

IN THE CHANCERY COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

**FIRST PRESBYTERIAN CHURCH
PCUSA OF STARKVILLE, MISSISSIPPI**

PLAINTIFF

V.

CAUSE NO.: 2015-0151-D

**PRESBYTERY OF ST. ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.**

DEFENDANT

FINAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on competing Motions for Summary Judgment filed by both parties, First Presbyterian Church of Starkville, Mississippi (“FPC”) and Presbytery of St. Andrew, Presbyterian Church U.S.A., Inc. (“PCUSA”)¹. The parties announced at the motion hearing that there were no disputed facts and that each were entitled to summary judgment.

Issue(s)

The Court is well aware of the impact of this decision and the potential adverse effect upon one or both parties. With that being said, the issue before the Court, simply put, is who is entitled to or controls the real property occupied by FPC. FPC argues that the only dispute in this case is whether or not FPC truly owns its property. On the other hand, PCUSA argues that there are two issues: 1) Whether PCUSA has a trust interest in the property of FPC?; and 2) Does the First Amendment to the United States Constitution permit entry of an injunction barring PCUSA from exercising its ecclesiastical authority?

Having outlined the issues, the Court is well aware that summary judgment is appropriate and shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on

¹Presbytery of St. Andrew is essentially a regional division of the Presbyterian Church U.S.A., Inc., and has the authority to bring this lawsuit for and on behalf of PCUSA.

file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Importantly, the party opposing summary judgment may not rest upon mere allegations or denial of his pleadings, but his response, by affidavit or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, will be entered against him. *Cascio v. Alfa Mutual Insurance Company, et al.*, 164 So. d 452 (Miss. App. 2013), quoting *Karpinsky v. American National Insurance Co.*, 109 So.3d 84, 88-89 (Miss. 2013).

With the issues clearly before the Court, along with the overlapping law associated with summary judgment motions, the Court finds the following, to-wit:

Background

Over many years, there have occurred many disagreements or disputes, referred to as “schisms” in many major religious denominations throughout our nation. Ultimately, the majority of these schisms end in litigation over church property. Primarily, these differences seek to exert control over what is deemed to be “trust” property. The law in the various states varies dramatically, between applying ordinary principles of trust and property law to the deeds and other written legal instruments, to the other end of the spectrum, by relying on church religious documents such as Constitutions, Church Order Doctrines or other similar documents.

The underlying goal in the litigation is to resolve the disputes but also and, very importantly, to not tread on the rights of churches to conduct their business without government interference and thereby remain autonomous under the First Amendment to the United States Constitution. If this balance is achieved, churches may adopt any form of governance without

interference from government, and it relieves Courts from becoming entangled in religious questions which arguably is prohibited by the First Amendment.

Such is the dispute *subjudice*. The underlying reason for the schism is not the issue before this Court, nor should it be. The issue is the relationship between the local church (FPC) and the parent church (PCUSA), and whether such relationship gives rise to a trust property interest in PCUSA to the real and personal property located in Oktibbeha County, title to which is held of record by FPC.

As the Court understands the present relationship, PCUSA has made it clear that it believes that the FPC's property is held in trust for PCUSA. Further, that if FPC desires by proper vote and resolution to disassociate from PCUSA, it may do so, but cannot remain in charge or benefit from its property. FPC, on the other hand, believes that it has made it clear in the past that any affiliation with PCUSA did not entail a trust clause provision, and that the record title to the real property remains out of trust and exclusively the real property of FPC, with all the rights afforded by law thereby.

The subject of the controversy is seven parcels of real estate in Oktibbeha County. These holdings have been acquired over 160 years. It is undisputed that FPC obtained the deeds of conveyance and paid all consideration for the title to the various properties. There are no trust provisions in any deed that the Court can ascertain. FPC was founded in 1821, as a congregational mission.

According to the briefs, FPC was affiliated with several denominations over many years such as the "Presbyterian Church in the United States of America" (1830), "Old School Presbyterian Church" (1837), "The Presbyterian Church, Confederate States of America" (1861),

and “The Presbyterian Church in the United States (“PCUS”) (1865).

In 1983, PCUS merged with another Presbyterian denomination to create “the Presbyterian Church in the United States of America” (“PCUSA”). Since 1983, FPC has been affiliated with PCUSA. This period of time, including the time before the merger and subsequent to that, is the only time relevant to this dispute.

The Presbytery of St. Andrew is the direct superior of FPC and is responsible for the administrative management of the denominational affairs of all PCUSA affiliated churches in its geographical area. It is PCUSA that is responsible for enforcing the denomination’s rights and representing its interests. As previously noted, a schism occurred at FPC which brought PCUSA to investigate and undertake any action PCUSA decided was within its power to either resolve the dispute or clearly define the rights of each party. Again, the reason for the schism is not at issue, but suffice it to say that PCUSA took the position that the FPC’s property was in trust, and if FPC decided to disaffiliate, they could do so, but without the ability to then sell, control, occupy or maintain the seven parcels of real property.

