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October 7, 2016

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Hon. Barbara Miner, Clerk
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Re: Supreme Court No. 93374-0 - The Presbytery of Seattle, et al. v. Jeff Schulz and Ellen Schulz, et al.
King County Superior Court No. 16-2-03515-9 SEA

Clerk and Counsel:

Enclosed is a copy of the RULING DENYING DISCRETIONARY REVIEW, signed by the Supreme Court Commissioner on October 7, 2016, in the above entitled cause.

Sincerely,

Susan L. Carlson
Supreme Court Clerk

SLC:bw

Enclosure as stated



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, a Washington nonprofit corporation; THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, a Washington nonprofit corporation; ROBERT WALLACE, President of The First Presbyterian Church of Seattle, a Washington nonprofit corporation; and WILLIAM LONGBRAKE, on behalf of himself and similarly situated members of First Presbyterian Church of Seattle,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ, as individuals and as the marital community comprised thereof; and LIZ CEDERGREEN, DAVID MARTIN, LINDSEY McDOWELL, GEORGE NORRIS, NATHAN ORONA, and KATHRYN OSTROM, as trustees of The First Presbyterian Church of Seattle, a Washington nonprofit corporation,

Petitioners.

NO. 93374-0

**RULING DENYING
DISCRETIONARY REVIEW**

Petitioners in this case seek direct discretionary review of a partial summary judgement order declaring the following: that respondent Presbytery of Seattle, through its Administrative Commission, governs the First Presbyterian Church of Seattle (FPCS); that the Commission's findings and rulings are conclusive

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and binding; and that FPCS property is held in trust for the benefit of the national organization, Presbyterian Church (U.S.A.).¹ This partial summary judgment order does not adjudicate all the claims in this matter, and therefore is subject only to discretionary review until the entry of a final judgment. RAP 2.2(d). As applicable here, RAP 2.3(b) provides that discretionary review of an interlocutory superior court decision is available only if (1) the court committed obvious error that renders further proceedings useless, (2) the court committed probable error that substantially alters the status quo or limits the freedom of a party to act, or (3) the court so far departed from the usual course of judicial proceedings as to call for appellate review. Although discretionary review may be requested under these circumstances, such piecemeal review is disfavored. *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990); *Hartley v. State*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985).

This case arises from a vote by some members of the congregation of FPCS to disaffiliate from the national religious organization Presbyterian Church (U.S.A.) and the Presbytery of Seattle, and to adopt new articles of incorporation and bylaws providing that FPCS is not subject to the authority of the Presbyterian Church (U.S.A.) or its form of government. The Presbytery of Seattle, acting pursuant to the constitution of Presbyterian Church (U.S.A.), appointed an Administrative Commission to conduct an investigation and issue a report and take action in light of the results of the investigation. Subsequently, the Administrative Commission adopted resolutions stating that it assumed original jurisdiction with the full power of the session of FPCS, and that the individuals “who previously constituted the session and the officers, directors, or board of trustees” no longer had authority with respect to

¹ The deputy commissioner previously denied the petitioners’ motion to stay all superior court proceedings and enjoin all actions seeking to enforce or implement the declaratory judgment pending review. The facts as related in that ruling are summarized again here.

FPCS's ministry, business dealings, or property.² Those specified individuals maintained that they still constituted the duly elected board of trustees of FPCS, that through their actions FPCS had severed all ties with the Presbyterian Church (U.S.A.), and that the commission had no authority over them. Disputes arose concerning who was entitled to FPCS property, funds, and accounts receivable. Copastors Jeff Schulz and Ellen Schulz and those who maintain they are the duly elected board of trustees of FPCS declined the Administrative Commission's directions to vacate the church property, turn over books and records, and return funds that had been placed in a law firm trust account.

The Presbytery of Seattle and individuals who the Administrative Commission elected as FPCS officers (respondents herein) filed suit against the Schulzes and the individuals who maintain they are the proper board of trustees of FPCS (petitioners herein). Respondents moved for partial summary judgment on their claim for declaratory relief. Petitioners sought a motion for a continuance under CR 56(f) and also filed a motion for a preliminary injunction prohibiting respondents from carrying out the Administrative Commission's resolutions. The superior court denied petitioners' request for a continuance, concluding that petitioners had already thoroughly responded to the motion for partial summary judgment and failed to show that the additional discovery they requested would provide additional support for their assertion that a genuine issue of fact exists as to whether Presbyterian Church (U.S.A.) is hierarchical. The superior court then granted respondents partial summary judgment and entered a declaratory judgment finding that Presbyterian Church (U.S.A.) is a hierarchical church in which the determinations of the Presbytery of Seattle, through its Administrative Commission, are conclusive and binding on the

² The "session" is the governing body of the local church on ecclesiastical matters, composed of the pastor or pastors and the elders of the local church, while the board of trustees governs business and property interests. FPCS's session also acts as its board of trustees.

session, trustees, and congregation of FPCS, and that any interest that FPCS has in church property is held in trust for the benefit of the Presbyterian Church (U.S.A.). Further, the court determined that the current governing body of FPCS is the body elected by the Administrative Commission. The court additionally found that FPCS is governed by the Restated Articles of Incorporation adopted in June 1985 and the bylaws adopted in May 2005, and it held void the recent amendments to the articles of incorporation and bylaws that the congregation had voted to approve providing that FPCS was not subject to the authority of the Presbyterian Church (U.S.A.) or its governance documents.

