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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Honorable George M. McFaddin, Jr.,
Circuit Court Judge

Appellate Case No. 2023-001043

Megan Scott, ...Appellant,

v.

Estate of Jonathan Bruner, ...Respondent.

BRIEF OF RESPONDENT

CORVEY LAW FIRM, LLC
Edward R. "Ted" Corvey, III
Kyra A. McMillan
815 Savannah Highway, Suite 201
Charleston, South Carolina, 29405
P: 843-625-8600
F: 843-625-8601
Attorneys for Respondent

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STATEMENT OF THE FACTS

On May 5, 2022, Jonathan Bruner (hereinafter "decedent") unexpectedly passed away. The decedent died intestate and his closest surviving heirs were his parents, Gary and Ellen Bruner (hereinafter "Respondents"). After his untimely passing, Respondents, who reside in Nevada, travelled to Charleston to tend to their son's remaining affairs, including to obtain his dog, Evie. (R. p. 17).

Evie was purchased by decedent and his ex-wife, Clara Bruner, (hereinafter ex-wife) on or about May 30, 2021 for $1,500.00. Evie is golden doodle breed with a red coat and, at the time of Decedent's passing was just over a year old and weighed approximately seventy (70) pounds. (R. pp. 17-19).

Decedent and his ex-wife were amicably and legally divorced on April 4, 2022. (R. p. 40-42). Throughout their divorce proceedings ex-wife and Decedent still "co-parented" Evie and their second dog, although Evie was to remain in Decedent's primary physical custody following the divorce. (R.p. 17). At the time of Decedent's passing, Evie's microchip information still contained ex-wife as the registered owner and first point of contact if Evie were to go missing or otherwise be found by law enforcement, animal control, or any veterinarian's office. (R. p. 17).

In the last few months of Decedent's life and during the period of time that the divorce proceedings were being finalized, he began dating a new woman named Megan Scott (hereinafter "Appellant"). Upon information and belief, Decedent and Appellant began cohabitating together with Evie in the last month or two prior to his passing. (R. pp. 17-18). Knowing this, when Respondents arrived in Charleston to tend to Decedent's affairs, they reached out to Appellant to collect the remaining belongings in the apartment they were sharing, as well as Evie. However, after numerous efforts to retrieve Evie, Appellant refused to turn her over to Respondents. (R. p. 18). Resultingly, Respondents filed a Claim and Delivery action in Magistrate's Court which has ultimately resulted in the present appeal.

STATEMENT OF THE CASE

On May 18, 2022, the Estate of Jonathan Bruner filed an action to recover personal property in Charleston County Magistrate's Court. Specifically, the Estate of Jonathan Bruner sought to recover the Decedent's one-year old Golden Doodle, Evie, from his girlfriend, the Appellant. Appellant was served with the Petition for Claim and Delivery and Order of Seizure for Immediate Delivery of property on May 21, 2022. As Appellant did not have possession of the dog at time of service, seizure was not accomplished. (R. p. 12).

On May 25, 2022, Appellant filed an answer and affidavit and alternatively requested a post-seizure hearing. Appellant also posted a bond of $3,000.00 at that time pursuant to §22-3-1440 S.C. Code of Laws Ann. (R. p. 12). At the hearing, the Court awarded possession of Evie to Appellant, pending trial or settlement negotiations. (R. p. 12).

A trial was held in Charleston County Magistrate's Court on July 16, 2022. Prior to the start of the trial, there was a pre-trial conference held with counsel in chambers. The Court held that it had jurisdiction to hear the case and found that all interested parties or potentially interested

parties were present for the proceedings. (R. p. 12). The Court also found at that time that the decedent's Decree of Divorce from ex-wife stated that there was no further marital property to divide at the time of divorce, which extinguished any rights that ex-wife had. (R. p. 12).

At trial, both parties presented evidence and testimony. Ultimately, the Court granted the Respondent's Claim for Delivery of Evie and ordered that Appellant relinquish custody of Evie within three days of the Order, which was issued on July 6, 2022. (R. p. 13).

