STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

MASTER-IN-EQUITY

C/A No.: 2012-CP-08-1362

JOANN LLOYD and BLONDER B. HAMILTON,

Plaintiffs,

v.

DESSIRENE G. LLOYD; RUDOLPH N. LLOYD; ONEMAIN FINANCIAL, F/K/A CITIFINANCIAL, INC.; and the ESTATE OF ORALEE BLAKES,

Defendants.

ORDER DENYING DEFENDANT DESSIRENE LLOYD'S MOTION TO RECONSIDER AND ALTER/AMEND

Presently before the Court is Defendant Dessirene Lloyd's (hereinafter "Defendant") motion to reconsider and alter/amend pursuant to Rules 52(b) and 59(e) of the SCRCP (hereinafter "Motion"), which Motion was served upon Plaintiffs' counsel on September 5, 2014. Also before the Court is Plaintiffs' memorandum in opposition to Defendant's Motion, and Defendant's reply. A hearing on these matters was held before the Court on September 28, 2014. For the reasons stated herein below, Defendant's Motion is denied.

BACKGROUND

At the onset of this trial, I was made aware that because of the nature of the case, there was some tension between the parties. During the course of the trial, I very carefully observed the demeanor and manner in which each witness testified. I noticed such things as their tone of voice, gestures, hesitation or readiness to answer questions, their sincerity, and other mannerisms, all of which assisted in my evaluation of their credibility. From my observation of the witnesses there is no doubt that the dominant person involved in the transfer of the property

in questions was Defendant, Dessirene G. Lloyd. The Court incorporates by reference the facts as described in its order entering judgment in favor of Plaintiffs entered on September 10, 2014. (Final Order, at 2-6).

PROCEDURAL HISTORY

The action was commenced on May 7, 2012, upon a complaint by Joann Lloyd and Blonder Hamilton (hereinafter "Plaintiffs") to set aside two deeds executed by their mother, Oralee Blakes, in favor of Defendants, Rudolph N. Lloyd and Dessirene G. Lloyd. Plaintiffs filed an amended complaint on May 10, 2012, upon which Defendants timely answered and counterclaimed and Plaintiffs replied. This matter was initially heard before the Court on July 31, 2014. On September 10, 2014, the Court issued an order and judgment was entered in favor of the Plaintiffs. Thereafter, on September 25, 2014, Defendant served a motion asking the Court to reconsider its order. Plaintiffs filed an opposition, and Defendant filed a reply. A hearing was scheduled and held before this Court on September 28, 2014.

LAW/ANALYSIS

A. Defendant's Failure to Comply with Rules 52(b) and 59(e) of the SCRCP

Before the Court addresses any substantive issues, it must address the procedural issue of whether Defendant's Motion was timely filed. Plaintiffs argue this Court lacks jurisdiction to review the matter because Defendant's Motion was not timely made.

Rule 52(b), SCRCP, provides, in part, that "Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial...." Pursuant to Rule 59(e), SCRCP, "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice

of the entry of the order." Entry of the order occurs once the clerk of court files the order. *Upchurch v. Upchurch*, 367 S.C. 16, 24, 624 S.E.2d 643, 647 (2006). "A person who knows of a thing has notice thereof. Stated differently, '[n]o one needs notice of what he already knows.'" *Hannah v. United Refrigerated Servs.*, 312 S.C. 42, 47, 430 S.E.2d 539, 541 (Ct. App. 1993). Actual notice is synonymous with knowledge. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 63, 504 S.E.2d 117, 122 (1998).

On September 10, 2014, this Court's order was filed, entering judgment in favor of the Plaintiffs, and a copy of the filed order was mailed to the parties' respective attorneys. On the same day, the Judge's administrative assistant sent an email to the parties' respective attorneys, notifying them that the order had been filed, and attaching a copy of the filed order. Defendant does not dispute that counsel received the administrative assistant's email, including the copy of the filed order, nor disputes that counsel affirmatively acknowledged receipt in a voicemail to Plaintiffs' counsel on September 11, 2014. Rather, Defendant asserts that the ten-day time limit for serving its Rule 52(b) and 59(e), SCRCP, Motion did not begin to toll when it received the emailed copy of the filed order. Instead, Defendant asserts that under Rule 77(d), SCRCP, the clerk of court is required to serve notice upon the parties through the mail. Accordingly, Defendant argues "service of the order … was completed when it was received from the Court by first class mail on September 15, 2014." (Def.'s Reply at 2-3). The Court disagrees.

As an initial matter, under Rule 5(b)(1), SCRCP, "[s]ervice by mail is complete *upon mailing* of all pleadings and papers subsequent to service of the original summons and complaint." (emphasis added). In 2014, Rule 77(d), SCRCP, was amended to permit service of notice on parties proceeding in the SCE-File electronic filing system through an electronic transmission of a Notice of Electronic Filing. Although the Parties in this case, as traditional

filers, must be served notice of the entry of the order or judgment by first class mail, contrary to Defendant's assertion, service was complete on September 10, 2014: the day the Court mailed the order to the Parties' respective attorneys.

