

THE STATE OF SOUTH CAROLINA
In the Circuit Court for Hampton County

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable Perry M. Buckner, III
Circuit Court Judge

Case No. 2015-CP-25-00065

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

vs.

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

Of Whom Laura Weekley, Segel, Individually, and As Personal
Representative of the Estate of William James Weekley, Deceased
is
the.....Appellant.

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JUN 02 2017

SC Court of Appeals

RESPONDENT'S PETITION FOR REHEARING
PURSUANT TO RULE 221 SCACR

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488

Other counsel of record:

Kelly McPherson Jolley, Esq.
Ariail Burnside Kirk, Esq.
PO Box 22230
Hilton Head Island, SC 29925

Amanda A. Bailey, Esq.
P.O. Box 336
Myrtle Beach, SC 29578

Pursuant to Rule 221 SCACR, the Respondent Betty W. Denney, by and through her undersigned counsel, petitions this Court for a rehearing of the Second Finding in its Unpublished Opinion in this matter filed May 17, 2017. *See Estate of Willie G. Weekley, Deceased, by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Unpublished Op. No. 2017-UP-208.

Pursuant to the Second Finding in the Opinion, this Court failed to address the ultimate issue as determined by the Probate Court for Hampton County and by the Court of Common Pleas for Hampton County in the appeal of the Probate Court's Order: compliance with the Will of the Testator, Willie G. Weekley. (Opinion, pp. 2-3).

The case came to the Honorable Perry M. Buckner for an appeal of the February 6, 2015, Order of Judge Odom granting summary judgment to Mrs. Denney requiring that certain property be returned to her father's estate where the transfers were not made in compliance with Willie G. Weekley's Will. (R. pp. 16-27). In his Order, Judge Buckner upheld the ruling of Judge Odom granting summary judgment to Betty W. Denney, the Personal Representative of the Estate of Willie G. Weekley, Mrs. Denney's father. (R. pp. 28-31). In his Order, Judge Buckner found

After considering the arguments at the hearing, the Probate Court's Order of February 6, 2015, and the submissions of the Appellant and Respondent, this Court finds that the Appellant cannot produce any evidence of compliance with the testator's intent, namely that the right of first refusal provision in Section VII of the Will was complied with.

(*Id.*)

Nowhere in its Opinion does this Court address compliance with the Will and the Testator's intent, the two ultimate requirements in cases involving probate matters. At no time was the Appellant ever able to demonstrate compliance with her grandfather's Will

and the right of first refusal contained in the Will. Without such compliance, the property transfers complained of by the Respondent should remain voided as determined by the Probate Court and upheld by Judge Buckner. There is no mention of this non-compliance in this Court's ruling on the appeal.

As Judge Buckner asked during the hearing of the appeal, there were no facts regarding the ultimate issue of compliance with the Will.

THE COURT: But she [the Probate Judge] found that the transfers were null and void and that the properties should be returned to the Estate of W.G. Weekley for distribution pursuant to the terms of the Will because there was no evidence of compliance, isn't that correct?

MS. JOLLEY: Yes, Your Honor.

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

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

(R. p. 191).

There is NO evidence that the transfers complained of by the Plaintiff in Paragraph 9 of her Complaint in this matter complied with this Section VII of the Will in that there is no evidence that there was a right of first refusal given to remaining devisees as required. (See R. pp. 178-179; R. pp. 190-191) Counsel for the Appellant, both present and past, have conceded this before both the Probate Court and the Circuit Court. *Id.*

The Court made no determination regarding the ultimate issue of compliance with the Will of Willie G. Weekley, which is the ultimate determination of the outcome of the matter, and for which there is no dispute as to the facts that there was no compliance.

There were not a mere scintilla of evidence of compliance presented, affirmative defenses notwithstanding. There were no issues of fact related to this issue and Ms. Denney is entitled to prevail on that issue as a matter of law, which this Court did not address. Rule 56(c) SCRPC. Unlike in the case of *Robinson v. Estate of Harris*, 388 S.C. 616, 698 S.E.2d 214 (2010), there was no thirty-nine years waited to challenge a quiet title action. Ms. Denney brought this matter as soon as she could within her time of appointment as her father's Personal Representative.

In addition, in response to the Appellant's affirmative defenses of laches, waiver, and estoppel, this Court notes that Ms. Denney was appointed Personal Representative on July 14, 2006, and the Complaint was filed on November 14, 2007. Therefore, this Court finds that the time which passed before filing did not invoke the equitable remedies of laches, waiver, and estoppel.


(R. pp. 28-31)

Without addressing the issue of compliance with the Will, this case will be remitted to the Circuit Court with the same issues to be decided and where no compliance can or will be shown as to the right of first refusal in the Will.

For these reasons, the Appellant request that this Court rehear this matter.

Mt. Pleasant, South Carolina
May 30, 2017

Respectfully submitted,



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Of Whom Laura Weekley, Segel, Individually, and As Personal
Representative of the Estate of William James Weekley, Deceased
is the.....Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing pursuant to Rule 221 SCACR by depositing copies of same in the U.S. mail, postage prepaid, on this 29th Day of May, 2017, addressed to all counsel of record as follows: Kelly M. Jolley, Esq., Ariail Burnside Kirk, Esq., P.O. Box 22230, Hilton Head Island, SC 29925, and Amanda A. Bailey, Esq., P.O. Box 336, Myrtle Beach, SC 29578.



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Mt. Pleasant, SC
May 30, 2017

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G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
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The Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Estate of Willie G. Weekley, Deceased By Its Personal Representative Bett
W. Denny v L.C. Weekley, et al.
Court of Appeals Case No: 2015-001721
File No.: 1273.0001

Dear Ms. Kitchings:

Enclosed please find the following in the above-referenced matter:

1. An original and seven (7) copies of the Respondent's Petition for Rehearing Pursuant to Rule 221 SCACR:
2. An original and one (1) copy of a Proof of Service for same.

Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee for the Petition. Please file the originals and return one copy of the Petition and the Proof of Service to me in the enclosed envelope. By copy of this letter, I am serving same upon opposing counsel. Should you have any questions, please feel free to contact me. With kind regards, I remain

Yours very truly,


G. Hamlin O'Kelley, III

Enclosures

cc. (w/enc.): Kelly M. Jolley, Esq.
Ariail B. Kirk, Esq.
Amanda A. Bailey, Esq.

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