

NO. A-07-0237-C

THE DIOCESE OF
NORTHWEST TEXAS, THE REV.
CELIA ELLERY, DON GRIFFIS and
MICHAEL RYAN

v.

ROBERT MASTERSON, MARK
BROWN, GEORGE BUTLER, CHARLES
WESTBROOK, RICHEY OLIVER,
CRAIG PORTER, SHARON WEBER,
JUNE SMITH, RITA BAKER,
STEPHANIE PEDDY, BILLIE RUTH
HODGES, DALLAS CHRISTIAN and
THE EPISCOPAL CHURCH
OF THE GOOD SHEPHERD

IN THE 51st DISTRICT COURT

OF

TOM GREEN COUNTY, TEXAS

FILED
2007 SEP 20 PM 5:09
TOM GREEN COUNTY, TEXAS

PLAINTIFFS' FIRST AMENDED PETITION

Come now, Plaintiffs THE DIOCESE OF NORTHWEST TEXAS, THE REV. CELIA ELLERY, DON GRIFFIS and MICHAEL RYAN complaining of Defendants ROBERT MASTERSON, MARK BROWN, GEORGE BUTLER, CHARLES WESTBROOK, RICHEY OLIVER, CRAIG PORTER, SHARON WEBER, JUNE SMITH, RITA BAKER, STEPHANIE PEDDY, BILLIE RUTH HODGES, DALLAS CHRISTIAN and THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD and for cause of action would show the Court as follows:

I.

Plaintiff CELIA ELLERY is an individual, serving as Priest in Charge and member of the Vestry of THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD of 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas, 76904.



True & correct copy of a document on file at Tom Green County Texas Sher Woodfin District Clerk Date 1 of 14

Plaintiff DON GRIFFIS is an individual, serving as Senior Warden and member of the Vestry of THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD of 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas, 76904.

Plaintiff MICHAEL RYAN is an individual, serving as Junior Warden and member of the Vestry of THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD of 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas, 76904.

Plaintiff THE DIOCESE OF NORTHWEST TEXAS (the "DIOCESE") is a geographically defined subordinate entity of the Episcopal Church. The Diocese is a non-profit corporation organized under the laws of the state of Texas and has its principal place of business at 1802 Broadway, Lubbock, Lubbock County, Texas, 79401.

II.

Defendants ROBERT MASTERSON, MARK BROWN, GEORGE BUTLER, CHARLES WESTBROOK, RICHEY OLIVER, CRAIG PORTER, SHARON WEBER, JUNE SMITH, RITA BAKER, STEPHANIE PEDDY, BILLIE RUTH HODGES, DALLAS CHRISTIAN are individuals, and former members of the Vestry of the Episcopal Church of the Good Shepherd purporting to act on behalf of the EPISCOPAL CHURCH OF THE GOOD SHEPHERD. The Defendants have left the Episcopal Church and yet continue to exercise control of Church property.

All of the above named Defendants are properly before this Court as evidenced by their respective Original Answers on file herein.

III.

Defendant THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD ("GOOD SHEPHERD") is a Parish of the DIOCESE of the Episcopal Church and a non-profit corporation organized under the laws of the State of Texas. It has its principal place of business at 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas, 76904.



3355 W. Beauregard Ave.
San Angelo, Texas
Tom Green County, Texas
Sher Woodfin, District Clerk
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Beauregard Ave., San Angelo, Tom Green County, Texas, 76904. Its property and affairs are currently under the de facto control of individuals, including those named as Defendants *supra*, who claim authority to sever the link between the parish and the DIOCESE and the Episcopal Church; to control and divert the real and personal property held by the GOOD SHEPHERD for use in affiliation with a different church other than the Episcopal Church; and to exclude the DIOCESE and members of the parish who are loyal to the DIOCESE and the Episcopal Church from the control and use of that property.

IV.

The events giving rise to this cause of action occurred in Tom Green County, Texas.

V.

