

CAUSE NO. 2015-CI-07858

FIRST PRESBYTERIAN CHURCH OF SAN ANTONIO	§	IN THE DISTRICT COURT OF
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	BEXAR COUNTY, TEXAS
	§	
MISSION PRESBYTERY,	§	
	§	
<i>Defendant.</i>	§	73 RD JUDICIAL DISTRICT

**PLAINTIFF'S REPLY TO DEFENDANT
AND INTERVENORS' RESPONSE TO
PLAINTIFF'S REQUEST FOR RECONSIDERATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff First Presbyterian Church of San Antonio ("FPC") and files this its Reply to Defendant and Intervenor's Response to FPC's Request for Reconsideration of its Application for Temporary Injunction, and in support hereof would show the Court the following.

I.

RULE 21(b) INAPPLICABLE

1. Defendant and Intervenor's leave off the caption or heading to Texas Rule of Civil Procedure 21(b) when they quote it: "*Service of Notice of Hearing*" (italics in original). Clearly the rule is intended to cover notice of hearings, not requests for relief. Certainly Defendant and Intervenor's do not cite case law that says it applies to requests for relief. The cases found by FPC concern only notice of hearings¹ and FPC has not found a case that says the rule applies to a request for reconsideration of a matter that was previously heard.

¹See, e.g., *In re Keck*, 329 S.W.3d 658, 661-62 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding).

2. There are cases that find however that a trial court does not abuse its discretion in considering matters when the other side was provided some notice and had an opportunity to respond.² In this case, Defendant and Intervenors were provided immediate notice of FPC's emergency request and have filed a 14 page response. It is within the Court's power to rule on FPC's request for reconsideration of the denial of its application for temporary injunction within the time frame requested by FPC.

3. Timing in this instance is critical. Even when an injunction is in place, Mission and its governing organizations are not to be trusted. In *Carrollton Presbyterian Church v. Presbytery of South Louisiana of Presbyterian Church (U.S.A.)*, 172 S.W.3d 1, 12, 2015 WL 1019492, at *7 (La. Ct. App. Mar. 9, 2015), *writ denied*, 171 So.3d 257 (La. May 22, 2015), the Presbytery (under the same Synod as Mission) was sanctioned \$390,000.00 for attempting to interfere with the trial court's injunction by attempting to dissolve the local church and for discovery abuses.

II.

THE FORMATION OF THE AC IS PRETEXT AND THE INJUNCTION SHOULD BE ENTERED

4. Defendant and Intervenors wrongfully accuse FPC of urging a double standard, saying that what Defendant and Intervenors seek to do is ecclesiastical and therefore off limits, but what FPC seeks to do is not ecclesiastical when it is. To the contrary, FPC has steered a straight and narrow course with the Court's jurisdiction, simply asking the Court to enter the same injunction to preserve the status quo in property rights that several other Texas and other state trial courts have entered.

²See *In re C.S.*, 264 S.W.3d 864 (Tex. App.--Waco 2008, no pet.); *In re K.A.R.*, 171 S.W.3d 705 (Tex. App.--Houston [14th Dist.] 2005, no pet.).

5. Defendant and Intervenors fail to address the fact that an Administrative Commission would assume control and management of the budget and operations of the church, and management of church property. This is an obvious property issue and would represent a dramatic change in the status quo.

III.

DEFENDANT AND INTERVENORS' ARGUMENTS ARE WITHOUT MERIT AND THE COURT IS ON SOUND FOOTING TO ENTER FPC'S REQUESTED INJUNCTION

6. There is no dispute that FPC is operating under the Book of Order. But operating under the Book of Order does not foreclose its exercise of legal rights protected under the Constitution and state law. FPC is not asking the Court to enter into the area of determining whether FPC is operating under the Book of Order by seeking the vote it intends on November 1. It is asking the Court to keep Defendant and Intervenors from interfering with the orderly conduct of FPC's business in terms of its property rights.

7. Defendant and Intervenors complain that not allowing the Administrative Commission to seize control of the day to day management of FPC property would interfere with its "ecclesiastical function." That is nonsense. In *Jones v. Wolf*, 443 U.S. 595 (1979) the Augusta-Macon Presbytery had appointed an administrative commission whose "assumption of original jurisdiction" and concomitant seizure of property control was necessarily blocked by the courts. Otherwise, the application of neutral principles of law to resolve the property dispute would have been a moot issue and the U.S. Supreme Court would not have remanded the case for further proceedings consistent with its opinion. *Jones v. Wolf*, at 597, 598. There are many instances throughout the U.S., including Texas, where courts have acted to prevent the property usurpation

