

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 24, 2008 Session

**AVONDALE CHURCH OF CHRIST, ET AL. v. MERRILL LYNCH, ET AL.**

**Appeal from the Chancery Court for Hamilton County  
No. 04-0538    Howell N. Peoples, Chancellor**

**No. E2007-02335-COA-R3-CV - FILED NOVEMBER 10, 2008**

This case involves a dispute between two factions of members of the Avondale Church of Christ over who should control the property of the church. The trial court, finding that the church was congregationally governed, that the church had no written bylaws or procedures to resolve the dispute, and that the factions had reached an impasse, ordered that a vote be taken by the members to determine who should be in “control of Avondale Church of Christ property and funds and leadership of the church.” We find no error in the trial court’s resolution of the issue of who should control the church’s property and funds, but that the trial court had no jurisdiction to order the church to vote to determine the broader question of “the leadership of the church.” We affirm the trial court’s ruling that a group of members known as the Men’s Business Committee had the sole authority to make decisions regarding the property of the church, in accordance with the vote of a large majority of the members. We vacate the trial court’s order that the “Men’s Business Committee is the proper leadership” of the church and its order affirming and enforcing a subsequent decision of the Committee to terminate the minister’s employment because these are ecclesiastical issues over which a civil court has no jurisdiction pursuant to the First and Fourteenth Amendments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part  
and Vacated in Part; Case Remanded**

SHARON G. LEE, SP. J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

Sandra G. Olive, Knoxville, Tennessee, for the Appellants, Frank T. Bradford, Earl T. Cullins, II, Jarrett Stone, and Gerald Taylor, Sr.

John R. Anderson and Robert S. Grot, Chattanooga, Tennessee, for the Appellees, Samuel L. Cosley, Charles E. Hudson, Robert Labron Smith, Herbert Jones, Jr., John E. Tucker, Edward Houston, James Earl Jones, and Reuben Fifer.

Ron D. Powers, Chattanooga, Tennessee, for the Appellee, SunTrust Bank.

## OPINION

It appears that the genesis of the dispute that eventually split the Avondale Church of Christ (“the church” or “Avondale”) into two opposing factions was the decision of the minister, Gerald Taylor, Sr., to change the leadership structure of the church. Minister Taylor announced this decision in late 2003 and attempted to implement it in the first half of 2004. Prior to that time, the church had been governed by men attending the “Men’s Business Meeting,” a monthly meeting open to all male members of the church. The church had no written documentation regarding its structure, governance, or church polity.

On March 14, 2004, after the Sunday morning service, minister Taylor asked the members to stay so he could present the men he had chosen for the new church leadership. Minister Taylor announced the selection of eight men and stated that they would be “observed and tested” for a period of time and that the actual selection and ordination of elders and deacons would occur in January of 2005. The testimony regarding the reaction of the members of the congregation describes a wide variety of responses, but the parties generally agree that some of the members seemed to express satisfaction with the announcement, and others expressed shock and disapproval. Minister Taylor asked those who were in support of the new leadership decision to stand; some stood and some did not. The testimony was conflicting regarding whether a majority stood, and it is undisputed that, as stated in the Appellants’ brief, “[t]here was no head count taken of the actual number or identification of members who were present to express approval or disapproval on March 14, 2004, nor was there an actual count of those who approved or disapproved of these men.”

The congregation divided into two factions fairly shortly after minister Taylor announced his proposed leadership change. On May 2, 2004, the eight named Defendants in this case, led by Samuel L. Cosley, who had been the predominant person in charge of the church’s finances since around 1976 prior to the change, met in Mr. Cosley’s office and drafted a letter of termination of minister Taylor’s employment. This group of men (the “Cosley faction”) presented the termination letter to minister Taylor shortly thereafter. Minister Taylor apparently left the church premises for a brief period of time, but shortly thereafter returned to the pulpit.

Plaintiff Frank T. Bradford became the person in charge of the church’s finances under the proposed new leadership scheme. At the time the controversy erupted, Avondale had approximately \$12,000 in its operating fund, deposited with SunTrust Bank, and approximately \$95,000 on deposit with Merrill Lynch. Mr. Bradford decided to move the church’s funds from SunTrust to another bank. On May 5, 2004, SunTrust issued Mr. Bradford an official check in the amount of \$9,800, but shortly afterward on the same day, SunTrust issued to Mr. Cosley another official check in the same amount and drawn from the same account, apparently due to an error or oversight. The ensuing confusion resulted in SunTrust refusing to honor the check to Mr. Bradford and some of the checks written by the church being returned for insufficient funds. Mr. Bradford and several others also inquired at Merrill Lynch about the church’s account there, and it appears that they were told that only Mr. Cosley and/or a couple of other members of the Cosley faction had authority to access the account.

