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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr.
Circuit Court Judge

Appellate Case No.: 2023-001043

Megan Scott,

Appellant,

v.

Estate of Jonathan Bruner,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN FINDING THAT THE EVIDENCE DOES NOT SUPPORT APPELLANT’S CLAIM THAT DECEDENT GIFTED AND/OR TRANSFERRED CO-OWNERSHIP OF THE SUBJECT DOG TO APPELLANT DURING DECEDENT’S LIFETIME?

- II. DID THE LOWER COURT ERR IN FINDING THAT A VETERINARY CLINIC FORM SIGNED BY DECEDENT, SPECIFICALLY IDENTIFYING APPELLANT AS CO-OWNER OF THE SUBJECT DOG, CONSTITUTES IMPERMISSIBLE HEARSAY?

STATEMENT OF THE CASE

This case concerns the rightful ownership of a dog, a beloved golden doodle named Evie (hereinafter referred to as “Evie”). The Appellant, Megan Scott, asserts that she co-owned the dog with Jonathan Bruner (hereinafter referred to as “Decedent”), her late boyfriend with whom she shared a home in Charleston County, South Carolina.

Decedent died intestate on May 5, 2022. As a result, Decedent’s father, who lives in Las Vegas, Nevada, was named personal representative of the estate, (hereinafter referred to as “Respondent”). After Decedent’s untimely death, Respondent travelled to Charleston, South Carolina to wrap up Decedent’s affairs and gather personal property that Decedent left behind. This included achievement medals and mementos from his time as service member, and other possessions, all of which Ms. Scott readily provided. To Ms. Scott’s dismay, however, Respondent also demanded possession of Evie. Respondent, a Nevada resident, had never lived with Evie, nor had he even met the dog, but now claimed she had become his possession as a result of Decedent’s death. Ms. Scott, as the dog’s co-owner, refused Respondent’s demand.

On May 18, 2022, Respondent filed a Claim and Delivery action for possession of personal property, wherein he sought possession of Evie. (See Exhibit #1 to Magistrate’s Return of Civil Appeal, filed February 7, 2023, R.____).¹ In his Affidavit, Respondent claimed Evie had legally become his possession as a result of Decedent’s passing. Ms. Scott was served with the Claim and Delivery Petition and an Order of Seizure for Immediate Delivery of Property on May 21, 2022. (Exhibit #2, R.____).

¹ The Magistrates’ Return of Civil Appeal, filed with the Circuit Court on February 7, 2023, provides a record of all papers filed in Magistrate Court. For purposes of this [Initial] Brief, Exhibit numbers referenced herein correlate to the Exhibits contained in the Magistrates’ Return.

On May 25, 2022, Ms. Scott filed her Answer, Affidavit of Defendant, and/or in the Alternative, Request for Post-Seizure Hearing. (Exhibit #3, R.__). Pursuant to S.C. Code Ann. Sec. 22-3-1440, she then supplied the Court with a bond of \$3,000.00, double the value reported in Respondent's petition. (Exhibit #4, R.__) At the hearing, Ms. Scott was awarded possession of the dog, considered property under our laws, pending trial or settlement negotiations.

The trial was held in the magistrate court on July 16, 2022. Ms. Scott, a pharmacist with means of caring for Evie, presented evidence and testimony establishing her contributions to the dog's care, including providing daily exercise, daily feeding, coordinating care based on her and Decedent's respective work and school schedules, and providing all other basic needs for the dog. (See Order, Exhibit #7, R.__). Ms. Scott also submitted paperwork from Evie's veterinarian, West Ashley Veterinarian Clinic, **including a signed document wherein Decedent himself specifically identified Ms. Scott as the dog's co-owner.** (Exhibit #6, R.__). The form specifically asks: "Please list the individuals whom you authorize to make medical decisions for your pet." The Decedent then—in his own handwriting—wrote: "Ownersg" [Plural, Emphasis Added]. Megan Scott is expressly identified as the dog's *co-owner* on the form. Ms. Scott's phone number is expressly listed under "Co-Owner's Phone #." The address she shared with Decedent is listed under both their names. (Ibid., R.__). The Decedent's signature, acknowledging all of the above, appears on the form. (Ibid., R.__).

