

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

CALVARY EPISCOPAL CHURCH,
PITTSBURGH, PENNSYLVANIA, a
Pennsylvania Nonprofit Church, et al.,

Plaintiffs

v.

THE RIGHT REVEREND ROBERT
WILLIAM DUNCAN, Bishop of The
Episcopal Diocese of Pittsburgh, et al.,

Defendants

and

THE EPISCOPAL CHURCH, an
unincorporated association, by THE RIGHT
REVEREND JOHN C. BUCHANAN, as
Trustee Ad Litem,

Plaintiff-in-Intervention.

No. G.D. 03-020941

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Copies Sent To:

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O P I N I O N

JAMES, J.

October 5, 2009

This matter was commenced by the filing of a civil action in October of 2003. Plaintiffs Calvary Episcopal Church, Pittsburgh, Pennsylvania, brought suit against the Right Reverend Robert Duncan, Bishop of the Episcopal Diocese of Pittsburgh, the members of the Board of Trustees of the Protestant Episcopal Diocese of Pittsburgh in their representative capacities, and the members of the Standing Committee of the Episcopal Diocese of Pittsburgh, in their representative capacities.

Plaintiffs alleged that the defendants intended to extinguish the property rights and interests of the Episcopal Church of the United States of America. The complaint alleged that certain actions of the defendants had jeopardized the property rights of plaintiffs, the property rights and interest of the Protestant Episcopal Church in the United States of America and the property rights and interests of the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.

After the filing of an answer and a number of other pleadings, on March 17, 2004, the court denied defendants' Motion to Dismiss and ordered the parties to go forward with discovery. At the hearing on that Motion to Dismiss, the court found that the Canons of the Episcopal Church of the United States of America imposed a constructive trust on parish property for the benefit of the Episcopal Church of the United States of America and the Pittsburgh Diocese of that church.

The parties conducted discovery and then entered into intense settlement negotiations. On October 14, 2005, a Stipulation By Counsel was submitted to the court and approved and signed that date.

The portion of that Stipulation that is the subject of this litigation states:

1. Property, whether real or personal (hereinafter "Property"), held or administered by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter "Diocese") for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in the Episcopal Church of the United States of America. For purposes of this paragraph, Property as to which title is legitimately held in the name of a parish of the Diocese shall not be deemed Property held or administered by the Diocese.

On December 22, 2006, Plaintiffs filed a Petition for Enforcement of the Settlement Order of October 14, 2005. They alleged that the defendants had separated

themselves and have acted to separate the property from the Episcopal Church of the United States of America. On January 9, 2007, the defendants filed their answer to the petition and pleaded that "The Diocese is a constituent member of The Episcopal Church of the United States, has not withdrawn from The Episcopal Church of the United States, and continues to be a constituent member of The Episcopal Church of the United States."

At the time of these two pleadings, defendant Duncan and others had taken the first steps to amend the Canon Laws and withdraw the Pittsburgh Diocese from the Episcopal Church of the United States of America. In fact, at the Diocesan Convention of October 4, 2008, a resolution to withdraw the Diocese from the Episcopal Church of the United States of America and align it with the Anglican Province of the Southern Cone received a majority of the votes cast.

After defendants took this action to withdraw from the Episcopal Church of the United States of America, the Episcopal Church of the United States of America removed Bishop Duncan as Bishop of Pittsburgh and named new members of the standing committee of the Diocese of Pittsburgh. The faction of the Episcopal Diocese of Pittsburgh that withdrew from the Episcopal Church of the United States of America admits that it has no affiliation with the Episcopal Church of the United States of America. Those parishes that remained loyal to the Episcopal Church of the United States of America (including plaintiffs) are now recognized as the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.

After discovery was completed, a hearing was held on May 27, 2009. Evidence

was taken and a large number of exhibits and stipulations were placed on the record. The narrow issue before the court was, assuming that the diocese validly withdrew from the Episcopal Church of the United States of America, can such a withdrawn Diocese take control of the property referenced under the October 14, 2005 Stipulation and appropriate that property to another denomination.

The plaintiffs and intervenor have always disputed whether a diocese may validly withdraw from the Episcopal Church. For the purposes of this proceeding, the court assumed that the withdrawal was valid and now will determine whether defendants are in violation of the October 14, 2005 Stipulation. Quite simply, they are in violation and cannot be allowed to continue to hold or administer the property referenced in Paragraph One of the October 14, 2005 Stipulation.

Many pages of the parties' briefs have been used to explain what Paragraph One means. However, I find that the language is clear and unambiguous and, therefore, requires no further explanation. The property is to be held or administered by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America. Regardless of what name defendants now call themselves, they are not the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.

Credible evidence establishes that the entity now represented by Attorney Andrew Roman has been recognized as the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America. Defendants contend that this designation is invalid and that they are entitled to continue to hold and administer the subject property. There is no basis in law or fact for their position. The Episcopal

Diocese of Pittsburgh of the Episcopal Church of the United States of America did not cease to exist when the defendants chose to withdraw. The defendants could not extinguish an entity that was created and recognized by the intervenors. The action to designate a subsequent board of governance and appoint a successor to Bishop Duncan is further evidence that the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America never ceased to exist.

The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America is the rightful trustee of the Paragraph One property, subject to the terms of the Stipulation of October 14, 2005. The Episcopal Diocese of Pittsburgh, affiliated with the Anglican Province of the Southern Cone, led by Bishop Duncan, cannot continue to be the trustee of the Paragraph One property.

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Plaintiff-in-Intervention.

No. G.D. 03-020941

ORDER OF COURT

AND NOW, this 6th day of October, 2009, in accordance with the foregoing Opinion, it is ORDERED, ADJUDGED and DECREED that:

1. The authorized representatives of the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (led by Bishop Robert H Johnson) shall hold and administer the real and personal property that is subject to Paragraph One of the Stipulation of October 14, 2005, subject to the terms of that Stipulation.
2. Counsel for all parties shall meet with the Special Master (Stanley E. Levine, Esquire) within 30 days of this Order.
3. The Special Master will report to the court within 20 days of that

meeting and said report shall identify the real and personal property that is subject to Paragraph One of the Stipulation.

4. The court will review the report and enter an appropriate order for the orderly transition of possession, custody, and control over said property.
5. This court retains jurisdiction over the parties and the subject matter to enforce the Stipulation and Order of October 14, 2005 and the provisions of this Order.

By the Court,

Joseph M. James J.