

REPORTER' S RECORD  
VOLUME 3 OF 3 VOLUMES  
TRIAL COURT CAUSE NO. C2010343

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RONALD D. WENNER, TRUSTEE	)	IN THE DISTRICT COURT
OF THE CYNTHIA BRANTS	)	
CHARITABLE REMAINDER UNITRUST	)	
VS.	)	HOOD COUNTY, TEXAS
THE EPISCOPAL CHURCH; THE	)	
EPISCOPAL DIOCESE OF FORT	)	
WORTH; THE CORPORATION OF THE	)	
EPISCOPAL DIOCESE OF FORT	)	
WORTH; ET AL	)	355TH JUDICIAL DISTRICT

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BENCH TRIAL

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On the 14th day of July, 2010, a Bench Trial came on to be heard in the above-entitled and -numbered cause, and the following proceedings were had before the Honorable Ralph Walton, Jr., Judge Presiding, held in Granbury, Hood County, Texas:

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July 14, 2010

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1 P R O C E E D I N G S

2 July 14, 2010

3 THE COURT: C2009233, Wenner versus  
4 Brants. I mean -- pardon me -- Episcopal Church et al. And  
5 this is a hearing on multiple motions, and we'll take them  
6 up at this time. And the first one will be amended joint  
7 motion for signing of orders from June 2nd.

8 THE COURT: All right. Mr. Sharpe.

9 MR. SHARPE: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. SHARPE: Your Honor, this is old  
12 business from the June 2 hearing. We have submitted  
13 proposed orders, the opposition has also submitted proposed  
14 orders. The substance of the orders is basically the same,  
15 it's only the form where we have a difference of opinion.  
16 We have used the legal name that appears in the Secretary of  
17 State's office. We have distinguished ourselves from the  
18 opposition by who the attorneys are. They are trying to add  
19 an ecclesiastical relationship for distinction, and while  
20 the Court has previously signed orders that had that in it,  
21 there's nothing that requires the Court to continue to make  
22 that distinction. We believe that they're clearly separated  
23 out, and, Your Honor, we would think that the form of those  
24 orders is such that the Court should go ahead and sign them.  
25 Thank you.

1 THE COURT: All right.

2 MS. WELLS: Your Honor, Catherine Wells  
3 for the Episcopal parties here. We submitted proposed  
4 orders to you and also a red-line version of Mr. Sharpe's  
5 orders to show what our specific objections were. As you  
6 know, it's pretty confusing to keep up with the parties in  
7 this case, since we all seem to be using the same names.  
8 One of the things we've been trying to do is figure out a  
9 way to distinguish the parties so that the orders actually  
10 accurately represent who the parties are, instead of letting  
11 them be confused. We want this court's orders to be very  
12 clear about who's what, and not to infer that the Court has  
13 made any rulings on the merits as to who is the legitimate  
14 continuing diocese and corporation and St. Andrews. So,  
15 with that in mind, we've asked the Court -- we submitted  
16 orders to ask the Court to make those changes to refer not  
17 only to the attorneys but also to the ecclesiastical  
18 affiliation, which the Court has -- has done in -- in other  
19 orders. We would like to continue that so that the Court's  
20 orders are clear.

21 In addition, there is, in one of the  
22 orders, an effort to award attorney fees, which were not  
23 even asked for in the motion, so we would like for that not  
24 to be stricken. We've also tried to use exact words of the  
25 relief sought in the motions. And the -- those are the main

1 points for -- for the objections of the notations that we've  
2 made on the red-line copies, showing the -- the -- our  
3 objections to their orders. And I have a copy -- I have  
4 proposed orders based on our submissions, Your Honor

5 THE COURT: And yours is the one that  
6 makes the reference to the use -- use of the terminology  
7 "Southern Cone"?

8 MS. WELLS: Yes, sir.

9 THE COURT: All right. I grant  
10 Mr. Sharpe's motion.

11 MR. SHARPE: Thank you, Your Honor. And  
12 the proposed orders are before you there.

13 THE COURT: Yes, sir.

14 MR. SHARPE: Thank you. I do have a  
15 proposed order that just grants the motion, plain vanilla,  
16 if the court would like for me to present that to you. It  
17 simply does what the Court --

18 THE COURT: Well, I have a motion  
19 here -- I mean -- pardon me -- an order granting motions to  
20 sever and pleas in abatement.

21 MR. SHARPE: Those are the orders  
22 itself. This was an order on our motion granting that, is  
23 what this is. (Indicating)

24 THE COURT: Oh, all right. All right.

25 MR. SHARPE: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 All right. Next is the Motion to Strike  
3 Plea in Intervention, and Objections and Responses of  
4 Intervenor and Episcopal Defendants to Amended Joint Motion  
5 for Summary Judgment, and Motion to Strike the Response of  
6 Carter Museum with the Amended Joint Motion for Summary  
7 Judgment. And -- and I have those motions before me here.

8 MR. SHARPE: Your Honor, I'll be  
9 speaking on behalf of the joint movant.

10 MR. NELSON: Your Honor, let me see if I  
11 can short-circuit part of this.

12 THE COURT: All right.

13 MR. NELSON: As it relates to the Motion  
14 to Strike the Amended Motion for Summary Judgment, we  
15 recognize clearly that the Court entered an order, striking  
16 the original Motion for Summary Judgment, but because it was  
17 an amendment, we felt just to protect the record that we  
18 needed to file an amended response, understanding what the  
19 Court did, just protecting the record, so I don't need to  
20 make any argument on it unless the Court is going to revisit  
21 its order of striking the motions for summary judgment  
22 originally filed, then the Court just can make a ruling on  
23 that portion of it.

24 THE COURT: All right. All right.

25 MR. SHARPE: Your Honor, I think what he

1 meant was the response to the motion for summary judgment,  
2 not -- not the motions themselves.

3 MR. NELSON: No, no, no, the response.

4 THE COURT: All right. All right.

5 Fine.

6 MR. SHARPE: Okay.

7 THE COURT: You may proceed.

8 MR. SHARPE: Your Honor, the plea in  
9 intervention as originally filed was based upon the mandamus  
10 opinion that the Fort Worth Court of Appeals handed down on  
11 June 25.

12 MR. NELSON: Your Honor, again, I  
13 apologize, but -- but -- but under Rule 60, the  
14 intervention, once there is a motion to strike, the burden  
15 is shifted to the intervenor to prove a justiciable interest  
16 in the lawsuit, and because of that, I believe that  
17 procedurally we should be allowed to -- to open and close  
18 that argument.

19 MR. SHARPE: I have no problem with  
20 that, Your Honor, if they wish to put on evidence to try to  
21 prove that. I think the pleadings speak for themselves, but  
22 if they wish to put on evidence and the Court wishes to hear  
23 it, that would be fine. Otherwise, movants would be the one  
24 to open the argument and then to conclude.

25 THE COURT: All right. Mr. Nelson.

1 MR. NELSON: Thank you, Your Honor.  
2 Rule 60 authorizes a party with a justiciable interest in  
3 the pending suit to intervene in a suit as a matter of  
4 right, that is, when a party's interests will be affected by  
5 the litigation. In addition, the second prong of that test  
6 is when the party could bring that lawsuit in his or her own  
7 names. As I have said, once the motion to strike is filed,  
8 the burden shifts to the intervenor. And as the Caprock  
9 Investment Corporation case states the Court may look at and  
10 we may utilize documentary evidence to justify the  
11 justiciable interest of, in this case, Bishop Ohl. That,  
12 we have on Page 5 of our response to the motion to strike,  
13 and it sets out specifically what the documentary evidence  
14 will be and have been -- have used to justify Bishop Ohl's  
15 being an intervenor in this case.

16 And this is, in shorthand rendition,  
17 what the evidence shows. St. Andrews at the present time --  
18 at the present time is under mission status and, under the  
19 canons and Constitution of the Episcopal Church,  
20 specifically Canon 21, Bishop Ohl, as the bishop, becomes  
21 the leader of that church, of St. Andrews Episcopal Church,  
22 and as the leader, some of his functions but not all of his  
23 functions are to hold meetings, to establish the mission, to  
24 appoint and remove vicars and also to oversee the temporal  
25 nature of that church, including all financial matters.

