

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No.: 2024-000444

Circuit Court Case No.: 2023-CP-33-00472

Probate Case No.: 2017-ES-33-00099

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

v.

Carolyn Johnson, as Personal Representative for the Estate of Samuel L. Davis Respondent.

FINAL BRIEF OF RESPONDENT

Florence, South Carolina

TURNER, PADGET, GRAHAM & LANEY, P.A.

July 22, 2024

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STATEMENT OF ISSUES ON APPEAL

IS THERE SUFFICIENT EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT, THAT ANY FUNERAL HOME INTEREST INHERITED BY CHELLIE NIXON (APPELLANT'S DECEDENT) WAS *NOT* SUBSEQUENTLY *SHARED WITH* AND *SOLD TO* SAMUEL L. DAVIS (RESPONDENT'S DECEDENT)?

STATEMENT OF THE CASE

This is a continued appeal from a Probate Court Order granting Respondent summary judgment. The original Complaint was filed on November 11, 2021 by one of Chllie Nixon's children alleging two (2) causes of action: one for declaratory judgment and one for fraud. R.pp.14-18 (Complaint). The first cause of action sought a declaration that an incorporated funeral home entity (Young and Young Funeral Home, Inc.) in Hartsville (Darlington County) is part of the Chellie Nixon's 2017 Estate (probated in Marion County). The second cause of action for fraud was based upon alleged misrepresentations by Samuel L. Davis regarding his ownership of that funeral home through decades of unchallenged operation (including decades of Chellie's life).

The Respondent, Samuel L. Davis, moved the Marion County Probate Court for Summary Judgment by motion filed November 30, 2022. R.pp.475-476. The Probate Court found that the claim of the Chellie Nixon Estate to corporate ownership of the funeral home lacked evidentiary support to create a genuine issue of material act; thus, the Probate Court granted the Respondent's motion for summary judgment as to all causes of action. R. pp. 5-9 (Probate Court Order filed July 17, 2023).

Appellant Chellie Nixon Estate then asked the Probate Court to reconsider its ruling – and that Motion was denied. R. pp. 10 (Probate Court Order filed August 9, 2023). Appellant Chellie Nixon Estate then appealed to the Marion County Circuit Court pursuant to the appeal provisions of the South Carolina Probate Code. S.C. Code §62-1-308. R. p. 23 (Notice of Appeal filed August 22, 2023). The Circuit Court affirmed the Probate Court's summary judgment, R. pp. 25-27 (Circuit Court Order of February 8, 2024), and the Appellant has now brought her appeal to this Court. R. p.24 (Notice of Appeal filed March 15, 2024).

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009).

The South Carolina Supreme Court has recently clarified the standard to be applied to a Motion for Summary Judgment under South Carolina Rules of Civil Procedure 56. Kitchen Planners LLC v. Friedman, 440 S.C.456, 892 S.E.2d 297 (2023)(rejecting the “mere scintilla” standard for summary judgment survival). Rule 56(c) provides that the moving party is entitled to summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kitchen Planners clarifies this “genuine issue of material fact” standard.

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Callawassie Island Members Club, Inc. v. Martin, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (*quoting Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)). But again, such inferences must be “reasonable”, as our Supreme Court has also said, ***a party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a genuine issue for trial.' "*** Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (S.C. 1990) *quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348 1356, (1986) (emphasis in original).

With regard to the spoliation issue raised by the Appellant’s Motion for Sanctions in the Probate Court, if the issue is preserved at all, the Probate Court’s spoliation rejection should be

evaluated by a more restricted “clear abuse of discretion” standard of review since it is a decision addressing a request for sanctions. Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 586 S.E.2d 572 (2003). Skywaves I Corp. v. Branch Banking & Trust Co., 814 S.E.2d 643 (S.C. App. 2018)(“The imposition of sanctions is generally entrusted to the sound discretion of the [c]ircuit [c]ourt.” *citing* Karppi v. Greenville Terrazzo Co. , 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (*quoting* Downey v. Dixon , 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)).

