

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
 TWENTIETH JUDICIAL DISTRICT, PART II

THE CONVENTION OF THE PROTESTANT )  
 EPISCOPAL CHURCH IN THE DIOCESE )  
 OF TENNESSEE d/b/a THE DIOCESE OF TENNESSEE, )  
 a Tennessee Corporation and THE RIGHT REVEREND )  
 JOHN C. BAUERSCHMIDT, )  
 Plaintiffs, )  
 vs. )  
 THE RECTOR, WARDENS, AND )  
 VESTRYMEN OF ST. ANDREW'S PARISH, )  
 a Tennessee Corporation, et al. )  
 Defendants. )

F0-9  
 No. 09-2092-II  
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SUMMARY JUDGMENT

This lawsuit asks the Court to declare that the Plaintiff, The Convention of the Protestant Episcopal Church in the Diocese of Tennessee, d/b/a The Diocese of Tennessee ("Diocese"), is the owner of a parish church's real property, a claim vigorously disputed by the Defendant disassociating parish church, "The Rector, Wardens and Vestrymen of St. Andrew's Parish" (St. Andrew"). On April 5, 2010, the Court orally granted the Plaintiff's motion for summary judgment after extensive briefing and oral arguments by both parties; it is not necessary to reiterate all of the information filed in this matter. For purposes of this motion, the Court finds that the issue is a question of law, with no genuine issue of material fact which would necessitate a trial.

FINDINGS OF FACT

The Court finds the following facts to be undisputed and pertinent to the disposition of the motion for summary judgment:

The Protestant Episcopal Church in the United States of America is a hierarchical religious body in structure and governance, composed of essentially three tiers, each being bound by the decisions of

the higher tier, with the General Convention of the Protestant Episcopal Church exercising ultimate authority. The Plaintiff, The Convention of the Protestant Episcopal Church in the Diocese of Tennessee, d/b/a, The Diocese of Tennessee, operates at the second level and the Defendant, St. Andrew's, is found at the third tier which is composed of the individual churches, parishes and missions.

The Diocese has its own Constitution and Canons that supplement, and must not be inconsistent with, the Church's Constitution and Canons. Article II of the Constitution of the Diocese provides that the Diocese has acceded to and adopted the Constitution of the Protestant Episcopal Church in the United States of America. The Diocesan Constitution, adopted by the General Convention in 1789 has been revised throughout the years, with a copy of the 2003 Constitution attached to the verified complaint.

The Episcopal Church Canon II.6 (2), adopted in 1868, provides as follows:

It shall not be lawful for any Vestry, Trustees, or other body authorized by laws of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated or consecrated Church of Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.

This Canon has remained essentially unchanged since 1868.

The Episcopal Church Canon 1.7, Section 3, [Canon 7: *Of Business Methods in Church Affairs*] was adopted in 1940 and provides as follows:

No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.

This Canon has not materially changed since its adoption in 1940.

The Episcopal Church Canon 1.7, Section 4, [Canon 7: *Of Business Methods in Church Affairs*] was adopted in 1979 and provides as follows:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

This Canon has not materially changed since its adoption in 1979.

The Episcopal Church Canon 1.7, Section 5 [Canon 7: *Of Business Methods in Church Affairs*] provides as follows:

The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.

In 1957, the Cheek family sold the real property located at 3700 Woodmont Boulevard, Nashville, Tennessee, and the subject of this motion, for \$50,000 to the Wardens and Vestrymen of the Church of the Advent, which, in 1966, conveyed the title and outstanding indebtedness to the Diocese by warranty deed.

The Defendant St. Andrew's parish was created as a mission by the Diocese in 1889 and granted permission by the Diocese to organize as a parish in the Diocese in 1960. When the mission congregation applied for membership in the Diocese in 1960, the members of the mission executed Articles of Association and acknowledged in writing that they would "accede to the constitution, canons, doctrine, discipline and worship of the Episcopal Church in the Diocese of Tennessee."

The Diocese's Canon 17 [New Parishes] Section 1 contains the wording for the Articles of Association and states, in pertinent part, as follows:

(2) The Parish acknowledges and accedes to the Constitution, Canons, Doctrine, Discipline and Worship of the Protestant Episcopal Church in the Diocese of Tennessee.

(6) The title to all real estate now owned or hereafter acquired by this Parish shall be vested as required by Canon 10, [Of Real Estate and Other Property].

