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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

The Honorable Mikell Scarborough
Trial Court Case No. 2020CP1004714

Case No. 2023-001200

William Gorham and Rosalee Gregg Smalls, Plaintiffs,

Alan Gregg, Victoria Manigault, Mary Frances Gregg Steed, Dorothy Gregg Horlback, 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 Does, 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, Jessee "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.

APPELLANT'S FINAL BRIEF

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- II. The Lower Court erred in ruling that Respondent had a Partition Counterclaim because Respondent did not allege or comply with the Clementa C. Pinckney Uniform Partition of Heirs Property Act.**

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STATEMENT OF ISSUES ON APPEAL

- I. **Did the Lower Court err in ruling that the three family Deeds transferring the heirs' shares to Respondent were valid in that the three family Deeds intentionally omitted Agnes A. Gregg Gorham (Appellant's mother) as one of the heirs to the Property?**

- II. **Did the Lower Court err in ruling that Respondent had a Partition Counterclaim because Respondent did not allege or comply with the Clementa C. Pinckney Uniform Partition of Heirs Property Act?**

STATEMENT OF THE CASE

On October 27, 2020, Appellant William Gorham filed a Complaint, and subsequently an Amended Complaint wherein Appellant sought to establish his ownership of Lot 1, TMS#560-00-00-051 a/k/a 1437 Venning Road, Mount Pleasant, SC by way of an Adverse Possession claim. Appellant also alleged a Quiet Title claim with regard to heirs' property, namely: Lots 1- TMS# 560-00-00-051, Lot 2- TMS# 560-00-00-052 and Lot 3- TMS# 560-00-00-15 (hereinafter "Property). Appellant attached Exhibits in support of his two claims. (Complaint)(Amended Complaint) (Exhibits A, B, C, D, E) (R. pp. 30-43, R. pp. 205-222).

With regard to the Quiet Title claim, Appellant included the Harriet Gregg Family Tree. (Exhibit B of Amended Complaint) (R. pp. 208-209). Appellant is the son of Agnes A. Gregg. (Exhibit B of Amended Complaint) (R. pp. 208-209).

On March 25, 2021, Respondent Robert Leroy Gregg filed an Answer and Counterclaim to the Amended Complaint. The Counterclaim set forth Respondent's version of the family tree and percentage of ownership of the heirs, with Respondent alleging that he is now the sole owner of Lots 1, 2 and 3 by way of the three family Deeds. The Counterclaim also requested that Appellant be forced to vacate Lot 1 and that Respondent be permitted to purchase Appellant's share of the property. (Answer/Counterclaim to Amended Complaint) (R. pp. 44-52).

On April 21, 2021, Appellant filed a Reply to Defendant's Counterclaim

denying most of the Counterclaim's allegations. (Reply) (R. pp. 53-55).

On January 19, 2022, Appellant filed a Motion to Appoint a Guardian Ad Litem (Motion for GAL) (R. pp. 64-66) and on January 20, 2022, the Court issued an Order appointing Kelley Wood, Esq. as the Guardian Ad Litem (Order for GAL) (R. pp. 4-6).

On February 3, 2022, the Guardian Ad Litem filed an Answer to the Amended Complaint, Consent to Reference, and Consent for Video/Teleconference Hearing for John Doe and Jane Doe. (GAL Answer) (R. pp. 56-57).

On May 31, 2022, Appellant filed an Affidavit of Publication. (Aff. Of Pub.) (R. pp. 58-59).

On September 7, 2022, the Court filed an Order of Default for against Alan Gregg, Victoria Manigault, Mary Frances Gregg Steed, Dorothy Gregg Horlback, Franklin Gregg, Michael Gregg, Agnes Gregg (daughter of Jesse Gregg, deceased), Joanne Gregg (daughter of Jesse Gregg, deceased) and Murray Chavis. (Order of Default) (R. pp. 7-10).

On September 16, 2022, a Consent Order of Reference to the Charleston County Master-In-Equity was filed. (Consent Order) (R. pp. 11-13).

On February 14, 2023, the GAL filed an Affidavit of Attorney for Unknown Defendants in the Military Service and Guardian Ad Litem for Unknown Defendants who are Minors or under Legal Disability. (GAL Affid.) (R. pp. 60-62).

