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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS

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HONORABLE J. CORDELL MADDOX, CIRCUIT COURT JUDGE

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CASE NO. 2016-CP-37-0060

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MITCHELL EUGENE DAVIS a/k/a MITCH DAVIS a/k/a MICHAEL DAVIS,

RESPONDENT

v.

SUSAN HARRISON and CHRISTOPHER JONES, PLAINTIFFS,  
Of whom CHRISTOPHER JONES IS THE  
APPELLANT

---

RETURN TO NOTICE OF APPEAL and MOTION TO STAY

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Christopher Jones, is not eligible to appeal the Order of the Court, by the Honorable J. Cordell Maddox, filed of recorded April 5, 2018 as Appellant was previously been advised that Appellant could not represent a Church and any other party, but must have a licensed attorney represent the Church, as stated by the Order of the Court.

Further, the Notice of Appeal does not stay and or operate as a stay of the Order or operation or execution of the Order of the Court. A Notice of and a Motion operates if granted as a stay, which has not been filed and only may be filed by the Church.

Respondent informs the Appeals Court that Appellant did not file any Notice of and

Motion for Reconsideration of the Order recorded April 5, 2018.

Further, Appellants' Supplemental to Motion to Stay Execution of Judgment (sic) Rule 240 S.C.A. C. R. and LETTER TO THE APPELLATE COURT CLERK FILING THE NOTICE OF APPEAL" Is Returned to by the Respondent as follows, the Supplemental was received by Defendant's attorney April 27, 2018, and,

As to the Original "Letter to the Appellate Court Clerk Filing the Notice of Appeal":

1. Appellant, has no standing to present the Appeal. Appellant was not a member of the congregation at the start of this matter AS SHOWN by the first and second and third page of the Appellant's (Plaintiff's Motion for Dismissal for Lack of Subject Matter Jurisdiction) filed March 5, 2018, in the underlying action. See Paragraph 2., page 1. states Appellant is "Jones as witness"! and then the other two pages here attached a Appellant's facts which indicated that this matter is as the Court originally Ordered.
2. Appellant, under Paragraph (4) a., stated, Order was improper because of no signing. The Order was and is proper. Signature is by electronic filing as per SC Code of Laws.
3. Appellant under Paragraph (4) b., raises the issue of subject matter jurisdiction. Appellant, during the course of this action acting as an attorney and attorney for the other Plaintiffs and acting as attorney for the Church did consistently by and through all pleading argue the Court had jurisdiction. The Appellant did not argue lack of jurisdiction until Appellant's filing after the Courts Order from the Bench and just prior the end of the twenty day period to obtain an attorney.
4. Appellant under Paragraph (4) c., Pursuant to the oral Order of the Court from the bench and the written Order as signed, Appellant was informed over the course of this action that Appellant could not represent anyone but himself

and not the other Plaintiff's, who have not appealed, and could not represent the Church as the Church must be represented by an attorney. Appellant was informed at the original motion hearings of that representation. Appellant continued to act as the other Plaintiff's attorney and added additional Plaintiff's without proper Motion. The Court was informed at the February 22, 2018 that Plaintiffs had sought representation and again the Court notified them and the Appellant the church would have to have representation.

5. Appellant under Paragraph (4) d., reference is requested to Paragraph 4. above.
6. Appellant under Paragraph (4) e., as to prior motions filed and not heard, at those Motions the Court informed Appellant that Appellant could not represent the other Plaintiffs and could not represent the Church. Therefor that allegation is disputed as the Motion was heard and Appellant was so advised.
7. Appellant under Paragraph (4) f., was as reported above and throughout the case, the Church and other Plaintiff's could not be represented by Appellant, by law and Appellant does not provide any case law indicative of the right of the Appellant to represent anyone but himself, if at all, due to Appellant lacking standing.
8. Appellant under Paragraph (4) g., as reported, the Court was informed by Appellant and the other Plaintiff's, but not the Church, that they had contacted an attorney, and the Court granted them twenty days to have the attorney notify of represent the Church. No notice of representation was received and the Order was issued. A letter facsimile was received by Respondent indicating that an Attorney had been attempting contact with Respondent's attorney but no message was received until the facsimile letter. Based on the Appellant's filing and the lettering indication of "involvement" that letter does not indicated representation, even if received after the time frame established.
9. Appellant under Paragraph (4) h., now Appellants argues that the vote of the

church of which the Appellant was not a member, was proper, while stating the Court has no jurisdiction. See Appellant's pages of Motion filed.