1 Therefore, in the intervention, Bishop Ohl is the one, as  
2 the head of that church, to be able to determine how best to  
3 distribute the proceeds from the Brants Trust. He is also  
4 obviously the one or -- or, our argument is, the one to  
5 receive those funds. He, in fact, under the canons and  
6 constitution of the Episcopal Church, is charged with a duty  
7 to protect the interests and to ensure that those funds are  
8 used for the purposes of the Episcopal Church. In addition,  
9 Bishop Ohl, as the bishop of the Episcopal Diocese of Fort  
10 Worth, has a justiciable interest as a bishop because of  
11 Canon 1.7.4, the Dennis canon. That canon states that  
12 parish property, both real and personal, which would include  
13 trust proceeds, are held in trust for two entities; first,  
14 for the church in the United States of America, and, second,  
15 for a diocese which is affiliated and has acceded to the  
16 Episcopal Church in the United States of America. So, under  
17 that provision, Bishop Ohl, as the bishop of the diocese,  
18 has a justiciable interest in the proceeds. Will this  
19 lawsuit affect his interest? Of course it will. It has to.  
20 What is the trustee asking this court to do? The trustee is  
21 asking in the declaratory judgment, which is Paragraph I of  
22 their First Original Amended Petition, is asking -- I'm  
23 sorry -- 10 -- it's asking the Court to determine which one  
24 of the factions is entitled to the distribution or the  
25 proceeds of the Brants Trust. And so clearly Bishop Ohl has

1 a justiciable interest in this lawsuit and its outcome,  
2 because this court is going to have to determine who  
3 receives those funds and who has a right to utilize those  
4 funds, cash them, distribute them, use those funds, and so  
5 he has, in -- in fact, has a justiciable interest.

6           The second prong, could Bishop Ohl have  
7 brought this lawsuit? The answer is, unequivocally, "Of  
8 course, he could have." The case law, the ones cited in our  
9 response to the motion to strike, clearly show that.  
10 In the trust code, apart from the case law, the trust code,  
11 in Section 115.001(a) and .011(a) states, quote, "An  
12 interested person may sue to ascertain beneficiaries of the  
13 trust, construe the trust instrument, and many other  
14 duties." That code defines an interested person as, quote,  
15 "a beneficiary," unquote, and, quote, "Any person who is  
16 affected by the administration of the trust." So under the  
17 trust code itself, the plain language, Bishop Ohl is, in  
18 fact, a proper intervenor because he does have a justiciable  
19 interest under the trust code.

20           In addition to that, the case law  
21 supports our position. For instance, in the Lokey case, the  
22 Supreme Court held that a Methodist minister who was part of  
23 a group, a committee charged with a duty and responsibility  
24 concerning the distribution of trust proceeds, the Supreme  
25 Court of Texas said that minister had standing to be in that

1 lawsuit. In addition, the Gray case involved a mere  
2 parishioner who sued concerning the distribution of trust  
3 assets, and the court said that that parishioner, not a  
4 leader of the church, not one seeking control of the church,  
5 but that parishioner had standing to what? To intervene.  
6 That case is on all fours. And if a parishioner in that  
7 court could intervene as an interested person and have a  
8 justiciable interest, it is beyond belief that Bishop Ohl  
9 cannot. There is no legal reason and there is no factual  
10 reason.

11 In addition to that, the argument that  
12 seems to be made by the opposition is this, that Bishop Ohl  
13 has no justiciable interest for two reasons. This court,  
14 they say, is not being asked to decide which competing group  
15 is entitled to receive distributions from the Brants Trust.  
16 That is exactly wrong. That is exactly what Paragraph 10 of  
17 First Amended Original Petition of the trustee is seeking.  
18 That's what it says. Second, they take the position that  
19 the identity of the leadership is not at issue here. Again,  
20 all one has to do is look at Paragraph 10 of that petition  
21 to see that is totally wrong. That's exactly what the  
22 trustee is seeking.

23 Practically speaking, this court  
24 ultimately is going to issue a ruling, a judgment, and that  
25 judgment is going to have to practically do several things

1 in order for it to be final. One, it's going to have to  
2 tell the parties who the trustee is supposed to write the  
3 check to. Second, it's going to have to tell the parties  
4 who physically gets that check. And third, it's going to  
5 have to tell the trustee who gets control to distribute the  
6 proceeds of that. Because if the Court doesn't do that,  
7 then -- then what the argument being made by the opposition  
8 is, all the Court has to do is to issue an order that the  
9 check is made payable to St. Andrews Episcopal Church and  
10 send it to Lamar Street. And so what that means practically  
11 is this. That check will be used by Father Dickson and a  
12 vestry who, under the canons and constitution of the  
13 Episcopal Church, and you heard his testimony here, are not  
14 entitled to receive that.

15                   The testimony of -- of Father Dickson  
16 was as follows: First, he acknowledged that in leaving the  
17 Episcopal Church he no longer was an Episcopal priest, and,  
18 as such, he was not the rector of St. Andrews Episcopal  
19 Church. Not only that, he testified that because there is  
20 no rector, there is a vacancy. In addition to that, he  
21 testified that the present vestry, in aligning itself with  
22 the South American church, in tandem -- his terms -- in  
23 tandem with Bishop Iker, was no longer in good standing with  
24 the Episcopal Church, and he acknowledged that in order to  
25 be a vestry in the Episcopal Church in the United States of

1 America, the vestry members have to be in good standing,  
2 and, therefore, there is neither a priest, rector nor a  
3 vestry present to this day at St. Andrews Episcopal Church.  
4 However, the affidavit of Porter Farrell clearly indicates  
5 that there is, in fact, a St. Andrews Episcopal Church.  
6 Those loyal to the the Episcopal Church meet every Sunday at  
7 Trinity Episcopal Church in Fort Worth, and the rector for  
8 them, the priest for them every Sunday, is Bishop Ohl. So  
9 the reality is that as far as for the purposes of an  
10 intervention, clearly Bishop Ohl has standing to intervene.

11                   Ultimately the trustee is going to have  
12 to know who to send the check to and -- and -- and who gets  
13 to distribute it, and to say that this court does not have  
14 to determine that fact makes any ruling this court signs  
15 incomplete, and it also sets up a conundrum, because if the  
16 court were simply to issue a check and if that check were  
17 sent to the rector, the present rector and the vestry, and  
18 if -- if, in fact, the vestry used that money  
19 inappropriately and then subsequently this court determined  
20 that they were not authorized to do so, the damage would  
21 already be done. And that is the very reason that the  
22 individuals who claim control on both sides of St. Andrews  
23 Episcopal Church should be in this lawsuit, that's the  
24 reason we filed the Rule 12 motion in this court, and that  
25 is the reason why Bishop Ohl intervened.

1                   And, finally, for all of these reasons,  
2   that is specifically why Bishop Ohl is an interested party,  
3   has a clear, justiciable interest under the facts, under the  
4   clear case law, and under the equity of this court. Thank  
5   you.

6                   THE COURT: Thank you. Mr. Sharpe?

7                   MR. SHARPE: May it please the Court?

8                   THE COURT: Yes, sir.

9                   MR. SHARPE: Your Honor, this is a  
10   declaratory judgment suit, as counsel has mentioned, to  
11   determine which defendant St. Andrews is entitled to the  
12   benefits of the trust. Now, that's what's in the  
13   declaratory judgment suit. Intervenor Ohl is not named in  
14   that trust. There is no leadership named in that trust.  
15   Your Honor, this is like a person who has a note payment due  
16   at the local bank. Let's say Your Honor has a note payment  
17   due at whatever your bank is. Let's say that there is a  
18   dispute, a lawsuit that's filed where one board of the bank  
19   claims that another claiming to be the board is not the  
20   board of the bank, and it's in a court, obviously not you,  
21   that's going to try to decide which board is the board of  
22   the bank. Now, are you going to wait and hold your note  
23   payment to the bank until the court decides which is the  
24   proper board of the bank so you will know who's entitled to  
25   make the decisions on how the money you send to the bank is

1 going to be used? I don't think so. You're sending it  
2 simply to the bank. However that lawsuit is decided is not  
3 your concern. Your concern is to pay the entity that you're  
4 obligated to pay.

5                   Now, that suit of the board, trying to  
6 decide which is the proper board, that's the Tarrant County  
7 lawsuit, filed before this lawsuit. That issue was there.  
8 And this court has already ruled now three times that you're  
9 not going to decide the issue of which is the controlling  
10 officials of the entities up there. That is not the  
11 declaratory judgment suit. The declaratory judgment suit is  
12 very plain. It names St. Andrews. St. Andrews is an  
13 identifiable entity. And, in fact, everybody has continued  
14 and agrees that there's only one St. Andrews, there's not  
15 two. But the officers that are contending that they are the  
16 head of St. Andrews, which is still to be determined in --  
17 in Fort Worth, it hasn't been determined by any affidavit or  
18 any testimony that this court might have received on some  
19 other occasion in connection with something else, because up  
20 there, whether Bishop Ohl ultimately proves to be the bishop  
21 will be decided there. In fact, that mandamus opinion that  
22 came down said that Fort Worth court will decide who the  
23 proper leaders are. Now, that's where the decision of who  
24 the proper believers will be decided.

