

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 29 2024

SC Court of Appeals

Appeal from Greenwood County
Greenwood County Court of Common Pleas
Hon. Judge Donald B. Hocker, Family Court Judge, Presiding

2020-000917

Karen Petit.....Appellant,

Versus

Phyllis Jean Krohn, USAA Federal Savings Bank, and USAA Investment Management
Co.,.....Respondents.

PETITION FOR REHEARING

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August 29, 2024.

NOW INTO COURT, comes the Appellant Karen Petit, who respectfully submits the following Petition for Rehearing, pursuant to Rule 211 of the S.C. Rules of Appellate Practice, for the following reasons, to wit:

The Court of Appeals in its unpublished opinion of August 14, 2024, respectfully overlooked and/or misapprehended all of the issues and arguments submitted by the Appellant in brief as to both Respondents, Phyllis Krohn and USAA. The Appellant fully incorporates and adopts all arguments furthered in brief in this Petition for Rehearing and respectfully requests that this Honorable Court grant the Appellant's petition and reverse the order of Honorable Judge Donald Hocker. This Court has affirmed the trial court's improper weighing of the evidence and has made conclusions regarding the strength of the evidence that was presented by both sides – rather than looking at the evidence in the light most favorable to the non-moving party, the Appellant. In addition, this Court has not determined whether a scintilla of evidence existed for the parties to go forward with the case to trial on all of the Appellant's causes of actions. A prominent example is this Court's weighing the evidence that was presented regarding Respondent Phyllis Krohn's undue influence rather than viewing the evidence presented in the light most favorable to the Appellant. This Court has respectfully erred, and the Appellant's Petition for Rehearing should be granted.

In its opinion, this Court has left the Appellant without a cause of action and recourse against an admitted bad actor Phyllis Krohn, and USAA. In addition to this Court erroneously finding that an action for tortious interference of contract will not lie against Krohn, this Court overlooked the argument of Appellant that she had stated a viable claim against Krohn of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C, 265, 395 S.E.2d 179 (1990). *Crandall* is a case in which the S.C.

Supreme Court reversed the grant of summary judgment by the trial court finding that no such cause of action existed in the law of South Carolina. In reversing, the S.C. Supreme Court held that the Petitioners had furthered a sound cause of action, and the elements that a Plaintiff must prove are that (1) the Defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. Further, if a defendant acts for more than one purpose (which the record of this case is devoid of any other purpose than a sinister one by Ms. Krohn), the improper purpose must predominate in order to create liability. Alternatively, a plaintiff can prove that the defendant's *method of interference* was improper under the circumstances – which in this case was clearly established by Ms. Krohn's own admissions regarding the change of beneficiary form and her acting outside the scope of the USAA Power of Attorney. This cause of action is precisely what is alleged in the Appellant's complaint, and the admissions of Ms. Krohn in her deposition establishes much more than a scintilla of evidence when the evidence is viewed in the light most favorable to the non-moving party, the Appellant Karen Petit.

Further, the facts are undisputed that USAA entered into a valid contract with Dr. Petit, given the admission of such in the pre-trial discovery process by the USAA defendants. (R. pp. 53-66.) It is also undisputed that the Appellant was a beneficiary of the contract, and undisputed that Ms. Krohn had actual knowledge of the account given her status as USAA Power of Attorney and her admitted act of changing the beneficiaries on the USAA form. (R. pp. 503-584.) There is also no doubt that Ms. Krohn's interference with the contract caused damages to the Appellant. In fact, at oral argument of this matter the Court acknowledged that the Appellant had suffered damages in the changing of the beneficiary to the IRA.

In the trial court's order granting summary judgment in favor of Ms. Krohn finding no scintilla of evidence supporting the facts viewed in the light most favorable to the Appellant Karen Petit regarding interference of a contractual relationship, the court erred in finding that Ms. Petit has a mere "expectancy in the benefits" of the IRA account, and thus no vested interest and standing to bring the present action, citing wholly inapplicable cases from jurisdictions not controlling in South Carolina. The cases cited by this Court in its opinion are also wholly inapplicable to the specific facts of this case regarding an IRA. As an initial matter, the Respondents stipulated at the summary judgment motion hearing that the issue squarely presented to the court in this case of the Appellant's standing to pursue this matter as a contingent beneficiary of an IRA appears to be one of first impression in South Carolina – thus would explain the trial court's citation of cases in jurisdictions outside South Carolina. Also cited by the trial court in its order granting Ms. Krohn's motion, as well as this Court in its Opinion, is the case of *Stribling v. Stribling*, 369 S.C. 400, 406, 632 S.E. 2d 291, 294 (Ct. App. 2006). *Stribling* is particularly inapplicable to the overall facts at bar. However, contrary to the assertions of both Respondents in their summary judgment motions and accompanying memoranda, the *Stribling* case actually supports the conclusion that the Appellant had standing to bring her claims as her Father was deceased at the time of the filing of the lawsuit and unable to change the beneficiaries. The case of *Stribling* involved a dispute about a former spouse's entitlement to IRA funds given a valid marital settlement agreement entered in the Family Court wherein the Wife waived her rights to certain retirement accounts, but yet was still named as the beneficiary of an IRA policy at the time of the deceased husband's death. The court in *Stribling in mere dicta* points out that the Wife had a mere expectancy of benefits given her status as the named beneficiary to the IRA account and not a vested interest such that would defeat the valid

