

- b. Direct the PTCA to vacate and rescind the motion of January 26, 2008 by which it approved Paul Capetz's declared departure from G-6.0106b.

Appearances

Bierschwale, *et al.* were represented by Charles Shreffler. The Complainants were all present in person. The Presbytery of Twin Cities Area (the Presbytery) was represented by Douglas Nave. The Committee of Council was entirely present in person.

History

This case concerns the action of the Presbytery in restoring Paul Capetz, a minister of Word and Sacrament, to the exercise of his ordained office. Capetz was ordained as a minister of Word and Sacrament in 1991, but asked in 2000 to be released from the exercise of ordained office because of his conscientious objection to the then newly adopted section G-6.0106b of the *Book of Order*. The Presbytery granted the requested release. *See* G-6.0600.

After the 217th General Assembly (2006) adopted an Authoritative Interpretation from the Report of the Theological Task Force on Peace, Unity, and Purity of the Church, addressing section G-6.0108 of the *Book of Order*, on August 15, 2007, Capetz requested that he be restored to the exercise of ordained office under the procedure set forth in G-6.0600c. Capetz responded to questions put to him by the Presbytery's Committee on Ministry, and stated: "I affirm the Constitutional Questions asked of me at my ordination. However, I have to raise a principled objection or scruple. I cannot affirm G-6.0106b. Nor can I affirm the position of the Presbyterian Church (U.S.A.) on the question of the morality of homosexual relationships."

The Presbytery met on January 26, 2008, and, based on the recommendation of the Presbytery's Committee on Ministry, considered three motions:

First, that Capetz's "declared departure from G-6.0106b be found not to constitute a failure to adhere to the essentials of Reformed faith and polity under G-6.0108 of the *Book of Order*" (Departure Motion);

Second, that Capetz "be restored to the exercise of ordained office of minister of Word and Sacrament" (Restoration Motion); and

Third, that the Presbytery validate Capetz's "ministry as member of the faculty of United Theological Seminary" (Validation Motion).

During the debate on the Departure Motion, Capetz answered questions. In response to one question, Capetz stated: "The 2006 GA has recognized a right of candidates for ministry to declare a departure, or scruple. My departure: I refuse to take a vow of celibacy." Capetz was asked whether he was in compliance with the constitutional standards, and responded: "Even if I could look in a crystal ball and know that I would have no future sexual relationships, I would still refuse to be in compliance with the *Book of Order* as it now stands." Capetz was asked in reference to G-6.0106b, whether he would refrain from intimate sexual activity outside the bounds of

marriage between a man and a woman, if he were to be restored to exercise of his ordained office. Capetz responded: "I refuse to take a vow of celibacy." The Presbytery passed all three motions on January 26, 2008.

Bierschwale, *et al.* filed a complaint on February 27, 2008, alleging that the Presbytery acted irregularly in passing the three motions, and asked the SPJC to order the Presbytery to nullify all three of its actions with respect to Capetz and determine that Capetz's declared departure from G-6.0106b was a failure to adhere to the essentials of the Reformed faith and polity under G-6.0108. The Presbytery moved to dismiss the Complaint for failure to state a claim upon which relief can be granted.

In an April 25, 2008, Preliminary Order, the Moderator and Clerk of the SPJC dismissed the Complaint, finding that granting the relief requested would nullify Capetz's ordination and that such action could be taken only in a disciplinary proceeding. Bierschwale, *et al.* challenged this Preliminary Order on June 4, 2008, and later amended their Complaint to request that, in addition to the relief previously sought, the SPJC admonish the Presbytery and order it to refrain from conducting further irregular ordinations, installations, restorations or validations.

After a hearing on August 12, 2008, the SPJC issued a final Decision and Order dismissing the Amended Complaint for failure to state a claim upon which relief can be granted. Bierschwale, *et al.* filed a Notice of Appeal to this Commission on September 23, 2008. A hearing was held before the GAPJC on February 27, 2009. On March 2, 2009 The GAPJC issued a Decision and Order to sustain the specifications of error in part and to not sustain the specifications of error in part and remanded specifications No 4 and 5. The so-called Restoration Motion and Validation Motion were sustained by the GAPJC and the Departure Motion was remanded to the SPJC for trial. This trial was held on May 11, 2009.

