

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

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Claire Cubbin-Will, )  
Appellant (Complainant), )  
v. )  
Presbytery of Tropical Florida, )  
Appellee (Respondent). )  
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**Decision and Order**  
Remedial Case 220-12

**Arrival Statement**

This remedial case comes before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal dated March 11, 2012, by Appellant Claire Cubbin-Will (Cubbin-Will) from a decision by the Permanent Judicial Commission of the Synod of South Atlantic (SPJC) dated November 15, 2011.

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, that Cubbin-Will has standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more of the grounds for appeal enumerated in D-8.0105.

**Appearances**

Cubbin-Will appeared in person, joined by Albert Will and Ronald Weir as Co-Counsel. Appellee Presbytery of Tropical Florida (Presbytery) was represented by George McIlrath.

**History**

Presbytery appointed two Administrative Commissions between 2006 and 2008 with authority to determine the viability of the Second Presbyterian Church of Ft. Lauderdale, Florida (SPC), and to respond to difficulties between SPC and another congregation sharing the building. The pastor of SPC retired in 2007. SPC was not able to afford a full-time called pastor after that point and subsequently had multiple temporary pastors.

The Presbytery Committee on Ministry (COM) recommended to the Coordinating Council that a new Administrative Commission (AC) be appointed. At a Presbytery stated meeting held on November 20, 2010, the following motion was adopted:

Council recommends to Presbytery that an Administrative Commission be appointed with original jurisdiction over Second Presbyterian Church, Ft. Lauderdale, with the charge of providing pastoral care and developing a process

for closing and celebrating the ministry of the church in consultation with their members, with plenary authority including but not limited to the administration and management of the church. This process will include determining all the correct steps for said closing in consultation with the office of the stated clerk of the General Assembly.

Three days later, the SPC session moderator, who was later appointed moderator of the AC, met with the session of SPC and stated that the session was dissolved by the November action of the Presbytery. That dissolution led to the filing of the Complaint in this case.

At the Presbytery meeting on February 26, 2011, after full notice and opportunity for discussion and debate, Presbytery adopted a motion identical to and ratifying the November 20, 2010, action.

### **Preliminary Matters**

During the week of the hearing, Cubbin-Will submitted a "Motion to Strike Two Members of Appellee's Committee of Counsel and Silence Appellee's Advisors," and a "Formal Request for Presence of Court Reporter during Oral Argument," both of which were denied.

### **Specifications of Error**

*Specification of Error No. 1: The SPJC erred in improperly considering actions of the Presbytery at its February 26, 2011, meeting which occurred after the original Complaint was filed, as curing the deficiencies of the Presbytery action on November 20, 2010.*

This specification of error is not sustained. See Decision below.

*Specification of Error No. 2: The SPJC erred by receiving evidence of events and Presbytery action that occurred after the Presbytery meeting on November 20, 2010.*

This specification of error is not sustained. See Decision below.

*Specification of Error No. 3: The SPJC erred by determining that the Presbytery Administrative Commission had taken control of the Session of the Second Presbyterian Church as of February 26, 2011, rather than November 20, 2010.*

This specification of error is not sustained. See Decision below.

*Specification of Error No. 4: The SPJC committed an error in constitutional interpretation by holding that the action of Presbytery on February 26, 2011, could "render moot" the Complainant's requested remedy of reinstatement of the Session of SPC as it was on November 20, 2010.*

This specification of error is not sustained. See Decision below.

## Decision

During the February 26, 2011, meeting the Presbytery approved a motion regarding the AC for SPC. The motion was styled as a motion to “ratify” the Presbytery’s earlier November action. However, the February motion incorporated an expanded notice and discussion procedure, to meet the requirements of *Book of Order* G-11.0103s. Members of the November 2010 Session were specifically invited to the Presbytery meeting and given the opportunity to speak. Opportunity was afforded other congregational members as well. As such, whether it is viewed as a continuation of the November action, or as a new action, the fulfillment of due process in the February meeting is sufficient to overcome any objection to that action. Further, the February action was not challenged by Cubbin-Will.

After the meeting on February 26, 2011, an AC had been properly created with original jurisdiction to move forward to consider the proper course of “administration and management” of SPC. By then, it was not clear that closing the church was necessary. Both parties now refer to changes that have subsequently occurred in the life of the congregation which obviate closure. The goals of Cubbin-Will, albeit achieved by the AC with the prospect of a changed Session, are similar to the goals of the present AC. SPC is apparently ready to move on and away from the prospect of closure.

This Commission affirms the Synod decision in full. The cases cited by Cubbin-Will, *Janet E. Wolfe v. Presbytery of Winnebago* (*Minutes*, 2009, p. 398), and *Daniel O. Hennigan v. Presbytery of Charlotte* (*Minutes*, 2000, p. 583), are different from this case. Judicial economy and other practicalities dictate that in limited circumstances, such as those in this case, it is appropriate to allow evidence of events subsequent to the filing of a remedial complaint. In *Wolfe* and *Hennigan*, the GAPJC found that it would be improper to consider evidence of actions by the respondent subsequent to the filing of a complaint. However, where there is subsequent and properly accomplished action which achieves the remedy that might otherwise be imposed by a judicial commission, it is appropriate to receive such evidence. This Commission therefore draws a narrow distinction in this case that is consistent with *George R. Stewart v. Mission Presbytery* (*Minutes*, 2008, p. 316), where the remedy sought had already been achieved.

Although Cubbin-Will’s argument is based on her objection to the admission of the minutes of the February 26, 2011, Presbytery meeting, Cubbin-Will and Presbytery have both repeatedly referred to events in the life of SPC and the work of the AC that are central to the selection of an appropriate remedy. This Commission does not interpret the prior cases to impose a rule which would discourage repair of procedural errors at the Presbytery level. The *Hennigan* decision obviously permitted consideration of post-complaint events in fashioning an appropriate remedy. This Commission determines that such an approach is necessary in the limited circumstances presented here.

For these reasons, this Commission accepts the SPJC conclusion that the relief sought by Appellant can no longer be achieved.

## **Order**

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of South Atlantic is hereby sustained.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of South Atlantic report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly

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

## **Absences and Non-Appearances**

Commissioner Flor Vélez-Díaz was absent and took no part in the deliberations for this case. Commissioner William Scheu 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 220-12, Claire Cubbin-Will, Appellant (Complainant) vs. the Presbytery of Tropical Florida, Appellee (Respondent), made and announced at Indianapolis, IN, on April 29, 2012.

Dated this 29<sup>th</sup> day of April, 2012.