

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

ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION

The plaintiffs have moved for reconsideration alleging the court misconceived facts in four numbered areas. The court's order on each of the plaintiffs' claims follows:

1. The plaintiffs submit that the 2004 bylaws require seven trustees to be present to establish a quorum even where there are fewer than the required eleven trustees serving. No case law or other precedent is cited in support of the plaintiffs' reading of the bylaws. It is unreasonable to conclude that there must be a seven-member quorum for trustees when there are less than eleven trustees in office. Reconsideration is denied.
2. This assertion of error is in two parts. **First**, the plaintiffs submit that the court erred in concluding there are currently four trustee positions vacant. Exhibit G and H, read together, indicate that there were seven trustees elected to office on February 23, 2008 to serve a three-year term (2008, 2009 and 2010). The seven trustees elected were Flanagan, Davis, Jeffery, S. Young, Rhodes, S. Jones and V.

King. That leaves four open trustee seats. The church leadership may have mistakenly nominated more trustees than were required under the bylaws. Indeed, comparing Exhibits G and H, it appears five of the trustees elected to three year terms in 2008 still had one year left to serve on their original term in office. (These trustees are Flanagan, Davis, S. Young, Rhodes and V. King). The chair of the nominating committee who proposed the 2008 slate of trustees to the congregation is one of the plaintiff-trustees, Virgie King. The congregation voted on these trustees and thus ratified the nominations made. Reconsideration on this issue is denied.

Second, the plaintiffs assert that the court overlooked the fact that one of the trustees (Rhodes) is not a borough property owner as required in the 2004 bylaws. The burden is on the plaintiffs to make a clear showing that Rhodes is not a borough property owner. In the court's opinion, a clear showing on that issue was not made: Rhodes was not called to testify. No one from the borough government was called to testify. Reconsideration on this point is thus denied.

3. The plaintiffs submit that the court applied the wrong section of the 2004 bylaws in determining whether a clear showing was made that the defendant-trustees violated the bylaws in terminating Pastor Justice. See Decision on Motion for Preliminary Injunction at pp. 17-18. The plaintiffs are correct and reconsideration is granted on this point: The court should have applied art. V, § 8 of the 2004 bylaws. The result, however, does not change for the purpose of deciding whether a preliminary injunction should issue.

Article V, § 8 provides, in relevant part:

Upon a written recommendation of the Council of Deacons . . . the Board of Trustees shall have the authority to terminate the Pastor's employment and dismiss him/or her as pastor if the Board of Trustees determines that such termination is in the best interest of the Church.

[Exh. B, p.13] The second paragraph of the November 10, 2008 letter terminating the pastor states: "[T]he Council of Deacons is hereby recommending to the Board of trustees to terminate your contract as Senior Pastor . . . effective immediately." [11/26/08 Exh. J at p.2] The third paragraph of the same letter terminates the pastor. The letter was signed by the chair of the Council of Deacons (Haynes) and the chair of the trustees (Flanagan). Haynes attended the trustees' meeting where the decision to terminate the pastor was made. The Council of Deacons' written recommendation to the trustees and the termination were effected in one letter instead of two letters. This is sloppy procedure, but not prohibited by the bylaws. For the purpose of the preliminary injunction, the court must assume – but does not decide – that Deacon Haynes acted with authority from the Council of Deacons because no evidence was presented by the parties on this point.

It may be that the Deacon Chair Haynes acted without authority from the Counsel of Deacons in signing the recommendation/termination letter and the plaintiffs might be able to prove that point at trial. Indeed, the court refused to convert this motion for preliminary injunction into a final judgment on the merits because the facts in this case are not fully developed. For the sole purpose of the preliminary injunction, however, the burden is on the plaintiffs to make a *clear* showing of probable success on the merits. The plaintiffs made *no showing* that

Haynes acted without the consent of the other remaining deacons and made no showing as to whom the remaining deacons are or if there are any remaining deacons.¹ Therefore, on the face of the recommendation/termination letter, it appears that the deacons and trustees complied with art. V, § 8. Although reconsideration is granted, the plaintiffs made no clear showing that Haynes acted without authority when he signed the recommendation/termination letter.

4. The plaintiffs next assert that there is no evidence that the February 2008 elections took place. The court noted that there was no express statement to that effect in the February 23, 2008 minutes. However, as the court noted, Exhibits G and H, taken together, strongly suggest that the vote was taken. The court has reviewed those exhibits again and confirms its original finding that the exhibits, on balance, strongly support the conclusion that the vote was taken. Furthermore, the burden in this preliminary injunction motion is on the plaintiffs to make a clear showing of probable success on the merits. There was no testimony that this vote did not occur; the plaintiffs have not met their burden on this point. Reconsideration is denied.

Dated this 14th day of May, 2009.

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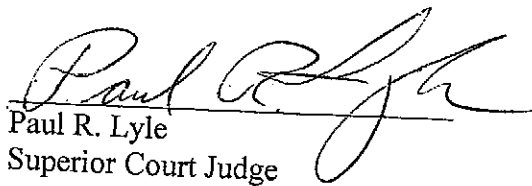
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Paul R. Lyle
Superior Court Judge

¹ As the court noted in its decision, there were five deacons elected in 2005. [Exh. F] Three of those deacons, Haynes (the chair), W. Smith and George Taylor were re-elected in February 2008. [Exh. G] The status of the remaining 2005 deacons is uncertain except for Tillery, who is listed as inactive in 11/26/08 Exh. D. One of the 2008 deacons (Taylor) moved permanently out of state before November 2008.