

NOT DESIGNATED FOR PUBLICATION

JOHN FRAZIER, MELVIN ROBERTSON,
TOMMY THOMPSON, MELVIN SPOONER,
MELVIN STOKES AND REVEREND
FREDERICK MATTHEWS
VERSUS
CEDRIC FLOYD AND ALVIN NORA

C/W

JOHN FRAZIER, ET AL
VERSUS
CEDRIC FLOYD AND ALVIN NORA

NO. 04-CA-1077 C/W
04-C-1133 & 04-CA-1433

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA
COURT OF APPEAL,
FIFTH CIRCUIT

FILED APR 12 2005



ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 599-958, DIVISION "O"
HONORABLE ROSS P. LADART, JUDGE PRESIDING

APRIL 12, 2005

THOMAS F. DALEY
JUDGE

Panel composed of Judges Edward A. Dufresne, Jr.,
James L. Cannella, and Thomas F. Daley

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AFFIRMED

T.D.
EAD
JLC

This matter stems from an election of the Board of Deacons for the New Mount Bethel Baptist Church, Inc. For the reasons that follow, we affirm the trial court's certification of the election.

FACTS AND PROCEDURAL HISTORY:

In 2003 a new pastor was elected to the New Mount Bethel Baptist Church, Inc. (hereinafter referred to as the church). An election for a new Board of Deacons, (hereinafter referred to as the board) was held on August 31, 2003. Five members were elected to the board. After the new board was elected some members of the previous board refused to resign their position and continued to act as members of the board. This led to the filing of a Writ of Quo Warranto. The Writ of Quo Warranto filed on October 14, 2003 by John Frazier, Melvin Robertson, Tommy Thompson, Melvin Spooner, Melvin Stokes (the five new board members), and Reverend Frederick Matthews sought to declare that Cedric Floyd and Alvin Nora (members of the previous board) were not members of the

board and forbid them from usurping that role. In the alternative, the writ requested that a new election be held. A hearing was held on the writ on November 10, 2003, during which a Consent Judgment was entered into. The Consent Judgment was read into the record, reduced to writing, and signed by the attorneys for the parties and the trial judge on November 25, 2003. The Consent Judgment provided that a new election be held on December 14, 2003 and appointed a Special Master to oversee the election. The Consent Judgment also appointed an interim board of ten, pending the election. On December 9, 2003, five members of the interim board met and passed a resolution nominating twelve candidates for the upcoming Board of Deacons election and resolved that eleven board members should be elected from the slate of twelve candidates.

On December 10, 2003, the attorneys for both sides met with the Special Master. The Special Master's report and the Special Master's testimony indicate that all parties agreed to the method in which qualification to vote and to serve on the board would be determined. The Special Master's report also indicates that there was no agreement as to the number of persons to be elected to the board and the manner in which the board would be elected. Based on the failure of the parties to agree on December 10, 2003, the Special Master made certain decisions regarding the upcoming elections. Specifically he decided on a slate of ten nominees and determined that from the ten nominees seven members would be elected to the board. The Special Master determined that three of the candidates nominated by the December 9th resolution, Steve Williams, Edward Jefferson, and Emmitt Robinson, were not qualified to run for the board because they did not meet the criteria set out in the Articles of Incorporation and/or By-Laws of the church.

On December 11, 2003, Mr. Cedric Floyd wrote and hand delivered a letter to the Special Master, challenging the Special Master's authority to make nominations and to determine the number of board members to be elected. After receiving Mr. Floyd's letter, the Special Master informed both counsel that he would seek instructions and directions from the trial court regarding his authority. The trial court held a status conference on December 12, 2003, two days before the scheduled election date, to discuss with the parties the dispute over the nominating process. After the status conference the trial court issued an Order approving the form and substance of the election ballot with ten nominees from which seven board members would be elected and clarifying that the Special Master "shall have authority to implement any orders necessary to carry out the Consent Judgment."

Just prior to the election, three nominees, Alphonse Robinson, Deberry Stewart, and Alvin Nora, submitted affidavits to the Special Master stating they wished to be removed from the ballot in protest objecting to the ballot as developed by the Special Master. This left seven names on the ballot.

On December 14, 2003 an election was conducted at the church and Tommy Thompson, Melvin Stokes, John Hall, Melvin Spooner, Melvin Robertson, John Frazier, and Cedric Floyd were elected to the board.

On December 17, 2003, Steve Williams filed a Petition for Intervention into the suit on the Writ of Quo Warranto claiming that his name was wrongfully removed from the ballot and asking the trial court not to certify the election results. Mr. Williams's intervention was denied and his appeal of this denial was docketed in this Court as No. 04-CA-1433.

On December 29, 2003, the Special Master delivered a report to the trial judge documenting the steps taken to hold the election and the results of that election.

The defendants, Cedric Floyd and Alvin Nora, appealed the December 12, 2003 Order clarifying the Special Master's authority and the January 6, 2004 Order certifying the election results. This appeal, lodged as No. 04-CA-291, was later dismissed as premature.

