



IN THE CIRCUIT COURT OF SHELBY COUNTY,

**Maylene Chapel Church, by and)
through its Board of Trustees,)
Clay Gingo, Chairman,)
Plaintiffs)**

v.)

CASE NUMBER: CV 06-927

**Jerald Johnson, as the Conservator)
and Guardian of the Estate of)
Kathleen Johnson, and individually,)
Darla F. Boyle, individually, Connie R.)
Collins, individually, and Jeffrey W.)
Johnson, individually,)
Defendants)**



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Shelby Cnty Judge of Probate, AL
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**IN THE MATTER OF:)
The Estate of Kathleen G. Johnson,)
Deceased.)**

CASE NUMBER: CV 06-731

ORDER

This cause came before the court for bench trial commencing May 18, 2010. Having considered the evidence, including the demeanor of the witnesses, the arguments of counsel and the applicable law, the court has determined that the following Order is due to entered.

The court finds that the plaintiff, Maylene Chapel Church, was incorporated on June 6, 2006. The members of the Board of Trustees of the newly incorporated Maylene Chapel Church were closely affiliated with the original religious association that established the unincorporated Maylene Chapel Church (the "Church") in 1974. The Church had a history of continuous operation until May 2005.

This action is being brought by the plaintiff corporation whose Board of Trustees is representative of the membership of the original, unincorporated Church. One of the corporate Trustees, Clara Majors, was a sister to the Church's pastor and leader, Rev. Kathleen Johnson. Mrs. Majors was regular in attendance, contributed personally, and participated in all of the fund raising activities of the Church.

Two of the other corporate Trustees who had been Church members since 1999 are Louis William Whitfield and his wife, Betty Whitfield. Both were very active in


Sunday School and worked with the Church finances. Trustee Linda Davis was a very active church member and leader. She served as the Church Treasurer, and was Rev. Kathleen Johnson's travelling companion and prayer partner. Mrs. Davis's late husband, Billy Davis, was nominated as a trustee of the Church by Rev. Kathleen Johnson. The Davises had become members of the Church in 1990, and remained so until May 2005.

Clay Gingo, chairman of the Board of Trustees, became a member of the Church in 2005. He had attended on and off for several years, and had lived next door to the Church property for more than thirty years. Mr. Gingo constructed and set the present steeple on the Church. He was elected Chairman of the Maylene Chapel Church Group in 2005 when the Church was in the midst of the turmoil made the basis of this suit.

Defendant Jerald Johnson is the son of Rev. Kathleen Johnson. She is now deceased. There is no evidence of Defendant Jerald Johnson attending or otherwise supporting the Church in any meaningful manner. The court finds no evidence whatsoever of Jerald Johnson or any of the other Defendants having ever been identified with the Church prior to May 2005.

Based upon the foregoing, the Court finds from the unequivocal, undisputed testimony that the Incorporators and members of the Board of Trustees of the plaintiff Maylene Chapel Church, an Alabama Religious Corporation, are the legal successors of the leaders and members of the group who established and operated the Church as a religious association. These individuals actually participated in the construction of the Church building; improved and enlarged it; and consistently maintained it until May 2005 when Defendant Jerald Johnson and the other Defendants ejected the congregation from the Church premises.

It is undisputed that the Church facilities had been built through the offerings, donations and physical work of the members of the Church, individually and collectively. Though the Church structure was built on land recorded in the name of Rev. Kathleen Johnson, the land and building were deemed to be tax exempt by the Shelby County Tax Assessor as a religious organization. Rev. Johnson had, however, never formally deeded to the Church the land occupied by the Church building. Instead, the real property remained titled to Rev. Johnson until October 14, 2004, when she deeded the property to her son, Defendant Jerald Johnson.


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At the time Rev. Johnson deeded the Church property to her son, she had been diagnosed with dementia and was suffering psychotic symptoms. She was being followed by a physician, and was under medication for her deteriorating mental condition. It is highly unlikely that Rev. Johnson had the mental capacity to execute the deed which transferred the Church property to her son. The validity of this deed is, however, not before the court. Because Rev. Johnson had never executed a deed in favor of the Church, the property would have passed through her estate to her heirs. Consequently, the Church would not have obtained legal title to the property under the circumstances, and the title would have eventually vested in Defendant Jerald Johnson.

As Rev. Johnson's condition deteriorated, in the spring of 2005 she was found by the Probate Court to be incapacitated and in need of protection. Upon petition filed by Defendant Jerald Johnson, he was made Rev. Kathleen Johnson's conservator and guardian. In May 2005, Defendant Jerald Johnson locked the Church congregation from the building, and thereafter denied the Church members access to the property. In October 2005, Jerald Johnson executed a deed transferring the Church property to his children, the named co-defendants. Interestingly, one of these children, Defendant Connie R. Collins, was the notary on the deed which transferred the property from Rev. Kathleen Johnson to Jerald Johnson.

