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NO. COA05-28-2

NORTH CAROLINA COURT OF APPEALS

Filed: 21 February 2006

GARY HARRIS, JOSEPH B. KINARD,
JOHN S. EAGLE, WAYMON TATE, JR.,
RAYFORD JONES, JOHN L. MCGRIFF
and LESLEY G. BELLINGER, the
plaintiffs suing on behalf of
SAINT LUKE MISSIONARY BAPTIST
CHURCH, INC.,
Plaintiffs,

v.

Mecklenburg County
No. 03 CVS 12251

CLIFFORD J. MATTHEWS, JR., SHARLA
BYRD and AARON MOORE,
Defendants.

Appeal by Clifford J. Matthews, Jr. ("defendant") from order entered 6 October 2004 by Judge Marcus L. Johnson and cross-appeal by plaintiffs from order entered 23 February 2004 by Judge Beverly T. Beal and order entered 13 April 2004 by Judge James W. Morgan in Mecklenburg County Superior Court. This case was originally heard in the Court of Appeals 24 August 2005 and we dismissed defendant's appeal by order entered 17 August 2005. By order dated 1 December 2005, our Supreme Court remanded this case to the Court of Appeals for further consideration.

H. Edward Knox and Lisa G. Godfrey, for plaintiffs-appellees/cross-appellants Gary Harris, Joseph B. Kinard, John S. Eagle, Waymon Tate, Jr., Rayford Jones, John L. McGriff, and Lesley G. Bellinger.

Shirley L. Fulton and Bartina L. Edwards, for plaintiff-appellee/cross-appellant Saint Luke Missionary Baptist Church.

Poyner & Spruill LLP, by P. Marshall Yoder and Joshua B. Durham, for defendant-appellant/cross-appellee.

PER CURIAM

This case was remanded to this Court by the Supreme Court's 1 December 2005 order ruling defendant's petition for writ of certiorari be "Allowed for the limited purpose of remanding this case to the Court of Appeals for more thorough consideration in light of *Tubiolo v. Abundant Life Church, Inc.*, 167 N.C. App. 324, 605 S.E.2d 161 (2004), *disc. rev. denied*, 359 N.C. 326, 611 S.E.2d 853, *cert. denied*, 126 S.Ct. 350, 163 L. Ed. 2d 59 (2005)."

I. Background

Gary Harris, Joseph B. Kinard, John S. Eagle, Waymon Tate, Jr., Rayford Jones, John L. McGriff, and Lesley G. Bellinger (collectively, "plaintiffs"), as members, filed suit on behalf of Saint Luke Missionary Baptist Church against defendant, the pastor of the church, alleging misappropriation of church funds. Defendant filed a motion to dismiss for lack of subject matter jurisdiction, which the trial court denied. Defendant appealed. Plaintiffs filed a motion to dismiss defendant's appeal.

This Court granted plaintiff's motion to dismiss defendant's appeal as interlocutory. An "order denying a motion to dismiss for lack of subject matter jurisdiction is interlocutory and not immediately appealable." *Shaver v. Construction Co.*, 54 N.C. App. 486, 487, 283 S.E.2d 526, 527 (1981). "If, however, 'the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review,' we may review the

appeal under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(d)(1).” *McCallum v. N.C. Coop. Extension Serv.*, 142 N.C. App. 48, 50, 542 S.E.2d 227, 230-31 (quoting *N.C. Dept. of Transportation v. Page*, 119 N.C. App. 730, 734, 460 S.E.2d 332, 334 (1995)). Defendant argues the order denying his motion to dismiss affects a substantial right, i.e., his right to be free from judicial interference into matters of church governance and ecclesiastical disputes.

On remand we now consider this Court’s previous dismissal of defendant’s appeal in light of *Tubiolo v. Abundant Life Church, Inc.* In *Tubiolo*, disputes arose between the plaintiffs, members of the church, and the church over its handling of finances. 167 N.C. App. at 325, 605 S.E.2d at 162. The church terminated the plaintiffs’ memberships. *Id.* Plaintiffs sought an injunction enjoining the church from terminating their memberships. *Id.* at 326, 605 S.E.2d at 162. The church appealed the trial court’s denial of its motion to dismiss. *Id.* at 326, 605 S.E.2d at 163.

This Court held “that the plaintiffs’ membership in the [church] is in the nature of a property interest, and that the courts do have jurisdiction over the very narrow issue of whether the bylaws were properly adopted by the defendant.” *Id.* at 329, 605 S.E.2d at 164. This Court concluded this inquiry can be made without delving into or determining ecclesiastical matters. *Id.* at 329, 605 S.E.2d at 164-65.

The *Tubiolo* opinion did not address whether the appeal in that case was interlocutory. Present in *Tubiolo*, but absent in this

case, was the trial court's finding under Rule 54(b) that its order "affects a substantial right of the Defendant and that there is no just reason to delay an appeal therefrom." *Id.* at 326, 605 S.E.2d at 163; N.C. Gen. Stat. § 1A-1, Rule 54(b) (2003). The holding and discussion in *Tubiolo* does not change the fact that this appeal is interlocutory. *Shaver*, 54 N.C. App. at 487, 283 S.E.2d 527.

Defendant argues his appeal should not be dismissed because he has a substantial right of being free from courts interfering in ecclesiastical matters. The property right involved in this case is allegedly misappropriated church funds. However, the assertion of that property right belongs to plaintiffs at bar rather than defendant. *Tubiolo*, 167 N.C. App. at 329, 605 S.E.2d at 164. The trial court here did not certify its order as affecting a substantial right and immediately appealable. N.C. Gen. Stat. § 1A-1, Rule 54(b). In addition, by its order dated 1 December 2005, our Supreme Court allowed plaintiff's motion to dismiss defendant's appeal to that Court "for lack of substantial constitutional question."

After further consideration in light of *Tubiolo*, this appeal was properly dismissed. We fail to discern any substantial right defendant will lose by this Court's decision not to review this interlocutory appeal.

Appeal dismissed.

Panel consisting of:

Judges HUNTER, TYSON, and STEELMAN.

Report per Rule 30(e).

