THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2023-001200
Civil Action No. 2020-CP-10-04714

William Gorham and Rosalee Gregg Smalls, Plaintiffs,
v.

Alan Gregg, Victoria Manigault, Mary Frances Gregg Steed, Dorothy Gregg Horlbeck, Robert Leroy Gregg, Franklin Gregg, Michael Gregg, Agnes Gregg (daughter of Jesse Gregg), Joanne Gregg (daughter of Jesse Gregg), Murray Chavis, John Doe and Jane Doe, as fictitious names for a class of unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons Harriet Gregg, Leroy Gregg, Henrietta Fishburn, Agnes Gregg Washington, Jessse "Eddie" Gregg, James Gregg, Leroy Gregg, Jr., Agnes A. Gregg, Jesse Gregg, Robert Gregg, and all other persons known or appear of record to have some right, title, interest in, or lien upon the real estate described in the complaint herein, Defendants.

Of whom William Gorham is the Appellant and Robert Leroy Gregg is the Respondent.

RESPONDENT'S FINAL BRIEF

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

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II. SHOULD A PARTY BE REQUIRED TO SPECIFICALLY PLEAD A STATUTE IN ITS PLEADING WHEN SAID STATUTE APPLIES BY OPERATION OF LAW?

STATEMENT OF THE CASE

The within matter concerns three parcels of real property located on Venning Road in the Town of Mount Pleasant, Charleston County, South Carolina. The three properties are more fully shown on a survey recorded in Plat Book EB Page 772 in the Charleston County Register of Deeds Office. (R. p. 231). Lot 1 is commonly known as 1437 Venning Road and bears TMS # 560-00-00-051; Lot 2 is commonly known as 1439 Venning Road and bears TMS # 560-00-00-052; and Lot 3 is commonly known as 1447 Venning Road and bears TMS # 560-00-00-015. (R. p. 230).

On October 27, 2020, Appellant filed a Complaint (and later an Amended Complaint) seeking, *inter alia*, ownership by adverse possession as to Lot 1 and a quiet title as to the remainder of the properties. (R. pp. 30-43).

On March 25, 2021, Respondent filed an Answer and Counterclaim to the Amended Complaint denying Appellant's claim of adverse possession and setting forth his belief as to the chain of title and family tree. (R. pp. 44-52). From the outset, Respondent has admitted that Appellant and his two siblings owned a minority interest (less than 3% total) in the subject properties. Subsequent to the filing of the Respondent's Answer and Counterclaim and prior to trial, Respondent purchased the outstanding 00.83% interest of Appellant's brother, Frankie Gregg, and acquired a quit-claim deed for his interest in the properties. (R. pp. 261-264). In his

Counterclaim, Respondent additionally requested that he be afforded the opportunity to purchase Appellant's outstanding interest in the properties. (R. pp. 44-52).

Appellant thereafter filed a Reply to the Respondent's Counterclaim denying the relief requested therein. (R. pp. 53-55).

The matter was referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County by Consent Order of Reference dated September 15, 2022. (R. pp. 11-13).

The Master held a quiet title hearing on February 21, 2023, which was reconvened on May 22, 2023. (R. pp. 67-204). As a result of the testimony and evidence presented therein, the Master issued its Quiet Title Order on July 26, 2023. (R. pp. 14-29).

In the Order, the Trial Court found that the Appellant failed to provide any evidence to support his claim of adverse possession. (R. pp. 22-23). Appellant has conceded the same and does not appeal the ruling of the Trial Court on that matter. (Appellant's Br. 4-5).

The Trial Court found that the subject properties were owned in fee simple by the late Harriet Gregg, who died in 1958 and is the great-grandmother of the Appellant and Respondent. (R. p. 15). In its Order, the Court provides the undisputed family history of the late Harriet Gregg. (R. p. 25-26).

At trial, the Master admitted into evidence three separate deeds whereby the overwhelming majority of the heirs of Harriet Gregg conveyed all of their right, title and interest to Respondent's father back in 1976. The deeds at issue are as follows: 1) Deed from Louise Gregg, Mary Francis Steed, Dorothy Horlbeck, Fanny Murray and Thelma Myers to Robert Gregg dated August 25, 1976 and recorded August 5, 1978 in the ROD Office for Charleston County in Book T115 at page 1 (R. pp. 240-243); (2) Deed from Henrietta G. Fishburn, Leroy Gregg, Jr., Jesse E. Gregg, Victoria G. Manigault and Rosa Lee Gregg to Robert Gregg dated

July 22, 1976 and recorded May 5, 1978 in the ROD Office for Charleston County in Book S115 at page 325 (R. pp. 236-239); and (3) Deed from Allen Gregg to Robert Gregg dated October 26, 1976 and recorded May 5, 1978 in the ROD Office for Charleston County in Book S115 at page 326 (R. pp. 244-247).

