

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

Judge Frank Addy, Jr, Circuit Court Judge

Case No. 2013-002236

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church,.....Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison,Respondents-Appellants.

INITIAL BRIEF OF APPELLANT-RESPONDENT

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether courts must recognize the existence of a trust in favor of the denomination over local church property, both real and personal, recited in the constitution of a hierarchical denomination, in situations where the title instruments to both real and personal property do not reference a trust in favor of the denomination over local church property?

II. Whether the trial courts finding of fact that the 4.5 acre tract was titled in the trustees of Rockford A.M.E. Church pursuant to an Order of Special Referee and that Respondents-Appellants were trustees of Rockford Church and subsequently grant the property to the Rockford Church is a violation of establishment clause and free exercise clause of the First Amendment?

III. Whether the trial court should have granted Appellant-Respondent's Motion to Take Depositions Pending Appeal?

STATEMENT OF THE CASE

The Appellant-Respondent filed a Summons and Complaint alleging that Rockford A.M.E. Church, as a member of a hierarchical denomination, holds its real and personal property in trust for the denomination, namely, the African Methodist Episcopal Church, Inc. as stated in the Book of Discipline of the A.M.E. Church. Appellant-Respondent also claimed that the Respondents-Appellants were no longer members of the local or national churches and therefore had no claim to the real and personal property of Rockford A.M.E. Church. Appellant-Respondent requested a declaratory judgment holding that Rockford A.M.E. Church holds all local church property, both real and personal, in trust for the African Methodist Episcopal Church, Inc. and an injunction enjoining the Respondents-Appellants from entering onto local church property disturbing the normal African Methodist Episcopal Church worship service. (R. pp. (1-8). Appellant-Respondent also filed a Motion for temporary restraining order and temporary injunction. (R. pp. 9-10, 11-13).

The Respondents-Appellants served an Answer and Counterclaim and asserted defenses of failure to state a claim upon which relief may be granted, lack of subject matter jurisdiction, waiver, res judicata, equitable estoppel, accord and satisfaction, collateral estoppel and alleged that Appellant-Respondent's complaint was contrary to the governing rules and regulations of the African Methodist Episcopal Church,. The Respondents-Appellants' counterclaims were defamation, negligent misrepresentation, breach of fiduciary duty, and intentional infliction of emotional distress. The Respondents-Appellants counterclaims of defamation and emotional distress are intertwined, as are the counterclaims of breach of fiduciary duty and negligent misrepresentation so entwined. The counterclaims of defamation and emotional distress are based on Respondents-Appellants assertion that Appellant-Respondent, knowing that Respondents-Appellants were members in good standing at Rockford A.M.E. Church, knowingly and willfully made false and defamatory statements to third parties about the Respondents-Appellants standing in the church and their involvement in the removal of church property. Respondent-Appellant also claimed that they incurred damages due to Appellant-Respondent's outrageous conduct, including telling lies and untruths about the Respondents-Appellant to third parties and forcing them to pay excessive fees to the national church.

The Respondents-Appellants counterclaims of negligent misrepresentation and breach of fiduciary duty are based on the common argument that Appellant-Respondent as elder of the church, held a position of trust and owed a fiduciary duty to members of the church to speak truthfully. Nevertheless, for pecuniary gain, he knowingly and negligently, or negligently caused to be made, false and misleading statements to Respondents-Appellants about their right to practice religion at Rockford A.M.E. Church, as well as false statements that Respondents-Appellants improperly removed church property. (pgs. 14-27)

Respondents-Appellants also filed a Motion to Dismiss Appellant-Respondents' complaint on April 15, 2011 claiming the Establishment Clause of the United States Constitution prevents the courts from exercising subject matter jurisdiction over the assertions raised in the complaint and in the motions for injunctive relief. They further alleged that even if the courts do have subject matter jurisdiction, the complaint fails to state any claims upon which relief may be granted under South Carolina law and the motions for temporary restraining order and temporary injunction should be denied because there is no showing of irreparable harm and or that plaintiffs could demonstrate success on the merits. They further claimed that Appellant-Respondent did not have standing to bring this action (pgs. 28-30)

In response to Respondents-Appellants motion to dismiss Appellant-Respondent filed Plaintiffs' Response Defendants' Motion To Dismiss on April 28, 2011(pgs.31-32) and Plaintiff's Amended Response To Defendants' Motion To Dismiss on September 10, 2011, (pgs.33-35) Plaintiff's 2nd Amended Response To Defendants' Motion To Dismiss was filed on August 29, 2012.(pgs. 36-40) Appellant-Respondent pursuant to motion titled Plaintiffs' 2nd Amended Response To Defendants' Motion To Dismiss alleged Rockford A.M.E. Church is a member of the African Methodist Episcopal Church, Inc., a hierarchical denomination governed in accordance with the Doctrine and Discipline of the African Methodist Episcopal Church which states that all property held by the local churches are held in trust for the African Methodist Episcopal Church, Inc. Appellant-Respondent also alleged standing under the constitution of the A.M.E. Church to bring the action as he is required thereby to see that all charters, deeds and other church property conforms to the Book of Discipline of the African Methodist Church and that he is entitled to bring this action as there were no local trustees at the time of litigation. Appellant-Respondent claimed that he was authorized to bring this action. He

further claimed that the Establishment Clause does not prevent the court from exercising subject matter jurisdiction in property disputes.

