

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

Frank R. 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*

vs.

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

RESPONDENTS-APPELLANTS' RESPONSE BRIEF
AND INITIAL CROSS-APPEAL BRIEF

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SC Court of Appeals

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**STATEMENT OF ISSUES ON
APPELLANT-RESPONDENT'S INITIAL APPEAL**

- I. DID THE TRIAL COURT ERR IN GRANTING A 4.5-ACRE TRACT OF REAL PROPERTY TO THE RESPONDENTS-APPELLANTS?

- II. DID THE TRIAL COURT ERR IN ORDERING THAT RESPONDENTS-APPELLANTS ARE THE LEGAL AND EQUITABLE OWNERS OF FUNDS ON DEPOSIT WITH THE McCORMICK COUNTY CLERK OF COURTS?

- III. DID THE TRIAL COURT ERR IN DENYING APPELLANT-RESPONDENT'S MOTION TO TAKE DEPOSITION PENDING APPEAL?

**STATEMENT OF ISSUES ON
RESPONDENTS-APPELLANTS' CROSS-APPEAL**

- I. DID THE TRIAL COURT ERR IN GRANTING THE 13.1-ACRE TRACT TO APPELLANT-RESPONDENT?

STATEMENT OF THE CASE

On October 15, 2013, Appellant-Respondent Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal ("AME") Church (hereinafter referred to as "Appellant-Respondent" or "McPherson") filed his Notice of Appeal stating that he appeals the trial court's June



27, 2013 Order and Judgment (filed July 22, 2013) and the trial court Orders dated October 13, 2013 and October 15, 2013.

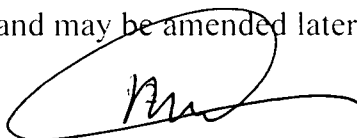
Prior to the filing of his Notice of Appeal, on September 11, 2013, the trial court denied McPherson's Motion to Alter or Amend the Judgment. (Designation of Matter to Be Included in the Record on Appeal ["Record"] No. 26.)¹ On September 24, 2013, the trial court denied McPherson's Motion to Take Depositions Pending Appeal. The trial court also denied McPherson's motions to alter or amend the September 11, 2013 and September 24, 2013 Orders. (Record Nos. 27, 28.)

On October 16, 2013, Respondents-Appellants Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison (hereinafter referred to as "Respondents-Appellants" or "Rockford Church") filed a Cross-Appeal on the ground that the trial court erred in its June 27, 2013 Order when it ordered that the national AME Church, Inc., holds equitable title to the 13.1 acres tract of land.

STATEMENT OF THE FACTS

Respondents-Appellants are long-time members of Rockford Church, a small rural church located in McCormick County, Mt. Carmel, South Carolina. For many years, Rockford Church was affiliated with the national African Methodist Episcopal Church, Inc. ("AME Church, Inc."), with whom McPherson is affiliated and is

¹Appellant-Respondent's Designation of Matter to Be Included in the Record on Appeal lists incomplete pleading names without dates, making it impossible to determine the exact pleadings or other documents referred to. The references in this Brief are therefore not certain and may be amended later.

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currently serving as the presiding elder of the Abbeville-Greenwood District of the AME Church, Inc. (Record No. 20.) While it was affiliated with the national church, Rockford Church was sometimes referred to as "Rockford (AME) Church." (Record No. 20.) The AME Church, Inc., is a national hierarchical church connected with several local churches. (Record No. 20.) The local churches are organized into districts, and each district is supervised by a presiding elder. (Record No. 20.) The bylaws of the national AME Church, Inc., are set forth in the Book of Discipline of the African Methodist Episcopal Church (the "Book of Discipline"). (Record No. 20.)

Rockford Church is no longer affiliated with the national AME Church, Inc., and has not been since 2011. (Record No. 20.) In 2010, a dispute arose between members of Rockford Church, including the individual Respondents-Appellants, and the national AME Church, Inc. Members of Rockford Church objected to the national church's unrelenting demands for money from Rockford Church, as well as other poor rural churches, while at the same time the national AME Church, Inc., failed to provide support and assistance to Rockford Church and other rural churches. (Record No. 20; *see also* Record Nos. 29-37.) Concerned members of Rockford Church informed McPherson, as the presiding elder of the national church, about their concerns, but McPherson did nothing to address the concerns raised. (Record No. 20; *see also* Record Nos. 29-37.)

