

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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MAY 17 2018

SC Court of Appeals

Gordon G. Cooper, Master-In-Equity

Trial Court Case No. 2014-CP-42-04205

Appellate Case No. 2016-000916

Ex Parte Anthony L. Mathis,Appellant,

Invacare Corporation, Inc. and all of its subsidiaries, assignors, and
assignees,..... Respondent,

v.

MD Medical, LLC and Gary Day,Defendants.

APPELLANT’S MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING

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STATEMENT OF ISSUES FOR REHEARING

- I. This Court's May 2, 2018 Opinion overlooks and/or misapprehends Appellant's argument that the Circuit Court did not have jurisdiction and authority to find him personally liable to Respondent because the August 24, 2015 Order of Reference for Rule to Show Cause failed to notify Appellant that he may be subject to personal liability in this matter and wholly fails to notify Dr. John Petrich whatsoever.
- II. This Court's May 2, 2018 Opinion overlooks and/or misapprehends Appellant's argument that the Respondent could not establish clear and convincing evidence under the Statute of Elizabeth and the Circuit Court lacked jurisdiction and authority to apply the Statute of Elizabeth in the supplemental proceedings underlying this appeal.

STATEMENT OF THE CASE

This matter arises from an August 24, 2015 Order of Reference for Rule to Show Cause that required Dr. Anthony L. Mathis, DPM (hereinafter "Appellant") to appear for deposition and otherwise fully, completely, and truthfully respond to discovery in accordance with the South Carolina Rules of Civil Procedure. The Order of Reference for Rule to Show Cause arose from a default judgment Respondent obtained on January 21, 2015 against MD Medical, LLC, a South Carolina limited liability company, and Gary Day, an individual, upon allegations that MD Medical, LLC and Gary Day had breached contractual obligations to Respondent. Appellant was not a party to the action in which Respondent obtained its judgment, was not served with any pleadings or orders in that matter and was not a party to the contract underlying Respondent's action against MD Medical, LLC and Gary Day.

By Order dated December 14, 2015, the Circuit Court held Appellant personally liable for the January 21, 2015 judgment and further ordered Dr. John Petrich (hereinafter "Dr. Petrich") to redirect contractual payments he owes Appellant to Respondent. On January 4, 2016 Appellant filed a Motion requesting that the Circuit Court reconsider and amend its December 14, 2015 Order. That Motion was denied by Order of the Circuit

Court dated March 30, 2016. Appellant filed his Notice of Appeal from those Orders on or about April 28, 2016. This Honorable Court affirmed the Circuit Court's Orders in its Opinion filed on May 2, 2018. Appellant hereby

ARGUMENT

I. This Court's May 2, 2018 Opinion overlooks and/or misapprehends Appellant's argument that the Circuit Court did not have jurisdiction and authority to find him personally liable to Respondent because the August 24, 2015 Order of Reference for Rule to Show Cause failed to notify Appellant that he may be subject to personal liability in this matter and wholly fails to notify Dr. John Petrich whatsoever.

The May 2, 2018 Opinion of this Court finds the Circuit Court had authority to enter judgment against Appellant and to order Dr. Petrich to redirect his contractual payments because South Carolina laws allows a master-in-equity to order that non-exempt property of a judgment debtor in the hands of a third party or owed to the judgment debtor be applied toward satisfaction of a judgment. Appellant contends that this Court's holding in that regard is misplaced because Appellant has not challenged the Circuit Court's authority in that regard. Appellant's argument actually challenges the Circuit Court's authority at the step prior in which the Circuit Court found that the proceeds of Appellant's contractual agreement with Dr. Petrich were in fact property of the judgment debtor.

Appellant's position is that the Circuit Court did not have jurisdiction and authority over the proceeds of Appellant's contractual agreement because the August 24, 2015 Order of Reference for Rule to Show Cause does not properly notify Appellant that the nature and validity of that contractual agreement would be subject to being set aside by the Circuit Court. See Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978) (holding that "Due process requires that a litigant be placed on notice of the issues which the court is to consider."). Appellant further contends that the August 24, 2015 Order of Reference and

Rule to Show Cause does not properly plead and provide notice that the issue of ownership of the proceeds of the appellant's contractual agreement would be before the Circuit Court in supplemental proceedings. More importantly, Appellant asserts that long-standing South Carolina law forbids a court from summarily disposing of the issue of ownership in supplementary proceedings. Wannamaker v. Bryant, 165 S.C. 107, 162 S.E. 779, 780 (1932); Palmetto Bank & Trust Co. et al. v. McCown-Clark Co. et al., 143 S.C. 98, 141 S.E. 155 (1928); and Deer Island Lumber Co. v. Virginia-Carolina Chemical Co., 111 S. C. 299, 97 S.E. 833 (1918).

