

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GEORGE T. IVANOV, KRUM GRKOV,)
GEORGE K. IVANOV, NUSHKA AGLIKIN,)
ATANAS AGLIKIN, ZORA IVANOV, and)
SAVA ROMANOV,)

Plaintiffs,)

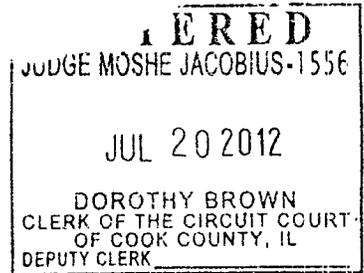
v.)

VALENTIN NOTZKOV, BOZIDAR DIMOV,)
BORIS NOTZKOV, KRASIMIR DETCHEV,)
ANGEL ALEXANDROV, EMIL DAVIDKOV,)
DIMITAR OGNIANOV, DOBRI KARABONEV,)
and ST. JOHN OF RILA BULGARIAN)
EASTERN ORTHODOX CHURCH,)

Defendants.)

No. 05 CH 13247

Judge Moshe Jacobius



MEMORANDUM OPINION AND ORDER

This matter came before this Court for trial upon Plaintiffs' Third Amended Complaint. This Court presided over approximately 18 days of trial commencing on October 24, 2011, and ending with the closing arguments on May 11, 2012. The Court has considered the testimony of over a dozen witnesses and adjudged their demeanor and credibility. It has read and considered the exhibits admitted into evidence and reflected upon counsel's closing arguments. Plaintiffs were represented by Jeanne Hoffmann and Frank Rowland of Bryce, Downey and Lenkov, L.L.C., and Defendants were represented by Mary Bluma of Sussman and Associates, P.C.

This case is distinguished by its lengthy and somewhat tortured procedural history. In August of 2005, Plaintiffs filed a two-count complaint seeking a declaratory judgment that the 2003 elected board members of St. John of Rila Bulgarian Eastern

Orthodox Church (“St. John of Rila”) were still the governing board and seeking a court order requiring an annual meeting and election. In June of 2006, this Court dismissed Plaintiffs’ complaint for lack of standing based on the assumption that St. John of Rila was a member church of the Bulgarian Eastern Orthodox Church, Diocese of the United States and Canada (“the Diocese”). *Ivanov v. Notzkov*, No. 05 CH 13247 (Ch. Div. June 27, 2006) (order granting motion to dismiss). However, the Court gave Plaintiffs a chance to replead if St. John of Rila was not, in fact, a member church of the Diocese. *Id.* Consequently, Plaintiffs filed an amended complaint in August of 2006, which included allegations that St. John of Rila had never been accepted into the Diocese. In August of 2009, Defendants filed an amended motion for summary judgment, arguing that St. John of Rila was a part of a hierarchical church and that the dispute was a religious one involving the ecclesiastical authority of that hierarchical church. As such, Plaintiffs sought judgment on a non-justiciable matter. This Court denied Defendants’ motion, finding that a question of fact existed as to whether St. John of Rila was part of a hierarchical organization. *Ivanov v. Notzkov*, No. 05 CH 13247 (Ch. Div. Mar. 4, 2010) (order denying summary judgment) (“the Court finds that there are genuine issues of material fact as to whether St. John of Rila Bulgarian Eastern Orthodox Church is a part of a hierarchical church”).

Plaintiffs then filed a second amended complaint in June of 2010. That complaint, too, alleges that “[t]he Parish is not, and has never been, a part of any organization named ‘Bulgarian Eastern Orthodox Church Diocese of the United States of America and Canada.’” (Second Am. Compl. ¶ 21.) Like its predecessors, Plaintiffs’ second amended complaint contains two counts. Count I seeks a declaration that “the

present governing body of the Parish . . . is the Board elected by the Parish members on February 22, 2003, including Georgi [*sic*] Ivanov, Daniela Hristova, Krum Grkov, Boris Notzkov, Krasimir Detchev and Angel Alexandrov.” (*Id.* Count I.) Count II seeks a court order requiring an annual meeting and election in conformance with the Illinois General Not for Profit Corporation Act of 1986 (“the Act”). (*Id.* Count II.) Specifically, Plaintiffs allege that the April 2005 vote, which removed Ivanov as president, violated the Act. (*Id.* ¶ 49.) As a result, Plaintiffs’ position is that the last duly-elected board was chosen at the 2003 election and a new election is mandated by the Act. On November 16, 2011, Plaintiffs sought leave of Court to file a Third Amended Complaint, which this Court granted. This Complaint was virtually identical to the Second Amended Complaint. The only addition was the allegation in Count III that Defendants had failed to comply with the Illinois Not for Profit Act, 895 ILCS 105/110.05, in filing an amendment to the Articles of Incorporation to be filed with the Secretary of State in 2006 because the directors listed in the amendment were not elected based upon the Act. Plaintiffs sought a declaration that the amendments to the Articles of Incorporation were improperly adopted and were invalid.

