2018 IL App (1st) 171101-U
No. 1-17-1101

SECOND DIVISION
August 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LATRELL LEGGETT, BRUCE YOUNG, RENEE YOUNG, and MARY ROSSER, Members of True Zion Spiritual Church, Inc.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs,	)	No. 16 CH 10616
(Latrell Leggett, Plaintiff-Appellant)	)	
v.	)	The Honorable Celia Gamrath, Judge Presiding.
LILLIE M. MOORE, Interim Pastor of True Zion Spiritual Church, Inc., and TRUE ZION SPIRITUAL CHURCH, INC.,	)	
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County is affirmed where plaintiffs failed to carry the shifted burden of going forward in response to defendants' section 2-619 motion, and the circuit court did not abuse its discretion in dismissing plaintiffs' complaint with prejudice because they cannot prove any set of facts entitling them to recovery.

¶ 2 Plaintiff Latrell Leggett appeals from an order of the circuit court of Cook County dismissing her complaint for injunctive and other relief, with prejudice against defendants Lillie M. Moore and the True Zion Spiritual Church, Inc., pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2016)). Leggett contends that the circuit court erred in granting defendants' motion to dismiss where unresolved evidentiary issues undermined the affirmative matter presented. We affirm the judgment of the circuit court for the reasons that follow.

¶ 3 BACKGROUND

¶ 4 Leggett and co-plaintiffs Bruce Young, Renee Young, and Mary Rosser were members of True Zion Spiritual Church, Inc., a not-for-profit corporation located at 6915 South Wentworth Avenue, in Chicago. In August 2016, several months after Pastor Morris Richardson passed away, plaintiffs filed a two-count complaint against defendants seeking various forms of relief. In count I of the complaint, plaintiffs alleged that they were long standing, active members of True Zion, which had a policy of lifetime membership. Defendant Lillie M. Moore was serving as the interim pastor and registered agent of True Zion. Plaintiffs described True Zion as a religious corporation whose charitable purpose was for religious worship and spiritual education. Plaintiffs alleged that "True Zion exists pursuant to the Illinois Not for Profit Corporation [Act] 805 ILCS 105, et al. [*sic*]." On February 18, 2016, True Zion created a new board of directors without complying with church bylaws. Traditional church policy provided that "selection" of the pastor be determined by Mary Rosser, the overseer of True Zion. However, on April 10, 2016, the board of directors elected Moore as the interim pastor. Since then, Moore has been performing her duties as the interim pastor without lawful authority. According to plaintiffs, defendants' refusal to "elect" a pastor pursuant to traditional church policy threw "the temporal

and spiritual affairs of the church into complete confusion" and seriously impaired the "business purposes of the church and impaired the ability of the church to acquire new members and retain current members." Plaintiffs added that the failure of defendants to recognize Mary Rosser as the one authorized to "appoint" an interim pastor "casted a cloud over the spiritual and temporal affairs of the church." As relief, plaintiffs sought a temporary restraining order and preliminary and permanent injunctions to prevent Moore from performing any ministerial functions at the church and True Zion from recognizing her as the interim pastor. In count II, plaintiffs further alleged that the cessation of religious services occasioned by Moore cancelling Sunday services and calling police, and the refusal of True Zion to "elect" a pastor pursuant to traditional church policy were grounds for involuntary dissolution pursuant to section 112.50 of the General Not For Profit Corporation Act of 1986 (805 ILCS 105/112.50 (b)(4) (West 2016)). Plaintiffs, however, urged the court to appoint a custodian to "remedy the grounds" for their complaint pursuant to section 112.55 of the Act (805 ILCS 105/112.55 (West 2016)), which provides for alternative remedies to judicial dissolution.

¶ 5 Defendants answered the complaint and denied the material allegations. Defendants attached, *inter alia*, copies of the articles of incorporation under the Act, the bylaws of True Zion, a proposed set of bylaws that were not adopted, the minutes from two board meetings, and a notice of a "congressional meeting to elect directors and officers."

¶ 6 Defendants then filed the underlying "motion for judgment on the pleadings" pursuant to section 2-619 of the Code. Referring to the exhibits attached to their answer, defendants argued that True Zion was organized under the Act, the bylaws have been in full force and effect since the incorporation of True Zion in 1978, and notice was sent to all congressional members, including plaintiffs and their counsel, about the meeting to elect the board of directors within the

time prescribed by the Act (805 ILCS 105/107.15 (West 2016)) and Article III, Section 4 of the bylaws. Defendants stated that plaintiffs attended the July meeting at True Zion and raised no objection regarding lack of notice. Defendants argued that plaintiffs waived any objections to lack of notice pursuant to section 107.20 of the Act (805 ILCS 105/107.20 (West 2016)), which provides that attendance of any meeting constitutes waiver of notice unless there is an objection to the holding of the meeting. Further, when asked if they would like to vote, plaintiffs declined. Defendants stated that the board of directors and officers resulting from the February 2016 election and their subsequent actions were unanimously approved at the meeting. Defendants added that during a subsequent meeting, the board of directors reaffirmed the actions of Moore, and they attached the minutes from that meeting. Defendants argued that the board of directors and Moore were authorized to manage the affairs of True Zion pursuant to section 108.05(a) of the Act (805 ILCS 105/108.05(a) (West 2016)), which provides that "[e]ach corporation shall have a board of directors, and except as provided in articles of incorporation, the affairs of the corporation shall be managed by or under the direction of the board of directors." Defendants also raised a *res judicata* argument under section 2-619(a)(4) (735 ILCS 5/2-619(a)(4) (West 2016)), regarding a separate cause of action between True Zion and Mary Rosser to quiet title to the church building.

