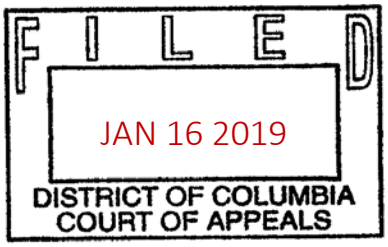
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 16-CV-444

DR. MARCUS TURNER, SR., ET AL., APPELLANTS,

v.

ALVA C. HINES, ET AL., APPELLEES.



Appeal from the Superior Court
of the District of Columbia
(CAB-1406-15)

(Hon. Robert D. Okun, Trial Judge)

(Argued May 10, 2017 Decided January 16, 2019)

Before GLICKMAN and EASTERLY, *Associate Judges*, and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellees, professed members of Beulah Baptist Church of Deanwood Heights, sued appellants – Dr. Marcus Turner, Sr., the Church's Pastor; Russell Moore, Jr., the former Chair of the Church's Trustee Board; and Beulah Community Improvement Corporation (BCIC), a non-profit secular entity affiliated with the Church – in Superior Court for breach of fiduciary duties, conversion, unjust enrichment, and civil conspiracy. This appeal is from the Superior Court's denial of appellants' motion to dismiss the complaint on standing and First Amendment grounds.[1] Appellants claim that (1) this court has jurisdiction to review that denial in this interlocutory appeal under the collateral order doctrine; (2) appellees lack standing to maintain their suit because they are not *bona fide* members of the Church; and (3) even taking all the factual allegations of the complaint as true, the suit must

[1] The court dismissed the claims against appellant Turner on other grounds, namely *res judicata*, but it did not enter a separate final judgment of dismissal for him and he remains a defendant in the case. The dismissal of the complaint against Turner is not the subject of the present appeal.

be dismissed at this juncture under the First Amendment ecclesiastical abstention doctrine as a matter of law. Appellees dispute each of those claims.

We conclude that we have jurisdiction at this time to review the Superior Court's rejection of appellants' First Amendment immunity claim, but not its rejection of their standing argument. We further conclude that, at this early stage of the proceedings, the ecclesiastical abstention doctrine does not require dismissal of the suit, because it appears that appellants' liability may be adjudicated under neutral principles of tort law without infringing on appellants' claimed First Amendment immunity.

I. The Allegations of the Amended Complaint

The amended complaint is brought by eighteen individuals who allege that they are *bona fide* members in good standing of Beulah Baptist Church and beneficiaries of the property held by the Church in trust for its members.[2] Their complaint charges that appellant Turner, with the assistance of appellants Moore and BCIC,[3] abused that trust by engaging for over a decade in a series of unauthorized, wasteful, and improper transactions involving Church funds and real property. The complaint alleges the following as the main elements of this charge.

(1) Between 2003 and 2008, Turner and Moore, purporting to act on behalf of the Church, purchased at least seven properties in the Deanwood Heights neighborhood and entered into at least five loan agreements encumbering the Church's real property. The last of these loans enabled BCIC to borrow $3.23

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[2] With their opposition to appellants' motion to dismiss on standing grounds, each appellee submitted a declaration under penalty of perjury that he or she is on the Church's membership roll, has a membership number provided by the Church, and serves (or has served) on Church ministries open only to Church members.

[3] The complaint describes BCIC as a nonprofit corporation "created to help raise funds and assist the Church in its work to improve the Deanwood Heights community" in various ways. Unlike the Church itself, BCIC can receive government funding because it is a secular organization. The complaint further alleges that (as shown in the allegations we summarize above) BCIC is controlled by Turner and is "Turner's alter ego even more than it is the Church's."

million in July 2008 (apparently to extinguish the remaining accumulated debt on the previous loans) with the Church as guarantor. This transaction also involved an unauthorized and secret conveyance of a valuable ¾-acre lot from the Church to BCIC for no consideration in return. In violation of the 1997 Church Constitution then in effect, Turner and Moore allegedly engineered these property and loan transactions without the knowledge and approval of the Church's Trustee Board (or its membership in general).[4] In fact, throughout the period, Turner falsely represented that the Church was debt-free and that the property transactions did not encumber the Church's property. The truth was revealed in 2014 when a notice appeared in *The Washington Post* that Church property was to be auctioned off in a foreclosure sale. To prevent this, Turner was forced to sell off certain Church properties, including the lot the Church had conveyed to BCIC for free.