On July 7, 2022, in response to the Magistrate's Court Order granting possession of Evie to Respondents, Appellant filed a Motion to Amend Judgement or in the Alternative Motion of Reconsideration and Motion to Stay Judgement. (R. pp. 68-72). Respondents then filed a Memorandum in Opposition to Defendant's Motion to Amend Judgement or in the Alternative for Reconsideration on July 19, 2022. (R. pp. 74-82). On July 20, 2023, Appellant filed a Memorandum in Support of Defendant's Motion to Alter or Amend or in the Alternative Reconsider and Reply to Plaintiff's Memorandum in Opposition. (R. pp. 83-88).

Appellant's motion for reconsideration was heard by the Magistrate Court on July 20, 2022. The Magistrate Court upheld its decision to grant possession of Evie to Respondents and issued further Findings of Fact in an Amended Order. (R. pp. 89-91). The Court further ordered that possession of the property would be stayed pending the appeal in the matter. (R. p. 13).

On August 22, 2022, a Notice of Appeal was filed by the Appellant. (R. pp. 92-93). For several months after the filing of the Initial Notice of Appeal, the original record had not been transmitted to the Clerk of Court nor had a motion to extend the time to prepare the certified record been filed. On December 12, 2022, Respondents filed a Motion to Dismiss this appeal pursuant to Rule 41 SCRCP. (R. pp. 94-98). At the time of the filing of the motion, the Appellant had not sought a Writ of Mandamus to compel the Magistrate to certify and file the original record with

the Circuit Court. Subsequently, on January 27, 2023, the Appellant filed a petition for Writ of Mandamus and Request for Sua Sponte Relief. (R. pp. 102-104). Upon receipt of the Writ of Mandamus, the Magistrate took the appropriate steps to certify the original record, which was filed with the Circuit Court on February 7, 2023. (R. pp. 12-14).

The Motion to Dismiss was heard on February 9, 2023. Given that at that point, the original record was certified and submitted to the Circuit Court by the Magistrate, the motion was denied. The Court then attempted to move forward with hearing the Appeal at that time. While counsel for both parties conceded that they were unaware that the Court intended to hear the Appeal that day, Counsel for Respondents advised the Court that they were prepared to move forward. However, Counsel for Appellant requested a continuance to further prepare, and the Court continued the hearing to the next term of Court.

Subsequently, Appellant obtained new counsel. Her current attorney of record filed a Notice of Appearance in this matter on March 31, 2023. Also, on March 31, 2023, counsel for Appellant filed Appellant's Brief in Support of Appeal. (R. pp. 121-129).

The final hearing on the Appeal was held on April 5, 2023. At the start of the hearing, Counsel for Respondents objected to the submission of the brief filed by Appellant on March 31, 2023. Counsel for Respondents detailed that this was submitted within days of the hearing, that they did not have appropriate time to respond and that further they did not believe the submission was appropriate given that the brief contained arguments and raised issues outside the scope of the Initial Notice of Appeal. Counsel for Respondents further requested that, if the Court was inclined to consider the brief, Respondents would like an opportunity to submit a brief in response. Accordingly, Respondents were granted ten days from the date of the hearing to submit the same. (R. p. 251, lines 19-25, p. 254, lines 12-13, p. 264, lines 10-17).

On April 14, 2023, Respondents submitted their Memorandum in Opposition to Appeal to the Circuit Court. (R. pp. 130-156). On that same day, Counsel for Appellant requested that they be allowed to submit a short reply in response to Respondents' Brief. That request was granted and Appellant submitted Appellant's Reply to Respondent's Memorandum in Opposition to Appeal on April 20, 2023. (R. pp. 157-177).

The ruling in the case was issued on June 12, 2023 and was based upon the entirety of the submissions presented to the Court as they pertained to the appeal. The Final Order, confirming that possession of the subject dog of interest was granted to Respondents, was filed on June 27, 2023. (*See* Order on Appeal from Final Order of Magistrate, R. pp. 180-186).