25                   Now, he argues that Bishop Ohl has

1 responsibilities with respect to this trust. Well, Your  
2 Honor, last time I looked, I think the plaintiff is the one  
3 that has the responsibility concerning the trust. I don't  
4 think Bishop Ohl has any responsibilities at all. In fact,  
5 every one of the opinions that have been cited to the court  
6 that says he has a justiciable interest, the person was in  
7 the shoes of the plaintiff. The plaintiff. None of those  
8 individuals had a receiving responsibility. In fact, you  
9 know, we talked about that the parishioner had intervened  
10 and the court found he had a justiciable interest. What  
11 counsel didn't tell you about the opinion was he had a  
12 contingent liability, which was acknowledged as a part of  
13 the written instrument that was the subject of the  
14 declaratory judgment suit. Bishop Ohl has no contingent  
15 liability. The trustee simply pays three beneficiaries.  
16 That simple. Your Honor, if you look at the code provision,  
17 the Texas Property Trust Code, as it defines it, it covers  
18 plaintiff, not Bishop Ohl or any other individual on the  
19 face of the earth. There's not one reported opinion that he  
20 cited to you where there's a contingent over a recipient of  
21 something as to whether their leader or not is entitled to  
22 have a justiciable interest. Not there.

23                   The thing that is very paramount, that  
24 the Court has already seen this three times, there is a  
25 difference between an unincorporated association and its

1 leaders. They are not synonymous. The Court is asked to  
2 determine who gets the check. The trustee sends it where  
3 it's already been sent twice and had no problem sending it  
4 there. According to the Secretary of State, and the record  
5 is before this honorable court, the authorized agent for  
6 St. Andrews is the rector. That is a public record that  
7 says, "St. Andrews, this is who it goes to." And that's the  
8 Secretary of State's determination.

9                   Now, if ultimately the decision is made  
10 up in Fort Worth that Bishop Ohl and those on that side  
11 prove to be the proper officers, then they would be seeking  
12 the property, but that's an issue down the line. Right now,  
13 that issue is still pending in Fort Worth, it is not before  
14 this court. You don't have to tell in your order anything  
15 other than "You send the check to St. Andrews Episcopal  
16 Church." According to the evidence of the Secretary of  
17 State's office, the person authorized as the agent for that  
18 is the rector of the church at that address where they've  
19 been since 1912.

20                   Now, Your Honor, if Bishop Ohl could not  
21 have brought this suit, and under the definition, the very  
22 definition they cite to you in the Texas Property Trust  
23 Code, he does not meet that definition, because he has  
24 nothing to do with the Brants Trust. He has zero to do with  
25 the Brants Trust. Plaintiff does, but not him. The money



1 not determinative. There has been no judicial determination  
2 by the Secretary of State as to who the valid parties are.  
3 As a matter of fact, the record will show that there have  
4 been competing filings. And -- and -- and so the last one  
5 that gets to file is the one that the Secretary of State  
6 determines? No. We filed them, they filed them, and we  
7 could have competing ones. And so what Mr. Sharpe is  
8 essentially saying with regard to the Secretary of State,  
9 the last entity which files with the Secretary of State,  
10 that's been some judicial determination. It doesn't make  
11 any sense, and -- and -- and that's not correct. He  
12 mentions unincorporated association. What he fails to say  
13 is that except for one case, every single case in the United  
14 States which has determined the issue of who controls has  
15 said that the ecclesiastical determinations will be deferred  
16 to without regard to what the association is, unincorporated  
17 or not.

18                   The reality is this. What can happen is  
19 the -- what -- what is being asked of this court is simply  
20 to -- to tell the trustee to issue a check to the Tarrant  
21 County -- to St. Andrews Episcopal Church. It ignores the  
22 fact that that's not what the trustee is asking for. The  
23 trustee in this case is asking for a declaratory judgment as  
24 to which faction should get the money. That's what's being  
25 asked. That's what this court has to rule on, and it can't

1 do it piecemeal. It can't rule at one point that "just  
2 issue the check," because the ramifications of that is this.  
3 Under Mr. Sharpe's theory, given that the Court of Appeals  
4 said, "We do not reach the true identity of the bishops and  
5 the trustees of the corporation, nor do we express any  
6 opinion concerning the propriety of resolving the  
7 intra-church dispute through litigation in Texas court," but  
8 finally says, quote, "Because the interests of the  
9 individuals within the Fort Worth Diocese and corporation  
10 associated with Bishop Iker at -- are adverse to those  
11 associated with Bishop Gullick, by whom Mr. Nelson and  
12 Ms. Wells were hired, those attorneys may represent the  
13 latter individuals but not the entities." That's exactly  
14 what the court said. And -- and under that, it is clear  
15 that if the court ignores the practicalities, then the  
16 argument must be for Mr. Sharpe this. When a church, an  
17 Episcopal Church, decides to leave the Episcopal Church but  
18 hold the property, including distributions, there is  
19 absolutely, positively no remedy at law for those who oppose  
20 that, because under the Court of Appeals decision, we can't  
21 represent the entity, and so essentially what Mr. Sharpe is  
22 saying, that there is no remedy at law for someone like  
23 Bishop Ohl, who is, in fact, an interested party and who is,  
24 in fact -- does, in fact, have a justiciable interest, and  
25 what that does is it flies in the face of the due process

1 clause and the open courts clause in the Texas and United  
2 States Supreme Court, and that is just plain wrong.

3                   And by way of a -- an aside, even though  
4 our response says it, I want to say it in open court, we  
5 refer the Court to the Motion to Response to Supplemental  
6 Plea and also the third affidavit of -- of -- of Bishop Ohl ,  
7 which sets out his power over St. Andrews, so for -- for all  
8 of those reasons, as a practical matter, under the law and  
9 the facts, which have been undisputed, by the way,  
10 everything that was in the plea in intervention is not  
11 disputed, and under those conclusive facts, Bishop Ohl is  
12 entitled to intervene in this case.

13                   THE COURT: All right.

14                   MR. SHARPE: Your Honor, may I respond  
15 to the portions that were not addressed in his opening  
16 statement?

17                   THE COURT: Yes, sir. You may.

18                   MR. SHARPE: Your Honor, he said that  
19 this Gray case did not involve an individual with contingent  
20 liability. Your Honor, if I could approach, I will under --  
21 I will show you what is underscored that says that's the  
22 reason he had an interest is because he was contingently  
23 liable as a trustee, so what we said was true, and Bishop  
24 Ohl does not have that.

25                   Now, I would like to approach and

1 address the language that he quoted to you from the Fort  
2 Worth Court of Appeals opinion, because he didn't quote it  
3 all. I would like to give you the opinion, and I have  
4 underscored what he quoted in blue, and I have underscored  
5 in red what he did not give you that puts it in a little  
6 different light. May I approach and give you --

7 THE COURT: Yes, sir, you may

8 MR. SHARPE: -- a color-coded opinion?  
9 Thank you, Your Honor. If the Court would turn, I believe  
10 it's to Page 13 is where the quote comes from -- no, it's  
11 14. The part that they quoted is "Thus, the lawyer may not  
12 be hired to represent a person by one or two factions in the  
13 organization against the other faction," that was a part of  
14 his argument. But look at the red language. "Because the  
15 interests of the individuals within the Fort Worth Diocese  
16 and the corporation associated with Bishop Iker are adverse  
17 to those associated with Bishop Gullick, by whom  
18 Mr. Nelson and Ms. Wells were hired, those attorneys may  
19 represent the latter individuals but not the entities when  
20 they did not discharge their burden of proving authority to  
21 do so." Your Honor, the key part of the mandamus was it was  
22 undisputed that they didn't prove they were entitled to  
23 represent those two entities. Therefore, the court ordered  
24 their pleadings struck and told the court, "You found -- you  
25 went halfway through Rule 12, but you didn't finish it."



1 That's who they sued.

2 Now, that's what the court is referring  
3 to. You can't sue individuals and get a judgment that would  
4 apply to the diocese or the diocesan corporation, not  
5 possible. When Justice Brister and I wrote the petition for  
6 mandamus, we were focusing on the fact that Rule 12 is a  
7 very simple rule. If you don't prove you represent a party  
8 you allege to represent and it's found by the court, you  
9 strike the pleadings. The court has now been ordered, and,  
10 in fact, interestingly enough, the court has even signed an  
11 order, the trial court, even though the mandate hasn't  
12 issued from the Court of Appeals, where their pleadings are  
13 struck on behalf of the Fort Worth Episcopal Diocese and the  
14 Corporation of the Fort Worth Episcopal Diocese, but that's  
15 as far as it goes.

