

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Court Of Common Pleas

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No.: 2021-CP-20-00024, Circuit Court
Appeals Court Docket No.: 2022-000987

Saint Luke Baptist Church, Respondent,

v.

Rayshawn Terry.....Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT OVER APPELLANT’S ARGUMENT THAT DISCOVERY IS INCOMPLETE, WHEN APPELLANT DID NOT ADVANCE A GOOD REASON WHY THERE WAS INSUFFICIENT TIME UNDER THE FACTS OF THE CASE OR WHY ADDITIONAL DISCOVERY WOULD UNCOVER ADDITIONAL RELAVANT EVIDENCE.**
2. **WHETHER THE CIRCUIT COURT ERRED IN GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT AS TO RESPONDENT’S CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF, WHEN THE RECORD IN THIS CASE REFLECTS THAT APPELLANT’S REMOVAL WAS IN ACCORDANCE WITH THE CHURCH’S BYLAWS AND A MAJORITY VOTE OF THE CONGREGATION FAVORED APPELLANT’S REMOVAL?**
3. **WHETHER THE CIRCUIT COURT ERRED IN GRANTING THE RESPONDENT’S MOTION FOR SUMMARY JUDGMENT AS TO APPELLANT’S COUNTERCLAIMS FOR CONVERSION, BREACH OF CONTRACT/BREACH OF CONTRACT WITH FRAUDULENT INTENT, SLANDER/SLANDER *PER SE*, AND VIOLATION OF S.C. PAYMENT OF WAGES ACT, WHEN THE RECORD REFLECTS NO GENUINE ISSUES OF MATERIAL FACT THAT WOULD PRECLUDE SUMMARY JUDGMENT AS A METETR OF LAW AS TO THESE CLAIMS?**

STATEMENT OF THE CASE

1. Procedural History

Respondent Saint Luke Baptist Church (hereinafter, “Respondent” or “Church”) initiated this action on January 14, 2021, in the Court of Common Pleas for Fairfield County, seeking preliminary and permanent injunctive and declaratory relief, after Appellant Rayshawn Terry (hereinafter, “Appellant” or “Terry”), the Church’s former Pastor, continued to interfere with the Church’s operations following the Church’s vote to end his employment as pastor during a duly called meeting on December 26, 2020. (Summons and Complaint).

In order to maintain the status quo and prevent the Church from suffering irreparable injury, loss, and damage, the Church later filed its Motion for Temporary Injunction against

Terry on January 19, 2021, seeking an order restraining and enjoining Terry from interfering with the Church's operations. (Plaintiff's Motion for Temporary Injunction).

The Honorable Eugene Griffith, Jr. entered an order on February 4, 2021, granting the Church's Motion for Temporary Injunction. (Order for Temporary Injunction, dated 02/04/21). Shortly thereafter, on February 18, 2021, Terry filed his Answer, Affirmative Defenses and Counterclaims against the Church asserting four counterclaims against the Church, including claims for Conversion, Slander/Slander *Per Se*, Breach of Contract/Breach of Contract with Fraudulent Intent and Violation of the South Payment of Wages Act. On February 4, 2022, the Church filed a Motion for Summary Judgment as to its claims for Declaratory and Permanent Injunctive Relief and as to Terry's Counterclaims. A hearing on the Church's Motion for Summary Judgment was held on March 31, 2022, before the Honorable Brian M. Gibbons. Finding no genuine issues of material fact, the circuit court entered a Form 4 Order granting summary judgment in favor of the Church on April 6, 2022, and entered the Final Order on April 21, 2022. Terry filed a Motion to Alter or Amend Judgment on April 29, 2022, contesting the circuit court's April 21, 2022 Order. Following the June 2, 2022 hearing on Appellant's Motion to Alter or Amend Judgment, the circuit court entered an Order denying Appellant's Motion on June 14, 2022. Appellant subsequently filed a Notice of Appeal with this Court on July 14, 2022.

