

A trial was held in Charleston County Magistrate's Court on July 16, 2022, and the Court granted the Respondent's Claim for Delivery of Evie and ordered that Appellant relinquish custody of Evie within three days of the Order which was issued on July 6, 2022.

On July 7, 2022, in response to the Magistrate's Court Order granting possession of Evie to Respondents, Appellant filed a motion for reconsideration with the Magistrate Court. Appellant's motion for reconsideration was heard by the magistrate court on July 20, 2022. The Magistrate Court issued an amended Order still granting possession of Evie to Respondents.

On August 22, 2022, a Notice of Appeal was filed by the appellant. For several months after the filing of the initial Notice of Appeal the original record had not been transmitted to the Clerk of Court nor had a motion to extend the time to prepare the certified record been filed.

On December 12, 2022, Respondents filed a Motion to Dismiss this appeal pursuant to Rule 41 SCRPC. At the time of the filing of the motion, the Appellant had not sought a Writ of Mandamus to compel the magistrate to certify and file the original record with the Circuit Court. Subsequently, on January 27, 2023, the Appellant filed a petition for Writ of Mandamus. Upon transmittal to the Magistrate, they took the appropriate steps to certify the original record. The Motion to Dismiss was heard on February 9, 2023. Given that, at that point, the original record was certified and submitted to the Circuit Court by the Magistrate, the motion was denied. The Court then attempted to move forward with hearing the Appeal at that time. While counsel for both parties conceded that they were unaware that the Court intended to hear the Appeal that day, Counsel for Respondents advised the Court that they were prepared to move forward. However, Counsel for Appellant requested a continuance to further prepare and the Court continued this hearing to the next term of Court.

Subsequently, Appellant obtained new counsel. Her current attorney of record filed a Notice of Appearance in this matter on March 31, 2023. Also on March 31, 2023, counsel for Appellant filed a Brief of Appellant in support of appeal.

At this hearing, Counsel for Respondents objected to the submission of this brief. Counsel for Respondents detailed that this was submitted within days of the hearing, that they did not have appropriate time to respond, and that further they did not believe the submission was appropriate given that the brief contained arguments and raised issues outside the scope of the Initial Notice of Appeal. Counsel for Respondents further requested that, if the Court was inclined to consider the brief, that Respondents would like an opportunity to submit a brief in response. Accordingly, Respondents were granted ten (10) days from the date of the hearing to submit the same.

On April 14, 2023, Respondents submitted their Brief of Respondents in Opposition to Appeal to the Court. On that same day, Counsel for Appellants requested that they be allowed to submit a short reply in response to Respondents' Brief. On April 17, 2023, the Court advised that Appellant were allowed to submit a reply by April 20, 2023. A reply brief was submitted by Appellant on that date.

On April 21, 2023 Counsel for Respondents filed a Motion to Strike all briefs which were submitted pertaining to the appeal from the record.

The decision in this case follows and was based upon the entirety of the submissions presented to the Court as they pertain to this appeal.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by Section 18-7-170 of the South Carolina Code of Laws, 1976. *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984).

§18-7-170, South Carolina Code of Law Ann, provides that “upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW THEREFORE having reviewed the file in this matter and carefully considering the submissions of the party and arguments of respective counsel, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. This Court considered all submissions made in connection with this appeal, to include the Brief of Appellant in Support of Appeal filed March 31, 2022, the Brief of Respondents in Opposition to Appeal filed April 14, 2022 and Appellant’s Reply Brief filed April 20, 2023.
3. This Court finds that the evidence does not support Appellant’s claim that the Decedent gifted or otherwise transferred co-ownership of the subject dog and property at issue, Evie, prior to his passing.
4. This Court specifically finds that two things considered by the Magistrate Court was in error during the original trial by admitting evidence and testimony proffered by the Appellant which constitute impermissible hearsay. The Magistrate Court allowed the submission testimony and evidence by the Appellant, over counsel for Respondent’s contemporaneous objections, which make this issue proper for review. First, the “New Client” document which Appellant contends is proof that the Decedent gifted or otherwise transferred co-ownership of the subject dog and property at issue, Evie, should not have

