

BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO: 2008-CA-00416

FRANK L. SCHMIDT, JR., ET AL

APPELLANTS

VERSUS

CATHOLIC DIOCESE OF BILOXI, ET AL

APPELLEES

APPEAL FROM THE CHANCERY COURT
OF HARRISON COUNTY, MISSISSIPPI

BRIEF OF APPELLANTS

(ORAL ARGUMENT REQUESTED)

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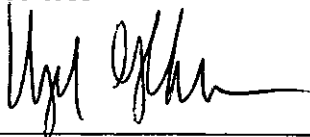
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TABLE OF CONTENTS

Certificate of Interested Persons.....	i - iv
Table of Contents.....	v
Tables of Cases, Laws & Constitution, and Other Authority.....	vi - ix
Statement Regarding Oral Argument.....	x
Statement of Issues.....	1
Statement of the Case.....	1
Summary of the Argument.....	9
Argument.....	10
The Chancellor Erred in Dismissing the Plaintiffs' Case for Lack of Subject Matter Jurisdiction.....	10
The Chancellor Erred in Failing to Strike Bishop Rodi's Affidavit.....	27
The Chancellor Erred in Dismissing The Plaintiffs' Case with Prejudice.....	27
Conclusion.....	28
Certificate of Service.....	32

TABLE OF CASES:

Page(s):

<u><i>City of Picayune v. Southern Regional Corporation,</i></u> 916 So.2d510, 523 (Miss. 2005).....	26
<u><i>Church of God Pentacostal vs. Free Will Pentacostal,</i></u> 716 So.2d 200 (MS Supreme Court 1998).....	9, 11, 20, 21, 23, 24, 31
<u><i>DeAguilar v. Boeing Co.,</i></u> 11 F.3d 55,58 (5 th Cir.1993).....	12
<u><i>Gray v. St. Matthews Cathedral Endowment Fund,</i></u> 544 S.W. 2d 488, 491 (Tex. 1976).....	15
<u><i>Gullett v. First Christian Church of Meridian,</i></u> 154 Miss. 516, 122 So. 732, 734 (Miss. 1929).....	24
<u><i>Gunter v. City of Jackson,</i></u> 130 Miss. 637, 94 So. 844, 845 (Miss. 1923).....	24
<u><i>Harris v. Matthews,</i></u> 643 S.E. 2d 566 (N.C. 2007).....	22, 23
<u><i>Jones vs. Billy,</i></u> 798 So.2d 1238, 1239 (2001).....	11, 12
<u><i>Jones v. Wolf,</i></u> 443 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).....	11, 19, 20, 23
<u><i>Lloyd vs. Bank of the South,</i></u> 796 So.2d 985, 987 (2001).....	12
<u><i>Mabus v. St James Episcopal Church,</i></u> 884 So.2d 747 (Miss.2004).....	22
<u><i>Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.,</i></u> 396 U.S. 367, 368, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970).....	11
<u><i>Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,</i></u> 393 U.S. 440, 445, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969).....	11

<u><i>Raynor v. Raytheon Company,</i></u> 858 So.2d 132, 134.....	28
<u><i>Roman Catholic Diocese of Jackson vs. Morrison,</i></u> 905 So.2d 1213 (MS Supreme Court 2005).....	8, 9, 12, 13, 14, 17, 21, 22, 23, 31
<u><i>Sealy vs. Goodard,</i></u> 910 So.2d 502, 506 (MS Supreme Court 2005).....	11
<u><i>Stegall v. Newsom,</i></u> 326 So. 2d 803, 806 (Miss. 1976).....	16
<u><i>Villarreal v. Smith,</i></u> 201 Fed.Appx. 192, 195 (5 th Cir.2006).....	12
<u><i>Watson v. Jones,</i></u> 80 U.S. 679 (1871).....	18, 20, 21
<u><i>West v. State,</i></u> 152 So. 888 (Miss. 1934).....	24

TABLE OF LAWS & CONSTITUTION

	<u>Page(s):</u>
United States Constitution, First Amendment.....	10
Mississippi Constitution, Sections 269 – 270.....	24
M.C.A.:	
79-11-501.....	16
79-11-525.....	16
89-1-17.....	17
91-9-1.....	23
91-9-117.....	17
Mississippi Code of 1892, Section 4230.....	23
Mississippi Code of 1942, Sections 5351.....	24
Mississippi Code of 1942, Section 5310.....	25
Mississippi Code of 1906, Section 934.....	24

OTHER AUTHORITY:

	<u>Pages(s):</u>
16 AmJur 2d, Constitutional Law, Section 423.....	10, 11
Mississippi Rules of Civil Procedure, Rule 12(b)(1).....	12
Bogert, "The Law of Trusts and Trustees," §414. Page 344 (1964).....	15
Hamilton, "God vs. The Gavel"	30
"Keeping the Faith: The Rights of Parishioners in Church Re-Organizations" 82 Washington Law Review 75 (2007).....	30
"Taking the Religion Out of Religious Property Disputes," 46 Boston College Law Review 1069.....	30
"Who Owns the Local Church? A Pressing Issue for Diocese in Bankruptcy," 29 Seton Hall Legislature Journal 375.....	30

ORAL ARGUMENT REQUESTED

Pursuant to Rule 34(b), the Appellants respectfully submit that Oral Argument would be extremely helpful to the Court in this matter. The Appellants feel that this is precisely the type of case in which Oral Argument should not only be allowed, but encouraged. There are so many issues and, for that matter, non-issues, in a case of this nature that justice requires that each party be allowed to articulate its position and be available to respond to the argument of the other side as well as to any questions the Court may have. This case presents Constitutional issues of great magnitude which need to be fully addressed, not only by Briefs, but by full Oral Arguments before the Court.

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STATEMENT OF ISSUES

- (1) The Chancellor erred in dismissing the Plaintiffs' case for lack of subject of subject matter jurisdiction.
- (2) The Chancellor erred in failing to strike Bishop Rodi's Affidavit.
- (3) The Chancellor erred in dismissing the Plaintiffs' case with prejudice.

STATEMENT OF THE CASE

On May 1, 2007, (157) individuals filed a Complaint in the Chancery Court of the First Judicial District of Harrison County, Mississippi, requesting the Court to determine certain matters involving the title (legal and beneficial) to certain real property and the status of certain personal property.

The property, generally known as St. Paul Catholic Church, Pass Christian, Mississippi, is made up of eight parcels of real property acquired at various times, through various types of documents, beginning with the conveyance of the first parcel to Fr. Stanislaus Buteux, individually, in 1843. The vesting deeds for six of the other parcels contained similar language, expressly providing that the properties were being conveyed to the grantee, as trustee or in trust for the benefit of the members of the congregation of St. Paul Catholic Church, Pass Christian, Mississippi. All of the Church Deeds were acknowledged and

declared before a notary public, or appropriate officer of Harrison County, and all were made part of the public records by their filing with the Office of the Chancery Clerk of Harrison County.

In addition to asking the Chancellor to determine the status of the above mentioned real property, the Plaintiffs requested a ruling on the status of certain funds raised for the repairing of St. Paul Church. As set forth in the Complaint, shortly after the impact of Hurricane Katrina. Rev. Carver, with the assistance of various Parishioners, began soliciting donations specifically for the purpose of repairing St. Paul Church. Over \$1,000,000.00 was received for that specific purpose. Plaintiffs allege that a trust was created for that specific purpose and, therefore, the Chancellor should determine the status of such funds.

All of the property involved, both real and personal, relate to St. Paul Catholic Church located in Pass Christian, Mississippi. Pass Christian, Mississippi is one of the older communities of our State, having been incorporated on February 21, 1848. The establishment of St. Paul Catholic Church on the beach in Pass Christian in 1866 was in the 18th year of the City of Pass Christian, the 49th year of the State of Mississippi, and the 90th year of the United States of America. 97 21 103 40

St. Paul has seen baptisms, marriages, funerals and great spiritual blessings for generations and generations of Pass Christian Roman Catholics.

And then, on August 29, 2005, the greatest natural disaster to ever impact the United States of America made landfall at Pass Christian, Mississippi and neither the community nor its citizens will ever be the same. This cataclysmic natural disaster desolated the beach front of Pass Christian, Mississippi and left its citizens homeless, without jobs and with a damaged Church.

