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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity Court

The Honorable Mikell R. Scarborough

Appellant Case Number: 2023-001428

Edward Mikell, Individually and as Personal Representative for the Estate of Estelle White,
deceased,..... Respondent,

v.

Mary Ann Green, Elnora Capers, William Mikell, Eloise Chestnut, Ralph Brown, Roges Brown, Raymond Mack, Henrietta J. Mack-Barnette, Jeanette Mack Green, James Mack, Jo Nathan Mack a/k/a Nathan Mack, Ida M. Blake, Glenn Mack, Rose Mack, Elizabeth Lee a/k/a Dorothy Marie Mack Lee, Michael Mack, Harvey Mack, Carolyn McClair, Magaline E. Brown, Delores G. Mack, Charles Mack III, Alton Kirk Mack a/k/a Kirk Mack, Kendall Gibbs, Harold Mack, Walter Brown (son of Cumsey Brown), Albertha Cohen, Jessie M. Washington, Manny Dunmeyer Jr., Ruthie Brown Roper, Sylvia Dunmeyer, Francis Dunmeyer, Tammy Dunmeyer, Brandy Dunmeyer, Timothy Brown, Barbara Ann Gathers aka Barbara Ann Geathers, Clarence Smith, Jr., Lillian Middleton, Pauline Walker a/k/a Pearlina Washington, Robert Smith, Arthur Smith, Margaret Brown, Georgiana Smith, Louise Hamilton, Benjamin Smith, John Smith, Leola Smith, Michael Smith, Janet Heyward Nelson, Eric Heyward, Keith Heyward, Darrell Heyward, William Heyward, Charlene Gadsden, Richard Brown, Sr., Sharon Y. Brown, Merele J. Mack, Adrienne F. Mack a/k/a Frankie Mack, Michael B rown, Louis Mikell, Janie Mikell, Altamese Brown, LaTricia Brown-Mayfield, and Edward Littleton Brown, Melissa Mikell (daughter of Nicolas Mikell), Tomisha Mikell, Thomas Elliott Mikell, Meliss Mikell (daughter of Thomas Mikell), Les Brown, Patricia Campbell, Curtrina Ladson, if they be alive, and JOHN DOE AND JANE DOE, whose true names are unknown and fictitious names designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors, or assigns of the above-named Defendants and if any of them be dead and of Estelle White, Lizzie Mikell Green, Edward Mikell, Emily Mikell Brown, Zeebree Mikell, Marion Green a/k/a Marian Green, Walter Brown, Florence Gadsden, Ida Mack, Charles Mack Jr., Geneva Mack, Franklin Mack Cumsey Brown, Nancy Brown, James Brown, Emily Heyward, Ida Mae Smith Dunmeyer, Pamela Dunmeyer Brown, Elizabeth Dunmeyer, Charles Brown, Jr., Rena Smith, Johnny Brown, Adell Mikell, Nicolas Mikell, Jesse Mikell, Thomas Mikell, and Mary Frances Brown, all deceased; and MARY ROE AND RICHARD ROE, whose true names are unknown and fictitious names designating infants, persons under disability, incompetents, imprisoned, or those person in the military, if any; and all other persons, known or whose true names are unknown, claiming any right, title, interest in, or lien upon the real estate described in the Complaint herein,.....Defendants,

Of whom Richard Brown, Sr. and Sharon Y. Brown are theAppellants,

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STATEMENT OF ISSUES ON APPEAL

1. THE MASTER ERRED BY ONLY CONSIDERING AND EXECUTING RESPONDENT'S PROPOSED ORDER, WHICH WAS NOT PROVIDED TO APPELLANTS, AND BY FAILING TO CONSIDER THE PROPOSED ORDER OF APPELLANTS.
2. THE MASTER ERRED IN DETERMINING THAT RESPONDENT PERSONAL REPRESENTATIVES' DEED OF DISTRIBUTION HAD PRIORITY OVER APPELLANTS' DEED.
3. THE MASTER ERRED IN RULING THERE WAS NO VALID DELIVERY OF THE DEED BY ESTELLE WHITE TO APPELLANTS.

