

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

23 MEMBERS OF THE CORINTHIAN)
BAPTIST CHURCH OF FAIRBANKS,)

Plaintiff(s),)

vs.)

ARTIS FLANAGAN, SANDERS JAMES)
YOUNG, FRANK DAVIS, BETTY)
JEFFERY, and JOE HAYNES,)

Defendant(s).)

Case No. 4FA-08-2838 CI

Decision on Motion for Preliminary Injunction

I. Introduction

Twenty-three members of the Corinthian Baptist Church of Fairbanks (CBC), including two trustees, have sued a group of four CBC trustees and one deacon seeking declarative and injunctive relief concerning which of two competing sets of bylaws govern the church and alleging the defendants have undertaken *ultra vires* acts. (For ease of reference the defendants are referred to as trustees or defendant-trustees). The plaintiffs allege bylaws dated 2002 control the church. The defendant-trustees claim the church is administered under 2004 bylaws. Both sets of bylaws were purportedly adopted within weeks of each other, the 2002 bylaws at a congregational meeting held on December 4, 2004, the 2004 bylaws at an organizational meeting of the initial trustees on December 30, 2004 (allegedly subsequently confirmed by the congregation in February

2005). The only other set of bylaws the parties are aware of are dated in 1989. By the end of 2004, the 1989 bylaws were clearly superseded by either the 2002 or 2004 bylaws.

Certain immediate results will flow from the decision as to which set of bylaws is controlling; whether administration of the church is controlled by membership votes or the decisions of the trustees, whether the church's pastor, Rev. Justice, was properly terminated by the trustees in late 2008,¹ and who controls the use of the church's building.

CBC, Inc. is not a defendant. Rev. Justice is not a party to this suit.

II. Jurisdiction

The First Amendment and art. I, § 4 of the Alaska Constitution guarantee the free exercise of religious belief. The parties agree that the core dispute in this matter (which set of bylaws governs the congregation) is one that may be resolved by the application of neutral principles of law. The court, therefore, concludes it may resolve the dispute without violating the Establishment or Free Exercise Clauses of the U.S. and Alaska constitutions and has jurisdiction to decide the case. *St. Paul Church v. United Methodist Church*, 145 P.3d 541, 553 (Alaska 2006).

III. Preliminary Injunction Standards

This decision addresses the plaintiffs' motion for preliminary injunction. In considering whether to issue a preliminary injunction, the first task is to decide which of two showings must be made by the plaintiffs.

¹ The dispute concerning a membership-driven versus leadership-driven church centers on whether the members are required to vote on major issues facing the church or whether the board of directors (the board of trustees in this congregation) is authorized to make major decisions without a vote of the members. The issue that brought this underlying dispute to court – the termination of Rev. Justice – is talismanic of the differences between the plaintiffs' and defendants' approaches to church governance. The plaintiffs believe that a congregational vote was required to terminate the pastor under the 2002 bylaws. The board of trustees claims it has sole authority to hire and fire the pastor under the 2004 bylaws.

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The showing required to obtain a preliminary injunction depends on the nature of the threatened injury.

[1] If the plaintiff faces the danger of *irreparable harm* **and** if the opposing party is *adequately protected*, **then** we apply a *balance of hardships* approach in which the plaintiff *must raise serious and substantial questions going to the merits of the case*; that is, the issues raised cannot be frivolous or obviously without merit.

[2] If, however, the plaintiffs threatened harm is *less than irreparable* **or** if the opposing party *cannot be adequately protected*, **then** we demand of the plaintiff the heightened standard of a *clear showing of probable success on the merits*.

State, Div. of Elections v. Metcalfe, 110 P.3d 976, 978 (Alaska 2005) (citations and inner quotation marks omitted; brackets, emphasis and re-paragraphing added).

IV. The Plaintiffs Have Not Established Irreparable Harm

The court held a two-day hearing on the motion for preliminary injunction in addition to a hearing on the plaintiff's request for a TRO and a hearing on the defendant's motion to enforce a court order cancelling the church's annual meeting. The plaintiffs offered no evidence on irreparable harm at the preliminary injunction hearing, concentrating instead on which set of bylaws should be declared to be valid. But, the plaintiffs did offer evidence of claimed irreparable harm in affidavits and at the TRO hearing held in this case. The proof of irreparable injury is insufficient.

