

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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JUL 23 2014

Thomas A. Russo, Circuit Judge

S.C. Supreme Court

Case No. 2010-CP-21-2932
Appellate Case No. 2012-213355

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

Vs.

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

PETITION FOR CERTIORARI

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II. The Court has failed to consider that a Congregation may be bound by the constitution of the general church when the Discipline of the Denomination creates an express trust in favor of the denominational church. *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775. *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 11, 719 S.E.2d 446 (Ga., 2011) -5-

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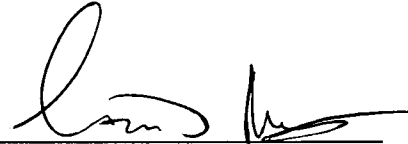
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CERTIFICATION

I, Louis D. Nettles, Attorney for Petitioners/Appellants certify that a Petition for Rehearing (App. P. 3) was filed and denied by the Court of Appeals (App. p. 7) on June 19, 2014.

A handwritten signature in black ink, appearing to read 'Louis D. Nettles', written over a horizontal line.

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QUESTIONS PRESENTED

Appellants petition the Court for a Writ of Certiorari to the Court of Appeals on the following grounds:

I. The Court of Appeals has erroneously given a much too broad construction of the holding in *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009) as deciding that the **only** way for a congregation to bind itself to the Discipline of a Denomination to which it and its members belong is the execution of a written trust agreement.

II. The Court has failed to consider that a Congregation may be bound by the constitution of the general church when the Discipline of the Denomination creates an express trust in favor of the denominational church. *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775. *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 11, 719 S.E.2d 446 (Ga., 2011)

MEMORANDUM

Summary of facts pertinent to Petition for Certiorari

Petitioners are members of the congregation of New Hope Free Will Baptist Church of the Pentecostal Faith, who adhere to the Free Will Baptist

Church of the Pentacostal Faith, and the General Conference of the Free Will Baptist Church of the Pentecostal Faith (Conference). Respondents are former members of the New Hope Baptist Church of the Pentecostal Faith who formed a new church, New Hope Church, and left the Conference. The suit is for a determination of the right to control the property of New Hope Baptist Church of the Pentecostal Faith and an accounting of its property.

Free Will Baptist Church of the Pentecostal Faith, as a Denomination, adopted a written Discipline which has been modified over the years. The Denomination is ultimately governed by the Annual Conference. The conference is composed of representatives of each church within the Denomination. Since at least 1938 the Discipline has provided that the General Conference shall have final jurisdiction over the local churches. By 1961 the Denomination specifically adopted the limitation on the local trustees of the church to prevent diversion of church property from the use of the Denomination. RoA p. 356 This was an obligation adopted by the members of New Hope through the governance of their denomination. In 2003, New Hope Free Will Baptist Church of the Pentecostal Faith incorporated telling its members that the purpose of the incorporation was to shield its members from personal liability for actions of the Church. In December 2009 the Conference

received a letter from attorney John M. Prosser Jr. on behalf of New Hope Church stating that the New Hope Church had recently voted to break ties with the Conference. The real property of New Hope Baptist Church of the Pentecostal Faith was not deeded to the Corporation prior to the congregation breaking ties with the Conference. RoA p.416 After attempts as reconciliation by the conference were rejected, this suit followed. The Trial Court granted summary judgment to the Respondent and this appeal followed.

Argument of Law

The Trial Court and the Court of Appeals have rejected the possibility that a congregation that participated in the governance of a larger denomination is subject to the Domination's written Discipline. Petitioners content that under the First Amendment, a church is treated like any association. When an association adopts rules of self governance, courts are required to enforce those voluntarily adopted rules.

In *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009), this Court held that the Episcopal Diocese could not unilaterally impose a trust on property of a Congregation that it had previously disclaimed any interest. Possibly because of its history as an established church, the Diocese in *All*

Saints did not have in its governing document any authority over the parish church. It seems likely that the Episcopal Diocese expected the courts to imply such authority from its history as an established church. The Diocese is governed by its Bishops and Clergy with some participation by lay members from the parishes and missions. The Free Will Baptist Church of the Pentecostal Faith is governed primarily by the lay members elected by the individual churches. (RoA. p. 28) Each church selects its own pastor from the licensed ministers of the Denomination. (RoA. p. 226 Article 27)

In its opinion the Court of Appeals has quoted *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775 stating that when resolving disputes over the ownership of church property, courts must rely "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." However that quote is just a portion of a much larger discussion of neutral principles that recognizes the importance of Church Discipline.

The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating

to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. *Serbian Orthodox Diocese*, 426 U.S., at 709, 96 S.Ct., at 2380.

Jones v. Wolf 443 U.S. at 603

A local church, if it desires to remain independent of the influence of a parent church body, must maintain this independence in the important aspects of its operation,-e.g., polity, name, finances. It cannot, as here, enter a binding relationship with a parent church which has provisions of implied trust in its constitution, by-laws, rules, and other documents pertaining to the control of property, yet deny the existence of such relationship. It does not matter whether such agreement to be bound is memorialized. A local church cannot prosper by the benefits afforded by the parent, participate in the functioning of that body, yet successfully disclaim affiliation when the parent acts to the apparent disadvantage of the local, so as to shield from equitable or contractual obligation the valuable property acquired by the local church either before or during such affiliation.

United Methodist Church v. St. Louis Crossing Independent Methodist Church, 150 Ind. App. 574, 276 N.E.2d 916, at 589

The Discipline of the Denomination creates in secular terms a restriction on diverting church property from the Denomination. Unlike *All Saints*¹ or

¹Shortly thereafter, in 1903, the Trustees of the Diocese signed a quit-claim deed (hereinafter the "1903 Quit-Claim Deed") transferring any interest the Diocese may have had in the congregation's property to All Saints Parish, Waccamaw, Inc. The Diocese did not retain any interest in the property, reversionary or otherwise. The 1903 Quit-Claim Deed was recorded in the Georgetown County public records on May 30, 1903. *All Saints* 385 S.C. at 437

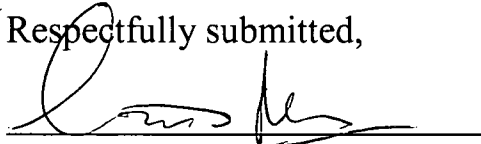
*Jones v. Wolf*², here the Denomination in a procedure in which each congregation participated, adopted a specific restriction on alienation of collectively owned property. RoA p. 356 and RoA p. 228. In *Carnes*, the Georgia Courts awarded control of the local church property to the loyalist members of the local church because the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church. *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976) See also *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 11, 719 S.E.2d 446 (Ga., 2011).

CONCLUSION

The facts before this court distinguish this case from both *All Saints* and *Jones* and create at least a genuine issue as to control of church property. This Court should grant the Writ and decide whether the provision of the Church Discipline create genuine issue of material fact and the effect of the voluntarily adopted Discipline of the Denomination on the control of Church property.

²And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church. The courts accordingly held that legal title to the property of the Vineville church was vested in the local congregation *Jones v. Wolf* 443 U.S. at 601

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis D. Nettles", is written over a horizontal line.

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July 18, 2014

THE STATE OF SOUTH CAROLINA
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APPEAL FROM FLORENCE COUNTY
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Thomas A. Russo, Circuit Judge

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and Donnis McDonald Respondents

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Petition for Certiorari on Respondent
by placing the same in the Unites States Mail postage prepaid and addressed to

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July 22, 2014



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SC Court of Appeals