

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthoneé J. Patterson :
 :
 v. : No. 1967 C.D. 2006
 :
 Kenneth Shelton, :
 Appellant :
 :
 Anthonee Patterson :
 :
 v. : No. 1968 C.D. 2006
 :
 Kenneth Shelton : Argued: December 10, 2007
 :
 Appeal of: Bishop Roddy :
 J. Shelton, II :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: January 31, 2008

In these consolidated appeals, Kenneth Shelton appeals from the July 10, 2006 order of the Court of Common Pleas of Philadelphia County (trial court) denying his petitions to vacate arbitration award and a supplemental adjudication and confirming the arbitration award in the matter of Anthoneé J. Patterson v. Kenneth Shelton, July Term 1995, No. 2945. Bishop Roddy J. Shelton (Roddy Shelton) appeals from the July 19, 2006 order of the trial court denying his petition

to intervene in the matter of Anthoneé J. Patterson v. Kenneth Shelton, July Term 1995, No. 2945.

In his appeal, Kenneth Shelton raises the issue of whether the trial court erred in confirming the April 26, 2006 arbitration award and denying Kenneth Shelton's petitions to vacate the arbitration award and the May 8, 2006 supplemental award. In his appeal, Roddy Shelton raises the issue of whether the trial court abused its discretion in denying his petition to intervene in light of the fact that the underlying litigation is ongoing and the determination of such may affect any legally enforceable interest of Roddy Shelton whether or not he may be bound by the judgment in the action.

The Church of the Lord Jesus Christ (Church) was founded in 1919 by Bishop S.C. Johnson and located at 22nd and Bainbridge Streets (also referred to as "Apostolic Square") in Philadelphia, Pennsylvania. The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. (Corporation) is the secular arm of the Church and was established as a nonprofit corporation in 1947. The Corporation is governed by Pennsylvania's Nonprofit Corporation Law of 1988 (Nonprofit Corporation Law), 15 Pa.C.S. §§ 5101 - 5997, the articles of incorporation, and corporate bylaws. The Corporation is the legal owner of all property of the Church.

The affairs of the Church are managed by the General Overseer/Bishop. The Corporation and all assets are managed by the President and the Board of Trustees. Whoever serves as the General Overseer of the Church also serves as the President of the Board of Trustees of the Corporation. The office of General Overseer is a life term.

Bishop S. McDowell Shelton served as General Overseer of the Church and President of the Corporation from 1961 until his death on October 13,

1991. Upon Bishop S. McDowell Shelton's death, a bitter dispute arose over who was the rightful General Overseer and President with the legal right to control the Church and the Corporation and the assets thereof.

These appeals are round two in the continuous litigation between the parties in these cases over the control of the Church and the Corporation. Round one ended on April 10, 2001, when this Court affirmed the trial court's determination that as a result of the valid action taken at the annual session of the General Assembly¹ in September 1992, specifically, confirming Kenneth Shelton as General Overseer and President, Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation. See Church of the Lord Jesus Christ of the Apostolic Faith, Inc., (Pa. Cmwlth., Nos. 376 CD 2000, 559 CD 2000, filed April 10, 2001), petition for allowance of appeal denied, 567 Pa. 766, 790 A.2d 1019 (2001). Hence, since September 1992, Kenneth Shelton has been lawfully in control of the Corporation.

The action at issue in these consolidated appeals began on or about July 24, 1995, when Anthoneé J. Patterson (Patterson), as a member of the Church, filed a complaint against Kenneth Shelton and Erik Shelton, as members of the Church and as *de facto* controllers of the Church and the Corporation and its assets. Therein, Patterson alleged that on May 28, 1994, after due notice and upon a quorum of the General Assembly, Patterson was duly confirmed as General Overseer and President of the Corporation. Patterson alleged further that despite the election of Patterson as General Overseer and President of the Corporation, Kenneth Shelton and Erik Shelton have refused to relinquish control of the various accounts, trusts and properties of the Corporation and that Kenneth Shelton has

¹ The General Assembly is the annual session of the Church congregation.

assumed for himself the office of General Overseer and President. Patterson alleged further that Kenneth Shelton and Erik Shelton have taken *de facto* control of the Corporation and its property and have operated the same in total disregard of the interests of the members and requirements of law.