An election was held to elect a new pastor on February 8, 2004. The results of this election were confirmed by the trial court on March 18, 2004. The defendants appealed this confirmation and included the January 6, 2004 confirmation in the Motion for Appeal. This appeal was lodged as No. 04-CA-1077¹. The trial judge refused to certify the December 12, 2003 and January 6, 2004 judgments as final for appellate purposes; however, this Court granted Writ No. 04-C-1133 and certified these judgments as final for appellate purposes. This Court then ordered that appeal Nos. 04-CA-1077 and 04-CA-1433, as well as Writ No. 04-C-1133² be consolidated for appeal.

ARGUMENTS RELATED TO DECEMBER 14, 2003 ELECTION:

On appeal, appellants, Cedric Floyd and Alvin Nora, argue that the trial court erred in certifying the election of the board. They assert three errors. First, they assert that the trial court could not rely on the Special Master's report to certify the election because they were not served with notice of filing of the Special Master's report. Second, they argue that the trial court erred in expanding the duties and powers of the Special Master. Their third argument is that the trial court went beyond the scope of the parties' consent and sanctioned an election conducted outside the authority of the corporate articles.

¹ This appeal was dismissed on motion of defendant, but the Order dismissing this appeal was recalled by this Court upon granting of plaintiffs' Motion for Rehearing.

² The only additional relief sought by defendants in Writ No. 04-C-1133 was that this appeal go forward.

In support of their position regarding notice of the Special Master's report, appellants cite LSA R.S. 13:4165, which provides:

- A. Pursuant to the inherent judicial power of the court and upon its own motion and with the consent of all parties litigant, the court may enter an order appointing a special master in any civil action wherein complicated legal or factual issues are presented or wherein exceptional circumstances of the case warrant such appointment.
- B. The order appointing a special master may specify or limit the master's powers. Subject to such specifications or limitations, the master has and shall exercise the power to regulate all proceedings before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties.
- C.
 - (1) The court may order the master to prepare a report upon the matters submitted to him and, if in the course of his duties he is required to make findings of facts or conclusions of law, the order may further require that the master include in his report information with respect to such findings or conclusions.
 - (2) The report shall be filed with the clerk of court and notice of such filing shall be served upon all parties.
 - (3) Within ten days after being served with notice of the filing of the report, any party may file a written objection thereto. After a contradictory hearing, the court may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions. If no timely objection is filed, the court shall adopt the report as submitted, unless clearly erroneous.
- D. The master's compensation shall be reasonable, fixed by the court, and taxed as costs of court.

Our review of the record indicates that no parties were served with notice that the Special Master filed a report. However, appellants do not state how they were harmed by the failure to file such notice. Appellants state in their brief that they received a copy of the Special Master's report in the mail. Thus, they timely received a copy of the report before it was filed into the record. While we agree

that the statute requires notice of the filing of the Special Master's report be sent to all parties and that this was not done in this case, appellants have not shown how they were harmed by the failure to receive such notice. The Special Master's report simply states the results of the elections. These facts are not in dispute. What is in dispute is the Special Master's authority to conduct the election in the manner in which it occurred. In the absence of showing how they were prejudiced by the failure to serve notice of the Special Master's report, we will not disturb the trial court's ruling on the basis of procedural error. Johnson v. Dumas, 01-1153 (La. App. 5 Cir. 2/26/02), 811 So.2d 1085.

The second and third Assignments of Error address appellants' major grievance. In their second Assignment of Error, the appellants contend the trial judge erred by expanding the Special Master's duties and powers after the parties consented to his appointment. In their Third Assignment of Error, appellants contend the trial court went beyond the scope of the parties' consent agreement. Appellants point out that the Consent Judgment gave the Special Master the authority to oversee the election of the board, to conduct the elections including the handling of absentee ballots, to count the ballots, to oversee the election of the pastor, and to determine the members entitled to vote in the elections. Appellants claim that there is nothing in the Consent Judgment that gives the Special Master the authority to determine the list of candidates for the new board and to create a ballot for the new board. Appellants claim that the authority to determine the list of candidates for the election was with the acting Board of Deacons, rather than the Special Master.

At the March 11, 2004 hearing conducted on this matter the Special Master and other witnesses testified about the factual details of the nominating process and how the election was conducted. It was brought out that the acting Board of

Deacons met on December 9, 2003 to select a list of candidates for the December 14, 2003 election. At the time there were ten members of the acting board; however, only five members attended this meeting. At the March 11th hearing all parties agreed that five members did not constitute a quorum on December 9, 2003. There is nothing in the Articles of Incorporation or the By-Laws of the church stating what constitutes a quorum. However, R.S. 12:224 states that "A majority of the board of directors shall be necessary to constitute a quorum for the transaction of business." Thus, there needed to be at least six members of that acting board present to constitute a quorum. Since there was no quorum, the resolution passed at this meeting selecting a list of candidates for the election was not valid.

