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. 2018-000761

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 ..... Respondents,

v.

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

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. Jeffcoat is properly attacking the jurisdiction of the Baldwin County Probate Court.

Jeffcoat agrees with Williams' argument that collateral attacks on foreign judgments are limited in nature. (Resp. Brief pp. 3-4). Jeffcoat's attack on the subject matter jurisdiction and personal jurisdiction of the Baldwin County Probate Court is exactly the type of limited inquiry allowed by law. E.g. Peoples Nat'l Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857 (1954); Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997); McLeod v. Sandy Island Corp., 260 S.C. 209, 195 S.E.2d 178 (1973). The case law cited by Williams further supports Jeffcoat's entitlement to seek relief:

> **Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry.** But if 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 by the record itself." In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. Whatever mistakes of law may underlie the judgment…it is "conclusive as to all the *media concludendi*."

Millikin v. Meyer, 311 U.S. 457, 462 (1940) (emphasis added) (citations removed).[1] Probate Courts in the state of Alabama are courts of limited jurisdiction, and their jurisdiction in guardianship and conservatorship matters is governed by the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Ala. Code § 26-2B-101 *et seq.*

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[1] V.L. v. E.L., 136 S.Ct. 1017 (2016), also cited by Williams, likewise stands for the proposition that a foreign judgment may be attack for lack of jurisdiction.

All of the Baldwin County Probate Court's orders, on their face, are silent as to the basis for the court's jurisdiction over Sandra Perkins. (R. pp. 209-212, 309). Williams contends that the Baldwin County Probate Court had "significant connection" jurisdiction.[2] (Resp. Brief pp. 4-8). A determination that Alabama is a "significant-connection state" is fact-intensive and requires the consideration of many factors:

> ...
> (3) SIGNIFICANT-CONNECTION STATE. A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.
>
> (b) In determining under Section 26-2B-203 and subsection (e) of Section 26-2B-301 whether a respondent has a significant connection with a particular state, the court shall consider:
>
> (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.

Ala. Code § 26-2B-201.

> (a) A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:
>
> ...
>
> (2) on the date the petition is filed, this state is a significant-connection state and:

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[2] It appears that all parties to this appeal agree that the Baldwin County Probate Court did not have jurisdiction over Sandra Perkins under any other type of jurisdiction (*e.g.* "home state" or "special jurisdiction"). See Ala. Code §§ 26-2B-203(a)(1), (a)(3), & (a)(4).

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and before the court makes the appointment or issues the order:

(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;

Ala. Code § 26-2B-203.

(c) In determining whether it is an appropriate forum, the court **shall** consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Ala. Code § 26-2B-206 (emphasis added).

The Baldwin County Probate Court's orders do not address the vast majority of these factors (despite mandatory language found in section 26-2B-206(c)), and do not even cite these jurisdictional statutes. Williams even concedes as much in her brief: "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..." (Resp. Brief p. 8). Accordingly, this Court must find that the Baldwin County Probate Court lacked jurisdiction in this matter.

Williams acknowledges that S.C. Code § 62-5-309(A)(2) (Supp. 2015) requires notice of the guardianship/conservatorship proceedings to a person who has the "care and custody" of the subject of the proceedings. (Resp. Brief pp. 6-7). However, Williams argues that because Perkins had been removed from Jeffcoat's home in South Carolina, he no longer had "care and custody" of Perkins. This is a strained interpretation of this statute, and an interpretation that would frustrate the intent of South Carolina's guardianship law.[3] Further, Williams grafts to S.C. Code § 62-6-309(A)(2) a requirement

[3] Williams mentions a "Health Care Power of Attorney" in her brief. (Resp. Brief p. 6). This document was not part of the trial court's record, but if this Court considers it, it will find that Perkins named Jeffcoat as her successor health care agent (R. p. 324), which further supports Jeffcoat's argument he should have been provided notice of any guardianship or conservatorship proceedings.

that "care and custody" requires a "familial or legal relationship". This is also improper and runs contrary to the plain language of the statute.

Williams argues that the Baldwin County Probate Court was "made aware" of Williams' partition action (Resp. Brief p. 7), but the record only establishes that it was made aware that a complaint for partition was being drafted. (R. pp. 313-315). The record contains no evidence that Williams informed the Baldwin County Probate Court of the *filing* of the partition action or of the existence of Jeffcoat's counterclaims (particularly counterclaims alleging fraud) against the guardian and conservator.

II. Jeffcoat never lost the right to assert his counterclaims in this matter, which were dismissed in violation of Rule 56, SCRCP.

