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 MAGISTRATE'S DECISION AND ITS DATE OF ENTRY UPON THE JOURNAL
 DANIEL M. MORRIGAN
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 IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMMIT

HUDSON PRESBYTERIAN CHURCH)	CASE NO. CV 2006 09 6162
)	
Plaintiff)	JUDGE SPICER
)	MAGISTRATE SHOEMAKER
-vs-)	
)	
EASTMINSTER PRESBYTERY)	<u>MAGISTRATE'S DECISION</u>
)	
Defendant)	

- - -

To the Honorable Mary F. Spicer, Judge of the Court of Common Pleas, Summit
 County, Ohio:

Pursuant to Civil Rule of Practice 53, Local Rule of Practice 18, and the Order of
 Reference made in this case, the Magistrate hereby reports his Decision to the Court, based upon
 the stipulated evidence presented by the parties, the pleadings in this case, and upon the agreed-
 upon resolution by Cross Motions for Summary Judgment addressing the Plaintiff's claim for the
 Declaratory Judgment Relief, and **Eastminster Presbytery's** counterclaim for Declaratory
 Relief. More specifically, Plaintiff designated as **Hudson Presbyterian Church** conducting its
 church activities in a church building located on real estate in Hudson, Summit County, Ohio on
 September 28, 2006 filed a complaint for Declaratory Judgment designating an entity known as
Eastminster Presbytery located in Mineral Ridge, Ohio as the Defendant. **Hudson
 Presbyterian Church** is recited to be an incorporated religious organization under the non-profit
 corporation laws of Ohio. It is asserted therein that the Hudson church is actually operated by an
 internal entity known as the **Hudson Presbyterian Church Accession**, claiming that it is the

governing body for such church. The Defendant, **Eastminster Presbytery** is described "... as a regional representative body of the denomination known as **The Presbyterian Church (USA)**, one of the several recognized Presbyterian denominations in the United States." More particularly, Plaintiff's complaint, with specific reference to Paragraph 17, seeks to "lay claim to the title to the property... owned by the church."

Thereafter, on November 20, 2006, the entity known as **Eastminster Presbytery** filed its answer and counterclaim. **Eastminster Presbytery** asserts in its first defense that this Court has no jurisdiction over the issues raised in the action, which are according to such answer with specific reference to Paragraph 1 asserting that such matters "... are governed by the constitution of **The Presbyterian Church (USA)**, and does not consent to the same, (i.e. trial in a civil court)." Such defense further goes on to assert that "... **Eastminster Presbytery** feels compelled to protect the rights of its congregation in Hudson, Ohio by answering the complaint and counterclaim for Declaratory Relief." In that same pleading under the affirmative defenses, with specific reference to Paragraph 27, the Defendant **Eastminster Presbytery** argues that it is authorized to act on behalf of **The Presbyterian Church United States** in relation to the actions of the Hudson Plaintiff church.

The counterclaim commencing on Paragraphs 30 through 44 asserts the claim against the actions of the Plaintiff with specific reference to challenging the Plaintiff's action choice of forum, and also Plaintiff's claim to ownership of property, both real and personal, with Paragraph 44 asserting that **Eastminster Presbytery** is the authorized representative body in northeastern Ohio with the right to pursue such counterclaim. On December 1, 2006, Plaintiff answered the counterclaim. Within such answer were affirmative defenses, plead by the Plaintiff. One of these is the assertion of failure to state a claim upon which relief may be granted, as well as failure to assert a legally viably property interest.

As a result of such matters, the parties agreed to proceed upon cross Motions for Summary Judgment filed by both the Plaintiff and the Defendant, as well as a motion made by the Attorney General, who was joined to the matter. The Attorney General's Motion for Summary Judgment is in support and parallel to that of the Defendant, **Eastminster Presbytery**.