(2) With the help of Moore and a few other confederates, Turner also secretly and repeatedly withdrew funds from the Church operating account for his own personal benefit. Turner allegedly

> charged to the Church credit card meals, fuel for his personal car, dry cleaning, vacations, personal lawn care and exorbitant cell phone bills, which included home internet and cable television services. He had the Church pay for his own continuing education, his wife's education and his son's tuition, including, for example, $14,000 in tuition payments in 2008. He had the Church cover personal tax liabilities, including $3,000 in 2008.

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[4] The Church's 1997 Constitution is incorporated in the complaint by reference. Under that Constitution, the duty "[t]o review and/or sign all contracts and legal documents on behalf of the Church" and "[t]o have responsibility for the acquisition . . . of all church property" was assigned to the Trustee Board. The Constitution did not assign similar duties or powers to the Pastor. The Constitution also assigned financial oversight and similar responsibilities to other boards, committees, and officers of the Church. The Board of Deacons, for example, had the duty to "[k]now at all times" the financial condition of the Church, and a separate Budget-Finance Committee bore responsibility for preparing the Church's annual budget for submission to the entire membership. The Constitution required the Church's Pastor (Turner), among other things, to "seek the advice of the official boards regarding recommendations for policy and program changes."

> Moreover, he had the Church establish and pay premiums on life insurance policies for both him and his wife, and had the Church pay his wife $500 on at least two occasions for delivering speeches at the Church.

All of these expenditures were unauthorized; the Church Constitution vested responsibility for the Church's property and finances, including Turner's salary, in the Trustee Board and other Church bodies, and they allegedly did not know of or approve Turner's use of Church funds to pay his personal expenses.[5]

(3) When Turner was having personal financial difficulties in 2008, he arranged with Moore for two secret payments from the Church to him in the total amount of $75,000 out of its general reserve fund. These payments were supposedly for services Turner had performed as a real estate "consultant" to the Church and BCIC and in securing government grants to acquire property for BCIC. There had been no contract or agreement to pay Turner for such services and the amount of the payments was arbitrary. Again, in violation of the Church Constitution, these payments were made without the knowledge and approval of the Trustee Board (or the Church membership).

(4) In 2011, Turner, aided by Moore, arranged for the Church to borrow $900,000, secured by Church property, ostensibly to pay for renovations of Church facilities (though the renovation contracts, had they been fully performed, would have totaled only $380,000). Much of that money is unaccounted for; the complaint alleges on information and belief that Turner drew down the funds and used them for "purposes unrelated to the mission of the Church." The Church paid only $162,500 in total for the (partial) renovation work that was performed, and Turner claimed to the contractor that the Church could not pay the rest of what it owed him, which amounted at the time to only $57,500. Instead, Turner borrowed $105,000 from the contractor, telling him that the Church and BCIC needed it to help pay off the July 2008 loan. Turner thereafter refused to repay the contractor and claimed that his loan had been a donation. The contractor sued the Church, BCIC, and Turner for the money he was owed; the Church incurred legal fees and expended funds to settle the lawsuit.

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[5] Under the Constitution, the Board of Deacons was charged with "[i]nsur[ing] that the Pastor is paid a salary which is fair to him and the Church," and the Trustee Board with "pay[ing] all salaries and debts incurred by the Church and such other disbursements as the Church deems necessary."

