

# THE SUPREME COURT

STATE OF WASHINGTON

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July 26, 2016

## LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 93374-0 - The Presbytery of Seattle, et al. v. Jeff Schulz and Ellen Schulz, et al.  
King County Superior Court No. 16-2-03515-9 SEA

Counsel:

Enclosed is a copy of the RULING DENYING EMERGENCY MOTION FOR STAY, signed by the Supreme Court Deputy Commissioner on this date in the above entitled cause.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan L. Carlson for".

Susan L. Carlson  
Supreme Court Clerk

SLC:kmt  
Enclosure as stated

FILED  
JUL 26 2016  
WASHINGTON STATE  
SUPREME COURT  
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, a Washington nonprofit corporation; THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, a Washington nonprofit corporation; ROBERT WALLACE, President of The First Presbyterian Church of Seattle, a Washington nonprofit corporation; and WILLIAM LONGBRAKE, on behalf of himself and similarly situated members of First Presbyterian Church of Seattle,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ, as individuals and as the marital community comprised thereof; and LIZ CEDERGREEN, DAVID MARTIN, LINDSEY McDOWELL, GEORGE NORRIS, NATHAN ORONA, and KATHRYN OSTROM, as trustees of The First Presbyterian Church of Seattle, a Washington nonprofit corporation,

Petitioners.

NO. 93374-0

RULING DENYING EMERGENCY  
MOTION FOR STAY

Petitioners in this case seek direct discretionary review of a partial summary judgement order declaring that respondent Presbytery of Seattle, through its Administrative Commission, governs the First Presbyterian Church of Seattle, and that its findings and rulings are conclusive and binding and that church property is

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held in trust for the benefit of its national organization, Presbyterian Church (U.S.A.). Now before me for determination is a motion by petitioners to stay all superior court proceedings and enjoin all actions seeking to enforce or implement the declaratory judgment pending review. For the reasons discussed below, the motion is denied.

This case arises from a vote by members of the congregation of First Presbyterian Church of Seattle (FPCB) to disaffiliate from the national religious organization Presbyterian Church (U.S.A.) and the Presbytery of Seattle, and to adopt new articles of incorporation and bylaws providing that FPCS is not subject to the authority of the Presbyterian Church (U.S.A.) or its form of government. The Presbytery of Seattle, acting pursuant to the constitution of Presbyterian Church (U.S.A.), appointed an Administrative Commission to conduct an investigation and issue a report and take action in light of the results of the investigation. Subsequently, the commission adopted resolutions stating the commission assumed original jurisdiction with the full power of the session of FPCS, and that the individuals “who previously constituted the session and the officers, directors, or board of trustees” no longer had authority with respect to FPCS’s ministry, business dealings, or property.<sup>1</sup> Those specified individuals maintained that they still constituted the duly elected board of trustees of FPCS, that through their actions FPCS had severed all ties with the Presbyterian Church (U.S.A.), and that the commission had no authority over them. Disputes arose concerning who comprised the “true church” and who was entitled to FPCS property, funds, and accounts receivable. Copastors Jeff Schulz and Ellen Schulz and those who maintain they are the duly elected board of trustees of FPCS declined the commission’s directions to vacate the church property, turn over books and records, and return funds that had been placed in a law firm trust account.

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<sup>1</sup> The “session” is the governing body of the local church on ecclesiastical matters, composed of the pastor or pastors and the elders of the local church, while the board of trustees governs business and property interests. FPCS’s session also acts as its board of trustees.