In support of her ownership claim, Ms. Scott's trial counsel argued that Ms. Scott's ownership interest had been established during Decedent's life, and that as result, she remained the rightful owner of the dog at the time of Decedent's death. (Exhibit #8, p. 1-7). Respondent's trial counsel conceded that "it is possible for one to effect a transfer of title and/ownership of property prior to one's death without the use of [a] will or other estate planning device," but that

the transfer of that title and/or ownership “must be clear, obvious, and unambiguous,” intimating that Ms. Scott could not claim an ownership interest in Evie without a “bill of sale, contract, or other writing that provides for clear and unambiguous transfer of property.” (Exhibit #9 at p. 3, R.__). In an effort to circumvent Decedent’s clear and unambiguous identification of Ms. Scott as Evie’s co-owner, Respondent then attempted to characterize the document as merely an indication that Decedent wished to list Ms. Scott as “an additional point of contact with the West Ashley Veterinary Clinic.” (Exhibit #9 at p. 3, R.__). Respondent, however, could offer no evidence to establish this was in fact Decedent’s intent.

On July 6, 2022, the magistrate court entered an order finding that Decedent had died intestate; that Ms. Scott’s ownership interest cannot be proven without a will or codicil; that Decedent’s express written identification of Ms. Scott as a co-owner on the veterinary form “does not suffice to prove ownership;” that the dog was solely owned by Decedent at death; and that Respondent is entitled to the possession of the dog. (Exhibit # 7 at p. 7, R.__).

On July 7, 2022, Ms. Scott filed a Motion to Alter or Amend Judgment or in the Alternative Motion for Reconsideration and Motion to Stay Judgment Pending Appeal. (Exhibit # 8, R.__). On July 19, 2022, Respondent filed a Memorandum in Opposition to Defendants Motion to Alter or Amend Judgment. (Exhibit #9, R.__). On July 20, 2022, Ms. Scott responded to Respondent’s Memo in Opposition and filed a Memorandum in Support of her Motion. (Exhibit #10, R.__).

The magistrate court heard Ms. Scott’s Motion to Alter or Amend Judgment on July 20, 2022. The court then entered an Amended Order in Response to Defendants’ Motion to Amend Judgment wherein it issued additional findings of fact, finding that “Decedent’s action of identifying the Defendant as a co-owner on the West Ashley Veterinarian Clinic form does not

suffice to prove transfer of ownership.” (Exhibit #11, R.____). In support of this finding, the court noted that the veterinarian’s practice manager testified that “for routine visits to be accepted by someone other than the actual owner of the dog, they must appear on veterinary forms so the veterinary office itself is relieved of the liabilities that come with treating someone’s animal without the owner’s consent.” (Ibid., R.____). The Circuit Court, however, failed to identify *any* evidence demonstrating that this was Decedent’s intent when he specifically named and identified Ms. Scott as Evie’s co-owner on the veterinary form.

The Court then found that, having heard Defendant’s testimony, it “does not find a preponderance of evidence that Decedent ever intended to gift the property to Defendant;” and that “the facts of this case do not suggest at any point that Decedent was seeking to relinquish ownership of the property.” (Ibid., R.____).

Ms. Scott filed a Notice of Appeal to the Circuit Court on August, 2022. (Exhibit # 12, R.____). On February 7, 2023, the Magistrate filed Magistrate’s Return of Civil Appeal as required by Rule 74, SCRPC. (R.____).

On March 7, 2023, counsel for Ms. Scott received notice from the Charleston County Clerk of Court that a hearing on the Appeal was scheduled before The Honorable George M. McFaddin, Jr., for April 5, 2023. (Notice, R.____). The notice specifically stated, “Memos and Briefs are to be submitted via e-filing prior to the week of term.” (Notice, R.____).

Pursuant to the Court’s instructions, Ms. Scott’s counsel e-filed Appellant’s Brief in Support of Appeal prior to the week of term on March 31, 2023, and emailed a copy to the Court and counsel for Respondent. (Appellant’s Brief, with Email, R.____). A hearing was then held on April 5, 2023. (Transcript, R.____). Respondent, however, did not file an appellate brief prior to the hearing and instead asked the court for leave to file his brief ten days *after* the hearing was

held. (Transcript, R. __). Respondent ultimately filed his Brief in Opposition on April 14, 2023. (R. __). On that same day, Counsel for Ms. Scott' counsel requested an opportunity to submit a short reply in response to Respondent's late-filed Brief. On April 17, 2023, the Court advised counsel that Appellant was allowed to submit a reply by April 20, 2023. Ms. Scott filed her Reply Brief on April 20, 2023. (R. __).

