

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-03104
Appellate Case No. 2015-002485

RECEIVED
AUG 30 2016
SC Court of Appeals

Deborah S. Dubose,Appellant,

v.

Ashley C. Cone and Branch Bank & Trust Company, Defendants,

Of whom Ashley C. Cone isRespondent.

FINAL BRIEF OF RESPONDENT

Thornwell F. Sowell
S.C. Bar No. 5197
Bess J. DuRant
S.C. Bar No. 77920
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
bsowell@sowellgray.com
bdurant@sowellgray.com

Attorneys for Respondent Ashley C. Cone

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-03104
Appellate Case No. 2015-002485

Deborah S. Dubose,Appellant,

v.

Ashley C. Cone and Branch Bank & Trust Company, Defendants,

Of whom Ashley C. Cone isRespondent.

FINAL BRIEF OF RESPONDENT

Thornwell F. Sowell
S.C. Bar No. 5197
Bess J. DuRant
S.C. Bar No. 77920
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
bsowell@sowellgray.com
bdurant@sowellgray.com

Attorneys for Respondent Ashley C. Cone

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	v
Statement of the Case.....	1
Statement of the Facts.....	3
Standard of Review.....	5
Argument	6
I. The Trial Court Correctly Concluded the Terms of the BB&T Account Control.	7
A. Section 62-6-203(a) Provides that the Terms of the Account Dictate at the Time of Death.	7
B. Section 62-6-202(a) Has No Application in this Matter.....	8
C. Sections 62-6-202(a) and 62-6-203(a) Are Not in Conflict.	8
D. Discovery Does Not Change This Result	10
II. The Trial Court Correctly Concluded that Deborah Dubose Waived Any and All Spousal Rights.....	13
A. Deborah Waived All Spousal Rights, Including Those in Section 62-2-202(a)	13
B. The Waiver’s Language Regarding Jointly Held Property Does Not Change the Analysis	13
C. Deborah’s Argument Regarding “Voluntary Transfers” Was Not Preserved.....	15
Conclusion	15

TABLE OF AUTHORITIES

Cases

<i>Bass v. Copal, Inc.</i> , 384 S.C. 238, 680 S.E.2d 917.....	5
<i>Beaufort County v. S.C. State Election Comm'n</i> , 295 S.C. 366, 718 S.E.2d 432 (2011)	9
<i>Brockbank v. Best Capital Corp.</i> , 341 S.C. 372, 534 S.E.2d 688 (2000)	5
<i>Buist v. Buist</i> , 410 S.C. 569, 766 S.E.2d 381 (2014).....	15
<i>Burwell v. S.C. Nat'l Bank</i> , 288 S.C. 34, 340 S.E.2d 786 (1986).....	7
<i>Dawkins v. Fields</i> , 354 S.C. 58, 580 S.E.2d 433 (2003).....	5
<i>Ellis v. Davidson</i> , 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)	5
<i>George v. Fabri</i> , 345 S.C. 440, 548 S.E.2d 868 (2001)	5
<i>Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.</i> , 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).....	10
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	9
<i>Huckaby v. Confederate Motor Speedway, Inc.</i> , 276 S.C. 629, 281 S.E.2d 223 (1981)	7
<i>Osborne v. Adams</i> , 346 S.C. 4, 550 S.E.2d 319 (2001)	6
<i>RWE Nukem Corp. v. ENSR Corp.</i> , 373 S.C. 190, 644 S.E.2d 730 (2007)	5, 6
<i>Silver v. Aabstract Pools & Spas, Inc.</i> , 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008) ...	12
<i>State v. Doster</i> , 276 S.C. 647, 284 S.E.2d 218 (1981).....	12

Statutes

S.C. Code Ann. § 33-44-103 (a)	9
S.C. Code Ann. § 62-6-201.....	8
S.C. Code Ann. § 62-6-202.....	6, 7, 8, 9, 10, 12, 13, 14, 15
S.C. Code Ann. § 62-6-203.....	6, 7, 8, 9, 10, 15

