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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

R. Ferrell Cothran, Jr., Circuit Court Judge
Case No. 2008-CP-43-02112

Appellate Case No. 2021-001293

The Estate of Fannie M. Champion, by Evelyn Champion Ludd, Personal Representative, Samuel Champion, Evelyn C. Ludd, Sarah C. Evans, Rachel C. Brown, Henry Champion, Jr. Janie M. Champion, Mary Johnson and John L. Champion, Plaintiffs/Appellants,

v.

Ronald L. Hallman, Marjorie J. Hallman, Elton J. Hallman, Conswalla E. Hallman, Oron J. Hallman, Hazelee C. Hallman, Edward G. Hamilton, Helen D. Hamilton, Edward E. Hamilton, Raymond Forbes Davenport, II, and Mary Ellen Davenport, Defendants/Respondents.

Initial Brief of Respondents

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge correctly determine that Champion's motions filed more than 1 ½ years after entry of the final order were time-barred under Rule 60(b)(1)-(3)?

2. Did the trial judge correctly enter judgment under Rule 70 when Champion failed to comply with the January 4, 2019 final order to convey an easement across Tract A to Hallman and exchange Tract B for Tract C for the use of a new roadway for Shingle Mill Road?

STATEMENT OF THE CASE

This is a property dispute over the use of Shingle Mill Road in rural Sumter County, South Carolina. On September 17, 2008, Appellants (hereinafter collectively referred to as "Champion" or "Champions") brought suit against Respondents (hereinafter collectively referred to as "Hallman" or the "Hallmans"[1]) to stop them from using Shingle Mill Road to access their property. Several property owners died during the pendency of the lawsuit. See Rule 25, SCRCP. In November of 2016, all Respondents filed answers and counterclaims seeking use of Shingle Mill Road to access their properties and joining the issues.

All of the subject property was commonly owned by Wash James when he purchased a 500-acre tract in 1872. Sumter County Book U-5, at page 51. As of today, Shingle Mill Road remains an unpaved and privately maintained rural dirt road that has been in constant use since the early 1800's.

This case was set certain for trial on April 24, 2017. On April 25, 2017, a settlement agreement was entered into the record before Judge R. Ferrell Cothran, Jr. Rule 43(k), SCRCP. On January 4, 2019, and after a contested hearing, a final order was entered directing the parties to consummate the earlier settlement. This January 4, 2019 order was *not* a consent settlement order.

On June 2, 2020, Hallman moved for relief under Rule 70, seeking specific acts and vesting title. On July 10, 2020, Judge Cothran entered a temporary injunction prohibiting all parties from obstructing any other party from using Shingle Mill Road.

Champion filed several untimely and non-specific motions: a July 10, 2020 motion to add, or implead, an adjoining landowner, a July 20, 2020 motion to dissolve a temporary injunction, a July 21, 2020 motion to vacate the settlement order, a September 27, 2021 motion to alter or amend a September 15, 2021 order, a November 2, 2021 filing of executed conveyances to stay judgment, and a October 18, 2021 motion in re: Bond.

Standard of Review

1. Rule 60, SCRCP

Rule 60(b), SCRCP, provides: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

> (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);
>
> (3) fraud, misrepresentation, or other misconduct of an adverse party;"

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling (them) to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App. 1991).

The one-year limitation is an absolute time limit under Rule 60(b)(1)-(3). *Coleman v. Dunlap*, 306 S.C. 491, 413 S.E.2d 15 (1992) (one year limitation is an absolute time limit); *Thomas & Howard Company, Inc. v. T.W. Graham and Co.*, 314 S.C. 410, 412, 444 S.E.2d 541, 542 (Ct.App.1994)(" the Rule 60(b)(1) motion was untimely because it was not made within the one year period prescribed by the rule."), *rev'd on other grounds*, 318 S.C. 286, 457 S.E.2d 340

[1] Upon information and belief, the Champions all have a familial relationship with one another. The Hallman's are not related to the other Defendant/Respondent property owners, but are referred to collectively to simplify the briefing of the issues.