Nevertheless, there was great rejoicing when the Pastor and the Bishop announced that St. Paul Church would, indeed, be restored. Funds were sought for that specific purpose and money came in specifically for the restoration of the Church.

However, three months after Katrina's landfall, on November 27, 2005, the Bishop announced that St. Paul Parish and Our Lady of Lourdes Parish would be combined into a new Parish to be called Holy Family Parish. In that decree, the Bishop stated that Holy Family Parish would have two Parish

Church edifices of equal dignity: St. Paul Church and Our Lady of Lourdes Church.

While many of the Parishioners, especially the old-timers, may not have understood the exact reason for the combining of the two Parishes, that action was not questioned since the Bishop, in his decree, had specifically stated that St. Paul would be repaired.

The Court needs to be aware of the fact that recovery in Pass Christian, Mississippi is proceeding very slowly indeed. One who has not experienced such a catastrophe cannot understand the despair that comes with the loss of this magnitude and the feelings of helplessness and hopelessness when recovery does not come quickly, but rather drags on and on.

Then, 16 months later, on March 13, 2007, the Bishop entered another decree stating that there would be no St. Paul, but rather that the Holy Family Parish would have only one Church to be located at the present site of Our Lady of Lourdes.

This was the final blow to many of the Parishioners whose lives had always centered around St. Paul Church on the beachfront in Pass Christian, Mississippi.

This is where these 157 Plaintiffs and Parishioners found themselves after March 15, 2007.

While St. Paul Church is located on the beachfront of Pass Christian, Mississippi, it stands on one of the highest points in Pass Christian, Mississippi and suffered much less damage than most of the homes and businesses in the rest of the City. As a matter of fact, after the storm, Mass continued to be celebrated at St. Paul, and the Church itself was largely intact, needing only to be restored to its former dignity. St. Paul had not been profaned by the storm. It continued to be used as a place of worship and, thus remained a Church, even under canon law.

This history is necessary for an understanding of how we got to this particular place and time and why 157 devoted Catholics would sue their Church, their Bishop and their Pastor. It can only be imagined how much prayer and consternation must have accompanied the individual decisions to take this step. And now having given the Court the historical background of the dilemma faced by these Plaintiffs, it is necessary to comment on matters in the record that almost defy understanding.

While we have a record consisting of some 14 volumes and one packet containing two

documents marked 'Exhibit 1,' most of the Appeal record is nothing more than fluff. The substance of this matter is all contained in the Complaint. If there is to be a decision upon a Rule 12(b)(1) jurisdictional attack, then the Court has only to look to the Complaint to see if the Court, in fact, has been asked to do something which it does not have jurisdiction to do. We really need to go no further in this case. The Complaint and the Exhibits attached thereto clearly set forth the areas of concern and the matters which are sought to be adjudicated by the Court. These matters only involve the title to the property on which St. Paul stands, and the status of those funds that were specifically raised for the restoration of St. Paul. That is all the Plaintiffs ask the Court to do. At this point, there is no need for any factual evidence. As a matter of fact, there was no factual evidence of any substance ever presented to the Chancellor in this matter.

The Court's attention is invited to one factual item that the Chancellor seemed to comment on and either rely upon or not rely upon, depending on which Order one reads. That was the Affidavit of Bishop Rodi. The Court's attention is invited to this Affidavit. See Appellant Record Excerpt (ARE), Tab 5. It sheds no light on the request of the Plaintiffs for determination regarding the title to the real property or the status of the money given in trust for the restoration of St. Paul. Quite frankly, the Court should have stricken this Affidavit, but, instead, as a result of a hearing held on August 3, 2007, the Court ruled on August 8, 2007, that the Affidavit would not be stricken. *should have stricken*

The Court's attention is invited to the ruling of the Chancellor made on August 8, 2007 (ARE, Tab 6). It cannot be read in connection with the Final Judgment of the Chancellor handed down on February 27, 2008 (ARE, Tab 7), without causing great confusion and without wondering whether the same person wrote these two Orders. They are diametrically opposed to each other. *confusingly on the*

On August 8, 2007, Chancellor Zebert recognized that the Plaintiffs were not trying to review the internal ecclesiastical decisions of the Catholic Church, specifically Bishop Rodi's decision to combine the two Parishes. The Court, in regard to that, on Page 3, stated: 'These claims are inherently inaccurate.' Thus, the Chancellor, in August of 2007, recognized that this lawsuit has nothing to do with Bishop Rodi's decision and decree to combine the two Parishes. As a matter of fact, the Chancellor

specifically stated that the lawsuit presented questions of title to real property and fiduciary responsibility regarding personal property. The Chancellor stated:

Upon review of the Complaint, this Court will note that The Code of Canon Law is not mentioned or questioned. The issues Plaintiffs bring before this Court are purely secular in nature, primarily: (1) Is Bishop Rodi and/or the Catholic Diocese of Biloxi holding title to the real property generally known as St. Paul Catholic Church, and the insurance proceeds, cash deposits and donations and charitable contributions received expressly for St. Paul Church, in trust for the benefit of Plaintiffs, as members of the congregation of St. Paul Catholic Church, Pass Christian, Mississippi? (2) If they are holding such real and/or personal property in trust for the Plaintiffs, do Defendants owe Plaintiffs a fiduciary duty with regard to the management of such property? (3) Do Defendants have the right to ignore the wishes and intentions of donors by diverting donations from their intended purpose to another purpose of Defendants' choosing? and (4) Do Defendants have the right to convert the St. Paul Church building into a diocesan community center?

While the Plaintiffs may have worded the secular issues before the Court somewhat differently, nevertheless, we will settle for the Court's designation of the issues for the purpose of this Appeal.

After the Chancellor clearly recognized what the lawsuit was all about, he stated: "Nowhere in the Complaint is there any demand for the Defendants to reopen St. Paul Church."

The Chancellor recognized that Bishop Rodi's Affidavit incorrectly focused on his authority to consolidate the Parishes. The Chancellor, in referring to the Affidavit, stated: "The opinions contained in the Affidavit have limited probative value to the issues before the Court."

Then the Court went even further to state: "The conclusatory allegations contained in the Affidavit appear to be general statements of fact and which do little more than emphasize Defendants' legal arguments."

So, it can be seen from a careful reading of the August 2007 Order that the Chancellor recognized that the Plaintiffs were not seeking (and have never sought) to question the Church's decision to combine the two Parishes. The Chancellor recognized that there was no request to reopen St. Paul Church and on Page 3 under Paragraph VII, he stated: "Nowhere in the Complaint is there any demand for the Defendants to reopen St. Paul Church."

The Chancellor clearly recognized that the Plaintiffs were only asking for the Court to make certain determinations about real property, certain personal property and any trusts which may encumber

these properties.

At this point, it must be noted that the only exhibit in evidence in the entire Appeal record is Exhibit 1 (ARE, Tab 4), submitted at the August 3, 2007 hearing (which resulted in the above mentioned Order), and that was the decree of Bishop Rodi dated November 27, 2005, combining the Parishes, and the decree of Bishop Rodi dated March 13, 2007 (ARE, Tab 5), where he decreed that St. Paul Church would not be rebuilt. There is no other evidence in the Record. Yes, there are a lot of discovery answers in the file, however, most of these were not even filed with the Clerk. Each party did give the Chancellor their discovery answers, and the Chancellor must have made these discovery answers as part of the record. The only evidentiary matters before the Court are Exhibit 1 and Bishop Rodi's Affidavit.

If the Court is wondering why Counsel is rambling on and on about this particular aspect of the case, it is to emphasize that there was really no factual proof made in this case, other than the two decrees entered as Exhibit 1 and Bishop Rodi's Affidavit, which the Chancellor had ruled had no real probative value. Yet, in the opinion dismissing this matter for lack of subject matter jurisdiction (ARE, Tab 7), the Chancellor stated that Bishop Rodi's Affidavit overcame the allegations of the Complaint and showed that there was no subject matter jurisdiction. Such a conclusion is not based in fact or in law and represents a total misunderstanding and misapplication of the issues involved and a lack of understanding as to how to apply the prevailing jurisprudence to the jurisdictional question at issue.