The evidence established that St. John of Rila was founded in 1996 when a group of Bulgarian émigrés gathered at Plaintiff George T. Ivanov’s preschool building and agreed to form a new church to be known as St. John of Rila. Archbishop Kyrill, the head of the Bulgarian Diocese of Toledo, Orthodox Church in America and Defendant Father Valentin Notzkov were present at the meeting. The attendees of this meeting agreed to have Father Notzkov serve as parish priest. On April 17, 1996, St. John of Rila was incorporated as an Illinois Not for Profit Corporation, pursuant to the Act. The

Articles of Incorporation provide that the Church is incorporated for the purpose of administering and establishing “a parish of St. John of Rila Bulgarian Eastern Orthodox Church, USA in accordance with the canons, constitutions, rules, and regulations of the Bulgarian Eastern Orthodox Church, USA.” (Joint Ex. 1.) At the initial organizational meeting, Plaintiff George T. Ivanov was elected as a Vice President of the Church. Plaintiff Krum Grkov was elected Treasurer of the Church. In 2000, Ivanov became President of St. John of Rila. The evidence at trial was unrebutted that no bylaws were ever adopted by the Church Board as is prescribed under the Illinois Not for Profit Act. *See* 805 ILL. COMP. STAT. 105/102.25. The evidence established that Plaintiff George T. Ivanov forwarded proposed by-laws to Archbishop Kyrill. These bylaws were, however, rejected by the Archbishop (*see infra*).

There was a dispute between the parties regarding the actions of the attendees at the first meeting. Father Notzkov testified that the founding members acknowledged and accepted Archbishop Kyrill as their Parish Archbishop and agreed to become a parish under the hierarchical ecclesiastical authority of the Diocese of the Bulgarian Orthodox Church in USA and Canada. He testified that he was appointed by Archbishop Kyrill. Father Notzkov testified that at the first organizational meeting, Archbishop Kyrill told the gathering that he would send the Constitution of the Bulgarian Eastern Orthodox Church, in USA and Canada to the parishioners and that he, in fact, visited the church on October 19, 1998, and provided Board members with eight copies of the Constitution. Father Notzkov testified that the Constitution and its main provisions were reviewed at every annual meeting of the Church.

Plaintiffs George T. Ivanov and Krum Grkov categorically denied that they or the founders of St. John of Rila ever agreed to be a part of the Diocese of the Bulgarian Eastern Orthodox Church, in USA and Canada. Plaintiffs point out that no formal application has ever been produced whereby St. John of Rila applied to be a parish of the Diocese of the Bulgarian Eastern Orthodox Church, in USA and Canada. They denied that they ever received or were governed by the Constitution. Ivanov and Grkov claimed that they never received the Bulgarian Eastern Orthodox Church Constitution or were governed by it. They claimed that they were self-governing and were solely and exclusively bound by the Articles of Incorporation. They admitted that they invited Archbishop Kyrill to attend the Church's meetings and conferred with him, but claimed that he was only their spiritual advisor and that they did not belong to his diocese. One of Grkov's duties as Treasurer was to collect membership dues and maintain a record of members who had paid their dues. (Pls.' Exs. 1-7, 8a.) Grkov testified that the only requisite for membership was the payment of dues. This was strongly challenged by Reverend Notzkov, who testified that prospective members had to submit an application and to demonstrate through documentation that they were baptized, had to get holy bread, get confirmation, participate in Sunday services, offer confession, and respect the parish priest, who was the spiritual leader, and also the archdiocese and archbishop. St. John of Rila held annual meetings, where the officers of the church and members of the Board were elected. On February 8, 2004, St. John of Rila's Board held a Board meeting and set St. John of Rila's regular annual membership meeting and election for the year 2004 on March 13, 2004. (Joint Stipulation of Facts, ¶ 11.)

