

11CA1405 Ananda Marga v. Avadhuta 04-10-2014

COLORADO COURT OF APPEALS

DATE FILED: April 10, 2014
CASE NUMBER: 2011CA1405

Court of Appeals No. 11CA1405
City and County of Denver District Court No. 10CV1867
Honorable Michael A. Martinez, Judge

Ananda Marga, Inc., a Colorado Nonprofit Corporation; Fernando Kumar, a/k/a Ac. Tirthananda Avt., an individual; Donald W. Nelson, a/k/a Ac. Vedaprajanananda Avt., an individual; Rubens C. Teixeira, a/k/a Ac. Rainjitananda Avadhuta, an individual; Prabha Thakur, a/k/a Avtk. Ananda Vibha Ac., an individual; Jody Wright, a/k/a Ac. Devanistha, an individual; William C. Dorf, a/k/a Valmiki, an individual; L. Michael Hemmelgarn, a/k/a Vinaya, an individual; Wayland Secrest, a/k/a Vishvadeva, an individual; Ananda Marga of Denver, Inc., a Colorado Nonprofit Corporation; Ananda Marga Pracaraka Samgha, Inc., a Colorado Nonprofit Corporation; Ananda Marga Women's Welfare, Inc., a Kansas Nonprofit Corporation; Ananda Marga Yoga Society, Inc., an Illinois Nonprofit Corporation; Ananda Dhiira Sierra Foothills, Inc., a California Nonprofit Corporation; Ananda Marga of Albany, Inc., a New York Nonprofit Corporation; Ananda Marga of Eugene, Inc., an Oregon Nonprofit Corporation; New Day Ananda Marga School of Portland, Inc., an Oregon Nonprofit Corporation; Progressive Schools, Inc., a Florida Nonprofit Corporation; Ananda Marga of Minneapolis, Inc., a Minnesota Nonprofit Corporation; Ananda Marga of North Carolina, Inc., a North Carolina Nonprofit Corporation; Ananda Marga of New York City, Inc., a New York Nonprofit Corporation; Ananda Marga of Philadelphia, Inc., a Pennsylvania Nonprofit Corporation; and Ananda Marga of Vermont, Inc., a Vermont Nonprofit Corporation,

Plaintiffs-Appellants,

v.

Acharya Vimalananda Avadhuta, an individual; Clark E. Forden, an individual; Dipendra Kumar Singh, a/k/a Acarya Dharmapremananda Avadhuta, an individual; Dirk Duill, a/k/a Acarya Divyalokeshananda Avadhuta, an individual; Shyam Sundar Kaushesh, an individual; Piyush Bhatnagar, an individual; and Steve Maniscalco, an individual,

Defendants-Appellees,

and

Ananda Marga Pracaraka Samgha,

Intervenor-Appellee.

JUDGMENT AFFIRMED

Division VI

Opinion by JUDGE GABRIEL

Hawthorne and Lichtenstein, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)

Announced April 10, 2014

Jin, Schauer & Saad LLC, Charles T. Mitchell, Denver, Colorado; Sander Ingebretsen & Wake, PC, Christopher C. Noecker, Denver, Colorado, for Plaintiffs-Appellants

Gammon & Grange, P.C., Scott J. Ward, Timothy R. Obitts, McLean, Virginia; Berg Hill Greenleaf & Ruscitti LLP, Alan C. Friedberg, Boulder, Colorado, for Defendants-Appellees and Intervenor-Appellee

Plaintiffs, Ananda Marga, Inc. (AMI), Fernando Kumar a/k/a Ac. Tirthananda Avt. (Tirthananda), and numerous persons and entities affiliated with them, appeal the trial court's order, entered after plaintiffs' presentation of evidence during a bench trial, that (1) denied them declaratory relief and (2) granted declaratory relief to defendants, a group of individuals claiming to be the rightful board of directors of AMI, and to intervenor, Ananda Marga Pracaraka Samgha (AMPS), a religious society registered in India.

We conclude that (1) the trial court did not improperly resolve a dispute between competing religious factions in violation of the First Amendment, and (2) the trial court did not err in taking judicial notice of an Indian court's July 2006 ruling in litigation between competing factions of AMPS. Accordingly, we affirm.

I. Background

The evidence at trial showed, and the trial court found, the following pertinent facts:

AMPS is a hierarchical religious society and denomination of Hinduism. At the top of the hierarchy, which is pyramidal in structure, is AMPS's spiritual leader, who is called the Purodha

Pramukha. Immediately beneath the Purodha Pramukha in the ecclesiastical hierarchy is the Purodha Board. This board is the ecclesiastical body that chooses the Purodha Pramukha from among its membership, and the board's decisions are viewed as unassailable.

