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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2023-001281

Dorothy Riley individually, and as
Personal Representative of the
Estate of Marion F. Riley

Respondent,

v.

Marcus Riley

Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Issues on Appeal.....1

Facts1

Standing.....5

Arguments

 The findings of a new trial absolute based on the thirteenth juror doctrine is unsupported by the evidence in this case.....6

Conclusion.....7

TABLE OF
AUTHORITIES CASES

Lester W. Norton vs. Norfolk Southern Railway Company, Opinion No. 25501 Heard April 16th 2002

STATUTES

S.C. Code Ann. § 62-1-20 (1976)

S.C. Code Ann. § 62-2-104 (1985)

ISSUES ON APPEAL

1. Did the facts of this case wholly support the granting of a new trial?

FACTS

Marcus Riley is the Grandson of Marion F. Riley Sr. He is also the son of Marion F. Riley Jr. Marcus had a great relationship with his father and grandfather growing up in Allendale County. (See Transcript of Record Page 6 lines 17-25, Page 7. lines 1-25)

Marcus Riley admitted that he came home inconsistently while he pursued an education. His educational pursuits led him to different states (See Transcript of Record Page 4, lines nine 23and 24, Page 6, lines 9-13)

Marcus's father died in 2019. He went home to Allendale County to attend the funeral. At that time he had no reason to know that he property that was in his father's estate was obtained illegally.

Marcus's interest regarding his father's estate began when his sister Tracy called him after the funeral to complain about a house she was living in. She complained that the property that was supposed to be in the Estate. (See Transcript of Record Page10 line 7) Marcus talked with his father's widow, Dorothy Riley about the situation and was told, "I don't know." (See Transcript of Record Page 10. Line 19). Marcus decided to go to the Allendale County Courthouse to research the problem. He discovered that his father fraudulently signed a power of attorney over Marcus's grandfather and transferred some properties to himself. Marcus discovered that the house that was willed to his sister Tracy was deeded to his other sister

Renique using that power of attorney. He suspected that the signature on the power of attorney could be false. Marcus started comparing signatures on the document and discovered some discrepancies. When he later brought this evidence to the attention of his father's widow, she responded "if you want to go to Court, we can." (See Transcript of Record Page 13, line 17.

Mr. Riley testified in Court that his grandfather's will was dated January 12th, 1990. A distribution list bequeathed the property to his grandmother, Ruth Riley, and the remainder to his children to share equally. (See Transcript of Record Page 16, lines 8-25. See Transcript of Record Page 17 line1-9.

There was also the introduction of the 1995 Power of Attorney that Marion F. Riley Sr allegedly produced. The date of that Power of Attorney was May 18th, 1995. Marcus found that date interesting because his grandfather had been in the hospital two weeks earlier. (See Transcript of Record Page 21line 1-6, See Transcript of Record Page 22 lines 1-25)

Evidence also showed that the 1995 Power of Attorney was revoked on May 28th, 1998. (See Transcript of Record Page 23, lines 17-23)

Another Power of Attorney was done five months later, on October 15th, 1998, which was presented as evidence. See Transcript of Record Page 24, lines 15-22) Marcus questioned the timing of the second power of attorney. Shortly after receiving the second power of attorney, Marcus's father transferred the specific property to himself. (See Transcript of Record Page 28. Line 22-25)

Prior to his discovery Marcus had no reason to research the transferring of any property his father claimed to own, nor was he involved in any prior litigation.

Janice Heard is Marcus's aunt. She testified that her father was having health problems with Dementia and Alzheimer's. (See Transcript of Record Page 49, line 23). She also testified that Marcus was unaware of the lawsuit in her father's Estate. (See Transcript of Record Page 53 line 25, Page 54, line 1,6)

The Plaintiff called expert Laurie Hoeltzel PhD to the stand. She is a forensic examiner. Dr. Hoeltzel testified that she had 25 years of experience as a forensic examiner. (See Transcript of Record Page 61, line 22) Opposing Counsel had no objection to her being qualified as an expert (See Transcript of Record Page 65 line 16-18). Dr. Hoeltzel stated there was a discrepancy in the signature on the 1998 Power of attorney and Marcus's grandfather's real signature. She presented slides that were introduced into evidence along with a report. She stated that, in her professional opinion, Mr. Marion F. Riley did not sign the documents she reviewed. (See Transcript of Record Page 84 lines 17-20)

Attorney Clyde Elzroth Jr. testified for the defense. He testified that he was the attorney for Marion F. Riley Sr. and remembered doing the Power of Attorney for Marion F Riley Sr. and filing it on October 24th, 1995. (See Transcript of Record Page 20, lines 6-9). He later testified that Mr. Marion Riley Sr. came to his office wanting to revoke the Power of Attorney, and although he had never done one before, he got it done. (See Transcript of Record Page 23, lines 5-16). He later admitted that he was in Florida when the 1998 Power of Attorney was done and completed. (See Transcript of Record Page 24, lines 6-14). After that, he could no longer testify that he had any knowledge that the Power of Attorney done in 1998 was a valid document.

