

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION  
NO. 09-0609

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**In re: THE CHURCH OF THE GOOD SHEPHERD ROSEMONT, PENNSYLVANIA  
INCORPORATED  
(A Pennsylvania Nonprofit Corporation)**

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**MEMORANDUM OPINION AND DECREE SUR  
MOTION FOR SUMMARY JUDGMENT ON AMENDED PETITION  
FOR DECLARATORY JUDGMENT**

**OTT, J.**

**August 25, 2011**

On February 19, 2009, The Protestant Episcopal Church of the Diocese of Pennsylvania, filed a petition for citation against the respondents, The Church of the Good Shepherd Rosemont, Pennsylvania, and David Moyer who is the rector of Good Shepherd, as well as the rector's warden, the accounting warden<sup>1</sup>, and the secretary of the vestry. The petition sought, *inter alia*<sup>2</sup>, the removal of the rector and vestry. The respondents filed preliminary objections to the

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<sup>1</sup> The accounting warden named in the amended petition, Theresa Smith, no longer serves in that capacity and the matter was discontinued as to her on May 24, 2010, by agreement of the parties.

<sup>2</sup> The petition also sought, *inter alia*, a declaration that the property is held by the Diocese as trustee, an injunction against the respondents from interfering with the Diocese's disposition of the property, and an order directing the respondents to transfer legal title to the property. In the course of the argument, counsel for the Diocese limited the relief being sought to the removal of the rector and the vestry.

petition. The Diocese then filed both preliminary objections and an answer to the preliminary objections. The respondents filed an answer to the preliminary objections to the preliminary objections and a reply to the answer to the preliminary objections. By Order dated December 22, 2009, the undersigned dismissed the Diocese's preliminary objections to the preliminary objections, and granted the respondents' preliminary objections in part, and directed the filing of an amended pleading. The amended petition, filed on January 12, 2010, was brought by Rodney R. Michel, Assisting Bishop of the Diocese, and Glenn M. Matis, President of the Standing Committee (the ecclesiastical authority of the Diocese) on behalf of the Diocese and sought essentially the same relief<sup>3</sup> as that requested in the original petition. The respondents filed a "reply" (more properly an answer) on February 16, 2010. There followed a period of discovery.

On September 15, 2010, the petitioners filed a motion for summary judgment. The respondents filed a "response and opposition" (more properly an answer) on October 15, 2010. Counsel provided extensive memoranda of law in advance of argument, which was heard by the undersigned on March 22, 2011. The Office of the Attorney General, as *parens patriae* for charities, attended the argument and indicated the Commonwealth would not be taking a position in this matter. In the course of argument, an issue arose relating to the necessity of the Protestant Episcopal Church of the United States of America's participating in this litigation. It was not until June 16, 2011, that counsel for the petitioners advised the Court that the National Church had concluded it was not an indispensable party to this litigation. Thus, the matter is only now ripe for adjudication.

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<sup>3</sup> For simplicity's sake, we refer herein to the moving party as the Diocese.

The allegations in the amended petition can be summarized as follows. The Diocese is a constituent part of the national Episcopal church. At present, there is no diocesan Bishop and the ecclesiastical authority for the Diocese is its Standing Committee, an elected group of laymen and clergy. The Standing Committee has granted Rodney R. Michel the authority of a diocesan Bishop on all matters pertaining to the parishes, missions and clergy of the Diocese. Respondent The Church of the Good Shepherd is “currently under the *de facto* control of individuals who have determined to sever ties with the Episcopal Church and the Diocese and yet retain control of the parish’s property for their own use in association with a different church.” (Amended Petition, ¶5.) The petition sets forth that respondent Moyer was the rector at Good Shepherd and continues to hold himself out as such, despite his having been deposed as a priest of the Episcopal church in 2002. The other respondents are members of the vestry, the governing body of Good Shepherd, who support respondent Moyer. After being deposed, respondent Moyer was ordained as a Bishop of the Armed Forces for the Anglican Church in America of the Traditional Anglican Communion (“TAC”). Following respondent Moyer’s deposition, the Standing Committee consented to the then-serving Diocesan Bishop’s determination that Good Shepherd had ceased to act in accordance with the Constitution and Canons, doctrine, discipline, and worship of the church and the Diocese, based, *inter alia*, on the vestry’s and warden’s decision to continue employing respondent Moyer and allowing him to live in the parish rectory. The Bishop and the respondents attempted unsuccessfully to resolve their differences outside of court. In October of 2008, after a jury trial, judgment was entered in favor of the Bishop and against respondent Moyer in his civil lawsuit alleging his deposition was illegal<sup>4</sup>.