16 The Rule 12 he talks about here, Your  
17 Honor, the fact that they filed it doesn't prove anything,  
18 because under a Rule 12, as we gave them the opportunity to  
19 come in and try to prove that they have been hired by people  
20 who were authorized, they didn't do it. If you look at the  
21 findings in that Court of Appeals opinion, it pretty well  
22 sends a telegraphed message to the trial court that if a  
23 Rule 12 comes against us, it's going to be denied, because  
24 they have got findings in there that are going to go pretty  
25 hard for the judge to file against us in a Rule 12.

1                   But the issue is this, Your Honor. It's  
2 undisputed that Lisa Jamieson and R. H. Wallace, sitting  
3 here, Mr. Seilheimer, sitting right here, were hired by the  
4 vestry of the church that -- that's been in existence and  
5 operating in that place since 1912, and they have not had  
6 any court find that they're not. Until that issue is  
7 decided in Tarrant County, which this court says, "I'm not  
8 going to decide that issue," they are hired by the vestry.  
9 In fact, even heard the testimony from the rector, who is  
10 the one, according to the Secretary of State, is the  
11 officer. Your Honor, this appellate opinion supports our  
12 position. It does not support them. They're trying to make  
13 this a complicated case, and it's not complicated. It's a  
14 simple case of what Ms. Brants wanted. Thank you, Your  
15 Honor.

16                   MR. NELSON: Your Honor, if I may  
17 respond to just that.

18                   THE COURT: You may.

19                   MR. NELSON: Mr. Sharpe used the -- the  
20 key phrase, "The case in Tarrant County, as it's postured."  
21 The Court in the Tarrant County case, the appellate court,  
22 simply said that we could not represent -- and the order, by  
23 the way, that the trial court originally signed said that  
24 there was no proof that we -- we had the authority to  
25 represent the diocese run by Bishop Iker. That's what it

1 said. And -- and -- and the -- and, of course, obviously,  
2 we couldn't show that because we had, but with put on  
3 testimony as to our authority, it was a multiple amounts of  
4 testimony about our authority, but, nevertheless, that  
5 ruling deals just with the Rule 12. This Court of Appeals  
6 would not have sent a message, saying that we would have the  
7 right to represent individuals who claim to have leadership  
8 in -- of St. Andrews -- of -- of the -- of the diocese if it  
9 wasn't sending a message. Frankly, what's good for the  
10 goose is good for the gander. If the ruling of this court  
11 is that individuals must claim to control an entity which  
12 everybody agrees exists because, according to the Court of  
13 Appeals, there is only one, then individuals have to be in  
14 that lawsuit. And that's why we filed a Rule 12, and that's  
15 exactly why we filed the intervention, and that is exactly  
16 why, under this court's opinion, Bishop Ohl has a right to  
17 intervene and does, in fact, have a justiciable interest,  
18 because he's not a bystander. The trust doesn't have to say  
19 it's Bishop Ohl. Bishop Ohl stands in the shoes of  
20 St. Andrews Episcopal Church because he is, in fact, the  
21 head of that church.

22 THE COURT: Thank you. The motion to  
23 strike the plea in intervention of Bishop Ohl is granted.

24 MR. SHARPE: Your Honor, I have an order  
25 to that effect. May I approach and give that to you?

1 THE COURT: Yes, sir, you may.

2 MR. SHARPE: Your Honor, the order  
3 granting the motion to strike also includes their objections  
4 and response to the summary judgment that we have filed.  
5 Since I'm understanding plaintiff to say he's not contesting  
6 that part of it, this order will cover both of those?

7 MR. NELSON: Well, Your Honor, not that  
8 I'm not contesting it, it's just that I don't need to argue  
9 it. Based upon the Court's prior ruling, I don't need to go  
10 through another argument. The Court has already heard that.

11 THE COURT: All right.

12 MR. NELSON: Your Honor, --

13 THE COURT: Yes, sir.

14 MR. NELSON: -- I would like an  
15 opportunity to review this order. For instance, it says,  
16 "The Court, after examining the motion to strike and  
17 response, having heard the arguments of counsel," we've also  
18 put forth evidence by way of documentary evidence, I would  
19 like the order to correctly reflect what the Court did, so I  
20 would like an opportunity to look at this before the Court  
21 signs it.

22 MR. SHARPE: Your Honor, I have no  
23 objection to him looking at it, but I do object to the fact  
24 that he's offered any evidence. He's made oral argument,  
25 but I have not seen him offer anything to this court by way

1 of evidence, and so, therefore, to say that he's offered  
2 evidence, I don't think the court reporter has taken one  
3 thing down other than that oral argument, and I would object  
4 to affidavits supposedly coming in, because I can't cross  
5 examine an affidavit, so I don't believe the Court has heard  
6 anything but oral argument.

7 MR. NELSON: In response, sir --

8 MR. SHARPE: He certainly can look at  
9 the order and if he wants to make a suggestion to the Court,  
10 the Court can make a decision on it at such time in the  
11 future as the Court deems appropriate.

12 MR. NELSON: Your Honor, in response,  
13 and so the record is clear, I referred to the record in  
14 Paragraph 5, including all the responses in Bishop Ohl. In  
15 addition to that, -- so it is before the Court. And in  
16 addition, Mr. Sharpe filed no objection to the use of  
17 affidavits, and it's a little late to be doing that. Third,  
18 under the case cited, af- -- the documentary evidence,  
19 including affidavits, is, in fact, to be used in an  
20 intervention hearing.

21 THE COURT: All right. Mr. Nelson, I'll  
22 let you respond by Friday, 5 p.m. Friday the 16th, if you  
23 have any response, just to send it to me in the form of a  
24 fax, a letter.

25 All right. Next thing that the Court's

1 going to be taking up is the plaintiff's motion for  
2 continuance of the motions for summary judgment.

3 MR. GORDON: Your Honor, may it please  
4 the Court? I'm Jim Gordon. I represent the plaintiff.

5 THE COURT: All right.

6 MR. GORDON: We filed a motion for  
7 summary judgment prior to the Rule 12 motion that the  
8 parties affiliated with the Episcopal Church filed, asking  
9 that the Court determine the authority of counsel for the  
10 entities affiliated with the Southern Cone to represent  
11 those parties. The basis of the motion for continuance is  
12 the Court of Appeals ruling. We received that a few days  
13 after June 25th, and it looks like to me that I need to  
14 replead to name the individual representatives of these two  
15 competing groups. The Court of Appeals ruling was only with  
16 respect to the diocese and corporation, and it doesn't talk  
17 about St. Andrews specifically, but, to me, it would seem to  
18 follow that if the Court has found that there really aren't  
19 two diocese, there's just one diocese with competing  
20 factions, they refer to the Iker group, they refer to the  
21 Gullick group, and I believe Bishop Gullick has been  
22 succeeded by Bishop Ohl, so we have a question of the right  
23 way to designate the parties. I heard Mr. Sharpe say just a  
24 moment ago that his thought is that the opinion telegraphs  
25 that if a Rule 12 motion is filed against the groups

1 affiliated with the Southern Cone, that that motion should  
2 fail because of certain findings. I don't know what those  
3 findings are. To me, it would seem to follow, based on what  
4 Judge Gardner said, that the court in this case should  
5 revisit the Rule 12 that was filed with respect to the  
6 Episcopal defendants and probably should grant that, and  
7 should probably grant the Rule 12 with respect to the  
8 Southern Cone defendants. Judge Gardner said, "Unless the  
9 trial court's order is modified to strike the pleadings  
10 filed by Mr. Nelson and Ms. Wells on behalf of the  
11 corporation and the Fort Worth Diocese and to bar those  
12 attorneys from appearing in the underlying cause as  
13 attorneys of record for the corporation, then the Fort Worth  
14 Diocese confusion in the litigation will be perpetuated,  
15 including the appearance that the issue is already resolved  
16 in favor of one party before the questions of identity and  
17 title to the property held by the corporation and the Fort  
18 Worth Diocese are determined in the course of the -- the  
19 litigation." That, seems to me, with all due respect to  
20 Mr. Sharpe, to be what he is continuing to perpetuate, the  
21 notion that St. Andrews Episcopal Church is clearly the  
22 entity that is still occupying the premises at Lamar, and  
23 that's what's in dispute.

