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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

FIRST AFRICAN METHODIST
EPISCOPAL CHURCH OF LOS
ANGELES et al.,

Plaintiffs and Respondents,

v.

FAME ASSISTANCE
CORPORATION et al.,

Defendants and Appellants.

B276177

(Los Angeles County
Super. Ct. No. BC496747)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark Mooney, Judge. Affirmed.

Ivie, McNeil & Wyatt, Rickey Ivie; Richards, Watson & Gershon, T. Peter Pierce and Marvin E. Bonilla for Defendants and Appellants.

Law Offices of Robert M. Silverman, Robert M. Silverman and Carol L. Newman for Plaintiffs and Respondents.

* * * * *

Defendants appeal from a declaratory relief judgment in favor of plaintiffs, declaring void certain amendments to the bylaws of two nonprofit public benefit corporations. The two defendant nonprofit corporations, FAME Assistance Corporation and FAME Housing Corporation, were established in the 1980's by the First African Methodist Episcopal Church (the Church) to provide housing and other services for needy and low income residents in Los Angeles. The trial court found that the procedures used in 2012 to amend the bylaws of the two nonprofit corporations "were unfair, unreasonable, and not performed in good faith." Therefore, the court declared the 2012 amendments to be void and of no effect and ordered "[n]ew officers and directors . . . shall be selected in a manner consistent with the original bylaws of the [c]orporation[s]."

The Church and its current senior pastor, J. Edgar Boyd, filed this lawsuit against the two nonprofit corporations, as nominal defendants, and against several individuals who plaintiffs claim unlawfully obtained control of the corporations for personal gain. On appeal, defendants do not contend there is a lack of substantial evidence to support the trial court's finding that the amendments to the bylaws were made in bad faith. Defendants' only claim on appeal is that plaintiffs -- the Church that established the nonprofit corporations to further its mission, and the Church's senior pastor -- lack standing to bring this lawsuit to return control of the nonprofits to the Church.

We affirm the trial court judgment, finding the trial court correctly rejected the contention that plaintiffs lack standing.

BACKGROUND

The Church and Pastor Boyd alleged in the verified second amended complaint that John Hunter, who served as senior

pastor of the Church between 2004 and 2012, and his wife, Denise Hunter, along with four coconspirators, unlawfully changed the bylaws of the two nonprofit corporations to sever their ties to the Church and block the Church's senior pastor from assuming his rightful position, as head of the Church, to manage and supervise the nonprofits. Before trial, the parties stipulated to the dismissal of the individual defendants, "recogniz[ing] that the main purpose of the lawsuit instituted by Plaintiffs was to obtain control of [the nonprofit] Corporations."

The two nonprofits were established in 1985 and 1988 to provide outreach services on behalf of the Church. They were to be under the control of the Church and not any outside entities.

The bylaws of FAME Assistance Corporation specify that the senior minister of the Church "shall be President of the Board of Directors." The Board of Directors (board) is to be comprised of members from "each of the three major advisory committees and the Senior Minister of [the] Church, the treasurer of [the] Church, two Stewards and two Trustees." Vacancies on the board were to be filled "by the appointing committee or by [the] Church as appropriate." The bylaws do not define "appointing committee." However, the bylaws define the "nominating committee" as "responsible for all elections for the Board of Directors." The committee consists of three members elected by the board. The bylaws also provide that they can be amended by a two-thirds vote of those in attendance at the annual meeting of the Church.

The bylaws of FAME Housing Corporation provide that the board shall include five members of the Church and others from the business community and the community to be served. The board is vested with authority to fill vacancies on the board.

Board members are elected at the Church's annual meeting by the members of the Church. The bylaws could be amended by a "two-thirds . . . vote of those in attendance at the meeting where the recommended amendment is presented."

The Discipline of the A.M.E. Church, which is the overarching rule of governance for every parish of the African Methodist Episcopal (A.M.E.) Church, sets the rules for the Church and all of its organizations and programs. According to the Discipline, the pastor of each A.M.E. church sits as the chairperson of all organizations and activities within his or her parish. From the formation of the nonprofits in the 1980's until 2012, the senior pastor of the Church served as chairman of the board for both nonprofits.

