

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

O.C. No. 410 NP of 2005

Control No. 055529

Control No. 055830

In re: The Greek Orthodox Kathedrikos of Saint George

O P I N I O N

Introduction

The petition and preliminary objections presently pending raise the issue of this court's jurisdiction to determine whether eight members of the nonprofit corporation Greek Orthodox Kathedrikos of Saint George (hereinafter "St. George") were improperly removed as elected members of the Parish Council and as officers of St. George. Since their removal and replacement by other individuals were allegedly the result of actions by the Metropolitan of the Metropolis of New Jersey, Metropolitan Evangelos,¹ this dispute raises delicate issues of separation of church and state that necessitate analysis of the complex interrelationship of St. George, as a nonprofit corporation, the Greek Orthodox Archdiocese of America ("Archdiocese"), and Metropolitan Evangelos.

The documents presented by the parties reveal that although St. George is a nonprofit corporation, its governing documents explicitly defer to the rules and procedures of the Archdiocese in matters relating to the election of the Parish Council. Under those documents, the Metropolitan was given the authority to validate Parish Council elections. The selection of the Parish Council is thus inextricably enmeshed with the issues of the composition of the church hierarchy, and as such may not be reviewed by a civil court where the highest judicatory body or authority of that church, in this case

¹ The petitioners assert that their petition raises an issue of corporate conduct rather than ecclesiastical actions by the Metropolitan. For the reasons set forth below, this effort to divert attention from the Metropolitan by focusing on those he appointed is disingenuous and ultimately unconvincing.

the Metropolitan of the Metropolis of New Jersey, has ruled upon it. The petition must therefore be dismissed.

Factual and Procedural Background

On March 18, 2005, a petition to set aside invalid corporate action and other relief as permitted by law was filed by petitioners Stephen McGrath, Alexander Kiotis, Zoe Tripolitis, Nicholas Tripolitis, John Dafis, Themistocles Kavadias,² Andrew Pogas, Barbara Kay Tarnoff and Katerina Theodorou . The petitioners assert that they are members (“stewards”) of The Greek Orthodox Kathedrikos of Saint George (hereinafter “St. George”), a nonprofit corporation organized pursuant to the laws of Pennsylvania with a registered office in Philadelphia. The petitioners emphasize that they had been elected members of the Parish Council of St. George as well as “duly elected directors and/or officers of the corporation.” Petitioners Stephen McGrath, Alexander Kiotis and Zoe Tripolitis were elected to three year terms on the Parish Council in December 2002. Nicholas Tripolitis was reelected to the Parish Council in December 2003. In January 2004, the Parish Council elected the following officers for one year terms: Stephen McGrath, president; Alexander Kiotis, vice president, Paul Costalas, secretary; Zoe Tripolitis, treasurer; and Nicholas Tripolitis, assistant treasurer.³

The petitioners allege that on October 3, 2004, St. George held a General Assembly of its stewards during which the Nominating Committee designated its choice of Parish Council Members. On November 7, 2004, St. George held another General Assembly for additional nominations for open Council seats, but no nominations were

² By Praecepte filed July 22, 2005, Themistocles Kavadias was removed as a petitioner.

³ 3/18/05 Petition at ¶¶ 1-2, 10-12.

made.⁴ On December, 3, 2004, however, the Metropolitan directed a letter to petitioner Stephen McGrath and others in which he stated that nominations for corporate elections scheduled for December 5, 2004 “were not made at a duly convened General Assembly Meeting.”⁵ The December 5, 2004 elections were nonetheless held. In reaction to the Metropolitan’s letter, however, the Parish Council sealed the results of those elections, hoping to resolve the issues raised by the Metropolitan. Petitioner McGrath telephoned the Metropolitan’s office to arrange a meeting between the Metropolitan and the officers of St. George, but the Metropolitan did not respond to this overture. Subsequently, on January 6, 2005, the Election Committee counted the votes from the election, noting that the following five petitioners received the highest number of votes: John Dafis, Themistocles Kavadias, Andrew Pogas, Barbara Kay Tarnoff, and Katerina Theodorou. When the Parish Council thereafter requested the parish priest, Rev. Nektarios Cottros, to forward the results of the election for the Metropolitan’s review and ratification, the priest refused to do so. Petitioner McGrath then took it upon himself to forward the election results to the Metropolitan. McGrath also announced the election results at the Parish Council meeting of January 11, 2005.⁶