24                                   A group of people continue to worship  
25 there, they control the property, they call themselves

1 St. Andrews Episcopal Church. There's another group that  
2 worships at Trinity Episcopal Church. They claim to be  
3 St. Andrews Episcopal Church in exile, as it were. The  
4 Texas cases that we can read are a predictor about which of  
5 those two competing parties will be the ultimate --  
6 determined to be the ultimate beneficiary. That's what the  
7 lawsuit is about. But the Court of Appeals appears to say  
8 that we can't call one group "St. Andrews Episcopal Church"  
9 and then the other group "certain individuals who are  
10 claiming to be St. Andrews Episcopal Church." They both  
11 have to be on the same footing.

12 I think it's premature to resolve the  
13 motions for summary judgment until we have sorted out and  
14 have these parties identified in the proper manner. And I  
15 think, as a practical matter, you ought to continue the  
16 hearing until you have resolved this Rule 12 motion and also  
17 to revisit your earlier ruling on on the -- the Rule 12  
18 motion that you denied, and then make sure that we've got  
19 the parties correctly identified before we go forward in  
20 trying to reach the merits on the motion for summary  
21 judgment. Thank you.

22 THE COURT: All right. Thank you.

23 MR. NELSON: Your Honor, just for the  
24 record, we have joined in that motion for continuance.

25 THE COURT: Yes, sir, I saw that,

1 uh-huh.

2 MR. SHARPE: Your Honor, this is the  
3 first time I've ever run into a motion for continuance of a  
4 summary judgment based on a mandamus in another case. I --  
5 usually, and I think Your Honor's experience would be that  
6 either the responding party hasn't had time to be able to  
7 respond and get ready for it or something to that effect,  
8 some impediment they can't be prepared, but to talk about a  
9 realignment of the parties as a basis for continuance, first  
10 of all, I don't see anything in the appellate opinion from  
11 Fort Worth that says that no one can represent the Episcopal  
12 Diocese of Fort Worth or the Corporation of the Episcopal  
13 Diocese of Fort Worth or St. Andrews. I don't find that  
14 anywhere in the opinion. The only thing I find in the  
15 opinion is that Mr. Nelson and Ms. Wells can't represent the  
16 Episcopal Diocese of Fort Worth and the corporation.  
17 That's clear. That's all I find.

18 There is nothing in there that suggests  
19 to the trial court that if a Rule 12 were filed against us  
20 in the 141st, which no Rule 12 as has been filed, if one  
21 were filed, we would lose. I mean Anne Gardner has been on  
22 that court a long time, and she's a really good judge.  
23 She's not going to forecast how some judge is going rule on  
24 evidence that she's not even heard. That's not in this  
25 opinion.

1                   Your Honor, to request that there's got  
2 to be a change in the alignment of the parties here, there's  
3 no case authority for that. Also, he talks about that you  
4 can't represent a faction and you can represent individuals,  
5 but what the court said, and I think this is significant, on  
6 Page 13, there is a footnote to the DeZavala versus the  
7 Daughters of the Republic of Texas, and that footnote up  
8 above says, "There's a single Fort Worth diocesan  
9 corporation, which both a majority and a minority faction  
10 claim to control." We put this case in Fort Worth in the  
11 very posture of the DeZavala case after our individual  
12 clients were served. In fact, the Fort Worth Diocese  
13 intervened, the Corporation of the Fort Worth Diocese  
14 intervened against those claiming to be them. And guess  
15 what? They brought in the very individuals who claim to be  
16 the officers of the diocese and the officers of the diocesan  
17 corporation. In fact, if you look at the DeZavala case, you  
18 find that the Daughters of Republic of Texas, a Texas  
19 nonprofit corporation, had the right to sue a group of  
20 people claiming to be its officers. That's exactly what we  
21 have done and postured.

22                   Your Honor, this is not a basis for a  
23 continuance of a suit that is simply asking, "Who is  
24 St. Andrews?" We know now there's one St. Andrews. It's  
25 not about who the officers are. Like the payment to the

1 bank, you keep sending the check to the bank, regardless of  
2 how the outcome comes out on the dispute of "Who's on the  
3 proper board or not?" That is true of the Tarrant County  
4 case. This case should not be continued on the basis of  
5 this court opinion. In fact, what this court has now  
6 repeatedly said I think five times is "the decisions up in  
7 Fort Worth on leadership will be decided there." All that  
8 the trustee is -- is to send it to St. Andrews, not in who  
9 the officers are, but he knows where St. Andrews is and he  
10 also knows what's in the Secretary of State's office, which,  
11 the last I heard, if you're going to sue St. Andrews, you  
12 better serve the person registered in the Secretary of  
13 State's office if it's going to be effective service.

14 THE COURT: Thank you.

15 MR. NELSON: Your Honor, may I say one  
16 thing for the record?

17 THE COURT: Yes, sir.

18 MR. NELSON: Because Mr. Sharpe  
19 continually refers to what the Tarrant County district court  
20 is going to do with regard to identity, and because it  
21 practically affects the distribution of the proceeds of the  
22 Brants Trust, we would again re-urge our plea in abatement  
23 so that this older case can deal with those issues before  
24 this court makes a ruling which may send money to those not  
25 entitled to it, and, as a practical matter, we would have

1 very little, if any, relief, and so we would re-urge the  
2 plea in abatement to deal with the those issues of identity  
3 before this court makes its ruling on the summary judgment.

4 MR. GORDON: Your Honor, may I make a --

5 THE COURT: Yes, sir, you may.

6 MR. GORDON: -- response to Mr. Sharpe?  
7 He said we now know or we know now there's only one  
8 St. Andrews, and that's -- that's still in dispute. There  
9 are two groups, each claiming to be St. Andrews. There is a  
10 continuing dispute. That's what the lawsuit is about.

11 From Page 17 of this opinion, Judge  
12 Gardner wrote, "Because a corporation cannot sue itself," I  
13 mean that seems like a no-brainer, "Corporation cannot sue  
14 itself, the trier of fact will be unnecessarily confused by  
15 presentation from two opposing factions who claim to be the  
16 corporation and the Fort Worth Diocese." Now, looks like to  
17 me that would be just as true if it says, "Because an  
18 unincorporated association cannot sue itself, the trier of  
19 fact will be unnecessarily confused by presentation from two  
20 opposing factions who claim to be the unincorporated  
21 association." So when one of the factions files a Rule 12  
22 and the other says, "I don't believe that that's necessary.  
23 I'm not going to file an opposing motion, Rule 12 motion,"  
24 and so the movant wins, they're ahead, they're still  
25 representing their group that says, "We are St. Andrews

1 Episcopal Church," the other group are behind. Now they  
2 have to regroup and try to intervene, they have to try to --  
3 to -- to have the proper parties involved in the lawsuit.  
4 And what they have now done is filed their motion, their  
5 Rule 12 motion to try to reel this back in and have both  
6 similarly situated, both at a equal starting point in  
7 determining who is entitled to the benefits of the trust.  
8 And that's the sole reason for asking for the continuance,  
9 is to give the court time to determine that a correct  
10 posture of the parties. Continuances should be granted for  
11 good cause, and I submit that that constitutes a sufficient  
12 good cause, and that we ought to postpone the hearing on the  
13 motions for summary judgment until we have the parties  
14 correctly designated and in the suit, including joinder of  
15 additional parties, if that appears to be necessary, Your  
16 Honor.

17 THE COURT: Plaintiff's motion for  
18 continuance is denied.

19 MR. SHARPE: I do have a plain, vanilla  
20 order. If I could approach?

21 THE COURT: Yes, sir, you can.

22 All right. Next item is the Amended  
23 Joint Motion for Summary Judgment, and also the Episcopal  
24 Defendants' Second Motion for Summary Judgment, filed June  
25 22nd, I believe, and the other one filed June 21st.

1 MR. SHARPE: May I proceed?

2 All right. Yes, sir, you may.

3 MR. SHARPE: Okay. Your Honor, --

4 MR. NELSON: Your Honor, at this  
5 juncture, for procedural purposes, I would object to  
6 Mr. Sharpe's arguing the -- this motion because his clients  
7 have, in their pleadings, both the summary judgment and  
8 others, disclaimed any interest in the proceeds of the  
9 Brants Trust, and, therefore, under the court's prior  
10 ruling, they would not be a quote, "Adverse party," unquote,  
11 and would not be entitled to argue.

12 MR. SHARPE: Your Honor, the plaintiff  
13 have put my clients into this lawsuit. We have claimed that  
14 it should be properly interpreted a certain way, and we are  
15 entitled to ask the court that it be declared to a certain  
16 party. The fact that it's not something we're seeking  
17 doesn't make us not entitled to have our opinion on this,  
18 since the plaintiff is the one who put us in this lawsuit,  
19 and that's why we filed our declaratory judgment -- I mean  
20 that's why we are seeking attorney fees and costs, if -- if  
21 the interpretation is as we say. Plus the fact that we're  
22 joint defendants with St. Andrews, it's a joint motion, and  
23 St. Andrews has the right to ask me to make the argument on  
24 its behalf, as well as my clients have the right to --

25 THE COURT: That's overruled. All

1 right. You may proceed.

