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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
Supreme Court of South Carolina

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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 — Petitioners

---

Petition for a Writ of Certiorari

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TABLE OF AUTHORITIES

South Carolina Code Annotated:

South Carolina Rules of Civil Procedure:

South Carolina Rules of Appellate Procedure:

THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA:

Petitioners, Margo Keese, Florence Keese, Marcy Keese and Marshall Keese respectfully petitions the Supreme Court to issue a Writ of *Certiorari* by which to review the decision of the South Carolina Court of Appeals.

I. CERTIFICATION

Pursuant to S.C.App.Ct.R. 242(d)(1), Petitioners, *pro se*, hereby certify that a petition for rehearing was made and finally ruled on by the Court of Appeals on August 18, 2022. See Appendix, at 1.

II. STATEMENT OF ISSUES ON APPEAL

I. WHETHER COURT OF APPEALS ERRED IN OVERLOOKING ALMOST 142 YEARS OF SOUTH CAROLINA PRECEDENTS IN UPHOLDING THE TRIAL COURT ERRONEOUS INTERPRETATION OF THE CLEAR INTENT OF THE TESTATOR?

II. DID THE COURT OF APPEALS ERR IN FINDING THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING PETITIONERS' MOTION TO OPEN THE DEFAULT JUDGEMENT?

III. DID THE COURT OF APPEALS ERR IN FINDING THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY FINDING THE PETITIONERS FAILED TO PRESENT A MERITORIOUS DEFENSE TO THE RESPONDENTS' QUIET TITLE ACTION?

III. STATEMENT OF THE CASE

On February 20, 2019, Respondents, Elizabeth Diane Keese, Frances K. Chestnut, Sylvester Keese, Arthur B. Keese and Mary K. Taylor filed an action in the Court of Common Pleas of Anderson County, South Carolina to quiet title in a tract of land that Minnie Keese ("the Testator") granted in equal shares to all her children and her then deceased son's heirs, which is described in their Complaint as follows:

> ALL that certain tract of land containing Eighty Seven and Forty Four One Hundredths (87.44) acres, more or less, situate in School District No. 28, called Bishop's Branch, in Garvin Township, in Anderson County in the State of South Carolina, bounded on the North and East by land now or formerly of Emmie Norton, on the South by land known as the Old Bolt Land, and on the West by now or formerly of George Link and Joe Berry Link.

Reproduced Record, at 1 (Respondents' Complaint).

In their Complaint, the Respondents averred that Petitioners, Margo Keese, Florence Keese, Marcy Keese and Marshall Keese did not have an interest in the property because their interest was extinguished due to the death of Marshall B. Keese who predeceased the Testator. See Reproduced Record, at 2. However, that is absolutely contrary to the Testator's intent. The Testator, while preserving a life estate for herself, devised the property to:

> Frances K. Chestnut, James Keese, Jr., Sylvester Keese, Marshall B. Keese, (deceased) Arthur B. Keese, And Mary K. Taylor, *their heirs* and assigns forever all of my right title and interest to the below described property...

Reproduced Record, at 2 (Minnie Keese's Deed)(*italics added*).

After the Petitioners failed to answer the Complaint, a default judgment was entered against them on July 1, 2019, pursuant to South Carolina Rules of Civil Procedure 55(b)(1). See Reproduced Record, at 3 (Entry of Default). On Petitioners timely moved to set aside the default judgment pursuant to South Carolina Rules of Civil Procedure 60(b) on August 2, 2019. See Reproduced Record, at 4 (Motion To Set Aside Default Judgment).

On December 12, 2019, Petitioners' motion was heard by The Honorable R. Scott Sprouse. The focus of that hearing was whether the Petitioners had a "meritorious defense" to the quiet title action. The Respondents argued that none existed because the Petitioners' title was "*void ab initio*" where their grantee predeceased his grantee. See Reproduced Record, at 5 (Transcript of Motion To Set Aside Default Hearing). The trial court took the matter under advisement with the expectation that Petitioners' counsel would "address more fully." *Id.*, at 9:16-17.

On January 9, 2020, the circuit court issued a two prong decision denying Petitioners' motion to set aside the default Judgment as follows: (1) "the Defendant has

not shown sufficient cause for the Court to set aside the default"; and (2) "the Defendant does not have a meritorious defense based on the facts and applicable law." Frances K. Chestnut, *et al.* v. Florence Keese, *et al.*, Case No. 2019CP0400337 (CCP Anderson, Jan. 9, 2020)(Sprouse, J.). See Reproduced Record, at 6 (Order Denying Motion To Set Aside Default).

Petitioners timely appealed to the South Carolina Court of Appeals, and requested the Transcript of the December 12, 2019, hearing.

On June 8, 2022, a three judge panel of the South Carolina Court of Appeals affirmed the trial court's denial of Petitioners' Rule 60(b), SCRCP, motion to set aside the default judgment (see Reproduced Record, at 7 (Unpublished Opinion No. 2022-UP-255 affirming the trial court)).

