

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-21-2932

Raymond Haseldon, Sharon Haseldon, Annie Raye Haseldon, Faye Haseldon and
The General Conference of the Free Will Baptist Church of the
Pentecostal Faith Appellants,

v.

New Hope Church, Randy Sharpe, Johnny Powell, Winston Haseldon
and Donnis McDonald Respondents,

RESPONDENTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. ARE THE APPELLANTS REQUIRED TO PRESENT AN ISSUE TO THE TRIAL COURT TO PRESERVE THE RIGHT TO ARGUE THE ISSUE ON APPEAL?

- II. DID THE TRIAL COURT CORRECTLY HOLD THAT THE APPELLANTS MUST COMPLY WITH SOUTH CAROLINA TRUST LAW TO PREVAIL ON THEIR CLAIM OF A TRUST OVER NEW HOPE CHURCH'S PROPERTY?

STATEMENT OF THE CASE

The Appellants commenced this action on October 7, 2010 claiming essentially that it had a trust interest in the property of New Hope Church after it disaffiliated from the General Conference of the Free Will Baptist Church of the Pentecostal Faith (hereinafter referred to as the "Conference"). The Appellants consist of the Conference and former members of New Hope Church. The Respondents are New Hope Church (hereinafter referred to as "New Hope"), New Hope's governing board, and New Hope's pastor, Randy Sharpe.

The Appellants attempted service on or around mid April 2011, and the Respondents timely answered and counter-claimed on May 18, 2011. The answer asserted affirmative defenses including statute of frauds, failure to serve, statute of limitations and laches. The answer included a counter-claim for a declaratory judgment that the Appellants had no trust or any interest in New Hope's property.

The Respondents served discovery requests and deposed the Conference's Superintendent, James A. McElveen. Raymond Haseldon, Annie Raye Haseldon, Legrande Goins, and Gail Goins were also deposed. On February 8, 2012, the Respondents filed a motion for summary judgment based, *inter alia*, on the ground that the evidence demonstrated that the Appellants had no interest in New Hope's property.

The motion was heard on March 8, 2012. Counsel for the Respondents and Appellants were present and argued their positions. The Respondents presented and filed a memorandum of law with exhibits supporting their position. The Appellants presented

no evidence at this hearing.

On March 27, 2012, the Honorable Thomas A. Russo, Circuit Court Judge for the Twelfth Judicial Circuit (hereinafter referred to as the "Trial Court") issued an Order granting the Respondents' motion for summary judgment. The Trial Court held that the Appellants failed to present any evidence that they held a trust interest in New Hope's property.

On April 6, 2012, the Appellants filed a motion to amend asking the Trial Court to reconsider its decision. The Trial Court heard the motion on August 13, 2012, and on September 28, 2012, the Trial Court issued an Order denying the motion. This appeal followed.

STATEMENT OF THE FACTS

This dispute arises over New Hope Church (“New Hope”) located in Johnsonville, South Carolina. New Hope was founded in the early 1900's. Around 1946, New Hope and other area churches formed a cooperative denomination named the General Conference of the Free Will Baptist Church of the Pentecostal Faith.

Churches who are members of the Conference are congregationally governed churches. (R. p. 115, line 1-p. 116, line 11).¹ Consistent with the congregational governed relationship, the Conference does not ordain or license a local church’s pastor; rather, the congregation chooses its own pastor, and the Conference has no disciplinary authority over the pastor. (R. p. 116, line 3- p. 117, line 10).

In 2000, New Hope conveyed church property to a third party. (R pp. 422-423). Appellant Raymond Haseldon signed the deed, and he admitted during his deposition that the Conference was not notified of the conveyance and did not need to be notified. (R. p. 206, line 13-p. 207, line 4).

In 2003, the members of New Hope Church unanimously voted to incorporate and adopt its own bylaws thereby removing any doubt that it was an “independent church.” (R. p. 417). Two of the individual Appellants were present and voted for the incorporation. (Id.) Although New Hope adopted its own bylaws, it voluntarily remained affiliated with the Conference.

However, in 2009, New Hope became frustrated with the Conference, and New

¹ The minutes from the Conference’s 2010 annual meeting corroborate Superintendent McElveen’s testimony that member churches are congregationally governed. (R. p. 421).

