

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Edward Mikell, Individually and as Personal)
Representative of the Estate of Estelle White,)
deceased,)
)
Plaintiff,)
)
Vs.)
)
Richard Brown, Sr. and Sharon Y. Brown, et. al.)
)
Defendants.)

IN THE COURT OF COMMON PLEA
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-05358

ORDER
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SC Court of Appeals

Date of Trial: May 31, 2023
Presiding Judge: Mikell R. Scarborough
Plaintiff: Edward Mikell, Individually and as Personal
Representative of the Estate of Estelle White
Petitioner’s Attorneys: Kathryn M. Cockrill, Esq. and Jessica L. Duffy,
Esq.
Defendant(s): Richard Brown, Sr. and Sharon Y. Brown, et. al.
Attorney for Richard
Brown, Sr. and Sharon
Y. Brown: Mark V. Evans, Esq.

THIS MATTER comes before the Court upon a Summons and Complaint for Suit to Quiet Title and Partition filed with this Court on October 18, 2017 by Defendants Roges Brown, Richard Brown, Sr., and Ralph Brown. Plaintiff, Edward Mikell, has filed both an Answer to Complaint and Third-Party Complaint with this Court. On May 17, 2021, a Consent Order was signed by Master Mikell R. Scarborough realigning the parties to make Edward Mikell the Plaintiff in this action, individually and in his capacity as the Personal Representative of the Estate of Estelle White. The intestate heirs of Estelle White together with Richard Brown, Sr. and Sharon Y. Brown have been made Defendants.

Present at the trial were Plaintiff Edward Mikell, and his attorneys, Kathryn M. Cockrill, Esq. and Jessica L. Duffy, Esq., as well as Defendants Richard Brown, Sr. and Sharon Y. Brown

and their attorney, Mark V. Evans, Esq. Willie Heyward, Esq., attorney for Roges Brown and Ralph Brown, did not appear at the trial.

Based on the Petition, the record in this matter, and the testimony given at the trial, the Court makes the following findings of fact and conclusions of law:

FACTUAL / PROCEDURAL BACKGROUND

1. The Decedent, Estelle White, died testate on January 25, 2014, a resident of Charleston County, South Carolina.

2. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §62-1-302(a) and S.C. Code Ann. §62-3-201(a)(1).

3. The Court finds that proper notice was given to Defendants Richard Brown, Sr. and Sharon Y. Brown.

4. The Decedent, Estelle White, was unmarried and had no children at the time of her death. Estelle White was one of six (6) siblings born of the union of her parents, Roger Mikell and Georgianna Brown Mikell. In addition to Estelle White, Roger Mikell and Georgianna Mikell had five (5) other children: Adell Mikell, Lizzie Mikell Green, Edward Mikell (not the same individual as Plaintiff), Emily Mikell Brown, and Zeebree Mikell.

5. At the time of Estelle White's death, she was survived by one sibling, Adell Mikell. Subsequent thereto, Adell Mikell died on or about June 10, 2021, survived by three (3) living children: Edward Mikell (the Plaintiff), Louis Mikell, and Janie Mikell, together with three (3) predeceased children: Nicholas Mikell, Jesse Mikell, and Thomas Mikell.

6. The Plaintiff alleges that Nicolas Mikell died in 1968 survived by one daughter, Melissa Mikell, that Jesse Mikell died in 1972 without surviving issue, and that Thomas Mikell

died in 2016 survived by three (3) children: Melissa Mikell, Tomisha Mikell, and Thomas Elliot Mikell, all of whom are alive.

7. The Plaintiff alleges that Lizzie Mikell Green died survived by her two (2) children, namely to wit: Mary Ann Green and Marion Green a/k/a Marian Green. Her date of death is unknown. The Plaintiff alleges that Marion Green a/k/a Marian Green died in the State of New York and was not survived by a spouse or children.

8. The Plaintiff alleges that Edward Mikell (not the Plaintiff) died intestate on or about July 23, 1991, survived by his three (3) children, all of whom are still alive, namely; Elnora Capers, William Mikell and Eloise Chestnut.

