No. 21-CV-262

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

RE'ESE ADBARET DEBRA SELAM KIDEST MARIAM ETHIOPIAN TEWAHEDO CHURCH, INC.,

Appellant,

v.

AKLILU HABTE, ET AL.,

Appellees

Appeal of Dismissal of Complaint in Case No. 2015 CA 007574 B
Appeal of Denial of Motion and Memorandum in Support to Alter, Amend and Correct Order in Case No. 2015 CA 007574 B

BRIEF FOR APPELLANT

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LIST OF PARTIES BELOW

Parties below were Appellant (Plaintiff) Re'ese Adbaret Debre Selam Kidest Mariam Ethiopian Orthodox Church, Inc., (hereinafter the "Church") and Appellees (Defendants) Aklilu Habte, Martha Kassa Engida, Metenu Tesfa, Tezazy Dagne Tegene, Elian Meaza, Kassa T. Biru, Beza Asrat Tadesse, Girma Tiruneh, Addisu Abebe, Tesfaye Mekoya Asseged, Mengesha Achamyeleh, Tadele G. Wolde, Abraham Habte Selassie, Ameha Desta, Zelalem Anteneh, Hailu Zeleke Lebu, Girma M. Semru, Bethleham M. Fetehayehu, Getu Woldetsadik, Hizkias Mamo, Dires Masho, Temesgen Asfaw Kersema, and Fekreyohannes K. Haile and intervenor/interpleader plaintiff Eagle Bank.

STATUTES AND REGULATIONS

All applicable statutes and regulations are contained in the Appellants' Statutory Appendix.

STATEMENT OF THE ISSUES

Did the Court below err in dismissing the complaint for lack of standing?

Did the Court below err in finding that the Church's 2014 and 2015 elections were invalid because persons otherwise entitled were denied the opportunity to vote?

Did the Court below err in finding that the Church's 2014 and 2015 elections were invalid because they were held in a month other than as specified in its Bylaws?

Did the court below err in finding that the Church's 2015 election was invalid for lacking a quorum?

Was it proper to for the Court below to credit the results of a putative election of eight board members conducted by Defendants when there were not eight vacancies on the board and where Plaintiff alleged the invalidity of such election?

Did the Court below err in holding that Dr. Amare Kassaye, the Church's Aleka was not a member of the board of trustees and thus not entitled to vote when

the purported board elected by Defendants and their supporters in October 2016 voted to dismiss this action.

STATEMENT OF THE CASE

Petitioner/Plaintiff Church appeals the dismissal of the complaint in this matter for lack of standing. The complaint sought to enforce the Church's board of trustees' decision to remove from the Church's premises Appellees and persons acting in concert therewith who are forcefully occupying the Church's premises, who have locked the Church's administrator out of his office, who purported to fire the administrator, and who are forcefully restricting board members and other Church members who oppose their unlawful actions from entering the Church.

This matter was previously before this Court in Case No. 18-CV-0559 wherein Plaintiff appealed the trial court's order dismissing the complaint. This Court vacated and remanded the case on several issues the trial court had failed to address adequately. *See* Memorandum Opinion and Judgment (August 22, 2019), pp. 1-4 ("Remand Order") (JA 27). Following this Court's Remand Order, the trial court without further hearings or proceedings issued another order dismissing the complaint. *See* Order (September 25, 2020). JA 37. Plaintiff then filed a motion under Rules 59 and 60 to alter, amend or correct the trial court's decision. *See* Motion and Memorandum in Support to Alter, Amend and Correct Order (October

22, 2020) (JA 136). The trial court denied that motion on March 20, 2021. JA 46. This appeal followed.

STATEMENT OF FACTS

The relevant background facts are adequately summarized in this Court's Remand Order and will not be repeated here in depth. *See* JA 27-30. *See also* Appellant's Brief, Case No. 18-CV-0559, pp, 3-20 (August 31, 2018) (hereinafter "Brief, 18-CV-0559"). Briefly stated, an escalating dispute over Church governance resulted in a group of Church members led by Appellee/Defendant Aklilu Habte purporting to dismiss the elected members of the Church's governing board of trustees and the church administrator (or Aleka), the Rev. Dr. Amare Kassaye, an ex officio board member. The board's concern that Church services were devolving into violence led it to temporarily close and lock the Church. Unknown person or persons were able to unlock the Church's doors allowing Appellee/Defendants to gain entry and forcibly restrain board members and supporters of the board from entering the Church. The Church then filed this action to evict the Defendants/Appellees. Subsequently, Appellees and their supporters purported to hold an election to fill all eight elected board positions in October of 2016 despite that the terms for the four board members elected in 2015 had not expired. That Appellee elected purported board then voted to dismiss this action.

Plaintiff had previously conducted its own 2016 election in March of that year for the four expiring board seats originally elected in 2014. So, no board vacancies existed when Appellees purported to hold their board election. *See generally* Brief 18-CV-0559, pp. 3-20.

SUMMARY OF ARGUMENT

The Remand Order focused on the question of the validity of the 2014 and 2015 church general assembly board elections and the holding of the prior dismissal order that those elections were invalid. JA 34-35. This Court noted that the dismissal order did not address the March 2016 election plaintiff had cited to as indicating there were no vacancies to be filed in the October 2016 election defendants purported to conduct. JA 35. This Court also noted that the validity of those three elections could affect who was the proper Aleka (administrator of the Church), the Aleka being a permanent board member under the 1996 bylaws this Court determined governed the Church. JA 35. This Court further noted that the prior judge that had denied temporary relief had concluded that Dr. Kassaye "had been named Aleka" by members of the board who were "invalidly elected in July 2014 and July 2015," but the dismissal order did not resolve that issue. JA 35.

On remand, Judge Mott purported to resolve these issues, but without holding further evidentiary proceedings. *See Order*, Case No. 2015 CA 007574 B

(Sept. 25, 2020) (hereinafter "Second Dismissal Order") (JA 37). However, in doing so, the Second Dismissal Order failed to consider unrefuted evidence of record and made errors of law and fact prejudicial to Plaintiff. Accordingly, the Church submitted a Motion to Alter, Amend and Correct the Second Dismissal Order pursuant to Superior Court Civil Procedure Rules 59 and 60. *See* JA 136. Rather than address the factual and legal issues Plaintiff raised, the court below simply issued a curt order denying the motion. *See* Order, Case No. 2015 CA 007574 (Mar. 30, 2021) (JA 46).