The irreparable injury claimed centered on the cancellation of church activities by the defendant-trustees, their dispossession of the congregation from the church building, the seizure by the trustee-defendants of church property, financial assets and records and the allegedly unauthorized removal of Rev. Justice from the pastorate. *See* affidavits accompanying November 18, 2008 Motion for Preliminary Injunction. Although there is

serious division in this congregation over how the church should be governed and who should govern it, and although the deeply-held feelings on both sides should not be minimized, the plaintiffs have not established irreparable harm.

Testimony indicated that the church is holding regular worship services, although there is a dispute over whether members who wish to do so should be permitted to use the church building for an alternative worship service led by Rev. Justice on Sunday mornings outside of normal worship hours. The defendant-trustees agreed to keep to the church's schedule and, through an agreement brokered by the court and made an order at the TRO hearing, provided keys to all church officers and members who had access to the building before November 2008, except Rev. Justice.

Whether the defendant-trustees have unlawfully seized the church building or accounts of the church is a matter that can be addressed through damages. Where the plaintiffs have the legal remedy of damages, there is no irreparable harm. *State v. Kluti Kaah Native Village*, 831 P.2d 1270, 1273 n. 5 (Alaska 1992) (accepting definition of "irreparable injury" as one where, *inter alia*, "no certain pecuniary standard exists for the measurement of damages."); *Dunlap v. Bavarian Village Condominiums Ass'n.*, 780 P.2d 1012, 1015 (Alaska 1989) (noting that the *absence* of an adequate remedy at law is a traditional basis for injunctive relief); 11 *Wright & Miller Federal Practice and Procedure*, § 2944 (2008).

The plaintiff-members who wish to be led in worship by Rev. Justice are not suffering irreparable harm: They are free to meet and worship under Rev. Justice's leadership elsewhere if they choose.

Because the plaintiffs have not established irreparable harm, the court need not examine whether the defendant-trustees can be adequately protected and need not balance the hardships between the parties. The second test applies. *Metcalfe*, 110 P.3d at 979 n. 11. Therefore, in order to obtain a preliminary injunction, the plaintiffs must make a “clear showing of probable success on the merits.” *Metcalfe*, *id.* at 978 (emphasis added).

V. The Plaintiffs Have Not Clearly Shown Probable Success on the Merits

a. Facts.

CBC was founded in 1966 by Rev. Patterson. He left the church in 1970-71 to take up a pastorate in Anchorage. CBC was incorporated in 1967. [Patterson]² Whatever its original formal governance structure required, by 1989, the church was incorporated and had bylaws. [Exh. 1]

CBC is affiliated with two national Baptist conventions, neither of which has rules controlling local church polity. Although Baptist tradition strongly favors placing ultimate power in the hands of a local congregation’s membership, local congregations are free to organize themselves how they wish, including ceding governing authority to a board of directors. [Patterson]

The church’s corporate status was allowed to lapse, apparently in 1994. [Exh. 7, attached letter] Rev. Blackburn testified that he was called as pastor in late 2000, began his pastorate at CBC in January 2001 and discovered the lapsed corporate status later that year. He began to take action to re-incorporate the church, but some of the church officers objected to his involvement in the issue. He identified three officers, Joe Haynes,

² Where not otherwise clear from the context, names referred to in brackets are the surnames of witnesses who testified at the preliminary injunction hearing. The court intends no disrespect to litigants or witnesses by omitting honorifics.

(chair of the deacons) Rhoderick Jones, Sr., (treasurer) and Artus Flanagan (trustee) as those who were involved in the re-incorporation effort. He believes they drew up new articles of incorporation, but could not recall the membership approving them before they were filed. Rev. Blackburn recalled that a congregational committee was working on bylaws in 2002, but he could not definitively recall if the new bylaws were adopted in 2002. He thought it more likely than not, that they were adopted. Ms. Susan Jones was chair of a bylaws committee in 2003 and 2004. She could not recall whether the 2002 bylaws had been adopted by the congregation. The plaintiffs have not clearly shown probable success on the merits of any claim that the congregation took action to adopt the 2002 bylaws before December 4, 2004.

