that the threatened harm to the plaintiff outweighs the potential for harm or inconvenience to the defendant and (4) show that the issuance of a preliminary injunction will not disserve the public interest. Chandler v. State of Louisiana, 02-1420 (La. App. 1 Cir. 3/28/03), 844 So. 2d 905. A showing of irreparable harm is not required when the deprivation of a constitutional right is involved. Chandler, 844 So 2d at 909, citing Brennan v. Bd. of Supervisors of Trustees for University of Louisiana Systems, 95-02396 (La. App. 1 Cir. 3/27/97), 691 So. 2d 324. This court has subject matter jurisdiction to resolve a church property dispute. Jones v. Wolf, 443 U.S. 595 (1979). See also Fluker v. Hitchens, 419 So. 2d 445 (La. 1982).

**Carrollton has made a *prima facie* showing that it will prevail on the merits**

In its post-hearing brief, the Presbytery of South Louisiana first argues that Carrollton indisputably holds all property in trust for the PCUSA pursuant to § G-8.0102 of the Book of Order. Exhibit D-3. That provision provides in pertinent part that all property of a particular church “whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).” The PSL further argues that Carrollton has, over the years, agreed to be bound by “the form of government as adopted by the General Assembly” of the Presbyterian Church in the United States. Exhibit P1. Insofar as the trust provisions are part and parcel of the “form of government,” Carrollton has consented to them, the PSL argues. Finally, the PSL argues that, under Jones v. Wolf, 443 U.S. 595 (1979), these provisions are constitutionally insulated from state property laws regulating the formation of trusts.

There is no doubt that the Book of Order purports to create a trust in favor of the PCUSA. The harder question is whether the inquiry simply stops there, or whether courts must take a harder look at the particular facts of each case and weigh those facts in the context of applicable state law as it relates to the formation of legally enforceable trusts. To simply rule that a trust provision is valid by virtue of the fact that it exists in a church constitution would seem to run counter to the “neutral principles” doctrine articulated in Jones and also in Fluker v. Hitchens, 419 So. 2d 445 (La. 1982). It would, in a sense, appear to deprive the local congregation of the protections afforded by Louisiana’s trust code. It would also introduce a level of instability and uncertainty into Louisiana’s unique civilian property regime.

I do not read Jones to stand for the proposition that all trust provisions are self-executing, so long as they are recited in a church constitution. Indeed, as the Jones court was careful to point out, once an express trust clause has been recited in favor of a denominational church, “civil courts will be bound to give effect to the result indicated by the parties, *provided it is embodied in some legally cognizable form.*” Jones at 607 (emphasis added). That final qualifier, that the trust provision be embodied in some legally cognizable form, presents the critical question in this case and ultimately casts serious doubt on the PSL’s position.

As Carrollton points out, the Louisiana trust code sets forth several *minimal* requirements for the formation of a legally enforceable trust. For example, under Louisiana Revised Statute 9:1752, an *inter vivos* trust must be by authentic act or

by act under private signature in the presence of two witnesses, duly acknowledged by the settlor or by affidavit of one of the attesting witnesses. Under Louisiana Revised Statute 9:1753, it must clearly appear that the creation of a trust is intended. Under Louisiana Revised Statute 9:1783, a trustee must be either a natural person with capacity to contract or a bank or trust company organized under Louisiana federal law and domiciled in Louisiana. As Carrollton points out, none of these requirements has been satisfied in the case at bar. In light of that fact, it is difficult for me to conclude that the language purporting to create a trust over Carrollton's property is in any "legally cognizable form," as Jones requires.

The PSL points out that no mention of church property is made in the Louisiana trust code. It does not follow, however, that the absence of a specific statutory regime governing the holding of church property precludes application of the more general trust code provisions to these facts. There are, admittedly, no reported Louisiana opinions that have struck down a church trust provision for noncompliance with the trust code. But this simply suggests that the issue is *res nova* in Louisiana and ultimately begs the question: Why should Louisiana's positive law that sets out what constitutes a legally enforceable trust be disregarded? To my mind, these laws are the very "neutral principles" I am bound to apply to this controversy. The alternative is to wade into a thicket of non-Louisiana jurisprudence, ignore this state's historical reluctance to import the trust concept indiscriminately, and develop some type of *ad hoc* property law regime.

Aside from my general conclusion that the trust code applies to the facts of this case, there is another reason why Carrollton has shown a strong likelihood of success on the merits. Section G-8.0701 of the PCUSA Book of Order allows a particular church to fall back on any provisions in the constitution it was subject to immediately prior to the formation of the PCUSA that are not similar to provisions in Chapter VIII of the PCUSA Book of Order. It is not disputed that Carrollton exercised this option within the applicable eight-year time period. Prior to the formation of the PCUSA, Carrollton was subject to the PCUS Book of Church Order. The Book of Church Order contains several provisions that appear to be internally inconsistent. For example, Section 6-3 purports to assert a trust over local church property for the use and benefit of the PCUS. However, 6-8 states that

[n]othing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church nor to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.

The PSL has essentially argued that this provision should be disregarded in favor of Section 6-3, the trust provision. But, as Carrollton points out, the unfettered right to dispose of all of one's property is mutually exclusive of any right by a third party to dictate the disposition of that same property. As both Mr. Clotworth and Ms. Koss testified at the hearing, Carrollton's intent when it exercised the exception of G-8.0701 was to preserve its property "heritage" which they explained meant unfettered ownership without any trust impressing Carrollton's property in favor of a third party, and, consequently, Carrollton's right to buy, sell or encumber its property without having to obtain permission of any denomination governing body beyond the Carrollton congregation itself.

