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SC Court of Appeals

IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA

George Jenkins, Appellant,

Florence Heyward Davis, Respondent.

Appeal From Charleston County

Case No. 2019-CP-10-06647

Hon. Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2024-001929

BRIEF OF RESPONDENT

(Pro Se - Florence Heyward Davis)

INTRODUCTION

Appellant asks this Court to overturn a lawfully entered order of summary judgment by the Court of Common Pleas concerning disputes he framed around alleged fraudulent wills and the use of a power of attorney ("POA"). The appeal is not warranted. The record shows: (1) the circuit court correctly applied Rule 56, SCRPC; (2) the 2012 POA expressly authorized Respondent to deed, sell, mortgage, refinance, and otherwise manage Florine Alethia Jenkins Heyward's property; (3) the 2017 statutory amendment addressing self-dealing by agents under POAs does not govern a POA executed in 2012; (4) issues about will validity are matters for the probate court, where wills are administered; and (5) Appellant offers no admissible medical evidence and no competent proof of fraud. The order should be affirmed, or the appeal dismissed to the extent it seeks to misuse the appellate process to re-litigate probate matters or unpreserved arguments.

JURISDICTIONAL STATEMENT

This is an appeal from a final order of summary judgment entered on October 29, 2024, by the Honorable Jennifer McCoy in the Court of Common Pleas, Charleston County. Appellate jurisdiction lies under S.C. Code Ann. § 14-8-200 and Rule 203(b)(1), SCACR. To the extent Appellant asks this Court to resolve probate

issues or matters not properly preserved in the circuit court, those issues fall outside the scope of this appeal and should be dismissed.

ISSUES PRESENTED

1. **Misuse of the Appellate Process / Non-preserved Issues.** Whether the appeal should be dismissed or the judgment affirmed where Appellant uses the appellate forum to relitigate probate questions, raise non-preserved theories, and attack a properly supported Rule 56 order.
2. **Summary Judgment.** Whether the circuit court correctly granted summary judgment because Appellant failed to present specific, admissible evidence creating a genuine dispute of material fact on fraud, capacity, or abuse of the 2012 Durable POA.
3. **Authority Under the 2012 Durable POA.** Whether the record shows the 2012 POA expressly authorized Respondent to deed property to herself, sell, mortgage, refinance, and otherwise manage assets as part of decedent's stated plan.
4. **Inapplicability of the 2017 Amendment.** Whether the 2017 statutory amendment concerning certain POA transactions is inapplicable to a Durable POA executed in 2012.
5. **Probate vs. Common Pleas.** Whether challenges to wills belong in probate court, not in the Court of Common Pleas (as Appellant seeks), and therefore provide no basis to reverse the circuit court's ruling.
6. **Lack of Competent Medical or Legal Proof.** Whether Appellant's lay assertions about decedent's health and legal capacity—despite estate instruments prepared by decedent's personal attorney and an available affidavit—are insufficient to create a triable fact dispute.

STATEMENT OF THE CASE

Appellant filed civil claims attempting to invalidate transactions authorized by a 2012 Durable POA and to re-litigate probate-related assertions about three wills of Florine Alethia Jenkins Heyward. After discovery opportunities, the circuit court granted Respondent's motion for summary judgment on

October 29, 2024, finding no genuine issue of material fact and determining that Appellant's theories failed as a matter of law. This appeal followed.

STATEMENT OF FACTS

- **The 2012 Power of Attorney.** Decedent executed a POA in 2012 appointing Respondent as agent. The POA expressly granted authority to deed property (expressly to Respondent), sell, mortgage, refinance, and otherwise manage assets. Respondent acted pursuant to those written powers.
 - **Statutory Context.** The POA predates the 2017 statutory amendment on certain agent self-dealing limitations; Respondent's actions were taken under the 2012 instrument's express grants of authority.
 - **Wills History.** Appellant was **not** a beneficiary in the decedent's 1995 or 2003 wills. He was considered in a 2019 iteration prepared by respondent using the POA. However, the 2019 will is inoperative and of no effect because the relevant property was placed into the decedent's estate plan/estate administration; probate, not the Court of Common Pleas, governs the will process.
 - **Attorney Involvement.** Decedent's instruments—including wills and the POA—were prepared by her personal attorney, **Nathan Davis, Esq.** An affidavit regarding his representation and the circumstances of execution is available and was proffered.
 - **Medical Assertions.** Appellant is neither a medical professional nor an officer of the court. He offers no admissible medical expert evidence of incapacity. The existence of general medical records referencing Alzheimer's or dementia—without competent expert opinion tied to the execution dates—does not create a genuine issue of testamentary or contractual capacity under Rule 56.
- Circuit-Court Proceedings.** The court considered the POA, the wills, and related record materials at summary judgment and ruled for Respondent.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a

matter of law. On appeal, the Court reviews the grant of summary judgment under the same standard, viewing the evidence in the light most favorable to the non-moving party, but conclusory allegations and inadmissible speculation cannot create a triable issue.

