THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,..RESPONDENTS,

V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM
CLINTON BRANTLEY IS THE ....PETITIONER.

APPENDIX
VOLUME II

Weston Adams, III
Gunnar Nistad
Helen F. Hiser
McAngus, Goudelock & Courie LLC
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519

Attorneys for Petitioner Clinton Brantley

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The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 28, 2011

P. Gunnar Nistad, Esquire
Weston Adams, III, Esquire
McAngus Goudelock
& Courie, LLC
P.O. Box 12519
Capitol Station
Columbia, SC 29211-2519

Re: Banks, Ira v. St. Matthews Baptist Ch.

Dear Counsel:

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case.

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of $7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,

Renee S. Johnson
Administrative Specialist

TAG/rj

cc: Thomas O. Sanders, IV, Esquire
Richard Carson Thomas, Esquire

The South Carolina Court of Appeals

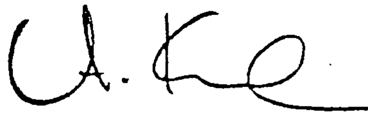
Ira Banks, James Bell, and Vernon Holmes,	Appellants,
v	
St. Matthew Baptist Church, an unincorporated association, and Clinton Brantley,	Respondents.

The Honorable John M. Milling
Charleston County
Trial Court Case No. 2007-CP-10-00896

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.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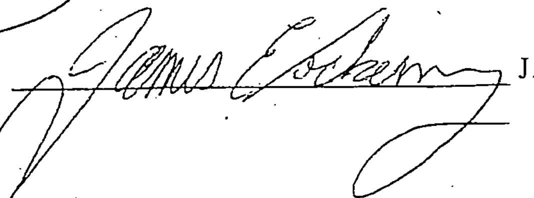
____________________ J.

Columbia, South Carolina

cc: Thomas O. Sanders, IV, Esquire
P. Gunnar Nistad, Esquire
Weston Adams, III, Esquire
Richard Carson Thomas, Esquire

FILED
FEB 28 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ira Banks, James Bell, and Vernon Holmes,
Appellants,

v.

St. Matthew Baptist Church, an unincorporated
association, and Clinton Brantley,
Respondents.

Appeal From Charleston County
John M. Milling, Circuit Court Judge

Opinion No. 4781
Heard May 20, 2010 – Filed January 26, 2011

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Thomas O. Sanders, IV, of Charleston, for
Appellants.

P. Gunnar Nistad, Weston Adams, III, Richard
Carson Thomas and Helen F. Hiser, all of
Columbia, for Respondents.

KONDUROS, J.: Ira Banks, James Bell, and Vernon Holmes (collectively the Trustees) brought suit against St. Matthew Baptist Church (the Church) and its pastor, Clinton Brantley, for defamation, negligence, and intentional infliction of emotional distress (IIED), contending the pastor had informed the congregation the Trustees had mismanaged money and money was missing from the Church. The trial court dismissed the action because the court did not have jurisdiction to intervene in a church matter, and the Trustees appealed. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

The Trustees served on the board of trustees (the Board) at the Church, which was located in Charleston County. In 2000, the Church moved to a new location and shortly thereafter decided to purchase some nearby apartments to expand the Church's influence into the new neighborhood. The congregation approved the Board's request to borrow $200,000 to purchase and improve an apartment building located at 1925 Grayson Street. The Church purchased the apartment building as well as other buildings. After the purchase, the apartment building at 1925 Grayson Street caught fire and the Church learned it did not have insurance on the building. The Church also learned the Church building was serving as collateral for the loan used to purchase the apartment building.

On May 22, 2006, at a quarterly congregational meeting, Brantley made a presentation to the congregation providing the reasons he believed the Trustees should be removed from the Board. The minutes taken at the meeting reflect that Brantley stated "the Church had been mortgaged and there was no insurance on the buildings that had been purchased," a $300,000 mortgage he did not know about had been placed on the Church building, and he had been "constantly deceived throughout." A majority of the congregation voted to remove the Trustees from the Board. The Trustees remained members of the Church. An audit performed in June 2006, revealed no money had been mismanaged.

The Trustees filed an action against Brantley alleging negligence, defamation, and IIED as well as against the Church alleging negligence. The Trustees alleged that at the congregational meeting, Brantley told the congregation the Trustees had placed a $300,000 mortgage on the Church property to purchase some nearby apartments without his knowledge and failed to insure them. They asserted Brantley also informed the congregation they had mismanaged money and money was missing from the Church. They further alleged Brantley informed the congregation he had been constantly deceived by the Trustees and they should be removed from the Board.

The Church and Brantley both moved to have the action dismissed for lack of jurisdiction. Following a hearing on the matter, the trial court granted the motions in a form order, finding:

> [A]ny alleged defamatory statements were made during the course of a congregational meeting where the [Trustees] continuing to serve as Trustees of the [C]hurch was being discussed. The [c]ourt finds that it is not appropriate for it to intervene in such a church matter and that the [c]ourt does not have jurisdiction to intervene. Further, with respect to the allegation of negligence against the [Church] the [c]ourt finds it does not have jurisdiction to try and impose a duty to do some independent investigation into alleged defamatory statements made by [Brantley].

This appeal followed.

LAW/ANALYSIS

The Trustees argue the trial court erred in dismissing the action for lack of jurisdiction because the Trustees' claims can be resolved by neutral principles of civil law without disturbing the Church's decision to remove the Trustees from their positions. We agree in part.

"The decisions of the Supreme Court of the United States concerning church dispute litigation make clear that there is no constitutionally prescribed rule for a civil court's disposition of such matters." All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S.C., 385 S.C. 428, 442, 685 S.E.2d 163, 170 (2009). "Nonetheless, there is a general constitutional command, based in the First Amendment, mandating . . . civil courts to 'decide church . . . disputes without resolving underlying controversies over religious doctrine.'" Id. at 442, 685 S.E.2d at 170-71 (quoting Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976)) (second omission by court).

The South Carolina Supreme Court has determined that when resolving church disputes, South Carolina courts apply the "neutral principles of law approach." See id. at 442, 685 S.E.2d at 171; Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996); see also

Jones v. Wolf, 443 U.S. 595, 602-04 (1979) (holding a state is constitutionally entitled to adopt the neutral principles of law approach as a means of adjudicating church disputes). "This method 'relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.'" All Saints Parish Waccamaw, 385 S.C. at 444, 685 S.E.2d at 172 (quoting Jones, 443 U.S at 603). "[T]he neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." Id.

Pearson articulated the rule South Carolina civil courts must follow when adjudicating church dispute cases. Id. The Pearson rule provides:

> (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; [and] (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.

325 S.C. at 52-53, 478 S.E.2d at 853 (footnote omitted). Under the Pearson rule, when "a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so." All Saints Parish Waccamaw, 385 S.C. at 445, 685 S.E.2d at 172.

However, when a civil court is presented an issue that is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories to the extent it concerns religious or doctrinal issues. Id. (citing Serbian E. Orthodox Diocese, 426 U.S. at 709 (finding the controversy before the Court "essentially involve[d] not a church property dispute, but a religious dispute the resolution of which . . . is for ecclesiastical and not civil tribunals")). "'[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.'" Pearson, 325 S.C. at 49, 478 S.E.2d at 851 (quoting Serbian E. Orthodox Diocese, 426 U.S. at 710).

I. Defamation

Under the Pearson rule "courts cannot avoid adjudicating rights growing out of civil law." 325 S.C. at 52, 478 S.E.2d at 853. Here, the Trustee's defamation claim can be resolved using solely legal principles without examining any religious questions. "[T]he neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." All Saints Parish Waccamaw, 385 S.C. at 444, 685 S.E.2d at 172. Because the circuit court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so.

Brantley provides several cases from outside jurisdictions that have found the court lacked subject matter jurisdiction over defamation claims.[1] However, by applying the neutral principles doctrine we can resolve whether the court has jurisdiction to address the defamation claim in the current case without looking to outside jurisdictions. In the present case, the court would not need to look at the Church's beliefs to determine if the statements

constitute defamation. Accordingly, the trial court erred in dismissing the defamation cause of action. Therefore, the dismissal of the defamation action should be reversed and the action remanded for trial.

II. Negligence

As to the negligence causes of action, the trial court properly dismissed the action. The negligence cause of action against the Church alleges it was negligent in hiring Brantley and not conducting its own investigation into the facts before the congregational meeting was held. The negligence cause of action against Brantley contends he was negligent in asking the congregation to remove the Trustees from the Board and in not conducting his own investigation of the facts before the meeting was held. All of these allegations involve the administrative procedures of the Church, which Pearson specifically notes courts cannot examine. Accordingly, the trial court properly dismissed the negligence causes of action.

III. IIED

Although the Trustees raised the IIED cause of action in their complaint, the trial court did not address it when it dismissed the action and the Trustees failed to make a Rule 59(e), SCRCP, motion. Accordingly, we cannot address the trial court's treatment of this cause of action. See Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (finding when a trial court fails to address the specific argument raised by the appellant, the appellant must make a motion to alter or amend pursuant to Rule 59(e) to obtain a ruling on the argument or it is not preserved for appellate review).

CONCLUSION

We find the trial court can decide the defamation action without looking at religious principles and therefore reverse the dismissal of the defamation action and remand that claim for trial. Additionally, the negligence causes of action cannot be examined by the court without delving into the Church's administrative procedures. Therefore, we affirm the dismissal of the negligence causes of action. Further, because the trial court did not rule on the IIED cause of action in its order, the dismissal of that claim is unpreserved for appellate review. Accordingly, the trial court's order is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED IN PART.

GEATHERS and LOCKEMY, JJ., concur.

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[1] In many of those cases, the courts could not determine if the claim was defamation without looking into the churches' beliefs.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,..APPELLANTS,

V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY, ...RESPONDENTS.

MOTION OF RESPONDENT CLINTON BRANTLEY FOR REHEARING AND/OR RECONSIDERATION

Weston Adams, III
Gunnar Nistad
Helen F. Hiser
McAngus, Goudelock & Courie LLC
700 Gervais Street, Suite 300 (29201)
Post Office Box 12519
Columbia, South Carolina 29211

Attorneys for Respondent Clinton Brantley

Respondent Brantley respectfully moves this Court for rehearing and/or reconsideration of its Opinion No. 4781 in this matter, filed January 26, 2011 ("Opinion"), on the basis that this Court overlooked or misapprehended at least three crucial points. First, the Court overlooked or misapprehended the proper application of the church autonomy doctrine to the facts of this case when it stated that the circuit court could decide the defamation claim under the neutral principles of civil law doctrine. As a consequence, the Court's decision would improperly extend the neutral principles of law doctrine to cover issues relating to internal church governance, an extension that no other court from South Carolina or any another jurisdiction has adopted or approved. Second, because there is no South Carolina case law directly on point, the Court overlooked, misapprehended and/or failed to fully consider cases from other jurisdictions that have analyzed the precise issues raised in this case with regard to defamation claims. Third, the Court overlooked or misapprehended the basis on which the cases cited by Respondent Brantley from other jurisdictions held that they lacked subject matter jurisdiction to hear defamation claims raised under similar circumstances.

I. The Court overlooked or misapprehended the proper application of the church autonomy doctrine to the facts of this case.

The Court overlooked or misapprehended the proper application of the church autonomy doctrine to the facts of this case when it stated that the circuit court could decide the defamation claim without looking at the Church's beliefs and, therefore, that the "Trustee's defamation claim can be resolved using solely legal principles without examining any religious questions." (Opinion p. 3).[1] The Court failed to adequately

[1] Respondent Brantley agrees with this Court's resolution of the negligence and intentional infliction of emotional distress issues and, therefore, does not request rehearing of the portions of the Opinion addressing those issues.

address and/or consider the application of church autonomy doctrine, which prohibits courts from reviewing disputes involving matters of, among other things, church governance. In doing so, the Court overlooked or misapprehended the impact of the facts that the statements alleged to be defamatory were made in the context of a meeting of a congregational church that was called specifically to determine issues of governance (*i.e.*, whether Appellants should be removed from the Trustee Board), and that the statements are inextricably intertwined with issues of church mission, internal church power structure and the proper relationship among the Trustees, Deacons and the Pastor.

The church autonomy doctrine "prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity." Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 655 (10th Cir. 2002),[2] *citing* Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143 (1952) (recognizing that churches have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine"); *see also* Rayburn v. General Conf. of Seventh-day Adventists, 772 F.2d 1164, 1167 (4th Cir. 1985) (explaining that First Amendment protection guarantees to churches the right "to decide for themselves, free from state interference, matters of church government a well as those

[2] In Bryce, the 10th Circuit Court of Appeals held it lacked jurisdiction under the church autonomy doctrine to hear a sexual harassment claim involving statements made regarding the plaintiff's sexual orientation and co-habitation situation, finding such "alleged statements fall squarely within the areas of church governance and doctrine protected by the *First Amendment.*" 289 F.3d at 655. The 10th Circuit pointed out that, "[w]hile churches do not operate above the laws, we find that the dispute here 'is an ecclesiastical one about "discipline, faith, internal organization, or ecclesiastical rule, custom or law"' and not a 'purely secular dispute' with a third party." Id. at 658 [citation omitted]. The alleged statements, whether offensive and/or even incorrect, fell "squarely within the areas of church governance and doctrine protected by the *First Amendment.*" Id.

of faith and doctrine"). Thus, the protection of the First Amendment[3] "extends beyond the selection of clergy to other internal church matters" including matters of church administration. Bryce, 289 F.3d at 656. Where issues of church governance are concerned, courts are limited to determining whether the church has actually spoken on an issue and, if it has, "this court inquires no further." Bowen v. Green, 275 S.C. 431, 435, 272 S.E.2d 433, 435 (1980).

