

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

James S. Verner, Esquire – Special Referee

Case No.: 2015-000872

**RECEIVED**

JUN 11 2015

SC Court of Appeals

St. Paul Independent Church Pomaria, Inc., .....Appellant,

v.

African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc.), ..... Respondents,

v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc., ..... Third-Party Appellants.

**INITIAL BRIEF OF RESPONDENTS**

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June 11, 2015

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### STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT PROPERLY GRANT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT WHERE THIRD-PARTY APPELLANTS ATTEMPTED TO TRANSFER ST. PAUL A.M.E. CHURCH PROPERTY AFTER FORFEITING THEIR POSITIONS AS CHURCH TRUSTEES BY VOTING TO DISAFFILIATE FROM THE CHURCH?**
2. **ARE APPELLANTS BARRED FROM ASSERTING IN THE ALTERNATIVE THAT GENUINE ISSUES OF MATERIAL FACT EXIST IN THIS MATTER AFTER THEY FILED A CROSS-MOTION FOR SUMMARY JUDGMENT IN THE TRIAL COURT?**
3. **DID APPELLANTS PROPERLY PRESERVE FOR APPELLATE REVIEW THEIR ARGUMENT THAT THE TRIAL COURT'S ORDER WAS INSUFFICIENT WHEN APPELLANTS FAILED TO FILE A RULE 59(E) MOTION?**

### STATEMENT OF THE CASE

On December 17, 2013, Appellant St. Paul Independent Church brought this action against Respondents seeking a declaratory judgment from the trial court that title to the church property located at 1945 Hope Station Road, Pomaria, South Carolina, 29162 (hereinafter "subject property"), is exclusively held by Appellant. Appellant filed an Amended Summons and Complaint on December 23, 2013, and obtained a Temporary Restraining Order ("TRO") from the court prohibiting Respondents from taking action that would affect Appellant's use of the subject property. The TRO was in effect until January 6, 2014, after which time a Form 4 Order was issued granting St. Paul A.M.E. Church and St. Paul Independent Church shared use of the subject property pending resolution of the litigation.

Subsequently, on January 27, 2014, Respondents filed a Third-Party Complaint against Thomas Flemon, Lisa Houseal, and Shirley Wise in their capacities as former trustees of St. Paul A.M.E. Church for fraudulent conveyance and breach of fiduciary

duty. On February 6, 2014, an Order was entered referring the action to Special Referee James S. Verner.

Respondents filed a Motion for Summary Judgment on September 30, 2014. Thereafter, Appellant and Third-Party Appellants filed a Motion for Summary Judgment on October 31, 2014. Following a status conference, the trial judge developed a briefing schedule, and the parties filed opposing Memoranda of Law in Support of Summary Judgment. Finding no genuine issues of material fact, the trial court entered an order granting summary judgment to Respondents on March 30, 2015, and filed the order on April 7, 2015. Appellant and Third-Party Appellants filed a Notice of Appeal with this Court on April 14, 2015.

### **STATEMENT OF THE FACTS**

St. Paul A.M.E. Church was established in or around 1883, and the first church building was established in 1897. (History of St. Paul A.M.E. Church-1986 Souvenir Journal for 103rd St. Paul A.M.E. Church Anniversary). In a deed dated and recorded March 14, 1885 (hereinafter "1885 Deed"), James C. Hope conveyed title to the subject property to the "Trustees of St. Paul A.M.E. Church." (1885 Deed). St. Paul A.M.E. Church has maintained an affiliation with the national African Methodist Episcopal Church, Inc., (hereinafter "A.M.E. Church") for more than 100 years, as evidenced in the admissions and testimony of Appellants' witnesses, including Appellants' 30(b)(6) deponent Frederick Houseal, that St. Paul A.M.E. Church obtains its pastors through assignment by the A.M.E. Church; its trustees are governed by the A.M.E. Church; and it pays annual assessments to the A.M.E. Church. (Frederick Houseal Depo. p. 51, lines 24-25, p. 52, lines 1-3, p. 53, lines 4-6, p. 54, lines 1-5, p. 57, lines 7-10; Shirley Wise

Depo. p. 14, lines 18-23, p. 15, lines 1-14, p. 41, lines 4-12, p. 42, lines 5-8; Thomas Flemon Depo. p. 22, lines 22-25, p. 47, lines 13-17; Lisa Houseal Depo. p. 13, lines 18-25, p. 14, lines 1-3).

