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**Jan 29 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Grace G. Knie, Circuit Court Judge

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Case No. 2022-CP-42-03465  
Appellant Case No. 2024-001739

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Annie Gray aka Gary, Sadie Jackson,  
M. Diane Jackson, William Jackson Sr.,  
Eric Caldwell, Renee Rose,  
formerly and aka Renee Caldwell, and  
Bobby L. Rookard.....Appellants,

v.

Lorene Jackson a/k/a Lorine Jackson.....Respondent.

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INITIAL BRIEF OF APPELLANTS

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Rolf M. Baghdady / SC Bar # 0464  
Rolf M. Baghdady, P.A  
118 Cobblestone Ct.  
Chapin, SC 29036-9705  
(803) 345-7653  
E-mail: rolf@rolfbaghdady.com  
Attorney for Appellants

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND ALL OF THE IMPORTANT FACTS THAT ESTABLISH CLEAR AND CONVINCING EVIDENCE OF THE CONSTRUCTIVE TRUST AT ISSUE IN THIS CASE?
2. DID THE TRIAL COURT ERR IF FAILING TO FIND THE UNDISPUTED FACTS ESTABLISHING THE EXPRESS TRUST AT ISSUE IN THIS CASE?

## STATEMENT OF THE CASE

This matter was initiated in the Trial Court by the filing of Summons, Complaint, and Lis Pendens by the Appellants on September 13, 2022, in which they reported an order of this Court seeking *inter alia* an express trust, a constructive trust, and the costs and expenses of the litigation. The Respondent served a pro se answer in which she made a general denial. The Trial Court filed an order for discovery sanctions on March 12, 2024. The case was tried non-jury on September 5, 2024. The Trial Court filed its order finding for Respondent on October 9, 2024. Appellants served a Notice of Appeal upon Respondent on October 14, 2024.

## STANDARD OF REVIEW

This is an action in equity tried by a judge. In an action in equity tried by a judge, the appellate court has the authority to find facts in accordance with its own view of the preponderance of the evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773, (1976).

## ARGUMENTS

- I. BECAUSE THE TRIAL COURT FAILED TO FIND ALL OF THE IMPORTANT FACTS THAT ESTABLISH CLEAR AND CONVINCING EVIDENCE OF THE CONSTRUCTIVE TRUST AT ISSUE IN THIS CASE, THE TRIAL COURT ERRED IN FINDING FOR RESPONDENT.

All of the important facts are as follows:

1. Appellant Sadie Jackson has 4 siblings and they are Annie Gary, Lorine Jackson, Diane Jackson, and William Jackson, whom they call Bill. Appellant Sadie Jackson also has an additional 2 siblings who are deceased: Clarence Hardy and John Robert Jackson. (T. p. 16, lines 14-21)
2. The heirs to the deceased siblings are: Renee Rose and Eric Caldwell for Clarence Hardy; and Bobby Rookard for John Robert Jackson. (T. p. 17, lines 3-7)
3. Joey Jackson is the son of Diane Jackson, and the nephew of the other parties. (T. p. 81, lines 12-22)
4. Sonia Pulliam is the niece of the parties. (T. p. 85, lines 4-8)
5. Bobby Rookard is the nephew to the parties, being the son of the deceased John Robert Jackson. (T. p. 94, lines 2-8)
6. Bill Jackson is the sibling to the parties. (T. p. 100, lines 7-12)
7. Sadie Jackson's mother, Irene Jackson, received the property from her siblings for the sum of \$1 with love and affection. (T. p. 32, lines 16-25)
8. In 1985 the property was transferred from the parents of Sadie Jackson to her younger sister, Diane Jackson. (T. p. 19, lines 4-6)