2. Statement of the Facts

Respondent operates as a Baptist Church in Winnsboro, South Carolina, established in 1893. As a Baptist Church, Respondent operates as a "congregational rule" Church in accordance with its Bylaws which govern the organization and have been in use since on or about May 23, 1984. (Church's Bylaws). The Church is led by a Pastor, appointed by the congregation on the recommendation of the Board of Deacons. (Id.) Terry was hired as Respondent's 11th Pastor

on or about August 1, 2019, following a recommendation of the Church Board of Deacons and a vote by the congregation, consistent with the Church's Bylaws. (Terry Depo. pp. 51-52; Affidavit of Kirk Chappell ("Chappell Aff.") ¶ 4).

The Church's Bylaws provide in part that, "[c]hurch conference meetings for business shall be held every quarter, three (3) months." Prior to December 2020, due in part to the COVID-19 pandemic, the Church had not held a quarterly business meeting, although members of the Board of Deacons sought such quarterly meetings through Terry. (Chappell Aff. ¶ 8). The Church's Bylaws provide in part that, at least twenty-five (25) members must be present for any meeting of the Church for which business is transacted.

The Church's Bylaws provide in part that, "[t]he Church shall select as many Deacons as the Pastor and Church deems necessary to serve the congregation." (emphasis added) (Church Bylaws). On December 20, 2020, the Board of Deacons convened a duly called meeting of the Saint Luke Board of Deacons, at which seven Deacons were present, constituting a majority. All Deacons present at this meeting voted unanimously to recommend the termination of employment of Terry to the Saint Luke Baptist Church congregation. (Chappell Aff. ¶¶ 5-6). In retaliation, on December 22, 2020, Terry, without any authorization by the Church's membership or Bylaws, attempted to unilaterally remove several of the Church's Deacons from the Board of Deacons. (Terry Letters to Deacons dated 12/22/20).

Following the Board of Deacons' December 20, 2020, meeting, a quarterly business meeting was scheduled for December 26, 2020. (Chappell Aff. ¶ 8). The Church's congregation received notice of the quarterly business meeting via telephone call and text message three days in advance of the meeting. (*Id.* at ¶ 9). Some members of the Church's congregation received notice of the December 26, 2020, meeting through the Church's GroupMe messages, which is a

messenger platform that Terry began customarily using to communicate to church members regarding Church business at the onset of the COVID-19 pandemic. (Affidavit of Odell McCants, Jr. (“McCants Aff.”) ¶ 6).

Prior to the meeting, Terry along with Barzelle Manning, the Director of Evangelism, actively discouraged members from attending the December 26, 2020 meeting. Specifically, Terry admits to discouraging congregational members from attending the December 26, 2020, meeting through GroupMe messages. (Terry Depo. p. 87, lines 6-10). Manning discouraged attendance at the December 26, 2020 meeting, by threatening disfellowship for those members that attended the duly called the meeting. (McCants Aff. ¶¶ 9-11).

Despite Terry’s and Manning’s efforts, on December 26, 2020, at a duly called meeting, 68 of the 125 members of the Church’s active membership, constituting a majority of the membership and exceeding a quorum, were present and accepted the recommendation of the Deacons. During this meeting, the congregation voted to remove Terry as Pastor. (Chappell Aff. ¶¶ 11,14; Affidavit of Mattie Ashford). To ensure the legitimacy of the vote, Rev. Dr. Preston Harrison, the Gethsemane Missionary Baptist Association Area Representative of the Midlands, served as the mediator for the vote taken during the December 26, 2020 meeting. (Chappell Aff. ¶¶ 12-13; Affidavit of Rev. Dr. Preston Harrison (“Harrison Aff.”) ¶ 2). As the mediator, Dr. Harrison certified the vote, and verified that the vote was carried out in accordance with the Church’s Bylaws. (Harrison Aff. ¶¶ 4-5).

After being removed from his position as Pastor of Saint Luke Baptist Church, Terry continued to contact members of the Church and financial institutions and held himself out as having the authority to act on behalf of the Church, as Terry disagreed with the Church’s decision to terminate his employment. (Terry Depo. p. 85, lines 10-13). Terry also removed church

officers' and staff members' access to the Church's online giving platform, thereby controlling sole access to the giving platform. Terry also advised church members to give only through the online platform, of which he had sole access. (Terry Depo. p. 86, lines 12 - p. 87, line 10; Chappell Aff. ¶ 18).

