

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2018-000653

Common Pleas Case No.: 2013-CP-10-1877

The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver, .....Respondents

vs.

Herman Bolds, Richard Brown Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller, and Payne Church, .....Appellants

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ORIGINAL

**TABLE OF CONTENTS**

Table of Authorities.....	ii
Statement of Issue on Appeal.....	1
Procedural History.....	1
Statement of the Case.....	3
Argument.....	7
Conclusion.....	14

**TABLE OF AUTHORITIES**

Adickes v. Adkins, 264 S.C. 394, 398 (1975)..... 13

Clark v. Moore, 2014 S.C. Unpub. Lexis 35.....11, 12

Colonial Auto Ctr v. Tomlin, 105 F.3d 933, 936-37 (4<sup>th</sup> Cir. 1997)..... 9

Cunningham v. MBNA Bank, N.A., 8 So.3d 438, 441 (Fla. Dist. Ct. App. 2009).....7, 8

Himler v. Comprehensive Care Corp., No. 92-1672, 1993 U.S. App. Lexis 10032, at 1 (4<sup>th</sup> Cir. 1993).....9, 10

Jones v. Wolf, 443 U.S. at 603..... 11

Knight v. Presbytery of W. N.Y., 18 N.Y.2d 868, 870 (1966)..... 11, 12

Moore’s Federal Practice – Civil § 41.40 (2018)..... 9

Mother African Union First Colored Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church, Civ. Action No. 12055, 1991 De. Ch. Lexis 90, at 1 (Ch. May 15, 1991)..... 12

Separate Trials–Discretion of Court, 9A Fed. Prac. & Proc. Civ. §2388 (3d ed.).....8, 9

Seldon v. Singletary, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985).....10, 11

Travelers Exp., Inc. v. Acosta 397 So.2d 733 (Fla. Dist. Ct. App. 1981)..... 8

## STATEMENT OF ISSUE ON APPEAL

1. **WHETHER THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' BIFURCATED COUNTERCLAIMS WITH PREJUDICE, THUS UNCONSTITUTIONALLY DEPRIVING THE APPELLANTS DUE PROCESS?**
2. **WHETHER THE TRIAL COURT ERRED IN DETERMINING OWNERSHIP OF CHURCH PROPERTY?**

## PROCEDURAL HISTORY

In March, 2013, in the Charleston County Court of Common Pleas, Respondents brought this action against Appellants seeking resolution to issues regarding real and personal property and alleging that Payne Chapel Church had taken the property from them. The appellants filed an Answer and Counterclaims denying all allegations by the Respondents.

The Plaintiff's claims regarding the property dispute was non-jury and tried on June 15, 2015 for two days before Judge Nicholson. Prior to the start of the trial, Judge Nicholson and all parties agreed that the Appellant's counterclaims would be bifurcated until a later date to be tried before a jury (ROA 94-97).

Before the start of the trial, Defendants (Appellants) raised to the trial court a Motion for Summary Judgment on the grounds of lack of standing. (ROA 102-106). The motion was denied. At the conclusion of the Plaintiff's case, Defendants renewed their motion to dismiss the case with regard to demonstrating who owns the property, and the motion was denied. (ROA 201-203). At the end of the two-day trial, the motion was renewed and denied. (ROA 391, L. 1-8). Judge Nicholson took the case under advisement to determine who is the highest authority at the RMUE Church, who owns the property presented before the court and encouraged the parties

to mediate the case to resolve the matter. In addition, he ordered the parties to attend mediation to try to resolve all or part of the case.

On August 31, 2015, the parties with their counsels appeared for mediation before M. Dawes Cooke, Jr. After twelve hours of mediation, the parties reached a settlement agreement which was signed by counsels for both parties, but required the approval and signature of the Bishop of the national church. Plaintiffs refused to adhere to the settlement agreement. The parties notified the court of the problems with the mediation and the Defendants were advised to file a Motion to Compel Settlement so that the court may hear the matter. (ROA 82; 592-593). On December 16, 2016, a hearing was held before Judge Nicholson on the motion and an Order was filed on February 10, 2016. The argument that was presented before the court to rule on was whether or not there were authorized members of both sides to settle the claim at the mediation. (ROA 610).

There were several rulings made that were unrelated to the motion hearing as to who would take possession of the properties, including the church, and the fellowship hall. Defendants argue that the trial court did not ascertain who owned the real property, the original trustees, or who had equity in it and never considered that the original title to the property was not in the national church.

