

02-09-00405-CV

RECEIVED
COURT OF APPEALS
SECOND DISTRICT
2010 MAR -3 PM 4:53
FORT WORTH, TEXAS
DEBRA SPISAK, CLERK

COURT OF APPEALS

SECOND DISTRICT OF TEXAS AT FORT WORTH

**In re Franklin Salazar; Jo Ann Patton; Walter Verdin, III;
Rod Barber; Chad Bates; Jack Leo Iker;
Corporation for the Episcopal Diocese of Fort Worth;
and The Episcopal Diocese of Fort Worth,**

Relators

**Original proceeding from 141st Judicial District Court,
Tarrant County (No. 141-237105-09),
Hon. John P. Chupp presiding**

**REPLY BRIEF,
filed by the Real Parties in Interest**

**Jonathan D.F. Nelson
SBN: 14900700
1404 West Abram St.
Arlington, TX 76013
817-261-2222
817-861-4685 fax**

**Kathleen Wells
SBN: 02317300
P.O. Box 101174
Fort Worth, TX 76185
817-332-2580
817-332-4740 fax**

**Frank Gilstrap
SBN: 07964000
Anne Michels
SBN: 18863600
Hill Gilstrap, PC
1400 W. Abram St.
Arlington, TX 76013
817-261-2222
817-861-4685 fax**

ATTORNEYS FOR THE REAL PARTIES IN INTEREST

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
INDEX OF AUTHORITIES.....	ii
ARGUMENT	1
1. All parties are before the court.....	2
2. Texas courts follow the deference rule.....	2
3. The Bishop was replaced in accordance with the Church Canons.	3
4. The Trustees were replaced in accordance with the diocesan documents.....	6
5. The General Convention, not the diocesan bishop, stands at the top of the hierarchy.....	9
CERTIFICATE OF SERVICE.....	14

INDEX OF AUTHORITIES

Cases

<i>Alexander v. Allen</i> , No. 14-04-01110-CV, 2005 WL 3369884, (Tex.App.-- Houston [14th Dist.] Dec. 13, 2005, no pet.)	7
<i>All Saints Parish Waccamaw v. The Protestant Episcopal Church and the Diocese of South Carolina</i> , 385 S.C. 428, 685 S.E.2d 163 (2009), petition for cert. filed, No. 09-986 (Feb. 12, 2010).....	1
<i>Chen v. Tseng</i> , No. 01-02-01005-CV, 2004 WL 35989, (Tex.App.-- Houston [1st Dist.] Jan. 8, 2004, no pet.).....	3
<i>Cherry Valley Church of Christ/Luther Clemons v. Foster</i> , No. 05-00-10798-CV, 2002 WL 10545, (Tex.App.-- Dallas Jan. 4, 2002, no pet.).....	3, 6, 7
<i>Dean v. Alford</i> , 994 S.W.2d 392 (Tex.App.--Fort Worth 1999, no pet.).....	2
<i>Diocese of Northwest Texas v. Masterson</i> , No. A-07-0237-C (51st Dist. Court Tom Green County, Texas, Oct. 8, 2009)	12
<i>Diocese of San Joaquin v. Schofield</i> , No. 08-ECG01425 (Cal.Super.Ct., Jul. 21, 2009).....	12
<i>Fowler v. Bailey</i> , 1992 OK 160, 844 P.2d 141 (1992).....	8
<i>Greanias v. Isaiah</i> , No. 01-04-00786-CV, 2006 WL 1550009, (Tex.App.-- Houston [1st Dist.] Jun. 8, 2006, no pet.).....	3, 6
<i>Hawkins v. Friendship Missionary Baptist Church</i> , 69 S.W.3d 756 (Tex.App.--Houston [14th Dist.] 2002, no pet.).....	3
<i>Huber v. Jackson</i> , 175 Cal.App.4th 663 (2009), cert. denied, 2010 WL 680538 (March 1, 2010)	12