STATEMENT OF FACTS¹

This Appeal is from the July 10, 2023 Order of the Charleston County Master in Equity wherein, pertinent to this appeal, the Master ordered that the Deed of Distribution dated November 18, 2015, by Edward Mikell as the Personal Representative of the Estate of Estelle White (2014-ES-10-1344), and recorded on November 19, 2015 in book 0518 at page 558 has priority over the deed allegedly executed by Estelle White on June 11, 2007 and recorded on September 1, 2016 in Book 580 at Page 422 to Appellants Richard and Sharon Brown. (emphasis added)

The Master further ordered that the deed dated June 11, 2007, is invalid because it was not properly delivered during the decedent's lifetime. (emphasis added).

It is undisputed that Appellant Richard Brown, Sr., hereinafter Richard Brown, did not receive notice of even the opening of the 2014 Estate of Estelle White. There is no dispute that the November 19, 2015, Deed of Distribution from Respondent Personal Representative Edward Mikell to Respondent Edward Mikell individually, for approximately 92 acres of the

¹ For ease of reference, Appellants have designated and Included in the Record on Appeal the Charleston County, Circuit Court Case Details, Public Index for Case No. 2017-CP-10-05358. (R.pps.).

real property of the Estate of Estelle White, was recorded and filed as part of the 2014 Estate of Estelle White, which was closed on January 21, 2016. The Will submitted to the probate court was executed in September of 1978 when Ms. White was 66 years old and while Respondent was living in New Jersey. (Tr., p. 190-191).

On May 5, 2017, a petition (under the same Case no. 2014-ES-10-1344) was filed in the Charleston County Probate Court to reopen the estate, quiet title, and set aside the deed of distribution. The petition was based on Respondent Personal Representative's acknowledged failure to provide the statutorily required notice to numerous intestate heirs of Decedent that an estate had been opened.

On August 31, 2017, a Consent Order was issued by the Probate Court directing petitioners to file an action in the Court of Common Pleas for the determination of the heirs of Decedent; to quiet the title; and to determine the validity of a deed executed by Estelle White to Appellants prior to her death, but not recorded until after the deed of distribution to Respondent of the entire approximately 92 acre tract. (August 31, 2017 Consent order, emphasis added)

On October 18, 2017, the instant action 2017-CP-10-05358, was commenced by the filing of a complaint on behalf of Decedent Estelle White's heirs by attorney Willie Heyward, Esquire. The complaint alleged that Decedent did not own an absolute fee simple title in the subject property and, therefore, the property was owned by decedent and her heirs as tenants in common. The complaint also referenced the deed executed to Appellants by Decedent prior to her death. However, the complaint incorrectly referred to the deed as unrecorded, although the deed from decedent Estelle White to Appellants was recorded on September 1, 2016, more than a year prior to the filing of the complaint. (Id., at pars. 15-

16). A Lis Pendens was filed with the complaint.

On April 16, 2018, an answer and counterclaim were filed on behalf of Appellants. This answer was filed after Appellants obtained individual counsel to represent their interests in the real property that is the subject of their 2007 deed from Estelle White. Up until this point, Richard Brown had been one of the named individual plaintiffs in this 2017 action.

STATEMENT OF THE CASE BEFORE THE MASTER

By order dated January 6, 2020, the entire case 2017-CP-10-05358, was referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County. (Order of Reference).

By Consent Order dated May 17, 2021, the parties were realigned whereby Respondent, Edward Mikell, became the Plaintiff, individually and in his capacity as the Personal Representative of the Estate of Estelle White. As Personal Representative, Respondent is required to provide notice of the proceedings to the intestate heirs. Respondent was directed by the Court to file an amended complaint with all of the intestate heirs and the Appellants as Defendants. (Consent Order, May 17, 2021).

The May 17, 2021, Consent Order stated:

The issues to be decided by this Court are as follows:

1) a determination of all intestate heirs of the late 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 Page 558 relative to the deed allegedly executed by the late Estelle White dated June 11, 2007 and recorded September I, 2016 in Book 0580 Page 422 to

Richard Brown, Sr. and Sharon Y. Brown.

(Consent Order, R. p.)

