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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

GENEVA HAWKINS et al.,

Plaintiffs and Respondents,

v.

ST. JOHN MISSIONARY BAPTIST CHURCH
OF BAKERSFIELD, CALIFORNIA et al.,

Defendants and Appellants;

JAMES BANKS et al.,

Defendants and Respondents.

F071584

(Super. Ct. No. S-1500-CV-279571)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Linda S. Etienne, Commissioner.

Horvitz & Levy, Barry R. Levy, Jeremy B. Rosen, Joshua C. McDaniel; Wilson, Elser, Moskowitz, Edelman & Dicker and Julie E. Van Wert for Defendants and Appellants St. John Missionary Baptist Church of Bakersfield, California et al.

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, Catherine E. Bennett, J.L. Rosenlieb and James R. Harvey for Plaintiffs and Respondents Geneva Hawkins et al.

Soltman, Levitt, Flaherty & Wattles, Steven B. Soltman and Thomas Rittenburg for Defendants and Respondents James Banks et al.

Scott & Cyan Banister First Amendment Clinic UCLA School of Law and Eugene Volokh for The International Association of Biblical Counselors as Amicus Curiae.

Stanford Law School Religious Liberty Clinic and James A. Sonne for The California Missionary Baptist State Convention and The Baptist Ministers Conference of Los Angeles and Southern California as Amicus Curiae on behalf of Defendants and Appellants.

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Appellant, St. John Missionary Baptist Church of Bakersfield, California (St. John), is a congregational Baptist church. It is organized as a religious corporation and is governed by a constitution and bylaws. Respondents are members of St. John who became dissatisfied with their pastor, Antonio Alfred (Pastor).

Respondents petitioned the trial court to order the St. John Board of Deacons to call a meeting to vote on whether to remove the Pastor. The court granted the petition and further ordered that a referee be appointed to oversee the meeting, conduct the vote, count the votes, and report the result of the vote in writing.

St. John provided the referee with a list of members eligible to vote. On the day of the election, if either St. John or respondents' representative objected to a voter, that voter cast a sealed provisional ballot. The regular votes were counted and, because the vote was close, it was necessary to count the provisional ballots as well.

Following various hearings, first the referee and then the trial court decided which St. John members who cast provisional ballots were eligible voters. Ultimately, eligible voters were determined to be those who were members of St. John and had not been disciplined. Three other members who would otherwise have been eligible were excluded over St. John's objection because those members were not on the original voter list prepared by St. John. The final ballot count ousted the Pastor by one vote.

On appeal, St. John contends the trial court exceeded its constitutional authority. According to St. John, whether a member is in “good standing” and thereby eligible to vote is an ecclesiastical determination. Therefore, St. John argues, the court must defer to St. John’s decisions on voter eligibility. St. John further asserts that the referee and the trial court erred in excluding the votes of the three members who qualify as eligible voters under the trial court’s own standard simply because they were mistakenly left off of the original voter list. Finally, St. John argues the trial court erred in counting the vote of one member who was under 18 years old on the eligibility cutoff date established by the referee but an adult at the time of the election.

The trial court erred in excluding the three eligible members on the ground that they were not on St. John’s original list. Accordingly, the judgment will be reversed.

BACKGROUND

In April 2012, a group of St. John members requested the Board of Deacons to call a vote to remove the Pastor. The Board of Deacons determined there were no grounds for such removal and refused to call a meeting. After further requests for a vote were denied, respondents petitioned the trial court under Corporations Code section 9414 to order a membership vote. Under this section, if for any reason it is “impractical or unduly difficult” for a nonprofit corporation to call or conduct a meeting of its members, the superior court, upon petition, may order that such a meeting be called. (Corp. Code, § 9414, subd. (a).) Respondents further requested that a referee be appointed to oversee such vote.

The trial court granted the petition and ordered the St. John Board of Deacons to call a meeting for a vote to remove the Pastor on or before December 16, 2013. The court also appointed a referee and directed St. John to give the referee a list of members eligible to vote.