Further, Rule 77(d), SCRCP, also provides that "[s]uch mailing or electronic transmission shall not be necessary to parties who have already received notice." Having received notice, it was not reasonable for Defendant to thereafter rely on receipt of the same in the mail to commence tolling of its time for filing.

The operative phrase in both Rules 52(b) and 59(e), SCRCP, is "receipt of written notice of the entry of the order." Entry occurs upon filing. Thus, the Court finds the email and attached copy of the filed order was more than sufficient "written notice of the entry of the order or judgment" to begin tolling the ten-day time limit under Rules 52(b) and 59(e), SCRCP. Accordingly, Defendant's Motion, served on September 25, 2014, fourteen (14) days after Defendant's counsel acknowledged having received the filed order, was untimely and must be dismissed.

However, because Defendant appears to misapprehend the basis for and reasoning behind this Court's prior order, the Court will exercise its discretion and address the substance of Defendant's Motion.

B. **The Court is not persuaded by Defendant's attempt to distinguish relevant case law**

Defendant takes issue with the case law cited by this Court. (Def.'s Mot. to Recons. at 3-6). First, Defendant argues that the Court should not have applied the legal standard for undue influence set forth in *Brooks v. Kay*, 339 S.C. 479, 530 S.E.2d 120 (2000). Second, Defendant claims that the Court committed reversible error by failing to apply the standard for undue influence set forth in its cited cases, specifically Defendant relies on *Dixon v. Dixon*, 362 S.C.

388, 608 S.E. 2d 849 (2005), and *Wilson v. Dallas*, 403 S.C. 411 (2013). (Def.'s Mot. Recons. at 6).

The Court disagrees with Defendant on both issues. First, our Supreme Court's unanimous opinion in *Brooks v. Kay* remains good law, and is plainly applicable to the facts of the present case. In that case, the grantor, Brooks, deeded a portion of her land to Kay. *Brooks* at 483. The circumstances leading up to the property transfer were suspicious, and Brooks physical health had deteriorated such that she had to be carried into the courthouse to sign and record the deed to Kay. *Id.* Following the transaction, Brooks called the courthouse and ordered them not to record the deed. *Id. at 485.* Within the next year, she was committed to the state hospital due to her Alzheimer's disease. *Id.* Brooks died intestate, and her children brought an action to determine Kay's rights in the land. *Id.* Both the trial court and Court of Appeals found that Kay had title to the property, and the children appealed. *Id.* The Supreme Court reversed and voided the deed on the ground of undue influence.

Here, Defendant asserts that because the Supreme Court found the existence of a confidential relationship in *Brooks*, this Court, having failed to find the same, improperly relied on *Brooks'* standard for undue influence. (Def's Mot Recons. at 3). However, while the Court in *Brooks* determined that sufficient evidence was presented at trial to support finding a confidential relationship existed between Brooks and Kay, the Court considered the issue wholly separate from the issue of whether the children presented sufficient evidence at trial to support a finding of undue influence. *Brooks* at 488-89. Analyzing the issue of undue influence, the Court stated that an inference will arise upon a showing of great mental weakness of the grantor and gross inadequacy of consideration. *Id.* at 489. The Court explained:

> It is not necessary, in order to secure the aid of equity, to prove that the deceased (grantor) was at the time insane, or in such a state of mental imbecility as to render her

> entirely incapable of executing a valid deed. It is sufficient to show that from her sickness and infirmities she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance. From these circumstances imposition of undue influence will be inferred.
>
> *Id.* 490.

Applying this standard, the Court held that Brooks' mental weakness combined with the deed's consideration of only $1.00 was sufficient evidence of undue influence to void the transfer. *Id.*

This Court is not persuaded by Defendant's assertion that the existence of confidential relationship is a condition precedent to finding the existence of undue influence. There is simply no causative link between the Supreme Court's finding of a confidential relationship in *Brooks* and its ultimate finding of undue influence. In fact, in its opinion the Court explicitly stated, "[e]ven absent a confidential relationship, this court has several times approved the principle ... that imposition of undue influence upon the grantor will be inferred from proof of great mental weakness, not amounting to incapacity to execute a valid deed, accompanied by gross inadequacy of consideration." *Brooks* at 490 (*quoting Hodge v. Shea*, 252 S.C. 601, 608-09, 168 S.E.2d 82, 85 (1969)). Here, both Ms. Blakes' health and the adequacy of the deeds' recited consideration were in issue. Therefore, *Brooks* is relevant, persuasive precedent, supporting this Court's finding of undue influence.

Defendant suggests that this Court should have relied on the standard for undue influence set forth in *Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849 (2005). The facts in *Dixon*, however, are materially distinguishable from the present case; thus, *Dixon* is not persuasive.