On December 30, 2020, the Church sent Terry a notice to cease and desist all attempts to act as Pastor of Saint Luke and on behalf of the Church. (Kirk Chappell Letter to Terry Dated 12/26/20.) On January 5, 2021, the Lancaster County Sheriff's Office personally served Terry with a letter notifying him of his removal as Pastor and a cease-and-desist letter. (Compl. ¶ 26). On January 9, 2021, Saint Luke Chairman of Deacons, made a report to the Fairfield County Sheriff's Office that Terry had requested that the Church's online giving platform remove all persons as account owners other than himself and that Terry has refused to relinquish control of the account. (Id. at 27).

Thereafter, Respondent initiated this action and obtained an Order for Temporary Injunction from Judge Eugene C. Griffith, Jr. The Order for Temporary Injunction included a provision as follows:

“Saint Luke Baptist Church shall have a meeting of the members of the Church, not to be held before February 15, 2021, but within 30 days of this Order, wherein the congregation shall vote on the matter of who will be the Pastor or Interim Pastor of the Church moving forward. The Defendant's attendance is prohibited. The meeting will be noticed by announcement each Sunday during Saint Luke Baptist Church service two (2) weeks prior to the date of the meeting and such other means ordinarily used by the Church.”

The Church timely held the meeting required by the order on February 20, 2022. (Meeting minutes and Meeting sign-in sheet). At this meeting, the congregation voted to appoint Rev. Jerome Boyd as Interim Pastor. (Id.) No person offered a motion to reinstate Terry as Pastor. (Id.)

STANDARD OF REVIEW

When resolving church disputes courts must apply the “neutral principles of law” analysis articulated in the South Carolina Supreme Court’s decisions in All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 685 S.E.2d 163 (2009) and Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996). South Carolina civil courts “have jurisdiction as to civil, contract, and property rights which are involved in a church controversy, even though they have no jurisdiction of ecclesiastical questions and controversies.” Pearson, 325 S.C. at 51, 478 S.E.2d at 852.

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED THE CHURCH’S MOTION FOR SUMMARY JUDGMENT AS DISCOVERY IS COMPLETE IN THIS CASE AND TERRY FAILED TO ADVANCE A GOOD REASON WHY SUMMARY JUDGMENT SHOULD BE DELAYED DUE TO INCOMPLETE DISCOVERY OR WHY ADDITIONAL DISCOVERY WOULD UNCOVER ADDITIONAL RELAVANT EVIDENCE.

In support of his Appeal, Terry claims that summary judgment is precluded because discovery is incomplete in this case. A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a

good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Dawkins v. Fields, 354 S.C. 58, 71 580 S.E.2d 433, 439-40 (2003). As more fully stated below, Terry has failed to make the requisite showing that summary judgment is precluded by incomplete discovery.

Terry has failed to show that the amount of time in which the parties engaged in discovery was insufficient. This case was filed on January 14, 2021, which was more than a year before the hearing on the Motion for Summary Judgment. The Church propounded written discovery requests to Terry on June 10, 2021, to which Terry did not complete responses until October 11, 2021¹. (See Plaintiff's First Set of Interrogatories to Defendant; Plaintiff's First Request for Production to Defendant; Defendant's Answers to Plaintiff's First Set of Requests for Production; Defendant's Answer's to Plaintiff's Interrogatories). Thereafter, the Church noticed Terry's deposition, which was taken on December 17, 2021.

Conversely, Terry did not propound initial discovery requests to the Church until October 21, 2021, to which the Church responded on November 24, 2021. (Plaintiff's Responses to Defendant's Request for Production of Documents and/or Things). While he now claims that some of the Church's written discovery responses were insufficient, Terry never submitted a Rule 11 letter to the Church, nor did he ever file a Motion to Compel. Terry did not serve any additional written discovery requests after the Church responded to Terry's initial discovery requests on November 24, 2021. Terry did not serve notice for any depositions of any potential witnesses, or indicate a desire to do so, until his response to the Church's Motion for Summary Judgment on March 28, 2021. The record further reflects that Terry was not actively pursuing

¹ Terry only provided a timely response to Plaintiff's First Set of Requests for Admissions on July 13, 2021.

discovery when the Church's summary judgment motion was filed on February 4, 2022, or when the motion was heard eight (8) weeks later on March 31, 2022.

