RECEIVED
Jan 29 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2021-CP-32-00633
Appellate Case No. 2022-001602

Rene S. Wells and Wilson Shealy, Jr.,
as Co-Personal Representatives of
Wilson Shealy, Sr., ... Respondents,

v.

David Shealy, ... Appellant.

David Shealy, ... Appellant,

v.

Rene Shealy Wells, Wilson Shealy, Jr.,
and Mimi Shealy, ... Respondents.

PETITION FOR REHEARING

GLEISSNER LAW FIRM, LLC

s/ Richard R. Gleissner
Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1316 Washington Street, Suite 101
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Respondents

BLAND RICHTER, LLP

s/Eric S. Bland
Eric S. Bland
SC Bar No. 64132
1500 Calhoun Street (29201)
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
Attorneys for the Respondents

STANDARD FOR REHEARING
(RULE 221(a), SCACR)

A petition for rehearing must be filed within 15 days of the opinion and must state with particularity the points of law or fact the Court overlooked or misapprehended. This petition identifies discrete misapprehensions of the record and controlling law that warrant correction.

TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

ERRORS OF FACT 5

I. The Opinion Relies on Facts Not in the Record and Omits Critical Record Absences

ERRORS OF LAW 7

II. The Opinion Misapplies South Carolina Law Relating to Conversion, Civil Conspiracy, and Probate Law Principles

CONCLUSION. 10

TABLE OF AUTHORITIES

Cases

Carroll v. M. & J. Finance Corp., 233 S.C. 200, 104 S.E.2d 171 (1958) 8

Crane v. Citicorp Nat'l Serv., Inc. 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). 5

Richardson's Rests. v. Nat'l Bank of S.C., 304 S.C. 289, 403 S.E.2d 669 (Ct. App. 1991) 5

Paradis v. Charleston County School District, 433 S.C. 562, 861 S.E.2d 774 (2021)....................9

Royal Persian Rug Co. v. Koons Ford, Inc., 498 F.2d 1397 (4th Cir. 1974) 6

Statutes

S.C. Code Ann. § 15-78-60..5

S.C. Code Ann. § 62-3-803(a) 5

ERRORS OF FACT

I. The Opinion Relies on Facts Not in the Record and Omits Critical Record Absences

On July 23, 2018, at the request of Wilson Shealy, Sr. (the "Father") and with the consent of David Shealy, the Trial Court entered a Consent Order For Restraining Order and Preliminary Injunction (the "Restraining Order"). (Record p. 54). At the time, Wilson Shealy, Jr., Rene Wells and Mimi Shealy (the "Siblings") were not even parties to this lawsuit. In the Restraining Order, David Shealy was given the opportunity to provide a list of "Claimed Property." David Shealy provided the list on July 25, 2018. The list of Claimed Property filed on July 25, 2018 is nowhere to be found in the Record on Appeal. It is simply absent. The list was never amended or changed. Thus, the Court of Appeals has no idea what property David Shealy was claiming. The Court of Appeals has no idea what happened to the Claimed Property.[1] Respondents respectfully request the Court amend or strike any reference in its Opinion that states that Appellant's "submission included titles to several vehicles." Because the claimed-property list is absent from the Record, Respondents also ask the Court to delete the sentence that it is 'virtually undisputed' Siblings sold a significant portion of the disputed property, or to clarify that any such statement does not rest on materials outside the Record.

Later in his original Answer filed on October 2, 2018, David Shealy includes this same list as an Exhibit to his Answer and Counterclaims and the Answer does appear in the Record. Record p. 364. Thus, the Court could infer that the Claimed Property was the property as claimed in the Exhibit to the Complaint but in the Amended Complaint, the Exhibit is no longer

[1] The Court of Appeals further states that the "submission included titles to several vehicles". In fact, the filed document in which David Shealy made his claim to the disputed property contains no titles to any vehicles.

present, thus, under the Record before this Court, again, the Court of Appeals has no idea what property David Shealy was claiming.

In the Order, the Court of Appeals states that the "record presents colorable questions regarding substantial interference." The only "interference" was the result of the Restraining Order initiated at a time that the Siblings were not even parties to this lawsuit.