<i>Kaminsky, In re</i> 295 N.Y.S. 989 (Sup.Ct. 1937).....	8
<i>Libhart v. Copeland,</i> 949 S.W.2d 783 (Tex.App.--Waco 1997, no pet.)	3
<i>Md. & Va. Churches v. Sharpsburg Church,</i> 396 U.S. 367 (1970).....	12
<i>Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.,</i> 552 S.W.2d 865 (Tex.Civ.App.--Texarkana 1977, no writ)	3
<i>Serbian Eastern Orthodox Diocese v. Milivojevich,</i> 60 Ill.2d 477, 328 N.E.2d 268 (1975), rev'd 426 U.S. 696 (1976).....	4, 5
<i>Serbian Eastern Orthodox Church v. Milivojevich,</i> 426 U.S. 696 (1976).....	1, 9-11
<i>Serbian Eastern Orthodox Diocese v. Milivojevich,</i> 74 Ill.2d 574, 387 N.E.2d 285, (1979).....	13
<i>Smith v. North Tex. Dist. Council of Assemblies of God,</i> No. 2-05-425-CV, 2006 WL 3438077 (Tex.App.-- Fort Worth Nov. 30, 2006, no pet.)	3
<i>Tran v. Fiorenza,</i> 934 S.W.2d 740 (Tex.App.--Houston [1st Dist.] 1996, no pet.)	8
<i>Watson v. Jones,</i> 80 U.S. 679 (1872).....	8
<i>Westbrook v. Penley,</i> 231 S.W.3d 389 (Tex.2007)	3, 8
<i>Wolf v. Jones,</i> 443 U.S. 595 (1979).....	13

Other Authorities

BLACK'S LAW DICTIONARY 418 (5th ed.).....	9
BLACK'S LAW DICTIONARY 615 (9th ed.).....	9
The New Shorter Oxford English Dictionary (1993), Vol. 1, p.838	9

ARGUMENT

We say that the Episcopal Church is hierarchical¹ and that ultimate authority lies with its General Convention.² Now, for the first time, the defendants are saying that the Church is “regional rather than national” and that ultimate authority lies with the diocesan bishop, not the General Convention.³ They try to distinguish *Serbian Eastern Orthodox Church v. Milivojevich*, 426 U.S. 696 (1976), but the church in that case is quite similar in structure to The Episcopal Church. *See infra*, pp.9-11.

The defendants also contend that they were not removed as Bishop and Trustees in accordance with church documents. *See Relators’ Reply*, pp.1, 19-21. That is incorrect. *See infra*, pp.3-8. Moreover, the courts must defer to The Episcopal Church on those issues because, even if “neutral principles” apply, the identities of the Bishop and the Trustees are ecclesiastical questions.⁴

¹ *See Response*, pp.33-34.

² *Id.*, p.2.

³ *See Relators’ Reply*, pp.13-14.

⁴ *See Petition*, p.10 (arguing that under the “neutral principles” standard “[c]ourts must accept as final and binding the decision of the highest religious judicatories only as to religious law, principle, doctrine, discipline, custom, or administration.”) (citing *All Saints Parish Waccamaw v. The Protestant Episcopal Church and the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009), *petition for cert. filed*, No. 09-986 (Feb. 12, 2010)).

1. All parties are before the court.

The defendants argue that, unless their Rule 12 motion is granted, a judgment “may never bind anyone locally” because the “new diocese is not a party.” Relators’ Reply, p.4.⁵ But they cite no authority allowing a trial court to grant a Rule 12 motion on account of a missing party.

In any event, all parties are before the trial court. The “old diocese”⁶ has sued the “new diocese.”⁷ The “old diocese” has also sued Iker and the old trustees, who still claim to be Bishop and Trustees, even though they have left The Episcopal Church.⁸ The defendants, in turn, have sued Bishop Gulick and the new trustees. *See Response*, p.16 & n.62.