(7) All real estate now owned or hereafter acquired by this Parish, title to which is vested in any manner as aforesaid, shall be held, sold, transferred, alienated, conveyed, mortgaged or encumbered, in whole or in part, only in conformity with the Constitution, Canons, Doctrine, Discipline and Worship of The Protestant Episcopal Church in the Diocese of Tennessee.

The Articles of Association of St. Andrew's Parish, Nashville contained these provisions with a slightly different wording in paragraph (6), stating

(6) The title to all real estate now owned or hereafter acquired by this Parish shall be vested in (a) the Convention of the Protestant Episcopal church in the Diocese of Tennessee, in trust for this Parish; or (b) the Rector, Wardens and Vestrymen of this Parish or (c) Trustees and their successors in trust for this Parish; or (d) a religious or general welfare corporation organized under the laws of the State of Tennessee.

The language in paragraph 6 of St. Andrews' Articles of Association did not follow the requirements of Canon 10 [Of Real Estate and Other Property] of the Diocese of Tennessee. Canon 10, Section 3, *How Title To Real Property Shall Be Vested*, states as follows:

- (a) After the adoption of this Canon, title to all real property thereafter acquired shall be taken and vested as follows:
- (1) If title is to be held by the Diocese, it shall be conveyed and held in the name of "The Convention of The Protestant Episcopal Church in the Diocese of Tennessee, a corporation."
  - (2) If title is to be held by an Parish, or by any Organization or Institution, which is incorporated under the laws of this state, then title shall be conveyed to it in its corporate capacity, but with these words added, "to be held subject to the Charter, Constitution and Canons of The Convention of The Protestant Episcopal Church in the Diocese of Tennessee, a corporation."
  - (3) If title is to be held by a Parish, or by any Organization or Institution, which is not incorporated, then title by deed shall be conveyed to "The Rector, Wardens and Vestry of \_\_\_\_\_ to be held subject to the Charter, Constitution and Canons of The Convention of The Protestant Episcopal Church in the Diocese of Tennessee, for the use and benefit of the Parish."

The language in the warranty deed from the Diocese to St. Andrews does not contain any of these provisions. However, Canon 10, Section 1 [Of The Use Of Property] also states:

All property of every kind and character, whether held by the Convention, or by a Parish or Mission, or by an Organization or Institution of this Diocese, and regardless of the manner in which title is vested, is held in trust to be used for the glory of God and the spread of His Kingdom, according to the Constitutions and Canons, and Doctrine, Discipline and Worship of the Protestant Episcopal Church in the United States of America and of this Diocese, and for the purposes and programs of said Church and Diocese.

Canon 10, Section 7 provides

If any property, real or personal, such as is referred to in Section 1 [see above] of this Canon be abandoned, or if it be devoted to uses not sanctioned by the Bishop as being in conformity with the Constitution and Canons and the Doctrine, Discipline, and Worship of the Protestant Episcopal church in the United States of America or of this Diocese, and their purposes and programs, it shall be the duty of the Bishop, and of The Bishop and Council, to take possession of title to said property, to be held in trust by the convention for such proper use.

(emphasis added).

In April, 1966, the parish incorporated as "The Rector, Wardens and Vestrymen of St. Andrew's Parish." At the time of incorporation, the parish incorporators again acknowledged and acceded in writing to the "constitution, canons, doctrine, discipline and worship of the Episcopal Church in the Diocese of Tennessee." Thereafter, St. Andrew's parish was made a constituent part of The Episcopal Church and the Diocese of Tennessee.

In November, 1966, the Diocese, through its Bishop at that time, executed a warranty deed, conveying title in the real property to "The Rector, Wardens and Vestrymen of St. Andrew's Parish."

In January, 1978, St. Andrews amended its corporate charter to delete the provision which stated "This corporation acknowledges and accedes to the constitution, canons, doctrines and worship of the Episcopal church in the Diocese of Tennessee."

On October 26, 2006, St. Andrew's Rector, James M. Guill, wrote the Bishop for the Diocese a letter, stating that the Vestry of St. Andrew's had "unanimously resolved to join the Diocese of Quincy [Illinois]" effective November 1, 2006. The resolution states, in part, that the 2003 General Convention

of The Episcopal Church (TEC) created a schism by electing a man to the episcopacy whose teachings and lifestyle are contrary to the Holy Scripture and Traditions of the Church, that the General Convention did not repent of its schismatic relations, and that the 2006 General Convention elected a person not qualified to be bishop. The document reflects St. Andrew's decision to disassociate and to separate itself from The Episcopal Church and the Diocese.

