

THE PERMANENT JUDICIAL COMMISSION
of
THE PRESBYTERY OF BOSTON
of
THE PRESBYTERIAN CHURCH (U.S.A.)

)	
Presbytery of Boston)	
For)	
The Presbyterian Church (U.S.A.))	
)	DECISION AND ORDER
vs)	Case 08-01
)	
Jean K. Southard,)	
Minister of Word and Sacrament)	
)	

ARRIVAL STATEMENT

This is a Disciplinary case which has come before the Permanent Judicial Commission as a result of a complaint submitted against Jean K. Southard, a Minister of Word and Sacrament and an Honorably Retired member of the Presbytery of Boston.

JURISDICTIONAL STATEMENT

The Permanent Judicial Commission finds that it has jurisdiction and that the charges against the Rev. Southard were filed with the Stated Clerk of the Presbytery of Boston within the required time limits.

APPEARANCES

Jean K. Southard, the Accused
Sara M. Taylor, Counsel for the Accused
Kevin Manuel and Alexander Wei, for the Prosecuting Committee
William H. Miller, Counsel for the Prosecuting Committee

HISTORY

An Investigating Committee was duly appointed by the Moderator of the Presbytery of Boston. The Committee decided to file charges which were dated 4 May 2009 in their first version by the Prosecuting Committee (PC) and received by the Clerk of the Permanent Judicial Commission (PJC) on 10 May 2009.

A pretrial conference was held on 20 May 2009 at 20:00 at the Hartford Street Presbyterian Church in Natick, MA, with both parties present. The Prosecuting Committee submitted amended charges, but these were rejected by Moderator and Clerk since they found that the substance of these charges was different from the original charges.

The date for the trial was set, and agreed to by all parties, for 22 August 2009 at 09:00 in a location to be announced. The Prosecuting Committee was directed to submit amended charges by 27 May 2009 at 18:00, the accused and her counsel to submit pretrial motions for dismissal by 3 June 2009 at 18:00, and the Prosecuting Committee to submit a response to these motions by 10 June 2009 at 18:00. All deadlines were met and all documents duly submitted.

The Moderator and Clerk made a preliminary determination on the motions to dismiss on 13 June 2009 and sent notification to both parties on 14 June 2009. In summary, charges 2, 3, and 4 were dismissed and the Prosecuting Committee was directed to amend charges 1 and 5 to comply with D-11.0403b, and to provide the amended charges by 20 July 2009.

On 7 July 2009 the Prosecuting Committee requested a postponement of the trial date by two months. The request was received by the Clerk on 8 July 2009. That same day the Accused notified the Clerk of her objections to a postponement.

The revised charges (version 4) were received from the Prosecuting Committee on 20 July 2009.

On 23 July 2009 the Permanent Judicial Commission met at Hartford Street Presbyterian Church in Natick, MA, to review the determination by Moderator and Clerk on the dismissals, to consider the request for postponement, and to set certain parameters for the trial.

The Hartford Street Presbyterian Church in Natick, MA, was chosen as the place for the trial. The determinations were sustained and the request for postponement was denied. These decisions are part of the records of this trial, but for reference the Commission includes a summary of its rationale here.

Charge 1: The Permanent Judicial Commission did not see the charge as submitted on 27 May 2009 setting forth the conduct that constitutes the offense, nor the time, place, and circumstances of the alleged offense. The Prosecuting Committee was directed to amend this charge to comply with D-10.0403b, without changing the substance of the original charge.

Charge 2: Dismissed since G-11.0403a governs the responsibilities of the presbytery in validating the ministries of its members and as such does not provide a ground for charging a member with an offense as alleged.

Charge 3: Dismissed since G-11.0403d governs the responsibilities of the presbytery in validating the ministries of its members and as such does not provide a ground for

charging a member with an offense as alleged. There is no indication that the Accused evaded accountability to the presbytery or at any time misled the presbytery about her actions.

Charge 4: Dismissed since the function of G-6.0106b is to guide governing bodies in their examination of candidates for ordination and installation; it may be ground for certain remedial cases, but is not applicable to disciplinary cases since it does not in and by itself prescribe or prohibit specific conduct for individual church officers or candidates.

Charge 5: This charge flows from the allegation contained in Charge 1. As in that case, the PERMANENT JUDICIAL COMMISSION did not see the charge as submitted on 27 May 2009 setting forth the conduct that constitutes the offense, nor the time, place, and circumstances of the commission of the alleged conduct. Therefore, the Prosecuting Committee was directed to amend this charge to comply with D-10.0403b, without changing the substance of the original charge.

