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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-28-00680
Appellate Case No. 2022-001789

Randy Bowers, Appellant,
v.

The Estate of Claude E. Campbell by and through Sonja Campbell Parker and Barry Campbell,
Thomas Clayter Campbell, The Estate of Colbert Harold Campbell by and through Francis
Campbell, Vivian C. Gardner and the Estate of Charles E. Campbell by and through Maxine
Watts Campbell, individually and as representatives,
..... Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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APPELLANT'S REPLY TO COUNTERSTATEMENT OF THE CASE

The Appellant reasserts the Statement of the Case and Statement of Facts set forth in Appellant's Initial Brief.

The Respondents would have this court rule, as they successfully argued at trial, that the fraudulent or, at the very least, negligent actions they took after the death of their father are immune from legal prosecution so long as they can tangentially relate the claims to their father's estate. They allege the facts presented at trial concerning their actions after their father was murdered are simply an artful way of pleading around South Carolina's statutes barring certain claims from estates. This can be seen not only in their arguments, but in the very limited facts they assert are relevant. They assert that Appellant knew of his father's death on the day he was murdered (Respondents' Brief p. 12); knew he was the son of T.E. Campbell prior to his death (Respondents' Brief p. 12); and believed he was supposed to receive something from his father's estate when his father died (Respondents' Brief p. 12). These facts deliberately omit the relevant actions of the Respondents after the death of Appellant's father that gave rise to the claims at issue at the trial. Distinct from a claim against the estate of Mr. Campbell, Appellant amply presented evidence at trial that the collective efforts of his siblings and their families to repeatedly and fraudulently represent that they would always believe and assert that Appellant was not their brother directly led to Appellant's detrimental reliance. The Appellant was intentionally and fraudulently omitted from the filings as to the Estate of Mr. Campbell as a child of the Decedent. The Respondents had full knowledge of and/or reasonable cause to believe that the Appellant was a son of the Decedent due to their knowledge of the Decedent's social interactions and relationships, and despite that knowledge, represented to Appellant that they would not acknowledge Appellant as a son of the Decedent, all so as to protect their financial

interests in the estate of the Decedent. These actions, amply supported by evidence at trial, all give rise to direct claims by the Appellant not against his father's estate, but rather, against the Respondents for fraud, negligent misrepresentation, negligence, civil conspiracy and for the institution of a constructive trust. Thus, the trial court's erroneous granting of a directed verdict should be reversed.

REPLY TO RESPONDENTS' ARGUMENTS

I. THE RESPONDENTS RELY UPON A GROSS MISCHARACTERIZATION TO JUSTIFY THE APPLICATION OF THE STATUTE OF LIMITATIONS

Respondents intentionally mischaracterize the claims brought by Appellant so as to tie the statute of limitations and its tolling under the discovery rule to irrelevant facts. Respondents would have this Court believe that the acts complained of by Appellant for the years following their father's death all could have been brought in the immediately preceding years, again, trying to characterize the claims as ones against the estate and immunizing themselves for their own fraudulent actions. Under the circumstances of the facts before the trial court a person of common knowledge and experience would not have been on notice of the fraudulent and conspiratorial acts of the Respondents until less than three years prior to this action being instituted, yet alone in the years immediately preceding Appellant's father's death.

In ruling the Appellant's claims were time-barred, the trial court held that the Appellant knew all of the facts concerning the alleged fraud and misrepresentations in 1982 when his father was murdered. Such an understanding could not be further from the case. The Appellant has alleged and presented evidence that, while the collective efforts of his siblings and their families to repeatedly and fraudulently represent that their belief that Appellant was not their brother began earlier than the death of his father, it was precisely at the time of his father's death that these false representations began to have an effect. Respondents assert that the evidence

supported a finding that Appellant firmly believed he was the child of Mr. Campbell as early as his childhood. This reliance is entirely misplaced. Again, in 1982, Appellant was faced with the belief that his biological father just passed, a statute that precluded him from raising any right to an inheritance, a burden of proof to any claim regardless of the statute that would be reasonably considered insurmountable without the supporting testimony of the Respondents. It was this understanding, the inability to procure their public acknowledgement of his familial relationship, that was relied upon and ultimately harmed him. Thus, the correct question before the court should have not been, when did Appellant believe he was an heir, but rather, whether the circumstances of the case (the then enforceable probate code, the relationship between Appellant and the Respondents, and the public and private statements of Respondents) would put a person of common knowledge and experience on notice that some claim against Respondents for these fraudulent acts might exist. It was precisely this analysis that leads to the consideration of the public statement in the obituary by one of the Respondents that would provide the most likely date to tie a person of common knowledge and experience to be on notice that the Respondents had conspired to mislead the Appellant concerning their actual belief as to his claim to an inheritance. Thus, the trial court's grant of a directed verdict should be reversed.

II. THE RESPONDENTS AVOID ADDRESSING THE RELEVANT FACTS PRESENTED AT TRIAL

The facts presented at the trial court presented more than ample evidence to support the Appellant's claims for fraud, negligent misrepresentation, negligence, and civil conspiracy. Similarly, the facts presented provided ample evidence to support a finding of a constructive trust. The Respondent seeks to focus this Courts attention on facts relevant to damages and not the claims themselves.

A. Appellant Presented Ample Evidence to Support His Action for Fraud

The Appellant properly presented ample evidence that Mr. Campbell's Legitimate Children and their relatives represented to Randy that they, in fact, knew or strongly believed that Randy was not the child of Mr. Campbell or that they would be willing to publicly state the same. This fraud directly harmed Appellant as was properly presented at trial. Evidence supporting a finding that Appellant knew he was his father's son does nothing to refute this claim. The statements concerning whether Appellant believed Respondents were the cause of his exclusion from inheritance under the estate laws in place in 1982 is equally irrelevant. Thus, this Court should overturn the directed verdict erroneously granted by the trial court.

