

The Communion of Reformed Evangelical Churches
Court of Appeals

In the Matter of

Mark and Andrea

MOORMANS,

Excommunicants/Appellants,

v.

ST. PETER

PRESBYTERIAN CHURCH,

Excommunicator/Appellee.

(Second Appeal)

April 28, 2014

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I. ABSTRACT

A. Ruling

It is the judgment of this Court that St. Peter's suspension, shunning, and excommunication of Mark and Andrea Moormans must be set aside.

B. Key Findings and Legal Determinations

1. Because St. Peter treated the Moormans as members in disciplining them, legally they must also be considered members for purposes of appeal. The case thus falls under CREC Constitution Article IV D 1, which applies to members, not IV D 4 which applies to non-members. Article IV D 1 addresses doctrinal, constitutional, and behavioral breaches by elders that are substantial and clearly established by the evidence. The Moormans' charges, if proven, would qualify as "gross misbehavior" within the meaning of IV D 1.

2. St. Peter violated the Biblical standard for elders to watch over the flock without lording it over them, and they lost sight of the weightier matters of the law—justice, mercy, and faith—while clinging to a more minor point about membership vows. They excommunicated the Moormans for not leaving St. Peter exactly as directed. While the Moormans' manner of leaving may have fallen short of what St. Peter required, there is no proof of willful disobedience or rebellion by which would justify excommunication.

3. The poor and strained relationship between St. Peter and Abingdon (PCA) adversely affected the Moormans' case. A jurisdictional standoff between churches, absent extraordinary circumstances, which were not present here, is an inappropriate context for the initiation of church discipline. If the churches cannot resolve the jurisdictional issue, the proper avenue is through presbytery.

4. St. Peter did not comply with its own constitutional requirements for formal discipline. The Moormans were suspended from the Table with no preceding notification that they were under discipline, no specified charges, and no hearing. Excommunicating the Moormans via erasure lacked proper due process.

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II. PROCEDURAL HISTORY

Mark and Andrea Moormans appeal their excommunication, and other disciplinary actions leading up to it, by Saint Peter Presbyterian Church (“St. Peter”), a member of the Communion of Reformed Evangelical Churches (“CREC”).

This case has a long and tortured history, due in large part to confusion over whether, at the time of the disciplinary actions, the Moormans were members of St. Peter, of another church, Abingdon Presbyterian (PCA) (“Abingdon”), or perhaps both.¹ That question led in turn to confusion over whether St. Peter had jurisdiction to discipline the Moormans, and if so, whether the Moormans had standing to appeal under the CREC Constitution.

The disciplinary actions in question were taken by St. Peter after the Moormans had been received into membership by Abingdon on August 29, 2010, but before they had been released from membership by St. Peter.² The disciplinary actions were driven, in large part, by St. Peter’s belief that the Moormans had not properly left.³

On October 2, 2010, the Moormans appealed to the Augustine Presbytery of the CREC (“Augustine”), contending that St. Peter lacked jurisdiction to discipline them, and further that St. Peter had not accorded them due process under its constitution and the Scriptures.⁴ St. Peter countered that the Moormans lacked standing to bring the appeal, because the Moormans had not met the requirements of Article IV D 4 of the CREC Constitution, which requires non-members to clear certain procedural hurdles before bringing a complaint against a CREC church.⁵

On August 20, 2011, the Augustine Court of Appeals ruled that the Moormans had substantially met the requirements of Article IV D 4, and thus had standing to appeal, and further that the Moormans had been members of Abingdon, and were no longer under St. Peter’s jurisdiction, when the disciplinary actions were taken.⁶ Accordingly, the Court held that St. Peter’s

disciplinary actions should be set aside.⁷ Augustine Presbytery subsequently ratified the Court’s opinion on October 5, 2011.

St. Peter appealed Augustine’s decision to CREC Council, and Presiding Minister (“PM”) Jack Phelps appointed a Council Court of Appeals (“Council Court 1”) to hear the case.⁸ In January 2013, the Court reversed Augustine, finding that St. Peter’s jurisdiction over the Moormans could not be dissolved by Abingdon’s unilateral action of receiving them into membership.⁹ Effectively, the Moormans were still members of St. Peter, regardless of how their new relationship with Abingdon might be characterized. The Court also reversed Augustine’s determination that the Moormans had met the requirements of Article IV D 4. The Court ruled, however, that the Moormans could bring another appeal if they met the jurisdictional requirements to do so.¹⁰

The Moormans filed a second appeal on July 12, 2013.¹¹ Pursuant to Article IV D 1 of the CREC Constitution, PM Phelps had the appeal lodged directly with Council, in order to conserve resources in a case that was already old and would almost certainly end up back at Council in any event.¹² PM Phelps appointed this Court (“Council Court 2”) to hear the case, and to that task, we now turn.¹³

III. JURISDICTION

A. Membership and Standing to Appeal

The Moormans’ church membership, while relevant to certain issues in this case, is a red herring when it comes to jurisdiction. When St. Peter excommunicated the Moormans, it treated them as members *legally*, thus conferring upon them standing to appeal.¹⁴ Because the Moormans were considered members for purposes of

⁷ *Ibid.* at 1.

⁸ Doc 33.

⁹ Doc 34.

¹⁰ *Ibid.*

¹¹ Doc 38.

¹² Art. IV D 1 provides that “[a]ppeals to Council do not necessarily have to first be heard by Presbytery.”

¹³ Doc 40.

¹⁴ Doc 2 at 6, Art. VI, Sec. C (“Christians who ... are non-members are ... not subject to formal discipline”); see also Doc 21 at 2 (“Mark & Andrea are members of [St. Peter]. Constitutionally they were never allowed to leave.”)

¹ “PCA” is the Presbyterian Church in America.

² See Docs 7; 8; 9.

³ See Docs 21 at 2; 22 at 1-2; 26 at 1.

⁴ Doc 16.

⁵ See Docs 31 at 4; 33 at 1, 2.

⁶ Doc 31 at 1-2, 4-5.

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discipline, *legally* they must be considered members for purposes of appeal.

Stated the other way around, if Article IV D 4 applies, that means the Moormans were not members, and that means St. Peter's disciplinary actions are a nullity.¹⁵ Accordingly, the Moormans legally fall under Article IV D 1, which applies to CREC members.

The Augustine Court of Appeals and Council Court 1 never directly addressed the issue of which constitutional section the Moormans belonged under.¹⁶ St. Peter argued that the Moormans fell under IV D 4, and both courts assumed it to be so.¹⁷

In truth, the Moormans couched neither appeal under Article IV D 4.¹⁸ Even if they had done so, the Court is not bound by either party's interpretation of the Constitution, but must apply it "straight up" according to its own terms.

The bottom line is that Article IV D 4 has been misapplied throughout the case. It is of no consequence, however, for Council Court 1 ruled that the Moormans could file another appeal, which they have done.

B. Application of Article IV D 1

Article IV D 1 permits appeals on two grounds, "grievous dishonesty in subscription to ... doctrinal or constitutional standards," and "gross misbehavior."¹⁹ It also requires at least two supporting witnesses from different households.²⁰ Finally, it requires that frivolous, irresponsible, or unconstitutional appeals be rejected.²¹

Each of Article IV D 1's requirements corresponds to Scripture. Its two grounds for appeal – grievous subscriptional dishonesty and gross misbehavior – correspond to the two areas Paul charged Timothy (and

by extension all elders) to give special heed to—doctrine and life.²² This is essential, said Paul, to secure the salvation both of the shepherd and the flock.²³ The basic standards for elders in term of doctrine and life are set forth by Paul in Titus 1.5-9 and 1 Timothy 3.1-7, by Peter in 1 Peter 5.1-3, and they are amplified and applied by Jesus in passages such as Matthew 12.1-7, 20.25-28, and 23.1-33.

Article IV D 1's witness requirements and proscriptions against frivolous and irresponsible appeals correspond to Scripture's demand that charges be clearly established by competent evidence.²⁴

Putting all of that together, Article IV D 1 proscribes doctrinal, behavioral, and constitutional breaches of the biblical standards for elders which meet the following criteria:

(1) *The breach must be substantial.* This consideration lies behind Article IV D 1's modifiers "grievous" and "gross." In cases of personal subscription or conduct, the breach must be significant when evaluated in light of all the circumstances, both of the alleged breach itself and of its effect or potential effect. In cases of judicial conduct, such as appeals from church discipline, the breach must prejudice the rights of one or more of the parties or the ability of the court to rightly and justly decide the case. The requirement of prejudice accords with Scripture and with the legal definitions of "gross" and "misconduct" in judicial settings.²⁵ If a judicial breach results in no prejudice to

²² 1 Tim 4.16.

²³ *Ibid.*

²⁴ See Deut 19.15-19; Prov 18.17; 1 Tim 5.19. These biblical due process requirements (along with many other features of biblical law) were brought into English Common Law by Alfred the Great, and have become part of the legal systems in Great Britain and the United States. See Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (Blackwell Publishers 1999) 416-29, 477-81; William Blackstone, *Commentaries on the Laws of England* (The University of Chicago Press 1979) 120-41; *The Constitution of the United States*, Amendments V and VI.

