

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

W.B. McCullough, Special Referee

Case Number: 2018-002199

Wilmington Savings Fund Society, FSB, D/B/A Christina Trust as Owner Trustee of the
Residential Credit Opportunities Trust V Respondent,

v.

Leroy Hooks, II and Ford Motor Credit Company, LLC Appellant,

Patrick A Wheeler and Maria D. Williams, Intervenors Respondent.

INITIAL REPLY OF APPELLANT

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S.C. Rules of Civil Procedure, Rule 17. 1, 3

ARGUMENT

Respondent Wilmington fails to cite any case or statutory law to support its position that the Special Referee can ignore the mandate of Rule 17(c) to appoint a Guardian *ad litem*.

Rule 17(c) states:

The court shall appoint a guardian *ad litem* for a minor or incompetent person not otherwise represented in an action or shall make such order as it deems proper for the protection of the minor or incompetent person. (Emphasis added).

The Brief of Respondent Wilmington does not offer reasonable arguments why the Special Referee is not required to follow the mandates of Rule 17(c) and appoint a Guardian *ad litem* for the incompetent Appellant. The Appellant has been found to be disabled by both the Department of Veterans Affairs and the Social Security Administration due to schizophrenia. (Howard Aff., Ex. 1 and 2). Despite the findings by both of these agencies Respondent Wilmington questions when the Appellant became disabled due to schizophrenia. Respondent Wilmington writes: "Appellant asserts incompetence going back to an injury that occurred in 1989." (Resp. Br. p. 5). The date for the Appellant's disability comes from the VA that writes: "The official records of the Department of Veterans Affairs verify Leroy A. Hooks was rated 100 percent, service-connected, permanent and totally disabled effective 5/19/1989. . . . Percentage 100; Disability schizophrenia." (Howard Aff., Ex. 1).

Respondent Willington relies on a statement in the Appellant's VA medical records dated September 12, 2018 to support their allegation that the Appellant is competent. (Resp. Br. p. 6). Respondent fails to include the information on why the Appellant was being treated on September 12. The medical records state "Admitted on SEP 7, 2018 12:21, 66 YO AAM, 100% SC, that was involuntarily

admitted to Recovery East due to report of worsening psychosis. . . Diagnoses Schizophrenia.” (Howard Aff., Ex. 3, P. 1-2) (Emphasis added). Respondent Wilmington relies on the statement of “[t]hought process are more organized today,” but this is only AFTER a five-day involuntary commitment at the VA hospital. (Resp. Br. p. 6).

Respondent Wilmington also quotes from VA medical records dated November 6, 2015 but fails to include the following from that same medical record: “inpatient hospitalizations: significant for January 2015 for paranoid thoughts, committed for 5 days. 2009 hospitalized; one-year hospitalization in Monroe, NY over 30 years ago and was dx with Schizophrenia at that time. . . . Diagnosis & Assessment: Schizophrenia, paranoid type. . . he has not managed his money before and given the history of head injury and memory problems would recommend to continue with a fiduciary for his disability.” (Howard Aff., Ex. 3, pp. 9-11) (Emphasis added). The full medical record from November 6, 2015 supports the contention that the Appellant is incompetent based on his many hospitalizations for his schizophrenia.

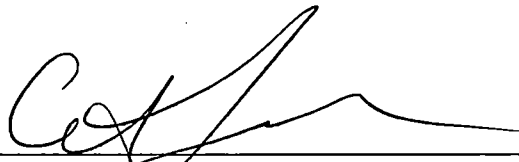
Respondent Wilmington’s final argument is that “[a]ppellant present no expert testimony regarding his competence . . .”. (Resp. Br. p. 8). This argument by the Respondent is factually incorrect. The Appellant offered 129 pages of Department of Veterans Affairs medical records from doctors that set forth a long history of the Appellant’s schizophrenia and the records were authenticated by a representative from the VA. (Howard Aff., Ex. 3). The Appellant also offered statements from both the Social Security administration and VA that the Appellant is totally disabled. The Respondent also argued that “nor any evidence that

Appellant has ever been legally determined to be incompetent.” (Resp. Br. p. 8). This argument is a misstatement of what must be proven to be found incompetent under Rule 17(c). Our Supreme Court held in Thompson v. Moore, 227 S.C. 417, 88 S.E. 2d 354, (1955) that: “The term 'mentally incompetent' is difficult of exact definition. Mental incompetency 'in its ordinary meaning imports mental deficiency so great as to render one unable to comprehend or transact the ordinary affairs of life.' It is not necessary that it be proved that the subject is a lunatic or that he has been previously adjudged insane.” Id. at 422, 356 (citations omitted). The Court’s holding in Thompson makes it clear that to be found incompetent and in need of a Guardian *ad litem* there does not have to be a prior adjudication of incompetence.

CONCLUSION

Respondent Wilmington has failed to cite to any case or statutory law to support its position that Special Referee was correct in refusing to appoint a Guardian *ad litem* as required by Rule 17(c). The medical records submitted at the hearing before the Special Referee clearly demonstrate that Appellant required the assistance of a Guardian *ad litem* to protect his interest. Because the case proceeded without a Guardian *ad litem* the Order and Judgement of Foreclosure and Sale was void for lack of personal jurisdiction over Appellant Hooks.

This Court should overturn the Order Denying Motion and remand the case for the appointing of a Guardian *ad litem* and allow additional proceedings to ensure that Appellant Hooks is protected.



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March 14, 2019

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CERTIFICATE OF SERVICE

I hereby certify that due and proper service of the documents described below was made on the 14st day of March, 2019, by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

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DESCRIPTION OF DOCUMENTS:
Initial Reply Brief of Appellant.



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March 14, 2019

The Honorable Jenny Abbott Kitchings
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RE: Wilmington Savings Fund Society, FSB, d/b/a Christina Trust as Owner Trustee
of the Residential Credit Opportunities Trust V vs. Leroy Hooks, II and Ford Motor
Credit Co. Inc. and Patrick Wheeler and Maria D. Williams.
Case No: 2018-002199

Dear Ms. Kitchings:

Please find enclosed for filing Initial Reply Brief of Appellant. I am by copy of this letter
serving the same on Chad W. Burgess, Esquire, Attorney for Respondent, Wilmington
Savings and Patrick R. Watts, Esquire, Attorney for Respondents, Wheeler and Williams.

If further information is needed please advise.

With warm regards, I am

Sincerely,


William Ceth Land

WCL/sr

Encls.

Cc: Chad W. Burgess, Esquire
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03/14/2019

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