On August 4, 2021, Plaintiff-Respondent filed an amended complaint pursuant to the consent order. (Amended Complaint, R. pp.____) The amended complaint alleged the Appellants' deed was invalid because the signature of Decedent was a forgery, the deed did not sufficiently describe the property conveyed (22.3 acres) and there was no delivery of the deed.

On October 1, 2021, Defendants-Appellants filed an answer and counterclaim alleging that their deed was properly executed, and that Estelle White requested they not record the deed until after her death. (Answer to Amended Complaint and Counterclaim, R. pp.)

Appellants' responsive pleadings provided, among other things, that should the court find their deed was valid, Appellants' deed had priority over the deed of distribution to Respondent. (Id. at para.22) Appellants maintained that Respondent's deed of distribution as part of the 2014 proceedings in the Estate of Estelle White should be set aside based on probate code provisions that any real property in an estate is held in trust by the personal representative until he has complied with all of the obligations of administration. (Id., See, Tr., p. 22, line 8, p. 24, line 20).

The Estate of Estelle White remains open in this formal probate proceeding before the Master. Issues remain as to notice to the intestate heirs of the Estate of Estelle White. (See Issues 1 and 2 in the May 17, 2021, Consent Order, R. p.) In addition, Respondent Personal Representative has yet to comply with and complete all of the obligations of administration for the estate.

On August 29, 2022, a consent order was filed that relieved counsel for Plaintiff/Respondent. (Order). After Respondent failed to obtain substitute counsel within thirty days as ordered, this action was dismissed by the court on November 10, 2022. (Order) On January 27, 2023, Defendant-Appellants moved to restore the case, which was granted on March 13, 2023. (Order).

All parties were represented at the March 13, 2023, hearing before the Master in Equity. The parties agreed that contrary to the bifurcation of issues in the May 2021 order, all outstanding issues would be tried before the Master on May 31, 2023.

Prior to trial, counsel for Respondent informed the court that there were notice issues regarding the first two issues outlined in the May 2021 consent order.

At the call of the case on May 31, 2023, counsel for Respondent conceded that, “... the reason we are here today is that he’s (Respondent Edward Mikell) the Personal Representative and the Estate was not opened in probate court and numerous heirs were not served.” (Tr. p. 6, lines 4-8). And, that, “... this Estate (of Estelle White) was probated in 2014. Certain heirs were not listed and never received an information to heirs and devisees.” (Id, p. 6, lines 20-22).

Respondent and Appellants agreed to proceed on the remaining issues of the validity of the Appellants' 2007 deed and the priority between the 2007 deed and the 2014 deed of distribution. (See Tr., p. 9, lines 7- 10).

This case was tried before the Master on May 31, 2023.²

² No formal notice of the May 31, 2023 trial was provided to any unrepresented heirs. Counsel for the represented heirs did not appear at the trial. (See Tr. p. 8, lines 8-17).

At the conclusion of the trial, the Master advised:

My usual procedure, if I'm not clear on the facts (or) the law, is to ask for y'all to submit proposed orders. Generally, ask that to be done within 30 days. If y'all could submit those to my law clerk ... within 30 days would be ideal.

If you need some additional time, you just need to let me know. And her email is mie@charlestoncounty.org. Okay? Put whatever citation of authority in your order you want me to cite to.

I've got three questions that I've got to deal with. And if I get some insight into those in the meanwhile, I'll do a conference call with y'all and my feeling with where we are on those. (TR. p. 235, line 6-19).

On June 29, 2023, counsel for Defendants - Appellants submitted a request for an additional two weeks to prepare a proposed Order to the Court, by email to the judge's law clerk. (Counsel for Appellants Email of June 29, 2023). There was no response to the request of counsel for Appellants.

In the afternoon of July 10, 2023, counsel for Appellants learned via Notice of Electronic Filing or NEF that an Order had been signed by the Master. (Notice of Electronic Filing or NEF, R. p.). Appellants were not provided notice that a proposed order had even been submitted by counsel for Respondent. Respondent did not provided Appellants with a copy of the proposed Order submitted to the Master.

