THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No.: 2007-CP-18-1794

James T. Judy, Bobby R. Judy.....Respondents,
and Kevin Judy,

vs.

Ronnie F. Judy, J. Todd Judy
Ryan C. Judy and Wanda B.
Judy, Defendants,

of whom Ronnie F. Judy *is*,.....Appellant.

BRIEF OF RESPONDENTS

Capers G. Barr, III
Barr, Unger and McIntosh
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
cgb@barrungermcintosh.com
Attorney for Respondents James T.
Judy, Bobby R. Judy and Kevin Judy.

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STATEMENT OF THE CASE

Respondents filed their Summons, Lis Pendens and Complaint in the Dorchester County Court of Common Pleas on September 27, 2007, seeking an order of the Court to set aside certain land conveyances alleged to be fraudulent, pursuant to the Statute of Elizabeth, South Carolina Code Sections 27-23-10, et. seq. The Lis Pendens and Complaint describe ten parcels of real property at issue, designated therein as Parcels "A" through "J". (R. pp. 63-66). The original Defendants were Ronnie, Todd and Ryan Judy, who filed their *pro se* Answer to the Complaint on November 2, 2007. (R. pp. 67-69).

On June 17, 2009, the Court filed its Order permitting Respondents to file their Amended Complaint to add Wanda Judy as a party, because of a conveyance made by Appellant Todd Judy to her after this action had been filed. (R. pp. 435-440). Respondents filed their Amended Complaint on June 22, 2009 (R. p. 71-80), to which Appellants filed their *pro se* Answer on August 18, 2009. (R. pp. 81-83).

On April 27, 2010, the Court filed its Order striking the case from the jury roster and referring the case for trial with finality to the Master in Equity for Dorchester County. (R. pp. 1-4).

On May 23, 2011, the Court referred the case for hearing to the Honorable Martin R. Banks, Master in Equity for Calhoun County, to serve as Special Referee, because the Master in Equity for Dorchester County had recused himself. (R. pp. 5-6).

The case was tried before Judge Banks on July 18, 2011, and who filed a Final Order on December 28, 2011. (R.pp.7-46). Appellants filed their Motion to Reconsider and Request for New Trial, *pro se,* on December 29, 2011, (R. pp. 98-100), which was denied by Order filed January 25, 2012. (R. pp. 47-51).

Only Ronnie F. Judy has appealed the decision of the Trial Court, in a notice filed on or-about February 29, 2012.

STATEMENT OF FACTS

Respondents James T. Judy, Bobby R. Judy and Kevin Judy were judgment creditors of Appellant Ronnie F. Judy ("Ronnie") at the time of the filing of the Complaint in this case[1].

On April 11, 2007, a Dorchester County jury found by clear and convincing evidence that Ronnie Judy had willfully destroyed a pond dam on lands jointly owned by Ronnie and Jimmy Judy (the "Pond Dam case"). The jury awarded actual and punitive damages (R. pp. 441-452; Exhibits 17, 18). Although the Supreme Court ultimately affirmed the reversal of the Pond Dam judgment on *res judicata* grounds *(Judy vs. Judy,393 S.C. 160, 712 S.E.2d 408 (S.Ct. 2011))*, the findings of the jury remain as relevant evidence of Ronnie's *animus*, which is discussed hereafter, more fully.

On May 2, 2007, a Dorchester County jury found by clear and convincing evidence that Ronnie had willfully destroyed a corn crop on lands of Bobby Judy, by disking it over. (The "Corn Crop case"). The jury awarded actual and punitive damages. (R. pp. 454-463). The Corn Crop case was affirmed by the Court of Appeals (R.p.464-474; *Judy vs. Judy, 384 S.C.634, 682 S.E.2d 836 (Ct.App. 2009))*. The factual findings by the jury in the Corn Crop case are further evidence of Ronnie's *animus*.

The Pond Dam case and the Corn Crop case were first called to trial in Dorchester County Court of Common Pleas on January 29, 2007. Jimmy Judy, Plaintiff in the Pond

[1] The parties, all of whom bear the surname "Judy", will be referred to herein by their first names, in the interests of clarity.

Dam case, appeared on that date with his witnesses. However, the case was continued because Ronnie Judy had been admitted to the hospital. (R. p. 172, lines 5-12).

On February 7, 2007, nine days after the first call of the Pond Dam case for trial, Ronnie Judy signed and recorded a deed conveying his home on a 9.29 acre tract and a nearby 10.9 acre tract to his son, Respondent Todd Judy, for $5.00, love and affection. (R. pp. 429-434). As previously stated, the Pond Dam case went to trial in April, 2007, and the Corn Crop case went to trial in May, 2007, and in each case a jury held Ronnie Judy liable for actual and punitive damages because of his willful conduct.

The case now before the Court was filed in the Circuit Court on September 27, 2007 against Respondents Ronnie, Todd and Ryan Judy. On December 31, 2008, while the within case was pending, Todd Judy conveyed to Ronnie's wife, Wanda Judy, the same 9.29 and 10.9 acre tracts that Ronnie had conveyed to him the year before. (R. pp. 435-440). At trial, Ronnie testified that, after he conveyed these lands to his son Todd, he "didn't own no more real estate". (R. p. 217, lines 13-16). Ronnie had borrowed $100,000 on the 9.29 acre home property, "because y'all had filed so many lawsuits against me, Mr. Barr, and I had hired so many lawyers that I spent in excess of $100,000." (R. p. 221, lines 3-7). Ronnie was vague about who pays the mortgage: "either me or Todd". (R. p. 221, lines 8-14). Further, Ronnie paid Todd no rent (R. p. 220, line 20), and Todd paid the taxes. (R. p. 220, lines 22-23).

From the evidence summarized to this point, it may be fairly concluded that Ronnie Judy harbored significant ill feelings toward his brothers Jimmy and Bobby, so much so that he had deliberately destroyed a pond dam, and a ten acre fish pond that was to become the property of Jimmy, and a thirty acre corn crop that belonged to Bobby.

After suit was filed against him for his wrongdoing, and virtually on the eve of trial, Ronnie transferred out of his name all remaining real property that he owned by conveying it for no consideration to his son Todd. To further obfuscate the trail of conveyances, Todd conveyed Ronnie's home and the 10.9 acre nearby parcel to Ronnie's wife, Wanda. Importantly, neither Todd Judy nor Wanda Judy testified at trial to offer any explanation for the transfers. Ronnie's only explanation was that he was "transferring it back to the rightful owner". (R. p. 217, lines 2-3). Evidence of actual fraudulent intent on the part of Ronnie Judy is overwhelming. But there is more.

