

AFFIRM; Opinion issued July 12, 2011



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-10-00202-CV

TIRUAYER FESSEHA AND DAGIM KASSAHUN, Appellants

V.

**THE ETHIOPIAN ORTHODOX TEWAHEDO DEBRE MEHERET ST. MICHAEL'S
CHURCH IN DALLAS, EYOEL NEGGA, YOSEF RETTA, GIRMA WOLDE RUFANEL,
ABERA FITTA, FETELEWORK GOLLA, BIZUAHEHU GETACHEW, SOLOMON
ASSEFA, HAILU ARAGAW (ABEBE), AND TEWABECH TADESSE, Appellees**

**On Appeal from the 192nd District Court
Dallas County, Texas
Trial Court Cause No. 09-06180-K**

MEMORANDUM OPINION

**Before Justices Bridges, Lang-Miers, and Murphy
Opinion By Justice Lang-Miers**

Appellants, Tiruayer Fesseha and Dagim Kassahun, appeal from the trial court's order granting summary judgment in favor of appellees, The Ethiopian Orthodox Tewahedo Debre Meheret St. Michael's Church in Dallas, Eyoel Negga, Yosef Retta, Girma Wolde Rufael, Abera Fitta, Fetelework Golla, Bizuahehu Getachew, Solomon Assefa, Hailu Aragaw (Abebe), and Tewabech Tadesse, on appellants' claims for breach of fiduciary duty, declaratory judgment, and injunctive relief. We affirm.

BACKGROUND

Appellants are former members of St. Michael's. They sued St. Michael's and its trustees alleging that they breached their obligations to appellants, as members of the church, by failing to conduct elections for trustees; improperly conducting general meetings without a requisite quorum; adopting amendments to the bylaws in violation of those bylaws; disenfranchising numerous members of St. Michael's who were adverse to the trustees' policies and procedures; refusing to allow those disenfranchised members to participate in meetings and refusing to provide them copies of church documents; establishing a mandatory monthly membership fee of \$30; refusing to honor the members' petitions to call special meetings or place matters on the agenda for other meetings; and altering the trustee-nomination procedure and committee-appointment process so that only persons appointed by them could be eligible for appointment. Appellants sought a declaration that the amended bylaws are of no effect, all disenfranchised members are restored to full rights as members, and the \$30 membership fee is void. They also sought temporary and permanent injunctive relief. Both parties filed combined motions for no-evidence and traditional summary judgment. Appellees asserted in their motion, among other things, that the ecclesiastical abstention doctrine applied to divest the court of jurisdiction to hear appellees' claims. The trial court granted appellees' motions without stating the basis for its ruling. Appellants challenge the trial court's granting of appellees' motion for summary judgment.

STANDARD OF REVIEW

We review a trial court's decision to grant or deny a motion for summary judgment de novo. *See Mid-Century Ins. Co. v. Ademaj*, 243 S.W.3d 618, 621 (Tex. 2007). The standards for reviewing a summary judgment are well-established. The party moving for summary judgment has the burden of showing that no genuine issue of material fact exists and that it is entitled to

judgment as a matter of law. See TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985); *Swilley v. Hughes*, 488 S.W.2d 64, 67 (Tex. 1972). When multiple grounds are raised in the summary judgment motion and the trial court does not specify the ground or grounds relied upon for its ruling, we will affirm the summary judgment if any of the grounds advanced in the motion are meritorious. *McAfee, Inc. v. Agilysys, Inc.*, 316 S.W.3d 820, 825 (Tex. App.—Dallas 2010, no pet.) (citing *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989)).

DISCUSSION

One of the grounds raised in appellees' motion for summary judgment was that appellants' claims should be dismissed because they concerned ecclesiastical matters over which the trial court did not have jurisdiction. In their first issue, appellants argue, among other things, that the ecclesiastical abstention doctrine does not apply and that their claims may be resolved by applying neutral principles of law.

