

VIRGINIA :
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----- x
IN RE: :
MULTI-CIRCUIT EPISCOPAL : OMNIBUS CASE NO.
CHURCH PROPERTY LITIGATION : CL2007-0248724
----- x

Fairfax, Virginia
Friday, September 14, 2007

The above-entitled matter came on for hearing before The Honorable Randy I. Bellows, Judge in and for the Circuit Court of Fairfax County, Virginia, 4110 Chain Bridge Road, Courtroom 4G, Fairfax, Virginia, beginning at approximately 2:04 p.m.

....

9 I am going to start out by giving you two lists.
10 I said one list, but it's actually two lists. The first
11 is the legal questions that I believe need to be resolved,
12 and the second is a tentative sense of what the scope of
13 the hearing should be. But, as written now, the scope of
14 the hearing is based on an assumption that none of these
15 issues are resolved prior to the November hearing. If, in
16 fact, all or some of these, it would, obviously, truncate
17 the November hearing, but what I wanted to say is that if
18 I didn't resolve any of these legal issues before the
19 November hearing, this is what I see as the scope of the
20 hearing. Do both of you understand that? Okay.
21 All right. Here are the questions of law, and
22 they are really not in any particular order of importance

1 or organization:
2 One, does the term division -- and, of course, I
3 mean that in the context of 57-9 -- require a formal
4 declaration by the highest level of a hierarchical church?
5 The second question is whether the term division
6 is defined differently in 57-9(A) and 57-9(B).
7 The third question, does a church have to be
8 hierarchical to be subject to 57-9(A)?
9 Fourth question, in order to be attached -- in
10 quotes, as that term is used in 57-9 -- to a church or
11 religious society, does a local church have to be

12 subordinate to or controlled by a national church or
13 religious society? In other words, that question is
14 really asking what is the meaning of attached in 57-9.
15 The fifth question, in order for an entity to
16 constitute a branch -- in quotes, as that term is used in
17 57-9 -- does it have to be created or spun off from a
18 national church or a hierarchical church? What I am
19 getting at there is there is a lot of discussion in these
20 pleadings about the CANA churches' characterization of the
21 churches having joined an offshoot -- which is the word
22 used in the CANA briefs -- and it appears to be the

40

1 position of TEC and the Diocese that a branch has to be a
2 creature or divided from the -- in this case, the
3 Episcopal Church. So that is the question, essentially,
4 what the term branch means.
5 The sixth question is does the term religious
6 society as that term is used in 57-9 include a
7 non-hierarchical loose affiliation of religious entities?
8 Now, I understand that there is some difference of opinion
9 as to what the Anglican Communion is and where it fits on
10 the continuum between, on the one hand, a completely loose
11 affiliation and, on the other hand, a hierarchical church.
12 And that may require evidence, actually, but the question
13 really turns on what the meaning of religious society is
14 under the statute.
15 Okay. Now, the scope of the hearing. Again,
16 this is what the scope of the hearing would be if I don't
17 resolve any of the legal issues that have been put before
18 me at this time.
19 First, obviously, has there been a division
20 within the Episcopal Church and the Diocese?
21 Second, is the Anglican Communion a church or
22 religious society as that term is used in 57-9?

41

1 Third, were the departing churches attached to
2 the Anglican Communion?
3 Fourth, is there a division within the Anglican
4 Communion?
5 I would say before I continue that I do not list
6 as subjects for the hearing the question of whether the
7 Episcopal Church is a hierarchical church or whether the
8 individual churches were attached to the Episcopal Church,
9 because that issue does not appear to me to be in dispute.

10 Those issues do not appear to be in dispute. If they are,
11 then, obviously, you will tell me.

12 And then the last two questions is whether CANA
13 is a branch of the Episcopal Church and whether CANA is a
14 branch of the Anglican Communion. Now, you may note that
15 I do not list as a subject matter for the 57-9 hearing any
16 question related to the procedural issues associated with
17 the vote because, to me, it makes no sense at all to get
18 into several days of testimony as to the accuracy of the
19 voting and the procedures used for the voting until I have
20 resolved all these other issues because, depending upon
21 the resolution, we may or may not ever need to reach that
22 issue, nor is it clear to me that the Episcopal Church and

42

1 the Diocese, if we do reach these issues, are going to
2 contest the procedures used to take the vote. They may,
3 but in any case, it doesn't seem to me to make any sense
4 to have this as a subject for the November hearing until I
5 have resolved all the other issues.

....

112

12 THE COURT: All right. Well, this discussion
13 illustrates the extent to which there are a number of
14 unresolved issues and case law and also my own evaluation
15 of the evidence -- excuse me -- my own evaluation of the
16 law in this case. But I told you that the last thing I
17 was going to do today is tell you what the scope of the
18 hearing is.

....

113

10 The scope of the hearing will be what I said
11 earlier I contemplated it being, because I am not going to
12 resolve prior to the November hearing the various legal
13 questions that I have raised. The reason I'm not going to
14 resolve them is because the CANA churches believe that I
15 need to hear certain evidence to make that decision, and I
16 am going to give them the opportunity to make that case.
17 I am not agreeing that I need such evidence to make the
18 decisions. But I want to provide them the opportunity to
19 make their best case for the positions that they are
20 asserting, and I am going to give them that opportunity.

21 And so I am not going to decide the legal questions that
22 we have been discussing for the last several hours before

114

1 the hearing and before an -- at least one -- additional
2 round of briefing on these questions which would follow
3 the hearing.

4 In other words, I don't anticipate that in
5 November at the conclusion of the hearing I will give you
6 a decision. What I anticipate is that, having taken the
7 testimony, each party will have the opportunity to submit
8 briefs, and then I will give you a decision. I would
9 imagine it would be an opinion letter, but -- that remains
10 to be seen, but in some form, I will give you my decision.

11 What I would add to the scope of the hearing
12 that I have discussed before is the question that I had
13 put in, a question of law issue, I will put it in the
14 scope of the hearing only because Mr. Coffee has
15 represented that he believes there is evidence relevant to
16 these questions, and that is what is the meaning of the
17 term division, the term branch, the term church or
18 religious society and the term attached, those four terms
19 that appear in 57-9.

20 The other question I would add is the question
21 Mr. Coffee said is -- whether ADV is a branch of the
22 Diocese, which I assume, by asking the question,

115

1 Mr. Coffee believes and will advocate that ADV is a branch
2 of the Diocese.

3 I will not -- as I told you I was not inclined
4 to do, we will not at the November hearing address the
5 procedural regularities issues associated with the vote,
6 with the various votes, because I don't believe -- that is
7 something we will need to address -- if I ultimately
8 determine that there was a division under 57-9, then I
9 will have to address it, but I do not need to address it
10 now and we do not need to address it until the 57-9 -- the
11 other issues in 57-9 have been resolved.