Upon learning of the PCUSA’s position, FPC filed a Petition for Issuance of a Temporary Restraining Order upon its belief of imminent harm, which was granted by this Court. A hearing was held thereafter and a Preliminary Injunction was issued by this Court preventing the seizure of any property or the displacement of the FPC congregation until the issue could be fully and finally argued and decided. (See Order entered May 7, 2015). The Injunctive relief also attempted to preclude from the restrictions placed in the Order any ecclesiastical action on part of PCUSA.

The Court did, *ore tenus*, instruct the parties that it would be prudent for the parties to refrain from any such interaction that might interfere with the intent of the restraining order. The

Court attempted to narrowly express its understanding at that time that the issue is and now remains the ownership of both real and personal property as previously stated. The ability to govern itself and to engage in the day-to-day functions as hierarchical churches have done in the past was not intended to be restricted as provided by the guarantees of the First Amendment. The Court did intend to restrict any activity that would have a bearing or perhaps create further turmoil on the relevant issue before the Court.

The long and often tragic history of church disputes about property stretches back to almost the birth of this country. The first rule followed in resolving these disputes was called understandably, the English Rule. This rule required courts to award property to whatever faction of the church which adhered to, “[t]he true standard of faith”. It was based primarily on donor intent. To do otherwise would violate donor intent. *Watson v. Jones*, 80 U.S. (13 Wall) 679, 727 (1872).

The downside to the English Rule was that it required courts to resolve questions about church doctrine and make determinations, which led to erroneous interpretations of donor intent. Further, church doctrine could not further evolve as well. The English Rule was rejected in *Watson*, *ibid*, as a matter of common law, but not constitutional law. The Court also noted the differences in the established church of England and the fact that the United States had no established church.

Watson found that property disputes must be determined by assessing which of two categories churches fall into: 1) congregational; or 2) independent organization or a subordinate organization which is a member of a higher church organization with power and control over it. *Watson* was not a constitutional ruling and therefore, states are free to follow other approaches,

including the English Rule.

Several cases following *Watson* made it clear that civil courts should not decide ecclesiastical issues, and the English Rule is not properly based on Constitutional restrictions. In the 1970 decision of the U.S. Supreme Court in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, the Court held that states can adopt three methods for settling such disputes as long as they avoid meddling in doctrinal issues. States can adopt the *Watson* approach by deferring to higher authority, apply “neutral law” or pass statutes carefully omitting the requirement of deciding doctrinal or ecclesiastical issues.

In the most recent case decided by the U.S. Supreme Court, *Jones v. Wolf*, 443 U.S. 595 (1979), the Court established the constitutionality of the “neutral principles” approach. This approach allows the courts to determine ownership by review of deeds, other documents of title and trust, and state corporation laws. According to the Court, this approach allows reliance on principles familiar to judges and lawyers established in the various states under either trust or property law and it can accommodate all forms of religious organization and polity. This approach maintains conformance with the Establishment Clause and the Free Exercise Clause of the First Amendment.

The opinion posits that church disputes can therefore be resolved just like any others within voluntary organizations. In addition, courts are not called on to decide religious questions. However, the *Jones* opinion did not restrict courts from being able to examine religious documents such as church constitutions. Apparently, this ability hinged on the church constitution reciting a trust provision in some legally cognizable form. To say that *Jones* created

ambiguity would be somewhat of an understatement.

As a result of *Jones*, this has given rise to what has been called a hybrid approach, while the strict or neutral approach can also be inferred. In this Court's estimation, the Supreme Court was giving courts of the various states the right to decide for themselves such issues, without hamstringing them, but at the same time giving courts the tools to fashion resolution which would be proper and constitutional.

It could be argued, that to alleviate the multitude of issues which have been raised over the years, the simplest approach would be to codify the rules. However, the relationships between congregations and denominations have been in place so long that such an action would possibly create excess litigation by those wishing to "quiet" the issues.

Facts

The history between PCUSA and FPC dates from approximately 1983. Prior to that time, FPC was affiliated with the Presbyterian Church in the United States ("PCUS"). In 1983, the PCUS merged with another denomination, the United Presbyterian Church in the United States of America ("UPC") to form "the Presbyterian Church in the United States of America" ("PCUSA"). This merger is referred to as the Reunion by PCUSA.

Prior to 1982, there had apparently been no inclusion of any trust language in the official documents of PCUS. In fact, in 1953, PCUS adopted an official position unambiguously disclaiming any trust interest property and confirming that the beneficial interest in the property remains with the congregation as does the disposition of that property.

In 1982, PCUS Amended its constitution to include the word "trust". §6-3, Book of Church Order (1982/1983). PCUSA argues that FPC was well aware of the inclusion of this

language and was involved in almost every level of the adoption of the amendments. FPC argues that PCUS repeatedly assured local congregations that amendments to the trust clause did not change anything, nor create a legal trust. To further this end, a reservation provision was included with the adoptions of the trust clause, which, essentially allowed a local church to not be required to seek or obtain consent or approval of any other entity to buy, sell or mortgage the property of that church in the conduct of its affairs as a church of the PCUS.

