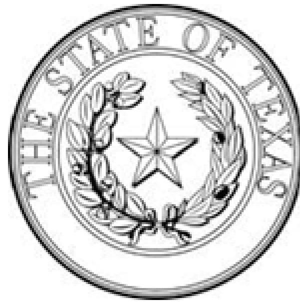
Affirmed and Memorandum Opinion filed August 29, 2023



In The

Fourteenth Court of Appeals

NO. 14-22-00028-CV

NEW BETHEL BAPTIST CHURCH, Appellant

V.

KYLYN TAYLOR, Appellee

On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Cause No. 112769-CV

MEMORANDUM OPINION

In this appeal, we must first determine whether the trial court properly assumed jurisdiction over a dispute between a former pastor and a church. If the church's claims implicate ecclesiastical matters, then the trial court abused its discretion in asserting subject matter jurisdiction, and we must dismiss the case for lack of jurisdiction. However, if we can apply neutral principles of law to the tort actions alleged against the former pastor that would not require inquiry into religious doctrine or offend the First Amendment's freedom of religion guarantee, then we

must determine if the trial court properly granted the former pastor's rule 12 motion to show authority. Concluding that the church's claims do not concern ecclesiastical abstention matters, we nonetheless affirm the trial court's order because the church's attorney did not have the authority to represent adverse factions of the church.

Background

New Bethel Baptist Church (New Bethel) was formed nearly 100 years ago as an unincorporated entity.[1] On September 14, 2008, New Bethel adopted its constitution and bylaws. Under the terms of the constitution and bylaws, the government of New Bethel was vested in its board of deacons. In 2015, Kylyn Taylor organized New Bethel as a Texas nonprofit corporation. The certificate of formation identified the entity as New Bethel Church of Angleton (New Bethel Angleton). New Bethel Angleton's governance was manager-managed, and identified three directors: Taylor, Donna Julks, and Annie Tolbert. On July 12, 2015, Taylor was ordained as pastor.

In 2017, the church building collapsed, and the church received a $300,000 check from the insurance carrier. Taylor simultaneously served as the general contractor for the construction project and as the pastor of the church. The check was deposited into the church's account and allegedly withdrawn by Taylor without any authorization. According to New Bethel, several years later, in January 2021, the board of deacons and church members requested an accounting from Taylor on sums spent. Taylor refused to provide the information or otherwise respond to New

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[1] The Uniform Unincorporated Nonprofit Association Act acknowledges unincorporated nonprofit associations. *See* Tex. Bus. Orgs. Code § 252.001. "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. A form of joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, regardless of whether the co-owners share use of the property for a nonprofit purpose. *Id.* at §252.001(2).

Bethel's request. Instead of discussing the financial expenditures, Taylor resigned as pastor.

In May 2021, New Bethel sued Taylor for fraud, constructive fraud, breach of fiduciary duty, and conversion. In June 2021, Taylor answered with a general denial and raised several affirmative defenses. Taylor also filed a motion to show authority and motion to disqualify pursuant to Rule 12 of the Texas Rules of Civil Procedure. In his motion, Taylor alleged that Savannah Robinson, New Bethel's attorney, lacked authority to represent the church because New Bethel Angleton was a Texas nonprofit corporation, and "[n]o person or group of persons with authority to act . . . retained Robinson to serve as counsel." Attached to Taylor's motion was a copy of the certificate of formation for a nonprofit corporation and Taylor's declaration.

On June 21, 2021, the trial court conducted an oral hearing on Taylor's motion to show authority and motion to disqualify. Taylor's counsel presented his motion and alleged that New Bethel, an unincorporated association, converted into New Bethel Angleton, a Texas nonprofit corporation with an IRS 501(c)(3) designation to accept charitable donations. Taylor claimed that New Bethel Angleton was a manager-managed entity and that "[u]nder the existing certificate of formation, if there [was] a conflict between the certificate and the bylaws, the certificate [would] trump." Taylor further argued that Robinson failed to meet her burden to show sufficient authority to prosecute the suit on behalf of New Bethel. At the conclusion of the first hearing, the trial court scheduled a second hearing and instructed the parties to be prepared for live witnesses.

