

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

BARRY R. BRIGHT, KENNETH S.
BURR, REBA BAILEY CALDWELL,
LARRY P. DeBOER, C. DALE
DUNNAWAY, BENNY FAY FOWLER,
NANCY B. McCLUNG and
WILLIAM V. MCGREGOR, as
Trustees of NEW HOPE CUMBER-
LAND PRESBYTERIAN CHURCH,

Plaintiffs,

vs.

GEORGIA O. FERNAMBUCQ and
GRACE J. BISHOP, as REPRESENT-
ATIVE PARTIES ON BEHALF OF A
CLASS CONSISTING OF ALL OF
THE HEIRS, KNOW AND UNKNOWN,
OF ISAAC W. JOHNSON AND WIFE,
M.A.R. JOHNSON, and
IN REM AGAINST THE REAL
PROPERTY DESCRIBED IN EXHIBIT
"A" WHICH IS ATTACHED HERETO
AND EXPRESSLY INCORPORATED
HEREBY BY REFERENCE TO THE
SAME EXTENT AS IF FULLY SET
OUT HEREIN AS A DEFENDANT,

Defendants.

CIVIL ACTION NO.: CV 94-754



Inst # 1296-39073

FINAL JUDGMENT

This matter came before the Court for an ore tenus hearing on October 4, 1996, and upon consideration of the pleadings and evidence presented, the Court finds as follows:

1. This cause is brought in rem pursuant to Code of Alabama §6-6-560 et seq. by the Trustees of the New Hope Cumberland Presbyterian Church (hereafter referred to as "Church") to establish the right or title and clear up all doubts or disputes

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concerning a condition or restrictive provision, which had been marked over in the warranty deed by which the Church acquired title to the property located in Shelby County, Alabama, and described as Exhibit "A".

2. The Church acquired title to the property described in Exhibit "A" by a warranty deed dated July 21, 1888, from Isaac W. Johnson and wife, M. A. R. Johnson, which was filed for record on August 30, 1935, in the Office of the Judge of Probate of Shelby County, Alabama, in Deed Record Vol. 94, Page 495. The Church has been in continuous possession and control of said property since its acquisition.

3. This cause listed as defendants two heirs of Isaac W. Johnson and M. A. R. Johnson, as representative parties on behalf of a class consisting of their heirs and descendants, known and unknown. Each of them filed a general denial to the cause by an attorney. Also other known heirs and descendants were subsequently served. Further, pursuant to Code of Alabama §6-6-562, the court appointed Jim Pino, an attorney who regularly practices in Shelby County, as guardian ad litem to represent the unknown heirs. Mr. Pino filed a general denial and attended the hearing on October 4th and vigorously represented the unknown heirs.

4. The heirs and descendants of Isaac W. Johnson and M. A. R. Johnson are so numerous that joinder of all of them is impracticable; there are questions of law and fact common to all of them; the defenses of the representative parties are typical of the class; the representative parties, including the guardian ad litem,

fairly and adequately represent the class, and all of the requirements of Alabama Rules of Civil Procedure, Rule 23 have been met for the defendant class.

5. The plaintiffs have made a diligent and assiduous effort to determine the names and addresses of all of the members of the defendant class and previously submitted two lists, one of which was prepared by one of the representative defendants. Pursuant to Code of Alabama §6-6-563 and Alabama Rules of Civil Procedure, Rule 23(c)(2), all of those persons whose addresses could be obtained and those persons who were not served were covered under publication and notice which was published once a week for four consecutive weeks in a newspaper of general circulation in Shelby County, Alabama.

6. The original warranty deed to the Church earlier described herein was partly printed and partly handwritten. The said warranty deed contained the following condition or restrictive provision which was stricken through with what appears to be the same ink as was used in the handwritten portion of the warranty deed:

Upon condition that if the Cumberland Presbyterian Church shall abandon said land & church building & cease to occupy and use the same for Divine Worship then and in that event the title hereby conveyed shall hereby revert to the Grantors, except three acres in the southwest portion of said tract of land; which said three acres shall be held by said trustees to be occupied and used for the education of said white children.

The court finds that this condition or restrictive provision was stricken through with the same ink as was used in the handwritten

portion and was made prior to, or contemporaneously with, the execution of the warranty deed and with the consent of the Grantors. Therefore, said condition is void.

7. Alternatively, the court finds that said condition or restrictive provision is due to be stricken under the doctrines of equitable approximation or deviation and cy pres as provided in the Code of Alabama §19-3-171 and §35-4-251. Said property is in a flood zone and has been subjected to floods which have resulted in damages to the Church's buildings. The surrounding area is developing rapidly and the flooding is worsening. The Church has acquired land immediately across Alabama Highway 119 and proposes to sell the property described in Exhibit "A" and use the proceeds derived therefrom exclusively in mortgage debt reduction and in the construction, erection and completion of church buildings on the newly acquired property or other property hereafter acquired to continue its "Divine Worship" and ministry thereon.