After Reunion of the two churches to form PCUSA, the present day church, PCUSA, argues that FPC subjected itself to the trust provision of the Book of Order of the PCUSA which did in fact contain a trust clause. G-4.0203 formerly G-8.0201, Book of Order. One difference was that a local church was now required to, “obtain permission before selling, mortgaging or otherwise encumbering the property of that particular church.”

FPC points out that the Presbyteries - not individual congregations or their governing bodies - only voted for the new trust clause. FPC argues that because local churches were not asked to approve any trust clause, only those “paying close attention” were aware that the denomination had adopted a trust clause. FPC further states that those who knew were reassured essentially that their property rights were not altered nor threatened.

Because the trust clause was a departure from prior practice, the PCUSA constitution in paragraph G-4.0208, formerly HG-8.0701, permitted a “property exception”. The exception provided as follows:

The provisions of this chapter shall apply to all congregations of the Presbyterian Church (U.S.A.). Except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States [PCUS] and the United Presbyterian Church in the United States of America [UPC] to form the

Presbyterian Church (U.S.A.) [PC(USA)], shall be excused from the provision of this chapter if the congregation, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the Presbytery of which it is a constituent church of such vote. The particular church voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.) [PC(USA)]. This paragraph may not be amended.

FPC argues that this provision grants the right of FPC to “opt out” and remain under PCUS’s property rules. PCUSA argues that the provision gave the local churches only the right to exempt itself from the requirement to obtain written permission of its presbytery to sell, encumber or lease its real property if it followed the provisions and requirements of the opt out within eight years. PCUSA further argues that because there had been added a trust clause to the PCUS constitution, which was the denominational affiliation before the merger, that the exception did not operate to except the local church from the trust clause.

FPC asserts that a representative of the presbytery attended a meeting of the Starkville session and, according to the affidavit executed by Dr. James E. Long, informed the local church that PCUSA would have rights to the property of FPC unless FPC voted to exempt itself from the new PCUSA property rules. It argues that in response to that advisory, in a meeting of a session held on January 15, 1984, FPC passed a resolution voting to opt out of the trust clause. The resolution is attached as Exhibit 11 to the Plaintiff’s complaint and in both briefs. The resolution reflected that FPC “does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the Reunion which established PCUSA and will hold title to it’s property and exercise its privileges of incorporation under the Book of

Church Order, PCUS (1982-1983 edition)”. FPC argues that it maintained the same posture for the next few years and cited session minutes from a June 1989 meeting as support.

PCUSA argues that Dr. Long reported a different understanding clearly indicating that FPC fully understood its position with its property and not that it would retain title. It argues that it makes no sense that PCUSA would have the right to determine who gets the property in the event of a split or take the church property in the event of a dissolution, unless it had a trust interest right.

FPC states that out of an abundance of caution, it resubmitted the exemption request. FPC further attaches an exhibit that was submitted by the chief officer of Presbytery that *inter alia* states, “The church (FPC) will continue to hold title to its property and take action concerning the property as it has in the past”.

PCUSA argues that FPC’s later incorporation and adoption of bylaws and its adherence to the doctrines and benefits of over 30 years indicate FPC’s intent to be bound by the trust provision. When incorporating in 2003, and subsequently adopting bylaws, FPC further caused to be placed in the bylaws a reaffirmation of its desire to be exempt. The minutes from the July 2005 session adopting the bylaws, stated that the bylaws will follow the Book of Church Order with the exception of, “retaining ownership of church property in the event the church dissolves. The Property will not become the property of the Presbytery.”

Law

It is undisputed that the State of Mississippi has adopted the “neutral principles of law” approach. *Schmidt v. Catholic Diocese of Biloxi*, 18 So.3d 814, 824 (Miss. 2009), quoting *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So.2d 200,

205 (*Miss. 1998*). The neutral principles approach, “relies on objective, traditional concepts of trust and property law....*Id.* at 205. “It calls for a completely secular examination of deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons, Books of Discipline and the like...*Id.* [*quoting Protestant Episcopal Church in Diocese of N.J. v. Graves*, 83 N.J. 572, 417 A.2d 19, 23 (N.J.1980), *cert. denied sub nom Moore v. Protestant Episcopal Church in Diocese of N.J.*, 449 U.S. 1131, L. Ed.2d 119, 101 S.Ct. 954 (1981)].

Religious documents must be scrutinized carefully, separating religious precepts from secular terms. *Church of God Pentecostal*, 716 So.2d at 205, citing, *Jones v. Wolf*, 443 U.S. at 604. This Court must be mindful of the requirements imposed under the First Amendment to the U.S. Constitution. As long as it is not required to interpret doctrinal matters, the Court is allowed to decide the issue of property ownership. *Jones v. Wolf* at 205.

Analysis

From a detailed reading of both well written and extensive briefs, the issue falls along the following lines: FPC argues that there is no trust, whether express or implied, constructive or resulting. FPC points to the opt out provision and other supporting documents to further bolster its rejection of the trust interest theory. PCUSA says that the opt out is not what FPC now says it was, and that FPC agreed to be bound by the PCUS inclusionary trust amendment. Further PCUSA argues that by continued allegiance to the higher church through adoption of the Constitution, Book of Order, incorporation and acceptance of the benefits of affiliation, that the trust interest is enforceable.