Patterson alleged that Kenneth Shelton and Erik Shelton have failed to present an annual report of financial affairs and activities as required by Section 5553 of the Nonprofit Corporation Law,² for the years 1991 through 1994. Patterson alleged that Kenneth Shelton and Erik Shelton have systematically looted the Corporation's accounts and trusts as well as the regular Church collections.

Therefore, Patterson requested the following relief pursuant to Section 5793(b) of the Nonprofit Corporation Law:³ (1) the appointment of a receiver to

² 15 Pa.C.S. §5553. Section 5553 provides that the board of directors shall present annually to the members a report for the fiscal year immediately preceding the date of the report detailing: (1) the assets and liabilities of the corporation; (2) the principal changes in assets and liabilities of the corporation; (3) the revenue or receipts of the corporation; (4) the expenses or disbursements of the corporation; and (4) the number of the members of the corporation as of the date of the report.

³ 15 Pa.C.S. §5793(b). Section 5793 governs review of contested corporate action and provides as follows:

(a) GENERAL RULE.-- Upon petition of any person whose status as, or whose rights or duties as, a member, director, member of an other body, officer or otherwise of a nonprofit corporation are or may be affected by any corporate action, the court may hear and determine the validity of such corporate action.

(b) POWERS AND PROCEDURES.-- The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other relevant evidence which may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the

(Continued...)

take control of the property, accounts and records of the Corporation; (2) an order requiring Kenneth Shelton and Erik Shelton, or alternatively the receiver, to issue annual financial reports for the years 1991, 1992, 1993 and 1994; (3) an accounting of all funds removed from corporate or Church accounts or trusts by Kenneth Shelton, Erik Shelton, and any persons acting in combination with them; (4) an order confirming Patterson as General Overseer; and (5) an order commanding that elections be held for such offices as the court finds to be vacant.

After the filing of preliminary objections, answers, and new matters, the matter was stricken by the calendar judge on February 22, 1996.⁴ In the meantime, as set forth above, it was finally determined by this Court on April 10, 2001, that Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation.⁵

court may order a meeting to be held in accordance with section 5792 (relating to proceedings prior to corporate action).

⁴ It is unclear from the record why the matter was stricken.

⁵ This Court's April 10, 2001 decision involved three separate equity actions which involved the fundamental question of who had the legal right to control the Corporation and the property. The three actions docketed in the trial court were: (1) Fincourt B. Shelton, as Minister Asher Ben Judah, Treasurer of the General Assembly of the Church of the Apostolic Faith, Inc. and Fincourt B. Shelton, Individually and on behalf of All Members of the Church Aggrieved By the Actions of Kenneth Shelton and Erik Shelton v. Kenneth Shelton, Erik Shelton and Trustees of the General Assembly (June Term 1992, No. 1887, Court of Common Pleas of Philadelphia County); (2) Church of the Lord Jesus Christ of the Apostolic Faith, Inc., and the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Fincourt Shelton and Anthoneé J. Patterson and George E. Patterson, Sr. and A. Leah Gregory (July Term 1994, No. 0914, Court of Common Pleas of Philadelphia County); and (3) Church of the Lord Jesus Christ of the Apostolic Faith and Roddy J. Nelson Shelton, I, General Overseer, and Roddy J. Nelson Shelton, II, Trustee, and Frank Matthews, Trustee v. Kenneth Shelton and Erik Shelton and Alonzo Woodard Reagan and John Carlton Thomas and Daniel Bowens and George Brown, Individually and As Trustees of the Church of the Lord Jesus Christ of Apostolic Faith, Inc. (August Term 1994, No. 3654, Court of Common Pleas of Philadelphia County).

