

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2013-002236

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SC Court of Appeals

Samuel L. McPherson, as Presiding Elder of the
Abbeville-Greenwood District of the African
Methodist Episcopal (A.M.E.) Church *Appellant-Respondent,*

v.

Henry Banks, Mary Robinson, Delois Phillips,
Naomi Mattison, and Frank Mattison *Respondents-Appellants.*

FINAL BRIEF OF RESPONDENTS-APPELLANTS

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STATEMENT OF ISSUES ON RESPONDENTS-APPELLANTS' APPEAL

Did the trial court err in granting the 13.1-acre tract to Appellant-Respondent?

STATEMENT OF THE CASE

On October 15, 2013, Appellant-Respondent Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal ("AME") Church (hereinafter referred to as "Appellant-Respondent" or "McPherson"), filed his Notice of Appeal (filed July 22, 2013), stating that he appeals the trial court's June 27, 2013 Order and Judgment (*see* Record on Appeal ["R."] pp. 14-21)¹ and the trial court Orders dated October 13, 2013 (R. p. 26) and October 15, 2013.

Prior to the filing of his Notice of Appeal, on September 6, 2013, the trial court denied McPherson's Motion to Alter or Amend the Judgment. (R. pp. 22-23.) On September 24, 2013, the trial court denied McPherson's Motion to Take Depositions Pending Appeal. (R. pp. 24-25.) The trial court also denied McPherson's motions to alter or amend the September 11, 2013 and September 24, 2013 Orders. (R. p. 26.)

On October 16, 2013, Respondents-Appellants Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison (hereinafter referred to as

¹The Final Brief cites the Record on Appeal filed by the Appellant-Respondent's former attorney on June 25, 2014. This is the only full Record on Appeal served on Respondents-Appellants. A Supplemental Record on Appeal was filed on November 18, 2014, which only contained two court filings missing from the June 25, 2014 Record on Appeal.

"Respondents-Appellants" or "Rockford Church") filed a Cross-Appeal on the ground that the trial court erred in its June 27, 2013 Order when it ordered that the national AME Church, Inc., held equitable title to the 13.1 acres tract of land.

STATEMENT OF THE FACTS

Respondents-Appellants are long-time members of Rockford Church, a small rural church located in McCormick County, Mt. Carmel, South Carolina. For many years, Rockford Church was affiliated with the national African Methodist Episcopal Church, Inc. ("AME Church, Inc."), with which McPherson is affiliated and is currently serving as the presiding elder of the Abbeville-Greenwood District of the AME Church, Inc. (R. p. 14.) While it was affiliated with the national church, Rockford Church was sometimes referred to as "Rockford (AME) Church." (R. p. 14.) The AME Church, Inc., is a national hierarchical church connected with several local churches. (R. p. 14.) The local churches are organized into districts, and each district is supervised by a presiding elder. (R. p. 14.) The bylaws of the national AME Church, Inc., are set forth in the Book of Discipline of the African Methodist Episcopal Church (the "Book of Discipline"). (R. p. 14.)

Rockford Church is no longer affiliated with the national AME Church, Inc., and has not been since 2011. (R. p. 15.) In 2010, a dispute arose between members of Rockford Church, including the individual Respondents-Appellants, and the national AME Church, Inc. Members of Rockford Church objected to the national

church's unrelenting demands for money from Rockford Church, as well as other poor rural churches, while at the same time the national AME Church, Inc., failed to provide support and assistance to Rockford Church and other rural churches. (R. pp. 14-15, 189-90.) Concerned members of Rockford Church informed McPherson, as the presiding elder of the national church, about their concerns, but McPherson did nothing to address the concerns raised. (R. pp. 41; 73, lines 23-25; 194; 197; 201.)