In 2000, Archbishop Kyrill assigned Reverend Bozidar Dimov, Reverend Notzkov's son-in-law, as Assistant Priest to the parish. (Defs.' Ex. 4.) George T. Ivanov objected to Father Dimov's appointment, arguing that the Church could not afford his salary. On February 16, 2004, George T. Ivanov sent a letter to Father Dimov terminating his salary effective March 1, 2004. This was only one issue in an ongoing series of disputes between George T. Ivanov and Father Notzkov. On March 13, 2004, there were guards posted at the doors of the church and some individuals who had previously voted were not allowed to enter the church. Father Notzkov testified that he had determined which members were in good standing based on the Church's Constitution, and invitations were sent out to those members only. Plaintiffs introduced a videotape of the church lockout. Archbishop Kyrill was present at the Church and spoke to the parishioners who were being kept out. Plaintiffs subsequently objected to the admission of his utterance on the basis of hearsay when the Court requested a stipulation of precisely what he had stated. However, when the tape was shown in open Court, the translator was freely stating what each person was saying on the tape, and Plaintiffs did not object at the time the tape was shown. (Pls.' Group 10.) The Court therefore finds that Plaintiffs have waived the hearsay objection and opened the door to the pronouncement when they presented the tape along with a running commentary of what the individuals appearing on the tape were saying. Archbishop Kyrill stated the following:

May I have a little bit of your attention, please. It is scheduled a members meeting. The purpose of this members meeting is report to be given by the priest or priests, the treasurer of the church, the president, the secretary, etc. Some things to be discussed. Right to participate in a members meeting have only those who are regular members. This means

those who submitted applications to become members of this church, those who fulfilled their obligations and did not have any violations.

I will make one exception for you to come in and all of you will enter. But my conscience will not allow me to permit to those who are not a regular members and who did not pay their obligations those who did not fulfilled their obligations according to the canons of the Bulgarian Orthodox Church in the USA and Canada those will not have the right to participate in the voting. But now you can come in . . .

(Court Ex. 2.) There was no vote for the Church officers or the Board that took place in 2004, and the prior officers and Board were carried over to the following year.

A subsequent meeting was held on April 3, 2005. Father Notzkov appointed additional members to the Board. It was determined at the meeting that the “Archbishop would decide the Church members to have a meeting when ready.” There was a vote taken at the meeting, and it was decided that Ivanov would be released from his office and duties as St. John of Rila’s President on the basis that he had “self-dealing with problems of communal character.” (Joint Ex. 3.) Thereafter, Plaintiff George T. Ivanov sent a notice and invitation to all regular parish members to attend a “regular annual election meeting, to be held on Mary 14, 2005.” (Joint Ex. 4.) On May 8, 2005, the Church issued an official announcement that George T. Ivanov was dismissed from office as president of the church board. (Defs.’ Ex. 25.) On May 14, 2005, the church doors were locked, and the parishioners who came to vote were locked out of the Church with a police car stationed in front of the church. Father Notzkov testified that he prepared a list of names together with Father Dimov indicating which individuals were members in good standing and who were not members in good standing and giving the reasons for his determination. (Defs.’ Ex. 12.) The scenario was taped, and the video was introduced into evidence by Plaintiffs. (Pls.’ Group 10.) Plaintiff Krum Grkov testified that he was

removed as Treasurer at an annual meeting on March 25, 2006, and Krassimir Dechev was designated the new treasurer. No further election for Church officials or the Church Board has been held since 2004, although annual meetings were held in 2005 and 2006. Father Notzkov testified that all of his actions were reported to Archbishop Kyrill and that he always acted on the Archbishop's authority. He testified that the Church held in abeyance all further elections pending the resolution of the lawsuit brought by Plaintiffs which challenged the church's authority.

An important witness at trial, called by Defendants, was Father Don Anthony Freude, rector of the Orthodox Church for St. Elia Parish in Akron, Ohio, and Chancellor of the Bulgarian Eastern Orthodox Church for the United States and Canada. Father Freude was appointed Chancellor by Archbishop Kyrill in 2000. The Archbishop died in 2007, and Father Freude has been attending to the business of the Diocese and basically running it until a new Archbishop is chosen. The Diocese has been utilizing other Bishops from the Orthodox Church in America (OCA) in Locum Tenens, to hold the place of a Bishop, until a permanent replacement is chosen. Father Freude explained that in 1947, there was a schism within the Bulgarian Church in America. The group formed under the Bulgarian Orthodox Church in USA and Canada did not accept any priest or administration from Bulgaria because the country had been taken over by the Communist Party. The other group, which did accept priests and administration from Bulgaria, was known as the Bulgarian Orthodox Diocese of the USA, Canada and Australia. This Diocese is headquartered in New York, presided over by Archbishop Joseph, and is sometimes referred to as the Synod. An undercurrent in the case, testified to by several witnesses, was that some members wished to join the Synod, while others were

adamantly opposed, as they perceived this as accepting the former Communist regime. It appears to this Court that this was part of the conflict created among the members of St. John of Rila.