¶ 7 In their response, plaintiffs contended that defendants failed to completely negate plaintiffs' argument that traditional church policy governed who becomes the pastor. Plaintiffs argued that defendants' section 2-619 motion, at best, merely provided evidence contesting the facts in plaintiffs' complaint. In support, plaintiffs attached two letters from plaintiffs' attorney to True Zion, first requesting a copy of the bylaws, which they alleged had not been previously used, and second denying that the bylaws they received were the original bylaws of True Zion.

Plaintiffs also attached annual reports filed with the Illinois Secretary of State indicating that before 2016, "Plaintiffs were board members not Defendants." Plaintiffs further argued that their complaint about who should lead the church or make decisions was not barred by *res judicata* and attached a copy of True Zion's complaint to quiet title against Mary Rosser showing that the ownership of the church building was at issue.

¶ 8 Following a hearing, the circuit court entered a written order noting that defendants mislabeled their motion as one for "judgment on the pleadings" and granting defendant's motion to dismiss with prejudice, stating as follows:

> "Crediting all well-pled facts in Plaintiffs' complaint, and considering the pleadings and prayers for relief contained in Plaintiffs' complaint, it is clear that True Zion Spiritual Church, Inc. ("Church") has a duly constituted board of directors ("Board") under the Church's bylaws and the [General] Not for Profit Corporation[ ] Act of 1986 ("Act"). 805 ILCS 105/101.01 *et seq.* At law, the Board is in control of the corporation and makes all necessary decisions on behalf of the corporation within the confines of the Act, the Church's articles of incorporation, and its bylaws. The bylaws, meetings minutes, and the Act are bereft of any reference to the position of "Overseer," claimed by Plaintiff Rosser. Plaintiffs admit this. The court finds no legal authority conferred the powers claimed by Plaintiffs to predicate the relief sought in their complaint.
>
> The pleadings show notice of special meetings and that the participants achieved quorums. The Board was duly elected, and thereafter affirmed the bylaws, cured the purported defect from the April 2016 meeting, and ratified the actions of the selected Interim Pastor, Rev. Moore. Plaintiffs themselves attended meetings now called into

question, but did not cast votes. All of this constitutes affirmative matter defeating the claim in Plaintiffs' complaint under section 2-619(a)(9).

Having found an affirmative matter defeats Plaintiffs' cause of action, the court need not reach the section 2-619(a)(4) *res judicata* arguments."

¶ 9 Plaintiff Leggett filed a timely notice of appeal. Co-plaintiffs Bruce Young, Renee Young, and Mary Rosser are not parties to this appeal.

¶ 10 ANALYSIS

¶ 11 Given our independent duty to review our jurisdiction over an appeal (*Vines v. Village of Flossmoor*, 2017 IL App (1st) 163339, ¶ 8), we first consider whether the doctrine of ecclesiastical abstention prohibits us from exercising jurisdiction over this appeal (*Jackson v. Mount Pisgah Missionary Baptist Church Deacon Board*, 2016 IL App (1st) 143045, ¶ 49). Having reviewed Leggett's arguments for jurisdiction, we find that we do have jurisdiction over this appeal. *Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162986, ¶ 26.

¶ 12 Under the first amendment right to the free exercise of religion, " 'civil courts may not determine the correctness of interpretations of canonical text or some decisions relating to government of the religious polity; rather courts must accept as given whatever the religious entity decides.' " *Jackson*, ¶ 50 (quoting *Duncan v. Peterson*, 408 Ill. App. 3d 911, 915 (2010)). However, mandatory deference to religious authority is not required by the first amendment when a church dispute does not raise issues of church doctrine, and the court may apply a variety of approaches including the "neutral principles of law" approach to examine pertinent church charters, constitutions and bylaws, deeds, State statutes, and other evidence to resolve the matter as it would in a secular dispute. *Id.* (citing *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700, 713-14 (1991)).

¶ 13 Civil courts may exercise jurisdiction to decide whether a church has violated its own bylaws (*id.* ¶ 52), and in this case, Leggett asserts in her complaint that "True Zion Church created a new Board of Directors without complying with the by-laws of the church." Although churches have the freedom to select their clergy in conformity with governing church law, "the first and fourteenth amendments do not prohibit court intervention when the church fails to follow the procedures it has, itself, enacted." *Id.* (quoting *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 46 (2004)). Whether or not defendants violated the bylaws in this case does not require inquiry into religious principles and doctrines; we need only consider the plain text of the church's bylaws and the relevant facts. *Id.* ¶ 54. Accordingly, we have jurisdiction to decide whether defendants followed the proper procedure for electing a pastor. *Id.* ¶¶ 53-54.

