



The Supreme Court of South Carolina

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May 29, 2019

The Honorable Sue K. Carpenter
P.O. Drawer 580
Chester, SC 29706-0580

REMITTITUR

Re: Patricia E. King v. Margie B. King
Lower Court Case No. 1998-CP-12-00325
Appellate Case No. 2018-001171

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,

CLERK

cc: Kenneth B. Wingate, Esquire
Paul David Kent, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Patricia E. King and Robbie King Jones, individually and
as personal representatives of the estates of W.R. King and
Ellen King, Plaintiffs,

Of Whom Patricia E. King is the Petitioner,

v.

Margie B. King and Robbie Patricia Ione King,
individually and as co-personal representatives of the
Estate of Christopher C. King, deceased and Nelson M.
King, Respondents.

Appellate Case No. 2018-001171

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Chester County
James C. Harrison Jr., Special Referee

Opinion No. 2019-MO-023
Submitted January 15, 2019 – Filed May 8, 2019

REVERSED

Kenneth B. Wingate and Paul David Kent, both of Sweeny
Wingate & Barrow, P.A., of Columbia, for Petitioner.

Margie B. King, Robbie Patricia Ione King, and Nelson
M. King, all of Rock Hill, pro se.

PER CURIAM: A special referee granted the proprietors of an unincorporated funeral home business the exclusive right to use the "King" family name for the operation of the business. The order specifically required Petitioner Patricia King, also a member of the family, to "cease" using the name for her funeral home business. Patricia appealed on the ground this relief was improper, and the court of appeals affirmed. We reverse the court of appeals and vacate the portion of the special referee's order granting the exclusive use of the family name.

W.R. King and his wife Ellen King purchased a funeral home at least as early as the 1940s and began operating it as "King's Funeral Home" on Cemetery Street in the City of Chester. When W.R. King died in 1975 without a will, his and Ellen's numerous children—particularly their son Christopher King—continued operating the business. At one time or another, each of W.R. and Ellen's children—including their daughters Patricia King and Robbie King Jones—worked in the funeral home. Ellen King died without a will in 1987, and Christopher King died without a will in 1997. Several of the remaining King children then had multiple disagreements, and at least one member of the family opened another funeral home under the "King" name.

In 1998, Patricia and Robbie¹ filed this lawsuit over issues relating directly and indirectly to the operation of the family funeral home business. They alleged thirteen separate theories of recovery. The defendants (Respondents)—Christopher King's wife and two of his children—counterclaimed on sixteen theories of recovery. Patricia and Robbie's complaint was dismissed in 2004 for failure to prosecute. After two trials and two appeals,² the special referee issued a final order in which the referee denied all the counterclaims Respondents asserted except for unjust enrichment. The referee did not award money damages. Instead, after

¹ We use the name "Robbie" to refer to W.R. King's daughter Robbie King Jones. Christopher's daughter Robbie Patricia Ione King is one of the Respondents.

² See *King ex rel. King v. King*, Op. No. 2012-UP-365 (S.C. Ct. App. filed June 20, 2012); *King v. King*, Op. No. 2007-UP-132 (S.C. Ct. App. filed Mar. 28, 2007).

acknowledging "[Respondents] have not specifically requested" this relief, the referee granted Respondents the exclusive use of the family name.

Patricia appealed to the court of appeals claiming on several grounds "the relief granted is improper." Respondents did not file a brief. The court of appeals affirmed in an unpublished opinion. *King v. King*, Op. No. 2018-UP-128 (S.C. Ct. App. filed Mar. 21, 2018). Patricia King filed a petition for a writ of certiorari, again claiming on several grounds "the relief granted is improper." Respondents did not file a return. We granted the petition. Respondents did not file a brief with this Court.

The Rules of Civil Procedure give trial courts flexibility to grant relief not specifically pled. *See, e.g.*, Rule 15(b), SCRCF ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."); Rule 54(c), SCRCF ("[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."). However, the special master should not have granted relief that Respondents did not request, and neither party ever envisioned. We reverse the court of appeals and vacate the portion of the special referee's order granting the exclusive use of the "King" family name.

REVERSED; SPECIAL REFEREE'S ORDER VACATED IN PART.

HEARN, FEW and JAMES, JJ., concur. BEATTY, C.J., concurring in result only. KITTREDGE, J., not participating.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King, Plaintiffs,

Of Whom Patricia E. King is the Appellant,

v.

Margie B. King and Robbie Patricia Ione King,
individually and as co-personal representatives of the
Estate of Christopher C. King, deceased, and Nelson M.
King, Respondents.

Appellate Case No. 2015-002289

Appeal From Chester County
James C. Harrison, Jr., Special Referee

Unpublished Opinion No. 2018-UP-128
Submitted September 1, 2017 – Filed March 21, 2018

AFFIRMED

Kenneth B. Wingate and John Earle Tyler, both of
Sweeny Wingate & Barrow, PA, of Columbia, for
Appellant.

Margie B. King, Robbie Patricia Ione King, and Nelson
M. King, all of Rock Hill, pro se.

PER CURIAM: Patricia E. King appeals an order by the special referee awarding Respondents use of the business name "King's Funeral Home," arguing the special referee erred by granting such relief because (1) Respondents did not seek it and she was therefore denied due process, (2) factual findings in a prior order, which was affirmed on appeal, precluded the award under the law of the case doctrine, and (3) Respondents failed to exhaust administrative remedies. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) ("Due process is flexible and calls for such procedural protections as the particular situation demands."); *id.* at 542, 570 S.E.2d at 569 ("The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."); Rule 54(c), SCRCR ("Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."); *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our [c]ourt looks for guidance to cases interpreting the federal rules."); *Robinson v. Lorillard Corp.*, 444 F.2d 791, 803 (4th Cir. 1971) (recognizing Rule 54(c), FRCP, "has been liberally construed, leaving no question that it is the court's duty to grant whatever relief is appropriate in the case on the basis of the facts proved").

As to issue 2: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.").

As to issue 3: *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994) ("Whether administrative remedies must be exhausted is a matter within the trial [court]'s sound discretion and [its] decision will not be disturbed on appeal absent an abuse thereof."); *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011) ("When an administrative remedy is not available for the injury suffered, the doctrine of exhaustion is not

applicable."); *id.* at 550 n.1, 707 S.E.2d at 398-99 n.1 ("This . . . suit was a tort claim, not a statutory violation for which the legislature has provided an administrative remedy. For that reason, exhaustion simply is inapplicable to the . . . suit.").

AFFIRMED.¹

LOCKEMY, C.J., and KONDUROS and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.