



# ORIGINAL

NOT FOR OFFICIAL PUBLICATION  
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

THE TABERNACLE BAPTIST CHURCH )  
OF OKLAHOMA CITY, INC., a )  
non-profit benevolent religious )  
corporation, by and through its Board )  
of Deacons, Don A. Willams, )  
President; EDWARD PAYTON, )  
ROBERT NICHOLSON, RODERICK L. )  
BRUNER, EDDIE H. PERKINS, and )  
MELROY LEE, Members, )

Plaintiffs/Appellees, )

vs. )

IRA JOAN MITCHELL, RICHARD )  
PALMER, DORTHEA FORSHEE, and )  
GEORGIETTA SPIVEY, )

Defendants/Appellants. )

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

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APPEAL FROM THE DISTRICT COURT OF  
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA STINSON, DISTRICT JUDGE

**AFFIRMED**

Kwame T. Mumina  
GREEN JOHNSON MUMINA & D'ANTONIO  
Oklahoma City, Oklahoma

For Plaintiffs/Appellees

Tom M. Cummings  
Oklahoma City, Oklahoma

For Defendants/Appellants

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

The defendants, the above-named members of the board of trustees at the Tabernacle Baptist Church, appeal the court's decision granting summary judgment in favor of the plaintiffs, The Tabernacle Baptist Church of Oklahoma City, Inc. (Tabernacle) and members of its board of deacons (the Deacons). Upon review, we find that the court properly granted the plaintiffs' motion for summary judgment on all claims.

### **BACKGROUND**

Tabernacle is a religious organization incorporated as a non-profit religious corporation. On May 20, 2014, Tabernacle adopted and approved its current bylaws. Tabernacle has continually operated under its 2014 bylaws since their adoption.

The present litigation arose when defendants, otherwise known as the "Concerned Members of Tabernacle Baptist Church," planned a church meeting for the alleged purpose of suspending Tabernacle's bylaws, its constitution, and the board of deacons and trustees, the official governing bodies of the church. According to the bylaws, a special church meeting may be called at any time by the pastor, the chairman of the deacon ministry, or a petition signed by not less than fifty members in good standing with a valid purpose as determined by the pastor, in addition to a majority vote of the deacon ministry. Regarding this particular meeting planned by the defendants, it is unclear how many signatures were properly obtained and whether there was, at that time, any pastor to receive notice of the meeting; however, a majority of the Deacons did not vote in favor of this special meeting and thereby vetoed the petition.

It appears that, despite not obtaining permission to hold the special meeting, defendants nevertheless held the meeting on January 22, 2022. As a result of this meeting, relations between the defendants and the church management rapidly deteriorated. Both parties make a variety of allegations against the other, including engaging in unauthorized spending, blocking access to bank account information, and changing locks on the church building. Apparently, tensions came to a head one evening in a “standoff” between various members and officials at the church. Law enforcement ultimately became involved; however, the confrontation purportedly ended peacefully.

As a result of the parties’ deteriorating relationships, Tabernacle filed a petition against the defendants on February 10, 2022. In its petition, Tabernacle alleged it was entitled to a temporary restraining order as well as temporary and permanent injunctions against the defendants. Tabernacle also sought declaratory judgment, asking the court to determine who controlled the property and assets of the church after the January 22 meeting. Lastly, Tabernacle requested that the court order a full and complete accounting regarding the church’s finances.

On February 11, 2022, the court granted a temporary restraining order against the defendants. On February 25, 2022, the court extended the temporary restraining order until March 7, 2022. On March 4, 2022, defendants filed a motion to dismiss, alleging that they were entitled to relief under the church autonomy doctrine because the issue of who controlled the church property had already been decided by the vote by the Tabernacle body and the court should

not intervene. Defendants also argued that claim preclusion defeated the plaintiffs' claims.<sup>1</sup>

On May 25, 2022, the court held a show cause hearing for the February 11 temporary restraining order. In a journal entry filed June 8, 2022, the court denied the defendant's motion to dismiss, found that upon the testimony of witnesses and consideration of all the evidence, the temporary restraining order was to become a temporary injunction, and ordered that a full accounting of all expenses and income that was received by Tabernacle from January 1, 2022, to May 25, 2022, be exchanged between the board of trustees and the board of deacons.

