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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Appellate Case No. 2023-001143

Case No. 2022-CP-36-00326

Lena Sue Yarborough, Appellant,

v.

Joel F. Yarborough, III, Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Special Referee err in finding Deed 482-207 in the Newberry Timber Tract's chain of title conveyed a tenancy in common with a remainder interest in Respondent Joel F. Yarborough, III?
- II. Given the clear and unambiguous language of the Deed 482-207 and the guidance provided in Cutler, did the Special Referee err in determining that extrinsic evidence was not required to determine the intent to the conveyor?

STATEMENT OF THE CASE

This appeal arises out of a partition action filed by Appellant Lena Sue Yarborough (“Appellant”) against her brother, Respondent Joel F. Yarborough, III (“Respondent”), relating to three properties in Newberry County and one in Fairfield County. Only one of those properties is the subject of this appeal: the Newberry Timber Tract.¹ All of these properties came to one or both parties through their mother, Bonnelle Yarborough (Bonnelle).

Both Appellant and Respondent filed competing motions for summary judgment on May 22, 2023, in which they agreed to the ownership of the properties except for the Newberry Timber Tract. (Pl.’s Mot. for Summ. J.); (Def.’s Mot. for Summ. J). The Parties disagreed whether Deed 482-207 related to the Newberry tract, granted by Bonnelle to herself and Respondent in 1998, conveyed a joint tenancy with a right of survivorship (“JTWRS”) or a tenancy in common with a right of survivorship (“TICWRS”). If the Deed conveyed a JTWRS, then it was undisputed that Appellant and Respondent held the property together as tenants in common after Bonnelle’s death because Bonnelle severed the JTWRS by executing Deed 2242-183 in 2020, creating a life estate for herself with the remainder to Appellant. If the Deed conveyed a TICWRS, then Respondent owned the entirety of the Newberry Timber Tract.

On May 25, 2023, the Special Referee issued an Order granting Respondent’s motion for summary judgment and denying Appellant’s motion for summary judgment as to the ownership of the Newberry tract, finding Deed 482-207 “unambiguously” conveyed an interest as tenants

¹ Although the partition action is ongoing, Respondent believes that the ownership interest of the Newberry Timber Tract can be determined without affecting the status of the remaining tracts or lot, and therefore does not address whether the current appeal is interlocutory.

in common with a right of survivorship that could not be severed by a subsequent Deed 2242-183. (Order Granting Def.'s Mot. for Summ. J.) granting Bonnelle's interest in the property to Appellant.

Appellant moved to reconsider, alter, or amend the Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on June 5, 2023. (Mot. to Recons.). The Special Referee denied the Rule 59(e), SCRCPP, motion by Order on June 16, 2023. (Order Den. Mot. to Recons.). Appellant filed and served the notice of appeal on July 13, 2023.

STANDARD OF REVIEW

An appellate court will review a grant of a motion for summary judgment under the same standard as applied by the circuit court under Rule 56 of the South Carolina Rules of Civil Procedure. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). “When the parties file cross-motions for summary judgment, the issue becomes a question of law for the [c]ourt to decide de novo.” *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) (citing *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

ARGUMENT

- I. The Special Referee correctly applied the precedent from *Smith v. Cutler* by ruling that the Deed 482-207 granted Respondent the remainder interest of Bonnelle's life estate in the Newberry Timber Tract.

On April 14, 1998, in Deed Book 482-207, Bonnelle executed what is titled a "Warranty Deed (Joint Tenants with Right of Survivorship)" to Bonnelle Yarborough and Joel F. Yarborough, III. Despite the notation that the deed was a warranty deed with joint right of survivorship, South Carolina did not recognize the joint right of survivorship created in deeds until 2000. Prior to that date, "[in] South Carolina, documents conveying a shared interest in property have generally been construed in favor of tenancies in common." *Herbermont v Thomas*, 15 Chev. Eq. 21 (SC 1939)(cited in *Smith v. Cutler*, 623 SE2d 644 (2005)).

The contested issues concerning the Newberry Timber Tract have been directly addressed in *Smith v Cutler*.

Just as the time-line of deeds exists between the Yarboroughs, in *Cutler*, the Court wrote "[we] note at the outset that section 27-7-40 cited above and relied on by the court of appeals, creating a joint tenancy with a right of survivorship, was not enacted until after the deed in the current case was executed. As a result, the parties to the deed could not have intended to take advantage of the statute creating the estate of joint tenancy with a right of survivorship."

The state supreme court added, "[we] hold that the use of the phrase 'for and during their joint lives and upon the death of either of them, then to the survivor of them' indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor."

The Deed executed by Bonnelle G Yarborough in Deed Book 482, page 207, also clearly conveys a life estate and remainder interest. The Grantor conveys the property to Joel and herself, “for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion. . . .” This is identical to the granting language in the Cutler case - “We hold that the use of the phrase ‘for and during their joint lives and upon the death of either of them, then to the survivor of them’ indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor.”

Bonnelle G. Yarborough passed on March 20, 2022, and Joel F. Yarborough, III, holds the remainder interest to this property. Because this is a life interest created in a tenancy in common, the interest of Bonnelle G. Yarborough was not severable as a joint tenancy created under 27-7-40. Therefore, the Special Referee was correct in granting Respondent’s Motion for Summary Judgment as to ownership of the Newberry Timber Tract, should be in the sole name Joel F. Yarborough, III.

- II. Because the language in Deed 482-207 was clear and unambiguous, the Special Referee correctly was not required to look to evidence outside of the deed itself.

As the Special Referee wrote in his Order Granting Summary Judgment, dated May 25, 2023, “[t]he construction of a clear and unambiguous deed is a question of law for the court. *Hammond v Lindsay*, 277 SC 182, 284 S.E.2d 581 (1981). The intention of the grantor is to be gleaned from the four corners of the deed, if ascertainable therefrom, and consistent with applicable legal principles.” The Special Referee found that the language in Deed 482-207 was

identical to the deeds cited in the Cutler case, in which Bonnelle granted Respondent and herself “for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion” in both the granting and habendum clauses of the deed. The Special Referee was compelled to follow the guidance of Cutler and analyze the deed in issue under the rules set out in that case. The language in the deed in Cutler and this case are identical and therefore, the legal conclusions of the cases fall along the same reasoning.

Appellant’s argument that the deed in this case is ambiguous only follows if one disregards or overrules the prior Cutler case.

CONCLUSION

The Special Referee was confronted with a fact pattern where the exact language in a deed has been previously considered, analyzed, discussed and ruled upon by the state supreme court in 2005. Extrinsic evidence would not change how the Special Referee read the language in the granting and habendum clauses of the Newberry deed and the order granting summary judgment should be affirmed.

Respectfully submitted by,

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