²⁵ See Lev 19.15-19; Deut 16.19-20. *The Law Dictionary* defines "gross" as "great" or "culpable," and judicial "misconduct" as "[a]ny unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of parties or to the right determination of the cause." <http://thelawdictionary.org/gross/>; <http://thelawdictionary.org/misconduct/>

¹⁵ *Ibid.*

¹⁶ See Docs 31 at 4-5, para. 12-14; 34 at 1.

¹⁷ *Ibid.* In its opinion, Council Court 1 stated: "St. Peter ... rightly pointed out that the appeal from the Moormans was brought under Article IV.D.4." (Doc 34 at 1). Council Court 1 was correct that St. Peter made that argument, but incorrect that the Moormans had brought their appeal under IV D 4. The Moormans' appeal made no reference to the CREC Constitution (see Doc 16).

¹⁸ See Docs 16 and 38.

¹⁹ Doc 1 at 2.

²⁰ *Ibid.*

²¹ *Ibid.*

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the parties or the proceedings, it is harmless and does not warrant appellate scrutiny.

(2) *The breach must be clearly established.* This consideration lies behind Section IV D 1's requirement that an accusation be substantiated by at least two witnesses from different households. It is important to note, however, that in accordance with Scripture, items of credible circumstantial evidence count as valid witnesses.²⁶ An accused elder or session is presumed innocent, and a local church court is presumed to have acted correctly. The evidence, taken as a whole, must clearly show otherwise. If the appeal is from a judicial action, official findings of fact by the local session must be accorded a presumption of correctness and should be set aside only if the evidence, taken as a whole, clearly shows that they are erroneous. However, the session's interpretation or application of Scripture or constitutional authority, as well as mixed conclusions of fact and law, are reviewed *de novo*.²⁷

In the present case, the Moormans allege that the session of St. Peter, in taking disciplinary action against them, failed to follow its constitution, failed to render due process under its constitution and the Scriptures, and acted in an unbiblical and abusive manner.²⁸ These charges, if proven, would qualify as "gross misbehavior" in a judicial setting within the meaning of Article IV D 1.

The witness requirements of IV D 1 have also been met, for the witnesses include, at a minimum, Mark and Andrea Moormans, various members of the St. Peter and Abingdon sessions, and all the various items of documentary evidence (letters, emails, pleadings) submitted by the parties before the Augustine Court, Council Court 1, and this Court.

Accordingly, the Moormans have *prima facie* met the requirements of Article IV D 1, and this Court has jurisdiction to hear the appeal.

C. Other Objections from St. Peter

Most of St. Peter's jurisdictional objections have been addressed in the preceding section. A few, however, merit further discussion.

²⁶ See, for example, Deut 22.13-18, where the bloody marital cloth counts as a credible witness of the bride's virginity.

²⁷ *De novo* means "anew," "without any presumption of correctness."

²⁸ See Docs 38 at 6-8, 26-38; 16 at 1-2.

1. St. Peter argues that the appeal should not be heard because the accusers (the Moormans) have refused to first go to the accused (St. Peter), as required by Matthew 18.15.²⁹ But the Moormans are the ones who were excommunicated, so it would be more accurate to identify them as the *accused*, not the *accusers*.³⁰ Once they have been excommunicated, they have a right to appeal to a higher court in the CREC.³¹ It seems St. Peter is confusing the first two steps of Matthew 18.15-16 (where personal contact is necessary) with an appeal from the third step (where it is not). If someone cannot appeal an excommunication without first going back to the court which convicted them, they are caught in an endless loop.

2. St. Peter argues that we have no authority to hear this case because we ought not to hear from an accuser who "refuses to be held accountable for their testimony."³² This argument has some weight, and should be given due consideration. We are not interested in wasting the Lord's resources through adjudicating a matter that will not be honored by the parties involved.

We do understand that the Moormans have indicated that they are not going to submit to the determination of this court if the decision goes against them. This is concerning to us. But we also have had indications of the same thing from St. Peter: "We believe it is upon you [(the Court)] to satisfy these requirements of our governing documents and show us how we have sinned, by citing constitution, confession, or Scripture."³³ Unless we do this, *to the satisfaction of St. Peter*, they are at a loss "as to [their] understanding of church authority."³⁴

The fact that the authority of a court might be disregarded by one or both parties is not grounds for saying that there is no such authority. We are hopeful that the reasons we provide for our decision might be

²⁹ Doc 46 at 1-2.

³⁰ In cases concerning the doctrine or life of an elder, the elder is properly considered the accused, and the one bringing the charges, the accuser. In cases involving appeals from church discipline, the one disciplined is the accused, and the session imposing the discipline, the accuser.

³¹ See this Opinion at 2-3.

³² Doc 46 at 2.

³³ *Ibid.*

³⁴ *Ibid.*

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used by the Lord to change hearts and minds. It might be a waste of time, but we do not believe it to be an abuse of authority.

3. St. Peter complains that the appeal was drafted by a third party, Ken Griffith.³⁵ We were unaware of Mr. Griffith's involvement, but we do not believe it is a jurisdictional problem if an outside party helps someone draft an appeal.³⁶

4. Finally, St. Peter suggests that if we hear this appeal, we are guilty of some very serious sins indeed, including "contempt of court," covenant breaking, and "standing in contempt of Christ's rule."³⁷ We do not object to the *arguments* St. Peter presents here, for they have every right to present such arguments, including the argument that the Court ought not to hear the appeal. But they could have said it this way: "It is our belief that for the CREC Council to hear an appeal without these requirements being met would be a serious mistake." Their charges against the Court are very grave (again, contempt of court, covenant-breaking, and contempt of Christ's rule), and the verses they cite forbid false witness, false swearing, and promise breaking.³⁸ This simply was not necessary, and is perhaps illustrative of a tendency that has afflicted this case from the beginning.

We were given the right to hear this case by the first Council Court when they authorized the Moormans to file another appeal. The first Council Court was in existence because St. Peter had appealed Augustine's decision. For St. Peter to now claim that our mere adjudication of this case is some form of high disobedience is unfortunate, to say the least.

³⁵ *Ibid.*

³⁶ Apparently, there has been some personal controversy between Mr. Griffith and St. Peter subsequent to the parties' submissions of their pleadings (see Doc 49). As inappropriate as that might be, it has no effect on the Court's responsibility or how we go about it. Our job is to determine whether the evidence of record clearly establishes that the St. Peter session, in their handling of the Moormans case, breached the biblical or constitutional standards for elders in a way that prejudiced the rights of the Moormans or the ability of the session to rightly and justly decide the case (see this Opinion at II B). There have been no back channel communications between Mr. Griffith and the Court, and therefore Mr. Griffith's involvement is irrelevant to this Court's responsibilities and its ability to carry them out.

³⁷ See Doc 46 at 2.

³⁸ *Ibid.* citing Exo 20.16; Mat 5.33-37; 1 John 2.5.

IV. THE FACTS

The nature of this case requires us to set out the facts in some detail.

Like most hard cases, this one grew out of difficult circumstances. Mark and Andrea Moormans were undergoing marital difficulties, which we need not rehearse, except to note that they resulted in Mark being suspended from the Lord's Table in October 2009 and restored in February 2010.³⁹ Predictably, the aftermath was one of challenge for the Moormans, leaving them feeling, especially by Andrea, in special need of fellowship and attention.⁴⁰

Meanwhile, St. Peter's session was also going through a time of special need, having been stretched very thin by the geographical departure of two elders on top of heavy and unusual ministerial demands, including the needs of two large families who tragically lost their wives and mothers in an automobile accident.⁴¹

It is easy in the best of times for elders to be stretched thin and for hurting members to feel neglected. In the circumstances at St. Peter in 2010, it was almost inevitable.

On April 10, 2010, the Moormans sent Pastor Laurence Windham a lengthy email expressing Andrea's feelings of depression and isolation, as well as her belief (echoed by Mark) that they could not get the help they needed at St. Peter and should find a new church:

Our family had no intention of ever leaving this [church] community, but now I long to be where our history will not be held against us or color our future. ... [W]e want help as a family to heal. I don't believe these things are possible here any longer. I don't want to pre-empt Mark, but I know he would like to talk about these things with you Laurence. We have talked about getting your permission to seek out a new community where we can get the help we need. You can be assured that we are not hiding or running away from our sin. We hope somehow we can be assured that that is not how

³⁹ Docs 3 at 1-2; 38 at 58.

⁴⁰ Docs 3 at 1-3; 11 at 1-2..

⁴¹ Docs 3 at 1-2; 11 at 5.

