

**THE PERMANENT JUDICIAL COMMISSION  
OF THE GENERAL ASSEMBLY  
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

<b>Dixie Lewellen,</b>	)	
<b>Appellant/Complainant,</b>	)	
	)	<b>DECISION AND ORDER</b>
v.	)	
	)	Remedial Case 223-03
<b>Presbytery of Los Ranchos,</b>	)	
<b>Appellee/Respondent.</b>	)	

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**Arrival Statement**

This is an appeal to the General Assembly Permanent Judicial Commission (the "GAPJC" or "the Commission") from a June 10, 2016, Decision of the Permanent Judicial Commission of the Synod of Southern California and Hawaii (the "SPJC") granting the Presbytery of Los Ranchos's Motion to Dismiss.

**Jurisdictional Statement**

This Commission has jurisdiction, Appellant has standing to file this Appeal, the Appeal was properly and timely filed, and the Appeal states one or more of the grounds for appeal under D-8.0105.

**Appearances**

Jack Guiso appeared on behalf of Appellant. Michael E. Williams appeared on behalf of Appellee.

**History**

On July 23, 2013, the congregation of St. Paul's Presbyterian Church in Anaheim, California (St. Paul's), and Reverend William Halliday requested dismissal from the Presbyterian Church (U.S.A.) to the Covenant Order of Evangelical Presbyterians (ECO). The Presbytery of Los Ranchos (PLR) established a Joint Discernment Team (JDT). The JDT recommendation to Presbytery included the following actions: dismissing St. Paul's to ECO, repayment of Synod Loan of \$11,500, and dismissing Reverend Halliday to ECO. These recommendations of the JDT were adopted by Presbytery at its meeting on July 31, 2014. On September 15, 2014, several members of PLR filed a remedial complaint against Presbytery to the Synod regarding the terms of dismissal for several congregations, not including St. Paul's. (Bucklin v. Presbytery of Los Ranchos).

On November 19, 2015, Presbytery leadership brought a motion to rescind the July 31, 2014, action of Presbytery. Presbytery declared the motion "controversial," which triggered the

Presbytery's controversial issues policy that mandated that the motion would be considered no sooner than the next stated meeting. On February 25, 2016, the Presbytery voted to rescind the July 31, 2014, action.

On March 21, 2016, Appellant filed a complaint with the Synod of Southern California and Hawaii alleging that the action to rescind was irregular and unconstitutional. On May 5, 2016, Presbytery filed a motion to dismiss the complaint in its entirety. The SPJC granted that motion on June 10, 2016. Appellant filed the Notice of Appeal with the GAPJC on August 26, 2016.

### **Specifications of Error**

Specification of Error No. 1: The SPJC erred procedurally in the following ways:

- a. *The SPJC manifested prejudice by not finding a disqualifying conflict of interest regarding the title to the property of a dismissed congregation held by the synod with an interest in retaining title (Appellant's Specification of Error No. 1). This specification of error is not sustained.*
- b. *The SPJC misconstrued the definition of a quorum and included ineligible attendees (Appellant's Specification of Error No. 2). This specification of error is not sustained.*
- c. *The SPJC misstated the action being considered/contested (Appellant's Specification of Error No. 3). This specification of error is not sustained (see Decision below).*
- d. *The SPJC issued contradictory findings on the jurisdictional question (Appellant's Specification of Error No. 4). This specification of error is not sustained.*
- e. *The SPJC hastened to a decision before evidence or testimony was received and disregarded Claimant's Amended Complaint (Appellant's Specification of Error No. 9). This specification of error is not sustained (see Decision below).*
- f. *The SPJC failed to issue timely invitation for Claimant to submit briefs in response to Motion to Dismiss (Appellant's Specification of Error No. 10). This specification of error is not sustained (see Decision below).*
- g. *The SPJC failed to comply with requirement that trials be conducted formally with full decorum (Appellant's Specification of Error No. 11). This specification of error is not sustained (see Decision below).*
- h. *The SPJC failed to consider and vote on each alleged irregularity (Appellant's Specification of Error No. 12). This specification of error is not sustained (see Decision below).*

