THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

Larry A. Yates.....Appellant,

v.

The Estate of Alvin Yates.....Respondent.

MOTION FOR ENLARGEMENT OF TIME

Appellant, Larry A. Yates, hereby moves the Court for an order granting him extra time for making, March 6, 2014, a timely filing date for his Petition for Rehearing.

Pursuant to Rule 221(a), SCACR petitions for rehearing must actually be received by the Appellant Court, no later than fifteen days after the filing of the Opinion. This Court's unpublished Opinion No. 2014-UP-006, was filed February 12, 2014. (Exhibit-A) However, this Appellant did not receive notification of this Court's issuing of the Opinion, or of the filing of the Opinion, until February 19, 2014.

It appears that the Clerk of Court's office, for some unknown reason, failed to timely serve this Appellant a notice of the Opinion being issued and filed, until

February 18, 2014, which was received by the Appellant on February 19, 2014. (Exhibit-B)

According to Rule 221(a) SCACR, Appellant's Petition for Rehearing would have needed to be filed with the Court within 7 or 8 days after first receiving notice. Rule 221(a) allows 15 days for filing a Petition for Rehearing. Unfortunately, this pro se Appellant, even with the assistance of a licensed attorney, was not able to research, write and file his Petition for Rehearing until March 6, 2014. (Exhibit-C)

This Appellant could not timely comply with the requirements of Rule 221(a) SCACR, for filing Appellant's Petition for Rehearing, because he was not timely served with a notice, of the filing date, of this Court's Opinion.

Therefore, for good cause shown, this Appellant prays that he be granted extra time for making March 6, 2014, a timely filing date for his Petition for Rehearing.

Respectfully requested,

Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29160
803-917-6224 (Ph)
Laycom6224@gmail.com

April, 8, 2014

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APR 0 8 2014

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

Larry A. Yates ..... Appellant,

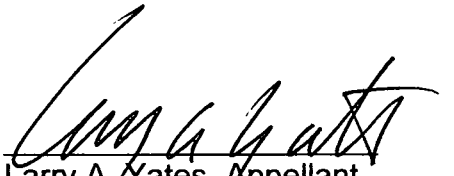
v.

The Estate of Alvin Yates ..... Respondent.

PROOF OF SERVICE

I certify that I have served the "Motion for Enlargement of Time" on the Respondent, by depositing copies in the United States Mail, postage prepaid, on April 8, 2014, to the attorney of record, addressed as follows:

Ronald R. Hall, Esq
Hall & Hall Attorneys at Law
1055 Sunset Blvd
West Columbia, SC 29169



Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29169
Phone 803-917-6224
laycom6224@gmail.com

Exhibit-A

Court of Appeals

Opinion No. 2014-UP-006

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Larry A. Yates, Appellant,

v.

The Estate of Alvin Yates, Respondent.

Appellate Case No. 2012-212594

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2014-UP-066
Submitted January 1, 2014 – Filed February 12, 2014

AFFIRMED

Larry A. Yates, of West Columbia, pro se.

Ronald R. Hall, of Hall & Hall Attorneys at Law, of West Columbia, for Respondent.

PER CURIAM: Larry A. Yates argues the trial court erred in denying his motion to amend its order denying his Rule 60(b), SCRCP, motion. Specifically, he argues the trial court erred in (1) using the "sound discretion of the reviewing judge" standard to review his Rule 60(b) motion; (2) failing to find the trial court's order was void under Rule 60(b)(4) because his due process rights were violated

when the trial court failed to rule in his favor after he presented substantial, uncontested evidence; and (3) failing to find the trial court's order was void under Rule 60(b)(4) because his due process rights were violated when the trial court based its ruling on erroneous suppositions. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the standard of review: Rule 60(b)(4), SCRCP (providing "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding"); *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006) ("Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the [court].").

