

Before the congregational meeting, the Executive Committee of the Council of the Presbytery of Baltimore (Presbytery) established an Administrative Commission for the Church which was authorized to investigate "all matters relating to the ministry of the co-pastors" and to make recommendations to the Presbytery based on its investigation. At a June 17, 1999 meeting, the Presbytery, accepting recommendations from its Committee on Ministry, concurred with the request of the co-pastor and the congregation to dissolve her co-pastor relationship and directed the Administrative Commission to "hear all sides of the conflict" at the Church and make appropriate recommendations to the Presbytery not later than September 1999.

In August 1999, the Administrative Commission issued a report regarding Second Presbyterian, which it gave to Smart. It recommended that the Presbytery dissolve the pastoral relationship between Smart and the Church.

A special meeting of the Presbytery was held on August 9, 1999 to receive and to act on the Administrative Commission's report, which was distributed in advance to members of the Presbytery and the Church. The Presbytery entered executive session with members of the Church present. Smart was given an opportunity to speak, but asked a member of the Church to speak on his behalf. An amended report from the Administrative Commission was distributed and the following motion was made and seconded:

The Rev. Smart, while appreciating the support of so many members of his congregation, realistically recognizes that Second Presbyterian church is now today a divided family. Out of love and respect for the whole congregation, the Rev. Smart wishes to tender his resignation effective September 1, 1999, on the conditions that: (1) He be permitted to continue all pastoral activities until that date (2) He be permitted to conduct two farewell worship services to meet the need for grace, forgiveness and reconciliation (3) That the severance package defined in the report and the recommendations of the Session to the Rev. Smart dated May 19, 1999 be implemented (4) That the original report of the Presbytery Administrative Commission be nullified in its entirety.

The moderator was asked to clarify the motion. According to the meeting minutes, the moderator stated that the motion included the acceptance of Smart's resignation, that such acceptance entailed dissolution of the pastoral relationship and asked Smart: "Ernest, is it clear that if the Presbytery votes this motion that you are not only tendering your resignation but the action of the Presbytery is the dissolution effective on the date in the motion." [sic] The minutes state that Smart "responded affirmatively." The Presbytery then voted to dissolve the pastoral relationship pursuant to the motion.

On October 29, 1999, Smart filed a remedial action against the Presbytery. In "Count 1" he asserted that, due to various irregularities in the "process" leading up to the August 9, 1999 Presbytery meeting, his resignation had been "compelled and coerced." In "Count 2" he alleged that these irregularities had effectively disenfranchised members of the Church who had voted in the majority during the congregation's May 25, 1999, meeting.

The Presbytery answered and also moved to dismiss, and asserted that Smart's complaint had not stated a claim upon which relief could be granted because it had failed to specify any irregularity in the process and because Smart had resigned.

After examining the papers in the case (see D-6.0307), the moderator and clerk of the SPJC found that Smart's complaint did not state a claim upon which relief could be granted. The moderator and clerk reported this finding to the parties and the SPJC on January 10, 2000. Smart challenged this finding pursuant to D-6.0306a, and the SPJC scheduled a hearing on this preliminary question for May 9, 2000. Before the hearing, the moderator of the SPJC informed Smart that he could present argument and documentary, but not testimonial, evidence at the hearing.

At the hearing, the SPJC concluded that the complaint did not state a claim for relief based upon the following facts:

1. In the Presbytery of Baltimore Minutes of Executive Session dated August 9, 1999, in pertinent part, a substitute motion was made relating to Second Presbyterian Church, Baltimore, Maryland. As a part of that motion, Rev. Ernest Smart tendered his resignation effective Sept 9, 1999. The Moderator asked Rev. Smart if the substitute motion represented his wishes. He replied in the affirmative. After discussion, the Moderator asked: 'Ernest, is it clear that if the Presbytery votes this motion that you are not only tendering your resignation but the action of the Presbytery is the dissolution effective on the date in the motion.' [sic] Rev. Smart answered affirmatively. The substitute motion was adopted.
2. Rev. Smart was asked by the PJC if the above stated minutes accurately reflected what occurred at the August 9, 1999 meeting and he responded, through counsel, in the affirmative.
3. Rev. Smart's brief filed in support of his challenge to the dismissal recommendation admitted that the resignation was undisputed.

