No. 21-CV-262

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

RE'ESE ADBARAT DEBRE 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

APPELLEES' BRIEF

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July 20, 2022

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LIST OF PARTIES BELOW

The Parties below are Appellant (Plaintiff) Re'ese Adbarat Debre Selam Kidest Mariam Ethiopian Orthodox Church, Inc. (hereinafter the "Church"); 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-Sellassie, 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 (hereinafter "Appellees"); and Intervenor/Interpleader Eagle Bank.

In both the trial court and appellate court proceedings, Appellant is represented by George L. Lyon, Jr. of Bergstrom Attorneys and Robert N. Kelly of Jackson & Campbell, P.C.; Appellees are represented by T. Michael Guiffré of Crowell & Moring LLP and Donald L. Thompson of Latham & Watkins LLP; and Intervenor/Interpleader is represented by Ryan S. Spiegel of Paley, Rothman, Goldstein, Rosenburg, Eig & Cooper, Chartered.

APPEAL FROM A FINAL ORDER OR JUDGMENT

This appeal is from the trial court's September 25, 2020, final order that disposes of all of Appellant's (Plaintiff's) claims ("Dismissal Order") and the March 20, 2021 denial of Appellant's second Motion and Memorandum in Support to Alter, Amend and Correct Order, filed on October 22, 2020 ("Second Reconsideration Motion").

STATEMENT OF THE ISSUES

Appellant's Statement of the Issues exceed the scope of the issues remanded by this Court and decided by the Superior Court, are argumentative, and contain incorrect statements of fact. The Issues should be as follows:

1. Did the Court below err in dismissing the complaint for lack of standing?
2. Did the Court below err in finding that the results of the Church's July 2014 and March 2015 elections were invalid?
3. Did the Court below err in finding that the results of the March 2016 election held by the displaced Board were invalid?

4. Did the Court below err in holding that Mr. Habte-Sellassie was entitled to vote as Aleka when the Board in January 2017 voted to dismiss this action?

5. Did a majority of the Board vote in January 2017 to dismiss this action?

STATEMENT OF THE CASE

This case involves a dispute over the rightful leadership of the Church. Following discovery and ten full days of evidentiary hearings, Judge Ross found no basis for Appellant's claims but rather determined that the individuals who initiated this suit lacked the authority to bring a claim on behalf of the Church. JA 13. Judge Ross further found that none of Appellees forcibly removed any person from the Church or prevented any person from entering the Church or worshiping. JA 1-2. Following independent consideration of the well-developed record, Judge Mott has likewise repeatedly dismissed Appellant's claims as meritless.

The individuals who filed this action have harassed the individual Church members named in this suit for nearly seven years with endless claims and motions aimed at expelling them from the Church. All of these attempts were rejected by the courts-including two prior appeals in this action, as well as dismissals with prejudice in related actions before the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit.[1]

[1] The individuals who claim in this Appeal to represent the Church filed these federal actions *against* the Church, which concerned the same issues that give rise to the claims on appeal here. As such, the individuals behind this lawsuit now appear to

The issues now raised by Appellant are the very same that it previously briefed to this Court in 2018. Following that appeal, this Court remanded to the Superior Court on the narrow issue of providing further explanation to support the holding that there was "reason to believe" that the July 2014 and March 2015 elections were invalid. *See* JA 35, Memorandum Opinion and Judgment (August 22, 2019) ("Remand Order"). This Court provided very specific instructions for the trial court to answer three questions relating to its holding, all of which Judge Mott addressed on remand. This appeal improperly seeks to re-litigate issues raised in Appellant's prior appeal, including through supplementing its copy-and-paste arguments with new ones that it failed to make to the trial court.[2]

Accordingly, this Court should affirm the trial court's dismissal for lack of subject matter jurisdiction.

STATEMENT OF THE FACTS

The relevant background facts are summarized in this Court's Remand Order and will not be repeated here in depth. *See* JA 27-30. *See also* Appellees' Brief,

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accept what the trial court has repeatedly concluded: they lack authority to bring this action on behalf of the Church and their claims should be dismissed.

[2] The majority of the Argument section of Appellant's current brief is copied and pasted, **verbatim**, from Appellant's Second Reconsideration Motion, which in turn was copied verbatim from Appellant's March 24, 2017 Memorandum in Opposition to Defendants' Renewed Motion to Dismiss and August 31, 2018 Appellate brief. *See* JA 189. The remainder consists of supplemental case law and commentary tacked on to these recycled arguments, which Appellant failed to raise to the trial court.