On September 16, 2021, the trial court resumed the hearing on Taylor's motion to show authority and motion to disqualify. Similar to the prior hearing, counsel provided substantial argument. At no point, however, did any counsel request testimony from the live witnesses. At the conclusion of counsel's argument,

the trial court referred the parties to mediation.

After the parties were unable to resolve their case in mediation, the trial court granted Taylor's motion to show authority on December 17, 2021. The trial court's order stated that Robinson was not authorized to represent New Bethel. In accordance with Rule 12, the trial court also struck New Bethel's pleadings and dismissed the lawsuit. On this same day, New Bethel requested findings of fact and conclusions of law. On January 7, 2022, New Bethel submitted its notice of past due findings. The following day, New Bethel filed its motion for new trial. New Bethel's motion for new trial was denied by operation of law, and this appeal followed.

Discussion

On appeal, New Bethel raises six issues, arguing that: (1) the trial court should have taken testimony to develop the facts; (2) the exhibits filed by Taylor were inadmissible; (3) the trial court should have filed findings of fact and conclusion of law; (4) there was no evidence that New Bethel ceased to exist; (5) there was no evidence of a merger between New Bethel and New Bethel Angleton; and (6) New Bethel's counsel was not disqualified by ethical rules. Before we can analyze the merits of New Bethel's claims, we must first address Taylor's argument, which was raised for the first time on appeal, that the trial court lacked subject matter jurisdiction because New Bethel's claims invoked the ecclesiastical abstention doctrine.

Ordinarily, new issues may not be raised for the first time on appeal, but there is a well-known exception for issues demonstrating an absence of subject-matter jurisdiction. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993) (holding that subject-matter jurisdiction cannot be waived and may be raised for the first time on appeal by the parties or court); *see also Singh v. Sandhar*, 495 S.W.3d 482, 492 (Tex. App.—Houston [14th Dist.], 2016, no pet.).

Because a court must not act without determining that it has subject-matter jurisdiction, we will begin by discussing the law governing our analysis before addressing whether New Bethel's claims implicate ecclesiastical matters that are "inextricably intertwined with inherently ecclesiastical issues" so as to prevent us from resolving this dispute. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000) (explaining that subject-matter jurisdiction is essential to the court's power to decide a case); *see also Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

I. Ecclesiastical Abstention Doctrine

The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of Religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, XIV; *see also Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 601 (Tex. 2013) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)). This provision forbids the government from interfering with the rights of hierarchical religious bodies to either establish their own internal rules and regulations or create tribunals for adjudicating disputes over religious matters. *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 708–09 (1976).

Pursuant to the First Amendment, government action is not permitted to burden the free exercise of religion by interfering with an individual's observance or practice of a particular faith or by encroaching on a church's ability to manage its internal affairs. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993); *see, e.g.*, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The Texas Supreme Court has recognized that churches have a fundamental right "to decide for themselves, free

from state interference, matters of church government as well as those of faith and doctrine." *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 397 (Tex. 2007). Accordingly, the First Amendment "severely circumscribes" the role that civil courts may play in resolving church-related ecclesiastical disputes. *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). For example, civil courts cannot inquire into matters concerning "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Milivojevich*, 426 U.S. at 713–14.