2 MR. SHARPE: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. SHARPE: You're asked, Your Honor,  
5 to decide a very simple issue. Ms. Brants, in her trust,  
6 clearly says, "I'm leaving it to three -- to -- to three  
7 entities, Carter Museum of Western Art, the Old Jail, and  
8 St. Andrews Episcopal Church. This is not a suit about an  
9 ecclesiastical dispute but a women's desires. It's a suit  
10 brought by a group of people who worship together. In other  
11 words, what -- what you have here is the Brants family  
12 worshipped at St. Andrews for a long time. They were  
13 members. It's undisputed in the evidence, they were  
14 members. Ms. Brants determined that she wanted to leave a  
15 portion of her estate to this church, where she and her  
16 family had worshipped a long time.

17 Where is it that an individual can't  
18 give something to an identifiable entity that they were  
19 related to? There's no indication in here that she wanted  
20 to leave it to a small group or a large group of people at  
21 St. Andrews who were of a particular theological persuasion.  
22 There's nothing like that in here. It's a simple bequest to  
23 a church. This is about a church named St. Andrews, it's  
24 not about the the Episcopal Church. It's not about the  
25 diocese, it's about a church named St. Andrews. In fact, to

1 do what people are asking is to put language into the trust  
2 that Ms. Brants didn't put in there. Could she have put it  
3 in there? Could she have said, "I leave it to St. Andrews  
4 Episcopal Church so long as it is aligned with the Episcopal  
5 Church"? Absolutely. She could have done that. Did she?  
6 No. If those things were of importance to her, we must  
7 assume she would have put them in there.

8                   That comes down to this. No one, not  
9 even this honorable court, can change what she wrote in that  
10 trust. That is not permissible under Texas law. In fact,  
11 it's not even permissible under the very trust. It says  
12 that if this trust is going to be changed, Ms. Brants, in  
13 writing, is the only one that can do it. And to say that  
14 there is some type of trust impressed upon this, my heavens,  
15 what would that do to every person out there who wants to  
16 leave something to some person or some entity? That just  
17 doesn't make sense. At the high school I went to in Fort  
18 Worth, a part of the Fort Worth Independent School District,  
19 has had economic problems and has had poor test results.  
20 The Texas Education Agency was threatened to shut it down.  
21 There's not in a teacher, staff member or student at my high  
22 school when I was there, but if I want to leave a gift to  
23 that high school and I say it's going to go to that high  
24 school, what difference does it make if it's a part of the  
25 Fort Worth Independent School District or if it becomes a

1 private academy, it's still the school, and I've got the  
2 right to give it there and nobody has got the right to get  
3 my money.

4                   You know, there's no way that you can  
5 look at their arguments and not say it's an attempt to amend  
6 the trust. There's no way you can do it. They're trying to  
7 put terms on this that are not there. Texas trust law is  
8 absolutely clear. If a trust is unambiguous, the court  
9 simply carries out what it says. Nobody has said this trust  
10 is ambiguous, not one person. The language -- and by the  
11 way, it's a legal decision as to whether whether or not the  
12 language is ambiguous, which means it's subject to more than  
13 two reasonable temptations, one of which a fact finder would  
14 have to determine which is reasonable, so we don't have that  
15 here.

16                   And an unincorporated association, as  
17 the court really has ruled already, it's separate and  
18 distinct from who its leadership is, totally, it's a  
19 non-issue. Ms. Brants never thought, "Who are the leaders  
20 going to be that I'm giving this to? I want it to be,  
21 quote, leaders that are whatever." She didn't do that. And  
22 to try to take her little simple trust and to create all  
23 this is an affront to her. Where is the trust language that  
24 for St. Andrews to receive benefits it must be a part of the  
25 Episcopal Church? Where is that language? It's not there.

1 And for that to be a determination of where her money goes,  
2 that's coming from outside her trust.

3                   You can't -- there's no law out there  
4 that says anybody can impress upon another trust of this  
5 kind when it designates where it is going to go. The  
6 conditions for the distribution of the trust have been met  
7 by St. Andrews. Two distributions have already been made.  
8 You know, the trustee didn't have any trouble on where to  
9 send those to. And guess what? They were acknowledged  
10 exactly as the terms of the trust required. So two  
11 distributions already gone.

12                   Now, what is it this caused this  
13 declaratory judgment suit to be filed? Because it's an  
14 exhibit to plaintiff's petition that this court has before  
15 it. It's a letter from Ms. Wells, saying, "I represent the  
16 diocese that's not named in this trust. And, by the way,  
17 send the check to us because we're going to hold it for the  
18 benefit of St. Andrews." Where in the trust language would  
19 there be such authority for the trustee to do that? I know  
20 of no law that would permit that, but that's what brought  
21 this whole declaratory judgment suit about. He says that's  
22 the whole basis for it, and he just argued to you in the  
23 motion for continuance, it has to do with the quote, dispute  
24 over who the leaders of St. Andrews are. Again, Your Honor,  
25 like the bank, you send your money to the bank and you let

1 somebody else sort out who the leaders are, but the money  
2 goes to bank, it doesn't go to the leaders. It goes to the  
3 entity, which is separate from the leaders.

4           Is there an estoppel here? Your Honor,  
5 if this is not patent estoppel in law school, I don't know  
6 what is. I mean where you give money to somebody twice and  
7 then all of sudden somebody just sends a letter and says,  
8 "No, I'm not giving it to you," that's an estoppel. That is  
9 a change of position, saying, "I'm not giving it to you."  
10 But when you get to the amendment part of it, Your Honor,  
11 this is clearly an attempt to amend the trust, contrary to  
12 the language of the trust and contrary to the Texas Property  
13 Trust Code, that it's got to be in writing, in accordance to  
14 what the document says. Your Honor, I think Ms. Brants  
15 needs to be honored.

16           THE COURT: Thank you, sir.

17           MR. GORDON: I guess I'll go ahead and  
18 respond to this, Your Honor.

19           THE COURT: Yes, sir, uh-huh.

20           MR. GORDON: First thing that I would  
21 like to say is that no one is trying to change Ms. Brants'  
22 will or her trust. What we're trying to do is follow the  
23 law. And the second thing there, Mr. Sharpe did not talk  
24 about in his arguments about alleged judicial admission by  
25 the trustee that -- that the client represented by

1 Ms. Jamieson is entitled to the benefits of the trust. I  
2 don't think a trustee can judicially admit anything to the  
3 detriment of the true beneficiary. In other words, if you  
4 have a suit like this where the trustee has identified two  
5 potential beneficiaries, the trustee, through malfeasance or  
6 nonfeasance, can't determine and -- and create rights in  
7 favor of a party who is not beneficiary. And clearly we  
8 have not made any judicial admission with respect to which  
9 of these competing groups is -- is entitled. In our style,  
10 we have clearly identified two unincorporated associations,  
11 each of them hold themselves out as St. Andrews Episcopal  
12 Church. We tried to distinguish between the two groups by  
13 referring to one affiliated with the Episcopal Church and  
14 the other affiliated with the Anglican province for the  
15 Southern Cone. So we've made no judicial admission.

16                   And our argument of estoppel I think is  
17 best resolved in the context of what I think may be the  
18 controlling case in this -- in this situation. This is this  
19 First Presbyterian Church of Texarkana case, and I -- I  
20 cited the Court to that and quoted from it extensively on  
21 Page 5 of my response. In the mid-70s, the First  
22 Presbyterian Church in Texarkana decided to disassociate  
23 itself from Presbyterian Church of the United States. They  
24 conducted a congregational meeting, and 100 percent of the  
25 members present at that meeting voted to disassociate. So

1 they -- they were still in their church building, they were  
2 still getting their water bill. I imagine that they are  
3 still -- were still designated the registered agent with the  
4 Secretary of State. They decided, because the presbytery,  
5 which is the organization comparable to the diocese in an  
6 Episcopal organization, because there was some question that  
7 the Presbytery held title to the church property, First  
8 Presbyterian Church, acting as a corporation, they were  
9 organized as a corporation as opposed to an unincorporated  
10 association, they sued the presbytery in a trespass to try  
11 title, and in the trial court, they won. On appeal, they  
12 lost. And the Court of Appeals, in this language that is --  
13 that is cited frequently in cases of this type, held, "When  
14 a division occurs in the local church affiliated with a  
15 hierarchical religious body, and a dispute arises between  
16 rival groups as to the ownership or control of the local  
17 church property, the fundamental question as to which  
18 faction is entitled to the property is answered by  
19 determining which of the factions is the representative and  
20 successor to the church as it existed prior to the division.  
21 And that is determined by which of the two factions adheres  
22 to or is sanctioned by the appropriate governing body of the  
23 organization. It is a simple question of identity."

