

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000165-MR

REV. KEVIN NELSON; GREGORY
DOWNS; BILLY WILLIAMS;
AND ANTHONY SILMON

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 06-CI-001120

MARY BAKER; DONALD BARBOUR;
DORIS BARBOUR; DORIS CARTER;
CAROL LUMPKINS-COCHRAN;
SCOTT COX; JACKIE FREEMAN;
MONNIE HANKINS; PEGGY HANKINS;
CLARENCE HAMBRICK; MATTIE
HASKINS; MILTON HASKINS;
EVA HOUSEAL; ALEX JONES; TONI
JONES; CHUCK MATTHEWS; NANCY
MATTHEWS; LINDA MCGHEE;
EUGENE MORROW; LUCILLE O'BANNON;
BRENDA PAYNE; ANN PLEASANT;
MELVIN PLEASANT; ELOIS SIMS;
PATRICIA STROTHER; CHUCK TRICE;
WALTER TYTUS, DECEASED; JERRY
WILLIAMS; AND PATRICIA WILLIAMS

APPELLEES

OPINION
REVERSING

** **

BEFORE: LAMBERT AND MOORE, JUDGES; ISAAC,¹ SENIOR JUDGE.

LAMBERT, JUDGE: Before this Court is a fourth appeal arising from a suit filed by members (now former members) of the First Baptist Church of Jeffersontown seeking injunctive relief related to the Church's business and financial affairs. The issues before this Court are whether the circuit court had jurisdiction over the dispute as it concerns the internal governance of the Church, whether the circuit court erred in failing to dismiss the claims due to lack of standing and because the controversy is moot, and whether the relief granted exceeded what was permitted by the Church's constitution and bylaws. After careful review of the record and the parties' briefs, we reverse.

The First Baptist Church of Jeffersontown (the Church) is a Congregationalist church in Jefferson County, Kentucky. When a previous pastor decided to retire, the congregation voted to adopt a constitution and bylaws to govern the practices of the Church, including membership, the selection and roles of the Church leaders, and the roles of the various committees. The constitution and bylaws went into effect in 2000.

Because this case's convoluted procedural history bears directly on our decision, we shall set forth the lengthy history of this suit in detail. In 2006,

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

three members of the Church, Monnie Hankins, Jackie Freeman, and Chuck Matthews, filed a verified complaint against the Church's current pastor, Rev. Kevin Nelson; Anthony Silmon, the Church's financial chairman; Billy Williams, the co-financial chairman; and Gregory Downs, the chair of the Deacon Board (the defendants). In their complaint, the members alleged that the Church's money was being spent in disregard of its constitution and bylaws and that the defendants had refused to provide information concerning the Church's financial status and affairs to them when requested. The members demanded that the defendants be required to repay to the Church any improper expenditures made, and that a Certified Public Accountant be appointed to conduct an independent audit. They additionally sought injunctive relief to prevent the defendants from disbursing Church funds. Shortly thereafter, the circuit court permitted the filing of an amended complaint naming additional plaintiffs. A second amended complaint was later filed concerning the holding of Church business meetings.

On July 8, 2006, prior to filing an answer, the defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. They alleged that the circuit court could not interfere with the internal affairs of the Church, because such is to be decided by the congregation by majority vote. By order entered December 12, 2006, the circuit court denied the motion to dismiss. As a basis for this ruling, the Court noted that the members were alleging that the will of the majority, as set forth in the constitution and bylaws, was not being followed, specifically related to the audit process. It ultimately held that, "[a]t this

juncture in time, Defendants have not shown that this is an ecclesiastical matter in which this Court should not be involved.”

Following the entry of this order, the defendants filed an answer to all of the allegations in the complaints. In September 2007, the members filed a motion to compel an independent audit and expense review of years 2005, 2006, and 2007 year to date, by someone other than Toni Levy, who had performed such audits in the past. The circuit court denied this motion following a hearing later that year.

On March 20, 2008, the members, having apparently abandoned their prior accusations of financial impropriety, moved to file a third amended complaint, this time alleging failure to: 1) conduct regular business meetings four times per year; 2) provide monthly financial reports to the Church; 3) conduct annual audits; and 4) make annual reports of receipts and disbursements. The members requested injunctive relief to require the defendants to immediately produce annual reports for 2006 and 2007. The defendants objected to the motion, arguing that the new claims were purely ecclesiastical in nature and were for a different time period than the original complaint. Additionally, the members moved the court to compel the defendants to produce an official active membership list for 2005 through 2008, stating that member-plaintiffs were being kicked out of the Church. The circuit court granted the motion to compel production of the membership list on April 7, 2008, and granted the motion to file a third amended complaint on June 4, 2008.

