THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Case No. 2018-001464

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SC Court of Appeals

Vanessa Williams, Vanessa Williams, as
Conservator and Guardian of Sandra P. Perkins,
and Vanessa Williams, as Personal Representative
of the Estate of Sandra P. Perkins.....Respondent,

v.

Bradford Q. Jeffcoat, Jr. and
Blue Heron Builders, Inc.....Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Appellant.

INITIAL BRIEF OF THE RESPONDENT

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ISSUES ON APPEAL

The Respondent disagrees with the following issue raised by the Appellant in this matter.

II. Did the Master-in-Equity err in ordering partition and sale of Bradford Jeffcoat's home pursuant to a summary judgment motion when the record contained substantial evidence of misconduct that would have prohibited such relief?

For the reasons addressed herein, the Appellant should be precluded from raising the newly argued issues of alleged substantial evidence of misconduct as articulated in Argument section II.

FACTS

Respondent, Vanessa Williams ("Williams" or "Respondent"), is the daughter of Sandra Perkins ("Perkins"). Prior to her move to Alabama, Perkins and the Appellant, Bradford Q. Jeffcoat, Jr. ("Jeffcoat" or "Appellant") had been roommates for approximately fifteen (15) years (Williams depo. pp. 63-65). On April 28, 2000, Jeffcoat bought ownership in a residential property in Charleston, South Carolina. (07/12/16 Jeffcoat Aff. pp. 1, 3-4; 03/27/17 Jeffcoat Aff. pp 1-2, 5; 4/28/00 Deed). Shortly after his purchase, on July 1, 2000, Jeffcoat conveyed a half interest to Perkins in exchange for a mortgage in the amount of $43,550.00. (07/12/16 Jeffcoat Aff. p. 1). It is undisputed that Perkins paid all of the principal and interest (at 7.5% fixed rate for 15 years) on the mortgage and that the mortgage has since been released. (07/12/16 Jeffcoat Aff. p. 1; 03/27/17 Jeffcoat Aff. pp. 1-2; 07/01/00; Mortgage; 06/20/16 Satisfaction). Accordingly, on or about June 1, 2015, Perkins held an unencumbered estate in fee simple in the subject property with Jeffcoat as joint tenants with right of survivorship and not as tenants in common.

Prior to her death in November of 2015, Perkins suffered from advanced dementia. (Williams depo. pp. 46). Her condition began to rapidly deteriorate in the summer of 2015 and after being informed by Jeffcoat of her mother's infirmities, Williams drove to Charleston in order to assess the situation. (Williams depo. pp. 33-34). Upon observing her mother's condition and

determining that, as Perkins' only child, she would be the most appropriate person to provide for her mother's care going forward, Williams left Charleston on or about June 16, 2015 and brought Perkins back to Alabama to live with her. (Williams depo. pp. 33-34).

After consulting with legal counsel in Alabama, Williams concluded that the best way to provide for her mother was to become her Guardian and Conservator. Correspondingly, Williams petitioned the Probate Court of Baldwin County and was issued permanent Letters of Guardianship/Conservatorship on September 15, 2015. (09/15/15/ Decree & Letters).

Thereafter, as fiduciary, Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, and that as conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, she consulted with the Law Firm of Clawson & Staubes LLC in South Carolina. Based on the advice of counsel, Williams, as conservator, decided to pursue a partition action on behalf of Perkins against Jeffcoat. (01/17/17 π MSJ p. 3; 04/02/18 π MSJ p.3).

In early November 2015, while counsel was working on drafting the complaint for this partition action, Williams received the unfortunate news that her mother's health had suddenly taken a turn for the worse, and death was imminent. (01/17/17 π MSJ p. 3; 04/02/18 π MSJ p.3). Given that the subject property was still in the names of Perkins and Jeffcoat and held as joint tenants with right of survivorship, the death of Perkins would result in Jeffcoat being the sole owner of said property. As a result, Williams upon advice of counsel, decided that the best way to fulfil her duties was to sever her mother's joint tenancy and then pursue partition. (01/17/17 π MSJ p. 3; 04/02/18 π MSJ p.3).