(1995). When a Rule 60(b)(1)-(3) motion is untimely, the court lacks jurisdiction to grant any relief. See Rule 60, SCRCP.

On review, appellate courts are limited to determining whether the trial court abused its discretion in granting or denying such a motion. *Saro Invs. v. Ocean Holiday P'ship*, 314 S.C. 116, 124, 441 S.E.2d 835, 840 (Ct.App. 1994). When a Rule 60(b)(1)-(3) motion is untimely, the court's sole discretion is whether the motion may also be considered under Rule 60(b)(4) or (5) which are excluded from the Rule's one-year absolute time limit. Rule 60, SCRCP.

2. Rule 70, SCRCP

Rule 70 provides:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Cited in *Lapitskiy v. Furmanov*, 97 Wash.App. 1038, 1999 WL 730908 * 4 (Ct. App. Wash, Div 1 September 20, 1999)("Rule 70 is designed 'to deal with parties who seek to thwart judgments by refusals to comply with orders to perform specific acts[.]' " (*citation omitted*) (quoting 12 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3021 (1973)); see also James Wm. Moore et al., *Moore's Federal Practice* § 70.02 (2d ed. 1991) ("Rule 70 ... is intended primarily to preclude recalcitrant parties from frustrating a court order for the performance of specific acts.") (*citation omitted*) (Rule 70 "grants the court authority to enforce

a previous court order to have a specific act performed."). Consequently, "[t]he rule applies only if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party has failed to comply within the time specified." 12 Charles A. Wright et al., *Federal Practice and Procedure* § 3021 (1997); (*citation omitted*) (Rule 70 "is not an appropriate basis for relief in cases where ... the party seeking relief does not allege noncompliance with any order issued by the court."); accord (*citation omitted*). Rule 70 orders are reviewed for an abuse of discretion. *United States v. Fitzgerald*, 109 F.2d 1333, 1343 (8th Cir. 1997) (citing *Gates v. Collier*, 616 F.2d 1268, 1271 (5th Cir. 1980)).

3. Final court orders are not "settlement agreements" under Rule 43(k)

Rule 43(k) provides: "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel…."

A final order of the Court is not a settlement agreement. See *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."). "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (quoting *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)); cited in *South Carolina Public Interest Foundation v Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022).

Arguments

1. Judge Cothran correctly denied relief where the Champions never asked for relief under Rule 60, and their untimely requests for relief were both well beyond the absolute one-year time limit to seek relief under Rule 60.

The Champions never *timely* asked for *any* relief from the January 4, 2019 final order. See 60, SCRCP. Champion first requested relief from the final order on July 10, 2020, when they sought to implead an adjacent property owner. This was well beyond the one-year absolute time limit for seeking relief under Rule 60, SCRCP. On July 22, 2020, Champion erroneously asked to vacate the settlement order, but never mentions Rule 60. Champion actually has never asked for relief under Rule 60, or addressed the merits of a Rule 60 request for relief either to Judge Cothran or in their appeal to this court.

Judge Cothran appropriately recognized that he lacked jurisdiction to grant relief under Rule 60 (despite the trial court not having been asked for such relief) because one year, six months and seven days (or 554 days) had passed since the final order was entered on January 4, 2019.

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling (them) to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App. 1991). The one-year limitation is an absolute time limit under Rule 60(b)(1)-(3). *Coleman v. Dunlap*, 306 S.C. 491, 413 S.E.2d 15 (1992) (one year limitation is an absolute time limit); *Thomas & Howard Company, Inc. v. T.W. Graham and Co.*, 314 S.C. 410, 412, 444 S.E.2d 541, 542 (Ct.App.1994)(" the Rule 60(b)(1) motion was untimely because it was not made within the one year period prescribed by the rule."), *rev'd on other grounds*, 318 S.C. 286, 457 S.E.2d 340 (1995). When a Rule 60(b)(1)-(3) motion is untimely, the court lacks jurisdiction to grant any relief. See Rule 60, SCRCP.