St. Paul A.M.E. Church trustees are elected pursuant to *The Doctrine and Discipline of the African Methodist Episcopal Church* (hereinafter "*The Discipline*"), which is the governing constitution and by-laws of churches within the national A.M.E. Church connection, including St. Paul A.M.E. Church and "everyone that is a member of the A.M.E. Church." (Joseph Postell Depo. p. 27, lines 1-4, p. 34, lines 20-22; Shirley Wise Depo. p. 67, lines 8-13; Dorothy Houseal Depo. p. 16, line 25, p. 17, lines 1-2). The current A.M.E. Church trustees are Derrick Flemon, Melvin Flemon, Laura Flemon, and Travis Lowery. (Melvin Flemon Depo. pp. 9-12). *The Discipline* guides the day-to-day operations of local A.M.E. churches and sets forth policies and procedures mandating how A.M.E. churches are to operate administratively. (Joseph Postell Depo. p. 26, lines 11-23; Tobie Pollock Depo. pp. 16-19). The duties of A.M.E. trustees are listed in *The Discipline* and include the duty to guard all real estate, churches, parsonages, schools, and any other property obtained by the local church. (*The Discipline*, pp. 64-65).

In 2013, St. Paul A.M.E. Church had five (5) trustees: Shirley Wise, Thomas Flemon, Lisa Houseal, Laura Flemon, and Derrick Flemon. (Shirley Wise Depo. p. 24, lines 18-25, p. 25, lines 1-2; Lisa Houseal Depo. p. 16, lines 11-17). On or about November 14, 2013, several persons who were in the process of organizing Appellant St. Paul Independent Church held a meeting. (Meeting Minutes of New St. Paul Church, dated Nov. 14, 2013; Pltf's Memo. in Support of Application for Preliminary Injunction, p. 2, ¶ 1; Frederick Houseal Depo. p. 62, lines 4-10; Shirley Wise Depo. p. 33, lines 21-

25, p. 34, lines 1-2, p. 36, lines 3-24). Of the persons present during the meeting, some were members of St. Paul A.M.E. Church and some were not. (Tenetha Hall Depo. p. 36, lines 1-19, p. 37, lines 1-18, p. 40, lines 17-25). Among those in attendance were Third-Party Appellants Shirley Wise, Thomas Flemon, and Lisa Houseal (hereinafter “former trustees”), who at the time were trustees of St. Paul A.M.E. Church. (Meeting Minutes of New St. Paul Church, dated Nov. 14, 2013). During the meeting, eleven out of sixteen persons present voted to disaffiliate from the A.M.E. Church. *Id.* The former trustees were among the persons listed as joining in the disaffiliation. (Pltf’s Motion for TRO).

By certified letter dated November 15, 2013, the former trustees notified the leadership and governing persons of St. Paul A.M.E. Church of their decision to disaffiliate. (Complaint, ¶ 6; Affidavit of Frederick Houseal, ¶ 4; Letter to 7th Episcopal District of the A.M.E. Church, dated Nov. 15, 2013). *The Discipline* provides the following guidance on withdrawal of membership in an A.M.E. Church:

A member who withdraws his or her membership does so on a purely individual basis and as a personal right. Such a member has no right or title to the personal or real property of the local or general church. This shall include the church building, parsonage, school, and other personal or real property held by the local trustees. Subsequent reversal of the withdrawal statement shall require the consent and approval of the pastor and the Quarterly Conference.

(*The Discipline*, pp. 60-61). Additionally, “any trustee ceasing to be a member of the denomination, by reason of expulsion or otherwise, shall immediately cease to be a trustee . . . .” (*The Discipline*, p. 66).

Following the November 15th notice of disaffiliation, the former trustees took additional steps to complete legal organization of St. Paul Independent Church and

incorporated St. Paul Independent Church with the South Carolina Secretary of State on November 26, 2013. (Certificate of Incorporation, dated Nov. 26, 2013). On or about December 5, 2013, Dorothy Houseal noticed that the St. Paul A.M.E. Church sign had been changed—the letters “A.M.E.” and the pastor’s name had been painted over. (Police Report, dated Dec. 5, 2013). On December 6, 2013, the former trustees signed a quitclaim deed purporting to convey the subject property to St. Paul Independent Church. (Quitclaim Deed, dated Dec. 6, 2013). The following Sunday, December 8, 2013, St. Paul Independent Church members, including the former trustees, assumed complete control of the subject property and contacted law enforcement seeking the removal of the remaining members of St. Paul A.M.E. Church and A.M.E. Elder Joseph Postell, from the subject property. (Police Report, dated Dec. 8, 2013).