The Second Dismissal Order clearly erred in its various findings, and the failure of the court below to address the matters raised in the Rule 59-60 motion was an abuse of discretion that requires this Court's correction. The Church raised valid points concerning the Second Dismissal Order that the court below should have addressed and corrected with respect to its decision. Had it done so it would not have dismissed this case for lack of standing.

Specifically, the trial court's finding that the 2014 and 2015 elections were conducted contrary to the 1996 Church bylaws (JA 41) lacks supporting evidence and is based on an erroneous interpretation of the Church's bylaws. The court's conclusion with respect to that matter is predicated on persons supposedly being denied the right to vote in those elections due to whether they had paid dues or were "financial contributors of record." JA 41. No evidence exists in the record,

however, of any Church member being denied the vote at those two Church general assembly meetings. Moreover, in interpreting the Church's 1996 Bylaws, the trial court erred in finding a difference between the terms "dues," "tithes" and contributions of record as used in the bylaws. *See* JA 41. Reading the bylaw provisions in context plainly shows that the terms were used synonymously.

Additionally, the trial court committed legal error in finding that the Church's 2014 and 2015 elections were invalid because they were held in a month other than as specified in its bylaws. JA 41-42. DC Code § 29-405.01(d) specifically provides that the failure to hold an annual or regular meeting at the time specified by the bylaws does not affect the validity of the actions taken at that meeting. The trial court nevertheless eviscerated that provision by holding without explanation or citation to any authority that these two meetings y being held other than in October thus became "emergency" meetings and that the bylaw requirements for such "emergency" meetings had not been met (JA 42), notwithstanding that the trial court failed to state what, if any, such bylaw requirement had not been met. *See* JA 42.

The trial court further erred in finding that the Church's 2015 election was invalid for lacking a quorum. JA 42-43. The court's conclusion in this regard is based entirely on speculation. The official election report plainly states that a quorum existed. JA 359. The record is bereft of testimony from any witness that a

quorum was lacking. There was abundant uncontradicted testimony that a quorum was present, including from the Church official, Ms. Seyoun, tasked with determining whether a quorum was present and from one of the persons who witnessed the count of the members to ensure a quorum was present. JA 262-63, 271-72. Yet, the trial court completely ignored this evidence to hold that a quorum was lacking. *See* JA 42. This was plain error.

Because the trial court's conclusions as to the validity of the Church's March 2016 board election are directly taken from the court's conclusions with respect to the 2014 and 2015 board elections (*see* JA 43), it follows that the court's analysis is likewise in error as to its rejection of the results of that election to replace the four board members elected in 2014.

Even were the trial court correct in finding the Church's 2016 board election invalid on some independent ground, that still left the four board members elected in 2015. Thus, it was error for the trial court to credit Appellees purported election of *eight* board members when at most there would have been only four board seats becoming vacant. Thus, any action taken by the Appellees 2016 "elected" board which excluded the 2015 elected board members cannot be credited.

The trial court erred yet again in holding that Dr. Amare Kassaye, the Church's Aleka was not a member of the board of trustees when the purported board elected in October 2016 by Defendant/Appellees and their supporters voted

to dismiss this action. JA 43-44. The trial court's explanation for this conclusion is both illogical and factually baseless. The trial court based its decision on the purported invalidity of the 2014 and 2015 elections – matters as to which the court erred as set forth above – stating it agreed with Judge Ross's view that "Dr. Amare *had been named Aleka* by Board members who were invalidly elected on June 2014 and March 2015." JA 44. (Emphasis added). The record contains absolutely no evidence to support that conclusion. Rev. Dr. Kassaye had been the Aleka for long before the 2014 or 2015 board elections. Whatever, the status of the other eight elected board members, Dr. Kassaye remained a permanent member of the board unless and until properly removed by a board vote as to which he was entitled to notice and an opportunity to participate and to vote. That never happened. Finally, Dr. Kassaye was entitled to notice and an opportunity to vote on any board action to dismiss this case. He had no such opportunity. Accordingly, any such board vote is plainly invalid.

In light of these infirmities in the Second Dismissal Order, its conclusion that Plaintiff lacked standing is plainly in error. Thus, this Court must once again vacate the trial court's judgment and remand this case for trial on the merits.

ARGUMENT

I. The 2014 and 2015 Church board elections were valid.

The Second Dismissal Order concluded that the 2014 and 2015 Church board elections were invalid. JA 39-43. The bases for that conclusion were three-fold. First, that the elections were conducted under rules more restrictive than under the 1996 bylaws, specifically a requirement for members to pay dues for six months prior to the election rather than to be "financial contributors of record for at least six months preceding" the election, JA 40-41, citing Def. Ex. 10, 1996 Bylaws, Art. VI (JA 548). Second, in light that the election meetings were not held in October as set forth in the 1996 bylaws, the Second Dismissal Order concluded that the meetings were required to meet the "emergency meeting" requirements of the 1996 bylaws and that Plaintiff had not shown that it met the emergency meeting notification requirements. JA 41-42. Third, the Second Dismissal Order held Plaintiff failed to establish that the required one-third quorum was achieved to hold the election in March 2015. JA 42-43. In that vein, the Second Dismissal Order cited findings from the prior judge that:

> (1) The election report for March 29, 2015 did not specify how many members belonged to the Church but indicated that the top vote getter, Legesse Tessema, received 130 votes [footnote omitted]; (2) Minutes from the preceding meeting on March 7, 2015 showed that the Church had 564 members, which would require a quorum of 188 members; and (3) Several months into the hearings for the Temporary Restraining Order, plaintiff produced for the first time a new, English-only report of the March 29, 2015 election stating that the Church had

> 532 members of which 178 were present. This new report did not explain the sudden drop in Church membership from March 7, and it incorrectly stated that 175 members were required to achieve a quorum. Ms. Debela testified that this mistake was a typo. She could not confirm, however, whether 178 members were actually present or whether that number had also been a typo. *See* Order Den. Mot. For TRO at 7,12-13.