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we will be judged. Regardless, wherever we end up, we intend to be open about this past year and our struggles. ... —Andrea⁴²

In late April or early May, the Moormans met with Pastor Windham and communicated their desire to seek another church and why.⁴³ There was a similar meeting in late May or early June between Mark Moormans and Pastor Windham.⁴⁴

Meanwhile, matters were complicated and worsened by a significant employment conflict between Mark Moormans and Elder Charles Humphrey, who worked for Mark.⁴⁵

On July 13, 2010, Mark Moormans and Pastor Windham met again, and Mark said that he and Andrea had decided they wanted to find another church.⁴⁶ Mark reiterated their reasons, including Mark's employment conflict with Elder Humphrey.⁴⁷ Pastor Windham explained why he thought such a move would not be in their best spiritual interest and asked that Mark and Andrea submit a letter to the session, signed by both, detailing why they wanted to leave St. Peter.⁴⁸

One week later, Mark and Andrea submitted the following letter to the session:

Dear Members of St. Peter Presbyterian Church Session,

We are deeply grateful for you and for your work in the Lord. After much prayer and study of God's Word, as well as discussions with several of you, we feel led to find a new church home. As such, we are formally communicating our intentions to seek out a church fellowship that may be a better fit for our family. We love the people at Saint Peter and look forward to continuing fellowship with them and with you in the broader community of which we are part. May God be glorified in all that we say and do, and may God bless and make all of our feet sure

as He illuminates the path before us. You are in our prayers, and we hope we in yours.

In Christ,

Mark & Andrea Moormans⁴⁹

The letter was sent with a cover letter from Mark to Pastor Windham communicating the same substance, along with the personal note: "I love you and am grateful for you. I share the same feelings for Charles [Humphrey]. Reconciliation has consistently been my pursuit and at my initiative. I am honoring my vows."⁵⁰ During the next month, the Moormans visited various churches, including Abingdon.⁵¹

On or about August 20, 2010, having not heard anything from the session at St. Peter, Mark Moormans emailed Pastor Windham asking if he had received the letter and shared it with the session.⁵² Hearing nothing, Mark contacted one of the other elders a couple of days later and was advised that the letter had been received, and that Pastor Windham would be getting back to him shortly.⁵³ That evening, August 22, 2010, Mark received the following email from Pastor Windham:

Mark,

When you and I met on July 13th I requested that you draft a letter to the Session detailing the reasons that you and your family feel the need to search out other church possibilities. I also told you that the letter would need both yours and Andrea's signatures.

Since that time I have received from you a brief note stating that you and your family have left Saint Peter "after much prayer and study of God's word". We find that disrespectful and troubling.

Now you e-mail me requesting a "status report". I don't quite understand your thinking here. Are you wondering how we reacted to your notification?

⁴² Doc 3 at 3; see also Doc 38 at 58.

⁴³ Docs 11 at 4-5; 38 at 4, 58.

⁴⁴ Docs 11 at 6; 38 at 4, 58.

⁴⁵ Doc 11 at 3, 6-7.

⁴⁶ Docs 11 at 6-8; 32 at 1-2; 38 at 4, 58.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Doc 4 at 2.

⁵⁰ *Ibid.* at 1.

⁵¹ Doc 11 at 9.

⁵² Doc 11 at 9-10.

⁵³ Doc 11 at 10.

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The session still requires from you the signed letter that I initially requested. We are also concerned about Andrea's recent posts on a website that misrepresented our actions and intentions.

It is ironic that you feel free to share with leaders in another church your past sins and that your wife also feels comfortable with doing the same with virtual women but that you fought against telling your own family (SPPC).

All of these actions are as common as the next page in a textbook. I had hoped that the two of you were above such stereotype.

We still hold out hope for the two of you. It will be a lot of work from this point on but we are willing to lay down our lives. We pray that you will return to us and not bring further chastening of the Lord upon your family.

*Love,
Laurence⁵⁴*

Whatever ability had remained with St. Peter's session to minister to the Moormans was effectively lost at this point, and their relationship went decidedly downhill from there.

The Moormans applied for membership at Abingdon, and on August 29, 2010, the Abingdon session voted to receive them based on reaffirmation of faith.⁵⁵ The next day, Abingdon wrote St. Peter advising them of the Moormans receipt into membership and asking for a letter of transfer "if it is your practice to issue such letters."⁵⁶

On August 31, Pastor Windham responded by letter to Abingdon, stating in pertinent part:

Having received your letter regarding Mark & Andrea Moormans admission into the fellowship of your church, you and your session should know how deeply disappointed we are with this taking place without our knowledge or consent.

Mark has dishonored his elders and has violated the public vows that he took when he covenanted with Saint Peter Presbyterian. Now, the session of Abingdon Presbyterian has either intentionally or ignorantly enabled and supported his rebellious behavior.

This is not the first time that the officers of Abingdon Presbyterian have accepted individuals and families into membership without exercising the wisdom and courtesy of having a conversation with the existing authority. This practice has been highly detrimental to your congregation in the past and has had the same negative effects within the broader community of Christ.

We find it confusing that you ask for a transfer of letter [sic] after the fact and demand that you amend your error (and breach of protocol) by dismissing the Moormans family from your congregation and encourage them to return to the church of their vows.

There will be no transfer of letter given to those who break their vows of membership and hold the authorities that are over them with contempt. As before, Mark Moormans is facing the discipline of the church ... and now we have issue with the elders of [Abingdon]. . . .

I am expecting your session to contact me soon so that we might bring this to an honorable end.⁵⁷

The relationship between St. Peter and Abingdon, which was already tenuous, eroded rapidly from that point on. On September 3, 2010, Pastor Windham wrote a letter to Mark Moormans, disabusing him of the "illusion of joining another church ... to avoid the responsibility of your sacred vows."⁵⁸ Mark was called to "meet with your rightful session for reproof, rebuke and correction," and in order to arrange for an apology from the

⁵⁴ Doc 5; see also Docs 11 at 10; 35 at 4. The references to Andrea posting on a website and sharing with "virtual women" concern Andrea's anonymous solicitation of counsel from other Christian women by divulging some of her marital challenges (Doc 11 at 11). Apparently, one of the women, putting two and two together, surmised that it was Andrea, and communicated it to the session (*ibid.*)

⁵⁵ Doc 6; see also Docs 11 at 11; 35 at 4.

⁵⁶ Doc 7.

⁵⁷ Doc 8 (emphasis in original).

⁵⁸ Doc 9.

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Moormans “to the session and people of Abingdon Presbyterian Church.”⁵⁹

On September 6, the Moormans wrote Virgil Hurt, then the Augustine Presiding Minister, relating the background of the matter and asking for his help.⁶⁰ They stated that they no longer trusted the session of St. Peter, and that they feared “abuse of ecclesiastical authority.”⁶¹ They said that they did not want to “be drawn in to a debate or trial,” and just wanted to “move on and heal”:

*I am appealing to you to get involved before this gets uglier or more inappropriate than it already has. We don't believe we have done anything to deserve church discipline, or for that matter, threats of church discipline. ... We don't desire trouble, nor do we feel we have done anything dishonorable or disrespectful. We're not running away (as some of the session have accused us); in fact, we have shared with our new session very explicitly all the sin that I committed last Fall. We were neither under discipline nor aware of any “pending” discipline or action the session was to take against us when we transferred our membership to Abingdon Presbyterian Church. Again, we just want to move on and heal.*⁶²

Meanwhile, the Abingdon session encouraged the Moormans to write St. Peter the detailed letter Pastor Windham had requested back in July, and the Moormans complied with a thirteen-page letter.⁶³ In the letter, the Moormans set forth in detail the events that led them to seek another church, and indicated that they had previously related the same to Pastor Windham “directly, in person, and repeatedly.”⁶⁴ Regarding the allusions to misconduct and discipline in St. Peter’s previous correspondence, the Moormans stated:

We are not writing to respond to allegations made by session members about some believed sin we are in, though we believe we are neither in rebellion nor covenant breakers. It is not at all clear to us what specifically is being referred to by these accusations (nor have any specific

*charges been communicated), and we neither agree with nor understand your current actions. ... [A]s we repeatedly communicated our needs and ultimately ... decided to find another church community, we have increasingly felt an unbiblical heavy-handedness towards us rather than seeking to hear our concerns and allow us [sic] to go where our needs would be met. ... The Saint Peter session has not followed due process in communicating specific formal charges against us, if in fact there are any. ... We also hope and expect that this is the last communication we will need to have regarding this matter.*⁶⁵

The Moormans letter was delivered with a cover letter from the Abingdon session, advising that the Moormans were members in good standing, that they were under Abingdon’s jurisdiction, and telling the St. Peter session to “leave them alone.”⁶⁶

On September 25, 2010, St. Peter delivered a letter to the Moormans advising them that they were “suspended from the Lord’s Table” based on their “transgression of scripture, our secondary, standards, and the constitution of our church.”⁶⁷ The letter stated that the next day (which was Sunday), the congregation would be exhorted to heed Paul’s admonition to “withdraw from every brother who walks disorderly.”⁶⁸ The session summoned the Moormans to meet with them on October 11 “in order to bring reconciliation between us,” and warned that “refusal . . . to obey the Lord in this matter will require us to proceed with excommunication.”⁶⁹

On September 30, 2010, Abingdon sent a letter accusing St. Peter’s session of defaming, suspending, and shunning the Moormans “without ever confronting them with charges or giving them an ecclesiastical hearing.”⁷⁰ Abingdon called upon St. Peter’s session to “cease your harassment of our members . . . , and to reverse your actions.”⁷¹

On October 2, 2010, the Moormans appealed their suspension to Augustine Presbytery, arguing, first, that

⁵⁹ *Ibid.*

⁶⁰ Doc 10.

