

[Cite as *Robinson v. Freedom Faith Missionary Baptist Church*, 2004-Ohio-2607.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

JOE L. ROBINSON	:	
	:	C.A. CASE NO. 20232
Plaintiff-Appellant	:	
v.	:	T.C. CASE NO. 2002 CV 05631
FREEDOM FAITH MISSIONARY	:	(Civil Appeal from
BAPTIST CHURCH, et al.	:	Common Pleas Court)
	:	Defendants-Appellees
	:	

OPINION

Rendered on the 21st day of May, 2004.

JOE L. ROBINSON, 5208 Whaley Drive, Dayton, Ohio 45427
Plaintiff-Appellant

CHARLES F. ALLBERY, III, Atty. Reg. No. 0006244, 137 N. Main Street, Suite 900,
Dayton, Ohio 45402
Attorney for Defendants-Appellees

FREDERICK N. YOUNG, J.

{¶1} Joe L. Robinson, pro se, is appealing from the decision of the Montgomery County Court of Common Pleas adopting the “decision” of its magistrate [actually its

recommendation of a decision to the court] denying his motion for default judgment in his favor and granting the defendants' motion to dismiss his case. On appeal he has presented the following seven assignments of error:

{¶2} "1. MAGISTRATE BALLARD ERRED BECAUSE APPELLANT WAS NEVER ASKED TO VOTE FOR AN ARBITRATOR OR MAGISTRATE.

{¶3} "2. MAGISTRATE BALLARD ERRED IN NOT GRANTING APPELLANT DEFAULT JUDGMENT.

{¶4} "3. MAGISTRATE BALLARD ERRED IN NOT RECOGNIZING THE MISSING FUNDS AND RETALIATION OF PASTOR HAYES TOWARD APPELLANT AS MERITS OF THE CASE.

{¶5} "4. MAGISTRATE BALLARD ERRED IN NOT RECOGNIZING APPELLANT'S POSITION AND HOW THE CHURCH WAS BEING GOVERNED BEFORE AND AFTER PASTOR HAYES WAS ELECTED TO BE THE PASTOR.

{¶6} "5. MAGISTRATE BALLARD FAILED TO SEE THE AFFIDAVIT SIGNED BY SIS. JOSIE BAILEY WAS [sic] EVENTS THAT HAPPENED AFTER APPELLEE HAD WRITTEN THERE WERE NO BY-LAWS AT THAT TIME.

{¶7} "6. MAGISTRATE BALLARD ERRED IN NOT SEEING APPELLANT WAS IN THE RIGHT JURISDICTION.

{¶8} "7. JUDGE HALL FAILED TO SEE APPELLANT'S ATTORNEY GRANTED DEFENDANT TIME TO FILE HIS ANSWER LATE, INSTEAD OF THE COURT."

{¶9} The facts of the matter, the issues presented, and the trial court's determination of the case are concisely but appropriately set forth in its opinion and

order, as follows:

{¶10} “FINDINGS OF FACTS

{¶11} “Freedom Faith Missionary Baptist Church (hereinafter ‘the Church’) is a congressional church organized as an Ohio non-profit corporation. Frederick Hayes, Sr. is the pastor of the Church. Josie Bailey is the Secretary of the Church. Martha Winston is the Treasurer of the Church. Joe L. Robinson (hereinafter ‘Plaintiff’) is an ordained Deacon and was Chairman of the Deacon’s Ministry of the Church.

{¶12} “The Plaintiff brought this action demanding an audit and accounting of the Church’s financial records, accounts, and transactions. In the Complaint, the Plaintiff states that he had concerns that ‘Josie M. Bailey and Martha Winston, who are responsible for managing and accounting for the collection of monies received by the Church and the expenditure of funds for legitimate Church expenses, were not properly accounting for the same, and that funds may have been diverted for personal use, or for no legitimate business purpose.’ Comp. at p. 2.