9. The Plaintiff alleges that Emily Mikell Brown died intestate on or about August 23, 1979, survived by her eleven (11) children, to wit: Ralph Brown and Roges Brown, both of whom are alive, and James Brown, Walter Brown, Florence Gadsden, Ida Mack, Cumsey Brown, Nancy Brown, Elizabeth Dunmeyer, Charles B. Brown, Jr., and Rena Smith, all of whom are now deceased.

10. The Plaintiff alleges that James Brown died on August 25, 2020, survived by his son Les Brown and his wife, Mary Frances Brown. Subsequent thereto, Mary Frances Brown died in 2020 leaving as her sole her at law her son, Les Brown.

11. The Plaintiff alleges that Walter Brown died August 8, 2019, survived by his wife Altamese Brown and two children: LaTricia Brown-Mayfield and Edward Littleton Brown.

12. The Plaintiff alleges that Florence Gadsden died and was not survived by a spouse or children. Florence Gadsden's date of death is unknown.

13. The Plaintiff alleges that Ida Mack died February 28, 1993 survived by her spouse, Charles Mack, Sr. and eleven (11) children: Raymond Mack, Henrietta Mack-Barnette, Jeanette

Mack Green, James Mack, Jo Nathan Mack, Elizabeth Lee a/k/a/ Dorothy Marie Mack Lee, Harvey Mack, Ida M. Blake, Charles Mack, Jr., Geneva Mack, and Franklin Mack. Subsequently, Charles Mack, Sr. died on August 19, 2000, survived by his above-named children.

14. The Plaintiff alleges that Charles Mack, Jr. died on or about April 5, 2013 survived by his two (2) children, Charles Mack III and Alton Kirk Mack a/k/a Kirk Mack. The Plaintiff alleges that it is possible that Charles Mack, Jr. has another child, namely, Kendal Gibbs, who has been named as a party Defendant.

15. The Plaintiff alleges that Geneva Mack died on or about November 8, 2000 survived by her two (2) children, Harold Mack and Michael Mack.

16. The Petitioner alleges that Franklin Mack died on or about June 13, 2004 survived by his spouse, Merele J. Mack and his daughter, Adrienne F. Mack a/k/a Frankie Mack.

17. The Petitioner alleges that Cumsey Brown died on or about August 16, 2008 survived by his four (4) children, to wit: Carolyn McClair, Magaline E. Brown, Michael Brown, and Walter Brown (not the son of Emily Mikell Brown), all of whom are alive.

18. The Plaintiff alleges that Nancy Brown does on or about July 17, 2001 survived by her four (4) children, to wit: Richard Brown, Albertha Cohen, Jessie Mae Washington, and Johnny Brown, all of whom are still alive except Johnny Brown. The Plaintiff alleges that Johnny Brown was survived by his two (2) children, Patricia Campbell and Curtrina Ladson. Johnny Brown's date of death is unknown.

19. The Plaintiff alleges that Elizabeth Dunmeyer died survived by her five (5) children, to wit: Manny Dunmeyer, Jr., Ruthie Brown Roper, Sylvia Dunmeyer, Francis Dunmeyer, and Barbara Ann Gathers a/k/a Barbara Ann Geathers, all of whom are alive.

20. The Plaintiff alleges that Rena Smith died on or about May 21, 2021 predeceased by her daughters, Emily Smith Heyward and Ida Mae Smith Dunmeyer; and survived by an additional twelve (12) children, to wit: Clarence Smith, Jr., Lillian Middleton, Pauline Walker a/k/a Pearline Washington, Robert Smith, Arthur Smith, Margaret Brown, Georgianna Smith, Louise Hamilton, Benjamin Smith, John Smith, Leola Smith, and Michael Smith, all of whom are still alive.

21. The Plaintiff alleges that Ida Mae Smith Dunmeyer's date of death is unknown and she was survived by her three (3) children, Pamela Dunmeyer Brown, Tammy Dunmeyer, and Brandy Dunmeyer, all of whom are alive except for Pamela Dunmeyer Brown. The Plaintiff alleges that Pamela Dunmeyer Brown was survived by one (1) child, Timothy Brown. Pamela Dunmeyer Brown's date of death is unknown.