On December 11, 2013, relying on the quitclaim deed they had executed, the former trustees, on behalf of St. Paul Independent Church (hereinafter collectively “Appellants”), filed a Motion for a TRO seeking to prohibit Respondents “from taking adverse action which would interfere with [St. Paul Independent Church’s] real or personal property rights or interests, as well as its lawful and legal business operations and/or the conduct of its worship services.” (Pltf’s Motion for TRO). Appellants included as evidence in support of their Motion:

- (a) Certified letter to A.M.E. Church leadership, dated November 15, 2013, noticing the St. Paul Church’s congregation and officer’s disaffiliation, effective November 24, 2013, which included former trustees Thomas Flemon, Lisa Houseal, and Shirley Wise;
- (b) Meeting Minutes from November 14, 2013, which references the affirmation of former trustees Thomas Flemon, Lisa Houseal, and Shirley Wise in the decision to disaffiliate;

- (c) List of signatures of individuals purporting to withdraw from St. Paul A.M.E. Church, including former trustees, Shirley Wise, Lisa Housel and Thomas Flemon.

The Court granted Appellants' Motion for a TRO on December 23, 2013. (TRO, issued Dec. 23, 2013). On January 6, 2014, Appellants filed a Memorandum in Support of Application for Preliminary Injunction that included the following admission:

By certified letter on November 15, 2013, and by hand delivery on November 24, 2013, the officers and congregation of St. Paul Church informed the A.M.E. Church of the congregation's decision to disaffiliate and that the services of any A.M.E. pastor, elder, bishop, or the like would no longer be needed.

In these court filings, Appellants admitted they voted to disaffiliate from the St. Paul A.M.E. Church at the November 14, 2013 meeting, signed the petition to disaffiliate, and informed the A.M.E. Church of their disaffiliation on November 15, 2013.

### **STANDARD OF REVIEW**

When resolving church disputes courts must apply the "neutral principles of law" analysis articulated in the South Carolina Supreme Court's decisions in All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 685 S.E.2d 163 (2009) and Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996). South Carolina civil courts "have jurisdiction as to civil, contract, and property rights which are involved in a church controversy, even though they have no jurisdiction of ecclesiastical questions and controversies." Pearson, 325 S.C. at 51, 478 S.E.2d at 852.

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate when there is no genuine

issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

## ARGUMENT

### **I. THE TRIAL COURT CORRECTLY GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT BECAUSE THE FORMER TRUSTEES WERE DIVESTED OF ANY AUTHORITY TO TRANSFER ST. PAUL A.M.E. CHURCH PROPERTY AFTER VOTING TO DISAFFILIATE FOR THE EXPRESS PURPOSE OF UNITING WITH ST. PAUL INDEPENDENT CHURCH.<sup>1</sup>**

#### **A. Third-Party Appellants had no interest in St. Paul A.M.E. Church property to convey after they disaffiliated from St. Paul A.M.E. Church and united with St. Paul Independent Church.**

Under South Carolina law, when a church trustee voluntarily agrees to disaffiliate from one church and unite with another, he forfeits his membership in the church, his position as a trustee of the church, and any interest he has in the church's property. Brock v. Bennett, 313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994). In Brock, this Court held a former trustee of a Baptist church had no remaining interest in the church's property once he withdrew his membership and united with another church. Id. In that case, the church property was deeded to certain named individuals, including Brock, as

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<sup>1</sup> Initially, Respondents note that Appellants have improperly appealed the trial court's denial of Appellants summary judgment motion. See Olson v. Faculty House of Carolina, Inc., 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003) (finding the denial of a summary judgment motion is not appealable, even after final judgment.); see also Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, n.21 (2004) (finding to the extent appellant argued the court should have granted his cross-motion for summary judgment, his appeal of the trial judge's denial of summary judgment was improperly before the court). Because Appellants' first argument focuses solely on why their summary judgment motion should have been granted and their second argument is without merit, this appeal should be dismissed.

“trustees for Emmanuel Baptist Church, their Successors in office, Heirs and Assigns, forever.” Id. at 518, 443 S.E.2d at 412. The deed did not create a property interest in Brock; he merely held legal title for the benefit of the church congregation. Id.

After leaving the church, Brock attempted to regain possession of the church property, asserting that he retained an interest as a named trustee in the church’s deed. Id. at 518-19, 443 S.E.2d at 411-12. This Court reasoned that by abandoning his membership and uniting with another church, Brock forfeited his right to remain a trustee of the church and, in turn, forfeited his interest in the church’s property. Id.