And then, without any evidentiary hearing whatsoever, and with only the two decrees and Bishop Rodi's Affidavit, the Court issued its final opinion and Findings of Fact and Conclusions of Law dismissing this case, with prejudice (See, ARE, Tab 7).

The Court is invited to read the Chancellor's first Order dated August 8, 2007 and then read the Chancellor's final decision of February 27, 2008 and reconcile the two together. The Chancellor had no more evidence, no more factual basis before it on the latter date than it did on the former date, yet the two Orders appear to have been written about two different matters.

It is respectfully submitted that on August 8, 2007 the Chancellor accurately recognized the issues before the Court; the fact that they were purely secular in nature; that there was no demand to

open St. Paul Church; and, that this lawsuit involves only the title to real property and the status of certain monies given for the restoration of St. Paul Church after the impact of Hurricane Katrina.

And then, we read the Chancellor's Final Judgment of Dismissal, with Findings of Fact and Conclusions of Law, handed down on February 27, 2008. It begins with the following statement: 'The primary issue initially in this lawsuit relates to the Church Defendants' decision to combine St. Paul Catholic Parish and Our Lady of Lourdes Catholic Parish.' Nothing could be further from the truth. Nowhere in the pleadings have the Plaintiffs questioned the Church combining these two Parishes. As a matter of fact, combining these Parishes has nothing to do with anything the Plaintiffs have asked the Court to rule upon. These Plaintiffs recognize the sanctity of the First Amendment and have no desire to delve into or question the internal ecclesiastical decisions of Bishop Rodi or the Catholic Church. The Chancellor recognized this on August 8, 2007, however, he begins his final decision on such a false premise that there can be no doubt but that a decision beginning with such a false premise must be leading toward an erroneous result.

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The Court's attention is invited to Page 3 of the Final Judgment, where the Chancellor states: 'Plaintiffs have requested this Court to intervene in the Church Defendants' decision to combine the Parishes and have only one Church.' There is no accuracy to this statement. Nowhere is such a request found in the pleadings, the arguments, or in any paperwork submitted by the Plaintiffs.

Time after time, the Chancellor refers to and quotes Canon Law and applies Canon Law. He interprets Canon Law to determine that St. Paul Church ceased to exist as a Catholic Church upon the impact of Hurricane Katrina. Again, we must emphasize that in August, the Chancellor recognized that there had not been a request to reopen St. Paul, yet he centers his final ruling around the premise that such request had been made. The Plaintiffs do not now ask that St. Paul be opened again as a Church. The Plaintiffs only request a ruling on the status of the title to the land upon which St. Paul is situated and the status of those monies given in trust for the specific purpose of rebuilding St. Paul Catholic Church.

At the top of Page 4 of the Final Judgment, the Chancellor makes a strange finding based on Canon Law, when he says: '...Plaintiffs are no longer members of St. Paul Catholic Parish and were not

members for well over a year before this lawsuit was filed. This appears somewhat brutal, but it is supported by the Canons of the Church.* The reason this sounds so strange is that the Plaintiffs are only asking the Chancellor to apply neutral principles of civil law and yet the Chancellor, in many areas of his Final Judgment, makes decisions based on his interpretation of Canon Law.

The Chancellor was incorrect in Pages 4 and 5 of his opinion under his first breakdown of 'Conclusions of Law' when he ruled that the Plaintiffs had not fulfilled their burden to establish that this Court had jurisdiction over the dispute with the Church Defendants. He said that the Plaintiffs had the burden of establishing by a preponderance of the evidence that jurisdiction exists. There was no evidentiary hearing held in this matter. The lack of evidence has already been commented upon. There are no disputed issues of material fact with which the Chancellor had to reckon with. The Bill of Complaint specifically set forth the specific deeds, either by way of attachments or by way of deraignment of title, and clearly sets forth how those deeds have established a trust. It also clearly established (and this was not refuted) that the monies given to rebuild St. Paul were given in trust for the specific purpose of rebuilding a specific Church.

The Chancellor, on Page 11 of his Final Judgment, made a finding that the property in question had been transferred to Holy Family Catholic Parish. While the Appellants do not presume to speculate as to the results of a final hearing that would determine the status of the title to these properties by the application of neutral principals of law, is it not strange that the Chancellor appears to be ruling on title matters without the benefit of any type of an evidentiary hearing? This is quite disturbing.

The Plaintiffs feel that a recent Mississippi case is dispositive of almost all of the issues in this case, and that is: Roman Catholic Diocese of Jackson vs. Morrison, 905 So.2d 1213 (MS Supreme Court 2005). In that case, it was recognized that the trial Court must accept as true all well-pled factual allegations of the Plaintiffs' Complaint and then proceed to try the jurisdictional issues. The Chancellor had already done this in his August ruling and clearly set forth that they were all secular in nature and had nothing to do with the decision of the Bishop to combine the Parishes and had nothing to do with the decision to close St. Paul Church. We are at a loss to understand how the Chancellor in this case could say that the Plaintiffs

have not fulfilled their burden of proof when only a well-pled Complaint was necessary.

On Pages 5 and 6 of this Final Judgment the Chancellor addresses Constitutional issues. These Plaintiffs are not asking the Court to interpret ecclesiastical dogma. There is no excessive entanglement in making these decisions. And then, in a statement that defies understanding, the Chancellor, on Page 9, says that this lawsuit does not involve a property ownership dispute. That is directly contrary to his initial ruling and directly contrary to the allegations contained in the Complaint. That is all this lawsuit involves. On Page 11, the Chancellor dismisses this case and states that it is impermissible to examine whether the Church Defendants' decision to form Holy Family Catholic Church was a misuse of Church funds. That has nothing to do with what we are talking about.

The Court's attention is invited again to these two rulings of the Court and the Court is invited to reconcile the two and to understand how the Chancellor could come to such a conclusion in view of the request made in the Complaint and the issues asked to be resolved. All one has to do in order to get a firm grip on the issues presented in this case is to read Roman Catholic Diocese of Jackson vs. Morrison *Supra*, and Church of God Pentacostal vs. Free Will Pentacostal, 716 So.2d 200 (MS Supreme Court 1998). Upon these two cases hang all the law and jurisprudence of the State of Mississippi.

SUMMARY OF THE ARGUMENT

The argument in this matter can be summed up fairly easily. The Plaintiffs maintain that the issues presented by their Complaint can be determined by the application of neutral principles of Mississippi Law. We need to beg the Court's patience regarding of the fact that we have mentioned so often what we are not trying to do, however, it seems that the Chancellor characterized our efforts so incorrectly that we feel we would be remiss if we did not constantly remind the Court that we are not asking the Court for any relief regarding the combining of the Parishes, the closing of St. Paul, or anything to do with the internal decisions of the Church, dogma, or anything that would threaten the establishment of the Church or free exercise as guaranteed by the First Amendment. We are only seeking that the Chancellor apply neutral principles of well-founded Mississippi Law in regard to the title to certain real

property and the ownership of certain funds solicited for the rebuilding of St. Paul Church.

While we ask the Chancellor to strike the Affidavit of Bishop Rodi, the failure to strike that, while error, does not present a great difficulty in the jurisdictional ruling, since the Affidavit did not put the jurisdictional question at issue. The jurisdictional questions were never put at issue. They are as stated plainly by the Complaint and the Exhibits to the Complaint.

Finally, we request that the Court correct the Chancellor in dismissing this case with prejudice, when there was no hearing on the merits.

ARGUMENT

THE CHANCELLOR ERRED IN DISMISSING THE PLAINTIFFS' CASE FOR LACK OF SUBJECT MATTER JURISDICTION

THE FIRST AMENDMENT AND SUBJECT MATTER JURISDICTION

In this Appeal, we are dealing with the question of subject matter jurisdiction. Subject matter jurisdiction deals with the power and authority of the trial court to consider a case.