FINDINGS OF FACT

1. Briefly stated, this lawsuit centers upon an actual controversy; that is, which party has the right to the ownership of the existing church real property located in Hudson, Summit County, Ohio, as well as certain tangible (i.e. fixtures, etc.) and intangible property (i.e. bank accounts, etc). The issue presented is whether the members of the Hudson church, which have sought to secede or to disaffiliate their relationship with a so-called national denomination, can retain ownership rights in real and personal property free and clear of any claims of any part of national denomination. The evidence established that on September 17, 2006, Plaintiff's Board of Directors approved the disaffiliation. The result per Plaintiff's by-laws was that on November 5, 2006 a vote of church members, where at least 229 members of the church were present, was taken. Thereat, a vote was taken on the issue of disaffiliation by those members of the congregation present. The result was 161 in favor, 61 opposed, 6 abstentions. A significant portion of this case addresses the major asset in dispute, which is the real property upon which the church is located, and upon which the Plaintiff was granted ownership of record by two separate deeds. One of these parcels, known as PP 380-HU-0012-02-011, was transferred by a deed recorded in the Summit County records in Volume 6674 at Page 16. That warranty deed was received for record by the Summit County Recorder on December 15, 1982. The Grantor designated therein was Nelson H. Chase, as Trustee of a certain trust created by the last will and testament of a decedent known as Eddie

Mae Case. The Grantee on such deed is specified as the corporate entity known as “**The Hudson United Presbyterian Church.**” Such deed, amongst other items, says it is subject to restrictions, reservations, and limitations of record, if any, and also cites that it is subject to all zoning ordinances, legal highways and easements. The second parcel of real estate, identified as permanent parcel PP 380-HU-0012-02-012 was transferred again to the same Grantee by a deed recorded on December 15, 1982. The Grantor of such deed was the entity known as The Western Reserve Development Company, A Partnership. Likewise, this deed says it is subject to restrictions, reservations, and limitations of record, if any, and also subject to easements, zoning ordinances and legal highways. This deed is recorded in Volume 6674, Page 19. Neither of these two deeds contains any wording providing that some interest is held by either the Defendant in this case and/or another entity addressed later, known as **The Presbyterian Church (USA)**, nor are there any separate filings elsewhere on the public records of Summit County that give those two entities any interest or claim on these parcels. Such ownership has not changed.

2. The Defendant’s argument that it has interest in the real estate is based upon an assertion of a trust right in the aforementioned property. In support of the trust argument, the Defendant points out a paperback book described as The Book of Order, Constitution of the Presbyterian Church (USA), Part II, 2005-2007. This document was copyrighted in 2005. There is no evidence that such an earlier document existed in any form at the time of the transfer of the deeds to the Plaintiff in this matter in December of 1982, or even if it did exist, that the current Book of Order of 2005 referred back to a prior edition, and contained such language as referred to in Chapter VIII; Section G-8.0000-.0401 in such current Book of Order. The 2005-2007 Book of Order, at that subsection, says in Paragraphs 1-7, language about all property and says all is held in trust for **The Presbyterian Church (USA)**. No

distinction is made between personal and real property, merely saying all property is held in trust for the benefit of **The Presbyterian Church (USA)**. The Defendant seeks to establish that the existing real estate, deeded in the name of the Ohio non-profit corporation known as **Hudson Presbyterian Church**, is encumbered with such trust obligation. Again, there was no recorded documented evidence to establish that any such trust was in existence, or was created on or about the time the property was deeded from the Grantors referred to above to the Plaintiff, nor is there any evidence that a trust document was created thereafter specifically dealing with real and personal property at issue in this case. The only writing related to trust is that found in the Book of Order and it just refers to Defendant's claim that such a trust exists, and is not supported by the existing by-laws of the Plaintiff, which by-laws were adopted by congregational vote on December 14, 2003. Such by-laws dealt with things that existed as of that date. The current Book of Order did not come into existence until at least its copyright date of 2005. Additionally, "The Manual of Operations-Eastminster Presbytery-Synod of the Covenant Presbyterian Church (USA)" has not been shown by any credible evidence to support any of Defendant's claims in this action.