JA 42-43. Apparently adopting these findings after "having considered the entire record" the Second Dismissal Order was in agreement with the prior judge that the March 2015 election failed to achieve a quorum. JA 43.[1]

A. The Second Dismissal Order's conclusion that board elections in 2014 and 2015 were held contrary to the bylaws is without foundation.

STANDARD OF REVIEW: The interpretation of the Church's bylaws is a matter of law. Hence the standard of review is de novo.

The Second Dismissal Order held that the 2014 and 2015 elections were invalid because they were conducted under the 2012 bylaws that required the payment of dues for a six-month period prior to the election. JA 41. According to the court, this was a stricter standard than contained in the 1996 bylaws which required members to be "financial contributors of record for at least six months preceding any such elections." JA 41, citing Def. Ex. 10, Article VI (JA 548). The order erroneously assumed that members who "paid tithes and other financial contributions" but did not pay monthly dues, were excluded from those elections

[1] Contrary to the prior judge's ruling, the Second Dismissal Order did not find the July 2014 election invalid for lack of a quorum. *See* JA 42-43.

(JA 41) without citing any record evidence indicating that any such persons were actually denied the right to vote at either of the elections. *See* JA 41. This was plain error.

The court's conclusion below is erroneous for several reasons. First, it was improper for the Court to conclude anyone was denied their opportunity to vote at the 2014 and 2015 General Assembly elections when not a single person testified he or anyone was denied the opportunity to vote. The court's conclusion simply amounted to bare speculation that anyone was denied the vote, and thus could not sustain the Defendants' motion to dismiss. Defendants called no witness to testify that he or she had been denied the opportunity to vote at either the 2014 or 2015 general assembly elections or that anyone else had been denied the right to vote at the elections. No witness called by the Church so testified.

Second, the court's interpretation of the 1996 bylaws conflicts with any rational construction of those bylaws. As this Court has said:

> It is well established that the formal bylaws of an organization are to be construed as a contractual agreement between the organization and its members, *Willens v. Wisconsin Ave. Coop. Ass'n*, 844 A.2d 1126, 1135 (D.C.2004); *Local 31, Nat'l Ass'n of Broadcast Employees & Technicians (AFL-CIO) v. Timberlake*, 409 A.2d 629, 632 (D.C.1979), since the continuing relationship between the organization and its members manifests an implicit agreement by all parties concerned to abide by the bylaws. *Maine Central R.R. Co.[v. Bangor & Aroostook R.R. Co .]*, 395 A.2d [1107,] 1120-21 [(Me. 1987)]; *Johnson* [*v. Schuberth*, 40 Ill.App.2d 467,] 189 N.E.2d [786,] 772 [(1963)].

Meshel v. Ohev Sholom Talmud Torah, 869 A.2d 343, 361 (D.C. 2005). *See also* 8 Fletcher, *Cyclopedia Corporations*, § 4195, p. 791 (bylaws are construed under the same rules applied by the courts to construe contracts).

"Bylaws and other contracts are to be 'construed as a whole' in a manner consistent with the 'clear, simple and unambiguous meaning' of their language. *Willens*, supra, 844 A.2d at 1135 (quoting *Johnson v. Fairfax Village Condo. IV Unit Owners Ass'n*, 548 A.2d 87, 91 (D.C.1988))." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d at 362. Clauses in a contract, and thus bylaws, should not be read as independent agreements thrown together without any consideration of their combined effect. Indeed, the document is best read as a whole, wherein clauses seemingly in conflict are construed, if possible, as consistent with one another. *In re Binenstock's Trust*, 410 Pa. 425, 190 A.2d 288 (1963). Terms in one section of the contract should not be interpreted in a manner which nullifies other terms. *See Flatley by Flatley v. Penman*, 632 A.2d 1342, 1344 (Pa. Super. 1993). Accord *Brown v. Cooke*, 707 A.2d 231 (Pa. Super. 1998). Likewise, a "statute should be read in its entirety and all of its parts should be construed to be internally consistent so as to give meaning to all parts." *In re Anderson*, 3 B.R. 160 (Bankr. S.D. Cal. 1980), citing *Kokoszka v. Belford*, 417 U.S. 642 (1973).

The Church's 1996 bylaws use the term "financial contributors of record" in referring to eligibility to vote. JA 548. Specifically, the requirement is that "members shall have been financial contributors of record for at least six months

preceding any such elections." JA 548. That phrase, "financial contributors of record" though, is nowhere defined in the bylaws. However, Article VII of the 1996 bylaws discusses termination of membership and states at Article VII(2) that "Membership may also be lost upon failure of members to pay dues within a reasonable period of time." *See* JA 548-49.[2] And Article V provides that among the requirements of Church membership is to "pay tithe to the Church." JA 548.[3] These are the three provisions relating to financial contributions in the 1996 bylaws. One provision sets forth the requirement to pay to support the work of the Church, one provides that failure to pay within a reasonable time can result in loss of membership, and the third provides that to vote the member must have been paying for at least six months. JA 548-49. These are three perfectly logical provisions if they are addressing the same thing. If we are talking about three different concepts, it does not make any sense.

The error of the court below was in failing to read these three provisions in concert. *See Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting

[2] Article VII provides that membership may be terminated by reason of immoral or un-Christian conduct or by failure to pay dues within a reasonable period of time. JA 548-49.

[3] Article V states that membership is open to persons over the age of 18 who profess the divinity of Jesus Christ in accordance with the teachings of the Ethiopian Orthodox Church and who undertake to attend services regularly, serve the Church in the furtherance of its objectives if and when requested, promote the growth of the Church, pay tithe to the Church and abide by the Bylaws. JA 548.

this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.") It is clear from reading these three provisions together in context that the "financial contributors of record for at least six months preceding the election," "tithes" and "dues" all mean the same thing. It makes no sense to require "tithes" to be members of the Church yet dismiss members for not paying "dues" which are not otherwise overtly stated to be a requirement of Church membership. Plainly, the "tithes" referred to in Article V are the "dues" referred to in Article VII. *See* JA 548-49. And it makes no sense to condition voting on some other undefined financial contribution of record for a six-month period nowhere else mentioned in the document. *See* JA 548. Indeed, the requirement to contribute over a six month period plainly implies recurring contributions, fully consistent with the concept of dues.

