

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<b>In re:</b>	)	<b>Case Nos.:</b>	CL 2007-248724,
<b>Multi-Circuit Episcopal Church Litigation</b>	)		CL 2006-15792,
	)		CL 2006-15793,
	)		CL 2007-556,
	)		CL 2007-1235,
	)		CL 2007-1236,
	)		CL 2007-1237,
	)		CL 2007-1238,
	)		CL 2007-1625,
	)		CL 2007-5249,
	)		CL 2007-5250,
	)		CL 2007-5362,
	)		CL 2007-5363,
	)		CL 2007-5364,
	)		CL 2007-5682,
	)		CL 2007-5683,
	)		CL 2007-5684,
	)		CL 2007-5685,
	)		CL 2007-5686,
	)		CL 2007-5902,
	)		CL 2007-5903, and
	)		CL 2007-11514

**MOTION TO RECONSIDER  
RULING FROM THE BENCH ON OCTOBER 8, 2008  
AND SUPPORTING MEMORANDUM**

The Protestant Episcopal Church in the Diocese of Virginia (“Diocese”) and the Episcopal Church respectfully move that the Court reconsider the Court’s ruling from the bench at the pre-trial hearing on October 8, 2008, and vacate or suspend the Order memorializing that ruling, which was entered on October 20, 2008. Specifically, we ask that the Court reconsider its holding that Rule 1:1 of the Rules of the Supreme Court of Virginia bars the Episcopal Church and the Diocese from challenging the validity of the December 2006 deeds purportedly conveying property from Christ the Redeemer Episcopal Church to Truro Church.

1. In discovery, in briefing prior to the pre-trial hearing, and in oral argument at the October 8, 2008, pre-trial hearing, the Episcopal Church and the Diocese contended that both

December 2006 deeds were invalid on the grounds that they violated Va. Code § 57-15. *See* Exhibit J (August 7, 2008, discovery letter from counsel for the Diocese) to Truro Church's Supplemental Brief on Whether the Christ the Redeemer Episcopal Church's Conveyance of Church Property to Truro is Subject to Truro's § 57-9 Petition (filed Sept. 23, 2008), at 2-3; TEC-Diocese's Supplemental Brief Regarding Christ the Redeemer Episcopal Church Property (filed Sept. 25, 2008) § III, at 9-11; TEC-Diocese's Reply Brief Regarding Christ the Redeemer Episcopal Church Property (filed Oct. 2, 2008) at 1-2; Tr. (Oct. 8, 2008) (Ex. A) at 47, 67.

2. The Court ruled from the bench on October 8, 2008, that it lacked jurisdiction, under Rule 1:1, to consider the validity of the December 2006 deeds because Judge Keith's September 29, 2006, Order was a final order and more than 21 days had elapsed:

19 I'm going to make some legal rulings  
20 that I think will narrow the issue considerably.  
21 The first is the September 29, 2006 order by Judge  
22 Keith authorizing the gift and transfer of Christ  
1 the Redeemer's property is a final order and is not  
2 subject to review by this Court.  
3 The Court does not have jurisdiction to  
4 review the decision of Judge Keith because that is  
5 a final order pursuant to their 57-15 petition.  
6 To the extent that the Episcopal Church  
7 and the Diocese are arguing that this authorization  
8 is invalid because it was made without the  
9 permission and consent of the Diocese, I find that  
10 the September 29, 2006 -- that the final order  
11 beyond the 21-day period is not subject for review  
12 by this Court.

Tr. (Oct. 8, 2008) (Ex. A) at 75-76.