Appellants agreed that their role as Trustees was part of the Church's governance. *See* (R. p. 150, lines 20-23 (Appellant Banks agreeing that, as a Trustee, he took part in decisions relating to church governance)) (R. p. 137, lines 9-13 (Appellant Holmes agreeing that the trustee board takes part in the governance of the church)). Furthermore, Appellants also agreed that the election and removal of a trustee is a matter of church governance. (R. p. 151, lines 4-17) (Appellant Banks agreeing that the election and removal of a trustee would "be a matter of church governance").

Contrary to the conclusion reached in this Court's Opinion, the neutral principles of law doctrine is a narrow exception to the church autonomy doctrine. For example, the Court's Opinion cites Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372 (1976) for the proposition that "[n]onetheless, there is a general constitutional command, based in the First Amendment, mandating . . . civil courts to 'decide church . . . disputes without resolving underlying controversies over religious doctrine.'" (Opinion p. 2). Taken out of context, this quote would appear to command civil courts to assert jurisdiction over church disputes. Expanding the quote from Milivojevich reveals a significantly different position:

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[3] As noted in Respondent Brantley's Brief, the South Carolina constitution mirrors the grant of religious freedom found in the First Amendment. South Carolina Constitution, Article I, Section 2; *see also* Pearson v. Church of God, 325 S.C. 45, 51, 478 S.E.2d 849, 852 (1996).

> *First Amendment* values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in maters of purely ecclesiastical concern . . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.' [citation omitted] This principle applies with equal force to church disputes over church polity and church administration.

426 U.S. at 709-10, 96 S. Ct. at 2381-82 (emphasis added). In fact, the neutral principles of law doctrine "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir. 1986).

This Court relies on Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979), for the proposition that states are "constitutionally entitled to adopt the neutral principles of law approach as a means of adjudicating church disputes," Opinion p. 3, which Respondent Brantley does not dispute so long as the doctrine is properly applied. However, the issue before the United States Supreme Court in Jones involved a property dispute, and the quoted language specifically is limited to the same: "We therefore hold that a State is constitutionally entitled to adopt neutral principles or law as a means of adjudicating a church property dispute." 443 U.S. at 604, 99 S.Ct. at 3026 (emphasis added); *see also* Hutchison, 789 F.2d at 396 (observing that the "'neutral principles' of law doctrine [was] most recently discussed in Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979). That Court expressly noted, however, that the 'neutral principles' exception to the usual rule of deference applies only to cases involving disputes over church property.")[4] Although the

[4] Note that, even within the arena of determining property rights, "where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the

neutral principles of law doctrine has been expanded to reach contract cases and purely secular employment cases,[5] neither this Court nor Appellants have unearthed a single case applying that doctrine to a case of internal church governance.

Patently, although South Carolina has adopted the neutral principles of law doctrine, no court has expanded the application of that doctrine to cases dealing with issues o f internal church governance. Instead, South Carolina courts applying the neutral principles of law doctrine have done so only in the limited areas of property and contract law. *See* Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956) (applied the neutral principles of law doctrine to a property rights issue); Pearson v. Church of God, 325 S.C. 45, 51, 478 S.E.2d 849, 852 (1996) (civil courts could consider a dismissed pastor's contractual right to retirement benefits without infringing on the First Amendment); All Saints Parish Waccamaw v. Campbell, 385 S.C. 428, 685 S.E.2d 163 (2009) (applied the neutral principles of law doctrine to decide (1) an issue relating to property rights and (2) whether certain Articles of Amendment were adopted in compliance with the South Carolina Non-Profit Act and, therefore, legally effective); *c.f.*, Knotts v. Williams, 319 S.C. 473, 462 S.E.2d 288 (1995) (refusing to hear a dispute between two factions of a congregation regarding removal of a pastor, and observing that, "[i]nternal disputes among members of a church present some of the most difficult questions involving the limits of governmental intrusion into the religious affairs of its citizens"). This Court's Opinion apparently relies on the "and other forms of law" language from All Saints

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ownership of property . . . [where] the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." 443 U.S. at 604, 99 S.Ct. at 3026.

[5] *See* Heard v. Johnson, 810 A.2d 871, 880 (D.C. 2002) (civil courts may have jurisdiction over property and contract disputes, as well as over "employment disputes where the employee provides a purely secular service for the church).

Parish to broadly expand the reach of civil courts into areas heretofore protected by the First Amendment.[6] However, that position drastically and improperly expands application of the neutral principles of law to cases which will inevitably and impermissibly entangle civil courts in matters of internal church governance, administration and discipline. A line has to be drawn somewhere; otherwise, the floodgates will be opened to civil court challenges to any statements regarding the fitness of individuals to fulfill leadership positions in the church, regardless of the fact that the statements were made in context of internal church governance proceedings.

There may be cases where that line is difficult to draw; however, this case is not one of them. In the present case, the facts that: (1) the statements were made in the context of a meeting of the highest decision-making body of the St. Matthew Baptist Church – the Congregation (R. pp. 114-15) (R. p. 140, lines 9-11); (2) the Congregation elected the Appellants as Trustees and only the Congregation could remove them (R. p. 148, lines 9-18); (3) part of Appellants' role on the Trustee Board was to participate in church governance (R. p. 150, lines 20-23) (R. p. 137, lines 9-13); (4) part of Appellants' role as Trustees was to further the spiritual mission of St. Matthew Baptist Church (R. p. 135, line 18 – p. 136, line 4) (R. p. 144, lines 11-12); (4) the election and removal of a trustee was a matter of church governance (R. p. 151, lines 4-17); and (5) at all times pertinent to this case, Defendant Brantley was acting within the course and scope of his employment and authority as pastor of St. Matthew Baptist and under the authority of St. Matthew Baptist (R. p. 3), all dictate a finding that the statements by Reverend Brantley

[6] The full phrase from All Saints Parish reads, "[T]he neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." 385 S.C. at 444, 685 S.E.2d at 172.

are inextricably intertwined with issues of ecclesiastical self-governance which cannot be adjudicated by a civil court.

In Pearson, the South Carolina Supreme Court set out the general principles allowing civil courts to determine cases involving religious institutions: "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 dispute, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration." 325 S.C. at 52-53, 478 S.E.2d at 853. The South Carolina Supreme Court specifically defined what it meant by "rights growing out of civil law" to mean "disputes determined by contract or property law." Id. at 53, 478 S.E.2d at 853. This Court's Opinion appears to have overlooked Pearson's admonition against civil court involvement into matters of church "discipline, custom, and administration" or, in other words, church governance. As was noted in Respondent Brantley's Brief, the Appellants admit that they and Reverend Brantley were engaged in an internal church power struggle. (R. p. 141, line 21 – p. 143, line 11 (Appellant Holmes testifying that Reverend Brantley was attempting to change the authority structure within St. Matthew, and "put the deacons in authority above the trustees")) (R. p. 157, line 18 – p. 158, line 23 (Appellant Bell testifying that he and Reverend Brantley had had disputes over financial issues and that he "couldn't be controlled by Reverend Brantley")) (R.159, line 20 – p. 160, line 4 (Appellant Bell asserting that he believed Reverend Brantley "wanted us out of office. He could not control us the way he wanted to control us," and "he concocted the idea that he had to move some people out of the

way so he could have his way")) *see also* (R. p. 141, line 5 – p. 143, line 11 (Appellant Holmes discussing the nature of the internal power struggle at St. Matthew Baptist Church)).

In All Saints Parish, the South Carolina Supreme Court pointed out that resolution of the property and corporate entity issues before it did not require the Court "to wade into the waters of religious law, doctrine, or polity," but rather, the issues could be resolved "though the application of neutral principles of property, trust, and corporate law." 385 S.C. at 445, 685 S.E.2d at 172. It is only where "a civil court can completely resolve a church dispute on neutral principles of law [that] the *First Amendment* commands it to do so." Id., 685 S.E.2d at 172 (emphasis added). In the instant case, the Court cannot completely resolve the defamation claim without delving into matters of church "discipline, custom, and administration" and, therefore, the defamation claims cannot be resolved under neutral principles of law.

Furthermore, in Morris Street Baptist Church v. Dart, 67 S.C. 338, 45 S.E. 753 (1903), our Supreme Court reaffirmed that "civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters." 67 S.C. at 342, 45 S.E. at 754. To do otherwise "would be inconsistent with complete religious liberty untrammeled by state authority." Id. In the instant case, the circuit court cannot resolve the defamation claim without inquiring into the regularity of the church judicator – here, the proceedings before the Congregation at the May 22, 2006 congregational meeting – having control of such matter.

Although not a South Carolina case, in Heard v. Johnson, 810 A.2d 871, 880-82 (D.C. 2002), the D.C. Court of Appeals distinguished between the types of cases where the neutral principles of law doctrine properly applies (such as some property cases and purely secular employment disputes), and those where it does not (such as cases dealing with church policy, religious doctrine or practice, employment of clergy, ecclesiastical self-governance). "Clearly the Free Exercise Clause guarantees [the church] the freedom to decide to whom it will entrust ministerial responsibilities." Id. at 882. In the present case, the defamation claims arise out of an internal church power struggle which was resolved at a meeting of the highest decisional body – the Congregation. All of the statements alleged to be defamatory were made to the Congregation at that meeting, and cannot be separated out from the central issue of church governance. Thus, under a proper application of the church autonomy doctrine, civil courts lack subject matter jurisdiction to hear defamation claims, and this Court should have so held.

II. Because there are no South Carolina cases on point, the Court should have, at a minimum, explained why it accepted or rejected the reasoning from other jurisdictions that have considered whether the First Amendment bars defamation claims in similar contexts.

South Carolina courts have a long tradition of looking to and relying on case law from other jurisdictions where there are no South Carolina cases directly on point. *See, e.g.,* Williams v. Morris, 320 S.C. 196, 200-201, 464 S.E.2d 97, 99-100 (1995) (relying on "persuasive authority" from other states where the precise issue in the case before it had not been addressed by the Court); Poliakoff v. Shelton, 193 S.C. 398, 8 S.E.2d 494 (1940) (upholding order relying on cases from other jurisdictions where there were no South Carolina cases directly on point); McKnight v. South Carolina Dept. of

Corrections, 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009) (relying on cases from other jurisdictions where there are no South Carolina cases directly on point).

There are no South Carolina cases applying the neutral principles of law doctrine to a defamation claim; therefore, it is appropriate to look at foreign jurisdictions for guidance. Instead of weighing the cases from other jurisdictions cited by Respondent Brantley that deal with very similar situations, this Court summarily dismissed them by simply concluding that South Carolina courts can resolve this issue "without looking to outside jurisdictions." (Opinion p. 3). In the absence of South Carolina precedent, this is not a sufficient explanation of why this Court does or does not agree with the reasoning in cases dealing with very similar fact patterns, and/or why South Carolina should adopt a different standard under the First Amendment of the United States Constitution.

Respondent Brantley is not suggesting that this Court should blindly adopt or accept as controlling precedent from foreign jurisdictions. However, this Court should at a minimum explain why it does or does not agree with the result consistently reached by other courts that have considered fact patterns remarkably similar to the one presently before it, in light of the constitutional prohibitions against state establishment of or entanglement in religious matters.

III. The Court overlooked or misapprehended the basis on which the cases from other jurisdictions cited by Respondent Brantley held they lacked subject matter jurisdiction to hear the defamation claims.

In reaching its conclusion, this Court dismissed the defamation cases cited by Respondent Brantley by suggesting that, "in many of those cases, the courts could not determine if the claim was defamation without looking into the churches' beliefs."

(Opinion p. 4, n.1). Respondent Brantley respectfully submits that the Court's assessment of the defamation cases cited by Respondent Brantley is incorrect.

For instance, in Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001), the Virginia Supreme Court analyzed whether civil courts had jurisdiction over a claim that allegations of "misuse of church funds," which impugned the plaintiff's honesty and integrity, were defamatory. In finding that civil court jurisdiction was barred by the First Amendment of the United States Constitution, the Virginia Court observed that "[e]ven though there are limited exceptions to this constitutional principle, it is well established that a civil court may neither interfere in matters of church government nor in matters of faith and doctrine." 553 S.E.2d at 514 (emphasis added). Not only is the "appointment and removal of ministers and persons in other positions of similar theological significance. . . . beyond the ken of civil courts," resolution of the defamation claims raised by the plaintiff "would have required that the circuit court adjudicate issues regarding the church's governance, internal organization, and doctrine, and such judicial intervention would have limited the church's right to select its religious leaders." Id. at 515.