22. The Plaintiff alleges that Emily Smith Heyward died and was survived by her five (5) children, Janey Heyward Nelson, Eric Heyward, Keith Heyward, Darrell Heyward, and Willian Heyward, all of whom are alive. Emily Smith Heyward's date of death is unknown.

23. The Plaintiff alleges that Charles Brown, Jr. died on or about November 19, 2005, survived by his one (1) child, Charlene Gadsden.

24. The Plaintiff alleges that Zeebree Mikell died and was not survived by a spouse or children. Zeebree Mikell's date of death is unknown.

25. A Summons and Complaint for Suit to Quiet Title and Partition filed with this Court on October 18, 2017 by Defendants Roges Brown, Richard Brown, and Ralph Brown by and through their counsel, Willie B. Heyward. The Complaint requested the Court to determine the intestate heirs of Estelle White and quiet title on four (4) parcels of property on Wadmalaw Island owned by Estelle White at the time of her death, identified by the following Tax Map Numbers:

TMS# 217-00-00-017, TMS# 217-00-00-137, TMS# 217-00-00-018, and TMS# 217-00-00-042. The Complaint further alleged that Estelle White held title to the subject properties as trustee for the benefit of the heirs of Roger Mikell. The Complaint also alleged that there was a conveyance from Estelle White to Sharon Brown, Sr. and Sharon Y. Brown for two tracts of land, by an unrecorded deed dated June 11, 2007 (it was not recorded in the ROD Office until September 1, 2016, in Book 0580 at Page 422, after the death of Estelle White in 2014 and after the institution of this action in 2015).

26. Subsequent to the filing of the Summons and Complaint, Mark V. Evans, Esq. filed a Notice of Appearance on behalf of Richard Brown, Sr. and Sharon Y. Brown and filed a Counterclaim alleging the aforesaid deed (from Estelle White to Richard Brown, Sr. and Sharon Y. Brown) was valid.

27. Plaintiff, Edward Mikell, by and through his counsel, Barry I. Baker, Esq., filed an Answer with this Court on September 27, 2018 and filed a Third-Party Complaint with this Court on October 1, 2018, alleging the deed dated June 11, 2007 was invalid for a variety of reasons.

28. On May 17, 2021, a Consent Order was signed by Master Mikell R. Scarborough realigning the parties such that Edward Mikell, individually and in his capacity as the Personal Representative of the Estate of Estelle White, became the Plaintiff in the within action and all of the intestate heirs of Estelle White became the Defendants along with Richard Brown, Sr. and Sharon Y. Brown. The Consent Order further directed Plaintiff, Edward Mikell, to file an Amended Complaint.

29. The Consent Order also outlined the issues to be decided by the Court of Common Pleas pursuant to an Order dated August 31, 2017, by Judge Lenna Kirchner, Charleston County Probate Court: (1) a determination of all intestate heirs of Estelle White; (2) whether Estelle White

owned the subject properties in fee simple or in some fiduciary capacity; (3) the validity of the 2007 deed to Richard Brown, Sr. and Sharon Y. Brown; and (4) the priority of the Deed of Distribution executed November 18, 2015, by Edward Mikell, as Personal Representative of the Estate of Estelle White, and recorded November 19, 2015 in Book 0518 at age 558 relative to the deed allegedly executed by the late Estelle White dated June 11, 2007 and recorded September 1, 2016 in Book 0580 Page 422 to Richard Brown, Sr. and Sharon Y. Brown.

30. On August 4, 2021, Plaintiff, Edward Mikell, filed an Amended Summons and Complaint as the Plaintiff in the action asking the Master to rule on the four issues before the Court of Common Pleas.