In interpreting a contract, or in this case bylaws, courts should not adopt a construction which renders provisions a nullity or reaches absurd or inconsistent results. *See Martin Marietta Materials, Inc. v. Vulcan Materials Co.,* 2012 WL 2819464 (Del. Sup., 2012). Yet, that is exactly what the decision below does in making a distinction between payment of dues, tithes and financial contributions of record. It is plainly obvious that when read in context, financial contributions of record for at least six months preceding the election refers to the dues that Church

members were always required to pay to become and remain members. JA 455. At the very least, this was a matter the court below needed to directly acknowledge and address, and not simply ignore. *See Blanken & Blanken Inv. v. Keg, Inc.*, 383 A.2d 1076, 1078 (D.C. 1978) (finding of clearly erroneous when issue should have been resolved by the trial court). The failure to do so is reversible error. *See* Sup. Ct. R. 52 (a)(1) requiring the court to specifically state its findings of fact and conclusions of law. Because the interpretation of bylaws is a matter of law, this Court may and should correct the error of the court below.

Third, the court below ignored unrebutted testimony that payment of dues for the preceding six months had been the rule to vote for more than 25 years, way prior to the purported adoption of the 2012 bylaws. Defendant Aklilu Habte testified in deposition that he paid dues to the Church back to 1987, except when he was working at the United Nations with UNICEF. *See* JA 455. He testified that dues have been $20 a month since the 1996 bylaws were approved. JA 455. Finance Department Head Ms. Seyoun confirmed that payment of dues had been a Church requirement to vote since she joined the Church in 1997 one year after the adoption of the 1996 bylaws:

> Q. So is it – is it fair to say that the requirements to vote under 1996 bylaws were the same as under the 2012 bylaws?
> A. Yes.
> Q. So under both, there was a requirement to pay dues for the preceding six-month period?
> A. Yes.

> Q. And has that been the practice of the church since you became a member in 1997?
> A. Yes.

JA 260-61.[4] The Second Dismissal Order never addressed her testimony, nor Defendant Habte's admission. Again, this was error.

Mr. Bekele, who testified that he has been a member of the Church for 23 years (JA 271), also confirmed that payment of dues for the preceding six months was a long-standing requirement of the Church to vote:

> Q. Sir, how long has it been the practice of the church to require payment of dues for the preceding six months in order to vote at general assembly meetings?
> A. For all the years I have been a member of the church.
> Q. So is it fair to say that it predates the adoption of the 2012 bylaws?
> A. Yes.

JA 272-73**.** No witness testified to the contrary. Yet, the Second Dismissal Order ignored this unrebutted testimony of the consistent practice of the Church going back more than 25 years to invalidate Church elections in 2014 and 2015. It was

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[4] *See also* JA 268-69**:**

> Q. Changing topics, you were asked questions regarding the procedure for preparing the list of members in good standing who had paid their dues for the six-month period and therefore, were able to vote, and you were asked whether this procedure was pursuant to the 2012 bylaws. And my question is, was this procedure in affect (sic) prior to the adoption of the 2012 bylaws.
> A. Yes.
> Q. So is it fair to say it was –the process pursuant to the 1996 bylaws before they were amended in 2012?
> A. Yes.

error for the court below to simply ignore this unrebutted testimony. This was not a case where the evidence was in conflict. *See, e.g., Spivy v. W.B. Florence Banana Co.*, 78 A.2d 861 (Mun. Ct. App. 1951); *Filippone v. D.C.*, 61 A.2d 565 (Mun. Ct. App. 1948). Nor was this a case where the court concluded to reject testimony based on demeanor. *Cf. Scott v. Scott,* 201 A.2d 535 (Mun. Ct. App. 1964) (court determined that plaintiff's testimony was evasive and contradictory and thus not credible).

Because the court's holding is inconsistent with the Church's admitted longstanding approach under the 1996 bylaws, with any reasonable reading of those bylaws, and with uncontradicted testimony, the Second Dismissal Order was clearly in error in concluding that the 2014 and 2015 elections were held contrary to the 1996 bylaws.

B. The Church's election meetings were not invalid due to their being held in a month other than October.

STANDARD OF REVIEW: The interpretation of the Church's bylaws and the effect of D.C. Code § 29-405.01(d) is a question of law; thus, review is de novo.

The Second Dismissal Order notes that the previous judge in denying a preliminary injunction held the 2014 and 2015 general assembly board elections invalid because they were held in the wrong month under the bylaws. JA 41-42. The order acknowledges the provisions of D.C. Code § 29-405.01(d) which provides that "The failure to hold an annual or regular meeting at the time stated in

or fixed in accordance with the articles of incorporation or bylaws shall not affect the validity of any corporate action." JA 42. This was a provision the prior Judge failed to address despite the Church specifically pointing this section out to the court. *See* JA 50. *See generally Order Denying Preliminary Injunction* (August 29, 2016) (hereinafter "Preliminary Injunction Denial.") JA 1.

The Second Dismissal Order nonetheless concluded that by holding the annual meeting at any time other than in October, that the annual meeting was transformed into an emergency meeting and that the Church had failed to show that it met the requirements for calling an emergency meeting as set forth in Section VIII(3) of the Church's 1996 Bylaws (JA 549). JA 41-42.

That holding eviscerated D.C. Code § 29-405.01(d). This provision could not be clearer. The failure to hold an annual or regular meeting at the time specified by the articles of incorporation or bylaws does not affect the validity of corporate action taken at the meeting. Period. D.C. Code § 29-405(d) is not a novel provision. The D.C. Council adopted this provision with the passage of Bill 18-500 in 2010, which completely revamped the District's business organizations law. According to the Council's December 2, 2010, Public Services and Consumer Affairs Committee Report, "Chapter 4 (Nonprofit Corporations) of the Code update[d] the District's nonprofit corporations act, D.C. Code § 29-301.01 et seq. (2001), which was enacted in 1962, and is based on the 1952 ABA Model

Nonprofit Corporations Act (MNCA).” The Committee Report further stated that “Twenty-four states have adopted a more recent version of the MNCA than the l952 Act, which is the current law of the District.” The Committee Report further indicated that the revised code “will bring the District's business organization laws into the 21st Century to the benefit of District businesses and residents.”

