THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's Church; St. James; Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church Of St. Luke and St Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County, The Vestries And Churchwardens Of The Parish Of St. Andrew, Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina, Appellants.

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Nil ultra

("No higher")

The motto of the South Carolina Supreme Court.

INTRODUCTION

This appeal presents the question of whether the Circuit Court has jurisdiction on remittitur to construe a South Carolina Supreme Court decision such that it, in effect, reinstates a previous Circuit Court ruling that the Supreme Court reversed. In addition, if so, this Court must answer the questions of how parties to the action (and others) are to determine whether they are bound by the Supreme Court decision or the conflicting Circuit Court ruling and, ultimately, how long a dissatisfied party can continue to litigate a claim after the Supreme Court has ruled against it.

Specifically, the subjects of this appeal are this Court's prior Opinion number 27731, *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017) (the "Supreme Court Ruling") – a decision which reversed a Circuit Court Order by Judge Diane Goodstein that ruled in favor of Respondents on all issues (R. p. 67) (the "Goodstein Order") – and a Circuit Court Order by Judge Edgar Dickson that purported to interpret and "clarify" the Supreme Court Ruling but ultimately, like the Goodstein Order, ruled in favor of Respondents on all issues.[1] (R. p. 1) (the "Dickson Order").

This matter has a lengthy procedural history and numerous parties, many of whom have names that can be confusingly similar to those of other parties. For the sake of convenience and simplicity, Appellants refer to the parties by the names below (unless referring to Appellants or

[1] Judge Dickson did decline Respondents' invitation to rule on trademark, service mark, and intellectual property issues. However, because Respondents did not appeal that ruling and those topics are being litigated in federal court, they are not directly relevant to the instant appeal. *See infra* n.4.

Respondents, collectively), which are based on the terms defined in the lead opinion of the Supreme Court Ruling, *Protestant Episcopal Church*, 421 S.C. at 215, 806 S.E.2d at 84:

- TEC – Appellant The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America; the Supreme Court Ruling also sometimes referred to it as the "National Church."

- Associated Diocese – Appellant The Episcopal Church in South Carolina, sometimes referred to as "TECSC" (the diocese which remains associated with TEC).

- Disassociated Diocese – Respondent The Protestant Episcopal Church in the Diocese of South Carolina[2] (which disassociated itself from TEC); the Supreme Court Ruling also sometimes referred to it as the "Breakaway Diocese."

- Trustees – The Trustees of the Protestant Episcopal Church in South Carolina.

- Parishes – Thirty-six individual parishes aligned with the Disassociated Diocese, all of which were parties to the Supreme Court Ruling, that are subdivided as follows:

    - Respondent Parishes – Twenty-nine parishes that are Respondents to this appeal.

    - Other Parishes – Seven parishes that are no longer parties to this dispute based upon the Supreme Court Ruling.[3]

STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court exceed its limited jurisdiction on remittitur by reinstating a declaratory judgment that the Supreme Court had reversed?

2. Did the Circuit Court err in failing to follow the result of the Supreme Court's judgment as the law of the case, reviewing evidentiary support for that judgment, and considering whether issues decided by the Supreme Court had been preserved for appellate review?

3. Did the Circuit Court err in finding this Court deprived the Respondents of due process?

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[2] The Disassociated Diocese has now renamed itself "The Anglican Diocese of South Carolina."

[3] The division reflects the different treatment of the Parishes in the Supreme Court Ruling. *See Protestant Episcopal Church*, 421 S.C. at 248 n.27, 806 S.E.2d at 102 n.27 (defining the two groups of Parishes); *see also* R. p. 2038 (wherein Respondent Parishes identified themselves as 29 of the original 36 Plaintiff Parishes).

STATEMENT OF THE CASE

While the dispute that spawned this action has a protracted history and the litigation itself has traveled a lengthy path, the present appeal is not concerned with everything that happened along the journey. Instead, this appeal focuses upon several important milestones.

The first events that help put this appeal in context are the parties' pleadings. Respondents filed this action on January 4, 2013, seeking declaratory relief.[4] Specifically, they sought a declaration that Appellants have no right, title, or interest in certain property consisting of real and personal property of the Parishes ("Parish Property") as well as personal and real property – including Camp St. Christopher – held in trust by the Trustees for the benefit of the Diocese of South Carolina[5] (the "Diocesan Property"). (R. p. 439, ¶ 494). Appellants counterclaimed to have the court declare their interests in the Parish Property and the Diocesan Property. (R. p. 551, ¶ d, and p. 631, ¶ 615). In their Counterclaims, Appellants alleged an Episcopal Church rule, Canon I.7(4) and (5) (commonly called the "Dennis Canon") confirmed their interests in the Parish Property. (R. p. 500, ¶ 32, and p. 620, ¶ 585). Respondents denied the Dennis Canon was applicable to them and alleged their rights should be governed by South Carolina law. (*See, e.g.*, R. p. 648, ¶ 9, and p. 640, ¶ 7).

[4] Respondents also sought injunctive relief regarding trademark, service mark, and intellectual property issues. While the Goodstein Order ruled in favor of Respondents on that claim, the Supreme Court Ruling determined that it should be litigated in federal court (in fact, the parties tried the trademark, service mark, and intellectual property issues before United States District Judge Richard Gergel and his ruling is now on appeal). The Dickson Order agreed those issues should be resolved in federal court. Because of the Supreme Court Ruling on this topic, as well as the Dickson Order regarding it (which Respondents did not appeal), the claim for injunctive relief is no longer part of this action. Consequently, Appellants disregard the claim when discussing the procedural history of and rulings in this matter.

[5] Both the Associated Diocese and the Disassociated Diocese claimed to be this beneficiary.

The next important milestone is the initial Circuit Court ruling on the merits. Following a bench trial, Judge Diane Goodstein issued an Order on February 3, 2015, ruling that Appellants had no interest in the Parish Property or the Diocesan Property and dismissing Appellants' counterclaims. (R. pp. 110, 112).

At trial, Judge Goodstein received evidence regarding the Dennis Canon. In her Order, she expressly addressed – and rejected – Appellants' claim that they were the beneficiaries of an express trust based on the Parishes' accession to the Dennis Canon:

> The claims of an express trust arises [sic] out of the same provision that was at issue in *All Saints*. 385 S.C. at 437, 449, 685 S.E. 2d at 168, 174. The "Dennis Canon" is found both in the TEC canons and was also in the Diocese [sic] canons before its removal in 2010. The Defendants assert that any parish churches [sic] governing documents, which voluntarily agreed to TEC's constitution and canons would constitute an express trust under South Carolina law.
> . . .
>
> The Dennis Canon created no express trust of which TEC was the beneficiary.
> . . .
>
> As to the parish churches, there was nothing consensual between TEC and the parish churches in the process used to adopt [the Dennis Canon], much less that it was subsequently "embodied in some legally cognizable form."

(R. pp. 100, 101). Judge Goodstein also ruled that Appellants had "no legal basis" to claim control over the Diocesan Property and that the Diocesan Property was not subject to a trust interest in favor of Appellants. (R. pp. 99-103).

On March 26, 2015, Appellants appealed the Goodstein Order. (R. p. 1135).

Of primary significance to the present appeal is this Court's ruling on that appeal. The official slip opinion of the Supreme Court Ruling, issued on August 2, 2017, stated in its caption that the Court "Reversed in Part and Affirmed in Part" the Goodstein Order. (R. p. 157).

