

2013 IL App (2d) 120847-U  
No. 2-12-0847  
Order filed September 23, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE

**APPELLATE COURT OF ILLINOIS**

SECOND DISTRICT

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MILOS PUSKAR, SIMO PETKOVIC,	)	Appeal from the Circuit Court
MILORAD PRTENJAK, MILOSH	)	of Lake County.
MILENKOVICH, RUDY SIMOVIC, PETAR	)	
SVILAR, MILENKO PALJICH, MILTON	)	
RADOVIC, STOJAN BOZIC, and MIRA	)	
PRTENJAK,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 10-CH-3845
	)	
<b>LONGIN KRCO,</b>	)	Honorable
	)	Mitchell L. Hoffman,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.

Justice Jorgensen concurred in the judgment.

Justice Spence dissented in the judgment.

#### **RULE 23 ORDER**

¶ 1 *Held:* The trial court erred when it granted defendant's motion for judgment on the pleadings because the pleadings raised a genuine issue of material fact regarding the autonomy of the subject church. Because the nature of the dispute was a matter of contract law and did not implicate church polity, the ecclesiastical abstention doctrine did not apply. Moreover, we determined that the Transitional Regulations document expired and was no longer in force when this dispute arose. For the reasons that follow, we reverse.

¶2 Plaintiffs are members of the Serbian Orthodox Metropolitanate of New Gracanica Diocese of the United States and Canada (Metropolitanate Diocese) and hold various positions of authority. On July 26, 2011, they filed an amended complaint against defendant, Longin Krco, the Bishop of the Metropolitanate Diocese. The Bishop moved for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615(e) (West 2010)), and the trial court granted this motion. Plaintiffs appeal the dismissal; we reverse.

¶3 Plaintiffs' amended complaint alleged as follows. In 1963, delegates of the "Tenth Church-National Assembly of the Serbian Eastern Orthodox Diocese" (the Diocese) proclaimed complete autonomy from the Serbian Orthodox Church (the Belgrade Church), which is headquartered in Belgrade, Serbia. This proclamation by the Diocese caused a dispute with the Belgrade Church over the control of the Diocese, culminating in *Serbian Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976). As a result of that case, property of the Diocese was transferred to the Belgrade Church. In response, the Diocese founded its own church, called the Free Serbian Orthodox Diocese of the United States and America (the Free Church).

¶4 In 1977, the Free Church recorded its Affidavit of Organization, attached as Exhibit A to plaintiffs' amended complaint, which provided:

"This independent and autonomous church is not subject to or under the authority or patronage of any higher ecclesiastical or hierarchical authority. This Church is free to independently regulate its own spiritual and secular affairs as well as affiliate or disaffiliate with any religious congregation, group or hierarchical entity."

¶5 In 1986, the Free Church adopted its "Constitution," attached as Exhibit B to plaintiffs' amended complaint. Resolution 1 of the Constitution proclaimed "COMPLETE AUTONOMY" of

the Free Church from the Belgrade Church based on the Belgrade Church being subject to the communist regime in the former Yugoslavia.

¶ 6 In July 1991, the Free Church changed its name to the Metropolitanante Diocese. After the change in government in Yugoslavia, tensions between the Metropolitanante Diocese and the Belgrade Church eased. In 1992, the Fifth Assembly of the Metropolitanante Diocese (the Assembly was the governing body of the Metropolitanante Diocese) approved a document called “Transitional Regulations” while the Metropolitanante Diocese and the Belgrade Church considered reuniting under a common constitution. The Transitional Regulations were attached as Exhibit D to plaintiffs’ amended complaint.

¶ 7 Article 2 of the Transitional Regulations provided that, until the adoption of a common constitution “for a period not to exceed 3 years,” the Metropolitanante Diocese shall be governed based on the “Holy Scripture and Holy Tradition” of the Belgrade Church; the Regulations recognized and adopted by the Belgrade Church; the Transitional Regulations “in the spirit of the Constitution” of the Belgrade Church; and the provisions of the Metropolitanante Diocese’s Constitution that did not conflict with the Transitional Regulations.

¶ 8 Articles 5 and 6 of the Transitional Regulations provided that, in the event of a vacancy of a bishop or administrator of the Metropolitanante Diocese, the Belgrade Church would appoint or elect those positions. In May 1998, the Belgrade Church appointed appellee as the Administrator bishop, and in May 1999, the Belgrade Church elected Bishop Longin (The Bishop) as Diocesan Bishop of the Metropolitanante Diocese.

¶ 9 The Transitional Regulations also had a provision relating to property, Article 14, which provided:

“The protection of Church property shall be regulated according to the hierarchical structure of [the Belgrade Church] as provided for by the respective Constitutions, Rules and Regulation of the Serbian Orthodox Church in the U.S.A. and Canada and [the Metropolitanante Diocese], and the laws of the respective countries.”

¶ 10 Plaintiffs’ amended complaint further alleged that in April 1998, the Assembly of the Metropolitanante Diocese met in Illinois to consider whether to accept a proposed draft of a common constitution. Because strong opposition arose concerning provisions of the proposed common constitution regarding property belonging to the individual church congregations, the Assembly of the Metropolitanante Diocese chose not to adopt the proposed common constitution. However, the Assembly agreed to reconvene in six months to revisit the issue.

¶ 11 A “Second Amendment of Affidavit of Organization” (amended Affidavit of Organization) for the Metropolitanante Diocese was attached to plaintiffs’ amended complaint as Exhibit C. The amended Affidavit of Organization, executed by the Bishop and dated September 21, 1998, stated that the Fifth Assembly gave final approval to the Transitional Regulations for the Metropolitanante Diocese and affirmed the decision to “reaffiliate with and to once again be canonically and hierarchically an integral part of the” Belgrade Church. The amended Affidavit of Organization further stated that, “[s]ince the date of the Fifth Assembly (September 30/October 1, 1992), the [Metropolitanante] Diocese has been governed pursuant to the Transitional Regulations. Specifically, the [Metropolitanante] Diocese is bound and governed by the documents set forth in Article 2 of the Transitional Regulations and by the governing bodies and authorities of the [Belgrade Church] set forth in those governing documents.” According to the amended Affidavit of Organization, the documents and decisions of the Belgrade Church were binding upon the

Metropolitanante Diocese and superseded any previous documents or decisions of the Metropolitanante Diocese.