STATEMENT OF FACTS

A. A Long, Close Relationship and A Planned Gift

Young and Young Funeral Home was begun in 1947 by Harold L. Young. R. p. 322 line 17 – p. 323 line 14 (Davis depo). Initially, the business was not incorporated. Samuel L. Davis had worked at the funeral home “since its inception, or shortly thereafter.” R. p. 15 (Complaint ¶ 9).¹

Nearing the end of his life, funeral home founder Harold L. Young decided to convey 35% of Young & Young Funeral Home to long-time employee Samuel Lee “Sam” Davis (Respondent’s decedent) who testified that he had begun working for the Hartsville business at the age of ten. R. p. 317 line 13 – p. 318 line 23 *and* p.336 line 8 – p. 338 line 14 (Davis deposition). Unfortunately, Harold L. Young passed away before he could fulfill his gifting decision and his Will left everything to his surviving spouse, Dorothy J. Young.² Ultimately, the

¹ While the verified Complaint erroneously asserts that the Personal Representative’s grandparents (Harold Young and Dorothy J. Young) were “shareholders” in the funeral home corporation, R. p.15 (Complaint ¶ 7), the corporate entity was not created with the secretary of state until after the grandparent’s deaths (as discussed below). While long departed Harold Young and Dorothy J. Young were not owners and operators of the current incorporated entity; the business started in 1947 was quite obviously the predecessor.

² The verified Complaint alleges that Harold L Young died intestate (R. p. 15 ¶¶10-12), thereby leaving a divided Estate between his widow and children, but the Plaintiff subsequently submitted the Last Will and Testament of Harold L. Young as Exhibit F to the Affidavit of Angela D. Young (R. p. 474). The factual error of her earlier affirmation and the subsequent production of the Will no doubt impacted the credibility of Appellant’s claims in the trial court below.

gifting decision of Harold Young was completed through the gift of his daughter Chellie³ when she became the sole owner of the funeral home upon her mother's death.⁴

B. Gift Consummation through Corporate Creation By Adult Daughter Chellie

Mrs. Dorothy J. Young died only weeks after her husband leaving everything to their sole child, Chellie, almost 27 at the time.⁵ Chellie completed the gift intended by her father only a few months later when, with the assistance of attorney John Bledsoe (then practicing with Senator Ed Saleeby), she personally executed Articles of Incorporation for the funeral home entity together with Samuel L. Davis as a co-director and co-incorporator.⁶

³ This is the Appellant's decedent. Born Chellie Young, she would later marry and be known as Chellie Young Mack and Chellie Mixon. *Notably, the funeral home ownership asserted in this litigation was never asserted during Chellie's life but only opportunistically upon her death by the Personal Representative.* For simplicity, and with no disrespect, Appellant's decedent may simply be referenced as "Chellie" in this Brief.

⁴ According to the Plaintiff's Complaint, Harold L. Young died in December of 1978 and Dorothy J. Young died just weeks later on January 16, 1979. R. p. 15 (Complaint ¶10 and ¶13).

⁵ Chellie's death certificate confirms that she was born June 13, 1955 and was 61 years old at the time of her death. R. p. 482 (Exhibit A to denied Spoliation motion).

⁶ The corporation was created in April 9, 1979 by the Personal Representative's mother Chellie and Defendant's decedent Samuel L. Davis -- the two original incorporators and directors. R. pp. 434-437 (Exhibit A to Carolyn Johnson Affidavit) (Articles of Incorporation filed by Hartsville Attorney John W. Bledsoe, III). Mr. Davis was designated as the initial registered agent in the Articles of Incorporation signed by both incorporators. **At the time of the funeral home incorporation, according to the Plaintiff's Complaint, Samuel L. Davis was Co-Personal Representative with Chellie for the Estate of Chellie's mother, Dorothy J. Young.** R. p. 15 (Complaint ¶14); *see also* R. p. 456-458 (Exhibit A to affidavit of Angela Young) (Petition for Letters of Administration from Darlington Probate Court).

C. Other Documentation Confirming Young Family Gift to Samuel L. Davis.

Corporate stock entries created at the Saleeby Law Firm at near the same time confirm the issuance of stock with 35 shares to Mr. Davis and 65 shares to Chellie.⁷ Furthermore, a real property deed was issued to the newly incorporated funeral home for the funeral home location – signed by Chellie and witnessed by attorney Ed Saleeby Jr. on March 25, 1980 – the same date as the stock ledger. R. pp. 459-460 (Exhibit B to affidavit of Angela Young).