Vesta Rumph was an elderly friend of Jimmy and Ronnie Judy who devised her lands to them, jointly, in her Last Will and Testament. Ronnie was named executor in the Will. Mrs. Rumph died in 1984 and Ronnie was appointed Executor. (R. pp. 401-402; Plaintiffs' Exhibit 7). On February 12, 2001, Ronnie recorded a Deed of Distribution, conveying the lands of the Vesta Rumph Estate to Jimmy and to himself (R. pp. 403-404, Plaintiffs' Exhibit 8). Thereafter, however, by deed recorded August 20, 2001, Ronnie purported to convey the same Rumph Estate lands to his sons Todd and Ryan for $15,000, including the one-half interest he had earlier acknowledged as owned by Jimmy in the Deed of Distribution. (R. pp. 405-408; Plaintiffs' Exhibit 9). By Order signed October 15, 2001, the Probate Judge removed Ronnie as Personal Representative of the Rumph Estate and substituted Jimmy. (R. p. 409; Plaintiffs' Exhibit 10). By orders signed August 16, 2002 and May 29, 2003, the Probate Judge rescinded Ronnie's conveyances to his sons. (R. pp. 410-413; Plaintiffs' Exhibits 11 and 13).

On January 8, 2004, the Probate Judge filed her Order partitioning the lands of the Rumph Estate between Jimmy and Ronnie. (R. pp. 414-424; Plaintiffs' Exhibit 13). In

her Order, the Court found that Ronnie had undertaken to lease the 10 acre fishing pond to a third-party, while a petition for his removal as Personal Representative was pending. (R. pp. 414-424; Plaintiffs' Exhibit 13, R. p. 415, Paragraph 4). The Court found that the pond lease was null and void (R. p. 419, Paragraph 1). She awarded to Ronnie the 9.29 acre and 10.9 acre tracts, which included the home of Mrs. Rumph, and to Jimmy she awarded 134 acres of land.

The Probate Court record therefore presents further evidence of Ronnie's ill will. Although Ronnie had acknowledged Jimmy's ownership of a one-half interest in the lands of the Rumph Estate, Ronnie attempted to sell the same lands to his sons for $15,000.00, even after having recorded the Deed of Distribution. That the $15,000.00 consideration recited in the deed to Todd and Ryan Judy was insufficient, is manifest. Ronnie testified that Jimmy had later sold his 134 acre tract, after the Rumph matter was concluded, for a sum in excess of one million dollars. (R. p. 238, lines 11-14; R. p 257 line 12- p. 258, line 18).

At trial, Ronnie testified that, because he and Jimmy could not agree on the distribution of the Vesta Rumph Estate and since he had the sole discretion to sell, "I sold the sucker". (R. p. 257, lines 15-21) Ronnie further testified that he took bids on the Vesta Rumph lands and that Todd and Ryan were "high bidder on it". (R. p. 258, lines 9-10). And as to who else bid on it, Ronnie could not recall the name of any other person. (R. p. 258, lines 11-15).

Accordingly, Ronnie's conduct involving the Rumph Estate property is further evidence of Ronnie's actual fraudulent intent in conveying lands with the intent to evade creditors. The evidence does not end with the Rumph Estate matter, however.

In 1998, Ronnie owned one-half interests in lands totaling in excess of 722 acres in Dorchester County. (R. pp. 383-386, Plaintiffs' Exhibit 3). In 1998, Ronnie owned, outright, lands in Dorchester County totaling in excess of 147 acres. (R. pp. 387-390, Plaintiffs' Exhibit 3-A). At that time, in 1998, Ronnie and Jimmy were on good terms with each other. (R. p. 180, lines 18-23). At trial, Jimmy testified that in 1997 or 1998 he had recounted to Ronnie the advice he had received from his divorce lawyer to convey out of his name the lands that he had inherited from his father, because of his pending divorce. Jimmy related that advice to Ronnie. (R. p. 181, line 9- p. 182, line 3). At the time, Ronnie was engaged in legal disputes, himself. Ronnie had been sued by Larry Mills. (R. p. 181 line 4-p. 184, line 4; R. pp. 629-681, Plaintiffs' Exhibit 40), and he was also engaged in a dispute about a combine that could have exposed him to a $10,000 claim. (R .p. 184, lines 5-22). Jimmy testified that Ronnie told him that he intended to transfer his property to his boys, because of these threatened liabilities (R. p. 184, line 18-p. 185, line 7). Accordingly, on November 16, 1998, Ronnie conveyed his interests in all of his lands to his sons Todd and Ryan, in two separate deeds. (R. p. 185, lines 4-7; R. pp. 383-390, Plaintiffs' Exhibits 3 and 3-A). The conveyances purported to transfer all of Ronnie's interests in lands in excess of 869 acres, for $5.00, love and affection.

On the same date in 1998 that he conveyed all of his lands to Todd and Ryan, Ronnie also transferred to them all of his farm equipment. (R. p. 218 line 25 to R. p. 219, line 13; R. p. 596, Plaintiffs' Exhibit 38).

Ronnie's conveyances of his lands and equipment to his sons was nothing more than a sham. Although Ronnie purported to have divested himself of significant land

ownership with the 1998 conveyances, and with total ownership of land with his 2007 conveyance, he nevertheless retained all control and benefits of ownership of the lands.

On February 7, 2000, Ronnie signed a credit application with Meherrin Agricultural and Chemical Company in Bowman, in which he falsely represented that he owned 554 acres and that he farmed 250 acres of land. (R. p. 116, lines 18-24). Meherrin's manager testified that, although he had seen Todd and Ryan, he had only done business with Ronnie. (R. p. 113, lines 1-21; Plaintiffs' Exhibit 44). Meherrin obtained Judgment against Ronnie on December 17, 2008 for $27,295.33 on Ronnie's unpaid account. (R. p. 117, lines 17-24; Plaintiffs' Exhibit 42; R. pp. 698-709).

The Meherrin credit application exhibit also reflects substantial transactions with Ronnie Judy for the period from February 23, 2000 to April 30, 2007. (R. pp. 710-714; Plaintiffs' Exhibit 44).

Ronnie transacted business in his name with Holly Hill Farm Center, another supplier of fertilizer, chemicals and seed, with whom Ronnie apparently did business after falling out with Meherrin. Holly Hill's manager, David Cantley, testified that he did business with Ronnie only, and never with Todd or Ryan, although Ronnie occasionally directed that invoices be billed in Ryan's name. The total of invoices with Holly Hill for 2008 and 2009 were $24,424.53. (R. p.124, line 13-p. 126, line 3; Plaintiffs' Exhibit "F"; R. pp. 715-723).

