



**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

**ADVANCE SHEET NO. 30
July 25, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org**

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Delories Jenkins, Respondent,

v.

Refuge Temple Church of God in Christ, Inc., and
Wayne Penn, Sr., Daniel Ward, Jr., James A. Tucker and
Eronda Jackson, Individually and as Members of the
Board of Directors of Refuge Temple Church of God In
Christ, Inc., Defendants,

of whom Refuge Temple Church of God in Christ, Inc.,
is Appellant.

Appellate Case No. 2016-000213

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5577
Heard March 6, 2018 – Filed July 25, 2018

REVERSED

Timothy J. Newton and Peter E. Farr, both of Murphy &
Grantland, PA, of Columbia, for Appellant.

Kenneth C. Hanson and Walter Marion Riggs, both of
Hanson Law Firm, PA, of Columbia, for Respondent.

SHORT, J.: The Refuge Temple Church of God in Christ, Inc. (the Church)
appeals from the circuit court's order granting judgment to Delories Jenkins

(Respondent) for breach of contract, arguing the circuit court erred in (1) ruling on this case because civil courts lack subject matter jurisdiction to rule on ecclesiastical matters; (2) finding the alleged contract at issue was properly executed and approved; and (3) finding the Church waived its objections by operating pursuant to the alleged contract for several years. We reverse.

FACTS

Pastor Elder Edward Jenkins, Respondent's husband, founded the Church in June 1997. Pastor Jenkins served as the Church's incorporator, first pastor, and chair of the Board of Directors (Board). Pastor Jenkins incorporated the Church under the laws of South Carolina as a nonprofit corporation through Articles of Incorporation (the Articles) filed in June 1997. Article V of the Articles states a three-director Board manages the affairs of the Church. Article VI of the Articles reveals the initial Board consisted of Pastor Jenkins, Connie Bowman, and Gary James, Sr.

The initial Board of the Church adopted bylaws in June 1997. These bylaws provide the congregation's members would be nonvoting members and the Board members would be voting members. The bylaws require individuals to attend worship services at the Church for at least three consecutive months prior to consideration for membership. The bylaws authorize the Board to manage the affairs of the Church, impose upon the Board a fiduciary obligation to the Church, and mandate the Board will consist of no less than three members. The bylaws establish a majority of the Board shall constitute a quorum, and specify the act of a majority of the Board shall be the act of the Board. The bylaws grant the pastor the authority to fill any vacancy in the Board with the advice and consent of a majority of the present Board. Finally, the bylaws allow the Board to authorize any officer or agent of the Church to enter into any contract or execute and deliver any instrument on behalf of the Church.

On March 13, 2002, the Board, consisting of Pastor Jenkins, Bowman, and Daniel Webster Ward, Jr., held a special meeting to consider and vote on an employment agreement entitled "Pastor's Employment and Retirement Agreement" (the Agreement) to retain Pastor Jenkins as the Church's pastor for life. After discussion, Ward made a motion to approve the Agreement, which Bowman seconded. The Board unanimously adopted the Agreement.

Section four of the Agreement, entitled "Death of Pastor," provides in pertinent part:

In the event of the Pastor's death, if Pastor is survived by his spouse, [Respondent], a monthly sum equivalent to the Pastor's monthly salary and housing allowance, which will become salary at the time of his death shall be paid to [Respondent] for the remainder of her life, even if she leaves the church.

Section six of the Agreement explains the Agreement is binding on all parties, revokes all prior employment agreements with respect to Pastor Jenkins, and states, "It is also[] agreed that in the event of Pastor's death or total disability, this Agreement shall become irrevocable."

The Church employed and paid Pastor Jenkins until his death on April 4, 2004. After Pastor Jenkins's death, the Church began paying Respondent \$1,575 each month. On April 5, 2005, the Church's new pastor, Pastor Elder Wayne Penn, received a letter from Mozzini Justice, an accounting firm hired by the Church, informing him that Respondent had been receiving a housing allowance and salary from the Church and recommending the Church reclassify the payment as a retirement plan as opposed to income for tax purposes because the payments "weren't quite legitimate." On February 4, 2010, the Church wrote a letter to Respondent proclaiming the Church could no longer afford to keep paying her the monthly amount of \$1,575. The letter explained the Church had been compensating Respondent "in honor of the service of yourself and your late husband, our pastor, the Elder Edward Jenkins and to help you financially during the transition." The Church's letter stated Respondent would receive the regular payment amount for February and March 2010, and then a reduced amount of \$500 from April 2010 until December 2010, at which time the payments would cease. However, Respondent never received another payment after a \$500 check in April 2010.

