THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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 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.

REPLY TO RETURNS TO MOTION FOR RELIEF FROM JUDGMENT

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1. Introduction.

Pursuant to Rule 240(f), SCACR, Appellants hereby reply to the Returns to Motion for Relief from Judgment filed by Respondents The Vestries and Church Wardens of the Parish of St. Andrew, Charleston ("Old St. Andrew's") and The Church of the Holy Cross, Stateburg ("Holy Cross"). Because the Returns largely overlap in their arguments, Appellants are submitting one Reply in response to both Returns but, where necessary, have also responded specifically to each Return.

2. This Court's power to grant relief from its judgment.

For the first time in this lengthy litigation, this Court ruled on the revocability of the trusts that Old St. Andrew's and Holy Cross granted in favor of Appellants.[1] Old St. Andrew's and Holy Cross argue in sections 1 and 2 of their Returns that this Court's ruling was not in the nature of a declaratory judgment and, further, that this Court lacks authority to grant relief from its ruling to the extent it is a judgment.

Revocability was not litigated in the Circuit Court, so it made no ruling on that issue. Rather, the Circuit Court found that Old St. Andrew's and Holy Cross had *not* created trusts in favor of Appellants. Therefore, it had no reason to reach the issue of whether those trusts were revocable. This Court addressed the revocability question for the first time and only after it reversed the Circuit Court's ruling that Old St. Andrew's and Holy Cross did not create trusts. In

[1] Appellants understood this issue was *res judicata* based on the Court's ruling in 2017. (Re-filed Opinion No. 28095, p. 25 ("the trusts in this case, based on express accession to the Dennis Canon, are irrevocable.") (citing *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 251, 806 S.E.2d 82, 103 (2017)). However, the Court revisited that topic with respect to Old St. Andrew's and Holy Cross because the 2017 Opinion "did not consider the applicability of subsection 62-7-602(a) of the South Carolina Code (2022)." (Re-filed Opinion No. 28095, p. 25). Of course, the Circuit Court did not consider whether that statute was applicable and the issue was not a subject of Appellants' appeal as there was no Circuit Court ruling on it.

doing so, this Court expressly opted not to remand that issue to the Circuit Court (Re-filed Opinion No. 28095, p. 6) and engaged in its own fact-finding regarding revocability despite the lack of a developed trial court record on that subject.

As such, this Court's ruling on revocability was neither an affirmance nor a reversal of the Circuit Court. It was an original ruling. Its ruling was in the nature of a judgment; otherwise, the Circuit Court would not be able to enforce the ruling following remittitur. It was not a judgment for monetary damages or a reversal of same. It was a declaration of the parties' rights regarding the nature of the subject trusts – a fact that is clear not only from the character of the Court's ruling but also from the nature of this action.[2]

If the Circuit Court had undertaken the same inquiry and made a ruling, procedural due process would have afforded Appellants a full and fair hearing with an opportunity to introduce evidence on the issue of revocability, as well as the ability to seek relief from the Circuit Court's judgment for any of the reasons set forth in Rule 60, SCRCP. If this Court is to make an initial ruling on revocability as set forth in its Re-filed Opinion, then it should afford the parties the same rights as they would have had if the Circuit Court had done so, whether relief from judgment is characterized as Rule 60 relief or simply relief in the inherent power of the Court via its original jurisdiction or otherwise. *See* Flanagan, *South Carolina Civil Procedure* § 60.B (2014) (referring to Rule 60(b) as "an *inherent* power of courts [that] does not affect the stability of judgments because the correction makes the judgment accurate" (emphasis added)); *see also United States v. Jerry,* 487 F.2d 600, 604 (3d Cir. 1973) ("[T]he power to grant relief from erroneous interlocutory

[2] In their Second Amended Complaint, Old St. Andrew's and Holy Cross stated they were "bring[ing] this action against the Defendant [sic] seeking a declaratory judgment pursuant to §§ 15-53-10 *et seq*. of the South Carolina Code of Laws (1976) that they are the sole owners of their respective real and personal property." (R. p. 355).

orders, exercised in justice and good conscience, has long been recognized as within the plenary power of courts until entry of final judgment….").

Appellants recognize the possibility the Court may consider the revocability/revocation issue as an "additional sustaining ground" for affirming the Circuit Court, as permitted by Rule 220(c), SCACR. In other words, the Circuit Court ruled there was no trust in favor of Appellants over Old St. Andrew's' and Holy Cross' properties and the effect of its revocability/revocation ruling is to sustain that conclusion on other grounds appearing in the record. Appellants submit such an approach would be contrary to the policies and goals of the "additional sustaining ground" practice as formalized in Rule 220(c).

