RECEIVED
Jul 28 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker

C.A. No.: 2022-CP-30-00208
Appellate Case No. 2024-002104

Wayne J. Rogers …… ……..…….... Plaintiff,

v.

Tomika Craig and Arthur Rogers ……..... Defendants,

OF WHOM

Wayne J. Rogers is the . . . . . ……..... Appellant,

and

Tomika Craig and Arthur Rogers are the ……....Respondents.

INITIAL BRIEF OF RESPONDENTS

Clayton L. Jennings (S.C. Bar #68284)
Jennings Law Firm, LLC
1151 E. Washington St.
Greenville, SC 29601
(864) 239-0055
clayton@jenningslawfirm.com

Attorney for Respondents
Tomika Craig and Arthur Rogers

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I. DID APPELLANT MEET HIS BURDEN OF PROVIDING CLEAR AND CONVINCING EVIDENCE THAT THE DEED IN QUESTION SHOULD BE SET ASIDE ON THE BASIS OF FORGERY?

STATEMENT OF THE CASE

Wayne J. Rogers ("Appellant") commenced this action by the filing of a Complaint on March 18, 202 seeking declaratory judgment that his children, Tomika Craig and Arthur Rogers, ("Respondents") had no right, title, or interest in or to the real property described in the Complaint of Appellant, despite a deed from Appellant to Respondents recorded in the Register of Deeds for Laurens County on February 4, 2022 in Deed Book 1630 at Page 86 (Complaint, March 18, 2022); R. p. _). The allegations of the Complaint are that Appellant did not execute the deed to the real property and that the subject deed was false, fraudulent, and forged. (Complaint, March 18, 2022); R. p. _). Respondents filed an Answer and Counterclaims asserting that Appellant had violated the general warranty provision of the deed to the subject real property and that Appellant had violated the South Carolina Frivolous Proceedings Act. By Consent Order entered on June 10, 2022, Respondents agreed to strike their counterclaim for violation of the South Carolina Frivolous Proceedings Act. (Consent Order, June 10, 2022); R. p. _).

The case was called for trial before the Honorable Donald B. Hocker on October 15, 2024 and was tried without a jury. Judge Hocker issued an Order on November 13, 2024 denying the relief sought by Appellant and finding that the deed in question was valid. (11/13/20 Order, R. at ____). In the Order, Judge Hocker found that the subject deed was valid on its face and that Appellant failed to establish that the deed was fraudulent or forged. (11/13/20 Order; R. at ____).

Instead, Judge Hocker found that there was clear and convincing evidence that Appellant had, in fact, executed the subject deed. (11/13/20 Order, R. at ____).

STANDARD OF REVIEW

An action to set aside a deed is an action in equity. However, an action for recovery of possession of real property is an action at law. *McKinnon v. Summers*, 224 S.C. 331, 79 S.E.2d 146 (1953). In *Fesmire v. Digh*, 683 S.E.2d 803, 385 S.C. 296 (Ct. App. 2009), this Court summarized the standards of review applicable to actions at law versus actions in equity as follows:

> In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. *Townes,* 266 S.C. at 86, 221 S.E.2d at 775. In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See Wilder Corp. v. Wilke,* 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App.1996) (citing *Townes,* 266 S.C. at 86, 221 S.E.2d at 775) (holding that because the master-in-equity heard the action, which was equitable in nature, without appeal to the circuit court, the appellate court could find the facts on appeal in accordance with its own view of the preponderance of the evidence). **However, this broad scope of review does not require this Court to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses**. *Laughon v. O'Braitis,* 360 S.C. 520, 524-25, 602 S.E.2d 108, 111 (Ct.App. 2004). (emphasis added)

In this case, Appellant sought a declaratory judgment to establish that Respondents had no right, title, or interest in or to the subject real property on the sole basis that the subject deed was fraudulent or forged. (Complaint passim (March 18, 2022); R. p. _). Thus, Appellant's action for declaratory judgment to recover possession of the subject property is an action at law, although it rests entirely on the issue of setting aside the deed, which is an issue decided in equity. Since the gravamen of the Complaint is cancellation of a deed on the ground of forgery, the standard of review should be one of equity. *See McKinnon v. Summers*, 224 S.C. 331, 79 S.E.2d 146 (1953).

ARGUMENT

I. The Deed was Valid on its Face and is Presumed Valid in all Respects.

At trial, Appellant entered into evidence the subject deed that conveyed title to real property in the County of Laurens from Appellant to Respondents. Pl. Ex. 1, R. at ____) (hereinafter, the "Deed"). The Deed identifies the grantor and the grantees, contains the language provided by S.C. Code Ann. §27-7-10, was properly witnessed and notarized as required by S.C. Code Ann. §30-5-30, and a derivation clause required by S.C. Code Ann. §30-5-35. The Deed was recorded in the Register of Deeds for Laurens County on February 4, 2022 in Deed Book 1630 at Page 86, as appears on the face of the Deed. "When an instrument has been recorded it is presumed that all requirements of law affecting the title to the realty have been complied with." S.C. Code Ann. §12-24-110. In the absence of "clear, unequivocal, and convincing evidence the presumption will prevail that a deed of conveyance is what on its face appears to be." *Creswell v. Smith*, 61 S.C. 575, 579, 39 S.E. 757 (S.C. 1901), citing *Brown v. Bank*, 55 S.C. 70, 32 S.C. 816. "Where a deed is valid and regular on its face, it is presumed to be valid in all respects." *Davis v. Monteith*, 289 S.C. 176, 182, 345 S.E. 2d 724, 727 (1986), citing *Avant v. Johnson*, 231 S.C. 119, 97 S.E.2d 396 (1957).