In order to arrive at a decision, each step of the arguments of both parties must be

absorbed and applied with the appropriate law. First, it is undisputed that the deeds to all the property at issue have no trust provision. The original parcel was acquired prior to the merger and before the final affiliation with PCUSA, with other parcels acquired after the affiliation. Regardless of the claim of trust, a strict reading of the recorded deeds reveal no trust provision in any other party as trustee, nor is there a reverter clause contained in any of the instruments. It is also undisputed that there is no express trust agreement outside of the deeds, which can have the same effect by law in the transfer of trust property, between the litigants or any other party.

Mississippi law requires that, “no trust of or in any real property can be created except by written instrument signed by the party who declares or creates such trust (the “settlor”)” *MCA §91-8-407*. Nowhere does either party assert or represent that there is any writing signed by the proper FPC officials after authorization that satisfies *MCA §91-8-407*, whether by original deed or separate trust instrument. Likewise, there is no declaration of trust filed in the land records of Oktibbeha County, MS, as provided by the *MCA §91-8-407(b)(2)*.

If there is no written trust, nor representation that there is one, it follows that there is no need to analyze the machinations of how a nonprofit or religious society should or could create such an express trust and the vote count required to do so. Subpart (b)(5) of *MCA §91-8-407* provides that, “the provisions of this subsection (b) shall have no application to trusts of personal property, or to any trust arising or resulting by implication of law out of a conveyance of land.....”

MCA §91-8-407(b)(5) therefore does not require any creation of trust to be in writing for inclusion in the trust of personal property or arising by implication of law. Under this subsection, the personal property of FPC is still subject to the same claim made by PCUSA, because a writing is not required. Also, the claim against the real property would likewise survive, not as an

express trust, but one which arises by implication from the conveyance of land. However, subpart (b)(5) would effectively bar a claim of even an implied trust since it is limited to an implied trust arising, “out of a conveyance of land.”

The language obviously necessitates a conveyance and brings into question, not any of the early and original conveyances, but the conveyance from FPC, an unincorporated association, to the new corporate entity in July 2003. Mississippi law recognizes a transfer and vesting of title from an unincorporated association to a newly formed non profit and provides the only method by which real property can be divested. *MCA §79-11-31*.

There is no indication that in July 2003 there was any reference to creating a trust, other than the corporate by-laws and the minutes of the meeting of FPC to approve and adopt the by-laws as previously discussed herein. There is no evidence that there was any intention to create such an express trust relationship. *MCA §91-8-402* specifically requires, *inter alia*, the intention to create a trust. *MCA §91-8-402(a)(2)*.²

There are no documents presented whereby resolutions were properly passed or votes were taken to establish a written express trust or of any indication whatsoever, that there was any mention of even a oral express trust. PCUSA asserts that the 1984 property exemption resolution was, in fact, intended to create a trust. PCUSA states that by inclusion of the reference to the Book of Order, [PCUS] (1982-1983 edition), that FPC therefore intended to be bound under a trust provision.

In addition to the express trust, Mississippi recognizes the implied trust. This type of trust

²The parties have not raised *MCA §89-1-3*, but that statute provides that, “An estate of inheritance or freehold, or for a term of more than one (1) year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered.”

is further broken down into two distinct types that are very different in effect and application.

The first is the constructive trust. The basis for the recognition of this type of trust is one of equity and the prevention of unjust enrichment. For instance, where one person wrongly retains property rightfully belonging to another, the Court will impose an equitable trust on the bare legal title to protect the interest of the person actually entitled to its benefits.

Constructive trusts arise by operation of law and not due to agreement or intent. Fraud is usually an element of the underlying allegations in the claim for relief. The burden of proof of a constructive trust is by clear and convincing evidence. Once proven, the trust is imposed and the person holding the property shall not be allowed to profit from his/her wrongdoing. *See also Russell v. Douglas*, 138 So.2d 730, 734 (1962), which provides a clear and concise summarization of the definition of a constructive trust.

If it is found that there is an express trust, then it would be unlikely under the facts agreed upon by the parties or this Court to find that there was an implied trust, namely a constructive one. First of all there were no documents titling any of the property in another's name and a need for affirmative action in equity to protect a party who, in good conscience, should have and hold the property.

If no express trust is found and there is a need to imply a trust, the second type of implied trust is a resulting trust. This type of trust arises from the actions of the parties and the nature of the transaction. It is applicable "to give effect to the unwritten but actual intention of the parties at the time of acquisition of title to the affected property. Thus the principal distinction between the two is that, in a constructive trust, the acquisition of title is somehow wrongful as to the purported beneficiary; whereas, in a resulting trust, the acquisition, as between the trustee and the

beneficiary, is mutually agreeable and the inequity arises out of the trustee's subsequent unwillingness to honor the terms of the parties' original agreement." *Church of God Pentecostal, Inc., ibid.*

A resulting trust is "implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surrounding the transaction out of which it arises. Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved". *Church of God Pentecostal, ibid, quoting, Ferguson v. Ferguson, 639 So.2d 921 (Miss. 1994).*

This type of trust, in the absence of an express trust, is the form that seems most applicable to the facts submitted to the Court in support of the Motions for Summary Judgments.

