

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

MAY 30 2013

SC Court of Appeals

Appellate Case No. 2010-177326

Adam Hill, Jr., Appellant,

v.

Henrietta Norman and Primerica Life Insurance Company Defendants,

Of Whom Henrietta Norman is Respondent.

PETITION FOR REHEARING

Pursuant to South Carolina Appellate Court Rule 221(a) Appellant Hill moves for the SC Appellate Court to reconsider its order dated May 22, 2013 affirming the ruling of Circuit Court Judge Eugene C. Griffith, Jr. This request is predicated upon the commission of errors of law and violation of South Carolina Rules of Evidence

May 28, 2013.

Adam Hill, Jr.
Appellant/Plaintiff/Pro Se
P. O. Box 1014
Anniston, AL 36202
(256) 435-8719

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

QUESTIONS PRESENTED 1

(A) Whether the Appellate Court erred in overlooking the sworn deposition of the decedent’s Pastor which creates a genuine issue of material fact which is disputed

(B) Whether the Appellate Court erred in affirming the decision of the trial court which was based upon flawed evidence

(C) Whether the Appellate Court erred by overlooking circumstantial evidence presented by the Appellant which has a substantial impact on dispelling the appropriateness of a summary judgment ruling

INTRODUCTION..... 3

STATEMENT OF FACTS..... 4 – 6

CONCLUSION 7

TABLE OF CASES AND AUTHORITIES

Cases

<u>Anderson v. Liberty Lobby, Inc.</u> , 242, 248, 106 S.Ct. 2505, 2510 (1986).....	4
<u>Fields v. Regional Md. Ctr. Orangeburg</u> , 354, S.C. 445, 581 S.E. 2d 489 (Ct App. 2003)	5
<u>Pittman v. Atlantic Realty Co.</u> , 754 A.2d 1030, 1042 (Md 2000)	5
<u>State v. Salisbury</u> , 343 S.C. 520, 541 S.E.2d 247 (2001)	6

Codes

S.C. Code Section 38-63-220(g).....	5
-------------------------------------	---

Rules

Rule 203(b) SCARC	3
Rule 704 SCRE	6

INTRODUCTION

On June 15, 2012 Appellant Adam Hill, Jr. served a timely Notice of Appeal in accordance with Rule 203(b), SCACR. This notice was filed in response to the Order of Circuit Court Judge Eugene C. Griffith dated January 11, 2012.

Appellant Hill filed an Initial Brief on October 16, 2012 in which he requests the Appellate Court to address the following issues:

I. Whether the Circuit Court committed an error of law by granting summary judgment to Defendant Norman based upon flawed evidence submitted by Primercia

II. Whether the Circuit Court acted prematurely in granting summary judgment to Defendant Norman

III. Whether the Circuit Court committed an error of law in its failure to address the sworn affidavit submitted by the decedent's Pastor

IV. Whether a jury trial as a right of law should be granted to Appellant Hill

STATEMENT OF FACTS

On May 24, 2012 Appellant Hill received the Order of the Appellant Court affirming the ruling of Circuit Court Judge Eugene C. Griffith's decision to grant summary judgment to Defendant Henrietta Norman. The Appellate Court order in essence states the Appellant provided no evidence to indicate a dispute of any material facts presented in Respondent Norman's brief. In depth review of Appellant Hills' Record on Appeal and Briefs clearly indicate numerous instances of genuine issue as to many material facts presented in this case. There are disputable facts and inconsistencies in the sworn affidavit and complete claim file submitted by Primerica and Defendant Norman's sworn deposition. There is a genuine issue of whether Respondent Norman asked the decedent for a power of attorney.

Whether the Appellate Court erred in overlooking the sworn deposition of the decedent's Pastor which creates a genuine issue of material fact which is disputed

The Court erred in overlooking the sworn testimony of the decedent's Pastor, Clara O. Barnes, because it is admissible documentary evidence creating a genuine issue of material fact regarding the issues of this case. In her sworn deposition Respondent Norman repeatedly denies having asked the decedent for a power of attorney. The sworn deposition of the decedent's pastor contradicts Respondent Norman's statements. In accordance with Anderson v. Liberty Lobby, Inc., 242, 248, 106 S.Ct. 2505, 2510 (1986), to be material, a fact must be one that might "affect the outcome of the suit under governing law."

