

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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SC Court of Appeals

APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-33-00306

Appellant Case No. 2018-002061

Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants,

FINAL BRIEF OF APPELLANTS

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STATEMENTS OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion by not entering a finding of fact and a conclusion of law on all issues (written, and oral) brought for determination in this case?
2. Did the trial court abuse its discretion by failing to take Mandatory Judicial Notice of evidentiary facts?
3. Did the trial court err in its application of law by denying Appellants Motion for Relief From Void Judgment 60(b)(4) on the grounds of:
 - A. It was filed untimely?
 - B. No conflict of interest as to the involvement of the Special Referee's spouse in the matter
4. Did the trial court err in its application of law by stating that the Special Referee Foreclosure Deed is valid?

Statement of the Case

I.

Appellants on June 4, 2018 filed a Motion for Relief from a Void Judgment 60(b)(4) and Challenge of Jurisdiction[R. p. 213- p. 215], Memorandum in Support[R. p. 216- p. 230], Exhibit A [R. p. 231- p. 238], and Exhibit B[R. p. 239-251] in the Court of Common Pleas in Case number 2013-CP-33-306. Appellants on July 24, 2018 filed an Affidavit of Truth in support of their motion.[R. p. 288- p. 294] Respondents failed to file any response in opposition of Appellants Motion for Relief and Challenge of jurisdiction, nor did they file an affidavit rebutting Appellants Affidavit of Truth. On August 20, 2018 a hearing was held before the Honorable Judge Thomas Russo located at the Marion County Court house located in Marion, South Carolina. Present at the hearing was Appellants, and counsel for Respondents. After hearing arguments from the parties Judge Russo stated he was taking the matter under advisement, and would issue an order later in the week. Prior to the issuance of the order on September 24, 2018 Appellants filed in the Marion County Circuit Court a Request for finding of fact and conclusion of law pursuant to South Carolina Rules of Civil Procedure Rule 52(a)[R. 252- p. 270]. On October 1, 2018 Judge Russo entered an order [R. p. 3- p. 7] Denying Appellants Motion for Relief from a Void Judgment 60(b)(4) and Challenge of Jurisdiction. After receiving the order Appellants realized that Judge Russo failed to make a finding of fact and conclusion of law on all issues presented before the court for determination in this matter. As a result, Appellants properly and timely filed on October 10, 2018 a Motion to Alter and/or Amend the final order pursuant to South Carolina Rules of Civil Procedure Rule 59(e). [R. p. 257- p. 268] Again, Respondents filed no objection or response to Appellants Rule 59(e) Motion. A hearing date was set and on October 18, 2018 a Notice of Hearing [R. p. 295- p.298] went out to all parties informing them that a court date had been set for November 1, 2018. However, on

October 25, 2018 without oral argument Judge Russo issued an Order denying Appellants Motion to Alter and/or Amend the Final Order 59(e) [R. p. 1- p. 2]. Pursuant to the issuance of the latter order, Judge Russo failed to make a ruling on all issues presented before the court for determination Appellants filed a timely appeal on November 19, 2018.

Standard of Review

II.

This is an appeal, made pursuant to Rule 201, SCACR, from an Order issued by the lower court based on the trial judge's denial of Appellants Motion for Relief from Void Judgment 60(b)(4) and Challenge of Jurisdiction. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Universal Benefits, 349 S.C. at 183, 561 S.E. 2d at 661 (quoting Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E. 2d 340, 343 (1995))." "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgements from courts which lacked subject matter jurisdiction or personal jurisdiction." See McDaniel v. U.S. Fidelity & Guaranty Co., 324 S.C. 639, 644, 478 S.E. 2d 868, 871(Ct. App. 1996), ("holding that the reasonable time requirement does not apply to 60(b)(4) because a void judgment is a nullity and thus may be attacked at any time"); Flanagan, South Carolina Civil Procedure 487 (2nd ed. 1996). "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA 1985). The trial judge abused its discretion by failing to issue a complete finding of facts and a conclusion of law on all issues presented for determination as required by SCRCF 52(a). "Vacating and remanding where the agency's finding of fact were insufficient to allow for a review of the agency decision, and stating, "The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are

