

THE STATE OF SOUTH CAROLINA

IN The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2011-CP-2026

Shelly K. All, Cezar E. McKnight


Respondent,

v.

Jerome Myers, Gloria Myers

Appellants

[INITIAL] Amended BERIF OF APPELLANT

 _____

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SC Court of Appeals

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STATEMENT OF ISSUE OF APPEAL

1. Did the circuit Judge M. Dennis **err** with his assumptions and his “cast iron” tolling of the **Statute of Limitation SC Code 15-3-530** when the circuit court should have allowed the Appellants, pro se litigants, at least the opportunity to speak and be heard in a hearing for reconsideration on February 11, 2013; and then and only then, the circuit court might have more fairly applied an **Equitable Tolling Theory**?
2. Did the lower court **err** when it continuously allowed Cesar E. McKnight to be the attorney for his co-defendants and his clients about Probate during all times pertinent to the forged Power of Attorney fraud act; with estranged wife Mrs. Willie O.W. McFadden-Myers and Mrs. Myers granddaughter , Latonya Hobson.
3. Appellants assert that the **Law of the Case** is that twice the case was adjudicated as being timely filed by both the Honorable Stephanie P. McDonald and the Honorable W. Jeffery Young; as both on the record declared this civil action by a Scheduling Discovery ORDER and then ready for a July Trial; while the issue of three years was not a matter until Defendant-Respondent McKnight continued a repetitive “forum shopping” if Circuit Judge that unfairly tolled the statue of limitations of a series of fraud alleged by the forgery and conversion and misrepresentation sections of the Complaint?
4. The last two transcript before Honorable Judge Markley Dennis are provided in and of itself as substitution of and proof that these Appellant’s issues were “systemically prevented” from being raised at the lower court
 - a. Two each: Real Estate notarized-sales-contract has the same effect upon the **20 year Statute Limitations for real estate instrument in South Carolina**? It clear the motive was to prevent Henry Myers from completing his task to deed his life-long property to his own children before he died as gift. Six children and two transfers were completed before the forgery scheme began.
 - b. Did Judge Dennis’ signing the **ORDER/JUDGEMENT** on January 25, 2013 while a hearing was scheduled and reluctantly held for the **Appellant’s Second Motion to Reconsider** on February 11, 2013 unfairly denying the Plaintiffs the opportunity to speak to the court below and cause for the expense of this very Appeal?
5. Did the two Contract(s) for Sale of the Henry Myers family real property on Shrimp Road that were created as result of the forged Power of Attorney and notarized by Attorney McKnight fall into the 20 years Statue of Limitations for real estate instruments South Carolina Code (b).
6. Can the Appeal Court reach to apply the “Clean Hands Doctrine” in that the Respondent’s have committed the wrongful, intentional and malicious acts alleged by these Appellants and bar them from appearances in the South Carolina Court’s in the future?

STATEMENT OF THE CASE

The Appellants, Jerome Myers and Gloria Myers are now seeking on appeal requesting a REMAND with an Equitable Tolling vice the 'cast iron' use of the Statue of Limitations in SC

The Appellants are the sibling and now heirs to their father, Henry Myers' matters.

The Respondents; Cesar McKnight {also the attorney for Ms. Willie O.W. McFadden-Myers (wife) and Latonya Hobson (her granddaughter)}, Ms. Willie O.W. McFadden-Myers became the estranged wife when she returned to live in Kingstree, SC March 2007.

The above captioned civil action was brought to expose this Respondent's Collusion for Forgery [on Henry Myers' General and Durable Power of Attorney Criminal Conversion; and Fraud, and Misrepresentation by Shelly All and her law firm. [There was no medical power of attorney by the estranged wife to be found with the RMC OFFICES in Charleston, SC to the date yet it could exist under proper discovery].

STATEMENT OF FACTS

This civil action was brought against the Defendants, hereafter the Respondents; Shelly K. All Esq. Cezar E. McKnight Esq. Willie O.W. McFadden-Myers and Latonya Hobson by the plaintiffs Jerome Myers and Gloria Myers. The Plaintiffs are the children of Henry Myers.

