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SC Court of Appeals

In the S. C. Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
2017CP2308016

Perry H. Gravely, Circuit Court Judge
Charles B. Simmons, Jr., Master in Equity Judge

Case No. 2024-002207

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

APPELLANT'S INITIAL BRIEF

Michelle Hodges
6 Young Harris Dr.
Simpsonville, SC 29681
864-692-3748
Appellant Pro Se

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TABLE OF AUTHORITIES

CASES

Wachovia Bank, Nat'l Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014).

Stoney v. Stoney, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017);

Stoney, 421 S.C. at 530, 809 S.E.2d at 59

Bank of America v. Draper, 405 S.C. 214, 747 S.E.2d 444 (Ct. App. 2013),

Wayburn v. Smith, 269 S.C. 37, 328 S.E.2d 805 (1977)

Epworth Children's Home v. Beasley, 365 S.C. 157, 616 S.E.2d 710 (2005)

Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995).

Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

OTHER AUTHORITIES

S.C. Const. art. V, § 5

S. C Supreme Court Administrative Order 2011-05-02-01

I. STATEMENT OF THE ISSUES

- 1. Did the Master in Equity err as a matter of law by holding that Wells Fargo had standing to foreclose.**
- 2. Did the Master in Equity err as a matter of law by failing to construe the Special Warranty Deed as a whole?**
- 3. Did the Master in Equity err as a matter of law by determining that Wells Fargo complied with Foreclosure Intervention requirements?**
- 4. Did the Master in Equity abuse his discretion by failing to reach the merits of the Appellant's Rule 60(b) motions vacate.**

II. STATEMENT OF THE CASE/PROCEDURAL HISTORY

A. Execution of Note and Mortgage

On March 28, 2012, Mrs. Ruth Witherspoon, the Movant's mother, executed a Note (Exhibit "A") and Mortgage (Exhibit "B") in favor of NVR Finance Inc. The only regular occupants of the subject property located at 6 Young Harris Dr., Simpsonville, SC, were Mrs. Witherspoon, the Movant, and the Movant's minor daughter. In 2014. On July 5, 2015, Mrs. Witherspoon passed away (See Recorded Death Certificate, Exhibit "C").

B. Wells Fargo Foreclosure Complaint

On December 22, 2017, Wells Fargo filed a complaint (Exhibit D) stating that the action was a foreclosure proceeding. The Complaint identifies the subject property by address, admits that only Ruth Witherspoon executed the Note and the Mortgage in favor of NVR, and declares a waiver of a deficiency judgment. The Complaint further asserts that title to the subject property had been granted solely to Ruth Witherspoon via the 2012 Deed (Exhibit E), claims that Mrs. Witherspoon subsequently passed away, and notes that the subject property passed to the Movant and other heirs as preserved by the Deed of Distribution (Exhibit F) which recorded in 2016. The Complaint also alleges a default as of May 1, 2017. However, Wells Fargo has not tied any default to the Appellant. However, the Respondent claims a lien superior to Appellants..

C. Lack of Allegations Against Movant

The Complaint does not allege any minimum contacts, actions, or obligations by the Movant that relate to Wells Fargo's cause of action. Furthermore, the Complaint has not been notarized for affidavit purposes. The Complaint does not allege possession of the Note.

D. Foreclosure Intervention and Certificate of Non-Owner Occupancy

The Plaintiff attached to the Complaint a notice of Foreclosure Intervention, whereby any owner under the Note and Mortgage who occupies and seeks to protect their primary residence from

foreclosure must communicate with the Mortgagee through its attorney. After the Movant reached out to Wells Fargo's counsel, Mr. Wyman made the same claim regarding occupancy that Wells Fargo had presented to the Greenville County Tax Collector. On January 2, 2018, Mr. Wyman filed a Certificate in the Circuit Court titled "Certificate of Non-Owner Occupancy Due to the Death of Mortgagor" (Exhibit "G"). The Certificate states that the mortgagor is deceased and, as a result, the loan does not qualify for foreclosure intervention.

E. Summary Judgment Stage Filings by Wells Fargo

On June 10, 2019, Wells Fargo moved for summary judgment (Exhibit "H"), filed a Notice of Hearing on July 10, 2019 (Exhibit "I"), and on July 18, filed its Reply in Support of its Motion for Summary Judgment (Exhibit "J"). These filings consisted of several exhibits including the Promissory Note. Wells Fargo stated that it did not have to file a creditor's claim because it was solely pursuing the mortgage. However, the Mortgage was not attached to either the Motion or the Reply. Wells Fargo implied that it was a secured creditor. The Defendant did not observe any documents which could have shown that Wells Fargo was in possession of the Note and Mortgage at the time of the Complaint filing, nor documentation of any default.