With specific reference to § 29-405.01, the Committee Report indicated that **t**his “section is based on § 7.01 of the [current] MNCA.” The Committee Report fails to indicate there was any controversy concerning the enactment of this provision. A similar provision is contained within the D.C. Code with respect to for-profit corporations. D.C. Code § 29-305.01(c) provides that “The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation’s bylaws shall not affect the validity of any corporate action.”

The court below had no basis to conclude that because an annual meeting is held at a different time than specified in the bylaws that it is somehow transformed into an emergency meeting. The court reasoned that because the bylaws contained no provision for annual meetings other than in October that the emergency meeting provision applied. JA 41-42. But the logic of such reasoning to the extent any exists is inconsistent with the obvious intent of the statute to legitimize meetings held for whatever reason at a time other than as specified in the bylaws or the articles of incorporation. Nothing in the D.C. Code supports the court’s conclusion

and a diligent search of case law throughout the nation has failed to uncover any authority to support such a proposition. Unsurprisingly, the Second Dismissal Order cited no authority for its rather novel conclusion. *See* JA 41-42.

Under the 1996 Church bylaws the annual election meeting is the Church's annual meeting. That the annual meeting is held early or held late does not then transform it into an emergency meeting. The court's conclusions to the contrary simply defies logic and results in a complete evisceration of Code § 29.405.01(d), which after all is denominated as covering "Annual and Regular Meetings" not emergency meetings. It is the annual meeting of the Church where trustees are elected, not at emergency meetings. *See* JA 549.

Moreover, Defendants never made an argument to the court below that such meetings held outside of October had to meet the notice requirement for emergency meetings. And defendants never contested the adequately of notice of those 2014 and 2015 annual election meetings. Had the issue been raised, Plaintiff would have addressed it during the hearings on the preliminary injunction, or thereafter as appropriate. For the court to hold that Plaintiff failed to meet a requirement never before placed in issue in this case was fundamentally unfair.

It is thus clear that the Second Dismissal Order was in error in holding these two elections invalid because they were held in the supposed wrong month, and the court below should have corrected that error in response to the Rule 59-60 motion.

Had it done so, it could not have concluded that the board elections were invalid because they were held in the wrong month.

Finally, it was simply speculation for the court to conclude that Plaintiff had not met the notice requirement for an emergency meeting. The bylaws require notice of an emergency meeting to be given at least 24 hours in advance of the meeting; that notice is required to state the business to be conducted at the meeting and the organs of the Church calling the meeting. JA 549. Such notice is completely encompassed by the notice of the annual meeting as set forth in Article VIII(2) of the 1996 Bylaws.[5] The notification provisions of the 2012 bylaws which the court found not to apply fully encompass the requirements for emergency meetings set forth in the 1996 bylaw as well. *See* JA 486.[6] So, even if it could somehow be said that an annual meeting occurring at a time other than as specified in the Bylaws is somehow transformed into an emergency meeting, the notification provisions required for such a meeting were met with respect to the 2014 and 2015 Church Board election meetings.

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[5] The 1996 Bylaws provide: "The Secretary shall cause to be mailed to every member in good standing the time, place and agenda of such annual meeting. Said notice shall be mailed at least 14 days prior to the meeting." JA 549.

[6] The 2012 Bylaws provide: The general secretary of the board notifies in writing the date, the time, the location and the agenda of the meeting to the members 15 (fifteen) days in advance."

C. No basis existed to question whether a quorum was present for the 2015 general assembly election meeting.

STANDARD OF REVIEW: Pursuant to D.C. R. Civ. Pro 52(a)(6): Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous or without evidentiary support, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility. See Springer v. Springer, 248 A.2d 822, 823 (D.C. 1969).

In *United States v. United States Gypsum Co*., 333 U.S. 364 (1948) the Supreme Court explained, "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* at 395. The clear-error standard, while deferential, is less so than the substantial-evidence standard applied to a jury's finding. It does not require the conclusion that no rational person could make the same finding as the trial judge.[7] If the trial court's finding is plausible, based on the evidence, the appellate court cannot reverse. As we show below, the trial court's view that the Church's March 29, 2015, election meeting lacked a quorum, is unsupported by the evidence, indeed ignores evidence supporting the conclusion that a quorum existed, and is thus clearly erroneous.

On March 29, 2015, the Church's general assembly met to elect four board members. JA 357-40. The election committee report for that meeting states a

[7] *See* Pratt, Standard of Review, 19 James Wm. Moore et al., Moore's Federal Practice §206.03, at 206–21 (3d ed. 2003).

quorum was present.[8] JA 359. *See also* JA 262-63; JA 443. Elected at that general assembly meeting were: Mr. Tessema, Ms. Kebede, Mr. Tsege and Mr. Bekele. JA 357-60. Despite the election committee report reciting that a quorum was present (JA 359), the Preliminary Injunction Denial held a quorum was lacking. JA 7 & 12.

The Second Dismissal Order concurred with the Preliminary Injunction Denial that the Church failed to establish that the March 29, 2015, election was conducted with the required quorum. JA 42-43. The court below cited as support for this holding the following matters set forth in the Preliminary Injunction Denial: (1) that the 2015 election committee report did not specify the number of Church members (JA 7, citing JA 357); (2) the top vote getter, Mr. Legesse Tessema, got 130 votes (JA 7)*;* and (3) minutes "from a March 7, 2015, General Assembly meeting stated the Church had 564 members, which would require a quorum of 188" (JA 7, citing JA 541).

Taking the last matter first, the Preliminary Injunction Denial and thus the Second Dismissal Order clearly erred with respect to their claim of a March 7, 2015, general assembly meeting. The record shows without contradiction that no March 7, 2015, general assembly meeting ever occurred. The Preliminary Injunction Denial erroneously characterized Defendants' Exhibit 8 (reproduced at JA 541) as minutes of a general assembly meeting on March 7, 2015; however, it is

[8] The Church's accounting personal determine whether a quorum is present at a General Assembly meeting. JA 259.

obvious on the face of that document that it is no such thing. By its express terms, it is a memorandum dated March 7, 2015, whereby three of the members of the election committee stated they were suspending their work on the committee. JA 542 (numbered para. 5). At numbered para. 2, the memorandum references "A list of 564 claimed members was provided on the last day when nominations forms were being mailed." JA 542. That date is not specified.