31. At the trial on May 31, 2023, the Master heard the third and fourth issues only: (3) the validity of the 2007 deed to Richard Brown, Sr. and Sharon Y. Brown; and (4) the priority of the Deed of Distribution executed November 18, 2015, by Edward Mikell, as Personal Representative of the Estate of Estelle White, and recorded November 19, 2015 in Book 0518 at age 558 relative to the deed allegedly executed by the late Estelle White dated June 11, 2007 and recorded September 1, 2016 in Book 0580 Page 422 to Richard Brown, Sr. and Sharon Y. Brown.

32. At the trial, Defendants Richard Brown, Sr. and Sharon Y. Brown both testified that the Decedent, Estelle White, executed a deed dated June 11, 2007 in which she gave two parcels of land on Wadmalaw Island to them in fee simple. The two parcels of land are identified by TMS# 217-00-00-017 and TMS# 217-00-00-137.

33. At the trial, Defendants Richard Brown, Sr. and Sharon Y. Brown both testified that at the time the deed was executed, the Decedent, Estelle White, instructed them to not record the deed until after her death and to not make others aware of the conveyance as it was the Decedent's intention to avoid family conflict during her lifetime.

34. At the trial, Defendants Richard Brown, Sr. and Sharon Y. Brown further testified that the deed was kept in Sharon's home and was not recorded until September 1, 2016.

35. At the trial, Defendant Sharon Y. Brown testified that she did not believe herself to be the fee simple owner of the subject properties after the deed dated June 11, 2007 was executed. Defendant further testified that she did not know when, if ever, she became the fee simple owner of the subject property.

36. At the trial, Defendants Richard Brown, Sr. and Sharon Y. Brown testified that they were divorced in Charleston County. At the time this action was filed, and the Financial Declarations were signed, neither party reflected an ownership interest in the subject properties.

37. At the trial, Plaintiff Edward Mikell testified that he was living in a house on the Decedent's property from 1999 until the time of her death in January 2014. Plaintiff further testified that his brother, Louis Mikell, lived in the Decedent's home with the Decedent during the time the deed dated June 11, 2007 was executed. Neither Edward Mikell nor Louis Mikell were asked by the Decedent, Estelle White, to move off of the property at any time after the deed was executed on June 11, 2007.

38. At the trial, Janie Mikell, sister of Plaintiff, Edward Mikell, testified that she and her mother, Adell Mikell, lived in a house on the Decedent's property and paid a portion of the property taxes each year. Neither Janie Mikell nor Adell Mikell were asked by the Decedent, Estelle White, to move off of the property at any time after the deed was executed on June 11, 2007.

39. At the trial, Respondent Richard Brown, Sr. testified that he was present at the Decedent's home at the time the deed was executed. The Respondent further testified that his

spouse at the time, Sharon Y. Brown, was present along with two witnesses, Sylvia Velez and Ijuana Gadsden, and the notary, Rose Frasier.

40. At the trial, Respondent Sharon Y. Brown testified that Richard Brown, Sr. was not present at the time the deed was executed by the Decedent and that only herself, the two witnesses, and the notary were present. The Respondent further testified that she waited in her car outside while the two witnesses and notary executed the deed inside of the Decedent's home.

41. At the trial, Sylvia Velez testified that she had never met the Decedent before June 11, 2007. Sylvia Velez further testified that she did not ask the Decedent for any photo identification on the date the deed was executed.

42. At the trial, Ijuana Gadsden testified that she had never met the Decedent before June 11, 2007. Ijuana Gadsden further testified that she did not ask the Decedent for any photo identification on the date the deed was executed.

43. At the trial, Rose Frasier testified that she had never met the Decedent before June 11, 2007. Rose Frasier further testified that she asked the Decedent to provide some sort of photo identification but could not recall what document was produced, if any, was produced by the Decedent.

44. At the trial, Petitioner's attorneys called Jeffrey S. Taylor, a forensic document examiner, who was offered as an expert witness to determine whether or not the deed dated June 11, 2007 and the accompanying affidavit were signed by the Decedent, Estelle White. Mr. Taylor testified that he had received seven (7) writing samples, two being the deed dated June 11, 2007 and the accompanying affidavit. Mr. Taylor testified that, after reviewing all writing samples he determined the Decedent, Estelle White, "probably did not" sign the deed dated June 11, 2007 and the accompanying affidavit based on the evidence contained in the handwriting. Mr. Taylor further

testified that the reason his determination fell short of the “virtually certain” degree of confidence was due to the quality of the photocopies submitted for examination and the lack of contemporaneous known writing for comparison purposes. However, Mr. Taylor testified that based on the line quality and baseline found in the signatures, the evidence points strongly toward the questioned and known signatures having not been written by the same individual.