¶ 12 Plaintiffs further alleged that the Assembly of the Metropolitanante Diocese did not reconvene until December 1999, at which time it again rejected the proposed common constitution. The Assembly “unanimously agreed that [it] would only be bound by the 1986 Constitution and remain separate from the Belgrade Church.” Plaintiffs alleged that at that meeting, the Bishop acknowledged before the Assembly that the issue of a new constitution was no longer being considered and that he would continue to live and work according to the provisions of the 1986 Constitution. In addition, plaintiffs alleged that, although the Assembly of the Metropolitanante Diocese met again in 2002 and 2005, it did not approve a common constitution at either meeting.

¶ 13 Plaintiffs also alleged that in 2008, the Belgrade Church circulated a document entitled “Constitution of the Serbian Orthodox Church in North and South America” (Serbian Constitution). Article 34 of the Serbian Constitution, attached as exhibit E to plaintiffs’ amended complaint, provided that “this [Serbian] Constitution was promulgated and adopted by” the Metropolitanante Diocese on April 24, 1998. In their amended complaint, plaintiffs alleged that this was “factually inaccurate” and “misleading” regarding what occurred during the April 1998 meeting. According to plaintiffs, the Assembly of the Metropolitanante Diocese never approved a common constitution.

¶ 14 Plaintiffs further alleged that in June 2009, the Belgrade Church circulated a letter announcing the reorganization of the Metropolitanante Diocese as part of the hierarchy of the Belgrade Church. Plaintiffs alleged that on July 11, 2009, the Bishop publically stated that a reorganization of the Metropolitanante Diocese had occurred and that there was no longer a division between the Metropolitanante Diocese and the Belgrade Church. According to plaintiffs, the

Assembly of the Metropolitanante Diocese never authorized a reorganization and retained independent and exclusive authority to self-govern, self-organize, and self-determine the extent to which it chose to affiliate. Count I sought a declaratory judgment that the Metropolitanante Diocese was an independent and autonomous religious organization.

¶ 15 With respect to counts II and III of plaintiffs' amended complaint, they alleged that the Metropolitanante Diocese was "founded specifically to exist outside the hierarchy of the Belgrade Church." "In order to do this," the Metropolitanante Diocese acquired property in Illinois to serve as its headquarters. On that property, the Metropolitanante Diocese constructed a Monastery, acquired sacred relics, and consecrated a cemetery where church members could be buried. This property and the facilities were unique and could not be duplicated. Plaintiffs alleged that in his role as bishop, Bishop Longin had possession and control of this property and other tangible and intangible property belonging to the Metropolitanante Diocese. The Bishop also had exclusive control over who could conduct religious services in the Monastery and who had access to the seminary building, picnic grounds, and cemetery. In addition, all dues collected by the Metropolitanante Diocese were forwarded to him.

¶ 16 Counts II and III sought a preliminary and permanent injunction to stop the Bishop from "taking any action causing the transfer of property" belonging to the Metropolitanante Diocese. Plaintiffs alleged that the Bishop was bound by the authority of the Metropolitanante Diocese and its Constitution, and that he owed a duty of loyalty to the Metropolitanante Diocese.

¶ 17 On October 14, 2011, the Bishop answered plaintiffs' amended complaint. The Bishop denied that the Metropolitanante Diocese and the Belgrade Church were separate entities, denied

that the People's Assembly was the supreme legislative body of the Metropolitan Diocese, and denied that the terms of the Transitional Regulations had expired.

¶ 18 In addition, the Bishop raised four affirmative defenses. The Bishop first alleged that the court system must abstain from hearing the case because the issues concerned matters of church polity, and thus the ecclesiastical abstention doctrine precluded any inquiry from the court, as the court lacked subject matter jurisdiction. Second, he alleged that because plaintiffs were not the governing authority of the Metropolitan Diocese, plaintiffs lacked standing to bring the action. Third, the Bishop took issue with plaintiffs' request for a declaratory judgment that, "the Metropolitan [Diocese] retains the independent and exclusive authority to self-govern, self-organize, and self-determine the extent to which it chooses to affiliate." The Bishop alleged that in order for plaintiffs to obtain such relief, the court would have to review decisions and documents promulgated by various ecclesiastical bodies within the hierarchy of the church. According to the Bishop, this would again invoke the ecclesiastical abstention doctrine, leaving the court without subject matter jurisdiction. Last, the Bishop alleged that the amended complaint was barred by the applicable statute of limitations (735 ILCS 5/13-205 (West 2010)). According to the Bishop, plaintiffs should have known about the controversy "many years ago."

¶ 19 On February 14, 2012, the Bishop filed a motion for judgment on the pleadings under 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2010)), or, in the alternative, a motion for summary judgment. In his motion, the Bishop argued that summary judgment was appropriate because plaintiffs' amended complaint, on its face, sought a judicial determination that the Metropolitan Diocese was an independent and autonomous religious organization. However, such relief was barred under the ecclesiastical abstention doctrine. Under that doctrine, courts have no authority to

resolve church disputes which turn on matters of church doctrine, practice, policy, or administration. See *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 713 (1991). Therefore, according to the Bishop, the court lacked subject matter jurisdiction.