Thus, no general assembly meeting occurred on March 7, 2015, the record is unclear when this alleged report of members that is not in evidence was prepared, and it plainly was prepared at some point before March 7, 2015. The Second Dismissal Order's blind reliance on the Preliminary Injunction Denial is apparently responsible for this error and gives no comfort that the court below carefully "considered the entire record." *See* JA 43.

Although no March 7, 2015, general assembly meeting occurred, the record does show that an emergency meeting of the general assemble was held on January 18, 2015, for the Church to approve a construction loan from Eagle Bank. JA 347. The minutes of that meeting stated that the Church then had 518 members, 252 of which attended the meeting. JA 347. This confirms testimony that the number of Church members eligible to vote could vary considerably. JA 261.

The Second Dismissal Order's point regarding the number of votes Mr. Tessema received at the election is far from clear and offers no support with

respect to the question whether a quorum existed. *See* JA 42. That Mr. Tessema received 130 votes as the top vote getter of eight candidates in no way suggests the absence of a quorum. If 564 was the number of dues paying members on March 27, 2015, then Mr. Tessema received 69 percent of the minimum quorum (188) votes. However, the minutes of the Church's election compiled by Church Secretary Debela, JA 443 placed the number of Church members qualified to vote at 532, resulting in a minimum quorum of 178. Mr. Tessema's 130 votes were 73 percent of that figure. There is nothing concerning the number of votes Mr. Tessema received which suggests a quorum was lacking. *Cf. Lake Arrowhead Property Owners Association v. Bagwell*, 100 S.W.3d 840, 845 (Mo. App. 2003) (footnote omitted) where the court found strong circumstantial evidence of the lack of a quorum, stating:

> The vote totals at the meetings in question never exceeded 172. There are 2068 lots in the subdivision. While there is evidence that some people and organizations own more than one lot in the subdivision, there is very little evidence showing how many of them own more than one lot or how many lots they own. There is also no evidence to indicate that a large number of people attended the meetings but simply abstained from voting or that a large number of people attended the meetings but were ineligible to vote for some reason. In short, there is no substantial evidence to establish the presence of a quorum.

Furthermore, the absence of a recitation of members in the March 2015 election committee report (JA 357) is no basis to question the absence of a quorum when that report *specifically recites a quorum was present. See* JA 359. In *Lake*

Arrowhead there was a challenge to the association's action based on an alleged lack of a quorum. In that case the court did find insufficient evidence of a quorum based partly on the *lack* of meeting minutes reciting that a quorum was present – not the case here – plus the strong circumstantial evidence discussed above – also not the case here. The court stated:

> We find no evidence recording the number of people present at each meeting *or otherwise reciting that a quorum was present at each meeting*. These documents declare only that "the owners of lots in Lake Arrowhead subdivision were present to conduct the business of the Association." This breezy recital contrasts conspicuously with the recitals contained in some earlier amendments, which unmistakably declare that "the owners of not less than 51% of the lots in the Lake Arrowhead Subdivision were present to conduct the business of the Association."

100 S.W2d at 845 (emphasis added). Here, however, the election committee report specifically recited that a quorum was present. It was error for the court to find this recital to be insufficient to establish that a quorum was present. In fact, the court never even acknowledged this recital.

The Preliminary Injunction Denial also stated the Church introduced what it called a "second, conflicting set of minutes from the March 29, 2015, meeting [which indicated] there were 532 members, which would require a quorum of at least 178 members, and this second set of minutes inaccurately states that 175 members were required to achieve a quorum." JA 7, citing JA 443 & 251 (Tr. Page

338, lines 5-18 (February 4, 2016).[9] The Preliminary Injunction Denial stated, "Ms. Debela [the Board Secretary] explained this inaccuracy was a "typo" but could not confirm whether there were actually 178 members present or whether that was also a typo." JA 7, citing JA 251.[10]

No basis existed for the court below to discredit the general assembly's March 29, 2015, election on this basis. The election committee report states "After refreshments were served, and after asserting that a quorum was present, the meeting was commenced with an opening prayer." JA 359. The election committee report, being the official report of the election, the court had no basis to question it. Moreover, the general assembly minutes, taken by Secretary Debela confirmed that a quorum of at least 178 members were present. JA 443-44. That she made a typo earlier in the document saying 175 instead of 178 as the required

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[9] The opinion's characterization of Plaintiff's Exhibit 26 (JA 443) as a "second conflicting set of minutes from the March 29, 2015" general assembly meeting inaccurately reads the record. First there is no conflict between Plaintiff's Exhibit 10 and Plaintiff's Exhibit 26. Plaintiff's Exhibit 10 (JA 357) was the *report* from the election committee, it did not purport to be *minutes* of the election meeting. Plaintiff's Ex. 26 (JA 443) was the minutes of the general assembly meeting taken by Board Secretary Ms. Debela.

[10] The Preliminary Injunction Denial suggested it was incumbent on the Church to "introduce into evidence []written ballots to establish that the persons who voted at elections were members under the 1996 bylaws criteria and that a quorum existed for the elections. *See* JA 7. Given that defendants had padlocked the Church administrator's office and prevented his entry into the Church, obtaining access to those records, if they still existed, was plainly problematic. *See* JA 329-30 & 456-57. In any event, the Second Dismissal Order did not take that position.

quorum does not mean that her confirming that 178 were present in the minutes was error. *Id.* The court could only arrive at that conclusion by speculation. Speculation is not entitled to appellate deference.

Furthermore, it is not a fair reading of the record to suggest that Ms. Debela could not confirm that her recitation of 178 was not a typographical error as the Second Dismissal Order does. JA 251 does not support such a conclusion, especially when counsel for the defendants cut off Ms. Debela in the middle of her answer to prevent her from so confirming.

> Q. So is it not possible that you switched the numbers here in Exhibit Number 26, that in fact you needed 178 people, but only had 175?
>
> A. I don't know what happened but –
>
> Q. We need to look at the original Amharic version, right?

JA 21.

In any event, there was independent unrebutted evidence that a quorum was present at the March 29, 2015, general assembly election which the Second Dismissal Order inexplicably ignored. Ms. Seyoun, whose department was specifically responsible for determining whether a quorum was present at the 2015 election meeting, testified a quorum was present. JA 262. She testified the quorum was verified by a count of the persons present which she witnessed. JA 263. Mr. Bekele likewise confirmed that a quorum was present at this election. JA 271-72. Neither the Preliminary Injunction Denial nor the Second Dismissal Order ever

addressed this testimony. Although a trier of fact may reject testimony it finds not to be credible, the court was at least required to acknowledge this testimony and to explain why it was rejecting it, especially given its unrebutted character. *See Blanken & Blanken Inv. v. Keg, Inc.*, 383 A.2d at 1078 (finding of clearly erroneous when issue should have been resolved by the trial court).

