

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY SC Court of Appeals  
Court of Common Pleas

Grace G. Knie, Circuit Court Judge

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

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.

INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

- I. 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?
  
- II. 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 requested 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.

## ARGUMENTS

- I. THE TRIAL COURT DID NOT 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?**

- 1. 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). **However**, a court should be reluctant to reverse the factual findings of the trial judge who had an opportunity to hear the testimony and observe the parties. *Crowder v. Crowder*. 246 S. C. 299, 143 S.E. (2d) 580 (1965).

“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).

## 2. ARGUMENT:

In this case that standard means that this court only needs to consider the exceptions which challenge the factual findings of the trial judge that the Plaintiffs did not establish an actual or express trust in this case regarding the transfer of the land in question to the Respondent from her sibling M. Diane Jackson. Since this is a case in equity, it is necessary to review the evidence to determine whether or not such findings are supported by a preponderance of the evidence. Crowder.

On May 11, 1962 the mother of the parties, Irene Hardy Jackson, gained possession of the property, subject of this action, when the property was deeded to her for \$1.00 dollar with love and affection by Garris H. King, Julius Hardy, \_\_\_\_\_ Hardy and Gettis Murray, her siblings. (T. p. 32, lines 16-25).

Thereafter, Irene Hardy Jackson and her husband John C. Jackson deeded the property to their daughter, the Plaintiff sibling M. Diane Jackson, on March 15<sup>th</sup>, 1985 for \$10.00 and love and affection when ownership of the property by them was in jeopardy due to loans from creditors. (T. p. 34, lines 20-25 ). The deed placed no restrictions on M. Diane Jackson's use of the property.

M. Diane Jackson thereafter put the property up for the bond of her husband which again put the property at risk of lost to the family. (T. p. 26, lines 9-14 ). That act prompted a meeting where M. Diane Jackson, her son Joey Jackson, her parents Irene Hardy Jackson, John C. Jackson and Loraine Jackson met and the Property was deeded to Loraine Jackson to “keep the property in the family” since Loraine had adequate income as a nurse to take care of the property in spite of Loraine residing out of state in Maryland. (T. p. 26, lines 15-25 ) It is stipulated by the parties that a title search would show only the Respondent, Loraine Jackson, as owner of the property.

That is the same manner in which the property had been transferred to M. Diane Jackson as well as to their parents Irene Hardy Jackson and John C. Jackson with no actual consideration being given for the transfer of the property.

Sadie Jackson alleges that at that meeting Pastor Gary Burgess notarized a deed which deeded the property in trust to Loraine Jackson. No such deed has been located. Dr. Burgess testified that all he did was notarize a document which was purported to be a deed, but he could not testify as to whether the document purported to transfer the property in trust as the Plaintiffs allege. (T. p. 53 , lines 16-17).

Thereafter, the Respondent and M. Diane Jackson went to the office of attorney James Cheek where the deed in this case was executed, witnessed and notarized by attorney Cheek and a law school graduate who clerked for attorney Cheek at the time on May 4, 1989. (T. p. 108, lines 4 - 10 ).

The Plaintiff M. Diane Jackson further allege that her signature appears on the final deed but that she signed a blank sheet of paper, and her signature must have been

transferred to the deed using the blank sheet of paper she signed. She provided no explanation for signing the blank sheet of paper. (T. p. 62, lines 22-24 ).

Thereafter, Loraine Jackson assumed ownership of the property and rented the property back to her sibling M. Diane Jackson for \$300.00 per month and Loraine became solely responsible for paying all of the taxes and maintenance on the property from 1989 to the present totaling tens of thousands of dollars over the years. In addition, Loraine paid for the upkeep of the property and was solely responsible for the maintenance on the property with M. Diane Jackson renting and making some repairs to the property. (T. p. 66, lines 2-25 and P 67 lines 1-5 )

In 2021 the Respondent commenced eviction proceedings against Plaintiff M. Diane Jackson to eject her from the property. The Magistrate granted her eviction request. In the eviction proceedings M. Diane Jackson could show no ownership interest in the property or the Magistrate would not have proceeded with the eviction under state law.

The following year, in 2022, the Plaintiffs initiated this action.

The Appellants brief cited several self-serving statements by the Appellants as to the intent of their parents to establish a trust for the land when they had appellant M. Diane Jackson, transfer the property to the Respondent but presented absolutely no independent witness to corroborate their claim.

There were only two witnesses in this case who did not have a stake in the outcome of the case. Those two witnesses were Dr. Gary Burgess and attorney James Cheeks. All of the other witnesses stood to benefit directly or indirectly from the finding of a trust regarding the property at issue in this case.

As to those two witnesses, Dr. Burgess only notarized a deed purporting to transfer the property to Loraine Jackson, the Respondent, but had no recollection of the document he notarized purporting to transfer the property in trust. (T. p53, lines 16-17). The deed done by Attorney James Cheeks made no mention of a trust and attorney cheek had no recollection regarding the establishment of a trust regarding the property in question. (T. pp 108-121).

The trial court correctly found that the Appellants failed to carry their burden of proof establishing the existence of a constructive trust in the conveyance of the property at issue in this case.

There is also no unjust enrichment of the Respondent who paid all of the taxes and upkeep of the property with some help from M. Diane Jackson who rented the property from her for \$300,00 per month.

## **II. THE TRIAL COURT DID NOT ERR IF FAILING TO FIND THE UNDISPUTED FACTS ESTABLISHING THE EXPRESS TRUST AT ISSUE IN THIS CASE?**

### **1. STANDARD OF REVIEW:**

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, 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.”

Google's AI overview states the following: "According to Black's Law Dictionary, a trust is an equitable or beneficial right to property that is held by a person other than the owner. The person who holds the legal title to the property is known as the trustee and the person who receives the beneficial enjoyment is known as the beneficiary. The person who transfers the property into the trust is known as the grantor or settlor.

**An express trust is a trust that is created intentionally by the settlor and is usually created in writing.** The settlor provides explicit instructions on how the property is to be held. Express trusts can be either private or public.

The opposite of express trust is an implied trust, which is implied by the circumstances. Implied trusts include constructive, involuntary and resulting trusts, which are equitable remedies imposed by courts to prevent unjust enrichment.

## 2. **ARGUMENT:**

There are clearly no document expressing the wishes of Irene Hardy Jackson and John C. Jackson in this case. Irene Hardy Jackson received the property from her from her siblings without real consideration in the same manner she used to transfer the property to M. Diane Jackson and M. Diane Jackson subsequently transferring the property to the Respondent for no Jackson was the wrong person to keep the property in the family, they turned to the Respondent to keep the property in the family.

Pastor and family member Dr. Gary Burgess testified that the transfer of the property to the Respondent fulfilled the wish of Irene Hardy Jackson and her husband that the property stays in the family. (T. p 53 , lines 14-18).

There is testimony that another deed than the one conveying the property to the Respondent existed but was never recorded and no copy of such document has been put into evidence. There is only self-serving testimony by individuals who stand to benefit from the establishment of a trust in this case that a prior deed transferred the property in trust.

The Appellant cited the following evidentiary principle:

“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, 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. “

The trial court allowed the testimony of Sonia Pulliam, who was not present for any deed of the property to the Respondent, as to the wishes of her Grandmomma without objection from the Respondent. The Court considered her testimony in reaching its decision in this case.

CONCLUSION

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

That 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: 100% to Lorine Jackson.

Respectfully submitted,

June 2, 2025

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