The Episcopal Church is a “hierarchical” religious denomination comprised of 111 Dioceses located in the United States and other countries. Each Diocese assists in carrying out the Episcopal Church’s mission in its defined geographical territory. Each Diocese is under the authority of a diocesan bishop, who serves as the “ecclesiastical authority” and “chief executive officer” in charge of both ecclesiastical and temporal issues within that diocese. The diocesan bishop is advised by and in some circumstances shares authority with a “Standing Committee,” a body of elected ordained and lay persons. The 111 Dioceses together contain nearly 7,700 individual worshiping congregations. Each congregation is a constituent part of the diocese in which it is physically located. Most of those congregations are “parishes.” Other congregations that do not meet all of the qualifications for parishes, which are generally newly forming congregations, are known as “Missions.”



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VI.

Under the rules of the Episcopal Church, the voting membership of each parish elects the lay members of its governing body, that is, its “vestry.” The clergy in charge of the parish, known as its “Rector,” is elected by the vestry and is a member of the vestry. Each parish, either by its membership or its vestry, also elects representatives to the governing body of the diocese, which is generally called an “Annual Convention” or “Council,” in which the parish is located. Each diocese, in turn, sends bishops, other ordained clergy, and lay representatives as voting members to the triennial meeting of the governing body of the Episcopal Church, which is called the “General Convention.”

VII.

The Episcopal Church’s General Convention has adopted and from time to time amends a Constitution and canons that are binding upon all Episcopal dioceses, parishes and missions. The various Dioceses, through their Annual Conventions or Councils, similarly have adopted and from time to time amend constitutions and canons that are binding upon their parishes and missions.

VIII.

The Episcopal Church’s and Dioceses Constitutions and canons govern both temporal and spiritual matters and contain a number of provisions that specifically relate both to the formation and governance of individual parishes and to the use and control of parish property.

IX.

Canon II.6 of the Episcopal Church was adopted in part in 1868 and in part in 1871. Canon II.6.1 requires that consecrated parish property be “secured for ownership and use by a Parish, Mission, Congregation, or institution affiliated with this Church and subject to its Constitution and



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Canons.” Canon II.6.2 specifically prohibits parishes from encumbering or alienating such property without the consent of the leadership of the diocese and provides:

“It shall not be lawful for any vestry, Trustees, or other body authorized by laws of any state or territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.”

Canon I.7.3 of the Church was adopted in 1940 and provides:

“No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation or Institution is a part . . .”

Canon III.9.5 of the Church was adopted in 1903 and requires that “(f)or the purposes of the office and for the full and free discharge of all functions and duties pertaining thereto,” it is “the Rector [who] shall at all times be entitled to the use and control of the Church and Parish buildings together with all appurtenances and furniture, and access to all records and registers maintain by or on behalf of the Congregation.”

Canon I.7.4 and 5 of the Church were adopted in 1979 and provide:

“Sec. 4: All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

“Sec. 5: The several Diocese may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.”



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X.

Like Church Canon II.6.2, which specifically prohibits parishes from encumbering or alienating such property without the consent of the leadership of the diocese, Diocesan Canon 42.2 provides:

“No Board of Directors authorized to hold, manage, or administer real property for any Parish, Mission, or Congregation or institution, shall encumber or alienate the same or any part thereof without the consent of the Bishop and the Standing Committee.”

Diocesan Canon 38.8 further provides:

“Real Property. All real and personal property held by or for the benefit of any congregation is held in trust for this Church and the Diocese thereof in which such congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the congregation otherwise existing over such property so long as the particular congregation remains a part of, and subject to, this Church and its Constitution and Canons. (I.7.4)”

XI.

The DIOCESE has also adopted Article XIII, Sections 3, 4, and 5 of the Diocesan Constitution and Canon 25 which set forth the exclusive method for dissolution of a parish. Specifically, Article XIII provides:

- Section 4. Suspension or Disestablishment. The Convention may suspend or dissolve the union with Convention of a Parish, Mission or Congregation by a two thirds vote of each order if:
- A. A congregation fails to conduct its affairs in accordance with this Constitution and the Canons of the Dioceses or with the Constitution and Canons of the Episcopal Church; or
 - B. A congregation is, in the opinion of the Bishop, essentially defunct.



The Secretary of
the Diocese of Dallas
Dallas, Texas
John Woodfin, District Clerk
Per: 6 134

Diocesan Canon 25:

Section 1. Causes.

- A. change in status shall be considered by the Convention for the following reasons: . . .
- B. Persistent failures to comply with the conditions and requirements for its organization and conduct as a Parish or Mission.