Attorney Gary L. Williams, an attorney practicing in Laurens, South Carolina, testified that he prepared the Deed and recorded the Deed in the Office of the Register of Deeds for Laurens County. (October 15, 2024 Trial Hr'g Tr. 119:15-25; 120:1-2; 122:4-10; 124:22-25; 125:1-4; R. p. ___) Attorney Williams confirmed that he prepared the Deed in compliance with applicable statutes before recording the Deed with the Register of Deeds. (October 15, 2024 Trial Hr'g Tr. 124:16-24; 125:8-10; R. p. __) For these reasons, the Deed is valid on its face, and it was Appellant's burden to present clear and convincing evidence that the Deed should be set aside.

II. An Experienced and Licensed Attorney Supervised and Witnessed the Execution of the Deed.

Attorney Gary L. Williams, an attorney with over thirty-four (34) years of experience in Laurens, South Carolina, testified that he traveled to the home of Appellant in Laurens to witness the execution of the Deed by Appellant on January 22, 2022. (October 15, 2024 Trial Hr'g Tr. 122:9-11; R. p. __) Attorney Williams testified regarding the date on which Appellant executed the Deed, the location of the Appellant's home in Laurens, the identity of the other witness to the Deed, and the persons who were present in the home at the execution of the Deed. (October 15, 2024 Trial Hr'g Tr. 120:1-25; 121:1-20; R. p. __) Attorney Williams confirmed that he received $265.00 for preparation and recording of the Deed and authenticated the receipt for payment entered into evidence as Defendants' Exhibit 1. (October 15, 2024 Trial Hr'g Tr. 125:17-25; R. p. __) Attorney Williams identified Appellant in the courtroom as the same person who signed the Deed and ruled out the possibility that it was Arthur Rogers who executed the Deed. (October 15, 2024 Trial Hr'g Tr. 123:1-25; R. p. __) Attorney Williams agreed that it would not make sense to risk the loss of his license to practice law over attesting to the signature of someone who did not sign a deed for a fee of $265.00. (October 15, 2024 Trial Hr'g Tr. 123:23-25; 124:1-8; R. p. __) Judge Hocker found that Attorney Williams was a long-time and respected attorney in the community of Laurens and considered his testimony more reliable than the testimony of Appellant, who testified that he suffered from Alzheimer's Disease, had a poor memory, and who provided inconsistent testimony (11/13/20 Order, R. at ____).

III. Appellant Failed to Demonstrate Forgery of the Deed.

Appellant provided no expert to testify concerning the signature of the grantor on the Deed and instead relied upon testimony from Appellant, Appellant's spouse, Janice Rogers, and

Appellant's stepson, Jonathan Williams, who testified that Attorney Williams and the other witness to the Deed did not appear at the home of Appellant on the date of execution of the Deed.

The testimony of Appellant was completely unreliable. First, Appellant testified that he suffered from Alzheimer's Disease and had a poor memory. (October 15, 2024 Trial Hr'g Tr. 46:21-25; 47:1-9; ; R. p. __) In addition, Appellant's responses to questions were wildly inconsistent. For example, Appellant testified that he learned of the Deed because someone placed a note on his fence while he was working in Enoree. (October 15, 2024 Trial Hr'g Tr. 52:5-17; R. p. __) At the same time, Appellant testified that he retired from Enoree Mills in 2018 and had never worked again. (October 15, 2024 Trial Hr'g Tr. 35:2-23; R. p. __) The Deed was executed and recorded in the year 2022, four years after Appellant testified that he had retired.

Appellant's spouse, Janice Rogers, also provided unconvincing testimony. Janice Rogers testified that she did not see Attorney Williams at the home of Appellant on the date the Deed was executed. (October 15, 2024 Trial Hr'g Tr. 76:21-22; R. p. __) She further testified that her journal did not reflect the appearance of Attorney Williams or any visitors through the time of 12:30 p.m. on the date of execution of the Deed. (October 15, 2024 Trial Hr'g Tr. 71:18-25; 73:8-10; R. p. __) On cross-examination, Janice Rogers admitted that she sometimes left her spouse, the Appellant, at home, and that Tomika Craig sometimes provided care for Appellant. (October 15, 2024 Trial Hr'g Tr. 81:18-25; R. p. __) Furthermore, Janice Rogers conceded that she was upset that Respondents were going to evict her sister from the subject property at 449 Westcliff in Laurens, South Carolina based on the Respondents' claim to possession of the property. (October 15, 2024 Trial Hr'g Tr. 88:5-17; R. p. __) Finally, the only characteristic of Appellant's signature that Janice Rogers could describe was that his signature was "small", but she confirmed that the

signature on the Deed was also "small." (October 15, 2024 Trial Hr'g Tr. 87:17-23; 88:1; R. p. __)

