

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-236

NORTH CAROLINA COURT OF APPEALS

Filed: 17 January 2006

ELIJAH CANTY et al.,

Plaintiffs,

v.

Guilford County
No. 04 CVS 9633

HAYES MEMORIAL UNITED HOLY
CHURCH, INC., and CLIFTON E.
BUCKRHAM, Pastor of Hayes
Memorial United Holy Church,
Inc.,

Defendants.

Appeal by defendants from orders entered 24 and 28 September 2004 by Judge John O. Craig, III, in Guilford County Superior Court. Heard in the Court of Appeals 18 October 2005.

Forman Rossabi Black, P.A., by Amiel J. Rossabi, for plaintiffs-appellees.

Gray Newell Johnson & Blackmon, LLP, by Angela Newell Gray, for Clifton E. Buckrham, defendant-appellant.

PER CURIAM.

Defendants Clifton Buckrham ("Buckrham") and Hayes Memorial United Holy Church ("Hayes Memorial") appealed from orders entered in Guilford County Superior Court by the Honorable John O. Craig, III on 24 and 28 September 2004 modifying a Temporary Restraining Order issued 14 September 2004.

Hayes Memorial is a domestic, non-profit corporation which has been affiliated with the United Holy Church of America, Inc. ("United Holy Church") since approximately 1918. Hayes Memorial never adopted by-laws establishing membership or voting criteria.

In September 1999, Buckrham was hired as pastor of Hayes Memorial. On 26 August 2003, Hayes Memorial's Joint Board notified Buckrham that it had voted to terminate his services as pastor. Buckrham questioned the validity of the termination and contacted Bishop Ralph Love ("Love"), a representative of United Holy Church, for assistance in settling the dispute. On 9 October 2003, Love mandated a "cooling off" period until 30 October 2003 at which time the church membership would vote on Buckrham's continued employment as pastor. At the 30 October meeting, only those individuals included on a list generated by defendants were permitted to vote. The majority of those voting at that meeting elected to retain Buckrham as pastor of Hayes Memorial.

Plaintiffs, members and purported members of Hayes Memorial, disputed that the composition of the list of individuals permitted to vote at the 30 October 2003 meeting accurately reflected the true voting membership of Hayes Memorial. Plaintiffs composed a list which they contend reflects the true roll of voting members of Hayes Memorial.

Plaintiffs scheduled a special meeting of the Hayes Memorial congregation for a vote, by those individuals plaintiffs contend were voting members of Hayes Memorial, to adopt by-laws proposed by plaintiffs. Defendants filed a Motion for Temporary Restraining

Order to prevent plaintiffs' from conducting their scheduled meeting. Defendants' motion was granted 14 September 2004. Defendants subsequently called a special meeting of the Hayes Memorial congregation for a vote by the individuals on defendants' voting list on the adoption of by-laws proposed by defendants. The parties filed cross Motions for Preliminary Injunction. After hearing arguments by each party in support of their Motion for Preliminary Injunction, the trial court entered an order which modified defendants' prior temporary restraining order and enjoining both parties from holding any special meeting of the church membership until 28 September 2004.

The order went on to prescribe various restrictions as to who could attend the 28 September meeting as well as to establish criteria to determine who would be permitted to vote at the meeting. The trial court defined the pool of voting members as those persons on plaintiffs' and defendants' lists who met the criteria established in the order. The trial court amended its 24 September 2004 order on 28 September 2004 to exclude or include certain individuals from the voting pool by name. It is from these orders that defendants Buckrham and Hayes Memorial appealed.

Notice of appeal was filed by both defendants 4 October 2004. On 16 January 2005, Buckrham was removed as pastor of Hayes Memorial by a unanimous vote of the Hayes Memorial membership. Hayes Memorial subsequently filed a Motion to Dismiss its appeal 20 April 2005. Hayes Memorial's motion was granted by this Court 29 April 2005. Accordingly, the only remaining appellant is Buckrham,

who was named in this action in his capacity as pastor of Hayes Memorial.

Buckrham is no longer the pastor of Hayes Memorial and, therefore, retains no interest in that capacity. Buckrham makes no claim on appeal that he is a member of Hayes Memorial, nor that he is personally aggrieved in any way by the orders from which the appeal was taken. Accordingly, there no longer exists any issue in controversy between Buckrham (in his role as pastor) and plaintiffs.

The absence of any issue between Buckrham and plaintiffs coupled with the dismissal of Hayes Memorial's appeal leaves no adverse parties with an interest in the appeal before this Court.

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). Accordingly, this appeal is dismissed as moot.

Appeal dismissed.

Panel Consisting of:

Judges TYSON, JACKSON, and JOHN.

Report per Rule 30 (e).