

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Calvary Episcopal Church, Pittsburgh, :  
Pennsylvania, a Pennsylvania :  
Non-profit Corporation; Saint Stephen's :  
Protestant Episcopal Church of :  
Wilkesburg, Pennsylvania, a :  
Pennsylvania Non-profit Corporation; :

The Reverend Dr. Harold T. Lewis, :  
Rector, Calvary Episcopal Church, :  
Pittsburgh, Pennsylvania; and Philip :  
Richard Roberts, Senior Warden, :  
Calvary Episcopal Church, Pittsburgh, :  
Pennsylvania, and Herman S. Harvey :

v. :

No. 293 C.D. 2010

The Right Reverend Robert William :  
Duncan, Bishop of The Episcopal :  
Diocese of Pittsburgh; The Right :  
Reverend Henry Scriven, Assistant :  
Bishop of The Episcopal Diocese :  
of Pittsburgh; Babatunde Fapohunda, :  
Robert Manson, James Moore, John :  
Morgan, Lynn Patterson, Donald Pepler, :  
Thomas Rumpy, Bruce G. Seiling, John :  
Stevenson, Richard Thomas, and :  
Douglas Wicker, all of whom are :  
members of the Board of Trustees of :  
The Episcopal Diocese of Pittsburgh; :  
The Rev. Catherine Brall, Kathleen :  
Marks, The Rev. J. Douglas McGlynn, :  
The Rev. Scott T. Quinn, and William :  
Roemer, all of whom are members of :  
the Standing Committee of the :  
Episcopal Diocese of Pittsburgh, and :  
The Episcopal Diocese of Pittsburgh, :  
an unincorporated association and The :  
Episcopal Church, an unincorporated :  
association, by The Right Reverend :

Argued: July 22, 2010

John C. Buchanan, as Trustee Ad Litem :  
:  
Appeal of: The Episcopal Diocese of :  
Pittsburgh, The Right Reverend Robert :  
William Duncan, The Right Reverend :  
Henry Scriven, Babatunde Fapohunda, :  
Robert Manson, Kathleen Marks, The :  
Rev. J. Douglas McGlynn, James :  
Moore, John Morgan, Lynn Patterson, :  
Donald Pepler, Thomas Rampy, :  
William Roemer, Bruce G. Seiling, :  
John Stevenson, Richard Thomas and :  
Douglas Wicker :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: August 4, 2010**

Calvary Episcopal Church, Pittsburgh, Pennsylvania, a Pennsylvania Non-profit Corporation; Saint Stephen's Protestant Episcopal Church of Wilkinsburg, Pennsylvania, a Pennsylvania Non-profit Corporation; The Reverend Dr. Harold T. Lewis, Rector, Calvary Episcopal Church, Pittsburgh, Pennsylvania; Philip Richard Roberts, Senior Warden, Calvary Episcopal Church, Pittsburgh, Pennsylvania; Herman S. Harvey; and The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (collectively, Appellees) have filed a Motion to Quash the Appeal of The Episcopal Diocese of Pittsburgh; The Right Reverend Robert William Duncan (Bishop Duncan); The Right Reverend Henry Scriven; Babatunde Fapohunda; Robert Manson; Kathleen Marks; The

Rev. J. Douglas McGlynn; James Moore; John Morgan; Lynn Patterson; Donald Pepler; Thomas Rampy; William Roemer; Bruce G. Seiling; John Stevenson; Richard Thomas; and Douglas Wicker (collectively, Appellants) from orders of the Court of Common Pleas of Allegheny County (trial court) that: (1) denied Appellants' Motion to Dismiss or Strike Petition by order dated May 8, 2007; (2) denied Appellants' Motion to Strike Praecipe for Entry of Appearance by order dated April 17, 2009; (3) decreed that the Appellees have the right to hold and administer real and personal property subject to Paragraph One of the Stipulation dated October 14, 2005 (Stipulation) **by Opinion and Order dated October 6, 2009**; and (4) accepted and approved the findings of the Special Master that the real and personal property described in the Special Master's Report falls within the scope of Paragraph One of the Stipulation and ordering the distribution of said property **by order dated January 29, 2010**. Appellees assert that Appellants' Notice of Appeal, filed on February 25, 2010, was untimely because the October 6, 2009 Order was a final appealable order and, thus, the Notice of Appeal needed to be filed within 30 days of October 6, 2009. Appellants contend that the Notice of Appeal was timely filed because the October 6, 2009 Order was interlocutory and the trial court's final appealable order, dated January 29, 2010, was the last order entered by the trial court.