Whether the Appellate Court erred in affirming the trial court's decision which was based upon flawed evidence

The Circuit court Judge relied mostly upon the sworn affidavit and claim file submitted by Primercia in rendering his decision to grant Respondent Norman's motion for summary judgment. The Circuit court indicated a sworn affidavit from a corporate representative is uncontradicted. Even though it was pointed out to the Court the affidavit submitted by the corporate representative may have been a sham affidavit; the Circuit Court insisted Primercia had no reason to not pay the proceeds to the beneficiary. The Circuit Court did not entertain the criteria as presented in Pittman v. Atlantic Realty Co., 754, A.2d 1030, 1042 (Md 2000) which establishes guidelines to distinguish a sham affidavit from a correcting or clarifying affidavit. A circuit court's failure to exercise discretion is itself an abuse of discretion. See Fields v. Regional Med. Ctr. Orangeburg, 354, S.C. 445, 581 S.E.2d 489 (Ct. App. 2003).

In accordance with South Carolina code of Law Section 38-63-220(g) insurance contracts must have a provision stating how the beneficiary is designated. A copy of the decedent's initial application for insurance with Primercia presented to the Circuit Court only had the printed name of the Respondent to indicate she was the beneficiary. There was no other designation to identify the beneficiary such as mailing address, home phone number or social security number.

Whether the Appellate Court erred by overlooking circumstantial evidence presented by the Appellant which has a substantial impact on dispelling the appropriateness of a summary judgment ruling

Respondent Norman's contention that the Circuit Court properly granted summary judgment because no genuine issue of material fact exists and appellant's arguments are based solely on speculation and conjecture is contradictory to document South Carolina case law and Rule 704 of the South Carolina Rules of Evidence.

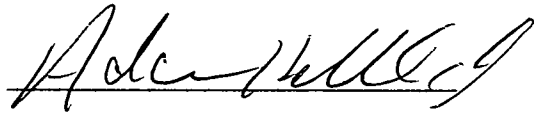
Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact; it is evidence which immediately establishes collateral facts from which the main fact is inferred. Circumstantial evidence is based on inference and not personal knowledge or observation. State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001). Under the "any evidence" or "mere scintilla" standard, Appellant Hill's Initial Brief has provided sufficient circumstantial evidence to negate a summary judgment ruling on this cause of action. Does the law make a distinction between the weight or value to be given to either direct or circumstantial evidence? Is it not true that circumstantial evidence is held on equal footing as direct evidence under the "any evidence" standard?

As pointed out in Appellant Hill's initial brief the facts within the Primerica claim file are documented and not speculation or conjecture. The facts within Respondent Norman's sworn deposition are not speculation or conjecture.

CONCLUSION

WHEREFORE, for all of the reasons set forth above, Appellant Hill requests the Court to reverse the decision to affirm the Circuit Court's order granting summary judgment to Respondent Norman and grant his plea for a jury trial and change of venue or grant summary judgment in favor of the Appellant.

Respectfully submitted,



Adam Hill, Jr.
P. O. Box 1014
Anniston, AL 36202
(256) 435-8719
Appellant/Pro Se

May 28, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2010-177326

Adam Hill, Jr.,.....Appellant,

v.


Henrietta Norman and Primerica Life Insurance Company Defendants,

Of Whom Henrietta Norman is..... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Petition for Rehearing on Henrietta Norman by depositing a copy of it in the United States mail, postage prepaid, on May 28, 2013, addressed to her attorney of record Edward S. McCallum, III, 340A Oak & Main Street, P. O. Box 148, Greenwood, SC 29648. .

May 28, 2013.



Adam Hill, Jr.
Appellant/Plaintiff/Pro Se
P. O. Box 1014
Anniston, AL 36202
(256) 435-8719