

RECEIVED

FEB 27 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Master-In-Equity

Trial Court Case No. 2017CP1005427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin,
Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants
Of whom Patricia Clarkin Smith is the Appellant

Defendants-Appellants.

**APPELLANT'S AFFIDAVIT IN SUPPORT OF RETURN TO RESPONDENT'S
MOTION TO DISMISS**

Appellant Patricia Clarkin Smith ("Appellant") hereby deposes and states as follows:

1. I am twenty-one years of age or older, legally competent to testify as to matter contained within this affidavit, and I have person knowledge of the facts set forth herein.
2. I currently live in a property located at 602 Atlantic Street, Mt. Pleasant, South Carolina 29464 (the "Subject Property"), and I have lived there since 1995.
3. During the summer of 2012, my Mother called Attorney Mac Gibson to prepare two deeds. My Sister, Muriel Clarkin Kennedy, was to have the Deed of our parents' Goat

Island property on Buccaneer Road. I was to have the Deed of my Mother's family home, 602 Atlantic Street, Mt. Pleasant, South Carolina 29464 that our Mother inherited after her Mother passed in 1998.

4. Attorney Mac Gibson informed my Mother that the Wells Fargo HELOC had an outstanding balance of over \$130,000, so my home was encumbered.
5. In August 2012, our Mother simply gave her daughter, Muriel Clarkin Kennedy, the Goat Island Deed with the expectation that it would be used as the collateral property for the Wells Fargo HELOC loan. That expectation was never evidenced.
6. In 2021, Muriel Clarkin Kennedy sold that Goat Island property for \$385,000 within weeks of filing a Motion for Partition of 911 South Shem Drive Mount Pleasant, SC 29464 that stated our Mother was in need of funds for her care.
7. On August 7, 2013, Attorney Mac Gibson prepared and executed a Deed for 602 Atlantic St. Mount Pleasant, SC 29464 devising to me one-half interest in my Mother's Property, as joint tenants with the right of survivorship with my mother.
8. On November 17, 2014, I was placed on extended medical leave.
9. My gross annual income on November 17, 2014 exceeded \$70,000. If I did not have sick leave with Charleston County School District, SC, available during the period that I was on extended medical leave, my annual gross income would be approximately \$34,000.
10. On November 17, my Mother and I went to Wells Fargo Bank to inquire about a home loan solely in my name and secured by 602 Atlantic St. Mt Pleasant, SC 29464. That meeting concluded with multiple Wells Fargo documents signed, including my Mother's request to close the home equity line and obtain a Pay Off Statement.

11. My Mother's handwritten notes from our meeting with the bank officer identify his name and note that I would not qualify for a home loan in my name that was secured by 602 Atlantic St. Mt Pleasant, SC 29464 given the balance of the Home Equity Line of Credit secured by the same property was approximately \$146,000.
12. Approximately \$15,000 of that balance was a loan to me from my Mother in April 2014 to replace the roof as required by State Farm before renewal of her State Farm rental policy for our jointly owned property, 602 Atlantic St. Mt Pleasant, SC 29464.
13. My Mother obtained this State Farm owner rental policy in the late 1990s because it was less expensive than her policy at that time.
14. Attorney Dennis O'Neill prepared and executed the Deed for 602 Atlantic St. Mount Pleasant SC, 29464 that I filed at the Charleston County SC Courthouse on November 18, 2014.
15. Attorney Dennis O'Neill was in possession of two letters dated November 17, 2014 from two different doctors to state that her mother was competent at that time. My Mother's Family Dr. Mikola stated the Mother was stable and able to make decisions, including the drafting of her Will. Dr. DeHaven's letter also found my Mother to be competent.
16. The reason my Mother transferred her 50% ownership to me was so that I could obtain a Home loan in my name secured by the same property. We both understood that the Wells Fargo HELOC would be settled at the Closing.
17. here came a time in late 2014 when my sister, Muriel, believed that our mother's memory was failing. She asked for my signature on paperwork to state that our mother was incapacitated, but I refused to make that assumption. I always knew that she was elderly, but I fully believed (and still believe) that she is not incapacitated.

