

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2013-UP-206 (S.C. Ct.App. filed May 22, 2013)

Henrietta Norman and Primerica Life Insurance Company
Of Whom Henrietta Norman is Respondent,

v.

Adam Hill, Jr., Petitioner,

PETITION FOR A WRIT OF CERTIORARI

July 18, 2013

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Petitioner, Pro Se

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JUL 19 2013

S.C. Supreme Court

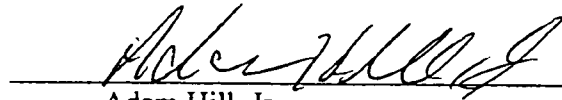
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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 20, 2013.

July 18, 2013

A handwritten signature in cursive script, appearing to read "Adam Hill, Jr.", is written over a horizontal line.

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QUESTIONS PRESENTED:

1. Did the Appellate Court err in affirming the order issued by the trial court in view of the fact the trial court's decision was based solely upon flawed evidence?
2. Did the Appellate Court err in its failure to consider the sworn affidavit submitted by the decedent's Pastor which creates a genuine issue of material fact?
3. Did the Appellate Court err by its failure to determine whether circumstantial evidence presented by the Petitioner created substantial justification to grant his request for a jury trial

STATEMENT OF THE CASE

On September 9, 2008, Helen Rebecca Smith passed away at her residence. At the time of her passing, Ms. Smith was covered by a life insurance policy issued by Primerica Life Insurance Company in the amount of twenty thousand dollars (\$20,000.00). Approximately nine thousand dollars (\$9,000.00) of the proceeds were used to pay for the decedent's funeral, and Primerica paid the balance of the proceeds to the decedent's cousin Henrietta Norman, who is the Respondent in this action. The decedent's Brother, Adam Hill, Jr., is the Petitioner in this action. On February 4, 2009 the Petitioner initiated a lawsuit by filing a complaint with the Court of Common Pleas in Greenwood South Carolina. In accordance with SCRCF Rule 38(a)(b) the complaint requested a jury trial to determine whether the Respondent, Henrietta Norman, may have fraudulently acquired the proceeds from the insurance policy and to determine the true beneficiary under the Primerica Life Insurance Policy. Petitioner Hill filed the complaint as a pro se litigant because he was unable to retain the services of counsel in order to meet the guidelines established by the statute of limitations for the case. The insurance policies of the decedent were never located.

Respondent Norman was the last person in the home of the decedent prior to discovery that the policies were missing. Respondent Norman alleges she had no prior knowledge that she was the beneficiary of the policy. Respondent Norman in her sworn deposition states she was shocked when notified by the funeral home attendant that she was the beneficiary of Helen R. Smith's insurance policy. According to testimony in Respondent Norman's sworn deposition Primerica Life Insurance Company did not contact her to notify her she was the beneficiary. Respondent Norman petitioned the Probate court for reimbursement of the decedent's burial cost and convinced the Court the proceeds of the life insurance company were left to her as a gift.

ARGUMENT

1. ACCORDING TO DOCUMENTED SOUTH CAROLINA CASE LAW AND RULE 704 OF THE SOUTH CAROLINA RULES OF EVIDENCE THE COURT OF APPEALS ERRED IN ITS AFFIRMATION THAT THE TRIAL COURT APPROPRIATELY APPLIED A SUMMARY JUDGEMENT RULING BASED UPON FACTS AND EVIDENCE PRESENTED.

The Circuit Court relied mostly upon the sworn affidavit and claim file submitted by Primerica Life Insurance Company to grant Defendant Norman's motion for summary judgment. The Court indicated a sworn affidavit from a corporate representative is uncontradicted. (See **Appendix A. p. 89, lines 1 thru 22**). Even though it was pointed out to the Court the affidavit submitted by the corporate representative may have been a sham affidavit; (See **Appendix B, page 15**) the Court insisted Primerica had no reason to not pay the proceeds to the beneficiary. (See **Appendix A. p. 79, lines 18 thru 22**).

In Petitioner Hill's motion for Reconsideration dated January 24, 2012 he discloses to the Court the initial flawed affidavit was submitted to the Court on July 27, 2010 and the corrected affidavit was submitted to the Court in May 2011. (See **Appendix A. pp. 156 thru 159**). In Maureen Middleton's (Primerica's corporate representative) initial sworn affidavit in support of Respondent Norman's motion for summary judgment she states the entire contents of the decedent's claim file was submitted to the Court on July 12, 2010. Maureen Middleton's initial sworn affidavit was not presented to the Court until Petitioner Hill made the Court and Respondent Norman aware of the inconsistencies within the claim file and Norman's sworn deposition. (See **Appendix A. pp. 37 thru 40**).

A Circuit Court's failure to exercise discretion is itself an abuse of discretion. State V. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981); See Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App. 1997) (When the trial judge is vested with discretion, but his ruling reveals no discretion, was in fact, exercised, an error of law has occurred."); Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. at 155, 399 S.E.2d at 441 ("It is an equal discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.").

Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Moriarity v. Garden Sanctuary Church of

God, 341 S.C. 320, 534 S.E.2d 672 (2000); Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Redwend Ltd. P'ship, 354 S.C. at 468, 581, S.E.2d at 501; see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom).

On June 5, 2012 during the hearing of Respondent Norman's second Motion for Summary Judgment Petitioner Hill's wife, Wynetta G. Hill, was permitted to testify. During the course of Wynetta Hill's testimony she pointed out to the Court facts documented within the claim file submitted by Primerica in support of Defendant Norman's motion for summary judgment clearly indicates their records are in such disarray that even if the decedent had submitted a change of beneficiary, Primerica, more likely than not, misplaced it or tossed it aside. (See Appendix A. pp. 161 thru 169 & Appendix B, pp. 12 thru 13).

2. THE APPELLATE COURT ERRED IN ITS FAILURE TO DETERMINE WHETHER CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PETITIONER WAS SUFFICIENT TO NEGATE THE TRIAL COURT'S SUMMARY JUDGEMENT RULING

Respondent Norman's contention that the Circuit Court properly granted summary judgment because no genuine issue of material fact exists and appellant's arguments are based solely on speculation and conjecture is contrary to documented South Carolina case law and Rule 704 of the South Carolina Rules of Evidence. In Respondent Norman's Final Reply Brief references are made to numerous hypothetical situations in the Appellant's Final Reply Brief. (See Appendix D, p. 4). Respondent views these as hypothetical situations when in fact these are inferences derived from circumstantial evidence. Under the "any evidence" or "mere scintilla" standard, Petitioner Hill's Final Brief has provided sufficient circumstantial evidence to negate a summary judgment ruling on this cause of action. (See Appendix B, pp. 12 thru 13).

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact; it is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not

personal knowledge or observation. See State v. Salisbury, 3243 S.C. 520, 541, S.E.2d 247 (2001). Circumstantial evidence does not actually establish the fact in question, but it asserts or describes something else from which the jury may reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the fact is true. Gastineau V. Murphy, 323 S.C. 168, 473 S.E.2d 819 (Ct.App. 1996). For circumstantial evidence to be sufficient to warrant a finding of facts, the circumstances must lead to the fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience and common sense, and the existence of a fact cannot be based on speculation, surmise of conjecture. Holland v. Georgia Harwood Lumber Co., 214 S.C. 195, 51 S.E.2d 744 (1949).

The documented facts within the Primerica claim file and Respondent Norman's sworn deposition are not conjecture of speculation. Respondent Norman denies having asked the decedent for a power of attorney. (See **Appendix A. p. 135, lines 22 thru 25 and Appendix A, p. 137, lines 1 thru 24**). The fact as to whether Respondent Norman asked for a power of attorney is addressed in the transcript of the hearing held on July 10, 2010. (See **Appendix A. p 57, lines 19 thru 25, Appendix A. p. 58, lines 1 thru 3, Appendix A. p. 59, lines 10 thru 15**).

The sworn affidavit of the decedent's Pastor is of considerable probative value because it addresses the primary issue of intent to commit fraud. The affidavit creates an issue of material fact which is disputed by Respondent Norman. (See **Appendix A. pp. 147 thru 148**).

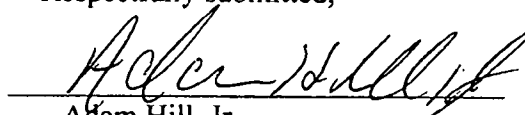
The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Circumstantial evidence is held on equal footing as direct evidence under the "any evidence" standard.

CONCLUSION

Insofar as the Court of Appeals departs significantly from both the spirit and letter of the law, and insofar as such a departure produces manifestly unjust results and is contrary to public policy and interest, Petitioner respectfully petitions this Honorable Court to GRANT Certiorari.

July 18, 2013

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Adam Hill, Jr.", written over a horizontal line.

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APPENDICES

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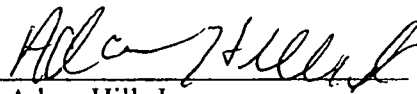
v.

Adam Hill, Jr., Petitioner,

PROOF OF SERVICE

I certify that I have served a copy of the Petition for a Writ of Certiorari on Clerk of Court, SC Court of Appeals by depositing a copy of it in the United States mail, postage prepaid, on July 18, 2013, addressed to Clerk of Court, South Carolina Court of Appeals, P. O. Box 11629, Columbia, SC 29211.

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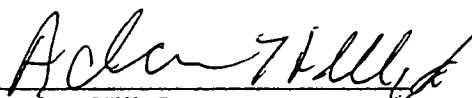
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PROOF OF SERVICE

I certify that I have served a copy of the Petition for a Writ of Certiorari on Henrietta Norman by depositing a copy of it in the United States mail, postage prepaid, on July 18, 2013, addressed to her attorney of record Edward S. McCallum, III, 340A Oak & Main Street, P. O. Box 148, Greenwood, SC 29648.

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