The Metropolitan responded on January 12, 2005, by sending a letter that sought to invalidate McGrath’s tenure as a member of the Parish Council and to bar him from seeking any future terms on the Council. The Metropolitan also declared all of the other officer positions of St. George to be vacant. Other members of the Parish Council received letters from the Metropolitan that sought to dismiss them from office for “disobedience and causing turmoil.” The Metropolitan thereafter named the respondents

⁴ 3/18/05 Petition, ¶¶12-13.

⁵ 3/18/05 Petition at ¶ 15 and Ex. D.

⁶ 3/18/05 Petition at ¶¶ 16-20.

George Grigos, Christos Pappas, Gus Pahides, Stephen Skoufalos and Nick Pappas to serve on the Parish Council in place of the petitioners. In addition, respondents Constantine Avegerios, Peter Kallitsopoulos, Thomas Pousatis and George Tsihlas continued to remain in office with the Metropolitan's support, even though the petitioners allege that these respondents' terms had expired with the December 5, 2004 elections. Finally, the Metropolitan appointed respondents George Grigos, Christos Pappas, Gus Pahides, Stephen Skoufalos and Nick Pappas to the respective offices of president, vice president, vice president, secretary and treasurer.⁷

During this period, petitioners allege, the bank accounts of St. George were frozen, when the Chancellor of the Metropolis authorized Citizen Bank to freeze the accounts. The petitioners by letter dated January 13, 2005 informed Citizens Bank that they were the properly elected officers of St. George and signers of record of its accounts. Citizens Bank responded by letter noting that it would seal the accounts until the dispute was resolved. PNC Bank, in contrast, allowed the individual respondents to alter the signature cards so that they would have access to the accounts. The petitioners allege that as a consequence of this access, the corporation's financial affairs were adversely affected.⁸

The petitioners thereafter filed their petition to set aside invalid corporate action. They claim, inter alia, that they were wrongfully expelled from their positions due to actions taken by Metropolitan Evangelos, the Metropolitan for the Metropolis of New Jersey.⁹ The petitioners assert that the Metropolitan holds no office in the corporation¹⁰

⁷ 3/18/05 Petition at ¶¶ 23-28 and Ex. F.

⁸ 3/18/05 Petition at ¶¶ 29-33.

⁹ 3/18/05 Petition at ¶¶ 23-24

¹⁰ 3/18/05 Petition at ¶14.

and that their removal from leadership positions was in violation of the Pennsylvania Nonprofit Corporation Law, 15 Pa.C.S. § 5101 et seq., the Uniform Parish Regulations of the Greek Orthodox Archdiocese of America (the “UPRs”), the Articles of Incorporation of the Corporation (“Articles”), and the Bylaws of the Corporation (“Bylaws”).¹¹

The petitioners sought, and obtained, a citation directed against St. George and those individuals who had allegedly wrongfully replaced them as directors and officers of the Greek Orthodox Kathedrikos of Saint George. These respondents are George Grigos, Christos D. Pappas, Gus Pahides, Stephen Skoufalos, Nick Pappas, Constantine Averginos, Peter Kallitsopoulos, Thomas Pousatis, and George Tsihlas.¹² According to the petitioners, “these respondents are currently posing as Corporation directors and/or officers and wrongfully trying to take action in the name of the Corporation properly represented by the petitioners.”¹³ The respondents responded by filing preliminary objections. Those preliminary objections assert that the petition should be dismissed for lack of subject matter jurisdiction and for failure to join the Metropolitan, whom they characterize as an indispensable party. In the alternative, the respondents request a more specific pleading.

The Interrelationship of the Nonprofit Corporation-- St. George—and the Greek Orthodox Diocese of America and Metropolitan Evangelos

A central thrust of the petitioners’ arguments is that the validity of the electoral procedures of St. George, as a nonprofit corporation, is amenable to review by a civil court pursuant to the Pennsylvania nonprofit law. They are emphatic in emphasizing that

¹¹ 3/18/05 Petition at ¶2.

