THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2012-205726

The Estate of Gordon Bridwell 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 Life and Hope Assembly of God ....Appellants.

BRIEF OF THE APPELLANT

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ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FINDING THAT "THE NATURE OF THE PURPORTED DEED SUPPORTS THE CONCLUSION THAT GORDON W. BRIDWELL, JR. DID NOT INTEND FOR THIS PURPORTED DEED TO HAVE IMMEDIATE EFFECT"?

II. DID THE TRIAL COURT ERR IN FINDING THAT "THERE IS NO RELIABLE EVIDENCE THAT 'LIFE AND HOPE ASSEMBLY OF GOD' EXISTED IN CORPORATE OR UNINCORPORATED FORM AT THE TIME OF EITHER THE EXECUTION OR DELIVERY OF THE DEED" DESPITE THE CHURCH'S LISTING IN THE 2008 GENERAL COUNCIL OF THE ASSEMBLIES OF GOD AS SUCH AND THE UNIMPEACHED TESTIMONY OF REV. BLOUNT?

III. WAS THE TRIAL COURT'S REFUSAL TO GRANT APPELLANT'S REASONABLE REQUEST FOR A CONTINUANCE BASED ON HER OWN VERY SERIOUS PERSONAL ILLNESS AN ABUSE OF DISCRETION WHICH PREJUDICED APPELLANT?

STATEMENT OF THE CASE

This matter came before the Circuit Court as an action to quiet title and declaratory judgment that a deed by decedent, Gordon W. Bridwell, Jr. (hereinafter referred to as "Decedent") was either void for failure of delivery or because of undue influence. **(R.p. 7)**. The parties agreed to bifurcate the issues and first try the issue of the deed validity non-jury and then, if necessary, the issue of undue influence via a jury trial **(R.p. 123)**.

Appellee is the estate of the decedent. The Personal Representative, Raymond "Eddie" Bridwell (hereinafter referred to as "the PR") is the cousin of the decedent and describes himself as the only living relative of Decedent **(R.p. 127)** though he claims also to have a sister who one would assume is of equal family priority since she was caring for decedent on the day of his death **(R.p. 148)**.

Appellant Mary Ellen Harris is the senior pastor for Life and Hope Assembly of God. She and her husband, James Harris, were first appointed to the church in January 1973 **(R.p.**

150). At that time, the group called itself the "Open Bible Assembly of God." (**Id.**) The group later became the Eastside Assembly of God Church and was first registered in South Carolina as an eleemosynary entity in August 1978. Around or about 1995, the Appellant Harris and her husband created "Life and Hope Assembly of God." (**Id.**; **R.p. 256**). Life and Hope Assembly of God regularly conducted business under that name, sued in that name (**R.pp. 160-161; 265-288**), and was recognized by the General Council of The Assemblies of God as an established congregation operating under that name in its 2008 directory (**R.pp. 291**).

In 2004, subsequent to his mother's passing, the Decedent inherited the property at issue from his mother, Vera Bridwell, who died on January 18, 2004. Unfortunately, as a result of the bills of her last illness, there was a Medicaid lien placed on the home in the approximate amount of $94,000.00 and the decedent was facing losing the home and becoming homeless. (**R.pp. 54-59, 130-131; 151; 259-260**). Decedent was active in Rev. Blount's congregation (Trinity), who at the time of trial had been a minister for sixty years (**R.pp. 254, 258-259**). Rev. Blount had known Rev. Harris since the 1970s (**R.p. 255**). Decedent first attempted to retain counsel to assist him with the negotiation of the lien, but after determining that retaining an attorney would cost $10,000.00 and was out of the financial realm of decedent (whose only income was $600.00 per month), Rev. Blount referred the Decedent to Rev. Harris (**R.pp. 133; 153; 259-261**). Rev. Harris was able to successfully assist decedent in getting the lien resolved and cancelled. (**R.pp. 54-59; 131; 260**). In return, Decedent thought Rev. Harris was "the greatest person on the earth that could relieve him of such a terrible burden." (**R.p. 260**).