The national AME Church, Inc.'s lack of support for Rockford Church in particular was evident by the national church's refusal to assist Rockford Church in making basic structural repairs to its aging and decrepit physical church property. (R. pp. 189-90.) For this reason, beginning in late 1990s, members of the Rockford Church could no longer rely on the national church for assistance. Instead, the individual church members made special inter vivos gifts directly to the Rockford Church. (R. pp. 186, 190.) These gifts were specifically earmarked to the Rockford Church Building Fund so that the monies would be used only to make the necessary repairs and improvements to the Rockford Church sanctuary and to build up a savings account, with the eventual goal of building a new and more secure church building. (R. pp. 197-99, 201.) These building funds were intended for the exclusive purpose of repairing and improving the Rockford Church sanctuary and for no other purpose. (R. pp. 199, 201.)

In addition, in 2010 the members of Rockford Church transferred the Deed to the Rockford Church property to the Rockford Church Trustees, who were no longer

affiliated with the national AME Church, Inc., and fully recorded the Deed transfer in Book 232 of Deeds, in the Auditor's Office of the McCormick City, South Carolina. (R. p. 416.)

McPherson then sued Respondents-Appellants for injunctive and declaratory relief. (R. pp. 31-35.) Although the national AME Church, Inc., refused to assist the Rockford Church in any way, it also refused to let the local church assist itself. In the Complaint filed by the national AME Church, Inc., through McPherson as the presiding elder of the Abbeville-Greenwood District of the AME Church, Inc., it was alleged that the Respondents-Appellants were not members of the Rockford Church, and that Rockford Church's real and personal property was held in trust for the national AME Church, Inc., as provided in the Book of Discipline. (R. pp. 33-34.)

After numerous motions were filed before the trial court, and after hearing from both parties on cross-motions for summary judgment, the trial court, in its June 27, 2013 Order, addressed the remaining issues between the parties, which concerned the ownership between the national AME Church, Inc., and Rockford Church of two tracts of real property—a 4.5-acre tract and a 13.1-acre tract—and the Building Fund bank account. The 4.5-acre tract is the tract upon which sits the Rockford Church sanctuary. (R. p. 15.) The 13.1-acre tract sits adjacent to the 4.5-acre tract and was acquired later, in 1998. (R. pp. 15, 411-14.)

On June 27, 2013, the trial court held that it had subject-matter jurisdiction over the parties' property disputes under South Carolina's neutral principles of law

without violating the First Amendment of the U.S. Constitution. (R. p. 17.) It further held that the legal and equitable title to the 4.5-acre tract is owned by the local Rockford Church, not by the national AME Church, Inc., as per the Deed held in Abbeville County, and that there was never an express trust in favor of the national AME Church, Inc., as to the 4.5-acre tract of land. (R. p. 18.) Likewise, the trial court held that the local Rockford Church is both the legal and equitable owner of the Building Fund bank account, which, at the time of the Order, was being held in escrow by the McCormick County Clerk of Court. (R. p. 19.) The court also held that the national AME Church, Inc., holds equitable title, but not legal title, to the 13.1-acre tract of land as of 1998. (R. p. 19.) This ruling is the subject of Respondents-Appellants' Cross-Appeal.

ARGUMENT

THE TRIAL COURT ERRED IN CONCLUDING THAT THE NATIONAL AME CHURCH, INC., HOLDS EQUITABLE TITLE TO THE 13.1-ACRE TRACT.

Despite a lack of evidence that the second tract of land, the 13.1-acre tract, was ever deeded to the national AME Church, the trial court erroneously and inexplicably ordered that the national AME Church, Inc., holds equitable title to the 13.1-acre tract and, further, that "the AME Church is the beneficiary of an express trust and holds equitable title to the 13.1 acre tract." (R. p. 19.) Under the neutral principles of law,

the trial court's conclusion is unsupportable under the relevant law and evidence in the record and should be reversed at this time.

