

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX
Civil Division

MOUNT PLEASANT BAPTIST CHURCH)
BOARD OF TRUSTEES et. al.,)
Plaintiffs,)

v.)

DR. KEVIN E. DONALSON)
Defendant.)
_____)

Case No.:CL-2023-0016807

ORDER

THIS MATTER COMES BEFORE THE COURT on the Demurrer filed by Defendant DR. KEVIN E. DONALSON to the Complaint filed Plaintiffs MOUNT PLEASANT BAPTIST CHURCH BOARD OF TRUSTEES, MICHEAL DAVIS, EMILY KITCHEN, CHERYL TILLMAN, ROBERT BULLET, and LOUIS WERTS.

UPON CONSIDERATION of the briefs and argument of Counsel, it is hereby

ORDERED that Defendant DR. KEVIN E. DONALSON's Demurrer to the Complaint is OVERRULED in Part and SUSTAINED in part for the reasons stated on the record, attached hereto as Exhibit A; it is further

ORDERED that the Demurrer to all claims brought by Plaintiff MOUNT PLEASANT BAPTIST CHURCH BOARD OF TRUSTEES is SUSTAINED without leave to amend as "The trustees can only bring litigation individually" (Exh. A 5:18-5:19) and "The Trustees ... have standing to bring this suit" (Exh. A 6:7-6:9); it is further

ORDERED that the Demurrer to all claims brought by Plaintiffs MICHEAL DAVIS, EMILY KITCHEN, CHERYL TILLMAN, ROBERT BULLET, and LOUIS WERTS is OVERRULED.

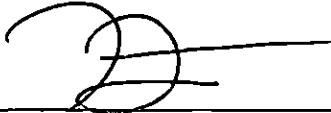
IT IS SO ORDERED

THIS CAUSE IS CONTINUED

ENTERED this ___ of _____, 2024.

Hon. Richard E. Gardiner
Judge, Fairfax County Circuit Court

SEEN AND AGREED:



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CHRISTINA P. LOWN
CLERK, CIRCUIT COURT,
FAIRFAX, VA

EXHIBIT A



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Transcript of Hearing

Date: January 31, 2024

Case: Mount Pleasant Baptist Church Board, et al. -v- Donalson

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----x

MOUNT PLEASANT BAPTIST CHURCH:

BOARD, et al., :

Plaintiffs, :

vs. :

DONALSON, :

Defendant. :

-----x

Case No.

CL-2023-0016807

HEARING

BEFORE THE HONORABLE RICHARD E. GARDINER

Fairfax, Virginia

Wednesday, January 31, 2024

9:30 AM

Job No.: 524233

Pages: 1 - 21

Recorded By: Ashley Meredith

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Hearing, held at the location of:

FAIRFAX COUNTY CIRCUIT COURT
4110 Chain Bridge Road
Fairfax, Virginia 22030

Pursuant to agreement, before
Ashley Meredith, Court Reporter.

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A P P E A R A N C E S

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C O N T E N T S

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E X H I B I T S

(None marked.)

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P R O C E E D I N G S

(Whereupon, the court reporter was duly sworn.)

THE COURT: All right. Good morning. We're here on Mount Pleasant Baptist Church of Board of Trustees et al. v. Kevin E. Donalson CL2023-16807. And this is here. I put this on for this morning to give you my decision with regard to the demurrer that was filed by Defendants -- by Defendant and also on the plaintiff's Motion for a Preliminary Injunction.

Let me start with the demurrer.

I'm going to sustain the demurrer in part and overrule it in part. With regard to the part that I'm going to sustain, that is to the case being brought by the board of trustees as a -- as an entity. I don't believe there is such a -- an entity that can appropriately bring this case. The trustees can only bring litigation individually. And in this case, they've done that, as well as Mr. Peterson explained yesterday, he brought both in the -- by the board and by the

1 individual trustees to -- so to the extent that
2 this case is brought by the board of trustees, the
3 demurrer to the board is sustained.

4 With regard to the demurrer to
5 Count -- count I, the demurrer is overruled. The
6 Court -- I believe that as to Count I, which is
7 the claim for declaratory judgment that the
8 trustees, first of all, have standing to bring
9 this suit, seeking the declaratory judgment
10 concerning the expenditures by the defendant. I
11 don't believe, as I said yesterday, and I'll
12 repeat just so the record is complete, that this
13 matter concerns an ecclesiastical question. I
14 don't believe it does.