In Schoenhals v. Mains, 504 N.W.2d 233 (Minn. Ct. App. 1993), the Minnesota appellate court held that it lacked subject matter jurisdiction over a defamation claim because it "would require an impermissible inquiry into Church doctrine and discipline." 504 N.W.2d at 236. The issue underlying the defamation claims in Schoenhals related to church finance, and allegations by the pastor that the plaintiffs had failed in their financial stewardship, created "division, animosity and strife in the fellowship," and fabricated lies. Id. at 234. In explaining its decision, the court observed that, while the

defendant's statement that the plaintiffs "had engaged in 'direct fabrication of lies with the intent to hurt the reputation and the establishment' of the Church appears unrelated to church doctrine on its face, the statement nevertheless relates to the Church's reasons and motives for terminating the [plaintiffs'] membership. Examination of those reasons and motives would also require an impermissible inquiry into Church disciplinary matters." Id. at 236. In addition, the court concluded that the fact that the information was disseminated only within the congregation bolstered its conclusion that the "statements involved and were limited to Church discipline," and "clearly involved an internal conflict within the Church, which is precluded by the First Amendment." Id.

The case of Patton v. Jones, 212 S.W.3d 541 (Tex. App. 2006) involved allegedly defamatory remarks alleging that the plaintiff, hired as a youth minister, had "upset congregation members by dating certain women and by putting his arm around girls at church." 212 S.W.3d at 546. Deciding that the plaintiff's position qualified as "ministerial in nature" because he was authorized to decide how the church's money was spent to further its ministry (as opposed to merely serving in an accounting function with no discretion over the use of church funds), the Texas appellate court applied the ecclesiastical abstention doctrine, which prohibits civil courts from reviewing "many types of disputes that would require an analysis of 'theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required.'" Id. at 547-48, 551.[7] The allegedly defamatory

[7] The prohibition against court interference in ecclesiastical employment decisions, the so-called "ministerial exception" covers not only clergy, but also to individuals "'whose primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order or supervision or participation in religious ritual and worship,' or any position that is 'important to the spiritual and pastoral mission' of the religious organization." Bourne v. Center on Children, Inc., 838 A.2d 371, 378-79 (Md. Ct. Spec. App. 2003) (emphasis added); *see also* Rayburn, 772 F.2d at 1169 (ministerial exception applies to individuals in positions of church governance); Patton, 212 S.W.3d at 549 (the "ministerial exception"

statements were made as part of the church's decision-making process to terminate the plaintiff from his position and, thus, were "inextricably intertwined" with a church governance decision and could not be reviewed by the court. Id. at 551-52.

Bourne v. Center on Children, Inc., 838 A.2d 371 (Md. Ct. Spec. App. 2003) considered allegedly defamatory comments concerning the plaintiff's "ministerial style," as well as his hostility and disobedience toward church supervisors, but did not raise any specific religious beliefs. 838 A.2d at 375. Despite the plaintiff's claim that the court could review his "purely secular" defamation claim, the court declined, noting that "consideration of his supposedly 'secular' claims necessarily requires the court to delve into religious considerations." Id. at 379. Although the issues in Bourne were no more about religious beliefs than the case presently before the Court, the Maryland court explained that, "'questions of truth, falsity, [and] malice . . . often take on a different hue when examined in the light of religious precepts and procedures. . . .' [citation omitted] When allegedly defamatory statements are made during the process of determining fitness for religious leadership positions, even if the statements are invalid and unfair, such speech is protected through the ambit of the *First Amendment* freedom of religion provisions." Id. at 380. Specifically, the court held that, even if the defendants had made defamatory statements regarding the plaintiff's behavior as a pastor of the church, and even if they had cast him in a false light, "this Court may not consider the issue because it

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applies to "all employees of a religious institution . . . whose primary functions serve its spiritual and pastoral mission," including "teaching, spreading the faith, church governance, . . . or if the position is important to the spiritual and pastoral mission of the church" but not to "purely custodial or administrative personnel . . .") (emphasis added). As Appellant Holmes testified at his deposition, the role of a Trustee at St. Matthew Baptist Church includes supporting "the spiritual ministry of the church." (R. p. 138, lines 2-18). (*See also* R. p. 144, lines 11-12 (discussing trustees "carrying out the trustee ministry")).

relates to [plaintiff's] employment with the Church" and the statements thus were protected by the First Amendment. Id.

In Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808 (Md. Ct. Spec. App. 1996), the allegedly defamatory statements concerned the plaintiff's "honesty, reliability, integrity and morality, specifically, asserting sexually motivated conduct toward certain staff members" at a particular church. 683 A.2d at 810. Although the plaintiff made the same arguments as the Appellants in the instant case raise,[8] the Maryland appellate court held that, "[e]ven where the dispute actually presented to the court is one that, if presented by any other set of litigants, would clearly be justiciable, if the resolution of that dispute between the litigants at hand would require the court to adjudicate matters of church doctrine or governance, or to second-guess ecclesiastical decisions made by a church body created to make those decisions, the matter falls outside the court's authority." Id. at 811 (emphasis added).

In Yaggie v. Indiana-Kentucky Synod, 860 F. Supp. 1194 (W.D. Ky. 1994), the controversy arose out of "communication problems and differences in management style." 860 F. Supp. at 1196. The allegedly defamatory remarks included statements that Yaggie was "aloof," that he acted like he was "the Boss," was dogmatic and not open to people who disagreed or had different viewpoints, that he did not seem to hear what the other person was saying, that he did not appreciate women as equals, and that he talked about people behind their backs, "sometimes close to the point of breaking confidentiality," as well as a statement that he was to be hospitalized for psychiatric treatment. Id. at 1196-97. In Yaggie, the district court stated: "We are also cognizant of

[8] Like Appellants in the instant case, the plaintiff in Downs insisted that his was a simple, civil defamation claim that did not involve the "internal ecclesiastical policies of the Church," and that he was not seeking review or reversal of the actual decision to remove him and/or reinstatement. Id. at 810.

the fact that, in this case, the alleged defamatory statements do not express any religious principles or beliefs. However, the fact remains that this action is the result of a conflict confined within the Resurrection Lutheran Church, concerning the employment relationship of its minister, and addressed in accordance with the church constitution. . . . we find these circumstances dictate our lack of jurisdiction over the matter." Id. at 1198 (emphasis added).

Finally, Anderson v. Watchtower Bible & Tract Soc. of N.Y., Inc., No. M2004-01066-COA-R9-CV, 2007 Tenn. App. LEXIS 29 (Tenn. Ct. App. Jan. 19, 2007) involved a member of the Congregation of Jehovah's Witnesses, who was expelled for raising issues relating to that organization's handling of child sexual abuse allegations. Because the plaintiff refused to stop researching and publicizing the sexual abuse issue, she and her husband were accused of "apostasy, or "turning away from one's faith," which Jehovah's Witnesses define as "stirring up unrest or causing divisions within their church.". 2007 Tenn. App. LEXIS 29 at *8-9. Additional charges waged against the plaintiffs included "submitting an article to an apostate journal," and "undermining confidence in Jehovah's arrangements." Id. at *9. Citing Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143 (1952), the Tennessee appellate court noted that the First Amendment "prevents civil courts from engaging in unwarranted interference with the practices, internal affairs, and management of religious organizations." Id. at *13. While acknowledging that the First Amendment does not insulate religious organizations from all suits, the Tennessee Court nonetheless concluded that application of the neutral principles of law doctrine to the case before it would be inappropriate because that doctrine "has never been extended to religious controversies in the areas of church

government, order and discipline, nor should it be." 2007 Tenn. App. LEXIS 29 at *25, *citing* Hutchison, 789 F.2d at 396 (emphasis added). In fact, the Tennessee court noted that "a majority of courts have held that defamation claims by church members against the religious organization itself and its officials are not justiciable under the *Free Expression* and *Establishment Clauses*." 2007 Tenn. App. LEXIS 29 at *81. Pointedly, although the charge against the Andersons was labeled "apostasy," the specific allegations against them by the church order were that they were sewing dissention and providing information to outside news sources that was potentially embarrassing to the Jehovah's Witnesses. Although the Tennessee court acknowledged that the allegedly defamatory statements contained some references to religious beliefs and scripture (in fact, only one of the alleged defamatory statements referenced Biblical scripture), the court noted that "all matters touching the relationship between pastor and church are of ecclesiastical concern and not subject to court review, regardless of assertions that the statements at issue are not based on religious doctrine or practice." Id. at *84-85. The same protection attaches to issues of membership, church governance, discipline and polity. *See* id. at *18, 25, 86-87. Ultimately, "[w]here the allegedly defamatory statements refer to or are based upon religious doctrine or church governance, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance." Id. at *98 [citation omitted] (emphasis added).

Thus, in every single defamation case relied on by Respondent Brantley, the allegedly defamatory statements no more required "looking into the churches' beliefs"

than would the present case. The other courts that have considered defamation claims under circumstances similar to the one presently before this Court have found that the claims were barred by the First Amendment of the United States Constitution. This Court should reconsider the reasoning and application of those cases to the case at hand.

In the end, although Respondent Brantley argued that it was premature to discuss the elements of a defamation claim because the Circuit Court lacked jurisdiction to consider this dispute, a quick review of those elements reveals why civil courts cannot settle this defamation claim. As pointed out by Appellants, the elements of a defamation claim are "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998). First, in order to be defamatory, the statement must be false. Thus, in order to resolve this case, the circuit court would be required to determine whether or not the following statements, alleged to be defamatory, were true:

- "[T]he Trustees had placed a $300,000 mortgage on the Church property to purchase some nearby apartments without [Brantley's] knowledge and failed to insure them";
- The Trustees "had mismanaged money";
- "[M]oney was missing from the Church";
- "[Brantley] had been constantly deceived by the Trustees"; and
- The Trustees "should be removed from the Board."

(Opinion p. 2). At a minimum, and as an example, the circuit court would be faced with deciphering what constitutes mismanagement of money by a Trustee of St. Matthew

Baptist Church, which would involve an inquiry into what is the proper use of church funds for spiritual and mission purposes, as well as for routine upkeep. In addition, the circuit court would be required to determine the truth or falsity of Reverend Brantley's statement that the Appellants should be removed from the Trustee Board, thus engaging itself in the very core of a church governance issue. Next, the circuit court would have to decide whether these statements, made during a quarterly congregational meeting, called for the specific purpose of deciding church governance issues, constituted an unprivileged publication to a third party. This would require the court to determine, among other things, who was and was not properly at the meeting (*i.e.*, which of the attendees were properly members and which, if any, were not), as well as whether or not, in the St. Matthew Baptist Church structure, communications from the Pastor to the congregation enjoy any privileged status. The next step would be to determine whether, as the pastor of St. Matthew Baptist Church, Reverend Brantley was at fault in any way for making these statements expressing his opinion regarding the Appellants' fitness to serve as Trustees. It simply is not possible for the circuit court to analyze each of these steps without asking questions regarding what constitutes "mismanagement" of church funds that the Trustees admit were spent as part of the Church's spiritual mission[9]; whether the Trustees had deceived Reverend Brantley in the way information was or was not shared between them and their pastor; what was the proper flow of communication

[9] Appellants agreed that the purchase of the apartment buildings was part of the Church's spiritual mission. *See* (R. p. 137, lines 4-8 (Appellant Holmes agreeing that the purchase of the Grayson Street Apartment building was "intertwined with the church's ministry")) (R. p. 133, lines 16-20 (Appellant Holmes explaining that the property purchase was part of Reverend Brantley's "vision, his spiritual vision, for the community")) (R. p. 146, line 24 – p. 147, line 4 (Appellant Banks explaining that he understood Reverend Brantley had said the purchase of the apartment buildings "was a part of the kingdom building process of St. Matthew being involved in the immediate community of the church")) (R. p. 152, line 7 – p. 152, line 13 (same)) (R. p. 156, lines 21-23 (Appellant Bell stating that "Reverend Brantley stated that he wanted to buy up everything around that church and make it a part of the church")).

and/or "command" within the structure of St. Matthew; and so on. Each of these inquiries would require the circuit court to make basic decisions regarding the organization, governance and spiritual mission of St. Matthew Baptist Church which, according to both the United States and South Carolina constitutions, it may not do.

This Court should conclude, as did the Virginia Supreme Court in Jae-Woo, that the allegations of defamation "cannot be considered in isolation, separate and apart from the church's decision to terminate" Appellants' tenure as Trustees. 553 S.E.2d at 516. In Jae-Woo, as in the case at hand, the "defendants who purportedly uttered defamatory remarks about the plaintiff were church officials who attended meetings of the church's governing bodies that had been convened for the purpose of discussing certain accusations against the plaintiff." Id.