Rules

Rule 56, SCRCP.....5, 11

Other Authorities

73 Am. Jur. 2d *Summary Judgment* § 43 (2001)6

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT CORRECTLY CONCLUDE THAT THE TERMS OF A JOINT BANK ACCOUNT, NOT S.C. CODE ANN. § 62-6-202, CONTROL THE OWNERSHIP OF FUNDS IN THE JOINT ACCOUNT WHEN ONE OF THE JOINT ACCOUNT HOLDERS DIES AND ONE OF THE REMAINING JOINT ACCOUNT HOLDERS IS HIS SURVIVING SPOUSE?

- II. DID THE TRIAL COURT CORRECTLY CONCLUDE THAT APPELLANT WAIVED ALL SPOUSAL RIGHTS, INCLUDING THOSE CONTEMPLATED IN S.C. CODE ANN. § 62-6-202, WHEN SHE SIGNED A WAIVER OF SPOUSAL RIGHTS?

STATEMENT OF THE CASE

This dispute is about the ownership of funds in a joint bank account with a right of survivorship between two remaining joint account holders upon the death of one joint account holder. The decedent was the father of one joint account holder and the husband of another. The decedent is G. Hollis Cone (“Hollis”). Hollis’ son was Ashley C. Cone (“Ashley”), and Hollis’ wife was Deborah Dubose (“Deborah”). Hollis, Ashley, and Deborah were the owners of the joint account at issue, which was held at Branch Bank & Trust Company (“BB&T”).

After Hollis’ death in January 2014, Deborah filed a lawsuit on May 14, 2014 to determine the ownership of the funds in the account. (R: pp. 15-19.) Specifically, Deborah asserted three causes of action against Ashley – (1) declaratory judgment that Deborah is the sole owner of the funds in the joint account, as of Hollis’ death, (2) conversion, and (3) constructive trust. (R. pp. 15-19.) Deborah also named BB&T as a defendant, but only for the purpose that it would be bound by the decision. (R. p. 17 ¶ 9.) On July 15, 2014, Ashley timely filed an Answer, generally denying the claims and asserting (a) failure to state a claim, (b) waiver and estoppel, and (c) accord and satisfaction as defenses. (R. pp. 20-23.)

The parties engaged in written discovery, and Deborah was deposed on March 25, 2015. (R. p. 259.) Deborah noticed the deposition of Ashley, but withdrew it. (R. p. 58, lines 12-15.) On February 11, 2015, Deborah served her Notice of Motion and Motion for Summary Judgment, which was supported by the Affidavit of Deborah S. Dubose (R. pp. 71-74 & R. pp. 24-28.) In Deborah’s motion for summary judgment, she declared that

“[t]here is no genuine issue of material fact and the plaintiff is entitled to summary judgment as a matter of law.” (*Id.*)

In turn, Ashley filed a motion for summary judgment on March 17, 2015. (R. pp. 75-243.) Ashley’s motion for summary judgment was supported by the Affidavit of Ashley C. Cone. (R. pp. 29-40.) Both parties submitted memoranda to support their respective motions and to oppose the other’s motions.

On April 16, 2015, the Honorable Tanya A. Gee heard the cross motions for summary judgment. During the hearing, Judge Gee accepted the deposition of Deborah Dubose. (R. p. 63, line 25 — p. 64, lines 1-3, 17-22.) From the bench, Judge Gee granted summary judgment in favor of Ashley, stating that the rights at death are determined by the terms of the bank account. (R. p. 68, lines 17-21.) Judge Gee memorialized her ruling in her Order Granting Defendant’s Motion for Summary Judgment and Denying Plaintiff’s Motion for Summary Judgment, dated and filed on April 24, 2015. (R. pp. 1-13.)