F. Summary Judgment and Appeals

On August 7, 2019, the Circuit Court issued a Summary Judgment Order (Exhibit "k") in favor of Wells Fargo, allowing its action to proceed. The Summary Judgment Order fails to identify any competent evidence establishing that Wells Fargo held both the Note and Mortgage at the time the Complaint was filed. The record reflects no admissible proof of possession, transfer, or assignment. The Defendant requested reconsideration, which was denied. On September 6, 2019, the Defendant appealed the Summary Judgment Order. The South Carolina Court of Appeals affirmed on August 27, 2022, based on facts from an incomplete record. The Court of Appeals

denied the Defendant's request for reconsideration.

G. Final Hearing Notice

On October 28, 2024, Wells Fargo's Notice of Final Hearing on the Merits (Exhibit "L") provided the date, time, and place of the hearing; however, it did not state what specific issues were to be heard.

H. Final Hearing on the Merits

On November 21, 2024, at the final hearing on the merits, there was no witness testimony as to whether Wells Fargo held the Note or Mortgage at the time the Complaint was filed, nor regarding any endorsements to the Note. The Court admitted the Movant's Special Warranty Deed recorded March 29, 2012, and the Movant's copy of Wells Fargo's Escrow Analysis dated April 5, 2017, into the record without objection. The Court read the granting clause of the Special Warranty Deed and determined that the Deed did not provide for a joint tenancy (see Exhibit "M," 11/21/24 Hearing Transcript). Without prior notice, Wells Fargo raised the Note, Mortgage, Assignment of Mortgage, the purported default numbers (Exhibit "N"), loan payment history (Exhibit "O"), waiver of deficiency judgment, denials of a loan assumption, and compliance with administrative orders.

I. Objection to Witness Testimony

The Movant objected to the Witness's testimony as hearsay and moved that his testimony be stricken from the record (see Exhibit "P," 11/21/24 Hearing Transcript).

J. Foreclosure Order and Procedural Omissions/Record Gaps

The December 12, 2024, Circuit Court Order states this is a Foreclosure and granted an Order of Foreclosure and Sale in favor of Wells Fargo. The Order states that the Special Warranty Deed did not provide for joint tenancy but does not state that the Court re-evaluated whether Wells

Fargo, as the Decedent's creditor, was barred from pursuing the property of the Distributee if not pursued within 12 months of the date of death of the Mortgage. The Order noted that Wells Fargo was not pursuing any action against the Defendant, nor the Estate of Ruth Ladson Witherspoon, which leaves a gap in the record as to whom the Defendant is.

K. Procedural Gaps and Deficiencies in Final Order

The December 12, 2024, Final Order did not make a ruling that the Movant's activities were related or supported Wells Fargo's cause of action. The Court's Order makes no reference to the Wells Fargo April 5, 2017 Escrow Analysis, (Q) which was entered into the record by the Movant to address Wells Fargo's claimed default. The Order states that Wells Fargo had standing under the Note and Mortgage and referenced the Note endorsements. However, the Court did not make a ruling connecting its observation of the endorsements to a finding that Wells Fargo held both the Note and Mortgage at the time the Complaint was filed. The Order further states that Wells Fargo held a purchase-money first lien, which conflicts with Wells Fargo's Complaint. The Movant's request for reconsideration and a stay were denied. On December 27, 2024, the Movant filed a notice of appeal.

L. Newly Discovered Evidence and Bankruptcy Filings

On January 23, 2025, the Movant obtained a copy of the recorded Death Certificate of Mrs. Ruth Witherspoon (Exhibit "S"). On January 31, 2025, the Movant filed for Bankruptcy, and on February 3, 2025, the Plaintiff listed the subject property for sale without proper advertising.

K. Plaintiff's Combined Motion and Order Purportedly Removing Case from Docket

On March 23, 2025, Wells Fargo's Counsel, Mr. Wyman, filed a motion/order purportedly removing this case from the docket. After dismissal of the Movant's first bankruptcy petition, the

Movant subsequently filed for Chapter 13 Bankruptcy on April 6, 2025.

M. Mr. Wyman Seeks Client's Direction Following Movant's Injunctive Motion

Immediately following the U.S. Bankruptcy Court's determination on May 30, 2025, that the Movant did not have a stay in place, on June 4, 2025, the Movant filed a Motion for Injunctive Relief in the Circuit Court. On June 9, 2025, Mr. Wyman sent an email to Judge Simmons' chambers stating that he did not think a hearing was necessary but that he needed to check how his client wanted to proceed.

