

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FAIRFIELD COUNTY
In The Circuit Court

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2019-00-01956

RECEIVED
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SC Court of Appeals

MOZELL TIMMS FORD, MARGARET GAITHER, GRACENE HAYDEN, JOHN H. HAYES, ALFRED HOLMES, SHERYL KENNEDY, DEBORAH NELSON-MOORE, PETER RICE, DOROTHY STEWART, and HASKELL TIDWELL, Sr., individually
and on behalf of all persons similarly situated, and
THE NEW CAMPGROUND OF CAMP WELFARE

Appellants,

vs.

CAMP WELFARE A.M.E. ZION CHURCH AND CAMP GROUND,
ROGER HALL, RACHEL MILLS, MELISSA LAMAR and any other persons acting as
Trustees of CAMP WELFARE A.M.E. ZION CHURCH AND CAMP GROUND,

Respondents.

PETITION FOR WRIT OF *CERTIORARI*

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Pursuant to Rule 242, S.C.A.C.R, the Petitioners petition for the issuance of a writ of *certiorari* to review the final decision of the Court of Appeals in the matter above.

This Petition is based upon those certain points, factual and legal, which the Petitioners believe the Court of Appeals to have overlooked or misapprehended, as set out herein.

The Petitioners contend the decision of the Court of Appeals is in conflict with prior decisions of the Supreme Court

To the extent allowed, the Petitioners restate and by this reference re-argues all matter set out in their Brief and referenced in the Record on Appeal and in the Appendix submitted herewith.

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing herein was made and finally ruled on by the Court of Appeals on April 3, 2020.

STATEMENT OF THE CASE

This Appeal is from Orders of the Circuit Court denying discovery in the above case. The Appeal was dismissed by Order of the Court filed December 11, 2019. The Motion for Rehearing was filed December 19, 2019. That Motion for Rehearing was denied by Order entered April 3, 2020.

The Order of the Court of Appeals of December 11, 2019 cites the holding in *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 433, 205 S.E.2d 184, 185 (1974) that “ordinarily, an order denying or compelling discovery is not directly appealable.” That holding cites the language of S.C. Code § 14-3-330 (the former Code Section 15-123) which states, in relevant part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, . . .

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part

thereof or any pleading in any action;

[*Emphasis added.*]

This limitation on review of intermediate orders was stated and clarified by the Supreme Court in *Lowndes, supra*:

The order denying discovery only determined what evidence might be elicited upon the pretrial examination of the defendant and does not have the effect of determining the scope of the issues at the trial.

[*Id.*, 262 S.C. 433 - 434, 205 S.E.2d 185; *emphasis added.*]

The holding of the Supreme Court in *EX PARTE Wilson*, 625 S.E.2d 205, 367 S.C. 7 (2005) is also on point:

Intermediate orders involving the merits may be immediately appealed pursuant to § 14-3-330(1). An order which involves the merits is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780. Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4.

This action arises from the Respondents' assertion of control over the direction and finances of a yearly gathering at the Camp Welfare campground in Fairfield County. This gathering is now over some hundred and forty years old and involves the descendants of the original campers, some hundreds in number. The nine current members of the Camp Welfare A.M.E. Zion Church on whose land the gathering takes place assert their total control of the gathering and its finances and claim immunity from any inquiry or disclosure by reason of their status as a church.

By the account in the WPA record of 1936, control lies in trustees selected by the full body of the campers. A copy of that record is attached and incorporated.

The Appellants contend that discovery can produce evidence that the local church and the A.M.E. Zion denomination have known of, and acceded in, the control of the gathering and its finances by the full body of the campers. They also contend that the local church and the A.M.E. Zion denomination were aware of the conversion of funds from the gathering to private

individuals.

The Respondents' defenses rely upon their status as a church, and upon their compliance with the discipline of the A.M.E. Zion denomination.

In this appeal, the discovery denied involves the merits of the case and has the effect of determining the scope of issues to be tried. By denying the Appellants the discovery sought, it effectively determines the substantial question of the involvement and/or acquiescence of the A.M.E. Zion Church in the practices of the local church. Such denial also effectively prevents a determination of the conversion of funds from the gatherings and of the Respondents' claim to be protected by their adherence to church discipline.