In the actions docketed at numbers 1887 and 3654, Roddy Shelton, Anthoneé Patterson
(Continued....)

On December 7, 2004, Patterson filed a motion to reinstate his action with the trial court.⁶ On December 27, 2004, Kenneth Shelton filed an answer to the motion for reinstatement.⁷ Thereafter, an order was entered on February 12, 2005 reinstating the action and removing the notation from the docket that the matter had been stricken on February 22, 1996.⁸

and Fincourt Shelton contested the validity of elections which were held in 1991 and 1992, and alleged, *inter alia*, that Kenneth Shelton and the Trustees violated the corporate bylaws, failed to provide proper notice of the meetings and elections, and illegally seized control by removing a trustee and forcibly expelling members of the congregation. In the action docketed at No. 0914, Kenneth Shelton and the Trustees sought to prevent Anthoneé Patterson and Fincourt Shelton from claiming control and interfering with the assets of the Church and the Corporation.

By order dated November 3, 2004, Judge Younge: (1) dismissed the action at number 3654 based on an agreement between all parties in that action to withdraw all claims and cross claims; (2) dismissed the action at number 1887 based on an agreement between the parties in that action to withdraw all claims and cross claims; and (3) dismissed the action at number 0914 because the plaintiff agreed to withdraw all claims if all other litigation was terminated.

⁶ Patterson requested reinstatement on the basis that he had not received notice from the trial court scheduling the matter for conference, that through some unknown clerical error, the docket was noted that the matter was stricken on February 22, 1996, and that no notice of said action was afforded any party to the action.

⁷ In his answer, Kenneth Shelton denied the material allegations of Patterson's motion to reinstate. In his new matter, Kenneth Shelton averred that Patterson's complaint in this action involved issues that were identical to the three consolidated actions at numbers 1887, 0914 and 3654 which had been disposed of by the trial court. Kenneth Shelton averred further that Patterson's counsel, by letter dated March 13, 1996 to the trial court, acknowledged: (1) that this action had been listed as a non-jury matter; (2) that the matter had been removed from the trial list on the ground that it had been assigned to Judge Sabo along with the three other related Church cases but was never consolidated or any action taken thereon; and (3) that the matter should be relisted but that as a practical matter, it would be best to await disposition of the three related equity actions currently on appeal to this Court. Therefore, Kenneth Shelton requested that the trial court denying Patterson's motion to reinstate based upon: (1) the doctrine of waiver and res judicata; (2) the doctrine of unclean hands because Patterson was attempting to have the trial court re-list a case based upon a misrepresentation of the record; and (3) the doctrine of laches because Patterson waited a period of 8 years to request reinstatement to the prejudice of Kenneth Shelton.

⁸ This order was entered by Judge Mazer Moss.

On November 30, 2005, Erik Shelton was voluntarily dismissed by Patterson as a defendant and the matter proceeded solely against Kenneth Shelton. On that same date, Patterson and Kenneth Shelton agreed to proceed to binding arbitration with no right of appeal and the same was memorialized in a written order dated January 10, 2006. The January 10, 2006 order also stated that the case was dismissed from the trial court by agreement of both parties. As such, the matter proceeded to arbitration.

The arbitrator rendered his initial decision in this matter on April 26, 2006. Therein, the arbitrator determined that Kenneth Shelton held *de facto* control over the Corporation and its property between October 13, 1991 until September 1992 when he was elected General Overseer and President. The arbitrator determined that throughout the period of *de facto* control, Kenneth Shelton violated the bylaws and articles of the Corporation by accumulating pecuniary gain and profit by systematically reducing the Corporation's accounts and trusts as well as the regular Church collections, without making any regular reports regarding the misappropriation of funds. The arbitrator found further that no accounting has ever been given to the General Assembly since 1973.

