

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

Isaiah D. Phinisee,)
Appellant (Complainant),)
)
v.)
)
Presbytery of Charleston-Atlantic,)
Appellee (Respondent).)

DECISION AND ORDER

Remedial Case 219-12

Arrival Statement

This remedial case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by Isaiah D. Phinisee (Phinisee), Appellant (Complainant), from a Decision of the Permanent Judicial Commission of the Synod of the South Atlantic (SPJC) dated March 20, 2009.

Jurisdictional Statement

This Commission finds that it has jurisdiction, Phinisee has standing to file the 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

Isaiah D. Phinisee was present and represented by David Belding. The Presbytery of Charleston-Atlantic (Presbytery), Appellee (Respondent), was represented by James A. Stuckey.

History

This remedial case arises out of a congregation in conflict, St. Luke Presbyterian Church (SLPC), where Phinisee served as the installed pastor. As recommended by the Presbytery's Committee on Ministry (COM), in May 2006, the congregation entered into a relationship with a Bridgebuilder consultant, to help find resolution to conflict in the church. A report of Bridgebuilders, which assessed numerous conflicts within the congregation, was delivered at a congregational meeting on December 12, 2006. This report suggested an approach for reconciling the conflicts. Concerned officers and members of SLPC as well as Phinisee requested the appointment of an Administrative Commission to resolve the conflicts at SLPC, but this request was not granted because the COM intended to handle the matter itself.

The documentary record of the COM, members of the Session, and Phinisee between December 5 and December 12, 2006, reflects a chaotic interchange concerning a desire of three

elders for the Session to meet on December 12 and whether the subsequent gathering of session members on that date was an appropriately called and moderated session meeting. However, there is no dispute that on December 8, 2006, three elders requested in writing that Phinisee call a session meeting for December 12, 2006, and Phinisee did not call that meeting. No other constitutional process for calling this meeting was followed.

Immediately following the December 12, 2006, congregational meeting, a meeting of elders called by COM was held and was moderated by a representative of COM. Phinisee was present for a brief period, protested that the meeting was irregular and left. The elders decided to call a congregational meeting for December 31, 2006, for the purpose of dissolving the pastoral relationship as of December 31, 2006. At the congregational meeting on December 31, 2006, the congregation voted to dissolve the pastoral relationship between SLPC and Phinisee.

Phinisee filed a complaint against the Presbytery on January 4, 2007, and amended the complaint on January 10, 2007. Phinisee's request to stay enforcement of the dissolution was not granted.

In a letter to Phinisee, on January 15, 2007, the moderator of the COM informed him that the COM had taken action on behalf of the Presbytery to concur with the request from the congregation of SLPC to dissolve the pastoral relationship effective December 31, 2006. He was instructed to cease all contact with the Session and congregation.

According to the minutes of the Presbytery's stated meeting on February 3, 2007, the COM recommended that the Presbytery dissolve the pastoral relationship between SLPC and Phinisee effective December 31, 2006, with three months severance pay ending March 31, 2007. Further, these minutes state,

Prior to the vote, Phinisee asked to speak to the issue. After Phinisee had spoken for about one minute, the stated clerk called a point of order saying 'that the minister does not have the right to be heard without those in opposition being given the same privilege. Phinisee has not made request of Session nor of the COM for such a hearing.' A call for the question carried as did the motion to dissolve the pastoral relationship. Phinisee filed a protest at that time.

Because the SPJC had failed to act within 90 days from the date of his complaints, Phinisee requested that the GAPJC assume jurisdiction. On October 22, 2007, the GAPJC ordered that the SPJC proceed within 90 days.

On January 28, 2008, Phinisee again requested that the GAPJC assume jurisdiction for failure of the SPJC to act upon the order of the GAPJC within 90 days. The GAPJC responded with a letter on February 19, 2008, denying the request because the SPJC had begun procedures for processing the Remedial Case on January 3, 2008.

After further preliminary proceedings, a pre-trial hearing was held on December 4, 2008, to seek agreement on a statement of facts, share documents and other evidence and set the date for trial as March 19, 2009.

