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Jun 27 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Honorable Joseph K. Coffey
Clarendon County

Case No. 2024-000664

Mirlene Witherspoon, Respondent

V.

Heirs of Thomas Witherspoon, Gwendolyn Jones,
Nakisha Christian, P. Kathleen Witherspoon, Pearl
Martin, The South Carolina Department of Revenue,
and Deborah West, Defendants

Of which Gwendolyn Jones is the Appellant

REPLY BRIEF OF APPELLANT

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Appellant, Pro se

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ARGUMENT

A Default Judgment May be Appealed Based Upon Extrinsic Fraud

Appellee argues that the Appellant is not entitled to relief based upon SCRCP 55(c) which provides that a Default Judgment is challenged by a Motion to set aside filed with the trial court. However, in this case the Complaint for partition was fraudulently filed with the court and contained misinformation. In effect, the Court was intentionally misled with regard to the residency status of heirs to the property. As a result, the Appellant was not served with the summons and Complaint for Partition which required a response within a specified time. Therefore neither she nor any of the Baltimore heirs responded to the Complaint. The first notice that the Appellant received was the notice of the hearing on Appellee's Request for Default Judgment.

The misinformation regarding the address and residency of the Appellant constitutes extrinsic fraud and it effectively deprived her and other heirs of their property rights. To allow the Default Judgment in this matter to stand would be in direct conflict with the intent of the Clementa C. Pinkney Uniform Partition of Heirs' Property Act which is rooted in the UHPA (Uniform Partition of Heirs' Property Act) which has been adopted by more than 20 states.

South Carolina Appellate Courts have held that "Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Hilton Head Ctr. of S.C. v. Public Serv. Commn.*, 294 S.C. 9, 11, [362 S.E.2d 176](#), 177 (1987). "Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully

exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.

Despite the fact that “South Carolina policy favor[s] the disposition of issues on their merits rather than on technicalities” *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001), the courts have recognized that there are instances where justice and equity require that an entry of default be set aside. The courts have indicated that *Rule 55(c) is to be “liberally construed to promote justice. . . .” Melton v. Olenik*, 379 S.C. 45, 47, 664 S.E.2d 487, 488 (Ct. App. 2008). “[T]his element of discretion given to the trial judge makes it clear the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default.” *Ricks v. Weinrauch*, 293 S.C. 372, 374-75, 360 S.E.2d 535, 536 (Ct. App. 1987). That is precisely the situation here. The Appellee should not be unjustly enriched by her intentional omission/deception which deprived Appellant and other heirs of the opportunity to be heard regarding their legitimate interests in the property inherited by decedent Thomas Witherspoon.

Allowing the Default Judgment to Stand would Violate Appellant's Constitutional Rights under the 5th and 14th Amendments

The Fifth Amendment's Due Process Clause is intended to protect people from having their property taken away without due process of law. The Due Process Clause requires that certain procedural protections must be in place before taking away a person's rights. These protections often include Notice and An opportunity for a hearing. In this case, the Appellant was intentionally deprived of notice when Appellee knowingly misrepresented to the court that she was a resident of South Carolina as opposed to the State of Maryland.

The Fourteenth Amendment, which was ratified in 1868, uses the same language called the Due Process Clause, to describe a legal obligation of all states to insure these rights. The failure of the Respondent, Mirlene Witherspoon, to provide accurate information to the Court resulted in a deprivation of Appellant's rights under the Due Process clause of the 5th and 14th Amendments. Furthermore, these actions directly conflict with the goals, objectives and purpose of S.C. Code § 15-61-310

CONCLUSION

For the foregoing reasons, this Court should vacate the Judgment of the lower court and require the Respondent to refile the Complaint for Partition providing true and accurate information so that all interested parties are properly notified.

Dated: June 26, 2025

Respectfully Submitted:

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PROOF OF SERVICE

I hereby certify that on this 26 day of June, 2025, I mailed the forgoing *Reply Brief of Appellant* with the South Carolina Court of Appeals and I served a copy by first class mail on the following counsel for Respondent, Mirlene Witherspoon:

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Dated: June 26, 2025
Respectfully Submitted,

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