On January 20, 2006, Ronnie signed a Personal Financial Statement for The Citizen's Bank in St. George, on which he represented his net worth to be $1,309,540.00 including real estate valued at $1,075,000.00. On the statement, Ronnie detailed the real estate as including his home at 1872 Sandridge (the 9.29 acre parcel that he later

conveyed to Todd in 2007), and 143 acres, which is listed as jointly owned with Todd. However, on the statement Ronnie represents that he owned an outright one-half interest in 257 acres and 168 acres. (R. pp. 619-628; Plaintiffs' Exhibit 39-A). Notably, the 257 acre and 168 acre tracts are those that had been conveyed to Todd in 1998. (R. pp. 383-386; Plaintiffs' Exhibit 3-A). On August 31, 2006, Ronnie borrowed $100,000 from The Citizen's Bank, based upon the financial statement.

Ronnie's testimony at trial contrasts starkly with the representations on the financial statement and credit application that he filed with The Citizen's Bank in 2006. Ronnie testified that, after conveying the 9.29 acre home place and the nearby 10.9 acre tract to Todd in 2007, he "didn't own no more real estate." (R. p. 217, lines 13-16).

Ronnie's tax returns for 2005 through 2008 reflect that he reported a total farm income of $128,430.00, and $23,989.00 from timber sales for 2007 and 2008. This, after he purportedly "owned no more real estate". Farm expenses for the same period on Ronnie's return were $216,799.00. (R. pp. 476-514; Plaintiffs' Exhibits 23, 24, 25, 26 & 27). In contrast, Todd's tax returns showed only a nominal $100.00 per year of farm income for the same period. (R. pp. 515-568; Plaintiffs' Exhibits 28, 29, 30 & 31). The only tax return for Ryan in evidence was for 2008 in which he showed farm income of $90,536, against expenses of $95,081.00. It is noteworthy that Ryan's 2008 return was filed after the within case was pending. (R. pp. 569-595; Plaintiffs' Exhibit 37).

The tax returns in evidence and the testimony of Barbara Dantzler, the accountant, are further evidence that Ronnie Judy retained the benefits of owning the lands that he had purportedly conveyed to his sons.

Ronnie also received payments from the U. S. Department of Agriculture for farm subsidies for the period 1995 through 2006 totaling $50,111.00 (R. p. 241, line 20-R. p. 242, line 23).

Ronnie engaged in the purchase and sale of farm equipment (R. p. 244, line 23-p. 246, line 3). Although he has farm equipment "all over the place" on the 9.29 acres on which he lives, Ronnie claimed the equipment to be owned by Todd and Ryan. (R. p. 246, line 4-p. 247, line 1). He transacted purchase and sale of livestock, but again claimed that it was all in the names of his sons. (R. p. 250, line 23-p.253, line 3).

Ronnie transacted business with Weathers Farm Supply in his own name, because his sons did not have an account there. (R. p. 253, lines 3-17). He also transacted with Farmer's Milling in Holly Hill, selling crops. Ronnie had been "doing business with them all them years and they was unaware that Todd and Ryan took over the farm". Checks from Farmer's Milling were paid to Ronnie but "some of it went in to Todd and Ryan's farm account". (R. p. 253, line 18-p. 254, line 24).

STANDARD OF REVIEW

An action to set aside a transfer as fraudulent under the Statute of Elizabeth is an action in equity. *Albertson vs. Robinson, 371 S.C.311, 638 S.E.2d 81 (Ct. App. 2007); Future Group II vs. Nationsbank, 324 S.C. 89, 97 n.6, 478 S.E.2d 45, 49 n.6.* On appeal, the Court of Appeals has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Albertson vs. Robinson, supra; Pinckney vs. Warren, 344 S.C. 382, 387, 544 S.E.2d. 620, 623 (2001).*

(Nothing further on this page)

ARGUMENT I

BECAUSE APPELLANT'S BRIEF FAILS TO COMPLY WITH RULE 208, SOUTH CAROLINA APPELLATE COURT RULES, ALL OR AT LEAST A PORTION OF HIS APPEAL ARGUMENTS SHOULD BE DISMISSED

A. Ronnie's Argument Does Not Conform With Rule 208(b)(4) SCACR.

In his Designation of Matters to be Included in the Record on Appeal, Appellant designates the entirety of the recorded transcript of the proceedings in the trial "due to the standard of review". However, in Appellant's Brief the references to the actual transcript are scant, at best.

Rule 208 (b)(4) of the Appellate Court Rules requires that "The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal...to support the salient facts alleged." The Rule further requires that the references should be to page and line number of the transcript.

The transcript of the trial testimony in this case comprises two hundred and eighteen pages. Although Appellant makes reference to trial exhibits, he does not make a single reference to any testimony in his Statement of Facts.

In his Argument on his Question 1, although he asserts that "Respondents have not met their burden of proof", Appellant makes reference to only fourteen pages of the transcript in any direct sense, although he does refer, but only generally, to the entire testimony of four witnesses. (West, Cantley, Utsy, Dantzler. Appellant Brief at page 11).

In his Argument on his Question 2, Appellant refers to five pages of the transcript (Brief, Page 20), although he refers to the same pages as were cited in Argument I.

No references are made to the transcript in Argument III.

Appellant's Argument 3, attacking the remedy invoked by the Trial Courrt, although citing case law relating to court orders, *nunc pro tunc,* fails to cite or argue authorities why the Trial Court erred in reforming the partition deeds in Appellant's chain of title. Instead, Appellant focuses upon the inapplicable argument that the Trial Cour's Order was an Order "*nunc pro tunc*".

Having failed to cite any appropriate supporting authority, Argument III should be dismissed. *Bryson v. Bryson, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008).* (An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a Brief, but not supported by authority. *378 S.C. at 510, citing Historic Charleston Holdings, LLC vs. Mallon, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005)).*

ARGUMENT II

BECAUSE APPELLANT ACTED WITH ACTUAL MORAL FRAUD, THE TRIAL COURT CORRECTLY SET ASIDE THE TRANSFERS

A. Introduction: The Law of Fraudulent Conveyances; Actual Fraud and Constructive Fraud.

It is a basic proposition of the law of fraudulent conveyances that a transfer of property will be set aside where it is made by the grantor with the actual intent of defrauding his creditors, where the intent is imputable to the grantee. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc.,* 331 S.C. 466, 470, 498 S.E.2d 858 (S.Ct. 1998). Moreover, where transfers to members of the family are attacked as fraudulent, either upon the ground of actual fraud or on account of their voluntary character, the law imposes a burden upon the transferee to establish both a valuable consideration and the *bona fides* of the transaction by clear and convincing testimony.

Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra, 331 S.C. 471; *Gardner v. Kirven,, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).*

Even where no actual fraud is found, a Court of Equity may find constructive fraud as a basis to set aside a voluntary conveyance, based upon circumstantial evidence. South Carolina courts have held that if (1) a grantor is indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary – that is, without consideration; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the creditor, then a constructive "fraud" has been proved, and the transfer is deemed to be fraudulent under the Statute of Elizabeth. *Mathis v. Burton,* 319 S.C. 261, 265, 460 S.E.2d 406 (Ct.App. 1995). Importantly for the purposes of the instant appeal, and as will later be discussed, the failure of the grantor to retain assets is an element only in the circumstantial case of constructive fraud, in which the legal fiction is applied to find constructive fraud. That is to say, where there is no evidence or finding of actual fraudulent intent, but instead the court relies upon the circumstantial elements discussed above from *Mathis v. Burton*, then a necessary element of that case is the failure of the debtor to retain property. However, where the evidence and the findings of the court show "actual moral fraud" it matters not what assets are or are not retained by the debtor, the conveyance must be struck down as fraudulent. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra.*

The requisite state of "fraud" necessary to sustain a finding of "actual fraud" under the Statute of Elizabeth has been called by many names. In *Mathis v. Burton, supra,* it is said to be "'actual moral fraud', rather than legal fraud", citing *Gentry v.*

Lanneau 54 S.C. 514, 32 S.E. 523 (1899) and *Jackson vs. Plyler* 38 S.C. 496, 17 S.E. 255 (1893).

The black letter distinction between "actual moral fraud" and "legal fraud" is this: "Moral Fraud" is a fraud which affects the conscience, and it is deemed to exist where there is a corrupt motive present, or a dishonest purpose in making a misrepresentation. "Legal Fraud" is merely another name for constructive fraud. *37 CJS Fraud, Section 3.* South Carolina Courts have held that the presence or absence of an intent to deceive or actual dishonesty of purpose, distinguishes actual fraud from constructive fraud. *Designer Showrooms, Inc. vs. Kelly, 304 S.C. 478, 405 S.E.2d 417, (Ct.App. 1991).*

B. Because Appellant Acted with Actual Moral Fraud, the Trial Court Correctly Set Aside the Transfers.

The evidence of Ronnie Judy's fraudulent intent to remove his property from the reach of his creditors is abundant and clear. In the first place, Ronnie declared to his brother Jimmy in 1998 that he was conveying his lands to his sons for the expressed purpose, and with the intent, to protect the lands from the reach of the claims of Larry Mills and the anticipated claim by the owner of the combine he had destroyed. On the same day in 1998 that Ronnie conveyed his interests in land, he also transferred to his sons "all farm equipment, including combines, tractors, trucks, and all equipment relating to farming", for a consideration of "$5.00 and other consideration". (R. p. 596). Neither Ronnie, Todd, nor Ryan offered any testimony as to what "further consideration" supported the transfer of Ronnie's farm equipment.

That the transfers were not *bona fide* is proved by what happened afterwards. Ronnie retained the full use, control and benefits of the lands and farming equipment and

of the farming operations, and its revenues, from 1998 to the date of trial in this case. Likewise, Ronnie retained all timber proceeds. Yet, his lands and his property and equipment remained titled in the names of his sons. The conveyance to his sons of his properties was nothing more than a charade, because Ronnie retained all rights and benefits of ownership.

The evidence in the record shows that Todd and Ryan Judy received no significant benefits from farm or timbering operations, except for 2008 after this case was commenced. Instead, the lion's share of all revenue went to Ronnie. This is shown on his tax returns in the record, as well as the reports from The United States Department of Agriculture reflecting the many crop allowances that he received.

Even after the Mills Judgment had been satisfied, and after the combine claim had lapsed, Ronnie did not restore title to his name, believing, Respondents contend, that he could thereafter act with impunity in his contractual decisions and, significantly, for his torts.

As proof of this, the vendors, suppliers, and buyers for the farming operation testified that they did all business with Ronnie, and not with Todd or Ryan. Although he no longer held title to the lands, Ronnie deducted the *ad valorem* property taxes on the farm income schedules of his income tax returns. Ronnie falsely represented to farm suppliers that he owned lands, knowing full well that they had been transferred to his sons in 1998. Ronnie falsely represented the same thing to The Citizens Bank in St. George in order to qualify for a loan. The loan was to pay lawyers fees, "because y'all have filed so many lawsuits against me". (R. p. 221, lines 3-7).

After Ronnie and Jimmy inherited lands from Vesta Rumph, Ronnie did everything in his power to deny the lands and their value to Jimmy. He purported to sell the Estate lands to Todd and Ryan for $15,000, even after having recorded aDeed of Distribution acknowledging that the lands were jointly owned with Jimmy. Ronnie attempted to lease to a third party the fishing pond destined for Jimmy. Both the conveyances to his sons and the lease of the pond were set aside by the Probate Judge.

Then, after his previous delicts had been set aside by the Probate Court, Ronnie maliciously destroyed the fishing pond, an act determined by a Dorchester County jury by clear and convincing evidence. Not six weeks later, Ronnie maliciously destroyed a 30 acre corn crop on Bobby's land, another act found by a Dorchester County jury by clear and convincing evidence.

Ronnie's acts of selling the Rumph lands to his sons, leasing the pond, destroying the pond dam, and destroying the corn crop, were brazen in the extreme. Not only did they prove the ill will and malice that Ronnie held for Jimmy and Bobby, but the acts also proved that Ronnie believed that he could act with impunity, believing he was "judgment proof" and able to act without risk that he would lose anything.

C. The Grantees Failed to Carry Their Burden of Proving the *Bona* Fides of the Transfers. Neither Todd nor Ryan nor Wanda Judy, the grantees, attempted to explain the transfers or to prove their *bona fides* at trial. It was clearly their burden to justify the conveyances by clear and convincing evidence. *Windsor Properties, Inc. vs. Dolphin Head Construction Company, Inc., supra.* They did not even attempt that. It would seem that the grantees, Todd, Ryan and Wanda, would have the greatest interest in retaining title to the lands that Ronnie had given them. However, not only did they not

testify at trial to justify the *bona fides* of the transfers, they have not even appealed the Trial Court's decisions. Ronnie is the only appellant.