Accordingly, the arbitrator determined that title to the Corporation's property rested with the faction who acted in harmony with the laws, usages and customs accepted by the body before the dispute and dissension arose. The arbitrator found that Patterson was the one who acted in harmony with the laws, usages and customs accepted by the General Assembly before the dispute and dissension arose but that before any property could vest in Patterson's faction, an accounting of all funds removed from the Corporate Church's accounts or trusts by Kenneth Shelton and any persons acting in combination with him had to be undertaken within thirty days with full discovery to determine the amounts of

misappropriations. The arbitrator further ordered counsel for both parties to undertake action to find a person or persons mutually satisfactory to act as receiver to take control of the property, accounts and records. The arbitrator further ordered any elections for offices of General Overseer and President shall await the final results of the receiver's report and accounting. Finally, the arbitrator ordered that any award requiring payment of funds to be paid by Kenneth Shelton and the members of the Board of Trustees under his administration shall await the results of the accounting of all funds described.

On May 8, 2006, the arbitrator issued a supplemental adjudication wherein he accepted Patterson's recommendation of GlassRatner Management and Realty Company (GlassRatner) to act as receiver commencing immediately. Therein, the arbitrator rejected Kenneth Shelton's attack on his April 26, 2006 decision on the basis that the Church was not named as a party in the initial complaint filed by Patterson and hence there is a 14th Amendment violation of taking property without due process. The arbitrator determined that the attack was collateral and in violation of the parties' arbitration agreement. The arbitrator stated that all procedural arguments including standing and failure to join an indispensable party were expressly waived prior to the commencement of the hearings before the arbitrator. The arbitrator stated further that in any event even if the Corporation were added as a party defendant, the result would inevitably be the same as the corporate veil would be pierced since the arbitrator has found that failure to adhere to corporate formalities is a factor to be considered in determining to pierce the corporate veil as well as evidence of intermingling of corporate and personal affairs. Thereafter, the arbitrator issued an order on May 8, 2006 appointing GlassRatner as receiver for the purpose of taking control of the assets of

the Church which are held by the Trustees of the Corporation and setting forth the receiver's powers.

By order entered May 10, 2006, the trial court confirmed the arbitrator's April 26, 2006 decision in favor of Patterson and against Kenneth Shelton and entered judgment in conformity therewith. On May 12, 2006, judgment was entered on the binding arbitration in favor of Patterson and against Kenneth Shelton. On May 19, 2006, the trial court vacated the order entered May 10, 2006 and directed Patterson to file a motion to confirm the award no later than May 27, 2006.

On May 26, 2006, Kenneth Shelton filed a petition to vacate the April 26, 2006 arbitration award. On June 5, 2006, Kenneth Shelton filed a supplemental petition to vacate the arbitrator's May 8, 2006 supplemental adjudication. On June 6, 2006, Patterson filed an emergency petition to confirm the arbitration award. Answers to the various petitions/motions were filed.

By order dated July 10, 2006, the trial court denied Kenneth Shelton's petitions to vacate and confirmed the arbitration award pursuant to Section 7341 of the Judicial Code, 42 Pa.C.S. §7341, on the basis that the arbitration was binding with no right of appeal. On July 20, 2006, judgment was entered in favor of Patterson and against Kenneth Shelton.

On July 13, 2006, Roddy Shelton filed a petition to intervene on the basis that according to the Church's/Corporation's customs, practices, bylaws, etc., he is the rightful successor as leader of the Church/Corporation as he is the rightful successor to Bishop S. McDowell Shelton and is the only party with "clean hands." By order of July 19, 2006, the trial court dismissed Roddy Shelton's petition to intervene as moot in light of the trial court's July 10, 2006 order.

On July 26, 2006, Kenneth Shelton appealed the trial court's July 10, 2006 order to the Superior Court which transferred the matter to this Court on September 22, 2006.⁹ Roddy Shelton appealed the trial court's July 19, 2006 order to this Court and the two appeals were consolidated for disposition by this Court.¹⁰ We will first address Kenneth Shelton's appeal.

