No. 01-2337

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SAMUEL L. EDWARDS, *et al.*

Appellants,

v.

JANE HOLMES DIXON

Appellee.

On Appeal from the United States District Court
for the District of Maryland, Southern Division, at Greenbelt

BRIEF OF *AMICI CURIAE* RT. REV. JACK LEO IKER, BISHOP OF THE EPISCOPAL DIOCESE OF FORT WORTH, AND RT. REV. ROBERT DUNCAN, BISHOP OF THE EPISCOPAL DIOCESE OF PITTSBURGH IN SUPPORT OF SAMUEL L. EDWARDS AND THE WARDENS AND VESTRY OF CHRIST CHURCH, ST. JOHN'S PARISH, ACCOKEEK, MARYLAND SUPPORTING A REVERSAL OF THE COURT'S JUDGMENT

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STATEMENT OF IDENTITY OF THE *AMICI CURIAE*, HIS INTEREST IN THE CASE AND THE SOURCE OF HIS AUTHORITY TO FILE A BRIEF

The Rt Rev. Jack Leo Iker is the Bishop of the Diocese of Fort Worth (Texas) of the Episcopal Church USA. On May 27, 2001, Bishop Iker placed St. John's Parish under his episcopal protection upon the request of the Rector, Rev. Samuel Edwards, and Vestry of St. John's Parish (appellants in this appeal and hereinafter referred to as "Appellant Edwards" or "Appellant Vestry"). Joint Appendix ("JA") 278. That protection continues to this date. Moreover, Fr. Edwards remains canonically resident in the Diocese of Fort Worth. Bp Iker has a significant interest in this case because of his relationship with both Appellants.

The Rt Rev. Robert Duncan is the Bishop of the Diocese of Pittsburgh (Pennsylvania), is a bishop of the Province of Washington (Province III) and serves as the Chair of the American Anglican Council's Bishops' Network, a membership consisting of 40 active and retired bishops of the Episcopal Church

Moreover, as Bishops of the Church, they have a vital interest in the correct interpretation of church polity, doctrine and faith, and in maintaining the separation of Church and State.

ARGUMENT

I. Summary of the Argument

The lower court misunderstood the polity of the Episcopal Church USA (hereinafter "Episcopal Church", "ECUSA" or "the Church"), specifically in reference to the nature, power and role of a bishop within the Episcopal Church. The court's misunderstanding led to at least three reversible errors in the court's ruling. First, the Diocese of Washington is an indispensable party to this suit because an Episcopal bishop, unlike perhaps a bishop of the Roman Catholic Church, is governed by the constitution and canons of the Church. An Episcopal Bishop is not an independent authority to act for the Church in his own name. Second, the lower court misconstrued the procedure of the Episcopal Church in calling a rector from one diocese to another, both as to the "30-day rule" and what is meant by the requirement that a prospective rector be "duly qualified."

In a broader context, the court's actions in this case, and at least some of the errors in its ruling, underlines the rationale for cases that mandate that courts remain free of ecclesiastical disputes until fully adjudicated within the ecclesiastical bodies and, further, to accept and defer to the decisions of ecclesiastical tribunals. For this reason alone, the trial court erred by not dismissing this case.

Finally, the Court erred in granting summary judgment under Rule 56, Federal Rules of Civil Procedure. There is credible evidence presented by Appellants Edwards and Vestry on a variety of material facts that was either ignored entirely or discounted by the lower court to reach the decision it annunciated. Simply put, the Court failed to follow the clear dictates of Rule 56, Fed. R. Civ. P., for deciding summary judgment motions.

II. The Lower Court erred in not dismissing the case under Rule 19, Fed. R. Civ. P., in that the Episcopal Diocese of Washington is an indispensable party to this suit

In order to determine whether the Diocese of Washington in an indispensable party for

purposes of Rule 19, Fed. R. Civ. P., the Court must properly understand the position of an Episcopal bishop within his diocese. There are some churches in which the Bishop and his diocese are interchangeable for one another, *i.e.*, the Bishop is the diocese and he speaks with nearly absolute authority as the diocese.[1] It is ***his*** diocese. The Roman Catholic Church is but one example.[2] This is understanding of the lower court with respect to the Episcopal Church as reflected in its ruling, and it is an incorrect understanding.