2. Texas courts follow the deference rule.

The defendants cite eight cases in which the courts have “treated the neutral-principles approach as a given.” Relators’ Reply, pp.7-8. But in every case, the “neutral principles” language was dicta. In four cases, the courts expressly held that the dispute was ecclesiastical in nature.⁹ Two others were tort

⁵ *See also* Petition, p.14.

⁶ The Episcopal Diocese of Fort Worth.

⁷ The Anglican Province of the Southern Cone’s Diocese of Fort Worth, holding itself out as “The Episcopal Diocese of Fort Worth.”

⁸ *See Amended Petition*, pp.2-3 ¶¶ 5-6 (Relators’ Record, Tab 2.).

⁹ *See Dean v. Alford*, 994 S.W.2d 392, 395 (Tex.App.--Fort Worth 1999, no pet.) (“the issue of a pastor’s ouster is ecclesiastical in nature.”); *Hawkins v. Friendship Missionary Baptist*

claims against pastors, which did not involve control of church property.¹⁰ This leaves only *Presbytery of the Covenant*, which we discussed,¹¹ and *Chen v. Tseng*, where the parties agreed that “neutral principles” would apply.¹²

3. The Bishop was replaced in accordance with the Church Canons.

The defendants concede that The Episcopal Church had the power to remove Iker.¹³ Thus, a Review Committee certified that Iker had “abandoned the Communion.”¹⁴ The Presiding Bishop then issued an “Inhibition” ordering him to “cease from exercising the gifts of ordination.”¹⁵ This was in accord with the

Church, 69 S.W.3d 756, 759 (Tex.App.--Houston [14th Dist.] 2002, no pet.) (“this dispute involves an ecclesiastical matter”); *Smith v. N. Tex. Dist. Council of Assemblies of God*, No. 2-05-425-CV, 2006 WL 3438077, at *3 (Tex.App.--Fort Worth Nov. 30, 2006, no pet.) (“this was a purely ecclesiastical matter”); *Cherry Valley Church of Christ/Luther Clemons v. Foster*, No. 05-00-10798-CV, 2002 WL 10545, at *4 (Tex.App.--Dallas Jan. 4, 2002, no pet.) (not designated for publication) (discussed at Response, p.41-42).

¹⁰ See *Westbrook v. Penley*, 231 S.W.3d 389, 400-402 (Tex.2007) (refusing to apply “neutral principles” to a professional negligence claim against a pastor, who also was a licensed counselor); *Libhart v. Copeland*, 949 S.W.2d 783, 793 (Tex.App.--Waco 1997, no pet.) (allowing recovery under fraud exception to deference rule).

¹¹ See Response, pp.40-41 (discussing *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 870 (Tex.Civ.App.--Texarkana 1977, no writ)).

¹² See *Chen v. Tseng*, No. 01-02-01005-CV, 2004 WL 35989, at *6 (Tex.App.--Houston [1st Dist.] Jan. 8, 2004, no pet.). Cf *Greanias v. Isaiah*, No. 01-04-00786-CV, 2006 WL 1550009, at *9 (Tex.App.--Houston [1st Dist.] Jun. 8, 2006, no pet.) (distinguishing *Chen*).

¹³ See Relators’ Reply, pp.14-15 (conceding that “certain bodies within [the Episcopal Church] have the power to remove a bishop.”) (citing Canon IV.5.2 (144) (dealing with trial of bishop for misconduct) & Canon IV.9.1 (154) (dealing with removal of bishop for “abandonment of communion”).

¹⁴ See Response, p.12 (quoting Henderson letter, p.1 (329)).

¹⁵ See Inhibition, at Buchanan aff. (Ex.5) (331).