To enforce this constitutional provision, Texas courts have utilized the "ecclesiastical abstention doctrine." *Episcopal Diocese of Ft. Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013); *Masterson*, 422 S.W.3d at 601. The ecclesiastical abstention doctrine is more than just a limitation on a court's actions, it is a limitation on its subject matter jurisdiction. *Masterson*, 422 S.W.3d at 605–06. This doctrine, however, does not foreclose civil court subject matter jurisdiction over all disputes involving religious entities. *See In re St. Thomas High Sch.*, 495 S.W.3d 500, 507 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). Because churches and their congregations "exist and function within the civil community," they are "amenable to rules governing property rights, torts, and criminal conduct." *Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *see also Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 12 (Tex. 2008) ("[R]eligious practices that threaten the public's health, safety, or general welfare cannot be tolerated as protected religious belief."); *Shannon v. Mem'l Drive Presbyterian Church U.S.*, 476 S.W.3d 612, 621 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) ("[C]hurches, their congregations, and hierarchy exist and function within the civil community, they can

be as amenable to rules governing civil, contract, or property rights as any other societal entity.”).

The United States Supreme Court has recognized an exception to the doctrine of church autonomy when neutral principles of law may be applied to resolve disputes over ownership of church property so long as the resolution of ownership entails no inquiry into religious doctrine and the interpretation of the instruments of ownership would not require the court’s resolution of a religious controversy. *Penley*, 231 S.W.3d at 398. For those disputes that we can resolve, Texas courts must apply a “neutral principles methodology” meaning they “apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues.” *Masterson*, 422 S.W.3d at 606; *see also Episcopal Diocese of Ft. Worth*, 422 S.W.3d at 650 (“But courts applying the neutral principles methodology defer to religious entities’ decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor, while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities.”). For property ownership disputes, neutral principles “will usually include considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and bylaws, if any), and relevant provisions of governing documents of the general church.” *Masterson*, 422 S.W.3d at 603. The Texas Supreme Court has not yet applied the neutral principles approach in circumstances other than property ownership disputes. *Penley*, 231 S.W.3d at 399 (“But even if we were to expand the neutral-principles approach beyond the property-ownership context as *Penley* requests, we disagree that free-exercise concerns would not be implicated.”).

The “differences between ecclesiastical and non-ecclesiastical issues will not

always be distinct, and many disputes of the type before us will require courts to analyze church documents and organizational structures to some degree." *Masterson*, 422 S.W.3d at 606. Determining the reach of subject matter jurisdiction in disputes involving religious organizations requires consideration of competing demands. *Thiagarajan v. Tadepalli*, 430 S.W.3d 589, 594 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Courts do not have jurisdiction to decide questions of an ecclesiastical or inherently religious nature, so as to those questions they must defer to decisions of appropriate ecclesiastical decision makers. *Masterson*, 422 S.W.3d at 605–06. But Texas courts are bound to exercise jurisdiction vested in them by the Texas Constitution and cannot delegate their judicial prerogative when jurisdiction exists. *Id.* at 606. "Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question." *See Masterson*, 422 S.W.3d at 606 (citing *Milivojevich*, 426 U.S. at 709–10).

Nevertheless, the neutral principles methodology requires courts to conform to fundamental principles: we must fulfill our constitutional obligation to exercise jurisdiction where it exists, and we must refrain from exercising jurisdiction where it does not exist. *Masterson*, 422 S.W.3d at 606. "In short, courts must act but cannot intrude." *Thiagarajan v. Tadepalli*, 430 S.W.3d 589, 594 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). To determine whether the ecclesiastical abstention doctrine applies, courts must analyze whether a particular dispute is "ecclesiastical" or simply a civil law controversy in which *church* officials happen to be involved. *Shannon*, 476 S.W.3d at 622. To resolve this issue, courts must look to the substance and effect of a plaintiff's complaint to determine its ecclesiastical implication. *Id.*

II. New Bethel's Dispute with Taylor Can Be Resolved by Utilizing Neutral Principles of Law

To determine whether and to what extent the ecclesiastical doctrine applies to this case, we must examine the "substance and effect" of New Bethel's petition to evaluate its ecclesiastical implication. *See id.*; *see also Tran v. Fiorenza*, 934 S.W.2d 740, 743 (Tex. App.—Houston [1st Dist.] 1996, no pet.). In its amended petition, New Bethel asserts causes of action for fraud, constructive fraud, breach of fiduciary duty, and conversion. Thus, we will consider the applicability of the ecclesiastical abstention doctrine to each of these causes of action in turn.