An episcopal bishop is elected by the laity and clergy of a diocese and must be approved by the House of Bishops and the Standing Committees of the Episcopal Church before being seated as a bishop of the Church. *See,* Title III, Canon 22 of the *Constitution and Canons...of the...Episcopal Church, Adopted in General Conventions 1789-2000, as Revised by the 2000 Convention* (hereinafter referred to as "Canons of ECUSA"). Although given great deference as a leader in much the same way as the President of the United States is given deference, neither the President or an Episcopal bishop acts independently of the checks and balances of the legal system of which they are a part. A bishop must adhere to the constitution and canons of the Church or be subject to discipline. *See,* Title III, Canon 24; Title IV: Ecclesiastical Discipline of the Canons of ECUSA.

A bishop of the Church, again in the same way as the President of the United States, is a leader and representative of the people he serves. Although both may act in an individual capacity, their public acts can only be in their official capacity. Hence, the President of the United States acts as a representative and agent for the United States, and actions are brought not in the President's name, but in the name of The United States of America. In the same way, a

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[1] "Peter has spoken, and Peter is judged by none" may be a motto of medieval Popes, but is not representative of the polity of the Episcopal Church. Supplemental Affidavit of Rev. Dr. Louis R. Taristano. JA 665.

[2] The Bishop of Rome and Pope is believed by Roman Catholics to be infallible in all statements made as representative of the polity. There is no equivalent to this in the Episcopal Church. *Id.*

bishop speaking and acting as a bishop does so for his diocese and any actions must be brought in the name of the diocese.

The fundamental question is whose rights and duties are being litigated here? Do these rights personally belong to Appellee Bishop Jane Holmes Dixon (hereinafter "Bishop Dixon") or to the Diocese of Washington? This case concerns the formation of a canonical relationship between Appellant Edwards and the Diocese of Washington. It is the Canons and rules of the national Episcopal church and the Diocese of Washington that controls the process. These rules and canons of the Church are not the property of Bishop Dixon. It is the Diocese of Washington, and not Bishop Dixon, that will be affected by the outcome of this case.

It might be said that Bishop Dixon is not an indispensable party to this case. The case could have been brought in the name of the Diocese, without the Appellee Bishop being a party, against the Appellants Edwards and Vestry. The converse is not true. The Diocese must be a party because it is the Diocesan property rights, and it is the national church's Constitution and Canons, as implemented by the Diocese of Washington, that are at issue. Nothing in this case suggests a personal right of Appellee Dixon that is at stake.

A word about this attempted shifting of responsibility from the diocese to the bishop personally in this case. First, parties cannot shift their rights and responsibilities, or waive their necessity in a lawsuit, simply to circumvent the federal jurisdictional statutes. To allow this is to destroy the meaning of diversity jurisdiction set out in 28 U.S.C. §1332. The Appellee fights to keep her own diocese from this litigation for the sole reason that its inclusion will destroy complete diversity of the parties and wrest this case from the federal courts.

Rule 19(a), Fed. R. Civ. P., provides, *inter alia*, that:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if ... (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may... (ii) leave any of the persons already parties subject to a

> substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest.

In a very real sense, Appellant Edwards' position is described in Rule 19(a)(ii) above. Were the outcome of this case to be adverse to Appellee Dixon -- and without the Diocese of Washington being a party -- the Diocese of Washington could start over in a state court and subject Appellants Edwards and Vestry to another round of litigation leading potentially to double "inconsistent obligations" over the same subject matter as is present in the case at bar.

The lower court's Rule 19 ruling on indispensable parties should be reversed, and the lower court directed to dismiss the case for lack of an indispensable party.

III. The lower court erred in not upholding the "thirty day" rule for objections by a bishop to the call of a rector from another diocese.