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<sup>4</sup> Specifically, the jury found that David Moyer did not prove, by clear and convincing evidence, that fraud pervaded the Bishop’s determination that David Moyer had abandoned the Communion of the Episcopal Church. The verdict was recorded in the notes of testimony on October 24, 2008, from the trial of Moyer v. Bennison, Montg. Co. C.C.P. #02-16553, at p. 102.

Regarding the structural and historical antecedents of the church parties in this controversy, the petition sets forth that the Episcopal Church is hierarchical in nature and is governed by a general convention and the constitution and canons adopted by that body. The Diocese is governed by a separate constitution and separate canons, however, the constitution accedes to, recognizes and adopts the general constitution of the National Church and acknowledges its authority. In turn, the churches and congregations that make up the Diocese are required to accede to the constitutions and canons of both the National Church and the diocese. Good Shepherd was incorporated in 1870, and, in its charter, declared itself to be a member of and to belong to the national and Pennsylvania Episcopal churches, and adopted their constitutions and canons. Under these canons, all real and personal property held by and for the benefit of parish churches is held in trust for the National Church and the Diocese. Specifically, Title 1, Canon 7 in the charter of the general convention of the National Church states that no vestry can alienate church property without the consent of the Bishop and Standing Committee of the Diocese, and all property of any parish is held in trust for the National Church and the local Diocese. (Exh. "D" to the amended petition for declaratory judgment.) Also, Section 13.2 of the canons of the Diocese, provides that all real property acquired by any parish for use for religious worship or for a rectory, parish house or school is held for the work of the Diocese and can not be alienated without the consent of the ecclesiastical authority and Standing Committee of the Diocese. (Exh. "C" to the amended petition for declaratory judgment.)

Regarding the church property in Rosemont, the petition states that Good Shepherd granted it, in trust, to the trustees of the Diocese in 1910. The deed provided that Good Shepherd shall use the premises for worship according to the doctrine and discipline of the National Church "so long as [Good Shepherd] shall continue to be united as a congregation with the

National Church in the local Diocese and recognized as so united by the Bishop of said Diocese....” The deed also provided that, should Good Shepherd be dissolved or cease to be united as a congregation with the Diocese or, in the opinion of the Bishop, cease to use the premises for worship in accordance with the doctrine of the National Church, the Bishop can authorize other congregations to use the property or decide to dispose of it. In 1967, the premises were deeded back to Good Shepherd, subject, however, to the building and use restrictions set forth in the 1910 deed. (Exh. “F” to the amended petition for declaratory judgment.)

In support of the allegation that Good Shepherd is no longer being used for the benefit of the Episcopal Church, the petition sets forth, *inter alia*, that 1) the respondents have announced the parish is no longer a constituent part of the Diocese and National Church, and are looking to join another hierarchical church and take Good Shepherd’s assets with them; 2) the respondents continue to employ respondent Moyer despite his deposition, in violation of the constitutions and canons that permit only those licensed by the Bishop or appropriate diocesan authority to serve as rectors; 3) in addition to his having been deposed, respondent Moyer’s ordination as a Bishop of the aforementioned Anglican Church makes him subject to an ecclesiastical authority outside the National Church and the Diocese, and thus incapable of serving as rector of Good Shepherd; 4) the respondents have employed other priests not licensed by the Diocese; and 5) the respondents have used parish assets to support respondent Moyer’s activities on behalf of the Anglican Church. As the result of these actions, the petitioners contend the respondents have “rendered themselves ineligible to be members of the congregation, to vote on matters relating to the parish, or to hold office or exercise any authority on behalf of Good Shepherd.” (Amended petition for declaratory judgment, ¶ 36.)

In support of their request for relief, the petitioners also cite to Section 13.4 of the diocesan canons which authorizes the Bishop, who with the consent of the Standing Committee determines that a member church has ceased to act in accordance with the constitution and canons, to take legal steps necessary to take over that member church's property to be conveyed to the Episcopal Church Foundation. (Exh. "D" to the amended petition for declaratory judgment.) The Standing Committee gave its consent to the move forward in this fashion by resolution dated November 6, 2002. (Exh. "H" to amended petition for declaratory judgment.)

In their responsive pleading to the declaratory judgment action, the respondents: 1) state they have insufficient information to admit or deny whether the Standing Committee had the authority to grant petitioner Michel the authority of a diocesan Bishop; 2) deny the allegation that they have acted or are determined to sever their ties with the Episcopal Church or the Diocese; 3) aver that respondent Moyer has, since his deposition, been licensed as a priest in good standing by other Dioceses of the Episcopal Church and the Archbishop of Canterbury, who do not recognize the deposition; 4) contend that the assets of Good Shepherd continue to be used for the benefit of the Episcopal Church; 5) deny that the Episcopal Church is hierarchical; 6) admit that respondent Moyer was made a Bishop of the Anglican Church, but deny that is a different church; 6) contend the Standing Committee authorized the commencement of legal action against the respondents only because the committee was given incomplete and inaccurate information by the diocesan Bishop; and 6) set forth repeatedly that the controlling constitutions, canons, charters, and deeds referred to in the amended petition must be reviewed, not in isolation, but in their entirety and considered as a whole and in the context of each other. The responsive pleading also demonstrated the kitchen-sink approach to affirmative defenses, having

included lack of subject matter jurisdiction, immunity of the individual respondents from civil liability, lack of standing of petitioners, no case or controversy, waiver, estoppel, laches, unclean hands, failure to mitigate damages, and statute of limitations.