In 2004, John Hunter became senior pastor of the Church. After Pastor Hunter assumed this role, his wife became a director of both nonprofits. Sometime before August 2012, Pastor Hunter was informed that he was being removed as pastor of the Church, effective October 28, 2012. Without notice to the Church, the bylaws of the two nonprofits were amended in October 2012, to change the selection of the board, and to make Mrs. Hunter chairman of the board of both nonprofits. The amended bylaws removed all involvement of the Church and its pastor in the selection of the board, and in the operation of the nonprofits.

J. Edgard Boyd became pastor of the Church on October 28, 2012. It was his understanding that the pastor of the Church was automatically the CEO of all corporations and affiliates associated with the Church. However, he learned in November 2012 that the bylaws of the nonprofits had been amended to exclude participation of the senior pastor and the Church in the nonprofits.

The second amended complaint alleged that the Hunters embezzled money from the nonprofits, and that the board illegally amended the bylaws of the nonprofits to exclude the Church. Before trial, plaintiffs dismissed the causes of action for breach of fiduciary duty, breach of trust, fraud, and other claims against the individual defendants. Trial proceeded on the remaining cause of action for declaratory relief against the two nonprofits. Plaintiffs sought a declaration that the amendments to the bylaws were void, and an order that the directors be ousted, that new directors be elected in conformance with the original bylaws at the annual meeting of the Church, and that Pastor Boyd be declared the president and CEO of the nonprofits.

In their answer, defendants claimed plaintiffs lacked standing to sue, and that claim was tried first to the court. In its statement of decision, the trial court found both the Church and Pastor Boyd had standing to maintain the action. The court also concluded that Pastor Boyd had an actual interest in determining whether the original bylaws were in effect, as under them he was authorized to act as the president of the boards of the nonprofits.

When the declaratory relief action was tried to the court, the court concluded that the amended bylaws were void. Judgment for plaintiffs was entered on July 6, 2016. Defendants timely appealed.

DISCUSSION

Standing to pursue claims against a nonprofit corporation is circumscribed by statute. (See, e.g., Corp. Code, §§ 5141, 5142, 5223.)¹ To the extent that our review depends on whether

¹ All statutory citations are to the Corporations Code unless otherwise indicated.

plaintiffs have standing under the bylaws of the nonprofits, and the Corporations Code, we employ the following standards of review. Statutory construction is a question of law we review de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) Moreover, when there is no conflicting evidence, we review a trial court's construction of a written instrument de novo. Where the court's findings turn on disputed facts, we employ the substantial evidence standard of review. (See *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1293-1294; see also *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955-956.)

Defendants' argument that the Church lacks standing rests on a strained reading of the bylaws of the two nonprofits together with a few selected provisions of the California Nonprofit Corporation Law, an enormous body of law contained in title 1, division 2 of the Corporations Code sections 5000 to 10841. Defendants' arguments also assume we will ignore the bylaws of the Church, the Discipline of the A.M.E. Church, and the history of the two nonprofits.

Defendants contend that section 5141 provides that only a member may sue a nonprofit corporation.² Section 5056 defines a

² Section 5141 provides in pertinent part: "[n]o limitation upon the activities, purposes, or powers of the corporation or upon the powers of the members, officers, or directors, or the manner of exercise of such powers . . . shall be asserted . . . , except in a proceeding: (1) by a member or the state to enjoin the doing or continuation of unauthorized activities by the corporation or its officers . . . , (2) to dissolve the corporation, or (3) by the corporation or by a member suing in a representative

member as, essentially, anyone who is designated as such in the corporation's articles or bylaws as having authority to make specified decisions on behalf of the nonprofit corporation.³ Defendants contend the Church is not designated as a "member" in the bylaws, and thus it lacks standing to sue.

Defendants' argument makes no sense. First, as defendants point out, one of the nonprofits, FAME Assistance Corporation, according to its bylaws, *has no members*. The Nonprofit Corporation Law explicitly authorizes a nonprofit corporation without members, in order to "do[] away with the useless and time-consuming formalities of holding member meetings when in fact there are no members within the meaning of the nonprofit law." (Legis. Com. com., Deering's Ann. Corp. Code (2009 ed.) foll. § 5310, p. 113.) If there were any merit to defendants' contention that only a member as defined in section 5056 has standing to sue for the ultra vires acts of rogue directors or officers, then no one could ever sue a nonprofit which

suit against the officers or directors of the corporation for violation of their authority." (*Id.*, subd. (a).)

