

1978

# Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, A Corporation Sole v. Douglas A. Wallace : Brief of Appellant

Utah Supreme Court

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I N T H E S U P R E M E C O U R T  
O F T H E  
S T A T E O F U T A H

CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST  
OF LATTER-DAY SAINTS, a  
corporation sole,

Plaintiff-Respondent,

vs.

DOUGLAS A. WALLACE,

Defendant-Appellant.

Civil No. ~~15106-~~  
15300

B R I E F O F A P P E L L A N T

AN APPEAL FROM THE FINAL ORDER AND JUDGMENT  
IN THE THIRD JUDICIAL DISTRICT COURT,  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
THE HONORABLE STEWART M. HANSON, JR., JUDGE PRESIDING

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**FILED**

**JUL 13 1978**

I N T H E S U P R E M E C O U R T  
O F T H E  
S T A T E O F U T A H

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OF THE CHURCH OF JESUS CHRIST	:	
OF LATTER-DAY SAINTS, a	:	
corporation sole,	:	
	:	
Plaintiff-Respondent,	:	Civil No. 15106
	:	
vs.	:	
	:	
DOUGLAS A. WALLACE,	:	
	:	
Defendant-Appellant.	:	

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OF THE CHURCH OF JESUS CHRIST	:	
OF LATTER-DAY SAINTS, a	:	
corporation sole,	:	
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Plaintiff-Respondent,	:	Civil No. 15106
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vs.	:	
	:	
DOUGLAS A. WALLACE,	:	
	:	
Defendant-Appellant.	:	

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**BRIEF OF APPELLANT**

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I

NATURE OF THE CASE

This action, initiated by the Plaintiff-Respondent in the Court below, sought a Permanent Injunction (Permanent Restraining Order) which would prevent the Defendant-Appellant from entering the premises known as Temple Square located in Salt Lake City, Utah.



## II

DISPOSITION IN LOWER COURT

The Court below after trial granted Plaintiff-Respondent's request for a Permanent Restraining Order. Said Order enjoined Defendant-Appellant from entering upon Temple Square, Salt Lake City, Utah in such a manner as to interfere with, impair or abridge the religious services or conferences of others.

## III

RELIEF SOUGHT ON APPEAL

Defendant-Appellant seeks reversal of the judgment and an order of dismissal.

## IV

STATEMENT OF THE CASE

This action was filed in the District Court of the Third Judicial District in and for the County of Salt Lake by the Plaintiff-Respondent seeking a Temporary Restraining Order and a Permanent Injunction against the Defendant-

Appellant. Two Temporary Restraining Orders were issued by the Court, against the Defendant-Appellant. The Defendant-Appellant filed an Answer to the Complaint and a Counterclaim alleging that the initial Temporary Restraining Order was wrongfully obtained and caused harm to the Defendant-Appellant. The Court below dismissed the Defendant-Appellant's Counterclaim for failure to state a cause of action. Said dismissal was affirmed on appeal. The Complaint was brought before the Court for trial and was heard by the Court August 15, 1977. The Court below granted the Plaintiff-Respondent's request for a Permanent Restraining Order against Defendant-Appellant and said Order was issued August 23, 1977.

The Defendant-Appellant filed a timely notice of appeal on the issuance of the Permanent Restraining Order.

## V

### STATEMENT OF FACTS

On April 6, 1976, Defendant-Appellant entered the premises known as the Tabernacle on Temple Square in Salt Lake City, Utah during the semi-annual conference of an unincorporated association known as The Church of Jesus Christ of Latter-Day Saints, hereinafter, the Church. The

Defendant-Appellant attempted to approach the speaker's stand at said conference when he was stopped by several ushers and removed from the building.

In September, 1976 the Plaintiff-Respondent petitioned the lower Court for a Temporary Restraining Order enjoining the Defendant-Appellant from entering the above mentioned Tabernacle during a conference of the Church to be held in October, 1976. The Plaintiff-Respondent also petitioned the lower Court for a Permanent Injunction prohibiting Defendant-Appellant from ever entering the above mentioned Temple Square. Plaintiff-Respondent alleged that Defendant-Appellant's conduct of April 6, 1976 and certain letters of Defendant-Appellant indicated Defendant-Appellant was a threat to the peaceful assembly of worshippers on Temple Square.