On February 25, 2011, Respondent filed a complaint against the Church alleging breach of contract, failure to pay wages under the South Carolina Payment of Wages Act,¹ and tortious interference with contract. After presenting her case in a bench trial, Respondent withdrew her claim for tortious interference with contract and dismissed the individual defendants named in her lawsuit, leaving only the Church in its official capacity. In its order granting judgment to Respondent, the circuit court found the Agreement a valid and enforceable contract, determined the Board possessed the authority to execute the Agreement, and noted the Church

¹ S.C. Code Ann. § 41-10-10 to -110 (Supp. 2017).

honored the Agreement with Respondent from 2004 to January 2010. As to her second cause of action, the circuit court found Respondent was not entitled to recover under the South Carolina Payment of Wages Act. The Church filed a Rule 59(e), SCRCP motion, seeking reconsideration of the decision, which the circuit court denied. The Church appeals.

STANDARD OF REVIEW

"An action for breach of contract is an action at law." *Electro-lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). "In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." *Id.* "[T]he findings of fact of the [circuit court] will not be disturbed upon appeal unless found to be without evidence which reasonably supports the [circuit court]'s findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

LAW/ANALYSIS

I. Subject Matter Jurisdiction

The Church argues the circuit court erred in hearing this dispute because civil courts lack subject matter jurisdiction to rule on the ecclesiastical matters present in this case. We disagree.

"Our case law has recognized that civil courts 'do have jurisdiction as to civil, contract[,] and property rights which are involved in a church controversy,' even though they have no jurisdiction of 'ecclesiastical questions and controversies.'" *Pearson v. Church of God*, 325 S.C. 45, 51, 478 S.E.2d 849, 852 (1996) (quoting *Bramlett v. Young*, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956)). In *Jones v. Wolf*, the Supreme Court of the United States approved of the use of neutral principles of law as a means of adjudicating ecclesiastical disputes. 443 U.S. 595, 602 (1979).

The neutral principles of law approach adopted by the South Carolina Supreme Court in *Pearson* provides:

- (1) [C]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration;
- (2) courts cannot avoid adjudicating

rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

325 S.C. at 52-53, 478 S.E.2d at 853. Under this rule, "where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so." *All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). "Where a civil court is presented an issue which is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues." *Id.*

Initially, we note the Church raised the issue of subject-matter jurisdiction for the first time on appeal. However, "[t]he issue of subject matter jurisdiction may be raised at any time[,] including for the first time on appeal to this [c]ourt." *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002).

The Church first asserts a "ministerial exception" based on the First Amendment bars courts from adjudicating claims concerning contracts between a church and a minister, citing *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012). We find the Church has improperly raised the ministerial exception as a jurisdictional argument because the exception "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar." *Id.* at 195, n.4. "[T]he issue presented by the exception is 'whether the allegations the plaintiff makes entitle [it] to relief,' not whether the court has 'power to hear [the] case.'" *Id.* (quoting *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010)). The Church did not plead or otherwise raise this defense to the circuit court and the circuit court issued no ruling on this defense. See Rule 12(b), SCRPC ("Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading . . ."); see also *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989) ("[A]ffirmative defense[s] . . . must be [pled] and proved."). Therefore, the Church is precluded from raising this defense for the first time on appeal. *Adams*, 297 S.C. at 419, 377 S.E.2d at 317 ("An issue not raised before the [circuit] court will not be addressed on appeal.").

Regardless, we believe the ministerial exception described in *Hosanna-Tabor* is inapplicable in this situation. In *Hosanna-Tabor*, the Supreme Court of the United States held that a "ministerial exception" grounded in the First Amendment barred an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. 565 U.S. at 190. The Supreme Court explained, "The exception . . . ensures that the authority to select and control who will minister to the faithful . . . is the church's alone." *Id.* at 194-95. However, the Supreme Court clarified, "[w]e express no view on whether the exception bars other types of suits, *including actions by employees alleging breach of contract or tortious conduct by their religious employers.*" *Id.* at 196 (emphasis added).

In contrast, the parties in this case are not asking this court to resolve an employment discrimination suit or a dispute over who will lead a church, but rather to determine the validity of a contract between a church and a former minister's wife. Additionally, the Supreme Court expressly refused to hold whether the ministerial exception bars other types of suits, such as breach of contract, which is the type of action brought in this case. Thus, we find the ministerial exception is inapplicable.

