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IN THE
COURT OF APPEALS OF INDIANA

DAVID A. GARMON, SR., KENNETH E. GARMON, SR., BISHOP O.C. GARMON MEMORIAL TRUST CORP., ET AL.,	)	
Appellants.	)	
vs.	)	No. 45A03-0908-CV-390
BISHOP DONSERO REYNOLDS as TRUSTREE OF ZION TEMPLE APOSTOLIC CHURCH,	)	
Appellee.	)	

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
Cause No. 45C01-0711-PL-306

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

David A. Garmon, Sr., Kenneth E. Garmon, Sr., and the Bishop O.C. Garmon Memorial Trust Corporation (collectively "Defendants") appeal the trial court's denial of their motion for summary judgment, demand for jury trial, and the trial court's judgment quieting title to Zion Temple Apostolic Church ("Church") and its successor trustees.

We affirm.

ISSUES

1. Whether the trial court erred in denying the Defendants' demand for jury trial.

2. Whether the trial court erred in denying the Defendants' motion for summary judgment.

3. Whether the trial court erred in quieting title in favor of Bishop Reynolds, as Trustee of Church.

4. Whether the trial court erred in granting Church's motion to declare title quieted.

FACTS

Bishop O.C. Garmon was the founding pastor and trustee of the Zion Temple Apostolic Church ("Church"), an unincorporated religious association in Gary, Lake County. During his tenure as pastor, Bishop Garmon appointed several congregants to the Church's Board of Trustees. Trustees are vested with the right to possess, control, and use Church property. Since its inception, Church has acquired the following parcels of land:

> Lots Eighteen (18) and Nineteen (19), in Block Thirteen (13), (except that part in rear of said lots taken for alley purposes), Chicago-Tolleston Land and Investment Company's Fifth Addition, to the Town of Tolleston, in the City of Gary, Indiana [("**Parcel A**")].
>
> Lot Numbers Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12) and Thirteen (13), all inclusive, in Block Number Twelve (12), as marked and laid down on the recorded plat of the Chicago-Tolleston Land Investment Company's Fifth (5th) Addition to Tolleston, except those parts of said lots taken for alley purpose, and the East One-Half (E½) of vacated alley Number Four West (4W), abutting these said lots, in the City of Gary, Indiana, Lake County Indiana, same as appears in plat Book Number Two (2), Page Thirty-One (31), in the Recorder's Office of Lake County, Indiana [("**Parcel B**")].
>
> Lot Numbers Twenty-One (21), Twenty-Two (22), Twenty-Three (23), Twenty-Four (24), Twenty-Five (25) and Twenty-Six (26), all inclusive, in Block Number Thirteen (13), as marked and laid down on the recorded plat of the Chicago-Tolleston Land Investment Company's Fifth (5th) Addition to Tolleston, except those parts of said alley taken for alley purpose, and the West One-Half (W½) of vacated alley Number Three West (3W), abutting these said lots, in the City of Gary, Indiana, Lake County Indiana, same as appears in plat Book Number Two (2), Page Thirty-One (31), in the Recorder's Office of Lake County, Indiana [("**Parcel C**")].
>
> Lot Number Twenty (20) in Block Number Four (4) in Chicago-Tolleston Land and Investment Company's Fifth Addition to Tolleston in the City of Gary, Lake County, Indiana [("**Parcel D**")].

(Order 2).

On January 28, 1953, Bishop Garmon and his wife, Hattie, conveyed Parcel D by warranty deed to Hattie's grandmother, Bessie Majors. Majors then conveyed Parcel D by warranty deed to Bishop Garmon, his wife Hattie, and Reverend John Ingram as

trustees of Church, and to their successors in trust.[1] On September 26, 1955, Sidney and Lavera Miller; Richard and Jean Miller; and Byron and Jean Miller[2] conveyed Parcel A by warranty deed to Bishop Garmon, Hattie, and Reverend Ingram as trustees of Church, and to the successor trustees.

On July 25, 1975, Bishop Garmon appointed his son, Kenneth, to the Board of Trustees of Church. On or about April 11, 1978, for consideration of $7,200.00, the City of Gary conveyed Parcels B and C by special warranty deed to Bishop Garmon, Hattie, George Fuller, Joe T. Feagen, Kenneth Garmon, and James Washington as Trustees of Church.

Bishop Garmon died on January 15, 1991. In April of 1991, the congregation asked Donsero Bishop Reynolds to assume pastorship of Church, and he accepted. At Church's general business meeting held on October 10, 1991, Bishop Reynolds nominated himself as chairman of the Board of Trustees; he also recommended that the following Church members be named as trustees: Ricky Dean, David Golden, Joe Feagen, Katie Eller, Beulah Henderson, Edna Garmon, Linda Bishop Reynolds, Ethel Pressley, and Wallace Redmon.

In 1995, Bishop Garmon's son, David Garmon Sr.,[3] moved back to Gary from California. He moved into his late father's house and discovered that sensitive Church-

[1] By the time of trial, the parties to this transaction were deceased.

[2] By the time of trial, Sidney and Lavera Miller, Richard and Jean Miller, and Byron and Jean Miller were deceased.

related mail continued to be delivered there. David notified Bishop Reynolds and delivered the mail to him; however, Church mail continued to arrive at the house for approximately three more years, and David began to investigate "what [was] going on with the property." (Tr. 184). He investigated and made inquiries over the ensuing "fourteen year [period]." (Tr. 184).

In May or June of 2007, David asked Armagene Ellis-Smith, a church member and former employee of the Marion County Township Assessor's Office records division, to research and locate the original deeds for Parcels A, B, C and D on his behalf. Thereafter, on June 8, 2007, David Garmon executed Quitclaim Deeds 2007049170 and 2007049171 in an attempt to transfer Church's title in Parcels A and D to the Bishop O.C. Garmon Memorial Trust Corporation, a privately-held trust that he created. On August 21, 2007, Kenneth Garmon executed Warranty Deeds 2007068515 and 2007068517 transferring Church's title in Parcels B and C to the Bishop O.C. Memorial Trust Corporation.

