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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church Of St. Luke and St Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County; The Vestries And Churchwardens Of The Parish Of St. Andrew,

Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina,

Appellants.

RETURN TO MOTION FOR RELIEF FROM JUDGMENT

Appellants filed a Motion for Relief from Judgment on September 1, 2022. Respondent, The Vestries And Churchwardens Of The Parish Of St. Andrew ("Old St. Andrew's"), submits the following in return pursuant to Rule 240(e).[1]

1. **Rule 60 of South Carolina's Rules of Civil Procedure is inapplicable in appeals governed by South Carolina's Appellate Court Rules.**

This Court is an appellate court and has jurisdiction because Appellants initiated an appeal from the trial court's judgment. S.C. Code Ann. § 14-3-330. As such, the South Carolina Appellate Court Rules apply, not the Rules of Civil Procedure. *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 211, 215, 810 S.E.2d 856, 858 (2018) ("[T]he South Carolina Rules of Civil Procedure are inapplicable to the outcome of [an appeal]" and an appellate court must therefore address issues on appeal "under relevant appellate court rules"); *see also* Rule 101(a), SCACR. Relief from judgment is not provided for under the Appellate Court Rules and Appellants acknowledge as much in their motion. Appellants' Mot. for Relief from

[1] Appellants simultaneously filed a Petition for Rehearing on September 1, 2022. A return to that petition can only be made at this Court's direction pursuant to Rule 221(a), SCACR. Should the Court request a return to Appellants' petition, Old St. Andrew's is prepared to respond to Appellant arguments and assertions and reserves its right to do so.

Judm., p. 2. Appellants offer no authority to support their contention that Rule 60, SCRCP is applicable.

The Court should deny Appellants' motion.

2. <u>Appellants are incorrect the Court issued a "declaratory judgment" similar to a trial court ruling entitling them to have Rule 60, SCRCP, applied to this appeal.</u>

In its attempt to shoe-horn Rule 60, SCRCP, into this appeal, Appellants argue this Court acted "like a trial court" by issuing in its re-filed *Protestant Episcopal Church II* opinion, as what Appellants call a "declaratory judgment." *Id*. There are two problems with this position. First, it presumes the Court does not have the power to issue a declaratory judgment without acting "like a trial court" or operating within the Appellate Court Rules. Second, it incorrectly presumes the Court's ruling was declaratory.

a. The Court's ruling was not a declaratory judgment; it was an appellate ruling.

Appellants' assertion that the Court made a declaratory judgment is wrong. In ruling Old St. Andrew's created a revocable trust, the Court declared nothing; it simply reviewed the lower court's rulings for error in the normal course of its authority as an appellate court. *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999) ("When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts… In such cases, the appellate court owes no particular deference to the trial court's legal conclusions. *See* S.C. Const. art. V, §§ 5 and 9; S.C. Code Ann. §§ 14-3-320, 14-3-330, and 14-8-200.").

The Court performed exactly the kind of appellate review, correction of errors of law, and application of the corrected law to the facts it routinely does in appeals. Justice Few said as much in his majority opinion:

> Because Judge Goodstein had not considered which individual Parishes acceded to the Dennis Canon or which "merely promised allegiance," the 2017 Court did not reach that issue. It was proper, therefore, for the circuit court (Edgar W. Dickson) to address this question in its 2020 decision, and it is now proper for us to review Judge Dickson's 2020 Parish by Parish rulings.

Protestant Episcopal Church II, *12.

The Court conducted an appellate review; it found error in the opinion of the trial court and then applied the corrected law to the record on appeal.

b. Without conceding that the Court issued a "declaratory judgment"—the Court has the power to issue declaratory judgments and, therefore, when it does so, it does not "act like a trial court" nor does such a ruling make Rule 60, SCRCP applicable.

Old St. Andrew's does not concede that the Court issued a declaratory judgment in this matter. Nonetheless, the Court has the power to issue declaratory judgments, certainly in its original jurisdiction, and the power to review declaratory judgments issued by lower courts in its appellate capacity. In *Nelson v. Ozmint*, the Court construed a petition filed in the original jurisdiction of the Supreme Court seeking a writ of mandamus as "an action for a declaratory judgment." 390 S.C. 432, 435, 702 S.E.2d 369, 370 (2010) (citing S.C. Code Ann. §§ 15-53-30 and 130; *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) (holding the Supreme Court can render a declaratory judgment when a

justiciable controversy setting legal rights of parties exists)).[2] Appellants, therefore, do not have a basis for alleging the Court acted like a trial court when it always had the authority—whether in its original jurisdiction or in its appellate jurisdiction—to issue a declaratory judgment. Moreover, there is no support for Appellants' assertion that the Court should now apply or borrow Rule 60, SCRCP, as a result. *See Wells Fargo Bank, N.A. v. Fallon Props. S.C.*, LLC, *supra*. at 215.