By contrast, Tomika Craig provided lucid and consistent testimony of details regarding the execution of the Deed. Respondent Tomika Craig testified that she and Arthur Rogers were Appellant's only two children and that Appellant wanted his children to have the subject property at 449 Westcliff Drive in Laurens. (October 15, 2024 Trial Hr'g Tr. 6:11-25; 7:1-20; R. p. __) She indicated that she was present at Appellant's home when the Deed was executed, that she saw Gary L. Williams inside the home, and that Gary L. Williams sat with Appellant in his living room to execute the Deed while Tamika Craig was in the kitchen. (October 17, 2024 Trial Hr'g Tr. 9:8-25; R. p. __) The clear and consistent testimony of Tamika Craig, coupled with the testimony of Attorney Gary L. Williams, outweigh the dubious testimony of Appellant, who suffers from advanced Alzheimer's Disease and has poor memory, and the self-serving testimony of his spouse and stepson. Thus, Appellant failed to provide clear and convincing evidence to overcome the validity of the Deed that is valid on its face.

IV. Appellant Did Not Allege Mental Incapacity or Undue Influence as a Basis to Set Aside the Deed and May Not Raise These Issues on Appeal.

Appellant made no allegation related to mental capacity or undue influence in his Complaint. (Complaint, March 18, 2022); R. p. _). Judge Hocker noted this at trial (October 17, 2024 Trial Hr'g Tr. 33:19-23; R. p. __) Furthermore, Appellant did not argue at trial that the Deed should be declared invalid on the basis that Appellant lacked the necessary mental capacity to execute the Deed. Likewise, Appellant did not argue at trial that the Deed was the result of undue influence. An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 34, 491 S.E.2d 571, 576 (1997) citing *Smith v.*

Phillips, 318 S.C. 453, 458 S.E.2d. 427 (1995). Therefore, Appellant may not raise these issues on appeal in an attempt to set aside the Deed.

Even if Appellant had raised the issue of lack of mental capacity to execute a deed by Appellant, the testimony at trial only demonstrated that Appellant lacked mental capacity at the time of trial, not on the date of executing the Deed, which occurred nearly two years and ten months prior to trial. Furthermore, Appellant provided no testimony or other evidence that Respondents unduly influenced Appellant into executing the Deed. Undue influence:

> must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition. *Russell v. Wachovia Bank, N.A*., 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). The influence must be of such a degree that it prevents the grantor's exercise of judgment and free choice. Id. Moreover, a showing of general influence is not tantamount to undue influence. *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982). For this Court to void a conveyance of land, a contestant must show that the undue influence was brought directly to bear upon the conveyance. *Russell*, 353 S.C. at 219, 578 S.E.2d at 335.
> *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E. 2d 849 (2005).

Even if Appellant had raised the issue of undue influence in his pleadings or at trial, the record is devoid of evidence to establish any mental coercion that destroyed the free agency of Appellant in the act of executing the Deed.

Furthermore, by pleading that the Deed was forged but now alleging that the Deed was the result of undue influence, Appellant is attempting to blow both hot and cold, something explicitly prohibited by our common law. "'". . . [A] pleader cannot blow hot one moment and cold another. He must stand by the cause of action he clearly intended to express.'" *Blue Bird Ice Cream Co. v. American Employers' Ins. Co. of Boston, Mass*., 182 S.C. 384, 189 S.E. 657 (1937), quoting *Scholtz v. Kerschensteiner*, 194 Wis. 92, 100, 215 N.W. 889, 891. As stated more recently:

> [a] litigant cannot "blow both hot and cold." *McDaniels v. General Ins. Co. of Am.,* 1 Cal.App.2d 454, 36 P.2d 829, 832 (1934). Under the doctrine of judicial estoppel, a party that has assumed a particular position in a judicial proceeding, via its pleadings, statements, or contentions made under oath, is prohibited from adopting an inconsistent posture in subsequent proceedings.
> *Cothran v. Brown*, 350 S.C. 352, 566 S.E.2d 548 (S.C.App. 2002), quoting 28 Am.Jur.2d Estoppel and Waiver § 74 (2000).

For these reasons, the Court should disregard the attempt by Appellants to set aside the Deed based on lack of mental capacity or undue influence.

CONCLUSION

The Court of Common Please rightfully determined that Appellant failed to meets its burden to set aside the Deed on the basis of fraud or forgery. Considering the accurate and persuasive testimony of Attorney Gary L. Williams, the corroborating testimony of other witnesses, and the recorded Deed that is valid on its face, the relief sought by Appellant must be denied.

Respectfully submitted,

s/Clayton L. Jennings
Clayton L. Jennings (S.C. Bar #68284)
Jennings Law Firm, LLC
1151 E. Washington St.
Greenville, SC 29601
(864) 239-0055 Telephone
clayton@jenningslawfirm.com

Attorney for Respondents
Tomika Craig and Arthur Rogers