

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

DARDENNE PRESBYTERIAN)
CHURCH, INC.,)

Plaintiff / Counterclaim-Defendant)

v.)

Case No. 2311-CC01028

PRESBYTERY OF GIDDINGS-)
LOVEJOY, INC.)

Defendant / Counterclaimant)

and)

PRESBYTERIAN CHURCH (U.S.A.),)
A CORPORATION,)

Defendant.)

**DEFENDANT PRESBYTERY OF GIDDINGS-LOVEJOY, INC.'S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendant / Counterclaimant Presbytery of Giddings-Lovejoy, Inc. (the "Presbytery"), by and through its undersigned counsel, hereby submits its Answer and Counterclaim, in response to Plaintiff / Counterclaim-Defendant Dardenne Presbyterian Church, Inc.'s ("Dardenne Church") Verified Petition and states the following:

I.

SUMMARY OF CLAIMS

1. The first sentence of paragraph 1 of the Petition simply characterizes the Petition, alleges no facts, and thus requires no response. The Presbytery admits that Dardenne Church is in St. Charles County and has operated for many years. The Presbytery further admits that Dardenne Church is a source of "fellowship, Christian guidance, and philanthropic services."

The Presbytery is without knowledge or information sufficient to form a belief as to the truth of

the remaining allegations in paragraph 1; the remaining allegations thus are denied.

2. The Presbytery admits the allegations in the first and second sentences of paragraph 2 of the Petition. The third and fourth sentences of paragraph 2 seek to characterize the particulars of the Presbytery's legal position, but are inaccurate, and the sentences therefore are denied. The Presbytery does indeed contend that all property held by Dardenne Church, whether held by a corporation, a trustee, or an unincorporated association, is held in trust for the use and benefit of the Presbyterian Church (USA). The particulars of the Presbytery's legal position are set forth in further detail in the Counterclaim incorporated below. Insofar as the allegations in the third and fourth sentences conflict with the allegations and position stated in the Counterclaim, the allegations are denied.

3. Paragraph 3 of the Petition characterizes Dardenne Church's legal position and certain actions that it has taken over the years, alleges no facts, and thus requires no response. To the extent that a response is deemed required, the Presbytery denies the statements in paragraph 3.

4. The first and last sentences of paragraph 4 of the Petition state what relief Dardenne Church seeks in this action, allege no facts, and thus require no response. The Presbytery denies the remaining allegations in paragraph 4 of the Petition.

II.

PARTIES

5. The Presbytery admits the allegations in paragraph 5 of the Petition.

6. The Presbytery admits the allegations in paragraph 6 of the Petition.

7. The Presbytery admits the allegations in paragraph 7 of the Petition, but denies that Presbyterian Church (USA), A Corporation, is a proper or necessary party to this action.

III.

JURISDICTION AND VENUE

8. Paragraph 8 of the Petition states only legal conclusions, to which no response is required. The Presbytery does not challenge the existence of the Court's subject-matter jurisdiction over this action.

9. Paragraph 9 of the Petition states only legal conclusions, to which no response is required. The Presbytery does not challenge the existence of the Court's personal jurisdiction over it in this action.

10. Paragraph 10 of the Petition states only legal conclusions, to which no response is required. The Presbytery does not challenge the existence of venue in this Circuit.

11. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 11 about what the "the applicable presbytery" does in "many comparable cases"; the allegation thus is denied. The Presbytery admits that the beneficiary of the trust by and through which Dardenne Church holds its property is the Presbyterian Church (U.S.A.) as a church denomination; the Presbytery is the council that serves as the corporate expression of the denomination in the specific geographical region that includes Dardenne Church and thus the only proper party to this action. The "Presbyterian Church (U.S.A.), A Corporation," is not a proper or necessary party to this action. Except as expressly herein admitted, the remaining allegations in paragraph 11 of the Petition are denied.

IV.

FACTUAL BACKGROUND

A. Dardenne Church and its Denominational Association

12. The Presbytery admits the allegations in the last sentence of Paragraph 12 of the

Petition. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 of the Petition; the remaining allegations thus are denied.

13. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Petition; the allegations thus are denied.

14. The Presbytery admits that Dardenne Church was, at one point, a member of the Presbyterian Church in the United States. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 of the Petition; the remaining allegations thus are denied.

15. The Presbytery admits the allegations in paragraph 15 of the Petition. Further answering, all former PCUS congregations (including Dardenne Church) were given the opportunity to leave the PCUSA denomination with their property, provided they did so within eight years of consummation of the union and creation of the Presbyterian Church (U.S.A.). Dardenne Church did not choose to leave during that window.

B. Dardenne Church's Property

16. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Petition; the allegations thus are denied.

17. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Petition; the allegations thus are denied. The deed at Exhibit 1 to the Petition is largely illegible and speaks for itself (whatever it says). The Presbytery denies the allegations regarding the referenced deed to the extent they vary from the language in the deed.

18. The Presbytery is without knowledge or information sufficient to form a belief as

to the truth of the allegations in paragraph 18 of the Petition; the allegations thus are denied. The deed at Exhibit 2 to the Petition is largely illegible and speaks for itself (whatever it says). The Presbytery denies the allegations regarding the referenced deed to the extent they vary from the language in the deed.

19. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Petition; the allegations thus are denied. The deed at Exhibit 3 to the Petition is largely illegible and speaks for itself (whatever it says). The Presbytery denies the allegations regarding the referenced deed to the extent they vary from the language in the deed.

20. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Petition; the allegations thus are denied. The deeds at Exhibit 4 to the Petition speak for themselves. The Presbytery denies the allegations regarding the referenced deeds to the extent they vary from the language in the deeds.

21. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Petition; the allegations thus are denied.

C. The PCUS in 1981 and 1982

22. The Presbytery admits that the PCUS proposed to amend its *Book of Church Order* in 1981, but denies all remaining allegations in paragraph 22 of the Petition. The meeting minutes in Exhibit 5 are incomplete and speak for themselves in any event. The Presbytery denies the allegations regarding the referenced minutes to the extent they vary from the language in the complete minutes.

23. The Presbytery denies the allegations in paragraph 23 of the Petition. The meeting minutes in Exhibit 5 are incomplete and speak for themselves in any event. The Presbytery

denies the allegations regarding the referenced minutes to the extent they vary from the language in the complete minutes.

24. The Presbytery denies the allegations in paragraph 24 of the Petition. The meeting minutes and letter in Exhibits 5, 6, and 7 are incomplete and speak for themselves in any event. The Presbytery denies the allegations regarding the referenced minutes and letter to the extent they vary from the language in the complete minutes and letter.

25. The Presbytery denies the allegations in paragraph 25 of the Petition. The excerpted references to the PCUS *Book of Church Order* quoted in paragraph 25 are incomplete, taken out of context, and do not support the allegations in paragraph 25.

26. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 26 of the Petition; the allegations thus are denied. The Presbytery otherwise denies the remaining allegations in Paragraph 26. The meeting minutes and letter in Exhibits 6 and 7 are incomplete and speak for themselves in any event. The Presbytery denies the allegations regarding the referenced minutes and letter to the extent they vary from the language in the complete minutes and letter.

27. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 27 of the Petition; the allegations thus are denied. The Presbytery admits that the PCUS denomination was merged into the newly created PCUSA denomination as of June 10, 1983. The Presbytery denies the remaining allegations in paragraph 27.

28. The Presbytery denies the allegations in paragraph of 28 of the Petition. The excerpted references to the PCUSA *Book of Order* quoted in paragraph 28 are incomplete and taken out of context.

D. The Dardenne Church in 1982

29. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 29 of the Petition; the allegations thus are denied. The Presbytery denies the allegations in the second sentence of paragraph 29 of the Petition.

30. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Petition; the allegations thus are denied. The resolution referenced as Exhibit 9 speaks for itself and Presbytery denies the allegations to the extent they vary from the terms of the resolution itself.

31. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Petition; the allegations thus are denied. The deeds referenced as Exhibits 10 and 11 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the deeds.

32. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Petition; the allegations thus are denied. The deed referenced as Exhibit 12 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in the deed.

E. The Dardenne Church: 1983 to the Present

33. The Presbytery admits that in January 1984, Dardenne Church elected to forever hold title to its property according to the provisions of Chapter 6 of the *Book of Church Order* of the Presbyterian Church in the United States and communicated that election in writing to the Presbytery on January 31, 1984. The Presbytery denies the allegations in paragraph 33 of the Petition to the extent they mischaracterize that election and Exhibit 13. Except as expressly

admitted herein, the Presbytery denies the allegations in paragraph 33 of the Petition.

34. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first, third, and fourth sentences of paragraph 34 of the Petition; the allegations thus are denied. The deed referenced as Exhibit 14 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in the deed. The Presbytery denies the allegations in the second sentence of paragraph 34. The Legal Resource Manual referenced as Exhibit 15 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in Manual.

35. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first, third, fourth, and fifth sentences of paragraph 35 of the Petition; the allegations thus are denied. The Articles of Incorporation referenced as Exhibit 16 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the articles. The Presbytery denies the allegations in the second sentence of paragraph 35. The Legal Resource Manual referenced as Exhibit 17 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in Manual.

36. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first and third sentences of paragraph 36 of the Petition; the allegations thus are denied. The deeds referenced as Exhibit 18 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the deeds. The Presbytery denies the allegations in the second sentence of paragraph 36. The Legal Resource Manual referenced as Exhibit 17 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in Manual.

37. The Presbytery is without knowledge or information sufficient to form a belief as

to the truth of the allegations in paragraph 37 of the Petition; the allegations thus are denied. The bylaws referenced as Exhibit 19 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the bylaws. The Legal Resource Manual referenced as Exhibit 17 speaks for itself and the Presbytery denies the allegations to the extent they vary from the language in Manual.

38. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Petition; the allegations thus are denied. The bylaws referenced as Exhibit 19 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the bylaws.

F. Dardenne Church: the present circumstances

39. The Presbytery admits that Dardenne Church is now affiliated with the PCUSA and that the Presbytery was involved in litigation with Bonhomme Presbyterian Church years ago. Except as expressly herein admitted, the Presbytery denies the allegations in paragraph 39 of the Petition.

40. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Petition; the allegations thus are denied. Further answering, the Presbytery states that attempts by Dardenne Church to revoke a trust created over property held in trust for the benefit of the PCUSA are of no legal effect.

41. Paragraph 41 of the Petition states only legal conclusions, to which no response is required. The Presbytery denies that Dardenne Church is entitled to the declaratory judgment that it seeks from this Court in the Petition.

V.

CAUSES OF ACTION AND REQUESTS FOR RELIEF

A. COUNT I: REQUEST FOR DECLARATORY JUDGMENT & PERMANENT INJUNCTION

42. The Presbytery denies that Dardenne Church is entitled to the declaratory judgment that it seeks from this Court, as requested in the Petition.

43. The Presbytery denies that Dardenne Church is entitled to the quiet-title relief that it seeks from this Court, as requested in the Petition.

44. The Presbytery denies that Dardenne Church is entitled to the injunctive relief that it seeks from this Court, as requested in the Petition.

B. COUNT 2: APPLICATION FOR TEMPORARY RESTRAINING ORDER and PRELIMINARY INJUNCTION

45. The Presbytery denies the allegations in paragraph 45 of the Petition.

46. Paragraph 46 of the Petition states only legal conclusions, to which no response is required.

47. Paragraph 47 of the Petition states only legal conclusions, to which no response is required.

1. Injunctive Relief Element 1 of 5: Probability of Success on the Merits

48. Paragraph 48 of the Petition states only legal conclusions, to which no response is required.

a. *The Applicable Legal Analysis*

49. The Presbytery admits that courts around the country, including in Missouri, in cases that involve different presbyteries, have addressed the property rights of the parties before them. The decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 49 of the Petition to the extent they vary from the decisions. Except as expressly

admitted herein, the Presbytery denies the allegations in paragraph 49 of the Petition.

50. Paragraph 50 of the Petition attempts only to describe and characterize legal conclusions expressed by a court in another case, alleges no facts, and thus requires no response. The decision referenced speaks for itself and the Presbytery denies the allegations in paragraph 50 to the extent they vary from the decision.

51. Paragraph 51 of the Petition attempts only to describe and characterize legal conclusions expressed by a court in another case, alleges no facts, and thus requires no response. The decision referenced speaks for itself and the Presbytery denies the allegations in paragraph 51 to the extent they vary from the decision.

52. Paragraph 52 of the Petition attempts only to describe and characterize legal conclusions expressed by courts in other cases, alleges no facts, and thus requires no response. The decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 52 to the extent they vary from the decisions.

b. *The Applicable Missouri Trust and Conveyance Law*

53. Paragraph 53 of the Petition attempts only to describe and characterize legal conclusions expressed by courts in other cases, alleges no facts, and thus requires no response. The statutes and decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 53 to the extent they vary from the statutes and decisions.

54. Paragraph 54 of the Petition only states legal conclusions, attempts to describe and characterize legal conclusions expressed by courts in other cases, alleges no facts, and thus requires no response. The statutes and decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 54 to the extent they vary from the statutes and decisions.

c. Missouri Law as Applied to the Dardenne Church

55. Paragraph 55 of the Petition only states legal conclusions, attempts to describe and characterize legal documents, alleges no facts, and thus requires no response. The statute referenced speaks for itself and the Presbytery denies the allegations in paragraph 55 to the extent they vary from the statute.

56. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Petition; the allegations thus are denied. The deeds and minutes referenced as Exhibits 3 and 9–14 speak for themselves and the Presbytery denies the allegations to the extent they vary from the language in the deeds and minutes.

57. Paragraph 57 of the Petition states only legal conclusions, to which no response is required. Further answering, the decision referenced speaks for itself and the Presbytery denies the allegations in paragraph 57 to the extent they vary from the decision.

58. The Presbytery denies the allegations in the first sentence of paragraph 58 of the Petition. The remainder of paragraph 58 states only legal conclusions, to which no response is required. The bylaws and decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 58 to the extent they vary from the bylaws and decisions.

59. The Presbytery denies the allegations in the first sentence of paragraph 59 of the Petition. The remainder of paragraph 59 states only legal conclusions, to which no response is required. The deeds, corporate resolutions, statutes, and decisions referenced in paragraph 59 speak for themselves and the Presbytery denies the allegations in paragraph 59 to the extent they vary from the items referenced.

60. The Presbytery denies the allegations in the first sentence of paragraph 60 of the Petition. The remainder of paragraph 60 states only legal conclusions, to which no response is

required. The decisions referenced in paragraph 60 speak for themselves and the Presbytery denies the allegations in paragraph 60 to the extent they vary from the decisions.

2. Injunctive Relief Element 2 of 5: Probability of Immediate Damage

61. The first sentence of paragraph 61 of the Petition states only legal conclusions, to which no response is required. The Presbytery denies the remaining allegations in paragraph 61 of the Petition.

62. The Presbytery denies the allegations in paragraph 62 of the Petition. The materials referenced in paragraph 62 are incomplete, lack context, and do not support the allegations in paragraph 62.

63. The Presbytery denies the allegations in paragraph 63 of the Petition. The materials referenced in paragraph 63 are incomplete, lack context, and do not support the allegations in paragraph 63.

