

IN THE SUPERIOR COURT OF MONROE COUNTY

STATE OF GEORGIA

**FORSYTH SECOND BAPTIST CHURCH, :**  
**INC., NETTIE PARKER, ESSIE :**  
**HERNDON, LINDA HARRIS, WAYNE :**  
**HARRIS, and VIVIAN YOUGHN, :**

**Plaintiffs, :**

**vs. :**

**JOHN HESTER and CHARLOTTE :**  
**HESTER, Individually and as Former :**  
**Officers of FORSYTH SECOND BAPTIST :**  
**CHURCH, INC., ROCK SPRINGS :**  
**CONGREGATIONAL METHODIST :**  
**CHURCH, INC., ABC and XYZ :**  
**CORPORATIONS and JOHN DOE, :**

**Defendants. :**

**CIVIL ACTION NO.: 2016-CV-57**

**FINAL ORDER**

This matter comes before the Court on Defendants' Motion to Dismiss and Memorandum in Support of the same. A hearing was held on April 7, 2016, wherein the parties presented their arguments. The Court finds as follows:

The dispute before the Court centers around a January 20, 2016, vote of the membership of Forsyth Second Baptist Church, Inc. ("Second Baptist"), a congregational church, to consolidate with Defendant Rock Springs Congregational Methodist Church, Inc. ("Rock Springs") by dissolving the Second Baptist corporation and donating its property to Rock Springs. The Plaintiffs state that they are five members of Second Baptist and they take issue with the vote, notice of the vote, and the manner in which it was conducted. The Defendants are Rock Springs, the individual who was the sole deacon for Second Baptist as of January 20, 2016, and the individual who was the Treasurer for Second Baptist as of January 20, 2016.

The substance of the Plaintiffs' Complaint is a request for injunctive relief to undo the actions that resulted from the January 20, 2016, vote. The Defendants have moved to dismiss the action on the grounds that the Plaintiffs have not met their burden of establishing that they have standing to bring this claim. For the reasons that follow, the Court agrees and must dismiss this Complaint.

#### **FINDINGS OF FACT**

A review of the pleadings and affidavits submitted by the parties reveals that all parties agree on the basic facts. In late 2015, Defendant Rock Springs' pastor, Benny Tate, was approached by John Hester and Charlotte Hester on behalf of Second Baptist. The Hesters expressed concerns about the continued viability of Second Baptist as it no longer had a pastor, no Sunday School, the church facilities were in a state of severe disrepair, and the church only had approximately fifteen attendees on average for its services.

After discussion, it was proposed that Second Baptist would become a satellite church for Rock Springs so that Rock Springs could repair the facilities, supply a pastor and music minister for the church, and otherwise run the church as part of Rock Springs. Notice of the meeting wherein the proposal was to be considered was run in Second Baptists' church bulletin on January 3, 2016, January 10, 2016, and January 17, 2016. Each notice was in substantially the same form:

JANUARY 20<sup>TH</sup> A VERY IMPORTANT CALL CONFERENCE  
WILL BE HELD AT THE CHURCH AT 6:30 P.M. PLEASE  
MAKE ARRANGEMENTS TO ATTEND. EVERYONE IS  
ASKED TO COME. YOU DON'T HAVE TO BE A MEMBER  
TO EXPRESS YOUR IDEAS!

After said notice, the proposal was presented to the membership of Second Baptist during a meeting held on Wednesday, January 20, 2016. The parties agree that thirteen (13) members of Second Baptist were present at the meeting and that all five (5) of the Plaintiffs were among them. A motion was made to implement this proposal and consolidate Second Baptist with Rock Springs. The measure was then voted on at the meeting. The motion carried by a vote of 11 to 2. However, all parties agree that two (2) non-members were allowed to vote on the measure. The vote was subsequently amended to reflect a final passage of nine (9) votes in favor to two (2) votes against. There is no evidence that anyone at the time of the meeting objected to the subject of the vote or to the notice given to the membership regarding the vote. There is no evidence that any member of the congregation was denied the right to vote.

Following the vote, the church property was quitclaimed to Rock Springs on January 27, 2016, and steps were taken to dissolve Second Baptist on January 28, 2016. Thereafter, Rock Springs began making improvements to the facility, including replacing the HVAC system, replacing the ceiling in the main sanctuary, replacing worn pews, replacing carpeting, painting, pressure washing, and re-landscaping the facility. Rock Springs contended that it spent in excess of \$80,000.00 performing said repairs. In addition to the work on the premises, Rock Springs provided a pastor and a music minister and manages the church. Church services were held at the former Second Baptist location on January 31, February 7, 14, 21, 28, March 6, 13, 20, 27, and April 3, with attendance steadily rising to as high as 169 individuals for Easter Sunday service. The Plaintiffs filed their lawsuit on March 4, 2016, objecting to the actions taken at the January 20, 2016, meeting.

## CONCLUSIONS OF LAW

A threshold question in any church dispute matter, such as the one before the Court, is whether the Plaintiffs have standing to bring the claims asserted. Under Georgia law, the Plaintiffs bear the burden of establishing their standing to bring an action. *Dep't of Human Res. v. Allison*, 276 Ga. 175, 178, 575 S.E.2d 876, 879 (2003).