Pursuant to S.C.App.Ct.R. 221, Petitioners timely petitioned for the South Carolina Court of Appeals rehearing.

On August 18, 2022, a three judge panel of the South Carolina Court of Appeals denied the petition for rehearing, and opined:

> After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principal of law has been either overlooked or disregarded and hence, there is no basis for grating a rehearing. Accordingly, the petition for rehearing is denied.

See Appendix, at 2 (*Order*, at 1, (S.C.App.Ct., Aug. 18, 2022)). Petitioners timely seek a Writ of Certiorari from this Court, *inter alia*, under S.C.App.Ct.R. 242(b)(3):

> Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

IV. STANDARDS OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court. See Harbor Island Owners' Association v. Preferred Island Properties, Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)(holding the decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court); Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989).

"[T]his court will not reverse the [circuit] court absent an abuse of discretion." Hillman v. Pinion, 347 S.C. 253, 255, 554 S.E.2d 427, 429 (Ct.App. 2001); Mitchell Supply Company, Inc. v. Gaffney, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322-23 (Ct.App. 1988). An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)(holding an abuse of discretion occurs when the" 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"); In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)(holding an abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support).

V. SUMMARY OF ARGUMENT

First, Court of Appeals erred by overlooking almost 142 years of South Carolina precedents in upholding the trial court erroneous interpretation of the clear intent of the testator in this case. Second, the Petitioners showed good cause to set aside the default judgment. Third, the Petitioners' evidence established a meritorious defense to the entry of the default judgment because the express intent of the Testator was to convey Marshall B. Keese's interests in property to his "heirs and assigns". Thus, the circuit court abused its discretion in denying the Petitioners' motion to set aside the default judgment because its decision was based a factual error in interpreting the intent of the Testator to convey Marshall B. Keese's interests in property to his "heirs and assigns".

VI. ARGUMENTS

A. Whether Court of Appeals erred in overlooking almost 142 years of South Carolina precedents in upholding the trial court erroneous interpretation of the clear intent of the testator?

Nearly 142 years ago, in McIntyre v. McIntyre, 16 S.C. 290 (1881), the Supreme Court of South Carolina was called upon decide the intent of the testator in a case where the testator's children predeceased their children, and the testator simply used the words "heirs" to describe who should inherit large tracts of land. There, there the court was unequivocal in its holding that "we are at liberty to construe this will in accordance with what every one [sic] who reads it must believe to have been the intention of the testator." *Id.*, at 278. McIntyre's progeny long lives in South Carolina. This was elucidated in Estate of Gill v. Clemson University Foundation, 397 S.C. 419, 426 (S.C.App. 2012):

> The paramount rule of will construction is to determine and give effect to the testator's intent." Holcombe–Burdette, [371 S.C. 648, 655, 640 S.E.2d 480, 483 (Ct.App.2006)]; see S.C.Code Ann. § 62–1–102(b)(2)(2009) ("The underlying purposes and policies of this Code are ... (2) to discover and make effective the intent of a decedent in the distribution of his property."). "In construing the provisions of a will, every effort must be made to determine and carry out the intentions of the testator." *Id.* at 656, 640

S.E.2d at 483. "A will must be read in the ordinary and grammatical sense of the words employed, unless some obvious absurdity, repugnancy, or inconsistency with the declared intention of the testator, as abstracted from the whole will, would follow from such construction." Kemp v. Rawlings, 358 S.C. 28, 34, 594 S.E.2d 845, 849 (2004). "The rules of construction are subservient to the primary consideration of ascertaining what the testator meant by the terms used in the written instrument itself, and each item of a will must be considered in relation to other portions." Id. If the terms or provisions of a will are ambiguous, the court may resort to extrinsic evidence to resolve the ambiguity. Bob Jones Univ. v. Strandell, 344 S.C. 224, 230, 543 S.E.2d 251, 254 (Ct.App.2001).

Again, Court of Appeals erred and overlooked almost 142 years of South Carolina precedents in upholding the trial court erroneous interpretation of the clear intent of the testator in this case.

B. Did The Court Of Appeals Err In Finding That The Trial Court Did Not Abuse Its Discretion By Finding The Petitioners Failed To Present A Meritorious Defense To The Respondents' Quiet Title Action Discretion And Denying Petitioners' Motion To Open The Default Judgement?

A party seeking relief from a default judgment must do so under SCRCP Rule 60(b). See Sundown Operating Co. v. Intedge Industrial, Inc., 383 S.C. 601, 608,

681 S.E.2d 885, 888 (2009). Rule 60(b) requires a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. See SCRCP Rule 60(b).

In determining whether to grant a motion under Rule 60(b), the circuit court should consider: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party. See Mictronics, Inc. v. S.C. Department of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App. 2001). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App. 1991); Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.2d 94 (Ct.App. 2011).

The circuit court held that Petitioners failed to show good cause because they failed to act upon the advice of an out-of-state attorney and cites the case of Williams v. Vanvolkenburg, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1993) in support of its conclusion. See Reproduced Record, at 6.