Rather than identifying the specific basis for relief, Champion inexplicitly sought to interplead a new party to the long-settled dispute that had been resolved by final order for more than a year and a half. If fact, the "new" party Champion sought to interplead did not even own the adjacent property at the time the settlement was entered into the record on April 25, 2017 before Judge Cothran. See Deed Book 1232, page 3521, purchased on May 4, 2017 by Ronald Sealey, et al. Again, and without citation to any specific procedural rule, Champion moved to vacate the final order on July 22, 2020. Champion's motion to vacate appears to be based upon a breach of contract theory, and completely ignores the procedural requirements for seeking relief under Rule 60. Judge Cothran appropriately denied Champions untimely requests for relief and granted Hallman's motion for specific acts and vesting title under Rule 70, SCRCP.

A discussion of the underlying property dispute and the April 25, 2017 settlement that was entered into the record before Judge Cothran may be illustrative:

2. An easement by necessity, created in 1872 by Wash James' purchase of 500 acres, was the catalyst of the April 25, 2017 settlement agreement reached by the parties, and later as the basis of the final order entered January 4, 2019.

In 1872, Wash(ington) James purchased 500 acres – which included all the "subject property" - by Sheriff's deed. Sumter County Book U-5, at page 51. Shingle Mill Road was the primary, if not the sole, means of ingress and egress to the Shingle grist mill, the Shingle Mill school, and all the other businesses and homes in the small community of Shingle Mill. In 1872, roads were not maintained by either the state or local government. Roads were also not generally delineated on property records recorded in the Sumter County courthouse. Deeds and plats delineated roads, if at all, only at the termini, or edges, of the property lines.

Wash James commonly owned all the property involved in this appeal. As was customary in 1872, when Wash James conveyed property to others, easements for ingress and egress were generally not described in the deeds and plats. However, all tracts conveyed by Wash James included an unwritten, or implied easement by necessity, to access the properties located in and around the Shingle grist mill and other businesses and residences. *See Boyd v Bellsouth Telephone Telegraph Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006)(discussing easement by necessity). Wash James sold the property that now belongs to the Champions, Hallmans, Hamiltons and Davenports. Therefore, all the subject property had unity of title when it was owned by Wash James, beginning on or (long) before Wash James purchased the land in 1872. *Kennedy v. Bedenbaugh*, 352 S.C. 56, 572 S.E.2d 452 (2002).

Louis Tisdale, a local surveyor, was set to testify at trial that since the early 1800's, the community of Shingle Mill maintained a man-made levy used to operate a grist mill, a local school and other businesses, all accessed by Shingle Mill Road, the very road in dispute in this lawsuit. Tisdale's testimony at trial would have been that Shingle Mill Road existed long before Washington "Wash" James ever began selling tracts after acquiring the property in 1872, and that every subsequent purchaser took ownership of the property subject to an implied easement, easement by necessity, pre-existing use, and estoppel. The easement would necessarily meet the then current standard for ingress and egress, which as of April of 2017, was a 50-foot deeded easement necessary to obtain a standard conforming mortgage for real estate.

And while the Champions may today choose to dispute Tisdale's testimony, every Plaintiff (Appellant herein) chose to settle the dispute on April 25, 2017, the day after which the case was set for a date certain trial before Judge R. Ferrell Cothran. The settlement agreement was entered into the record pursuant to Rule 43(k), SCRCP.

At trial, Respondents would have offered unrefuted testimony that Shingle Mill Road was used as the primary, if not the sole, means of access to the Shingle Mill community since at least 1872. Thus, Wash James held (1) unity of title, (2) severed the title to the common property that later was purchased by the parties, and (3) Shingle Mill road was necessary to access the property for all of the property owners.