On May 19, 2004, eight members<sup>1</sup> of the church, including Mr. Bradford and minister Taylor (the “Bradford faction”), filed this lawsuit against Merrill Lynch, SunTrust, and eight members of the Cosley faction. Shortly thereafter, Merrill Lynch paid into court the amount of the church’s account and was voluntarily dismissed by agreed order. SunTrust also paid into court the remaining balance of the church’s funds in its account. The Cosley faction answered and subsequently amended its answer to include a counterclaim against the Bradford faction. Each faction claimed the authority to control the property of the church.

Following an unsuccessful attempt at judicial mediation, the trial court heard testimony on April 6, 7, and 12 of 2006, and entered an order finding as follows in pertinent part:

From the testimony of witnesses in open court and the argument of counsel, the Court finds and is of the opinion that a dispute arose among the congregation of Avondale Church of Christ on March 14, 2004, that the property rights of Avondale Church of Christ are at stake so that the Court can assert jurisdiction over the dispute, that Avondale Church of Christ did not have ordained elders as of March 14, 2004 who had the authority to resolve the dispute, that Avondale Church of Christ is a congregational church, and that a vote of those who were members of the congregation of Avondale Church of Christ as of March 14, 2004 should be conducted to determine whether Avondale Church of Christ should be governed by a men’s business meeting or the leadership team as proposed by Minister Gerald Taylor to the congregation.

The trial court ordered the parties to compile a list of those persons agreed to be members on March 14, 2004, and a list of those persons whose membership was in dispute, and the court scheduled a hearing “to discuss what process will be utilized to resolve the remaining disputes as to who shall be considered to have been members of [the church] as of March 14, 2004, to set a date to conduct the vote, and to deal with any other matters that should be addressed prior to the vote.”

Following that hearing on May 2, 2006, the trial court appointed a special master to hear evidence regarding the individuals whose membership was in dispute. The Clerk and Master filed a report listing 180 members and 53 persons found to be non-members as of March 14, 2004. The Bradford faction filed an objection to the report arguing that “the evidence is insufficient for the following proposed members to be eligible to vote” (objecting to 28 persons found to be members) and listing five persons that they argued should have been found eligible to vote as members, but were not. The trial court entered an order confirming and accepting the Master’s report with the addition of three of the persons proposed by the Bradford faction to be members to the list of eligible voters, bringing the total number of eligible voters to 183.

The vote was held on June 17, 2007. The ballot provided a choice regarding which group would hold “control of Avondale Church of Christ property and funds and leadership of the Church” – either the “Men’s Business Committee” (propounded by the Cosley faction) or the

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<sup>1</sup> Several of the Plaintiffs were subsequently dismissed, leaving the number of Plaintiffs at time of disposition of the case at less than eight.

“Minister’s Leadership Team” (propounded by the Bradford faction). Of the 127 votes cast, the members of the congregation voted in favor of the Men’s Business Committee by a vote of 96 to 31. Based on the results of the vote as reported and certified by the Master, the trial court entered an order ruling that “the Men’s Business Committee is the proper leadership of Avondale Church of Christ [and] . . . has the sole authority and power to make decisions regarding the property rights of Avondale Church of Christ.”

On August 11, 2007, the Men’s Business Committee met and unanimously voted (1) to dismiss Gerald Taylor, Sr., as minister of the church, (2) to dismiss the lawsuit against SunTrust Bank, and (3) to appoint two men, Samuel Cosley and John Tucker, to control the property of the church on behalf of the congregation. The final judgment of the trial court in effect ratified the actions of the Men’s Business Committee, holding that “it had the power to take [such] actions” and further stating as follows:

It is further hereby **ORDERED** that Gerald Taylor, Sr. has been terminated as the minister of Avondale Church of Christ pursuant to the unanimous vote of the Men’s Business Committee on August 11, 2007. It is further hereby

**ORDERED** that the claims asserted by Avondale Church of Christ against SunTrust Bank are dismissed without prejudice . . . It is further hereby

**ORDERED** that individual Defendants Samuel Cosley and John Tucker shall control the real and personal property of Avondale Church of Christ on behalf of the congregation pursuant to the unanimous vote of the Men’s Business Committee on August 11, 2007.