The Court's lead opinion, authored by Acting Justice Pleicones, detailed reasons to "reverse the entire [Goodstein] order," *Protestant Episcopal Church*, 421 S.C. at 214, 806 S.E.2d

at 84, and specifically to reverse its finding that "the Disassociated Diocese, the Trustees, and parishes controlled or owned the disputed real and personal property." *Id*. at 230, 806 S.E.2d at 92.

Immediately following Acting Justice Pleicones' opinion, the slip opinion delineated the other Justices' positions in relation to the lead opinion, stating:

> HEARN, J., concurring in a separate opinion. BEATTY, C.J., concurring in part and dissenting in part in a separate opinion. KITTREDGE, J., concurring in part and dissenting in part in a separate opinion. Acting Justice Jean H. Toal dissenting in a separate opinion.

(R. p. 175).

Consistent with this summary, Justice Hearn stated she "concur[red] fully" with the lead opinion, *id*. at 232, 806 S.E.2d at 93, and found "the Appellants [are] entitled to all property, including Camp Saint Christopher." *Id*. at 248, 806 S.E.2d at 101.

Also in keeping with the Court's summary of opinions, Chief Justice Beatty concurred with Acting Justice Pleicones and Justice Hearn with respect to their judgment relating to the Respondent Parishes' property and the Diocesan Property; however, he dissented with respect to property of the Other Parishes.[6]

Respondents filed a Petition for Rehearing on September 1, 2017. (R. p. 1311). Their petition characterized the Supreme Court Ruling as "erroneous" and admitted the Court "reversed" the Goodstein Order. (*See, e.g.,* R. pp. 1326, 1332). Specifically, Respondents acknowledged Chief Justice Beatty agreed with Acting Justice Pleicones and Justice Hearn regarding the property

[6] To provide clarity regarding Parish Property, Justice Hearn noted: "I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church [*i.e.,* the Respondent Parishes], but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes [*i.e.,* the Other Parishes]." *Protestant Episcopal Church*, 421 S.C. at 248 n.27, 806 S.E.2d at 102 n.27.

of the Respondent Parishes (R. pp. 1333-1334) and with respect to the Diocesan Property. (R. pp. 1344-1345).

In addition, on September 6, 2017, Respondent Church of the Good Shepherd filed a separate Petition for Rehearing (R. p. 1691) asserting error because "three judges" [sic] of the Supreme Court erred in ruling against it. (R. pp. 1693, 1705).

Consistent with Respondents' request that the Court recuse Justice Hearn (R. p. 1350), Justice Hearn did not participate in the ruling on the Petitions for Rehearing. (R. p. 144). On November 17, 2017, this Court denied both Petitions for Rehearing via an Order signed by all four remaining members of the Court, which stated:

> In light of the above, the petitions for rehearing have failed to receive a majority vote. Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur.

(R. p. 145). That "final decision" "Reversed in Part and Affirmed in Part" the Goodstein Order. Because the affirmance related to the Other Parishes – which are no longer involved in this case – the Supreme Court Ruling should be reduced to "Reversed" for present purposes.

The matter was thus remitted to the Circuit Court, where it was assigned to Judge Edgar Dickson. (R. p. 51).

Thereafter, on February 9, 2018, Respondents petitioned the United States Supreme Court for a Writ of Certiorari. (R. p. 2020). Respondents acknowledged that this Court, "in a 3-2 decision, held that a trust could exist in favor of [TEC and the Associated Diocese]" with respect to the Parish Property at issue,[7] conceded that they had "lost" before this Court, and argued that

[7] Respondents did not ask the United States Supreme Court to review the Supreme Court Ruling as to the Diocesan Property.

the Supreme Court Ruling "must be reversed." (R. pp. 2033, 2048, 2068). Specifically, they summarized their request for review as follows:

> Petitioners [the Respondents here] seek review of the judgment below that parishes that allegedly acceded to the Dennis Canon hold their property in trust for the national church. [TEC and the Associated Diocese] prevailed on this question by a 3-2 majority comprising Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty.

(R. pp. 2118-2119).

On June 11, 2018, the United States Supreme Court denied Respondents' Petition. (R. p. 245).

Following remittitur from this Court, the parties filed in the Circuit Court three motions relevant to this appeal.

First, on March 23, 2018, Respondents filed a Motion for Clarification of Jurisdiction and for Other Relief (R. p. 659), which they supplemented on September 24, 2018 (R. p. 806) (collectively, "Motion for Clarification"). In this motion, they asked the Circuit Court to clarify the Supreme Court Ruling and to decide factual issues – particularly the express trust issue – that the Supreme Court Ruling purportedly "did not decide." (R. p. 808; *see also* R. pp. 816, 870, 1079). Appellants opposed the motion. (*See generally* R. p. 1060).

Next, on May 8, 2018, Appellants filed a Petition for Execution and Further Relief on Declaratory Judgments of the South Carolina Supreme Court and for the Appointment of a Special Master (R. p. 670), which they amended on May 16, 2018 (R. p. 783) (collectively, "Petition for Execution"). In this petition, Appellants asked the Circuit Court to carry out the result of the Supreme Court Ruling by replacing the Trustees with individuals elected by the Associated Diocese, transferring title of the Parish Property of the Respondent Parishes to Appellants, and appointing a Special Master to oversee the transition process. (R. pp. 843-844, 847, 850). Respondents opposed the Petition for Execution. (*See generally* R. p. 963).

Third, on July 11, 2018, Appellants filed a Petition for an Accounting (R. p. 795), in which they asked the Circuit Court to appoint an accounting firm, as experts, to identify the assets to be delivered by Respondents to Appellants consistent with the Supreme Court Ruling and to determine any compensation due to Appellants as a result of Respondents' wrongful possession and control of those assets since the initiation of this action. (R. pp. 801-802). Respondents also opposed this Petition. (*See generally* R. p. 1049).

In addition to these motions and the memoranda referenced above, the parties submitted to the court various other materials related to the motions. (R. pp. 1095,[8] 8901, 8976, 8977).

The Circuit Court held several hearings after remittitur. Each hearing consisted of the arguments of counsel but none involved the introduction of evidence; rather, the only evidence considered by the Circuit Court was the original record. (R. pp. 23, 41).

Judge Dickson held the first hearing on November 19, 2018. There, he addressed the Motion for Clarification but no other motions. (R. p. 4853B). He took the motion under advisement and stated: "I'm going to ask y'all follow up questions by email. Those emails and your responses are going to be part of the record in this case…." (R. p. 4853A). Judge Dickson thereafter sent emails indicating he was reviewing the five Justices' opinions in the Supreme Court Ruling for agreement and was considering evidence in the previous record regarding the Respondent Parishes' accession to the Dennis Canon. (R. pp. 8828, 8829).[9]

[8] One of the topics addressed in this brief was Appellants' Motion to Dismiss a separate action filed by Respondents after the Supreme Court Ruling (the "betterment action"). The betterment action is not involved in this appeal.

[9] Judge Dickson later requested "exact citations in the trial record where each parish expressly acceded to the 1979 Dennis Canon" and requested an explanation of "exactly what was appealed from the [Goodstein] order." (R. p. 8909).