¹² The citation was also directed to Lawrence Barth, Esquire, Senior Deputy Attorney General, as *Parens Patriae*.

¹³ 3/18/05 Petition at ¶3.

the “Metropolitan holds no office in the corporation,” while conceding that he is authorized to provide “ecclesiastical leadership to members of the Christian Greek Orthodox Church of the Eastern Confession in the Metropolis of New Jersey.”¹⁴ In responding to the preliminary objections, the petitioners try to divert attention from the Metropolitan’s actions by suggesting that it is not his actions that are in dispute but those of the persons he appointed to take the petitioners’ place in the Parish Council. The reason for this approach is clearly spelled out by the petitioners: they seek to avoid any suggestion that issues of ecclesiastical governance are at stake. Rather, they contend, “this case is purely concerned with issues of corporate governance that have no intersection with ecclesiastical matters aside from the fact that the Corporation is associated with a religious organization.”¹⁵

This attempt to “sanitize” the issue as dealing solely with corporate law with no reference to the actions of the Metropolitan is unconvincing for several reasons. First, in their own petition, the Petitioners ask this court to review their removal as members of the Parish Council as well as officers of the corporation and their replacement by other individuals.¹⁶ The petition, however, repeatedly emphasizes that it was the Metropolitan who was responsible for this change in the Parish Council.¹⁷ Moreover, the role of the Metropolitan in the governance of the nonprofit corporation of St. George is not as clear-cut as the petitioners suggest. To unravel the nature of this role, it is necessary to analyze a variety of interrelating documents:

¹⁴ 3/18/05 Petition at ¶ 14.

¹⁵ Petitioners’ 5/12/05 Response to Preliminary Objections, Memorandum at 7.

¹⁶ 3/18/05 Petition, ¶ 37.

¹⁷ See, e.g., 3/18/05 Petition, ¶¶ 15, 17, 21, 23-27.

- The Articles of Incorporation of St. George¹⁸
- The Parish By-Laws of St. George¹⁹
- The Uniform Parish Regulations (“UPR”)²⁰
- The Charter of the Greek Orthodox Archdiocese of America²¹

The nonprofit corporation of St. George was created on December 20, 1937 by Decree of the Court of Common Pleas.²² According to its Articles of Incorporation, the corporation of St. George embraces strongly religious purposes, which include:

- (a) The preservation and propagation of the Christian faith uncorrupted, for instance, of the doctrines, administration, discipline, holy worship, traditions, ethics and ecclesiastical rules, as they have been formulated in accordance with the Holy Scriptures and the Holy Seven Ecumenical Councils, of the undivided Church and of the local Councils that have been ratified by the Ecumenical Councils and as they are interpreted in practice by the Great Church of Christ at Constantinople, i.e. the Ecumenical Patriarchate.
- (b) The preservation of the original tongue of the Gospel and the edification of the religious and moral lives of the Christians belonging to said Church of our jurisdiction, in accordance with the high traditions under the leadership of the canonical Ecclesiastical Authority by means of catechetical and other schools of proper preaching and books of valid sacred services by canonical clergy.²³

In addition to the clearly stated purpose of preserving and propagating the Christian religion, the Articles of Incorporation also explicitly recognize that St. George is subject to the “rules, regulations, dictates and bylaws of the Greek Archdiocese of North and South America, Inc.:

The corporation accedes to, recognizes and adopts, and is subject to the supervision and control of the constitution, canons, ecclesiastical laws and doctrines, discipline, worship, rules, regulations, dictates and by-laws of the

¹⁸ Ex. A to 3/18/05 Petition.

¹⁹ Ex. B to 3/18./05 Petition.

²⁰ Ex. C. to 3/18/05 Petition.

²¹ Ex. A. to 5/2/05 Preliminary Objections.

²² 3/18/05 Petition, ¶5 and Ex. A.

²³ 3/18/05 Petition, Ex. A, Articles of Incorporation, ¶3(a)& (b).