We are dealing with the very delicate question of whether subject matter jurisdiction is denied the Court by virtue of the application of the First Amendment to the United States Constitution. The First Amendment to the United States Constitution reads as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

In considering the application of this sacred principle to the issues at hand, American Jurisprudence has given us an overview of the issues as in Section 423 ,16 AmJur 2d as follows:

A state is constitutionally entitled to adopt neutral principles of law, such as examination of the language of deeds, local church charters, state statutes, and provisions of the constitution of the general church, as a means of adjudicating church property disputes, but in undertaking such an examination the civil court must take special care to scrutinize the documents in purely secular terms, and if a deed, a corporate charter, or a constitution of the general church incorporates religious concepts in a provision relating to ownership of property, so that interpretation of the

instruments of ownership would require a civil court to resolve a religious controversy, the court must defer to resolution of the doctrinal issue by the authoritative ecclesiastical body.

This Court, in the 1998 case of Church of God Pentacostal, Inc. v. Free Will Pentacostal Church of God, Inc., 716 So.2d

200, 204-205 (MS Supreme Court 1998) stated as follows:

To understand the constitutional boundaries of this inquiry necessitated by this appeal, this Court's authority in adjudicating church property disputes must be described. Civil courts have the general authority to resolve the question of church property ownership. Jones v. Wolf, 443 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). 'The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership (and control) of church property can be determined conclusively.' Id.: Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem. Presbyterian Church, 393 U.S. 440, 445, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). The first amendment to the United States constitution, however, 'severely circumscribes the role that civil courts may play in resolving church property disputes.' * Wolf, 443 U.S. at 602, 99 S.Ct. 3020 (quoting Blue Hull, 393 U.S. at 449, 89 S.Ct. 601). The first amendment, therefore, forbids civil courts from resolving church property disputes by inquiring into and resolving disputed issues of religious doctrine and practice. Wolf, 443 U.S. at 602, 99 S.Ct. 3020; Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring). Accordingly, courts may not support the tenets of any one religion and must respect the right of all persons to choose their own course with reference to religious observance. See Wolf, 443 U.S. at 602, 99 S.Ct. 3020. States are free to adopt any approach to adjudicate church property disputes ' ' so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. - Id. at 602, 99 S.Ct. 3020 (quoting Sharpsburg, 396 U.S. at 368, 90 S.Ct. 499) (Brennan, j., concurring).

* * * * *

Over one hundred years later, the United States Supreme Court adopted and applied a somewhat different approach, invoking the 'neutral principles of law' for resolving disputes over Church property. Wolf, 443 U.S. at 602, 99 S.Ct. 3020. This relies on objective, traditional concepts of trust and property law familiar to attorneys and judges.

The Appellants maintain that the issues presented to the Court in this Appeal are issues of law and not of fact. Therefore, since the issues presented to the Court are issues of law instead of fact, the standard of review is *denova*. See Sealy vs. Goodard, 910 So.2d 502, 506 (MS Supreme Court 2005).

Jurisdictional issues are always reviewed by the Appellate Court de nova. Tones vs. Billy, 798 So.2d 1238, 1239 (2001). The trial judgment may be reversed if error was committed, whether manifest or not. Lloyd vs. Bank of the South, 796 So.2d 985, 987 (2001).

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BURDEN OF PROOF IN ATTACKS ON SUBJECT MATTER JURISDICTION

The party seeking to establish jurisdiction bears the burden of proof that such jurisdiction exists. See, e.g. Villarreal v. Smith, 201 Fed.Appx. 192, 195 (5th Cir.2006) citing DeAguilar v. Boeing Co., 11 F.3d 55,58 (5th Cir.1993). This distinguishes between two general attacks on subject matter jurisdiction brought pursuant to Mississippi Rules of Civil Procedure, 12(b)(1). A facial attack is one that 'alleges the court lacks jurisdiction as a matter of law, regardless of factual disputes.' Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213, 1220-21 (Miss.2005). By contrast, a 'factual attack' is one that challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.

A facial attack on a complaint requires a court merely to determine if a plaintiff has sufficiently alleged a basis of subject matter jurisdiction in the complaint, and allegations in the complaint are accepted as true for purposes of the motion. By contrast, where a defendant makes a 'factual attack' on the court's subject matter jurisdiction, the defendant may submit affidavits, testimony, or other evidentiary materials. A factual attack on the court's jurisdiction requires that the court resolve 'one or more factual disputes in order to determine subject matter jurisdiction.'

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Where a defendant makes a factual attack, the court decides disputed issues of material fact with regard to the jurisdictional issue and 'then must accept as true all undisputed well-pled factual allegations of the plaintiff's complete and proceed to decide the jurisdictional question.' Morrison at 1221.

In Morrison, the defendant submitted affidavits in support of its motion to dismiss for lack of subject matter jurisdiction. The Mississippi Supreme Court found that the defendant's motion to dismiss for lack of subject matter jurisdiction 'suggests a facial attack' as it 'does not advance a detailed factual argument, that is to say, *under the facts of this case*, the court lacks subject matter jurisdiction. Rather, the Diocese says simply that our courts lack subject matter jurisdiction over such causes of action against religious institutions.' Morrison at 1221. On the other hand, the court also found that the fact that the Diocese defendant submitted affidavits of different bishops 'suggests a factual attack.' Although it was not clear

whether the defendant's motion to dismiss contained a facial or factual attack, the court decided it would first analyze the Diocese's motion as a facial attack [and] then review the Morrisons' causes of action, taking into consideration the Affidavits.

The Chancellor should have accepted the Complaint's factual allegations not in conflict with the affidavit submitted by the Diocese. The Chancellor should have, '[a]fter deciding all issues of material fact, accepted as true all undisputed well-pled factual allegations of the Plaintiffs' Complaint and proceed to decide the jurisdictional question. "Like the Diocese in Morrison, the Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction 'does not advance a detailed factual argument' as Defendants do not allege that the court lacks subject matter jurisdiction 'under the facts of this case.' See Morrison at 1221. (emphasis in original). Defendants, in fact, do not dispute any of the factual arguments in Plaintiffs' complaint that support this Court's jurisdiction to hear this case. These undisputed allegations, which Plaintiffs supported with factual evidence attached to the complaint, include, but are not limited to: 1) the fact that certain property deeds state that the St. Paul property is held in trust for the benefit of the members of St. Paul Church, 2) that Defendants converted funds raised for the exclusive purpose of rebuilding St. Paul Church for constructing new facilities for Holy Family Parish, and 3) that Defendants made misrepresentations while soliciting funds for the rebuilding of St. Paul Church.

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**REGARDLESS OF WHETHER DEFENDANTS' ATTACK ON
THIS COURT'S JURISDICTION IS DEEMED TO BE A FACIAL OR
FACTUAL ATTACK, THE COURT MUST ACCEPT AS TRUE
THE UNDISPUTED FACTUAL ALLEGATIONS IN THE COMPLAINT
FOR PURPOSES OF DECIDING THE JURISDICTIONAL ISSUE**

The Plaintiffs met their burden of proving facts in support of the Court's subject matter jurisdiction because Defendants completely failed to rebut any of the factual allegations in the Complaint. See. Morrison, at 1221. The Court's attention is invited to the Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Record 68 - 71) and the Affidavit of Bishop Rodi (ARE, Tab 5). Instead of addressing any of the factual allegations in the Complaint, Defendants invoked the Doctrine of Church Autonomy to support their argument that the court lacked subject matter jurisdiction. The Defendants'

attack on jurisdiction is a facial attack, as Defendants are 'alleg[ing] the court lacks jurisdiction as a matter of law, regardless of factual disputes.' Morrison, at 1220-21. The Chancellor should have accepted the allegations in the complaint as true for purposes of ruling on Defendants' Motion to Dismiss.

Even if Bishop Rodi's Affidavit somehow transforms Defendants' purely legal argument into a 'factual attack,' the Court must, as in Morrison, accept as true, for purposes of deciding the jurisdictional issue, all of the factual allegations in the Complaint, and, upon accepting such factual allegations as true, must necessarily conclude that Plaintiffs have met their burden of establishing the Court's subject matter jurisdiction.

APPLICATION OF NEUTRAL PRINCIPLES OF LAW

This case deals with Mississippi property and trust law. That is made very clear by the Complaint. The Plaintiffs felt that these issues were made clear to the Chancellor and that the Chancellor understood these issues as evidenced by his August, 2007 decree. This case does not deal with the Bishop's decision to merge St. Paul's Parish with another Parish. This case does not deal with the closing of St. Paul Church. This case does not request the Court to interpret Canon Law. This case does not delve into doctrine or dogma. There is no excessive entanglement or even any danger of excessive entanglement in simply interpreting the various deeds and determining the status of certain gifts made for certain purposes.