On June 27, 2023, the Circuit Court entered its *Order on Appeal from Final Order of Magistrate*, affirming the Magistrate Court's Final Order, finding that Respondent is entitled to sole, exclusive title and possession of the subject dog and property at issue, Evie, and ordering Ms. Scott to transfer Evie to the custody of Respondent, the Personal Representative of Decedent's Estate, within ten (10) days of entry of the Order. (Order, R. __). Of relevance to this appeal, the Court found (1) that the Veterinary Clinic Form signed by Decedent, specifically identifying Appellant as co-owner of the subject dog, and admitted at trial below, constitutes impermissible hearsay, (2) that the evidence in this case does not support Appellant's claim that Decedent gifted and/or transferred co-ownership of the subject dog to Ms. Scott during Decedent's lifetime," and that as a result, the dog had automatically transferred to Respondent upon Decedent's death. (Order, pp. 4-6, R. __).

On June 27, 2023, Ms. Scott timely served and filed a Notice of Appeal with the Circuit Court and South Carolina Court of Appeals, and immediately filed a Petition for Emergency Order of Supersedeas with the Circuit Court pursuant to Rule 241(c), SCACR. (Petition, R. __). Ms. Scott's Petition asserted, *inter alia*, that a stay was necessary to preserve the Court's jurisdiction and prevent a contested issue from becoming moot, noting that subject Order commands Ms. Scott to transfer Evie to an out-of-state Respondent, located 2,300 miles away in Las Vegas, Nevada, outside the jurisdiction of South Carolina Courts. (Ibid, R. __). Respondent

filed a Memorandum in Opposition to the Petition on July 3, 2023. (Memo, R.__). Appellant then filed a Reply on July 3, 2023, further noting that Respondent has no personal or business ties to the State of South Carolina, and no reason to ever return should he come in possession of the dog, which, again, he had never met nor provided care for at any time prior to or since Decedent's death. (Reply, R.__). On July 5, 2023, the Circuit Court entered an Order denying Appellant's Petition for Emergency Order of Supersedeas. (Order, R.__).

Appellant immediately filed an Emergency Petition for Ex Parte Order of Supersedeas with the South Carolina Court of Appeals. (Petition, R.__). Respondent filed a Return on July 6, 2023. (Return, R.__). Appellant then filed a Reply to the Return on July 7, 2023. (Reply, R.__). That same day, the Court of Appeals entered an Order granting Appellant's request that the Circuit Court's order be stayed during the pendency of the appeal, and requiring that Appellant maintain a \$3,000.00 bond and provide the Court with proof of the same. (Order, R.__). The Court, having already received a Return from Respondent, denied Appellant's request that the motion be considered *ex parte*. (Order, R.__). Appellant provided confirmation of bond renewal that very day. (Letter to Court w/ Proof of Bond, R.__). This appeal follows.

STANDARD OF REVIEW

In cases originating in Magistrate's Court, South Carolina Code Ann. § 18-7-170 applies. Section 18-7-170 provides: "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case without regard to technical errors or 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."

On appeal from a Circuit Court's affirmance of a magistrate's order, the Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the

merits where the testimony is sufficient to sustain the magistrate’s judgment and there are no facts that show the affirmance was influenced by an error of law. *Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000). On a subsequent appeal from the Circuit Court, the appellate court will look to whether the Circuit Court order is controlled by an error of law or is unsupported by the facts. *Parks v. Characters Night Club*, 548 S.E.2d 605, 345 S.C. 484, 490 (Ct. App. 2001).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN FINDING THAT THE EVIDENCE DOES NOT SUPPORT APPELLANT’S CLAIM THAT DECEDENT GIFTED AND/OR TRANSFERRED CO-OWNERSHIP OF THE SUBJECT DOG TO APPELLANT DURING HIS LIFETIME.

The evidence in this case establishes that Ms. Scott co-owned the dog with the Decedent at the time of his death. As set forth in the Statement of the Case, *supra*, Ms. Scott submitted a Veterinary Clinic Form at trial, wherein the Decedent himself specifically identified Ms. Scott as the dog’s co-owner. (Exhibit #6, R.__). The form specifically asks: “Please list the individuals whom you authorize to make medical decisions for your pet.” The Decedent then—in his own handwriting—wrote: “Owners_g” [Plural, Emphasis Added]. Megan Scott is expressly identified as the dog’s *co-owner* on the form. Ms. Scott’s phone number is expressly listed under “Co-Owner’s Phone #.” The address she shared with Decedent is listed under both their names. (Ibid, R.__). The Decedent’s signature, acknowledging all of the above, appears on the form.

