In the

Supreme Court of Virginia

RECORD NO. 171098

THE PURE PRESBYTERIAN CHURCH OF WASHINGTON and SAMYEOL KIM,

Appellants/Defendants,

v.

THE GRACE OF GOD PRESBYTERIAN CHURCH,

Appellee/Plaintiff.

REPLY BRIEF

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INTRODUCTION

In this appeal, the dispositive question is whether the Circuit Court of Fairfax County had subject matter jurisdiction to address the matters raised by Grace Presbyterian in its litigation against Pure Presbyterian. For the reasons stated in Pure Presbyterian's Opening Brief and now in this Reply Brief, the court below lacked subject matter jurisdiction, and the judgment below should be vacated and the case dismissed.

AUTHORITIES AND ARGUMENT IN REPLY TO THE BRIEF OF APPELLEE

Pure Presbyterian offers this Reply to address the Brief of Appellee filed by Grace Presbyterian.

I. The Standard of Review is *De Novo*

Although Grace Presbyterian agrees that jurisdiction is reviewed *de novo*, it qualifies that agreement by stating that "any factual findings underpinning the jurisdictional determination" "are 'entitled to deference and are binding upon this Court unless those findings are plainly wrong or without evidence to support them.'" Br. of Appellee at 11. Because the record discloses no such findings, this qualification is beside the point and review in this case is *de novo.*

II. Subject Matter Jurisdiction May Be Questioned at Any Time

The invocation of Rule 5:25 by Grace Presbyterian is misplaced. *See* Br. of Appellee at 11. It is settled law in this Commonwealth that lack of subject matter

jurisdiction may be raised at any time, including for the first time on appeal. *See, e.g., Seabolt v. Cty. of Albemarle*, 283 Va. 717, 719 (2012).

Grace's invocation of the doctrine of judicial estoppel is likewise misplaced, for similar reasons. *See* Br. of Appellee at 11-12. In articulating the distinction between an order being void ab initio and merely voidable, this Court has stated:

> The distinction between an action of the court that is void ab initio rather than merely voidable is that the former involves the underlying authority of a court to act on a matter whereas the latter involves actions taken by a court which are in error. An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." Consequently, Rule 1:1 limiting the jurisdiction of a court to twenty-one days after the entry of the final order does not apply to an order which is void ab initio.

Singh v. Mooney, 261 Va. 48, 51-52 (2001) (citations omitted). Thus, under these principles, a judgment that is void ab initio cannot be brought to life – regardless of the conduct of the parties in the proceedings that produced that judgment.

III. The Dispute Below was Ecclesiastical, not Secular

It settled law, under both the Constitution of the United States and the Constitution of Virginia, that religious organizations like Pure Presbyterian have

autonomy in matters of internal governance and polity. Grace Presbyterian posits that this "'religious freedom' argument . . . is ultimately a red herring . . . ." Br. of Appellee at 12. This assertion is incorrect, and is refuted by the cases cited by Grace Presbyterian.

In *Hosanna-Tabor Evangelical Church & School v. EEOC*, 565 U.S. 171 (2011), *see* Br. of Appellee at 15 n. 8, the Supreme Court of the United States recognized and applied the ministerial exception to employment discrimination suits. It doing so, the Supreme Court stated that "[b]y forbidding the 'establishment of religion' and guaranteeing the 'free exercise thereof,' the Religion Clauses ensured that the new Federal Government – unlike the English Crown – would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." 565 U.S. at 184. *See also id.* at 196-97 (Thomas, J., concurring) ("As the Court explains, the *Religion Clauses* guarantee religious organizations autonomy in matters of internal governance, including the selection of those that will minister the faith.").

Thus, in accordance with its rights under the First Amendment to the Constitution of the United States, Pure Presbyterian should have autonomy from any civil court in this Commonwealth regarding matters of its own internal

governance. Similarly, as a matter of Virginia law under the Constitution of Virginia, this Court in *Jae-Woo Cha v. Korean Presbyterian Church*, 262 Va. 604 (2001), *see* Br. of Appellee at 15, stated that "it is well established that a civil court may neither interfere in a matters of church government nor in matters of faith and doctrine." 262 Va. at 611.

Hence, Grace Presbyterian's attempt to rely on "neutral principles of law" does not embrace the full scope of the limitation on courts deciding ecclesiastical issues. See Br. of Appellee at 12 (citing and quoting *Reid v. Gholson*, 229 Va. 179, 188 (1985) ("[t]he question is simply whether the court can decide the case by reference to neutral principles of law, without reference to issues of faith and doctrine"). This issue here between Pure Presbyterian and Grace Presbyterian is fundamentally one about church governance. As such, the trial court below lacked subject matter jurisdiction. *See, e.g., Bowie v. Murphy*, 271 Va. 126, 133-34 (2006) ("As a general rule, courts lack subject matter jurisdiction to resolve issues of church governance and disputes over religious doctrine.")