On November 30, 2007, Church filed a complaint to quiet title. On January 22, 2008, in an attempt to correct David's unsuccessful attempt to transfer title in Parcels A and D, Kenneth executed Quitclaim Deeds 2008005083 and 2008005081, in an attempt to convey Parcels A and D to the Bishop O.C. Memorial Trust Corporation.[4] On January

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[3] David had not been a member of Church since 1961.

[4] The action taken by Kenneth Garmon on January 22, 2008, was an attempt to correct defects in David's June 8, 2007 quitclaim deeds. David Garmon has never been a trustee of Church; thus, he lacked authority to transfer title in Church's real property, and his deeds were deemed defective.

28, 2008, Defendants filed their answer, affirmative defenses, counter-claim, and a demand for jury trial. On February 22, 2008, Church filed its answer to Defendants' counterclaim. On July 16, 2008, Defendants moved for summary judgment and designated evidence. The trial court scheduled a hearing on the motion for summary judgment for September 5, 2008. On August 15, 2008, Church filed a motion in opposition to Defendants' motion for summary judgment, a memorandum and a designation of evidence. On August 25, 2008, Defendants filed a reply to Church's motion in opposition to their motion for summary judgment as well as a motion to strike portions of affidavits that trustee Bishop Reynolds had submitted in response to their motion for summary judgment. On September 5, 2008, Church filed a response in opposition to Defendants' motion to strike.

On September 15, 2008, the trial court issued an order granting in part and denying in part Defendants' motion to strike. The trial court also denied Defendants' motion for summary judgment. In October of 2008, the trial court initially set a jury trial for January 13 – 16, 2009. Subsequently, on December 12, 2008, the trial court vacated the jury trial setting and denied Defendants' demand for jury trial over objection. Counsel subsequently agreed to a three-day bench trial setting slated for July 6-8, 2009.

On January 12, 2009, Church moved for an earlier trial setting, which motion was granted on January 16, 2009. Without objection, the trial court scheduled trial for June 15-18, 2009. On May 18, 2009, Defendants moved the trial court to reconsider and reinstate trial by jury, or alternatively, to grant certification for interlocutory appeal. On

June 1, 2009, Church filed a memorandum of law opposing Defendants' motion to reconsider denial of jury trial.

A bench trial was conducted from June 15-18, 2009, and after presentation of evidence, the presiding magistrate judge requested proposed findings of fact and conclusions of law from the parties. Church submitted its proposed findings of fact and conclusions of law on June 18, 2009. On July 30, 2009, Defendants filed proposed findings of fact and conclusions of law. That same day, the trial court issued its findings of fact, conclusions of law, and judgment, which provided, in pertinent part, as follows:

I. FINDINGS OF FACT

*** * ***

> 9. After assuming the pastorship of the Church, Bishop Donsero Reynolds nominated candidates for the Church's Board of Trustees on October 10, 1991. The congregation elected Ricky Dean, David Golden, Joe T. Feag[e]n, Katie Eller, Ruby Henderson, Edna Garmon, Linda Reynolds, Ethel Pressley, Derrie Phelps, and Wallace Redmon to the Church's Board of Trustees.
> 10. The election for Trustees held on October 10, 1991, was conducted without notice as required by I.C. 23-10-2-1, et. seq., and no certificates were filed in the county Recorder's office, again in violation with said Indiana statute.
> 11. Defendant Kenneth E. Garmon left the Church in 1991 and began attending the church his brother pastored, Greater New Zion Temple Apostolic Church.
> 12. Defendant Kenneth E. Garmon rejoined the Church in 1992, and remained a member until 2007. During that fifteen-year period, Defendant Kenneth R. Garmon regularly attended services at the Church, had numerous conversations with Bishop Donsero Reynolds, and knew that a Board of Trustees had been nominated and elected under the pastorship of Bishop Reynolds. During that fifteen-year period, Defendant Kenneth E. Garmon never mentioned or questioned the legitimacy of the pastorship of

Bishop Reynolds or the Board of Trustees, or the ownership of Parcels A, B, C or D.

13. On June 8, 2007, Defendant executed Quitclaim Deed 2007049170 and Quitclaim Deed 2007049171 on behalf of Zion Temple Apostolic Church, purporting to transfer ownership of Parcels A and D to the Bishop O.C. Garmon Memorial Trust Corporation.

14. On January 22, 2008, after the commencement of this lawsuit, Defendant Kenneth E. Garmon executed "Corrected" Quitclaim Deed 2008005083 and "Corrected" Quitclaim Deed 2008005081 on behalf of Zion Temple Apostolic Church, attempting to convey ownership of Parcels A and D to the Bishop O.C. Garmon Memorial Trust Corporation.

15. On August 15, 2007, Defendant Kenneth E. Garmon executed Warranty Deed 2007068515 and Warranty Deed 2007068517 on behalf of Zion Temple Apostolic Church, an unincorporated religious association, attempting to convey ownership of Parcels B and C to the Bishop O.C. Garmon Memorial Trust Corporation.

16. The deeds executed by Defendants David and/or Kenneth E. Garmon on June 8, 2007, August 21, 2007, and January 22, 2008, were prepared and executed without the knowledge or approval of the Board of Trustees elected on October 10, 1991.

17. At trial, one of the reasons given by the Garmon Defendants for wanting to convey Parcels A, B, C, and D into the Trust was to ". . . take back over the Church and get the property back into the Garmon family name."

* * *

II. CONCLUSIONS THEREON

1. The Court concludes the Kenneth E. Garmon is the sole surviving Trustee of the Church, as he had been appointed to that position by his father, Bishop O.C. Garmon, and no successor Trustees have been lawfully elected to succeed him.
2. The Court concludes that the election of Church Trustees on October 10, 1991, was invalid as contrary to law (I.C. 23-10-2-1, *et. seq*.), and all purported Trustees so elected have no authority to hold property as Trustees for the Church. The Court therefore concludes that title to Parcels A, B, C and D may not be quieted in Plaintiff at this time; the Church must conduct an election in accordance with the provisions of I.C. 23-10-2-1 in order for this Court to consider granting the relief sought by Plaintiff.