To the extent that, in this appeal from a question in equity this Court may review the entire record to determine facts in accordance with its own view of the preponderance of the evidence, logic supports the conclusion that if Todd, Ryan and Wanda had truly believed that the conveyances to them were *bona fide,* and not fraudulent, they would have said so in court. If they truly believed the lands were theirs, and entertained any expectation of enjoying the beneficial interests for themselves, rather than for Ronnie, they would have testified. They would have appealed the Trial Court's decision to this Court. However, they were silent; and they are silent still.

The record shows that Ronnie was the spokesman for the Defendants at trial. He was the spokesman for, and he controls, the land and the timbering and farming operations. He is the sole party prosecuting this appeal.

D. Appellant Argues the Wrong Fraud Standard. The presence or absence of an intent to deceive, or actual dishonesty of purpose distinguishes actual fraud from constructive fraud. *Designer Show Rooms, Inc. vs. Kelly, supra; 37 CJS: Fraud Sec. 3.* Ronnie Judy's dishonesty of purpose is abundantly clear, beginning in 1998 and continuing through the administration of the Rumph Estate and the transfer of the home place to Todd in 2007. Ronnie Judy's schemes and pattern of conduct reflect a dishonesty of purpose to render himself "judgment proof", in order to avoid claims such as those reduced to judgment by Jimmy and Bobby Judy, and that of Meherrin Agricultural and Chemical Company, and others who did not appear in this record.

Ronnie's appeal applies the wrong Standard of Fraud. Ronnie argues that Respondents should have been held to the standard of proof required for a claim of fraudulent misrepresentation, which entails proof of the nine elements of fraud traditionally set forth in the cases. He cites *Ardis vs. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct.App. 1993)* and *King v. Hartsford, 282 S.C. 307, 318 S.E.2d 125 (Ct.App. 1984).* The standard argued by Ronnie is not applicable in a case to set aside a conveyance for fraud under the Statute of Elizabeth.

"Fraud is a generic term embracing all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth." *37 CJS Fraud, Section 1.* "It has been said that there can be no all embracing definition of 'fraud' but each case must be considered upon its own facts. The term 'fraud' is a generic one which is used in various senses and fraud assumes so many different degrees and forms that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily on the conscience and judgment of the Court or jury in determining its presence or absence." *37 Am. Jur. 2nd Fraud, Section 1.*

The fraud standard argued by Ronnie is that applicable to a cause of action for fraudulent misrepresentation. However, the proof elements required to sustain a claim for fraudulent misrepresentation, a legal tort, are not the same as required to sustain an equitable claim to set aside a fraudulent conveyance because of "actual moral fraud" or "constructive fraud". As argued previously in this Brief, the requisite actual fraud that must be proved to set aside a conveyance is simply the intent to make the conveyance in

order to avoid a creditor's claim. More specifically, the cases say that a conveyance is fraudulent if made "with the view to hinder and delay creditors, by putting the property beyond the reach of creditors." *Walker, Evans and Cogswell v. Bollmann Brothers, 22 S.C. 512 (1885).* A conveyance is fraudulent if made "with a view to future indebtedness". *Jackson v. Plyler, supra; Gentry v. Lanneau, supra.* The requisite fraud has also been described as "that which is made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantors to defraud creditors". *Mathis v. Burton, supra.*

In no case of fraudulent conveyance has a court in South Carolina required that there be proof of the nine elements of fraudulent misrepresentation, as argued by Ronnie. In point of fact, the essence of a fraudulent conveyance claim is that there is no "misrepresentation" by the grantor, at all. Typically, and as occurred in this case, the conveyance is a unilateral act performed by the grantor without disclosure or representation whatsoever to the creditor. The touchstone of a fraudulent conveyance is "actual moral fraud"; that the act be accomplished with a corrupt, dishonest purpose and intent to deceive. Actual dishonesty of purpose constitutes actual fraud. *Designer Show Rooms, Inc. v. Kelly, supra.*

Another perspective of this argument may be gleaned from the proposition that a fraudulent conveyance claim may be made by subsequent creditors. *c.f., Mathis v. Burton, supra.* To the extent that subsequent creditors cannot be known to the grantor at the time of the fraudulent conveyance, it would be impossible that a fraudulent conveyance claim must be based upon any "misrepresentation", or that there must be

evidence of the creditor's reliance. A grantor could not possibly make a representation to a creditor who does not yet exist.

E. Ronnie Judy Divested Himself of all Property Upon Which a Judgment or Creditor Could Levy.

In his brief, Ronnie argues that Jimmy, Bobby and Kevin failed to prove that he did not retain sufficient property to pay his indebtedness in full. The principal position of Respondents in response to that argument is that such proof was not necessary, in light of the manifest evidence of Ronnie's actual fraudulent intent as discussed above. Proof of failure to retain sufficient property is not a required element of the claim, where the evidence proves the grantor acted with actual fraudulent intent. *Windsor Properties, Inc. v. Dolphin Head Construction Company, Inc., supra.*

As part of this argument, Ronnie suggests that Respondents themselves proved that Ronnie possessed "assets", through the introduction of tax records, evidence of Ronnie's receipt of substantial income, evidence of the buying of personal and business property, and evidence of a loan from a bank. The argument is naïve, at best.

Ronnie does not seriously dispute that he conveyed away all of his real property, as discussed previously in this Brief, or that he had given all of his farm equipment to Todd and Ryan in 1998. Beyond that, the record is replete with testimony from Ronnie that "everything belonged to Todd and Ryan." For example:

1. When asked whether it is correct that Ronnie conveyed the 9.29 home site and the 10.9 acres to Todd in 2007 his response was, "I was transferring it back to the rightful owner". (R. p. 217, lines 2-3).

2. When asked whether, after conveying the land to Todd in 2007 he owned no more real estate, Ronnie answered. "Yes, sir, because it wasn't mine". (R. p. 217, lines 17-21).

3. When asked about his purchases of equipment from Godley Auction Company, he responded, "I bought (it) for Ryan and Todd". (R. p. 244, line 23).

4. When asked about the equipment he stores on his 9.29 acre home site "all over the place" Ronnie answered that the equipment belonged to Todd and Ryan. This included equipment he had purchased from Godley Auction Co. (R. p. 246, lines 4-21).

5. Ronnie insists that the equipment belonged to Todd and Ryan, even though the invoices were made out to him, "because when I go to the sale I didn't have Todd and them's checks. So we went to the bank and switched over". (R. p. 246, line 22-p.247, line 1).

