

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**RECEIVED**

**Jun 11 2024**

**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Charles B. Simmons, Jr., Master-in-Equity

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Opinion No. 2024-UP-126  
S.C. Ct. App. filed April 17, 2024

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Kenneth Curtis, Respondent,

V.

Cynthia Glenn, Petitioner

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PETITION FOR A WRIT OF CERTIORARI

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Cynthia-J: Glenn, Petitioner Sui Juris  
411 West Main Street, Unit 87  
Gray Court, South Carolina [29645]  
864-350-2830

Kenneth Curtis, Respondent  
113 Edwards Road  
Marietta, South Carolina 29630

## INDEX

<b>Questions Presented</b>	3
<b>Statement of the Case</b>	3
<b>Arguments</b>	6
Argument 1	6
1(a) Burial rites are 1st Amendment Freedom?	
1(b) Contract law can not forfeit religious rights.	10
1(c) Failures to fully dispose of all matter in the case continue to violate religious freedoms.	11
Argument 2	13
Burial grounds that have been open to the public hold a duty to the public.	
Argument 3	16
Lower courts can no longer resolve issues on appeal because the Court of Appeals created new orders that conflicted with the findings of two previous rulings.	
Argument 4	18
Res judica bars a rehearing when parties, evidence and the primary rights are the same.	
CONCLUSION	19

## QUESTIONS PRESENTED FOR REVIEW

1. Are burial rites and cemetery access a protected First Amendment Right recognized by the state of South Carolina? Did the Court of Appeals violate petitioner's Constitutional Right to Freedom of Religion by failing to offer a final resolution thus interfering with secluded gravesite mourning for her husband?
2. Can an unlicensed person/property claiming to be a natural burial ground that advertises to the public for ongoing burials also refuse to have standard grave visitation hours for the families/friends of those interred? Can that same burial ground deny access without cause or give unequal access at their digression?
3. Did the Court of Appeals err by restating Master-in-Equity orders in a manner that changed the meaning of the original order and contradicted the Summary Court orders?
4. Did the Court of Appeals err by vacating a portion of the Master-in-Equity order for res judicata but by affirming another portion when all parties, incidences and findings had already been decided in a first hearing? Did the Court of Appeals also err by affirming orders that did not have jurisdiction in the Court of Common Pleas because there was no appeal and the conditions of the complaint were outside of the Motion of Reference?

## STATEMENT OF THE CASE

Curtis v. Curtis case was presided over by Judge Charles B. Simmons in 2005. In this hearing, Curtis referred to the land as TOMAR (a combining of both his father and mother's names). A dispute existed between Curtis and his father as to ownership of 113 Edwards Road in Marietta, South Carolina. Because Curtis's mother is buried at #113, Simmons ruled that TOMAR had a

family cemetery. This was a lengthy trial resulting in a 26 page order signed by Charles B. Simmons on September 7, 2005.

In December 2018, following a contract between Kenneth Curtis and Glenn, Glenn's husband was buried on property often referred to as Saluda Rest located at 177 Edwards Road, which is also owned by Curtis. Subsequently, a dispute arose between the parties regarding the time and manner of Glenn's visitation to her husband's grave. Curtis filed a complaint in magistrate's court and Glenn filed for a restraining order. The magistrate's court filed its final order on January 15, 2020; the order, among other things, consolidated the two cases, found Curtis "has opened his property to the public for use as a cemetery. As a result, the Plaintiff owes a duty to the families of those buried in his cemetery" to allow them to visit their family member's graves. Specifically, as to Glenn's visitation, it ordered Curtis to set weekly visitation hours that Curtis was permitted to determine, "provided that the duration of the visitation should be at least six (6) consecutive hours," begin no later than 11:00 A.M. and end no earlier than 4:00 P.M., and it also provided Glenn "shall be allowed to access her husband's grave by vehicle," "be allowed to take tools with her to care for and maintain the grave site," and "enjoined [Curtis] from dumping horse manure on Defendant's husband's grave." It also ordered Curtis to file an action with the circuit court to determine the status of Saluda Rest as a cemetery. Finally, the order provided that if Curtis failed to file that action with the circuit court within thirty days of the date of the order, the visitation schedule provided "shall apply to all members of the public in addition to [Glenn]." This order was not appealed.