Case No. 18-CV-0559, pp, 6-20 (October 1, 2018) (hereinafter "Appellees' Brief, 18-CV-0559"). In the years leading up to the dispute, a group of individuals holding themselves out as Board members (the "former Board members") persistently abused their authority by taking actions that violated the Bylaws governing the Church and contravened the Church's religious cannons. JA 316, 334-35, 545-56. Several Church members confronted the wayward former Board members over a period of several years and asked them to address the Church's concerns about their conduct, but the former Board members retaliated against these members and clung more tightly to power, holding invalid elections aimed at maintaining their positions on the Board, and even skipping elections altogether. JA 361-62. Having exhausted all other options, several Church members, in consultation with the congregation, took action to remove the former Board members and put in place a temporary committee to oversee Church functions until a new Board properly could be elected in accordance with Church Bylaws. JA 310-11. The former Board members retaliated by bringing this lawsuit as yet another attempt to remain in power.

SUMMARY OF ARGUMENT

The Remand Order tasked the trial court with addressing three issues (1) providing further explanation as to why there is "reason to believe" that the 2014 and 2015 elections were invalid; (2) addressing the putative Board election held in March 2016; and (3) resolving the identity of the proper Church Aleka at the time the Board voted to dismiss this lawsuit. JA 35. The Dismissal Order fully addressed these issues and properly concluded that Appellant failed to meet its burden to establish standing to prosecute claims in the name of the Church, and thus properly dismissed this suit for lack of subject matter jurisdiction.

First, Judge Mott held that the 2014 and 2015 elections were invalid for three reasons (1) applying the stricter 2012 Bylaws voting requirements, which excluded members who paid tithes and other financial contributions, but not the monthly $20 membership fee; (2) violating the 1996 Bylaw requirement requiring General Assembly meetings be held in October; and (3) failing to demonstrate a quorum at the 2015 election. JA 40-43. Appellant contends that "[n]o evidence exists in the record" of members being denied the right to vote and that "[t]he record is bereft of testimony from any witness that a quorum was lacking" at the 2015 election. Br. for Appellant at 6-7. However, there is evidence of both in the record, including testimony explicitly cited in the Dismissal Order from Appellant's own witnesses. JA 41, citing JA 265.

Second, Judge Mott held that the March 2016 election was invalid for many of the same reasons, including being held by the displaced Board, which failed to follow the timing and voter eligibility criteria of the 1996 Bylaws. JA 43. Lastly, Judge Mott held that since the properly constituted Board following the October 2016 elections named Mr. Habte-Sellassie Aleka after the election, he was the proper Aleka to participate in the Board vote to dismiss the lawsuit. JA 44.

Appellant also takes issue with Judge Mott ruling without holding further evidentiary proceedings. Br. for Appellant at 5. However, this Court has already ruled that there is no basis for reversal on this ground, as Appellant failed to preserve this objection. JA 30. The record contains ample evidence that the Dismissal Order properly concluded the March 2014, March 2015, and March 2016 elections were invalid and that Father Habte-Sellassie rightfully participated as Aleka in the vote to dismiss the lawsuit. Accordingly, this Court should affirm the trial court's decision.

ARGUMENT

The trial court properly dismissed this case for lack of subject matter jurisdiction because the individuals who filed this lawsuit were not properly elected to the Board and/or had remained on the Board beyond the limits of their terms, and thus lacked the authority to take such action on behalf of the Church. JA 44. The proper Board, validly elected through a process that was monitored by a retired D.C. Superior Court Judge and complied with the 1996 Bylaws (JA 78-87), voted

unanimously to dismiss this suit. The trial court also properly denied Appellant's Second Reconsideration Motion due to "no change in controlling authority, no new evidence presented, no demonstration of error, and … nothing unjust about the court's" Dismissal Order. JA 47.

The plaintiff bears the burden of establishing standing. *See Grayson v. AT&T Corp*, 15 A.3d 219, 246 (D.C. 2011). "Whether appellants have standing is a question [this Court] consider[s] on appeal *de novo*" but the "underlying factual determinations" are reviewed "under the clearly erroneous standard." *Bd. of Dirs. of the Washington City Orphan Asylum v. Bd. of Trs. of the Washington City Orphan Asylum.*, A.2d 1068, at 1074 (D.C. 2002). *See also* 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, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.").

With the exception of the applicability of D.C. Code § 29-405.01(d), every issue raised on appeal takes issue, in whole or in part, with the trial court's factual findings. As such, this Court cannot set aside these findings absent a holding that they were clearly erroneous.

I. THE TRIAL COURT PROPERLY CONCLUDED THAT THE 2014 AND 2015 CHURCH BOARD ELECTIONS WERE INVALID

A. The trial court correctly concluded that the Board elections in 2014 and 2015 were held contrary to the Bylaws

STANDARD OF REVIEW: This issue is one of mixed law and fact. Pursuant to D.C. R. Civ. Pro. 52(a)(6): Findings of fact must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility. The issue of interpretation of the Church's bylaws is a matter of law and is reviewed de novo.