On February 21, 2023, a final hearing was held before the Hon. Mikell

Scarborough. (Transcript) (R. pp. 67-173) and on July 26, 2023, the Court filed a Quiet Title Order with regard to its' decisions from the final hearing. In the Order, the Court decided the Family Tree of Harriet Gregg and the percentage of ownership of each of her heirs based on the three family Deeds. The Court also ruled against the Appellant with regard to his Adverse Possession claim. Finally, the Court ordered that an appraisal of Lots 1, 2 and 3 be obtained so that the Court could determine the fair market value of Appellant's ownership interest in order for Respondent to buy out Appellant's interest in the property as Respondent had requested in his Counterclaim. (Quiet Title Order) (R. pp. 14-29) (Answer/Counterclaim to Amended Complaint) (R. pp. 44-52).

On July 27, 2023, the Appellant filed a Notice of Appeal (Notice) (R. p. 63) and on September 8, 2023, Respondent filed his Letter of Exhibits Introduced at Final Hearing on February 21, 2023 with Exhibits. (Letter and Exhibits) (R. pp. 226-299).

STANDARD OF REVIEW

Although actions to quiet title are usually in equity, "when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat the plaintiff's action, the issue of title is legal". Hilton Head Plantation Prop. Owners' Ass'n v. Donald, 375 S.c. 220, 223, 651 S.E.2d 614, 616 (Ct.App. 2007) (citing Mountain Lake Colony v. McJunkin, 308 S.c. 202, 204, 417 S.E.2d 578, 579 (1992)). In a case tried by a judge without jury, the factual findings of the judge will not be reversed on appeal unless found to be

without evidence that reasonably supports the judge's findings. Id.

ARGUMENT

I. The Lower Court erred in ruling that the three family Deeds transferring the heirs' shares to Respondent were valid in that the three family Deeds intentionally omitted Agnes A. Gregg Gorham (Appellant's mother) as one of the heirs to the Property.

With regard to Appellant's Adverse Possession claim, Appellant accepts the Court's ruling against Appellant in its' Quiet Title Order filed on July 26, 2023 and the Appellant will not be appealing the Court's decision with regard to this adverse possession claim.

With regard to Appellant's quiet title claim, Appellant accepts the Court's ruling in its' Quiet Title Order regarding the Family Tree of Harriet Gregg in that:

1. "Harriet Gregg died intestate on or about December 18, 1958, leaving as her sole heirs-at-law her three children, Leroy Gregg, Henrietta Fishburn and Agnes Gregg Washington, and the two children of her predeceased son, Jesse Gregg, to wit: Fanny Murray and Thelma Murray.
2. Agnes Gregg Washington died intestate without a surviving spouse or issue on or about March 12, 1963, leaving as her sole heirs at law Leroy Gregg, Henrietta Fishburn and the children of Jesse Gregg, to wit: Fanny Murray and Thelma Murray.
3. Leroy Gregg died intestate on or about July 14, 1976, leaving as his sole heirs at law his wife, Louise Gregg, eight children, to wit: Leroy Gregg, Jr., Jesse E. Gregg, Robert Gregg, Allen Gregg a/k/a Alan Gregg, Rosalee Gregg Smalls, Victoria Manigault, Mary Frances Gregg Steed and Dorothy Gregg Horlback a/k/a Dorothy Gregg Horlbeck, and the children of his predeceased daughter **Agnes A. Gregg Gorham** (bold emphasized by Appellant), to wit: the Appellant William Gorham, Michael Gregg, and Franklin Gregg a/k/a Frankie James Gregg."

(Quiet Title Order) (R. pp. 14-29).

However, in the July 26, 2023 Quiet Title Order, the Court awarded Appellant only 00.83% ownership interest in Lots 1, 2 and 3. This decision was based upon the Court ruling that the three family Deeds, namely: Deed dated July 22, 1976 and recorded in Book S115, page 325; Deed dated August 25, 1976 and recorded in Book T115, Page 1; and Deed dated October 26, 1976 and recorded in Book S115, Page 326 in the Charleston County Register of Deeds were valid conveyances. (Quiet Title Order) (R. pp. 14-29).

