

All Saints Parish, Waccamaw, Inc.: “A Case in Controversy” -The Supreme Court’s Narrow Ruling as to Property Ownership -

Does the 2009 opinion of the South Carolina Supreme Court in the case of All Saints, Waccamaw exempt *all* parish properties in the state’s dioceses from the Canons of the Episcopal Church? Does it say that the Dennis Canon is no longer valid in South Carolina, or does it consider only the property of *that one particular parish*, with its unique history of ownership, to be exempt? The opinion also begs the questions of constitutionality in light of U.S. Supreme Court church property dispute cases and the First Amendment, and whether the Diocese has taken improper steps to detach itself from The Episcopal Church after the decision was issued.

The case was originally filed as two actions that were eventually consolidated. One action, filed in 2000, had to do with property ownership of All Saints, Waccamaw. The other, filed in 2005, revolved around who was in control of the parish -- the vestry that voted to break away from The Episcopal Church and the Diocese of South Carolina, or the vestry that was elected by the remaining parishioners after the majority of the parish voted to leave. Although the cases were consolidated, the Court addressed the issues separately. The focus of this writing is primarily limited to the property ownership issue from the 2000 case. The ruling as to the 2005 part of the case is left for another writing, as are full discussions of the overarching question of constitutionality and the subsequent actions of the Diocese of South Carolina.

The opinion begins with a factual background of the case; a timeline that starts with a 1745 Trust Deed and ends with a parish vote in 2004 to amend its 1902 parish charter and transfer its affiliation with the Diocese and the Episcopal Church to the Anglican Mission in America, (AMiA), an outreach mission of the Anglican Province of Rwanda, formally organized in 1999.

The timeline also includes the recording of a legal notice in Georgetown County in 2000 in which the Diocese of South Carolina asserted its claim that All Saints’ property is held in trust for the Diocese and The Episcopal Church. The document served as notice and restatement of the Diocese’s claim of trust ownership, pursuant to the adoption of the Dennis Canon by General Convention in 1979 and by the Diocesan Convention in 1987.

Below is an outlined history that the Court used to base its decision. This history stretches back to colonial South Carolina, and includes legislative Acts specifically pertaining to All Saints Parish, adopted first by the colonial Commons House of Assembly and later by the South Carolina General Assembly, before and after the Revolutionary War:

- a) 1734 - George Pawley, member of the colonial Commons House of Assembly, was given legislative approval to acquire land in the coastal Carolina region in order to establish churches in that area;
- b) 1745 - a trust deed was granted from Percival and Ann Pawley to George Pawley and William Poole to build a church for the “inhabitants of the Waccamaw Neck area;”
- c) 1766 -Waccamaw Neck inhabitants petitioned the Commons House to establish their own parish;

- d) 1767 - Church Act of Commons House affirmed the parish's existence and the parish recorded its 1745 trust deed, as title vested in the members of All Saints Parish;
- e) 1778 -South Carolina General Assembly re-established the parish;
- f) 1820 – the Vestry and Wardens of All Saints Parish were recognized and incorporated through an Act of the General Assembly;
- g) 1839-S.C. General Assembly renewed the incorporation of All Saints Parish;
- h) 1853-S.C. General Assembly renewed the charter as an indefinite corporate recognition of All Saints;
- i) 1880-Act of the S. C. General Assembly required dormant parishes to be owned by the Diocese;
- j) 1902 - All Saints reincorporated its charter, due to parish concerns that property records had been destroyed in a storm;
- k) 1903 - A Quit-Claim deed was issued by the Diocese to All Saints Parish, Waccamaw, Inc., and recorded in 1903;
- l) 1987 - The Diocese of South Carolina adopted the Dennis Canon, Title III, Canon XXIX, Section 5.
- m) 2000 -Notice of diocesan trust interest in All Saints was recorded in Georgetown County.

Recognizing the many renewals and restatements of corporate entity and ownership documentation, the Court issued a narrow opinion as to the property ownership, determining that “All Saints Parish, Waccamaw, Inc.,” (the corporate entity named in its 1902 rechartering), owned the parish’s property, and not the Diocese or The Episcopal Church. The Court held that the Dennis Canon “*had no legal effect*” in the All Saints matter, based on the parish’s reincorporation in 1902 and the recording of a Quit-Claim deed in 1903, through which the Diocese relinquished its interest in All Saints’ property, decades *prior* to the Diocesan adoption of the Dennis Canon.

