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publication in the Pacific Reporter.*

IN THE SUPREME COURT OF THE STATE OF UTAH

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The Fundamentalist Church
of Jesus Christ of Latter-Day
Saints, an association of
individuals,
Petitioner,

No. 20090859

v.

The Honorable Denise P. Lindberg,
Third District Court Judge,
Respondent.

F I L E D

August 27, 2010

Original Proceeding in this Court

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INTRODUCTION

¶1 This case concerns the United Effort Plan Trust ("UEP Trust" or "Trust")--a trust originally formed in 1942 by what petitioners characterize as a fundamentalist religious group that was the predecessor of the Fundamentalist Church of Jesus Christ of Latter-Day Saints. The Trust was modified in 1998 so that it qualified as a charitable trust under Utah law. In 2006, the Utah Third District Court issued an order that modified the Trust again. This order was not appealed or otherwise challenged for nearly three years. In a petition for extraordinary writ, an association of members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the "FLDS Association")¹ challenges the district court's modification and subsequent administration of this Trust as unconstitutional and in violation of Utah law. We hold that because the FLDS Association has delayed this challenge for nearly three years, and because during this time, many parties have engaged in numerous transactions in reliance on the Trust's modification, the FLDS Association's trust modification claims are barred by the equitable doctrine of laches. We also hold that all of the FLDS Association's remaining claims regarding trust administration, except one, are also barred by laches because they involve the same delay and prejudice as the modification claim. The claim that is not barred by laches is barred because it is not ripe for adjudication.

BACKGROUND

¶2 In 1942, the spiritual leadership of a fundamentalist religious movement called the "Priesthood Work" formed the United Effort Plan Trust. The UEP Trust stated that its purpose was "charitable and philanthropic," but conditioned membership in the Trust upon "consecration" of real and mixed property to the Trust. For this fundamentalist group--predecessors of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the "FLDS Church" or "Church")--consecration was an act of faith whereby members deeded their property to the UEP Trust to be managed by Church leaders. Church leaders, who were also

¹ The FLDS Association currently petitioning is not the FLDS Church, nor the corporation of that church's president. Rather, the association describes itself as "The Fundamentalist Church of Jesus Christ of Latter-Day Saints, an association of individuals."

trustees, then used this property to minister to the needs of the members.

¶3 In 1986, some Trust property residents sued the UEP trustees for breach of fiduciary duty. The district court rejected those claims, finding that since the UEP Trust was charitable rather than private, the plaintiffs lacked standing to sue. In 1998, we reversed the district court's holding that the Trust was charitable.² We first noted that charitable trusts differ from private trusts because "in a private trust[,] property is devoted to the use of specified persons who are designated as beneficiaries of the trust; whereas a charitable trust has as a beneficiary a definite class and indefinite beneficiaries within the definite class, and the purpose is beneficial to the community."³ We then found that the UEP Trust was not a charitable trust because it was intended, from its inception, to benefit specified persons, namely the Trust's founders.⁴

¶4 In response to our decision, Rulon Jeffs, the sole surviving founder and beneficiary of the 1942 Trust, acting for himself and also in his capacity as president and Corporation Sole of the FLDS Church, along with the other trustees, executed the "Amended and Restated Declaration of Trust of the United Effort Plan" (the "1998 Restatement"). It is not disputed that the 1998 Restatement of the 1942 UEP Trust qualifies as a charitable trust. It broadened the class of beneficiaries beyond the founders of the Trust to all of those who "consecrate their lives, time[,], talents, and resources to the building and establishment of the Kingdom of God on Earth under the direction of the President of the [FLDS] church." The 1998 Restatement provided that "in the event of termination of this Trust, whether by the Board of Trustees or by reason of law, the assets of the Trust Estate at that time shall become the property of the Corporation of the President of the [FLDS Church]."

¶5 In 2004, then-FLDS Church president, Warren Jeffs, the Trust, and the FLDS Church were sued in two separate tort actions: the first action alleged child sexual abuse, assault, and fraud primarily against Warren Jeffs; the second alleged

² Jeffs v. Stubbs, 970 P.2d 1234, 1239 (Utah 1998).