Terry has also failed to establish the likelihood that further discovery will uncover relevant evidence and create a genuine issue of material fact. The only evidence which Terry insists will be revealed in additional discovery is a 'covenant contract.' This evidence does not exist, as Terry never entered into a 'covenant contract' with the Church.

Contrary to Terry's contentions, the Church has not suppressed any relevant documents requested by Terry in discovery nor did Terry raise the issue of spoliation prior to his response in opposition to the Church's Motion for Summary Judgment. Further, contrary to Terry's assertions, Terry's affidavit dated March 28, 2022, which he filed along with his Memo in Opposition to the Church's Motion for Summary Judgment, did not list items missing from the Church's answers to discovery. Thus, it is inappropriate to make such accusations in order to oppose the Motion for Summary Judgment. Thus, Terry has failed to show that further discovery would lead to additional relevant evidence that would create a genuine issue of fact.

Terry also argues that no scheduling order has been issued in this case, but Terry has not provided evidence that he requested a scheduling order nor is a scheduling order a prerequisite to filing a summary judgment motion. Additionally, Terry has not articulated a reason as to why approximately more than one (1) year was not adequate time to complete discovery.

The Court should find Terry's assertion that additional time is needed for discovery unpersuasive. See Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants "advanced no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the

motion for summary judgment"). Therefore, Terry has failed to make a sufficient showing that summary judgment is premature due to incomplete discovery. Accordingly, the Court should affirm the circuit court's order granting summary judgment to Respondent.

II. THE CIRCUIT COURT PROPERLY GRANTED THE CHURCH'S MOTION FOR SUMMARY JUDGMENT AS TO THE CHURCH'S CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF, BASED ON THE RECORD IN THIS CASE, WHICH REFLECTS THAT TERRY'S REMOVAL WAS IN ACCORDANCE WITH CHURCH'S BYLAWS AND A MAJORITY VOTE IN FAVOR OF TERRY'S REMOVAL.

A. The circuit court properly ruled that there exist no genuine issues of material fact that the Church acted within its authority, in compliance with the congregational rule standard, and in accordance with its Bylaws with regard to the removal of Terry.

The record in this case supports the circuit court's finding that the Church is entitled to summary judgment as a matter of law as to its claims for declaratory and injunctive relief because the Church ended its relationship with Terry in accordance with the Church's Bylaws and a majority vote of the membership in favor of Terry's removal.

Church disputes in South Carolina are resolved following the "neutral principles of law" approach articulated in All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C., 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). Following this approach, "where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so." All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C., 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009).

The dispute in this case involves a determination of whether the Church followed the "congregational rule" standard of a Baptist church in South Carolina, along with any applicable bylaws, in dismissing Rev. Rayshawn Terry as Pastor of the Church. "The law is clear that the majority controls the decisions of a congregational church." McCain v. Brightharp, 399 S.C. 240,

248. In Bowen v. Green, the South Carolina Supreme Court took judicial notice that, generally, Baptist churches are governed by their own congregations. Bowen v. Green, 275 S.C. at 435, 272 S.E.2d at 435. Therefore, "the burden [is] on the party departing from the usual Baptist convention to demonstrate by a preponderance of the evidence that its church had adopted an alternative means of church government and that it was following the procedure prescribed by that church." Id.

In a case involving the dismissal of a pastor in a Baptist church, the South Carolina Supreme Court held that the only questions it had the power to consider were: (1) whether the congregation met, and (2) whether the congregation disposed of the defendant as pastor. McCain v. Brightharp, 399 S.C. 240, 248-249 (citing Morris Street Baptist Church v. Dart, 67 S.C. 338, 343, 45 S.E.2d 753, 754 (1903)).

