

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas (Non-Jury)

W. Casey Manning, Circuit Court Judge

Appellate Case No. 2016-000213

Deloris Jenkins, Respondent,

vs.

Refuge Temple Church Of God In Christ, Inc., and Wayne Penn, Sr., Daniel Ward, Jr., James A. Tucker and Eronda Jackson, Individually and as Members of the Board of Directors of Refuge Temple Church Of God In Christ, Inc., Appellants.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS:

TABLE OF AUTHORITIES..... ii.

STATEMENT OF THE CASE.....1

STATEMENT OF FACTS.....1

ARGUMENT.....2

 I. CIVIL COURTS HAVE SUBJECT MATTER JURISDICTION
 TO RULE ON CONTRACTUAL DISPUTES BETWEEN A
 CHURCH AND AN EMPLOYEE OR THIRD PARTY.....2

 A. The “ministerial exception” does not bar a civil court from
 adjudicating a contractual dispute between a church and an
 employee or third party under the Establishment and Free
 Exercise Clauses.....3

 B. Civil Courts have jurisdiction to determine the rights
 arising out of a contractual dispute between a church and
 an employee or third party regardless if a church is
 congregational or hierarchical.....5

 II. THE TRIAL COURT PROPERLY HELD THE AGREEMENT
 BETWEEN THE PARTIES TO BE VALID.....8

 III. THE TRIAL COURT CORRECTLY HELD THAT APPELLANT
 WAIVED ITS OBJECTIONS BY OPERATING PURSUANT TO
 THE ALLEGED CONTRACT FOR SEVERAL YEARS.....11

CONCLUSION.....13

TABLE OF AUTHORITIES

CASES

Beckroge v. South Carolina Public Service Co., 185 S.C. 210, 193 S.E. 315 (1937).....11, 13

Eason v. Eason, 384 S.C. 473, 682 S.E.2d 804 (2009).....12

Hosanna-Tabor Evangelical Church & Sch. v. E.E.O.C., 565 U.S. 171, 181 L. Ed. 2d 650 (2012).....3

Ira Banks v. St. Matthew Baptist Church, 406 S.C. 156, 750 S.E.2d 605 (2013).....4

Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992).....12

Jones v. Wolf, 433 U.S. 595, 61 L. Ed. 2d 775 (1979).....4, 5

Lyles v. BMI, Inc., 292 S.C. 153, 355 S.E.2d 282 (1987).....12

McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) 5

Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996).....4, 5, 6

Seldon v. Singletary, 284 S.C. 148, 326 S.E.2d 147 (1985).....6

Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L. Ed. 2d 151 (1976).....6, 7

Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443 (2009).....8

Williams v. Gov’t Emples. Ins. Co., 409 S.C. 586, 762 S.E.2d 705(2014).....5

STATEMENT OF THE CASE:

On February 25, 2011, Respondent instituted this action for breach of contract, violation of Payment of Wages Act (S.C. Code Ann. 41-10-10, et. seq.) and tortious interference with a contract. The complaint was brought against Refuge Temple Church of God in Christ, Inc., Appellant herein, and others, seeking damages for breach of contract in failing to adhere to an employment agreement requiring Appellant to pay a pastor's widow.

The case was tried non-jury before the Honorable L. Casey Manning at the Richland County Courthouse on June 18, 2012. At trial, Respondent dismissed the action for tortious interference with contract and, further, dismissed the individual members of Appellant's Board of Directors from the cause. Judge Manning issued his order on October 25, 2012 finding in Respondent's favor on the breach of contract cause of action and awarded her the sum of \$365,593.00. Appellant promptly filed and served a Motion for Reconsideration. However, it was not until January 8, 2016 that Judge Manning issued his order denying the motion. Thereafter, Appellant filed this appeal and served notice of appeal on Respondent.

STATEMENT OF THE FACTS:

Pastor Edward Jenkins was employed by Appellant Church as its pastor from August 14, 1997 until his death on April 04, 2004. On March 13, 2002, Pastor Jenkins and the Board of Directors for Appellant Church entered into an employment agreement which extended Pastor Jenkins' employment and provided a base monthly salary with a parsonage or housing rental allowance, among other items of compensation. The Church's Board of Directors voted for approval and authorized

the agreement, which was drafted and entitled "PASTOR'S EMPLOYMENT AND RETIREMENT AGREEMENT." Thereafter, it was executed by Pastor Jenkins and the Board of Directors.