Under Mississippi law, when applying the principal of Neutral Law, this Court must look at the evidence objectively, applying traditional concepts of trust and property law familiar to attorneys and judges. The examination requires a, "completely secular examination of deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons, Books of Discipline, and the like, to determine whether any basis for a trust in favor of the general church exists." *Wolf, 443 U.S. at 602.*

Wolf involved an action similar to the one subjudice between a local and the "general church." The Court examined the secular instruments, as well as the church constitution and the Book of Church Order. This left the connectional relationship between the parties which was

found in that case to be an insufficient basis upon which to establish property rights in the general church. Most importantly, the Court concluded that, “although the analysis may involve examination of some religious instruments, such as a church constitution, the inquiry must be performed in purely secular terms without relying ‘on religious precepts in determining whether the document indicates that the parties have intended to create a trust’ ” *Id.* at 604.

In one of the seminal cases in this state, *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So.2d 200 (Miss. 1998), the Mississippi Supreme Court acknowledged that case law in this state was “sparse” and that *Wolf* did not clearly delineate the approach this Court should follow in Mississippi. The Court then stated, “This Court now chooses to follow the neutral approach for the determination of issues such as in the case subjudice. As *Wolf* stated, the primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity” and “relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges.” *Wolf*, 443 U.S. at 603.

1. *Express Trust*

Based on this standard as adopted in this State, it must be apparent that the property was not transferred by express trust from FPC to PCUSA. There is no such expression in any of the deeds. Significantly, when FPC “reformed” as a non profit in 2003, there were no deeds of conveyance from the prior association to the newly formed non profit that recited any trust arrangement or intent to create an express trust. This opportunity to settle all legal “issues” was missed by both parties. By law, as previously discussed, the property remained with FPC, whether as an unincorporated religious association or a newly formed non profit. However, deeds

could have been prepared at that time to establish any trust that may have been intended or desired by either party.

Of course, as we now understand the arguments of each side, FPC thought that the trust issue had been resolved back in 1984, during the “opt out” period, and PCUSA understood that the property was already in trust due to the inclusion of the reference to the desire to be “under” the former PCUS constitution.

Based on the arguments today, both parties saw the same picture, but had entirely different perspectives of it. PCUSA asserts that the express trust is, in fact, the resolution adopted during the opt out by FPC when it clearly desired to be “under” the former PCUS constitution. As aforesaid, there were no express trusts entered into by the parties under traditional Mississippi trust law. There is no reference in any deed to creation of a trust relationship. It follows that there is no clear expression of a intent to create a trust, nor any reference to even the term “trust”. Neither party has asserted the opposite. Likewise, there is no separate document such as a trust instrument in writing. Neither party also asserts the contrary.

None of the elements of creation of an express trust are present, such as the writing, the clear intent of the trustor, or the confirming authority of creation of a trust and the transfer of property by the governing body. *Church of God Pentecostal*, 716 So.2d at 208 and MCA §79-11-331. Therefore, this Court concludes and finds that there was and is no traditional express trust applicable herein in the documents of title, nor any legally enforceable and separate traditional trust instrument that would operate to vest a beneficial interest in and over the legally titled property of FPC to PCUSA.

2. *Constructive Trust*

Also, as previously set forth, if there is no express trust then is the title to property defaulted to an implied trust? The Court does not find, nor does the evidence reflect that one of the categories of an implied trust, a constructive trust, is applicable. FPC has purchased its own property. There is no evidence that PCUSA invested any funds into the acquisition of any parcel of real or personal property now at issue. Likewise, there is no evidence of any documents, oral conversations, minutes or other written or oral supporting evidence that any such arrangement of trust was contemplated in the classic legal definition of a constructive trust.

There is no evidence of any of the form of conduct as set forth in numerous Mississippi cases such as *Allred v. Fairchild*, 785 So.2d 1064, 1067 (Miss, 2001) and *Joel v. Joel*, 43 So.3d 424, 431 (Miss, 2010), that would allow equity and good conscience to correct. The Court therefore finds that there is no constructive trust as implied by law based on the facts as agreed upon by the parties.

3. Resulting Trust

The two remaining issues of trusts are the resulting trust and the assertion by PCUSA that an express trust was created by the clear indication that FPC wished to be bound by the constitution of the former denomination before merger, PCUS, must now be discussed and decided. Because this will entail a review of the circumstances between the parties, the Court will attempt to decide each of these issues simultaneously rather than duplicate the facts submitted by the parties.

The first issue must be the adoption of the FPC 1984 resolution, which has been made a part of the record. The pertinent part is the language, “.... and exercise its privileges of incorporation under the provisions of the Book of Church Order, [PCUS] (1982-1983 edition).