On March 10, 2016, Defendants served the Notice of Appeal on Plaintiffs. The lower court case was stayed pending the appeal. On April 4, 2018 the Court, without a Motion to Dismiss or having the case bifurcated as agreed by the parties, entered an Order of Dismissal of the Counterclaims with Prejudice. On March 5, 2018, the Court of Appeals ruled that the case would be returned to the lower court.

On April 4, 2018, the parties appeared before Judge Nicholson and all issues were reopened for argument. (ROA 621-673). After hearing the arguments that the ruling by the lower court on the Church property was improper as the evidence presented only pertained to the cemetery and that the Defendants were denied due process on the bifurcated trial, Judge Nicholson ruled that the full church property belongs to the national church and that the counterclaims would be dismissed without trial.

On April 11, 2018, Defendant's filed and served a Notice of Appeal of the Order.

### **STATEMENT OF THE CASE**

The real property and the church at issue is located at 1560 Camp Road, Charleston, SC consisting of 2.37 acres of land and marsh, a church building, and a fellowship hall. In addition, there is a separate property which contains the cemetery. On January 4, 1884, F.P. Seabrook conveyed the property to St. James Church, James Island. (ROA 396-397; Deed Book G-19, Page 210).

In 1875, Payne Church was established by Rev. Pappy White and the founding fathers of the church. A congregation was organized, a church known as Payne's Chapel R.M.U.E. Church was erected and trustees of the church were elected. A church was built on the property and named "Payne's Chapel", later to be renamed "Payne's Chapel Independent Church". In 1880, Payne's Chapel Independent Church joined the union with the African Methodist Church ("AME"). The church name was changed to Payne African Methodist Episcopal Church.

In 1884, Payne withdrew from the AME, thus becoming "Payne Church". In the same year, the Reformed Methodist Union Episcopal (a union which hereinafter is referred to as "National Church") was formed, which was originally affiliated with the AME Denomination.

On March 27, 1947, St. James Church, James Island, conveyed the property to Wesley Campell, Joe Grant and James Grant, Trustees, their Successor Trustees and Assigns as long as the said premises are used for religious and burial purposes, and that the Trustees herein named and their Successor Trustees hold the within described premises for the use and benefit of Payne's Chapel R.M.U.E. Church as a place of worship of Almighty God. (ROA 398-400; Deed Book P47, Page 159).

On April 8, 1978, the founding trustees recorded a trust deed with the Charleston County Register of Deeds and held legal title to the property. (ROA 398; Trust Deed, Book P47, Page 158). In 1978, Payne Chapel Church obtained a mortgage on the church property.

Payne Church joined the National Church, a denomination and voluntary union that is made up of many churches in counties throughout the states of South Carolina and Georgia. It was governed under their Doctrines and Disciplines. As set out by the Doctrines and Disciplines (ROA 429-430; Doctrine and Disciplines, Pages 32-34), the local church would be provided financial assistance by the national church.

As the national church was not providing financial assistance or meeting their duties (ROA 172-173), and there were ecclesiastical disputes, it had become clear that the national church failed to adhere to the Doctrines and Disciplines. The local church, Payne Church, decided that they disaffiliate with the union and withdrew according to the doctrines and discipline. In fact, as they had not paid their dues to be a part of the union, they were eliminated by the union on December 28, 2012 (ROA 515). As a result of withdrawing, the national church raised a question as to who owns the property and filed a complaint against the Defendant for the property including the church, a cemetery and a fellowship hall.

Payne Chapel, the local church, through their trustees and members, have maintained and controlled the properties. In addition, members of the church who preferred to remain with the National Church left. The local church, Payne Chapel, continued their worship services and use of the fellowship hall on the property. The National Church never constructed, renovated or provided any type of assistance, including but not limited to, financial assistance for the church, the buildings or the cemetery. (ROA 172, 219, 220). Payne Chapel, the local church, completed renovations on the property, they exclusively possessed the property, they paid taxes on the property, church van, the mortgage for the fellowship hall, all without the help of the National Church, even prior to joining the union. The National Church never provided any financial assistance toward the mortgage, property taxes, property insurance, church van or other personal property. (ROA 219, L. 11-25). The only relationship that existed between the parties was a hierarchical relationship, and the relationship ended on December 28, 2012. (ROA 515).

At no time did Payne Chapel, the local church transfer their interest to the union. (ROA 178-179). When the parties notified each other that the local church, Payne Chapel, was no longer a member of the National Church, they did not state to them that they had to leave the property and Payne Chapel remained on the property. According to the Doctrine of Disciplines, it states that in case of a split, the one who remains keeps the property. (ROA 262). The National Church never paid any money toward the property or tried to get back into the church. (ROA 264). The members of Payne Chapel Church still remained and the members of the union moved away. (ROA 265). (ROA 589).