The new articles of incorporation were drafted and signed in November-December 2002 and filed with the State on January 13, 2003. The initial incorporators (and signers) of the new articles of incorporation were Artus Flanagan, Rhoderick Jones, Sr. and Joe Haynes. The initial board of directors under the articles were Artus Flanagan, James Young, Jamie Rodgers, Rhoderick Jones, Sr. and Gladys Austin. At least two of the initial incorporators were trustees in 2002-2003. Rev. Blackburn identified Mr. Flanagan as a trustee and Mr. Jones, Sr. as the treasurer. As treasurer, Mr. Jones, Sr. was required to be a trustee under the 1989 bylaws. If the 2002 bylaws were adopted in 2002, then only one of the initial incorporators (Mr. Flanagan) was clearly a trustee. The plaintiffs did not present evidence as to the positions held, if any, by Mr. Rodgers, Mr. Young and Ms. Austin in 2002.

The organizational meeting required under AS 10.20.166 was not immediately held after the 2003 articles of incorporation were filed with the State. A rift began to

develop in the church over the substantive provisions of the bylaws and over the pastor's involvement in the administration of the church. By December 2004, Rev. Blackburn described the church's condition as two churches in one church building.

On December 4, 2004, Rev. Blackburn and Rev. Patterson (acting in his role as Executive Minister of the Alaska Baptist Churches) attended a congregational meeting. According to the minutes of that meeting [Exhibit 5], Rev. Blackburn explained that the trustees of the new corporation had been in office for more than one year, reviewed certain sections of the Alaska Statutes and concluded that neither bylaws nor church officers existed. The membership voted in six new trustees and then recessed, while the newly elected trustees separately adopted the 2002 bylaws. The congregational meeting re-convened and elected other officers. The newly elected trustees signed an amendment to the 2003 articles of incorporation changing Article IV to state that the power to adopt bylaws was vested in the membership of the church. This amendment was filed with the State on December 8, 2004.

On December 21, 2004, a bylaws committee (including two of the plaintiffs in this suit) recommended the draft 2004 bylaws for adoption by the board of trustees named in the 2003 articles of incorporation. That board held an organizational meeting on December 30, 2004, elected five directors (trustees), and six officers and adopted the 2004 bylaws. On January 3, 2005, the new president of the corporation, Nanci Jones, signed a notice of change of officers with the State. Therefore, in December 2004, one group of members purported to elect trustees who, in turn adopted the 2002 bylaws, amended the 2003 articles of incorporation and filed the amendments with the State. Another group (those listed in the 2003 articles of incorporation) held a separate meeting,

adopted the 2004 bylaws, held elections and filed the results of those elections with the State.

On January 25, 2005, the officers elected in the December 30, 2004 organizational meeting called a congregational meeting to be held February 5, 2005. [Exh. E] The purpose of that meeting was to confirm the election of the board of trustees elected at the December 30, 2004 organizational meeting and to ratify all decisions, elections and appointments of the December 30th board of directors, and to terminate Rev. Blackburn as pastor. [Exh. E] The meeting was not held, but balloting was held at the church on February 6, 2005 and the members voted on three questions, (1) to confirm that CBC, Inc. would act under AS 10.20, (2) “to recognize the duties of the Board of Trustees” as outlined in AS 10.20 and/or the bylaws of CBC, Inc., and (3) to ratify and approve the decision of the board of trustees to terminate Rev. Blackburn. [March 2, 2009 Aff. of Nanci Jones correcting her February 27, 2009 testimony] The February 6, 2005 ballot questions were overwhelmingly approved by those who voted, but, in the court’s opinion, the ballot questions did not clearly address the purposes of the special meeting as set out in the January 26, 2005 notice.