Hope's congregation voted unanimously to terminate the church's affiliation with the Conference. New Hope subsequently amended its name to remove any identification with the Conference. The Appellants do not dispute that the congregation of New Hope unanimously voted to withdraw from the Conference.

The Conference was notified of the disaffiliation, and the Appellants present no evidence that the Conference took any formal action against the Respondents other than commencing this action.² (R. p. 145, lines 1-15).

The Respondents moved for summary judgment and submitted documents and deposition testimony to support the motion. The Appellants presented no evidence in response. The Trial Court correctly held that no trust was imposed on New Hope's property, and it dismissed the complaint and granted the Respondents' counter-claim. The Trial Court noted in its Order granting summary judgment that "the Plaintiff presented no evidence identifying when or under what circumstances the alleged trust was created." (R. p. 3).

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The Conference did not appoint any committee or group to accept "ownership" over the church.

ARGUMENT AND CITATION OF AUTHORITY

STANDARD OF REVIEW

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

I. The Appellants must present alleged evidence of a trust to the Trial Court to preserve the issue for appeal.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the trial judge.” Wilder Corp. v. Wilke, 330 S.C. 71, 75, 497 S.E.2d 731, 734 (1998). “Error preservation requirements are intended to ‘enable the lower court to rule properly after it has considered all relevant facts, law and arguments.’” I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

The Respondents moved for summary judgment notifying the Plaintiffs that they would demonstrate that no such trust existed. (R. p. 19). The Respondents supported

their motion for summary judgment with deposition testimony, deeds, church minutes, and Conference minutes.

The Appellants presented no evidence in response to support their claim. *See* (R. pp. 28-52). The failure to respond to the Respondents' evidence was in itself a ground to grant summary judgment. Rule 56(e), SCRPC. The Trial Court noted the absence of any evidence in its Order. (R. p. 3).³

“[A] trial judge will not be reversed for failing to act on a matter that was not submitted to him.” Roche v. South Carolina Alcoholic Beverage Control Commission, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975)(reversed on other grounds). The Appellants argue now on appeal that Conference bylaws created a trust over New Hope's property. However, the Appellants did not present this issue to the Trial Court when responding to the Respondents' motion for summary judgment, and they did not preserve the issue for appeal. Consequently, this appeal must be denied.

II. The Trial Court correctly held that South Carolina Trust law applies to this dispute.

In Jones v. Wolf, the United States Supreme Court held that state courts could apply neutral principals of law to resolve church property disputes. 443 U.S. 595, 603, 99 S.Ct. 3020, 3025 (1979). Following Jones, the South Carolina Supreme Court

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“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). The Appellants' presentation of evidence for the first time to support their motion to reconsider was improper and insufficient to preserve error for appellate review. This tenet of law was noted in the Trial Court's order denying the motion to reconsider. (R. pp. 5-6).

summarized the principles it applies to church controversies:

(1) courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996).

The South Carolina Supreme Court in All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina, expressly held that courts must apply the neutral principles of law approach to resolve church disputes. 385 S.C. 428, 449, 685 S.E.2d 163, 175 (2009). In the context of resolving church property disputes, the Supreme Court explained that the neutral principles of law method “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.” Id. at 444, 172 (citing Jones, 443 U.S. at 603, 99 S.Ct. at 3025).

The Trial Court applied well established concepts of trust law to hold that no trust existed against New Hope’s property. To prove the creation of a trust, a plaintiff must show: (1) a declaration creating the trust, (2) a trust *res*, and (3) designated beneficiaries. Whetstone v. Whetstone, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (Ct. App. 1992). South Carolina law requires a writing to prove a trust in land. Beckham v. Short, 298 S.C. 348, 350, 380 S.E.2d 826, 827 (1989). Moreover, if the settlor is the trustee, some written declaration signed by the settlor is required to create a trust. S.C. Code § 62-7-401(a)(2) and South Carolina Comments, ¶ 2.

The Appellants failed during summary judgment proceedings to produce any

written instrument indicating that New Hope granted a trust over its real and personal property to the Appellants. Rather, the Appellants proceeded on a theory based on the old “deference” approach to argue that New Hope was not permitted to withdraw from the Conference. However, the South Carolina Supreme Court in All Saints replaced the “deference” approach with the neutral principles of law approach. All Saints, 385 S.C. at 444-445, 685 S.E.2d at 171-172. The Trial Court properly rejected the Appellants’ argument.

