

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM McCORMICK COUNTY

DEC 08 2014

Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

SC Court of Appeals

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.*

**RESPONDENTS-APPELLANTS' FINAL REPLY BRIEF
TO APPELLANT-RESPONDENT'S RESPONSE
BRIEF TO INITIAL CROSS-APPEAL BRIEF**

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ARGUMENT

I. THE NATIONAL AME CHURCH DOES NOT HOLD TITLE TO THE 13.1-ACRE TRACT OF LAND, AND THE TRIAL COURT'S ORDER AS TO THE 13.1-ACRE TRACT SHOULD BE REVERSED UNDER SOUTH CAROLINA LAW.

Throughout this litigation, Respondents-Appellants Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison ("Respondents-Appellants") have consistently argued, according to the well-established law of South Carolina, that disputes over church real property may only be decided in accordance with the neutral-principals-of-law approach to church disputes. This means that the court may only rely on "objective, well-established concepts of trust and property law familiar to lawyers and judges." *Banks v. St. Matthews Baptist Church*, 391 S.C. 475, 480, 706 S.E.2d 30, 32 (2011). This neutral approach to church property ownership disputes is important because it "promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice." *Id.*

Contrary to the neutral-principles-of-law approach, Appellant-Respondent Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church ("McPherson" or "Appellant-Respondent"), seeks to have the Court improperly "wade into the waters of religious law" and look to the national AME Church's Book of Discipline to determine the ownership of the 13.1-acre tract of land which sits adjacent to the Rockford Church sanctuary. This approach is not available under the First Amendment to the U.S.

Constitution or South Carolina law. See *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 685 S.E.2d 163 (2009).

For many of the same reasons the trial court concluded from the legal documents in the record that the disputed 4.5-acre tract is owned by the Rockford Church as represented by the Respondents-Appellants, the adjacent 13.1-acre tract also belongs to the Rockford Church, as represented throughout this litigation by Respondents-Appellants. (Record on Appeal ["R."] pp. 14-21.) This larger tract was purchased in 1998, when the Rockford Church was affiliated with the national AME Church. The language in the deed recorded on December 21, 1998 reflects that affiliation. (R. pp. 411, 414.)

Yet the deed language fails to establish an enforceable legal trust in favor of the national AME Church because the deed fails to include language that the trustee of the property will act for the transferor's benefit instead of his own behalf. (R. pp. 411, 414.) *State v. Jackson*, 338 S.C. 565, 527 S.E.2d 367 (2000).¹ Because the deed does not demonstrate each of the requirements of a trust in favor of the national AME Church, as the trial court concluded, the trial court's order as to the 13.1-acre tract should be reversed at this time under South Carolina law.

¹ In Appellant-Respondent's Response to Respondents-Appellants' Appeal, McPherson argues that Respondents-Appellants' reliance on *Jackson* is not proper because the facts in *Jackson* are distinguishable. *Jackson* states the South Carolina law on trust formation and when a trust can be relied upon, and it remains legal precedent in South Carolina.

The evidence in the record demonstrates that the 13.1-acre tract properly belongs to the current Rockford Church as represented by Respondents-Appellants. (R. pp. 411, 414.)

II. APPELLANT-RESPONDENT HAS NO REMEDY UNDER A CONSTRUCTIVE TRUST THEORY.

Appellant-Respondent did not raise a constructive trust remedy in his complaints against Respondents-Appellants, and no evidence exists in the Record on Appeal to support the existence of a constructive trust in favor of the Appellant-Respondent. Any claim to a constructive trust should be rejected and denied as not properly before this Court. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012); *see also Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (2009) (a constructive trust claim cannot be raised for the first time through a post judgment motion).

Even if this Court determines that this constructive trust issue is properly before it, McPherson presents no evidence to support a finding of a constructive trust. Under South Carolina law, a constructive trust requires evidence of fraud and bad faith, as well as evidence that equity requires intervention by a court to rectify an incident of fraud. *Carolina Park Assocs. v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012). The trial court made no findings that Respondents-Appellants engaged in any conduct which could support a constructive trust.