by presbytery-appointed administrative commissions so that the court would have opportunity to resolve the property issues. *See, e.g., Bethany Independent Church v. Stewart*, 645 So. 2d 715, 719 (La. Ct. App. 1994); *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 464 A.2d 1008, 1010 (Md. 1983); *Calvary Presbyterian Church v. Presbytery of Lake Huron*, 384 N.W.2d 92-94 (Mich. 1986); *Mills v. Baldwin*, 362 So. 2d 2, 3 (Fla. 1980); *Presbytery of Hudson River v. Trustees of First Presbyterian Church of Ridgebury*, 2010 NY Slip Op. 00240 (2008-04618) at p.8; *Norton v. Green*, 304 S.W.2d 420, 423 (Tex. Civ. App.—Waco 1957, writ ref'd n.r.e.); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 869 (Tex. App.—Texarkana 1977, no writ); *Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 702 (Tex. App.—Dallas 1986, no writ).

8. Defendant and Intervenors' reliance on *Milivojevich* is woefully misplaced. In *Milivojevich* the civil corporation that owned and controlled the property was chaired by whomever the bishop was that the national denomination selected—an exceptional case where resolution of the property issue was made expressly dependent on a religious question. 426 U.S. 696 at 709. In the case at bar, there are no analogous facts whatsoever—and Defendant and Intervenors have cited none. In stark contrast with *Milivojevich*, the case at bar presents a standard, *Masterson*-type case where the property issues can be decided based in neutral principles of law – an examination of the deeds, articles of incorporation, state property, trust and corporation law, and the denominational charter viewed through a purely secular lens without reliance on religious doctrine.

9. The remainder of Defendant and Intervenors' Response consists of wild, unfounded, and conclusory allegations, unsupported by citation to any facts or law. Defendant and Intervenors are simply rehashing arguments made last August—when Mission swore to the Court that it had no

intention of appointing an administrative commission to effect practical seizure of FPC property use and control, and on which representations the court concluded that the threat to FPC property was not imminent. Now Mission has reversed course.

10. Mission has appointed the very Administrative Commission it told the court it would not appoint. If the threat was not imminent before, it plainly is now. Defendant and Intervenors' citation to its savings clause is doublespeak when its general prohibition is contradicted by at least four of the specific powers it has itemized and granted to its administrative commission -- which all expressly affect FPC's property rights.

IV.

DEFENDANT AND INTERVENORS SEEK A DETERMINATION OF THE MERITS

11. Defendant and Intervenors wrongfully that FPC's fraudulently amended its articles of incorporation and bylaws, and argument implicitly rejected by the Court in denying (twice) Defendant and Intervenors' request for an injunction. This is an effort to have the Court reconsider the merits of their claim, which the Court denied last week by allowing the elected officers of the church to remain in control of the church's assets.

12. FPC has shown it was entitled to amend its articles of incorporation. The Nonprofit Corporation Act defines the rights, duties, limitations and obligations of a nonprofit corporation. TEX. BUS. ORG. CODE §§ 22.001 *et seq.* It has no less than three separate provisions that govern what is required for a nonprofit to validly amend the articles of incorporation. TEX. BUS. ORG. CODE §§ 22.105-22.107. Defendant and Intervenors cite no valid facts and no law in support of their argument that there was an ultra vires act on the part of FPC. FPC merely seeks preservation of the status quo pending that decision. *See Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594,

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**ATTORNEYS FOR FIRST
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Reply to Defendant and Intervenors' Response to Plaintiff's Request for Reconsideration was served on counsel for Defendant and the Intervenors, Mr. José E. de la Fuente, LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, Telecopier No. 512/472-0532, via service through efile and EFP provider, and/or through some other permissible method, on the 30th day of October, 2015.

/s/ Kent C. Krause
Kent C. Krause

the property deeds of FPC, the terms of its corporate charter, the provisions of the denominational constitution, and the generally applicable provisions of Texas law, FPC has demonstrated the likelihood of its complete and exclusive ownership of any property held in its name. The Court also finds that Mission Presbytery has the means at its disposal and has indeed threatened imminent harm and irreparable injury, loss or damage to FPC in connection with FPC filing this action and that, if the Court does not issue the Temporary Injunction, FPC will be irreparably injured, because Presbytery will proceed to form an Administrative Commission or listening team to seize control of FPC property or its corporate operations or both. Such conduct by Mission Presbytery would render FPC without an adequate remedy at law in that an award of damages would not adequately compensate FPC for the resulting harm to its ability to conduct its various ministries. The Court therefore finds that absent a temporary injunction, the rights of FPC and its ministry will be irreparably injured, as seizure of FPC's property or corporate operations by Mission Presbytery will adversely impact donations and volunteer support by Plaintiff's congregants and that no amount of subsequent monetary reimbursement would be an adequate remedy for the irreparable damage that would be done to the mission and ministries of FPC. The Court also finds that FPC seeks protection of the ownership, possession and enjoyment of immovable and personal property and that existing policy and prior action of Mission Presbytery demonstrates that FPC will suffer irreparable injury if injunctive relief is not granted and, thus, a monetary award is an insufficient remedy at law. Thus, the Court finds that the equities favor the issuance of this Temporary Injunction and that this Temporary Injunction is necessary to preserve the status quo between the parties pending a judgment on the merits of the underlying claims.

