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SC Court of Appeals

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

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 Frances C. Campbell, Vivian C. Gardner, and the Estate
of Charles E. Campbell, by and through Maxine Watts Campbell, Respondents.

FINAL REPLY BRIEF OF APPELLANTS

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ARGUMENT

I. SUMMARY JUDGMENT WAS IMPROPERLY GRANTED

Appellants are making claims similar to those made in *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001), and should have an opportunity to complete discovery in this matter. As such, summary judgment was improperly granted. Summary judgment is a “drastic remedy” which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003). Because summary judgment is a drastic remedy, it 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).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002). “Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law.” *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501. Summary judgment was granted in this matter before Appellants were given an opportunity to depose any of the Respondents and to fully develop the facts.

II. APPELLANTS DID NOT WAIVE THEIR PREMATURITY ARGUMENT

Appellants submitted affidavits from Bryant Allen (R. pp. 55-57), Andre Allen (R. pp. 58-60), Timothy Johnson (R. pp. 61-63), Melissa Jackson (R. pp. 36-37), and Tyre Jackson (R. pp. 38-40) in opposition to Respondents’ motion for summary judgment (R. pp 41-70 and 36-40). These affidavits stated they believed they were heirs to T.E. Campbell. At the time summary

judgment was granted, these individuals had not been deposed. Furthermore, at the time summary judgment was granted, none of the Respondents had been deposed. The trial court was advised that discovery was still ongoing and that Appellants believed it was premature for the motion to be heard. There was no waiver of Appellants' prematurity argument.

III. APPELLANTS' CLAIMS ARE NOT INDEPENDENTLY BARRED BY MITCHELL v. HARDWICK

In *Wilson v. Jones*, 281 S.C. 230, 314 S.E. 2d 341 (1984), the South Carolina Supreme Court held "only those illegitimate children whose fathers died after April 26, 1977, the date of the Trimble decision, may inherit from their fathers' estates." T.E. Campbell died on June 12, 1982, and therefore any of his illegitimate children could inherit from his estate. *Mitchell v. Hardwick*, 297 S.C. 48, 374 S.E.2d 681 (1988), sets out the requirements for *retroactive* application of the Trimble decision before April 26, 1977, *Trimble v. Gordon*, 430 U.S. 762, 97 S.Ct. 1459 (1977). In *Mitchell*, the intestate died on July 18, 1975, and the Supreme Court set forth the requirements for applying the Trimble decision to deaths that occurred *before* April 26, 1977. Therefore, the holding in *Mitchell* does not bar Appellants' claims.

IV. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION

The trial court had subject matter jurisdiction over this matter as T.E. Campbell died in 1982. The law prior to 1987 appears to give the Probate Court jurisdiction, but not exclusive jurisdiction "in matters testamentary and of administration." See *Tucker v. Tucker*, 264 S.C. 172, 213 S.E.2d 588 (1975) (concurrent jurisdiction of probate court prior to 1987); *Mack v. Stanley*, 190 S.C. 300, 308, 2 S.E.2d 792, 795 (1939) (citing *Caldwell v. Little*, 15 S.C. 236; *Bradford v. Richardson*, 111 S.C. 205, 97 S.E. 58; *Beatty v. National Surety Company*, 132 S.C. 45, 128 S.E. 40). But, "a distinct ground of equitable relief is not included in the general grant of" such jurisdiction. *Mack v. Stanley*, 190 S.C. 300, 308, 2 S.E.2d 792, 795, (1939) (citing *Beckwith v.*

McAlister, 165 S.C. 1, 162 S.E. 623, 628). In this case, Appellants have a claim for a declaratory judgment, seeking a determination that they are descendants of T.E. Campbell and against the Respondents for unjust enrichment in the exclusion of the descendants of T.E. Campbell from his estate, including, the real property obtained by the Respondents from the estate. These matters seeking equitable relief are not included in the general grant of jurisdiction to the Probate Court. Thus, the trial court had subject matter jurisdiction.

Additionally, the South Carolina Probate Code was not enacted until 1986 and took effect on July 1, 1987. See S.C. Code Ann. §62-1- 100(a). This code section goes on to state “any accrued right is not impaired by this Code. Unless otherwise provided in the Code, a substantive right in the decedent’s estate accrues in accordance with the law in effect on the date of the decedent’s death. If a right is acquired, extinguished, or barred upon the expiration of prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provision remains in force with respect to that right...” See S.C. Code Ann. §62-1-100(b)(4). The law in effect at the date of T.E. Campbell’s death conferred subject matter jurisdiction on the trial court.

CONCLUSION

Therefore, because discovery had not yet been completed, summary judgment was premature. Further, appellants did not waive but expressly preserved the argument that discovery had not yet been completed. Lastly, South Carolina case law establishes that the Circuit Court has subject matter jurisdiction, and the claims of the Appellants are not independently barred. The Appellants respectfully request that the decision of the Trial Court be reversed and the Appellants be given the opportunity to complete discovery and try this case on its merits.

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