On July 13, 2023, Appellants' counsel submitted a detailed proposed order to the Court. (Appellants' proposed Order).³ The Master's law clerk advised she would present Appellants' proposed Order to the Master. The clerk for the Master apologized, stating she did not realize counsel for Appellants had not been served with Respondent's proposed

³ Appellants designate their proposed Order in full to the Record on Appeal and incorporate the proposed Order into their brief as more fully set forth herein; Particularly the sections regarding the weight to be given to the opinion of Respondent's handwriting expert, the sufficiency of the property description in Appellants' deed, and applicable law regarding time limitations for claims beginning to run against an estate regarding title to estate assets.

order. (July 11, 2023 email of Master's Clerk).

On July 20, 2023, Appellants filed motions pursuant to Rule 59 and Rule 60, SCRCPP. Appellants' Rule 59 SCRCPP motion requested the relief that the Court set aside the July 10, 2023 Order, and instead alter or amend the subject order's findings of fact and conclusions of law and direct entry of a new judgement, or alternatively to set aside the order and carefully consider and adopt the Order submitted by Defendants-Appellants. The stated grounds of this motion are that the Court failed to consider Appellants' arguments and incorrectly applied the law to the facts of the case. Appellants further stated that the Order of July 10, 2023, was submitted to the Court with no notice or opportunity for review as counsel was not provided a copy prior to submission to the Court. (Rule 59, SCRCPP Motion).

Appellants moved for relief pursuant to Rule 60(b)(1) and (3) SCRCPP, on the grounds that Plaintiff (Respondent) through his counsel submitted a proposed order to the court without notice to Defendants-Appellants herein, and on the grounds set forth in Defendant's Rule 59 SCRCPP Motion filed contemporaneously herewith. (Rule 60, SCRCPP Motion).

On August 15, 2023, the Master entered a Form 4 Order, denying Appellants' post-trial motions. The Master's Form 4 Order provided in pertinent part as follows:

Upon consideration, the Court respectfully DENIES the Motion. The Court requested proposed Orders to be submitted within 30 days of the trial held on May 31, 2023, but only received an Order from the [Respondent] within that time frame. Having reviewed the Motion, the Court confirms the ruling and its basis. (R. pps.)

On September 11, 2023, Appellants timely filed and served a Notice of Appeal on counsel for Respondent of the Orders of July 10, 2023, and August 15, 2023, with copies of

said Orders attached.

STANDARD OF REVIEW

This case before the Master presented issues both in equity and in law. Appellants requested that the Master *set aside* the deed of distribution based on the Personal Representative's failure to perform his duties in probate court, including the required notice to heirs necessary to administer the Estate.

While an action to set aside a deed is typically a matter in equity per *Bullard v. Crawley*, 94 S.C. 276, 278, 363 S.E.2d 897 (1987); the failure of Respondent to comply with the probate code to give notice to Appellants in the very estate from which the Deed of Distribution was issued, is reviewed as a matter of law.

The Master's determinations that Appellants' deed was void for lack of delivery, and had priority over Appellants' deed under race-notice because it was recorded, are likewise reviewed as errors of law.

In review of cases at law, an appellate court is "limited in [its] review to corrections of errors of law and a determination of whether or not there is any evidence to support the trial judge's findings." *Donnan v. Mariner*, 339 S.C. 621, 625-626, 529 S.E.2d 754 (2000).

The Master's failure to require compliance with Rule 5(b)3 SCRCF, which mandates that any party providing a proposed order for the court's consideration shall serve the same on all counsel of record at the same time and by the same means, is an error of law.

The Master's Order denying Appellants' Motions under Rule 59 and 60(b)1 and 3, SCRCF, stated grounds, that, "The Court requested proposed Orders be submitted within 30 days of the trial held on May 31, 2023, but only received an Order from the Plaintiff within

the time frame” are contrary to the directions and instructions of the Court. (Tr. p. 235, lines 5- 25). The Master’s Order denying Appellants’ was an error of law.

ARGUMENTS

I. THE MASTER ERRED BY ONLY CONSIDERING AND EXECUTING RESPONDENT’S PROPOSED ORDER, WHICH WAS NOT PROVIDED TO APPELLANTS, AND BY FAILING TO CONSIDER THE PROPOSED ORDER OF APPELLANTS.