The Church next argues the resolution of the issues in this case requires extensive inquiry into religious matters and this court is therefore unable to adjudicate this dispute under neutral principles of law. In applying neutral principles of law to the facts of this case, we find a court's exercise of jurisdiction over this matter would not violate the federal or state constitutions. This case does not contain disputes as to religious law, principle, doctrine, discipline, custom, or administration. This case presents a temporal issue: the validity of a contract involving a church and a former minister's wife providing for monthly payments by the church to the wife after the death of her husband. "Where . . . a church controversy necessarily involves rights growing out of a contract recognized by the civil law, . . . civil tribunals cannot avoid adjudicating these rights." *Pearson*, 325 S.C. at 52, 478 S.E.2d at 853 (quoting *Morris St. Baptist Church v. Dart*, 67 S.C. 338, 341-42, 45 S.E. 753, 754 (1903)). Although we recognize we must accept "as final and binding the decisions of the highest religious judicatories of the [Church] as to religious doctrine and discipline," we find the resolution of this dispute requires only "the application of neutral principles of contract law and very little inquiry into religious law." *Pearson*, 325 S.C. at 52-53, 478 S.E.2d at 853. Accordingly, we find the circuit court did not err in exercising jurisdiction over this case.

II. Contract Validity

The Church argues the circuit court erred in finding the Agreement valid because the Board that executed the Agreement lacked proper authority, and the Agreement was tainted by conflict of interest. We agree.

Before resolving this dispute under neutral principles of law analysis, we must determine the "highest religious judicatories" of the Church to comply with the third directive expressed in *Pearson*. See *Pearson*, 325 S.C. at 52-53, 478 S.E.2d at 853 ("[I]n resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration."). "Religious organizations are generally divided into two groups: (1) congregational churches and (2) hierarchical churches." *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). "A congregational church is an independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government." *Id.* (quoting 66 Am.Jur.2d *Religious Societies*, § 3). "[A] hierarchical church may be defined as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *Id.* at 149-50, 326 S.E.2d at 148.

It is undisputed the Church is a hierarchical church. Accordingly, *Pearson* mandates we must accept as final and binding the decisions of the highest ecclesiastical tribunal of the Church, as to religious law, principle, doctrine, discipline, custom, and administration. See *Pearson*, 325 S.C. at 53 n.4, 478 S.E.2d at 853 n.4 ("In religious organizations of a hierarchical nature, courts would interpret the final actions of the highest ecclesiastical tribunal or body."). With this determination in mind, we turn to the facts of this case.

The Church first argues Pastor Jenkins improperly appointed two of the members of the Board who executed the Agreement, Bowman and Ward. Because the Church is organized as a South Carolina nonprofit corporation, the governing law for determining the proper election of board members is the South Carolina Nonprofit Corporation Act (Non-Profit Act), specifically sub-section 33-31-804(b) of the South Carolina Code (2006). However, section 33-31-180 of the South Carolina Code (2006) provides: "If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both." Additionally,

because the method of electing a hierarchical church's board members is a matter of church polity, we must defer to the decisions of the highest ecclesiastical body of the Church, as dictated in the Official Manual of the Church of God in Christ (Official Manual). *See Pearson*, 325 S.C. at 52-53, 478 S.E.2d at 853 ("[I]n resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.").

A secular review of the Official Manual reveals the requirement that all trustees of local churches must be members of the church. *See Pearson*, 325 S.C. at 51, 478 S.E.2d at 852 ("In undertaking an examination of religious documents, such as a church constitution, a civil court 'must take special care to scrutinize the document in purely secular terms.'" (quoting *Jones*, 443 U.S. at 604)). The Official Manual also provides, "In all cases where the laws require a special mode of election of Church [directors], that mode must be followed Where, however, no particular mode of election of [directors] is established or required by law, then the [directors] shall be elected by a majority of the members of the congregation." Finally, the Official Manual allows a local church to establish its own bylaws so long as the bylaws do not conflict with "the Charter, Constitution, Laws and Doctrines of the Church of God in Christ."

Accepting these determinations in the Official Manual, we find the governing law in this case, section 33-31-804(b) of the Non-Profit Act, lists no particular requirement for the election of the Board. *See* § 33-31-804(b). Therefore, we are bound to accept the Official Manual's mandate that the majority of the members of the congregation shall elect the members of the Board.