supported by the evidence and whether the law has been properly applied to those findings.” Stubbs v. S.C. Dep’t of Emp’t & Workforce 755 S.E 2d 114 (S.C. Ct. App. 2014); “Stating implicit findings, as well as general statements and conclusions, do not provide sufficient detail to enable appellate review” Robinson v. Estate of Harris 388 S.C. 616 (S.C. 2010); S.C. Code Subsection 1-23-380(5) provides the reviewing court “may affirm the decision of the agency,” “remand the case for further proceedings,” or “reverse or modify the decision if substantial rights of appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are....(d) affected by [an] error of law. Appellants filed a Motion to Alter and/or Amend the trial judge order pursuant SCRCP 59(e), yet it was later denied without explanation on all issues. Under Rule 59(e), a court may “alter or amend the judgment if the movant shows...that there has been a clear error of law or a manifest injustice.” Robinson v. Wix Filtration Corp., 599 F. 3d 403, 407 (4th Cir. 2010); see also Collison v. Int’l Chem. Workers Union, 34 F. 3d 233, 235 (4th Cir. 1994). “ A party must file such motion when an issue or argument has been raised but not ruled on, to preserve it for appellate review” see Elam v. South Carolina Dep’t of Transp, 361 S.C. 9, 24, 602 S.E. 2d 772, 780(2004).

Argument

III.

1. The trial court did abuse its discretion by not entering a finding of fact and a conclusion of law on all issues (written, and oral) brought for determination in this case. Appellant’s states in their Motion to Alter and/or Amend 59(e) [R. p. 257- p. 268] that the trial court failed to enter an order determining the issue of the Special Referee spouse acting as a witness to and notarizing her husband Special Referee deed [R. p. 32- p. 36]. Kathryn Elizabeth Porter (Betsy) actions were in direct violation of South Carolina Statute Law governing Notarial Acts [R. p. 262- p. 263]. The trial court also failed to rule

on the fact that the Special Referee had a duty to disqualify himself pursuant to 28 USC 455(a) being that his wife is within third degree of relations. The trial court also failed to make determinations on the fact that Appellants was denied discovery in the original trial court hearing held on July 29, 2013. The Special Referee never made Respondents prove standing. In particular, Appellants requested the original wet ink signature promissory note at the original hearing. Special Referee denied this request and the trial court failed to make a determination on the finding of facts and conclusion of law pursuant to SCRCR Rule 52(a). During the August 20, 2018 hearing Counsel for Respondents told the trial court she would be happy to go over the merits of Foreclosure Action [R. p. 309 line 5-8]. The trial court refused to go over the merits, yet ruled that Appellants claims were meritless. In fact, if the trial court would have discussed the merits it would have found that Appellants did have a meritorious defense. The trial court fail to determine the issues of Fraud upon the trial court. Counsel for Respondent admitted on and for the record that the Special Referee spouse did receive a benefit from the transaction of which she notarized. [R. p. 320 line 8- p. 321 line 7] Special Referee should of known/could of known that his wife could not notarize any documents. Appellants stated in their 59(e) Motion that the former Clerk of Court (Sherry Rhodes) knew that the Special Referee Haigh Porter and the witness/notary Katheryn Elizabeth Porter(Betsy) were husband and wife and still allowed the Special Referees Deed, and the Satisfaction of Mortgage and Release of Lien to be entered and recorded in public record[R. p. 237- p.238 & p. 279- p. 280].

2. The trial court did abuse its discretion by failing to take Mandatory Judicial Notice of evidentiary facts. During the August 20, 2018 hearing Respondents counsel

