THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2024-CP-28-00123
Appellant Case No. 2025-001848

Mary Dow Jackson, Individually and as Personal Representative of the Estate of Gordon Louis Jackson, Melissa Jackson, Tyre Jackson, Reginald Allen, Bryant Allen, Andre Allen, and Timothy Johnson, ... Appellants,

v.

The Estate of Claude E. Campbell, by and through Sonja Campbell Parker and Barry Campbell, Thomas Clayter Campbell, Jr. as Personal Representative and Trustee for the Estate and Testamentary Trust of Thomas Clayter Campbell, Sr., the Estate of Colbert Harold Campbell, by and through Vivian C. Gardner, Heyward M. Clamp, and Larry E. Clamp, and the Estate of Charles E. Campbell, by and through Maxine Watts Campbell, ...Respondents.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

On August 16, 2023, Appellants brought this action in the Richland County Court of Common Pleas alleging causes of action against the Respondents for Declaratory Judgment, Constructive Trust, and Unjust Enrichment (R. pp. 240-247). On February 21, 2024, venue in this matter was changed to Kershaw County. On June 12, 2025, Respondents moved for summary judgment (R. pp. 72-82) as to all causes of action. This motion was heard by the Honorable Daniel Coble on July 17, 2025, and was granted in favor of Respondents on July 29, 2025 (R. pp. 10-13). Appellants moved for reconsideration on August 8, 2025 (R. pp. 28-35), and this motion was denied by the court on August 13, 2025 (R. pp. 1-3). On September 11, 2025, Appellants served the Notice of Appeal on the Respondents (R. pp. 26-27).

STANDARD OF REVIEW

In reviewing the granting of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRCP: "summary judgment is proper when 'there is no genuine issue as to any material fact and … the moving party is entitled to judgment as a matter of law.'" In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Summary judgment is a drastic remedy and must not be granted until the opposing party has had

a full and fair opportunity to complete discovery. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003).

FACTS

Appellants include the personal representative of the Estate of Gordon Louis Jackson ("Jackson"), and his heirs at law. Appellants allege Jackson was a natural child of Thomas Edward Campbell ("T.E. Campbell"), who died intestate on June 12, 1982, in Kershaw County, South Carolina. At the time of T.E. Campbell's death, his estate consisted of numerous parcels of land, monies, and other personal property. Jackson was excluded from T.E. Campbell's estate when it was probated. Respondents in this matter are the intestate heirs of T.E. Campbell who were not excluded from the estate and received distributions from the estate. Appellants brought equitable causes of action against respondents for declaratory judgment (R. pp. 244-245), constructive trust (R. pp. 245-246), and unjust enrichment (R. pp. 246-247). Appellants asked the court to make a determination that Jackson was a natural child and heir of T.E. Campbell and that Jackson, and his heirs were wrongfully excluded from T.E. Campbell's estate.

ARGUMENTS

I. RESPONDENTS' MOTION FOR SUMMARY JUDGMENT WAS PREMATURE AND SHOULD HAVE BEEN DENIED.

Respondents' motion for summary judgment (R. pp. 72-82) was premature as discovery was still ongoing at the time the motion was heard. The procedural history of this case shows the original complaint that was filed in 2023 (R. pp. 240-247). Respondents filed a motion to dismiss the complaint (R. pp. 222-231), and this motion was denied in May of 2024 (R. pp. 20-22). Respondents failed to timely file an answer following the denial of the motion to dismiss and were in default until December 11, 2024 (R. pp. 196-214), when the trial court granted Respondents' motion to set aside the default (R. pp.14-16). At the time of the hearing, the parties had exchanged written discovery, and depositions were actively being scheduled and conducted. Additionally,

Appellants had submitted DNA samples for testing that were currently pending results. See Affidavits (R. pp. 52-63; 70-71; 36-40). The Respondents filed a motion for summary judgment (R. pp. 72-82) based upon testimony given in the *only* deposition taken in the matter. The parties had identified numerous witnesses in discovery that needed to be deposed. It was improper at that moment in discovery to proceed with a motion for summary judgment (R. pp. 72-82). Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). The nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.' " Id. Further discovery in this matter will definitely uncover additional relevant evidence in this matter.