Greek Archdiocese of North and South America, Inc., which is the corporate title of the Christian Orthodox Church in the United States of America.²⁴

The Greek Archdiocese of North and South American, Inc., the parties agree, is currently known as the Greek Orthodox Archdiocese of America (“Archdiocese”)²⁵ as set forth in its 2003 Charter. Significantly, this charter clearly defines the Archdiocese as “hierarchical.”²⁶ The Archdiocese is comprised of one Direct Archdiocesan District and eight Metropolises. The respondent St. George is a Parish within the Metropolis of New Jersey.²⁷

As the petitioners note, St. George is governed by 2 other documents: the Parish Bylaws²⁸ and the Uniform Parish Regulations (“UPR”).²⁹ The corporate or Parish Bylaws, however, clearly defer to the Uniform Parish Regulations. Not only do the Bylaws state in Article I that the “Parish shall be governed by the Uniform Parish Regulations of the Greek Orthodox Archdiocese,”³⁰ but each discrete Article of the Bylaws specifically references the concurrent article of the UPR as controlling. Since the present controversy focuses on the composition of the Parish Council, the Bylaws and UPR relating to that Council are especially relevant. Article VII of the Parish Bylaws provide that the composition, rights and duties of the Parish Council are set forth in Article VII of the Parish Regulations. Similarly, Article VIII of the Bylaws, which focuses on the election of Parish Council, defer to Article VIII of the Regulations.³¹ The

²⁴ 3/18/05 Petition, Ex. A, Articles of Incorporation, ¶ 6.

²⁵ See 5/2/05 Preliminary Objections, ¶ 9 and Ex. A; 5/12/05 Response, ¶ 9

²⁶ See 5/2/05 Preliminary Objections, ¶ 9-10, Ex. A, Charter of the Greek Orthodox Archdiocese of America, Art. 1, § b.

²⁷ 5/2/05 Preliminary Objections, ¶ 11-12, citing Ex. A, Charter, Art. 3, §b. The petitioners likewise agree that St. George is a parish within the Metropolis of New Jersey. 5/12/05 Petitioners’ Response, ¶12.

²⁸ See 3/18/05 Petition, ¶ 7 and Ex. B.

²⁹ See 3/18/05 Petition, ¶ 7 and Ex. C.

³⁰ 3/18/05 Petition, Ex. B, Parish Bylaws, Art. I, ¶ 2.

³¹ 3/18/05 Petition, Ex. B, Parish Bylaws, Arts. VII & VIII.

key point, therefore, is that although St. George is a nonprofit corporation, its Bylaws recognize the superior authority of the Uniform Parish Regulations which are promulgated by the Archdiocese.³² Significantly, although the petitioners invoke the Pennsylvania Nonprofit Corporation Law, 15 Pa.C.S. § 5101 et seq., the respondents note that this law specifically cautions deference to applicable canon law:

If and to the extent canon law applicable to a corporation incorporated for religious purposes shall set forth provisions relating to the government and regulation of the affairs of the corporation which are inconsistent with the provisions of this subpart on the same subject, the provisions of canon law shall control to the extent, and only to the extent, required by the Constitution of the United States or the Constitution of Pennsylvania or both.
15 Pa.C.S. § 5107.

Under the UPRs, the purposes of a Parish are “to keep, practice and proclaim the Orthodox Christian faith pure and undefiled.”³³ A Parish is defined as “the local Eucharistic community of the Church in a given locality, organized under the jurisdiction of the Archdiocese, whose ecclesiastical authority is its canonically consecrated Bishop.”³⁴ As the petitioners note, the “bishop” is also known as the Metropolitan.³⁵

The threshold question that must be resolved, therefore, is whether this court lacks subject matter jurisdiction to resolve the controversy concerning the election of Parish Council members and officers where the Metropolitan under the relevant UPR is charged with validating the results of that election.³⁶ For the reasons set forth below, this court concludes that it must exercise deference due to controlling precedent and the separation of church and state.

³² 5/25/05 Preliminary Objections ¶¶ 11-13, Ex. A. (Archdiocese Charter Art. 22). The petitioners likewise describe the UPRs as the “Uniform Parish Regulations of the Greek Orthodox Church of America.” 3/18/05 Petition, ¶2.

³³ 3/18/05 Petition, Ex. C, UPR, Chap. II, Art. I, section 1.