On December 2, 2013, the referee issued an order establishing the voting process and procedures. St. John was ordered to provide a list of eligible voters no later than 5:00

p.m. that same day. The order defined eligible voters as adults who were members of St. John as of September 17, 2013. St. John printed a list of adult members in good standing from its computer system and provided it to the referee. However, the list contained errors. Some deceased members were on the list and other members were excluded.

The vote on the Pastor was held on December 8, 2013. As the voters presented themselves at the polling place, one of the poll workers would determine if the voter's name was on St. John's list. Each side had one representative who could voice objections to a particular voter. However, St. John was only permitted to object to voters whose names did not appear on the list. If there was no objection, the voter was allowed to cast a regular ballot. If either side objected, the voter was required to cast a provisional ballot, sealed inside an envelope marked with the voter's name and address.

At the end of the voting, there were 480 regular ballots and 67 provisional ballots. The regular ballots were counted with 249 votes to keep the Pastor and 231 votes to remove him. Because of the narrow margin and the number of provisional ballots, the referee concluded he could not certify the vote and scheduled a hearing to resolve the challenges to the eligibility of those who cast provisional ballots.

The referee held a hearing on February 5, 2014, and gave each St. John member who desired to have his or her provisional vote counted an opportunity to give testimony. Following each provisional voter's testimony, the referee ruled whether the voter was a member in good standing and thus eligible to vote.

The referee ruled that neither side could change its position on voter eligibility after the day of voting. Accordingly, although St. John withdrew its objection to three provisional ballots on the morning of the hearing on the ground that the names had been inadvertently omitted, the referee excluded those ballots because those voters were originally objected to as not being on the membership list. According to the referee, once St. John objected, it was "stuck with it."

The referee excluded another four provisional ballots after concluding that those voters had not demonstrated that they considered St. John their home church or were otherwise loyal to St. John. Finally, the referee excluded six provisional ballots because those voters were under church discipline.

After the hearing, the referee counted the admitted provisional ballots. With 13 ballots cast in favor of the Pastor and 32 ballots cast against the Pastor, the total number of votes to retain the Pastor was 262 and the total number to terminate him was 263. Thus, the referee issued a report recommending to the trial court that the vote be certified in favor of terminating the Pastor.

Both sides objected to the referee's report. Respondents objected to the referee's refusal to count the votes of the six members under church discipline.

St. John moved to set aside the report in its entirety on the ground that the referee exceeded the court's constitutional powers by deciding who was a member in good standing. St. John also objected to the referee's rulings to count the votes of persons who were not on the membership list and whose testimony demonstrated "that they did not fulfill most if not all of the duties required of a member in good standing as detailed in St. John's By-Laws." St. John further objected to the referee's refusal to count the votes of the three members who were inadvertently omitted from the membership list. Finally, St. John objected to the referee's decision to count the vote of a member who was not a legal adult as of September 17, 2013, although she was 18 years old when the vote was held on December 8.

Following a hearing on June 20, 2014, the trial court issued an order sustaining in part and overruling in part St. John's objections and overruling respondents' objections to the referee's report. Relying on the criteria established in St. John's bylaws, the court concluded that to be a member, one must simply meet one of the four separate objective requirements for membership and not have been disciplined or dismissed. The court ruled that neither a referee nor a court can decide who is a member based on subjective

measures. Thus, the referee erred in excluding provisional ballots based on the referee's determination of loyalty or faithfulness to St. John. The trial court agreed with the referee regarding the ballots of the three members who St. John inadvertently omitted from the membership list. The court found that the referee's rationale for excluding these ballots was "entirely consistent with the referee's duty to insure that the vote is conducted fairly." Finally, the trial court determined that, based on the bylaws, it was reasonable to count the ballot of the member who turned 18 between the date of the referee's order and the date of the vote.

Thereafter, the trial court modified its June 20, 2014 order so as to remand the matter to the referee to reconsider each provisional ballot excluded at the February 2014 hearing. The court noted that, "[t]o preclude the referee from reconsidering in light of the court's 6/20/2014 ruling the other provisional ballots originally excluded by the referee would be to potentially permit different criteria for membership to be applied to the members casting provisional ballots. Without question members who are entitled to vote should be permitted to have their voices heard."