The Presbytery of Seattle and individuals who the Administrative Commission elected as FPCS officers (respondents herein) filed suit against the Schulzes and the individuals who maintain they are the proper board of trustees of FPCS (petitioners herein). Respondents moved for partial summary judgment on their claim for declaratory relief. Petitioners sought a motion for a continuance under CR 56(f) and also filed a motion for a preliminary injunction prohibiting respondents from carrying out the Administrative Commission's resolutions. The superior court denied petitioners' request for a continuance, concluding that petitioners had already thoroughly responded to the motion for partial summary judgment and failed to show that the additional discovery they requested would provide additional support for their assertion that a genuine issue of fact exists as to whether Presbyterian Church (U.S.A.) is hierarchical. The superior court then granted respondents partial summary judgment and entered a declaratory judgment finding that Presbyterian Church (U.S.A.) is a hierarchical church in which the determinations of Seattle Presbytery, through its Administrative Commission, are conclusive and binding on the session, trustees, and congregation of FPCS, and that any interest that FPCS has in church property is held in trust for the benefit of the Presbyterian Church (U.S.A.). Further, the court determined that the current governing body of FPCS is the Administrative Commission for First Presbyterian Church of Seattle. The court additionally found that FPCS is governed by the Restated Articles of Incorporation adopted in June 1985 and the bylaws adopted in May 2005, and it held void the recent amendments to the articles of incorporation and bylaws that the congregation had voted to approve providing that FPCS was not subject to the authority of the Presbyterian Church (U.S.A.) or its governance documents.

The superior court also denied petitioners' motion for a preliminary injunction against implementation of the Administrative Commission's resolutions,

finding they had not shown (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of would result in actual and substantial injury. *See Huff v. Wyman*, 184 Wn.2d 643, 651, 361 P.3d 727 (2015). As to the first criterion, the court found that the rights at issue were conclusively determined by the Administrative Commission, citing the same authority on which it had based the declaratory judgment. *See Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 373, 485 P.2d 615 (1971) (in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive). The court also concluded that, even if neutral principles of law were applied as a means of adjudicating the church property dispute, an approach described in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), and advanced by petitioners, the Presbytery of Seattle would still be entitled to the use and possession of the property by virtue of the 2005 Restated Article of Incorporation and bylaws that incorporated a *Book of Order* provision that the property held by and for the congregation is held in trust for the Presbyterian Church (U.S.A.). As to the second and third criteria, the court observed that petitioners had continued to worship in the FPCS chapel while congregants who opposed their actions worshiped elsewhere, and that respondents had not interfered with any bank accounts in the name of FPCS and had decided to await a prompt resolution of the action before contacting entities (such as Diamond Parking and Seattle Classical Christian School) that have contractual obligations to FPCS. The court found petitioners had not met their burden of showing that any fear of immediate invasion of a right was well grounded or that the acts complained of would result in actual and substantial injury.



Petitioners moved for reconsideration of the orders denying a continuance, granting declaratory judgment, and denying a preliminary injunction. The superior court denied reconsideration of all of these matters, and petitioners now seek this court's direct discretionary review of each of these orders. The motion for direct discretionary review is scheduled on the commissioner's August 18, 2016, calendar.

Petitioners now ask this court to stay trial court proceedings pending a decision on their motion for discretionary review, and to "stay and/or enjoin" any effort by Presbytery of Seattle to enforce or implement the declaratory judgment order "until the appellate courts review that order." Additionally, they argue that they should not be required to post a bond or other security, and they assert they have no means to pay a bond and that a stay would not impose any pecuniary harm on the Presbytery of Seattle. Respondents oppose a stay or injunction, but they urge that if a stay is granted, it be conditioned on petitioners furnishing security of at least \$350,000.

Petitioners request a stay pursuant to RAP 8.3, which allows an appellate court to issue orders, before or after acceptance of review, to insure effective and equitable review, including authority to grant injunctive or other relief to a party. If it exercises such authority, "[t]he appellate court will ordinarily condition the order on furnishing a bond or other security." Petitioners urge that, in considering their request, the court apply the criteria set forth in RAP 8.1(b)(3), which governs stays pending review in cases not involving rights to property or money judgments. Respondents agree this provision is the one under which petitioners' stay request should be evaluated. Under that subsection, the court considers whether the moving party can demonstrate that debatable issues are presented and compares the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed. The "debatability" standard

of this rule contemplates a limited inquiry, not an extensive assessment of the merits, but debatability must be shown before the relative harm to the parties is weighed. 2A KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE RAP 8.1 at 602 (8th ed. 2014). RAP 8.1(b)(3). An appellate court may stay the trial court decision being reviewed “upon such terms as are just,” and it ordinarily will condition relief on the furnishing of a “supersedeas bond, cash or other security.” RAP 8.1(b)(3). Security should serve the purpose of ensuring a party’s ability to obtain the benefit of a trial court order if it is upheld on appeal. *See Spahi v. Hughes-Nw., Inc.*, 107 Wn. App. 763, 769-70, 27 P.3d 1233 (2001).