Kenneth Shelton contends that the trial court erred in confirming the arbitrator's award because the April 26, 2006 award was not final, the award is an irregularity that has led to an unconscionable result, and the arbitrator exceeded the scope of the arbitration by deciding doctrinal issues and by going beyond the 1991 to 1994 time period expressed in the complaint.

As recently stated by this Court in Jefferson Woodlands Partners, L.P. v. Jefferson Hills Borough, 881 A.2d 44, 48-49 (Pa. Cmwlth. 2005):

Pursuant to Section 7341 [of the Judicial Code], 42 Pa. C.S. § 7341, common law arbitrations are "binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award." An "irregularity refers to the process employed in reaching the result of the arbitration, not to the result itself." *Gargano v. Terminix Internat'l Co., L.P.*, 784 A.2d 188, 193 (Pa. Super. 2001). It is well-settled that a

⁹ On October 12, 2006, a praeceipe to enter judgment in favor of Patterson and against the Trustees of the Corporation and the Church headed by Kenneth Shelton was filed with the trial court. On November 2, 2006, a motion to intervene was filed with the trial court by the Trustees. The motion to intervene was denied by order of November 17, 2006 and entered November 21, 2006. The trial court determined that the Trustees waited too long to request intervention. The Trustees appealed to this Court from that order on December 15, 2006, which is docketed in this Court at 2338 C.D. 2006.

¹⁰ This matter is appealable as of right to the Commonwealth Court pursuant to our not-for-profit corporation jurisdiction under Section 762(a)(5) of the Judicial Code, 42 Pa. C.S. §762(a)(5).

common law arbitration award is not reviewable on the basis of an error of law or fact. *Borgia [v. Prudential Ins. Co., 561 Pa. [434,] 440, 750 A.2d [843,] 846 [(2000)]; Hade v. Nationwide Ins. Co., 519 Pa. 227, 546 A.2d 615 (1988)*. Finally, an award may also be corrected if the arbitrator exceeds the scope of his authority. *Gargano; Ginther v. United States Fid. & Guar. Co., 632 A.2d 333 (Pa. Super. 1993)*. See also *Sley Sys. Garages v. Transport Workers Union of America, 406 Pa. 370, 178 A.2d 560 (1962)*.

With the foregoing in mind, our review of the arbitrator's April 26, 2006 decision in this matter leads us to the conclusion that the arbitrator clearly went beyond the scope of his authority. As stated previously herein, this action began in July 1995 when Patterson filed a complaint against Kenneth Shelton and Erik Shelton. Therein, Patterson challenged Kenneth Shelton's status as General Overseer and President of the Corporation and alleged, *inter alia*, that he was the rightful General Overseer and President of the Corporation and that despite this fact, Kenneth Shelton refused to relinquish control of the various accounts, trusts and properties of the Corporation. Patterson alleged further that Kenneth Shelton had taken *de facto* control of the Corporation and its property and had operated the same in total disregard of the interests of the members and requirements of law. Patterson also alleged that Kenneth Shelton failed to present an annual report of financial affairs and activities as required by Section 5553 of the Nonprofit Corporation Law, 15 Pa.C.S. §5553, for the years 1991 through 1994.

Therefore, Patterson requested certain relief pursuant to Section 5793(b) of the Nonprofit Corporation Law including the appointment of a receiver to take control of the property, accounts and records of the corporation, an order requiring Kenneth Shelton, or alternatively the receiver, to issue annual financial reports for the years 1991, 1992, 1993 and 1994, an accounting of all funds

removed from Corporate or Church accounts or trusts by Kenneth Shelton or others acting with him, an order confirming Patterson as General Overseer, and an order commanding that elections be held for such offices as the court finds to be vacant.