In addition to improperly recycling its argument from prior briefing to this Court (*See* Appellees' Brief, 18-CV-0559 at 45-49), and after opposing application of the 1996 Bylaws for over five years of litigation, Appellant now unconvincingly attempts to argue that the membership voting requirements are identical *in practice* under either set of Bylaws, despite the clearly differing requirements between the two sets, thereby mooting which set applies. Br. for Appellant at 15. This contention is wholly without merit, as the trial court has already found.

Appellant never submitted evidence that the practice under each set of Bylaws is identical. Instead, Appellant falsely claims, "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 [right to] vote." Br. for Appellant at 12.[3] This representation is false.

Dr. Metaferia, one of the seven former Board members representing Appellant that voted to initiate these proceedings in 2015, testified that the July 27, 2014 election minutes indicate at least four voters were disqualified from voting for not paying dues. *See* JA 222, Jan. 11, 2016 Trans. at 186; *see also* JA 354, Jul. 27, 2014 G.A. Mtg. Min. at 3. Furthermore, testimony of Ms. Debela, another former Board member representing Appellant, indicated that over the span of eight months, the number of people qualified to vote dropped by approximately 100 members for the July 2014 election then jumped back up by a hundred after the election "based on who had paid membership dues." JA 249-50, Feb. 4, 2016 Trans. at 336-37. Moreover, Judge Mott's Dismissal Order explicitly cited to the February 11, 2016 testimony of one of Appellant's witnesses, Woulita Seyoum, who testified that people who pay tithe contributions or make other special contributions do not get added to the membership list and even congregants on the membership list are not permitted to vote unless all six months of dues are paid current. JA 41, citing JA 265. Therefore, it is clear that the trial court based its holding on its consideration of "the entire record," as opposed to "bare speculation." JA 43, Second MTD Order at 7.

[3] As the party bearing the burden to establish standing, Appellant had the burden to prove that no one was excluded from the election. Appellant's present arguments improperly attempt to shift its burden.

Second, Appellant contends that it "is clear from reading [the 1996 Bylaws] in context that the 'financial contributors of record for at least six months preceding the election,' 'tithes' and 'dues' all mean the same thing." Br. for Appellant at 15. However, a cursory review of both bylaws demonstrates that Appellant's interpretation is the erroneous one. For instance, the invalid 2012 Bylaws (Arts. 5.1, 6.1, and 7) used by Appellant require dues payments in the amount of $20 per month (JA 402-05), while the 1996 Bylaws (Art. VI) do not require dues or any particular amount of financial contribution to have voting rights. JA 548. In addition, Article V of the 1996 Bylaws states that to qualify for membership, individuals must "pay tithe to the Church." JA 548. In contrast, the only reference to tithes in the 2012 Bylaws is a new section 9, titled "Tithe Paying Parishioner," which explicitly states, "a tithe paying parishioner will not have … a right to vote." JA 408. The testimony of Appellant's own witnesses also proves the Bylaws are not one and the same.[4] Moreover, Judge von Kann's election procedures, which Appellant was invited to comment on, determined that the 1996 Bylaws "requirement may be

[4] In response to whether the 1996 Bylaws states dues must be paid for six months, Dr. Metaferia testified: "This is one of the flaws of this article. What is financial contributor, it is too general. It could be a dollar or a hundred dollars." JA 230-34, Jan. 12, 2016 Trans. of Dr. Metaferia at 223-27. Furthermore, Dr. Metaferia conceded that paying tithes of 10% of one's salary would be considered a financial contribution to the church but that under the 2012 Bylaws, it would not qualify to be a member. JA 233-34. *See also* JA 265-67, Feb. 11, 2016 Trans. of Woulita Seyoum at 52-54 ("do people who pay tithe to contribute to the building fund or other special contributions also get added to the membership list? No").

satisfied by 'making a financial contribution, in any amount, prior to the election." *See* JA 80 Defs.' MTD Ex. B at 3.

Therefore, based on both Dr. Metaferia's testimony and Judge von Kann's independent interpretation, under the 1996 Bylaws, donating "a dollar" would be sufficient to satisfy voter eligibility, whereas the 2012 Bylaws required strict adherence to $20 a month dues for six consecutive months. As such, it was proper to conclude that the voter eligibility requirements were stricter under the 2012 Bylaws. Moreover, Appellant's witness specifically testified that she prepared the membership lists according to the 2012 Bylaws. JA 264, Feb. 11, 2016 Trans. of Woulita Seyoum at 51. Thus, the 2014 and 2015 elections were held contrary to the 1996 Bylaws.