¶ 14 Before turning to the merits, we note that Leggett's arguments for jurisdiction are taken nearly verbatim from *Jackson* without proper citation, and we direct appellate counsel's attention to Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017), which requires proper "citation of the authorities and the pages of the record relied on." Compare *Jackson*, ¶¶ 50-53, with Leggett's brief, pp. 9-11. The cutting and pasting of four paragraphs from *Jackson* without any citation in the argument section or in the points and authorities section of the opening brief does not meet the requirements of Rule 341(h)(7). See generally *United States v. Jackson*, 64 F.3d 1213, 1219 n.2 (8th Cir. 1995), *cert. denied*, 516 U.S. 1137 (1996) (citing *United States v. Davis*, 864 F. Supp. 1303, 1305-09 (N.D. Ga. 1994) (expressing disapproval of brief-writing style that "appropriates both arguments and language without acknowledging their source")). Relatedly, defendants correctly point out that the statement of facts in Leggett's brief is incomplete, and we refer appellate counsel to subsection (h)(6) of the same rule, which requires that the statement of

facts "contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). We caution appellate counsel that "our supreme court rules governing appellate practice are mandatory, not merely suggestive." *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 21.

¶ 15 We further note that Leggett's brief includes a *res judicata* argument that appellate counsel concedes the circuit court did not reach in dismissing the underlying complaint. "Issues not considered by the [circuit] court cannot be argued on review." *Lafata v. Village of Lisle*, 185 Ill. App. 3d 203, 207 (1989). Hence, we need not consider the *res judicata* argument.

¶ 16 On the merits, Leggett contends that the affirmative matter asserted by defendants does not warrant dismissal of her complaint under section 2-619. She asserts that defendants' affirmative matter contains evidentiary issues that the circuit court improperly resolved in defendants' favor, namely that the bylaws have no date of adoption and require members to have a law license to be eligible for "resident membership," yet fail to even mention how an interim pastor is selected.

¶ 17 Generally, we review *de novo* the circuit court's decision to dismiss a complaint under section 2-619 of the Code. *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 141576, ¶ 22. However, we review the circuit court's decision to dismiss a complaint *with prejudice* for an abuse of discretion because that decision is a matter within the sound discretion of the circuit court. (Emphasis added.) *Id.* A complaint should be dismissed with prejudice only where it is apparent that plaintiff cannot prove any set of facts entitling recovery. *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 405 (2008).

¶ 18 Section 2-619(a)(9) allows for the involuntary dismissal of a claim that is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2016). Affirmative matter means "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). The affirmative matter asserted by defendants must be apparent on the face of the complaint or supported by affidavits or other evidentiary materials. *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997). The affirmative matter must do more than refute a well-pleaded fact in the complaint. *Doe v. University of Chicago Medical Center*, 2015 IL App (1st) 133735, ¶ 39. "Once a defendant satisfies this initial burden of going forward on the section 2-619(a)(9) motion to dismiss, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is 'unfounded or requires the resolution of an essential element of material fact before it is proven.' " *Epstein*, 178 Ill. 2d at 383 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993)). Plaintiff may overcome this burden with "affidavits or other proof." *Andrews v. Marriott Intern, Inc.*, 2016 IL App (1st) 122731, ¶ 19 (quoting 735 ILCS 5/2-619(c) (West 2010)). If plaintiff fails to present a counteraffidavit refuting the evidentiary facts in defendants' affidavits or other evidence, those facts may be admitted and the motion to dismiss granted because plaintiff "failed to carry the shifted burden of going forward." *Id.* (quoting *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116).

¶ 19 Here, defendants supported their motion to dismiss with reference to the exhibits attached to their answer showing that True Zion was incorporated under the Act. Because the Act provides that the affairs of the corporation are managed by the board of directors, and

defendants' affirmative matter showed that the duly elected board of directors affirmed the church bylaws and ratified the actions of the interim pastor during meetings at which plaintiffs attended but abstained from voting, the burden shifted to plaintiffs to establish that the affirmative matter was either unfounded or involved an issue of material fact. *Epstein*, 178 Ill. 2d at 383. However, the letters that plaintiffs attached to their response and the annual reports filed with the Illinois Secretary of State fail to refute the evidentiary facts presented by defendants. Likewise, the allegations in plaintiffs' complaint are insufficient to refute the affirmative matter raised by defendants in their motion to dismiss. *Andrews*, 2016 IL App (1st) 122731, ¶ 38. Under these circumstances, we cannot agree with Leggett that the circuit court erred in dismissing plaintiffs' complaint because plaintiffs failed to carry the shifted burden of going forward. Rather, we conclude that the circuit court did not abuse its discretion in dismissing plaintiffs' complaint with prejudice because they cannot prove any set of facts entitling them to recovery.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.