9. Diane Jackson was under the impression that the property, regardless of which sibling's name was on the title, was intended to be shared by all of the siblings. (T. p. 64, lines 14-17)
10. There were five [5] parties present at the signing of the deed which Gary Burgess notarized. (T. p. 52, lines 1-3)
11. Gary Burgess, having an extensive education, has served as a teacher, principal, superintendent, and reverend. (T. p. 49)
12. Gary Burgess is a second cousin to the parties in this case. (T. p. 50, lines 2-4)
13. Sadie Jackson states that Lorine Jackson agreed to put the property under her name with the understanding that the property belonged to them and their siblings. (T. p. 27, lines 11-22)
14. Sadie's mother stated that her intent was for the property to stay in the family and be able to be used for all family members. (T. p. 38, lines 13-19)
15. It is Joey Jackson's understanding, in the same vein as Sadie Jackson and Diane Jackson, that the property was intended to be shared amongst the family. (T. p. 81, lines 23-25-p. 82, lines 1-11)
16. It was the wish of the parties' mother, Irene Jackson, that Diane Jackson continue to live at the property. (T. p. 56, lines 20-22)
17. It is Sonia Pulliam's understanding that the property is meant to be shared amongst the family. (T. p. 86, lines 4-9)
18. The deed which Gary Burgess notarized listed Irene Jackson's wishes for the property. (T. p. 86, lines 23-25 - p. 87, lines 1-5)

19. Sonia Pulliam was in the room at the time that Gary Burgess notarized the deed and can confirm that it contained Irene Jackson's instructions for Lorine Jackson. (T. p. 92, lines 11-16)
20. Irene Jackson told Bobby Rookard that the property was the "family's place" and that he could live on the property. (T. p. 94, lines 22-25-p. 95, line 1)
21. It is Bobby Rookard's understanding that the deed to Lorine Jackson was put in her name due to trust. (T. p. 97, lines 8-9)
22. Diane Jackson lived at the property her entire life until Lorine Jackson evicted her in 2022. (T. p. 56, lines 8-14)
23. Following the eviction of Diane Jackson in 2022, Sadie Jackson discovered a deed signed by Diane Jackson which was different from the one she was familiar with, as it had James Cheek's signature instead of Gary Burgess's. (T. p. 22, lines 4-22)
24. The stated amount paid for the property that was transferred to Lorine Jackson was \$10. (Trial Exhibit 3)
25. In regard to the deed with James Cheek's signature on it [Plaintiff's Exhibit 3; Deed dated 5/4/1989], Sadie Jackson testified: "She said she signed a piece of paper where it had a mark on it. There was no other writing on that paper other than what she saw and put her name on it. Her name was the only thing there. Nobody's signature, and there was nothing at the top up there." And "She said when she was handed that paper, no signature was on it at all. And there was a mark on it where she was told to sign." (T. p. 37, lines 3-7 and lines 10-12)
26. Diane Jackson testified: "When I signed that piece of paper, it was a check for me to sign,

27. and I signed my name. All that rest of the stuff was not there.” When asked if there were witnesses, Diane Jackson testified, “No.” When asked if Attorney Cheek was present, Diane Jackson said, “No,” and further stated: “She brought that paper in. She said somebody was waiting on her. Okay. It was a man out there. She said we’re going up to the house to get Mom and Daddy’s name on it, too. And that was it. We was already on the outs. We was already not speaking to each other.” (T. p. 71, lines 11-25 and p. 72, line 1)
28. Diane Jackson states that the blank document was signed in her home. (T. p. 122, lines 20-21)
29. Diane Jackson has never visited the office of Attorney James Cheek. (T. p. 123, lines 4-5)
30. According to James Cheek , Diane Jackson was present in his office during the signing of the deed and was in the presence of two witnesses. (T. p. 110, lines 22-25)
31. James Cheek does not have recollection of where the deed was signed. (T. p. 112, lines 6-10)
32. James Cheek does not have recollection of the events or circumstances surrounding the deed. (T. p. 115)
33. James Cheek is unfamiliar with Diane Jackson and was unaware that she was the sister of Lorine Jackson. (T. p. 116, lines 1-12)
34. When asked to identify Diane Jackson in the courtroom, James Cheek instead identified Sadie Jackson. (T. p. 117, lines 9-14)
35. James Cheek was unable to recall where his offices have been located since the year 1985. (T. p. 119)

36. When Diane Jackson was asked about Defendant's exhibit 5, she stated that she was told the paper she was signing was to assist Lorine Jackson with taxes. It should also be noted that throughout her examinations, Diane Jackson struggled to read documents. (T. p. 76, line 16-23)

37. The document Diane Jackson signed did not state she was surrendering rights to the property, nor was this her understanding. (T. p. 76, line 25 - p. 77, lines 1-4)

38. Diane Jackson was physically afraid of Lorine Jackson. Diane Jackson testified:

“Q: Can you describe a little bit more about what you mean up in your face until you signed it?

