

NOTICE
Decision filed 05/19/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140502-U

NO. 5-14-0502

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JOEL BERNER <i>et al.</i> ,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	St. Clair County.
)	
v.)	No. 12-CH-1153
)	
FAITH CHURCH OF LEBANON, ILLINOIS,)	Honorable
)	Richard A. Aguirre,
Defendant-Appellee.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err by dismissing the plaintiffs' second amended complaint because, pursuant to the ecclesiastical abstention doctrine, the circuit court lacked subject matter jurisdiction.

¶ 2 The plaintiffs, Joel Berner *et al.*, appeal the September 8, 2014, order of the circuit court of St. Clair County that granted the motion of the defendant, Faith Church of Lebanon, Illinois (Faith Church), to dismiss the plaintiffs' second amended complaint (complaint). For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On July 11, 2014, the plaintiffs filed the complaint for declaratory judgment. The complaint alleged that the plaintiffs, who were members of the congregation of Faith Church, were expelled by the church council, pursuant to section 3 of article 6 of Faith Church's constitution and by laws. The complaint further alleged that the constitution and by laws required the church council to bring the issue of the plaintiffs' expulsions before the church body for final action, but the church council failed to do so. The plaintiffs requested that the circuit court enter an order declaring, *inter alia*, that the church council's failure to bring the plaintiffs' expulsions before the church body for final action—as allegedly required by the constitution and by laws—rendered the expulsions null and void and that until such time when the church body has an opportunity to finally act on the expulsions, the plaintiffs remain members of Faith Church.

¶ 5 On July 16, 2014, Faith Church filed a motion to dismiss, based on sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2012)). On September 8, 2014, the circuit court, without further comment, granted the motion to dismiss. The plaintiffs filed a timely notice of appeal.

¶ 6

ANALYSIS

¶ 7 "This court reviews the trial court's ruling on a motion to dismiss *de novo* and can affirm on any basis present in the record." *Riverdale Industries, Inc. v. Malloy*, 307 Ill. App. 3d 183, 185 (1999). The threshold issue presented by this appeal is whether the ecclesiastical abstention doctrine prohibited the circuit court from exercising subject matter jurisdiction over the plaintiffs' first amended complaint. "The first amendment to

the Constitution of the United States (U.S. Const., amend. I) bars any secular court from involving itself in the ecclesiastical controversies which may arise in a religious body or organization: 'it would be a vain consent and would lead to the total subversion of *** religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.' " *Abrams v. Watchtower Bible & Tract Society of New York, Inc.*, 306 Ill. App. 3d 1006, 1011 (1999) (quoting *Watson v. Jones*, 80 U.S. 679, 729 (1872)). "[I]f the subject matter of an internal church dispute is not appropriate for state intervention, then abstention is equally compulsory whether the church is congregational or hierarchical, and whether the dispute has been addressed by an adjudicatory body, if any, within the church." *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 407-08 (2008).

¶ 8 While Illinois has adopted a "neutral principles of law" approach in some cases, these cases have almost exclusively involved matters regarding ownership of church property (see *Diocese of Quincy v. Episcopal Church*, 2014 IL App (4th) 130901, ¶ 48; *People ex rel. Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740, 744 (1997); *Aglikin v. Kovacheff*, 163 Ill. App. 3d 426, 432 (1987); *York v. First Presbyterian Church of Anna*, 130 Ill. App. 3d 611, 617 (1984)), employment contracts for wages and benefits (see *Jenkins v. Trinity Evangelical Lutheran Church*, 356 Ill. App. 3d 504, 509 (2005)), or tortious conduct on the part of a church officiate (see *Bivin v. Wright*, 275 Ill. App. 3d 899, 903 (1995); *Duncan v. Peterson*, 408 Ill. App. 3d 911, 915 (2010)). In contrast, such an approach is constitutionally impermissible where a controversy involves " 'matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or

law.' " *Bruss*, 385 Ill. App. 3d at 426 (quoting *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976)).

¶ 9 The first inquiry, then, is to determine the subject of the dispute. If matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law are involved, then abstention is required regardless of whether or not neutral principles of law could be applied to adjudicate the matter. *Id.* at 421. If the subject does not involve one of these matters, then the circuit court may hear the case, but only if the issues can be determined using neutral principles of law without interfering with matters of church discipline, faith, internal organization, or ecclesiastical rule, custom, or law. See *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 714-15 (1991) (abstention required although the issue involved control of church property because examination of the documents pertinent to the dispute necessarily entailed deciding an issue of religious doctrine or church law); see also *Steppek v. Doe*, 392 Ill. App. 3d 739, 755-56 (2009) (abstention required although the issue involved a priest's allegations of defamation on the part of former members of the church because alleged defamatory statements were made in the course of a church's internal disciplinary proceedings).