15 What it concerns is an
16 interpretation of the relevant statutes in Article
17 57, and of course, most importantly, an
18 interpretation of the church's bylaws. And I
19 don't see that as touching -- getting anywhere
20 near an ecclesiastical question. Indeed, as Mr.
21 Showers said yesterday, that the -- essentially,
22 the ecclesiastical questions have been reduced to

1 or put into the bylaws, the -- the bylaws
2 structure, the church, pursuant to its
3 ecclesiastical arrangements. And so by simply
4 interpreting those bylaws, it's my conclusion that
5 I am not addressing an ecclesiastical question.
6 I'm only addressing secular questions, that is the
7 construction of the bylaws.

8 And as I said, with regard to
9 Count I, the claim for declaratory judgment, I --
10 I'm overruling the demurrer because I believe that
11 the contract -- excuse me, the Complaint sets out
12 sufficient facts showing that there is an ongoing
13 dispute between the trustees, given their
14 fiduciary obligations, and between -- with the
15 defendant and that there is dispute about what can
16 happen in the future. And so I think a
17 declaratory judgment is perfectly appropriate
18 here, given the allegations in the Complaint.

19 With regard to Count II, I also
20 overrule the demurrer. I believe that the Count
21 II is request for injunctive relief, given the
22 factual allegations in the Complaint does set

1 forth an appropriate cause of action. And
2 therefore, as I said, I'm overruling the demurrer
3 to Count II. I'll be -- I'm going to be asking
4 Mr. Peterson, please, to prepare an order
5 implementing my ruling with regard to the demurrer.

6 Let me move on to the preliminary
7 injunction request. First of all, the preliminary
8 injunction, as I see it, is being sought pursuant
9 to the Statutory Provision 8.01-628 and also --
10 and which provides that no temporary injunction
11 shall be awarded unless the Court shall be
12 satisfied of the plaintiff's equity. And as the
13 Virginia Supreme Court said recently in the
14 Loudoun County School Board v. Cross case last --
15 last fall, or last winter -- doesn't even have a
16 citation yet in the Virginia Reporters, Although
17 this Court has not definitively delineated the
18 factors that guide granting the equitable relief
19 of a temporary injunction, an injunction is an
20 extraordinary remedy and rest on sound judicial
21 discretion to be exercised upon consideration of
22 the nature and circumstances of a particular case

1 and is meant to preserve the status quo between
2 the parties while the litigation is ongoing.

3 Based on that, that the Court has
4 not definitively delineated the factors, I don't
5 believe that the -- the factors that are set forth
6 in the United States Supreme Court case in winter,
7 setting forth the -- the four factors, that those
8 factors apply here. As I -- as I read, the
9 Supreme Court's decision, this decision about it
10 rest on the question of Plaintiff's equity and
11 that that's to be is -- that rest on sound
12 judicial discretion. And in my view, the -- with
13 some limits, the request for a preliminary
14 injunction is -- is going to be granted in part
15 and denied in part.

16 What was asked for yesterday at
17 the completion of the hearing was somewhat
18 different than what was requested in the -- the
19 papers that were filed, even in the Amended Motion
20 for a Preliminary Injunction. But I think the
21 Court, based on the evidence that I heard
22 yesterday, nonetheless, can issue a narrower

1 injunction than -- than was originally sought.

2 The things that were sought in the
3 Amended Motion for Preliminary Injunction, which
4 was filed December 22nd of last year, one was to
5 enjoin the defendant for making, approving, or
6 authorize any expenditure by the church without
7 approval from the board of trustees. I think
8 after my review of the bylaws yesterday that --
9 that -- that's something that is not supported by
10 the bylaws. I don't think that the bylaws require
11 the limit expenditures without approval by the
12 board of trustees.

13 In my view, after hearing the
14 evidence yesterday and -- and a review of the
15 bylaws again yesterday afternoon in chambers, it's
16 -- I don't -- I -- I think that it's the -- the
17 defendant is limited by what is set in the budget
18 that is adopted by the congregation. And
19 therefore, the -- I am going to issue a
20 preliminary injunction because I believe
21 Plaintiff's -- the equity of the -- falls with the
22 plaintiffs on this point, that the defendant shall

1 not expend or direct others to expend any church
2 funds as -- except as approved in the budget. As
3 -- as came out yesterday, and I think it's
4 supported by the bylaws, the budget is what is
5 been approved by the congregation. And I think
6 that it -- it -- the plaintiff's equity in this
7 case should be to expressly limit the defendant
8 from expending funds or directing others to expend
9 church funds except as approved in the budget.