Similar to the deed in Brock, which created no property interest in the individual trustee, in this case, the 1885 Deed conveyed title to the subject property to the “Trustees of St. Paul A.M.E. Church” as custodians of the property. (1885 Deed). Therefore, trustees of St. Paul A.M.E. Church only hold an interest in the subject property to the extent they hold it for the St. Paul A.M.E. Church congregation.

On November 14, 2013, the former trustees attended a meeting wherein they voted to disaffiliate from St. Paul A.M.E. Church for the express purpose of joining St. Paul Independent Church, thus, like Brock, they abandoned both their membership in the church and their position as trustees. (Meeting Minutes, dated November 14, 2013). The day after the meeting, on November 15, 2013, the former trustees notified the A.M.E. Church leadership of their decision to disaffiliate from St. Paul A.M.E. Church by certified letter. (Letter to Church Leadership, dated November 15, 2013). On December 6, 2013, the former trustees executed a quitclaim deed (hereinafter “Quitclaim Deed”) purportedly transferring title to the subject property from the trustees of St. Paul A.M.E. Church to St. Paul Independent Church.

Like the plaintiff in Brock, the former trustees voluntarily abandoned their membership in St. Paul A.M.E. Church and their positions as trustees, leaving them with no interest in the subject property after November 14, 2013. Therefore, at the time the Quitclaim Deed was executed on December 6th, the former trustees no longer held the requisite legal authority to alienate church property titled in the name of the trustees of St. Paul A.M.E. Church. See Bennett v. Investors Title Ins. Co., 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006) (“A quitclaim deed . . . [conveys] only the right, title, and interest of the grantor.”).

In addition to the former trustees November 14th vote expressing a clear intent to leave St. Paul A.M.E. Church and the November 15th letter informing the A.M.E. Church of their decision to disaffiliate, the Appellants’ Memorandum in Support of Application for Preliminary Injunction included the following admission:

By certified letter on November 15, 2013 and by hand delivery on November 24, 2013, the officers and congregation of St. Paul Church informed the A.M.E. Church of the congregation’s decision to disaffiliate and that the services of any A.M.E. pastor, elder, bishop, or the like would no longer be needed.

However, the former trustees now contend that they remained members and trustees through December 6th and retained the requisite authority to transfer the subject property. The former trustees base this assertion on self-serving statements that they continued attending worship services and serving as trustees after they voted to disaffiliate. They also cite to the subjective beliefs of various other members of the St. Paul A.M.E. Church congregation that the former trustees were still members and trustees of St. Paul A.M.E. Church at the time of the attempted conveyance on December 6th.

However, the subjective beliefs of various individuals regarding the status and authority of the former trustees on the date they executed the Quitclaim Deed is irrelevant. The interests of the trustees diverged from St. Paul A.M.E. Church on November 14th at the time they voted to disaffiliate and unite with another church. Their separation was confirmed in writing on November 15th, leaving no question after that date that the former trustees were not acting on behalf of St. Paul A.M.E. Church. Furthermore, the former trustees assertion that they continued fulfilling their duties as trustees of St. Paul A.M.E. Church after the November 14th vote to disaffiliate is unpersuasive; at no time did they act in the interest of St. Paul A.M.E. Church after their vote to disaffiliate. Therefore, at the time the December 6th Quitclaim Deed was executed, the former trustees lacked any legal authority to transfer title to the subject property from the trustees of St. Paul A.M.E. Church to St. Paul Independent Church. Thus, the attempted conveyance of the subject property by quitclaim deed is invalid and was appropriately set aside.

**B. Appellants are judicially estopped from claiming that the November 15th letter was invalid and did not express their decision to disaffiliate from St. Paul A.M.E. Church because they relied on the validity of the letter to obtain a TRO.**

Appellants are judicially estopped from asserting the November 15th letter was invalid because they relied on the letter as evidence of their disaffiliation before the trial court. “Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding.” Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). In Cothran, the South Carolina Supreme Court held that the following elements must be present to apply the doctrine of judicial estoppel: (1) two inconsistent

positions have been taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id.

In this case, before the trial court, Appellants submitted the November 15th letter as Exhibit One in support of their Motion for a TRO as evidence of their notification to the A.M.E. Church of their disaffiliation. (Pltf's Motion for TRO). They also relied on the November 15th letter in their Memorandum in Support of Plaintiff's Application for Preliminary Injunction filed on January 6, 2014. (Pltf's Memorandum of Law in Support of Motion for Preliminary Injunction, p. 2). The trial court granted Appellants' Motion for TRO on December 23, 2013.