Title III: Canon 17: Of the Calling of a Rector, of the Canons of ECUSA governs the call of a rector to a parish. *E.g.* JA 162, 168, 194. The procedure therein set out is thus: (1) Name of the priest candidate must be made known to the Bishop; (2) "sufficient time, **not exceeding thirty days**, [must be] given to the Bishop to communicate to the Vestry"; (3) "such communication, **if made within that period** has been considered by the Parish or Vestry..." and (4) the **Vestry or congregation may make the call of a rector if no objection has been filed within the thirty-day period** by the Bishop. (Emphasis added.)

It is undisputed that the name of Appellant Edwards was made known to Bishop Dixon. JA 199. It is also undisputed that not thirty days, but seventy-three days, passed between the notice being sent to the Appellant Bishop of the call of Appellant Edwards and the first word of objection by the Bishop. JA 229-30.

The lower court puts great stock in Appellant Edwards' inability to meet with the Appellee Bishop on the date first proposed by Appellee Bishop, although there are disputed facts as to the scheduling of this meeting. What the lower court failed to appreciate was that the

Appellee Bishop had any number of options to meet her canonically- mandated time period. If *arguendo* the Appellee Bishop is the absolute authority that the lower court ascribed to her,[3] Appellee Bishop could have ordered the Appellant Edwards to appear at a time of her own choosing, and upon his failure to appear, she could have found him not "duly qualified" within the thirty-day period. Or if the Bishop has only the constitutional powers as maintained by *Amici Curiae*, Appellee Dixon could have notified the Vestry that she needed additional time to investigate and seek an agreement with the Vestry to extend the thirty-day period or again, could have sent word to the Vestry that Appellant Edwards was not duly qualified, or even filed a charge on him with the appropriate judicatory body. A pragmatic solution: Had Appellee Dixon had a genuine interest in talking with the Appellant Edwards, she simply could have arranged a telephone conference between herself and Appellant Edwards before the expiration of the thirty-day period. Bishop Dixon chose none of the options available to her, but let the time expire.

The lower court failed to appreciate that the Canons of ECUSA do not provide for any automatic extension of the thirty-day period in which to communicate with the Vestry whether the proposed rector was "duly qualified." Were an interview between the bishop and the rector-candidate required by the Canons of ECUSA, and had the Appellant Edwards deliberately and unilaterally refused to meet with the Appellee Bishop Dixon, then there might be some basis for the court's reading a reasonable extension of a time limit into the Canons of ECUSA. <u>However, the Canons of ECUSA do not mention, and certainly do not mandate, a meeting between the Bishop and the Rector-Candidate nor do these Canons provide for an extension of the thirty-day time period in which to object.</u> It is not rational to use the lack of a <u>voluntary</u> meeting between Appellee Dixon and Appellant Edwards as the basis for rewriting the Canons of ECUSA by the lower court.

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[3] Amicus Curiae strongly disagrees with the lower court's position on the authority of an Episcopal bishop.

Appellee Dixon is using her own negligence in exercising her option to find Appellant Edwards not duly qualified within the canonically-mandated time period as the basis for the Court to modify Episcopal canon law to suit Bishop Dixon's own needs.

The Court's ruling rewrites and changes ECUSA canon law, and for this reason, the case should be remanded to the lower court for dismissal or a full hearing on the merits not inconsistent with this Court's ruling.

IV. The lower court erred in its construction and application of the term "duly qualified" in Title III, Canon 17, Section 3 of the Canons of ECUSA

Nowhere in the Constitution and Canons of ECUSA, as revised by the Convention of 2000, is the term "duly qualified" defined in relation to the call of a rector from one diocese to another. Does "duly qualified" mean, as the Appellee Dixon would have the court believe, anything she wants it to mean as the Bishop *Pro Tempore* of Washington? The *Amici Curiae* believe that this is a wrong interpretation, and is further evidence of the lower court's misunderstanding of Episcopal polity.

