RECEIVED

Nov 05 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2020-000917

Karen Petit.....….....Petitioner,

Versus

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

PETITION FOR WRIT OF CERTIORARI

Scarlet B. Moore, #72534
Attorney for Petitioner
P.O. Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)

November 5, 2004.
Greenville, S.C.

CERTIFICATION OF COUNSEL

Undersigned counsel certifies that the Petitioner submitted a Petition for Rehearing to the S.C. Court of Appeals on August 29, 2024, which Petition was denied by the S.C. Court of Appeals on September 16, 2024.

QUESTION PRESENTED FOR REVIEW

Did the trial court err in granting the motions for summary judgment filed by the Respondents Phyllis Jean Krohn, USAA Federal Savings Bank and USAA Investment Management Co., respectively?

STATEMENT OF THE CASE

This matter is an appeal of the trial court's orders granting summary judgment to the Respondents and dismissing the Petitioner's complaint and all causes of action in the above titled matter. (R. pp. 1-22) This matter was initiated by the Petitioner, Karen Petit, filing a Summons and Complaint seeking damages pursuant to multiple causes of action arising from the settlement of a USAA IRA account worth $454,332.00 held by the Petitioner's Father, Dr. Edward Petit, who died on March 18, 2015. (R. pp. 35-45) During Dr. Petit's lifetime, the Petitioner had actual knowledge that she and her sister were the beneficiaries of the USAA IRA policy, with the sister's portion to be held in trust. (R. pp. 101-104) On or about January 15, 2007, Dr. Petit executed a form entitled "Individual Retirement Account Designation of Beneficiary" form entirely in his handwriting, in which he named Karen (NMI) Petit and Kathy Elise Petit Trust as the beneficiaries. (R. pp. 101-104) However, subsequent to Dr. Petit's death on March 18, 2015, the Petitioner learned in 2017 that a change of beneficiary form had been executed on or about January 23, 2012, changing the beneficiaries from the Petitioner and her sister in trust, to the Petitoner's nieces. (R. pp. 149-152) During Dr. Petit's lifetime and during the time that the change of beneficiary form would have been executed, the Respondent Phyllis Jean Krohn served as a companion to him. Given the fact that the beneficiaries had been changed without her knowledge, the Petitioner on or about June, 2017, asked Ms. Krohn whether or not she knew how the IRA was changed. Ms. Krohn replied, "I did it." (R. p. 673, lines 15-21; p. 695, lines 5-11; p. 743, lines 11-21) The Petitioner

asked her why she changed it, and Ms. Krohn advised that the Petitioner's Father wanted to do something nice for his granddaughters and that ***Ms. Krohn*** had decided that this is what he could do – provide for them through the USAA IRA. (R. p. 695, lines 5-11) Subsequently, Ms. Krohn apologized to the Petitioner saying, "I'm so sorry, I'm so sorry, you don't know how often I regretted the things that I did with your Dad." (R. p. 743, lines 11-21) At the summary judgment hearing, the Petitioner submitted an affidavit of Wallace M. Dorn corroborating the Petitioner's recollection of the confrontation that took place between the Petitioner and Ms. Krohn. (R. pp. 873-874; R. pp. 233-240) Mr. Dorn described witnessing the conversation between the Petitioner and Ms. Krohn, and observed that the Petitioner was distraught and upset. (R. pp. 873-874; R. pp. 233-240)

The Petitioner eventually learned that on or about January 23, 2012, Ms. Krohn had completely filled out a USAA form entitled "Individual Retirement Account Designation of Beneficiary," which permitted Ms. Krohn to change the beneficiaries to the Petitioner's nieces, with the form being signed by Dr. Petit. (R. pp.149-152) The deposition testimony of Ms. Krohn also established that an agent for the company from Houston, Texas actually visited the home of Dr. Petit in Greenwood, S.C. to discuss financial accounts and services available to him through USAA on or about Fall of 2011. (R. p. 553, lines 15-21; R. p. 555, lines 1-10) And, according to Ms. Krohn's deposition, USAA's agent provided the change of beneficiary form after visiting with Dr. Petit and Defendant Krohn in the Fall of 2011. (R. p. 554, lines 17-25; R. p. 555, lines 1-10) The Petitioner also learned that on or about January 26, 2009, Dr. Petit had executed a USAA Power of Attorney in favor

of Ms. Krohn. (R. pp. 105-109) The power of attorney was not executed pursuant to South Carolina law (which requires two (2) witnesses), and the document contains a specific limitation in section 1(d) which states:

> "Limitations: My attorney does not have the authority to make himself or herself or others the co-owner or beneficiary of such investment accounts; does not have the authority to change ownership of such investment accounts; does not have a power of appointment over such investment accounts……."

