

RENDERED: JUNE 11, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001226-MR

ERNEST BOYD; DENNIS WHITE;
WILLIAM BISHOP; ONA DUNN;
AND SONA MAE CLAYTON

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARTIN F. MCDONALD, SENIOR JUDGE
ACTION NO. 08-CI-007634

REV. MATTHEW E. SMYZER, JR.

APPELLEE

OPINION
AFFIRMING IN PART,
VACATING IN PART AND REMANDING

** ** * ** * ** *

BEFORE: VANMETER, ACTING CHIEF JUDGE; FORMTEXT STUMBO
AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ernest Boyd, Dennis White, William Bishop, Ona Dunn, and
Sona Mae Clayton (collectively referred to as appellants) bring this appeal from a
February 13, 2009, summary judgment of the Jefferson Circuit Court in favor of

Reverend Matthew E. Smyzer, Jr., and dismissing appellants' complaints. We affirm in part, vacate in part, and remand.

Reverend Matthew E. Smyzer, Jr., became pastor of Beargrass Missionary Baptist Church in November of 2004. On January 28, 2008, members of the church conducted a meeting to vote upon whether Smyzer should continue as pastor. Some members were in favor of Smyzer continuing as pastor, and others opposed it. After compilation of the votes, the result was a 55-55 tie vote. Smyzer voted at the meeting as a member of the church.

Smyzer and members of the church were unable to resolve their disagreement regarding whether Smyzer would remain as pastor. Subsequently, on July 21, 2008, appellants filed a complaint in the Jefferson Circuit Court alleging that Smyzer "refused to comply with the will of the church as expressed by the vote of the majority of the membership." Appellants believed Smyzer was not a member of Beargrass Baptist Church and, thus, improperly voted on January 28, 2008. Smyzer did not file an answer, but instead on August 14, 2008, filed a motion to dismiss or, in the alternative, motion for summary judgment. He alleged that the court lacked subject matter jurisdiction, arguing that the claims raised in the complaint involved ecclesiastical issues. The court conducted oral argument on December 11, 2008, and entered an order on the same date permitting appellants to file an amended complaint asserting an additional allegation. Therein, appellants alleged that Smyzer "has through direction and/or in concert

with those individuals whom he has placed in charge of the financial affairs have totally disregarded the directives of the church.”

On December 31, 2008, Smyzer again filed a motion to dismiss the amended complaint or in the alternative, be granted summary judgment. By order entered February 16, 2009, the circuit court granted Smyzer’s motion for summary judgment and dismissed appellants’ action. The circuit court concluded that the complaint raised issues of a purely ecclesiastical nature over which the court had no authority:

The Court finds as a matter of law that the question of whether Smyzer is a member of the church is one that must be determined by church custom and any church policy on the matter. Additionally, whether Smyzer may vote when the question before the church is his retention as pastor also must be governed by church policy. This Court declines to entangle itself with the church’s internal affairs. Ecclesiastical doctrine should govern the disputes of these parties; these are not secular matters for the jurisdiction of this Court.

The summary judgment did not address the claims raised in the amended complaint. This was brought to the circuit court’s attention in a timely filed CR 59.05 motion. In the circuit court’s final order entered May 29, 2009, the court dismissed the amended complaint with prejudice also. This appeal follows.

Appellants contend that the circuit court erred by rendering summary judgment dismissing their action against Smyzer. Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v.*

Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991). Upon consideration of a motion for summary judgment, the record shall be viewed in a light most favorable to the nonmoving party, and all doubts must be resolved in that party's favor. *Steelvest, Inc.* 807 S.W.2d 476.¹

In this case, appellants filed a complaint and amended complaint. We shall initially consider whether the circuit court properly rendered summary judgment dismissing the claims raised in the complaint and then consider whether the court properly dismissed with prejudice the claims raised in the amended complaint. In the complaint, appellants essentially alleged that Smyzer was not a member of the Beargrass Baptist Church and improperly voted on January 28, 2008. Thus, appellants contend that a majority of the members of the church voted to oust Smyzer as pastor and that Smyzer refused to vacate the pulpit.

It is well-established that the question of membership in a church is purely an ecclesiastical matter over which the court has no jurisdiction. *See Music v. United Methodist Church*, 864 S.W.2d 286 (Ky. 1993). *See also*, 66 Am. Jur. 2d *Religious Societies* § 19 (2001). Succinctly stated, any issue concerning who is a member of a particular church is strictly nonjusticiable. *Prather v. Immanuel Baptist Church*, 296 S.W.2d 224 (Ky. 1956). As appellants' complaint quintessentially sought resolution of a membership question, we conclude that the

¹ As the circuit court considered "matters outside the pleadings," the motion to dismiss filed by Reverend Matthew J. Smyzer, Jr., was properly treated as a motion for summary judgment under Kentucky Rules of Civil Procedure 56. *Ferguson v. Oates*, 314 S.W.2d 518 (Ky. 1958).

circuit court properly determined that the complaint raised an ecclesiastical issue and, thus, properly dismissed same.

In the amended complaint, appellants alleged that “the church” rejected certain financial reports submitted by Smyzer and directed that bids be received from public accountants to audit church finances. Appellants further alleged that Smyzer and other unnamed individuals “totally disregarded the directives of the church” to obtain the bids. Appellants sought an injunction to compel Smyzer to obtain bids for the performance of an audit of church finances.

As previously pointed out, Smyzer did not file an answer but filed a motion to dismiss as to both the complaint and amended complaint. The action was dismissed by the circuit court upon the basis of lack of jurisdiction over purely ecclesiastical issues. In the summary judgment, the circuit court never mentioned any issues raised in the amended complaint; instead, the court only focused upon issues raised in the original complaint and further declined to address the issue upon appellants’ CR 59.05 motion. As noted, the circuit court dismissed the amended complaint with prejudice, and without comment.

Generally, a court has authority to decide issues relating to ownership and control of church property. *Parker v. Harper*, 295 Ky. 686, 175 S.W.2d 361 (1943); see also 66 Am. Jur. 2d *Religious Societies* § 43 (2001). And, in this Commonwealth, a member or members of a religious organization have standing to maintain an action concerning the property of the religious organization.

Damron v. Clifton, 305 Ky. 21, 202 S.W.2d 721 (1947).

Upon the face of the amended complaint, it appears that appellants, as members of Beargrass Baptist Church, sought to maintain an action relating to church finances. And, the circuit court omitted any mention or analysis in its summary judgment of the allegations contained in the amended complaint regarding the church finances and audit requests. Based upon the record before us, we are unable to determine whether the amended complaint raised a justiciable property issue or merely a nonjusticiable ecclesiastical issue. Without any discovery or other evidence in the record regarding this issue, there appears to exist a genuine issue of disputed material fact regarding church finances which constitutes a dispute over property of the church, and thus precludes summary judgment on this issue at this early stage of the proceeding. Accordingly, we vacate and remand to the circuit court for reconsideration of the issues raised in the amended complaint.

For the foregoing reasons, the summary judgment of the Jefferson Circuit Court is affirmed in part, vacated in part, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Darryl T. Owens
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BRIEF FOR APPELLEE:

Demetrius O. Holloway
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