

STATE OF MICHIGAN
COURT OF APPEALS

CROSSWAY BAPTIST CHURCH,¹

Plaintiff/Counterdefendant,

v

HOWARD DOOLEY and MINNIE DOOLEY,

Counterdefendants,

and

CROSSWAY BAPTIST CHURCH,²

Defendant/Counterplaintiff/Third-
Party Plaintiff-Appellant/Cross-
Appellee,

and

PALMER ROAD BAPTIST CHURCH,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee,

and

DAVID MULLAN and ASSEM SHEIKLT,³

Third-Party Defendants-
Appellees/Cross-Appellants,

UNPUBLISHED

November 26, 2002

No. 233443

Wayne Circuit Court

LC No. 97-723462-CH

¹ Documents in the lower court file variously refer to “Crossway Baptist Church” and “The Crossway Baptist Church.” For the purpose of consistency, we adopt “Crossway Baptist Church.”

² At some point in the lower court case, defendant Crossway inserted a space between Cross and Way to distinguish itself from plaintiff Crossway. We do not adopt that spelling.

³ Various spellings of this party’s name are found throughout the lower court file. We adopt this spelling for consistency.

and

TYLER STREET CHRISTIAN UNION,

Third-Party Defendant.

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Defendants Crossway Baptist Church (defendant Crossway) and Palmer Road Baptist Church (defendant Palmer) appeal as of right an order dismissing all claims and counterclaims, quieting title in defendant Crossway, and granting an equitable lien to third-party defendants David Mullan and Assem Sheiklt (Mullan and Sheiklt) in this property case. We reverse the trial court's decision to grant an equitable lien to Mullan and Sheiklt and affirm its decision to quiet title in defendant Crossway.

In 1978, Crossway Baptist Church formed as an ecclesiastical corporation. Tyler Street Christian Union (Tyler) conveyed property to Crossway Baptist Church in 1984. In 1987, after being notified that \$5 in taxes from 1981 had not been paid, Howard Dooley paid the outstanding amount with fees totaling approximately \$77. As a result of this payment, on May 13, 1987, a deed was issued by the state to Crossway Baptist Church.

Crossway Baptist Church's congregation eventually dwindled until, in April 1992, the only remaining members were Howard and Minnie Dooley. The Dooleys asked defendant Palmer to support Crossway Baptist Church as a mission church. After operating in this fashion for a time, nineteen people agreed to join Crossway Baptist Church. In March 1994, the church then reconstituted independently. However, upon a vote of the nineteen members, including the Dooleys, the Dooleys were not elected as board members. The vote was consistent with the church's articles of incorporation, which dictated that the church operate as a congregational government with matters decided by majority vote.

Thus formed, what appeared to be, two factions of Crossway Baptist Church.⁴ From 1993 to 1996, both factions filed nonprofit corporation reports with the state changing the names of corporate officers. In March 1997, a meeting was convened consisting of nine people, including the Dooleys, but not including the other members listed in the March 1994 vote. Documents were generated reflecting that Crossway Baptist Church's members voted to give Howard Dooley authority to sell the Church's property. On March 25, 1997, plaintiff Crossway allegedly conveyed the church property to Mullan and Sheiklt. However, there is no evidence in the lower court record of a deed, of payment by Mullan and Sheiklt, that Mullan and Sheiklt had possession of the property, or that the sale to Mullan and Sheiklt was recorded in the chain of

⁴ Defendant Crossway is one of the factions. Plaintiff Crossway Baptist Church, the other faction comprised largely of Howard and Minnie Dooley, is not a party to this appeal.

title. On appeal, Mullan and Sheiklt attempt to expand the record to include purported evidence of a conveyance.⁵ However, even that evidence raises doubt concerning whether a conveyance occurred.

Defendant Crossway argues that the trial court erred in granting an equitable lien to Mullan and Sheiklt because there was no evidence of a conveyance from defendant Crossway to Mullan and Sheiklt nor any evidence of indebtedness between these parties. This Court reviews a trial court's decision regarding a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion pursuant to MCR 2.116(C)(10), the court considers affidavits, pleadings, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the non-moving party. Summary disposition may be granted if the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 454-455.

