

STATE OF SOUTH CAROLINA  
COUNTY OF  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-21-3062

MICHAEL DENNIS MOORE

THOMAS PAUL MOORE; FRANCINE  
LAURA LAWHON; LINDA KAYE MOORE;  
AND PHILLIP FREDERICK MOORE  
RESPONDENTS

APPELLANT

Submitted by: The Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

2018 MAY -8 AM 10:26  
 FILED  
 DORIS POLK, CLERK  
 SC COURT OF APPEALS  
 FLORENCE COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

RECEIVED

JUN 18 2018

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2141  
Judge Code

4/25/18  
Date

CERTIFIED: A TRUE COPY

*Doris Polk Ottara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C. Page 1 of 4



STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

IN THE MATTER OF:  
THE ESTATE OF THOMAS G. MOORE  
(Probate Court File 2014-ES-21-00134)

Michael Dennis Moore,

Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,  
Linda Kaye Moore, and Phillip Frederick  
Moore,

Respondents.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
CASE NO. 2016-CP-21-3062

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JUN 18 2018

SC Court of Appeals

ORDER AFFIRMING THE PROBATE  
COURT

2018 MAY -8 AM 10:06  
DORIS FOULOS O'HARA  
C.C.P. & G.S.  
FLORENCE COUNTY, SC

FILED

THIS MATTER came before me pursuant to an appeal from the order of Florence County Probate Judge J. Munford Scott, Jr., dated November 28, 2016, and filed November 29, 2016, directing the Appellant—Personal Representative of the estate of Thomas G. Moore—to take certain steps to close the estate and distribute its assets. An appellate hearing was held on February 14, 2018, and was attended by N. David Durant, Sr. and Norwood D. Durant, Jr. on behalf of the Appellant, C. Pierce Campbell; R. Edward Henderson, Jr. on behalf of Respondent Thomas Paul Moore; and Respondent Phillip Frederick Moore, *pro se*. Upon careful consideration of the record, pleadings, and oral arguments, the decision of the Probate Court is affirmed.

#### INTEGRATION

The first issue before the Court was the Probate Court's ruling that a document expressing intent to devise Decedent's one-half interest in a four (4) acre parcel of property in Richland County, South Carolina ("Church Property") to his oldest son, Respondent Thomas Paul Moore, was integrated into the Decedent's last will and testament.

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*Doris Foulos O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

All of the issues involved in this appeal are actions at law. In matters of law, the appellate court cannot disturb the lower court's findings of fact unless there is no evidence in the record to support the lower courts findings. *Howard v. Mutz*, 315 S.C. 356, 434 S.E.2d 254 (1993). Further, it is a determination of fact as to whether or not the documents purported to be the will are in fact the will of the testator. *Goethe v. Browning*, 146 S.C. 7, 143 S.E. 362 (1928). The findings of fact on the issue of what constitutes the testator's will are conclusive and cannot be overturned unless there is no evidence to support them. *Id.*

The Probate Court found, and the record reflects, that after Decedent's death, the safe at his home was opened. Contained in the safe were the Decedent's will and a letter in an envelope with Decedent's letterhead on it. This letter identified the Church Property and included testamentary language bequeathing Decedent's interest in the property to Respondent Thomas Paul Moore. The Probate Court applied the law of integration and found that it was the intent of the Decedent that the document regarding disposition of the Church Property be part of the Decedent's will. Though the doctrine of integration has not been analyzed by many South Carolina courts, the parties concede it is the law of the State and simply disagree on its application to these facts.

Here, there is ample evidence to support the Probate Court's finding that the letter regarding disposition of the Church Property should be integrated into the Decedent's last will and testament. No facts contrary to the letter being integrated into the will were presented at the trial of this matter. Because there is sufficient evidentiary support for the Probate Court's decision to apply the doctrine of integration, this decision cannot be disturbed and is affirmed.

#### **SALE OF BEACH HOUSE**

The second issue before the Court was whether the Decedent's estate was entitled to one-half of the proceeds from the sale of the Cypress Road property. Decedent and Appellant owned this property as joint tenants with right of survivorship. They entered into a binding contract to

sell the property before Decedent's death. Shortly after Decedent's death, the sale was closed. Appellant kept all of the proceeds from the sale, despite the existence of the contract before Decedent's death. The Probate Court, citing *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, 307 S.C. 76, 413 S.E.2d 852 (Ct. App. 1992), found that the joint tenancy with right of survivorship was limited by the contract of sale of the property and ordered Appellant to pay the Decedent's Estate \$162,500.00 for the Estate's portion of the sales proceeds.