The lower Court issued a Temporary Restraining Order enjoining Defendant-Appellant from entering the Tabernacle during the October, 1976 conference of the Church. Defendant-Appellant was at all times obedient to that Order.

During March of 1977 and directly prior to another scheduled conference of the Church, the matter of the Permanent Injunction was still pending. The Plaintiff-Respondent requested another Temporary Restraining Order enjoining Defendant-Appellant from entering Temple Square during the April, 1977 conference of the Church. Such an

Order was issued ex parte by the lower Court. Defendant-Appellant was at all times obedient to said Order.

The issue of the Permanent Restraining Order or Permanent Injunction came for trial in the lower Court August 15, 1977 before the Honorable Stewart M. Hanson, Jr., District Judge. The lower Court granted Plaintiff-Respondent's petition and issued a Permanent Restraining Order. Said Order reads in part as follows:

. . . that the Defendant be and he is hereby permanently enjoined from entering upon Temple Square, Salt Lake City, Utah, during such times and under such circumstances as to interfere with, impair or abridge by his conduct, the religious services or conferences of other persons or the free exercise of religion by such other persons therein or thereon; provided however, that this injunction is neither intended nor is it to be construed to interfere with or abridge Defendant's right to free speech and expression, or Defendant's right to the free exercise of his religious beliefs at such other times and places, or under such other circumstances as to not interfere with the constitutionally protected rights to the free exercise of religion of and by other persons, . . .

## VI

### ARGUMENT

#### POINT I

THE COURT BELOW ERRED IN DETERMINING THAT THE CORPORATE PLAINTIFF IN THE ACTION AT ISSUE HAD STANDING AND WAS A PROPER PARTY IN INTEREST.

It has long been a basic underlying principle of Anglo-American law that a civil action may be prosecuted only by a party having a real interest in the determination of the suit. This concept is embodied by Utah Statute in Rule 17(a) of the Utah Rules of Civil Procedure. This rule states in part, "Every action shall be prosecuted in the name of the real party in interest."

The purpose for this requirement of interest on the part of civil plaintiffs has been clarified by the Utah Supreme Court:

The reason the defendant has the right to a cause of action prosecuted by the real party in interest is so that the judgment will preclude any action on the same demand by another and permit the defendant to assert all defenses or counterclaims available against the real owner of the cause. Shaw v. Jeppson, 121 Utah 155, 239 P. 2d 745 (1952).

In the instant case, action was brought not by the true parties in interest but by the Plaintiff, a corporate sole known as the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints. This corporate entity exists solely for the purpose of handling the financial and property affairs of the unincorporated association known as the Church of Jesus Christ of Latter-Day Saints. According to testimony adduced at trial, the purpose of the Plaintiff is to deal with the Church's estate. The purpose of the

Plaintiff is not to worship. However, the Plaintiff alleged in its petitions for a Permanent Restraining Order against the Defendant that the injury Defendant would cause if not enjoined was an injury to the rights of certain parties to freely assemble and practice their religion. The Plaintiff has alleged that Defendant's conduct of April 6, 1976 and certain letters written by Defendant and entered in evidence by Plaintiff indicate the Defendant will, if not enjoined, disrupt the worship services held by the Church and known as general conferences. The Plaintiff has alleged these conferences are attended by thousands of members of the Church and are broadcast world wide to other Church members. Hence, the Plaintiff has revealed the true parties in interest in the present action. The true parties in interest are the Church itself and the individual worshippers, members of the Church. Since the Plaintiff does not deal with ecclesiastical affairs of the Church it cannot have any legal interest in the worship services of the Church. Moreover, since the Plaintiff corporate sole consists of only one person, it cannot be found that the Plaintiff is in any way representative of all parties in interest in the present case.