On June 30, 2008, the defendants moved to dismiss the third amended complaint for failure to state a claim upon which relief may be granted, arguing

that the relief requested was not authorized by the Church's constitution or bylaws. The members also moved for summary judgment on the third amended complaint, arguing that no issues of material fact existed and that the defendants had failed to comply with the constitution and bylaws related to the provisions described in the complaint. On October 6, 2008, the circuit court entered an opinion and order ruling on these motions and addressing the members' demands regarding hard copies of monthly reports, business meetings, and the hiring of an external auditor. The court first held that it had jurisdiction to decide these issues based upon the law of the case as well as upon the holding in *Music v. United Methodist Church*, 864 S.W.2d 286 (Ky. 1993), that permits a court to intervene where an issue pertains to property rights rather than to matters of faith. The court then stated that the constitution and bylaws constituted a contract, subject to the laws governing contract interpretation. Finally, it addressed the specific issues raised in the motions. The court declined to order an external audit because there was no requirement for one in the constitution or bylaws; it interpreted the documents to require that the Church hold business meetings at least three times per year; and it declined to require that hard copies of the financial documents be provided at the business meetings, again because this was not required by the constitution or bylaws. However, the court set forth several requirements as to what data must be kept in the Church's finance room and that any reports be prepared and made available to the members for review at least one week before each business meeting.

On November 5, 2008, the defendants filed a notice of appeal from the above opinion and order (Appeal No. 2008-CA-002093-MR). However, on October 16, 2008, the members filed a timely motion to amend the opinion and order, requesting that the circuit court amend that order to include a provision that it would maintain jurisdiction over the matter for enforcement purposes. In support of the motion, the members related that they were still being denied access to the financial records due to their alleged “bad standing” in the church. The defendants objected to the motion, arguing that the circuit court did not have jurisdiction over the sole issue raised; namely, membership and discipline.

On December 2, 2008, the members moved the circuit court to order the defendants to show cause for their failure to comply with the provision of the October 6, 2008, order imposing a permanent injunction that financial data be maintained in the finance room and made available to all active members. In an order signed on December 5 and entered on December 8, 2008, the circuit court opted to continue the case for a show-cause hearing later that month. In addition, the court specifically stated that “[t]he Plaintiffs are all active members of the church, having attended church during the past year” and that “[o]ne or more Plaintiffs have been denied access to the books, records and accounts in the finance room of the church.”

On December 5, 2008, the defendants moved the circuit court to suspend the injunctive relief ordered so that the status quo could be maintained during the

appeal. They asserted that damage would be done if the members were permitted to view the documents and then the order was reversed on appeal.

Following the hearing of December 9, 2008, the circuit court entered a supplemental and amended order on December 11, 2008. This order slightly revised language in orders entered October 6 and December 8, 2008, and specifically reserved a ruling on the pending motion to suspend injunctive relief until after the scheduled show-cause hearing.

At the show-cause hearing on December 19, 2008, the members argued that the defendants failed to comply with previous orders concerning access to the financial records. Discussion ensued concerning a church meeting on December 12, 2008, to review the requested the documents, which apparently went well. The members then asked for more documents, and the next scheduled meeting was canceled by the defendants due to a conflict. During the hearing, the defendants stated that they would be producing the rest of the documents on January 16, 2009. At that point in the hearing, the circuit court indicated that the matter was remanded unless further problems arose. The parties discussed the existence of the pending appeal and whether the defendants would be filing a motion to dismiss the appeal. They then discussed that a new final judgment had been created, made up of all three orders and amendments. However, the court stated that the order entered October 6, 2008, was final and appealable, but that the members' motion for the court to retain jurisdiction became part of the final judgment.

On December 29, 2008, the defendants moved to dismiss the pending appeal of the October 6, 2008 opinion and order. A three-judge motion panel of this Court granted the motion on February 4, 2009.