Father Freude testified that he was familiar with St. John of Rila. On June 29, 1996, at the thirty-third annual diocesan conference held at Dearborn Heights, Michigan, Archbishop Kyrill announced the new mission of St. John of Rila serving Bulgarians in the greater Chicago area. (Defs.' Ex. 35.) At the thirty-fourth annual diocesan conference held on June 28, 1997, St. John of Rila was recognized as a parish and represented by Father Bozidar Dimov and Krum Grkov. (Defs.' Ex. 36.) St. John of Rila sent representatives to the annual Bulgarian Diocesan Conferences and offered reports in 2000, 2001, 2002, 2004, and 2005. (Defs.' Exs. 37–41.) In 2005, the St. John of Rila delegates requested that the Diocesan Conference be held at St. John of Rila. (Defs.' Ex. 41.)

Father Freude testified that all parish council meetings and parish meetings could only be held with the knowledge and blessing of the parish rector. The parish priest is the president of the parish or church community. He makes the spiritual decisions of the church, and the Board of Trustees makes the financial decisions. Father Freude testified that all board members of the church had to be elected and that there is no provision that anyone be appointed to the board of a church under the auspices of the Bulgarian Orthodox Church in the USA and Canada. He further testified that a parishioner who is a board member, is not abiding by the Constitution, and is not a member in good standing could be removed by the bishop or priest. A board member could be removed for an act of heresy or disobedience to the priest.

In addition to Father Freude's testimony, the evidence was overwhelming that St. John of Rila was a parish under the hierarchical structure of the Bulgarian Orthodox Church in USA and Canada and under the authority of the Diocesan Prelate, Archbishop Kyrill, and subject to the Constitution of the Diocese. The minutes of the meeting of February 27, 1996, document that the parishioners of St. John of Rila accepted and acknowledged "His Eminence Archbishop Kiril [*sic*], the head of the Bulgarian Eastern Orthodox Diocese USA" as the "parish Archbishop." (Defs.' Ex. 21.) On November 10, 2003, Archbishop Kyrill wrote to Fathers Notzkov and Dimov that he could not accept the proposed bylaws that had been forwarded to him by Plaintiff George T. Ivanov because they conflicted with the Constitution. It was clear from the testimony that the Constitution was cited in church documents as "the Diocesan By-Laws, the Statutes of the Orthodox Church in America and the Canons of the Church," which is the term the Archbishop used in his letter. The Archbishop concluded his letter by stating:

Until we come to the point whereby the Parish will need their own By-Laws approved by the Diocesan Bishop, you have to abide with the By-Laws of the Bulgarian Diocese of Toledo which are compulsory for every parish within the Bulgarian Orthodox Church, Diocese of Toledo, Orthodox Church in America.

(Defs.' Ex. 5.)

Early on in St. John of Rila's history, on March 29, 1998, the minutes reflect that an annual meeting of the board of St. John of Rila took place pursuant to Section 8 of the "Constitution of the Bulgarian Eastern Orthodox Church Diocese of the United States of America and Canada." The minutes propound the fact that:

Father Valentin went over the 'Constitution of the Bulgarian Eastern Orthodox church Diocese of the United States of America and Canada' with the present people.

(Defs.' Ex. 43.)

In his Chancellor's report to the 39th Annual Diocesan Conference in 2002, which the delegates from St. John of Rila attended, Father Don Freude stated the Diocesan policy that:

All Parish Council Meetings and Parish Meetings must not be held without the knowledge and blessing of the Parish Rector. Normally, he must be present, and if for some valid reasons cannot be there, in order for the meeting to be legal and the important decisions taken legal, his blessing is required. The minutes of all meetings of the Parish Council must be signed by the Parish Rector. (OCA Statutes, Article X, Section 8c.)

(Defs.' Ex. 42).

St. John of Rila's Treasurer, Krum Grkov, testified at trial that he sent checks to the Diocese every year from membership dues. This clearly constituted the Parish contribution to the Diocese, although Grkov tried to cast it as a voluntary contribution. On January 8, 2005, Plaintiff George T. Ivanov sent a letter to Fathers Notzkov and Dimov recounting his visit with Archbishop Kyrill in Pittsburgh together with Krum Grkov admitting that St. John of Rila was "in his Eminence Kyrill's diocese." (Defs.' Ex. 9.) In his deposition, George T. Ivanov testified under oath that Archbishop Kyrill attended the annual meetings of St. John of Rila every year and that he visited Archbishop Kyrill to discuss the differences within the church and the dispute over who is entitled to be a member. (Joint Ex. 6.) In light of this striking and explicit evidence, the Plaintiffs' assertion that St. John of Rila was not a part of the Diocese and that Ivanov never saw the Diocesan Constitution or knew about it prior to his deposition is preposterous and brazen. This Court finds that in light of this overwhelming evidence,

St. John of Rila was a parish within the hierarchical structure of the Bulgarian Orthodox Church in USA and Canada.