The Court should deny Appellants' motion.

3. <u>The Court should deny Appellants' motion on the merits because Appellants previously presented the same arguments in their Return to Petitions for Rehearing, and the Court rejected them.</u>[3]

Appellants' Motion for Relief from Judgment makes the same argument raised in their June Return to the Respondents' May 2022 Petition for Rehearing. That argument claimed the 2007/2010 version of OSA's Constitution and Canons (R. p. 6252-60) is different in several respects from the 1970 version of OSA's Constitution and Canons (R. p. 6246-51) and that change had to occur before 2006. Appellants' Return to Petition for Rehearing, p. 6-7 (Jun. 20, 2022). Appellants repeat this argument in this motion, but they now claim new evidence proves the change occurred in the 1990s. However, in this motion, Appellants now omit what they argued in June: the accession language in the 2007 Constitution and Canons was

[2] *Town of Hilton Head Island*, 307 S.C. 449, is a case where the Court reviewed a declaratory judgment in its appellate capacity, ultimately affirming the master-in-equity's order. *Id*. at 458.

[3] Although the Court has not yet requested a reply to Appellants' petition for rehearing, Old St. Andrew's, without waiving the right to make a reply if request, notes that this would also be a basis for denying the petition for rehearing.

present in the 1970 Constitution and Canons. *See* Appellants' Return to Pet. for Rehearing, p. 6 (June 20, 2022).

Under this argument, there are two reasons the motion should be denied. First, the issue raised by Appellants that OSA accession language in its constitution and canons existed in the 1990's is neither new evidence (though it is non-record evidence) nor is it determinative of the issue was there a present intent and present action to create a trust in the 1990's when the same accession language had been in the OSA constitution since 1970.[4]

Appellants made this claim in their June return: "The Record shows that Old St. Andrews had adopted the cited provisions [accession language in 2007/2010 OSA constitution and canons] no later than January 10, 1970, when it adopted a constitution and canons…." Appellants' Return to Petition for Rehearing, p. 6.

Appellants' argument does not change the fact that the 1992 or 1996 amendments to OSA's Constitution and Canons are irrelevant since accession language was present as early as the 1970 version of the Constitution and Canons (R. p. 6246) and that document is in the Record of Appeal. As this Court has found, parishes that added "adopted" or "acceded to" language to their governing documents

[4] There is evidence outside the record, that would show: (1) appellants knew of the 1990's amendments and their content; (2) appellants knew the amendments were not directed to any accession language; (3) appellants had a complete copy of the January 22, 2006 Constitution and Canons but provided an incomplete copy as a trial exhibit, D-OSA-8 and; (4) appellants represented to the trial court (J. Goodstein) that the post 2006 accession language had existed in the same form since 1970 until its removal in 2010. Appellants were repeatedly asked by Judge Dickson to submit for his review any and all records in support of their positions and should not be allowed to use this motion to change course and point to yet additional records.

prior to 1979 "did not take a present action coupled with the present intent to create a trust in favor of the National Church." *Protestant Episcopal Church II*, *24. OSA is, at most, in the same factual position as the four parishes who added accession language to their governing documents prior to 1979, the Church of the Holy Comforter, Sumter, The Vestry and Church Wardens of St. Jude's Church of Walterboro, Saint Luke's Church Hilton Head and Trinity Church of Myrtle Beach. *Protestant Episcopal Church II*, *24-25.

Second, Appellants claim that this Court should accept new evidence to support the argument made, and previously rejected by this Court, that changes to OSA's Constitution and Canons in the 1990's created a trust interest. Though outside the record on appeal, this is not "new evidence", as it has existed since at least June 2018 when Appellants drafted and had executed the affidavit they have now proffered. Appellants could have proffered this outside-the-record document, as they do now, in the four hearings before Judge Dickson (November 19, 2018, July 23, 2019, November 26, 2019, and February 27, 2020) or in their previous return where they squarely presented the issue.[5]

The Court should deny Appellants' motion.

CONCLUSION

[5] "Thus, one can conclude that the amendment occurred between 1970 and 1996." Appellants' Return to Pet. for Rehearing, p. 6, n.4.

For the reasons stated above, this Court should deny Appellants' Motion for Relief from Judgment.

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