Accordingly, pursuant to the advice of her Alabama and South Carolina counsel, Williams conveyed Perkins' interest in the subject property to herself on November 16, 2015, severing the joint tenancy and creating a tenancy in common with Jeffcoat. (11/15/15 Deed). Perkins died on November 27, 2015. (Williams depo. p. 18). In conveying the subject property to herself, Williams acted in the only way possible to retain the asset on behalf of Perkins' estate until determining its ultimate disposition. She took this action in accordance with Ala. Code § 26-2A-152(c)1 (1975). The conveyance was approved by order of the Probate Court of Baldwin County on January 15, 2016 while applying Ala. Code § 26-2A-152(c)1 (1975). (1/15/16 Order). Having severed the joint tenancy with Jeffcoat by destroying the unity of time, Williams then sought judicial partition pursuant to S.C. Code Ann. § 15-61-10 et seq. (1986), by complaint filed in this Honorable Court on November 23, 2015. (Verif., Compl. P. 1).

ARGUMENT

I. The Baldwin County Probate Court held subject matter jurisdiction over the guardianship and conservatorship proceedings regarding Sandra Perkins.

Williams' authority to act as guardian and conservator was appropriately granted by the Baldwin County Probate Court after proper notice and an open hearing on the facts of the case. Moreover, collateral challenges to subject matter jurisdiction in another state are limited to inquiries as to whether a judgment on its face shows that it was rendered by a court of competent jurisdiction but are not subject to attack on the merits of its decision. V.L. v. E.L., 136 S.Ct. 1017 (2016).

A. Attacks on Subject Matter Jurisdiction are limited in nature

A court in another state may explore the jurisdictional basis of a foreign court's order, but only in a limited way. It is well established law that where "the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be

presumed unless disproved by extrinsic evidence, or the record itself." Millikin v. Meyer, 311 U.S. 457 (1940); V.L. v. E.L., 136 S.Ct. 1017 (2016).

B. The Baldwin County Probate Court was properly informed on its jurisdiction and properly followed the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Baldwin County Probate Court has jurisdiction to appoint guardians pursuant to Ala. Code §§ 26-2B-203. Under this section there are several scenarios by which a petitioner may invoke the subject matter jurisdiction of the Baldwin County Probate Court. The first way is if Alabama is the home state of the respondent. Ala. Code § 26-2B-203(a)(1). "Home State" is defined by Ala. Code § 26-2B-201(a)(2) as follows:

> The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

There is no dispute that Alabama was not the home state of Perkins at the time of Williams' petition for guardianship and conservatorship and the adjudication of this matter.

The second way jurisdiction is invoked is through a significant connection to the state of Alabama as well as the following additional considerations promulgated in Ala. Code § 26-2B-201(B):

> (i) a petition for an appointment or order is not filed in the respondent's home state;
>
> (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
>
> (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 26-2B-206;

Moreover, in order to evaluate whether there is a "significant connection" the court is required by Ala. Code § 26-2B-201(a)(3) to consider the following factors:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Accordingly, the determination as to subject matter jurisdiction with respect to "significant connection" requires an analysis by the Judge of Probate at the time of the hearing.

Contrary to the allegations made by the Appellant, the emergency petition that was filed in this matter and the subsequent petition for permanent guardianship does not conceal the fact that South Carolina was Perkins home state. The emergency petition states in paragraph 2 "[t]hat SANDRA P. PERKINS has been residing in Baldwin County, Alabama for the last seven (7) days from the date hereof." Paragraph 3 states "[t]hat prior to residing in Baldwin County, Alabama, SANDRA P. PERKINS resided in Charleston, South Carolina." Paragraph 10 states "[a]dditionally and pursuant to Ala. Code. §§ 26-2B-201(a)(3) and 26-2B-201(b), SANDRA P. PERKINS has significant connection with County of Baldwin, State of Alabama. SANDRA P. PERKINS's only child resides in Lillian, Alabama and a substantial amount of her assets are held in a brokerage firm in Foley, Alabama." (6/25/15 Pet.). The petition further disclosed that "pursuant to 26-2B-203, a petition for appointment of a guardian or order is not pending in a court in the State of South Carolina." (6/25/15 Pet.). It is abundantly clear that the petition acknowledges South Carolina as Perkins' home state and further pleads that the court take jurisdiction pursuant to Perkins' significant connection to Alabama. (6/25/15 Pet.).

