

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

Ruling Elder Claydeth Johnson and the Rev. Cleotha Robertson, **Appellants**

v.

The Presbytery of New York City, **Appellee**

Decision and Order

Remedial Case 225-04

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) filed by Ruling Elder Claydeth Johnson and the Rev. Cleotha Robertson (Appellants) from a February 11, 2021, decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC), titled “Final Determination of the Preliminary Questions.” Previously, the SPJC officers had issued a preliminary order accepting the case for trial, finding that the preliminary questions (D-6.0305) were answered in the affirmative. The Presbytery of New York City (Presbytery or Appellee) filed a challenge to that preliminary order, and the SPJC, following a hearing, sustained the challenge in part, dismissing the complaint for failure to state a claim upon which relief could be granted. Appellants appealed that SPJC decision to this Commission.

Jurisdictional Statement

This Commission finds that it has jurisdiction, Appellants have standing to file the appeal, the appeal was properly and timely filed, and the appeal states one or more of the grounds for appeal set forth in D-8.0105.

Appearances

Appellant Robertson was present; Appellants were represented by Ruling Elder Vivian L. Joseph, counsel. Appellee was represented by a committee of counsel consisting of Ruling Elders Nathaniel H. Christian, Sharon M. Davison, and Jonathan Robert Nelson. Presbytery Stated Clerk Ruling Elder Warren McNeill was also present for the hearing.

History

This remedial appeal arises from actions taken by the Presbytery at its meeting of September 26, 2020. In that meeting, the Presbytery, after spirited debate, approved a recommendation from its Commission on Mission, Budget and Corporate Responsibility/Board of Trustees (Presbytery Commission) to sell a building at 1063 East 213 Street, Bronx, New York, which had in years past been used as a manse for the Laconia Community Presbyterian Church (Laconia). Later, when not needed as a manse, the property was used as a residential rental property, which the City of New York determined was inconsistent with its tax-exempt status and therefore imposed property taxes, which the Presbytery paid. A portion of the proceeds from the property sale that the Presbytery approved on September 26, 2020, was to reimburse the Presbytery for its expenses related to the property, with the remaining proceeds to be used for the benefit of Laconia.

Appellants filed a remedial complaint and a request for a stay of enforcement with the SPJC on October 20, 2020, seeking to overturn the Presbytery action. Elder Johnson was a commissioner from Laconia to the September 26, 2020, stated meeting. Rev. Robertson, a minister member of the Presbytery, has been pastor of a nearby church and has had informal relationships with Laconia.

On October 28, 2020, the SPJC accepted the remedial complaint. Acting on an expedited timeline because of the requested stay of enforcement, the SPJC's executive committee affirmed that the SPJC had jurisdiction, that the Appellants had standing, that the complaint was timely filed, and that the Appellants stated claims against the Presbytery, upon some of which claims—notably the alleged irregular votes at the September 26, 2020, stated meeting—relief could be granted. A stay of enforcement was not entered.

On November 27, 2020, the Presbytery filed a challenge to the SPJC's preliminary determination. Specifically, the Presbytery challenged the findings that the complaint was filed in a timely manner and the portion of the determination which found that for some of the claims, relief could be granted. Subsequently, on December 5, 2020, the Presbytery filed a brief answering the original October 20, 2020, complaint, and on January 19, 2021, filed a brief supporting its challenge to the SPJC preliminary question determination and a motion to dismiss the complaint.

On January 19, 2021, Appellants submitted a brief opposing the Presbytery's November 27, 2020, challenges to the preliminary question determination.

Following a hearing by video conference on February 11, 2021, the SPJC dismissed the complaint upon determining that it did not state a claim against the Presbytery upon which relief could be granted, because the title of the property in question was held by the Presbytery and not by the Laconia congregation.