³ Section 5056 provides in pertinent part that a "member" is "any person who, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or substantially all of the assets of a corporation or on a merger or on a dissolution 'Member' also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote on changes to the articles or bylaws." (*Id.*, subd. (a).) Subdivision (d) provides that a person is not a member "by virtue of any . . . [¶] . . . rights such person has to designate or select a director or directors." (*Id.*, subd. (d)(2).)

has no members.⁴ Such a result would not only defeat the purpose of section 5310 to dispense with the requirement that a nonprofit have members, it would thwart any attempt by anyone to challenge unlawful acts by those claiming in bad faith to have control of such a nonprofit. It would also require us to ignore the provisions of subdivision (b) of section 5310, which provides that where there are no members of a nonprofit corporation, then any act which would require approval of the members may be taken by the board, notwithstanding any other statute or the articles or bylaws.⁵

We find unpersuasive the hypertechnical arguments defendants assert about who is a “member” with standing to sue. The bylaws of both nonprofits confer upon the Church authority to vote for the election of directors. The bylaws of FAME Housing Corporation provide that directors would be elected at the Church’s annual meeting. The bylaws of FAME Assistance Corporation provide that the board shall be composed of the leaders of the Church. Vacancies could also be filled by the

⁴ While section 5223 permits a director to sue to remove any director for “fraudulent or dishonest acts or gross abuse of authority or discretion[,]” this subdivision would be of little assistance if, for example, no director chose to act, or all directors were compromised, as was the case here. (*Id.*, subd. (a).)

⁵ “In the case of a corporation which has no members, any action for which there is no specific provision of this part applicable to a corporation which has no members and which would otherwise require approval by a majority of all members (Section 5033) or approval by the members (Section 5034) shall require only approval of the board, any provision of this part or the articles or bylaws to the contrary notwithstanding.” (§ 5310, subd. (b).)

Church. Thus, in the case of FAME Assistance Corporation, which has no members, section 5310 confers standing on the Church insofar as the statute provides that any member of the board may act for a nonprofit corporation with no members, because the board is selected by the Church acting through its members and leaders, and is comprised of Church members. In the case of FAME Housing Corporation, which has members, section 5310 confers standing to the extent that board members are elected at the Church's annual meeting by the members of the Church, and the board is comprised of at least five members of the Church.

Moreover, in the case of FAME Housing Corporation, the nonprofit that has members, section 5056 confers standing on the Church insofar as the statute defines a "member" to include "any person who, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors." (§ 5056, subd. (a).)

The Church has consistently contended, in the trial court and on appeal, that it is the only member of the two nonprofits. We understand this to mean the Church has plenary and sole power to select the boards of the two nonprofits, to ensure they fulfill the mission of the Church and not be diverted to other purposes, and we agree that is the case.

Concerning Pastor Boyd's standing, we begin by stating the obvious: The Church is a nonprofit corporation, and as such, it acts through those natural persons who are vested with authority to act on behalf of the Church. (See, e.g., *Dearborn v. Grand Lodge Ancient Order of United Workmen* (1903) 138 Cal. 658, 663.) The bylaws of the Church state that management is vested in those members of the Church who serve on the Board of Stewards and the Board of Trustees. The bylaws also state that the pastor shall be the chairman of the Board of Stewards. Thus,

as chairman of the Board of Stewards, Pastor Boyd has authority to act on behalf of the Church. In addition, the Discipline of the A.M.E. Church requires that the senior minister sit as chairperson of all organizations and activities within his church. From the formation of the nonprofits in the 1980's until 2012, the senior pastor of the Church served as chairman of the board for both nonprofits. By virtue of the authority vested in Pastor Boyd by the bylaws of the Church, the Discipline by which it is governed, and the bylaws of the nonprofit corporations, we find Pastor Boyd has standing to sue on behalf of the Church.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.