Also, as stated previously herein, after the action brought by Patterson was stricken by the calendar judge on February 22, 1996, Patterson filed a motion to reinstate his action on December 7, 2004. An order was entered on February 12, 2005 reinstating the action and removing the notation from the docket that the matter had been stricken. As the record reflects, the motion to reinstate and the grant of the same occurred well after this Court's determination by opinion and order dated April 10, 2001, which determined that Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation, and shortly after the trial court dismissed, based upon agreement of the parties, the three equity actions underlying our decision.

Accordingly, the only relief remaining that was obtainable, if Patterson prevailed, when this matter was reinstated was the relief he sought pursuant to Sections 5553 and 5793(b) of the Nonprofit Corporation Law. Specifically, the only relief available is an accounting of the Corporation's financial dealings for the years 1991, 1992, 1993 and 1994, and a determination as to whether Kenneth Shelton had misappropriated assets during that time period and an order requiring Kenneth Shelton to issue annual financial reports for the years 1991, 1992, 1993 and 1994.¹¹ Therefore, when the trial court ordered, by agreement of the parties, that this matter be submitted to arbitration, the foregoing

¹¹ We note that Patterson's July 1, 2005 motion to file an amended complaint changing the scope of the relief sought to the time period 1991 to the present was denied by order entered

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were the only issues before the arbitrator. The remaining issues had already been settled between the initial filing of Patterson's action in July 1995 and the reinstatement of the same in February 2005.¹² However, in rendering a decision the arbitrator clearly went beyond this scope in more than one respect.

The arbitrator first exceeded the scope of the arbitration in his April 26, 2006 decision by going beyond the 1991 to 1994 time period. The arbitrator's decision clearly covers the time period 1991 to 1998. See Decision of Arbitrator dated April 26, 2006.

The arbitrator next exceeded the scope of the arbitration by deciding the issue of who should be in control of the Church's property. The arbitrator opined that because there was a division in the Church's congregation and a battle as to its property rights, it was his duty as a court of equity to determine in which faction title to the Church property rests. Id. at 15-16. The arbitrator found that the preponderance of the evidence was in favor of Patterson and determined that the property owned by the Church and the Corporation should vest in Patterson's minority faction because Patterson was able to show that he acted in harmony with the laws, usage and customs accepted by the General Assembly before the dispute and dissension arose. Id. at 16. To effectuate this "vesting", the arbitrator ordered that an accounting of all funds removed from the "Corporate Church's" accounts or trust by Kenneth Shelton or any persons acting in combination with him should

July 8, 2005.

¹² It is clear from the record in this matter that the trial court should have been aware, before it granted Patterson's motion for reinstatement, of the three related equity actions decided by Judge Younge determining that Kenneth Shelton was in rightful control as the General Overseer and President of the Corporation as of September 1992. See Certified Record, Petition/Motion Cover Sheet Accompanying Kenneth Shelton's Answer to Patterson's Motion to Reinstate Case to Trial List.

be undertaken with full discovery to determine the amounts of misappropriations within 30 days and that the parties undertake action to find a person or persons to act as a receiver to take control of the property, accounts and records. Id. The arbitrator further ordered that any elections for the offices of General Overseer and President of the Corporation await the final results of the receiver's report and accounting. Id.

By ordering the foregoing actions, the arbitrator clearly went beyond the scope of the arbitration, which was to determine whether Patterson was entitled to relief under the Nonprofit Corporation Law. In essence, the arbitrator ordered the removal of the control of the assets and property of the Corporation and the Church from the Trustees and Kenneth Shelton, as the rightful General Overseer and President of the Corporation, and placed the same into the hands of Patterson through the appointment of a receiver chosen by Patterson. This not only violates the Corporation's bylaws¹³ but also does not comply with the Nonprofit Corporation Law.

