

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the case.

2014 IL App (1st) 122988-U

SECOND DIVISION
March 25, 2014

No. 1-12-2988

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).

GEORGE T. IVANOV, KRUM GRKOV,)	Appeal from the
GEORGE K. IVANOV, NUSHKA AGLIKIN,)	Circuit Court of
ATANAS AGLIKIN, ZORA IVANOV, and)	Cook County
SAVA ROMANOV,)	
)	No. 05 CH 13247
Plaintiffs-Appellants,)	
)	
v.)	
)	
VALENTIN NOTZKOV, BOZIDAR DIMOV,)	Honorable
BORIS NOTZKOV, KRASIMIR DETCHEV,)	Moshe Jacobius,
ANGEL ALEXANDROV, EMIL DAVIDKOV,)	Judge Presiding.
DIMITAR OGNIANOV, DOBRI KARABONEV)	
and ST. JOHN OF RILA BULGARIAN)	
EASTERN ORTHODOX CHURCH,)	
)	
Defendants-Appellants.)	

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiffs' request for remand and to order the circuit court to address plaintiffs' prayer for relief that a meeting be ordered pursuant to General Not for Profit Corporation Act of 1986 ((805 ILCS 105/107.05(b) (West 2002)) is denied. The circuit court did not err in denying the requested relief.

¶ 2 This case involves a protracted dispute over control of a church's board of trustees and its membership. Plaintiffs initiated this action after being divested of their membership in the church by the parish priest and the archbishop of the diocese. In the third amended complaint, plaintiffs alleged that they were active members of the church. Plaintiffs requested the circuit court to: (1) declare that the members elected to the board of trustees at the February 22, 2003 meeting and election are the true board members; (2) order an annual meeting and election of the board of trustees; and (3) declare that the 2006 articles of amendment filed with the Illinois Secretary of State are invalid because they were filed by later appointed board members who were not duly elected. After a lengthy trial, the circuit court entered judgment in favor of the defendants and against plaintiffs. The circuit court stated plaintiffs' complaint "is denied in its entirety" finding the ecclesiastical abstention doctrine prevented it from delving into matters of church doctrine and polity. Plaintiffs contend the trial court erred when it failed to address the plaintiffs' prayer for relief that the court order the church to hold a membership meeting and election. Plaintiffs request we remand this matter to the trial court with directions to order defendant, St. John of Rila Bulgarian Eastern Orthodox Church (St. John's), to call a meeting as required under the General Not for Profit Corporation Act of 1986 (Act) ((805 ILCS 105/107.05(b) (West 2002)). We decline plaintiffs' request and affirm the circuit court.

¶ 3

BACKGROUND

¶ 4 Plaintiffs filed a complaint alleging that in 1996, St. John's was incorporated as an Illinois not-for-profit corporation. St. John's articles of incorporation provided that it was founded "to establish and administer the 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." Plaintiffs alleged that there has never been such an organization, however, there is a diocesan church named the "Bulgarian Eastern Orthodox Church Diocese of the United States of America and Canada Toledo, Ohio" (Diocese), to which St. John's never belonged. Further, St. John's has always been an independently administered church that never adopted any bylaws. Plaintiff George T. Ivanov (Ivanov) was a founding member of the church and served as president of the board of trustees from 2000 to 2005. Plaintiff Grkov was treasurer of the board of trustees until 2005. The remaining plaintiffs, George K. Ivanov, Nushka Aglikin, Atanas Aglikin, Zora Ivanov and Sava Romanov, were allegedly members of St. John's at the time of filing this action.

¶ 5 In 2004, a dispute arose between plaintiffs and the church clergy. In 2005, Ivanov and Grkov were removed from their board positions after a vote taken at a meeting administered by the parish priest, defendant Valentin Notzkov, and Archbishop Kyrill of the Diocese. Thereafter, plaintiffs called for an annual meeting of church members in May 2005. At that time a list was prepared by the parish priest indicating those members who were in good standing and those persons no longer considered members in good standing. When plaintiffs arrived at the May 2005 meeting, they were not permitted to enter. Plaintiffs claimed the church has not called an annual meeting and election of the board of trustees since 2003 in violation of the Act. In the third amended complaint, plaintiffs requested that the circuit court order an annual meeting pursuant to the Act; declare Ivanov and Grkov members of the board of trustees; and to declare the articles of amendment filed with the Illinois Secretary of State void.