D. Subsequent Documented Sale of Chellie's 65 Shares to Samuel L. Davis.

After doing right by her father's wishes, daughter Chellie decided two (2) years later to sell out altogether. According to the sworn affidavit of Ms. Johnson, Chellie sold out her stock in the funeral home corporation on March 19, 1982 for \$65,000 to Samuel L. "Sam" Davis. R. p.432. Minutes of a special meeting of the two corporate directors (*also* Chellie and Samuel L. Davis) held that day at the Saleeby Law Firm in Hartsville confirm this transaction. R. pp. 441-442. (Exhibit C). On the same day, a new stock certificate was issued. Specifically, a new stock certificate replacing the lost Chellie Y. Mack 65 shares was issued to Samuel L. Davis and dated March 19, 1982 (corresponding to the sale date). R. pp.438-440 (Exhibit B to Affidavit of Carolyn Johnson). ***Thus, for the next thirty-five (35) years, from 1982 until Chellie's death in 2017, the incorporated entity was operated by Samuel L. Davis as the sole shareholder without any claim by Chellie Nixon to the contrary.***

⁷ According to the affidavit of Carolyn Johnson with attached corporate records, the ownership of the funeral home at the time of incorporation was 65 shares by Chellie and 35 shares, a minority interest, were owned by long-serving worker Samuel L. "Sam" Davis. R. pp. 432-440 (Exhibit B, Stock Certificate Ledger initially dated March 25, 1980). Notably, this agreed division between Mr. Davis and Ms. Mack was consistent with the understanding that Mr. Young was to leave a "portion" of the funeral home to Mr. Davis. R. p. 452 (Latonia Davis Affidavit ¶ 22); R. p. 337 lines 1-24 (Sam Davis deposition).

E. Decades of Open Operation By Samuel L. Davis As An Unchallenged Sole Owner

As part of the evidence presented in moving for summary judgment, the Respondent presented five years of tax returns (2013-2018) prepared by the corporation's CPA (Peyton Warren) and attached to the Johnson affidavit confirm full ownership of the corporation by Samuel L. Davis. R. p.443-448 (Exhibit D to Affidavit of Carolyn Johnson). Moreover, CPA Warren's deposition testimony, provided to the Probate Court, confirmed that he had been the funeral home's accountant for almost thirty years and that throughout that time, Sam Davis was the sole shareholder of the corporation. R. pp.266-272. In addition, the affidavit of Latonia Davis *submitted by Plaintiff* further confirmed the accounting work done by Mr. Warren, R. p. 450 (Davis Affidavit ¶ 6), and further confirmed that she never witnessed any payment made to Chellie Nixon from 1995 through 2021. R. p. 450 (Davis Affidavit ¶ 11). Thus, the evidence shows that, from 1982 until Chellie Nixon's death in 2017, the incorporated entity was operated with Samuel L. Davis as the sole shareholder and Chellie Nixon never raised a claim to the contrary in those 35 years – *now her daughter does, without any evidence.*

ARGUMENT

THERE IS NOT SUFFICIENT EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT, THAT ANY FUNERAL HOME INTEREST INHERITED BY CHELLIE NIXON (APPELLANT'S DECEDENT) WAS NOT SUBSEQUENTLY SHARED WITH AND SOLD TO SAMUEL L. DAVIS (RESPONDENT'S DECEDENT).

As noted above, this is an appeal from Marion County Probate Court. Chellie died February 14, 2017 while residing in Marion County. R. p.14 (Complaint ¶1); R. p.453 (Angela Young affidavit ¶7). The original Complaint was filed in Marion County Probate Court on November 11, 2021 alleging two (2) causes of action: one for declaratory judgment seeking to have the Court declare the funeral home corporation an asset of Chellie's estate, R. pp. 15-16 (Complaint ¶¶ 6-26); and a second cause of action for fraud asserting that Chellie had been misled and harmed by Samuel L. Davis' representations of corporate ownership. R. pp. 16-17 (Complaint ¶¶ 27-36). *Of course, all the evidence in the record shows that Samuel L. Davis has been the sole owner of Young and Young Funeral Home, Inc. since 1982!*

I. Limited Subject Matter Jurisdiction of the Probate Court

Probate Code Section 62-1-302(a)(1) provides that the Probate Court has jurisdiction related to "determination of property in which the estate...has an interest"). Again, the first cause of action seeks a declaration that an incorporated funeral home entity in Hartsville (Young and Young Funeral Home, Inc.) is part of the Chellie Nixon's 2017 Estate (probated in Marion County); thus, this cause of action is arguably within the Probate Court's subject matter jurisdiction. *With regard to the second cause of action, however, subject matter jurisdiction is not so clear and is hereby raised – as it can be raised at any time.*

Nothing in the Probate Code provides that the Probate Court has subject matter jurisdiction of a tort claim simply because the tort plaintiff is an estate.⁸ Accordingly, Respondent asks this Court to affirm the dismissal of the Appellant's second cause of action for lack of subject matter jurisdiction using SCACR 220(c) if necessary.

