THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

ROBIN B. STILLWEL, Circuit Court Judge

Appellate Case No: 2012-205726

The Estate of Gordon W. Bridwell, Jr. by Raymond Eddie Bridwell, Personal Representative, — Respondent,

v.

Life and Hope Assembly of God, Mary Ellen Harris, and John Doe, Representing Unknown persons claiming to [sic] Life and Hope Assembly of God, — Appellants

---

INITIAL BRIEF OF RESPONDENT

George E. Lafaye, IV
201 Whitsett St
Greenville SC 29601
864-241-3001

Attorney for Respondent

RECEIVED
APR 15 2014
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii
ISSUES ON APPEAL 1
STATEMENT OF THE CASE 1
ARGUMENTS 3
I. THE COURT OF APPEALS DOES NOT HAVE JURISDICITON OVER THIS MATTER. 3
II. THE TRIAL COURT DID NOT ERR IN FINDING THAT THERE WAS NO EFFECTIVE DELIVERY OF THE PURPORTED DEED FROM GORDON W. BRIDWELL. 3
III. THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT THE PURPORTED DEED NAMED A GRANTEE THAT DID NOT EXIST. 6
IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GRANT THE APPELLANT A CONTINUANCE BASED ON AN ALLEGED SICKNESS AND THE DENIAL OF A CONTINUANCE DID NOT PREJUDICE THE APPELLANT. 9
CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Bullard v. Crawley, 294 S.C. 276,278, 363 S.E.2d 897 (1987) 3
First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) 9
First Union Nat. Bank of South Carolina v. Shealy, 325 S.C. 351, 355, 479 S.E.2d 846 (Ct. App 1996) 5, 6
Foster v. Foster, 384 S.C. 380, 682 S.E.2d 312 (Ct. Ap. 2009) 7
Jeffery v. Ehrhardt, 210 S.C. 519, 43 S.E.2d 483 (1947) 7, 8
See Duckworth v. First Nat'l Bank, 254 S.C. 563, 576, 176 S.E.2d 297, 304 (1970). 5
Sloan v. Greenville County, 590 S.E.2d 338, 346, 356 S.C. 531 (S.C.App. 2003) 3
Wise v. South Carolina Dept. Corrections, 372 S.C. 173, 174, 642 S.E.2d 551 (2007). ... 3

ISSUES ON APPEAL

I. DOES THE COURT OF APPEALS HAVE SUBJECT MATTER JURISDICTION OVER THIS CASE?

II. DID THE TRIAL COURT ERR IN FINDING THAT THERE WAS NO EFFECTIVE DELIVERY OF THE PURPORTED DEED FROM GORDON W. BRIDWELL?

III. DID THE TRIAL COURT ERR IN FINDING THAT THE PURPORTED DEED NAMED A GRANTEE THAT WAS NOT ABLE TO ACCEPT DELIVERY?

IV. DID THE TRIAL COURT ABUSE ITS DISCRETION IN NOT GRANTING THE APPELLANT A CONTINUANCE?

STATEMENT OF THE CASE

The Statement of the Case contained in the Appellant's Brief, while it contains some accurate information, also includes a raft of unsubstantiated, irrelevant, contested and false information. Therefore, the Respondent cannot accept it, and will contest the more egregious and relevant assertions in the Argument section.

The case was indeed commenced by the filing of a Summons and Complaint on March 25, 2010. Mary Ellen Harris attempted to file an Answer and Counterclaim on behalf of herself and Life and Hope Assembly of God on April 26, 2010. (Summons and Complaint). The Respondent objected to the filing of a pleading by the church without representation. (Answer and Counterclaim filed April 26, 2010) Ms. Harris filed another Answer and Counterclaim on May 25, 2010, this one also purporting to be on behalf of the church. (Answer and Counterclaim Filed May 25, 2010). Once the Appellants were

ordered (Order of Judge Hill, dated June 6, 2010) to secure counsel, that attorney saw to a filing of a third Answer and Counterclaim. (Answer and Counterclaim filed September 7, 2010). Therefore any reference to "Answer and Counterclaim and Exhibits" is unavoidably vague.

Appellant's Brief accurately states the nature of the Respondent's claims, the fact that the issues were bifurcated and that a trial took place, the result of which was that the trial court held that the deed recorded January 5, 2010 was void. (Ord. of Judge Stillwell). This Order was filed on November 10, 2011 and the Clerk of Court mailed a copy to Mary Ellen Harris and the attorney for the Appellants. (*Id* at p 1). No motion for reconsideration was ever filed.

