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Apr 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc,

Respondent,

v.

Estate of Justin K. Spires,
Timothy J. Spires, Sr. South
Carolina Department of
Probation, Parole and Pardon
Services and Warren B. Giese
as Solicitor,

Of who, the Estate of Justin K.
Spires and Timothy J. Spires
are the

Appellants.

RETURN TO MOTION TO DISMISS

Pursuant to Rule 240, SCACR, Appellant issues this RETURN to Respondent's Motion to Dismiss and asks that this court DENY the relief sought.

FACTS AND BRIEF PROCEDURAL HISTORY

This is an appeal of the Court's denial of Appellants' Motion to Vacate a Judgment and Order for Foreclosure and Motion to Vacate Foreclosure Sale. The grounds of the appeal are that the court never had personal jurisdiction over the defendants because the Respondent never

served them. The Respondent claimed to have served them both by substitute service by delivering the Summons and Complaint to the boyfriend of Justin Spire's mother at 30 Cardington Street while Justin was at work. 30 Cardington was the residence of Justin Spires and his daughter, Jasmin Spires. The boyfriend was not a resident of the 30 Cardington nor was 30 Cardington ever the residence of Timothy Spires. Service on Justin and Timothy was never completed so the court never had personal jurisdiction to enter an order and sell 30 Cardington.

The house sold at a foreclosure auction on January 6, 2021, to the Respondent for \$69,407.20. The Appellants filed a Motions to Vacate the Sale, Set Aside the Default Judgment, and Dismiss the Action for Lack of Personal Jurisdiction. This motion was denied along with the subsequent Motion to Reconsider and the Appeal was filed. The Respondent then brought a Motion to Set Bond. At this hearing, the Respondents testified the house was valued at \$147,280.00 and the appeal bond was set at \$147,280.00. Appellants were not able to post that bond. Since learning of the death of Justin Spires, Respondent began seeking to evict Jasmin Spires from the house.

Justin Spires died intestate in August of 2024 at the age of 39. He was unmarried and only had one daughter, Jasmin Spires. His death left Jasmin Spires as his only heir. She was appointed as the personal representative of the Estate of Justing Kirby Spires on March 7, 2024. On March 11, 2024, she filed a motion to be substituted as the real party in interest for her father. This Motion was granted without any opposition or objection by the Respondent on April 1, 2024.

Counsel for Appellant received notice of this Motion from the Respondent on April 12, 2022, when he reviewed the Court of Appeals' online records. He was not copied via email even though it was filed via email. He has not yet received notice through the US Mail.

ARGUMENT

THE APPEAL IS NOT MOOT AND SHOULD NOT BE DISMISSED

1. Jasmin Spires has standing to pursue this appeal as the personal representative of the Estate of Justin Spires.

“Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Bank of Am., N.A. v. Todd Draper, Mortg. Elec. Registration Sys., Inc.*, 405 S.C. 214, 746 S.E.2d 478 (S.C. App. 2013) *citing Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008) "To have standing ... one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (S.C. App. 2003) *citing Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999).

The Estate does have a ‘real, material, or substantial interest.’ If successful, the Order and Judgment of Foreclosure and Sale is Voided, the Foreclosure Sale is Vacated, and the house becomes an asset of the estate. According to the Respondent’s own testimony, there is \$80,000.00 in equity in the property as of January of 2022.

The estate is also given standing by statute. The standing of a personal representative of an estate in legal actions is controlled by Section 62-3-703(c) of the South Carolina Code (2024) which says:

Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing

to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

The Respondent cites the South Carolina Supreme Court, which said, “We recognize three types of standing: (1) standing conferred by statute; (2) 'constitutional standing'; and (3) public importance standing.” *Found v. S.C. Dep't of Transp. & John V. Walsh*, 804 S.E.2d 854, 421 S.C. 110 (S.C. 2017) citing *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).” Based on this standard, the South Carolina Probate Code confers standing on the Personal Representative by statute.

The Respondent spends a fair amount of time discussing *Erickson v. Stenman*, an unreported case out of the state of Washington, as support for its position. This case has no value here as the entire foundation for the result in that case was because the probate case had been closed without any resolution of the property. The Estate of Justin Kirby Spires is open so the result would be the exact opposite.

The arguments of the Respondent all boil down to their possession of a deed depriving the Spires of any rights. Our laws do not work that way. There is no law or statute to support this. A ruling such as this would leave estates and heirs no recourse against illegally or fraudulently obtained deeds.

2. The Estate of Justin Spires is already a party to the appeal.

Appellant points out that it satisfied the deficiency judgment of \$2,693.96 it had against Mr. Spires. Appellants fail to see the relevance of this. Respondent makes the point that they are not required to make the Estate a party to the appeal. The Estate is already a party to the appeal by the Appellant’s Motion and the Court’s Order, neither of which were challenged.

3. The satisfaction of the judgment does not deprive Timothy Spires of standing.

The Respondents claim that the satisfaction of the deficiency judgment against Timothy Spires removes his standing to appeal because he has no material interest in the outcome of the appeal. This is not true. The Respondent sued Timothy Spires. They sought a judgment by default against him even though they never served him. The satisfaction of the deficiency judgment for \$2,693.96 does not undo that. There is still an Order and Judgment of Foreclosure and Sale entered against him. There is still a finding of fact that he did not pay this debt. That finding of fact acts as res judicata against him in challenging this or any other claim he has related to this claim. He has suffered damage to his credit and reputation that he cannot undo just because the Respondent satisfied the deficiency judgment.

CONCLUSION

The Respondent has failed to provide a valid argument supporting its claim the Appellants lack standing and the appeal is moot. It is well established that an estate steps into the shoes of the decedent in most legal matters. There are a few claims that do not survive death. This is not one of them.

April 12, 2024

/s/Shawn M. French, Sr.
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Proof of Service

I certify that I have served the Return to Motion to Dismiss by email on April 12, 2024,
to the following attorneys of record.

Theodore von Keller
ted@crawfordvk.com

April 12, 2024

/s/Shawn M. French, Sr.
Shawn M. French, Sr.