64. The Presbytery denies the allegations in paragraph 64 of the Petition. The materials referenced in paragraph 64 are incomplete, lack context, and do not support the allegations in paragraph 64.

65. Paragraph 65 of the Petition attempts only to describe and characterize legal conclusions expressed by courts in other cases, alleges no facts, and thus requires no response. The decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 65 to the extent they vary from the decisions.

66. The Presbytery admits that it has convened administrative commissions in the past to address certain issues facing the Presbytery. The materials referenced in paragraph 66 of the Petition are incomplete and lack context. Except as expressly admitted herein, the Presbytery denies the allegations in paragraph 66.

67. The Presbytery admits that Dardenne Church openly disputes the Presbytery's trust claim. Except as expressly admitted herein, the Presbytery denies the allegations in paragraph 67 of the Petition.

3. Injunctive Relief Element 3 of 5: The Likely Damages are Irreparable

68. Paragraph 68 of the Petition states only legal conclusions, to which no response is required.

69. The Presbytery denies the allegations in paragraph 69 of the Petition.

70. The Presbytery denies the allegations in paragraph 70 of the Petition.

71. The Presbytery denies the allegations in paragraph 71 of the Petition.

72. The Presbytery denies the allegations in paragraph 72 of the Petition.

73. The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Petition; the allegations thus are denied. The decisions referenced speak for themselves and the Presbytery denies the allegations in paragraph 73 to the extent they vary from the decisions.

4. Injunctive Relief Element 4 of 5: The Balance of Equities

74. The first sentence of paragraph 74 of the Petition states only legal conclusions, to which no response is required. The Presbytery denies the remaining allegations in paragraph 74.

5. Injunctive Relief Element 4 of 5: The Public Interest

75. The first sentence of paragraph 75 of the Petition states only legal conclusions, to which no response is required. The Presbytery denies the remaining allegations in paragraph 75.

VI. JURY DEMAND

76. Paragraph 76 alleges no facts, and thus no response is required.

VII. PRAYER

The Presbytery denies that Dardenne Church is entitled to the relief sought in the Petition and prays that the Court dismiss the asserted claims with prejudice and award the Presbytery all such further relief to which it is entitled.

AFFIRMATIVE DEFENSES

1. Dardenne Church's claim for declaratory judgment regarding all corporate property (Count I) is barred by the doctrine of estoppel, as more fully explained in Count IV of the Presbytery's Counterclaim below, which is incorporated herein by reference. More specifically, Dardenne Church affirmatively elected in January 1984 to hold its property in trust for the use and benefit of the PCUSA, and promised that, in the event Dardenne Church ever ceased to exist or function as a member church of the PCUSA, any property that it had would then be within the control of the Presbytery and could be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion may direct. Dardenne Church notified the Presbytery of this election in a signed letter dated January 31, 1984. Dardenne Church at other times further affirmed its relationship with the PCUSA as a member church. In reasonable reliance on these representations, affirmations, and recognitions (which were material), the Presbytery conferred substantial benefits on Dardenne Church and otherwise continued to support and assist Dardenne Church with its mission. It would be unjust and inequitable to allow Dardenne Church to disclaim its earlier representations, affirmations, and recognitions, to the injury of the Presbytery.

COUNTERCLAIM

The Presbytery hereby asserts its Counterclaim against Dardenne Church and states as follows for support:

FACTS FOR ALL COUNTS

1. The Presbytery is a presbytery of the Presbyterian Church (USA) (“PCUSA”), a mainline Protestant Christian denomination in the United States. The Presbytery is legally organized as a non-profit corporation under Missouri law, has articles of incorporation and bylaws, and is formally governed by representatives (called “elders”) of the various regional congregations within the Presbytery. The Presbytery includes local congregations in southeastern Missouri and western Illinois and has certain administrative responsibilities for said congregations and rights with respect thereto.

2. The PCUSA is a hierarchical body that governs itself in polity matters through Part II of its Constitution, the “Book of Order.”

3. Dardenne Church is a member church of the PCUSA denomination.

4. Dardenne Church’s administration, management, and its legal actions and commitments are ultimately governed by the decisions of its members, who, according to Dardenne Church’s Articles of Incorporation and Bylaws, are the members in good standing of the religious congregation that worships within its facilities. For all events relevant to this action, the votes of the congregation have been votes of the membership of Dardenne Church and the actions taken by Dardenne Church’s Board of Directors have been guided and controlled by the decisions of the membership. Dardenne Church is simply the legal embodiment, for civil purposes, of the religious congregation that worships at the facility, responsible for holding and

maintaining property on behalf of the congregation. In short, the congregation and corporation are one and the same and have been since Dardenne Church was legally incorporated in 1996.

5. Dardenne Church maintains facilities in St. Charles County for holding worship for a local congregation of the PCUSA denomination located within and associated with the Presbytery of Giddings-Lovejoy.

6. The Presbyterian Church denomination as it exists in the United States has gone through several transformations and mergers over the last century, some of which are relevant in this action.

7. Before June 1983, there existed the United Presbyterian Church in the United States of America (UPCUSA), commonly called the “Northern Church,” and the Presbyterian Church in the United States (PCUS), commonly called the “Southern Church.” Other Reformed Presbyterian denominations in the United States existed at this time, but these two were the dominant ones.