While the facts recited above do not alter the existing title to the Church property, this undisputed evidence provides the court with insight into the defendants' motive, intention and mindset. To effect that intent, without the aid of any court or legal proceeding, the defendants forcibly took possession and control of the Church premises, including the land, building, fixtures, furnishings and even the personal items belonging to Church members.

The defendants ejected the Church members from the premises and prevented their return. Then in late 2005, the defendants leased the property to a third party religious organization at the rate of \$2,000.00 per month. The evidence before the court is that this lease is still operative. The undisputed testimony is that the Church facilities are currently being utilized as a church, and that \$2,000.00 per month rent has been received by the defendants beginning in December 2005, and continuing through the date of trial.

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The court finds that the plaintiff stands in the shoes of the members and trustees of the Church and, as the successor in interest, has sustained damages as a result of Defendants' wrongful conduct. The defendants unlawfully ejected the membership of the Church from the premises. In so doing Defendants were unjustly enriched. They had gained possession of the Church facilities which had been donated directly to the Church or paid for through Church offerings. The building, its fixtures and appurtenances were equitably the property of the Church. The defendants had had little or nothing to do with the major improvements to Rev. Johnson's property, other than to claim these improvements as their own, and to then utilize these improvements to establish a monthly cash flow for their personal benefit.

It is undisputed that Defendant Jerald Johnson and the other defendants seized the Church facilities and thereafter denied the Church members access to the building and facilities which had been built through offerings, donations and sweat equity. Inside the building were small personal items, such as Bibles, which belonged to the individual Church members. None of these items were recovered. Moreover, the defendants leased the Church facilities to another religious organization which has occupied the subject property for at least the last five years.

The result is that the members of the original Church have been forced to affiliate with new and different church organizations. By denying the Church members access to the Church facility, the defendants created a forced diaspora of the Church congregation. Rev. Johnson's son and his children effectively destroyed the Church that their mother and grandmother had worked for decades to build. The conduct of her son and the other defendants destroyed the unity and organization of the Church which was Rev. Johnson's legacy and life's work.

At the very least, the Church congregation had a possessory and equitable interest in the facility that it had created by its own hand. During her lifetime Rev. Johnson had created a constructive trust in favor of, and for the benefit of, the Church membership. The membership was entitled to some modicum of notice and due process as required by state statute. There is no evidence of any type of legal process whatsoever being utilized by the defendants to remove the Church members from the facility. To the contrary, the overwhelming evidence is that the defendants confiscated the Church facilities for their benefit, along with the personalty and other belongings of the individual Church

members. The defendants have been unjustly enriched to the detriment of the Church members who were wrongfully ejected from the Church facility that they had occupied for many years with the consent of Rev. Kathleen Johnson, and under her direction and leadership.

In considering its assessment of the damages incurred by the plaintiff, the court finds that at the time of trial, the building which had been built by the Church members was insured for the amount of \$250,000.00 through a policy with State Farm Insurance. The court finds that the structure and fixtures are worth at least that amount. The value of the contents has been established by uncontroverted testimony to be in the amount of \$62,000.00.

As a further measure of damages, the evidence is undisputed that Defendants have collected \$2,000.00 per month beginning in December 2005, and continuing thereafter through the date of trial. Utilizing this amount as the fair market value of the loss of use of the facility, and considering that at the time of trial the Church membership had been deprived of the use of the facility for five years, the court determines that a reasonable award of damages for the loss of the use of the facility is in the amount of \$120,000.00. This amount is derived from 60 months loss of use at the rate of \$2,000.00 per month. Assuming that the lease has continued since the date of trial, the defendants have collected well over this amount in rents subsequent to their having taken possession and control of the Church facility.

As a result of the intentional, malicious and unconscionable conduct of Defendants, and especially that of Defendant Jerald Johnson, the Church property was seized. The defendants obtained title to the Church property through operation of law, though equity and good conscience demand otherwise. Jerald Johnson's deliberate and calculating actions following his mother's illness and death combined with the acts of the other defendants produced the desired outcome. The destruction of the Church organization was effected with the concomitant ruination of Rev. Kathleen Johnson's life work. It is, therefore, the finding of this court that Plaintiff is entitled to punitive damages as a result of Defendants' conduct.

The court determines that a reasonable assessment of punitive damages is twice the amount of the value of the building, fixtures and personal property lost by the Church having been wrongfully ejected from the premises. The value of said property is in

excess of \$300,000.00. The court finds that a reasonable award of punitive damages is, therefore, in the amount of \$600,000.00.