The complaint further alleges that as a result of Turner's financial mismanagement, self-dealing, continuing concealment of financial arrangements, and refusal to disclose information about the Church's financial condition to its membership, the Church is in financial distress and can no longer maintain its facilities, fully fund positions and scholarships, or carry on other basic activities as it had been doing.

Based primarily on the foregoing activities, the complaint charges Turner and Moore with breach of fiduciary duty, unlawful conversion of Church funds, and unjust enrichment from the diversion of those funds to pay Turner's personal expenses. The complaint also charges Turner, Moore, and BCIC with civil conspiracy to commit those torts. The relief sought includes an accounting to determine how much Turner owes the Church and an award of monetary damages.

II. Appellate Jurisdiction

The denial of a motion to dismiss a complaint usually is not immediately appealable because it does not finally dispose of the case.[6] We have held, however, that where the motion to dismiss asserts a claim of absolute ecclesiastical immunity from suit under the First Amendment, the denial of that claim is appealable under the collateral order doctrine *if* the immunity turns on an issue of law rather than on a factual dispute.[7] Therefore, we have jurisdiction to review the ruling on appeal to the limited extent of determining whether appellants "are entitled to the First Amendment immunity based on the allegations in the complaint,"[8] or whether the litigation can proceed under the assumption that those allegations are true.

We reach a different conclusion as to our jurisdiction to review the Superior Court's threshold ruling that appellees have standing to maintain their suit based on

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[6] *Heard v. Johnson*, 810 A.2d 871, 876 (D.C. 2002).

[7] *Id.* at 877; *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 426 (D.C. 1996); *United Methodist Church v. White*, 571 A.2d 790, 792-93 (D.C. 1990).

[8] Brief of Appellants at 16.

their declarations stating they are enrolled members of the Church in good standing.[9] To be amenable to immediate interlocutory review under the collateral order doctrine, a trial court ruling must satisfy three requirements: "(1) it must conclusively determine a disputed question of law, (2) it must resolve an important issue that is separate from the merits of the case, and (3) it must be effectively unreviewable on appeal from a final judgment."[10] The ruling on appellees' standing did not satisfy either the first or the third of these requirements. It was not a "conclusive" determination because there remains a genuine factual dispute over appellees' standing.[11] And unlike a ruling denying a claim of immunity as a matter of law, a ruling on standing is not "effectively unreviewable" on appeal from a final judgment.[12] Appellants argue that this particular ruling is effectively unreviewable after a final judgment has been rendered because litigating the issue will impermissibly involve the court in second-guessing the Church's religious decisions

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[9] "[A]s a general principle, *bona fide* members of a church have standing to bring suits as trust beneficiaries when there is a dispute over the use or disposition of church property." *Mount Jezreel Christians Without a Home v. Board of Trustees of Mt. Jezreel Baptist Church*, 582 A.2d 237, 239 (D.C. 1990). *Bona fide* membership can be established based on the church's membership roll and financial records. *Id*. at 240-41. *See also Williams v. Board of Trustees of Mt. Jezreel Baptist Church*, 589 A.2d 901, 908 (D.C. 1991).

[10] *McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 1135 (D.C. 2010) (internal quotation marks omitted).

[11] While appellees filed declarations stating they were on the Church's membership roll, had membership numbers, and were in the Church's ministries, Turner countered with a declaration asserting the opposite. Ultimately, the Superior Court will need to resolve this factual dispute, presumably after discovery in which the membership roll and other pertinent documents are produced (if they are available). *See Grayson v. AT&T Corp.*, 15 A.3d 219, 245-46 (D.C. 2011) (en banc) (explaining that the standing inquiry may be different depending on the stage of the litigation).

