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Dec 14 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON
COURT OF COMMON PLEAS
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001292

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, ... Petitioners.

RETURN TO
PETITION FOR A WRIT OF CERTIORARI

Respondents Frances K. Chesnut, Elizabeth Diane Keese, Sylvester Keese, Arthur B. Keese and Mary K. Taylor (referred to collectively as "Respondents") file this return to the pending Petition for Writ of Certiorari, and respectfully urge this Court to deny the Petition.

Review by this Court of a decision of the Court of Appeals is not a matter of right. Rule 242(a). "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." South Carolina Constitution, Article 5, § 1. The South Carolina Court of Appeals was created in 1979 and 1983.[1] In 1999, the General Assembly

[1] The 20th Century Court of Appeals was created by legislative act in 1979, Act No. 164. However, the Supreme Court held that several portions of the 1979 Act that created the Court of Appeals were unconstitutional and further

restructured certain provisions of the statutes which governed judicial review under Article V of the State Constitution, and made the South Carolina Court of Appeals the sole court for appeal of decisions from the trial courts, excepting seven (7) categories of cases for which direct appeal to the Supreme Court remained. 1999 Act No. 598, amending S.C. Code §14-8-200.

With the 1999 statutory amendments, review of a decision of the Court of Appeals by the Supreme Court became discretionary in matters which had been appealed to the Court of Appeals as a matter of right. S.C. Code §14-8-210. "The decisions of a panel of the court. . . shall be final and not subject to further appeal, *except by petition for review or by other exercise of discretionary review* by the Supreme Court.[2]" (italics added by author).

This Court adopted Rule 241, SCACR, to govern the procedure by which discretionary review by this Court may be sought. "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b). The rule provides a non-exlusive list of circumstances that might justify the grant of certiorari, none of which are applicable here.

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that four of the five judges elected to that court were ineligible (as sitting members of the general assembly). *State ex re: Riley v. Martin*, 274 S.C. 106, 262 S.E.2d 404 (1980). In *Maner v. Maner,* 278 S.C. 377, 296 S.E.2d 533 (1982), this Court ruled that the court created in 1979 still existed, but the General Assembly had failed to fill the seats on that court. 1983 Act No. 89, Section 1 provided the statutory framework for electing judges to the current Court of Appeals. The South Carolina Constitution was amended by the electorate in November, 1984, which determined that the Court of Appeals should be made a constitutional court and was now "shielded from political and social influences like those that had destroyed South Carolina's first Court of Appeals." The quoted language, from the history of the Court of Appeals which appears on the website for the South Carolina Judicial Branch, refers to the "first Court of Appeals" as the Court of Appeals that had been created by pre-civil was legislation in the 19th century. The real first Court of Appeals in South Carolina was lost to the governmental upheaval which followed the civil war and the rebuilding of the state government. Today's Court of Appeals is the result of 20th century governmental restructuring and rebuilding to meet the growing needs of the citizens.
https://www.sccourts.org/appeals/history.cfm#:~:text=On%20July%201%2C%201985%2C%20the,Carolina's%20first%20Court%20of%20Appeals.

[2] Additional provisions of the 1999 act included provisions for the Supreme Court to certify any case pending before the Court of Appeals for decision by the Supreme Court. S.C. Code §14-8-210.

DECISION OF THE COURT OF APPEALS

The Court of Appeals affirmed the decision of the circuit court judge in a non-published opinion dated June 8, 2022. *Chestnut et al. v. Keese et al.,* Unpublished Opinion No. 2022-UP-255 (App. PDF p. 5).[3]

This action was filed on February 20, 2019 in circuit court in Anderson County seeking to quiet title to set aside a 1992 deed which encumbered title to real property in Anderson County. (App. PDF p. 106). The dispute arose out a 1992 deed from Minnie Keese of 87.44 acres of land in Anderson County. (Anderson County Book 1465, Page 38, App. PDF p. 111). The grantees in that deed were "Frances K. Chestnut, James Keese, Jr., Sylvester Keese, Marshall Keese (deceased), Arthur B. Keens and Mary K. Taylor" in fee simple. *Id*. The deed reserved to grantor a life estate in the property. *Id.*

Affidavits of Service on record in Anderson County reflect that Defendant Marshall Keese was personally served by sheriff's deputy on April 10, 2019. Margo Keese was served by sheriff's deputy on April 5, 2019. Florence Keese was served personally by sheriff's deputy on April 5, 2019. Marcy Keese was personally served by sheriff's deputy on April 5, 2019. An affidavit that none of the defendants was protected by Article 1 of the "Soldiers and Sailors" Civil Relief Act.[4]

[3] The pages of the Appendix furnished by Petitioner are not consecutively numbered, so references to the Appendix herein are to the PDF page number which appears automatically using the Adobe Acrobat software. Documents are also available via C-track in Appellate Case No. 2020-000263.

[4] None of these documents appear in the Appendix filed by Petitioners.

Anderson County records reflect that Respondent's counsel filed an affidavit of default on May 17, 2019. The Anderson County Clerk's file reflects no filing in response to the pleadings either prior to or after the filing of the affidavit of default filed by Petitioner's counsel.

Circuit Judge R. Scott Spruill issued an order finding the named defendants to be in default, and further finding that the conveyance to Marshall Keese in the deed of September 22, 1992 was null and void. (Order dated July 21, 2019, App. PDF p. 117). The order further granted Respondent's request that they each be found to own an undivided one-fifth interest in the subject property. *Id*.