The Petitioner presented evidence at the summary judgment hearing that immediately prior to her Father signing the change of beneficiary form in favor of the nieces, the 87 year-old Dr. Petit lost consciousness while on a cruise from Miami, and was taken from the ship to a hospital in Key West, Florida. (R. p. 550, line 19; p. 535 lines 8-12; p. 536, lines 2-9) The hospital in Key West could not control Dr. Petit's heart condition and sent him to a hospital in Miami. (R. p. 536, lines 20-25; p. 537, lines 1-13) While in Miami, Dr. Petit had a heart catheterization, a heart ablation, and a defibrillator and pacemaker implantation, and was in either ICU or CCU. (R. p. 536, lines 10-15; p. 539) (R. p. 662, lines 22-24) When he was discharged from the hospital on January 22, 2012, Dr. Petit was not fully recovered. (R. p. 548, lines 5-7; p. 548, lines 11-15) Even though Dr. Petit was not fully recovered and continued taking pain medication, he signed the beneficiary designation form in favor of the nieces the day after he was discharged from the hospital. However, Ms. Krohn testified in her deposition that she could not remember if she saw him sign it. (R. p. 557, lines 14-22) However, Ms. Krohn admitted in deposition and requests to admit that she completed the change of beneficiary form and all the printed handwriting on

the form is hers. (R. p. 551, lines 24-25; p. 552, lines 1-16) (R. pp. 233-240; R. pp. 149-152)

As stated, the Petitioner filed suit on or about November 8, 2017, with the Greenwood County Court of Common Pleas naming USAA Federal Savings Bank and USAA Investment Management Co., and Phyllis Jean Krohn as Defendants. (R. pp. 35-45) All Respondents filed Answers to the Plaintiff's Complaint. (R. pp. 53-66; R. pp. 46-51) The parties engaged in some discovery, but discovery was not complete as of the time of the summary judgment motions. The Petitioner was in the process of gathering additional medical information from the hospital in Miami, Florida, where her Father was taken after his medical emergency issues on the cruise ship. On or about May 2, 2019, Respondents USAA filed a motion for summary judgment asking the court to dismiss all of the Petitioner's causes of action. (R. pp. 67-68) The Respondent Ms. Krohn filed a motion for summary judgment on or about August 5, 2019, asking for the same relief. The parties appeared before Judge Donald Hocker on September 4, 2019, for a hearing pursuant to the Defendants' motions for summary judgment. (R. pp. 848-872) The Petitioner filed a Memorandum in Opposition to the Summary Judgment Motions. (R. pp. 233-240) On January 15, 2020, Judge Hocker filed two separate orders granting the Respondents' motions. (R. pp. 1-22) The Petitioner timely filed a motion to reconsider both orders on or about January 27, 2020. (R. pp. 308-314) Judge Hocker denied the Petitioner's motion to reconsider both orders in separate orders filed on May 20, 2020. (R. pp. 23-34) The Petitioner filed a timely notice of appeal on June 17, 2020. In an unpublished opinion, the South Carolina Court of Appeals affirmed the order of Judge Hocker.

The Petitioner filed and served a timely Petition for Rehearing on August 29, 2024. The Court of Appeals denied the Petition for Rehearing on September 16, 2024.

ARGUMENT IN SUPPORT OF PETITION

THE S.C. COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT TO ALL RESPONDENTS IN THIS MATTER.

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 Petitioner in brief as to both Respondents, Phyllis Krohn and USAA. The Court of Appeals 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 Petitioner. In addition, the Court of Appeals has not determined whether a scintilla of evidence existed for the parties to go forward with the case to trial on all of the Petitioner's causes of actions. A prominent example is the Court of Appeals' 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 Petitioner. The Court of Appeals has respectfully erred, and the Petitioner's Petition for Certiorari should be granted by this Honorable Supreme Court.

In its opinion, this Court of Appeals has left the Petitioner 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 Petitioner 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 Petitioner'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 Petitioner 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 Petitioner 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 Petitioner. In fact, at oral argument of this matter the Court of Appeals acknowledged that the Petitioner 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 Petitioner 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 the Court of Appeals 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 Petitioner'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 the Court of Appeals 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 Petitioner 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 the Appellate Courts to close the courthouse doors to the Petitioner 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 the Court of Appeals? Again, the conclusion reached the Appellate Court's application of wholly irrelevant cases on this issue has yielded an absurd result in barring the courthouse from the Petitioner 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, the Court of Appeals 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 the Court of Appeals in its opinion. In *Mayer,* the Petitioners were contingent beneficiaries of the remainder of a trust established during the lifetime of the decedent, their Father. The Petitioner 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 the Court of Appeals in *Mayer* was that the Petitioners' 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, the Court of Appeals disagreed with the Petitioner 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). The Court of Appeals 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 Petitioner did not learn of the bad acts of Ms. Krohn until after her Father's death, in 2017. However, if the reasoning of the Court of Appeals 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, the Court of Appeals erred in affirming the trial court's order, and this Court should grant the Petitioner's Petition for Writ of Certiorari.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court would grant her Petition for Writ of Certiorari, review this matter, and reverse the ruling of the S.C. Court of Appeals affirming the order of the trial court, Honorable Donald Hocker presiding.

Respectfully Submitted,

s/Scarlet B. Moore

_____

Scarlet B. Moore, #72534
Attorney for Petitioner
P.O. Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)

November 5, 2024.