The Notice of Appeal was not filed until December 28, 2011. The transcript from the trial was not received by the Appellant until August of 2012. The Initial Brief was mailed by counsel for the Appellant Life and Hope Assembly of God on September 30, 2013, but it was never received by this Court or the Respondent.

This case was dismissed on October 11, 2013 for failure to file the appellants' Initial Brief. Court records will indicate that a copy of that Order was sent to Mary Ellen Harris. By letter dated October 29, 2013, the Court sent Remittitur of this matter to the Greenville County Clerk of Court. Court records show that a copy of this letter was sent to Mary Ellen Harris.

Appellant's counsel moved to have remittitur recalled on November 21, 2013. Respondent filed a Return arguing that the Court of Appeals lacked jurisdiction. After requesting documents from Appellant's counsel, this Court granted that motion.

ARGUMENTS

I. THE COURT OF APPEALS DOES NOT HAVE JURISDICITON OVER THIS MATTER.

The South Carolina Court of Appeals lost jurisdiction over this case upon the sending of Remittitur on October 29, 2013. Once "remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter." *Wise v. South Carolina Dept. Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551 (2007). "The only exception to this rule is when remittitur is sent down by mistake, error or inadvertence **of the Court**." *Wise*, at S.C. 174, (*emphasis added*).

The Appellants' Petition to Reinstate Appeal and Recall Remittitur did not allege that there was any mistake, error or inadvertence **by the Court**. Instead, the Appellant ignored the October 11, 2013 Order and the October 29, 2013 Remittitur. The Appellants could have easily taken advantage of the lag between these two events to raise the issue of the lost brief. Therefore the Court does not have jurisdiction to hear any matter in this case, and the Appellant's appeal should be dismissed.

II. THE TRIAL COURT DID NOT ERR IN FINDING THAT THERE WAS NO EFFECTIVE DELIVERY OF THE PURPORTED DEED FROM GORDON W. BRIDWELL.

An action to set aside a deed is a matter in equity. *Bullard v. Crawley*, 294 S.C. 276, 278, 363 S.E.2d 897 (1987). An equitable action "should be reviewed under the preponderance of the evidence standard." *Sloan v. Greenville County*, 590 S.E.2d 338, 346, 356 S.C. 531 (S.C.App. 2003). "Our broad scope of review, however, does not

require this court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Id* at S.E2d 346.

In this matter, the trial Court made a specific finding concerning credibility:

> This Court had the opportunity to observe the testimony of all parties and to assess their credibility. During the course of her testimony, Mary Ellen Harris was confronted with dubious filings made on behalf of the Defendants in this matter, and she was confronted with the testimony she gave under deposition. The nature of these dubious documents along with the Rev. Harris' failure to participate meaningfully in discovery negatively impacts this Court's view of her credibility.
>
> Stillwell Order at p. 2-3

The record is replete with examples of the Appellant forging documents and refusing to cooperate in discovery. For example, Appellant's counsel told the trial court that "Reverend Blunt [sic], an additional witness who was supposed to be here, had to leave at five o'clock yesterday and apparently will not be back in town until the 18th according to the information supplied by my client." (Tr. p. 6). The record shows he was able to testify in court that very day. (Tr pp. 150-164).

The Rev. Harris also admitted at trial that she knew the answer to a deposition question about the composition of her church board, although she had answered that she did not know who was on that board. (Tr. p. 113, line 18). Her own attorney opted to have her testify in a narrative form (Tr. p. 124, lines 7-20) and advised her, as did the trial judge, of her rights under the Fifth Amendment to the United States Constitution. (Tr. p. 125, lines 1-5).

The Rev. Harris testified that she never saw the purported deed until after the death of Gordon W. Bridwell. (Tr. p. 94 line 30). She indicated that Fedra Campbell, an

employee of the church would have been the person to have received delivery of the deed. Fedra Campbell, the Appellant church's secretary, did not testify at the trial. The trial court would have been correct to draw a negative inference from the lack of testimony from Ms. Campbell. *See Duckworth v. First Nat'l Bank*, 254 S.C. 563, 576, 176 S.E.2d 297, 304 (1970).