The significance of the Court’s reliance on the 1902 and 1903 events needs added emphasis. All Saints Parish, Waccamaw, Inc. revised its Articles of Incorporation and received its Quit-Claim deed from the Diocese over seventy years prior to General Convention’s adoption of the Dennis Canon, and over eighty years prior to its adoption by the Diocese of South Carolina.

The Court applied its version of the “neutral principles of law approach” to the facts of this case to analyze the question of ownership, using South Carolina property and trust law, (and in the second portion of the opinion, using South Carolina non-profit corporate law). This analysis led the Court to give *this parish*, All Saints Parish, Waccamaw, Inc., the authority to retain its property, since the Diocese conveyed all of its inherent interest to the parish *prior* to the adoption of the Dennis Canon. The Court’s neutral principles analysis, in effect, exempted All Saints from the Dennis Canon, since all of the ownership documents and charters and the renewals thereof had been well established *prior to the adoption of the Dennis Canon*. The Court stated that “*there was no such property canon existing in 1902 when the Diocese directed the congregation to incorporate, or when it executed the 1903 Quit-Claim deed in favor of the newly created All Saints Parish, Waccamaw, Inc.*”

A breakdown of the decision shows that seven pages of the fifteen page opinion focus on the detailed history of All Saints Parish; two and one half pages address the constitutional basis for its property decision; two pages explain its property decision, and a little over one page was devoted to the issue of which leaders are in charge. Considering the importance of the relation between constitutionality and property ownership, and the brevity of the Court's constitutional analysis, a critical view of the opinion is necessary.

First, the case that the Court relied on to reach its decision that it could constitutionally use the "neutral principles approach," *Pearson v Church of God*, 325 S.C. 45, 478 S.E.2d 849 (S.C. 1996), can be distinguished from this case. *Pearson* involved a contractual issue over an insurance policy from a minister's pension fund, which was revoked because of misconduct on the part of the minister. All facts involving the revocation of the policy were outside of the purview of the Church's doctrinal concern.

In the All Saints case, however, the hierarchical nature, the governing authority, and governing documents of the Church organization, (the Constitution and Canons of The Episcopal Church) were integrally intertwined with the facts of the case. The Court chose only to look at property law, trust law, and non-profit corporation law, as independent bodies of law, not having arisen out of church doctrinal issues.

Had the Court looked hard at the structure and authority of The Episcopal Church, in relation to the history of the parish, it may have placed more emphasis on the hierarchical nature of the Episcopal Church and related critical issues that could have put the controversy to rest:

- 1) The Diocese of South Carolina, of which All Saints Parish is a member, was part of the 1979 General Convention when the Dennis Canon was adopted, putting the Diocese and All Saints Parish within the purview of the Dennis Canon;
- 2) Because the Dennis Canon was specifically adopted by the Diocese of South Carolina in 1987, All Saints would have reinforced its recognition of and adherence to the 1979 action of General Convention, as being a member of the Diocesan Convention;
- 3) Prior to The Episcopal Church's and the Diocesan adoption of the Dennis Canon, there was an implied trust between parishes, dioceses, and The Episcopal Church regarding church property, through the parish-diocesan relationship in the hierarchical Church structure;
- 4) The diocesan version of the Dennis Canon, (Title III, Canon XXIX, Section 5 of the diocesan Canons) remained in place at the time of the All Saints dispute, through its "Accession Clause" in the diocesan Constitution, Article I: "*The Church in the Diocese of South Carolina accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America and acknowledges this authority accordingly.*"

Furthermore, new facts have emerged since the Court issued its opinion:

- 1) It was not until 2010 that the Diocesan Convention purportedly eliminated the Accession Clause and the Dennis Canon of The Episcopal Church, well after the All Saints opinion; and

2) The diocesan actions of purportedly eliminating accession to the Canons of The Episcopal Church (with the exception of the 2006 Title IV disciplinary canons), and The Episcopal Church Constitution, (when inconsistent with the diocesan Constitution), were thereafter deemed to be “null and void” in 2011, by The Episcopal Church’s Executive Council, through its Joint Standing Committee on Governance & Administration of Council.

