

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master In Equity
Hon. Mikell R. Scarborough

APPELLATE CASE NUMBER: 2022-000172

Johnny Scott.....Respondent

v.

**Heirs of James Prioleau, Crystal Adams, John Doe, Sarah Roe, Richard Roe and Mary
Roe, being fictitious names used to designate the unknown heirs-at-law, administrators,
executors, successors and assigns if any and all other persons claiming any right, title,
estate, interest in or lien upon the lands of the Estate of James Prioleau, or any portion
thereof, including any such as may be infants, incompetents, or otherwise under any
disability.....Appellants.**

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT DID NOT ERR IN FINDING APPELLANTS WERE PROPERLY SERVED WITH THE AMENDED SUMMONS AND COMPLAINT.
- II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS MOTION TO SET ASIDE DEFAULT PURSUANT TO RULE 55©, SCRPC.
- III. APPELLANTS ARE NOT ENTITLED TO RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), SCRPC.

STATEMENT OF FACTS

Respondent filed his Amended Summons and Complaint in this action on November 19, 2020 pursuant to the South Carolina Uniform Declaratory Judgment Act, Section 15-53-10, et. seq., Code of Laws for South Carolina, 1976, to quiet title to the property he owned as a result of a boundary dispute between his property and property owned by the Heirs of James Prioleau and Crystal Adams. Crystal Adams is not a party to this appeal. Pursuant to the Charleston County Tax Assessors Office, all of the remaining property involved in the boundary dispute were listed in the name of the Heirs of James Prioleau at three (3) different addresses, namely:

- a. Heirs of James Prioleau
1717 Folly Road
Charleston, SC 29412
- b. Heirs of James Prioleau
1833 S. Grimball Road
Charleston, SC 29412
- c. Heirs of James Prioleau
1829 S. Grimball Road
Charleston, SC 29412

The Amended Summons and Complaint, Notice of Filing, Notice of Intent to Refer to Master-in-Equity, Petition for the Appointment of a Guardian *ad litem* and Order Appointing

Guardian *ad litem* were served on the Heirs of James Prioleau at the addresses provided above, by certified mail, return receipt requested. (R.pp.14-20). Joe N. Prioleau, an heir of James Prioleau and who resided at 1717 Folly Road, Charleston, SC acknowledged receipt of the above referenced documents on November 25, 2020. (R.p. 20). The pleadings certified mailed to the Heirs of James Prioleau at 1833 S. Grimball Road, Charleston, SC were received by an unknown individual on November 25, 2020 (R.p.16), and the pleadings certified mailed to the Heirs of James Prioleau at 1829 S. Grimball Road was signed on November 25, 2020 by an unrecognizable signature (R.p.18).

On February 24, 2021 Respondent filed an Affidavit of Publication pursuant to South Carolina Code Section 15-67-40¹ (R.p.21), and an Order of Publication was filed with the Court of Common Pleas on March 3, 2021 for publication of the Summons, Lis Pendens, Notice of Filing and Notice Nisi on all unknown heirs of James Prioleau in the Charleston City Paper once per week for three (3) consecutive weeks (R.p.23). The Summons, *Lis Pendens*, Notice of Filing and Notice Nisi were published in the Charleston City Paper on March 17, 24, and 31, 2021. (R.p.26). The Affidavit of Publication from the Charleston City Paper was filed with the Court on April 7, 2021. The only responsive pleading filed prior to the Affidavit of Publication was filed by the court appointed Guardian *ad litem*. No other responsive pleadings were filed.

Respondent filed an Affidavit of Default and Non-Military Service on June 1, 2021 and a

¹ SC Code Section 15-67-40 - Service on unknown parties; notice of lis pendens. In any action brought to determine adverse claims to real property within the State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: "Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of any affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State

proposed Order for Default and Reference. (R.p.28). The Order for Default and Reference was filed on June 3, 2021. (R.p.30).

