

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

JOHN DAVID SMITH,

Plaintiff,

-against-

MEMORANDUM OF LAW

Index No. EF2020-68480

UNITED METHODIST CHURCH, THE NORTHEASTERN
JURISDICTION OF THE UNITED METHODIST CHURCH,
THE UPPER NEW YORK ANNUAL (REGIONAL)
CONFERENCE OF THE UNITED METHODIST CHURCH,
NORTH CREEK UNITED METHODIST CHURCH, COME
BY CHANCE, LLC, FOOTHILLS UNITED METHODIST
CHURCH, CHURCH OF GOD OF PROPHECY OF NEW
YORK HOLDING CORPORATION, WARREN COUNTY,
And WARREN COUNTY SOCIAL SERVICES,

Defendants.

Respectfully submitted,

HANCOCK ESTABROOK LLP

By: 

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Administration of The United Methodist Church*

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POINT I

“THE UNITED METHODIST CHURCH” IS NOT A LEGAL ENTITY SO THE ACTION AGAINST IT MUST BE DISMISSED

In this lawsuit brought pursuant to the Child Victims Act, plaintiff’s counsel has named multiple defendants, including “The United Methodist Church.” The Complaint lumps all of the defendants together and alleges that all of them were collectively responsible for failing to take reasonable steps to protect the plaintiff, when he was a minor, from being abused by a man identified as one Richard Reynolds who is alleged to have been a foster parent at the time. See Compl., ¶¶ 1-4.

In the section of the Complaint labeled “III. Parties”, plaintiff alleges that “defendant United Methodist Church was a religious organization with its principal administrative offices in Nashville, Tennessee.” Compl. ¶ 6. No such office for The United Methodist Church exists in Nashville or anywhere else, for that matter, since “The United Methodist Church” is not a religious or any other type of organization. As set forth in the accompanying Affidavit of Bryan Mills, “The United Methodist Church” is not a jural entity. It is a religious denomination, a belief. See Mills Affidavit.

Under New York law, specifically CPLR 3211 (a)(8), a party may move for judgment dismissing an action on the ground that the court lacks jurisdiction of the person of the defendant. If a party does not have a separate jural identity, it is not a proper defendant. See, e.g. *Westside Federal Sav. & Loan Ass'n of New York City v. Fitzgerald*, 136 A.D.2d 699 (2d Dep't 1988) (holding that where, prior to the commencement of the action, the mortgagee savings and loan association had been merged with and absorbed by another banking institution, it ceased to exist as an independent jural entity); *Sheldon v. Kimberly-Clark Corp.*, 105 A.D.2d 273 (2d Dep't 1984)

(affirming the dismissal of an action against a corporate defendant that was dissolved in a merger with another corporate defendant since the absorbed corporation ceased to exist as a separate entity and thus could not be named as a party to the lawsuit).

By its very definition, there is no single, incorporated “United Methodist Church.” Nor are there officers, employees, locations or assets of “The United Methodist Church.” See Mills Affidavit; **Exhibit A**, excerpt from The Book of Discipline¹, ¶ 141, p. 102 (“‘The United Methodist Church’ as a denominational whole is not an entity, nor does it possess legal capacities and attributes. It does not and cannot hold title to property, nor does it have any officer, agent, employee, office or location.”) *Id.* There is only a collective belief, a *connectionalism*, that binds different individuals and entities together to form the worldwide religious denomination that is United Methodism.

A religious denomination is a group of people who share the same beliefs and use the same name. It is an incorporeal, non-jural entity with no physical being or separate legal existence and, therefore, cannot sue or be sued. See, e.g. *Bauerlein v Salvation Army*, 74 A.D.3d 851 (2d Dep’t 2010) (holding that claims against the named “non-jural entities” should have been dismissed by the lower court); *Wiebusch v. Bethany Memorial Reform*, 2003 WL 25627204 (S. Ct. New York Cnty. Sept. 12, 2003) (dismissing the action against named defendant “Marble Collegiate Church” on the ground that it was not a separate corporation and not a jural entity.)

The decision of the U.S. District Court for the Eastern District of Pennsylvania in the case

¹ The Book of Discipline is “the instrument for setting forth the laws, plan, polity, and process by which United Methodists govern themselves.” It sets forth the organization of the Church, which consists of a General Conference, jurisdictional conferences in various locations through the United States, annual conferences “as the fundamental bodies of the Church” and local churches. See Book of Discipline, Ex. A, pp. 25-39.

of *Phillips v. Eastern Pennsylvania Conference*, 2000 WL 375262 (E.D. Pa. April 11, 2000) is also instructive. There, the plaintiff alleged that the defendants, including The United Methodist Church, violated his constitutional and civil rights and subjected him to intentional infliction of emotional distress by denying him an appointment as a local pastor. The Court granted a motion to dismiss the United Methodist Church, holding that it was “not [a] separate jural entit[y] subject to suit.” *Id.* at *2.

To try to pigeonhole a faith into the legal confines of an “entity” would require this Court to reject the very self-expression that underlies United Methodism and would give rise to “serious concerns of excessive entanglement in religious affairs, in violation of the First Amendment of the United States Constitution.” *Kenneth R. v Roman Catholic Diocese*, 229 A.D.2d 159, 162 (2d Dep’t 1997). It would be no different than allowing actions against “Democracy” or “Islam,” or “the Free World.”

The Complaint in this case names as defendants the Northeastern Jurisdiction, the Upper New York Annual (Regional) Conference and several local churches. If the plaintiff were to be successful in establishing liability, those entities are, at least, legal entities capable of suing and of being sued and possessed of legal capacities.

POINT II

PROPER SERVICE OF THE SUMMONS AND COMPLAINT WAS NOT MADE SO THE ACTION AGAINST THE UNITED METHODIST CHURCH MUST BE DISMISSED

According to the affidavit of service, service of the Summons and Complaint in this action was attempted to be made on The United Methodist Church by delivering a copy to the receptionist for an organization by the name of “The Foundation for United Methodist Communications” located at 810 12th Ave. South, Nashville Tennessee. As set forth in the accompanying Affidavit of Bryan

Mills, that entity is not a registered agent or otherwise authorized to accept service on behalf of The United Methodist Church. In fact, there is no one who is authorized to accept service on behalf of “The United Methodist Church” since that is not a legal entity but, rather, a religious denomination. Hence, even assuming delivery of the Summons and Complaint to the receptionist for The Foundation for United Methodist Communications may have constituted proper service on that organization, it did not constitute service on The United Methodist Church.

The Complaint in this action alleges that The United Methodist Church is “a religious organization with its principal administrative offices in Nashville, Tennessee.” Compl. ¶ 6. As set forth in the Mills Affidavit, this allegation is inaccurate. The United Methodist Church is a denomination, not a “religious organization.” It does not have administrative offices or employees. Further, the person to whom the Summons and Complaint were delivered, the receptionist for The Foundation for United Methodist Communications, a not-for-profit corporation, is not a registered agent or otherwise authorized to accept service for The United Methodist Church. See Mills Affidavit, ¶ 7.

CONCLUSION

Based on the foregoing, the action against United Methodist Church should be dismissed in its entirety, with prejudice.

Dated: December 4, 2020

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