The Court of Appeals also knows that the Restraining Order was modified on October 23, 2019 to allow an independent inventory of the property at the request of David Shealy. Record p. 36. The Court of Appeals knows that the Restraining Order was also modified on November 8, 2019. Record p. 31. The November 8, 2019 Order allowed David Shealy to assist in the independent inventory. No inventory was taken and no inventory appears in the Record. There is no evidence in the Record as to what happened to the Claimed Property after the Trial Court issued its Restraining Order. There is no evidence in the Record to even suggest that the Siblings had anything to do with the Claimed Property since the Restraining Order was initiated not by the Siblings but by the Father.

The Court of Appeals is incorrect when it says "it is virtually undisputed that Siblings have sold a significant portion of the disputed property." In fact, the Claimed Property still sits on the real property after, upon the Father's passing, the real property was turned over to Dominion Energy. The Appellant failed to include the list of Claimed Property that was filed with the Trial Court on July 25, 2018. Further, the Appellant failed to perform the inventory after requesting a modification of the Restraining Order to allow him to participate in the inventory. In fact, if an inventory had been done, the inventory would have shown that the disputed property was still on the Father's real property at the time of his death and is presently

located on the property. But since no inventory was done, the Court of Appeals has no idea what the Claimed Property was or what happened to the Claimed Property.

The Court of Appeals mentions the sale of junk cars. The sale of the junk cars was done by the Father while he was still alive, while David Shealy was in default, and before David Shealy answered the Complaint. The Siblings did not have anything to do with the sale of junk cars. Nothing in the Record suggests that the Siblings took control of the junk cars while they were on the Father's property.

ERRORS OF LAW INCLUDED IN THE OPINION

II. The Opinion Misapplies South Carolina Law Relating to Conversion, Civil Conspiracy, and Probate Law Principles

The Opinion correctly states that "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Citing Crane v. Citicorp Nat'l Serv., Inc*. 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). Conversion does not exist when the Trial Court uses its authority to issue a restraining order and preserve the status quo. Simply, conversion cannot arise from the defendant's exercise of a legal right over the property. *Richardson's Rests. v. Nat'l Bank of S.C.*, 304 S.C. 289, 403 S.E.2d 669 (Ct. App. 1991) (where the bank had legal authority over money in a bank account, there could be no conversion). To establish conversion, a plaintiff must show title or right to immediate possession and unauthorized assumption of dominion. *Crane*, supra; *Richardson's Restaurants*, supra.

In this case, when the trial court issued the Restraining Order preventing David Shealy from accessing the real property where the Father resided, the Court issued the Restraining Order pursuant to judicial authority. In these circumstances, the Father's actions in seeking the order are protected under South Carolina law. Actions taken in lawful compliance with a court order

cannot be ‘wrongful’ as a matter of conversion law. See, e.g., *Richardson's Restaurants* (conversion cannot arise from a defendant's exercise of a legal right over property). The only access restrictions here flowed from a judicial Restraining Order. Thus, Appellant cannot satisfy the ‘wrongfulness’ element. In this case, the record on appeal fails to contain the property that David Shealy claimed pursuant to the Restraining Order. A “mere assertion of ownership,” without disturbance of possession, is not sufficient. *Carroll v. M. & J. Finance Corp.*, 233 S.C. 200, 104 S.E.2d 171 (1958). More importantly, this Record on Appeal establishes that the Siblings did not violate the Restraining Order when “they did not want David Shealy on the property during the auction” as stated by the Court of Appeals. To the contrary, if the Siblings were to allow David Shealy on the property, that would have violated the Restraining Order.

Furthermore, in *Royal Persian Rug Co. v. Koons Ford, Inc.*, 498 F.2d 1397 (4th Cir. 1974), the Federal Court of Appeals emphasized that the validity of a judicial order must first be challenged and invalidated before a claim for conversion can proceed. If the judicial order is valid, it serves as a bar to any conversion claim arising from actions taken under its authority. South Carolina and the South Carolina Court of Appeals should agree with this logic.

Thus, the Court of Appeals erred in finding a genuine issue of material fact in the conversion claim against the Siblings since the Siblings only act was lawfully following the directives of the Restraining Order.

The Court of Appeals states that “the wrongful appropriation of another's property constitutes an unlawful act”. Court of Appeals Opinion, p. 8. However, the Court of Appeals fails to consider the Restraining Order and the effect of the Restraining Order on the Siblings. The Siblings did not violate the Restraining Order. Thus, nothing they did was “wrongful” and there is no evidence of an “appropriation”.