The national AME Church, Inc.'s lack of support for Rockford Church in particular was evident by the national church's refusal to assist Rockford Church in

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making basic structural repairs to its aging and decrepit physical church property. (Record Nos. 29-37.) For this reason, beginning in late 1990s, members of the Rockford Church could no longer rely on the national church for assistance. Instead, the individual church members made special inter vivos gifts directly to the Rockford Church. (Record Nos. 29, 33, 36; *see also* Respondents-Appellants' Designation of Additional Matters to Be Included in the Record on Appeal ["Record Additions"] No. 4.) These gifts were specifically earmarked to the Rockford Church Building Fund so that the monies would be used only to make the necessary repairs and improvements to the Rockford Church sanctuary and to build up a savings account, with the eventual goal of building a new and more secure church building. (Record Nos. 29, 33, 36; *see also* Record Additions No. 4.) These building funds were intended for the exclusive purpose of repairing and improving the Rockford Church sanctuary and for no other purpose. (Record Nos. 29, 33, 36; *see also* Record Additions No. 4.)

In addition, in 2010 the members of Rockford Church transferred the Deed to the Rockford Church property to the Rockford Church Trustees, who were no longer affiliated with the national AME Church, Inc., and fully recorded the Deed transfer in Book 232 of Deeds, in the Auditor's Office of the McCormick City, South Carolina. (Record No. 47.)

McPherson then sued Respondents-Appellants for injunctive and declaratory relief. (Record No. 1.) Although the national AME Church, Inc., refused to assist the



Rockford Church in any way, it also refused to let the local church assist itself. In the Complaint filed by the national AME Church, Inc., through McPherson as the presiding elder of the Abbeville-Greenwood District of the AME Church, Inc., it was alleged that the Respondents-Appellants were not members of the Rockford Church and that Rockford Church's real and personal property was held in trust for the national AME Church, Inc., as provided in the Book of Discipline.

After numerous motions were filed before the trial court, and after hearing from both parties on cross-motions for summary judgment, the trial court in its June 27 Order addressed the remaining issues between the parties, which concerned the ownership between the national AME Church, Inc., and Rockford Church of two tracts of real property—a 4.5-acre tract and a 13.1-acre tract—and the Building Fund bank account. The 4.5-acre tract is the tract upon which sits the Rockford Church sanctuary. The 13.1-acre tract sits adjacent to the 4.5-acre tract and was acquired later, in 1998. (Record No. 20.)

On June 27, 2013, the trial court held that it had subject-matter jurisdiction over the parties' property disputes under South Carolina's neutral principles of law without violating the First Amendment of the U.S. Constitution. (Record No. 20.) It further held that the legal and equitable title to the 4.5-acre tract is owned by the local Rockford Church, not by the national AME Church, Inc., as per the Deed held in Abbeville County, and that there was never an express trust in favor of the national AME Church, Inc., as to the 4.5-acre tract of land. (Record No. 20.) Likewise, the

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trial court held that the local Rockford Church is both the legal and equitable owner of the Building Fund bank account, which, at the time of the Order, was being held in escrow by the McCormick County Clerk of Court. (Record No. 20.) The court also held that the national AME Church, Inc., holds equitable title, but not legal title, to the 13.1-acre tract of land as of 1998. This ruling is the subject of Respondents-Appellants' Cross-Appeal.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE 4.5-ACRE TRACT OF REAL PROPERTY BELONGS TO THE ROCKFORD CHURCH AND THAT THE BUILDING FUND ACCOUNT BELONGS TO THE ROCKFORD CHURCH.

A. The Parties To The Trial Court's Order.

To properly respond to the Initial Brief of Appellant-Respondent, it is important to clarify the identity of the parties in this action. Appellant-Respondent Samuel L. McPherson, as the Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (AME) Church, represents the national AME Church, Inc., in the present action. The national AME Church, Inc., is a hierarchical church that presides, through "districts," over numerous individual churches. (Record No. 20.) The Respondents-Appellants are members of Rockford Church. For many years, prior to 2011, Rockford Church was affiliated with the national hierarchical AME Church. During the time period it was affiliated with the national church, it was

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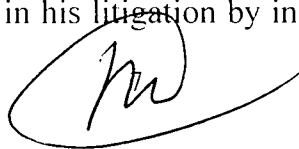
referred to as "Rockford (AME) Church" and was a member of the Abbeville-Greenwood District, over which McPherson presides as the AME elder.