Thus the general holding of *Lowndes* dismissing intermediate appeals on discovery cannot be applied in this case.

In the absence of full discovery on this issue, the Plaintiffs cannot prosecute their case. In the absence of full discovery, the issues to be tried will be severely limited or effectively barred.

The Appellants set forth below the history of this matter:

History and Argument as to Discovery requested

1. The Appellants' Subpoena to the South Atlantic Episcopal District of the African Methodist Episcopal Church was dated April 25th, 2017.
2. The documents sought by the Subpoena to the African Methodist Episcopal Church were stated as:

Any and all documents or communications relating to or regarding any records of the existence, incorporation, record-keeping, finances and operation of A.M.E.Z CHURCH AND CAMP and/or CAMP WELFARE A.M.E. ZION CHURCH AND CAMP GROUND, a South Carolina eleemosynary corporation during the relevant period.

3. The Appellants' Subpoena to Roger R. Hall on behalf of A.M.E.Z Church and Camp Welfare Trustees was dated February 22nd, 2017 and mailed to opposing counsel on February 28th, 2017. That *Subpoena* sought documents in the same term as quoted above.
4. The Respondents made no objection to the Subpoena at the Deposition of Roger Hall on March 31, 2017, which was set as the deadline for production under that said Subpoena.
5. The Appellants' Request for Production of Documents was served by mail and e-mail dated

May 13th, 2019.

Motion to Quash

6. In response to the *Subpoena* to Hall, the Respondents filed a Motion to Quash. That Motion to Quash was based, *inter alia*, upon over-breadth of the request.'
7. During the period leading up to argument, counsel for the Appellants was told by counsel for the Respondents of his position was that the caption joined the full A.M.E. Zion Church.

Order to Compel and Response

8. By its Order filed September 12th, 2018, after a hearing on the Motions to Quash and to Enforce the *Subpoena* to Hall, the Court compelled discovery of those items listed on the *Subpoena* to Mr. Hall as representative of the Defendant A.M.E. Zion Church and Camp Welfare Trustees. A copy of that Order is attached hereto and incorporated herein.
9. By letter with attachments dated October 2nd, 2018, the Respondents purported to comply with the Order to Compel. The said letter does not claim to have held any documents back. It stated, in relevant part, that the documents included those "in possession of Camp Welfare A.M.E. Zion Church detailing the finances and operation of its annual revival and camp meeting."
10. To the extent the documents supplied with the Respondents' letter of October 2nd do not respond to the those demanded by the *Subpoena* to Hall and required by the Order to compel, the Respondents are in contempt of that Order.

Status of Discovery supplied by Camp Welfare

11. On May 3rd, 2019, the Appellants took the Deposition of Rachel Hall Mills, identified as a Rule 30(b)(6) representative of Camp Welfare Church. In that Deposition, the following exchanges occurred:

- 5· Ma'am, I believe I'm accurately characterizing
- 6· the testimony we had from Mr. Hall as indicating that
- 7· reports from Camp Welfare as to their finances, and
- 8· otherwise as required by the Book of Discipline, had been
- 9· filed with the A.M.E. Zion bishop and the -- what I would

10 · call, I guess, the authorities above the church itself.

11 · Is that your understanding, ma'am?

12 · · · · A. · Yes.

13 · · · · Q. · Okay. · Who has possession of those documents,

14 · ma'am?

15 · · · · A. · They are either at the church, or -- and I have

16 · copies.

17 · · · · Q. · Okay. · Well, ma'am, we have in this case already

18 · had a subpoena and order to turn over records as to

19 · finances in this church. · We do not have those documents.

20 · I realize, ma'am, you are not a lawyer. · Is there any

21 · reason why you can tell me why we do not have those

22 · documents?

23 · · · · A. · Which ones did you not get?

24 · · · · Q. · The reports to the church, ma'am, the higher

25 · church.

· A. · I don't understand the question. · You got the

· 2 · bank statements, the receipts.

· 3 · · · · Q. · No, ma'am. · I'm talking about the reports from

· 4 · Camp Welfare Church to the bishop and to what I believe is

· 5 · called the "general conference."

· 6 · · · · A. · Um-hmm.

· 7 · · · · Q. · I understood your testimony to be that those had

· 8 · been -- they exist and they were in the keeping of the

· 9 · church. · Am I misstating your statement, ma'am?