8. The Southern Church broke away from a once unified Presbyterian denomination during the Civil War.

9. Dardenne Church was part of the Southern Church or PCUS.

10. The UPCUSA and the PCUS reunited after approximately 120 years on June 10, 1983 to form the PCUSA. All rights of the former denominations were sold, transferred, or conveyed to the PCUSA and PCUSA is the successor to the former denominations.

11. In the wake of that reunion, local congregations in both former denominations were given the option to stay within the PCUSA or to break away and unite with another Reformed Presbyterian denomination. At that time, if a majority of the local congregation voted to leave, it was agreed that such congregation could take its property and assets with it. Each

congregation was given an eight-year window after the reunion to elect to unite with another denomination or to remain bound to the PCUSA and bound by its constitution.

12. On June 10, 1983, by a vote of its members, Dardenne Church formally elected to stay within the PCUSA.

13. Congregations from the PCUS that chose to join the PCUSA, including Dardenne Church, were also given the option to exempt themselves from the specific property provisions in the PCUSA's Constitution in favor of the property provisions in the former PCUS's Constitution as it existed at the time of reunion. As part of the agreement to reunify the Southern and Northern Churches, congregations had eight years to make that decision.

14. This choice is recognized in the PCUSA Constitution, which provides:

The provisions of this chapter shall apply to all congregations of the Presbyterian Church (U.S.A.) except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America to form the Presbyterian Church (U.S.A.), has been excused from that provision of this chapter if the congregation, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), voted to be exempt from such provision in a regularly called meeting and thereafter notified the presbytery of which it was a constituent congregation of such vote. The congregation voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.). This paragraph may not be amended. (G-4.0208)

15. The PCUS property provisions, like the PCUSA property provisions, provided for a mandatory trust for a church's assets. But the PCUS provisions gave greater flexibility to a church to transfer and encumber its real property during the churches' affiliation with the PCUS.

16. On January 15, 1984, within the eight-year election window, Dardenne Church's members voted to exempt the church from the PCUSA Constitution's property provisions and instead agreed to be legally and permanently bound by the former PCUS Constitution's

alternative property provisions. Dardenne Church adhered to this election of the PCUS property provisions and never renounced that election until purporting to do so recently.

17. The property provisions from the PCUS Constitution, also called the Book of Church Order, to which Dardenne Church elected to be bound, state as follows in relevant part:

Section 6–3. All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

Section 6–4. If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the Presbyterian Church in the United States or otherwise ceases to exist or function as a member of the Presbyterian Church in the United States, any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion may direct.

18. The members of Dardenne Church further voted at a meeting of the congregation on January 15, 1984, to formally notify the Presbytery, in a signed letter, of the church’s election to follow the former PCUS Constitution’s property provisions.

19. In a letter dated January 31, 1984, signed by the pastor and by the clerk of Dardenne Church, Dardenne Church notified the Presbytery as follows:

On the 15th day of January, in the year of our Lord 1984, the congregation of the Dardenne Presbyterian Church of Dardenne Prairie, Missouri, voted to be exempt from the provisions of G-8.0501 and G-8.0502 of the Form of Government of the Presbyterian Church (U.S.A.). These provisions deal with selling, encumbering, or leasing the property of said congregation.

The Presbytery of Southeast Missouri is hereby informed of such action, and is further informed that the congregation of the Dardenne Presbyterian Church, from the date of that congregational meeting, “shall hold title to its property and exercise its privileges of incorporation and property ownership” according to the provisions of Chapter 6 of the *Book of Church Order* of the Presbyterian Church in the United States as that chapter existed on the date of June 10, 1983.

20. In so doing, Dardenne Church made an intentional and voluntary decision to hold all of its property, “from the date of that congregational meeting,” irrevocably in trust for the

benefit of the PCUSA, the legal successor to the PCUS, and promised that, if the church should ever vote to withdraw its affiliation with the PCUSA or ever otherwise cease to function as a PCUSA member church, then its property would remain within the control of the Presbytery, as the legal agent of the PCUSA denomination. In that regard, Dardenne Church became the fiduciary of the PCUSA and the Presbytery.

21. By virtue of its election to join the PCUSA, and its affirmative decision to accept the permanent restrictions and trust provisions described previously, Dardenne Church imposed an irrevocable trust (hereinafter the “Trust”) over its assets for the benefit of the PCUSA and the Presbytery and entered into a fiduciary relationship by which Dardenne Church owed fiduciary duties, including a duty to abide by the terms of the Trust, to the PCUSA, and to the Presbytery.

22. Since its affirmative election to stay within the PCUSA and to be bound by its constitution, Dardenne Church has enjoyed the many substantial benefits of PCUSA affiliation.

23. Dardenne Church’s governing bylaws have changed several times since Dardenne Church was formally incorporated in 1996. At times, the bylaws acknowledged Dardenne Church’s affiliation with the Presbyterian Church (U.S.A.) denomination and commanded that the church “be governed by the PCUSA Book of Order and the decisions of its General Assembly, the Synod of Mid-America, and the Presbytery of Giddings-Lovejoy, or their successor governing bodies,” and further stated that “any provision of these By-Laws which is now, or may at any future time be found to be in conflict with the book of Order shall be null and void.”