¹³ As pointed out by this Court in our April 10, 2001 decision, the Corporation's bylaws provide that the General Overseer, by virtue of the office, shall always be a Trustee and the President of the Board of Trustees and shall continue to hold these offices during his lifetime. The bylaws provide further that upon the death of the General Overseer, the General Assembly shall elect a successor. The "General Assembly" is the annual session of the Church congregation. Article I of the Bylaws. "Any session called by the General Overseer shall also be designated as a general assembly and shall have all the rights and powers and authority of the annual general assembly." Id. The bylaws further provide that the "quorum for the transaction of business before the General Assembly shall be fifty members voting before matters of the General Assembly." Article IV of the Bylaws. "A majority of those present and voting shall determine such matters of the General Assembly, except in the case of the election of officers, which is otherwise provided for here in these By-laws." Id.

In our April 10, 2001 decision we affirmed the trial court's finding that a valid meeting of the General Assembly was held in September 1992 at Apostolic Square. The testimony revealed that approximately 5,000 members were in attendance. We held that

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Section 5764 of The Nonprofit Corporation Law permits a member of a corporation to make an application to the court for the appointment of a custodian of a corporation on deadlock or other cause including if any of the conditions specified in Section 5981, which relates to proceedings upon petition of any member, exist with respect to the corporation.¹⁴ A review of Patterson's

according to the bylaws, this constituted a quorum for the transaction of business. A majority of those present and voting unanimously elected Kenneth Shelton as the General Overseer. We held that the trial court properly found that Kenneth Shelton, having been confirmed as General Overseer, automatically became President of the Corporation according to the bylaws. Based upon our review of the record, we determined that the trial court's findings were supported by substantial evidence and were not in violation of the law or corporate bylaws.

¹⁴ Section 5764 provides in pertinent part as follows:

(a) General Rule.-- The court, upon application of any member, may appoint one or more persons to be custodians of and for any nonprofit corporation when it is made to appear:

(1) That at any meeting for the election of directors the members are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon the qualification of their successors; or

(2) that any of the conditions specified in section 5981 (relating to proceedings upon petition of any member, etc.) exists with respect to the corporation.

15 Pa.C.S. §5764.

Section 5981 reads in pertinent part:

The court may, upon petition filed by a member or director of a nonprofit corporation, entertain proceedings for the involuntary winding up and dissolution of the corporation, when any of the following are made to appear:

(1) That the objects of the corporation have wholly failed; or are entirely abandoned, or that their accomplishment is impracticable.

(2) That the acts of the directors, or those in control of the corporation, are illegal, oppressive, or fraudulent, and that it is beneficial to the interests of the members that the corporation be wound up and dissolved.

(Continued....)

allegations contained in his complaint reveal that he is not requesting that a custodian/receiver be appointed for any of the reasons permitted in the Nonprofit Corporation Law. The allegations of the complaint clearly show that Patterson is not seeking dissolution of the Corporation due to the alleged misapplication or wasting of the Corporation's assets/property but is only in fact seeking to replace Kenneth Shelton as General Overseer and take control himself of the Church and the Corporation.

This is evidenced further by the arbitrator's May 8, 2006 "Order to Appoint a Receiver" wherein the arbitrator states that "the evidence adduced during arbitration that [Patterson] representing the minority faction is entitled to the appointment of a receiver for the purpose of taking control of the assets of the Church of the Lord Jesus Christ which are held by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., currently headed by [Kenneth Shelton]." See May 8, 2006 Order. The arbitrator in the May 8, 2006 order appointed GlassRatner, an entity chosen by Patterson, to act as receiver and to take control of all of the Church's and the Corporation's assets and property. Id. The arbitrator also ordered that, during the receiver's period of control of the "church property" and prior to returning the same to "Bishop Patterson", Kenneth Shelton and the Trustees were enjoined from, *inter alia*,

(3) That the corporate assets are being misapplied or wasted, and that it is beneficial to the interest of the members that the corporation be wound up and dissolved.

(4) That the directors or other body are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof.

15 Pa. C.S. §5981.

possessing or managing the property and from interfering in any way with possession or management of the property by the receiver. Id.