6. Ronnie testified that on a specific invoice he bought parts for a John Deere 3020 tractor and although the invoice was in his name, he bought the parts for Todd and Ryan. (R. p. 247, lines 5-21).

7. Ronnie purchased additional equipment for $5,490.00 on June 28, 2008. "That was (for) Judy Farms. Todd and Ryan." (R. p. 247, line 25-p. 248, line 2).

8. Ronnie purchased a caterpillar motor grader on May 29, 2009 and wrote a check for $10,500.00 but "matter of fact, Todd has got a mortgage up at Citizen's Bank for $10,000.00 on that." (R. p. 248, lines 3-11).

9. Ronnie sold soy beans to Carolina Soya, and payment was made to "Ronnie Judy, 1872 Sandridge Road". But, according to Ronnie, "Money was deposited in Ryan or Todd Judy's farm account". (R. p. 248, line 15-p. 249, line 14).

10. Ronnie admitted that in his deposition he had testified he was not farming, but the boys were farming and all he did was help them with the fences. To which Ronnie responded at trial, "I help with the maintenance". (R. p. 251, lines 12-20).

11. Ronnie sold livestock, but testified that "Just because the checks were made out to me, I deposited the money in their (Todd and Ryan's) farm account out of that". (R. p. 251, line 17-p. 252, line 25).

12. Ronnie admitted that Farmers Milling & Supply recorded all of its transactions with him: "Well I been doing business with them all them years and they was unaware that Todd and Ryan took over the farm". (R. p. 253, line 18-p.-254, line 16). However, Ronnie testified as to the Farmers Milling payments "we went to the bank and some of it went into Todd and Ryan's farm account". (R. p. 254, lines 20-24).

13. Ronnie testified that he gave lands to his sons in 1998 because it was what his daddy wanted him to do, a family tradition. When questioned whether he continued to farm the lands he responded "I helped". (R. p. 274, lines 10-18).

Accordingly, far from Respondents proving that Ronnie possesses tangible, attachable property upon which a judgment creditor might levy, Ronnie has dodged that issue at every turn, steadfastly claiming that everything belongs to Todd and Ryan.

ARGUMENT III

THE REMEDY FASHIONED BY THE TRIAL COURT WAS CLEARLY WITHIN ITS EQUITABLE POWERS

A. Appellant's Attack upon the Remedy Fashioned by the Trial Court as an Improper *Nunc Pro Tunc* Order is Without Foundation.

In its Order, the Trial Court clearly characterizes its remedial findings and conclusions as reformatory. For the purposes of making clear the Court's intentions in the

record chains of title to the properties at issue, the Trial Judge declared that the partition deeds to Todd and Ryan Judy were deemed to be reformed, "the same as if Ronnie Judy were a party to the partition actions and putative grantor or grantee, as the case may be, to the partition deeds; so that the public records of Dorchester County should reflect the partitioned conveyances to have been in the name of and for the benefit of Ronnie F. Judy, rather than for Todd Judy and Ryan Judy. Ronnie F. Judy was the real party in interest in the partition proceedings by reason of his antecedent fraudulent conveyances". (R. p. 22, Court Order). The Trial Court further directed that its Final Order be recorded with the Dorchester County Register of Deeds to be indexed in the grantor's index for deeds under the names, "Ronnie F. Judy", "J. Todd Judy", "Ryan C. Judy", and "Wanda B. Judy". (R. p. 29, Court Order).

The Trial Court cited ample authority for its reformation of the deeds:

> "South Carolina courts have held that 'the reformation of written contracts for fraud or mistake is an ordinary head of equity jurisprudence', meaning a distinct branch of equity jurisprudence. *Jumper vs. Queen Mab Lumber Co., 115 S.C. 452, 106 S. E. 473 (1921), citing Moffett vs. Rochester, 178 U. S. 373, 20 S.Ct. 957 (1900).* Our courts have likewise recited the proposition that fraud constitutes a basis for a Court of Equity to reform an instrument. *Groce vs. Benson, 168 S.C. 145, 167 S. E. 151 (1933); Aiken Petroleum, Co. vs. Natural Petroleum Underwriters, etc., 207 S. C. 236, 36 S.E.2nd 380 (1945).* Accordingly, I conclude that the mechanism to best implement the Court's previous findings that the 1998 conveyances by Ronnie Judy were fraudulent is to reform the partition conveyances that

putatively named Todd Judy and Ryan Judy as grantees in the partition deeds, so that Ronnie Judy is deemed to have been a grantee of the partition deeds. The intention of this ruling is to restore to Ronnie Judy the same interests in the lands that were partitioned, as if he had originally been a named party to the partition actions and deeds." (R. p. 22-23, Court Order).

In this appeal, Ronnie makes no attempt to argue that the Court erred in reforming the deeds, or that the Court did not have authority to do so. Instead Ronnie seeks to mischaracterize the Court's actions as an improper order, *nunc pro tunc,* and then bases his entire argument upon that flawed premise. The Court's Order is not an order, *nunc pro tunc*, at all. The Court's Order affects deeds to real property by deeming them reformed, and does not purport to affect any prior order of the court.

The Latin phrase, *nunc pro tunc,* is merely descriptive of the inherent power of a court to make its records speak the truth, that is to say, to record that which was actually done, but omitted to be recorded. *Simmons v. Atlantic Coastline Railroad Company, 235 F. Supp. 325 (U.S. Dist. Ct. 1964); citing ABC Packard v. General Motors Corp. 275 F.2d 63 (Ninth Circuit 1960).* A *nunc pro tunc* order can only be used to place in the record evidence of judicial action that has actually taken place. *Ex parte Strom, 343S.C. 257, 539 S.E.2d 699(S.Ct. 2000).*

Nothing of the sort happened in this case. Here the Trial Court did not characterize its order as *nunc pro tunc* with respect to anything. Clearly, the Trial Court did not attempt to alter, modify, or clarify any prior order of any court, or to rule "now for then" (the literal meaning of the Latin phrase) what the partition court had intended but not ruled. Rather, the Trial Judge reformed the deeds in accordance with its findings

of fraud, based upon the evidence before it. The expressed purposes for the Court's rulings about reformation was to make clear on the records of the Dorchester County Register of Deeds, and in the respective record chains of title, the reasons why title was restored to Ronnie Judy, vesting in him complete ownership of lands in which he had formerly owned only a fractional one half interest.

If there is any error in the Court's ruling with respect to its declaration of intent to reform the deeds, which is certainly not conceded, particularly since the Appellant did not argue that it was, such error should surely be harmless because the Court's findings were made solely to clarify the record chains of title.