Respondents also would have offered testimony that "[t]he prevailing view in this country is that a way of necessity is not limited to such use of the land as was actually made and contemplated at the time of the conveyance, but is a way for any use to which the owner may lawfully put the granted land at any time." *Palmer v R.A. Yancey Lumber Co*, 294 Va. 140, 154, 803 S.E.2d 742, 750 (2017). Thus, Respondents offered that the 'lawful use' of property to finance and build a house in 2017 was a deeded fifty (50) foot easement for ingress/egress to meet conventional mortgage requirements.

Therefore, beginning no later than the year of 1872, when Wash James began selling off tracts of his 500-acre Shingle Mill property, Shingle Mill Road was the primary, if not the only, means of access to the Shingle Mill community. Shingle Mill Road was primary means of access for Wash James and all other property owners in the Shingle Mill community. Both Wash James and the Shingle Mill community *necessarily* had to use Shingle Mill Road to access their property. This "necessary access" was impliedly conveyed by Wash James in every tract of land he sold away to others, including the lands that would later belong to the parties involved in this appeal.[2]

Wash James' "implied by necessity" easement was granted to all the Shingle Mill community as a means of ingress and egress (to and from) across Shingle Mill Road. This community easement benefited both Wash James and all others who lived, shopped, and attended school in the Shingle Mill village which was accessible primarily through Shingle Mill Road. In 1872, roadways were not state or county government maintained. Roads were only delineated on deeds and plats at the termini, or edges, of the property.

And because Wash James' necessary easement served the entire community, it would be implied by necessity to meet the needs of the community as they existed *then*, and as may change over time and *into the future*. *Palmer v R.A. Yancey Lumber Co*., 294 Va. 140, 153, 803 S.E.2d 742, 750 (2017)("[t]he prevailing view in this country is that a way of necessity is not limited to such use of the land as was actually made and contemplated at the time of the conveyance, but is a way for any use to which the owner may lawfully put the granted land at any time.").

Thus, as Wash James conveyed out the parcels of land that would later be conveyed to the Champions and the Hallmans, the implied easements by necessity were similarly conveyed to later property owners. Specifically, while Shingle Mill Road may have been wide enough for the use of a wagon in 1912, as an example, it would necessarily widen to a 50 ft deeded ingress/egress easement sufficient to meet national mortgage underwriting standards for residential/commercial lenders for access.

Thus, the implied necessity easement created on or before 1872 during the ownership of Wash James was transferred to all subsequent property owners, to include the Hallman's, Hamilton's and Davenport's properties. It is upon these terms that the parties reached a settlement as set forth in Plat Book PB 2019, page 7 filed in the Sumter County register of deeds

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[2] Champions argued that at one time a wooden bridge across the Shingle Mill pond provided additional access to the Shingle Mill community. However, there is no evidence this bridge was accessible during the last half century, and

office on January 17, 2017, and entered into the record on April 25, 2017 before Judge R. Ferrell Cothran, Jr..

This appeal axiomatically arises out of the settlement agreement entered into the court record on April 25, 2017, and the final order entered after a contested hearing on January 4, 2019. Because the risk of buyer's remorse was palpable, Judge Cothran agreed to retain jurisdiction of the then nearly nine (9) year old lawsuit to resolve any future disputes that may arise.

Henry and Fannie Champion, successor of all of Appellants' property rights, acquired 23.40 acres at 2645 Shingle Mill Road by deed dated February 10, 1993. See Book 564, at page 1842. Over the following years, members of the Champion family placed manufactured housing and stick-built homes immediately adjacent to Shingle Mill Road. The other property owners behind the Champions also extensively used Shingle Mill Road to access their properties.

Much of Sumter County rests as 177 feet above sea level. The water table for much of Sumter County is 175 feet above sea level.[3] The Shingle Mill area is no different. Dirt roads frequently flood and require maintenance for potholes that are often perpetually wet. As such, unpaved roads such as Shingle Mill Road frequently meander around undriveable areas.