Postponement: The Prosecuting Committee had the prerogative to not file charges until it had procured counsel and its case was ready. However, once the charges are filed the Accused has every right to expect a speedy trial. The Permanent Judicial Commission has the obligation to protect that right and to hold to a trial date once it is set, barring extreme emergency. In *Matsuda et al. vs. Presbytery of San Francisco* (remedial case 203-4, 11.049, 1991) the GAPJC stated very clearly:

The Presbyterian judicial process does not contain the concept of "continuance" very common in civil law. The synod permanent judicial commission has the right and obligation to set an appropriate trial date and, barring extreme emergency, hold to it.

(See also the Annotated Book of Order, D-7.0101 and D-11.0101)

Therefore, since the Commission did not perceive an extreme emergency, the request was denied.

From this point onward, the original charges 1 and 5 are renumbered as 1 and 2.

CHARGES AND VERDICT

Charge 1

On 1 March 2008, in the sanctuary of the First Presbyterian Church of Waltham, Massachusetts, the Rev. Jean Southard as a minister of the Word and Sacrament violated the Constitution of the Presbyterian Church (U.S.A.) by participating in and directing a worship service publicly witnessed and acknowledged by the community of faith

- (a) that appropriated the liturgical forms for Christian marriage to celebrate the marriage of two women sanctioned by civil law and purporting to be consistent with the Christian understanding of marriage under the Constitution of the Presbyterian Church (U.S.A.);
- (b) where Rev. Southard declared that as a result of the marriage ceremony she performed, the two women were then joined in Christian marriage, declaring a

new status that is reserved to the marriage of one man with one woman under the Constitution of the Presbyterian Church (U.S.A.);

- (c) where Rev. Southard failed to differentiate between the marriage celebrated between the two women and a Christian marriage between one man and one woman, but rather directed the marriage worship service to be similar to the marriage service between one man and one woman under the Constitution of the Presbyterian Church (U.S.A.), by conducting the service in the sanctuary and by including in the worship service one or more of the following elements:
- (i) the two women declared their intention to enter into Christian marriage;
 - (ii) the two women exchanged vows of love and faithfulness similar to the vows expressed by a man and a woman in a ceremony of Christian marriage;
 - (iii) prayers were offered for the two women as a new couple in their new dimension as being married together;
 - (iv) Rev. Southard declared that as a result of the marriage ceremony the two women were then joined in Christian marriage.

By so participating and directing the worship service, Rev. Southard disregarded the Directory for Worship W-4.9000, in particular W-4.9001, which expressly defines our biblical and constitutional understanding of Christian marriage.

Verdict

This charge is not sustained.

Rationale

The Prosecuting Committee has not proven beyond reasonable doubt that W-4.9000 contains mandatory language that would prohibit a Minister of Word and Sacrament from performing a same-gender marriage.

Since the Preface to the Directory of Worship (clause b) states that the Directory uses language that is “simply descriptive”, this Commission takes this to mean that the definition of Christian marriage in W-4.9001 is merely descriptive; there is no mandatory language in this article. Where mandatory language is used in subsequent articles (e.g., W-4.9004), it is taken to refer to mandatory action, not limiting the gender of the couple to be married. In addition, there is no mandatory language in the Constitution, nor in any Authoritative Interpretation, prohibiting Ministers of Word and Sacrament from performing same-gender marriages in states where this is allowed by law.

The Authoritative Interpretation of 1991 (Request 91-23), written by the Advisory Committee on the Constitution, again contains no mandatory language. Also, it addresses the distinction between mixed-gender marriage and same-gender unions, not same-gender marriages (as no states allowed same-gender marriage at the time), and is therefore not applicable to this case.

In the Spahr case (GAPJC 218-12) the GAPJC ruled that the decision in the Benton case (GAPJC 212-11) was not applicable. Benton (GAPJC 212-11) was a remedial case, rather than a disciplinary case and involved the policies of a session. Moreover, its subject matter was same-gender civil unions, not same-gender marriage. It is not applicable to this case.

The decision in the Spahr case (GAPJC 218-12) does not contain a clear prohibition that is applicable to this case, while it also cannot serve as precedent to the present case, as precedent cannot be applied retro-actively.

Charge 2

On 1 March 2008, in the sanctuary of the First Presbyterian Church of Waltham, Massachusetts, the Rev. Jean Southard as a minister of the Word and Sacrament failed to fulfill her ordination vow to be governed by our church's polity (W-4.4003e) by participating in and directing the ceremony as set forth in Charge # 1, purporting to perform a Christian marriage between two women.

“Will you be governed by our church’s polity, and will you abide by its discipline?...” --W-4.4003e

Verdict

This charge is not sustained.

Rationale

Since the first charge is not sustained and therefore the commission of an offense has not been established, the Rev. Southard, by definition, cannot have failed to fulfill her ordination vow to be governed by the church's polity and to abide by its discipline.