The watershed case on this topic is *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). There, the Court stated:

> [A] respondent – the "winner" in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. …
>
> The appellate court may review respondent's additional reasons and, *if convinced it is proper and fair to do so*, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, *or when the court believes it would be unwise or unjust to do so in a particular case*. It is within the appellate court's discretion whether to address any additional sustaining grounds.
> …
> In clarifying the law, we do not mean to dilute the important principle that all parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling. While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, *an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal.* Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419-21, 526 S.E.2d 716, 723-24 (2000) (emphasis added).

For an issue to be presented to a trial court for a ruling, due process requires, at a minimum: "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; (4) the right to confront and cross-examine witnesses." *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). Stated differently, "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). These concepts should inform the Court whether it would be "unfair," "unwise or unjust" under the present circumstances to apply the "additional sustaining ground" doctrine to make both an initial and final ruling on the revocability issue without providing for robust fact-finding on that issue and an opportunity for review, at least by the Court itself following its declaratory judgment.

The protracted and circuitous history of this case – and the Court's detailed and various rulings in it – need not be repeated here; however, they bear mentioning as evidence of this Court's persistent effort to reach the correct result with respect to all involved properties, real and personal. In that same spirit, the Court should not now resolve the revocability issue with regard to Old St. Andrew's and Holy Cross out of simple expedience when a full and fair opportunity to litigate that issue would insure due process to all parties and the best opportunity for a correct result.

3. Specific responses on the merits.

a. Old St. Andrew's.

Old St. Andrew's argues Appellants have conceded the "same accession language" is present in both its 1970 and 2007[3] Constitution and Canons. (Old St. Andrew's' Return, pp. 5-6).

[3] Old St. Andrew's continues to describe the later version of its Constitution and Canons as being from 2007. However, this is a misnomer. As Appellants have pointed out to the Court, the fact someone handwrote "2007" on their first page only shows, at best, a date when they were included in the Vestry Book. In fact, the document is missing its last two pages, where the date of adoption would have been listed.

In fact, the two versions differ, which demonstrates a specific intent to accede after 1970. (Appellants' Return to Petitions for Rehearing, p. 6).

Old St. Andrew's also argues Appellants could have submitted the new evidence on revocability earlier and that the Circuit Court "repeatedly asked" Appellants to do so. (Old St. Andrew's' Return, pp. 6-7). Actually, the opposite is true.

As Appellants noted in their Petition for Rehearing, when he heard this matter following the Court's remittitur, Judge Dickson agreed with Respondents' argument that he was limited to the record of the trial before Judge Goodstein. (Appellants' Petition for Rehearing, p. 6). Specifically, Respondents' attorney Mr. Runyan argued:

> This Court can determine, because it has the existing record and it can determine on the existing record without the necessity of an additional record whether each Parish agreed to the Dennis Canon and signed.

(R. p. 4833).

Similarly, the following exchange thereafter took place between Judge Dickson and Mr. Runyan:

> MR. RUNYAN: I think the cases that the Supreme Court has issued that have to do with what a trial court is supposed to do when it gets a case back say that the trial court cannot defer the issue to the Supreme Court by letting it go up again but must confront the evidence in front of it.
>
> THE COURT: And by confronting the evidence, we're talking about all of the evidence that was before Judge Goodstein during the trial?
>
> MR. RUNYAN: Yes, Your Honor.
>
> THE COURT: Okay. And is there any reason for me to have a hearing to have any new evidence?
>
> MR. RUNYAN: No, Your Honor. We think the record is closed on that.

(R. p. 4888).

A similar exchange occurred later:

> THE COURT: You're not suggesting that I – that I have any authority at all to take testimony, are you?
>
> MR. RUNYAN: No.
>
> THE COURT: Okay.
>
> . . .
>
> THE COURT: I don't see that I have been granted the authority to take testimony, you know.

(R. p. 4973-74). In a subsequent exchange with Appellants' counsel, Judge Dickson reiterated: "[Y]ou would agree, I cannot take any testimony on this case, right?" (R. p. 4980).

Thus, it is not accurate for Old St. Andrew's to contend now that Appellants could have introduced the new evidence in hearings before Judge Dickson. (Old St. Andrew's' Return, p. 7).

b. Holy Cross.

Holy Cross' Return misses the point of Appellants' Motion for Relief from Judgment. To reiterate, the existing record is insufficient to determine when Holy Cross acceded to the Dennis Canon. (Motion for Relief from Judgment, pp. 10-11). The Court can remedy this problem by vacating its existing judgment and allowing a full and fair hearing on that issue, insofar as it bears upon the question of revocability.

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Respectfully submitted,

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