

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BOARD OF TRUSTEES OF OAKLEY PARK  
MISSIONARY CHURCH,

UNPUBLISHED  
August 7, 2003

Plaintiff-Appellant,

v

MICHIGAN DISTRICT MISSIONARY  
CHURCH,

No. 234465  
Oakland Circuit Court  
LC No. 00-021044-CH

Defendant-Appellee.

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Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court's opinion and order granting summary disposition to defendant in this case involving a takeover of the Oakley Park Missionary Church by defendant Michigan District Missionary Church. We affirm.

We review a trial court's grant of summary disposition de novo. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002). In this case, the trial court asserted that defendant brought its motion for summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and MCR 2.116(C)(10) (except as to damages, there is no genuine issue with regard to any material fact and the moving party is entitled to partial or full judgment as a matter of law).<sup>1</sup> However, the court did not specify on which court rule it relied in granting defendant's motion. Nevertheless, because it relied on matters outside the pleadings, we will treat the motion as granted under MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The moving party must initially support its position by affidavits, depositions, admissions, or other documentary evidence. *Id.* at 455. "The burden then shifts to the opposing party to establish that a genuine issue of disputed fact

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<sup>1</sup> In moving for summary disposition, defendant also raised an issue under MCR 2.116(C)(4), which concerns the lack of subject matter jurisdiction. The trial court ruled that it did in fact have subject matter jurisdiction over the instant case, and no party disputes this ruling on appeal.

exists.” *Id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the nonmoving party would bear the burden of proof at trial, that party may not merely rely on the allegations or denials in the pleadings but must set forth specific facts demonstrating the existence of a genuine issue of material fact. *Smith, supra* at 455. The trial court must view the affidavits and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* at 454. If the opposing party fails to establish the existence of a material factual dispute, summary disposition is appropriate. *Id.* at 455.

Plaintiff first argues that the trial court erred in finding, as a matter of law, that the Missionary Church is a hierarchical church requiring the trial court to accord deference to the highest ecclesiastical body within the denomination. Although conceding that the Missionary Church has hierarchal authority with regard to spiritual or doctrinal matters, plaintiff argues that the denomination is not hierarchal concerning temporal, or lay, matters, including the exercise of authority over church property. Essentially, plaintiff disagrees that the district church may force the sale of the local church’s property. We find no basis for appellate relief.

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” US Const, Am I. These First Amendment protections are extended to the states through the Fourteenth Amendment. *Smith v Calvary Christian Church*, 462 Mich 679, 684 n 4; 614 NW2d 590 (2000), citing *Cantwell v Connecticut*, 310 US 296, 303; 60 S Ct 900; 84 L Ed 1213 (1940). The First Amendment essentially “requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.” *Jones v Wolf*, 443 US 595, 602; 99 S Ct 3020; 61 L Ed 2d 775 (1979). Property disputes among ecclesiastical entities, or factions thereof, that do not involve doctrine or polity, however, may be decided by civil courts on other bases consistent with the First Amendment, including “neutral principles of law.” *Id.* Even though courts have jurisdiction to resolve property disputes among religious entities and a state has a legitimate interest in seeing that such disputes are peacefully resolved, the First Amendment “severely circumscribes the role that civil courts may play in resolving church property disputes,” *id.*, quoting *Presbyterian Church v Hull Church*, 393 US 440, 449; 89 S Ct 601; 21 L Ed 2d 658 (1969).

Although the *Jones* case indicated that church property disputes *may* be decided according to “neutral principles of law,”<sup>2</sup> this Court in *Bennison v Sharp*, 121 Mich App 705, 721-724; 329 NW2d 466 (1982), essentially indicated that such an approach is disfavored in Michigan and that a “theory of hierarchy” represents the preferred approach.<sup>3</sup> Under this

<sup>2</sup> A court employing the “neutral principles of law” test uses “the same principles of law as would be applied to nonreligious organizations and therefore will not declare an implied trust based solely on deference to the authority and rules of the denominational hierarchy.” *Calvary Presbyterian Church v Presbytery of Lake Huron of the United Presbyterian Church in the USA*, 148 Mich App 105, 110 n 4; 384 NW2d 92 (1986).

<sup>3</sup> The *Bennison* Court did indicate, however, that the “neutral principles of law” test might be appropriate if “it appears from the church constitution, canons or rules, or from some other source, that an express trust exists in favor of one or the other of the contending parties . . . .” *Bennison, supra* at 724. There is no indication of an express trust in the instant case.

hierarchical approach, if “a religious organization is but a subordinate part of a general church in which there are superior ecclesiastical tribunals with a more or less complete power of control,” then the higher authorities within the church are entitled to control the property. See *id.* at 720; see also *Calvary Presbyterian Church v Presbytery of Lake Huron of the United Presbyterian Church in the USA*, 148 Mich App 105, 108 n 1; 384 NW2d 92 (1986). In *Calvary Presbyterian, supra* at 112-113, this Court followed *Bennison* and concluded that the higher authority in a hierarchical church has the power to control church real estate.