A. Fraud/Constructive Fraud

Fraud requires a showing of a material misrepresentation, which (1) was false, (2) was either known to be false when made or was asserted without knowledge of the truth, (3) was intended to be acted upon, (4) was relied upon, and (5) caused injury. *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 688 (Tex. 1990). Constructive fraud is the breach of a legal or equitable duty that the law declares fraudulent because it violates a fiduciary relationship. *Archer v. Griffith*, 390 S.W.2d 735, 740 (Tex. 1964). Separate from fraud, constructive fraud does not require an intent to defraud. *Jean v. Tyson–Jean*, 118 S.W.3d 1, 9 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

On the record, New Bethel's fraud and constructive fraud claims are primarily based on Taylor's financial activities regarding money purportedly belonging to the church. According to New Bethel's amended petition, a $300,000 check was withdrawn from New Bethel's account without the authorization of the board of deacons and deposited into a personal account held by Taylor and his wife. New Bethel also alleged that Taylor "sought an SBA EIDL loan in the amount of $150,000" using New Bethel's name and withdrew over $25,000 from general funds belonging to the church via CashApp. After a series of unauthorized transactions, New Bethel sought an accounting of expenditures requesting "bank statements,

itemized lists, and receipts" of anything purchased by Taylor while he served as the pastor. Thus, at the heart of New Bethel's fraud and constructive fraud claims, the issue is whether Taylor used his authority to mislead financial institutions when he allegedly misappropriated church funds for his own personal gain.

The Supreme Court has left unresolved the question of whether there is room for "marginal civil court review" of the decisions of ecclesiastical tribunals under the narrow rubrics of fraud or collusion. *See Milivojevich*, 426 U.S. at 713. Applying the ecclesiastical abstention doctrine to New Bethel's fraud claims highlights the indistinct nature of "the line between required judicial action and forbidden judicial intrusion." *Thiagarajan*, 430 S.W.3d at 595.

At first glance, resolution of these causes of action will require the examination church documents, church governance, and organizational structures. If this were true, then adjudication of New Bethel's fraud claims would be out of our reach because the ecclesiastical abstention doctrine is a limitation on subject matter jurisdiction. *Masterson*, 422 S.W.3d at 605–06. However, upon closer inspection, the resolution of these causes of action does not depend on the interpretation of New Bethel's bylaws and constitutions or other relevant provisions of governing documents. Indeed, this is an example of a civil law controversy in which a church official happens to be involved. *See Shannon*, 476 S.W.3d at 622; *Tran*, 934 S.W.2d at 743. Any interpretation otherwise would inextricably allow church officials that misappropriate church funds to escape liability under the shield of the ecclesiastical doctrine. *See e.g.*, *Masterson*, 422 S.W.3d at 606 ("Properly exercising jurisdiction requires courts to apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues.").

In sum, because the court can adjudicate New Bethel's fraud and constructive

fraud claims by applying neutral principles of law, the trial court properly exercised jurisdiction. *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756, 759 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

B. Breach of Fiduciary Duty

To prevail in a breach of fiduciary duty claim, a plaintiff must prove that (1) there is a fiduciary relationship between the plaintiff and defendant, (2) the defendant breached his fiduciary duty to the plaintiff, and (3) the breach resulted in an injury to the plaintiff or benefit to the defendant. *Lundy v. Masson*, 260 S.W.3d 482, 501 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

According to its amended petition, New Bethel contends that Taylor breached his fiduciary duty by "self-dealing, . . . neglecting a matter that he had undertaken, and . . . converting funds and property to his use without the knowledge or informed consent of New Bethel . . . by tendering to himself sums without an accounting of disbursements, fees and expenses, and thus misrepresenting the payments made on behalf of New Bethel . . . or paid to himself." Akin to its fraud claims, New Bethel's breach of fiduciary duty allegation focuses on Taylor's alleged misappropriation of church funds and misuse of his authority to acquire funds for an unauthorized purpose.