¶ 20 The Bishop argued that the facts alleged in the amended complaint as well as the attached exhibits demonstrated that the Metropolitanante Diocese submitted to the hierarchical authority of the Belgrade Church. He asserted that in 1992, the Assembly of the Metropolitanante Diocese approved the Transitional Regulations document and thereby agreed to be canonically and hierarchically an integral part of the Belgrade Church. In particular, he asserted that Article 2 of the Transitional Regulations document provided that they were to remain in effect until the adoption of a common constitution, and that the Metropolitanante Diocese was to be governed by specified documents. The Bishop also relied on plaintiffs' Exhibit C, the 1998 amended Affidavit of Organization that he had signed, stating that the documents and decisions of the Belgrade Church were binding upon the Metropolitanante Diocese and superseded any previous documents or decisions of the Metropolitanante Diocese. The amended Affidavit of Organization also stated that, since the date of the Fifth Assembly in 1992, the Metropolitanante Diocese had been governed pursuant to the Transitional Regulations document. The Bishop also relied on plaintiffs' exhibit E, indicating that in June 2008, the Belgrade Church promulgated the Constitution adopted by the Metropolitanante Diocese in 1998. Finally, according to the Bishop, exhibit F of plaintiffs' amended complaint showed that in June 2009, the Belgrade Church announced it had restructured existing dioceses, with the Metropolitanante Diocese becoming incorporated within another restructured diocese (the Diocese of New Gracanica-Midwestern America). According to the Bishop, the

exhibits showed that the Metropolitanante Diocese agreed to be bound by the Transitional Regulations and the hierarchical authority of the Belgrade Church.

¶ 21 The Bishop argued that, to determine whether the Metropolitanante Diocese was an independent and autonomous religious organization, the court would need to analyze the Transitional Regulations document and the polity of the Belgrade Church incorporated by reference. More specifically, the Bishop argued that the court would need to determine whether the Belgrade Church overstepped its authority by adopting a new constitution and reorganizing its dioceses. The Bishop maintained that the doctrine of ecclesiastical abstention prohibited the court from examining the power of the Belgrade Church to adopt a new constitution and reorganize its dioceses. Concluding that the court had no authority to resolve this internal church dispute, the Bishop requested the court to enter judgment on the pleadings or to issue summary judgment in his favor.

¶ 22 Plaintiffs responded to the Bishop's motion and argued that he misunderstood the ecclesiastical abstention doctrine. According to plaintiffs, that doctrine did not prohibit the court from making a determination regarding the autonomy of the Metropolitanante Diocese. Citing *Serbian Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696 (1976), plaintiffs argued that, while courts must accept as binding decisions of the highest ecclesiastical tribunal, they had alleged that the Metropolitanante Diocese was independent and autonomous based upon the contract entered into between the churches. Because of that contract, the Assembly was its highest authority; and the Belgrade Church was a "separate church entirely." In other words, plaintiffs claimed that, before the court abstained from hearing a claim based on deference to the Belgrade Church, it needed to determine whether the Metropolitanante Diocese was separate and/or subordinate to the Belgrade Church by interpreting the contract (Transitional

Regulations document) approved between the two parties. Plaintiffs urged the court to take a “neutral-principles approach” to the issue.

¶ 23 The court conducted a hearing on the motions on May 31, 2012. At the hearing the Bishop argued that, for the court to determine whether the Metropolitanante Diocese was an independent and autonomous religious organization, the court would have to consider matters of church doctrine, practice, administration, and polity, which was precluded under the ecclesiastical abstention doctrine. Plaintiffs countered that the Metropolitanante Diocese had never merged or unified with the Belgrade Church as evidenced by the attached documents, and the ecclesiastical abstention doctrine did not apply because this was a case involving two separate and autonomous churches.

¶ 24 On the issue of the Transitional Regulations document, the parties disputed whether they were still in effect. According to plaintiffs, the Transitional Regulations document of 1992 expired after three years; the highest body of the Metropolitanante Diocese, the Assembly, “held assembly after assembly where they voted on whether or not to approve a common constitution and they never did.” Plaintiffs argued that the rules promulgated by the 1992 Transitional Regulations document were in effect for only three years and did not permanently transfer the independence and autonomy of the Metropolitanante Diocese to the Belgrade Church. Plaintiffs further argued that during that three-year period, and even after it, no common constitution was adopted. Thus, plaintiffs claimed that the governing and structure of Metropolitanante Diocese reverted back to the rules set out by its 1986 Constitution.

¶ 25 To refute plaintiffs’ argument that the 1992 Transitional Regulations were no longer in effect, the Bishop referred to exhibit C, the amended Affidavit of Organization signed in 1998 that was attached to plaintiffs’ amended complaint, which stated that since 1992, the Metropolitanante

Diocese had been governed by the Transitional Regulations. In addition, the Bishop pointed out that Article 16 of the Transitional Regulations document stated that they were effective and “IN USE UNTIL THE ADOPTION OF A NEW COMMON CONSTITUTION.”

¶26 At this point, the trial court noted that it was undisputed that there was a period of time when the two churches were separate and distinct. The court asked the parties if the adoption of the Transitional Regulations document “created one church out of two,” meaning it needed to determine whether that document was still in effect. In other words, if the Transitional Regulations document had expired, the trial court wanted to know whether there was “one church or two separate churches.” The trial court noted that the language in Article 16 of the Transitional Regulations document conflicted with the language in Article 1 of the Transitional Regulations document, which specified “for a period not to exceed 3 years.”

¶27 Plaintiffs argued that, even if the Transitional Regulations document did not contain a three-year period, they were in effect “just until a common constitution ha[d] been adopted.” According to plaintiffs, it was undisputed that no common constitution had been adopted, which meant there was no merger of the Belgrade Church and the Metropolitan Diocese. Plaintiffs further argued that, after the Belgrade Church “got frustrated and realized a common constitution was never going to be accepted, [the Belgrade Church] just made a unilateral proclamation that the churches were united.” The Bishop disagreed that no common constitution had been adopted and pointed to the Serbian Constitution adopted by the Belgrade Church (exhibit E to plaintiffs’ amended complaint). The Bishop’s argument prompted the court to ask whether the Transitional Regulations document implied that a common constitution had to be agreed upon by both churches. The Bishop responded “[a]bsolutely not,” because it was a hierarchical church and the Belgrade Church had the ultimate

**authority to adopt the Constitution.** According to the Bishop, resolving that very question was prohibited by the ecclesiastical abstention doctrine.