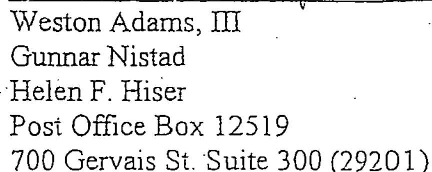
CONCLUSION

For the reasons stated herein and in his Brief, Respondent Brantley respectfully requests this Court to reconsider its Opinion, and hold that the circuit court properly determined that it lacks subject matter jurisdiction, under the First Amendment of the United States Constitution and Article I, Section 2 of the South Carolina constitution, to hear Appellants' defamation claims.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

February 8, 2011



Weston Adams, III
Gunnar Nistad
Helen F. Hiser
Post Office Box 12519
700 Gervais St. Suite 300 (29201)

Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for Respondent Clinton Brantley

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John M. Milling, Circuit Court Judge

Case No. 2007-CP-10-896

Ira Banks, James Bell, and Vernon Holmes.................. Appellants

v.

St. Matthew Baptist Church, an Unincorporated
Association, and Clinton Brantley............................ Respondents

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FINAL BRIEF OF APPELLANTS

Thomas O. Sanders, IV, Esquire
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, SC 29407
(843)573-8828
Attorney for Appellants

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STATUTES

Not applicable.

OTHER AUTHORITIES

Not applicable.

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN FINDING THAT IT LACKED JURISDICTION TO HEAR APPELLANTS' CLAIMS FOR NEGLIGENCE, DEFAMATION, AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS?

2. WOULD ANALYZING RESPONDENT BRANTLEY'S ACCUSATIONS REQUIRE THE CIRCUIT COURT TO INTRUDE INTO THE CHURCH'S GOVERNMENT?

STATEMENT OF THE CASE

On March 5, 2007, Appellants Ira Banks, James Bell, and Vernon Holmes ("Appellants") filed this action against Respondents St. Matthew Baptist Church and Clinton Brantley, its pastor ("Respondents"). Extensive discovery was conducted. Later, Respondents filed motions for summary judgment and to dismiss for lack of jurisdiction. On September 15-16, 2008, the motions were argued. The circuit court ruled that it did not have jurisdiction to intervene in what it regarded as a church matter. On October 6, 2008, Appellants served their Notice of Appeal on Respondents.

FACTS

On or about May 22, 2006, Respondents held a congregational meeting at which Respondent Brantley stated that the Appellants had misappropriated $300,000.00 of the church's money and that he did not know anything about it (R. pp. 3-4; R. p. 93, ¶6; R. pp. 101-102; R. p. 109, ¶7; R. p. 113; R. p. 129, lines 7-14; R. p. 129, lines 24-25; and R. p. 130, lines 1-9). Before the meeting, Respondent Brantley clarified with Church Finance Officer Francina Roche that the authorized amount of the loan was $300,000.00 and not $200,000.00 (R. p. 131, lines 14-16). Also before the meeting, Respondents made no other attempt to determine whether or not any money was actually missing (R. p. 131, lines 7-10). Also before the meeting, no audit was done (R. p. 93, ¶8). However,

after the meeting, Church Finance Officer Francina Roche made it a point to tell Respondent Brantley that no money was missing (R. p. 109, ¶11). Also after the meeting, a preliminary audit was done. It revealed that no money was mismanaged or missing (R. p. 127, lines 2-4; and R. p. 170, lines 7-14). Even so, Respondent Brantley's disparaging remarks were made more egregious by his refusal to admit their falsity (R. p. 128, lines 1-3; and R. p. 171, lines 5-9).

After being accused of wrongdoing at the meeting, Appellants attempted to hand out materials and to speak to defend themselves. However, their efforts were not well-received. (R. p. 86, ¶3; R. p. 94, ¶s 11-12). After Respondents' false accusations, the congregation voted to remove Appellants as trustees of the church.

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANTS' CLAIMS FOR LACK OF JURISDICTION, BECAUSE THESE CLAIMS CAN BE RESOLVED BY NEUTRAL PRINCIPALS OF CIVIL LAW WITHOUT DISTURBING THE CHURCH'S DECISION TO REMOVE APPELLANTS AS TRUSTEES.

Even though civil courts have no jurisdiction over ecclesiastical questions and controversies, they do have jurisdiction over civil matters which are involved in a church controversy. Pearson v. The Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996) (quoting Bramlett v. Young, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956)). In Morris Street Baptist Church v. Dart, 229 S.C. 338, 45 S.E. 753 (1903), the court limited judicial involvement in church disputes by holding, "When a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right and no more, taking the ecclesiastical decisions out of which the civil right arises, as it finds them." Id. at 341, 45 S.E. at 754.

The circuit court's exercise of jurisdiction over this matter would not violate the federal and state constitutions. The circuit court was not asked to adjudicate a matter of religious law, principle, doctrine, discipline, custom or administration. The controversy is not whether Appellants were properly dismissed as trustees. In fact, Appellants did not ask the circuit court to disturb the congregation's decisions to terminate them as trustees (R. p. 52, lines 21-22) or to "discipline" them (R. p. 61, lines 21-23). Before ruling, the circuit court admitted, "I don't know that the decision of the body is what's being called into question." (R. p. 51, lines 16-18). The circuit court was asked to resolve a civil dispute arising from the false statements made about Appellants to the congregation. The issue here is Respondent Brantley's false statements, their egregiousness, their effect, and Respondent St. Matthew Baptist Church's failure to prevent/stop Respondent Brantley from speaking falsely about Appellants to the congregation when it knew he was going to do this. This case simply requires the application of neutral principles of civil law and very little inquiry into religious law.

II. HEARING APPELLANTS' CLAIMS DOES NOT REQUIRE THE CIRCUIT COURT TO INTRUDE INTO THE CHURCH'S GOVERNMENT.

Respondents assert that delving into the truth or falsity of Respondent Brantley's accusations, as well as the hiring of Respondent Brantley, requires the circuit court to intrude into the government of the church (R. p. 31, lines 9-12; R. p. 33, lines 1-3; R. p. 33, lines 14-22; R. p. 50, lines 5-11; R. p. 69, lines 22-24). This assertion is without merit. Actually, the circuit court may make *extensive* inquiry into religious law and polity. However, when doing so, the First and Fourteenth Amendments of the United States Constitution mandate that "civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such

decisions as binding on them, in their application to the religious issues of doctrine or polity before them." Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). Within the church, there is no appeal from a congregational decision (R. p. 32, lines 15-18). In making its inquiry, the circuit court simply must accept the congregation's decision to remove Appellants as trustees and not try to determine whether or not the decision was correct. This can be done easily, because Appellants are not seeking a determination regarding the congregation's decision.

A. Whether Respondents were negligent is a question of fact to be determined by the finder of fact at trial.

Because the circuit court's decision was made entirely on jurisdictional grounds, the only pertinent issue on appeal with regard to negligence is whether allowing negligence as a cause of action would require the court to make decisions based on ecclesiastical law. During the summary judgment arguments, Respondents (who never cited any controlling law on point) vaguely implied that such a decision necessarily implicated ecclesiastical law. However, a simple application of civil negligence law is all which is needed to determine this claim. No use of ecclesiastical law or interference with an ecclesiastical decision or precedent is required.

The circuit court determined, "You can't make a determination as to whether or not somebody should remain in a position without airing a little bit of dirty laundry" (R. p. 77, lines 5-7). However, to adopt the circuit court's finding is to grossly oversimplify the line between ecclesiastical and civil law by holding that no ecclesiastical action, however vile, is ever actionable in a civil court. That this suit arises from church involvement by the parties does not mean it is an ecclesiastical matter which is not

subject to civil jurisdiction. To find this would allow a religious entity to absolve itself of all tort liability in every instance of wrongdoing without recourse for the aggrieved.

B. Because the Appellants were accused of moral turpitude, this case is an example of *per se* defamation that is actionable *per se*.

The circuit court's order did not address the defamation claim when it found that it lacked subject matter jurisdiction. However, a discussion of defamation as it relates to jurisdiction is pertinent here. When "ruling on a motion for summary judgment or directed verdict in a defamation action, the court must review the evidence using the same substantive evidentiary standard of proof the jury is required to use in a particular case." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006). To recover damages for defamation, Appellants must prove, by a preponderance of the evidence, "(1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication." Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 518, 506 S.E.2d 497, 506 (1998). Courts find that "[a] communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him." Id. at 531, 513. If the defamatory meaning of a message or statement is obvious on the face of the statement, the statement is defamatory *per se*, and "an example of defamation *per se* is 'A is a thief.'" Id. at 508-09, 501. Slander is spoken defamation and libel is written defamation. Id. at 508, 501. Whether a communication is actionable *per se* is a separate analysis from whether it is defamation

per se. Id. at 509-510, 501-02. If the defamation is slander, then it is actionable *per se* if it charges the aggrieved with commission of a crime of moral turpitude. Id. at 511, 502. Furthermore, if "defamation is actionable *per se*, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages." Id. at 510, 501. General damages comprise "such damages as are recoverable without proof of special damage" and include "injury to feelings, mental suffering, injury to character and reputation, and similar injuries, incapable of definite money valuation." Whitaker v. Sherbrook Distributing Co., 189 S.C. 243, 243, 200 S.E. 848, 849 (1939).

In our case, the defamation was perpetrated by Respondent Brantley without restraint by Respondent St. Matthew Baptist. The Appellants were accused of taking money from the church, which is precisely the allegation that South Carolina law uses as the most transparent example of *per se* defamation that is actionable *per se*. The only factual analysis that the circuit court can perform is to determine whether or not Respondent Brantley's allegations were true. Therefore, the court has jurisdiction over this cause of action.

C. Whether Respondent Brantley's statements constitute intentional infliction of emotional distress is a question of fact to be determined by the finder of fact at trial.

The circuit court did not make any statement with regard to the intentional infliction of emotional distress claim when it found that it lacked subject matter jurisdiction. Nevertheless, a discussion of this cause of action as it relates to jurisdiction is pertinent here. The analysis would be similar to the above analyses of the other causes of action. Trying the claim for intentional infliction of emotional distress will not require

the circuit court to examine ecclesiastical decisions. Only an application of civil law would be required. As such, the circuit court may exercise jurisdiction without infringing upon any ecclesiastical matter with respect to this cause of action as well.

CONCLUSION

The circuit court has jurisdiction over all of Appellants' causes of action. For the reasons stated above, this Court should reverse the judgment of the circuit court.

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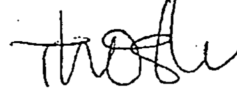


Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843)573-8828
ATTORNEY FOR APPELLANTS

May 18, 2009
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John M. Milling, Circuit Court Judge

Case No. 2007-CP-10-896

Ira Banks, James Bell, and Vernon Holmes.................. Appellants

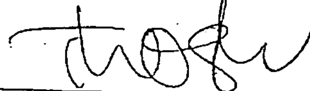
v.

St. Matthew Baptist Church, an Unincorporated Association, and Clinton Brantley............................ Respondents

CERTIFICATE OF COUNSEL

I certify that this Final Brief complies with Rule 211(b), SCACR.

SANDERS LAW FIRM, LLC



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V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY, ... RESPONDENTS.

FINAL BRIEF OF RESPONDENT CLINTON BRANTLEY

Weston Adams, III
Gunnar Nistad
Helen F. Hiser
McAngus, Goudelock & Courie LLC
700 Gervais Street, Suite 300 (29201)
Post Office Box 12519
Columbia, South Carolina 29211

Attorneys for Respondent Clinton Brantley

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court properly dismissed Appellants' claims for lack of jurisdiction because the claims involve fundamental issues of church governance and are thereby barred by the United States and South Carolina constitutions' guarantee of freedom of religion?

II. Whether the "Neutral Principles" doctrine provides a basis for the Circuit Court to hear Appellant's claims against Reverend Brantley?

Appellants Ira Banks, James Bell and Vernon Holmes ("Appellants") are members of the congregation of St. Matthew Baptist Church ("Church") located at 2005 Reynolds Avenue, in North Charleston, South Carolina. Respondent Reverend Clinton Brantley is the pastor of the Church, a position he was appointed to in 2000.[1] Appellants held positions on the Trustee Board of the Church up to and until a quarterly congregational meeting held on May 22, 2006 where the congregation voted to remove them from that board based, in part, on statements made during the meeting by Reverend Brantley. On or about March 5, 2007, Appellants filed an action against Respondents alleging negligence, defamation and outrage against Reverend Brantley and negligence against the Church.

In their complaint, Appellants acknowledge that "At all times herein, Defendant Brantley was acting within the course and scope of his employment and authority as pastor of St. Matthew Baptist and under the authority of St. Matthew Baptist." (R. p. 3). The allegations in the complaint center on statements made by Reverend Brantley during the May 22, 2006 congregational meeting of the Church. (R. pp. 3-4). According to the Complaint, Reverend Brantley made various statements concerning a mortgage that had been placed on the Church in connection with the purchase of some nearby apartment buildings, that those buildings had not been insured, that Appellants had "mismanaged money" and that "money was missing from St. Matthew Baptist. Defendant Brantley told the congregation that he had been deceived constantly by Plaintiffs, and that Plaintiffs should be removed as Trustees of St. Mathew Baptist." (R. pp. 3-4). In their negligence cause of action against Reverend Brantley, Appellants allege the Reverend

[1] The Church and Reverend Brantley are referred to collectively as "Respondents."

was negligent in conveying his message to the congregation and "in asking the congregation to remove Plaintiffs as Trustees of the church." (R. p. 6).