24 So I thought of two scenarios. Let's  
25 say that in the First Presbyterian Church situation, after

1 the church has had this meeting and one hundred percent of  
2 the members have voted to leave the First Presbyterian  
3 Church, what if there had been a trust and this trustee had  
4 already paid First Presbyterian Church two times in the  
5 past? In the lawsuit that resulted in this opinion from the  
6 Texarkana Court of Appeals, would they have held that the  
7 trustee was estopped to ask the church which of the two  
8 rival factions was entitled to the -- to the distribution?  
9 I don't think so. I don't see how that the trustee is  
10 estopped. Before the division occurs, the payment is -- is  
11 not probative in terms of the trustee having taken a  
12 position on which of the two groups is entitled. The  
13 distributions the trustee made in our case were made before  
14 the events occurred in 2008 and 2009 that resulted in -- in  
15 these two factions both claiming to be the church.

16 Here's another scenario. And the  
17 Texarkana case, I -- I need to add some additional facts.  
18 The court -- or -- or after this meeting that they  
19 conducted, the presbytery contacted the entire membership to  
20 see, "Are there any members that weren't in favor of -- of  
21 disassociation?" And they found thirty active members and a  
22 few inactive members. The Court of Appeals said, in effect,  
23 those 30 active and 18 inactive members constitute the  
24 ongoing First Presbyterian Church of Texarkana, and, in  
25 effect, the majority, when they disassociated, created

1 something new. They thought they were the old congregation,  
2 ongoing. They didn't realize that by disassociating, they,  
3 in effect, created a new entity. Maybe they didn't know  
4 that that's what was going to happen when they did that.  
5 But, anyway, that was the holding of the Court in the  
6 Texarkana case.

7 All right. So the second scenario is  
8 this. During the litigation that results in the holding  
9 that the minority faction is the ongoing church, the trust  
10 gets a letter from -- the trustee gets a letter from the  
11 presbytery that says, "Please don't pay the majority that  
12 still occupies the church building. Instead, pay us. We  
13 are the rightful person." All right. On page 15 of the --  
14 of the reply that Mr. Sharpe filed, he says that what the  
15 trustee should do is just ignore that letter. I don't think  
16 that if he was in my position that he would ignore a letter  
17 that says, "Don't pay. We have a dispute. We are entitled"  
18 and where he's received the letter from Ms. Jamieson that  
19 says, "Pay us." I think that would be a situation in which  
20 any reasonably prudent attorney and reasonably prudent  
21 trustee would not pay anyone. And it's not that we're  
22 saying that -- that that we never will pay, it depends on  
23 the court's determination on who is entitled to receive.  
24 That's what the lawsuit is about.

25 With respect to the -- the motions for

1 summary judgment, the summary judgment evidence clearly  
2 shows that there are two groups, both contending that they  
3 constitute St. Andrews Episcopal Church. The opinion in  
4 this Texarkana case, I think, strongly suggests that the  
5 minority group, if there's sufficient evidence that they are  
6 sanctioned by and adhere to the appropriate governing body  
7 of the hierarchical church with which they were associated,  
8 they may turn out to be the -- the -- the beneficiary  
9 entitled to the distribution.

10 So that raises this question. To me,  
11 and which I've tried to express in my brief, it's pretty  
12 obvious to me that the -- that the various groups have seen  
13 this kind of a split coming for a long time. Were they able  
14 to figure out a way where the outcome in their case will be  
15 different than the outcome in the First Presbyterian Church  
16 case? Does it matter that it's an incorporated association?  
17 Have they -- have they done some other transaction? Is  
18 there some other step that they could take in preparation  
19 for this disassociation with the national church whereby  
20 they get to retain the property and whereby they are  
21 entitled to the benefit of the trust? That's what -- what I  
22 was looking for in the summary judgment evidence in the  
23 authority that was cited, and I do not see it, Your Honor.  
24 I think in this case we have a clear fact issue that  
25 precludes summary judgment in this case. Thank you, Your

1 Honor.

2 THE COURT: All right.

3 MR. SHARPE: Your Honor, the  
4 Presbyterian Church case is not in point here for one very  
5 simple reason. The trustee doesn't stand in the shoes of a  
6 hierarchical religious body in relationship to a subordinate  
7 body. The relationship of a trustee to a beneficiary is  
8 anything but that. Everything that the Presbyterian Church  
9 case says might be arguable up in the Tarrant County  
10 litigation, but it has nothing to do with what Ms. Brants  
11 said on where the money should go. She said, "Send it to  
12 them." And he says any prudent attorney would have filed a  
13 declaratory judgment suit. Well, Your Honor, I am not a  
14 prudent attorney, if that's the definition, because I would  
15 tell my client trustee, "If it says send it to so-and-so,  
16 you send it to so-and-so. If there's a dispute over the  
17 leadership, let them decide that in some other court, but  
18 you don't try to sit in the middle of it. Send it to them."  
19 It's like the bank. You're going to send your note payment  
20 to the bank and they will resolve the leadership problem  
21 elsewhere, but you at least pay the individual that was  
22 supposed to get it, and whoever the leadership is, that's  
23 something else.

24 There's one thing that's also never been  
25 disputed. When Ms. Brants wrote this trust, there was only

1 one St. Andrews. Nobody else was claiming, quote, to be  
2 St. Andrews. And if you look at when she wrote it and when  
3 the first two payments were made, and if you were to go  
4 there today and take a 10-year-old child and let that child  
5 look, that child would say, "That's the same St. Andrews."  
6 So why is there a different St. Andrews? Because they're  
7 claiming that a minority group that is worshipping someplace  
8 else has for some reason under Texas trust law become,  
9 quote, the St. Andrews. Your Honor, that's not a dispute of  
10 fact. It's the leadership issue that will be resolved up  
11 there. Because guess what? The funds that come in this  
12 trust plus the things that are given in the plate every  
13 Sunday plus whatever they get from real estate they have in  
14 downtown Fort Worth that pays them rent for use of the  
15 property, that issue is going to be decided over there.  
16 None of these people down there said, "We're not paying them  
17 until they decide the leadership issue." That money is  
18 coming in. And on Sunday morning, the people who walk in  
19 and put it in the pew, they're giving it to them. Your  
20 Honor, Ms. Brants cannot be overlooked in this. Otherwise,  
21 how would any human being ever say, "I want to bless a group  
22 that blessed me," and get involved in a theological dispute?  
23 Thank you, Your Honor.

24 THE COURT: All right. Thank you. All  
25 right. Mr. Nelson, I'll go ahead and hear from you on your

1 motion while we're doing this at this time, so that you may  
2 proceed with your argument.

3 MR. NELSON: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. NELSON: At the outset, I note that  
6 the summary judgment evidence that was and has been referred  
7 to and introduced in our motion for summary judgment is  
8 undisputed. It is there and conclusive. The question in  
9 this case, by way of declaratory judgment, what the trustee  
10 has asked this court to do is to determine which rival  
11 factions are to receive the distributions. It isn't a  
12 question of whether or not Ms. Brants intended this or  
13 intended that or anything like that. The entity is  
14 St. Andrews Episcopal Church, but it's more than just brick  
15 and mortar, it's more than just an address. For the trustee  
16 and the trust and the distribution, it has to be who  
17 controls that entity. The entity is not the brick and  
18 mortar. The entity, the real entity is who the priest is  
19 and who the vestry is. And so as every single court in the  
20 United States has done, when dealing with who controls  
21 parish property, including bank accounts, the court has  
22 looked at the seminal, fundamental issues surrounding the  
23 question of who controls and gets parish property. In this  
24 particular case, the trust proceeds present no different  
25 scenario and no different analysis.

1                   And so what does Texas law and the  
2 overwhelming number of cases that have decided the issue of  
3 parish property, both real and personal, within the  
4 Episcopal Church say? Well, they say that the identity of  
5 the leadership is the key issue to determine who controls  
6 the property. Texas law clearly indicates that a  
7 constituent part of an organization, like a parish, must be  
8 controlled by those loyal to the Episcopal Church. That's  
9 the case law in this state and others. It indicates that a  
10 voluntary association must be loyal to the hierarchy, and in  
11 this particular case, the undisputed evidence is that the  
12 Episcopal Church is hierarchical, from the top, the general  
13 convention, all the way down to the parishes. Each entity,  
14 the parish, the rectors, the priests, the diocese, in order  
15 to be such, must accede to the canons and constitution of  
16 the Episcopal Church in the United States of America, and  
17 once they do that, then they can only function as loyal  
18 Episcopalians, and once they cease to do that, whether they  
19 be bishops or priests or vestry members, they may leave the  
20 church, but they cannot, under case law, control the  
21 property.

