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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE WESTERN CALIFORNIA
PRESBYTERY et al.,

Plaintiffs and Respondents,

v.

HOLY HILL COMMUNITY CHURCH et
al.,

Defendants and Appellants.

B236877

(Los Angeles County
Super. Ct. No. BC459793)

APPEAL from orders of the Superior Court of Los Angeles County.

James C. Chalfant and Ramona G. See, Judges. Affirmed.

Law Office of Nick A. Alden and Nick A. Alden for Defendants and Appellants.

Parker Shumaker Mills, David B. Parker, William K. Mills for Plaintiffs and
Respondents.

This appeal concerns a dispute over the ownership and control of the Holy Hill Community Church. Defendants and appellants, led by Dong Sub Bang (Rev. Bang) and including several elders of the Church, prosecute this appeal on behalf of one faction of the Church (the Bang Faction); plaintiffs and respondents The Western California Presbytery (Presbytery), Chan Hyo Tak, Sung Yeol Yim, Joong Hoon Kim and Moon Kyo Yu, are litigating this action on behalf of a competing faction of church members (the Presbytery Faction).

When a dispute arose concerning which individuals were the "true members" of the Church, the Presbytery Faction filed a lawsuit. The Bang Faction counter-sued, seeking, among other things, an injunction to put their members in possession and control of the Church building and other Church assets. This is an appeal of the trial court's denial of the Bang Faction's application for a preliminary injunction. Finding no error, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

Holy Hill Community Church (the Church) is a Korean Presbyterian church incorporated as a California non-profit religious corporation. The Church owns the real property located at 1111 West Sunset Boulevard in Los Angeles (the Property). In 2003, Rev. Bang was elected Senior Pastor of the Church. On September 11, 2007, the Church executed a contract of affiliation with plaintiff Presbytery, a presbytery of the Korean-American Presbyterian Church (KAPC) and a non-profit California religious corporation. The Church is governed by a Board of Elders, with the KAPC's Book of Church Order, the Articles of Incorporation and the Church Bylaws as its governing documents.

Prior to September 2010, a schism developed within the Church between Rev. Bang and the majority of the Church's members. Over a period of several months, Rev. Bang excommunicated several dozen Church members.

On or about March 6, 2011, Rev. Bang announced in the Church bulletin that the Church would hold a congregational meeting on March 13, 2011. On that date, Rev. Bang continued the meeting to March 20, 2011. The purpose of the meeting was not

specified in either announcement. At the March 20 meeting, Rev. Bang put to a vote, by show of hands rather than by secret ballot, a resolution that the Church secede from the KAPC and the Presbytery. Rev. Bang announced that the resolution passed. Rev. Bang overruled objections to the voting procedure.

On March 24, 2011, the Presbytery called an emergency session of its Executive Committee, which terminated Rev. Bang as Senior Pastor of the Church and as President of the Church's Board of Elders, and replaced appellants Jun Ki Kim, Kwang Nam Kim, and Sang Yoon Cho as members of the Church's Board of Elders. A new pastor was appointed as interim pastor and interim President of the Church's Board of Elders, pursuant to the Presbytery's Book of Order. The Executive Committee also authorized an Administrative Commission to take possession of the Church's real and personal property and to operate and maintain the Church pending resolution of the schism at the Church, as provided in the Book of Order.

On March 25, 2011, Rev. Bang was summoned to the Presbytery's Executive Committee, which informed him that the notice of the special congregational meeting set for March 20, 2011, and therefore the action taken at that meeting, was invalid, in that the notice did not contain any agenda for the meeting. Accordingly, on March 27, 2011, Rev. Bang published in the Church bulletin notice of another special congregational meeting, scheduled for April 1, 2011. The Church members again voted to secede from the Presbytery. The Presbytery refused to acknowledge this vote, because the notice of the April 1 meeting again failed to conform with the Bylaws, which requires seven days advance notice, and because Rev. Bang, having been terminated as Senior Pastor and Elder of the Church on March 24, was not authorized to preside at a congregational meeting on April 1. On April 17, 2011, the Presbytery took possession of the Church property, changed all of the locks to the Church buildings, and posted security guards on the Property to prevent members of the Bang Faction from accessing the Property.