Following extensive discovery, Respondents moved for summary judgment and moved to have the matter dismissed for lack of subject matter jurisdiction. The Circuit Court heard oral argument on the motions on September 15-16, 2008, and on September 17, 2008, Judge Milling granted Respondents' motions. The Circuit Court found, among other things, that "according to the pleadings any alleged defamatory statements were made during the course of a congregational meeting where the [Appellants] continuing to serve as Trustees of the church was being discussed. The Court finds that it is not appropriate for it to intervene in such a church matter and that the Court does not have jurisdiction to intervene." (R. p. 2).

Appellants appealed this decision and filed their Initial Brief on January 28, 2009.

FACTS

The Church is an independent Baptist church. According to its constitution, government of the Church "is vested in the body of believers who compose it." (R. p. 114). As a "sovereign and democratic Baptist church under the Lordship of Jesus Christ," the "membership retains unto itself the exclusive right of self-government in all phases of the spiritual and temporal life of the church." (R. p. 115). The constitution further states that the pastor, who was at all times relevant to this appeal Reverend Brantley, "is responsible for leading the church to function as a New Testament church." Id. In this role of "leader of pastorial [sic] ministries in the church," the pastor leads "the congregation, the organizations, and church staff to perform their tasks." Id. The organizations of the Church include a Trustee Board, which is responsible for the

management of the Church's assets. However, as Appellant Holmes testified at his deposition, the role of a Trustee is also to "support . . . the spiritual ministry of the church." (R. p. 138, lines 2-18). (*See also* R. p. 144, lines 11-12 (discussing trustees "carrying out the trustee ministry")).

Appellants clearly understood that the congregation was the ultimate decision-maker within the Church. *See* (R. p. 139, lines 1-5) (R. p. 140, lines 9-11); (R. p. 148, lines 9-18). Appellants also understood that part of their role on the Trustee Board was to participate in church governance; *see* (R. p. 150, lines 20-23); (R. p. 137, lines 9-13) and that the election and removal of a trustee was a matter of church governance. (R. p. 151, lines 4-17).

In 2000, the Church's former location was sold to the South Carolina Department of Transportation to make way for the construction of the new Ravenel Bridge. The Church purchased property at its current location at 2005 Reynolds Avenue and relocated. Shortly after the move to Reynolds Avenue, the Church made a decision to purchase properties near or adjacent to the Reynolds Avenue property in an attempt to expand the Church's influence in its new neighborhood.

After some negotiations, the Trustee Board was able to consummate a deal to purchase an apartment building at 1925 Grayson Street, close to the Church's Reynolds Avenue location. The strategy of purchasing land could only be put into action if approved by the congregation, which was done through a series of votes at regularly-scheduled congregational meetings. Therefore, in order to purchase the apartment building on Grayson Street, the Board of Trustees sought and obtained explicit and specific approval from the congregation at a June 14th, 2004 meeting, to borrow funds for

the purchase and improvement of this property, the amount of which was not to exceed $200,000. (R. pp. 161-62). Subsequently, the Church purchased this and other properties on Grayson Street.

Appellant Holmes testified that the purchase of the Grayson Street apartment building was more than a means of generating income for the Church; it was "intertwined with the church's ministry." (R. p. 137, lines 4-8) (R. p. 135, line 7 – p. 136, line 21). Appellant Banks confirmed that he had been informed by Reverend Brantley that the purchase of the apartments was "part of the kingdom building process of St. Matthew being involved in the immediate community of the church." (R. p. 146, line 24 – p. 147, line 4); *see also* (R. p. 152, line 7 – p. 153, line 13); (R. p. 156, lines 21-23 (noting that Reverend Brantley "wanted to buy up everything around that church and make it a part of the church")). Furthermore, Appellant Holmes testified that his role as a Trustee in the selection and purchase of the apartment building "in that capacity, was to carry out the church's mission." (R. p. 133, lines 16-20).

These properties were held by the Church without incident for some time. However, a disgruntled tenant in the 1925 Grayson Street property set fire to an apartment causing damage to seven rental units. After the fire, the Church discovered that it did not have insurance to cover the loss. Furthermore, a review of the closing documentation also revealed that the Reynolds Avenue Church property had been used as collateral to secure the loan for the Grayson street apartment complex without any approval from the congregation. As managers of the Church's assets, it was the Trustees' responsibility to obtain congregational approval for using the Church property as collateral.

During the course of these events, the working relationship between Reverend Brantley and the Appellants began to deteriorate. According to Reverend Brantley, the Appellants' failure to communicate with him was creating difficulties in his ability to effectively lead the congregation and to monitor the use of the Church's funds in outreach programs. (R. p. 121, line 14 – p. 122, line 7) (R. p. 123, lines 13-19) (R. p. 124, line 22 – p. 125, line 15) (R. p. 126, lines 12-20) (R. pp. 163-64). The growing controversy between Reverend Brantley and the Appellants led Reverend Brantley to the decision that Appellants should be removed from the Trustee Board and replaced with other members of the congregation. This issue was brought to the attention of the congregation at a regularly-scheduled quarterly congregational meeting on May 22, 2006. Shortly into the meeting, Reverend Brantley made a presentation to the congregation in which he outlined his reasons for asking that Appellants be removed from their positions on the Trustee Board. The statements made during this presentation are the basis for Appellants' claims against Reverend Brantley. According to the written minutes of the meeting, Reverend Brantley stated that "the Church had been mortgaged and there was no insurance on the buildings that had been purchased" and that a $300,000 mortgage had been placed on the church that he did not know about, and that he had been "constantly deceived throughout." (R. p. 163).[2]

[2] Although Appellants' brief asserts that Reverend Brantley "stated that the Appellants had misappropriated $300,000 of the church's money and that he did not know anything about it," the minutes of the meeting do not support this assertion. Neither do the excerpts of Reverend Brantley's deposition cited by Appellants. Those passages indicate that Reverend Brantley merely stated that the Church had been mortgaged by the Appellants without his knowledge. (R. p. 129, line 7 – p. 130, line 9). In fact, the portion of Reverend Brantley's deposition cited by Appellants for the egregious nature of his allegedly "disparaging remarks" reveal that Reverend Brantley denied ever saying Appellants had misappropriated or taken money from the Church. He explained that he had accused Appellants of bad management and therefore had nothing to apologize for following the May 22, 2006 congregational meeting. (R. p. 128, lines 1-9). Nonetheless, for purposes of this appeal, Respondent Brantley will assume that Appellants' statements regarding what was said at the meeting are accurate.

Following the presentation made by Reverend Brantley, the Appellants were allowed to address the congregation in response. A motion was made to remove Appellants from their position on the Trustee Board. That motion was seconded and passed by a majority vote of the congregation. Appellants have not participated as members of the Trustee Board since that meeting but have remained members of the Church.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, appellate courts apply the same standard that governs a circuit court's review of the pleadings and facts. USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008). Summary judgment is appropriate where there are no genuine issues of material fact and, reviewing all the evidence in the light most favorable to the non-moving party, the moving party is entitled to a judgment as a matter of law. Id.; *see also* Collins Holding Corp. v. Wausau Underwriters Ins. Co., 379 S.C. 573, 576-77, 666 S.E.2d 897, 899 (2008). Furthermore, the question of subject matter jurisdiction is a question of law for the court. Murphy v. Owens-Corning Fiberglas Corp., 346 S.C. 37, 550 S.E.2d 589 (Ct. App. 2001).

ARGUMENTS

I. The Circuit Court properly dismissed Appellants' Claims for lack of jurisdiction because the claims involve fundamental issues of church governance and are thereby barred by the United States and South Carolina Constitutions' guarantee of freedom of religion.

The First Amendment to the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." This guarantee of freedom of religion applies to decisions of the federal courts and, through the Fourteenth Amendment, to the various states. Celnik

v. Congregation B'Nai Israel, 131 P.3d 102, 106 (N.M. Ct. App. 2006), *citing* Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 191, 80 S. Ct. 1037 (1960). In addition, the South Carolina constitution mirrors the grant of religious freedom found in the First Amendment. South Carolina Constitution, Article I, Section 2; Pearson v. Church of God, 325 S.C. 45, 51, 478 S.E.2d 849, 852 (1996). Consequently, courts have followed the general rule that they "should be loath to assert jurisdiction over internal church disputes; its exceptions are rare." Yaggie v. Indiana-Kentucky Synod, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994), *citing* Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372 (1976).

As explained by the New Jersey Supreme Court, the Establishment Clause prohibits states from promoting a particular religion or becoming too entangled, either procedurally or substantively, in religious affairs. McKelvey v. Pierce, 800 A.2d 840, 849 (N.J. 2002) (citations omitted). The Free Exercise Clause forbids "governmental action from encroaching on the ability of a church to manage its internal affairs." Id. at 848.

The church autonomy doctrine provides that "churches have autonomy in making decisions regarding their own internal affairs. This church autonomy doctrine prohibits civil court review of internal church disputes involving matters of faith, doctrine, *church governance*, and polity." Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 655 (10th Cir. 2002), *citing* Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143 (1952) (emphasis added); *see also* Rayburn v. General Conf. of Seventh-day Adventists, 772 F.2d 1164, 1167 (4th Cir. 1985) (explaining that First Amendment protection guarantees to churches the right "to decide for themselves, free from state

interference, matters of church government a well as those of faith and doctrine").[3] Thus, the protection of the First Amendment "extends beyond the selection of clergy to other internal church matters" including matters of church administration. Bryce, 289 F.3d at 656.[4]

South Carolina has long recognized the importance of maintaining a strict separation between church and state. Knotts v. Williams, 319 S.C. 473, 462 S.E.2d 288 (1995) (noting that the "maintenance of governmental neutrality in the court resolution of church disputes has been the consistent and dominant theme of the South Carolina cases in this area"). The South Carolina Supreme Court has specified that "civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters." To do otherwise would "be inconsistent with complete religious liberty untrammeled by state authority." Pearson, 325 S.C. at 51-52, 478 S.E.2d at 852, *quoting* Morris Street Baptist Church v. Dart, 67 S.C. 338, 45 S.E. 753 (1903). Although Appellants quote the South Carolina Supreme Court in Morris Street for the proposition that civil courts will determine civil rights that are dependent on an ecclesiastical matter (Initial Brief of Appellants, p. 3), they fail to note that the Court clarified what it meant by a "civil right" to be "rights growing out of a contract recognized by the civil law, or

[3] The church autonomy doctrine arose out of the Free Exercise Clause but has been described as being rooted in both of the "Religion Clauses." McKelvey, 800 A.2d at 850-51.

[4] Appellants assert that "the circuit court may make extensive inquiry into religious law and polity." (Brief of Appellants, p. 3). However, they cite no authority for such a startling proposition for the very reason that there is none. Instead, where issues of church governance are concerned, courts are limited to determining whether the church has actually spoken on an issue and, if it has, "this court inquires no further." Bowen v. Green, 275 S.C. 431, 435, 272 S.E.2d 433, 435 (1980).

the right to the possession of property . . ." 67 S.C. at 342, 45 S.E. at 754.[5] The exceptions to the prohibition against judicial involvement in internal church affairs – purely contractual and/or property disputes – do not apply to the case before the Court which arises out of an issue of fundamental church governance and a related internal power struggle.

In fact, Appellants have made it clear that they viewed what was transpiring between themselves and Reverend Brantley to be a power struggle – Appellant Homes indicated that Reverend Brantley was trying to "put the deacons in authority above the trustees." (R. p. 141, line 21 – p. 143, line 11); *see also* (R. p. 188, lines 18-23) (R. p. 157, line 18 – p. 158, line 23) (R.159, line 20 – p. 160, line 4).

Exceptions to the prohibition against court involvement in internal church affairs have been made only in narrow circumstances where the conduct or actions under question "invariably posed some substantial threat to public safety, peace or order." Sherbert v. Verner, 374 U.S. 398, 403, 83 S. Ct. 1790, 1793 (1963); *see also* McClure v. The Salvation Army, 460 F.2d 553, 558 (5th Cir. 1972) (holding that "only in rare instances where a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate' is shown can a court uphold state action which imposes even an 'incidental burden' on the free exercise of religion"). As explained in more detail below, defamation claims rarely, if ever, rise to this level of concern.

Appellants appear to have conceded that the decision of the congregation to remove them from the Trustee Board cannot be examined by this Court because doing so would infringe upon rights guaranteed under the First Amendment. What they apparently

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[5] Appellants have not alleged, nor could they legitimately claim, that their injuries arise out of any contractual or property dispute with the Church or Reverend Brantley and, therefore, their claims do not

misapprehend, however, is that precisely because this was a decision affecting church governance, statements made during the congregational discussion as to whether to remove them are also protected by the First Amendment. This is not a case where Reverend Brantley just spoke up and began randomly to accuse the Appellants of various infractions. His statements were made in a quarterly congregational meeting discussing issues directly related to church governance. Courts have held that, claims based on statements made in the context of discussions of church policy or governance, regardless of whether the statements are "offensive" or even incorrect, cannot be adjudicated by civil courts without infringing on the First Amendment. Bryce, 289 F.3d at 658. This is because the "church autonomy doctrine is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely." Id. Furthermore, contrary to Appellants' assertions that the court can consider the defamation claims divorced from their religious setting, any examination of Appellants' claims would necessarily involve an "inquiry into the good faith of the position asserted by [Reverend Brantley] . . . It is not only the conclusions that may be reached . . . which may impinge on the rights guaranteed by the Religion Clauses, but also the very process of inquiry." Scharon v. St. Luke's Episcopal Presbyterian Hosp., 929 F.2d 360, 363 (8th Cir. 1991). In Scharon, the court rejected the petitioner's claim that the religious motives for her dismissal were "merely a pretext for the actual motive behind her dismissal." Id.