Section 4 (A.) of the employment agreement stipulated that "In the event of PASTOR'S death, if PASTOR is survived by his spouse, Delories Jenkins, a monthly sum equivalent to the PASTOR'S monthly salary and housing allowance, which will become salary at the time of his death shall be paid to Mrs. Delories Jenkins for the remainder of her life, even if she leaves the church." (Pl's Trial Exh. 2). The employment agreement further provided in Section 6 (D.) that "It is also agreed that in the event of PASTOR's death or total disability, this AGREEMENT shall become irrevocable." (Pl's Trial Exh. 2).

Appellant paid Pastor Jenkins according to the agreement until his death on April 04, 2004. Appellant continued to honor the agreement thereafter, paying the Pastor's the monthly salary amount and housing allowance to his widow, the Respondent herein. Appellant continued to perform according to the agreement from April, 2004 and until March, 2010, paying Respondent the monthly salary and housing allowance sum of One Thousand Five Hundred Seventy-Five and No/100 (\$1,575.00) Dollars each month. Then, on April 19, 2010, Appellant issued a final payment of Five Hundred and No/100 (\$500.00) Dollars to Respondent and, thereafter, ceased to make any further payments to Respondent.

ARGUMENT:

- I. CIVIL COURTS HAVE SUBJECT MATTER JURISDICTION TO RULE ON CONTRACTUAL DISPUTES BETWEEN A CHURCH AND AN EMPLOYEE OR THIRD PARTY.

- A. The “ministerial exception” does not bar a civil court from adjudicating a contractual dispute between a church and an employee or third party under the Establishment and Free Exercise Clauses.

The First Amendment to the United States Constitution states in part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I (emphasis added). The Establishment and Free Exercise Clauses are cast in terms of absolutes and work together symbiotically to ensure that no law, either at the federal or state level, neither establishes a religion nor impedes one from worshipping as his or her own conscious dictates. Hosanna-Tabor Evangelical Church & Sch. v. E.E.O.C., 565 U.S. 171, 182-86, 181 L. Ed. 2d 650, 659-61 (2012).

As a preliminary matter, to warrant scrutiny under the Establishment and Free Exercise Clauses, a federal or state statute must be the basis by which a claim is brought. *Id.* Appellant fails to recognize that in Hosanna-Tabor, the Court analyzed a claim brought by the Equal Employment Opportunity Commission (EEOC) for a violation of the Americans with Disabilities Act of 1990 (ADA) between an employer and employee, specifically a church and its minister respectively. It is through this lens that the Court ruled the application of the ADA would violate the church’s rights under the Free Exercise and Establishment Clauses by altering the governance of the church polity in deciding who would lead its congregation. *Id.*

Second, although the courts recognize a “ministerial exception,” the exception is applied to employees and an allegation of a legislative violation. *Id.* Again, Appellant fails to acknowledge that for the “ministerial exception” to be analyzed under the Establishment and Free Exercise Clauses protections, there must be an

employee/employer relationship and some legislation as the basis for the claim. *Id.* This, exception, which precludes the application of such *legislation* – particularly employment discrimination laws – applies to employment disputes between a church and its ministers, not innocent third parties. *Id.* (emphasis added). The crux of the courts analysis hinges on the particular legislation alleged as applied between a church and its employee under a First Amendment analysis. *Id.*

Lastly, it is recognized that, so long as neutral principles of law apply, a civil court has jurisdiction to hear and resolve church disputes. *Jones v. Wolf*, 433 U.S. 595, 602-05, 61 L. Ed. 2d 775, 784-86 (1979); see also *Ira Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 160-61, 750 S.E.2d 605, 607 (2013). The Church cannot use the Establishment and Free Exercise Clauses to shield itself from contractual liability to an innocent third party, or an employee for that matter, when neutral principles of contract law can resolve the matter. *Pearson v. Church of God*, 325 S.C. 45, 49-54, 478 S.E.2d 849, 851-53 (1996). Where a church controversy necessarily involves the rights growing out of a contract, civil tribunals cannot avoid adjudicating these rights. *Id.* To do so would allow a church to essentially have carte blanche to void, or have become voidable, any and all matters, whether ecclesiastical or neutral. *Id.*

Here, there is no legislation, whether federal or state, alleged to warrant a First Amendment analysis. Not only is there no legislation as the basis for the litigation, there is no dispute between a church and its minister; rather, this matter comes before the court to enforce the four corners of a contract between a church and third party. Further, even if the Agreement in question is between a church and an employee,

specifically its late minister, rather than a church and third party, South Carolina jurisprudence recognizes and emphasizes that a civil tribunal cannot avoid adjudicating rights growing out of a contract under neutral principles of law.

