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August 23, 2016

VIA EMAIL TO [ggrantbrantley@comcast.net](mailto:ggrantbrantley@comcast.net)  
FOLLOWED BY U.S. MAIL

Honorable G. Grant Brantley  
Office of Senior Judges  
Superior Court of Cobb County  
30 Waddell Street  
Marietta, Georgia 30090-9642

Re: *Forsyth Second Baptist Church, Inc., et al. v. Charlotte Hester, et al.*  
*Superior Court of Monroe County*  
*Civil Action No. 2016CV57*

Dear Judge Brantley:

Please find enclosed Defendant's Response to Plaintiff's Motion to Intervene along with the Defendant's proposed Order with reference to the Motion to Intervene and Plaintiff's Motion for New Trial for your review and consideration. If you wish me to make any corrections or additions to the proposed order, please notify me.

With kindest regards,

A.J. "Buddy" Welch, Jr.

AJWjr/sd  
Enclosures

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IN THE SUPERIOR COURT OF MONROE COUNTY  
STATE OF GEORGIA

**FORSYTH SECOND BAPTIST CHURCH, :  
INC., NETTIE PARKER, ESSIE :  
HERNDON, LINDA HARRIS, WAYNE :  
HARRIS, and VIVIAN YOUGHN, :**

**Plaintiffs, :**

**vs. :**

**CIVIL ACTION NO.: 2016-CV-57**

**JOHN HESTER and CHARLOTTE :  
HESTER, Individually and as Former :  
Officers of FORSYTH SECOND BAPTIST :  
CHURCH, INC., ROCK SPRINGS :  
CONGREGATIONAL METHODIST :  
CHURCH, INC., ABC and XYZ :  
CORPORATIONS and JOHN DOE, :**

**Defendants. :**

**ORDER ON MOTION TO INTERVENE AND  
PLAINTIFFS' AMENDED MOTION FOR NEW TRIAL**

This matter comes before the Court on a Motion to Intervene filed by Dean Clements, Katherine Pippin, Gerald Pippin, and Mildred Brasher and Plaintiffs' Amended Motion for New Trial originally filed on May 11, 2016, and amended on June 28, 2016. The four proposed intervenors request intervention to Amend the Complaint and re-litigate issues decided in this Court's April 11, 2016, Order. The Amended Motion for New Trial seeks a new trial following the Court's Final Order granting the Defendants' Motion to Dismiss, entered of record on April 18, 2016.

The Defendants oppose intervention and ask the Court to dismiss the Motion for New Trial on the grounds that it is the improper vehicle to review the Court's judgment in this case. The Defendants also argue that the record does not reflect any attempt by the Plaintiffs to

introduce the evidence referenced of in the Motion for New Trial or any ruling by this Court prohibiting the Plaintiffs from introducing any evidence in support of their position. Finally, the Defendants have requested that this Court enter an Order on these matters without the need for a hearing pursuant to Uniform Superior Court Rule 6.3.

Having read and considered the Motions, all matters of record, and the Defendants' responses thereto, the Court finds as follows:

The Motion to Intervene by Dean Clements, Katherine Pippin, Gerald Pippin, and Mildred Brasher claims that their interests were adequately represented by the original Plaintiffs and indicate that they were witnesses in the original action. For intervention to be granted, it must be timely and should not prejudice the original parties. O.C.G.A. § 9-11-24. Moreover, "Intervention after judgment is not usually permitted..." *Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 958, 216 S.E.2d 897, 903 (1975).

The request to intervene is simply not timely. It appears that these four potential Plaintiffs have simply waited until the original case has been disposed of in an effort to re-litigate the issues. This is not the purpose of the intervention statute, nor is it permitted by the case law. *AC Corp. v. Myree*, 221 Ga. App. 513, 515, 471 S.E.2d 922, 924 (1996). Moreover, amending the Complaint following judgment is not permitted. "A party is not entitled to amend its complaint to assert a new [cause] of action after judgment is entered." *Duffy v. Landings Ass'n, Inc.*, 254 Ga. App. 506, 509, 563 S.E.2d 174, 177 (2002) (internal citations omitted). Because the intervenor's motion is untimely, and the requested amendment of the Complaint is not permitted, the Motion to Intervene is hereby **DENIED**.