Church Canons.¹⁶ Next, after receiving Iker's written response, the Presiding Bishop, with the advice and consent of the Advisory Council, declared that Iker had voluntarily renounced his ordained ministry and that he was "therefore, removed from the Ordained Ministry of [the] Church and released from the obligations of Ministerial offices."¹⁷ This accorded with a Canon authorizing the Presiding Bishop, with the advice and consent of the Advisory Counsel, to declare that a bishop has renounced his position in writing.¹⁸ But the defendants erroneously argue that Iker was removed for "abandonment of communion," under a Canon that requires a majority vote of the House of Bishops.¹⁹

Certainly, the courts must defer to the Church on this point. Bishop Dionisije made similar arguments in *Milivojevich*. He said that the Serbian Eastern Orthodox Church violated its own penal code in removing him as Bishop. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 60 Ill.2d 477, 328 N.E.2d 268, 279 (1975), *rev'd* 426 U.S. 696 (1976).

Under those penal code provisions, "the Holy Assembly could not transfer Bishop Dionisije . . . without a previous hearing, investigation, and

¹⁶ See Canon IV.9.1 (294).

¹⁷ Buchanan aff., p.3 (130) (*quoting* Certificate of Renunciation, at Buchanan aff. Ex. 7) (334).

¹⁸ See Canon III.12.7(a) (251).

¹⁹ See Relators' Reply, p.15 & n.41 (*citing* canon IV.9.1) (294).

judgment brought by the Holy Synod.” *Milivojevich*, 328 N.E.2d at 279. But, in Dionisije’s case, the “investigation commission did not . . . hold a hearing of witnesses or collect proof of the charges,” and he “was not given an opportunity to answer all the accusations, nor did he receive proof of the charges.” *Id.*

Also, under the penal code, the Holy Synod should have acted only as the court of first instance, and Dionisije could have appealed to the Holy Assembly. Instead, the “Holy Assembly acted as the court of first instance,” and Dionisije had no appeal. *Id.* at 280. Therefore, according to the Illinois Supreme Court, Dionisije’s removal was “not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church.” *Id.* at 281. It therefore reversed the trial court, which had upheld Dionisije’s removal. *Id.* at 284. But the U.S. Supreme Court held that the Illinois Supreme Court decision

rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.

Milivojevich, 426 U.S. at 708. For these same reasons, the courts in our case must defer to the Episcopal Church as to Iker’s removal. *See Response*, p.33.

The defendants also say that the Presiding Bishop exceeded her powers by “appointing a local bishop.” *Relators’ Reply*, p.19. But the Presiding Bishop appointed no one. She merely convened a special meeting of the diocesan convention, which elected Gulick. *See Response*, pp.13-14. Again, this was in

accord with Canons.²⁰ The General Convention then ratified the actions of the special meeting,²¹ and again the defendants concede that it has this power.²²

The defendants say that the General Convention's actions were mere "courtesy resolutions." Relators' Reply, p.20. But Gulick was seated and credentialed by the General Convention. See Response, pp.14-15. Certainly, a trial court would not have abused its discretion by concluding that ratification occurred. But again, the courts cannot reach these issues; instead, they must defer to the General Convention.

4. The Trustees were replaced in accordance with the diocesan documents.

By resolution, the diocesan convention declared that the Trustee positions were vacant.²³ The courts must defer to this decision, just as the *Greanias* court deferred to the Metropolitan's decision to remove the Cathedral trustees. See Response, pp.36-38. Similarly, the courts must defer to the convention's decision that the old trustees were no longer "Lay persons in good

²⁰ See Canon III.13.1 (254) ("A Diocese without a Bishop may, by an act of its Convention, and in consultation with the Presiding Bishop, be placed under the provisional charge and authority of a Bishop of another Diocese . . . , who shall by that act be authorized to exercise all the duties and offices of the Bishop of the Diocese until a Bishop is elected and ordained for that Diocese or until the act of the Convention is revoked.") (emphasis added).

²¹ See Response, pp.14-15.

²² See Relators' Reply, p.12 ("Relators concede that [the Episcopal Church] can recognize a new diocese, a new bishop, and new trustees as its representatives in Fort Worth-- which appears to be what it has done.") (emphasis added).

