

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

S.C. SUPREME COURT

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 Church of the Holy Cross, Stateburg (“Holy Cross”), submits the following in return pursuant to Rule 240(e).¹

1. **Appellants’ motion should be denied because relief from judgment as set forth in 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

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, Holy Cross is prepared to respond to Appellant arguments and assertions and reserves its right to do so.

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.

Appellants acknowledge as much in their motion. They acknowledge the relief they seek is more properly sought from a trial, not appellate, court. (Appellants’ Motion for Relief from Judgment, p. 2). Appellants offer no authority to support their contention that Rule 60, SCRCP is applicable.

The Court should deny Appellants’ motion.

2. **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.**

In order 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 what Appellants call a “declaratory judgment.” *Id.* There are two problems with this claim. 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 Holy Cross 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. There is nothing declaratory about its ruling.

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, SCRPC applicable.

Holy Cross does not concede that the Court issued a declaratory judgment in this matter. *See Arg. 2.b.* 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, SCRPC, 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. **The Court should deny Appellants’ motion on the merits because Appellants already presented the same arguments in their Return to Petitions for Rehearing, and the Court rejected them.**³

Appellants are re-hashing the same arguments previously made in the Return to Petitions for Rehearing they filed on June 20, 2022, and this Court rejected in *Protestant Episcopal Church II*. Their Motion does not present “new” evidence; nor does it argue anything that could not have been reasonably argued in their June 20th Return.

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, Holy Cross, without waiving the right to make a reply if requested, notes that this would also be a basis for denying the petition for rehearing.

a. It's the same argument Appellants already made.

In their Motion for Relief from Judgment, Appellants argued (by inaccurately citing evidence in the record) that Holy Cross had bylaws pre-dating 2011, erroneously referencing the bylaws from 1980. Thus, their argument goes, Holy Cross had acceded before 2006. They've already made this argument and had it rejected.

Here is what Appellants previously argued in their Return to Petitions filed on June 20, 2022.

The Court cited portions of Holy Cross' 2011 bylaws (R. app. 6446, 6448) in support of its finding accession. *Protestant Episcopal Church II*, at *53. The bylaws were amended in 2011 (although final approval may not have occurred until 2013). ([HCS-11] R. app. 6446, 6457). However, the changes were unrelated to the portions cited by the Court (R. p. 6457), demonstrating that the accession language predated 2011. In fact, the identical language was contained within Holy Cross's bylaws as early as 1980. (R. p. 8912). Therefore, Holy Cross did accede to TEC's and TECSC's canons before 2006.

(Appellants' Return to Petitions for Rehearing, p. 5).

Here is Appellants' argument in their current motion.

In section III.B.viii. of its Re-filed Opinion...and in the Opinion's Addendum...the Court cited Holy Cross' Bylaws, which were amended at its annual parish meeting on January 23, 2011. (Trial Exhibit HCS-11; R. p. 6446). The Court held that [the bylaws in] Exhibit HCS-11 constituted accession to the Dennis Canon and the Diocesan Canon. Re-filed *Protestant Episcopal Church II*, at 22.

Clearly, Holy Cross' Bylaws existed before January 23, 2011, because they were simply amended rather than created at that time. The questions, therefore, are whether the amendments adopted at that annual parish meeting included addition of the language [of accession] or whether that language predated that meeting... .

(Appellants' Motion for Relief from Judgment, p. 9).

Appellants argue the same thing, cite the same portions of the Record on Appeal, and draw the same incorrect conclusions.

Holy Cross previously responded to this argument. (*See Reply to Return to Petitions for Rehearing*, at p. 5-6.).

Moreover, the Court already rejected Appellants' argument. In its re-filed opinion, the Court ruled:

The primary issue before the Court today, however, is the first question: whether the 2017 Court made a final decision as to all real property owned by the twenty-nine Parishes. We hold it did not. Thus, we proceed to review the merits of the circuit court's 2020 Parish by Parish determination as to which entity owns the disputed property. ... As to some Parishes, we hold the circuit court correctly ruled the individual Parish retained ownership of its property. As to other Parishes, we hold those Parishes created a trust in favor of the National Church and its diocese, now the Associated Diocese. **For those Parishes that created a trust before 2006, we hold the trust is irrevocable. We hold two Parishes created a revocable trust and took the necessary steps for revocation.**

* * *

Two Parishes—the Church of the Holy Cross, Stateburg and the Vestries and Church Wardens of the Parish of St. Andrew, Charleston—took the actions we hold amount to accession *after* January 1, 2006. ... **Both of these Parishes amended their respective governing documents with approval from their congregations after 2011 to remove the accession language.** Therefore, the following Parishes created revocable trusts after January 1, 2006, and revoked the trusts in compliance with South Carolina trust law:

- The Church of the Holy Cross, Stateburg

Protestant Episcopal Church II, at 6, 26-27 (emphasis added).

The Court should deny Appellants' motion.

b. Appellants do not present new evidence or argue anything they could not have previously argued.

Appellants have neither presented new evidence nor established that additional evidence exists. All they have done is offer a lawyer's argument in the negative as somehow proof in the positive, claiming an absence of a reference in meeting minutes regarding 2011 amendments is proof that a reference in pre-2011 minutes must exist. (Appellants' Motion for Relief from Judgment, pp. 8-10). Besides proving nothing, this argument fails for two reasons.

The first reason the argument fails is Appellants, despite attaching exhibits to their motion, do not actually present new evidence. The exhibits are already in, or could have been included in, the Record. What's more, they do not establish or support the arguments Appellants put forward; they simply re-hash an already rejected argument and/or make a circular proof in the negative argument, as discussed above. To the extent Appellants did not include necessary evidence in the record this motion should be denied.

The second reason the argument fails is there is no new evidence to be obtained from conducting further proceedings. Thorough and extensive discovery was conducted nine years ago. To now suggest it is incomplete is untimely.

The Court should deny Appellants' motion.

c. Appellants do not argue anything they could not have previously argued.

On June 7, 2022, the Court directed briefing on (1) revocation based on S.C. Code § 62-7-602(a) and (2) the existence of accession language in bylaws or constitutions prior to 1979. Appellants briefed these issues in their Return to Petitions for Rehearing filed on June 20, 2022. As discussed above, Appellants argued for a finding of accession language prior to 2011 and cited the same references in the Record on Appeal cited in their current motion for relief from judgment.⁴ Appellants had the benefit of reading Holy Cross' argument in its Petition for Rehearing, filed on May 5, 2022, that the bylaws established a revocable trust in 2011 (including the benefit of citations to the Record on Appeal that Appellants then cited in their reply and their current motion). Appellants have already had more than one opportunity to argue the claims they are making in the Motion for Relief from Judgment, and never did.

The Court should deny Appellants' motion.

CONCLUSION

For the reasons stated above, Respondent Holy Cross respectfully prays this Court deny Appellants' Motion for Relief from Judgment.

[SIGNATURE PAGE TO FOLLOW]

⁴ Appellants even titled the section in which they made this argument "Pre-2006 evidence of accession to the Dennis Canon and Diocesan Canon." (Return to Petitions for Rehearing, p. 4.).

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