Likewise, the Probate Court did not assume special jurisdiction over this matter as there were no submissions or allegations made in either petition with respect to Ala. Code. § 26-2B-204(b). Accordingly, the speculative argument that a South Carolina court would have had the ability to dismiss this action upon request of the Alabama court is without merit. Since the Alabama court was never asked to consider its special jurisdiction and clearly acted pursuant to jurisdiction obtained through significant connection to Alabama, the Appellants are attacking a strawman and attempting to distract from the fact that the petitioner was transparent in her assertion that Perkins had been moved from South Carolina to Alabama only seven days prior to the petition; that Williams was her only child; that Perkins was not married; that Williams was appointed by Perkins as her first choice as attorney-in-fact which would come into effect in the event of disability or incapacity; and that all of these factors were considered by the Probate Court where Perkins was represented by a guardian *ad litem*. (7/09/15 Pet.). The idea that information regarding Perkins home state was withheld from the Probate Court of Baldwin County demonstrates a selective and gratuitous reading of the petition.

The Appellants' argument that Jeffcoat was entitled to notice of the hearing in Alabama is equally baseless. The law in Alabama requires that if Alabama is not the home state of the respondent, then the petitioner must give notice to those persons who would be entitled to notice if the petition was brought in the respondent's home state. Ala. Code § 26-2B-208. Looking to S.C. Code § 62-5-309, the Appellants assert that Jeffcoat had "care and custody" of Perkins at the time of the petition. Care and custody is not a clearly defined term in the statute, but there can be no dispute that Perkins was in the care and custody of Williams at the time of the petition and hearing. Williams was designated as Health Care Agent for Perkins pursuant to a Health Care Power of Attorney executed on November 19, 2009. (11/19/2009 Power of Attorney). Jeffcoat,

while admittedly living with Perkins prior to the move to Alabama, never had care or custody of Perkins at the time of the petition or immediately before it. There is nothing in the record that indicates that Jeffcoat was under any obligation to care for Perkins nor did he have a right to her custody. Despite the fact that Perkins lived with Jeffcoat for over fifteen years, there was no familial or legal relationship between him and her, which would have required notice to Jeffcoat pursuant to S.C. Code § 62-5-309.

The contention by the Appellant that Williams failed to inform the Probate Court of the South Carolina proceedings is also untrue. This fallacious allegation ignores the motion filed on January 11, 2016, which discloses the exact course of action taken by Williams in South Carolina and further explains the rationale of her decision to transfer Perkins' half interest in the property in question in order to preserve it for her estate. (1/11/16 Motion to approve transfer). The Appellants suggest that Williams' motion was "an attempt to address Jeffcoat's counterclaim without informing the Probate Court of the existence of the litigation." The motion states that "in November 2015, the law firm of Clawson & Staubes LLC in South Carolina was assisting Perkins with drafting a complaint requesting that said Real Property be partitioned via sale and the proceeds from sale be divided between Perkins and Jeffcoat." (1/11/16 Motion to approve transfer). The actual lawsuit was filed on November 23, 2015, which was only four days before Perkins death. The counter-claim by Jeffcoat disputing the transfer in question was filed on December 29, 2015. Given the circumstances, the Probate Court of Baldwin County was made aware of the South Carolina lawsuit in a timely fashion and the Motion to Approve Transfer of Real Property filed on January 11, 2016, was a transparent effort to inform the court of the circumstances of the transfer and the pending partition action.