Accordingly, we believe Pastor Jenkins improperly appointed Bowman and Ward to the Board. Bowman and Ward were qualified members of the Church at the time they were selected to serve on the Board, which complied with the Official Manual.² However, Pastor Jenkins appointed both Bowman and Ward to the Board. Although the Church's bylaws grant the Pastor the authority to fill any vacancy on the Board with the advice and consent of a majority of the present

² The Church's bylaws require individuals to attend worship services at the Church for at least three consecutive months prior to consideration for membership. Bowman's testimony indicates she was an initial director, rotated off the Board for several years, and then Pastor Jenkins reappointed her to the Board. Ward's testimony indicates he attended the Church for almost a year before Pastor Jenkins appointed him to the Board.

Board, these bylaws conflict with the Official Manual's requirement that the majority of the congregation's members elect the members of the Board. Therefore, we find Pastor Jenkins improperly appointed both Bowman and Ward to the Board. Because neither Bowman nor Ward were properly elected to the Board, the Board lacked the authority to execute the Agreement,³ and we hold the circuit court erred in finding the Agreement a valid and enforceable contract.⁴

III. Laches/Waiver

Lastly, the Church argues the circuit court erred in finding the doctrine of laches barred any objection to the Agreement because the Church operated under the Agreement from March 2002 through April 2010. We agree.

Respondent presented the defense of laches in her proposed order as an additional basis for granting judgment, which the circuit court adopted. For this first time on appeal, Respondent argues the defense of waiver as an additional sustaining ground.

"The equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is the 'voluntary and intentional relinquishment or abandonment of a known right.'" *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). "Both laches and waiver require a party to have [(1)] known of a right, and [(2)] known that the party was abandoning that right." *Id.* at 85, 650 S.E.2d at 470-71. The party seeking to establish waiver or laches has the burden of proof. *See SPUR at Williams Brice Owners Ass'n v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015); *King v. James*, 388 S.C. 16, 28, 694 S.E.2d 35, 41 (Ct. App. 2010).

We find Respondent has failed to meet her burden of establishing waiver or laches. Here, the record shows Pastor Penn testified he had never seen the Agreement until

³ Because we find the Board lacked proper authority to execute the Agreement, we need not address the Church's remaining argument on the Agreement's validity. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding appellate courts need not address remaining issues when disposition of prior issues is dispositive); *Whiteside v. Cherokee Cty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993).

⁴ We note Respondent's counsel acknowledged the contract was invalid at oral argument.

this litigation. Although he acknowledged the Church's payments to Respondent, Pastor Penn explained the Church typically supports widows of former pastors for about five years. The Agreement also does not specify a payment amount, and the evidence in the record is conflicting on the exact amount that Respondent received from the Church each month. Bowman testified no one announced the special meeting about the Agreement, the Board's decision on the Agreement, or the Agreement itself to anyone other than the Board members who signed the Agreement. Ward remembered reading the Agreement and believed someone would present the Agreement to the congregation. Ward also stated he did not tell anyone else in the congregation about the Agreement.

As additional evidence of the Church's ignorance of the Agreement, there were several other terms in the Agreement that the parties never performed. For example, the Agreement provided Respondent would become a permanent member of the Board upon Pastor Jenkins's death. The Agreement also required the Church to purchase a life insurance policy on Pastor Jenkins, and that did not occur. Finally, the Agreement gave Respondent "the controlling voice" in selecting the new pastor once Pastor Jenkins passed away or could no longer perform as pastor. The Agreement stated the Church would not select a new pastor "without the affirmative consent of [Respondent]." However, the only evidence in the record is that Respondent did not "help oversee the process of finding a new pastor." The parties' failure to comply with these additional terms undermines the circuit court's finding that the Church performed under the Agreement for approximately six years, and, thus, waived its ability to challenge the Agreement.

Based on the testimony and evidence in the record, we believe neither the Church's current leadership nor the Church's congregation were aware of the Agreement until this litigation. Although the Church's leadership acknowledged the payments, without knowledge of the Agreement itself, the Church could not have known of its right to object to the Agreement's validity. Because the Church was unaware of the Agreement and its right to object, the Church could not have abandoned this right. Therefore, we hold the circuit court erred in finding the doctrine of laches barred the Church from objecting to the Agreement. We also find Respondent failed to meet her burden under the doctrine of waiver.

CONCLUSION

Accordingly, the decision of the circuit court is

REVERSED.

