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NO. COA05-1054

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

Elijah Canty et al.,

Plaintiffs,

v.

Guilford County
No. 04 CVS 9633

Hayes Memorial United Holy
Church, Inc., and Clifton
Buckrham, Pastor of Hayes
Memorial United Holy
Church, Inc.,

Defendants.

Appeal by defendants from orders entered 15, 24, and 28 September 2004, 7 October 2004, 18 November 2004, and 3 and 6 January 2005 by Judge John Craig, III, in Guilford County Superior Court. Heard in the Court of Appeals 22 March 2006.

Forman Rossabi Black, P.A., by Amiel J. Rossabi and Jason M. Goins, for plaintiff-appellees.

Angela Newell Gray, for Clifton E. Buckrham, defendant-appellant.

JACKSON, Judge.

The facts of the instant case are the same as those in *Canty v. Hayes Memorial United Holy Church, Inc.*, ___ N.C. App. ___, 624 S.E.2d 432, 2006 N.C. App. LEXIS 163 (Jan. 17, 2006) (No. 05-236) (unpublished) (*Canty I*), and thus we need not go through a

recitation of the background facts in order to dispose of the present case. In *Canty I*, we dismissed defendant Clifton Buckrham's ("Buckrham") appeal as moot. At the time of his appeal, Buckrham was no longer pastor of Hayes Memorial United Holy Church, Inc. ("Hayes Memorial"), and he retained no interest in that capacity. He made no claim on appeal that he was a member of Hayes Memorial, or that he had been personally aggrieved by the trial court's 28 September 2004 Amended Order which excluded and included certain individuals from the list of eligible voting members of Hayes Memorial. In *Canty I*, as in this case, both defendants Buckrham and Hayes Memorial appealed the trial court's 28 September 2004 Amended Order. Hayes Memorial later filed a Motion to Dismiss its appeal, which was granted by this Court. As there no longer existed any controversy between Buckrham, in his role as pastor, and plaintiffs, and as Buckrham remained the sole appellant, we held there were no adverse parties with an interest in the appeal before this Court, thus Buckrham's appeal was moot.

The instant case involves defendants' appeal not only from the trial court's 28 September 2004 Amended Order, but also from the following additional orders: the 15 September 2004 order denying defendants' Motion for Temporary Restraining Order; the 7 October 2004 order denying defendants' Motion to Stay; the 18 November 2004 order granting in part plaintiffs' Motion to Quash and for Protective Order; the 3 January 2005 order granting in part plaintiffs' Motion to Quash and for Protective Oder; and an order

entered on 6 January 2005 denying defendants' Motion to Vacate the September 2004 order.

As in *Canty I*, the facts indicate that defendant Buckrham voluntarily resigned his position as pastor of Hayes Memorial on 16 January 2005. On 1 September 2005, defendant Hayes Memorial filed a Motion to Dismiss not only its appeal, but also defendant Buckrham's appeal. In support of its motion, Hayes Memorial argues that it no longer wishes to pursue its appeal, and it does not wish for Buckrham, who resigned his position as pastor and does not claim to be a member of Hayes Memorial, to pursue the appeal on the church's behalf. By way of this opinion, we hereby grant defendant Hayes Memorial's Motion to Dismiss its appeal. On 13 September 2005, plaintiffs filed a Motion to Dismiss defendant Buckrham's appeal, citing the fact that Hayes Memorial wished to dismiss its own appeal, and that Buckrham, against the wishes of Hayes Memorial, has purportedly filed his appeal on behalf of Hayes Memorial.

As in *Canty I*, Buckrham no longer retains any interest in the position as pastor with Hayes Memorial. He also fails to argue that he is a member of the church or that he has been injured personally by any of the orders from which he appeals. As we held in *Canty I*, "there no longer exists any issue in controversy between Buckrham (in his role as pastor) and plaintiffs." *Canty I*, 2006 N.C. App. LEXIS 163, at *4. We note that the instant case is in the same posture that *Canty I* was in when it came before us, in that the absence of a controversy between defendant Buckrham and

plaintiffs, when joined with the dismissal of Hayes Memorial's appeal, leaves no adverse parties with an interest in the appeal before this Court. *Id.* at *4-5.

Whenever during the course of litigation it develops that . . . the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain an action merely to determine abstract propositions of law. . . . If the issues before the court become moot at any time during the course of the proceedings, the usual response is to dismiss the action.

Simeon v. Hardin, 339 N.C. 358, 370, 451 S.E.2d 858, 866 (1994) (citations omitted). Thus, we therefore grant defendant Hayes Memorial and plaintiffs' Motions to Dismiss defendant Buckrham's appeal, as his appeal is moot.

Appeal dismissed.

Judges ELMORE and STEELMAN concur.

Report per Rule 30 (e).