- B. Civil Courts have jurisdiction to determine the rights arising out of a contractual dispute between a church and an employee or third party regardless if a church is congregational or hierarchical.

Civil courts do not have jurisdiction to rule on ecclesiastical questions and controversies; however, more importantly, civil courts cannot avoid jurisdiction where the church controversy arises under the neutral principles of law, specifically contract law. Pearson, 325 S.C. at 53-54, 478 S.E.2d at 853. There are many advantages of the neutral-principles approach, mainly it is completely secular in operation and, yet, flexible enough to accommodate all forms of religious organization and polity. Jones, 433 U.S. 595, 602-03, 61 L. Ed. 2d 775, 784-85. “Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general -- flexibility in ordering private rights and obligations to reflect the intentions of the parties” without hindering religious freedom. Id. 433 U.S. at 603, L. Ed. 2d at 785.

When a “contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.” Williams v. Gov’t Emples. Ins. Co., 409 S.C. 586, 594, 762 S.E.2d 705, 709 (2014) citing McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Also, when a contract is unambiguous, interpretation is for the court. Pearson, 325 S.C. at 54, 478 S.E.2d at 853.

Appellant offers evidence and argues that Appellant is part of a hierarchical church organization; this is not contradicted. As part of a hierarchical church

organization, it is the higher denomination that governs as opposed to the local church. Seldon v. Singletary, 284 S.C. 148, 149-150, 326 S.E.2d 147, 148 (1985). Further, in religious organizations part of a hierarchical scheme, courts would interpret the final actions of the highest ecclesiastical tribunal or body when that particular decision directly involves religious issues of doctrine or polity before them. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709, 49 L. Ed. 2d 151, 162 (1976).

In Pearson, our Court settled a contractual dispute between a former minister and an employer church without attempting to pontificate the divine. Pearson, 325 S.C. at 53-54, 478 S.E.2d at 853-54. Simply, the application of neutral principles of contract law determined the rights between the parties without infringing the rights of the church polity, regardless of being congregational or hierarchical. Id. The Court ruled the contract was clear and unambiguous in revoking the former minister's ability to draw from a pension plan. Id.

Similarly, there is a clear and unambiguous contract gravamen in the case at hand. Whether or not it is determined to be between the Appellant and the late minister or the Respondent is, frankly, irrelevant. Regardless of the scenario, all that is being asked of this court is to apply the neutral principles of contract law to determine the rights between the parties by looking at the four corners of the contract and not religious doctrine, custom, or administration. Pearson, 325 S.C. at 53, 478 S.E.2d at 853. Further, since this is not an ecclesiastical matter, courts do not have to adhere to the highest ecclesiastical tribunal's determination regardless of being part of a hierarchical or congregational makeup. Milivojevich, 426 U.S. at 708-09, 49 L. Ed.

2d at 162-63. The contract clearly and unambiguously states, so long as [Respondent] does not remarry, [Respondent] shall receive the late Pastor's monthly salary for the remainder of [Respondent's] life, even if [Respondent] were to leave the church. (Pl's Trial Exh. 2).

However, even if the court were to look at the denomination's bylaws, the bylaws state, "[a] local church may establish its own constitution and by-laws, provided the same shall not be in conflict with or repugnant to the Charter, Constitution, Laws and Doctrines of the Church Of God In Christ." (Def.'s Trial Exh. 2 at 15.) Further, the denomination's bylaws state, "[i]n all cases where the law requires a special mode of election of Church Trustees, that mode *must* be followed." *Id.* (emphasis added).