{¶13} “The Plaintiff alleges in his Complaint that he discussed these concerns with Frederick Hayes in April 2002, when he told him that the [sic] had reviewed the Church’s computer records and found that there were unaccounted funds. Mr. Hayes allegedly told the Plaintiff that he was going to appoint his mother, who works for an accounting company, to act as the Church’s bookkeeper. Furthermore, the Plaintiff alleges that the Church was operating without any written rules, regulations, or by-laws, but by Broadman Church Manual, which states that Church financial records should be audited annually by individuals authorized by the Church who are not involved in regular Church financial matters. The Plaintiff claims that the named Defendants have

breached their fiduciary duty to act in the best interest of the Church.

{¶14} “The two motions on which the Magistrate ruled include an oral Motion for Default, apparently stipulated to during a telephone status conference on January 20, 2003, and the Defendant’s Answer to the Oral Motion for Default Judgment and Motion to Dismiss filed on February 7, 2003. The Plaintiff apparently responded to the Motion to Dismiss on February 10, 2003. However, this Objection was not filed with the Court.

{¶15} “STANDARD OF REVIEW

{¶16} “If objections to a magistrate’s decision are filed, the trial court may adopt, modify, or reject the magistrate’s decision. *Quick v. Kwiatkowski*, 2nd Dist. No. CA 18620, 2001-Ohio-1498. The appropriate standard of review for a trial court in ruling on objections to a magistrate’s decision is de novo. *Id.* A trial court may not presume that the findings of the magistrate are valid and correct. *Id.* Rather, the trial court may only adopt the findings of the magistrate if, after an independent review, the court makes the same findings of fact and reaches the same conclusions of law. *Wilson v. Voss Chevrolet, Inc.*, 2nd Dist. No. CA 18925, 2002-Ohio-3312. The role of the trial court is to ensure that the magistrate has properly determined the factual issues and appropriately applied the law. *Id.* When the magistrate has failed to do so, the trial court must substitute its own judgment for that of the magistrate. *Id.*

{¶17} “LAW AND ANALYSIS

{¶18} “The Magistrate denied the Plaintiff’s Motion for Default Judgment and Granted the Church’s Motion to Dismiss. The Plaintiff objects to the Magistrate’s decision and argues that it is ‘biased, prejudiced, misleading, and representing.’

{¶19} “MOTION FOR DEFAULT JUDGMENT

{¶20} “Default judgment is only appropriate when the defendant has not contested the plaintiff’s allegations by pleading or otherwise defendant [sic]. Only if no issues are present in the case because the Defendant has failed to plead, is default judgment appropriate. *Pandi v. Marc Glassman, Inc.* (May 11, 1995), 8th Dist. No. 68076. Cases should be decided on their merits when possible, rather than on procedural grounds. However, a party should only be permitted to file an untimely answer upon some showing of excusable neglect. *Thrower v. Olowo* (April 24, 2003), 8th Dist. No. 81873, 2003 Ohio 2049.

{¶21} “In the present action, the Plaintiff did not move for default judgment until January 30, 2003. The Defendants had filed an answer to the complaint on October 11, 2002, thus contesting the Plaintiff’s allegations. In their Reply to Motion of Plaintiff for Default Judgment, the Defendants claim that they did not timely file their answer in reliance on an extension of time granted to them by the Plaintiff’s attorney. The Court finds that the Defendants have sufficiently demonstrated excusable neglect, such that their untimely answer should be permitted, and therefore, the Defendants have contested the issues in the Plaintiff’s complaint such that default judgment would be improper. In his Objections to the Magistrate’s Decision, the Plaintiff claims that the Defendants did not contest the issues of discrimination of the Plaintiff’s former attorney or the retaliation against him. The Plaintiff did not seek relief for these claims in his Complaint. Therefore, the Defendants had no obligation to contest these allegations because they do not relate to the Plaintiff’s cause of action for breach of fiduciary duty. The Court adopts the decision of the Magistrate with respect to the Motion for Default Judgment.

{¶22} “MOTION TO DISMISS

{¶23} “The Plaintiff includes in his objections to the Magistrate’s Decision, accusations that Defendant Frederick Hayes has ‘committed a felony against Plaintiff and violated his 1st amendment’ and retaliated against his wife. Additionally, the Plaintiff claims that his former attorney and the Defendant’s attorney conspired and discriminated against him. Moreover, the Plaintiff accuses the Magistrate of discriminating against the Plaintiff when she granted the Defendants’ Motion to Dismiss, thereby depriving him of ‘his equal and constitutional rights.’ The Plaintiff claims that the Magistrate discriminated against him because of his race and because he is not an attorney. The Court finds that these issues are not before the Court and do not impact whether the Magistrate properly granted the Defendants’ Motion to Dismiss.

{¶24} “The Plaintiff asks this Court to find that the Magistrate’s decision ‘be denied as sham and false and he be granted default judgment. Plaintiff states relief can be granted to him by being reimburse [sic] for his property, reimburse [sic] for his attorney fees, court costs, restored back on the property (which he has been evicted from by the sheriff department, but still have his name on the deeds), for slander of his good name and reputation by the Defendants and he be restored back to his original position (Chairman of the Deacon Board) according to Acts 6: 1-4 of the Bible.’ Objections Magistrate’s Decision. The Court finds that these prayers for relief are irrelevant to the Magistrate’s decision granting the Defendants’ Motion to Dismiss. The Plaintiff’s cause of action is for breach of fiduciary duty and these additional claims that he now raises are irrelevant to the Magistrate’s decision. Therefore, the Court will not address these issues.

{¶25} “The Magistrate found that the Plaintiff failed to establish that this Court has subject matter jurisdiction because the dispute involves ecclesiastical matters. For the reasons that follow, the Court adopts the decision of the Magistrate and concludes that the Plaintiff has failed to establish that this Court has jurisdiction in this matter.

{¶26} “Ohio law requires a civil court to apply a two part test to determine whether it has subject matter jurisdiction over a case involving a religious organization. *Bhatti v. Singh* (2002), 148 Ohio App.3d 385, citing *Tibbs v. Kendrick* (1994), 93 Ohio App.3d 35, 43. The court must first determine whether the religious organization is hierarchical or congregational. *Id.* In a hierarchical organization, the congregation is subordinate member of a general organization. *Id.* In congregational organizations, however, the congregation is independent of other ecclesiastical organizations and owes no obligation to a higher organizational authority. *Id.* When a congregational organization is involved, the court must determine whether the dispute itself is secular or ecclesiastical. *Id.* If the organization is hierarchical, the authority of the court is more limited. *Id.*

{¶27} “In the present case, the Magistrate concluded that the religious organization involved is a congregational organization. The Plaintiff has offered no evidence to refute this finding and the evidence supports such a conclusion. Therefore, this Court must examine the second prong of the test to determine whether this is a secular or ecclesiastical issue. This Court has subject matter jurisdiction only if the dispute involves secular issues.

{¶28} “The dispute in this case involves allegations that the Defendants have breached their fiduciary duty to act in the best interest of the church. The Defendants

include the pastor of the church, as well as the secretary and treasurer of the church. In *State ex rel. First New Shiloh Baptist Church v. Meagher* (April 16, 1997), 1st Dist. No. C-960371, which is cited in the Magistrate's decision, the court explained that 'the lower court has no jurisdiction over the claims brought by the individual members of the congregation seeking to oust the pastor or hold the Board liable for breach of fiduciary duty to the congregation.' In that case, the plaintiffs were members of a congregational church who brought claims against the pastor of the church for breach of fiduciary duty. The court of appeals explained that if the trial court had ordered an accounting of the church finances to determine whether the pastor had been engaged in wrongdoing, the heart of the inquiry would be whether or not the pastor should be removed, which is an ecclesiastical issue.

{¶29} "Similarly in the present case, the Plaintiff has made an allegation of breach of fiduciary duty and seeks an accounting of church finances. This inquiry would necessarily involve whether the pastor of the Church engaged in wrongdoing, and therefore, whether he should be removed as pastor. This is not a matter for the Court to decide. In *Tibbs v. Kendrick*, the court explained that it is not the province of civil courts to determine who should be preaching from the pulpit. *Tibbs v. Kendrick* (1994), 93 Ohio App.3d 35, 41. If this Court were to exercise jurisdiction in this matter, this Court would be improperly interfering in the ecclesiastical matters of a church. Moreover, if the Court had any doubt that this case involves an ecclesiastical issue, the Plaintiff's Objections to the Magistrate's Decision, referring the court to passages from the Bible and explaining that the Church is governed by God, demonstrate that the matters involved in this case are beyond the jurisdiction of this Court.

{¶30} “AFFIDAVITS SIGNED IN BAD FAITH

{¶31} “The Plaintiff further objects to the Magistrate’s finding that there is no evidence to support a finding that the Defendants have engaged in bad faith. In his objections, the Plaintiff states that Josie Bailey, who is a defendant in this matter, willfully and with knowledge, violated Civ.R.P. 56(g) when she signed an affidavit because she knew that the by-laws were not in effect when the original complaint was filed. The Plaintiff has offered nothing to support this claim and therefore, the Court adopts the Magistrate’s finding.

{¶32} “CONCLUSION

{¶33} “For the reasons detailed herein, the Court hereby Overrules the Plaintiffs’ objections and adopts the Magistrate’s Decision.”

{¶34} We find that the trial court’s decision and opinion adequately addresses all of the appellant’s assignments of error except his first one which is that “Magistrate Ballard erred because appellant was never asked to vote for an arbitrator or magistrate.” It is quite clear, however, that this matter was appropriate for referral to a magistrate inasmuch as no party made a jury demand. Civ.R. 53(C)(1)(a)(ii). Moreover, as pointed out by the appellees, no objection was filed by either party to refer this matter to the magistrate and, therefore, the appellant has waived this issue on appeal. *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 210, 24 O.O.3d 316, 317, 436 N.E.2d 1001, 1003. An unobjected decision at the trial level may be reviewed under the doctrine of plain error, but clearly there is no plain error when a case is lawfully referred to a magistrate for the initial hearing.

{¶35} Our review of the record clearly and definitively supports the decision of

the trial court and, therefore, we find no abuse of discretion on its part. Its opinion and decision are approved and hereby adopted as our own.

{¶36} In addition to the ecclesiastical nature of this case, which renders the court without jurisdiction to hear it, there is another matter which was referred to by the magistrate in its decision, as follows:

{¶37} “Plaintiff in the case at bar was also given the opportunity by the Defendants to present his claim to the Executive Committee of the Church and to the entire membership at its specific time to determine if the Church would inquire into the issue further. Plaintiff failed to allege or establish that he presented his complaint to either groups at that designated time.” (Docket 25, page 8).

{¶38} Clearly, the plaintiff’s complaints should have been raised and settled according to the internal procedures of the church. In a case practically on all fours with the present case, the First District Court of Appeals found that the failure of the complainants to follow the internal procedures of the church were “fatal to the individuals’ members claims and to the jurisdiction of the trial court.” *First New Shiloh Baptist Church v. Meagher* (Apr. 16, 1997), Hamilton App. No. C-960371, citing *Russell v. United Missionary Baptist Church* (1994), 92 Ohio App.2d 736, 739; *First Baptist Church of Glen Este v. Ohio* (Southern District of Ohio 1983), 591 Fed.Sup. 676, 683.

{¶39} For the foregoing reason and for all the reasons stated by the trial court, we find not only that it did not commit any abuse of discretion, it also rendered a decision which was practically required in this case since the matters are ecclesiastical in nature, not secular. The assignments of error are all overruled, and the judgment is affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

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Charles F. Allbery, III
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