THOMAS and HILL, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown, Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown, Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

Appellate Case No. 2015-002417

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 5578
Heard April 17, 2018 – Filed July 25, 2018

AFFIRMED

Robert C. Byrd and Alyson Smith Podris, both of Parker Poe Adams & Bernstein, LLP, of Charleston; Katon Edwards Dawson, Jr., of Parker Poe Adams & Bernstein,

LLP, of Columbia; and Marc Toberoff, of Malibu, CA, all for Appellants Deanna Brown Thomas, Yamma Brown, and Venisha Brown. Matthew Day Bodman, of Matt Bodman, PA, of Columbia, and David B. Bell, of Augusta, GA, both for Appellants Michael Deon Brown and Daryl J. Brown. John Andrew Donsbach, Sr., of Donsbach Law Group, LLC, of Martinez, GA, for Appellant Terry Brown.

Robert N. Rosen, of Rosen Law Firm, LLC, of Charleston; S. Alan Medlin, of Columbia; Thomas Heyward Carter, Jr., Andrew W. Chandler, and M. Jean Lee, all of Evans Carter Kunes & Bennett, PA, of Charleston; David Lawrence Michel, of Michel Law Firm, LLC, of Charleston; and Arnold S. Goodstein, of Goodstein Law Firm, LLC, of Summerville, all for Respondent.

SHORT, J.: In this case involving the estate of James Brown, six of Brown's children appeal from the trial court's grant of Tommie Ray Brown's (Respondent's) motion for summary judgment, arguing the trial court erred in finding the marriage between Respondent and Brown was not bigamous. We affirm.

FACTS

Respondent married Javed Ahmed on February 17, 1997. Thereafter, she married Brown on December 14, 2001.¹ Respondent brought an action to annul her marriage to Ahmed on December 15, 2003, and in its April 15, 2004 order, the

¹ On her marriage license to Brown, Respondent stated it was her first marriage. In the parties' joint stipulation of facts filed September 5, 2014, it states, "From the February 17, 1997 marriage ceremony between [Respondent] and [Ahmed] through the December 14, 2001 marriage ceremony between [Respondent] and [Brown], no order of any court or other occurrence of which [Respondent] is aware at this time ended or caused to end any marriage that certain parties assert existed between [Respondent] and [Ahmed]."

Charleston County Family Court found her marriage to Ahmed was void ab initio. The court found Ahmed was married at the time of his marriage to Respondent, and therefore, he lacked capacity to marry her.²

Brown and Respondent separated after Brown was arrested on January 28, 2004, for criminal domestic violence as a result of an altercation between Brown and Respondent. Brown sought an annulment from Respondent on May 6, 2004, asserting Respondent was legally barred from entering into a marriage to Brown because she was married to Ahmed at the time of their marriage ceremony. Respondent filed a counterclaim, seeking a divorce on the grounds of physical cruelty and adultery. In a consent order of dismissal filed by the Aiken County Family Court on August 16, 2004, the parties informed the court they had reached an agreement, and Respondent agreed to "forever waive any claim of a common law marriage to [Brown], both now and in the future." Respondent states she and Brown reconciled and lived together until his death.

Brown died on December 25, 2006. His will devised his personal effects to six named children: Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown, and Daryl Brown (collectively, Appellants). Brown's will was admitted to probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the circuit court, and the probate court continued to remove all matters filed in Brown's Estate to the circuit court. On February 1, 2007, Respondent brought an action to set aside Brown's entire will, which did not name her or their son as beneficiaries, based on alleged

² Respondent stated she thought she married Ahmed, but after the marriage ceremony, he told her he would not live with her because he was married to three or more women in Pakistan. She claims the marriage was never consummated, and Ahmed only married her to become a United States citizen. In the parties' joint stipulation of facts, it states Respondent had "no documents or other tangible evidence evidencing [Ahmed] was married to another person when [Respondent] and [Ahmed] participated in the February 17, 1997 marriage ceremony" and Respondent could not identify any person "who can testify that [Ahmed] was married to another person when [Respondent] and [Ahmed] participated in the February 17, 1997 marriage ceremony." According to Respondent, Ahmed was never located, and he did not "appear, answer the complaint or otherwise plead within the time required, participate in or otherwise defend himself in the Ahmed Annulment Action."

undue influence and fraud.³ She separately claimed an elective share or an omitted spouse's share of the Brown estate.