Reviewing the substance and effect of New Bethel's complaint, the only "ecclesiastical" connection to its fiduciary claim is Taylor's role as the former pastor of New Bethel. For example, if Taylor was a director or executive officer in a corporation instead of the pastor of a church, and there were allegations that he abused his authority, we would not conclude that the corporation's claims against the director were so "inextricably intertwined with inherently ecclesiastical issues" so as to prevent us from resolving this dispute. As we explained above, though a church official happens to be involved in this case, his pastoral role does not change

our ability to apply neutral principles of law to review whether or not he engaged in self-dealing and misappropriation of church funds. Because New Bethel's breach of fiduciary duty cause of action revolves around the same central issue as its fraud and constructive fraud causes of action, our analysis is the same. The court can resolve the dispute regarding the accounting and alleged misappropriation of church funds by applying neutral principles of law. *See Masterson*, 422 S.W.3d at 606.

C. Conversion

Conversion is the unauthorized and unlawful assumption and exercise of dominion and control over the personal property of another to the exclusion of, or inconsistent with, the owner's rights. *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444, 446 (Tex. 1971). The elements of conversion are: (1) the plaintiff owned, had legal possession of, or was entitled to possession of the property; (2) the defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with the plaintiff's rights; and (3) the defendant refused the plaintiff's demand for return of the property. *Hunt v. Baldwin*, 68 S.W.3d 117, 131 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

A conversion claim is, at its core, a property dispute, which the Texas Supreme Court has expressly declared to be a matter courts can decide using the neutral-principles methodology. *See In re Diocese of Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021) (orig. proceeding) (quoting *Masterson*, 422 S.W.3d at 596) ("Under the neutral-principles methodology, 'courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities. . . .'").

Here, New Bethel's conversion claim is based on Taylor's actions to assume control of insurance proceeds and real property belonging to the church. Thus, New Bethel's conversion claim—like its other causes of action—turns on the central issue

of whether Taylor misappropriated church funds for his own personal gain.

Accordingly, after examining the "substance and effect" of New Bethel's amended petition to evaluate its ecclesiastical implications, we overrule Taylor's issue on appeal. We conclude that the ecclesiastical abstention doctrine is inapplicable, and the trial court properly exercised jurisdiction over each of New Bethel's causes of action.

III. Issues on Appeal

Having determined that the ecclesiastical abstention doctrine is not applicable to New Bethel's claims against Taylor, we next turn to New Bethel's issues on appeal: (1) the trial court should have taken testimony to develop the facts and erred in considering exhibits filed by Taylor; (2) the trial court should have filed findings of fact and conclusion of law; (3) there was no evidence that New Bethel ceased to exist; (4) there was no evidence of a merger between New Bethel and New Bethel Angleton; and (5) New Bethel's counsel was not disqualified by ethical rules. We address the merits of each issue in turn.

A. Trial Court's Alleged Refusal to Develop the Case and Admissibility of Evidence Not Preserved for Appellate Review

In its first issue, New Bethel argues that the trial court should have allowed testimony to develop the case and complains that exhibits filed by Taylor were inadmissible. On appeal, New Bethel alleges that it did not have the opportunity to cross-examine Taylor on assertions made in his affidavit. However, the record does not support this contention. New Bethel has not cited, and we have not found any place in the record, showing that (1) Taylor was called as a witness, (2) New Bethel requested the opportunity to cross-examine Taylor, (3) the trial court denied New Bethel the opportunity to cross-examine Taylor, or (4) New Bethel made the complaint to the trial court by a timely request, objection, or motion. Indeed, neither

party presented live testimony at the oral hearing on the motion to show authority.

