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JUN 20 2023

The South Carolina Court of Appeals ^{SC Court of Appeals}

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May 24, 2023

The Honorable C. Reena Thomason
Post Office Box 8002
Anderson SC 29622

REMITTITUR

Re: Frances K. Chestnut v. Florence Keese
Lower Court Case No. 2019CP0400337
Appellate Case No. 2020-000263

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

Enclosure

cc: Florence Keese
Margo Keese
Marcy Keese
Marshall Keese
Carolyn G. Baird, Esquire
The Honorable R. Scott Sprouse

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May 24 2023

The Supreme Court of South Carolina ^{SC Court of Appeals}

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.

Appellate Case No. 2022-001292

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
May 24, 2023

cc:
Carolyn G. Baird, Esquire
Florence Keese
Marcy Keese
Margo Keese
Marshall Keese
The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals

Frances K Chestnut, Elizabeth Diane Keese, Sylvester
Keese, Arthur B. Keese and Mary K. Taylor,
Respondents,

v.

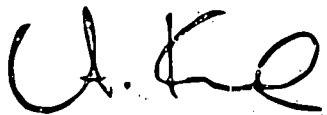
Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, Appellants.

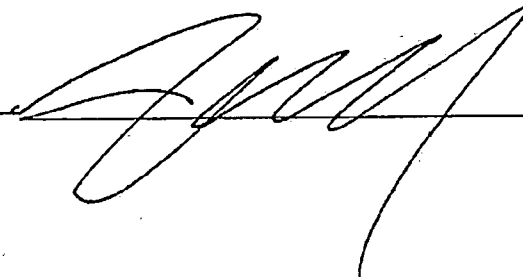
Appellate Case No. 2020-000263

ORDER

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


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
Florence Keese
Margo Keese

Marcy Keese
Marshall Keese
Carolyn G. Baird, Esquire
The Honorable R. Scott Sprouse

FILED
Aug 18 2022



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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June 08, 2022

Florence Keese
1035 Ridgehaven Road
West Chester PA 19382

Marcy Keese
1035 Ridgehaven Road
West Chester PA 19382

Marshall Keese
1035 Ridgehaven Road
West Chester PA 19382

Ms. Carolyn G. Baird, Esquire
Jones Law Firm
PO Box 987
Anderson SC 29622

Re: Frances K. Chestnut v. Florence Keese
Appellate Case No. 2020-000263

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen

CLERK

cc: The Honorable R. Scott Sprouse

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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, Appellants.

Appellate Case No. 2020-000263

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2022-UP-255
Submitted May 2, 2022 – Filed June 8, 2022

AFFIRMED

Florence Keese, Marcy Keese, and Marshall Keese, of
West Chester, PA; and Margo Keese, of Silver Spring,
MD, all pro se.

Carolyn G. Baird, of Jones Spitz Moorhead Baird &
Albergotti, of Anderson, for Respondents.

PER CURIAM: Appellants Florence Keese, Marcy Keese, Margo Keese, and Marshall Keese, Jr., appeal a circuit court order denying their motion to set aside the default judgment declaring void the 1992 conveyance to Marshall Keese, Sr. of a one-sixth interest in a property in Anderson County. On appeal, Appellants argue the circuit court abused its discretion by finding they (1) failed to present evidence of good cause to set aside the default judgment and (2) failed to present evidence of a meritorious defense to Respondents' quiet title action. We affirm.

1. The circuit court did not abuse its discretion by denying Appellants' Rule 60(b), SCRCP, motion to set aside the default judgment. *See Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) ("The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the [circuit court]."); *id.* at 607, 681 S.E.2d at 888 ("An abuse of discretion occurs when . . . the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support."). The circuit court erred by applying the less rigorous "good cause" standard applicable to motions filed pursuant to Rule 55(c), SCRCP. *See Sundown Operating Co.*, 383 S.C. at 607, 681 S.E.2d at 888 ("The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'"); *id.* at 608, 681 S.E.2d at 888 ("The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)."). However, because evidence supports the circuit court's finding that Appellants failed to present evidence of good cause, we find Appellants also failed to present evidence sufficient to set aside the default judgment under Rule 60(b). *See Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888 ("Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.'" (quoting Rule 60(b), SCRCP)).

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))).

AFFIRMED.¹

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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South Carolina Court of Appeals
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