The SPJC also concluded, based on the record before it, that the appeal should be dismissed as moot.

This appeal followed.

Specifications of Error

Smart raised several specifications of error, which are restated for clarity and to avoid redundancy.

I. The SPJC should have allowed Smart to present testimonial evidence and should have considered all papers pertaining to the case at the hearing on the preliminary question before summarily dismissing his complaint.

This specification of error is sustained.

D-6.0306a provides that if a challenge is made to the findings of the moderator and clerk on the preliminary questions identified in D-6.0305, "opportunity shall be provided to present evidence and argument on the finding in question." Evidence is defined in D-14.0101 "in addition to oral testimony of witnesses, [evidence] may include records, writings, material objects, or other things presented to prove the existence or nonexistence of a fact." Here, the "finding in question" was whether Smart's complaint states a claim upon which relief can be granted given its alleged lack of specificity and the fact of his resignation. At the hearing, SPJC should have allowed Smart an opportunity to present testimonial as well as documentary evidence produced pursuant to D-6.0307 on this preliminary question, limited to those alleged irregularities occurring on and after July 31, 1999 (see D-6.0202a) and the objective circumstances and events leading to his resignation.

II. *The SPJC's summary dismissal of "Count 2" effectively disenfranchised and nullified the May 25, 1999, congregational vote to retain Smart as pastor.*

This specification is not sustained.

While the Presbytery only minimally heard from representatives of the Church, the May 25, 1999 congregational vote does not have controlling authority over the Presbytery's dissolution of the pastoral relationship under G-14.0601.

Order

IT IS THEREFORE ORDERED that this case be remanded to the SPJC for a hearing on the preliminary question of whether Smart's complaint fails to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic report this decision to the Synod at its first meeting after receipt, that the Synod enter the full

decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of General Assembly.

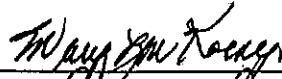
IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Baltimore report this decision to the Presbytery at its first meeting after receipt, that the Presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

Leon Fanniel and Mildred Morales, members of this Commission, were not present for the hearing and took no part in the deliberation or decision.

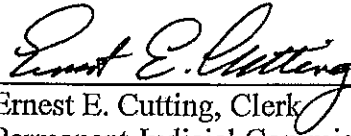
Dated this 2nd day of December, 2001.

CERTIFICATE

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 214-3, Ernest R. D. Smart v. Presbytery of Baltimore, made and announced at Atlanta, GA, on December 3, 2001.



Mary Lou Koenig, Moderator
Permanent Judicial Commission of the General Assembly

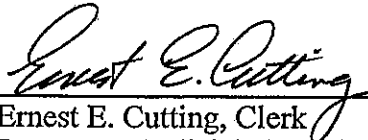


Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing Mark A. Tammen to deposit it in the mail at Atlanta, GA on December 3, 2001, postage prepaid.

Ross S. Bash, Esq., Counsel for Complainant/Appellant
Samuela Jett, Jr., Esq., Counsel for Respondent/Appellee
Charles Forbes, Stated Clerk
Presbytery of Baltimore
Barry Van DeVenter, Int. Stated Clerk
Synod of the Mid-Atlantic
General Assembly Permanent Judicial Commission (by regular mail)

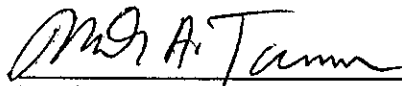
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to Mark A. Tammen, on December 3, 2001.



Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly at Atlanta, GA, on December 3, 2001 in Remedial Case 214-3, Ernest R. D. Smart v. Presbytery of Baltimore, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Atlanta, GA, on December 3, 2001.



Mark A. Tammen
Director of Constitutional Services