On January 23, 2009, the members filed a renewed motion for a show-cause hearing, citing the defendants' continuing refusal to comply with the court's orders and allow meaningful access to the financial records. The same day, the members also filed a Kentucky Rules of Civil Procedure (CR) 65.04 motion for a temporary injunction ordering the defendants to produce the financial records for inspection. On February 9, 2009, the circuit court granted the members' motion for an injunction and ordered that "the defendants shall, beginning on February 11, 2009, produce the financial records described as Exhibit 44, a monthly financial statement, along with the cash assets balance sheets, for each month from January, 2006 through date, from 9 to 5 on business days on the church premises." The order further permitted the members to take whatever notes they wished and did not provide any time limitation for reviewing the data. The order concluded with a recitation that it was final and appealable, and that it "supplements the court's prior orders in this matter." Immediately following the entry of this injunction, the defendants filed a notice of appeal of the December 12, 2006, October 6, 2008, December 8, 2008, December 11, 2008, and February 9, 2009, orders (Appeal No. 2009-CA-000248-MR).

The defendants then moved the circuit court for interlocutory relief during the appeal so that the injunctive relief granted on February 9, 2009, would be

suspended. Also on February 9, 2009, the circuit court denied this motion. The defendants then filed a CR 65.08 action for relief with this Court (Appeal No. 2009-CA-000245-I), which included a motion for emergency relief. The Court of Appeals granted emergency relief in an order entered February 10, 2009, staying the circuit court's February 9, 2009, order until such time as a three-judge panel could resolve the underlying CR 65.08 motion. In this order, the Court questioned the authority of the circuit court to continue to enter orders while Appeal No. 2008-CA-002093-MR was still pending, and expressed reservations about whether *Music v. United Methodist Church*, 864 S.W.2d 286 (Ky. 1993), supported its decision that it had jurisdiction to proceed.

On February 16, 2009, the defendants moved this Court to reconsider the order dismissing Appeal No. 2008-CA-002093-MR and reinstate that appeal or clarify the order to state that the October 6, 2008, order was not final or appealable.

On March 13, 2009, this Court denied a second motion for emergency relief in which the members sought an order precluding the defendants from taking steps to affect the application or operation of the Church's constitution and bylaws. In denying the motion, this Court stated that the members failed to demonstrate that the relief they were requesting had first been presented to and ruled on by the circuit court. The Court went on to explain as follows:

At the February 9, 2009 hearing on respondents' motion for a temporary injunction, they specifically asked the trial court to withhold ruling on the question of whether the Church could hold a meeting on March 15, 2009, for the purpose of repealing its by-laws. CR 65.08 itself makes clear that this Court is without authority to rule

upon respondents' entitlement to a temporary injunction until the trial court has had an opportunity to rule. Here, although review of the February 9 hearing confirms that the matter was addressed to the circuit court, respondents unequivocally requested that it not rule upon its motion for stay of the March 15 meeting until a later, specified date. Further, the trial court itself, having considered the arguments of counsel, agreed not to rule on the motion, assuming the matter would go forward on March 15, 2009.

We note that the record certified for the present appeal does not include a recording of the February 9, 2009, hearing.

During the church meeting of March 15, 2009, the congregation voted to rescind the Church's constitution and bylaws.

On April 17, 2009, this Court issued an order in the two pending appeals (2009-CA-000245-I and 2009-CA-000248-MR), directing the defendants/appellants to show cause why the appeals should not be dismissed as moot due to the repeal of the Church's constitution and bylaws at the March 15, 2009, meeting. Both parties responded, and the Court entered an order dismissing the appeals as moot on July 22, 2009. The order reads, in part, as follows:

On April 17 this Court directed the appellants to show cause why these appeals should not be dismissed as moot. In their response the appellants concede that the church's March 15 vote to rescind its bylaws rendered these appeals moot. The appellants also point to the circuit court's statement that its "rulings, based on the Constitution and Bylaws, are subject to amendment consistent with the procedure set forth therein," and request that this Court determine that the circuit court orders are moot. The appellants cite *Thomas v. Lewis*, 224 Ky. 307, 6 S.W.2d 255 (1928), in support of its argument that the church has the authority to determine its bylaws.

Having considered the appellants' response to the April 17 show cause order and the appellees' reply, this Court finds insufficient cause to allow these appeals to proceed. The circuit court is the appropriate forum to first determine whether its appealed orders are moot or unenforceable. The Court ORDERS that the above-captioned actions be DISMISSED. The motions for CR 65.08 relief and the appellants' motion for leave to file a reply to the response are DENIED AS MOOT.

