RECEIVED
Feb 26 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2023-001428
Charleston County Case No. 2017-CP-10-05358

INITIAL BRIEF OF RESPONDENT

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 ofCumsey 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 Pearline 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 Brown, Louis Mikell, Janie Mikell, Altamese Brown, LaTricia Brown-Mayfield, and Edward Littleton Brown, Melissa

Mikell (daughter of Nicolas Mikell), Tamisha 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 the ..... **Appellants**

Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

COUNTER-STATEMENT OF ISSUES ON APPEAL

I

Did the Master-in-Equity err by ruling for the Respondent before Appellants' attorney submitted a proposed order, and did Appellants' subsequent motion to alter or amend render any potential error cured or harmless?

II

Was the Master-in-Equity's finding that Respondent's filed deed of distribution had priority over Appellants' secret purported deed supported by any evidence?

III

Was the Master-in-Equity's finding that the decedent did not deliver the secret purported deed supported by any evidence?

IV

Are the Master-in-Equity's unappealed findings that the secret purported deed was a forgery and had a defective description now the law of the case?

COUNTER-STATEMENT OF THE CASE

This is an appeal from an order setting aside a 2007 deed that appeared, nearly a decade after its alleged execution, during the administration of the Estate of Estelle White. The Appellants are Richard Brown, Sr., and Sharon Y. Brown, a now-divorced couple who produced the deed in question (the "2007 Deed"), which conveyed to them ±22.3 acres on Wadmalaw Island (TMS numbers 217-00-00-017 & 217-00-00-137). (2007 Deed). The Respondent is Edward Mikell, individually and as Personal Representative of the Estate of Estelle White (Charleston County estate number 2014-ES-10-1344). Respondent is also the sole devisee of all of the real property of the Estate of Estelle White, which consists of ±92.34 acres on Wadmalaw Island (TMS numbers 217-00-00-017, 217-00-00-018, 217-00-00-042, & 217-00-00-137). (Will; DoD). The 2007 Deed purportedly conveys a portion of this property.

Estelle White's estate and the Browns' first lawsuit.

Estelle White died testate in Charleston County on January 25, 2014. Her will, dated September 13, 1978, devised the Roger Mikell Property to Respondent Edward Mikell, and also appointed him as Personal Representative. (1978 Will). Respondent was appointed Personal Representative on August 19, 2014.

On July 7, 2014, Defendants Roges Brown, Ralph Brown, and Appellant Richard Brown (the "Browns"), along with James Brown (now deceased – his heirs are Defendants) brought against "Estelle White (deceased)" and others an action to quiet title in the ±92.34 acres formerly owned by White, leaving the heirs of Estelle White as owners. (2014-CP-10-4236.S&C). This complaint also requested partition of the property. (2014-CP-10-4236.S&C). On April 17, 2015, the Circuit Court added

Respondent as a party to this suit. (04.17.2015.order). A hearing was held in this action on September 30, 2015, where the Circuit Court instructed the Browns to challenge Estelle White's will in Probate Court. (Tr. 16-18, 170). The Circuit Court then dismissed the Browns' lawsuit by order dated October 1, 2015. (10.01.2015.Ord).

The Browns never filed a challenge to Estelle White's will before the Probate Court by the statutory deadline.[1] (Tr. 18, 170-171). On November 19, 2015, Respondent, pursuant to White's will, executed to himself a deed of distribution for the ±92.34 acres formerly owned by Estelle White. (2015 Deed;Tr. 18). White's estate was closed on January 21, 2016. (AS&C 8;Tr 18).

The Browns' second lawsuit.