ECUSA has a national body that leads the overall church through its General Conventions, with the first national convention in 1789 and the most recent in 2000. *See generally* JA 187, 201. Among other things, the General Convention is the body which alters and revises the Canons of the Church. Below that are the various dioceses which are generally geographical in nature.[4] The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. The dioceses have canons that cannot be inconsistent with national canons. Priests within a given diocese may move from one diocese to another, procedures of which are contained in the Canons of ECUSA. For that reason, there is rationale for having some reasonably uniform way of judging whether a priest is "duly qualified." To allow each diocesan bishop absolute freedom to determine who is and is not duly

[4] There are special instances of non-geographic dioceses that are of no moment in this case.

qualified would, in part, render ECUSA a loose association of independent regional church bodies. There must be some national standard by which "duly qualified" can be determined.

One place to search for a working definition of "duly qualified" is the Church Pension Fund, for it is here that records on all Episcopal clergy are kept. Were one interested in determining a priest's formal education, and whether a priest had been regularly ordained as a deacon and had been regularly ordained as a priest, such records are officially maintained by the Church Pension Board. If one needed to determine whether any charges had been brought against a priest or a priest had been suspended, removed or deposed, the various diocesan bishops maintain such information (*See*, ECUSA Title III, Canon 6(b)) and communicate it yearly to the Recorder of the Episcopal House of Deputies. The Recorder is required to furnish such information upon proper request. Canon 6(c)of ECUSA. Hence, any official, negative information concerning Appellant Edwards was available at any time to Appellee Dixon from the Recorder, from the Church Pension Board, and from *amicus curiae* since Appellant Edwards is presently canonically resident in the Diocese of Fort Worth. Moreover, had there been informal information that concerning the character and fitness of Appellant Edwards to assume the rectorship of St. John's Parish, *Amici Curiae* Bishop Iker would have shared that with Bishop Dixon during their telephone communications. The undisputed fact is that there is nothing negative in Appellant Edwards' education, experience, character or fitness that would negatively impact his selection of rector by Appellant Vestry. Even Appellee Dixon raised no objection to Rev. Edwards' qualifications or moral character. *See* JA-164 (¶14); JA-182 (¶14); JA-221.

Hence, what is the basis for the finding that Appellant was not "duly qualified" in the judgment of Appellee Dixon? The answer to this question is hotly contested among the parties, and becomes one of many material issues that would have been fully aired at a trial on the merits, but which were not reached because of the grant of summary judgment by the lower court.

The issue from the prospective of the *Amici Curiae* is simply this: How could a priest be duly qualified in one diocese of ECUSA, and without a change in any facts or indices about that priest, be found not qualified in another diocese of the same church? If a bishop is the absolute, unchecked authority within his diocese, then personal whim can be a reason for finding a rector-candidate not qualified. However, in a constitutionally ordered church such as ECUSA that freely permits movement of its clergy between dioceses, the decision of a bishop must be governed by a more objective standard. It is the position of the *Amici Curiae* that Appellee Dixon stepped beyond the boundaries of her canonical authority and abused her authority.

Had the court permitted a trial on the merits, this issue and the facts underlying it would have been fully litigated. If the lower court is not ordered by this court to dismiss this case, the case should be remanded to the lower court for a hearing on the merits not inconsistent with the opinion of this Court.

V. The lower court erred in not dismissing this case as a matter of law because the ecclesiastical judicatory process had not be completed

The basic rule governing the interaction between federal courts and ecclesiastical judicatory bodies is that federal courts will await taking action, if it acts at all, until the decision of the ecclesiastical tribunals is complete. Thereafter, the courts will defer to the decision of the ecclesiastical bodies concerning church faith, doctrine, rules and custom. As annunciated in *Watson v. Jones*, 80 U. S. (132 Wall.) 679 (1871):

> [W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson, supra, at p.727.