The pertinent question then for the instant case is whether the church in question is hierarchical, “with a central governing body which has regularly acted within its powers, or whether it is organized in the looser ‘congregational’ structure, with all governing powers and property ownership remaining in the individual churches.” *Id.* at 108 n 1.

The facts demonstrate that the church in question is indeed hierarchical. First, plaintiff *concedes* that the Missionary Church has hierarchal authority in spiritual matters but contends that the hierarchal authority does not extend to property matters. *Bennison* and *Calvary Presbyterian*, however, allowed for no such distinction. Moreover, the local church’s 1959 articles of incorporation provide that the members would “worship and labor together according to the discipline, rules and usages of the United Missionary Church . . . .”

Also, the Missionary Church’s 1999 constitution clearly states that local churches are subject to the discipline of higher church authorities. The constitution indicates that the highest supervisory, legislative, judiciary, and policy-making powers reside in the general conference. General oversight of the entire work of the denomination resides in the president elected by the general conference. The constitution also establishes a general board consisting of the general officers, the district superintendents, representatives of the districts elected by the district conferences, and the president of Bethel College. The general board is “the final arbitrator in all appeals related to due process referred to it.” District conferences are established as an intermediate level of government but must function in accordance with the authority delegated by the constitution and the general conference. The business of each district between conferences is confided to an executive board, and if membership in a local church “falls below 15 baptized adult members (16 years or older), supervision and governance of that church shall revert to the district executive board.” Article XIV of the constitution provides for an appeal of any entity of the Missionary Church to a higher body and includes “the right of the body hearing the appeal to endorse or overturn a previous ruling.” Thus, an appeal may be taken from a decision of the local church board or the district superintendent and commenced at the district board, and the district board may be appealed to the executive committee of the general board, and from there, to the general board, the final arbitrator of all appeals instituted within the denomination. This constitution clearly evidences a hierarchal structure.

Plaintiff points to the denomination’s church-building promotional material to argue that the local church was independent with respect to property. However, that material confirms that when a local church and its members join the denomination, that act constitutes “a voluntary submission to the counsel, guidance and authority given to district and denominational leaders.” The election of district and denominational leaders by the clergy and representatives of the member local churches does not subvert the hierarchal nature of the denomination’s polity,

*Calvary Presbyterian, supra* at 113, and such voluntary submission to the authority of the ecclesiastical hierarchy clearly militates in favor of abstention. *Id.* at 112.

Plaintiff's argument that the 1969 merger of the United Missionary Church with the Missionary Church Association changed the hierarchal structure of the successor church is similarly without merit.<sup>4</sup> Indeed, we cannot conclude that the change in constitutional language resulting from the merger and emphasized by plaintiff on appeal serves to counteract the clear legal implications of *Bennison* and *Calvary Presbyterian* – i.e., that higher church bodies exercise authority over church property in hierarchal denominations.

Because Oakley Park Missionary Church “is but a subordinate part of a general church in which there are superior ecclesiastical tribunals with a more or less complete power of control,” *Bennison, supra* at 720, it is a member of a hierarchal ecclesiastical body, and thus courts must defer to the decision of defendant, the higher denominational authority. *Id.* at 720; see also *Calvary Presbyterian Church, supra* at 113. The trial court correctly granted summary disposition to defendant.

Next, plaintiff argues that the trial court should have denied relief to defendant under the doctrine of unclean hands. Although plaintiff did not raise this issue below, because equity actions are reviewed de novo, and because the doctrine of unclean hands protects the integrity of the court, the issue need not be specifically preserved for appeal and may even be raised sua sponte by an appellate court. *Stachnik v Winkel*, 394 Mich 375, 382-383; 230 NW2d 529 (1975). Plaintiff's argument fails, however, because defendant was not seeking equitable relief but rather asserting its legal rights under the First Amendment. See *Rose v National Auction Group*, 466 Mich 453, 468; 646 NW2d 455 (2002) (holding the defendant's entitlement to its real estate commission could not be barred by the doctrine because its claim was based in law rather than equity), and *Rzadkowolski v Pefley*, 237 Mich App 405, 409; 603 NW2d 646 (1999) (holding the equitable defense of unclean hands may not be asserted as a defense to the legal obligation to pay child support).

Next, plaintiff argues that the trial court erred in granting summary disposition to defendant because even if the rule of compulsory deference to ecclesiastical decisions would normally apply, material issues of fact existed concerning plaintiff's allegations of fraud and collusion. We disagree.

In *Hull Church, supra* at 447, the Supreme Court noted that “marginal civil court review” of ecclesiastical decisions might be appropriate in some situations. The Court quoted Justice Brandeis in *Gonzalez v Archbishop*, 280 US 1, 16; 50 S Ct 5; 74 L Ed 131 (1929): “In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive . . .” *Hull Church, supra* at 447. The Court, however, did not

<sup>4</sup> Plaintiff points to a book excerpt in support of its argument, but we do not consider this excerpt because it is not located in the lower court record. We are strictly limited to the existing trial court record. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). At any rate, the excerpt would not affect our ruling.

discuss the limits of this “marginal civil court review.” *Id.* at 450 n 7. In *Serbian Orthodox Diocese v Milivojevich*, 426 US 696, 712; 96 S Ct 2372; 49 L Ed 2d 151 (1976), the Supreme Court pointed out that it had never given concrete content to nor applied the “exception” to required deference to hierarchal ecclesiastic decisions because of “fraud, collusion, or arbitrariness.” Although closing the door on any claimed exception based on “arbitrariness,” the court left open the question of review of ecclesiastical decisions on a showing of bad faith for a *secular* purpose. The Court stated:

We have concluded that whether or not there is room for “marginal civil court review” under the narrow rubrics of “fraud” or “collusion” when church tribunals act in bad faith for secular purposes, no “arbitrariness” exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. [*Id.* at 713 (footnote omitted).]

