

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

FILED
APR 29 2011
Angela Coffett
CIRCUIT CLERK

Stojan Bozic, Milos Puskar,)
Milorad Prtenjak, Milosh Milenkovich,)
Rudy Simovic, Petar Svilar, Milenko)
Paljich, Milton Radovic, Simo Petkovic,)
and Mira Prtenjak,)
) No. 10 CH 3845
)
) Plaintiffs,)
)
) v.)
)
) Reverend Longin Krco)
)
) Defendant.)

**RESPONSE TO DEFENDANT'S 2-615 MOTION TO DISMISS
AND TO DEFENDANTS MEMORANDUM OF LAW**

NOW COMES the Plaintiffs, Stojan Bozic, Milos Puskar, Milorad Prtenjak, Milosh Milenkovich, Rudy Simovic, Petar Svilar, Milenko Paljich, Milton Radovic, Simo Petkovic, and Mira Prtenjak, by and through their attorneys, Churchill, Quinn, Richtman & Hamilton, Ltd., and in response to the Defendant's 2-615 motion to dismiss and to Defendant's Memorandum of Law, states as follow:

INTRODUCTION

On March 10, 2011, the Defendant filed DEFENDANT'S RULE 2-615 MOTION TO DISMISS ("Motion"). The Defendant subsequently filed his MEMORANDUM OF LAW IN SUPPORT REV. LONGIN KRCO'S 2-615 MOTION TO DISMISS

("Memorandum"). In both, Defendant argues that Counts I,II, and III should be dismissed for lack of standing, that in Counts I, II, and III, should be dismissed because Bishop Longing is not a proper defendant, and that Counts II and III should be dismissed because there is no actual controversy. As explained herein, the Plaintiffs do have standing, Reverend Longin is a proper Defenant, and there is a ripe controversy.

BACKGROUND

The Plaintiffs are members of the Serbian Orthodox Metropolitanate of New Gracanica - Diocese of the United States of America and Canada (hereafter "Metropolitanate") and hold, or held, various positions of authority within the Church. (Complaint ¶¶ 1-14) There exists another Church, which is headquartered in Belgrade and is referred to as "Belgrade Church" in the Plaintiffs' Complaint. (Complaint ¶ 15) For a period of years in 90's, these two Churches considered merging. (Complaint ¶ 36) Ultimately, the Metropolinate decided to remain independent and autonomous. (Complaint ¶¶ 42-45) In 2008, the Belgrade Church began circulating a document which stated, among other things, that it had decided that the Metropolitanate was now a part of its church. (Complaint ¶ 36) The Metropolitanate owns property, including real estate located in Third Lake, Illinois, which is held in its corporate name. (Complaint ¶ 65)The Defendant, Reverend Longin Krco is the Bishop of the Metropolitanate and has possession of the Third Lake property and other property belonging to the Metropolitanate. (Complaint ¶ 66) Reverend Longin has made

statements suggesting that he is under the control of and supports the Belgrade Church.
(Complaint ¶ 54)

Based upon the circumstance described in the preceding paragraph, there is a substantial and immediate danger Reverend Longin will cause the wrongful transfer of property belonging to the Metropolitanate to the Belgrade Church. Furthermore, because Longin claims that the Metropolitanate is now a part of the Belgrade Church, his continued possession of the Metropolitanate's property is itself a wrongful transfer of possession of the property.

The Plaintiffs have brought this action in order to ensure the continued independence and autonomy of the Metropolitanate and to protect the property rights of the Metropolitanate.

ARGUMENT

I. The Plaintiffs have standing to bring their claims.

The Defendant initially argues that the "Plaintiffs fail to allege any basis whatsoever for their standing to bring this action." (Motion ¶ 4). "Under Illinois law, lack of standing is an affirmative defense. A plaintiff need not allege facts establishing that he has standing to proceed. Rather, it is the defendant's burden to plead and prove lack of standing." *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 22, 808 N.E.2d 1240 (2004). As such, the Defendant cannot simply challenge the Plaintiff's standing in a 2-615 motion. The Plaintiff is legally presumed to have standing to bring a claim. For the Defendant to avail himself of this defense, the Defendant must affirmatively allege facts which

support the finding that the Plaintiff lacks standing or point to specific allegations of the Plaintiff which would support such a finding. Here the Defendant makes no affirmative allegations and his arguments concerning the Plaintiff's allegations are unpersuasive.

a. Plaintiffs bring this lawsuit in the capacity of the various offices and positions they hold within the Metropolitanate.