Thus, New Bethel did not preserve any error on this issue. Tex. R. App. P. 33.1(a)(1) (providing that to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection, or motion calling the trial court's attention to the complaint); *see also Matter of D.T.M.*, 932 S.W.2d 647, 652 (Tex. App.—Fort Worth 1996, no writ) (explaining that even constitutional arguments are waived at appellate level if issues were not before the trial court).

Likewise, any objections made by New Bethel were in response to counsel's argument and not to the admissibility of evidence. However, motions and arguments of counsel are not evidence. *McCain v. NME Hosps., Inc.*, 856 S.W.2d 751, 757 (Tex. App.—Dallas 1993, no writ). To the extent New Bethel suggests the trial court impermissibly relied on exhibits offered by Taylor, this assertion is also not supported by the record nor is it consistent with rule 12's burden of proof. The record is devoid of any objections made by New Bethel regarding the admissibility of Taylor's evidence. New Bethel cannot raise this issue for the first time on appeal.

Accordingly, we overrule New Bethel's first issue and address its second issue.

B. No Harm in Trial Court's Failure to File Findings of Fact and Conclusions of Law

In its second issue, New Bethel complains that the trial court should have filed findings of fact and conclusions of law.

Rule 296 provides that "[i]n any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law." Tex. R. Civ. P. 296. A case is "tried" when there is an evidentiary hearing before the court upon conflicting evidence. *See Besing v. Moffitt*,

882 S.W.2d 79, 81–82 (Tex. App.—Amarillo 1994, no writ). The purpose of Rule 296 is to give a party a right to findings of fact and conclusions of law finally adjudicated after a conventional trial on the merits before the court. *Puri v. Mansukhani*, 973 S.W.2d 701, 707 (Tex. App.—Houston [14th Dist.] 1998, no pet.). When properly requested, the trial court has a mandatory duty to file findings of fact. *Cherne Indus., Inc. v. Magallanes*, 763 S.W.2d 768, 772 (Tex. 1989). If the trial court does not file findings after they have been timely and properly requested, it is presumed harmful unless the record affirmatively shows the appellant suffered no harm. *Tenery v. Tenery*, 932 S.W.2d 29, 30 (Tex. 1996).

Here, it is undisputed that New Bethel timely filed its request for findings of fact and conclusions of law and notice of past due findings of fact and conclusions of law. Though New Bethel's request was timely, the trial court failed to file findings of fact and conclusions of law. Nonetheless, New Bethel was not harmed by the trial court's failure to file findings of fact and conclusions of law. Error is harmful only if it prevents an appellant from properly presenting a case to the appellate court. *Tenery*, 932 S.W.2d at 30; *Rumscheidt v. Rumscheidt*, 362 S.W.3d 661, 665 (Tex. App.—Houston [14th Dist.] 2011, no pet.). New Bethel alleges that "[i]t would be helpful to the parties, and to the Appellate Court, to have findings of fact and conclusions of law," but New Bethel does not identify any issue that it was unable to brief as a result of the trial court's failure to make findings of fact and conclusions of law.

Accordingly, New Bethel has not been prevented from properly presenting its evidentiary complaint to this court. *See Rumscheidt*, 362 S.W.3d at 665. We overrule New Bethel's second issue.

C. Attorney Not Authorized to Represent Adverse Interests

In its third issue, New Bethel alleges that the trial court abused its discretion

in determining that New Bethel ceased to exist because there is no evidence of the fact. We disagree with New Bethel's argument because this is not supported by the record.

Appellate courts review a trial court's ruling on a motion to show authority for an abuse of discretion. *See Urbish v. 127th Judicial Dist. Court*, 708 S.W.2d 429, 432 (Tex. 1986); *Bosch v. Harris Cty.*, No. 14-13-01125-CV, 2015 WL 971317, at *3 (Tex. App.—Houston [14th Dist.] Feb. 26, 2015, no pet.) (mem. op.). A trial court abuses its discretion if it acts without reference to any guiding rules and principles or clearly fails to analyze or apply the law correctly. *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006) (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)).