The Special Master testified that he held a meeting with the attorneys for both factions on December 10, 2003 after the December 9, 2003 meeting of the acting board. He testified that at this meeting there was an agreement to remove Mr. Williams, as well as the other two members from the ballot. The record reflects that the Special Master was not questioned by the attorney's for appellants at this hearing. Thus, his testimony that there was an agreement to remove Mr. Williams and the other two members from the ballot is uncontroverted.

The trial judge stated during the March 11, 2004 hearing that it was evident that one faction decided not to participate in the December 9, 2003 meeting of the acting board so there would not be a quorum. The trial judge explained that when he met with the attorneys and the Special Master on December 12, 2003, he considered problems with the election process and signed the December 12, 2003 Order approving the form and substance of the ballot and giving the Special Master authority to implement any Orders necessary to carry out the Consent Judgment in order to save the church. The trial judge noted that the December 12, 2003 Order

was not challenged by writ. The trial judge noted that the Consent Judgment gave the Special Master “all powers to conduct the election” and that it was purposefully broad to ensure the election would be carried out so the church ministry could continue. The trial judge looked to the Consent Judgment for a determination of the Special Master’s authority.

The record reflects that after the Consent Judgment was read into the record. The trial judge called each party to the bench. After swearing the parties in, the trial judge asked if they understood and agreed to the terms of the Consent Judgment. All parties answered affirmatively. The Consent Judgment was therefore ratified by all five directors elected to the board on August 31st and two directors who served on the previous board. The Consent Judgment was approved and ratified unanimously by the five deacons who were elected on August 31st and by a majority, seven out of eleven, of the deacons holding office before the August 31st election. Hence, the Special Master did not usurp any of the director’s authority; rather, the Special Master was granted “all powers to conduct the election” by a majority of the board.

We agree with appellant’s argument that the Articles of Incorporation provide that the Board of Deacons is to compile a list of candidates for the Board of Deacon election. Since there was no quorum at the December 9, 2003 board meeting the resolution adopted at that meeting nominating twelve candidates for the election had no binding effect. Absent a valid board resolution nominating candidates, the Special Master’s authority clearly included the authority to nominate. Further, the Special Master’s decision to have a board of seven does not offend the Articles of Incorporation, which only states that there must be an odd number of members on the board. Absent some other valid board resolutions to the contrary, the assignment of authority to the Special Master to conduct the

election controls. Given the broad wording of the Consent Judgment, which all parties stated under oath that they understood and agreed with, we see no error in the trial court's certification of the December 14, 2003 election.

INTERVENTION:

Intervenor, Steve Williams, claims the trial court erred in not allowing him to intervene in this action since he had an indispensable interest in the pending action.³ The record reflects that Mr. Williams filed a Petition for Intervention on December 17, 2003 to contest the removal of his name from the ballot for the December 14, 2003 election. This motion was set for hearing and heard on March 11, 2004. The record reflects that Mr. Williams had notice on December 12, 2002 that his name would not be on the ballot. The Code of Civil Procedure has provisions available to Mr. Williams by which he could have been heard prior to the election. Instead, Mr. Williams filed an intervention in ordinary proceedings and did not have it heard for nearly three months. By the time the intervention was heard, appeal orders for the board and pastor elections had already been filed. C.C.P. art. 1033 states that an incidental demand, (which includes an intervention) may be filed if, (among other things) it will not retard the progress of the principal action. At the March 11, 2003 hearing on the intervention, the trial judge questioned the intervenor's attorney as to when the intervenor became aware that his name would not be on the ballot. The intervenor's attorney responded that he knew on December 12, 2003 that he would not be on the ballot. Yet, he waited until December 17, 2003 to file a Motion for Intervention and allowed the motion to proceed with the normal calendar of the court, rather than seeking expedited

³ Intervenor also lists Assignments of Error and arguments similar to appellants' position related to notice of the filing of the Special Master's report and scope of the Special Master's authority, which were discussed as above.

consideration. Intervenor failed to avail himself of other procedures, i.e. Temporary Restraining Order and/or Injunction, to delay the election in order to determine if his name was properly removed from the ballot. Furthermore, at the hearing on the intervention, the Special Master testified that the parties agreed to remove Mr. Williams' name from the ballot. To allow the intervention at this late date would prejudice not only the parties involved, but the entire congregation of the church. Accordingly, we see no error in the trial court's denial of Mr. Williams's Petition for Intervention.

CONCLUSION:

For the foregoing reasons, the judgments of the trial court are affirmed.
Appellants to pay all costs of appeal.

AFFIRMED

EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

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THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. McMANUS
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JUDGES

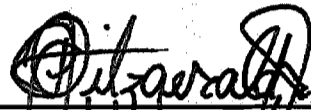


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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED ON OR DELIVERED THIS DAY APRIL 12, 2005 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:



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CLERK OF COURT

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C/W 04-C-1133 & 04-CA-1433

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