Williams v. Vanvolkenburg is distinguishable from the instant case. There, the Court of Appeals found no abuse of discretion where the husband/wife parties to the litigation failed to request that *their South Carolina licensed attorney* file an answer to the complaint. *Id.*, at 409. Here, in contrast, the person that Petitioners consulted

in Philadelphia, Pennsylvania was not licensed to practice law in South Carolina, nor did he conduct any law related business or provide any legal services in the State of South Carolina, which would qualify him as a lawyer in South Carolina. See, e.g., In re Ochoa, 426 S.C. 483, 489-90, 827 S.E.2d 586, 589 (S.C. 2019)("[b]y providing legal services in South Carolina and targeting advertisements and solicitations to this state, respondent meets the definition of "lawyer" provided in Rule 2(r)"). He was merely a lay person. Therefore, circuit court abused its discretion because it misapplied the law to the facts of this case. See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)(holding an abuse of discretion occurs when the" 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"); In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)(holding an abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support). Therefore, the Court of Appeals erred in finding that the trial court did not abuse its discretion by finding the petitioners failed to present a meritorious defense to the respondents' quiet title action discretion and denying petitioners' motion to open the default judgement.

C. Did The Court Of Appeals Err In Finding That The Trial Court Did Not Abuse Its Discretion By Finding The Petitioners Failed To Present A Meritorious Defense To The Respondents' Quiet Title Action?

A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or doubtful evidence. See Graham v. Town of Loris, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978).

The circuit court ruled that:

> Even if Default [sic] were to establish good cause, to set aside the entry of the Default there must be a showing that meritorious defense exists to the Plaintiffs' Complaint. The Court finds that there is no meritorious defense in this case. The Default Judgment found the conveyance to Marshall Keese (Sr.) to be null and void based on the undisputed fact that he was dead at the time of conveyance, and thus not a life in being at the time of the conveyance.

Reproduced Record, at 6.

The circuit court's ruling is contrary to the express language of the deed. "One of the first canons of construction of a deed is that the intention of the Testator must be ascertained and effectuated if no settled rule of law is contravened." Southern

Railway Company v. Smoak, 243 S.C. 331, 336, 133 S.E.2d 806, 808 (1963); Wayburn v. Smith, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977); see also McDaniel v. Connor, 206 S.C. 96, 100, 33 S.E.2d 75, 76 (1945)("[a]s has many times been said, the governing principle in the construction of deeds is that the intention of the Testator, if consistent with law, shall govern"). Moreover, in ascertaining such intention the deed must be construed as a whole, and effect given to every part thereof, if such can be done consistently with law. See Wayburn, *supra*, at 42, 239 S.E.2d at 892; Bean v. Bean, 253 S.C. 340, 343, 170 S.E.2d 654, 655 (1969); see also First Carolinas Joint Stock Land Bank of Columbia v. Ford, 177 S.C. 40, 46, 180 S.E. 562, 565 (1935)("[l]arger and more sensible rules of construction require that the whole deed should be considered together, and effect be given to every part, if all can stand together consistently with law...").

Here, obviously the Testator, Minnie Keese knew that Marshall B. Keese was deceased at the time she executed to the deed. It is clear that she intended for his "heirs and assigns" to receive his share of property because that is the exact language she used in the deed. Therefore, the Court of Appeals erred in finding that the trial court did not abuse its discretion by finding the petitioners failed to present a meritorious defense to the respondents' quiet title action. It also ignores the fundamental premises that courts of this State "favor trial of issues on merit over securing

judgment by slight technicalities." Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986)

VII. CONCLUSIONS

For these reasons, the Petitioners respectfully request this Court to grant this Petition for Writ of Certiorari and issue the Court's opinion reversing the decision of the Court of Appeals on the issues set forth above.

Respectfully submitted,

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VI. CERTIFICATE OF SERVICE

I, Margo Keese, on this 15th day of September 2022, hereby certify that attached Petition For Writ of Certiorari was filed in this Court by **EXPRESS MAIL** and served by **EXPRESS MAIL** on the person noted below:

Other Counsel of Record:
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Respectfully submitted,

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October 29, 2022

BY PRIORITY MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Frances K. Chestnut, Elizabeth Diane Keese, Sylvester Keese, Arthur B. Keese and Mary K. Taylor, Respondents, v. Florence Keese, Marcy Keese, Marshall Keese and Margo Keese, *pro se*, Appellants, Case No. 2020-000263

Dear Ms. Kitchings:

Attached is a copy of .appellants' Florence Keese, Marcy Keese, Marshall Keese and Margo Keese, *pro se*, Petition for a Writ of Habeas Certiorari to the Supreme Court of South Carolina.

Respectfully,

s/ Margo Keese

Margo Keese
Pro Se

cc: Clerk of Court SC Supreme Court

Carolyn G. Baird, Esquire
Attorney for Respondent


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