The Appellant-Respondent filed a Reply to Respondents-Appellants' Counterclaim on September 7, 2011. Appellant-Respondent denied Respondents-Appellants' allegations. Appellant-Respondent alleged defenses of failure to state a claim upon which relief may be granted and lack of subject matter jurisdiction over the claims (12(b)(1) (pgs. 41-43)

Appellant-Respondent's motions for temporary restraining order and temporary injunction were heard by the Honorable R. Knox McMahon on April 13, 2011. The trial judge therein found "In considering the Book of Discipline's rules governing church property, the evidence that the property is held in trust for the higher connectional church, the testimony and affidavits of both parties that Rockford A.M.E. Church remains affiliated with the African Methodist Episcopal Church, Inc. the Appellant-Respondent's Motion for temporary injunction is granted with the exception of allowing the Respondents-Appellants to enter church property as long as there are no disruptions". . As a result the Appellants-Respondents were ordered to return church property, including the books and keys, to the pastor in order for the accounts of Rockford A.M.E. to be maintained, to pay church bills, and to return the sign outside of the church to its original state, "Rockford A.M.E".(pgs. 44-49)

Subsequently Appellant-Respondent filed a Rule To Show Cause seeking to prohibit Respondents-Appellants from retaining church property and to require Respondents-Appellants to return church property to Appellant-Respondent. Appellant-Respondent alleged Respondents-Appellants, instead of turning over all of the property of Rockford A.M.E. Church, removed 117,536.00 from the church banking account, as well as, retained keys, check books and financial information regarding the church.(pgs. 50-54) Although, The Honorable R.

Knox McMahon did not hold the Respondents-Appellants in contempt, he ordered Respondents-Appellants to deliver certificates of deposit totaling \$117,536.00 to the McCormick County Clerk of Court to be held in trust until further order of the court; provide bank statements of Rockford A.M.E. Church, dated January 11, 2011 to the present, in their possession that have not already been provided; and to produce whatever was in their possession.(pgs. 44-49)

Appellant-Respondent filed a Motion To Strike on April 10, 2012 asking the trial court to strike portions of Respondents-Appellants' defenses as they required the courts to determine the membership of Rockford A.M.E. Church. Appellant-Respondent alleged that it was immaterial and impertinent as to Respondents-Appellants subjective assertions that they are members of both the local and national churches and that it would be prejudiced by the courts impermissible intrusion into the administration of the church. Appellant-Respondent moved to strike all allegations relating to Respondents-Appellants' membership at Rockford A.M.E. Church and their relationship to the denomination or stating that Respondents-Appellants are members of Rockford A.M.E. Church and the denomination.(pgs. 58-61)

Appellant-Respondent filed a Motion For A More Definite Statement on July1, 2012 to determine the identity of the third parties referred to in Respondents-Appellants counterclaims wherein it was alleged Appellant-Respondent published to third parties that church property was removed from the premises by Respondents-Appellants. Appellant-Respondent also asserted that Respondents-Appellants' claims were so vague and ambiguous that he could not reasonably respond.(pgs. 62-64)

Appellant-Respondent filed both a Motion to Dismiss Respondents-Appellants counterclaims on July1, 2011. (pgs. 65-67) An Amended Motion To Dismiss Respondents-Appellants' counterclaims pursuant to Rules 12(b)(1) and 12(b)(6) was filed on April 10, 2012.

(pgs. 68-70) Appellant-Respondent alleged that the courts do not have subject matter jurisdiction to hear the defamation and intentional infliction of emotional distress counterclaims because both arise out of the same allegations wherein Respondent-Appellant asked the court to determine the membership of and intrude into the administration of the African Methodist Episcopal Church. The free exercise clause prohibits the states from interfering with religious group's right to select its own. Appellant-Respondent further alleged that Respondents-Appellants counterclaims of defamation and intentional infliction of emotional distress fail to state a claim for which relief can be granted because truth is a bar to recovery in this case for both counterclaims.

Respondents-Appellants filed a Response In Opposition To Appellant-Respondent's Motion To Dismiss Counterclaims, Appellant-Respondent's Motion For A More Definite Statement, and Appellant-Respondent's Motion To Strike on July 11 2011. Respondents-Appellants alleged that the courts have subject matter jurisdiction to review their counterclaims. They claimed that as pleaded, each of the counterclaims arise directly from Appellant-Respondent personal actions against Respondents-Appellants. Respondents-Appellants alleged that each counterclaim stated a claim upon which relief may be granted.

Respondents-Appellants alleged that Appellant-Respondents' Motion To Strike and Motion For A More Definite Statement... should be denied. They claim that because Appellant-Respondent claims subject matter jurisdiction in his complaint, that the courts also by the same token have jurisdiction over their counterclaims. Respondent-Appellants believe that there counterclaims are capable of being resolved by civil law as courts can decide issues arising in a church context that does not involve religious matters. (pgs. 102-166)

Subsequently, Appellant-Respondent filed a Motion For Summary Judgment on April 28, 2011, (pg. 71-73) An Amended Motion For Summary Judgment was filed on August 29, 2012.

(pgs. 74-77) Appellant-Respondents' motion asked the court to grant his request for declaratory judgment. Appellant-Respondent alleged that Rockford A.M.E. Church, as a member of a larger connectional church is subject to the authority, government, and control of the of the larger national church, and that the constitution of the A.M.E. Church, Inc. mandates that all church property, both real and personal, is the property of the A.M.E. Church, Inc. Appellant-Respondent requested an order stating that all property of Rockford A.M.E. Church is held in trust by the trustees of Rockford A.M.E. church on behalf of the African Methodist Episcopal Church, Inc.; that the African Methodist Episcopal Church Inc. is the true owner of both the real and personal property of Rockford A.M.E. Church ; that the Appellant –Respondent, as representative of the African Methodist Episcopal Church, Inc. is entitled to all of the personal property of Rockford A.M.E. Church ; and that Rockford A.M.E. Church is affiliated with the African Methodist Episcopal Church, Inc.

Appellant-Respondents' Amended Motion For Summary Judgment also requested that the trial court issue an order dismissing Respondents-Appellants counterclaims of defamation and negligent misrepresentation. Appellant-Respondent claimed that truth is a bar to recovery in this case and that he did not communicate to anyone that Respondents-Appellants were not affiliated with Rockford A.M.E. Church and that any utterance by Appellant-Respondent was a privileged communication contained in his pleadings. Appellant-Respondent also alleged that Respondents-Appellants cannot demonstrate damages.