In addition, the Plaintiff is not the proper party in interest to bring even an action concerning the trespass issues which may be involved in the instant case. The

general rule of law is that a party in possession of real property has the exclusive right of action for injuries affecting the possession. Bowe v. Palmer, 36 Utah 214, 102 P. 1007 (1909); 49 Am Jur. 2d L/T §281 (1964). A landlord/owner's right of action is limited to protection of his reversionary interest. Miller v. Edison Electric Illuminating Co. of New York, 184 NY 17, 76 NE 734 (1906); Am Jur. 2d L/T §86 (1964).

In the instant case, Temple Square is owned by the Plaintiff, a corporate sole. The Plaintiff does not personally occupy Temple Square, but "leases" the premises to the unincorporated association, the Church. The Church is in exclusive possession of Temple Square. Under law, the Church and not the Plaintiff has exclusive right of action for trespass to Temple Square, both action for damages caused by trespass and for injunctive relief to prevent future trespasses. Hence the proper party of interest to institute the present action, even as it may pertain to property interests in Temple Square, is not the Plaintiff but the Church.

Thus, the lower Court's decision should be reversed for four reasons: 1) The decision violates Utah Rules of Civil Procedure, Rule 17(a) by granting the Plaintiff standing to bring their action. The decision also denies

the Defendant the rights established in Jeppson, supra, in that; 2) other actions on the same demand may be brought by other parties at a later time, and 3) the Defendant is denied the opportunity of asserting the defenses and counterclaim he may have against the true parties in interest, the Church and its members; 4) the Plaintiff is not the proper party in interest to bring any action regarding trespass to Temple Square since the Plaintiff is an owner/landlord who is not in possession of Temple Square and was not in possession of Temple Square at any time during which the alleged injurious conduct of Defendant occurred.

## POINT II

THE COURT ERRED IN GRANTING A PERMANENT RESTRAINING ORDER IN THAT THERE WERE ADEQUATE REMEDIES AT LAW TO PROTECT THE PLAINTIFF FROM THE ALLEGED HARM TO BE CAUSED BY DEFENDANT.

A permanent restraining order or permanent injunction is an extraordinary writ which the courts issue only when all legal remedies are inadequate to afford the Plaintiff relief.

Generally, equity will protect personal rights by injunction upon the same conditions on which it will protect property rights, that is, where a substantial right of Plaintiff will be injured in a material degree unless



relief is granted, (and) the remedy at law is inadequate, . . . 43A C.J.S. Injun. § 140, (1948) (emphasis added)

In the instant case, Plaintiff has sufficient remedies at law to guard against any alleged potential harm by the Defendant such that issuance of the Permanent Restraining Order by the lower Court was error.

The Plaintiff has alleged that, if not enjoined, Defendant will enter Temple Square during the Church's semi-annual conference worship services and will disrupt said conferences. The Plaintiff has two legal remedies for such alleged harm. First, the Revised Ordinances of Salt Lake City, Utah afford Plaintiff a legal remedy. Section 32-1-13 of said Ordinances states:

It shall be unlawful for any person to disturb a public assembly, congregated for religious or other lawful purposes, within the limits of Salt Lake City, by undue noise, or by offensive, unbecoming or indecent behavior.

Second, the Plaintiff has a remedy at law for any alleged potential harm of the Defendant through an action for trespass. Section 32-3-3(1) of the Revised Ordinances of Salt Lake City, Utah states in part:

It shall be unlawful for any person to . . . ride, drive, walk, lodge, or camp or sleep upon the premises of another without the permission of the owner or occupant thereof.

The Utah Code Annotated, 1953, provides in 76-6-206:

- (1) For purposes of this section "enter" means intrusion of the entire body.
- (2) A person is guilty of criminal trespass if, . . .
  - (a) He enters or remains unlawfully on property and:
    - (i) Intends to cause annoyance or injury to any person thereon or damage to any property thereon; . .
    - (b) Knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:
      - (i) Personal communication to the actor by the owner or someone with apparent authority to act for the owner; or
      - (ii) Fencing or other enclosure obviously designed to exclude intruders; or
      - (iii) Posting of signs reasonably likely to come to the attention of intruders.

According to the findings of the lower Court Plaintiff is the lawful owner of Temple Square. Hence, the Plaintiff has a legal remedy for trespass any time the Defendant should enter Temple Square without the permission of Plaintiff.