3. The Court concludes the Defendant Kenneth E. Garmon breached his fiduciary duty as Trustee of the Church when he attempted to convey Parcels A, B, C and D to a privately held trust corporation, as he was not acing in the best interest of the Church and the congregation by such conveyance into a privately held trust corporation over which the congregation would have no control. While no evidence was presented as to what role, if any, Defendant Kenneth E. Garmon has in the Bishop O.C. Garmon Memorial Trust Corporation, the role of trustee or beneficiary of the Trust would be incompatible with his fiduciary loyalties to the Church.
4. The court concludes that when Defendant Kenneth E. Garmon voluntarily left the Church shortly after his father's death in January of 1991, and did not return to the Church for nearly a year, he failed to act in the best interests of the Church during that transitional period, and thereby further breached his fiduciary duty as Trustee of the Church.
5. The Court concludes that "Corrected" quitclaim deed 2008005083, "Corrected" quitclaim deed 2008005081, warranty deed 2007068515, and warranty deed 2007068517, are null and void, and Parcels A, B, C and D were not lawfully conveyed to the Bishop O.C. Garmon Memorial Trust Corporation, because as Trustee of the Church, Defendant Kenneth E. Garmon was not acting for and on behalf of the best interests of the Church or its congregants when executing said deeds.
6. The Court concludes that Parcels A, B, C and D shall remain the property of successor Trustees of the Church, but the Church must conduct an election for Trustees pursuant to the requirements of I.C. 23-10-2-1, *et. seq.*

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Church is hereby Ordered to conduct a lawful election for successor Trustees, pursuant to the requirements of I.C.23-10-2-1, *et. seq.*, allowing Defendant Kenneth E. Garmon to participate in said election if he desires, within sixty (60) days from the date of this Order. After the results of said lawful election are determined by the Church, the Court Orders that said Trustees shall prepare deeds conveying Parcels A, B, C and D into the names of the newly elected successor Trustees, for and on behalf of the Church, and shall record said deeds as required by law. When that is accomplished, the Court will enter judgment quieting title to Parcels A, B, C and D in the names of the duly elected successor Trustees

> of the Church, as Trustees of the Church, as Trustees for and on behalf of the Church, upon application to this Court by Plaintiff.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that "Corrected" quitclaim deed 2008005083, "Corrected" quitclaim deed 2008005081, warranty deed 2007068515, and warranty deed 2007068517, executed by Defendant Kenneth E. Garmon as Trustee of the Church, is hereby null and void, and that Defendant Kenneth E. Garmon, David Garmon, and the Bishop O.C. Garmon Memorial Trust Corporation are hereby divested of any and all rights, title, interest and claims in or to the real property described in Parcels A, B, C and D.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as between the parties, all ownership rights, title, interest and claims to the subject real property will be vested in the names of duly elected successor Trustees of the Church, for and on behalf of the Church, after a lawful election is held as described in this Order, free and clear of any claims or rights of Defendants Kenneth E. Garmon, David Garmon, and the O.C. Garmon Memorial Trust Corporation, unless Defendant Kenneth E. Garmon is elected as a Trustee of the Church in the successor Trustee election.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all ownership rights, interest and or claims of Defendant-Counterclaimants David Garmon, Kenneth E. Garmon, and the O.C. Garmon Memorial Trust Corporation to and in the subject real property described in Parcels A, B, C and D, are hereby terminated and extinguished, effective as of the date of this Order, and said Defendants-Counterclaimants shall take nothing by way of their counterclaim.

(Order 3-5).

On July 31, 2009, Defendants filed a notice of appeal. Pursuant to the trial court's June 30, 2009 order, on or about August 24, 2009, Church conducted a general business meeting wherein successor trustees were elected. On August 26, 2009, Church moved to quiet title. On September 4, 2009, Defendants filed a verified objection to Church's motion to quiet title. On September 8, 2009, the trial court granted Church's motion. On

September 16, 2009, Defendants filed verified motion for stay upon appeal and to fix bond. On September 21, 2009, Defendants filed an amended notice of appeal. On October 13, 2009, Church filed an objection to Defendants' motion for stay upon appeal. The trial court did not rule on Defendants' motion. On October 20, 2009, the trial court entered an order sustaining Bishop Reynolds' objection to Defendants' verified motion for stay upon appeal and to fix bond.

Additional facts will be provided as necessary.

DECISION

1. Demand for Jury Trial

Defendants argue that the trial court abused its discretion in denying their demand for jury trial because it "was filed timely and not objected to by [Bishop Reynolds]." Defendants' Br. at 16. We disagree.

We review a trial court's denial of a request for jury trial for an abuse of discretion. *Martin v. Eggman*, 776 N.E.2d 928, 930 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Allen v. State*, 791 N.E.2d 748, 756 (Ind. Ct. App. 2003).

Article 1, section 20 of the Indiana Constitution states that "in all civil cases, the right of trial by jury shall remain inviolate." However, our Supreme Court has held that this provision "preserves the right to a jury trial only as it existed at common law."

Songer v. Civitas Bank, 771 N.E.2d 61, 63 (Ind. 2002). "This principle is embodied in Ind[iana] Trial Rule 38(A):"

> (A) Causes triable by court and by jury. Issues of law and issues of fact in causes that prior to the eighteenth day of June, 1852, were of exclusive equitable jurisdiction shall be tried by the court; issues of fact in all other causes shall be triable as the same are now triable. In case of the joinder of causes of action or defenses which, prior to said date, were of exclusive equitable jurisdiction with causes of action or defenses which, prior to said date were designated as actions at law and triable by jury – the former shall be triable by the court, and the latter by a jury, unless waived; the trial of both may be at the same time or at different times, as the court may direct.

Id. at 64-65. To determine whether a litigant is entitled to a trial by jury,

> [t]he appropriate question is whether the essential features of the suit are equitable. To determine if equity takes jurisdiction of the essential features of a suit, we evaluate the nature of the underlying substantive claim and look beyond both the label a party affixes to the action and the subsidiary issues that may arise within such claims. Courts must look to the substance and central character of the complaint, the rights and interests involved, and the relief demanded.