In addition, during the early part of the Opinion the Court of Appeals in holding that the nonclaim statute does not protect the Siblings, the Court of Appeals states "these claims against the Siblings [are] in their individual capacities, not as representatives of the estate." Court of Appeals Opinion, p. 6. But, in the portion of the Opinion dealing with the alleged conspiracy, the Court of Appeals refers to the fact that "[t]wo of the Siblings are the co-personal representatives of the Father's estate" and then discussing their actions as personal representatives in organizing an auction. Court of Appeals Opinion, p. 8. If the actions of the Siblings were as co-personal representatives, the non-claim statute should apply and prohibit the claims against the Siblings as co-personal representatives of the estate.

Civil conspiracy requires an agreement and an unlawful act or a lawful act by unlawful means, with resulting damages. *Paradis v. Charleston County School District*, 433 S.C. 562, 861 S.E.2d 774 (2021). Under *Paradis v. Charleston County School District*, a civil conspiracy requires an agreement to commit an **unlawful act** or a lawful act by **unlawful means**, accompanied by resulting damages. 433 S.C. 562, 861 S.E.2d 774 (2021). Where all conduct is undertaken pursuant to a valid judicial order and within the scope of estate administration, no "unlawful act" exists as a matter of law.

The opinion reasons that the probate nonclaim statute has 'no bearing' on claims against Siblings because the claims are in their individual capacities. Section 62-3-803(a) expressly bars all claims against "the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees" unless timely presented. Because the Opinion relies on acts taken in the Siblings' capacity as co-personal representatives, any claim predicated on those acts is barred as a matter of law. Yet the opinion also relies on acts Siblings took as co-personal representatives to infer agreement and interference. Respondents respectfully request the Court clarify that any

claims predicated on acts in representative capacity are barred under § 62-3-803 unless timely presented, and that the opinion should not be read to permit end-run individual-capacity liability for representative acts.

CONCLUSION

The Trial Court rightly held that Appellant's claims against his Deceased Father and against the Siblings were barred under S.C. Code Ann § 62-3-803. Similarly, the Appellant's ever evolving claims for conversion and civil conspiracy lacked any evidence in support of the necessary elements and further fail to consider the Restraining Order. Respondents respectfully request rehearing to correct specific misapprehensions of the Record and controlling law. In the alternative, Respondents request the Court amend the opinion to (a) delete or revise statements implying undisputed sales and record support for vehicle titles, (b) clarify that actions taken in compliance with the Restraining Order cannot constitute 'wrongful' dominion or an 'unlawful act,' and (c) confirm that § 62-3-803 bars claims predicated on acts taken in representative capacity.

[SIGNATURE PAGE FOLLOWS BELOW]

GLEISSNER LAW FIRM, LLC

s/ Richard R. Gleissner
Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1316 Washington Street, Suite 101
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Respondents

BLAND RICHTER, LLP

s/Eric S. Bland
Eric S. Bland
SC Bar No. 64132
1500 Calhoun Street (29201)
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
Attorneys for the Respondents

January 29, 2026

RECEIVED
Jan 29 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2021-CP-32-00633
Appellate Case No. 2022-001602

Rene S. Wells and Wilson Shealy, Jr.,
as Co-Personal Representatives of
Wilson Shealy, Sr., ... Respondents,

v.

David Shealy, ... Appellant.

David Shealy, ... Appellant,

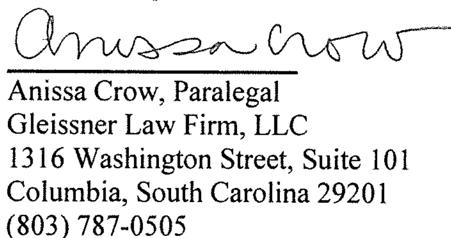
v.

Rene Shealy Wells, Wilson Shealy, Jr.,
and Mimi Shealy, ... Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of the Gleissner Law Firm, LLC, hereby certifies that on January 29, 2026, I served Respondents' Petition for Rehearing in the above captioned matter via email and via first class mail with sufficient postage prepaid addressed to the following:

J. Derrick Jackson, Esquire
Tobias G. Ward, Jr., PA
Post Office Box 50124
Columbia, SC 29250
dj@tobywardlaw.com
Attorney for Appellant



Anissa Crow, Paralegal
Gleissner Law Firm, LLC
1316 Washington Street, Suite 101
Columbia, South Carolina 29201
(803) 787-0505

January 29, 2026