Accordingly, the arbitrator went well beyond the scope of his authority by deciding who was to be in control and possession of Church property and ordering that the assets of the Church/Corporation be first turned over to a receiver for an accounting prior to being returned to Patterson. Again, the arbitrator was only authorized to determine if Kenneth Shelton had misappropriated the Corporation's assets/funds and if so, whether Patterson was entitled to an accounting of the Corporation's assets for the time period 1991 to 1994. As such, the trial court erred by confirming the arbitrator's April 26, 2006 and May 8, 2006 decisions and orders.

Therefore, the trial court's July 10, 2006 order denying Kenneth Shelton's petition and supplemental petition to vacate and confirming the arbitrator's award is reversed. In addition, this matter is remanded to the trial court with instructions to vacate the arbitrator's April 26, 2006 decision and any decisions rendered by the arbitrator after that date and for the trial court to conduct the proper proceedings consistent with this opinion to determine whether Patterson is entitled to relief pursuant to Sections 5553 and 5793(b) of the Pennsylvania Nonprofit Corporation Law as alleged in his complaint filed July 24, 1995.

We now turn to Roddy J. Shelton's appeal from the July 19, 2006 order of the trial court denying his petition to intervene as moot in light of the trial court's July 10, 2006 order confirming the arbitration award.¹⁵ The gist of Roddy

¹⁵ The Pennsylvania Rules of Civil Procedure which apply to interventions are set forth at Pa.R.C.P. Nos. 2326-2350. One wishing to intervene is required to file a petition to intervene, "setting forth the ground on which intervention is sought and a statement of relief or defense which the petitioner desires to demand or assert." Pa.R.C.P. No. 2328. Whether or not to grant a

(Continued....)

Shelton's argument that the trial court erroneously denied his petition to intervene is based on his position that he is the rightful General Overseer and President. Notwithstanding the fact that this issue was finally decided by this Court on April 10, 2001 as set forth above, the trial court did not abuse its discretion by denying the petition to intervene. Bishop Roddy J. Shelton did not seek to intervene in this matter until July 13, 2006, which was more than a year after Patterson's action was reinstated by the trial court and three days after the trial court issued its order confirming the arbitration award. Accordingly, the trial court's July 19, 2006 order is affirmed.

JAMES R. KELLEY, Senior Judge

petition is within the discretion of the trial court. Stanbro v. Zoning Hearing Board of Cranberry Township, 566 A.2d 1285 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 526 Pa. 644, 584 A.2d 325 (1990).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthoneé J. Patterson	:	
	:	
v.	:	No. 1967 C.D. 2006
	:	
Kenneth Shelton,	:	
	:	
Appellant	:	
	:	
Anthonee Patterson	:	
	:	
v.	:	No. 1968 C.D. 2006
	:	
Kenneth Shelton	:	
	:	
Appeal of: Bishop Roddy	:	
J. Shelton, II	:	

ORDER

AND NOW, this 31st day of January, 2008, it is hereby ordered as follows:

1. The order of the Court of Common Pleas of Philadelphia County, at No. 2945 July Term, 1995, dated July 19, 2006, denying the petition to intervene filed by Bishop Roddy J. Shelton, II, is affirmed.
2. The order of the Court of Common Pleas of Philadelphia County, at No. 2945 July Term, 1995, dated July 10, 2006, vacating Kenneth Shelton's petition and supplemental petition to vacate and confirming the arbitration award, is reversed.
3. This matter is remanded with instructions to vacate the arbitrator's April 26, 2006 award/decision and any decisions rendered by the arbitrator after

that date and for the trial court to conduct the proper proceedings consistent with the foregoing opinion to determine whether Anthoneé J. Patterson is entitled to relief pursuant to the Pennsylvania Nonprofit Corporation Law.

4. Jurisdiction relinquished.

JAMES R. KELLEY, Senior Judge