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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

CASE NO. 2024-001080

Deatrix Zeigler,

Appellant,

v.

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

Respondents.

**INITIAL BRIEF OF
RESPONDENTS**

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Master in Equity erred in setting aside the deed into the Appellant.

STATEMENT OF THE CASE

FACTS

By deed dated May 25, 1970, and recorded in Deed Book 19-A at page 276, Jacob A. Bailey conveyed 203 Roach Drive, Swansea, SC to Leon Zeigler and Lula Mae Zeigler. The Zeiglers owned the property continuously until 2018. By deed dated July 29, 2018, and record August 1, 2018, in Record Book 20187, Leon Zeigler and Lula Mae Zeigler purported to transfer the property to their daughter, Deatrix Zeigler.

Leon Zeigler died intestate on August 3, 2018. He was survived by his wife, Lula Mae Zeigler and his six children. Glenn Zeigler was appointed his Personal Representative.

PROCEDURAL HISTORY

Glenn Zeigler (Respondent) brought the action on December 16, 2021. In the action, the Respondent sought, inter alia, to set aside the deed on the grounds of insufficient consideration, lack of mental capacity and breach of a confidential relationship.

The Respondent accepted service on February 9, 2022.

On February 28, 2022, the Appellant an Answer and Counterclaim.

On March 29, 2022, the Respondents filed a Reply to the Counterclaim

On February 8, 2023, the court referred the case to the Master in Equity. The referral was with finality with any appeal being directly to the Court of Appeals.

The case came to be tried on November 2, 2023. The testimony of several witnesses revealed that the persons who signed as witnesses to the Grantors' signatures were not present when the deed was executed. The Respondent timely moved, pursuant to Rule 15(b), SCRCP, to amend the pleadings to comply with the evidence that the deed was not properly executed. The Appellant consented and the Court granted the motion. Tr. pp. 140-142.

In its Order dated April 4, 2024, the Court held:

The deed executed July 29, 2018 by Leon Zeigler and Lula Mae Zeigler to Deatrix Zeigler was improperly executed and is invalid.

On April 15, 2024, Appellant timely filed a Motion to Reconsider. A hearing on the Motion was held on May 13, 2024.

By Order filed May 28, 2024, the Court denied the Motion to reconsider.

Appellant served and filed her appeal on June 28, 2024.

ARGUMENT

STANDARD OF REVIEW

An action to set aside a deed is an action in equity. The Court of Appeals is permitted to find facts in accordance with its view of the preponderance of the evidence. The Court does not necessarily disregard the findings of the Master because the Master was able to observe the witnesses and make determinations about their credibility.

QUESTION

1. Did the Master in Equity err in setting aside the deed into the Appellant?

ARGUMENT

§27-1-10 provides in part:

The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate **if it shall be executed in the presence of and be subscribed by two or more credible witnesses:** (emphasis added)

The Respondent initially challenged the deed on the grounds of the Grantors' incapacity and for undue influence by the Appellant. Complaint, pp. 1-3 . Although there was testimony offered to prove these grounds, the Master ultimately found that there was insufficient evidence to set aside the deed on either ground. Order dated April 4, 2024, p. 10.

In his Order, the Master found that the deed was improperly executed and found it to be invalid. The Master considered the following testimony:

The Respondent called the Appellant as a witness. The Appellant testified that although there were other persons present when the deed was signed, none of those persons signed as witnesses on the deed. Trial Tr., pp. 38-42. The persons who did sign as witnesses on the deed were not present. Tr., pp. 38-42. The Appellant made no objection to this testimony.

Pursuant to Rule 15(b), SCRCP, the Respondent made a motion to amend his Complaint to comply with the testimony. The Appellant made no objection to the motion and the Court granted it. Tr., pp. 140-142.

Thereafter, Sylvia Brown testified. She confirmed that she was present and signed the probate. She did not sign on either witness line. She also confirmed that the persons who signed as witnesses on the deed were not present when the deed was signed. Tr. pp. 152-154. Although the notary and Ms. Brown did sign the deed, neither signed as subscribing witnesses as required by the statute.

When the Appellant was recalled as her own witness, she again confirmed that the persons who signed the deed as witnesses were not present when the deed was signed by the Grantors. Tr. pp. 175-176.

The statute is precise and unambiguous as to the requirements for a deed to be properly executed. The evidence clearly shows that the deed was not executed as required by the statute. It was therefore invalid as a conveyance.

The Appellant has argued that the Grantors intended to transfer the property to the Appellant, that they were competent to do so and there was no undue influence. Leon Zeigler is now deceased and his intention cannot now be known. Lula Zeigler was available to be called as a witness by the Appellant but she did not call her. Regardless, the Court found that the deed had to be executed as required by the statute. It was not.

This deed is just as ineffective as one with only one witness signature or without any witness signatures at all.

Appellant argues that the deed should be held to be valid because the Grantors had the necessary capacity to execute a deed and that they desired to do so based on Mathias v. Mathias, 206 S.C. 276, 33 S.E.2d 626 (1945). The facts in Mathias do not raise a question the manner of execution of the deed. The Court expressly noted that the deed

was properly signed and delivered in the presence of two witnesses and notarized as required.

In addition, the Appellant also cites Brooks v. Kay, 339 S.C. 479, 530 S.E.2d 120 (2000). In this case, the Court found the deed to be invalid based on the Dead Man's Statute, the mental impairment of the Grantor and undue influence. The facts in Brooks do not raise a question the manner of execution of the deed.

Although the Appellant listed provisions of the Probate Act (Title 62) in her Table of Authorities, she did not discuss any of those provisions in her Argument.

The Appellant also argues that the Court should analyze the deed as it would in analyzing a will to determine the intent of the Testator. She did not cite any authority for that argument. The standards for parsing a will are significantly different from those involving a deed. This argument also clearly ignores the requirements of §27-7-10.

CONCLUSION

The Appellant failed to set forth any compelling argument that the deed should not be declared in valid. The Master did not err when he ruled that because the deed was not witnessed as required by the statute, the deed was invalid and therefore ineffective to convey title to the Appellant. The Order of the Master should be affirmed without modification.

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