Id. at 68. *See Midwest Sec. Life Ins. Co. v. Stroup*, 730 N.E.2d 163, 169 (Ind. 2000) (Boehm, J., concurring) ("[T]he key determination . . . is whether the claim involved is legal or equitable in character.")). "If an action is essentially legal in nature, a jury demand must be honored, but those causes of action that are equitable may be tried to the court."

Here, David and Kenneth Garmon executed deeds purporting to convey Church's ownership title to Parcels A, B, C and D to the Bishop O.C. Memorial Trust, a privately-held corporation. Church's single-count complaint sought a judicial determination that

Parcels A, B, C and D were the property of Church and could be conveyed only by Church's trustees; and that neither David nor Kenneth Garmon had any legal claim to the property; and they lacked the authority or approval to convey the real estate. "[L]ook[ing] to the substance and central character of the complaint, the rights and interests involved, and the relief demanded," *id*. at 68, we conclude that Church's claim was an action to quiet title.

It is a well-settled principle in Indiana's jurisprudence that actions to quiet title have equitable origins and are governed by equitable principles. *Puterbaugh v. Puterbaugh,* 30 N.E. 519, 521 (1892); *Joliffe v. Crawford,* 132 N.E. 300, 302 (1921); *Terpstra v. Farmers & Merch. Bank,* 483 N.E.2d 749, 757 (Ind. Ct. App. 1985). *Cf. Folsom v. Buttolph,* 82 Ind. App. 283, 143 N.E. 258, 260 (1924) (It is well-settled that statutory actions to quiet title are triable to a jury.). In *Midwest Sec. Life Ins.,* Justice Boehm wrote,

> If the cause of action existed on June 18, 1852, then this issue is decided by history. Legal actions at that time included replevin, ejectment, fraudulent conveyances, and actions for money damages, see City of Terre Haute v. Deckard, 243 Ind. 289, 293, 183 N.E.2d 815, 817 (1962); Howell v. State Farm Fire & Cas. Co., 530 N.E.2d 318, 319-20 (Ind.Ct.App.1988), while equitable actions included injunctions, reformations, derivative actions, accounting, discovery, and **land transactions**[.]

Midwest Sec. Life Ins. Co., 730 N.E.2d at 170 (internal citations omitted) (emphasis added).

We conclude that actions to quiet title are essentially equitable; thus, Church's claim, including related legal claims and counterclaims, is drawn into equity. *See Songer*, 771 N.E.2d at 69. Accordingly, we find no abuse of discretion from the trial court's denial of Defendants' demand for jury trial.

2. Denial of Motion for Summary Judgment

Defendants argue that the trial court erred in denying their motion for summary judgment. Specifically, they argue that their designated evidence demonstrated that no genuine issues of material fact existed as to whether Kenneth Garmon was the "sole surviving trustee of Church with authority to execute deeds conveying in fee simple and by Quitclaim deeds, title to [Church] real property held in trust for [Church]" to the Bishop O.C. Garmon Memorial Trust. We disagree.

> Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C). In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. In doing so, we consider all of the designated evidence in the light most favorable to the non-moving party.

Timberlake, Inc. v. O'Brien, 902 N.E.2d 843, 848 (Ind. Ct. App. 2009).

In their motion for summary judgment, Defendants alleged that Kenneth Garmon, who had been properly appointed a trustee by his late father in 1975, was the only lawful trustee of Church and, therefore, had the authority to convey title to Church's real property, and acted within said authority when he conveyed Parcels A, B, C and D to the

privately-held Bishop O.C. Garmon Memorial Trust. Bishop Reynolds, as a trustee for Church, tendered an affidavit wherein he averred that in October of 1991, the congregation had met and elected successor trustees by majority vote, which trustees were the only ones legally authorized to convey, hold, and receive real estate for the benefit of Church; thus, Church argued, in essence, that it had removed Kenneth Garmon from his position as trustee as of October 1991.

After considering the designated evidence in the light most favorable to Church, we agree with the trial court that the designated evidence reveals that a genuine issue of material fact existed as to whether Kenneth Garmon was, in fact, a trustee of Church with authority to convey Church's real property at the time that he effected the conveyances to the privately-held Bishop O.C. Garmon Memorial Trust. The trial court did not err in denying Defendants' motion for summary judgment.

3. Findings and Conclusions

Defendants challenge several of the trial court's findings of fact and conclusions of law as clearly erroneous; we address his contentions in turn below. First, because the trial court entered findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we must employ the following two-tiered standard of review: whether the evidence supports the findings; and whether the findings support the judgment. *Redd v. Redd*, 901 N.E.2d 545, 549 (Ind. Ct. App. 2009). We will only set aside the trial court's findings and conclusions if they are clearly erroneous, meaning that the record contains no facts or inferences that support them. *Id.* A judgment is clearly erroneous when a

review of the record leaves us with a firm conviction that a mistake has been made. *Id*. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. *Id*. Our review of questions of law is *de novo*. *Id*.

a. Finding #3: **Bishop O.C. Garmon appointed Kenneth Garmon to the Board of Trustees**.

Defendants argue that the trial court's judgment is inconsistent with its finding that Bishop O.C. Garmon appointed Kenneth Garmon to the Church's Board of Trustees on July 25, 1975. The record reveals that at the bench trial, Kenneth Garmon's testimony was unrefuted that his late father had appointed him as a trustee on July 25, 1975. Subsequently, Kenneth Garmon was identified as a Church trustee on a special warranty deed, wherein on April 5, 1978, the City of Gary conveyed Parcels B and C to "Bishop O.C. Garmon, George Fuller, Joe T. Feagen, Hattie Garmon, Kenneth E. Garmon, and James Washington as Trustee's [sic] of the Zion Apostolic Temple Church." Defendants' Ex. B (emphasis added). Defendants therefore contend that the evidence does not support the trial court's judgment.

On its face, there appears to be an inconsistency; however, taking into consideration all of the evidence that supports the trial court's finding, and reading the findings together, we conclude that the record contains sufficient evidence or reasonable inferences drawn from facts from which the trial court's Finding #3 ultimately supports its judgment. We find no clear error.

b. Finding #11**: Kenneth Garmon left the Church in 1991 and began attending the church his brother pastored**.