Although debatability is one of the threshold questions, I need not address that issue to decide this motion, since petitioners fail to show that the balance of harms falls in a direction that justifies staying the superior court’s decision pending review without the provision of security. First, without security, a stay would deprive respondents of the ability to access or manage property that the superior court has ruled is held in trust for the benefit of the Presbyterian Church (U.S.A.), without assurance of compensation for this lost ability if the partial summary judgment is upheld on review. Petitioners offer no convincing reason to depart from the ordinary practice of conditioning a stay on the provision of security. Second, the Presbytery of Seattle has provided several assurances: (1) that under its leadership through the Administrative Commission, it will continue without interruption the ministries, programs, and worship services of FPCS at its historic downtown location, including the programs specified in paragraphs 8 through 19 of the Declaration of David Martin in Support of Petitioners’ Emergency Motion for Stay, thus allowing transition back to petitioners should they ultimately prevail on review; (2) that it will disburse funds to pay the salaries, benefits, and payroll taxes of staff necessary to ensure these programs and services continue, and to pay for maintenance and utilities and for

program-related, lease-related, and other administrative costs necessary to sustain the church's ministry as described in paragraphs 21 through 24 of the Declaration of David Martin in Support of Petitioners' Emergency Motion for Stay; (3) that it will retain current employees of FPCS (with the exception of current copastors Jeff Schulz and Ellen Schulz) until 30 days after petitioners' motion for discretionary review is denied or, if review is granted, until the finality of appellate review; (4) that it will continue to pay Jeff and Ellen Schulz at their current rate of compensation until 30 days after the motion for discretionary review is denied or, if review is granted, until the propriety of their claimed severance agreements are addressed and adjudicated; (5) that it will assist the Schulzes and any members of congregation who wish to continue worship services with them in finding an alternative location for services; and (6) that if petitioners ultimately prevail in this litigation, it will return control of the property to them and account for any funds earned and expended in the interim.

Given these assurances, I cannot conclude that a stay is needed to insure effective and equitable review. And given the absence of any security by petitioners, a stay could undermine effective and equitable review by depriving respondents of the ability to ensure the preservation of church assets pending review.

In a reply in relation to their motion for a stay, petitioners point to a purchase and sale agreement FPCS entered into in 2014 with a developer to sell part of the church property, along with an option agreement that contemplates the formation of a limited liability company by FPCS and the developer to develop a portion of the property into an urban ministry center, which would include building a new church structure for FPCS. Petitioners claim that a new developer has asked to step in as the original developer's assignee under the option agreement to work on the redevelopment project, which would result in destruction of the current historic church. Since FPCS must approve the substitution, petitioners urge that failing to



grant a stay could allow the historic church to be destroyed and redesigned under respondents' governance without input from them. But if petitioners as representatives of FPCS have entered into agreements contemplating significant redevelopment, the need for security to protect respondents' interests established by the declaratory judgment becomes even more compelling. Petitioners do not show in any event that any development involving third parties would likely proceed while rights to the use and control of the property remain in litigation. Moreover, I take respondents' assurance that they will maintain services and programs at the historic downtown location to mean that they will preserve the historic building.

The motion for an emergency stay is therefore denied. But since this ruling is based in part on the assurances of Presbytery of Seattle, during the pendency of the motion for discretionary review respondents may not act contrary to those assurances, including the assurance to preserve and maintain the historic downtown church building, without providing 30 days advance notice to petitioners so that they may renew a motion for a stay and/or injunctive relief.

  
DEPUTY COMMISSIONER

July 26, 2016