The trial court's conclusion that the 13.1-acre tract is held by the national AME Church by some sort of equitable trust is not supported by the record and is not consistent with South Carolina law. There is insufficient evidence that an actual trust exists in favor of the national AME church and no evidence of an equitable trust or title in favor of the national AME Church. (R. pp. 411, 414.) For each of these reasons, the trial court's June 27, 2013 Order on the 13.1-acre tract should be reversed.

III. RESPONDENTS-APPELLANTS' GOOD-FAITH FILINGS.

There are numerous motions and filings currently pending before this Court which arise from confusion by the parties about the initial briefing process when there are more than one appeal. Respondents-Appellants have been proceeding under the good-faith belief that the Appellant-Respondent's appeal, filed October 15, 2013, and Respondents-Appellants' appeal, filed October 16, 2013, would move forward as consolidated appeals pursuant to the correspondence received from the Clerk of the Court's office dated October 30, 2013, which states that "these appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules."

To the extent that Respondents-Appellants were mistaken about the timing and caption of their initial consolidated appellate briefs, all errors in timing and designations were in good faith, and attempts have been made to rectify any errors.

In addition, Respondents-Appellants respectfully request this Court to recognize that each of the initial briefs filed by Respondent-Appellants has complied with the content requirements of Rule 208, SCACR. Each was filed with the Clerk of the Appellate Court with the proper proof of service. Additionally, Respondents-Appellants' Designation of Matter included the proper Certificate of Counsel.² The May 21, 2014 letter sent by the Deputy Clerk of Court indicating that a Certificate of Counsel had not been received was in error, and that error was promptly acknowledged by the Deputy Clerk.

The recent false representations by Appellant-Respondent in his Reply in Opposition to Respondents'-Appellants' Motion for Leave to File Initial Appellate Brief of Respondents-Appellants out of Time about Respondents-Appellants' filings should be disregarded in their entirety. Respondents-Appellants have acted diligently and competently throughout this lengthy litigation and, now, appeal, and they have made every effort to respond to and address each of the numerous motions and actions directed at them by Appellant-Respondent over the past four years.

² In McPherson's recent Reply in Opposition, he contends that Respondents-Appellants' Response Brief was filed without a Certificate of Counsel or Certificate of Service. Yet, each of the briefs filed by Respondents-Appellants has included a Certificate of Service as required, and the Designation of Matter properly included a Certificate of Counsel as required.

CONCLUSION

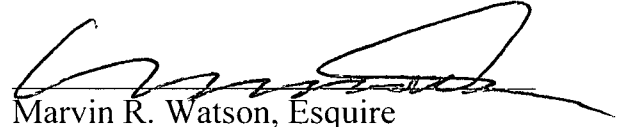
For each of the reasons stated herein, Respondents-Appellants respectfully request this Court to enter an order reversing the trial court's June 27, 2013 Order that the national AME Church, Inc., holds an equitable interest in the 13.1-acre tract of land, and to grant whatever further relief the Court deems just and proper at this time.

Dated: December 5, 2014.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

Respondents-Appellants hereby certify that the Respondents-Appellants' Final Reply Brief to Appellant-Respondent's Response Brief to Initial Cross-Appeal Brief fully complies with Rule 211(b), SCACR. The Final Reply Brief is identical to the Respondents-Appellants' Reply to Appellant-Respondent's Response Brief to Initial Cross-Appeal Brief except for (1) the addition of references to the Record on Appeal; and (2) the correction of obvious typographical errors and/or misspellings.



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Dated: December 5, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Respondents-Appellants' Final Reply Brief to Appellant-Respondent's Response Brief to Initial Cross-Appeal Brief to be mailed, first-class postage prepaid, to William T. Toal, Esquire, Johnson, Toal & Battiste, P.A., 1615 Barnwell Street, Post Office Box 1431, Columbia, South Carolina 29202, on this 5th day of December 2014.



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