

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No.: 2020-CP-23-00939

Kenneth Curtis,
Plaintiff,
vs.
Cynthia Glenn,
Defendant.

RECEIVED ORDER
DEC 29 2020
SC Court of Appeals

This matter is back before the Court pursuant to Plaintiff's Motion to Alter or Amend filed November 5, 2020 and Defendant's Motion for Definite Statement, for Relief, to Dismiss and Recusal filed November 9, 2020, and Defendant's Motion for a New Trial and Intervention filed October 22, 2020. The Court has also reviewed Defendant's Reply to the motions filed by Plaintiff.¹

At the outset, the Court notes that as established by the voluminous record in this matter, the parties have been in litigation for quite some time. From magistrate court actions, to various administrative agencies in South Carolina, to the present action, it is clear that the parties have a good faith dispute and strong emotional convictions relative to this case. Both are convinced that they are completely in the right and that the other party is completely in the wrong.

With the above context, the Court addresses the motions as follows:

As to Plaintiff's Motion, Plaintiff seeks for the Court to declare that Plaintiff is a minister and that the property involved herein, Saluda Rest Natural Burials and Ministries, is a church and

¹ Based upon the Court's familiarity with the record and the detailed nature of the respective motions, a hearing is not necessary. See, Pollard v. County of Florence, 444 S.E.2d 534 (SC App 1994).

a church cemetery.

As noted in the Order filed October 29, 2020, the Court declines to address those questions. First, the Court does not believe it has jurisdiction to determine ecclesiastical questions and controversies. In the Court's opinion, this includes the Court's determination of whether Plaintiff is a minister and Saluda Rest a church ad church cemetery. Even were this within the Court's jurisdiction, the Court would still decline to grant any relief in this regard since the only evidence establishing that Plaintiff is a minister and that Saluda Rest is a church and church cemetery are Plaintiff's assertions of the same. In other words, other than Plaintiff's claims, there is no other evidence in the record of Plaintiff being recognized by any governmental entity or agency or any religious organization as a minister or a church.

The second issue raised in Plaintiff's Motion is to amend the language relative to a fifteen (15) foot restriction on either side of an eight (8) foot gravel path/roadway. See, Order filed 10/29/2020, page 12, paragraph 7.² To clarify the Order, the Court's intention and Order is that there currently exists a designated approximately eight (8) foot wide gravel path/roadway. Plaintiff shall not place any burial site within ten (10) feet of either side of the path/roadway. In other words, from the center point of the path/roadway, Plaintiff shall not be allowed to place any burial site or other impediment to travel within ten (10) feet of the center line. This allows continued use by Defendant of the established gravel path/roadway in a width sufficient to allow vehicular traffic in passage. As such, the October 29, 2020 Order is amended in this limited regard by reducing the fifteen (15) feet to ten (10) feet on either side of the existing gravel path/roadway. The Court declines to require Defendant to obtain and pay for a survey as requested by Plaintiff in his motion.

² One of the magistrate court Orders granted Ms. Glenn vehicular access to her husband's grave. See, Mag. Ct. Order signed 2/14/2020.

In addressing Defendant's motions, the Court rules as follows:

As to Defendant's Motion for a New Trial and Intervention filed October 22, 2020, the motion was filed after the trial held on October 13, 2020 and before the Court issued its Order filed October 29, 2020. Upon a review of the motion filed October 22, 2020, the Court finds that the issues raised by Defendant in said motion were sufficiently addressed in the Order filed October 29, 2020. Or, alternatively, that they are sufficiently addressed herein. As to Defendant's Request for Intervention by the South Carolina Attorney General, the Court lacks jurisdiction or authority to compel the same.

As to Defendant's Motion for Definite Statement, for Relief, to Dismiss and Recusal, the fifty-eight (58) page motion raises a multitude of issues, many not raised at trial or not addressable by this Court. Many of them appear to arise out of the multiple claims between the parties in the magistrate court and in other administrative venues. As best the Court can determine, part of what Defendant is claiming that this Court's ruling of October 29, 2020 "automatically remanded" the case to the magistrate court.

The Court finds that the Order filed October 29, 2020 sufficiently addresses all issues relative to magistrate court litigation between the parties. Further, in that the Court does not have authority or jurisdiction to "automatically remand" the case back to the magistrate court, the Court need not address that issue.

The Defendant also has requested in that motion that the judge herein be recused. The basis for this request is that Plaintiff referenced a letter in his testimony that he had sent to the judge herein after a 2005 trial that dealt with the same real estate involved herein. See, 2003-CP-23-07936. Defendant asserts that this letter "would disqualify the judge from continuing to preside over the case".

First, the Court does not have any recollection of such a letter following the lawsuit referenced by Defendant. Second, in her motion filed November 9, 2020, Defendant states that she learned of the trial in 2005 just days before the trial of this case and asserted objections to not being advised earlier by Plaintiff. However, at no time prior to or at the trial or the issuance of the Order filed October 29, 2020, did Defendant assert any request that the undersigned be recused. Third, even had said motion been made, the Court would have declined it since there has been absolutely no hint of any evidence or even an inference that somehow the 2003 lawsuit impaired the Court's ability to be fair and impartial as to the within case.

As to Defendant's Amended Motion for New Trial and Intervention, Defendant appears to argue that the Court lacked subject matter jurisdiction and issues under what Defendant refers to as the Perpetual Care Act laws and whether Plaintiff violated constitutional rights of deceased in future generations by claiming ownership of human remains. Defendant also contends that the parties were denied an opening and a closing statement at trial and that that violated her due process rights. Defendant also contends that at least one of the witnesses called by Plaintiff gave false testimony. Defendant also contends that the Court did not appropriately give credence and "full faith and credit" to certain magistrate court rulings. And, that the Court erred in failing to rule that Saluda Rest is a cemetery and, as a result, did not protect the public interests.

Innumerable other issues are also raised in Defendant's motion.

As noted above, the parties have been actively litigating and pursuing issues between themselves in any number of venues over the years. The Court has endeavored, within the confines of its jurisdiction, and the pleadings filed herein, to address the substantive issues between the parties. It is clear to the Court that no matter what rulings this Court or any court would make, the parties' animosity towards each other will continue. The Order filed October

29, 2020 is a carefully reasoned Order that addresses and decides the substantive issues between the parties. The Order, a draft of which was provided by Plaintiff's attorney and a copy to Defendant, was carefully reviewed, rewritten and revised by the Court. As such, the Order filed October 29, 2020, except for the portion addressing the width of the gravel road/pathway, is affirmed and the parties' respective motions are denied.

As the Court informed the parties at the conclusion of the trial, South Carolina has outstanding appellate judges and justices and whatever Order the appellate courts ultimately issue in this litigation, since the Court is quite confident that one or both parties will appeal this Order, will be, as the Court at this level has attempted to do, well-reasoned, carefully thought through and issued in an effort, within the confines of the applicable law, to resolve the issues between the parties that may otherwise, in many respects, be unresolvable.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Kenneth Curtis vs. Cynthia Glenn

Case Number: 2020CP2300939

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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