Although the February 2005 balloting does not establish that the church membership ratified and confirmed the adoption of the 2004 bylaws and the December 30, 2004 election of church officers, there is some evidence that the membership acted at least *partially* under the 2004 bylaws after February 2005. On December 10, 2005, at its first annual meeting following the purported adoption of both the 2002 and 2004 bylaws, the congregation elected the following positions as *clearly* required by the 2004 bylaws:

Eleven trustees to staggered terms of either two or three years
(2002 bylaws provide for 5 trustees and do not mention length of term.)

Corporate President (no position under 2002 bylaws)

Corporate Vice-President (no position under 2002 bylaws)

Corporate Secretary (2002 bylaws have a secretary/clerk as a hired position appointed by the pastor)

Church Historian

[See Exh. B, p. 8, (art. III, §§ 7 & 8); p. 9 (art. IV, §§ 1-4); p. 17 (art. VIII, § 3)]

The congregation also elected a youth director and music ministry/president as *clearly* required by the *2002 bylaws*. The remaining elected positions either appear to have counterparts in both sets of bylaws or are not mentioned in either set of bylaws. One position, the Baptist Training Union chair, is listed in both sets of bylaws but was not elected in 2005. Some of the elected positions are listed under the heading “Auxiliary Departments.” “Auxiliary departments” is a term used in the 2002 bylaws. That term does not appear in the 2004 bylaws. However, some of the auxiliary departments listed in the minutes of the December 2005 meeting, are referred to as “standing committees” in the 2004 bylaws.

There was evidence that Rev. Blackburn’s termination in 2005 was voted upon by the membership. This decision was not made solely by the trustees as provided under the 2004 bylaws. On the other hand, trustee Nanci Jones testified that submission of Rev. Blackburn’s termination to the congregation was done as a courtesy because of the distress the congregation was going through at the time.

Also submitted to the court were minutes of a February 9, 2008 business meeting and the February 23, 2008 annual business meeting. [Exh. G & H] The February 9th minutes review the slate of candidates for 2008 and address *only* the corporate officers,

eight nominees to the board of trustees, three nominees to the board of deacons and the church clerk. The corporate officers and the church clerk are elected positions mentioned only in the 2004 bylaws. The eight trustees up for election likewise indicates that the church was following the 2004 bylaws, which call for eleven trustees while the 2002 bylaws call for only five. The 2008 minutes do not address other positions required to be annually elected under the 2004 bylaws. Concern was, however, noted about the “lack of no [sic] church officers.” [Exh. G] The February 23rd annual meeting minutes reflect the substitution of individuals for two positions listed in the February 9th minutes. These substitutions were made to avoid the dual service of trustees as corporate officers. Dual service is prohibited only in the 2004 bylaws. [Exh. H & B at p.20]

Furthermore, the fact that there was a nominating committee and that it reported a slate of candidates to the congregation before the February 2008 annual meeting is further evidence that the church was partially operating under the 2004 bylaws: Only the 2004 bylaws require this procedure. [Exh B, p. 17, art. IX §§ 2 & 3] The nominating committee did not report on the dates required, but the nomination procedure required under the 2004 bylaws was used. Neither the 1989 nor the 2002 bylaws provides for a nominating committee. Under those bylaws nominations appear to be required from the floor of the annual meeting. [Exh. 1, p. 7, § 1; Exh. A, p. 6]

b. Legal Analysis

Given the evidence recited above, the court cannot conclude that the plaintiffs have made a *clear* showing of probable success on the merits justifying the issuance of a preliminary injunction requiring the church to administer itself under the 2002 bylaws. The evidence indicates the church may have utilized portions of both sets of bylaws. But,

the trustees and corporate officers were clearly elected in 2005 and 2008 under the 2004 bylaws.