Of course, even if the Probate Court properly had jurisdiction of the fraud cause of action, that Court properly concluded that there was no genuine issue of fact with regard to alleged misrepresentation if there was no evidentiary support for the underlying claim of Chellie's current ownership in the incorporated funeral home.

II. No Genuine Issue of Current Corporate Ownership

The claim of the Estate to corporate ownership of the Hartsville funeral home is clearly without merit and lacks evidentiary support to create a genuine issue of material act; thus, the Probate Court (and the Circuit Court) correctly concluded the matter was proper for summary judgment.

- A. There Is Ample Evidence That Samuel L. Davis Was The Sole Owner Of Young & Young Funeral Home When This Probate Action Was Begun; All Evidence Confirms Those Interests Were Shared With And Were Sold To Samuel L. Davis By March Of 1982 (42 Years Ago).

See STATEMENT OF FACTS ABOVE, Sections A through E.

⁸ The wisdom of this jurisdictional limitation is particularly evident when the decedent had decades to raise and pursue the now alleged tort while she was still alive – as discussed below.

B. Without Evidence, Appellant Suggest “Metaphysical Doubts” to Survive Summary Judgment

As noted in the Standard of Review above, our state’s Supreme Court – following the United States Supreme Court – has declared that a party opposing summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with ‘specific facts showing that there is a genuine issue for trial.’ ” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (S.C. 1990) quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348 1356, (1986) (emphasis in original). With a litigation budget, but no evidence, the Appellant has tried to get multiple Courts to speculate or infer a basis to rebut the clear historical evidence and documentation.⁹ These efforts were rejected by the Probate Court and Circuit Court and should be rejected by this Court as well.

⁹ Prior to the instant litigation (filed by Chellie’s daughter on November 11, 2021), the Appellant Estate was represented by Marion attorney Robert E. Lee who issued a February 2018 subpoena in the Estate administration (Chellie’s son Harold Young, II was then the Personal Administrator) to Samuel Davis as the Registered Agent for Young and Young Funeral Home, Inc. That subpoena sought “All documents which evidence the transfer of ownership of Young and Young Funeral Home, Inc. from Harold Young to Samuel L. Davis or the current owner(s) of Young and Young Funeral Home, Inc.” R. pp. 393-396 (Subpoena attached as Exhibit to Davis deposition).

Although the response was initially incomplete (real property deed only), thereby triggering a Petition and Rule to Show Cause, R. pp. 389-390, Hartsville attorney Jim Cox of the Saleeby & Cox law firm did write attorney Lee on the date scheduled for the Rule to Show Cause and provide additional information and confirming a plan to meet the following week. R. p. 397 (Exhibit 6 to Davis deposition). Of course, the Record now contains the historical incorporating documents and the stock records described in the Statement of Facts above. Ultimately, the subpoena was apparently resolved to Mr. Lee’s satisfaction because no further enforcement action was offered in the record. Indeed, ultimately the Appellant had to find both a new Personal Representative, R. p. 16 (Complaint ¶25) and new counsel.

Primarily, the Appellant tried to have the Probate Court infer alternative facts through an earlier Spoliation motion which was denied by the Probate Court.¹⁰ In that failed motion, *despite the actual documentation produced confirming corporate formation and ownership*, Appellant tried to suggest that other documentation was destroyed which somehow might suggest alternative ownership; that speculation was soundly rejected by the Probate Court which concluded, “Nothing before this Court indicates any effort by the Respondent to destroy any evidence that relates to the ownership of Young and Young Funeral Home, Inc.”¹¹

In her brief, Appellant complains that the Probate Court “did not even mention the issue of spoliation” in its Summary Judgment Order of July 17, 2023. Brief page 11. What Appellant fails to reference, however, is the separate earlier March Order of the Probate Court expressly addressing the spoliation claims and rejecting them. R. pp. 2-4. Notably, spoliation was raised in the “Statement of Issues on Appeal” in Circuit Court required by S.C. Code § 62-1-308 (b), however, the Order itself was not referenced in that Statement or designated in the Record for

