

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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AUG 07 2015

APPEAL FROM MCCORMICK COUNTY  
Court of Common Pleas

SC Court of Appeals

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Unpublished Opinion No. 2015-UP-355  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

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' OPPOSITION  
TO PETITION FOR REHEARING

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## STATEMENT OF THE CASE

On June 27, 2013, after protracted litigation, the Circuit Court for McCormick County, South Carolina, held, inter alia, that Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison's ("Respondents-Appellants") church, known as "Rockford Church," holds legal and equitable title to the 4.5-acre tract of land on which their church sanctuary currently sits. The court also held that the Rockford Church holds both legal and equitable title to the funds raised by Rockford Church for the purpose of repairing or replacing the structural problems with the church, which funds are currently being held in an escrow account.

On July 15, 2015, this Court affirmed the trial court's June 27, 2013 order and held that the trial court did not err in finding that Appellant-Respondent Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church (the "A.M.E. Church"), did not hold any ownership interest in the 4.5-acre tract of real property or in the personal property held in the escrow account.

The A.M.E. Church filed a timely Petition for Rehearing in this Court.

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## ARGUMENT

### I. STANDARDS FOR PETITION FOR REHEARING

Rule 221, SCACR, permits a party to move for a rehearing by the court of appeals within 15 days after an opinion is filed, to address, with specific particularity, points that were overlooked or misapprehended by the court of appeals. *Goodman v. Cartledge*, C/A No. 9:07-3517-MBS, 2008 WL 4458159 (D.S.C. Sept. 30, 2008). The purpose of a petition for rehearing is not to present points that the attorneys overlooked in the initial appeal or to have the case tried for a second time, but to present only points overlooked or misunderstood by the court itself. *Arnold v. Carolina Power & Lights Co.*, 168 S.C. 163, 167 S.E. 234 (1933).

Pursuant to Rule 242, SCACR, a moving party may petition the South Carolina Supreme Court for a writ of certiorari only if the party can certify that he or she filed a petition for rehearing and that such petition for rehearing was heard by the court of appeals. Further, Rule 242, SCACR, states that questions presented for review to the South Carolina Supreme Court are limited to those raised in the court of appeals and in the petition for rehearing.

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**II. THE PETITION FOR REHEARING FAILS TO PRESENT WITH PARTICULARITY POINTS THAT WERE EITHER OVERLOOKED OR MISAPPREHENDED BY THIS COURT**

Appellant-Respondent's Petition for Rehearing contends that the court of appeals improperly applied the holding of the South Carolina Supreme Court's decision in *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South Carolina*, 385 S.C. 428, 695 S.E.2d 163 (2009), to the issues on appeal. Specifically, Appellant-Respondent argues that the *Waccamaw* decision, which held that a trust of real property must be proved by writing and signed by the party creating the trust, has no application to the factual circumstances in the present case.

Appellant-Respondent states:

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.

*See* Pet. for Reh'g 3.

In fact, the evidence admitted in the trial court, and upon which the trial court based its decision, which was later affirmed by this Court, shows that the disputed 4.5-acre tract was created by the merger of several smaller parcels of land, the first of which was purchased by Rockford Church in 1898. The second parcel was purchased by Rockford Church in 1914. Both deeds were duly recorded. The third

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parcel was purchased by Rockford Church sometime before 1929 but was never recorded. In 1999, the 4.5-tract was conveyed by a special referee to "Trustees for Rockford [A.M.E.] Church," but the tract was never put in trust for the national A.M.E. Church. The evidence further demonstrated that the trustees are no longer trustees of a national A.M.E. church and the Rockford Church is no longer affiliated or associated with the national church so that Rockford Church, represented by the individual Respondents-Appellants, maintains both legal and equitable title to the 4.5-acre tract. There is no evidence that Rockford Church intended or agreed to hold the property in trust for the A.M.E. Church.

Likewise, with respect to the disputed bank account, the evidence demonstrated that the funds that make up the account were gifts to Rockford Church only for repairs and not to benefit in any way the national A.M.E. Church. The Petition for Rehearing offers no additional evidence or misapprehension on this issue.

Consistent with both South Carolina law and federal law, the trial court and this Court resolved the dispute over the real property and the personal property using objective, well-established, neutral principles of South Carolina trust and property law, including the relevant deeds and other documents that evidence ownership and title. Contrary to the Petition for Rehearing, neither a lawsuit to acquire property, nor the A.M.E. Church Book of Discipline can create a trust in the name of the A.M.E.

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Church. The Petition for Rehearing fails to state any points that were either overlooked or misapprehended by this Court.

### CONCLUSION

For each of the reasons stated herein, Respondents-Appellants respectfully request this Court to enter an order denying Appellant-Respondent's meritless Petition for Rehearing and for whatever further relief this Court deems just and proper at this time.

Dated: August 3, 2015

Respectfully submitted:

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By: 

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Methodist Episcopal (A.M.E.) Church, )

Appellant-Respondent, )

v. )

Henry Banks, Mary Robinson, Delois Phillips, )  
Naomi Mattison, and Frank Mattison, )

Respondent-Appellants. )

CERTIFICATE OF COUNSEL

I certify that this Respondents-Appellants' Opposition To Petition For Rehearing complies with Rule 221 and 240, SCACR.

Greenwood, South Carolina  
July 30, 2015



Marvin R. Watson  
Watson Law Firm, P.A.  
Attorney for Respondents-  
Appellants

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Naomi Mattison, and Frank Mattison, )  
 )  
Respondent-Appellants. )  
 )

CERTIFICATE OF SERVICE  
BY MAIL

I, Cynthia E. Bruce, employee of Watson Law Firm, P.A., Attorney for the Respondent-Appellants, in the above-captioned case, hereby certify that I have served the Respondents-Appellants' Opposition To Petition For Rehearing on William T. Toal, Esquire, Counsel for Appellant-Respondent, by mailing one copy of the same, postage prepaid and return address clearly indicated on said envelope on July 30, 2015, at the following address:

William T. Toal, Esquire  
Johnson , Toal & Battiste, P.A.  
PO Box 1431  
Columbia, South Carolina 29202

Greenwood, South Carolina  
July 30, 2015

Watson Law Firm, P.A.  
BY: Cynthia E. Bruce  
Cynthia E. Bruce

Attorneys and Counselors at Law

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## Watson Law Firm

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Marvin R. Watson  
Thomas P. Austin  
Velvet B. Davis

July 30, 2015

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SC Court of Appeals

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

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

Dear Mrs. Kitchings:

Enclosed please find six copies of Respondents-Appellants' Opposition To Petition For Rehearing, Certificate of Counsel and Certificate of Service in the above referenced case. If there is any cost please call my office immediately.

Watson Law Firm, P.A.

By:

cc: William T. Toal , Esquire  
Johnson, Toal & Battiste, P.A.  
P.O.Box 1431  
Columbia, SC 29202  
Respondents Appellants

  
Marvin R. Watson