3. *The Ludd easement, Tract A, was the only uncompleted portion of the January 4, 2019 settlement order, and Judge Cothran correctly ordered conveyed to Hallman on September 15, 2021 per Rule 70, SCRCP*

The visual settlement agreement, as entered into the record by Judge Cothran on April 25, 2017, and later reduced to a final order on January 4, 2019 following a contested hearing, essentially concerned three (3) tracts of land: Tract A, a fifty (50) foot granted non-exclusive easement that runs to the west of Mrs. Ludd's home, and a land swap of two tracts of +/- 0.96

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probably became impassable shortly after the closing of the Shingle grist mill.

[3] https://en-us.topographic-map.com/map-mbg814/Sumter-County/?center=34.00884%2C-80.48687&zoom=12

acres, consisting of Tract B (outlined in blue) and Tract C (outlined in red). See Ex. 38 (color map). The sole area of dispute is the easement portion of Tract A that runs along the western side of Mrs. Ludd's residence.

While much *ado* is made about the land swap of Tract B and C, it is significant to point out that Mrs. Ludd *also* refused to grant the access easement across Tract A until Judge Cothran ordered an easement deed be signed by the Sumter Clerk of Court on September 15, 2021.

All of the "construction" on Tract B was completed well before the conveyance of Tract B and C by court order. Only the easement "construction" along Tract A was delayed awaiting the grant of an easement across Mrs. Ludd's property.

By motion of June 2, 2020, Defendants moved for relief under Rule 70, SCRCP. In that motion, Hallman sought to enforce the final order as entered on January 4, 2019. The final order directed the parties to conclude the settlement as follows:

1. A plat dated May 26, 2017, entitled "SHINGLE MILL ROAD ACCESS" was prepared by Louis White Tisdale, RLS, has been recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2019, at page 7 (hereinafter referred to as "LAND SWAP plat"), and sets forth the exact property descriptions for the affected properties.

2. *Within 30 days of entry of this Order*, Plaintiffs shall convey to Defendants a Fifty (50) foot non-exclusive easement in perpetuity of ingress and egress across certain real property described as Parcel A and shown on the LAND SWAP plat. See attached deed.

3. Within 30 days of entry of this Order, Plaintiffs shall convey in fee simple certain real property consisting of several tracts of land equaling 0.96 acres and more fully described as Parcel B in the LAND SWAP plat to Defendants; See attached deed.

4. Within 30 days of entry of this Order, Defendants shall convey in fee simple certain real property consisting of several tracts of land equaling 0.97 acres and more fully described as Parcel C in the LAND SWAP plat to Plaintiffs. See attached deed.

5. On the 31st day after entry of this Order, if any one or more of the three deeds described above in (2), (3) and (4) have not been executed and filed in the office of the Register of Deeds (ROD), the Sumter County Clerk of Court shall immediately execute and record the deeds with the ROD office. See attached deed for execution by Clerk of Court.

6. Upon recording of the last of the deeds described in (2) through (4), or alternatively (5), Defendants shall take all necessary action to clear and construct a private exclusive roadway for the purpose of ingress and egress to their real property over and upon Parcel B.

7. No later than six months after the recording of the last of the three deeds described in (2) through (4), or alternatively (5), Defendants shall no longer use that portion of Shingle Mill Road (Shingle Mill current situs) that transverses through the center of Plaintiffs' real property.

8. In the event any party appeals and seeks a stay of any one or more of the Orders entered in this matter, the appealing party shall be required to post with the Sumter County Clerk of Court cash surety in an amount not to exceed Fifty Thousand and no/100 ($50,000.00) dollars, or such other amounts as may be determined to be sufficient by the Court. *South Carolina Code* § 18-9-130, and *South Carolina Code* § 18-9-170. All limitations set forth in (7) above shall be immediately stayed until further Order of the Court upon the filing of any appeal.

(*emphasis added*). This was a final order. No appeal was taken.