¶ 28 Prior to the court's ruling, the Bishop filed a supplemental brief listing four reasons to support his position that the rules promulgated in the Transitional Regulations document were still in effect. First, the Bishop relied on the amended Affidavit of Organization, which he executed in 1998, more than six years after the Transitional Regulations document was initially adopted in 1992. Second, he relied on the official newspaper of the Metropolitan Diocese, which stated in December 1999 that it "continue[d] to be governed by the Transitional Regulations of 1992." Third, the Bishop argued that plaintiffs conceded that they were under the hierarchical authority of the Belgrade Church in 1998 and 1999 when the Holy Assembly of Bishops of the Belgrade Church appointed him as head of the Diocese, first as Administrator Bishop and then as Diocesan Bishop. According to the Bishop, plaintiffs admitted that his "enthronement" made him "President and Chief Executive Officer of the Diocese's church-hierarchical and church-administrative governing authorities." Finally, the Bishop stated that he participated in the annual meeting of the Holy Assembly of Bishops of the Belgrade Church in 2009 and fully understood and fully concurred that the reorganization of the Dioceses was under the sole authority, jurisdiction, and competence of the Belgrade Church.

¶ 29 Plaintiffs filed a response to the Bishop's supplemental brief. According to plaintiffs, the central question in the case was whether a merger between the two churches had occurred. Plaintiffs argued that **the ecclesiastical abstention doctrine was inapplicable to a dispute between two separate churches, and that the instant dispute involved two separate churches.** Plaintiffs pointed out that they had presented evidence that **the Assembly of the Metropolitan Diocese had decided not to unite**

under a common constitution. Regarding the Transitional Regulations document, plaintiffs argued that whether that document was in effect beyond its stated three-year duration, as the Bishop argued, was “beside the point,” because the document itself was evidence that no merger between the churches had occurred. Plaintiffs argued that, while the Bishop provided several reasons why he believed that the Transitional Regulations document was still in effect, he offered no good reason why he believed that the Transitional Regulations document proved that a merger between the churches had occurred.

¶ 30 The trial court made an oral ruling on July 5, 2012, stating that the case depended on the nature of the dispute in plaintiffs’ amended complaint. In particular, the court examined the distinction between a “control” dispute or a “property” dispute in reference to the ecclesiastical abstention doctrine:

“If this is primarily a property dispute, then the Court may apply the neutral principles approach and in doing so objectively examine church charters, constitutions, by laws, deeds, state statutes, and other evidence necessary to resolve the matter. However, if the complaint presents the Court with an issue of church polity or a control dispute, then the Ecclesiastical Abstention Doctrine requires dismissal of the complaint.”

¶ 31 The court summarized the relief that plaintiffs sought. Count I sought a declaration that the Metropolitanante Diocese was an independent and religious organization. Counts II and III sought preliminary and permanent injunctive relief. In those counts, plaintiffs argued: (1) the Bishop was bound by the Constitution of the Metropolitanante Diocese; (2) he owed a duty to the Metropolitanante Diocese; (3) and the property of the Metropolitanante Diocese over which the Bishop maintained control was in substantial and immediate danger of being unlawfully transferred.

¶ 32 The court noted that the parties disagreed over whether the Transitional Regulations document remained in effect and whether a common constitution had been adopted by the Metropolitanante Diocese. It also noted that plaintiffs did not sue the Metropolitanante Diocese itself but instead had sued the Bishop, alleging that **his proclamations of unity violated his duty of loyalty to the Metropolitanante Diocese.** According to the court, because the focus of the suit was on the Bishop's duties and whether he had violated those duties by his actions, the case at bar was similar to *Bruss v. Przybylo*, 385 Ill. App. 3d 399 (2008). Determining that the dispute in plaintiffs' amended complaint was "primarily a dispute over church polity and only tangentially a dispute over the control of church property," the court granted with prejudice the Bishop's section 2-615(e) motion for judgment on the pleadings. The court stated that in reaching this decision, it was not necessary to address the Bishop's motion for summary judgment. Plaintiffs timely appealed.

¶ 33 Here, **plaintiffs requested that the trial court issue a declaratory judgment that the two churches are separate, distinct entities and that no merger between the two occurred.** A trial court may, in cases of actual controversy, make binding declarations of rights. 735 ILCS 5/2-701 (West 2010); *Clyde Saving & Loan Association v. May Department Stores*, 100 Ill. App. 3d 189, 192 (1991). A trial court should refuse to enter a declaratory judgment if it appears that the judgment or order would not terminate the controversy or some part thereof. *Id.* "Actual controversy" in the context of the statute requires a showing that the underlying issues of the case are not moot or premature. *Id.* In order for declaratory judgement to be granted, there must be an actual, justiciable controversy between the parties. *Id.*

¶ 34 The Bishop's answers to plaintiffs' amended complaint evidenced the existence of an actual, justiciable controversy. The Bishop and plaintiffs disagree as to how to interpret the various

documents and contracts entered into between the parties. In the present matter, the parties cannot even agree on whether they are one church or two separate churches.