45. Mr. Taylor’s Report was offered into evidence as Plaintiff’s Exhibit 1.

46. At the hearing, Plaintiff, Edward Mikell, testified that he did not have actual knowledge of the deed dated June 11, 2007 as it was not filed with the Charleston County Register of Deeds Office when the Deed of Distribution dated November 18, 2015 was recorded. The Plaintiff further testified that he did not have constructive knowledge of the deed dated June 11, 2007 as he was not made aware of such deed until it was alleged in the Complaint filed by the Respondents with this Court on October 18, 2017.

LAW / ANALYSIS

47. It is well-settled law in South Carolina that South Carolina is a Race-Notice State. In *Leasing Enterprises, Inc., v. Joe E. Livingston and Margaret H. Schlee*, 294 S.C. 204 (1987), South Carolina Supreme Court ruled the recording act is a race-notice act which will provide protection to the subsequent purchaser or creditor provided he records first. This matter involves the effort by a judgment creditor to attack a conveyance of real property between debtor and a family member. The Court cites the Livingston matter in *MI CO., LTD, Respondent, v. Arthur F. McLean, Jr., Trustee under Testamentary Trust contained in Will of Sarah S. McLean, et al*, 325 S.C. 616 (1997), 482 S.E. 2nd 597, and ruled that S.C. Code Ann. Section 30-7-10 (1991) indicates that our recording act is a race-notice act which will provide protection to a subsequent purchaser or creditor *provided he records first* (cites *Leasing Enterprises, Inc., v. Livingston*, 294 S.C. 204,

363 S.E.2d 410 (Ct. App. 1987). Thus, in order to cut off a prior lien such as a mortgage, the purchaser must have no knowledge of the outstanding lien and win the race to the recording office. The Court further opines that Notice can be actual (may consist of facts or conditions observed by a prospective purchaser as well as information conveyed orally or in writing to him) or constructive (notice is imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts).

48. In this matter before the Court, the Deed of Distribution transferring the property from the Estate of Estelle White to Edward Mikell, was recorded on November 19, 2015 in Book 0518 at Page 558 (TMS # 217-00-00-017, 217-00-00-137, 217-00-00-018, 217-00-00-042). At the time this Deed of Distribution was recorded, the Plaintiff, Edward Mikell, had no actual or constructive knowledge of the existence of the June 11, 2007 Deed that conveyed two parcels, TMS # 217-00-00-017 and 217-00-00-137, to Richard Brown, Sr. and Sharon Y. Brown. Further, Edward Mikell recorded the Deed of Distribution 288 days before Richard Brown, Sr. and Sharon Y. Brown recorded their Deed. Under the race-notice act, Edward Mikell is protected because he filed first, with no actual or constructive knowledge of the Brown's Deed dated June 11, 2007.

49. Under South Carolina law, for a Deed to be valid, delivery must occur. In *Burke v. Burke* 139 S.E. 209 Aug. 23, 1927 (S.C. Supreme Court), the Court ruled that a deed must take effect on its execution, and immediately pass the estate or interest given. Delivery of a deed includes, not only an act by which the grantor evidences a purpose to part with the control of the instrument, but a concurring intent thereby to vest the title in the grantee. In *Burke v. Burke*, the Grantee, the stepbrother of the Grantor, claimed to have a deed dated prior to Decedent's death. The Grantee was instructed by the Grantor to not record the Deed until the death of the Grantor. The Court ruled that the Grantor may not use a deed to transfer an interest which will take effect

after the grantor's death, and that the Grantor should have retained no further interest in the land for the deed to be valid.

