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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Judge

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SEP 06 2013

SC Court of Appeals

Case No. 2010-CP-21-2932

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

Vs.

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

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGEMENT
TO RESPONDENTS BECAUSE IT FAILED TO CONSIDER THE GOVERNING
DOCUMENT OF THE APPELLANT CONCRETION SETTING FORTH THE RULES
ADOPTED BY THE PARTIES CREATING A RESTRICTION ON ALIENATION OF
CHURCH PROPERTY

STATEMENT OF THE CASE

Appellants brought this Declaratory Judgment action by Summons and Complaint filed October 7, 2010. Appellants members of the congregation of New Hope Free Will Baptist Church of the Pentecostal Faith, who adhere to the Free Will Baptist Church of the Pentecostal Faith, and the General Conference of the Free Will Baptist Church of the Pentecostal Faith (Conference). Respondents are former members of the New Hope Baptist Church of the Pentecostal Faith who formed and new church New Hope Church and left the Conference. The suit is for a determination of the right to control the property of New Hope Baptist Church of the Pentecostal Faith and an accounting of its property.

Respondents filed an answer and counterclaim on May 18, 2011. The Answer and Counterclaim included a general denial, and defenses of laches, estoppel, Statute of Frauds. The counterclaim sought a declaration that they were the true owner of the Property of New Hope Baptist Church of the Pentecostal Faith as its lawful successor. Respondents served a Reply on July 14, 2011.

The Respondents motion for summary judgment was heard on March 8, 2012 and granted by order entered March 27, 2012 and received by Respondents on March 28, 2012. Appellant moved to alter or amend the judgment on April 6, 2012. The motion to alter or amend was heard on August 13, 2012 and denied by order entered and received by Respondents on October 1, 2012.

The Notice of Appeal was served on October 29, 2012.

STATEMENT OF FACTS

The Conference was incorporated in 1926 as Free Will Baptist of South Carolina and changed its name to Free Will Baptist Church of the Pentecostal Faith in 1959. The oldest record of the Conference is the 1938 Discipline of the Wilmington and South Carolina Conference of the Free Will Baptist Denomination. The Discipline provided that the Annual Conference

Each local Church is a distinct and independent organization, with full authority to manage its own internal affairs, elect its officers, receive, dismiss, discipline, and exclude members. But this principle of the independence of each Church is not held as a law of isolation; on the contrary, Churches conveniently situated associate and cooperate in all things which tend to advance the common cause. Councils are, therefore, called in the organization of a Church and the settlement of serious difficulties. On the same principles, the Churches meet by delegation in the Annual Conferences, etc.

The Annual Conference being the highest tribunal, shall have final jurisdiction over the local churches

New Hope Church begun around 1907 and joined the Conference in 1946. The 1948 minutes of the General Conference show that New Hope sent delegates to participate in the governance of the Conference. RoA p. 311. By 1961 the Conference had amended its Discipline to provide that Church Trustees be prohibited from diverting property from the use of the Free Will Baptist Church of the Pentecostal Faith. RoA p. 356 That provision was part of the 2007 Discipline of the Conference at the time of this dispute. RoA p. 228

In 2003, New Hope Free Will Baptist Church of the Pentecostal Faith

incorporated telling its members that the purpose of the incorporation was to shield its members from personal liability for actions of the Church. In December 2009 the Conference received a letter from attorney John M. Prosser Jr. on behalf of New Hope Church stating that the New Hope Church had recently voted to break ties with the Conference. The real property of New Hope Baptist Church of the Pentecostal Faith was not deeded to the Corporation prior to the congregation breaking ties with the Conference. RoA p.416

ARGUMENT

THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGEMENT TO RESPONDENTS BECAUSE IT FAILED TO CONSIDER THE GOVERNING DOCUMENT OF THE APPELLANT CONCRETION SETTING FORTH THE RULES ADOPTED BY THE PARTIES CREATING A RESTRICTION ON ALIENATION OF CHURCH PROPERTY

May an religious association adopt rules to govern itself and its members?

This is an appeal from a grant of summary judgment. This court must view the facts in the light most favorable to the non-moving party and the moving party must establish that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law.

The law governing disputes involving church is set forth in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996)

(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.

478 S.C.45 at 52

Pearson was the first time the South Carolina Supreme Court considered the implications of *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775. In *Jones* the United States Supreme Court ruled that a civil court could,

consistent with the First Amendment to the United States Constitution, apply neutral principles of state law in determining disputes involving religious organizations. In discussing the meaning of “neutral principles” the U.S. Supreme Court said:

Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

443 U.S. 595 at 606

Ultimately the Court in *Jones* approved the decision of the Georgia Supreme Court awarding the church property to the breakaway congregation because the “the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church.” That distinguished the case from *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976). In *Carnes*, the Georgia Courts awarded control of the local church property to the loyalist members of the local church because the constitution of The United Methodist Church, its Book of

Discipline, contained an express trust provision in favor of the general church. See also *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 11, 719 S.E.2d 446 (Ga., 2011)

The trial court based its decision on the result in *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009) stating that the Conference could not impose a trust on the property of New Hope. The result in *All Saints* is similar to the result in *Jones v. Wolf*, 241 Ga. 208, 243 S.E.2d 860 (Ga., 1978) affirmed by *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775. As pointed out above the result in *Jones*, was determined by the fact that governing documents of the domination did not contain any language creating an express or implied trust in favor of the loyal minority. This was the opposite of the result in *Carnes*, *supra*, where the governing documents of the Church created such an restriction on congregational property.