Curtis then filed a summons and complaint in circuit court against Glenn, seeking a declaratory judgment regarding whether he owns private property and "operates a private ministry, church, and/or religious organization and that [Glenn] must request and receive permission to enter [Curtis's] property," and seeking a ruling that Glenn is denied any access to the property pursuant to section 27-43-10 to -310 of the South Carolina Code (2007 & Supp. 2023). He also

alleged claims of breach of contract and abuse of process. The matter was referred to the master. Glenn answered, asserted counterclaims, and moved to dismiss the complaint in part, arguing a majority of the complaint, causes of action, and requests for relief were previously tried and a final judgment was issued and the only matter before the master was whether Saluda Rest was a cemetery. Following a hearing on the motion to dismiss, the master issued a Form 4 order, "rul[ing] that any issues that occurred between the parties prior to January 15, 2020 (the date of [the magistrate's court's o]rder) may not be re-litigated in this court. "Following a trial, the master filed the October 29, 2020 order. The October 2020 order found: (1) Glenn did not prove any elements of her counterclaims, (2) Curtis did not prove Glenn breached the contract nor that she brought forth legal proceedings with an ulterior purpose, (3) the determination of whether Saluda Rest is a church is beyond the master's jurisdiction, (4) Curtis owns the property in question AND that he owns private property (5) there are PROPERTIES known as Saluda Rest (6) one property is private (7) one property is not currently open to the public and (7) it had the jurisdiction to grant relief between the parties. The master also ordered (1) Glenn was entitled to visit her husband's grave with up to three people, (2) Glenn could visit any day between the hours of 8:00 A.M. and 8:00 P.M. so long as she provided twenty-four hours' notice, (3) provided for how Curtis should handle a request to visit if there was a legitimate and objective reason to not allow access, (4) provided for payment if damages should occur during Glenn's visit, (5) prohibited Curtis from placing a burial site within a certain distance of the path leading to Glenn's husband's grave site and required the path have sufficient room for an average sized vehicle, (6) ordered a mutual restraining order, prohibiting harassment that was punishable by fine of \$5,000 or jail time if violated, and (7) ordered that this order would supersede and overrule any previous orders or ruling related to these matters between Curtis and Glenn that are addressed herein—specifically the magistrate's court cases. Both during the trial and in her post-trial motion, Glenn argued to the court that the issues being presented and ruled on—save the ruling on whether the property at issue was a cemetery and what hours of

visitation Curtis was required to maintain—were not properly before the court because they had been decided by the magistrate's court.

Glenn appealed the Master-in-Equity ruling and South Carolina Court of Appeals issued Unpublished Opinion No. 2024-UP-126 on April 17, 2024. The Court of Appeals held that the doctrine of res judicata bars the re-litigation of the issues between Curtis and Glenn that were determined or could have been determined by the magistrate's court's January 15, 2020 order thus vacating the portions of the master's order that involve Glenn.

The Court of Appeals affirmed two issues that were contested by Glenn in a Motion for Rehearing on April 29, 2024: 1: *"Plaintiff owns the property subject to this action and that Plaintiff owns private property."* and 2: that the Master-in-Equity had the jurisdiction to grant relief between the parties. Unfortunately, the Court of Appeals misquoted the Master-in-Equity and restated the order to say, *"Saluda Rest is private property."*

In Motion for Rehearing, Glenn argued that (1)The Court of Appeals acted without authority and created new findings by restating the orders of the lower court, (2) res judicata should apply to the entire order because the cases shared the exact same boundaries, (3) the Court of Appeals's opinion does not create a final resolution and that (4) the issues on appeal are not resolved. The Motion for Rehearing was denied on May 21, 2024.

## **ARGUMENTS**

**Argument 1. Are burial rites and cemetery access a protected First Amendment Right recognized by the state of South Carolina? Did the Court of Appeals violate petitioner's Constitutional Right to Freedom of Religion by failing to offer a final resolution thus interfering with secluded gravesite mourning for her husband?**

**1(a)** Are burial rites and cemetery access a protected First Amendment Right recognized by the state of South Carolina?

Although recognized by the US Congress, Common Law and the high courts of many States, this petitioner can find no such case law protecting religious rights regarding the internment of our deceased in the South Carolina Supreme Court.