50. In *Donnan V. Mariner* (529 SE 2d 754 – SC Court. App. 2000), Grantor, Samuel Owens, executed a deed purportedly conveying his one-half interest in his marital home and lake house to his daughters while reserving a life estate for himself. The Grantor instructed the drafting attorney that he did not want his spouse to know about the transfer. The drafting attorney mailed the deed to one of the daughters with the instruction not to record the deed until after the Grantor's death, which it was. The Court ruled that the deed was invalid because the Grantor did not effectively deliver the deed prior to his death. The Court ruled that the delivery of a Deed includes not only the act by which the Grantor evinces a purpose to part with the control of the instrument, but a concurring intent thereby to vest the title in the Grantee. Because the Grantor continued to exercise control over the property and did not tell his spouse about the life estate deed, the Court found that the Grantor's actions contradicted any present intent to transfer the properties.

51. In the matter before this Court, Defendant Richard Brown testified that he was instructed to hold onto the deed, not tell notify others of the conveyance, and not record the deed until after Estelle White's death, so as to avoid family conflict during her lifetime. Further, Sharon Y. Brown testified that she never considered herself to be the owner of the property, and, in fact, both parties failed to acknowledge ownership of the parcels of land in the financial declarations filed in a family court action in Charleston County. Estelle White failed to deliver the deed to Richard Brown, Sr., and Sharon Y. Brown. Estelle White maintained control over the property by instructing Richard Brown, Sr. and Sharon Y. Brown to hold onto the deed and not record until she passed away. Estelle White continued to have the opportunity to do what she wanted with the property for the remainder of her life, including, but not limited to, mortgaging the property, selling

the property, gifting the property, or occupying the property as the owner. There was never an intent to immediately vest the property with Richard Brown, Sr. and Sharon Y. Brown. This is supported by Richard Brown Sr. and Sharon Y. Brown testifying that they did not believe they were the owners of the property during the remainder of Estelle White's lifetime.

52. The Deed dated June 11, 2007 lacks sufficient and accurate property descriptions of the parcels of land conveyed from Estelle White to Richard Brown, Sr. and Sharon Y. Brown. The metes and bounds description does not include the general location of the tract or lot with sufficient accuracy such that the tract can be readily located on the ground. The testimony concerning the execution of the June 11, 2007 Deed was inconsistent. Further, Jeffrey S. Taylor, a forensic document examiner, who was offered as an expert witness to determine whether or not the deed dated June 11, 2007 and the accompanying affidavit were signed by the Decedent, determined that Estelle White, "probably did not" sign the deed dated June 11, 2007 and the accompanying affidavit based on the evidence contained in the handwriting. This Court agrees.

CONCLUSION

Therefore, this Court finds that the Deed of Distribution dated November 18, 2015 and recorded November 19, 2015 by Plaintiff is valid and has priority over the deed dated June 11, 2007 and recorded on September 1, 2016 by the Defendants.

This Court further finds that the deed dated June 11, 2007 was not properly delivered to the Defendants during the Decedent's lifetime as the Defendants were instructed to not record the deed until after the Decedent's death.

Therefore, based upon the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Deed of Distribution dated November 18, 2015 by Edward Mikell as the Personal Representative of the Estelle White, and

recorded on November 19, 2015 in Book 0518 at Page 558 has priority over the deed allegedly executed by the Estelle White on June 11, 2007 and recorded on September 1, 2016 in Book 0580 at Page 422 to Richard Brown, Sr. and Sharon Y. Brown; it is further

ORDERED, ADJUDGED, AND DECREED that the deed dated June 11, 2007 is invalid because it was not properly delivered during the Decedent's lifetime; it is further

ORDERED, ADJUDGED, AND DECREED that the parties be required to come before the Court to determine the heirs of Estelle White and to determine whether or not Estelle White owned the subject property in fee simple or in some fiduciary capacity; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED!

MIKELL R. SCARBOROUGH
Master in Equity
Charleston County

This ____ day of _____, 2023
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Roges Brown , plaintiff, et al VS Estelle White , defendant, et al
Case Number: 2017CP1005358
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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