Also on July 22, 2009, this Court denied the defendants' motion to reconsider the order dismissing Appeal No. 2008-CA-002093-MR without any further discussion as to whether the October 6, 2008, order was final and appealable.

At this point procedurally, the matter returned to the circuit court. On September 17, 2009, the members filed a renewed motion for the court to enter a show-cause order. In the motion, the members requested that the defendants be ordered to show cause why they should not be held in contempt for their failure to comply with the February 9, 2009, order once their appeals from that order had been dismissed. In support of the motion, the members attached a copy of their attorney's letter, dated September 2, 2009, to the attorney representing the defendants:

The Court of Appeals entered dismissal orders in both pending appeals on July 22, 2009. As more than thirty days have passed since the entry of those orders, the final judgment in this action is Judge Shake's February 9, 2009 order, along with the earlier orders incorporated with it. My clients expect that your clients will comply with Judge Shake's final order, and are prepared to review the documents ordered produced within the next 72 hours. Please confirm that the documents are ready for review.

They also attached a letter in response, dated September 3, 2009, rejecting their request to review the documents within the next seventy-two hours because the basis for the members' demand was no longer valid, since the Church's constitution and bylaws had been repealed. The letter went on to state that "as these day-to-day decisions are in the hands of Pastor Nelson, the Church has decided not to allow your clients to review any documents. Any further action on this case by your clients will be deemed an act of defiance against the Church leadership and the Church and your clients will be dealt with accordingly." Finally, the letter pointed to the Court of Appeals' statement in its order concerning its reservations about whether the circuit court had jurisdiction at all, and stated that it would appeal the jurisdiction issue to the Court of Appeals if the circuit court were to again order production of the documents.

On October 8, 2009, the defendants filed a response to the show-cause order, which the circuit court later converted into a motion for summary judgment, upon the defendants' request. The defendants argued: 1) that the members lacked standing to seek compliance with the February 9, 2009, order because they were no longer members of the church, and 2) that the circuit court lacked jurisdiction over the case and subject matter, upon the repeal of the constitution and bylaws, because the court is not permitted to involve itself in the internal operations of a church on issues of membership and discipline. Furthermore, the defendants asserted that the court's earlier orders were based upon its interpretation of the constitution and bylaws, which no longer existed. In response, the members argued that a material

issue of fact remained as to the propriety of the rescission of the constitution and bylaws, that the rescission did not apply retroactively, and that the “reservation” concerning jurisdiction made in the order of the Court of Appeals was not binding because that issue was not before the Court at that time. In reply, the defendants asserted that it was appropriate to revisit subject matter jurisdiction because the nature of the case had changed. They also asserted that the members waived any opportunity to challenge the vote to rescind when they failed to raise a timely objection during the meeting.

On January 8, 2010, the circuit court entered an opinion and order partially granting and partially denying the defendants’ motion for summary judgment. After a lengthy analysis of cases addressing the role of Kentucky courts as arbiters among church members, which the court essentially concluded was limited to deciding property rights for purposes of this case, the court held:

[T]his Court has jurisdiction to decide the property rights of the Plaintiffs asserted prior to the March 15, 2009 vote, pursuant to the rights granted by the constitution and by-laws that existed prior to March 15, 2009. Those rights which represented the will of the majority until purportedly repealed on March 15, 2009, have been affirmed by prior final orders of this Court and the Plaintiffs are entitled to the relief heretofore granted, including review of the financial records pursuant to Injunction Order entered February 9, 2009. However, the Court *does not* have jurisdiction to determine the Plaintiffs’ status as church members since being informed of their removal or the validity of the vote rescinding the by-laws and constitution of the church. With respect to those issues, summary judgment in the Defendants’ favor, based on jurisdiction, is proper.

This appeal by the defendants (hereinafter, the “appellants”) follows.

In their brief, the appellants raise three arguments. First, they assert that the circuit court lacked jurisdiction based upon the First Amendment's prohibition against interfering with religion. Second, they argue that the circuit court erred when it failed to dismiss the members' suit upon remand, both because the suit became moot when the constitution and bylaws were repealed, and because the now former members lacked standing. Finally, the appellants argue that the circuit court exceeded the bounds of the constitution and bylaws in the relief it granted.