A: We had been on the outs for a long time. Instead, when she had been upset, she kicked the door in. So if you want to know all about it, it's a lot.

Q: Say it again.

A: If you want to know the history, it's a lot. We was on the outs. She had kicked my back door in for some reason, 'cause I wouldn't let her in the house. She just have her way. She was just hard at times. She wanted things her way.

Q: Were you a little bit afraid of her physically?

A: Yes.

Q: Tell me why.

A: She bigger than I am. When you have asthma, it flares up every time, yeah. She knew I was the weak one of the family.

Q: She knew you were what?

A: The weakling of the family when it come to fighting. I would take it and go on.”

(T. p. 77, lines 15-25 and p. 78, lines 1-7)

39. Diane Jackson signed at least one of the documents because of physical intimidation. (T. p. 78, lines 6-8)
40. Thinking she was alleviating the burden of taxes which the family owed for the property, Diane Jackson paid Lorine Jackson for the time that she lived on the property. (T. p. 42, lines 1-2)
41. After receiving the deed signed in blank, Lorine Jackson mortgaged the property, which was contrary to the restrictions placed upon her for the benefit of the family. (T. p. 42, lines 22-25)
42. Sadie Jackson's brother-in-law and nephew did work on the property. (T. p. 43, lines 7-9)
43. Diane Jackson cared for many family members, both young and old, while living on the property. (T. p. 57, lines 1-6)
44. Diane Jackson made improvements upon the house to make it more livable. (T. p. 57, lines 1-6)
45. Diane Jackson looked after numerous children on the property, both from family members and neighbors. (T. p. 59, lines 15-25, p. 60 lines 1-3)
46. While living on the property, Diane Jackson did have employment. (T. p. 61, lines 2-5)
47. Diane Jackson consistently maintained and improved the property over the past 30 years. (T. p. 66)
48. Sadie Jackson learned about the existence of the rental contract between Diane Jackson and Lorine Jackson between February and July of 2022, before the eviction. (T. p. 47, lines 10-16)

49. After Lorine Jackson evicted her sister, Diane Jackson, from the property, this action was commenced with the filing of a Summons, Complaint and Lis Pendens on September 13, 2022.

Based on all of the facts above, a constructive trust should be imposed on the subject real property to which the parties are the beneficiaries. The South Carolina Court of Appeals, in an unpublished decision summarized the relevant law as follows:

“A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust.” *McNair v. Rainsford*, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (Ct. App. 1998). “It is resorted to by equity to vindicate right and justice or frustrate fraud.” *Id.* Because an action to declare a constructive trust is in equity, this Court may find the facts in accordance with its own view of the evidence. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987).

“A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title.” *Lollis*, 291 S.C. at 529, 354 at 561. “A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution.” *Id.* “A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.” *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990).

The burden is on the plaintiff to establish a constructive trust by clear and convincing evidence. *McNair*, 330 S.C. at 357, 499 S.E.2d at 501; see also *Lollis*, 291 S.C. at 530, 354 S.E.2d at 561 (“In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.”). Although fraud is generally cited as an element to establish a constructive trust, a party need not show actual fraud. *McNair*, 330 S.C. at 357, 499 S.E.2d at 501. Further, “equity is less than demanding and quite flexible in prescribing the elements essential to a constructive trust.” *Whitmire v. Adams*, 273 S.C. 453, 458, 257 S.E.2d 160, 163 (1979). *The Estate of Tucker v. Tucker*, 2008-UP-284 (S.C. App. Jun 04, 2008).