¶ 35 In response to plaintiffs' request for declaratory judgment, the Bishop requested that the trial court dismiss the case pursuant to section 2-615(e) of the Code. Section 2-615(e) of the Code provides that "[a]ny party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e)(West 2010). A motion for judgment on the pleadings requires the trial court to examine the pleadings to determine whether an issue of fact exists, or conversely, whether the controversy can be resolved as a matter of law. *Crestview Builders, Inc. v. Noggle Family Limited Partnership*, 352 Ill. App. 3d 1182, 1184-85 (2004). In ruling on such a motion, the trial court can only consider facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions. *M.A.K. v. Rush-Presbyterian-St. Luke's Medical Center*, 198 Ill. 2d 249, 255 (2001). A trial court must construe the evidence strictly against the moving party and liberally in favor of the nonmoving party. *McCall v. Devine*, 334 Ill. App. 3d 192, 198 (2002). Judgment on the pleadings is only proper where the pleadings demonstrate that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Terraces of Sunset Park, LLC*, 399 Ill. App. 3d 1090, 1093 (2010). Our review of a decision to grant a motion on the pleadings is *de novo*. *Id.* A plaintiff is required to attach to the complaint any written documents upon which the claim is based, and these documents are to be treated as part of the complaint itself. *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 18. Where allegations made in the body of the complaint conflict with facts disclosed in the exhibits, the exhibits will control, and the allegations will not be taken as true in evaluating the sufficiency of the complaint. *Id.* at ¶ 18.

¶ 36 Here, the trial court was tasked with ruling on the Bishop's motion for judgment on the pleadings. In so doing, the trial court was required to "consider as admitted all well-pleaded facts as set forth in the pleading of the nonmoving party, and the fair inferences drawn from them." *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). In the amended complaint, plaintiffs pled that the People's Assembly is the supreme legislative body of the Metropolitan Diocese, and is the only authority empowered "to adopt, extinguish, or amend the Metropolitan Diocese's Constitution." Moreover, plaintiffs' amended complaint alleged that the Transitional Regulations document for the Metropolitan Diocese lapsed three years after its ratification. Plaintiffs requested that the trial court interpret the contract entered into by the parties and involve itself in a property dispute between the parties. The Bishop disagreed that the People's Assembly was the supreme authoritative body of the Metropolitan Diocese and further disagreed with plaintiffs' interpretation of its Constitution and documents. Instead, the Bishop claimed that the dispute was a matter of church polity of which the ecclesiastical abstention doctrine applied.

¶ 37 In general, the court, as a governmental agency of the State, is charged with the task of resolving disputes. *Tanios*, 213 Ill. App. 3d at 713. In matters of internal church disputes, however, its authority to do so is narrowly circumscribed by the first amendment's guarantee that the right to the free exercise of religion will not be abridged. *Id.* "The ecclesiastical abstention doctrine provides that civil courts may not determine the correctness of interpretations of canonical text or some decisions relating to government of the religious polity; rather, courts must accept as given whatever the religious entity decides." *Duncan v. Peterson*, 408 Ill. App. 3d 911, 915 (2011). Where doctrinal controversy is not involved in a church dispute, however, mandatory deference to religious authority is not required by the first amendment, and the court may use the "neutral

principles of law” approach, in which the court examines pertinent church charters, constitutions and bylaws, deeds, State statutes, and other evidence and resolves the matter the same as it would a secular dispute. *Tanios*, 213 Ill. App. 3d at 713-15.

¶ 38 In this case, plaintiffs characterize the issue as follows: “where one of the Metropolitanante [Diocese’s] agents has violated duties owed to the Metropolitanante [Diocese], may the Plaintiffs obtain relief in Illinois courts.” We determine that the main dispute in the present matter is one of contract interpretation, not church polity and thus, plaintiffs can obtain relief from the Illinois courts. Because, the trial court, in this matter, was tasked only with interpreting the contractual obligations willingly entered into by the parties themselves, and was not tasked with second-guessing the inner structure or workings of the religious organization, the ecclesiastical abstention doctrine does not preclude this court from deciding this matter.

¶ 39 *Bruss v. Pryzbylo* (385 Ill. App. 3d 399 (2008)), is distinguishable. In *Bruss*, the issue did turn on the application of the ecclesiastical abstention doctrine. The plaintiffs’ complaint directly called on this court to judge the qualifications and fitness of a priest to be pastor of the defendant church. *Bruss*, 385 Ill. App. 3d at 424. Likewise, it called on this court to judge the qualifications of certain individuals of the defendant church’s board of directors. *Id.* Relying on *Milivojevich* and other cases, this court recognized that civil courts may not involve themselves in matters of discipline, faith, internal organization, ecclesiastical rule, custom, or law, and that the qualifications of pastors and members generally fall within these subjects. *Id.* Accordingly, this court concluded that the ecclesiastical abstention doctrine precluded adjudication of the plaintiffs’ complaint. *Id.* at 426. We held that application of the ecclesiastical abstention doctrine depends solely on the subject matter of the dispute. *Id.* at 421 (the more circumspect approach to applying the ecclesiastical

abstention doctrine is to “rest the abstention decision entirely on the subject matter of the dispute”). We stated that, “[n]ot only is abstention not contingent on an adjudication of a dispute by the highest authority within a church, no formal adjudication at all is necessary.” *Id.* at 422. In other words, abstention turns on the essence of the dispute brought to the secular courts; where the subject matter is forbidden to civil courts, the duty to abstain is in no way defeated or diminished by the structure or sophistication of the church, or by the presence or absence of any formal adjudication of the matter within the church itself. *Id.* at 423.

¶ 40 Qualifications and fitness of church members are not at issue in the present matter. To the contrary, plaintiffs request only that the trial court interpret the contractual obligations between what the amended complaint alleges are two separate churches. Here, plaintiffs are not requesting that the courts step in to discipline or reorganize the structure of the church; instead plaintiffs request that the trial court interpret the contractual obligations that the parties themselves freely chose to enter into and under which their members agreed to abide.