Appellant's Emergency Petition for Order of Supersedeas was also filed on June 27, 2023. (R. pp. 189-196). On July 3, 2023, Respondents filed their Memorandum in Opposition to the petition. (R. pp. 199-203). Also, on July 3, 2023, Appellant filed a reply to the memorandum. (R. pp. 204-206). The Order denying Appellant's Petition for Emergency Order of Supersedeas was issued and filed on July 5, 2023. (R. p. 228). This appeal follows.

STANDARD OF REVIEW

"The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by Section 18–7–170 of the South Carolina Code of Laws…upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact." *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (1984). The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the

judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law. *Id.* When there is evidence in the record which supports the Circuit Judge's decision, the Court of Appeals is bound to uphold it. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp*., 280 S.C. 232, 234, 312 S.E.2d 20, 21 (1984).

ARGUMENT

I. THE LOWER COURT CORRECTLY RULED THAT THE EVIDENCE, INCLUDING THE " NEW CLIENT FORM" FILLED OUT BY DECEDENT FOR HIS VETERINARY OFFICE, DID NOT PROVE THAT APPELLANT GIFTED OR OTHERWISE TRANSFERED CO-OWNERSHIP OF THE SUBJECT DOG OF INTEREST TO APPELLANT DURING HIS LIFETIME.

Appellant argues that the Lower Court erred in not finding that Decedent gifted or otherwise transferred co-ownership of the subject dog of interest, Evie, to the Appellant during his lifetime. Appellant bases this contention solely on a "New Client Form" filled out for the West Ashley Veterinary Clinic on which Decedent listed Appellant as an additional point of contact. (R. p. 36).

It is of note that Appellant did not raise the issues as they relate to the "New Client Form" in her original Notice of Intent to Appeal the Magistrate's Order. (R. p. 92-93). Pursuant to §18-3-30 of the South Carolina Code of Laws Annotated, Appellant must "file the notice of appeal…. stating the grounds upon which the appeal is founded." Respondents assert that, as Appellant did not raise this issue at the time the Notice of Appeal was filed, any arguments pertaining to this paperwork being evidence of Appellant's ownership were and remain improperly before the Court.

Notwithstanding, the paperwork which Appellant attempts to cite as evidence of ownership does not have the effect Appellant maintains it does. It is not in question that, at the time that the standard "New Client Form" was completed, the Decedent and Appellant were residing together with the subject dog of interest. However, it is baseless to assert that when Decedent listed Appellant

as a point of contact in the only space on the form Decedent could, that he intended to declare she had some form of legal ownership of the dog.

Aside from the fact that there is no way to truly determine Decedent's intentions from this paperwork, there is no legal basis which establishes that authority should be given to a form document, with no binding legal effect, to evidence ownership of the subject dog of interest. Appellant broadly opines that the Decedent "gifted and/or transferred co-ownership of the subject dog to Appellant" through this form. Appellant does not, because Appellant cannot, provide in her argument what type of instrument the "New Client Form" purports to be… i.e., a contract. This is a critical issue because while Appellant attempts to give the "New Client Form" legal effect, Appellant is unable to even provide to the Court what type of legal document should be considered when analyzing and weighing its validity.

Appellant relies on *Regions Bank v. Schmauch* as precedent in an attempt to lend credence to the document which she contends proves ownership of the subject dog of interest. *Regions* involved loans obtained through Regions Bank by a business owner that required a third-party co-signer. *See Regions Bank v. Schmauch* 582 S.E.2d 432, 354 S.C. 648 (2003). After the loan came due and the borrower did not pay, the bank sought to recover from the third-party co-signer on the balances owed. The co-signer alleged that while her signature was on the Guaranty Agreement, "she never intended to enter into an agreement for unlimited liability," and further that she did not read the documents or inquire as to their meaning prior to signing them. *Id.* at 439, 662. The Court of Appeals held that a person who signs a contract or "other written document" cannot avoid the effect of the document by claiming he did not read it and further that, a person signing a document is responsible for reading the document and making sure of its contents. *Id.*

Regions and other cases cited by the *Regions* Court[1], all of which involved "other written documents" pertained to very specific written instruments. In *Regions,* the in-question documents were Guaranty Agreements. In *Evans v . State Farm Mut. Auto Ins. Co.,* the document was a written release. In *Sims vs. Tyler,* the in-question document was a deed. Not only are these all documents which, on their face, have a binding legal effect but, they were also found by their respective Courts to be contracts.