On June 8, 2022, the defendants filed their answer to plaintiffs' petition. The defendants made counterclaims for a derivative suit, judicial determination as to the interpretation, application, enforceability, and validity of the corporate bylaws under 18 O.S. § 1014.1, declaratory judgment,<sup>2</sup> and equitable accounting.

On March 8, 2023, the plaintiffs filed a motion for summary judgment, arguing that there were no disputed material facts regarding the invalidity of the

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<sup>1</sup> It appears that Tabernacle has been embroiled in litigation for quite some time. In their motion to dismiss, defendants note two prior cases involving Tabernacle where a court found that control of the church property belonged to the board of trustees as evidence that plaintiff's current claims are precluded. However, we note that the two previous cases CJ-2010-8291 and CJ-2011-1892, involved a pre-2014 set of bylaws and different issues from the present case.

<sup>2</sup> The defendants sought declaratory judgment from the trial court that: the 2014 bylaws were invalid and unenforceable, the boards of deacons embezzled and misappropriated funds of the church, the board of deacons collectively usurped the authority of the governing body of the church, and that the governing body of the church is its congregation, not the board of deacons.

January 22 meeting, and they were, therefore, entitled to a declaratory judgment that the bylaws are still valid. Additionally, plaintiffs alleged that they were entitled to summary judgment that the defendants' counterclaims violated the ecclesiastical abstention doctrine.

On June 14, 2023, the court granted the motion for summary judgment finding: the 2014 bylaws remain the valid and current official bylaws of the church; the meeting on January 22 did not properly alter, amend, or suspend the church bylaws; pursuant to the bylaws the "deacon ministry" is to oversee management, business, and financial decisions of the trustee ministry and to ensure the church affairs are being performed according to the wishes of the members of the church; the defendants' claims relying on shareholder/member rights granted by the Oklahoma General Corporation Act fail as a matter of law; and the claims for accountings were moot as both requests for accounting had already been addressed by the court. Defendants appeal.

#### **STANDARD OF REVIEW**

Summary judgment settles only questions of law. *Pickens v. Tulsa Metro. Ministry*, 1997 OK 152, ¶ 7, 951 P.2d 1079, 1082. The standard of review of questions of law is *de novo*. *Id.* Summary judgment will be affirmed only if the appellate court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.* Summary judgment will be reversed if reasonable people might reach different conclusions from the undisputed material facts or a party is not entitled to judgment as a matter of law. *See Runyon v. Reid*, 1973 OK 25, ¶ 15, 510 P.2d 943, 946. All

reasonable inferences are taken in favor of the nonmovant. *Jennings v. Badgett*, 2010 OK 7 ¶ 4, 230 P.3d 861, 864.

### **ANALYSIS**

Because Tabernacle is a religious organization, we will first address our ability to decide the issues presented in this case as both plaintiffs and defendants allege certain issues should not be before this Court due to the ecclesiastical abstention doctrine.

The Oklahoma Supreme Court has held that courts cannot interfere with the internal affairs of a religious organization except for the protection of civil or property rights. *Fowler v. Bailey*, 1992 OK 160, ¶ 16, 844 P.2d 141, 143, citing *Wolozyn v. Begarek*, 1963 OK 35, ¶ 14, 378 P.2d 1007, 1011. “Within the context of ecclesiastical discipline, churches enjoy an absolute privilege from scrutiny by the secular authority.” *Hadnot v. Shaw*, 1992 OK 21, ¶ 26, 826 P.2d 978, 987. Where a dispute involves only narrow property issues, without any reference to religious doctrine and practice, courts may apply neutral principles of law to review language of deeds, terms of charters, church provisions concerning property ownership, and state property and trust statutes. *Jones v. Wolf*, 443 U.S. 595, 602–603, 99 S.Ct. 3020, 3025 (1979).