In gratitude for Rev. Harris' assistance, in 2006, Decedent authored and signed a document entitled "My Final Trust and Deed of Appointment" (**R.pp. 108-112**). In 2008, the PR, who earned approximately $40,000.00 per year and had numerous other property holdings, hired an attorney for decedent to draft the decedent a will leaving all decedent's property to the PR. (**R.p. 134-135; 263-264**). The will was signed September 16, 2008, and the original remained solely in the PR's possession from that time forward. (**R.p. 135**). Notably, though, NO SPECIFIC REAL PROPERTY is referenced in the Will. (**R.pp. 263-264**). Thereafter, a deed dated December 31, 2008, was executed by the Decedent in favor of Life and Hope Assembly of God, reserving a life estate upon himself and was delivered in a sealed envelope to Appellant. (**R.pp.19-22**). On that same date (12/31/2008), Decedent signed a document detailing the misdeeds of his cousin, the PR, and attached a copy of the September 2008 will upon which he wrote "REVOKE" and "VOID." (**R.pp. 99-102**). Of course, he could not revoke the original because the PR had sole and exclusive possession of it. (**R.pp. 128; 135**).

Over the period of time leading up to decedent's death, the PR began coming to visit decedent about once per month. (**R.p. 136**). He only took decedent to a regular doctor's appointment one time and had no clue who regularly took decedent to his appointments, including which members of the Decedent's church transported him because the PR was so unreliable. (**R.p. 137**). The PR undertook no efforts to help decedent deal with the lien on the home and though he first asserted that he helped decedent out financially, he finally admitted on cross examination that his only financial assistance was really only ever loans that the decedent had to repay. (**R.pp. 22-24**). At one point, the PR helped purchase a vehicle for decedent, with decedent's own funds, but was trying to negotiate himself a tax

deduction by having the vehicle bought through a local church with the PR personally receiving tax credit for a "donation" to help him defray his personal taxes. **(R.pp. 131-133; 262)**. It ended up that the vehicle had numerous problems, which caused the older, ill decedent to repeatedly become stranded **(R.pp. 131-133)**. Then on the morning of the day that the decedent lay dying, instead of tending to Decedent, the PR went to the SCDMV as soon as the doors opened, without legal power to do so, and transferred the vehicle out of decedent's name and into the PR's personal name so he could sell it ASAP. **(R.pp. 142-148)**. Ultimately, the unreliable vehicle that the PR helped the Decedent procure for several thousand dollars was sold for a measly $750.00 immediately after being transferred to the PR's personal name. **(R.p. 141)**. Then, at the funeral, the PR learned that Decedent had deeded the property at issue to the Appellant church. **(R.p. 129)**.

Decedent died on December 14, 2009 and probate was opened by the PR less than a month later and he was appointed PR on January 20, 2010. **(R.pp. 13-23)**. This matter was then filed in the Circuit Court on March 25, 2010 and came to trial on September 7, 2011 in front of the Honorable Robin Stilwell. **(Id.)**

On the date of the trial, Appellant Harris was violently ill as a result of a viral infection that she caught from her daughter which ended up as pneumonia. On the day before trial, Appellant was up all night vomiting and exhibiting the symptoms her daughter had exhibited the week before. **(R.pp. 121-122)**. Additionally, two material witnesses were unavailable – the Notary from the deed at issues and Rev. Blount. **(R.pp. 121-122; 172; 231, 248, 251-252)**. The Notary on the deed could not be in court because of a hospitalization that lasted through the day before the hearing. **(R.pp. 231, 248, 251-252)**. Rev. Blount was traveling and it appeared likely he would not return in time to testify, though he was needed

to authenticate documents. (**R.pp. 121-122; 172**). Despite this, the Court denied the Appellant's request erroneously believing, without any evidence thereof, that the stress from the ongoing litigation was contributing to Appellant's illness, when in fact she had a serious viral malady. (**R.p. 124**). As a result of her serious illness, Harris' testimony was often "foggy" and was erroneously perceived as "unreliable" by the Court when, in fact, Harris was quite ill.

ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT "THE NATURE OF THE PURPORTED DEED SUPPORTS THE CONCLUSION THAT GORDON W. BRIDWELL, JR. DID NOT INTEND FOR THIS PURPORTED DEED TO HAVE IMMEDIATE EFFECT.