admitted on and for the record that the Special Referees spouse Kathryn Elizabeth Porter (Betsy) has worked in his (Special Referee) office for a “very, very long time [sic].” In addition to her employment with him, she also is employed by ERV. ERV is a bidding service.... [R. p. 320- line 18-19]. Appellants also asked the Court to take Mandatory Judicial Notice pursuant to Rule 201(d) of the authority of Gomez v. United States, where it states, “upon those basic fair trial rights that can never be treated as harmless is a defendant right to an impartial adjudication be it judge or jury. “Due process in law requires that a person shall also have the opportunity to be heard before legally appointing a qualified impartial tribunal before any binding decree or judgment can be made affecting his rights of life, liberty, or property” see State v Brown (S.C. 1935) 178. S.C. 294, 182 S.E.838. Appellants asked the trial court to take Mandatory Judicial Notice that the Special Referee’s Order was never affirmed by the South Carolina Court of Appeals or South Carolina Supreme Court being that Appellants case was never decided on the merits, and was dismissed for mere technicality(failure to comply) [R. p. 15-16]. As Professor Flanagan observed, “The purpose of the rules is to secure justice, and consequently, they reduces formalities and technicalities.” As the Supreme Court of the United States wrote in 1962, it is too late in the day and entirely contrary to the spirit of the....Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities...” The... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” In construing the South Carolina Rules of Civil Procedure, our courts looks for guidance to cases interpreting the federal rules.” (Citing Gardner v. Newsome Chevrolet-Buick, Inc.,

304 S.C. 328, 330, 404 S.E. 2d 200, 201(1991)); 4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, Federal Practice and Procedure §1029 (4th ed. 2015)(“The federal rules are designed to discourage battles over mere form and to sweep away needless procedural controversies that either delay a trial on the merits or deny a party his day in court Cyclopedia of Federal Procedure §8.2(3d., rev. 2017)(“The spirit of rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid if possible, depriving a litigant of a chance to bring a case to trial.”). “Due process prohibits estopping some litigants who never had a chance to present their evidence and arguments on a claim, despite one or more existing adjudication of the identical issue which stand squarely against their position. “Roberts v. Recovery Bureau, Inc (S.C. App. 1994) 316 S.C. 492, 450 S.E. 2d 616.

3. The trial court erred in its application of law by denying Appellants Motion for Relief From Void Judgment 60(b)(4) on the grounds of:

A. Appellants Motion was timely.

Appellants asked the trial court to reconsider its ruling on its Motion to Alter and/or Amend 59(e) because there Motion was made within a reasonable time. [R. p. 257- p. 268]. Respondents Anderson Brothers Bank attempted to use the Special Referee’s Deed against Appellants to obtain a Writ of Assistance on or around October 1, 2015. Appellants filed its first Motion for Relief from Void Judgment 60(b) (1) (3) (4) and Challenge of Jurisdiction on October 16, 2015. Including but not limited to, the respondents never showed standing, gave no consideration (See Exhibit A – Un-rebutted Affidavit of Lack of Consideration), [R. p. 271- p. 274] Fraud upon the court, and the Special Referees Fraudulent Deed of which Respondents who were not Bona Fide purchasers used to obtain a Writ of Assistance. Respondents and the Special Referee assumed jurisdiction and moved forward without having a proper hearing before

an impartial court before having the Marion County DEU Officers execute Writ of Assistance. Under Rule 60(b) (4), SCRPC, “The definition of “void” under the rule only encompasses judgments from courts which failed to provide proper due process....” See McDaniel v. U.S. Fidelity & Guaranty Co., 324 S.C. 639, 644, 478 S.E. 2d 868, 871(Ct. App.1996)’ (“holding that the reasonable time requirement does not apply to 60(b)(4) because a void judgment is a nullity and thus may be attacked at any time”); Flanagan, South Carolina Civil Procedure 487 (2nd ed. 1996). Petitioners was in possession and living in said property and had every right to challenge the jurisdiction of the non bona fide purchasers fraudulent deed (Petitioners October 16, 2015 filings). Furthermore, it is believed that the court erred in its January 21, 2016 order (See Exhibit B- Judge Russo Order January 21, 2016)[R. p. 274- p. 276] when the court dismissed Petitioners Motion 60(b) (1) (3) (4) for Lack of Jurisdiction. When in fact, upon information and belief this court did have jurisdiction to determine the issues challenging the jurisdiction, which may be attack at any time before, during, or even after appeal as per, “Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal.” Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA 1985); See e.g. Lake v. Reeder Constr. Co., 330 S.C. 242, 248, 498 S.E. 2d 650, 653 (Ct.App.1998)(“Lack of Subject matter jurisdiction can be raise for the first time on appeal, and can be raised sua sponte by the court.”)On May 2, 2013 Petitioners filed in the Marion County Clerk of Court Nature and Full Discovery (See Exhibit E-Discovery and Full Disclosure). [R. p. 281- p. 284] Respondents never showed standing, in particular when Petitioners demanded the original wet ink signature promissory note at the July 29, 2013 hearing, Special Referee allowed the copies of the note to be entered as admissible evidence where the authenticity of the note was heavily contested by Appellants. Pursuant to South Carolina Rules of Civil Procedure Rule 1003 where it states, “A

duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or circumstances make it unfair to admit the duplicate." Not only was it in violation of South Carolina Rules of Evidence, but also in violation of South Carolina statutory law See S.C. Code §1-23-330(2) where it states, "Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request parties shall be given an opportunity to compare the copy with original." Appellants were deprived of that right. Special Referee denied Petitioners an opportunity to cure defect in pleadings(not in South Carolina form), instead of looking to the substance of the pleading where South Carolina Rules of Civil Procedure Rule 8(f) states, "All pleadings shall be so construed as to do substantial justice to all parties" See Estelle v. Gamble, (supra). The facts of the case, the transcript of the July 29, 2013 hearing and the discovery request evidence that the Special Referee violated South Carolina Rules of Evidence 1003 and S.C. Code § 1-23-330(2) and the Due Process Clause (procedural and substantive) of the State and Federal Constitution to reach his August 5, 2013 decision in favor of Respondents (Anderson Brothers Bank). See Art. 1 Sec 3 of South Carolina Constitution. Further, there was no agreement (consent) between the parties to have the Special Referee adjudicate the foreclosure case. In particular, On June 25, 2013 Petitioners filed an objection to the Order in Reference to the Special Referee Rule 53, and demanded a Trial by Jury pursuant to South Carolina Rules of Civil Procedure Rule 38 (See Exhibit F- Objection to Rule 53)[R. p. 285- p. 287][See Affidavit of Truth R. p. 288- p. 292]. Under SCRCP Rule 53 states that in part, "In an action where the parties consent" "Any party may request a jury pursuant to Rule 38....." The record clearly shows that Appellants did file a timely objection.

B. There was a conflict of interest as to the involvement of the Special Referee's spouse in the matter

Secondly, the trial court denied Appellants Motion for Relief from Void Judgment 60(b) (4) by stating that there was no conflict in interest as to the involvement of the Special Referee's spouse in the matter. Appellants objected to this very same issue in its Motion to Alter and/or Amend 59(e) and asked the court to reconsider this issue see [R. p. 257- p. 268]. Counsel for Respondents admitted on the record that the Special Referees spouse Kathryn Porter (Betsy) was employed by ERV bidding company, she was employed by the Special Referee, and has worked out of his the (Special Referees) office for years. [R. p. 257- p. 268] The Special Referee's spouse was a representative for Respondents Anderson Brothers Bank at the foreclosure sale causing a conflict of interest giving the appearance of partiality/impropriety in this case. In the case *Van Ness v. Eckerd Corp* 350 S.C. 399(S.C. Ct. App. 2002) "Judge Harwell stated "[he] discovered that one of the [his] brothers has a relationship to the corporate defendant which was unknown [to me] at the time this Court heard the Motions in question and entered the Order of May 28, 1998." He then vacated his earlier order and recused himself from the case.....Judge Harwell did not know there was a potential conflict until nearly two months after he issued his original order. On realizing there might be a problem, Judge Harwell properly declined to take any further action in the case but he should not have vacated his earlier order. Pursuant to the Van Ness case the Special Referee had a duty to disqualify himself from the very beginning or in the alternative decline to take action after his spouse appearance on behalf of Respondents. Special Referee Spouse Kathryn Elizabeth Porter(Betsy) actions was binding on Respondents by placing the winning bid of \$19,000 at the sale of Appellants private property evidencing that she was a representative/agent of the principal. [R. p. 263-264 para. 4] "An agent of the agent to the principal is still an agent for the principal especially when the agent actions are binding on the