The origin of this suit occurred when Appellees<sup>1</sup> filed a civil action in October 2003 against Appellants, alleging that Appellants intended to extinguish

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<sup>1</sup> By Order dated March 22, 2004, the trial court granted the Petition to Intervene of Saint Stephen's Protestant Episcopal Church of Wilksburg, Pennsylvania, adding it as a plaintiff in the action and amending the caption to include it.

the property rights and interests of The Episcopal Church of the United States of America. Appellees' Complaint further alleged that certain actions of the Appellants had jeopardized their property rights and the property rights and interests of The Protestant Episcopal Church of the United States of America and the property rights and interests of The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.

After the filing of an answer and a number of other pleadings, on March 17, 2004, the trial court denied Appellants' Motion to Dismiss and ordered the parties to proceed with discovery. The parties conducted discovery and subsequently entered into settlement negotiations. On October 14, 2005, a Stipulation By Counsel was submitted to the trial court, which the trial court approved and signed on that date. Paragraph One of the Stipulation, which is at issue in this case, provides as follows:

1. Property, whether real or personal (hereinafter "Property"), held or administered by [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter "Diocese") for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in [T]he Episcopal Church of the United States of America. For purposes of this paragraph, Property as to which title is legitimately held in the name of a parish of the Diocese shall not be deemed Property held or administered by the Diocese.

(Stipulation ¶ 1, R.R. Vol. I at 166a.) The present controversy began on December 19, 2006, when a Petition for Enforcement of the Settlement Order of October 14,

2005 was filed by a group of Appellees,<sup>2</sup> alleging that Appellants had separated themselves and have acted to separate the property from The Episcopal Church of the United States of America. (Petition for Enforcement, R.R. Vol. I at 169a-85a.) On January 9, 2007, Appellants filed their answer to the Petition for Enforcement and pleaded that “[t]he Diocese is a constituent member of The Episcopal Church of the United States . . . , has not withdrawn from [The Episcopal Church of the United States], and continues to be a constituent member of [The Episcopal Church of the United States.]” (Answer ¶ 2, R.R. Vol. I at 244a.) Several other answers and new matter were filed by the parties and, on July 7, 2008, Appellees filed a Supplement to the Petition for Enforcement of the Settlement Order (Supplement), in which they requested a court-appointed monitor to inventory and oversee the property at issue. (Supplement ¶¶ 25, 27, R.R. Vol. II at 425a-26a.)

The Petition for Enforcement was filed when:

defendant Duncan and others [Appellants] had taken the first steps to amend the Canon Laws and withdraw the Pittsburgh Diocese from [T]he Episcopal Church of the United States of America. In fact, at the Diocesan Convention of October 4, 2008, a resolution to withdraw the Diocese from [T]he Episcopal Church of the United States of America and align it with [T]he Anglican Province of the Southern Cone received a majority of the votes cast.

(Trial Ct. Op. at 3, October 6, 2009.) Following Appellants’ action, whereby they withdrew from The Episcopal Church of the United States of America, The Episcopal Church of the United States of America removed Bishop Duncan as Bishop of Pittsburgh and named new members to the standing committee of the Diocese of Pittsburgh.

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<sup>2</sup> The Petition for Enforcement was filed by Calvary Episcopal Church, The Reverend Dr. Harold T. Lewis, Philip Richard Roberts, and Herman S. Harvey.

