

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1989

AFRICAN METHODIST EPISCOPAL CHURCH, INC.

VERSUS

REV. LARRY STEWART

Judgment Rendered: May 6, 2011.

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2005-001834

The Honorable Zorraine M. Waguespack, Judge Presiding

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African Methodist Episcopal Church,
Inc.

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Reverend Larry Stewart and Rising
Star Community Church

* * * * *

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

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CARTER, C. J.

This is a dispute over church property. Plaintiff/appellant, African Methodist Episcopal Church, Inc. (AME), appeals the judgment of the district court granting possession of the property to defendants/appellees, Reverend Larry Stewart and Rising Star Community Church (Rising Star). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

AME filed its original petition in this suit on May 31, 2005. The petition requested that a temporary restraining order be issued against Reverend Larry Stewart. Although the petition named "Rev. Larry Stewart" as the sole defendant, the district court signed a judgment in July 2005 ordering mutual preliminary injunctions against Stewart, the congregation of Rising Star Community Church, and the AME church. A pre-trial order was submitted to the district court in September 2005, listing only AME and Stewart as parties.

Stewart filed a peremptory exception raising the objections of no cause of action and no right of action, alleging AME was a foreign corporation and not authorized to do business in Louisiana. In response, AME filed a "First Amended Petition" in February 2006, seeking to amend its original temporary restraining order to name the Annual Conference of the African Methodist Episcopal Church in Mississippi and Louisiana, rather than AME, as the plaintiff. AME also sought to amend its original temporary restraining order to obtain a declaratory judgment that it was the owner of the church property,¹ which the district court granted. Again,

¹ The original petition stated that plaintiff sought injunctive relief and a determination that plaintiff was to be maintained in possession of the church property.

Stewart was the only named defendant in the amended petition and the only defendant served with a copy of the amended petition.

In January 2007, the district court entered judgment declaring AME to be owner of the church and issued a permanent injunction against Stewart and “**Raising** Star Community Church” (*emphasis added*). Stewart appealed this judgment. On appeal, this court raised the peremptory exception objecting to nonjoinder of a party because the record owner, Rising Star, was not a named defendant. *African Methodist Episcopal Church, Inc. v. Stewart*, 07-1303 (La. App. 1 Cir. 3/26/08); 978 So. 2d 1259 (table) (*African I*). This court vacated the district court’s judgment, insofar as it declared AME to be owner of the immovable property, and allowed AME thirty days from the date our opinion was final to amend its petition to properly join Rising Star. *Id.*

On April 21, 2008, AME amended its petition to name Rising Star as a defendant for the first time. Thereafter, Stewart and Rising Star filed a motion to tax costs of appeal to AME and sought return of the church property to joint use pending a trial on the merits. Pursuant to a hearing on that motion, judgment was granted in favor of Stewart and against AME for costs of the appeal, Stewart and Rising Star’s motion to resume joint use of the property was denied, and title to the church property was granted to AME. Stewart and Rising Star appealed this judgment. On appeal, this court reversed and rendered, declaring Rising Star to be the “full owner” of the church property. *African Methodist Episcopal Church, Inc. v. Stewart*, 09-0405 (La. App. 1 Cir. 9/17/09); 28 So. 3d 1044, 1049; *writ denied*, 09-2276 (La. 12/18/09), 23 So. 3d 943 (*African II*).

After this court's 2009 opinion became final, Stewart and Rising Star filed a motion to tax costs of both appeals to AME and sought an order directing AME to deliver possession of the church property. On April 27, 2010, the district court rendered judgment in favor of Stewart and Rising Star for all costs and ordered AME to deliver possession of the church property. AME now appeals the district court's April 2010 judgment, raising two assignments of error.

DISCUSSION

In its first assignment of error, AME argues that the district court erred in concluding that Rising Star has the right to possess the church property simply because this court rendered judgment declaring Rising Star the full owner of the property.

This court's September 17, 2009, judgment granting full ownership of the property at issue to Rising Star is final. "Full ownership" is comprised of a bundle of rights. *Lanza v. Lanza*, 04-1314 (La. 3/2/05); 898 So. 2d 280, 285 n.5. There are three separate sub-bundles that together constitute "full ownership" of property. These include *usus*, *fructus*, and *abusus*. *Id.* *Usus* is the right to use or possess, i.e., hold, occupy, and utilize the property. *Id.* Because "full ownership" includes the right of *usus*, or the right to possess, Rising Star has the right to possess the property at issue. Accordingly, this assignment of error has no merit.

AME also argues that because the 2007 injunction issued against Rising Star was not appealed, the trial court erred in finding the right to possess the property belonged to Rising Star.

A civil action is commenced by the filing of a pleading presenting the demand to a court of competent jurisdiction. La. Code Civ. Proc. Ann. art.

421. The petition shall set forth the name, surname, and domicile of the parties. La. Code Civ. Proc. Ann. art. 891. Judgment may not be rendered against an entity who is not named as a defendant. *Dennison v. Liberty Mutual Insurance Co.*, 94-0026 (La. App. 1 Cir. 11/10/94); 645 So. 2d 1227, 1233.

The permanent injunction was filed in January 2007. At that time, Rising Star was not a party in the matter. It had not been named in any pleadings or served with the petition or the judgment. *See* La. Code Civ. Proc. Ann. arts. 891(A) and 1201(C). Rising Star did not become a party until April 21, 2008, when AME filed its amended petition. Therefore, no judgments issued before April 21, 2008, are enforceable against Rising Star. *See Dennison*, 645 So. 2d at 1233. This assignment of error is without merit.²

DECREE

For the reasons listed, we affirm the judgment of the trial court. All costs of this appeal are assessed to the plaintiff/appellant, African Methodist Episcopal Church, Inc.

AFFIRMED.

² Moreover, the permanent injunction was issued against “**Raising** Star Community Church” (*emphasis added*).