In 2011, members of the Rockford Church, including the named Respondents-Appellants, along with the minister, withdrew from the national AME Church, Inc. The members could not pay the steep fees the national church imposed on small rural churches such as Rockford. In addition, the national AME Church, Inc., refused to assist Rockford Church in making the necessary repairs to the sanctuary.

McPherson filed a Complaint against certain members of the Rockford Church, seeking a declaratory judgment by the court that all real and personal property of Rockford Church was held in trust for the benefit of the national AME Church, Inc. The dispute thus concerns the property rights of the national AME Church, Inc., if any, and the property rights of Rockford Church.

The trial court, in its June 27, 2013 Order, states that the individual Defendants are trustees of Rockford Church; that Rockford Church owns certain real and personal property separate and apart from the national AME Church, Inc.; and that Rockford Church does not hold this property in trust for the national AME Church, Inc. (Record No. 20.) The court's September 6, 2013 Order Denying Plaintiff's Motion to Alter or Amend, clarified that the Respondents-Appellants are not trustees of a church affiliated with the national AME church, because Rockford Church is no longer affiliated with the national AME Church, Inc.² (Record No. 20.)

²Despite the trial court's postjudgment clarification, Appellant-Respondent continues to confuse the issues in his litigation by insisting in his Initial Brief that

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B. Rockford Church Holds Legal And Equitable Title To The 4.5-Acre Tract Of Property.

The trial court properly held that it had subject-matter jurisdiction to determine certain real and personal property interests of the parties, notwithstanding their church affiliations, pursuant to the neutral principles approach adopted by the U.S. Supreme Court in *Jones v. Wolf*, 443 U.S. 595 (1979), and by the South Carolina Supreme Court in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996). In *Pearson*, the South Carolina Supreme Court stated generally that when deciding church disputes, the courts may not engage in deciding disputes "as to religious law, principle, doctrine, discipline, custom or administration," but courts must decide disputes "growing out of civil law." 325 S.C. at 52, 478 S.E.2d at 853.

More recently, in *Banks v. St. Matthew Baptist Church*, 391 S.C. 475, 706 S.E.2d 30 (2011), this Court held that the neutral-principles-of-law approach to church disputes

["]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, 99 S.Ct. 3020). "[T]he neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." *Id.*

Id. at 480, 706 S.E.2d at 32-33; see also *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 685 S.E.2d 163 (2009) (holding

Respondents-Appellants are or may be trustees of a church affiliated with the national AME Church, Inc. They are not, and Rockford Church is no longer affiliated with the national AME Church, Inc.



that under the neutral principles-of-law approach to church disputes, where a court can completely resolve a church dispute on neutral principles of law, the First Amendment requires that it do so).

As in the *All Saints Parish Waccamaw* case, the adjudication of the property ownership issues raised in the present appeal can be resolved on neutral principles of law, and does not require the court to "wade into the waters of religious law, doctrine or polity." 385 S.C. at 445, 685 S.E.2d at 172. Indeed, pursuant to the U.S. Supreme Court decisions, and the clear mandate of the South Carolina Supreme Court, South Carolina courts are required and compelled to analyze and determine church property disputes solely through the application of state civil laws. The court may not make a determination based on church canons or doctrines such as the Book of Discipline, as McPherson urges.

With respect to the 4.5-acre tract of land in dispute between McPherson, as representative of the national AME Church, Inc., and Rockford Church, and its current members, the trial court, carefully following the law stated in *Pearson* and *All Saints Parish Waccamaw*, concluded that it could resolve the dispute over the property using objective, well-established concepts of the state's trust and property law, including relevant deeds and other documents evidencing title.

Specifically, in its June 27, 2013 Order, the trial court concluded from these legal documents and state laws that the disputed 4.5-acre tract was created by the merger of several smaller parcels of land, the first of which was purchased by

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Rockford Church in 1898 and the Deed for which was filed in the Abbeville County Clerk of Courts. The second parcel was purchased by Rockford Church in 1914, and the Deed for that parcel was duly filed in Abbeville County. The third parcel of four acres or more was purchased by the Rockford Church from the Rockford School sometime before 1929, but the Deed was never recorded. In 1999, by a Special Referee Order, in response to a quiet-title action by the Trustees of Rockford African Methodist Episcopal Church, conveyed the 4.5-acre tract to the Trustees of the Rockford African Methodist Episcopal Church. (Record No. 20.)