In addition to the foregoing, the Purodha Pramukha appoints and oversees the office of the general secretary and selects members of the central executive committee. The central executive committee is the key policymaking arm of AMPS, and the General Secretary, who reports directly to the Purodha Pramukha, is the person principally responsible for AMPS's general administration.

In order to propagate AMPS's beliefs, the founder of AMPS divided the world into nine sectors. As pertinent here, the New York Sector includes North and Central America, and at least by the beginning of 2003, AMI was the corporate entity associated with that sector.

AMI's highest executive officer was its Sectorial Secretary. AMI's bylaws provided that the Sectorial Secretary was appointed by AMPS's General Secretary and that the Sectorial Secretary, in turn,

was empowered to appoint the remaining officers of AMI. The bylaws also provided that they could be amended, but only with the prior written approval of the Sectorial Secretary, which approval was contingent on the consensus of AMI's board of directors.

In January 2003, the General Secretary, Ac. Dhruvananda Avt. (Dhruvananda), appointed plaintiff Tirthananda as the Sectorial Secretary for the New York Sector. Months later, there was a split in AMPS, resulting in litigation between an AMPS faction based in Ranchi, India (AMPS-Ranchi) and an AMPS faction based in Kolkata, India (AMPS-Kolkata). AMPS-Ranchi kept Dhruvananda as General Secretary, AMI as the corporate entity associated with the New York Sector, and Tirthananda as the Sectorial Secretary of AMI. AMPS-Kolkata, however, appointed its own General Secretary and Sectorial Secretary for the New York Sector, and it elected an independent board of directors for that sector.

On October 30, 2005, General Secretary Dhruvananda announced that he was transferring Sectorial Secretary Tirthananda to a different sector and posted Ac. Shubhatmananda Avt. (Shubhatmananda) as the new New York Sectorial Secretary.

In response, a core group of adherents in the New York Sector, including at least one of the plaintiffs, wrote to the Purodha Board requesting a review and rejection of Tirthananda's transfer. In this letter, the adherents did not question Dhruvananda's legitimacy or his right to order Tirthananda's transfer. Rather, they argued against the transfer because, among other things, it was contrary to the New York Sector's mission and would disrupt the function of the sector, and because they felt that Tirthananda had performed exemplary work for the sector.

The Purodha Board initially stayed Tirthananda's transfer, but the Board vacated that stay on January 6, 2006.

Thereafter, AMI's board of directors voted to amend its bylaws. The amendment purported to require that the appointment of any new Sectorial Secretary be ratified by a two-thirds vote of the AMI board, not including the incumbent Sectorial Secretary. Shubhatmananda, whom Dhruvananda had appointed to replace Tirthananda as AMI's Sectorial Secretary, never gave prior written approval to this amendment.

Subsequently, Dhruvananda reaffirmed his decision to

transfer Tiirthananda to a different sector, but apparently because Shubhatmananda had become needed elsewhere, Dhruvananda then posted Ac. Vimalananda Avt (Vimalananda) as the new New York Sectorial Secretary. Thereafter, Dhruvananda repeatedly directed Tiirthananda to turn over his duties to Vimalananda. Tiirthananda and AMI's board of directors, however, refused to do so, and ultimately, on October 23, 2009, Vimalananda replaced AMI's board of directors with a new slate of directors, who are now the defendants in this case.

Plaintiffs then initiated this action against defendants, seeking, as pertinent here, a declaration confirming and affirming the rights and status of the individual plaintiffs in this case as the rightful board of directors of AMI. Defendants responded by filing a counterclaim, seeking, as pertinent here, a declaration that *they* are the rightfully appointed directors of AMI. AMPS, which was then comprised of the AMPS-Ranchi faction, subsequently intervened as a defendant and filed its own declaratory judgment counterclaim, which was substantively identical to defendants' counterclaim. The parties later filed cross-motions for summary judgment, but the

trial court denied those motions, and the case proceeded to a bench trial.

At trial, without objection, the court admitted certain evidence relating to litigation in India between AMPS-Ranchi and AMPS-Kolkata. Notably, the court did so pursuant to requests from *both* plaintiffs and defendants (plaintiffs sought to introduce the exhibits first, and defendants objected, subject to their right to introduce their own similar exhibits; the court admitted both sides' proffered exhibits). This evidence included an Indian court's July 2006 order authorizing Dhruvananda to continue to act as General Secretary of AMPS while the litigation between the two factions was pending. The court stated that it was entering the order to allow for the smooth functioning of AMPS and to avoid "further litigation and chaos."