An action to determine the title to real property is an action at law. *Grant v. State*, 395 S.C. 225, 717 S.E.2d 96 (Ct. App. 2011). In an action at law, the scope of the appellate court's review extends merely to the correction of errors of law. *Crary v. Djebelli*, 329 S.C. 385, 496 S.E.2d 21 (1998). Thus, the trial court's factual findings will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings. *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 538 S.E.2d 672 (2000).

As with the first issue, there is ample evidence to support the Probate Judge's findings, and they consequently must not be disturbed. It is undisputed that a contract to sell the Cypress Road property for \$324,500 was entered into in November 2013, before Decedent's death. It is also undisputed that the sale was closed on December 27, 2013, seven days after the Decedent's death. The issue on appeal, therefore, is a legal question about the effect of an executory contract to purchase and sell real estate, creating rights for Decedent after death.

After a *de novo* review of the legal issues, I find that the Probate Court correctly interpreted and applied the relevant law, and its decision with respect to the Cypress road property is hereby affirmed. Our Court of Appeals has held that a purchaser under an executory contract, like this one, for the purchase and sale of real property has an equitable lien on the property in the amount paid for the purchase price. *S.C. Fed. Sav. Bank v. San-A-Bel Corp.*, 307 S.C. 76, 413 S.E.2d 852, (Ct. App. 1992). Once the Decedent and Appellant entered into the binding contract, the

Decedent's death did not prevent him from preserving all of the rights under it simply because he was waiting for it to be executed. The contract entitled the purchaser to purchase the property according to the contract's terms, and entitled the Decedent and Appellant to receive an equal share of the proceeds. Thus, the Decedent's estate is entitled to one-half of the proceeds from the sale.

I do find a scrivener's error in the Probate Court's calculation of the sales proceeds to be paid to the Decedent's estate. The Probate Court mistakenly ordered \$162,500 to be paid to the Decedent's estate. One-half of the \$324,500 sale price, however, correctly totals \$162,250. Decedent's estate is therefore entitled to \$162,250 for its portion of the sales proceeds as further outlined in the Probate Court's Order.

#### ACCOUNTING FOR FUNDS

The third issue before the Court was whether the Probate Court properly considered the extensive evidence and testimony presented at trial and correctly ruled based on that evidence that the Appellant failed to pursue loans to the Decedent, failed to account for funds received which belonged to the Estate, and failed to account for loans made by the Decedent to the Appellant's own business.

Appellant's primary arguments are that he was surprised by the evidence presented at trial and was not permitted to submit explaining testimony or evidence post-trial. Appellant chose not to conduct discovery on these matters; no written discovery was exchanged between the parties, limited depositions were taken, and there were no Requests for the Production of Documents submitted. At trial, Appellant's trial counsel acquiesced to the admission of evidence related to the above-mentioned issues numerous times, either expressly or by failing to object to their introduction.

Appellant raised this issue and asserted these arguments for the first time on appeal. Therefore, it is not preserved for review. An argument not presented to the trial court on the record

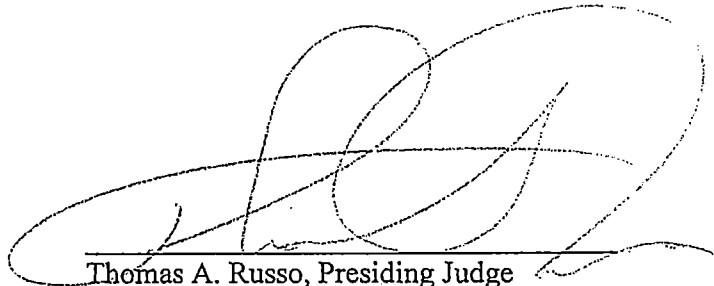
is not preserved for appellate review. *Wilson v. Builders Transport, Inc.* 330 S.C. 287, 498 S.E.2d 674 (Ct. App. 1998). Accordingly, the Probate Court's decision on the third issue is affirmed.

**CONCLUSION**

THEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the lower court's order is AFFIRMED. Appellant is to abide by all terms set forth in Probate Judge J. Munford Scott, Jr.'s original Order.

AND IT IS SO ORDERED.

April 25, 2018  
Florence, South Carolina



Thomas A. Russo, Presiding Judge  
Twelfth Judicial Circuit

**FILED**  
2018 MAY - 8 AM 10: 06  
DORIS POULOS O'HARA  
C.C.P. & G.S.  
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
*Doris Poulos O'Hara*  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

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IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
CASE NO. 2016-CP-21-3062

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of May, 2018 a filed-stamped copy of the Order Affirming the Probate Court was served via U.S. mail, in envelopes with postage prepaid and properly addressed to the following:

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