On June 8, 2021, Respondent forwarded to each of the Heirs of James Prioleau at the addresses listed in the Charleston County Tax Assessors Office a copy of the Order of Default and Reference along with the Affidavit of Default and Non-Military Services. (R.pp.33-3).

On June 14, 2021, Appellant Parris Williams filed an Answer to the Amended Summons and Complaint claiming to be an heir of James Prioleau. (R.p. 39). Also, on June 17, 2021, Appellant Stewart Middleton filed an Answer to the Amended Summons and Complaint claiming to be an heir to James Prioleau. (R.p. 41.). Both Appellants were represented by Attorney Willie B. Heyward.

In the Answer filed by Appellant Parris Williams, said Appellant denied all of the allegations in the Complaint; referenced a separate litigation that had been filed involving the Heirs of James Prioleau to which Respondent was not a party; consented to this matter being referred to the Master in Equity for Charleston County for a full adjudication of the action; denied that any of the Heirs of James Prioleau were properly served; and alleged that the Order of Default was not supported by the Affidavit of Default.

In the Answer filed by Attorney Willie B. Heyward on behalf of Appellant Stewart Middleton reference was made to a suit filed by *Daniel Middleton v. The Heirs of James Prioleau*, et al, Case No.: 2009-CP-10-1218 to which Respondent was not a party. In addition, said Appellant alleged that he has an interest in the property titled in the name of James Prioleau; that he had not been individually named as a party in the action nor served with the pleadings; that none of the heirs of James Prioleau he spoke with were served; and that the Order of Default is not properly supported by Respondent's Affidavit of Default.

Respondent's Affidavit of Default acknowledged that the Heirs of James Prioleau were served by registered mail, return receipt requested and by publication in The Charleston City Paper. (R.p. 28). The Affidavit further alleged that more than thirty (30) days had elapsed since the completion of service on all the Defendants and that the Heirs of James Prioleau were in default since no responsive pleadings had been filed.

Respondent filed a Notice of Motion and Motion to Strike the Answers filed by Parris Williams (R.p. 43) and Stewart Middleton (R.p. 47) pursuant to SCRCF 12(a), said answers not being timely filed. At the hearing on Respondent's motion to strike, Appellant moved to vacate the Order of Default. Said motion was denied by the Master-in-Equity in an amended Form 4 Order filed on September 28, 2021. (R.p. 49). The Form 4 Order noted that the Order of Default was not a final order of judgment. The trial court found that there was no basis upon which to reopen the default and found that service by publication was effective in this case. (R.p. 58, lines 3-6). A final hearing was scheduled to be heard in this matter on December 13, 2021.

Notice of the final hearing was sent to each of the Heirs of James Prioleau pursuant to Rule 55(b)(2), SCRCF, at the addresses listed with the Charleston County Tax Assessors Office by certified mail, return receipt requested on November 30, 2021. (R.pp. 52-54). Joe Nathan Prioleau, one of the Heirs of James Prioleau, acknowledged receipt of notice of the hearing on December 3, 2021 (R.p. 54) and was present at the final hearing with his daughter, Karen Prioleau. (R.p. 62., lines 13-18). Joe Nathan Prioleau and Karen Prioleau were allowed to participate in the hearing, to question the Appellant and allowed to present testimony. (R.p.113, lines 13-25; R.p. 114, lines 1-20). Neither Attorney Willie B. Heyward nor either of the Appellants attended the final hearing. (R.p. 62, lines 3-12).