The superior court also denied petitioners' motion for a preliminary injunction against implementation of the Administrative Commission's resolutions, finding they had not shown (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of would result in actual and substantial injury. *See Huff v. Wyman*, 184 Wn.2d 643, 651, 361 P.3d 727 (2015). As to the first criterion, the court found that the rights at issue were conclusively determined by the Administrative Commission, citing the same authority on which it had based the declaratory judgment. *See Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 373, 485 P.2d 615 (1971) (in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive). The court also concluded that, even if neutral principles of law were applied as a means of adjudicating the church property dispute, an approach described in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), and advanced by petitioners, the Presbytery of Seattle would still be entitled to the use and possession of the property

by virtue of the 2005 Restated Article of Incorporation and bylaws that incorporated a *Book of Order* provision that the property held by and for the congregation is held in trust for the Presbyterian Church (U.S.A.). As to the second and third criteria, the court observed that petitioners had continued to worship in the FPCS chapel while congregants who opposed their actions worshiped elsewhere, and that respondents had not interfered with any bank accounts in the name of FPCS and had decided to await a prompt resolution of the action before contacting entities (such as Diamond Parking and Seattle Classical Christian School) that have contractual obligations to FPCS. The court found petitioners had not met their burden of showing that any fear of immediate invasion of a right was well grounded or that the acts complained of would result in actual and substantial injury.

Petitioners moved for reconsideration of the orders denying a continuance, granting declaratory judgment, and denying a preliminary injunction. The superior court denied reconsideration of all of these matters, and petitioners now seek this court's direct discretionary review of each of these orders.

In seeking review, the petitioners first assert that the superior court committed obvious or probable error in failing to apply a "neutral principles of law" analysis to the facts presented by this matter. As noted, in *Jones* the Supreme Court recognized a "neutral principles of law" analysis as one of several acceptable approaches civil courts may follow in resolving church property disputes. Historically, the Supreme Court's first approach to the role of civil courts in adjudicating church property disputes was outlined in *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 20 L. Ed. 666 (1871). There the Supreme Court concluded that where individuals had organized themselves into a voluntary religious association, and had agreed to be bound by the decisions of the governing hierarchy of the association, the civil courts were compelled to give deference to the final decisions of the organization's

hierarchical authorities. In *Rohrbaugh* this court adopted the approach in *Watson*, which it summarized as setting forth the rule that “the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property.” *Rohrbaugh*, 79 Wn.2d at 372. The court observed that historically it had applied a similar rule under which “in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive.” *Id.* at 373. The court saw no reason to abandon the rule. *Id.*

Fifteen years later, in *Church of Christ at Centerville v. Carder*, 105 Wn.2d 204, 208, 713 P.2d 101 (1986), this court observed that First Amendment case law subsequent to its decision in *Rohrbaugh* had recognized three ways in which a property dispute in a hierarchical church setting may be addressed: (1) pursuant to *Watson*, which requires deference to the highest hierarchical body; (2) according to neutral principles of law which may not necessarily coincide with the highest hierarchical body’s decision, as set forth in *Jones*; and (3) according to any state legislation that governs church property arrangements in a manner that precludes state interference in doctrines. But no hierarchical church was involved in *Carder* and thus “[t]here is no higher church body to which the aggrieved parties can appeal or to which this court can defer.” *Id.* at 208. Here, petitioners acknowledge that this court “has not squarely addressed the issue since *Jones*,” but argue that discussion in recent decisions presages future application of neutral principles to resolve disputes such as those presented in this matter. In support of this proposition, petitioners cite the descriptions of *Jones* in the lead opinion in *Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 675-76, 286 P.3d 357, 367 (2012) (Madsen, C.J., with three

justices concurring; two justices concurring in the result) (observing that use of the neutral principles of law approach was applied to a church property dispute in *Jones*, but stating that the neutral principles of law approach was not the proper approach to address claims of negligent retention and supervision of the church minister). Three justices “strongly disagree[d] with the lead opinion that we should reject the ‘neutral principles of law’ approach approved by the United States Supreme Court in *Jones*.” *Id.* at 692 (Chambers, J., dissenting in part and concurring in part). Petitioners also cite decisions from other jurisdictions that have applied the *Jones* approach in circumstances where the court could resolve a property dispute without reference to church doctrine.