#### Conclusions of Law

Having considered these facts, the Court concludes as a matter of law that the real property and improvements located at 3700 Woodmont Boulevard, Nashville, Tennessee and the associated personal property are impressed with a trust in favor of the Diocese of Nashville.

The Court's reasoning is as follows:

When property disputes can be resolved without entanglement in religious doctrine, "[c]ivil courts have the general authority to resolve the question of church property ownership." *Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 3024-25, 61 L.Ed.2d 775 (1979). The State has a legitimate interest in the peaceful resolution of property disputes and in providing a civil forum where the ownership and control of church property can be determined. *Id.* Like the issue in *St. Andrew's Anglican Catholic Church v. Benemann*, No. 03A01-9105CH00172, 1991 WL 209871 (Tenn. Ct. App. October 21, 1991), the primary issue is a dispute over the ownership of Church property to be resolved according to Tennessee statutory law.

The Defendant, St. Andrew's Parish, contends that the controversy can be resolved by applying "neutral principles of law" by a secular court, therefore allowing state courts to resolve property disputes in which hierarchical church organizations are involved. *Jones*, 443 U.S. at 602, 99 S. Ct. at 3025 (States may adopt neutral principles of law in purely secular terms, avoiding decisions concerning religious doctrinal issues). Tennessee courts adopted the "neutral principles of law" doctrine many

years ago. *Fairmount Presbyterian Church v. Presbytery of Holston*, 531 S.W.2d 301, 306 (Tenn. Ct. App.

1975). The Tennessee Court of Appeals explained this doctrine in *Benemann, supra*:

Historically, Tennessee courts have not interfered with the internal administration of religious associations. Courts have jurisdiction to adjudge ecclesiastical issues only as a mere incident to the resolution of some property right. Therefore, the critical question is whether this is an ecclesiastical or property dispute.

To determine who owns the church property in question, this Court must determine which party constitutes the "true congregation" of St. Andrew's . . . However, such a resolution would require a civil court to pass upon questions of ecclesiastical government . . . in accordance with the canon laws and constitution . . . the resolution of such issues requires a greater knowledge of the [Protestant Episcopal] Constitution and canon laws than this Court possesses or has been referred to in the record . . . A civil court must defer to resolution of such doctrinal issues by the authoritative ecclesiastical body.

*Benemann*, 1991 WL 209871 at \*4 (citations omitted).

If this Court is to determine who owns the church property in question, both the real and personal property located at 3700 Woodmont Boulevard, an examination of the warranty deed using neutral principles of law is required. Such an examination reveals that the property was conveyed to "The Rector, Wardens and Vestrymen of St. Andrew's Parish, a Tennessee Corporation." To ascertain the owner(s) of the Corporation, the court examines the Articles of Incorporation, which reflects that the original incorporators who executed the Charter of Incorporation were Edwin L. Conley, W. R. Baker, H.L., Weatherby, Jr., Walter Sullivan and Lewis B. Hollabaugh, all of whom acknowledged and acceded in writing to the constitution, canons, doctrine, discipline and worship of the Episcopal Church in the Diocese of Tennessee, a provision which is set out in the Charter of Incorporation.

Next, the Court examines the constitution and canons of the Diocese which have been submitted in support of its claim of ownership. St. Andrew's Parish voluntarily sought to associate with the Diocese in 1960, six years before the incorporators met. The associating members of St. Andrew's

mission acknowledged and acceded to the Diocese's constitution and canons, which included Canon 17 set out above.

The Court also examines Canon 10 which states that all property of every kind and character, held by the by a Parish of this Diocese, and regardless of the manner in which title is vested, is held in trust to be used for the glory of God and the spread of His kingdom, according the Constitutions and Canons, and Doctrine, Discipline and Worship of the Protestant Episcopal Church in the United States of America and of this Diocese, and for the purposes and programs of said Church and Diocese. The Defendants contend that the Diocese's Canon 10 does not apply to them because the Articles of Association did not replicate the wording that they were instructed to follow as set out in Canon 17, Section 1 (5) which states "The title to all real estate now owned or hereafter acquired by this Parish shall be vested as required by Canon 10."

