

ORIGINAL<sup>24</sup>

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

STEPHEN P. LAMB  
VICE-CHANCELLOR

COURT HOUSE  
WILMINGTON, DELAWARE 19801

Submitted: December 17, 2001  
Decided: December 20, 2001

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**RE: Paul Collins, et al. v. Reverend S. Todd Townsend, et al.  
C.A. No. 19098**

Dear Counsel:

Following the hearing held on December 10, 2001, the parties submitted post-hearing letters bearing on a determination of the identities of the currently serving members of the Board of Trustees of the Eighth Street Baptist Church. For the reasons next addressed, the court will refrain from resolving these issues at the present time. In large part, this decision is predicated on the conclusion that those issues may well be

rendered moot by the election of trustees now scheduled to be held next month and that any decision will not affect the outcome of that election. Even if this were not the case, however, there is a substantial probability that the court would find it necessary to abstain from intervening in this Church governance dispute under the so-called “ecclesiastical abstention” doctrine.

### ***Factual Background***

There are several matters of fact that are not in dispute between the parties. These can be summarized as follows:

- The Church was incorporated pursuant to the predecessor statute to 27 *Del. C.* §§ 101, et seq.
- The Church has a written constitution that was adopted in 1992 by a vote of the members of the congregation. Article VI of the constitution (“Officers”) defines the duties and responsibilities of, among others, the Pastor, the Board of Deacons and the Board of Trustees. The Pastor is “the spiritual leader of the Church and of all activities.” He is an *ex officio* member of all Boards. The Board of Deacons is charged with assisting the Pastor “through close cooperation in doing all that is aimed to enrich and enlarge the ministry of the Church.” By contrast, the duties defined for the Board of Trustees are temporal in character. These are to care for the place of worship and other real estate, to manage the financial affairs, be responsible for the fixed assets, pay the bills, etc.

- Until 2000, the Church customarily held elections for trustees at the Annual Meeting, which is held on the fourth Tuesday in January. Pursuant to Article XI (“Elections of Officers”), trustees are elected in staggered three year terms. Neither the Constitution nor the by-laws of the Church fixes the size of the Board of Trustees.
- The last election for trustees was held in 1999, at which time persons were elected to two and three year terms.
- The persons elected in 1999 to three year terms who remain involved in the Church are Catherine Broadway, Paul Collins, Shirley Farr, Elaine Jones, and Bryan Thompson. The parties agree that these five persons continue to hold office as trustees.
- Bessie Evans was appointed by the former Pastor (and reappointed by the current Pastor) to serve as chairperson of the Board of Trustees pursuant to authority said to be found in Article V of the constitution. She has never been elected to the Board of Trustees.
- On February 10, 2000, at the postponed Annual Meeting, Pastor Townsend discussed with the congregation a proposed plan of reorganization. According to the minutes of that meeting (Pet. Ex. 2), “Trustees would become part of the Stewardship Ministries within this structure and attention was given to the *Stewardship Ministries* category.. . Stewards would be required to adhere to the deacon ministry training. ”
- Between February 2000 and the filing of this lawsuit in September 2001, there were no separate meetings held of the Board of Trustees.
- Finally, Pastor Townsend testified at the hearing that the Church leadership intends to have an election of trustees at the 2002

Annual Meeting, scheduled to be held on January 22, 2002. He did not say how many candidates would be nominated for election.

### ***Discussion***

The narrow issue presented at the hearing was whether or not the persons who were elected at the 1999 Annual Meeting or earlier to terms that were scheduled to expire either in 2000 or 2001 continue in office as “holdovers” due to the failure of the Church to hold elections for their successors in either 2000 or 2001. The petitioners presented no evidence that any action is likely to occur between today and the time of the 2002 Annual Meeting that depends on an answer to this question.