STANDARD OF REVIEW

The decision as to whether to set aside an entry of default or a default judgement “lies solely within the sound discretion of the trial judge.” *Roberson v. Southern Finance of SC, Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112,114 (SC 2005) (citing *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03(SC 1989). “A motion filed under Rule 55(c) is addressed to the sound discretion of the trial court.” *Williams v. Stalmaker*, 312 S.C. 373,375, 440 S.E.2d 408, 409 (Ct. App. 1994). The standard for setting aside an entry of default under Rule 55(c) requires a showing of “good cause.” Appellant is required to “provide an explanation of the default and give reasons why vacation of the default entry would serve the interests of justice”. *Sundown v. Intedge Industries*, 383 S.C. 601, 607, 681 S.E.2d 885, 888, (S.C. 2009). Further, the Supreme Court held that:

Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Id.* at 383 S.C. 601, 607-608, 681 S.E.2d 885, 888.

The decision of the trial court will not be reversed absent an abuse of discretion which occurs when the order of the court is controlled by an error of law or when the order is without evidentiary support.” *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, ____ (Ct. App. 2004) (citing *Thompson v. Hammond*, *supra.*)

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR IN FINDING APPELLANTS WERE PROPERLY SERVED WITH THE AMENDED SUMMONS AND COMPLAINT (Rule 55(c), SCRPC)

This case involves an interest in real property. Respondent acknowledges that he served the Amended Summons and Complaint on the Heirs of James Prioleau by certified mail, return receipt requested, however, he did not send the documents by restricted delivery since the

property which is the subject of the action was titled in the Tax Assessors Office in the Heirs of James Prioleau without the identity of any specific heir. Joe Nathan Prioleau, one of the heirs whose address was listed in the Tax Assessors Office, signed the certificate of mailing. Thereafter, service on the remaining unknown heirs was effectuated by publication pursuant to South Carolina Code Sections 15-9-720².

Appellants filed their motion to set aside the default on the grounds that South Carolina Code of Civil Procedure, SCRCP, Rule 4(d)(8) mandates that service of the Summons and Complaint upon an individual can be effected by Certified Mail, Restricted Delivery, only to the addressee with a Return Receipt Requested. Appellants did not acknowledge service by publication pursuant to SCRCP 4(e)³ and SC Code of Laws Section 15-67-40⁴.

In the present case, Heirs of James Prioleau were served at the addresses listed with the Charleston County Tax Assessors Office and by publication pursuant Rule 4(e) of the SCRCP and SC Code Section 15-67-40. In addition, Joe Nathan Prioleau, an heir of James Prioleau acknowledged receipt of the Amended Summons and Complaint on November 25, 2020 and failed to file any responsive pleadings. Neither of the Appellants filed timely answers pursuant

² Section 15-9-720: "Service on unknown parties by publication for certain real property actions."

³ SCRCP(4)(e) Other Service: Whenever a statute or an order of court provides for service of the summons and complaint or of a notice, or an order upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

⁴ SECTION 15-67-40. Service on unknown parties; notice of lis pendens. In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: "Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State.

to the actual publication which was served on all unknown heirs as ordered by the Court, the first publication being dated March 17, 2021. Appellant Parris Williams filed his Answer on June 14, 2021 and Appellant Stewart Middleton filed his Answer on June 17, 2021. The Answer of each of the Appellants were filed in violation of Rule 12(a), SCRCP and as a result, the Appellants were in default for failing to file responsive pleadings timely.

Appellants argue that Respondent should have known that they were Heirs of James Prioleau since other civil actions were filed involving the Heirs of James Prioleau. However, Appellants filed no affidavit alleging that Respondent was a party to any other civil action filed involving the subject property and, as a result, that Respondent should have known the identify of the Heirs of James Prioleau. The trial court found that service of the Amended Summons and Complaint were served on the Heirs of James Prioleau in such a manner to give the court jurisdiction of the action and notice of the proceedings in accordance with the rules of the court and pursuant to an order of publication.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS MOTION TO SET ASIDE DEFAULT PURSUANT TO RULE 55(c), SCRCP

Appellants file their action to set aside the default based upon improper service of process pursuant to Rule 4(d)(8) of the South Carolina Rules of Civil Procedure (SCRCP). “Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App 1996). See also, *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 356 S.E.2d. 897 (S.C. 1994). The court has never required exacting compliance with the rules to effect service of process. *Id.* at 318 S.C. 209-210, 356 S.E.2d. 899. Rather, the trial court is required to inquire as to whether the plaintiff has sufficiently complied with the rules such that the

court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.”

