

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2018-0651

**Weare Bible Baptist Church, Inc. v. Calvin Fuller
and
Weare Bible Baptist Church v. Leland Quimby et al.**

APPEAL PURSUANT TO RULE 7 FROM ORDER
OF THE HILLSBOROUGH COUNTY SUPERIOR COURT,
NORTHERN DISTRICT

BRIEF OF DEFENDANTS EVELYN QUIMBY,
SUSAN QUIMBY, AND CHRISTOPHER QUIMBY

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QUESTIONS PRESENTED

1. Whether the Trial Court Erred in Denying Evelyn, Susan, and Christopher Quimbys' Motion to Dismiss the Verified Motion for Contempt.

[**Issue Preserved:** Defendants' Motion to Dismiss Verified Motion for Contempt, App. 134-143; Plaintiff's objection, App. 144-148].

2. Whether the Trial Court Erred in Finding Defendants in Contempt of its February 18, 2016 Order, Without Identifying Specific and Clear Obligations in its Order That Were Violated, and Based on a Determination They Had Not Abided With the "Spirit" of its Prior Order, Had Been Disruptive to Church Operations, and Undermined Fuller's Authority.

[**Issue Preserved:** Defendants' Motion to Dismiss Verified Motion for Contempt, App. 134-143; the Plaintiff's objection, App. 144-148]; Tr. 93-95, 100; To the extent specific findings about ecclesiastical matters form the basis for the Court's order, the Court did not have subject matter jurisdiction over those issues, which can be raised at any time, including for the first time on appeal].

3. Whether the Trial Court Erred in Making Rulings About the Operations and Other Ecclesiastical Matters of the Weare Bible Baptist Church.

Because of substantial overlap, this question presented includes the questions separately raised in the notice of appeal pertaining to findings on ecclesiastical issues, including questions (2), (3), (5), (7) and (8).

[**Issue Preserved:** *See* Tr. 94-95; rulings involving ecclesiastical matters pertain to subject matter jurisdiction which cannot be waived and may be raised for the first time on appeal; *See* Notice of Appeal

Sec. 13 (2), (3), (5), (7) and (8); Subject matter jurisdiction is also reviewable as plain error as it affects substantial rights and seriously effects the fairness and integrity of judicial proceedings].

RELEVANT CONSTITUTIONAL PROVISIONS

US Const. Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE AND RELEVANT FACTS¹

This is an appeal from an order finding Defendants Evelyn Quimby, Susan Quimby, and Christopher Quimby (the “Quimbys”) in contempt of order issued by the trial court on February 18, 2016.² *See* Trial Order, App. 4-13. The original action involved a dispute between members of the Weare Bible Baptist Church (the “WBBC”) over leadership of the church. In 2014, the WBBC, whose membership was largely the Quimby family, voted to bring in an interim pastor, Calvin Fuller. App. 6. Leland Quimby, who had been the active pastor of the WBBC for nearly 30 years, continued to live with his wife and two children in the Church’s parsonage after Fuller was brought in as the interim pastor. Tr. 142, 179. WBBC developed two factions, one group supporting Fuller, and one group involving the original

¹ Citations to the record are as follows:

“App.” refers to the Case Appendix

“Tr.” refers to the Transcript

² The fourth Defendant, Leland Quimby, died during the pendency of this proceeding.

members and the Quimbys. App. 12, Tr. 94. A case was initiated which challenged whether Fuller was brought in as pastor with full authority over all aspects of the church and whether new church members, including Fuller, were properly admitted as members of the WBBC. App. 7 and 11.

The Court held a bench trial on December 14 and 15, 2015. App. 4. On February 18, 2016, the Court held that, based on the evidence presented at trial, 1) Calvin Fuller had been elected as Pastor of the WBBC; 2) the new members were properly admitted, and thus their membership remained as is; and 3) all official acts made by both parties following Fuller's election as pastor, with the exception of inviting and voting on members, were vacated. App. 8-12. The Court made only one prospective ruling: that the church members needed to hold a meeting to ratify or reject all actions as necessary and comply with the charter. App. 12.

In the meantime, after the bench trial in December of 2015, Fuller was installed as the pastor for Victory Baptist Church in Londonderry, New Hampshire ("Victory"). Tr. 119-123; *See also* App. 241-242, 248 and 250. The WBBC March 27, 2016 Church Bulletin announced a church meeting for April 3, 2018. App. 183. The Quimbys received notice of that meeting. Tr. 172-173. On March 28, 2016, the Quimbys sent Fuller's attorney a letter explaining, among other things, that they believed Fuller was no longer the pastor at WBBC because he had accepted a position as the pastor of Victory. App. 210-221. WBBC held a meeting on April 3rd over the Quimbys' objections, which they attended. Tr. 13-17, 138, and 172-174; App. 178-182. Despite the Quimbys' continuing objections that the meeting was invalid, a vote was held on a number of issues. *Id.*

Subsequent to that meeting, Susan, Evelyn, and Christopher Quimby signed a petition for church discipline for Calvin Fuller, his wife Melba, and other church members. App. 187-188; Tr. 26-27; 174-176. On December 1, 2016, the Quimbys sent Fuller a letter informing him he terminated as the pastor at WBBC because he had become the pastor of Victory in December of 2015. App. 224-225. On December 12, 2016, the Quimbys on behalf of the WBBC sent letters to members asserting they had been dismissed as members due to their failure to participate in church discipline. App. 189-201.