B. Appellant's 2014 and 2015 election meetings were invalid due to being held outside of October

STANDARD OF REVIEW: This issue is one of mixed law and fact. Pursuant to D.C. R. Civ. Pro. 52(a)(6): Findings of fact must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility. The issue of interpretation of the Church's bylaws is a matter of law and is reviewed de novo.

Despite this Court previously holding that "the controlling bylaws required an election to be held in October 2016" (JA 34), Appellant regurgitates its prior unsuccessful argument to this Court that D.C. Code § 29-405.01(d) permits it to hold annual meetings outside of October. *See* Appellees' Brief, 18-CV-0559 at 35-36.

The trial court rejected this argument, holding that § 29-405.01(d) "does not remove the obligation to comply with other meeting requirements within the Bylaws." JA 42, Second MTD Order at 6. In other words, if bylaws are otherwise silent on the issue, DC law fills the gap by upholding corporate action that does not conform precisely to the annual meeting timing requirements. However, if there is an explicit bylaws provision providing for alternative procedures, such provision trumps D.C. Code § 29-405.01(d). This is a logical interpretation, as it would make little sense to invalidate a corporate action if an unexpected emergency forced an entity to reschedule its annual meeting or necessitated holding a meeting ahead of schedule to vote on an important matter. However, as Judge Mott correctly noted, the 1996 Bylaws were not silent on this issue, as they contained an explicit emergency meeting procedure. *See* JA 549,1996 Bylaws at Article VIII.3. Therefore, D.C. Code § 29-405.01(d) is inapplicable.

Moreover, Appellant's interpretation that D.C. Code § 29-405.01(d) permits it to hold annual meetings in contravention of the 1996 Bylaws in perpetuity is clearly erroneous, as it would be irreconcilable with D.C. Code § 29-405.01(a). This section holds that "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." Thus, it is clear that the legislature must have intended D.C. Code § 29-405.01(d) to apply in one-off situations to fill the gaps in bylaws that are otherwise

silent, as opposed to insulating Appellant from its decade long practice of intentionally scheduling General Assembly meetings in March in accordance with the invalid 2012 Bylaws. *See* JA 409, 2012 Bylaws at Article 10.1.[5]

In an attempt to bolster its incorrect interpretation of D.C. Code § 29-405.01(d), Appellant improperly supplements the arguments that it previously made to the trial court and to this Court. These new matters include a detailed recounting of the legislative history of this provision, as well as now arguing that the emergency meeting notice requirements are "completely encompassed by the notice of the annual meeting as set forth in Article VIII(2) of the 1996 Bylaws." Br. for Appellant at 19-22. However, "matters not properly presented to a trial court will not be resolved on appeal." *Linen v. Lanford*, 945 A.2d 1173, n. 4 (D.C. 2008) (declining to consider an argument raised for the first time on appeal "that December 1, 2005, is less than sixty days from October 3, 2005").

Appellant attempts to deflect by claiming that there is "no basis" to conclude an annual meeting held in the wrong month is "transformed into an emergency meeting" and that had the issue been raised, Appellant would have addressed it during the hearings on the preliminary injunction. Br. for Appellant at 20-21. However,

[5] Indicating that under the 2012 Bylaws, the General Assembly met twice a year: once between January through March to hold Board elections and once in October through December to elect the election committee.

Appellant's own testimony provides such a basis.[6] Likewise, Appellant itself raised this topic several times during the preliminary injunction hearings, demonstrating that it was well aware that notice was a required element of proof to establish the validity of a General Assembly meeting.[7] Appellees have consistently argued that both the 2014 and 2015 meetings were invalid in their entirety due to following the wrong procedures. Therefore, it was Appellant's burden to prove that it fully complied with all required procedures to establish standing in this case, which Appellant concedes it did not do.

Lastly, no further briefing on this issue is required, as the voluminous record demonstrates that Appellant cannot establish that its March 2015 election in accordance with the invalid 2012 Bylaws accidentally complied with the emergency

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[6] *See* JA 216, Jan. 11, 2016 Trans. of Dr. Metaferia at 176:

> Q. So the board of trustees can call a meeting of the general assembly if it wants to, right?
> A. In case of an emergency, yes.
> Q. Well, the board also schedules general meetings, right?
> A. That is called according to the timetable given in the bylaw. That's one thing. The second thing is a case of emergency. And the third thing, as I mentioned before, is if there is a petition of one-third of the members. That was the normal procedure.