“Constructive Trusts may... be imposed based on other conduct or circumstances

including ... mistake in the transaction that originates the problem... other circumstances suggesting unjust enrichment, or other improper method by which one, in any way, either obtained or holds the legal right to property which he or she ought not hold and enjoy." 76 Am. Jur. 2d Trusts § 170 (2016). "Where one mistakenly retains property or money which rightfully belongs to another, a constructive trust is the proper remedial device to correct the situation." 76 Am. Jur. 2d Trusts § 201 (2016).

Mother Irene Hardy Jackson conveyed the property to Plaintiff Diane Jackson in 1985 to be held in trust for the benefit of all the heirs. It is uncontroverted that Plaintiff Diane Jackson met with the notary, Pastor Gary Burgess, and signed a document transferring the property to the Defendant Lorine Jackson to hold the property as trustee for the benefit of the family, defined as children of Mother Irene Hardy Jackson and children of the two deceased children.

Additionally, "(n)o deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so." *Cummings v. Varn*, 413 S.E.2d 829, 832, 307 S.C. 37 (S.C. 1991) citing *Griggs v. Griggs*, 199 S.C. 295, 19 S.E.2d 477 (1942). See also Am. Jur. 2d., Vol. 22B §7 p. 84, Thomas Reuters (2024) citing *Cummings v. Varn*, Id. stating, "one cannot convey an interest greater than one possesses in property, and a conveyance of property is invalid to the extent the seller tries to convey an interest greater than the seller has." Moreover, the Supreme Court has said where one has actual notice of others' interests or adverse interests in the subject property, they cannot be a bona fide

purchaser for value without notice.<sup>1</sup>

Here, Plaintiff Diane Jackson was the trustee of the property at the time she executed the deed to Defendant Lorine Jackson for the benefit of all of the heirs<sup>2</sup> and it is uncontroverted that Defendant Lorine Jackson is not a bona fide purchaser for value without notice as there was no consideration for the subject property and Defendant Lorine Jackson had knowledge that the property was held in trust for the benefit of the family, with family being defined as the children of Mother Irene Hardy Jackson and the children of the two deceased children of Mother Irene Hardy Jackson.

Plaintiff Diane Jackson presented uncontroverted testimony that she was afraid of Defendant Lorine Jackson as she had been violent at times and had even kicked a door in and when she signed the Deed and the lease, she did so under duress. Plaintiff Diane Jackson also contended that she did not sign the Deed 55J at page 459, dated May 4, 1989, before a notary. Defendant presented evidence in the form of James Cheek's testimony that Plaintiff Diane Jackson signed the deed at his office in May of 1989. James Cheek's testimony lacks credibility as he failed to recall the details surrounding allegedly obtaining the signature and he could not even recall the location of his office in 1989.

Based on the foregoing, the property rightfully belongs to the parties as co-beneficiaries.

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<sup>1</sup> The Supreme Court has found that where land buyer prior to sale had actual notice, orally and in writing, of stepdaughter's claim of one-third interest in property, buyer was not a bona fide purchaser for value without notice; the stepdaughter's claim "was of interest to him, and he is charged with all the knowledge he could have had that day for the asking. He is charged with this full and complete information in ordinary fairness as well as in law." *Spence v. Spence*, 628 S.E.2d 869, 975 368 S.C. 106 (S.C. 2006) citing *Walker v. Taylor*, 104 S.C. 1, 15, 88 S.E. 300, 303-04 (1916).

<sup>2</sup> "No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so." *Cummings v. Varn*, 413 S.E.2d 829 (S.C. 1992) citing *Griggs v. Griggs*, 199 S.C. 295, 19 S.E.2d 477 (1942).

II. BECAUSE THE TRIAL COURT FAILED TO FIND THE UNDISPUTED FACTS ESTABLISHING THE EXPRESS TRUST AT ISSUE IN THIS CASE, THE TRIAL COURT ERRED IN FINDING FOR RESPONDENT.