New Bethel argues that it is an unincorporated association, and New Bethel Angleton is a Texas nonprofit corporation. We, however, need not decide the question of the true identity because a rule 12 motion is not an appropriate vehicle for deciding that issue in the underlying case. *See In re Salazar*, 315 S.W.3d 279, 284 (Tex. App.—Fort Worth 2010, orig. proceeding). In this case, regardless of how it is named or classified in the underlying suit, it is undisputed that there is only one church. Within this one church, there are two competing factions claiming control, i.e., the board of deacons and directors. With two competing factions claiming control of the church, attorney Robinson, as the challenged attorney, was either authorized to represent both entities, or she was not. In granting Taylor's rule 12 motion to show authority, the trial court concluded that attorney Robinson failed to discharge her burden of proof to show her authority to act and nothing more.

We are also guided by the comment stated in Texas Disciplinary Rule of Professional Conduct 1.12 that "[a] lawyer employed or retained by an organization represents the entity as distinct from its directors, officers, employees, members,

shareholders or other constituents." Tex. Gov't Code Title 2, Subt. G, App. A, Art. 10, § 9, Rule 1.12, cmt. 1. Thus, a lawyer may not be hired to represent a corporation by one of two factions in the organization against the other faction. *See id.* at cmt. 4. Because the interests of the factions within the church are adverse, the trial court did not abuse its discretion in concluding that attorney Robinson could not represent New Bethel in its suit against Taylor.

Accordingly, we overrule New Bethel's third issue and turn to its fourth issue.

D. Merger of Entities Not Required

In its fourth issue, New Bethel argues that there was no evidence of a merger between New Bethel and New Bethel Angleton. Specifically, New Bethel contends that: (1) New Bethel Angleton was not completely formed because it did not adopt bylaws, (2) New Bethel did not approve a merger, (3) the board of deacons did not consent to the merger by waiver, (4) there was no intent of the board of deacons to turn over the secular management of the church, and (5) there was no evidence of ratification.

As explained above, we do not reach the question of the true identity of the church or determine which faction controls the church because a rule 12 motion is not an appropriate vehicle for deciding that issue. *See In re Salazar*, 315 S.W.3d at 284. In this case, it is not dispositive whether New Bethel and New Bethel Angleton merged into one entity because the only relevant inquiry is whether attorney Robinson had the authority to act on behalf of both factions. *See* Tex. Bus. Org. Code § 10.001 ("A domestic entity may effect a merger by complying with the applicable provisions of this code."); *see also* Tex. R. Civ. P. 12 ("[T]he burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute . . . the suit on behalf of the other party."). Thus, New Bethel may not shift its burden for attorney Robinson to show authority to act.

Accordingly, we overrule New Bethel's fourth issue.

E. Counsel Was Not Disqualified

In its final issue, New Bethel apparently complains that the trial court abused its discretion in disqualifying attorney Robinson from representing New Bethel. Because the trial court did not rule on Taylor's motion to disqualify attorney Robinson, this error was not preserved for appeal. Tex. R. App. P. 33.1(a)(2); *Washington DC Party Shuttle, LLC v. IGuide Tours*, 406 S.W.3d 723, 736 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) ("The trial court also must rule or refuse to rule on the request, objection, or motion.").

Accordingly, we overrule New Bethel's fifth issue.

Conclusion

Having concluded that the ecclesiastical abstention doctrine is inapplicable to New Bethel's claims against Taylor, we nonetheless affirm the trial court's judgment.

/s/ Frances Bourliot
Justice

Panel consists of Justices Jewell, Bourliot, and Zimmerer.

Justice Jewell joins the court's opinion rejecting Taylor's jurisdictional argument based on the ecclesiastical abstention doctrine. Justice Jewell otherwise notes his dissent from the court's disposition of appellant's issues 1, 3, 4, and 5.