On May 5, 2017, the Browns filed a petition in White's estate to reopen the estate, quiet title on the ±92.34 acres formerly owned by Estelle White, and set aside Respondent's deed of distribution. (2014-ES-10-01344.Petition). This petition included an unrecorded version of the 2007 Deed that lacked an address for the grantees or a derivation clause. (Petition.Ex1). On August 31, 2017, the Browns and Respondent entered into a consent order dismissing this action in order for the Browns to re-file before the Circuit Court. (08.31.17.Consent Order). The Probate Court stayed any further proceedings pending adjudication by the Circuit Court. (Consent Order; 2021AS&C 8).

---

[1] Estelle White died on January 25, 2014, and her Last Will and Testament was admitted into probate on August 19, 2014. The South Carolina Probate Code provides that an action to challenge the validity of a will must "be commenced within eight months from informal probate or one year from the decedent's death, whichever is later." S.C. Code § 62-3-108(2)(c).

The Browns' third lawsuit.

On October 18, 2017, the Browns filed the action before this Court, Charleston County case number 2017-CP-10-5358. (2017 S&C). The Browns' complaint is not a model of clarity, but it claimed that a 1955 deed from Roger Mikell to Estelle White conveyed property to her as trustee of an unnamed trust. (S&C 6). It also requested title to Estelle White's ±92.34 acres be vested in White's intestate heirs, setting aside Respondent's deed of distribution and the 2007 Deed. (S&C 6-9). The October 18, 2017, complaint also requested the court partition White's real property. (S&C 6, 9).

On April 16, 2018, Appellants Richard Brown, Sr., and Sharon Y. Brown filed an answer and counterclaim seeking to "confirm" the interest allegedly conveyed by the 2007 Deed. (A&C). Prior to this filing, Appellant Richard Brown, Sr. was a plaintiff and Appellant Sharon Y. Brown was one of the case's unknown defendants. Because the Browns had neglected to include Respondent as a party to this action, the Circuit Court allowed Respondent to intervene by order field August 3, 2018. (Int.Order). Respondent answered the complaint and filed a third-party complaint against the Appellants concerning the validity of the 2007 deed. (2021AS&C 9).

On January 6, 2020, this case was referred to the Charleston County Master-in-Equity. (Ref.Ord; 2021AS&C 9). On May 17, 2021, the parties agreed to realign the caption by consent order and consider certain issues. (Con.Ord; 07.10.23.order 6-7).

On August 4, 2021, Respondent filed an Amended Summons and Complaint pursuant to this order, requesting the Master-in-Equity quiet title, determine Estelle

White's heirs, and to declare the 2007 Deed invalid or lower in priority to Respondent's deed of distribution. (2021AS&C).

On October 1, 2021, Appellants answered the Amended Summons and Complaint, and they also asserted a counterclaim requesting the Master-in-Equity declare the 2007 Deed valid and that it had priority over Respondent's deed of distribution, which Appellants also requested be set aside. (10.01.2021.Ans). Appellants' answer and counterclaim also appears to request the Master-in-Equity declare a trust exists over the property. (10.01.2021.Ans 4).

Defendant Roges Brown and Ralph Brown filed their answer to the Amended Summons and Complaint on May 2, 2022. (05.02.2022.Ans). In this answer, which is also not a model of clarity, the Browns reiterate their request that the Master-in-Equity declare the existence of an unnamed trust over the ±92.34 acres formerly owned by Estelle White, effectively voiding Estell White's will and Respondent's deed of distribution. However, this answer also argued the 2007 Deed was valid.[2] (05.02.2022.Ans 3-4).

By consent order dated August 29, 2022, Respondent's original counsel was relieved. (08.29.2022.ord). Because Respondent did not obtain replacement counsel within 30 days, this action was dismissed, but it was restored on March 13, 2023. (11.10.22.ord;03.13.2023.ord).

[2] This pleading omitted a request to partition the property.

The May 31, 2023, trial.

This matter was called for trial on May 31, 2023. (03.31.2023.tr). Attorneys for Appellants and Respondent were present, though the attorney for Defendants Roges Brown, Ralph Brown, and (presumably) the Estate of James Brown did not appear, despite having notice of the trial. (09.11.2023.ord 2; Tr. 10-11).