Appellants benefited from their assertion that the November 15th letter was valid because the trial court granted the Motion for TRO. Appellants cannot now argue the wholly inconsistent position that the letter was unauthorized and that at the time of the attempted conveyance on December 6th they were still acting in the interest of St. Paul A.M.E. Church.<sup>2</sup> Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997) ("When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him."). Because of the factual nature of Appellants' inconsistent assertion as to the

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<sup>2</sup> Respondents note that Appellants substituted counsel after this TRO was granted and after filing the Motion for Preliminary Injunction. However, Appellants remain bound by their former assertion. See Shelton v. Bressant, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993) ("Acts of an attorney are directly attributed to and binding upon the client.")

validity of the November 15th letter, it is unlikely the inconsistency is incidental; instead it constitutes an intentional attempt to mislead the Court. Therefore, this Court must apply the doctrine of judicial estoppel. Quinn v. Sharon Corp., 343 S.C. 411, 415, 540 S.E.2d 474, 476 (Ct. App. 2000) (“Allow[ing Appellant] to change his position as to the facts . . . [would undermine] the truth-seeking function of the judicial process.”).

At the November 14th meeting, the former trustees forfeited their membership, to include their position as trustees of St. Paul A.M.E. Church, when they voted to disaffiliate and unite with St. Paul Independent Church. Their November 15th letter evinces this intent.

**II. APPELLANTS ARE BARRED FROM ASSERTING ON APPEAL THAT A GENUINE ISSUE OF MATERIAL FACT EXISTS AFTER FILING A CROSS-MOTION FOR SUMMARY JUDGMENT WITH THE TRIAL COURT.**

When parties file cross-motions for summary judgment, they agree that there are no genuine issues as to any material fact, and summary judgment is an appropriate means of resolving the case. Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) (“Where cross-motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law.”); see also Alltel Commc'ns, Inc. v. S. Carolina Dep't of Revenue, 399 S.C. 313, 319, 731 S.E.2d 869, 872 (2012). Before the trial court, Appellants filed a Cross-Motion for Summary Judgment asserting that no genuine issues of material fact remain in this matter. Appellants are bound by that assertion in their appeal of the trial court's Order to this Court. See White v. Livingston, 231 S.C. 301, 306, 98 S.E.2d 534, 537 (1957) (“It is well settled that one

cannot present and try his case on one theory and thereafter advocate another theory on appeal.”).

Appellants may not argue an entirely inconsistent position as to the appropriateness of summary judgment on appeal. Bramlett v. Young, 229 S.C. 519, 533, 93 S.E.2d 873, 880 (1956) (finding an appeal “must be considered in the light of the general rule that the theory pursued in the trial [c]ourt with respect ‘to the relief sought and grounds therefore’, must be adhered to in the appellate [c]ourt.”); see also Taylor v. Medenica, 324 S.C. 200, 216, 479 S.E.2d 35, 43 (1996) (an issue is not preserved if a party argues one ground for objection at trial and another ground on appeal).

In Clarendon Cnty. ex rel. Clarendon Cnty. Assessor v. TYKAT, Inc., 394 S.C. 21, 714 S.E.2d 305 (2011), the Supreme Court ruled that a party may not motion the trial court for summary judgment and later argue on appeal that genuine issues of material fact remain in the matter. In that case, the parties filed cross-motions for summary judgment. Id. at 23, 714 S.E.2d at 306. The Administrative Law Court (“ALC”) granted Clarendon County’s motion and denied TYKAT’s motion, finding there were no genuine issues of material fact. Id. at 26, 714 S.E.2d at 308, n.2. On appeal, TYKAT argued that summary judgment was prematurely granted and additional discovery was needed. Id. The Supreme Court declined to hear the argument relying on TYKAT’s previously filed cross-motion for summary judgment wherein it asserted that there were no genuine issues of material fact. Id.

As noted in TYKAT, Appellants in this matter are restricted to their assertion in their cross-motion for summary judgment before the trial court that no genuine issues of material fact exist. It follows that Appellants are also barred from arguing in the

alternative in their brief to this Court that the trial court incorrectly granted summary judgment in favor of Respondents because genuine issues of material fact remain in this matter. (Appellants' Initial Brief, p. 14). Despite Appellants attempt to argue two wholly inconsistent positions, it is axiomatic that Appellants cannot argue both that additional material facts exist and do not exist; they are bound by their assertion to the trial court. White, 231 S.C. at 301, 98 S.E.2d at 534 (“When both parties act upon a particular theory of the cause of action, they will not be permitted to depart therefrom when the case is brought up for appellate review.”).