Importantly, and contrary to McPherson's Complaint and his numerous filings in this case, the trial court's analysis of the relevant Deeds and other legal documents evidencing title revealed no evidence or support in any way for McPherson's claim that the 4.5-acre tract was intended to be held in trust for the national AME Church, Inc., as McPherson has consistently contended. In fact, McPherson's argument in favor of the existence of a trust arises only from the national AME Church, Inc.'s governing book called the Book of Discipline, not by neutral principles of South Carolina property law. Again, in *All Saints Parish Waccamaw, Pearson, and Banks*, the courts emphasize that a church's governing canons do not and cannot preempt or have any actual legal effect on the actual title to church property. Specifically, the *All Saints Parish Waccamaw* court stated:

Furthermore, we hold that neither the 2000 Notice nor the Dennis Canon has any legal effect on title to the All Saints congregation's property. A trust "may be created by either declaration of trust or by transfer of property. . . ." *Dreher v. Dreher*, 370 S.C. 75,

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80, 634 S.E.2d 646, 648 (2006). *It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another.* The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

385 S.C. at 449, 685 S.E.2d at 174 (emphasis added).

Blatantly ignoring these legal principals, in his Initial Brief of Appellant-Respondent, McPherson attempts to distinguish the *All Saints Parish Waccamaw's* clear ruling that church canons have no legal effect on title to church property by distinguishing the facts in *All Saints Parish Waccamaw*. Yet the factual distinctions McPherson tries to draw between the present case and *All Saints Parish Waccamaw* are insignificant to the court's legal conclusions. In *All Saints Parish Waccamaw*, the original church charter vested ownership in the church property to the people of Waccamaw, and the people later transferred their interest in the property to the local church by quitclaim deed. In both cases, the legal instruments evidencing title and ownership in property plainly demonstrated that the local church holds title.

Again, McPherson's claims arise from the national AME Church, Inc.'s belief that all personal and real property of Rockford Church was forever held in trust for the national AME Church as evidenced only in the national AME Church, Inc.'s Book of Discipline. McPherson's second appellate argument, that the trial court's conclusion that the 4.5-acre tract is titled in the Rockford Church improperly fails to

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take into account the "intent of the parties," is therefore blatantly contrary to the neutral principles of law.

McPherson's argument requires the Court to entangle itself in questions of religious doctrine, polity, and practice, contrary to *Banks*, and to find that the Book of Discipline preempts the objective principles of South Carolina property law. The trial court properly refused to so entangle itself. Instead, the trial court's ruling on the 4.5-acre tract as held by the current local Rockford Church is supported by South Carolina law and should be affirmed.

Furthermore, the courts do not have subject-matter jurisdiction to enforce church canons. It is axiomatic under *Serbian Eastern Orthodox Diocese for the United States & Canada v. Milivojevich*, 426 U.S. 696 (1976), that controversies brought before a court of law that involve religious doctrine and disputes are considered ecclesiastical and are not within the jurisdiction of the court. *See also Banks*, 391 S.C. at 481, 706 S.E.2d at 33. Indeed, in McPherson's Motion to Dismiss before the trial court, McPherson states that it is not proper for a court to determine whether a church has acted consistently with its religious laws and doctrines, including its "system of discipline and administration." (Record Additions No. 3.)

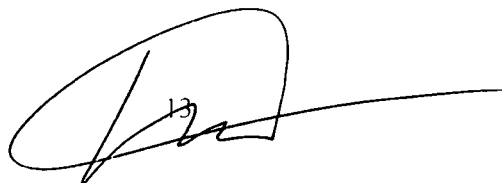
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C. Rockford Church Is The Proper Owner Of The Building Fund On Deposit With The McCormick County Clerk Of Court.

The trial court properly held, based on neutral principles of South Carolina law and all of the evidence in the record, that the funds accumulated by the Rockford Church members and previously held in a bank account at First Citizens Bank in the name of Rockford Church represent inter vivos gifts to the local church for the purpose of repairs and future construction costs. (Record No. 20.)

To establish the existence of an inter vivos gift, there must be evidence of the intent of the donor and the act of the donor. To show the act of a gift of personal property, the donor must delivery the property to the donee. *Lynch v. Lynch*, 201 S.C. 130, 21 S.E.2d 569 (1942). Indeed, the evidence in the Record is unequivocal that the monies gifted and delivered to the Rockford Church Building Fund account were intended by the contributing church members to be used to ensure a safe and secure place of worship precisely because, prior to the Respondents-Appellants' break from the national AME Church, the national AME Church persistently failed to care for the rural church. (Record No. 33.)