Courts have no subject matter jurisdiction over matters of “ecclesiastical government.” *Oklahoma Annual Conference of the United Methodist Church, Inc. v. Timmons*, 2023 OK 101, ¶ 9, 538 P.3d 163, 167, quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 714, 96 S.Ct. 2372 (1976). Churches have the freedom to decide their own “government, faith, and doctrine.” *Id.* quoting

*Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116, 73 S.Ct. 143. Plaintiffs' claims and defendants' counterclaims must be measured against this standard, especially in terms of what constitutes the church's "government." Based on these cases, it is clear that a court may resolve issues between church members if they may be decided according to "neutral principles of law," and without the resolution of doctrinal questions or conclusive inquiry into religious policy.

Defendants argue that the court abused its discretion by sustaining summary judgment when there were disputed material facts concerning the validity of the church votes on the January and October 2022 meetings. As discussed above, a court may resolve issues within the church according to "neutral principles of law," and without the resolution of doctrinal questions or conclusive inquiry into religious policy. Here, we can resolve the issues relating to the validity of the special meeting because they involve this Court applying neutral principles of law, and do not require this Court to delve into any doctrinal questions or inquire into Tabernacle's religious policy.

We hold that there are no disputed material facts regarding the January 22, 2022, meeting. The church bylaws explicitly state that in order to call a special meeting, fifty members must sign a petition, there must be a valid purpose to the meeting as determined by the pastor, and approval of the meeting by the majority of the deacons. While the record is unclear as to the number of proper signatures on the petition and whether any pastor gave approval or determined the meeting had a valid purpose, it is undisputed that the board of

deacons did not have a majority vote in favor of holding the meeting. Because there was no majority of deacons who approved the petition, regardless of how many signatures and whether the pastor approved, the special meeting was undoubtedly held in violation of the bylaws.<sup>3</sup>

The defendants next argue that, even if the vote was invalid, the 2014 bylaws are still void because they violate various principles of corporate and business law. The defendants first argue that the 2014 bylaws are void because the bylaw requiring approval of a special meeting by the Deacons breaches the “business judgment rule” if the intended purpose of the special meeting is to remove the Deacons.

The argument that the bylaws violate the “business judgment rule” is obscure. The business judgment rule is essentially a defense available to corporate decision makers and “shields a director or trustee from liability in the case of an honest error in judgment.” *Hargrave v. Canadian Valley Elec. Co-op., Inc.*, 1990 OK 43, ¶ 24, 792 P.2d 50, 57 (citing *Hoye v. Meek*, 795 F.2d 893, 896 (10th Cir.1986) (applying Oklahoma law)); *Lewis v. Curtis*, 671 F.2d 779, 786 (3rd Cir.1982). Hence, the business judgment rule prohibits a court from imposing liability for discretionary business decisions made honestly in good faith simply because they later proved harmful to stockholder interests. We find no relevance of the “business judgment rule” to the current case.

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<sup>3</sup> The letter calling the special meeting stated that “Pastor Kelley Brooker, EZD moderator” would be the presiding over the meeting. There appears to be no consensus that Pastor Kelley Brooker is actually the pastor of Tabernacle, however.



Defendants' also assert that the court erred by sustaining summary judgment on their counterclaims that relied on the Oklahoma General Corporation Act (OGCA).<sup>4</sup> The bylaws are quite explicit that a special meeting of is subject to a majority approval by the "Deacon Ministry." Doc. 2, Ex. A, pg. 7. As stated above, there was no approval of the meeting's purpose by a majority of the Deacons. Defendants argue that, nonetheless, under 18 O.S. § 1014.1(A)(1) of the OGCA, "[a]ny ... member ... may bring an action to interpret, apply, or enforce or determine the validity of ... the bylaws of a domestic corporation" without approval by anyone. This provision of the OGCA allows a member of a corporation to seek a judicial decision as to the validity of bylaws. However, we find that § 1014.1(A)(1) does not render the meeting approval provision in the bylaws inherently invalid.

Defendants' broader argument appears to be that the bylaws requiring the approval of a majority of the Deacons for any special meeting violate some provision of the OGCA, 18 O.S. §§ 1001- 1155.<sup>5</sup> However, it is unclear from the

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<sup>4</sup> Defendants argue that Tabernacle is the "host of a dual lifestyle," as on the one hand, it has its "ecclesiastical life" that is protected by the first amendment, and on the other, its "corporate life," protected by the OGCA. This argument is consistent with the "neutral law" principle outlined previously.