On March 20, 2019, because approximately sixteen months had elapsed since this Court denied Respondents' Petition for Rehearing and Judge Dickson had not yet ruled on the parties' motions, Appellants filed a Petition for Writ of Mandamus asking this Court to direct the Circuit Court to enforce the Supreme Court Ruling. (R. p. 1773). On June 28, 2019, the Court issued an order that did not address the merits of the parties' positions but instead stated:

> [W]e are confident that [Judge Dickson] will resolve the petition to enforce the judgment, as well as any related matters that are pending, in an expeditious manner. As a result, we deny the petition for writ of mandamus.

(R. p. 141).

Following exchanges of correspondence between the Circuit Court and counsel, Judge Dickson held a second hearing on November 26, 2019.[10] Again, he addressed only the Motion for Clarification. (R. p. 4945). In that hearing, Judge Dickson focused on whether there was evidence in the existing trial record to support the Supreme Court Ruling. (*See, e.g.,* R. pp. 4875-4876, 4887-4889, 4911-4912, 4955-4957). He concluded the hearing by stating:

> Here's what I want y'all to do, okay, is I want proposed orders on the motion to clarify, okay? I want that. I want the order to discuss how we got to here, the law of the case at this point, and I want you to make findings for me and in those findings I want you to refer specifically to what part of the record will back it up, okay?

(R. p. 4960). The parties submitted proposed Orders as requested. (R. pp. 8978, 9003).

However, as of February 21, 2020, Judge Dickson had not ruled on any of the outstanding motions; therefore, Appellants filed a Petition for Writ of Prohibition asking this Court to prohibit Judge Dickson "from exceeding the Circuit Court's jurisdiction by ruling on [Respondents'] Motion for Clarification." (R. p. 1833). The Court denied the Petition without explanation in an Order dated March 31, 2020. (R. p. 135).

[10] Judge Dickson held an earlier hearing on July 23, 2019, where he addressed Appellants' Motion to Dismiss the betterment action but none of the motions relevant to this appeal.

Judge Dickson's final hearing in this matter took place on February 27, 2020. The purpose of that hearing was to address Appellants' Petition for Execution and Petition for Accounting, not the Motion for Clarification. (R. pp. 4964, 4983).

On June 19, 2020, Judge Dickson issued the Dickson Order granting the Motion for Clarification and denying the Petition for Execution and Petition for Accounting. (R. pp. 2, 46). In that Order, he undertook to "construe" the Supreme Court Ruling "to determine intent while disregarding superfluous language." (R. p. 6). He did so by considering the factual support for the findings in the Supreme Court Ruling, questioning whether this Court ruled on issues that were not preserved for appellate review, and interpreting the intent of the Supreme Court Ruling based upon his effort to "distill," "harmonize," and "find common ground" among the Justices' separate opinions – including the dissenting opinions. (R. pp. 6-7, 16).

Specifically, with respect to the Parish Property, Judge Dickson concluded that fewer than three of the Justices found that the Respondent Parishes had acceded to the Dennis Canon so as to create a trust interest in favor of Appellants and that, consequently, he was required to "determine whether each individual Parish expressly acceded in writing to the 1979 Dennis Canon." (R. pp. 20-21). In doing so, he first concluded "[t]he Dennis Canon can have no effect until acceded to in writing by the individual parishes under South Carolina law." (R. p. 21). He then reviewed the record before this Court for the Supreme Court Ruling and found "no evidence of written accession to the Dennis Canon in the Record." (R. pp. 22-23). Lastly, he made his own ruling that the evidence at trial before Judge Goodstein was inadequate to prove the Respondent Parishes acceded to the Dennis Canon and created a trust in favor of Appellants. (R. pp. 23-26).

As to Diocesan Property, Judge Dickson acknowledged that, pursuant to the deed conveying Camp St. Christopher to Trustees, the Trustees hold that property in trust "to further

the welfare of the Protestant Episcopal Diocese of South Carolina" (R. p. 18 n.14)[11] and that Chief Justice Beatty had ruled "the disassociated diocese can make no claim to being the successor."[12] (R. p. 40). Nevertheless, he found that the Disassociated Diocese is the beneficiary of the trust, reasoning:

- "There is no dispute that before disassociation that the [Disassociated] Diocese was the beneficiary of those Trustees' assets. This Court finds that the act of disassociation alone cannot cause the loss of beneficiary status." (R. p. 40).

- "[S]ince the argument and issue regarding the language of the deed was never presented by TEC to the trial court for a decision nor was it ruled on by the trial court, the language of the deed cannot now be used as a basis for reversal of the trial court's order." (R. p. 41).

- The Supreme Court Ruling is "ambiguous" as to whether the beneficiary of the trust is the Associated Diocese or the Disassociated Diocese. (R. p. 41).

- Chief Justice Beatty's conclusion about the trust beneficiary has to be "construed" in light of *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 385 S.C. 428, 685 S.E.2d 163 (2009), which "rejected the idea that TEC could determine the 'true parish.'" (R. p. 41).

By ruling in favor of Respondents, the Dickson Order issued a declaratory judgment that largely duplicated that of the now-reversed Goodstein Order, as shown by the chart below:

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[11] The Dickson Order addressed Diocesan Property in Section VII, captioned "Camp St. Christopher." (R. pp. 39-42). Nevertheless, its ruling related to all Diocesan Property. (R. p. 49).

[12] Chief Justice Beatty's complete statement on this topic was:

> I would find "The Trustees of the Protestant Episcopal Church" in the Diocese of South Carolina should retain title to Camp St. Christopher as my decision in no way alters the clear language of the 1951 deed conveying ownership of this property. The conveyance of Camp St. Christopher was for the explicit purpose of furthering "the welfare of the Protestant Episcopal Diocese of South Carolina." In my view, *the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina*.

Protestant Episcopal Church, 421 S.C. at 251 n.29, 806 S.E.2d at 103 n.29 (emphasis added).

Dickson Order	Goodstein Order
"[N]o Parish expressly acceded to the 1979 Dennis Canon. … As a result, there is no trust created in favor of the Defendants, TEC and TECSC." (R. p. 25).	"The Dennis Canon created no express trust [with respect to Parish Property] of which TEC was the beneficiary. … [T]here was nothing consensual between TEC and the parish churches in the process used to adopt [the Dennis Canon], much less that it was subsequently 'embodied in some legally cognizable form.'" (R. p. 101).
"[T]he deed of Camp St. Christopher titled to the Trustee Corporation is controlling" and "the [Disassociated] Diocese … properly disassociated and control[s] [the Diocesan] real and personal property." (R. pp. 2, 42).	"Title to all the real property of the … Trustees … is held in [Trustees' name]" and "[t]here is no legal basis for TEC or TECSC to have any claim of control over the Trustees or its assets" (which include Camp St. Christopher). (R. pp. 86, 99).
"[T]he Defendants herein have no interest in the Plaintiff Parishes' properties." (R. p. 46).	"The Defendants have no legal, beneficial or equitable interest in the Plaintiffs' real, personal and intellectual property." (R. p. 110).

Based on these rulings, Judge Dickson denied Appellants' Petition for Execution and Petition for Accounting. (R. pp. 2, 46).

Appellants filed a Motion for Reconsideration and to Alter or Amend pursuant to Rule 59(e), SCRCP. (R. p. 1104). Respondents opposed the motion. (R. p. 1124). By Order dated July 13, 2020, Judge Dickson denied the motion. (R. p. 48).