Id.

As stated above, an entry of default may be set aside pursuant to Rule 55(c), “for good cause shown”. “In deciding whether good cause exists, the trial court should consider the following factors: (1) the timing of the defendant’s motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Stark Truss Co. v. Superior Const. Corp*, supra at 360 S.C. at 510, 602 S.E.2d at ____, (citing *Pilgrim v. Miller*, 350 S.C. 637, 640, 567 S.E.2d 527, 527 (Ct. App. 2002)). “In reviewing the court’s exercise of discretion, the issue before the appellate court is not whether it believes good cause existed to set aside the default, ‘but rather, whether the [trial judge’s] determination is supportable by the evidence and not controlled by an error of law.” *Pilgrim v. Miller*, 350 S.C. at 640-41, 567 S.E.2d 528.

Appellants Answers were filed in violation of Rule 12(b), SCRCP which requires that the responsive pleadings be filed thirty (30) days after service of process. In addition, Appellants have not alleged that either of them have a meritorious defense in this matter when Appellant’s interest in the subject property had been adjudicated by the Court of Common Pleas in an action filed by Appellant’s predecessor in title pursuant to the order of the Honorable Louis E. London, Master-in-Equity for Charleston County in Case No. 85-CP-10-400 some 30 years before the present boundary dispute action was filed. (R.p.64, line 25, R.p. 65, lines 1-25). Neither Appellant addressed any prejudice that Respondent would suffer if the motion to vacate the entry of default was granted. As a result, the trial court’s refusal to vacate the entry of default was proper.

III. APPELLANTS ARE NOT ENTITLED TO RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), SCRCP.

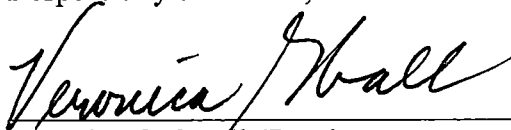
Rule 60(b), SCRCP provides that a default judgment may be set aside on the grounds of (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); or (3) fraud, misrepresentation, or other misconduct of an adverse party. Rule 60(b)(1), (2), (3) SCRCP. “[T]he power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of discretion.” *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E.2d 841, ___ (S.C. App. 2005). Further, “[a]n abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” *Id.* @ 364 S.C. at 49-50, 610 S.E.2d at ____.

Notice of the final hearing in this matter were mailed to the Appellants at the address listed in Charleston Tax Assessors Office, and by electronic filing. Neither the Appellants nor their attorney appeared at the final hearing in this matter. Joe Nathan Prioleau, and Heir of James Prioleau did appear at the final hearing. Joe Nathan Prioleau and his daughter were allowed to question Respondent. (R.p. 113, lines 12-25; R.p. pp. 113 - 114, lines 1-19; R.p. 115, line 25 to p. 116, lines 1-20). Appellants have presented no factual basis for setting aside the default judgment pursuant Rule 60(b)(1), (2), or (3), SCRCP. Having failed to attend the final hearing where each Appellant had an opportunity to present his defense or question the Respondent, Appellants have no basis for seeking a motion to set aside the final order of judgment rendered in this matter.

CONCLUSION

For the foregoing reasons, Respondent finds that Appellants have failed to show that they were not properly served pursuant to the South Carolina Rules of Civil Procedure, and have failed to provide the trial court with a satisfactory reason for, or evidentiary basis for vacating the default entered against them. For all of the reasons as set forth herein and any other affirming ground appearing on the record as provided by Rule 220(c), Respondent respectfully requests that this Court deny Appellants relief as requested and affirm the Final Order of the trial court.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

Dated: September 9, 2022
At North Charleston, SC