Coming back to Appellant's failure to identify the "type" of document Appellant contends the "New Client Form" to be, Appellant never specifically states the document in question is a contract. When properly analyzing *Regions* and applying to the case at hand, an enforceable contract must first be found to exist for Appellant's arguments to even apply. Appellant further contends that the Court "need not speculate as to what Decedent's intentions were, because they are expressly stated in his own handwriting in a document that he signed." (*See* Brief of Appellant). The issue with this is that the document in question is nothing more than a form that was filled out when Decedent brought his dog to a new veterinarian. Appellant is now trying to transmute this document into a binding contract.

A contract exists where there is an agreement between two or more people upon sufficient consideration either to do or not to do a particular act. *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (1984). There must be an offer and an acceptance accompanied by valuable consideration. *Regions Bank* at 439, 661. A contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound. *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (2004).

[1] *See Regions Bank* at 440, 663 "A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *citing Sims v. Tyler,* 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); *Evans v. State Farm Mut. Auto. Ins. Co.,* 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977).

In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). The "meeting of minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known. *Id.* For a contract to be binding, material terms cannot be left for future agreement. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). Regardless of intent, an agreement which leaves open material terms is unenforceable. *Id.* A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood. *Id.*

Appellant's reliance on *Regions Bank v. Schmauch* is misplaced and is an attempt to utilize language she deems favorable in a fact pattern which in no way applies to the present case. The "New Client Form" is unambiguously not a contract. This document never constituted an agreement between Decedent and Appellant. The basic and necessary elements for the formation of a contract do not exist. On its face, this document does not represent Appellant and Decedent demonstrating that they came to an agreement to mutually be bound to terms concerning the ownership of the subject dog of interest. There was no consideration, offer, or acceptance and it cannot be proven because this document was not executed between the parties. This was a document filled out for a third party, in an effort to provide contact information and authorization for Appellant to take the dog to the veterinarian.

In the Magistrate Court's *Amended Order in Response to Defendant's Motion to Amend Judgment,* the Magistrate finds, "The decedent's action of identifying the Defendant as co-owner on the West Ashley Veterinarian clinic form does not suffice to prove transfer of ownership. As stated in my Order: ***As testified to by Evie's veterinary office, for routine visits to be accepted by someone other than the actual owner of the dog, they must appear on veterinary forms so the veterinary office itself is relived of liabilities that come with treating someone's animal without the owner's consent***." (R. pp. 89-91)(emphasis added).

Even arguing that Appellant believed that a contract was formed does not hold up. Appellant's belief cannot be supported by any competent evidence. The intentions of the parties are not clear from this document as, again, it was not a document executed between the parties. There is testimony that supports that Decedent would have taken the step of listing Appellant on the form to provide Appellant with the means to take the dog to the veterinarian. However, without Decedent available, there is no way to articulate his intent and therefore a contract cannot be inferred.

The Magistrate did, however, allow Appellant to testify as to interactions with Decedent over objections of Respondents and ultimately found that "***the facts in this case do not suggest at any point that Decedent was seeking to relinquish ownership of the property***…" (R. pp. 89-91)(emphasis added).

Accordingly, the Circuit Court correctly held that the "New Client Form" did not prove that Appellant gifted or otherwise transferred co-ownership of the subject dog of interest to Appellant during his lifetime.

II. THE LOWER COURT CORRETLY RULED THAT THE "NEW CLIENT FORM" IS IMPERMISSIBLE HEARSAY.

At the final trial in Magistrate's Court, Respondents objected to the admission of hearsay statements contained within the West Ashley Veterinary Clinic New Client Form, which was ultimately admitted at trial as Appellant's Exhibit 1 *(* R. p. 36).