Appellant Richard Brown, Sr.

Appellant Richard Brown, Sr., testified first for the Appellants. (Tr. 27-80). Mr. Brown testified that he was present at Estelle White's home at the time the deed was executed. (Tr. 62-63, 70-72, 76, 78). Mr. Brown further testified that he and Appellant Sharon Y. Brown (his spouse at the time) were present at execution, along with witnesses Sylvia Velez and Ijuana Gadsden and the notary Rose Frasier. (Tr. 62-63, 70-72). Though Mr. Brown's interrogatory responses stated that Estelle White wanted him to file the 2007 Deed after she died, at trial he testified that she only wanted him to survey the property after she died. (Tr. 62-63, 68). Mr. Brown contradicted this assertion later in his testimony. (Tr. 72-73, 79).

Appellant Sharon Y. Brown

Appellant Sharon Y. Brown testified next for the Appellants. (Tr. 81-99). The former Mrs. Brown testified that Appellant Richard Brown, Sr., was not present when Estelle White executed the 2007 Deed and that only she, the two witnesses, and the notary were present. (Tr. 90, 96-97). The former Mrs. Brown further testified that she waited in her car outside while the two witnesses and notary executed the deed inside of White's home. (Tr. 96-97). She also testified that Estelle White instructed her to

not file the 2007 Deed until after she died, and that she did not consider herself owner of the property until Estelle White died. (Tr. 88, 95, 97-98).

Jeffrey Taylor

Jeffrey Taylor, the Respondent's expert witness, testified next (out of order). (Tr. 100-120). Respondent offered Taylor as an expert witness to determine whether or not the 2007 Deed and the accompanying affidavit were signed by Estelle White after Respondent's first expert, Mickey Dawson, died. (Tr. 98-99). Mr. Taylor received seven writing samples, two being the 2007 Deed and the accompanying affidavit. (Tr. Ex 1). Taylor opined that, after reviewing all writing samples he determined Estelle White "probably did not" sign the 2007 Deed and the accompanying affidavit.[3] (Tr. 105-109). Taylor testified that based on the line quality and baseline found in the signatures, the evidence points strongly toward the questioned and known signatures having not been written by the same individual. (Tr. 107, 105-111). Taylor further testified that the reason his determination fell short of the "virtually certain" degree of confidence was due to the quality of the photocopies submitted for examination and the lack of contemporaneous known writing for comparison purposes. (Tr. 105, 110-111).

Sylvia Velez

Sylvia Velez, a witness on the 2007 Deed, then testified for the Appellants. (Tr.121-130). Her testimony indicated she had never met Estelle White before June

[3] The prior expert had opined that he was "certain" Estelle White did not sign the 2007 Deed and its accompanying affidavit. (Tr. 110).

11, 2007. She further testified that she did not ask White for any photo identification on the date the deed was executed. (Tr. 126, 128).

Ijuana Gadsden

Ijuana Gadsden, a witness on the 2007 Deed, next testified for the Appellants. (Tr. 131-139). She testified that she had never met Estelle White before June 11, 2007. (Tr. 133, 138). She further testified that she did not ask White for any photo identification on the date the deed was executed. (Tr. 138).

Rose Frasier

Appellants' final witness was Rose Frasier, the notary on the 2007 Deed. (Tr. 140-154). She testified that she had never met Estelle White before June 11, 2007. (Tr. 141-142, 145-147). She further testified that she asked the Decedent to provide some sort of photo identification but could not recall what document was produced, if any, was produced by the Decedent. (Tr. 143-144, 147). Frasier also testified that Appellant Sharon Y. Brown was not present at signing, but she did remember Estelle White telling her to tell Brown to not file it until White died. (Tr. 144-146, 148).