¶ 6 Defendants argued that the claims involved a religious dispute and moved to dismiss the complaint raising the ecclesiastical abstention doctrine as a bar to the circuit court's subject

matter jurisdiction. The circuit court denied defendants' motion. Defendants answered the third amended complaint and denied all material allegations including allegations that plaintiffs were members of the church. Defendants specifically answered that plaintiffs' "membership was terminated by the Parish and Diocesan ecclesiastical authority" and that none of the plaintiffs "were members at the time the complaint was filed."

¶ 7 The issues between the parties were then narrowed to: (1) whether plaintiffs' were members of the church; (2) whether St. John's was a hierarchical church governed by the Diocese and, if so, whether the Diocese's constitution governed St. John's; and, (3) whether the church held meetings as required by the Act and, if applicable, the Diocese's constitution. Defendants filed an amended motion for summary judgment arguing that St. John's is part of the Diocese, a hierarchical church, and therefore, counts I and II are not justiciable because they involve a religious dispute. Defendants argued St. John's is entitled to protection under the first and fourteenth amendments of the U.S. Constitution and, therefore, the circuit court must accept as binding the decisions of St. John's concerning membership eligibility pursuant to the ecclesiastical abstention doctrine. The circuit court denied defendants' amended motion finding that material issues of fact exist as to whether St. John's was established under the Diocese and whether the ecclesiastical abstention doctrine prohibits the court from adjudicating plaintiffs' claims.

¶ 8 Subsequently, plaintiffs filed a motion for partial summary judgment on the issue of subject matter jurisdiction arguing that St. John's is not a part of a hierarchical church and the ecclesiastical abstention doctrine does not apply. The circuit court granted plaintiffs' motion for partial summary judgment finding "subject matter jurisdiction exists under the neutral principles

of law analysis" because the issues in "this case would not require an in-depth analysis of ecclesiastical issues." The circuit court noted that it could look to the Act, the Diocese's constitution and any other relevant secular materials to adjudicate plaintiffs' claims.

¶ 9 The case then proceeded to an 18 day bench trial on plaintiffs' third amended complaint. On July 20, 2012, the circuit court entered a detailed and reasoned memorandum opinion and order. The circuit court entered judgment in favor of defendants and against the plaintiffs and denied plaintiffs' complaint "in its entirety." The circuit court found that St. John's is governed under the hierarchical jurisdiction of the Diocese and the instant dispute "clearly involves doctrine and polity" prohibiting the circuit court from disturbing the final decisions of St. John's and the Diocese regarding "the issue of which church members are members in good standing who are able to vote in an election for the church's board."

¶ 10 In its opinion, the circuit court summarized the testimony presented and made the following factual findings pertinent to this appeal: (1) St. John's was incorporated in 1996 under the Act; (2) St. John's is a parish church within the hierarchical structure of the Diocese; (3) the difference in the name of the Diocese governing St. John's shown in the 1996 articles of incorporation, Bulgarian Eastern Orthodox Church, USA, and the proper name of the Diocese, Bulgarian Eastern Orthodox Church, USA and Canada, was a scrivener's error; (4) the clear intent of the articles was to incorporate St. John's as a church belonging to the Diocese; (5) St. John's does not have bylaws, but is governed under the Diocese's church constitution which establish the rules and procedure for meetings, elections and qualifications for church and board membership; (6) the Diocesan constitution gives the parish priest and bishop of the Diocese the discretion and authority to determine qualifications of members in good standing in the church

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and qualifications to serve on the board of trustees based on specific religious standards set forth in the constitution; (7) no election of church officials or board members has been held since 2004, although annual meetings were held in 2005 and 2006; and (8) plaintiff Ivanov was released from his position as president of the board of trustees in April, 2005, because he had "self-dealing with problems of communal character" and plaintiff Grkov was removed as treasurer of the board of trustees for reasons not provided in the circuit court's order. The circuit court also found the evidence was "striking and explicit" that St. John's was a parish church under the hierarchical structure of the Diocese and plaintiffs' contention that St. John's was not a part of the Diocese and that Ivanov did not previously know about the Diocese's constitution is "preposterous and brazen." Regarding plaintiffs' being divested of their church membership, the circuit court concluded that it could not grant plaintiffs' relief where "[s]uch a determination would require [the circuit court] to substitute its determination for the Church's authority, which is prohibited under the ecclesiastical abstention doctrine."

