

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2006-CP-10172

RECEIVED

JUN 06 2016
SC Court of Appeals

IN THE MATTER OF:)
)
Leon Chisolm, James Roosevelt Chisolm,)
Doris C. Fladger, Robert Chisolm, Florence)
Chisolm, Alice C. Jenkins, Sadie Y. McDonald,)
Martha Pryor, Patricia Millian, Margaret E. Warren,)
Andrew K. Chisolm, Edrina L. Wilson, Carl)
Chisolm, Lawrence Chisolm, Roosevelt Chisolm, II,)
Louis Chisolm, Eddie Chisolm, Leroy Chisolm, and)
Tommy Chisolm,)

ORDER DENYING DEFENDANT'S
60(b) MOTION FOR RECUSAL
AND TO SET ASIDE ORDER DATED
SEPTEMBER 17, 2014

Plaintiffs,

vs.

Mary Frances S. Chisolm, William Chisolm, Emily)
C. Campbell, Debra C. Murphy, Allie C. Frazier,)
Cora C. Brown, Cordell Chisolm, Charles Chisolm,)
Jr., Phillip Chisolm, Anthony Chisolm, David)
Chisolm, Leonard Chisolm, and Levy Chisolm,)

Defendants.

2016 APR 20 AM 9:36
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter came before me on March 10, 2016 upon the Motion for Recusal and to Set Aside Order filed by Defendants pursuant to Rule 60(b), SCRPC on January 6, 2016. Willie Heyward, Esquire appeared on behalf of the Defendants and Barry I. Baker, Esquire and Kyle T. Varner, Esquire appeared on behalf of the Plaintiffs.

BACKGROUND

This case is very complex and has a tortured history. The record shows that the Plaintiffs filed suit on May 4, 2006 to enforce an Order issued by the late Louis E. Condon, Master-in-Equity for Charleston County dated September 28, 1982. I held a hearing on August 21, 2012 and August 22, 2012. The issues in this case have been very difficult and I took a great deal of time to deliberate before issuing my Final Order of September 17, 2014.

After issuing my Final Order, the Defendants filed a Rule 59(e), SCRPC Motion that I heard on January 8, 2015. I issued an Order dated January 20, 2015 denying the Motion for Reconsideration.

ARJ

Thereafter, Defendant, Cora Chisolm Brown, filed a *pro se* Notice of Appeal to the South Carolina Court of Appeals, which the attorneys stipulated was never perfected.

RECUSAL

The Defendants base their Rule 60(b) Motion for Recusal upon the fact that I represented the Charleston County Election Commission and that the late John Chisolm, who at one time had an interest in the subject property, was a member of said commission. I want the record to be perfectly clear and I find that John Chisolm was not a party to the within action and did not appear at the trial as a witness. As a matter of fact, John Chisolm died in 2004, two years before the within action was even filed. Furthermore, John Chisolm had been deceased for approximately ten (10) years at the time I issued my Final Order in September 2014.

Gary Chisolm was the pivotal witness in this case. Mr. Chisolm was a very reluctant witness and he was called by both Plaintiffs' and Defendants' counsel.

I want the record to further reflect that Rule 501, Canon 3E of the SC Appellate Rules governing judicial conduct provides that a judge shall voluntarily recuse himself or be subject to recusal if any one or more of the following is true:

- a) the Judge has a personal bias or prejudice against a party or a party's counsel or has personal knowledge of disputed evidentiary facts;
- b) the Judge or one of his former law partners served as counsel in the matter in controversy or the Judge was a material witness concerning the matter;
- c) the Judge or his family have an economic interest in the matter;
- d) the Judge or his family is either a party to the proceeding, acting as counsel in the proceeding, has an economic interest that is more than de minimis or are material witnesses in the proceeding; or
- e) the Judge's impartiality might reasonably be questioned.

I find that none of the above grounds for recusal as set forth in Rule 501, Canon E are present in the instant case. Further, I did not have any bias or prejudice about this case before, during the trial, or at the present time, nor is it reasonable to question my impartiality. There is

no evidence of prejudice or bias as required by case law. *See Christensen v. Mikell*, 324 S.C. 70, S.E.2d 692 (1996).

I further find that the appellate courts have made it abundantly clear that the failure to timely file a Rule 59(e), SCRPC Motion serves as an absolute bar in attempts to later raise this issue on appeal or otherwise. *Ness v. Eckerd Corp.*, 350 S.C. 399, 566 S.E.2d 193 (S.C. App. 2002).

I therefore find that there is no basis for me to recuse myself from the within case and furthermore the issue of recusal was not even timely brought before the Court.

SET ASIDE ORDER

The Defendants also moved pursuant to Rule 71(4)(e) that my Decree should be reversed upon the fact that there is no transcript of record as required by said Rule. The parties all agree that a court reporter was present during the entire proceedings and that a transcript of the hearing has been preserved. Further, the testimony of Gary Chisolm has been transcribed and the transcript has been filed with the Clerk of Court; therefore it is

CONCLUSIONS OF LAW

ORDERED, ADJUDGED, and DECREED that Defendants' 60(b) Motion for Recusal is denied; it is further

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Set Aside the Order pursuant to Rule 71(4)(e) is denied; it is further

ORDERED, ADJUDGED, and DECREED that Defendant, Cora Chisolm Brown's *pro se* appeal to the South Carolina Court of Appeals is no longer pending as it was not timely perfected;

AND IT IS SO ORDERED!


THE HONORABLE MICHAEL R. SCARBOROUGH
MASTER-IN-EQUITY FOR CHARLESTON COUNTY

April 18, 2016
Charleston, SC