In the meantime, on November 13, 2016, Fuller and other members took a vote on evicting Leland Quimby, Evelyn Quimby, Susan Quimby, and Christopher Quimby from the parsonage. App. 229-232. In January of 2017, he commenced an action entitled Weare Bible Baptist Church, Inc. v. Leland Quimby et al., 9th Circuit-District Division-Goffstown, Case No. 438-2017-LT-4. *See* App. 130-133. That action was stayed indefinitely and was still pending at the time of the hearings in the Trial Court. Tr. 23-24.

On July 5, 2017, Fuller commenced a new action seeking declaratory judgment and injunctive relief and contemporaneously filed a motion for contempt. App. 14-25, and 26-133. On September 11, 2017, the Quimbys filed a motion to dismiss the motion for contempt, asserting that Pastor Fuller had failed to identify any clear directives of the Trial Order that were violated. App. 134-143. Pastor Fuller objected. App. 144-148. On September 26, 2017, the Court denied the motion to dismiss. *See* September 26, 2017, attached; App. 149.

The Court thereafter held a hearing on the motion for contempt.³ On the final day of the hearing, Fuller moved to consolidate the final merits into the preliminary hearing. Tr. 191. The Court denied the motion. Tr. 192.

On February 2, 2018, the Court issued an order finding the Quimbys in contempt of the Trial Order. February 2, 2018, Order, attached (the “Contempt Order”). The Court awarded Fuller attorneys’ fees and costs incurred in the contempt proceedings for the Court’s review.

The Quimbys appealed. This Court, however, suggested that because there had been no determination of fees and costs, the appeal might be voluntarily withdrawn without prejudice to refiling once the issue of attorney fees had been determined. *See* Docket in Case No. 2018-0108. On October 29, 2018, the Court issued its order on attorneys’ fees and costs. App. 268. This appeal followed.

STANDARD OF REVIEW

1. Motion to Dismiss

“In reviewing a motion to dismiss, our standard of review is whether the allegations in the Plaintiff’s pleadings are reasonably susceptible of a construction that would permit recovery.” *Sanguedolce v. Wolfe*, 164 NH 644, 645 (2013). “[T]he appropriate standard of review for a motion to dismiss (or nonsuit) is to take the evidence presented and determine if, viewed most favorably to the non-moving party, it establishes a prima facie case.” *Renovest Co. v. Hodges Dev. Corp.*, 135 N.H. 72, 75 (1991). In reviewing a motion dismiss, the Court must “assume the plaintiff’s

³ As noted in the transcript, the hearing took place on three separate days.

pleadings to be true and construe all reasonable inferences in the light most favorable to him.” *Sanguedolce*, 164 NH at 645.

2. Contempt

“The contempt power is discretionary and the proper inquiry is not whether we would have found the respondent[s] in contempt, but whether the trial Court unsustainably exercised its discretion in refusing to do so.” *Holt v. Keer*, 167 NH 232, 239. (2015), quoting *In the Matter of Giacomini & Giacomini*, 150 NH 498, 500 (2004). “To show an unsustainable exercise of discretion, [a party] must demonstrate that the trial Court’s ruling was clearly untenable or unreasonable to the prejudice of [their] case.” *Id.*, quoting *Lillie-Putz Trust v. Downeast Energy Corp.*, 160 NH 716, 723-24 (2010).

3. Subject Matter Jurisdiction

“A party may challenge subject matter jurisdiction at any time during the proceeding, including on appeal, and may not waive it.” *Hemenway v. Hemenway*, 159 NH 680, 684 (2010). The Supreme Court “review[s], *de novo*, whether the trial Court in this case had subject matter jurisdiction.” *In re Ball & Ball*, 168 N.H. 133, 140 (2015). Constitutional issues are questions of law that are reviewed *de novo*. *Berthiaume v. McCormack*, 153 N.H. 239, 244 (2006).

SUMMARY OF THE ARGUMENT

The Superior Court erred in finding that the Defendants Evelyn Quimby, Susan Quimby, and Christopher Quimby were in contempt of the its prior order. The motion for contempt should have been dismissed at the outset. Calvin Fuller failed to identify a clear and specific provision of the

underlying order that was violated. Even taken as true, none of the allegation in the motion for contempt plausibly made out a prima facie case that the Quimbys' actions violated any clear directive in the Trial Order.

The Court also erred by finding contempt after the hearing. The Court did not identify any specific provisions in its prior order that "clearly describe what the alleged contemnor must do to avoid the sanction." *Dover Veterans Council, Inc. v. City of Dover*, 119 NH 738, 740 (1979). Instead, it held that "a central principle of its order was respect for the corporate charter and recognition of Pastor Fuller as Pastor of the Weare Bible Baptist Church. The Court's finding that the Quimbys' actions "disrupted the orderly operation of the church and undermined Pastor Fuller's authority, and exposed the church to needless expenses" constituted contempt were unreasonable and untenable and erred as a matter of law. The fact that a hearing was held did not change Plaintiff's fundamental failure to identify any part of the Trial Order that "clearly describe[d] what the alleged contemnor must do to avoid the sanction."

Third, in concluding that the Quimbys were in contempt and were liable for attorneys' fees and costs, the Court made determinations about ecclesiastical matters such as church discipline, conformity of the members to the standards required of them as members, church governance, use of church property, and other matters within the sole purview of the church. The Court lacked subject matter jurisdiction over those matters and any orders involving those issues are void. In addition, given that the Court already determined that two factions had formed within the church, it could not make rulings about property rights as those rights must be determined based on faith and doctrinal principle under the Church's Charter.

ARGUMENT

1. Whether the Trial Court Erred in Denying Evelyn, Susan, and Christopher Quimby's Motion to Dismiss the Verified Motion for Contempt

“It is a prerequisite to the exercise of the civil contempt power that the underlying order clearly describe what the alleged contemnor must do to avoid the sanction.” *Dover Veterans Council, Inc. v. City of Dover*, 119 NH 738, 740. (1979). Under the motion to dismiss standard, the evidence presented, viewed most favorably to the non-moving party, must establish a prima facie case. *Renovest Co. v. Hodges Dev. Corp.*, 135 NH 72, 75 (1991). In ruling on a motion dismiss, the Court must “assume the plaintiff’s pleadings to be true and construe all reasonable inferences in the light most favorable to him.” *Sanguedolce v. Wolfe*, 164 NH 644, 645 (2013). The Court does not need to “assume the truth of statements in the plaintiff’s pleadings, however, that are merely conclusions of law.” *Id.*

As the basis for his motion for contempt, Pastor Fuller alleged that on February 18, 2016, the trial Court ordered the following:

- a. Calvin Fuller and his wife were voted in as members of WBBC in 2014. (App. 26 at ¶ 1);
- b. Calvin Fuller was installed as pastor on June 15, 2014. (*Id.*);
- c. All other official corporate acts that occurred after Fuller became pastor were vacated. (*Id.*); and
- d. The members of the church needed to hold a meeting to ratify or reject actions taken by Fuller and the Quimbys during the time subsequent to him becoming a pastor and follow the charter. (*Id.*).

Fuller alleged that the Quimbys were in contempt based on the following:

- a. The Quimbys sent a letter objecting to a business meeting called by Pastor Fuller because, among other reasons, they alleged Fuller had become Pastor at Victory Baptist Church, Londonderry, New Hampshire, in December of 2015 and thus lacked authority to act on behalf of WBBC (and for a variety of other reasons outlined in a letter dated March 28, 2016). (App. 27, Motion for Contempt at ¶4 and App. 56-68, Exh. D to Motion);
- b. A meeting of WWBC took place on April 3, 2016. (*Id.* at ¶5);
- c. The Quimbys had “frustrated” the efforts of Pastor Fuller and the majority of the member of WBBC refused to participate in the April 3, 2016 meeting, and refused to recognize the acts of WBBC in that meeting. (App. 28, Motion for Contempt at ¶10);
- d. The Quimbys sent a letter to Fuller asserting he was in violation of the Trial Order and that he was derelict in his duties at WBBC by becoming the pastor at Victory in December of 2015 approximately two weeks after trial. (App. 29, Motion for Contempt at ¶11 and App. 76-78, Exh. G to Motion);
- e. The Quimbys sent a letter to Attorney Leberman and Douglas Hatfield asserting that they did not have the authority to represent WBBC, given that they had been the lawyers for Calvin Fuller who was adverse to WBBC in the prior action.

(App. 29, Motion for Contempt at ¶14 and App. 79-80, Exh. H to Motion);

- f. Letters were sent on December 12, 2016, to thirteen WBBC member dismissing their memberships. App. 29, Motion for Contempt at ¶15 and App. 81-94, Exh. I to Motion);
- g. The Quimbys filed documents with the Secretary of State on behalf of WBBC. (App. 30, Motion at ¶¶16 & 17 and App. 96-125, Exh. J to Motion);
- h. The Quimbys sent a letter to Fuller and Mike Mudge demanding that they return WBBC's financial and other property. (App. 30, Motion at ¶18 and App. 126-128, Exh. K to Motion); and
- i. The Quimbys filed a motion for an extension of time in an eviction action. (App. 30, Motion at ¶19 and App 129-133, Exh. L to Motion).

Although the motion alleged generally that the Quimbys' behavior was directly contrary to the Trial Order, Fuller did not identify any clearly described obligations of the Trial Order the Quimbys violated.

Indeed, the only prospective and clear obligation in the Trial Order was for a meeting and vote, which, as alleged in the motion for contempt, took place on April 3, 2016. Aside from that obligation, the Trial Order determined that Fuller had been brought in 2014 as pastor with full authority, and that other members had been admitted regardless of the apparent disregard of certain formalities required by the WBBC Corporate Charter. The Court did not impose additional obligations tied to those

findings, nor did it clearly describe what alleged contemnors had to do to avoid sanctions in connection with those findings.

Taking all of the allegations as true, none of the Quimbys' actions violated the Trial Order. The Plaintiff's allegations did not plausibly make out a *prima facie* case that:

- 1) the Quimbys disputed that Fuller was installed as the Pastor of WBBC with full authority in 2014;
- 2) the Quimbys disputed that the members as found by the Court were not members as of the date of the order; or
- 3) the WBBC did not have a meeting (or meetings) as the Court directed.

Nothing in the Trial Order prohibited the Quimbys from challenging Fuller's actions after trial, or from claiming that church members were subject to discipline and that their membership could be revoked based on their subsequent actions. The Trial Order did not prohibit such actions, nor could it since those are internal church matters beyond its purview. *See, e.g., Bowen v. Green*, 272 S.E.2d 433, 434 (SC 1980) ("a civil Court has no authority to intervene in cases involving expulsion from church membership where there is no question of an invasion of a civil, property or contract right."). "[T]he [Supreme] Court characterized 'matter[s] which concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them' as being ecclesiastical in nature." *Rentz v. Werner*, 232 P.3d 1169, 1178 (Wash. 2010) quoting *Watson v. Jones*, 80 US (13 Wall.) 679, 713 (1871). Thus, the Trial Order did not, and could not, delve into those matters.

At best, the motion described a disagreement between the Quimbys and Fuller over 1) whether he had left his position as the pastor in 2015; 2) the results of votes and other internal church matters related to the April 3rd meeting; and 3) church governance disputes.⁴ Such disagreements might be subject to court review on a very limited basis, so long as the review did not involve entanglement with ecclesiastical issues. Disagreements could not, however, be the basis for a finding of contempt given the lack of clear prospective directives the Trial Order.

Accordingly, the Court erred as a matter of law in not dismissing the motion for contempt.

2. Whether the Trial Court Erred in Finding Defendants in Contempt of its February 18, 2016 Order, Without Identifying Specific and Clear Obligations in its Order That Were Violated, and Based on a Determination They Had Not Abided With the “Spirit” of Its Prior Order, Had Been Disruptive to Church Operations, and Undermined Fuller’s Authority

As noted above, to impose civil contempt power, a Court’s order must “clearly describe what the alleged contemnor must do to avoid the sanction.” *Dover Veterans Council, Inc. v. City of Dover*, 119 NH 738, 740. (1979). Other Courts have explained that “[o]nly a clear and unequivocal order provides ‘all who are subject to [the] order’s command [with] fair notice of the conduct the order prohibits.’” *O’Connell v. Greenwood*, 794 N.E.2d 1205, 1210 (Mass. App. Ct. 2003), quoting *Sax v. Sax*, 762 N.E.2d 888 (Mass. App. Ct. 2002).

⁴ Many of the issues raised in the Plaintiff’s pleadings were non-justiciable ecclesiastical issues. *See* pp. 21-24 *infra*.

The Trial Order held that 1) Calvin Fuller had been duly elected as the Pastor; 2) the new members were properly admitted and the membership remained as is; and 3) all acts made by the parties after Fuller's election as pastor were vacated, except for admission of the new members, and the members were to hold a meeting to ratify or reject the prior actions taken by the parties. Other than requiring the parties to hold and vote on various issues, the Order imposed no other affirmative obligation on the parties.

After denying the motion to dismiss, the Court held hearings on the Motion for Contempt on October 13, 2017, November 9, 2017, and December 22, 2017. *See* Tr. 1, 105 and 188. The evidence presented was essentially identical to the evidence submitted as part of the Verified Motion for Contempt. *See* App. 14-133 and App. 178-232. The evidence was largely undisputed, save for questions regarding Fuller's actions in becoming the pastor at Victory, and the admissibility of documents pertaining to events that took place after the filing of the motion for contempt. Tr. 117-136, 159-160. Fuller presented no evidence at the hearing to demonstrate the Quimbys violated clear obligations described in the Trial Order, despite this issue having been raised in great detail at the outset of the proceeding. In short, after three days of hearings, the issues and facts before the Court remained the same.

First, with respect to Pastor Fuller, there was no evidence that the Quimbys did not recognize he had been elected as the Pastor of WBBC. The evidence unequivocally showed the opposite: that the Quimbys recognized his election as pastor but claimed that he had left his post and abdicated his roles. The Quimbys based their position on the fact that he

became the pastor at Victory Baptist Church in Londonderry and was no longer preaching at WBBC. App. 57, 140. *See also* App. 234-260; Tr. 117-136. There is nothing in the Trial Order that proclaimed Fuller was pastor for life regardless of his actions. App. 139. Nothing in the Trial Order prohibited the Quimbys, or any other church member, from challenging his subsequent actions. Whether or not they asserted he was no longer the pastor based on his separate actions following trial did not violate any specific provision of the Trial Order.

Further, “the First Amendment prohibits civil Courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization.” *Alberts v. Devine*, 479 N.E.2d 113, 122 (Mass. 1985). *See also Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301, 309 (Mass. 2004) (“congregational as well as hierarchical churches are entitled to autonomy over church disputes touching on matters of doctrine, canon law, polity, discipline, and ministerial relationships.”); *Rentz v. Werner*, 232 P.3d 1169 (Wash. 2010). Thus, to the extent the Court made affirmative rulings as part of its Contempt Order about Fuller’s role at Victory or whether he remained the Pastor at WBBC, it lacked jurisdiction to so.

Second, the Trial Order held that new members invited by Pastor Fuller were properly admitted, and their membership remained as is as of the date of the order. The Trial Order could not plausibly be read to require membership could never change after that either through admission of additional members or by terminations of current members. Nor could the Court impose such an obligation on a church. The Trial Order does not contain a directive that no member can be disciplined or dismissed. Further,

only members can be disciplined and terminated. Thus, to the extent that the Court based its finding of contempt on actions taken by the Quimbys to initiate discipline, this demonstrates recognition, not violation, of the Trial Order regarding membership. In addition, discipline is governed by Article V of the WBBC Constitution and is an ecclesiastical matter. *See App. 39.* As noted above, internal church proceedings are outside the jurisdiction of the Court, and thus cannot be the basis for a finding of contempt.

Third, a meeting was held to vote on various issues, as ordered. *See App. 178-181.* While the Court found that Susan Quimby “loudly objected, talked over Pastor Fuller, and otherwise attempted to interfere with the proceedings,” Contempt Order p.2, the meeting did take place. Further, though it found that “the Quimbys have been disruptive on many other occasions,” and that they had placed stakes on the property, continued to reside in the parsonage, and held a hunter safety course, it did not point to any provision in the Trial Order that prohibited those actions. *See Id.*

While it is clear from the Contempt Order that the Court did not approve of what the Quimbys did, the Court’s displeasure in their behavior does not translate to contempt of its prior order. The Court was well-aware that there was discord within WBBC. It noted in its Order that “two factions formed in the church.” App. 12. Despite this, the Trial Order did not include specific directives to any of the parties other than holding a meeting. Its jurisdiction was limited to determining whether its specific directive was followed, assuming that directive was within its jurisdiction.

From the outset, the Quimbys did not dispute that they had claimed Fuller left his pastorship at WBBC to become pastor at Victory, that the April 3, 2016 meeting took place, that they challenged the validity of that

meeting and actions taken Fuller and his faction, or that they sent letters about discipline and dismissal of members. *See App.* 150-154. The Quimbys asserted at the commencement of the proceeding that none of those actions, or the other actions alleged by the Plaintiff, constituted contempt of the Trial Order because the Order did not contain specific prospective directives other than holding a meeting to vote on various issues. *App.* 134-143.

Nowhere in the Trial Order does the Court warn any party that a future challenge to Fuller for acts subsequent to trial was prohibited. Nowhere does the Trial Order spell out that actions that are later determined to not comply with the WBBC corporate charter will expose a party to claims of contempt. A Court cannot hold a party in contempt based on later-imposed obligations that were not clearly identified in its prior orders. *See Dover Veterans Council, Inc.*, 119 NH 738, 740. Thus, the Court's findings that the Quimbys' actions "disrupted the orderly operation of the church and undermined Pastor Fuller's authority, and exposed the church to needless expenses" (Contempt Order p. 4), even if true, cannot be the basis for a finding for contempt because those obligations were not clearly identified in the Trial Order. In any event, the Court has no jurisdiction to rule on internal operations and member behavior.

The Court's "ruling was clearly untenable or unreasonable to the prejudice of [their] case." *Holt v. Keer*, 167 NH 232, 239. (2015). Accordingly, it erred as a matter of law in finding the Quimbys in contempt. The Court's finding of contempt, and the award of attorneys' fees and costs based on the contempt, should be vacated.

3. Whether the Trial Court Erred in Making Rulings About the Operations and Other Ecclesiastical Matters of the Weare Bible Baptist Church.

Subject matter jurisdiction is “[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a Court can rule on the conduct of persons or the status of things.” *Hemenway v. Hemenway*, 159 NH 680, 683 (2010). “The first amendment, as applied to the states through the fourteenth amendment, requires [the Court] to maintain the separation of church and State. The constitutional mandate prohibits the Courts from intervening in religious disputes involving matters of doctrine, discipline, faith, or internal organization.” *Reardon v. Lemoyne*, 122 NH 1042, 1047 (1982). “[C]ongregational as well as hierarchical churches are entitled to autonomy over church disputes touching on matters of doctrine, canon law, polity, discipline, and ministerial relationships.” *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301, 309 (Mass. 2004). “Courts have recognized a wide variety of subject matter as being ecclesiastical as opposed to secular ... including matter[s] which concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” *Rentz v. Werner*, 232 P.3d 1169, 1178 (Wash. 2010) (citing cases). “There are several areas in which civil courts continue to have jurisdiction over church actions,” including property, civil rights, secular employment, and contract dispute. *See Heard v. Johnson*, 810 A.2d 871, 880 (DC 2002), listing cases. In addressing church disputes over property, this Court recognized that “[s]pecial problems arise ... when these disputes implicate controversies over church doctrine and practice.” *Berthiaume v.*

McCormack, 153 NH 239, 244-45 (2006). This Court has found that intrusion is allowed in certain cases where property is at issue, so long as “neutral principles” are applied to avoid a court “entangling itself in matters of doctrine, discipline, faith, or internal organization. *Id.* at 245.

The trial Court did not follow these requirements in ruling on the motion for contempt. Instead, it impermissibly intervened in ecclesiastical matters and operations of WBBC. Specifically, the trial Court made determinations that the Quimbys had been disruptive to the church and interfered with its operation by, among other things:

- residing in the parsonage
- holding a hunter safety course
- instituting church discipline
- alleging violation of the church charter
- holding a meeting which was noticed but not attended by other church members
- mailing letter stating other members were dismissed from the church
- notifying the New Hampshire corporate division of membership changes
- sending a letter to Pastor Fuller accepting his termination as pastor
- accepting Fuller’s transfer of church membership to Victory
- demanding return of church property.
- using the WBBC corporate seal

Contempt Order pp. 2-3. The Court determined that those actions “disrupted the orderly operation of the church, undermined Pastor Fuller’s authority, and exposed the Church to needless expenses, including property taxes.” *Id.* p.4.

The operation of the church, the challenge to Pastor Fuller’s authority, and church expenses are all “matter[s] which concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” *Rentz v. Werner*, 232 P.3d at 1178. The Weare Bible Baptist Church Charter sets forth clear directives for the duties of members under Article IV, and church discipline under Article V, sections 4-5. App. 37-39. Church finances are driven by its religious purpose. Findings that the Quimbys engaged actions that “disrupted the orderly operation of the church,” “undermined Pastor Fuller’s authority,” and “consistently acted in direct contravention of the church’s corporate charter” are inextricably part of church matters. *See, e.g., Callahan*, 808 N.E.2d at 311-314 (analyzing various claims brought by a pastor against a church and individual members.) Whether a member’s conduct is contrary to their duties as members, or whether they need to be disciplined are ecclesiastical, not secular matters. At a minimum, the Court should have carefully limited its jurisdiction to avoid “entangling itself in matters of doctrine, discipline, faith, or internal organization,” *Berthiaume*, 153 NH at 245, and ensured that it applied neutral principles to matters within its jurisdiction. It did not do so.

In addition, the Court previously determined that two factions formed in the church. App. 12. The WBBC Charter provides that “[i]n the

case of schism within the congregation, all property shall go to the group that adheres to the adopted articles of faith, article III in this Constitution.” Weare Bible Baptist Church Charter Article XI, sections 3. App. 46. *See also* Tr. 94-95. Having recognized that there was a division within the church, the Court could not make determinations about which faction it believes owns the church’s property. That determination is ecclesiastical and depends on the interpretation of doctrinal matters, as set forth in its Charter.

The Court lacked subject matters jurisdiction to make the rulings upon which it based finding of contempt. Accordingly, its order and award of attorneys’ fees and costs should be vacated.

CONCLUSION AND REQUEST FOR ORAL ARGUMENT

The motion for contempt should have been dismissed at the outset because none of the allegations in the motion for contempt plausibly made out a prima facie case that the Quimbys’ actions violated any clear directive in the Trial Order. None of the undisputed facts established at that hearing changed that analysis. In addition, the Court lacked subject matter jurisdiction to determine ecclesiastical matters. Accordingly, the Quimbys respectfully request this Honorable Court vacate the trial court’s February 2, 2018 Order, and dismiss the motion for contempt.

The Defendants respectfully request 15 minutes of oral argument before the full Court. Eric M. Sommers will present oral argument for the appellants.

Dated: May 14, 2019

/s/ Eric M. Sommers

Eric M. Sommers, Esq.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that, pursuant to Supreme Court Rule 16(3)(i), rulings below were in writing and copies of same are appended to this brief in an addendum, and further that I have complied with Supreme Court Rules 16(10) and 26 and that pursuant to the electronic filing rules, a copy of the document is being provided through the electronic filing system's electronic service to Susan A. Lowry, Esq., counsel for the Plaintiff-Appellee.

Dated: May 14, 2019

/s/ Eric M. Sommers

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
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September 26, 2017

FILE COPY

Case Name: **Weare Bible Baptist Church, Inc. v Calvin F Fuller**
Case Number: **216-2015-CV-00201**

You are hereby notified that on September 25, 2017, the following order was entered:

RE: MOTION TO DISMISS VERIFIED MOTION FOR CONTEMPT:

"Motion Denied." (Brown, J.)

W. Michael Scanlon
Clerk of Court

(923)

C: Douglas S. Hatfield, ESQ; Susan Aileen Lowry, ESQ; Eric M. Sommers, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
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February 02, 2018

FILE COPY

Case Name: **Weare Bible Baptist Church, Inc. v Calvin F Fuller**
Case Number: **216-2015-CV-00201 216-2017-CV-00465**

You are hereby notified that on January 30, 2018, the following order was entered:

RE: MOTION FOR CONTEMPT and PRELIMINARY HEARING:

See copy of order attached - Brown, J.

W. Michael Scanlon
Clerk of Court

(539)

C: Douglas S. Hatfield, ESQ; Susan Aileen Lowry, ESQ; Eric M. Sommers, ESQ

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

Weare Bible Baptist Church, Inc.

v.

Calvin F. Fuller

Docket No. 216-2015-CV-00201

ORDER

This action was originally brought by Leland Quimby and his family on behalf of the Weare Bible Baptist Church as a result of a dispute between the members and leadership of the church. Following a bench trial, the Court issued a final order on February 18, 2016. Calvin Fuller now moves for contempt on behalf of the church, alleging the Quimby family has taken actions contrary to the Court's order. The Court held hearings on October 13, November 9, and December 22, 2017. Upon consideration of the evidence, the parties' arguments, and the applicable law, the Court finds and rules as follows.

Factual Background

The underlying facts of this case are fully set forth in the Court's February 18, 2016 order, and need not be repeated here. In that order, the Court held that: (1) Calvin Fuller had been duly elected as pastor of the church with full authority; (2) the membership of the church as of the date of the order was to remain as is; and (3) the

church was to hold a meeting at which it would ratify or reject previous official actions taken by both Pastor Fuller and the Quimbys.

Following the Court's order, Pastor Fuller scheduled a meeting for April 3, 2016. The meeting was announced during church service on March 27, 2016, and notice was both posted on the church bulletin board and mailed to the Quimbys directly. At the meeting, Pastor Fuller led the church members in voting on a number of issues, including the election of church officers. Throughout the entirety of the meeting, Susan Quimby loudly objected, talked over Pastor Fuller, and otherwise attempted to interfere with the proceedings.

The Quimbys have been disruptive on many other occasions. They have placed stakes down in the yard around the parsonage, claiming the property belongs to them and preventing others from entering onto it even to mow the grass. Evelyn Quimby continues to reside in the parsonage, resulting in the Town of Weare removing its tax exempt status and subjecting the church to property taxes. After the church voted to discontinue a hunter safety course, the Quimbys continued to hold it at the parsonage, despite the church lacking insurance to cover them. On May 15, 2016, the church held a meeting at which the members voted unanimously to have the Quimbys removed from the parsonage in order to rectify the tax situation. (Pl.'s Ex. 18.)

The Quimbys have also taken actions directly against the members of the church. On May 5, 2016, Susan, Evelyn, and Christopher Quimby signed and distributed a petition for church discipline. (Pl.'s Ex. 5.) The petition sought to discipline Pastor Fuller, his wife, and twelve other members¹ of the church for alleged violations of the corporate charter as well as their participation in the April 3 meeting. (Id.) In

¹ These members are those that support Calvin Fuller as pastor.

December 2016, the Quimbys held a meeting which was noticed but not attended by any other church members, at which they apparently voted to dismiss the aforementioned members. Thereafter, Daniel and Christopher Quimby mailed letters to said members, stating that they had been dismissed from the church. (Pl.'s Ex. 6.) Finally, on December 12, 2016, Daniel and Christopher Quimby sent a letter to the corporate division of the New Hampshire Secretary of State, notifying it of the membership changes. (Pl.'s Ex. 13.)

On December 1, 2016, Daniel and Christopher Quimby sent a letter to Pastor Fuller stating that as members of the corporate/advisory board of the church, they accepted Fuller's termination as pastor due to his work at Victory Baptist Church. (Id.) It does not appear that any corporate formalities were observed in Pastor Fuller's alleged termination. Daniel and Christopher also accepted the transfer of Fuller's membership from Weare Bible Baptist Church to Victory Baptist Church. (Id.) On January 17, 2017, Daniel and Christopher Quimby sent a letter to Pastor Fuller demanding the return of all church property and financial property belonging to the church and threatening criminal action. (Pl.'s Ex. 11.) The corporate seal was used on all of the foregoing correspondence, and Daniel Quimby signed as corporate treasurer, despite the church electing Leonard Mudge to that position on April 3.

Respondent now moves for a finding of contempt against the Quimbys, arguing the conduct noted above is in direct violation of the Court's order.

Analysis

"Contempt is an offense at common law—a specific and substantive offense that is separate and distinct from the matter in litigation out of which the contempt arose." In

re Kosek, 151 N.H. 722, 726 (2005) (citing Town of Nottingham v. Cedar Waters, Inc., 118 N.H. 282, 285 (1978)). “The power of contempt to enforce previous orders of a court of general jurisdiction is extensive but the exercise of the power involves practicalities as well as principles.” Id. at 726–27 (citing Douglas v. Douglas, 109 N.H. 41, 43–44 (1968)). The difference between civil and criminal contempt is the character of the punishment. In re Brownell, 163 N.H. 593, 601 (2012).

In civil contempt, the punishment is remedial, coercive, and for the benefit of the complainant. Civil contempt proceedings may result in fines payable to the complainant or an indeterminate jail sentence until the contemnor complies with the court order. By contrast, the purpose of prosecution for criminal contempt is to protect the authority and vindicate the dignity of the court. The criminal contemnor, unlike the civil contemnor, may be imprisoned for a determinate amount of time without the ability to purge the sentence.

Id. (citations omitted).

A central principle of the Court’s order was respect for the corporate charter as well as the recognition of Pastor Fuller as pastor of the Weare Bible Baptist Church. The Quimbys have repeatedly demonstrated contempt for the Court’s order, the corporate charter, and Pastor Fuller in an attempt to maintain complete control over what they clearly perceive to be *their* church. Their actions over the past several years have disrupted the orderly operation of the church, undermined Pastor Fuller’s authority, and exposed the church to needless expenses, including property taxes.

The Quimbys attempt to excuse their behavior by claiming that Pastor Fuller vacated his post around the beginning of 2016, and lacked authority to take any of the official acts noted above. Specifically, the Quimbys argue Pastor Fuller ceased to be pastor of the Weare Bible Baptist Church when he began to serve as pastor of the nearby Victory Baptist Church. The Court disagrees and is unpersuaded by the

documents submitted by the Quimbys in support of their position. (See Def.'s Ex. B-I.) Pastor Fuller testified that he served as supply pastor at Victory and called Andrew Dean to serve as supply pastor of Weare Bible Baptist Church in his absence, but he never abandoned his role as pastor. Moreover, there does not appear to be anything in the church's corporate charter that would prevent Pastor Fuller from temporarily serving as a supply pastor at another church.

Accordingly, the Court finds Pastor Fuller remains pastor of the Weare Bible Baptist Church, and the ballot measures voted on at the April 3 meeting, as well as the results of all other properly noticed meetings, stand. On the other hand, the Court finds the actions taken by the Quimbys—including the December 2016 meeting at which they voted to terminate the membership of a majority of the congregation—were contrary to the corporate charter and invalid. Therefore, the Court vacates those acts and finds the membership of the church remains unaffected. The fact that this order serves to essentially reiterate and reaffirm the Court's prior ruling with respect to Pastor Fuller and the membership of the church underscores the extent of the Quimbys' contempt.

In light of the foregoing, the Court finds the Quimbys' continued act of residing in the parsonage is unlawful,² and their conduct is ripe for an eviction process. Because the Quimbys' use of the parsonage triggered the removal of the church's tax exemption, they shall be responsible for any and all property taxes imposed on the church since the date of the Court's February 18, 2016 order, pro-rated to the date of their departure from the premises. Further, the Court imposes an additional fine of \$500 per month, payable to the Weare Bible Baptist Church, on the Quimbys collectively. Said fine shall

² As a result, the stakes around the parsonage shall be removed and the Quimbys shall no longer attempt to restrict access to the land surrounding the parsonage.

continue until the Quimbys vacate the parsonage, and shall be waived fully in the event they do so within sixty (60) days of the date of this order.

The Court also awards costs and attorney's fees to Pastor Fuller and the Weare Bible Baptist Church. "[W]hen overriding considerations so indicate, the award of fees lies within the power of the court, and is an appropriate tool in the court's arsenal to do justice and vindicate rights." Harkeem v. Adams, 117 N.H. 687, 690 (1977). "Bad faith conduct held to justify the award of counsel fees has been found where one party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons; where the litigant's conduct can be characterized as unreasonably obdurate or obstinate; and where it should have been unnecessary for the successful party to have brought the action." Id. at 690–91 (citations omitted). The Quimbys have clearly and consistently acted in direct contravention of both the letter and spirit of the Court's order and the church's corporate charter. Accordingly, these proceedings ought to have been unnecessary. Counsel shall submit an affidavit documenting costs and fees incurred in litigating these contempt proceedings for the Court's review.

Finally, the Court notes that at the close of the hearing on November 9, 2017, it ordered the Quimbys to turn over all corporate records, as well as the corporate seal, in their possession or the possession of their counsel. To the extent this has not yet occurred, the Quimbys are to comply within ten (10) days.

In light of the foregoing, the Court believes the present order effectively resolves the issues raised in Weare Bible Baptist Church v. Leland Quimby et al., Hillsborough County Superior Court – North, No. 216-2017-CV-00465, and renders further action in

that case unnecessary. Should either party believe this is incorrect, they may file a motion to reconsider.

SO ORDERED.

1/30/18
Date

K C Brown
Kenneth C. Brown
Presiding Justice