Janie Mikell

Respondent presented two additional witnesses: Janie Mikell and Respondent Edward Mikell. Janie Mikell, sister of Edward Mikell, testified that she and her mother, Adell Mikell, lived in a house on Estelle White's property. (Tr. 155-156). Ms. Mikell, who was familiar with Estelle White's daily schedule, expressed skepticism that persons could have visited Estelle White without others knowing. (Tr. 157-159, 162). She further testified Estelle White allowed a member of her church to farm her property. (Tr. 160).

Respondent Edward Mikell

Respondent Edward Mikell testified that he had no actual knowledge of the 2007 Deed at the time he filed his deed of distribution on November 18, 2015, and Estelle White never told him of a deed. (Tr. 171). Mikell was "surprise[d]" the Appellants claimed the 2007 Deed was executed during the morning, as Estelle White's usual schedule would not have accommodated such a visit. (Tr. 174). He also testified Appellants' visits with Estelle White were exceedingly rare, and the only visit he could recall led to a dispute between him and Richard Brown, Sr. (Tr. 173, 188).

Conclusion of trial and post-trial motions.

After the presentation of evidence, the Master-in-Equity noted he had additional questions he needed to answer. His first question was whether the 2007 Deed was prepared by an attorney. (Tr. 224). His second question was whether the Appellants' divorce listed the Roger Mikell Property as an asset. (Tr. 224). His third question was whether the 2007 Deed was delivered under South Carolina law. (Tr. 224-225). His fourth question was whether Appellants' claims were timely. (Tr. 225-227).

The Master-in-Equity requested proposed orders from the parties within 30 days. (Tr. 235). Respondent timely provided his proposed order, but inadvertently neglected to copy Appellants. On June 29, 2023, Appellants requested an additional two weeks to prepare an order. (06.29.2023.email). The Master-in-Equity did not respond to this request, and he issued his order disposing of this matter on July 10, 2023. (07.10.2023.order).

On July 20, 2023, Appellants filed a motion to alter or amend under Rule 59, SCRCP, and for relief from judgment under Rule 60, SCRCP. (07.20.2023.motions). These motions referenced Appellants' proposed order in this matter, which they had emailed to the Master-in-Equity on July 13, 2023. (07.20.2023.motions; proposed order). The Master-in-Equity denied this motion by order dated August 15, 2023. (08.15.2023.order). This appeal followed.

STANDARD OF REVIEW

While an action to quiet title is usually one in equity, the main purpose of the complaint determines the character of the action. *Clark v. Hargrave*, 323 S.C. 84, 473 S.E.2d 474 (Ct.App. 1996). When the dispositive question in the case concerns the determination of title to real property, it is an action at law. *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988); *Cook v. Eller*, 298 S.C. 395, 380 S.E.2d 853 (Ct.App. 1989). "An action to set aside a deed for lack of delivery is an action at law." *Donnan v. Mariner*, 339 S.C. 621, 625, 529 S.E.2d 754 (Ct. App. 2000). Whether a deed has been delivered is a question of fact. *E.g., Godfrey v. Godfrey*, 182 S.C. 117, 188 S.E. 653 (1936); *Patterson v. Causey*, 119 S.C. 12, 111 S.E. 725 (1922) "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

***

When reviewing decisions to grant or deny motions under Rule 60, SCRCP, appellate courts use an abuse of discretion standard. *See Ex Parte Carter*, 422 S.C. 623, 631, 813 S.E.2d 686, 690 (2018). An abuse of discretion occurs when the ruling is controlled by an error of law, or when based on factual conclusions, is without evidentiary support. *McKinney v. Pedery*, 413 S.C. 475, 482, 776 S.E.2d 566, 570 (2015).