## ***II. Issues Presented***

Several Plaintiffs who are members of the Bradford faction have appealed, raising the following issues as restated:

1. Whether the trial court had subject matter jurisdiction to address and decide the issues of: (a) who should control the church’s property on behalf of the church; (b) who should comprise “the leadership of the church”; and (c) the propriety of the decision of the Men’s Leadership Committee to terminate Gerald Taylor’s employment as minister of the church.

2. If the trial court did have subject matter jurisdiction, whether it committed reversible error in its order that the church conduct a vote to decide these issues, in its supervision of the voting process, and its judgment reflecting the will of the majority of the church members.

## ***III. Analysis***

### ***A. Standard of Review***

In a non-jury case such as this one, we review the record de novo with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's conclusions of law are reviewed de novo and are accorded no presumption of correctness. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993). Because "a determination of whether subject matter jurisdiction exists is a question of law," our standard of review of that issue is de novo, without a presumption of correctness. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

### ***B. Subject Matter Jurisdiction of Church Property Disputes***

We begin our analysis with the fundamental constitutional premise that "courts in this country do not exercise jurisdiction over purely ecclesiastical, religious, or theological disputes. Courts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience." *Anderson v. Watchtower Bible & Tract Soc'y of New York, Inc.*, No. M2004-01066-COA-R9-CV, 2007 WL 161035, at \*4 (Tenn. Ct. App. M.S., filed Jan 19, 2007) (quoting *Bentley v. Shanks*, 348 S.W.2d 900, 903 (Tenn. Ct. App. 1960)). This ecclesiastical abstention doctrine is rooted in the First and Fourteenth Amendments to the United States Constitution. *Id.* As this court noted in *Anderson*, "a consequence of this Nation's fundamental belief in the separation of church and state is that, under most circumstances, the First and Fourteenth Amendments preclude civil courts from adjudicating church fights that require extensive inquiry into matters of 'ecclesiastical cognizance.'" *Id.* at \*5; see also *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976); *Travers v. Abbey*, 58 S.W. 247 (Tenn. 1900). Consequently, "civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice." *Anderson*, 2007 WL 161035, at \*4; *Milivojevich*, 426 U.S. at 709; *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 446-47 (1969).

However, not all disputes between factions of a church involve disagreements over religious doctrine, church policy, or matters of faith. The United States Supreme Court has stated that civil courts may exercise jurisdiction over intrachurch property disputes under certain circumstances:

[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law,

developed for use in all property disputes, which can be applied without “establishing” churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, ***School District of Township of Abington, Pa. v. Schempp***, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

***Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church***, 393 U.S. 440, 449 (1969). And as this court recently stated in ***Anderson***, our state courts have exercised subject matter jurisdiction over intrachurch disputes involving civil or other property rights, as long as the resolution does not require excessive entanglement in matters of religion or church doctrine:

Even where intrachurch disputes occur, as in the case before us, courts still have jurisdiction to decide some issues, as long as that resolution will not require the court to engage in extensive inquiry into religious law or doctrine. ***Burgess v. Rock Creek Baptist Church***, 734 F.Supp.[30] at 32 [D.D.C. 1990] (stating that courts can adjudicate church disputes “under narrow circumstances.”) Where a court can decide a dispute within a church without unduly entangling itself in matters of doctrine or essentially religious questions, the First Amendment may permit a court to adjudicate the matter. ***Milivojevich***, 426 U.S. at 710.

For example, where resolution of an intrachurch property dispute does not risk the prohibited court entanglement and involves only nondoctrinal matters, courts may decide such controversies. In doing so, they apply “neutral principles of law” developed for use in all property disputes. ***Jones v. Wolf***, 443 U.S. 595, 604, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (holding that a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute so long as there [is] no need to examine a church’s ecclesiastical polity or doctrine); ***Presbyterian Church v. Mary Elizabeth Hull Memorial Presbyterian Church***, 393 U.S. at 449 (holding that the state has a legitimate interest in adjudicating disputes over church property but may only use neutral principles of law).