1. The terms of the express trust with respect to the property at issue in this case were outlined in niece Sonia Pulliam's testimony, where she stated: "And she wanted it to stay in the family, to never be sold. And it is to become a family home, house for any members of the family that need a place to stay." (T. p. 86, lines 2-9)

2. Sonia Pulliam testified to the terms of the express trust, which were outlined in the deed placed in Respondent Lorine Jackson's possession, as follows:

"A: My Grandmomma sat there and she had it specifically wrote – stated out what she wanted and what Aunt Lorine was supposed to do. When you want to say if we learned from it, that's what my Grandmomma did. She changed specifically in how the deed and stuff is supposed to be done.

Q: You said specifically written it out. Show me that writing.

A: Ask your client. [Lorine Jackson]

Q: You said it was specifically in writing.

A: Yes, I was there when it was done.

Q: You saw a document?

A: I sure did.

Q: Does a family member have that document?

A: It was not filed." (T. p. 89, lines 9-22)

3. Sonia Pulliam further testified:

"Q: Who has a copy ....?"

A: Your client has it. She's supposed to have it because whenever it was signed and notarized, it was given to her to go take to the deed office to file.

...

Q: Do any of you have a copy of that?

A: Your client [Lorine Jackson] got rid of it." (T. p. 91, lines 5-19)

An express trust is created when the property owner explicitly declares that the property is to be held in trust for the benefit of another party. See S.C. Code § 62-7-401, an express trust may be created by "(i) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death...(2) To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust... (b) A trust that arises by act or operation of law does not require the existence of a writing."

S.C. R. Evid. 1004 provides, "(t)his rule addresses the admissibility of other evidence of contents when the original writing is lost or destroyed. It states that other evidence of the contents of a writing, recording, or photograph is admissible if all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith."

Additionally, S.C. Code Section 19-21-20 for the perpetuation of testimony as to lost, destroyed, or defective instruments, states the following:

Any person interested in the preservation of the contents of any deed, release, private writing usually put on record or document alleged to have been lost, destroyed or defective in the record thereof and desiring to preserve the evidence thereof for any purpose may, by summons and complaint as provided by Title 15, institute an action in the court of common pleas to perpetuate testimony as to the existence and true contents of the same. In such complaint the defects, if any, complained of in the record shall be substantially set forth and to such action all persons interested or known or supposed to claim an interest in the property to which such testimony may

relate shall be made parties defendant and served with summons as provided by law in civil actions.

In this case, Mother Irene Hardy Jackson deeded the land over to Diane Jackson in 1985 to be held in trust for the benefit of all the heirs. There was a document, which has now been lost or destroyed by Lorine Jackson, prepared by the parents and a notary, Pastor Gary Burgess, which Diane Jackson signed to keep the property in trust for the benefit of all the heirs with Defendant Lorine Jackson as trustee.

According to the testimony of Sonia Pulliam, which testimony was uncontradicted by Lorine Jackson, the existence of an Express Trust with Lorine Jackson as Trustee was created by a deed that Dianne Jackson executed and that Gary Burgess notarized, conveying the property in trust with Lorine Jackson as trustee for the heirs of Irene Jackson. This document, put into possession of Lorine Jackson, which Lorine Jackson has since lost or destroyed, had been created for the benefit of the family, defined as children of Mother Irene Hardy Jackson and children of her two deceased children.

#### CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Circuit Court and Order:

- 1) The legal title to 23, 25A, and 25B Blackstock Rd., Inman S.C. 29349, more particularly described in the Lis Pendens in this action is vested as follows: 1/7th to Annie Gary, 1/7th to Sadie Jackson, 1/7th to Marylyn Dianne Jackson, 1/7th to William Jackson, Sr., 1/14th to Eric Caldwell, 1/14th to Renee Rose, 1/7th to Bobby L. Rookard, and 1/7th to Lorine Jackson; and,

2) The Appellants are entitled to costs and any further relief the Court deems to be just and proper.

Respectfully submitted,

January 29, 2025

/s/ Rolf M. Baghdady  
Rolf M. Baghdady / SC Bar # 0464  
Rolf M. Baghdady, P.A  
118 Cobblestone Ct.  
Chapin, SC 29036-9705  
(803) 345-7653  
E-mail: [rolf@rolfbaghdady.com](mailto:rolf@rolfbaghdady.com)  
Attorney for Appellants