Our standard of review is set forth in *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996):

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. *Goldsmith v. Allied Building Components, Inc.*, Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 480 (1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose*, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . ." *Huddleston v. Hughes*, Ky.App., 843 S.W.2d 901, 903 (1992), *citing Steelvest, supra.* (citations omitted.).

The parties do not claim that any genuine issues of material fact exist for purposes of the issues raised in this appeal. Therefore, our review is limited to whether the circuit court erred as a matter of law in holding that it had jurisdiction to decide the property rights asserted prior to March 15, 2009, and that the members were entitled to the relief granted to them prior to that date.

The first issue we shall address is appellants' argument that the circuit court lacked jurisdiction to resolve the dispute in this case. For the reasons set forth herein below, we agree with the appellants that the circuit court lacked the requisite jurisdiction to decide the present matter.

Before we may reach the merits of this argument, we must first address the members' contention that the jurisdictional arguments are not properly before this Court. They assert that the appellants are barred from seeking review on this issue because jurisdiction was the subject of the 2008 appeal that was dismissed on their motion. Therefore, the members argue that continuing litigation of this issue is barred by the law of the case or by collateral estoppel. We disagree, and hold that the members are permitted to raise this issue in the present appeal.

In support of this argument, the members cite to the recent opinion of *Brown v. Commonwealth*, 313 S.W.3d 577 (Ky. 2010), in which the Supreme Court of Kentucky discussed the law-of-the-case doctrine.

“Law of the case” refers to a handful of related rules giving substance to the general principle that a court addressing later phases of a lawsuit should not reopen questions decided by that court or by a higher court during earlier phases of the litigation. . . .

Although in general the law-of-the-case doctrine applies only to matters the merits of which an appellate court has decided, *Davis v. Island Creek Coal Company*, 969 S.W.2d 712 (Ky. 1998), an extension of the core law-of-the-case doctrine is the rule that precludes an appellate court from reviewing not just prior appellate rulings, but decisions of the trial court which could have been but were not challenged in a prior appeal. . . . Unlike the core law-of-the-case doctrine, however, this extension barring issues not raised in a prior appeal is more accurately understood as a type of waiver. This is so because the extension hinges not on a previous appellate decision on the barred issue establishing the law of the case, but instead on the party's inaction in failing to raise the issue in a manner consistent with the court's general policy against piecemeal appeals. *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735 (D.C.Cir. 1995). It is this waiver extension of the law-of-the-case doctrine that the Commonwealth would erect here against review of its DNA evidence, but the waiver rule applies only where a "ruling of law is made based on existing law and that ruling has gone unchallenged during the original appeal." *Sherley*, 889 S.W.2d [794 (Ky. 1994)] at 798. *See also Crocker*, 49 F.3d at 741 n. 2 ("The waiver rule ... applies only when the trial court has expressly or impliedly ruled on a question and there has been an opportunity to challenge that ruling on a prior appeal.... If the trial court has not affirmatively ruled, the waiver doctrine would be inapplicable.").

Brown, 313 S.W.3d at 610-11. The members rely upon this statement of the law to argue that the appellants waived their right to raise the jurisdictional argument in the present appeal because they had previously appealed the issue of jurisdiction, but those appeals had been dismissed on the members' motion. We disagree.

The issue of jurisdiction in this case has never been considered by an appellate court, and the circumstances have been such that the appellants were unable to do so prior to this appeal. First, we consider that the 2006 order denying

the motion to dismiss was not a final order upon entry, but rather was an interlocutory order subject to later modification by the circuit court or review upon the entry of a final judgment. Upon the entry of the October 6, 2008 order, which was undoubtedly a final judgment when it was entered because it decided all of the claims of all of the parties, *see* CR 54.01, the jurisdictional rulings in both that order and the 2006 order were subject to review on appeal. And the appellants did file an appeal. However, prior to filing of the notice of appeal by the appellants, the members filed a motion to amend the judgment pursuant to, we presume, CR 59.05, which tolled the time for filing a notice of appeal of the October order. Accordingly, the notice of appeal filed while the motion to amend was still pending was therefore premature. *See Johnson v. Smith*, 885 S.W.2d 944, 950 (Ky. 1994) (“We hold that these movants’ notices of appeal were not fatally defective simply because they were filed before the trial court ruled on a post-judgment motion made by other parties. The notices of appeal filed forthwith relate forward to the time when final judgment was entered disposing of post-judgment motions made by others.”). For further discussion related to the premature filing of a notice of appeal, *see James v. James*, 313 S.W.3d 17 (Ky. 2010).