Here, the Respondent's bylaws are not repugnant to the denomination's bylaws. There is nothing in the denomination's manual offered as evidence stating that a Pastor cannot elect board members. There is nothing in the official manual stating one must be a member in good standing for three years prior to becoming a board member. However, the denomination's own bylaws state that a special mode of election must be followed if the law requires it. *Id.* Here, Appellant's bylaws do have a special mode of election and that is that the pastor himself can elect board members. (Pl's Trial Exh. 3 at p. 14).

Thus, whether or not Appellant is a member of a hierarchical or congregational organization is irrelevant. Regardless of the scenario, all that is being asked is to determine the rights of the parties growing out of a contract. This can be determined by the neutral principles of contract law. Second, if, under the hierarchical

makeup, the denomination's bylaws are binding, the denomination itself allows a local church to have its own bylaws so long as they are not repugnant and further allows special modes of election for board members, which in turn must be followed. Even under that scenario it circles back to determining the rights of the parties growing out of a contract.

In conclusion, a First Amendment analysis is not warranted in this matter because there is no legislation alleged as the basis of a claim. Since there is no legislation as the basis for a claim, the "ministerial exception," founded in the First Amendment, does not apply as well. Lastly, regardless of the makeup of a church, whether hierarchical or congregational, a court can resolve this matter under the neutral principles of law approach in determining the rights of the parties without traversing the divine and only looking at the clear and unambiguous four corners of a contract.

II. THE TRIAL COURT PROPERLY HELD THE AGREEMENT BETWEEN THE PARTIES TO BE VALID.

On this certain point, Appellant claims that the Agreement is invalid because it was executed and approved by three Board Members, one having a conflict of interest and the other two having been improperly elected. Appellant argues that Rev. Jenkins had a conflict of interest and, thus, should not have participated in the vote on his employment contract. Although the pastor was a founder and incorporator of the Church (Pl's Trial Exh. 3, 4 & 5), it must be conceded that his vote was tainted with conflict. Yet, the issue of Rev. Jenkins' conflict is overcome if there is proof that the agreement was fair to the Church. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443 (Ct. App. 2009).

Appellant complains that Respondent Jenkins failed to introduce any evidence of fairness of the Agreement to the Church. Yet, Respondent provided unchallenged testimony that the Rev. Jenkins and she performed their duties well until his death in 2004. (Transcript of Record, p. 7; line 23 to p. 8, line 3, p. 10). Surely, the Agreement was fair to the Church in that it received or continued to receive a minister and wife team, both whom administered to the church's flock and otherwise continued the church's religious mission. Nonetheless, this particular analysis regarding any conflict on Rev. Jenkins' part is not required because the Trial Court found the Agreement to be valid based on a quorum vote. (Order Oct. 25, 2012 at p. 4). It should be noted that Appellant's Bylaws provide for actions to taken based upon a quorum vote of a majority of the Board. (PI's Trial Exh. 3 at p. 13).

Next, Appellant argues that the two remaining board members were improperly elected, and, thus, their votes should not count. However, there is no mandate that Board Members must be elected by the Church congregation. A careful review of the denomination's Official Manual indicates that it merely provides for election of Board Members by a majority of the congregation *where there is no church provision*. (Def's Trial Exh. 2, p. 16). (Emphasis added). In addition, Article Three, Section 1 of Appellant's Bylaws specifically states that members of the congregation are "(nonvoting, except as provided in ARTICLE FIVE)." (PI's Trial Exh. 3 at p. 6). It is also worthy to note that Article 4, Section 9 of Appellant's Bylaws provides for the Pastor to fill vacancies on the Board. (PI's Trial Exh. 3 at p. 14). Finally, the denomination's Official Manual allows a church to establish its own by-laws, provided they do not conflict with and are not repugnant to the

denomination's Official Manual. (Def. Trial Exh. 2, p. 15). Thus, Board Members can be elected by the Pastor. Hence, Rev. Jenkins' appointment or election of Bowman and Ward to Appellant's Board was valid, as it was authorized under both the denomination's Official Manual and Appellant's Bylaws.

Board Member Bowman was involved with the Church since its inception and was an original Board Member. (Pl's Trial Exh. 3, 4 & 5.) Interestingly, Ward was Board Member at the time that the Church decided to stop honoring this agreement. (Def's Trial Exh. 3). Further, Respondent can find no requirement in the Church Bylaws or the denomination's Official Manual that one must be a member of the Church for three years before becoming a Board Member. In fact, the only reference with respect to the number three (3) that Respondent can find is one relating to church membership. Article Three, Section 2 of Appellant's Bylaws call for a minimum of three months attendance at the Church before one can become a member. (Pl's Trial Exh. 3 at p. 7). In short, Rev. Jenkins appointment of Board Members Bowman and Ward was valid and their decision regarding the Agreement herein concerned was valid.