18. When Muriel could not obtain agreement from me, she sought the appointment of a conservator through the courts.
19. On December 22, 2014, Muriel Clarkin Kennedy filed an Emergency Ex Parte Petition seeking a finding of Incapacity for our Mother and Orders of Appointment for both Temporary Guardian and Temporary Conservator.
20. This Petition was heard by Associate Probate Judge Tamara Curry. Judge Curry denied the Petition to a C Kennedy appoint Muriel C Kennedy as the Temporary Conservator. Judge Curry granted the Petition to appoint Muriel C Kennedy as the Temporary Guardian of our Mother.
21. On January 9, 2015, Judge Curry relieved Muriel as Temporary Guardian and appointed a Successor Temporary Guardian. Respondent was appointed as the Temporary Conservator.
22. Throughout the years, my mother has loaned me money. My mother intended this money to be a gift to me, but I always considered them to be a loan. This money was not provided to me as a result of any undue influence over my Mother.
23. As explained to the Conservator in an email, my goal was to use my approved home loan to settle the Wells Fargo Home Equity Line of Credit and pay all debts owed to my Mother in an effort to alleviate Judge Tamara Curry's concern of "Sisterly Strife."
24. The Conservator requested the Pay Off Statement on April 6, 2015. All relevant information was provide in her answers during her Deposition on July 28, 2018.
25. At the recommendation of the Conservator in a letter dated August 8, 2017, I assisted financially with the Wells Fargo HELOC payments given that Conservator stated in 2017 and again in 2019 that my Mother lacked funds.

26. My financial assistance repaid those loans.
27. Respondent canceled my mother's State Farm rental insurance policy and has accepted my homeowner's insurance policy since 2015.
28. Therefore, the Respondent never doubted my ownership in the Property. The first time Respondent complained about the deed recorded in November 2014 was when it filed the complaint in this matter in October 2017.
29. Furthermore, it should also be noted that Respondent have Tax Returns evidencing loss of rental income or profit from rental income.
30. There is the November 2017 Deed, which Respondent now disputes, but accepted as valid for almost three year.
31. Respondent is not in possession of a document requesting a rental agreement or payment of alleged "back rent." Therefore, I am perplexed as to the reasoning for Respondent's claim of "rent" and the evidence that supports such a claim.
32. The Court was set to hold a hearing on Respondent's motion for summary judgment on May 11, 2021. At that time, the Probate Court had authorized a mediation of all Conservator issues that was held on April 28, 2021.
33. The Mediator's Invoice lists that a Settlement agreement was drafted.
34. Appellant was represented by counsel at the Mediation given she had a Dr. Work Note dated April 26, 2021 that stated Return to Work Date UNKNOWN.
35. When I learned the Conservator had rejected a Settlement Agreement and was pursuing the Motion for Summary Judgment Hearing, I requested that the hearing be continued for medical reasons, as I has since January 30, 2020. My request was denied.

36. The Mediation is the main reason that I did not file a response to Respondent's Motion for Summary Judgment. I fully expected a new settlement agreement to be produced through the mediation at the Probate Court. Instead, however, Respondent pursued its Motion for Summary Judgment in this Court with the hearing in May 2021.
37. On May 11, 2021, on the date of the scheduled hearing, I called the trial court to say that I was on my way. Although I was in the courthouse, I was not located in the courtroom for the judge conducting this hearing. By the time I had arrived in the courtroom, the Trial Judge had accepted everything stated by Respondent's counsel as the truth, without requiring any evidence to support its claims.
38. I tried to explain that I had been in the courthouse, but the judge did not care. I tried to tell him that I had an affidavit from Ann Fosberry, showing my mother's handwritten notes from the Spring of 2015, but the judge did not care. This affidavit and these notes would have shown that it was my mother's intention to give the Property to me and to give another of her properties to Muriel. These were critical facts in this case, but I was not allowed to speak about this. It actually was never in the transcript as well.
39. The Court refused to open the hearing or hear any argument from me, and the ruling did not change in the case. On June 21, 2021, the court issued an order, ruling that I was to pay the following: (1) a return of \$32,728.65 in disputed funds; (2) unpaid back rent in the amount of \$46,755.88; and (3) costs for declaratory judgment in the amount of \$1,664.60 (for a total of \$81,148.13). Furthermore, a deed from my mother to me for the Property was declared void.

40. I did not move for a Reconsideration of the Order of the Court because I was hospitalized for a stroke evaluation following the Hearing for the Motion for Summary Judgment on May 11, 2021.

41. I initially wrote the appellate brief in this case, and I recognize that Appellant's Initial Brief in not in the proper form, as outlined by the rules of court for the Court of Appeals in South Carolina. I did argue, however, that the Trial Court should never have granted Summary Judgment in this case, as there was and will be evidence presented to show that I did not exercise undue influence over my mother and that my actions were not wrongful.