¶ 41 In this case, the trial court did not determine whether the Transitional Regulations document was still in effect; whether a common constitution between the Metropolitanante Diocese and the Belgrade Church had been adopted; or whether the Metropolitanante Diocese was subordinate to the Belgrade Church. Instead, the court focused on the nature of the dispute, which it determined was whether the Metropolitanante Diocese was independent of or subordinate to the Belgrade Church, and whether the Bishop had violated his duty to the Metropolitanante Diocese by claiming unity with the Belgrade Church. The trial court should have construed the viability of the contracts and granted or denied the relief requested by plaintiffs without having to make any determinations regarding church polity.

¶ 42 We note that the Bishop's argument that all exhibits attached to plaintiffs' complaint supersede and contradict the allegations stated in the complaint misconstrues the rule of law. Here, the attached exhibits pointed to by the Bishop in no way invalidate the complaint's allegations. Instead, the attached exhibits show only that unilateral actions taken by the Bishop and documents executed by the Bishop served to further confuse the relationship between the parties. If anything, the attached exhibits highlight the contract dispute between the parties and demonstrate the need for court intervention to resolve the dispute. See *Tanios*, 213 Ill. App. 3d at 713-15 (holding that where doctrinal controversy is not involved in a church dispute, mandatory deference to religious authority is not required by the first amendment, and the court may examine pertinent church charters, constitutions and bylaws, deeds, State statutes, and other evidence and resolve the matter the same as it would a secular dispute). Because the nature of this dispute sounded in contract law, the ecclesiastical abstention doctrine does not preclude the trial court from determining the issue.

¶ 43 Moreover, the Bishop's remaining affirmative defenses are unpersuasive. The Bishop alleges that plaintiffs are without standing because they are not the ultimate authority of the Belgrade church. This matter, however, is a question of law, relating to the proper interpretation of the Transitional Regulations document. According to the language of the Transitional Regulations document, it remained in effect "until the adoption of a common Constitution \*\*\* for a period not to exceed 3 years." If the Transitional Regulations document is still viable or whether it has expired is a question of law. Plaintiffs are representatives of the ultimate authority of the Metropolitan Diocese pursuant to its constitution. The Bishop further alleges that the applicable statute of limitations has run. The statute of limitations cited in the Bishop's affirmative defense is a "5- year catch-all" statute of limitations. See 735 ILCS 5/13-205 (West 2010). In essence, the statute provides that

if the conduct complained of occurred over 5 years before the filing of the action, it is time-barred. See 735 ILCS 5/13-205 (West 2010). In the present matter, however, plaintiffs filed suit only after the Belgrade Church circulated a letter announcing the reorganization of the Metropolitanante Diocese as part of the hierarchy of the Belgrade Church in June of 2009 and subsequently, on July 11, 2009, publically stated that a reorganization of the Metropolitanante Diocese had occurred and that there was no longer a division between the Metropolitanante Diocese and the Belgrade Church.

These actions could not have been foreseen by plaintiffs years earlier, when the two churches were attempting to reach an agreement (which was never executed) regarding a merger of the churches.

¶ 44 Our review of a decision to grant a motion on the pleadings is *de novo*. *Terraces of Sunset Park, LLC*, 399 Ill. App. 3d at 1093. We determine that judgment on the pleading was inappropriate in this matter because plaintiffs' complaint raised a question of law, specifically, whether the Transitional Regulations document entered in to by the parties had expired or a new constitution had ever been entered into by the Assembly pursuant to the Transitional Regulations document. If the Transitional Regulations document expired without the adoption of a joint constitution, the Metropolitanante Diocese remained autonomous from the Belgrade church. Because both sides presented differing interpretations of the documents, for purposes of a 2-615(e) judgment on the pleadings, we must construe the evidence strictly against the moving party. See *McCall*, 334 Ill. App. 3d at 198. Thus, it was error for the trial court to have granted the motion.

¶ 45 Moreover, we determine that the Transitional Regulations document entered into by the parties expired in 1995 pursuant to its terms, after 3 years where no common constitution was jointly adopted. Thus, the governing rules of the two, separate churches reverted back to the documents previously set forth.

¶46 The primary goal in construing a contract is to give effect to the intent of the parties. *Premier Title Company v. Donahue*, 328 Ill. App. 3d 161, 164 (2002); citing *Omniurus Merging Corp. v. Illinois Tool Works Inc.*, 256 Ill. App. 3d 31, 34 (1993). When the language of a contract is clear, a court must determine the intent of the parties solely from the plain language of the contract. *Id.*; citing *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344 (2000). The language of a contract must be given its plain and ordinary meaning. *Id.*; citing *Owens*, 316 Ill. App. 3d at 344. When interpreting a contract, a court must consider the document as a whole, rather than focusing upon isolated portions. *Id.*; citing *Spectramed, Inc. v. Gould, Inc.*, 304 Ill. App. 3d 762, 770 (1998).

¶47 In the present matter, the terms of the Transitional Regulations document, when read as a whole, are clear. In 1992, the Metropolitanante Diocese and the Belgrade Church contemplated uniting. Before the churches officially agreed to unite, they entered into the Transitional Regulations document as a way to govern the churches while each party worked out details of a potential merger. The Transitional Regulations document states clearly that, unless a common constitution is reached by the governing bodies of each church, the terms of the agreement will expire after 3 years' time. The document even provides the specific time and place, the "(meeting of the Holy Assembly of Bishops in May of 1995)" where it will expire if no common constitution has been adopted. Here, in 1995 (3 years later), no common constitution had been jointly adopted and the churches remained separate, having never formally unified. It is of no matter that years after the expiration of the Transitional Regulations document, the Bishop executed documents and publically presented the Belgrade Church as unified with the Metropolitanante Diocese. The terms of the Transitional Regulations document were no longer in effect and, therefore, the Metropolitanante Diocese was not governed by that document.

¶ 48 For the reasons stated, the judgment of the circuit court of Lake County is reversed.

¶ 49 Reversed.