In essence, the Appellant argues that the Church is not liable to Respondent because entering into the employment contract with Rev. Jenkins was an ultra vires act. However, state law has long held that a corporation cannot insulate itself from liability for an erroneous act when it has received benefits.

It is now well settled that a corporation cannot avail itself of the defense of ultra vires, when the contract has been in good faith fully performed by the other party, and the corporation has had the benefit of the performance of the contract. As has been said, corporations, like natural persons, have power and capacity to do wrong. They may, in their contracts and dealings, break over the restraints imposed upon

them by their charters, and when they do so, their exemption from liability cannot be claimed on the mere ground that they have no attributes or facilities which render it possible for them thus to act. While they have no right to violate their charters, yet they have the capacity to do so, and are bound by their acts where a repudiation of them would result in manifest wrong to innocent parties, and especially where the offender alleges its own wrong to avoid a just responsibility. It may be that, while a contract remains unexecuted upon both sides, a corporation is not estopped to say in its defense that it had not the power to make the contract sought to be enforced; yet, when it becomes executed by the other party, it is estopped from asserting its own wrong, and cannot plead that the contract was beyond its power.

Beckroge v. South Carolina Public Service Co., 185 S.C. 210, 213, 193 S.E. 315, 316, (1937).

Clearly, the deceased Rev. Jenkins dutifully complied with his contractual obligations to the Church until his death on April 2, 2004. (Transcript of Record, p. 10, lines 1 - 3). There was no testimony produced at trial suggesting that the pastor had not performed his duties under the contract. (Transcript of Record, p. 10). The Church honored the Agreement and paid Respondent for six (6) years before making its suspect decision that this was an ultra vires act by the Board. Essentially, this contract had become executed and, thus, the Church must be estopped from claiming a wrong on its Board's part. It must be estopped from refusing to honor this agreement which it adhered to for over six (6) years.

III. THE TRIAL COURT CORRECTLY HELD THAT APPELLANT WAIVED ITS OBJECTIONS BY OPERATING PURSUANT TO THE ALLEGED CONTRACT FOR SEVERAL YEARS.

Next, Appellant's position is that the Trial Court erred in using "laches" to find that Appellant had slept on its rights by operating pursuant to the Agreement for years. As stated by Appellant, courts have held the equitable doctrine of laches to be the equivalent to the legal doctrine of waiver. Waiver is the "voluntary and intentional

relinquishment or abandonment of a known right.” Eason v. Eason, 384 S.C. 473, 682 S.E.2d 804 (2009). A known right can be actual or constructive. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). Constructive or implied waiver “results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable.” Lyles v. BMI, Inc., 292 S.C. 153, 355 S.E.2d 282 (1987).

Appellant, thus, argues that laches and or waiver cannot be used as a sword. Respondent recognizes that laches is generally an equitable defense. Skipper v. Perrone, 382 S.C. 53, 674 S.E.2d 510 (2009). It, thus, seems that the Trial Court was incorrect to find that Refuge Temple slept on its rights by operating pursuant to the Agreement for over eight (8) years. However, Respondent would assert laches and or waiver to defend against Appellant’s defense that it was not obligated to make payment to Respondent because the Agreement was not valid.

At trial, Appellant’s witness, Rev. Penn, indicated that the Church had paid Respondent based on a church custom and not on a contract. Clearly, there was an employment contract in place between Pastor Jenkins and Appellant. Further, it is clear from the 2005 Mozzini and Associates letter that Rev. Penn, and Appellant, knew or had constructive knowledge that Respondent was being paid pursuant to an agreement that was “not quite legitimate.” (Def’s Tr. Exh. 1). Further, by his own testimony, Rev. Penn stated that he knew of the existence of the Agreement within six months after becoming pastor. (Transcript of Record, p. 32, lines 3 -6). Rev. Penn became pastor of Appellant Church in March of 2005. (Transcript of Record, p. 26, lines 4 -6). Concomitantly, it is most reasonable to infer that Appellant knew or had

reason to know of some possible question as to the validity of the contract way back in 2005. Yet, Appellant continued to pay according to the Agreement until 2010, some six additional years. Thus, it should be held that Appellant, by its acts and conduct, constructively or impliedly waived or relinquished its right to assert issue with the Agreement's validity.

