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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-89

No. COA20-335

Filed 16 March 2021

Wake County, No. 19 CVS 9973

UNITED COMMUNITY BANK, Plaintiff,

v.

WAKEFIELD MISSIONARY BAPTIST CHURCH, DARRYL HIGH, APRIL HIGH, ALTON HIGH, HOMER HIGH, BARBARA WILLIAMS, ROSALIND ETIM, SAM ETIM, HOUSTON HINSON, and NATALIE HARRIS, Defendants-Appellants,

REV. DR. CORY BENSON, LEROY JEFFREYS, MICHAEL BENTLEY, CARLTON NICHOLSON, REV. JULIUS MONTAGUE, MILDRED SPIVEY, FRED PERRY, SYDNEY CARPENTER, AUDREY HIGH FOSTER, and CHARLOTTE McKNIGHT, Defendants-Appellees.

Appeal by Defendants-Appellants Wakefield Missionary Baptist Church, Darryl High, April High, Alton High, Homer High, Barbara Williams, Rosalind Etim, Sam Etim, Houston Hinson, and Natalie Harris from order entered 30 December 2019 by Judge A. Graham Shirley, II in Wake County Superior Court. Cross-appeal by Plaintiff. Heard in the Court of Appeals 10 February 2021.

*Bell, Davis & Pitt, P.A., by Bradley C. Friesen, for Plaintiff-Appellee/Cross-Appellant.*

*Kitchen & Turrentine, PLLC, by Karlene S. Turrentine, for Defendants-Appellants.*

*Michael A. Jones & Assocs., PLLC, by Michael A. Jones, for Defendants-Appellees.*

INMAN, Judge.

¶ 1

Church trustees appeal from a trial court order marking the first procedural step in a lawsuit filed by a bank to resolve a dispute about access to church funds deposited with the bank. The bank also appeals, seeking to be discharged permanently from all liability related to the funds. The order granting interpleader of church funds and preliminarily discharging potential claims against the bank is interlocutory, the trial court can use neutral principles of law to determine who controls the church’s bank accounts, and no party’s substantial right is affected by the order. We therefore dismiss the appeal and cross-appeal.

## I. FACTUAL & PROCEDURAL HISTORY

¶ 2

United Community Bank (“the Bank”) filed an interpleader action in response to a dispute as to who should have access to funds held by the Bank for Wakefield Missionary Baptist Church (“the Church”). The dispute arose between church trustees previously named signatories on the accounts (“Trustee Defendants”), on the one hand, and Reverend Dr. Cory Benson (“Rev. Benson”) and church congregants (collectively, “the Benson Defendants”), on the other, after an audit revealed deficiencies in bookkeeping and payroll records and after Rev. Benson learned,

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allegedly for the first time, that the Church's accounts with the Bank included a Certificate of Deposit Account ("CD account") in excess of \$123,000, which Trustee Defendants allegedly had not disclosed.

¶ 3 The Church has three different accounts and a safe deposit box at the Bank. In January 2019, the Bank received authorization for two trustees, Barbara Williams and Darryl High, to have signing powers over the accounts. But in June 2019, Rev. Benson wrote a letter to the Bank requesting that a different congregation member be granted access to the accounts. The Bank informed the parties that it was concerned about who should properly receive funds, although the Trustee Defendants were still the only authorized names on the account. As a precaution, the Bank froze the accounts except to pay the Church's operating expenses.

¶ 4 In July 2019, the Bank filed its complaint for interpleader to determine who among the trustees and congregants was entitled to the accounts.

¶ 5 In September 2019, the Trustee Defendants incorporated the Church,<sup>1</sup> which had previously been an unincorporated association, creating WMBC, Inc.<sup>2</sup> The

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<sup>1</sup> Trustee Defendants' counsel claims to represent the Church as both the unincorporated association and the corporate entity.