Defendants argue that the trial court erred in failing to find that Kenneth Garmon was the sole surviving trustee of Church.[5] They also argue that the trial court erred in concluding that Kenneth Garmon breached his fiduciary duty as a trustee to Church when he left Church to attend his brother's church because such a conclusion by the court is a violation of the First Amendment's prohibition against civil courts "resolving church property disputes on the basis of religious doctrine and practice." Defendants' Br. at 20-21.

To be precise, the trial court did conclude that Kenneth Garmon is the sole surviving Trustee of Church; however, it further concluded that he failed to act in the best interests of Church and its congregation, and, thereby, breached his fiduciary duty as a trustee of Church when he (1) voluntarily left Church to attend a different church after his father's death, and did not return to Church for nearly a year; and (2) attempted to convey Parcels A, B, C, and D to a privately-held trust corporation "over which the congregation would have no control." (Order 4).

a. Sole surviving trustee

[5] Defendants also contend that the trial court erred in concluding that he breached his fiduciary duty as a trustee when he left Church and began attending another church, because the trial court "ignored evidence that K[enneth] Garmon who worked as a custodian at [Church] was locked out of [Church] after the locks were changed" and was treated as an outsider after his father died." Defendants' Br. at 21. These contentions amount to an invitation to reweigh the evidence and reassess the credibility of witnesses, which our standard of review precludes us from doing. *Redd*, 901 N.E.2d at 549.

Kenneth Garmon testified to the following at trial: His father appointed him as a Church trustee on July 25, 1975, and he was never removed as trustee. That other trustees named along with Kenneth Garmon on a special warranty deed conveying Parcels B and C on or about April 11, 1979 were deceased at the time this action was brought. That after his father's death in 1991, he left Church to attend another church, where his brother, Johnny, was the pastor because he felt that he was being treated as an outsider. Kenneth further testified that although he "was attending [his] brother's church, . . . [he] was still a member of [Church]." (Tr. 145). He "came back" to Church in 1992, and was an active member of Church until 2007, attending services "[e]very Sunday" and Wednesday." (Tr. 145, 165). He also testified that he considered himself to be "[t]he only legal" trustee in Church from 1992 to 2007. (Tr. 164). Notably, however, in the fifteen-year period between 1992 and 2007, evidence established that Kenneth did not attend a single business meeting of Church's Board of Trustees or inquire about Church's day-to-day operations, budget and/or payroll concerns, or the status of Church's real property. Kenneth testified that in his father's day, trustees did not get involved in such matters.

The following colloquy occurred between Kenneth and counsel for Church on cross-examination:

> Q: …[O]n August 29, 2007, you were still holding yourself out as a trustee of [Church], correct?
> A: Correct.
> Q: Were you aware that a new Board had been appointed in '91?
> A: No, I wasn't.

> Q: Were you aware that there may be Board meetings going on during the period of '92 to 2007 --
> A: No, I didn't.
> Q: -- that you may be missing?
> A: No, I didn't.
> Q: Did you make any inquiry whatsoever as to what your role or responsibilities may be in the church during that period?
> A: No.
> Q: In your own mind, did you think that you had any responsibility or obligation as a trustee other than just to have a name on paper?
> A: No, I was a trustee on paper.
> Q: So, what did you do [as trustee]?
>
> ***
>
> Q: *** In the fifteen years preceding [your transferring the real estate into the Bishop O.C. Memorial Trust in 2007], what did you contribute to the body of the church as trustee?
>
> ***
>
> A: Did[n't] none [sic] of us do anything until the Bishop came to us and told us what he needed to be done. If there was any property to be – to be bought or any such thing as that then he came to the trustees and he talked it over to the trustees and we made an agreement and then that's what we did. I didn't go into any specific way of concerning myself to do anything. I didn't go over his head, not one time.
> Q: Did you ever ask . . . Bishop Reynolds . . . when the Board meetings were?
> A: No, I didn't. I didn't even know he had a Trustee Board until later.[6]

(Tr. 147-149).

The foregoing evidence presented at trial supports the trial court's finding that although Kenneth Garmon was the lone surviving trustee of Church, he breached his fiduciary duties by failing to act properly on Church's behalf and engaged in conduct that was not in Church's best interests.

b. First Amendment

[6] Despite his biweekly presence at Church and his working on-site as a custodian for Church, Kenneth testified that he had no inkling that Church had elected a new Board of Trustee.

Defendants also argue that the trial court violated the First Amendment's prohibition against civil courts "resolving church property disputes on the basis of religious doctrine and practice," by finding and conclusion that he failed to act in the best interests of Church, and thereby breached his fiduciary duty as Trustee when he voluntarily left the Church to attend his brother's church. Defendants' Br. at 20-21. We disagree.

> Civil courts are precluded from resolving disputes involving church affairs <u>if resolution of the disputes cannot be made without extensive inquiry into religious law and polity</u>. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976). However, the courts do not inhibit free exercise of religion merely by opening their doors to disputes involving property, as there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. Therefore, <u>the First Amendment commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine and practice</u>. *Id.*

Cole v. Holt, 725 N.E.2d 145, 148 (Ind. Ct. App. 2000) (some internal citations omitted).

With respect to "a church of congregational polity, rather than hierarchical polity, [Indiana courts] apply the ordinary presumption that, absent some indication to the contrary, the religious organization is represented by a majority of its members." *Id.* (citing *Jones v. Wolf*, 443 U.S. 595, 606-10 (1979) (finding that a state's adoption of a presumptive rule of majority representation is consistent with both the neutral principles analysis and the First Amendment; and noting that generally a majority faction can be identified without resolving any questions of religious doctrine)). "Thus, when presented with a dispute within a church of congregational polity, our courts will uphold the

majority's decision, . . . unless the church has established its own decision-making body with the power to override the will of the majority." *Cole*, 725 N.E.2d at 148.