B. The Trial Court Acted Within its Equitable Powers.

Ronnie does not argue that the Trial Court committed error in reforming the deeds, or in expressing its intentions to do so. Neither does Ronnie argue that the authorities cited by the Trial Court to support reformation of documents by Courts of Equity, are in error. In the first place, not having adequately briefed the issue responsively to the Trial Court's Order, Ronnie's argument should be deemed abandoned. *Bryson v. Bryson, 378 S.C 502, 662 S.E.2d 611 (Ct.App. 2008).* (An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a Brief but not supported by authority. *378 S.C. at 510, citing Historic Charleston Holdings, LLC vs. Mallon 365 S.C. 524, 533 n. 7, 617 S.E.2d 388, 393, n. 7 (Ct.App. 2005)).*

In the second place, the reformation of deeds is a well recognized power of a Court of Equity. Citing the Supreme Court of the United States, South Carolina Courts have held that "the reformation of written contracts for fraud or mistake is an ordinary

head of equity jurisdiction." *Jumper vs. Queen Mab Lumber Co., 115 S.C. 452, 106 S.E. 473 (1921), citing Moffett vs. Rochester, 178 U.S. 373, 20 S.Ct. 957 (1900).* In *Groce vs. Benson, 168 S.C. 145, 167 S.E. 151 (1933)*, a case to reform a deed, the South Carolina Supreme Court acknowledged the authority of a court of equity to reform an instrument based on fraud or mistake; although the deed in that case was not reformed. In *Aiken Petroleum. Co. v. National Petroleum Underwriters, 207 S.C. 236, 36 S.E.2d 380 (1945)*, our Supreme Court affirmed the Trial Court's reformation of an insurance policy. There, the Supreme Court held: "It is the law of this State, and appears to be the universal rule, that reformation of a written instrument may be obtained where there is mistake on the part of the Plaintiff, and unequitable conduct, deceit, concealment and imposition of fraud on the part of the Defendant, inducing the Plaintiff's mistake. *Gowdy v. Kelly, 185 S.C. 415, 194 S.E. 156; Jumper v. Queen Mab Lumber Co., 115 S.C. 452, 106 S.E. 473; Forrester vs. Moon, 100 S.C. 157, 84 S.E. 532; Kennerty vs. Etiwan Phosphate, Co., 21 S.C. 226, 53 Am. Rep. 669.*" *Aiken Petroleum, 207 S.C. at 253.*

In this appeal, Appellant does not attempt to distinguish the authorities, because they clearly affirm and support the basis for the remedial findings and conclusions of the Trial Court in this case.

ARGUMENT IV

THE TRIAL COURT DID NOT ERR IN AWARDING ATTORNEY FEES BECAUSE OF THE BAD FAITH OF APPELLANT IN THE CONDUCT OF THE LITIGATION

The Trial Court determined that because of the vexatious conduct of Ronnie Judy and Todd Judy, in particular, Ronnie and the other Defendants before the Trial Court should be liable to Respondents for the sum of $7,000 as partial reimbursement of

Respondents' attorney fees incurred in the case. (R. pp. 23-27; Court Order). The total legal fees incurred by Respondents, as appears by reference to the Affidavit submitted by Respondents' Counsel, exceed $38,000. (R. pp. 346-359). As the Trial Court's factual basis for the partial award, the Court cited the vexatious conduct of Ronnie and Todd Judy, in particular. The Court found that Ronnie had been admitted to hospital on the eve of trial of the Pond Dam case and then, only several days later on February 7, 2008, he conveyed his home on 9.29 acres and the nearby 10.9 acre tract to Todd for $500.00. (R. pp. 429-434). After the filing of the case now before the Court on September 26, 2007, and not even a year later, Todd conveyed the same 9.29 and 10.9 acre lands to Ronnie's wife, Wanda. (R. pp. 435-440).

Ronnie correctly argues that Todd's conveyance was subject to the Lis Pendens filed by Respondents, but the argument misses the point. At the time of his conveyance to Wanda, Todd had been served with this lawsuit and had filed his *pro se* answer (obviously written by Ronnie), so that he could have only intended the transaction to complicate and confuse the present case. Todd did not attempt to explain the transaction to the Court. Wanda did not even appear at trial. Neither Todd nor Wanda have chosen to appeal to this Court. That the transfers were made in bad faith and with vexatious motive cannot be seriously argued. That the actions – at least Todd's conveyance to Wanda – occurred during the conduct of this litigation, cannot be disputed. The real question to be decided therefore, is where a party acts "in bad faith, vexatiously, wantonly or for oppressive reasons" in the conduct of the litigation, the parties guilty of such misconduct should be liable for attorney fees of the other parties which are incurred became of the misconduct.

Here, the attorney's billing statement reflects his time in preparing the Motion to Amend Complaint to add Wanda Judy as a party. (R. pp. 348-359; Plaintiffs' Exhibit "A" Attorney Fee Affidavit; Entry for March 10, 2009 and following). Respondents incurred legal expenses in preparing the Motion to Amend Complaint, appearing at the motion hearing in St. George, and for discovery activities following the Amended Complaint, including the taking of Todd's deposition. (R. p. 350; Attorney Fee Affidavit, Entry for October 21, 2009).

In the circumstances, the amount of fees ordered by the Trial Court, particularly in comparison with the total fees incurred by Respondents, is more than justified under the standards of *Baron Data Systems vs. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).*

The ultimate question, therefore, is whether Respondents were entitled to such an award of attorney fees. South Carolina Courts have consistently held that South Carolina follows the "American Rule" stated, for example in *Layman vs. State, 376 S.C 434, 658 S.E.2d 320 (S.Ct. 2008),* in which our Supreme Court held that "under the "American Rule" the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees, (citing *Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 561, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986)).* This Court and others recognize numerous exceptions to this rule, including the award of attorneys' fees pursuant to a statute... A statutory award of attorneys' fees is typically authorized under what is known as a fee-shifting statute, which permits a prevailing party to recover attorneys' fees from the losing party. *See Blum v. Stenson, 465 U.S. 886, 893, 104 S.Ct. 1541, 79 L.Ed2nd 891 (1984).*

The Supreme Court of the United States has also recognized the award of attorneys' fees in a "bad faith" context. In *Alyeska Pipeline Service Co. vs. Wilderness Society, 95 S.Ct. 1612, 421 U.S. 240 (1975)* the Court held that, in addition to an award of attorney fees pursuant to fee statutes, "Also, a Court may assess attorneys fees for the 'willful disobedience of a Court Order....as part of the fine to be levied on the Defendant...; or when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons...'. These exceptions are unquestionably assertions of the inherent power iofthe Courts to allow attorneys' fees in particular situations, unless forbidden by Congress...". 421 U.S. at 259.