As a Baptist Church, Saint Luke is a "congregational rule" church in which the congregation is the final decision maker for the hiring and termination of the Church's Pastor. The Church's Bylaws provide in part that, "[c]hurch conference meetings for business shall be held every quarter, three (3) months." Respondent's Bylaws also provide in part that, at least twenty-five (25) members must be present for any meeting of the Church for which business would be transacted. (Bylaws). At a Church meeting held on December 26, 2020, in which a quorum of at least 25 members required by the Church's Bylaws for a lawful meeting was present, sixty-eight (68) members voted unanimously to terminate the services of Terry as Pastor. The total of 68 members voting to terminate Terry is also a majority of the Church's total membership of 125 members. (Chappell Aff. ¶11,14).

The record reflects, based on the testimony of Deacon Kirk Chappell (Deacon Chappell"), that the vote to end Terry's employment relationship occurred during a regular,

quarterly meeting on December 26, 2020. (See Affidavit of Kirk Chappell). There is no genuine issue of material fact as to whether this meeting was a quarterly meeting, as there is no other evidence in the record of another meeting being the quarterly meeting. Further, Terry's argument regarding Deacon's Chappell's status is of no moment as the Church's Bylaws do not require a quarterly meeting to be called by a specific officer. Therefore, pursuant to the Church's Bylaws, there was no requirement that either Terry, as Pastor, or Barzelle Manning, the Assistant Pastor, or Chairman of the Board of Deacons, call the meeting. (Church Bylaws). Thus, the Church was in compliance with its Bylaws in the calling of the meeting on December 26, 2020.

The circuit court properly gave deference to the Church's interpretation of the Bylaws, and its designation of the December 26, 2020, meeting as a quarterly meeting. The Church's designation is supported by the record as multiple witnesses testified that the December 26, 2020, meeting was in fact a quarterly business meeting, not a special called meeting.

Further, the circuit court correctly ruled that the Church complied with the congregational rule standard and its governing Bylaws. As a Baptist Church, Saint Luke is a "congregational rule" church in which the congregation is the final decision maker for the hiring and termination of the Church's Pastor. As mentioned above, the quarterly Church meeting held on December 26, 2020, in which a quorum of at least 25 members required by the Church's Bylaws for a lawful meeting was present, 68 members voted unanimously to terminate the services of Terry as Pastor. The total of 68 members voting to terminate Terry is also a majority of the Church's total membership of 125 members. (Chappell Aff. ¶¶ 9-11). This process is consistent with the process utilized to hire Terry. (Chappell Aff. ¶ 4).

The Church's Bylaws are silent as to how notice of Church meetings, or the manner in which voting, should occur. However, members were notified of the meeting in accordance with

a practice that had been used historically to call meetings. In particular, Church members were notified of the meeting via telephone call and/or text message using the Church's robocall service over a three-day period. (Chappell Aff. ¶ 9). Some members of the Church's congregation received notice of the December 26, 2020 meeting through the Church's GroupMe message account, which is a messenger platform that Terry began customarily using to communicate to church members regarding Church business at the onset of the COVID-19 pandemic. (McCants Aff. ¶ 6). Terry acknowledged notice of the meeting, as Terry and Assistant Pastor Manning contacted members in an attempt to prevent the meeting from taking place. (See Terry Depo. p. 87, lines 6-10; McCants Aff. ¶¶ 9-11).

Not only did the Church follow the Bylaws in the calling of the December 26, 2020, meeting, but the record reflects that the voting procedure also complied with the Bylaws. Rev. Dr. Preston Harrison, who is the Gethsemane Missionary Baptist Association Area Representative of the Midlands and Pastor of Blackjack Baptist Church, served as a neutral mediator at the December 26, 2020 meeting, to certify the vote and ensure that the vote was in accordance with the Gethsemane Missionary Baptist Association and the Church's Bylaws. He testified that the vote was carried out in accordance with the Church's Bylaws. (Harrison Aff. ¶¶ 4-5). Therefore, the record reflects that the vote taken at the December 26, 2020, meeting was valid and carried out in compliance with the Bylaws.