The Supreme Court has been consistent in maintaining this doctrine of deference to

ecclesiastical authorities. *See, Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 376 (1970); *Serbian Eastern Orthodox Diocese for the U.S. & Canada v. Milivojevich*, 426 U.S. 696 (1976). Likewise, this Circuit has followed *Watson* in the cases that have come before it. In *E.E.O.C. v. The Roman Catholic Diocese of North Carolina et al.*, 213 F.3d 795 (4th Cir. 2000), an employment case involving a music director, this Circuit wrote:

> Indeed, "civil courts have long taken care not to intermeddle in internal ecclesiastical disputes." *Bell*, 126 F.3d at 330. The Supreme Court has always safeguarded the "unquestioned" prerogative of religious organizations to tend to "the ecclesiastical government of all the individual members, congregations, and officers within the general association." *Watson v. Jones*, 80 U.S. 679, 728-29, 20 L. Ed. 666 (1871); see also *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 74 L. Ed. 131, 50 S. Ct. 5 (1929). For "religious freedom encompasses the ' power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 721-22, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) (alteration in original) (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 97 L. Ed. 120, 73 S. Ct. 143 (1952)). "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government . .. . ." *Serbian Eastern Orthodox Diocese*, 426 U.S. at 724.

213 F. 3d at 800-801.

In *Bell v. Presbyterian Church (U.S.A.) et al*, 126 F. 3d 328 (4th Cir. 1997) , this Circuit reviewed a case involving an employee-minister who sued four churches who were funding sources for his employer. Even in such a case that involved funding and a non-church program, this Circuit held that this dispute was ecclesiastical in nature, writing: " Such a decision about the nature, extent, administration, and termination of a religious ministry falls with the ecclesiastical sphere that the First Amendment protects from civil court intervention." 126 F. 3d at 333. The case at bar is more clearly an ecclesiastical question than that issue decided in *Bell, supra,* and should be dismissed for the reasons articulated in *Bell, supra.*

The case should be remanded to the lower court with instructions to dismiss the case under the doctrine of deference to ecclesiastical bodies.

VI. The Court erred in granting Summary Judgment under Rule 56, Fed. R. Civ. P.

The general rule is that all evidence must be given a reading most favorable to the non-moving party –the Appellants Edwards and Vestry in this case – in ruling on a motion for summary judgment. A fair reading of the lower court's opinion demonstrates that it did just the opposite. All weight was given to the evidence of the moving party, Appellee Dixon.

If the lower court was going to rule on ECUSA's polity and doctrine, it gravely erred in doing so without benefit of a full hearing and arguments by the parties. Even with a full hearing, there is grave danger that a court will misconstrue and misinterpret church polity and doctrine (as the lower court did here), and for that reason the courts have been reluctant to enter such controversies. *See, e.g., Watson, supra.*

But if a court chooses, rightly or wrongly, to retain jurisdiction to such a case, surely the Court increases its chances of error by granting relief by summary judgment, rather than having all of the evidence and all of the arguments before it. In cases of ecclesiastical controversy, our basic sense of fairness and a desire by all courts "to get it right" mandates as a practical matter a full hearing on the merits and the avoidance of concluding litigation by summary judgment..

CONCLUSION

Retaining subject matter jurisdiction of this case was a fundamental error committed by the lower court. Rather than following the weight of authority and dismissing the case because it involves the faith, doctrine, beliefs and customs of the Episcopal Church U. S. A., the court retained jurisdiction. The lower court should have dismissed this action in deference to the ecclesiastical processes that were and remain to this day underway. The lower court's summary judgment opinion demonstrates the rationale for this deference by courts to ecclesiastical bodies: the lower court erred in its interpretation of Episcopal polity. The court, in effect, rewrote ECUSA canon law by modifying the thirty-day provision contained in Canon 17 and misconstrued the power and duties of a bishop of ECUSA. Finally, the lower court erred in its

application of the requirements of Rule 56, Fed. R. Civ. P. by giving all reasonable inferences of the evidence to the moving, rather than the non-moving party.

For these reasons, the case should be remanded to the lower court with instructions to dismiss the case. In the alternative, the case should be remanded to the lower court for a full hearing on the merits not inconsistent with this court's ruling.

Respectfully submitted,

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