A majority of courts faced with defamation claims have held that "defamation claims by church members against the religious organization itself and its officials are not justiciable under the Free Expression and Establishment Clauses" of the First Amendment. Anderson v. Watchtower Bible & Tract Soc. of N.Y., Inc., No. M2004-

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fall within this exception.

01066-COA-R9-CV, 2007 Tenn. App. LEXIS 29, *81 (Tenn. Ct. App. Jan. 19, 2007). "Under most circumstances, defamation is one of those common law claims that is not compelling enough to overcome First Amendment protection . . . because resolution of the claim would require impermissible inquiry into the church's bases for its action. . . . Questions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light of religious precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church." Patton v. Jones, 212 S.W.3d 541, 553-54 (Tex. App. 2006), *quoting* Heard v. Johnson, 810 A.2d 871 (D.C. 2002); *see also* Bourne v. Center on Children, Inc., 838 A.2d 371, 380 (Md. Ct. Spec. App. 2003) (holding that statements made during decisions regarding "religious leadership positions" are protected by the First Amendment even if they are "invalid and unfair").

Clearly, where alleged defamatory statements are based on issues relating to church governance, "resolution of the truth of falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance." Anderson, 2007 Tenn. App. LEXIS 29, at *98. Where allegedly defamatory statements are made within the context of a church deciding issues of church governance, they fall "squarely within the protective ambit of the First Amendment." Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808 (Md. Ct. Spec. App. 1996) (applying the First Amendment to deny hearing claims regarding alleged defamatory statements made in the context of an attempt to prevent an applicant from becoming a priest).

Even where the alleged defamatory statements do not themselves express any "religious principles or beliefs," the fact that they are made in the context of an internal church conflict involving persons holding ministerial roles prohibits courts from exercising jurisdiction over the dispute. *See* Yaggie, 860 F. Supp. at 1198; *see also* Schoenhals v. Mains, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993) (holding that where examination of the truth or falsity of alleged defamatory statements "would require an impermissible inquiry into Church doctrine and discipline," the claim was precluded by the First Amendment); Klagsbrun v. Va'ad Harabonim of Greater Monsey, 53 F. Supp. 2d 732, 741 (D.N.J. 1999) (dismissing defamation case where determining the veracity of statements that plaintiffs had entered into a second marriage without first obtaining a religious divorce would require the court to "inquire into areas of clear ecclesiastical concern"); Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001) (dismissing suit alleging defamatory statements regarding honesty of plaintiff because adjudicating the issues would impermissibly involve the court in issues of the "church's governance, internal organization, and doctrine").

Appellants' recitation of the elements of a defamation claim are premature. Regardless of whether the statements constitute defamation *per se*, even assuming Reverend Brantley accused Appellants of stealing, an investigation into whether the remarks were true or justified would necessarily thrust the courts into an examination of the governance of the Church, the spiritual and fiscal obligations of the Trustees, the Trustees' role in the spiritual life of the church, as well as issues of faith, doctrine and discipline. In fact, Appellants Banks and Holmes readily agreed that their role was part of the Church's governance, (R. p. 150, lines 20-23) (R. p. 137, lines 9-13), and all

agreed that the purchase of the apartment buildings was part of the Church's spiritual mission. *See* (R. p. 137, lines 4-8) (R. p. 133, lines 16-20) (R. p. 146, line 24 – p. 147, line 4) (R. p. 152, line 7 – p. 152, line 13) (R. p. 156, lines 21-23). Thus, because Appellants' claims arise out of fundamental issues of church governance, this Court should uphold the Circuit Court's dismissal of Appellants' claims as barred by the First Amendment to the United States Constitution and Article I, Section 2 of the South Carolina Constitution.

II. The "Neutral Principles" doctrine does not provide a basis for the Circuit Court to hear Appellant's claims against Reverend Brantley.

Although Appellants argue that "[t]his case simply requires the application of neutral principles of civil law and very little inquiry into religious law," (Brief of Appellants, p. 3), the "'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir. 1986). Instead, the neutral principles doctrine has been restricted to property disputes and contractual issues that could be decided without resort to involving matters of church doctrine or government. Id.; *see also* Morris Street, 67 S.C. at 342, 45 S.E. at 754; Downs, 683 A.2d at 622; Anderson, 2007 Tenn. App. LEXIS 29, ** 24-25.[6]

In particular, Appellants argue that the Court may review the statements made in the May 22, 2006 congregational meeting separate from the decision to remove the Appellants as Trustees by "simply" accepting the congregation's decision and examining the statements outside of their context. (Brief of Appellants, p. 4). Other courts faced

[6] Appellants are correct that the analysis of their intentional infliction of emotional distress claim is subject to the same analysis as their defamation claim. (Brief of Appellants, p. 6). For this reason, Appellants' second cause of action should be dismissed on the same basis as the defamation claim.

with this argument have flatly rejected it. For example, in Farley v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1286 (D. Minn. 1993), the court was presented with a defamation claim involving a church governance issue. Although the statements were made in the context of the plaintiff's removal from a pastoral post, the plaintiff argued, as do Appellants here, that his defamation claim could be maintained without offending the First Amendment because he was not challenging the church's decision to terminate his position. Instead, the plaintiff argued that the court need only examine the specific challenged conduct and determine whether that conduct was defamatory. The court rejected plaintiff's argument and held that resolution of the defamation claim would necessarily involve examining the basis for the plaintiff's removal from office and the veracity of the challenged statements. This, the court held, "would implicate the concerns expressed in the First Amendment." Id. at 1290.

Similarly, in Jae-Woo Cha, the Virginia Supreme Court pointed out that the defamation claims "cannot be considered in isolation, separate and apart from the church['s decision to terminate [plaintiff's] employment." 553 S.E.2d at 516. The Virginia Supreme Court noted that the defendants who allegedly made the defamatory remarks "were church officials who attended meetings of the church's governing bodies that had been convened for the purpose of discussing certain accusations against the plaintiff," and observed that to allow "defamation suits to be litigated to the fullest extent against members of a religious board who are merely discharging the duty which has been entrusted to them by their church could have a potentially chilling effect on the performance of those duties." Id. at 516-17, *quoting from* McManus v. Taylor, 521 So. 2d 449 (La. Ct. App. 1988).

In Celnik, a New Mexico appeals court held that allegations that the defendants "intentionally disseminated one-sided and negative information" about the plaintiff with an intent to sway a congregational leadership decision was "precisely the type of religious debate that the church autonomy doctrine is intended to protect from judicial review." 131 P.3d at 107. In the case at hand, Appellants allege that Reverend Brantley made the allegedly defamatory statements in a congregational meeting in order to persuade the congregation that Appellants "should be removed as Trustees of St. Matthew Baptist." (R. p. 4). As such, their claims are "precisely the type of religious debate" that is barred from judicial review by the First Amendment.[7] This Court should find likewise.

CONCLUSION

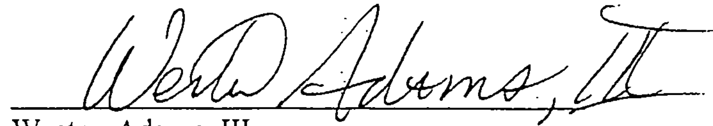
The Circuit Court properly dismissed Appellants' claims against Reverend Brantley because they arise out of issues of fundamental church governance and are therefore barred by the federal and State constitutions' guarantee of religious freedom. Likewise, the Circuit Court properly rejected Appellants' suggestion that the case could be maintained by applying the neutral principles doctrine. This Court should therefore uphold the decision of the Circuit court and hold that appellants' claims are barred by the First Amendment to the United States Constitution, as well as Article I, Section 2 of the South Carolina Constitution.

[7] Likewise, Appellants' negligence claim, which alleges Reverend Brantley was negligent in conveying his message to the congregation in an attempt to convince it to remove Appellants from the Trustee Board, is inseparable from the type of religious debate that the church autonomy doctrine is intended to protect.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

May 18, 2009



Weston Adams, III
Gunnar Nistad
Helen F. Hiser
Post Office Box 12519
700 Gervais St. Suite 300 (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorneys for Respondent Clinton Brantley

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,.. APPELLANTS,

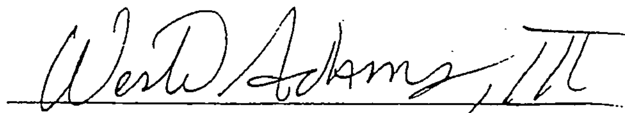
V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY, ...RESPONDENTS.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of Respondent Clinton Brantley complies with Rule 211(b), SCACR.

May 18, 2009



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Gunnar Nistad
Helen F. Hiser
Post Office Box 12519
700 Gervais St. Suite 300 (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorneys for Respondent Clinton Brantley

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable John M. Milling, Circuit Court Judge

Case No. 2007-CP-10-896

Ira Banks, James Bell, and Vernon Holmes, ... Appellants,

v.

St. Matthew Baptist Church, an Unincorporated Association, and
Clinton Brantley, ... Respondents.

RESPONDENT ST. MATTHEW BAPTIST CHURCH'S FINAL BRIEF

Richard C. Thomas
Matthew G. Gerrald
J. Todd Kincannon
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondent
St. Matthew Baptist Church

May 14, 2009

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY HOLD THAT THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA CONSTITUTION PRECLUDE AN EXERCISE OF JURISDICTION OVER CLAIMS AGAINST A CHURCH FOR NEGLIGENTLY HIRING AND SUPERVISING ITS PASTOR?

II. DID THE CIRCUIT COURT CORRECTLY HOLD THAT THERE IS NO DUTY FOR A CHURCH TO CONDUCT AN INDEPENDENT INVESTIGATION INTO ALLEGED DEFAMATORY STATEMENTS BY ITS PASTOR?

STATEMENT OF THE CASE

Respondent St. Matthew Baptist Church is a Baptist church located in North Charleston, South Carolina. (R. p. 9, ¶ 3). Respondent Reverend Clinton Brantley is, and at all times relevant to this action was, the Pastor of the Church. (R. p. 24, lines 23-24). Both Respondents were Defendants below. At the time relevant to this action, the Appellants, Plaintiffs below, were members of the Church's Board of Trustees. (R. p. 32, lines 9-12).

On May 22, 2006, the Church held a business meeting during which the congregation, in accordance with Matthew 18:15-17, voted to remove the Appellants from the Church's Board of Trustees. (R. p. 29, lines 3-6). The Appellants maintain that certain statements made by Reverend Brantley at that meeting were defamatory. (R. p. 4, ¶ 7). They filed this lawsuit against Reverend Brantley and the Church on March 5, 2007, asserting causes of action for defamation, intentional infliction of emotional distress, and negligence against Reverend Brantley, and negligence against the Church. (R. p. 4, ¶ 6 – p. 6, ¶ 26). Specifically, the Appellants allege that the Church was negligent in its hiring and supervision of Reverend Brantley. (R. p. 5, ¶ 20).

The Respondents moved to dismiss on the grounds that this is a religious dispute and therefore civil courts lack jurisdiction pursuant to the federal and state constitutions. (R. p. 31, lines 13-17; R. p. 34, line 21 – p. 35, line 4). After a hearing on September 15-16, 2008, the circuit court granted the Respondents' motions and dismissed the Appellants' claims for lack of jurisdiction. (R. p. 2). The Appellants subsequently filed a notice of appeal on October 6, 2008.

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY HELD THAT THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA CONSTITUTION PRECLUDE AN EXERCISE OF JURISDICTION OVER CLAIMS AGAINST A CHURCH FOR NEGLIGENTLY HIRING AND SUPERVISING ITS PASTOR.

A. Civil courts have no jurisdiction to hear ecclesiastical disputes or disputes which would require intrusion into ecclesiastical affairs or questioning of ecclesiastical decisions.

The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" U.S. Const. amend. I. The First Amendment's prohibitions against government establishment of religion or interference with the free exercise of religion, known as the Religion Clauses, apply against the states by incorporation through the Fourteenth Amendment. Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 8 n.4 (2004). Moreover, the South Carolina Constitution contains language virtually identical to the Religion Clauses. S.C. Const. art I., § 2. Courts, including the United States Supreme Court, have unanimously held that these clauses prohibit civil courts from exercising jurisdiction over internal church disputes and other ecclesiastical matters.

In the oft-cited case of Watson v. Jones, 80 U.S. 679 (1871), the United States Supreme Court held:

> [W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Id. at 727. The Court further noted:

> [I]t is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,—a matter over which the civil courts

> exercise no jurisdiction,—a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,—becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction.

Id. at 733.