In response, Deborah filed a motion to reconsider Judge Gee’s Order, pursuant to Rule 59(e), SCRCP. (R. pp. 244-254.) It was denied via Form 4 Order, dated and filed on October 23, 2015. (R. p. 14.) On December 1, 2015, Deborah filed a Notice of Appeal, providing that she is appealing both the Order, filed April 24, 2015 and the Form 4 Order, filed October 23, 2015. (Notice of Appeal, dated Dec. 1, 2015.)

STATEMENT OF THE FACTS¹

Hollis (father of Ashley) became ill with liver cancer in the fall of 2013. (R. p. 261, lines 19-25 — p. 262, lines 1-8.) Soon after the diagnosis, Hollis died on January 26, 2014. (R. p. 266, lines 14-15.) However, ten days prior to his death, Hollis married Deborah Dubose on January 16, 2014. (R. p. 265, lines 14-18.)

On the same day that Hollis married Deborah, Hollis and Deborah signed the Waiver, in which Deborah agreed to waive any spousal rights in exchange for receiving (a) \$2.8 million from Hollis' life insurance policies and (b) possible proceeds from Hollis' Buy-Sell Agreement with his former business partner. (R. pp. 255-258.) The Waiver also provided that jointly held property, *as between Hollis and Deborah*, would be distributed to Deborah. (R. p. 256 at ¶ D.) The Waiver further stated that it can be amended or modified, provided that the amendment or modification be in writing and signed by Hollis and Deborah. (R. p. 256 at ¶ J.)

On the following day – January 17, 2014 – Hollis changed his individual account² with BB&T into a joint account and added Ashley and Deborah to the account. On January 17, 2014, Hollis, Ashley, and Deborah signed a signature card for the BB&T Account. (R. pp. 32-34.) As stated on the BB&T Signature Card, Hollis, Ashley, and Deborah agreed to the following:

We understand that BB&T may pay any or all of the funds in the account on the order of any one person named on the account. Upon the death of a party to the account, the deceased party's ownership in the account passes to the surviving party or parties in the account. . .

¹ The Statement of Facts nearly mirrors the "Facts and Procedural History" section of the Order, filed April 24, 2015.

² Hollis opened his individual bank account with First Palmetto State Bank and Trust Company, which subsequently became BB&T. (R. pp. 79-82.)

(*Id.*) Hollis, Ashley, and Deborah indicated their agreement with this term, along with many others, by signing directly underneath this term. (*Id.*; *see also* R. p. 267, lines 7-24.) In addition to this term, Hollis, Ashley, and Deborah agreed that (1) each of them is a co-owner of the account; (2) each of them serves as each other's agent "to deposit, withdraw, and conduct any business on the joint account;" and (3) each may withdraw or transfer any and all of the funds in the account. (R. 293.) Hollis died nine days after he made the account joint.

Upon Hollis' death on January 26, 2014, the balance of the BB&T Account was \$183,255.24 on January 26, 2014. (R. p. 29 at ¶ 5.) Deborah has already received slightly over half of the \$183,255.24. (*Id.* at ¶ 6.) She received a \$68,459.91 BB&T counter check on or about April 2, 2014. (*Id.* at ¶ 7(a).) She withdrew \$19,871.62 from the BB&T Account on or about April 1, 2014. (*Id.* at ¶ 7(b).) Finally, her personal bills, totaling \$3,296.56, were paid by Ashley. (*Id.* at ¶ 7(c).) Consequently, Deborah has received \$91,628.09 in funds from the BB&T Account.

After Hollis' death, Ashley wrote a check to himself on the BB&T Account for \$130,000.00. (R. p. 30 at ¶ 8.) He deposited the check into his personal account at TD Bank. (*Id.*) Of this \$130,000.00, Deborah has received \$68,459.91, while the Estate of G. Hollis Cone has received \$3,296.56. (*Id.*) The remaining \$57,931.77 is still on deposit in Ashley's TD Bank account. (*Id.*) Any funds that Ashley has withdrawn from the BB&T Account have been used to pay for bills and expenses of Deborah and Hollis. (*Id.* at ¶ 9.) No funds from the BB&T Account have been used to pay for any personal expenses of Ashley. (*Id.* at ¶ 10.)