²³ See Response, p.13.

standing,” just as the *Cherry Valley* court deferred to the congregation’s decision to remove trustees “according to the custom and practices of the church.” *Id.* at 41-42.²⁴

The defendants contend that, whether the “old trustees were in good standing” is not “an ecclesiastical question,” because it “can be determined by reference to the Parish Register kept in each parish.” Relators’ Reply, p.10 n.23. They cite Diocesan Canon 28, which requires parish priests “to maintain a Parish Register listing communicants in good standing.” *Id.* But that canon goes on to provide that

no parish shall be required to continue as a communicant . . . one who has abandoned the Communion of this Church by an open renunciation of its doctrine, discipline and worship, or by a formal admission into a religious body not in communion with this Church.

Canon 28.4 (1541) (emphasis added). It is well settled that a civil court

cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly, cut off from the body of the church.

Westbrook, 231 S.W.3d at 399 (emphasis added).²⁵ Thus,

²⁴ citing *Cherry Valley*, 2002 WL 10545, at *3. See also *Alexander v. Allen*, No. 14-04-01110-CV, 2005 WL 3369884, at **3-4 (Tex.App.--Houston [14th Dist.] Dec. 13, 2005, no pet.) (holding that exclusion of church members from voting because they had “fail[ed] to show a cooperative attitude toward the Pastor, and the church program” was an ecclesiastical question.).

²⁵ quoting *Watson v. Jones*, 80 U.S. 679, 727 (1872). See *Tran v. Fiorenza*, 934 S.W.2d 740, 743-744 (Tex.App.--Houston [1st Dist.] 1996, no pet.) (“[W]hether Father Tran was excommunicated is unavoidably an ecclesiastical matter.”). See generally *Fowler v. Bailey*, 1992 OK.160, 844 P.2d 141, 144 & n.3 (1992) (collecting cases).

[t]he church has a right to determine the qualifications for membership, and whether one is a member in good standing is a matter of an ecclesiastical nature, relating to the government and discipline of the church, and its decision is binding on the courts.

In re Kaminsky, 295 N.Y.S. 989 (Sup.Ct. 1937) (emphasis added).²⁶

Finally, Bishop Gulick's action in appointing new trustees also accords with the Diocesan Canons. His election as bishop automatically made Gulick chairman of the board.²⁷ And when there is a vacancy on the board, "the Bishop nominates new board members," and the board "fill[s] any vacancy."²⁸ Also, under the bylaws of the Corporation, "[a]ny vacancy in the board . . . shall be filled by vote of the majority of the members of the board remaining in office although such majority is less than a quorum."²⁹ Thus, once the old trustees were removed, Bishop Gulick could "fill any vacancy." Finally, The Episcopal Church has ratified the selection of the new trustees,³⁰ and the defendants have conceded that it has this power.³¹

²⁶ *aff'd*, 13 N.E.2d 456 (N.Y.1938).

²⁷ *See* Diocesan Canon 17.2 (1532).

²⁸ Diocesan Canon 17.3 (1532).

²⁹ Bylaws, p.3 (Art. II.9) (360).

³⁰ *See* Response, p.15.

³¹ *See* Relators' Reply, p.12 (*quoted supra*, p.6).

5. The General Convention, not the diocesan bishop, stands at the top of the hierarchy.

For the first time, the defendants are saying that The Episcopal Church is “hierarchical only within a diocesan region.” Relators’ reply, p.19. As sole support for this revolutionary argument, they cite a dictionary definition of “episcopacy.” *Id.*, p.13.³² But “episcopacy” can also refer to government by bishops in convocation.³³ Thus, the Serbian Eastern Orthodox Church is governed by a “Holy Assembly of Bishops,” which is “a body composed of all the diocesan bishops”; therefore, it is “an episcopal church.”³⁴ Similarly, in our case, the General Convention is “a bicameral legislative body made up of a House of Bishops . . . and a House of Deputies.”³⁵ The House of Bishops is “composed of most of the Church’s active and resigned bishops.”³⁶

The defendants say that the Serbian Eastern Orthodox hierarchy

³² *citing* BLACK’S LAW DICTIONARY 615 (9th ed.).