Turning to the Plaintiffs' Amended Motion for New Trial, the Court finds that resolution of this matter is warranted without a hearing. Accordingly, the Defendants' Motion for Exception from Uniform Superior Court Rule 6.3 is hereby **GRANTED**.

The Court Agrees with the Defendants that the Plaintiffs' Motion for a New Trial is not the proper vehicle to review the April 11, 2016, judgment of this Court.

Objections which go to the judgment only, and do not extend to the verdict, cannot properly be made grounds of a motion for new trial. A motion for new trial seeks to set aside the verdict. No new trial is necessary to correct a judgment or decree. If a judgment or decree is erroneous or illegal, direct exception should be taken to it at the proper time.

*Barber v. Barber*, 157 Ga. 188, 121 S.E. 317 (1924). The Supreme Court has explicitly held that a Motion for New Trial is not the proper procedural vehicle to review a Court's ruling on a Motion to Dismiss. *Pillow v. Seymour*, 255 Ga. 683, 683, 341 S.E.2d 447, 447 (1986). "Where a motion for new trial is not a proper vehicle for review of a trial court's action, the motion has no validity..." *Id.* at 683, 448. Accordingly, the Plaintiffs' Motion for a New Trial is a nullity and must be dismissed.

The Court takes note of the affidavits filed by the Plaintiff with the Amended Motion for New Trial. However, the Plaintiffs have still not provided any explanation for how these affidavits constitute "new evidence." It appears that these individuals and their testimony was known to the Plaintiffs at the time of the hearing and, for whatever reason, the Plaintiffs chose not to introduce this evidence at the hearing. This is simply "evidence that [the Plaintiffs] should have produced, but failed to, earlier in the case." *Debter v. Stephens*, 297 Ga. 652, 653, 777 S.E.2d 244 (2015); *see also Kim v. McCullom*, 222 Ga. App. 439, 441, 474 S.E.2d 654, 657 (1996) (internal citations omitted) ("OCGA § 9-11-60 provides the exclusive method by which civil judgments may be attacked. It does not permit the use of post-judgment motions to raise

arguments or introduce evidence previously known to the parties but not addressed at trial.”). For these reasons, the Plaintiffs’ Amended Motion for New Trial is a nullity and must be **DISMISSED**.

Next, the Defendants argue that the time for appeal has now passed and that this Court should dismiss any Notice of Appeal filed by the Plaintiffs as untimely because an improperly filed Motion for New Trial does not toll the time for filing a Notice of Appeal. This argument is consistent with the case law of the State of Georgia. “Where a motion for new trial is not a proper vehicle for review of a trial court’s action, the motion has no validity and will not extend the time for filing the notice of appeal.” *Pillow v. Seymour*, 255 Ga. 683, 683, 341 S.E.2d 447, 448 (1986); *Shine v. Sportservice Corp.*, 140 Ga. App. 355, 355, 231 S.E.2d 130, 130 (1976); *Debter v. Stephens*, 297 Ga. 652, 653, 777 S.E.2d 244 (2015) (“because his motion for new trial was not a proper vehicle for review of the trial court’s action, his notice of appeal was untimely filed and this appeal must be dismissed.”). A trial court is authorized to dismiss a late filed notice of appeal pursuant to O.C.G.A. § 5-6-48(b)(1).

The record reflects that the final order and judgment in this case was entered into the record on April 18, 2016. O.C.G.A. § 5-6-38(a) allows for 30 days from that date for the filing of a Notice of Appeal. The record further reflects that no Notice of Appeal was filed by the deadline, May 18, 2016. As discussed above, the Plaintiffs’ improper Motion for New Trial does not extend the deadline beyond May 18, 2016. As such, the Court of Appeals is now incapable of taking jurisdiction over this matter. “The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction upon an appellate court.” *Moncrief v. Tara Apartments, Ltd.*, 162 Ga. App. 695, 695, 293 S.E.2d 352, 353 (1982).

Accordingly, in addition to dismissing the Plaintiffs' Motion for New Trial, the court notes that the time for appeal of this matter has now passed and considers the matter closed in its entirety.

**ORDER**

Having read and considered the Motions, all matters of record, and the arguments of counsel, it is hereby **ORDERED** that

1. The Motion to Intervene is **DENIED**;
2. The Defendants' Motion for Exception from Uniform Superior Court Rule 6.3 is hereby **GRANTED**;
3. The Plaintiffs' Amended Motion for New Trial is **DISMISSED** and is a nullity; and
4. The Court further observes that the time to file a Notice of Appeal has passed and any Notice of Appeal so filed shall be **DISMISSED** as untimely.