The fact that the original Articles of Incorporation referred to the Diocese as the “Bulgarian Eastern Orthodox Church, USA,” and omitted to mention the formal name of “Bulgarian Eastern Orthodox Church, USA and Canada” is not inimical to Defendants’ case. This clearly was a scrivener’s error, and the entirety of the evidence demonstrates beyond peradventure that the clear intent of the Articles of Incorporation was to join and belong to the Bulgarian Orthodox Church in USA and Canada. When the Church board filed its amendment in 2006, which Plaintiffs attempt to paint as a subterfuge, it was merely reaffirming the original intent, correcting the scrivener’s error, and restating the original intent of the incorporators. There is therefore no merit to Count III of Plaintiffs’ Third Amended Complaint that the Amended Articles of Incorporation should be declared null and void. This Court will deal with the assertion that the Board was illegally constituted and had no authority to file the Amendment *infra*.

A thorough review of the Constitution of the Bulgarian Eastern Orthodox Church of the Diocese of the United States of America and Canada confirms that the Parish priest and the Bishop of the Church have ultimate and exclusive authority over all religious matters in the Church. Article III, Section 3 of the Constitution provides:

The Bulgarian Eastern Orthodox Church, Diocese of the United States of America and Canada shall be guided in its spiritual and administrative life by the Prelate who is the Diocesan Bishop and Head of the Diocese and by the Spiritual Council of the Diocese.

The Diocesan Prelate shall have full authority and hierarchical power in matters of faith, morality, priesthood and pastoral service. He shall rule the Diocese with the assistance of the Spiritual Council of the Diocese; the Trustees of the Diocese; the annual conferences of the Diocese; and the Diocesan Congress—Sobor.

Section 11 of the Uniform Parish Regulations provides:

Each parish shall be administered by the Priest and the Parish Board of Trustees. The Priest as head of the Parish (predstoyatel) by virtue of the ecclesiastical authority vested in him, shall guide and oversee the total Parish programs, with the advice and consent of the Parish Board of Trustees, and shall be ultimately responsible for the whole life and activities of the Parish.

Section 3 of the Uniform Parish Regulations gives the Parish priest the authority of verifying in writing that the candidates for the Board of Trustees were qualified and that the election “was conducted in accordance with the regulations of the Diocese and the Parish bylaws.” Qualifications for membership in good standing are set forth in Article VIII, Section 1 of the Constitution:

Any person, twenty-one years of age or over, who was baptized according to the rites of the Eastern Orthodox Catholic and Apostolic Church, or was received into said Church through Holy Chrismation, who lives according to the faith and canons of the Church, abides by the regulations and administration of the Bulgarian Eastern Orthodox Church—Diocese of the United States of America and Canada, and by-laws of any Parish of this Diocese, and fulfills his or her financial obligation into his respective parish, is a member in good standing of the Parish and this Diocese.

Section 3 of Article VIII further provides:

The religious, moral and social duties of a parishioner are to apply the tenets of the Orthodox faith to his or her life and activities; to attend the Divine Liturgy and other services of worship faithfully on Sunday and Holy Days; to keep the rules and fasts of the Orthodox tradition; to receive frequently the sacraments of Penance and Holy Communion; to train and teach the young according to the faith and spirit of Orthodoxy, to respect the clergy, the ecclesiastical authority; and all governing bodies of the Church; to be obedient in matters of faith and ecclesiastical order; and to cooperate in every way towards the welfare and prosperity of the Parish and the success of its sacred mission.

(Joint Ex. 5.)

Plaintiffs maintain that this dispute does not revolve around a religious issue, but presents a neutral question of applying procedures for election of the Board for St. John of Rila. Defendants argue that the dispute between the parties is grounded in religious doctrine and is barred under the ecclesiastical abstention doctrine. A review of the applicable law is therefore necessary.