ARGUMENT

At the May 31, 2023, trial of this matter, the Master-in-Equity was presented with a substantial amount of evidence, both testimonial and documentary, regarding the delivery, or non-delivery, of the 2007 Deed to Appellants. As trier of fact, he was able to assess credibility and assign evidence its proper weight. He found that the 2007 Deed was not legally delivered to the Appellants. Because the record contains evidence supporting this finding, the Master-in-Equity must be affirmed. Further, the record contains evidence supporting the Master-in-Equity's finding that Respondent's deed of distribution was filed before the 2007 Deed, meaning even if the 2007 Deed had been delivered, it did not have priority under South Carolina's "race notice" statute. Again, the Master-in-Equity must be affirmed. Finally, the Appellants have failed to appeal the Master-in-Equity's dispositive findings of a fatally deficient description and forged signatures, which are now the law of the case. Again, the Master-in-Equity must be affirmed. Any remaining errors asserted by Appellants are unpreserved or harmless, and, thus, the Master-in-Equity must be affirmed.

I. The Appellants' post-trial motions cured, or rendered harmless, any potential error regarding proposed orders.

The Appellants contend that Master-in-Equity should be reversed because Respondent did not copy them with his proposed order disposing of this case. (App. Br. 9-11). Appellants' post-trial motions (post-motions) cited no rule or law supporting this argument, making its preservation unlikely. *See S.C. Dep't of Transp. v. First*

Carolina Corp. of S.C., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (issue must be, *inter alia*, raised with sufficient specificity to trial court).

Assuming, *arguendo*, this argument was preserved, it is possible that Rule 5(b)(3), SCRCP, could have required Respondent to copy Appellants on his proposed order. The fact this alleged deficiency was not acknowledged in the Master-in-Equity's August 15, 2023, order (08.15.23.order) indicates that the Master-in-Equity excused Respondent from this requirement. *See* Rule 5(a), SCRCP (excusing service of papers for "other reasons"). To the extent that Respondent was noncompliant with Rule 5, it was only due to inadvertence; Appellants have presented no evidence of Respondent's bad faith or ill motive, because there is none.

Most importantly, Respondent's alleged noncompliance with Rule 5, SCRCP, was harmless. Appellants were able to identify this alleged deficiency in time to file their post-trial motions, which alerted the Master-in-Equity and gave him the opportunity to consider the arguments of Appellants' proposed order. The fact the Master-in-Equity was not persuaded by Appellants' arguments does not constitute prejudice. To the extent an error occurred, the Master-in-Equity should be affirmed under the harmless error rule. "[T]he harmless error rule embodies a commonsense principle our appellate courts have long recognized—'whatever doesn't make any difference, doesn't matter.'" *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (quoting *State v. Jolly*, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991)); *see also* Rule 61, SCRCP (harmless error to be disregarded).

Lacking any evidence of harm or prejudice, Appellants instead present this Court a red herring – by complaining of notice in the underlying Estate of Estelle White. Appellants' notice argument is meritless. The Master-in-Equity found the Appellants have received proper notice in this case. (07.10.23.order 2). The Appellants do not contest this finding. Whether other heirs of Estelle White (or other interested parties) have received notice in the underlying estate has no bearing whatsoever on whether the Appellants are bound by the Master-in-Equity's orders. *See* S.C. Code § 62-3-106. Assuming, *arguendo*, that Appellants did not receive notice of the opening of the 2014 estate, they were certainly given notice during the course of the three vexatious lawsuits over this property. (2014-CP-10-4236.Compl.; 2014-ES-10-1344.Pet.; 2017-CP-10-05358.Compl.; B.Baker.Aff). *See Stearns Bank Nat'l Ass'n v. Glenwood Fals, Ltd. P'ship*, 373 S.C. 331, 340-41, 64 S.E.2d 793, 798 (Ct.App. 2007) (voluntary appearance). Any error regarding notice would be harmless, and the Master-in-Equity must be affirmed. *See Reyes*, *supra*.

II. The Master-in-Equity's finding that Respondent's filed deed of distribution had priority over the 2007 Deed is supported by evidence and should be affirmed.