It was in that context that the trial Court had to determine whether or not there was effective delivery of the purported deed from Gordon W. Bridwell to Life and Hope Assembly of God. The trial court applied on the following law:

> "An effective delivery of a conveyance contains two parts: (1) an intention to deliver, and (2) an act evincing a purpose to part control with the instrument." *First Union Nat. Bank of South Carolina v. Shealy*, 325 S.C. 351, 355, 479 S.E.2d 846 (Ct. App 1996). Further, a "grantor may not use a deed to transfer an interest which will take effect after the grantor's death. *Id.* at S.C. 357.
>
> Final Order p. 2

Appellant, in its brief, is unable to cite to the record where anyone testified as to how or when this purported Deed was delivered, because nobody from the Appellant's side ever did so testify. There is, therefore, no reliable evidence the deed was delivered during the decedent's lifetime.

Appellant contends that the reservation of a life estate in the purported Deed indicates an intent for the deed to become effective before death. The trial court properly focused its attention on the fact that the purported Deed remained sealed until after Gordon W. Bridwell's death. Also, this rather idiosyncratic document contained very odd language about the care of Mr. Bridwell's pets, making gifts, and a statement that "this to by my final Trust". All the foregoing indicate that that the purported Deed was

more of a testamentary document than a Deed. As such, the trial court correctly ruled that such a document could have been revoked up to Gordon W. Bridwell's death, or until he lost testamentary capacity.

Still, the fact remains that no one from the Appellant directly testified how this purported Deed came into its possession. In fact, the only witness, other than the Rev. Harris who testified for the Appellant was Edward Blount. He testified that he received copies of the purported Deed after Gordon Bridwell died (Tr. p. 157, line 17), but he did not testify as to who may have sent the letter to him. As in *First Union*, the record "is devoid of any evidence indicating [that the grantor] told anyone that he intended to divest himself of his property rights at the time he executed the deed." *Id.* at S.C. 356. The purported Deed itself goes beyond the standard reservation of a life estate and states that Gordon W. Bridwell would "completely control the property during [his] lifetime. (Deed p. 1).

Most shockingly, Appellant, in its brief, attempts to bolster its theory of the validity of the purported Deed with reference to the "Final Trust and Deed of Appointment" done in 2006. That document was originally sent to the trial Court in an altered form. (Plaintiff's Trial Ex. 10).

For the above reasons, the findings of the trial court should be affirmed.

III. THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT THE PURPORTED DEED NAMED A GRANTEE THAT DID NOT EXIST.

The trial Court found that there was no delivery of a deed, because there was no grantee, in existence and capable of holding title to land, identifiable as "Life and Hope Assembly of God" at the time of execution or at the time of purported delivery. A deed

that names a grantee that does not exist, is void. *Foster v. Foster*, 384 S.C. 380, 682 S.E.2d 312 (Ct. Ap. 2009).

The evidence presented shows that Mary Ellen Harris was a pastor of a church called Eastside Assembly of God from 1978 until 2003 when that entity sold its property to the Korean Full Gospel Church of Greenville. In June of 2008 the property was sold by the Korean church to an entity known as Vida y Esperanza Assembla de Dios. (Deed from Korean Full Gospel Church).

The Rev. Harris failed to show any evidence that any church was adhering to the corporate form of "Eastside Assembly of God" until that nonprofit corporation changed its name to "Life and Hope Assembly of God/ Iglesia Vida Y Esperanza De Dios" after the commencement of this action. (Tr. p. 47, lines14-20). Indeed, in prior litigation (Trial Exhibits 7 and 8), and at the trial of this case the Rev. Harris testified that "Life and Hope Assembly of God" was "not a corporate entity." (Tr. p. 62 lines 21-25). The trial court, therefore, properly found that if "Life and Hope Assembly of God" existed, it did so as an unincorporated entity.

Under the case of *Jeffery v. Ehrhardt*, 210 S.C. 519, 43 S.E.2d 483 (1947), unincorporated entities can own real property. The Court in that case provided guidelines for determining when an unincorporated entity can be a grantee capable of accepting delivery of a deed. The church in that case "was functioning" at the time of the acceptance of the deed, and the name of the church was found to show "organization and officers and religious purposes." *Id* at S.E.2d 485.

In this case, the evidence presented shows that from 2003 forward Mary Ellen Harris may have been using the name of Life and Hope Assembly of God, but she was

also suing the churches who actually occupied of 1325 Brushy Creek Road. (Trial Exhibit 7). She was unable to name a board member of this church, even though the Bylaws she propounds call for them. (Tr. p. 109 lines 4-6). She was not able to produce minutes from board meeting, (Tr. 107, lines 13-15) even after being requested to in discovery, and until trial, did not give the number of congregants she claimed to have. (Tr. p. 132, lines 10-13). Given the questions the trial Court had about the Rev. Harris' credibility, her bare assertions that a church existed either in 2008 or 2010 hold no weight.