[7] *See* JA 207, Nov. 23, 2015 Trans. at 60 (Appellant's counsel: "that assumes a valid General Assembly meeting, and there can't be a valid General Assembly meeting if there's not valid notice). *See also* JA 246, Feb. 4, 2016 Trans. at 6 (Exchange between former Board member Ms. Debela and her counsel testifying that a "validly called General Assembly meeting" required valid notice and "all bonafide church members [being] allowed to participate.").

meeting requirements of the 1996 Bylaws. As an initial matter, the record demonstrates that the March 2015 election was not "held late" (Br. for Appellant at 21), but instead intentionally scheduled for March in accordance with Article 10.1 of the invalid 2012 Bylaws, just like its purported March 2016 election. Furthermore, even if it were possible to satisfy the requirements inadvertently, the Election Committee report for the March 2015 meeting demonstrates that Appellant violated the emergency meeting procedures.[8] *See* JA 359-60, Mar. 29, 2015 Election Comm. Report. Therefore, it is clear that the March 2015 election did not conform to either the general or the emergency meeting requirements of the 1996 Bylaws, nor did Appellant intend such due to its ill-founded, yet adamant adherence to the invalid 2012 Bylaws.

C. There is ample basis in the record to question whether a quorum was present for the 2015 General Assembly election meeting

STANDARD OF REVIEW: This issue is one of mixed law and fact. Pursuant to D.C. R. Civ. Pro. 52(a)(6): Findings of fact must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

[8] For instance, the Minutes indicate that Father Zelalem requested the right to speak and explained the reasons for his purported resignation, after which the General Assembly and the Election Committee rejected these reasons prior to continuing "without any further delays." However, the emergency meeting provisions under both bylaws prohibit such impromptu business, strictly forbidding discussion on any topic not explicitly specified in the notice.

As the trial court previously found when Appellant first made these identical arguments,[9] the record clearly refutes Appellant's assertion that "no basis existed to question whether a quorum was present for the 2015 general assembly election meeting." Br. for Appellant at 23. Appellant contends that receiving votes equating to 69% of the minimum quorum "in no way suggests the absence of quorum." Br. for Appellant at 26. However, the reported results for every other purported election do in fact suggest that receiving votes equivalent to only 69% of the minimum quorum evinces the absence of quorum. For instance, the top vote getter in the July 2014 election received votes equating to 110% of the minimum quorum, or 98% of the members in attendance,[10] and the October 2016 top candidate received votes

[9] These findings included 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 only 130 votes; (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." JA 42-43, Second MTD Order at 7. (emphasis added).

[10] *See* JA 461-66, July 27, 2014 G.A. Mtg. Min. at 3, indicating that the top candidate received 152 votes out of the 155 verified voting forms, or 98% of the members in attendance. *See also* JA 442, July 13, 2014 G.A. Mtg. Min., indicating that minimum quorum was 138, or 110% of the votes received. Like the 2015 Election Minutes, these contain a typo, which indicated that there were 460 members in good standing. However, it allegedly should have instead stated that there were 414 members in good standing. *See* JA 244, Feb. 4, 2016 Trans. at 322.

totaling 174% of the minimum quorum.[11] Lastly, the top vote getters in Appellant's purported March 2016 election received votes from 95.5% of the voting members in attendance.[12] Therefore, based on the available record, the top vote getter historically received a minimum of 90% of the vote of all members in attendance and greater than 100% of the minimum quorum, providing ample justification to second-guess the March 2015 election quorum.

Moreover, Appellant contends that this Court should accept Ms. Debela's written report as sufficient proof that a quorum was satisfied, despite Ms. Debela testifying that (1) she was not the one that compiled the list of members in good standing; (2) that she incorrectly wrote the required quorum was 175 instead of 178 because she is "weak in mathematics;" and (3) that she didn't know whether or not she accidentally switched the numbers, leading to only 175 members in attendance. *See* JA 250-51, Feb. 4, 2016 Trans. at 337-38. Likewise, Dr. Metaferia also testified for Appellant that he could not be sure how many members were at the 2015 election, nor why the required quorum had dropped so much since just three weeks prior. *See* JA 214-15; 218-19; 225-26, Jan. 11, 2016 Trans. at pp. 158-59; 180-81; 189-90.

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[11] *See* JA 84, 86, Defs.' MTD Ex. B at 7 & 9, noting that the Church had 810 registered members, equating to a quorum of 270, and that the top candidate received 471 votes.

[12] *See* JA 196-97, citing and attaching Aug. 13, 2018 Joint App. Vol. 4 at 1011-15 (Exhibits 1-2 to Pl.'s Opp. to Renewed MTD). In the March 2016 election, Appellant's March 27, 2016 Election Committee meeting minutes indicate that the top candidate received 171 votes out of 179 voting forms.

