

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

THE EXECUTIVE BOARD OF THE MISSOURI BAPTIST CONVENTION, et al.,
Respondents,

v.

MISSOURI BAPTIST FOUNDATION,
Appellant.

DOCKET NUMBER WD78034

Date: May 24, 2016

Appeal from:
Cole County Circuit Court
The Honorable Frank Conley, Judge

Appellate Judges:
Division Four: Alok Ahuja, C.J., P.J., Anthony Rex Gabbert, J. and S. Margene Burnett, Sp. J.

Attorneys:
Jim J. Shoemaker, Clyde Farris, Michael Whitehead for respondent
Laurence R. Tucker, Thomas B. Weaver, Jeffery T. McPherson, and Tyson H. Ketchum for
appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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The Missouri Baptist Foundation was originally incorporated in 1946. Its 1994 charter declared that the Foundation was to serve as “the trust services agency of the Missouri Baptist Convention.” The 1994 charter gave the Convention and its Executive Board numerous specific rights, including the right to nominate and elect the Foundation’s Trustees, the right to receive quarterly reports, the right to approve the encumbrance of Foundation property, and the right to receive the Foundation’s net assets if the Foundation were dissolved. Most significantly, the 1994 charter provided that the Foundation could not amend the charter without the Convention’s approval.

In 2001, the Foundation amended its organizational documents, in two steps, to eliminate the Convention’s oversight and approval rights. The Foundation made these amendments without seeking or obtaining the Convention’s prior approval.

The Convention filed this lawsuit in 2002. In addition to claims asserted against other entities, the Convention alleged that the Foundation’s 2001 amendments to its 1994 charter were unlawful and invalid, and that the Convention’s rights under the 1994 charter remained valid and enforceable.

In 2010 and 2011, the circuit court granted summary judgment to the Convention, finding that the Foundation’s 2001 amendments to its organizational documents without the

Convention's approval, which had the effect of eliminating the Convention's rights under the 1994 charter, were invalid and void. Although claims by the Convention against other defendants remained pending, the circuit court certified its partial judgment as final under Rule 74.01(b), finding that there was no just reason to delay the immediate appeal of the judgment.

The Foundation appealed. This Court dismissed the appeal in 2012, finding that the 2011 Judgment was not an appealable partial final judgment, because it did not fully and finally resolve a distinct claim or "judicial unit."

On remand, the circuit court adhered to its earlier rulings, but issued additional orders seeking to resolve the outstanding issues which this Court had found prevented the judgment from being immediately appealable. The Foundation again appeals.

AFFIRMED.

Division Four holds:

The Foundation first contends that the latest judgment is still not final, because it does not fully and finally resolve all of the Convention's claims against the Foundation. This Court disagrees. The language of the most recent judgment makes unmistakably clear that the circuit court intended to fully and finally resolve all of the Convention's claims against the Foundation, leaving nothing for future determination. Moreover, while the most recent judgment does not itself contain a certification under Rule 74.01(b), it is evident that the court intended to incorporate by reference its 2011 judgment, which contained the necessary certification.

The Foundation next asserts that the Convention lacks standing to pursue its claims of mismanagement by the Foundation. Once again, this Court disagrees. Although members of the public may generally lack standing to challenge the management of a charitable corporation, the Convention has a "special interest" in the Foundation's operations, by virtue of the special rights of oversight and control given to the Convention in the 1994 charter.

The Foundation argues that summary judgment was inappropriate, because the summary judgment briefing reflected that numerous facts were disputed between the parties. However, although the Foundation's briefing lists, by paragraph number and record citation, multiple factual statements which it alleges were controverted, it fails to describe any of the disputed

factual statements, or argue that any of the factual statements were material to the resolution of the Convention's summary judgment motion. The circuit court's entry of summary judgment depends on a limited number of facts: that the Foundation adopted the 1994 charter; that the 1994 charter gave the Convention and its Executive Board various rights, including particularly the right to approve charter amendments; and that the Foundation eliminated the Convention's rights by amending the 1994 charter in 2001, without the Convention's prior approval. The Foundation does not contend that any of those facts are controverted, and it identifies no other material fact, which *was* controverted, on which the circuit court's ruling depends.

The Foundation next contends that summary judgment was inappropriate, because the Convention failed to identify undisputed facts to negate the Foundation's affirmative defenses. While the Foundation briefly describes affirmative defenses which it alleges the Convention failed to controvert, those "affirmative defenses" appear to raise primarily legal issues, and the Foundation identifies no disputed factual issues on which those affirmative defenses depend.

Finally, the Foundation challenges the circuit court's award of attorney's fees. The Convention has previously released its claim for attorney's fees, however, in exchange for a payment made by the Foundation's insurer. Given that the attorney's fee claim has been compromised and released, the Foundation's challenge to that award is moot.

Before: Division Four: Alok Ahuja,, C.J., P.J., Anthony Rex Gabbert, J. and S. Margene Burnett, Sp. J.

Opinion by: Alok Ahuja, Judge

May 24, 2016

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