

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY

Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

C/ A No.: 2008-CP-16-0707

Isaac Johnson,

Respondent,

v..

Elve Williams, David McFarland,
Charles Douglas, Bernice Wilson,
Wilken Benjamin, Eddie Gwaltney,
Robert Ervin, Kelvin Byrd, Ronald
Mumford, Layton Swinney, Carl
Days, Alton Taylor, Daisy Weaver,
Melvin Warren, Larry Stivers and
Jerusalem Baptist Church,

of whom

Kelvin Byrd is the

Appellant.

FINAL BRIEF OF RESPONDENT

JOHN D. CLARK, ESQUIRE
CLARK LAW FIRM, LLC
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151
(803) 775-1234 • (803) 775-8590 *fax*
jclark@theclarklawfirm.com

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE ISSUE OF LIMITATION OF LIABILITY FOR APPELLANT UNDER S.C. CODE SECTION 33-56-180 IS PRESERVED FOR APPELLATE REVIEW?
2. DID THE LOWER COURT ERR IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT ON RESPONDENT'S CLAIMS OF LIBEL AND SLANDER ABSENT ANY EVIDENCE THAT APPELLANT'S EMPLOYER WAS A CHARITABLE ORGANIZATION AS DEFINED BY S.C. CODE SECTION 33-56-170?

STATEMENT OF THE CASE

This is an appeal from an action tried by jury between July 11 and 15, 2011, wherein the Plaintiff, Reverend Issac Johnson, claimed damages resulting from civil conspiracy, slander per se, libel per se, tortious interference with a contractual relationship, wrongful discharge, breach of contract, malicious prosecution, abuse of process, and injunctive relief, as a result of his termination from employment as pastor of the Defendant Jerusalem Baptist Church. The action was commenced in the Court of Common Pleas for Darlington County by filing of a Summons and Complaint dated August 15, 2008. The case was tried by Jury, which returned a total verdict on July 15, 2011 in the amount of \$100,000, which is allocated between causes of action for wrongful termination (50%), libel (40%) and slander (10%). The judgment was entered on August 31, 2011, and notice of appeal was served by Appellant's trial counsel on September 26, 2011.

ARGUMENTS

- I. BECAUSE THE ISSUE OF LIMITATION OF LIABILITY FOR APPELLENT AS AN EMPLOYEE OF A CHARITABLE ORGANIZATION UNDER S.C. CODE SECTION 33-56-180 IS NOT PRESERVED FOR APPEAL, THIS ISSUE CANNOT BE CONSIDERED BY THE COURT.

In cases at law tried by jury, the standard of review by the Appellate Court extends merely to corrections of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

In the case at bar, because the appellant failed to raise the issue of Limitation of Liability under S.C. Code Section 33-56-180, the issue is not properly preserved for appellate review, and cannot be considered by the Court.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the appellate court with a platform for meaningful appellate review. Queen's Grant II Horizontal Property Regime v Greenwood Development, Corp., 368 S.C. 342, 373, 628 S.E.2d 902 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E. 2d 731, 733 (1998). It is "axiomatic that issues cannot be raised for the first time on appeal." *Id.* Imposing such a requirement on appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, laws and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

In this matter, a careful examination of the record, submissions and hearings before the trial court reveals that the issue of Appellant's limitation of liability as an employee of a charitable organization under Section 33-56-180 was never raised to the

trial judge. Counsel for Appellant did indeed move for dismissal of Respondent's causes of action for libel and slander, but only on the grounds that "there is a reasonable basis that the information that he had was true." (R. p. 13, lines 8-10).

The record is completely devoid of any objection to Respondent's causes of action for libel and slander being submitted to the jury against Appellant individually, and appellant cannot raise the issue for the first time on appeal. Therefore, the Court cannot consider this issue, and the judgment of the trial court must be affirmed.

II. BECAUSE THERE IS NO EVIDENCE IN THE RECORD THAT APPELLANT'S EMPLOYER, JERUSALEM BAPTIST CHURCH, IS A CHARITABLE ORGANIZATION AS DEFINED BY S.C. CODE SECTION 33-56-170, AND APPELLANT IS ENTITLED TO LIMITATION OF LIABILITY UNDER S.C. CODE SECTION 33-56-180, THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT ON RESPONDENT'S CLAIMS OF LIBEL AND SLANDER.

Even if the Court assumes *arguendo* that the issue of limitation of liability of Appellant as employee of a charitable organization is preserved for appeal, Appellant failed to present any evidence to the trial court that its employer is a charitable organization as defined by Section 33-56-170.

Section 33-56-180(A) provides:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless,

wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

In order to be afforded the limitation of liability under Section 33-56-180, the charitable employer must meet the definition of "Charitable organization" as defined by Section 33-56-170, which provides, in pertinent part, as follows:

For purposes of Section 33-56-180:

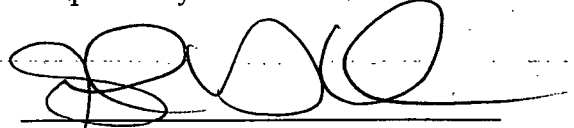
- (1) "Charitable organization" means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended.
- (2) "Employee" means an agent, servant, employee, or officer of a charitable organization.

Appellant failed to present evidence of its employer's status of being "exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code." Therefore, Appellant is not entitled to protection under Section 33-56-180, and the judgment of the lower court must be affirmed.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John D. Clark', written over a horizontal line.

John D. Clark
Post Office Drawer 880
Sumter, South Carolina 29150
(803) 775-1234
Attorney for Respondent

February 25, 2013

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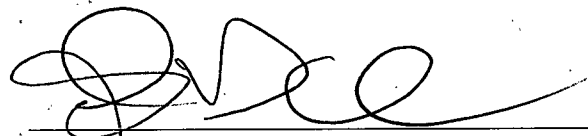
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



John D. Clark
Post Office Drawer 880
Sumter, South Carolina 29150
(803) 775-1234
Attorney for Respondent

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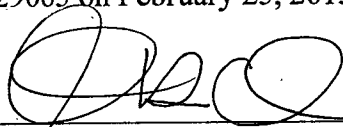
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Kelvin Byrd, by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, Kevin H. Sitnik, Post Office Box 389, Irmo, South Carolina 29063 on February 25, 2013,



John D. Clark
Post Office Drawer 880
Sumter, South Carolina 29150
(803) 775-1234
Attorney for Respondent

February 25, 2013