

parish's separation from the Rochester Diocese its property reverted back to the Rochester Diocese or the National Church. For the reasons stated below, we answer this question in the affirmative.

BACKGROUND

The National Church was founded in the late 1700's and is a member of the Anglican Communion, a group of churches rooted in the doctrine, discipline and worship of the Church of England's Book of Common Prayer. The National Church has a hierarchical form of governance. Its governing body, the General Convention, adopted -- and periodically amends -- a constitution and canons (the "National Canons") that manifest its doctrinal law.

The Rochester Diocese is incorporated under Article III of the Religious Corporation Law, which solely governs Protestant Episcopal Parishes or Churches.¹ As a member of the National Church, the Diocese is governed by Annual Conventions or Councils and, in addition to the National Canons, has adopted its own Diocesan Canons (the "Rochester Canons").

All Saints was originally organized in 1927 as a mission under the ecclesiastical canons of the National Church

¹ Its predecessor was the Episcopal Diocese of Western New York.

and the Episcopal Diocese of Western New York.² Later that year All Saints incorporated under Article III of the Religious Corporation Law. In 1947, All Saints applied to the Rochester Diocese to be recognized as a parish in spiritual union with the Diocese. To this end, All Saints signed a document agreeing "to abide by and conform to the Constitution and Canons in force in the Episcopal Diocese of Rochester and to conform to all the canonical and legal enactments thereof." The Bishop of the Diocese approved this union, and All Saints thereafter became a parish.

FACTS AND PROCEDURAL HISTORY

Due to serious theological disputes between the Rochester Diocese and the vestry (the leadership) of All Saints, in November 2005, the governing body of the Rochester Diocese -- the Diocesan Convention -- approved a resolution declaring the parish ecclesiastically "extinct."³ The Convention also resolved that All Saints' real property and tangible and intangible assets were to be "transferred to the trustees of the [Rochester Diocese]."⁴ All Saints, however, maintained that it held legal

² A more detailed description of the history of and property relating to All Saints (e.g., the deeds) can be found in Episcopal Diocese of Rochester v Harnish (17 Misc3d 1105[A][Sup Ct Monroe Cty Sept 13, 2006]).

³ The parties acknowledge that the resolution was a purely ecclesiastical determination.

⁴ Subsequently, All Saints sought ecclesiastical oversight by other bodies within the Anglican Communion and All Saints

title to the real and personal property and, as it held the property free and clear under New York property law, neither the Rochester Diocese nor the National Church had claim to the property.

Plaintiffs commenced the instant declaratory action seeking, among other relief, (1) a judgment that the real and personal property of All Saints was impressed with a trust in favor of the Rochester Diocese and National Church, (2) an injunction barring All Saints from interfering with the Rochester Diocese's ownership and use of the property and (3) an accounting. Defendants counterclaimed, seeking to (1) quiet title to the property, (2) declare certain provisions of the Religious Corporations Law null and void under the Establishment Clause of First Amendment of the United States Constitution and (3) enjoin the Rochester Diocese from trespassing and interfering in All Saints. Further, All Saints brought an Article 78 proceeding against the Rochester Diocese, seeking to annul the determination declaring the parish extinct. All Saints argued that the Rochester Diocese abused its discretion and failed to follow its own rules and New York Law when it declared All Saints

notified plaintiff Reverend Jack M. McKelvey (Bishop of the Rochester Diocese), by letter, that it was now under the ecclesiastical authority of Archbishop Henry Orombi, Archbishop of the Church of the Province of Uganda. It also sought to amend its Certificate of Incorporation to change its name from All Saints Protestant Episcopal Church to "All Saints Anglican Church."

extinct.

Relying on Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville (250 AD2d 282 [3d Dept 1999]), Supreme Court granted summary judgment to plaintiffs, declaring that All Saints held all the real and personal property of the local parish for the benefit of the Rochester Diocese and National Church and dismissing defendants' counterclaims. The Appellate Division affirmed "for reasons stated in the decision at Supreme Court" and also affirmed Supreme Court's dismissal of the Article 78 petition since the Rochester Diocese's decision to dissolve the parish was a purely ecclesiastical determination and not reviewable by the Court. We granted defendants leave to appeal and now affirm.

DISCUSSION

Plaintiffs argue that there has been both an express and implied trust in favor of it and the National Church since All Saints' incorporation pursuant to Article III of the Religious Corporation Law. Specifically, plaintiffs contend that All Saints expressly agreed to abide by the Constitution and Canons of the Episcopal Diocese and is, therefore, subject to the trust doctrine of National Canons I.7.4 and I.7.5 (the "Dennis Canons").⁵ Under the Dennis Canons, a parish holds its property

⁵ The "Dennis Canons" were adopted in 1979 by the General Convention of the National Church. They provide:

"Sec. 4-All real and personal property held

in trust for the Diocese and the National Church. Plaintiffs also contend that Rochester Canon 8⁶ reaffirms this doctrine, and that the Religious Corporation Law (see Article III, § 42-a; Article II, § 5)⁷ further supports their contention that a

by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

"Sec. 5-The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust."

⁶ Rochester Canon 8 provides: "In conformity and consistent with the provisions of Title I, Canon 7, of the General Convention, it is hereby explicitly reaffirmed that all real and personal property held by or for the benefit of any Parish, Mission, or Congregation located in the Diocese of Rochester is held in trust for the Episcopal Church and the Diocese of Rochester."

