

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2017-002165

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr. and
Kenny Boykin,.....Respondents,

v.

Zady R. Burton, Individually and as Personal Representative of
the Estate of Helen L. Burton,.....Petitioner(s).

Of Whom Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L.
Burton is the Appellant and Jimmy Boykin is the Respondent.

RETURN
TO
PETITION FOR WRIT OF CERTIORARI

Moultrie B. Burns, Jr.
Savage, Royall & Sheheen, L.L.P
Post Office Drawer 10
Camden, South Carolina 29021
Attorney for Respondents
Telephone: (803) 432-4391

Other Counsel of Record:
Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, South Carolina 29020
Attorney for Petitioner(s)
Telephone: (803) 424-1919

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QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that a mediation agreement existed?
2. Even if a mediation agreement did exist, did the Court of Appeals err in holding that it should be enforced as ordered?

STATEMENT OF THE CASE

Decedent died in 2006 owning her home at 72 Burdell Road (hereinafter Home) which is the subject of the controversy. The estate still has not disposed of or distributed the Home.

In his affidavit, Respondent Boykin confirmed he is 35 years old and has resided in the Home since he was 7 years old. (R. p. 56). The estate has no significant assets other than the Home and the obligations and cost of administration exceed the equity in the home, which is mortgaged. (R. p. 23 ¶ 45).

Naming all the interested parties in said estate, Boykin, his father (Sammy) and one brother (Kenny) brought an action in the probate court against Petitioner Burton, individually and as Personal Representative and another brother (Kenny). The Lis Pendens states its purpose is for the sale of real estate pursuant to S.C. Code 62-3-1301 et seq. (R. p. 9). The Amended Complaint filed May 31, 2013 prays for the same relief by way of private sale to Boykin. (R. p. 13 ¶ 20). Burton filed responsive pleading in which he alleges "... he is the residuary devisee of decedent's will....and is entitled to the fee simple absolute ownership of the Home Place." (R. p. 23 ¶ 42&43). The case was removed to the circuit court by order dated August 8, 2013. (R. p 40).

Boykin's father (Sammy) died and his two brothers (Kenny and Sandy, Jr.) quit claimed any interest in the home. (R. p. 56). A mediation was conducted by stipulation on May 2, 2014 by retired Judge G. Thomas Cooper, mediator, resulting in his Proof of ADR providing that the matter was "fully settled" with the agreed to terms of the suit settlements and sale of the Home being reduced to writing by the attorneys on the mediator's letterhead, signed by Appellant and Respondent, and attached to and filed with the Proof of ADR. (R. pp. 42-44).

Boykin filed his Motion to enforce said mediation agreement because Burton refused to comply with the mediated settlement, resulting in the Order of Circuit Court Alison Lee dated May 14, 2015, granting Boykin's Motion (R. .2). The Court of Appeals affirmed by Unpublished Opinion No. 2017-CP-340 filed August 9, 2017.

ARGUMENTS

1. CONTRARY TO BURTON'S ARGUMENT, THERE IS A MEDIATION AGREEMENT TO ENFORCE.
 - a) G. Thomas Cooper, Jr. (retired Circuit Court Judge) was the mediator and the agreement is on his letterhead. (R. at 44).
 - b) The mediator, on his Proof of ADR confirmed that the matter was "fully settled". (R. at 43-44).
 - c) Circuit Court Alison Lee granted Boykin's motion to enforce the mediated settlement agreement by specifying eight (8) steps to be accomplished simultaneously. (R. at 2).
 - d) The key word in Judge Lee's Order is "simultaneously". Burton had required that the real estate closing, dismissal of the cause of action, mutual releases and even the payoff of the existing mortgage be handled piecemeal. This was the sole reason Boykin found Burton's "settlement agreement and release" to be unacceptable, that document being attached to Boykin's memorandum (R. at 48-61).

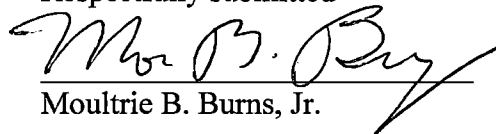
2. CONTRARY TO BURTON'S ARGUMENT, THERE IS A BASIS FOR THE
REMEDY GRANTED BY THE COURT OF COMMON PLEAS

Judge Lee's Order granted Boykin's motion to enforce the mediated agreement upon her "...review of all the pleadings, motions, memoranda, exhibits, affidavits and based upon the argument of counsel during the hearing." (R. at 2) In support of his motion, Boykin submitted a Memorandum (R. at 48-62) which included as Exhibit "A" a proposed "settlement agreement and release" (R. at 51-55) When asked by Judge Lee, Burton's attorney confirmed that he prepared it. (R. at 121, lines 5-8). Given that Burton's own proposal make specific provisions for a deed of distribution, mortgage payoff, etc., Burton's arguments now that a) the deed and mortgage were not intended by the parties to the mediated agreement and b) should not be discussed because of confidentiality, seems misplaced.

The Court of Appeals, citing Patricia Grand Hotel, LLC vs MacGuire Enters, 372 S.C. 634, 643 S.E. 2d 692 (Ct. App. 2007), makes it plain that the trial court has the duty to ascertain the intentions of parties to a settlement agreement. In this case, Judge Lee ascertained the parties' intent and required that eight (8) steps be taken simultaneously, rather than piecemeal as Burton tried to require.

Based upon the above, it is submitted that Burton's Writ should be denied.

Respectfully submitted


Moultrie B. Burns, Jr.

November 20, 2017

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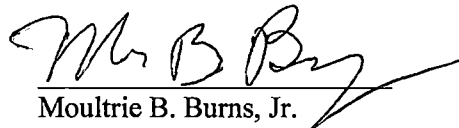
Of Whom Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L. Burton
is the Appellant and Jimmy Boykin is the Respondent.

CERTIFICATE OF SERVICE

I, Moultrie B. Burns, Jr., do hereby certify that, on November 20, 2017, I served a copy of the Return to
Petition for Writ of Certiorari in the captioned case on the following individuals by U.S. Mail, first
class, sufficient postage affixed, addressed as follows:

The Honorable Janet C. Hasty
Kershaw County Clerk of Court
Post Office Box 1557
Camden, South Carolina 29021

Roger B. Jellenik, Attorney at Law
1106 Little Street
Camden, South Carolina 29020



Moultrie B. Burns, Jr.
PO Drawer 10
Camden, SC 29021
(803) 432-4391

SWORN TO and subscribed before me this
20th day of November, 2017

Nancy M. Richbourg
Notary Public for South Carolina
My Commission expires: 9/22/18