10. Now as the the "Supplemental" to Motion to Stay" Paragraph 5. And 6. Of the Motion to Stay are not listed and are missing, from that filing as received by the Respondent's attorney, but if there is or was any allegations all allegations if any are denied.
11. Appellant under Paragraph (7), denied, as the Court had repeatedly informed Appellant and Plaintiffs that an attorney was required and that they had twenty days to have the attorney they claimed to have contacted notify the Court. No notification was received by the Court as requested and required by the Court both from the Bench and by Order. As to having a day in Court, Appellant has had his day in court repeatedly.
12. Appellant under Paragraph (8), the Appellant as a convicted felon and as a person practicing law without a license knows, the Appellant has had his day in Court repeatedly and has been repeatedly informed by the Court that Appellant is not the attorney for the other Plaintiff and then added Plaintiff's and is not the attorney for the Church.
13. Appellant under Paragraph (9), and the hundreds of pages of this action, the Plaintiffs and the Appellant have argued this is a Church matter as the Appellant has stated by Paragraph (4) h., that the congregation held a vote. Appellant was not a member of the church nor the congregation. See attachment as noted.
14. Appellant under Paragraph (10), is denied, the denial noted was based on Appellant not conforming repeatedly to a proper order of the Court.
15. Appellant under Paragraph (11), is denied, as no attempts were presented to the Court. As to Attorney Allen, no message was received of representation

and upon information and belief no notice was received by the Court as to representation.

16. Appellant under Paragraph (11), this appears to be the Appellant's argument. Defendant Respondent states, that the Court properly followed the law and procedures of the Court, which the Appellant was repeatedly informed of by the Court. The Order of the Circuit Court is proper and must be upheld.

The Church here is a congregational church, The Truth Outreach Church, West Union, SC. which is independent of any other church and or organization.

Pastor Davis, Defendant, became Pastor in 2006 and remained Pastor until ordered by the Oconee Sheriff Dept. to leave the church property. At no time was the membership more than 20 members.

In 2014 the Constitution Bylaws were established to require 2/3 (two-thirds) of members to vote and upon voting the name of the church was renamed to Truth Out Reach.

The members also voted to have the Board to have a unanimous vote to have any changes including the expulsion of any member and removal of the Pastor.

January 2016 the membership was only that of Pastor Davis and about twenty others with only two members of the church congregation on the Board.

The establishing document confirms the congregational nature. Document is of record. At the time of the beginning of this action, there were only two members of the Board one being Pastor Davis and a congregation of around 20 member of the church.

Pastor Davis was removed from the premises of the Church by the police authority not by a vote of the congregation. Review the facts attachment. document establishing the congregation provides the method for removal of the Pastor. The Pastor has the providence of controlling the voting. In this case, no vote was called and no vote was made by Pastor Davis or the only other member. Appellant is not a member by Appellant's own statement.

This action was started by a non-member. The Appellant Plaintiff Jones a non-member, not only brought this action but attempted to represent the other Plaintiff Originally and was admonished by the Court that each Plaintiff had to

have their own Attorney or not be represented by Appellant.

Appellant added other Plaintiffs but none of the added Plaintiffs are members of the church Mike Davis Pastor of the Truth Outreach Church, West Union, SC.

As this is an independent congregational church organization, which is self-governing and the congregation is the highest religious judicatory (Pearson). The Truth Outreach Church, is independent organization of any other church body or hierarchical organization, The Truth Outreach Church, governs itself and has it's own tenets without reference to other Tenets. That Truth Outreach Church must be reinstated And returned to the lands and church as was at the first of January 2016 when Pastor Davis the Respondent Defendant was forced from the church by police authority.

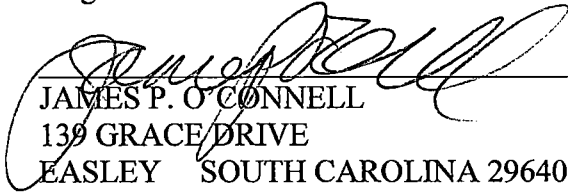
As reported, Defendant Respondent Pastor Mike was not removed by the congregation according to The By-Laws, but by law enforcement. The Protestant Episcopal Church in the Diocese of South Carolina, et al v. The Episcopal Church (aka The Episcopal Church in the United State of America) et al. Appellate Case No. 2015-000622, Opinion No. 27731 Heard Sept. 23, 2015 Filed August 2, 2017.

