THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2023-001519

James Reid and Sarania Reid, Respondents,

v.

Carrie Gaston Henderson Appellant.

RESPONDENTS' INTITIAL BRIEF

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BACKGROUND

Respondents are the record owners of a roughly 33-acre parcel of land (the "Property") in Beaufort County, which they purchased in 2016. (R. __) (Order). The Property was formerly part of a 113-acre tract of heir's property (the "Original Heirs Parcel") that was partitioned and deeded out by the Beaufort County Circuit Court in or around 2001. (R. __) (Order).

As owners of the Property, Respondents brought this action against Appellant in 2020 for trespass, permanent injunction and/or writ of ejectment because Appellant refused to remove a mobile home from the Property. (R. __). (Complaint). This mobile home is not Appellant's primary residence. Appellant answered the complaint via letter on September 21, 2020, in which she asserted an ownership interest in the Property as an heir of Cecil Gaston (or sometimes Cecil Gadsden). (R. __). (Answer). As best it can be interpreted, Appellant seemed to argue that there was a defect in Respondent's chain of title. Specifically, Appellant claimed that a 2004 deed to Cunningham Real Estate Management, Inc. (Respondents' predecessor in interest) was ineffective because an attorney named Louis Dore allegedly prepared and signed this deed as witness. (R. __). According to Appellant, attorney Dore had a conflict of interest. To support this allegation, Appellant points to a 2007 Court Order finding Mr. Dore was relieved from representing certain parties related to parcels that had formerly been a part the Original Heirs Parcel. *See generally* (Appellant's Initial Brief) and (R. __).

HISTORY OF THE PROPERTY

Throughout the 1990s the Original Heirs Parcel was the subject of several lawsuits among the various heirs including Cecil Gaston (sometimes Cecil Gadsden and herein "Cecil"). Through these suits, Cecil was found to have fraudulently/improperly converted the timber from the

Original Heirs Parcel and a judgment was therefore entered against Cecil, in favor of the other heirs, in excess of $200,000.00. (R. __). (Order ⁋ 3c.) As of 1998, this judgment in favor of the other heirs remained unpaid, and the amount Cecil owed on the judgment exceeded the value of his ownership interest in the Original Heirs Parcel. (R. __). (Id.). Therefore, on February 20, 1998, the Beaufort County Court of Common Pleas issued an order in Case No. 90-CP-7-310 assigning full ownership of the 113 acres of the Original Heirs Parcel to certain named heirs, and specifically excluded/divested Cecil of any ownership interest in the Original Heirs Parcel. (R. __). (Order ⁋⁋ 3c. & 4). This order is referred to herein as the "1998 Order."

Subsequently, in 2001 the remaining heirs who had an ownership interest in the Original Heirs Parcel reached a settlement agreement on how to partition the Original Heirs Parcel in kind among themselves—this agreed upon partition being reflected on a plat recorded at Plat Book 84 Page 43[1]. (R. __). (Order ⁋ 5). On October 15, 2001, the Court entered an Order directing the Original Heirs Parcel be partitioned pursuant to this agreement, and shortly thereafter, the Master-in-Equity executed the deeds necessary to transfer the subdivided parcels according to the Court's Order and as shown on the agreed upon plat. (R. __). (Order ⁋ 5).

Relevant to this appeal are two of the parcels that were partitioned out of the Original Heirs Parcel: First a roughly 22-acre parcel (known as "Harold Green"), and second, a roughly 11-acre parcel (known as "Doris Green"). (R. __) (Order ⁋3). Pursuant to the deed issued by the Master in 2001 Harold Green was conveyed to Carolyn Tremble and Anthony Green (Master's deed recorded at Book 1579, Page 1037), and Doris Green was conveyed to Robert Erkhart, III (Master's deed recorded at Book 1579, Page 1039).

[1] All references to recorded plats, deeds or other documents made herein are recorded with Beaufort County Register of Deeds unless stated otherwise.

