

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

2005 AUG - 5

ROSIE ANDUJAR, *et al.*

Plaintiffs,

v.

BISHOP PILLA, *et al.*

Defendants.

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY


CASE NO.: 05-CV-565095

JUDGE STUART FRIEDMAN

: MOTION TO DENY
: DEFENDANT BISHOP
: ANTHONY M. PILLA'S
: MOTION TO DISMISS

NOW COME Plaintiffs, by and through undersigned counsel, and hereby move to deny Defendant Bishop Anthony M. Pilla's Motion to Dismiss because Plaintiffs' have standing to bring these claims against all Defendants; this Court has subject matter jurisdiction over the claims against Bishop Pilla, based on the First Amendment to the United States Constitution; and Plaintiffs have stated a claim upon which relief may be granted against Bishop Pilla. For the reasons more fully stated in the attached Memorandum In Opposition, Defendant's Motion to Dismiss should be denied.

Respectfully submitted,


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I hereby certify that a copy of the foregoing Plaintiffs' Brief in Opposition to Defendant's Motion to Dismiss was served via ordinary U.S. mail on this 5th day of August 2005, on John M. Newman, Jr., Jones Day, North Point, 901 Lakeside Avenue, Cleveland, OH 44114-1190.


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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

ROSIE ANDUJAR, *et al.* : CASE NO.: 05-CV-565095
Plaintiffs, : JUDGE STUART FRIEDMAN
v. : MEMORANDUM IN
BISHOP PILLA, *et al.* : OPPOSITION TO BISHOP
Defendants. : ANTHONY M. PILLA'S
 : MOTION TO DISMISS
 :
 :

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**MEMORANDUM IN OPPOSITION TO
BISHOP ANTHONY M. PILLA'S MOTION TO DISMISS**

I. INTRODUCTION

Before this Court is Plaintiffs' Memorandum in Opposition to Bishop Anthony M. Pilla's Motion to Dismiss. On June 13, 2005, Plaintiffs filed a lawsuit in Cuyahoga County Common Pleas Court claiming that current and former employees of the Diocese of Cleveland wrongfully converted Diocesan assets and that these individuals entrusted with protecting the assets of the Diocese of Cleveland breached both their duties of care and loyalty. Additionally, Plaintiffs' claim that Bishop Anthony M. Pilla ("Bishop Pilla"), Bishop of the Diocese of Cleveland and Trustee of all Diocesan assets, is liable for negligent supervision of these employees. Plaintiffs' demand that the absconded monies be returned to the Diocese of Cleveland and an accurate accounting of the Diocese be completed. Plaintiffs are registered members of their respective parishes within the Diocese of Cleveland.

Subsequently, Bishop Pilla filed a Motion to Dismiss claiming that Plaintiffs lack standing to sue; that the Court lacks jurisdiction to order the relief requested by Plaintiffs; and that Plaintiffs did not state a claim upon which relief may be granted against Bishop Pilla. For the reasons stated below, this Court should deny Bishop Pilla's Motion to Dismiss.

II. LAW AND ARGUMENT

Bishop Pilla's Motion to Dismiss should be denied because: (a) Plaintiffs' have standing to bring these claims against all Defendants; (b) this Court has subject matter jurisdiction over the claims against Bishop Pilla, based on the First Amendment to the United States Constitution; and (c) Plaintiffs have stated a claim upon which relief may

be granted against Bishop Pilla.

A. Plaintiffs Have Standing to Bring These Claims Against All Defendants.

Plaintiffs have standing to bring these claims against all Defendants because each Plaintiff is a beneficiary of the trust of the Diocese of Cleveland and a conclusion to the contrary is against public policy.

In *Mannix v. Purcell*, the Ohio Supreme Court first recognized a diocese of the Roman Catholic Church as a charitable trust. *Mannix v. Purcell* (1888), 46 Ohio St. 102, 19 N.E. 572. Bishop Pilla, in his ecclesiastical capacity as Bishop of the Diocese of Cleveland, is identified by both civil and church law as trustee of all trust assets, both real and personal property, of the Diocese of Cleveland (*see* Statement of the Catholic Conference of Ohio, attached to Complaint). According to Ohio Revised Code Section 109.23(A), a charitable trust is any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious, or educational purpose. Under Ohio Revised Code Section 109.24 states that the Attorney General has the sole authority to enforce a charitable trust; however, the statute does not unequivocally prevent a private party from prosecuting an action to enforce a charitable trust.

The law generally prohibits a private citizen from suing to enforce a charitable trust, because such a trust is by nature devoted to the accomplishment of purposes beneficial to the public and not to any specified beneficiaries. *See Shriner v. ProMedica Health Sys., Inc.* (N.D. Ohio 2005), 2005 U.S. Dist. LEXIS 894, at 894. A suit may be

maintained for the enforcement of a charitable trust by the Attorney General or other public officer, by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest. See Restatement of the Law of Trusts 2d, Section 391. A party may not maintain an action merely because they are concerned citizens taken from the public at large. *Willoughby Hills v. C.C. Bar's Sahara, Inc.* (1992), 64 Ohio St.3d 24.