Respondent Defendant. Pastor Mike Davis as pastor of The Truth Outreach Church, West Union South Carolina as he was January 2016, before being removed by the local law enforcement, was returned to being the Pastor by the Order of the Court which is being appealed here. .

Respondent must be returned to the church as that church was January 2016 as the Board and the the congregation did not remove Pastor Davis. See governing case here attached.

THE RESPONDANT, states the Motion to Stay should be lifted and dismissed immediately and that as the Circuit Court Ordered, Respondent be returned to the Respondent's church as per the governing case law.

May 4, 2018

  
JAMES P. O'CONNELL  
139 GRACE DRIVE  
EASLEY SOUTH CAROLINA 29640  
ATTORNEY FOR RESPONDENT

OTHER COUNSEL OF RECORD:

NONE, PRO SE APPELLANT, Christopher Jones  
Post Office Box 1064  
Greenville, South Carolina 29602

Susan Harrison, Christopher Jones,  
Connie McKee, and Desimber Wattleton

Plaintiffs

VS.

Mitchell Eugene Davis  
aka Michael Davis

Defendant

2018 MAR -5

P 12:30

FILED IN COURT, SC  
BY [unclear] FIELD  
COURT

PLAINTIFF'S MOTION  
FOR DISMISSAL FOR  
LACK OF SUBJECT MATTER  
JURISDICTION

CASE NO. 2016-CP-37-0060

NOW COMES Plaintiffs, Susan Harrison, Christopher Jones, Connie McKee, and Desimber Wattleton, and moves this Court to dismiss the above-captioned case in its entirety pursuant to Rule 12(b)(1)SCRCP. In support of Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Plaintiffs show the following:

**STATEMENT OF FACTS**

1. Upon tangible evidence, knowledge, and information of repeated alleged offenses, the members of Truth Outreach of West Union, South Carolina, decided it would be in the best interest of the Church for the Defendant, Michael Davis, to step down as Pastor.
2. It was decided by the members that the Plaintiff, Susan Harrison, and Christopher Jones as witness, would meet with Michael Davis on Sunday, January 29<sup>th</sup>, 2016 to address the concerns of the Church and request that he voluntarily step down from the position as Pastor due to Misconduct.
3. Mr. Davis refused to step down voluntarily, at that time he was notified by Susan Harris that a vote would take place on Sunday, February 14, 2016 to officially vote for his termination as Pastor of The Truth Outreach of West Union, South Carolina.
4. On Sunday, February 14, 2016, the allegations against Mr. Davis were presented in writing, read aloud, and affirmed by witnesses as required by The Truth Outreach Constitution and By-Laws.
5. In the presence of two Oconee County Police Officers, a vote was held by the members of The Truth Outreach of West Union, South Carolina regarding the termination of Michael Davis as Pastor. The vote resulted in 16 votes in favor of his termination, and zero votes against his termination.
6. Mr. Davis was given the opportunity to defend himself against the allegations made against him by the congregation, which he waived in the presence of the members and police

officers present.

7. The termination of Michael Davis as Pastor of The Truth Outreach was ratified by the Congregation, and Mr. Davis has not been back to the church in the capacity as a Pastor or Member since February 2016.

8. The members of The Truth Outreach of West Union, South Carolina maintain the allegations brought against Michael Davis are founded upon facts. Mr. Davis did in fact engage in a long-standing extramarital affair with, and continues to this day to cohabit with Maria Davis, who at the time was the Pastor of The Truth Outreach Greenville, South Carolina.

9. Mrs. Sharon Davis did file for, and was granted a divorce from Michael Davis upon the grounds listed in her Complaint, which included Adultery, this information is a matter of public record.

10. Mr. Davis did in fact allow Elizabeth Estes, the former Treasurer of The Truth Outreach of West Union, South Carolina, to embezzle funds from the church, for which she was investigated and prosecuted for forgery of bank documents by the Oconee County Police Department, which this Court has the ability to verify.

