

LORAIN COUNTY COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

TOM ORLANDO, Clerk

JOURNAL ENTRY

James L. Miraldi, Judge

Date 12/16/16

Case No. 15CV188025

APOSTOLIC CHRISTIAN CHURCH-  
NAZARENE INC

JOSEPH P MCCAFFERTY

Plaintiff

Plaintiff's Attorney (440)250-1800

VS

DOREL STEFAN

MONICA E RUSSELL

Defendant

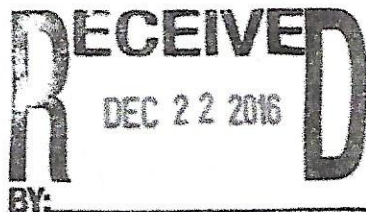
Defendant's Attorney (330)723-6404

Bench trial on November 2 and 3, 2016. The court finds that the actions taken on September 12, 2015 to remove Traian Mohan and Petar Stefan as trustees and then appoint Dmytro Popovych and George Zula as the trustees are void as the meeting did not comply with the notice requirements under RC 1702.18. Therefore, the plaintiffs lacked standing to file this suit. Judgment for defendants and case dismissed. Costs to plaintiffs. However no additional costs or penalties awarded to defendants for violation of the Stipulated Mutual Restraining Order.

See opinion.

  
James L. Miraldi, Judge

VOL. \_\_\_\_\_ PAGE \_\_\_\_\_



**LORAIN COUNTY COURT OF COMMON PLEAS**

**LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk**

**JOURNAL ENTRY**

**James L. Miraldi, Judge**

Date 12/16/16

Case No. 15CV188025

APOSTOLIC CHRISTIAN CHURCH-  
NAZARENE INC

JOSEPH P MCCAFFERTY

Plaintiff

Plaintiff's Attorney

(440)250-1800

VS

DOREL STEFAN

MONICA E RUSSELL

Defendant

Defendant's Attorney

(330)723-6404

A bench trial in this matter was held beginning on November 2, 2016 and concluded November 3<sup>rd</sup>.

Plaintiff Apostolic Christian Church – Nazarene, Inc., asserts that it is a church which is located in Columbia Station on Royalton Road (hereinafter "The Church" ). This is to be distinguished from a larger religious organization the Apostolic Christian Church (hereinafter ACC) which may or may not be an overarching governing or related entity. After the conclusion of all the evidence, it was still unclear what the exact relationship was between the Church and the ACC.

For purposes of this case and the limitations imposed by the scope of the evidence, the court will assume and conclude that the Church is an independent charitable corporate entity which is not owed by or under the jurisdiction of the ACC or controlled by the ACC's own bylaws and regulations. However, nothing in this opinion would be binding upon the ACC as it is not a party to this litigation.

Originally Plaintiff sought a declaration that Dmytro Popovych and George Zula are the real and legitimate trustees of the Church. (Since the litigation was filed, George Zula resigned, and was later replaced by Mihal Petras.) Secondly, Plaintiff seeks an injunction prohibiting the Defendants Petar Stefan, Petar's son Dorel Stefan and Traian Mohan from representing to any person that they are the trustees of the Church (aka Nazarene Congregation by the Defendants), from selling, renting or encumbering the Church, from transferring the Church to any third parties; and from prohibiting



members of the Church from worshipping at the Church or from conducting events consistent with their religious beliefs. (Traian Mohan has since resigned as trustee.)

#### **FINDING OF FACTS**

The evidence adduced at trial established that seven Yugoslavian immigrant families had worshipped at the Cleveland Romanian Nazarene Congregation. After Defendant Petar Stefan located the land on Royalton Road in Columbia Station in 1987, these seven families decided to construct their own church on this property and left the Romanian Church. Their apparent intention was to establish a church where they could follow what they deemed to be the true nature of the Nazarene faith. The surviving founders or their children described in court that this version of the faith is conservative – where for example only the men have authority and where only certain forms of dress and behaviors are appropriate. Beards and uncovered female hair are considered sinful.