The larger, 13.1-acre tract of real property at issue was purchased for \$25,000 in 1998 by Rockford (AME) Church, at a time when Rockford Church was affiliated with the national AME Church, Inc. (R. p. 411.) The property is adjacent to the 4.5-acre tract of land upon which the Rockford Church sanctuary is built. (R. p. 15.) The purchased real property was duly recorded in the McCormick County Clerk of Courts on December 21, 1998 in Book 141 of Deeds, page 18. (R. pp. 411-14.) The Deed states that the 13.1-acre tract is held by the "Trustees for Rockford African Methodist Episcopal Church in Trust for the African Methodist Episcopal Church, Inc." (R. p. 411.) The deed language reflects the facts that at the time of the purchase, Rockford Church was affiliated with the national AME Church, Inc., and that the national church, pursuant only to the Book of Discipline, required such a designation. (R. p. 16.)

As the South Carolina court states, "To prove the existence of a trust, the following elements must be shown: (1) a declaration creating the trust, (2) a trust res, and (3) designated beneficiaries. Furthermore, the trust declaration must be in writing when the trust property includes realty." *Foster v. Foster*, 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009), *aff'd*, 393 S.C. 95, 711 S.E.2d 878 (2011). In *State v. Jackson*, 338 S.C. 565, 527 S.E.2d 367 (2000), the court states that an enforceable trust instrument must also demonstrate that the property is being transferred with the

intention that the property be administered by the trustees for another's benefit. This means that "the transferor of the property must intend that the trustee will act for the transferor's benefit instead of on his own behalf." *Id.* at 570, 527 S.E.2d at 370.

Consistently with South Carolina law, the commentators in *Corpus Juris Secundum* emphasize the importance of preparing a sufficiently detailed expression of trust before a trust can be enforced. Specifically:

A declaration of trust is a conveyance of an equitable interest. To prove the existence of a trust, a declaration creating the trust must be shown. A sufficient declaration of trust is essential to the creation of an express or voluntary trust, which, when the statute so requires, must be in writing. Such trusts are generally created by an instrument or instruments pointing out directly and expressly the property, persons, and purpose of the trust, or by an agreement or contract between the parties expressing the intended trust. The declaration must contain sufficient words to create the trust, and it must embody all the essential elements of a trust. It must express the intention to create a trust and state with certainty the terms, subject, persons, and object of the trust. The trustee must be authorized and directed to perform certain duties and assume certain obligations. A trust, whether of real or personal property, is created as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty an intention on the part of the trustor to create a trust and the subject, purpose, and beneficiary of the trust.

90 C.J.S. *Trusts* § 38 (Westlaw database updated Mar. 2014) (footnotes omitted).

The trial court's conclusion that the 13.1-acre tract is held in trust by the national AME Church, Inc., is completely inconsistent with South Carolina law on trust instruments. While the 1998 Deed includes some trust language, no actual trust occurred. The Deed reflects that the transferor, Rockford (AME) Church, transferred the property in trust to the national AME Church, Inc. (R. p. 141.) Under the alleged

trust, the national AME Church, Inc., was required to act for the transferor's benefit and not on its own behalf. Yet it is unequivocal in the record that the national AME Church, Inc., failed to act for the benefit of the Rockford Church and, to the contrary, acted in ways that were severely detrimental and harmful to the well-being and future viability of the small rural church.

It is axiomatic under trust law that the creation of an enforceable trust requires more than mere language in a deed. There must be evidence that the trustee will perform certain duties to benefit the transferor. These trustee obligations are not stated in the Deed for the 13.1-acre tract, and it is uncontested that the national AME Church, Inc., did nothing to benefit the transferor. The trial court conclusions do not reflect the proper application of trust law, and they inexplicably fail to incorporate uncontested facts into its analysis of the actual legal ownership of the 13.1-acre tract. For these reasons, the trial court's conclusion that the national AME Church, Inc., holds some sort of title on this real property should be reversed.