The Church Defendants did succeed in clouding the issues. The Appellees attempted to cloak themselves in the robes of dogma and Church law to such an extent that they convinced the Chancellor that this was some type of internal Church struggle rather than a case clearly capable of being decided by neutral principles of Mississippi law. Contrary to the attempts of the Defendant to cloud the issues, the Plaintiffs did not request the Chancellor to review the ecclesiastical decisions of the Defendants, or interpret doctrine. The Plaintiffs are not seeking a determination of whether the Defendants' actions are in the Plaintiffs' best spiritual interests. The Plaintiffs simply requested the Chancellor to confirm whether various vesting deeds created a trust, to rule on the implications of such trust and to resolve

certain questions regarding funds specifically given for a specific purpose. The Plaintiffs only seek the same standard and customary fiduciary duties owed to every beneficiary under State law, whether the beneficiaries are Parishioners or ordinary citizens.

The Plaintiffs are confident that through the application of neutral principles of Mississippi real property, trust and donation law, the Court can review deed provisions similar the following provision contained in one of the deeds conveying the Church Site, in trust, to Bishop Rodi's predecessor, i.e., Bishop Howze:

'NOW THEREFORE, in order to confirm and record the succession of Most Reverend Josheph L. Howze to said trusts and to perfect record tide in him, I, Most Reverend Joseph B. Brunini, Bishop of the Catholic Diocese of Jackson as trustee for the uses and benefit of the members of the Catholic Parishes or Congregations situated in the seventeen counties above-named do hereby set over, assign, transfer, sell and convey unto Most Reverend Joseph L. Howze, Bishop of the Catholic Diocese of Biloxi, and his successors in office forever, as trustee for the use and benefit of the members of each such Catholic Parish or Congregation all property , real, personal or mixed, which I hold as trustee for any parish or church institution located in the counties of ... Harrison...' See Exhibit 'D' to the Complaint and the other deeds mentioned in the deraignment or attached to the Complaint.

A charitable trust, by definition, creates a fiduciary relationship between the trustee and the beneficiary. See. Rest. 2d Trusts 5348. While charitable trusts are generally 'public' trusts, a 'private charitable trust' is created when property is conveyed in trust for the benefit a specific group or class of people. See. Gray v. St Matthews Cathedral Endowment Fund, 544 S.W. 2d 488, 491 (Tex. 1976) citing Bogert, The Law of Trusts and Trustees, s 414, p. 344. (1964). In Gray, the court further held that the beneficiaries of a 'private charitable trust' have standing to enforce the terms of the trust against the trustee. (Id at 491). Notwithstanding Church Defendants' repeated denial and the Chancellor's Final ruling, a fiduciary relationship was created through Defendants' acceptance of the Church Site in trust, thus creating certain equitable obligations to Plaintiffs, as beneficiaries of such trust. See. Stegall v. Newsom, 326 So. 2d 803, 806 (Miss. 1976). These equitable obligations provide Plaintiffs with the standing to pursue these issues to a Final ruling on the merits. These obligations also prohibit Defendants from repudiating the trust and changing the use of the property from that specified by the original grant.

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The Defendants maintain that they are not subject to the Mississippi statutes governing charitable

solicitations or the fiduciary duties imposed under M.C.A. §79-11-525. Although M.C.A. §79-11-501 exempts religious organizations from the definition of 'charitable organizations', M.C.A. §79-11-525 provides that 'every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, .. and every officer, director, trustee or employee of that person who is concerned with the solicitation, collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity.' [Emphasis added]. While Defendant Catholic Diocese of Biloxi, Inc., may be exempt from the reporting requirements of M.C.A. §79-11-501, et seq., every person, religious or secular, that solicits and/or expends charitable contributions is considered a fiduciary, and as such, has fiduciary obligations regarding such contributions.

**THE MANAGEMENT OF THE TRUST PROPERTY IN QUESTION IS
GOVERNED BY THE NEUTRAL PRINCIPLES OF MISSISSIPPI LAW**

The Church Defendants maintain that if the Church Site is held in trust the deeds attached as exhibits to Plaintiffs' Complaint 'state that the transfer of the property is being made subject to The Code of Canon Law.' Upon review of these documents, the Court will find that only the Warranty Deed from Bishop Howze to Bishop Rodi, i.e., Exhibit 'F' [the 'Rodi Deed'], provides for the trust property to be administered in accordance with Canon Law. None of the other deeds identified in the Complaint provide for the application of Canon Law. The Rodi Deed cannot unilaterally modify the previous deeds or the trust created for the Plaintiffs, and it is inappropriate for Defendants to override the will of the grantors by imposing Canon Law upon the beneficiaries.

Mississippi law is quite clear. A grantor can only convey what rights it holds in the property. See. M.C.A. §89-1-17. Since the documents creating the trust do not provide for the trust corpus to be managed according to Canon Law, Mississippi law governs the administration of the trust property. (See. M.C.A. §91-9-117). To hold otherwise would be to give preferential treatment over secular trustees in similar circumstances. As this Court is well aware, preferential treatment of religious organizations violates the Free Establishment Clause of the First Amendment; thus, Defendants would owe Plaintiffs the same

normal and customary fiduciary duties due other beneficiaries. See. Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213, 1224 (Miss.2005).

**THE DEFENDANTS' MOTION TO DISMISS MISCHARACTERIZED
THE ISSUES BEFORE THE COURT IN AN EFFORT TO BRING THIS CASE
WITHIN THE AMBIT OF THE CHURCH AUTONOMY DOCTRINE**

From the outset, it must be noted that the Defendants' Motion to Dismiss is based upon a false premise: that the Plaintiffs' lawsuit seeks to challenge the Defendants' authority to consolidate St. Paul's and Our Lady of Lourdes Parish. Apparently, the Defendants did a good job, because even though the Chancellor clearly found this not to be the case in his August, 2007 ruling, he based his entire Final Judgment on the premise that this was a lawsuit about nothing but the consolidation of these two Parishes. As has been stated time and time again, such is not the case. To further this smoke screen, the Defendants argue that they have followed the purportedly applicable canon law provisions concerning the merger/consolidation of parishes, and that judicial intervention in that decision making process would violate the Constitution and/or the Ecclesiastical abstention/Church autonomy doctrines.

However, as has been repeatedly stated, the Plaintiffs do not challenge the authority of the Defendants to merge St. Paul's and Our Lady of Lourdes Parish. The Chancellor initially agreed that the Defendants' arguments fail to address the actual issues raised by the Plaintiffs' lawsuit, when, on August 8, 2007, he ruled:

The affidavit incorrectly focuses on Bishop Rodi's authority to consolidate St. Paul Parish and Our Lady of Lourdes parish into the newly formed Holy Family Parish. In support of his decision to combine the two parishes, the Most Rev. Thomas J. Rodi is of the opinion that the "Code of Canon Law sets forth a 'specific process' by which a bishop must follow when altering parishes such as St. Paul's. Bishop Rodi does not identify what steps make up this 'specific process,' nor does he indicate what steps he actual took. Not only is Bishop Rodi making conclusory allegations without providing supporting facts based upon personal knowledge, these allegations are not applicable to the issues before the Court.

Continuing, the Chancellor noted as follows:

It does not appear to this Court that the merger of the two parishes is before this Court and Plaintiffs have not questioned Bishop Rodi's decision to merge the two parishes...The focus of Bishop Rodi in his affidavit should address the issues before this Court, which is not Bishop Rodi's decision to merge the two parishes.

In August, 2007, the Chancellor saw through this smoke screen, however, such was not the case when the Chancellor issued his Final Order in February of 2008.

**THE PLAINTIFFS' CLAIMS CAN BE RESOLVED USING
NEUTRAL PRINCIPLES OF LAW AND DO NOT
IMPLICATE THE CHURCH AUTONOMY DOCTRINE**

Although it incorrectly approaches the issue in the context of the merger of St. Paul's and Our Lady of Lourdes Parishes, the crux of the Defendants' legal arguments is that the Church Autonomy Doctrine, also known as 'Ecclesiastical Abstention,' requires this court to refrain from exercising jurisdiction in this case. However, a careful review of those arguments reveals the Defendants' fundamental misunderstanding of the nature and scope of that doctrine, as well as its failure to harmonize more recent decisions of both the U.S. and Mississippi Supreme Courts into its analysis. Since the Church Autonomy Doctrine does not preclude judicial application of neutral principles of law to cases involving Church property, the Defendants' arguments should be rejected.

