

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

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Court of Common Pleas

JUN 19 2019

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

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 Deaton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keaton, 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

RESPONDENTS' FINAL BRIEF

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**STATEMENT OF THE ISSUE ON APPEAL**

Whether further litigation of this case is barred by res judicata and lack of jurisdiction, because the case was fully decided by the parties' settlement, the Circuit Court's 2016 final Order and the subsequent appeal to the Court of Appeals and Appellants have failed to preserve their issues for appeal?

## STATEMENT OF FACTS AND STATEMENT OF THE CASE

In order to understand the current appeal, a discussion of the entire history of the case is necessary. The factual and procedural facts of this case are interconnected, and Respondent feels it would aid the Court in treating them together. At the outset, Respondent nearly completely disagrees with Appellants' statement of the facts. Unless a fact stated by Appellant is supported by the record, Respondents submit it is neither supported by the record nor accurate. This case involves a church dispute and real estate dispute, but the narrow issue before the Court now is whether the case was ended by the Circuit Court's final order in 2016 and subsequent appeal.

### *Statement of Facts*

The R. M. U. E. Church is an old African American church with deep roots in South Carolina. Part of the property in question was acquired in 1978. Beulah Grimbball Robinson conveyed the property to George Richardson, Henry Robinson, Raymond Murray, Joseph Grant, John W. Prioleau, Alfred Bright, Wesley E. Goudine, Wesley A. Moore, James Fleming, Hezekiah Brown, Jr., & Willie Pinckney, As Trustees for Payne's Chapel R. M. U. E. Church by Deed duly executed and recorded in the Charleston County Register of Deeds. (ROA 401-404)

The Deed contained certain covenants and restrictions and they are, verbatim, as follows:

The property is subject to the easements, rights-of-way and zoning regulations of record. The property is also subject to the following Restrictive Covenants running with the land and capable of being amended only by the Grantor, Beulah Grimbball Robinson, or if she be deceased, by a majority of her heirs and assigns consisting of an interest of greater than fifty (50%) per cent of the heirs as established under the Statute of Descent and Distribution:

1. That no portion of the premises be used for a cemetery or graveyard until such time as the full purchase price of the subject property with interest is paid to the Seller.
2. That the only entrance to the property will be on the road marked as private road on the plat recorded in Plat Book J, Page 89, and that the said entrance will be at least Three Hundred (300') Feet from Grimbball Road.
3. That the property will be restricted to church (including graveyard) farm or single family use and that no noxious or offensive activity shall be carried on upon any of the said

property nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, and without limiting the generality of the foregoing, the following specific prohibitions are imposed upon the said property.

- a. No paper or trash may be burned except in an incinerator.
- b. No unsightly accumulation of trash or refuse may be contained thereon.
- c. No house trailers or trucks having a size of greater than a one (1) ton capacity may be kept permanently or temporarily on said property.
- d. No portion of any building or structure shall be used for a place of business or for other commercial, business or quasi-business purposes.
- e. No grass, weeds, underbrush or other similar vegetations shall be allowed to grow or be permitted on any portion of the said property which is more than eight (8") inches higher than the ground level of said property.

The habendum clause also contains conditions which are, verbatim, as follows:

To have and to hold all and singular, the said Premises before mentioned unto the said George Richardson, Henry Robinson, Raymond Murray, Joseph Grant, John W. Prioleau, Alfred Bright, Wesley Goodine, Wesley A. Moore, James Fleming, Hezekiah Brown, Jr., & Willie Pinckney, As Trustees for Payne's Chapel, R. M. U. E. Church, their Successors and Assigns forever, for the use and benefit of Payne's Chapel R. M. U. E. Church, to pay taxes, mortgage, hypothecate, to insure and to hold for Church and/or investment purposes, and to make improvements or dispose of the property as directed by a majority of the legal voters of the Church, and to act under the authority and discipline of the Doctrines and Disciplines of the Reformed Methodist Union Episcopal Church, dated May 1972.

(ROA pp. 401-404)

In the last few years, the Payne R. M. U. E. Church has been embroiled in controversy involving some of its members. The controversy is described by the record of the trial in this case before Judge Nicholson. The controversy within the Payne R. M. U. E. congregation began when former Bishop Fred Henderson Moore led a revolt. Fred Henderson Moore was the Bishop of the R. M. U. E. As the time for election of a new Bishop approached, he purported to cancel the election and make himself Bishop for life. Bitterness and litigation ensued. *See eg. Barbara Clark, et al vs. Moore*, Memorandum Opinion No: 2014-MO-034. Moore was removed as Bishop by a R. M. U. E. Church tribunal. Moore thereafter purported to appoint and license "Reverend" Thomas Junious, who then purported to appoint various Payne R. M. U. E. church officers, including Willie J. Parker, Remus Cromwell and Jacqueline R. Miller.