Our Father, Henry Myers was first married to our mother, and together they had six children together and lived on Shrimp road, Charleston, SC. After our mother passed our father married a second time to Willie O.W. McFadden-Myers and this marriage there were no children together.

Ms. Willie O.W. McFadden-Myers has two grown daughters herself from a former marriage. Ms. Willie O.W. McFadden-Myers moved into the homestead on Shrimp Road in Charleston, SC after the marriage to Henry Myers. Ms Willie O.W. McFadden-Myers moved to Charleston from Kingstree, SC where she was living with her two daughters there.

Our father Henry Myers was up and doing for himself and his wife, Ms. Willie. O.W. McFadden-Myers. My father kept up with his doctors visits at the Veterans Hospital in Charleston, SC. Our father was very active with his church, his community and his grandchildren and great-grandchildren; all about his homestead. He cut his own grass with his own lawnmower. He drove his own truck up to the time of his leg surgery.

In February of 2007, our father Henry Myers had vascular surgery done on one of his legs at the Charleston Veterans Hospital in Charleston, SC. After being there for a few days, the doctor for the vascular surgery sent him to Ashley Crossing Drive, the Trinity Health Mission Health and Rehab in Charleston, SC. He was staying there anywhere from fifteen days to thirty days of the approval of the V.A. Hospital. At the Trinity Mission Rehab, Ms. Willie O.W. McFadden-Myers decided that our father was not allowed to return to his homestead on Shrimp Road.

After our father realized that he wasn't going home, because his wife decided that she was returning back to Kingstree, SC with her children, and that she had decided to refuse to allow is to care for our father at his home. Our father became depressed after he realized that his wife had moved back to her hometown and didn't want him in his homestead on Shrimp Road. Our father got depressed and stopped eating well and got some dehydration and was sent out to the emergency room twice from Trinity Mission Rehab. On the second time to the emergency room the doctor decided that he needed to come to the V.A. Hospital in Charleston, SC.

When our father was placed at the Charleston V.A. Hospital, he was moved upstairs to the V.A. Hospital nursing home in the same building. Willie O.W. McFadden-Myers decided that he needed to be placed under hospice at the V.A. Hospital nursing home care right here in Charleston. During this time, Willie O.W. McFadden-Myers used a forged (fraud) document that was signed illegally.

We the Myers children and our father found out through the V.A. that she was using the Power of Attorney which the V.A. social worker told us about and they did not know it was a fraud and forgery and that is how Willie O.W. McFadden-Myers was able to use the Power of Attorney . We suspected that the Power of Attorney had to be a fraud and decided to go to Attorney Dennis J. Christensen , which we hired him as our attorney as of (June 6, 2007) to take care of this matter of forgery of a Durable Power of Attorney that was filed on April 12, 2007.

Jerome Myers and Gloria Myers went to the Charleston County Registrar and Means and Conveyance Office to get the Power of Attorney, Willie O.W. McFadden-Myers was using before we went to the (RMC) office. We had an appointment with Attorney Dennis J. Christensen to discuss the suspected fraud of the Power of Attorney.

We met with Attorney Christensen discuss in his office taking the case of suspected fraud. We brought in the documents believed to be illegal about the Power of Attorney and legal documents showing our fathers signatures which we had signed in the past and present as samples of our father's handwriting. The suspected illegal document of the Durable Power of Attorney was signed or filed on April 12, 2007. The signatures were not like our father Henry Myers. Our father did not give anyone permission to sign any documents for him at all.

Attorney Christensen examined all of the documents which had signatures of our father's handwriting that was legally signed and he compared them to the illegal signatures; Notary and Witness of April 12, 2007 (RMC) date. Attorney Christensen agreed to take the case on because he believed it to be fraud case, assuring us that he could get justice through the court for our father Henry Myers and his children. So he made another appointment for us to meet with him on this suspected fraud case that was committed on April 12, 2007.

We, the Myers children met Attorney Dennis J, Christensen and he introduced us to his partner Shelly K. All on this second appointment. We were expecting that what Attorney Christensen had assured to us that Shelly K. All will work with us on this fraud case. Jerome Myers, Gloria Myers and Melba Myers-Taylor went into Attorney Shelly K. All, office to discuss this case with her even though, we were expecting to continue this case with Attorney Dennis Christensen.