N. Limited Emergency Motion to Reinstate and Motion for an Emergency Stay

On August 4, 2025, after not hearing from Mr. Wyman, the Movant filed an Emergency Motion to temporarily reinstate this case to the docket so that she could file an Emergency Motion for a Stay, to which the Court did not respond. On August 26, 2025, the Movant filed an Emergency Motion for a Stay, pending an Appeal with requests for a hearing and 14-day Restraining Order, and simultaneously filed a Motion for Leave to file a Proposed Seventh Amended Answer.

O. Recurring General Denials of Orders & Motions Without Decisions on the Merits

On September 15, 2025, the Circuit Court issued a general denial of the motions stated above, consistent with the rulings on prior motions to vacate, which alleged fraud upon the Court. These gaps left in the record, together with omissions in the Final Order of Foreclosure, have deprived the Movant of an appeal and a meaningful opportunity to respond on the issues not ruled upon. The Movant now brings this Motion for Relief under Rule 60(b)(U), seeking to vacate the Final Judgment due to the repeated general denials and rulings without substantive review. This pattern underscores the necessity for this Court to finally address the merits of all issues affecting the integrity of these proceedings.

P. Order on October 6, 2025 (V), the Master in Equity Place a limitations on filings in the Circuit Court and is no longer accepting filings from Appellant.

III. FACTS

A. On March 28, 2012, the Defendant, her Daughter and Ruth Witherspoon (Defendant's Mother), began occupying the subject property to the exclusion of Stanley Witherspoon, the Defendant's Brother.

B. On July 5, 2015 Mrs. Witherspoon passed away. The Defendant continued to treat the property as her own through continuous, actual, open, hostile and adverse possession, paying the homeowner's association dues, maintaining the property and ultimately defending the property against Wells Fargo's actions.

C. In October of 2016, the SCHelp program, which began September of 2014 concluded its financial assistance -- leaving the loan according to Wells Fargo -- due for the December 2016 payment.

D. In November of 2016, immediately following the end of SCHelp's financial assistance, without the Defendant's knowledge and before the Defendant began making any payments, Wells Fargo paid the property taxes at an inflated rate of 6% and excluded the Defendant's (discounted) inherited homestead exemption. The Defendant inherited her Mother's homestead exemption by continuing to occupy the property as the head of household with a minor child, after her Mother's passing.

E. In April of 2017 Wells Fargo sent the Defendant an escrow statement demanding that Defendant pay in full a false escrow shortage in the amount of \$3,249.95, or increase the escrow payment by \$423.73 per month, when it only improperly disbursed \$2,983.32 and per the

Greenville County Tax Collector the tax bill was only \$1,070.07. These discrepancies demonstrate a pattern of manufactured default, by Wells Fargo, as it imposed obligations on the Defendant that were unsupported by the actual tax liability.

F. Final Hearing held November 21, 2024, the Appellant objected to the Witnesses Testimony, based on hearsay and lack of personal knowledge, however the Interrupted be object was compland and Appellant moved for the Witnesses' testimony be stricken from the record , which was overuled by the Master in Equity. The Appellant then objected to the Courts holding that the Special Warranty Deed did not provide for a joint tenancy, after the Master in Equity only read the granting clause. The Appellant the pointed to the Habendum Clause, the Court interrupted, stated , we are going to have to disagree, maam you are protected on the record, please move on.

G. Appellant filed for Bankruptcy 2019, January of 20 On January 23, 2025, the Movant obtained a copy of the recorded Death Certificate of Mrs. Ruth Witherspoon (Exhibit "C"). On January 31, 2025, the Movant filed for Bankruptcy, and on February 3, 2025, the Plaintiff listed the subject property for sale without proper advertising.

H. Plaintiff's Combined Motion and Order Purportedly Removing Case from Docket

On March 23, 2025, Wells Fargo's Counsel, Mr. Wyman, filed a motion/order purportedly removing this case from the docket and has not prosecuted the case since this motion. After dismissal of the Movant's first bankruptcy petition, the Movant subsequently filed for Chapter 13 Bankruptcy on April 6, 2025.

I. Mr. Wyman Seeks Client's Direction Following Movant's Injunctive Motion

Immediately following the U.S. Bankruptcy Court's determination on May 30, 2025, that the Movant did not have a stay in place, on June 4, 2025, the Movant filed a Motion for Injunctive

Relief in the Circuit Court. On June 9, 2025, Mr. Wyman sent an email to Judge Simmons' chambers stating that he did not think a hearing was necessary but that he needed to check how his client wanted to proceed.

STANDARD OF REVIEW

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). Thus, our standard of review is de novo. *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017); see S.C. Const. art. V, § 5 (stating in equity cases, the supreme court "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside"). Under de novo review, we may consider two principles long recognized by our courts "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows us to take our own view of the evidence and make our own findings of fact. *Id.*

IV. ARGUMENTS

A. Issue #1: Legal Error: Standing to Foreclose

The Master in Equity concluded that Wells Fargo Bank, N.A. was entitled to foreclosure according to the terms of the Note and Mortgage. (R. Final Order, p. __, line __).