On March 29, 2013, the National Church filed a complaint with the lower court against the local church to obtain possession of the historical property. (ROA 37-43). On April 5, 2013, they filed an Amended Complaint. (ROA 44-50). On April 22, 2013, Appellants filed a Motion to

Dismiss (ROA 51-61). On July 1, 2013, Respondents filed another Complaint against Appellants. (ROA 62-67). On November 8, 2013, the local church, Payne Chapel Church filed an Answer and Counterclaim against the Plaintiffs alleging slander and defamation for falsely stating that the local church converted funds and property not belonging to them and intentionally making statements to cause harm to the local church. (ROA 68-77).

The Plaintiff's claims regarding the property dispute was non-jury and tried on June 15, 2015 for two days before Judge Nicholson. Prior to the start of the trial, Judge Nicholson and all parties agreed that the Appellant's counterclaims would be bifurcated until a later date to be tried before a jury (ROA 94-95).

Before the start of the trial, Defendants (Appellants) raised to the trial court a Motion for Summary Judgment on the grounds of lack of standing. (ROA 102-106). The motion was denied.

During the trial, evidence regarding property was presented to the Court, including a deed for the cemetery. At the conclusion of the Plaintiff's case, Defendants renewed their motion to dismiss the case with regard to demonstrating who owns the property, and the motion was denied. (ROA 201-203). At the end of the two-day trial, the motion was renewed and denied. (ROA 391, L. 1-8). Judge Nicholson took the case under advisement to determine who is the highest authority at the RMUE Church, who owns the property presented before the court and encouraged the parties to mediate the case to resolve the matter. In addition, he ordered the parties to attend mediation to try to resolve all or part of the case. Although a settlement agreement was reached during the mediation, it required the approval of the Bishop of the National Church and was never approved, thereby making the settlement agreement null and void.

Upon motion to the Court, Judge Nicholson reviewed the evidence and made a final ruling declaring the property located on Camp Road which holds the church and the fellowship hall to

belong to the National Church. However, the deed presented to the Court was only for the cemetery and not the remaining properties.

In addition, Judge Nicholson dismissed all of Defendants' Counterclaims despite the agreement at trial that the Counterclaims would be bifurcated to a later date before a jury. As an appeal was pending on the matter, the local court case was stayed pending the appeal. Once the appeal was completed and the case was transferred back to the local court, a hearing was held on April 4, 2018 wherein Judge Nicholson reopened all issues, including the bifurcated trial. (Hearing Transcript ROA 619-674). Despite arguments that his ruling was on a deed presented in evidence was for a cemetery property and not the church and fellowship hall, he left the property in the hands of the non-owners, the national church.

In addition, it was argued that the counterclaims should not have been dismissed. Although the court had bifurcated the counterclaims to a later date (ROA 94-95), he made a unilateral decision to dismiss the counterclaims with prejudice without an opportunity for argument or a motion to dismiss the counterclaims, thereby denying the Defendants due process to have their claims tried by jury. (ROA 619-674).

### ARGUMENT

#### **I. The court erred in dismissing with prejudice the bifurcated counterclaims without cause, thus unconstitutionally depriving the Defendants of due process.**

When defining the appeal ability of a counterclaim, the court must first determine whether the claim is permissive or compulsory. The court in *Cunningham* defines a compulsory counterclaim as any claim which at the time of serving of the pleading the pleader has against the opposing party, provided it arises out of the transaction or occurrence that is the subject matter of the opposing claim. The court defines permissive counterclaims as any claim against an opposing

party not arising out of the transaction or occurrence that is the subject matter of the opposing parties claim. *Cunningham v. MBNA Am. Bank, N.A.*, 8 So. 3d 438, 441 (Fla. Dist. Ct. App. 2009).

The rule to determine the “logical relationship” test was determined by the court in *Travelers*. Here, the court determined that the relationship is established if (1) that the same aggregate of operative facts serves as the basis for both claims or (2) that the aggregate core of facts upon which the original claim rests activates additional legal rights in a party Defendant that would otherwise remain dormant. When a matter is properly as a mandatory counterclaim, rather than a permissive counterclaim, it is an error to dismiss it as such. *Travelers Exp., Inc. v. Acosta*, 397 So. 2d 733 (Fla. Dist. Ct. App. 1981).