In their Memorandum in support of their motion, the Defendant argues that the Plaintiffs lack standing because, the Defendant asserts, the Plaintiffs bring their suit in their individual capacity. According to the Defendant, "it is those organs and/or governing authorities/bodies who are vested with rights under the 1986 Constitution..." and that any violation of the procedures for reaffiliation under the 1986 Constitution would be a violation of the Diocesan Authorities' rights, not Plaintiffs' individual rights." (Memorandum at 6).

Contrary to the assertion of the Defendant, the Plaintiff alleged, under the heading "PARTIES" and in allegations 4 through 13, the capacity in which Plaintiffs bring their claims. Milos Puskar is a member of the Diocesan Council. (Complaint ¶ 5) Milorad Prtenjak was a delegate of the Church-People's Assembly. (Complaint ¶ 6) Milosh Milenkovich was a delegate of the Church-People's Assembly. (Complaint ¶ 7) Rudy Simovic was a delegate of the Church-People's Assembly. (Complaint ¶ 8) Petar Svilar was a delegate of the Church-Peoples's Assembly. (Complaint ¶ 9) Milenko Paljich was a delegate of the Church-People's Assembly. (Complaint ¶ 10) Milton Radovic is the president of a member church of the Metropolitanate. (Complaint ¶ 11) Simo

Petkovic is a president of a church-school congregation of the Metropolitanate .

(Complaint ¶ 12) Mira Prtenjak is a past president of a church-school congregation of the Metropolitanate. (Complaint ¶ 13)

As such, the Plaintiffs are indeed authorities of the Metropolitanate and have both the authority and responsibility to protect both the Metropolitanate's property rights and the powers granted to them by virtue of the offices and positions created by the Metropolitanate's Constitution. (Complaint, Exhibit G) It is particularly noteworthy that several of the Plaintiffs are or were themselves members of the Assembly which Plaintiff alleges voted specifically to remain independent from the Belgrade Church. (Complaint ¶¶ 42-49) The Assembly is the supreme decision making body of the Church. (Complaint, Exhibit G, Article 24) The Plaintiff further alleges that in defiance of the Assembly, the Defendant stated there was no longer a division between the Metropolitanate and the Belgrade Church. (Complaint ¶ 54) As members of the assembly, these Plaintiffs's are in a particularly proper position to enforce the authority of the Assembly and the powers conferred upon them individually.

b. Even if the Plaintiffs brought this action merely in their capacity as members of the Metropolitanate, they would still have standing.

Under Illinois law, plaintiffs have standing if they suffer "some injury in fact to a legally cognizable interest." *Flynn v. Ryan*, 199 Ill.2d 430, 436, 771 N.E.2d 414 (2002).

"There are two components to the standing requirement in the context of declaratory judgment actions. There must be an 'actual controversy' between adverse parties, and the party seeking the declaratory judgment must be 'interested' in the controversy. (*Id.*)

The Plaintiffs have alleged that the Metropolitanate is an independent church, and is independent from the Belgrade Church in particular. (Complaint ¶ 57) The Plaintiffs have also alleged that the Defendant has wrongfully proclaimed that the Metropolitanate is affiliated with the Belgrade Church. (Complaint ¶54) There is an actual controversy in that the Plaintiff's claim the Metropolitanate is an independent church and the Defendant claims it is not. The Plaintiff's are interested parties in that as members of the Metropolitanate, they have the right to belong to an independent church that is governed by its Constitution and rules they chose to effectuate and abide by. The Defendant's actions, seek to deprive them of this right.