³ Id. at 1252 (emphasis added) (quoting Olivas v. Bd. of Nat'l Missions of Presbyterian Church, 405 P.2d 481, 485 (Ariz. Ct. App. 1965)).

⁴ Id. at 1252-53.

civil conspiracy, fraud, breach of fiduciary duties, and other torts against Warren Jeffs, the FLDS Church, and the Trust. Rodney Parker of the law firm of Snow, Christensen & Martineau served as attorney for the Trust and the FLDS Church in these actions until he withdrew because his clients insisted upon a course of conduct with which he fundamentally disagreed, and because his clients had discharged him. Warren Jeffs, as controlling trustee, did not appoint a substitute attorney to defend the Trust in the litigation, leaving the Trust vulnerable to default judgments against it.

¶6 With this concern in mind, Mr. Parker filed motions in the district court asking the court to give notice to the Utah Attorney General ("Utah AG") and the Trust land residents before entering a default judgment against the Trust. In response, the Utah AG petitioned the district court for (1) removal of the trustees for breach of fiduciary duty; (2) an order compelling Warren Jeffs and the other trustees to appear and file an inventory, final report, and accounting of the administration of the Trust; and (3) appointment of a special fiduciary to serve until new trustees were appointed. The Utah AG's petition was filed in May 2005. Personal service was made on those trustees who could be found. Trustees who could not be served personally were served via substitute service. Publications were made where Trust participants resided.

¶7 In a June 2005 preliminary injunction, the district court suspended the trustees and appointed a special fiduciary for the Trust. The special fiduciary's powers and authority were outlined in various district court orders. The district court gave the special fiduciary authority to act on behalf of the Trust. The district court also ordered the suspended trustees to prepare an accounting, deliver records, and cooperate with the fiduciary, but the suspended trustees failed to comply with this order. The district court asked the special fiduciary to prepare a memorandum identifying issues the court needed to address before appointing new trustees. Ultimately, the special fiduciary expressed concern in a memorandum filed with the district court that the Trust needed to be reformed if new trustees were to be appointed.

¶8 On December 13, 2005, the district court entered an order that concluded the Trust could be reformed so that the special fiduciary could administer the Trust to meet the "just wants and needs" of the beneficiaries according to neutral, nonreligious principles. The district court cited Utah Code section 75-7-413 as its authority to use the doctrine of cy pres to modify the Trust. Cy pres is a common-law doctrine, now adopted by statute in Utah Code section 75-7-413, that courts may

apply when a charitable purpose of a trust "becomes unlawful, impracticable, impossible to achieve, or wasteful."⁵ Rather than allowing the Trust to fail in these situations, under the common law, courts would apply the trust "'to other charitable objects lawful in their character, but corresponding, as near as may be to the original intention of the [settlor].'"⁶ The Utah Code's similar language allows a court faced with a trust whose purpose has become "unlawful, impracticable, impossible to achieve, or wasteful . . . to modify or terminate the trust by directing that the trust property be applied or distributed . . . in a manner consistent with the settlor's charitable purposes."⁷

¶9 The district court listed two reasons for using cy pres to reform the Trust. First, the court found that the trustees had breached their fiduciary duties of loyalty and prudent trust administration. Second, it found several Trust provisions to be "fundamentally flawed and unworkable."

¶10 The following three principles guided the district court's reformation of the Trust: First, the court would attempt to preserve the Trust's charitable intent. Second, the court would only give effect to the Trust's legitimate and legal purposes. Finally, the court would employ "neutral principles of law."

¶11 To meet its first goal of preserving the Trust's charitable intent, the district court had to first identify that intent. It characterized the 1998 Restatement as having at least two purposes: first, the Trust was to advance the religious doctrines and goals of the FLDS Church; and second, the Trust was to provide for the just wants and needs of the FLDS Church members. The FLDS Association characterizes each of these goals as religious because participation in the Trust was conditioned upon living according to Church principles, with the president of the FLDS Church being the ultimate arbiter of individual righteousness.

⁵ Utah Code Ann. § 75-7-413(1) (Supp. 2010); see also In re Gerber, 652 P.2d 937, 939-40 & n.4 (Utah 1982) (explaining the history of the common-law cy pres doctrine).