The district court has provided a useful analytical blueprint and stated that the decision to bifurcate a trial is a practical one and should be examined on a case-by-case basis according to the following factors: (1) convenience, (2) prejudice, (3) expedition, (4) economy, (5) whether the issues sought to be tried separately are significantly different, (6) whether they are triable by jury or the court, (7) whether discovery has been directed to a single trial of all issues, (8) whether the evidence required for each issue is substantially different, (9) whether one party would gain some unfair advantage from separate trials, (10) whether a single trial of all issues would create the potential for jury bias or confusion, and (11) whether bifurcation would enhance or reduce the possibility of a pretrial settlement. *2388 Separate Trials—Discretion of Court, 9A Fed. Prac. & Proc. Civ. § 2388 (3d ed.)*

Courts have adopted a three-step test to determine whether to bifurcate a trial: “First, the trial judge must determine whether separate trials would avoid prejudice to a party or promote judicial economy. Only one of these criteria—avoidance of prejudice or judicial economy—need be met before a court can order separation. Next, the court must be satisfied that the decision

to bifurcate does not unfairly prejudice the non-moving party. Finally, separate trials must not be granted if doing so would violate the Seventh Amendment. § 2388 *Separate Trials—Discretion of Court*, 9A Fed. Prac. & Proc. Civ. § 2388 (3d ed.)

The local church, Payne Chapel Church, was not given the opportunity to be heard by the judge or jury. The judge and the parties agreed that the counterclaim would be bifurcated to a later date, but it was ultimately decided that the claims would be dismissed with prejudice. The judge's decision to bifurcate the counterclaims was not based on past precedent set by courts. The decision does not satisfy any of the above referenced tests established by the courts, thus making the bifurcation unreasonable and appealable by the plaintiff.

**II. Defendant is not barred from action because the merits were not addressed within the final order, which was dismissed with prejudice.**

Generally, dismissal of an action with prejudice is a complete adjudication of the issues presented by the pleadings and is a bar to further action between the parties. *Colonial Auto Ctr. v. Tomlin (In re Tomlin)*, 105 F.3d 933, 936-37 (4th Cir. 1997). The decision to grant or deny a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court. However, the scope of the court's discretion does not excuse its acting arbitrarily or failing to exercise any discretion at all. 8 *Moore's Federal Practice - Civil* § 41.40 (2018). Nevertheless, when the dismissal with prejudice does not dispose of the entire litigation, the court may inquire as to whether the remaining parties would be prejudiced by a dismissal with prejudice. *Id.* Furthermore, an exception to the rule regarding final orders that are dismissed with prejudice exists as an alternate remedy.

Customarily, a party may not appeal the dismissal of his suit with prejudice. *Himler v. Comprehensive Care Corp.*, No. 92-1672, 1993 U.S. App. Lexis 10032, at 1 (4<sup>th</sup> Cir. 1993).

However, an exception to this general rule exists when the dismissal is with prejudice and designed on to expedite review of a prior order having the effect of a dismissal. *Id.* In such circumstances, the party may appeal the underlying order. *Id.* Thus, to determine whether this exception applies to this case, the court must determine whether an order effectively dismisses a case. *Id.*

Even though the case has been dismissed with prejudice, the claimants are not barred from asserting future claims. The sole issue decided upon from the court regards the quitclaim deed concerning the cemetery property owned by the corporate entity, Payne Church. Therefore, the issue concerning the actual church building, fellowship hall and property that the buildings are on, along with the Defendants' Counterclaims have not been resolved. Accordingly, since the merits have not been addressed, the Defendants' claims are not barred from future action.

The lower court attempted to expedite the Payne Church litigation through a dismissal with prejudice because the appearance of the case was that it was resolved through settlement of all the church's real and personal property. Nevertheless, the only piece of property whose ownership was ordered on was the cemetery property, leaving the Fellowship Hall and church's real and personal property ownership unsettled. Because the local church, Payne Chapel Church, was not given adequate due process due to the lack of a hearing on the counterclaim, the claimants were not afforded their constitutional right to procedural due process.

**III. If the Court decides the property dispute is deemed an ecclesiastical matter, Payne Church's trustees have ownership of the church's real and personal property in addition to the Fellowship Hall.**

"Religious organizations are generally divided into two groups: (1) congregational churches and (2) hierarchical churches." *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). Our supreme court has explained the differences between the two types of churches:

A congregational church is an independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government, while a hierarchical church may be defined as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head. Under the congregational form of government . . . the local church is not subject to the control of any higher ecclesiastical judicature and is self-governing in its religious functions. *Id.* at 149-50, 326 S.E.2d at 148-49. Our supreme court elaborated on how congregational churches function in *Williams v. Wilson*: 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. *Williams*, 349 S.C. at 342, 563 S.E.2d at 323.

Possession of the church's real and personal property is resolved once the trustees have been identified. The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body. *Knight v. Presbytery of W. N.Y.*, 18 N.Y.2d 868, 870 (1966). The state has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of the real and personal property of the church can be determined conclusively. *Jones v. Wolf*, 443 U.S. 595, 597 (1979).