⁶¹ *Ibid.* at 1.

⁶² *Ibid.* at 1, 10.

⁶³ Doc 11; see Doc 38 at 5.

⁶⁴ Doc 11 at 1.

⁶⁵ *Ibid.* at 1, 12, 13.

⁶⁶ Doc 12.

⁶⁷ Doc 13.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Doc 15.

⁷¹ *Ibid.*

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St. Peter had no jurisdiction to discipline them, and second, that they were “censured and effectively excommunicated without a trial ... [or] adherence to Biblical process ... to communicate specific charges against us.”⁷²

On November 17, 2010, St. Peter wrote a letter to Mark Moormans, inviting him to a meeting on December 13, and stating:

*This meeting is not a trial. This meeting is not for us to explain to you why you have been charged with breaking the third, fifth and ninth commandments. This meeting is not to address you at all. This meeting is for you to have an opportunity to demonstrate from the Scripture and our secondary standard how we have sinned against you and your family. This meeting is for the purpose of our repenting of any such sin.*⁷³

On December 2, 2010, Abingdon responded to St. Peter’s letter, stating that they had advised the Moormans not to repond to St. Peter’s invitation to meet:

*[Y]ou have broken faith with the Moormans and with us. ... After reading Mark and Andrea’s 12 page account (and we also assume you have read Mark’s appeal to your Presbytery), do you really need more explanation of the wrong that you have done to this family? It is not appropriate for you to meet as a session with Mark Moormans. We are no longer [at] the level of a brother going to a brother, as in Matthew 18:15. ... This has been to the level of church court and censure. If you desire reconciliation and peace with the Moormans and with Abingdon ..., you could ... [p]ublically remove all censures ... [and d]ismiss the Moormans from your church into the care of Abingdon ..., where they are already members.*⁷⁴

Abingdon advised St. Peter that if they objected to Abingdon’s receipt of the Moormans, the proper procedure was for St. Peter to appeal to Abingdon’s presbytery, either directly or through Augustine.⁷⁵ Abingdon requested that all future communications

concerning the Moormans be directed to the Abingdon session.⁷⁶

On December 9, 2010, Abingdon advised Augustine PM Virgil Hurt that the Moormans would not meet with St. Peter’s session, that the matter was properly an issue between the two church sessions, and that all future communication should be directed to the Abingdon session, and not to the Moormans:

*[T]hey have censured Mark and Andrea As a member of our church, we instructed Mark not to respond to [St. Peter’s] demands. ... As this is now a session matter, please do not communicate any further directly with Mark or Andrea.*⁷⁷

Meanwhile, St. Peter advised PM Hurt that they would continue to proceed with excommunication of Mark and Andrea Moormans:

*Our understanding of the biblical, confessional, and constitutional nature of covenantal vows ... leaves us with no other faithful duty but to admonish and rebuke Mark & Andrea ... (which we have done) and if they do not repent (which they have not) to move forward with censure (which we have done: suspension) and then to excommunication which is impending. If even an elder or widow or orphan, in good and beloved standing, “joined” another church and we were informed after the fact, we would follow the same procedure.*⁷⁸

On February 2, 2011, St. Peter advised Mark Moormans by letter that he and Andrea had been removed from membership “by means of erasure,”⁷⁹ which St. Peter regards as a form of discipline equivalent to excommunication.⁸⁰

Meanwhile, Augustine PM Virgil Hurt had been trying to bring about reconciliation between St. Peter, Abingdon, and the Moormans, pursuant to the CREC

⁷⁶ *Ibid.*

⁷⁷ Doc 20; see also Doc 19 (the Moormans communicating the same substance to PM Hurt).

⁷⁸ Doc 21 at 1.

⁷⁹ Doc 23.

⁸⁰ Doc 2 at 3, Art. III, Section D (stating that “erasure ... is a form of discipline”); Doc 34 (referring to the “discipline of ... erasure/excommunication”)

⁷² Doc 16.

⁷³ Doc 17.

⁷⁴ Doc 18 at 1, 2.

⁷⁵ *Ibid.* at 1.

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directive that “amidst any appeals..., reconciliation between parties will remain a central objective.”⁸¹ In April 2011, PM Hurt arranged a meeting between the parties, but the arrangements fell apart when St. Peter specified that the Moormans and Abingdon would have to come ready to repent of a list of sins.⁸²

Similar efforts in January through June of 2013 by CREC PM Jack Phelps were also unsuccessful, as they were not met with a cooperative response from St. Peter.⁸³

V. DISCUSSION

A. Preliminaries

Mark and Andrea Moormans appeal “the following formal and informal censures” by the session of St. Peter:

- *Public Declaration that the Appellant Family “broke their membership vows”*
- *Excommunication of the entire Appellant Family for the reason stated above.*
- *Shunning of the entire Appellant Family for the reason stated above.*
- *Public Exposure of Appellants’ private marital counseling confidences, including a private letter from [Andrea] to the Session requesting help in the Fall of 2009.*
- *Failure to suspend the sanctions while the censure was under appeal.*⁸⁴

Before we proceed to the merits of the case, a couple of matters need to be clarified.

First, St. Peter points out that its disciplinary actions were directed toward Mark and Andrea only, not the “entire Appellant Family.”⁸⁵ This appears to be

⁸¹ Doc 1 at 5 (BOP Art. X 1); see Doc 26 (emails between PM Hurt and Pastor Windham)

⁸² See Doc 26 at 1-2; see also Doc 31 at 3 (Augustine Appeals Court finding that the “meeting between the parties ... was disrupted by [St. Peter’s] conditions that required the Moormans and [Abingdon] to come to the meeting prepared to repent”).

⁸³ Doc 45 at 2-3; see also Docs 35 and 36 (new Augustine PM Hemmeke making similar efforts).

⁸⁴ Doc 35 at 3.

⁸⁵ Doc 43 at 3.

correct.⁸⁶ Accordingly, we will consider the Moormans’ appeal as concerning Mark and Andrea only, bearing in mind, however, that disciplinary actions against parents always affect children in the household.

Second, St. Peter has confessed and sought the Moormans’ forgiveness for reading Andrea’s 2009 letter at the congregational meeting.⁸⁷ Accordingly, we will regard that matter as resolved and will not address it except to the extent that it plays into other issues in the case.

B. The Merits

We come now to the merits. The question before us is whether the evidence of record clearly establishes that St. Peter’s session, in their handling of the Moormans case, breached the biblical or constitutional standards for elders in a way that prejudiced the rights of the Moormans or the ability of the session to rightly and justly decide the case.

We want to begin by quoting part of St. Peter’s congregational meeting held on August 28, 2011, to discuss the recently issued opinion of the Augustine Appeals Court. During the meeting, the session stated that they disagreed with the opinion, and complained that the Court did not cite any specific Scriptures or constitutional provisions that the session had violated. Near the end of the meeting, the following interchange took place:

[Member:] Men that you acknowledge to be good men are telling you they think you are wrong but they can’t give you a reason. I have often found that when people really think you are wrong ... and can’t give a reason, it’s not because there isn’t a reason, but it’s because they ... can’t verbalize it. ... Now ..., the whole thing is kind of weird, and it’s a little complicated because there is a big back story. But if we ignore the back story because honestly that is not what this appeal is about, that’s not what the case is about. The case is about a very simple narrow thing, it’s almost a technicality: they [i.e., the Moormans] left before they got

⁸⁶ Doc 13 (“Mark & Andrea ... both of you are hereby suspended from the Lord’s Table”); Doc 23 (“Mark, ... the Session ... voted ... to remove you and Andrea ... by means of erasure”).

⁸⁷ Doc 37.

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permission. What if the problem isn't that you're wrong..., but it's simply that this really is a minor offense[?] And it's not like the Moormans are fleeing authority, because they've gone to another authority So it's not like they are ditching and going somewhere they can get away with anything, they're not doing that. So the offense to you seems to be a rather minor offense, and it is perhaps something that a wise man just overlooks. ... Maybe the best thing to do is to ... tell the session over at [Abingdon] ... we think you should pursue this Is that something that could be a possibility?

Laurence Windham: If we could make that decision, we might. But we can't because we have vowed to shepherd the flock and to watch for their souls. That's our responsibility, it's not Abingdon's responsibility⁸⁸

This interchange is in many ways a microcosm of the case. Most CREC elders who have really delved into the facts have come away feeling that St. Peter's session was profoundly wrong in the way that they handled the Moormans, and yet these same elders have struggled to articulate exactly why it was wrong. St. Peter's session, interpreting that inexactness as proof of groundlessness, has bunkered in, citing their obligation to their oaths in a "here we stand; we can do no other" sort of way.⁸⁹

We now add our names to the list of elders who believe St. Peter has gotten things profoundly wrong. And we hope that we can articulate why in a way that will convince St. Peter's session and bring about a change of heart leading to reconciliation and healing between St. Peter, the Moormans, and Abingdon, on the one hand, and between St. Peter and their fellow Augustine elders, on the other. That is a lot to hope for, given the ordeal that this case has been, but we are bound to hope for it nonetheless, in Christ's name.