principal". "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." See Fochtman v. Clanton's Auto Auction Soles, 233 S.C. 581, 106 S.E. 2d 272(1958). South Carolina Rule of Disciplinary Enforcement Rule 501 Judicial Conduct Canon (3) (b) (1) "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required." (See South Carolina Rule of Disciplinary Enforcement Rule 501 Judicial Conduct Canon (3) (E) Disqualification (1) "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:....."(d) "the judge or the judge's spouse, or a person within the third degree of relationship * to either of them, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director or trustee of a party...." "Recusal under Section 455(a) is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989); Special Referee Haigh Porter choosing not to disqualify himself was in direct violation of the due process clause of the U.S. Constitution as per "should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution." United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause."). See Gomez v. United States, 109 S. Ct. 2237, 2248(1989); and State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838. [See Affidavit of Truth p. 288-292].

4. The trial court erred in stating that the Special Referee Foreclosure Deed is valid. The Special Referee Foreclosure Deed is invalid being that his spouse Kathryn Elizabeth Porter (Betsy) acted as a witness, and she also notarized her husband (Special Referee) re-conveyance documents and Deed [R. p. 32 p. 36][See Affidavit of Truth pg. 288-292] Section 20-3-630 of S.C. Code (Supp. 2010) defines “marital property” as all real and personal property which has been acquired by the parties during the marriage....S.C. Code Ann. §20-3-630(A)(1)(Supp. 2010). Upon information and belief in South Carolina whatever is obtained during the marriage is deemed marital property belonging equally to both spouses (husband and wife). The Special Referee received \$440 for presiding over the case and sale of the property. So \$220 is what belonged to Kathryn Elizabeth Porter (Betsy), along with receiving payment from ERV who was paid by Anderson Brothers Bank (Plaintiff). Evidential facts presented before the court show Kathryn Elizabeth Porter (Betsy) the Special Referees spouse was a Representative of a party, and did receive a benefit from the transaction. The Special Referees spouse Kathryn Elizabeth Porter (Betsy) actions appear to be a direct violation of South Carolina Statute Law governing Notarial Acts as per, In the State of South Carolina pursuant to S.C. Code § 26-1-90(C) A notary may not perform a notarial act if the: (3) notary is a signer of, party to, or beneficiary of the record that is to be notarized..... so long as the notary is not also a party to the record individually or in some other representative or fiduciary capacity; or (4) notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in Section 26-1-100 (five dollars)....., Punishment for violation of SC Notarial Law is a \$500 fee, or 30 days in jail and/or both. Appellant

father was a Notary and he could not notarize Appellant (his son) documents (within third degree of relations), so surely a wife cannot notarize her husband documents especially if she is a Representative of a party of the record, or receives a benefit from the transaction exceeding the amount allowed by South Carolina Statutory Law. [R. p. 225] [See Affidavit of Truth p. 288- p.292]. “We are shocked by the respondent’s abuse of the office of notary public. A notary is a public officer, who by his hand and seal, authenticates certain classes of documents. The credibility of notarized documents is essential to the viability of our legal system.” See In re McGuinn, 272 S.C. 366, 252 Se.E.2d 122(1979)

IV.

Conclusion

In sum, Appellants has raised timely claims for Motion for Relief from Void Judgment 60(b) (4) and Challenge of Jurisdiction. Appellants also requested that the trial court issue a complete findings of facts and conclusion of law making determination on all issues presented to the court pursuant to SCRCP 52(a). The trial court erred by finding that appellant’s claims are untimely, and meritless. The appellant court should here these matters for the first time being that they were properly preserved for appeal through Appellants 59(e) Motion, or in the alternative reverse and remand claims back to the trial court with instructions on further proceedings consistent of the rulings of this court.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

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Appellants

APPELLANT'S CERTIFICATE OF COUNSEL AS TO APPELLANT'S FINAL BRIEF

Appellants certify, pursuant to Rule 211(a), SCACR, that Appellants final brief complies with the requirement of Rule 211(b), SCACR, and contains no matter which was not included in the Appellants Initial Brief other than as allowed under SCACR 211(b).

[SIGNATURE ON FOLLOWING PAGE]

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