On February 13, 2009, a Petition to Intervene was filed on behalf of The Episcopal Church of the United States of America, by the Right Reverend John C. Buchanan, as Trustee *Ad Litem*. (Petition to Intervene, R.R. Vol. IV at 1624a.) Subsequently, upon completion of discovery, the trial court held a hearing on May 27, 2009, at which time the trial court agreed that the narrow issue for it to decide was, assuming that Appellants validly withdrew from The Episcopal Church of the United States of America, whether the Appellants may take control of the property referenced in Paragraph One of the Stipulation and appropriate that property to another denomination without violating the Stipulation. The trial court ultimately concluded that Appellants could not. The trial court explained that the faction that withdrew from the Episcopal Church of the United States of America to align with The Anglican Province of the Southern Cone, herein the Appellants, admitted that they had no affiliation with The Episcopal Church of the United States of America. The trial court explained that the “parishes that remained loyal to [T]he Episcopal Church of the United States of America,” herein the Appellees, “are now recognized as [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.” (Trial Ct. Op. at 3.) The trial court then reasoned as follows:

I find that the language is clear and unambiguous and, therefore, requires no further explanation. The property is to be held or administered by [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America. Regardless of what name [Appellants] now call themselves, they are not [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.

Credible evidence establishes that the entity now represented by Attorney Andrew Roman has been recognized as [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America. [Appellants] contend that this designation is invalid and that they are entitled to continue to hold and administer the subject

property. There is no basis in law or fact for their position. The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America did not cease to exist when [Appellants] chose to withdraw. [Appellants] could not extinguish an entity that was created and recognized by the intervenors. The action to designate a subsequent board of governance and appoint a successor to Bishop Duncan is further evidence that [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America never ceased to exist.

The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America is the rightful trustee of the Paragraph One property, subject to the terms of the Stipulation of October 14, 2005. The Episcopal Diocese of Pittsburgh, affiliated with [T]he Anglican Province of the Southern Cone, led by Bishop Duncan, cannot continue to be the trustee of the Paragraph One property.

(Trial Ct. Op. at 4-5.) The trial court's **Order of October 6, 2009**, specifically ordered that:

1. The authorized representatives of [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (led by Bishop Robert H[.] Johnson) shall hold and administer the real and personal property that is subject to Paragraph One of the Stipulation of October 14, 2005, subject to the terms of that Stipulation.
2. *Counsel for all parties shall meet with the Special Master (Stanley E. Levine, Esquire) within 30 days of this Order.*
3. *The Special Master will report to the court within 20 days of that meeting and said report shall identify the real and personal property that is subject to Paragraph One of the Stipulation.*
4. *The court will review the report and enter an appropriate order for the orderly transition of possession, custody, and control over said property.*
5. This court retains jurisdiction over the parties and the subject matter to enforce the Stipulation and Order of October 14, 2005 and the provisions of this Order.

(Trial Ct. Order at 1-2, October 6, 2009 (emphasis added).) Appellants did not appeal from this order within thirty days.

Subsequently, the Special Master provided the trial court with a report identifying the real and personal property that is subject to Paragraph One of the Stipulation after he met with counsel pursuant to the trial court's order of October 6, 2009. The trial court considered the Report, and met with counsel and the Special Master on January 27, 2010, to discuss the entry of "an appropriate order for the orderly transition of possession, custody and control over the real and personal property identified" in the Report. (Trial Ct. Order at 2, January 29, 2010.) Following the January 27, 2010 hearing, the trial court **entered an order on January 29, 2010**, ordering that: (1) it accepts and approves the findings of the Special Master; (2) two versions of the order would be prepared – one version that shall be confidential and filed under seal and another one that the public can view; (3) "[u]pon entry of this Order, the financial institutions and repositories holding the Cash, Cash Equivalents, Receivables and Investments listed on page 1 and pages 17-19" of the Report "shall take their instructions regarding the use, distribution, management or disposition of those assets only from the authorized representatives" of the Appellees, "to be identified in a writing signed by Bishop Kenneth L. Price, Jr., or his successor"; (4) "the financial institutions, repositories or other trustees or fiduciaries of the trusts or estates identified on pages 2 and 3" of the Report "shall take their instructions regarding the use, distribution, management or disposition of the assets and beneficial interests described therein only from the authorized representatives [of the Appellees], to be identified in a writing signed by Bishop Kenneth L. Price, Jr., or his successor"; (5) with respect to the "real property assets identified on pages 4 and 21" of the Report, the trial court's "Opinion and Order of October 6, 2009 serves as an adjudication that the [Appellees are] the rightful party to hold and administer the said real estate. The