The Master-in-Equity's order correctly noted that South Carolina is a "race-notice" jurisdiction. (07.10.23.Order 10). Under South Carolina's recording act, S.C. Code § 30-7-10, a subsequent purchaser is protected from adverse claims, provided the seller has recorded his instrument before an adverse claimant. *See, e.g., Leasing Enterprises, Inc. v. Livingston*, 294 S.C. 204, 363 S.E.2d 410 (Ct.App. 1987); *MI Co. v. McLean*, 325 S.C. 616, 482 S.E.2d 597 (Ct. App. 1997). Applying this statute, the

Master-in-Equity found that Respondent filed his deed of distribution before the 2007 Deed, and without actual or constructive notice of that deed. (07.10.23.Order 11).

The Appellants do not contest the application of the recording act, or the finding of fact that Respondent filed his deed first. (App. Br. 11-14). The fact that Respondent's deed of distribution was filed first is apparent from the face of the competing deeds. (DoD.rec.page; 2007 Deed.rec.page). Thus, this finding is supported by evidence and must be affirmed. Instead of addressing these rulings, the Appellants again fall back on the notice argument they present in Part I of their brief. This argument is meritless, as set forth above.

III. The Master-in-Equity's dispositive finding that the decedent did not deliver the Appellants' secret deed is supported by evidence and should be affirmed.

According to this Court:

> 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 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."

Donnan v. Mariner, 339 S.C. 621, 627, 529 S.E.2d 754 (Ct. App. 2000) (footnotes and citations removed); *see also Burke v. Burke*, 141 S.C. 1, 139 S.E. 209 (1927). Appellants do not appear to dispute the applicable law, only the Master-in-Equity's finding that no delivery occurred. (App. Br. 14-17; 07.10.23.order 10-13).

The Master-in-Equity's finding that Estelle White never intended the 2007

Deed to immediately vest title in the Appellants is supported by evidence and must be affirmed. The testimony reflects that ownership of the property did not vest until the death of Estelle White. (Tr. 62-63, 67, 72-73, 79, 88, 95, 97-98). Estelle White maintained control over her property by instructing Appellants to not record the deed before she died. (Tr. 62-63, 67, 72-73, 79). *See Donnan*, *supra*. (no delivery when grantor instructed deed to be recorded after his death). White even allowed others to farm her land. (Tr. 160). Most significantly, the Appellants' sworn financial statements from their 2011 divorce do not include the property of the 2007 Deed, and the Appellants' divorce decree does not mention it, either. (Fin.Declarations; Am.Fin.Order 2-3).

IV. The Master-in-Equity's dispositive findings that the 2007 Deed's description was deficient and that Estelle White's signature was forged were not appealed and are thus the law of the case.

The final paragraph of the Master-in-Equity's July 10, 2023, order finds that the 2007 Deed's description was inadequate and Estelle White's signature was forged on the 2007 Deed and its accompanying tax affidavit. (07.10.23.Order 13). Appellants do not address these findings in their Issues on Appeal, or in their brief – these rulings are therefore the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal.").

Had these issues been preserved for appeal, the Master-in-Equity's findings were supported by evidence in the record and would thus be affirmed. Regarding the description, the Master-in-Equity found: "The metes and bounds description does not

include the general location of the tract or lot with sufficient accuracy such that the tract can be readily located on the ground." (07.10.23.order 13). The premises/description is a necessary element of a deed in South Carolina. *See* S.C. Code § 27-7-10; *Craig v. Pinson*, 25 S.C.L. 272, Chev. 272 (1840). An instrument affecting real property must include a "sufficient description of the property intended to be affected." *Navassa Guano Co. v. Richardson*, 26 S.C. 401, 2 S.E. 307, 310 (1887). The 2007 Deed's description contains blanks for the names of adjoining landowners, making the description meaningless.[4] (2007 Deed). Though the 2007 Deed does mention acreage, such a recitation is of little to no importance. *See Phillips v. Dubose*, 233 S.C. 224, 74 S.E.2d 56 (1953).