The circuit court then considered the motion to amend, among others, and essentially granted the motion to amend by entering additional orders amending and supplementing the original order. When the circuit court entered the additional orders, the October 6, 2008 order became interlocutory. The

jurisdictional issue was not subject to appeal until a subsequent final order had been entered.

The next final order was the injunction entered February 9, 2009, which was also appealed. And, while we cannot know what would have happened with the 2009 appeals had this Court not issued the show-cause order, those appeals were dismissed as moot based upon the repeal of the constitution and bylaws prior to a decision being rendered. Therefore, the appellants have never had the opportunity to seek review of the jurisdictional issue before an appellate court, and we cannot hold that they waived their right to seek review from this Court by any inaction in the past. Accordingly, the appellants are not prohibited by the law-of-the-case doctrine from raising the jurisdiction issue in this forum.

For their second argument as to why the issue of jurisdiction is not properly before this Court, the members state that the appellants are barred by the doctrine of collateral estoppel. They rely upon this Court's discussion in *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 429-34 (Ky. App. 2008), addressing the difference between subject matter and particular case jurisdiction. Based on this discussion, the members contend that the present matter addresses the issue of particular case jurisdiction, rather than subject matter jurisdiction. Because they contend that the October 6, 2008 opinion became final once the appeal was dismissed, the members argue that the appellants are impermissibly attempting to collaterally attack the now final judgment. In their reply brief, the appellants dispute the applicability of *Hisle* to the present case and

point out that this issue does in fact address whether the circuit court has subject matter jurisdiction to proceed based upon the prohibition against courts involving themselves in ecclesiastical matters. We agree with the appellants' argument that the members' collateral estoppel argument has no merit.

In *Hisle*, this Court presented a detailed analysis of the legal concept of jurisdiction, describing it as “a fundamental concept that goes to the very heart of a court to act or decide a case.” 258 S.W.3d at 428. The Court recognized there are three types of jurisdiction: personal jurisdiction, which addresses the court's authority over a specific person or persons; subject matter jurisdiction; and particular case jurisdiction. Addressing the interplay of subject matter and particular case jurisdiction, the Court explained:

Subject matter jurisdiction concerns the very nature of the court's creation under constitutional provisions. Particular case jurisdiction is a subset of subject matter jurisdiction in that a court that lacks subject-matter jurisdiction over an action will also always lack particular-case jurisdiction, but a court can have proper subject-matter jurisdiction over an action, but nonetheless lack particular case jurisdiction.

* * * *

Particular case jurisdiction generally involves more specific so-called “jurisdictional facts.” A “jurisdictional fact” has been defined as “[a] fact that must exist for a court to properly exercise its jurisdiction over a case, party, or thing.” BLACK'S LAW DICTIONARY 857 (7th ed. 1999). This definition is somewhat circular and not particularly helpful. Some courts have linked jurisdictional facts to factual prerequisites established by statute or rule that are treated as affirmative defenses such as limitations periods or failure to state a claim,

although clearly not all affirmative defenses should be treated as involving jurisdictional authority. . . .

Hisle, 258 S.W.3d at 429-30 (some internal citations, quotation marks, and brackets omitted).

The *Hisle* Court next addressed the effect that a lack of either subject matter or particular case jurisdiction would have on a court's judgment:

It is well-established that a judgment entered by a court without subject matter jurisdiction is void. In addition, since subject matter jurisdiction concerns the very nature and origins of a court's power to do anything at all, it cannot be born of waiver, consent or estoppel, and may be raised at any time.

On the other hand, lack of particular case jurisdiction merely renders a judgment *voidable*, rather than *void ab initio*. In *Dix v. Dix*, 310 Ky. 818, 822, 222 S.W.2d 839, 841 (1949) (holding judgment granting a wife fee title to a house in a divorce action contrary to the statutory requirements was not void for lack of subject matter jurisdiction), the court commented that "where the court has jurisdiction of the parties and subject matter, the judgment, if erroneous, is voidable, not void." . . . Any error rendering a judgment voidable cannot be challenged in a collateral action and is subject to consent, waiver, or estoppel.