10 · · · · A. · Oh, yeah. · No. · We do not give an actual written

11 · report to the bishop. · The pastor sits in all the meetings

12 · at the final end of the camp meeting to go over what's

13 · raised, what's paid out. · That's the documentation for the

14 · church. · If he's okay with it, that's the end of it. · The

15 · bishop, to my knowledge, never asks him -- you may have to

16 · ask him if she asked him for any more information.

17 · · · · Q. · So, ma'am, if I understand your testimony, there

18 · is no such thing as a written report from Camp Welfare

19· Church to the conference or to the bishop?

20· ···A· Not that I'm aware of, no.

21· ···Q· Not anymore?

22· ···A· Not that I'm aware of, no.

23· ···Q· Ma'am, I have to ask you, since you've been

24· designated as a 30(b)(6) witness, who would know, if not

25· you, whether such things exist?

·1· ···A· No one else.

[DEPOSITION OF RACHEL HALL MILLS, May 3, 2019, pp. 6-8.]

·8· ··· Ma'am, a contribution is sent by Camp Welfare to

·9· what I call the conference or the bishop.

10· ···A· What's the question?

11· ···Q· Are any monies donated or given to Camp Welfare

12· since -- to the bishop or what I call the conference, the

13· larger church above you?

14· ···A· From the church, yes.

15· ···Q· And those are sent in what form? A check?

16· ···A· Yes.

17· ···Q· With no report?

18· ···A· Yes. We report those, like, for the different

19· auxiliaries, like the trustee board, the steward board,

20· the Ministry of Kindness. They all have to do a report

21· quarterly, and then they do one at the end, at the annual

22· conference, for the annual.

23· ···Q· And who has those reports, ma'am?

24· ···A· They turn them in to the bishop, to the A.M.E.

25· Zion Conference.

·Q· Do you-all keep copies?

·2· ···A· Yes.

·3· ···Q· Do you have those copies?

·4· ···A· They should be at the church, or the pastor has

·5· them, one or the other.

·6· ···Q· One or the other?

·7· ···A· ·Um-hmm.

·8· ···Q· ·Are you aware, ma'am -- and I'm not trying to be

·9· ·combative with you -- why we haven't been given copies of
10· ·them?

11· ···A· ·I have no idea.

[DEPOSITION OF RACHEL HALL MILLS, May 3, 2109, pp. 17-18.]

Objection of the Respondents and argument

12. In its objection to the Appellants' Request for Production, the Respondents stated as follows:

Defendants object to this request as the term "subject transaction" is broad in that Plaintiffs have requested copies of all documents and correspondence regarding Camp Welfare A.M.E. Zion Church, the A.M.E. Zion Church, Inc., a hierarchical denomination, its episcopal districts, bishops, officers, and other representatives from January 1, 1863 to present. As drafted, such request is unduly burdensome as responding to this request would require an unreasonable amount of time and resources to fulfill in relation to the needs of the case as it would require Respondents to search, review, and produce all records since the Church's inception. Respondents further object to this request as it seeks records of persons not a party to this action, to include, conference reports, financial records, and other documents of the A.M.E. Zion Church, Inc., its episcopal districts, bishops, officers, and other representatives.

13. Insofar as the documents sought are adequately described in the *Subpoena* served on Hall, enforced by Order of this Court, and again in Appellants' Request for Production of Documents, the argument as to over-breadth is moot.

14. Insofar as the documents sought are adequately described in the *Subpoena* served on the A.M.E. Zion Church, and again in Appellants' Request for Production of Documents, the request is not overbroad.

15. As of this time, the Appellants' suit involves two main issues: a) the Appellants' continuing right to peacefully and direct the Campground during the August gathering, and b) an accounting for funds paid for upkeep and improvement on the Campground property.

16. The issue of Campground finances are specifically referenced in Paragraph 3. of the

Appellants' Motion for Temporary Restraining Order filed August 16, 2016, and in Paragraphs 14. through 18., and 24. through 40. of their Amended Complaint filed March 1, 2018.

17. The scope of discovery is stated in Rule 26(b)(1), S.C.R.C.P. as follows:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

18. The documents sought are, by definition, relevant to the issues stated in the pleading. They cannot be defined as overbroad.