Appellants and Respondent participated in mediation on August 10, 2008, and reached a settlement agreement. The agreement states "[t]he settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement." The parties agreed Respondent "was the legal wife of [Brown], during his lifetime and at the time of his death, and qualifies as his surviving spouse." The court approved the settlement agreement on May 26, 2009. However, on May 8, 2013, the South Carolina Supreme Court reversed and remanded the approval of the settlement to the trial court because of a lack of evidence showing a fair and reasonable settlement of a good faith controversy. *See Wilson v. Dallas*, 403 S.C. 411, 450-51, 743 S.E.2d 746, 767-68 (2013). The court stated that "even if [Respondent was] able to establish a claim as Brown's surviving spouse, she executed a prenuptial agreement, in which she indicated that she had the opportunity to consult with counsel of her own choosing and waived all rights to Brown's property or any statutory claims against his estate," and a valid prenuptial agreement would normally preclude any right to an elective share. *Wilson*, 403 S.C. at 440, 743 S.E.2d at 762.

In the interim, a hearing was held and several other motions were filed, but what is relevant to this appeal is that on April 28, 2014, Respondent filed a motion for summary judgment, asserting there was no genuine issue of material fact as to her marriage to Brown, and she was entitled to summary judgment on the issue of the validity of her marriage as a matter of law. On June 2, 2014, Appellants joined in on a motion for summary judgment, limited to the sole assertion that Respondent was not Brown's surviving spouse at the time of his death.⁴ After a hearing on the

³ Brown and Respondent have one son together, James Joseph Brown, II, who was born on June 11, 2001.

⁴ The Limited Special Administrator (LSA) of the Estate of James Brown filed the motion. In the motion, Appellants attached as an exhibit an affidavit from an attorney who said he spoke with Ahmed, who was in Pakistan. The attorney stated Ahmed told him he was not married to anyone else when he married Respondent, and he and Respondent lived together as husband and wife for a period of time following the 1997 marriage. Appellants also attached the marriage license between Ahmed and Respondent that stated Ahmed was not married at the time of the application.

motions, the trial court filed its order on January 13, 2015, granting Respondent's motion for summary judgment. The court found Respondent and Ahmed never had a valid marriage because it was a bigamous marriage, and thus, Respondent had no impediment to her valid marriage to Brown. Appellants filed motions to reconsider. In an order filed October 26, 2015, the trial court denied Appellants' motions to reconsider. These appeals followed.⁵

STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). "An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment." *Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011). "Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial." *Id.*

LAW/ANALYSIS

I. Bigamous Marriage

Appellants Deanna Brown-Thomas, Yamma Brown, and Venisha Brown argue the trial court erred in not finding Respondent's attempted marriage to Brown was bigamous as a matter of law due to her failure to terminate her first marriage prior

⁵ Michael Deon Brown and Daryl Brown adopted the briefs of the LSA. The LSA notified this court that it reached a settlement with Respondent and sought to withdraw its appeal. On September 19, 2017, this court granted the LSA's request to withdraw its appeal and stated the briefs submitted by the LSA were to be made a part of the record as the briefs of Michael Deon Brown and Daryl Brown.

to her second marriage.⁶ We disagree.

Section 20-1-80 of the South Carolina Code (2014) provides:

All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

Appellants argue the trial court erred in applying the 2004 annulment order to validate Respondent's 2001 marriage to Brown, which they assert was bigamous under section 20-1-80. They maintain a subsequent order declaring a first marriage void ab initio does not relate back so as to validate a second bigamous marriage. Appellants also argue the trial court erred in making a distinction between later-annulled marriages that were "void" and those that were "voidable." They state it does not matter whether Respondent's 1997 marriage to Ahmed was "void" or "voidable" because Respondent's first marriage must be declared void by a competent court before she can remarry.

The trial court in this case stated, "A void marriage is treated differently from a voidable marriage. A voidable marriage is valid unless and until a court rules that such a marriage is invalid, but a void marriage is never valid for any purpose." The court further stated, "South Carolina law precludes this Court from giving any effect whatsoever to a bigamous marriage. Because the Court cannot give any effect to a bigamous marriage, it is required to hold that the bigamous marriage was never a marriage." Therefore, the court held Respondent and Ahmed never had a valid marriage at any point in time, and Respondent had no impediment to her valid marriage to Brown.