¹⁰ Respondent says “primarily” because Appellant has also sought to cast some speculative doubt on the historical corporate minutes found in the record that confirm Chellie’s sale of her corporate interests. R. pp.411-442. Specifically, Appellant has referred to testimony by an almost 73-year-old, R. p. 200 lines 9-10, Ernestine Boston (ex-wife of Samuel L. Davis, R. p. 201 lines 5-10) which suggests she was somewhat uncertain in 2023 of her attendance at the 1982 corporate meeting with a previous husband (now married to Mr. Boston). Ms. Boston admits her *actual* signature on Corporate minutes, R. p. 243 line 13-14, and then morphs to she “don’t remember” the meeting itself. R. p. 244 lines 16-19, R.p. 251 lines 8-9, R.p. 256 lines 1-7).

Nevertheless, Ms. Boston *did remember* that Samuel L. Davis was the *sole* owner of the funeral home during their marriage and Chellie had no ownership or involvement anymore. R. p. 249 line 4 – p. 250 line 20. Again, there is no evidence in the testimony of Ms. Boston to create a genuine issue of fact. Appellant seems to suggest that an uncertain memory of a meeting 40 years earlier should allow the Marion County Probate Court to reconstitute the Darlington County Estates of Harold L. Young and Dorothy J. Young from 1978 and 1979; any such metaphysical suggestion would not be grounded in evidentiary reality.

¹¹ Order filed March 23, 2023. R. pp. 2-4.

Circuit Court until done responsively by Respondent. Likewise, the Probate Court's Order on Spoliation has not been included in the Appellant's Designation of Matter and was not explicitly listed or incorporated in the Notice of Appeal to this Court as would seem to be required by SCACR 203 (d) (1) (B) (ii). The Probate Court's spoliation order would thus seem to be the law of the case. Again, the Respondent would urge this Court to use SCACR 220(c) to affirm the lower Court's ruling on the spoliation issue as unpreserved.

Even if not the law of the case, the Probate Court's spoliation rejection should be evaluated by a more restricted "clear abuse of discretion" standard of review since it is a decision addressing a request for sanctions. Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 586 S.E.2d 572 (2003). Skywaves I Corp. v. Branch Banking & Trust Co., 814 S.E.2d 643 (S.C. App. 2018) ("The imposition of sanctions is generally entrusted to the sound discretion of the [c]ircuit [c]ourt." *citing* Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (*quoting* Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)).

Although the Appellant's motion for sanctions was supported by the affidavit of former funeral home employee Latonia Davis which declared the 2020 destruction of unidentified stored records that were over 7 years old ("dated before 2013"), R. p.451-452 (Affidavit ¶¶19-21), the Probate Court also considered the clarifying deposition testimony of funeral home manager Carolyn Johnson who explained (and provided examples in Court) that the irrelevant purged files related to individual decedents whose remains and arrangements had been handled by the funeral home (i.e., customer files). R. p. 131 line 13 – p. 132 line 9; p.166 line 16- p.168 line 6. Moreover, the Probate Court had before it – the actual, *undestroyed*, historical documents of incorporation (signed by Chellie) and stock transfer – as referenced in the **Statement of Facts** above.

Accordingly, the Probate Court's spoliation decision, *if preserved for appeal at all*, was not an abuse of discretion – and neither was the Circuit Court's subsequent order.

CONCLUSION

Despite a wholly artificial smokescreen of complexity, this matter is actually quite simple: is there evidentiary support for Appellant's claims sufficient to create a genuine issue of material fact? More directly, is there any evidentiary support for the theory that Chellie did not agree almost 43 years ago to incorporate the funeral home with Samuel L. Davis owning 35 shares and later agree to sell Davis her remaining 65 shares? The record before the Probate Court, the Circuit Court, and this Court, fully supports the conclusion of Judge Atkinson that there is no genuine issue of material fact and summary judgment was appropriate. The summary judgment order of the Probate Court should be affirmed.

Florence, South Carolina

July 22, 2024

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/ J. Rene' Josey

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CERTIFICATE OF COUNSEL

I, Jon Rene Josey, Esquire of Turner, Padget, Graham & Laney, P.A., attorney for the Respondent, hereby certify that the Final Brief filed with the Court on or about this date complies with Rule 211(b), SCACR.

Florence, South Carolina

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