Respondents-Appellants alleged that Appellant-Respondent was not entitled to summary judgment because the court lacked subject matter jurisdiction. Respondents-Appellants allege that the complaint arises out of a dispute between themselves and the A.M.E. Church, Inc., over membership issues and the relationship between Rockford A.M.E. Church and the national

church organization. They further alleged that there are genuine issues that exist and that summary judgment should be denied because the neutral principles approach prevents the courts from awarding the real and personal property to Appellant-Respondent as the bank accounts and one deed is titled in Rockford Church. (pgs. 78-92)

A hearing was held on May 22, 2013 in McCormick County, South Carolina regarding Appellant-Respondent's Amended Motion For Summary Judgment, Motion To Strike, Motion For A More Definite Statement, and Plaintiffs 2nd Amended Response To Defendants Motion To Dismiss pursuant to Rules 12(b)(1) and 12(b)(5). Respondents-Appellants' Motion To Dismiss was treated as a Motion for Summary Judgment and was heard also. Pursuant to Order dated June 27, 2013, the trial judge granted a 4.5 acre tract of real property to the Trustees of Rockford Church although according to the trial courts findings that the property was titled in the Trustees of Rockford A.M.E. Church. He awarded the monies to Rockford Church as the bank account was titled in Rockford Church and a 13.10 acre tract to the African Methodist Episcopal Church Inc., as the deed was titled in the African Methodist Episcopal Church Inc. The trial judge ruled that the canons of a denomination have no effect on title under South Carolina law and that there was no indication that Respondents-Appellants consented to the trust clause contained in the Book of Discipline. (pgs. 93-100)

Appellant-Respondent subsequently filed a Motion To Alter Or Amend The Judgment dated August 2, 2013. (pgs. 100-104) Appellant-Respondent alleged that the trial court did not have jurisdiction to determine the trustees of Rockford A.M.E. Church and that the court could not award the property to Rockford Church as it does not exist. Appellant-Respondent also alleged that neutral principles required the courts to recognize the creation of a trust recited in the Book Of Discipline of The African Methodist Episcopal Church. Appellant-Respondent asserted

that Respondents-Appellants consented to the control and governance of the national church and that they failed to consider their imputed obligations to the national church. Appellant-Respondent further claimed that a denomination may create a trust pursuant to the church's constitution and that the language found in the Book of Discipline of the African Methodist Episcopal Church creates a trust.

Respondents-Appellants filed a response titled Defendants' Response In Opposition To Plaintiffs' Motion To Alter Or Amend The Judgment on August 2, 2013. They opposed the motion alleging Appellant-Respondent no new evidence was offered and that the motion was a rehash of prior arguments. Respondents-Appellants argued that the court did not hold that Respondents-Appellants were trustees of the AME Church and that both the award of the 4.5 acre tract and the monies were supported by the evidence. (pgs. 105-114)

Appellant-Respondent also filed a Motion to Take Depositions Pending Appeal dated August 30, 2013. (pgs. 117-121) Appellant-Respondent alleged that the Respondents-Appellants transferred approximately \$ 117,000.00 from an account titled Rockford A.M.E. Church into an account titled Rockford Church and asked the trial court to allow him to take the depositions of the Respondents-Appellants and representatives First Citizens Bank.

Respondents-Appellants filed objection to Appellant-Respondent's motion for taking of depositions pending appeal. The Respondents-Appellants alleged that the court should deny the motion for leave to take deposition because of Appellant-Respondent could not have collaterally attack the judgment. Respondents-Appellants also claim that the motion did not show "the substance of the testimony which he expects to elicit and that information sought can only be used to support arguments for the first time in his post judgment motions.(pgs. 122-127)

A hearing was held in Greenwood County, South Carolina on September 5, 2013 to hear Appellant-Respondents' Motion To Alter or Amend and Appellant-Respondents' motion To Take Depositions Pending Appeal. The trial judge issued an order denying Appellant-Respondent's Motion To Alter Or Amend. The trial judge amended his order in one respect. The trial judge clarified that he did not find that Respondents-Appellants were the current trustees of Rockford A.M.E. Church. The trial court did not rule on Appellant-Respondent's Motion To Take Depositions Pending Appeal.(pgs. 115-116)

By order dated September 6, 2013 the trial court issued its' Order regarding the motion To Take Depositions Pending Appeal wherein the trial court ruled that Appellant-Respondent had already taken the deposition of Henry Banks and that he appears to understand where the funds were transferred and why. The trial court also ruled that the motion does not detail the substance of the testimony or the reason necessary for the testimony. (pgs. 131-132)

Appellant-Respondent also filed a Motion To Alter Or Amend the trial court's denial of his Motion To Take Depositions Pending Appeal on October 4, 2013 (pgs.128-129) The Appellant-Respondent alleged that although the Motion to take Depositions Pending Appeal did not specifically state that the deponents will testify as follows, the court could discern the relief requested in the motion. Appellant-Respondent also claimed that monies were transferred from an account titled Rockford A.M.E. church to an account titled Rockford Church. He also alleged that depositions of the Respondents-Appellants will not prejudice their case and is done to prevent an injustice that his motion was specific.

