

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case Number: 2012-213070

James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church, Appellant,

v.

Cothran Manning Jr., Theodore Manning, Earlene W. Manning Respondents,

FINAL BRIEF OF THE RESPONDENTS

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April 15, 2013

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Facts 1

Standard of Review 2

Arguments 3

 I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE BOOK OF
 DISCIPLINE OF THE A.M.E. CHURCH DOES NOT CREATE A TRUST ON
 BEHALF OF THE AFRICAN METHODIST EPISCOPAL CHURCH,
 INC.....3

 II. THE TRIAL COURT DID NOT ERR IN FAILING TO HOLD ITS DECISION
 IN ABEYANCE UNTIL DEPOSITIONS WERE TAKEN.. 7

Conclusion 8

TABLE OF AUTHORITIES

CASES

All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina,
385 S.C. 428, 442, 685 S.E.2d 163, 170-71 (2009).....3, 4, 5, 6

Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 330, 730 S.E.2d 282,
285-86 (2012).....7

Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991)....2,3

Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722.....2

Pearson v. Church of God 325 S.C. at 53, 478 S.E.2d at 854.....5

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710, 96 S.Ct. 2372,
49 L.Ed.2d 151 (1976).....3

Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983).....2

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).....7

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 56.....2

STATEMENT OF ISSUES ON APPEAL

1. **THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE BOOK OF DISCIPLINE OF THE A.M.E. CHURCH DOES NOT CREATE A TRUST ON BEHALF OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC.**
2. **THE TRIAL COURT DID NOT ERR IN FAILING TO HOLD ITS DECISION IN ABEYANCE UNTIL DEPOSITIONS WERE TAKEN.**

STATEMENT OF THE CASE

This is an appeal of an Order denying Appellant's Motion to Alter or Amend from The Honorable Brooks Goldsmith dated August 31, 2012 and filed on September 4, 2012. Appellant filed their Motion to Alter or Amend on July 30, 2012 in response to the Order denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment from The Honorable Brooks Goldsmith dated and filed July 19, 2012.

FACTS

On July 12, 1873, one Tabitha Brown, conveyed 1.8 acres of land in Fairfield County to the "Trustees of Pine Grove Church" by general warranty deed. (Transcript p. 12 lns 20-22)(R. p. 94 lns 20-22). On May 14, 1984, an additional .37 acres was conveyed to Pine Grove Church by general warranty deed. (Transcript p. 13 lns 6-7)(R. p. 95 lns 6-7). These two conveyances make up the property located at 190 South Wind Drive in Ridgeway, South Carolina which the property in dispute in this appeal. (Transcript p. 13 lns 8-9)(R. p. 95 lns 8-9). This property in question has never been conveyed to the AME Church nor has a trust ever been set up wherein the property was held for the benefit of the AME Church. (Transcript p. 13 lns 10-12)(R. p. 95 lns 10-12). A current title search of the property located at 190 South Wind Drive in Ridgeway, South Carolina lists vested title in "Trustees of Pine Grove Church" (Pine Grove Title Search p. 1)(R. p. 67). On or about November 29, 2010, Respondents informed Appellant that all

members of Pine Grove Church had unanimously voted to terminate any and all affiliations with the AME Church. (Transcript p. 13 lns 12-16)(R. p. 95 lns 12-16). Since that time, religious services have continued without interruption. (Transcript p. 13 lns 16-17)(R. p. 95 lns 16-17).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure, Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722. “In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion.” Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983). The most comprehensive statement of the burden of both parties on a motion for summary judgment is set forth in Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991):

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by ‘showing’ – this is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party’s case.’ The moving party need not ‘support its motions with affidavits or other similar materials negating the opponent’s claim.

Once the moving party carried its initial burden, opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with ‘specific facts showing that there is genuine issue for trial.’ Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE BOOK OF DISCIPLINE OF THE A.M.E. CHURCH DOES NOT CREATE A TRUST ON BEHALF OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC.