³⁴ 3/18/05 Petition, Ex. C, UPR, Chap. II, Art. I, section 2.

³⁵ 3/18/05 Petition, ¶ 14.

³⁶ 3/18/05 Petition, Ex. C, UPR, Chap. II, Art. IX.

Legal Analysis

Civil courts presented with a controversy involving the internal governance or administration of a religious association must be sensitive to the potential constitutional issues at stake. To discourage interference with the free exercise of religion by civil courts, the United States Supreme Court has embraced a deference rule. In Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94 (1952), for instance, the court emphasized that a civil court’s intervention in issues of governance of a hierarchical church organization is limited by the First and Fourteenth amendments. In so doing, the Kedroff court emphasized the “spirit of freedom for religious organizations, an independence from secular control or manipulation—in short power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”³⁷ It therefore struck down a New York statute that sought to redefine the administrative structure of the Russian Orthodox Churches in America so that a corporation could acquire a cathedral for an archbishop chosen by American churches rather than those in Moscow.

The Kedroff court focused on how this legislation had the effect of regulating church administration and operation.³⁸ In explaining why this was impermissible, the court emphasized:

The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and

³⁷ Kedroff, 344 U.S. at 116.

³⁸ Kedroff, 344 U.S. at 107.

would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. Kedroff, 344 U.S. at 114-15 (quoting Watson v. Jones, 80 U.S. 679 (1872)).

The analysis in Kedroff involved potential civil interference with ecclesiastical government and allocation of power within the context of the organizational structure of a hierarchical church.³⁹ It defined hierarchical churches as “those organized as a body with other churches having similar faith and doctrine with a common ruling, convocation or ecclesiastical head.”⁴⁰

In a subsequent opinion, the United States Supreme Court once again emphasized that questions involving “the composition of the church hierarchy are at the core of ecclesiastical concern.” Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717 (1976). The controversy in Milivojevich centered on whether a Bishop of the American Canadian Diocese of the Serbian Orthodox Church had been properly suspended by the Holy Assembly of Bishops and Holy Synod. In concluding that this raised an issue of “ecclesiastical cognizance and polity” that precluded intervention by a civil court under the First and Fourteenth Amendments, the United States Supreme Court underscored the impropriety of any analysis of whether the Bishop’s removal had been “arbitrary” under the laws and canons of the Church:

For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense “arbitrary” must inherently entail inquiry into the

³⁹ Kedroff, 344 U.S. at 115.

⁴⁰ Kedroff, 344 U.S. at 110. It noted that the Russian Orthodox Church until the Russian Revolution was a hierarchical church with “paramount jurisdiction in the governing body in Russia over the American Metropolitanate.” Kedroff, 344 U.S. at 105. It also noted that as a hierarchical church, it had a Patriarch at its head, governed by the conventions or sobors called by him. *Id.*, 344 U.S. at 101.

procedures of that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept ecclesiastical decisions of church tribunals as it finds them.

Milivojevich, 426 U.S. at 713.

In line with this analysis, the Milivojevich court also concluded that disputes concerning the reorganization of the Diocese were likewise beyond the purview of civil courts because they involve “a matter of internal government, an issue at the core of ecclesiastical affairs.”⁴¹

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. Milivojevich, 426 U.S. at 724-25.

The Pennsylvania Supreme Court in Presbytery of Beaver- Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, 507 Pa. 255, 259, 489 A.2d 1317 (1985) likewise recognized this rule of deference:

Whenever the questions of discipline, or of faith or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in application to the case before them.

The Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, 507 Pa. 255, 259, 489 A.2d 1317, 1319 (1985)(quoting Watson v. Jones, 80 U.S. at 727 (emphasis added in Presbytery).