Citing *First Union Nat. Bank of South Carolina v. Shealy*, 325 S.C. 351, 355 (Ct. App. 1996), the Court erroneously concluded that the Decedent "did not intend for this purported deed to have an immediate effect." (**R.p. 9**) However, the facts in the *First Union* case are distinctly different than this case. In the *First Union* case:

> *Prior to his death, Dr. Shealy executed a deed dated August 11, 1975, purporting to convey his one-quarter interest in the Roland Place to Wilson. However, Dr. Shealy did not inform Wilson of the conveyance, nor did he deliver the deed to him; rather, Dr. Shealy placed the deed in a sealed envelope marked "Safekeeping" and gave it to Charles Shealy, who was at that time the Clerk of Court for Lexington County. Dr. Shealy did not tell Charles what the sealed envelope contained. According to Charles, the following colloquy occurred when Dr. Shealy handed him the sealed envelope:*
>
> > *He [Dr. Shealy] said, "Keep this for me. I'll let you know when to do something with it or when I want it known," something to that effect. I said, "Well, what is it?" He said, "If I had wanted you to know, I would have told you, but I have done something for somebody that's done so much for me."*
>
> *Dr. Shealy also told Charles that: "You'll be told when to open it, and you'll know what to do with it."*

First Union Nat. Bank of South Carolina v. Shealy, 325 S.C. 351, 354 (Ct. App. 1996) (Emphasis added).

Notably different, in this case, the Decedent **reserved himself a life estate** and **sent the deed to the Appellant. (R.pp.19-22; 99-102)**. Obviously, there would be no need to reserve himself a life estate if he had only intended the transfer to take effect upon his death. Further, he has previously stated his intent in 2006 to leave the property in the Appellant church's control. **(R.pp. 108-112)**. Finally, notably absent from the September 2008 will was any specific mention of the real property. **(R.pp. 263-264)**.

The Court of Appeals may find facts according to our own view of the preponderance of the evidence. *S.C. Dept. of Transp. v. Horry Cnty.,* 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011).. In this case, the facts are distinctly different than in the *First Union* case, and a preponderance of evidence would lead to the conclusion that the decedent delivered the deed to the Appellant church and that the most logical conclusion that could be drawn in this situation is that the Decedent intended for the deed to become effective before death, lest there be no reason to reserve himself a life estate in the property.

For these reasons, this Court should reverse the trial Court's finding that Decedent "did not intend for this purported deed to have an immediate effect."

II. THE TRIAL COURT ERRED IN FINDING THAT "THERE IS NO RELIABLE EVIDENCE THAT 'LIFE AND HOPE ASSEMBLY OF GOD' EXISTED IN CORPORATE OR UNINCORPORATED FORM AT THE TIME OF EITHER THE EXECUTION OR DELIVERY OF THE DEED" DESPITE THE CHURCH'S LISTING IN THE 2008 GENERAL COUNCIL OF THE ASSEMBLIES OF GOD AS SUCH AND THE UNIMPEACHED TESTIMONY OF REV. BLOUNT.

While the Court correctly began an analysis of the Appellants as an unincorporated organization that could certainly be deeded the property in 2008, the Court erred in finding that "there is no reliable evidence that 'Life and Hope Assembly of God' existed in corporate or unincorporated form at the time of either the execution or delivery of the deed" despite the

church's listing in the 2008 General Council of the Assemblies of God as such and the unimpeached testimony of Rev. Blount, in addition to Ms. Harris' testimony.

The Court apparently discounted Ms. Harris' testimony given under the suffering of illness, finding her "credibility, [and] her bare assertions that a church existed hold no weight." (**R.p.11**). However, there were more than just "bare assertions" to support that the Life and Hope Assembly of God existed in 2008. First, attached to the Answer and Counterclaim, and admitted as Plaintiff's Exhibit 10, were the church's attachments *pro se* Answer and Counterclaim, which included as an Exhibit the 2008 directory of the General Council of the Assemblies of God, which lists the Life and Hope Assembly of God on page 336 of the Directory in the South Carolina District under "Taylors." (**R.pp. 13-119; 291**). Additionally, the Rev. Blount, whose unimpeached testimony was that he had been a minister for 60 years, that he was a superintendent over the Assembly of God churches in South Carolina from 1982-1994 and that the church started using the name of Life and Hope Assembly of God sometime around his service as Superintendent. (**R.p. 256**). He also testified that Ms. Harris' congregation acted continuously as a church and that "there's never been a time that they did not exist." (**R.pp. 257-258**).

