

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

DONALD L. BARNETT,

Plaintiff,

vs.

No. 88-2-04148-2

JACK A. HICKS, JACK H. DuBOIS
and E. SCOTT HARTLEY, individually
and as the Board of Directors of
COMMUNITY CHAPEL AND BIBLE TRAINING
CENTER AND COMMUNITY CHAPEL AND
BIBLE TRAINING CENTER,

Defendants.

DEPOSITION UPON ORAL EXAMINATION OF

E. SCOTT HARTLEY

PA 13, 18-81

(17-28-88)

Reel 69, Fr 9/37 → pp. 46-60 of 9/88 dep

216 - 1st South, Room 280

Seattle, Washington

DATE: March 9, 1988

REPORTED BY: Debra Roberts

Rough & Associates
COURT REPORTERS

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SEATTLE, WASHINGTON 98101
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1 A. (Witness complies.)

2 Q. Do you have another copy of this document?

3 A. Not with me, no. You can keep that if you
4 want.

5 Q. Tell me, with regards to this -- this
6 appears to be a 1/25/88 agreement that you have here
7 -- it talked about the approval of a board of
8 directors meeting in here? Maybe you can tell me?

9 A. Sure. I'll explain it to you.

10 Q. No, I want you to tell me what paragraph on
11 this document provided for the approval, not some
12 interpretation, just the provisions for it.

13 A. This agreement that was signed by the
14 pastor tells us that we have the right to hold
15 meetings to discuss and to make a decision over a
16 problem between Don Barnett and Jerry Zwack,
17 Z-W-A-C-K.

18 Q. Tell me what paragraph talks about an
19 approval of this meeting on February 10th.

20 A. Once this eldership meeting had gone on,
21 the 25th, it says that, "Don shall not exercise any
22 authority over these hearings, and over the
23 conclusive eldership review session. The Board of
24 Elders shall exercise final authority over these
25 meetings. This agreement applies only to these

1 hearings, and does not pertain to any other church
2 matters. Don and Jerry shall permit the hearing to
3 continue until they are concluded to the satisfaction
4 of the Elders. Don shall not act as pastor to stop
5 the meetings once they have begun." With the senior
6 elders to preside over the meeting.

7 And with this agreement, we determined
8 that after hearing his testimony -- and I'll read to
9 you, because -- "Testimony given before the entire
10 leadership ..." --

11 Q. No. To me, that's not part of the
12 question. I just need that part of the paragraph.

13 A. Okay.

14 Q. Is there a board of elders and a board of
15 senior elders?

16 A. Yes.

17 Q. Can I see this document, this 1/25?

18 A. (Witness complies.)

19 Q. This apparently talks about, "The Board of
20 Elders, as a group, shall exercise final authority
21 over these meetings"?

22 A. Yes.

23 Q. That doesn't talk about board of senior
24 elders?

25 A. It's -- includes us, because we're part of

1 that.

2 Q. Does it talk about board of senior elders?

3 A. It included us, because we're a part of
4 that group.

5 Q. We'll go on to the next one. Did you have
6 that one?

7 A. Uh-huh.

8 Q. Excuse me. When did these hearings stop?

9 A. When did they stop?

10 Q. Yes. It says, "... not to stop the
11 meetings once they began."

12 When did they begin?

13 A. On the date there.

14 Q. January 25, 1988?

15 A. Yes.

16 Q. When did they end?

17 A. Effectively, yesterday.

18 Q. Effectively yesterday?

19 A. Yes.

20 Q. This agreement only applied to those
21 hearings that were being conducted, not to any other
22 church matters; is that correct?

23 A. Yes.

24 Q. And did everybody know that these hearings
25 were continuing?

- 1 A. As far as the board of elders?
- 2 Q. Yes.
- 3 A. Sure. They were all there.
- 4 Q. Did Donald Barnett know?
- 5 A. Yes.
- 6 Q. How did you tell him that those were --
- 7 A. He knew, like all of us knew. We were
- 8 going to meet every Monday, Tuesday, Wednesday, from
- 9 1:00 o'clock to 6:00 o'clock, and at times, he was
- 10 specifically asked to come down and testify, and
- 11 other times, he wasn't.
- 12 Q. He could go down to these meetings?
- 13 A. Uh-huh.
- 14 Q. And these meetings continued up to
- 15 yesterday, which would be March 8th?
- 16 A. Yes.
- 17 Q. And he was disfellowshipped on March 4th?
- 18 A. Yes.
- 19 Q. Could he still go between March 4th and
- 20 March 8th?
- 21 A. No.
- 22 Q. Then he was not allowed to be present for
- 23 some of the hearings?
- 24 A. March 4th, he was disfellowshipped,
- 25 therefore, he could not be a part of it. There was

1 no way he could be a part of it.