In his Initial Brief of Appellant-Respondent, McPherson continues to misapply the neutral principles of law by arguing that the trial court should not apply objective rules of law to the dispute over the Rockford Church Building Fund account, but should refer to the Book of Discipline as evidence that the funds are held "in trust" for the national AME Church. Yet McPherson also concedes in his Answers to



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Interrogatories that he, as the representative of the national AME Church, Inc., has no actual interest in the Rockford Church Building Fund. (See Record Additions No. 1.)

Applying the South Carolina law on the existence of inter vivos gifts, the affidavit testimony of the Respondents-Appellants meets the requirements that there was an intent to make a monetary gift to the local Rockford Church and that the delivery of the funds was accomplished. In her affidavit, church member Delois Phillips stated that members of Rockford Church "raised and paid all monies that are in the account for Rockford" and "the members of Rockford do not want elder McPherson to take control of the church funds." (Record No. 33.) Other church members including Henry Banks and Twyler Johnson testified about how funds were raised by Rockford Church members for the exclusive purpose of the Building Fund. (Record Nos. 29, 36; Record Additions No. 4.) Further, in his Answers to Interrogatories, McPherson stated that his only basis for alleging that the church fund account should be controlled by the national AME Church, Inc., is his interpretation of the Book of Discipline, the national church's canons, which are outside the scope of the court's jurisdiction for the reasons expressed above. (Record Additions No. 1.)

Based on South Carolina law regarding gifts and on the testimony of Rockford Church members, and there being to other evidence on the issue, therefore, the trial court properly concluded that the Rockford Church Building Fund account is the property of Rockford Church, to be used exclusively for the church sanctuary.

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II. THIS COURT SHOULD AFFIRM THE DENIAL OF APPELLANT-RESPONDENT'S MOTION TO TAKE DEPOSITIONS PENDING APPEAL.

The trial court properly exercised its discretionary authority pursuant to Rule 27(b), SCRCF, and denied Appellant-Respondent's Motion to Take Depositions Pending Appeal. (Record No. 27 or 28.) The Motion was filed postjudgment, and it failed to comply with the basic requirements of a Rule 27 motion. Further, the Motion failed to demonstrate any manner in which additional deposition testimony would advance justice or serve any purpose at all.

Generally a movant should not be entitled to take postjudgment deposition in an attempt to support an argument for the first time on appeal or where the witness was deposed earlier in the proceedings. *See Cent. Bank of Tampa v. Transam Ins. Group*, 128 F.R.D. 285 (M.D. Fla. 1989). Further, in seeking this extraordinary relief, the movant must show the substance of the testimony that he or she expects to elicit from each person intended to be examined. *See* Rule 27(b), SCRCF.

McPherson's inadequate Motion made it impossible for the court to evaluate it pursuant to the requirements of the Rule 27(b). Acknowledging its failings, McPherson, in his Initial Brief of Appellant-Respondent, erroneously relies on *Lucey v. Meyer*, 401 S.C. 122, 736 S.E.2d 274 (2012), to argue that the trial court should nevertheless figure out what McPherson really meant in his Rule 27(b) Motion and what unnamed witnesses would probably testify about. *Lucey*, however, concerns a

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Rule 59(a) motion for reconsideration, not a Rule 27(b) motion, and does not require a court to read the minds of attorneys or witnesses.

Further, McPherson's Motion appears to seek testimony to support arguments raised for the first time in a postjudgment motion. It is axiomatic that a party who has litigated his case under one legal theory should not be permitted to reopen the case postjudgment using Rule 27(b) in an attempt to introduce evidence in support of a different legal theory not raised before, particularly where McPherson had ample opportunity to develop the record below while taking the depositions of the Defendants. *See Bell Tel. Labs., Inc. v. Hughes Aircraft Co.*, 73 F.R.D. 16 (D. Del. 1976). Finally, the trial court properly denied McPherson's Rule 27(b) Motion on the ground that it was another attempt to further harass and unnecessarily litigate against the Defendants.

McPherson's appeal of the trial court's denial of his Motion to take postjudgment depositions offers no legal or factual basis upon which this Court should reverse the trial court or conclude in any way that the trial court abused its discretionary authority to deny a request for additional discovery. Justice will not be served through the taking of the Defendants' depositions multiple times nor those of any other possible witness.

