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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 31 2014

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie Reynolds..... Appellants

vs.

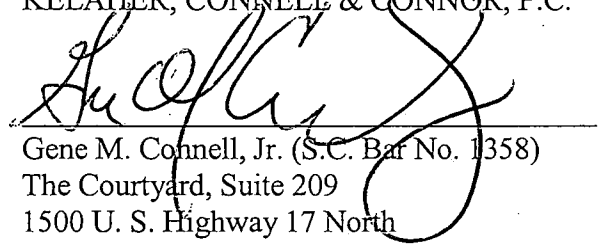
Gary Moore and Robert Moore Respondents

PETITION FOR REHEARING

The Appellants, pursuant to Rule 221 of the South Carolina Appellate Court Rules, moves this Court for an order reconsidering its Opinion No. 2014-UP-466 submitted November 1, 2014 and filed December 17, 2014. The basis of this Petition is the attached Memorandum of Law.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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December 30, 2014

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Cynthia Graham Howe, Master in Equity **SC Court of Appeals**

CASE NO. 2008-CP-26-7941

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vs.

Gary Moore and Robert Moore Respondents

**MEMORANDUM OF LAW IN SUPPORT
OF PETITION FOR REHEARING**

On December 17, 2014, this Court issued its Opinion No. 2014-UP-466 affirming the Order of the Horry County Master-in-Equity in this case. Appellants request reconsideration and rehearing pursuant to South Carolina law.

This is an action brought to collect a wrongful death judgment obtained by the Plaintiff against Defendant Gary Moore. On October 20, 2002, Gaye Marie Reynolds, the deceased, was walking down U.S. Highway 17 in Surfside Beach on her way to work when Gary Moore struck her with his vehicle and killed her. Moore left the scene and was later identified by witnesses as the driver of the vehicle in question. Moore currently is in custody and serving a fifteen year prison sentence at the South Carolina Department of Corrections. Shortly thereafter, Plaintiff obtained a wrongful death judgment/confession of judgment against Moore in the amount of \$500,000.00. Plaintiff brought supplemental

proceedings against Moore and his brother since they jointly owned real property in Myrtle Beach, South Carolina. Collection of the judgment was referred to the Master-in-Equity pursuant to S.C. Code § 15-31-10 of the 1976 Code of Laws, as amended, and Rules 53 and 71 of the South Carolina Rules of Civil Procedure.

At the Master's hearing, Plaintiff sought to enforce the judgment and sell the property owned by Defendant Robert A. Moore and Gary R. Moore located at 5848 Creekside Drive, Myrtle Beach, South Carolina. The Master found the Plaintiff's judgment attached to only one-half of the Creekside Drive property because Gary Moore was a tenant in common. After an additional hearing, the Master-in-Equity ruled by Order dated April 15, 2013 (R. p. 4) that Moore was entitled to homestead exemption of \$50,000.00 in the real property located at 5848 Creekside Drive, Myrtle Beach, South Carolina and that if the successful bidder is the judgment creditor he should be required to pay the selling officer cash in an amount equal to the homestead exemption pursuant to *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C.App. 2002). The Estate moved for reconsideration of the Master's Order which was denied on June 10, 2013. This Court in an unpublished Opinion No. 2014-UP-466 submitted November 1, 2014 and filed December 17, 2014 affirmed the Master's Order. Appellant respectfully moves for reconsideration of this unpublished Opinion based on the following grounds:

1. This Court made no ruling on Appellant's constitutional argument, more particularly Art. I, Section 24 entitled Victim's Bill of Rights.

2. Further, the Court's citation of *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct.App. 1999) is erroneous. In *Commercial Credit Loans*, this Court merely held that because the transcript of the proceedings below is omitted

from the record it appears the first time Commercial Credit made this argument was in its Rule 59(e) Motion for Reconsideration.

3. Also, the Court does not consider Appellant's argument that he could simply file a new supplemental proceeding to enforce the judgment and have this issue ruled on by the Master.

4. Appellant respectfully suggests that the Court find SCRCP 59(e) does not apply to a judgment which the Appellant is attempting to enforce as the litigation is ended.

5. Appellant also requests the Court reconsider its holding that the *Holden* case is not inequitable because the homestead exemption excludes fraudulent conveyances. Appellant believes that such a ruling allows judgment debtors to escape and was not intended by the legislature. Further, it is inequitable to allow a creditor to attack a fraudulent conveyance in order to obtain an individual retirement account, but not allow another criminal victim such as the Appellant to attack the homestead exemption for the death of his wife.

6. Petitioner asserts that the Court erred in applying *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C.App. 2002) to the facts of this case. The Court in its decision holds that a successful bidder must pay cash in an amount equal to the homestead exemption. Petitioner asserts that S.C. Code § 15-41-10 does not require the Petitioner to pay cash for the homestead exemption. At best, S.C. Code § 15-41-10 means no bid should be accepted less than the homestead exemption. Petitioner believes that the current Order of this Court requires the Petitioner to pay the homestead exemption in cash prior to the sale. Petitioner does not believe that he should be required to pay cash for the homestead exemption prior to the sale and that such ruling thwarts justice and fair play. To require

payment of the homestead exemption in cash would make the collection of the judgment extremely difficult and would generally mean that debtors would escape their creditors.