Terry attempts to argue that the vote was improper, although he was not present at this meeting to observe the procedure. (Terry Depo. p. 74, lines 12-22). However, Terry has failed offer any evidence in support of his assertion. Terry may not use the contradictions in his own testimony to create an issue of fact for the jury. See David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006); see also, Barwick v. Celotex Corp., 736 F.2d 946, 960 (4th

Cir. 1984). Therefore, the circuit court properly ruled that the Church acted within its authority and the removal of Terry as Pastor is valid pursuant to its Bylaws, and the congregational rule standard, as a matter of law.

The circuit court's ruling is also proper as the Church's congregation ratified its action to remove Terry in a Church meeting held on February 20, 2021, pursuant to the Order for Temporary Injunction from Judge Eugene C. Griffith, Jr. The Order for Temporary Injunction included a provision stating as follows:

“Saint Luke Baptist Church shall have a meeting of the members of the Church, not to be held before February 15, 2021, but within 30 days of this Order, wherein the congregation shall vote on the matter of who will be the Pastor or Interim Pastor of the Church moving forward. The Defendant's attendance is prohibited. The meeting will be noticed by announcement each Sunday during Saint Luke Baptist Church service two (2) weeks prior to the date of the meeting and such other means ordinarily used by the Church.

(Order for Temporary Injunction Dated 02/04/21). Pursuant to this provision, the Church timely held the meeting required by the order on February 20, 2022. (Meeting minutes; Meeting sign-in sheet). At this meeting, the congregation ratified its prior action to remove Terry as Pastor by voting to appoint Rev. Jerome Boyd as Interim Pastor. *Id.* No motion was made to reinstate Terry as Pastor. *Id.* Accordingly, this court-mandated meeting ratified the Church's action in removing Terry, and further supports the circuit court's ruling that there exist no genuine issues of material fact that the Church acted within its authority and in accordance with its Bylaws with regard to the removal of Terry. As such, the circuit court properly granted the Church declaratory relief declaring that the Church's removal of Terry was in accordance with the Church's Bylaws and a majority vote in favor of Terry's removal. The circuit court also properly granted the Church injunctive relief to prohibit further interference from Terry in the Church's business.

B. Terry's argument that the circuit court's factual findings with regard to the narrative of how Terry's removal occurred are inappropriate is not preserved

for appellate review because Terry failed to raise this issue in his Rule 59(e) Motion to Alter or Amend the Judgment.

In Terry's Initial Brief, he asserts that the circuit court's "Findings of Fact" related to Terry's removal in its April 21, 2022, Order is improper. Terry first raises this issue in his Initial Brief. However, because Terry failed to include this argument in his SCRCR Rule 59(e) motion to allow the circuit court to rule on this issue, this issue is not preserved for appellate review. See Rule 59(e), SCRCR; see also Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appellate review. It must have been raised to and ruled upon by the trial court to be preserved for appellate review... Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error".) Accordingly, Terry's argument that the circuit court's factual findings are improper constitutes an issue that has not been properly preserved for appellate review, and should therefore not be addressed by this Court.

III. THE CIRCUIT COURT PROPERLY GRANTED THE CHURCH'S MOTION FOR SUMMARY JUDGMENT AS TO TERRY'S COUNTERCLAIMS.

Based on the record in this case, the circuit court made no error in ruling that all of Terry's Counterclaims fail as a matter of law.

A. The circuit court properly ruled that no genuine issues of material fact exist with regards to Terry's counterclaim for conversion.

The circuit court properly ruled that Terry's conversion claim fails as a matter of law because Terry cannot satisfy the requisite elements of his claim. Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); Castell v.

Stephenson Fin. Co., 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964). Terry failed to establish that the Church's staff and/or members assumed any responsibility for any of the items that he allegedly brought to the church. In fact, Terry admitted in his deposition that no one at the Church took responsibility for or took any ownership over any items allegedly left by him. (See Terry Depo. p. 65, lines 10-23). Without a wrongful detention of Terry's belongings, there can be no conversion. See Castell v. Stephenson Fin. Co., 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964) ("Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention").

