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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari to the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2021-001296

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins.....Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. ..... Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Petitioner.

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

ARGUMENT

I. The Court of Appeals' interpretation of S.C. Code § 62-5-309 (Supp. 2015) runs counter to the plain language of, and all commentary on, that statute.

1. Williams' response to Jeffcoat's first argument relies on a Durable Springing Power of Attorney and Healthcare Power of Attorney, both of which name Williams as Perkins' agent.[1] (Resp. Brief 9; App 327-338). Williams' description of these documents omits a salient fact: both designate Jeffcoat as successor agent. (App 324, 327). Consequently, Williams' assertion of the Durable Springing Power of Attorney provides further supports Jeffcoat's arguments:

First, it is further evidence that the Baldwin County Probate Court lacked subject matter jurisdiction. Section 26-2B-210(a)(4) of the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act required Williams to identify persons who held an "alternate appointment as legal agent". Ala. Code § 26-2B-210(a)(4). Williams' petitions to the Baldwin County Probate Court (App 306-307, 310) did not provide this information. Unquestionably, Williams was aware of Jeffcoat's existence, as well as his current address; as such, the Baldwin County Probate Court was, through Williams' omission, unable to consider material information concerning the relationship between Jeffcoat and Perkins before its ruling.

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[1] Both of these documents were added to the record at Williams' request. *See* Rule 212(b), SCACR (supplemental record).

Second, Williams' emergency petition affirmatively represented to the Baldwin County Probate Court: "…Petitioner knows of no person not a party to the proceeding who holds an appointment or alternate appointment as legal agent of SANDRA P. PERKINS." (App 306-307). This statement is false, and this misrepresentation represents "unjustifiable conduct" that can form a basis for declining jurisdiction. *See* Ala. Code § 26-2B-207.

Third, the only legitimate reason a court would need to know of the existence of a person holding an "alternate appointment as legal agent" would be to notify him or her of the proceedings. Specifically, section 26-2B-210(a)(4) states that the affidavit or pleading must state whether the party "knows the names and addresses of any person not a party to the proceeding who holds an appointment or alternate appointment as legal agent of the respondent and, if so, the names and addresses of any such person." Though Jeffcoat was already entitled to notice of the guardian/conservatorship action as someone with "care and custody" of Perkins, he would also be entitled to notice as a person holding an "alternate appointment as legal agent".

2. Williams also argues the Durable Springing Power of Attorney "would have allowed her to undertake all of the same actions without court supervision if she was seeking to be deceitful." (Resp. Brief 9). Williams is mistaken: the Durable Springing Power of Attorney only "springs" into effect when "activated either by the principal or because of the principal's incapacity." *Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 828 S.E.2d 82 (Ct. App. 2019). By its own terms (App 328), this power of attorney did

not take effect because: (1) a court of competent jurisdiction did not find Perkins incapacitated; (2) two doctors' affidavits attesting to incapacity were not produced; and (3) Perkins did not certify in writing Williams could exercise power.

Further, at the time Williams conveyed Perkins' property to Williams, South Carolina law prohibited an agent from making gifts to him/herself without express consent in writing. *Fender v. Fender*, 285 S.C. 260, 329 S.E.2d 430 (1985). Even when permissible, this Court has cautioned against the practice, noting: "It is for the common security of mankind…that gifts [procured] by agents…from their principals, should be scrutinized with a close and vigilant suspicion" *Id.*, 285 S.C. at 262 (quotations and citations removed). Williams conveyed Perkins' property to herself free from any encumbrance, condition, trust, or any other limit to her exercise of dominion over this property. Under South Carolina law, Williams' conveyance is a gift, and gifts to the agent are not permitted freely, without close scrutiny. *McCarter v. Willis*, 299 S.C. 198, 383 S.E.2d 252 (Ct. App. 1989).

Williams' attempt to avoid this prohibition references section thirteen of the Durable Springing Power of Attorney. (Resp. Brief 20). Section thirteen does allow an agent to convey assets for the purpose of "preservation", but such act must be "in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have…" (App 332). The only evidence of record of Perkins' plan of inheritance regarding 1955 Old Fort is the deed itself, which unambiguously directs that Jeffcoat receive Perkins' share upon death.

3. Instead of addressing Jeffcoat's citations to *South Carolina Jurisprudence*, Williams argues: "There can be no dispute that Perkins…was in the care and custody of Williams at the time of the petition and hearing [before the Baldwin County Probate Court]." (Resp. Brief 7). This contention is, in fact, disputable. Perkins had been in Alabama for approximately seven days at the time the emergency petition[2] for guardianship/conservatorship was filed, and roughly a month when the general guardianship/conservatorship petition was filed. (App 305, 311). As far as can be ascertained from the record, at the time of Williams' petitions, Sandra Perkins was a South Carolina citizen and resided at 1955 Old Fort. For the many years she lived at 1955 Old Fort, she was cared for physically and financially by Brad Jeffcoat. (App 71). The fact Sandra Perkins was, in effect and act, kidnapped and taken to Alabama cannot change these facts and place her in the "care and custody" of her kidnapper.