Section 2. Parish After full investigation of the failures cited in Section 1. of this Canon and upon concurring action of the Bishop and the Standing Committee, said Parish may, by a two thirds vote of the Convention, either be dissolved in its entirety or declared to be a Mission or Congregation. . . .

Section 4. Conveyance of Property and Records. In the event that a Parish or Mission is to be dissolved in its entirety, such property as it may own shall be delivered and conveyed to the Northwest Episcopal Board of Trustees prior to dissolution. In the case of Parish, the corporation shall be dissolved following conveyance of its property. All records shall be delivered to the registrar of the Diocese.

XII.

Neither the Constitution nor Canons of the Episcopal Church nor those of the DIOCESE contain any provision for the unilateral withdrawal from the DIOCESE or the Episcopal Church by Defendants or any other parish. Furthermore, Canon I.13 delegates the authority to recognize new parishes to the Dioceses and provides:

“The ascertainment and defining of the boundaries of existing Parishes or Parochial Cures, as well as the establishment of a new Parish or Congregation, and the formation of a new Parish within the limits of any other Parish, is left to the action of the several Diocesan Conventions.”

The Diocesan Constitution, pursuant to Article XIII, Sections 1 and 2 provide, in relevant part, that:

Section 1. Formation and Recognition. The Convention shall define by Canon an orderly procedure for the formation and recognition of Parishes, Missions and Congregations.



1998-99 Diocesan Convention
Diocese of the Northwest
New Month District Clerk
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Section 2. Union. Parishes, Missions and Congregations may be admitted to union with the Convention my majority vote of the convention, provided that each shall produce satisfactory evidence of its status pursuant to Canons.

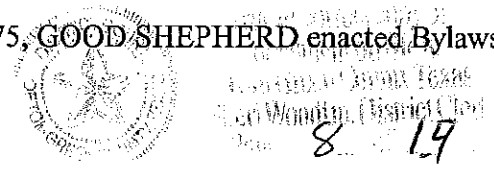
Diocesan Canons 23 and 24 then regulate the manner in which Mission and Parishes are formed and recognized in the DIOCESE. As a first matter, the petitioning parties must “declare their adherence to the doctrine, discipline and worship of this [Episcopal] Church and their willingness to conform to rules which are or may hereafter be established for Missions and Congregations of the Diocese by duly constituted authority.”

XIII.

Finally, Canon I.17.8 of the Church requires that all persons accepting any office with the Church, including members of parish vestries, shall “well and faithfully perform the duties of [their] office in accordance with the Constitution and canons of this church and of the DIOCESE in which the office is being exercised.” Similarly, Canon 31, Section 1 of the DIOCESE states that members of the vestry must subscribe to and “. . .engage to conform to the doctrine, discipline and worship of The Episcopal Church.”

XIV.

GOOD SHEPHERD, as an Episcopal Mission, was established with the support and assistance of the DIOCESE and through the efforts of individuals who wished to establish a place of worship for faithful members of the Episcopal Church. On September 26, 1965, GOOD SHEPHERD applied as a Mission of the Episcopal Church. In its application, the petitioning parties promised “conformity to the Constitution and Canons of the General Convention and the Diocese of Northwest Texas.” On April 17, 1974, the first vestry of GOOD SHEPHERD filed Articles of Incorporation as the “Episcopal Church of the Good Shepherd, pledging to “hold office in accordance with the Church Canons.” On January 18, 1975, GOOD SHEPHERD enacted Bylaws



which provided that the GOOD SHEPHERD is "a constituent part of the Diocese of Northwest Texas and of the Protestant Episcopal Church in the United States of America. The parish accedes to, recognizes, and adopts the General Constitution and Canons of the Church and the Constitution and Canons of the Diocese of Northwest Texas and acknowledges the authority of the same."

XV.