In acknowledging this deference rule, the Pennsylvania Supreme Court emphasized that “the right to practice one’s belief and worship is so deep a root of our constitutional culture that a court, even with the best intentions, can be no more than a

⁴¹ Milivojevich, 426 U.S. at 722.

clumsy intruder into the most delicate and sensitive areas of human life.” Presbytery, 507 Pa. at 260, 489 A.2d at 1310 . The Presbytery court was, however, careful to draw boundaries for the rule of deference. Not all disputes among members of a congregation, it noted, are doctrinal. Instead, “[s]ome are simply disputes as to meaning of agreements on wills, trusts, contracts and property ownership.” Id., 507 Pa. at 261-62, 489 A.2d at 1320-21. A “neutral principles approach’ evolved as to these nondoctrinal issues.⁴² These issues involve civil law and are thus amenable to judicial review by civil courts because they “are not predicated on any religious doctrine.” Id., 507 Pa. at 262, 489 A.2d at 1320-21. Thus, in Presbytery, the Pennsylvania Supreme Court was able to decide the “pristine” property issue of whether a church/nonprofit corporation that ended its affiliation with the United Presbyterian Church of America retained the property it owned prior to its affiliation. In Presbytery, the nonprofit corporation had owned property prior to its affiliation with the United Presbyterian Church. By applying neutral principles of trust law, the court concluded that the corporation had never evinced the requisite intent to convey the property to the church. See also The Conference of African Union First Colored Methodist Protestant Church v. Shell et al., 659 A.2d 77 (Pa. Commw. 1995)(under neutral principles approach, a civil court could determine the title of property after the disbanding of a nonprofit corporation and its previously affiliated church).

Similarly, the Pennsylvania Commonwealth court concluded that a civil court could adjudicate under nonprofit corporation law whether there had been an improper transfer of corporate funds to a church by members of a board of a nonprofit corporation that had

⁴² The United States Supreme Court outlined the benefits of this approach in Jones v. Wolf, 443 U.S. 595 (1979).

been created to promote and maintain a Swedenborgian church. The propriety of such a transfer of funds, the court reasoned, would not “require a court to determine any ecclesiastical issue” and was a pure question of corporate law. In re the Lord’s New Church Which is Nova Hierosolyma Appeal of Feodor Pitcairn et al., 817 A.2d 559, 564 (Pa. Commw. 2003), aff’d in part and rev’d in part, (as to the voiding of the 6/23/99 Special Meeting of the Board of Directors), 573 Pa. 479, 826 A.2d 863 (2003).

In contrast, however, the issue raised by the petitioners as to their removal from the Parish Council by the Metropolitan does not fall within the neutral principles approach. Instead it strikes at the organizational structure of the Parish. Courts have recognized that issues involving the composition of a church hierarchy are at the core of ecclesiastical concerns. As previously discussed, in its Milivojevich decision the United States Supreme Court concluded that where a bishop was defrocked by the Holy Assembly of Bishops—the highest hierarchical body of the Serbian Orthodox Church—that decision was not subject to review by civil courts. In so doing, it observed:

The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments “civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes]... Such a determination...frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ...religious law [governing church polity] would violate the First Amendment in much the same manner as civil determination of religious doctrine. Milivojevich, 426 U.S. at 708-09 (quoting Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 369 (1970)(brackets and ellipses in original).

The petitioners, in contrast, argue that their petition involving the election of the Parish Council does not raise ecclesiastical issues, and in so doing they invoke

Poesnecker v. Ricchio, 158 Pa. Commw. 459, 631 A.2d 1097 (Pa. Commw. 1993), app.denied, 538 Pa. 651, 647 A.2d 903 (1994) An analysis of Poesnecker, however, does not support the petitioners’ broad position. In Poesnecker, the Commonwealth Court was asked to determine whether the Supreme Grand Master of a fraternal society was properly removed by a Council of Seven. The fraternal society was in part religious and it conducted all business through a Pennsylvania nonprofit corporation.

In tackling the various issues presented, the Commonwealth Court noted that courts must apply a rule of deference as to the internal workings of a religious organization. Hence, “civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical policy on matters of discipline, faith, internal organization or ecclesiastical rule, custom or law.” Poesnecker, 158 Pa. Commw. at 470, 631 A.2d at 1103 (emphasis added). It noted, however, that courts may resolve church disputes that do not involve ecclesiastical issues. Applying these principles to the facts before it, the court concluded that “the ritual rules governing the position of Supreme Grand Master and Council of Seven are doctrinal.” Id., 158 Pa. Commw. at 471, 631 A.2d at 1103. The next inquiry therefore was whether there had been a ruling by the highest judicatory body of the Fraternity as to the removal of the Supreme Grand Master. To make this determination, the court analyzed the Organic Law of the Fraternity which provided that the Council of Seven was subordinate to the Supreme Grand Master. Hence, the removal of the Supreme Grand Master by the Council of Seven was not the result of a decision by the highest judicatory body of the Fraternity—and was therefore invalid.