Determining whether Grace Presbyterian is the successor church to Pure Presbyterian – the ecclesia – is at its core an ecclesiastical dispute, requiring the courts to choose between competing ecclesiastical interpretations of their congregational votes and joint services, and to determine and identify the clergy, the membership, and the bylaws. *See, e.g., Bowie*, 271 Va. at 133 ("While what is

or is not an 'ecclesiastical' dispute is often debatable, issues of church governance . . . are unquestionably outside the jurisdiction of the civil courts."); *Hutterville Hutterian Brethren, Inc. v. Sveen,* 776 F.3d 547, 557 (8th Cir. 2015) (holding that addressing "which excommunications were valid and which is the true church" as part of determining corporate control of a religious society presents "religious questions" outside the jurisdiction of the courts to resolve).

IV. Grace Presbyterian Nonsuited Count III in its Entirety

It is not correct that Grace Presbyterian's "request for monetary relief was later nonsuited although the count itself remained." Br. of Appellee at 7 n.3. In its nonsuit motion, Grace Presbyterian sought "entry of a Nonsuit Order of Count III of the First Amended Complaint and for the ad damnum request of $500,000 in compensatory damages in the above-styled action." J.A. 84. The trial court's grant of the nonsuit stated "that the claim under Count III for monetary damages be, and hereby is, nonsuited." J.A. 86. This language in the trial court's order is a description of the dismissal of Count III, not any type of limitation on the scope of the nonsuit. Thus, Grace Presbyterian nonsuited Count III in its entirety. Thereafter, Grace Presbyterian pursued its claims under the alleged merger agreement in the mistaken belief that the trial court had subject matter jurisdiction to entertain its request for declaratory judgment.

Anticipating this, Grace Presbyterian asserts that the trial court nevertheless had jurisdiction to adjudicate its request for declaratory relief. *See* Br. of Appellee at 20. But, this Court's clear precedent does not permit declaratory relief for fully mature contract claims or to determine disputed factual issues. *See* Pure Presbyterian's Opening Br. at 13-15, 17-20. When Grace Presbyterian states that "[i]n the present case, however, the jury did determine disputed factual issues about whether the merger occurred and whether it was performed," Br. of Appellee at 21 (emphasis in original), it concedes the error committed below by the trial court.

V. The Trial Court Lacked In Rem Jurisdiction When the Operative Complaint Was Filed

Grace Presbyterian asserts that the issue of in rem jurisdiction is determined as of the date of plan confirmation. Br. of Appellee at 23. This cannot be correct because, as Grace Presbyterian concedes, the bankruptcy court specifically retained some in rem jurisdiction post-confirmation. Br. of Appellee at 24 n. 11. Because in rem jurisdiction, to the extent it exists at all, is exclusive and indivisible, the circuit court lacked jurisdiction over the res when Grace Presbyterian filed its Complaint and its First Amended Complaint. Because the subject matter of this action, the Church Property of Grace Presbyterian, remained subject to the in rem jurisdiction of the bankruptcy court at the time of filing, the Final Order in the proceeding below was void *ab initio*. *See e.g., Lucas v. Biller*, 204 Va. 309, 313,

315 (1963) (holding an order void "[e]ven though a motion for judgment alleges matter proper for the potential jurisdiction of the court, and the court has acquired actual jurisdiction of all the necessary parties," because "the controversy belongs exclusively in another court" where it was first brought); *see also, e.g. Iron City Sav. Bank v. Isaacsen*, 158 Va. 609, 626-27 (1932) ("[W]here it appears . . . that, though the bill alleges matter proper for the exercise of the potential jurisdiction of a court of chancery, [but] the court has not acquired jurisdiction . . . of the *res* necessary to the exercise of that jurisdiction" because before another court, an "objection to the jurisdiction of the court . . . is that it lacks jurisdiction of the subject matter; and, therefore, the objection . . . may be shown at any time; and the court, when it comes to its attention, should . . . refuse to proceed").

VI. Pure Presbyterian Has Not Abandoned Anything

The fact that Pure Presbyterian is prosecuting this appeal demonstrates that it has not abandoned the Church Property. Because the judgment below is void, the state of any encumbrances on title will have to be resolved in some other proceeding or through some other process.

CONCLUSION

For the reasons stated in its Opening Brief and in this Reply Brief, Pure Presbyterian respectfully asks this Court to vacate the judgment below and dismiss the case for lack of subject matter jurisdiction.

Dated: 23 April 2018

Respectfully submitted,

s/ E. Duncan Getchell, Jr.

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CERTIFICATE

The undersigned hereby certifies that the foregoing Reply Brief complies with Rules 5:6, 5:26, and 5:27, and further certifies as follows:

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(5) On this 23rd day of April, 2018, I caused three (3) copies of the foregoing Reply Brief to be hand delivered to the Clerk's Office of the Supreme Court of Virginia for filing, as required by Rule 5:26(c)(1) and (e). I also caused an electronic copy of the foregoing Reply Brief to be filed through VACES with the Clerk's office, as required by Rule 5:26(e) and 5:32(a)(3)(i). Finally, I also caused an electronic copy of the foregoing Reply Brief were sent via electronic mail to all Counsel for Appellee, as required by Rule 5:26(e).

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