In a case discussed by the Missouri court in *Lakewood*, the appellate court accepted testimony from one of the trustees that supported the conclusion that a quorum was present. In that case, *Brentmoor Place Residents Ass'n v. Warren*, 816 S.W.2d 7 (Mo. App. E.D.1991), a homeowner raised an affirmative defense challenging the validity of the homeowners' association's actions for lack of a quorum. *Id.* at 9-10. This account of the evidence appears in the court's opinion:

> On direct examination, Hugill [one of the trustees] testified that attendance at the election was good, but he did not personally know whether more than 50 percent of the Association's members voted at the meeting. When counsel for the Warrens cross-examined Hugill regarding the presence of a quorum, Hugill stated that he had "no way of knowing" how many people voted at that meeting. On redirect examination, however, Hugill acknowledged that he had testified in the prior hearing that "about two thirds" of the members voted in the election.

Id. at 10. Based upon this account, appellate court concluded that the evidence did not support the trial court's finding that the election was invalid for lack of a quorum. *Id.*

Lastly, not a single defendant testified to the lack of a quorum at the 2015 election meeting. Priest Zelalem spoke to the general assembly at the 2015 election**.** JA 360. He also testified at the preliminary injunction hearing. *See* JA 277-355. Although he testified he objected to how the election committee conducted the election, he never suggested the election was conducted without a quorum. JA 279-83. Not one of the defendants so testified. Nor is there any evidence that the lack of a quorum was ever suggested at the 2015 election meeting. *Cf. Christopher v. United States*, 171 F.2d 1004, 1005 (D.C. Cir. 1948) (defendant accused of perjury before a Congressional committee was estopped from questioning whether a quorum was present when he failed to object during the committee's proceedings).

In sum, the conclusion that the March 29, 2015, general assembly election was held without a quorum lacks evidentiary support and is based on pure speculation in contravention of both the written record and oral testimony. This court must therefore vacate the trial court's findings in this regard under the clearly erroneous standard.

II. The Second Dismissal Order's findings concerning the March 2016 election meeting suffer from the same infirmities as its erroneous analysis of the 2014 and 2015 election meetings.

STANDARD OF REVIEW: As discussed in parts IA and IB, supra, the standard of review for interpretation of bylaws is de novo.

The Second Dismissal Order summarily rejected the validity of the Church's March 2016 general assembly election meeting on two of the same grounds as it

found the 2014 and 2015 meetings to be invalid, i.e., not held in October as required by the bylaws and supposedly not conducted in accordance with the 1996 bylaws. JA 43. Since we have shown that the conclusions of the Second Dismissal Order are erroneous as to the 2014 and 2015 election meetings, it follows that the identical conclusions with respect to the March 2016 election meeting are equally erroneous and must be vacated.

III. The Second Dismissal Order's conclusion as to the proper Church Aleka to vote at any board meeting concerning the dismissal of this action was without record support.

STANDARD OF REVIEW: This issue is one of mixed law and fact. The court's factual findings that are supported by evidence will not be disturbed unless clearly erroneous. The issue of the interpretation of the Church's bylaws is a matter of law and is reviewed de novo.

The Second Dismissal Order states without citation to the record that:

> Judge Ross found that Dr. Amare Kassaye was named Aleka by Board members who were invalidly elected on July 2014 and March 2015. This court, having concluded that the July 2014, March 2015, and March 2016 elections were invalid, is in agreement with Judge Ross that Dr. Kassaye was not properly named as Aleka and, therefore, did not have a right to participate in the Board vote to dismiss the lawsuit.

JA 44. The Second Dismissal Order erred on three points. First, since we have shown that the conclusions that the 2014 and 2015 elections were not invalid, the basic premise behind the Second Dismissal Order's reasoning that Dr. Kassaye is not the Church's Aleka is false.

Second the Second Dismissal Order misstates the prior judge's finding. The prior judge actually stated:

> The BOT comprised of members who either had been improperly elected or had remained on the BOT beyond the limits of their terms, *retained* Dr. Kassaye as Church Administrator. Dr. Kassaye … was an *ex officio* member of the BOT. [Def. Ex. 10, Art. XI]; Tr. 155:17-18 (1-18-16).

JA 8 (emphasis supplied).

Third, the Preliminary Injunction Order got it wrong too. First, let's correct the record to reflect there is no January 18, 2016, transcript. Judge Ross actually meant to refer to the January 11, 2016, transcript as he was cribbing directly from Defendants proposed findings and conclusions as he did for the bulk of the Preliminary Injunction Denial.[11]

Second, neither of the citations in the Preliminary Injunction Denial support the proposition that the 2014 or 2015 Board voted to "retain" Dr Kassaye much less "named" him as Aleka. The transcript citation merely states as follows: "Q.

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[11] *See, e.g.,* Defendants' Proposed Findings of Fact and Conclusions of Law at para. 33 (June 13, 2016) (JA 58) which stated:

> The BOT, comprised of members who either had been improperly elected or had remained on the BOT beyond the limits of their terms, retained Dr. Kassaye as Church Administrator. Dr. Kassaye, who voted to initiate this lawsuit, was an *ex officio* member of the BOT, DE10 Art. XI;; [sic] 1/11 Tr. 155:17-17.

Wholesale adoption of a party's proposed findings and conclusions is not a practice to be encouraged. *See Anderson v. City of Bessemer City,* 470 U.S. 564 (1985).

Who is the ex-officio? A. Amare Kassaye, A-M-A-R-E K-A-S-S-A-Y-E." JA 213. Dr. Kassaye had been the Church administrator for many years prior to 2014. *See, e.g.*, JA 523; JA 557 (board reprimands Dr. Kassaye, noting, "You have a record of long service as member of the Board of Trustees and Administrator of the Church.")