A plain reading of the petitions filed in the Probate Court of Baldwin County shows that the decree granting Guardianship and Conservatorship to Williams was on its face rendered by a court of competent jurisdiction. Ruling otherwise requires a presumption that the court did not make the inquiries required of it in the statute. The court was clearly made aware of the fact that the petitioner sought to invoke jurisdiction through Williams significant connection to the state of Alabama, and it was within its power to find jurisdiction even if it did not publish those reasons in its Order granting Letters of Guardianship and Conservatorship. (10/15/15 Order). The material facts were presented to the court; all parties entitled to notice were in fact notified; and there is nothing in the record or extrinsic evidence that shows otherwise. This Court, therefore, has no grounds to further review the subject matter jurisdiction of Probate Court of Baldwin County, and should therefore not disturb its rulings.

II. There are no material facts in dispute despite the Appellant's mischaracterization of Williams's actions.

Following the mere scintilla rule, the record, when viewed in a light most favorable to Jeffcoat fails to create a material issue of fact. All of the transactions were done under the supervision of the court and on advice of legal counsel. Williams was Perkins only child and only immediate family member. Furthermore, Williams held a power of attorney, which would have allowed her to undertake all of the same actions without court supervision if she was seeking to be deceitful. As the Appellant acknowledged in his own motion for summary judgment, there is no factual dispute to be litigated. (4/17/2018 Δ MSJ). Upon losing his arguments on summary judgment, the Appellant is now seeking to reopen factual inquiries that he previously viewed as immaterial.

A. Standard of Review

Summary Judgment is governed by Rule 56 of the South Carolina Rules of Civil Procedure. Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Id. at 122, 708 S.E.2d at 769. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc.,365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id.

B. Appellant is estopped from claiming issues of material fact when he took the opposite position in his motion for summary judgment.

Judicial estoppel prevents a party from taking a position contrary to one taken earlier in the litigation. Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The Appellant filed a motion for summary judgment on April 17, 2018. (4/17/2018 Δ MSJ). In his motion, the Appellant asked the court to accept the facts as presented therein and rule that the transfer of title by Perkins by her conservator, Williams was invalid because the transfer did not comply with severance requirements under South Carolina law, and because Williams did not comply with Alabama

statutes regarding a conservator's ability to dispose of real property in another state. (4/17/2018 Δ MSJ pp. 13-14.). The Appellant concluded that there were no disputed facts in the case and asked the Master in Equity to rule only on the transfer of real property and whether it was in accordance with Alabama and South Carolina Law. (4/17/2018 Δ MSJ pp. 13-14.) It is clear that this was an apathetic attempt to have it both ways. The Appellant essentially takes the position that so long as the Master in Equity agrees with our position on the law, then we accept that there are no material issues of fact; however, if otherwise, then there are material issues that underlie the entire action that will render the actions of the Respondent void.

C. Appellant's arguments that there are multiple issues of material fact are duplicitous considering his arguments at the trial court level.

While not binding on this court, the 7th Circuit has opined that an argument cannot be preserved if it is only raised in a "perfunctory and underdeveloped manner" Kensington Rock Island L.P. v. American Eagle Historic Partners, 921 F.2d 122, 124-25 (7th Cir. 1990). Likewise, the 5th Circuit has ruled that in preserving arguments, a party must "press and not merely intimate" an argument. Kelly v. Foti, 77 F.3d 819, 823 (5th Cir. 1996). It is clear that the Appellant did not press its arguments with respect to disputed facts, and actually believed that those alleged disputed facts were immaterial to the transfer of real property. If he had thought otherwise, then the Appellant would not have filed a motion for summary judgment with the Master in Equity. Unlike the superficial emphasis on counterclaims and affirmative defenses found in its motion for summary judgment, Jeffcoat now conveniently argues that the factual allegations advanced on his counterclaims were actually material underpinnings to the alleged unlawful transfer of real property. This is a different position than the one advanced in Jeffcoat's motion for summary judgment, and it is plain that Jeffcoat expected the entire matter of the transfer of real property to be decided as a question of law. (4/17/2018 Δ MSJ). Framing the issues on appeal now as

questions of fact that were not considered by the Master in Equity conveniently ignores the Appellant's previous theory of the case and introduces new issues that were not pressed in the second summary judgment hearing or at best were introduced in a heedless manner.