<sup>2</sup> The Benson Defendants contend the decision to incorporate the Church was not authorized by the majority of the Church's members, as required by the Church's constitution and bylaws. The Benson Defendants also filed cross-claims against Trustee Defendants alleging, among other things, that they breached their fiduciary duties by failing to disclose the existence of the CD account.

Trustee Defendants moved to substitute the newly incorporated entity, WMBC, Inc., as a party to the matter in the place of the unincorporated Church. They also filed a motion to dismiss the Bank’s interpleader, claiming that there was no factual dispute over which party had a right to possess or control the Church’s funds, since they were the only members authorized on the Bank’s documents.

¶ 6 The Trustee Defendants asserted that the trial court lacked subject matter jurisdiction because this controversy concerned “determinations as to who are members of the Church and of the roles and authorities of members of the Church,” an ecclesiastical matter precluding court entanglement in violation of the federal and state constitutions. The Trustee Defendants brought counterclaims against the Bank, alleging breach of contract, conversion, wrongful dishonor, unfair trade practice, and violation of the implied covenant of good faith and fair dealing. The Bank filed a “Motion for Interpleader and Discharge” along with a motion to dismiss the Trustee Defendant’s counterclaims.

¶ 7 The trial court heard these motions and found the following:

1. The Court has subject matter jurisdiction over the issue of interpleader and other issues set forth in the pleadings as they can be decided upon neutral principles of law.
2. Plaintiff has established the requisite grounds for granting its Motion for Interpleader and Discharge, which should be granted

. . . .

4. Wakefield Missionary Baptist Church, Inc. is a necessary party, and it should be joined as a defendant in this action; however, it should not be substituted in place of Defendant Wakefield Missionary Baptist Church, an unincorporated association, which is also a necessary party.

5. Plaintiff's Motion to Dismiss Counterclaims should be granted without prejudice.

The trial court granted the Bank's motion for interpleader and discharge, ordering the Bank to relinquish all of the disputed funds to the Clerk of Superior Court to be held until further orders. The Bank complied. The trial court further ordered:

7. Plaintiff's Motion to Dismiss Counterclaims is GRANTED IN PART in that pending counterclaims against Plaintiff are hereby DISMISSED, but said dismissal is WITHOUT PREJUDICE for a party who believes that it may have a claim against Plaintiff to assert such claim in a separate action[.]

8. The Motion to Substitute Party is GRANTED IN PART, and DENIED IN PART in that Wakefield Missionary Baptist Church, Inc. IS HEREBY JOINED as a defendant in this action, and Defendant Wakefield Missionary Baptist Church, an unincorporated association shall remain as a defendant in this action[.]

Trustee Defendants appeal: (1) the trial court's order dismissing their counterclaims against the Bank, (2) the trial court's approval of the interpleader proceeding, and (3) the trial court's denial of the motion to substitute WMBC, Inc., as a party in place of the unincorporated Church. The Bank cross-appeals, claiming that Trustee's counterclaims should be dismissed *with* prejudice.

## II. ANALYSIS

¶ 9 As a threshold matter, we consider whether Trustee Defendants and the Bank have the right to appeal the trial court’s order at this time. Generally, no party has the right to appellate review of an initial interpleader order. *See Lipsitz v. Smith*, 178 N.C. 104, 106, 100 S.E. 247, 248 (1919). “A decree that money be paid into the court . . . for preserving the property pending litigation, is *interlocutory merely*, and no appeal lies from it.” *Id.* at 106-07 (citation omitted) (emphasis added).

¶ 10 However, a party may appeal an interlocutory order that affects a substantial right. *Fox v. Johnson*, 243 N.C. App. 274, 281, 777 S.E.2d 314, 321 (2015); N.C. Gen. Stat. § 1-277(a) (2019). A substantial right is affected when an order “will *work injury to appellant* if not corrected before appeal from final judgment.” *Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (citations and quotations omitted) (emphasis added).