In *Dixon*, an elderly mother conveyed her property to her son. *Id.* at 398. The stated consideration was "five dollars, love and other consideration." *Id.* At the same time the deed was executed, a Lifetime Agreement was executed whereby the son agreed to care for his mother and maintain her residence. *Id.* Approximately three years later, following a confrontation, the

mother asked the son to leave her home, changed the locks, and requested that he reconvey the property to her. *Id.* The son refused, and the mother filed an action to set aside the deed. *Id.* The mother's causes of action included both failure of consideration and undue influence. *Id.*

In finding the consideration sufficient, the Court placed significant weight on the "other" consideration, which it determined included the Lifetime Agreement. *Id.* Although the mother was not satisfied with the amount of care provided to her by her son, the Court determined that the son, in fact, cared for the mother and her property. *Id.* Finding that the son acted in accordance with the terms of the Lifetime Agreement, the Court concluded that the consideration did not fail. *Id.* The present case does not involve a Lifetime Agreement or any "other" comparable consideration. Thus, the consideration in *Dixon* must be distinguished.

Here, the stated consideration listed in each deed was $5.00, love and affection. While there is no evidence in the record as to the exact value of the property, following execution of the first deed, Defendants took out a mortgage on the property in excess of eighty thousand dollars ($80,000.00). Thus, the evidence shows that the property was valuable, and the Court stands by its finding that the recited consideration was grossly inadequate.

Finally, Defendant asserts that the vast majority of cases regarding undue influence apply a much stricter standard than the standard applied by the Court in this case. (Def's Mot. Recons. at 4). Defendant asserts that the majority of cases require that a party challenging a transaction show that the grantor's will was overbore by the grantee or someone acting on the grantee's behalf. *Id.* (*citing Bullard v. Crawley*, 294 S.C. 276, 281, 363 S.E. 2d 897, 900 (1987)). Further, Defendant asserts that the influence must be "the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will." *Dixon* at 398-99 (*citing Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003)).

This Court does not dispute the precedent set forth in Defendant's cited cases, but finds *Brooks* more on point with the facts of the present case. Defendant's cited cases, including *Dixon*, do not argue against the precedent in *Brooks*. Unlike the present case, however, *Brooks* standard for undue influence was not applicable to the facts in those cases; thus, the courts applied a different standard for undue influence. For example, in *Dixon*, the grantor mother was alive and well at the time of trial. *Id.* at 398. In fact, the grantor-mother commenced the action to set aside the deed and testified against the grantee-son at trial. *Id.* As opposed to the grantor in *Brooks* and Ms. Blakes, the grantor's health was never in issue. *Id.* In fact, in the very outset of its opinion, the Court made a point to state, "other than a hearing problem, [the Grantor] mother has no health problems." *Id.* at 392. Where the grantor's health is not in issue, application of the *Brooks* ' standard for undue inference is not applicable. Without proof of great mental weakness the inference automatically fails. Thus, in cases where the grantor's mental health is sound, proof of undue influence requires a showing that the grantor's free will was overcome. Defendant also cites several cases involving undue influence and the execution of a will. *Brooks* cannot be applied to infer undue influence in cases involving a testator's execution of a will because a will, unlike a deed, does not require consideration. Thus, unlike this case, the standard in *Brooks* cannot be properly applied.

For the foregoing reasons, this Court is not convinced by Defendant's arguments about which cases should control, and Defendant has failed to demonstrate that this Court committed error by applying the standard for undue influence set forth in *Brooks*. Thus, Defendant's arguments do not merit reconsideration.

C. **There is sufficient evidence to support this Court's finding of undue influence**

Defendant argues that this Court abused its discretion in finding the evidence at trial sufficient to support a finding of undue influence. Defendant's argument, however, improperly assumes that the Court applied the incorrect legal standard for undue influence. Defendant asserts that the Court erred because "no evidence was presented at trial which suggested the Defendants actions brought directly to bear upon the challenged transaction such that it prevented the grantor's exercise of judgment and free choice." (Def.'s Mot. Recons. at 10). Nothing in *Brooks*, however, requires such a finding. Contrary to Defendant's protestation, *Brooks* is good law and was properly applied by the Court to the facts of this case. As such, Defendant's argument misses the mark.

In addition, Defendant's allegations are unsupported. Defendant's Motion alleges facts and specifically references witness testimony without support from the record. As such, Defendant necessarily fails to meet its burden of proof.

D. Defendant is not a party entitled to set-off

Defendant alleges that the Court erred by failing to consider certain testimony that entitles Defendant to an equitable set-off. The court disagrees. Defendant's request is barred by the doctrine of unclean hands. Pursuant to the doctrine, a litigant is precluded from a recovery in equity if that litigant acted unfairly to the detriment of the plaintiff. *First Option Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568-69, 511 S.E.2d 372, 379 (Ct. App. 1998). Defendant is not a party deserving of equitable treatment. Accordingly, the Court did not error by failing to award a set-off.

Conclusion

For the foregoing reasons, the Defendant's Motion to Reconsider and/or Alter Amend is denied.

Robert E. Watson, Master-In-Equity
Berkeley County

Moncks Corner, South Carolina

November 7, 2014