On January 20, 2009, Phinisee filed an additional Complaint against the Presbytery alleging an irregularity or delinquency at a meeting on December 18, 2008. The Presbytery responded to that Complaint on February 5, 2009.

On March 2, 2009, Phinisee filed a motion to continue the trial of the case for forty-five days, citing the death of his lead counsel. On March 6, 2009, the SPJC denied the request for continuance, consolidated the proceedings for the two complaints, reset the date for Phinisee's trial brief to be submitted and set out stipulations for the trial. The trial was held March 19-20, 2009. The SPJC issued a decision on March 20, 2009 not to sustain the complaints.

Phinisee filed a Notice of Appeal to this Commission on May 2, 2009. This Commission held oral argument on the Appeal on October 30, 2009.

Specifications of Error

Specification of Error No. 1. The SPJC erred in upholding the Presbytery's refusal to appoint an administrative commission prior to the dissolution of the pastoral relationship between Phinisee and SLPC.

This specification of error is not sustained.

The decision to appoint an administrative commission by a presbytery is a discretionary function that resides solely with the presbytery (G-11.0103s).

Specification of Error No. 2. The SPJC erred in finding that the December 12, 2006, session and December 31, 2006, congregational meetings were properly called meetings.

This specification of error is sustained. See Decision below.

Specification of Error No. 3. The SPJC erred by not entering Phinisee's request for Stay of Enforcement of the action taken at the December 31, 2006, congregational meeting of the Church.

This specification of error is not sustained.

The grant of a stay of enforcement is a discretionary function and the *Book of Order* provides no basis for compelling any stay (D-6.0103).

Specification of Error No. 4. The SPJC erred by failing to grant Phinisee's motion for continuance following the death of his lead counsel.

This specification of error is not sustained.

The SPJC appropriately responded to the motion, which was made some 60 days after the discovery of the death. The SPJC has the discretion to determine whether a continuance is needed. That discretion was not abused.

Specification of Error No. 5. The SPJC erred in finding that the Presbytery's counsel was properly appointed and could appropriately act in these proceedings.

This specification of error is not sustained.

This Commission agrees with the SPJC that Stuckey's service on other Presbytery committees dealing with aspects of the conflict at SLPC does not disqualify his service as the Presbytery's counsel in this case. There is no demonstration in the record that the appointment of counsel for the Presbytery should be re-examined or was improper in any regard.

Specification of Error No. 6. The SPJC erred in not affording Phinisee the relief requested after Presbytery agreed not to contest the appeal.

This specification of error is not sustained.

While counsel for Phinisee listed this specification of error in his brief, it was not in the Notice of Appeal, was a mischaracterization of the Presbytery's response, and was not properly before this Commission (*Congregation for Reconciliation v. Presbytery of Miami*, Minutes, 2000, p. 580, 12.071).

Decision

The *Book of Order* establishes three ways that a special session meeting may be called: (1) by the moderator, when he or she judges it necessary; (2) by the moderator when requested in writing by any two members of the session; or (3) when directed to do so by presbytery (G-10.0201). Three elders requested in writing that a special session meeting be called for December 12, 2006. Phinisee refused to call a meeting for December 12. Nevertheless, members of the session did meet on December 12 with a COM representative present, who moderated the meeting.

The designated responsibilities of a COM under G-11.0502 do not include the power to call a special session meeting. While this responsibility may be directed by a presbytery and delegated to a COM, nowhere in the record is it reflected that this Presbytery delegated this authority to its COM in this particular matter. At oral argument, Presbytery's counsel conceded that the Presbytery had not given this authority to the COM. The COM was not empowered to call or conduct a session meeting of SLPC for December 12. Thus, actions taken at this December 12, 2006, meeting to call a congregational meeting for December 31, 2006, for the purpose of recommending that the Presbytery dissolve the pastoral relationship as of December 31, 2006, were irregular, as were the actions taken at that December 31, 2006, congregational meeting.