Possibly because of its history as an established church, the Diocese in *All Saints* did not have in its governing document any authority over the parish church. It seems likely that the Episcopal Diocese expected the courts to imply such authority from its history as an established church. As the U.S. Supreme Court has stated such an inference is foreclosed by the First Amendment to the United States Constitution. More importantly the Diocese actually quit claimed any interest in the parish property in 1903 and reserved no rights in that property.

The members of New Hope joined the Appellant Conference in 1946. They were then both members of the local church and the denomination. As with any association the members of the Denomination were free to make such rules governing themselves as they should adopt. By joining the denomination both the members and there church became subject to the rules then in existence and afterwards adopted according the rules fo the domination. At that time the members of New Hope joined the governing documents of the denomination provided that the Annual Conference was the denominations highest tribunal and retained final jurisdiction over the local churches. The Doctrine and Constitution of the Denomination provided for governance by the Annual Conference composed of delegates from each local church and a method of amending the governance of the denomination (RoA pp. 66-68). By 1961 the Denomination specifically adopted the limitation on the local trustees of the church to prevent diversion of church property from the use of the Denomination. RoA p. 356 This was an obligation adopted by the members of New Hope through the governance of their denomination.

All this brings us back to the admonition from the U.S. Supreme Court in *Jones*, supra

Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

443 U.S. 595 at 606

The restriction on diversion of church property from the was not created by strangers to the New Hope property, it was created by the members of New Hope as part of the larger denomination under rules that the New Hope Church members assented to upon joining and participating in the governance through the Annual Conference. New Hope and its members were a part of the larger body.

The facts viewed in the light most favorable to the Appellants show that the Respondents broke from the Conference, after being members for more than 60 years and wish to divert property from the Conference despite objection from members of the congregation and the Conference. None of this requires a determination of religious doctrine by a civil court. The court is not free to ignore the rules adopted by the parties at to the effect of a schism in the local congregation. As pointed out in *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (S.C., 1956) quoting from *Watson v. Jones*, 80 U.S. 679, 733 (1871)

'In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment[229 S.C. 545] of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all of the individual members, congregations and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone

aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeal as the organism itself provided for.'

93 S.E.2d at 886

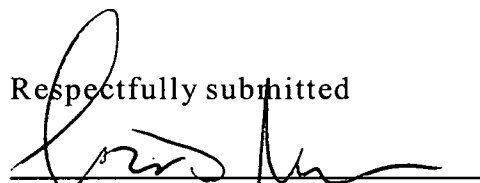
Bramlett v. Young should be tempered by the recognition that courts are not free to supply religious societies special rules not provided by the parties or neutral rules of law, but courts are not free to ignore rule adopted by the parties themselves. *Jones v Wolf*, 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d 775.

This case is clearly distinguishable from *All Saints* based on the rules the parties themselves consented to and adopted. The case before this court is comparable to *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976) rather than *Jones supra*. because the parties have supplies the rules themselves

CONCLUSION

Viewing the facts in the light most favorable to Appellants as the non moving parties the Trial Court erred in granting summary judgment to Respondents. The members of this religious association had the freedom to create their own rules governing the church and the domination. They did so . The Respondents by joining the domination and participating in its governance consented to the rules and are now bound by them. The facts show that the Conference adopted rules restricting the alienation of church property from the use of the Conference and therefore summary judgment was improper.

Respectfully submitted



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September 3, 2013

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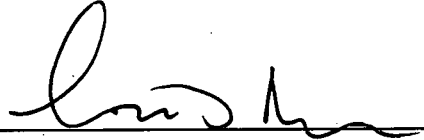
New Hope Church, Randy Sharpe, Johnny Powell, Winston Haselden
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants Brief and the Reply comply with Rule 211(b),

SCACR.

September 4, 2013



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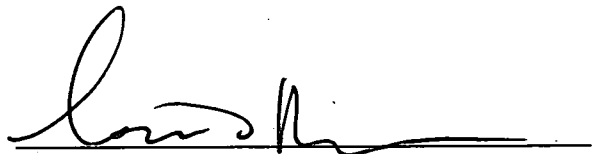
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and Donnis McDonald Respondents

CERTIFICATE OF SERVICE

I certify that I have served the Appellants' Brief and Reply Brief on Respondent's Attorney by depositing a copies of the same in the United States Mail, postage prepaid, on September 4, 2013; addressed to the following address:

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