Finally, words from a case cited in a prior section is worthy of recitation here. "...when [a contract] becomes executed by the other party, [a corporation] is estopped from asserting its own wrong, and cannot plead that the contract was beyond its power." Beckroge v. South Carolina Public Service Co., 185 S.C. 210, 213, 193 S.E. 315, 316, (1937). In this instant case, the Agreement had become executed by Rev. Jenkins and Respondent. Therefore, thus, under the equitable principle set forth in Beckroge, Appellant cannot claim a wrong on its Board's part. It should be estopped from refusing to honor the Agreement which it knowingly adhered to for over six (6) years.

CONCLUSION:

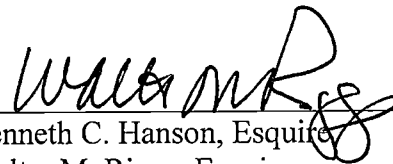
The judgement for Respondent Jenkins should be upheld. This is a contractual dispute between a church and third party. Even if it is deemed to be a contractual dispute between a church and its minister, civil courts have subject matter jurisdiction to settle disputes from claims arising out of neutral principles of contract law. No First Amendment analysis is warranted because there is no legislation as the basis for a claim. Consequently, it follows that no "ministerial exception" is warranted as that specific exception is founded in the First Amendment. It is also irrelevant whether Appellant is part of a hierarchical organization or congregational.

The denomination's Official Manual is quiet as to membership requirements of board members and allows for special modes of elections for Trustees that must be followed. The contract is a fair representation of what the church wanted and what the late Rev. Jenkins wanted. The church got a minister and Rev. Jenkins obtained a means of protecting his wife in the event of his death. Even if Rev. Jenkins' vote was marred by conflict, there was still a quorum by valid board members. Lastly, Appellant became aware Respondent was receiving benefits in 2005. Instead of being proactive, Appellant continued to make payments. Now, it chooses to claim that the payments to Respondent were a custom. However the payments went on far longer than the supposed custom and did not become a problem until Respondent wanted to leave the church.

Accordingly, the trial court properly had jurisdiction and properly found that Appellant Refuge Temple breached the contract with Respondent. Respondent Jenkins respectfully requests this Court affirm the Trial Court's Order.

Respectfully submitted,

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November 29, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L, Casey Manning, Circuit Court Judge
Trial Court Case No. 2011-CP-40-01320

Appellate Case No. 2016-000213

Delories Jenkins,

Respondent,

v.

Refuge Temple Church Of God In Christ, Inc., and Wayne Penn, Sr., Daniel Ward,
Jr., James A. Tucker and Eronda Jackson, Individually and as Members of the Board
of Directors of Refuge Temple Church Of God In Christ, Inc.,

Defendants,

of whom

Refuge Temple Church Of God In Christ, Inc., is

Appellant.

CERTIFICATE OF
SERVICE

I, the undersigned employee of Hanson Law Firm, P.A., do hereby certify that I have served
the following documents in the above referenced matter with the following by depositing same in the
United States Mail, postage paid and addressed as follows:

DOCUMENTS: (1) Brief of Respondent
 (2) Certificate of Service
 (3) Respondent's Designation of Record

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November 30, 2016

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RECEIVED
NOV 30 2016
SC Court of Appeals

Re: Delories Jenkins vs. Refuge Temple Church of God, Inc.
Appellate Case No.: 2016-0001320

Dear Ms. Kitchings:

Please find enclosed for filing the original copies of each of the following: Brief of Respondent, Respondent's Designation of Record and Certificate of Service. In addition, I enclose three (3) copies of each that I ask be clocked and returned to our office.

By copy of this letter, I am herewith serving a copy of these items upon Counsel for Appellant, Peter E. Farr, Esquire.

In closing, we thank you for your prompt attention to this matter. Please do not hesitate to call me if you have any questions regarding this matter.

Sincerely yours,



Walter M. Riggs

Enclosures

cc: Peter E. Farr, Esquire
Attorney for Appellant