11. Mr. Davis has also allegedly had an intimate relationship with Elizabeth Estes and has since fathered a child by Elizabeth Estes, born to Ms. Estes and Mr. Davis in November 2017, which can also be easily confirmed by this court via DNA testing.

12. For the aforementioned reasons and issues previously described in more detail, the congregation of The Truth Outreach, West Union, South Carolina, duly voted for the termination of Michael Davis as Pastor, and he has not attended the church for the past two years.

13. Following the termination of Mr. Davis as Pastor of The Truth Outreach of West Union, South Carolina, he summarily declared that all the members who voted for his termination were no longer members of the church and that the Board never existed.

14. Mr. Davis has now presented an argument to this court that although The Truth Outreach is a Congregational Church, his termination could only be confirmed upon Unanimous Decision by the two board members he claims now exist, of which he is one; thereby effectively attempting to reorganize the church with assistance from this Court, as a Hierarchical Church, whereby he becomes the final authority and cannot be removed from office unless he votes for his own termination.

15. However, The Truth Outreach of West Union, South Carolina is in fact a Congregational Church, as acknowledged and stated by Defendant's Counsel, to which the Plaintiffs acknowledge and agree, with the Congregation itself being the highest authority.

16. Therefore, in addition to the church operating within its Organizational and

Constitutional right to vote for the termination of its pastor as a Congregational Church, the following argument and legal precedent is being provided to establish that the Court and The Honorable Judge Maddox does not, under any circumstances, recourse of civil procedure or interpretation of law, have jurisdictional authority to overrule the church and reappoint Michael Davis as the Pastor of The Truth Outreach of West Union, South Carolina through any means of litigation or by request of the Defendant or his attorney.

## ARGUMENT

### A. SC RULES OF CIVIL PROCEDURE

The Court lacks jurisdiction to hear this case pursuant to Rule 12(b)(1). Plaintiffs present the following South Carolina Supreme Court Precedent in support as follows:

"The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60-61 (Ct. App. 2006).

"It is not the function of the courts to dictate procedures for a church to follow." *Id.* "Generally, a civil court has no authority to intervene in cases involving expulsion from church membership where there is no question of an invasion of a civil, property or contract right." *Bowen v. Green*, 275 S.C. 431, 434, 272 S.E.2d 433, 434 (1980).

"South Carolina case law is in accord with the view that no review of the ecclesiastical decision follows absent the infringement of those rights but South Carolina authorities do not treat the specific issue of membership expulsion." *Id.* at 434, 272 S.E.2d at 434-35.

### B. ORGANIZATIONAL STRUCTURE

The Truth Outreach, being a Congregational Church as defined by the State of South Carolina, was formed upon the foundation of self-governance. The members maintain the vote to remove the Defendant, Michael Davis, from office, was made in accordance with the organizational structure of the church, specifically that the congregation is the highest authority existing within the church, and having voted to remove Mr. Davis on February 14, 2016, the decision of the church is final. Neither the church, nor its members, have voted to adopt an alternative means of church government that may offer any avenue of challenge to the majority vote that took place;

**KARL B. ALLEN LAW FIRM, L.L.C.**

Attorney and Counselor at Law  
108 Lavinia Avenue  
Greenville, SC 29601  
(864) 235-9049  
Fax (864) 235-9601

April 9, 2018

**James P. O'Connell, Esquire**  
Attorney at Law  
139 Grace Drive  
Easley, South Carolina 29640

Via Facsimile (864) 498-7210

**RE: Susan Harrison and Christopher  
Jones vs. Mitch Eugene Davis, et. al.  
2016-CP-37-000600**

**Dear Attorney O'Connell:**

Please be advised that I called again this a.m. but was unable to reach you. I apologize that we continue to play phone tag in reference to the above-referenced matter.

As you are aware, I started contacting you approximately *three (3)* weeks ago as it is my understanding that you needed to know I was involved on behalf of Plaintiffs.

I have again advised your assistant this date, however, I am advised that you will not be in the office today. Since I am out of office the balance of week, I will forward a copy of this correspondence to the Court. It is my understanding that the Court is aware of our involvement.

Please Advise!