Approximately three and one-half months after Hollis' death, this lawsuit followed. Specifically, Deborah claims that she is entitled to all of the funds in the BB&T Account (1) because Hollis wanted her to have the funds "so that she would have the funds to live on while his estate was being settled"; (2) because the Waiver states jointly held property, as between Hollis and Deborah, shall pass to Deborah; and (3) section 62-6-202 of the South Carolina Code provides that Deborah, as surviving spouse, is entitled to Hollis' interest in the BB&T Account. (R. p. 16 at ¶¶ 3-6.)

STANDARD OF REVIEW

The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004), *reh'ing denied* (May 20, 2004) (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003)); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001)). On appeal from a grant of a summary judgment motion, an appellate court "applies the same standard as that required for the circuit court under Rule 56(c), SCRPC." *Bass v. Gopal, Inc.*, 384 S.C. 238, 243, 680 S.E.2d 917, 919-20 (2009) (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000)). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

"In considering cross motions, the court should draw all inferences against each movant in turn." *RWE Nukem Corp. v. ENSR Corp.*, 373 S.C. 190, 195, 644 S.E.2d 730, 733 (2007) (quoting 73 Am. Jur. 2d *Summary Judgment* § 43 (2001)). "On appeal from an

order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” *ENSR Corp.*, 373 S.C. at 195-96, 644 S.E.2d at 733 (citing *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001)).

When this standard is applied to the present case, it is apparent that the Order granting summary judgment to Ashley and denying summary judgment to Deborah must be affirmed.

ARGUMENT

First and foremost, the terms of the BB&T Account unambiguously provide that upon the death of a party to the account, his interest passes to the surviving parties to the account. Therefore, pursuant to section 62-6-203(a) of the South Carolina Code, the funds in the BB&T Account passed to Ashley and Deborah, upon Hollis’ death, as a matter of law. Section 62-6-202 of the South Carolina Code has no applicability because the parties contractually determined how the funds were to be allocated upon the death of any party to the account. No amount of discovery can change this result.

Second, Deborah has waived any spousal rights, including those in section 62-6-202, in the Waiver of Spousal Rights. Deborah and Hollis specifically addressed jointly-held property, but only as to jointly held property between them and not with any third party, including Ashley. Hollis and Deborah cannot contractually alter the contractual rights of Ashley by entering into the Waiver. Regardless, Hollis, Deborah, and Ashley entered into the BB&T Account terms, *after* the execution of the Waiver, resulting in an amendment of the Waiver. Finally, Deborah offers a new argument regarding the

“Voluntary Transfer” section of the Waiver. This argument was not addressed before the trial court, and therefore, it is not preserved for appellate review.

I. THE TRIAL COURT CORRECTLY CONCLUDED THE TERMS OF THE BB&T ACCOUNT CONTROL.

A. Section 62-6-203(a) Provides that the Terms of the Account Dictate at the Time of Death.

It is well-established that parties have the freedom to contract and determine the allocation of their property rights. *See Huckaby v. Confederate Motor Speedway, Inc.*, 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981) (“[P]eople should be free to contract as they choose.”). Section 62-6-203(a) of the South Carolina Code embraces this principle. Section 62-6-203(a) provides “[r]ights at death of a party under Section 62-6-202 are determined by the terms of the account at the death of the party.” Section 62-6-202 concerns joint accounts with a right of survivorship.

Here, the terms of the BB&T Account provide as follows:

We understand that BB&T may pay any or all of the funds in the account on the order of any one person named on the account. *Upon the death of a party to the account, the deceased party's ownership in the account passes to the surviving party or parties in the account. . .*

(R. p. 34 (Emphasis added).) Each party to the account signed directly underneath this language, indicating their consent and intent to be bound by this language. *See Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789 (1986) (“As early as 1924, this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.”). At Hollis’ death, his ownership in the account passed to Ashley and Deborah, as a matter of law.