PCUSA asserts that by inclusion of this language, by implication, FPC bound itself to the newly adopted PCUS trust clause and therefore became a trustee for the benefit of PCUSA of its property.

The undisputed facts are that shortly before the merger or “Reunion” of PCUS into PCUSA, it adopted a trust provision into its constitution. For the entire history of the relationship between FPC and PCUS, there had been no trust provision and that non trust relationship had been affirmed on prior occasions. FPC cites a 1953 official statement issued by PCUS, in which beneficial ownership of church property would continue to be held by the congregation and title could be held in any manner consistent with civil law. According to FPC, this was the official position of PCUS until the merger in 1983 and according to the deposition introduced as Exhibit 19 was confirmed by the appropriate PCUSA officer.

PCUS amended its constitution in 1982 to insert a trust provision for the first time. This is the essence of the dispute concerning the response previously set out by FPC. According to FPC, PCUS repeatedly assured local congregations that the amendment did not change anything as far as title or control of church property. FPC argues that the trust clause was approved subject to an accompanying reservation relieving the local church from seeking consent or approval to deal with its property. FPC argues further, that local churches were not asked to approve the trust clause, but instead it was the Presbyteries which voted to approve the trust clause.

In response to concerns over property rights, PCUSA in its initial constitution (1983-1984), provided the so called opt out or grandfather clause. The wording of this section of the constitution appears to provide a method to allow a local congregation to be excused from the provision, if within eight years of the establishment of PCUSA, it votes to be exempt. The

exemption provision goes on to say that the local congregation may hold title to its property, incorporate and be subject to property ownership, “under the provisions of the Constitution to which it was subject immediately prior to the establishment of the [PCUSA]”.

Once more this begs the question of whether or not the former PCUS amended constitution controls since the PCUS had adopted the trust amendment prior to the merger. FPC says that the PCUS trust provision was adopted in an obscure manner and that the intent of FPC was to not be bound by any trust provision. It is important to note that the FPC resolution language contains another provision just prior to that previously cited which reads, “and will hold title to its property...” This language also must be considered as defining along with the language of commitment to the constitution of PCUS.

FPC asserts that the chief officer of the Presbytery, William Clark, assured the local church that by voting for the exemption, FPC could retain all its property rights. On January 15, 1984, in a session meeting, the resolution was passed and approved by the church congregation on July 1, 1984. FPC apparently held the belief that it had successfully exempted itself from the requirement of placing its property in trust, but could remain affiliated with the denominational church, PCUSA.

Session meetings in June 1989 and in August 1989 seemed to support that belief. On December, 18, 1990, the Presbytery’s chief officer in a letter to FPC stated, “The church (FPC) will continue to hold title to its property and take action concerning the property as it always had in the past.” In its incorporation documents in 2003, the church reaffirmed its reservation of rights. In the adoption of its by-laws, the minutes of the July 2005 session indicate that, “the by-laws will follow the Book of Church Order with the exception of retaining ownership of church

property in the event the church dissolves. The property will not become the property of the Presbytery.”

Interestingly, in a supplemental brief, FPC has submitted an affidavit of Caroline Laurie Griffith, who represents herself as an officer of the PCUSA with authority to represent PCUSA. The affiant states that PCUSA has no ownership interest in and no right to control or maintain the property of FPC and further disclaims any and all interest in the property of FPC. Obviously, the corresponding question is one of the authority of this agent and the representation she has made. It would seem the head entity takes this position, then any subordinate entity as a member of that denomination could not assert any contrary position.

PCUSA further argues that under the holding of *Church of God Pentecostal, Inc.*, this Court is required to determine the connectional relationship of the two churches. In other words, whether FPC and PCUSA are “sister” churches. This approach was necessitated in *Church of God Pentecostal, Inc.*, by the fact that there was no express trust and resort was had to the relationship of the two churches to determine whether a constructive trust or a resulting trust was applicable and whether there had been a compliance with denominational church documents by the congregational church. This necessitated a review of the denominational church’s by-laws and other church documents.

As previously stated, a constructive trust is not applicable. Resulting trusts arise by virtue of agreement or intention, either actual or implied. The inquiry by the Court in *Church of God Pentecostal, Inc.*, turned on the separate relationships of each litigant. Although the name was similar, the “connection” between the two churches did not support an implied or resulting trust.

This inquiry under present Mississippi law is authorized and is the proper approach to

resolve this issue. Much like the case *subjudice*, does a resulting trust arise even though there is no traditional express trust or by a constructive trust? Under Mississippi law, it may. The relationship between FPC and PCUSA has been much stronger over the last 30 plus years than that exhibited between the two churches in *Church of God Pentecostal, Inc.* However, this Court must likewise study the undisputed facts and conclude whether or not the actions of the parties just prior to the merger and in the ensuing years provide by clear and convincing evidence the intent to create a trust provision to affect the property of FPC. This Court concludes that they do not.