The trial court erred in awarding an equitable lien to Mullan and Sheiklt. In regard to the sale to third-party defendants Mullan and Sheiklt, the trial court correctly found that there was no genuine issue of material fact as to whether the Dooleys lacked authority to convey the church property. When the alleged sale took place in 1997, the Dooleys were not elected as board members nor did they represent a majority of the congregation. Assuming that defendant Crossway maintained title to the property that Dooley "sold" to Mullan and Sheiklt, Mullan and Sheiklt did not receive an interest in the property unless they were bona fide purchasers for value. A person who purchases property without notice of a defect in the vendor's title is a good-faith purchaser. *Royce v Durther*, 209 Mich App 682, 690; 531 NW2d 817 (1995). However, there is absolutely no evidence of a conveyance of the church property to Mullan and Sheiklt. The evidence in the lower court record indicates only that, on March 3, 1997, a meeting of plaintiff Crossway convened during which the members voted that Howard Dooley had authority to sell the church property.

We note that Mullan and Sheiklt attempt to expand the record on appeal by submitting three documents, which also tend to show that a conveyance never occurred. The three documents are: (1) a lease agreement between Mullan and Sheiklt and Crossway Baptist Church dated March 25, 1997 referencing a warranty deed executed on the same day; (2) a survey waiver dated March 25, 1997; and (3) a commitment to insure title requiring, among other things, a satisfactory survey. Although the lease agreement references a warranty deed, neither a copy of the deed nor proof of the chain of title were submitted as evidence to the trial court or on appeal. It is also notable that the agreement to insure required a survey, but Mullan and Sheiklt waived the survey. Thus, it appears that the conveyance to Mullan and Sheiklt never occurred and that title insurance was never provided. Because there was no evidence of a conveyance of the church property to Mullan and Sheiklt, the trial court erred in granting them an equitable lien on the property.

⁵ This Court's review is limited to the lower court record and a party may not expand the record on appeal. *Reeves v Kmart Corp*, 229 Mich App 466, 481 n 7; 582 NW2d 841 (1998).

Mullan and Sheiklt argue on cross-appeal that the trial court erred in quieting title in defendant Crossway because (1) the trial court was not precluded from examining whether a church faction has departed from the “foundations, tenants [sic], and principles upon which the church was constituted,” when competing factions claim a right to the church property and property ownership is at issue, (2) when competing church factions claim a right to the church’s property, and the majority has departed from the “foundations, tenants [sic], and principles upon which the church was constituted,” the majority is not entitled to church property, (3) when competing factions claim the church’s property and the factions adhere to different denominations, the faction that belongs to the original denomination is entitled to the church property, and (4) the law should not permit members of a church belonging to one denomination to flood a small church of another denomination and, using majority power, declare that the church belongs to the majority denomination.

The First and Fourteenth Amendments of the United States Constitution and art 1, § 4 of the Michigan Constitution of 1963 severely restrict the federal and state courts’ ability to resolve disputes between a church and its members. *Maciejewski v Breitenbeck*, 162 Mich App 410, 413-414; 413 NW2d 65 (1987). The jurisdiction of the court is limited to property rights that can be resolved by application of civil law. *Id.* at 414. A court loses jurisdiction if it must address issues requiring the application of religious doctrine or ecclesiastical polity. *Id.* Religious doctrine refers to ritual, liturgy or worship and tenets of the faith. Polity refers to organization and form of government. *Id.*

We note that the trial court did not decide that it lacked jurisdiction to decide the property issues presented. Rather, it stated as a caveat that it could not address religious matters. The trial court nonetheless proceeded to decide the property issues without addressing religious matters. In deciding the property issues before it, the trial court looked to the evidence to determine which party had authority over the church property at the time of the “sale” to Mullan and Sheiklt. If property is held by an independent church, ownership of property should be determined by the principles governing voluntary associations. *Bennison v Sharp*, 121 Mich App 705, 714-715; 329 NW2d 466 (1982). If the principle of government is that majority rules, then the numerical majority of members maintains control of the property. *Id.*

As previously discussed, the Dooleys did not have authority to sell the church property in 1997 when the alleged sale occurred. Therefore, the trial court correctly found that there was no genuine issue of fact as to whether defendant Crossway retained title to the property. Any further inquiry into the faith held by the majority and minority factions would be improperly considered by the court as matters of religious doctrine and ecclesiastical polity.

Affirmed in part and reversed in part.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper