

**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

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

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ARGUMENT

1. The Motion For Contempt Should Have Been Dismissed For Failure To Identify The Specific Obligations In The Trial Order That Were Violated.

Appellees mistakenly argue that Pastor Fuller and WBBC met their burden to overcome the motion to dismiss based the Court's subsequent finding of contempt and the facts of the case outlined in their appellate brief. Findings after an evidentiary hearing cannot be used to justify a ruling on a motion to dismiss. As outlined in Appellants' motion to dismiss and explained in their opening brief, Fuller's motion for contempt did not identify clearly described obligations the Quimbys had violated. Because none of the allegations plausibly made out a prima facie case that the Quimbys' actions violated any clear directive in the Trial Order,¹ the motion for contempt should have been dismissed at the outset.

2. The Court's Finding Of Contempt Had To Be Based On Violations Of Clearly Articulated Obligations In The Trial Court Order, Not General Dissatisfaction With The Quimby's Actions.

Despite raising the issue about lack of specificity of obligations in the Trial Order that were violated, Appellees did not further identify specific obligations either at the contempt hearing or in their brief. The Court also failed to do so in its Contempt Order. Despite this, Appellees argue that the finding of contempt was not an abuse of discretion because the Court determined that Quimbys challenged Calvin Fuller's role subsequent to trial, interfered with a meeting, and otherwise interfered with the operation of the Church, which was contrary to what the Court

¹ "Trial Order" refers to underlying February 18, 2016 trial court order.

intended. Contempt, however, cannot be based on reading into an order obligations or prohibitions that were not originally articulated. In other words, a Court cannot subsequently impose obligations on a party that it did not define and impose in the first instance in an effort to justify a finding of contempt.

Appellees argue that *res judicata* barred any challenge to whether Calvin Fuller continued to be the pastor of Weare Bible Baptist Church after becoming the pastor at Victory Baptist Church several weeks after the conclusion of trial. This misapplies the doctrine. “[R]es judicata prevents parties from relitigating matters actually litigated and matters that could have been litigated in the first action.” *Gray v. Kelly*, 161 N.H. 160, 164 (2010) (emphasis added). With respect to Fuller’s role, the issues litigated at trial were 1) whether he was properly elected as pastor; and 2) the scope of his authority, *i.e.*, whether his authority was limited to spiritual matters. App. 10-11. It is axiomatic that actions occurring after trial, including Fuller accepting the position of pastor of a different church at the end of December, could not have been litigated in that case because they occurred after trial.

Further, as became evident during the contempt hearing, although Fuller knew at the time of trial that had had been voted in as pastor Victory Baptist Church effective late December of 2015 “when he concludes his responsibilities at Weare Bible Baptist Church,” he did not disclose this information either before or at trial. App. 248. *See also* App. 234-240. Yet, at trial Fuller evaded the question as to whether he was going to be pastoring Victory Baptist Church the following January. *See* App. 164-165. Appellees cannot blame the Quimbys for not litigating facts that were not

part of the issues raised in that case, that Fuller did not disclose, and that occurred after trial.² Pastor Fuller's lack of candor should preclude him from even arguing that the Quimbys should have asserted those claims at trial.

Appellees also mistakenly characterize the Quimbys' argument that Fuller ceased to be the pastor at WBBC after trial as a collateral attack on the Trial Order. This fundamentally misstates the Quimbys' position. They have not challenged the findings in Trial Order. Susan Quimby was clear that upon receiving that order, they studied it, prayed about it, and then did their best to follow its provisions. *See* App. 166-167, 138, and 170-172. Though Appellees assert the Quimbys should have raised their concerns about Fuller becoming pastor at Victory at trial, as noted above, this was not possible given he did not become the pastor there until after trial was over.

Finally, Appellees concede that a meeting was held as ordered and that the other acts of the Quimbys identified as "contemptuous" were not specifically prohibited by the Trial Order. Appellees' Brief p. 15. They assert the Court could nonetheless "appropriately use[] this information to find the Quimbys' disregard for its order." *Id.* Claiming that a Court can base a finding of contempt on actions that are not prohibited flies in the

² During the October 13, 2017 contempt hearing, Fuller initially denied he became the pastor there. Tr. 76. When pressed and presented with Victory records, he argued he was voted in as "interim" pastor at Victory before Christmas. Tr. 118-122. As noted by the Court in its February 18, 2016 Order, "the term 'interim' merely applies to the duration, not the nature of [] service." App. 105.

face of logic and is contrary to well-established law. *See Dover Veterans Council, Inc. v. City of Dover*, 119 NH 738, 740. (1979).

Even if the Court was frustrated that its Trial Order did not resolve the dispute between the parties, its first step should have been to clarify what the parties needed to do, being careful to limit its rulings to property and secular matters within its purview, as allowed by *Berthiaume v. McCormack*, 153 NH 239 (2006). In addition, the evidence at trial demonstrated that two factions had formed in the church. *See App. 106*. The fact that the dispute did not end at trial should not have been a surprise. In any event, the Court could have imposed specific additional obligations regarding secular matters, including obligations regarding use of the parsonage and tax issues. It did not do so. The Court instead took an impermissible shortcut by imposing and clarifying additional obligations *ex post facto*, and simultaneously holding the Quimbys in contempt for not following those obligations.

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. Rulings About the Church Operations, Discipline and Other Ecclesiastical Matters Are Outside the Jurisdiction of The Court.

Appellees devote a significant portion of their brief arguing that the Trial Order did not violate the First Amendment. Appellees' Brief pp. 17-20. The Quimbys have not argued that the Court did not have jurisdiction to make the finding in the Trial Order. In that instance, the Court limited its

finding to employment matters and membership votes based on analysis of compliance with the WBBC Corporate Charter.

In ruling on the motion for contempt, however, the trial court did not limit its inquiry to neutral principles. Instead, it made determinations that the Quimbys “disrupted the orderly operation of the church, undermined Pastor Fuller’s authority, and exposed the Church to needless expenses, including property taxes.” Contempt Order p. 4. Appellees argue that because there was no testimony or rulings about “issues of faith” or reliance on “Church Doctrine,” the Court could not have impermissibly encroached into ecclesiastical matters. This argument interprets ecclesiastical matters too narrowly. Ecclesiastical matters include “matters of doctrine, discipline, faith, or internal organization.” *Reardon v. Lemoyne*, 122 N.H. 1042, 1047 (1982). Although this Court has not provided a detailed list of subject matters that are ecclesiastical as opposed to secular, other courts have further defined ecclesiastical issues to include church discipline, ecclesiastical government, and conformity of the members of the church to the various behavior standards. *See Rentz v. Werner*, 232 P.3d 1169, 1178 (Wash. 2010). Those categories are helpful guidelines to ensure that First Amendment rights are not compromised.

The Court based its finding of contempt on determinations that the Quimbys had been disruptive to the church and interfered with its operation. Aside from the fact that the Trial Order did not specifically prohibit those actions, the Court’s ruling, without a precise application of neutral principles, impermissibly intervened in ecclesiastical matters and operations of WBBC.

CONCLUSION

For the reasons set forth above and in defendants' opening brief, defendants respectfully request this Honorable Court vacate the trial court's February 2, 2018 Order, and dismiss the motion for contempt.

Dated: July 17, 2019

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that, pursuant to Supreme Court Rule 16(3)(i), 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: July 17, 2019

/s/ Eric M. Sommers

CERTIFICATE AS TO COMPLIANCE WITH WORD LIMIT

I hereby certify that the within document complies with the word limit for reply briefs under Sup. Ct. R. 27(7) and contains 1,494 words, excluding the cover page, table of contents, and table of authorities.

Dated: July 17, 2019

/s/ Eric M. Sommers