3. Additionally, the Defendant seeks to establish an interest in the property by asserting that the very Articles of Incorporation filed by the Plaintiff in this matter with the State of Ohio on July 1, 1982 had express language therein, which would address this subject. It is true that such Articles of Incorporation filed did refer to the fact that the Plaintiff was submitting to the authority and form of the government as set forth in the Constitution, as amended of **The United Presbyterian Church (USA)**. Again, there is absolutely no evidence to establish what the Constitution had set out therein at the time such Articles of Incorporation were filed in July of 1982. Even if such authority did exist in a Constitution, no copy of such constitution as it may have existed in 1982 is now available to review. Nor is there any

evidence that Articles of Incorporation referring to an entity known as **The United Presbyterian Church of the United States of America** was the same entity as **The Presbyterian Church (USA)** as described in the aforementioned Book of Order. For argument's sake, even such were the same, the record in this case is barren of documents to illuminate the legal status of the **Defendant Eastminster Presbytery** showing that it has the legal capacity and/or authority and/or standing to act for **The Presbyterian Church (USA)**. **The Presbyterian Church (USA)** and **Eastminster Presbytery** are found to be two separate and distinct legal entities. The vague reference in such Articles of Incorporation ordered as ...**(by) the authority of Eastminster Presbytery,**" is not helpful in resolution of the Defendant's argument, nor can such brief and perfunctory wording resolve or show that they are one in the same, or Eastminster has some written authority to act. **Eastminster's** November 24, 2006 answer says "... **Eastminster** (which is also a constituent part and hierarchy above Hudson...)." Such wording is not supported by any evidence that it has a separate legal status, able to pursue suits. This is particularly so since the claim is made that **The Presbyterian Church (USA)** is the beneficiary of the trust. How **Eastminster** seeks to act to enforce such is not shown. The Book of Order Part II, 2005 does not solve this by the wording found in Chapter XI, G-11.0000-.0102. Saying that "... it is a corporate expression of the church..." does not attain the Defendant's need. **Eastminster Presbytery** is not sui juris with an independent right to act for **The United Presbyterian Church of the United States of America** by assignment, power of attorney, trustee, and/or agent.

4. Of more significance in the Articles of Incorporation is the statement that the Plaintiff, by its Articles of Incorporation, was choosing to voluntarily associate with either one of those two entities described within the Articles of Incorporation. The voluntary association means by any reasonable interpretation of such, that just as an entity could voluntarily associate, it was

equally free to voluntarily disassociate from the other entity. Such evidence fails to establish any legal ownership and/or claim of the Defendant **Eastminster Presbytery** in the real property or personal at issue here.

5. An additional review of the debt structure of the past and current nature of the Plaintiff reflects an inconsistency in the total authority sought to be claimed by the Defendant and/or **The Presbyterian Church (USA)** over the Plaintiff. Various loans were made from time-to-time as established in the past, some of these were paid off; some of these currently exist, such being created without any express written approval of such, which the current Book of Order requires (G-80500, Paragraph 5). Plaintiff has shown since the beginning of its corporate existence to always conduct the church's business affairs as a corporation (i.e. it is named as beneficiary on insurance, it signed to be a corporate debtor, it has monetary assets held under its corporate name, it manages its own budget, it's deeds are in its name, etc.). A clear conclusion to draw from such facts is that the Plaintiff in this matter, from time-to-time, entered into contracts with other entities to borrow money without the express approval of the entity known as **The Presbyterian Church (USA)**, which claimed it had a right to have the ability to pass on such loans, specifically in regard to any mortgages of church property. No such approval was shown as sought, granted or denied.
6. Additionally, though somewhat less strenuously argued by the parties, is the dispute over the identification and ownership of intangible property, which includes checking accounts, various Morgan Bank accounts and what's known as a McDonald Endowment Fund, as well as certain other accounts, known as the John R. Howell Fund accounts, which appear to be both a gift and an endowment fund. Also, there is a dispute whether any of the parties have any control over a separate series of accounts, which have been described as the Early Childhood Center accounts; such accounts being with Morgan Bank. The approximate