By virtue of the foregoing deeds and by applying the laws of intestate succession under the South Carolina Probate Code, the Master then determined the current ownership shares in the properties. Ultimately, the Master found in the Quiet Title Order that Respondent owns a 98.35% interest in the properties, Appellant owns a 00.83% interest in the properties and Appellant's brother, Co-Defendant Michael Gregg, owns a 00.83% interest in the properties. (R. p. 26). Respondent would note that in its Order, the Trial Court approved a settlement agreement whereby Respondent has agreed to purchase the outstanding 00.83% interest owned by Defendant Michael Gregg upon such time as the Master determines the fair market value of his minority share. (R. pp. 17-18). Therefore, the 00.83% share owned by Appellant is the sole remaining outstanding interest in the properties.

On July 27, 2023, Appellant filed a Notice of Appeal as to the Trial Court's Quiet Title Order dated July 26, 2023. (R. p. 63).

STANDARD OF REVEW

In most instances, a suit to quiet title action is one grounded in equity. *Fox v. Moultrie*, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). Notwithstanding the foregoing, when a defendant's answer attempts to raise an issue of paramount title to land and if the same was established, it would defeat plaintiff's cause of action, the issue of title is legal in nature. *Major v. Penn Cmty. Serv. Inc.*, 394 S.C. 75, 713 S.E.2d 795 (Ct. App. 2011) (citing *Dargan v. Tankersley*, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008)). As such, in a case tried without a jury, the factual

findings of a judge regarding title will not be reversed on appeal unless found to be without evidence which reasonably supports the judge's findings. *Id.* (citing *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). The same standard of review applies to any factual determinations of a Master-in-Equity as well as those of a Circuit Court Judge. *May v. Hopkinson*, 289 S.C. 549, 554–55, 347 S.E.2d 508, 511 (Ct.App.1986).

Based upon the allegations raised by the Appellant at trial, one of the key issues is tied to the validity of a recorded deed. "An action to set aside deeds is a matter in equity." *Bullard v. Crawley*, 294 S.C. 276, 278, 363 S.E.2d 897, 898 (1987); See also *Clark v. Hargrave*, 323 S.C. 84, 86-87, 473 S.E.2d 474, 476 (Ct. App. 1996). The Courts have stated that in a matter in equity, "we may determine the facts in accordance with our own view of the preponderance of the evidence. We, however, will not disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000).

ARGUMENT

I. THE MASTER-IN-EQUITY PROPERLY DETERMINED THE APPELLANT'S PERCENTAGE OF OWNERSHIP INTEREST IN THE SUBJECT PROPERTIES BY INCORPORATING THE RECORDED DEEDS FOUND IN THE CHAIN OF TITLE.

In his Initial Brief, Appellant acknowledges and accepts the family history of the late Harriet Gregg as was set forth in the Quiet Title Order issued by the Master-in-Equity acting as the Trial Court. (Appellant's Br. 4-5). Therefore, that issue has become moot and Appellant's entire case hinges on the validity of three deeds that were duly executed and recorded in 1976, more than forty (40) years ago.

In order to prevail on his claim that the Trial Court should have strictly followed the laws of intestacy and disregarded the impacts of the three deeds of record, the Trial Court would be required to make a finding that the three deeds are utterly void.

By way of background, the three deeds in question all provide detailed recitals concerning the family history of Harriet Gregg, the matriarch of the family. (R. pp. 236-247). The recitals accurately set forth the date of death for Harriet Gregg as December 18, 1958, along with the fact that she had a total of four children. (Id.) At the time of the conveyances in 1976, only one of Mrs. Gregg's four children was still living, namely, Henrietta Fishburn, who joined in the conveyance. (R. p. 25). The recitals in the deeds then proceed to provide additional background information as to the intestate heirs of Agnes Gregg Washington and Leroy Gregg, two of the then deceased children of Harriet Gregg. (R. pp. 236-247). Leroy Gregg is the grandfather of Appellant and Respondent. The recitals in the deeds set forth only the surviving children of Leroy Gregg at the time of his demise in 1976 and did not list Appellant's mother, Agnes Gregg Gorham, as she was a predeceased child of Leroy Gregg. (R. pp. 236-247). Appellant's argument rests on the mere inadvertent omission of a predeceased child as set forth in the recitals of the deeds to call into question the validity of the underlying deeds.