A complicating problem is that there have been interpretational differences throughout the diocese over this opinion, and in particular, over the sentence, “*the Dennis Canon has no legal effect.*” This has created a case in controversy in and of itself. A common interpretation of the property ownership part of the opinion is that of a broad view; that parishes within the Diocese no longer need to hold their properties in trust for the Diocese and The Episcopal Church. The Diocese included language to this effect, in its attempt to abolish the Dennis Canon in October 2010, by making the following statement after the language of Resolution 10: “*The ruling of the South Carolina Supreme Court has established that in this state there is no implied trust in the property of the parishes of the Diocese. Given that ruling, this Section no longer applies and should be removed.*” (emphasis added)

Other than the diocesan attempt to abolish the Dennis Canon, the broad interpretation of the September 2009 opinion has spawned additional diocesan actions which further detach itself from The Episcopal Church. The Special Convention in October of 2009 voted that the Diocese of South Carolina is a “sovereign” diocese. Several months later, the March 2010 Diocesan Convention voted to affirm the “sovereignty” of the Diocese. As referenced in Paragraph 1 above, the October 2010 “Reconvened Convention” purportedly eliminated accession to the Canons of The Episcopal Church, (with the exception of retaining the outdated 2006 disciplinary Canons), and the 2011 Annual Convention limited the unqualified accession to The Episcopal Church’s Constitution. The 2010 Convention also authorized a change in the diocesan Corporate Charter such that the Diocese would no longer be an Episcopal Diocese *in The Episcopal Church*, but an Episcopal Church *in the Diocese of South Carolina*. The most significant diocesan actions that have been taken, in implementation of the above amendments, were the amending of its Corporate Charter, filed October 2010 with the South Carolina Secretary of State, and the Bishop’s and Standing Committee’s executing of numerous Quit-Claim deeds to parishes throughout the diocese, many of which have become effective through public recording.

Referring back to the initial questions: Does the All Saints property decision apply to *all* parishes? Is the Dennis Canon no longer valid in South Carolina? Can the Diocese abolish the Dennis Canon, recharter itself, and issue deeds to parishes, in the name of the All Saints case? Not at all; a reasonable interpretation of the opinion as to all of the above questions, is that the case in controversy was specific to All Saints, and that all diocesan actions which followed were improper. --Melinda A. Lucka 1/9/2012©

Excerpts from the FACTUAL/PROCEDURAL BACKGROUND of the opinion:

"Therefore, at the direction of the Diocese, the congregation re-incorporated in 1902 under the name "All Saints Parish, Waccamaw, Inc." Shortly thereafter, in 1903, the Trustees of the Diocese signed a quit-claim deed (hereinafter the "1903 Quit-Claim Deed") transferring any interest the Diocese may have had in the congregation's property to All Saints Parish, Waccamaw, Inc. The Diocese did not retain any interest in the property, reversionary or otherwise. The 1903 Quit-Claim Deed was recorded in the Georgetown County public records on May 30, 1903.

"In 1987, the Diocese amended its constitution and canons so as to include the "Dennis Canon." The Dennis Canon purports to declare a trust, in favor of the ECUSA and the Diocese, on all real and personal property held by any congregation. No such property canons existed in 1902 when the Diocese directed the congregation to incorporate, or when it executed the 1903 Quit-Claim Deed in favor of the newly created All Saints Parish, Waccamaw, Inc."

Excerpts from the RULING:

1903 Quit-Claim Deed-

"Moreover, the 1903 Quit-Claim Deed makes clear that All Saints Parish, Waccamaw, Inc. holds title to its property. The All Saints Parish congregation was officially incorporated in 1820. In 1902, due to doubt over the status of the congregation's incorporation, the Diocese directed it to re-incorporate as "All Saints Parish, Waccamaw, Inc." Shortly thereafter, in order to settle any doubt as to the status of title to Parish property, the Diocese voluntarily executed the 1903 Quit-Claim deed. The 1903 Quit-Claim Deed makes clear that title to the property at issue is currently held by the congregation's corporate entity – All Saints Parish, Waccamaw, Inc."

2000 Notice and Dennis Canon-

"Furthermore, we hold that neither the 2000 Notice nor the Dennis Canon has any legal effect on title to the All Saints congregation's property. A trust "may be created by either declaration of trust or by transfer of property...." Dreher v. Dreher, 370 S.C. 75, 80, 634 S.E.2d 646, 648 (2006). It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

"For the aforementioned reasons, we hold that title to the property at issue is held by All Saint

Parish, Waccamaw, Inc., the Dennis Canons had no legal effect on the title to the congregation's property, and the 2000 Notice should be removed from the Georgetown County records."

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