III. Williams' transfer of real property on behalf of her ward, Perkins was lawful.

A. A Joint Tenancy with right of survivorship is severed by a Tenant's conveyance of property interest to a third party.

It is difficult to point directly to the primary source of the rules governing the severance of tenancies at common law just as it is difficult to source the direct cases from the ancient common law that established joint tenancies or tenancies in common. Numerous cases, however, in common law jurisdictions refer to the form of severance contemplated by the Respondent in this case.[1] Furthermore, other academic and secondary source publications make reference to this common law property rule. "In the ancient language of the law, joint tenants were said to hold ***per my et per tout***".[2] The preceding phrase is defined as "[b]y the half and by the whole". It is further described as:

> [T]he estate [undivided share] held by joint tenants; by the half for purposes of survivorship, by the whole for purposes of alienation.[3]

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[1] Nunn v. Keith, 289 Ala. 518 (1972); Smith v. Kofstad, 206 P.3d 441 (Alaska 2009); Estate of England, 233 Cal.App.3d 1 (1991); Alexander v. Boyer, 253 Md. 511 (Md. 1969); Matter of Estate of Bates, 492 N.W.2d 704 (Iowa App. 1992); Harmes v. Sprague, 105 Ill.2d 215 (Ill. 1984); Home Trust Mercantile Bank v. Staggs, 714 S.W.2d 792 (Mo.App. E.D. 1986); Smith v. Tang, 100 Ariz. 196 (1996); Reicherter v. McCauley, 47 Kan.App.2d 968 (Kan.App. 2012); Estate of Knickerbocker, In re, 912 P.2d 969 (Utah 1996); Estate of Gulledge, 673 A.2d 1278 (D.C. 1996); Marchel v. Estate of Marchel, 349 Wis.2d 707 (Wis.App. 2013); Hoover v. El Paso Nat. Bank, 498 S.W.2d 276 (Tex.Civ.App. —El Paso 1973); Ianotti v. Ciccio, 219 Conn. 36 (Conn. 1991); Edwin Smith LLC v. Synergy Operating LLC, 2012 -NMSC- 034 (N.M. 2012); Johnson v. Gray, 533 N.W.2d 57 (Minn.App. 1995); Valdez v. Occupants of 3908 SW 24th Street, 270 P.3d 143 (Okla. 2011); Williamson v. Williamson, 157 A.2d 110 (R.I. 1960); Lyon v. Lyon, 100 Wn.2d 409 (Wash. 1983); In re Estate of Bernecker, 654 A.2d 246 (Pa.Cmwlth. 1995); Foucart v. Paul, 516 So.2d 1035 (Fla.App. 5 Dist. 1987); Taylor v. Canterbury, 92 P.3d 961 (Colo. 2004); Shockly v. Halbig, 75 A.2d 512 (Del.Ch. 1950); Halleck v. Halleck, 216 Or. 23 (Or. 1959).

[2] Wilkins v. Young (1895) 144 Ind 1.

[3] Black's Law Dictionary (10th ed. 2014), ("per my et per tout").

Accordingly, the concept of joint tenancy under the common law allows each owner to hold an undivided share which vests in the survivor upon the death of the first joint tenant, but which is also a wholly owned share which may be completely alienated during the lifetime of the tenant.[4]

S.C. Code § 27-7-40 provides several non-exclusive mechanisms by which a joint tenancy with right of survivorship may be created and severed in South Carolina. Section 27-7-40 in its entirety states:

> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
>
> (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
>
> (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.
>
> (iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.
>
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.
>
> (v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.
>
> (vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally

[4] What acts by one or more of joint tenants will sever or terminate the tenancy 64 A.L.R. 2d 918 § 2 (Originally published in 1959); 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7-9.