3. The Court's ruling was erroneous. Rule 1:1 applies only to "further proceedings within the very suit in which a final judgment has been entered." *Niklason v. Ramsey*, 233 Va. 161, 164, 353 S.E.2d 783, 785 (1987). If a new case arises, involving one or more different parties, Rule 1:1 does not apply, even if the later case directly implicates issues in the case where

the final order was entered. *See id.* *Niklason* was a case in which creditors (Ramsey and Boardman) sought to reach certain property that the debtor received as an inheritance. The probate proceedings and a related fiduciary dispute regarding the inherited property had concluded by final order on January 28, 1982. The creditors' suit was initiated more than 21 days after entry of the final order in the earlier dispute. The trial court found against the debtor on the debtor's contention that he had disclaimed the inheritance. The debtor appealed not only that disclaimer issue but also "raise[d] a second issue: that the trial court's decision in the instant suit modified the final judgment entered in the fiduciary suit and thus the trial court violated Rule 1:1." 233 Va. at 164, 353 S.E.2d at 784. After quoting Rule 1:1, the Supreme Court of Virginia explained that it simply did not apply:

*Rule 1:1 does not apply in the situation presented in this appeal. Ramsey and Boardman had nothing whatever to do with the fiduciary dispute, which concerned the validity of Ellowene's will and the division of her estate. Ramsey and Boardman's claims were against Hugh. The fact that a second, separate lawsuit with different parties and issues directly impacted upon a previous suit does not mean that Rule 1:1 is implicated. That Rule does not address itself to this situation. It concerns further proceedings within the very suit in which a final judgment has been entered. Therefore, we reject appellant's argument concerning Rule 1:1.*

*Id.* at 164, 353 S.E.2d at 785 (emphases added).

4. This litigation (both the § 57-9 action and the declaratory judgment action related to Truro Church) involves a dispute between the Diocese and Truro regarding the property that was the subject of the December 2006 deeds. These are new cases, with new parties, not a continuation of the *ex parte* proceedings culminating in Judge Keith's Order. Rule 1:1 does not apply and cannot constitutionally be applied in the manner the Court has applied it. *Id.* *Cf.* *Gulfstream Bldg. Assoc., Inc. v. Britt*, 239 Va. 178, 181-82, 387 S.E.2d 488, 490 (1990) ("A non-party ... may maintain a suit to set aside the allegedly damaging judgment if he has an interest

which is jeopardized by enforcement of the judgment and the circumstances support a present grant of relief”).

5. The holding in *Niklason* avoids any constitutional question about the application of Rule 1:1 in a way that would offend basic principles of due process. If *Niklason* does not apply, however, and if Rule 1:1 is applied to cut off the rights of the Episcopal Church and the Diocese without giving them notice or opportunity to be heard, that would violate due process. Where a party has an interest in the subject of a prior action but was not involved in that case, was never served with process, and had no notice or opportunity to be heard, due process does not permit applying Rule 1:1 to bar that party from ever being able to assert its interest. *See, e.g., Boddie v. Connecticut*, 401 U.S. 371, 377-78 (1971):

due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.... Although “[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause,” as Mr. Justice Jackson wrote for the Court in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), “there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Id.*, at 313.

*Id.* at 379-80 (footnote omitted):

a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question. Thus, in cases involving religious freedom, free speech or assembly, this Court has often held that a valid statute was unconstitutionally applied in particular circumstances because it interfered with an individual’s exercise of those rights. No less than these rights, the right to a meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws that operate to jeopardize it for particular individuals.

*See also, e.g., McManama v. Plunk*, 250 Va. 27, 34, 458 S.E.2d 759, 763 (1995) (“Article I, § 11 of the Constitution of Virginia provides that ‘no person shall be deprived of his life, liberty, or property without due process of law.’ Procedural due process guarantees that a person shall have

reasonable notice and opportunity to be heard before any binding order can be made affecting the person's rights to liberty or property"); *Commission of Fisheries v. Hampton Roads Oyster Packers and Planters Ass'n*, 109 Va. 565, 585, 64 S.E. 1041, 1048 (1909) ("It is very true that 'due process of law' requires that a person shall have reasonable notice and opportunity to be heard before an impartial tribunal before any binding decree or order can be made affecting his rights to liberty or property").