Specification of Error No. 2: The SPJC erred in constitutional interpretation in the following ways:

- a. *The SPJC misconstrued the standard for summary dismissal and failed to base its determination solely upon the assumed truth of the facts alleged in the complaint, after a thorough examination*

*of the record and opportunity for all parties to be heard (Appellant's Specification of Error No. 5). This specification of error is sustained (see Decision below).*

- b. The SPJC elicited improper testimony on consultation with St. Paul's about dismissal (Appellant's Specification of Error No. 6). This specification of error is sustained (see Decision below).*
- c. The SPJC disregarded Claimant's allegation that Presbytery was not sufficiently informed when voting on the controversial issue of dismissal and not at all regarding transfer of property title (Appellant's Specification of Error No. 7). This specification of error is not sustained.*
- d. The SPJC refused Claimant the opportunity to be heard via opening statement, history, and interests in St. Paul's (Appellant's Specification of Error No. 8). This specification of error is not sustained (see Decision below).*
- e. The SPJC misconstrued the purpose and effect of a Stay of Enforcement in a remedial case which is intended solely to maintain the status quo until a decision on review is reached, not to allow parties time to amend or rescind their actions (Appellant's Specification of Error No. 13). This specification of error is sustained in part and not sustained in part (see Decision below).*
- f. The SPJC misconstrued the preconditions for rescinding an action when something has been done as a result of that action that cannot be undone (Appellant's Specification of Error No. 14). This specification of error is not sustained.*
- g. The SPJC misconstrued Robert's Rules of Order by rescinding an action that included the resignation of Reverend Halliday (Appellant's Specification of Error No. 15). This specification of error is not sustained.*
- h. The SPJC misconstrued the prerogative of the Presbytery of Los Ranchos unilaterally to decline further contest of Bucklin v. Los Ranchos (Appellant's Specification of Error No. 16). This specification of error is not sustained (see Decision below).*
- i. The SPJC misconstrued that the power to decide or rescind issues under judicial review resides with the higher council, not reserved to Presbytery (Appellant's Specification of Error No. 17). This specification of error is not sustained (see Decision below).*
- j. The SPJC accepted as true that an action under judicial review can be rescinded simply for convenience without applying the standard (Appellant's Specification of Error No. 18). This specification of error is not sustained.*

Specification of Error No. 3: *The SPJC erred by not applying civil law in the following ways:*

- a. *The SPJC accepted as true that Presbytery is not subject to civil law involving breach of contract (Appellant's Specification of Error No. 19). This specification of error is not sustained (see Decision below).*
- b. *The SPJC accepted as true that Presbytery is not subject to civil law involving timeliness of contract rescission (Appellant's Specification of Error No. 20). This specification of error is not sustained (see Decision below).*

### **Decision**

In a case involving an appeal from a grant of a motion to dismiss, this Commission reviews the decision of the SPJC to determine if the dismissal was proper. In this case, the review led this Commission to focus on whether the complaint filed stated a claim upon which relief can be granted. In determining whether the Complaint states a claim upon which relief can be granted, the SPJC and this Commission must assume the truth of facts as alleged in the Complaint (*McKittrick v. Session of West End Presbyterian Church*, 2003, p. 272) and then determine whether those assumed facts warrant any relief.

Appellant alleges in Specification of Error 2e (Appellant's Specification of Error 13) that Presbytery's rescission of the July 31, 2014, action was irregular because Presbytery may have violated a judicial stay which had been entered in a case to which Presbytery was a party. Appellant's arguments are focused on D-3.0102, which states "[w]hen a case, either remedial or disciplinary, has been transmitted to a permanent judicial commission, the electing council shall take no further judicial action on the case." That provision, however, does not support Appellant's position because Presbytery is not the electing council for the SPJC.

