

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM F. LEACH and OTIS T. BUCHAN,

Plaintiffs/Counter-Defendants-
Appellees,

v

R. P. JOHNSON, KEN PESHL, a/k/a KEN
PESHI, C. J. PUTNEY, FRANK SCHULTZ and
STEVE WOLIN,

Defendants/Counter-Plaintiffs-
Appellants.

UNPUBLISHED

June 18, 2009

No. 283626

Macomb Circuit Court

LC No. 2005-002379-CZ

Before: Murphy, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Defendants/counter-plaintiffs-appellants (defendants) appeal as of right the trial court's order granting plaintiffs/counter-defendants-appellees' (plaintiffs) motion for summary disposition pursuant to MCR 2.116(C)(4) and denying defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

Defendants argue on appeal that Assemblies of God is not a hierarchical organization with complete power and control over subordinate religious organizations because Gospel Lighthouse, of which defendant R. P. Johnson is the pastor and defendants Ken Peshl, C. J. Putney, Frank Shultz, and Steve Wolin are the elders, has the power to govern itself and the power to own property. Therefore, according to defendants, the trial court has subject matter jurisdiction to decide which parties control Gospel Lighthouse. We disagree.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and MCR 2.116(C)(10) (no genuine issue of material fact). Plaintiffs moved for summary disposition pursuant to the same subsections, as well as MCR 2.116(C)(4) (lack of subject matter jurisdiction). At the motion hearing, the parties agreed that there was no genuine issue of material fact, and therefore, the trial court decided the motions under MCR 2.116(C)(4).

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion for summary disposition may be granted under MCR 2.116(C)(4) when a court lacks

subject matter jurisdiction. *Briggs Tax Service, LLC v Detroit Pub Sch*, 282 Mich App 29, 33; 761 NW2d 816 (2008). “[J]urisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending” *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992), quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938). On review, this Court “must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate . . . [a lack of] subject matter jurisdiction.” *CC Mid West v McDougall*, 470 Mich 878, 878; 683 NW2d 142 (2004). Constitutional issues are also reviewed de novo. *J & J Construction Co v Bricklayers & Allied Craftsmen, Local 1*, 468 Mich 722, 729; 664 NW2d 728 (2003).

The “First Amendment . . . ‘severely circumscribes the role that civil courts may play in resolving church property disputes’” *Bennison v Sharp*, 121 Mich App 705, 712-713; 329 NW2d 466 (1982), quoting *Jones v Wolf*, 443 US 595, 602; 99 S Ct 3020; 61 L Ed 2d 775 (1979). “Under the ecclesiastical abstention doctrine, apparently derived from both First Amendment religion clauses, ‘civil courts may not redetermine the correctness of an interpretation of canonical text or some decision relating to government of the religious polity.’” *Smith v Calvary Christian Church*, 462 Mich 679, 684; 614 NW2d 590 (2000), quoting *Paul v Watchtower Bible & Tract Society*, 819 F2d 875, 878, n 1 (CA 9, 1987). “Religious doctrine refers to ritual, liturgy of worship and tenets of the faith.” *Maciejewski v Breitenbeck*, 162 Mich App 410, 414; 413 NW2d 65 (1987). “Polity refers to organization and form of government of the church.” *Id.* A civil court’s jurisdiction is “limited to property rights which can be resolved by application of civil law.” *Id.* Otherwise, a court must “defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.” *Bennison, supra* at 713, citing *Jones, supra* at 602.

The *Bennison* Court explained that “[t]he United States Supreme Court has expressly approved of two methods by which civil courts may be guided in deciding church property disputes: 1) the polity or hierarchical theory; and 2) the neutral principles of law theory.” *Id.* at 713, citing *Watson v Jones*, 80 US (13 Wall) 679; 20 L Ed 666 (1872). Under the polity theory, applicable to the case at bar,¹ “when a subordinate congregation or a faction thereof secedes from a hierarchical church, it has no right to retain church property where the governing body of the general church has determined it is no longer the congregation or its legitimate successor for which the property was originally purchased or obtained.” *Bennison, supra* at 715. A later decision of this Court clarified the definition of “hierarchical,” explaining that a denomination is organized hierarchically if it has “a central governing body which has regularly acted within its powers,” in contrast to “the looser ‘congregational’ structure, with all governing powers and property ownership remaining in the individual churches.” *Calvary Presbyterian Church v*

¹ The *Bennison* Court clarified that neutral principles of law could be used where there was an express trust, *Bennison, supra* at 724, however, there is no express trust in the case at bar, *William F Leach v R P Johnson*, unpublished opinion per curiam of the Court of Appeals, entered July 19, 2007 (Docket No. 272669), slip op, p 8.