In short, the specific action of exercising the exception contained in Section G-8.0701 belies the PSL's contention that Carrollton has subjected itself to the denominational authority embodied in the Book of Order. If Carrollton wanted to create a trust in favor of a third party, it should have acted as settlor in accordance with the provisions of the trust code. But even assuming *arguendo* that the trust code provisions do not apply to the facts of this case, Carrollton's timely, properly noticed decision to avail itself of Section 6-8 precludes enforcement of the asserted trust under any reasonable interpretation of the denomination's own governing documents.

For all these reasons, I have concluded that Carrollton has made a *prima facie* showing that it will prevail on the merits of the suit.

**Carrollton will suffer irreparable harm without the injunction**

The PSL argues that Carrollton has failed to demonstrate that it will suffer irreparable harm without the injunction. Carrollton submits that it need not demonstrate irreparable injury when the deprivation of a constitutional right is at stake. See, e.g., Brennan v. Bd. of Supervisors of Trustees for University of Louisiana Systems, 95-02396 (La. App. 1 Cir. 3/27/97), 691 So. 2d 324. As Carrollton points out, this constitutional right may derive from the federal constitution or the state constitution. The fact that Carrollton is not asserting a violation of its federal constitutional rights is therefore of no moment.

Even assuming that Carrollton could not show a deprivation of a constitutional right, there is also evidence that the congregation's missions and ministries would be irreparably harmed without the issuance of the injunction. Perhaps the best evidence of this looming hardship is the synod administrative commission's unilateral decision to dissolve Carrollton in an effort to terminate its existence.

**The harm to Carrollton outweighs the harm to the defendant**

The PSL argues that the harm to the Presbytery from the restraint on its free exercise of religion far outweighs the non-existent harm to Carrollton if the injunction is denied. I have considered this contention carefully, and based on the evidence before me, I have concluded that the balance of hardships tilts in favor of the congregation. Without the injunction, Carrollton may very well cease to exist. This is simply not the case for the PSL. The PSL's argument that the congregation will be able to appeal any decision of the synod also rings hollow. It was the synod, after all, that acted to dissolve Carrollton in the first place.

**The issuance of this injunction will not disserve the public interest**

The PSL argues that the public interest would be undermined if this court issues a preliminary injunction. This argument is predicated on the PSL's view that the current dispute is essentially ecclesiastical in nature. The PSL further maintains that Carrollton is planning to dissolve itself and therefore dissipate the legacy of this 150-year-old church by disposing of all the real and personal property held in trust for the PCUSA without regard to the religious mission of the PCUSA.

As I have already explained, I am unable to conclude that any property is held in trust for the PCUSA or any other entity. If there is any "legacy" involving Carrollton, it is the congregation's effort over the years to maintain unfettered control of its property. Furthermore, the evidence that Carrollton plans to dissolve itself is, at best, indefinite. For example, Ms. Koss testified on March 3 that Carrollton is "still an ongoing worshipping congregation" with "plans for the future." See March 3 Transcript at page 15. It was also revealed at the hearing that Carrollton has an agreement with its existing lessee and potential buyer that will allow Carrollton's congregation to continue worshipping in its sanctuary indefinitely.

The PSL's argument that a civil court has no business resolving the present dispute echoes its position that this court lacks subject matter jurisdiction. I have already rejected this argument. The PSL has consistently attempted to reframe

this entire case as a fight over ecclesiastical principles and hierarchical discipline. These issues are peripheral, however, and do not preclude the availability of relief from this court. Far from disserving the public interest and entangling the court in religious matters, the issuance of the injunction will ensure that litigants on both sides of this issue are able to resolve complex property disputes before a neutral body, just as the Fluker court required.

**Conclusion**

Carrollton has made a *prima facie* showing that it will prevail on the merits of this suit. The law and evidence in this case strongly suggest that there is no legally cognizable trust impressing Carrollton's property, despite the PSL's suggestion to the contrary. There is also clear evidence that Carrollton timely voted to opt out of any proposed trust regime, thus acting to preserve its ability to manage its own property. Carrollton has also shown a deprivation of its state constitutional rights, or, alternatively, that it will suffer irreparable injury without the injunction. The potential hardship that Carrollton may endure—including total dissolution—far outweighs any potential harm to the PSL. Finally, there is no evidence that the issuance of this injunction will disserve the public interest. In fact, this is a classic example of a civil court exercising its jurisdiction to resolve a property dispute by applying neutral principles of law—without appealing to church doctrine. For all these reasons, Carrollton's request for a preliminary injunction is hereby GRANTED. I am instructing counsel for Carrollton to circulate a proposed order and submit it to the court for my signature.

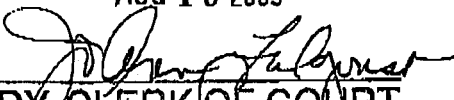
The temporary restraining order will remain in effect until the court signs an order granting the preliminary injunction. Furthermore, the preliminary injunction will remain in effect until the court rules on Carrollton's petition for a permanent injunction and declaratory judgment on October 13, 2009, unless these issues become moot after Carrollton's motion for summary judgment is heard on September 28, 2009.

Signed in Baton Rouge, Louisiana, this 18 day of August, 2009.

  
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Judge Kay Bates, 19<sup>th</sup> Judicial District Court

**FILED**

AUG 18 2009

  
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CLERK OF COURT