Lastly, Appellant ignores the fact that even if the Meeting Minutes were correct, it would only mean that a quorum was satisfied under the invalid 2012 Bylaws, not the 1996 Bylaws. This is a key distinction, as more restrictive membership requirements under the 2012 Bylaws, which were not limited solely to the previously discussed financial provisions, significantly reduced the membership count, thereby reducing the minimum required quorum. For instance, the invalid 2012 Bylaws contained a new provision holding that families will only receive one membership card and one vote unless the husband and wife separately apply for membership and make separate payments. *Compare* JA 403, 2012 Bylaws at Article 5.2, *with* JA 550, 1996 Bylaws at Article IX ("Every member of the DSK Mariam Church shall be entitled to one vote"). Additionally, under Article 10 of the 2012 Bylaws, when a member is delinquent on their monthly dues, they are immediately suspended without notice and unable to attend or vote at meetings until remedied. JA 409-10. However, the concept of a suspension did not exist in the 1996 Bylaws. Instead, under Article VII, members that failed to pay dues "within a reasonable period of time" would have their membership terminated, after notice and hearing, which could be restored upon payment. JA 549. By using the restrictive 2012 Bylaws, the Appellant undercounted its membership and therefore the quorum required to hold a valid election, and undoubtedly did not include on its

membership role members who were eligible to vote in the election under the 1996 Bylaws.

Lastly, there were additional requirements for membership and grounds for termination under Articles 5 & 8 of the invalid 2012 Bylaws that are not contained in the 1996 Bylaws. JA 402-03; 406-08. These include that a member not be involved in conflict with the Church, not have caused any disturbance or disagreement within the Church, and not dispute or contradict the bylaws of the Church. Indeed, Appellant used these invalid provisions to terminate the memberships of individuals who allegedly were complicit in an "unlawful series of challenges to the church's bylaws and the authority of the elected Board" through allowing the choir "to voice their grievances against the Board, thereby causing disturbances." *See* JA 555, Membership Termination Letters at 1. Thus, Appellant's repetition of its previously rejected arguments misrepresenting the record fails to demonstrate clearly erroneous findings of fact in Judge Mott's Dismissal Order. Appellant has failed to meet its burden to establish that any quorum was satisfied at the March 2015 election, let alone a quorum under the applicable 1996 Bylaws. *See In re Estate of Derricotte*, 885 A.2d 320, 324-25 (D.C. 2005).

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE MARCH 2016 ELECTION WAS HELD CONTRARY TO THE BYLAWS

STANDARD OF REVIEW: This issue is one of mixed law and fact. Pursuant to D.C. R. Civ. Pro. 52(a)(6): Findings of fact must not be set aside unless clearly erroneous,

and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

Appellant fails to advance any additional facts or legal arguments regarding the validity of its purported March 2016 election, apart from those discussed above relating to the July 2014 and March 2015 elections. While the trial court correctly concluded that the above flaws are sufficient to invalidate the March 2016 election, there are additional defects unique to the March 2016 election. For example, Appellant's self-serving affidavits of individuals who supported the eight removed Board members are the only records of these supposed elections. *See* JA 196-97, citing and attaching Aug. 13, 2018 Joint App. Vol. 4 at 1011-15 (Exhibits 1-2 to Pl.'s Opp. to Renewed MTD). These exhibits fail to establish that Appellant conducted the March 2016 election in accordance with the 1996 Bylaws, nor could they, as Appellant was continuing to adhere to the invalid 2012 Bylaws. The meetings did not occur at the Church, which is located on 1350 Buchanan Street NW, in contravention of D.C. Code § 29-405.01(c), which holds that annual meetings must be held at a location indicated in the bylaws, or if none is stated, "at the nonprofit corporation's principal office."[13] Furthermore, the fewer than 200

[13] Following the events of 2015, approximately 100-200 members supportive of Appellant split from the Church and declared themselves the "true" DSK Church. This other church created its own separate membership booklets with a differing cover picture and a smaller following than the Buchanan Street Church, which has substantially increased its membership since the split. *See* JA 80-81, Defs.' MTD Ex. B at 3-4. Appellant purportedly held the March 2016 election at 1610 Columbia Rd.

"members" alleged to be in attendance fell far short of a quorum of the approximately 810 eligible Church members under the 1996 Bylaws.[14] In addition, this Court has already agreed that "[w]hether or not unlawful actions occurred before the October 2016 election, the controlling bylaws required an election to be held in October 2016." JA 34. Thus, the March 2016 election could not have been proper.