to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

As argued in the Williams' motion for summary judgment, the statute acknowledges common law methods for creating a joint tenancy with right of survivorship, to wit: "[i]n addition to any other methods for the creation of a joint tenancy in real estate which may exist by law". The statute plainly envisages that there are other ways to create a joint tenancy in South Carolina. Accordingly, statutory creation of a joint tenancy is not exclusive and common law rules for the creation of a joint tenancy are still recognized. The Court of Appeals affirmed this rule in Estate

of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass, 359 S.C. 407 (Ct. App. 2004), opining:

> Appellant asserts that, at most, Rosemary's 1985 deed created a tenancy in common. "The common law method of creating a joint tenancy requires a conveyance to have four unities: unity of interest, unity of title, unity of time, and unity of possession." Smith v. Rucker, 357 S.C. 532, 593 S.E.2d 497, 499 (Ct.App.2004) (citing Jenkins v. Jenkins, 8 S.C.L. (1 Mill Const.) 48, 52 (1817)).

Therefore, a joint tenancy with right of survivorship is established where the grant or devise conveys unity of title, unity of interest, and unity of possession to two or more tenants at the same time.

By implication, statutory severance is likewise not the exclusive mechanism for destroying a joint tenancy. The common law rules for severance still apply and the destruction of one of the required unities of title destroys the joint tenancy and renders property holders "tenants in common." In Smith v. Cutler, 623 S.E.2d 644 at 647 (S.C. 2005), Chief Justice Toal held that in South Carolina, "unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."

Contrary to this holding, the Appellant reads into the statute that destruction of the joint tenancy is "limited to" the ways enumerated in S.C. Code 27-7-40(a). The statute does state that a "joint tenancy includes and is limited to, the following incidents of ownership:" and then goes on to list eight ways in which an interest of a joint tenant may vest upon the death, conveyance, divorce, or judicial sale. The legislative history of this section, however, suggests that there was no intention of subsuming the common law on the issue of severance.

S.C. Code 27-7-40(a) was introduced for the first time in March of 2000. The bill underwent several revisions before its adoption. Most notably, in the original bill, § 27-7-40(a)(iii) & (iv) read as follows:

(iii) The fee interest in real estate held in joint tenancy may not be encumbered **or conveyed** to a third party or parties by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **or conveyance**.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **or deed of conveyance**, the interest in the real estate shall be effectively encumbered **or conveyed** to a third party or parties.[5]

Subsequent revisions, however, resulted in the current language of the statute that removes the language contemplating unilateral conveyances, and those sections now read as follows (with previous language struck):

(iii) The fee interest in real estate held in joint tenancy may not be encumbered ~~[or conveyed]~~ by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance ~~[or conveyance]~~.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance ~~[or deed of conveyance]~~, the interest in the real estate is effectively encumbered ~~[or conveyed]~~ to a third party or parties.

The implication of the legislature removing language that would undeniably prohibit the unilateral severance of a joint tenancy seems to be that it did not intend to proscribe this common law method of severing joint tenancies. Furthermore, it is clear that "encumbrance" and "conveyance" are not synonymous for the purposes of this statute. Given the legislative history and the plain meaning of encumbrance, conveyances are excluded from the definition. According to Black's Law Dictionary, encumbrance means:

encumbrance n. (16c) A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. • An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled incumbrance. — encumber, vb

or:

Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.[6]

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[5] S.C. Gen. Assemb. Act No. 398, Section 2. Reg. Sess. 1999-2000 (2000).

[6] Black's Law Dictionary (10th ed. 2014), encumbrance

Applying the law to the facts of the case at bar results in a tenancy in common with Williams and Jeffcoat each holding a one-half interest in the subject property. The subject property was conveyed from Sandra P. Perkins, who held a joint survivorship interest with Bradford Q. Jeffcoat, Jr., to Vanessa Williams on November 16, 2015. This conveyance severed the unity of time requirement with respect to the new tenancy, which in turn severed the joint tenancy with right of survivorship. The Supreme Court in Smith v. Cutler spells out exactly what language to include in the granting clause and habendum clause of a deed to create an indestructible tenancy in common:

> "[w]e hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor." 366 S.C. at 551, 623 S.E.2d at 647.