The ecclesiastical abstention doctrine is based on the First Amendment's free exercise of religion clause. *Westbrook v. Penley*, 231 S.W.3d 389, 396–98 (Tex. 2007). The First Amendment prohibits governmental action that burdens the free exercise of religion by encroaching on a church's ability to manage its internal affairs. *Id.* at 395 (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)); *Retta*, 338 S.W.3d at 76; *Lacy v. Bassett*, 132 S.W.3d 119, 122–23 (Tex. App.—Houston [14th Dist.] 2004, no pet.). This prohibition applies to the States through the Fourteenth Amendment. *Westbrook*, 231 S.W.3d at 394–95. It prohibits government, including the courts, from “interfering with the rights of heirarchical religious bodies to either establish their own internal rules and regulations or create tribunals for adjudicating disputes over religious matters” such as “theological controversy, church discipline, ecclesiastical government, or the conformity of members to standards of morality.”

Lacy, 132 S.W.3d at 123; *Retta*, 338 S.W.3d at 76 (citing *Westbrook*, 231 S.W.3d at 398). A trial court, however, has jurisdiction to resolve purely secular disputes that do not require an inquiry into religious doctrine. *Westbrook*, 231 S.W.3d at 399. But such disputes have thus far been limited to disputes over property ownership. *See id.*; *Retta*, 338 S.W.3d at 77.

Although appellants argue that we may resolve the issues here by applying neutral principles of law, appellants stated in oral argument that the gravamen of their claims in this case is that “the church’s bylaws were changed inappropriately.” Appellants also stated their view that this Court’s recent opinion in *Retta v. Mekonen*, 338 S.W.3d 72 (Tex. App.—Dallas 2011, no pet.) is dispositive of this appeal and conceded that there are no new issues to be decided in this case because both cases involve the same amendments to the bylaws. They urged the Court to reconsider its ruling in *Retta*.

In *Retta*, a case involving the same defendants (the church and trustees) as in this case but different plaintiffs (former members), the trial court granted the former members a temporary injunction, and the church and trustees appealed. *Id.* at 74. Among other things, the trial court granted a temporary injunction enjoining the church and trustees from prohibiting any person from entering the church and peaceably participating in worship services and from requiring any person to leave the worship services unless the person was creating an actual disturbance. *Id.* We concluded that the trial court lacked jurisdiction to grant the temporary injunction enjoining the church and trustees from prohibiting persons from entering the church or removing persons during worship services, and we vacated and dissolved the temporary injunction and remanded the cause to the trial court. *Id.* at 77. We did not consider whether the trial court had subject-matter jurisdiction over the underlying causes of action, but held that “the church’s failure to follow its

bylaws on a matter of internal governance is also a matter of internal church governance and ecclesiastical concerns, and the courts may not interfere with that decision.” *Id.* at 76 & n.1.

We conclude that the neutral principles of law approach does not apply here because appellees complain about matters of internal church governance. The disputes in this case do not involve contract, property, or civil rights. Instead, appellees contend that the trustees failed to comply with the bylaws when they allegedly called for elections, conducted meetings, and amended the bylaws; disenfranchised members; refused to allow those disenfranchised members to participate in meetings; refused to provide disenfranchised members copies of church documents; and established a mandatory monthly membership fee. Whether a church failed to “follow its bylaws on a matter of internal governance is also a matter of internal church governance and ecclesiastical concerns,” and we may not interfere with that decision. *Retta*, 338 S.W.3d at 77. Nor do courts have jurisdiction to decide who may or may not be members of the church. *Westbrook*, 231 S.W.3d at 398–99; *Retta*, 338 S.W.3d at 77 (“A church has a right to control its membership without government interference, including interference by the courts.”).

We conclude that the trial court lacked jurisdiction to hear appellants’ claims because they involve matters of internal church governance. Consequently, we further conclude that the trial court did not err by granting appellees’ motion for summary judgment on the ground that it did not have jurisdiction because the claims involved ecclesiastical matters. Based on our disposition of this issue, we do not need to consider the other issues raised by appellants.

In their appellate response, appellees moved for sanctions against appellants under rule 45, Texas Rules of Appellate Procedure, for a frivolous appeal. That motion is denied.

We affirm the trial court's judgment.

ELIZABETH LANG-MIERS
JUSTICE

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