

**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

Unpublished Opinion No. 2015-UP-355
Heard June 10, 2015 – Filed July 15, 2015
Appellate Case No. 2013-002236

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SC Court of Appeals

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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.)
)

PETITION FOR REHEARING

**I.S. Leevy Johnson
William T. Toal
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P. O. Box 1431
Columbia, SC 29202
(803) 252-9700
Attorneys for Appellant-Respondent**

I.

INTRODUCTION

This petition challenges this court's decision to affirm the transfer of the property on which a local church sits and a bank account from the Rockford A.M.E. Church to the Rockford Church. The court held there was "no signed documentation to indicate Rockford ever intended or explicitly agreed to hold property in trust for the A.M.E. Church." Opinion, p. 2. It further made a finding of fact the "local church has disaffiliated from the national church." Both these holdings led to the conclusion that the properties formerly in the hands of Trustees for Rockford A.M.E. Church were now in the hands of the Trustees of the Rockford Church. Each of these premises is false and a rehearing should be had.

II.

A trust putting the real property and the money in the control of trustees of the Rockford A.M.E. Church was created in writing by the owners of these properties. It is mandatory to look to the connectional documents to determine both who the trustees are and what their duties and obligations are.

This court, relying on the unpublished opinions in Glover v. Manning (2014 UP-256, June 25, 2014) and Glover v. Stevenson (2014-UP-257) held that "The Book of Discipline ("Discipline") alone did not create an express trust in favor of the A.M.E. Church because it was not signed by the local church." Opinion, p. 2. The opinion also found against the existence of a trust by quoting from All Saints Parish Waccamaw v.

Protestant Episcopal Church in the Diocese of S.C., 385 S.C. 428, 437, 449 685 S.E.2d 163, 168, 174 (2009) that “[t]o be valid, a trust of real property, created by transfer or by declaration of trust, must be proved by some writing signed by the party creating the trust.” In All Saints, this language was appropriate and controlling because the national church didn’t own the property. Here this principle of law has no application. The trust here was created by the owners of the property in writing. The property on which the church sits was acquired piecemeal and was in various names. The Trustees of Rockford A.M.E. Church brought a lawsuit in writing to consolidate real property in the name of Trustees of Rockford A.M.E. Church. The writing requirement to create the trust was met. There is no requirement that the trust beneficiaries accept in writing. There was, then, a deed to the Trustees of Rockford A.M.E. Church and that deed created a trust. Who were these trustees? What were their duties? These were ecclesiastical matters. These are for the church and only the church to decide. See, e.g. All Saints, supra. The answer is to be found in the Discipline. There is no requirement that the Trustees assent in writing to become Trustees of the Rockford A.M.E. Church. Having consented to become Trustees of Rockford A.M.E. Church the Trustees have agreed to abide by the direction and duties assigned to those Trustees. Surly hierarchical churches are not the only eleemosynary corporations in which trustees may disregard the rules under which they serve. By accepting the benefits of association, the Trustees and the congregation assented to the rules of the association. In Jones v. Wolf, 443 U.S. 595 (1979), the Supreme Court said that Georgia properly looked to neural principles to establish whether a trust is created but that the state must defer to the authoritative ecclesiastical body for how the trust is administered. Id at p. 603.

Accordingly, this court should look to the deed designation to determine whether a trust is created to be administered by the trustees of Rockford A.M.E. Church. Similarly, this court should look to the designation on the bank account to see for which entity the funds were held in trust. Then, the denomination's explication of who are those trustees and what their duties are control. Those answers are found in the Discipline.

III.

There is still a Rockford A.M.E. Church.
Title to the real property and the bank
account should remain in the hands of the
Trustees of Rockford A.M.E. Church.

Title to the property on which the church sits and to the cash account were decided against the A.M.E. church on summary judgment. That requires this court to take the facts in the light most favorable to the A.M.E. Church. The affidavit of Elder Samuel L. McPherson (R-206) states that only five persons in the congregation have left the A.M.E. Church and that Rockford A.M.E. Church has 125 members on the roll. The reliance by the court on the disassociation from the national church of the congregation violates the requirement that facts must be construed in the light most favorable to Plaintiff. In any event, whether local churches or individuals have disassociated themselves from the connection are ecclesiastical matters. The questions may be resolved only by resort to the rules and regulations of the connectional church. There is no evidence in the record of such a disassociation. The opinion of the court gives no explanation how property held in trust for a still existent Rockford A.M.E. Church is transferred by Trustees of the Rockford A.M.E. Church (or in the case of the money by persons who are no longer members or trustees of the Rockford A.M.E. Church) to

Trustees of the Rockford Church. Trustees may not make transfers which violate their trust duties. And persons who are no longer trustees cannot transfer trust property. The money and the property on which the church building sits are vested in Trustees of Rockford A.M.E. Church. There is still a Rockford A.M.E. Church and there are still trustees of Rockford A.M.E. Church. Rockford Church and the trustees of Rockford Church have no claim to either.

CONCLUSION

Title to the property on which the church building sits and the escrowed funds are titled in trustees of Rockford A.M.E. Church. A Rockford A.M.E. Church still exists. Defendants and the newly formed Rockford Church have no valid claim to either. This court should rehear the case and hold that title to each is in the trustees of Rockford A.M.E. Church.

Respectfully submitted,

JOHNSON, TOAL & BATTISTE, P.A.

BY: I. S. Leevy Johnson

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Columbia, South Carolina
July 24, 2015

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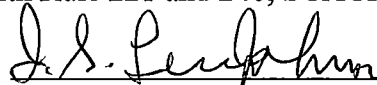
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Respondents-Appellants.)
_____)

CERTIFICATE OF COUNSEL

I certify that this Petition for Rehearing complies with Rule 221 and 240, SCACR.



I.S. Leevy Johnson

William T. Toal

Attorneys for Appellant-Respondent

Columbia, South Carolina
July 24, 2015

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CERTIFICATE OF SERVICE
BY MAIL

I, Melisa Y. McClurkin, employee of Johnson, Toal & Battiste, P.A., Attorneys for the Appellant-Respondent, in the above-captioned case, hereby certify that I have served the **Petition for Rehearing** on Marvin R. Watson, Counsel for Respondents-Appellants, by mailing one copy of the same, postage prepaid and return address clearly indicated on said envelope on July 24, 2015, at the following address:

Marvin R. Watson, Esquire
333 Main Street
P. O. Drawer 799
Greenwood, SC 29648

JOHNSON, TOAL & BATTISTE, P.A.

BY: 
Melisa Y. McClurkin

Columbia, South Carolina
July 24, 2015

JOHNSON, TOAL & BATTISTE, P.A.

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July 24, 2015

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Via Hand Delivery

Ms. Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

PLEASE REPLY:

Columbia Office

RE: Samuel L. McPherson v. Henry Banks
Case # 2013-002236
Our File Number: 2013-221

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Petition for Rehearing, Certificate of Counsel and Certificate of Service in the above-referenced case. Also enclosed is a check for \$25.00 to cover the filing fee.

By copy of this letter, I am serving one copy of the above-mentioned documents on Mr. Watson.

Thank you for your assistance in this matter.

Yours very truly,

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal

WTT/mym
Enclosures
Copy: Marvin R. Watson, Esquire