2. As to the due process issue concerning the substantial, uncontested evidence: Rule 60(b)(4), SCRCP ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . the judgment is void."); *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) ("The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction."); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution."); *id.* ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

3. As to the due process issue concerning the trial court's reliance on erroneous suppositions: *Halersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (1990) (providing three partnership tests for determining whether a partnership exists: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management); *Madren v. Bradford*, 378 S.C. 187, 192, 661 S.E.2d 390, 393 (Ct. App. 2008) ("The appellate court will not disturb the trial court's findings of fact as long as they are reasonably supported by the evidence."); *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350 ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

AFFIRMED.[1]

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit-B

Court of Appeals

Mailing Envelope
Post Marked February 18, 2014

South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

Hasler
02/18/2014
US POSTAGE
FIRST-CLASS MAIL
$00.48⁰
ZIP 29201
011D12602824

LARRY A. YATES
612 ASHWOOD CIRCLE
WEST COLUMBIA SC 29169

25169496512

Exhibit-C

Appealant's

March 6, 2014

Petition for Rehearing

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, *Circuit Court Judge*

Docket No: 08-CP-40-0009

Larry A. Yates ..... Appellant,

v.

The Estate of Alvin Yates ..... Respondent.

PETITION FOR REHEARING

Note: Petitioner receive the unpublished opinion of the Court of Appeals at his home on February 19, 2014, which is fourteen days as of February 5, 2014. Petitioner is now *aware of the wording of Rule 221, but would argue that he should have fifteen days from* the day he received the opinion to prepare and file his Petition for Rehearing.
(Opinion was mailed on February 18, 2014 and received on February 19, 2014)

Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29160
803-917-6224 (Ph)
Laycom6224@gmail.com

STATEMENT OF THE CASE
PRELUDE TO
APPELLANT'S PETITION FOR REHEARING

This Appellant, Larry A. Yates, a 73 year old senior citizen, living on Social Security and a small rental income, has been during the past 5 years, seeking what is right, just and fair from the Courts of South Carolina including Richland County Circuit Court and the South Carolina Court of Appeals.

Up until now, I have not experienced Courts that operate efficiently and strive to find the truth and justice for all. Instead, I have experienced, crowded dockets, long waits for rulings, from overworked judges that can't possibly make fair and accurate rulings for trials held 3-4 months prior to hearing dozens or hundreds of cases afterwards. The over worked judges are unnecessarily "taking cases under advisement" and then trying to rule fairly on a "old cold case" after hearing dozens of new cases, in between.

As an example, this Appellant's case was non-jury trial before Judge Childs in July of 2009. I know it was 2009 because I had just lost my wonderful, loving wife to cancer in April of 2009. It was difficult to concentrate on an upcoming trial after experiencing the loss of a loved one. However, I prepared a spiral bound booklet of exhibits, written trial testimony, affidavit of the trial testimony, and including relative case law of state statutes with regard to partnerships.

As a plaintiff, pro se, I presented an amazingly strong case before Judge Childs, documenting the existence of a partnership between myself and my cousin. (now deceased) We had an agreement for a partnership to construct a spec home in Blythewood, SC.

Anyway, the record shows a clear and undisputed evidence of a partnership. After cross examination by defendant's attorney, I rested my case.

The defendant was not present at trial and there was no testimony or other evidence presented at trial. The defense rested without doing anything whatsoever. At this point it was expecting that Judge Childs would have ruled judgment for me, the Plaintiff. After all I had an abundance of evidence, testimony, exhibits, affidavit testimony and pertinent partnership case law. It all was evidence that supported the existence of a partnership. The defendant had

nothing. Judge Childs was compelled by law, by the constitution and the scales of justice to rule for me, the plaintiff, based on a preponderance of evidence.

Unfortunately, she did not do so. Instead she "took the case under advisement." And thus started a five year long legal nightmare. Instead of giving me, the sole surviving partner of the partnership, the proceeds of the sale of the $235,000 home, so that I could pay partnership debts and divide any profits equally between me and the estate of my deceased partner, Judge Childs did eventually rule for the defendant. The Estate of Alvin Yates, my cousin, took the $235,000 proceeds from the sale, didn't pay any of the bills that were incurred for the construction of the home which left me, the plaintiff, who had all the evidence at the trial before Judge Childs, to pay all of the left over debts. Judge Childs' judgment for the defense has cost me my home by way of foreclosure of a mortgage that was taken to build the Blythewood house. Also, five years of working through the Court maize of motions, appeals, judges, and now hopefully a rehearing determination by this Appellant Court.