### POINT III

THE FINDINGS OF FACT ADOPTED BY THE COURT BELOW DO NOT SUPPORT THE ORDER OF THE LOWER COURT AND ARE INADEQUATE AS A MATTER OF LAW.

If the Court is to enjoin the Defendant from the future acts disruptive of worship services on Temple Square the lower Court must make a finding of fact that the Defendant will in the future disrupt worship services on Temple Square. Anderson v. Jensen, 71 U. 295,296 P. 745, (1948). At the very least the Court should be required to find a reasonable possibility that the Defendant will disrupt future worship services. It is not logical for a Court to enjoin the Defendant from committing certain acts if there is little or no possibility of the acts ever occurring.

The lower Court has made no findings of fact that the Defendant will or even possibly will disrupt future worship services on Temple Square. The Court has found merely that the Defendant entered Temple Square on April 6, 1976 in an attempt to disrupt the general conference of the Church and that the Defendant has made various threats concerning ecclesiastical trials of certain leaders of the Church. The lower Court has made no finding of fact that the Defendant will or has any intention to make good these threats. Hence, the Court erred in issuing the Permanent Restraining Order in that there were insufficient findings of fact to support issuance of the Order.

POINT IV

THE FINDINGS OF FACT OF THE LOWER COURT ARE NOT SUPPORTED BY THE TESTIMONY ADDUCED AT TRIAL.

The Court below in its Findings of Fact and Conclusions of Law made the following findings in paragraph 6 concerning the events of April 6, 1976:

. . . that the Defendant and his two associates were blocked from proceeding through one avenue to the podium and commenced across the front aisle of the Tabernacle; that Defendant pushed an usher aside who stood in his way requesting if he could be of help; the Defendant stated in substance, "Don't try to stop the Lord;" that thereafter two security personnel took hold of Defendant and turned him around, the Defendant stating in substance, "Don't touch me, I'm the Lord;" that the Defendant was escorted from the Tabernacle by said security personnel,...

These findings are in direct conflict with testimony produced at trial. On page 176 of the trial record the Defendant's testimony is as follows:

Q. With respect to your entrance into the Tabernacle, you were intent on getting to the podium, I take it, from the fact that you struck aside an usher; is that correct?

A. I did not strike aside an usher.

Q. You heard the testimony of Mr. Truitt?

A. I take exception to the testimony.

Q. All right. Is it your testimony now under oath that you did not brush him aside and cause him to stumble?

A. Mr. Truitt's hand came out at me, and I pushed it aside as being an effort to restrain me.

Q. And what did you say to Mr. Truitt?

A. I think my words were, "Get out of my way."

Q. You heard his testimony that you said, "Don't stop me. I'm the lord"?

A. This is what he said.

Q. That was not your testimony?

A. That was not my statement.

It is inappropriate for a Court to make a finding of fact where there is directly conflicting testimony and the lower Court erred in making the findings included in paragraph 6 of the Findings of Fact.

In addition, the Court erred in failing to find as fact that the Defendant corresponded with the President of the Church of Jesus Christ of Latter-Day Saints for the purpose of discussing his excommunication from said church and an ecclesiastical trial to be held of leaders of said church for alleged misconduct and that the Defendant believed the doctrines of said church gave him a right to initiate such a trial. Uncontradicted testimony and other evidence

*Unmaterial*

was produced at trial to support such findings of fact. It was error for the lower Court to omit such uncontradicted information from its findings of fact.

POINT V

THE COURT BELOW ERRED IN TAKING JURISDICTION OF A PURELY RELIGIOUS DISPUTE AND ALLOWED THE PLAINTIFF-RESPONDENT BY AND THROUGH THE CIVIL COURT OF THE STATE OF UTAH TO SUPPRESS THE RELIGIOUS FREEDOMS AND RELIGIOUS ACTIVITIES OF THE DEFENDANT-APPELLANT.