6. The Court also has jurisdiction to re-open the proceedings leading to Judge Keith's Order pursuant to Va. Code § 8.01-428(B) and (D). Section 8.01-248(B) provides that "Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order." This language "clearly is broad enough to cover more than errors committed by the clerk or one of the clerk's employees." *Lamb v. Commonwealth*, 222 Va. 161, 165, 279 S.E.2d 389, 392 (1981). Section 8.01-248(D) provides that "the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or to set aside a judgment or decree for fraud upon the court" is preserved. In this case, one of two things must have happened: *either* (i) the litigant and the Court overlooked the requirement that a transfer be the wish of the duly constituted authorities, by oversight or inadvertence, in which case § 8.01-248(B) would allow re-opening the proceedings to correct the error; *or* (ii) the litigant was aware of the requirement but "engaged in conduct which prevented 'a fair submission of the controversy to the court,'" the necessary support for a finding of extrinsic fraud. *Gulfstream Bldg. Assoc., Inc. v. Britt*, 239 Va. 178, 183, 387 S.E.2d 488, 491 (1990).

7. If the Court reconsiders its ruling and allows a challenge to the validity of the December 2006 deeds, the Episcopal Church and the Diocese would seek to present a limited amount of evidence (certainly less than a day's worth of testimony and exhibits) regarding the narrow issue of whether Diocesan consent was required for the transfer from Christ the Redeemer Episcopal to Truro.

8. If such consent was required, then the transfer is invalid under well-established law, based on both the evidence already presented and the additional evidence that would be presented if allowed.

a. There does not appear to be any dispute that “[i]n the case of a super-congregational church, ... Code § 57-15 requires a showing that the property conveyance is the wish of the constituted authorities of the general church.” *Norfolk Presbytery*, 214 Va. 500, 503, 201 S.E.2d 752, 755 (1974); accord *Green v. Lewis*, 221 Va. 547, 553, 272 S.E.2d 181, 184 (1980).<sup>1</sup>

b. There also does not appear to be any dispute that the December 2006 deeds were not the wish of the Episcopal Church and the Diocese. Indeed, the uncontradicted evidence at trial, including the testimony of Truro Church's own witness, was that Christ the Redeemer Episcopal never gave the Diocese any notice of its actions or consulted with the Diocese in any way about what to do with the property:

- 21 Q Mr. Griswold, after the September 2006 vote  
22 by the Christ the Redeemer Episcopal congregation, you  
1 were the person who had primary responsibility for  
2 negotiations with the Diocese?  
3 A If I were appointed by the vestry, yes.  
4 Q And were you, in fact, appointed or the

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<sup>1</sup> This Court has determined that for property within its scope, § 57-9(A) supersedes this requirement of Virginia law. If the December 2006 deeds were invalid, however, the property that is the subject of those deeds was not Truro's property at all (let alone held by trustees for Truro Church) and therefore cannot be subject to Truro's § 57-9 petition.

5 leader at that point for any negotiations that may  
6 occur?  
7 A Negotiations with the Diocese had not been  
8 determined by the vestry.  
9 Q So no negotiations actually occurred?  
10 A Correct.  
11 Q And you never talked to anyone at the  
12 Diocese about Christ the Redeemer Episcopal Church's  
13 status or what to do with the property?  
14 A No.

Tr. (Oct. 14, 2008) (Ex. B) at 46-47. The Court records also reflect that the proceedings leading to Judge Keith's Order were *ex parte* and that the Episcopal Church and the Diocese were not involved. See TEC-Diocese Exs. 24 (Christ the Redeemer Episcopal's Petition to this Court for Leave to Make a Gift of and Transfer Church Property (filed in case no. 2006 12110 on Sept. 22, 2006), with affidavits and exhibits) and 25 (Order (entered in case no. 2006 12110 on Sept. 29, 2006)).<sup>2</sup> If further testimony and evidence were allowed, it would bolster the evidence already in the record. See Proffer Of Evidence Regarding Validity of December 2006 Deeds Pursuant to Direction of Court at October 14, 2008, Trial, together with Exhibits (served Oct. 21, 2008, filed Oct. 22, 2008).

9. The Diocese and the Episcopal Church have stated the grounds for this Motion and provided the arguments and authorities we wish the Court to consider in support thereof in this Motion and Supporting Memorandum. Other relevant material may be found in briefing prior to the pre-trial hearing on October 8, 2008, and in the Proffer of Evidence Regarding Validity of December 2006 Deeds Pursuant to Direction of Court at October 14, 2008, Trial (served October 21, 2008; to be filed on October 22, 2008). Pursuant to the Fairfax Circuit Court Practices and Procedures regarding Motions for Reconsideration, no hearing has been scheduled on this Motion.