The Defendants begin their constitutional arguments by stating that 'the Mississippi Supreme Court has recognized; Watson v. Jones, 80 U.S. 679 (1871); as the 'leading case for the Doctrine of Church Autonomy.' This simply is not the case, as Watson's 19th century rule of almost total abstention in Church property matters is no longer controlling at either the state level or the federal level. More specifically, in Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1079), the United States Supreme Court set forth a new and less deferential standard for considering disputes concerning Church property. In Wolf a dispute arose over the ownership of Church property after a local Church decided to become independent of a hierarchical Church organization with which it had previously been associated. The Georgia Supreme Court, in considering the case, formulated a 'neutral principles of law' method for resolving the dispute. This method included analysis of the deeds to the properties and the state statutes dealing with trusts. Unable to find anything in those documents that would give rise to a trust, the court awarded the property on the basis of legal title, which was in the name of the local Church.

The United States Supreme Court granted certiorari in the case and determined that Georgia's

decision to apply neutral principles of law to the matter was constitutionally valid. While the Court noted that the First Amendment requires deference to resolution of religious doctrine or polity by the highest court of a hierarchical Church, it found that the Constitution did not dictate 'that a State must follow a particular method of resolving Church property disputes.' *Id.* at 3025. Furthermore, it opined that 'a State may adopt any one of various approaches for settling Church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.' *Id.* Finding that a 'neutral principles of law' approach could constitutionally be employed, the Court stated that 'the primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.' *Id.*

Finally, and of particular importance in this case, the Court specifically rejected the approach advocated by the Defendants in this matter. Addressing the dissent's contentions, which mirror those of the Defendants in this case, the Court noted that:

The dissent would require the States to abandon the neutral-principles method and instead would insist as a matter of constitutional law that whenever a dispute arises over the ownership of church property, civil courts must defer to the 'authoritative resolution of the dispute within the church itself.' It would require, first, that civil courts review ecclesiastical doctrine and polity to determine where the church has 'placed ultimate authority over the use of the church property.' After answering this question, the courts would then be required to 'determine whether the dispute has been resolved within that structure of government, and, if so, what decision has been made.' They would then be required to enforce that decision. We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved. *Id.* at S.Ct. 3026.

Thus, the clear import of Wolf is that the states are free to employ neutral principles of law, such as trust and property law, in resolving Church property disputes.

In Church of God Pentecostal v. Freewill Pentecostal Church of God, 716 So.2d 200 (Miss.1998), the Mississippi Supreme Court decided to adopt the rationale of Wolf. In Church of God, a dispute arose over the ownership of Church property between a local sect and the national Church of God Pentecostal. Citing Wolf, the

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Court stated that 'the State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership [and control] of Church property can be determined conclusively.' It recounted the history of the Church autonomy doctrine in the U.S. Supreme Court, specifically addressing the fact that the holding of Watson (the lynchpin of the Defendants' arguments in this matter) had been discarded in favor of a 'neutral principles of law' approach in Wolf. Most importantly, the Court resolved any dispute as to whether the Watson standard was still viable in Mississippi:

Our case law in Mississippi is sparse with regard to the issue before this Court, all predating the United States Supreme Court's decision in Wolf. Our most recent case, Sustar v. Williams, provides an overview of our case law on this issue, as well as case law from other states and the United States Supreme Court, and discusses various approaches to this issue, broaching the neutral principles approach approved by Wolf without clearly delineating the approach we should follow in Mississippi. Most of our case law followed the Watson "judicial deference" standard discussed supra. This Court now chooses to follow the neutral approach for determinations of issues such as in the case sub judice. As Wolf stated, 'the primary advantages of the neutral principles approach are that it is completely secular in operation and yet flexible enough to accommodate all forms of religious organization and polity, and relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges. *Id.* at 206.

As a result, the Chancery Court has jurisdiction over this case as long as the matter may be decided using neutral principles of law. As demonstrated in detail above, the Plaintiffs in this case simply request that Mississippi's trust and property laws be used to resolve the question of whether or not the St. Paul Church property is held in trust for their benefit. As this Court noted in its order (ARE, Tab 6) on the Motion to Strike, 'the issues Plaintiffs bring before this Court are purely secular in nature...' There is absolutely no need to consider matters of Catholic belief, dogma, or spirituality in order to decide whether or not these Defendants hold the Church property in trust for the benefit of the members of St. Paul congregation, or whether the Defendants illegally converted donations and made misrepresentations while doing so. Furthermore, the legal analysis needed to resolve this case would be the same regardless of whether the property in question was a church, a mosque, or a temple. There is no jurisdictional bar to the Plaintiffs claims.

A more recent opinion of the Mississippi Supreme Court further demonstrates that the Church autonomy doctrine does not deprive this Court of jurisdiction of this matter. In Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss.2005), the Supreme Court was asked to determine whether jurisdiction existed for the Plaintiff's claims of civil conspiracy, breach of fiduciary duty, and fraud and fraudulent concealment arising out of alleged sexual abuse of children by former priests of the Diocese. Because the case was not one involving Church property, the Court analyzed the case under the more restrictive Watson framework. Nevertheless, it found that jurisdiction existed over the Plaintiff's claims, noting that:

[W]e are not so easily persuaded that the Doctrine of Church Autonomy suggests blanket protection of the Church from all accountability in our civil courts. As with everything judicial, there are exceptions, tests, and limits. We read Watson to hold only that civil courts may not take jurisdiction over a religious organization's internal, ecclesiastical matters.

As in the instant matter, the Defendants in Morrison alleged that there was no jurisdiction over the Plaintiffs' claims for breach of fiduciary duty. However, the Court noted its previous decision in Mabus v. St James Episcopal Church, 884 So.2d 747 (Miss.2004), in which it held that 'a claim for breach of fiduciary duty against a priest and the diocese] was not prohibited by the First Amendment.' Mabus at 760

Furthermore, the court indicated that state law concerning fiduciary duties would apply to the Plaintiff's claims. Remarkably, in an eerie premonition of the facts of the instant litigation, the Court in Morrison stated that:

We further state that our holding today is not to be blindly applied, allowing in all cases an exercise of jurisdiction over a particular cause of action. Rather, each cause of action asserted against a religious organization claiming First Amendment protection must be evaluated according to its particular facts. For instance, with respect to a claim of breach of fiduciary duty, a religious organization might enjoy First Amendment protection from claims of failure to provide a certain quantity or quality of religious instruction in exchange for tithes and offerings, but might not enjoy such protection from claims that it solicited and accepted funds to be held in trust for a specific stated purpose, but spent the funds for an unauthorized purpose. 905 So.2d 1242.

While admittedly dicta, this statement by the Court provides a strong indication that it would find jurisdiction in a case where, as here, parishioners allege that funds which were raised and held in trust for one purpose were converted for an unauthorized purpose. Indeed, the Court affirmed that a

Church may not hide behind the first amendment when perpetrating fraud upon the public or its members.' *Id* at 1242. While the Defendants argue that 'civil courts have consistently rejected such clergy fiduciary claims,' they overlook the fact that the courts of this state have already determined those claims to be cognizable.

The Defendants state that the North Carolina Supreme Court's decision in Harris v. Matthews, 643 S.E. 2d 566 (N.C. 2007) dealt with issues 'almost identical to the ones presented here.' That case is readily distinguishable. Harris is not a Church property dispute in which the Defendants held property in trust for the benefit of its members, and it did not involve the alleged diversion of monies donated for specific purposes. Instead, Harris involved a dispute over the alleged misuse of money donated to Church for general purposes, i.e., tithe. The Harris court determined it was being asked to review the day-to-day expenditures of the Church, and it specifically noted that it could not resolve the matter 'because no neutral principles of law exist to resolve the Plaintiff's claims.- Here, Mississippi trust law clearly provides a set of neutral principles, applicable to all trustees, under which the Court may determine the legal relationship between the parties as a result of the trust language contained in the deeds affecting St. Paul Church property.