The Court of Appeals has held that, “[w]ith respect to congregational churches such as this one, courts exercise jurisdiction only in those suits brought on behalf of a majority of the congregation.” *Waverly Hall Baptist Church, Inc. v. Branham*, 276 Ga. App. 818, 824, 625 S.E.2d 23, 30 (2005); *Gervin v. Reddick*, 246 Ga. 56, 57, 268 S.E.2d 657, 658 (1980) (“It is well-settled that a court of equity will take jurisdiction over disputes involving churches when property rights are involved and when the suit is brought on behalf of a majority of the congregation.”) The Court notes that, while it does have a duty to determine the issue of standing prior to exercising jurisdiction over church matters, “[i]t is not the trial court’s obligation to order a meeting of the church member [sic] if it had ‘any concerns related to standing,’ or otherwise to tell the plaintiffs what evidence they need to submit.” *Victory Drive Deliverance Temple, Inc. v. Jackson*, 298 Ga. App. 563, 566, 680 S.E.2d 588, 591 (2009).

The crux of the matter before the Court, then, is whether the Plaintiffs have submitted evidence that they represent a majority of the membership of the church. On this question, the Court believes that through their pleadings and affidavits submitted with their pleadings, the Plaintiffs have established that they represent only a minority of the church membership.

The record reflects that the vote to consolidate Second Baptist with Rock Springs carried with at least nine (9) votes from the membership out of thirteen (13) members present. Though all five (5) of the Plaintiffs submitted affidavits with their Complaint stating that they were

present at the January 20, 2016, meeting now complained of, there were only two (2) votes against the proposal at that meeting. Even if the Court were to look beyond the fact that some of the five (5) Plaintiffs voted in the affirmative or abstained from voting during the original vote, five (5) members is still not a majority of even the thirteen (13) members that voted at the January 20, 2016, meeting.

The Plaintiffs contend that the notice for the January 20, 2016, meeting was defective under the Georgia Nonprofit Code. However, the core problem with this argument is that all five of the Plaintiffs were present at January 20, 2016, meeting. The Plaintiffs do not allege, nor does the record reflect, that any objection was raised as to either the subject matter to be discussed at the meeting or defective notice of the meeting. The Georgia Nonprofit Code provides that, in such an event, the member cannot later complain of the vote taken.

[a] member's attendance at a meeting: (1) [w]aives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (2) [w]aives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

O.C.G.A. § 14-3-706. Having failed to raise the objection during the January 20, 2016, meeting, the Plaintiffs cannot now complain of alleged defects in notice or the substance of the meeting.

From the foregoing, it is clear to the Court that the Plaintiffs have not met their burden of establishing that they have standing to bring the claim asserted. As such, the Court cannot take jurisdiction over the internal matters of the church and must dismiss this lawsuit.

**ORDER**

Having read and considered the Defendants' Motion, all matters of record, and the arguments of counsel, it is hereby **ORDERED** that the Defendants' Motion is **GRANTED** and this matter stands dismissed with prejudice.

This <sup>TE</sup> 11 day of April, 2016.

  
Hon. Grant Brantley  
Judge, Superior Court of Monroe County

*Presented by:*

A. J. "Buddy" Welch, Jr.  
Georgia Bar No. 746800  
bwelch@smithwelchlaw.com  
Grant E. McBride  
Georgia Bar No. 109812  
gmcbride@smithwelchlaw.com  
Smith, Welch, Webb & White, LLC  
Attorneys for Defendants  
2200 Keys Ferry Court  
P.O. Box 10  
McDonough, Georgia 30253  
Office: (770) 957-3937  
Fax: (678) 583-4888

## Lamonte Scott

---

**From:** grantbrantley@comcast.net  
**Sent:** Monday, April 11, 2016 4:13 PM  
**To:** Grant McBride  
**Cc:** scott; dent@les-law.com; Welch, A. J.; Sheila Wright; G. Grant Brantley  
**Subject:** Re: Proposed Order - Forsyth Second Baptist Church, et al. v John Hester, et al.  
**Attachments:** 20160411151038.pdf; \_Certification\_.htm

All:

See the attached signed order; the original is being mailed to the Clerk.....

Grant

---

**From:** "Grant McBride" <grant.mcbride@gmail.com>  
**To:** grantbrantley@comcast.net, "scott" <scott@les-law.com>, dent@les-law.com, "A. J. Buddy Welch, Jr." <bwelch@smithwelchlaw.com>, "Sheila Wright" <swright@smithwelchlaw.com>  
**Sent:** Thursday, April 7, 2016 6:04:28 PM  
**Subject:** Proposed Order - Forsyth Second Baptist Church, et al. v John Hester, et al.

Judge Brantley,

Attached please find the Defendants' proposed Order on the Motion to Dismiss. By way of this e-mail, I am sending a copy to Mr. Scott.

Regards,  
Grant McBride

---

No virus found in this message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 2016.0.7442 / Virus Database: 4545/12002 - Release Date: 04/10/16