[Appellees] may, but need not, file of record and index a copy of the Public Version of this Order and the Court’s Opinion and Order dated October 6, 2009 in the counties where the real estate is located as proof of this determination”; (6) “the recipients of the altar artifacts identified on pages 5 through 16” of the Report “shall take their instructions regarding the use, safekeeping and/or return of the altar artifacts only from the authorized representatives of the [Appellees]”; (7) “the persons or entities with the outstanding loans identified on page 20” of the Report “shall take instructions regarding the repayment or payment of the loans only from the authorized representatives of the [Appellees]”; (8) that within twenty days of the January 29, 2010 order, the Appellants shall provide to Appellees “the financial records and other documents and electronically stored information reasonably needed by [Appellees] to hold and administer the real and personal property that is the subject of the order”; and (9) “[t]his Order of Court takes effect immediately. This Court retains jurisdiction over the parties and the subject matter to enforce the Stipulation and Order of October 14, 2005, the Opinion and Order of Court of October 6, 2009, and this Order.” (Trial Ct. Order at 2-5, January 29, 2010.)

Appellants filed a Notice of Appeal on February 25, 2010 appealing, *inter alia*, the October 6, 2009 Order and the January 29, 2010 Order. After the Court issued a briefing schedule to the parties, Appellants filed a reproduced record, and both parties filed briefs.<sup>3</sup> Thereafter, on July 6, 2010, Appellees filed the Motion

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<sup>3</sup> Following the filing of the Notice of Appeal on February 25, 2010, and the Court’s receipt of the original record in this case, this Court sent a briefing schedule to the parties on April 15, 2010 notifying Appellants that their brief and reproduced record were due on May 25, 2010, and the Appellees’ brief was due thirty days after service of Appellants’ brief. In compliance with the briefing schedule, Appellants filed seven volumes of the reproduced record on May 24, 2010; Appellants filed their brief in support of the Notice of Appeal on May 25, (Continued...)

to Quash the Appeal and Brief in Support of the Motion to Quash. On July 20, 2010, Appellees filed a Motion for Leave to File Supplemental Brief in Support of Motion to Quash Appeal, which this Court herein grants. On the same day, Appellants also filed a Response in Opposition to Motion to Quash. This Court heard argument via telephone on the Motion to Quash on July 22, 2010.

In its Motion to Quash, Appellees argue that Appellants untimely filed their Notice of Appeal because the October 6, 2009 Order was a final order “determining that the Appell[ants] could not hold or administer the property in question and the Appellants waived their right to appeal from that order and orders predating that final order by failing to file a notice of appeal within 30 days of the October 6, 2009 [O]rder.” (Motion to Quash ¶ 3.) In opposition to the Motion to Quash, Appellants contend that the October 6, 2009 Order was not a “final order” pursuant to Rule 341(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 341(b), because that order did not dispose of all claims and all parties.

We agree with Appellants that they did not waive their right to appeal from the October 6, 2009 Order. Section 762(a)(5)(ii) of the Judicial Code confines this Court's appellate jurisdiction to "final orders" of the courts of common pleas involving actions or proceedings involving the corporate affairs or affairs of members, security holders, directors, officers, employees or agents of non-profit corporations. 42 Pa. C.S. § 762(a)(5)(ii). A final order is one that: “(1) disposes

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2010; and Appellees filed their brief in opposition on June 24, 2010. Appellants filed their reply brief on July 23, 2010.

of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order” by the tribunal issuing the order. Pa. R.A.P. 341(b). Further, a final order ends the litigation or effectively puts a litigant out of court. Probst v. Department of Transportation, Bureau of Driver Licensing, 578 Pa. 42, 53, 849 A.2d 1135, 142 (2004). The parties do not argue that the October 6, 2009 Order is either an order that is defined as final by statute or that it was determined to be a final order by the trial court. At issue here is whether the October 6, 2009 Order disposed of all of the claims raised by Appellees in their Petition for Enforcement and Supplement thereto, because, if it did not, it would not be a final order pursuant to Pa. R.A.P. 341(b)(1).