Notwithstanding, both parties admit that there was a stay in place, although a copy of the stay was not in the record on appeal. This case was decided on the basis of a motion to dismiss and the record does not provide information on whether evidence was presented as to the content and extent of the stay. If the stay did prohibit the actions taken by Presbytery, a claim that warranted relief may have been stated. In the proper circumstances, the SPJC could overturn the actions of Presbytery. For these reasons, Specification of Error 2e (Appellant's Specification of Error 13) is sustained in part and not sustained in part.

Appellant further argues that the SPJC did not apply the appropriate standard of review. The decision of the SPJC after a hearing on Respondent's motion to dismiss states: "Finding the Respondent's arguments to be correct, the motion to dismiss is granted." In its motion to dismiss, Respondent argued that Complainant could not meet her burden of proof by the preponderance of the evidence, citing D-7.0402a. This provision applies to the standard of review in trials where both parties have an opportunity to present evidence. As set forth above, the standard of review on a motion to dismiss requires the facts in the complaint to be taken as true precisely because they are the only facts available to the permanent judicial commission in absence of a trial or other evidentiary-type hearing. Because the SPJC was required to assume the truth of the factual allegations cited in the Complaint, the SPJC erred by failing to find that the Complaint, on its face, stated a claim that Presbytery had committed an irregularity in rescinding an action governed by a judicial stay entered in another case. The SPJC erred by relying on Appellee's

contention that Appellant could not meet her burden of proof as that is not the appropriate standard of review for a motion to dismiss.

Appellant contends that testimony was improperly considered by the SPJC regarding the veracity of facts alleged in the complaint. Again, the appropriate standard of review for a motion to dismiss is to first assume that the facts alleged are true, and then determine whether any relief can be granted. As stated by this Commission in (*Hope, et.al. v. Presbytery of San Francisco* 2006, p. 363), "[i]n relying on matters outside the complaint, the SPJC not only violated the standard set forth in McKittrick but also improperly determined the merits of disputed factual allegations without the benefit of a trial. As this Commission reminded stated clerks and moderators of permanent judicial commissions in 1990, the Book of Order contains no constitutional provision permitting 'summary dismissal of any case' where there are disputed factual allegations that, if proved, would entitle the complainant to some relief. Under those circumstances, 'a dismissal is only appropriate after thorough examination of the record and opportunity for all parties to be heard' (*Minutes*, 1990, p. 139)." Appellant alleged that, during the hearing, Respondent denied a fact set forth in the Complaint. If true, this denial should have triggered the factual dispute required to defeat the motion to dismiss. That assessment is a matter for the SPJC to determine following any proceedings that occur on remand of this case to the SPJC.

The Complaint alleges that Appellant did not receive timely notice regarding the SPJC's procedure to hear Respondent's motion to dismiss. Fair notice is defined as "a short and plain statement of the matters at issue as identified by the commission and of the time and place for a hearing upon the matters at issue." (*Minutes* 2001, 149, 16.001-.012, Req. 01-1). The record shows these considerations were met by the SPJC, and no error is found regarding the opportunity to be heard on the motion to dismiss.

On appeal a permanent judicial commission may consider only those matters that were part of the trial or hearing on appeal by the lower permanent judicial commission. (*Congregation for Reconciliation v. Presbytery of Miami*, 2000, 580, 12.071). In this case, no transcript was included in the record regarding the hearing on Respondent's motion to dismiss. This Commission has found that whenever a lower permanent judicial commission conducts a hearing concerning a potential final disposition that might be the subject of a further appeal, it would be wise practice for a permanent judicial commission to create such a record, even though it is not specifically required by the Constitution. (*Session of Second Presbyterian Church of Tulsa v. Eastern Oklahoma Presbytery*, 2006, 217-5, 377). Inasmuch as a hearing on a motion to dismiss is a hearing concerning a potential final disposition that could be the subject of appeal, the transcript of the hearing could have been beneficial to the resolution of this case on appeal. In addition, the brevity and absence of rationale in the SPJC Decision did not serve the judicial process well.