¶ 10 In the case at bar, the general subject matter of the plaintiffs' complaint for a declaratory judgment is church membership and/or discipline. Following the ecclesiastical abstention analysis outlined above, abstention is required because this subject necessarily involves a "matter of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." See *Bruss*, 385 Ill. App. 3d at 426 (quoting *Milivojevich*, 426 U.S. at 713). It is inconsequential whether the dispute could be

resolved by interpretation of the defendant's bylaws because, no matter how egregiously the congregation may have departed from the proper procedures, the subject matter of the dispute makes abstention compulsory. See *id.* at 422 (citing *Nunn v. Black*, 506 F. Supp. 444, 448 (W.D. Va. 1981)).

¶ 11 The only case cited by the plaintiffs that does not comport with the above-stated analysis is *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41 (2004). However, a careful review of the legal analysis and authority relied upon by the court to exercise jurisdiction in that case reveals that its reasoning is unsound. In *Ervin*, a church's board members voted to remove a pastor from his pastoral duties. *Id.* at 41-42. However, the church's bylaws provided that the congregation could vote to terminate the pastor, but no provision permitted the board to terminate the pastor without a vote of the church's members. *Id.* at 42. The pastor sued for an injunction to prevent the church from terminating his service as pastor without such vote. *Id.* The church responded that the employee handbook and the church covenant gave the board the power to remove the pastor. *Id.* After a trial, the circuit court refused to interfere with the church's ecclesiastical decision to terminate the pastor and dismissed the complaint. *Id.*

¶ 12 In reversing, our brethren in the First District cited *Bivin* (275 Ill. App. 3d at 903) for the proposition that the circuit court may resolve a dispute that arises within a church if the dispute does not require determination of any doctrinal issue. *Ervin*, 351 Ill. App. 3d at 43. The *Ervin* court then quoted *Abrams* (306 Ill. App. 3d at 1011) and cited *Muhammad* (289 Ill. App. 3d 740), stating that "[c]ivil courts may apply neutral legal principles 'to interpret provisions of religious documents involving *** nondoctrinal

matters, to the extent that the analysis can be done in purely secular terms.' " *Ervin*, 351 Ill. App. 3d at 43. Finally, the court cited *Abrams* (306 Ill. App. 3d at 1011) for the proposition that "the first and fourteenth amendments do not prohibit court intervention when the church fails to follow the procedures it has, itself, enacted." *Ervin*, 351 Ill. App. 3d at 46. The problem with the *Ervin* analysis, however, is that it puts the cart before the horse.

¶ 13 The *Ervin* court failed to recognize that the neutral principles analysis set forth in the cases *Ervin* cites is only relevant if the court first determines that the subject matter of the dispute does not involve "matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." See *Bivin*, 275 Ill. App. 3d at 903 (abstention not required because the general subject matter of the dispute consisted of allegations of tortious conduct on the part of a church officiate *and* neutral principles of negligence law could be applied in resolving the dispute); *Abrams*, 306 Ill. App. 3d at 1013 (abstention required because although the general subject matter of the dispute consisted of allegations of tortious conduct on the part of a church officiate, the dispute could not be decided based on neutral legal principles); *Muhammad*, 289 Ill. App. 3d at 744-45 (abstention not required because the general subject matter of the dispute was ownership of church property *and* the dispute could be addressed by applying neutral principles of law set forth in the church's bylaws).

¶ 14 Again, the *Ervin* court failed to recognize the first layer of the ecclesiastical abstention analysis and make an initial determination of whether the subject matter of the dispute concerned discipline, faith, internal organization, or ecclesiastical rule, custom, or

law. Accordingly, we find that *Ervin* was wrongly decided and deviates from the analysis conducted by all of the cases cited above, including the cases cited therein. Because, in the case at bar, the general subject matter of the dispute is church discipline, we find that the ecclesiastical abstention doctrine bars the court from exercising jurisdiction, and the circuit court was correct in dismissing the first amended complaint.

¶ 15

CONCLUSION

¶ 16 For the foregoing reasons, we affirm the September 8, 2014, order of the circuit court of St. Clair County.

¶ 17 Affirmed.