Further, they contend that they are not bound by Diocese's Canon 10 because the warranty deed did not include the specific language that Diocese's Canon 10, Section 3 required, that is, that the property "be held subject to the Charter, Constitution and Canons of The Convention of The Protestant Episcopal church in the Diocese of Tennessee, a corporation." However, "The Rector, Wardens and Vestrymen of St. Andrew's Parish, a Tennessee Corporation" acknowledged and acceded to all of the Canons of The General Convention of The Protestant Episcopal Church, including Title I, Canon 7, Section 5 which states that

The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.

Section 4 states

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the



particular Parish, Mission or Congregation remains a part of, and subject to, this church and its Constitution and Canons.

The original incorporators of "The Rector, Wardens and Vestrymen of St. Andrew's Parish, a Tennessee Corporation," established the Corporation for the purpose of

Promoting the cause of religion and piety, establishing order, and securing the advantages of the ministry and ordinances of the Church; and of supporting public worship, of building and maintaining churches, rectories, schools, hospitals, chapels, and other such religious, educational, or benevolent institutions as may be necessary or proper to the work of the ecclesiastical bodies, and of maintaining missionary undertakings. This corporation acknowledges and accedes to the constitution, canons, doctrine, discipline, and worship of the Episcopal Church in the Diocese of Tennessee.

Specific members of its congregation, including the Rector, have indicated to the Bishop of the Diocese that they no longer will adhere to the Diocese's constitution and canons. They reject the specific and affirmative acknowledgement and accession of the founding members to the Constitution and Canons of the Episcopal Church and the Diocese. These disassociating members claim that the founding members, in their Articles of Association, specifically omitted language that required the parish to adhere to the dictates of Canon 10, that is, that property be held "subject to the Charter, Constitution and Canons of the Convention of the Protestant Episcopal church in the Diocese of Tennessee."

The First Amendment proscribes the establishment of religion. U.S. Const. Amend. I. First Amendment values

are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. . . . [T]he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

*Fairmount Presbyterian Church, Inc.*, 531 S.W.2d at 305. Further, the United States Supreme Court has instructed the state civil courts that

The neutral-principles method . . . requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

*Jones v. Wolf*, 443 U.S. at 604, 99 S. Ct. at 3026.

In the present case, an examination of the deed, the Articles of Incorporation, the Articles of Association and the Constitution and Canons of The Episcopal Church and the Diocese reveals a trust imposed upon the property for the benefit of the Diocese and The Episcopal Church. Any further declaration would require the Court to resolve a religious controversy, which is forbidden by the First Amendment.

While the disassociating individuals have an unquestioned right to form another voluntary religious association and to organize the governance of a new congregation in whatever way they deem appropriate, they no longer accede to the Constitution and Canons of The Episcopal Church and the Diocese and accordingly, they are not entitled to claim any ownership interest to any property held in trust for the Diocese by "The Rector, Wardens and Vestrymen of St. Andrew's Parish, a Tennessee Corporation."

It is, therefore, **Ordered, Adjudged and Decreed** as follows:

The Plaintiff's motion for Summary Judgment is **GRANTED**. The Court declares that the real property, the improvements thereon and the personalty associated with the real property located at

3700 Woodmont Boulevard, Nashville, Tennessee is impressed with a trust in favor of the Diocese and The Episcopal Church, which shall have the sole right to occupy, possess and use the property in accordance with the Constitutions and Canons of The Episcopal Church and the Diocese, and as such, the Diocese is entitled to immediate possession of the Woodmont Property. Further, as a result of the trust in favor of the Diocese and The Episcopal Church, those individuals, including the Rector of St. Andrew's Parish, who have disassociated from or have indicated an intention to disassociate from the Diocese shall be enjoined from claiming any ownership interest to the real property located at 3700 Woodmont Boulevard and any associated personalty located in St. Andrew's Parish Church, or upon the real property where the Church building is located and/or its environs. The acts of any disassociating individuals who attended St. Andrew's Parish do not affect the validity or the existence of the trust established when the original incorporators of "The Rector, Wardens and Vestrymen of St. Andrew's Parish, a Tennessee Corporation" acceded to the Constitution and Canons of The Episcopal Church and the Diocese. The trust remains a viable entity unaffected by the actions of disassociating individuals. The Defendant shall provide an accounting to the Diocese for all property located on or associated with the Woodmont property.

Costs of this cause are assessed against the Defendant, for which execution may issue if necessary.

  
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