ARGUMENT

I. The Appeal Misuses the Appellate Process and Raises Non-Preserved Probate Matters; Dismissal or Affirmance Is Warranted.

Appellant asks this Court to adjudicate will-contest issues that are the province of the probate court and to revisit matters fully addressed in the circuit court's Rule 56 order. Issues not ruled upon below are not preserved for appeal. To the extent Appellant seeks appellate relief on probate questions or theories not preserved, the appeal should be dismissed in part and otherwise affirmed.

II. The Circuit Court Properly Granted Summary Judgment; Appellant Presented No Admissible Evidence of Fraud or Incapacity.

To defeat summary judgment, Appellant was required to present specific facts—through admissible evidence—showing a genuine dispute of material fact. He did not. His assertions rest on speculation and lay opinions. The circuit court had before it the operative instruments (including the POA and wills) and Respondent's supporting materials, and properly concluded there was no triable issue on fraud, undue influence, or capacity.

III. The 2012 POA Expressly Authorized Respondent to Deed to Herself, Sell, Mortgage, Refinance, and Otherwise Manage Assets.

The plain language of the 2012 POA empowered Respondent to perform the challenged acts, including executing deeds to herself and engaging in sales, mortgages, and refinances consistent with decedent's stated wishes and estate plan. Where an instrument unambiguously grants authority, courts enforce its terms. Appellant's disagreement with the decedent's chosen agent and plan is not legal grounds for reversal.

IV. The 2017 Statutory Amendment Does Not Apply to the 2012 POA.

Appellant's reliance on post-2012 statutory cha is misplaced. The POA at issue was executed in 2012, and Respondent's actions were taken pursuant to that instrument. The later 2017 amendment he

cites does not retroactively restrict the authority expressly granted in the 2012 POA. Thus, there is no legal basis to void the transactions on that ground.

V. Will Validity Is a Probate Question; Appellant's Attempt to Resolve Wills in Common Pleas Is Improper.

By statute and long practice, will contests and administration are handled in the probate court. Appellant's effort to transform this civil action into a will contest in the Court of Common Pleas is procedurally improper. The circuit court correctly declined to entertain probate questions outside its role and properly granted summary judgment on the civil claims presented.

VI. Appellant Offers No Competent Medical or Legal Proof; Lay Assertions Cannot Create a Fact Issue.

Appellant is not a medical professional or officer of the court and cannot offer expert opinions on capacity. General references to Alzheimer's or dementia, without expert testimony connecting the condition to the specific dates and legal standards for capacity at execution, do not create a triable issue. In contrast, the estate instruments were prepared by decedent's personal attorney, **Nathan Davis, Esq.**, and an affidavit supporting the circumstances of execution is available. The circuit court rightly found the record insufficient to proceed to trial.

Lack of First-Hand Knowledge by Appellant

Appellant was neither a caregiver to Florine Alethia Heyward nor a regular visitor during her final years; even failing to attend her funeral. He lacks personal knowledge of her day-to-day condition or decision-making capacity. In fact, Appellant relied upon, depended upon, and trusted the care provided by Respondent, who was consistently present with the decedent. Accordingly, Appellant cannot credibly assert claims about her health, her intent, or the circumstances surrounding execution of the estate instruments.

VII. The 2019 Will Is Inoperative; No Prejudice Exists.

Although Appellant was considered for the first time in a 2019 will iteration prepared under the POA, that document is null and of no effect. The property at issue was legally and intentionally transferred during the decedent's lifetime pursuant to the valid 2012 Power of Attorney, which expressly authorized such transfers. All other properties have since been placed into the Florine Alethia Jenkins Heyward Estate for

administration through the proper probate channels.
Consequently, the 2019 document neither prejudices Appellant nor
creates a live controversy warranting reversal of the Rule 56
order.

CONCLUSION

The Court should **dismiss** this appeal to the extent it raises
non-preserved or probate-exclusive issues and otherwise **affirm**
the circuit court's October 29, 2024 summary judgment in
Respondent's favor. Alternatively, the Court should affirm on
any ground appearing in the record.

Respectfully submitted,

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