However, to the chagrin of this judge, the founding Church members paid more attention to the construction details of the building than they did to constructing the rules the Church members would follow. As a result, the roof does not leak, but the “walls” that bind that congregational members together are crumbling and may now be beyond repair. The rules of law which apply require a very limited and likely unsatisfying result for all parties.

This court had hoped that it could determine under the law whether Defendants Petar Stefan and Traian Mohan had the legal authority to temporarily close the Church on August 29, 2016, to change the name of the Church, attempt to transfer the property to the newly named entity and to appoint Dorel Stefan as a third trustee. Also this court had hoped to determine whether congregational members of the Church had the legal authority under Revised Code 1702 et al to (i) remove Traian Mohan and Petar Stefan as trustees of the Church (ii) appoint Dmytro Popovych and George Zula as the trustees of the Church; (iii) schedule and hold a meeting of the Church in the absence of the prior trustees. Lastly, the court plans to address the issue of whether the plaintiffs have violated the court’s order against conducting church business and if so, whether the court will exercise its discretion to award attorney fees and costs to the defendants.

To try to answer these questions this court is required to rely upon sections of the Ohio Revised Code Chapter 1702 dealing with non-profit corporations and possibly consider equitable principles including estoppel. In making its decision, the court has not attempted to address the merits of competing religious beliefs or doctrine. Therefore, this court does not find that the Ecclesiastical Abstention Doctrine or State and Federal Constitutional issues separating Church and State have any application here.

The evidence shows that the articles of incorporation for the Apostolic Christian Church – Nazarene were accepted and filed on Oct. 26, 1989. Other than a “Church Orders” document (Defendant’s Exhibit E) dealing with matters of religious protocols, the Church never drafted any by-laws or regulations that described how the corporate entity would be governed. By practice, meetings were held each year. At these meetings trustees would be elected. The length of the term would also be set at these meetings and other business was transacted. Sometimes minutes were taken. Sometimes voting was done by secret ballot and sometimes simply by acquiescence to a slate of candidates for which no objection was raised.

Problems arose in 2015 as members argued over matters of religious doctrine matters. On August 29, 2015, the two and only two trustees Traian Mohan and Petar Stefan made the decision to *unilaterally* close the church and prohibit using the property for worship. This decision was made without the usual practice of having a discussion and vote or approval at a church business meeting. The trustees' professed intention was to make this a temporary closure. There was no evidence as to plan the trustees had to re-open the church building.

Enter now the ACCN Elder Committee (hereinafter "the Elders") which attempted to intervene and resolve the dispute so that the Church would be reopened. It appears that the Elder Committee sought to mediate a resolution. It is not clear what authority, if any, the Elders have now or had then. The Elders sent a letter dated Sept. 2, 2015 to defendant trustees Traian Mohan and Petar Stefan to set up a meeting with all the members to try and "resolve the matters of concern." A second letter dated Sept. 9, 2015 from the Elders to Petar Stefan, his son Dorel Stefan and Traian Mohan informed them that due to their actions of closing the Church, they were being disciplined by the Elders. Henceforth, they were "no longer considered free brothers within the fellowship of the Apostolic Christian Church (Nazarene) . . . ."

The court finds that the neither of these letters advised the defendants as the church trustees of the exact scope of business to be transacted or the location of the meeting. One of the ACCN elders David Nikolson spoke with Petar Stefan and Traian Mohan about the meeting to discuss the issues that were at the heart of the internal conflict and closing of the church, but they decided to ignore the meeting and refused to attend. Because these same trustees had locked up the Church building, the remaining shut out members were forced to hold their meeting on Sept. 12<sup>th</sup> elsewhere and did so at a church in Akron. The court understands why the plaintiffs felt compelled to do so. However the failure to strictly follow the statutory notice requirement will prove to have fatal legal consequences for both sides to this dispute. In any event, the members voted to remove defendants Petar Stefan and Traian Mohan as trustees as well as remove Petar Stefan's son Dorel Stefan as treasurer. The members further voted to elect Dmytro Popovych and George Zula as the new trustees.