On July 13, 2020, Appellants timely appealed from the Dickson Order and the Order denying their Motion for Reconsideration. On the same date, Appellants asked this Court to certify this appeal for review and to transfer it from the Court of Appeals. By Order dated August 24, 2020, this Court granted Appellants' Motion to Certify.

STANDARD OF REVIEW

The issues in this appeal are questions of law that the Court reviews de novo. *See Gantt v. Selph*, 423 S.C. 333, 338, 814 S.E.2d 523, 526 (2018) ("The question of subject matter jurisdiction is a question of law. An appellate court may decide questions of law with no particular deference to the trial court." (internal quotation marks and citation omitted)); *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014) ("[T]he interpretation of a judgment is a question of law for the court. Questions of law are reviewed de novo." (internal citation omitted)).

ARGUMENT

At the heart of this appeal is Respondents' continued refusal to accept the result reached by the majority in the Supreme Court Ruling. Their strategy is obvious. After receiving an unfavorable ruling from this Court, Respondents tried to vacate Justice Hearn's opinion with a motion to recuse her. They asked for a rehearing and reversal from this Court. They attempted to get the Supreme Court of the United States to reverse this Court. They finally moved the Circuit Court to reverse the result reached by the majority of this Court under the guise of a need to "clarify" the Supreme Court Ruling, knowing that Appellants would appeal any such reversal. The whole effort thus far has culminated in what Respondents wanted – to get this case in front of a differently constituted Supreme Court with the hope of a different, favorable result. Not only is this plainly improper, it is legally impossible.

As outlined below, the Supreme Court Ruling comprised a three-Justice majority that reversed the Goodstein Order, declaring that Appellants are entitled to the Diocesan Property and the Respondent Parishes' property. That is the result in this case. The fact that the Court issued multiple opinions in deciding the case in no way dilutes the result – and that result is conclusive. Fundamental principles of judicial review precluded the Circuit Court, and indeed preclude this

Court, from reviewing that result. Were it otherwise, litigation in any particular case would never cease; but "the peace and order of society require that there should be an end of litigation." *Warren v. Raymond,* 17 S.C. 163, 189 (1882). It is well beyond time for this Court bring this litigation to a close by vacating the Circuit Court's reversal of the Supreme Court Ruling and ordering it to enforce that Ruling, including granting Appellants' Petition for Execution and Petition for Accounting.

I. A majority of three Justices reversed the Goodstein Order.

A majority of three Justices voted to reverse the Goodstein Order and correctly found that the Respondent Parishes hold their property in trust for Appellants. That is the controlling result in this case. That this Court reversed the Goodstein Order is demonstrated by the South Carolina Constitution and statutory laws that require a majority for a reversal, this Court's statements in the Justices' individual opinions, Respondents' concessions on the issue, and this Court's statements after it issued the Supreme Court Ruling.

A. Reversal requires a majority vote.

The decree on the Supreme Court Ruling states "***REVERSED*** IN PART AND AFFIRMED IN PART." (R. p. 157) (emphasis added). The South Carolina Constitution and statutory laws mandate that, for the Court to reverse, three Justices must vote for reversal. S.C. CONST. ART. V, § 2 ("[T]he concurrence of three of the Justices shall be necessary for a reversal of the judgment below."); S.C. CODE ANN. § 14-3-360 (1977) ("In all cases decided by the Supreme Court the concurrence of three of the justices shall be necessary for a reversal of the judgment below . . . ."); *Peoples Life Ins. Co. v. Community Bank*, 278 S.C. 70, 70 n.*, 292 S.E.2d 188, 188 n.* (1982) (stating in a ruling by four Justices, with one Justice not participating, that because "the Court is evenly divided and three justices do not agree to reversal, the rulings of the lower court are affirmed"). Express and unambiguous in this Court's "REVERSED" decree is the fact that three

or more Justices agreed to reverse the Goodstein Order as to the Respondent Parishes and the Diocesan Property. The Circuit Court incorrectly analyzed "whether a majority exists as to any issue." (R. p. 12). On remittitur, it effectively reversed the Supreme Court Ruling by reinstating the declaratory relief granted in the Goodstein Order and directly contradicted this Court's mandate.

B. The Justices agreed on the result of the Supreme Court Ruling.

While the five opinions disagreed on several issues, they were of the same mind on one thing – the resulting effect of their opinions. All of the opinions agreed that a majority of Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty reversed the Goodstein Order as to the Respondent Parishes' property and the Diocesan Property.

Justice Hearn stated that she "join[ed] Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to" the Respondent Parishes and she repeatedly referred to Justice Kittredge's and Acting Justice Toal's opinions as dissents. *Protestant Episcopal Church*, 421 S.C. at 248 n.27, 806 S.E.2d at 102 n.27 (2017). Justice Hearn also found that "the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property, including Camp Saint Christopher." *Id.* at 248, 806 S.E.2d at 101. Acting Justice Pleicones joined in Justice Hearn's opinion. *Id.* at 231, 806 S.E.2d at 93. Chief Justice Beatty referred to Justice Hearn and Acting Justice Pleicones as "the majority" and stated he "agree[d] with the majority as to the disposition of the [Respondent] parishes" because they expressly acceded to the Dennis Canon. *Id.* at 251, 806 S.E.2d at 102-03. He also agreed that, with respect to Diocesan Property, "the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina. *Id.* at 251 n.29, 806 S.E.2d at 103 n.29.

Justice Kittredge described his opinion as a "dissent in part (concerning the [Respondent Parishes]) and concur[rence] in part (concerning the [Other Parishes])." *Id.* at 260, 806 S.E.2d at 108. Acting Justice Toal referred "to 'the majority' when discussing the collective opinions of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones." *Id.* at 261 n.40, 806 S.E.2d at 108 n.40. She and Justice Kittredge were "in the minority, because a different majority of the Court – consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones – would reverse the trial court." *Id.* at 291 n.72, 806 S.E.2d at 125 n.72. She also stated "a majority consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones" found that a trust existed in favor of Appellants as to the Parish Property and that Camp St. Christopher is held for the benefit of the Associated Diocese. *Id.* at 291 n.72, 806 S.E.2d at 125 n.72.

The Justices' agreement on the result of the Supreme Court Ruling is consistent with the law; that is, each Justice's vote on an issue – not his or her separate reasoning for the vote – is what controls and dictates the outcome. In *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 750 S.E.2d 78 (2013), this Court addressed a dispute about the effect of its prior divided opinion. To resolve the appeal, the Court counted the votes on the disputed issue. *Id.* at 198, 750 S.E.2d at 84 ("Upon review of our opinion, we find the Court voted 4-1 in favor of awarding Austin his request for trial-level fees."). Applying the same analysis to this case, it is undeniable that a majority of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones voted to reverse the Goodstein Order as to the Respondent Parishes' property and the Diocesan Property.

C. Respondents conceded that the Supreme Court Ruling reversed the Goodstein Order.

Respondents represented to this Court and to the Supreme Court of the United States that the Supreme Court Ruling reversed the Goodstein Order as to the Respondent Parishes' property and Diocesan Property.

The Petition for Rehearing acknowledged:

- The Petition was on behalf of the Disassociated Diocese and the Respondent Parishes "with the exception of those parishes who ***prevailed*** with respect to their property rights."

- The Supreme Court Ruling was a "decision to strip Petitioners of their property rights" and "a deprivation of their property."