The Poesnecker court also addressed the different issue of whether a civil court could appoint a custodian to hold a plebiscite of the members of the secret organization to select the directors and officers of the Fraternity’s corporate arm—the Beverly Hall Corporation. The Commonwealth Court ruled that the trial court properly applied the statutes governing Pennsylvania nonprofit corporations to the Beverly Hall Corporation. In reaching this conclusion, however, the court noted that the bylaws of the Beverly Hall Corporation did not address either the election of a board of directors or membership. Consequently, under the Pennsylvania statute, “directors shall be elected by the members of the nonprofit corporation unless other methods have been adopted by the bylaws.” Poesnecker, 158 Pa. Commw. at 474, 631 A.2d at 1105 (quoting 15 Pa.C.S. § 5725).

In the instant case, in contrast, the Bylaws of St. George do set forth clear procedures for the election of the Parish Council. Those Bylaws submit unreservedly to the procedures set forth in the Uniform Parish Regulations. Article VII of the Bylaws state that the “composition, rights, and duties of the Parish Council are set forth in Article VII of the Regulations.”⁴³ Article VIII of the Bylaws likewise provides that “the elections of the Parish Council are as set forth in Article VIII of the Regulations,” while outlining the nominating procedure for elections to the Parish Council.⁴⁴ Finally, Article XI of the Bylaws require ratification of the election of the Parish Council as set forth in Article IX of the Regulations.⁴⁵

Article IX of the UPR states that the results of the election should be forwarded by the Priest to the Bishop “for review and ratification.”⁴⁶ While this UPR does not

⁴³ 3/18/05 Petition, Ex. B.

⁴⁴ 3/18/05 Petition, Ex. B.

⁴⁵ 3/18/05 Petition, Ex. B.

⁴⁶ 3/18/05 Petition, Ex. C, Chapt. II, Art. IX.

define “Bishop,” the Charter of the Greek Orthodox Archdiocese of America provides that a Metropolitan within his ecclesiastical district has the right and responsibilities of a bishop.⁴⁷ The petitioners likewise concede that under the UPR the Bishop is the Metropolitan.⁴⁸ Under Article IX of the UPR attached as Ex. C to the petition, the Bishop—or Metropolitan—is listed as the sole hierarch with authority to ratify a Parish Election.⁴⁹ The only caveat is in case of a protest, in which case the election will be deemed void by the Bishop (or Metropolitan) if the protest is upheld and a new election will be ordered.⁵⁰ A protest as to the validity of a Parish Election may be lodged by any member in good standing of the Parish, but Article VIII of the UPR provides that the “decision of the Bishop thereon shall be final.”⁵¹ Under the UPRs, therefore, the Metropolitan is the final arbiter as to the validity of a Parish Election, and would thus constitute the highest judicatory body under the relevant rules to make that determination. In fact, the Regulations provide that any candidate running for election to the Parish Council must attend a seminar with the Priest to discuss the UPR. Prior to any election, all candidates must sign a statement that they understand the UPR and will “abide by them and the oath of office.”⁵²

Moreover, an analysis of the Regulations the petitioners attach to their petition underscores the ecclesiastical nature of the duties and responsibilities of the Parish Council as well as its role in the fiscal and administrative affairs of the Parish. Each member of the Parish Council must take the following oath of office:

⁴⁷ 5/2/05 Preliminary Objections, Ex. A, Article 7.

⁴⁸ 3/18/05 Petition, ¶14.

⁴⁹ 3/18/05 Petition, Ex. C., Chapt. II, Art. IX.

⁵⁰ 3/18/05 Petition, Ex. C., Chapt. II, Article IX, section 2.

⁵¹ 3/18/05 Petition, Ex. C, Chapt. II, Article VIII, section 9.

⁵² 3/18/05 Petition, Ex. C, Chapt. II, Article VIII, section 2.