As requested by the parties on remand, the referee reconsidered 13 of the 22 provisional ballots that were originally excluded. Applying the objective criteria set forth by the trial court, the referee concluded that the four provisional ballots that he had originally excluded because the voters had not demonstrated that they considered St. John their home church or were otherwise loyal to St. John would be included. These voters had accomplished membership in one of the four ways set forth in St. John's bylaws and had not been disciplined. Two of these voters, Antoinete Mangrum and Phillip Jackson, were not on St. John's original membership list.

The referee determined that the nine remaining provisional ballots under consideration would continue to be excluded. Thus, the six provisional ballots cast by voters who had become members under the bylaws but were under church discipline were omitted. Also, the three provisional ballots cast by the voters who were active

members but were inadvertently omitted from the membership list, Malinda White, Kathy Richardson, and Jeremiah Thomas III, were excluded.

Regarding White, Richardson and Thomas, the referee elaborated on his reasoning for their exclusion. The referee opined that “the composition of the Church’s Voting List presents an ecclesiastical issue (which is entitled to absolute judicial deference) as well as a procedural issue (which is susceptible to a neutral-principles analysis based on the Church Bylaws).” The referee discounted St. John’s explanation that these members were omitted due to clerical errors noting that St. John had ample time and resources to resolve any such errors before the vote, but did not do so. The referee further concluded that St. John’s “pre-vote determinations regarding its Voting List were ecclesiastical in nature, and it is not for judicial authorities to probe the logic underlying those determinations.” The referee further determined that these ballots had to be excluded under Robert’s Rules of Order, which, under the bylaws, were to govern St. John’s business proceedings.

The referee’s revised vote count was 264 votes to retain the Pastor and 265 votes to terminate him.

The trial court adopted the referee’s findings and recommendations as the decision of the court and judgment was entered in respondents’ favor. The order and judgment were stayed pending appeal.

DISCUSSION

1. *Church property disputes and the First Amendment.*

When asked to do so, secular courts must resolve internal church disputes involving civil or property rights. (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 478; *Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55, 60 (*Providence Baptist Church*)). The decision on who shall be pastor of a church presents a problem involving such civil and property rights. This is because the question of who shall

receive the emoluments of office necessarily involves the church's real property and funds collected. (*Providence Baptist Church, supra*, at p. 61.)

However, “the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.” (*Jones v. Wolf* (1979) 443 U.S. 595, 602.) Secular courts must not entangle themselves in disputes over church doctrine or infringe on the right to free exercise of religion. (*Diocese of San Joaquin v. Gunner* (2016) 246 Cal.App.4th 254, 267.) They “must accept as binding any church adjudication regarding ‘questions of discipline, or of faith, or ecclesiastical rule, custom, or law’” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 484.) Nevertheless, civil courts are not prevented from using neutral principles of law to resolve church property disputes that do not turn on questions of church doctrine, even though some ecclesiastical matters are incidentally involved. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 484-485; *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1277 (*Singh*).)

St. John is a congregational type church. This “type exists ‘where each local group is in charge of all its affairs through majority vote of its members and there is no control from above.’” (*Providence Baptist Church, supra*, 40 Cal.2d at p. 61.)

When a secular court is called on to resolve a property dispute in a congregational church, the decision cannot be based on religious doctrine. However, the court may apply neutral principles of law based on the church's own constitution, bylaws and rules, and relevant California statutes. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 485.) Thus, a court may determine whether an election in which a pastor was removed was properly conducted according to the church's bylaws, rules and regulations. In other words, the court may assist the church in acting within its proper sphere under its own rules and regulations to protect civil and property rights. (*Providence Baptist Church, supra*, 40 Cal.2d at pp. 61, 63; *Singh, supra*, 114 Cal.App.4th at p. 1289.) In interpreting the bylaws, the court uses the relevant provisions of the Corporations Code and applies

the general rules governing the construction of statutes and contracts. (*Singh, supra*, 114 Cal.App.4th at p. 1294.)

