

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1563

LUCILLE JOHNSON, SAM BAKER, LEATRICE S. DRUMMOND,
VYRON WHITE, JUANITA F. WHITLEY, AND JOYCE S. VEAL

VERSUS

MOUNT PILGRIM BAPTIST CHURCH, REV. DR. IRVIN BRILEY, JR.,
OPHELIA JOHNSON, MARY HOLLOWAY, LETITIA BRILEY POLAR,
AND CYNTHIA ROBINS

Judgment Rendered: MAY - 4 2007

Appealed from the 23rd Judicial District Court
in and for the Parish of Ascension
State of Louisiana
Suit Number 79,565

Honorable Thomas J. Kliebert, Jr., Judge

Walter C. Dumas
Baton Rouge, LA

Counsel for Plaintiffs/Appellants
Lucille Johnson, Sam Baker,
Leatrice S. Drummond, Dianne
Cushenberry, Vyron White,
Juanita F. Whitley, and
Joyce S. Veal

Winston G. DeCuir, Sr.
Winston G. DeCuir, Jr.
Brandon J. DeCuir
Baton Rouge, LA.

Counsel for Defendants/Appellees
Mount Pilgrim Baptist Church,
Rev. Dr. Irvin Briley, Jr.,
Ophelia Johnson, Mary Holloway,
Letitia Briley Polar, and Cynthia
Robins

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AFFIRMED

KUHN, J.

MEMORANDUM OPINION¹

Lucille Johnson, Sam Baker, Leatrice S. Drummond, Dianne Cushenberry,² Vyron White, Juanita F. Whitley, and Joyce S. Veal (“Plaintiffs”), filed suit in December 2004 against Mount Pilgrim Baptist Church, Rev. Dr. Irvin Briley, Jr., Ophelia Johnson, Mary Holloway, Letitia Briley Polar, and Cynthia Robins (“Defendants”), to contest the consolidation/merger of Mount Pilgrim Baptist Church with Mount Calvary Baptist Church in order to create the First Pilgrim Calvary Missionary Baptist Church. Plaintiffs’ petition sought injunctive relief and declaratory judgment, as well as other available relief. Defendants filed a peremptory exception raising the objection of no cause of action, which was sustained by the trial court following a hearing. A final judgment sustaining Defendants’ peremptory exception and dismissing all of Plaintiffs’ claims was signed on March 29, 2006.³ From this judgment, Plaintiffs appeal.

A trial court's judgment sustaining the peremptory exception raising the objection of no cause of action is subject to *de novo* review by an appellate court, employing the same principles applicable to the trial court's determination of the exception. **Stroscher v. Stroscher**, 2001-2769, p. 3 (La.App. 1 Cir. 2/14/03), 845 So.2d 518, 523. A court appropriately sustains the peremptory exception raising the objection of no cause of action only when, conceding the correctness of the well-pleaded facts, the plaintiff has not stated a claim for which he can receive legal remedy under the

¹ This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

² Dianne Cushenberry is listed as one of the plaintiffs in the body of the petition and also is listed by counsel in brief as one of the represented plaintiffs; however, inexplicably, her name was left out of the original caption of the petition as well as all other filings in this proceeding.

³ A prior appeal in this matter was dismissed because a final judgment had not yet been rendered. **Johnson v. Mount Pilgrim Baptist Church**, 2005-0337 (La.App. 1 Cir. 3/24/06), 934 So.2d 66.

applicable substantive law. **City of New Orleans v. Board of Directors of Louisiana State Museum**, 98-1170, p. 10 (La. 3/2/99), 739 So.2d 748, 756. Generally, no evidence may be introduced to support or controvert the exception raising the objection of no cause of action. La. C.C.P. art. 931. However, Louisiana jurisprudence recognizes an exception to this rule, whereby evidence admitted without objection may be considered by the court as enlarging the pleadings. **Stroscher**, 2001-2769 at p. 3, 845 So.2d at 523. Here, the record reflects that evidence was received during the course of the hearing held on Defendants' exception and Plaintiffs' request for injunctive relief and declaratory judgment, and that no objection was made to the trial court's consideration of such evidence for purposes of determining the peremptory exception raising the objection of no cause of action.⁴ See **Block v. Bernard, Cassisa, Elliott & Davis**, 2004-1893, pp. 8-9 (La.App. 1 Cir. 11/4/05), 927 So.2d 339, 344-345.

As a preliminary matter, Plaintiffs contend that the trial court erred in refusing to admit additional evidence at the hearing. Generally, the trial court is granted broad discretion in its evidentiary rulings, and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Smith v. Smith**, 2004-2168, p. 14 (La.App. 1 Cir. 9/28/05), 923 So.2d 732, 742. Based on our review of the record herein, we find no abuse of the trial court's discretion in its evidentiary rulings and, thus, cannot credit Plaintiffs' argument to the contrary.

Plaintiffs do not dispute that the evidence that was admitted by the trial court indicated that the consolidation agreement and the articles of incorporation of the newly consolidated First Pilgrim Calvary Missionary

⁴ A ruling on Defendants' exception was referred to the merits of Plaintiffs' claims. Pursuant to the express terms of the judgment, the trial court considered the evidence submitted in sustaining Defendants' peremptory exception raising the objection of no cause of action.

Baptist Church were filed with the Secretary of State and that the Secretary of State subsequently issued the new church a certificate, recognizing its incorporation. Such a certificate is conclusive evidence that the newly consolidated entity was duly incorporated. See La. R.S. 12:205(B). According to **Haynes v. Louisiana Teachers Association**, 381 So.2d 849, 852 (La.App. 1 Cir.), writ denied, 384 So.2d 800 (La. 1980), any alleged deficiencies in the procedure leading to the issuance of that certificate are not subject to collateral attack by Plaintiffs.

Even so, we note that Plaintiffs' arguments, raised for the first time on appeal, that written notice was not mailed to all members and/or that the written notice was mailed untimely are without any basis in the record before us. Particular facts supporting such an argument were neither specifically alleged by Plaintiffs in their petition nor established by the evidence submitted at the hearing.

Finally, we see no reason to remand this matter since the evidence presented by Plaintiffs at the hearing on the merits of their claims for declaratory judgment and injunctive relief was altogether insufficient to establish their entitlement to such relief. Therefore, the trial court judgment sustaining the Defendants' peremptory exception and dismissing Plaintiffs' claims is hereby affirmed. All costs of this appeal are assessed to Plaintiffs, Lucille Johnson, Sam Baker, Leatrice S. Drummond, Dianne Cushenberry, Vyron White, Juanita F. Whitley, and Joyce S. Veal.

AFFIRMED.