A court may not delve into ecclesiastical matters unless it can do so "without deciding issues of religious law, principle, doctrine, discipline, custom, or administration." *Clark v. Moore*,

2014 S.C. Unpub. LEXIS 35. The First Amendment to the United States Constitution forbids civil courts from deciding church's real and personal property disputes on the basis of religious doctrine and practice. *Id.* The courts must resolve such disputes only on the basis of "neutral principles of law," without considering church doctrinal matters. *Id.* Under a neutral principles approach, a civil court may consider and resolve the church's real and personal property disputes on the basis of sources such as state statutes, church corporate charters and constitutions, and the language of trusts, deeds and similar granting instruments. *Mother African Union First Colored Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, Civil Action No. 12055, 1991 Del. Ch. LEXIS 90, at 1 (Ch. May 15, 1991).

If the lower court was correct in deciding the ownership of the church's real and personal property was in fact an ecclesiastical matter, then based on the Judiciary Code within the RMUE disciplinary manual, the Defendants, Payne Chapel Church's trustees own the Fellowship Hall and the church's real and personal property according to *Knight*. Nevertheless, Payne Church has solely financed and paid the mortgage on the church's real and personal property while Payne RMUE, the National Church, alleges ownership of the disputed church's real and personal property. Furthermore, Payne Church is represented by trustees within the RMUE ecclesiastical body before splitting from RMUE.

**IV. If the disputed property is deemed a non-ecclesiastical matter, the court can apply the *Adickes* test in ordering Defendant to be the rightful owner of the church's real and personal property and Fellowship Hall.**

The question of ownership in the church's real and personal property after a schism has occurred is an unfortunate issue churches may face. When a division occurs in a church congregation, the question as to which faction is entitled to the church's real and personal property

is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism. *Adickes v. Adkins*, 264 S.C. 394, 398 (1975). It is a question of identity. *Id.* The Supreme Court of South Carolina has traditionally avoided any intrusion upon religious matters; however, the court has accepted the findings of the appropriate church judicatory as to the matter of identity. In so doing, it applies neutral principles of law. *Id.*

The local church, Payne Chapel Church, is the owner of the real and personal property of the church as well as the Fellowship Hall. Payne Church has been consistently making payments on the mortgage, and the national church, Payne R.M.U.E., has failed to do so even though they claim ownership of the church's real and personal property in dispute and the Fellowship Hall. Historically, Payne Chapel Church has owned the disputed church's real and personal property, which dates back to the two acres of property deeded from Saint James Church to Payne Church in 1879 for the purpose of a place of worship for the Almighty God." Originally, Payne Church trustees and members, whom at the time were RMUE members, were removed from their Church by Bishop Polite, now deceased. Payne RMUE National is alleging ownership of the church's real and personal property, which was and currently owned by Payne Church.

Furthermore, Payne RMUE National unjustly benefitted from alleged ownership of the Fellowship Hall and church's real and personal property. The local church, Payne Chapel Church, has continually paid the mortgage on each piece of property Payne RMUE National allegedly owns. Ultimately, the question of whether the corporate entity, Payne Church, owns the alleged Payne RMUE Church property does not fall into the category of ecclesiastical matters. These property disputes can be addressed through adjudication of Payne Church's counterclaim, which was dismissed without proper due process since the counterclaims were never heard.

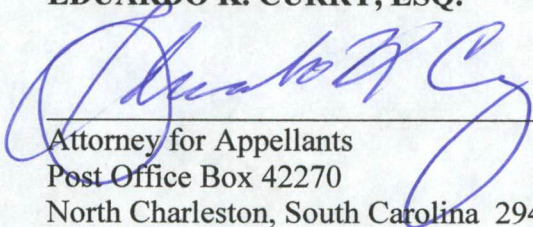
**CONCLUSION**

The lower court failed to address the counterclaim in a requested jury trial when the case was bifurcated. Furthermore, even though the lower court's final order was dismissed with prejudice, the counterclaim was not ordered on the merits. Nevertheless, the local church, Payne Chapel Church trustees are the rightful owners of the Fellowship Hall and the real and personal property of the church that Plaintiff claims possession of. In addition, Defendants have been unjustly denied procedural due process due to the lack of hearing and jury trial on their counterclaims.

Wherefore, the Order of April 5, 2018 should be overturned ruling that the church real property, personal property and fellowship hall belong to the local church, Payne Chapel Church, and that the Defendants should be afforded the opportunity to a jury trial on their counterclaims.

**RESPECTFULLY SUBMITTED,**

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