Presbytery of Lake Huron of United Presbyterian Church in USA, 148 Mich App 105, 108 n 1; 384 NW2d 92 (1986).

Defendants assert that the constitution of the local church, Gospel Lighthouse, for which they claim authority to speak, provides that Gospel Lighthouse has the power to govern itself and the power to own property, and therefore, the larger denomination, Assemblies of God (consisting of the national General Council and the regional Michigan District), is not hierarchical. Moreover, defendants assert that any association with Assemblies of God on the part of Gospel Lighthouse is voluntary and terminable by Gospel Lighthouse. We find these arguments unpersuasive.

In this case, as was done in *Bennison*, it is necessary to examine the organizing documents of both Gospel Lighthouse and the Michigan District. It is true, as defendants claim, that the constitution and bylaws of Gospel Lighthouse, adopted January 20, 1984, provide for the church to govern itself and control its property. Article II, Prerogatives, Section 1 gives “Gospel Lighthouse, a church affiliated with the Assemblies of God . . . the right to govern itself according to the standards of the New Testament Scriptures.” Section 2 states that Gospel Lighthouse “shall have the right to purchase or acquire by gift, bequest, or otherwise . . . and to own, hold in trust, use, sell, convey, mortgage, lease or otherwise dispose of any real estate”

As the trial court noted, however, Gospel Lighthouse from its inception, has recognized itself as a subordinate member of Assemblies of God. First, On December 27, 1968, Reverend Walter Bostick, pastor of Gospel Lighthouse Assembly of God, Detroit, Michigan, submitted paperwork, constituting a “voluntary application,” to the “Executive Presbytery of the Michigan District Council of the Assemblies of God for official recognition . . . as a Dependent assembly” Second, the articles of incorporation (ecclesiastical), filed on January 20, 1984 (with defendant Johnson as resident agent), stated: “We Gospel Lighthouse declare that we are in cooperative fellowship with the Michigan District Council of the Assemblies of God according to the constitution and bylaws of Gospel Lighthouse.” Third, Gospel Lighthouse submitted its constitution and bylaws to the Michigan District for approval, which it received, on December 31, 1986. Fourth, Gospel Lighthouse twice petitioned to upgrade its status in Assemblies of God.

Furthermore, the constitution and bylaws of Gospel Lighthouse provide ample evidence that the church submitted itself to and was part of a hierarchical organization. The preamble of the Gospel Lighthouse constitution states: “we . . . do hereby recognize ourselves as a local fellowship of believers, and a part of The General Council of the Assemblies of God, and of the Michigan District of the Assemblies of God according to the Bylaws of Gospel Lighthouse” In Article II, Affiliation and Relationship, Gospel Lighthouse again declared itself “to be voluntarily in full cooperative fellowship” with the Michigan District and the General Council of the Assemblies of God, “and shares in the privileges and *assumes the responsibilities enjoined through this cooperation.*” (Emphasis added.) Article II further recognizes the power of the Michigan District and the General Council over Gospel Lighthouse, including the right to disapprove of doctrine and conduct, and the right to remove “any and all from governing rule” of Gospel Lighthouse. This latter provision is analogous to the situation in *Calvary Presbyterian, supra*, where, this Court found that while individuals were free to leave the larger denomination, the local church could not “depart from the ‘rules’ which [it] had originally agreed to abide by, one of which was that the Denomination could supersede the Church’s powers to govern itself by

replacing its governing Session in the event of a dispute and that the Administrative Commission could determine to keep the real estate in the possession of the Denomination [for] the use of the nondeparting members.” *Id.* at 113.