These opinions may illustrate that the legal question is at least arguable, and that this court may be asked to consider whether changes in the legal context after *Rohrbaugh* warrant revisiting the question. But the various opinions in *Erdman* do not show that the preferred approach to resolution of church property disputes has indeed changed. Petitioners’ showing that there is a debatable issue falls far short of demonstrating the superior court committed obvious or probable error as required by the review criteria of RAP 2.3(b)(1) and (2).³

Further, it is unclear whether a court reviewing the superior court decision in this matter will find it necessary to choose among the different acceptable methods for resolving church property disputes. In its order denying the petitioners’ motion for a preliminary injunction, the superior court concluded that even if the neutral

³ Petitioners also claim there is conflict among the decisions of the Court of Appeals. See *Choi v. Sung*, 154 Wn. App. 303, 225 P.3d 425, review denied, 169 Wn.2d 1009 (2010) (Washington Supreme Court has disavowed the *Jones* “neutral principles of law” approach and exclusively adopted the *Watson* “compulsory deference” approach to address property disputes in a hierarchical church setting) and *In re Marriage of Obaidi & Qayoum*, 154 Wn. App. 609, 226 P.3d 787, review denied, 169 Wn.2d 1024 (2010) (applying neutral principles of contract law to a prenuptial agreement that was based on Islamic law). But a conflict among the published decisions of the Court of Appeals is a criterion for review of a Court of Appeals decision terminating review. See RAP 13.4(b).

principles of law approach applied, the petitioners would not be entitled to relief. The superior court reasoned that since the FPCS's restated articles of incorporation and 2005 bylaws incorporated a provision of the *Book of Order* that property held by the congregation was held in trust for the Presbyterian Church (U.S.A.), as further reflected in FPCS's financial statements until 2015, the petitioners' rights to the property ended when they ceased to use it for the benefit of the Presbyterian Church (U.S.A.). Petitioners dispute that FPCS ever consented to hold the property in trust for another entity. But regardless of the relative weight of the parties' positions, the potential that the legal issue petitioners present would not be reached is further indication that interlocutory review is not appropriate.

Next, the petitioners argue that the superior court committed obvious or probable error in entering summary judgment on the basis that Presbyterian Church (U.S.A.) is a hierarchical church. Petitioners submitted the declaration of an expert witness who is an ordained minister and former church leader and who has authored papers on the constitution and governance of the Presbyterian Church (U.S.A.). Petitioners contend this declaration created a genuine issue of fact as to whether Presbyterian Church (U.S.A.) is a hierarchical church. However, petitioners point to no clear decisional law in Washington on the extent to which a court may consider the testimony of an expert witness as to the meaning of a denomination's constitution, and whether the court may weigh that interpretation against a contrary interpretation of the tribunals that the denomination has vested with interpretative authority. This is an issue that has been considered by the courts in some other states. *See, e.g., Lamont Cmty. Church v. Lamont Christian Reformed Church*, 285 Mich. App. 602, 618, 777 N.W.2d 15 (2009) (stating that if a denomination's constitutional provisions are not so express that the civil courts can enforce them without engaging in an searching inquiry into church polity, the courts must accept the interpretation of the church

constitution provided by the denomination's authorities). Petitioners protest that this analysis is circular when the very question at issue is whether a religious organization's structure is hierarchical, and the underpinning for deference to the denomination's tribunal is the premise that the religious organization is hierarchical. But for purposes of this motion for discretionary review, I need only determine whether the petitioners have demonstrated that the superior court committed probable or obvious error. They have failed to do so. Even in states that apply a neutral principles approach to church property disputes, courts have disagreed over whether express provisions in a denomination's constitution are dispositive on the creation of a trust, and whether or what additional evidence is appropriate to examine. *See Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 352 Or. 668, 685-86, 291 P.3d 711 (2012) (discussing cases). Petitioners' arguments highlight the difficult task civil courts face in adjudicating such matters without becoming entangled in questions of religious doctrine and practice. But they have not shown that the superior court's determination here, that there was no genuine issue of material fact that precluded summary judgment, is contrary to any controlling authority on this issue.

Finally, petitioners argue the superior court committed obvious or probable error in failing to grant their CR 56(f) motion for a continuance to allow them to obtain answers to discovery requests that they had propounded on the issue of whether Presbyterian Church (U.S.A.) is a hierarchical church. But the superior court denied the continuance on the basis that petitioners did not show a likelihood that these requests would result in additional noncumulative information pertinent to resolution of the partial summary judgment motion. In this context, the question of whether a continuance should have been granted and whether petitioners can show they suffered any resulting prejudice is closely related to the appropriate scope of the civil court's

inquiry as to whether a religious organization is hierarchical. As discussed above, I cannot say that the superior court committed probable or obvious error in its determination of what evidence is properly considered in a civil court's resolution of this question. It follows that I cannot say that the court's denial of a continuance until discovery requests on this point were answered was obvious or probable error.

The motion for discretionary review is denied. My conclusion that discretionary review is not warranted under RAP 2.3(b) makes it unnecessary to decide whether direct review would be appropriate. RAP 4.2.



COMMISSIONER

October 7, 2016