Accordingly, any attempt to conduct an election during the meetings of the "other" DSK Church was invalid under the 1996 Bylaws. Instead, the record demonstrates that the March 2016 election was simply the first election at Appellant's separate church. Appellant has never alleged that it made any effort to follow the 1996 Bylaws at its separate church, as it has always maintained the 2012 Bylaws govern. Therefore, the trial court correctly concluded that the purported March 2016 election had no bearing on the number of vacancies in the October 2016 election.

III. THE TRIAL COURT CORRECTLY CONCLUDED THAT ABRAHAM HABTE-SELLASSIE WAS THE PROPERLY APPOINTED ALEKA FOLLOWING THE OCTOBER 2016 ELECTIONS

STANDARD OF REVIEW: This issue is one of mixed law and fact. Pursuant to D.C. R. Civ. Pro. 52(a)(6): Findings of fact must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

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in Washington D.C.. JA 196-97, citing and attaching Aug. 13, 2018 Joint App. Vol. 4 at 1011-15 (Exhibits 1-2 to Pl.'s Opp. to Renewed MTD).

[14] *See* JA 84, Defs.' MTD Ex. B at 7, reflecting that in October 2016, the Church had 810 registered members, equating to a quorum of 270. *C.f.* JA 196-97, citing and attaching Aug. 13, 2018 Joint App. Vol. 4 at 1011-15 (Exhibits 1-2 to Pl.'s Opp. to Renewed MTD), stating that 179 "members" voted in Appellant's March 2016 election.

As noted in the Dismissal Order, Mr. Habte-Sellassie was the properly appointed Aleka following the October 2016 elections. Appellant does not contest that a duly-elected board has the authority to appoint the Church Aleka. The October 2016 election resulted in a duly-elected Board. The duly-elected Board affirmed the Interim Board's appointment of Mr. Habte-Sellassie as the Church Aleka. Dr. Kassaye was validly terminated as Aleka of the Church, if not by the removal of Dr. Kassaye by the Interim Board, then by the duly-elected Board's continued rejection of Appellant's claims and appointment of Mr. Habte-Sellassie. In either case, Dr. Kassaye, had been validly removed as Aleka prior to the vote to dismiss this case.

Even if Dr. Kassaye's removal was invalid, which it was not, this Court has already rejected Appellant's "fruit of the poisonous tree" argument with regard to the validity of the October 2016 election. JA 34.[15] Moreover, under Appellant's

[15] Dr. Kassaye was among the former Board members dismissed in 2015. Br. for Appellant at 4. Appellant argues that "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." *Id*. at n. 12. However, this Court has held that the October 2016 election "was not tainted simply because antecedent actions may have been unlawful." JA 34. Therefore, the validity of Dr. Kassaye's removal in 2015 has no bearing on the October 2016 Board's subsequent appointment of Mr. Habte-Sellassie as Aleka. If the election was otherwise valid, so too was their subsequent appointment.

argument, the initial 2015 vote to initiate this lawsuit was invalid, as it denied nearly half of the Board the right to participate. JA 3.[16]

The decision by the duly-elected board to dismiss this action was decided unanimously by the 11-member board, including the Board's founding member, Megabe Kahnat Kehali Wondaferew. Appellant cannot reasonably argue that a different vote from the Aleka position would have resulted in a different outcome.

IV. A MAJORITY OF THE BOARD VOTED TO DISMISS THIS LAWSUIT

The crux of this matter comes down to whether the majority of the Board voted to dismiss this lawsuit in January 2017. As this Court addressed in the Remand Order, "In any event, the trial court further reasoned, there were at least four vacancies at the time of the October 2016 election, and thus a majority of validly selected Board members voted to dismiss this lawsuit." JA 30. This is because all eight candidates elected in October 2016 voted with the three non-elected Board members in January 2017 to unanimously dismiss this suit, depriving Appellant of standing. JA 38. This decision was not among the particular issues remanded and,

[16] "These individuals did not provide notice of this meeting to the permanent members of the BOT and those elected by the clergy, including Father Workeneh Haile, the Church's father figure priest; Kehali Wondaferew, the Church's founder; Father Hailu Zeleke Lebu, the trustee elected by the clergy; and Mengesah Achamyeleh, the trustee elected by the Youth Sunday School Association ("YSSA"). PE11, PE32 ¶ 18. On the evening of September 30th, no one attempted to call these individuals to provide an opportunity to participate in the meeting. Tr. 85:1-18 (10-28-15). Ms. Debela testified that these individuals were not called because they had "done a coup d'etat" and were "on the other side." Tr. 84.9, 24 (10-28-15)."

accordingly, the Superior Court did not specifically address it. However, the Court's Order dismissing the suit did hold that the plaintiff also lacked standing for the reasons "expressed in the court's January 2, 2018 Order." JA 44.