The Diocese relied on the promises and statements of GOOD SHEPHERD as set forth above. In consideration for such promises, the DIOCESE provided financial support to GOOD SHEPHERD, including but not limited to, an interest free loan and grants in excess of \$13,000.00. On April 24, 1982, the Board of Trustees for the DIOCESE also conveyed the property and improvements then located at 3355 W. Beauregard Ave., San Angelo, Tom Green County, Texas to GOOD SHEPHERD by Warranty Deed "for and in consideration of the sum of Ten and No/100 DOLLARS (\$10.00) and other valuable consideration. . ." Specifically, title to the land was taken in the name of the "Good Shepherd Episcopal Church." On May 24, 2005, Good Shepherd acquired an additional 5.287 tract of land in the Hillside Subdivision of San Angelo, Texas. Title to that tract was taken in the name of the "Episcopal Church of the Good Shepherd. " (together, the "CHURCH PREMISES")

The Legal descriptions of the two tracts are as follows:

Warranty Deed dated April 14th, 1982:

First Tract: That certain tract of 2.361 acres of land out of the T.J. Moore Survey No. 11, Abstract No. 5908, as described in a deed dated November 21, 1962, from Henry Charless, A.D. Rust and Lloyd Hershberger, Trustees to J.E. Lowndes, Lee T. Blevins and George Quarterman, Trustees of the Northwest Texas Episcopal Diocese, recorded in Volume 443 page 420, Deed Records of Tom Green County, Texas, to which record reference is here made for the metes and bounds description of said tract of land.



Notary Public
State of Texas
My Comm. Expires 12/31/2011
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Second Tract: The north, or northwest one-half (½) of Lot Twenty-one (21), block Two (2), Section One (1), CLAR-MOR HEIGHTS, an addition to the city of San Angelo, in Tom Green County, Texas and being the tract of land conveyed by Baugh Lewis and wife, Helen Hale Lewis, to the Northwest Texas Episcopal Board of Trustees by deed date January 31, 1969, recorded Volume 531, page 320, Deed Records of Tom Green County, Texas to which record reference is here made for a more particular description of said tract of land.
(Together with improvements)

Warranty Deed with Vendor's Lien dated May 24, 2005:

Property(including any improvements): A tract of land containing 5.287 acres, more or less, and being all of HILLSIDE TERRACE SUBDIVISION, a Subdivision of land in the City of San Angelo, Tom Green County, Texas, which subdivision is recorded in Vol. 4, pages 486-487, Plat records of Tom Green County, Texas and which subdivision is also found in Cabinet D, Slide 21, Plat Records of Tom Green County, Texas.

XVI.

On November 5, 2006, the vestry of the GOOD SHEPHERD purported to recommend certain resolutions which sought to withdraw GOOD SHEPHERD from the Episcopal Church and the DIOCESE, and to begin worship as a new, distinct, separate, and independent church. Specifically, the resolutions purported to change the name of the GOOD SHEPHERD to the "Anglican Church of the Good Shepherd" and "withdraw from its membership in, and dissolve its Union with . . ." the Episcopal Church and the DIOCESE. The resolutions also sought to revoke any trusts previously imposed on any property of the GOOD SHEPHERD in favor of the Episcopal Church, the DIOCESE, or the Northwest Texas Episcopal Board of Trustees . . ."

The church members voted on the resolutions on November 12, 2006, with 53 voting in favor of separation, and 30 voting against such separation, effective as of January 5, 2007.

XVII.

On November 22, 2006, the Bishop of the DIOCESE, requested that the Defendants, along with those parishioners wishing to leave the Episcopal Church, depart the premises by January 5,



San Angelo, Texas
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2007 (the effective date of the purported resolutions), and placed Defendants on notice that the real and personal property of the GOOD SHEPHERD was held in trust in for the DIOCESE for the benefit of the Episcopal Church and those members of the GOOD SHEPHERD who remained faithful to the Church. Since that date, the loyal members of the GOOD SHEPHERD have elected a new vestry. The Bishop of the Diocese has recognized these persons as the true and proper representatives of the GOOD SHEPHERD and appointed CELIA ELLERY as priest in charge, effective January 2, 2007.

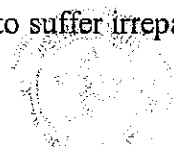
Despite the Bishop's request made on behalf of the loyal members of GOOD SHEPHERD, the Defendants continue to occupy, use and possess the real and personal property of the GOOD SHEPHERD, including, but not limited to, the CHURCH PREMISES, described above. Further, Plaintiff is informed and believes that the Defendants have misappropriated and otherwise converted funds belonging to the GOOD SHEPHERD, and held in trust for the Episcopal Church, in the amount of \$30,000.00.

XVIII.