1. Breaches of Biblical Standards

The temptation in dealing with messy cases like this one is to grab for the things that are the most objective—things like St. Peter's own procedural requirements for formal discipline. We will discuss those, for we do believe St. Peter has run afoul of them, but that is not where we will start, nor will it be our main focus. To go

that route would be to take the easy way and ignore the real heart of the matter.

What is the real heart of the matter? Pastor Windham identified it during the congregational meeting: "We have vowed to shepherd the flock."⁹⁰ What does it mean to shepherd the flock?

a) Elders and Shepherding

Shepherding is what elders are commanded to do, and they are commanded to do it in a certain way. Specifically, they are directed to exercise authority in a Christ-like manner, and they are expected to bring a particular heart and mind to the whole enterprise of understanding and applying God's word.

(1) Exercising Authority

Elders are commanded to exercise authority, "[not] by lording it over those allotted to your charge, but proving to be examples to the flock."⁹¹ This command by Peter echoes the Lord Jesus' instructions contrasting the exercise of authority in the church, which was to be characterized by servant leadership, with the way it was exercised in the pagan world, where the rulers lorded it over their subjects.⁹²

Two things are implicit in these directives. First, the exercise of eldership authority is to be guided by the good of the sheep, as defined in Scripture. Second, lording it over the sheep sets a bad example and undercuts the moral authority of the shepherd.

The improper wielding of authority lay behind Jesus' criticism of the scribes and Pharisees for laying on the people "heavy burdens, hard to bear," while simultaneously cutting themselves lots of slack.⁹³

(2) A Particular Heart and Mind

Elders are to have a particular heart and mind when it comes to understanding and applying God's word. The lack of this heart and mind formed the basis for many of Jesus' criticisms of the shepherds of Israel, particularly the scribes and Pharisees. Jesus said, in a nutshell, that the scribes and Pharisees had lost the forest for the trees, for several reasons.

⁹⁰ Doc 32 at 18.

⁹¹ 1 Peter 5.3 (NAS).

⁹² See Mat 20.25-27; Mark 10.42-45; Luke 22.25-27.

⁹³ Mat 23.4.

⁸⁸ Doc 32 at 18.

⁸⁹ See, e.g., Docs 21 at 1; 22 at 1, 2; 32 at 18.

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First, they lost sight of the “weightier matters of the law: justice and mercy and faith.”⁹⁴ As a result, they strained gnats and swallowed camels.⁹⁵

Second, they detached formal obedience (“sacrifice”) from genuine love, loyalty, and faithfulness (“mercy”), and elevated the former over the latter.⁹⁶ As a result, they “condemned the guiltless” and shunned those they should have been trying to minister to.⁹⁷

Drawing these two things together with Jesus’ overarching observation that all the law hangs on the two great commands to love God with all that we are and our neighbor as ourselves, we can picture the law as a great tree.⁹⁸ The trunk is the two great love commands. Branching directly out of the trunk are the three weightiest branches: justice, mercy, and faith. Sprouting from those are all the other commandments.

Here is the point. To apply any individual command in a way that detaches it from the greater commands that support it is to misapply that command, and thus to subvert the law. This is what the scribes and Pharisees lost sight of, and as a result, their idea of a law abiding, God honoring life was a monstrosity.

b) Application to St. Peter

These commands and principles for elders are exactly what we believe St. Peter’s session lost sight of in the Moormans case, and as a result they produced an outcome that is neither just nor merciful nor faithful. Demonstrating that, however, is not as simple as adding up numbers. That is why so many CREC elders have struggled to explain to St. Peter why they are wrong.

How did Jesus go about demonstrating that the shepherds of Israel were wrong? He pointed to the divergence of actual outcome from God’s desired outcome.⁹⁹ He pointed to wrong perspectives—losing

the big picture for the small and the weighty for the light.¹⁰⁰ He pointed to wrong attitudes and motivations.¹⁰¹ This is how Jesus demonstrated that the scribes’ and Pharisees’ approach, which seemed to be steeped in the law, actually subverted the law.

(1) Outcome

What about this case? What is the outcome of St. Peter’s actions? A family who was attending an evangelical and reformed church, after meeting with the pastor several times to explain why they thought it would be best for them to attend another church, joined another evangelical and reformed church, where they have been open about their past (including their past sins and struggles) and are in submission to the elders, and as a result, for three years now, they have been excommunicated and declared outside of Christ for not leaving the first church in precisely the way the elders required. Is there anything wrong with that outcome? Yes, many things.

Let’s start with grounds for excommunication. St. Peter claimed the Moormans violated the third and fifth commandments.¹⁰² That sounds very serious, but when we ask how the Moormans broke those commandments, we are told:

*Any member who leaves a church without consultation with and permission from the Session is guilty of breaking the third and fifth commandments. And ... a Session which allows ... a member to leave in such a manner is guilty of breaking the third and fifth commandments.*¹⁰³

St. Peter believes, more specifically, that the Moormans violated the third and fifth commandments by breaking their membership vow “to support the ministry of this church in its worship and work, submitting to its government and discipline, while pursuing its purity and peace.”¹⁰⁴

⁹⁴ Mat 23.23 (NKJ).

⁹⁵ Mat 23.24.

⁹⁶ See Mat 9.13 and 12.7 (Jesus quoting Hosea 6.6: “I desire mercy and not sacrifice”). In Hosea 6.6, “mercy” is the Hebrew *chesed*, which the ESV translates as “steadfast love,” and the NAS as “loyalty.” Covenant love, loyalty, and faithfulness are what are in view.

⁹⁷ See, respectively, Mat 9.11-13 and 12.2, 7 (both quoting Hosea 6.6). See also Micah 6.6-8.

⁹⁸ Mat 22.36-40.

⁹⁹ See, e.g., Mat 12.7; 23.4, 13-15, 25-28.

¹⁰⁰ See, e.g., Mat 23.16-24.

¹⁰¹ See, e.g., Mat 23.5-7; John 5.44.

¹⁰² Doc 22 at 1.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.* at 2 (quoting Doc 2 at 2, Art. III A 1); see also Doc 21 at 1 (“If even an elder or widow or orphan, in good and beloved standing, “joined” another church and we were informed after the fact, we would follow the same procedure”).

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How, exactly, did the Moormans break that vow? St. Peter explains:

*Any member who ... leaves the church without consultation with and permission from the Session ... [has] manifestly not supported the ministry of this church, submitted to its government, or pursued its purity and peace.*¹⁰⁵

But the Moormans *did* consult with the session. Between April and July of 2010, they corresponded with Pastor Windham and met with him three times, and on each occasion they talked about finding another church.¹⁰⁶

The only thing the Moormans failed to do was to comply with Pastor Windham's request that they submit a jointly signed letter detailing their reasons for wanting to find another church.¹⁰⁷ Instead, the Moormans submitted two short, gracious letters, one to the session and one to Pastor Windham, signed by Mark alone, indicating their intentions to find another church home.¹⁰⁸

The Moormans state that they interpreted Pastor Windham's request as a request, rather than a demand, and decided that the better course was to submit the two, short, gracious letters rather than one, long, fault-finding letter.¹⁰⁹ As it turns out, the Moormans' instincts were correct, for when they subsequently, at Abingdon's urging, complied with Pastor Windham's request for a detailed letter, St. Peter construed it as a complaint against the session, characterized the Moormans as accusers under Matthew 18.15-18, and put the burden on the Moormans to specify and prove their charges.¹¹⁰

¹⁰⁵ *Ibid.*.

¹⁰⁶ See this Opinion at 5-6.

¹⁰⁷ *Ibid.* at 5; Doc 32 at 1.

¹⁰⁸ *Ibid.*

¹⁰⁹ Doc 11 at 8 ("We were not convinced that such a letter was wise or necessary"), 9 ("After much prayer ..., Andrea and I sent a simple letter to Laurence ... [and] the session indicating our intentions") ("We didn't want to argue or stir the pot") ("We desired to leave peacefully and graciously and felt that the peace and purity of the church would be best served with the simple letter we wrote").

¹¹⁰ See Docs 11 (the detailed letter); 13 (calling upon the Moormans to come to a designated meeting to comply with "Matthew 18.15-18," and stating that refusal to obey "will require us to proceed with excommunication"); 17 ("you have the opportunity to demonstrate from Scripture and our secondary standards how we have sinned against you"); 26 at 1 (stating that Mark Moormans needs to "repent of breaking

After the Moormans submitted their two, short letters, they heard nothing for a month, during which time they visited other churches.¹¹¹ Even then, it was only at the Moormans' prompting that they got a reply at all.¹¹² When they received the reply, the tone was such that whatever ability had remained for St. Peter's session to minister to the Moormans was effectively lost.¹¹³

So the question comes down to this: Under all the circumstances, does the record establish that the Moormans violated their membership vows to St. Peter because they sent two, short, gracious letters with one signature rather than one long, fault-finding letter with two signatures? The answer is no. If anything, the record shows that the Moormans, by sending the two, short, gracious letters, were honoring their vow by seeking the peace and well being of St. Peter.¹¹⁴

St. Peter has suggested on appeal that requiring a detailed letter with two signatures was necessary to protect Andrea by ensuring that she was in agreement with Mark's decision.¹¹⁵ But Andrea's agreement could hardly have been questioned, given her previous, lengthy email to Pastor Windham expressing her conclusion that they needed to find another church.¹¹⁶

The record certainly does not establish that the Moormans were engaging in willful rebellion or intentional disobedience. So we are back to what the church member told the session at the congregational meeting:

The case is about a very simple narrow thing, it's almost a technicality: they left before they got permission. ... And it's not like the Moormans are fleeing authority, because they've gone to another authority So the offense to you seems to be a rather minor offense
....