We sat down and explained what we wanted to happen in this fraud case. This meeting was at the end of June 2007. The documents were again reviewed with Ms. All just like with Mr. Christensen before. We pointed out that this Power of Attorney was signed filed April 12, 2007 (RMC) date by Mrs. Willie O.W. McFadden-Myers and her granddaughter, Ms Latonya Hobson as witness. Attorney Cesar McKnight was their attorney and notarized and witness this suspected forged Power of Attorney signed filed April 12, 2007(RMC) date.

These illegal documents was supposed to be signed by our father Henry Myers in the presence of their (Respondents) Attorney Cesar E. McKnight who signed this document himself

and notarized it with Mrs. Willie O.W. McFadden-Myers who signed and witnessed along with her granddaughter, Latonya Hobson that came to Charleston, SC from Ohio to be a witness signing the forged Durable Power of Attorney. The fact that Mrs. Willie O.W. McFadden-Myers used this document (Power of Attorney) against our father and his children to get way about the matters above and the property on Shrimp Road.

In the meeting with Shelly K. All we were prepared to go on the witness stand for the fraud that was committed and filed on April 12, 2007 (RMC) date against our father and his six children. Shelly All told the Myers children that we had to wait on the right Judge to be heard in front of about the forgery. When our hearing came up in front of the Judge in court we the Myers children were not allowed to speak before the court because there was a closed meeting in the Judge's chambers. ***(There was no hearing and no transcript exists for attaching to the Appellant's Record on Appeal)***. After our Attorney Shelly K. All came out of the meeting in the back of the Chambers we asked her when the court was going to start so we can go on the witness stand.

Our Attorney Shelly K. All advised us that she would go back into the Judge Chambers to speak with McKnight. After coming back and out a third time she met with the Myers children in a room of the court room. We the Myers children and Attorney Shelly K. All sat down and she advised us that they came to an agreement in the Chambers that they dropped the illegally signed Durable Power of Attorney and had made Mrs. Willie O.W. McFadden- Myers our father's Conservator along with her Attorney Cezar E. McKnight behind closed doors.

We told Attorney Shelly K. All we were not satisfied of what had taken place in the Chambers without us even agreeing on this matter and we were looking to be heard in court on the record. We felt it wasn't right after we hired their law firm to deal with the forgery case that had been committed and filed on April 12, 2007 (RMC) date by the same Respondents (Defendants) while they were being heard in the Judge's Chambers, but not the Myers's children being on record. Attorney Shelly K. All informed us the Myers children, that the decision has been made and nothing we could do after all that was his wife and that their ruling stands.

Attorney Shelly K. All informed us that we could file a petition to become Guardian and Conservator over our father, so we agreed since we didn't know what else to do. We felt very encourage after finding out we could be a Guardian and Conservator for our father as his own children and the court and our attorney made his wife the Conservator and appointed a Guardian and Guardian Ad Litem for our father Henry Myers, at this typically "back door meeting" (without a hearing nor one held on the record).

We the Myers children became very discouraged because we did not hire the attorney All and her law firm to start out in a Probate Guardian and Conservator for us and our father. We wanted them to deal with the matter of the suspected fraud and forgery documents against those that committed the alleged crime on April 12, 2007 (RMC) date. Resultantly and instead we had

to visit out father in five different nursing homes from Charleston to Florence SC. We felt that no one was listening and fighting for our justice or right of our father and his children. Our father Henry Myers is a WWII veteran and worked all of his life to accomplish what he had been blessed with in his lifetime.

So we decided to go the Charleston City police Department and explain what has happened with the suspected fraud and forgery documents. The city police department sent us to the West Ashley Police Department. So we went to West Ashley and there we met with Sgt. Donald Daquigan. We explain to him that the documents of the Durable Power of Attorney that we suspected were not signed by our father, nor had he consented to have anyone sign any such documents for him. Sgt. Donald Daquigan assures us that he would keep in touch and agree to investigate the matter concerning the alleged fraud and forgery of the Durable Power of Attorney that took place on April 12, 2007 (RMC) date our father was at the Trinity Mission and Rehab in West Ashley at the time.

