

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

M. LEAR CURTIS, TRUSTEE, : APPEAL NO. C-190517
TRUE HOLINESS CHURCH OF GOD : TRIAL NO. A-1606644
OF MT. AUBURN, :

and : *JUDGMENT ENTRY.*

TRUE HOLINESS CHURCH OF GOD :
OF MT. AUBURN, :

Plaintiffs-Appellees, :

vs. :

DEBORAH L. PHILLIPS, :

and :

NEW BEGINNINGS CHURCH OF :
GOD, :

Defendants-Appellants. :

TRUE HOLINESS CHURCH OF GOD : TRIAL NO. A-1606699
OF MT. AUBURN, :

Plaintiff, :

vs. :

M. LEAR CURTIS, :

EDITH THROWER, :

MARILYN WASHINGTON, :

and :

HELEN CURTIS, :

Defendants. :

This court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In the case numbered A-1606644, M. Lear Curtis, on behalf of True Holiness Church of God of Mt. Auburn ("THC"), filed an action against Deborah L. Phillips and New Beginnings Church of God ("Phillips") for trespass and fraud, seeking damages and a permanent injunction enjoining Phillips from entering the THC property. Curtis alleged that his mother, Gearldine Curtis White ("Gearldine"), was the pastor of THC, and that following Gearldine's death in October 2016, Phillips trespassed on THC property, caused damage to the property, and took actions on behalf of THC without authorization. Curtis later amended his complaint to add THC as a plaintiff and to request a temporary restraining order ("TRO") and preliminary and permanent injunctions enjoining Phillips from entering THC, interfering with the activities of THC, or taking actions on its behalf. In addition, Curtis and THC sought a judgment declaring that Curtis, Edith Thrower, and Donnie Rutherford are the legitimate members of the THC Board of Trustees and that Phillips is not a member of THC's Executive Board or Board of Trustees.

In the case numbered A-1606699, Phillips, on behalf of THC, filed an action against Curtis, Edith Thrower, Marilyn Washington, and Helen Curtis ("Helen"), for conversion and trespass. Phillips sought a TRO and preliminary and permanent injunctions enjoining Curtis from transferring or impairing his interest in the THC property and enjoining Curtis, Thrower, Washington, and Helen from entering THC premises or interfering with THC worship services, asserting that none of them was a member of THC. The trial court, which was not the same court to which Curtis's case

was assigned, issued a TRO restraining Curtis from transferring or impairing his interest in the property and prohibiting all parties from holding worship services on the property or taking any action in relation to the property.

Pursuant to local court rules, the cases filed by Curtis and Phillips were consolidated to be heard by the trial court to whom the lowest case number (Curtis's case) was assigned. That court extended the TRO on its original terms until the date scheduled for a hearing on the parties' requests for preliminary injunctions.

After that hearing, the trial court granted a preliminary injunction in favor of Curtis and THC, allowing Curtis to continue as caretaker of the THC property and enjoining Phillips from taking any actions on behalf of THC or entering its premises.

Following a trial on the merits, the trial court entered judgment in favor of Curtis and THC and declared that Rutherford and Thrower, but not Curtis, are the trustees of THC, and the court extended its preliminary injunctive relief as it related to Phillips into a permanent injunction. The court dismissed Phillips's claims for conversion, trespass, and injunctive relief, as well as Curtis's claims for trespass and fraud. Phillips now appeals.

In her first assignment of error, Phillips argues that the trial court "erred in the Temporary Restraining Order preceding in the case after recuse itself." Phillips contends that the trial judge initially assigned to her case stated that Thrower was a friend, before the judge granted the TRO and then recused. However, the transcript of the hearing on the TRO reflects that the judge made no comment about a friendship with any party. At the hearing, Phillips was represented by counsel, but Curtis was not. The judge stated that the parties reached an agreement as to the TRO and then the judge read that agreement into the record. Before the judge signed the TRO, she asked the parties if they had anything further, and none of the parties replied. In addition,

the record demonstrates that no recusal occurred and that the cases were consolidated pursuant to local rules. The error complained of is not reflected in the record. *See* App.R. 16(A). Therefore, we overrule the first assignment of error.