Plaintiffs are more than just “miscellaneous members” of group of concerned citizens from Northeastern Ohio. They are beneficiaries of the charitable trust of the Diocese of Cleveland because each individual Plaintiff is a registered member of their respective parishes and their membership at their parishes is readily ascertainable to prove they are beneficiaries of the trust. Additionally, Plaintiffs are financial contributors and supporters of their parishes. Because Plaintiffs are beneficiaries of the charitable trust of the Diocese of Cleveland they have standing to bring these claims against all Defendants. Thus, Bishop Pilla’s Motion to Dismiss should be denied on this issue.

Moreover, a determination that Plaintiffs have no interest in the charitable trust of the Diocese of Cleveland and, therefore, have no standing to sue is against public policy. Public policy dictates that Plaintiffs have standing to sue for the enforcement of a charitable trust when individuals entrusted with its continuance have absconded millions of dollars from it for their own benefit. Bishop Pilla’s interpretation of the charitable trust of the Diocese of Cleveland is so narrowly construed as to not permit accountability for the clear abuses by the Defendants named in this lawsuit. To dismiss Bishop Pilla as a Defendant in this case, given the positions of the Defendants involved and their direct accountability to Bishop Pilla, would also fly in the face of public policy because it

would endorse a lower standard of care and duty for trustees to public charities.

Therefore, Plaintiffs have standing to sue as beneficiaries as a matter of public policy and Bishop Pilla's Motion to Dismiss should be denied.

B. This Court Has Subject Matter Jurisdiction Over the Claims Against Bishop Anthony M. Pilla, Based on the First Amendment to the United States Constitution.

This Court has subject matter jurisdiction over Plaintiffs' claim that Bishop Pilla breached his fiduciary duties as Trustee of the Diocese of Cleveland and is liable for the negligent supervision of three current and former employees of the Diocese of Cleveland, and such jurisdiction does not infringe on the First Amendment.

Generally, civil courts will not interfere in church matters related to faith; however, they may intervene if property or civil rights are involved. The authority of civil courts to inquire into religious disputes was confirmed by the Supreme Court of the United States in *Jones v. Wolf* (1979), 443 U.S. 595. The state has an obvious and legitimate interest in the peaceful resolution of property disputes and in providing a civil forum in which the ownership and control of church property can be determined conclusively. *Id.* at 600; *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 445 ("Blue Hull Church").

The first amendment prohibits civil courts from resolving church property disputes by inquiring into and resolving disputed issues of religious doctrine and practice. *Id.*; *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich* (1976), 426 U.S. 696, 710 ("Serbian Orthodox Diocese"); *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* (1970),

396 U.S. 367, 368 (per curiam) (“Sharpsburg Church”). However, when a disputed issue of religious doctrine or practice is relevant to a property dispute, a civil court must defer to the resolution of that issue arrived at by the highest court, tribunal or controlling body of a hierarchical church organization. *Jones v. Wolf*, 443 U.S. at 602, 604; *Serbian Orthodox Diocese*, 426 U.S. at 709, 724-25; *Watson v. Jones* (1871), 80 U.S. (13 Wall.) 679, 727.

Despite the limitations on civil courts to interject into matters of church disputes, this Court has competent jurisdiction to do so in this case. This Court has an obvious interest in protecting the rights and ownership interests of the beneficiaries of the Diocese of Cleveland. It is not necessary for the court to delve into matters of church practices or doctrines in order to adjudicate this dispute. By adopting a “neutral principles of law” approach, a trier of fact can accurately determine whether Bishop Pilla breached his duty as Trustee of the Diocese of Cleveland. Therefore, adjudication of this matter by this Court is not prohibited by the First Amendment.

Bishop Pilla argues that Plaintiffs’ claims against him are no different than those alleged in the *Tibbs v. Kendrick* (8th Dist. 1994), 93 Ohio App.3d 35, 40-41, 637 N.E.2d 397. Motion to Dismiss ¶ 10. In *Tibbs*, the Eighth District held that civil courts lack subject matter jurisdiction to entertain claims by beneficiaries of a trust against trustees of a congregational church. The Church in *Tibbs*, however, was a congregational church, as opposed to the Roman Catholic Church, which is a hierarchal church. The difference between the two churches is that in a congregational church the members make binding decisions, whereas in a hierarchal church decisions are made by designated and appointed officials, i.e. cardinals, bishops, etc. Because of this discrepancy between the church in

Tibbs and the Diocese of Cleveland, Bishop Pilla's argument that *Tibbs* is controlling on the First Amendment issue is inaccurate.

Moreover, the Code of Canon Law states "that civil laws to which the law of the Church yields *are to be observed in canon law with the same effects*, insofar as they are not contrary to divine law and unless canon law provides otherwise (emphasis added). The Code of Canon Law, Canon 22. Therefore, this Court can apply the "neutral principles of law" doctrine, which would dispense of any anxiety about violating the First Amendment. Bishop Pilla contends that *Tibbs* is not controlling as applied to the "neutral principles of law" doctrine; however, he argued that *Tibbs* was controlling in the previous paragraph. Motion to Dismiss ¶ 11. Nevertheless, it is not necessary for this Court to inquire into matters of church practices or doctrines in order to adjudicate this dispute.