Decision

G-6.0108 provides for the expression of disagreement and/or departure from particular interpretations of Scripture and the *Confessions* as expressed in the *Form of Government*, so long as the disagreement and/or departure falls within certain bounds (G-6.0108b). We find that Dr. Capetz did declare a departure from G-6.0106b. The Presbytery heard his departure and acted on it during a special Presbytery meeting held on January 26, 2008.

G-6.0108a enumerates those bounds as "So far as may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church. . ." By a preponderance of the evidence presented, we find that the stated departure of Dr. Capetz does not infringe on the rights and views of others, and does not obstruct the constitutional governance of the church. As to the matter of serious departure from these standards, G-6.0108b states, in part, "The decision as to whether a person has departed from essentials of Reformed faith and polity is made initially by the individual concerned but ultimately becomes the responsibility of the governing body in which he or she serves", namely the Presbytery of the Twin Cities Area in this case. The Presbytery took extraordinary care to make it clear that their decision applied only to the current expression of departure and was not making policy or setting precedent and the Complainants

have not contested that claim by the Respondent. We find that the action of the Presbytery was not irregular.

As to the contention that PTCA waived the “fidelity and chastity” requirement of G-6.0106b, we find that the Presbytery clearly stated in the acceptance of Dr. Capetz that they were not waiving any requirements. We find that the Presbytery did not set policy to be applied to any future departures.

Order

IT IS THEREFORE ORDERED that the action of the Presbytery is affirmed; no relief is granted.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of the Twin Cities Area report this decision to the Presbytery of the Twin Cities Area at its first meeting after receipt, that the Presbytery of the Twin Cities Area 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 Synod of Lakes and Prairies.

Absences and Non-participants

Commissioners Jeanne Grosshans and Reginald Kuhn were absent, and Jo Ringgenberg recused herself (member of a church in PTCA) and they did not participate in this decision.

Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the Synod of Lakes and Prairies of the Presbyterian Church (U.S.A.) in Remedial Case 2008-1, David Bierschwale, David Lenz, and Carol Shanholtzer (Complainants) v. Presbytery of the Twin Cities Area (Respondent), on May 11, 2009.

Dated the 12th day of May, 2009.

Margaret Z. Morris, Moderator
Permanent Judicial Commission
Of the Synod of Lakes and Prairies

Charles E. Orr, Clerk
Permanent Judicial Commission
Of the Synod of Lakes and Prairies

I certify that I did transmit a certified copy of the foregoing to the following persons by Certified Mail and/or personal service, directing J Jay Wilkinson to deposit it in the mail at Eagan, Minnesota on May 12, 2009.

Charles R. Shreffler, Counsel for Complainants
Barbara Lutter, Committee of Counsel for Respondent (personal delivery)
Nancy Grittman, Stated Clerk of the Presbytery of the Twin Cities Area
Synod Permanent Judicial Commission (personal delivery and regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Synod of Lakes and Prairies of the Presbyterian Church (U.S.A.) by personal delivery to J Jay Wilkinson on May 12, 2009.

Charles E. Orr, Clerk
Permanent Judicial Commission
Of the Synod of Lakes and Prairies

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of Lakes and Prairies of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the Synod of Lakes and Prairies, Eagan, Minnesota, on May 11, 2009, in Remedial Case 2008-1, David Bierschwale, David Lenz, and Carol Shanholtzer (Complainants) v. Presbytery of the Twin Cities Area (Respondent), and that is the final judgment of the Synod of Lakes and Prairies of the Presbyterian Church (U.S.A.) in the case.

Dated at Eagan, Minnesota, on May 12, 2009.