Regarding the forgery of Estelle White's signature, the Master-in-Equity found: "The testimony concerning the execution of the June 11, 2007 Deed was inconsistent." (07.10.23.order 13). He also agreed with Respondent's expert Jeffrey Taylor that Estelle White "probably did not" sign the 2007 Deed and its accompanying affidavit. (07.10.23.order 13). The inconsistences in the witnesses' testimony speak for themselves, and Appellants did not provide an expert witness to controvert Taylor's opinion. Further, the grantees' address and a derivation page were added at some point after May 5, 2017, (when an unfiled version of the 2007 Deed was filed with the Probate Court). (2014-ES-10-1344.petition.Ex1; 2007 Deed;Tr. 59-62, 66, 93, 152). These modifications to the deed, which took place long after Estelle White's

[4] The deed's recording affidavit (2007 Deed Aff) also contains no description of the property being conveyed, which violates the spirit, if not the letter, of the law and is potentially a criminal act. *See* S.C. Code § 12-24-70.

death, were likely performed to file it with the Charleston Register of Deeds. *See* S.C. Code § 30-5-35(b) (recorder cannot file a warranty deed that lacks a derivation clause).

V. The Record on Appeal reflects additional sustaining grounds to affirm.

This Court is empowered to "affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR; *see also* Rule 208(b)(2), SCACR (Respondent may include additional sustaining grounds in brief.). Accordingly, Respondent would ask this Court to consider the following arguments:

A. The 2007 Deed was the product of the unauthorized practice of law.

The 2007 Deed was supposedly prepared by a "consultant" named the TMMC Group, LLC. (Tr. 34-37, 85; Tr. Ex.1). Melonie Stewart, the "CEO" of this limited liability company, is not a licensed South Carolina attorney,[5] nor does the Appellants' agreement with this organization indicate it employs attorneys. (Tr. 96, Ex1). Deed preparation is the practice of law. *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987). Unauthorized practice of law is a crime. S.C. Code § 40-5-310. Equity follows the law. *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct.App.2007). Appellants should be foreclosed from relief under the doctrine of unclean hands. *See Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) ("He who comes into equity must come with clean hands. It is far more than a

[5] https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm

mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."); *but see Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (2011) (unauthorized practice of law by *lender* created unclean hands defense for loans closed after August 8, 2011).

B. Appellants' claims are barred by the "double dismissal rule" and res judicata and/or collateral estoppel.

This appeal represents the third time these claims have been brought before a court for adjudication. Rule 41(a), SCRCP, provides that a notice of dismissal filed in an action after it has been dismissed once before serves as a dismissal on the merits (*i.e.*, with prejudice). Rule 41(a), SCRCP. This action was once dismissed on October 1, 2015, by the Circuit Court. (10.01.2015.Ord). It was then subsequently dismissed by a consent order on August 31, 2017.[6] (08.31.17.Consent Order). While a consent order is not technically a notice of dismissal under Rule 41(a), federal courts are willing to consider an order issued without argument as equivalent to such a notice. *See Gioia v. Blue Cross Hosp. Serv.*, 641 F.2d 540 (8th Cir. 1981) (a "so ordered" dismissal functions as a notice of dismissal). Thus, Appellant Richard Brown, Sr.'s claims were dismissed with prejudice on August 31, 2017, and he cannot pursue the action before this Court. Appellant Sharon Y. Brown, as a party in privity with her ex-husband, is bound by this dismissal. *See Manning v. S.C. Dept. Highways and*

[6] This order states it dismisses the Browns' action "with prejudice". (08.31.17.Consent Order 2).

Public Safety, 914 F.2d 44 (4th Cir. 1990) (dismissal with prejudice extends to privies).

CONCLUSION

The Master-in-Equity should be affirmed.

Dated: 02/26/2024

/s/ Jason Scott Luck
Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Respondent