Subsequently, the trial judge issued an order denying Appellant-Respondents motion To Alter Or Amend Order denying Depositions Pending Appeal by order dated October 13, 2013. He also reaffirmed his previous order and ruling.(pg. 130)

STATEMENT OF THE FACTS

The Savannah Valley Lodge conveyed one acre and five rods to the trustees of Rockford Church on January 26, 1914.(pg. 148) By deed of Hillard Dunlap dated April 6, 1929 4.0 acres was transferred to the trustees of Rockford School.(pg. 149) The trustees of McCormick County School District subsequently transferred the property to Marshall Belcher, W.F. McCombs and A.J. Wheeler as trustees of a Colored Community House.(pg. 150) Thereafter, Marshall Belcher as trustee of Colored Community House conveyed the property to the Town of Mt. Carmel, South Carolina. (pgs. 151-152) Pursuant to an order of a Special Referee a 4.5 acre tract was granted to the Trustees of Rockford A.M.E. Church on October 19, 1999. (pgs. 153-157)The trustees of Rockford A.M.E. Church later transferred the property to Rockford Church dated July 10, 2010. (pg. 158)

The 13.10 acre tract was originally purchased by the Trustees of Rockford A.M.E. Church in Trust for the African Methodist Episcopal Church, Inc. from Atlantic Coast Properties on December 17, 1998. (pgs. 159-160) Subsequently, the tract was transferred to the trustees of Rockford A.M.E. Church dated November 11, 1999. (pg. 161) The trustees of Rockford A.M.E. Church transferred the property to Rockford Church dated July 10, 2010. (pg. 162)

The Rockford A.M.E. Church maintained financial accounts in the name of Rockford A.M.E. Church. Thereafter the monies were transferred into an account with First Citizens Bank in the name of Rockford Church. Deposition of Henry Banks. (pps. 42, lns. 2-23) After the issuance of the Order of the Eleventh Judicial Circuit dated, April 26, 2011) wherein the real and personal property of Rockford A.M.E. Church was awarded to Appellant-Respondent, the Respondents-Appellants removed the funds from the account with First Citizens Bank and

placed the monies in certificates of deposit. (Transcript of Rule to Show Cause hearing and Order dated June 29, 2011.)

The Respondents-Appellant were removed as members of Rockford A.M.E. Church and the national church. Appellant-Respondent brought this action requesting a declaratory judgment and a temporary and permanent injunction.

ARGUMENTS

1. THE COURTS MUST RECOGNIZE THE EXISTENCE OF A TRUST IN FAVOR OF THE DENOMINATION OVER LOCAL CHURCH PROPERTY, BOTH REAL AND PERSONAL, RECITED IN THE CONSTITUTION OF A HIERARCHICAL DENOMINATION, IN SITUATIONS WHERE THE TITLE INSTRUMENTS FOR BOTH REAL AND PERSONAL PROPERTY, DO NOT REFERENCE A TRUST IN FAVOR OF THE DENOMINATION OVER LOCAL CHURCH PROPERTY.

2. THE GRANT OF A 4.5 ACRES TRACT TO THE RESPONDENTS-APPELLANTS IS A VIOLATION OF THE ESTABLISHMENT CLAUSE AND THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT IN LIGHT COURT'S FINDINGS THAT THE PROPERTY IS TITLED IN THE NAME OF THE TRUSTEES OF ROCKFORD A.M.E. CHURCH AND THE RESPONDENTS-APPELLANT WERE FOUND BY THE COURT TO BE TRUSTEES OF ROCKFORD CHURCH.

3. THE TRIAL COURT SHOULD HAVE GRANTED APPELLANT-RESPONDENT'S MOTION TO TAKE DEPOSITIONS PENDING APPEAL.

1. THE UNITED STATES SUPREME COURT NAMED TWO METHODS THAT COURTS MAY APPLY WHEN DECIDING CHURCH PROPERTY DISPUTES.

The question as to who is the true owner of local church property in a hierarchical church where title to real and personal property does not expressly reference a trust is not a novel issue before The United States Supreme Court. The Court has presented two methods which states may use as a First Amendment jurisdictional model in church property disputes. The first method is the deferential approach enumerated in *Watson v. Jones*, 80 U.S. 679, 681 (1872) The second is the neutral principles approach as stated in *Jones v. Wolf*, 443 U.S. 595 (1979) which sanctioned an expanded role of the Courts

into church property disputes. Although the First Amendment severely prohibits the Courts intrusion into matters which involve religious doctrine or practice it does not mandate a particular method of resolving church disputes and as such, the United States Supreme Court has given it's consent to the use of neutral principles in resolving church property disputes. *Id. at 602*

a.

South Carolina uses the Neutral Principles approach when resolving Ecclesiastical property disputes.

The South Carolina Supreme Court stated “ [w]e hereby explicitly reaffirm that, when resolving church dispute cases, South Carolina Courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in *Jones v. Wolf*.” *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of S. Carolina*, 685 S.E.2d 163, 171, 385 S.C. 428, 442 (2009). The neutral principles analysis prohibits courts from resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration, and from substituting its opinion for decisions of religious judicatures as to religious law, principle, doctrine, discipline, custom, and administration. However, courts may adjudicate rights growing out of civil law. *Pearson v. Church of God* 478 S.E.2d 849, 851, 325 S.C. 45, 50 (1996).

The trial court ruled in error that *Waccamaw* held that the canons of a denomination have no effect on legal title. The matter herein is fundamentally different from the facts in *Waccamaw*. The Supreme Court of South Carolina in *Waccamaw* held in favor of the local church as based on the facts therein the national church never held an interest in the realty therein by trust or otherwise. The original church charter vested ownership in the inhabitants of Waccamaw and the denomination later demonstrated its' lack of ownership and claim to the

property by transferring its' interest by quitclaim deed to the local church. The denominational church therein did not have an ownership interest at the time of litigation and as such, there was no need to consider the canons of the denomination. In this scenario, the denominational church has not transferred legal title to the local church. The court in *Waccamaw* did not address the question as to whether based on the facts therein, the canons would have an effect on title if the property was not originally granted to the inhabitants of Waccamaw. They also did not address the issue as to whether the canons of a hierarchical denomination would have effect on title if a local church without the approval of the denominational church transferred title.

2. THE NEUTRAL PRINCIPLES APPROACH REQUIRES THE COURTS TO INQUIRE INTO THE INTENTIONS OF THE PARTIES PRIOR TO THE DISPUTE.