J. Jay Wilkinson
Stated Clerk/Treasurer

Dissenting Opinion

Myra J. Watts May 12, 2009

As a member of the Synod Permanent Judicial Commission, I respectfully dissent from the ruling of the majority opinion in the case of Bierschwale et al. V. Presbytery of the Twin Cities Area (May 11, 2009).

The SPJC was given the task to determine whether there were facts that would show that (a) Dr. Capetz stated a departure from G-6.0106b and (b) if so, whether that departure was a failure to adhere to the requirements of G-6.0108; and if the facts did indeed show that (a) and (b) had occurred, whether the PTCA's action was irregular. The SPJC was also charged to determine if the PTCA had waived the "fidelity and chastity" requirement of G-6.0106b.

The SPJC determined that Dr. Capetz's departure did not constitute a failure to adhere to the requirement of G-6.0108. I disagree with this finding.

The SPJC did not specifically examine the constitutionality of Dr. Capetz's departure. Rather, it accepted the PTCA as bearing the ultimate responsibility to rule in matters of departures. This determination was based on G-6.0108b, which states that "the decision as to whether a person has departed from essentials of Reformed faith and polity is made initially by the individual concerned but ultimately becomes the responsibility of the governing body in which he or she serves."

However, G-9.0103 states that "the jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body [*italics mine*]."

It is impossible for the next higher governing body to rule on the constitutionality of a particular action when it gives the lower governing body ultimate authority to make a determination. It is the constitutionality of the PTCA's action that has been called into question. In this case, the PTCA's responsibility for its decision regarding the constitutionality of Dr. Capetz's departure should not preclude a challenge by a higher governing body based on compliance with the constitution.

The GAPJC specifically charged the SPJC with the task to determine whether Dr. Capetz's departure was a failure to adhere to the requirements of G-6.0108. The SPJC ruled that his departure was not a failure to adhere to the requirements of G-6.0108 based on the somewhat circular argument that Dr. Capetz's departure was not a failure to adhere to the requirement of G-6.0108 because the PTCA determined that it was not a failure to adhere to the requirements of G-6.0108. But whether the PTCA's determination was correct is precisely what the SPJC was asked to review.

G-6.0108b states that an officer of the Presbyterian Church must choose to exercise freedom of conscience within certain bounds, which includes the standards of the church. G-6.0106b makes

clear that one of these standards is fidelity in marriage between a man and a woman or chastity in singleness.

It seems reasonable to presume that there is less latitude for freedom of interpretation of a specific standard that is articulated in the constitution. It also seems reasonable to presume that Dr. Capetz's departure from this standard would indicate that he interprets the G-6.0106b to exclude same sex intimate relations. G-6.0108a affirms that an individual's freedom of conscience should be maintained as long as the departure does not infringe on the rights and views of others, does not obstruct the constitutional governance of the church, and is not a serious departure from the essentials of the Reformed faith and polity as expressed in The Book of Confessions and the Form of Government. Dr. Capetz's request for departure appears to be in conflict with the constitution, which therefore renders the decision of the PTCA irregular in its action.

Finally, the SPJC ruled that the PTCA did not set policy to be applied to any future departure and therefore did not "waive" the "fidelity and chastity" requirement of G-6.0106b. I agree that the PTCA did not overtly waive the "fidelity and chastity" requirement. A departure, however, creates the basis for an exemption to the standard. Dr. Capetz in good conscience departed from the exclusionary language of the G-6.0106b constitutional amendment, and the PTCA accepted his departure. It seems reasonable that if an individual exercises freedom of conscience to depart from a particular standard that the individual is no longer bound by the language of the standard. Therefore, by accepting Dr. Capetz's departure from G-6.0106b, the PTCA may not have overtly "waived" the "fidelity and chastity" requirement, but it has exempted Dr. Capetz from future compliance to a constitutional amendment (G-6.0106b) and insulated him from any possible disciplinary action. This action therefore appears to have the same effect as waiving the requirement.

For all of the above reasons, I respectfully submit a dissenting report.