The neutral principles approach, created originally to deal with church property disputes, has been used by courts in other types of cases involving civil rights. Tennessee courts have exercised

jurisdiction over actions arising from intrachurch disputes when other civil or property rights are involved. *Ward v. Crisp*, 189 Tenn. 513, 226 S.W.2d 273, 275 (Tenn. 1949) (involving construction of trust on church property); *Crenshaw v. Barbour*, 162 Tenn. 235, 241, 365 S.W.2d 87, 90 (1931); *Rodgers v. Burnett*, 108 Tenn. 173, 65 S.W. 408, 410 (1910). Nonetheless, they have been careful in those cases to decide only the issues dealing with the civil or property right involved using neutral principles of law. *Landrith v. Hudgins*, 121 Tenn. 556, 120 S.W. 783, 807 (Tenn. 1908); *Nance v. Busby*, 18 S.W. at 879; *Fairmont Presbyterian Church, Inc. v. Presbytery of the Holston of the Presbyterian Church of the United States*, 531 S.W.2d 301, 306 (Tenn. Ct. App. 1975).

*Anderson*, 2007 WL 161035, at \*6-7; see also *Nance v. Busby*, 18 S.W. 874 (Tenn. 1892) (holding that “[t]he jurisdiction of a civil court to adjudge any ecclesiastical matter must result as a mere incident to the determination of some property right,” and that “if, to determine a property right, it becomes necessary to adjudge an ecclesiastical question, the courts will go only so far as is necessary to determine the effect of ecclesiastical law or relations on property rights.”).

In the present case, there is no dispute that the Avondale Church of Christ is congregationally governed, as opposed to being part of a “connectional” or “hierarchical” church or body of churches. It is also undisputed that there is no written documentation that has been adopted by the church providing for governance, dispute resolution, or church polity, and that at the time the controversy and ensuing lawsuit arose, the church had not elected and ordained ruling elders, but that the church was governed by the Men’s Business Committee – the male members of the church choosing to attend a monthly meeting. In the seminal case of *Nance v. Busby*, our Supreme Court over a century ago held that under circumstances such as these, intrachurch property disputes are to be decided by a “pure democracy/majority rule” system, stating:

When two factions in the same congregation disagree as to which is entitled to the control of the church property, and both sides profess adherence to the same faith and practices, the right must depend upon the will of the majority, unless there be shown some law, regulation, rule, or practice of the church determining otherwise.

*Nance*, 18 S.W. at 875.

Subsequent decisions by Tennessee courts involving intrachurch property disputes in congregationally-governed churches have followed and applied *Nance*. See *McGee ex rel. Bridgwood Baptist Church v. Holmes*, 182 S.W.3d 293 (Tenn. Ct. App. 2005) (holding trial court’s actions of twice ordering a vote of church members, conducted by special master, on question of whether to pursue a lawsuit to be “reasonable and within the scope of its authority”); *Royal Heights Church of Christ v. Williams*, 1987 WL 18670, at \*3 (Tenn. Ct. App. M.S., filed Oct. 21, 1987) (stating “it is evident that the possibility of ever resolving the differences between

the factions was nil” and affirming the trial court’s holding that “the faction representing the majority of the congregation should prevail”); *Padgett v. Verner*, 366 S.W.2d 545, 549 (Tenn. Ct. App. 1963) (stating that an independent or congregational religious society “is a pure democracy and ‘the will of the majority, when duly and regularly expressed through the appointed channels of the society, ordinarily prevails’”); *Cannon v. Hickman*, 4 Tenn. App. 588, 1927 WL 2091, at \*3 (Tenn. Ct. App. 1927) (finding that “[t]he government of Primitive Baptist Churches is purely congregational, wherein the majority vote of the church controls.”).

These cited cases, in addition to the *Murrell* and *Lewis* opinions discussed below, also support the proposition that when two opposing factions in a congregational church reach an apparently irresolvable deadlock or impasse in a property dispute, a civil court will assume jurisdiction to assist the resolution when requested by one of the factions. The court in *Murrell v. Bentley*, 286 S.W.2d 359 (Tenn. Ct. App. 1954), faced with a similar congregational church property dispute, stated the following in pertinent part:

Of course, the general rule is reiterated many times in our cases that matters of dispute concerning the internal affairs and management of a religious organization are not subject to review by the civil courts. *Mason v. Winstead*, 196 Tenn. 268, 265 S.W.2d 561; *Nance v. Busby*, 91 Tenn. 303, 18 S.W. 874, 15 L.R.A. 801.

However, under the authority of *Cannon v. Hickman*, 4 Tenn. App. 588, we hold that the Chancery Court had jurisdiction to determine which of these two groups was entitled to manage the affairs of the Church because as a result of their disputes the Church had obviously reached an impasse. The bank account was tied up and each side seemed determined not to yield or to submit to further negotiations on the controversy.