Had Perkins and Jeffcoat chosen the above language, then the conveyance by Perkins would have failed. Having opted instead for joint tenancy with right of survivorship, the parties impliedly contemplated the fact that either party may sever the joint tenancy by conveyance to a third party.

B. Alabama Law permits a Conservator to Collect Hold and Retain property in another state.

The Appellant argues that Alabama Law does not permit a conservator to transfer property to herself without court approval. Ala. Code § 26-2A-152(d)(3) (1975) proscribes the disposal of real property for cash or credit. The Respondent, by contrast, sought to protect a valuable asset of Perkins' estate by conveying it to herself as fiduciary. As fiduciary, Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, the fact that her mother named her as power of attorney, and the fact that as a conservator, she was required to

retain and protect the assets of her mother and/or mother's estate by law, Williams consulted with legal counsel in Alabama and South Carolina in order to determine how to sever the joint tenancy. This was not an act of "bad faith" or one of "self-dealing." It was done in consultation with professionals in both states in a manner that was designed to follow the law of both states.

Without the conveyance, a valuable asset of the estate would have been lost to the survivorship clause in the July 1, 2000 deed in contradiction of Williams duties under Alabama law. § 26-2A-152(c)(1) provides that a conservator may act without court authorization to:

> Collect, hold, and retain assets of the estate including land in another state and stocks of private corporations, until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.

Thus, it is appropriate and permissible for a conservator to hold property in her own name in order to determine the final disposition of said property. The statute manifestly provides for conservators to act in the very manner that Williams did in this scenario, just as her ward could have done had she the mental capacity to do so. It is likewise impossible for this statute to have any meaning with respect to land if it does not allow for conveyances such as this one as it is futile to attempt a transfer of property without a deed.

Furthermore, the allegations that Williams "kidnapped" Perkins are spurious and insensitive. Perkins had named her daughter, Williams, as her power of attorney, and her actions at all times were disclosed and were undertaken under the supervision of the Probate Court of Baldwin County, Alabama. Despite the purported affection Jeffcoat claims toward Perkins prior to her death, the fact remains that he was not her first choice for caregiver or fiduciary, and had absolutely no rights to act on behalf of Perkins, to be informed of her status or otherwise. Williams on the other hand, accepting her appointed role, did the best she could to care for her mother and protect her assets. This required Williams to move her mother into her own home, which was the

reason for Perkins' move to Alabama.

CONCLUSION

Based on the forgoing arguments, Vanessa Williams prays this honorable court deny Bradford Jeffcoat's appeal and sustain the June 28, 2018 Order of the Charleston County Master-in-Equity. Vanessa Williams prays for such other and further relief as this Court deems just and proper.

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1/25, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough, Master-in-Equity for Charleston County

Appellate Case No. 2018-001464

RECEIVED
JAN 28 2019
SC Court of Appeals

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiff

v.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendants

Of Whom Bradford Q. Jeffcoat, Jr. is the Appellant.

and Of Whom Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins is the Respondent.

Certificate of Service

I hereby certify that I have caused a copy of the Initial Brief of Respondent and Respondent's Designation of Matter in this matter to be deposited in the United States mail with postage prepaid and affixed thereto, addressed as follows, on the following 25 day of January, 2019.

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January 25, 2019

File No.: 20152399.000

RECEIVED
JAN 28 2019
SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court Of Appeals
PO Box 11629
Columbia, SC 29211

Re: Vanessa Williams and Vanessa Williams as Conservator and Guardian of Sandra P. Perkins vs. Bradford Q. Jeffcoat and Blue Heron Builders, LLC
Appellate Case No.: 2018-001464

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the Initial Brief of Respondent and Respondent's Designation of Matter and Certificate of Service to be filed in the above-referenced case.

By copy of this letter, I am serving a copy of the Initial Brief of Respondent and Respondent's Designation of Matter upon counsel of record, along with a Certificate of Service.

Very truly yours,

CLAWSON and STAUBES, LLC

Andy Blackwell

Enclosure

cc: Jason Scott Luck
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JAN 28 2019

SC Court of Appeals

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