In 2004 Cunningham Real Estate Management Inc., ("Cunningham") purchased **both** Doris Green and Harold Green, and the deeds reflecting these acquisitions are recorded at Book 2079 Page 462 and Book 2079 Page 466 respectively. (R. __) (Order ¶ 5). In 2010 Cunningham had a plat prepared which reconfigured the boundary lines of Doris Green and Harold Green, and combined the two parcels into one parcel of roughly 33 acres—*i.e.,* the "Property". This plat was recorded at Plat Book 131 Page 10. Respondents subsequently purchased the Property from Cunningham in 2016, with the deed for the same being recorded at Book 3476 Page 3028. (R. __).

PROCEDURAL POSTURE

This appeal concerns Respondent's Motion for Summary Judgement which the Circuit Court granted in an order dated May 31, 2023. (R. __) (Motion and Order). Appellant filed a Motion to Reconsider which the Circuit Court denied on July 23, 2023. (R. __). Appellant filed notice of appeal on September 22, 2023.[2] (R. __).

On September 23, 2024, Respondents filed a motion to dismiss this appeal, and/or strike Appellant's initial brief. On November 13, this Court issued an order granting Respondents' motion to strike and directed Appellant to file a brief that complied with Rule 208, SCACR, on or before December 3, 2024, and asked the arguments for dismissal be raised in Respondent's Brief. Appellant filed an amended initial appellant's brief on January 27, 2025, which was not served on Respondents until on or about February 11, 2025.

[2] The following orders/documents were attached to the notice of appeal. First an Order issued by former Circuit Court Judge Ellis Drew on May 11, 2007 (nearly twenty years ago) in an unrelated case (Case No. 2006-CP-07-2435). Second an Order dated July 27, 2023, denying Appellant's request for reconsideration in this case.

ARGUMENT

The precise issue(s) on appeal or allegation(s) of error are not clear. Appellant's Initial Brief does not set forth any particular allegation of error made in the Order(s) on appeal. Instead, it appears that Appellant takes exception with the conduct of certain attorneys and judges that were involved with various transactions and lawsuits related to the Original Heirs Parcel over a very long period of time—*i.e.*, between 1954 and 2015.

Respondent (like the Circuit Court below) interprets the arguments here as claiming some defect in Respondent's chain of title. It seems that Appellant is seeking to litigate/re-litigate issues of ownership in the Property based on an ownership interest that Appellant claims as a purported heir of Cecil. *See* (R. __). (Order). Notwithstanding the absence of evidence to support a claim that Appellant is an heir of Cecil, the issue of Cecil's ownership of the Property (or more specifically his lack of ownership interest in the Property) was finally resolved by the 1998 Order, which found that Cecil had no ownership interest in the Original Heirs Parcel. (Id.). As a result, any claim or right that Appellant may claim in the Property as Cecil's alleged heir was extinguished by the 1998 Order, and whether right or wrong, this ruling has long been the law of the case. Therefore, to the extent Appellant's Initial Brief is intended to challenge Respondents' ownership of the Property, Appellant has no standing to make such an argument, and this Court's appellate jurisdiction does not permit it to grant such relief. Accordingly, as set forth below, this Court should either dismiss the instant appeal or otherwise affirm the lower court's order for the reasons stated.

Part 1

This appeal should be dismissed because this Court lacks appellate jurisdiction to reverse the 1998 Order which renders this appeal moot.

Appellant's claim to an ownership interest as Cecil's heir is inconsistent with the Circuit Court's 1998 Order which divested Cecil of any ownership interest in the Property. It appears that Appellant is seeking to use this appeal as a means to challenge the 1998 Order. This is improper.

The time to appeal the 1998 Order expired 30 days after it was issued. *See* Rule 203(b)(1), SCACR (setting forth a 30-day deadline for filing a notice of appeal from the circuit court). Similarly, under South Carolina law the time for Appellant to assert any purported ownership interest in the Property expired in 2008—10 years after her ancestor (Mr. Gadsden) was found to have no ownership interest by the 1998 Order. *See.* S.C. Code Ann. §15-3-340 ("No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within **ten years** before the commencement of the action.").