*Murrell v. Bentley*, 286 S.W.2d 359, 365 (Tenn. Ct. App. 1954). The *Murrell* court quoted *Lewis v. Partee*, which stated in relevant part:

It is unquestionably true that the courts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience; nor will they in fact undertake to revise or to inquire into the propriety or justice of the action of a church upon any matter not affecting a property or civil right. But in order that the members of a church may enjoy their property rights, and the right to worship in their property undisturbed, as a church or as a membership of the church, the courts will inquire and decide as to what parties certain church property belongs to or is rightfully in possession of; and they will inquire into the fact whether a certain person has been elected pastor or is pastor, or whether certain persons are deacons or trustees, or whether certain persons have been excommunicated from the church or are still members of the church, in order to protect the church and its membership in the enjoyment of their property rights, and their civil liberty to worship

undisturbed by threats and violence, or from trespasses by those who are not officers and members of the church.

*Lewis v. Partee*, 62 S.W. 328, 333 (Tenn. Ch. App. 1901); *see also Church of God in Christ, Inc. v. Middle City Church of God in Christ*, 774 S.W.2d 950, 953 (Tenn. Ct. App. 1989) (noting, in dicta, “should there b[e] a true impasse relating to property rights, then intervention may be required”).

Based on the foregoing and under the particular circumstances presented here, we hold that the trial court did have jurisdiction to decide the question of who should control the property of the church on its behalf, and that the trial court did not err in ordering a vote to take place on that specific question in order to determine the will of the majority. Were we to hold otherwise, it seems likely that the church would be facing the real possibility of having its assets tied up in court in perpetuity with no acceptable and peaceable means to resolve the property dispute. As the United States Supreme Court observed in *Jones v. Wolf*, “[t]he State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.” *Jones v. Wolf*, 443 U.S. at 602. The trial court in this case was placed in the unenviable position of dealing with two factions that not only were unable to agree on who should control the property of the church, but also were unable to agree as to who should be eligible to vote on the question, how the vote should take place, and what the wording on the ballot should be. The special master and trial judge made substantial efforts in their attempt to make sure both sides were heard and had an opportunity to propose voting procedures or object to proposed procedures.

Although the Bradford faction on appeal (largely after the fact) objects to certain aspects of the voting procedures established by the trial court as unfair, such as its refusal to provide for absentee voting and its allowance of some of the minors to vote, we are of the opinion that the voting procedure was conducted in a fair and impartial manner. The impact of these alleged imperfections is also lessened somewhat by the lopsided outcome of the vote – a vote in favor of the Men’s Business Committee by 96 votes to 31, a margin of more than three to one. If every decision regarding voting procedure requested by the Bradford faction had been determined in its favor, *i.e.*, if among other things the court were to have thrown out the votes of all those persons objected to by the Bradford faction as ineligible to vote, and assuming all those thrown out would have voted for the Men’s Business Committee propounded by the Cosley faction, the Men’s Business Committee would still have easily won the majority vote.

The Bradford faction raises several issues on appeal that were not raised at the trial level, and makes arguments here that were never presented to the trial court for a ruling. First, the Bradford faction argues that the eight named Defendants of the Cosley faction were “disfellowshipped” (expelled from the church) in June of 2004, prior to the filing of their counterclaims, and that they therefore had no standing or authority to bring their counterclaims. However, the Bradford faction’s filed response to the Cosley faction’s motion for leave to file an amended answer and counterclaim does not assert or otherwise mention the alleged disfellowshipping. Moreover, the Bradford faction’s answer to the counterclaim, filed on February 7, 2006, states that “it is denied that they [the eight named Defendants] are the rightful representatives *although it is admitted that they are still members of the Church.*” (Emphasis added). The Bradford faction did not raise the issue of the alleged disfellowshipping and its potential consequences at the trial level.

Secondly, the Bradford faction argues that the Church ordained two men, Plaintiffs Mr. Bradford and Jarrett Stone, as elders in January of 2005, rendering any further decision of the trial court moot. There is little testimony in the record regarding the alleged ordination, and the testimony cited in the Bradford faction's brief certainly does not unequivocally support the assertion that the ordination actually took place. But in any event, the Bradford faction did not make this argument to the trial court that the alleged ordination of elders (which, if done, was done well after the schism and the filing of this lawsuit) rendered the property dispute issues of this case moot. The trial court made no findings of fact regarding the alleged ordination or its effect; nor did the trial court make a finding on the issue of the alleged disfellowshipping because the Bradford faction did not request it of the trial court. Because these issues were not raised at trial and it is well-settled that an issue not raised in the trial court will not be entertained on appeal, *In re Adoption of E.N.R.*, 42 S.W.3d 26, 32 (Tenn. 2001), we find that the Bradford faction's arguments on appeal regarding disfellowshipping and the subsequent ordination of elders to be without merit.