Interment and the caring for our dead is a religious right celebrated for many years, even generations, after the deceased have departed this world. South Carolina has a long history of preserving religious freedoms, "To preserve and foster this most cherished of freedoms, South Carolina and the federal government chose a constitutional prohibition against governmental interference with its citizens free exercise of religious belief," Knotts v. Williams SC Supreme Court 462 S.E.2d 288 (1995).

To the petitioner and much of mankind, interment rituals relate to an afterlife or final destination; choices that are painstakingly made to provide that our fallen may forever "Rest in Peace." We bury, mourn and remember our loved ones in a manner that elevates and respects their life and also pleases our sovereign creator. Equal access to visitation of these resting places as well as the protection and maintenance of the burial ground is, among other things, a practice of religious rights and thus constitutionally protected. "[I]t shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites", American Indian Religious Freedom Act, 92 Stat. 469, 42 U. S. C. § 1996 (1982 ed).

Regardless of the laws and rules relating to the ownership and control of real property, when a plot of ground is set apart for cemetery purposes, and burials are made in the land, the ground

changes its character in the minds and feelings of the community. "It assumes a sacred quality that overrides conveyancers' precedents and requires freedom from profanation until, by abandonment and removal of the bodies or by complete disintegration, there remains nothing to appeal to the emotions of the survivors." Humphreys v. Bennett Oil Corp., 1940, 195 La. 531, 197 So. 22.<sup>1</sup>

In A.F. Hutchinson Land Co., Inc. v. Whitehead Bros. Co., 218 A.D. 682, a New York court observed that land is dedicated as a cemetery by use of the property for cemetery purposes—the burial of human remains in or on the property. Such a dedication "is a privilege or a license, not only to bury the dead . . . , but also the right of the living to place monuments or suitable decorations over the graves of their dead as memorials, and to preserve and beautify the premises."

Courts across the United States have acknowledged for centuries that the kin of the deceased and, in some states, the general public, have the right to access burial places, even those located on private land, to maintain and protect the graves. Courts have the authority to protect these rights and acts of desecration, Beatty v. Kurtz: 27 U.S. 566 (1829)

"The creation and maintenance of cemeteries by churches as a legitimate extension of their ministry is further recognized by a statute and constitution in many states." Evangelical Lutheran Synod v. Hoehn, 355 Mo. 257, 196 S.W. (2d) 134 (1946). Without exception these states recognized that the three major legitimate concerns of a church were the holding of land for purposes of erecting a place of public worship, a parsonage and a cemetery. Sales v.

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<sup>1</sup> See, e.g., Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938) ("There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.");

Southern Trust Company, 182 Tenn. 270, 185 S.W. (2d) 623 (1945); Spradlin v. Wiman, 272 Ky. 724, 114 S.W. (2d) 111 (1938); Miller v. Ahrens, 150 F. 644 (W. Va. 1907); Regents of University of Maryland v. Trustees of Calvary ME Church South in the City of Baltimore, 104 Md. 635, 65 A. 398 (1906); Hamsher v. Hamsher, 132 Ill. 273, 23 N.E. 1123 (1890); Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E. (2d) 752 (1974).

Rituals of gravesites and burial rights are also recognized as a religious right in Ecclesiastical Law, “burial is above all the most fitting way to express faith and hope in the resurrection of the body,” Cf. Catechism of the Catholic Church, 2300. St. Augustine, De cura pro mortuis gerenda, 3, 5: CSEL 41, 627. “Tobias, the just, was praised for the merits he acquired in the sight of God for having buried the dead,” Cf. Tb 2:9; 12:12. And the Church considers the burial of the dead one of the corporal works of mercy. Cf. Catechism of the Catholic Church, 2300. Finally, the burial of the faithful departed in cemeteries or other sacred places encourages family members and the whole Christian community to pray for and remember the dead, while at the same time fostering the veneration of martyrs and saints. Ecclesiastical Law, Congregation for the Doctrine of the Faith.

“Sacred places are those which are designated for divine worship or for the burial of the faithful by a dedication or a blessing.” CODE OF CANON LAW PART III SACRED PLACES AND TIMES TITLE I: SACRED PLACES (Cann. 1205 - 1243) Can. 1205. “Particular law is to establish appropriate norms about the discipline to be observed in cemeteries, especially with regard to protecting and fostering their sacred character” Can. 1243.

