

UPDATE ON COC SUIT AGAINST DEVON PARK

April 22, 2010

These are the answers given by one of our lawyers to the KC Star reporter, Brian Burnes in an email today. He was asking for more information about the suit for an article he is planning to write. Notice at the bottom the underlined section that describes the new expected time line. We should pray that oral arguments will be permitted.

Brian:

We represent Devon Park Restoration Branch of Jesus Christ's Church and its pastor David McLean. In response to the inquiries in your email below, the U.S. District Court for the Western District of Missouri summarily ruled in favor of the Community of Christ ("COC") in a trademark infringement action finding that COC has an exclusive right to use the name "Reorganized Church of Jesus Christ of Latter Day Saints" and its moniker RLDS. The Court's January 14, 2010, order is attached.

In the court case, Devon Park argued that it had a right to use the RLDS name to identify itself as a place of worship that adheres to the traditional RLDS doctrines and beliefs (as distinguished from the more liberal doctrines adopted by the COC) because COC had abandoned the RLDS name. Most of the Devon Park members were raised in the traditional RLDS religion. The Court disagreed with Devon Park, finding that COC still delivered religious services under the RLDS name and that the public still associated the name RLDS with the religious services of the COC, even though COC spent nearly \$2 million in a quite successful public relations campaign to change its name and public identity to "Community of Christ" in 2001. COC's abandonment of the RLDS name is evidenced by, among other conduct, the fact that COC changed all of its headquarter and monument signs to reflect the COC name, now advertises only as COC, publishes new literature, membership certificates, and other church documents under the COC name, instructed the military to change its religious preference category name from RLDS to COC, and no new COC congregations are permitted to form under the RLDS name. Likewise, the vast majority of the 1000+ congregations have been required to change their signs to reflect the new COC name, with only a tiny handful of COC congregations retaining the RLDS name on signs that pre-date the 2001 name change. Six years after the new name was adopted, current President Veazey, who is regarded within the church as a Prophet and an oracle through whom the word of God can come, made a divine decree to the COC membership, which was accepted by the 2007 COC World Conference as the word of God and canonized by being placed in a book regarded as scripture called the *Doctrine and Covenants*. See T 291. *Doctrine and Covenant 163:1* reads:

"Community of Christ," your name, given as a divine blessing, is **your identity** and calling. If you will discern and embrace its full meaning, you will not only discover your future, you will become a blessing to the whole creation. Do not be afraid to go where it beckons you to go.

There are a multitude of other examples along these same lines.

In addition to finding that COC has not abandoned the RLDS name, the Court also ruled that RLDS does not refer to the traditional religious belief system practiced by Devon Park and other restoration branches and groups no longer associated with COC, but rather is a commercially protectable trademarked name still publicly associated with the COC and the religious services it offers. The evidence was undisputed that COC no longer adheres to the traditional doctrines associated with the

RLDS name, and that there is no actual confusion among members of either side as to the differences between the two belief systems. Where a previously trademarked name becomes “generic,” that is where it describes a religious belief system much like the names “Baptist” or “Methodist,” it is no longer entitled to trademark protection. In other words, while a proper name such as “First Baptist Church of Raytown” may be entitled to trademark protection because it refers to a distinct entity and the public identifies a specific source of goods or services with that name, the name “Baptist” in and of itself to describe an entities’ adherence to the Baptist faith is not. Devon Park argued that RLDS had become “generic” and described a religious belief system rather than a specific source of religious services. But again, the Court disagreed with Devon Park’s arguments.

Following the Court’s ruling enforcing the COC’s trademarks, the court exercised its discretion under the trademark statutes to award the COC over \$348,000 in attorneys’ fees. In doing so, the Court found that Devon Park’s conduct in choosing to challenge the COC’s claim to exclusive use “went beyond the pale” and made this an “exceptional case” warranting an award of attorneys’ fees. The Court’s March 24 order awarding fees is attached. Devon Park’s position is more fully set out in the attached pleading entitled “Opposition to Plaintiff’s Statement of Attorneys’ Fees.” In short, Devon Park believes the Court abused its discretion in this respect and failed to consider a number of factors. COC has indicated its intention to pursue collection of this fee award both from Devon Park, a very small branch of fewer than 40 members, and individually from pastor David McLean, who is a volunteer pastor for the Devon Park branch.

Devon Park has appealed the rulings of the District Court to the 8th Circuit Court of Appeals. Devon Park believes that under the evidence submitted to the District Court, it should have ruled that COC abandoned the RLDS name, and/or that RLDS refers to a traditional religious belief system and does not identify COC as a source of those traditional religious services. Devon Park further appeals the attorneys’ fee award for the reasons in the attached brief. The notice of appeal has been filed, but the briefing will not be completed until later this summer. If the 8th Circuit permits oral argument, that will not likely occur until early Fall. Please let me know if you have any other questions, or want copies of any other pleadings filed in the federal court case.

Julie J. Gibson