South Carolina courts have made a clear decision on how courts are to decide disputes over property involving churches. All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina held that, “where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so.” 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). All Saints continues on to state that, “there is a general constitutional command, based in the First Amendment, mandating that civil courts “decide church ... disputes without resolving underlying controversies over religious doctrine.” *citing* Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 442, 685 S.E.2d 163, 170-71 (2009). In the case at hand, Appellant’s argument regarding an alleged trust rests solely on his contention that the Book of Discipline creates a trust through its language. (Appellant’s Initial Brief p. 7). Even in Appellant’s initial pleadings at the trial level, Appellant fails to allege the creation of a trust and only states that “under the book of Discipline, the Board of Trustees of a local church such as Pine Grove African Methodist Church holds the property in trust for the General Church.” (Appellant’s Summons and Complaint p. 2)(R. p. 8). Appellant’s failure to support his allegation of the creation of a trust with evidence based on South Carolina law supports the trial court’s decision to grant summary judgment in favor of the Respondents as there is no evidence present in the record supporting the existence of a trust. Appellant even concedes that the creation of a trust, and sole basis for the Appellant’s claim to this disputed property, is based in church doctrine alone. (Initial Brief of Appellant p.

12). Under the guidance of All Saints, it would be inappropriate for the court to allow Appellant to use The Book of Discipline as support for the trust in direct violation of the neutral principles of law and the First Amendment of the United States Constitution. Accordingly the trial court's grant of Respondents' motion for summary judgment and denial of Appellant's Motion to Alter or Amend should be affirmed.

Appellant, while conceding that South Carolina law commands the trial court to utilize the neutral principles of law doctrine, then attempts to cite to multiple cases from differing jurisdictions to support the argument that a court should examine the church documents in search of the existence of the trust. (Initial Brief of Appellant p. 7-8). The Respondents find it important to note that Appellant never cites to a South Carolina case which has allowed, under the neutral principle of law doctrine, examination of church documents to form a party's sole basis for the existence of trust. Appellant's argument thus ignores the main issue of the trial court's Order granting summary judgment which states that because the trial court is able to completely resolve the church dispute on neutral principles of law, no examination of Church doctrine is necessary. All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). As All Saints dictates, "church disputes that are resolved under the neutral principles of law approach do not turn on the single question of whether a church is congregational or hierarchical. Rather, the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." 385 S.C. 428, 444, 685 S.E.2d 163, 172 (2009). Using this analysis, the Court does not have to examine the issue of whether the parties submitted themselves to the authority of the church by connecting themselves to it or any reference to the Book of Discipline and the effect thereof, as the Court is able to decide this matter on neutral South Carolina law. In further

support of this contention, in discussing this exact issue of how to apply neutral principles of law, the Supreme Court of South Carolina reiterated the rule of Pearson v. Church of God stating:

(1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

Pearson v. Church of God 325 S.C. at 53, 478 S.E.2d at 854 as cited in All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 444-45, 685 S.E.2d 163, 172 (2009).

In the case at hand, the dispute between the parties is only civil in nature and, as such, does not allow the court to engage in the dispute over religious law or discipline. The Appellant's action is one of legal title to land, not disagreement over religious doctrine, and as such, the court is bound to apply South Carolina property law. All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). Even assuming arguendo that the Appellant was able to simply declare the Respondents' property was held in trust through the AME Church doctrine, there is absolutely no evidence in the record to support the contention that the AME ever held title to the disputed property. All Saints addresses this situation by unequivocally stating that:

It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 449, 685 S.E.2d 163, 174 (2009).

Applying this logic to the case at hand, as the record is completely devoid of evidence to support the Appellant ever having interest in the disputed property, the Appellant is unable to create a trust over the property simply by stating it to be so in the church documents. In fact the Appellant even conceded at the summary judgment hearing that the Respondents did have good title to the property. (Transcript p. 22 lns 14-21)(R. p. 104 lns 14-21). No argument was ever made, nor evidence presented to dispute the fact that the property in question was never owned or controlled by the AME Church. Appellant seemingly even conceded at the summary judgment hearing that prior to this action being filed, Appellant specifically told Respondents that the AME Church did not own the property and that the Respondents needed to deed the property to the AME Church. (Transcript p. 17 lns 16-25, p. 21 lns 13-17)(R. p. 99 lns 16-25, p. 103 lns 13-17). As such, the Appellant's arguments fail as a matter of law and the trial court's grant of Respondents' motion for summary judgment and denial of Appellant's Motion to Alter or Amend should be affirmed.

In addition to the previous arguments, Appellant attempts to bolster his argument for the existence of a trust by citing to equity and good conscience. (Initial Brief of Appellant p. 13-15). As Appellant failed to raise this issue and argument at the trial level, he is now prevented from raising it on appeal. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 330, 730 S.E.2d 282, 285-86 (2012). Appellant had an opportunity to present argument and evidence regarding constructive trusts at the trial court's hearing on the parties' motions for summary judgment and chose to waive such opportunity. As such, Appellant should be barred from presenting new issues not presented in

support of his appeal, and the trial court's grant of Respondents' motion for summary judgment and denial of Appellant's Motion to Alter or Amend should be affirmed.