Sgt. Donald Daquigan assured is that he would keep in touch with us, and then there were a few weeks before we heard anything from him. Through a phone conversation, when we called and Sgt, Daquigan informed us that he turned our case over to Ms. Elizabeth Spencer, department of Elderly Support Unit and Charleston City Police Department. He told us that Ms. Spencer would be able to help us in the matter committed against out father's right.

Ms. Spencer called us to meet with her at the Charleston City Police Dept on Lockwood Blvd. Ms Spencer had set up a small table and chairs in the middle of the public lobby for our privacy-sensitive meeting about our criminal complaint. We started with the documents of alleged fraud and forgery of the Durable Power of Attorney filed April 12, 2007 (RMC) date. Before we left the meeting with Ms. Spencer we agreed that the documents given to Sgt. Daquigan that he faxed over to Ms. Spencer were suspect of fraud and forgery.

We did not hear from Ms Spencer for a few weeks. We tried to call her office number we left her messages and there non-responsive attempts to follow-up went on for a few more weeks to no avail. We then called Sgt. Daguigan to find out any progress and any new information from Ms Spencer since Sgt. Daquigan had turned the case over to Ms. Spencer and he wanted us to meet him at the main police Station on Lockwood Blvd so he could return all that we had given to him and Mrs. Spencer through him. Sgt. Daquigan gave us a folder without any case number. We asked where the case number was the Sgt. said' there was no number because there was not a case'. We asked for a letter with the folder from Sgt. Daquigan. His letter is dated November 7, 2008. We tried to present some more recent evidence from our handwriting expert receive October 18, 2008. Neither Sgt. Daquigan nor Ms. Spencer wanted to see it or wanted to know about it. The Police Dept. would not take the affidavit of the Handwriting Expert.

Our father Henry Myers was diagnosed by the Veteran Administration with rating decision computer December 15, 2008 as him being competent and that caused his retirement

payments to be returned directly to his control by the Federal Government. Our Father returned to his homestead with his children March of 2009. We the Myers children have tried diligently to receive help with this matter of fraud and forgery of the illegally used document and new evidence of same. Everywhere we turned we were turn away and there was no justice in this matter. Our father Henry Myers was diagnosed by the Veterans Administration with rating decision completed December 15, 2008 as him being competent and that caused his retirement payments to be returned directly to his control by the Federal Government. Our father returned to his homestead with his children of March 2009.

We the Myers children have “tried diligently” to receive help with this matter of fraud and forgery of the illegally used documents and new evidence of same. Everywhere we turned—we turned away and there was not any justice in this matter.

STATEMENT OF ARGUMENT

The Appellants pray for the Court of Appeals to correct the Stipulation reducing the original Defendants as SCRCF 40j required all the parties to sign for a consent order which it being signed by the only the two Appellant's and Attorney Dennis Christensen—a lawyer—does not meet the prerequisite all of the SCRCF 40j. The other defendant did not sign any stipulation.

To allow or to correct that attorney All and Christensen law firm was retained to seek civil actions about the suspected forgery and fraud when they misrepresented and caused a probate case without any testimony from the Appellants about the forgery and the fraud being caused by the illegal General and Durable Power of Attorney created by the Respondents April 12, 2007 (RMC) date.

To allow the Appellants for a credit of the legal advice apparently shared between Judge Jeffery Young and Respondent Attorney Cezar E. McKnight. The Charleston Count has had plenty of time to have known better about tolling, since the South Carolina Supreme Court Decision in Hooper v. Ebenezer Senior Service and Rehabilitation Center.

As detailed herein question No. 1 to show October 16, 2008 until March 17, 2011 is less than three years time not lost after a time from June 28, 2007 that is solely attributable to their delays and their lack if action by others who are certain Attorney and City Police Department Elder Abuse Unit.

