

RELIGION LAW

When Can Courts Decide Disputes Between Local Churches and Their Denominations?

There is much confusion—including in some New York courts—about when a judge may resolve a disagreement between a local church and its governing body. In their Religion Law column, Barry Black and Jonathan Robert Nelson review the law and suggests steps that can help limit litigation in these situations.

By Barry Black and
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The First Amendment prohibits courts from interfering in or determining religious disputes, out of concern that the government would become excessively entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs. This “ecclesiastical abstention” doctrine is meant to free religious bodies to decide disputes that are religious in nature by themselves, uninhibited by state interference.

New York courts often have to decide whether the ecclesiastical abstention doctrine applies in particular matters. The issue can be particularly complex when the dispute is between a local church and a higher church body in a hierarchical denomination to which the local church belongs. It is further complicated when significant property interests are involved. Indeed, whether the First Amendment precludes judicial review in a case involving religious institutions in a hierarchical system has confounded parties, counsel, and courts alike.

This column reviews the law applicable in New York, including a



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questionable recent decision by the Appellate Division, Second Department. It concludes by offering suggestions that local churches and their denominations can take to limit the risk of litigation in these situations.

The ‘First Presbyterian’ Decision

In 1984, the New York Court of Appeals decided *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States*, 62 N.Y.2d 110 (1984), which has become one of the leading New York decisions on the subject of hierarchical churches and property rights.

The case involved a dispute between the First Presbyterian

Church of Schenectady, a local church, and its religious denomination, The United Presbyterian Church in the United States of America (UPCUSA), that arose when the church withdrew from the UPCUSA because of a disagreement over the UPCUSA’s financial support of various political groups and individuals. The church went to court, seeking a declaration of its independent status and a permanent injunction preventing the UPCUSA and the Presbytery of Albany from interfering with its use and enjoyment of its property.

When the case reached the Court of Appeals, the defendants characterized the dispute as involving

nothing more than a controversy over church polity and authority and contended, therefore, that the courts had to defer to the authority of the hierarchical church and avoid resolving the underlying question of property ownership because any other course would necessarily entangle the courts in church dogma and doctrine in violation of the First Amendment.

For its part, the church viewed the case as concerning only the question of property ownership, which it asserted could be resolved without violating the First Amendment.

The defendants responded that even if the case was considered to be a contest over the right to control use of the church's property, the courts were bound to defer to the highest authority in the hierarchical church. The Court of Appeals did not accept that position.

In its decision, the Court of Appeals adopted the "neutral principles of law" analysis as a means of resolving church property disputes. Applying commonplace legal principles, this analysis focuses on the language of the deeds, the terms of the local church charter, the state statutes governing the holding of church property, and the provisions in the denomination's constitution concerning the ownership and control of church property.

The court explained that this analysis, when properly applied, avoids drawing civil courts into religious controversies by focusing on evidence from which a court can discern the "objective intention of the parties" while also permitting the state "to protect its legitimate interests in securing titles to property." Moreover, the court continued, the neutral principles of law analysis provides "predictability" so that religious organizations may order their affairs to account for its application.

The court then applied the analysis and ruled in favor of the local church, reasoning among other things that the church held record

title to the property free from any competing interests and that the deeds by which the church had acquired the property all named it or its trustees as grantees and did not include language vesting any interest in the Albany Presbytery or the UPCUSA. The court added that the denomination's constitution contained no provision creating an express trust in favor of the UPCUSA, that the local church had acquired the property on its own without any funding assistance from the denomination, and that there was no evidence that the church intended to hold the property in trust for the denomination.

Under the neutral principles approach adopted by the court in 'First Presbyterian', the outcome of a church property dispute is not foreordained.

Accordingly, the court held, New York courts could resolve the parties' dispute, and it decided that the church was entitled to an injunction permanently enjoining the denomination from interfering with the church's property.

The 'Eltingville' Case

In July, the Appellate Division, Second Department, issued its decision in *Eltingville Lutheran Church v. Rimbo*, 2019 N.Y. Slip Op. 05957 (2d Dep't July 31, 2019), with issues quite similar to those at the heart of *First Presbyterian*.

The case involved the Eltingville Lutheran Church, a member of the Evangelical Lutheran Church in America (ELCA), and the Metropolitan New York Synod of the Evangelical Lutheran Church in America. Eltingville operates a church and school on real property it owns on Staten Island.

On March 15, 2016, the Synod Council imposed synodical administration on Eltingville and appointed trustees to take control

of Eltingville's property. The Synod advised Eltingville of its right to appeal the decision to the Synod Assembly.