19. To the extent required by the Court, the Appellants stand ready to enter into a Protection Order in common form as to any documents provided.

20. To the extent the documents sought are extensive, the Appellants stand ready to provide an independent researcher to search the records of the African Methodist Episcopal Church.

21. To the extent the discovery of materials is limited by the alleged non-joinder of the full African Methodist Episcopal Church and such joinder is required to effect discovery, the Appellants moved that the same be joined in this action by operation of Rules 18 and 19, S.C.R.C.P.

Current Status of Discovery

22. By their Motion to Compel filed July 23rd, 2019, the Appellants sought an Order to compel Discovery and/or compliance with its Subpoena to the African Methodist Episcopal Church, an award of attorneys' fees and costs incurred as a result of this Motion and, as proven, an Order holding the Respondents in contempt for failure to comply with the Order to compel filed September 12th, 2018.

23. The Appellants' Motion was heard October 17th, 2019. By its Order of October 23rd, 2019, this

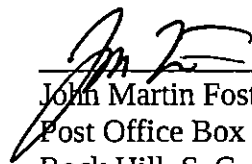
Court denied the Plaintiffs' Motion without comment.

24. The Appellants' Rule 59 Motion was filed November 1, 2019. By its Order of November 5, 2019, this Court denied the Plaintiffs' Rule 59 Motion without comment.
25. In the absence of Findings of Fact or Conclusions of Law in the Circuit Courts' Orders, the Appellants are without guidance as to their right to future discovery, or as to the grounds for the Court's refusal of relief.
26. There is no Scheduling Order in place in this civil action under whose terms the relief sought is untimely.
27. There is no indication in the appealed Circuit Courts' Orders that the discovery sought by Appellants is overbroad.
28. There is no indication in the appealed Circuit Courts' Orders that the discovery sought by the Appellants cannot be used to support its claims.
29. The Appeal herein was filed by Notice dated and served by mailing of November 22, 2019. This Appeal is from Orders of the Circuit Court denying discovery in the above case.
30. The Orders of the Court of Appeals dismissing the appeal are referenced above.

CONCLUSION

For all the reasons set out and referenced above, the Petitioners request that this Court issue its Writ of *Certiorari* and hear this appeal, and for any other relief to which the Petitioner may be entitled in law or equity.

Respectfully submitted,



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Attorney for Petitioners

May 4, 2020

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FAIRFIELD COUNTY
In The Circuit Court

Brian M. Gibbons, Circuit Court Judge

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ROGER HALL, RACHEL MILLS, MELISSA LAMAR and any other persons acting as
Trustees of CAMP WELFARE A.M.E. ZION CHURCH AND CAMP GROUND,

Respondents.

CERTIFICATE OF SERVICE

I certify that on May 4, 2020, I served the Petition for Writ of *Certiorari*, the Appendix and this Certificate of Service on the following counsel of record, parties or persons:

Kenneth A. Davis
Boykin & Davis, LLC
Attorneys for Respondents
Post Office Box 11844
Columbia, S.C. 29211

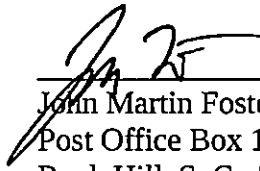
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A.M.E. Zion Headquarters
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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 262(b), S.C.A.C.R.

May 4, 2020



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May 4, 2020

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29201

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SC Court of Appeals

Re: Ford, *et al.*, Petitioners
v. Camp Welfare AME Zion Church, *et al.*, Respondents
Appellate Case No.: 2019-01956

Dear Ms. Kitchings:

In accordance with Rule 242(c), S.C.A.C.R., enclosed herewith please find the original and one (1) copy of the Appellant-Petitioners' Petition for Writ of *Certiorari*, together with Certificate of Service for the same in the above referenced case.

By copy of this letter, I am serving the attorneys for the Respondents with a copy of the said Petition, as evidenced by the Certificate of Service.

Please return the extra conformed copy of the Petition, with Certificate of Service, to my office in the enclosed self-addressed, stamped envelope. As always, thank you and your staff for your assistance in these matters.

Sincerely yours,



John Martin Foster

jmf/
enclosures

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TO: The Honorable Jenny Abbott Kitchings
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