When CBC was dissolved by the State in 1994, it ceased to exist as a corporation and its 1989 bylaws ceased to have *legal* effect. However, the church continued to function as an unincorporated entity and was free to follow the 1989 bylaws. Other than testimony indicating the church was membership-driven (see footnote 1), there was little evidence presented at the hearings as to how the church specifically governed itself from the time its corporate status was dissolved in 1994 until 2001, when Rev. Blackburn realized that the church's corporation had been dissolved. Nevertheless, it appears the church continued to use the member-driven 1989 bylaws. This inference flows logically from the fact that the church continued to function after its 1994 dissolution and from the fact that no one realized for seven years that the church had lost its corporate status. Rev. Blackburn was called to the pulpit of CBC through a membership vote, as required by the 1989 bylaws. It appears the church had members recognized as legitimately-established deacons and trustees while Rev. Blackburn was at the church. Trustees especially could only be recognized as such if the members had elected them under the former legal structure of the corporation embodied in the 1989 bylaws. [Exh. 1, p. 7 "One third (1/3) of the trustees, except the financial secretary and the treasurer shall be elected . . ."]]

Rev. Blackburn referred to two of the 2003 incorporators (Artus Flanagan and Rhoderick Jones, Sr.) as treasurer and trustee and to Mr. Haynes as a deacon during Rev. Blackburn's tenure. Under the 1989 bylaws, the treasurer was required to be on the trustee board. [Exh. 1, p. 7] There does not appear to be a dispute that these individuals were accepted by the congregation in 2002 to hold the positions ascribed to them by Rev.

Blackburn. Therefore, two of the five “initial board of trustees” and two of the three “initial incorporators” listed in the 2003 articles of incorporation were trustees.

Under the 1989 bylaws, it was the duty of the trustees to hold the church property in trust and to take all necessary action for its protection, management and upkeep, except the trustees were prohibited from mortgaging, leasing or transferring property. The trustees were also tasked to “perform such other duties as are imposed upon it by the Church and State.” [Exh. 1, pp.7-8] The 2002 bylaws contain the same provisions ([Exh. B, pp.6-7]), but there is no clear evidence presented as to whether the 2002 bylaws were ever adopted, as concluded above. Since it appears the church was operating under bylaws in 2002 and 2003 -- and since there is no clear evidence that the 2002 bylaws were actually adopted in 2002 -- the court must conclude that the church continued to operate informally (and by consensus) under the 1989 bylaws from 1994 to December 2004, when either the 2002 or the 2004 bylaws were purportedly adopted.

Under the 1989 bylaws, when confronted with the fact that the CBC’s corporation had been dissolved, at least Messrs. Flanagan and Jones, Sr. were trustees who were authorized under the 1989 bylaws to take action to protect the church by re-incorporating it. The positions held, if any, by the other “original board” members listed in the 2003 articles of incorporation cannot be determined on the evidence presented. However, for purposes of obtaining a preliminary injunction, the burden is on the plaintiffs to clearly show both (1) that the board and incorporators listed in the 2003 articles needed the express authority of the membership to re-incorporate the church and (2) acted without authority from the membership, as alleged by Rev. Blackburn. These facts have not been clearly established.

Although Rev. Blackburn felt the 2003 incorporators were required to bring the issue of re-incorporating (and the terms of the 2003 articles) to the membership for a vote, this conclusion is questionable under the 1989 bylaws. The 1989 bylaws empower the trustees to take action to protect church property and to carry out and perform the duties placed on the church by the State: Those duties would reasonably include maintaining (or renewing) the church's corporate status. Therefore, a clear showing has not been made that the two trustees who signed the 2003 articles of incorporation acted wrongfully and without congregational authority simply because an express vote on re-incorporation was not obtained. Nor has it been shown whether the initial trustees listed in the 2003 articles were in fact recognized as trustees at that time.

There is an issue with respect to whether Mr. Haynes was authorized by the congregation to be an incorporator under the 1989 bylaws. He was identified as a deacon, not a trustee, at the time of the 2003 incorporation. AS 10.20.146 requires a minimum of three incorporators. But, state law does not prohibit Mr. Haynes from being an incorporator and the issuance of the certificate of incorporation in January 2003 "is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated." AS 10.20.161. Therefore, based on the evidence to date -- for the purposes of the "clear showing" required for the issuance of a preliminary injunction -- there is insufficient evidence from which to conclude that the plaintiffs will probably succeed on the merits of their allegation that the initial incorporators acted without authority to re-incorporate the church. It appears that at least two of the three initial incorporators had authority to act under the 1989 bylaws.

