

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2015-001752
Unpublished Opinion No. 2018-UP-038

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge
Stephanie P. McDonald, Circuit Court Judge at Trial
Lower Court Case No. 2012-CP-10-3421

RECEIVED
MAR 05 2018
SC Court of Appeals

Mamie F. Nichols.....Appellant,

vs.

Albert Napoleon Thompson, Jr., Al Thaddeus Thompson, Titus Sherod Thompson and Asia Rachal Thompson.....Respondents.

**RESPONDENT'S RETURN TO APPELLANT'S
PETITION FOR REHEARING**

Respondents submit this Return to Appellants' Petition for Rehearing pursuant to Rule 240, SCACR and respectfully requests that the Court's opinion in this matter be left intact without further proceedings.

A. The Court correctly ascertained that the deed which was filed by an unlicensed attorney was irrelevant in the Court's decision

On April 22, 2006, a Title to Real Estate was filed transferring a life in the property (TMS #460-04-04-079) to Mamie F. Nichols for and during her natural life, and the remainderment to her daughter Donna Thompson. There were no property transfers prepared after this deed was filed. Upon the death of Donna Thompson, her children, as her heirs, are then granted possession

of this property. Following the death of Donna Thompson, at no time did Ms. Nichols transfer her own interest in any other way. When Ms. Nichols died, property was automatically titled exclusively to the Respondents who are Donna Thompson's heirs.

On a number of occasions, the Appellant's have consistently misstated that the preparer of the deed in question, Russell Brown, was disbarred. Respondents would like to clarify that this attorney was not disbarred as stated by the Appellant. Pursuant to the Order of the Supreme Court Disciplinary Counsel, Mr. Brown resigned his license and received a public reprimand. He was given the option to regain his license at a later time.

Appellant argues that because he was an unlicensed attorney, that he gave incorrect advice when the deed was prepared. Unfortunately, Mamie Nichols is deceased and no one can testify on her behalf. The deed was prepared as instructed by the late Ms. Nichols and she signed the deed on her own free will, it was properly witnessed, notarized and filed with the court.

As stated in the Opinion of the Court, there is no evidence that the parties were not aware of the unauthorized practice of law being committed. In addition, there is no evidence that Mr. Brown actually prepared the deed. The only evidence that was provided in the trial of this case is that the deed was signed, witnessed, notarized by Mr. Brown (his notary was active at the time), and filed by Mr. Brown. There was no evidence that the deed was invalid, improperly executed, that Mamie Nichols was not of sound mind and disposing memory, was under constraints and/or undue influence, or under the influence of alcohol and narcotics at the time the deed was executed.

Matrix Financial Services Corp. v. Frazier, 394.S.C. 134, 714 S.E.2d 532 (2011) finds that the court did not need to reach the issue of whether the bank's unauthorized practice of law barred equitable and legal relief because the bank could not foreclose on an invalid mortgage obtain by the deceased husband on property titled exclusively to the wife. No evidence has been given in

the lower court by the Appellant that Ms. Nichols was aware of any unauthorized practice of law. Only evidence that Ms. Nichols signed the deed on her own free will and desire. Testimony of her daughter, Barbara Gillard confirmed Ms. Nichols' desires that upon the death of Donna Thompson, she wanted the property to go to Ms. Thompson's children.

Mr. Brown's license to practice law has no effect, influence or relevance in the signing of the deed. Therefore, Appellant's request for a rehearing should be denied.

B. Appellant Waived Right to Appeal Issue of Confidential Relationship

During trial, a Motion for Directed Verdict was made by the Appellant arguing that a confidential relationship existed making the deed invalid. The Trial Court ruled that there was a factual issue and that it would be presented to the jury to rule on a verdict form. The jury ruled that there was no evidence a confidential relationship existed.

The Opinion states that the issue is not reversible as there was not an error and that the Appellant waived the issue of submitting the question of the existence of a confidential relationship to the jury. Appellant argues in their Motion for Renewal that they did not waive the issue and that the error is reversible.