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<sup>2</sup> Both exhibits were admitted. See Tr. (Oct. 14, 2008) (Ex. B) at 71 (Ex. 24, discussed at 68-71 but incorrectly identified on 71 as Ex. 20, which was also admitted but not until 96), 74.

WHEREFORE, for the foregoing reasons, the Court should reconsider its ruling from the bench on October 8, 2008, later memorialized in the October 20, 2008, Order, and should allow further briefing and evidence regarding whether Diocesan consent was required to the purported transfer in the December 2006 deeds. A decision on that issue in favor of the Episcopal Church and the Diocese will establish the deeds' invalidity under Va. Code § 57-15 and therefore that the property that is the subject of those deeds is not subject to Truro Church's § 57-9 petition. If the Court believes it necessary, the Court should also allow the parties to litigate a challenge to Judge Keith's Order under Va. Code § 8.01-428(B) or (D).



Respectfully submitted,

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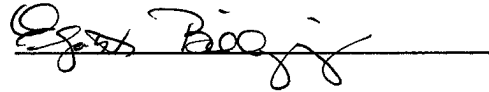
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A handwritten signature in black ink, appearing to read "Stephen R. McCullough", is written over a horizontal line.

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1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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4 IN RE: : Consolidated Cases:

5 MULTI-CIRCUIT EPISCOPAL : CL 2007-248724, et al.

6 CHURCH LITIGATION :

7 - - - - - x

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9 TRANSCRIPT OF PRETRIAL MOTIONS

10 FAIRFAX COUNTY CIRCUIT COURT

11 4110 Chain Bridge Road

12 Courtroom 4G

13 Fairfax, Virginia 22030

14 Wednesday, October 8, 2008

15 10:00 a.m.

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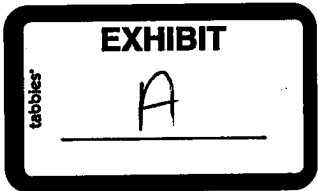
18 BEFORE: The Honorable Randy I. Bellows

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20 Job No.: 139589

21 Pages: 1 through 168

22 Reported by: Sandria L. Cox



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1 could have just conveyed the --

2 THE COURT: I thought the position --  
3 and, Mr. Peterson, I want to hear you on that same  
4 question that I just asked Mr. Heslinga -- but I  
5 thought the position of the Diocese is both these  
6 are invalid.

7 MR. HESLINGA: Well, that's an  
8 evidentiary position that we'll get to if we need  
9 to. That is our position.

10 THE COURT: Why is the first deed  
11 invalid in your view?

12 MR. HESLINGA: Because 57-15 says that  
13 has to be the wish of the duly- constituted  
14 authorities of the church. The way you determine  
15 who the duly-constituted authorities are is to look  
16 at the canon. The canons require the Diocese  
17 consent and that wasn't given.

18 THE COURT: But hasn't that ship sailed  
19 already?

20 I mean, Judge Keith issued his order in  
21 September 2006. It sounds to me like you're asking  
22 me two years later to go back and vacate that

1 I haven't heard him articulate what intervening  
2 rights came between December 15 and December 21st.

3 They didn't file their declaratory  
4 judgment actions until January 2007.

5 THE COURT: They're saying that Judge  
6 Keith's order -- it sounds to me like they're  
7 saying his order isn't valid because they are the  
8 ultimate Church authority and under their reading  
9 of Norfolk Presbytery, they have rights and  
10 obligations to consent to the transfer and they  
11 didn't.

12 MR. PETERSON: That would have been  
13 certainly, Judge, a factual issue in terms of what  
14 their interpretation of what their own canons  
15 means.

16 I can tell you that it's our position  
17 that there was no requirement that Christ the  
18 Redeemer Church seek Diocesan approval to transfer  
19 this property because it's nonconsecrated  
20 property.