10 The evidence yesterday was that on
11 at least one or two occasions, the defendant did
12 expend funds that were not in the -- approved in
13 the budget and subsequently that was approved by
14 the -- by the congregation. But I think it's --
15 it -- it -- it's equitable to the plaintiffs that
16 the -- that the congregation shouldn't have to be
17 organized or -- or convened, I should say, every
18 few months to -- to clean up what the defendant
19 has done that he's not authorized to do. So I am
20 issuing the -- the preliminary -- preliminary
21 injunction on that basis with regard to church
22 funds.

1 The second thing that was sought
2 was to enjoin the defendant from taking any
3 further personnel actions. I think in this case,
4 the plaintiffs, the trustees, don't have standing
5 to make a request with regard to personnel
6 actions. Under the bylaws, the plaintiffs, in
7 this case, the trustees, certainly have standing
8 with regard to assets of the corporation. That's
9 right in -- in the bylaws in Section 3.2G, and
10 I'll call it G1. I noticed also that I suspect
11 the reason why there's two Gs is that there's
12 actually no B.

13 But in any event, the G1 gives --
14 clearly gives the trustees custodianship of the
15 church property and its assets. And in my view,
16 that would include the financial assets as well as
17 bank accounts and -- and any church funds. But I
18 don't see anything in the bylaws that gives the
19 board of trust -- or the trustees any authority
20 over personnel decisions. And so to the extent
21 that the preliminary injunction request is to
22 enjoin him from taking any further -- further

1 personnel actions, that request is denied.

2 The third request was to enjoin
3 the defendant from taking any actions to remove
4 the board of trustees or otherwise elect new
5 trustees. With regard to removing trustees, that
6 certainly is an issue that the trustees have
7 standing -- in my view, have standing to bring
8 now, since they would obviously be directly
9 affected by any effort to remove the trustees.
10 But I'm not sure that there was any -- if -- that
11 I remember, any evidence yesterday suggesting that
12 the -- that actually the defendant had tried to
13 remove a trustee.

14 I would note that -- that Section
15 3.2F says that the trustee shall be subject to
16 removal upon recommendation of the pastor and
17 trustees after 30 days' notice has been given in
18 writing and upon two-thirds vote of the members
19 present and voting at a regular or called business
20 meeting. So therefore, the pastor has a right to
21 recommend removal of trustees, but that's as far
22 as he can go. After that, it's up to the

1 remainder of the trustees and then the
2 congregation. So I'm going to issue a limited
3 preliminary injunction on that point, and that
4 will be the defendant shall not take any action to
5 remove a trustee except that he may recommend the
6 removal of -- of a trustee, but beyond
7 recommending it, he can take no further action.

8 And the third request -- excuse
9 me, the fourth request was to invalidate any
10 actions taken by Dr. Donalson at the church's
11 annual business meeting on December 27th. I heard
12 testimony concerning -- from two witnesses
13 yesterday concerning what happened at that meeting
14 and whether it was a valid meeting or not. And I
15 -- at this point, I -- I don't think it's the --
16 in the interest of -- or this -- the plaintiff has
17 an equitable interest in my taking any action with
18 regard to that. That's an issue that can -- that
19 will have to be resolved at trial. I'm not going
20 to issue any preliminary injunction regarding the
21 annual business meeting, so that request is denied.

22 And lastly, with there was a -- a

1 request made orally, which was not in the Amended
2 Motion, but I'm going to address it. And that was
3 to prevent him -- prevent the defendant from
4 hiring or firing personnel. With regard to
5 hiring, I -- I -- I don't think that's
6 appropriate. Certainly, that's not appropriate to
7 issue a preliminary injunction. The -- he can
8 hire as long as he goes through whatever the
9 processes are. I'm not going to in any way put
10 limits on his hiring ability.