This Court has no appellate jurisdiction to review the propriety of the 1998 Order settling ownership of the Original Heirs Parcel. *See e.g., First Carolina Nat'l Bank v. A & S Enters., Inc*., 272 S.C. 339, 340, 251 S.E.2d 762, 762 (1979) (finding that where the appellant failed to timely appeal the controlling order, "the appeal must be dismissed **for want of jurisdiction.**") (emphasis added); *accord* Toal, Appellate Practice in South Carolina (3ed.) at p. 121 (explaining that where notice of appeal is not timely filed, the appellate court lacks jurisdiction over the matter) *citing* Rule 205, SCACR; *see also, Allison v. W. L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) ("We now clarify that the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction").

Because this Court lacks appellate jurisdiction over the 1998 Order, this Court lacks the authority to issue relief that is inconsistent with that Order. Whether right or wrong, the finding that Cecil (and by extension Appellant as his purported heir) had no ownership interest in the Property is the law of the case.[3] Therefore, even if this Court were to accept Appellant's allegations of misconduct affecting the title to the Property (which Appellant denies), it remains that this Court would nonetheless be powerless to grant Appellant the relief she requests—*i.e.*, a determination regarding the extent of Appellant and/or Cecil's alleged ownership interest in the Property. Accordingly, the matter is quintessentially moot. *See S.C. Ret. Syst. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013) ("A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court."); 15 S.C. Jur. *Appeal and Error* § 19 (Supp. 2014) ("[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties."); *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 558, 703 S.E.2d 499, 506 (2010) ("Appellate court[s] will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.")

Therefore, this Court lacks appellate jurisdiction over Appellant's claims, and it should issue an Order dismissing the instant appeal.

[3] This doctrine provides that "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

Part 2

This Court Should affirm

To the extent this Court does not dismiss the instant appeal it should nonetheless affirm because the points raised by Appellant neither warrant nor permit reversal of the trial court's proper grant of summary judgment. Respondents herein respond to the numbered issues raised in Appellant's Brief.

I. The fact that attorney Dore prepared and witnessed a 2004 deed in Respondent's chain of title does not warrant reversal.

Appellant has misapprehended or mischaracterized this issue. It appears from the Record that attorney Dore prepared and witnessed a deed related to the Property in 2004. Several years later Mr. Dore represented Doris Green and Joe Louise Green, Jr. in separate a case (Case No. 2006-CP-07-2435). During that representation, Mr. Dore filed a motion to be relieved with the consent of his clients. On May 11, 2007, the Court issued an order relieving Mr. Dore and permitting his clients to proceed in that case *pro se*. (R. __) (May 11, 2007 Order).

Appellant seems to misinterpret this order relieving Mr. Dore with providing some evidence of a conflict of interest. However, the order relieving Mr. Dore made no finding of a conflict of interest. Accordingly, there is no evidence that Mr. Dore had a conflict of interest or that this non-existent conflict of interest had any prejudicial impact on Appellant. *Contra generally, Builders Mut. Ins. Co. v. Island Pointe, LLC,* 431 S.C. 93, 104, 847 S.E.2d 87, 93 (2020) (recognizing that there should be evidence in the record to support the finding of a conflict of interest).

Furthermore, even (assuming for the sake of argument) that Mr. Dore had some conflict of interest arise in 2007 which precipitated the order relieving him, there is no evidence that conflict could possibly have affected the 2004 deed—what was prepared and executed three years earlier.

See McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter.").

Finally, Appellant has no standing to allege any defect in the 2004 deed prepared and witnessed by Mr. Dore because this deed did not affect any property to which Appellant had any ownership interest. Pursuant to the 1998 Order, Cecil (of whom Appellant claims to be an heir) was divested of any interest in the Original Heirs Parcel and therefore had no interest in Harold Green or Doris Green which ultimately formed the Property at issue here. Because the purported ownership interest that Appellant claims is as an heir of Cecil, it follows that whatever defect may have occurred in the chain of title *after* Cecil was divested from this property has no impact on Appellant's claim to ownership. *See e.g., Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) ("Generally, a party must be a real party in interest to the litigation to have standing[, and] a real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation.") (internal citation omitted).

II. Appellant has neither alleged nor shown any prejudice caused by the purported delay in the trial court mailing Appellant a copy of the Court's order denying her Rule 59 Motion.