The South Carolina Supreme Court in *Lukich v. Lukich* found that under the terms

⁶ Appellants Terry Brown, Michael Deon Brown, and Daryl Brown also make essentially this same argument in their briefs; therefore, we combine the arguments for this issue.

of section 20-1-80, the wife's "'marriage' to [h]usband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse and that marriage had not been 'declared void.'" 379 S.C. 589, 592, 666 S.E.2d 906, 907 (2008) (quoting S.C. Code Ann. § 20-1-80). "A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable." *Day v. Day*, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950); *see also Howell v. Littlefield*, 211 S.C. 462, 466, 46 S.E.2d 47, 48 (1947) ("[Husband's] existing marriage . . . incapacitated him . . . to contract another marriage. . . ."); *Johns v. Johns*, 309 S.C. 199, 201, 420 S.E.2d 856, 858 (Ct. App. 1992) ("At the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while [the] respondent had a subsisting marriage was void as a matter of public policy. . . . It was void from its inception, not merely voidable, and, therefore, cannot be ratified or confirmed and thereby made valid.").

While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second "marriage." Since there was no marriage under the plain terms of the statute when the ceremony between Wife and Husband # 2 was performed in 1985, there was nothing to be "revived" by the annulment order in 2003.

Lukich, 379 S.C. at 592, 666 S.E.2d at 907.

In *Wilson v. Dallas*, 403 S.C. at 434 n.16, 743 S.E.2d at 759 n.16, our supreme court stated in a footnote:

[Respondent]'s request for an annulment from Ahmed was hastily granted by the family court in Charleston County during the pendency of Brown's separate annulment action against her. The circuit court noted the decision of the Court of Appeals in *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), in which the Court of Appeals held that an annulment declaring a spouse's first marriage void could not retroactively validate the spouse's second marriage. The circuit court distinguished Brown's situation, opining that the rule in

Lukich did not apply where the first marriage was never valid because one of the parties was already married. This Court has since affirmed *Lukich*, in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008). We express no opinion, however, on the circuit court's interpretation here.

In *Lukich*, there was no impediment to the first marriage; thus, the wife had to have the first marriage annulled for the second marriage to be valid. Here, Respondent's first marriage to Ahmed was invalid or void from the beginning because he was already married to someone else at the time of the marriage. As a result, had Respondent's marriage to Ahmed not been annulled, the second marriage to Brown would still have been valid. Respondent was married to Brown in a valid ceremonial marriage, as evidenced by a marriage license and certificate. Her marriage to Ahmed was properly held bigamous in a final unappealed judgment by the family court, which provides she had no impediment to her marriage to Brown. Therefore, we find the trial court did not err in finding Respondent was married to Brown.

II. Summary Judgment

Appellants Deanna Brown-Thomas, Yamma Brown, and Venisha Brown argue the trial court erred in not granting their motion for summary judgment because Respondent failed to present any admissible evidence that her marriage to Ahmed was invalid.⁷

Appellants argue the trial court granted Respondent's motion for summary judgment on the purported ground that Respondent's marriage to Ahmed was bigamous without any evidentiary support for its finding. They also assert the trial court erred in relying on the annulment order for the truth of the matter asserted in its findings because it was inadmissible hearsay not subject to an exception. Appellants assert the evidence presented to the trial court established that Ahmed was not married when he married Respondent in 1997. Specifically, that Ahmed stated he was not presently married on their Texas marriage license. They assert,

⁷ Appellant Terry Brown makes essentially this same argument in his brief; therefore, we combine the arguments for this issue.

in contrast, that the only evidence that Ahmed was married at the time is the annulment order, which was based solely on Respondent's testimony.

The denial of a motion for summary judgment is not directly appealable. *Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994). Therefore, we decline to address this issue. However, to the extent Appellants also argue the trial court erred in granting Respondent's motion for summary judgment, we find the trial court had no subject matter jurisdiction to relitigate the family court order because only the family court has jurisdiction over annulments. S.C. Code Ann. § 63-3-530(A)(6) (2010) ("The family court has exclusive jurisdiction . . . to hear and determine actions for the annulment of marriage."). As a result, the trial court did not err in granting Respondent's motion for summary judgment because the annulment order was conclusive as to Respondent's marriage to Ahmed.

III. Collateral Estoppel

Appellants Deanna Brown-Thomas, Yamma Brown, and Venisha Brown argue the trial court erred in holding the findings of fact and conclusions of law in the annulment order were preclusive as to Appellants.⁸ We disagree.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

Appellants argue the annulment order binds "all the world" as to the marital status of Respondent and Ahmed as of April 15, 2004, the date the order was filed. However, they assert the annulment order's findings of fact and conclusions of law are not binding on those who were not parties to that proceeding, such as Brown and Appellants.