....”The neutral principles analysis...should reflect the intentions of the parties. *Jones v. Wolf*, 443 U.S. 595, 603 (1979) Formal documents as well as the course of conduct under the denominations governing rules reveal the parties intent prior to the eruption of the dispute at the local and national level regarding beneficial ownership. *Rector, Wardens and Verstrymen of Christ Church in Savannah et al. v. Bishop of the Episcopal Diocese of Georgia, Inc. et al*, 718 S.E.2d 237, 246, 290 Ga. 95, 104

The intent of the parties herein was that their relationship be contractual in nature with a binding trust in the Book of Discipline. The denomination agreed to provide ministers, polity, religious materials, structure and allow the local church to participate in district, state, and national conferences. In return the local church would hold local church property in trust for and pay dues to the denomination. The parties should be required to fulfill their obligations under the trust bargain. The trust recited in The Book Of Discipline of The African Methodist Episcopal Church simply codifies explicitly the terms of the trust relationship between the local church, namely, Rockford A.M.E. Church and the denomination.

The Defendants consent to the trust provisions as found in The Book of Discipline of the African Methodist Episcopal Church, Inc. is overwhelming evidence of their intent to be bound by the Book of Discipline. The consent of the parties to the trust provisions found in the Book Of Discipline is an important neutral principle factor in determining ownership of church property in a hierarchical or connectional church in situations where the deed does not expressly mention a trust. *From The Heart Church Ministries, Inc. v. Philadelphia Baltimore Annual Conference*, 964 A.2d 215, 229 (Md. App. 2009). The local church's course of conduct herein by and through the actions of its various pastors, stewards, trustees, and officers reveals the local church's consent to the national church's control and governance in all aspects except the proper form of a deed as per the Book of Discipline. The local churches' compliance with the Book Of Discipline reveal the intent and desire of the local church, in the absence of an IN TRUST clause in a local church deed, to be bound by the trust provisions relating to church property found in the Book Of Discipline.

3. THE NEUTRAL PRINCIPLES ANALYSIS REQUIRES THE PARTIES TO ADHERE TO THEIR IMPUTED OBLIGATIONS TO THE DENOMINATION.

a.

Members of a hierarchical or connectional church structure have obligations to the denomination.

“Where a church controversy involves the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.” *Pearson v. Church of God*, 478 S.E.2d. 849, 852. 325 S.C. 45, 51 (1996). The trustees violated their imputed obligations to the A.M.E. Church, Inc. by failing to protect, hold, and preserve the property in trust for the African Methodist Episcopal Church Inc., and by

purposefully failing to include a proper trust provision in the deed referencing a trust in favor of the A.M.E. Church Inc. The Book of Discipline provides that trustees “shall guard for the Connection all real estate, churches, parsonages, schools, and any other property obtained by the local church.” (R. pg. 77 Book of Discipline). The Respondents-Appellants wish to simply leave the hierarchical connection and take church property with them without transferring the property as per the Book of Discipline of the A.M.E. Church. They have failed to adhere to their imputed obligations under the Book of Discipline.

As full participants and members of the African Methodist Episcopal Church, Inc. the Respondents-Appellants were required to adhere to the Book of Discipline when transferring church property. The A.M.E. Constitution i.e. the Book of Discipline states, “The Board of Trustees, duly elected by the local church as provided by *The Book of Discipline of the African Methodist Episcopal Church*, may take such steps to purchase, mortgage, sell, transfer and convey real and personal property, PROVIDED, that such transfer has been duly approved by the resolution in Quarterly Conference of the said church, and also by the trustees of the Annual Conference in which the property is located, and of which the presiding bishop is president, (R. pg. 75 Book of Discipline) The Respondents-Appellants in the present case neither sought nor received the approval of either the quarterly conference or annual conference.

4. THIS COURT DOES NOT HAVE JURISDICTION TO GRANT THE 4.5 ACRE TRACT OF LAND TO THE RESPONDENTS-APPELLANTS.

The Order of the court found that Respondents-Appellants are trustees of Rockford Church. He also determined after examining the chain of title for the 4.5 acres, that a Special referee found that the property was titled in the trustees of Rockford A.M.E. Church. The court makes no further mention of the subsequent transfer of the property to Rockford Church. The court inexplicably and in error and direct contradiction to his finding that the property was titled

in the trustees of Rockford A.M.E. Church awarded the property to the trustees of Rockford Church.

This court has jurisdiction, whether correctly or incorrectly, to rule that title to the 4.5 acre tract of land resides with the trustees of Rockford A.M.E. Church or the trustees of Rockford Church. However, this court's jurisdiction terminated upon finding that the deed pertaining to the 4.5 acres was titled in the trustees of Rockford A.M.E. Church. To hold that the deed is titled in the trustees of Rockford A.M.E. Church but award the property to the trustees of Rockford Church is to in effect find that Respondent-Appellant are trustees of Rockford A.M.E. Church. The fundamental error in the trial courts analysis is that he is dealing with the wrong entities, namely, Rockford Church and the denomination, namely, the African Methodist Episcopal Church, Inc.. Whereas, his analysis should focus on Rockford A.M.E. Church and the denomination, namely, the African Methodist Episcopal Church, Inc. The court has deviated from a literal interpretation of the title instruments to intruding into church affairs.

The court correctly acknowledged in his Order dated June 27, 2013 that it does not have jurisdiction to decide who are and are not members of the Rockford A.M.E. Church or the national denomination. As such, it is axiomatic that this court cannot determine who are and are not trustees of Rockford A.M.E. Church or Rockford Church. To grant the property to Respondents-Appellants as trustees of Rockford Church while at the same time ruling that title is in the Trustees of Rockford A.M.E. Church is an intrusion into the discipline, custom, and administration of the African Methodist Church and Rockford A.M.E. Church and is a clear violation of the 1st and 14th amendments to the United States Constitution and Article 1 Section 2 of the Constitution of the State of South Carolina. The decisions as to who are trustees of Rockford A.M.E. Church resides solely with the 68 members of Rockford A.M.E. Church.