IT IS THEREFORE ORDERED that this Temporary Injunction be and is hereby issued against the Mission Presbytery of the Presbyterian Church (USA), its officers, agents, employees,

and counsel, and any persons or entities in active concert or participation with the Mission Presbytery, or acting by or through the Presbytery or on its behalf or in its stead (hereinafter "Presbytery"). This Temporary Injunction pertains to all Property held by or for First Presbyterian Church of San Antonio and its civil corporation (FPC), both immovable (real) together with all buildings and improvements thereon, and movable (personal), whether corporeal or incorporeal, wherever located, whether held by, for or in the name of FPC (collectively "Property"), which real Property is more particularly described in the Appendix attached hereto. Presbytery is enjoined from filing any documents in the mortgage and conveyance records of Bexar County to assert ownership, use or control, or rights to determine ownership, use or control, to any real Property titled in the name of FPC or to assert a trust on behalf of the Presbytery or other affiliated third party over real Property titled in the name of FPC or otherwise held by or for FPC the effect of which would be to place a cloud on the title of said real Property, or otherwise interfere with or disturb FPC's ownership, use, control, or disposition of FPC's Property, or interfere with FPC's right to determine the ownership, use, control, or disposition of Property held by or for FPC or held in the possession of, control of, or owned by or titled in the name of FPC.

IT IS FURTHER ORDERED that the Mission Presbytery of the Presbyterian Church (USA), and any persons or entities in active concert or participation with it, on its behalf or in its stead, whether acting directly or indirectly, are temporarily enjoined from taking any action that could affect the property rights of FPC, including but not limited to:

- (1) Filing any documents in the mortgage and conveyance records in Bexar County, or any County where FPC's property is located, the effect of which would be to place a cloud on the title of any property titled in the name of plaintiff;
- (2) Otherwise taking any action to claim or assert ownership, use, or control of the Personal and Real Property, or a right to determine ownership, use or control of the Personal and Real Property, in the possession or control of, owned by, titled in the name of or held for the benefit of First Presbyterian Church of San Antonio;

- (3) Asserting any rights to the property of First Presbyterian Church of San Antonio, including but not limited to seeking to change the locks of the church, initiating any disciplinary action against the ministers or members of the church that pertains to the ownership, control, use or disposition of FPC's Real and Personal Property, appointing a listening team, a visiting team, or an administrative commission with purported authority to assume "original jurisdiction" over FPC's local governance or control of local property possessed by or titled in the name of First Presbyterian Church of San Antonio or in the name of any foundation for First Presbyterian Church of San Antonio's benefit, or otherwise interfering, by dissolution or otherwise, in any way with the property-related rights and responsibilities of the employees of FPC, the governing body of FPC (the session), its congregation, or the governing body of its local church corporation FPC (the board of trustees);
- (4) Contacting any financial institution to assert a claim of interest in any account, fund, stock or other asset held in the name or for the benefit of First Presbyterian Church of San Antonio or First Presbyterian Church of San Antonio Foundation; or
- (5) Otherwise interfering with the normal duties and responsibilities of the officers, ministers, and employees of First Presbyterian Church of San Antonio or the First Presbyterian Church of San Antonio Foundation or any designees thereof in any way that pertains to the ownership, control, use or disposition of the Real and Personal Property held by, for or in the name of First Presbyterian of San Antonio.

IT IS FURTHER ORDERED that nothing in this Temporary Injunction shall preclude Presbytery from taking ecclesiastical action for non-pretexual ecclesiastical cause that is unrelated to this litigation or any property issue raised in, prompted by, related to, or affecting the ownership, control, use, or disposition of the Personal or Real Property held by, for or in the name of First Presbyterian Church of San Antonio.

IT IS FURTHER ORDERED that the trial on the merits is set for a jury trial on March 7, 2016.

IT IS FURTHER ORDERED that the bond in the amount of Five Hundred Dollars (\$500.00) previously filed in support of the Temporary Restraining Order shall remain in effect and serve as bond for this Temporary Injunction.

SIGNED this _____ day of _____ 2015, at ____ : ____ . m.

JUDGE PRESIDING