On April 18, 2011, the Presbytery Faction filed its complaint for declaratory relief, permanent injunction and an audit and accounting. The Bang Faction filed a cross-complaint for trespass, declaratory relief, and intentional interference with prospective

economic advantage, and an ex parte application for a temporary restraining order. The court denied the temporary restraining order, but set the matter for an order to show cause hearing on the application.

That hearing was held on August 29, 2011 before Judge James C. Chalfant. The crux of the issue before the court was which rival faction would have possession and control of the Church property pending resolution of the lawsuit. The Presbytery Faction cited Chapter 9, Article 9(a) of the Book of Order for its authority to maintain possession and control of the Property. That section provides: "When an internal dispute arises in the local church that is within the jurisdiction of a presbytery, regarding membership in the presbytery and the ownership of church property, the right to manage the church property shall temporarily be placed within the hands of the presbytery until the dispute is resolved and the normal operation of the local church is restored." The Bang Faction contended that the Church was no longer a member of the Presbytery at the time the Presbytery Faction took control of the Property, the Church having terminated that association on either March 24 or April 1.

At the hearing, the Bang Faction argued that it was likely to prevail on the merits on its claim for trespass, that the failure to issue the injunction would result in great or irreparable injury, and that monetary compensation for such injury would be inadequate or unascertainable. The trial court denied the application for a preliminary injunction, ruling that the Bang Faction failed to sustain its burden on the application. That ruling maintained the status quo, leaving temporary control of the Church and its property in the hands of the Presbytery Faction.

On October 11, 2011, the Bang Faction filed a second application for an injunction. The basis of the renewed application was the "newly-discovered evidence" that the Presbytery was suspended by the California Franchise Tax Board and the Secretary of State on February 1, 2005. The Bang Faction argued that, due to this suspension, the contract of affiliation between the Church and the Presbytery is voidable. Judge Ramona See denied the application, essentially ruling that the Presbytery's

corporate status had no bearing on the likelihood that the Bang Faction would prevail on the merits, or would suffer irreparable harm if no injunction issued.

The Bang Faction timely appealed the Judges Chalfant's and See's rulings denying the applications for a preliminary injunction. Finding no error, we affirm.

DISCUSSION

We begin by noting the special considerations which apply to judicial resolution of church disputes. "Where an internal church dispute involves a question of ownership or control of church property which the civil courts can adjudicate by applying "neutral principles of law, developed for use in all property disputes," the civil courts may properly decide the issues in controversy. (*Jones v. Wolf* (1979) 443 U.S. 595, 599-605.) But where an internal church dispute turns on "the resolution . . . of controversies over religious doctrine and practice," not on a property question resolvable under "neutral principles of law," the civil courts may not adjudicate the dispute. (*Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449.' (*Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, 291.)" (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1081.)

Judge Chalfant ruled that appellants had not met their burden on their application for a preliminary injunction. Our review of that ruling is confined "to a consideration whether the trial court abused its discretion in "evaluat[ing] two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm the defendant is likely to suffer if the preliminary injunction were issued." [Citations.] And although we will not ordinarily disturb the trial court's ruling absent a showing of abuse, an order granting or denying interlocutory relief reflects nothing more than the superior court's evaluation of the controversy on the record before it *at the time* of it ruling; it is not an adjudication of the ultimate merits of the dispute." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109.) Thus, we review the record for substantial evidence to

support the ruling. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.)