The Champions' argument that because Hallman did not complete construction of the roadway within two years of when the April 25, 2017 settlement was entered into the court record is disingenuous. The Champions refused to 'approve' a final order, which was not entered until January 4, 2019. Mrs. Ludd (and the other Champion plaintiffs) failed to convey Tract A to Hallman so that a roadway across the easement could be constructed. See para. 2 above requiring conveyance within 30 days of the January 4, 2019 final order.

Judge Cothran's rulings have been consistent throughout this litigation. Champion sued Hallman to prevent them from using Shingle Mill Road. The case was called to trial and a settlement agreement was entered into the record. This settlement required Ms. Ludd to grant a 50-foot right of way easement across Tract A, and for Tract B and Tract C to be swapped to allow for a new route for Shingle Mill Road.

Only Tract A was not completed because Ms. Ludd (and the other Champions) refused to comply with the court's January 4, 2019 final order. Champion's argument that Hallman somehow breached a contract is nothing more than a bait and switch argument attempting to

confuse the swapping of Tract B and Tract C, with the deeded easement that Ms. Ludd refused to convey to Hallman across her property for the construction of a new roadway, or Tract A.

Assuming *arguendo* Champion could properly assert a breach of contract claim under these circumstances, which is vehemently denied, Ludd and Champion themselves completely ignored the court's 30-day requirement to convey an easement over Tract A to Hallman. In the absence of conveying the easement over Tract A, Hallman would have been traveling outside the historical confines of Shingle Mill Road had they attempted to construct the new roadway along Tract A.

Champion's *contra proferentum* argument is equally disingenuous. The Champions feign a willingness to settle with self-proclaimed righteous indignation, but in fact have instigated the court's action at every stage. Champion filed suit to prevent Hallman from using Shingle Mill Road, but never requested an injunction (specifically because it would have failed). Champion refused to settle until literally the eve of trial on April 25, 2017. Champion failed to agree to any written order, and Hallman was forced to order the April 25, 2017 transcript and request a contested hearing before Judge Cothran.

Following a contested hearing, a final order was entered on January 4, 2019. Champion openly ignored and failed to comply with the trial court's January 4, 2019 final order. Only after Hallman sought specific relief under Rule 70 on July 24, 2020, did Champion even acknowledge the final order of January 4, 2019.

Rather than following the (mandatory) Rules of Civil Procedure, Champion filed unfounded and untimely motions to vacate the settlement order (July 21, 2020), add an adjacent landowner (July 28, 2020), motion on a bond (October 18, 2021) and motion to stay judgment (November 2, 2021).

Contra proferentum, is a rule of contract interpretation that states an ambiguous contract term should be construed against the drafter of the contract. *Frewil, LLC v Price*, 411 S.C. 525, 769 S.E.2d 250 (Ct.App. 2015). The term *contra proferentem* is derived from a Latin phrase meaning "against the offeror." First, the final order of January 4, 2019 was not a contract. Secondly, Champion failed to consent to any settlement order. In fact, Champion ignored all efforts to have a consent settlement order entered. Hallman was forced to order the transcript of the April 25, 2017 settlement that had been entered into the record. A contested hearing was held because of Champion's refusal to consent. Champion did nothing to effectuate a consent settlement order.

Only after a contested hearing, Judge Cothran issued a final order on January 4, 2019. Champion failed to object to this final order of January 4, 2019. Champion did not move for reconsideration or appeal any portion of the January 4, 2019 final order. As such, Champion cannot now factually or legally allege that any ambiguity, of which it is vehemently denied, should be decided in their favor in this appeal. There is no ambiguity in the January 4, 2019 final order. Champion merely failed to comply with the final order, and has failed to timely seek any relief whatsoever from its terms. Judge Cothran properly determined that Rule 60 barred the relief sought by Champion and granted Hallman's Rule 70 motion to convey title to the easement across Tract A, and the land swaps of Tract B and Tract C.