Phinisee did not fulfill his constitutional mandate to call a meeting in conformity with G-10.0201. Although his conduct was a factor in aggravating the circumstances, it was not dispositive of the issues here. In their haste to correct the difficulties between SLPC and Phinisee, the Presbytery, and particularly the COM, acted with serious disregard for the *Book of Order*.

This case demonstrates the consequences of failing to follow the *Book of Order* for calling meetings and dissolving pastoral relationships. The flaws of the COM procedure were exacerbated by the failure of the Synod to respond in a timely manner to Phinisee's grievances. Justice delayed was an impediment to the process and a fair proceeding throughout the course of this matter. Governing bodies are reminded that "all participants are to be accorded procedural safeguards and due process" (D-1.0101).

The pastoral relationship between SLPC and Phinisee was dissolved in an irregular manner. However, in light of the Presbytery's judgment that the pastoral relationship was broken and due to the passage of time, restoration of this relationship is not feasible. Therefore, the Presbytery's action to dissolve the pastoral relationship is allowed to stand.

The *Book of Order*, at G-9.0408, provides that a higher governing body that learns of irregularities or delinquencies by a lower governing body may take appropriate actions to rectify the problems. Accordingly, this Commission directs the actions described below.

Order

IT IS THEREFORE ORDERED that the Synod Permanent Judicial Commission's decision be affirmed in part and modified in part in conformity with this decision.

IT IS FURTHER ORDERED that the pastoral dissolution effected by the Presbytery of Charleston-Atlantic on February 2, 2007, shall stand.

IT IS FURTHER ORDERED that the Presbytery of Charleston-Atlantic establish an administrative commission to review the policies, procedural options, and strategies for dealing with churches and pastors in conflict, that this administrative commission submit a report of its conclusions to the Presbytery by its October, 2010 stated meeting and enter the report in the Presbytery Minutes. The report is to be submitted to the Synod of South Atlantic for its review as part of its annual review of presbytery records (G-9.0407). A copy of the report is to be sent to the Stated Clerk of the General Assembly.

This review shall, at a minimum, identify and develop:

1. a plan to utilize denominational resources available for education, support and assistance in matters of polity and conflict;
2. the Presbytery's policies and process in relation to churches and pastors in conflict;

3. internal policies to insure compliance with the relevant *Book of Order* provisions;
4. a manual to guide presbytery committees on procedures relevant to their respective functions (or review any existing manual); and
5. a plan to train the Committee on Ministry on *Book of Order* provisions related to the rights and responsibilities of pastors and sessions, and provisions related to the role of the Committee on Ministry and presbytery in situations of congregational or pastoral conflict.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of South 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 the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Charleston-Atlantic report this decision 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.

Absences and Non-Participants

Angel Casaus-Urrutia, Yun Jin Kim, and Rebecca New were not present and took no part in this case. William Scheu was recused and did not participate in this case.

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 219-12, Isaiah D. Phinisee, Appellant (Complainant) v. Presbytery of Charleston-Atlantic Appellee (Respondent) made and announced at Indianapolis, IN on November 2, 2009

Dated this 2nd day of November, 2009.

Fred L. Denson, Moderator
Permanent Judicial Commission of the General Assembly

Gregory A. Goodwiller, 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 C. Laurie Griffith to deposit it in the mail at Indianapolis, IN on November 2, 2009.

David Belding, Counsel for Appellant
James Stuckey, Counsel for Appellee
Stated Clerk, Synod of the South Atlantic
Stated Clerk, Presbytery of Charleston-Atlantic
General Assembly Permanent Judicial Commission (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 C. Laurie Griffith, on November 2, 2009

Gregory A. Goodwiller, 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, in Indianapolis, IN on November 2, 2009, in Remedial Case 219-12, Isaiah D. Phinisee, Appellant (Complainant) v. Presbytery of Charleston-Atlantic, Appellee (Respondent), and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Indianapolis, IN on November 2, 2009.

C. Laurie Griffith
Manager of Judicial Process and Social Witness