With Kind Regards,

*Karl B. Allen/mh*

**Karl B. Allen**

**KBA/mh**

**cc: Honorable J. Cordell Maddox, Jr.**

**James P. O'Connell**  
**Attorney at Law**  
**139 Grace Drive**  
**Easley, South Carolina 29640**  
**Phone/Fax: (864)220-0005**  
jpatrickoconnell@yahoo.com

April 10, 2018

Mr. Karl B. Allen  
Attorney at Law  
108 Lavinia Avenue  
Greenville, SC 29601

fax also: 235-9601

RE: Susan Harrison et al v. Mike Davis 2016-CP-37-0060

Dear Attorney:

1. My first notice of phone communication was March 22, 2018 and I promptly returned the communication to your answering machine. Late I phone again and requested to know the gist of your communicaiton. I have phoned back at least four time before the receipt of the letter of April 9, 2018.
2. Your letter does not indicate representation as the Court had ordered. Nor did your phone message. And at the hearing Mr. Jones stated they had attorney Bennett as the attorney? The person representing the Plaintiff Harrison, is a non attorney but has been practicing law without a license, and is also a convicted felon.
3. At the hearing, Mr. Jones (who claimed to represent the Plaintiff and the additional Plaintiff's added without proper Order) was informed he could not represent the Plaintiff, and that the Plaintiff could not represent the church.
4. This case has been ended by the Order of the Court.

Advise promptly in writing.

Cordially yours,

James P. O'Connell  
TC Paralegal  
[tracycantrell@bellsouth.net](mailto:tracycantrell@bellsouth.net)

cc client, Honorable J. Cordell Maddoz, Jr.

*James P. O'Connell*  
*Attorney at Law*  
*139 Grace Drive*  
*Easley, South Carolina 29640*  
*Phone 864-220-0005 Fax 220-0005 & 498-7210*  
*jpatrickoconnell@yahoo.com*

*Mike Davis*

April 10, 2018

Anderson County Clerk of Court  
Attn: Honorable J. Cordell Maddox, Jr.  
Anderson County Courthouse  
Post Office Box 8002  
Anderson, South Carolina (SC) 29622

RE: Susan Harrison et al v. Mike Davis 2016-CP-37-0060

Dear Judge Maddox, Jr.:

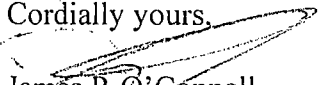
Find here attached a copy of the letter being sent to Attorney Karl B. Allen.

Attorney Allen's letter indicates phone calls, which is have addressed.

Further, no written notice was received until the receipt of the facsimile letter from Attorney Allen. There letter does not appear to indicate Attorney Allen has been retained?

Advise promptly in writing.

Cordially yours,

  
James P. O'Connell  
TC Paralegal  
[tracycantrell@bellsouth.net](mailto:tracycantrell@bellsouth.net)  
cc client and Attorney Allen

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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MIKE  
DAVIS

Greg Williams and Bill Wines,  
individually and as trustees and  
members of The Christian Church of  
North Myrtle Beach, and as  
representatives of others similarly  
situated as members of The Christian  
Church of North Myrtle Beach, Harrill  
Lovelace and Clay Crowder,  
individually and as members of The  
Christian Church of North Myrtle  
Beach, and as representatives of  
others similarly situated as members  
of the The Christian Church of North  
Myrtle Beach, and Darrel Hall,  
Respondents,

v.

Joel Wilson, Danny Banks, J.W.  
Mullins, Bob Williamson and E.  
Richard Powell, individually and as  
present or former trustees of The  
Christian Church of North Myrtle  
Beach, Petitioners.

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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Appeal From Horry County  
J. Stanton Cross, Jr., Master-in-Equity

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Opinion No. 25457  
Heard February 21, 2002 - Filed April 29, 2002

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**AFFIRMED IN PART; REVERSED IN PART**

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Randall K. Mullins and Elizabeth J. Saraniti, both of Mullins Law Firm, P.A., of North Myrtle Beach, for petitioners.

Robert L. Barnett, of Barnett & Wright, P.A., of Myrtle Beach, for respondents.

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**JUSTICE MOORE:** This is a church dispute. We granted a writ of certiorari to review the Court of Appeals's decision <sup>(1)</sup> affirming the master's finding that the dismissal of the preacher by church trustees was a nullity and the congregation's election of new trustees was valid. We affirm in part and reverse in part.