- "[T]he ***effect of the majority*** of the opinions is to deprive [Respondents] of their property retroactively."

- "The ***result of the majority*** of the opinions is that the Court is granting deference to TEC's legislative body . . . ."

- It listed the points this Court "relied upon to ***reverse*** the trial court."

- It included an argument heading that "[t]he trial judge is being improperly ***reversed***."

- "[T]he ruling as to Camp St. Christopher is ***in error***, and rehearing should be granted."

- "[T]his Court, in its divided decision, has ***reversed*** the trial court's findings . . . ."

- "[T]he ***majority would transfer the real and personal property*** of South Carolina religious organizations . . . ."

- "[A]ccording to the ***majority***, that constitutionally protected decision ***requires*** a massive ***transfer of*** centuries old ***real and personal property*** . . . ."

(R. pp. 1312, 1314 n.1, 1315, 1324, 1332, 1334, 1345-1347) (emphasis added). Their Reply to the Return to the Petition for Rehearing stated:

> The ***result of a majority*** of the opinions of the Justices is the first time that ***Petitioners [Disassociated Diocese] lost*** the issue of whether a trust was created. However, rather than remanding to the trial court for further proceedings on the subsequent issues, which should have been done, the ***Court reached a final decision*** itself.

(R. p. 1758) (emphasis added).

The Petition for Writ of Certiorari that Respondents filed in the Supreme Court of the United States made the following representations:

- "[T]he court below, in a 3-2 decision, held that a trust could exist in favor of [TEC and Associated Diocese] . . . ."

- "Petitioners [Disassociated Diocese] ***lost below*** . . . ."

- "The court below resolved this property dispute by deferring to the national church's unilateral claim to Petitioner's [Disassociated Diocese's and Respondent Parishes'] properties."

(R. pp. 2033, 2048, 2060) (emphasis added). Further, in their Reply Brief related to the Petition for Writ of Certiorari, Respondents expressly admitted:

> Petitioners [the Respondents here] seek review of the judgment below that parishes that allegedly acceded to the Dennis Canon hold their property in trust for the national church. [TEC and the Associated Diocese] prevailed on this question by ***a 3-2 majority comprising Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty***.

(R. pp. 2118-2119) (emphasis added).

Respondents undeniably (and correctly) conceded that the result of the Supreme Court Ruling was that they lost. A party is bound by a concession in its brief. *Shorb v. Shorb*, 372 S.C. 623, 628 n.3, 643 S.E.2d 124, 126 n.3 (Ct. App. 2007). [13]

[13] After unsuccessful attempts to get this Court and the Supreme Court of the United States to change that result, Respondents decided to try a different strategy and argued the opposite – that this Court ruled in its favor.

Respondents made the same argument in the federal court action; Judge Gergel, however, disagreed. *vonRosenberg v. Lawrence*, 412 F. Supp. 3d 612, 630 (D.S.C. 2019) (District Court would "not assess whether each Justice properly applied *All Saints* to their own decision, and instead is bound by the actual ruling articulated by the South Carolina Supreme Court majority…. … [I]t is settled by a majority of the South Carolina Supreme Court that TECSC is the lawful successor to the Historic Diocese.").

The Circuit Court erred in permitting Respondents to take a directly contrary position in the same litigation, especially where the sole purpose was to avoid the consequences of this Court's decision. *See State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.*, 414 S.C. 33, 60, 777 S.E.2d 176, 190 (2015) (Even assuming an argument is preserved, the appellant "is nonetheless procedurally barred from appellate review because [it] argues a different basis on appeal than was argued at trial."); *State v. Rios*, 388 S.C. 335, 341, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding a party waived appellate review of an issue where it conceded the issue in the lower court).

Ironically, even as they argued that they had won in this Court, Respondents also argued to the Circuit Court that this Court had deprived them of due process. A prevailing party, of course, receives the relief that it requested. By claiming they were denied due process, Respondents implicitly acknowledged (again) that they were not the prevailing party with respect to the judgment of the Supreme Court Ruling.

D. The Justices confirmed the result of the Supreme Court Ruling.

In subsequent orders this Court stated that it ruled in favor of Appellants. In the order denying Respondents' Motion to Recuse Justice Hearn, Justice Kittredge referred to "this Court's ***majority decision*** as to the so-called twenty-eight 'acceding churches.'" (R. p. 149) (emphasis added). In the same order, Acting Justice Toal wrote that "[o]nly after receiving an ***adverse decision on the merits from a majority of the Court*** did the respondents challenge Justice Hearn's participation in the matter." *Id.* (emphasis added). In its order denying Respondents' Petition for Rehearing, signed by Chief Justice Beatty and Acting Justice Pleicones, the Court denied the petition "with the exception of the parishes ***who prevailed with respect to their property rights***." (R. p. 144) (emphasis added). All of these statements demonstrate this Court confirmed that the result of the Supreme Court Ruling was to reverse the Goodstein Order.

II. This Court is precluded from reviewing its own law of the case.

This Court is bound to follow its prior decision in the same case.

> It is well settled in this jurisdiction that a decision of this court on a former appeal is the law of the case. The questions therein decided are *res judicata* and this court will not on subsequent appeal review its former decision. We are not convinced that our former opinion was erroneous, but even if it were, we are precluded, under the settled rule, from reviewing it on this subsequent appeal.

Huggins v. Winn-Dixie Greenville, Inc., 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969) (internal citation omitted). The Supreme Court Ruling – the result of which was the majority's reversal of the Goodstein Order – is the law of the case and is not subject to further review by this Court.

III. The Circuit Court did not have jurisdiction or authority to hear or decide a motion to clarify a Supreme Court judgment.

When this Court remitted the judgment, the Circuit Court obtained jurisdiction and authority only to enforce the judgment, not to clarify or to rehear it. Consistent with its motto – *nil ultra* – this Court remitted the case to effect a final ending to this property litigation. The

Circuit Court erred in overriding this Court's judgment and ignoring longstanding precedent regarding the finality of this Court's decisions. If losing parties may simply return to Circuit Court and ask it to reverse this Court's decisions, then there will be no finality to litigation and no court of last resort in South Carolina.

After the denial of their Petition for Rehearing and Petition for Writ of Certiorari, Respondents made a motion for the Circuit Court to clarify its jurisdiction and determine "what the Collective Opinions [of the Supreme Court Ruling] held and what action would be consistent with those holdings." (R. p. 808). For at least 140 years, the law of South Carolina has prohibited a lower court from entertaining and ruling on such a motion.

In *Ex Parte Knox*, 17 S.C. 207 (1882), this Court heard a second appeal from the same case. After this Court issued a decision that modified a Circuit Court order, it remitted the case. *Id.* at 215. The losing party then filed a motion asking the Circuit Court to reopen and to rehear the judgment modified by this Court. *Id.* The Circuit Court denied the request and this Court affirmed, holding: "[The judgment] is made by an authority paramount to and which overrides the Circuit Court. This judgment of the Supreme Court is remitted, not to be reheard in, but to be enforced by, the Circuit Court according to law. . . . There must be some end to litigation." *Id.* at 218; *see also Builders Mut. Ins. Co. v. Bob Wire Elec.*, 424 S.C. 161, 166, 817 S.E.2d 807, 810 (Ct. App. 2018) ("Human life is not long enough to allow matters once disposed of being brought under discussion again." (internal quotation marks omitted)).