The next event relevant here occurred on March 25, 2013, when a group of dissenters, led by Herman Bolds and Derrick Lucas, notified the R. M. U. E. leadership that they were withdrawing from the church, effective March 25, 2013. The significant members of this group were Willie J. Parker, Jr., Jacqueline R. Miller and Remus Cromwell (ROA 507) One day later, on March 26, 2013, Payne Church was formed with the South Carolina Secretary of State as a nonprofit corporation.

Next, on March 27, 2013, Remus Cromwell, Jacqueline R. Miller and Willie J. Parker, purportedly as Trustees of Payne's Chapel R. M. U. E., executed a Deed purportedly conveying that part of the property to Trustees of Payne Church. The Deed does not identify the trustees of Payne Church. The granting clause does not identify the trustees of Payne Chapel R. M. U. E. Church. The signature section does not state "Payne Chapel R. M. U. E. Church" and there is an Acknowledgment for only one of the three signatures. The Deed was recorded in the Office of the RMC for Charleston County in Book 322 at Page 156. (ROA 508-512)

The Discipline is clear that, in the event of a schism, the church property remains with the remaining congregation. (ROA 430) It is undisputed that Payne R. M. U. E. has continued to exist, without interruption, holding its services in a borrowed facility. (ROA 187-188) There is no provision for a new church to take the Church's property against the will of the remaining members. While there is no provision for a majority vote of the congregation to take the Church property, such a vote did not even occur. *See eg.* ROA 408-502.

### *Statement of the Case*

Litigation ensued thereafter with the filing of the Plaintiffs' Summons and Complaint on March 29, 2013. (ROA 37-43) The Plaintiffs filed an Amended Summons and Complaint on April 5, 2013. (ROA 44-50) The Defendants filed a Motion to Dismiss on April 22, 2013. (ROA 51-61) The Plaintiffs filed a second action styled Payne R. M. U. E. Church vs. Payne Church, a corporation, on July 1, 2013. The Court consolidated both cases via Order filed October 6, 2013. (ROA 27-28) The Defendants filed an Answer and Counterclaim for both cases on November 8, 2013. (ROA 68-77) The Plaintiff filed a Reply to the Counterclaim on November 21, 2013. (ROA 78-81) The Court found the case was appropriate for Complex Case Designation and assigned the case to the Honorable J. C. Nicholson, Jr., by Order filed December 17, 2013. (ROA 29)

The Court next held a lengthy, non-jury trial. At the conclusion of the trial, the Court ordered the parties to mediate the case and mediation took place on August 31, 2015. After mediation, the parties entered into a written Settlement Agreement which was signed by counsel for both parties. Section 1 of the Settlement Agreement states: "Payne Church will re-align with RMUE." (ROA 675-676) The parties subsequently had a disagreement over on contingency in the Settlement Agreement which resulted in the Defendants filing a Motion to Enforce Settlement Agreement on November 19, 2015. (ROA 82-88) The Court held a hearing and issued an Order filed February 10, 2016. The Order essentially adopted the Settlement Agreement and made it the Order of the Court. The Order contained the following section that is the issue on this appeal:

While I fervently hope that the issue is moot, I have decided to rule upon the issue of title to real estate. It was indicated that the Church itself may have pre-existed the R. M. U. E. affiliation. However, the real estate was deeded to Payne's Chapel R. M. U. E. Church. Payne R. M. U. E. Church still exists. Nothing has transpired to validly change title. Specifically, the Quitclaim deed was signed by persons who were no longer members of Payne R. M. U. E. Church. The real estate of Payne R. M. U. E. Church is confirmed and quieted in favor of Payne R. M. U. E. Church, a/k/a Payne's Chapel R. M. U. E. Church

The Court next ruled on March 3, 2016, that Appellants' (the Defendants') counterclaims were dismissed with prejudice. (ROA 34-36) No appeal or motion for reconsideration was ever filed in regard to this Order.

The Defendants/Appellants filed their Notice of Appeal on March 10, 2016, and the case was litigated in the Court of Appeals. The Court of Appeals affirmed Judge Nicholson's Order on March 5, 2018, and remittitur was filed with the Circuit Court. Appellants then sought to revive the case, although no pleading in the record reflects the same. Judge Nicholson ruled that the case was over by Order dated April 5, 2018, and Appellants then filed their Notice of Appeal.

### **ARGUMENTS**

- A. Appellants' claims are barred by res judicata, because this case has been fully decided by a settlement among the parties, the Circuit Court's Order enforcing the settlement and the Court of Appeals' decision affirming the Circuit Court Order.***

Appellants seek to relitigate a case which was ended in 2016 and Judge Nicholson's Order should be affirmed on the grounds of res judicata and lack of jurisdiction. Respondents submit that the issues which Appellants seek to litigate were decided, or waived, in Appellants' previous appeal to this Court, and that this Court's decision in the previous appeal is final and not subject to further review.