I do solemnly affirm that I will uphold the dogma, teaching, traditions, holy canons, worship, and moral principles of the Greek Orthodox Church, as well as the constitutional charter, discipline, and regulations of the Greek Orthodox Archdiocese of North and South America, and that I will fulfill faithfully and sincerely the duties and obligations required of a member of the Parish Council. So help me God.⁵³

Under Article XII of the Regulations, the Parish Council is charged with the following duties:

The Parish Council under the leadership of the Priest shall have the following duties: to attend divine services regularly and to participate in the sacramental life of the Church thereby setting an example for the Parish; to administer the affairs of the Parish in such manner as to aid the Priest in the fulfillment of its aims and purposes, establish a stewardship program, appoint a stewardship committee to implement and expand the stewardship program of the Parish, to collect the revenue of the Church, issuing receipts thereof and paying by check the salaries of Parish personnel, Parish expenses, budgetary grants-in-aid for the Parish educational and philanthropic organizations and such sums as may be fixed by the Clergy-Laity Congresses for the support of the Archdiocese, to buy, sell or mortgage parish property, as hereinbefore provided, to submit to the Bishop at the end of each year a report of its stewardship and to submit annually to the Archdiocese and to the Diocese the Parish budget for the ensuing year and the audited financial statement for the prior year.⁵⁴

The respondents in support of their preliminary objections attach and invoke “current” Regulations that were ratified on January 3, 2005. The main objective in citing these more recent regulations appears to be its more explicit definition of the Metropolitan as the “head hierarch of a Metropolis.”⁵⁵ The Petitioners object that these more recent provisions were not in effect at the time of the disputed incidents; it is, however, unnecessary to delve into this issue since the regulations attached to the Petitioners’ petition establish the Metropolitan’s crucial role in validating a Parish Election. In fact, the Petitioners themselves concede this role in their petition, where they

⁵³ 3/18/05 Petition, Ex. C, Chapt. II, Article IX, section 4.

⁵⁴ 3/18/05 Petition, Ex. C, Chapt. II, Article XII, section 1.

⁵⁵ 5/2/05 Preliminary Objections, ¶ 15 and Ex.B.

acknowledge that under the UPRs the Metropolitan must ratify the results of the Parish election.⁵⁶

As a secondary issue, the petitioners request that the respondents' assertion of control over and freezing of St. George's bank accounts be set aside. This issue, however, is intimately linked to the exercise of the respondents' authority as members and officers of the Parish Council. It thus does not involve the "pristine" issue of title to property previously discussed⁵⁷ in terms of The Presbytery of Beaver Butler of the United Presbyterian Church v. Middlesex, 507 Pa. 255, 489 A.2d 1317 (1985) and The Conference of African Union First Colored Methodist Protestant Church v. Shell et al, 659 A.2d 77 (Pa. Commw. 1995). Rather, since the issue of control over St. George's bank accounts as set forth in the petition⁵⁸ is intimately related to the exercise of that authority by members and officers of the Parish Council, it likewise is controlled by the conclusion that this court lacks subject matter jurisdiction under the relevant Bylaws, UPRs, Articles of Incorporation and Charter. See generally, Milivojevich, 426 U.S. at 709 (where resolution of the issue of a bishop's defrockment controls related property issue, this is a "religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals").

⁵⁶ 3/18/05 Petition, ¶ 21. The petitioners attempt to characterize the Metropolitan's role in ratifying the elections as limited or pro forma, since they state that the "UPRs direct that the Metropolitan should ratify the election after confirming that the Parish has met its financial obligations to the Archdiocese, but the Metropolitan instead refused to accept the results of the election." Id.

⁵⁷ See p. 13 *supra*.

⁵⁸ The petitioners note, for instance, that in objecting to the respondents' exercise of control over the corporation's account, the petitioners told Citizens Bank "that they were the duly elected Officers of the corporation," thereby linking the issue of their rightful authority within the hierarchy to the property issues asserted in their petition. See 3/18/05 Petition, ¶ 30.

Conclusion

For the reasons set forth above, the petition to set aside invalid corporate action is dismissed.

Date: _____

By the Court:

John W. Herron, J.