All of the events, alleged injuries and alleged potential injuries surrounding the litigation which has led to the issuance of the Permanent Restraining Order involve an ecclesiastical dispute between the Plaintiff and the Defendant. The Defendant claims a religious belief that the doctrine of his church allows him to bring certain leaders of the church to church trial for alleged malfeasance in office. The Plaintiff claims on the other hand that the Defendant's efforts to exercise this doctrinal belief constitute an infringement of Plaintiff's rights to exercise his religion. The dispute is, in short, an intra-church dispute over authority within the Church.

The lower Court erred by taking cognizance of this intra-church dispute at all. The Courts are estopped by

constitutional fiat and unanimous court precedents from determining any and all matters of church discipline, faith, rule, custom or law. The landmark United States Supreme Court case of Watson v. Jones, established this rule. The Watson court stated:

The right to organize voluntary religious associates to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Watson v. Jones, 13 Wall 679, 20 L. Ed. 666 (1872).

Other authorities supporting the view that civil courts will not review acts of church discipline or member expulsion include 66 Am. Jur. 2d p. 781-787; 70 ALR 71-90; and 20 ALR 2d 421-522. A recent case supporting this view

is Simpson v. Wells Lamont Corporation, 484 F. 2d 490 (1974).

There is no way that a Court can rule on the instant case without making a decision concerning church doctrine. If the lower Court is sustained the Courts will have decided that under church doctrine the Defendant does not have the right to present grievances to the general conference of his church regarding malfeasance of the church's leaders. If the Court rules in favor of the Defendant, the Court will have determined that the Defendant does have such a right. Since the Court cannot rule for either party without making a secular decision of religious doctrine, the lower Court erred in taking cognizance of the case at all and the lower Court should be reversed and the case dismissed.

#### POINT VI

THE ORDER ISSUED BY THE COURT BELOW IS SO VAGUE AS TO VIOLATE THE TERMS OF RULE 65 A(d) OF THE UTAH RULES OF CIVIL PROCEDURE.

Utah Rule of Civil Procedure 65 A(d) states in part:

Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained;...



The Permanent Restraining Order granted the Plaintiff by the lower Court violates Rule 65 A(d) in its failure to describe in reasonable detail the act or acts sought to be restrained. The Defendant is prohibited from entering Temple Square in such a manner as to "interfere with, impair or abridge by his conduct, the religious services or conferences of other persons . . . ." The Court does not, however, clarify just what conduct it deems to interfere with, impair or abridge religious services. The Order continues on to provide that the Order is not to be construed to interfere with or abridge Defendant's rights to free speech, religion and assembly. The Court does not clarify how the Order is to be construed when the religious convictions of the Defendant conflict with those of other worshippers on Temple Square. The Order does not even clarify whether or not the past conduct of Defendant which precipitated the present action would, if repeated, constitute a violation of the Order.

The Permanent Restraining Order is so vague as to be useless. It affords neither the Plaintiff, the Defendant nor future tribunals any concrete information as to what constitutes a violation of the Order. For this reason the lower Court should be reversed.

CONCLUSION

The Court below erred in issuing the Permanent Restraining Order. The Court erred in allowing the Plaintiff to have standing to bring action. The Court erred in granting the Order when the Plaintiff had adequate remedies at law to protect it from the alleged harm. The Court erred in making its findings of fact and in holding that these findings of fact supported the Order. The Court erred in taking jurisdiction of a religious dispute and in issuing an order so vague in its terms as to violate Rule 65 A(d) of the Utah Rules of Civil Procedure. The lower Court decision should be reversed and the matter dismissed.

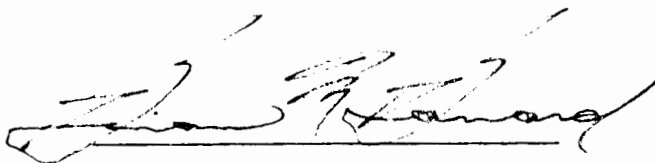
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CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing Brief of Appellant to Oscar W. McConkie, Attorney for Plaintiff-Respondent, 336 South 300 East, Salt Lake City, Utah, 84111, postage prepaid in the United States Postal Service, this 13<sup>th</sup> day of July, 1978.

A handwritten signature in black ink, appearing to read "Brian M. Barnard", written over a horizontal line.

BRIAN M. BARNARD  
Attorney for Defendant-Appellant