

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000068-MR

H. JOSEPH BRENNER;
LAWRENCE E. NIEMANN;
JOSEPH R. BELL, JR.;
JOSEPH MITTEL;
JEFFREY R. LAMPE;
WILLIAM L. RILEY; AND
RICHARD GELHAUSEN;

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 01-CI-001827

PRIORY OF ST. JOHN THE BAPTIST, INC.;
THE SOVEREIGN ORDER OF SAINT JOHN
OF JERUSALEM

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER, JUDGE; AND JOHN D.
MILLER, SPECIAL JUDGE.¹

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

BARBER, JUDGE: Appellants, H. Joseph Brenner, Lawrence E. Niemann, Joseph R. Bell, Jr., R. Joseph Mittel, Jeffrey R. Lampe, William L. Riley, and Richard L. Gelhausen, defendants below ("Appellants"), seek review of orders of the Jefferson Circuit Court determining that some of their actions, as Board members of the Appellee, the Priory of St. John the Baptist, Inc. ("the Priory"),² were improper. Finding no error, we affirm.

We refer to the facts as necessary to resolve the issues on appeal. On March 14, 2001, the Priory filed a complaint against the Appellants in the Jefferson Circuit Court. The Priory, an affiliate of the Sovereign Order of St. John of Jerusalem ("the Order"), alleged that on September 3, 2000, the Appellants had attempted to adopt a new set of bylaws for the Priory without following proper procedure. Ultimately, the Grand Master of the Order removed the Appellants as directors and officers of the Priory, and appointed a new Board of Directors to take control of the Priory. The new Board of Directors then drafted a resolution rescinding the by-laws passed by the Appellants.

² Appellants named both the Priory and The Sovereign Order of Saint John of Jerusalem as Appellees in their Notice of Appeal; however, this appears to be in error, because the Order was not a party below.

The Priory asserted that since their removal, Appellants had continued to hold themselves out as the legitimate Directors and had refused to relinquish control of the Priory.

The case was submitted on briefs. On October 9, 2001, the trial court entered an Opinion and Order providing, in relevant part:

At a meeting held on September 3, 2000, the seven members of the Board [the Appellants] decided to "shrink" the voting members to exclude the other eleven voting members beside themselves, and then voted unanimously to amend the Priory's bylaws. . . . Upon becoming aware of the new bylaws, some members requested that they be set aside. When the Board [the Appellants] refused, John Grady [Grand Master of the Order] was contacted. After failing to reach an amicable solution, John Grady expelled the seven board members from the Order and removed them from the Priory's Board. He further appointed a new Board of Directors for the Priory which approved a resolution, dated February 24, 2001, rescinding the new bylaws.

On March 14, 2001, the Priory brought this action against the seven members of the Board, who held the September 3, 2000 meeting, alleging that these members have continued to improperly hold themselves out as the Priory's legitimate Board of Directors and have refused to relinquish control of the Priory. The seven members of the Board . . . [the Appellants] deny any wrongdoing on their parts. . . .

OPINION

KRS 273.191 provides that the power to alter, amend or repeal the initial bylaws or adopt new bylaws is invested in the board of directors unless otherwise provided in articles of

incorporation or the bylaws. The Priory's 1974 bylaws have the following language:

ARTICLE IX: Amendments

39. The Knights of the Priory may from time to time by vote of a majority of their overall number make, alter or rescind any or all of the by-laws of the Priory.

Thus, in order to vote in the new bylaws on September 3, 2000, the Board had to have a vote of a majority of the Knights of the Priory. Defendants [Appellants] allege that they followed Article IX by first shrinking down the number of voting Knights to just themselves and then voting. Defendants [Appellants] contend that they had such power under Article VI of the bylaws, which provides the Board with the general supervision, management and control of the affairs and business of the Priory, and are protected by the business judgment rule.

After reviewing the original bylaws, the Court finds no language therein supporting the Board's decision to temporarily suspend any Knight's voting privilege, so as to shrink the number of voting members for a given vote to those on the Board. A Knight's right to vote would be rendered meaningless if such were properly allowed under the bylaws. . . .

The Court will not interrupt [sic] the Board's right of general supervision under the bylaws as a basis to somehow temporarily suspend other Knight's voting privileges at will. Given that the action taken by the Board at the September 3, 2000 meeting was improper, the disputed issue of whether said meeting was a regular meeting or a special meeting requiring notice is irrelevant. Consequently, the new bylaws must be set aside. The original bylaws remain in effect until they are amended by a proper vote of the Knights of the Priory.