After plaintiffs completed their presentation of evidence at trial, defendants and AMPS moved to dismiss plaintiffs' claims under C.R.C.P. 41(b)(1). They also asked the court to reconsider their prior motion for summary judgment on their counterclaims. In their motions, defendants and AMPS asserted that AMPS is a

hierarchical church and that the court was required to enforce the decision of the highest ecclesiastical body to transfer Tiirthananda. Plaintiffs responded by questioning whether AMPS is, in fact, a hierarchical church and by asserting that this question was nevertheless beyond the scope of this litigation. Plaintiffs then proceeded to argue that there was a “hot dispute” between factions within AMPS and that, as a result, the trial court had no jurisdiction to determine who the authorized General Secretary was. According to plaintiffs, this, in turn, resulted in a situation where there was no accepted General Secretary or Purodha Pramukha. And because no one was authorized to act as General Secretary, plaintiffs could proceed as they did.

The trial court granted defendants’ and AMPS’s motions to dismiss plaintiffs’ claims and for reconsideration of defendants’ and AMPS’s motion for summary judgment on their counterclaims. As pertinent here, the court found and concluded that:

- It was undisputed that on October 30, 2005, Dhruvananda was the “stand alone” General Secretary with the “unquestioned” authority to transfer Tiirthananda.

- The evidence was uncontroverted that AMPS is a hierarchical religious denomination, and thus the trial court, as a secular court, was obliged to defer to and enforce the decisions of AMPS's highest ecclesiastical authorities in matters concerning the governance of that religious denomination.
- Tirthananda therefore ceased to be the Sectorial Secretary for the New York Sector on October 30, 2005, when he was transferred and his posting was changed, and any actions taken by him as purported Sectorial Secretary for that sector beginning then and going forward were of no legal consequence or effect.
- The purported 2006 amendments to AMI's bylaws were not legally effectual because, among other things, Shubhatmananda, the then-properly appointed Sectorial Secretary, had not passed on or approved them.
- Pursuant to the appointment of the General Secretary, Vimalananda was the rightfully appointed Sectorial Secretary of the New York Sector, and it was thus within his authority to remove and reconstitute AMI's board of directors, which he

did.

Plaintiffs now appeal.

II. First Amendment

Plaintiffs contend that the trial court violated the First Amendment by resolving a dispute as to which AMPS faction controlled AMI. We are not persuaded.

Whether the First Amendment bars a civil court from resolving a dispute involving a religious organization is an issue that goes to the court's subject matter jurisdiction. *See Jones v. Crestview S. Baptist Church*, 192 P.3d 571, 573 (Colo. App. 2008); *see also Van Osdol v. Vogt*, 908 P.2d 1122, 1125 (Colo. 1996) (holding that the First Amendment precluded the court from exercising jurisdiction over particular claims by a minister against her church).

Resolution of a matter concerning a court's subject matter jurisdiction presents an issue of law that we review de novo. *BDG Int'l, Inc. v. Bowers*, 2013 COA 52, ¶ 9, 303 P.3d 140, 143.

The First Amendment to the United States Constitution provides, in part, "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof."

U.S. Const. amend. I. In light of this prohibition, the Supreme Court has made clear that civil courts are precluded from inquiring as to whether a hierarchical church's governing body had the power to decide issues of church polity because allowing courts to probe deeply into matters of religious law and polity would violate the First Amendment in the same manner as a civil determination of religious doctrine. *See Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 708-09 (1976); *see also Congregation Beth Yitzhok v. Briskman*, 566 F. Supp. 555, 558 (E.D.N.Y. 1983) (concluding that the First Amendment precluded judicial consideration of the case before the court because, among other things, the case's resolution would have required the court to determine the proper succession to the post of religious leader in a particular enclave of Chassidism); *Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 879 N.E.2d 1282, 1286 (N.Y. 2007) (concluding that the First Amendment forbade the court from deciding an election dispute between two rival factions of a religious congregation because membership issues were at the center of the dispute, thus placing ecclesiastical matters at issue).

Conversely, the First Amendment permits hierarchical religious organizations to establish their own rules and regulations for internal governance and to create tribunals for adjudicating disputes over these matters. *Serbian E. Orthodox Diocese*, 426 U.S. at 724. When a religious organization exercises this choice and creates ecclesiastical mechanisms to decide disputes over the governance of subordinate bodies, the Constitution requires that civil courts accept as binding the decisions of the ecclesiastical authorities. *Id.* at 724-25.