been admitted or considered by the Magistrate Court. Second, testimony from Appellant at the trial regarding conversation she had with the Decedent prior to his death regarding ownership of the subject dog and property at issue, Evie, should not have been admitted or considered by the Magistrate Court. In both instances, the Magistrate Court erred in allowing the admission of the evidence and testimony as both constitute impermissible hearsay pursuant to South Carolina Rule of Evidence 804 as Decedent was an unavailable witness and there was no exception which could be applied to permit the evidence and testimony into the record. Had the New Client document and Appellant's testimony been properly excluded by the trial court there would be no facts in the record which could stand to support Respondent's ownership claim of Evie, thus, rendering her claim(s) meritless.

5. This Court finds that the Magistrate Court correctly ruled that Respondents are entitled to sole, exclusive title and possession of the subject dog and property at issue, Evie.
6. This Court finds that the Magistrate Court correctly ruled that there is no provision of South Carolina law that grants ownership and/or possessory rights of the personal property of their partner to unmarried romantic partners.
7. This Court finds that the Magistrate Court correctly ruled that as the Decedent died intestate, S.C. Code Ann. § 62-2-103 dictates the distribution of Decedent's estate and personal property.
8. This Court finds that the Magistrate Court correctly ruled Pursuant to S.C. Code Ann. § 62-2-103 (2) that the Decedent's father and Respondent, Gary Bruner, is the sole heir to Decedent's estate.
9. This Court finds that the Magistrate Court correctly ruled that, as the as the sole heir to Decedent's estate, Respondent Gary Bruner is entitled to recover and come into the

possession of all assets of his son's estate which will include the personal property of the Decedent which he possessed and solely owned at the time of his death, to include the Decedent's dog Evie.

10. This Court finds that the Magistrate Court did not abuse its discretion in failing to conclude that ownership of the subject dog and property at issue, Evie, automatically transfer to Appellant upon Decedent's death.
11. This Court affirms the Magistrate Court's ruling and Final Order and further finds that this ruling concludes the appeal of the Magistrate Court's July 20, 2022, Final Order.
12. Evie shall be transferred within 10 (ten) days of the filing of this Order to the custody and control of Respondents. If an extension of this transfer is to be granted, it must be done so in writing as a separate order of this Court.

IT IS, THEREFORE,

ORDERED, ADJUDED AND DECREED that the Magistrate Court's ruling and July 20, 2022, Final Order is **AFFIRMED**.

ORDERED, ADJUDED AND DECREED that the Magistrate Court did not abuse its discretion in failing to conclude that ownership of the subject dog and property at issue, Evie, automatically transfer to Appellant upon Decedent's death.

ORDERED, ADJUDED AND DECREED that Respondents are entitled to sole, exclusive title and possession of the subject dog and property at issue, Evie.

ORDERED, ADJUDED AND DECREED that Appellant, Megan Scott, shall relinquish custody of Evie, within ten (10) days of the issuance of this Order. Counsel for both Appellant and Respondents shall make the appropriate arrangements for Evie's physical transfer from Appellant to Respondents or their designee.

ORDERED, ADJUED AND DECREED that any and all law enforcement, animal control, or other applicable governmental agencies shall take the necessary actions in accordance with this Court's Order to effectuate Respondent's rights as sole legal owner of Evie subject dog and property at issue, Evie, should not have been admitted or considered by the Magistrate Court..

AND IT IS SO ORDERED!

Hon. George McFaddin, Jr.
Presiding Judge, Court of Common Pleas
Ninth Judicial Circuit

_____, 2023

_____, South Carolina



Charleston Common Pleas

Case Caption: Megan Scott VS Jonathan Bruner , defendant, et al

Case Number: 2022CP1003843

Type: Order/Judgment and Form 4

So Ordered

S/George M. McFaddin, Jr., #2759