22                   In addition, how do courts view this?  
23 What do courts do? Well, in Texas, what courts do is they  
24 defer to the ecclesiastical determination of that  
25 hierarchical church, and specifically Texas courts defer to

1 the Episcopal Church and the Presbyterian church in their  
2 determination as to who the leaders of their church is, and  
3 that applies, the case law clearly says, to parishes.

4                   What's been determined in this case? By  
5 the convention in November of 2009, when Bishop Ohl became  
6 the provisional bishop, and before that, it was determined  
7 that the leadership of St. Andrews Episcopal Church was not  
8 Father Dickson, which he testified he agreed with, under the  
9 canons and constitution. In addition, that convention,  
10 under the the ecclesiastical rules, determined that  
11 St. Andrews was going to be in mission status, and under  
12 Canon 21, Bishop Ohl became essentially the rector of that  
13 church, which still meets at Trinity Episcopal Church and  
14 still has a priest, a bishop, to hold services. And that  
15 determination, the Texas courts and the courts around this  
16 country have said, "We cannot question, whether we agree  
17 with it or not."

18                   In some cases, there's been an attack on  
19 the procedural decisions, and uniformly, case after case  
20 after case, the courts have held, "We cannot second-guess  
21 the Episcopal Church's determination as to who controls."  
22 And that applies in numerous cases to parish, and in this  
23 particular case, that determination has been made. And so  
24 under case law, under summary judgment evidence, which is  
25 undisputed, it is, in fact, conclusive, as a matter of law,

1 that those who claim to be in power and control St. Andrews,  
2 Father Dickson and their vestry, are, as a matter of law,  
3 not in control, and that Bishop Ohl, as a matter of law, is,  
4 in fact, in control. It doesn't matter, the cases say,  
5 whether or not a majority of that parish vote to  
6 disassociate, as it has in many cases, it doesn't matter if  
7 they align with, in this particular case, a South American  
8 church, the courts hold that that determination is, as a  
9 matter of law, void. A -- a overwhelming majority of these  
10 cases across the nation, the courts have determined these  
11 issues in the favor of the Episcopal Church as a matter of  
12 law in summary judgment. Even when there have been trials,  
13 week-long trials, the trial court has essentially said, "I  
14 do not need to refer to the conflicting testimony. All I  
15 need to do is to see what the documents say and what the  
16 church has determined," and in every single case that court  
17 has said, "As a matter of law, the Episcopal Church is in  
18 control, and those who are no longer Episcopalians cannot,  
19 as a matter of law, control property," and that applies in  
20 this case to the proceeds of that trust.

21                   It's undisputed that under  
22 ecclesiastical law church property must be used for the  
23 benefit of the Episcopal Church. And as far as I know in  
24 this particular case, based upon Dr. Dickson, it's  
25 undisputed that it is not. His testimony is that they are

1 no longer affiliated with the Episcopal Church, and under  
2 the courts' rulings, time after time after time, courts  
3 around this country have said, "When that happens, when that  
4 property is not being used for the benefit of the Episcopal  
5 Church, those who are doing that cannot do that, should not  
6 do that, and," the courts have ruled, "will not do that."  
7 There is absolutely, positively no difference here. The  
8 argument that I'm hearing is "Just look at the building and  
9 just look at the address and just write a check." No court  
10 in the United States has ever ruled that way in an  
11 ecclesiastical case, none, never has happened. They have  
12 all dealt with the underlying issues. It makes sense that  
13 they do, because the ultimate issue is "Who has a right to  
14 control?" That has to be determined before there can be a  
15 final judgment in this case. And what the other side wants  
16 is for this court simply to say, "There is St. Andrews  
17 Episcopal Church, and a check will be written." To do that,  
18 this court has to ignore all of that law that's been briefed  
19 and cited in our motion. Every court, whether we've won or  
20 not, has had to determine those underlying issues. And if  
21 this court, as it should, looks at those underlying issues  
22 of control and hierarchical nature, there is in this  
23 particular case undisputed evidence to support a summary  
24 judgment that our group should be entitled to the proceeds.  
25 And it's interesting, what I'm saying

1 about the parish, my argument about a parish that  
2 essentially votes to leave, happened once before in Tarrant  
3 County. Several years ago, when Bishop Iker was the bishop,  
4 there was a church, the church's name was Holy Apostles, it  
5 was an Episcopal Church, and those in power, the priest,  
6 Father McCauley, and his vestry, voted to leave the  
7 Episcopal Church and align itself with the Eastern Orthodox  
8 Antiochian church, and a lawsuit ensued, and the arguments  
9 that I have made before this court are an echo of what  
10 Bishop Iker said, and this is part of the summary judgment  
11 evidence. What Bishop Iker said was, quote, "Such persons  
12 are not members of the true Church of the Holy Apostles,  
13 because they have joined the Antiochian Orthodox Church and  
14 thereby have abandoned communion with the Episcopal Church.  
15 The schismatic and purported Church of the Holy Apostles is  
16 a new creation, having no relation to the Holy Apostles and  
17 no right to the property." Not my words, not my argument,  
18 but Bishop Iker's words, under oath. "The church and the  
19 diocese accedes to the constitution and canons of the  
20 Episcopal Church. Therefore, each parish within the  
21 Episcopal Diocese of Fort Worth has acknowledged that they  
22 are governed by and recognize the authority of the general  
23 convention." Not my words, Bishop Iker's, and that was a  
24 suit to determine who controlled the property. There is no  
25 practical difference between that case and this case.

1                   And Bishop Huff in that case -- I'm  
2 sorry -- Reverend Huff in that case, by way of affidavit,  
3 also said, quote, "All real and personal property held by or  
4 for the benefit of the parish, mission or congregation is  
5 held in trust for this church and the diocese of the  
6 Episcopal Church." And so not only does almost every case  
7 that's been determined hold that the identity of who  
8 controls is the key factor, but also Bishop Iker has  
9 acknowledged that and has acknowledged, as has all of the  
10 other cases except for one, all of those cases have  
11 acknowledged that once you leave the Episcopal Church, you  
12 cannot control the property. That applies not just to real  
13 property but personal property. And, therefore, as a matter  
14 of law, we are entitled to the proceeds of the trust.

15                   THE COURT: All right.

16                   MR. GORDON: Your Honor, may I respond?

17                   THE COURT: Yes, sir, you may.

18                   MR. GORDON: My response with respect to  
19 the motion that was filed by the entities affiliated with  
20 the Episcopal Church is to say that I question whether their  
21 summary judgment is sufficient to -- to prove the effect of  
22 the disassociation with the Episcopal Church. It -- it  
23 appears, and I think it's undisputed, --

24                   THE COURT: Which group are you talking  
25 about, counsel?

1 MR. GORDON: Yes, the group that still  
2 occupies Lamar, that's associated with the Anglican Province  
3 of the Southern Cone. I think it's undisputed that they did  
4 disassociate with the Episcopal Church. The legal and  
5 factual question is "What is the consequence of that  
6 disassociation?" I question whether the summary judgment --  
7 summary judgment evidence is sufficiently conclusive for the  
8 Court to grant their motion for summary judgment. It's the  
9 trustee's position that both motions for summary judgment  
10 should be denied because of the existence of fact issues.

11 THE COURT: All right. Thank you.  
12 Mr. Sharpe, response?

13 MR. SHARPE: I can't respond to theirs.  
14 If I would respond, I would be going against the position  
15 I've taken. I cannot respond to theirs.

16 (Pause)

17 THE COURT: All right. The Court will  
18 take the matter under advisement, and I will make a ruling  
19 and inform the parties of that ruling in writing.

20 MR. SHARPE: Thank you, sir.

21 MR. NELSON: Thank you, Judge.

22 MR. SHARPE: May we be excused, Your  
23 Honor?

24 THE COURT: Yes, sir, you may, uh-huh.

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C E R T I F I C A T E

THE STATE OF TEXAS                    )  
  )  
COUNTY OF HOOD                        )

I, Mike Carlisle, CSR, Official Court Reporter in and for the 355th Judicial District, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and was reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of all volumes of the Reporter's Record is \$\_\_\_\_\_ and will be paid by Ms. Wells.

WITNESS MY OFFICIAL HAND this the 10th day of September, 2010.

\_\_\_\_\_  
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