Colorado case law is in accord with these principles. Thus, in *Moses v. Diocese of Colorado*, 863 P.2d 310, 320 (Colo. 1993), our supreme court observed that “courts must not become embroiled in disputes involving a religious organization if the court would be required to interpret or weigh church doctrine.” This is not to say, however, that a civil court can never decide a dispute involving religious organizations. Colorado law requires the application of the “neutral principles” doctrine when a court is called on to resolve a dispute involving religious institutions. *See id.* Under this doctrine, courts may analyze legal issues that arise out of church

organizations in the same manner as they would analyze those issues if they arose out of a secular corporation or association. *See id.* In doing so, courts may apply the neutral laws of the state to religious organizations. *See id.* Courts may not, however, resolve disputed issues of religious doctrine and practice. *Id.*

Here, plaintiffs argue that they disputed the governing body having control over AMI and that the trial court violated the First Amendment by resolving this dispute. Defendants and AMPS, in contrast, argue that there was no dispute as to what governing body had control over AMI when Dhruvananda ordered Tirthananda's transfer on October 30, 2005 and when the Purodha Board vacated its stay of that order on January 6, 2006. Thus, defendants and AMPS contend that pursuant to *Serbian Eastern Orthodox Diocese*, the court was required to accept the transfer decision as binding. We agree with defendants and AMPS.

Specifically, for several reasons, we agree that the trial court was not called on to decide, and did not in fact decide, the issue of which AMPS faction controlled.

First, as the district court recognized, plaintiffs focused

extensively at trial on whether AMPS was, in fact, hierarchical. As the district court found, overwhelming evidence showed that it was.

Second, the record shows that at the time Tiirthananda was transferred and at the time the Purodha Board lifted the stay of the transfer, plaintiffs did not dispute Dhruvananda's authority as General Secretary to order the transfer or the authority of the board to enforce it. (Although plaintiffs argue for the first time in their reply brief that, contrary to the trial court's finding, the Purodha Board did not, in fact, lift the stay, we will not consider that argument. *See Justi v. RHO Condo. Ass'n*, 277 P.3d 847, 852 (Colo. App. 2011) (noting that the appellate court will not address issues raised for the first time in an appellant's reply brief).) Indeed, Tiirthananda himself conceded Dhruvananda's authority at least through December 2005, and no evidence in the record suggests that he questioned the Purodha Board's authority to enforce the transfer order when it did so. Moreover, as noted above, several of Tiirthananda's supporters, including at least two plaintiffs, appealed the transfer through the established ecclesiastical channels, including through an appeal to the Purodha Board, thus

acknowledging the board's authority over the matter. And in numerous required regulatory filings, including filings with the Internal Revenue Service, representatives of plaintiffs acknowledged the hierarchical nature of AMPS and the authority of AMPS-Ranchi over AMI.

Third, at no time did plaintiffs acknowledge AMPS-Kolkata's authority as the proper central authority of AMPS. Indeed, had they done so, Tiirthananda would not have been the Sectorial Secretary for the New York Sector because the AMPS-Kolkata faction purported to appoint its own Sectorial Secretary. Thus, Tiirthananda himself acknowledged that AMPS-Kolkata had someone other than him as its Sectorial Secretary and that he was the Sectorial Secretary for the New York Sector under the AMPS-Ranchi faction.

The record before the trial court thus established that none of the parties in this action disputed Dhruvananda's authority to transfer Tiirthananda and to appoint a new Sectorial Secretary at the time those decisions were made. Nor did any of the plaintiffs dispute the Purodha Board's authority to enforce the transfer at the

time the board rejected the appeals to it. And none of the plaintiffs questioned the authority of the duly-appointed Sectorial Secretary to appoint members of AMI's board, although plaintiffs had attempted to alter that authority through a bylaw amendment.