During trial, after close of all evidence, the parties are given the opportunity to submit motions, and they have a right to renew their motion for directed verdict. The Trial Judge holds a charging conference in which the parties each present jury instructions and the Court determines which instructions will be presented to the jury. The parties have a duty to object or add any charges during the conference. In addition, after a jury has presented their verdict form, should a party believe that an error occurred, they must submit a motion for judgment notwithstanding the verdict. Appellant did not renew her motion for directed verdict, object to the jury instructions or submit a Motion for Judgment Not Withstanding the Verdict. Her failure to do so means she failed

to preserve the issue regarding the confidential relationship and jury verdict form. *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908, 912 (Ct. App. 1995). (“Because they did not raise the alleged error at the first opportunity, we hold the landowners failed to preserve any issue regarding the court’s exhibit and verdict form.”). *Howard v. Kirton*, 144 S.C. 89, 101, 142 S.E. 39, 43 (1928)(“If the appellant thought there was confusion in the wording of the verdict, he should have called the attention of the court to the matter at the time the verdict was rendered; and, then any seeming confusion in the language of the verdict could have been easily cleared up).

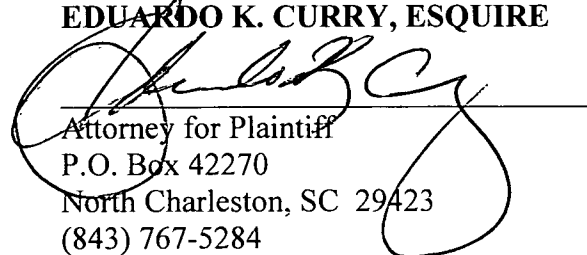
In addition, any issues on appeal must be presented in the Record on Appeal. It cannot be issued after a decision has been rendered. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339-40, 611 S.E.2d 485, 488 (2005).

Despite the absence of Appellant’s objection to this issue, there was no evidence that a confidential relationship existed that would make the deed invalid. The deed was signed and filed in 2006, more than eleven years ago. Discussions made with other family members, even after her daughter, Donna Thompson, died, clearly determined her intent for Ms. Thompson’s children to keep the property.

Conclusion

For the reasons set forth above, Appellant respectfully asks this Honorable Court to deny Appellant’s request for a rehearing and affirm its opinion in this matter.

**THE CURRY LAW FIRM, LLC
EDUARDO K. CURRY, ESQUIRE**



Attorney for Plaintiff
P.O. Box 42270
North Charleston, SC 29423
(843) 767-5284

North Charleston, SC
March 2, 2018

THE
CURRY LAW FIRM

Attorneys at Law

Eduardo K. Curry (SC,PA)
Cindy R. Pinckney (SC)

6518-D Dorchester Road (29418)
Post Office Box 42270
North Charleston, South Carolina 29423
currylawfirm@bellsouth.net

Tel: (843) 767-5284
Fax: (843) 767-5286
1-888-54CURRY (28779)

March 2, 2018

Jenny Abbott Kitchings
The SC Court of Appeals
PO Box 11629
Columbia, SC 29211

South Carolina Office of Court Administration
1220 Senate Street, Ste. 201
Columbia, SC 29201

RECEIVED
MAR 05 2018
SC Court of Appeals

RE: Mamie F. Nichols vs. Albert Napoleon Thompson, Jr., et al.
Appellate Case No. 2015-001752

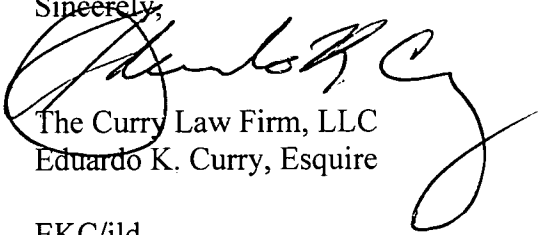
Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the Respondent's Return to Appellant's Petition for Rehearing. Please file the original and return one stamped copy in the self addressed stamped envelope provided.

By copy of this letter, I am hereby serving same upon counsel listed below.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


The Curry Law Firm, LLC
Eduardo K. Curry, Esquire

EKC/jld

cc: Precious Felder, Esquire