Even if Appellant had met its burden of establishing that the 2014 and 2015 elections were proper and that Dr. Kassaye was Aleka, this would still leave four vacancies in October 2016 from the expiration of the 2014 former Board members' terms, thereby resulting in six votes in favor of dismissal (i.e., four votes by the newly-elected members, one vote by the permanent member, and one vote by the member elected by the clergy), which constitutes a majority of the 11-member Board. Thus, to meet its burden of establishing standing, Appellant would have to prevail on every appealed issue, including the validity of the March 2016 election results.[17] As such, this appeal is moot absent a showing that there were zero vacancies in October 2016, which Appellant has not and cannot do.

V. APPELLANT'S APPEAL SHOULD BE DENIED BECAUSE THE RELIEF SOUGHT IS MOOT

The Article III case or controversy doctrine applies to limit the judicial power of the lower courts in the District of Columbia. *See Banks v. Ferrell*, 411 A.2d 54,

[17] Appellant's brief does not cite to any evidence supporting the validity of the March 2016 election. Likewise, Appellant has failed to satisfy its burden of addressing additional challenges unique to the March 2016 election, including being held at the wrong location in contravention of D.C. Code § 29-405.01(c). JA 197. Appellant has not even demonstrated that there were any vacancies in March of 2016, given that the two-year terms of the candidates elected in July of 2014 had not yet expired.

55-56 (D.C. 1979). "A justiciable controversy is limited... to 'one upon which the judgment of the court may effectively operate,' as distinguished from a debate or argument that proposes a purely academic conclusion, or advisory opinion." *Thorn v. Walker*, 912 A.2d 1192, 1195 (D.C. 2006). "A case is moot when the legal issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome." *Id*. "[I]t is well-settled that, while an appeal is pending, an event that renders relief impossible or unnecessary also renders that appeal moot." *Id*. "'[W]hen there is no effective relief this [c]ourt can fashion, the appeal is moot.' As the Supreme Court said in *Brownlow*, '[a] reversal would ostensibly avoid an event which had already passed beyond recall.'" *Id*. at 1197.

The issue before this Court—whether the trial court erred in dismissing Appellant's Complaint—is now moot since both the lower and this Court have affirmed the dismissal of Appellant's requests for injunctive relief, as well as denied its request for declaratory judgment that the 2012 Bylaws govern the Church. *See* JA 199, citing Pl.'s Compl. at ¶ 37. Thus, the sole remaining request for relief is for declaratory judgement "that the purported removal of the eight [] members of the Board of Trustees [was] invalid and that the Board of Trustees continues to be the governing entity of the Church." *Id*. However, this Court rejected Appellant's "fruit of the poisonous tree" claim, holding that "[w]hether or not unlawful actions occurred before the October 2016 election, the controlling bylaws required an

election to be held in October 2016." JA 34, Aug. 22, 2019 Mem. Op. & J. at 8.[18] Therefore, the issue of whether the 2015 removal was invalid is not justiciable, as it is "purely academic." *See Thorn*, 912 A.2d at 1195.

Furthermore, declaratory judgment that "the [former] Board of Trustees continued to be the governing entity of the Church" is also moot because the Court cannot fashion effective relief, as a "reversal would ostensibly avoid an event which had already passed beyond recall." *Id*. Given the multiple elections that have transpired over the past five years—including at Appellant's separate "true" church—the persons who held themselves out as Board members in 2015 would not be Board members today. The only purpose continuing this litigation would serve is revenge. However, the "desire for vindication is … inadequate to show that [the] appeal is not moot. The 'legal interest' at stake 'must be more than simply the satisfaction of a declaration that a person was wronged.' 'While the emotional satisfaction of a victory may be important to a litigant, 'emotional involvement in a lawsuit is not enough to meet the case-or-controversy requirement; were the rule otherwise, few cases could ever become moot.'" *Id*. at 1197 (emphasis added). Thus, it would be inappropriate for the Court "to adjudicate the merits of [Appellant's Appeal] … merely to record [its] views concerning a controversy which

[18] This provides further support that the March 2016 election was invalid for occurring outside of October.

no longer exists and to rule on a question which has become moot and purely academic." *See Banks*, 411 A.2d at 56. As such, Appellant's requested relief in the current action is not justiciable, as it is both impossible and unnecessary to grant.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court affirm the trial court's Dismissal Order and denial of Appellant's Second Reconsideration Motion.

Dated July 20, 2022

Respectfully Submitted,

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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 July 20, 2022, via the Court's electronic filing system. 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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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
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     (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;
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     (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.

/s/ Donald Thompson
Signature

21-CV-262
Case Number(s)

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