Rule 5(b)(3), SCRCP, provides as follows:

Service of Proposed Orders and Other Papers. Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

The notes to the 1994 Amendment of the Rule provide, “Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed.” This clearly did not occur in the instant case as counsel for Appellants only became aware of the proposed order submitted by Respondent after the Master had executed the same and the order was filed electronically in the AIS system.

However, as set forth in the Standard of Review, this rule violation was specifically raised in the Rule 59 and 60 SCRCP post-trial motions filed on behalf of Appellants. Counsel for Appellants requested that the court give due consideration to their proposed order, but the court took no action to remedy the situation, thus denying Appellants an opportunity to “review and comment on” Respondent’s proposed order.

In his testimony in response to cross-examination by Appellant’s counsel, Respondent Edward Mikell acknowledged understanding that the reason we are still in court today is

because many family members were never given notice that an estate had been opened for Estelle White. (Tr. p. 176, lines 8-15).

At trial, the Personal Representative testified as follows:

Q. ... And do you know how you're supposed to give notice to an heir that an estate has been opened?

A. Do I know how?

Q. Yeah, how you would legally give somebody notice that an estate had been opened for somebody. Do you know how that is done?

A. No, I don't know.

Q. And do you also understand that these heirs can't make claims, contest the will or anything until they get notice that an estate has been open? Do you understand that?

A. No, I don't know. I don't understand this type of law. No, I don't know.

(Tr. p. 176, line 20- p. 177, line 7.)

Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Theisen v. Theisen*, 676 S.E.2d 133, 139, 382 S.C. 213 (S.C. 2009).

Notice issues have plagued this case from the start. Heirs were not given notice that the 2014 Estate of Estelle White had been opened. Appellants had no notice that Respondent Personal Representative had filed a Deed of Distribution to himself for all the real property owned by Estelle White. Numerous intestate heirs of Estelle White and unrepresented parties in this case were not given notice of the May 31, 2023 trial. Appellants were not given notice that a proposed order had been submitted to the court.

At the conclusion of the trial, the Master advised as to additional matters to be answered in the proposed orders of the parties. One of the issues was as to whether the deed to Appellants was valid. On this question, the Master stated: “And if it is, then they (Appellants) should have some of this estate property” Tr. pp. 223-235.

II. THE MASTER ERRED IN DETERMINING THAT
RESPONDENT PERSONAL REPRESENTATIVES’ DEED OF
DISTRIBUTION HAD PRIORITY OVER APPELLANTS’
DEED.

The Master erred in determining the deed of distribution is valid and has priority over Appellants' deed as the Respondent Personal Representative was not in compliance with the Probate Code and, among other material deficiencies, failed to give notice to Appellant Richard Brown, Sr. and other heirs of the opening and administration of the estate.

The Master ruled that the Deed of Distribution recorded by Respondent in his capacity as Personal Representative of Decedent's estate had priority over the deed executed by Estelle White to Appellants because it was recorded first, and South Carolina is a race notice state. Order at pp. 10-11.

At trial and in their proposed Order, Counsel for Appellants maintained that the deed of distribution should be set aside until Respondent properly complies with the obligations of administration as Personal Representative of the Estate. (Tr. pp. 196-200, Appellants’ proposed Order at 7 – 10.

§ 62-3-703(a) of the South Carolina Code provides, “[a] personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent

with the best interests of the estate." § 62-3-703 (b) provides "Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms."

The first obligation of administration of an estate by the personal representative is to provide notice to the heirs of the opening of the estate. S.C. Code § 62-3-705. This statutory duty is mandatory and, "[t]he personal representative's failure to give this information is a breach of his duty to the persons concerned " *Id.*, "If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust." S.C. Code § 62-3-712.

Appellant Mr. Brown's uncontroverted testimony was that he never received legal notice that an estate had been opened for decedent in Probate Court. (Tr. p. 41, lines 17-19). In fact, the "Petition to Reopen the Estate" filed in May 2017, resulted from the fact that numerous heirs of the Decedent were never given notice that an estate had been opened. In the Consent Order, filed May 17, 2021, one of the issues to be decided by the trial court was "a determination of all intestate heirs of the [Decedent]". A review of the court's docket reflects that the personal representative was still providing notice of formal proceedings to heirs of the Decedent as recently as mid-2022. R. p.