Rather than following and enforcing the final judgment, the Circuit Court instead nullified this Court's ruling. It acted without jurisdiction when it undertook to interpret the *reasoning* of the five opinions and reversed the *result* of the Supreme Court Ruling. There are numerous,

independent legal bases for this Court to find the Circuit Court acted without authority and in excess of the jurisdiction that revested upon remittitur.

A. Remittitur jurisdiction was limited to taking action consistent with the Supreme Court Ruling.

The Court remitted this case to the Circuit Court. (R. p. 145) (directing the Clerk of Court to "send the remittitur" to the Circuit Court). It did not remand the case with instructions. On remittitur, the "Circuit Court acquires jurisdiction to ***enforce*** the judgment and ***take any action consistent with*** the Supreme Court ruling." *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993) (emphasis added); *cf. Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 709 S.E.2d 122 (Ct. App. 2011) (Even after a case has been remanded – rather than remitted – "the appellate court's instructions circumscribe the trial court's authority on remand.").

A remand is accompanied by instructions from the Court for further proceedings before reaching a final result. The issuance of a remittitur without instructions further confirms that the Court reached a final result in this case and is based on the assumption that permissible actions "consistent with" the Court's ruling are self-evident and do not require further interpretation or analysis. (R. p. 145) (stating "the opinions previously filed in this case reflect the final decision of this Court"). Given the Circuit Court's decision in this case, it is necessary to state the obvious: "consistent with" means consistent with the majority *vote* of the Justices prescribing the *result* of the case but does not include the Circuit Court's determining whether that result is "consistent with" the legal reasoning of the various Justices.[14] Any other interpretation would mean that this

[14] For example, in *Pee Dee Health Care v. Estate of Thompson*, 424 S.C. 520, 531-32, 818 S.E.2d 758, 764 (2018), a lower court exercised jurisdiction over a defendant's motion for sanctions filed after an appellate decision and remittitur. This Court held the lower court properly exercised its jurisdiction because the motion – which was based on the dismissal of the plaintiff's claims – was "consistent with" the appellate court's opinion affirming that dismissal.

Court considered its ruling in this case for almost two years and then, simply because the Justices could not agree on the legal reasoning for the majority result, abdicated its role and delegated to the Circuit Court via remittitur the responsibility of determining the result after distilling legal precedent and harmonizing opposing viewpoints, even if it meant the Circuit Court reinstated a judgment that this Court had reversed.

That each Justice wrote an opinion setting out his or her *reasoning* does not expand the scope of jurisdiction on remittitur or provide a basis to avoid enforcing the majority's *result*. The Circuit Court cited *Marks v. United States*, 430 U.S. 188 (1977), as support for its jurisdiction to interpret the five opinions. (R. p. 8 n.4). In *Marks*, the Supreme Court of the United States was presented with the question of whether a plurality opinion in a *separate* case "authoritatively stated the *law*" applicable to the case before it. *Id.* at 190-91 (emphasis added). It explained that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Id.* at 193 (internal quotation marks omitted). That holding is not applicable to this situation. Here, the Circuit Court was not required to discern legal principles from a fragmented decision in another case; rather, it was charged with enforcing the *result* that this Court declared in *this* case. S.C. CODE ANN. § 18-9-270 (2014).

"Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996). "The decision of the appellate court is ***final*** as to all questions decided. It is the duty of the trial court to ***follow*** the decision of the appellate court." *Id.* at 443, 477 S.E.2d at 268 (internal citation omitted) (emphasis added). The Circuit Court directly violated *Ackerman* by rehearing and reconsidering matters decided by this Court under the guise

of clarifying its jurisdiction. Neither the Circuit Court nor Respondents have identified any other instance in which this Court remitted a case in which it had declared a *result* with the expectation that the lower court would then interpret this Court's legal reasoning to supplant this Court's result with its own.

A "judgment shall be remitted to the court below to be enforced according to law." S.C. CODE ANN. § 18-9-270 (2014). Upon remittitur under section 18-9-270, the Circuit Court must "act in accordance with [the Supreme Court's] opinion." *Hamm v. Southern Bell Tel. & Tel. Co.*, 305 S.C. 1, 5, 406 S.E.2d 157, 160 (1991). The Dickson Order cites to *Hamm* as support for its conclusion that the Circuit Court must resolve ambiguities in this Court's ruling. (R. p. 8 n.3). *Hamm* says no such thing. In *Hamm*, the Supreme Court addressed "a question involving the enforcement of this Court's prior opinion" in which it reversed the Circuit Court and remitted the case. 305 S.C. at 2, 406 S.E.2d at 158. In reversing the Circuit Court, this Court had ruled that the telephone company "unlawfully established" a rate increase. *Id.* at 5, 406 S.E.2d at 159. On remittitur, the telephone company argued that, because this Court remitted the case rather than remanding with instructions, the Circuit Court lacked jurisdiction or authority to send the case to the Public Service Commission to determine how much money the telephone company must refund for the unlawful rate increase. *Id.* at 5, 406 S.E.2d at 159-60. This Court disagreed and held "it was implicit" in its decision and "no such instruction was necessary" for the Circuit Court to send the case to the Commission "to act in accordance with our opinion." *Id.* at 5, 406 S.E.2d at 160.

Nowhere in *Hamm* did this Court say that a Circuit Court, on remittitur, may interpret the meaning of this Court's ruling or engage in an exercise to harmonize five Justices' opinions to produce a result contrary to the result of the Supreme Court's decision. Equally importantly,

nothing in *Hamm* suggests that a Circuit Court, once reversed on appeal to this Court, may then use remittitur as a vehicle to reinstate its earlier rulings. The lower court erred in relying on *Hamm* as authorizing it to resolve any alleged ambiguities in the Supreme Court Ruling.

The Circuit Court acted without jurisdiction by taking action contrary to and inconsistent with the majority's votes to reverse the Goodstein Order. Moreover, because the relief requested in Appellants' Petition for Execution and Petition for Accounting was consistent with the Supreme Court Ruling, the Circuit Court erred in denying those petitions.

B. The majority's reversal of the Goodstein Order is the law of this case.

The votes of Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty are a majority judgment that the Respondent Parishes' property is held in trust for Appellants and that the Associated Diocese is the beneficiary of trust with respect to all Diocesan Property. The Circuit Court acknowledged that it is bound by the law of this case but then ignored the Supreme Court Ruling's stated reversal and refused to follow and enforce the result of the majority's controlling votes. (R. pp. 8-13). Instead, the Circuit Court focused on the reasoning of the five opinions. Judge Dickson determined that a so-called "majority" of Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal "agreed that *All Saints* remained good law" and, as a result, concluded he must apply neutral principles of law as "the law of this case" and reexamine the trial evidence de novo. (R. pp. 12-13).

Justice Kittredge's and Acting Justice Toal's opinions to affirm property ownership in Respondents are ***dissenting*** opinions. A dissenting opinion "is not binding authority" and "is not controlling." *State v. Batson*, 107 S.C. 460, 461, 93 S.E. 135, 135 (1917). "The majority opinion shows what is the law, and the dissenting opinion shows what is not the law." *Id.* at 461, 93 S.E. at 135. The Dickson Order adopts and applies dissenting opinions that are "not the law."

The Circuit Court misunderstood and misapplied the law of the case doctrine.