ORDER

IT IS THEREFORE ORDERED that the Stated Clerk of the Presbytery of Boston report this decision to the Presbytery at its first meeting after receipt, and that the Presbytery enter the full decision upon its minutes.

IT IS FURTHER ORDERED that the Clerk of Session of the First Presbyterian Church of Waltham report this decision to the Congregation at its first worship service after receipt, that the Session enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the Presbytery of Boston.

IT IS FURTHER ORDERED that all official representatives and staff of the Presbytery of Boston are directed to state ONLY the decision of the Permanent Judicial Commission to the media without any comment or interpretation.

**Dissenting Opinion of
Margaret MacLeod and R. Ward Holder**

In rendering this decision, the majority has taken the liberty of legislating change in the Constitution through the judicial process. W-4.9001 definitely does define marriage as being between a man and a woman. Since 2004 in the Commonwealth of Massachusetts, the civil act of marriage between same gender couples is a possibility, making this case different from the context of the Spahr decision. Thus, the rationale from the Spahr decision (GAPJC 218-12) does not fit, wherein (p. 4) the GAPJC argued that a same gender ceremony can never be a marriage. In the Commonwealth of Massachusetts, a same gender ceremony can definitely be a civil marriage.

Benton (GAPJC 212-11) does set a rational standard for deriving the difference between a blessing of a same-sex union and the celebration of a Christian marriage. However, this case does not elucidate the facts of Southard (08-01), as Benton assumed the impossibility of a civil marriage between same gender participants. Further, the issues of fact of the Southard case were stipulated – both the Prosecuting Committee and the Accused provided and accepted evidence that this was intentionally a Christian marriage.

Because of this changed legal state in the Commonwealth of Massachusetts (The General Laws of Massachusetts, Chapter 207), the importance of the definitions within the Constitution of the Presbyterian Church (U.S.A.) become more important, not less so. Further, the argument that the definition of marriage being between a man and a woman is only descriptive and reflects the ideals and mores of a bygone age cannot be sustained. The claim stands without proof, and can only be maintained through dependence on the argument from silence. This sets a dangerous precedent, that any part of the Constitution that has not recently been sustained by legislative action can be assumed to have lost validity. In the absence of that legislative action, the commission has substituted its judgment for the clear words of definition. This makes a mockery of the prescriptive language of W-4.9004, wherein the Directory for Worship orders that “The man and the woman shall declare their intention to enter into Christian marriage and shall exchange vows of love and faithfulness.”; and “In the name of the triune God the minister shall declare publicly that the woman and the man are now joined in marriage.”

We disagree with the commission decision and do not join in it. While we find that Rev. Southard found herself in a difficult position given the request of two valued elders of her church, we do not find that tension to be sufficient reason to grant release from the strictures of the discipline of the Constitution. Her action of social justice came at the cost of her obedience to her ordination vows, (W-4.4003e), and created a situation that worked against the peace, unity and purity of the Church.

ABSENCES AND NON-PARTICIPANTS

The Rev. Jean K. Southard, the accused and member of the Permanent Judicial Commission, was present as the accused and took no part in the Commission's proceedings. The Rev. Preston Williams, a member of the Permanent Judicial Commission, was not present and took no part in the proceedings. The Rev. Alice Hageman, a past member of the Commission, was present at all proceedings in order to be able to function as a substitute member if the quorum would not be met at some point during the trial, but did not participate in the deliberations.

Dated this 22nd day of August, 2009

Sarah E. S. Newhall,
Moderator, Permanent Judicial Commission of the Presbytery of Boston

Arnold H. Rots,
Clerk, Permanent Judicial Commission of the Presbytery of Boston

Certificates

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Presbytery of Boston, Presbyterian Church (U.S.A.), in Disciplinary Case No. 08-01, Presbytery of Boston for the Presbyterian Church (USA) vs. Jean K. Southard, Honorably Retired Minister of Word and Sacrament, made and announced at Natick, on the 22nd day of August 2009.

Sarah E. S. Newhall,
Moderator, Permanent Judicial Commission of the Presbytery of Boston

Arnold H. Rots,
Clerk, Permanent Judicial Commission of the Presbytery of Boston

I certify that I did transmit a certified copy of the foregoing to the following by delivering it in person on the 22nd day of August 2009 or by certified mail:

Jean K. Southard,
Accused

Sara M. Taylor,
Counsel for the Accused

Alexander L. Wei
Clerk, Prosecuting Committee

William H. Miller,
Counsel for the Prosecuting Committee

Frances Dragon
Clerk of Session, First Presbyterian Church of Waltham

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Presbytery of Boston, Presbyterian Church (U.S.A.), by delivering it in person, on the 22nd day of August 2009:

Arnold H. Rots,
Clerk, Permanent Judicial Commission of the Presbytery of Boston

As witnessed by:

Sarah E. S. Newhall