21 Even within the interpretation of their  
22 own canons, they --

1 THE COURT: Okay. I'm going to take a  
2 recess for 15 minutes. When I come back I'm going  
3 to rule on Christ the Redeemer Church and we'll  
4 move on from there.

5 BAILIFF: All rise.

6 (At 11:10 a.m. there was a recess held,  
7 and then the hearing reconvened as follows:)

8 BAILIFF: Please be seated and come to  
9 order.

10 THE COURT: The question before the  
11 Court is whether the property subject to the  
12 December 13, 2006 to December 21, 2006 deeds are  
13 covered by the 57-9(A) petition filed by Truro  
14 Church.

15 The Court's ruling is there is a factual  
16 issue that will have to be presented at trial next  
17 week regarding the intent of the grantors and the  
18 deed.

19 I'm going to make some legal rulings  
20 that I think will narrow the issue considerably.  
21 The first is the September 29, 2006 order by Judge  
22 Keith authorizing the gift and transfer of Christ

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7 and the Diocese are arguing that this authorization  
8 is invalid because it was made without the  
9 permission and consent of the Diocese, I find that  
10 the September 29, 2006 -- that the final order  
11 beyond the 21-day period is not subject for review  
12 by this Court.

13 Further I find that the December 21,  
14 2006 deed, which on its face is not ambiguous, may  
15 nevertheless be subject to correction to represent  
16 the intent of the parties in the December 13, 2006  
17 -- uh, uh -- to represent -- to reflect the intent  
18 of the parties.

19 The Episcopal Church and Diocese argue  
20 that only an ineffective deed such as one that  
21 conveys the wrong property or that is ineffective  
22 or ineffectual or invalid can be corrected, but I

1 CERTIFICATE OF REPORTER

2 I, Sandria L. Cox, do hereby certify that the  
3 foregoing proceedings were taken by me in stenotype  
4 and thereafter reduced to transcript under my  
5 supervision; that said proceedings are a true  
6 record of the testimony given by said witness; that  
7 I am neither counsel for, related to, nor employed  
8 by any of the parties to the action in which these  
9 proceedings were taken; and further, that I am not  
10 a relative or employee of any attorney or counsel  
11 employed by the parties hereto, nor financially or  
12 otherwise interested in the outcome of the action.

13 Given under my hand this 8th day of October,  
14 2008.

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\_\_\_\_\_  
Sandria L. Cox  
Court Reporter

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1 V I R G I N I A:

2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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4 IN RE:

Consolidated cases:

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CL 2007-248724, et al

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MULTI-CIRCUIT EPISCOPAL

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CHURCH LITIGATION

The Honorable Randy I. Bellows

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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 Fairfax County Circuit Court

12 4110 Chain Bridge Road

13 Courtroom 4J

14 Fairfax, Virginia

15 Tuesday, October 14th, 2008

16 10:20 a.m.

17 TRIAL - DAY ONE

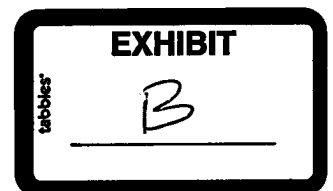
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19 Before: The Honorable Randy I. Bellows

20 Job No. 1-139202

21 Pages 1 - 110

22 Reported by: Laurie Bangart-Smith, RPR, CRR





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TRIAL DAY ONE

IN RE: MULTI-CIRCUIT EPISCOPAL CHURCH LITIGATION

Held at:

FAIRFAX COUNTY CIRCUIT COURT  
4110 Chain Bridge Road  
Courtroom 4J  
Fairfax, Virginia 22030  
(702)691-7320

Taken pursuant to notice, before Laurie  
Bangart-Smith, Registered Professional Reporter,  
Certified Realtime Reporter, and Notary public in  
and for the Commonwealth of Virginia.