24. Recently, however, Dardenne Church has amended its bylaws to remove all references to the PCUSA or its Book of Order. Provisions in various iterations of Dardenne

Church's bylaws that are inconsistent with Dardenne Church's election and irrevocable declaration of trust on January 15, 1984 are void and unenforceable.

25. Dardenne Church presently contends that all property, real and personal, titled in its name is now its own, unencumbered, and *not* held in trust for the benefit of the PCUSA or the Presbytery, and further that it has no legal obligation to deliver, convey, and transfer the title to any property to the Presbytery upon any future disaffiliation or dismissal from the PCUSA.

26. On information and belief, Dardenne Church presently holds legal title to eight different parcels of real property in St. Charles County.

27. Six of the parcels were acquired between 1823 and 1975.

28. Two of the parcels were acquired in 1990 and 1998, respectively. The deeds for these two parcels do not contain any limiting language exempting the properties from the trust previously created in favor of the PCUSA.

29. The deed to one parcel, acquired by Dardenne Church in 1870, states that the property "shall be controlled, conveyed, and disposed of, as the said trustees or their successors may be directed in writing by a majority of the members of the said church," and further that "the trustees of said property shall in no way or manner be subject to the control, interference or meddling of any Presbytery, Synod, General Assembly, or other ecclesiastical body."

30. Nothing in the language of the 1870 deed blocks or prevents Dardenne Church from declaring a trust over the conveyed property to be held for the beneficial interest of the PCUSA, as Dardenne Church declared in January 1984.

31. A deed for the remaining five other parcels acquired in 1975 or before, dated June 8, 1982, states that the property conveyed "shall not become the property of any denomination or church court, nor be deemed to be held in trust or for the benefit of any denomination or church

court,” and that upon such event, “all right, title and interest in and to the said premises shall forthwith revert to and become the property of [the Schumans, as grantors], their heirs or assigns, who shall have the immediate right to possession of said premises, and all right, title and interest of the [Dardenne Church] and their successors and assigns in and to said premises shall forthwith cease.”

32. Later, the Schumans, as the grantees of the reversionary interest (specifically, a possibility of reverter) in the five parcels conveyed in June 1982, on March 14, 1983, conveyed all right, title, and interest in that reversionary interest to “the members of the Session or other like ruling body of any Church from time to time using the property hereinafter described.”

33. “The Session,” as used in the deed conveying the reversionary interest, is not expressly defined in the deed.

34. “The Session,” however, is a well understood term within the PCUSA denomination and predecessor denominations, including the PCUS, of which Dardenne Church was a member church before reunion. According to the PCUSA Book of Order, “the session is the council for the congregation,” composed of “those persons elected by the congregation to active service as ruling elders, together with all installed pastors and associate pastors.” The session has the “responsibility for governing the congregation.” The PCUS *Book of Church Order* had a materially similar provision at the time of the March 1983 conveyance.

35. The Grantors and Grantees in the March 14, 1983 deed understood and intended the phrase, “the Session or other like ruling body of any Church from time to time using the Property,” as used in the deed, to mean “the Session,” as ascribed in the PCUS *Book of Church Order*.

36. Per the PCUSA Book of Order, a PCUSA “presbytery” is “the council serving as

a corporate expression of the church within a certain district.” In its relations with the session of a PCUSA congregation within its district, a presbytery has the authority “to counsel with a session concerning reported difficulties within a congregation.” It may also “assume original jurisdiction in any situation in which it determines that a session cannot exercise its authority,” after a “thorough investigation, and after full opportunity to be heard has been accorded to the session.”

37. If a presbytery determines that a particular congregation’s session, for whatever reason, cannot exercise its authority, then the presbytery may appoint an “administrative commission” with the full power of session, and the commission will then “assume original jurisdiction of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.” The administrative commission then becomes the session of the particular congregation. Assuming original jurisdiction of an existing session is not the only purpose for which an administrative commission is convened.

38. Rather, administrative commissions are designed, more generally, to consider and conclude matters not involving ecclesiastical judicial process.

39. The Presbytery, in November 2023, to, among other things, consider and direct the Presbytery’s response to Dardenne Church’s lawsuit, convened an administrative commission in relation to matters involving Dardenne Church and its relationship to the Presbytery and the PCUSA more generally. In so doing, the Presbytery gave the administrative commission the authority to assume original jurisdiction in any situation in which it discovers that Dardenne Church’s session cannot properly exercise its authority.

40. The administrative commission for Dardenne Church has *not* exercised its authority to assume original jurisdiction over the session at Dardenne Church.

41. If the Presbytery, acting through its administrative commission, later decides to, and in fact does, assume original jurisdiction of the existing session at Dardenne Church, then at that point the members of the administrative commission would constitute the “Session” of Dardenne Church until such time as the Presbytery would otherwise direct.

42. Such action by the administrative commission would be an ecclesiastical matter of internal church governance that Missouri courts would respect and not disturb. *See Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 586 (Mo. App. W.D. 2012).

43. If the Presbytery, acting through its administrative commission were to assume original jurisdiction and thereby constitute the “Session” of Dardenne Church, it would at that point and hold all right, title, and interest in and to the possibility of reverter conveyed to the “Session” in the March 14, 1983 deed.