The next issue concerning authority is whether the authority of the initial board of trustees listed in the January 2003 articles expired in January 2004 after that board failed to adopt bylaws and hold the organizational meeting required under AS 10.20.166. If that were the case, the initial board would have lacked legal authority to adopt bylaws in December 2004. Again, there has been no clear showing by the plaintiffs of probable success on the merits of this claim.

AS 10.20.091 provides that the directors named in the articles of incorporation “hold office until the first annual election of directors or for the period specified in the articles of incorporation. If no term of office is specified, a director’s term is one year.” An argument can be made that this statute means the first board of directors is limited to a one year term in the absence of provisions to the contrary in the articles. The 2003 articles, however, specify a term of office for the first board. Article VI provides:

The initial board of Trustees shall consist of at least five (5) members. The names and address of the persons who shall serve as initial Trustees [and] *who shall serve until their successors have been elected or qualified*, are as follows:

[names and addresses listed]

[Exh 2, p.3 (emphasis added)] The initial trustees were not limited to the statutory term of one year under AS 10.20.091. The term of office for the initial trustees was from the date of incorporation “until their successors have been elected or qualified.” In light of AS 10.20.166 -- which requires an organizational meeting to be held after the issuance of the certificate of incorporation -- it would be unreasonable to read Article VI to permit an indefinite or lifetime term for an initial board. Here, however, the initial trustees served from January 3, 2003 to December 30, 2004, just short of two years. This period is not an unreasonable amount of time. Furthermore, although AS 10.20.166 requires an

organizational meeting to be held, it does not require the meeting to be held within a specified time. AS 10.20.091 provides that the initial directors will hold office “until the first annual election,” but, the first annual election cannot be held until the organizational meeting takes place: Annual elections must be held in accordance with bylaws (AS 10.20.096) and bylaws must first be adopted at an organizational meeting. *See* AS 10.20.091. Thus, the reference in § .091 to the “first annual election” cannot be read to require the organizational meeting under § .161 be held within one year of the issuance of the articles of incorporation. AS 10.20.166 merely requires that an organizational meeting be held within a reasonable time after the certificate is issued. The plaintiffs have not clearly shown probable success on the merits of their claim that the initial board of trustees was without legal authority to adopt bylaws as of December 2004.

Also related to the authority of the defendant-trustees is the plaintiffs’ claim that, as of 2008, the terms of the trustees elected in 2005 had expired, leaving them without power to oust Rev. Justice in late 2008. Again, there is no clear showing of probable success on the merits of this claim. The 2003 initial trustee board held its organizational meeting in December 2004. Five new trustees were elected. [Exh. D, p.2] The first annual meeting following adoption of the 2004 bylaws was held in December 2005. Eleven trustees were elected at that meeting, apparently to either two or three-year staggered terms. [Exh.F] There were five trustees assigned two-year terms expiring in December 2007. The remaining six trustees’ terms expired in December 2008.

The annual meeting for December 2007 was postponed until February 2008. A business meeting was held on February 9, 2008 to approve nominations of four corporate officers, eight trustees, three deacons and a church clerk to be voted on at the annual

meeting. [Exh. G] The annual meeting was held on February 23, 2008. [Exh. H] The minutes from this latter meeting do not expressly state that trustees were elected. However, the minutes indicate that concerns were raised about two individuals serving in dual roles as corporate officers and trustees. Dual service as a trustee and corporate officer is prohibited under the 2004 bylaws, as noted above. As a result, the congregation substituted and voted on new individuals to resolve the dual service problem.

Although the minutes are deficient in failing to expressly note that trustees were elected at the 2008 meeting, on balance, Exhibits G and H strongly suggest that the new trustees were in fact elected. Comparing Exhibits F and G, it appears that five of the seven trustees³ elected at the February 23, 2008 meeting (Flanagan, Davis, Young, Rhodes and Virgie King) were originally three-year term trustees who still had an additional year to serve on their original terms. Thus, as of February 2008, it appears the board of trustees had at least seven members who were slated to be in office from at least calendar year 2008 through calendar year 2010.⁴ All of the defendant-trustees appear to have been re-elected to office in February 2008. Thus, if the actions taken by the defendant-trustees in late 2008 were *ultra vires*, it was not because their terms of office had expired.