This case has been pending since 2013, although the controversy among the parties has been going on much longer and has been much litigated in the Courts. The present case (and the prior appeal) arose out of an Order of Judge Nicholson which, ironically, actually granted Appellants' Motion to Enforce Settlement Agreement. After intensive mediation, the parties had reached a settlement of the case, which Appellants moved to enforce, due to the Respondents' failure to formally ratify the agreement. Judge Nicholson granted Appellants' motion, and

Appellants appealed that Order. The case was decided by this Court and Judge Nicholson's Order was affirmed. (ROA 34-36)

The doctrine of res judicata originated in the public interest of bringing an end to litigation. Res judicata precludes the parties and their privies from relitigating an issue decided in one case in a subsequent case. *See eg. Price vs. City of Georgetown*, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1985). Pursuant to South Carolina Appellate Court Rule 221(a): "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240 and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR." In order to raise an issue on appeal, a party must timely raise the issue below. Lack of subject matter jurisdiction cannot be waived and can be raised at any time and in any forum. *See eg. Bardeen Properties vs. Eidolon Corporation*, 326 S.C. 166, 485 S.E.2d 371 (1997)

In the present case, Appellants simply seek to continue to litigate matters which were settled by mediation, ruled upon by Judge Nicholson and then affirmed by this Court. Appellants seem to take the position that the settlement agreement did not involve all issues and that Judge Nicholson reserved some issues for further litigation. Nothing in the settlement agreement, nor Judge Nicholson's Order suggests that the issues Appellants now raise were reserved for later. Nothing in the record prior to the entry of this Court's prior decision reflect the issues which Appellants now raise. Appellants raise their new issues outside the time for a motion for reconsideration by this Court and outside the time for reconsideration by the Circuit Court. Being outside such time limits, neither the Circuit Court, nor even this Court, have the jurisdiction to

consider new issues. This argument is made with all due respect to both this Court and to Judge Nicholson. Appellants cannot relitigate matters finally decided and, assuming they did not raise these issues, they were waived and not preserved for review in the prior appeal. For these reasons, this Court should dismiss the current appeal and, hopefully, bring an end to this long and protracted litigation.

***B. Appellants failed to raise either of their issues on appeal before the Circuit Court or in a Rule 59 motion.***

Appellants raise two issues in this appeal. The first issue is whether the Circuit Court deprived Appellants of due process by dismissing their bifurcated counterclaims with prejudice. The second issue is whether the Circuit Court erred in determining ownership of church property. Neither one of these issues was raised by Appellants in a Rule 59 Motion. *See eg. Jones vs. State Farm Mutual Auto Insurance Co.* 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005) (An issue is not preserved for appellate review where the trial court does not explicitly rule on it and the appellant does not raise it in a Rule 59(e) motion to alter or amend the judgment.) The Circuit Court's 2018 Order speaks for itself. Judge Nicholson noted that what the [Appellants] fail to realize, or acknowledge, is that when they mediated the case they settled all issues, including [Appellants'] counterclaims. 1 [sic] As a result, this case is over." (ROA 1-26). Appellants did not raise their Constitutional concerns in a Rule 59 Motion to the initial Order dated March 3, 2016 dismissing the counterclaims or the 2018 Order. The property issue was the principal subject of the prior appeal. Appellants' claims were not preserved for appeal and should be dismissed.

CONCLUSION

The present case was ended in 2016 by a settlement agreement, then by Judge Nicholson's 2016 Orders, then by the South Carolina Court of Appeals and now needs to be ended once and for all. Appellants' position that the settlement and prior litigation was somehow intended to leave issues unsettled strains imagination. Appellants' latest efforts at continuing the litigation are barred by res judicata. Appellants' claims were not preserved for appeal because they were not explicitly ruled upon by Judge Nicholson in his 2018 Order nor raised by Appellants in a Rule 59 motion. This Court should affirm Judge Nicholson's Order affirming the ending of the entire case and allow all of the litigants to get on with their lives.

Respectfully submitted this 17<sup>th</sup> day of June, 2019



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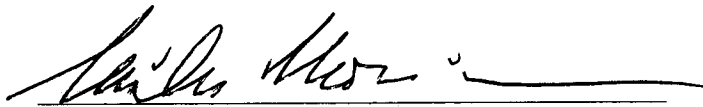
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CERTIFICATE OF COUNSEL

I certify that Respondent's Final Brief complies with Rule 211(b) of the SCACR.

Dated: June 17, 2019



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