It is therefore, ORDERED, ADJUDGED, and DECREED as follows:

A. The condition or restrictive provision in the warranty deed set out in Paragraph 6 above is void and the Church is authorized to sell said property free and clear of said condition or restrictive provision.

B. The Church shall use the proceeds of any such sale exclusively in mortgage debt reduction and in the construction, erection and completion of church buildings on the newly acquired property or other property hereafter acquired to continue its ministry thereon. An accounting shall be kept thereon and


submitted to the court for filing in this cause when the funds are expended until such time as all funds derived from the said sale are exhausted.

C. The Clerk shall forward a copy of this Final Judgment to all of the persons named on plaintiffs' Exhibits 7 and 8 which was submitted at the oral hearing on October 26, 1995, for whom addresses are obtainable, and any other heirs and descendants whose names and addresses are known and reflected in the record herein.

D. That the plaintiffs shall pay to the said guardian ad litem, Jim Pino, the sum of \$2,550.00 for his representation of the unknown heirs in this cause.

E. Court costs are taxed against the plaintiffs.

DONE and ORDERED this 10th day of October, 1996.


D. Al. Crowson
Circuit Judge

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Exhibit "A"

Commence at the Southeast corner of the Northwest One Quarter of the Southeast One Quarter of Section 22, Township 19 South, Range 2 West; run thence in a Westerly direction along the South line of said Quarter-Quarter Section for a distance of 127.90 feet to the point of beginning; thence turn an angle to the right of 53 degrees, 51 minutes, 25 seconds and run in a northwesterly direction along an old fence and hedge row for a distance of 577.64 feet to a point in a paved road; thence turn an angle to the left of 91 degrees, 18 minutes, and run in a Southwesterly direction along the center line of a paved road for a distance of 422.84 feet; thence turn an angle to the right of 8 degrees, 38 minutes and continue in a Southwesterly direction along the center line of a paved road for a distance of 70.58 feet; thence turn an angle to the left of 44 degrees, 43 minutes and run in a Southwesterly direction for a distance of 93.07 feet to the point of intersection of the mouth of a spring branch with the center line of Bishop Creek; thence turn an angle to the right of 83 degrees, 06 minutes and run in a Northwesterly direction for a distance of 23.33 feet along the center line of Bishop Creek; thence turn an angle to the left of 55 degrees, 25 minutes and run in the Southwesterly direction along the center line of Bishop Creek for a distance of 27.59 feet; thence turn an angle to the left of 46 degrees, 28 minutes, and run in a Southerly direction along the center line of Bishop Creek for a distance of 25 feet; thence turn an angle to the left of 18 degrees, 09 minutes, 15 seconds and run in a Southeasterly direction along the center line of Bishop Creek for a distance 74.25 feet; thence turn an angle to the right of 35 degrees, 07 minutes, 15 seconds and run in a Southwesterly direction along the center line of Bishop Creek for a distance of 132.24 feet; thence turn an angle to the right of 13 degrees, 26 minutes and run in a Southwesterly direction along the center line of Bishop Creek for a distance of 68.87 feet to a point on the Northerly line of old Cahaba Valley Road; thence turn an angle to the left of 120 degrees, 29 minutes, and run in an Easterly direction along the Northerly right of way line of the Old Cahaba Valley Road for a distance of 113.96 feet; thence turn an angle to the right of 90 degrees, and run in a Southerly direction along the Easterly right of way line of the Old Cahaba Valley Road for a distance of 10 feet; thence turn an angle to the left of 90 degrees, and run in an Easterly direction along the Northerly right of way line of the Old Cahaba Valley Road for a distance of 99.60 feet; thence turn an angle to the left of 2 degrees, 18 minutes and run in an Easterly direction along the Northerly right of way line of the Old Cahaba Valley Road for a distance of 99.60 feet; thence turn an angle to the left of 89 degrees, 41 minutes and run in a Northerly direction along the Westerly right of way line of the Old Cahaba Valley Road for a distance of 10 feet; thence turn an angle to the right of 90 degrees and run in an Easterly direction along the Northerly right of way line of the Old Cahaba Valley Road for

a distance of 499.32 feet; thence turn an angle to the left of 1 degree, 35 minutes, and run in an Easterly direction along the Northerly right of way line of the Old Cahaba Valley Road for a distance of 141.17 feet; thence turn an angle to the left of 120 degrees, 11 minutes, and run in a Northwesterly direction along the projection in a Southeasterly right of way line of an old fence and hedge row for a distance of 177.66 feet to the point of beginning.

Certified a true and correct copy

Date: 11-26-96

Dan Reeves, Jr.

Dan Reeves, Circuit Clerk
Shelby County, Alabama

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