The plaintiffs also claim that, even assuming the 2004 bylaws were properly adopted, the trustees violated those bylaws on November 10, 2008 when, acting without a

³ During the annual meeting, one of the nominees for trustee (Nanci Jones) was elected to the corporate secretary's position to resolve one of the dual service issues. No replacement for her position on the board of trustees is addressed in the minutes. Thus, it appears only seven trustees were elected rather than the originally intended eight.

⁴ Under the 2004 bylaws, after the initial election, all trustees serve three year terms. [Exh. B, p. 8 (art. III, § 8)] Under the 2002 bylaws, there is no stated term of office for trustees.
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quorum, the trustees voted to terminate Rev. Justice's employment.⁵ The evidence shows that a church leadership meeting was called and held on November 10, 2008 to discuss whether Rev. Justice had made improvements to his performance as pastor as demanded in a letter sent to him in August 2008. [11/26/08 Exhibit I] During the November meeting, a vote was taken on whether Rev. Justice should be terminated. One of the plaintiff-trustees (Virgie King) reminded the group that a termination decision was the responsibility of the trustees [11/26/08 Exhibit I, p.1], thus indicating that the plaintiff-trustee believed the church was acting under the 2004 bylaws on that date. Six trustees and Deacon Haynes went into a separate session. The minutes of that private session were submitted as 10/26/08 Exhibit J, p.1. The minutes name the six trustees as Young, Flanagan, Jeffrey, Davis, Susan Jones and Virgie King. The leaders voted 5 to 2 to terminate Rev. Justice's employment. The court assumes the two "no" votes were Susan Jones and Virgie King because they are plaintiffs in this case. The remaining five individuals are the named defendants in this suit and the court assumes they voted to terminate the pastor's employment. The court finds that there has not been a clear showing of the plaintiffs' probable success on the merits of their claim that this vote was unauthorized for lack of a trustee quorum.

First, as noted above, the leadership group (including the two plaintiff-trustees) was applying the 2004 bylaws. Under the 2004 bylaws, "[t]he Board of Trustees, upon consultation with the Council of Deacons, shall have sole authority to remove officers⁶ of

⁵ Evidence and argument on this issue was presented at the TRO hearing held on November 26, 2008. The exhibits attached to the Defendants' Opposition to Plaintiffs Motion for TRO (filed November 26, 2008) and are referred to in the text as [11/26/08 Exh. ___] to distinguish them from similarly marked exhibits entered into evidence at the February 2009 preliminary injunction hearing.

⁶ The term "officer" is defined to include the pastor. [Exhibit B, p.22 (art. XVII, § 6)]
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this Church when in its judgment removal is in the best interest of [the] Church.” [Exhibit B, p. 7 (art.III, § 5)]. The affidavits accompanying the plaintiffs’ motion for preliminary injunction state that there were eight trustees for calendar year 2008. For purposes of this portion of the decision, the court accepts that number as correct.⁷ Under the 2004 bylaws, seven of eleven trustees are required for a quorum to transact business, or approximately two-thirds. [Exh. B, p. 8 (art. III, § 9)] But, there were only eight trustees in 2008. Two-thirds of eight is six (rounded): Six trustees constituted a quorum under the 2004 bylaws. There were six trustees at the November 10, 2008 meeting.⁸ Thus, the trustees had a quorum. Deacon Haynes should not have voted at the meeting because the “sole authority” to remove a pastor under the 2004 bylaws resides in the board of trustees. [Exh. B, p.7 (art. III, § 5)] The trustees voted 4 to 2 (a 2/3rds majority) to terminate the pastor. The trustees acted in accordance with the quorum requirements of the 2004 bylaws.