The Bradford faction takes issue on appeal with certain of the trial court's factual findings, arguing in particular that the trial court should have found that the congregation's action on March 14, 2004, in response to minister Taylor's announcement to his proposed leadership team reflected an approval of the majority, and that this "vote" should have been upheld by the trial court. But our review of the testimony in the record supports the conclusion that the evidence does not preponderate against the trial court's finding that it was impossible to tell what was done by a majority of the people in the congregation that day. The trial court did not err in ordering a vote to determine who should be in control of the property of the church.

### ***C. Subject Matter Jurisdiction Regarding Church Leadership, Governance, and Decision to Terminate Minister's Employment***

We are of the opinion that the trial court's order was unduly broad, however, in mandating that the congregation vote on "the leadership of the church." The issue of who should comprise the leadership of the church, a question significantly broader and more all-encompassing than that of who should control the church property, involves a deeper foray into the thicket of religious belief and church policy than was necessary to resolve the property dispute. "[W]hen our courts have taken jurisdiction over an action arising from an ecclesiastical dispute, they have been careful to decide *only the issues dealing with the civil or property right involved* using neutral principles of law." *Foster v. Collins*, No. W2004-01959-COA-R3-CV, 2005 WL 3527656, at \*6 (Tenn. Ct. App. W.S., filed Dec. 27, 2005) (emphasis added). The Tennessee Supreme Court noted long ago that "[w]hen a civil right depends upon an ecclesiastical matter it is the civil court and not the ecclesiastical which is to decide. But *the civil tribunal decides the civil right and no more*, taking the ecclesiastical decisions out of which the civil right arises, as it finds them." *Landrith v. Hudgins*, 120 S.W. 783, 807 (Tenn. 1907) (emphasis added).

We therefore conclude that the trial court was without subject matter jurisdiction to order a determination of "the leadership of the church." The congregation of the church is, of course, free to determine for itself by whatever means it finds appropriate, including majority rule by vote, the question of its leadership. The trial court simply had no jurisdiction to order such a

determination because it involves a thoroughly ecclesiastical matter and encompasses broader issues than necessary to resolve the impasse over property rights.

We also hold that the trial court had no subject matter jurisdiction to address and decide the issue of the propriety of the decision of the Men's Leadership Committee to terminate Gerald Taylor's employment as minister of the church, nor to either affirm or reverse that decision. Our cases make it clear beyond purview that "decisions as to hiring or firing of pastors, as well as other issues regarding minister employment, are protected from court inquiry because such decisions necessarily involve questions of religious practice or governance." *Anderson*, 2007 WL 161035, at \*14; *see also Mason v. Winstead*, 265 S.W.2d 561, 563 (Tenn. 1954) ("the removal of a pastor is an ecclesiastical matter, and the tribunals of the church have exclusive authority in such cases without interference from the civil courts."); *Travers v. Abbey*, 58 S.W. 247 (Tenn. 1900); *Foster*, 2005 WL 3527656, at \*6. Therefore, the trial court was without jurisdiction to enter a judgment ordering "that Gerald Taylor, Sr. has been terminated as the minister of Avondale Church of Christ pursuant to the unanimous vote of the Men's Business Committee on August 11, 2007."

#### *IV. Conclusion*

For the aforementioned reasons, the trial court's ruling that the Men's Business Committee had the sole authority to make decisions regarding the property of the church, in accordance with the vote of a large majority of the members, is affirmed. The trial court's order dismissing the claims of Avondale Church of Christ against SunTrust Bank is affirmed. The trial court's order that the "Men's Business Committee is the proper leadership" of the church and its order affirming and enforcing the subsequent decision of the Committee to terminate the minister's employment is vacated, because these are ecclesiastical issues over which the trial court has no jurisdiction. Costs on appeal are assessed one-half to the Appellants, Frank T. Bradford, Earl T. Cullins, II, Jarrett Stone, and Gerald Taylor, Sr., and one-half to the Appellees, Samuel L. Cosley, Charles E. Hudson, Robert Labron Smith, Herbert Jones, Jr., John E. Tucker, Edward Houston, James Earl Jones, and Reuben Fifer.

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SHARON G. LEE, SPECIAL JUDGE