On March 17, 2021, Elder Johnson and Rev. Robertson filed an appeal with the GAPJC which was accepted in a Preliminary Order by the officers of this Commission dated April 8, 2021. On September 17, 2021, Appellants filed a brief disputing the SPJC's final determination

of the preliminary questions dated February 11, 2021, alleging among other things that the title to the property in question was not held by the Presbytery, and therefore the SPJC's final determination was in error. On September 28, 2021, the Presbytery filed a brief in opposition to the appeal, providing additional information concerning the title to the property in question and clarification of the role of the Presbytery Commission. The GAPJC heard oral arguments in a hearing by videoconference on October 8, 2021.

Specifications of Error

Appellants provide a variety of statements of error in their appeal and brief. Permanent judicial commissions have long-standing and broad authority to restate, group, consolidate, and summarize, but not omit, specifications of error presented in an appeal, for purposes of clarity (D-8.0404d). This Commission has reorganized Appellants' specifications of error as follows:

Specification of Error No. 1: The SPJC erred in hastening to a decision by relying on the Presbytery's assertion that title to the property in question was held by the Presbytery and not by Laconia, rather than examining the deed and taking other evidence at a trial to factually determine rightful ownership of the property (D-8.0105d).

This specification of error is not sustained.

While Appellants assert that Laconia's long-standing use and management of the manse confer certain ownership rights, the fact that the Presbytery holds the legal title to the manse is largely uncontested both in the pleadings and in the actions of Laconia's representatives over the years. Even so, which party holds the title to the manse property is not the fundamental issue. Rather, the question is whether the process that the Presbytery used to address the possible disposition of the property was improper, and whether the SPJC correctly interpreted the Presbytery's ownership in resolving the preliminary questions. These issues are addressed in Specification No. 3.

Specification of Error No. 2: The SPJC erred in constitutional interpretation by dismissing the complaint without considering whether relief could be granted regarding claims that the Presbytery's creation and original grant of authority to the Commission on Mission, Budget and Corporate Responsibility/Board of Trustees was not carried out in a manner consistent with the provisions of the Book of Order and the Standing Rules of the Presbytery (G-3.0109b, D-8.0105g).

This specification of error is not sustained.

Specification No. 2 makes claims concerning the creation and original grant of authority to the Presbytery Commission. This Specification is not sustained for several reasons.

In bringing the sale proposal to the Presbytery on September 26, 2020, for final action,

the Presbytery Commission was performing duties of a committee rather than a commission (*Suarez-Valera v. Presbiterio del Noroeste*, 2020, 225-02). Any potential constitutional flaws in the Presbytery Commission's original creation as an administrative commission are not relevant claims in the context of this case.

Claims challenging creation of the Presbytery Commission under *Book of Order* provisions related to administrative commissions should be assessed as to their timeliness under D-6.0305c. The record shows that the Presbytery Commission, the entity that recommended the Presbytery sell the Laconia manse property, was established well before 2018; therefore any challenges to the creation of the Presbytery Commission are not timely.

Even if the Presbytery Commission was constituted and acted in violation of the Presbytery's Standing Rules, the GAPJC in *Hope, et al. v. Presbytery of San Francisco* (2006, 217-1), established that a presbytery's failure to follow its own stated policy does not rise to the level of a constitutional error, and that the GAPJC rules on violations of requirements of the *Book of Order* rather than those of internal presbytery policy.

Specification of Error No. 3: The SPJC erred in constitutional interpretation by dismissing the complaint based solely on a particular Presbytery vote on September 26, 2020, without considering other possible grounds for relief from actions and conduct of the Presbytery and its Commission on Mission, Budget and Corporate Responsibility/Board of Trustees, during this meeting and on other occasions, that were inconsistent with the provisions of the Book of Order.

This specification of error is sustained.

The SPJC dismissed the complaint on preliminary questions, referring only to the Presbytery's holding title to the manse property as grounds to dismiss. The SPJC did not choose to hold a trial on the disputed issues the parties raised in their pleadings. In that, this Commission finds that the SPJC erred. The record and oral arguments in this case reveal several grounds on which a trial may be in order, and relief could be granted.