The Appellants change course on appeal and argue that Conference bylaws impose a trust over New Hope’s property.⁴ However, the unrecorded bylaws are not New Hope’s governing documents, and the bylaws are not a contract or an agreement with New Hope. The bylaws do not provide a grant of trust by New Hope to the Appellants. New Hope did not sign the bylaws, and the bylaws do not prohibit a member church from withdrawing from the Conference. The bylaws do not comply with South Carolina law relating to the creation of trusts.

In addition, the South Carolina Supreme Court has previously heard and rejected the Appellants’ theory. In All Saints, a local parish (“All Saints”) voted to withdraw from the National Episcopal Church (“ECUSA”). The ECUSA argued that the Dennis Canons, which were amended into the Dioceses Constitution in 1987, imposed a trust on All Saints’s property in favor of the ECUSA and the Dioceses of South Carolina. Id. at 437,

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The Appellants present no evidence that New Hope’s congregation or governing board assented to the bylaws. Conversely, New Hope, in 2003, incorporated and adopted its own bylaws.

168 and at 449, 174.

The Supreme Court rejected the ECUSA's argument, and it held that "the Dennis Canons had no legal effect on the title to the congregation's property. . ." Id. The Supreme Court reasoned that "[i]t is an axiomatic principle of law that a person or entity must hold title to property in order declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another." Id.

The Supreme Court in All Saints held that basic trust law precluded the ECUSA from declaring trust in its bylaws over property it did not own. Similarly, in this case, New Hope, who predates the Conference, has always held title to its property. The Appellants' attempt to assert a trust over property they do not own through the Conference bylaws is ineffective.⁵

The Appellants attempt to distinguish the result in All Saints by mistakenly claiming that the Episcopal church's bylaws did not contain a trust provision. (Appellants' Brief, p. 7-8). This mistaken assertion ignores the detailed factual and legal discussion regarding the Dennis Canons. All Saints, 385 S.C. at 437,449, 685 S.E.2d at 168, 174. The Appellants mistaken comparison is a tacit admission that the outcome in All Saints is required in this case.

In addition, the course of conduct by New Hope and the Conference demonstrate

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The public policy reasons for refusing to allow the Conference to unilaterally impose a trust on New Hope's property is clear. Allowing a national organization to impose a trust through its bylaws on local property it does not own without requiring the organization to satisfy some evidentiary burden would create disastrous title issues, harm bonafide purchasers for value and create havoc with the state's real property records.

that no trust was imposed over New Hope's property. New Hope conveyed real property in 2000 through a deed signed by the Appellant Raymond Haseldon ("Haseldon"). (R. p. 422). Haseldon testified that the Conference was not notified of the conveyance and that it did not need to be notified. (R. p. 206, line 13-p. 207, line 4).

Moreover, a holding that the bylaws create a trust over New Hope's property would contradict the congregational form of government the Conference and the member churches have always maintained. Historically, a church that is congregationally governed may, upon majority vote of the congregation, withdraw from a denomination with its property intact. Whitmire v. Adams, 273 S.C. 453, 459-460, 257 S.E.2d 160, 164 (1979); *see also* All Saints, 385 S.C. at 443, 685 S.E.2d at 171. In line with the congregational form of government maintained between the Conference and its member churches, the bylaws do not impose a trust against a withdrawing member's property. New Hope's congregation unanimously voted to disaffiliate from the Conference. The Appellants have neither a mechanism nor authority to overcome the will and decision of New Hope's congregation.

The Trial Court correctly held that no trust exists against New Hope's property, and it correctly granted summary judgment dismissing this action and granting the Respondents' counter-claim.

CONCLUSION

The Appellants failed to preserve the issue it presents on appeal, and this appeal must be denied. In addition, the Trial Court correctly held that no trust exists over New Hope's property. The Respondents request that the Court affirm the Trial Court's decision.

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondents' Final Brief complies with the provisions
set forth in Rule 211(b), SCACR.



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PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondents'** on the Appellants, through their attorney of record, by depositing a copy of it in the United States Mail, postage prepaid, to:

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