The burden of proof is upon the party attacking the deeds in question. *Hudson v. Leopold*, 288 S.C. 194, 341 S.E.2d 137 (1986) citing *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330 (1921). In addition, thereto, any party seeking to invalidate a deed for fraud or misrepresentation must satisfy the heightened standard and prove his or her case by clear and convincing evidence. *Grant v. Hudson*, 192 S.C. 394, 7 S.E.2d 2 (1940) (citing *Rivers v. Woodside Nat'l Bank of Greenville*, 150 S.C. 45, 49, 147 S.E. 661, 663 (1929)). In the instant case, the Trial Court found that Appellant failed to provide **any** evidence of fraud at trial. (R. p. 24-25).

In addition to Appellant's failure to carry his burden of proof, South Carolina law further provides that "[a] deed which is valid and regular on its face is clothed in a presumption of validity." *Davis v. Epting*, 317 S.C. 315, 317 454 S.E.2d 325, 326 (Ct. App. 1995). The Trial Court made a factual determination that the deed was valid and regular on its face. (Quiet Title Order at Page 11). Any such deed is presumed to be valid in all respects. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). Therefore, Respondent is entitled to reasonably rely upon the validity of the three deeds into his father, Robert Gregg, that were recorded more than forty (40) years ago.

A recital is defined, in part, as "[a] preliminary statement in a contract or deed explaining the reasons for entering into it or the background of the transaction…" Black's Law Dictionary (8th ed. 2007). Furthermore, the recitals do not comprise a material part of the deed itself such as the granting clause, habendum clause or warranty clauses. They are only meant to provide background information and have no impact on the validity of the underlying instrument. Real estate practitioners commonly use recitals to provide insightful information that might be recorded in other jurisdictions and cross reference other documents concerning the title to the property. If successful, Appellant's argument would cause complete and utter chaos in the real estate title world if a deed was automatically voided due to some level of ambiguity or error contained in the mere recitals. This would severely and negatively impact the stability of real estate titles and the underlying real estate market. The problem is further exacerbated by the fact that lawyers examining title very rarely are able to independently verify and confirm all details set forth in deed recitals.

By virtue of the three deeds, eleven (11) of the family members of the late Harriet Gregg transferred their respective interests in the subject properties to Respondent's late father, Robert

Gregg. (R. pp. 236-247). These deeds were duly witnessed, notarized, and recorded in the Charleston County Register of Deeds Office. (Id.) "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 313 433 S.E.2d 875, 880 (Ct. App. 1992). In this case, Respondent claims to have received the ownership share that his father acquired from those family members in the three deeds inasmuch as Respondent's father later transferred all of his right, title, and interest in the subject properties to Respondent in 2018. (Appellant's Br. 6-7). Respondent acknowledges and accepts that Appellant owns a minority share of 00.83% by and through the Appellant's mother being a predeceased child of Leroy Gregg as set forth in the Quiet Title Order. However, the foregoing does not preclude or in any way affect the transfers made by the other Gregg family members over four decades ago.

In support of Appellant's position relative to the validity of the deeds, he mistakenly relies on S.C. Code Ann. § 27-23-20. First and foremost, the statute requires that the deeds in question "be had or made for the intent and of purpose to defraud and deceive such person or persons, bodies politic or corporate, **as shall purchase** …" S.C. Code Ann. § 27-23-20 (emphasis added). In the instant case, Appellant has not provided a scintilla of evidence that the three deeds were made with the intent to defraud anyone at all. Furthermore, assuming *arguendo* that the deeds were made with fraudulent intent (which Respondent vehemently denies), the Appellant is not afforded any protection under the statute as he is not a purchaser. In essence, "conveyances which are made with an actual intent to defraud **subsequent purchasers** are void when the subsequent purchase is bona fide and for a valuable consideration." *Powell v. Green*, 281 S.C. 358, 362 315 S.E.2d 183, 185 (Ct. App. 1984) [emphasis added]. In the case at bar, Appellant is a tenant in common with Respondent and his predecessors in title. Appellant has

never been a purchaser, much less a purchaser for value, of the subject properties. Rather, Appellant merely inherited a 00.83% interest in the properties upon the demise of his mother. Therefore, Appellant's reliance on the foregoing statute is misplaced.