The instant dispute did not concern extensive ecclesiastical matters of church doctrine or practice, and thereby, did not require interpretation of church doctrines. *Id.* Here, the trial court was confronted with a situation in which an individual who had previously been appointed a Church trustee, left Church to attend another church for nearly a year, but subsequently returned to Church and attempted to exercise trustee authority by transferring ownership title in Church's real property to a privately-held trust, despite the congregation having named new trustees in October of 1991. We find no clear error in the trial court's decision to uphold the congregation's decision.

Based upon the foregoing, we conclude that the record contains sufficient evidence to support the trial court's finding and conclusion that Kenneth Garmon was the lone surviving trustee, but that he breached his fiduciary duty to Church by his conduct.

c. Finding #9: **Congregation elected nine Trustees on October 10, 1991**.

Defendants argue that the trial court erred in finding that the congregation had elected Bishop Reynolds and ten other individuals to the Board of Trustees on October 10, 1991, because said election "was invalid and contrary to law." Defendants' Br. at 19. It is well-settled that "findings will be construed together, and construed liberally, in favor of the judgment." *Masson Cheese Corp. v. Valley Lea Dairies, Inc.*, 411 N.E.2d 716, (Ind. Ct. App. 1980). However, when read together, Findings #9 and #10 evince the trial court's determination that the congregation's purported election was contrary to

Indiana law. Finding #10 provides, "The election for Trustees held on October 10, 1991, was conducted without notice and required by I.C. 23-10-2-1, *et. seq.*, and no certificates were filed in the county Recorder's office, again in violation with said Indiana statute." (Order 3). We find no conflict between the Defendants' position on this issue and the trial court's determination as gleaned from a joint reading of Findings # 9 and 10; thus, we find no clear error.

d. Findings #12 and #17;
Conclusion: **Kenneth Garmon breached his fiduciary duty as a Church trustee when he left Church and began attending another church**.

Defendants argue that Findings 12 and 17 are untrue, irrelevant, and therefore clearly erroneous. Finding 12 provides,

> Defendant Kenneth R. Garmon rejoined the Church in 1992, and remained a member until 2007. During that fifteen-year period, [he] regularly attended services at the Church, had numerous conversations with Bishop Donsero Reynolds, and knew that a Board of Trustees had been nominated and elected under the pastorship of Bishop Reynolds. During that fifteen-year period, Defendant Kenneth E. Garmon never mentioned or questioned the legitimacy of the pastorship of Bishop Reynolds or the Board of Trustees, or the ownership of Parcels A, B, C or D.

(Order 3).

First, inasmuch as Defendants challenge the veracity of this finding, we decline their invitation that we reweigh the evidence or reassess the credibility of witnesses; this we cannot do. *Redd*, 901 N.E.2d at 549. Next, with respect to Defendants' contention that this finding is unsupported by the evidence, we cannot agree. At trial, the trial court heard evidence of the following: In 1992, Kenneth returned to Church after nearly a year

of attending another church pastored by his brother, Johnny. From 1992 to 2007, he attended Church "[e]very Sunday" and on Wednesdays. (Tr. 165). Regular trustee board business meeting dates and times were announced at Church's Sunday services. From 1992 to 2007, Kenneth Garmon worked as Church's custodian and, according to his testimony, he frequently spoke with Bishop Reynolds about various matters; however, they never discussed the matter of Church's real property. Bishop Reynolds testified that after returning to Church, Kenneth Garmon never challenged his authority as pastor. Kenneth's testimony appears to corroborate Bishop Reynolds' testimony in this regard. Kenneth testified, "I didn't go over [Bishop Reynolds'] head, not one time." (Tr. 149).

Based upon the foregoing, we conclude that the record contains evidence to support the trial court's Finding #12. Much of said evidentiary support is provided by Kenneth's own testimony at the bench trial. In the face of evidence that the trustee board met regularly and that meeting dates and times for the trustee business meetings were announced at Church services, which Kenneth claimed to have attended faithfully, the trial court did not believe Kenneth's testimony that he was unaware that Church had conferred trustee powers upon a new trustee board. We find no clear error.

Defendants also challenge Finding #17 as clearly erroneous. Finding 17 provides,

> At trial, one of the reasons given by the Garmon Defendants for wanting to convey Parcels A, B, C and D into the trust was to ". . . take back over the Church and get the property back into the Garmon family name."

(Order 4). In challenging this finding, Defendants correctly assert that when findings <u>merely</u> purport to restate the testimony of a witness, reviewing courts will not "cloak the

trial court recitations in the garb of true factual determinations and specific findings as to those facts." Defendants' Br. at 21; *Auspurger v. Hudson*, 802 N.E.2d 503, 515 (Ind. Ct. App. 2004) (emphasis added). However, we find that Finding #17 does more than merely restate witness testimony; rather, Finding #17, when construed together with the trial court's other findings, evinced the trial court's determination that Kenneth Garmon's interests and motives were contrary to those of Church, and that Kenneth Garmon breached his fiduciary duty as a Church trustee by taking action that was contrary and detrimental to the best interests of Church's congregation.

The testimony referenced in Finding #17 can be attributed directly to Defendant David Garmon, who unsuccessfully attempted to make the initial transfers of title of Church's real property to the Bishop O.C. Memorial Trust; however, a reasonable inference may be drawn from the fact that Defendant Kenneth Garmon, upon learning that David's attempted transfers were defective and not in accordance with Indiana law, subsequently executed the deeds with the intent to effect the transfer of title in parcels A and D to the Bishop O.C. Memorial Trust. We cannot say that Finding #17 was untrue, irrelevant, or unsupported by evidence, and we find no clear error.

e. Finding #16: **Deeds executed by David and/or Kenneth Garmon were prepared and executed without knowledge or approval from Church or trustees elected on October 10, 1991**.
Conclusion #5: **The quitclaim and warranty deed executed by Kenneth Garmon are null and void, and that the real estate was not conveyed to the Bishop O.C. Garmon Memorial Trust**.
Conclusion #6: **The real estate shall remain Church property, and that Church must conduct an election of successor trustees pursuant to Indiana Code section 23-10-2-1, *et. seq***.