Hisle, 258 S.W.3d at 430-31 (emphasis in original, some internal citations, quotation marks, brackets, and footnotes omitted).

The members contend that the present matter concerns the circuit court's particular case jurisdiction, rather than subject matter jurisdiction, as the circuit court has the power to grant or deny injunctive relief and to decide disputes based upon a written agreement, which is what was requested in this case. They argue that, because the appellants failed to prosecute their prior appeals of the

jurisdictional ruling, they have waived their opportunity to do so and may not now collaterally attack that ruling. We specifically disagree with the members' argument and hold that this issue addresses itself to subject matter jurisdiction, since this case concerns the very nature and origin of the court's power to act at all; namely, whether the court can proceed in the realm of the traditionally mandated separation of church and state. Therefore, the appellants are not collaterally estopped from raising the issue of subject matter jurisdiction before this Court.

Because we have held that neither the law-of-the-case doctrine nor collateral estoppel prevents the appellants from raising the jurisdictional argument in this appeal, we shall now address the merits of that issue.

The appellants argue that the circuit court lacked jurisdiction based upon the First Amendment to the United States Constitution, which provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S.C.A. Const. Amend. I. For a general statement of this body of law, we seek guidance in 66 Am. Jur. 2d *Religious Societies* § 13 (2010).

Generally, courts have no authority to resolve religious disputes. Civil courts will not interfere in religious societies with reference to their ecclesiastical practices. Thus, so long as no civil or property rights are invaded, a church member has no right to invoke the supervisory power of a civil court in a matter of ecclesiastical jurisdiction. Ecclesiastical matters include doctrines, creeds and proper modes of exercising one's belief.

However, secular courts will adjudicate religious disputes under the “neutral principles of law doctrine” that calls for a completely secular examination by civil courts into church documents, deeds to the property in question, state statutes, and other relevant evidence to determine ownership; such determinations must be made exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. In applying neutral principles to resolve church-related disputes, a court must not consider doctrinal matters, deferring to the resolution of any doctrinal issue by an authoritative ecclesiastical body. [Footnotes omitted.]

We turn next to 66 Am. Jur. 2d *Religious Societies* § 19 (2010), addressing congregational churches:

In churches where each congregation is supreme, the church may adopt rules and regulations as may meet with the approval of the majority. If, in the adoption, there is any error, mistake, or irregularity that does not affect civil or property rights, the action may be corrected only by the membership. All matters of membership and the rights of members, as such, are addressed solely to the society’s officers, except in cases where the civil rights of an individual are at stake or property is involved. A court lacks jurisdiction to grant any legal or equitable relief on individual claims for exclusion from membership in a church with a congregational form of government. Any question of membership is nonjusticiable, even in a dispute centering on church property. [Footnotes omitted.]

In *Thomas v. Lewis*, 224 Ky. 307, 6 S.W.2d 255, 257-58 (1928), the former Court of Appeals presented a thoughtful and detailed examination of the role of courts in church disputes. Describing the Baptist Church, the Court stated:

A Baptist Church is a pure democracy, and in all matters relating to its government, election of its officers, its articles of faith, and the management of its affairs the local congregation present and voting at a meeting

regularly held, on any question, determines the matter finally until the decision is likewise revoked by the congregation. The local congregation determines, by its own by-laws, resolutions, or orders, the time and place as well as the method of ascertaining the will of the majority. From the determination of a question by a majority of the congregation there is no appeal to any ecclesiastical authority. A Baptist congregation, as long as it acts as a local church functioning under its own laws and regulations, may say to all mankind that, "Mine are the gates to open and mine are the gates to close." No power may interfere with the authority of the local congregation so exercised.