**COUNT I – DECLARATORY JUDGMENT
(Property held in express trust for the Presbytery)**

44. The Presbytery restates and realleges its allegations above as if fully set forth herein.

45. Section 527.010, RSMo., provides in part that the circuit courts “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed,” and that “such declarations shall have the force and effect of a final judgment or decree.”

46. Further, Sections 456.2-201 and -202, RSMo., authorize the Court to intervene in the administration of a trust, and include the authority to “declare rights” involving a trust.

47. Dardenne Church at all times had the legal capacity to create a trust.

48. By electing on January 15, 1984, to follow and be bound by the PCUS Constitution’s property provisions, with notice later given to the Presbytery in writing on January

31, 1984, Dardenne Church intended to permanently place into trust all property titled in its name (or otherwise owned by it) for the benefit of the PCUSA as expressed in the Presbytery.

49. This declaration of trust is irrevocable both by operation of law and by its terms. For example, if the assets and property are to revert to the PCUSA as a result of “any” departure from the PCUSA—with no limitation as to time or reservation of a right to revoke this provision—then it would be untenable and illogical for Dardenne Church to be able to revoke this commitment and then immediately depart from the denomination. But that is the position taken by Dardenne Church in the present circumstances.

50. Thus, the Presbytery prays that this Court declare that all property, real and personal, legally titled in or otherwise owned by Dardenne Church, is held in trust for the benefit of the Presbytery, as the corporate expression of the PCUSA in the geographic district that includes St. Charles County.

51. In addition, the 1870 deed states that the property “shall be controlled, conveyed, and disposed of, as the said trustees or their successors may be directed in writing by a majority of the members of the said church,” and further that “the trustees of said property shall in no way or manner be subject to the control, interference or meddling of any Presbytery, Synod, General Assembly, or other ecclesiastical body.”

52. Nothing in the language of the 1870 deed blocks or prevents Dardenne Church from declaring a trust over the conveyed parcel, to be held for the beneficial interest of the PCUSA, as Dardenne Church declared in January 1984.

53. Nevertheless, Dardenne Church now contends that the 1870 deed restricts the property from being held in trust for any denominational organization.

54. Dardenne Church misreads the language in the 1870 deed.

55. Alternatively, to the extent that the 1870 deed, by its terms, does restrict the conveyed property from being held in trust for any denominational organization, that deed restriction is unreasonable and no longer enforceable as a matter of law against the PCUSA or the Presbytery.

56. In addition, the 1990 and 1998 deeds state that the Trustees of Dardenne Presbyterian Church “and the Real Estate shall in no way or manner be subject to the control, interference or meddling of any Presbytery Synod, General Assembly or other ecclesiastical body.”

57. Nothing in this or other language in the 1990 or 1998 deeds blocks or prevents Dardenne Church from declaring a trust over all property titled in its name (including parcels acquired in 1990 and 1998), to be held for the beneficial interest of the PCUSA, as Dardenne Church declared in January 1984

58. Nevertheless, Dardenne Church now contends that the 1990 and 1998 deeds restrict the property from being held in trust for any denominational organization.

59. Dardenne Church misreads the language in the 1990 and 1998 deeds.

WHEREFORE, the Presbytery prays for an order and judgment declaring that all property legally titled in or otherwise owned by Dardenne Church (including without limitation the property conveyed in the 1870, 1990, and 1998 deeds) is held in trust in perpetuity for the benefit of the Presbytery, for an award of the Presbytery’s costs and attorney’s fees, and for such other and further relief as this Honorable Court deems just and proper.

**COUNT II – DECLARATORY JUDGMENT
(Property held in resulting trust for the Presbytery)**

60. The Presbytery restates and realleges its allegations above as if fully set forth herein.

61. If, for technical reasons that it never intended, Dardenne Church failed in January 1984 to create an ordinary express trust over all of its property (regardless of when the property was conveyed or titled in Dardenne Church's name), to be held for the benefit of the PCUSA, then, under the circumstances and given the clear intention of the parties, equity demands that Dardenne Church hold all of its property on resulting trust for the benefit of the Presbytery, as the corporate expression of the PCUSA in St. Charles County.

62. In addition, Dardenne Church's acquisition of real property under the 1990 and 1998 deeds was made subject to the trust language in Dardenne Church's January 1984 affirmative election to follow and be bound by the requirements of Chapter Six of the PCUS *Book of Church Order*.

63. Therefore, a resulting trust in favor of the PCUSA was created on the date of each of those transfers in favor of the Presbytery, even though the deeds do not expressly reference a trust.

WHEREFORE, the Presbytery prays for an order and judgment declaring that all property legally titled in or otherwise owned by Dardenne Church (including without limitation the property conveyed in the 1990 and 1998 deeds) is held in trust in perpetuity for the benefit of the Presbytery, for an award of the Presbytery's costs and attorney's fees, and for such other and further relief as this Honorable Court deems just and proper.

COUNT III – UNJUST ENRICHMENT / CONSTRUCTIVE TRUST

64. The Presbytery restates and realleges its allegations above as if fully set forth herein.

65. Dardenne Church made commitments to the PCUSA as a condition of its membership in the PCUSA for nearly 40 years, including an express agreement in 1984 to be bound by the PCUS Constitution's property provisions.