A party is not permitted to submit new evidence or arguments as part of a Rule 59 motion. Moreover, there is no specific timeline for how long the Court has to rule on a Rule 59 motion. Naturally, when a party receives notice of the Court's ruling on a Rule 59 motion is irrelevant other than for dictating when the 30-day deadline for filing notice of appeal will expire. Here Appellant makes no argument about when the trial court should have ruled on the Rule 59 motion. Similarly, to the extent that Appellant alleges a delay in receiving the notice of the trial court's denial of her Rule 59 Motion, Respondents do not allege Appellant's notice of appeal to be

untimely. Therefore, to the extent there was a delay in Appellant receiving notice of the trial court's order, Appellant has shown no prejudice, nor has any prejudice resulted.

Our Supreme Court has explained, that "only a 'party aggrieved' may appeal." *Ralph v. McLaughlin*, 432 S.C. 640, 649, 856 S.E.2d 154, 158 (2021); *see also* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."). Accordingly, even if there was a delay (which is not conceded) Appellant is not entitled to appeal this issue because Appellant is not "aggrieved." *Id.* at 649, 856 S.E.2d at 158 ("An aggrieved party within the meaning of the statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest.") (internal modifications omitted).

III. The trial court did not err in finding Appellant did not have an ownership interest in the Property.

The question of Cecil's ownership interest in the property (or lack thereof) was resolved by the Court in 1998. The trial court in this case was obligated to follow this Order and was without jurisdiction to rule contrary. *See Charleston Cty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another."); *Sellers v. Nicholls*, 432 S.C. 101, 114, 851 S.E.2d 54, 60 (Ct. App. 2020) ("[T]he prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge.")

Because Appellant claims an ownership interest as Cecil's heir, the trial court did not err in finding Appellant had no ownership interest in the Property because to do so would require the lower court to have overruled the 1998 Order. The time for Appellant to litigate the question of her (or Cecil's) ownership interest in the Property has long since passed. *See supra.*

IV. The trial court's ruling is not inconsistent with prior appellate court rulings regarding this Property.

Although Appellant does not specifically identify what prior appellate ruling she claims to be violated, it seems that she is referring to the Supreme Court's decision in *Perry v. Heirs at Law & Distributees of Gadsden*, 316 S.C. 224, 225, 449 S.E.2d 250, 251 (1994). (Herein *Perry* II). Through this ruling the Supreme Court affirmed, as modified, the Court of Appeals' decision in *Perry v. Heirs at Law & Distributees of Gadsden*, 313 S.C. 296, 298, 437 S.E.2d 174, 176 (Ct. App. 1993) (Herein *Perry I*).

In *Perry I,* the Court of Appeals considered an appeal from the Master in Equity's decision to, *inter alia,* sell the Original Heirs Parcel, rather than order a partition in kind. On appeal, the Court Appeals affirmed in part, but reversed the Master's order directing the sale of the property, and remanded so that the Original Heirs Parcel could be partitioned in kind. *Id.* Appeal was made to the Supreme Court (in *Perry* II) which subsequently affirmed as modified. Upon remand, the Original Heirs Parcel was partitioned in kind pursuant to settlement agreement approved by the Circuit Court. (*surpa*). It was during that process that the Court issued the 1998 Order clarifying that Cecil had no ownership interest in the lots that subsequently became the Property that is the subject of this action. (*supra*).

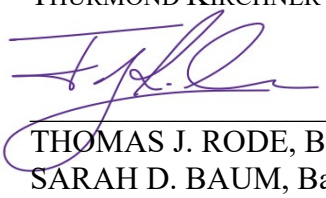
Because the appellate rulings referenced and alluded to by Appellant precede the 1998 Order which resolved any issues of ownership of the Property, theses appellate rulings have no import to the issues presented here.

CONCLUSION

For the reasons stated above, this Court should issue an Order striking Appellant's Initial Brief, or dismissing the instant appeal, or both.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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PROOF OF SERVICE

I, hereby certify that the enclosed was served on the parties stated below by depositing a copy of the same in the U.S. Mail:

Carrie G. Henderson *pro se*
316 East 35th St.
Savannah, GA 31401

This 25th day of February, 2025.

THURMOND KIRCHNER & TIMBES, P.A.

BY: Kaitlyn Nobles
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