[12] *See, e.g., Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1334-35 (11th Cir. 1999) (citing cases). *See also Freyre v. Chronister*, 2018 U.S. App. LEXIS 35141 *1, *5-6 (11th Cir. Dec. 14, 2018).

concerning its membership.[13] We are not persuaded by this assertion. The court may need to determine *whether* and *when* the Church admitted or excluded appellees from membership, but not, so far as now appears, *why* the Church did so.[14]

III. Ecclesiastical Abstention

Appellants claim to be immune from suit because, generally speaking, the First Amendment requires civil courts to abstain from disputes over "matters of church government as well as those of faith and doctrine."[15] But this principle "does not mean . . . that churches [or their ecclesiastical personnel, e.g., ministers] are above the law or that there can never be a civil court review of a church action."[16] On the contrary,

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[13] Appellants note that the Church Constitution makes "faith in the Lord Jesus Christ" a qualification for membership.

[14] *See, e.g.*, *Jackson v. George*, 146 A.3d 405, 416-18 (D.C. 2016) (holding that dispute over purported termination of church memberships was justiciable where the issue turned on the authority of the decision makers without requiring resolution of any religious questions; "[c]ontrary to appellants' assertions, Judge Nash was not required to determine whether appellees . . . or anyone else had 'accepted Jesus Christ'").

[15] *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). *See also, e.g.*, *Meshel v. Ohev Shalom Talmud Torah*, 869 A.2d 343, 353-54 (D.C. 2005); *Heard*, 810 A.2d at 879. In *Hosanna-Tabor*, the Court clarified that this doctrine of abstention "operates as an affirmative defense to an otherwise cognizable claim, not [as] a jurisdictional bar." 565 U.S. at 195 n.4.

[16] *Heard*, 810 A.2d at 879 (brackets added). *See also Family Fed'n for World Peace v. Moon*, 129 A.3d 234, 249 (D.C. 2015) ("In sum, the mere fact that the issue before the court involves a church or religious entity does not thereby bar access to our courts.").

> civil courts may resolve disputes involving religious organizations as long as the courts employ neutral principles of law and their decisions are not premised upon their consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. . . . Even where the civil courts must examine religious documents in reaching their decisions, the "neutral principles" approach avoids prohibited entanglement in questions of religious doctrine, polity, and practice by relying exclusively upon objective, well-established concepts of law that are familiar to lawyers and judges.[17]

Disputes over church property are "especially" amenable to resolution by civil courts employing neutral principles of law applicable in all property disputes.[18]

"[I]n determining whether the adjudication of an action would require a civil court to stray impermissibly into ecclesiastical matters, we look not at the label placed on the action but at the actual issues the court has been asked to decide."[19] As set forth in the complaint, the main issues here appear to be entirely secular and to be governed entirely by neutral principles of law. They are not issues of religious doctrine, church governance, or the like; unlike in some past cases this court has seen, they do not involve review of policy matters reserved to ecclesiastical judgment. They are simply issues of the permissible use or disposition of Church property; they primarily boil down to whether Turner, with Moore's and BCIC's assistance, misappropriated the Church's money for his own use and encumbered or disposed of the Church's real estate without the authorization required by the Church Constitution. The resultant causes of action – breach of fiduciary duty, conversion, unjust enrichment, and civil conspiracy to commit those torts – all "rely upon

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[17] *Meshel*, 869 A.2d at 354 (quoting *Jones v. Wolf*, 443 U.S. 595, 602, 603 (1979) (quotation marks omitted)).

[18] *Family Fed'n*, 129 A.3d at 248. *See also Heard*, 810 A.2d at 880.