amounts in such accounts were identified and are not disputed, at least as to the amounts at the time the stipulated exhibits were agreed to. Again, there is absolutely no evidence that the signatures of authority to act in any such bank accounts, (i.e. to write checks, make withdraws, etc.) or other funds, provides any ownership interest claims or entitlement to any type of ownership to other than the Plaintiff. In short, there has been no showing that **The Presbyterian Church (USA)** and/or the Defendant Entity known as **Eastminster Presbytery** has any contractual right or any other legal claim or interest of any type under Ohio law to such savings and checking accounts, etc., which have been identified.

CONCLUSIONS OF LAW

1. It is found that Ohio law is well settled as to the standard the Court must apply in reviewing a Motion for Summary Judgment. Parenti v. Goodyear Tire & Rubber Co. (1990), 66 Ohio App.3d 826; Horton v. Harwick Chemical Corp. (1995), 73 Ohio St.3d 679; Vahila v. Hall (1997), 77 Ohio St.3d 421; and Dresher v. Burt (1996), 75 Ohio St.3d 280. In general, a motion for summary judgment when presented requires a moving party to bear the initial burden in informing the trial court of the basis for the motion, identifying those portions of the record that demonstrate the absence of any issue of material fact on the essential elements of the nonmoving party's claim. Other cases dealing with these issues were presented in briefs and were reviewed in this matter. These included the Presbytery of Beaver-Buther, et al. v. Middlesex Presbyterian Church, et al. 507 pp 255; 489 A.2d 1317; 1985 Pa Lexis 309 (April 1985). Also, Ohio law is also well settled on the elements of Declaratory Relief per R.C. 272, Mid America Fire v. Heasley, (2007) 113 Ohio St. 3rd, 133; 2007 Ohio Lexis 797 (4-4-07).

2. Further, Ohio law is well settled that in disputes between entities, which involve religious matters (i.e. ecclesiastical matters), temporal courts or civil courts are not to be involved in such ecclesiastical matters. Further, it is specifically concluded that written documents which address ecclesiastical matters cannot either directly or indirectly be concluded to control the operation of temporal matters, with specific reference to non-profit corporations, which are allowed to exist in Ohio and are to operate under Ohio law. The Plaintiff here is in fact a non-profit corporation, separately chartered, and otherwise authorized to operate under Ohio law. Likewise, Ohio law is equally well settled that religious documents, or ecclesiastical documents in nonprofit corporations, or which involve religious enterprises, are not allowed to intrude upon or to trump the laws of Ohio governing such nonprofit corporations or as to the disposition of real estate, personal property of any type, and/or other contractual documents related to such real estate or personal property owned by the nonprofit entity. More specifically, any interest claimed by the Defendant must have shown such satisfied the statute of frauds (i.e. R.C. §1335.04 Interest in land to be granted in writing). Defendant has failed to shown it has satisfied this duty. Nor has Defendant provided any parol evidence so as to preclude the requirement of R.C. §1335.04. Nor has the Defendant shown any lien, security agreement, and/or ownership interest in either personal property, tangible or intangible of the Plaintiff.