First, Defendants argue that the trial court erred in finding that the deeds executed by David and Kenneth Garmon "were prepared and executed without the knowledge or approval of the Board of Trustees elected on October 10, 1991." (Order 3). Specifically, they do not dispute that their deeds were prepared and executed without Church's knowledge. Rather, they challenge the correctness of the trial court's decision, arguing that "[t]he finding, to the extent that it finds that a board of trustees was elected on October 10, 1991 is not supported by the evidence." Defendants' Br. at 23.

With respect to this objectionable clause, we refer to our discussion above of Findings #9 and #10, which when read together with #16, evince the trial court's ultimate determination that the congregation's purported election in 1991 of successor trustees was contrary to Indiana law. Thus, we find no clear error.

Next, Defendants argue that the trial court erred in concluding that the deeds executed by David and Kenneth Garmon are "null and void, and Parcels A, B, C and D were not lawfully conveyed to the Bishop O.C. Memorial Trust Corporation, because as Trustee Kenneth E. Garmon was not acting for and on behalf of the best interests of the Church or its congregants when executing said deeds." (Order 4).

"One of the most fundamental duties of the trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary [or beneficiaries]." *Davis v. Davis*, 889 N.E.2d 374, 385 (Ind. Ct. App. 2008) (citing *Massey v. St. Joseph Bank and Trust Co.*, 411 N.E.2d 751, 753 (Ind. Ct. App.

1980)). Here, the trial court's conclusion #3 states that "[w]hile no evidence was presented as to what role, if any, Defendant Kenneth E. Garmon has in the Bishop O.C. Garmon Memorial Trust Corporation, the role of trustee or beneficiary of [that trust] would be incompatible with his fiduciary loyalties to the Church." (Order 4).

First, it is undisputed that David Garmon was never a trustee of Church; thus, he lacked legal authority to transfer title in Church property. At trial, David testified that he created the private trust in order to "bring the church back into our -- family." (Tr. 184). David also testified that in 2006 or 2007, he wrote a letter to Bishop Reynolds wherein he stated that "<u>we</u> wanted to take back over the church." (Tr. 185) (emphasis added). Subsequently, on June 8, 2007, David executed Quitclaim Deeds 2007049170 and 2007049171, "purporting to transfer ownership of Parcels A and D to the Bishop O.C. Memorial Trust." (Order 3).

However, the record reveals that on January 22, 2008, Kenneth -- who had been appointed a trustee by his father in 1975, and who was the lone surviving legal trustee of Church -- executed Quitclaim Deeds 2008005083 and 2008005081 in an attempt to correct defects in David's June 8, 2007 quitclaim deeds to effect the transfer of title in Parcels A and D to the privately-held Bishop O.C. Memorial Trust Corporation. Kenneth testified that he was "[t]he only legal" trustee of Church; thus, he felt no obligation to notify Church and/or the congregation before he attempted to transferred title in Church real estate to a privately-held trust corporation over which the congregation had absolutely no control. (Tr. 164).

Based upon the foregoing, the trial court held that Kenneth had breached his fiduciary duties to Church. We agree and find no clear error in the trial court's finding and conclusion that the deeds executed by both David and Kenneth Garmon were null and void, and that Parcels A, B, C and D were therefore not lawfully conveyed to the Bishop O.C. Memorial Trust Corporation, because Kenneth E. Garmon had not acted in the best interests of the Church or its congregants when he executed the deeds, thereby, breaching his fiduciary duties to Church.

Lastly, Defendants argue that the trial court erred in concluding that the real estate "shall remain the property of successor Trustees of the Church, but the Church must conduct an election for Trustees pursuant to the requirements of I.C. 23-10-2-1, *et. seq.*" (Order 4).

On September 26, 1955, Parcel A was conveyed by warranty deed to Bishop O.C. Garmon, his wife, Hattie, and Reverend John Ingram as trustees of Church, and to their successors in trust. By the time of trial, all parties named as trustees for this conveyance were deceased. On April 11, 1978, Parcels B and C were conveyed by special warranty deed to Bishop O.C. Garmon, George Fuller, Joe T. Feagen, Hattie Garmon, Kenneth E. Garmon, and James Washington as trustees. By the time of trial, Kenneth Garmon was the lone surviving party named as trustee in this conveyance. On January 28, 1953, Parcel D was conveyed by warranty deed to Bishop O.C. Garmon, his wife, Hattie, and Reverend John Ingram as trustees of Church, and to their successors in trust. By the time of trial, all trustees involved in this conveyance were deceased.

Each of the aforementioned parcels had been entrusted to the trustees, for the benefit of and on behalf of Church and its congregants; thus, it is undisputed that ownership of Parcels A, B, C, and D was vested in Church before David and Kenneth Garmon attempted to convey the parcels into the private trust. On October 10, 1991, Church conducted an election for successor trustees. However, Church's election did not comport with the notice requirement set out in Indiana Code section 23-10-2-3 for elections for trustees; or with the requirements set out in Indiana Code section 23-10-2-4 that a clerk be appointed to "take, count and make a poll-list of the votes give for trustees," and that an election certificate "setting forth the notice of such election, the time and place where the same was held, the name of the society and persons elected as trustees" be filed with and recorded by the county recorder's office. Accordingly, as the trial court concluded in Conclusions #1 and #2, "Kenneth E. Garmon is the sole surviving Trustee of the Church, . . . and no successor Trustees has been lawfully elected to succeed him"; and "the election of Church Trustees on October 10, 1991, was invalid as contrary to law . . ., and all purported Trustees so elected have no authority to hold property as Trustees for the Church." (Order 4).

As discussed at length above, the lone surviving trustee, Kenneth Garmon, owed Church certain fundamental fiduciary duties. The evidence conclusively showed that he breached said fiduciary duties when he, as a trustee, (1) left Church to attend another church for nearly a year in the transitional period following his father's death; and (2) transferred Church's ownership title in Parcels A, B, C, and D to a privately-held trust

corporation created by his brother, David Garmon, to "bring the church back into [the Garmon] family," and over which private trust which the congregation would exercise no control. (Tr. 184).