According deference to the Bishop, Plaintiffs assert that they are entitled to title, possession and use of all real and personal property belonging to the GOOD SHEPHERD, including the CHURCH PREMISES. An actual controversy exists, therefore, between Plaintiffs and Defendants as to the proper representatives of the GOOD SHEPHERD and the interest of the DIOCESE and the Church in the real and personal property of the GOOD SHEPHERD. A declaration is necessary and appropriate to set forth and determine the parties rights.

XIX.

Plaintiffs have no plain, speedy, or adequate remedy at law for the harm done and threatened to be done by Defendants, and is suffering and will continue to suffer irreparable harm unless the



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acts and conduct of Defendants are enjoined, because the local church property will be permanently lost or wasted through Plaintiffs' inability to manage the same due to the Defendant's actions.

Prayer for Relief

Therefore, Plaintiffs respectfully request that the Defendants be cited to appear and answer and that on final trial the court grant Plaintiffs the following relief:

1. Issuance of a declaratory judgment pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq. declaring that Defendants may not divert, alienate, or use the real or personal property of GOOD SHEPHERD, including the CHURCH PREMISES, except for the mission of the Episcopal Church, as provided by and in accordance with the Constitutions and canons of the Episcopal Church and the DIOCESE;
2. Issuance of a declaratory judgment pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq. declaring that the continuing Parish of the GOOD SHEPHERD is represented by those persons recognized by the Bishop of the Diocese and that the actions of the Defendants in seeking to withdraw GOOD SHEPHERD as a Parish of the Diocese and from the Episcopal Church are void and without effect;
3. Issuance of a declaratory judgment pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq. declaring that all real and personal property of the GOOD SHEPHERD is held in trust for the Episcopal Church and the DIOCESE;
4. Issue a preliminary and a permanent injunction ordering Defendants to stop diverting, alienating, or using the real or personal property of GOOD SHEPHERD except for



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the mission of the Episcopal Church, including the CHURCH PREMISES, as provided by and in accordance with the Constitutions and canons of the Episcopal Church and the DIOCESE; to render to the DIOCESE an accounting of all real and personal property held by GOOD SHEPHERD as of November 4, 2006 and to relinquish control of the real and personal property held by the GOOD SHEPHERD to the DIOCESE;

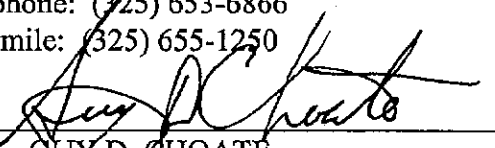
5. Actual damages;
6. Such other and further relief in law or equity to which the Plaintiffs may be entitled.

Respectfully submitted;

SMITH & LIGGETT, P.C.
1220 Avenue K
Lubbock, Texas 79401
Telephone: (806) 744-4477
Facsimile: (806) 744-2671

By: 
TED A. LIGGETT
SBN: 00795145

WEBB, STOKES & SPARKS
314 W. Harris
P.O. Box 1271
San Angelo, TX 76902
Telephone: (325) 653-6866
Facsimile: (325) 655-1250

By: 
GUY D. CHOATE
SBN: 04212410

ATTORNEYS FOR PLAINTIFFS

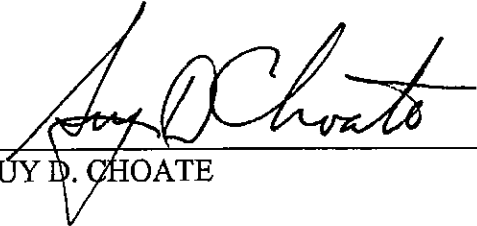


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CERTIFICATE OF SERVICE

20th This is to certify that a true and correct copy of the above and foregoing was on this the day of September, 2007, served on all parties of interest as follows:

George S. Finley
Smith, Rose, Finley, Harp & Price, P.C.
P.O. Box 2540
San Angelo, Texas 76902-2540



GUY D. CHOATE

**CERTIFIED COPY CERTIFICATE
STATE OF TEXAS COUNTY OF TOM GREEN**

I hereby certify that the above is a true & correct copy of the original record on file in my office.

Sheri Woodfin, District Clerk, Tom Green, Texas

Attest:  **MAR 31 2008**

By _____
Deputy

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