So, while the trial Court has explained its discount of Ms. Harris' testimony (though Appellant asserts that her illness played a factor in that and was a reason the continuance should have been granted), there is simply other credible and unimpeached testimony and evidence in the record that Life and Hope Assembly of God did exist as a non-corporate entity prior to the time the decedent's deed was executed on 12/31/2008. Furthermore, the PR elicited questions and put exhibits in regarding a suit Life and Hope Assembly of God was engaged in beginning in 2007 - C.A. No. 2007-CP-23-4419, *Life and Hope Assembly of*

God v. Korean Full Gospel Church Of Greenville Assembly of God filed July 7, 2007. **(R.pp. 265-288)**.

For these reasons, this Court should reverse the trial Court's finding that "there is no reliable evidence that 'Life and Hope Assembly of God' existed in corporate or unincorporated form at the time of either the execution or delivery of the deed."

III. THE TRIAL COURT'S REFUSAL TO GRANT APPELLANT'S REASONABLE REQUEST FOR A CONTINUANCE BASED ON HER OWN VERY SERIOUS PERSONAL ILLNESS AN ABUSE OF DISCRETION WHICH PREJUDICED APPELLANT.

The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record *Bridwell v. Bridwell*, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983) and prejudices the appellant. *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980)

For appellate purposes, an abuse of discretion occurs where the ruling is based on an error of law or, where the ruling is grounded upon factual findings, is without evidentiary support. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009); *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Bartlett v. Rachels*, 375 S.C. 348, 652 S.E.2d 432 (Ct. App. 2007); *Burroughs v. Worsham*, 352 S.C. 382, 574 S.E.2d 215, 218 (Ct. App. 2002).

In the case at bar, the Trial Judge, without any evidentiary support, presumed that the litigation itself was causing Appellant's physical illness. Appellant stated that her daughter had a similar viral ailment the very week before. **(R.p. 121)**. There was no evidence in the record that previous continuances had been granted based upon illness. The Court acknowledged that Appellant looked truly ill and wasn't "putting on." **(R.p. 125)**. However, inexplicably, the Court determined that "I believe that one of the reasons that you may be

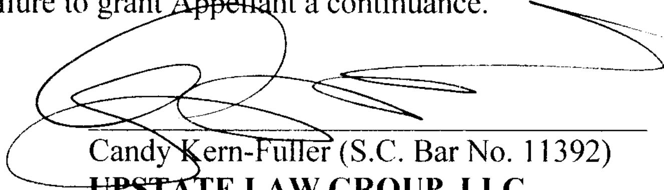
feeling this illness and you may be suffering such a physical infirmity us due, in part, to the stress that you are experiencing as a consequence to this trial and the best thing that I can do for you is to get this trial behind you." (**Id.**)

Ms. Harris' viral malady did not improve and, in fact, after the trial, she was diagnosed with pneumonia. However, Appellant was prejudiced by the failure of the Court to grant the continuance because the Court interpreted Ms. Harris' inability to function as "credibility" issues. This deleteriously affected the trial outcome and prejudiced her.

For these reasons, this Court should remand this matter for a new trial.

CONCLUSION

For these reasons, the Court erred in granting judgment to Appellee and the same should be reversed by this Court. In the alternative, this Court should grant Appellant a new trial based upon the Court's failure to grant Appellant a continuance.



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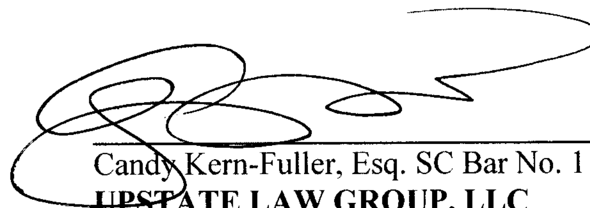
September 9, 2014 **ATTORNEY FOR APPELLANT**

Certificate of Counsel

Candy M. Kern-Fuller, Attorney for Appellant, does hereby certify that the Appellant's final brief has been served upon Respondent and that the brief complies with Rule 211(b) and further complies with the requirement of Rule 267.



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