During the hearing, Respondents argued that the hearsay statements of Decedent elicited through the testimony of Appellant should have been excluded on the basis that Decedent was unavailable pursuant to Rule 804 (a) SCRE and no permissible exception applied to admit the statements under Rule 804 SCRE or another rule of evidence. It is of note that the Final Order issued by the Circuit Court expounds that both the hearsay statements of Decedent contained within the West Ashley Veterinary Clinic form and the hearsay statement of Decedent elicited through the testimony of Appellant should have been properly excluded. (R. pp. 223-224).

Respondents concede that the appropriate foundation was laid at the Magistrate's trial through the testimony of the West Ashely Veterinary Practice Manager's testimony for the physical admission of the document as an exception to the hearsay rule pursuant to Rule 803(6) SCRE. Nonetheless, Rule 803(6) further provides that a business record can be admitted in the regular practice of business activities, "provided, however, that subjective opinions and judgements found in business records are not admissible."

As previously mentioned in Section I. above, the veterinary office testified that the business practices of their office required that any individual other than the owner who may present with the dog for routine visits or other treatment be listed on the form, mostly for the veterinary office's own liability purposes. There was no testimony from the veterinary office that it was ever directly conveyed to them that Decedent's intent of listing Appellant on this form had anything to do with transfer of ownership. While the business record exception may apply for the admittance of the

document itself, there is no basis for admitting this document for purposes of proof of ownership, as that is purely subjective.

Appellant argues that Rule 804(a)(4) and 804(b)(3) of South Carolina Rules of Evidence provide the exception to the hearsay rule to allow the disputed testimony and evidence to be admitted and considered. Appellant believes that by making this argument, it will give levity to her being listed as "co-owner" on the "New Client Form". (*See* Brief of Appellant). This is misguided. Appellant's argument that by listing Appellant on the "New Client Form" as "co-owner" of the dog Decedent intended to make a conveyance of ownership amounts to hearsay within hearsay, for which these hearsay exceptions simply do not apply.

Rule 805 SCRE does provide that "hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule." However, hearsay within hearsay, or "double hearsay" is excluded when each part of the combined statement fails to fall within an exception to the hearsay rule. *Wilson v. Childs*, 315 S.C. 431, 439, 434 S.E.2d 286, 291 (1993).

The April 5, 2023 Order issued by the Circuit Court delineates:

> "This Court specifically finds that two things considered by the Magistrate Court was in error during the original trial by admitting evidence and testimony proffered by the Appellant which constitute impermissible hearsay. The Magistrate Court allowed the Submission [of] testimony and evidence by the Appellant, over counsel for Respondent's contemporaneous objections, which make this issue proper for review. First, the "New Client" document which Appellant contends is proof that the Decedent gifted or otherwise transferred co-ownership of the subject dog and property at issue, Evie, should not have been admitted or considered by the Magistrate Court. Second, testimony from Appellant at the trial regarding [the] conversation she had with the Decedent prior to his death regarding ownership of the subject dog and property at issue, Evie, should not have been admitted or considered by the Magistrate Court. In both instances, the Magistrate Court errored in allowing the admission of the evidence and testimony as both constitute impermissible hearsay pursuant to South Carolina Rule of Evidence 804 as Decedent was an unavailable witness and there was no exception which could be applied to permit the evidence and testimony into the record. ***Had the New Client document and Appellant's testimony been properly excluded by the trial court there would be no facts in the record which could stand***

to support Respondent's ownership claim of Evie, thus, rendering her claim(s) meritless." (R. pp. 223-224)(Emphasis added).

At the time of the Magistrate's final trial, the "New Client Form" was initially admitted into evidence. (R. p. 36). The Court had the opportunity to review its contents and hear all of the testimony related to the same. It was not until after a Motion to Reconsider was filed and Memorandums were submitted to the Court that the Magistrate issued an Amended Order in which the Magistrate opined that it should not have been admitted. (R. p. 90). The reality is that the weight of this document did not and would not change the Magistrate's determination. As to the Circuit Court, this document was entered into evidence at trial and therefore was submitted as part of the Magistrate's Record, also providing the Circuit Court the opportunity to review the document and its contents and make its' own determination. Regardless of whether the lower court erred in finding this document inadmissible, it would still amount to harmless error.