<sup>5</sup> This raises a fundamental question whether the OGCA invalidates or supersedes any by-law of an incorporated church that allows or requires a governance procedure different from those stated in 18 O.S. §§ 1001- 1155? The question is a relatively new one. The current OGCA dates from 1986. It was not until 2019 that the legislature enacted § 1004.1 applying the Act to non-stock corporations. Whether it considered religious corporations to be non-profit non-stock corporations that were thereby made subject to the Act is not clear. The statutory section specifically addressing religious corporations is outside of Chapter 22, where the Corporation Act resides, and has only eight sections, 18 O.S. §§ 561-564.5. Its three core sections, §§ 561-63, have been in force since 1910. We do not answer that question here.

summary judgment briefing just how the bylaws violate the Act. Defendants' broad theory appears to be that every procedure stated in the OGCA is both mandatory and exclusive. For example, as the Act does not mention a veto power over special meetings, then the by-laws violate the Act by providing one. A brief survey of Chapter 22 indicates that the OGCA has very little to say on the subject of "special meetings" and that many of its procedures are subject to the by-laws of the corporation, rather than the reverse. We reject the argument that the current Tabernacle by-laws are rendered invalid by the OGCA.

Defendants next argue that, as church parishioners, they are members of a non-stockheld corporation and are allowed by 18 O.S. § 1070(A) to ask the court to order a vote as to the Deacon's position and authority held according to the stockholder voting procedures prescribed by 18 O.S. § 1056 or § 1060, rather than according to the church bylaws. Doc. 27, pg. 2.<sup>6</sup> Section 1070(a) allows that:

Upon application of any shareholder or director, or any officer whose title to office is contested, the district court may hear and determine the validity of any election, appointment, removal or resignation of any director or officer of any corporation, and the right of any person to hold, or continue to hold, such office.

Further:

In case it should be determined that no valid election has been held, the district court may order an election to be held in accordance with the provisions of Section 1056 or 1060 of this title.

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<sup>6</sup> Title 18 O.S. § 1056 deals with general rules for shareholder meetings and § 1060 with the voting rights of members of non-stock corporations.

No published case has interpreted § 1070 since it was enacted in 1986. Defendants place a somewhat circular interpretation on § 1070 which is that a group may hold an election not authorized by the by-laws, and when the result is properly declared “invalid,” § 1070 then give the same group a legal right to an election *under different bylaws*. We find this interpretation unsupportable. An “election in accordance with the provisions of Section 1056” includes the proviso of § 1056(A)(1) that any meeting shall be “in the manner provided in the certificate of incorporation or bylaws.” Approval of the Deacons would still be required for a new election. Section 1060(A) states that this rule also applies to non-stock corporations. We find no indication that § 1070 allows a new vote free from the rules contained in the bylaws.

Defendants next argue that the by-laws violate 18 O.S. § 1013(A) because that statute requires that “[i]n the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its governing body.” Defendants argue that the “governing body” of the Tabernacle Baptist Church is the congregation as a whole, not the Deacons or any other group, citing *Ward v. Jones*, 154 Misc. 2d 597, 587 N.Y.S.2d 94 (Sup. Ct. 1992) as establishing that Baptist Churches are congregational in nature and governed by the will of church membership. *Ward* actually states that:

Baptist Churches are congregational, that is, controlled, in general, by the will of its membership. In resolving these issues, the court must be guided by the church constitution *and bylaws* as well as past and accepted custom.

*Id.* at 601 (emphasis supplied).

Ward is clear that courts should look to the *church constitution and bylaws* as well as past and accepted custom in resolving disputes. We agree and find that in this case, the bylaws, rather than the possibly indeterminate and vacillating will of the general membership govern. Simply put, pursuant to the bylaws, the congregation at large is not the “governing body” for the purposes of 18 O.S. § 1013(A).<sup>7</sup>

Defendants next argue that they were entitled to bring a “derivative suit” against the Deacons pursuant to 18 O.S. § 1126.

A. In any derivative suit instituted by a shareholder of a corporation, it shall be averred in the petition that the plaintiff was a shareholder of the corporation at the time of the transaction of which the plaintiff complains or that the plaintiff's stock thereafter devolved upon him or her by operation of law.