What kinds of offenses is excommunication appropriate for? The Westminster Assembly spoke to this issue:

the 9th Commandment [because] he has misrepresented the members of the session to [Abingdon]").

¹¹¹ See this Opinion at 6.

¹¹² *Ibid.*

¹¹³ *Ibid.* at 5-6.

¹¹⁴ Doc 11 at 8-9 (see note 102).

¹¹⁵ See Doc 46 at 4-5.

¹¹⁶ See Doc 3 at 3.

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Such errors as subvert the faith, or any other errors which overthrow the power of godliness, if the party who holds them spread them, seeking to draw others after him; and such sins in practice, as cause the name and truth of God to be blasphemed, and cannot stand with the power of godliness; and such practices, as in their own nature manifestly subvert that order, unity and peace, which Christ hath established in his church; those being publicly known, to the just scandal of the church, the sentence of excommunication shall proceed according to the directory.

But those persons who hold other errors in judgment about points, wherein learned and godly men possibly may or do differ, and which subvert not the faith, nor are destructive of godliness; or that be guilty of such sins of infirmity, as are commonly found in the children of God; or, being otherwise sound in the faith, and holy in life (and so not falling under censure by the former rules) endeavour to keep the unity of the Spirit in the bond of peace, and do yet out of conscience not come up to the observation of all those rules, which are or shall be established by authority for regulating the outward worship of God and government of his church: We do not discern to be such against whom the sentence of excommunication for these causes should be denounced.¹¹⁷

Did the Moormans' manner of leaving St. Peter "cause the name and truth of God to be blasphemed"? No.

Did the Moormans' manner of leaving "manifestly subvert that order, unity and peace, which Christ hath established in his church"? No. To the contrary, it

¹¹⁷ A *Directory for Church-Government, Church-Censures, and Ordination of Ministers: Agreed upon by The Assembly of Divines at Westminster* (Glasgow, 1763) (quoted in Stephen C. Perks, *The Nature, Government and Function of the Church*, The Kuyper Foundation (Taunton, England) 1997, at 57 (emphasis added)). The *Directory* was adopted by Parliament in 1648 for use in England and Ireland, but it was never formally approved by the Church of Scotland. Many modern publishers of the Westminster Assembly's deliberations have, unfortunately, omitted the *Directory* from their editions. (See Perks at 56.)

appears that the Moormans were specifically concerned to maintain the unity and peace of St. Peter.¹¹⁸

Did the Moormans' manner of leaving involve sin of a scandalous nature? No. Indeed, what has produced more notoriety, the Moormans' leaving or St. Peter's excommunicating them?

To the extent the Moormans sinned in how they left, was the sin of such a nature as to be "commonly found in the children of God"? Yes. Scores of members have left CREC or other reformed churches with far less sense of duty and grace than the Moormans.

To the extent the Moormans sinned in how they left, could it be fairly characterized as the kind of sin that "out of conscience [simply did] not come up to the observation of all those rules, which are established by authority for ... government of [the] church"? Yes. The Moormans chose two, short, gracious letters over one long, fault-finding letter, because they believed it to be the best course for all concerned.

Bottom line, to the extent the Moormans sinned in how they left St. Peter, it was not the sort of sin that the Westminster Assembly thought merited excommunication. We agree with the Westminster Assembly.

(2) Attitude and Perspective

What about attitude and perspective? It became evident in reading the record of this case that the poor and strained relationship between St. Peter and Abingdon adversely affected the Moormans' case.¹¹⁹

Beginning with St. Peter's response to Abingdon's notification that it had received the Moormans and were seeking a letter of transfer, the inter-church hostility is apparent.¹²⁰ It is highly significant that St. Peter's first mention of charges and church discipline came in that correspondence.¹²¹ It is also significant that St. Peter's allegations were generic—dishonoring elders, violating vows, holding authorities in contempt—without any indication of how, when, and where the Moormans had

¹¹⁸ See note 109.

¹¹⁹ See Doc 31 at 3 (Augustine Appeals Court finding that "there is an ungodly level of dissension and suspicion between the leadership of [Abingdon] and [St. Peter]").

¹²⁰ Doc 8.

¹²¹ *Ibid.*

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done these things.¹²² Generic allegations would become a theme in the case.

Admittedly, it would have been better if Abingdon had taken the higher road by touching base with St. Peter *before* receiving the Moormans, or at least if they had received the Moormans pending transfer, rather than receiving them outright based on reaffirmation of faith. We acknowledge that Abingdon was authorized to proceed as they did, but we are talking about the *higher road* here. If the higher road is owed to unbelievers, how much more to fellow Christian elders? Not only are Abingdon and St. Peter both evangelical and reformed churches, they both subscribe to the Westminster Confession. Besides, Jesus specifically said that the higher road is owed to enemies, which seems to be precisely how Abingdon and St. Peter regarded one another.¹²³

Be that as it may, there is no question that St. Peter's response to Abingdon was hostile and highly deleterious to the relationship, just as St. Peter's similarly hostile response to the Moormans was to their relationship.¹²⁴ The higher road for St. Peter would have been to respond with conciliation toward Abingdon and accommodation toward the Moormans, regardless of whether Abingdon and the Moormans had taken the higher road themselves. Instead, St. Peter responded with accusations and demands.¹²⁵ That effectively ended any remaining ability St. Peter had to minister to the Moormans, while heightening Abingdon's sense of duty to protect the Moormans from St. Peter.

From that point on, it was trench warfare between the churches, with St. Peter demanding that Abingdon bow out, and that the Moormans submit to their jurisdiction on pain of excommunication; and Abingdon instructing the Moormans not to submit to St. Peter, and instructing St. Peter not to communicate with the Moormans, because the matter was properly a dispute between the two sessions.¹²⁶ However reasonable minds might differ in apportioning blame between St. Peter and Abingdon, one cannot get away from the fact that the central conflict was between the churches, with the Moormans being the battlefield. Rightly or wrongly, the

Moormans' refusal to submit to St. Peter's jurisdiction was under color of lawful church authority.

As to the Moormans' membership, we think the most reasonable position is to conclude that they had a valid membership relationship with both churches. Temporary dual membership often occurs as churches pass the membership baton from one to another. Here, the handoff was fossilized by the standoff between the churches.

But regardless of the Moormans' membership, a jurisdictional standoff between churches, absent extraordinary circumstances, which were not present here, is an inappropriate context for the initiation of church discipline. If the churches cannot resolve the jurisdictional issue, the proper avenue is through presbytery, even as Abingdon pointed out to St. Peter.¹²⁷

Not to be deterred, however, St. Peter proceeded to suspend and shun the Moormans.¹²⁸ Then, even with the Moormans' appeal pending before presbytery, and with PM Hurt trying to bring about reconciliation, St. Peter continued to march onward and excommunicated the Moormans.¹²⁹ Having done so, and thus treated the Moormans as members, St. Peter turned around on appeal and treated the Moormans as nonmembers, arguing that they lacked standing to have their appeal heard unless they complied with Article IV D 4.¹³⁰ This is not what Christian leadership is supposed to look like.

St. Peter lost sight of the weightier matters of the law—justice, mercy, and faith; they lorded it over the Moormans; they elevated their own standard of precise obedience (requiring a detailed letter with two signatures, on pain of excommunication) above genuine faithfulness; they strained gnats while swallowing camels (for the same reason); and as a result, they

¹²⁷ Doc 18 at 1.

¹²⁸ Doc 13.

¹²⁹ See this Opinion at 8-9. The only efforts of St. Peter toward pursuing informal resolution church-to-church or through the PCA presbytery came *after* they had excommunicated the Moormans and *after* the Moormans had appealed (see Docs 24 and 39).

¹³⁰ See Docs 31 at 4 (Augustine Appeals Court noting St. Peter's argument under Article IV D 4 that "the Court did not have constitutional grounds to hear this case"); 33 at 1, 2 (St. Peter arguing on appeal to Council that under IV D 4, Augustine "had no constitutional authority to hear and rule on the accusations by the Moormans");

¹²² *Ibid.*

¹²³ Mat 5.39-45.

¹²⁴ See Docs 8 and 9.

¹²⁵ *Ibid.*

¹²⁶ See this Opinion at 7-9.

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“condemned the guiltless.”¹³¹ These breaches in the biblical standards for elders prejudiced the rights of the Moormans (obviously), as well as the ability of the St. Peter session to rightly and justly decide the Moormans case. Accordingly, St. Peter’s suspension, shunning, and excommunication of Mark and Andrea Moormans must be set aside.

