

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

RECEIVED
Jun 26 2024
SC Court of Appeals

Glenn A. Zeigler, individually and)
as Personal Representative of)
the Estate of Leon Zeigler and)
Lula Mae Zeigler,)

Plaintiffs,)

vs.)

Deatrix Zeigler,)

Defendant.)

ORDER FROM HEARING
ON MOTION TO RECONSIDER

2021-CP-32-04055

Presiding Judge
Attorney for Plaintiff
Attorney for Defendant
Date of Hearing
Court Reporter

James O. Spence
Spencer Andrew Syrett
Jamie M. Best, III
May 13, 2024
Katherine M. Boone
Creel Court Reporting

This matter came before the Court a Motion to Reconsider filed on behalf of the Defendant. The attorneys for the parties and the parties were present.

HISTORY OF THE CASE

The Final Order from the hearing on the merits was issued on April 4, 2024.

The Defendant timely filed her Motion to Reconsider on April 15, 2024.

The Defendant properly served Plaintiff with the Motion to Reconsider when filed and with Notice of the within hearing on April 17, 2024.

The Motion to Reconsider requests amendment to Paragraph 1 on Page 10 and Paragraph "A" on Page 11 of the Final Order dated April 4, 2024.

This Court has continuing jurisdiction over the parties and the subject matter.

ARGUMENT

Defendant argues that the errors committed in the execution of the deed in question were not attributable to either of the parties to this action. Rather, it is clear from the argument and from the testimony in the record that the error was and is attributable to the person who supervised the execution of the document (the Notary).

Defendant argues that the errors in the execution of the deed in question should not be fatal to the intended effect of the document, i.e., that the property be conveyed to Defendant. Defendant furthermore argues that the principles of equity should determine that the transfer of the property to Defendant should be held valid.

The Court allowed the parties ten (10) days to present additional argument to it for its consideration.

DISCUSSION

May the Court consider requiring a “corrective deed” be issued to fulfill the intent of the original grantors?

Is it possible for the Court to reform the deed to fulfill the intent of the original grantors?

Does the acknowledgement signed by the Notary “override” the requirements of § 27-7-10 of the SC Code of Laws (1976) as amended?

Both the reformation of a deed and the propriety of a “corrective deed” have been discussed at length in our case law. Both possible avenues require that there be a “mutual mistake made by the parties” to the deed. *Gowdy v. Kelley, et. al.*, 185 S.C. 415, 194 S.E. 156 (1937) While I have held that in this case the grantors were competent, had not been coerced nor unduly influenced, and intended to transfer the property referenced in the deed, the deed is simply improper as it does not comply with our statutes. (§ 27-7-10 of the SC Code of Laws (1976), as amended.)

In clarification, I find that the mistake in the subject deed was not “a mutual mistake of the

parties”. Rather, it was a unilateral mistake made by the *non-attorney* who supervised the execution. This is made abundantly clear by the Defendant’s own testimony as contained in the record.

Therefore, neither reformation of the subject deed nor a “corrective deed” is an appropriate remedy available to Defendant in this matter. Also, one of the original grantors has passed away after the subject deed was signed and the other *may* now be considered not competent to execute any legal document, including a “corrective deed”. I find that neither a corrective deed nor reformation of the subject deed can be had.

The requirements of § 27-7-10 of the SC Code of Laws (1976), as amended, are also abundantly clear in that the witnesses to the grantors’ signatures must be present when the grantors affix their signatures. The Defendant’s own testimony proves that this requirement was not met.

Defendant also argues that the recording statute was fulfilled in this case by the acknowledgement of the Notary and/or the probate of Sylvia Brown. § 30-5-30 of the SC Code of Laws (1976), as amended, provides that the deed must be proved by the affidavit of a *subscribing witness* taken by a Notary. Neither the Notary involved in the execution of the subject deed nor the person who signed the probate portion of the deed (Sylvia Brown) were in fact “subscribing witnesses” and ,again, Defendant’s testimony clearly shows that neither person who signed as a “subscribing witness” was actually present when the grantors signed the deed.

CONCLUSIONS

I therefore find and conclude that:

There was no mutual mistake made by the parties to the subject deed and that therefore reformation is not a remedy available to Defendant;

Since there was no mutual mistake made by the parties and since the grantors are now unable to execute any deed of a “corrective” nature, a corrective deed is also not a remedy available to Defendant;

Defendant’s argument concerning whether or not the acknowledgement of the Notary or

the probate by Sylvia Brown overrides the requirements of § 27-7-10 of the SC Code of Laws (1976), as amended, is not viable due to neither the Notary nor Ms. Brown having affixed their signature as a subscribing witness when coupled with the clear testimony that neither person who *did* affix a signature as a subscribing witness was present when the grantors signed.

AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- A. That Defendant's Motion to Reconsider is denied;
- B. That no amendment shall be made to the provisions of the Court's prior Order dated April 4, 2024.

AND IT IS SO ORDERED.

James O. Spence
Master in Equity for Lexington County

May _____, 2024



Lexington Common Pleas

Case Caption: Glenn A. Zeigler , plaintiff, et al VS Deatrix Zeigler

Case Number: 2021CP3204055

Type: Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068