In *Theisen v. Theisen*, 382 S.C. 213, 676 S.E. 2d 133, 138 (2009), our South Carolina Supreme Court, referencing 80 Am. Jur. "Wills" Sec. 808, stated that, "notice of probate of a will, or of the admission of a will to probate, may start an applicable time limitation for bringing a will contest." The Court specifically noted that the appellants before them had "failed to timely file a petition for formal testacy" after "they had notice of proceedings

and... opportunities to object to them... " *Id.*, at 139.

It is undisputed that here, Appellant Richard Brown, along with numerous other heirs of Decedent, were never given notice that the 2014 estate had been opened until after Respondent as Personal Representative had issued a deed of distribution to himself and closed the estate.

One of the personal representative's most important duties is outlined in § 62-3-711(a): "Until termination of his appointment ... , a personal representative has the same power of the title to property of an estate that an absolute owner would have, in trust however, for the benefit of the creditors and other interested in the estate." § 62-1-201(23) defines "interested persons" as including "heirs, devisees... and any other having a property right or claim against... the estate of a decedent...".

Appellant Mr. Brown is both an heir of the estate and a person, along with Ms. Brown, having a property right or claim against Decedent's estate, and the personal representative in his official (not individual) capacity.

In the August 31, 2017 consent order, the parties agreed this estate had to be reopened to allow the personal representative to properly perform his mandatory duties. While that process is ongoing, our statutes provide that all real property of the estate is held in trust by the personal representative "until termination of his appointment." *Id., supra.*

The Master erred in granting priority to the Deed of Distribution by Respondent Personal Representative to Respondent individually over Estelle White's deed to Appellants. In effect the Master rewarded Respondent for breaching his fiduciary duties as Personal Representative in failing to give notice to Appellant Richard Brown in the administration of the Estate.

A court's sanctioning and approving this type of conduct by a Personal Representative

inevitably jeopardizes the abilities of claimants in future proceedings to successfully pursue valid claims against an Estate. The Master's determination that Respondent's Deed of Distribution had priority over the Appellants deed led to the Master's errors in failing to properly consider the facts and circumstances of both the execution and delivery of the deed to Appellants.

For all of the reasons set forth herein, the Deed of Distribution issued by Respondent Personal Representative to himself should be set aside.

III. THE MASTER ERRED IN RULING THERE WAS NO VALID DELIVERY OF THE DEED BY DECEDENT TO APPELLANTS DURING HER LIFETIME.

The Master erred in applying the law in determining Appellants deed was invalid because it was not properly delivered during decedent's lifetime.

The evidence in this case is that Appellants met with Estelle White to discuss obtaining a portion of her property. (Tr. pp. 31, line 2-p. 32, line 10, p.85, lines 5- 22). As a result of these discussions Appellants retained a company's services to prepare and have the deed executed by Estelle White. (Tr. pp. 32, line 11- p. 37, line 9, p. 83, line 5- p. 88 line 9). To assist in the preparation of the deed Appellants obtained records from the Register of Deeds in Charleston County, including the 1955 deed to Estelle White from her father and tax maps of the several parcels Estelle White owned in 2007. (Tr. pp. 32, line 11- p. 37, line 9, p. 83, line 5- p. 88 line 9; D e f s . Trial Exhibits 2 and 3. (dated May 23, 2007, and May 29, 2007, respectively).

As noted above, the two witnesses and the notary testified as to the execution of the June 11, 2007, deed by Estelle White. (Tr. p. 122, line 7,- p. -124, line 19 , 133, line 1, -p 136, line 11, p. 141, line 15, -p. 145, line 9; D e f s . Trial Exhibit 3)

The notary testified she handed the deed to Appellant Sharon Brown with instructions from Ms. White to not record the deed until after her death. *Id.* The evidence supports that Estelle White made this request partly because Respondent showed up at her home on an earlier occasion when Appellants were discussing obtaining some property from Ms. White. They testified that words were exchanged so Ms. White cleared her home and requested Appellants return later. (Tr. pp. 37, line 7-p. 38, line 17, p. 72, lines 2-10, p. 85, lines 5-22, p. 88, lines 2-9).