In the case of *Roadway Express, Inc. vs. Piper, 100 S.Ct. 2455, 447 U.S. 752 (1980)* the United States Supreme Court dealt with Plaintiffs' attorneys who were dilatory and frivolous in pursuit of an employment discrimination case. In concluding that the District Court acted correctly in awarding attorney fees against Plaintiffs' counsel, the Supreme Court recognized that the inherent powers of Federal Courts are those which are "necessary to the exercise of all others". The most prominent of these is the contempt sanction; "which a Judge must have in exercising and protecting the due and orderly administration of justice and in maintaining the authority and dignity of the Court". However, the Court noted, because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion, recognizing that in clearly defined circumstances Federal Courts have inherent power to assess attorneys' fees against counsel. *Roadway Express, 447 U.S. at 764.*

Citing *Link vs. Wabash Railroad Company, 370 U.S. 626, 632, 82 S.Ct. 1386, 1389 (1962)* the Court recognized the inherent power of a Trial Court to levy sanctions in

response to abusive litigation practices. In *Link* the Trial Court had dismissed an action for failure to prosecute. The Court acknowledged that the ultimate sanction available to a Trial Court is dismissal of an action with prejudice; a power of "ancient origin, having its roots in judgments of *non-suit* and *non-prosequitur,* entered at common law...and dismissals for want of prosecution of bills in equity." *Roadway, 447 U.S. at 765.*

The *Roadway* Court reasoned that since the assessment of counsel fees is a less severe sanction than outright dismissal, then surely the inherent authority of the Trial Court must also include the authority to require payment of legal fees. *447 U.S. at 765.*

Recognizing the general rule of Federal Courts that a litigant cannot recover his attorney fees, the *Roadway Express* Court recognized that the rule does not apply when the opposing party has acted in bad faith. Citing *Alyeska, supra*, the Court acknowledged its inherent power to "assess attorneys fees for the willful disobedience of a court order...as part of the fine to be levied on the Defendant...or when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons."

The *Roadway* Court held that "bad faith" may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation. Recognizing that "this view coincides with the ruling in *Link, supra*, which approved judicial power to dismiss a case not because the substantive claim was without merit, but because the Plaintiff failed to pursue the litigation." 447 U.S. at 766.

Although no South Carolina decisions appear to have ruled upon an award of attorney fees in exactly the context as appears in this case, to the extent that the South Carolina Supreme Court has relied upon and has cited the articulation of Federal common law by the United States Supreme Court, such as in the *Layman* case, and to the extent

that the Federal Common Law, as articulated by the United States Supreme Court in the cases above cited, recognizes the "bad faith exception" based upon acts in the conduct of the litigation, it seems that our Courts have implicitly acknowledged the bad faith exception as a basis for the award of attorney fees.

Factually, the actions of Todd Judy, which are imputable to Ronnie Judy, in conveying land to Wanda Judy, Ronnie's wife, after this action was filed, could have only been for the purpose of obfuscating the legal process. At least that should be the presumption when no party, particularly neither Todd nor Wanda as grantees, have attempted to justify or explain the conveyance on any other than sinister purposes. The additional legal expenses incurred by Respondents because of the misconduct are at least the $7,000.00 awarded by the Court, as may be found by reference to the Attorney's Affidavit and Time Statement. (R. pp. 346-359; Attorney Affidavit and Time Statement). If anything, the award of $7,000.00 was low. It should be affirmed.

CONCLUSION

The most telling reason to affirm the Trial Court in this case is the failure of the grantees, Todd, Ryan, and Wanda Judy, to satisfy their burden to prove, by clear and convincing evidence, that the transfers at issue were supported by valuable consideration, and were *bona fide*. A long line of South Carolina decisions support the proposition. *Windsor Properties; Inc. vs. Dolphin Head Construction Company, Inc. supra; Gardner vs. Coven, supra;* and the many cases cited therein.

The silence of Todd, Ryan, and Wanda, at trial, and in this Appeal, speak volumes to the position that the conveyances at issue were a sham, and that that they were intended by Ronnie to evade and avoid his creditors.

The bad faith of Ronnie, Todd ,Ryan, and Wanda in attempting another fraudulent conveyance while this case was pending, more than justifies the Order of the Trial Court awarding partial attorneys fees.

The Trial Court Order should be affirmed in all respects.

Respectfully submitted,

BARR UNGER & McINTOSH

Capers G. Barr, III
11 Broad Street
Charleston, SC 29401
Telephone: (843) 577-5083
Facsimile: (843) 577-5081
cgb@barrungermcintosh.com
ATTORNEY FOR RESPONDENTS

Charleston, South Carolina
July 10, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Martin R. Banks, Special Referee

Case No.: 2007-CP-18-1794

James T. Judy, Bobby R. Judy.....Respondents,
and Kevin Judy,

vs.

Ronnie F. Judy, J. Todd Judy
Ryan C. Judy and Wanda B.
Judy, Defendants,

of whom Ronnie F. Judy *is*,.....Appellant

CERTIFICATE OF COUNSEL

The undersigned certified that this Brief of Respondents complies with Rule 211(b), SCACR.

Capers G. Barr, III
Barr, Unger and McIntosh
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
cgb@barrungermcintosh.com
Attorney for Respondents James T. Judy, Bobby R. Judy and Kevin Judy.

Charleston, South Carolina
August 20, 2012

THE STATE OF SOUTH CAROLINA
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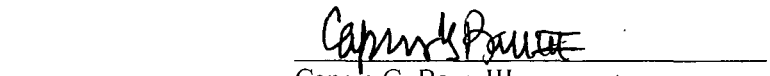
PROOF OF SERVICE

I certify that I have served a copy of the following Brief of Respondents on Ronnie F. Judy by depositing a copy of same in the United States Mail, postage prepaid, on July 10, 2012, addressed to his attorneys of record:

Eric C. Hale, Esq.
Law Offices of Eric C. Hale, L.L.C.
Post Office Box 1605
Irmo, SC 29063

Craig R. Stanley, Esquire
The Law Office of Craig R. Stanley
701 Gervais Street, Suite 150-284
Columbia, SC 29201



Capers G. Barr, III
Barr, Unger and McIntosh
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
Attorney for Respondents James T. Judy, Bobby R. Judy and Kevin Judy

July 10, 2012
Charleston, South Carolina