The 2004 bylaws also require the Council of Deacons to be consulted before an officer is terminated. [Exh. B., p.7 (art. III, § 5)]. The 2004 bylaws require seven deacons, although the bylaws state that the number may vary. [Exh. B, p.14 (art. V, § 17)] Deacons serve unspecified terms. [Exh. B., p.10 (art. IV, § 11)] However, three

⁷ As noted elsewhere in this decision, it appears to the court that there were only seven trustees in 2008. The plaintiffs’ affidavits include Ms. Juanita Johnson as a trustee. Ms. Johnson was a two-year term trustee elected in December 2005. [Exh. F] Her term expired in December 2007. The December 2007 annual meeting was postponed until February 23, 2008. There is no evidence she was re-elected at that meeting. [Exh. G and H]

⁸ The plaintiffs allege that two of the trustees are not qualified to be trustees because they do not own property in the borough as required by the 2004 bylaws. That requirement may be waived. [Exh. B., p.7 (art. III, § 2)] The names of those trustees were not mentioned in testimony and there was no evidence as to whether the requirement was waived. Therefore, a clear showing of probable success on the merits of this point has not been made at this time.

deacons elected in 2005 were re-elected in 2008.⁹ [Compare 2005 list of elected deacons on Exh. F, p.2 with 2008 list of elected deacons on Exh. G, p.1] It is clear that Deacon Haynes was consulted about the pastor's termination. Deacon Taylor was consulted about the pastor's performance and was present when the demand letter to Rev. Justice was drafted, but he testified that he moved permanently out of state before the November 2008 meeting took place. [11/26/08 Exh. D & E] Deacon Tillery was noted as an inactive deacon. [11/26/08 Exh. D, p.2] It is unclear whether the other deacons listed on Exhibit F were still deacons in 2008 or whether there were other deacons serving unspecified terms. The Council of Deacons required under the 2004 bylaws is also confusingly organized: The council is described as "consisting" of the chairman and secretary of the deacons, yet a majority vote of the council is required to remove deacons from office for cause. [Exh. B, p. 15, §§ 19 and 20] It appears that some consultation with deacons occurred before Rev. Justice's employment was terminated. It is unclear whether the required level of consultation was achieved. There has been no clear showing of probable success on the merits on this claim at this time.

Conclusion

The plaintiffs have not made a clear showing of probable success on the merits. The motion for preliminary injunction is denied. The evidence indicates the church was operating under the 2004 bylaws in 2008 at least as to the election of trustees and corporate officers. At this point, under the 2004 bylaws, there are four open trustee seats

⁹ The 2002 bylaws require deacons to be initially elected and thereafter reappointed by the pastor annually. [Exh. A., p.5] The 2004 bylaws appear to require deacons to be initially elected to unspecified terms, although a firm conclusion cannot be drawn on that point without interpreting Acts 6: 1-7, a portion of New Testament Christian scripture. The interpretation of scripture is outside of the court's jurisdiction. The 1989 bylaws are the only governing document that requires deacons to be re-elected annually after their initial selection. Nevertheless, for the purposes of this argument, the plaintiffs ask the court to assume the 2004 bylaws apply.

and three open corporate officer seats (President, Vice-President and Secretary). It is unclear whether the church clerk serves one year or five years. [*Compare* Exh. A, p. 10 (art. IV § 14) *with* Exh. A, p. 11 (art. IV, § 17)]

The court cancelled the annual meeting that was scheduled for December 2008. That meeting may now be scheduled under the 2004 bylaw procedures. If a slate of officers was not prepared, the 2009 nominating committee elected on October 10, 2008 [Exh. 6, p. 2] may meet to nominate open corporate officer positions, open trustee seats and other seats open under Articles VI, VII and VIII of the 2004 bylaws. The church must comply with the election procedures of Article II of the 2004 bylaws. The court retains jurisdiction to resolve eligibility or election disputes under the 2004 bylaws if the parties need the court's assistance. Election results and the continuing authority of elected officers remain subject to the provisions of any findings entered after trial in this matter.

Dated this 6th day of April, 2009.

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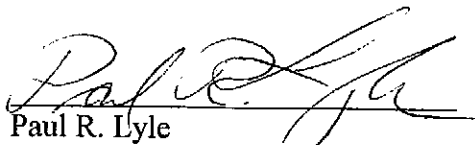
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Superior Court Judge