Appellant Richard Brown testified to meeting with a surveyor (Robert Frank) regarding the separate 20acre tract of the subject property, and Appellant Sharon Brown told him, that Aunty said hold the paper until she died, and get them surveyed after she died. (Tr. 40, line 9- p. 41, line 2. and 44, lines 6 – 19)

Although Respondent did not admit he knew a deed was being discussed, he did concede to being called to Ms. White's home by his brother Louis on one occasion when Appellants were present. Respondent further admitted, that there was some kind of argument and disagreement between him and Appellant Richard Brown, "Yeah, because I want to know why he was there." (Tr. pp. 173, lines 7-21, p. 177, line 11, -p 179 line 6). He further testified that he kept Estelle White's home under constant surveillance after he moved back to the family property around 1999, until her death in 2014. (Tr. p. 174, line 11- p. 175, line 22, p. 188, lines 2-23).

In this case the trial court cited *Burke v. Burke*, 139 S.E. 209, 141 S.C. 1 (1927), in support of the finding that there was not an effective delivery of the deed. The trial court incorrectly

interpreted Burke as holding that a "grantor may not use a deed to transfer an interest which will take effect after the grantor's death". (Final Order at par. 49).

In fact, that is precisely what occurred in the case of *Donnan v. Mariner*, 329 S.C. 621, 529 S.E. 2d 754 (Ct. App. 2000), also cited in the trial court's order. In *Donnan*, the grantor's instructions to grantee not to record the deed until after his death was not a factor in the Court of Appeal's decision.

The *Donnan* court held:

A deed is not legally effective until it has been delivered. While there is no prescribed method for an effective delivery of a deed, manual transfer of the instrument into the hand of the grantee is neither required to effectuate a valid delivery, nor dispositive of the issue. The term delivery in this regard refers to "not so much a manual act but the intention of the maker... existing at the time of the transaction ... and not subject to later change of mind." "Delivery of a deed includes, not only an act by which the grantor evinces a purpose to the part with the control of the instrument, but a concurring intent thereby to vest the title in the grantee." "The controlling question of delivery in all cases is one of intention." (citations omitted) *Id.* at 627, 757.

In *Donnan*, the court found there was no effective delivery of the deed because the grantor continued to exercise control over the property by later selling a portion of it and also continuing to discuss a possible sale of the remaining property to his neighbor. *Id.*

The evidence at trial was unrefuted that Estelle White parted with physical control of the deed after its execution and that she intended to vest title in Appellants. There was no evidence submitted by Respondent that Decedent took any action to the contrary after execution of the Appellants' deed in June 2007, until her death in 2014.

Notice issues have plagued this case from the start. Heirs were not given notice that the 2014 Estate of Estelle White had been opened. Appellants had no notice that Respondent Personal Representative had filed a Deed of Distribution to himself for all the real property owned by Estelle White. Numerous intestate heirs of Estelle White and unrepresented parties in this case were not given notice of the May 31, 2023 trial. Appellants were not given notice that a proposed order had been submitted to the court.

The Master's Orders granting priority to the Deed of Distribution from the unadministered 2014 Estate of Estelle White, prior to the heirs of the Estate being given notice of the Estate, declaring Appellants' deed invalid, coupled with denying Appellants' post-trial motions, and the Court not providing additional time for submitting Appellants' proposed order as indicated at the conclusion of the trial (Transcript p. 235), has resulted in Appellants being deprived of their property without due process of law in violation of Art I, Section 3 of the South Carolina Constitution.

CONCLUSION

Appellants Richard Brown, Sr., and Sharon Brown request that the Master's Orders of July 10, 2023, and August 15, 2023 be Reversed. That the case be Remanded back to the Master to enter an Order setting aside the Deed or Distribution, and to declare the deed to Appellants executed by Estelle White on June 11, 2007 and recorded on September 1, 2016 in Book 580 at Page 422 to Appellants Richard and Sharon Brown as valid, and for such further relief as is just and appropriate.

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