

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Perry M. Buckner, III, Circuit Court Judge

Civil Action No. 2015-001721

Estate Of Willie G. Weekley, Deceased, By Its Personal
Representative, Betty W. Denney,.....Respondent,

v.

L.C. Weekley, Laura Weekley Segel, Individually and as
Personal Representative of the Estate Of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

Of whom Laura Weekley Segel, Individually And As Personal
Representative Of The Estate Of William James Weekley, Deceased,
is the.....Appellant.

APPELLANT'S REPLY BRIEF

JOLLEY LAW GROUP, LLC
Kelly M. Jolley, SC Bar #72573
Michael C. Cerrati, SC Bar # 78011
Post Office Box 22230
Hilton Head Island, SC 29925
(843) 681-6500

McNAIR LAW FIRM, P.A.
Amanda A. Bailey, SC Bar #71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Appellant

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ARGUMENT

I. The appropriate standard of review for this appeal is the standard for summary judgment rather than the “two-judge rule”.

Respondent asserts that the proper standard of review for the grant of summary judgment in this case is the “two-judge rule”. The “two-judge rule” provides for the “any evidence” standard of review of an action in equity, tried first by the probate court, and concurred in by the circuit court. *See Townes Associates, Ltd. v. Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775-776 (1976) (holding that an action at equity first tried by master or special referee subsequently affirmed or concurred in by circuit court will not be disturbed on appeal unless found to be without evidentiary support); *Dean v. Kilgore*, 313 S.C. 257, 259-260, 437 S.E.2d 154, 155-156 (Ct. App. 1993) (applying the “two-judge rule” to an affirmance or concurrence of the circuit court with the probate court).

While the “two-judge rule” may be the proper standard of review for a probate court action that was tried in the probate court and affirmed by the circuit court, it does not apply to a grant of summary judgment by the probate court. Rather, the proper standard of review that is to be applied by this Court, as well as the Circuit Court and Probate Court, is pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. *See e.g. Beach First Nat’l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 202, 754 S.E.2d 875, 879 (2014). Notwithstanding the foregoing, and assuming arguendo that the “two judge rule” applies, the lower courts’ rulings should be reversed because neither is based on any evidentiary support. Therefore, summary judgment in favor of Respondent is improper and the February 6, 2015 Order should be reversed and the matter remanded to Circuit Court.

II. Appellant timely filed her Petition to Remove.

Respondent asserts that the Probate Court properly retained jurisdiction following Appellant's Motion to Remove on June 4, 2012 because this motion was made four years after the responsive pleading to the original Probate Court Complaint in 2008. (Respondent's Initial Brief, p. 28). The original Probate Court Complaint sought relief related to the Farm Property. (R. pp. 36-39). While the motion for summary judgment was pending related to the Farm Property, Respondent deeded the Homesite property to herself and her sister in 2012 by Deed of Distribution. (R. pp. 203-206).

As a result of this transaction related to the Homesite property, Appellant filed a Petition for Removal of the Personal Representative, Petition to Set Aside Deed of Distribution, Motion to Consolidate Petitions before the Probate Court, and Motion to Remove to Circuit Court on June 4, 2014. (R. pp. 154-164). The Motion to Remove to Circuit Court was filed well within ten (10) days following the date on which responsive pleadings related to these petitions were filed and contemporaneously with the petitions. (R. pp. 162-164). As a result, the Motion to Remove was timely and the Probate Court lacked jurisdiction to issue the August 29, 2013 Order or the February 6, 2015 Order.

Notwithstanding, without noticing any hearing on the 2012 Petition related to the Homesite Property, the Probate Court held that the 2012 Deed of Distribution regarding the Homesite property was "made in compliance with the Will" in the February 6, 2015 Order. (R. p. 27). This finding violated Appellant's due process rights and was in error as the Homesite property was not subject to the motion for summary judgment. This

finding was also in error as the Probate Court lacked jurisdiction following the timely Motion to Remove to Circuit court. S.C. Code Ann. §62-1-302.

The Probate Court's finding that the Deed of Distribution of the Homesite Property was "made in compliance with the Will" is also factually in error. (R. p. 27). This finding was in error because the Deed of Distribution of the Homesite property to Respondent and her sister is not in compliance with the Will. (R. pp. 117-118). Specifically, the Will requires the property to be devised in four (4) equal shares to Willie G. Weekley's surviving children. (R. pp. 117-118). Willie G. Weekley died in 1977 with eight surviving children. (R. p. 77). Respondent's Deed of Distribution to only two of Weekley's eight surviving children in 2012, thirty-five years after his death, is not in compliance with the Will. (R. pp. 117-118).

As a result, summary judgment in favor of Respondent is improper and the February 6, 2015 Order should be reversed and the matter remanded to Circuit Court.

III. Statements by Appellant's counsel did not relieve Respondent of her burden of proof.

Respondent's argument that Appellant's former and current counsel concede during argument the points being argued on this Appeal both misrepresents the statements of counsel and disregards the fact that Respondent never met the burden of proof required for a grant of summary judgment.

As a reading of the transcript makes clear, counsel's statement at the January 5, 2015 hearing on summary judgment that "maybe the original transfers were not in technical compliance with the – with the Will," at most concerned "technical

compliance” with the Will, which Respondent herself does not always require. (R. pp. 178-179). In her Petition, Respondent acknowledges that she took part in and does not challenge real estate transactions concerning estate property that had only “informal compliance” with the Will. (R. p. 38). Similarly, reading the entire statement made by counsel in response to questioning by Judge Buckner at the June 15, 2015 hearing on appeal to the circuit court – as opposed to the clause cited by Respondent in her brief – reveals that Ms. Jolley acknowledged that neither the Respondent nor Appellant had evidence *in the record* before the Probate Court regarding whether the Disputed Transactions strictly complied with the Will:

JUDGE BUCKNER: All right. So I’m asking you now, because you’re appealing to me, what evidence do I have before me in the record that there was compliance with the terms of the testator’s wishes?