II. THE TRIAL COURT DID NOT ERR IN FAILING TO HOLD ITS DECISION IN ABEYANCE UNTIL DEPOSITIONS WERE TAKEN.

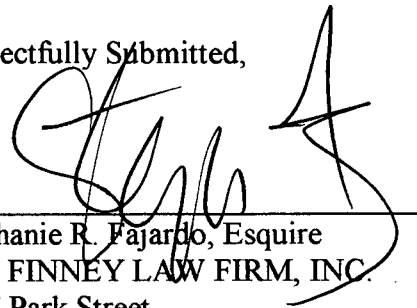
Although the Appellant proffered at the summary judgment hearing in this matter that there was no genuine issue of material fact, the Appellant now seeks to recant that statement in support of his position that deposition testimony was necessary to the trial judge's decision in this matter. (Initial Brief of Appellant p. 16). This argument fails as a matter of law in that the trial judge's grant of Respondents' motion for summary judgment was based on the lack of a deed or writing by the Respondents transferring interest in the disputed property to the Appellant – a legal argument, not a factual argument. (Order Granting Summary Judgment p. 3)(R. p. 4). There is no contention by the Appellant in his brief that deposition testimony would reveal any form of evidence related to the legal ownership of the property, only that the trial court did not have the benefit of deposition testimony in considering the issues on summary judgment. (Initial Brief of Appellant p. 16). There is additionally no support in the record that deposition testimony would have served any purpose in the trial court's consideration of the summary judgment motions. During the summary judgment hearing, when questioned regarding why counsel needed deposition testimony, Appellant stated that he wanted deposition testimony “to make sure that as far as that they've met these requirements of the Book of Discipline...” (Transcript p. 30 lns 8-10)(R. p. 112 lns 8-10). Appellant's failure to present evidence of how the lack of deposition testimony caused any prejudice to the Appellant causes this argument to fail as a matter of law. Accordingly the trial court's grant of Respondents' motion for summary judgment and denial of Appellant's Motion to Alter or Amend should be affirmed.

Respondents would also note that this matter was pending at the trial level for over a year and Appellant only sought to notice depositions following the continuation of the first summary judgment hearing date in this matter. Additionally, the first summary judgment hearing was continued from the original date of June 7, 2012 due to the failure of counsel for the Appellant to show up at the hearing. After being graciously granted a continuance of the summary judgment hearing until June 22, 2012, Appellant sought to take depositions of all named defendants in both this matter and the companion case of Glover v. Stevenson, et.al. on June 18, 2012 even though counsel for the Respondents informed Appellant that it was not possible to have all the depositions in one day due to scheduling issues. No other attempt was made by Appellant to garner deposition testimony, and discovery was fully exhausted by both parties through Interrogatories, Requests to Admit, and Requests to Produce prior to the trial court's hearing of the summary judgment motions. Based on this information, Respondents would respectfully request that the trial court's grant of Respondents' motion for summary judgment and denial of Appellant's Motion to Alter or Amend be affirmed.

CONCLUSION

As the trial judge correctly cited to the law of South Carolina regarding property disputes involving churches as well as the Appellant has failed to present any genuine issue of material fact that would have prevented the trial court from granting Respondents' motion for summary judgment, the trial court's decision should be affirmed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Stephanie R. Fajardo', written over a horizontal line.

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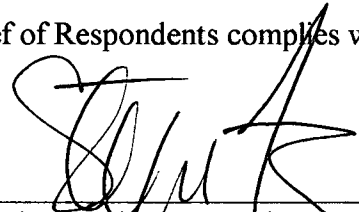
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CERTIFICATE OF COUNSEL FOR RESPONDENTS

Counsel for Respondents hereby certifies that the Final Brief of Respondents complies with Rule 208(b)(2), SCACR.



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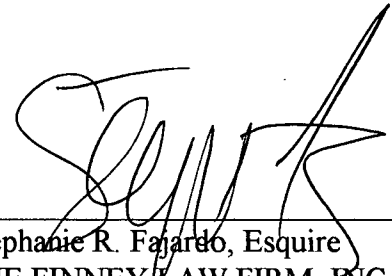
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PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondents** in the above matter on opposing counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, on April 15, 2013, addressed as follows:

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