There is absolutely nothing in the record to indicate that either the 2014 or 2015 Board voted to "name" or "retain" Dr. Kassaye. That was simply made up in Defendants' proposed findings and conclusions and accepted without actual examination of the record by the prior judge and then in the Second Dismissal Order. Given this, the apparent logic of the Preliminary Injunction Denial and the Second Dismissal Order must be that Dr. Kassaye's employment terminated with each board election unless the board voted to retain him or reappointment him. But nothing in the record supports such an assumption. Plainly the board could fire him, but in the absence of board action, Dr. Kassaye would continue as the Aleka like any other Church employee. That is the way organizations typically work and nothing in the record suggests the Church works any differently. Certainly, nothing in the bylaws supports a conclusion that the board must annually hold a vote to retain the Aleka. *See generally* JA 545.

Dr. Kassaye was the long-time Church administrator, an ex officio member of the board as set forth in the Church's bylaws. He served in that role well prior to

2014 and continues to be the rightful Church administrator, though denied the ability even to enter the Church by the illegal actions of appellees. The conclusion he was not a board member when defendants' rump board purported to dismiss this action, is patently erroneous.[12] Accordingly, the purported board vote to dismiss this action was defective because Dr. Kassaye was denied the right to participate. Thus, the court below's action dismissing this case for lack of standing based on that vote must be vacated.

IV. Conclusion.

In light of the foregoing, discussion, the Second Dismissal Order's conclusion that vacancies existed on the board when Defendants/Appellees purported to hold an election for eight board seats is in error. Since there were no vacancies, the defendants' "election" meeting was invalid, and defendants' rump board vote to dismiss this proceeding was likewise invalid. Moreover, even if there were some vacancies existing to fill, and even if Defendants' election meeting

[12] Dr. Kassaye remains a board member until he is validly terminated as Aleka of the Church. That can only be done by a validly elected board of which he is a member and as to which he gets a vote after he is properly noticed. This has never happened. In fact, assuming arguendo that the Church's 2014 and 2015 board elections were invalid, and that all eight elected board positions were vacant, Dr. Kassaye was one of only three valid board members at the time Appellees held their 2016 election. And even if the Defendants/Appellees' October 2016 election was otherwise valid, Dr. Kassaye was still entitled to notice and the opportunity to vote on the purported dismissal of this action. That did not happen, rendering any purported vote by a newly constituted board invalid.

could be credited as to as many as four members, the exclusion of board members validly elected in 2015 and ex officio member Dr. Kassaye rendered any vote by Defendants' board to dismiss this proceeding invalid.[13]

Because we have shown the conclusions of the Second Dismissal Order to be unsupported by the record, indeed contrary to the record and to applicable law, this court should vacate the Second Dismissal Order and remand this case for trial on the merits.

Respectfully submitted,

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[13] It is noted further that the Church contested the validity of the defendants' putative October 2016 election on a number of points not discussed in the Second Dismissal Order. *See* JA 134-35. Plaintiff pointed out, for example, that under the bylaws only the board could call a meeting of the general assembly and that it had not done so. JA 134-35. Plaintiff also claimed the procedure used to call the meeting, a purported petition, was not authorized under the 1996 bylaws pursuant to which the "election" was supposedly called. JA 135. *See State ex rel. Industrial Finance Limited v. Yanagawa*, 484 P.2d 637, 39 (Haw. 1973); *Haskell v. Read*, 96 N.W. 1007 (1903). We suggest the court's failure to address these matters with respect to the Rule 59-60 motion was also error and an abuse of the court's discretion requiring this court to vacate and remand this case back for trial.

Statutory Appendix

Code of the District of Columbia

§ 29–305.01. Annual meeting.

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 29-305.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to § 29-305.28, directors shall not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or outside of the District at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

PUBLICATION INFORMATION

Current through
June 13, 2022

Last codified D.C. Law:
Law 24-126 effective May 19, 2022

Last codified Emergency Law:
Act 24-437 effective June 13, 2022

Last codified Federal Law:
Public Law 115-334 approved Dec. 20, 2018

Code of the District of Columbia

§ 29–405.01. Annual and regular meetings.

(a) A membership corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.

(b) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles of incorporation or bylaws.

(c) Except as otherwise provided in subsection (e) of this section, annual and regular meetings of the members may be held in or outside of the District at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, annual and regular meetings shall be held at the nonprofit corporation's principal office.

(d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles of incorporation or bylaws shall not affect the validity of any corporate action.

(e) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

Section References

This section is referenced in § 29-401.50.

Emergency Legislation

For temporary (90 days) amendment of this section, see Title 29(a) of Coronavirus Support Congressional Review Emergency Amendment Act of 2021 (D.C. Act 24-96, June 7, 2021, 68 DCR 006025).

For temporary (90 days) amendment of this section, see § 407(a) of Coronavirus Support Emergency Amendment Act of 2021 (D.C. Act 24-30, Mar. 17, 2021, 68 DCR 003101).

For temporary (90 days) amendment of this section, see § 407(a) of Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020 (D.C. Act 23-405, Aug. 19, 2020, 67 DCR 10235).

For temporary (90 days) amendment of this section, see § 407(a) of Coronavirus Support Congressional Review Emergency Amendment Act of 2020 (D.C. Act 23-328, June 8, 2020, 67 DCR 7598).

For temporary (90 days) amendment of this section, see § 407(a) of Coronavirus Support Emergency Amendment Act of 2020 (D.C. Act 23-326, May 27, 2020, 67 DCR 7045).

Temporary Legislation

For temporary (225 days) amendment of this section, see § 407(a) of Coronavirus Support Temporary Amendment Act of 2021 (D.C. Law 24-9, June 24, 2021, 68 DCR 004824).

For temporary (225 days) amendment of this section, see § 407(a) of Coronavirus Support Temporary Amendment Act of 2020 (D.C. Law 23-130, Oct. 9, 2020, 67 DCR 8622).

PUBLICATION INFORMATION

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Last codified Emergency Law:
Act 24-437 effective June 13, 2022

Last codified Federal Law:
Public Law 115-334 approved Dec. 20, 2018

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing Brief to be served on counsel for the parties listed below, on or before June 21, 2022, via the Court's electronic filing system and/or via email. I further certify that I have reviewed Super. Ct. Civ. R. 5.2 and the Court's Order No. M-274-21, and that this brief complies with the applicable requirements of those provisions.

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District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

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