B. Section 62-6-202(a) Has No Application in this Matter.

Section 62-6-202(a) is a statute that applies when no contractual term governs the ownership of funds in a joint account with the right of survivorship. Specifically, section 62-6-202(a) states, in pertinent part, that “[i]f two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 62-6-201 belongs to the surviving spouse.” Deborah contends this statute provides that she, as surviving spouse, is entitled to the entire sum of funds in the BB&T Account.

Deborah’s argument, however, fails to address the very next statute – section 62-6-203(a), which provides that the terms of the account govern the parties, at the time of a party’s death, to a joint account with right of survivorship. Here, the parties chose to allow a contract to govern their rights, rather than leave their rights subject to the default provision in the statute. Therefore, the terms of the BB&T Account control and provide that Ashley and Deborah share in Hollis’ ownership of the account.

C. Sections 62-6-202(a) and 62-6-203(a) Are Not in Conflict.

Section 62-6-202(a) governs when the parties to a joint account with right of survivorship have no contract governing the account or no contractual term governing the ownership of funds, upon the death of one of the account holders. In other words, it is a default statute. If parties want to determine, themselves, ownership of such funds, they can enter into a contract governing the ownership. This arrangement is contemplated by section 62-6-203(a). The interplay of these two statutes is akin to the LLC Act’s default statutory scheme and the contractual operating agreement, which allows members of the LLC to contractually add or omit certain rights, obligations, and duties. *See, e.g., S.C.*

Code Ann. § 33-44-103 (a) (“To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.”). In other words, LLC members can let the default provisions of the LLC Act control or they can contract for a more specific governance. The same is true as to joint accounts with right of survivorship. Here, Hollis, Deborah, and Ashley chose for a contract, not section 62-6-202(a), to govern their rights. The statutes can be read together and produce a “single, harmonious result.” *Beaufort Cnty. v. S.C. State Election Comm’n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

Despite arguing that the two statutes are in conflict, Deborah contends the only way to read the two statutes together is “by finding that § 62-6-203(a) applies generally and only if no spouse is involved but if there is a spouse, then § 62-6-202 controls.” (Final Br. of Appellant, p. 7.) “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Id.* “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* (internal quotation marks and citation omitted). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Id.* (internal quotation marks and citation omitted).

Neither statute states nor otherwise implies Deborah’s fortuitous reading of the statutes. The clear and unambiguous construction of the two statutes is that section 62-6-202(a) applies when there is no contractual term governing the ownership of the account,

upon death of one of its owners, while section 62-6-203(a) provides that the account's terms, if existent, control. Section 62-6-202(a) is merely a "fall back" or default provision. There is nothing in the statutes that provide, or even suggest, that section 62-6-203(a) applies only if no spouse is involved. Deborah admitted at the trial court hearing that these statutes are clear and unambiguous. (R. p. 54, lines 15-21 & p. 58, lines 7-13.) Ashley agrees. Because the statutory language is plain and unambiguous, this Court does not need to resort to any rules of statutory interpretation. The plain reading of the statutes controls.

D. Discovery Does Not Change This Result.

No discovery would preclude summary judgment from being issued to Ashley. As a preliminary matter, one of Deborah's grounds in her motion for summary judgment is "[t]here is *no genuine issue of material fact* and the plaintiff is entitled to summary judgment as a matter of law." (R. p. 72 at ¶ 4 (emphasis added).) Now, Deborah, however, contends she needs more discovery. Notably, nearly one year had passed between the filing of the complaint and the hearing on the cross motions for summary judgment. Deborah had plenty of time to seek discovery. *See Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479–80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment").

Even if Deborah did not have a substantial amount of time to conduct discovery, none of the material she seeks would have any bearing on the fact that the terms of the BB&T Account provide that the funds pass to Ashley and Deborah. It is indisputable that Hollis, Deborah, and Ashley signed the BB&T Account signature card, agreeing to be

bound to the terms of the BB&T Account, which provides that upon death of one party, the deceased party's interest passes to the other parties. Consequently, the funds passed to Ashley and Deborah, as a matter of law. No discovery will change this result.