Thomas, 6 S.W.2d at 258. Addressing the involvement and jurisdiction of the courts, *Thomas* provided:

The jurisdiction of courts of equity in certain cases involving the use of church property has been recognized by this court from the organization of this state. *Gibson v. Armstrong*, 46 Ky. (7 B. Mon.) 481; *Gartin v. Penick*, 68 Ky. (5 Bush) 112; *Perry v. Wheeler*, 75 Ky. (12 Bush) 541. The church cannot control any civil right or duty, and the civil power has no authority to secularize the church, or to interfere with the exercise of its constitutional ecclesiastical jurisdiction. The organic law of the church has been held to be a contract between all the parties to it, and, as these parties are entitled as citizens to the protection of the paramount Constitution of the state against all breaches of their contracts, civil authority has jurisdiction over the constitution of the church as a contract to protect the members of the church against unconstitutional invasion of their civil rights whenever such invasion is attempted by the ecclesiastical government. It must never be overlooked that the church alone has jurisdiction of communion, faith, or discipline, and the members must submit to such rules and regulations governing these matters as may be prescribed by their church, but the church does not always have exclusive jurisdiction over property or personal liberty, or over any right which it is the duty of the civil power to protect. Therefore, when a question arises involving the right to use property belonging to a church or the

ownership of such property, the jurisdiction of civil courts may be invoked to determine property rights. In determining property rights under such circumstances courts must take into consideration the organization and government of the church and restrictions in the title to the property to determine where the rights of property lie.

Id. at 257. It concluded:

In rare instances where the local congregation [of a Baptist church] has ceased to function, the jurisdiction of courts may be invoked to determine property rights, but no such question is presented by this record. All questions as to whether the congregation has legally acted are questions that must be determined by the congregation itself, unless restrictions are found on its rights to control its property. The minority is always bound by the majority in a Baptist congregation.

Id. at 258. See also *Prather v. Immanuel Baptist Church*, 296 S.W.2d 224, 225 (Ky. 1956) (“church members may only invoke judicial relief if they can establish that their civil rights (which would include property rights) have been violated.”); *Connoley v. Smith*, 255 Ky. 630, 75 S.W.2d 222, 222 (1934) (“[a]ny error, mistake, or irregularity in [a congregation’s] action must be corrected by the membership of the church, and the courts will never interfere, unless some civil or property right is violated.”).

Many years later, the Supreme Court of Kentucky recognized in *Music v. United Methodist Church*, 864 S.W.2d 286, 287 (Ky. 1993), that “the United States Supreme Court has held that civil courts have no role in deciding ecclesiastical questions.”

The United States Supreme Court has adhered to the proposition that the First and Fourteenth Amendments permit heirarchical [sic] religious organizations to

establish their own rules and regulations for internal discipline and government and to create tribunals resolving disputes over these matters. . . . Civil courts may intervene in ecclesiastical errors, however, if there is fraud, collusion or arbitrariness.

Id. There is no allegation of fraud, collusion, or arbitrariness in this case.

Additionally, *Music* addressed the United States Supreme Court's adoption of a "neutral principles" test, which would permit "a court to interpret provisions of religious documents involving property rights and other nondoctrinal matters as long as the analysis can be done in purely secular terms." *Id.* However, this exception is generally limited to cases that involve church property disputes. *Id.* at 288.

The appellants contend that the circuit court misconstrued controlling precedent when it determined that it had jurisdiction to decide the claims raised in this case based upon the property right exception. They argue that the members never asserted or established that a civil or property right had been violated. They also cite to a plethora of caselaw and secondary materials confirming that membership in a church is not a property right, nor do contributions to a church create a property right in the assets of the church. On the other hand, the members contend that the court is permitted to intervene in this case because the matter may be decided using neutral, secular principles of contract law.

We have examined all of the cases and materials relied upon by the parties and, based upon this examination, we must conclude that the circuit court lacked subject matter jurisdiction to proceed in the matter. The Church's financial

records and method of presentation to the congregation are clearly matters of internal governance and organization, and are, therefore, not subject to interference by the court. Furthermore, we agree with the appellants that the members have not asserted a property right as contemplated by the cases establishing and interpreting the neutral principles exception. The exception applies in disputes concerning actual church property, such as in the event of a schism or a dispute between separate churches as to which body actually owns or has the right to a particular piece of property. *See Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969), for discussion of church property disputes. Here, there is no such argument concerning the right to church property. Rather, this case concerns the internal method by which the Church's leaders permit the active members to view the financial documents. This is clearly an ecclesiastical matter of internal church governance, in which the court has no place. Therefore, the circuit court erred as a matter of law when it concluded that it had jurisdiction over the subject matter of the present case, and declared that the members were entitled to the relief provided under its earlier orders.

Because we have held that the circuit court did not have jurisdiction in this action, we need not address the appellants' remaining arguments regarding mootness, standing, or the extent of the relief granted.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is reversed.

ALL CONCUR.

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