The remaining issue before the court at the time of trial was determination of the ownership of two bank accounts that had been maintained in the name of the Maylene Chapel Church. At the time of trial a Regions bank account, number [REDACTED] had an approximate balance of \$40,144.01. The other account, number [REDACTED] was maintained at SouthTrust Bank (k/n/a Wells Fargo Bank). The balance in that account at the time of trial was approximately \$5,525.48. Defendant Jerald Johnson had initially claimed these accounts were the personal property of his mother's estate. At the commencement of the trial, however, the defendants relinquished any claims or interest in the two bank accounts, leaving only the plaintiff as a claimant of these funds.

In consideration of the foregoing, it is hereby ORDERED that:

1. The plaintiff Maylene Chapel, a religious corporation, incorporated on June 6, 2006, is the legal entity and successor in interest to the congregation and membership of the religious association known as the Maylene Chapel Church, which had been established and operated under the leadership and direction of Rev. Kathleen Johnson.
2. Judgment is due to be, and it hereby is, entered in favor of the plaintiff, and against the defendants, jointly and severally, in the amount of \$432,000.00. Said judgment amount is in the nature of compensatory damages, and consists of the fair market value of the Church facilities and business personal property, together with the loss of use of the facility over the past five years.
3. Punitive damages in the amount of \$600,000.00 are hereby awarded to Plaintiff as a result of Defendants' intentional, malicious, and unconscionable conduct. Accordingly, judgment for punitive damages of \$600,000.00 is entered in favor of the plaintiff and against the defendants, jointly and severally.
4. By consent of the parties, the above described bank accounts maintained at Regions Bank and SouthTrust Bank (n/k/a Wells Fargo Bank) in the name of "Maylene Chapel" are awarded to Plaintiff.
5. Any and all monies received by Plaintiff pursuant to this Order of judgment, including those funds maintained in the above described bank accounts, shall



be paid into a Maylene Chapel Trust Account (the Trust) for distribution to be made in strict accordance with the mandates of this Order. The initial mailing address for the receipt of said funds shall be the office of Plaintiff's counsel of record located at Suite 310, Diamond Head Building, 1957 Hoover Court, Birmingham, Al 35226. Said mailing address may be changed from time to time as directed by Plaintiff's Board of Trustees (the Board), acting pursuant to powers of the Board as granted in the Articles of Incorporation and under the Bylaws, and any future amendments thereto.

6. Distribution of any and all monies received by Plaintiff pursuant to this Order shall be made only by the Board acting in accordance with the Articles of Incorporation and under the Bylaws, and any future amendments thereto.

(a) The Board shall maintain an accurate and detailed accounting of all Trust receipts and disbursements. Said accounting shall be in accordance with generally accepted accounting principles and as required by state law.

(b) Payment of fees and expenses owed to attorneys and other professionals retained to prosecute Plaintiff's legal claims and/or to perform other related services through the date of this Order shall be satisfied first.

(c) Distributions from the Trust, other than the normal and customary expenses of administering the Trust, shall be made only to a recognized 501(c)(3) religious organization. Any such distribution shall be made only upon properly authorized Board approval.

(d) The Trust shall only retain funds sufficient to cover anticipated administration expenses. All other Trust funds shall be distributed by action of the Board which must be taken so that funds are distributed within six months of the date that those funds are received.

(e) No member of the Board may receive disbursements from the Trust, and all disbursements shall strictly comply with the laws and regulations governing the operation of non-profit, 501(c)(3) corporations.

(f) In the event that Plaintiff reorganizes an active, on going church, the Board may utilize the Trust funds to promote and maintain this religious activity. As a condition precedent, the reorganized church must have first attained on active membership of at least 20 adult members; have a duly elected pastor; conduct regular services at least once per week; and have established a regular meeting place for those

services. Until such conditions have been met, all Trust distributions shall be made in accordance with the time frame set out in paragraph (d) above.

7. Until satisfied, this judgment in the total amount of \$1,032,000.00 does hereby attach to, and constitute a lien against, the real property formerly occupied by the Church, and more particularly described as follows: to wit;


Lot 29, according to R.E. Whaley's Map of the town of Maylene, as recorded in Map Book 3, page 75, in the Probate Office of Shelby County Alabama.

8. As a lien and encumbrance against the above described real property, this judgment shall be recorded in the Office of the Judge of Probate for Shelby County, Alabama.