First of all, as stated, there is no express trust in the deeds of ownership or separate instrument as allowed by law. Secondly, there is no constructive trust. There is no evidence of any kind that any of the legal requirements for this Court to impose such a trust existed in any way. It is clear that PCUS had always disclaimed any interest in church trust property until right before the merger. Local churches apparently did not have a voice in the adoption of that resolution. Afterwards, local churches were assured that nothing had changed and even PCUSA joined in the chorus of assurance, Furthermore, if the trust provision was absolute, the question must be answered as to why PCUSA granted the ability to opt out during the eight year period following creation of PCUSA.

PCUSA was formed in approximately 1983. Prior to that FPC had no fears of loss of its property in the event of affiliation with PCUS. Frankly, just the opposite was true, in that PCUS disclaimed such an interest. When PCUSA was formed, the trust provision was placed in the constitution without participation of the local churches. In essence, the old church merged (PCUS) and the new church arose (PCUSA). It is reasonable to grant an opt out if there were

additional requirements upon the local churches that they had not been subject to before the merger. This is especially true as to the importance of property ownership, which often is substantial as to any change of ownership of church property, especially as to the toils and sweat equity of countless members over the years to accumulate and care for such property. Property ownership being one of the greatest constitutional guarantees along with the First amendment.

Secondly, FPC took measures under the opt out provision on several different occasions to reiterate its desire to retain title to its property. It did so in session meetings and by-laws of incorporation. It did so with reassurances by officers of PCUSA that compliance with the opt out would allow FPC to hold title to its property. It is not only reasonable to interpret the consistent position of FPC as representative of its intent, but much less reasonable to interpret the inclusion of the reference to the constitution of PCUS as creating an implied trust (resulting).

If PCUS had maintained for its existence the requirement of holding property in trust, the argument might be different. But it did not, only changing its position shortly before the merger. There is inadequate proof in the estimation of this Court that this fact was properly communicated or properly passed by votes of the member congregations. It is both logical and reasonable to believe that FPC wanted to remain, as it always had, the owner of its property and naturally since it had been under the auspices of PCUS for most of its existence, that was the appropriate reference point.

The inclusion of the phrase clearly indicating the intent to retain title to “our property” is specific and incapable of different interpretations. The reference to PCUS is not clear as to the intent and is capable of different interpretations. In order to transfer property to trust, the intent of the trustor and the parties must be specific, must have proper authority, and further must be

shown by clear and convincing evidence. This has not been established by the evidence before this Court.

A further question that supports the Court's position that has not been properly answered, is the question of notice to the PCUSA. The opt out resolution was required to have been passed and PCUSA notified of the desire of the local church. The proper officer when reading the opt out resolution surely would not have been smug enough to opine that the inclusion of the reference to PCUS was enough to grant property of the FPC in trust. Surely the reference to, "will hold title to its property", was not capable of misinterpretation.

Upon reading this, a reasonable person, in the estimation of the Court, would have immediately sought to notify the proper parties to resolve this "misunderstanding". The reasonable person would not have sat back over 30 plus years and been able to reasonably conclude that FPC intended to convey its property in trust.

Due to the impact of the transfer of property on which so many are dependent and have worked so hard to accumulate, the governing church, responsible for the local congregation in all regards, fell short of its duty to FPC. PCUSA had the duty and the burden shifted to it to straighten this out at the time of the opt out, not 30 years later.

Our Supreme Court has set forth a three tiered approach to contract interpretation. ***Ronnie Robertson and Diane Robertson v. Jean A. Catalanotto and Jody M. Catalanotto***, 2014-CA-00332-COA, (Miss. Ct. App. 2016), quoting, ***One S. Inc. v. Hollowell***, 963 So.2d 1156, 1162-63 (Miss. 2007). Although there was no traditional express contract, PCUSA has asserted that the resolution passed during the opt out period was in fact an expression of the intent of FPC to be bound by the property trust provision. Therefore, the analysis promulgated by the Court is

applicable to determine intent of the parties. The four corners rule provides that the Court is to look at the language used by the parties in expressing their agreement. The contract as a whole is to be considered, so as to give effect to all the clauses.

The Mississippi Supreme Court stated, “Our concern is not nearly so much with what the parties may have intended, but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy.”

Robertson, Id. If the contract is unclear and ambiguous, the Court should attempt to harmonize the provisions in accordance with the parties’ apparent intent. Finally, if the contract interpretation still is elusive, the Court will apply the reading most favorable to the non-drafting party. ***Robertson, Id.***

For the reasons set forth above, this Court concludes that the language employed by FPC clearly indicated its intent to continue to hold title to its property. The words are there in black and white and cannot be misinterpreted. The inclusion of the reference to PCUS, could be interpreted as making the statement ambiguous, until it is viewed in conjunction with all the other documentary evidence. Clearly, FPC had operated under the non trust constitution of PCUS since its existence. The adoption of a trust clause by PCUS was at the eleventh hour prior to merger. The proof is not persuasive that FPC was aware of the trust provision, had an opportunity to vote on it, and understood the implications of the adoption of said trust while being repeatedly assured that, “nothing would change”.