Over one hundred years later, the Court reiterated its holding in Watson, stating that it is a "constitutional mandate" that "civil courts are bound to accept the decisions of the highest judicatories of a religious organization . . . on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 713 (1976). The Court continued: "[I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria." Id. at 714-15.

The Fourth Circuit has also opined that the First Amendment dictates that matters of church governance shall not be subject to secular judicial scrutiny. In Rayburn v. Gen. Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985), the court held:

> Each person's right to believe as he wishes and to practice that belief according to the dictates of his conscience so long as he does not violate the personal rights of others, is fundamental to our system. This basic freedom is guaranteed not only to individuals but also to churches in their collective capacities, which must have power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

Id. at 1167 (citations and quotations omitted).

Following the lead of the United States Supreme Court, the South Carolina

Supreme Court has held that civil courts have no jurisdiction to adjudicate ecclesiastical disputes or disputes which would necessarily involve intrusion into ecclesiastical affairs. In Morris Street Baptist Church v. Dart, 45 S.E. 753 (S.C. 1903), the court held:

> Whenever [a] congregation meets as a church, it may expel members, depose its pastor, and dispose of its property in any way that it sees fit; and, when a congregation has acted, the civil courts will not inquire whether in doing so it violated any of its own rules. The congregation being the sole legislative and judicial body of the Baptist Church, those who connect themselves with it voluntarily assume the risk of the propriety and justice of congregational action.

Id. at 754.

In Bramlett v. Young, 93 S.E.2d 873 (S.C 1956), the court echoed the language of Watson, stating:

> The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatoris having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority.

Id. at 882 (quoting Turbeville v. Morris, 26 S.E.2d 821, 827 (S.C. 1943)). The court summarized its holding thusly: "[C]ivil courts have no jurisdiction of ecclesiastical questions and controversies[.]" Id.

Finally, just seven years ago, the South Carolina Supreme Court reiterated that in order to "preserve complete religious liberty, untrammeled by state authority, we limit our inquiry into church affairs and respect the boundaries of church self-governance." Williams v. Wilson, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002) (citations and quotations omitted). Thus, it has been clearly established that civil courts may not constitutionally exercise jurisdiction where the dispute is inherently an ecclesiastical

dispute or its adjudication would involve questioning or interference with ecclesiastical affairs or decisions.[1]

B. Decisions relating to the hiring and supervision of a pastor are quintessentially ecclesiastical.

"The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." McClure v. Salvation Army, 460 F.2d 553, 558-59 (5th Cir. 1972). Recognizing this special relationship between churches and their pastors, courts across the country, including the United States Supreme Court, have held that decisions regarding the selection and supervision of pastors are quintessentially ecclesiastical matters which are not subject to interference by civil courts.

In Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929), the United States Supreme Court held that "it is the function of the church authorities to determine what the essential qualifications of a [pastor] are and whether [a] candidate possesses them." Id. at 16. The Fourth Circuit has held that "the decisions of religious entities about the appointment and removal of ministers and persons in other positions of similar theological significance are beyond the ken of civil courts." Bell v. Presbyterian Church (U.S.A.), 126 F.3d 328, 331 (4th Cir. 1997). See also Equal Employment Opportunity Comm'n v. The Roman Catholic Diocese of Raleigh, N.C., 213 F.3d 795, 800 (4th Cir. 2000) (noting that "courts have repeatedly emphasized the constitutional imperative of governmental non-interference with the ministerial employment decisions

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[1] Moreover, exclusive original jurisdiction over disputes between church members lies with the church itself. See, e.g., I Corinthians 6:1-8 (NASB) (stating that lawsuits between believers are a "defeat" for the church and questioning whether "there is not among [the church] one wise man who will be able to decide between his brethren").

of churches"); Rayburn, 772 F.2d at 1168 ("Any attempt by government to restrict a church's free choice of its leaders . . . constitutes a burden on the church's free exercise rights."). The South Carolina Supreme Court has echoed these sentiments. See, e.g., Bramlett, 93 S.E.2d at 882 (holding that "the action of church authorities in the deposition of pastors . . . is final").

C. Civil courts have no jurisdiction to adjudicate allegations regarding a church's pastoral hiring and supervision practices and procedures.

The Appellants acknowledge that "civil courts have no jurisdiction over ecclesiastical questions and controversies." Appellants' Br. at 2. The Appellants even admit that this dispute involves at least some "inquiry into religious law." Appellants' Br. at 3. Though the Appellants attempt to minimize the level of inquiry into religious law required by this dispute, the United States Supreme Court has held that its decision in Watson "left civil courts no role to play in reviewing ecclesiastical decisions[.]" Milivojevich, 426 U.S. at 712. Thus, no "inquiry into religious law" by civil courts, however minimal, is constitutionally permissible.

In any event, the Appellants' attempt to avoid application of the above-stated constitutional principles by characterizing this case as one which involves only secular "civil rights" is faulty. Appellants' Br. at 3. The Appellants' mere assertion that this dispute requires "very little inquiry into religious law" does not make it so. Id. Nor is the fact that the Appellants do not seek reversal of the Church's decision to remove them from the Board of Trustees relevant. Id. The critical and determinative issue is that, as against the Church, the Appellants' only cause of action—negligence—seeks a judicial determination that the Church's practices and procedures with regard to hiring and supervising its Pastor were defective. The federal and state constitutions simply do not

permit civil courts to make such determinations.

The Appellants' sole cause of action against the Church is negligence. The Appellants allege that the Church was negligent in: (a) hiring Reverend Brantley; (b) placing Reverend Brantley in a position of authority within the Church; (c) not conducting its own investigation of "the facts" before the May 22, 2006 congregational meeting; (d) failing to "prevent" Reverend Brantley from making alleged defamatory statements about the Appellants; and (e) failing to "stop" Reverend Brantley from making alleged defamatory statements about the Appellants. (R. p. 5, ¶ 20). Allegations (a) and (b) essentially allege negligent hiring, while allegations (c) through (e) essentially allege negligent supervision.

Regardless of the label the Appellants have affixed to their claims against the Church, the question is whether a court must delve into ecclesiastical questions in order to resolve it. Clearly, the Appellants' negligent hiring and supervision claims would require impermissible inquiry into the Church's practices and procedures with regard to selection and supervision of its pastors, matters which are unmistakably ecclesiastical concerns. See, e.g., Natal v. Christian & Missionary Alliance, 878 F.2d 1575, 1577 (1st Cir. 1989) ("Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated."). As noted above, the Appellants even concede that some inquiry into ecclesiastical affairs is necessary in this case. Appellants' Br. at 3. A civil court therefore has no jurisdiction to hear the Appellants' claims. Courts have consistently recognized this principle.

For example, in Swanson v. Roman Catholic Bishop of Portland, 692 A.2d 441

(Me. 1997), the plaintiffs asserted claims for negligent hiring and retention of a priest. Like the Appellants in the instant case, the plaintiffs in Swanson attempted to avoid dismissal for lack of jurisdiction by asserting that their claims could be resolved by the application of neutral, secular tort principles. Id. at 443. They argued that "inquiry into the church's knowledge of any risk presented by [the priest] and the reasonableness of the church's supervisory acts involve nothing beyond the application of secular legal standards to secular conduct." Id. However, the court rejected the plaintiffs' arguments, finding that "constitutional considerations bar such a claim against the church in this case." Id. at 444. The court noted that "[p]astoral supervision is an ecclesiastical prerogative" and that "[i]t would be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the [priest]." Id. at 445 (quoting Schmidt v. Bishop, 779 F.Supp. 321, 332 (S.D.N.Y. 1991)). The court found that "[a]ny award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination." Id. (quoting Schmidt v. Bishop, 779 F.Supp. 321, 332 (S.D.N.Y. 1991)).

As previously discussed, the United States Supreme Court has reached the same conclusion. E.g., Gonzalez, 280 U.S. at 16 (holding that "it is the function of the church authorities to determine what the essential qualifications of a [pastor] are and whether [a] candidate possesses them"). Other courts have announced similar holdings. See, e.g., Bell, 126 F.3d at 331 (holding that "the decisions of religious entities about the appointment and removal of ministers and persons in other positions of similar theological significance are beyond the ken of civil courts"); Rayburn, 772 F.2d at 1170 ("It is axiomatic that the guidance of the state cannot substitute for that of the Holy Spirit

and that a courtroom is not the place to review a church's determination of 'God's appointed.'"); Knotts v. Williams, 319 S.C. 473, 478, 462 S.E.2d 288, 291 (1995) (holding that courts lack jurisdiction over religious disputes because "[i]t is not the function of courts . . . to dictate procedures for a church to follow"); Elvig v. Ackles, 98 P.3d 524, 528 (Wash. Ct. App. 2004) (holding that adjudication of a negligent supervision claim against a church would require a secular court to examine ecclesiastical decisions and would undermine the church's autonomy).

At the hearing below, counsel for the Appellants attempted to distinguish this long line of cases prohibiting court intervention in churches' pastoral hiring and supervision decisions on the grounds that most of the cases involved church employees who were fired and sought to be restored to their positions. (R. p. 41, lines 6-15). While many of these cases, though certainly not all of them, did indeed involve such situations, that fact is irrelevant. The overriding principle that courts may not question or interfere with pastoral hiring and supervision practices applies regardless of the underlying facts of each particular case.

Based on these principles, the trial court was obliged to dismiss the Appellants' claims against the Church for lack of jurisdiction in order to avoid unconstitutionally interfering with the Church's pastoral hiring and supervision practices and procedures, and this court should affirm that dismissal.[2]

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2 Predictably, counsel for the Appellants complained at the hearing that the Appellants would be left without a remedy if their claims were to be dismissed. (R. p. 62, lines 22-25). Even assuming the correctness of that assertion, courts have held that "the preservation of the free exercise of religion is deemed so important a principle it overshadows the inequities that may result from its liberal application." Williams v. Gleason, 26 S.W.3d 54, 59 (Tex. App. 2000). See also Dart, 45 S.E. at 754 ("The congregation being the sole legislative and judicial body of the Baptist Church, those who connect themselves with it voluntarily assume the risk of the propriety and justice of congregational action."); Anderson v. Watchtower Bible and Tract Soc'y of N.Y., 2007 WL 161035 at *20 (Tenn. Ct. App. 2007) ("If the harm alleged is the direct result of a religious practice or decision that courts cannot examine, there is no remedy

II. THE CIRCUIT COURT CORRECTLY HELD THAT THERE IS NO DUTY FOR A CHURCH TO CONDUCT AN INDEPENDENT INVESTIGATION INTO ALLEGED DEFAMATORY STATEMENTS BY ITS PASTOR.

A. Imposition by a civil court of duties relating to pastoral supervision would necessitate inappropriate and unconstitutional intrusion into ecclesiastical affairs.

As previously noted, the Complaint alleges that the Church was negligent "in not conducting its own investigation of the facts before the congregational meeting was held[.]" (R. p. 5, ¶ 20(c)). The trial court found that "it does not have jurisdiction to try and impose a duty to do some independent investigation into alleged defamatory statements made by the Pastor." (R. p. 2). For the same reasons set forth above, the trial court's finding was correct and should be affirmed by this court.

"It is not the function of courts . . . to dictate procedures for a church to follow." Knotts, 319 S.C. at 478, 462 S.E.2d at 291. See also Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996) ("[I]t is not the function of courts to dictate procedures for a church to follow; the courts' function is solely limited to interpreting the final action of the church."). Moreover, the Appellants "have cited no precedent and [counsel for the Church is] aware of none that stands for the proposition a church owes its parishioners a duty of care regarding its handling of their complaints." Brown v. Pearson, 326 S.C. 409, 420, 483 S.E.2d 477, 483 (Ct. App. 1997).

As the trial court stated, to impose on the Church a duty to conduct an independent investigation would not only be an unconstitutional interference with the Church's prerogatives in supervising its Pastor, but it would require an impermissible inquiry into whether the Church acted properly in the process of removing its trustees. (R.

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available in the courts for such harm.").

p. 45, lines 15-20). Such an inquiry would be "inconsistent with complete religious liberty, untrammeled by state authority." Bramlett, 93 S.E.2d at 882. Accordingly, the trial court's order should be affirmed.

B. Nothing in the record supports the existence of a duty on the part of the Church to conduct an independent investigation.

"An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007) (citations omitted). A legal duty sufficient to support a negligence claim exists if "created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. S.C. Dep't of Corrections, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988).

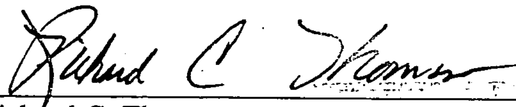
Based on these principles, affirmance of the trial court's order would be required even were there not an insurmountable constitutional bar to the Appellants' claims against the Church because nothing in the Complaint nor anything else in the record supports the existence of a duty. Indeed, when questioned at the hearing below regarding the source of a duty on the part of the Church to conduct an independent investigation, counsel for the Appellants admitted that he was "not arguing that the congregation should have done this, that, or the other." (R. p. 46, lines 21-22). Crucially, however, the congregation *is* the Church. See, e.g., Colossians 1:18 (NASB) (referring to the church as "the body").