⁷ Section 42-A, enacted in 1991, states:

"Notwithstanding and in addition to the provisions of section five of this chapter, and subject always to the trust in which all real and personal property is held for the Protestant Episcopal Church and the Diocese thereof in which the parish, mission or congregation is located, the vestry or trustees of any incorporated Protestant Episcopal parish or church, the trustees of every incorporated governing body of the

religious corporation, incorporated pursuant to Article III of the Religious Corporation Law, holds its property in trust for the Diocese and the National Church. Finally, plaintiffs argue that All Saints has remained an Episcopal parish for more than 20 years after adoption of the Dennis Canons without challenging their substance or applicability.

Defendants contend that a factual question exists as to whether an express or constructive trust was created or existed in favor of the Rochester Diocese and/or the National Church when they were expelled from the Rochester Diocese. Specifically, defendants argue that they cannot be bound by the Dennis Canons because they were adopted in 1979, nearly 30 years after All Saints was accepted as a parish. Also, defendants question whether the Dennis Canons or Rochester Canon 8 create an express

Protestant Episcopal Church and each diocese are authorized to administer the temporalities and property, real and personal, belonging to the corporation, for the support and maintenance of the corporation and, provided it is in accordance with the discipline, rules and usages of the Protestant Episcopal Church and with the provisions of law relating thereto, for the support and maintenance of other religious, charitable, benevolent or educational objects whether or not conducted by the corporation or in connection with it or with the Protestant Episcopal Church."

Under Section 5, the trustees of a religious corporation "shall have custody and control" of all church property and shall administer same in accordance with the rules of the corporation and ecclesiastical governing body.

trust, effectively divesting All Saints of its property, without violating the due process provisions of the United States and New York State Constitutions. Moreover, defendants argue that there is nothing in any deed, will or in the All Saints' Certificate of Incorporation that establishes a trust over the All Saints property for the benefit of the Rochester Diocese or the National Church. Defendants' arguments are unavailing.

In First Presbyterian Church v United Presbyterian Church, we adopted the neutral principles of law approach to church property disputes set forth by the United States Supreme Court in Jones v Wolf(443 US 595 [1979]).

"Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form"

(Jones, 443 US at 606 [emphasis added]. The enactment of the Dennis Canons was apparently an attempt by the Episcopal Church to do exactly what this language suggested - to "ensure that . . . faction loyal to the hierarchical church [would] retain the church property."

Application of the neutral principles doctrine requires the court to focus

"on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. The court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, taking special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties have intended to create a trust or restriction"

(First Presbyterian Church, 62 NY2d at 122 [citation omitted]).

In Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, a case similar to this one, the Third Department noted that in many ways Dennis Canon 4 was adopted in response to Jones v Wolf, which "held that the constitution of a hierarchical church can be crafted to recite an express trust in its favor concerning the ownership and control of local church property" (Trinity, 250 AD2d at 285, citing Jones, 442 US at 606). The Third Department affirmed the judgment granted in favor of the diocese, concluding -- despite the existence of deeds indicating that the local parish held unrestricted title to three parcels of land surrounding the church -- that the property was held in trust for the benefit of the diocese and hierarchical church.

Here, applying the neutral principles of law approach to the case at bar, we find that there is nothing in the deeds

that establishes an express trust in favor of the Rochester Diocese or National Church. All Saints' Certificate of Incorporation, further, does not indicate that the church property is to be held in trust for the benefit of either the Rochester Diocese or the National Church. Nor does any provision of the Religious Corporation Law conclusively establish a trust in favor of the Rochester Diocese or National Church.⁸

The remaining factor for consideration under neutral principles, however, requires that we look to "the constitution of the general church concerning the ownership and control of church property." It is this factor that we find dispositive. We conclude that the Dennis Canons clearly establish an express trust in favor of the Rochester Diocese and the National Church (see Jones, 443 US at 606), and that All Saints agreed to abide by this express trust either upon incorporation in 1927 or upon recognition as a parish in spiritual union with the Rochester Diocese in 1947. We therefore need not consider the existence of an implied trust. In agreeing to abide by all "canonical or legal enactments," it is unlikely that the parties intended that the local parish could reserve a veto over every future change in the canons. We find it significant, moreover, that All Saints never objected to the applicability or attempted to remove itself

⁸ However, since All Saints was incorporated under Article III of the Religious Corporation Law, which only covers "Protestant Episcopal Parishes or Churches," we can conclude that it was a part of the Episcopal Church and Rochester Diocese until it became extinct in 2005.

from the reach of the Dennis Canons in the more than twenty years since the National Church adopted the express trust provision (cf., First Presbyterian, 62 NY2d at 125).

In conclusion, plaintiffs have established that they are entitled to the real and personal property at issue and defendants have not raised any triable issue of fact to preclude this determination. We have considered defendants' remaining arguments in support of their declaratory judgment action and conclude that they lack merit. With regard to defendant's Article 78 petition, we conclude as did the Appellate Division, that plaintiffs' resolution deeming the parish "extinct" was a non-reviewable ecclesiastical determination (see Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana, 9 NY3d 282 [2007]).

Accordingly, the Appellate Division orders should be affirmed, with costs.

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Orders affirmed, with costs. Opinion by Judge Jones. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

Decided October 23, 2008