Moreover, the discovery sought is either inadmissible or irrelevant. Deborah mentions two affidavits submitted by her lawyers, Pope D. Johnson, III and W. Steven Johnson³ and why she needs further discovery.⁴ (Final Br. of Appellant, p. 8.) Deborah contends the trial court erred by concluding the Dead Man's Statute and the attorney-client privilege preclude inquiry into certain areas. She says the Dead Man's Statute "does not prohibit a discovery deposition of conversations with the deceased." (Final Br. of Appellant, p. 8.) This may be true, but any testimony regarding these discussions is inadmissible under the Dead Man's Statute so any deposition is nothing more than an exercise in futility, especially considering any possible testimony cannot change the end-result – the terms of the account provide that the funds pass to Ashley and Deborah.

Deborah also takes issue with the trial court's decision "that the attorney-client privilege would prevent Attorney Sojourner from testifying." (Final Br. of Appellant, p. 8.) But again, any testimony that he would offer does not affect the final result. Sojourner, who was Hollis' estate planning attorney, has an obligation to assert the privilege on Hollis'

³ The trial court correctly concluded that the Affidavit of W. Steven Johnson was improper and insufficient to support Deborah's motion for summary judgment. (R. p. 8 at n.2.) It did not satisfy the requirements of Rule 56, SCRPC, because it was replete with statements made "upon information and belief." (*Id.*)

⁴ Deborah states "[t]he Trial Judge, without hearing any of [sic] testimony that Deborah sought to take, found that some testimony could nevertheless be admissible." (Final Br. of Appellant, p. 8.) It is unclear as to what, if any, "testimony could nevertheless be admissible." Deborah has no citation to the record as to which testimony she is referring, and Ashley's counsel is unaware of any such testimony.

behalf. *See State v. Doster*, 276 S.C. 647, 653, 284 S.E.2d 218, 220 (1981) (recognizing “appropriateness” of attorney asserting attorney-client privilege on behalf of deceased client). Moreover, his testimony regarding the BB&T Account (to the extent he has any knowledge of the account) is of no moment because Hollis, Deborah, and Ashley clearly expressed their intent regarding the BB&T Account when they signed the BB&T signature card. *See Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (providing a court is constrained to the four corners of an unambiguous contract to determine the parties’ intent and contract’s meaning). To the extent Sojourner could avoid the attorney client privilege, Deborah cannot look to extrinsic evidence to challenge the BB&T Account terms.

Finally, the purported need to depose Ashley is nothing but a red herring. As a preliminary matter, Deborah’s counsel noticed his deposition, but then decided to withdraw it. (R. p. 58, lines 12-15) Substantively, Ashley’s testimony regarding paying Deborah’s personal bills and Hollis’ estate’s expenses have nothing to do with the ownership of the funds, which is the basis of Deborah’s complaint. Moreover, the specious and spurious allegation that Ashley “made some deal” or “induced” Hollis to include Ashley on the BB&T Account is wholly baseless and unfounded. The record is devoid of any evidence to even suggest that Ashley had any ulterior motive. To the extent Deborah wanted to inquire into Ashley’s motive, she should not have canceled his deposition. Regardless, such testimony would have no impact on the conclusion that the funds pass to Ashley and Deborah.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT DEBORAH DUBOSE WAIVED ANY AND ALL SPOUSAL RIGHTS.