¶ 11 On August 16, 2012, plaintiffs filed a post-trial motion requesting that the circuit court vacate and modify its July 20, 2012, judgment and opinion and utilize "neutral principles" of law to resolve this dispute and enter judgment ordering St. John's to hold a board election consistent with sections 105/107.03 (members), 105/107.05 *[sic]* (meeting of members) and 105/108.35 (removal of members) of the Act. Plaintiffs argued that the ecclesiastical abstention doctrine does not preclude the court's involvement in this dispute over neutral civil law: the election of the board of trustees of a not-for-profit corporation. Further, plaintiffs argued, the church constitution requires an annual election, which has not been held since 2004, and the court should order an annual election pursuant to the Act. On September 6, 2012, after hearing, the

circuit court denied plaintiffs' post-trial motion. Plaintiffs timely filed this appeal.

¶ 12

ANALYSIS

¶ 13 Plaintiffs appeal the circuit court's orders of July 20, 2012 and September 6, 2012, contending that the trial court erred in not "adequately" addressing the issue of whether the church should be ordered to hold the requested annual meeting. Plaintiffs state that they do not "concede" that the circuit court was correct in finding the ecclesiastical abstention doctrine prevented it from determining whether plaintiffs were members entitled to vote and granting plaintiffs' relief. Plaintiffs "are not seeking reversal" of, and do not appeal, that finding. Instead, plaintiffs request that we "do what the trial court did not: address the issue of whether the meeting requirements of the Not for Profit Act require the convocation of a member meeting and election by the church" and remand for the trial court to issue an order directing that a meeting take place. Plaintiffs contend we can employ "neutral principles of law" to resolve this dispute by ordering an annual meeting without delving into religious matters.¹ We decline to do so for the essential reasons that plaintiffs do not understand that these rulings of the circuit court are final and where judgment is entered in favor of the defendants and against the plaintiffs and the complaint is denied in its entirety, the plaintiffs are not entitled to any relief on appeal unless the lower court judgment is modified or reversed.

¶ 14 In view of the plaintiffs' unusual appellate posture of not "conceding" the correctness of the trial court's finding that the ecclesiastical abstention doctrine applies and "simply" requesting

¹ Under the "neutral principles" approach, where a there is no issue of doctrine, religious polity or governance, a court's judgment is made in the same manner as a secular dispute. *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 431 (1987); *Abrams v. Watchtower Bible and Tract Society of New York, Inc.*, 306 Ill. App. 3d 1006, 1011 (1999).

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no other corporate document that governed church operations. The defendants denied plaintiffs were members in good standing at the time the complaint was filed. Attached to defendants' motion to dismiss plaintiffs' original complaint, were letters from Archbishop Kyrill that declared, pursuant to his "pronouncement of May 12, 2005," the membership of all persons who signed a list stating they attempted to and were prevented from attending the May 2005 meeting called by Ivanov was "hereby revoked." The letter further explained that plaintiffs Ivanov and Grkov's memberships were revoked for "defying ecclesiastical authority of the Diocesan Prelate, [and] the duly ordained clergy." A second letter contained a list of persons, including all remaining plaintiffs, who the Archbishop determined were "not now, nor ever have been, certified by me, nor have met the qualifications of membership as determined by the Parish Rector to be members of" St. John's and the Diocese.

¶ 16 After an exhaustive trial, the circuit court found that St. John's is governed by the constitution of the Bulgarian Eastern Orthodox Church of the Diocese of the United States of America and Canada which granted the discretion and authority to the parish priest and archbishop to determine whether a person was a member in good standing of the church. This determination involved both financial and religious factors. The circuit court stated that this

"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 circuit court concluded that a determination of plaintiffs' membership and whether the parish

priest and archbishop had the authority to appoint members to the board, "would require this Court to substitute its determination for the Church's authority, which is prohibited under the ecclesiastical abstention doctrine." In context, the circuit court ruled that the ecclesiastical abstention doctrine as articulated in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) and its progeny, prohibited it from disturbing the church's determination that plaintiffs were not members of St. John's. Therefore, the circuit court clearly and unequivocally found the plaintiffs were not members of St. John's and denied plaintiffs' cause of action and requested relief under the Act because plaintiffs, as nonmembers, did not have standing under the Act to bring this lawsuit.