3. More specifically, the Book of Order, published in 2005, which the Defendants rely upon significantly in their argument in this matter, was not in existence in 2005, nor has it been proven to have a prior document that was in existence at the time the property was originally transferred into the ownership of the Ohio Plaintiff corporation. The Plaintiff, as an Ohio corporation, has not shown at any time subsequent thereto to have filed or otherwise agreed

in writing to encumber its ownership rights and/or interest in the real property and/or personal property at issue here by any liens, security agreements, trust, and/or any other encumbrances as related to the named Defendant. Specifically, no such encumbrances are shown to be held by either the entity known as **The Eastminster Presbytery** or the entity known as **The Presbyterian Church (USA)**. The 2005 Book of Order has no writings therein that refer back to any earlier edition of the Book of Order, if such existed when the property was transferred, seeking to incorporate by reference the “old” into the “new.” Nor is there any evidence that if such older Book of Order existed, that it was superseded in the current book specified as for 2005-2007. Likewise, it is concluded that the entity referred to in the Plaintiff’s Articles of Incorporation, which it voluntarily associated with, is **The Presbyterian Church (USA)** and not **Eastminster Presbytery**. Further, of major significance is the fact that the Defendant, **Eastminster Presbytery**, has not shown by any credible evidence that it is an independent legal entity and has therefore the right to stand in place of **The Presbyterian Church (USA)** as its agent, assignee, etc., or has been legally substituted to allow it to make the claims presently asserted by it under the Book of Order for **The Presbyterian Church (USA)**.

4. The same defects in Defendant’s claim affecting the real property also are applicable to all of the Defendant’s claims to the Plaintiff’s personal property both tangible, as well as intangible assets; such as the aforementioned bank accounts and annuities, etc. In summary, it is concluded that there is no evidence of any expressed trust affecting Plaintiffs’ real and personal property, nor is there any statutory or common law authority supporting any claim of implied trust. Additionally, Ohio law has continued to follow the law set out in the Summit County case of Serbian Orthodox Church v. Keleman (1970, 21 Ohio St. 2d 154),

which is that Ohio does not recognize the concept implied trust concept in a church scenario such as found in this case (Upper Ohio Valley Presbytery, Inc., et al. v. The Covenant Presbyterian Church of Steubenville, Ohio, et al. (1988 Ohio App Lexis 3452, Seventh Appellate District) Likewise, the Defendant fails to provide any credible evidence of constructive trust. Ohio has also adopted the concept known as the “Neutral Principals of Law,” which the parties have addressed and referred to by citation. The Ohio Attorney General has chosen to enter this matter. His position shows he agrees with the Defendant. The Attorney General’s position is as equally flawed and is devoid of evidence to support the Defendant. Thus, it is concluded that Plaintiff is the sole owner of the disputed real estate and the tangible and intangible personal property, which is the subject of this litigation. Plaintiff’s articles and by-laws allow the Plaintiff Corporation to disaffiliate from the national body. In doing so, the congregation making up the nonprofit corporation, which is the Plaintiff, can retain ownership of its assets.

5. Wherefore, the Magistrate concludes that the Defendant’s Motion for Summary Judgment is not well taken, and such is denied. The Attorney General’s Motion for Summary Judgment is likewise without merit and such is denied. Additionally, it is concluded that the Plaintiff’s answer to the Defendant’s counterclaim asserting as it does the failure to state a claim upon which relief may be granted, and also upon a failure to state or assert a legal viable interest in the property has merit. **Eastminster Presbytery** as designated in the Plaintiff’s complaint, says it is “something” claiming to be the regional represented body of the denomination known as **The Presbyterian Church United States**. There is no definition as to what is meant by a regionally represented body. Even if for argument purposes, **The Presbyterian Church of the United States** claims, as it appears it does, to

own Plaintiff's property, the named Defendant and counter-claiming entity known as **Eastminster Presbytery** is not shown to be an entity able to assert ownership or claim over Plaintiff's property, both real and personal, tangible and intangible. **The Presbyterian Church (USA)** has absolutely failed to show that it delegated such right to pursue the claims now pursued by **Eastminster Presbytery** in this action to any entity known as **Eastminster Presbytery**. The answer and counterclaim of November 20, 2006 starts off referring to the barren entity known as **Eastminster Presbytery**. It cites not one wit of information concerning what such entity is. Is it a separate incorporated legal body in some state? There is no evidence of that. Is it some entity with expressed written authority to pursue a claim of **The Presbyterian Church of the United States**? Again, there is no explanation as to what the entity described as **Eastminster Presbytery** consists of, and who it belongs to, other than barren statements such as found in Paragraph 44 of the Defendant's counterclaim, asserting that **Eastminster Presbytery** is **The Presbyterian Church United States'** authorized representative body in northeastern Ohio empowered to pursue a claim for Declaratory Relief as addressing the actions of the Plaintiff church.