Appellants allege a lack of communication and transparency in the Presbytery Commission's and the Presbytery's processes, and allege that "animus and racist disdain" affected the outcome of the September 26, 2020, Presbytery vote. They cite *Book of Order* provisions relating to administrative commissions (G-3.0109b) that call for fair notice and opportunity to be heard as pertinent to the Presbytery Commission's actions. Appellee disputes these contentions.

Holding title to the property at issue does not shield the Presbytery from claims of irregularity. If there is evidence of irregularity in voting on the sale of property as to which a presbytery indisputably holds title, a complaint may still be valid. If facts presented by the two parties are in conflict, as they are in this case, a trial may be needed to resolve the disputed facts (*Lewellen v. Presbytery of Los Ranchos* (2018, 223-03)).

When determining the disposition of the property of a particular congregation, the fiduciary responsibilities of a presbytery are guided by G-4.0202 and G-4.0203. Presbyteries may create administrative commissions to act on their behalf in property decisions. This Commission has previously held that the congregation must be consulted—and in some cases all persons affected by its decision heard—when such an administrative commission settles a dispute. *Sundquist, et al. v. Heartland Presbytery* (2008, 219-03) states: “When the presbytery’s powers are specifically assigned to an administrative commission, the commission then is acting with the full power and authority of the presbytery as to the powers assigned. Moreover, the administrative commission must follow all applicable requirements for fair notice and an opportunity to be heard.”

Holding title to property does not confer on a presbytery unlimited discretion to dispose of property without regard to its fiduciary responsibility. Therefore, the SPJC erred in resolving this case solely on the basis of who holds title. Regardless of the status of the manse’s legal title, it is undisputed that the manse was used for many years to benefit the mission of the Laconia church. Even when the church had no pastor, income from the manse was used to fund the church’s mission. The fiduciary responsibility of a presbytery with regard to properties held in trust for the use and benefit of the Presbyterian Church (U.S.A.) includes the mission not only of the presbytery, but also of the local church.

The record and oral arguments before this Commission suggest that various forms of relief could be granted. Because the property has not yet been sold, if the SPJC finds an irregularity, one form of relief might be a reversal of the Presbytery’s decision to sell it. Even if the property is sold, other forms of relief are available, including potential declaratory relief that could provide future guidance to the Presbytery. See *McKittrick v. West End Presbyterian Church of Albany, New York* (2003, 215-5); *Laney v. Presbytery of North Alabama* (2018, 223-02). (“While some of Presbytery’s actions cannot be undone, the SPJC may exercise its declaratory authority to provide future guidance to Presbytery.”)

In its decision, the SPJC expresses concern that “ambiguities in the Standing Rules of the [Presbytery of New York City], and the specific authority granted to commissions and committees . . . could result in bias or systemic inequality of treatment, creating a culture of distrust and resulting in more remedial cases.” This complaint and appeal raise claims of racial bias. If those claims are sustained in a trial of this case, the SPJC could enter declaratory relief addressing those concerns, encouraging that the Presbytery and especially its leaders be held accountable to show respect and sensitivity to the rights of local churches and do more to resist racial bias.

Decision

The case before this Commission is limited to whether the SPJC correctly ruled on preliminary questions, specifically whether the complaint failed to state a claim upon which relief can be granted. When determining preliminary questions, judicial commissions are required to assume the truth of the facts as alleged in a complaint. See *Wolfe v. Presbytery of*

Winnebago (2008, 219-04), *Lewellen v. Presbytery of Los Ranchos* (2016, 223-03), and *McKittrick v. West End Presbyterian Church of Albany, New York* (2003, 215-5).

The SPJC decided on preliminary questions that, because the Presbytery held the title to the manse property, no relief of any type could be granted to Appellant. This Commission disagrees with that conclusion.