Respectfully submitted:
DEFENDANT/APPELLANT:
PATRICIA CLARKIN SMITH



Patricia Clarkin Smith
602 Atlantic Street
Mount Pleasant, SC 29464
Tel. No. 843-345-0158
smithpatriciaclarkin@gmail.com
Appellant Pro Se

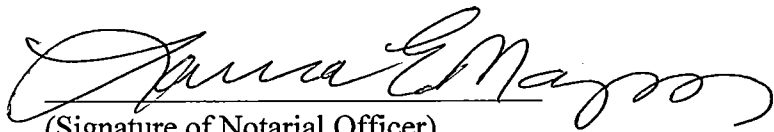
Dated: February 23, 2023

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF GEORGIA
COUNTY OF DEKALB

This document was acknowledged before me on 02-23-23 [Date] by

LAURA EVANS MAJORS

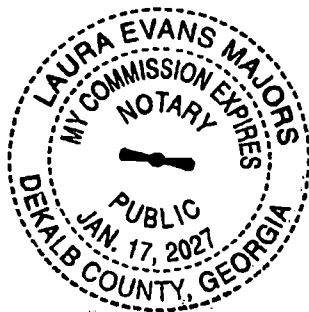


(Signature of Notarial Officer)

Notary Public

My commission expires:

01-17-27



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

FEB 27 2023

SC Court of Appeals

The Honorable Mikell R. Scarborough
Master-In-Equity

Trial Court Case No. 2017CP1005427

Family Services, Inc., as Conservator for Muriel W. Clarkin, Respondent,,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants
Of whom Patricia Clarkin Smith is the Appellant
Appellate Case No. 2021-000793,

Defendants-Appellants.

PROOF OF SERVICE

I certify that on this 23 day of February, 2023, I have served Appellant Smith's Affidavit in Support of Opposition to Respondent's Motion to Dismiss upon Respondent's counsel, via USPS Certified Mail:

D. Conor Keys, Esq. (100148)
The Law Office of David Conor Keys, LLC
PO Box 14223
Charleston, SC 29422



Patricia Clarkin Smith
602 Atlantic Street
Mount Pleasant, SC 29464
Tel. No. 843-345-0158
smithpatriciaclarkin@gmail.com
Appellant Pro Se

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
FEB 27 2023
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2017CP1005427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,
Of whom Patricia Clarkin Smith is theAppellant.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of February 2023, I have served Appellant's Affidavit of Opposition to Respondent's Motion to Dismiss upon Respondent's attorney via USPS Certified Mail.

D. Conor Keys, Esq. (100148)
The Law Office of David Conor Keys, LLC
P.O. Box 14225
Charleston, SC 29422
Attorney for Respondent

February 23, 2023

s/Patricia Clarkin Smith
Patricia Clarkin Smith
602 Atlantic St.
Mount Pleasant, SC 29464
Phone: 843-345-0158
smithpatriciaclarkin@gmail.com
Appellant Pro Se

Visit UPS.com

Apply shipping documents on this side.



Scan QR code to schedule a pickup

Domestic shipment:

- To qualify for the letter rate, UPS Express envelopes may only contain correspondence, urgent documents, and/or electronic media, and must weigh 8 oz. or less. UPS Express envelopes containing items other than those listed or weighing more than 8 oz. will be billed by weight.

International shipment:

- The UPS Express envelope may be used only for documents of no commercial value. Certain countries consider electronic media as documents and require up to 100% insurance to verify if your shipment is classified as a document.
- To qualify for the letter rate, the UPS Express envelope must weigh 8 oz. or less. UPS Express envelopes weighing more than 8 oz. will be billed by weight.

Note: UPS Express envelopes are not recommended for shipping electronic media containing sensitive personal information or financial items. Do not send cash or cash equivalent.

GREEN COPY 42A-5042

This envelope is for use with the following services:
 UPS Next Day Air®
 UPS Worldwide Express®
 UPS 2nd Day Air®
 UPS Worldwide Expedited®

Do not use this envelope for: UPS Ground

UPS Standard

PATRICIA SMITH
 (843) 345-6158
 THE UPS STORE #8868
 STE E
 3939 LAVISTA RD
 COLUMBIA SC 29204-5162

1 LBS 1 OF 1
 SHIP WT: 1 LBS
 DIMS: 15.12.1
 DATE: 23 FEB 2023

SHIP SC COURT OF APPEALS
 TO: CLERK OF COURT KITCHINGS
 1228 SENATE ST

COLUMBIA SC 29201-3769
 SC 292 9-01
 TRACKING #: 1Z 375 BEX 02 7707 6314

UPS 2ND DAY AIR
 TRACKING #: 1Z 375 BEX 02 7707 6314 2



BILLING: P/P

184 33.687 229 458 63.00 03/2023



Sending you for more than 110 years
 United Parcel Service®

For information about UPS privacy practices or to opt out from the sale of personal information, please see the UPS Privacy Notice at www.ups.com
 010151101 9720 INC United Parcel Service

International Shipping Notice — Contents hereunder may be subject to the rules relating to liability and other terms and conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the "Warsaw Convention") and/or the Convention on the Contract for the International Carriage of Goods by Road (the "CMR Convention"). These commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. Law prohibited.