### **FACTS**

Petitioners (Trustees), who are the founders of The Christian Church of North Myrtle Beach (NMB Church), voted to dismiss the church's preacher, respondent Darrell Hall. In response, the congregation voted to oust Trustees, elected replacement trustees, and overrode the dismissal of Preacher Hall. Trustees retaliated by freezing the church's assets and locking its doors.

Respondents, who are church members, then commenced this declaratory judgment action to determine Preacher Hall's employment status and the legitimacy of the newly elected trustees, and for injunctive relief. After issuing a temporary injunction, the circuit court referred the case to the master-in-equity. The master found NMB Church was a congregational church and, as such, the congregation held the ultimate authority over all church matters. Accordingly, he ruled the ouster of Trustees was legitimate and Preacher Hall's dismissal was a nullity. Further, he enjoined Trustees from interfering with the congregation's access to church assets. On appeal, the Court of Appeals affirmed.

### **ISSUES**

1. Did the Court of Appeals properly affirm the master's finding that NMB Church is a congregational church?
2. Did the Court of Appeals's analysis infringe the right to freedom of religion?
3. Was the special congregational meeting at which the new trustees were elected a legal meeting?

## DISCUSSION

### Standard of review

We begin by noting our agreement with the Court of Appeals's finding that this is an action in equity and therefore the applicable standard of review is our own view of the preponderance of the evidence. See Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). Whether an action for declaratory relief is legal or equitable in nature depends on the plaintiff's main purpose in bringing the action. Doe v. South Carolina Medical Malpractice Liability Joint Underwriting Assoc., 347 S.C. 642, 557 S.E.2d 670 (2001). Respondents' main purpose in bringing this action was to enjoin Trustees' present and future interference in church matters. Accordingly, this is an equitable action and we may take our own view of the evidence.

Further, it is important to note our limited jurisdiction over church matters. Church disputes may be resolved by the courts only if resolution can be made without extensive inquiry into religious law. It is not the function of the courts to dictate procedures for a church to follow. Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996); Knotts v. Williams, 319 S.C. 473, 462 S.E.2d 288 (1995). To preserve "complete religious liberty, untrammelled by state authority," we limit our inquiry into church affairs and respect the boundaries of church self-governance. Pearson, 325 S.C. at 52, 478 S.E.2d at 852-53.

### Form of church governance

The NMB Church was founded by Trustees as a Christian Church, which is also referred to as the Church of Christ, in 1994. Trustees were members of another Christian Church, the Grand Strand Christian Church, and all but two of them remained members of that church even after founding the NMB Church. (2) Trustees acquired the church property in June 1994 and constructed the church building on it. The church was incorporated as a nonprofit corporation in March 1995. Trustees hired Preacher Hall at the end of May 1996 and he began his tenure at NMB Church on June 18, 1996.

On June 30, Trustees approved a "Constitution and By-Laws" (hereinafter "the bylaws") that became effective July 1, 1996. The bylaws provide regarding trustees as follows:

#### **ARTICLE I, SECTION III**

1. The church is set up as a "Trust" under the direction of the Trustees named herein.

#### **ARTICLE IV, SECTION 11**

3. TRUSTEES: The Church formed under the direction of a Board of Trustees, named here as they may add to or change:

[naming Trustees]

A. DUTIES OF TRUSTEES: Trustees shall act as legal agents of the Church in all business matters. Hold legal title to all church property and handle all business transactions related thereto; have supervision over all endowment and trust funds; and discharge such duties as the law of South Carolina enjoins upon them.

A1) As an advisory board to the church leaders of [NMB Church]

A2) Duties as given in the Article of Organization (3)

B. MINIMUM NUMBER OF TRUSTEES (6)

C. QUALIFICATIONS: Must be active member of the Christian Church

D. ELIGIBILITY: Shall be based upon the decision of other trustees.

On the subject of a preacher, the bylaws provide:

#### **ARTICLE VII, SECTION 1**

1. The Minister shall be elected for an indefinite term, and a contract agreeable to the Board of Elders and Deacons and Minister shall be entered into.

3. The Elders shall appoint the Pulpit Committee. . . . When a vacancy occurs in the pulpit, it shall be their duty to carry on proper correspondence with candidates for the pulpit. The recommended candidate's qualifications shall be submitted to the Church Board (4) for their approval. If approved, the recommended candidate shall be invited to meet with the Elders and Deacons prior to conducting a Worship Service. . . . Then following the service a congregational vote shall be cast to determine whether the candidate shall be elected to fill the pulpit. . . .

