

Baptists' Victory Over College May Stall Other Secular Bids

Shorter College's failed attempt to escape the Georgia Baptist Convention's control by dissolving and reincorporating may affect other nonprofits' attempts to win their freedom from institutional control.

In a Wednesday opinion, Georgia Court of Appeals Judge Charles B. Mikell Jr. wrote that it was clear that Shorter College's trustees' vote to dissolve the school, transfer its assets to a new foundation, and rename it "Shorter College" did not create a new entity, and did not take Shorter out of GBC control.

"The 'new' Shorter College is ... the same old corporation with a new name," he wrote. "It is not a true dissolution. Absent the GBC's approval, it cannot stand." The appeals court panel, which also included Presiding Judge Edward H. Johnson, and Frank M. Eldridge, remanded the case to the trial court, with instructions to set aside Shorter's "dissolution." *Shorter v. Baptist Convention of the State of Georgia*, No. A03A2230 and *Baptist Convention of the State of Georgia v. Shorter*, No. A03A2229 (Ct. App. Ga. March 17, 2004).

Lawyers who represented the Georgia Baptist Convention said the court's opinion supports the position of institutions—especially religious institutions—that have affiliations with schools or other nonprofits. Arnall Golden Gregory's Walter H. Bush, who represents the GBC, said, "If the decision had gone the other way then no nonprofit would be safe from this kind of sleight of hand."

'A Very Important' Decision

Sutherland Asbill & Brennan's **Richard L. Robbins**, who represents trustees who opposed the dissolution, said Shorter's is not an isolated case. "There are dozens—if not hundreds—of religious affiliated schools who have had the same issues," he said. "This decision is going to be a very important one for nonprofits nationwide."

Lawyers for Shorter have filed a petition for certiorari to the Supreme Court of Georgia. During oral arguments in October, Bruce P. Brown, of McKenna Long & Aldridge, told the court his client had announced its intentions at every step. There was no intention to fool anyone, he said. It simply announced what it intended to do, and then executed the plan—in accordance with the law, he added.

All the college had to do was get a majority vote from the board and notify the attorney general's office, and it did both, Brown said. If the school had voting members, Brown said, it would have had to seek their approval, but Shorter didn't have any voting members, he told the court.

Brown did not return a phone call seeking comment.

Shorter is a four-year college in Rome with satellite campuses in Lawrenceville, Riverdale and Marietta. It has slightly more than 1,000 students. The school was founded in 1873, and operated autonomously, for the most part, until 1958, when it asked the GBC to bail it out of debt, and offered it control of the school in return.

Specifically, Shorter gave the GBC the right to appoint all of its trustees and approve amendments to its charter. According to the GBC, the convention has invested about \$26 million in the school since then.

Conflict Over Trustees

According to court records, the friction between Shorter and the GBC began in 2001, when President Edward L. Schrader contacted the convention about putting together a slate of possible new trustees. Shorter's original petition describes a meeting between Schrader and nominating committee member Michael Everson. According to the college, Everson described himself as a conservative activist.

"He suggested that the College's Board of Trustees were not the kind of conservative individuals he had in mind for the board," the petition states. Everson suggested a list of nominees, which Schrader examined. But the president claims he couldn't find one of them; two others declined to serve, and he sent the name of one of Everson's last two choices to the college's executive committee for inclusion on its slate of nominees. At the same time, the Southern Association of Colleges and Schools warned Shorter that if it didn't curb the undue influence of the Baptist Convention, the school could lose its accreditation, according to court documents.

Conflict Escalates

After that warning, and the fight with GBC over trustees, the college fired its first shot in a conflict that soon escalated into open warfare. In January 2002, the trustees voted to incorporate a separate entity called the Shorter College Foundation Inc. The school then leased all of its assets to the foundation, which had a self-perpetuating board that would control the college.

A displeased GBC then cut off the college's funding, according to Mikell's opinion.

The college then rescinded the lease and the GBC resumed funding. Shortly after that, the college submitted a list of 16 potential trustees. They were rejected by the GBC, which then selected eight trustees.

At a meeting Nov. 22, the board of trustees voted to dissolve the college, effective Dec. 31, 2002. Under the board's plan, all the college's assets would be transferred to the foundation, which would control the college through its own board of trustees. Then the foundation would change its name to "Shorter College" and continue as it had—minus GBC influence.

When the GBC learned of the plan, it withheld funding from the school. Shorter then sued the GBC in DeKalb County, where the convention has its headquarters. Shorter asked Superior Court Judge Daniel M. Coursey Jr. for a declaratory judgment stating that Shorter had authority to appoint its own trustees, and that the GBC must release \$8.3 million of the school's money the GBC was holding in trust. The school also sought damages for breach of contract and breach of trust.

The GBC counterclaimed, seeking to enjoin the college from implementing its dissolution plan, and accusing it of conversion, tortious interference with a contract, breach of fiduciary duty, fraud and civil RICO.

Summary Judgment

In an April summary judgment order, Coursey found that the GBC was a member of Shorter, and that it once had the authority to appoint trustees. All that was moot, however, because the school the GBC once controlled dissolved Dec. 31, and no longer existed. *Shorter College v. Baptist Convention of the State of Georgia*, No. 02CV11985 (DeKalb Super. Dec. 19, 2002). The GBC appealed the dissolution findings, and Shorter appealed the part about GBC being a member. Mikell agreed with the trial court judge that the GBC was properly a member of Shorter College under the Georgia Nonprofit Code. An amendment to Shorter's charter in 1958 specifies that the corporation governing the college will be directed by a board of trustees, all of whom "shall be elected by the GBC", Mikell noted. Also, Mikell wrote, the GBC did not have a voting interest in Shorter's action. Or, it wouldn't have, if Shorter had taken a legitimate action to dissolve.

"If the corporate action taken by the college had been a bona fide dissolution ... then the answer would be no," he wrote. "The charter gives the GBC the right to approve any amendment to the charter, but does not specifically mention dissolution." So, Mikell wrote, Coursey got it partially right.

"[T]he trial court did not err in ruling that the GBC did not have a right to vote on the dissolution," he wrote. "However, the trial court erred in failing to consider the GBC's contention that the dissolution was a sham."

1878 Ruling Cited

Mikell cited *State v. Atlantic & Gulf R. Co.*, 60 Ga. 268, 274 (1878), in which Judge [later Georgia Chief Justice] Logan E. Bleckley took up the issue of distinguishing a merger from a dissolution.

"Bodies corporate are not dead bodies, but living persons. When they die, they are annihilated," Bleckley wrote. A merger, on the other hand, involved "the extinction of one corporation and the absorption of its ... assets, etc., by another."

A merger, Bleckley wrote "may be compared to extinguishing one of two lighted torches, and combining its material with the other." In this case, Mikell wrote, "One of the lighted torches, the 'old' Shorter College has merely been extinguished, and its assets transferred to the new company."

Robbins said the opinion is a victory for following the proper procedure for colleges severing relations with sponsoring religious organizations. "It means they really have to follow the process—whether they like that process or not," he said.