For these reasons, and notwithstanding plaintiffs' assertions to the contrary, the trial court was not called on to decide, and did not in fact decide, whether AMPS-Ranchi or AMPS-Kolkata was the proper governing authority of AMPS. Thus, after noting that there was litigation in India between the competing factions of AMPS, the court observed, "[T]hat is not a debate that I need to get into, that is not a resolution that I can offer, that is the [sic] beyond the scope of my authority to review this case and it is beyond the scope, obviously, of my authority to intervene." The court further opined:

[W]e are here primarily because in October of 2005, the then general secretary Dhruvananda endeavored to transfer the then sectorial secretary from the New York Sector, Acarya Tiirthananda Avadhuta, also known as Fernando Kumar. And what is not in dispute, it is not, it is not in dispute, I found no evidence to the contrary, was that on the date and time of that transfer and change in posting Dhruvananda was the stand alone general secretary with the unquestioned authority pursuant to Ananda Marga structure

and authority and code and doctrine to do what he did, which is to transfer Tirthananda, unquestionably.

Because the trial court did not resolve any dispute concerning the internal governance of AMPS, and because the appropriate ecclesiastical authorities had made and enforced the decision to transfer Tirthananda, the First Amendment required the trial court to accept the ecclesiastical authorities' decision as binding, which is what the court did. *See Serbian E. Orthodox Diocese*, 426 U.S. at 724-25.

We are not persuaded otherwise by plaintiffs' citation to the testimony of AMI's corporate secretary that "there were other general secretaries" of AMPS in October 2005. Immediately after making this statement, the witness clarified that he was referring to the general secretary of AMPS-Kolkata and that he did not follow that faction.

Nor are we persuaded by the same witness's testimony that "we [were] not recognizing Dhruvananda as the only legitimate general secretary." This witness was discussing plaintiffs' view in February 2006, after the transfer decision had already been made and enforced. Plaintiffs' positions at that time, however, were

irrelevant to the decision that had previously been made and enforced.

Accordingly, we perceive no First Amendment violation in the court's ruling in this case.

III. Judicial Notice

Plaintiffs next contend that, for two reasons, the trial court erred in taking judicial notice of an Indian court's July 2006 ruling in litigation between AMPS-Ranchi and AMPS-Kolkata. First, they contend that the court erred because under CRE 201, although the court could take judicial notice of the documents for purposes of establishing the existence of the Indian litigation, it could not do so for the purpose of making a factual finding that the Indian court did not make, namely, that Dhruvananda was the permanent General Secretary as of the date of the Indian court's ruling. Second, plaintiffs contend that the Indian court's ruling did not find that Dhruvananda was the General Secretary on October 30, 2005, but merely authorized him to act, on a provisional basis, as General Secretary starting, at the earliest, in July 2006. We are not persuaded by either argument.

As an initial matter, we note that it is unclear whether this issue was, in actuality, a question of the propriety of judicial notice. As noted above, at trial, the court admitted the documents at issue into evidence without objection by plaintiffs. Nonetheless, because the court referred in its findings of fact and conclusions of law to having taken judicial notice of these documents, we will address the issue.

With respect to plaintiffs' assertion concerning the scope of CRE 201, plaintiffs did not make that argument at trial, and, therefore, we will not consider it. *See In re Estate of Stevenson v. Hollywood Bar & Cafe, Inc.*, 832 P.2d 718, 721 n.5 (Colo. 1992) (noting that arguments never presented to, considered by, or ruled on by a trial court may not be raised for the first time on appeal).

With respect to plaintiffs' assertion that the Indian court's ruling did not find that Dhruvananda was the General Secretary on October 30, 2005 but merely authorized him to act, on a provisional basis, as General Secretary beginning in July 2006, even if true, the point is of no import. The trial court did not state that it was relying on the Indian court's ruling to support its finding as to

Dhruvananda's authority, nor did it need to do so. As discussed above, the undisputed evidence at trial established Dhruvananda's authority to do what he did at the time he did it and the court so found. Only then did the court refer to the Indian Court's ruling, and it did so in the context of corroborating what it had already found.

Accordingly, to the extent the trial court took judicial notice of the Indian Court's July 2006 ruling, we conclude that it did not abuse its discretion or reversibly err in doing so.

IV. Conclusion

For these reasons, the judgment is affirmed.

JUDGE HAWTHORNE and JUDGE LICHTENSTEIN concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

CHRIS RYAN
CLERK OF THE COURT

PAULINE BROCK
CHIEF DEPUTY CLERK

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(I), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b) will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT:

Alan M. Loeb
Chief Judge

DATED: October 10, 2013

Notice to self-represented parties: *The Colorado Bar Association provides free volunteer attorneys in a small number of appellate cases. If you are representing yourself and meet the CBA low income qualifications, you may apply to the CBA to see if your case may be chosen for a free lawyer. Self-represented parties who are interested should visit the Appellate Pro Bono Program page at <http://www.cobar.org/index.cfm/ID/21607>.*