We conclude that Judge Chalfant did not abuse his discretion. We start with the undisputed fact that the notice of the March 24 congregational meeting did not state the matters to be considered. This lack of an agenda contravened not only the church Bylaws¹ and the KAPC Book of Order,² but the Corporations Codes, by which the Church, as a California non-profit corporation, is governed. Section 9411, subdivision (e) of the Corporations Code sets forth the requirements for providing notice of meetings: "Any member approval . . . , other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice." By calling the second meeting to again vote on the Church's secession from the Presbytery, even Rev. Bang acknowledged that the notice of the March 20 meeting was defective.

The ecclesiastical rule of judicial deference requires that we refrain from inquiring into the Presbytery's claimed authority to remove Rev. Bang as Senior Pastor of the Church and President of the Church's Board of Elders. As our colleagues on the First District Court of Appeal noted in *Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, this issue is particularly within the ecclesiastical powers not subject to review by a civil court: "The two issues as to which the trial court made reference to the ecclesiastical rule – i.e., the legitimacy of Open Bible's suspension of Mashore and revocation of his ministerial credentials, and the propriety of its

¹ The Church Bylaws read as follows: "A congregational meeting is called by the decision of the Session, or by the moderator of the congregational meeting when necessary and the date and the location of the meeting are to be announced in the weekly bulletin a week before the meeting is to be opened with the attendees. The congregational meeting can deal with the agenda that has been announced when the meeting was called and that which had been urgently presented by the Session."

² The KAPC Book of Order provides: "The session shall give public notice to the congregation, stating the date, the place, and the agenda of the meeting, one week in advance."

imposition of regional supervision as a matter of ecclesiastical polity – are precisely the kinds of issues to which both the United States Supreme Court and the courts of this state have traditionally applied the ecclesiastical rule of judicial deference." (*Id.* at p. 1413.)

We note as well that the Book of Order, by which the Church agreed to be governed upon affiliating with the Presbytery, provides that in the event of a dispute over membership in the presbytery and the ownership of church property, "the right to manage the church property shall temporarily be placed within the hands of the presbytery until the dispute is resolved and the normal operation of the local church is restored." The Book of Order also provides that the Presbytery approves and installs pastors of local churches, sets qualifications of pastors of local churches, approves the resignation of pastors and approves and installs Ruling Elders of local churches and sets their powers, qualifications and duties. In addition, the Book of Order authorizes the Presbytery to dissolve pastoral relations between the pastor and the local church, and to remove a pastor from office. Consequently, the Church's governing documents provide that, so long as the Church was a member of the Presbytery and subject to its governing documents, those documents supported the Presbytery's authority to remove Rev. Bang from his position and duties at the Church.

In short, Judge Chalfant's conclusion that the Church was a member of the Presbytery at the time that the Presbytery removed Rev. Bang from his pastorship was fully supported by the record. Judge Chalfant properly concluded that the Presbytery's decision to remove Rev. Bang was an ecclesiastical matter not subject to judicial review.

Moreover, appellants have failed to demonstrate that Judge See abused her discretion in denying their application for an injunction. Appellants renewed their request for an injunction based on the newly-discovered fact that the Presbytery was suspended at the time of its affiliation with the Church. Appellants proffered no explanation of why the Presbytery's corporate status would affect the merits of the litigation, or result in irreparable harm absent the issuance of an injunction. Because appellants argue only that the contract of affiliation was voidable, and it indisputably was not voided at the time the Presbytery removed Rev. Bang as the Church's pastor, Judge

See properly determined that appellants had failed to meet their burden on the application.

Finally, appellants state that, as a suspended corporation, the Presbytery may not prosecute or defend a lawsuit. Appellants fail to explain the relevance of this proposition to Judge See's ruling on their application for an injunction. Appellants certainly cite no authority to suggest that a court is required to grant an application for an injunction if the party to be enjoined is a suspended corporation. Thus, they have failed to establish reversible error.

DISPOSITION

The orders are affirmed.

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ARMSTRONG, Acting P. J.

I concur:

KRIEGLER, J.

MOSK, J., Concurring

I concur.

I would affirm on the basis that the denial of a preliminary injunction was not an abuse of discretion.

MOSK, J.