The evidence was that no trustees had ever been removed except by death or voluntary resignation. Neither the Elders nor the members in attendance advised the "deposed" leaders of the Church that they had been voted out of office until Oct. 3, 2015.

In the meantime, Petar Stefan and Traian Mohan continued to be concerned that the other members were still going to try to take control of the Church. Thinking they were still valid trustees 2015 and with the apparent assistance of counsel, on Sept. 18, 2015 they unilaterally changed the name of the Church to the "Nazarene Congregation" and signed a deed transferring the church building and property to this new "entity." However, just like plaintiffs they did so without providing the statutory notice to the Church members.

On or about October 3, 2015, Traian Mohan notified Petar Stefan and Dorel Stefan that he had changed his mind about the resolution and the deed. Three days later Traian Mohan resigned as trustee.

On November 18, 2015, with the approval of the ACCN, Plaintiffs Dmytro Popovych and George Zula believing that they were the trustees and acting as such filed the Complaint and a Motion for a Temporary Restraining Order and Preliminary Injunction.

On November 23, 2015, the parties to this case entered into a Stipulated Mutual Restraining Order whereby the Defendants agreed to allow Plaintiff's representatives and certain specified individuals limited access to the Church for worship and the payment of related expense for its use. Both parties agreed "not [to] take any action on behalf of the church absent a signed written agreement of the parties, except they can proceed with prosecution and defense of this case and the defendants will maintain the property."

Nevertheless, just before the trial on Nov. 2nd, new counsel for the plaintiffs prepared by-laws which were "adopted" likewise without notice to the defendants.

At trial, the defendants testified that they believed Dorel Stefan was the closest person to an original trustee-founder because of his involvement in the actual construction of the church building. Therefore he and his followers within the Church claimed that they should have the final authority on the use of the building and the governance issues. There was no evidence to provide a legal basis for this position.

### CONCLUSIONS OF LAW

The court finds that the dispute is one of authority and governance of an Ohio non-profit corporate entity and does not require the court to weigh in on matters of religious doctrine. The court finds that the church is "congregational" and not hierarchical. If the Church were hierarchical, then issues of governance in this case could more easily be subsumed under rules for the larger religious organization and its own adjudicatory system. Unfortunately, that is not the case here. The ACC attempted to voluntarily mediate a solution, but was unable to do so. At least per the evidence submitted in this case, the ACC did not have the authority to force a resolution because the Church was not part of a hierarchical structure within the ACC. Hence this lawsuit is the result of the ongoing dispute. The court rejects the defendants' arguments that the court is constitutionally prohibited from deciding the issues in this case either under the First and Fourteenth Amendments to the U.S. Constitution or Article I Section 7 of the Ohio Constitution or the Ecclesiastical Abstention Doctrine.

Who has authority to act on behalf of the Church? Since "neither the articles of incorporation nor the regulations provide for members thereof,... the directors shall for the purposes of any statute or rule of law relating to corporations, be taken to be the members of such corporation, and they shall have all the rights and privileges of members." R.C. Section 1702.14. The court finds that the "directors" in this case are the duly elected trustees per the definition under R.C. Section 1702.01(K). This section defines "directors" as those "persons vested with the authority to conduct the affairs of the corporation irrespective of the name, *such as trustees*, by which they are designated." (emphasis added.)

However, such directors do not have unlimited powers. R.C. Section 1702.30(A) reads: "Except where the law, the articles, or the regulations require that action be otherwise authorized or taken, all of the authority of a corporation shall be exercised by or under the direction of its directors."