Respondents stated, "No birth certificate, testamentary documents, other papers, or paternity tests assert that T.E. Campbell is Gordon Jackson's biological father." However, factual statements of the attorneys, whether made during argument or in written briefs or memoranda, may not be considered by the court in determining whether a genuine issue of material fact exists. Higgins v. Med. Univ. of S.C., 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997). There was evidence in the record as to Gordon Jackson's paternity, and Appellants anticipated further evidence to be provided. Mary Jackson, the wife of Gordon Jackson, has given deposition testimony (R. pp. 83-147) in this matter. She testified:

Q: Okay. What is your understanding of who Gordon Louis Jackson's dad was?
A: Because Tommy Edward Campbell said so.
Q: I understand that's why you think that. But you think –Thomas Edward Campbell? Is that what you're trying to say?
A: Yes.
Q: Okay. All right. And you're referring to Thomas Edward Campbell who's been deceased since 1982?
A: Yes.

Q: Did you know Thomas Edward Campbell?
A: I met him several times.
Q: Okay. And so let me ask the question you've been trying to answer. On what basis do you claim that Gordon Louis Jackson is the biological son of Thomas Edward Campbell?
A: Because Mr. Thomas Edward Campbell said so.

(R. p.104, 19-25; p. 105, 1-10)

Q: Okay. What damages are you seeking in this lawsuit?
A: Whatever belongs to my husband as a rightful heir to the Campbell estate.
Q: Do you believe your husband is a rightful heir to the Campbell estate?
A: His father said that was his son.

(R. p. 121, 22-25; p. 122, 1-3)

Respondents Reginald Allen and Andre Allen submitted affidavits (R. pp. 52-53; pp.58-60) stating they referred to Thomas Edward Campbell's son, Claude Campbell, as "Uncle Claude." See Affidavits of Reginald Allen and Andre Allen (R. pp. 52-53; 58-60). These Respondents also had pending DNA tests at the time of the summary judgment hearing. These results have since been received and there is a 99.8829% probability Andre Allen is related to Thomas Edward Campbell. There is a 99.9162% probability Reginald Allen is related to Thomas Edward Campbell.

II. APPELLANTS' CAUSES OF ACTION FOR UNJUST ENRICHMENT DOES NOT FAIL ON ITS ELEMENTS.

Respondents incorrectly state the elements of a claim for unjust enrichment. A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Dema v. Tenet Physician Services-Hilton Head, Inc., 383 S.C. 115, 678 S.E.2d 430 (2009). The trial court held Appellants produced no evidence they conferred any benefit on the Respondents. Appellants' contention is they were deprived of their inheritance from the estate. Respondents received all the benefit from the estate as the Appellants were excluded. Following the holding in Dema, in

this case, the Defendants receive a benefit, a distribution from the estate, and deprive the Plaintiffs of any recovery. Thus, the benefits received by the Defendants were at the expense of the Plaintiffs.

Respondents argued Appellants' claims for constructive trust (R. pp. 245-246) failed "because there is no evidence of fraud, bad faith, abuse of confidence, or violation of a fiduciary duty." None of the named Respondents had been deposed in the matter. As stated earlier, discovery was still ongoing in the matter and Respondents' Motion for Summary Judgment was premature (R. pp. 72-82). Further discovery in this matter was needed.

III. APPELLANTS' CAUSE OF ACTION FOR CONSTRUCTIVE TRUST DOES NOT FAIL ON ITS ELEMENTS.

Constructive trust arises entirely by the operation of law without reference to any actual or supposed intention to create a trust. It is resorted to in equity, to vindicate right and justice or to frustrate fraud. A constructive trust will arise whenever circumstances under which property is acquired make it inequitable that property should be retained by him who holds legal title. Whitmire v. Adams, 273 S.C. 453, 257 S.E.2d 160 (1979).

The trial court held that the Appellants had not identified any evidence of fraud, bad faith, abuse of confidence, or a fiduciary relationship, which are necessary to support the imposition of a constructive trust.