For reasons embedded in constitutional protections of religious freedom, “courts must proceed with caution in resolving civil disputes within religious organizations.”<sup>1</sup> The United States Supreme Court has explained this reluctance to exercise jurisdiction as follows:

For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil

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<sup>1</sup> ***East Lake Med. Church v. United Med. Church***, Del. Supr., 731 A.2d 798, 805 (1999).

courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.<sup>2</sup>

Where, as here, the polity (i.e., the form of governance or constitution) of the Church is congregational, rather than hierarchical, civil courts are to give effect to decisions reached by the congregation by application of ordinary principles governing voluntary associations, either by a vote of a majority of the members of the congregation or by such other rules as the congregation may have adopted for its own governance.<sup>3</sup>

Many of the cases that have discussed this issue have arisen out of disputes over church property. Even in that context, there is “a substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, ‘the First Amendment severely

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<sup>2</sup> *Serbian Eastern Orthodox Diocese, etc., v. Milivojevich*, 426 U.S. 696, 709 (1976).

<sup>3</sup> *East Lake Med. Church*, Del. Supr., 731 A.2d at 805.

circumscribes the role that civil courts may play in resolving church property disputes. ’”<sup>4</sup> As the Supreme Court further explained:

“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 [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. ”  
This principle applies with equal force to church disputes over church polity and church administration.<sup>5</sup>

The present case does not involve a property dispute but does raise issues relating to “church polity and church administration. ” The question, therefore, is whether it is possible for the court to examine and decide the issues presented without impermissibly treading on areas constitutionally reserved to the congregation itself. This inquiry has two parts. The first is whether it would be possible, by reference only to the

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<sup>4</sup> *Id.*, quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

<sup>5</sup> *Id.*, 426 U.S. at 709-10, quoting *Presbyterian Church v. Hull Church*, *supra*, 393 U.S. at 449 (emphasis added).

constitution, the statute, and general neutral principles of law, to decide whether or not the trustees whose terms were scheduled to expire in 2000 or 2001 continue to hold office as “holdovers.” The second, related inquiry is whether it is an unwarranted intrusion into the affairs of the Church for the court to exercise jurisdiction at all before the congregation is asked to address any of the issues raised by the petitioners about the identity and responsibilities of the Board of Trustees.

Neither of these inquiries is easily answered. As for the first, the record reflects that there may be doctrinal issues underlying the ongoing effort of the Pastor and the deacons to change the nature of the Church’s governance structure, among other things, by diminishing the role and autonomy of the Board of Trustees. Thus, even a neutral reading of the constitution and the statute could entangle the court in the resolution of a religious controversy. As for the second, there is reason to believe that it is wrong for the court to intervene in this internal governance dispute before the matter is presented to the congregation for its determination. After all, persons choosing to belong to the Church have agreed to the congregational polity of that organization and should look first to the

congregation for decisions in matters of this nature. Once that occurs, the role of a civil court asked to review the decision taken by the congregation would be a more limited one, addressing only whether that decision was made in conformity with “ordinary principles governing voluntary organizations. ”

While it might ultimately be necessary to resolve these issues, I decline to do so at the present time because there is a reasonable likelihood that the election now scheduled to be held in conjunction with the 2002 Annual Meeting will resolve the underlying dispute. At least, it appears that the parties will have the opportunity to moot the issue of whether or not trustees “holdover” until their successors are elected and take office. This is so because there is now a clear opportunity to fix the size of the Board of Trustees in accordance with the provisions of 27 **Del. C.** § 101(b)( 1) and to elect a slate of candidates to fill those seats.

In addition, there is no emergent issue or problem that argues in favor of an immediate decision. On the contrary, the situation confronting the petitioners is substantially the same as it was two years ago and may be expected to remain materially unchanged until the Annual Meeting takes



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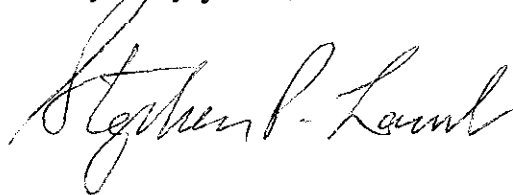
December 20, 2001

Page 9

place. In the circumstances, it is reasonable and advisable for the court to withhold judgment on the matters in contest between the parties and await developments.

For all of the foregoing reasons, the petitioners' application for a declaration defining the duration of their terms in office as trustees to holdover until their successors are duly elected and take office is denied without prejudice to its later reassertion.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stephen P. Leavelle". The signature is written in black ink and is positioned below the typed name "Stephen P. Leavelle".

cc: Register in Chancery