As recently as 2014, the U.S. Congress amended the Protect Cemeteries Act to identify cemeteries as a right to religious freedom. Public Law 113-154, “(1) Cemeteries are sacred sites that are of great spiritual, cultural, and historical significance to many religious and ethnic groups. (2) Congress is committed to protecting and preserving the heritage and sacred sites of national, religious, and ethnic groups, which includes cemeteries ... (3) Cemeteries around the

world have and continue to be defaced or destroyed as a direct result of their affiliation with a particular religious or spiritual group. (4) Such attacks constitute an assault on the fundamental right to freedom of religion”.

As sacred grounds are a part of ritual practices of almost every religion, cemeteries and the families for which they represent deserve to be also protected in the great state of South Carolina.

**1(b)** Does contract law forfeit burial and religious rights of family members?

For the burial of the petitioner’s husband, only a sparse contract was offered by Curtis.

Although the contract would certainly be questioned under normal circumstances, during times of distress many details can be overlooked. The Glenn contract made no reference to visitation or the future rights of the family, however it mentioned policies having been explained but no written policies were presented at the time of the contract. Verbal explanations of grave visitation drastically differed from the only written “policies” the petitioner later found in a facebook “Frequently Asks Questions” post. This Facebook “policy” stated that 24 hours notice must be given before admittance, whereas the verbal explanation prior to contracting said that the cemetery was always open from dawn until dusk.

Evidence presented in court by Curtis revealed that his contracts have changed and that SR’s new contracts state that remains become “part of the property of Saluda Rest” suggesting an ownership of the remains. A statement on the FAQ post also states that access to the cemetery is only allowed until “plantings are established” suggesting that grass or weeds alone constitute an abandonment of the burial mound as opposed to “complete disintegration, [where] there remains nothing to appeal to the emotions of the survivors” Humphreys v. Bennett Oil Corporation, 195 La. 531, 197 So. 222, 229. Not Only do these “policies” contradict all

accepted definitions of cemetery maintenance and access, but they also seem to allow Curtis to force the family to abandon the burial grounds so that he can reclaim the land for another purpose even after dictating the “suggested donation” for services at the cemetery. As a reminder to the court, Curtis had to be barred from placing horse manure on the petitioners’ husbands’ grave in Summary Court, a tactic he uses to expedite the establishment of plantings.

The contracts are between SR and the next of kin, but these contracts do not account for the rights of the dead<sup>2</sup> nor the rights of friends, extended family and future generations. Even if contracts with SR had explicitly stated that burial upon SR would be considered abandonment, would it have been a legally binding contract since all stakeholders were not participants.

“[L]ife’s veneration of life does not end at the grave; death does not extinguish organized society’s reverence for human dignity or the law’s recognition of all aspects of life’s experience; nor does it diminish protection against life’s degradation,” Tachiona v. Mugabe, 234 F. Supp. 2d 401, 438 (S.D.N.Y. 2002).

**1(c)** Did the Court of Appeals violate petitioner’s Constitution Right to Freedom of Religion related to sacred burial ground rituals by its failure to offer a final resolution which will result in continued interference of secluded gravesite mourning for her husband?

The Court of Appeals Opinion statement does not offer a final resolution because it does not dismiss the entirety of the Common Pleas order, is vague and causes confusion that cannot be understood or implemented by a enforcement or regulation agencies.

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<sup>2</sup> At least four posthumous rights are longstanding and deeply rooted with origins that predate the ratification of the Fourteenth Amendment and the passage of Section 1983. These include the right to dignified interment, the right against undignified disturbance, the right to bodily integrity, and the right to transfer property. THE CONSTITUTION AFTER DEATH, Fred O. Smith, Jr.

The confusion created by the Court of Appeals' new order that SR is private property but without specification as to which property is private or the meaning of the term "private property" as it relates to this case is unreasonable and will continue to inhibit the petitioner's ability to visit her husband's grave.