II. The Court of Appeals erroneously disregarded the significant evidence of Williams' misconduct supporting Perkins' affirmative defenses and counterclaims.

In arguing against Jeffcoat's defenses and counterclaims, Williams argues that Jeffcoat has either not preserved these arguments, or he lacks standing to assert claims. (Resp. Brief 18-20). Jeffcoat's arguments proving preservation of his arguments (Pet. Brief 18-19, 28-29) are largely unaddressed by Williams and need not be repeated in this brief. Williams' standing arguments focus inordinately on the

[2] Williams maintains that she did inform the Baldwin County Probate Court of Perkins' residence in South Carolina. (Resp. Brief 6, 8). Jeffcoat would encourage this Court to review the relevant petitions (App 305-308, 310-311) to see if Williams' bare mentions of South Carolina candidly and fully informed that court of Perkins' living situation.

fact that the couple was not married.[3] Jeffcoat's and Perkins' marital status has nothing to do with whether Williams acted with unclean hands, which could preclude or limit her entitlement to partition. *E.g. Holland v. Shaffer*, 178 P.2d 235 (Kan. 1947); *accord Pruitt v. Pruitt*, 298 S.C. 411, 414, 380 S.E.2d 862 (Ct. App. 1989) ("Partition is an action in equity and, accordingly, the partition procedure must be fair and equitable to all parties of the action."). It also does not change the fact that on June 16, 2015, after representing she would take Perkins to the doctor, Williams fled with Perkins to Alabama, setting into motion the actions underlying this appeal.

III. The Court of Appeals created a new way to sever a statutory joint tenancy not authorized by S.C. Code § 27-7-40.

Williams' response to Jeffcoat's third argument conflates a joint tenancy created under the common law with a joint tenancy created under S.C. Code § 62-7-40. The differences between these joint tenancies are subtle, but significant to this appeal. Under South Carolina common law, the use of the words "joint" and "survivor" in the vesting language is appropriate for creating a joint tenancy, and S.C. Code § 62-2-804 identifies other suitable language. *Free v. Sandifer*, 131 S.C. 232, 126 S.E.2d 521 (1925). The continued existence of common law joint tenancies is acknowledged by S.C. Code § 62-2-804 ("While other methods for the creation of a joint tenancy in real property may be utilized…") and S.C. Code § 62-7-40(a) ("In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law…").

[3] Williams maintains her insensitive denial of Jeffcoat and Perkins' relationship. (Resp. Brief 1-2). This denial is disloyal to the relevant standard of review, which requires all facts be construed in a light most favorable to Jeffcoat.

Such a common law joint tenancy is subject to all the methods of alienation available at the common law, including unilateral alienation by a joint tenant. A joint tenancy under S.C. Code § 62-7-40, however, is a creature of statute, governed by the provisions of the statute that created it. *See South Carolina Dep't of Soc. Servs. v. Wheaton*, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App. 1996) (legislation in derogation of common law to be strictly construed). The plain language of the statute limits the methods by which a statutory joint tenancy may be severed: "[t]his joint tenancy includes, and is limited to, the following incidents of ownership". S.C. Code § 27-7-40(a). Williams' discussion of the legislative history of S.C. Code § 27-7-40 (Resp. Brief 14) shows how the legislature considered and removed, unilateral alienation by one cotenant from the exclusive list of incidents of ownership. Jeffcoat's position is not controversial; a title insurance attorney with over 37 years of experience noted in a recent South Carolina Bar publication:

> South Carolina Code § 27-7-40 does not specifically list as an incidence of ownership the right of unilateral alienation by one cotenant which would destroy the right of survivorship. At common law, one cotenant in a joint tenancy can convey his interest to a third party and sever the joint tenancy. The third party becomes a tenant in common with the other former joint tenant. If you wish to preserve this right for the joint tenants, you should indicate on the deed that the joint tenancy is being created under common law and S.C. Code § 62-2-804 and not under S.C. Code § 62-7-40.

Joby C. Castine, *Deeds of Conveyance* 152 (S.C. Bar CLE Div. 2019). The joint tenancy deed of 1955 Old Fort (App 98-99) makes no such disclaimer. As a joint tenancy under S.C. Code § 27-7-40, unilateral alienation of 1955 Old Fort by a joint tenant was not possible.

CONCLUSION

The Court of Appeals should be reversed.

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