# STATE OF MICHIGAN

# COURT OF APPEALS

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| TRUE WORSHIP CHURCH OF GOD IN CHRIST and A. DAVID ANDERSON,<br><br>Plaintiffs-Appellees,<br><br>v<br><br>GWENDOLYN ANDERSON, MATTHEW ANDERSON, JOSEPH ANDERSON, DELOIS ANDERSON, NAOMI ANDERSON, and MARY ANDERSON,<br><br>Defendants-Appellants. | UNPUBLISHED<br>April 21, 2005<br><br>No. 253294<br>Kalamazoo Circuit Court<br>LC No. 02-000609-CH |

Before: Neff, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendants appeal by right the trial court's entry of default judgment and award of $26,587 in damages to plaintiffs for conversion of church property. We affirm, but remand this case to the trial court for the allocation of liability among defendants.

This case involves a dispute between siblings regarding leadership and control over their family church after the death of their father who had been the church's pastor. Plaintiff A. David Anderson was appointed pastor of the church after the death of the parties' father and ordered an accounting of church finances and requested church records from the church secretary and treasurer, who were both plaintiff Anderson's siblings. Defendants Gwendolyn and Delois Anderson refused to turn over the records and plaintiff Anderson was locked out of the church building. Plaintiffs subsequently filed the present action against defendants for tortious interference with plaintiffs' business relationship and trespass and conversion of church property. After a default judgment was entered against defendants, the trial court awarded plaintiffs $26,584 in damages for conversion.

Defendants assert that the trial court abused its discretion by refusing to set aside the default entered against them. We disagree. Whether a default or a default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of that discretion. *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94-95; 666 NW2d 623 (2003). Such an abuse occurs "when the result is 'so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason

but rather of passion or bias.'" *Alken-Ziegler, Inc v Waterbury Headers Corp,* 461 Mich 219, 227; 600 NW2d 638 (1999) (citations omitted). Whether the trial court had subject-matter jurisdiction is a question of law that this Court reviews de novo. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp,* 237 Mich App 721, 730; 605 NW2d 18 (1999).

Defendants argue that the resolution of the conversion claim in plaintiffs' complaint requires interpretation of church doctrine and by-laws, such that the trial court lacks subject matter jurisdiction. We disagree. Under the Establishment Clause and Free Exercise Clause of our federal Constitution's First Amendment, "civil courts may not redetermine the correctness of an interpretation of canonical text or some decision relating to government of the religious polity." *Smith v Calvary Christian Church,* 462 Mich 679, 684; 614 NW2d 590 (2000), quoting *Paul v Watchtower Bible & Tract Society,* 819 F2d 875, 878, n 1 (CA 9, 1987). This Court has determined that courts are "severely circumscribed" from resolving disputes between a church and its members and that courts' "jurisdiction is limited to property rights which can be resolved by application of civil law." *Maciejewski v Breitenbeck,* 162 Mich App 410, 413-414; 413 NW2d 65 (1987). A court loses jurisdiction over a claim when its resolution requires the court to "stray into questions of religious doctrine or ecclesiastical polity." *Id.* at 414. "Polity refers to organization and form of government of the church." *Id.*

Defendants maintain that there is an ongoing controversy regarding whether plaintiff Anderson is the pastor of plaintiff church and that this controversy exists at both the national and local level. Defendants further maintain that a resolution of this controversy requires an interpretation and application of church doctrine and by-laws. This argument is not supported by the factual record.

Plaintiffs' complaint alleges that plaintiff Anderson is the duly appointed pastor for plaintiff church, and, while plaintiff Anderson admitted that he had previously been removed from this position by a local bishop, he testified that he was reinstated one week later. Defendants' affidavit of meritorious defense, which contains the averments of defendant Matthew Anderson, notes an investigation by the national church as to whether defendant Anderson is fit to be pastor, but does not represent that an action had yet been taken by the national church to remove plaintiff Anderson from his position. Defendant Matthew further averred that defendants had taken several votes to "oust" plaintiff Anderson as pastor but fails to state the outcome of such votes. Furthermore, defendant Matthew admits that plaintiff Anderson was the pastor at the time of the preparation of his affidavit as he avers that "if" plaintiff Anderson's credentials are taken away, he would not be in a position to be president of plaintiff church's corporation and that it was his understanding that plaintiff Anderson "will" either be ousted by the national church or by the local members. Therefore, we find a complete absence of admitted evidence establishing that plaintiff Anderson was not the pastor of plaintiff church at the time of the default judgment. The trial court then properly considered the conversion claim without having to examine church doctrine or polity.

Defendants further assert that they demonstrated both good cause for their failure to defend this action and a meritorious defense against plaintiffs' claim. We disagree. Except when grounded on lack of jurisdiction over the defendant, a motion to set aside a default or a default judgment generally may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1); *Alken-Ziegler, supra* at 223. Good cause sufficient to warrant setting aside a default or a default judgment may be shown by: (1) a

substantial procedural defect or irregularity, or (2) a reasonable excuse for the failure to comply with requirements which created the default, (3) some other reason showing manifest injustice if default is not set aside. *Alken-Ziegler supra* at 233.