In sum, the Wolf and Church of God cases make it abundantly clear that this court may take jurisdiction over cases involving Church property where they may be resolved by neutral principles of law, such as state property and trust law. Furthermore, the Morrison case demonstrates that the First Amendment does not bar claims for breach of fiduciary duty where it converts funds from one use to an unauthorized use. As such, the Church Autonomy doctrine does not apply, and the Plaintiffs case should have been allowed to proceed on its merits.

The statutory requirements for creating an express trust under Mississippi law were clearly established through the adoption of Section 4230, Mississippi Code of 1892. This statute has remained virtually unchanged since adoption and is currently codified as M.C.A. §91-9-1. In the pertinent part, M.C.A. §91-9-1 provides as follows:

'Hereafter all declarations or creations of trusts or confidence of or in any land shall be

made and manifested by writing, signed by the party who declares or creates such trust, or by his last will, in writing; or else they shall be utterly void. Every writing declaring or creating a trust shall be acknowledged or proved as other writings [and] ... shall be lodged with the clerk of the chancery court of the proper county to be recorded, and that trust shall only take effect from the time it ... is so lodged for record. 'Where any trust shall arise or result, by implication of law, out of a conveyance of land, such trust or confidence shall be of the like force and effect the same as it would have been if this statute had not been passed.'

Upon review of the Church Deeds, it is obvious these documents meet the statutory requirements for creating an express trust. All of the Church Deeds were in writing, executed by the respective grantors, who declared and/or created the trust; were acknowledged by a notary public, or other authorized county officer; and were recorded in the public records of the Office of the Chancery Clerk of Harrison County, Mississippi. The Church Deeds fulfill the requirements for creating an express trust under Mississippi law, and Bishop Rodi, as trustee of this express trust, holds title to the Church Site for the benefit of Plaintiffs, as members of the congregation.

A resulting trust is a matter of equity and is created when one party advances the money to purchase property, but title is conveyed in the name of another. See. Church of God at 206. When this occurs, equity requires that the grantee hold the property in trust for the benefit of the one who advanced the purchase money. *Id* A resulting trust is implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises. *Id* at 207.

It has been the public policy of the State of Mississippi to restrict the ownership of real property by religious organizations. See. Gunter v. City of Jackson, 130 Miss. 637, 94 So. 844, 845 (Miss. 1923). Sections 269 and 270 of the Mississippi Constitution of 1890 declared void any devises or bequests of real or personal property to a religious corporation or society. *Id* Moreover, Mississippi law prohibits unincorporated associations from acquiring title to real property, whether by will or intervivos conveyance. See. West v. State, 152 So. 888 (Miss. 1934).

However, as far back as 1857, an unincorporated religious society could become a 'corporate body', entitled to own real property, if it took affirmative action to comply with the statutory

requirements. See. Gullett v. First Christian Church of Meridian, 154 Miss. 516, 122 So. 732, 734 (Miss. 1929)(referencing Mississippi Code of 1942 Annotated Recompiled, §5351). These statutory requirements included the membership electing its officers and keeping record of its proceedings. See. *Id* at 733 (referencing §5350, Mississippi Code of 1942 Annotated). If the religious society availed itself of the provisions of the statute, it could hold title to real property, but this right was limited to specific types of real property located at a single site. See Gunter at 844 (quoting Section 934 of the Code of 1906). Plaintiffs surmise that the congregational governance requirement imposed by Section 934 alone was enough to prevent the Catholic Church from becoming a 'corporate body', but even if the Diocese of Natchez would have complied with the Section 934, it would have only been allowed to hold title to one Church site. For this reason, the then-Bishop of the Diocese of Natchez held title to the various parcels, as trustee for the respective Catholic congregations.

This changed in 1905 when the Catholic Diocese of Natchez was incorporated under the general incorporation statute adopted in 1892, with its stated purpose being to hold in trust the titles to the property belonging to the catholic congregations, parishes and missions in the State of Mississippi. (See Record 1537 – Charter of Incorporation of the Catholic Diocese of Natchez). The incorporation of the Diocese entitled it to own real property and on or about May 21, 1906, Rt. Rev. Thomas Heslin, Bishop of the Diocese of Natchez, conveyed unto the Catholic Diocese of Natchez, Inc., in trust, all real property acquired by him in trust for the several Catholic congregations, including certain of the Church Parcels. From and after 1906, multiple properties were conveyed both to the Diocese of Natchez Jackson, Inc. and to subsequent Bishops of the Diocese of Natchez, some containing trust language and others not.

In 1958, the general corporation statute of the Mississippi Code of 1942 was amended with regard to non-profit corporations. In pertinent part, Section 5310 of the Mississippi Code of 1942, as amended, provided that a non-profit corporation's charter 'shall vest in each member the right to one vote in the election of all officers.' Mississippi Code of 1942 Annotated, Recompiled, Vol. 4A, Cumulative Supplement, §5333. Congregational governance provision was not included within the general corporation statute adopted in 1892, and this amendment essentially prohibits non-profit corporations

formed after 1958 from adopting a hierarchical form of governance.

In June 1977, the Catholic Diocese of Biloxi was formed and Rt. Rev. Joseph L. Howze, was appointed as its first Bishop. The Mississippi statutes governing religious societies were still in effect at that time, and the Rt. Rev. Joseph B. Brunini executed two deeds on or about June 6, 1977, one as Bishop of the Diocese of Jackson, and the other as President of The Diocese of Jackson, Inc. These deeds conveyed all of the property being held in trust for the various Catholic congregations situated in the Diocese of Biloxi unto Bishop Howze, in trust for the respective Catholic congregations. Bishops Brunini and Howze apparently made a conscious decision to have the Church Site, together with other properties, conveyed to Bishop Howze, in trust for the respective congregations.

On or about June 29, 1977, the organizational meeting of The Diocese of Biloxi, Inc. was held and its corporate charter was approved by the Mississippi Secretary of State and filed of record on August 4, 1977. Plaintiffs believe that the statute entitling each member to one vote in election of officers, and the possibility that lay members of the Diocese of Biloxi could be deemed members and vote Bishop Rodi out of office, was one of the reasons why Bishop Brunini conveyed the Church Site to Bishop Howze, as trustee, instead of to the newly formed non-profit corporation.

Another factor supporting the finding of a resulting trust is that the Code of Canon Law provides that neither the bishop nor a diocese owns the property of a parish. If title to parish property is placed in the name of the bishop or the diocese for purposes of legal convenience, it does not divest the parish of its rights in the property, inasmuch as such a divestiture would violate the Canon Law. Although Plaintiffs do not believe nor do they assert that Canon Law is applicable, it is important to note that Bishop Rodi would hold title as trustee under Canon Law, if it were applicable.

Following Hurricane Katrina, Rev. Dennis Carver, with the assistance of various parishioners, began actively soliciting donations specifically for the repairing of St. Paul Church. Pleas for financial donations were made through internet websites, direct written correspondence, telephonic communications and in-person solicitations, and despite having decided not to rebuild St. Paul Church, Defendants did not stop soliciting donations for this purpose until after Plaintiffs filed their complaint. See

Exhibit 'G' to the Complaint. Financial records prepared by Holy Family Parish indicate that donations totaling approximately \$1,000,000.00 were received by Defendants for repairing St. Paul's Church as of March, 2007.

By soliciting and accepting donations for a specific purpose, Defendants became fiduciaries of the trust implied through those donations, and as such, have a fiduciary obligation to follow the intentions of the donor. See. City of Picayune v. Southern Regional Corporation, 916 So.2d510, 523 (Miss. 2005). The Chancery Court has jurisdiction to decide questions of law concerning trusts, the management of trust property and the fiduciary obligations of trustees to their beneficiaries. The Chancery Court also has jurisdiction to hear claims involving breaches of fiduciary duty. Plaintiffs are simply requesting the application of neutral principles of Mississippi's standard of care for fiduciaries to determine whether Defendants' failure to follow the specific intentions of the donors was, or would be, a breach of their fiduciary duties, and as the preceding discussion illustrated, the Chancery Court clearly has jurisdiction over the issues Plaintiffs bring before it.

