



The South Carolina Court of Appeals

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November 04, 2024

The Honorable Angie Bryant
PO Box 649
York SC 29745-0649

REMITTITUR

Re: Vicki Vergeldt v. John Vergeldt
Lower Court Case No. 2016CP4600820
Appellate Case No. 2021-000816

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: Desa Ballard, Esquire
Harvey M. Watson, III, Esquire
Taylor Anthony Peace, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Vicki Lynn Vergeldt, Individually, and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
dated September 27, 1978, Respondent,

v.

John Edward Vergeldt, Appellant.

Appellate Case No. 2021-000816

Appeal From York County
Teasa Kay Weaver, Master-In-Equity

Unpublished Opinion No. 2024-UP-052
Heard November 8, 2023 – Filed February 14, 2024

AFFIRMED

Desa Ballard and Harvey M. Watson, III, both of Ballard
& Watson, Attorneys at Law, of West Columbia, for
Appellant.

Taylor Anthony Peace, of Harrell, Martin, & Peace, P.A.,
of Chapin, for Respondent.

PER CURIAM: John Vergeldt appeals the master-in-equity's order granting the
John Vergeldt, Jr. Revocable Living Trust (the Trust) a money judgment of

\$361,092.88 against him to restore trust assets and pay attorney's fees and additional expenses. On appeal, John argues the circuit court erred by (1) allowing Vicki Vergeldt to amend her petition to seek damages because damages were barred by res judicata and (2) failing to apply the standard of proof imposed by John Vergeldt, Jr.'s (the Settlor's) tenth amendment to his will. We affirm pursuant to Rule 220(b), SCACR.

1. We hold that John's argument that the doctrine of res judicata barred Vicki from amending her petition for his removal as successor trustee and other related relief was not preserved for appellate review because John first raised the argument in his motion for reconsideration. See *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion."); *id.* at 182, 826 S.E.2d at 588 ("In rare cases . . . a trial court may deny a motion to amend if the amendment would be clearly futile."); *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182, 597 S.E.2d 152, 159 (Ct. App. 2004) ("Res judicata is an affirmative defense that must be pled at trial in order to be pursued on appeal."); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (explaining that to be preserved for appellate review, an issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity" (quoting Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))).

2. We hold the master did not fail to apply the correct standard of proof as required by the Trust agreement. See *Smith v. Barr*, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct. App. 2007) ("Our scope of review for a case heard by a Master permits us to determine facts in accordance with our own view of the preponderance of the evidence."); *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) ("The primary consideration in construing a trust is to discern the settlor's intent."); *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 485 (Ct. App. 2006) ("In ascertaining a settlor's intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument.").

AFFIRMED.

MCDONALD and VINSON, JJ., and BROMELL HOLMES, A.J., concur.

The South Carolina Court of Appeals

Vicki Lynn Vergeldt, Individually, and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
dated September 27, 1978, Respondent,

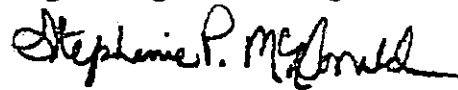
v.

John Edward Vergeldt, Appellant.

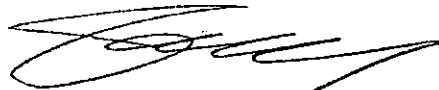
Appellate Case No. 2021-000816

ORDER

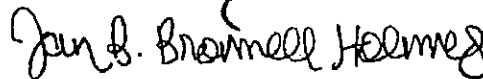
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A. J.

Columbia, South Carolina

cc:

Desa Ballard, Esquire

Harvey M. Watson, III, Esquire

FILED
Apr 11 2024

Taylor Anthony Peace, Esquire
The Honorable Teasa Kay Weaver

RECEIVED

Oct 30 2024

SC Court of Appeals

The Supreme Court of South Carolina

Vicki Lynn Vergeldt, Individually, and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
dated September 27, 1978, Respondent,

v.

John Edward Vergeldt, Petitioner.

Appellate Case No. 2024-000775

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina

October 30, 2024

cc:

Desa Ballard

Harvey M. Watson, III

Taylor Anthony Peace

Haley Alyse Hubbard

The Honorable Jenny Abbott Kitchings