11 As far as his authority to fire
12 the director of administration, because that's
13 what was specifically addressed yesterday, I don't
14 believe that the trustees have standing to raise
15 that issue because that is not within their ambit
16 to make to personnel decisions. And the reason
17 that I conclude that, among other things, is that
18 the bylaws say that, as far as the director of
19 administration goes that -- I -- I'm looking at
20 the bylaws again, where it says employment and/or
21 -- this is Paragraph C under the Director of
22 Administration. Employment and/or service -- and

1 I would see this as service, require the mutual
2 consent of the individual and the church.

3 And in the Court's view,
4 interpreting the word Church with a capital C, in
5 -- in my view, is really essentially another way
6 of saying the entire congregation. And I say that
7 for this reason. Article 6 of the Constitution,
8 which was admitted in evidence, refers to the
9 church as the body of baptized believers and also
10 refers to the church as an quote, an autonomous
11 body operating through democratic processes. And
12 in -- in my view, that is the -- it's essentially
13 speaking of the congregation, so that there has to
14 be mutual consent of the individual, in this case,
15 the director of administration and -- and the
16 congregation.

17 And it goes on to say, that is
18 Paragraph C, Either party has the right to --
19 either party, and that I view that as the
20 individual in the one hand, and the church on the
21 other, has the right to terminate the service
22 relationship at any time with or without cause or

1 notice. My view of that is that, therefore, that
2 the only entity that can terminate the director of
3 administration is either he himself or the
4 congregation. And in my view, that would have to
5 be done at a regular or special business meeting
6 and -- but in any event, because it's the Church
7 that would have to do that termination, not the
8 trustees, I'm going to deny the request to issue a
9 preliminary injunction with regard to firing the
10 director of administration because, as I said, I
11 don't believe the trustees, as trustees, have
12 standing to raise that -- that issue.

13 So those are my rulings on
14 preliminary injunctions. Again, I'm going to ask
15 Mr. Peterson, please, to prepare an order
16 implementing that -- that is it would essentially
17 be two matters. One is that he shall not expend
18 or direct others to expend church funds except as
19 approved in the budget. And second of all, that
20 he shall not take any action to remove a trustee
21 except that he may recommend the removal of a
22 trustee. That'll be the order of the Court.

1 MR. PETERSON: Thank you, Judge. I
2 think I'll work with Counsel. It's going to take
3 us a while to type that up and probably need to
4 get a copy of the transcript.

5 THE COURT: Okay.

6 MR. SHOWER: Only question, I think --

7 THE COURT: Yes, sir.

8 MR. SHOWER: I think that you meant
9 this, but must only spend within the budget. Of
10 course, if the congregation amends the budget --

11 THE COURT: Of course.

12 MR. SHOWER: Okay. So --

13 THE COURT: Yeah.

14 MR. SHOWER: -- the budget even as
15 amended. Okay.

16 THE COURT: The -- even as amended.

17 MR. SHOWER: Yeah.

18 THE COURT: If the budget --

19 MR. SHOWER: Right.

20 THE COURT: -- is amended, but he can't
21 do it as he done in a couple of occasions.

22 MR. SHOWER: One time.

1 THE COURT: Free --

2 MR. PETERSON: Judge, we're not going
3 to re-litigate the case. (Crosstalk) --

4 MR. SHOWER: Yeah. No, I -- I -- I
5 just wanted -- no. That's clear. Thank you.

6 MR. PETERSON: Thank you, Judge.

7 (OFF THE RECORD AT 9:50 AM)

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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC
2 I, ASHLEY MEREDITH, the officer
3 before whom the foregoing proceedings were
4 taken, do hereby certify that any witness(es) in
5 the foregoing proceedings were fully sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a
8 qualified transcriptionist; that said digital
9 audio recording of said proceedings are a
10 true and accurate record to the best of my
11 knowledge, skills, and ability; and that I am
12 neither counsel for, related to, nor employed
13 by any of the parties to this case and have
14 no interest, financial or otherwise, in its
15 outcome

16 Notary Registration No.: 7930582

17 My Commission Expires: 6/30/2025

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21 ASHLEY MEREDITH

22 NOTARY PUBLIC FOR THE COMMONWEALTH OF VIRGINIA

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CERTIFICATION OF TRANSCRIPT

I, Maliq Smith, do hereby certify
that this transcript was prepared from the digital
audio recording of the foregoing proceeding; that
said proceedings were reduced to typewriting under
my supervision; that said transcript is a true and
accurate record of the proceedings to the best of
my knowledge, skills, and ability; and that I am
neither counsel for, related to, nor employed by
any of the parties to the case and have no
interest, financial or otherwise, in its outcome.



Maliq Smith
Planet Depos, LLC
February 5, 2024

Transcript of Hearing
 Conducted on January 31, 2024

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Transcript of Hearing
Conducted on January 31, 2024

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