Eltingville filed an action in court against the Synod and its Bishop seeking a judgment declaring that the Synod's decision to place it under synodical administration violated New York Religious Corporations Law (RCL) §§17-c and 13.24 of the Synod's constitution because the standards for synodical administration had not been met. Eltingville also sought to enjoin the Synod from closing its church, seizing or taking control over any part of its real or other property, and interfering with the day-to-day operations of its church and school.

In its complaint, Eltingville alleged that it was a functional church with 80 members, that it conducted weekly services, and that it had a school and \$350,000 in cash assets. In another filing, it pointed out that its property was worth over \$4 million.

The Supreme Court, Richmond County, temporarily enjoined the defendants from imposing synodical administration and taking any actions to close the church or interfere with its day-to-day operations. Eltingville thereafter took the first of two required votes under the RCL to disaffiliate from the ELCA and the Synod.

The defendants moved to dismiss Eltingville's complaint, arguing that the Supreme Court lacked subject matter jurisdiction over the internal church dispute because the determination to impose synodical administration was a nonjusticiable religious determination that resulted in the Synod taking title to Eltingville's property.

The Supreme Court granted the defendants' motion, and Eltingville appealed to the Second Department.

In a decision that we question, the Second Department affirmed, citing the brief decision in *Matter of Metropolitan New York Synod of the*

Evangelical Lutheran Church of America v. David, 95 A.D.3d 419 (1st Dep’t 2012), for the proposition that the Synod’s decision to impose synodical administration on Eltingville was a “nonjusticiable religious determination.” The First Department in *Metropolitan* had relied in turn on the New York Court of Appeals decision in *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008), and had concluded that the decision by the Synod in *Metropolitan* “that the congregation had become so diminished and scattered that it could no longer function” was “a nonjusticiable religious determination.”

The factual underpinnings of the decisions to impose synodical administration in *Eltingville* and *Metropolitan* were, however, distinct from the facts in *Harnish*. In *Harnish*, the parties agreed that “[d]ue to serious theological disputes between the Rochester Diocese and the vestry (the leadership) of All Saints ... the governing body of the Rochester Diocese—the Diocesan Convention—approved a resolution declaring the parish ecclesiastically ‘extinct.’” Given the “serious theological disputes,” the court in *Harnish* ruled that the resolution deeming the parish “extinct” was a nonreviewable ecclesiastical determination.

Neither *Eltingville* nor *Metropolitan* involved theological questions. To the contrary, in both cases, the Synod had relied on provisions of the church constitution and New York statutes that empowered the Synod to act based on considerations that essentially were managerial. Although issues of the proper disposition and deployment of church resources may legitimately be considered to be “ecclesiastical” in nature as elements of “ecclesiastical rule,” see *Watson v. Jones*, 80 U.S. 679 (1871), such decisions are not entirely immune to judicial consideration. Even decisions of church officials that normally are protected from judicial review may be

challenged in court when there are credible allegations of “fraud, collusion or arbitrariness.” *First Presbyterian Church, supra* (citing *Gonzales v. Archbishop*, 280 U.S. 1, 16 (1929)). *But see Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712-713 (1976) (rejecting “marginal civil court review” on the basis of “arbitrariness”).

The court in *Eltingville* failed to consider whether the complaint’s credible allegations raised issues such as “fraud, collusion or arbitrariness” permitted for judicial review by *First Presbyterian*. Moreover, the enactment of a statutory standard for synodical administration in RCL §17-c—“The

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membership of the congregation becomes so scattered or diminished in numbers as to make it impracticable for such congregation to fulfill the purposes for which it was organized”—may have altered the “ecclesiastical” nature of the decision so as to permit judicial review. After all, a legislature may not enact purely ecclesiastical standards. When a statute sets conditions for the exercise of a power, it implies that an injured party may allege in court that the statutory conditions have not been met.

Refusing to permit this kind of dispute to be heard in the courts, by adopting the *Eltingville/Metropolitan* approach that a denomination’s decision to close a local church is

per se a nonjusticiable religious determination, could invite abuse of this power by denominations. Such a result would be unfair to local churches and their members, might be unenforceable under contract principles, and is not clearly required by the First Amendment or the rule of law enunciated by the Court of Appeals in *First Presbyterian*.

Conclusion

Under the neutral principles approach adopted by the court in *First Presbyterian*, the outcome of a church property dispute is not foreordained. The denomination and its local churches can agree by contract in advance of any dispute how disputes should be resolved. The denomination’s constitution and governing charter, as well as deeds, contracts, bylaws, and other legal documents, should clearly spell out, at a minimum, how any disagreement over property is to be resolved and how ownership of property is to be determined.

Having those agreements clearly written will help the parties and their advisers to reach an amicable resolution of any property dispute. If they are unable to do so, New York courts, by reviewing and applying the parties’ agreements and considering evidence and testimony, will be able to resolve problems without infringing on any of the parties’ First Amendment rights.

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