³³ *See* BLACK’S LAW DICTIONARY 418 (5th ed.) (defining “episcopacy” as “[a] form of church government by diocesan bishops.”). *See also* The New Shorter Oxford English Dictionary (1993), Vol. 1, p.838 (defining “episcopacy” as “government of a church by bishops; the system of church government in which there is an order of bishops.”).

³⁴ *See Milivojevich*, 426 U.S. at 699 (“The Serbian Orthodox Church . . . is an episcopal church Its highest legislative, judicial, ecclesiastical, and administrative authority resides in its Holy Assembly of Bishops, a body composed of all of the Diocesan Bishops presided over by a Bishop designated by the Assembly to be Patriarch.”) (emphasis added).

³⁵ First Mullen aff., pp.7-8 (*citing* Const. arts. I, 2, 4 (142-143)).

³⁶ *Id.*

differs from that of The Episcopal Church in three ways. First, they say that a Serbian Eastern Orthodox diocese is an “organic part” of the mother church,³⁷ while in The Episcopal Church, the diocese is a “[l]ocal entity are created by local clergy and laity.”³⁸ They cite the preamble to the Church Constitution,³⁹ but the preamble does not refer to the diocese of Fort Worth, which is a part of The Episcopal Church, which is, in turn, a Province of the Anglican Communion.⁴⁰ Instead, under the Constitution, “[a] new Diocese may be formed, with the consent of the General Convention,”⁴¹ and its formation must be “ratified by the General Convention.”⁴²

Indeed, the Diocese of Fort Worth was formed out of the Diocese of Dallas with the approval of the General Convention. *See* Response, pp.5-6. And it “acceded” to the constitution and canons of The Episcopal Church and “recognize[d] the authority of the General Convention.” *Id.*, p.6.⁴³

Second, the defendants say that a Serbian Eastern Orthodox bishop is

³⁷ *See* Relators’ Reply, p.17 (*citing* *Milivojevich*, 426 U.S. at 701).

³⁸ *Id.*

³⁹ *Id.*, p.17 n.48.

⁴⁰ *See* Const., p.1 (142).

⁴¹ *See* Const. V.1 (146)

⁴² Canon I.10.1 (186).

⁴³ *quoting* diocesan Const.I (1283).

“appointed by [the] mother church,”⁴⁴ while an Episcopal bishop is “elected by the Diocese.”⁴⁵ But in the Episcopal Church, any bishop-elect must be confirmed by a majority of the other dioceses⁴⁶ and ordained by three bishops appointed by the Presiding Bishop.⁴⁷

Third, the defendants say that, in the Serbian Eastern Orthodox Church, amendments to a diocesan constitution “must be approved by [the] mother church,” while no prior approval is required in The Episcopal Church.⁴⁸ But in The Episcopal Church, any diocesan constitution must be presented to the General Convention, and any amendment must be consistent with the Church Constitution and Canons.⁴⁹

Of course, even if one could distinguish between the hierarchies of the two churches, that would be a task for canon lawyers, not the civil courts.

“To permit civil courts to probe deeply enough into the allocation of power within a (hierarchical) church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in

⁴⁴ Relators’ Reply, p.17 (citing *Milivojevich*, 426 U.S. at 700).

⁴⁵ *Id.* (citing Const. II.1 (144)).

⁴⁶ See Canon III.11.3-4 (240-243).

⁴⁷ See Const.II.2 (144) (“No one shall be ordained and consecrated Bishop by fewer than three Bishops.”) & Canon III.11.6 (243) (giving Presiding Bishop the power to order ordination “by any three Bishops to whom the Presiding Bishop may communicate the testimonials”).

⁴⁸ Relators’ Reply, p.7 (citing *Milivojevich*, 426 U.S. at 701)

⁴⁹ See First Mullen aff., pp.9-10 ¶ 25 (925-926) (citing Const.V.4 (146) & Canon I.10.4 (186)). See also Const.V.4 (147).

much the same manner as civil determination of religious doctrine.” For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions 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.