As a matter of law, under *Bank of America v. Draper*, 405 S.C. 214, 747 S.E.2d 444 (Ct. App. 2013), "A foreclosure plaintiff must establish both possession of the note and a legal interest in the mortgage at the time the action is filed; failure to do so deprives the plaintiff of standing."

The Master in Equity's ruling regarding standing relies on testimony introduced for the first time at the final hearing. However, that testimony did not establish that Wells Fargo was in

possession of the note, at the time the complaint was filed. (R. Transcript p. ____, lines ____).

According to *Bank of American v. Draper* the failure of the Master in Equity to determine whether Wells Fargo was in possession of the Note at the time of the complaint filing, constitutes an error of law. Additionally, Wells Fargo has not tied the alleged default to the Appellant.

Reliance on an unproven default constitutes reversible error. A default to the Appellant.

B. Issue #2: Legal Error: Construction of the Special Warranty Deed

The Master in Equity rejected joint tenancy and did not claim to have reviewed the Special Warranty Deed as a whole. (R. Final Order, p ____, lines ____). At the Final Hearing the Appellant presented the Special Warranty Deed and the Court, held that the Deed did not provide for joint tenancy after only reading the granting clause, instead of reviewing the Deed as a whole. (R. Transcript, p __ lines ____). The Court ruling is an error of law because South Carolina courts are required to construe the Deed as a whole, giving effect to every part. See *Wayburn v. Smith*, 269 S.C. 37, 328 S.E.2d 805 (1977): *This constitutes an error of law, because proper construction requires interpreting the deed as a whole and giving effect, to each provision, if such can be done consistently with law.*

C. Issue #3: Legal Error: Compliance with Foreclosure Intervention Program

The Master in Equity held that Wells Fargo complied with administrative Order 2011-05-02-01, which established the Foreclosure Intervention Program and requires that all communication between the mortgagee and owners occupying their primary residence, proceed through the mortgagee's attorney, allowing the Plaintiff's attorney to issue a certificate of compliance. (R. Final Order, p __ lines ____). On January 2, 2018, Mr. Wyman, counsel for Wells Fargo preemptively disqualified the Appellant from participating in the program by filing a certificate (Exhibit "A" Certificate of Non Owner Occupancy Due To Death of Mortgagor (a/k/s Certificate)

that implied that the Appellant was not the owner, or occupant of the subject property and further alleging that the loan did not qualify for foreclosure intervention; all, before the Appellant was required to respond to the complaint. At all times the Appellant has been the owner and occupant of the subject property since March 29, 2012, evidenced by the Special Warranty Deed. (Exhibit "B") and Appellant's 10 year DMV record (Exhibit "C").

The Master in Equity' ruling constitutes an error of law, because the Court failed to apply the law to the facts on the face of the record -- namely, that Mr. Wyman preemptively disqualified the Appellant, instead of communicating per the S. C. Supreme Court Order 2011-05-02-01. Masters in Equity are held to the same standard as circuit judges: they must apply the correct law to the facts before them. Failure to do so is reversible error of law. See, e.g., Epworth Children's Home v. Beasley, 365 S.C. 157, 616 S.E.2d 710 (2005) (non-jury equity case; de novo review of legal errors). The Issue of Wells Fargo's compliance with the Foreclosure Intervention program was raised at the final hearing. (R. Transcript, p ___, lines ___)

D. Issue #4

The appellant filed several Rule 60(b) motions, all raising Wells Fargo's noncompliance with the Foreclosure Intervention Program, all procedurally proper and timely. The Master in Equity never reached the merits, disposing of them on procedural grounds unrelated to the substance of the claims.

By failing to adjudicate the motions, the court deprived the appellant of the opportunity to have meritorious claims considered. When a court is clothed with discretion but fails to exercise that discretion, such inaction constitutes an abuse of discretion, which South Carolina Courts have held is an error of law. **STANDARD OF REVIEW** - See Roche v. Young Bros., Inc. of

Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Where a court is vested with discretion but fails to exercise it, an error of law has occurred. See Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

CONCLUSION

For the foregoing reasons, the appellant respectfully submits that the rulings of the Master in Equity reflect errors in law, and procedural deficiencies, including abuse of discretion in failing to adjudicate properly filed motions whereby the Master in equity failed to reach the merits. The record supports appellate review and consideration in light of these deficiencies and the rulings should be reversed or remanded.

Respectfully submitted,



February 9, 2026

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