While presbyteries have general power to hold, manage, and transfer real property as to which they hold title (G-4.0101), that power cannot be exercised in isolation from the needs and mission priorities of congregations that make use of that property. Whether a presbytery has adequately done so is appropriately a matter of remedial judicial review. The relational nature of our polity is based on dialogue, respect, and mutual caring for other councils and congregations, and for an understanding of fiduciary responsibility as embracing not only finances but the emotional and spiritual well-being of people of faith in our churches (*Sundquist, et al. v. Heartland Presbytery* (2008, 219-03)).

This Commission understands the urgency the parties feel to resolve this case swiftly, and is aware that the time necessary to hold a trial may delay resolution of the issue and reduce monetary benefits to the parties. Even so, the GAPJC finds that it cannot affirm the decision of the SPJC before it. In briefs and in oral argument, it is clear that there are facts and perspectives that are in dispute between the parties in need of resolution.

This Commission reverses the SPJC's final determination, finds that the complaint states grounds upon which relief can be granted and therefore is not dismissed on preliminary questions, and remands the case to the SPJC for trial. The SPJC may provide the parties with opportunities to explore settlement possibilities in accordance with D-6.0310.

Order

IT IS THEREFORE ORDERED that the decision of the Synod of the Northeast Permanent Judicial Commission is reversed, that the complaint be deemed to have satisfied the preliminary question that it states a claim upon which relief can be granted, and that the case is remanded to the Synod Permanent Judicial Commission for trial.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of New York City report this Decision to the Presbytery of New York City at the first meeting after receipt, that the Presbytery of New York City 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 Synod of the Northeast report this Decision to the Synod of the Northeast at the first meeting after receipt, that the Synod of the Northeast 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.

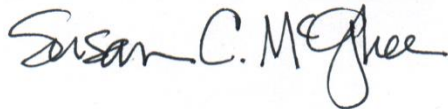
Absences and Non-Appearences

Commissioner Paul K. Hooker did not participate in the hearing and deliberations. Commissioner June L. Lorenzo participated in the hearing but did not participate in the final deliberations. The commissioner position from the Synod of Alaska-Northwest was vacant. The commissioner position from the Synod of the Trinity was made vacant when Commissioner Jean C. Kennedy went home to God on September 25, 2021.

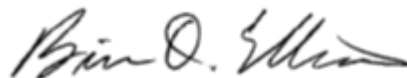
Certificates

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 225-04, Ruling Elder Claydeth Johnson and the Rev. Cleotha Robertson, Appellants v. Presbytery of New York City, Appellee, deliberating by videoconference under the provisions of 6.02.90e of its Manual of Operations, made and announced at Louisville, Kentucky, this 10th day of October, 2021.

Dated this 10th day of October, 2021.



Susan C. McGhee, Moderator
General Assembly Permanent Judicial Commission

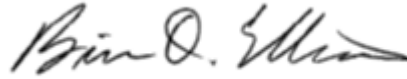


Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

I certify that I did transmit a certified copy of the foregoing to the following persons by Federal Express Next Day Air, directing Flor Vélez-Díaz to deposit it in the mail in Louisville, Kentucky:

Claydeth Johnson and Cleotha Robertson, Appellants
Vivia Joseph, Counsel for Appellants
Sharon Davison, Committee of Counsel for the Appellee
Stated Clerk, Presbytery of New York City
Stated Clerk, Synod of the Northeast
General Assembly Permanent Judicial Commission

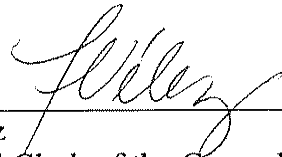
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by electronic mail to Flor Vélez-Díaz, on this 10th day of October, 2021.



Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

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, in Louisville, Kentucky, on October 10, 2021, in Remedial Case 225-04, Ruling Elder Claydeth Johnson and the Rev. Cleotha Robertson, Appellants v. Presbytery of New York City, Appellee, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, this 10th day of October, 2021.



Flor Vélez-Díaz
Assistant Stated Clerk of the General Assembly,
Presbyterian Church (U.S.A.)
and Manager of Judicial Process and Social Witness