- a. The Appellants have never had the opportunity to tell their story and history via a timeline of events about the suspected and alleged Power of Attorney forgery of their father's signature while my father was a patient at the Veterans Affair Hospital in April of 2007
- b. The Appellants filed their Summons & Complaint on March 17, 2011 which is less than three years when Equitably Tolloed from the date the Appellant's had retained the Dennis Christensen and Shelly All Law Firm with a payment of June 27-28, 2007.[Shelly K. All was original defendant & plaintiff-appellant Attorney and Shelly K. All and her firm were never removed by a court order]
- c. The first "loss of time" was one year three mouths and eighteen days between retaining Dennis Christensen and Shelly K. All law firms; whose misrepresentation and misbehavior have caused their later inclusion into this civil action as defendants?
- d. The ending of "loss of time" continued up to the date on the replacement counsel letter; Oberman & Oberman Law Firm; whose letter has received the Handwriting Experts Affidavit for the Appellants and mailed it out with their letter dated October 16, 2008. This expert's affidavit is the trigger required to attach with the Summons and Complaint against professional and attorneys and the same must comply with SC Code 15-36-100(B), (F), & (G) (2).

- e. The total time of matter, Appellants have met their burden to have been diligently in pursuit of their cause of actions of actions as required by the Hooper citations; and even the time up and including November 7, 2008 when the City Police Dept letter was obtained by these Appellant.

Did the lower court err when it continuously allowed Cezar E. McKnight to be the attorney for his co-defendants and his clients about Probate during all time pertinent to the forged Power Of Attorney fraud act; with estranged wife Willie O.W. McFadden-Myers and Mrs. Myers granddaughter, Latonya Hobson?

- a. Is this repulsive attorney behavior also an 'Ethical Negligence'?
- b. This appeal is to show that Respondents Cezar McKnight, abused his duty and intentionally is culpable the causes of attorney's professional negligence in this matter, which continues even to today, until the matter is resolved about the attempts to sale the home and land of Henry Myers heirs? The Real Estate Sales Contract (s) using the forged Power of Attorney document that leveraged the Probate Petitions, all later vacated.

Appellants assert that the Law of the Case is that twice the case was adjudicated as being timely filed by both the Honorable Stephanie P. McDonald and the Honorable W. Jeffery Young; as both on the record declared this civil action by a Scheduling Discovery ORDER and then ready for a Jury Trial; while the issue of three years was not a matter until Defendant-Respondent McKnight continued a repetitive "forum shopping" of Circuit Judges that unfairly tolled the statue of limitations of series of fraud alleged by the forgery and conversion and misrepresentation sections of the complaint.

- a. Judge McDonald April 24, 2012 told and scolded defendant- respondent McKnight for his not answering the Appellants discovery for five months. In fact the court below orders McKnight to include this charge in the proposed order. The order got signed and served without the inclusion. The plaintiffs never got to file it rule to show before Judge Roger Young.
- b. Judge Jeffery Young July 23, 2012 transcript page eight and nine is the Respondent Cezar E. McKnight being told by the court that there would be a trial by jury about the forgery and fraud.
- c. The Appellants claim that if they would have been allowed to speak completely at hearing to the court below other than to partially speak via their Motion to Reconsider and their Second Motion to Reconsider that the Plaintiff-Appellants testimony would have shown that Rule 40j consent to dismiss certain parties other original defendants was SCRCF procedurally flawed in that rule requires ALL the PARTIES to sign the stipulations; which was not perfected, before the court can sign any consent order.
- d. At the hearing July 23, 2012 with Judge Jeffery Young, he held a "of the record conference" with Respondent Cezar E. McKnight then the hearing resumed with

instruction to McKnight about how to proceed with his forthcoming Amended Answer *ibid* a Motion to Dismiss Rule. 15(a). The Court did not give legal device to the Appellants.

CONCLUSION

The Appellant pray for the Court of Appeals to apply the arguments above and the Plaintiffs Statement to reverse the err caused the Judge Dennis having used the 'cast iron" three years Statute of Limitations, SC Code 15-3-530 when (I) should have used the more proper Equitable Tolling dates from either October 18, 2008 and or November 7, 2007 until March 17, 2011; when the complaint was filed to REVERSE or REMAND our civil action for jury trial in Charleston County Court Common Pleas.

October 11, 2013

Respectfully submitted

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