An action by church members to enforce the rules and rights of a church is not unprecedented. In *Church of God of Decatur, Ill. V. Finney, ,* an action was brought naming the Church of God of Decatur; Vernon Spaar, Orville Spencer, and Willard Hake as Trustees, as individuals and as members of the Church, and seven other members of the congregation. 344 Ill. App. 598, 599-600, 101 N.E.2d 856 (1951). The action was brought against the pastor and associate pastor of the Church, both of whom, the plaintiffs claimed had violated the original by-laws of the Church by wrongfully divorcing their church from the Church of God. These Plaintiffs claimed specifically that "the defendants have denied the individual plaintiffs and all other members of the congregation similarly situated the right to worship in the church building in accordance with the usages of the Church of God and the right to have a minister in fellowship with the General Ministerial Assembly." (*Id.* at 600) The Trial Court granted and the Appellate Court affirmed the relief requested by the Plaintiffs.

In doing so, the Court recognized the right claimed by the members of the Church be governed by their chosen by-laws.

Similarly, in the present case, the Plaintiffs, as members of the Church, have the right to worship in accordance with the Constitution of their church. By claiming, that the Metropolitanate is affiliated with the Belgrade Church, the Defendant has injured the Plaintiff's in denying them this right.

More recently the Appellate Court of Illinois of the Second District ruled on *Bruss v. Przybylo*, 385 Ill. App.3d 399, 401, 895 N.E.2d 1102 (2nd Dist. 2008), in which Plaintiffs brought a lawsuit to rescind their priest's employment contract and to declare a prior election of the church's board of elders invalid. (*Id.*) Plaintiffs alleged they were members of a church and that they had previously been members of the church's board of directors. "[P]laintiffs sought to maintain a derivative action on behalf of the [church], notwithstanding the fact that the [church] was not a named party, either plaintiff or defendant, to the action." (*Id.*) Defendants brought a 2-619 motion arguing that Plaintiffs did not have standing because, they asserted, Plaintiffs were no longer members of the church. (*Id.* at 403) The Appellate Court rejected this argument holding that "plaintiffs had sufficient standing to bring either individual or derivative claims and that the trial court erred in dismissing this action for plaintiffs' lack of standing." (*Id.* at 406) In accordance with *Bruss*, the Plaintiffs' mere membership in the Metropolitanate give them standing to bring their claims either as individuals or on behalf of the Metropolitanate.

The cases cited by the Defendant in support of its argument on standing are distinguishable from the present case. In *Flynn v. Ryan*, the Plaintiffs challenged the constitutionality of the State Gift Ban Act, which limited the ability to give gifts to state officials. The Plaintiffs argued they had standing because they were subject to the provisions of the act. (*Flynn* at 437) In denying standing, the Supreme Court of Illinois noted that the Plaintiffs did not allege that they "have sustained or are in immediate danger of sustaining disciplinary action...nor do they even claim that they have given or would like to give a prohibited gift." (*Id.* at 437-438) The Plaintiffs also argued that the Act violated the separation of powers in providing ethical standards for members of the executive and judicial branches of government. Again finding a lack of standing, the Court noted that, "neither plaintiff has claimed to be a member of the executive or judicial branch of government." (*Id.* at 439) Here, the Plaintiffs have claimed injuries. Plaintiffs have alleged that they were and are members of the Assembly and the Diocesan Council, and as such are vested with certain powers. In their respective roles within the Church, Plaintiffs have been, or face the threat of being, deprived of their powers since the Defendant ignores the Metropolitanate's Constitution and the decisions made by the Metropolitanate's decision making bodies.

In *Vally Forge College v. Americans United*, 454 U.S. 464, 466-467, 102 S.Ct. 752 (1982) the Americans United for the Separation of Church and State challenged the transfer of government property to a religious organization under an Act which allowed the Secretary of Health, Education and Interior to dispose of surplus real property by transferring it to private or public entities. The Plaintiffs complained

specifically that the act of transferring property to a religious organization was contrary to the establishment clause and argued that they had standing because they were taxpayers. (*Id.* at 468.) The issue of taxpayer standing to challenge the Federal Constitution is too far removed from the present facts and circumstances to be relevant to the present controversy. The Plaintiffs in *Flynn* had no more rights than the ordinary citizen to the property that was transferred. As discussed above, the Plaintiffs here have specific rights and powers based upon their positions within and membership to the Metropolitanate.

