

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HEARTLAND PRESBYTERY, A MISSOURI NONPROFIT CORPORATION, et al.,
Appellants,**

v.

**GASHLAND PRESBYTERIAN CHURCH, A MISSOURI BENEVOLENT
CORPORATION,**

Respondent.

DOCKET NUMBER WD73064

Date: January 10, 2012

Appeal from:
Clay County Circuit Court
The Honorable Larry D. Harman, Judge

Appellate Judges:
Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:
Allan V. Hallquist and Kathryn C. Goldsmith-Lee, Kansas City, MO, for appellant.
Glen S. Masters, North Kansas City, MO, Michael K. Whitehead, Kansas City, MO, and
Jonathan R. Whitehead, Lee's Summit, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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Gashland Presbyterian Church, a local Presbyterian congregation, was incorporated on August 11, 1948. Gashland's Articles of Agreement specify that it was "connected with and ecclesiastically subject to the Presbytery of Kansas City, Synod of Missouri, and the General Assembly of" a predecessor of the Presbyterian Church (U.S.A.) ("PCUSA"), a national religious denomination.

On October 11, 1948, the Presbytery of Kansas City deeded property located at 8029 North Oak Trafficway in Kansas City to Gashland. The grantee is identified in the Corporation Warranty Deed as "Gashland Community Church, Gashland, Missouri."

In 1981, the PCUSA's predecessor denomination adopted a "Property-Trust Clause." As now contained in the PCUSA's Book of Order, that provision specifies that "[a]ll property held by or for a particular church . . ., whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)."

In 2008, Gashland terminated its affiliation with the PCUSA, and instead affiliated with the Evangelical Presbyterian Church. After efforts at an amicable resolution failed, the PCUSA's Heartland Presbytery initiated this action against Gashland, claiming that, under the Property-Trust Clause, Gashland held title to its church property in trust for the denomination.

The circuit court dismissed Heartland's first amended petition for failure to state a claim. This appeal follows.

AFFIRMED.

Division One Holds:

Under the United States Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979), and the Missouri Supreme Court's decision in *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. banc 1984), we are to resolve this church-property dispute by application of "neutral principles of law," meaning "objective, well-established concepts of trust and property law familiar to lawyers and judges," which were "developed for use in all property disputes." Under Missouri's generally-applicable trust and property law, Heartland's claim that the PCUSA holds a beneficial interest in Gashland's property fails.

First, the 1948 deed to the property is inconsistent with Heartland's claims. It states that fee title to the property was transferred to Gashland, without any reference to the grantor's reservation of a beneficial interest in the property, or to Gashland taking title in a representative or fiduciary capacity. Under Missouri law, trusts in real property must be evidenced by a writing, and the intention of the creator to establish a trust must be clearly expressed. The 1948 deed fails to satisfy these requirements.

Gashland's 1948 Articles of Agreement are similarly inconsistent with Heartland's claims. Those Articles specify that "the title to [Gashland's property] shall vest in the Gashland Community Church of Gashland, Missouri, in its corporate capacity," with no reference to other persons or entities holding any interest therein. Further, the Articles specify that "no real estate shall be conveyed in any manner" unless approved by two-thirds of Gashland's members, and by its Board of Trustees; Heartland does not allege that these formalities were satisfied here. Finally, by specifying that Gashland would be "ecclesiastically subject to" the predecessor to PCUSA, the Articles imply that Gashland would *not* be subject to the denomination with respect to *non*-ecclesiastical matters, such as property matters.

Heartland also relies on provisions of Gashland's 1987 Amended By-Laws, which provide that Gashland "recognizes that the Constitution of the Presbyterian Church (U.S.A.) is, in all of its provisions, obligatory upon it and its members." But the By-Laws cannot establish Gashland's agreement to be subject to the Book of Order's Property-Trust Clause, because – if interpreted in this manner – the By-Laws would be inconsistent with Gashland's governing Articles of Agreement. In any event, it is doubtful whether the general statements on which Heartland relies could constitute the clear, cogent and convincing evidence necessary to establish existence of a trust.

Under Missouri law, the Property-Trust Clause of the PCUSA's Book of Order, standing alone, cannot establish a trust interest, without an effective expression of Gashland's intent to subject itself, and its property, to that provision. We reject Heartland's claim that, in *Jones*, the United States Supreme Court held that courts are *required* to give effect to the unilateral expressions of a trust interest in a denomination's constitution, or that *Elijah Parish*, in which the Property-Trust Clause was not even at issue, requires this result. *Jones* held that state law would generally govern such church-property disputes; we do not read it as announcing the substantive principles of trust and property law which govern here.

Heartland also relies on a course of dealing by which Gashland sought Heartland's consent to various transactions by which Gashland sought to encumber or sell portions of its

property. Under *Elijah Parish*, however, this course of dealing does not establish a reversionary interest in the PCUSA.

Heartland's breach of contract claim fails for similar reasons, since it relies on the contention that the Property-Trust Clause is binding on Gashland.

Before: Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

January 10, 2012

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