Curtis seemed to believe that if his property was deemed to be private that it would negate the orders of the Summary Court and that he could forbid Glenn (or others) from cemetery access. Because of Curtis' belief that "private" land means that he can operate under S.C. Code of Laws SECTION 47-23-310 Cemeteries on Private Land, despite the findings of Summary Court that Curtis had opened his land to the public for burial, under 47-23-310, Glenn could be forced to again defend her ability to visit the cemetery without submitting a request in writing for each visit giving Curtis 30 days to answer each request. Thus far, every visit to the burial grounds by petitioner has been met with intrusion upon seclusion. Petitioner's family has been videotaped and images displayed publicly on social media, guard dogs were released leaving one family member to hide in a tree, petitioner has been met with firearms, her person was physically followed by "staff" and relentlessly observed without ever having one private moment with her husband's remains.

The designation of "private" without qualification places the cemetery in a vulnerable status that greatly diminishes its use as a sacred space by the petitioner, the families of 50+ decedents buried at SR as well as the families of members of the public who will be buried at SR in the future.

The distinction of "private" deserves an explanation as to its application regarding the cemetery because the concept of private land or a ruling of private land does not settle the matter before the court. Whereas Summary Court deemed that the land had been open for public use; a distinction must be made between "private" and "public" as to the use of the land.

Cemetery Protection Laws are not the "taking" of private property and whether Curtis owns land that is private is a moot issue. Curtis himself obtained and deeded a large tract of land in the

name of Saluda Rest f/b/o Kenneth Curtis with the intended purpose of burial which is currently the only activity of the property at 177 Edwards Rd. The graves are scattered as would be consistent with a nature burial preserve. Curtis himself designated the land and encompassed the entirety of the land with a cemetery.

The Summary Court found that Curtis had opened his land to the public and therefore owed a duty to the public. Public as it relates to Curtis' duty does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few," Black's Law 4th Edition. Public access does not negate any private ownership or constitute any takings of land.

In contrast to #177, 113 Edwards Rd is Curtis's home. This property was called TOMAR and is the focus of the Curtis v. Curtis case that was presided over by Judge Charles B. Simmons in 2005. Because Curtis's mother is buried at #113, Simmons ruled that TOMAR had a family cemetery. Other than the storage of caskets, #113 is separate from Saluda Rest Burial and Natural Preserve located at #177. However in Curtis v. Glenn, Curtis argued that both #113 and #177 were Saluda Rest. It was also discovered that Curtis had purchased a third plot of land on the same street that he deeded in the name of Saluda Rest to which the intended purpose is unknown.

The ambiguity of the phrase "Saluda Rest is private property" as stated by the Court of Appeals and the phrase, "Curtis owns private land" as stated by the Master-in-Equity without details of the intended meaning of these orders or the location of said "private property" is not a resolution that can be acted upon and leaves the parties subject to more legal actions and also restrains the petitioner from her religious freedom to visit her husband's remains as sacred ground.

**Argument 2. Can an unlicensed person/property claiming to be a natural burial ground that advertises to the public for ongoing burials also refuse to have standard grave**

**visitation hours for the families/friends of those interred? Can that same burial ground deny access without cause or give unequal access at their discretion?**

Curtis acquired a large tract of land at 177 Edwards Rd on 12/31/2012 and deeded it the name of Saluda Rest f/b/o Kenneth Curtis. He began to function under the name Saluda Rest Preserve Natural Burial & Ministries (SR) with public notice on Facebook. He also placed street signage detailing their services. He began interment, obtaining some bodies from the County Coroner, supposedly free of charge. He then obtained a tax exempt status as a cemetery and at some point began to offer caskets, funeral services and interment in exchange for money which he calls "suggested donation" with affixed minimal prices.

Curtis argued that his land was private and therefore he could deny access and that visitors must fill out a written notice for entry as required in S.C. Code 47-23-310 Cemeteries on Private Land, however "private" cemeteries in this statute apply to abandoned/retired cemeteries, cemeteries older than 1990 on non-contracted cemeteries. SR's continuance to sell burial services to the public disqualifies it as a private cemetery.

In 2002, the South Carolina Perpetual Care Cemetery Act was ratified. SECTION 40-8-20 states, "Cemeteries, burial grounds, and any agreement or contract which has for a purpose the furnishing or delivering of a person, property, or merchandise of any nature in connection with the final disposition of a dead human body, must be subject to sufficient regulation by the State to ensure that sound business practices are followed by all entities subject to this chapter." The Act continues on to section SECTION 40-8-200 which states: "The provisions of this chapter do not apply to governmental cemeteries, nonprofit cemeteries, church cemeteries, nature preserve cemeteries, or family burial grounds."