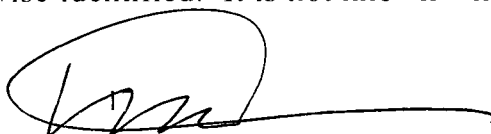
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III. THE TRIAL COURT ERRED IN CONCLUDING THAT THE NATIONAL AME CHURCH, INC., HOLDS EQUITABLE TITLE TO THE 13.1-ACRE TRACT.

Despite a lack of evidence that the second tract of land, the 13.1-acre tract, was ever deeded to the national AME Church, the trial court erroneously and inexplicably ordered that the national AME Church, Inc., holds equitable title to the 13.1-acre tract and, further, that "the AME Church is the beneficiary of an express trust and holds equitable title to the 13.1 acre tract." (Record No. 20.) Under the neutral principles of law, the trial court's conclusion is unsupported under the relevant law and evidence in the record and should be reversed at this time.

The larger, 13.1-acre tract of real property at issue was purchased for \$25,000 in 1998 by Rockford (AME) Church, at a time when Rockford Church was affiliated with the national AME Church, Inc. The property is adjacent to the 4.5-acre tract of land upon which the Rockford Church sanctuary is built. The purchased real property was duly recorded in the McCormick County Clerk of Courts on December 21, 1998 in Book 141 of Deeds, page 18.³ The Deed states that the 13.1-acre tract is held by the "Trustees for Rockford African Methodist Episcopal Church in Trust for the African Methodist Episcopal Church, Inc." The deed language reflects the facts that, at the time of the purchase, Rockford Church was affiliated with the national AME

³The Designation of Matter to Be Included in the Record on Appeal lists several Deeds that are not otherwise identified. It is not known which designation refers to the 1998 Deed.

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Church, Inc., and the national church, pursuant only to the Book of Discipline, required such a designation.

As the trial court states, "To prove the existence of a trust, the following elements must be shown: (1) a declaration creating the trust, (2) a trust res, and (3) designated beneficiaries. Furthermore, the trust declaration must be in writing when the trust property includes realty." *Foster v. Foster*, 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009), *aff'd*, 393 S.C. 95, 711 S.E.2d 878 (2011). In *State v. Jackson*, 338 S.C. 565, 527 S.E.2d 367 (2000), the court states that an enforceable trust instrument must also demonstrate that the property is being transferred with the intention that the property be administered by the trustees for another's benefit. This means that "the transferor of the property must intend that the trustee will act for the transferor's benefit instead of on his own behalf." *Id.* at 570, 527 S.E.2d at 370.

Consistently with South Carolina law, the commentators in *Corpus Juris Secundum* emphasize the importance of preparing a sufficiently detailed expression of trust before a trust can be enforced. Specifically:

A declaration of trust is a conveyance of an equitable interest. To prove the existence of a trust, a declaration creating the trust must be shown. A sufficient declaration of trust is essential to the creation of an express or voluntary trust, which, when the statute so requires, must be in writing. Such trusts are generally created by an instrument or instruments pointing out directly and expressly the property, persons, and purpose of the trust, or by an agreement or contract between the parties expressing the intended trust. The declaration must contain sufficient words to create the trust, and it must embody all the essential elements of a trust. It must express the intention to create a trust and state with certainty the terms, subject, persons, and object of the trust. The trustee must be authorized and directed to perform certain duties


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and assume certain obligations. A trust, whether of real or personal property, is created as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty an intention on the part of the trustor to create a trust and the subject, purpose, and beneficiary of the trust.

90 C.J.S. *Trusts* § 38 (Westlaw database updated Mar. 2014) (footnotes omitted).

The trial court's conclusion that the 13.1-acre tract is held in trust by the national AME Church, Inc., is completely inconsistent with South Carolina law on trust instruments. While the 1998 Deed includes some trust language, no actual trust occurred. The Deed reflects that the transferor, Rockford (AME) Church, transferred the property in trust to the national AME Church, Inc. Under the alleged trust, the national AME Church, Inc., was required to act for the transferor's benefit and not on its own behalf. Yet it is unequivocal in the record that the national AME Church, Inc., failed to act for the benefit of the Rockford Church and, to the contrary, acted in ways that were severely detrimental and harmful to the well-being and future viability of the small rural church.