1. Final court orders are not merely "settlement agreements" under Rule 43(k) and Champion is bound by the law of the case of the January 4, 2019 final order

Champion asserts that this appeal is merely a contract dispute as to the terms of the consent settlement agreement. Champion is wrong. Champion's consent was entered into the record on on April 25, 2017, but Champion thereafter refused to enter into any consent settlement order. As such, this is not a contract dispute. Judge Cothran's January 4, 2019 final order (became and)

is the law of the case. Any request for relief from this final order may only be properly addressed under Rule 60, SCRCP.

Rule 43(k) provides: "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel…."

A final order of the Court is not merely a settlement agreement. See *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."). "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (quoting *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)); cited in *South Carolina Public Interest Foundation v Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022).

The settlement agreement was placed "into the court record" on April 25, 2017. Rule 43(k), SCRCP. Because Champion refused to enter into a consent settlement order, a transcript of the agreement that was entered into the record was ordered. A contested hearing was held, and Judge Cothran entered a final order on January 4, 2019. This was not a consent order. Hallman was compelled to seek, and Judge Cothran was forced to enter into a final order based upon the language of the April 25, 2017 settlement 'on the record.' Rule 43(k), SCRCP.

Rule 43(k) provides a litigant must meet one of three conditions to obtain an enforceable settlement: "(1) reduced to the form of a consent order or (2) written stipulation signed by counsel and entered into the record, or (3) unless made in open court and noted upon the record." In this case, the settlement agreement was (3) "made in open court and noted upon the record."

After Champion failed to consent to a "consent settlement order", Hallman moved for an order setting forth the terms of the settlement entered into the record. Hallman ordered a transcript of the April 25, 2017 settlement conference. See XA. Based upon Hallman's motion and the April 25, 2017 transcript, Judge Cothran entered a final order on January 4, 2019. Judge Cothran's January 4, 2019 order was a final determination of the dispute between the parties, and "right or wrong, is the law of the case."

Champion's failure to appeal or otherwise timely object to the final January 4, 2019 Order cannot now be summarily dismissed as a simple matter of a contract dispute, laughably asserting that any ambiguity in the "language" of the contract (Court's order) must be interpreted in their favor. Extrapolating Champion's argument further, no ligation involving the Champions may *ever* be concluded: all *final* orders represent nothing more than mere contracts which may be disregarded, and subsequent relief may be sought *in perpetuity*. The Rules of Civil Procedure do not apply to the Champions *because* they never invoked them in seeking relief more than 1 ½ years after a final order. After more than 13 years of litigation, the Champions offer this appellate court a mere contract dispute, one in which apparently everything that has previously transpired may be cavalierly ignored. Champion is wrong.

Conclusion

Judge Cothran called this case for trial on April 24, 2017. On April 25, 2017, a settlement agreement was entered into the record, and thus became enforceable. Rule 43(k), SCRCP. Champion failed to thereafter agree to a consent settlement order. Hallman was forced to order the transcript of the "settlement agreement entered into the record" and thereafter moved to enforce settlement at a contested hearing. Champion again did not consent. On January 4, 2019, Judge Cothran entered a final order enforcing the settlement reached on April 25, 2017.

The Champions failed to appeal this final order, and thus it became the law of the case.

The Champions failed to comply with the directives of the January 4, 2019 final order. On June 2, 2020, Hallman moved for specific acts and vesting title under Rule 70 to enforce the January 4, 2019 order. Only after Hallman's Rule 70 motion, Champion moved for general relief to add an adjoining landowner to the dispute and to vacate the "settlement" on July 21, 2020. Champion failed to seek any relief under Rule 60, either at the trial court level or in this court. As such, Champion's attempt to evade the January 4, 2019 final order as a mere contract dispute should be denied as a matter of law. The unappealed final order of January 4, 2019 is the law of the case, and Champion's appeal here is untimely.

Judge Cothran correctly granted Hallman's Rule 70 relief, and otherwise denied the untimely relief requested by Champion. Hallman respectfully submits the appeal of Champion should be respectfully denied.

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