THE CANONICAL APPEAL IS OF NO MOMENT IN THIS CASE

On Page 3 of the Final Judgment, the Chancellor stated: 'The Vatican determined that Bishop Rodi followed The Code of Canon Law of the Roman Catholic Church in the actions he took.' The Court then refers to an exhibit attached to one of the Appellees' Memorandums. That refers to a procedural dismissal of a Church matter. To imply that such Appeal decided anything is inaccurate.

The canonical appeal is completely irrelevant to this case. The Plaintiffs have addressed their administrative and canonical concerns to the proper authorities (the Vatican), while asserting their legal rights as beneficiaries of a trust over Church property in the proper forum: the Chancery Court. The fact that the Plaintiffs appealed the closure of the Church (an issue not before this Court) to the Vatican highlights the Plaintiffs' sensitivity to the separation of church and state, and their recognition that while this court certainly cannot resolve theological disputes, it can and must resolve the civil law questions posed in the Complaint.

**THE CHANCELLOR ERRED IN FAILING
TO STRIKE BISHOP RODI'S AFFIDAVIT**

The Court's attention is again invited to the Affidavit of Bishop Rodi (ARE, Tab 5). Being mindful of what the Complaint was all about and the issues that the Complaint sought to have resolved, it can be seen from a reading of this Affidavit that it does nothing to challenge the factual allegations of the Complaint regarding the real property, nor the gifts made to rebuild St. Paul Church, and, therefore, added nothing to this matter and should have been stricken on the Motion of the Plaintiffs. A reading of the Chancellor's August 8, 2007 Order will show that he came very close to doing this. The Chancellor said: 'The Affidavit incorrectly focuses on Bishop Rodi's authority to consolidate St. Paul Parish and Our Lady of Lourdes Parish into the newly formed Holy Family Parish.' The Chancellor even referred to the fact that Bishop Rodi was 'making conclusatory allegations, without providing supporting facts...' He even stated: 'The opinions contained in the Affidavit have limited probative value to the issues before this Court,' finally saying that they were merely general statements of fact, which did little more than emphasize the Defendants' legal arguments. And then, in spite of all of these findings and in the fact of the fact that the Affidavit did not contain any evidence disputing the issues brought by the Plaintiffs, the Chancellor nevertheless let the Affidavit stand. The Appellants contend this was error.

**THE CHANCELLOR ERRED IN DISMISSING
THE PLAINTIFFS' CASE WITH PREJUDICE**

The Chancellor never heard this case on the merits, having dismissed the case for lack of jurisdiction, therefore, it was error for the Chancellor to dismiss the case with prejudice when there had been no hearing on the merits. The Court's attention is invited to Raynor v. Raytheon Company, 858 So.2d 132,134, where this Court stated:

The phrase 'with prejudice' in [the context of when an action is dismissed with prejudice] means and 'adjudication on the merits and final disposition, barring the right to bring or maintain an action on the same claim or cause.

* * * * *

Thus, lacking jurisdiction, the circuit court was without authority to address the merits. The circuit court should have simply dismissed this case for lack of jurisdiction.

Therefore, it is felt that no more needs to be said in addressing the error in dismissing this matter with prejudice.

CONCLUSION

It was no easy decision for each Plaintiff to allow himself/herself to be listed as a Plaintiff in a lawsuit against their Church, their Bishop and their Pastor. I doubt that anyone other than the Plaintiffs could come anywhere near understanding where the Plaintiffs found themselves in March, 2007, when it was announced that St. Paul would not be rebuilt. One is reminded of the words of Charles Dickens when he said: "These were the best of times. These were the worst of times." Only someone who has lived through something like Katrina can understand how such a disaster brings out the best and the worst - - how it produces the highest and lowest of feelings and emotions.

Perhaps the only way to understand the setting of this lawsuit is to have actually been one of the survivors of Hurricane Katrina who stood at a damaged Church and celebrated the Eucharist in the washed-out interior of such a Church.

Maybe somehow someone can grasp the significance of the act of these 157 Plaintiffs as they committed themselves to sue the very institution that had given them lifelong stability and peace. Not an easy decision. Nevertheless, that is where we find ourselves.

It wasn't easy for these Parishioners. It wasn't easy for the Chancellor in entering his Final Order. If we may have sounded harsh in our criticism of the Chancellor's decision, such criticism is tempered by the fact that he too trudged no easy road in making such ruling. These matters are trying on all concerned. We have no doubt that everyone involved has felt the pressure that comes from dealing with an area as sensitive and as emotional as this.

After the Bishop entered his decree of November, 2005, the Parishioners of St. Paul were told that if they would allow the Diocese to close their school, which was the oldest Catholic Elementary School in the State of Mississippi, then the Diocese would allow them to repair their Church on the beach. The Parishioners were not happy about closing their school, but at such a time, any hope was better than no

hope at all. They reluctantly accepted this edict. And then, they went out and raised over \$1,000,000.00 to accomplish what the Bishop had promised - - to repair their Church. Then the Bishop took away their money, their Church, and worst of all, their hope.

The founders of this country were wise to recognize the overreaching foibles of human nature in enacting the First Amendment. Perhaps it wasn't the intent of those forefathers to extend the First Amendment to the States, nevertheless, that has also been accomplished by the Fourteenth Amendment.

Volumes and volumes have been written about this delicate and sensitive area of the law. Current problems within the Catholic Church have brought these matters even more to the forefront. Entire books have been devoted to this problem. Professor Marcia Hamilton recently published God vs. The Gavel, Religion and the Rule of the Law. One reviewer stated that God vs. The Gavel is essential reading for those who insist that religion be true to its fundamental mission and not about victimizing people for the sake of power, privilege or financial gain. There have been many enlightening articles commenting upon First Amendment application. For example: "Keeping the Faith: the Rights of Parishioners in Church Re-Organizations," 82 Washington Law Review 75 (2007). "Who Owns the Local Church? A Pressing Issue for Diocese in Bankruptcy," 29 Seton Hall Legislature Journal 375. And, "Taking the Religion Out of Religious Property Disputes," 46 Boston College Law Review 1069.

In reviewing all of these matters, the Appellants plead to the Court to recognize the following things:

- (1) We are not questioning the combining of St. Paul and Our Lady of Lourdes Parish to Holy Family Parish;
- (2) We are not now asking the Court to reopen St. Paul Church;
- (3) We are not asking the Court to do anything about any of Bishop Rodi's decisions that relate to internal matters of the Church;
- (4) We don't question the dogma of the Church.

All we ask is for the Court to apply neutral principles of Mississippi Property and Trust Law to the questions relating to the real property described in the attachments to the Complaint and the status of those

funds that were specifically raised in order to rebuild St. Paul Church.

The Church Defendants will say that letters were written to the donors regarding this matter. That disturbs the Plaintiffs since such letters may have been revealed in discovery, they were never proved before the Court. Besides, once a gift is given, it is beyond the control of the donor. We can't question a completed gift. Once a donor has completed his gift, he loses control. Neither the giver nor the receiver can change the status of such gift. Just asking the donor about the gift is a violation of trust.

A careful reading of the Chancellor's decisions will show that most, if not all, of his conclusions were legally incorrect. How can one read Morrison and Church of God and reconcile the Chancellor's Final Judgment. No well-pled facts were ever put at issue. What facts did the Church Defendants prove that put jurisdiction at issue? This matter must be reversed and sent back for a trial on its merits.

Without further belaboring this matter, the Appellants ask: how could the Chancellor even consider a dismissal with prejudice when there had been no hearing on the merits of the lawsuit? Justice requires a reversal.

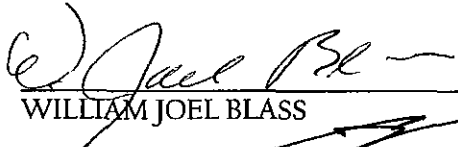
RESPECTFULLY SUBMITTED, this the ^{23rd} day of September, 2008.

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CERTIFICATE OF DELIVERY

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I further certify that I have this date delivered a true and correct copy of the above and foregoing Brief, via U. S. Mail, postage prepaid, to the following:

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So Certified, this the 23rd day of September, 2008.



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