It is axiomatic under trust law that the creation of an enforceable trust requires more than mere language in a deed. There must be evidence that the trustee will perform certain duties to benefit the transferor. These trustee obligations are not stated in the Deed for the 13.1-acre tract, and it is uncontested that the national AME Church, Inc., did nothing to benefit the transferor. The trial court conclusions do not reflect the proper application of trust law, and they inexplicably fail to incorporate uncontested facts into its analysis of the actual legal ownership of the 13.1-acre tract.

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For these reasons, the trial court's conclusion that the national AME Church, Inc., holds some sort of title on this real property should be reversed.

Additionally, the trial court's conclusions regarding the 13.1-acre tract erroneously rejects the actual transfer of this property in 2010 from the Rockford (AME) Church to the Rockford Church, reflecting the rural church's split from the national AME Church, Inc. The trial court, in a footnote dicta sua sponte suggests that this transfer could possibly establish a constructive trust in favor of the national AME Church, Inc. This is in error under South Carolina law. A constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. It is resorted to by equity to vindicate right and justice or frustrate fraud." *Carolina Park Assocs. v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012) (citation omitted) (internal quotation marks omitted). The trial court made no factual findings to support even a suggestion of a constructive trust in the present case. Furthermore, South Carolina precludes the imposition of a constructive trust to be raised for the first time through a postjudgment motion. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (2009).

In conclusion, the trial court erred in holding generally and without any factual basis that the national AME Church, Inc., has or may have an equitable title in the 13.1-acre tract of real property. No actual trust in favor of the national AME Church, Inc., was ever established because the national AME Church, Inc., never acted in a way that could be interpreted as benefiting the transferor. Further, the property was

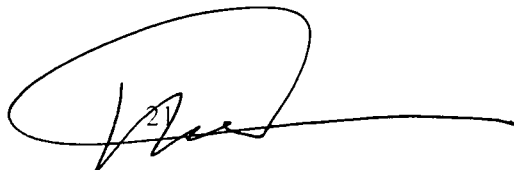
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officially transferred to the newly independent Rockford Church. Equitable title, in contrast, is an equitable designation applied rarely and only when a right or interest in property, arising out of a valid contract or relationship, reflects the actual circumstances of the parties. "[Equitable title] does not arise from a naked promise of purely moral obligation." 30A C.J.S. *Equity* § 56 (Westlaw database updated Mar. 2014).

The trial court fails to designate any supporting facts or evidence to support its alternative conclusion that the national AME Church, Inc., holds equitable title in the 13.1-acre tract. For each of these reasons, the trial court's conclusion regarding title to the 13.1-acre tract should be reversed at this time. Respondents-Appellants respectfully request this Court to enter an order that the 13.1-acre tract is owned by, and properly titled to, the Rockford Church.

CONCLUSION

For each of the reasons stated herein, Respondents-Appellants respectfully request this Court to enter an order affirming the trial court's June 27, 2013 Order (filed July 22, 2013) on its conclusions that the 4.5-acre tract and the Rockford Church Building Fund are both legally and equitably titled to Rockford Church, and reversing the trial court's June 27, 2013 Order on its conclusion that the national AME Church, Inc., holds an equitable interest in the 13.1-acre tract of land. Further, Respondents-Appellants respectfully request that this Court enter an order affirming

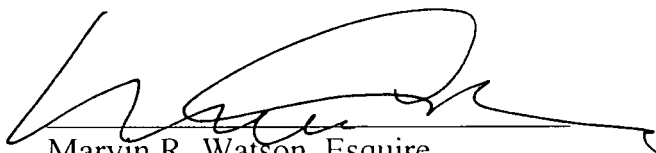
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the trial court's denial of Appellant-Respondent's Motion to Take Depositions Pending Appeal, and grant whatever further relief the Court deems just and proper at this time.

Dated: May 16, 2014

Respectfully submitted,

WATSON LAW FIRM, P.A.

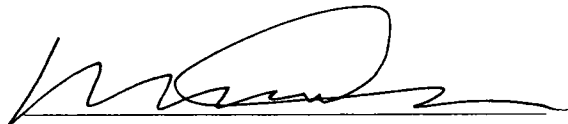
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Attorney for Respondents-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Respondents-Appellants' Response Brief and Initial Cross-Appeal Brief to be mailed, first-class postage prepaid, to Randall R. Williams, Esquire, 110 Riley Avenue, Post Office Box 3461, Greenwood, South Carolina 29648-3461, on this 16 day of May 2014.



Marvin R. Watson, Esquire

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SC Court of Appeals