⁸ Appellants Terry Brown, Michael Deon Brown, and Daryl Brown all make essentially this same argument in their briefs; therefore, we combine the arguments for this issue.

Appellants also argue the trial court erred in finding they are collaterally estopped from contesting the findings of fact and conclusions of law in the annulment order. They assert the first element of collateral estoppel is not met because the order was essentially granted by default and the issue of Ahmed's alleged bigamy was never actually litigated. Appellants also assert Ahmed was not properly served with Respondent's summons and complaint because the publication was buried in the Houston Chronicle on page two of the classified section and the process server did not state he searched United States immigration databases or looked for Ahmed in Pakistan. Appellants further argue collateral estoppel only applies to parties to the prior action and their privies, and the only named parties in the annulment action were Respondent and Ahmed. They assert Brown was not in privity with Respondent due to his alleged interest in the outcome, and Brown's and Appellants' interests are neither identical to nor closely aligned with Respondent or Ahmed. Appellants assert merely paying Respondent's legal fees for the annulment action did not place him in privity with Respondent and did not give him control over the litigation. Finally, Appellants argue that even if the elements of collateral estoppel were present, application of the doctrine is discretionary and should not be applied to this case because it would be inequitable to bar Appellants from challenging the hasty findings of a prior action in which Brown was not a named party, had no right to intervene, did not control the proceedings, and his interests were not heard or adjudicated.

We find Appellants lacked standing to contest the annulment order, just as Brown did not have standing to intervene in the annulment action between Respondent and Ahmed. *See Lukich*, 368 S.C. at 51, 627 S.E.2d at 756 (denying the husband's motion to intervene in the wife's annulment proceeding and finding he did not have standing because he was not a party to the marriage). Any rights Appellants have are derivative from Brown. *See Watson v. Watson*, 172 S.C. 362, 369-70, 174 S.E. 33, 36 (1934) ("[A]s it is only the children of Mr. Watson who are contesting this question, they are completely estopped, as was their father, from disputing the validity of the divorce in question. If they cannot dispute the validity of the divorce, then there is no question of the validity of the marriage to the demandant which they can make, and hence there is no question of her right of dower in the real estate which he owned during coverture."); *Neely v. Thomasson*, 365 S.C. 345, 354, 618 S.E.2d 884, 889 (2005) ("Because the issue of paternity was raised and ruled upon in a prior action, Decedent, if alive, would have been barred from challenging paternity at a later date. As a result, Decedent's heirs are likewise

barred from asserting claims that Decedent himself would have been barred from asserting. Moreover, we find that it would be unjust to allow Decedent's siblings to assert a claim that Decedent himself never chose to assert during his lifetime." (citations omitted)). During his life, Brown availed himself of the method available to him by bringing his own annulment action against Respondent to invalidate his marriage to her. However, Brown and Respondent agreed to dismiss the action, and Brown did not bring another action prior to his death.

Appellants also argue that while the annulment order binds them as to the marital status of Respondent and Ahmed as of April 15, 2004, the annulment order's findings of fact and conclusions of law are not binding on those who were not parties to that proceeding. However, Respondent is only asserting the family court's order as to the status of her marriage to Ahmed. As for Appellants' collateral estoppel argument, (1) the annulment was actually litigated as the court reviewed the evidence presented and found it was sufficient to meet Respondent's burden of proof; (2) the validity of the marriage between Respondent and Ahmed was determined in the annulment action as it was the entire purpose of the action; and (3) the issue was necessary to support the prior judgment. Therefore, we find the trial court did not err in holding the findings of fact and conclusions of law in the annulment order were preclusive as to Appellants.

IV. Discovery Stay

Appellants Deanna Brown-Thomas, Yamma Brown, and Venisha Brown argue the trial court erred in staying discovery and granting Respondent's motion for summary judgment despite genuine issues of material fact. We disagree.

Appellants argue the court erred in not allowing the parties to conduct any discovery pending its ruling on Respondent's motion, yet allowed her to file two self-serving affidavits in support of her motion, and the court sealed her handwritten diaries. They assert this prevented them from using potentially relevant evidence that may have been adverse to Respondent.

The parties all agreed to the stipulation of facts in this case, which resolves the material factual issues in the action. The reason Appellants seek additional discovery is to relitigate the annulment order. We already determined Appellants are bound by the annulment order. Therefore, we find the trial court did not err in staying discovery pending the decision on Respondent's motion for summary

judgment as to the status of her marriage to Brown.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

THOMAS and HILL, JJ., concur.