The trial court held the failure of Appellants to prevail on their claims of unjust enrichment (R. pp. 246-247) and constructive (R. pp. 245-246) rendered their declaratory judgment claim (R. pp. 244-245) moot as there is no legal proceeding in which this declaration would have practical effect.

IV. APPELLANTS' DECLARATORY JUDGMENT CAUSE OF ACTION WAS IMPROPERLY DISMISSED

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the estate of a decedent, infant, lunatic or insolvent may have a declaration of rights or legal relations in respect thereto:

> (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others;
> (2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
> (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

See S.C. Code Ann. § 15-53-50. Before any action can be maintained, there must exist a justiciable controversy. Wilson v. Dallas, 743 S.E.2d 746 (S.C. 2013). A "justiciable" controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract. Sloan v. Friends of Hunley, Inc., 630 S.E.2d 474 (S.C. 2006).

Appellants are making claims similar to those made in Pinckney v. Warren, 344 S.C. 382, 544 S.E.2d 620 (2001). In that matter, Scrappy Pinckney was born on April 19, 1927, and was the son of James Leonard Pinckney. In 1954, James Leonard Pinckney died intestate and left an estate that included approximately ten acres of land. In 1975, Scrappy Pinckney sold his partial interest in the property to D&S Development ("D&S"). On October 25, 1989, the Collins family, heirs of the original owner of the property, filed a declaratory judgment action in Charleston County to quiet title to real property, obtain a decree establishing the family history of Lark Collins, identify the owners of the property, and determine each owner's interest in the property. On October 26, 1989, the Collins family filed an identical action in Berkely County. Both Complaints allege the

conveyance to D&S was ineffective because Scrappy Pinckney was illegitimate, and therefore, not an heir at law of James Leonard Pinckney. The two actions were consolidated and referred to the Honorable Louis E. Condon, the Master-in-Equity for Charleston County, for entry of a final order with direct appeal to this Court. Both Complaints allege the conveyance to D&S was ineffective because Scrappy Pinckney was illegitimate, and, therefore, not an heir at law of James Leonard Pinckney.

In 1991, the Master-in-Equity established Scrappy Pinckney was a lineal descendant of the original owner of the property. In 1999, the matter was tried by the Master-in-Equity who found Scrappy Pinckney's interest in the property was invalid and he was not an heir at law of the original owner as he was an illegitimate child. If there is a justiciable controversy arising from a transfer of property in 1975 that was inherited in 1954, then surely there is a justiciable controversy in this matter.

V. APPELLANTS' CAUSES OF ACTION ARE NOT BARRED BY LACHES.

Respondents allege Appellants' claims should be barred by the equitable defense of laches (R. p. 81). Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Mid–State Trust, II v. Wright, 323 S.C. 303, 474 S.E.2d 421 (1996). See also Provident Life and Accident Ins. Co. v. Driver, 317 S.C. 471, 451 S.E.2d 924 (Ct.App.1994.) Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights. Id. Importantly, delay in the assertion of a right does not, in and of itself, constitute laches. Mid–State Trust, supra. Rather, so long as there is no knowledge of the wrong committed and no refusal to embrace opportunity to ascertain

facts, there can be no laches. Id.; Archambault v. Sprouse, 218 S.C. 500, 63 S.E.2d 459 (1951). The failure to assert a right does not come into existence until there is a reason or situation that demands assertion. Mid–State Trust, supra. The party asserting laches must satisfactorily show negligence, the opportunity to have acted sooner, and material prejudice. Provident Life and Accident, supra. See also Mid–State, supra (party asserting laches must show it has been materially prejudiced by other party's delay). The burden of proof is upon the person claiming laches. Provident Life and Accident, supra. Finally, whether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits. Mid–State, supra.

The defense of laches fails because there has been no reliance on non-assertion by the Respondents. Respondents have repeatedly (and incorrectly) stated Gordon Louis Jackson could not inherit from his father's estate in 1982 because he was an illegitimate child. Respondents cannot rely on the non-assertion of a right by the Appellants that they do not believe exists.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

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