

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Judge

Case No. 2010-CP-21-2932

Raymond Haselden, Sharon Haselden, Annie Raye Haselden, Faye Haselden
and The General Conference of the Free Will Baptist Church of the
Pentecostal Faith, Appellants

Vs.

New Hope Church, Randy Sharpe, Johnny Powell, Winston Haselden
and Donnis McDonald Respondents

INITIAL REPLY BRIEF OF APPELLANT

RECEIVED

JUL 18 2013

SC Court of Appeals

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL -1-
DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGEMENT
TO RESPONDENTS BECAUSE IT FAILED TO CONSIDER THE
GOVERNING DOCUMENT OF THE APPELLANT CONCRETION
SETTING FORTH THE RULES ADOPTED BY THE PARTIES
CREATING A RESTRICTION ON ALIENATION OF CHURCH
PROPERTY -1-

STATEMENT OF THE CASE -2-

STATEMENT OF FACTS -3-

ARGUMENT -5-

CONCLUSION -7-

TABLE OF AUTHORITIES

CASES

All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina, 385 S.C. 428, 685 S.E.2d 163 (2009) 7

Carnes v. Smith, 236 Ga. 30, 222 S.E.2d 322 (1976) 7

Jones v Wolf, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775 6,7

Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996) 6

STATEMENT OF ISSUES ON APPEAL

DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGEMENT TO RESPONDENTS BECAUSE IT FAILED TO CONSIDER THE GOVERNING DOCUMENT OF THE APPELLANT CONCRETION SETTING FORTH THE RULES ADOPTED BY THE PARTIES CREATING A RESTRICTION ON ALIENATION OF CHURCH PROPERTY

STATEMENT OF THE CASE

Appellants brought this Declaratory Judgment action by Summons and Complaint filed October 7, 2010. Appellants members of the congregation of New Hope Free Will Baptist Church of the Pentecostal Faith, who adhere to the Free Will Baptist Church of the Pentecostal Faith, and the General Conference of the Free Will Baptist Church of the Pentecostal Faith (Conference). Respondents are former members of the New Hope Baptist Church of the Pentecostal Faith who formed and new church New Hope Church and left the Conference. The suit if for a determination of the right to control the property of New Hope Baptist Church of the Pentecostal Faith and an accounting of it property.

Respondents filed an answer and counterclaim on May 18, 2011. The Answer and Counterclaim and included a general denial, and defenses of laches, estoppel, Statute of Frauds. The counterclaim sought a declaration that they were the true owner of the Property of New Hope Baptist Church of the Pentecostal Faith as it lawful successor. Respondents served a Reply on July 14, 2011.

The Respondents motion for summary judgment was heard on March 8, 2012 and granted by order entered March 27, 2012 and received by Respondents on March 28, 2012. Appellant moved to alter or amend the judgment on April 6, 2012. The motion to alter or amend was heard on August 13, 2012 and denied by order entered and received by Respondents on October 1, 2012.

The Notice of Appeal was served on October 29, 2012.

STATEMENT OF FACTS

The Conference was incorporated in 1926 as Free Will Baptist of South Carolina and changed its name to Free Will Baptist Church of the Pentecostal Faith in 1959. The oldest record of the Conference is the 1938 Discipline of the Wilmington and South Carolina Conference of the Free Will Baptist Denomination. The Discipline provided that the Annual Conference

Each local Church is a distinct and independent organization, with full authority to manage its own internal affairs, elect its officers, receive, dismiss, discipline, and exclude members. But this principle of the independence of each Church is not held as a law of isolation; on the contrary, Churches conveniently situated associate and cooperate in all things which tend to advance the common cause. Councils are, therefore, called in the organization of a Church and the settlement of serious difficulties. On the same principles, the Churches meet by delegation in the Annual Conferences, etc.

The Annual Conference being the highest tribunal, shall have final jurisdiction over the local churches

New Hope Church begun around 1907 and joined the Conference in 1946. The 1948 minutes of the General Conference show that New Hope sent delegates to participate in the governance of the Conference. (Document 2 page 260 By 1961 the Conference had amended its Discipline to provide that Church Trustees be prohibited from diverting property from the use of the Free Will Baptist Church of the Pentecostal Faith. (Document 7 p. 132) That provision was part of the 2007 Discipline of the Conference at the time of this dispute. (Document 1 p. 12)

In 2003, New Hope Free Will Baptist Church of the Pentecostal Faith incorporated telling its members that the purpose of the incorporation was to shield its members from personal liability for actions of the Church. In December 2009 the Conference received a letter from attorney John M. Prosser Jr. on behalf of New Hope Church stating that the New Hope Church had recently voted to break ties with the Conference. The real property of New Hope Baptist Church of the Pentecostal Faith was not deeded to the Corporation prior to the congregation breaking ties with the Conference. (Document 266)

ARGUMENT

THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGEMENT TO RESPONDENTS BECAUSE IT FAILED TO CONSIDER THE GOVERNING DOCUMENT OF THE APPELLANT CONCRETION SETTING FORTH THE RULES ADOPTED BY THE PARTIES CREATING A RESTRICTION ON ALIENATION OF CHURCH PROPERTY

May an religious association adopt rules to govern itself and its members?

Respondents argue that Appellant have not provided evidence that the Conference has authority over the property of the local congregation. In fact the Appellants have provided the Court with the 1938 Discipline, the 1961 Discipline and the 2007 Discipline of the Church. Hearing p, 11 lines 17 -21, p. 21 line 3 -5. Deposition of page. 87 line 21 to Page 89, line 11.

What is before the court it a congregation and its members that joined with other churches in an existing denomination that had rules governing the members and their relations. Those rules provided that the General Conference has the final authority over the members. That while the members and the church were participating in the General Conference they adopted a specific restriction on the alienation of church property. The Respondents now wish to disavow any authority of the General Conference. This court applying genreal principles of law should enforce the rules the parties themselves have adopted.

The law governing disputes involving church is set forth in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996)

(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 decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

478 S.C.45 at 52

In *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775, the

U.S. Supreme Court stated:

Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Here the parties have adopted rules of governance that this Court should recognize.

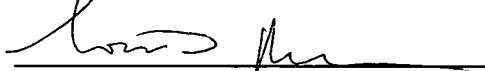
This case is clearly distinguishable from *All Saints* based on the rules the parties themselves consented to and adopted. The case before this court is

comparable to *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976) rather than *Jones supra*. because the parties have supplies the rules themselves. Contrary to the position of the Respondents, *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009) is devoid of any showing of authority of the Diocese over the All Saints Church. In fact the Diocese quit claimed any interest to All Saints Church and nothing presented to the court showed any retention of authority of the Diocese to adopt a canon binding over the All Saints Church. Here the General Conference retained ultimate authority over the members of the Domination and pursuant to that authority and it rules adopted the restriction of alienation that is the heart of this case.

CONCLUSION

Viewing the facts in the light most favorable to Appellants as the non moving parties the Trial Court erred in granting summary judgment to Respondents. The members of this religious association had the freedom to create their own rules governing the church and the domination. They did so . The Respondents by joining the domination and participating in its governance consented to the rules and are now bound by them. The facts show that the Conference adopted rules restricting the alienation of church property from the use of the Conference and therefore summary judgment was improper.

Respectfully submitted



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July 14, 2013

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CERTIFICATE OF SERVICE

I certify that I have served the Appellants Initial Reply Brief on Respondent's
Attorney by depositing a copy of the same in the United States Mail, postage prepaid, on
July 15, 2013, addressed to the following address:

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