“A person who **signs** a contract **or other written document cannot avoid the effect of the document** by claiming he did not read it.” *Regions Bank v. Schmauch*, 582 S.E.2d 432, 354 S.C. 648 (Ct. App. 2003), citing *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). **A person signing a document is responsible for reading the document and making sure of its contents.** *Id.* Here, the Respondent cannot avoid the effect of a written document, signed by the

Decedent, specifically identifying Ms. Scott as co-owner of the dog. Respondent's contention that "there is no way to truly determine Decedent's intentions" is completely undermined by Decedent's own hand-written entries on the subject form.

This Court need not speculate as to what Decedent's intentions were, because they are expressly stated in his own handwriting in a document that he signed and filed with the dog's veterinary clinic. The Circuit Court's finding that "the evidence does not support Appellant's claim that the Decedent gifted or otherwise transferred co-ownership of the subject dog" is unsupported by the facts in this case. Accordingly, Appellant respectfully requests that this Honorable Court grant her appeal, reverse the Circuit Court's order, and give effect to Decedent's express, written acknowledgment that Ms. Scott is the rightful owner of this beloved and well-cared-for dog.

II. THE CIRCUIT COURT ERRED IN FINDING THAT THE VETERINARY CLINIC FORM SIGNED BY DECEDENT, SPECIFICALLY IDENTIFYING APPELLANT AS CO-OWNER OF THE SUBJECT DOG, CONSTITUTES IMPERMISSIBLE HEARSAY.

The Veterinary Clinic Form is part of the trial record, properly admitted at trial, and does not constitute impermissible hearsay. (Exhibit #6, R.__). The Circuit Court's order errs in accepting Respondent's view that the subject form, signed by Decedent himself, and maintained as part of the Veterinary Clinic's normal business records, is somehow not competent evidence. (Order, R.__). This is an error of law, which this Honorable Court has authority to correct on appeal. See *Parks v. Characters Night Club*, 548 S.E.2d 605, 345 S.C. 484, 490 (Ct. App. 2001), noting, the appellate court will look to whether the Circuit Court order is controlled by an error of law or is unsupported by the facts.

Here, the Veterinary Clinic form was properly admissible under Rules 804(a)(4) and 804(b)(3) of the South Carolina Rules of Evidence. Rule 804, SCRE addresses hearsay

exceptions where the declarant is unavailable. Rule 804(a)(4) states, “Unavailability as a witness includes situations where the declarant is unable to be present to testify at the hearing *because of death* or then existing physical or mental illness or infirmity.” [Emphasis added]. Clearly, Decedent could not be present at trial because of his untimely death. Rule 804(b)(3), SCRE, sets forth the applicable exception to the Hearsay Rule, stating that a statement which is at the time of its making contrary to the declarant’s *pecuniary or proprietary interest*, that a reasonable person in declarant’s position would not have made unless believing the statement to be true, is not excluded by the hearsay rule if the declarant is unavailable as a witness:

Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness. (4) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's *pecuniary or proprietary* interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

Rule 804(b)(3), SCRE

The declaration-against-interest exception of the hearsay rule is well established. It proceeds from a realization of the necessity for such evidence as well as an underlying presumption that the evidence is trustworthy. The trustworthiness element is derived from the presumption that a statement against the proprietary interests of the declarant would not have been expressed by him unless he believes it to be true. *See Matthias, Ronald S. (1980) “Evidence,” South Carolina Law Review: Vol. 32: Iss. 1, Article 9.*

Here, the Veterinary Clinic Form was competent evidence and properly admitted at trial because (1) Decedent was unavailable because of death, (2) the statements were against his proprietary interest in the dog, and (3) a reasonable person in declarant’s position would not have

made the statement unless believing it to be true. The Circuit Court's Order misconstrues the law, erroneously finding that this official form, signed by the Decedent himself, and maintained as part of the veterinary clinic's normal business records, constitutes impermissible hearsay. Accordingly, Appellant respectfully requests that this Honorable Court grant her appeal, reverse the Circuit Court's order, and find that Appellant is the rightful owner of this beloved dog, for whom she continues to provide unconditional love and care.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court grant her appeal, reverse the lower court's order, and find that she is the rightful owner of this goldendoodle named Evie. It was error for the Circuit Court to find that the evidence does not support Ms. Scott's claim of ownership. It was also error for the Court to find that the veterinary clinic form signed by Decedent, and specifically identifying Appellant as Co-owner of the Subject dog, constitutes impermissible hearsay, particularly where (1) Decedent was unavailable because of death, (2) the statements were against his proprietary interest in the dog, and (3) a reasonable person in declarant's position would not have made the statement unless believing it to be true.

[Signature on following page]

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Initial Brief of Appellant complies with Rule 211(b),
SCACR.

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