Additionally, the trial court's conclusions regarding the 13.1-acre tract erroneously rejects the actual transfer of this property in 2010 from the Rockford (AME) Church to the Rockford Church, reflecting the rural church's split from the national AME Church, Inc. (R. p. 416.) The trial court, in a footnote dicta sua sponte suggests that this transfer could possibly establish a constructive trust in favor of the national AME Church, Inc. (R. p. 19.) This is in error under South Carolina law. A constructive trust "results from fraud, bad faith, abuse of confidence, or violation of

a fiduciary duty which gives rise to an obligation in equity to make restitution. It is resorted to by equity to vindicate right and justice or frustrate fraud." *Carolina Park Assocs. v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012) (citation omitted) (internal quotation marks omitted). The trial court made no factual findings to support even a suggestion of a constructive trust in the present case. Furthermore, South Carolina precludes the imposition of a constructive trust to be raised for the first time through a postjudgment motion. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (2009).

In conclusion, the trial court erred in holding generally and without any factual basis that the national AME Church, Inc., has or may have an equitable title in the 13.1-acre tract of real property. No actual trust in favor of the national AME Church, Inc., was ever established because the national AME Church, Inc., never acted in a way that could be interpreted as benefiting the transferor. Further, the property was officially transferred to the newly independent Rockford Church. Equitable title, in contrast, is an equitable designation applied rarely and only when a right or interest in property, arising out of a valid contract or relationship, reflects the actual circumstances of the parties. "[Equitable title] does not arise from a naked promise of purely moral obligation." 30A C.J.S. *Equity* § 56 (Westlaw database updated Mar. 2014).

The trial court fails to designate any supporting facts or evidence to support its alternative conclusion that the national AME Church, Inc., holds equitable title in the

13.1-acre tract. For each of these reasons, the trial court's conclusion regarding title to the 13.1-acre tract should be reversed at this time. Respondents-Appellants respectfully request this Court to enter an order that the 13.1-acre tract is owned by, and properly titled to, the Rockford Church.

CONCLUSION

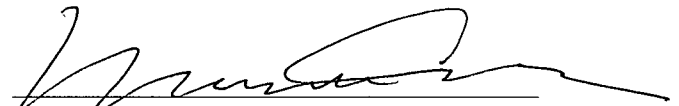
For each of the reasons stated herein, Respondents-Appellants respectfully request this Court to enter an order reversing the trial court's June 27, 2013 Order on its conclusion that the national AME Church, Inc., holds an equitable interest in the 13.1-acre tract of land and granting whatever further relief the Court deems just and proper at this time.

Dated: December 4, 2014

Respectfully submitted,

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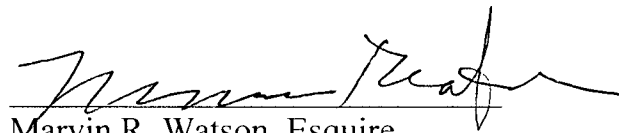
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CERTIFICATE OF COMPLIANCE

Respondents-Appellants hereby certify that the Final Brief of Respondents-Appellants fully complies with Rule 211(b), SCACR. The Final Brief is identical to the Initial Brief of Respondents-Appellants except for (1) the addition of references to the Record on Appeal and an explanation of the Record on Appeal; and (2) the correction of obvious typographical errors and/or misspellings.


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Dated: December 4, 2014

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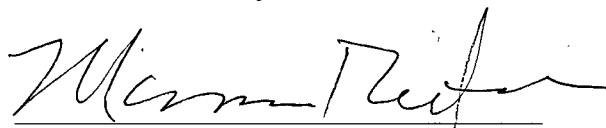
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Final Brief of Respondents-Appellants to be mailed, first-class postage prepaid, to William T. Toal, Esquire, Johnson, Toal & Battiste, P.A., 1615 Barnwell Street, Post Office Box 1431, Columbia, South Carolina 29202, on this 4th day of December 2014.



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