In fact, a cash bid is not required under S.C. Code § 15-41-10. The statute provides: “The minimum bid for the property must be in the amount of the exemption and no bid less than the amount of the exemption may be accepted.” Accordingly, this Court’s ruling affirming the Master that Petitioner must pay cash in an amount equal to the homestead exemption is clearly contra to S.C. Code § 15-41-10. Petitioner respectfully asserts that the Court of Appeals in affirming the Master’s ruling that cash be paid for the homestead exemption in effect means that a creditor will never be able to collect from a debtor the amount owed without making a payment for the homestead exemption in cash. Such a result was clearly not intended by the Legislature.

7. Petitioner also requests the Court review *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C.App. 2002) in that this opinion is inequitable and unfair as a matter of law. In this particular case the defendant was convicted of a criminal act and requiring the victim who intends to sell the defendant’s property to come up with cash to pay the exemption amount is inequitable and unfair as a matter of law. Petitioner requests the Court to find as follows:

(a) The homestead exemption should never apply to a case involving a criminal act such as this one; or

(b) In the alternative, it is inequitable as a matter of law to require the judgment creditor to pay a homestead exemption in cash before the actual sale. Such a result allows debtors to escape payment and in this case victims are denied compensation.

8. Finally, the Court erred in finding the defendant was entitled to a homestead exemption because Moore is currently confined to the state prison system. The term "residence" has been defined by this Court in terms of legal residence and actual residence. The term "residence" has been defined by this Court in terms of legal residence and actual residence. Here, the Defendant Moore is an actual resident at the Department of Corrections in Columbia. Further, he is a "legal resident" of the Department of Corrections. Accordingly, he is not entitled to a homestead exemption. See *Roof v. Tiller*, 195 S.C. 132, 105 S.E.2d 333 (S.C. 1940); *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (S.C.App. 2012) (allowing preferred assessment only to those owner occupants who limit the use of their legal residence to statutorily defined parameters). Using this logic, Moore does not live on the property and is neither a "legal resident" nor a "resident" of the property in question. Accordingly, Moore cannot claim a homestead exemption, especially in light of his lengthy prison sentence, an issue which was not addressed in *Holden* and this Court has not addressed.

Finally, Appellant believes that the homestead exemption in this case is not \$50,000, but \$5,000, if it is applicable at all. Appellant points to the Record on Appeal which provides that the Confession of Judgment was dated April 4, 2008 (R. p. 16). Also, Appellant points out that the General Assembly amended S.C. Code § 15-41-10(1) to increase the homestead exemption from \$5,000.00 to \$50,000.00 effective May 22, 2008. In this case, the wrongful death settlement order approved by the Court was signed by Larry R. Patterson on May 22, 2008 after a term of Court in Horry County. Appellant asserts that at the very most, the homestead exemption in this case would be \$5,000.00 and that because

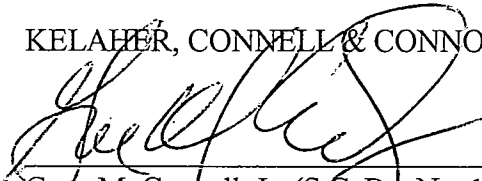
Moore is only a half owner it would be \$2,500.00. Accordingly, Appellant requests the Court rule on the homestead exemption amount to be applied to this case.

CONCLUSION

Petitioner submits this case sends a terrible message to the public, which is, your property cannot be sold unless the creditor pays the homestead exemption at the sale. For this reason and the others cited, the Court should vacate its opinion.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr. (S.C. Bar No. 1358)

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Attorney for Appellant/Petitioner

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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served **Petition for Rehearing and Memorandum of Law in Support of Petition for Rehearing** on the Appellant, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Kimberley Campbell, Esquire
Kimberley Campbell, LLC
P. O. Box 760
Murrells Inlet, SC 29576

DATE OF MAILING: December 30, 2014

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 30th day of December, 2014

Barbara A. Smith
Notary Public for South Carolina
My Commission Expires: 3/12/24

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

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VIA FEDERAL EXPRESS

Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *John Sherrill as Personal Representative of the Estate of Gaye Marie Reynolds v.
Gary Moore and Robert Moore*
Appellate Case No. 2013-001433
C/A No. 2008-CP-26-7941
Our File No. 2002-0579C


Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellant's **Petition for Rehearing, Memorandum of Law in Support of Petition for Rehearing and Proof of Service** of same in the above-captioned matter. I enclose our check for \$25.00 for the filing fee. Please return a filed copy to this office in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondent through counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures
cc w/enc.:

Kimberley Campbell, Esquire
John L. Sherrill, Esquire