The evidence in this case clearly demonstrated that since the church's inception, the trustees actions were performed in concert with congregational votes choosing or affirming the directors, the number of directors, and the length of their terms. All important business decisions were also discussed and either voted on by the church congregational votes of members. The voting process was initially done by secret ballot and later the "secret" requirement was discarded. Some votes were done by voice to determine if anyone had objections. However, the common thread was that this small congregation had

input and no important action including adjusting the number of trustees or selection of trustees was done without a meeting at the Church where the members of the congregation participated.

This judge has written and rewritten draft opinions with different rationales trying to reach a decision that is fair and that would bring a conclusion to this dispute. It appears that neither side has acted legally here and that all of the actions of both sets of trustees described beginning in September of 2015 under the Findings of Fact were invalid. However, as will be explained shortly, the court's decision must be less than complete.

The evidence showed that Petar Stefan and Traian Mohan were the duly elected trustees of the Church. Under the applicable statutory provision R.C. 1702.14 and the definitions of RC 17092.01(K), the trustees had the power to conduct the affairs of the Church. Although subject to a vote of approval by virtue of the Church's long standing practice, these trustees could arguably not be removed except by death or voluntary resignation. RC 1702.29. The only proviso is that due to the long standing practice of requiring a vote on trustee's appointment and the conduct of major business issues, one could make the argument that a congregational meeting that met the statutory notice requirements under RC 1702.18 could replace or remove a trustee. One could also make the argument that the existing trustees still required the vote of the church members to make important changes in church procedure including whether or not the church should remain open or closed. However, this court cannot reach those conclusions here until duly elected trustees file suit to raise these same issues.

The court finds that the actions taken on September 12, 2015 to remove Traian Mohan and Petar Stefan as trustees and then appoint Dmytro Popovych and George Zula as the trustees are void. The meeting did not comply with the notice requirements under RC 1702.18. Therefore, all actions including the filing of this lawsuit by the Plaintiffs on behalf of the Apostolic Christian Church Nazarene, Inc. are void as the plaintiffs were not the legal trustees of the church and therefore did not have standing to bring this action. See E. End Church of God v. Logan, 102 Ohio App. 552, 555, 131 N.E.2d 439, 441 (8<sup>th</sup> Dist. 1956); Moore v. Christ's Christian Fellowship Church, Inc., 172 Ohio App.3d 398, 2007-Ohio-3095 (5<sup>th</sup> Dist.) Because the party initiating this suit on behalf of the church did not have authority to do so, judgment is granted in favor of the defendants and this suit is dismissed at plaintiff's cost.

Lastly, the actions taken by the plaintiffs to create by-laws and take actions under them while the prior ***Stipulated Mutual Restraining Order*** was in effect violates this Order. Such actions are therefore void and would have been void anyway due to the lack of notice to the defendants. The court has already instructed new counsel for the plaintiffs at the time of trial of what the court finds to be an unintentional misunderstanding by new counsel as to the limitations of the Restraining Order made by prior counsel for the plaintiffs. Furthermore, since the actions of plaintiffs' counsel had no appreciable impact upon the trial or the outcome of the case, the court will not award any additional costs to be imposed on the plaintiffs for this violation of the agreement.

Unfortunately, the court finds that its hands are tied and is unable to bring about a complete resolution to the issues raised in this case. Under the current governance structure of this Church, this court can only suggest that at the next properly noticed meeting, the Church trustees and its members pass by-laws and regulations to clarify these issues and procedures to remove trustees as well as to the conditions for which the Church can be reopened. The court also notes that the litigation over these matters will continue to be costly to this small congregation if they are unable to reach some type of

agreement on their own or with the help of some third party mediator. In addition to the financial costs, the emotional toll on the participants was apparent to the court during the trial. A continued "fight to the death" will not likely create a pleasing result for anyone. A voluntary compromise and a reconsideration of the doctrine of forgiveness that is professed to be central to all denominations and sects of the Christian faith is recommended over further litigation.

  
James L. Miraldi, Judge

VOL. \_\_\_\_\_ PAGE \_\_\_\_\_