The law of the case applies "to subsequent proceedings in the same litigation following an appellate decision." *Lifschultz Fast Freight v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999). "The doctrine of the law of the case prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case." *Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Id.* at 62, 492 S.E.2d at 68.

In the prior appeal of this case, this Court correctly reversed the Goodstein Order and held the Respondent Parishes hold the property in trust for Appellants. The Circuit Court erred in relitigating a matter decided in a prior appeal. The Dickson Order states the Circuit Court:

- "has jurisdiction and duty to enforce the Supreme Court's ***Collective*** Opinion *[sic]*,"
- is required "to confront and determine the ***intent*** of the Supreme Court in the ***Collective*** Opinions,"
- "must articulate an order that is 'consistent' with the ***Collective*** Opinions,"
- "must ***distill*** the five separate opinions, identify the Court's ***intent***, and produce a logical directive. It must ***harmonize*** these opinions and find common ground among them," and
- must resolve "[a]ny ambiguity."

(R. pp. 5, 8, 16) (emphasis added).

All of these statements are incorrect. The Circuit Court must enforce the *result* reached by a majority of the Court, not try to interpret, distill, harmonize, or clarify the legal *reasoning* of the Justices' various opinions. It is a matter of math. Three Justices – Pleicones, Hearn, and Beatty – voted to reverse the Goodstein Order and to declare property ownership in Appellants. Two

Justices – Kittredge and Toal – voted to affirm the Goodstein Order and place property ownership in Respondents. The majority result establishes the law of this case.[15]

The fact that all Justices did not agree on reversal or the reasons for that result makes no difference. In addressing a party's citation to a fractured ruling, this Court explained that "two Justices were for affirmance, two for reversal, and the fifth Justice concurred only in the result of the main opinion. Under these conditions it has been held that such cases shall not be considered as precedents, but establish the law only as to the particular case." *Moseley v. American Nat'l Ins. Co.*, 167 S.C. 112, 116, 166 S.E. 94, 96 (1932). The legal precedent of the Supreme Court Ruling does not matter for ***this case***. "[T]he doctrine of 'law of the case' is just that – the law of the case in which it was made, not the law of future cases." *Builders Mut. Ins. Co. v. Bob Wire Elec.,* 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018). The law of this case is the result of the majority's votes and not the Circuit Court's interpretation of a "collective" legal reasoning that included dissenting opinions.

C. The Circuit Court exceeded its jurisdiction and violated the law of the case when it reviewed the record for evidence of accession to the Dennis Canon and "construed" the Supreme Court Ruling to reverse its result as to Diocesan Property.

This Court's review of and correct decision on the evidence is the law of the case and was not reviewable by the Circuit Court. The Circuit Court exceeded its limited jurisdiction on remittitur (*supra* Argument section II.A.) and misused the law of the case doctrine (*supra*

[15] The Circuit Court noted that, in the order denying the Respondents' Motion to Recuse Justice Hearn, Justice Kittredge and Acting Justice Toal wrote separately and expressed concern that the Justices' five opinions may create "great uncertainty" and provide "little to no coherent guidance." (R. p. 8). Those statements, made by a self-described dissenting Justice after the Court issued the ruling, is not a basis for the Circuit Court to take the unprecedented step of reversing the Supreme Court. Whether this Court's ruling clearly resolves the legal standards involved relates to whether the Court created any legal precedent (that is, a ruling generally applicable to all cases) in its decision – a matter for another day in another case – but is not relevant to the enforcement of the ruling pursuant to the law of this case – the matter that was actually before the Circuit Court.

Argument section II.B.) when it reviewed the trial and appellate records for evidence of accession to the Dennis Canon. (R. pp. 23-39). This Court already undertook that analysis and its majority conclusion that the Respondent Parishes acceded to the Dennis Canon is the law of the case.[16] (*Infra* n.16). The Circuit Court did not have jurisdiction to review whether the record on appeal or the trial record supported the Supreme Court Ruling. *Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("[T]he law of the case prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case").

The Circuit Court again exceeded its jurisdiction when it "construed" Justice Beatty's opinion and concluded that the Supreme Court Ruling was "ambiguous" on the question of Diocesan Property (R. pp. 39-42), when this Court's decision clearly stated that a majority had determined that the Diocesan Property belonged with Appellants.

D. The Circuit Court exceeded its jurisdiction and violated the law of the case when it considered whether the issues this Court decided were preserved for appellate review.

This Court's mandate plainly stated it "Reversed" the Goodstein Order as to the Respondent Parishes' property and Diocesan Property; that is the law of this case. The Circuit Court lacked jurisdiction to reverse the majority's stated ruling and to determine whether an issue this Court addressed was preserved for appellate review. (R. pp. 6-7, 18, 26, 28, 42). Beyond this, the Circuit Court and Respondents failed to cite any law that permits a lower court to find the Supreme Court addressed unpreserved issues and then to disregard its ruling on that basis.

[16] Appellants argued in the earlier appeal that the Respondent Parishes' "voluntary accession to the National Church's rules, including the Dennis Canon, created a trust under the applicable "minimal burden" standard of First Amendment jurisprudence. (Brief of Appellants, p. 38). Alternatively, Appellants argued the Respondent Parishes created a trust interest under South Carolina law by those same "express promises in [the Respondent Parishes'] governing documents to comply with the National Church's rules [made] *after* those rules had been amended to include the Dennis Canon." (*Id.*) (emphasis in original).

Every issue the Court ruled on was preserved for its de novo review in this declaratory judgment action. Otherwise, the Court would not and could not have ruled on them and issued its own declaration of rights. As this Court explained, "[i]f a question is not presented for our review, we should not answer it no matter how much we may want to do so." *Atl. Coast Builders & Contrs. v. Lewis*, 398 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 n.4 (2012) (citing *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), *quashed on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.")). In other words, the fact that this Court decided issues means that it concluded those issues were preserved for appellate review – a finding the Circuit Court cannot contradict.

The Circuit Court cited *White's Mill Colony v. Williams*, 363 S.C. 117, 609 S.E.2d 811 (Ct. App. 2005) for the proposition that statements about unpreserved issues are dicta and the law of the case doctrine does not apply to dicta. (R. p. 7). *White's Mill Colony* does not grant a lower court authority to analyze whether the Supreme Court addressed unpreserved issues or to disregard a Supreme Court ruling as dicta. It addressed a situation in which no party appealed a finding. This Court held that, despite the parties' procedural failure, it did not have to accept an unappealed ruling as the law of the case where the ruling did not make sense and was not supported by any analysis. *Id.* at 123 n.1, 609 S.E.2d at 814 n.1. That result is easily distinguishable from the situation in this case where the Circuit Court *disregarded* the Supreme Court majority's result (reversal) based on the Circuit Court's post-appeal conclusion that Appellants did not preserve the issues.

The Circuit Court acted without jurisdiction and committed legal error when it found this Court ruled on unpreserved issues. If the Circuit Court's ruling is not vacated, the losing party in

an appeal will always be able to seek to overturn this Court's final judgment by arguing after remittitur that the appellate court ruled on unpreserved issues. It is an understatement to say that this is not how the appellate and Circuit Court systems operate and that such an outcome would result in unending litigation.

IV. Respondents received due process.

The Circuit Court erred and acted without jurisdiction in finding this Court deprived Respondents of due process. As an initial matter, the Circuit Court lacked jurisdiction to determine whether this Court deprived a litigant of due process. (*See supra* Argument section II). Regardless, its finding is reversible legal error.