A. Deborah Waived All Spousal Rights, Including Those in Section 62-2-202(a).

Even if section 62-2-203(a) had no application, the Waiver precludes Deborah from asserting any spousal rights with respect to the BB&T Account because she waived all spousal rights. After all, the Waiver is entitled *Waiver of Spousal Rights*. Deborah was represented by counsel during the negotiation and execution of the Waiver. (R. p. 151.) In the Waiver, Deborah “irrevocably renounces, releases, and forever waives” all spousal rights in exchange for receiving (a) \$2.8 million from Hollis’ life insurance policies and (b) possible proceeds from Hollis’ Buy-Sell Agreement with his former business partner. (R. p. 151 at ¶¶ A-B & p. 152 at ¶C.) Section 62-6-202(a) allows for a surviving spouse (over any other joint account owner) to receive the deceased spouse’s interest in the joint account, provided the terms of the joint account do not provide otherwise. This is a spousal right. Deborah waived this spousal right in the Waiver document, and therefore, section 62-6-202(a) cannot provide her with an escape from the Waiver.

B. The Waiver’s Language Regarding Jointly Held Property Does Not Change the Analysis.

Regarding jointly held property between Hollis and Deborah, the Waiver provides as follows:

D. Jointly Held Property. Upon Hollis’ death, any property held or acquired in the form of ownership known as joint tenants with rights of survivorship, or treated as joint tenants with rights of survivorship under the laws of South Carolina, *as between Hollis and Deborah*, shall be distributed to Deborah.

(R. p. 152 at ¶ D (Emphasis added).) Contrary to Deborah’s position, the trial court did not ignore paragraph D of the Waiver. (Final Br. of Appellant, p. 10.) Rather, the trial

court properly held that paragraph D governs solely property held jointly by Hollis and Deborah. The BB&T Account, however, was not held solely by Hollis and Deborah; it was held jointly among Hollis, Deborah, and Ashley. Consequently, this Waiver does not affect Ashley's rights.

The Waiver shows that Deborah waived all spousal rights, including those described in Section 62-6-202. (See R. p. 152 at ¶ C (providing Deborah "irrevocably renounces, releases, and forever waives" her spousal rights, in exchange for \$2.8 million in life insurance proceeds and possible proceeds from a buy-out agreement).) When Hollis executed the Waiver, he did not have the power or authority to waive any rights Ashley had in the BB&T Account. Hollis only had the power and authority to contract with respect to *his* rights, not Ashley's. Ashley was not a party to the Waiver, and consequently, Ashley did not contract away any rights he had in the BB&T Account.

Even if the Waiver's language regarding jointly held property were applied here, it was amended when Hollis and Deborah signed the BB&T signature card, evidencing their intent to be bound by the terms of the BB&T Account. The Waiver provides that it can be amended or modified by a writing signed by both parties. (R. p. 152 at ¶ J.) If Deborah's argument had any validity, the BB&T Signature Card is a writing that alters the terms of the Waiver by stating that the jointly held funds are to pass to the surviving joint owners, upon the death of one joint owner. The Waiver was signed by Hollis and Deborah on January 16, 2014, and the BB&T Signature Card was signed by Hollis, Deborah, and Ashley on January 17, 2014. (R. pp. 151-169 & R. pp. 170-172.) Therefore, the BB&T Signature Card amends and modifies the terms of the Waiver – to the extent the Waiver

could reach to property jointly held among Hollis, Deborah, and Ashley. The Waiver's discussion of jointly held property is of no legal moment with respect to this issue.

C. Deborah's Argument Regarding "Voluntary Transfers" Was Not Preserved.

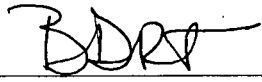
For the first time, Deborah argues, in her initial brief, that paragraph F, entitled Voluntary Transfers, provides that the funds in the BB&T Account constitute a "voluntary transfer," and therefore, Deborah should be entitled to the total funds. However, this argument is not preserved for appellate review because it was not raised before the trial court. *Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." (internal quotation marks and citation omitted)). Even if this Court could consider this argument, the record is devoid of any admissible evidence to support it.