The neutral principles analysis prohibits courts from resolving disputes as to religious law, principle doctrine, discipline, custom or administration and from substituting its opinion for decisions of religious judicatures as to religious law, principle, doctrine, discipline, custom, and administration. *Pearson v. Church of God* 428 S.E. 2d 849, 851, 325 S.C. 45, 50 (1996). Where a civil court is presented with an issue which is a question of religious law or doctrine it must defer to the decision of the proper judicatories in so far as it contains religious or doctrinal issues. *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*. 685 S.E. 2nd 163, 171, 385, S.C. 428, 445 (2009). This court cannot substitute its opinion as to who and who are not trustees. To do so is a clear violation of the Pearson rule that prohibits courts from substituting its opinion as to administration and custom. Once the proper judicatory has spoken as to the administration, discipline and custom this court jurisdiction is at an end. In cases involving the administration, doctrine, or discipline of a denomination, the courts function is to assure the church itself has spoken. If it has, this court cannot inquire further into the matter. *Thomas C. McCain, Sr. and Joseph Curry, individually and as trustees of the Mount Canaan Baptist Church; James E. Johnson and Nathan Goodwin, individually and as deacons of the Mount Canaan Baptist Church v. G. L. Brightharp*, 730 S.E. 2nd 916, 921, 399 S.C. 240, 250, (S.C. App. 2012).

5. THE NEUTRAL PRINCIPLES ANALYSIS DOES NOT REQUIRE THAT A TRUST BE EXPRESSLY MENTIONED IN TITLE INSTRUMENTS TO REAL AND PERSONAL PROPERTY.

a.

The Trial Court erred
in awarding the 4.5 acre
tract to Rockford Church

“It is true that the deed to the 4.5 acre tract does not explicitly state that the property is owned by to the African Methodist Episcopal Church, Inc. or that the local church is held in trust

for the African Methodist Episcopal Church, Inc. However, lack of trust language in a deed pertaining to a church that is the member of a hierarchical denomination is not fatal. The court must look to other neutral principles in such a situation to determine whether a trust exists in situations where the title instrument does not mention a trust. The United States Supreme Court approved the Georgia Supreme Courts' examination of a church's constitution for the existence of a trust and commented favorably on the approach used in *Maryland and Virginal Churches v. Sharpsberg Church* 396 U.S. 367, 368 (1970) whereby a local church dispute was settled on the basis of the language in the deeds, local church charter, and provisions of the church constitution.

Also, the Court spoke with approval of the results in *Carnes v Smith*, 236 Ga. 30 wherein the Georgia Courts awarded local church property to the denominational church primarily because the constitution of the church contained a trust clause. It is to be noted that there was no basis for a trust in favor of the general church in the deeds and state statutes. *Jones v Wolf*, 443 U.S. 603-604. Courts should review "not only the denominations polity, but all relevant documents and circumstances, charter and by-laws, the Religious Corporation Law, the relations and correspondences between the parties, the deposition testimony...and all relevant documents in the record." *From The Heart Church Ministries, Inc. v. Philadelphia Baltimore Annual Conference*, 964 A.2d. 215, 229, 184 Md. App. 11, 34 (MD. App. 2009

The Georgia Supreme later succinctly described the over inflated importance of trust language in title instruments involving hierarchical churches when Justice wrote

" It is true that neither ... deeds show an intent by the grantors to create a trust. But they also do not expressly preclude the creation of one. And it is undisputed that Timberridge affiliated with the PCUSA ... and thus brought itself under the national church's constitution, which squarely states that local church's such as Timberridge hold their property in trust for the PCUSA even if legal title is lodged in a corporation. Given that provision, Timberridge would have no reason to believe that its deeds needed to recite a trust in favor of the general church Thus, the absence of language in the deeds creating a trust in favor of the national church is of limited value in deciding the

question before us, and we turn to consideration of other neutral principles” *Presbytery of Greater Atlanta, Inc v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446, 451, 290 Ga. 272, 277 (2011)

The Respondents-Appellants in this case are subject to the Constitution of the A.M.E. Church Inc., which recites an express trust in favor of the A.M.E. Church, Inc.

b.

The court ruled in error that Rockford Church was the owner of the monies found in the account with First Citizens Bank on the basis that the account was titled as “Rockford Church.”

Neutral Principles requires the Court to determine the intent of the parties prior to litigation when deciding property disputes that involve a hierarchical denomination and title to personal property does not mention a trust in favor of the denomination. “The neutral principles analysis is flexible in ordering private rights and obligations to reflect the intentions of the parties.” *Jones v. Wolf* at pg. 603. The intent of the parties was to establish a contractual relationship whereby the funds were to be held in trust pursuant to the trust agreement found within the constitution of the A.M.E. Church, Inc. The monies found in the account belong to Rockford A.M.E. Church in trust for the A.M.E. Church, Inc. Although the monies found in the account were maintained under the name “Rockford Church” it was transferred from an Abbeville Savings and Loan bank account, titled as” Rockford A.M.E. Church.” Respondent-Appellant Banks stated under oath pursuant to deposition after being asked whether the name or title of the church bank account was changed from “Rockford A.M.E. Church” to Rockford Church ‘stated “it was” pg. 42 lns. 2-5. Counsel inquired as to whether the money that was removed from the Rockford A.M.E. Church account was ever authorized by the church conference and deponent responded that it was approved by the local conference, but not by quarterly or annual conferences. Pg, 42 lns. 6-23The Respondents-Appellants herein have purposefully enjoyed the

benefits of the trust bargain and allowed the denomination to fulfill its obligations, while at the same time the Respondents-Appellants at their discretion and whim pick and choose which obligations they will honor. The court must not allow this.

c.

The trial court erred in finding that the funds held in a bank account at First Citizens Bank were inter vivos gifts to Rockford Church.

The trial Judge's findings of fact are against the preponderance of the evidence. A trial court's factual findings will be reversed if the preponderance of evidence is against the finding of the lesser court *Lewis v. Lewis* 709 S.E. 2d 650, 653. (S.C. 2011) The court can then make its findings of fact in accordance with its overviews of the preponderance of evidence. *Pickney v. Warren* 554 S. 2d 620, 632 (S.C. 2001).