Finally, Gospel Lighthouse’s constitution makes clear what should happen to the property in the event of a dispute. Article XII, Section 2 of the Gospel Lighthouse constitution provides, “in the event defection shall occur from the tenets of faith . . . resulting in a breach with the Assemblies of God, Michigan District . . . any portion of the membership subscribing to and practicing the aforesaid tenets of faith and the constitution and bylaws of Gospel Lighthouse and retaining membership with Gospel Lighthouse, shall retain possession of, and title to, all properties of said church with full rights thereto” Article XII, Section 3 states that “in the event this church shall cease to function for the purposes as declared heretofore in the Articles of its Constitution, then, after providing for the payments of its debts, the remaining assets . . . shall revert to, and be transferred to, the Michigan District of the Assemblies of God.”

The organizing documents of the Michigan District provide further proof that Assemblies of God is a hierarchical organization. First, the Michigan District Yearbook explains the meaning of “voluntary cooperative fellowship”: “once one, of their own free will, decides to become a cooperating member of the Assemblies of God, this cooperation becomes obligatory and not optional.” As noted above, in Article II of its Constitution, Gospel Lighthouse declared itself “to be voluntarily in full cooperative fellowship” with the Michigan District and the General Council of the Assemblies of God.

Second, Article VI, Section 2 of the Michigan District’s constitution states that the district has the right “to approve all Scriptural teachings, methods, and conduct, and to disapprove unscriptural teachings, methods, and conduct.” Article VII, Section 2 provides that “local churches that are members of the Assemblies of God, Michigan District shall recognize *and be subject to* the District Council as set forth in the General Council Constitution (Article XI).” (Emphasis added.)

Third, Section 1 of the Michigan District’s bylaws describes the different classifications of local churches, demonstrating that regardless of classification, an Assemblies of God church is still subordinate to the larger organization. A district supervised local church “shall be under the leadership of the District Supervised Church Director until such time as the Presbyter Board, in cooperation with the District Officiary, deem it prudent for the advancement of the church.” A district advanced local church (the status of Gospel Lighthouse from 1988 to 1992) is one that “is making satisfactory progress toward, but which is not yet able, to qualify for General Council affiliation as an Autonomous local church.” An autonomous local church (the status of Gospel Lighthouse from 1992 up to the time the controversy arose), while it “shall have the right to choose its own Pastor(s), elect officers, hold title to property in its corporate name, discipline members, and transact business on its behalf,” it is still “*expected to conform to the decisions of the District council in the interests of general unity.*” Moreover, even an autonomous church must file an annual statement “signed by the Pastor and/or church secretary, stating that the church has maintained the standards set forth herein.”

Finally, according to the Michigan District’s bylaws, Section 2(c), “should a crisis arise in an Autonomous or District Advanced local church and a resolution appear unlikely, the District Superintendent or authorized District Officer invited for counsel and advice may

recommend to the church a vote to become reclassified to District Supervised status. The church will return to its former status at the request of the congregation and the approval of the executive board.” This provision seems to imply that an autonomous local church has a say in any change of status, however, pursuant to section 2(d), “if any situation is such that it requires immediate action, the district superintendent may reclassify the church to district supervised status . . . subject to the ratification of the executive board [of the Michigan District] within seven days. The church will return to its former status at the request of the congregation and the approval of the executive board [of the Michigan District].” Therefore, because Gospel Lighthouse subordinated itself to the authority of Assemblies of God, and because the Michigan District had ultimate control over Gospel Lighthouse’s doctrine, status, and leadership, the trial court did not err when it determined that Assemblies of God is a hierarchical organization, thus precluding subject matter jurisdiction.

Defendants also argue on appeal that the trial court erred in not joining Gospel Lighthouse as a party. We note, that aside from the fact that defendants never asked that Gospel Lighthouse be joined as a party (and indeed, this dispute concerns which party has the right to speak on Gospel Lighthouse’s behalf), this issue was not preserved below. Although we can review an unpreserved issue, *State Auto Insurance Cos v Velazquez*, 266 Mich App 726, 731; 703 NW2d 223 (2005), we further find that this issue is moot, because regardless of whether Gospel Lighthouse was or should have been a party to this action, a lack of subject matter jurisdiction precludes this Court from granting relief, *Tenneco, Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 472; 761 NW2d 846 (2008).

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray