

[Cite as *Revelation Spiritual Church v. Tussey*, 2010-Ohio-6432.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

REVELATION SPIRITUAL CHURCH OF CHRIST,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-03-058
	:	<u>OPINION</u>
- vs -	:	12/29/2010
	:	
CHRISTOPHER TUSSEY, et al.	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CV09-05-2240

Stephen R. Felson, 215 East Ninth Street, Suite 650, Cincinnati, Ohio 45202, for  
plaintiffs-appellants

Cors & Bassett, LLC, Kevin R. Feasell and Robert C. Hassman, Jr., 537 East Pete  
Rose Way, Suite 400, Cincinnati, Ohio 45202, for defendants-appellees

**POWELL, P.J.**

{¶1} Control over real estate reportedly belonging to a church prompted a  
lawsuit by the pastor and current membership of the church against family members  
of the original church trustees. The party initiating this suit on behalf of the church  
did not have authority to do so and, as a result, the judgment of the Butler County

Common Pleas Court, granting summary judgment to the family members is affirmed.

{¶12} The following facts are presented here for purposes of summary judgment. The Revelation Spiritual Church of Christ was incorporated as an Ohio nonprofit corporation in 1971. The three individuals named in the articles of incorporation as trustees were: Clara Pepper, Clara's then-husband, Richard Pepper, and Clara's son, Marcus Tussey. Clara reportedly served as pastor of the church. No other documentation related to the appointment of additional or replacement trustees or directors was in the record before the court.

{¶13} Clara and Richard Pepper subsequently divorced and Clara married Harold Morgan. Clara transferred the Fairfield property at issue in this case to the church.

{¶14} Kimberly Haas and Teresa Jaroscak, who are grandchildren of Clara, claimed they became trustees of the church at their grandmother's request. Christopher Tussey is the sibling of Haas and Jaroscak. He lives in the house on the real estate owned by the church.

{¶15} Clara died in 2003. Morgan served as pastor and was designated "CEO," in documents signed by Marcus Tussey, Haas, and Jaroscak as trustees. Morgan unsuccessfully filed an action on behalf of the church to evict Christopher Tussey from the Fairfield property in 2007. As a result, Marcus Tussey, Haas, and Jaroscak revoked Morgan's appointment as "CEO."

{¶16} In 2008, Morgan and members of the current congregation scheduled and held a meeting. They elected new trustees, who, in turn, appointed Morgan "CEO" and authorized him to file this lawsuit on behalf of the church in Butler County Common Pleas Court. Marcus Tussey, who was the sole surviving original trustee,

reportedly did not attend or participate in the election of the new trustees. Marcus Tussey died before the complaint in this case was filed in 2009.

{¶7} The lawsuit was filed against Christopher Tussey, Haas, and Jaroscak, and against Marcus Tussey individually and as executor of Clara's estate. The complaint requested the eviction of Christopher Tussey from the property, past rent and damages from his occupation. It also sought a declaration that: the church is the owner of the real estate, the two mortgage deeds naming the real estate are null and void, and Marcus Tussey, Haas, and Jaroscak are not trustees of the church.

{¶8} Haas, Jaroscak, and Christopher Tussey filed a motion for summary judgment, arguing that Morgan was not authorized to file the complaint on behalf of the church corporation. In granting their motion, the trial court observed that the only remaining original trustee, Marcus Tussey, did not attend and vote at the 2008 church meeting. The trial court found that the church members did not have the authority to elect trustees and those new trustees had no authority to direct Morgan to file the lawsuit.

{¶9} The church appealed the decision. It argues in its single assignment of error that the trial court erred in granting summary judgment to Haas, Jaroscak, and Christopher Tussey.

{¶10} On appeal, a trial court's decision granting summary judgment is reviewed de novo.<sup>1</sup> Summary judgment is proper when there is no genuine issue of material fact remaining for trial, the moving party is entitled to judgment as a matter of law, and reasonable minds can only come to a conclusion adverse to the nonmoving

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1. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296.

party, construing the evidence most strongly in that party's favor.<sup>2</sup>

{¶11} The movant bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact.<sup>3</sup> Once this burden is met, the nonmovant has a reciprocal burden to set forth specific facts showing a genuine issue for trial.<sup>4</sup>

{¶12} The trial court's decision in this case centered on the fact that membership in a church is not the same as being a member of a corporation with voting rights and the ability to elect trustees or directors.<sup>5</sup>

{¶13} R.C. 1702.14 states that where neither the articles nor regulations of the nonprofit corporation identify the members of the corporation, or, where a corporation has no members other than the directors, the directors shall "be taken to be the members of such corporation, and they shall have all the rights and privileges of members."

{¶14} A trial court dealing with a derivative action filed by members of a church congregation in *Moore v. Christ's Christian Fellowship* stated that church members did not acquire a right to maintain a derivative action against the church corporation and its trustees because they were not members of the corporation.<sup>6</sup> The trial court said the corporate documentation for the church did not invest the church congregation members with an ownership interest in the corporation or a right

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2. Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

3. *Harless*.

4. *Id.*

5. See *Howard v. Covenant Apostolic Church, Inc.* (1997), 124 Ohio App.3d 24, 30.

6. *Moore v. Christ's Christian Fellowship*, 172 Ohio App.3d 398, 2007-Ohio-3095, ¶13-14; see, also R.C. 1702.12(l)(1)(c).

to the corporation's assets.<sup>7</sup>

{¶15} The appellate court in *Moore* noted that the corporate documentation of the church in that case did not define or set requirements for members of the corporation.<sup>8</sup> The appellate court found that absent any specific definition of corporate members and membership qualifications, the trustees are the sole members under R.C. 1702.14.<sup>9</sup> "The corporation exists solely with the members named in the articles."<sup>10</sup> Therefore, the *Moore* court found that summary judgment was correctly granted to the defendants in that case.<sup>11</sup>

{¶16} Construing the evidence most favorably for the church in this action, we find that reasonable minds can come to but one conclusion and that conclusion is adverse to the church. The corporate documents available do not list corporate members or the requirements for membership. The articles of incorporation only list the three original trustees. The church members were not members of the corporation. They had no authority to elect trustees who authorized Morgan to file the complaint on behalf of the corporation against the family members. The trial court did not err in granting summary judgment. The church's single assignment of error is overruled.

{¶17} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.

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7. Id.

8. Id. at ¶29.

9. Id.

10. Id.

11. Id. at ¶31.