Milivojevich, 426 U.S. at 708-709.⁵⁰

We have cited many cases recognizing the hierarchical nature of The Episcopal Church.⁵¹ The defendants argue that, in those cases, “suit was filed by a bishop or diocese against a local church.”⁵² But in a suit filed by The Episcopal Church, a California court has expressly applied these same principles against a dissenting bishop who, like Iker, contended that he was still bishop of a diocese and president of a diocesan corporation.⁵³

Finally, even though the identities of the bishop and the trustees are ecclesiastical questions, the trial court must nevertheless decide this case, because

⁵⁰ quoting *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369 (1970).

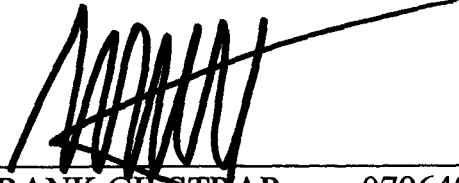
⁵¹ See Plaintiffs’ Motion for Partial Summary Judgment, p.9 n.1 (40). See also *Diocese of Northwest Texas v. Masterson*, No. A-07-0237-C (51st Dist. Court Tom Green County, Texas) (Oct. 8, 2009) (Tab V); *Huber v. Jackson*, 175 Cal.App.4th 663 (2009), *cert. denied*, 2010 WL 680538 (March 1, 2010).

⁵² Relators’ Reply, p.18.

⁵³ See *Diocese of San Joaquin v. Schofield*, No. 08-ECG01425 (Cal.Super.Ct., Jul. 21, 2009), slip op. p.5 (106) (holding that cases “analyzing the actions of a parish, rather than the actions of a diocese, do not invalidate the findings regarding the nature of the Church as a whole.”).

ownership of church property is at issue. See Response, pp.43-44.⁵⁴

Respectfully submitted,



JONATHAN D.F. NELSON 14900700
1404 West Abram St.
Arlington, TX 76013
817-261-2222
817-861-4685 fax

FRANK GILSTRAP 07964000
ANNE MICHELS 18863600
Hill Gilstrap, PC
1400 West Abram Street
Arlington, Texas 76013
(817) 261-2222
(817) 861-4685 fax

KATHLEEN WELLS 02317300
P.O. Box 101174
Fort Worth, TX 76185
817-332-2580
817-332-4740 fax

⁵⁴ See also *Wolf v. Jones*, 443 U.S. 595, 602 (1979) (“The only question presented by this case is which faction of the formerly united . . . congregation is entitled to possess and enjoy the property There can be little doubt about the general authority of civil courts to resolve this question.”); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 74 Ill.2d 574, 387 N.E.2d 285, 288-289 (1979) (affirming award on remand of church property to Mother Church representatives).

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing response was served on

March 3, 2010, on the following persons:

Kendall M. Gray
Andrews Kurth, LLP
600 Travis, Suite 4200
Houston, Texas 77002

Hon. Scott A. Brister
Andrews Kurth LLP
111 Congress Ave., Ste. 1700
Austin, Texas 78701

J. Shelby Sharpe
Sharpe Tillman & Melton
6100 Western Place, Suite 1000
Fort Worth, Texas 76107

Hon. John P. Chupp, Judge
141st District Court
200 E. Weatherford St., 4th Floor
Fort Worth, Texas 76106-0230



Frank Gilstrap

**Judgment in the *Texas Diocese
of Northwest v. Masterson*,
No. A-07-0237-C (51st Judicial
District Court, Tom Green
County, Oct. 8, 2009)**

TAB V

EXHIBIT V

STATE OF TEXAS §
 § AFFIDAVIT
COUNTY OF TARRANT §

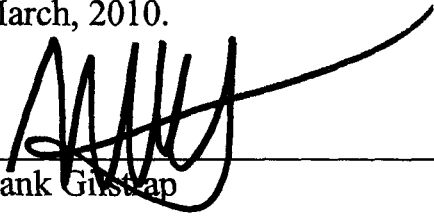
BEFORE ME, the undersigned authority, personally appeared Frank Gilstrap, known to me to be the person whose names is subscribed below, who after being duly sworn, upon his oath did depose and state as follows:

1. “My name is Frank Gilstrap. I am above the age of twenty-one (21) years and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated herein and such facts are true and correct.