[19] *Meshel*, 869 A.2d at 356.

doctrines basic to our legal system" and are resolved by applying familiar, well-developed, neutral principles of law.[20]

The causes of action in this case are justiciable notwithstanding that they rely on provisions of the Church's Constitution specifying the allocation of responsibility for and authority over Church property, contracts, and financial matters.[21] As we explained in *Bible Way Church*, a civil court can enforce standards of behavior that a church has formally adopted.[22] And a church's constitution is a contractual agreement that a court may construe using neutral principles of law, such as "the 'objective law' of contracts, under which the written language embodying the terms of an agreement governs the rights and liabilities of the parties."[23] In this case, for instance, the court may have to construe and apply Article 5, Section 3 (c)(2) of the Constitution, which specified that it was the Trustee Board's duty "[t]o review and/or sign all contracts and legal documents on behalf of the Church . . . ." We see no reason why this task (or the construction and application of any other provision of the Constitution pertinent to this case) should entangle the court in any questions of religious doctrine, polity, or practice. That some provisions of the Constitution contain religious terminology should not give rise to such impermissible entanglement in the absence of a "material dispute between the parties" over the

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[20] *Family Fed'n*, 129 A.3d at 249. In contrast, in *Bible Way Church*, *supra*, footnote 7, and *Kelsey v. Ray*, 719 A.2d 1248 (D.C. 1998), we held that the plaintiffs had failed to allege the applicability of neutral accounting and reporting criteria that were clear and objective enough to allow a court to examine a church's financial practices without involving itself in policy determinations committed to ecclesiastical judgment. *See Kelsey*, 719 A.2d at 1249, 1252-53; *Bible Way Church*, 680 A.2d at 428-29.

[21] See footnotes 4 and 5, *supra*.

[22] 680 A.2d at 428 ("If the church has, in fact, adopted clear, objective accounting and reporting standards that eliminate all doctrinal decision-making in their enforcement, then arguably a civil court can apply them – much as a court can resolve secular disputes over church property – because the church itself has obviated all First Amendment concerns.").

[23] *Meshel*, 869 A.2d at 361.

meaning of the religious language.[24] The existence of such a material dispute in this case has not been shown and is not apparent.[25]

Thus, at this early stage of the case, "it would appear that this dispute is susceptible to resolution by 'neutral principles of law' not requiring any forbidden inquiry into matters barred by the First Amendment."[26] We therefore hold that the litigation may proceed, with the understanding that "going forward, if it becomes apparent to the trial court that this dispute does in fact turn on matters of doctrinal interpretation or church governance, the trial court may grant summary judgment to avoid 'excessive entanglement with religion.'"[27]

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[24] *Id.* at 354. In *Meshel*, the court construed the corporate bylaws of an Orthodox Jewish congregation to determine that the parties had an enforceable agreement to arbitrate their dispute by presenting it to a "Beth Din." The court held that it could make this determination applying neutral principles of contract interpretation because there was no material dispute between the parties as to the meaning of that or other religious terms in the bylaws. *See also id.* at 357 ("It is undeniable that 'Beth Din,' 'Din Torah,' 'Orthodox rabbi,' and 'Halacha' are religious terms that lend the case a certain surface feel of ecclesiastical content. When we look beneath the surface, however, we see an action to compel arbitration that turns not on ecclesiastical matters but on questions of contract interpretation that can be answered exclusively through the objective application of well-established, neutral principles of law.").

[25] Appellants appear to rely on a provision of the 1997 Constitution, Article IV, Section 1, stating that the Pastor of the Church "shall serve as *overseer*, leader, advisor, and teacher" (emphasis added). Assuming *arguendo* that "overseer" is a religious term (as appellants contend it is), it is not clear that the parties disagree over its meaning or that, if they do, the dispute is either unresolvable by a court or material to the issues raised by the complaint. Appellants do not seem to claim, for example, that Turner's status as "overseer" entitled him to misappropriate Church funds for his own use (in fact, they disavow any such claim in their appellate briefing) or override provisions of the Constitution committing contractual and other matters to the Trustee Board.

[26] *Family Fed'n*, 129 A.3d at 249.

[27] *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 818 (D.C. 2012).

Accordingly, we hereby affirm the Superior Court's denial of appellants' motion to dismiss the amended complaint on First Amendment and standing grounds and remand the case for further proceedings.

ENTERED BY DIRECTION OF THE COURT:

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