This \_\_\_\_\_ day of \_\_\_\_\_, 2016.

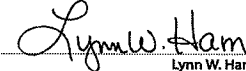
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Hon. Grant Brantley  
Judge, Superior Court of Monroe County

*Presented by:*

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AUG 19, 2016 04:02 PM

  
Lynn W. Ham, Clerk  
Monroe County, Georgia

IN THE SUPERIOR COURT OF MONROE COUNTY

STATE OF GEORGIA

**FORSYTH SECOND BAPTIST CHURCH, :**  
**INC., NETTIE PARKER, ESSIE :**  
**HERNDON, LINDA HARRIS, WAYNE :**  
**HARRIS, and VIVIAN YOUGHN, :**

**Plaintiffs, :**

**vs. :**

**JOHN HESTER and CHARLOTTE :**  
**HESTER, Individually and as Former :**  
**Officers of FORSYTH SECOND BAPTIST :**  
**CHURCH, INC., ROCK SPRINGS :**  
**CONGREGATIONAL METHODIST :**  
**CHURCH, INC., ABC and XYZ :**  
**CORPORATIONS and JOHN DOE, :**

**Defendants. :**

**CIVIL ACTION NO.: 2016-CV-57**

**DEFENDANTS' RESPONSE TO MOTION TO INTERVENE BY DEAN CLEMENTS,**  
**KATHERINE PIPPIN, GERALD PIPPIN, AND MILDRED BRASHER**

COMES NOW, John Hester, Charlotte Hester, and Rock Springs Congregational Methodist Church, Inc. ("Rock Springs"), Defendants in the above-styled matter, and in Response to the Motion to Intervene by Dean Clements, Katherine Pippin, Gerald Pippin, and Mildred Brasher (the "Proposed Intervenors"), state as follows:

A Final Order dismissing this matter with prejudice was entered by the Court on April 11, 2016. More than three months later, the Proposed Intervenors have now filed a motion to intervene in this action. In their motion, the Proposed Intervenors concede that the original Plaintiffs could have represented the Proposed Intervenors' interest and that they were aware of the original action because they served as witnesses to that action. (Motion, p. 4). By their own motion, the Proposed Intervenors have established that they have not met the high burden of

establishing a right for mandatory or permissive intervention, especially where a final order has been entered.

It is axiomatic that “[i]ntervention must be timely, whether asserted as a right or as a matter of discretion. Intervention after judgment is not usually permitted...” *Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 958, 216 S.E.2d 897, 903 (1975). “Whether permissive intervention should be granted is a question addressed to the sound discretion of the trial court.... We will not reverse a grant or denial of permissive intervention unless there is an abuse of discretion.” *Allgood v. Georgia Marble Co.*, 239 Ga. 858, 859, 239 S.E.2d 31, 31-32 (1977) (internal citations omitted). Where the potential intervenors could potentially benefit from the opposite decision, but are not bound by it, they are only incidentally affected by the decision and there is no error in refusing intervention. *Id.* at 32. Further,

“While the right to amend is very broad, it may not be exercised after the case has been tried and judgment rendered therein. [Cit.]”  
... “Under the Civil Practice Act a pleading may be amended after judgment but only insofar as to make it conform to the evidence.”  
“A party is not entitled to amend its complaint to assert a new [cause] of action after judgment is entered.

*Duffy v. Landings Ass'n, Inc.*, 254 Ga. App. 506, 509, 563 S.E.2d 174, 177 (2002) (internal citations omitted).

Here, the Proposed Intervenors have not established that they have made a timely motion to intervene, as required by both subsections of at the O.C.G.A. § 9-11-24. As the Proposed Intervenors readily admit, they were aware of this lawsuit and were, in fact, witnesses at earlier points in the suit. (Motion, p. 4). Rather than making a timely motion to join the matter, the Proposed Intervenors chose to wait to see how the matter played out. The Proposed Intervenors are only now moving for intervention because the original Plaintiffs lost. In other words, the



Proposed Intervenors are attempting to game the system by holding their claims back to drag out litigation.