MS. JOLLEY: There is no evidence in the record that the transfer was made in compliance. There is also no evidence in the record that they were not.

(R. p. 191, lines 10-16).

Respondent is required to present evidence in the record that the Disputed Transactions are required to be set aside, rescinded, or voided as a result of restrictive language providing for a purported right of first refusal contained in the Will. *See Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (“Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.”). Respondent failed to meet her burden and did not demonstrate by any admissible evidence that the purported right of first refusal: (a) is a valid restraint on the devisee’s alienation, and (b) was not complied with in the

Disputed Transactions. Moreover, the grant of summary judgment ignores and fails to consider the substantial evidence and genuine issues of material fact in the record that Respondent waived, participated in, had knowledge of, and is estopped from challenging the Disputed Transactions as a result of constructive and actual knowledge, the passage of time, and her participation in the management of the property. Accordingly, summary judgment in favor of Respondent is improper and the February 6, 2015 Order should be reversed and the matter remanded to Circuit Court.

IV. The relief granted by the Probate Court in returning the property in the Disputed Transactions to the Estate is improper.

Notwithstanding any other issue or ruling in this case, the Probate Court erred in ordering the return of transferred properties back to the Estate Willie G. Weekley rather than simply voiding or rescinding the Disputed Transactions. (R. pp. 26-27). The Estate of Willie G. Weekley was not a party to the Disputed Transactions. Rather, each of the grantors in the Disputed Transactions was one of Willie G. Weekley's eight children, the original devisees following his death in 1977. In the January 5, 2015 Order, the Probate Court found that the Disputed Transactions were improper under the Will because the parties involved did not grant a written first right of refusal to all beneficiaries which the Probate Court believed that the Will required before the transfer took place. (R. p. 25). Accordingly, in this belief, the Probate Court ordered that the Disputed Transactions were void, but then strangely ordered that the property involved in the transfers be returned to the Estate of Willie G. Weekley for proper distribution under the Will rather than

returning the property to the grantors, the original devisees under the Will, and the consideration to the grantees. (R. pp. 25-27).

This result creates a probate quagmire, as only two of the eight children, the devisees under the Will, are still living now more than thirty years after Estate of Willie G. Weekley was opened. For the property subject to the Disputed Transactions to be returned to the estate and distributed in compliance with the Will, it would necessarily require the estate for each of the now deceased devisees to be reopened to redistribute the property from the Weekley Estate pursuant to the terms of the Will, and to subject those transfers to the challenged right of first refusal. Those estates would then be required to allow for the repayment of the consideration now owed back to the Estate of William James Weekley and Laura Segel due to the transactions being held void. This nonsensical result also ignores the fact that the property in question was already properly distributed by consent to each of Weekley's eight children more than thirty years ago, which is not in dispute.

The gravamen of Respondent's challenge to the Disputed Transactions in this case and in her Motion for Summary Judgment is that that the children who had inherited property under the Will from the Weekley Estate failed to comply with purported restrictions on transfer contained in the Will. There is no dispute regarding the initial distribution to the beneficiaries/devisees. Therefore, even if the Probate Court's grant of summary judgment to the Respondent was upheld – which it should not be – the property

and consideration involved in the disputed transactions should be returned to the parties to the respective transactions and not to the Estate.

CONCLUSION

For these and the foregoing reasons, and any other reason supported by the Record, the Circuit Court's Order upholding the Probate Court's grant of summary judgment in favor of Respondent should be REVERSED and the case REMANDED to Circuit Court.

Respectfully submitted,

JOLLEY LAW GROUP, LLC



Kelly M. Jolley, SC Bar # 72503
Michael C. Cerrati, SC Bar # 78011
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax

McNAIR LAW FIRM, P.A.

Amanda A. Bailey, SC Bar #71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107

Attorneys for Appellant

Hilton Head Island, South Carolina

Date: February 15, 2016

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is the.....Appellant.

CERTIFICATE OF COUNSEL

I, Kelly M. Jolley, hereby certify that I have served the Appellant's Reply Brief
and that it is in compliance with Rule 211(b) SCACR in that no changes were made
excepting references to the Record on Appeal and correction of typographical errors and
misspellings.

February 16, 2016

JOLLEY LAW GROUP, LLC

By: Kelly M. Jolley
Kelly M. Jolley (SC Bar # 76573)
Michael C. Cerrati (SC Bar # 78011)
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax
Attorneys for Appellant

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is the.....Appellant.

PROOF OF SERVICE

I, Kelly M. Jolley, hereby certify that I served the Appellant's Reply Brief and Certificate of Counsel by depositing a copy of it in the United States Mail, postage prepaid, on February 16, 2016, addressed to the counsel of record, at the following address:

G. Hamlin O'Kelley, III, Esq.
Buist, Byers, & Taylor, LLC
652 Coleman Blvd., Suite 200
Charleston, SC 29464
Attorneys for Respondent

JOLLEY LAW GROUP, LLC

February 16, 2016

By: Kelly M. Jolley
Kelly M. Jolley (SC Bar # 72573)
Michael C. Cerrati (SC Bar # 78011)
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax
Attorneys for Appellant