

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

S.C. SUPREME COURT

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

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

v.

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

RESPONDENTS' RETURN TO THE PETITION FOR WRIT OF CERTIORARI

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ARGUMENTS AGAINST QUESTIONS PRESENTED

- I. THE TRIAL COURT AND THE COURT OF APPEALS CORRECTLY APPLIED OBJECTIVE, WELL-ESTABLISHED AND NEUTRAL PRINCIPLES OF LAW TO REJECT THE PETITIONERS' ALLEGATIONS OF TRUST OVER NEW HOPE CHURCH'S PROPERTY?

COUNTER-STATEMENT OF THE CASE

This dispute arises over property owned by New Hope Church (“New Hope”), which is located in Johnsonville, South Carolina. New Hope was founded in the early 1900's. Around 1946, New Hope and other area churches formed a cooperative denomination named the General Conference of the Free Will Baptist Church of the Pentecostal Faith (“Conference”).

Churches who are members of the Conference are congregationally governed churches. (R. p. 115, line 1-p. 116, line 11).¹ Consistent with the congregational governed relationship, the Conference does not ordain, license or discipline a local church’s pastor; rather, the congregation chooses its own pastor, and the Conference has no disciplinary authority over the pastor. (R. p. 116, line 3- p. 117, line 10).

In 2000, New Hope conveyed church property to a third party. (R pp. 422-423). Petitioner Raymond Haseldon signed the deed, and he admitted during his deposition that he neither notified the Conference nor was such notice required. (R. p. 206, line 13-p. 207, line 4).

In 2003, the members of New Hope unanimously voted to incorporate and adopt its own bylaws thereby removing any doubt that it was an “independent church.” (R. p. 417). Two of the individual Appellants were present and voted for the incorporation. (Id.) Although New Hope adopted its own bylaws, it voluntarily remained affiliated with the Conference.

However, in 2009, New Hope became frustrated with the Conference, and New Hope’s congregation voted unanimously to terminate the church’s affiliation with the Conference. New

¹ The minutes from the Conference’s 2010 annual meeting corroborate Superintendent McElveen’s testimony that member churches are congregationally governed. (R. p. 421).

Hope subsequently amended its name to remove any identification with the Conference. The Appellants do not dispute that the congregation of New Hope unanimously voted to withdraw from the Conference.

New Hope notified the Conference of the disaffiliation, and the Petitioners present no evidence that the Conference took any formal action against the Respondents other than commencing this action.² (R. p. 145, lines 1-15). The Petitioners commenced this action on October 7, 2010, claiming essentially that it had a trust interest in the property owned by New Hope. The Petitioners consist of the Conference and former members of New Hope. The Respondents are New Hope, New Hope's governing board, and New Hope's pastor, Randy Sharpe.

The Petitioners attempted service on or around mid April 2011, and the Respondents timely answered and counter-claimed on May 18, 2011. The answer asserted affirmative defenses including statute of frauds, failure to serve, statute of limitations and laches. The answer included a counter-claim for a declaratory judgment that the Petitioners had no trust or any interest in New Hope's property.

The Respondents served discovery requests and deposed the Conference's Superintendent, James A. McElveen. Raymond Haseldon, Annie Raye Haseldon, Legrande Goins, and Gail Goins were also deposed. On February 8, 2012, the Respondents filed a motion for summary judgment based, *inter alia*, on the ground that the evidence demonstrated that the Petitioners had no interest in New Hope's property.

²

The Conference did not appoint any committee or group to accept "ownership" over the church.

The motion was heard on March 8, 2012. Counsel for the Respondents and Petitioners were present and argued their positions. On March 27, 2012, The Honorable Thomas A. Russo, Circuit Court Judge for the Twelfth Judicial Circuit (hereinafter referred to as the "Trial Court") issued an Order granting the Respondents' motion for summary judgment. The Trial Court held, generally, that well established trust law required dismissal of the Petitioners claims. (R. pp. 1-2).

On April 6, 2012, the Petitioners filed a motion to amend asking the Trial Court to reconsider its decision. The Trial Court heard the motion on August 13, 2012, and on September 28, 2012, the Trial Court issued an Order denying the motion. The appeal to the South Carolina Court of Appeals followed. The Court of Appeals heard oral arguments on March 6, 2014. Approximately two weeks later, on March 19, 2014, the Court of Appeals affirmed the Trial Court's decision in an unpublished per curiam opinion.

ARGUMENT AND CITATION OF AUTHORITY

I. **The Trial Court and Court of Appeals correctly applied well established, objective and neutral principles of law to reject the Petitioners' allegation of a trust over New Hope Church's property**

In Jones v. Wolf, the United States Supreme Court held that state courts could apply neutral principles of law to resolve church property disputes. 443 U.S. 595, 603, 99 S.Ct. 3020, 3025 (1979). Following this decision, the South Carolina Supreme Court expressly held that courts must apply neutral principles of law to resolve church property disputes. All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 385 S.C. 428, 449, 685 S.E.2d 163, 175 (2009).

To prove the creation of a trust, a plaintiff must show: (1) a declaration creating the trust, (2) a trust *res*, and (3) designated beneficiaries. Whetstone v. Whetstone, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (Ct. App. 1992). South Carolina law requires a writing to prove a trust in land. Beckham v. Short, 298 S.C. 348, 350, 380 S.E.2d 826, 827 (1989). Moreover, if the settlor is the trustee, some written declaration signed by the settlor is required to create a trust. S.C. Code § 62-7-401(a)(2) and South Carolina Comments, ¶ 2.

In All Saints, the proponents of the national church claimed that a bylaw provision, which was referred to as the Dennis Cannon, in a separate entity imposed a trust on the local church's property. The South Carolina Supreme Court rejected the claim and held that "[i]t 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 to transfer legal title to one person for the benefit of another." All Saints, 385 S.C. at 449, 685 S.E.2d at 174.

In this case, the Petitioners rely on a vague admonition in the Conference's bylaws to

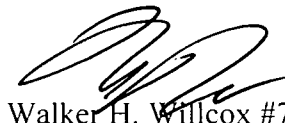
assert a trust interest in the Conference's favor over New Hope's property. However, the Conference has never held title to New Hope's property, and it provides no instrument evidencing New Hope's intent to create a trust in the Conference's favor.³ Consequently, the Petitioners' claim of trust must fail.

CONCLUSION

The Trial Court and the Court of Appeals applied well-established, objective and neutral principles of trust law to properly reject the Petitioners' claims. Therefore, the Respondents request that the Court deny the Petition for Writ of Certiorari.

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August 15, 2014

³ The Trial Court noted that the Petitioners provided no evidence during summary judgment to identify when or under what circumstances the alleged trust was created. (R. p. 2, n. 2). The Petitioners are precluded from attempting to do so for the first time on appeal. Wilder Corp. v. Wilke, 330 S.C. 71, 75, 497 S.E.2d 731, 734 (1998).

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PROOF OF SERVICE

I certify that I have served on August 15, 2014 the **Respondents' Return to the Petition for Writ of Certiorari** on the Petitioners, through their attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

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