**III. BECAUSE APPELLANTS FAILED TO FILE A 59(E) MOTION TO ALTER OR AMEND THE JUDGMENT, APPELLANTS' ARGUMENT CONCERNING THE INSUFFICIENCY OF THE TRIAL COURT'S ORDER IS NOT PRESERVED FOR APPELLATE REVIEW.**

“It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment’; . . . a motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’” Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); see also Rule 59(e), SCRPC.

Appellants argue that the trial court erred in granting “blanket summary judgment” in not addressing the causes of action against the former trustees. However, because Appellants failed to file a 59(e) motion to request the trial court rule on this issue, it is not preserved for appellate review. See Rule 59(e), SCRPC; see also Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (“It is well-settled

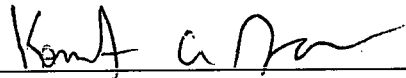
that an issue cannot be raised for the first time on appellate review. It must have been raised to and ruled upon by the trial court to be preserved for appellate review.”<sup>3</sup>

### CONCLUSION

The trial court, after viewing the undisputed facts in the light most favorable to Appellants and applying established law to the undisputed facts, found that the former trustees of St. Paul A.M.E. Church lacked any authority to transfer the subject property. The trial correctly granted summary judgment in favor of Respondents. Respondents respectfully request that this Court affirm the trial court’s Order.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By:   
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Attorneys for Respondents

June 11, 2015  
Columbia, South Carolina

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<sup>3</sup> Additionally, Appellants contend Respondents lack standing in this matter; however, this argument is wholly without merit. Appellants named Respondents as parties in this matter. Further, St. Paul A.M.E. Church is the legal and beneficial owner of the subject property. St. Paul A.M.E. Church’s current trustees, Derrick Flemon, Melvin Flemon, Laura Flemon, and Travis Lowery, hold the subject property for the benefit of the congregation as contemplated in the 1885 Deed.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**RECEIVED**

James S. Verner, Esquire – Special Referee

JUN 11 2015

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Case No.: 2015-000872

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SC Court of Appeals

St. Paul Independent Church Pomaria, Inc., .....Appellant,

v.

African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc.),..... Respondents,

v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc.,..... Third-Party Appellants.

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**PROOF OF SERVICE**

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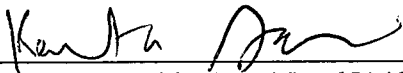
The undersigned of Boykin & Davis, LLC, hereby certifies that he has served the **INITIAL BRIEF OF RESPONDENTS** on Appellants Counsel of record, by mailing a copy of same, postage prepaid, and return address clearly indicated, addressed to the following on this 11th day of June 2015:

Stephanie R. Fajardo, Esq.  
The Fajardo Law Firm, LLC  
P.O. Box 2177  
Irmo, South Carolina 29063

**[SIGNATURE BLOCK ON FOLLOWING PAGE]**

Respectfully submitted,

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<sup>†</sup> CERTIFIED CIVIL ARBITRATOR AND MEDIATOR  
<sup>‡</sup> ALSO ADMITTED IN FLORIDA

June 11, 2015

**RECEIVED**

JUN 11 2015

SC Court of Appeals

**VIA HAND-DELIVERY**

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: St. Paul Independent Church Pomaria, Inc. vs. African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder of the A.M.E. Church, Inc.) vs. Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc.

Appellate C.A. No.: 2015-000872

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and two (2) copies of the Initial Brief of Respondents and the original and two (2) copies of the Designation of Matter Included in the Record on Appeal regarding the above-referenced matter. Please return two (2) file-stamped copies of the Initial Brief and the Designation of Matter to our courier.

By copy of this letter, we are serving a copy on the Appellants' counsel of record. Should you have any questions, please feel free to contact our office.

Sincerely,

  
Kenneth A. Davis

/pmt

Enclosures

cc: Stephanie R. Fajardo, Esq. (via U.S. Mail, w/encls.)  
Charles J. Boykin, Esq. (w/o encls.)  
Tierney F. Goodwyn, Esq. (w/o encls.)

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**VIA HAND DELIVERY**

The Honorable Jenny A. Kitchings  
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