The ecclesiastical abstention doctrine is rooted in both the free exercise and the establishment clauses of the First Amendment to the United States Constitution. *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 406 (2d Dist. 2008). The First Amendment, made applicable to the states through the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend I. Ecclesiastical abstention provides that courts may not determine the correctness of an interpretation of canonical text or some decision relating to government of the religious polity. *Duncan v. Peterson*, 359 Ill. App. 3d 1034, 1043 (2d Dist. 2005). The United States Supreme Court first articulated the principles of the ecclesiastical abstention doctrine in *Watson v. Jones*. 80 U.S. 679 (1872). In *Watson*, the Court held that with respect to hierarchical churches, questions of discipline, faith and ecclesiastical rule, custom or law decided by the highest church judicatory must be accepted as final and binding on civil courts. *Id.* at 727. However, the Court did not use the First Amendment as a basis for its ruling. In the 1950s, the Supreme Court began to constitutionalize the doctrine. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 730 (1976) (Rehnquist, J., dissenting) (citing *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952)) (“The year 1952 was the first occasion on which this Court examined what limits the First and Fourteenth Amendments might place upon the

ability of the States to entertain and resolve disputes over church property.”). Thus, the doctrine gained constitutional backing.

In *Milivojevich*, the Court continued to refine the doctrine. There, the Court held:

[W]here resolution of [a dispute] cannot be made without extensive inquiry by the civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decision of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

426 U.S. at 709. Thus,

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724–25.

In *Milivojevich* and other cases, courts have distinguished between hierarchical and congregational churches. A hierarchical polity exists when the religious congregation is a subordinate member of a general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power to control the whole membership of that general organization. *Bruss*, 385 Ill. App. at 408. Conversely, a congregational polity exists when a religious congregation is strictly independent of other ecclesiastical associations. *Id.* If a church is hierarchical, the rule of deference from *Milivojevich* applies. If a church is congregational, a civil court should defer to the decision of the local congregational governance. *Marsaw v. Richards*, 368 Ill. App. 3d 418, 429 (1st Dist. 2006). The Court’s holding in *Milivojevich* was, at least to some extent, based on the hierarchical nature of the church at issue in the case. *See* 426 U.S. at

725 (White, J., concurring) (“Major predicates for the Court’s opinion are that the Serbian-Orthodox Church is a hierarchical church and the American-Canadian Diocese, involved here, is part of that Church.”). Thus, what governance structure a religious institution takes on may be a relevant inquiry.

Three years after deciding *Milivojevich*, the Supreme Court clarified the ecclesiastical abstention doctrine in *Jones v. Wolf*. 443 U.S. 595 (1979). The Court first noted that states have an “obvious and legitimate interest” in resolving property disputes and providing a civil forum where the ownership of church property can be determined. *Id.* at 602. However, the First Amendment prohibits such courts from resolving these disputes on the basis of religious doctrine and practice. *Id.* Notwithstanding this proscription, a state may adopt any one of various approaches for settling church property disputes so long as it involves no considerations of doctrinal matters. *Id.* For example, the neutral principles of law approach allows reliance on objective, well-established concepts of trust and property law familiar to lawyers and judges. *Id.* at 603. Illinois courts have adopted and further analyzed the neutral principles of law approach. *See, e.g., Marsaw*, 368 Ill. App. 3d at 427–28; *Duncan*, 359 Ill. App. 3d at 1045; *Jenkins v. Trinity Lutheran Church*, 356 Ill. App. 3d 504, 509–10 (3d Dist. 2005); *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 43 (1st Dist. 2004); *Abrams v. Watchtower Bible & Tract Soc’y*, 306 Ill. App. 3d 1006, 1011 (1st Dist. 1999); *People ex rel. Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740, 744 (1st Dist. 1997); *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 714 (2d Dist. 1991); *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 431 (1st Dist. 1987); *York v. First Presbyterian Church of Anra*, 130 Ill. App. 3d 611, 615 (5th Dist. 1984). In applying

neutral principles, courts can look to deeds, terms of the local corporate charter, state statutes applicable to church property, and the relevant provisions of the church constitution and laws. *York*, 130 Ill. App. 3d at 618. If the analysis can be done in secular terms, civil courts are permitted to exercise jurisdiction. *Jenkins*, 356 Ill. App. 3d at 509. The neutral principles of law approach appears to be based on the idea that the First Amendment did not intend for civil and property rights to be unenforceable in the civil courts simply because the parties involved are the church and its members. *Duncan*, 359 Ill. App. 3d at 1044; *Bodewes v. Zuroweste*, 15 Ill. App. 3d 101, 103 (5th Dist. 1973).

In *Abrams*, the First District Appellate Court noted that the neutral principles analysis has “been used primarily for disputes of ownership of church property.” 306 Ill. App. 3d at 1013; *see also Bruss*, 385 Ill. App. 3d at 426 (“[T]here are no clear signs in *Jones* or any other decision by the Court that a neutral principles analysis is applicable beyond property cases”). However, other Appellate Court cases have used this approach when there is a control dispute, stating that the dispute involves the identity of who will control the church property. *See, e.g., Marsaw*, 368 Ill. App. 3d at 430; *Muhammad*, 289 Ill. App. 3d at 745. Furthermore, in *Duncan*, the Second District Appellate Court stated: “Illinois courts may use neutral principles of negligence law in reviewing alleged tortious conduct by churches and their employees.” 359 Ill. App. 3d at 1045. Therefore, the neutral principles of law approach has been extended beyond mere property disputes.