¶ 50 JUSTICE SPENCE, dissenting.

¶ 51 I respectfully dissent. In particular, I disagree with the majority's characterization of the dispute as one of contract interpretation. Instead, I believe that this dispute is a matter of church polity that we are barred from considering under the ecclesiastical abstention doctrine. See *Duncan v. Peterson*, 408 Ill. App. 3d 911, 915 (2010) (if the ecclesiastical abstention doctrine applies, the trial court lacks subject matter jurisdiction to decide the claim).

¶ 52 Generally, courts are charged with the task of resolving disputes. *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 713 (1991). The authority of courts to do so, however, in matters of internal church disputes, including those which concern the control of ownership of property, is narrowly circumscribed by the first amendment's guarantee that the right to the free exercise of religion will not be abridged. *Id.* "By reason of this limitation, civil courts have no authority to resolve church disputes which turn on matters of church doctrine, practice, polity or administration." *Id.* Where no consideration of religious doctrine is involved, however, the "neutral principles of law" approach may be applied, which permits a court to interpret provisions of religious documents involving property rights and other nondoctrinal matters, to the extent that the analysis may be performed in purely secular terms. *Abrams v. Watchtower Bible & Tract Society of New York, Inc.*, 306 Ill. App. 3d 1006, 1011 (1999); see also *Duncan*, 408 Ill. App. 3d at 918 (holding that the ecclesiastical abstention doctrine was not applicable because the general subject matter of the dispute did not involve internal church matters). The question of whether the doctrine of

ecclesiastical abstention deprived the trial court of subject matter jurisdiction is reviewed *de novo*. *Duncan*, 408 Ill. App. 3d at 915.

¶ 53 In this case, plaintiffs sought a declaration that the Metropolitanante Diocese is an independent and autonomous organization, and they sought preliminary and permanent injunctions that Bishop Longin, based on the duty he owes to the Metropolitanante Diocese, should be restrained from transferring any of its property. In their brief, plaintiffs characterize the issue as follows: “where one of the Metropolitanante [Diocese’s] agents has violated duties owed to the Metropolitanante [Diocese], may the Plaintiffs obtain relief in Illinois courts.” At the heart of plaintiffs’ claims is the issue of whether Bishop Longin’s proclamations of unity with the Belgrade Church violated his duties to the Metropolitanante Diocese, and whether the Metropolitanante Diocese is subordinate to the Belgrade Church.

¶ 54 In order to determine the hierarchy of the two churches and whether Bishop Longin overstepped his authority, however, the court would be required to determine: (1) whether a common constitution had been adopted; (2) the duration and significance of the Transitional Regulations and the documents it incorporates, including the Constitutions of the Metropolitanante Diocese and the Belgrade Church; and (3) the Bishop’s authority to file an Affidavit of Organization declaring that the Metropolitanante Diocese was bound by the Transitional Regulations and was subordinate to the Belgrade Church. These questions impermissibly delve into church polity, thus committing the error proscribed by the ecclesiastical abstention doctrine. See *Duncan*, 408 Ill. App. 3d at 915 (the ecclesiastical abstention doctrine provides that civil courts may not determine the correctness of interpretations of canonical text or some decisions relating to government of the religious polity).

¶ 55 The majority oversimplifies the nature of the dispute by labeling it as one of contract interpretation, *i.e.* interpretation of the Transitional Regulations. The majority faults the trial court in this respect, stating that it erred by focusing on whether the Metropolitanante Diocese was independent of or subordinate to the Belgrade Church, and whether the Bishop had violated his duty to the Metropolitanante Diocese by claiming unity with the Belgrade Church. Instead, the majority states that the “trial court should have construed the viability of the contracts and granted or denied the relief requested by plaintiffs without having to make any determinations regarding church polity.” *Supra* ¶ 41. The majority then goes on to determine that the Transitional Regulations expired and were no longer in force when this dispute arose. Based on the determination that the Transitional Regulations no longer governed the Metropolitanante Diocese, the majority also concludes that the Metropolitanante Diocese remained autonomous from the Belgrade Church.

¶ 56 However, the viability of the Transitional Regulations is not a matter of simple contract interpretation. As I explain, there are conflicting provisions within the document, and the parties continued to operate as though it remained in effect. Because it is not clear whether the Metropolitanante Diocese is still governed by the Transitional Regulations, there is no way to determine the viability of that document and thus the autonomy of the Metropolitanante Diocese without improperly delving into issues of church doctrine and polity. See *Tanios*, 213 Ill. App. 3d at 717 (resolution of the question of which bylaws governed the parish required the court to delve, impermissibly, into matters of church doctrine and polity).

¶ 57 At the outset, it is not clear that the Transitional Regulations expired, as the majority concludes. According to the majority, the “terms of the Transitional Regulations document, when read as a whole, are clear.” *Supra* ¶ 47. The majority relies on Article 2 of the Transitional

Regulations, which states that until the adoption of a common constitution “for a period not to exceed 3 years,” which would be 1992 to 1995, the Metropolitanante Diocese shall be governed based on the “Holy Scripture and Holy Tradition” of the Belgrade Church; the Regulations recognized and adopted by the Belgrade Church; the Transitional Regulations “in the spirit of the Constitution” of the Belgrade Church; and the provisions of the Metropolitanante Diocese’s Constitution that did not conflict with the Transitional Regulations. Because no common constitution was adopted from 1992 to 1995, the majority states that the Transitional Regulations expired, and the Metropolitanante Diocese remained autonomous from the Belgrade Church. *Id.* at 20. *Supra* ¶¶ 44-45.

¶ 58 By focusing exclusively on Article 2, however, the majority ignores Article 16 of the Transitional Regulations, which conflicts with the three-year expiration period listed in Article 2. As the trial court noted, the Transitional Regulations contain conflicting provisions, in that Article 16 provides that the document was effective and “in use until the adoption of a common constitution.” In response to the court’s questioning at the hearing, plaintiffs argued that even if the Transitional Regulations did not contain a three-year period, the document was in effect “just until a common constitution ha[d] been adopted,” which had not occurred. But even assuming that a common constitution had not been adopted, this does not answer the question of whether the Transitional Regulations are still in effect.