Appellees contend that the trial court and counsel for the parties had an “understanding” that the only issue for the trial court to dispose of was, assuming Appellants validly withdrew from The Episcopal Church of the United States of America, whether Appellants can continue to hold and distribute the property at issue in Paragraph One of the Stipulation, and that the trial court definitively disposed of that issue in its October 6, 2009 Order. However, we will look at the initiating pleadings filed of record to determine the claims that had been raised and then evaluate whether the October 6, 2009 Order disposed of all of them.

As part of the relief requested in its Petition for Enforcement, Appellees (who were the initiating parties) claimed they were entitled to “[a]n accounting of the real and personal property of the Diocese and its use since 2003.” (Petition for Enforcement ¶ 23(a)(1), R.R. Vol. I at 184a.) Moreover, in the Supplement filed by the Appellees, they requested a court-appointed monitor to: (1) “inventory the

Property and to oversee any expenditures or transfers of the Property (including cash assets) until assurance of use of the Property within the Episcopal Church is resolved” (Supplement ¶ 25, R.R. Vol. II at 425a); and (2) “conduct an accounting of the Property (real and personal) held or administered by the Diocese and its use since October 14, 2005.” (Supplement ¶ 27, R.R. Vol. II at 426a.) Additionally, in the Complaint-In-Intervention filed on behalf of The Episcopal Church of the United States of America by the Right Reverend John C. Buchanan on May 12, 2009, Reverend Buchanan requested the trial court to enter “[a]n order requiring defendant Bishop Duncan and the individual defendants . . . to provide an accounting of all real and personal property of the Episcopal Diocese of Pittsburgh held on October 4, 2008.” (Complaint-In-Intervention ¶ 59(d), R.R. Vol. V at 1954a.) Indeed, the trial court acknowledged the outstanding claims regarding the accounting of the property at issue when it ordered, on October 6, 2009, that it would review the Special Master’s inventory report “and [would] enter an appropriate order for the orderly transition of possession, custody, and control over said property.” (Trial Ct. Order at 1-2, October 6, 2009.)

There is no dispute that the trial court appointed the Special Master in September 2008 to begin the process of sorting through the property at issue and that the Special Master did not issue his Report to the trial court until after the trial court directed him to do so in its October 6, 2009 Order. More importantly, the trial court did not issue an order adopting the Special Master’s Report and inventory of the real and personal property and decreeing the transition of that property until its January 29, 2010 Order. While the October 6, 2009 Order decided whether the Appellants would be authorized to hold and administer the

real and personal property subject to Paragraph One of the Stipulation, the October 6, 2009 Order *did not* dispose of the accounting claims involving the identification of the subject property or the mechanism by which transfer of that property would be accomplished. Thus, the trial court's January 29, 2010 Order disposed of all claims by all parties and, as such, is a final order pursuant to Rule 341(b) from which Appellants may appeal. We therefore find that Appellants did not waive their right to appeal.

Accordingly, the Motion to Quash Appeal is denied.

  

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RENÉE COHN JUBÉLIRER, Judge

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**ORDER**

**NOW**, August 4, 2010, the Motion for Leave to File Supplemental Brief in Support of Motion to Quash Appeal filed by Calvary Episcopal Church, Pittsburgh, Pennsylvania, a Pennsylvania Non-profit Corporation; Saint Stephen's Protestant Episcopal Church of Wilkinsburg, Pennsylvania, a Pennsylvania Non-profit Corporation; The Reverend Dr. Harold T. Lewis, Rector, Calvary Episcopal Church, Pittsburgh, Pennsylvania; Philip Richard Roberts, Senior Warden, Calvary Episcopal Church, Pittsburgh, Pennsylvania; Herman S. Harvey; and The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (collectively, Appellees) is hereby **GRANTED**.

The Motion to Quash Appeal filed by Appellees is hereby **DENIED**.

  
RENEE COHN JUBELIRER, Judge

Certified from the Record

AUG - 4 2010

and Order Exit