This type of strategy is specifically rejected the case law and by the statutory requirements of a timely motion. O.C.G.A. § 9-11-24. In fact, the statute requires that, “[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” O.C.G.A. § 9-11-24. The original parties will clearly suffer both prejudice and delay by being forced to litigate the same issues once more with new parties – especially when there is no reason the Proposed Intervenors could not have joined earlier and had their rights adjudicated along with the original Plaintiffs.

Moreover, the proposed Amended Complaint submitted with the Motion to Intervene greatly expands the scope of litigation by adding **eight** (8) new causes of action to the Complaint. The Proposed Intervenors do not have a right to hijack this case, three months after final judgment, to add brand new causes of action and seek new remedies from the Defendants. *See Duffy v. Landings Ass'n, Inc.*, 254 Ga. App. 506, 509, 563 S.E.2d 174, 177 (2002); *AC Corp. v. Myree*, 221 Ga. App. 513, 515, 471 S.E.2d 922, 924 (1996). This is especially the case where the Proposed Intervenors had every opportunity to involve themselves in the case from the beginning or at any point prior to final judgment.

Accordingly, for the reasons articulated above, intervention pursuant to O.C.G.A. § 9-11-24 is not appropriate and should be denied. In the alternative, should the motion to intervene be granted, the Proposed Intervenors must be bound by the existing judgment and prohibited from amending the Complaint as proposed. “A true intervenor ‘takes the case as [he] finds it’ and cannot expand the litigation, ... he or she merely stakes a claim to a share in the result of the pending litigation.” *AC Corp. v. Myree*, 221 Ga. App. 513, 515, 471 S.E.2d 922, 924 (1996)

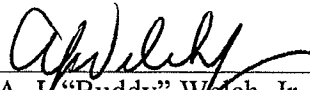
(internal citations omitted); *Undercofler v. Seaboard Air Line R. Co.*, 222 Ga. 822, 829, 152 S.E.2d 878, 884 (1966) (“[I]ntervenors are bound by the fundamental rule that an intervenor takes the case as he finds it and cannot inject new issues.”). Intervenors “will be held to the well-established general rule that when they come into a case by intervention they must take it as they find it, **and having come in after the final decree was rendered they are bound by it.**” *Am. Nat. Bank of Atlanta v. Lamb*, 147 Ga. 667, 95 S.E. 227 (1918) (emphasis added). Where the case has been decided by the original parties prior to intervention by third parties, the intervenors are bound by the determination as between the original parties. *Worsham v. Ligon*, 147 Ga. 39, 92 S.E. 756, 757 (1917) (“The plaintiffs other than the original caveators were not bound to intervene, and could have brought a separate proceeding; but, having come into the case by intervention, they must take the case as they found it.”).

In other words, having voluntarily elected to intervene in this matter following judgment, the Proposed Intervenors are intentionally choosing to accept the Court’s judgment and “share in the result” of that judgment. There is no right to expand the proceedings or re-litigate the case. As such, should intervention be granted, the Proposed Intervenors cannot amend the Complaint as proposed. *See Duffy v. Landings Ass’n, Inc.*, 254 Ga. App. 506, 509, 563 S.E.2d 174, 177 (2002). They are bound by the original Complaint and this Court’s April 11, 2016, judgment. And, for the reasons articulated in the Defendants’ Response to the Plaintiffs’ Motion for New Trial, no grounds exist to re-examine the issues already decided by the Court.

As such, the Defendants respectfully request that this Court deny the Proposed Intervenors’ Motion to Intervene and dismiss the Plaintiff’s Motion for New Trial and bring this matter to a full and final conclusion.

Respectfully submitted this 19th day of August, 2016.

**SMITH, WELCH, WEBB & WHITE, LLC**



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**CERTIFICATE OF SERVICE**


I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANTS' RESPONSE TO MOTION TO INTERVENE BY DEAN CLEMENTS, KATHERINE PIPPIN, GERALD PIPPIN, AND MILDRED BRASHER** upon all parties to this matter by hand delivery and depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

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Attorney for Plaintiffs

Andy Clark  
Andy Clark Law, LLC  
1100 Peachtree St. NE  
Suite 200  
Atlanta, GA 30309  
Attorney for Plaintiffs

This 19th day of August, 2016.

**SMITH, WELCH, WEBB & WHITE, LLC**

  
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