6. The rather voluminous bound joint exhibit documents presented in these matters by all the parties in this matter, to include the Plaintiff, the designated Defendant **Eastminster Presbytery**, and the Attorney General, fail to establish any specific answer to the foregoing questions. The two (2) books submitted in addition thereto; the first of these being the Book of Confessions, known as Part I; and in essence seeming the first of two volumes of the constitution of **The Presbyterian Church of the United States** does not address this matter or resolve the question. Such Part I addresses ecclesiastical matters. Part II of the constitution of **The Presbyterian Church of the United States**, designated as published

through a copyright date of 2005, appears to assert that **The Presbyterian Church of the United States** is some form of formalized entity. However such document fails to establish that it is in fact a duly constituted legal entity somewhere; such that it has separate legal standing and the authority to directly pursue a Declaratory Judgment claim, as sought to be pursued by **Eastminster Presbytery**, or has any other standing to assert directly or indirectly a claim against the Plaintiff in this instant action. Within the body of the joint exhibits, there are two (2) items addressing the articles of the corporation of the Plaintiff. However, there is no information of an evidentiary value to address in the cross Motions for Summary Judgment by the Defendant and the Attorney General establishing that **The Presbyterian Church of the United States** is a legally constituted entity, able to pursue legal actions, as it seeks to do in this matter, and more specifically, that it has authorized some unknown body, known as **Eastminster Presbytery** to act in its behalf. It is readily apparent that **Eastminster Presbytery** presumes without any evidentiary support of its own status in its counterclaim that it can legally act for **The Presbyterian Church of the United States**. In short, there are no documents establishing any agency relationship or other legal relation as between the entity known as **Eastminster Presbytery** and **The Presbyterian Church of the United States**.

7. Defendant's claim of trust is found only in the brief wording in the Book of Order. Far more than such is required to demonstrate the elements of and expressed trust between parties. Plaintiff never agreed to a trust in any form.

8. Wherefore, the Magistrate concludes that the Plaintiff's Motion for Summary Judgment is well taken. The Declaratory Judgment is rendered in favor of Plaintiff. It is declared that the Plaintiff in this matter is the owner of the real estate currently located in Hudson, Ohio, having set thereon Plaintiff's church. The two (2) deeds recited in the Findings of Fact are found to give full title and ownership to Plaintiff, free of any claims of Defendant. The nonprofit corporation, i.e. Plaintiff church, which voted through a majority of its members to disaffiliate itself from **The Presbyterian Church of the United States of America**, is a nonprofit corporation, which can decide what entity the corporation wants to affiliate with. It is further declared that the ownership of all other assets, both tangible and intangible, shall stand in the name of the Plaintiff, which the nonprofit corporation referred to above, free and clear of any claims of the Defendant. This includes any personal property and chattels, such as furniture and other matters found within the building, as well as all intangible assets, which include any monies in any savings accounts, investment accounts, and any other such depositories. It is further declared that the body of the church, as an Ohio nonprofit corporation, voting as the ownership did under its by-laws, which are in fact authorized under the Articles of Incorporation, allow the church members, as controllers of such corporation, to disaffiliate from the parent church. Such action is declared not to be an ecclesiastical or religious matter. It is simply a corporate decision by the corporation made under Ohio law that it does not want to be associated with **The Presbyterian Church (USA)**. The corporation has decided not to be involved with **The Presbyterian Church (USA)**, and has legally taken a vote to disaffiliate itself. The Magistrate further concludes that the Defendant's cross Motion for Summary Judgment and that of the Attorney General are not well taken. Their claim for a Declaratory Judgment seeking to have **Eastminster Presbytery** declared as entitled to ownership of all such church property, real or personal,