⁶ Gerber, 652 P.2d at 939 (quoting Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1, 56 (1890)).

⁷ Utah Code Ann. § 75-7-413(1)(c).

¶12 Using the second of its principles--to give effect only to the Trust's legitimate and legal purposes--the district court held that it could reform the Trust by excising the purpose of advancing the religious doctrines and goals of the FLDS Church to the degree that any of these were illegal. As examples of illegal doctrines it could not sanction, the district court listed "polygamy, bigamy, [and] sexual activity between adults and minors." The court instead focused its reformation on preserving the Trust's goal of providing for the just wants and needs of Trust participants, which it held was a "lawful religious purpose[]." "

¶13 Despite finding a "lawful religious purpose," the third of the district court's principles mandated that the court reform the Trust using "neutral principles." The court understood this to mean that it could not resolve property disputes on the basis of religious doctrine. The district court's memorandum decision states,

[C]ourts are prohibited by the First Amendment from resolving "rights to the use and control of church property on the basis of a judicial determination that one group of claimants has adhered faithfully to the fundamental faiths, doctrines and practices of the church . . . while the other group of claimants has departed substantially therefrom." In short, courts must separate that which is primarily ecclesiastical from that which is primarily secular, and must defer to ecclesiastical authority for ecclesiastical determinations.

But the district court felt that if FLDS ecclesiastical leaders were able to make ecclesiastical determinations about who participated in the Trust, many former or disaffected members of the FLDS Church who consecrated property to the Trust "could be excluded from consideration notwithstanding their prior consecrations to the Trust." The district court found this unacceptable. It resolved that the Trust needed to be modified so that the role of ecclesiastical leaders would be to provide "non-binding input" to future trustees. These trustees would then use a neutral set of criteria and their own "good judgment"--informed but not bound by FLDS ecclesiastical advice--to determine the "just wants and needs" of the beneficiaries.

¶14 Ultimately, the district court concluded that implementation of these principles would require modifying each section of the Trust. These modifications included the

following: stating that Trust property would only be used in furtherance of "legitimate Trust purposes" as identified by the court; allowing FLDS leaders to offer their nonbinding input, but granting the Board of Trustees the ultimate authority to determine who would be allowed to live on Trust property and what the Trust property residents' just wants and needs were; limiting the Board's power to order relocation or property sharing among Trust property residents to situations where the relocation arrangement was "necessary for legitimate Trust administration reasons"; and deleting or modifying the Trust's requirement that occupants of Trust land live according to Church doctrine. The goal of the district court was unambiguous: "A clear division must exist between the authority of the Board to act with respect to the Trust, and the authority of the priesthood to act with respect to the [FLDS Church] Plan."

¶15 The district court decided that the Trust's third section would also need to be modified to strip the FLDS Church president of several powers under the Trust. First, the district court would remove any requirement that the president of the FLDS Church approve any Board action. Since the 1998 Restatement gave the FLDS Church president power to appoint and remove trustees, the district court invited interested parties to suggest Trust modifications that would allow for a different method of appointing and removing trustees. Second, the district court modified the Trust to remove the president of the Church as trustee and as president of the Board of Trustees. The court felt this modification was necessary because it had just suspended Warren Jeffs, the FLDS president, as a trustee and because it wanted to keep the Church and the Church Plan separate from the Trust. Finally, the district court found that a reversionary clause that would cause the Trust to revert to the FLDS president in the event of termination needed to be altered because the court had just suspended the FLDS president's trusteeship for violation of his fiduciary duties to Trust beneficiaries, and because, in the event of reversion, the Trust assets might be used to further illegal FLDS practices.

¶16 In its order, the district court invited suggestions for reformation of the 1998 Restatement. It also formed an advisory board to aid the special fiduciary in administration of the Trust until trustees could be appointed. It was understood that the court would consider the members of the advisory board as candidates to become trustees. There were no active FLDS members on the advisory board. On October 25, 2006, the court entered an order reforming the Trust (the "2006 Reformed Trust"). This order was not appealed.