2. Breaches of Constitutional Standards

a) “Erasure/Excommunication”

When St. Peter took final disciplinary action against Mark and Andrea Moormans, it was to remove them from membership “by means of erasure.”¹³²

Reformed churches often have a mechanism for removing a member from the roll when the member has left the church in an irregular manner. Such removal is typically a non-judicial action involving no public censure.¹³³

St. Peter’s constitutional provision for erasure seems at first blush to be a non-judicial action along those lines, and accordingly, the only stated ground is when a “member can no longer be found.”¹³⁴ Though “erasure ... is a form of discipline,” St. Peter’s constitution distinguishes it from “moral discipline.”¹³⁵

In the Moormans’ case, however, St. Peter applied erasure as a form of excommunication, even calling it “erasure/excommunication.”¹³⁶ This is highly problematic.

St. Peter’s Constitution contains only one reference to erasure, which states in full:

*The names of members shall be removed from the rolls of the church only by order of the Elders on the basis of death, dismissal to another church, transfer to another church, moral discipline, or in cases where the member can no longer be found, erasure (which is a form discipline), from the roll.*¹³⁷

Other than being distinguished from “moral discipline,” erasure is undefined, and St. Peter’s procedures for “formal” and “informal” discipline make no mention of it.¹³⁸

The bottom line is that St. Peter’s Constitution does not define what kind of discipline erasure is (and it certainly does not define it as excommunication), nor does it specify any due process procedures which must be followed before a member is erased. The only ground specified for erasure—when a “member can no longer be found”—would support removal from the rolls, but not excommunication.¹³⁹

St. Peter’s Constitution, as currently written, will not support using erasure as a form of judicial discipline, especially not excommunication. Accordingly, St. Peter’s excommunication of Mark and Andrea Moormans, if it is to pass constitutional muster, must comport with the constitutional requirements for formal, judicial discipline, without relying on erasure as an alternative mode of excommunication.

b) Formal Discipline

(1) Constitutional Procedures

St. Peter’s Constitution provides that formal church discipline, “except in cases of scandal requiring immediate action, will generally include formal private admonishment by two or three (Matt. 18:16), formal public admonishment and suspension from the Supper (2 Thes. 3:14-15), and a formal hearing which may result in excommunication (Matt. 18:17).”¹⁴⁰ These procedures were not followed in the application of formal discipline to the Moormans. Private admonition by two or three

¹³¹ Mat 12.7. By “guiltless,” Jesus did not mean his disciples were sinless, but that they were innocent of the particularly sin the Pharisees had charged them with.

¹³² Doc 23.

¹³³ In the PCA, for example, “when a member ... attempt[s] to withdraw from ... this branch of the visible Church by affiliating with some other branch ..., [and] is in good standing, the irregularity shall be recorded, his new membership acknowledged, and his name removed from the roll” (PCA Book of Church Order (BCO) 38-3). If a member cannot be found or has otherwise “neglected the church for a period of one year,” and the session concludes after due inquiry “that the member will not fulfill his membership obligations in this or any other branch of the Visible Church, then the Session shall erase his name from the roll ... [which] is an act of pastoral [(i.e., non-judicial)] discipline” (*ibid.* 38-4 (citations omitted)).

¹³⁴ Doc 2 at 3, Art. III, Section D.

¹³⁵ *Ibid.*

¹³⁶ Doc 37.

¹³⁷ Doc 2 at 3, Art. III, Sect. D.

¹³⁸ Doc 2 at 6-7, Art. VI, Sect. A - E.

¹³⁹ *Ibid.*

¹⁴⁰ Doc 2 at 6, Art. VI B.

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did not occur, public admonition did not occur, nor did the timing of the eventual suspension from the Lord's Table or the setting of a date for a hearing occur as the Constitution contemplates.

Private admonishment by two or three

While it is evident that Pastor Windham and Mark Moormans met at least three times prior to time when the Moormans joined another congregation, and that these were meetings which dealt with the Moormans' concerns about their "fit" at St. Peter, and that the Moormans indicated that they were considering finding and attending another church, there is no indication that these meetings were times of "private admonishment."¹⁴¹ Furthermore, there is no indication that these meetings were done "by two or three." Additionally, there are no records present that indicate that if any private admonition occurred during these times, it was done as part of the process of formal discipline.

Formal public admonishment

During the time when the Moormans were considering attending another church, and even up until the time they joined Abingdon, they did not receive any "formal public admonishment" indicating that they were under some aspect of the formal discipline of the church. It was later explained that the Moormans were "under suspicion"¹⁴² by the session, but that does not qualify as "formal" or "public" admonishment. Indeed, "suspicion" does not even exist as a category of formal discipline in St. Peter's Constitution.

Suspension from the Supper and a Public Hearing

According to St. Peter's Constitution, the process of applying formal discipline may also include suspension from the Lord's Supper. The Moormans were eventually suspended, but that did not occur until after they had joined Abingdon. And up until

¹⁴¹ These meetings occurred in April, May, and on July 13 of 2010, and Mr. and Mrs. Moormans were both present at the first of these (see Docs 11 at 3-7; 32 at 1-2; 38 at 4, 58). Further, Mrs. Moormans wrote a letter dated April 10, 2010, to the session of St. Peter which also stated a desire to transfer (Doc 3). This letter was not met with any kind of response or notification to the effect that transferring was "not possible because they were under some form of formal discipline."

¹⁴² Doc 46 at 4 ("Mark Moormans was being watched carefully ... [Mark was] under suspicion' and being watched closely").

the time that they joined Abingdon, the Moormans were communing members of St. Peter who had not received any notice that they were pending discipline or under investigation.

If formal discipline was pending, it was the responsibility of the St. Peter's session to make that clear to the Moormans.¹⁴³ St. Peter's session must follow their own constitutional procedures, both for the good order of the church and for the benefit of the sheep.¹⁴⁴ Although a hearing place and date were eventually set, it was not preceded by clear and appropriate admonitions pursuant to the Constitution. Thus, St. Peter's own constitutional order was not followed.

(2) Membership in Good Standing

It is evident that the Moormans considered themselves to be members in good standing at St. Peter, and not under the formal discipline of the church. Furthermore, there is no record of formal discipline until after the Moormans had joined another Christian church. This is demonstrated, in part, by the following time-line:

- The Moormans had been members in good standing during the times they met with, or attempted to meet with, Pastor Windham (Spring of 2010), sharing their concerns about staying at St. Peter, and expressing that they were considering finding another church. They were not told that they were under the discipline of the church or that they could not transfer.
- On July 20, 2010, the Moormans sent a letter to Pastor Windham and one to the Session, expressing their love and gratitude as well as communicating their intention to "seek out a church family that may be a better fit for our family."¹⁴⁵ This letter did not receive a response for an entire month, and then only after Mr. Moormans sent an email inquiry about it to Pastor Windham and Elder Hays. In Pastor

¹⁴³ "For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more" (Luke 12.48). "A bishop then must be blameless...." (1 Tim 3.2).

¹⁴⁴ "I am joying and beholding your order, and the steadfastness of your faith in Christ" (Col 2.5).

¹⁴⁵ Doc 4 at 1, 2.

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Windham's email response of August 22, 2010, there was no indication that some form of Formal Discipline was present or pending.¹⁴⁶ They were not admonished about being under discipline, nor were they reminded of any previous admonitions (private or public), nor were they informed that they were on the precipice of suspension. Instead of taking the initiative to acknowledge receipt of the letter, and peacefully granting their departure to the care of Christ's ministry and ministers elsewhere, the session termed the Moormans' notification of leaving as "disrespectful and troubling." The Moormans were told that the session still required a letter detailing their reasons for leaving and with both Mark's and Andrea's signatures.¹⁴⁷

- As the Moormans were not under the formal discipline of the church, as the established procedures for applying such discipline had not occurred, and as the Moormans had not been notified that they were under investigation, approximately one month later the Moormans joined Abingdon on August 29, 2010.¹⁴⁸
- The Moormans eventually, at Abingdon's urging, gave the St. Peter session a letter in which they shared many concerns as well gave some reasons for seeking another church.¹⁴⁹ It is important to note that at no place in that letter was there any hint of awareness that they were under, or being considered for, formal discipline by St. Peter.¹⁵⁰
- The next communication with the Moormans occurred on September 24, 2010 and was in the form of a notification from the elders of St.

Peter.¹⁵¹ That the Moormans were to be immediately suspended from the Lord's Table, and that a hearing date had been set at the home of one of the elders on October 11, 2010, and further that "a refusal to obey ... will require us to proceed with excommunication."¹⁵²

(3) Initial Procedures of Formal Discipline

St. Peter's Constitution also includes "initial" procedures for implementing formal discipline, which procedures were not followed in the disciplining of the Moormans:

*The Elders shall establish the specific procedures for all formal discipline on a case-by-case basis, as appropriate to the circumstances and individuals involved. However, at a minimum these procedures should include a clear and timely warning of the individual that he is in the process of formal discipline, two or three visits or communications involving two or three witnesses, and clear records and/or minutes of the entire proceedings kept by the Elders.*¹⁵³

These are the *initial and minimal* procedures, not eventual or occasional procedures, and they bind the elders to a *minimum* of the following:

- Providing "a clear and timely warning" of the "process of formal discipline"
- Two or three visits or communications involving two or three witnesses
- Clear records and/or minutes of the entire proceedings

The Moormans did not receive a *clear and timely* warning. Rather, they were notified that they had been suspended, and that after they had joined another Christian church.