Based upon the foregoing, indisputable evidence exists in the record to support the trial court's conclusion that Parcels A, B, C and D should remain the property of successor trustees of Church; and that given Kenneth Garmon's breach of his fiduciary duties, and the failure of Church to give sufficient notice prior to the October 10, 1991 business meeting to elect successor trustees, Church needed to conduct a proper business meeting to elect successor trustees in accordance with Indiana law. We find no clear error.

4. Jurisdiction

Defendants argue that the trial court abused its discretion when it granted Church's motion to quiet title on September 8, 2009, because the trial court clerk issued a notice of completion of clerk's record on August 24, 2009; thus, they argue, the trial court no longer had subject matter jurisdiction. Church replies that the trial court retained jurisdiction to adjudicate those claims that remained unresolved and that its September 8, 2009 order granting Church's motion to quiet title "simply adjudicated the Church's compliance with" its July 30, 2009 judgment ordering Church to conduct an election for successor trustees pursuant to Indiana Code section 23-10-2-1. Church's Br. at 17.

Indiana Appellate Rule 8 provides that "[t]he Court on Appeal acquires jurisdiction on the date the trial court clerk issues its Notice of Completion of Clerk's

Record." *Jernigan v. State*, 894 N.E.2d 1044, 1046 (Ind. Ct. App. 2008). *See also Clark v. State*, 727 N.E.2d 18, 20 (Ind. Ct. App. 2000) (once an appeal is perfected, trial court loses subject matter jurisdiction over the case). This rule "facilitate[s] the efficient presentation and disposition of the appeal and to prevent the simultaneous review of a judgment by both a trial and appellate court." *Id.* Here, the trial court issued its notice of completion of clerk's record on August 24, 2009; Church filed its motion to quiet title on August 25, 2009; and the trial court granted the motion to quiet title in Church's favor on September 8, 2009. Thus, the trial court ruled on Church's motion to quiet title after this Court had acquired jurisdiction in this matter.

There are, however, exceptions to this general rule which permit the trial court to retain jurisdiction notwithstanding an appeal. *Id.* "For example, a trial court may retain jurisdiction to reassess costs, correct the record, enforce a judgment, continue with a trial during an interlocutory appeal concerning venue, or preside over matters which are independent of and do not interfere with the subject matter of the appeal." *Id*.

In support for its position that the trial court retained jurisdiction after the trial court clerk filed a notice of completion of clerk's record to adjudicate remaining unresolved claims, Church relies upon *Donahue v. Watson*, 413 N.E.2d 974, 976 (Ind. Ct. App. 1980). In *Donahue*, the trial court granted summary judgment for appellees Watson, *et al*, concluding that trustee Donahue had breached her fiduciary duties. The trial court ordered her removal as her trusteeship and concluded that she was liable for attorney's fees. Initially, the trial court did not order Donahue to pay attorney's fees.

Donahue appealed, and we affirmed the trial court's judgment. After the trial court clerk filed a notice of completion of clerk's record, the trial court entered a second judgment, wherein it ordered Donahue to pay $10,000.00 in attorney's fees. Donahue appealed, arguing that the trial court lost jurisdiction in the matter before it issued its second judgment.

In affirming the trial court's judgment, we noted that the policies "which underlie the rule [were] absent" under the facts presented in *Donahue*. *Id*. at 976. Appellate Rule 8 "facilitates the orderly presentation and disposition of appeals and prevents the confusing an awkward situation of having the trial and appellate courts simultaneously reviewing the correctness of the judgment." *Id*. We concluded that because the trial court's first judgment had not ordered Donahue to pay attorney's fees, the issues present in the second appeal could not have been raised on the first appeal. We concluded further that the trial court had

> impliedly reserved this ancillary matter until an evidentiary hearing could be conducted and a determination made as to what a reasonable fee would be. Indeed, we believe this practice is contemplated by our rules of civil procedure. Ind. Rules of Procedure, Trial Rule 54(B) allows the trial court to direct the entry of a final judgment as to one or more but fewer than all the claims of the parties. We hardly think the trial court thereby loses jurisdiction to adjudicate those claims which remain unresolved.

Id. Accordingly, we concluded that the trial court had "retained limited jurisdiction over the case to dispose of those claims left unresolved by the first judgment." *Id*.

Here, in its July 30, 2009 judgment, the trial court concluded that Parcels A, B, C and D would remain Church property, but found that title "may not be quieted in

[Church] at this time" because (1) Church needed to conduct a proper business meeting and election of successor trustees pursuant to Indiana Code section 23-10-2-1; (2) the new trustees had to prepare deeds conveying the real estate into their names, as successor trustees for and on behalf of Church; and (3) the new trustees had to record the deeds in the recorder's office before the trial court could granting the relief sought. (Order 4). The trial court then stated, "**When that is accomplished**, the Court will enter judgment quieting title to Parcels A, B, C and D in the names of the duly elected successor Trustees of the Church." (Order 5) (emphasis added).

The record reveals that on August 13, 2009, Church filed proper notice of publication of its business meeting for the election of successor trustees; and on August 25, 2009, it conducted a proper lawful election whereby nine successor trustees were elected by the congregation. Subsequently, the new successor trustees prepared deeds conveying the real estate into their names as trustees, and recorded the deeds for and on behalf of Church in the Lake County Recorder's Office. Thereafter, on September 8, 2009, the trial court quieted title in the names of the duly-elected successor trustees, for and on behalf of the Church. (App. 274).

It is apparent that the trial court's July 30, 2009 order had not yet quieted title in Church. However, as of that date, as in *Donahue*, the trial court expressly retained jurisdiction over the case to later dispose of all claims left unresolved by its July 30, 2009 order. The trial court gave Church sixty days to demonstrate its compliance with Indiana's applicable statutory provisions by holding a proper business meeting to elect

successor trustees. When Church demonstrated its compliance, the trial court granted judgment quieting title in Church on September 8, 2009. We find no abuse of discretion in the trial court's retention of jurisdiction over the matter to resolve the quiet title concern as prescribed by its initial judgment.

Affirmed.

MAY, J., and KIRSCH, J., concur.