The fraud of Mr. Campbell's Legitimate Children and their relatives was presented by ample evidence at trial. Mr. Campbell's Legitimate Children and their relatives made several significant false public statements before Appellant, namely that he was not only not their sibling, but that they firmly knew such to be the case. Respondents knowingly made these representations with the intent that Appellant not act in any way towards the inheritance upon his belief that he was, in fact, their sibling.

B. Appellant Presented Ample Evidence to Support His Action for Negligent Misrepresentation and Negligence

Similarly, contrary to the assertions of Respondents, the trial court erred in granting a directed verdict to the Respondents as to Appellant's action for negligent misrepresentation. Respondents rely entirely upon the argument that they had no duty as a matter of law to truthfully disclose their willingness to publicly acknowledge their familial relationship with Appellant. This runs contrary to South Carolina law. Under South Carolina law, the duty to disclose may be reduced to three distinct classes:

First, where it arises from a pre-existing definite fiduciary relation between the parties; second, where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied. The third class includes those instances where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary, and necessarily calls for perfect good faith and full disclosure, without regard to any particular intention of the parties. Such, for instance, as a contract of insurance.

Holly Hill Lumber Co. v. McCoy, 201 S.C. 427, 437, 23 S.E.2d 372, 376 (1942) (citing Pom. Eq. Jur., Vol. 2, Sec. 902; Pom. Eq. Rem., Vol. 2, Sec. 784). While “[t]here is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence,” *Ama Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (1992), “issues of reliance are ordinarily resolved by the finder of fact.” *McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (2008) (quoting *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 800 (1992)). A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties. *West v. Gladney*, 341 S.C. 127, 134 (2000). Contrary to the erroneous arguments of Respondents, all of the elements of negligent misrepresentation were present in the evidence before the trial court.

C. Appellant Presented Ample Evidence to Support His Action For Civil Conspiracy

Respondents, in alleging the only conspiracy alleged was one of a “conspiracy of silence,” again misleads this Court as to the full breadth of evidence before the trial court. The actions evidenced at trial by the Respondents more than support a claim for civil conspiracy. In the facts outlined in his initial brief, Appellant provided evidence supporting overt actions of Respondents to work together to prevent the Appellant from seeking redress concerning the inheritance. See public statements denying any relation (Tr. p. 80 ¶¶ 2-13; Tr. p. 87-89; and Tr. p.

96-97) and avoiding discussions when confronted by Appellant (Tr. p. 79 ¶¶ 15-21; p. 80 ¶¶ 2-13; p. 81 ¶¶ 8-13). The evidence provided ample support for a claim against the Respondents for civil conspiracy.

D. Appellant Presented Ample Evidence to Support a Finding Constructive Trust was Presented at Trial

Finally, Appellant presented ample evidence to support a finding that the Respondents held the inheritance in constructive trust. The fraud of the Respondents as presented to the trial court with specific relation to the inheritance from Mr. Campbell, provides the exact facts South Carolina law provides for the establishment of a constructive trust. Contrary to the assertions of Respondent, equitable principles under South Carolina law should not support the ruling of the trial court that somehow a party can use fraud for a prolonged period of time to avoid the application of a constructive trust. Thus, the order granting a directed verdict should be reversed.

III. THE RESPONDENTS ERRONEOUS RECASTING OF THE CLAIMS DOES REMOVE JURISDICTION OF THE COURT

Again, Respondent seeks to recast the claims brought by Appellant so as to prevent any actions to be brought against them personally for actions they took after the probate of Appellant's father's estate. South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11. In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. See *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001) (examining the language of the statute to determine the legislative intent regarding exclusive jurisdiction). S.C. Code Ann. § 62-1-302 provides:

To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

- (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court;
- (2) subject to Part 7, Article 5:
 - (i) protective proceedings and guardianship proceedings under Article 5;
 - (ii) gifts made pursuant to the South Carolina Uniform Transfers to Minors Act under Article 6, Chapter 5, Title 63;
 - (iii) matters involving the establishment, administration, or termination of a special needs trust for disabled individuals;
- (3) trusts, inter vivos or testamentary, including the appointment of successor trustees;
- (4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;
- (5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights of way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights of way; and
- (6) the involuntary commitment of persons suffering from mental illness, intellectual disability, alcoholism, drug addiction, and active pulmonary tuberculosis.

Contrary to the erroneous assertions of the Respondents, the trial court had jurisdiction over the tort and equitable claims brought by Appellant.

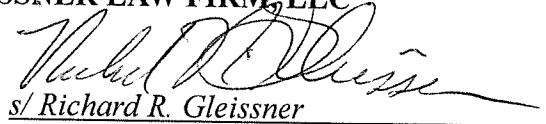
CONCLUSION

The Court erred when it directed verdict for the Respondents. The evidence presented to the Court and jury provided ample evidence raising issues of fact for the jury to decide whether the Respondents committed fraud, negligent misrepresentation, negligence, and civil conspiracy and whether their actions gave rise to and for the institution of a constructive trust. Thus, this

Court should, respectfully, overturn the ruling of the Trial Court and grant the Appellant a new trial.

April 22, 2024

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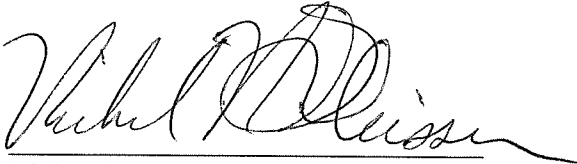
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PROOF OF SERVICE

I certify that I have served the Appellant’s Reply Brief on the Respondent by sending a copy of it via email, on April 22, 2024, addressed to its attorneys of record as follows:

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Dated: April 22, 2024