2. *St. John's procedure for removing a pastor from office.*

The St. John bylaws provide the procedure to be followed in the event the church wishes to remove a pastor from office. At issue here is the eligibility of certain St. John members to vote on whether to remove the Pastor. The St. John bylaws state that "Twenty-five (25) qualified voting members in good standing shall constitute a quorum. A majority of the members of the Church present and voting may remove a Pastor"

We first note that, while the minimum 25 members for a quorum must be "in good standing," the bylaws only require a majority of the "members" present and voting to remove a pastor. Thus, there is an ambiguity in voting requirements. Nevertheless, assuming all members who vote to remove a pastor must be "in good standing," the bylaws do not define what "good standing" means. This omission has caused the primary dispute in this case, i.e., what specific requirements must be met to be eligible to vote. We suggest St. John consider amending the bylaws to ameliorate this deficiency going forward.

3. *The conflicting interpretations of the "good standing" requirement.*

The St. John bylaws set forth four ways a person can accomplish membership. The bylaws then explain that each member has a duty to: abide by the provisions of the Baptist Covenant; pledge to St. John's financial support; be regular in attendance at St. John services and gatherings; and support the total St. John program including missions, evangelism and Christian education. The bylaws further state that a member can be disciplined for a private or public offense and outline the various disciplinary steps St. John can take, including dismissal.

In interpreting the "good standing" component of voter eligibility, the trial court observed that, to avoid unconstitutional court involvement in the religious governance of St. John, it needed to base "good standing" on the objective criteria contained in the

express provisions of the bylaws, i.e., where St. John had spoken directly. By relying on objective criteria, the trial court could apply neutral principles of law and ensure a fair election. Thus, the court concluded, if a person has accomplished membership as set forth in the bylaws and the objective requirements for discipline or dismissal have not occurred, that person is eligible to vote as a member in good standing.

In contrast, St. John asserts that defining what it means to be a member in good standing is a core ecclesiastical matter. According to St. John, its leaders have determined that membership in good standing incorporates the religious duties set forth in the bylaws and that good standing is not based solely on whether a member has been disciplined. St. John argues the trial court should have deferred to St. John's interpretation of its own bylaws and, accordingly, relied on St. John's list of members eligible to vote and not counted the ballots of 11 members over St. John's objection.

4. *The exclusion of the votes of the three members who satisfied the trial court's membership standard.*

As discussed above, three St. John members, White, Richardson and Thomas, were not on St. John's December 2013 voter list and consequently cast provisional ballots. However, before the provisional ballots were unsealed and counted, St. John withdrew its objection to these three members explaining that their omission from the voting list was a clerical error.

It is undisputed that these members satisfy the trial court's voter eligibility standard. They became St. John members as specified in the bylaws and had not been disciplined or dismissed. Nevertheless, the referee and the trial court refused to rule on their membership status and excluded their votes. According to the referee, St. John's voting list was an ecclesiastical determination and thus was entitled to absolute judicial deference. The referee further relied on Robert's Rules of Order to exclude these ballots. The trial court adopted the referee's rulings.

5. *The votes of the three members who satisfied the membership standard should have been counted.*

As noted above, the trial court concluded that “[w]ithout question members who are entitled to vote should be permitted to have their voices heard.” The trial court was correct. It is error to disenfranchise qualified voters. (See *League of Women Voters of California v. McPherson* (2006) 145 Cal.App.4th 1469, 1482.) Nevertheless, the referee and the trial court disenfranchised White, Richardson and Thomas, who were qualified to vote under the trial court’s standard, by holding that St. John was bound by its initial voting list whether or not that list contained errors.

Moreover, even if we assume, without making a constitutional determination, that the referee correctly found that St. John’s list of eligible voters constituted an ecclesiastical decision entitled to absolute judicial deference, that finding was inconsistently applied. There were a number of members not on St. John’s list who met the trial court’s eligibility standard. St. John originally objected to all of these voters. Yet, while some of these votes were counted, e.g., Antoinete Mangrum and Phillip Jackson, the votes cast by White, Richardson and Thomas were excluded. There is no justifiable reason for this disparity. The voting list either represents an ecclesiastical decision or it does not.