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A P P E A R A N C E S

ON BEHALF OF TRURO CHURCH AND ITS RELATED ENTITIES:

GEORGE O. PETERSON, ESQUIRE

TANIA M.L. SAYLOR, ESQUIRE

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ON BEHALF OF THE EPISCOPAL DIOCESE OF VIRGINIA:

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1 (Appearances continued)

2 ON BEHALF OF CHRIST THE REDEEMER CHURCH, POTOMAC FALLS  
3 CHURCH AND THE FALLS CHURCH:

4 TIMOTHY R. OBITTS, ESQUIRE

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6 Seventh Floor

7 8280 Greensboro Drive

8 McLean, Virginia 22102

9 (703)761-5000

10 ON BEHALF OF CHURCH OF THE WORD, ST. MARGARET'S  
11 CHURCH, AND ST. PAUL'S CHURCH:

12 E. ANDREW BURCHER, ESQUIRE

13 Walsh, Colucci, Lubeley,

14 Emrich & Walsh

15 Glen Park 1, Suite 300

16 4310 Prince William Parkway

17 Woodbridge, Virginia 22192

18 (703)680-4664

19

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21

22

1 A Yes.

2 Q Do you have any reason to doubt that this is  
3 a copy of the 2005 constitution and canons of the  
4 Diocese?

5 A No.

6 MR. PETERSON: Your Honor, I still object  
7 to --

8 THE COURT: There's nothing objectionable  
9 about that question.

10 MR. PETERSON: I understand.

11 MR. HESLINGA: Your Honor, I'm not sure  
12 whether it's necessary to have this in evidence,  
13 but I move it into evidence as the 2005  
14 constitution and canons of the Diocese.

15 THE COURT: Mr. Peterson?

16 MR. PETERSON: This witness still hasn't  
17 identified what this is. He's read a title on  
18 the cover page.

19 THE COURT: Sustained.

20 BY MR. HESLINGA:

21 Q Mr. Griswold, after the September 2006 vote  
22 by the Christ the Redeemer Episcopal congregation, you

1 were the person who had primary responsibility for  
2 negotiations with the Diocese?

3 A If I were appointed by the vestry, yes.

4 Q And were you, in fact, appointed or the  
5 leader at that point for any negotiations that may  
6 occur?

7 A Negotiations with the Diocese had not been  
8 determined by the vestry.

9 Q So no negotiations actually occurred?

10 A Correct.

11 Q And you never talked to anyone at the  
12 Diocese about Christ the Redeemer Episcopal Church's  
13 status or what to do with the property?

14 A No.

15 Q You went to a vestry meeting of Truro Church  
16 after Christ the Redeemer Episcopal Church's vote in  
17 September of 2006 to report on the vote?

18 A Yes.

19 Q Was that the September 26th, 2006, vestry  
20 meeting?

21 A It may have been. I don't recall the exact  
22 date.

1 MR. HESLINGA: Your Honor, I'd move Exhibit  
2 24 in.

3 MR. PETERSON: I would object, Your Honor.  
4 This is the issue related to Judge Keith's order  
5 which this court had ruled it had no power to  
6 determine. I think it's related to that. It's  
7 the petition that the order was generated from,  
8 so I don't think it has any relevance whatsoever  
9 at this point, given the court's determination  
10 last Wednesday.

11 MR. HESLINGA: And Your Honor, I would say  
12 that what Christ the Redeemer Episcopal Church  
13 asked the court to be able to do has got to be  
14 relevant to what it decided to do and what it  
15 intended to do, because the petition would have  
16 to express what it wanted to do.

17 MR. PETERSON: The problem with that, Your  
18 Honor, if I may --

19 THE COURT: Well, before I hear from you,  
20 Mr. Peterson, let me understand how far down this  
21 road you intend to go, Mr. Heslinga, because  
22 obviously my ruling says that this court has no

1 power to review, modify, vacate, alter Judge  
2 Keith's order, because that was a final order,  
3 and the time has long passed for the court to  
4 reconsider it.

5 Having said that, there is a wealth of  
6 evidence both parties could -- I mean you could  
7 litigate that issue if it was open, but it's not,  
8 because I've said it's a final order. So where  
9 are we headed here?

10 MR. HESLINGA: All I'm intending to do is  
11 bring it into evidence as some expression, some  
12 relevant statement related to their intent. I  
13 will make a proffer later regarding exhibits that  
14 are no longer relevant in light of Your Honor's  
15 ruling. This, I contend it is still relevant to  
16 some degree, because what they ask the court to  
17 do must be related to, by definition, what they  
18 wanted to do and what they intended.

