

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

JUL 05 2022

SC Court of Appeals

R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-04-00337

Frances K. Chestnut, Elizabeth Diane Keese,
Sylvester Keese, Arthur B. Keese and Mary K. Taylor,

Respondents.

v.

Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, pro se,

Appellants.

RETURN TO PETITION FOR REHEARING

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I. STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT EXERCISE SOUND DISCRETION IN REFUSING TO GRANT THE APPELLANT'S MOTION TO SET ASIDE THE ENTRY OF THE DEFAULT JUDGMENT?

II. STATEMENT OF THE CASE

The Petition for Rehearing argues that the Court of Appeals affirmation of the July 1, 2019 Order of the Circuit Court denying the Appellants' Motion to set aside the Entry of the Default Judgment for the Respondents was incorrect. The Respondents adamantly disagree. After considering the circumstances of the default and inquiring about the existence of meritorious defense, the Court of Appeals affirmed the Circuit Court on two essential issues; the failure to meet the standard to set aside a default judgment, and the failure to set forth a meritorious defense.

As to the first issue, South Carolina Rule of Civil Procedure 60(b) sets forth the standard to set aside the Entry of a Default Judgment. The Court of Appeals in its per curiam opinion filed June 8, 2022 notes that the standard for setting aside a judgment is "more rigorous" than the standard for setting aside a default. Thus, the Circuit Court by finding that the Appellant had not shown good cause (the standard for setting aside a default under SCRCP 55) the evidence was also sufficient to conclude that the Appellant did not meet the more stringent standard necessary to set aside the Default Judgment.

The Appellants also failed to present evidence of a meritorious defense, and even though the Circuit Court specifically inquired of the Appellant's trial counsel concerning any defense. As the Court of Appeals ruled, no meritorious defense is preserved for appellate review.

III. STANDARD OF REVIEW

The Standard of Review in this case is the Appellants must show that the Circuit Court abused its discretion by refusing to set aside the Entry of the Default Judgment of July 1, 2019. The analysis of the Circuit Court Default Judgment turns on two issues.

1. The Court of Appeals notes in its per curiam opinion the fact that the Circuit Court applied the standard of good cause which applies under SCRCP 55 to setting aside the default, and not to setting aside a default judgment which requires a more "rigorous standard". The Court of Appeals in its per curiam opinion aligned the case with the requirements of SCRCP 60(b) reciting the standard required to set aside the Entry of a Default Judgment to be "more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered, evidence, fraud, misrepresentation, or "other misconduct of an adverse party." See Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (as cited by the Court of Appeals) Since the Circuit Court did not find good cause to set aside the default, then the Circuit Court would not find the standard met to set aside the Entry of the Default Order. Thus, there is sufficient evidence in the record to show that the Circuit Court carefully considered the facts and the events that led to the Default Judgment and the Circuit Court did not abuse its discretion by refusing to set the Default Judgment aside.

2. The Court of Appeals also refused to find the Circuit Court abused its discretion by finding that a meritorious defense was not presented. Since no meritorious defense was presented to the Circuit Court, one cannot be raised on appeal. See Miller v. Dillon, 432 S.C. 197, 207, 851 S.E.2d 462, 467 (Ct. App. 2020) and the Circuit Court did not abuse its discretion in this regard.

In sum, the Standard of Review requires a finding of an abuse of discretion by the Circuit Court. In this case, the review of the record shows that the Circuit Court Order of Default Judgment cannot be overturned since the Circuit Court did not abuse its discretion.

IV. RETURN TO THE ARGUMENTS OF THE APPELLANTS

A. The Appellants argue that the Grantor of this Deed is the equivalent of a Testator. This novel argument is completely outside the scope of this case on the basis of the facts, but more importantly on the basis of the arguments raised and preserved in this case. First, this is an entirely new argument that was not presented to the Trial Court. Since the Circuit Court never got a chance to address this new version of the case, it certainly cannot be raised now. See Miller v. Dillon, 432 S.C. 197, 207, 851 S.E.2d 462, 467 (Ct. App. 2020). Clearly, this case involves a Deed with quiet title issues concerning a grant to a predeceased grantee rather than to a person in being. Concerns now being raised about the intent of the Grantor and referring to him as a Testator are entirely irrelevant, specious, and out of place in this case. None of the case law and discussion presented on this issue should even be considered.

B. The Court of Appeals dealt thoroughly with the issues under SCRCP 60(b). Thus, there is little more to say. However, the consultation with the out of state lawyer is not an irrelevant fact. The Circuit Court considered this fact in sound exercise of his discretion in this matter and that information is relevant to the multiple "particulars" raised in Rule SCRCP 60(b). See Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (as cited by the Court of Appeals). In this context, the Appellants admitted that they *knew* an answer needed to be filed. They allowed the case to go into default. The time lapse between the default and entry of the Judgment a period was over six weeks. Obviously, the Appellants believed they could act at their own pace without any consequences. One of the standards of SCRCP 60(b) is

"the prejudice to the other party". Certainly, the case could not go on indefinitely without substantial prejudice to the Respondents not to mention to the Court itself. The Circuit Court more than demonstrated sound discretion in his consideration of the Motion.

The Respondents submit that SCRCP 60(b) was properly applied to this case by the Court of Appeals by affirming the Default Judgment on the grounds the Circuit Court did not abuse its discretion.

C. As previously stated, the Appellants are trying to reinvent this case into a Will interpretation case, rather than a quiet title action. The obvious reason for this tactic is an attempt to establish a meritorious defense on the basis of the "testamentary" intent on the part of the Grantor. The simple response is this argument was not presented to the Circuit Court and cannot now be used to bootstrap the Appellants into a meritorious defense.

Nonetheless, it must be said that it is not even a responsible argument since a Deed and Will are two different legal documents and the grantor under a deed does not become a testator by just changing the nomenclature.

V. CONCLUSION

The Circuit Court's ruling refusal to set aside the Entry of the Default Judgment demonstrated a sound exercise of discretion based on the case presented.

Therefore, the Court of Appeals' Order of June 8, 2022 affirming the Circuit Court ruling must stand and the Petition for Rehearing must be denied.

July 2, 2022

Respectfully submitted,

A handwritten signature in cursive script that reads "Carolyn D. Baird". The signature is written in black ink and is positioned above a horizontal line.

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v.


Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, pro se,

Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing of Respondents and Certificate of Counsel on Florence Keese, Mary Keese, Margo Keese and Marshall Keese, pro se Appellants, by depositing a copy of it in the United States Mail, postage prepaid, on July 2, 2022, addressed to Florence Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382; Mary Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382; Margo Keese, 11608 Stewart Lane, Apt 302, Silver Spring, Maryland 20904 and Marshall Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382, on July 2, 2022.

July 2, 2022



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Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Frances K. Chestnut v. Florence Keese
Appellate Case No.: 2020-000263

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondents Return to the Petition for Rehearing. Please stamp one copy of the Return and return same to me in the envelope provided. I have enclosed a self-addressed stamped envelope for your convenience. I have also enclosed the original and one copy of the Proof of Service. Please stamp the file copy and return a stamped copy to me in the envelope provided.

By copy of this letter, I am serving same on the Appellants.

Sincerely yours,

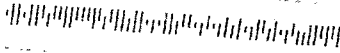


Carolyn G. Baird

CGB/pcm

Enclosures

cc: Florence Keese
Margo Keese
Marcy Keese
Marshall Keese



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