Finally, Appellant has alleged that the SPJC erred in failing to address civil law matters raised in the complaint. This Commission has ecclesiastical jurisdiction (*See* F-3.0108, G-3.0102) as granted in D-5.0202, which states: "[i]n the cases transmitted to it, the permanent judicial commission shall have only the powers prescribed by and conduct its proceedings according to the Constitution of the Presbyterian Church (U.S.A.)." This provision of the *Book*

*of Order* precludes consideration of matters outside of those expressly granted to permanent judicial commissions.

Permanent judicial commissions have long-standing and broad authority to restate, group, consolidate, and summarize, but not omit, specifications of error presented in the appeal. A PJC may also consider those specifications of error set forth in briefs or at oral argument on appeal. This may be done for purposes of clarity or to eliminate redundancy. A PJC is not required, but rather encouraged, to provide rationale for each specification. (*Presbytery of Greater Atlanta v. Ransom* (2010, 219-02, 359, PC(USA)), *Bolton v. Alamance Presbyterian Church* (1995, 117, 11.053), *Congregation for Reconciliation v. Presbytery of Miami* (2000, 580, 12.071), and *Hope, et.al. v. Presbytery of San Francisco* (2006, 217-1, 455)). This Commission has chosen to restate and regroup the Specifications of Error presented on appeal for the purpose of clarity. It has given an explanation for those Specifications of Error that it determines are most pertinent to this Decision, and that provide guidance to lower councils. Given that the Commission has reversed and remanded the SPJC Decision, it does not find it necessary to give rationale for its rulings regarding the remaining Specifications of Error.

### **Order**

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of Southern California and Hawaii be reversed and the case remanded for further proceedings consistent with this Commission's Decision.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Southern California and Hawaii report this Decision to the Synod of Southern California and Hawaii at the first meeting after receipt, that the Synod of Southern California and Hawaii 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Los Ranchos report this Decision to the Presbytery of Los Ranchos at the first meeting after receipt, that the Presbytery of Los Ranchos 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.

### **Absences and Non-Appearances**

Commissioner Maurice Caskey was recused from this appeal and did not participate in the hearing or deliberations.

## Concurring Opinion

The Synod Permanent Judicial Commission created a great deal of consternation among the parties and this Commission by failing to include any substantive basis in fact or law for its decision on the Motion to Dismiss. With no guidance as to the basis for the decision, SPJC left everyone twisting in the wind. Particularly, SPJC sat in a unique position to enlighten the litigants on the issue of the Stay issued. Presumably the Stay, which SPJC itself issued, was considered, but presume is all we can do without so much as a copy of the document. GAPJC received over 1500 pages of record. It heard extensive arguments about the Stay, yet the salient document was not available. Permanent commissions are the backbone of the disciplinary system of the PC (USA). It is essential that every council in the gradual system of review conceived by the Book of Order issue ruling in such a manner as that the appellate council can ascertain the basis of the lower council's decision. Without some findings coherently included in a decision, the reviewing council will have difficulty effectively doing its prescribed job.

Moreover, there are serious questions in the record about a potential conflict of interest on the part of the Synod. While we did not reach these issues in rendering our decision, potential conflict must be duly considered and there should never be any question that no conflict exists. The integrity of the judicial procedure for the church is at stake, and avoidance of even the appearance of any impropriety should be the standard.

Robin L. Roberts

Craig J. Lindsey

February 26, 2016

## Certificate

We certify that the foregoing is a true 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 223-03, Dixie Lewellen, Appellant v. Presbytery of Los Ranchos, Appellee, made and announced at San Antonio, TX, this 26<sup>th</sup> day of February, 2017.

Dated this 26<sup>th</sup> day of February, 2017.