II. The Reverend Longin is a proper Defendant.

The Defendant argues that he is not a proper Defendant because he claims he has “no control over the reaffiliation of the church and no control over the disposition of the property owned by the Diocese.” (Memorandum at 6) On the latter point, the Plaintiffs allege that the Defendant has possession and control of real property in Third Lake and other property belonging to Metropolitanate. (Complaint ¶66) As to the former, The Defendant misstates the controversy. Of course the Defendant does not have the power to affiliate the two Churches, a power which rests exclusively with the Assembly. The controversy that is occurring is that the Assembly unequivocally decided to remain separate from the Belgrade Church and the Defendant, contrary to the obligations of his office, has ignored that decision. (Complaint ¶¶53-63)

III. There exists a ripe controversy.

Finally, the Defendant argues that "Plaintiffs' claims for injunctive relief are not ripe because they are based on unfounded fears and misapprehension, and not an actual controversy. In particular, Counts II and III seek to enjoin Bishop Longin from the potential transfer of property interest held by the Diocese. However, there is no allegation that any transfer has been proposed, pending or even contemplated."

(Memorandum at 11)

The Plaintiff has alleged that the Defendant has taken the false position that the Metropolitanate has been absorbed by and is now under the authority of the Belgrade Church. (Complaint ¶54, Complaint Exhibit G) The Plaintiff is not alleging that the Defendant may in the future defy the Assembly, breach his duty of loyalty to the Metropolitanate, and act as an agent of the Belgrade Church. Exhibit G of Plaintiffs' Complaint demonstrates that this has already happened. The Plaintiffs may not have alleged that the Defendant has formally signed over title documents, but they did allege facts demonstrating that the Defendant considers himself an agent of the Belgrade Church. Thus, the continued possession of the Metropolitanate's property is itself a transfer of possession of the property from the Defendant as an agent of the Metropolitanate to the Defendant as agent of the Belgrade Church. Further, the Defendants defiance of the Assembly constitutes a wrongful limit on the authority of the Assembly to control Metropolitanate's property that has already occurred.

Again, the present controversy is similar to *Church of Decatur, Ill. v. Finney*. As stated by the Appellate Court: "We have here two contesting factions each of which asserts its

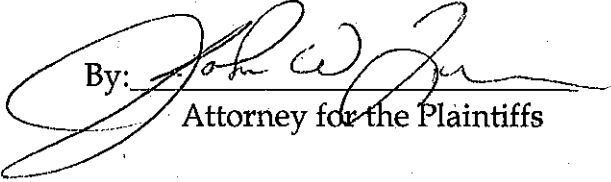
right to be named as the true church. This determination will settle for once and for all the rights as to the real property involved and the rights of the individuals to maintain, manage and use that property in the interests of the Church of God." (*Church of Decatur* at 604) In that case, it was the pastors continued possession of the church real estate after wrongfully proclaiming the church was no longer a member of the Church of God. Here, the Defendant continues to possess the real property in Third Lake after wrongfully claiming that the Metropolitanate is no longer independent and is a part of the Belgrade Church. Thus, as a ripe controversy existed in *Church of Decatur*, a ripe controversy exists here.

CONCLUSION

As discussed above, the Plaintiffs have standing to bring this action both by their respective positions of authority within the Metropolitanate Church and because of membership in the Church. The Defendant is acting as an agent of the Belgrade Church in defiance of the Metropolitanate Assembly and Constitution and has falsely proclaimed the Metropolitanate to be a part of the Belgrade Church, acts which breach the duty of loyalty owed to the Metropolitanate. Further his continued possession of Metropolitanate property, despite his newfound allegiance to the Belgrade Church, constitutes a wrongful transfer of possession of Metropolitanate property. As such, Longin is a proper defendant and there exists a ripe controversy.

WHEREFORE, the Plaintiffs pray that Defendant's Motion to Dismiss be denied and for any other relief that the Court deems just.

Respectfully Submitted,

By: 
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