Further, the circuit court's ruling that Terry's conversion claim fails as a matter of law is supported by the fact that the Church provided Terry an opportunity to collect all of his belongings, but Terry failed to retrieve all of them, thereby abandoning such items. (See Kirk Chappell Letter dated January 5, 2021). Moreover, when asked about any remaining items left at the Church, Terry could not identify those items with any specificity to allow the Church to identify and return them. (See Terry Depo. p. 64, lines 14-25). Therefore, the circuit court made no error in ruling that Terry's counterclaim for conversion fails as a matter of law as Terry cannot prove that the Church wrongfully exercised ownership of any of Terry's property.

B. The circuit court properly ruled that Terry's contract claims fail as a matter of law as the record reflects that no valid contract exists between the parties.

The circuit court properly ruled that Terry's contract claims fail as a matter of law, based on the record, as Terry cannot satisfy the requisite elements of his claims. To establish a breach of contract claim, Terry must show that he entered into an enforceable contract with Respondent. The elements required to establish a contract are an offer, acceptance, and valuable consideration.

Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771, 773 (1997) (citing Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins., Co., 313 S.C. 215, 437 S.E.2d 122 (1993)).

The record reflects that Terry never entered into an enforceable contract with the Church for employment. In fact, Terry admits in his deposition that he did not work for the Church under an employment contract at all; however, Terry insists that he worked under a “covenant contract.” (Terry Depo. p. 62, lines 19- p. 63 line 1). Despite this assertion, Terry has not produced any evidence to support the existence of the alleged “covenant contract”, aside from his own vague testimony. Terry admitted that he has not produced any evidence of this “covenant contract.” (Terry Depo. p. 91, lines 7-22). No purported covenant contract has been produced, because no such document exists. Moreover, Terry’s testimony is that the term of his employment was for an indefinite period which would have rendered the tenure “at-will” under South Carolina law. Thus, his tenure was subject to end at the discretion of either party. See Shealy v. Fowler, 182 S.C. 81, 188 S.E. 499, 1936) (“Under South Carolina law, if an employee is employed for an indefinite period of time, the employment relationship is considered to be “employment at will.”).

Terry testified that his purported ‘covenant contract’ indicated that he would be employed by the Church for an indefinite term, as it had no expiration date. (Terry Depo. pp. 63, lines 2- p. 64, lines13). Under South Carolina law, a contract for an indefinite term, falls within the Statute of Frauds as it is incapable of being performed within one year. The Statute of Frauds provides that a contract that cannot be performed within one year is unenforceable unless it is in writing and signed by the party against whom enforcement of the contract is sought. Springob v. Univ. of S.C., 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014) (“[T]he Statute of Frauds requires that a contract that cannot be performed within one year be in writing and signed by the parties.” (alteration in original)(citation omitted)).

For these reasons, there is no genuine issue of material fact regarding the existence of an enforceable contract. Therefore, the circuit court properly ruled that Terry's contract claims² fail as a matter of law.

C. The circuit court properly ruled that Terry's counterclaim for slander/ slander *per se* fails as a matter of law because the pleadings do not constitute slander as a matter of law.

Based on the record, the circuit court properly held that Terry's slander claims fail as a matter of law. A party asserting a claim of defamation must prove the following elements: "(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm." Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 302–03, 631 S.E.2d 286, 292 (Ct. App. 2006).

In his deposition, Terry testified under oath that the basis for his slander claim were the allegations of the Church's Complaint that suggest he stole funds. (See Terry Depo. p. 68, lines 25 - p. 70, line 24). During his deposition, Terry does not mention any other basis for his slander claim, and did not identify any statements made by any officials or staff members of the Church. However, in his Initial Brief, Terry makes a reference to his Memorandum in Opposition dated March 28, 2022, as affirmed by Affidavit dated March 28, 2022, which directly contradicts Terry's sworn deposition testimony by asserting that Terry heard from an individual named Brenda Anderson, that Kirk Chappell made the purported slanderous statement to members of the community. However, a contradictory statement made in a party's memorandum of law, even if affirmed by

² A valid claim for breach of contract accompanied by fraudulent act requires, as a threshold matter, the existence of a contract. Maro v. Lewis, 389 S.C. 216, 697 S.E.2d 684, 688 (S.C. Ct. App. 2010). Because Terry has failed to establish the existence of a contract that changed his at-will employment, Terry's cause of action for breach of contract accompanied by a fraudulent act also fails as a matter of law.

the party's affidavit, should not be allowed to create a sham issue of material of fact for purposes of summary judgment. See Cothran v. Brown, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004)(finding that a court may disregard a subsequent affidavit as a 'sham,' that is, as not creating an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement). Thus, the circuit court properly relied on Terry's sworn deposition testimony, that the basis for his slander claims were the allegations of the Complaint.