Respondents filed a Motion to Set Aside Default Judgment on August 2, 2019. (App. PDF p. 120). Judge Sprouse held a hearing on the motion to set aside default on December 12, 2019. (App. PDF p. 122[5]).[6] They argued they had difficulty locating South Carolina counsel to represent them, but they made no showing of a meritorious defense. Counsel for the petitioners said, "I'm not aware of any South Case law that supports their assertion as far as this being an invalid transfer." (App. PDF p. 126, lines 21-23).

Judge Sprouse issued an order on January 22, 2020 stating that the Petitioners had failed to show good cause and there was no meritorious defense, and denied the motion to set aside default. (App. PDF p. 130). As to the absence of a meritorious defense, Judge Sprouse cited case

[5] The entire transcript is not included in the Appendix. Only pages 4-7 of the transcript are reproduced, beginning at App. PDF. p. 123.

[6] The motion was supported by affidavits of Florence Keese (App. PDF p. 98), Marshall Keese (App. PDF p. 96), Pennsylvania lawyer Richard Margolis (App. PDF p. 94). The affidavits reflect that the affiants Keese received a letter from Respondent's counsel and Lawyer Margolis received copies of the quiet title pleadings in March, 2019. Mr. Margolis contacted Respondent's counsel, said he was not licensed in South Carolina but would attempt to assist Petitioners in finding counsel.

law from North Carolina and stated "[n]o argument exists that Marshall Keese Sr. deceased at the time was a person in being on the date ofe the conveyance." *Id.* PDF p. 131.

On appeal, Petitioners, acting *pro se*, argued that the circuit court abused its discretion in denying the motion to set aside default, and also abused its discretion by finding no meritorious defense existed. (App. PDF p. 74). The gist of Petitioner's argument on appeal that, since the 1992 conveyance to the living grantees granted fee simple title including the named "heirs" of the grantees who were alive at the time of the deed, the language of the deed should control. (App. PDF p. 79).

They further argued that Rule 60, SCRCP, was the controlling authority (rather than Rule 55) and argued that the trial judge abused its discretion in denying their motion and the trial judge's decision was controlled by an error of law.

The Court of Appeals affirmed in the unpublished decision cited above.

Petitioners raise three issues in the petition, the first of which was not argued below and is therefore not appropriate for consideration by this Court. Moreover, the argument (which claims the Court of Appeals "overlook[ed] almost 142 years of South Carolina precedent. . . [as to] the intent of the testator. . ."a] is irrelevant to the issues in this case.

This case is not now, nor has it ever been, about the intent of the testator (presumably the grantee) in the 1992 deed. Had Petitioners filed answers to the pleadings, perhaps they could have raised this issue, but they did not. They defaulted, and egregiously so, not hiring counsel for almost four (4) months after they were served.

The sole issue on appeal related to an abuse of discretion alleged to have occurred by the trial judge. Petitioners correctly cite the doctrine that an abuse of discretion occurs when the trial

court's decision is controlled by an error of law. *Roberson v. Southern Finance of South Carolina*, 365 S.C. 6, 615 S.E.2d 112 (2005), cited in Petition p. 7. However, the trial judge here did not commit an error of law. The Court of Appeals' decision, in Issue 1, thoroughly discussed the applicable law and correctly applied the law, finding no abuse of discretion by the trial judge.

The Petition also presents a third question, labeled Issue C, which states as follows: "

> 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.

Petition, P. ii.

The Court of Appeals did not address this issue at all. The Court of Appeals found that the issue regarding a meritorious defense was not raised at the trial court and therefore need not be addressed on appeal. The Court of Appeals never addressed the merits of this issue.

> 2. Whether the circuit court abused its discretion by finding that Appellants failed to present evidence of a meritorious defense is not preserved for appellate review, because Appellants declined to put forth a defense at the hearing before the circuit court. *See Miller v. Dillon,* 432 S.C. 197, 207, 851 S.E.2d 462, 467 (Ct. App. 2020) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." (Quoting *Wilder Corp. v. Wilke,* 330 S.C. 71, 76,497 S.E.2d 731, 733 (1998)).

(App. PDF p. 6).

Petitioner's Petition for Rehearing to the Court of Appeals similarly asserted that the circuit court abused its discretion in failing to find Petitioners presented a meritorious defense. (App. PDF p. 21).

The Petition for Rehearing to the Court of Appeals contained no argument regarding the Court of Appeals' conclusion that the second issue was not preserved.

Perhaps Petitioners did not understand that the Court of Appeals did not address this issue or did not understand that it was incumbent on them to raise the issue to the Court of Appeals before it could be addressed before this Court. Rule 242(d), SCACR ("Only those questions raised in the Court of Appeals *and in the petition for rehearing* shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.")(emphasis added).

Regardless, the issue of a meritorious defense was argued to the circuit court by Respondents at the time the petition for rehearing was heard, with Respondents pointing out that no meritorious defense had been proffered by Petitioners. (App. PDF p. 123, Lines 19 – 25). More importantly, in his ruling denying rehearing, the circuit court judge specifically found that "[t]here is no meritorious defense in this case." (App. PDF p. 131).

CONCLUSION

There are no grounds whatsoever for this Court to grant extraordinary relief in the form of certiorari. The matters have been fully litigated and correctly decided. There are no "special or important" reasons for the petition to be granted. Rule 242(b), SCACR.

The petition should be denied, and costs taxed against Petitioners.

Respectfully submitted,

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PROOF OF SERVICE

I, Patti Milford, an employee with Jones Law Firm, do hereby certify that on December 14, 2022, I served a copy of the **Return to Petition for a Writ of Certiorari** in the above-captioned case on the following individuals by U.S. Mail with sufficient first-class postage affixed, and addressed as follows:

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_____
Patti Milford, Paralegal

December 14, 2022
Anderson, South Carolina