There is some authority for the proposition that the hierarchical-congregational distinction is not necessarily dispositive for a determination of whether the abstention doctrine should apply, although applying the ecclesiastical abstention doctrine to a hierarchical setting appears to be better established and more deeply rooted than applying

it to the congregational setting. In *Callahan v. First Congregational Church of Haverhill*, the Supreme Judicial Court of Massachusetts held that “constitutional rights of religious freedom apply equally to congregational and hierarchical churches.” 441 Mass. 699, 700–01 (2004); *see also Bruss*, 385 Ill. App. 3d at 407–08 (“if the subject matter of an internal church dispute is not appropriate for state intervention, the abstention is equally compulsory whether the church is congregational or hierarchical”); *York*, 130 Ill. App. 3d at 615 (“UPCUSA maintains a hierarchical structure of government. . . . This circumstance does not, however, preclude a civil court decision respecting the Anna Church property.”). Accordingly, the “hierarchical rule and the congregational rule are formulations of the same basic principle of deference to church authority; the differences reflect application of the principle to slightly different facts.” *Callahan*, 441 Mass. at 705 (quoting Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1413 (1981)).

Ervin v. Lilydale Progressive Missionary Baptist Church presented a similar issue argued herein. However, a juxtaposition of that case and the case *sub judice* underscores an essential point in applying the ecclesiastical abstention doctrine. In *Ervin*, the plaintiff served as Lilydale’s pastor. 351 Ill. App. 3d at 42. Lilydale’s bylaws provided that a pastor’s service could be terminated only by a vote of two-thirds of the church’s members qualified to vote. *Id.* Despite this provision, the church’s board members terminated plaintiff’s service without receiving support from two-thirds of the church’s membership. *Id.* Plaintiff sued, seeking an injunction enjoining the church from terminating his service as pastor without following the procedures set forth in the church’s bylaws. *Id.*

The trial court dismissed the case, finding that it did not have subject matter jurisdiction to consider the church board's "ecclesiastical decision." *Id.* After examining the relevant law regarding the ecclesiastical abstention doctrine, the First District Appellate Court reversed the trial court's ruling and found that the doctrine did not apply. *Id.* at 46. The court held that the church board had "not effectively terminated Reverend Ervin's service as pastor, because the church members have not voted, in accord with the bylaws, for that termination." *Id.* The trial court did not need to inquire into religious doctrine or law to decide whether the board had violated the church's bylaws. *Id.* Ervin involved a congregational church and not a hierarchical church structure. Thus, the court held that "[t]he [F]irst and [F]ourteenth [A]mendments do not forbid judicial determination of whether the proper church authority made the decision to remove the pastor." *Id.*

In the case *sub judice*, it is patently evident to this Court that the dispute is deeply grounded in religious doctrine. The dispute revolved around the issue of which church members are members in good standing who are able to vote in an election for the church's board. Qualifications to be a member in good standing are virtually entirely bound up with determining which members meet the religious standards set forth in the Constitution of the Diocese. The Parish priest is given discretion to make this determination subject to the ultimate authority of the Bishop of the Church. In addition, there was considerable evidence that Plaintiffs challenged the Parish priest's authority, which is contrary to the Church's Constitution that the parishioners must show obedience to the Church. Defendant Valentin Notzkov clearly had the authority to determine who was eligible to vote for the Board. It is patent that he was backed up by Archbishop

Kyrill if only based upon the Archbishop's edict to postpone the election in 2004, which was respected by the membership of the church at the time.

Plaintiffs argue that Father Notzkov's actions were merely a subterfuge for him to maintain control of the church and of his position since he feared that the Board would fire him. The Constitution of the Bulgarian Eastern Orthodox Church clearly manifests that only the Archbishop has the authority to appoint and to discharge Parish priests. This very question of the parish priest's motive is bound up with the workings of the church based on religious doctrine. Plaintiffs want this Court to tell the church whether the Parish prelate had certain powers in the areas of religious doctrine or whether he was merely fabricating his positions in the area concerning religious doctrine. This is precisely the type of inveiglement of a secular tribunal into the processes of a religious institution based on an interpretation of religious authority that the Supreme Court of the United States has cautioned against and prohibited.