Further, there was no justification for excluding White, Richardson and Thomas on the ground that it is fundamentally unfair to permit St. John to withdraw its objection to these voters. St. John withdrew its objection before their votes were unsealed. There is no evidence that St. John knew how those votes had been cast before they were counted. Respondents’ claim that St. John had time to determine which provisional ballots were for and which were against the Pastor before those ballots were unsealed, and thus changed its position to “stuff the ballot box,” is nothing more than speculation. White, Richardson and Thomas were eligible to vote and therefore their votes should have been counted.

Finally, Robert's Rules of Order do not prohibit counting the votes cast by White, Richardson and Thomas. The St. John bylaws provide that "[t]he rules contained in Roberts Rules of Order shall govern the business proceedings of this Church in all cases not otherwise provided for in these By-laws." In excluding the ballots of White, Richardson and Thomas, the referee relied on section 45 of Robert's Rules of Order (Robert and Honemann, Robert's Rules of Order (11th ed. 2011) pp. 408-409.) That section provides, in part:

"After the result of a vote has been announced, members can still propose or demand certain actions that may change the result... With the exception of a point of order raised against a breach of a continuing nature, if any of these actions is to apply to a vote after the result has been announced, it must be taken immediately after the chair's announcement, before any debate or business has intervened. For example, it is too late to take these actions after any member has been recognized and begun to speak in debate or to give a report or presentation..."

According to the referee, this section "is designed to prevent strategic objections once the tentative result of a vote – and the precise consequences of any changes to the vote count – are known to interested parties." Thus, the referee concluded it was "simply 'too late' for anyone to contest which voters were or were not on the Voting List or ecclesiastical decisions made by the Church regarding the composition of that list."

However, the tentative result of the provisional ballot count was not known to St. John when it withdrew its objection to White, Richardson and Thomas. Thus, St. John's action was *before* the result of the vote had been announced. Accordingly, section 45 of Robert's Rules of Order does not apply.

In sum, applying neutral principles of law, we conclude the trial court erred in excluding the ballots cast by White, Richardson and Thomas. These members were eligible to vote under the objective standard applied by the trial court and therefore their voices should have been heard. Accordingly, the judgment must be reversed and the matter remanded to redetermine the election result after counting these excluded votes.

6. *The remaining issues on appeal.*

Two other issues raised by St. John still remain. First, is whether the trial court violated the First Amendment when it interpreted the bylaws to define what it means to be a St. John member in good standing.

St. John notes that, as recognized by the United States Supreme Court, the application of the neutral principles approach is not wholly free of difficulty. Rather, a civil court must take special care to scrutinize the documents at issue in purely secular terms and not rely on religious precepts. If the documents being reviewed incorporate religious concepts, and the interpretation of the instruments would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. (*Jones v. Wolf, supra*, 443 U.S. at p. 604.)

However, we need not consider this issue. Under the concept of judicial self-restraint, we do not reach constitutional questions unless absolutely required to do so to dispose of the matter. (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230.) Because this case can be resolved on a narrower ground that does not implicate the First Amendment, we will not decide this constitutional question. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1102.) Nevertheless, St. John should keep in mind that, while a secular court cannot second-guess ecclesiastical decisions, abuses of authority are still subject to review. We note that this case arose only because the St. John Board of Deacons refused to call a meeting as requested by St. John members to vote on removing the Pastor.

The final issue is whether the referee and trial court properly interpreted the referee's order and counted the vote of a member who was a minor when the order was made but an adult when the election was held. However, the disposition of the case renders this issue moot. Thus, this issue will not be ruled on.

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings to redetermine the election results after counting the ballots of Malinda White, Kathy Richardson and Jeremiah Thomas. Costs on appeal are awarded to appellants.

LEVY, Acting P.J.

WE CONCUR:

KANE, J.

POOCHIGIAN, J.