2 Q. Did he know he would no longer be able to
3 attend another hearing?

4 A. Why wouldn't he, since he was
5 disfellowshipped, wouldn't he know?

6 Q. I'm just asking, did you provide any
7 information to him?

8 A. When a person is disfellowshipped, they
9 know they're not to function in any part. You just
10 know that automatically.

11 Q. Did you provide anything other than the
12 automatic notice to him?

13 A. March 4th letter was sufficient to let him
14 know. He knows it followed. He knows how it's to be
15 interpreted.

16 Q. Other than the March 4, 1988, letter, I
17 assume, of the three --

18 A. Senior elders, yes.

19 Q. Was there any other notice for him with
20 regard to the hearings?

21 A. With them stopping on -- yesterday? No.

22 Q. Were decisions made based upon those
23 hearings?

24 A. Absolutely.

25 Q. What decisions were made based on those

1 hearings?

2 A. Well, you can see them there on the
3 resolutions. You can --

4 Q. No. You tell me, please.

5 What decisions were made based upon
6 these hearings?

7 A. The first one was -- let me get the right
8 dates here. There was a letter transmitted to
9 Don Barnett on February 15, 1988, from the senior
10 elders, expressing our responsibility to the church
11 to implement its own guidelines, and putting him on
12 special status.

13 Q. My question was, what were the decisions
14 that were based upon those 1/25/88 to 3/8/88
15 hearings. And you've indicated to me the 2/15/88
16 special status notice.

17 A. Yeah, that's the first one.

18 Q. What else? All I really want to know is
19 what those decisions were that were based upon those
20 hearings.

21 A. Okay. On February 24th, another letter was
22 sent to Don Barnett by the entire board of elders,
23 saying they agreed with what the senior elders had
24 done, as far as putting Don on special status. And
25 that they were pleading with him to please comply.

1 Q. Any other decisions made upon these 1/25/88
2 to 3/8/88 hearings?

3 A. Also, on February 4, 1988, another letter
4 sent to Pastor Don Barnett from the entire elders,
5 including the senior elders, was a letter addressing
6 questions he had requested of us to be answered.

7 Q. Is that a decision that's made based upon
8 these hearings?

9 A. The information passed in here, other
10 decisions based upon questions he challenged the
11 committee to answer.

12 Q. Are there any other decisions that are
13 based upon those hearings?

14 A. Yeah. Exhibitss 10, 11, 12, and 13, also.

15 Q. Well, you made reference to documents.
16 Just tell me what the decisions were, if you would,
17 please.

18 A. I said, we did cover these, right? I said
19 we covered these.

20 Exhibit 10 is a recommendation by the
21 general elders to the senior elders; their
22 recommendation to disfellowship Don. March 4th
23 letter to Don Barnett, from David Motherwell,
24 regarding his recommendation to the board of elders
25 for disfellowship. March 4th letter to Don Barnett

1 from the remaining board of directors,
2 disfellowshipping Don. And a letter to the Pastor
3 Don from all of the elders, describing our reasons
4 for taking the actions that we did.

5 Q. Now, that goes up to March 4, 1988.

6 What decisions were made at the
7 conclusions of these hearings on March 8, 1988?

8 A. (No audible response.)

9 Q. There must have been some purpose to
10 continuing on the hearings after March 4th?

11 A. Yeah. We basically discussed if there was
12 anything else to do, and to conclude, at those
13 meetings.

14 Q. And what happened? What decisions were
15 made?

16 A. That we would send a letter to the pastor
17 -- excuse me. We would send a letter -- we would
18 send a letter to Don Barnett, outlining the
19 conditions outlined in our March 4, '88, letter to
20 him from the remaining board of directors, to provide
21 him -- well, I'll just say -- I'll tell you what it
22 says.