¶ 11 The order interpleading the Church’s funds preserves the property pending litigation to resolve claims between the Trustee Defendants and Benson Defendants. Yet, the Trustee Defendants contend they have a right to appeal because the order interferes with their substantial rights under the First Amendment. Though they do not specifically name which rights may be impaired by the trial court’s order, we may presume them to be the rights to free exercise of religion and association guaranteed by the First Amendment to the United States Constitution and by Article I, Section

13 of the North Carolina Constitution.

¶ 12 To be sure, these rights are substantial. *Harris v. Matthews*, 361 N.C. 265, 270, 643 S.E.2d 566, 570 (2007) (“[W]e reaffirm our stance that First Amendment rights are substantial and hold that First Amendment rights are implicated when a party asserts that a civil court action cannot proceed without impermissibly entangling the court in ecclesiastical matters.”). However, immediate appeal is only appropriate when those rights “are threatened or impaired by an interlocutory order.” *Id.* at 270, 643 S.E.2d at 570 (citing *Elrod v. Burns*, 427 U.S. 347, 373, 49 L.Ed.2d 547, 565 (1976)).

¶ 13 To determine whether the interlocutory order affects a substantial right, we must, to some extent, reach the merits of one of the Trustee Defendants’ arguments on appeal and consider whether the interpleader action violates the constitutional prohibition against court entanglement in ecclesiastical matters. *Id.* at 269, 643 S.E.2d at 569. The Trustee Defendants rely on *Harris*. In that case, a pastor and other church leaders were sued for breaching their fiduciary duty to the church by misappropriating church funds. *Id.* at 268, 643 S.E.2d at 568. Our Supreme Court concluded it would be improper for the Court to evaluate the use of church funds because doing so would require the Court to engage with the church’s religious doctrine to determine which expenditures were appropriate. *Id.* at 273, 643 S.E.2d at 571.

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¶ 14 Importantly, though, *Harris* distinguished that the court *does* have jurisdiction “to determine *who constitutes the governing body of [the church] or whom that body has authorized to expend church resources*” because those questions can be answered by the application of “neutral principles of law.” *Id.* (emphasis added). In particular, courts “have jurisdiction as to civil, contract and property rights which are involved in, or arise from, a church controversy.” *Bigelow v. Sassafras Grove Baptist Church*, 247 N.C. App. 401, 410, 786 S.E.2d 358, 365 (2016) (citations and quotations omitted).

¶ 15 For example, in a case similar to this one, the Supreme Court of North Carolina held it had subject matter jurisdiction to resolve claims by competing factions in another Missionary Baptist Church about who was entitled to the use and possession of church property, including a bank account. *Reid v. Johnston*, 241 N.C. 201, 204, 210-11, 85 S.E.2d 114, 117, 122 (1954). As here, the dispute in *Reid* concerned property rights and did not involve “purely ecclesiastical questions” regarding religious doctrine. *Id.* at 204, 85 S.E.2d at 117. Here, as in *Reid*, the trial court had jurisdiction over the interpleader and related counterclaims because these disputes can be decided by applying neutral principles of law. *See Harris*, 361 N.C. at 273, 643 S.E.2d at 571.

¶ 16 The interlocutory order granting interpleader does not impair the Trustee Defendants’ or any other party’s substantial rights because the issue of who has control over the Church’s assets with the Bank is the very thing yet to be decided at

the trial court. There is no risk of injury to any party, such as inconsistent verdicts or deprivation of the right to free exercise of religion. The proceeding does not interfere with the Trustee Defendants' substantial right to be free from ecclesiastical entanglement because the trial court can resolve the controversy based on neutral principles of law. The proceeding does not impair any substantial right of the Bank because any potential claims by the other parties have been dismissed for the time being and cannot arise, if at all, until the conclusion of the litigation. Accordingly, we dismiss the appeal and cross-appeal.

### III. CONCLUSION

¶ 17 For the above-mentioned reasons, we dismiss this appeal and cross-appeal as interlocutory.

DISMISSED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).