¶ 59 On the issue of the viability of the Transitional Regulations, the majority ignores evidence that the parties continued to operate as though the document was still in place. For example, the Bishop introduced evidence of an official newspaper of the Metropolitanante Diocese from

December of 1999, stating that the Metropolitanante Diocese “continue[d] to be governed by the Transitional Regulations of 1992.”

¶ 60 In addition, the majority does not address Articles 5 and 6 of the Transitional Regulations, which gave the Belgrade Church authority to appoint a bishop or administrator of the Metropolitanante Diocese in the event of a vacancy. Pursuant to these provisions, the Belgrade Church appointed the Bishop to the Metropolitanante Diocese as Administrator Bishop in 1998 and as Diocesan Bishop in 1999, long after the Transitional Regulations had allegedly expired. There was no evidence of any objection to that appointment by the Metropolitanante Diocese.

¶ 61 Not surprisingly, the parties dispute the significance of the Bishop’s role. Because he was appointed by the Belgrade Church, the Bishop argues that plaintiffs effectively conceded that they were under the hierarchical authority of the Belgrade Church in 1998 and 1999. Specifically, the Bishop argued that his “enthronement” made him “President and Chief Executive Officer of the [Metropolitanante] Diocese’s church-hierarchical and church-administrative governing authorities.” Plaintiffs, on the other hand, state only that the Bishop “came to them as part of the [Metropolitanante Dioceses’s] dealings with the Belgrade Church.” While plaintiffs challenge the authority of the Bishop to unify or subordinate the Metropolitanante Diocese to the Belgrade Church, this question necessarily depends on an interpretation of church governance and administration, which the ecclesiastical abstention doctrine prohibits. Indeed, the very essence of this dispute is whether the Bishop overstepped his bounds and loyalty to the Metropolitanante Diocese by professing unity with the Belgrade Church.

¶ 62 For example, in 1998, the Bishop filed an amended Affidavit of Organization for the Metropolitanante Diocese stating that the Assembly of the Metropolitanante Diocese, which

plaintiffs argue is the highest authority of the Metropolitanante Diocese, gave final approval to the Transitional Regulations and had been governed pursuant to that document since 1992. The amended Affidavit of Organization further stated that the Assembly of the Metropolitanante Diocese had affirmed the decision to “reaffiliate with and to once again be canonically and hierarchically an integral part of the” Belgrade Church. Again, there is no evidence that the Metropolitanante Diocese objected to the filing of the amended Affidavit of Organization.

¶ 63 While the majority refers to this document as a “unilateral” action taken by the Bishop that demonstrates the need for court intervention, I disagree. *Supra* ¶ 42. Though the Bishop executed the amended Affidavit of Organization, the document on its face states that it reflects the decision of the Assembly of the Metropolitanante Diocese. In any event, the confusion over the Bishop’s role does not demonstrate the need for court intervention; rather, it underscores the need for the court to abstain from deciding matters of church governance and hierarchical structure. See *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696, 722-23 (1976) (the constitutional provisions of the diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity).

¶ 64 Plaintiffs downplay the significance of the Transitional Regulations by arguing that that document did not result in the Metropolitanante Diocese ceding independence and autonomy to the Belgrade Church. Yet, as stated, Article 2 provides that the Metropolitanante Diocese shall be governed based on the “Holy Scripture and Holy Tradition” of the Belgrade Church; the Regulations recognized and adopted by the Belgrade Church; the Transitional Regulations “in the spirit of the Constitution” of the Belgrade Church; and the provisions of the Metropolitanante Diocese’s

Constitution that did not conflict with the Transitional Regulations. Therefore, if the Transitional Regulations remain in effect, the Metropolitanante Diocese is not autonomous, as the majority asserts, but subordinate to the Belgrade Church. Specifically, under Article 2, the Constitution of the Metropolitanante Diocese is subordinate to the Transitional Regulations.

¶ 65 Finally, the majority notes that the trial court likened the instant case to *Bruss v. Przybylo*, 385 Ill. App. 3d 399 (2008), in that it focused on the Bishop's duties and whether he had violated those duties by his actions. I agree with the majority that this case is different from *Bruss* to the extent that *Bruss* involved the qualifications and fitness of a priest and certain members of the church's board of directors. See *id.* at 424. Nevertheless, this factual distinction does not change the overriding principle in *Bruss*, which is that application of the ecclesiastical abstention doctrine depends *solely* on the subject matter of the dispute. See *Bruss*, 385 Ill. App. 3d at 421 (the more circumspect approach to applying the ecclesiastical abstention doctrine is to "rest the abstention decision entirely on the subject matter of the dispute").

¶ 66 As stated, plaintiffs' claims center on the autonomy of the Metropolitanante Diocese from the Belgrade Church and whether Bishop Longin violated his duty to the Metropolitanante Diocese by declaring otherwise. As such, the subject matter of the dispute requires application of the ecclesiastical abstention doctrine. See *Milivojevich*, 426 U.S. at 717 (questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern; the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his diocese); see also *Rentz v. Werner*, 156 Wash. App. 423, 441 (2010) (the ecclesiastical abstention doctrine applied to claims regarding whether a minister at a church had exceeded her

authority when she expelled several members; whether a minister is in compliance with church rules is recognized as going to the core of the church's ecclesiastical affairs).

¶ 67 In my opinion, this case involves issues of church polity that go far beyond contract interpretation. Accordingly, the trial court properly granted the Bishop's motion for judgment on the pleadings based on the application of the ecclesiastical abstention doctrine. For these reasons, I would affirm.