Turning to the motion for summary judgment, we perceive the pivotal fact to be the deposition of respondent Moyer which the respondents acknowledge to have taken place. (Response to Motion for Summary Judgment, ¶2.) Under the rule of deference, by which civil courts do not adjudicate controversies involving the internal governance or administration of religious organizations, this Court clearly can not inquire into the propriety of this action. Another matter on which this Court will not rule is whether one ordained by a branch of the Anglican Church can be deemed to be an Episcopal priest. An issue this Court could entertain is one to which the parties devoted all of their briefs and most of their arguments -- the proposition that this is a church property dispute that can be resolved by this civil court under the "neutral principles" approach, *i.e.*, the court can make a decision based "exclusively on objective, well-established concepts of trust and property law" with reference to "the terms of a governing statute, the property deed, and any other document that expresses the parties' intentions regarding the ownership of the property." Jones v. Wolf, 443 U.S. 595, 603 (1979). However, the Diocese's having in the course of the argument restricted the relief it seeks to a determination that the rector and vestry be removed, the question before us does not turn on trust concepts -- which are the bread and butter of this Court -- or the wording of documents that can be interpreted without delving into doctrinal issues.

On the sole question of whether or not the Diocese can ask this Court to force the respondents out of Good Shepherd, the answer is clear. Their eviction, literally and figuratively,

is the will of the petitioning Standing Committee and Assisting Bishop. Their decision is the result of the parties' divergent views on ecclesiastical questions and this Court can not get entangled in those controversies. The resolution of the Standing Committee dated November 6, 2002, authorized the Bishop "to take all steps reasonably necessary to secure the property of Good Shepherd for the use of the Episcopal Church." (Exh. H. to amended petition for declaratory judgment.) The respondents argue strenuously that the present action was filed prematurely because the petitioners did not follow the resolution's directive that the Bishop "endeavor to seek an amicable resolution to the disputes with The Church of the Good Shepherd, Rosemont, in order to restore the Parish and the Diocese to that unity which is ours in Christ" before moving against the respondents. Clearly, the members of the Standing Committee, as they are petitioners herein, have determined this "condition" to be impossible of fulfillment, a conclusion that would seem inevitable in light of, *inter alia*, the aforementioned civil case tried in 2008 between respondent Moyer and the then-Bishop.

In view of the above, we enter the following.

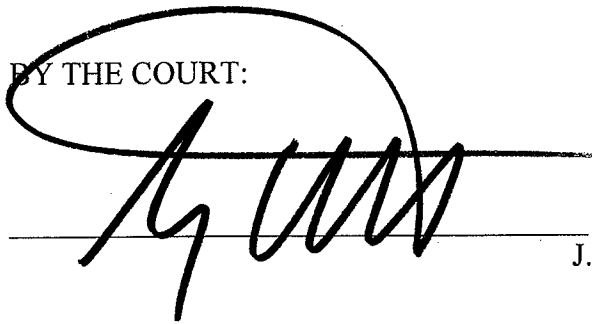
**DECREE**

AND NOW, this <sup>25<sup>th</sup></sup> day of August, 2011, after argument and consideration of briefs of counsel, the motion for summary judgment on the amended petition for declaratory judgment filed by Rodney R. Michel and the Glenn M. Mathis, and the request for relief, as delineated at time of argument, are hereby GRANTED. Accordingly, the Court determines that respondent

Moyer and respondents John Heidengren and Timothy Tammany no longer have any right or authority to serve as rector and vestry members of The Church of The Good Shepherd, Rosemont Pennsylvania, and they are hereby removed from those positions.

This is a final decree.

BY THE COURT:



A handwritten signature in black ink, appearing to be 'J. W.', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval. To the right of the signature, the letter 'J.' is printed.

Copies of the above mailed  
August 25, 2011, to:

Mary E. Kohart, Esquire, for the petitioners  
Michael F. Ruggio, Esquire, for respondents  
Lawrence Barth, Sr. Deputy Attorney General, for the Commonwealth



A handwritten signature in black ink, appearing to be 'Shurey R. Clegg', is written over a horizontal line.