Instead of a ruling finding for the plaintiff, which was demanded by the evidence, Judge Childs took more than three months before she ruled for the defendant in a twelve page order which was mostly taken from exparte communication with the defense counsel, including accepting an after trial memorandum that included materials that were not in evidence or part of the trial record. I don't think Judge Childs, meant to make a mistake in her ruling, but she did. Not only did she make a mistake in her ruling, she refused to reconsider her decision or to amend her flawed order that was clearly not based on evidence contained in the trial record.

If the July, 2009, trial would have been a jury trial, it is a 100% probability that a jury would have unanimously reach a verdict for me, the plaintiff, the litigant that had all the evidence. Furthermore, a jury would have reach the correct verdict within a few minutes. How ironic is it that a jury consisting of twelve "non-law school educated" citizens can reach a correct verdict, for a non-contested trial, in only a few minutes; but it takes more than three months for a well trained lawyer-judge to get it wrong and rule for the "non-contesting" party. The jury would have the same evidence as the Judge, but the jury gets it right and the judge gets it wrong? If it would have been wrong for a jury to find for the defendant, then it

was wrong that Judge Childs did find for the "non-contesting" defendant. Judge Childs got it wrong, but the reality was, that nothing was going to persuade Judge Childs to change her ruling in favor for the "non-contesting" defendant.

Judge Childs' order was so bad and so wrong, that it did match the criteria for determining it a void judgment as required by SCRCP Rule 60(b)(4). This appellant did file a motion to set aside Judge Child's order of October, 2009, on the basis that the order is void because it was taken in error and in violation of plaintiff's constitutional rights to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs. (emphasis added)

After months of waiting, the Rule 60(b)(4) hearing was scheduled for March of 2012, before Judge Lee. March of 2012, is nearly 3 years after the July of 2009, trial in which Judge Childs should have ruled in favor of me, the plaintiff. At the motion to set aside hearing, before Judge Lee, this appellant filed memorandums of law, transcript of trial, copies of exhibits and gave oral arguments in support of the motion to set aside. The defendant's attorney attend part of the hearing but refused to participate. He rejected copies of my memorandum of law and printed transcript and written arguments. Judge Lee noted his refusal to participate in the hearing and also noted for the record, that he had rudely walked out of courtroom before the hearing was completed.

My plaintiff argument for the hearing, was the same as it is with this Appellant Court. Argument that the trial court order was void from the inception because it was taken in error and in violation of constitutional right to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs. It is understood by this appellant, and is confirmed by applicable case law (lots of federal - less state) that in order to determine what error or mistake was made by trial court Judge Childs, under Rule 60(b)(4) the record would need to be examined de novo. The reason for reviewing the record from the beginning, de novo, is that determining error, mistake, due process or violation of constitutional rights and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs, is a matter of law that is determined by review of the record.

In any case, Judge Lee ignored and/or didn't even consider the fact that the trial court Judge Childs based her order of judgment for the defendant, on clear error of ignoring the preponderance of evidence, substantial evidence by plaintiff, defendant not presenting any evidence and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs, and thereby violation of plaintiff's constitutional rights to fair trial and/or denial of due process rights, all of which would only have been substantiated by a review of the trial record.

Judge Lee denial of this appellant's Rule 60(b)(4) motion, was based on a standard of review authority that was, "within the sound discretion of Judge Lee." With that ruling, Judge Lee was saying that the actions and ruling of Judge Childs, was not taken in error or in violation of constitutional right to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs.

This appellant filed his Notice of Appeal of Judge Lee's June 7, 2012, Order denying his motion to set aside, with this Court of Appeals, on July 26, 2012

APPELLANT'S PETITION FOR REHEARING

Appellant Court Rule 221(a) requires petitioner to, "state with particularity the points supposed to have been overlooked or misapprehended by the court." Appellant's issues with this Court's Review and Opinion for Appellant's Arguments as set forth in his Final Brief, are:

1. how could motion court's Judge Lee determine "preponderance of evidence" and/or "constitutional rights" and/or "rights to fair trial" issues without reviewing the trial record, de novo?

2. how could motion court's, Judge Lee, determine "clearly erroneous" and/or "substantial evidence" and/or "denial of due process" issues without reviewing the trial record, de novo?