Attorney Elzroth was allowed to review his notes and stated with substantial certainty that he was not present when the 1998 Power of Attorney was signed. (See Transcript of Record

Page 28, lines 17-25 and Page 29, lines 1-4). He could not even verify who did the Power of Attorney. (See Transcript of Record Page 29, line 25, Page 30, line 1)

The next witness was June Bilka. She was one of the paralegals who claimed to have witnessed the signatures on the Power of Attorney. She gave testimony that she did not know who prepared the documents. She claimed that only the people in the room were present when Marion F Riley Sr. signed the documents. Still, she could not identify the other person who eligibly witnessed the document. She provided no evidence of being or explanation as to why she had such a good memory of the client from over 20 years ago, but not the go-worker was in working with her. She later admitted that she did not remember specific details because of the time-lapse. (See Transcript of Record Page 37, lines 5-9).

She later testified that the document sign process appeared to be outside of the firm's procedures because it looked like a paralegal named Janet Palazzolo notarized the document rather than one of the attorneys. (See Transcript of Record Page 38, lines 24-25, and Page 39 1-6) No other witness could state they were in the room when the Power of Attorney was signed.

The other witnesses presented by the Defense offered no evidence regarding the signing of the power of attorney. The offered disparaging, unsubstantiated testimony of Marcus's character.

The evidence in this case was clear and grossly one-sided. The wholly of the evidence was presented by the Plaintiff. There was no evidence from the defense for the Trial Court to consider. That is why the jury returned within the hour with a verdict for the Plaintiff.

According to the case *Lester W. Norton v. Norfolk Southern Railway Company*, Opinion No. 25501 Heard April 16th, 2002 – Filed July 22nd, 2002.

Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Folkens*, 300 S.C. at 254-55, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976)). This Court's "review is limited to consideration of whether evidence exists to support the trial court's order." *Id.* At 255, 387 S.E.2d at 267. As long as there is conflicting evidence, this Court has held that the trial judge's grant of a new trial will not be disturbed. *Id.*

The granting of a new trial based on the thirteenth jury doctrine is wholly un'supported"by evidence. In the case, the Defendant does not have one person who could definitively place Mr. Marion F. Riley Sr.'s signature on the 1998 power of attorney. Attorney Elzroth admitted that he was in Florida, and June Bilka was not sure what was signed and who authorized the signing of that document. Both witnesses worked in the same law firm but differed as to the policy for a client signing a document. She did not review whatever was signed, nor did Mr. Riley's regular attorney prepare the document. The defense called Dorothy Riley and her children Renique and Chauncey and none of them could testify that they knew for a fact that the document was signed by Marion F. Riley Sr.

Standing

Marcus Riley is an heir to his father's estate because he is the son of Marcus F. Riley Jr. Not being mentioned in the will has no relevance to whether he is an heir.

According to SC Code Section 62-1-20, Heirs” means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of a decedent—SC Code Section 62-2-104. (1) 2a states that an heir under the succession statute is an individual born before a decedent’s death but who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. We do not argue that he is a disinherited heir, but that does not affect his status as an heir.

The Appellant was not trying to reopen the Estate of his Grandfather. He was attempting to challenge the property in his father’s Estate. As an heir to his father’s Estate, he has the right to challenge the property in his Estate. The allegations were that his father committed fraud and obtained property from his grandfather. During the trial, he explained that his grandfather was everything to him (See Transcript of Record Page 8 line 3-4).

CONCLUSION

The defense never produced anyone with a working log that placed Mr. Riley Sr. in the office that day. Nor did they have an expert agreeing that Mr. Riley Sr. signed the document.

The rest of the witnesses failed to tarnish Marcus' character. The Plaintiff produced evidence of multiple Power of Attorney, an expert witness that stated that the signature was not Mr. Riley Sr. and numerous other exhibits. We strongly believe that the granting of the New Trial Absolute based on the theory of thirteenth jury is wholly unsupported by the evidence.

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

January 10, 2024

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