4. The congregation reserves the right to dismiss any Minister at any time. . . . The dismissal of a Minister of this congregation shall be by the recommendation of majority of all Elders and Deacons and a

majority vote of the eligible members present at a congregational meeting.

The contested action regarding the preacher and new trustees took place at a special congregational meeting held on June 14, 1998, after the approval of these bylaws.

The evidence is uncontested that Christian Churches are independent congregational churches governed by their own congregations. The congregation selects the church's trustees and the trustees are always members of that church. In a congregational church, the congregation is the highest authority. Knotts v. Williams, *supra*.

In a church dispute, the party asserting a deviation from governance conforming to the affiliated church convention must demonstrate by a preponderance of the evidence that the church adopted an alternative government. Bowen v. Green, 275 S.C. 431, 272 S.E.2d 433 (1980). Here, the burden is on Trustees to show the NMB Church was established as other than a congregational church since they are asserting that they, and not the congregation, are the highest authority.

The testimony of Trustees at the hearing before the master is conflicting on their intent as the founders of NMB Church. Trustee Spruill testified the Board of Trustees was intended to act as an advisory committee that "would derive its authority from the principal that was recognized or represented. That being the church." He stated that although the church had not ordained any elders, which is "a spiritually guided process," the church was now able to handle its own affairs. His understanding was "the trustees serve a legal capacity at the pleasure of the elders and in turn the elders are elected by the congregation members. Therefore the ultimate authority flows to the members." Trustees Powell and Wilson, on the other hand, felt they had the authority to control the church property and dismiss the preacher because the church was set up as a "trust."

Whatever the original intent of the Trustees in 1994 when the church was founded, they memorialized its form of government by approving the church bylaws in 1996. The church bylaws clearly reserve to the congregation the right to dismiss the preacher which is consistent with the convention of Christian Churches as congregational. Accordingly, Trustees had no authority to dismiss Preacher Hall and the master properly ruled the dismissal was a nullity.

The bylaws, however, do not clearly follow the Christian Church convention of congregational authority in regard to the election of trustees. There is no express provision regarding the election of trustees. Article IV, section II(3)(A), provides: "The Church [is] formed under the direction of a Board of Trustees, named here as they may add to or change." This language may be construed

as creating a self-perpetuating Board, which would remove from the congregation the right to elect new trustees.

We find this language is not sufficient, however, to carry Trustees' burden of proving an alternative church government vesting them with the highest authority. The same provision of the bylaws also specifies that the Board of Trustees is "an advisory board to the church leaders," language which supports the conclusion a congregational form of government was intended. The ambiguity of the bylaws and the conflicting testimony regarding the intent of the founders is insufficient to prove the adoption of an alternative to the conventional Christian Church governance by congregation.

Further, although the bylaws provide that the Board of Trustees will "hold legal title to all church property and handle all business transactions related thereto [and] have supervisions (*sic*) over all endowment and trust funds," this provision does not clearly give Trustees the ultimate authority over church matters but merely indicates the Trustees' function as business managers who will answer to the congregation. Accordingly, the bylaws do not overcome the presumption that the church is ultimately governed by the congregation according to the Christian Church convention.

We find Trustees have failed to carry their burden of proving an alternative form of church governance and conclude the master properly found the NMB Church is a congregational church.

#### Freedom of religion

In affirming the master, the Court of Appeals noted that "South Carolina recognizes at least two forms of governance for churches: (1) hierarchical; and (2) congregational." It found Trustees had failed to show all the legally required elements of a trust and therefore the NMB Church was not a trust but congregational. Trustees contend this analysis limits the church's ability to choose its own form of government and infringes its right to the free exercise of religion. (5)

We agree the Court of Appeals's abbreviated analysis in determining the church's form of government appears to limit the form of church government to those recognized forms. As discussed above, however, the preponderance of the evidence, including the intent of the founders and the church bylaws, supports the ruling that the NMB Church is in fact a congregational church. Our analysis does not infringe on the church's ability to chose any alternative form of government.