3. why the "standard of review" for Rule 60(b)(4) may or may not be the same "standard of review" as for Rule 60(b)(1), (2), (3) or (5)

4. why would this appeal court cite BB & T v. Taylor, 369 S.C. 548, 551,633 S.E.2d 501,502 (2006) to justify "within the sound discretion of the hearing judge" as a standard of review for appellant's Rule 60(b)(4) motion, when the Supreme Court determined that its, "standard of review" (for BB & T v. Taylor) "is limited to

determining whether there was an abuse of discretion"? Would "determining whether there was an abuse of discretion," require a de novo standard of review?

5. also, in BB & T v. Taylor, this appeal court's affirmation of the circuit court's denial of Appellant Taylor's motion to set aside, was reversed by the Supreme Court.

6. would the trial court's failure to rule for the existence of a partnership, be an abuse of discretion by the trial court judge, and void her October 26, 2009, order when the "substantial evidence contained in the record" clearly documents the existence of a partnership?

7. would the motion court's failure to determine that the trial court judge failed to rule for the existence of a partnership, be an abuse of discretion by the motion court judge, and void her June 7, 2012, order, when the "substantial evidence contained in the record" clearly documents the existence of a partnership?

8. would the trial court's issuing an order that was "clearly erroneous" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

9. would the motion court's failure to determine that the trial court judge issued an order that was "clearly erroneous" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

10. would the trial court's issuing a order that contained mostly "opinions of defendant's attorney not in evidence that were obtained after trial by way of exparta communications" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

11. would the motion court's failure to determine that the trial court judge issued an order that contained mostly "opinions of defendant's attorney not in evidence that were obtained after trial by way of exparta communications" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

12. would this appeal court have affirmed the motion court's appealed order, had this appeal court confirmed that the trial court's October 26, 2009, order was controlled by "opinions of defendant's attorney not in evidence that were obtained after trial by way of exparta communications"? (R.p.17.¶.5) (Motion Court's June 7, 2012 order)

13. would this appeal court have affirmed the motion court's appealed order, had this appeal court confirmed that the trial court's October 26, 2009, order was

controlled by statements of fact that are not supported by the trial record? (see page 18 of the appellant's final brief)

14. would the trial court's failure to rule with the "preponderance of evidence" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

15. would the motion court's failure to determine that the trial court judge failed to rule with the "preponderance of evidence" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

16. why Judge Lee would have cited, Perry v. Heirs at Law of Gadsden, 357 S.C. 42, case law for a Rule 60(b)(3) Motion as a justification of her standard of review for this Appellant's Rule 60(b)(4) Motion?

17. why Judge Lee would have cited, Tobias v. Rice, 379 S.C. 357, case law for a Rule 60(b)(1) Motion as a justification of her standard of review for this Appellant's Rule 60(b)(4) Motion?'

CONCLUSION

Wherefore, on multiple grounds, the trial court's order of judgment issued on October 26, 2009, includes multiple abuses of discretions, by trial judge Childs as set forth above. An order taken by way of a judge's abuse of discretion was taken in violation of the plaintiff's constitutional "due process" rights to a fair trial, and therefore trial judge's October 26, 2009, order of judgment, is void.

Under Rule 60(b)(4), a party is entitled to relief from a judgment, if it is void. Therefore, the trial court's October 26, 2009 order of judgment should have been set aside by the motion court's Judge Lee, in response to the appellant's December 15, 2011, Motion to Set Aside.

In light of all the evidence, supporting the existence of a partnership and no evidence opposing the existence of a partnership, as recorded in the official transcript of the record of the July 13, 2009 trial, the trial court's October 26, 2009, order of judgment, finding for the Defendant, is an unmistakable an egregious violation of the Plaintiff's "due process" rights, that are afforded him under the fifth and fourteenth amendments to the United States Constitution. (emphasis added)

This appellant is entitled to relief from the trial court's October 26, 2009, order of judgment, and therefore the motion court's Judge Lee's June 7, 2012, order denying this appellant's motion to set aside, should be reversed. The motion court Judge Lee abused her discretion in denying appellant's motion to set aside the trial court's October 26, 2009, order of judgment and therefore Judge Lee's June 7, 2012 order of judgment should be reversed and remanded by a Court of Appeals' decision.

Respectfully submitted,

Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29169
Phone: 803-917-6224
Email: laycom6224@gmail.com

March 5, 2014