66. Since that time, Dardenne Church has accepted all the real and substantial benefits that the Presbytery conferred on it from these commitments, at the expense of the Presbytery.

67. Dardenne Church would be unjustly enriched were it permitted to accept the benefits of PCUSA membership but be excused from all obligations of such membership, including those stated in the PCUS Constitution's property provisions in the Presbytery's favor, by which Dardenne Church specifically and expressly elected to be bound.

68. A constructive trust imposed on all property owned and/or legally titled in Dardenne Church's name is required in equity and good conscience to avoid Dardenne Church's unjust enrichment at the expense of the PCUSA and the Presbytery.

WHEREFORE, the Presbytery prays for an order and judgment imposing a constructive trust on all of Dardenne Church's property for the Presbytery's benefit, for an award of the Presbytery's costs and attorney's fees, and for such other and further relief as this Honorable Court deems just and proper.

COUNT IV - EQUITABLE ESTOPPEL

69. The Presbytery restates and realleges its allegations above as if fully set forth herein.

70. In January 1984, Dardenne Church voted to follow and be bound by Chapter 6 of the PCUS *Book of Church Order*, by which the church declared that it would hold all of its property in trust for the use and benefit of what at that time was and had become the PCUSA.

71. At that time, Dardenne Church voted to, and later did, expressly inform the Presbytery of this election, by letter dated January 31, 1984.

72. Dardenne Church over the years otherwise committed to be bound to PCUSA.

73. In reliance on Dardenne Church's affirmations and recognitions, the Presbytery conferred benefits upon and continued to support and assist Dardenne Church in various ways.

74. Dardenne Church's current assertions regarding the property titled in its name are inconsistent with its affirmation in January 1984 and its other commitments to be bound to the PCUSA.

75. The Presbytery and the PCUSA as a denomination would suffer great injury if Dardenne Church were permitted to repudiate its earlier affirmations.

76. Therefore, as a matter of equity and to avoid injustice and injury, Dardenne Church is foreclosed and estopped from denying its affirmations, which the Presbytery in good faith accepted and relied upon when agreeing to confer benefits on Dardenne Church.

WHEREFORE, the Presbytery prays for an order and judgment barring Dardenne Church from denying that it holds all property titled in its name in trust for the benefit of the Presbytery, from denying that it agreed that the Presbytery would have the legal right to hold, use, apply, transfer, or sell all such property in the event that Dardenne Church ceased as a particular church of the PCUSA, for an award of the Presbytery's costs and attorney's fees, and for such other and further relief as this Honorable Court deems just and proper.

**COUNT V – DECLARATORY JUDGMENT / QUIET TITLE
(The Session and the Possibility of Reverter)**

77. The Presbytery restates and realleges its allegations above as if fully set forth herein.

78. Section 527.150, RSMo, allows this Court to "ascertain and determine the estate, title and interest of" persons "having or claiming to have any title, estate or interest" in real property.

79. In the March 14, 1983 deed, all right, title, and interest in the possibility of

reverter created in the June 8, 1982 deed involving five parcels of land was conveyed to “the members of the Session or other like ruling body of any Church from time to time using the property hereinafter described.”

80. “The Session” referenced in the March 14, 1983 deed is the governing body at Dardenne Church, as set forth in the PCUSA’s governing Book of Order.

81. In the event the administrative commission were to assume original jurisdiction of the Session at Dardenne Church, then the administrative commission would constitute the “Session,” Missouri courts would respect that ecclesiastical decision, and the administrative commission would thus hold the possibility of reverter conveyed in the March 14, 1983 deed.

82. Thus, the Presbytery prays that this Court declare that, if the administrative commission were to assume original jurisdiction, then the administrative commission, as the agents of the Presbytery, would hold all right, title, and interest in the possibility of reverter conveyed in the March 14, 1983 deed.

WHEREFORE, the Presbytery prays for an order and judgment declaring that, if the administrative commission convened by the Presbytery were to assume original jurisdiction of the Session at Dardenne Church and thereby become the “Session,” then the Presbytery, through the members of the administrative commission as its agents, would hold all right, title and interest to the possibility of reverter conveyed in the March 14, 1983 deed; for an award of the Presbytery’s costs and attorney’s fees; and for such other and further relief as this Honorable Court deems just and proper.

COUNT VI – ATTORNEY’S FEES AND COSTS

83. The Presbytery restates and realleges every allegation of every preceding paragraph as if fully set forth herein.

84. Section 456.10-1004, RSMo., provides that “[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.”

85. This action involves the administration of a trust.

86. Justice and equity require an award of the Presbytery’s legal fees, costs, and expenses, including its reasonable attorney’s fees, incurred prosecuting this action and defending against Dardenne Church’s Verified Petition.

WHEREFORE, The Presbytery prays this Honorable Court for an award of the Presbytery’s costs and expenses, including reasonable attorney’s fees, incurred in this action.

Dated: December 29, 2023.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2023, the foregoing in the above styled case was electronically served via Case.Net on all counsel of record.

/s/ Britton St. Onge _____