At the outset, it is worth noting that the Circuit Court's ruling that this Court found in Respondents' favor is inconsistent with its ruling that this Court deprived Respondents of due process. By definition, an (allegedly) prevailing party is not denied due process but, instead, received the relief that it requested. This blatant contradiction is one example of how the Dickson Order conflicts with this Court's actual ruling in favor of Appellants.

Respondents received the full extent of due process in this case. They filed an action in Circuit Court, fully participated in a three-week trial, fully participated in an appeal, filed and received a ruling on a Petition for Rehearing, and filed and received a ruling on a Petition for Writ of Certiorari. Respondents exhausted all avenues of relief. That they are dissatisfied with the outcome does not mean they were denied due process.

The Circuit Court mentioned two alleged denials of due process: (1) the lack of "a finding, pursuant to a proper opportunity for argument and based on a proper record that they indeed acceded to the Dennis Canon"; and (2) this Court's denial of the petition for rehearing by a 2-2 vote. (R. pp. 21, 41). While the Circuit Court does not specify, its findings appear based on a perceived lack of procedural due process. (R. pp. 21-22, 21 n.18, 41).

"Procedural due process requirements are not technical; no particular form of procedure is necessary." *Vora v. Lexington Med. Ctr.*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). "The United States Supreme Court has held, however, that – at a minimum – certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Id.* at 595, 582 S.E.2d at 416. Due process was satisfied in this case.

As to the accession issues, Respondents filed this declaratory judgment action and were on notice of the accession issues involved. They received an opportunity to be heard on accession during a three-week trial and the prior appeal. At trial, Judge Goodstein received evidence and heard witness testimony regarding the Dennis Canon and expressly ruled on accession to the Canon in the Respondents' favor. (R. pp. 100, 101).

Respondents received and exercised the right to designate matters for the record on appeal in the prior appeal. In the prior appeal, all five Justices discussed the Parishes' accession to the Dennis Canon in their opinions.[17]

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[17] Acting Justice Pleicones: "In 1987, the Lower Diocese of South Carolina adopted a version of the Dennis Canon as part of its own constitution, as did many of the Parishes. Recall that accession to TEC's Canons, which included the Dennis Canon, and to the Lower Diocese's Constitution, which from 1987 forward included a diocesan version, were conditions of a parish or mission's membership in the Lower Diocese." *Protestant Episcopal Church*, 421 S.C. at 222, 806 S.E.2d at 87-88 (footnote omitted).

Justice Hearn: "Even beyond its clear accession to the Dennis Canon by its actions in remaining affiliated with the National Church upon its enactment, the Lower Diocese indisputably manifested its acknowledgement that all parish property was held in trust for the National Church through its adoption of its Diocesan version of the Dennis Canon in 1987." *Id.* at 245, 806 S.E.2d at 100.

Chief Justice Beatty: "TEC argues that the parishes' accession to the Dennis Canon created the trust. Assuming that each parish acceded in writing, I would agree. In my view, the Dennis Canon had no effect until acceded to in writing by the individual parishes. Thus, in contrast to the majority, I would find the parishes that did not expressly accede to the Dennis Canon cannot be divested of their property. ... However, I agree with the majority as to the disposition of the

As to the Petition for Rehearing, Respondents received and exercised all due process rights. The Circuit Court found Respondents did not receive due process based solely on the fact that four, instead of five, Justices ruled on the Petition. This is not a denial of due process and this Court already rejected that argument (R. p. 1373) when it denied the Petition.

No party is entitled to a rehearing. *See State v. McKennedy*, 348 S.C. 270, 277-78, 559 S.E.2d 850, 854 (2002) (petitions for rehearing are discretionary and fall outside of South Carolina's "ordinary appellate procedure"). Thus, the decision to deny Respondents' petition did not deprive them of a procedural right.

The Court regularly rules on petitions for rehearing with less than five Justices' votes. *See, e.g.*, *Hollins v. Wal-Mart Stores*, 392 S.C. 313, 314, 709 S.E.2d 625, 626 (2011) (granting motion to strike a petition for rehearing) (Moore, A.J., and Waller, A.J., not participating); *In re Ellerbe*, 384 S.C. 418, 418, 682 S.E.2d 487, 487 (2009) (granting petition for rehearing and substituting opinion) (Toal, C.J., not participating); *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001) (denying petition for rehearing) (Pleicones, J., not participating).

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remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust." *Id.* at 250-51, 806 S.E.2d at 103.

Justice Kittredge: "I first address the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon. … [I]t is my view that a trust was created as to the property of the local churches that acceded to the 1979 Dennis Canon. … While I agree the national church could not unilaterally declare a trust over the property of the local churches, I would join Chief Justice Beatty and hold that the local churches' accession to the 1979 Dennis Canon was sufficient to create a trust in favor of the national church." *Id.* at 252, 806 S.E.2d at 103-04.

Acting Justice Toal: "The defendants contend that twenty-eight of the plaintiff parishes 'acceded,' in some form or another, either to the local or national version of the Dennis Canon. Eight of the plaintiff parishes never acceded to either Dennis Canon. … [T]he twenty-eight parishes that made this alleged express promise at most merely acceded to the national church's constitution and canons. However, their accession did not include a transfer of title in a form recognized under South Carolina law." *Id.* at 265, 281, 806 S.E.2d at 111, 119 (footnotes omitted).

The State Constitution provides that three justices "shall constitute a quorum for the transaction of business." S.C. CONST. ART. V, § 2; *see also* S.C. CODE ANN. §§ 14-3-90 ("Any three of the justices shall constitute a quorum.") & 14-3-100 (if a quorum is present, "the business of the court shall not in such case be continued") (1977). The Appellate Court Rules expressly allow for fewer than five Justices to rule on a petition for rehearing. "Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court." Rule 240(j), SCACR (emphasis added). The rule on petitions for rehearing, Rule 221, SCACR, does not require the concurrence of two or more members of an appellate court. Because the Rules allow for one Justice to rule on a petition for rehearing and the Court is required to proceed with business when a quorum is present, the absence of a fifth Justice when only one is required to rule on a petition is not a denial of due process.

That four Justices ruled on the petition for rehearing is not a denial of due process; rather, it is the result of the Respondents' own motion to recuse Justice Hearn and to remove from further participation a Justice whose opinion they did not like. In other words, Respondents got what they asked for in their Motion to Recuse – a ruling on the Petition for Rehearing without Justice Hearn's participation. Respondents should not be now heard that they were denied due process as a result.

The Circuit Court erred in finding that Respondents did not receive due process. This Court should reverse that finding.

CONCLUSION

By the time the Court decides this appeal, the parties will have litigated this property dispute for approximately eight years. The Court previously spent two of those eight years

deciding the Supreme Court Ruling. The rulings of this Court are, and have until now been, final rulings that the Constitution mandates lower courts must follow.

Appellants request the Court vacate the Dickson Order and remand with instructions for the Circuit Court to take actions consistent with the Supreme Court Ruling that issued a declaration of rights in Appellants' favor, including granting the specific relief requested in Appellants' Petition for Execution and Petition for Accounting.

Dated: April 26, 2021

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

The Protestant Episcopal Church in the Diocese of South Carolina, et al Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina, Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

/s/ Bert G. Utsey, III
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April 26, 2021