By taking the Deeds into consideration, the percentage of ownership given to Appellant was less than the percentage of ownership he would have received if the Court had ruled that quiet title would be decided based upon intestate succession.

Appellant had argued at the final hearing that these Deeds were invalid because all three Deeds intentionally omitted Agnes A. Gregg Gorham as a child of Leroy Gregg. Leroy Gregg's children, Henrietta G. Fishburn, Leroy Gregg, Jr., Jesse E. Gregg, Victoria G. Manigault, Roselee Gregg (Deed Book S115, Page 325); Louise Gregg, Mary Frances Steed, Dorothy Horlbeck, Fanny Murray and Thelma Myers (Deed Book T115, Page 1); and Allen Gregg (Deed Book S115, Page 326) specifically state in the Deeds that they are the sole heirs of Leroy Gregg with Agnes A. Gregg Gorham's siblings swearing under oath that the facts set forth in each Deed were true and accurate. (Exhibits 6, 7, 8 to Defendant's Letter with List of Exhibits) (R. pp. 236-247) and (Transcript) (R. pp. 67- 173) and (Quiet Title Order) (R. pp. 14-29).

A deed conveyance that is deceptive or fraudulent shall be utterly void and of no effect. S.C. 27-23-20, *et seq.*. In this matter, the Court found that Agnes A. Gregg Gorham was an heir of Leroy Gregg and thus, had an ownership interest in the property. (Quiet Title Order) (R. pp. 14-29). Due to the fact that the Deeds purposely omitted Agnes A. Gregg Gorham, the Deeds should have been declared void.

Instead, the laws governing intestate succession should have been used when the Court was calculating the percentage of ownership interests of the heirs to the property. See S.C. Code 62-2-101, 62-2-102 and 62-2-103. Prior to the final hearing, Appellant had submitted a Percentage of Ownership Calculation Sheet as requested by the Court. (Calculation Sheet) (R. pp. 223-225) based on Intestate Succession. Appellant would have received 2.08% ownership interest in the property had the Court found that the Deeds were void. (Appellant's Calculation Sheet) (R. pp. 223-225).

I. The Lower Court erred in ruling that Respondent had a Partition Counterclaim in its' Answer because Respondent did not allege or comply with the Clementa C. Pinckney Uniform Partition of Heirs Property Act.

In Respondent's Answer and Counterclaim to Amended Complaint filed on March 25, 2021, Respondent requested an Order which would 1) require that Appellant William Gorham vacate Lot 1; 2) that the Sheriff of Charleston County or a duly authorized constable be authorized to remove Appellant from the property if Appellant did not vacate the property and 3) that Respondent be authorized to pay Appellant his ownership interest in the properties, with the

property being deeded to Respondent. (Answer/Counterclaim to Amended Complaint) (R. 44-52).

At the final hearing on July 26, 2023, the Court permitted Respondent to proceed on Respondent's Counterclaim as though it was a Partition Counterclaim in order to grant Respondent's requests as set forth above. (Quiet Title Order) (R. pp. 14-29) and (Transcript) (R. pp. 67-173). Appellant argued that Respondent had not requested a Partition pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act and that Respondent had not complied with the requirements of the Act. (Quiet Title Order) (R. pp. 14-29) and (Transcript) (R. pp. 67-173).

The Clementa C. Pinckney Uniform Partition of Heirs' Property Act requires that certain statutory elements be followed, including the Right of First Refusal of a co-owner of the property. See S.C. Code 15-61-310, *et seq.*, S.C. Code 15-61-370(A). As it was undisputed that Appellant was a co-owner of the property, this requirement was never presented to Appellant as an option during the entire pendency of the lawsuit.

CONCLUSION

Appellant respectfully request that this Court reverse the Quiet Title Order filed on July 26, 2023 and remand this matter to the lower court because 1) the family Deeds were void under the cited statute because the family heirs intentionally omitted Agnes A. Gregg Gorham from the Deed conveyances and 2) that Respondent did not allege or comply with the Clementa C. Pinckney Uniform Partition of Heirs' Property Act.

Dated: February 28, 2024

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

CERTIFICATE OF COUNSEL

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

Dated: February 28, 2024

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