Williams argues that because this action was decided on matters of law under Rule 56, SCRCP, that Jeffcoat has somehow waived his right to assert counterclaims or is estopped from asserting them. (Resp. Brief pp. 8-11). This is contrary to the record and the law of South Carolina. At the hearing for the motions for summary judgment, the Master-in-Equity stated the scope of what was before him:

> So I've got cross Motions for Summary Judgment. One would be -- the rule would be dispositive as to the case if the Court grants either motion as I understand it. **I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right of survivorship can be alienated.** I think that's the legal question for the Court to have to address. So I'll do that.
>
> It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?
>
> I do tend to agree with you. It's a question of law. **If we get into the trial there will be lots of questions of fact**, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

(R. pp. 302-303) (emphasis added). Further, Williams' trial counsel understood there would be issues of fact that needed to be resolved at trial. When Williams' trial counsel began to discuss Perkins' condition when Williams found her in 2015, the trial court asked: "That will be a matter for trial one day, right?" (R. p. 301). Williams' trial counsel agreed. (R. p. 301).

Williams also mis-applies the doctrine of judicial estoppel in her arguments. Judicial estoppel applies only to inconsistent statements of fact, and it does not apply to conclusions of law or legal theories. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997). Jeffcoat has never wavered in his factual assertion that Williams has engaged in a wide variety of misconduct (see Appellant's Brief, Argument II). Further, judicial estoppel requires the satisfaction of five elements: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Cothran v. Brown, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004). Even if Jeffcoat was taking an inconsistent position regarding the facts, Williams has not met (and cannot meet) her burden of proof of these elements; judicial estoppel is not appropriate.

Williams also argues that Jeffcoat did not preserve his counterclaims because he did not "press his arguments", citing out-of-state federal decisions. (Resp. Brief p. 10). However, in South Carolina arguments found in the pleadings are sufficient to preserve

an argument for appeal. See Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000) (holding issue preserved where alleged in complaint that was dismissed with prejudice). Jeffcoat's counterclaims properly set forth the basis of his claims against Williams, and the Master-in-Equity dismissed them via the last sentence of his order: "Any relief not specifically addressed herein, is denied." (R. p. 6). These arguments are preserved, and the Master-in-Equity committed reversible error in dismissing them.

III. Williams does not properly interpret section 27-7-40 of the South Carolina Code.

Williams admits that S.C. Code § 27-7-40(a) states a "joint tenancy includes, and is limited to, the following incidents of ownership:", but refuses to concede that the "is limited to" language limits joint tenants' incidents of ownership. (Resp. Brief p. 14). Williams' interpretation of section 27-7-40 is that joint tenants have implied incidents of ownership (*e.g.* an ability to sever via alienation) not enumerated in the statute. (Resp. Brief p. 14). This interpretation is contrary to the plain language of the statute, and this Court cannot countenance it. E.g. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

Further, Williams' interpretation does not take into account that the joint tenancy statute exists in derogation of the common law and thus must be strictly construed and not extended in application beyond clear legislative intent. South Carolina Dep't of Soc. Servs. v. Wheaton, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App.1996). While section

27-7-40 may recognize other means by which to create a joint tenancy, it strictly limits how joint tenants may use their rights in a manner that can only be expanded by the legislature. The legislature's intent can be found in the name of the act that created this statute:

> ...TO ADD SECTION 27-7-40 SO AS TO PROVIDE AN ADDITIONAL METHOD TO CREATE A JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP BY USING CERTAIN WORDS IN A DEED OF CONVEYANCE, TO PROVIDE CERTAIN INCIDENTS OF OWNERSHIP, TO PROVIDE FOR ITS SEVERANCE AND PROCEDURES FOR FILING...

Act No. 398, 2000 S.C. Acts ___. By the very name of the bill, the legislature intended to create an "additional" method to create a joint tenancy, but it "provide[s]" (*i.e.* stipulates) what the incidents of ownership, manner of severance, and procedures for filing are.[4]

While Williams does quote S.C. Code § 27-7-40(c) ("The provisions of this section must be liberally construed to carry out the intentions of the parties."), she does not address how the Master-in-Equity's interpretation of this statute somehow carries out Perkins' and Jeffcoat's intentions. This is because she cannot – the obvious intention of Perkins and Jeffcoat was to live together in 1955 Old Fort until one of them died, at which point the survivor would become the sole owner. The Master-in-Equity's interpretation of section 27-7-40 allowed Williams to completely circumvent the intention[5] of Perkins and Jeffcoat, leaving Jeffcoat facing the sale of, and his eventual eviction from, his home since April of 2000. This is an error of law and must be reversed.

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[4] However, Jeffcoat believes that the language of the statute is plain and unambiguous, making statutory interpretation unnecessary.

[5] Jeffcoat would note that Williams, as conservator, is statutorily required to consider Perkins' wishes

IV. Williams maintains a strained interpretation of section 26-2A-152 of the Alabama Code to support her post-hoc justification of self-dealing.