9. To satisfy the judgment entered herein, any and all rental payments received by Defendants pursuant to any existing or future lease of the subject property shall be paid to Plaintiff. Plaintiff is hereby designated as the third party beneficiary of any such lease agreement, and Defendants shall forthwith designate Plaintiff as the direct payee thereof. Should any Defendant fail to abide by the terms of this Order, that Defendant shall be subject to a finding of contempt of court with the imposition of appropriate sanctions.

10. This Order is a final judgment with respect to all issues raised by the parties in civil case number CV 2006-927. Accordingly, the costs of court in said action are hereby taxed to Defendants.

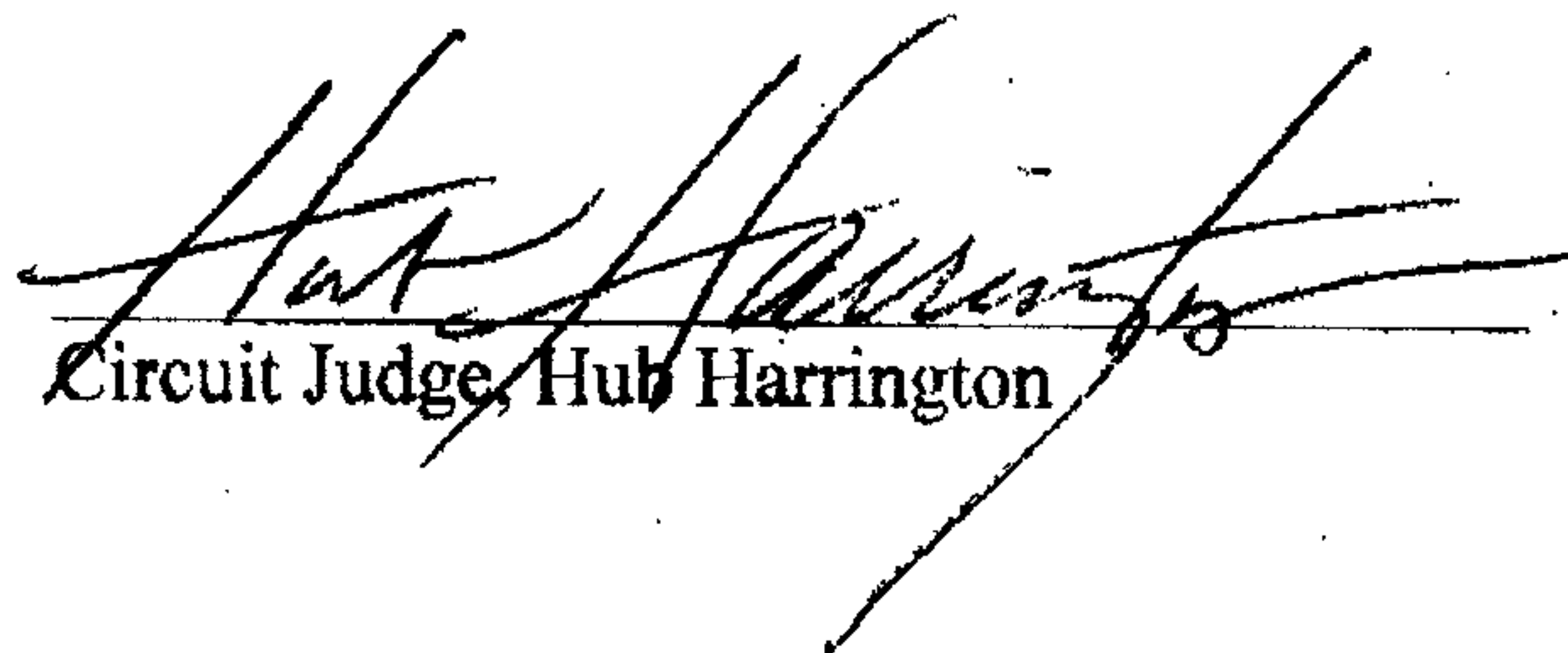
11. The consolidated case number CV 2006-731 is before the court pursuant to a petition to the probate court in the Estate of Kathleen Johnson, probate case number PR 2005-136, requesting removal of the probate case to the circuit court. The disputed issues in the probate case are resolved by this Order. The court, therefore, determines that there is no just reason for delay, and does hereby expressly direct entry of final judgment in case number CV 2006-731 as to all civil issues addressed in this Order.



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12. The probate removal action, case number CV 2006-731, remains open only for performing the ministerial function of administering the final settlement of the Estate of Kathleen Johnson.

The personal representative of the estate is hereby Ordered to file the final settlement within 60 days of the date of this Order, or show good cause as to why the estate should remain open.

DONE AND ORDERED this 20th day of September, 2011.


Circuit Judge, Hub Harrington


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