The Court in his Order correctly stated that the funds were used to repair the sanctuary of the church, but he was incorrect in finding that it was the sanctuary of Rockford Church that was repaired or in need of repair. The monies were used either for the benefit of Rockford A.M.E. Church in the form of either paying the expenses of Rockford A.M.E. Church or to build a new Rockford A.M.E. Church. Respondent-Appellant Henry Banks pursuant to his affidavit dated July 26, 2012 admitted that he has been a member of Rockford A.M.E. Church for 55 years. He further admitted the monies in the account came from donations that were to be used to either repair the church or build a new church. He further admitted that there were times when some of the money that was raised would be used to pay the District Budget to the denomination.

Affiant Mamie Banks in her affidavit filed September 18, 2012 says that she has been a member of Rockford AME Church since 1972. She states that "fund raisers and programs began to start shape form for a new sanctuary. "I distributed a list of 10 captains for homecoming each

year in August to devote the proceeds to the building fund. Each year, part of those funds had to be used for the district budget. When the fund was set up, it was established that all funds taken up was only to be used for the building fund.”

Also at the Rule To Show Cause hearing on June 29, 2011 it was found that the Respondents-Appellants did not turn over all of the personal property of the local church including but not limited to \$117,536.00 as previously required by order dated April 26, 2011. The court found that Respondents-Appellants instead of turning the monies of Rockford A.M.E. Church over to the Appellant-Respondent, Respondents-Appellants paid the bills of Rockford A.M.E. Church from the \$117,536.00 withdrawn from the Rockford Church account in the amount of \$2,660.82. The balance of \$114,875.18 was placed in Certificates of Deposit at the Greater Abbeville Federal Credit Union. Respondent-Appellant Robinson stated in her affidavit that it has come to the point that we either pay the budget and let our church fall or try to build a place of worship.

Further, Rockford Church does not exist and the name is used interchangeably with Rockford A.M.E. Church as a convenience and habit. The Respondents-Appellants refer to Rockford Church and Rockford A.M.E. Church as the same entities but in essence means Rockford A.M.E. Church. For instance Respondent-Appellant, Henry Banks testified that Rockford Church and Rockford A.M.E. Church are the same. pg. 39 Ins 4-13. Again, on pg. 39 Ins.4-13 of his deposition the deponent admitted that there was no difference between Rockford A.M.E. Church and Rockford Church. When questioned a third time as to whether there is a difference between Rockford A.M.E. Church and Rockford Church, the deponent replied “I don’t think so,” just my opinion, I don’t think so.” Pg. 39. 8-14. He was asked a fourth time if

there was a difference between Rockford Church and Rockford A.M.E. Church and he replied "No Sir" pg. 39 lns. 18-20.

Further, the policy of insurance is titled in the Rockford A.M.E. Church. This is additional evidence that the real church is Rockford A.M.E. Church and Rockford Church does not exist.

Also, in her deposition testimony Respondent-Appellant Phillips stated in response to a direct question by counsel as to whether there is a difference between Rockford A.M.E. Church and Rockford Church she stated "I don't think so." Delois Phillips, pg. 9, lns. 11-13. Again when questioned as to her affidavit and the failure to use the complete name of Rockford A.M.E. Church therein stated "....." I don't just go around saying Rockford A.M.E. Church, we always just called it Rockford" pg. 13 lns. 5-6. In response to a question concerning church correspondence the deponent was asked "when you send out letters, do you list the church as Rockford Church or Rockford A.M.E. Church and she replied "probably sent out as both" pg. 15 lns. 12-14. She further stated that she has always "been a member Rockford Church. I joined Rockford when I was 10 years old. I have actively served there. I've served as Sunday school teacher...teach bible study...I've been a steward. I've been a trustees, the financial secretary"pg. 22 lns. 12-17. The Appellant-Respondent alleged in his complaint that the Respondents-Appellants were no longer members of Rockford A.M.E. Church which caused Respondent-Appellant Phillips to respond in her affidavit dated April 8, 2011 that she has been "a member of Rockford for 42 years and I have been the financial secretary for Rockford since 1999." She further stated that "I never told anyone that I did not want to be a member of Rockford" and declared that "I am still an active member and Steward of Rockford." She also stated that "I have never misused any monies or funds owned by Rockford church."

Respondents-Appellants Naomi Mattison and Mary Robinson also indicated that the parties mean Rockford A.M.E. Church when they say “Rockford Church.” Respondent-Appellant Mattison was asked about her affidavit, which read “we the members of Rockford Church” was asked why the affidavit did not refer to Rockford A.M.E. Church. She replied “Well I’m accustomed to just saying I’m a member of Rockford Church. I didn’t mean nothing about saying it” pg. 14 lns. 1-9. She also stated pursuant to affidavit that she has been a Steward of Rockford Church for 8 years and that Appellant-Respondent wants them out of their church.

Respondent-Appellant Robinson stated under oath that the only difference in Rockford Church and Rockford A.M.E. is the name. pg. 11 lns.1-12. Respondent-Appellant Robinson pursuant to her affidavit stated that she has been a member of Rockford A.M.E. Church since age 12.

6. THE NEUTRAL PRINCIPLES APPROACH ALLOWS A DENOMINATION TO CREATE A TRUST IN ITS CONSTITUTION.

a.

It was error by the court not to consider the constitution of the African Methodist Episcopal Church, Inc.

The trial court violated the very tenants of the neutral principles analysis by not considering the church’s’ constitution. The inclusion of an express trust in the Book of Discipline of the African Methodist Episcopal Church creates a valid and enforceable trust. In *Jones v. Wolf*, 443 US. 595, 606 (1979) our United States Supreme Court stated “the constitution [denomination of a church can be made to recite an express trust in favor of the denominational church...[a]nd the civil courts shall be bound to give effect to the result indicated by the parties” *The Constitution of the A.M.E. Church is The Book of Discipline of the African Methodist Episcopal Church, Inc. which states:*

The African Methodist Episcopal Church, Inc. is organized and functions solely as a connectional church. The titles(s) to all real, personal and mixed property held at the General, Annual Conference level or by the local church, shall be held IN Trust for the African Methodist Episcopal Church, Inc. and subject to the provisions of the Book of Discipline of the African Methodist Episcopal Church.