Assuming, for the moment, that the OGCA does apply in its entirety to religious corporations, defendants' argument is that all church members are “members of the corporation” and hence have shareholder rights to bring derivative suits.

This question does appear to have been addressed under the prior “Business Corporation Act” that was replaced by the current OGCA. The prior act, 18 O.S.1981 §§ 1.1-1.250 clearly included non-stockheld corporations, applying to “every private corporation, profit or non-profit, stock or nonstock.” 18 O.S.1981 § 1.3. In *Fowler v. Bailey*, 1992 OK 160, 844 P.2d 141, members of

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<sup>7</sup> 18 O.S. § 1004.1 equates the “governing body” of a non-stock corporation with the traditional board of directors. The OGCA places numerous significant duties on a corporation's “governing body” that appear extremely difficult to perform if the “board” has a shifting membership composed of hundreds of people.

the Saint Andrew Baptist Church, a nonprofit church incorporated without stock, argued that they were the equivalent to stockholders in a business corporation entitled to access to the financial records of the corporation pursuant to 18 O.S.1981 § 1.71. The Court held that members of the church were not stockholders that could exercise stockholder rights under the Business Corporation Act. *Id.* Concurring, Justice Opala noted the rule of *Stone v. Salt Lake City*, 356 P.2d 631, 634 (Utah 1960), holding that neither church membership nor donations gave members an individual interest in church property.<sup>8</sup>

In *Wolozyn v. Begarek*, similar claims involving § 1.71 and corporate doctrine as applied to religious organizations were before the Oklahoma Supreme Court. 1963 OK 35, 378 P.2d 1007. The plaintiffs in that case were members of St. Mary's Ukrainian Church, a corporation organized pursuant to the laws of Oklahoma. *Id.* ¶ 2. The plaintiffs alleged that as members of the church, they were entitled to see, read, and take copies of the corporate records to determine whether the corporation/church complied with necessary conditions. *Id.* In that case, unlike *Fowler*, the court assumed (without deciding) that membership was sufficient to grant a right of inspection pursuant to the Business Corporation Act. It blocked the request on other grounds, however, finding that the "grounds for plaintiffs' claimed right of inspection are relative to the acts of the corporation

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<sup>8</sup> Indeed, a decision that each member holds individual rights in church property might put questions as to the expulsion of members back inside the jurisdiction of the civil courts because a property right is involved.

in influencing or changing the fundamental procedures and concepts of the church.” *Id.* ¶ 13.

Even if we were to follow *Wolozyn* rather than the later *Folwer* case, the same problem exists with the defendants’ attempted exercise of stockholder rights as in *Wolozyn*. The proponents of the special meeting did not merely demand simple relief in a corporate context; rather, they wanted a wholesale suspension of both the church bylaws and of all Deacons and Deaconesses. Doc. 2, Exhibit B. Although this request may include purely secular matters of corporate governance, the same bylaws also involve ecclesiastical functions, and the Deacons have mixed corporate and ecclesiastical duties. It appears that defendants’ corporate claims, like those in *Wolozyn*, are based on their desire to influence and change the fundamental procedures and beliefs of the church. To allow such a process through the OGCA would permit interference in ecclesiastical matters of church governance.

Defendants also raised an issue related to the church’s corporate status on appeal. Specifically, defendants alleged that the court erred in sustaining summary judgment because plaintiffs had misquoted 18 O.S. §1004.1(B)(1) to claim that non-stock corporations are not governed by the General Corporation Act. Assuming the court made such a decision, any error is harmless because we have found that, even if § 1004.1 does subject non-stock religious corporations to the mandatory provisions of the OGCA, the Act offers defendants no relief here.

## **CONCLUSION**

We affirm the court's decision granting Tabernacle's motion for summary judgment as the January 22, 2022, meeting was improperly held and therefore the 2014 bylaws remain in effect. Additionally, we hold that the court was correct in holding defendants' counterclaims under the OGCA and other corporate doctrine failed as a matter of law for the reasons discussed.

**AFFIRMED.**

HUBER, P.J., and HIXON, J., concur.

March 28, 2024