This Court's May 2, 2018 holding that the Circuit Court had authority to apply property of a judgment debtor in the hands of a third party or owed to the judgment debtor toward satisfaction of the judgment overlooks and/or misapprehends Appellant's argument that the proceeds of his contractual agreement are not property of the judgment debtor in this case. The Appellant is indeed a third party; however, he has claimed and made a prima facie showing that he and he alone owns the contractual proceeds the Circuit Court seeks to apply toward Respondent's judgment. As the Appellant has argued from the outset of this matter (See Record on Appeal at pp. 143, line 20 – 146), the Circuit Court did not have jurisdiction nor authority to assert control over those proceeds in the supplemental proceedings underlying this appeal. South Carolina law specifically forbids the Circuit Court from depriving Appellant his day in court or of the right of trial in the form prescribed by law for a regular judicial procedure where property he claims to be his is sought to be applied to the debt of another. Palmetto Bank & Trust Co. et al., 143 S.C. 98, 141 S.E. at 156.

The Circuit Court did not have jurisdiction and authority to attach the proceeds of

Appellant's contractual agreement with Dr. Petrich in the supplemental proceedings at issue in this case. At most, the Circuit Court's authority was restricted to requiring Appellant to post a bond or cash security in the amount of the judgment debt until the issue of ownership of the contractual proceeds could be determined in a proper judicial proceeding. *Id.* "A third person claiming property rights which have not been passed upon in the original action under which the execution is issued should not be deprived either of his day in court or of the right of trial in the form prescribed by law for a regular judicial procedure." *Id.* Accordingly, this Honorable Court should grant Appellant's request for a rehearing of this matter, issue an order vacating this Court's May 2, 2018 Opinion and issue a new opinion reversing the Circuit Court's Orders of December 14, 2015 and March 30, 2016.

II. This Court's May 2, 2018 Opinion overlooks and/or misapprehends Appellant's argument that the Respondent could not establish clear and convincing evidence under the Statute of Elizabeth and the Circuit Court lacked jurisdiction and authority to apply the Statute of Elizabeth in the supplemental proceedings underlying this appeal.

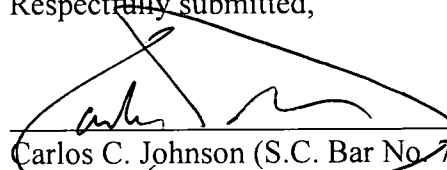
The May 2, 2018 Opinion of this Court sets forth the standard of proof governing fraudulent conveyance claims under South Carolina law and the scope of review for a case heard by a master-in-equity; however, the May 2, 2018 Opinion overlooks and/or misapprehends and fails to address Appellants argument that he is not a judgment debtor in this matter and, therefore, his personal assets were not subject to the Circuit Court's jurisdiction. As discussed in Appellant's final briefs, and as reiterated above, there is no provision of South Carolina law that either expressly or by implication gives the Circuit Court authority to summarily dispose of the issue of ownership, or to order that the sales proceeds Appellant claims as his personal funds be applied towards the satisfaction of

Respondent's judgment through supplemental proceedings. *Id.*; see also Deer Island Lumber Co., *supra.* and Wannamaker v. Bryant, *supra.* Appellant asserts that South Carolina law specifically forbids the Circuit Court's application of the Statute of Elizabeth in this matter. This Court's May 2, 2018 Opinion overlooks and/or misapprehends Appellant's argument against application of the Statute of Elizabeth and overlooks the South Carolina law supporting Appellant's argument. Therefore, this Honorable Court should grant Appellant's request for a rehearing of this matter, issue an order vacating this Court's May 2, 2018 Opinion and issue a new opinion reversing the Circuit Court's Orders of December 14, 2015 and March 30, 2016.

CONCLUSION

Based upon the foregoing arguments and cited authorities, Appellant respectfully requests a rehearing of this matter and an order vacating this Court's May 2, 2018 Opinion and issuing a new opinion reversing the Circuit Court's Orders of December 14, 2015 and March 30, 2016.

Respectfully submitted,



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