Furthermore, it is not necessary to examine canon law to determine that Bishop Pilla should be held to a reasonable prudent person standard in his role as Trustee of the Diocese of Cleveland. The question of whether Bishop Pilla was a reasonable prudent trustee is a question of fact that a trier of fact could decide without having to consider canon law and possibly offending the First Amendment. Thus, this Court's subject matter jurisdiction over this case is not prohibited by the First Amendment and the Bishop Pilla's Motion to Dismiss should be denied.

C. Plaintiffs Have Stated a Claim Upon Which Relief May Be Granted Against Bishop Anthony M. Pilla.

A motion to dismiss will be sustained only where a reasonable reading of the complaint shows that the plaintiff can prove no set of facts entitling the party to recovery. *Border City S & L Assn. v. Moan* (1984), 15 Ohio St.3d 65, 66. Courts reviewing a 12(b)(6) motion must accept the well-pled factual allegations of the complaint as true and

construe all reasonable inferences in favor of the plaintiff. *See Miller v. Currie*, 50 F.3d 373, 377 (6th Cir.1995).

Plaintiffs have stated a claim upon which relief may be granted against Bishop Pilla. It is only coincidental that a church is involved in this civil legal matter; Plaintiffs' claims do not deal with religious doctrines; therefore, this Complaint adequately and accurately describes the allegations against all Defendants and is sufficient to survive a 12(b)(6) motion.

Bishop Pilla's Motion to Dismiss analyzes each count of the complaint separately and state why Plaintiffs have not stated a claim upon which relief may be granted. Plaintiffs have addressed each count in a similar manner below. Count One does not name Bishop Pilla as one of the current or former employees of the Diocese of Cleveland, which Plaintiffs' allege are liable for the wrongful conversion of monies of the Diocese of Cleveland. Therefore, because he is not named under this count it was not necessary to state a claim for relief against him.

Count Two demands an accurate accounting of the Trust of the Diocese of Cleveland by Bishop Pilla, Trustee of the Diocese of Cleveland. Plaintiffs demand in this count is a remedy, but it is also a cause of action. In view of the apparent absconding of millions of dollars by both current and former employees of the Diocese of Cleveland, as evidence by the accompanying documents of the complaint, Plaintiffs demand such an accounting. A complete accounting is necessary in order to ascertain the full amount of damages to the trust and Plaintiffs, as beneficiaries, have a right to demand as such. Bishop Pilla has acted negligently by not demanding that these wrongfully converted funds be returned to the Diocese of Cleveland. Therefore, Plaintiffs have stated a claim

upon which relief may be granted against Bishop Pilla.

Plaintiffs claim in Count Three that Bishop Pilla breached his duty of loyalty to the trust of the Diocese of Cleveland. Plaintiffs have alleged how Bishop Pilla breached his duty of loyalty to the beneficiaries of the trust by not providing an adequate accounting. Compl. ¶ 21. Thus, Plaintiffs have stated a claim upon which relief may be granted against Bishop Pilla.

Count Four states that Bishop Pilla breached his duty of care in administering the trust of the Diocese of Cleveland. Plaintiffs have explicitly stated how Bishop Pilla breached his duty of care to the beneficiaries of the trust. Compl. ¶ 21. Bishop Pilla claims that this Count should be dismissed as applied to him because Plaintiffs' charges "amount to no more than an assertion of absolute liability." Motion to Dismiss ¶ 17. However, this defense does not challenge the sufficiency of the factual allegations; rather, it requests the Court to inquire into the merits of the case. Thus, Plaintiffs have sufficiently stated a claim upon which relief may be granted against Bishop Pilla under this Count.


Count Five states that Bishop Pilla is liable for negligent supervision of three current and former employees of the Diocese of Cleveland. Bishop Pilla alleges that the complaint does not allege a single fact that shows that he is liable for the misconduct of the three current and former employees named in the Complaint. Motion to Dismiss ¶ 18. Conversely, the complaint explicitly states that Bishop Pilla is the Trustee of the Diocese of Cleveland and why he is liable for such negligent supervision. Compl. ¶¶ 76-77. Therefore, Plaintiffs have sufficiently stated a claim upon which relief may be granted against Bishop Pilla under this Count.

Plaintiffs argue in Count Six that the Attorney General should take legal action to enforce the administration of the trust of the Diocese of Cleveland. The Attorney General has been offered the opportunity to join this lawsuit as a party-plaintiff. Additionally, public policy should also dictate to him that the individuals who absconded with money belonging to the beneficiaries of the Diocese of Cleveland should be held accountable.

III. CONCLUSION

For the foregoing reasons, Bishop Anthony M. Pilla's Motion to Dismiss should be denied.

Respectfully submitted,


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