23 "We greatly appreciate the deep
24 sacrifice you have made for the congregation for many
25 years. We will show you fairness and be benevolent

1 to you with regard to the parsonage, severance pay,
2 and the automobile you use. The Senior Elders, in
3 conjunction with the Deacon Board, will extend terms
4 to you as soon as possible."

5 And we were discussing what terms to
6 extend to him, which would be done sometime this
7 week.

8 Q. So there's more hearings to be held?

9 A. No.

10 Q. Who makes the determination of these
11 terms?

12 A. The board of elders.

13 Q. Board of elders?

14 A. Senior elders.

15 Q. Board --

16 A. Board of the senior elders.

17 Q. And so will the board of senior elders be
18 meeting to discuss these matters?

19 A. If there's a reason for it, yes.

20 Q. Have you come to some decisions at the
21 present time?

22 A. The only thing that we have, is that we
23 were going to extend terms to Don.

24 Q. What did you discuss in those meetings of
25 the board of elders, and what resolutions or

1 decisions were made?

2 A. That is still being drafted, and I don't
3 have any copies of the letter to be sent over to him
4 yet.

5 Q. Well, do you know what the terms are of his
6 severance pay?

7 A. No, because we're going to make a
8 suggestion. I don't have it written down at this
9 point in time, and I don't have the letter in front
10 of me. It hasn't been completed.

11 Q. Who is preparing the letter?

12 A. I think we asked David Motherwell, I think,
13 to do that.

14 Q. Did you tell David Motherwell what you

1 preliminary to see what Don would do.

2 Q. I assume some decisions were made by their
3 sending out --

4 A. When he --

5 Q. Hold on. I'll ask you questions.

6 A. Okay.

7 Q. I assume that some action was taken by the
8 board of senior elders to make a recommendation on
9 Don; is that correct?

10 A. Only to draft a letter. When that gets to
11 us, then the senior elders will review it, and make a
12 decision at that time.

13 Q. You do not have any input with regards to
14 severance pay or other things that are included in
15 that recommendation?

16 A. I will, as soon as I get the rough draft of
17 the letter.

18 Q. Now, do you have that 1/25/88 document?

19 A. Yes.

20 (Exhibit No. 14 was marked
21 for identification.)

22 Q. (By Mr. Pierce) I show you what has been
23 marked as Exhibit 14, which says 1/25/88 as the
24 date. It says "Agreements" on it.

25 Am I to understand that this document

1 is a permission of the chairman, pursuant to Article
2 VII, Definition 1, for any board of senior elders
3 meeting to occur in the future?

4 A. Regarding the complaint and issue at hand,
5 yes.

6 Q. And just limited to the complaint and issue
7 at hand; is that correct?

8 A. The issues.

9 Q. And the complaint was what? Mr. Zwack?

10 A. Jerry Zwack.

11 Q. And the issues at hand were relating to the
12 complaint of Mr. Zwack?

13 A. Zwack.

14 Do you want me to list those?

15 Q. No.

16 Other than the complaint of Mr. Zwack,
17 and the issues relating to those complaints, there
18 was no implied authority taken by you in this Exhibit
19 14 that you had any authority to do anything else
20 with regards to the corporation of the church; is
21 that correct? It wasn't pertaining to any other
22 board of directors meeting; is that correct?

23 A. Yes and no.

24 Q. Tell me why.

25 A. No, in the sense that this particular

1 letter agreement was supposed to -- it was for the
2 purpose of these hearings, and through their -- and to
3 conduct them. And in the middle of them, it became
4 obvious to us, due to the malfeasance of office, that
5 we were -- that was being exposed, even by Don's own
6 mouth, that our responsibility to the congregation,
7 from a Scriptural standpoint, and our obligation to
8 state law, was to take appropriate and reasonable
9 action to stop his misuse and misconduct of various
10 females in the congregation.

11 Q. I'm lost with regards to that response.

12 The question is: Did this document,
13 Exhibit 14, give you authority to have, or give you
14 the permission, pursuant to Article VII, Definition
15 1, to have meetings other than for that limited area
16 of Mr. Zwack's complaint? And you talked about the
17 malfeasance.