2. “I am licensed to practice law in the State of Texas and I have practiced law in Texas since 1967. I am one of the attorneys representing the real parties in interest in No. 02-09-00405-CV, entitled *In re Salazar, et. al.*, an original proceeding in the Second Court of Appeals in Fort Worth.

3. “**Exhibit V** is a true and correct copy of the judgment in *The Diocese of Northwest Texas v. Masterson*, No. A-07-0237-C, in the 51st Judicial District Court of Tom Green County.”

Signed this the 3rd day of March, 2010.

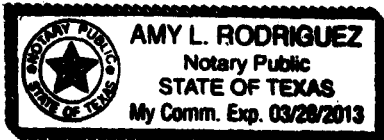


Frank Gilstrap

SUBSCRIBED AND SWORN TO BEFORE ME on this 3rd day of March, to certify which witness my hand and seal of office.



Notary Public, State of Texas



NO. A-07-0237-C

THE DIOCESE OF	§	IN THE 51 st DISTRICT COURT
NORTHWEST TEXAS, THE REV.	§	
CELIA ELLERY, DON GRIFFIS and	§	
MICHAEL RYAN	§	
v.	§	
ROBERT MASTERSON, MARK	§	OF
BROWN, GEORGE BUTLER, CHARLES	§	
WESTBROOK, RICHEY OLIVER,	§	
CRAIG PORTER, SHARON WEBER,	§	
JUNE SMITH, RITA BAKER,	§	
STEPHANIE PEDDY, BILLIE RUTH	§	
HODGES, DALLAS CHRISTIAN and	§	
THE EPISCOPAL CHURCH	§	
OF THE GOOD SHEPHERD	§	TOM GREEN COUNTY, TEXAS

FINAL SUMMARY JUDGMENT

On September 16, 2009, the court heard Plaintiffs' Motion for Summary Judgment. The parties appeared before the court for the hearing on the motion. After considering the pleadings, motion, response, evidence on file, and arguments of counsel, the court GRANTS the motion.

The court hereby RENDERS judgment for the Plaintiffs. The court finds that the Episcopal Church is a hierarchical church; Defendants have no rights in the real and personal property of The Episcopal Church of the Good Shepherd; the Church Property is held in trust for the Episcopal Church in the Diocese of Northwest Texas; and the continuing membership of the Episcopal Church of the Good Shepherd have an immediate right to possession and use of the property for worship as part of the Episcopal Church.

The court hereby issues a DECLARATORY JUDGMENT pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq. declaring that Defendants may not divert, alienate, or use the real or personal property of Good Shepherd, including the Church Property, and improvements located at 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas; the 5.287 tract of land in the Hillside Subdivision of San Angelo, Texas; and any other real property held in the name of the Episcopal Church of the Good Shepherd.

The Court hereby issues a DECLARATORY JUDGMENT that the continuing Parish of the Good Shepherd is identified as and represented by those persons recognized by the Bishop of the Episcopal Diocese of Northwest Texas and that the actions of the Defendants in seeking to withdraw Good Shepherd as a Parish of the Diocese and from the Episcopal Church are void and without effect;

The court hereby issues a DECLARATORY JUDGMENT pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq. declaring that all real and personal property of the Good Shepherd is held in trust for the Episcopal Church and the Diocese;

The court hereby ORDERS the Defendants to relinquish control of all real and personal property of the Episcopal Church of the Good Shepherd within one (1) week of the signing of this judgment and deliver said property to the Vestry of the Episcopal Church of the Good Shepherd.

This judgment is final, disposes of all claims and all parties, and is appealable.

The court orders execution to issue for this judgment.

SIGNED on October 8, 2009.


JUDGE PRESIDING