Thus, because the record does not support the existence of a duty on the part of the Church to conduct an independent investigation and because counsel for the Appellants has admitted that the congregation (i.e., the Church) had no such duty, the

trial court's order should be affirmed.

CONCLUSION

For the reasons explained herein, the trial court committed no error in granting the Respondents' motion to dismiss. Respondent St. Matthew Baptist Church therefore respectfully requests that this Court affirm the order of the trial court.



Richard C. Thomas
Matthew G. Gerrald
J. Todd Kincannon
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondent
St. Matthew Baptist Church

May 14, 2009

p. 45, lines 15-20). Such an inquiry would be "inconsistent with complete religious liberty, untrammeled by state authority." Bramlett, 93 S.E.2d at 882. Accordingly, the trial court's order should be affirmed.

B. Nothing in the record supports the existence of a duty on the part of the Church to conduct an independent investigation.

"An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007) (citations omitted). A legal duty sufficient to support a negligence claim exists if "created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. S.C. Dep't of Corrections, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988).

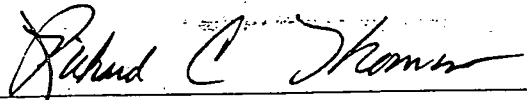
Based on these principles, affirmance of the trial court's order would be required even were there not an insurmountable constitutional bar to the Appellants' claims against the Church because nothing in the Complaint nor anything else in the record supports the existence of a duty. Indeed, when questioned at the hearing below regarding the source of a duty on the part of the Church to conduct an independent investigation, counsel for the Appellants admitted that he was "not arguing that the congregation should have done this, that, or the other." (R. p. 46, lines 21-22). Crucially, however, the congregation *is* the Church. See, e.g., Colossians 1:18 (NASB) (referring to the church as "the body").

Thus, because the record does not support the existence of a duty on the part of the Church to conduct an independent investigation and because counsel for the Appellants has admitted that the congregation (i.e., the Church) had no such duty, the

trial court's order should be affirmed.

CONCLUSION

For the reasons explained herein, the trial court committed no error in granting the Respondents' motion to dismiss. Respondent St. Matthew Baptist Church therefore respectfully requests that this Court affirm the order of the trial court.



Richard C. Thomas
Matthew G. Gerrald
J. Todd Kincannon
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondent
St. Matthew Baptist Church

May 14, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John M. Milling, Circuit Court Judge

Case No. 2007-CP-10-896

Ira Banks, James Bell, and Vernon Holmes................. Appellants

v.

St. Matthew Baptist Church, an Unincorporated
Association, and Clinton Brantley............................ Respondents

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FINAL BRIEF OF APPELLANTS TO RESPONDENT BRANTLEY

Thomas O. Sanders, IV, Esquire
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, SC 29407
(843)573-8828
Attorney for Appellants

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ARGUMENTS

I. THE "NEUTRAL PRINCIPLES" DOCTRINE SHOULD EXTEND TO APPELLANTS' CLAIMS.

Respondent Brantley asserts that the Neutral Principles Doctrine was restricted to property disputes and contractual issues (Initial brief of Respondent Clinton Brantley, p. 13) by Morris Street Baptist Church v. Dart, 67 S.C. 338 (1903). On the contrary, Morris Street involves a church's attempt to enjoin and to restrain a pastor from preaching and from attempting to function as a pastor after the congregation had voted to dismiss him. The pastor asserted that he was entitled to three months' notice before he could be dismissed. The court held that a church may dismiss its pastor without notice at a properly-called, regular business meeting. While the court mentions rights "growing out of a contract" or "possession of property," it does not restrict the Neutral Principles Doctrine to these issues. Id. at 342. The Morris Street holding is much broader than Respondent Brantley suggests. "When a *civil* right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right and no more, taking the ecclesiastical decisions out of which the civil right arises, as it finds them." Id. at 341, 45 S.E. at 754 (emphasis added).

The jurisdiction of civil courts as to civil rights involved in a church controversy is further defined in Pearson v. The Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996) (quoting Bramlett v. Young, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956)). Pearson holds "civil courts do 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." Id. at 51. This holding suggests that civil rights are in addition to contract and property rights.

Appellants' claims are indeed civil rights.[1] Appellants have a right to seek redress for their destroyed reputations at the hands of Respondent Brantley's false allegations. Aside from the civil court, Appellants have nowhere else to turn.

Respondent Brantley suggests that civil courts may not inquire into any matters of church administration (Initial Brief of Respondent Clinton Brantley, p.8). This is inaccurate. In Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 at 709 (1976), the supreme court accepted extensive inquiry by civil courts into religious law and polity when it used the words "extensive inquiry" in its holding. The court held that when such an extensive inquiry is made, the First and Fourteenth Amendments of the United States Constitution mandate that "civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." Id. at 709. Even this rule requires that proof be made as to what these decisions are. If proofs on that issue conflict, then the civil court will inevitably have to choose one over the other. St. Matthew Baptist Church is governed congregationally. It is not governed by a ruling hierachy as in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143 (1952). As such, there is no appeal from a congregational decision (R. p. 32, lines 15-18). Therefore, the court has jurisdiction to review actions taken by both the congregation (see Knotts v. Williams, 319 S.C. 473, 479 (1995)) and the pastor.

Also, the case at hand is distinguished from Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001). In Jae-Woo Cha, a pastor sued his

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[1] As are the many molestation claims of young parishioners which have been made against Catholic Priests for torts occurring on church property.

church and its board for wrongful termination and for defamation arising from the termination. The court held that because the defamation was intertwined with the termination, it could have a potentially chilling effect on the performance of the duties of a religious board's members. Id. at 515. Even though the court in Jae-Woo Cha declined jurisdiction, it went on to recognize that there are situations in which a civil court may exercise jurisdiction over a plaintiff's tort claims as to a church and its officials.

Respondent Brantley's reliance upon Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963) is misplaced. Sherbert held that South Carolina's denial of unemployment benefits to an employee who was fired for refusing to work on the Sabbath Day (Saturday) of her faith was unconstitutional, because such a policy required the employee to abandon her religious convictions. Such drastic action has not occurred in our case. Religious freedom has not been violated.

Appellants are not challenging their dismissal as trustees. Their claims against Respondent Brantley are not intertwined in an action for their removal as trustees. Because Respondent Brantley's allegations against Appellants can be considered in isolation-- separate and apart from the congregation's decision to remove Appellants as Trustees-- Appellants' actions against Respondent Brantley can be heard without considering St. Matthew Baptist Church's policy, doctrine, beliefs and governance.

It is important to observe what Appellants have not done. They have not challenged Respondent Brantley's authority as a preacher. They have not challenged their removal as Trustees. Before ruling, the circuit court admitted, "I don't know that the decision of the body is what's being called into question." (R. p. 51, lines 16-18). This alone distinguishes the case at hand from all of the cases cited by Respondent Brantley.

Also, Respondent Brantley fails to identify how the circuit court's exercise of jurisdiction over this matter would violate religious freedom. Respondent Brantley fails to show even a potential chilling effect on the operation of St. Matthew Baptist Church because none exists.

II. RESPONDENT BRANTLEY'S EGREGIOUS ALLEGATIONS AGAINST APPELLANTS DO NOT FALL UNDER THE UMBRELLA OF CHURCH GOVERNANCE.

Respondents assert that Respondent Brantley's allegations about Appellants at the congregational meeting are protected speech, because they are a "decision" "affecting church governance." (Initial Brief of Respondent Clinton Brantley, p. 10). However, Respondent Brantley's allegations are not decisions in the practical sense. As such, challenging Respondent Brantley's allegations does not affect church governance.

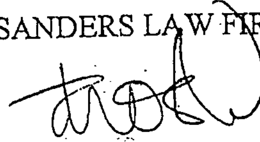
Furthermore, assuming that the dismissal of Appellants as Trustees could be classified as a decision of church governance, Brantley's behavior cannot be classified as such. Instead, the court should focus upon Respondent Brantley's behavior—specifically his allegation that Appellants misappropriated $300,000.00 (R. p. 93, ¶s 6-7; R. pp.101-102; R. p. 113; R. p. 109, ¶7; R. p. 129, lines 7-25; R. p. 130, lines 1-9).

Even if the church is found to be protected under the umbrella of church governance, Respondent Brantley should not be afforded the same protection. To find otherwise would be to allow a pastor to commit all kinds of torts (including rape and murder) at a church meeting without redress by the aggrieved.

CONCLUSION

Appellants' causes of action for Defamation, Intentional Infliction of Emotional Distress, and Negligence as to Respondent Brantley are viable, because they do not violate the religious freedom guaranteed by the Fourteenth Amendment.

SANDERS LAW FIRM, LLC



Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843)573-8828
ATTORNEY FOR APPELLANTS

May 18, 2009
Charleston, South Carolina

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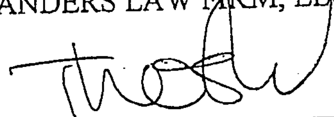
CERTIFICATE OF COUNSEL

I certify that this Final Brief complies with Rule 211(b), SCACR.

SANDERS LAW FIRM, LLC



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ATTORNEY FOR APPELLANTS

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Thomas O. Sanders, IV, Esquire
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, SC 29407
(843)573-8828
Attorney for Appellants

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ARGUMENT

I. THE CHURCH HAS A DUTY TO PROTECT ITS PARISIONERS' REPUTATIONS AS A RESULT OF THE PARISHIONER-PASTOR RELATIONSHIP AND AS A RESULT OF THE SPECIAL CIRCUMSTANCES OF UNINVESTIGATED AND FALSE ALLEGATIONS WHICH HAVE REPERCUSSIONS IN THE BROADER COMMUNITY.

A legal duty sufficient to support a negligence claim exists if "created by...relationship...or some other special circumstance." Rayfield v. S.C. Dept. Corrections, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). The Pastor has a relationship with all of the church's parishioners as spiritual leader and counselor. The Pastor represents God (R. p. 87, ¶8; R. p. 104, ¶7; and R. p. 84, ¶7). A Pastor's job is to prepare God's people for works of service, so that the body of Christ may be built up until we all reach unity in the faith and in the knowledge of the Son of God and become mature, attaining a whole measure of the fullness of Christ (Ephesians 4:12-13). The church is to submit to Christ (Ephesians 5:24). Because of this, the church has a relationship with all of the parishioners as a place of sanctity, safety from earthly turmoil and the teaching of God's word. As a result of these relationships, the Pastor has a duty to minister to his flock-- not to harm them by injuring their reputations (R. p. 109, ¶9)-- and the church has a duty to protect its parishioners and to lead them to Jesus Christ (R. p. 87, ¶8; R. p. 104, ¶7; and R. p. 84, ¶7).

Also, the uninvestigated and false allegations (R. p. 109, ¶s 9-11) which Respondent Brantley made about the Appellants in front of the congregation constitute a special circumstance which gives rise to a duty to investigate the allegations, because Respondent Brantley's actions had repercussions in the broader community (R. p. 87, ¶s 6-7; R. p. 104, ¶s 6 and 8; R. p. 84, ¶ 6). In essence, Respondent Brantley's

actions were not merely a church matter, because they had an impact outside the confines of the church (R. p. 87, ¶s 6-7; R. p. 104, ¶s 6 and 8; R. p. 84, ¶6). Furthermore, church officials Lewis Waring and Roy Gillard knew that Respondent Brantley's allegations were false, because they had been present at the meetings where the property was discussed. However, Waring and Gillard made no attempt to stop Respondent Brantley once he began (R. p. 87, ¶ 8; R. p. 104, ¶ 7; R. p. 84, ¶ 7).

Even if hiring and supervising Respondent Brantley is adjudged to be an ecclesiastical matter, the church should not have stood idly by and allowed Respondent Brantley to harm Appellants' reputations.

CONCLUSION

Appellants' cause of action for Negligence as to Respondent St. Matthew Baptist Church is viable, because the church has a legal duty to protect its parishioners' reputations from the special circumstances of uninvestigated and false allegations which have repercussions in the broader community and from the relationship between Parishioners and their Pastor and between Parishioners and their church. This Court should reverse the judgment of the circuit court as to Respondent St. Matthew Baptist Church.

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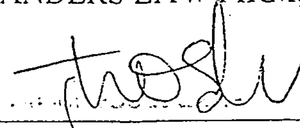

Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
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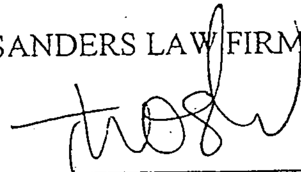

Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843)573-8828
ATTORNEY FOR APPELLANTS

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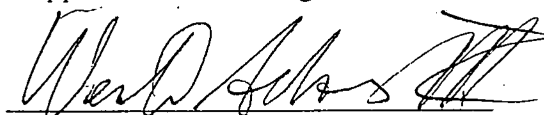
v.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM
CLINTON BRANTLEY IS THE ....PETITIONER.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Appendix** complies with Rule 242(e), SCACR. The undersigned also certifies that this **Appendix** complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

March 22, 2011



Weston Adams, III
Gunnar Nistad
Helen F. Hiser
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519

(803) 779-2300

Attorneys for Petitioner Clinton Brantley