¶ 17 Plaintiffs assert they are not challenging these findings on appeal nor are they appealing the circuit court's denial of their complaint "in its entirety." Rather, plaintiffs contend that the circuit court did not address whether section 105/107.05 of the Not for Profit Act requires St. John's to hold a member meeting and election. We strongly disagree. This issue was addressed as directly as it could be addressed when the circuit court entered judgment in favor of defendants and against the plaintiffs and denied the complaint "in its entirety." By dismissing the complaint "in its entirety" the court conclusively found that the plaintiffs failed to prove their case which included an essential allegation that they were members in good standing in St. John's and entitled to relief under the Act.

¶ 18 In addition, plaintiffs requested a meeting under section 105/107.05 of the Act in a posttrial motion. After a hearing on September 6, 2012, the circuit court order denying plaintiffs' motion states "[f]or the reasons cited in the Court's Memorandum Opinion and Order of July 20, 2012 and as stated in the record, Plaintiffs' Post-Trial Motion is denied." We do not have

transcripts or bystanders reports of the September 6 hearing. However, we do know the circuit court denied plaintiffs' relief based on the ecclesiastical abstention doctrine as articulated in the July 20, 2012 order denying the complaint in full, which includes plaintiffs' claim that they are qualified members requesting a meeting. This makes perfectly clear that the circuit court did in fact address their request for a meeting and denied their request because they did not have standing as members to seek such relief.

¶ 19 Plaintiffs argue the circuit court erred in "holding that a not-for-profit corporation with members entitled to vote can remove directors other than by a membership vote as required by the Illinois Not For Profit Corporations Act." The circuit court did not so hold. Rather, the circuit court in its lengthy and comprehensive order specifically denied plaintiffs' complaint finding that "St. John of Rila [is] a parish within the hierarchical structure of the Bulgarian Eastern Orthodox Church in the USA and Canada" which confirms "the Parish priest and the Bishop of the Church have ultimate and exclusive authority over all religious matters in the Church" and "[s]ection 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 the election was conducted according to the "Parish bylaws." The circuit court further found that inquiry into qualifications of membership was "bound up with determining which members meet the [church's] religious standards." Ultimately, the circuit court concluded that the adjudication of membership and plaintiffs' claim that the clergy did not have the power to appoint members to the board of trustees would require the circuit court to invade matters of religious doctrine and polity that are protected by the ecclesiastical abstention doctrine. As evident from the foregoing, plaintiffs are clearly mistaken that the circuit court made a finding that a not-for-profit corporation can remove

a member of the board of trustees without a membership vote.

¶ 20 Plaintiffs' appellate arguments on the one hand seek relief by requesting that the case be remanded to the circuit court for it to order an annual meeting because the circuit court failed to "adequately" address plaintiffs' prayer for relief. At the same time, plaintiffs "do not concede that the circuit court was correct in its finding that a determination regarding the membership of St. John's would require an impermissible delving into matters of religious doctrine or church polity," and further state that they are not seeking review of that issue or asking this "[c]ourt to make or substitute its own findings of fact for that of the circuit court." Thus, in effect plaintiffs ask this court to ignore the lower court's findings of fact and conclusions of law that were adverse to the plaintiffs and order the requested relief anyway. This we will not do. A prerequisite to granting relief under the Act is that the request be brought by a "member entitled to vote." 805 ILCS 105/107.05(b) (West 2002). A trial was held and a finding was made that the circuit court could not "substitute its determination" for that of the church, that plaintiffs were not members of St. John's when the complaint was filed. In context, this equates to a lack of standing to call for a meeting under the Act. Because plaintiffs have chosen not to seek review of the circuit court's judgment that St. John's is a hierarchical church within the Diocese and the determination of membership qualification rests within the sole power and authority of St. John's and the Diocese, accordingly, we must accept the circuit court's findings. We will not disturb the judgment of the circuit court. Therefore, we decline to grant plaintiffs' request.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.