In her second and fourth assignments of error, Phillips argues that the trial court erred in granting the preliminary injunction in favor of Curtis and THC. However, this argument is rendered moot by the trial court's decision granting the permanent injunction. *See Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 269, 747 N.E.2d 268 (1st Dist.2000). The purpose of the preliminary injunction was simply to preserve the status quo pending a trial on the merits. *See id.* at 268. Because the trial court's determination of the merits effectively rendered moot the consideration of the likelihood of Curtis's success on the merits for the preliminary injunction, the court's decision granting the permanent injunction moots the issue of Curtis's right to the preliminary injunction. *See id.* at 269. We overrule the second and fourth assignments of error.

In her third and sixth assignments of error, Phillips argues that the trial court's decision was against the manifest weight of the evidence. She asserts that the court erred by finding that she was neither a member of the Board of Trustees nor the pastor of THC, and by finding that Rutherford and Thrower were members of the Board of Trustees. Phillips contends that at a THC business meeting on May 5, 2016, Gearldine named Phillips, Phillips's daughter, and Phillips's niece to the THC Board of Trustees, and that Gearldine wrote a letter that same date appointing Phillips as the pastor of THC.

Here, the trial court found credible the testimony of Rutherford and Thrower as to their appointments to the THC Board of Trustees. Their testimony was supported by a 2015 filing with the Ohio Secretary of State, which Rutherford and Thrower executed

on behalf of THC, to appoint Gearldine as THC's statutory agent. Dr. Robin Forde, president of Temple Christian University and an adviser for THC since its inception, testified that he prepared and filed the statutory-agent update with the state after he met with Gearldine, Rutherford, and Thrower, the members of THC's Board of Trustees.

The trial court found no credible evidence supporting Phillips's claim that she was on the THC Board of Trustees or that she was the THC pastor. The court noted that the May 6, 2016 letter purporting to appoint Phillips as the THC pastor was suspicious because Gearldine's signature on the letter "is substantially different from every other example of her signature that the Court has on record," and because "Gearldine's typed name is misspelled as 'Geraldine,' [despite] evidence that she was highly particular about how her name was spelled." The court stated that "[t]hese discrepancies cast doubt on the already suspicious meeting notes from the same day, which allege a complete change of leadership [which] was never communicated to anyone outside of Phillips'[s] cohort."

The court stated that the evidence showed that Gearldine, "did not trust Phillips," and that "[d]uring a March 20, 2016 business meeting of the Church, Gearldine started 'venting' and said, 'No one is over me but God' and 'that includes . . . Phillips.'" In addition, the court found:

It is highly implausible that Gearldine in such a short time [between March and May 2016] had completely changed her mind and decided to entrust Phillips with control of a church which had been family-run since its inception in 1979. No independent witnesses verify Phillips'[s] story; only her family and friends confirm that she was pastor of the Church. If Gearldine had appointed Phillips, it seems strange that she failed to

inform any of the friends and family that took care of her every day until she died.

As this was a bench trial, we must presume that the trial court's factual findings are correct because the court had the opportunity to view the witnesses and observe their demeanor. *Jindal Builders & Restoration Corp. v. Cincinnati Metro. Hous. Auth.*, 2020-Ohio-4043, 157 N.E.2d 279, ¶ 13 (1st Dist.). Following our review of the record, we cannot say that the trial court clearly lost its way and created such a manifest miscarriage of justice that its judgment must be reversed and a new trial ordered. See *William Powell Co. v. OneBeacon Ins. Co.*, 2020-Ohio-5325, 162 N.E.3d 927, ¶ 47 (1st Dist.), citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20. Therefore, we overrule the third and sixth assignments of error.

In her fifth assignment of error, Phillips argues that the trial court erred by failing to utilize the THC Constitution and Bylaws when ruling on the merits of the claims. However, the record demonstrates that the trial court referenced the Constitution and Bylaws in its decision and that it found no credible evidence that Phillips had been appointed to the Board of Trustees. Therefore, we overrule the fifth assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

MYERS, P.J., WINKLER and HENDON, JJ.

SYLVIA SIEVE HENDON, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on July 2, 2021,

per order of the court _____.
Administrative Judge