#### Election of new trustees

Finally, Trustees contend the meeting at which the congregation voted to reinstate Preacher Hall and to elect the new trustees was illegal because notice was not given to Trustees. This issue affects only the validity of the election of new trustees since the dismissal of Preacher Hall by Trustees was a nullity and his reinstatement by the congregation was not required.

The bylaws provide that notice of a special congregational meeting must be given for the two preceding Sundays and written notice sent five days before the meeting to all members of the church. (6) Only two Trustees were members of the NMB Church, Trustee Powell and Trustee Williamson. (7) Under the bylaws, they were entitled to notice and it is undisputed they did not receive it.

(8) These two Trustees were not aware of the meeting until the day it occurred. Both did attend and neither objected at the meeting that they were not given notice.

In response to Trustees' claim the meeting was held illegally, respondents contend Trustees have failed to show prejudice from the lack of notice. Rather than inquiring into prejudice, in light of our restraint in dealing with church disputes, we resolve this issue by simply requiring compliance with the church's own bylaws rather than determining whether a deviation was harmless. See Hatcher v. South Carolina Dist. Council of Assemblies of God, Inc., 267 S.C. 107, 226 S.E.2d 253 (1976) (civil courts will accept as conclusive the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter absent fraud, collusion, or arbitrariness).

In conclusion, since the congregational meeting was not properly noticed to all members as required, we reverse the Court of Appeals's decision on this issue. Although the congregation has authority to elect its trustees under the congregational form of church governance as discussed above, this authority was not properly exercised according to the church bylaws.

### CONCLUSION

We affirm the holding that Preacher Hall's dismissal by Trustees was a nullity but reverse the holding that the new trustees were properly elected. (9)

**AFFIRMED IN PART; REVERSED IN PART.**

**TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.**

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1. Williams v. Wilson, 341 S.C. 136, 533 S.E.2d 592 (Ct. App. 2000).

2. Under Christian Church doctrine, a person can be a member of only one church at a time.

3. There is no "Article of Organization" included in the bylaws.

4. The term "Church Board" is not defined in this document but appears in context to refer to the Board of Trustees.

5. See S.C. Const. art. I, § 2.

6. This provision regarding a "special congregational meeting" (Article VI, section I, ¶3), rather than the provision governing a "special business meeting" of Trustees (¶ 2), applies in light of our conclusion that the election of trustees is accomplished by the congregation and not the trustees.

7. As noted above, the other Trustees remained members of the Grand Strand Christian Church and under church doctrine a person can be a member of only one church at a time.

8. Preacher Hall admitted he intentionally omitted giving Powell and Williamson notice of the meeting.

9. Although Trustees will retain their positions until further action by the congregation, the injunction forbidding them from interfering with the congregation's access to church assets accords with congregational control and remains valid.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS

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HONORABLE J. CORDELL MADDOX, CIRCUIT COURT JUDGE

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CASE NO. 2016-CP-37-0060

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MITCHELL EUGENE DAVIS a/k/a MITCH DAVIS a/k/a MICHAEL DAVIS,

RESPONDENT

v.

SUSAN HARRISON and CHRISTOPHER JONES, PLAINTIFFS,  
Of whom CHRISTOPHER JONES IS THE  
APPELLANT

---

CERTIFICATE OF SERVICE Appellate Case No. 2018-000625

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I, Paralegal for Attorney for Respondent, do hereby affirm that I served y U. S. Mail or did cause the same to be hand delivered a copy of the Return to the Notice of Appeal, denoted as " Letter to the Appellate Court Clerk filing the Notice of Appeal" and, "Appellants' Supplemental to Motion to Stay Execution of Judgment Rule 240 S.C.A.R., on the Appellant at the following address, the date written below:

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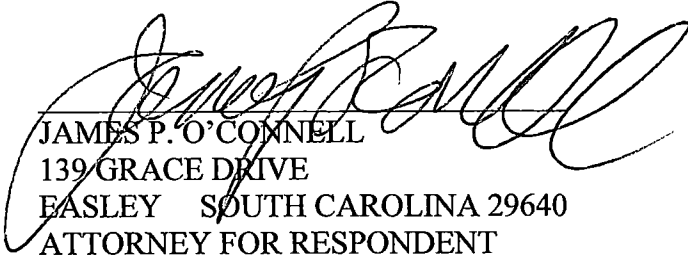
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~~April 7~~, 2018



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