

STATE OF SOUTH CAROLINA
COUNTY OF MARION

In Re: Chellie Nixon

Angela D. Young, as Personal Representative
for the Estate of Chellie Nixon,

Plaintiff,

v.

Estate of Samuel L. Davis,
Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2017-ES-33-00099

ORDER

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SC Court of Appeals

This matter comes before the Court upon the Defendant Estate of Samuel L. Davis' Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. In support of its motion the Defendant has offered the deposition testimonies of Peyton Warren, CPA, and Samuel L. Davis along with the affidavit of Carolyn Johnson. In opposition, the Plaintiff has offered the deposition testimonies of Samuel L. Davis, Ernestine B. Davis and Carolyn Cranford Johnson and the affidavits of Angela D. Young, and Latonia M. Davis. A hearing on the Defendant's motion was held by the Court on June 1, 2023.

PROCEDURAL HISTORY

This action concerns the ownership of a funeral home known as Young and Young Funeral Home, Inc. which operates in Hartsville, SC. Plaintiff filed its complaint on November 11, 2021 in which it requested a declaratory judgment and it raised a claim for fraud against Samuel L. Davis (who was then alive).

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The Defendant filed its answer on December 7, 2021 in which it denied the Plaintiff's allegations. Samuel L. Davis died on October 2, 2022 and his estate was substituted as the defendant in this matter. After the parties conducted extensive discovery, the Defendant filed its Motion for Summary Judgment on November 30, 2022.

FACTUAL BACKGROUND

Chellie Nixon f/k/a Chellie Young Mack died intestate on February 14, 2017. Her parents Harold L. Young and Dorothy J. Young predeceased her. Her father died on December 22, 1978 and her mother died shortly thereafter on January 16, 1979.

After the deaths of Harold and Dorothy Young, Chellie Nixon and Samuel L. Davis on April 9, 1979, filed articles of incorporation with the South Carolina Secretary of State and created the corporation Young and Young Funeral Home, Inc. ("Funeral Home") which operates a funeral home located at 711 South Sixth Street, Hartsville, SC. At the time of incorporation, Chellie Nixon owned sixty-five of the corporation's outstanding shares, while Sam Davis owned the other thirty-five outstanding shares.

On March 19, 1982, Chellie Nixon sold her sixty-five shares to Sam Davis for \$65,000. Since March 19, 1982, Sam Davis and now his estate have been the sole shareholder of the Funeral Home.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 79, 735 S.E.2d 650, 658 (2012), *reh'g denied* (Dec. 12, 2012) (citing Rule 56(c), SCRPC); *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88 (1995). In ruling on a motion for summary judgment, the trial court must view the evidence, and all inferences which

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can be reasonably drawn therefrom in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392 (1994).

However, “[w]hen a party makes a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or [other evidence], must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not respond accordingly, the trial court shall enter summary judgment against him if appropriate.” *Coker v. Cummings*, 381 S.C. 45, 54–55, 671 S.E.2d 383 (Ct. App. 2008) (internal quotation marks and citation omitted). Summary judgment is appropriate in this case because, viewing the evidence as favorably as possible to Plaintiff, there can be no viable or genuine issues for trial.

DISCUSSION

In its complaint the Plaintiff requests that the court issue an order for a declaratory judgment as follows:

- a. The Funeral Home was formed, and jointly owned by Harold L. Young and Dorothy J. Young and were the original shareholders thereto;
- b. Pursuant to the state’s intestacy laws, as a result of the death of Harold L. Young, the new shareholders of the Funeral Home were Dorothy J. Young and Chellie Nixon, with Dorothy J. Young being a 75% shareholder and Chellie Nixon being a 25% shareholder;
- c. Pursuant to the state’s intestacy laws, as a result of the death of Dorothy J. Young, the sole shareholder of the Funeral Home was Chellie Nixon;
- d. Pursuant to the state’s intestacy laws, as a result of the death of Chellie Nixon, the Funeral Home became an asset of the Nixon Estate subject to state’s intestacy laws;
- e. The Defendant Samuel L. Davis has no ownership interest in the Funeral Home.

As to its fraud claim, the Plaintiff alleges that Samuel Davis fraudulently claimed that he was the sole shareholder of the Funeral Home since 1982.

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The gravamen of the Complaint is that Chellie Nixon was the sole owner of the Funeral Young at the time of her death. In order to reach this conclusion, the Plaintiff claims that the Funeral Home which was incorporated after her parents' deaths was somehow part of her parents' estates when they died and she as their only child ultimately inherited 100% of the Funeral Home. However, the Plaintiff's claims lack merit since, as is noted above, the Funeral Home was not incorporated until after her parent's deaths. Consequently, there was no way for her parents to have been shareholders in the Funeral Home. Moreover, the Funeral Home's stock book indicates that the initial shareholders were Chellie Nixon and Sam Davis. The Funeral Home's records and minutes further indicate that Chellie Nixon sold her sixty-five shares to Sam Davis on or about March 19, 1982. There is no evidence that Chellie Nixon ever owned any shares in the Funeral Home after March 19, 1982.

The Plaintiff has failed to present a scintilla of evidence to support its claim that Chellie Nixon owned 100% of the Funeral Home at her death, and in fact, the Plaintiff has failed to present a scintilla of evidence that Chellie Nixon owned any shares in the Funeral Home at her death.

On the other hand, the Defendant introduced the Funeral Home's stock book and minutes which indicated that Chellie Nixon sold her sixty-five shares on March 19, 1982 to Sam Davis. The book and further indicate that since that time Sam Davis owned all of the outstanding shares.

Additionally, the Defendant offered the deposition testimony of Peyton Warren, CPA, who acted as the Funeral Home's accountant for almost thirty years. Mr. Warren testified that during the thirty years that he was the accountant for the Funeral Home, Sam Davis was the sole shareholder of the Funeral Home. He further testified that during that time he had never heard of Chellie Nixon or Chellie Mack. Mr. Warren provided the Schedule G to numerous federal tax

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returns filed by the Funeral Home. All of the Schedule G's indicate that Sam Davis owned 100% of the shares of the Funeral Home.

The Defendant also offered the deposition testimony of Sam Davis. In his testimony Sam Davis confirmed the testimony of Peyton Warren, CPA and the records of the Funeral Home all of which stated that he was the sole shareholder of the Funeral Home since March 19, 1982.

In reviewing the affidavits and testimony submitted by the Plaintiff, there is nothing contained therein that states that Chellie Nixon was a shareholder in the Funeral Home at her death or that she was receiving the benefits from being a shareholder in the Funeral Home. In fact, the affidavit of Latonia Davis states that she never witnessed a check or any other evidence of payment being made to Chellie Nixon from 1995 through approximately 2021.

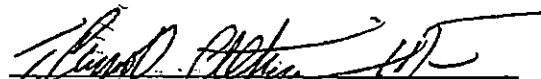
In this case the Plaintiff have failed to make s showing to establish that Chellie Mack was a shareholder in the Funeral Home at her death. Without such evidence, both of the Plaintiff's causes of action fail since they are predicated on Chellie Mack being a shareholder in the Funeral Home at her death. Thus, in light of the evidentiary submissions, the arguments presented, and the existing law, the Court concludes that no genuine issues exist for trial and the Defendant is entitled to a judgment as a matter of law.

CONCLUSION

Based on the foregoing, IT IS ORDERED that the Defendant's Motion for Summary Judgment IS HEREBY GRANTED and this action against Defendant is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

July 17, 2023


Honorable T. Carroll Atkinson, III.
Probate Judge for Marion County

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