The intent of FPC to this Court clearly indicated that it wanted to hold title to its property as it always had and the reference to PCUS was a reaffirmance of that position since that had been the case from the beginning, **not** one contrary to its desire to hold title and in compliance

with the newly adopted trust resolution. It would not make sense for FPC to state that it wished to continue to hold title to its property as it always had and then to submit its property to a trust provision in the next clause. PCUSA's argument is not persuasive.

Further, this Court alluded to the requirements of §91-8-407(b)(1) MCA. The first part of the section acknowledges that a trust does not have to be, "evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence," which the Court has concluded herein has not been accomplished. Subpart (b)(1) clearly requires that, "No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust...".

This statute is part of the Mississippi Uniform Trust Code adopted and implemented into law on July 1, 2014. This Court can find no case law citing this statute and/or setting forth any definition or direction. It can be argued that since the interactions between the parties took place prior to enactment of this statute that it has no application and the resulting trust, although implied and not therefore in writing, would still have to be analyzed. If the trust was already in place, then it had been created before the statute became effective.

The statute, however, does underscore the importance of the issue of real property in trust and seems to now require only written instruments and obviate the necessity of determining whether a resulting trust can even arise. Since the Court conducted its analysis without reliance on the statute and found that a resulting trust did not arise and there was no intent to create either an express trust as well, there is no need to determine whether it is applicable or not.

Furthermore, the statute now shines a bright light on how important the ownership and transfer of real property is in this State, and that the burden should be high for the imposition of a

resulting trust. This statute or its enforcement will not change the ultimate finding of this Court for the reasons expressed previously.

Conclusion

Several cases are cited by both parties which variously support their positions. This Court has read the cases which are most applicable to the facts of this case. There is not a redline drawn into the inquiry made by a Court as to each set of facts before it. It is not black letter law and each case stands on its own merits. The matter *subjudice* is no different.

Several factors distinguish this matter from others, the most prominent being the merger in 1983, the opt out adopted apparently in response to the trust clause, the resolution by FPC to hold title to its property, the lack of a trust provision in the deeds of title both initially and those conveyed in response to the incorporation of non profit status, the repeated assurances of PCUSA that FPC would hold title to its property, FPC's inclusion into its corporate charter and by-laws about the property retention, and finally, PCUSA's apparent disclaimer of interest in the property bring the Court to the finding that FPC is the titleholder of its property without claim of PCUSA, under the principles of neutral law as adopted by the State of Mississippi.

As previously explained, the Court did not merely examine the secular documents, but also the appropriate church documents to reach its conclusion. Mere reaffirmance of allegiance to PCUSA during the last 30 plus years under the facts of this case do not rise to the level that would necessitate the implementation of a resulting trust under current law. This Court is of the opinion that FPC pledged its allegiance and complied with the Constitution and Book of Order from the date of affiliation until today under the belief that it had properly exercised its right of retention of its property. There would, therefore, be no reason to remain affiliated with PCUSA

all these years and not act as a good steward of the principles and message of the parent church.

This case should not be viewed as a statement of reliance and authority for all future church disputes, as each will turn on its own set of facts and circumstances. The only cure for the issues herein is dialogue and proper execution of trust documents, whether deeds or separate instruments, or there will continue to be litigation which is costly and unseemly for church denominations and congregations.

In conclusion, this Court finds that this is not a doctrinal dispute and the Court is authorized to exercise jurisdiction under neutral principles of law. The Court further finds that there was no express trust between the parties. The only representation of an express trust is the 1984 resolution which has been adequately addressed previously by this Court. This provision falls short of the requirements to create an express trust under the trust law of this State.

The continued affiliation of FPC with PCUSA since the merger was based on FPC's belief that it had availed itself of the eight year opt out provision given it by PCUSA and been repeatedly assured that was the case. The intent is clear to this Court that FPC "will hold title to its property" means exactly what it says, is unequivocal, clear and unambiguous. The inclusion of the portion in reference to PCUS underscores an intent to not be under a trust provision which had been the case for decades. Therefore, the Court does not find a resulting trust as well. See §91-8-407 MCA, and as explained previously.

The Court further finds that creation of trusts and intent must be clear and convincing. To uphold the argument of PCUSA would be contrary to that standard, unreasonably deprive FPC of its property without just compensation, violate its constitutional right of the free ownership of property and be unjust and inequitable. For these reasons, the Court grants FPC's Motion for

Summary Judgment as well as a permanent injunction, affirming its right to hold title to its property without interference or claim from PCUSA. The Court does however lift the injunctive relief as pertains to the ecclesiastical aspects of the functions of PCUSA and FPC. PCUSA shall not be restrained in any way from carrying out its ecclesiastical mission in ministering to its congregants and conducting such other usual and customary duties as required by church law.

At this time, FPC is still affiliated with PCUSA and nothing shall prohibit or restrain that relationship to continue. Nothing herein contained shall prohibit the parties from continuing their relationship until proper steps are taken in keeping with church law and doctrine to end that relationship, if ever. However, continuation of the relationship shall in no way be conducted in a manner contrary to this opinion and FPC shall be unencumbered to deal exclusively with its property as it deems fit without interference from PCUSA.

SO ORDERED, this the 27th day of July, 2016.


CHANCELLOR