18 MR. LEACH: If you don't like the
19 answer, ask the question again. Don't try to argue
20 with him.

21 MR. PIERCE: All right.

22 Q. (By Mr. Pierce) Am I to understand there's
23 an implied authority or implied authorization that
24 came from that document, other than for the
25 Zwack's --

1 A. Zwack's hearing.

2 Q. Did you talk with Don with regards to these
3 other board of directors meetings?

4 A. There's several things involved here. We
5 have that particular agreement. We have our
6 responsibility to the word of God, which all of us
7 have agreed to uphold, and our responsibility to the
8 State of Washington, as a non-profit corporation, to
9 protect this corporation from tortuous acts.

10 Q. We have marked this Exhibit 6, the February
11 10th meeting of the board of senior elders. You
12 indicate that Don Barnett wasn't present for that.
13 His permission for that was this 1/25/88 agreement,
14 Exhibit 14.

15 A. That was one of the reasons, yes.

16 Q. It talks about, in here, presence or
17 permission. He wasn't present. Was there other
18 permission that was given besides the Exhibit 14?

19 A. Not from Don, directly, no.

20 Q. But the Exhibit 14 was the permission that
21 was permission for this eldership meeting on February
22 10th?

23 A. It was one of the reasons, yes.

24 Q. Was there any other permission given by
25 Don Barnett?

1 A. Yeah. His previous statements over the
2 years regarding the authority of the word of God.

3 Q. Okay.

4 A. And it's authority over everything that we
5 do, including our bylaws.

6 Q. Anything else?

7 A. Our responsibility to State law, as well.

8 Q. Now, Exhibit 7 indicates that there's
9 another senior elders meeting, dated February 26,
10 1988.

11 Was Donald Barnett present for that?

12 A. No.

13 Q. Was there "permission of the chairman" for
14 this meeting of the board of senior elders?

15 A. It's the same reason that I just gave you
16 regarding Exhibit 14. Also, the word of God and
17 Washington State law.

18 Q. What Washington State law are you referring
19 to for the meeting of the board of senior elders?
20 I'm not talking about decisions made; just to hold a
21 meeting.

22 A. That would be limited to Exhibit 14 and,
23 also, the word of God.

24 Q. Now, Exhibit 8 talks about a senior elders
25 meeting on March 8th, 10:20 a.m.

1 Q. I didn't ask you if a formal meeting -- Let
2 me put it this way: Was that a meeting of you,
3 Jack DuBois and Jack Hicks?

4 A. I guess I'm not sure how you mean that
5 question. I don't know how to answer that.

6 Q. Did you and Jack Hicks and Jack DuBois have
7 a meeting with regards to amending the articles of
8 the corporation prior to going to Mr. Leach's office
9 on March 2, 1988?

10 A. I don't recall at this point. It's
11 possible. I just don't remember.

12 Q. When did you decide that the Articles of
13 Amendments should be presented to the Secretary of
14 State with regard to amending the articles of the
15 corporation of this Community Chapel?

16 A. I decided on March 4th.

17 Q. Did you have any discussion with any other
18 individuals with regards to that, prior to March
19 4th?

20 A. I believe on Wednesday, March 2nd, is when
21 we discussed it in Jim Leach's office.

22 Q. Who else was present then?

23 A. Jack Hicks, Jack DuBois, Jim Leach, and
24 myself.

25 MR. HICKS: I wasn't there, Scott.

1 Q. And that was adopted by the board of
2 directors?

3 A. Yes.

4 Q. When was that adopted?

5 A. March 4, 1988, at 3:25 p.m., in Jack Hicks'
6 office.

7 Q. Is that after you had gone down to the
8 Secretary of State's office with the Articles of
9 Amendment to amend the Articles of Incorporation of
10 Community Chapel?

11 A. Yes.

12 Q. And did you give notice of this meeting to
13 Pastor Don Barnett?

1 meeting in the afternoon?

2 A. No.

3 Q. And did you direct anybody, on behalf of
4 you, or any other members of the board of senior
5 elders, to contact him on your behalf?

6 A. No.

7 Q. So he could not have possibly gotten any
8 notice with regards to this meeting; is that
9 correct?

10 A. That's true.

11 Q. Now, the bylaws, up until this point in
12 time, up to this meeting at 3:25 p.m., on March 4th,
13 provided that Don Barnett was to concur, or he would
14 have to concur with the directors of the corporation
15 or any action that was going to be taken; is that
16 correct?

17 A. The bylaws said that.

18 Q. And the bylaws had not been amended up
19 until this point in time; is that correct?

20 A. Yes.

1 allowed the corporation, itself, to change its bylaws