marital settlement agreement entered in Family Court. This dicta can hardly be used by this Honorable Appellate Court to close the courthouse doors to the Appellant Karen Petit in a Common Pleas action by challenging her basic standing to assert a cause of action which is clearly justiciable in the Courts of South Carolina. The trial court's interpretation and application of the alleged principle in *Stribling* of "mere expectancy" would bar litigants such as Ms. Petit to file lawsuits against wrongdoers (particularly those wrongdoers who admit their bad acts at the inception of a lawsuit as is present in this case) and would yield absurd results. Ms. Petit ultimately was not the beneficiary who received the proceeds of the USAA IRA – so the question becomes at what point would she have had standing to challenge the bad acts of Ms. Krohn if she could not do it during the lifetime of Dr. Petit, nor following his death due to the fact that she was not the vested beneficiary as found by the trial court and this Honorable Appellate Court? Again, the conclusion reached this Court's application of wholly irrelevant cases on this issue has yielded an absurd result in barring the courthouse from the Appellant Karen Petit's claims – and she has not had a sufficient opportunity to present her case fully to a proper finder of fact, a jury.

In its opinion, this Appellate Court does not address whether the issue presented as discussed *supra* is one of first impression in South Carolina as stipulated by defense counsel at the summary judgment motion hearing. However, the case of *Mayer v. M.S. Bailey & Son*, 347 S.C. 353, 555 S.E.2d 406 (S.C. App. 2001) presents a much more analogous set of facts to the case at bar than those cases relied upon by this Court in its opinion. In *Mayer*, the Appellants were contingent beneficiaries of the remainder of a trust established during the lifetime of the decedent, their Father. The Appellant children had concerns that the trust was being depleted and mismanaged to their detriment by the trustee M.S. Bailey & Son, Bankers, during the

lifetime of the decedent. However, believing that they would not have a vested interest in the proceeds of the remainder until the death of the decedent, they did not file suit to challenge the acts of the trustee until after the death of their Father. The opinion of this Honorable Court in *Mayer* was that the Appellants' claims were barred by the statute of limitations set forth in Title 62 and Title 15 of the South Carolina Code (The Probate Code), affirming the trial court's grant of summary judgment. However, this Court disagreed with the Appellant children's assertion that as contingent remaindermen of the trust accounts, they did not have a justiciable interest and thus no standing to initiate a suit against Bankers until their interests became fully vested upon the death of their Mother (pursuant to the terms of the trust). This Court rejected this argument finding that as contingent beneficiaries to the trust that they were an "interested party" and had standing to assert their claims prior to the death of the decedent. Application of the principles of *Mayer* to the case at bar would yield a much more equitable result and conclusion that contingent beneficiaries have standing not only prior to the death of a decedent to challenge the acts of admitted bad actors contrary to the intent and will of a decedent during their lifetimes, but also following the discovery of the bad acts that caused them harm to their contingency interests. Of note is that in the case at bar, the Appellant did not learn of the bad acts of Ms. Krohn until after her Father's death, in 2017. However, if this Court's reasoning stands in this case and shuts the doors of the courthouse to Ms. Petit's claims against Ms. Krohn, the absurd result would be that there would be no remedy to redress the grievance against the bad actor that caused harm to Ms. Petit. Therefore, the trial court erred in granting summary judgment in favor of the Respondents, this Court erred in affirming the trial court's order, and this Court should reverse the order and remand the matter back to the trial court for further proceedings.

CONCLUSION

The Appellant respectfully prays that this Honorable Appellate Court will grant the Appellant's Petition for Rehearing, and reverse the Order of the Trial Court.

Respectfully submitted,

s/Scarlet B. Moore

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