It is well settled under South Carolina law that allegations found in relevant pleadings, even if defamatory, are absolutely privileged. See McKesson & Robbins v. Newsome, 206 S.C. 269, 33 S.E.2d 585 (1945); Texas Co. v. C.W. Brewer & Co., 180 S.C. 325, 185 S.E. 623 (1936); Rodgers v. Wise, 193 S.C. 5, 7 S.E.2d 517 (1940) (holding that pleadings, although they may constitute libel on their own, are absolutely privileged if they are relevant and legitimately related to the issues and inquiry at trial). Therefore, based on Terry's sworn deposition testimony, the circuit court properly dismissed Terry's slander claim, as a matter of law, as Terry failed to satisfy the requisite elements of his claim for slander.

D. The Court properly ruled that Terry's counterclaim for Violation of the South Carolina Payment of Wages Act fails as a matter of law because the record reflects that Terry has been paid all wages owed to him.

Based on the record, the circuit court properly held that Terry's wage violation claim fails as a matter of law. The South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 41-10-110 (Supp. 2018), provides that when an employer fails to pay wages, an employee may recover an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. S.C. Code Ann. § 41-10-80(C).

In support of Terry's claim for a Payment of Wages Act violation, Terry alleges that

Respondent failed to pay his annual salary of \$41,000.00 in 2020. (Terry Depo. p. 84, lines 12-16). However, the record clearly reflects that the Church paid Terry all wages due to him in 2020. In fact, the Church paid Terry a gross amount of \$42,576.84, which includes his total salary, and also reflects an additional check paid to him in 2021, despite his termination on December 26, 2020. (Terry's Wage Report). In fact, the South Carolina Department of Labor, Licensing and Regulation (LLR) determined, based on its administrative investigation of Terry's wage complaint, that the Church did not violate the South Carolina Payment of Wages Act. (Investigator Lory Bellino Letter Dated 02/10/22).

In his appeal, Terry attempts to avoid his failure to provide evidence to establish his wage violation claim, by representing to the Court that the Church acted improperly in producing Terry's wage records. The Church acted properly in disclosing in a supplemental discovery response Terry's wage records as part of Terry's administrative file received from LLR. Moreover, the wage records and LLR's determination reflect that Terry was paid all of his wages in 2020. Therefore, based on the wage records, there exists no genuine issue of material fact with respect to this claim, and therefore, the circuit court properly dismissed Terry's wage violation claim.

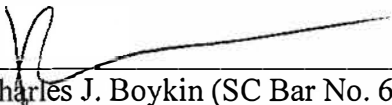
CONCLUSION

The circuit court, after viewing the undisputed facts in the light most favorable to the Appellant and applying established law to the undisputed facts, found that there exist no genuine issues of material fact relating to the Respondent's claims for declaratory and injunctive relief, and the Appellant's counterclaims. Thus, the circuit court correctly granted summary judgment in favor of the Respondent. Accordingly, the Respondent respectfully requests that this Court affirm the circuit court's ruling.

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Respectfully Submitted,

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January 3, 2023
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Court Of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No.: 2021-CP-20-00024, Circuit Court
Appellate Case No.: 2022-000987

Saint Luke Baptist Church Respondent,

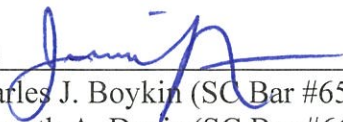
v.

Rayshawn Terry Appellant.

PROOF OF SERVICE

I certify that I have served the **INITIAL BRIEF OF RESPONDENT** on the counsel of record listed below, by electronic mail and U.S. Mail a copy of same on January 3, 2023, addressed to:

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