No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial. *State v. Byers*, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) (internal citation omitted). The document was admitted to evidence, was available to the Courts for review and was ultimately not the basis for the Court's determination. While the lower court did opine that without the "New Client Form" Appellant's claim was effectively meritless, ultimately the Court's reasoning for granting possession of Evie to Respondents was based upon the lack of any legally binding document effecting the same, as well as the intestacy laws of this state.

As the statements pertaining to the ownership of the dog do not fall within any hearsay exceptions, the "double-hearsay" makes the "New Client Form" inadmissible in entirety. The lower court correctly ruled that this document amounted to impermissible hearsay. Regardless, the

evidence was still admitted and considered by the Court and the contents of the same would not have impacted the final order of the Court. Accordingly, if the lower court did err in finding that this document was impermissible hearsay that should not have been offered into evidence, it amounts to harmless error.

III. THE LOWER COURTS CORRECTLY RULED THAT THE DECEDENT DIED INTESTATE AND THAT, AS SOLE HEIRS TO DECEDENT'S ESTATE, RESPONDENTS WERE AND ARE THE RIGHTFUL OWNERS OF THE SUBJECT DOG OF INTEREST.

The Magistrate's Final Order opines, "based on the evidence presented, ***this Court finds that there was no valid agreement as to the transfer of ownership of Evie upon the demise of Decedent***. ***It is indisputable that Decedent died intestate with no will in place that presumably would have contained the Decedent's intent including any agreement as to the future ownership of Evie***." (R. p. 61)(emphasis added).

The Magistrate goes on to say, "As Decedent died intestate, the Court finds that S.C. Code Ann. §62-2-103 prevails: *The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate (2) if there is no surviving issues, to his parent or parents equally….* ***[Appellant's] representation that Decedent had intended for [Appellant] to come into possession of Evie upon his untimely death, without a will or codicil cannot be proven. Furthermore, representation on a form from the Veterinary Clinic does not suffice to prove ownership****."* (R. pp. 62-63)(emphasis added).

The Circuit Court correctly upheld the Magistrate finding, amongst other things, that: (1) there are no provisions of South Carolina Law that grant ownership and/or possessory rights of the personal property of a partner to unmarried romantic partners; (2) the law of intestacy applies to this matter as Decedent died without a valid will and, thus, South Carolina Code § 62-2-103 is the authority the Court must consider in rendering its ruling; and (3) as South Carolina Code § 62-2-103

applies, the Decedent's Father is the sole heir of Decedent's Estate and is thus entitled to possession of the subject matter dog of interest/ Decedent's property - Evie. (R. p. 63).

Further referring to the arguments made in Section I. above, the "New Client Form" does not suffice to show that Decedent intended to transfer ownership or otherwise gift the subject dog of interest to Appellant. Respondents submit that the Court(s) correctly applied the law and arrived at the only legally supported decision it could in denying Appellant's Appeal at the Circuit Court level. If the Court were to give Appellant's argument any credence in this matter, the entire purpose of the South Carolina Legislature enacting the intestate laws would be frustrated and rendered futile.

Conclusion

For the reasons set forth herein, Respondent, The Estate of Jonathn Bruner, respectfully requests this Court to affirm the judgment of the Circuit Court.

Respectfully Submitted,

CORVEY LAW FIRM, LLC

S/Edward R. "Ted" Corvey, III
S/Kyra McMillan

Edward "Ted" R. Corvey, III
Kyra A. McMillan
815 Savannah Highway, Suite 201
Charleston, South Carolina, 29405
P: 843-625-8600
F: 843-625-8601
Attorneys for Respondent

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CERTIFICATE OF COMPLINACE

Undersigned counsel certifies that the Initial Brief of Respondent complies with Rule 211(b) SCACR.

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CORVEY LAW FIRM, LLC

S/Kyra McMillan

Edward "Ted" R. Corvey, III
Kyra A. McMillan
815 Savannah Highway, Suite 201
Charleston, South Carolina, 29405
P: 843-625-8600
F: 843-625-8601
Attorneys for Respondent