19 THE COURT: Is this the only document that  
20 you were planning on offering either now, in  
21 cross, or in your case in chief that precedes  
22 Judge Keith's order, or are there other documents

1           that are offered?

2           MR. HESLINGA: Our exhibit 20 is a letter  
3           from 1998 to which Truro made no objection, so I  
4           didn't think now it was necessarily an  
5           appropriate time, but I do intend to move that  
6           in. There are a couple other pre- --

7           THE COURT: Well, actually --

8           MR. HESLINGA: So I'm saying it's not the  
9           only document, but it is one of the documents  
10          pre-order that I would like to move into  
11          evidence.

12          THE COURT: All right.

13          Well, Mr. Peterson, it would be my view that  
14          the Episcopal Church and the Diocese can offer  
15          such evidence as they think is relevant to the  
16          issue of intent, and they're saying this is  
17          relevant not to the validity of Judge Keith's  
18          order but the issue of intent.

19          MR. PETERSON: I understand that, Your  
20          Honor, but as I understood the court's ruling  
21          last week, it was the issue of intent as of  
22          December 13, 2006.



1 THE COURT: That's correct.

2 MR. PETERSON: Our petition was filed back  
3 in mid-September, and I don't think it's related  
4 or relevant.

5 THE COURT: Well, this is a document signed  
6 by Mr. Griswold; is that correct?

7 MR. PETERSON: It is, Your Honor.

8 THE COURT: I'm going to admit it. It's in  
9 (Exhibit 20).

10 MR. HESLINGA: Thank you, Your Honor.

11 THE COURT: Excuse me. You don't question  
12 the authenticity of it, right?

13 MR. PETERSON: No, I don't.

14 THE COURT: All right. It's in.

15 MR. HESLINGA: I'd also like to move in 25,  
16 which is the order itself. Same thing. It's  
17 limited to whatever the order shows about intent.  
18 The only objection Truro heard on that as well  
19 was relevance, and I think it's relevant for the  
20 same reason.

21 THE COURT: Well, I understand the first  
22 document, because Mr. Griswold signed it, so it's

1 for, as the petition was offered and admitted, is  
2 for the language, "Truro Church, a church  
3 organized as a Virginia non-stock religious  
4 corporation," because I think that's relevant to  
5 their intent.

6 THE COURT: Well, I don't see any problem  
7 with this court taking notice of the orders of  
8 this court, and I will take it in. It's  
9 admitted.

10 MR. HESLINGA: Thank you. That's my  
11 examination.

12 THE COURT: All right. Redirect?

13 MR. PETERSON: Your Honor, would you note  
14 the objection to the admission of that last  
15 exhibit?

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MR. PETERSON:

19 Q Mr. Griswold, if you can take a look at  
20 Exhibit 24 before you, and specifically if you could  
21 find your affidavit.

22 A Yes.

1 it?

2 MR. HESLINGA: Correct.

3 THE COURT: You're offering it.

4 Any objection?

5 MR. PETERSON: No.

6 THE COURT: They're in.

7 Next one is 20?

8 MR. HESLINGA: Yes, our 20.

9 THE COURT: Okay. 20 is admitted without  
10 objection?

11 MR. PETERSON: We made no objection when the  
12 exhibits were identified, so no objection.

13 THE COURT: All right. 20 is in.

14 Anything else?

15 MR. HESLINGA: 23.

16 THE COURT: Any objection to 23?

17 MR. PETERSON: We made no objection to it  
18 pretrial, so no objection.

19 THE COURT: All right. 23 is in.

20 MR. HESLINGA: And then 29, that's the Truro  
21 Church vestry minutes from their September 26th,  
22 2006 meeting. It has a report from Christ the

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CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

I, Laurie Bangart-Smith, Registered Professional Reporter, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of October, 2008.

My commission expires: January 31st, 2010

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LAURIE BANGART-SMITH  
NOTARY PUBLIC IN AND FOR  
THE COMMONWEALTH OF VIRGINIA