Williams also continues to maintain that Ala. Code § 26-2A-152(c)(1) (the power to "[c]ollect, hold, and retain assets...including land") applies to Williams' November 16, 2015, transfer of 1955 Old Fort for $10.00 "and love and affection" to herself. Williams contends that she conveyed this property to herself "as a fiduciary", but the deed in question does not purport to do this. (R. pp. 61-62). Because Williams disposed of Perkins' property for cash (and eventually sought its partition), Ala. Code § 26-2A-152(d)(3) applies to Williams' conduct: "Dispose of any real property, including land in another state, for cash or on credit, at public or private sale, and manage, develop, improve, partition, or change the character of estate real property".[6] This conduct requires prior court approval. Ala. Code § 26-2A-152(d). Williams, who did not obtain prior court approval for any of her acts regarding 1955 Old Fort, seeks to use Ala. Code § 26-2A-152(c)(1) as a post-hoc justification of conduct that clearly violated Alabama law.[7] This violation of Alabama law precluded partition, and the Master-in-Equity has committed reversible error.

V. Williams' durable springing power of attorney supports a finding of breach of fiduciary duty against her.

Williams' Brief repeatedly references a "power of attorney" executed by Sandra Perkins that names Williams as her attorney-in-fact. (Resp. Brief pp. 6, 8, & 16). While

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[6] This argument assumes that Williams' conveyance was not a gift. Jeffcoat's counsel can find no authority under the Alabama law of conservatorship that authorizes gifts by a conservator. See Ala. Code § 26-2A-152.

[7] Williams also never addresses the issue of Perkins' trust, which could also bear upon Perkins' compliance with Alabama law and any potential breach of fiduciary duty (App. Brief pp. 22-23).

this document was never made part of the record below,[8] Williams' counsel has provided Jeffcoat's counsel with a durable springing power of attorney executed on November 19, 2009 and filed of record in Charleston County on December 1, 2009. (R. pp. 327-340). This document names "Vanessa Leigh Perkins" (presumably Williams' maiden name) as Perkins' attorney-in-fact and Jeffcoat as her successor, and that it takes effect upon Perkins' incapacity (established either by court order or the affidavits of two physicians). (R. pp. 327-329).

This power of attorney renders Williams a South Carolina fiduciary, subject to South Carolina law. (R. p. 336). When a court appoints a guardian or conservator, a South Carolina power of attorney's powers that are within the ambit of the guardian and/or conservator are terminated. S.C. Code § 62-8-108. A conservator in Alabama apparently does not have the power to make gifts of his or her ward's property. See Ala. Code § 26-2A-152. Perkins' power of attorney, however, does govern gifts – gifts to Perkins' family are allowed, but gifts to Williams are generally prohibited but allowed if and only if the "primary purpose and motivation" of the gift is: "the preservation of my assets…(in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have)…" (R. p. 332). This provision is consistent with the past and current law of South Carolina, which prohibits gifts from agent to principal without an express grant of authority. See Fender v. Fender, 285 S.C. 260, 329 S.E.2d 430 (1985); S.C. Code § 62-8-201.

[8] Because both Williams and Jeffcoat reference this document in their trial pleadings and this document was filed of record at the time of trial, Jeffcoat has no objection to this Court's consideration of it. (R. pp. 65, 245).

Williams' transfer of 1955 Old Fort from Perkins to Williams was made for the consideration of $10.00 and "love and affection". (R. pp. 61-64). This transfer is considered a gift under South Carolina law. E.g. Huggins v. Huggins, 107 S.C. 470, 93 S.E. 129 (1917); Middleton v. Suber, 300 S.C. 402, 388 S.E.2d 639 (1990); see also Blacks Law Dictionary 445 (8th ed. 2004) ("gift deed. A deed given for a nominal sum or for love and affection."). Accordingly, any gift of 1955 Old Fort must be "in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have..." (R. p. 332). Perkins' will does not dispose of 1955 Old Fort. (R. p. 292). This is undoubtedly because the 2000 deed to 1955 Old Fort, establishing Perkins and Jeffcoat as joint tenants with right of survivorship, addressed the property's disposal upon Perkins' death. (R. pp. 69-72, 98-99, 155-159, 292). Restated, the evidence clearly establishes Perkins was to remain owner of her interest in 1955 Old Fort until death, at which time her interest would pass to Jeffcoat. Williams' acts effectuated the exact opposite of Perkins' intended estate plan: Perkins lost ownership of her interest in 1955 Old Fort during her lifetime in exchange for $10.00, and upon her death her interest did not pass to Jeffcoat, who now faces eviction. This is far more than a scintilla of evidence of Williams' breach of fiduciary duty, and the Master-in-Equity's dismissal of that cause of action was an error of law.

CONCLUSION

For the argument set forth above, Bradford Jeffcoat asks this Court to reverse the June 28, 2018 Order of the Charleston County Master-in-Equity and award Jeffcoat all such other and further relief as this Court deems just and proper.

Dated: 4/1/19

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