The same principle applies to Plaintiffs' argument that the St. John of Rila church did not adhere to every provision of the Bulgarian Eastern Orthodox Constitution and therefore its actions were invalid (set out in Plaintiffs' demonstrative Exhibit 1). Perhaps the most poignant example of this is Plaintiffs' argument that the Parish priest and Archbishop did not have the authority to appoint members to the Board once Plaintiffs Ivanov and Grkov were removed. Such a determination would require this Court to substitute its determination for the Church's authority, which is prohibited under the ecclesiastical abstention doctrine. The mere dormancy of a church's adherence to election procedures or church processes does not, *ipso facto*, give rise to a claim against a

church's governance. *First Church of Deliverance v. Holcomb*, 150 Ill. App. 3d 703 (1st Dist. 1986).

Plaintiffs further argued that the Church was governed by the Illinois Not for Profit Corporation Act of 1986 and, therefore, the provisions of the statute were binding on the parties. In *Milivojevich*, the defendant church had bylaws that the Illinois Supreme Court construed in reaching its decision. The United States Supreme Court, in rejecting the Illinois Court's ruling, stated:

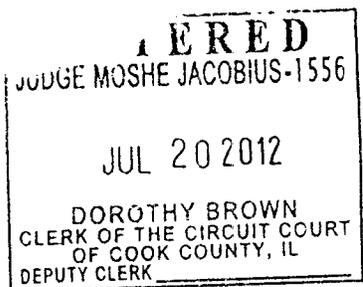
For civil courts to analyze whether the ecclesiastical actions of a church judicatory are . . . "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits.

426 U.S. at 713. In the case *sub judice*, the Court would have to conduct such an inquiry. As *Milivojevich* held, this type of inquiry violates the First Amendment, and the corporate structure of the church is not relevant. *Milivojevich* and its progeny demand that this Court not utilize a civil statute such as the Illinois Not for Profit Corporation Act to delve into doctrinal and polity church issues, particularly when the civil statute itself adopts a church constitution as its governing authority.

Plaintiffs place great reliance on *Aglikin v. Kovacheff*. It is perhaps coincidental that this case involves another Bulgarian Church, St. Sophia's Church, where Defendant Father Notzkov was previously employed as a priest. However, that case is totally inapposite from the instant case. In that case, the issue in controversy involved church property and did not turn upon church doctrine or polity. The court determined that in control disputes such as the one before it, neutral principles of law could be utilized and a court did not have to invoke the ecclesiastic abstention doctrine. The court stated, "[t]he

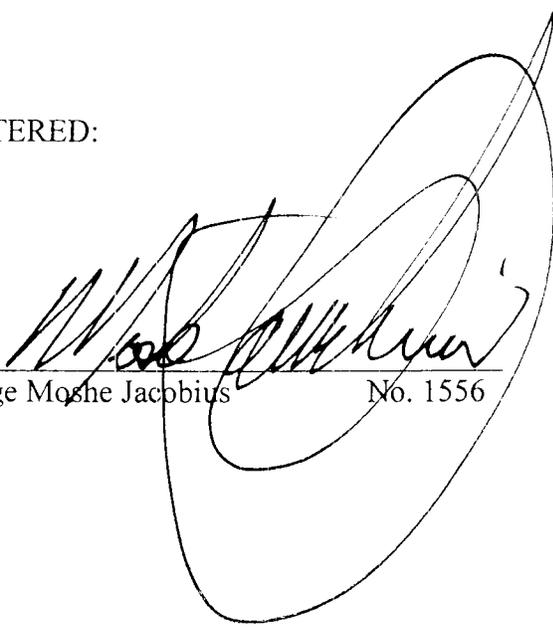
case at bar is a control dispute, a controversy among the members of a local church over a control of property.” *Aglikin*, 163 Ill. App. 3d at 432. In *Aglikin*, the Appellate Court noted that the parties agreed that the dispute did not turn on doctrine or polity. In the instant case, the dispute clearly involves doctrine and polity in a church that is part of a hierarchical church structure. The *Aglikin* decision is therefore not relevant to the instant case.

Based on the foregoing review of the evidence and analysis of the law, this Court finds that it must invoke the religious abstention doctrine in this case and refrain from imposing the Court’s determination in the governance of St. John of Rila Bulgarian Orthodox Church. Judgment is therefore entered in favor of Defendants and against Plaintiffs, and Plaintiffs’ Complaint is denied in its entirety. Defendants may govern St. John of Rila under the hierarchical jurisdiction of the Bulgarian Eastern Orthodox Church of the Diocese of the United State of America and Canada.



July 20, 2012

ENTERED:



Judge Moshe Jacobious

No. 1556