CONCLUSION

The terms of the BB&T Account control the ownership of funds in the BB&T Account pursuant to both the contractual terms of the BB&T Account and section 62-6-203(a). Deborah cannot avoid this result by looking to section 62-6-203's preceding statute (section 62-6-202), the alleged need for more discovery, or the Waiver. Section 62-6-202 has no application because Hollis, Deborah, and Ashley agreed to terms governing the BB&T Account. No amount of new discovery is going to change this outcome. Moreover, the Waiver only bolsters the position that section 62-6-202 has no application to the matter because Deborah waived all spousal rights in exchange for a multi-million dollar payout. The funds, upon Hollis' death, totaled \$183,255.24, and Deborah has received \$91,628.09, which is over half of these funds. (R. p. 29 at ¶¶ 5-6 & R. p. 30 at ¶ 7.) She has received

more than that to which is she entitled. All of Deborah's causes of action fail. The trial court correctly granted summary judgment to Ashley and denied summary judgment to Deborah. This Court should affirm the trial court's Order, dated April 24, 2015, along with the Form 4 Order, dated October 23, 2015, denying Deborah's motion for reconsideration.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
Thornwell F. Sowell, SC Bar #5197
Bess J. DuRant, SC Bar #77920
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Ashley C. Cone

Columbia, South Carolina
August 30, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-03104
Appellate Case No. 2015-002485

RECEIVED
AUG 30 2016
SC Court of Appeals

Deborah S. Dubose,Appellant,

v.

Ashley C. Cone and Branch Bank & Trust Company, Defendants,

Of whom Ashley C. Cone isRespondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b),
SCACR.



Thornwell F. Sowell
S.C. Bar No. 5197
Bess J. DuRant
S.C. Bar No. 77920
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
bsowell@sowellgray.com
bdurant@sowellgray.com

Attorneys for Respondent Ashley C. Cone

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-03104
Appellate Case No. 2015-002485

RECEIVED
AUG 30 2016
SC Court of Appeals

Deborah S. Dubose,Appellant,

v.

Ashley C. Cone and Branch Bank & Trust Company, Defendants,

Of whom Ashley C. Cone isRespondent.

PROOF OF SERVICE

I certify that I have caused the service of the Final Brief of Respondent and Certificate of Counsel on Appellant Deborah S. Dubose by depositing a copy of it in the United States Mail, postage prepaid, on August 30, 2016, addressed to her attorneys of record, Pope D. Johnson, III, Attorney at Law, 1230 Richland Street, Columbia, SC 29201, and W. Steven Johnson and Arthur E. White, III, Todd & Johnson, LLP, P.O. Box 11262, Columbia, SC 29211.



Thornwell F. Sowell
S.C. Bar No. 5197
Bess J. DuRant
S.C. Bar No. 77920
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorneys for Respondent

August 30, 2016

SOWELL **SG** GRAY

Litigation is our Business.

BESS J. DuRANT
Direct Dial 803 231.7832
Direct Fax 803 231.7882
Email bdurant@sowellgray.com

August 30, 2016

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED
AUG 30 2016
SC Court of Appeals

Re: Deborah S. Dubose v. Ashley C. Cone and Branch Bank & Trust Company
Appellate Case No.: 2015-002485
SGSL No.: 6678/1500

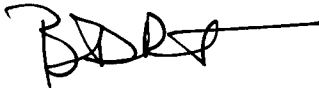
Dear Ms. Kitchings:

Pursuant to Rule 211, SCACR, attached please find eighteen (18) copies (one original unbound) of the Final Brief of Respondent, along with a Certificate of Counsel and Proof of Service in the above-referenced matter. Please return three (3) clocked in, bound copies of the Final Brief via our courier.

By copy of this letter and as evidenced by the Proof of Service, we are serving same upon counsel for the Appellant.

Thank you for your assistance in this matter and please contact me if you have any questions.

Sincerely,



Bess J. DuRant
BJD:tc
Enclosures

cc: Pope D. Johnson, III, Esquire (via US Mail)
W. Steven Johnson, Esquire (via US Mail)
Arthur E. White, III, Esquire (via US Mail)