

No. 11-0265

In The Supreme Court of Texas

THE EPISCOPAL DIOCESE OF FORT WORTH, et al.,
Appellants,

vs.

THE EPISCOPAL CHURCH, et al.,
Appellees.

On Direct Appeal From the
141st District Court of Tarrant County, Texas
Cause No. 141-252083-11

EMERGENCY MOTION TO RECALL AND STAY ISSUANCE OF MANDATE OR TO STAY ENFORCEMENT OF MANDATE

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Texas Rule of Appellate Procedure 18.2 and the Court's inherent authority, Appellees the Local Episcopal Parties and Local Episcopal Congregations¹ (the "Episcopal Parties") respectfully ask the Court to recall its mandate and to "stay issuance of the mandate pending the United States Supreme Court's disposition of a petition for writ of certiorari," *see* Tex. R. App. P. 18.2, or

¹ As defined in Appellees Local Episcopal Parties' and Congregations' Response Brief at xiii-xvi (Identities of Parties and Counsel).

to stay execution of the mandate pending the U.S. Supreme Court's disposition of that petition. The Episcopal Parties support this motion as follows:

1. On March 21, 2014, the Court denied the Episcopal Parties' Motion for Rehearing of the Court's August 30, 2014 Opinion. The Court issued the mandate on the same day as its order, March 21, 2014.

2. Under Texas Rule of Appellate Procedure 18.2, parties are entitled to "move to stay issuance of the mandate pending the United States Supreme Court's disposition of a petition for writ of certiorari." Petitions for writ of certiorari in this matter would be due on or before June 19, 2014. *See* S. Ct. Rule 13.

3. Because Appellees have a right to move this Court to stay the mandate under Rule 18.2, issuance of the mandate was premature, and the mandate should be recalled and its issuance stayed pending disposition of a petition for writ of certiorari. Alternatively, the Court should stay execution of its mandate for this period. This Court "may grant a stay if it finds that the grounds [for the petition] are substantial and that the petitioner or others would incur serious hardship from the mandate's issuance if the United States Supreme Court were later to reverse the judgment." *Tex. R. App. P. 18.2; cf. 28 U.S.C. § 2101* ("In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court.").

4. The grounds for a petition for writ of certiorari are substantial. They include, but are not limited to, (1) the constitutionality of adopting the neutral principles approach and applying it retroactively to arrangements made within a church under the deference doctrine, *see Jones v. Wolf*, 443 U.S. 595, 606 n.4 (1979); (2) the continued viability of the neutral principles approach over the deference approach in light of recent U.S. Supreme Court decisions, *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 704–05 (2012) (church-employment case praising the deference approach in church property cases); and (3) the split among state courts as to whether an express-trust canon trumps contrary state law, *compare Masterson v. Diocese of Nw. Tex.*, ---S.W.3d ---, 2013 WL 4608632 (Tex. Aug. 30, 2013), *and All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 685 S.E.2d 163 (S.C. 2009), *with Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446 (Ga. 2011), *cert. denied*, 132 S. Ct. 2772 (2012), *and Episcopal Church in the Diocese of Conn. v. Gauss*, 28 A.3d 302 (Conn. 2011), *cert. denied*, 132 S. Ct. 2773 (2012). No recent case has presented these issues so squarely or with such straightforward facts.

5. A stay is warranted because the “petitioner [and] others would incur serious hardship from the mandate’s issuance if the United States Supreme Court were later to reverse the judgment.” Tex. R. App. P. 18.2. Not staying the mandate and forcing parallel appellate and trial-court proceedings would cause the parties to incur costly litigation, including discovery and further summary judgment proceedings, which would be unnecessary if the U.S. Supreme Court reverses the judgment. By contrast, a stay

would cause no harm to Appellants *because they currently occupy and possess the vast majority of the property at issue*. It is Appellees, the Episcopal Parties, who are worshipping in temporary spaces such as a wedding chapel, a theater, other churches, and other non-profit property. Allowing the Episcopal Parties to exercise their right to appeal will not stop the breakaway group from continuing to use the property at issue – just as they have while exercising their own right to appeal to this Court.

CONCLUSION AND PRAYER

For these reasons, the Local Episcopal Parties and Local Episcopal Congregations respectfully move this Court to recall and stay issuance of its mandate or, alternatively, to stay execution of the mandate, pending the United States Supreme Court's disposition of a petition for writ of certiorari. The Local Episcopal Parties and Local Episcopal Congregations also request all other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that counsel for Appellees conferred with Mr. Shelby Sharpe and Mr. David Weaver, counsel for Appellants, by email on March 25, 2014. Mr. Sharpe and Mr. Weaver confirmed that Appellants oppose the relief requested by this motion.

/s/ Thomas S. Leatherbury

Thomas S. Leatherbury

CERTIFICATE OF SERVICE

I certify that on the 25th day of March, 2014, the foregoing Emergency Motion to Recall and Stay Issuance of Mandate or to Stay Enforcement of Mandate was filed electronically and, therefore, this document was served on all counsel.

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