The exemptions to the Act are clearly defined by South Carolina Perpetual Care Cemetery Board in regulation 21-27. Among other things, prior approval of the Board is required for all licensing exemptions granted for a nature preserve cemetery. They must be owned by, or operated in conjunction with a government agency or a nonprofit conservation organization that is recognized by the Internal Revenue Service as a public charity, the conservation partner must have legally binding responsibility for perpetual stewardship of the land, have written policies for public access and establish an endowment fund. SR has fulfilled none of those requirements.

On January 15, 2020, Greenville County Summary Court deemed that SR had been open to the public and therefore Curtis owed a duty to the public. He was given 30 days to file with the Court of Common Pleas to determine if his land was a cemetery or he would have to give visitation access to the public one day each week. Curtis did not file for a determination.

The name "Saluda Rest Preserve Natural Burial & Ministries" is not neatly categorized within the definition of a Perpetual Care Cemetery or the regulations for Nature Preserve Exemption Requirements; however because SR does contract with members of the public and does not have the approval of the Cemetery Board, he does not have an exempt status.

Since Curtis failed in his duty to determine his status by properly filing in the Court of Common Pleas, and the Master-in-Equity accepted a deficient Complaint as the Motion of Reference, rulings were made upon relevant matters. Whereas The Court of Appeals did not clarify or resolve the issues; the duty now falls to the South Carolina State Supreme Court.

Without set times for gate opening, visitors are not given private and uninhibited opportunities to mourn in a truly sacred manner. It is the belief of this petitioner that SR is obligated to allow for private visits and the ability to maintain the graves to any family or concerned member of the

community that wishes to participate. At minimum, the cemetery should be opened one day a week as outlined by the North Greenville Summary Court order.

It has been established by Summary Court that the respondent opened his land to the public. Common Law doctrine provides that private property appropriated by the owner to a public use is thereby subjected to public regulation; therefore it was the courts duty to protect the public welfare by understanding and properly applying the Summary Court findings and Motion of Reference and to rule only upon the Saluda Rest lands as each one relates to a cemetery. (see GRANGER CASES (1877) Munn v. Illinois, 94 U.S. 113, Chicago, Burlington & Quincy Railroad Co. v. Iowa, 94 U.S. 155, Peik v. Chicago & Northwestern Railway Co., 94 U.S. 164). The leading common law case on this subject is Hines v. State.<sup>37</sup> In that case, the Tennessee Supreme Court, observed that: When land has been definitely appropriated to burial purposes, it cannot be conveyed or devised as other property, so as to interfere with the use and purposes to which it has been devoted. When once dedicated to burial purposes, and interments have there been made, the then owner holds the title to some extent in trust for the benefit of those entitled to burial in it, and the heir at law, devisee, or vendee takes the property subject to this trust. The right of burial extends to all the descendants of the owner who devoted the property to burial purposes, and they may exercise it when the necessity arises.

**Argument 3. Did the Court of Appeals err by restating Master-in-Equity orders in a manner that changed the meaning of the original order and contradicted the intended purpose of the Motion of Reference from Summary Court orders?**

The actual findings/rulings of the Master-in-Equity are much different than represented in the Court of Appeals opinion statement. In truth, the Master-in-Equity never states that Saluda Rest is Private Property. In contrast, the Master-in-Equity findings are the opposite.

By improperly stating, "Saluda Rest is Private Property," the Court of Appeals has taken it upon themselves to summarize the orders of the Master-in-Equity and in so doing they have created a distinctly new ruling and order. It is the duty of the court to correct mistakes; Inadvertence; excusable neglect; Fraud, etc.<sup>3</sup> Whereas, the matter can no longer be determined by a lower court because it was an error of the South Carolina Court of Appeals, it now becomes the jurisdiction of the Supreme Court.<sup>4</sup>

Although the Master-in-Equity concedes that there are multiple properties, he gives no clarify as to which one of the properties are subject to his orders, to which property the plaintiff owns that is private, or under which category he places the property with the driveway that leads to the cemetery that has been opened to the public in which the petitioner's husband is buried, and most importantly, the status of SR as a cemetery.