While Edward Blount did testify that Life and Hope had a continual existence, he did not demonstrate any awareness of the litigation between Mary Ellen Harris and the occupants of 1325 Brush Creek Road. He also testified that he retired as head pastor of his church in 2004, well before the time in question. (Tr. p 163, lines 9-12). He also did not testify as to the identity of any officers of the church.

Notably, Appellant did not call any members of the board, or any congregants to testify that the church had an organization, officers, and religious purpose.

Unlike the church in *Jeffery*, the preponderance of the evidence is that "Life and Hope Assembly of God" did not exist in a corporate or unincorporated form at the time of either the execution or the delivery of the deed, so the deed would fail for lack of a grantee.

The preponderance of the evidence, given the credibility of the witnesses considered by the trial court, is that Life and Hope Assembly of God did not exit as either a non-profit corporation or as an unincorporated entity, and its rulings should be affirmed.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GRANT THE APPELLANT A CONTINUANCE BASED ON AN ALLEGED SICKNESS AND THE DENIAL OF A CONTINUANCE DID NOT PREJUDICE THE APPELLANT.

The Appellant, in its brief, correctly sets out the standard of review for the failure of a trial judge to grant a continuance. The Appellant fails to show that either the trial judge abused his discretion or that the refusal of the court to grant the continuance prejudiced the Appellant.

The trial judge was in the best position to evaluate the credibility of Mary Ellen Harris claim of illness and the effect that any illness would have on the conduct of the trial. The record shows many reasons why the court properly did not grant a continuance.

The Appellant advanced two reasons for asking for a continuance. One was based on the purported illness of Mary Ellen Harris and the other was because of the unavailability of the Reverend Blount as a witness because he was going to be out of town for the next ten days. It should be noted that this case was subject to a Scheduling Order (Sched. Ord.) and a Consent Order of Continuance (Cons. Ord. of Continuance) that laid out precisely when the trial was subject to being called.

Appellant did not advance a theory based on the unavailability of any witnesses in the Arguments section of its brief, although it did mention them in its quite argumentative Statement of the Case. These mentions did not have the support of any authority. Appellant has, therefore abandoned any argument that the trial judge should have granted a continuance based on the unavailability of witnesses. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

At the time of trial, all the trial judge knew was that Mary Ellen Harris claimed to have a viral illness; had been vomiting; and had a hard time talking. (Tr. p. 5 lines 15-22). The record does not show that Mary Ellen Harris vomited at any point in the trial. The record does show that the Rev. Harris testified on examination by Respondent's counsel, again on direct in a narrative form, and she interacted with the trial judge. Her testimony takes up nearly eighty pages in the transcript. (Tr. pp. 46-115; 125-149) She did not have any noted issues making herself heard, and did not have to take any more than the usual breaks in her testimony. In fact, her final words to the trial judge after her testimony were "I'm glad I'm feeling a little bit better." To which the trial judge replied, "You sound better too. I'm glad of that as well." (Tr. p. 149, lines 12-15).

She even had a strong enough voice to call one of her allegedly unavailable witness on her cell phone from the courtroom while the Respondent was testifying. (Tr. p. 17, lines 15-17; Tr. p 17 lines 15-17).

The Appellant argues that it was the Rev. Harris's "inability to function" that the trial judge misinterpreted as a "credibility issue." The Rev. Harris's credibility issues go back much further than the trial date. As noted above, the Rev. Harris caused to be filed altered documents and failed to meaningfully cooperate in discovery. Her testimony is marked by a refusal to give direct answers to questions. There is ample support for the trial judge's adverse assessment of the Rev. Harris's testimony.

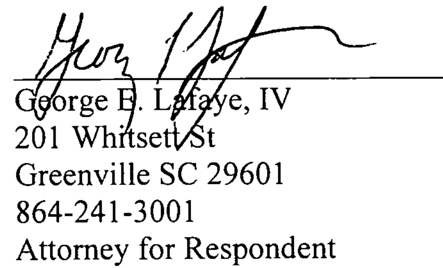
Based on the foregoing, the trial judge did not abuse his discretion in failing to grant a continuance, and, if there was any abuse of discretion, there was no prejudice to the Appellant.

CONCLUSION

For the reasons stated, or for any grounds found in the Record on Appeal, this Court should affirm the judgment of the circuit Court.

Respectfully Submitted,

April 10, 2014



George E. Lafaye, IV
201 Whitsett St
Greenville SC 29601
864-241-3001
Attorney for Respondent