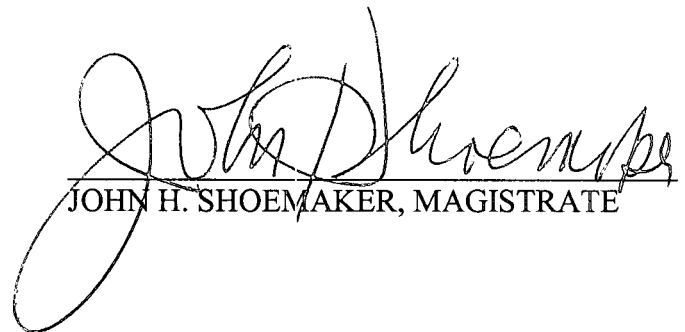
tangible or intangible, fails by a considerable margin for want of proof. Likewise, it is further declared that **The Presbyterian Church of the United States**, if even for argument purposes, is a body affiliated and established as a nonprofit entity in some part of this country or elsewhere, and as such has authorized as its agent some entity known as **Eastminster Presbytery** to pursue the claims as sought to be pursued in this matter is an invalid assertion. There is no proof of this. **Eastminster** is not an independent entity, nor by some agreement with **The Presbyterian Church (USA)**, to stand as a party. Even if the parties among themselves tried to agree as such, they cannot serve by agreement or stipulation to make the Defendant a legal entity to stand as a party. Likewise, the Motion for Summary Judgment presented by the Ohio Attorney General paralleling that of the Defendant **Eastminster Presbytery** is found without any basis, and without merit, and such is denied. It is clear from the summary judgment evidence presented that there are no issues of disputed material fact as to any of the aspects of the ownership of the property, both real and personal, tangible and intangible; such that the entity, **Eastminster Presbytery**, has any right to assert any claim against such. Further, even if **The Presbyterian Church of the United States** had by some means authorized the entity, **Eastminster Presbytery**, to pursue such claims, and for argument purposes, **Eastminster Presbytery** has such authority, the claims still fail because **The Presbyterian Church of the United States** has failed to establish that it has any ownership interest through any direct claim to any of these properties, real and personal, either through any expressed trusts, implied trusts, or charitable trust. Nor does **The Presbyterian Church of the United States**, under the same argument, or **Eastminster Presbytery** have any lien or other encumbrances to either the real property or the personal property described above. Therefore, ownership of both the real property and personal property described above is declared to be and is confirmed to stand in the name of the

Plaintiff, and it so shall remain. As such, judgment as to the Declaratory Judgment through the mechanism of the Summary Judgment agreed to by the parties is granted and confirmed in the name of the Plaintiff in this matter, and is denied to **Eastminster Presbytery** and/or **The Presbyterian Church (USA)**. Costs to the Defendant, **Eastminster Presbytery**.

9. The parties and/or their counsel are specifically warned and noticed hereby that a party may not assign as error on appeal the adoption by the trial court of any finding of fact or conclusion of law set forth herein unless a timely and specific objection is first made to the trial court pursuant to Civ.R. 53(D)(3)(a)(iii).

10. Further, pursuant to Civ.R. 53(D)(3)(a)(iii), the Clerk of the Courts shall serve upon all parties not in default for failure to appear or counsel of record notice of this Magistrate's Decision and its date of entry upon the journal of this Court.

It is so decided.



JOHN H. SHOEMAKER, MAGISTRATE

cc: Judge Mary F. Spicer
Attorney Forrest A. Norman
Attorney Lee C. Davies
Attorney Daniel W. Fausey
Attorney T. Christopher O'Connell

lcb
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