The Master-in-Equity's use of both the singular and the plural form of the word "property" verifies that there are more than one location, just as there are more than one function. The lack of clarity in the use of both of the words "property" and "properties" makes it impossible to distinguish between the property of reference and other properties or organizations.

The Master-in-Equity failed in their duties and the Court of Appeals does not have the authority to make new rulings or to create new orders; to do so would interfere with the appellant's rights to a fair and impartial hearing.

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<sup>3</sup> RULE 60 (b) Rules of Civil Procedure RELIEF FROM JUDGMENT OR ORDER

<sup>4</sup> RULE 245 SCACR ORIGINAL JURISDICTION OF THE SUPREME COURT

**Argument 4. Did the Court of Appeals err by vacating a portion of the Master-in-Equity order for res judicata but by affirming another portion when all parties, incidences and findings had already been decided in a first hearing? Did the Court of Appeals also err by affirming orders that did not have jurisdiction in the Court of Common Pleas because there was no appeal and the conditions of the complaint were outside of the Motion of Reference?**

If the court vacates a portion of this case per res judicata, then the entirety of the order must be vacated: 1) The parties are the same. 2) The evidence was the same. 3) the same primary right was held and 4) the claims arose from the same transaction. (quoting James F. Flanagan, South Carolina Civil Procedure 649-50 (2d ed. 1996)).

The matter of the property having been opened to the public is also already decided by the rulings of magistrate court. Those findings were not appealed and are therefore outside of the jurisdiction of the Master-in-Equity to overturn.

In addition, the magistrate court had also conducted a Rule to Show Cause hearing regarding the open grave placed in the entrance to the access road to 177 Edwards Rd. So there were absolutely no new conflicts for the Master-in-Equity to rule upon. See *Zinn v. CFI Sales & Mktg., Ltd.*, 415 S.C. 93, 105, 780 S.E.2d 611, 617 (Ct. App. 2015) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999))). See *id.* at 105, 780 S.E.2d at 618 ("Res Judicata is shown if (1) the identities of the parties is the same as a prior litigation, (2) the subject matter is the same as in the prior litigation; and (3) there was a prior adjudication of

the issue by a court of competent jurisdiction." (quoting Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994)).

The findings of the two courts are the exact opposite and the petitioner should not have been forced to defend her position twice in court and now again before the state Supreme Court. .

Findings of Summary Court: *"Plaintiff has opened his property to the public."*

Findings of Mater-in-Equity: *"The plaintiff's property is not open to the general public."*

The disputed portions of the order being affirmed by the Court of Appeals are (1) "The plaintiff's property is not open to the general public" which was misquoted by the Court of Appeals Opinion statement: "Saluda Rest is private property," and (2) Master-in-Equity had the jurisdiction to grant relief between the parties.

Since the respondent did not properly file the Motion in Reference in the Court of Common Pleas, the Master-in-Equity did not clarify or rule upon the proper issue before the court and all other matters of the case have already been litigated (or could have been litigated); the rulings violate Res Judicata. In truth, the Master-in-Equity should have dismissed the case prior to any hearings.

## **CONCLUSION**

The respondent, as well as other members of the community, have acquired burial services in a new cemetery created by Curtis in the name of Saluda Rest. A religious right and legal duty to visit and memorialize their loved ones is owed to the families of those interred in the burial ground. Currently, unenforced regulations and unclear orders of the court are interfering with these freedoms. It is the commission of the South Carolina Supreme Court to resolve errors of

the Court of Appeals especially in matters of public interest. The public is best served by vacating the entirety of Master-in-Equity rulings and affirming the orders of Summary Court.

*Cynthia-J: Glenn*

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Cynthia Glenn, Petitioner

PROOF OF SERVICE

I, Cynthia-Jane, have served WRIT OF CERTIORARI upon the respondent via postage paid USPS at the following address on June 11, 2024.

Kenneth Curtis  
113 Edwards Road  
Marietta, South Carolina 29630

*Cynthia-J Glenn*

Cynthia-J: Glenn, Petitioner Sui Juris

411 West Main Street, Unit 87

Gray Court, South Carolina [29645]

864-350-2830