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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer McCoy, Circuit Court Judge

Case No. 2024-001929

Florence Heyward Davis

Respondent,

v.

George Jenkins

Appellant.

INITIAL BRIEF OF APPELLANT

Respectfully submitted,

George Jenkins
1348 South Sherwood Dr.
Charleston SC 29407
(843) 813-0640 phone
Pro-Se Appellant

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STATUTES

- S.C. Code Ann. § 14-3-320 and Rule 203(b), SCACR.
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- Rule 55, SCRCP
- Under the South Carolina Uniform Power of Attorney Act (SCUPOAA), which is codified at S.C. Code Ann. § 62-8-101 et seq.,

STATEMENT OF ISSUES ON APPEAL

Whether the Circuit Court erred in granting summary judgment when genuine issues of material fact existed.

STATEMENT OF THE CASE

This case arises from a case that was jointly filed in the Charleston County Probate Court, originating from the Charleston County Court of Common Pleas on December 27th, 2019. (Exhibit A) An Order for Summary judgment was Ordered in this case of Appellant notified the Appeals Court of the intent to appeal the ruling on November 14th, 2024.

Despite conflicting testimony and documentary evidence supporting Appellant's claims, Respondent moved for partial summary judgment on May 10th, 2023, asserting that no genuine issue of material fact existed. (Exhibit B)

After a hearing on October 29th, 2024, the Circuit Court granted Respondent's Motion for Summary Judgment on the basis that Appellant failed to demonstrate a triable issue. (Exhibit C) Prior to this ruling, Plaintiff filed a motion to Reconsider. That motion was denied by the Court (Exhibit D) This appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate only when no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Rule 56(c), SCRCP; Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 109, 410 S.E.2d 537, 541 (1991).* In reviewing the grant of summary judgment, appellate courts apply the same standard as the trial court, viewing the

evidence and all reasonable inferences in the light most favorable to the non-moving party. *Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).*

ARGUMENT

The Circuit Court erred in granting summary judgment because genuine issues of material fact exist. Summary judgment should be denied when the record reveals disputes of material fact. *Baughman,* 306 S.C. at 109. The burden rests upon the movant to demonstrate the absence of such disputes. Id.

Here, the Circuit Court overlooked or misapprehended evidence that directly conflicts with Respondent's assertions. Specifically:

1. The Order from the Probate Court that found the three prior wills invalid.
2. That the Power of Attorney did not explicitly allow self-dealing.

The Court did not take the prior Probate Court's Order nor the three wills that were thrown out by the Probate Court. The argument by the Defendant that the Plaintiff lacks standing has no merit when the will that is supposedly excluding the Plaintiff at issue in Probate Court.

Summary judgment is particularly inappropriate when the outcome turns on witness credibility or competing inferences from the facts. *Etheredge v. Richland Sch. Dist. Two, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000).* Considering these factual disputes, it was error for the Circuit Court to weigh the evidence or make credibility determinations. The presence of such genuine issues of material fact mandates reversal of summary judgment. According to *Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857* (2002):

"In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party."

This means when there is opposing evidence presented by opposing parties the non-movant must have priority as it relates to summary judgment.

It is also established that Summary Judgment should not be granted when credibility is at issue. In *Etheredge v. Richland Sch. Dist. Two, 341 S.C. 307, 534 S.E.2d 275* (2000) it states:

"Summary judgment is rarely appropriate in cases involving questions of intent, motive, or where there are issues of credibility."

This case involved the question of three wills which have been thrown out by the Charleston Probate Court. It also had a question of the use of power of attorney for personal gain. The Defendant admits to using the POA to transfer property and benefiting from that transaction.

Under the South Carolina Uniform Power of Attorney Act (SCUPOAA), which is codified at S.C. Code Ann. § 62-8-101 et seq., the agent has a fiduciary duty to:

- Act in accordance with the principal's reasonable expectations to the extent known.
- Act in good faith.
- Act only within the scope of authority granted in the power of attorney.

Self-dealing, which includes transactions that benefit the agent personally at the principal's expense (such as transferring the principal's property to themselves or making gifts to themselves), is strictly limited and usually prohibited unless:

The Power of Attorney document expressly permits it (such as allowing gifts, transfers, or self-dealing or the principal consents at the time of the act, which is rare if the principal is incapacitated (the usual reason for using the POA).

If the Power of Attorney is silent or ambiguous about self-dealing, the agent is prohibited from doing so and may be found in breach of fiduciary duty.

The moving party bears the burden of showing no genuine issue of material fact. In *Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)* the Court concluded:

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact."

Even "Slight Doubt" about facts requires denial of Summary Judgment. According to *Davidson v. Shirley, 172 S.C. 329, 174 S.E. 35 (1934)* (still cited for the general principle):

"If there be the slightest doubt as to the facts, summary judgment should not be granted." There was enough evidence presented in a packet to Judge McCoy which created the slightest doubt. The Honorable Judge read the full packet from presented from the Plaintiff and did not take any of it into considered. The weighing of the facts is the duty of the trier of fact and the Appellant is informed and believes that ignoring this information is inappropriate.

Due to the fact that circumstantial evidence can preclude summary judgment, the Plaintiffs presentation of real evidence such as the vacated wills should be enough to preclude summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009):*

"Summary judgment should not be granted merely because the movant believes the non-movant's evidence is weak or circumstantial."

The Plaintiff not having a large amount of evidence is not a standard for the granting of a summary judgment, but he did provide the evidence of the wills that were deemed insufficient by the Probate Court. The Defendant argued that the POA did not explicitly prohibit the action. This is contrary to South Carolina law. In the case *Fender v. Fender*, 285 S.C. 260, 329 S.E.2d 430 (1985): The South Carolina Supreme Court established that an agent cannot make gifts to themselves or others without clear, written authorization in the POA. The court stated:

"To avoid fraud and abuse, we adopt a rule barring a gift by an attorney-in-fact to himself or a third party absent clear intent to the contrary evidenced in writing.

The sentiment of no self-dealing was also reiterated in *Loftis v. Eck, 288 S.C. 154, 341* S.E.2d 641 (Ct. App. 1986): The Court of Appeals reinforced the principle that self-dealing by an agent is impermissible without explicit written authority.

In the case *Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (2014)*, The court upheld the validity of property transfers made by an agent to a trust, emphasizing that the POA must clearly authorize such actions.

This case was set for a bench trial which never occurred. The Court mentioned that the purpose of the hearing was to have a hearing on the merits. Pg. 4 p. 16, Pg.5 pa4 At the call of the case the Defendant was not in Court and only appeared by his attorney. This should have prevented the case from going forward because all parties were summoned to appear in Court. Failure to respond to a summons or appear at a scheduled hearing in a civil case in South

Carolina can result in a default judgment against the defendant, as outlined in *Rule 55 of the SCRCP*. It's important for defendants to respond promptly to legal actions and attend all scheduled hearings to protect their rights.

CONCLUSION

For the foregoing reasons, Appellant is informed and believes that there were genuine issues of material fact that deserved to be heard by a trier of fact and respectfully requests this Court reverse the Circuit Court's Order granting summary judgment and remand the matter for trial.

Respectfully submitted,

George Jenkins
1348 South Sherwood Dr.
Charleston SC 29407
(843) 813-0640 phone
Pro-Se Appellant