Defendants argue that they have demonstrated good cause where their attorney abandoned his representation of defendants for 8 months without notice. It is true that, while a lawyer's negligence is attributable to the client and normally does not constitute a ground for setting aside a default, a lawyer's abandonment of his client may constitute good cause for setting aside the resultant default, *Amco Builders, supra,* at 96 . However, defendants' assertion of abandonment is not supported by the record.

Defendants hired attorney Robert Connelly in November 2002. While Connelly represented defendants at a settlement meeting in November 2002, he subsequently failed to enter an answer in the matter and ultimately left the law firm in which he practiced. While defendants claim that they were left without representation for eight months, the record shows that attorney Robert Wise communicated with plaintiffs' counsel in March 2003, explained the departure of his colleague, and, on April 8, 2003, obtained a copy of the November 2002 order requiring defendants to produce all church records and notified defendants of this requirement. Therefore, defendants' assertion that they were abandoned by counsel and that the firm failed to take any action on their behalf for eight months is incorrect; defendants were being actively represented by counsel roughly seven weeks *before* entry of the default against them. Therefore, defendants have failed to show good cause for their failure to defend this action.

Moreover, defendants failed to show the existence of meritorious defenses against plaintiffs' claims as required. Within their affidavit of a meritorious defense, defendants aver that they were abandoned by counsel and that a controversy exists as to whether plaintiff Anderson is, or, more accurately, will remain, the pastor of plaintiff church. As noted above, defendants' argument that the trial court lacked subject matter jurisdiction over the conversion claim lacks merit. There is no record support to show that plaintiff Anderson is not pastor of plaintiff church; at most, the affidavit demonstrates that defendants believed there would come a time in the future that he would be removed as pastor. Because defendants failed to show the existence of a meritorious defense when requesting that the trial court not enter the default judgment, the trial court did not abuse its discretion in refusing to set aside the default.[1] Furthermore, because defendants failed to show either good cause or a meritorious defense, no manifest injustice resulted in the trial court's refusal to set aside the default against defendants.

Defendants further assert that the trial court's award of $26,584 in damages to plaintiffs was clearly erroneous. We again disagree. This Court reviews a trial court's award of damages after a bench trial for clear error. *Scott v Allen Bradley Co,* 139 Mich App 665, 672; 362 NW2d 734 (1984). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake

[1] Defendants argue on appeal the existence of a statute of limitations defense; however, defendants failed to assert this defense in their affidavit of meritorious defense. Therefore, the trial court could not have considered such a defense when deciding whether to set aside the default.

has been committed." *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999).

In *Berrios v Miles, Inc*, 226 Mich App 470, 478-479; 574 NW2d 677 (1997) (citations omitted), this Court explained:

> A party asserting a claim has the burden of proving its damages with reasonable certainty. Although damages based on speculation or conjecture are not recoverable, damages are not speculative merely because they cannot be ascertained with mathematical precision. It is sufficient if a reasonable basis for computation exists, although the result be only approximate. Where injury to some degree is found, we do not preclude recovery for lack of precise proof of damages. We do the best we can with what we have.

Furthermore, our Supreme Court has noted that this is particularly true when the lack of precision is due to defendants' "own act or neglect." *Godwin v Ace Iron & Metal Co*, 376 Mich 360, 368; 137 NW2d 151 (1965) (citation omitted).

Plaintiffs' witness, Simeon Anderson, testified that, because of the incomplete records supplied by defendants, he used four weeks of records from the year 2001 to find an average amount collected for the church's programs and pastor each week then extrapolated this amount out for an expected yearly contribution of $27,200. He then subtracted the actual amount of contributions included in the partial records received from defendants, which totaled $20,554, to reach a yearly loss of $6,646, which he then multiplied by four for the years 1999-2003, to arrive at a total loss of $26,584 over the four-year period. While defendants' expert, Matthew Anderson, disputed this calculation, it is clear from the record that the trial court discounted his testimony because he admitted to considering evidence outside the record in his analysis and accepted the admittedly incomplete records as complete. In considering the credibility of witnesses with regard to damages**,** this Court will defer to the trial court's superior position to observe and evaluate the witnesses' credibility. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). Furthermore, any uncertainty in the damages amount is a result of defendants' refusal to comply with the November 25, 2002 order requiring production of all church records and accounts. In light of the incomplete records obtained from defendants, and the trial court's determination that Simeon's testimony was more credible than Matthew's testimony, the trial court's determination of damages is not clearly erroneous.

However, pursuant to Michigan's tort reform law, the trial court was required to allocate the liability of each defendant in proportion to the individual's percentage of fault. MCL 600.2957; *Holton v A+ Ins Assoc*, 255 Mich App 318, 323-324; 661 NW2d 248 (2003). While the trial court apportioned the damage award between plaintiffs, it did not allocate the liability among defendants; therefore, we remand this case to the trial court to perform the required allocation.

Affirmed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Michael J. Talbot