. . . .

This Court will not address the validity of the Order under John Grady, which was raised by Defendants [Appellants}, or the discipline received therefrom by any of the Defendants [Appellants]. As stated in Music v. United Methodist Church, Ky., 864 S.W.2d 286 (1993), issues of faith, internal organization, and church discipline are governed by ecclesiastical rule, custom, and law, and civil courts generally have no role in deciding such ecclesiastical questions.

The trial court determined that Appellants' actions in shrinking the voting membership and subsequently entering new bylaws were improper, and set them aside, leaving the original bylaws of the Priory intact. By Opinion and Order entered December 12, 2001, the court denied Appellants' motion to alter, amend or vacate the October 9, 2001 Opinion and Order.

On January 4, 2002, Appellants filed a notice of appeal to this Court. On appeal, Appellants assert that:

- (1) THE SEPTEMBER 3, 2000 AMENDMENTS TO THE PRIORY'S BYLAWS DO NOT CONTRAVENE EITHER THE ARTICLES OF INCORPORATION OR THE ORIGINAL BYLAWS.
- (2) THE COURT ERRED IN CONCLUDING THAT THIS PROPERTY DISPUTE MUST BE RESOLVED THROUGH THE APPEAL PROCESS CODIFIED IN THE CONSTITUTION OF THE ORDER.
- (3) THIS CONTROVERSY DOES NOT INVOLVE A DOCTRINAL DISPUTE, BUT RATHER A PROPERTY DISPUTE AND THEREFORE THE CIVIL COURTS HAVE JURISDICTION TO RESOLVE IT.
- (4) THE COURT SHOULD HAVE RESOLVED THIS CONTROVERSY BY UTILIZING ITS INHERENT POWER OF EQUITY.

(1)

Appellants acknowledge that the original bylaws required a two-thirds majority to vote in new bylaws. Appellants maintain that they had enough votes, "because they [first] voted to shrink the membership of the Priory to the seven members who were then serving as Directors." Appellants would have us believe that they did not "violate the tenor of the original bylaws," by terminating the membership of the other voting Knights and then unanimously voting to amend the bylaws.

Appellants cite no authority to support this curious argument. Nor do they explain how the trial court erred. The court declined to interpret "the Board's right of general supervision under the bylaws as a basis to somehow temporarily suspend other Knights' voting privileges at will." The court explained that a Knight's right to vote would be rendered meaningless, were the Board allowed the unfettered discretion to act as it did at the September 3, 2000 meeting. The court concluded that the Board's actions were improper; thus, making the issue of whether the subject meeting was special or regular irrelevant. Having reviewed the original bylaws, we agree with the sound reasoning of the trial court and adopt it as our own.

(2) & (3)

Next, Appellants appear to argue that the discipline imposed upon them by John Grady cannot properly be resolved

through the Order's appeal process, because the Priory never agreed to Grady's Order exercising such authority.

In Music v. United Methodist Church,³ relied upon by the trial court in declining to address the validity of the Order or the discipline imposed upon Appellants, the Kentucky Supreme Court explained:

The United States Supreme Court has adhered to the proposition that the First and Fourteenth Amendments permit hierarchial religious organizations to establish their own rules and regulations for internal discipline and government and to create tribunals resolving disputes over these matters. Where this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding. [Citation omitted.]⁴

We cannot agree with Appellants' speculation that the court "felt constrained by its misreading of Music." We find no error.

(4)

Appellants assert that the expense and ill feelings resulting from this controversy "could have been easily avoided" had the trial court directed a vote on the amendments by all the Knights. In support of their position, Appellants rely upon several maxims of equity law. We do not believe that the trial

³ Ky., 864 S.W.2d 286 (1993).

⁴ *Id.*, at 287.

court committed reversible error. To the contrary, we believe that directing a vote under the circumstances of this case would constitute an "excessive entanglement with religion" by a civil court, contrary to the holding in *Music*.⁵

Accordingly, we affirm the Opinions and Orders of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Donald Killian Brown
Jeri D. Barclay
Louisville, Kentucky

BRIEF FOR APPELLEE:

Thomas E. Clay
Mark G. Hall
Louisville, Kentucky

⁵ *supra*.