(R. pg.74,) The plain language contained in The Book of Discipline should be given effect by enforcing the trust therein.

7. IT WAS ERROR TO DENY APPELLANT-RESPONDENT'S MOTION TO TAKE DEPOSITIONS PENDING APPEAL

Appellant-Respondent's Motion to Take Deposition Pending Appeal elicited the substance of the deponent's testimony. Although, the Appellant-Respondent's motion did not use the express words "the witness will testify to the following, he did detail facts that the deponent must affirm. Based on the parties' course of conduct of concealing church funds it is clear that the motion states what the deponent would testify to and the reason that their testimony is necessary. The trial court ruled that Rockford Church was the owner of the monies found in a First Citizens Bank account because it was titled as "Rockford Church." It is plain from the face of the motion that the deponents will testify to the matters found in paragraphs 3, 4,5,6,7 and that the facts contained within those paragraphs indicate the reason necessary for the prayed for testimony. When the trial court is able to discern the relief requested, it is the substance of the requested relief that matters regardless of the form in which the request for relief is formed." *Lucey v. Meyer, GMRC Mortgage Corporation, Citi Mortgage, Inc., and John Doe Finance, Third Party Defendants*. 736. S.E. 27 4,279 (S.C. App. 2012). The basis of the motion was to enlighten the court that the monies found in the account belong to Rockford A.M.E. Church, in trust of the A.M.E. Church, Inc. and not Rockford Church. Appellant –Respondent's motion stated the following:

3. That the trustees of Rockford A.M.E. Church maintained at least two (2) accounts with Abbeville Savings and Loan bearing accounts numbers, 018210471204 and 018531023302.

4. That a check dated May 30, 2010 was written to First Citizens Bank from an Abbeville Savings and Loan account titled as Rockford A.M.E. Church bearing account numbers 018210471204. The sum of Forty Five Thousand and 00/100 was deposited into an account for Rockford Church bearing account number 340173727901. That Respondent-Appellant Deloris Phillips executed the check.

5. Further, that the records of First Citizens Bank also indicate that a deposit slip was submitted wherein Forty Six Thousand Five Hundred Eighty One and 00/100 (\$46,581.001) Dollars was deposited on May 30, 2010.

6. That a cashier's check issued by Abbeville Savings & Loan dated September 10, 2010, bearing number 75202 in the amount of Twenty Nine Thousand One Hundred Ninety Nine and 08/100 (\$29,199.08) Dollars was taken from an account titled "Rockford A.M.E. Church" according to the records of First Citizens Bank.

7. That according to the records of First Citizens Bank a deposit slip was submitted dated October 3, 2010 wherein Thirty Seven Thousand Nine Hundred Fifty Seven and 26/100 (\$37,957.26) Dollars was placed into a First Citizens account bearing account numbers 018210471204 and 018531023302.

The Court is correct that the deposition of Respondent-Appellant Banks has already been taken. Although that fact should not defeat the need for an additional deposition of Respondent-Banks, there is also the request to take the deposition of a representative of First Citizens Bank and Abbeville Savings and Loans. The parties have not deposed anyone from First Citizens Bank or Abbeville Savings and Loans.

The Court should have granted the Motion To Take Depositions Pending Appeal to avoid a failure of justice. The testimony of the parties is required, especially the testimony of representatives from First Citizens Bank and Abbeville Savings and Loan. The parties' course of conduct has demonstrated that the intent is to conceal the funds of the local church and to frustrate and prevent the denominations rightful claim to the monies. The funds were taken from accounts titled as Rockford A.M.E and placed in an account titled Rockford Church. The trial

court ruled that Rockford Church is the owner of the monies. The parties' testimony will enlighten the court as to where the funds originated.

The Respondents-Appellants would not be prejudiced in this case. The Respondents-Appellants would also not be prevented from exercising a strategic matter or from cross-examining the witness deponents.

The taking of deposition would assist the court in rendering a fair decision. The Respondents-Appellants course of conduct demonstrates their intention is to conceal funds or mislead the court into denying the Appellant-Respondent's request for relief. The court should allow all of the facts to be presented for a fair and just judgment.

CONCLUSION

Therefore, this Court should find that the constitution of the A.M.E. Church known as the Book of Discipline of The A.M.E. Church creates a valid and enforceable trust in favor of African Methodist Episcopal Church Inc. The Appellant-Respondent respectfully requests a declaratory judgment stating that all property of the Rockford African Methodist Episcopal Church is held in Trust by the Trustees of Rockford African Methodist Episcopal Church on behalf of the African Methodist Episcopal Church, Inc.; that the African Methodist Episcopal Church, Inc. is the true owner of both the real and personal property of Rockford African Methodist Episcopal Church; that Appellant-Respondent as representative of the denomination is entitled to both the real and personal property of the Rockford African Methodist Episcopal Church; that a permanent injunction be issued enjoining and restraining Respondents-Appellants from coming onto Church property disturbing the normal worship service.

Further, this court should find that the trial court does not have jurisdiction to grant the 4.5 acres to the Respondents-Appellants as to do so is a violation of the First Amendment.

Also, Trial Judge's findings of fact should be set aside and hold that all monies found in the account with First Citizens Bank were inter vivos gifts to Rockford A.M.E. Church. Further, that the funds therein were used for the benefit of Rockford A.M.E. Church.

Further, this court should grant the motion to Take Depositions Pending Appeal to avoid a failure of justice.

Further, in the alternative Appellant-Respondent respectfully ask that this matter be remanded to the trial court with instructions to uphold the trust provisions recited in the constitution of the African Methodist Episcopal Church, Inc.



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