Plaintiff’s argument that the “fraud” or “collusion” exception to ecclesiastical abstention applies in this case fails. The *Random House Webster’s College Dictionary* (1997) defines “collusion” as “a conspiracy for fraudulent purposes.” Collusion implies the existence of fraud. See *Black v Goodwin, Loomis & Britton, Inc*, 239 Conn 144, 163; 681 A2d 293 (1996), and *Dickerman v Northern Trust Co*, 176 US 181, 190; 20 S Ct 311; 44 L Ed 423 (1900). Fraud requires that the defendant have knowingly or recklessly made a material, false representation, with the intent of inducing the plaintiff’s reliance thereon, and that the plaintiff did in fact rely on the representation to its detriment. *Hord v Environmental Research Inst (After Remand)*, 463 Mich 399, 404; 617 NW2d 543 (2000). Thus, there can be no fraud without a false representation. *Id.* at 410; *Alibri v Detroit/Wayne Co Stadium Authority*, 254 Mich App 545, 564; 658 NW2d 167 (2002).

Plaintiff’s argument that Oakley Park Missionary Church’s pastor met with defendant to discuss the future of the local church after his retirement, and even recommended that defendant close the local church, does not establish fraud or collusion. Likewise, plaintiff’s argument that the pastor (the chairman of the local church board), the local church board’s vice-chairman, and their spouses were informed of defendant’s decision to assume control of the local church before other congregation members also fails to establish fraudulent or collusive activity upon which plaintiff or its individual members relied to their detriment. Further, plaintiff’s allegation that defendant failed to disclose that it intended to assume control of the local church and the property at issue cannot establish fraud because a fraudulent representation must relate to a past or existing fact. *Forge v Smith*, 458 Mich 198, 212; 580 NW2d 876 (1998). Thus, the allegations of plaintiff, viewed in a light most favorable to plaintiff, simply fail to establish that defendant made a material, false representation, or that any of the complained-of actions were evidence of a conspiracy to deprive plaintiff or any of its members of their lawful rights. In short, even if fraud or collusion is an exception to the deference accorded the decisions of higher ecclesiastical bodies in a hierarchal church, the record fails to raise a disputed question of fact on fraud or collusion.

In addition to lack of evidence of fraud or collusion, there is no suggestion that defendant was pursuing a secular purpose. The essence of the dispute in this case is whether the property at issue should continue being used to support a local congregation with dwindling members or be sold, with the proceeds to be used for other church purposes. The trial court properly granted defendant summary disposition because to attempt an inquiry into the process by which this ecclesiastical decision was made, or whether it was right or wrong, would infringe the command of the First Amendment to avoid entanglement in religious affairs. Internal church reorganization is “a matter of internal church government, an issue at the core of ecclesiastical affairs . . . .” *Serbian Orthodox Diocese, supra* at 721.

In summary, the facts in this case, viewed in the light most favorable to plaintiff, reveal that defendant made an ecclesiastic decision authorized by the denomination’s constitution, and plaintiff disagreed. However, rather than pursue an appeal available within the denomination, plaintiff sought to invoke the trial court’s jurisdiction. Because plaintiff produced no evidence of fraud or collusion, the First Amendment required the trial court to grant defendant summary disposition.

Last, plaintiff argues that the trial court erred by not addressing its claim that MCL 458.521 *et seq.*, dealing with the incorporation of the Missionary Church, violates the Establishment Clause of the First Amendment. We disagree.

Statutes are presumed to be constitutional unless unconstitutionality is clearly apparent. *Tolksdorf v Griffith*, 464 Mich 1, 5; 626 NW2d 163 (2001); *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999). Here, the statute is not clearly unconstitutional and, indeed, this Court rejected a similar claim in *Bennison, supra* at 725. In addition, appellate courts should avoid deciding constitutional issues when it is possible to resolve a case on other grounds. *People v Riley*, 465 Mich 442, 447; 636 NW2d 514 (2001); *Trent v Suburban Mobility Authority for Regional Transportation*, 252 Mich App 247, 252; 651 NW2d 171 (2002). Here, it was unnecessary for the trial court to rely on the incorporation statute in order to correctly conclude that the Missionary Church is a hierarchal ecclesiastical body and, therefore, that the First Amendment commanded deference to the higher church body’s decision. The trial court properly declined to address the issue. *Riley, supra* at 447; *Trent, supra* at 252.

Affirmed.

/s/ Jane E. Markey

/s/ Michael R. Smolenski

/s/ Patrick M. Meter