St. Peter's session is bound by their own Constitution to make two or three visits, or to have two or three communications, involving two or three witnesses. This, presumably, would be visits or communications concerning formal discipline and the facts supporting it. The witnesses and the communications would provide verification and protection. This did not occur.

¹⁴⁶ Doc 5.

¹⁴⁷ *Ibid.* This request, initially made by Pastor Windham, is chiefly a sessional request and is not a requirement of departing members according to the St. Peter Constitution (see Article III D). One year later, during a St. Peter congregational, Pastor Windham explained the rationale for the request for signatures from both Mark and Andrea: "We wanted to be sure that he was speaking for her as well, so we said we need a letter with your reasons and that letter needs to be signed by you and your wife" (Doc 32 at 1).

¹⁴⁸ See Docs 6 and 7.

¹⁴⁹ Doc 11.

¹⁵⁰ *Ibid.*

¹⁵¹ Doc 13.

¹⁵² *Ibid.*

¹⁵³ Doc 2, Art. IV D.

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Finally, clear records or minutes that these steps occurred and were followed are required. If such records were available, the previous two points could be verified as having occurred and would bring some of the Moormans testimony under suspicion. With the absence of such minutes, it is clear that the elders of St. Peter did not follow their own Constitution in following the initial procedures of formal discipline.

With regard to both the details of notification of formal discipline, and the actual initial procedural steps for formal discipline, the elders of St. Peter have not followed their own Constitution. This is an important matter, as elders should desire to have honest weights and measures and to judge with righteous judgment.

(4) Summing Up

In summary, let us state what did *not* happen: There was no trial, there were no charges specified, and there were no formal admonishments involving two or three witnesses prior to the Moormans' excommunication.¹⁵⁴ It may be claimed that the Moormans refused the session's invitations to meet, but St. Peter did not comply with the constitutional "initial procedures" requirement that the Moormans receive a "clear and timely warning" that they were "in the process of formal discipline," nor did they communicate what exactly the Moormans were charged with.¹⁵⁵

St. Peter's communication of September 3, 2010, "called [Mark Moormans] to meet with [his] rightful session for reproof, rebuke and correction," but there was no reference to Mark being the subject of formal discipline, nor was there any date or time frame given for meeting.¹⁵⁶ And, as the letter acknowledged, the Moormans had already been received as members by Abingdon, and there was a dispute as to which of the two sessions was the Moormans' "rightful session."¹⁵⁷

St. Peter's first mention of discipline was not made to the Moormans, but to Abingdon, and it was not clear what was going on or why.¹⁵⁸ The letter was primarily a rebuke to Abingdon.¹⁵⁹ There was a single, passing reference to the effect that "Mark Moormans is facing the discipline of the church...and now we have issue with the elders of [Abingdon]."¹⁶⁰ There was no reference to Andrea, and there were only vague generalities as to what Mark was accused of: "Mark has dishonored his elders and has violated the public vows he took when he covenanted with Saint Peter. ... There will be no transfer ... given to those who break their vows of membership and hold the authorities that are over them with contempt."¹⁶¹

St. Peter was immediately put on notice that the Moormans were unsure as to whether Mark was being charged and, if so, with what, and further that they believed St. Peter had failed to comply with its own due process procedures, if in fact discipline was being pursued:

It is not at all clear to us what specifically is being referred to by these accusations (nor have any specific charges been communicated), and we neither agree with nor understand your current actions. ... I have at best received general accusations of general sins. I have received no communication of specific formal charges against me (e.g. In what way have I rebelled? In what way have I avoided my vows? How have I been deceitful?), and to my knowledge the only thing we have not done is written the letter that was requested (not required). Since my last meeting with Laurence, no one has tried to meet with us or to explain specifically your concerns. ... The Saint Peter session has not followed due process in communicating specific formal charges against us, if in fact there are any. This nonetheless has not prevented the [St. Peter] session from threatening us with discipline to our new session."¹⁶²

¹⁵⁴ See *ibid.*, Art. VI B, D, E. Regarding the specification of charges, simply saying the Moormans violated certain of the Ten Commandments does not suffice, for it does not inform the Moormans of how, when, and where they allegedly broke the commandments.

¹⁵⁵ Doc 2 at 7, Art. VI D.

¹⁵⁶ Doc 9.

¹⁵⁷ *Ibid.*

¹⁵⁸ Doc 8.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.* (ellipsis in original).

¹⁶¹ *Ibid.*

¹⁶² Doc 11 at 1, 11, 12. Mark contemporaneously communicated the same information and concerns to Augustine PM Hurt (see Doc 10).

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Without further communication, St. Peter suspended and shunned Mark and Andrea.¹⁶³ As to why, St. Peter stated that it was for “transgression of scripture, our secondary standards, and the constitution of our church.”¹⁶⁴ That is like a police officer arresting someone, and when asked why, replying, “For violating the law.”

St. Peter was immediately notified by Abingdon that they believed St. Peter had failed to follow due process:

Without ever confronting [the Moormans] with charges or giving them an ecclesiastical hearing, you declared them [(i.e., at the congregational meeting)] to be in violation of the 3rd, 5th and 9th commandments and you pronounced censure on them of suspension from the Lord’s Table.¹⁶⁵

Within a week, the Moormans had appealed to Augustine Presbytery, alleging, among other things, that St. Peter had failed to follow its constitutional due process procedures:

[M]y family was censured and effectively excommunicated without a trial. Prior to this action, there was no adherence to Biblical process ... (i.e. no elder met with me or my family to specifically show us our sins and call us to repent, neither did another meeting occur in which two or more witnesses met with us to communicate specific charges against us, prior to the Session taking public action against us before the church).¹⁶⁶

Six weeks later, with the appeal pending, St. Peter invited Mark Moormans to another meeting, but it did not concern the formal discipline which had been taken against the Moormans, nor the remaining formal discipline (excommunication) which could yet be taken against them.¹⁶⁷ The invitation shed no light on what precisely the Moormans had done to warrant suspension and shunning.¹⁶⁸ Indeed, the letter contained no reference to the existing discipline, except to say that the meeting was *not* about that:

¹⁶³ Doc 13.

¹⁶⁴ *Ibid.*

¹⁶⁵ Doc 15.

¹⁶⁶ Doc 16 at 1.

¹⁶⁷ Doc 17.

¹⁶⁸ *Ibid.*

This meeting is not a trial. This meeting is not for us to explain to you why you have been charged with breaking the third, fifth and ninth commandments. This meeting is not for us to address you at all.¹⁶⁹

Instead, the meeting, evidently, was to allow the Moormans to comply with Matthew 18.15:

We know, Mark, that you have something against us. We, therefore, are coming to you to seek reconciliation. ... This meeting is for you to have an opportunity to demonstrate from Scripture and our secondary standards how we have sinned against you and your family.¹⁷⁰

The letter evidences the same confusion and role reversal which we noted earlier when addressing the issue of jurisdiction: St. Peter saw themselves as the accused, and the Moormans as the accusers.¹⁷¹ Therefore, it was the Moormans, not St. Peter, who had the burden of specifying charges and proving them.

There was no further communication between St. Peter and the Moormans until two and a half months later, when St. Peter notified the Moormans that they had been erased, which was equivalent to excommunication.¹⁷² No grounds were stated, except possibly St. Peter’s statement that they were “disappointed” that the Moormans “did not accept our invitation to meet.”¹⁷³

St. Peter gave no greater specificity to their generic charges that the Moormans had broken several of the Ten Commandments until St. Peter advanced a theory before Augustine Presbytery that “any member who leaves a church without consultation and permission from the Session is guilty of breaking the third and fifth commandments.”¹⁷⁴ This, of course, was long after the Moormans had been suspended and long after they had appealed. It could not do service for the constitutional requirements of notification of charges, multiple admonishments, and a trial *preceding* excommunication.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ See this Opinion at 4, Section III C 1.

¹⁷² Doc 23; see also Doc 34 (referring to the “discipline of ... erasure/excommunication”).

¹⁷³ Doc 23.

¹⁷⁴ Doc 22.

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The bottom line is that St. Peter did not comply with its own constitutional requirements for formal discipline. It is evident that St. Peter used erasure as a way around those constitutional requirements. But, as we have already established, St. Peter's constitution will not support using erasure as an alternative mode of excommunication.

Accordingly, the Moormans' suspension, shunning, and excommunication fail on constitutional grounds and must be reversed.

VI. CONCLUSION

For the foregoing reasons, it is the judgment of this Court that St. Peter's suspension, shunning, and excommunication of Mark and Andrea Moormans must be set aside. The Court, therefore, directs St. Peter to:

- 1) Communicate the Court's entire opinion to their congregation or heads of households.
- 2) Publicly declare to the congregation of St. Peter that Mark and Andrea Moormans are no longer under the discipline of St. Peter.
- 3) Issue a letter to Abingdon officially transferring the Moormans' membership there.
- 4) Within 60 days of this ruling's delivery, report to Presiding Minister Jack Phelps how St. Peter intends to respond to the ruling.

Members of the Council Court of Appeals:

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