II. THE MASTER-IN-EQUITY PROPERLY DETERMINED THAT THE RESPONDENT FILED A COUNTERCLAIM SEEKING PARTITION OF THE SUBJECT PROPERTIES.

The within matter was originally filed by the Appellant as an adverse possession action wherein he attempted to claim ownership as to a portion of the subject properties. The Master-in-Equity determined that Appellant presented **no evidence** to support his claim of adverse possession. (R. p. 22-23). Appellant has accepted the decision of the Trial Court as to this matter and does not appeal the same (Appellant's Br. 4-5).

"In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties." *Jerkowski v. Marco*, 56 S.C. 241, 245 34 S.E. 386, 388 (1899). "The consequence is that, when a fact is pleaded, whatever inferences of law or conclusions of fact may properly arise from it are to be regarded as embraced in such averment." *Id.* "It is the court that refers the facts to their appropriate form of action…." *Id.*

Respondent timely filed an Answer and Counterclaim wherein he set forth his position relative to the chain of title and the resulting respective percentages of ownership owned by the Respondent and Appellant. (R. pp. 44-52). In addition, Respondent alleged that it would be impossible to "partition the property in kind or by allotment without injuries to the parties." (R. p. 50). Respondent then proceeded to request that the Court permit him to purchase the outstanding interest of the Appellant, which, in essence, is a form of partition. (Id.) The Trial

Court reviewed the pleadings, heard arguments from counsel, and concluded that the Respondent had properly sought a partition action. (R. 27).

The Clementa C. Pinckney Uniform Partition of Heirs' Property Act (herein Pinckney Act) is codified in S.C. Code Ann. § 15-61-310, et seq. and provides a mechanism to resolve ownership rights and disposition of heirs' property. The Pinckney Act only controls the partition of heirs' property as defined in S.C. Code Ann. § 15-61-320(5). Appellant concedes that the instant case satisfies the definition of heirs' property and is governed by the Pinckney Act; however, Appellant is not required to plead such Act as it is statutory in nature. The Trial Court appears to concur that this matter is subject to the Act as well (R. p. 23).

The Pinckney Act requires a court to hold separate hearings, as the matter is handled in phases. The first step in any heirs' property matter is for the court to determine the owners of the property and their respective percentages of ownership, which is commonly known as the quiet title portion of the case. Without first accomplishing this critical step, the Court is unable to proceed to the partition aspect. In the instant case, the Trial Court issued its Quiet Title Order on July 26, 2023. (R. p. 14-29). Once that procedural step is complete, the Court can then proceed with following the Pinckney Act. The Pinckney Act generally requires an appraisal to be performed unless all parties agree otherwise. S.C. Code Ann. § 15-61-360(A). Appellant agrees with Respondent that an appraisal should be performed pursuant to the Pinckney Act and in furtherance of the Trial Court's Order (R. p. 27).

Appellant asserts that he has a right of first refusal as provided in the Pinckney Act and that he was never afforded an opportunity to exercise said right. (Appellant's Br. 7-8). Respondent would state that Appellant's claim fails as any right of first refusal does not attach until after the Trial Court determines the fair market value of the property. "If any cotenant

requests partition by sale, **after the determination of value pursuant to Section 15-61-360**, the party filing the partition action, after receipt of the value information from the clerk's office, shall send notice to the parties that any cotenant, except a cotenant that requested partition by sale, may buy all of the interests of the cotenants that requested partition by sale." S.C. Code Ann. § 15-61-370(A) [emphasis added]. Therefore, it is abundantly clear that the issue of the existence of any right of first refusal that may be granted to the Appellant is not a ripe matter. "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Spivey ex rel. Spivey v. Car. Crawler*, 624 S.E.2d 435, 367 S.C. 154 (Ct. App. 2006) quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Until such time as the Trial Court determines if Appellant possesses a right of first refusal, then this issue is merely hypothetical.

CONCLUSION

Appellant has provided no statutory authority or case law to support his position that the three deeds in question should be automatically voided. The Master found that no evidence of fraud was submitted at trial. South Carolina law clearly provides that the burden of proof for fraud regarding deeds lies on the attacking party. The inapposite statute cited by Appellant only affords protection to purchasers in the event that the Court found the deeds were intended to defraud someone. The Appellant is not a purchaser and also presented no evidence of any kind as to the alleged fraud.

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision of the Master-in-Equity.

Respectfully Submitted,

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Dated: February 20, 2024

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CERTIFICATE OF COUNSEL

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

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