

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen
Presiding Judge

Case No. 2013-CP-25-00295

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SC Court of Appeals

Estate of Willie G. Weekley, Deceased, by its Personal
Representative, Betty W. DennyAppellant,

v.

L.C. Weekley, Laura Weekley Segal, Individually and as
Personal Representative of the Estate of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

Of whom

Laura Weekley Segel, Individually and as Personal
Representative of the Estate of William James Weekley,
Deceased, is theRespondent.

APPELLANT'S FINAL BRIEF

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorney for the Appellant

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652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorney for the Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO LAURA WEEKLEY SEGAL WHERE AFFIDAVITS OF RECORD CLEARLY PRESENT GENUINE ISSUE OF MATERIAL FACT REGARDING ACTUAL AND CONSTRUCTIVE KNOWLEDGE OF DISPUTED TRANSACTIONS BY LAURA WEEKLEY SEGAL'S FATHER
- II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO LAURA WEEKLEY SEGEAL BASED UPON A RELIANCE ON AN UNPUBLISHED OPINION OF THIS COURT REGARDING THE RIGHT OF FIRST REFUSAL IN HER GRANDFATHER'S WILL WHERE THERE WAS NO NOTICE OF THAT ARGUMENT UNTIL THE HEARING OF HER MOTION WHICH ARGUMENTS WERE JOINED IN BY THE PERSONAL REPRESENTATIVE OF THE ESTATE ONLY AT THE TIME OF ORAL ARGUMENT WITHOUT NOTICE TO THE APPELLANT
- III. THE CIRCUIT COURT ERRED IN FAILING AND REFUSING TO CONSIDER THE MOTION TO INTERVENE BY THE APPELLANT, HER DAUGHTER, AND A NUMBER OF HER NIECES AND NEPHEWS WHO CLEARLY HAVE AN INTEREST IN THE OUTCOME OF THIS MATTER AS BEING DESCENDANTS AND POTENTIAL BENEFICIARIES OF THE ESTATE OF THEIR GRANDFATHER AND WHICH WAS DENIED BASED UPON MOOTNESS WITHOUT A WRITTEN ORDER
- IV. THE CIRCUIT COURT ERRED IN NOT FOLLOWING THE DIRECTIVES OF THIS COURT IN ITS ORDER DATED MAY 17, 2017, IN THE CASE OF *ESTATE OF WILLIE G. WEEKLEY, DECEASED BY ITS PERSONAL REPRESENTATIVE BETTY W. DENNEY V. L.C. WEEKLEY, ET AL.*, OP. NO. 2017-UP-208, IN WHICH THIS COURT FOUND THAT THERE WERE GENUINE ISSUES OF MATERIAL FACT REGARDING AFFIRMATIVE DEFENSES OF LACHES AND ESTOPPEL WHICH THE CIRCUIT COURT IGNORED

STATEMENT OF THE CASE

This matter is before this Court appealing the Order of the Honorable Carmen T. Mullen dated November 5, 2018. (ROA 4-9). In that Order, Judge Mullen ruled that the applicable statute of limitations had expired to recovery any interest in the property that is still owned by the Estate of W.G. Weekley and that laches and estoppel applied to the attempt to return improperly transferred property back to the Estate of W. G. Weekley. *Id.* Judge Mullen's Order is in stark contradiction to this Court's prior ruling in the case of *Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208. (ROA 10-12)

Further, Judge Mullen, on a matter of first impression at the time of the arguments of the motion, also ruled that the right of first refusal contained in the will of W.G. Weekley, which has given rise to years of litigation, was invalid as an unreasonable restraint on alienation citing an unpublished opinion from this Court, which has no precedential value. *Page v. Page*, Op. No. 2004-UP-110 (Ct. App. Feb. 24, 2004). *Id.* (Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved, Rule 268(d)(2) SCACR).

The Appellant moved to have that order reconsidered. (ROA 83-85). That motion was denied without a hearing by Form Order dated December 4, 2011 (ROA 1-3).

Judge Mullen's Orders arose from the Motion for Summary Judgment filed on May 10, 2018, by Laura Weekley Segal. (ROA 106-108). In that Motion, Ms. Segal claimed Ms. Denney had no standing to bring this action, that only she answered in the original complaint brought by Ms. Denney in the Probate Court for Hampton County, and that the case she brought was untimely. *Id.* There was nothing in Ms. Segal's motion regarding the invalidity of the right

of first refusal as set forth in the will of her grandfather, W.G. Weekley. *Id.* In fact, it was only at the argument of her motion that Ms. Segal and the new Personal Representative of the Estate, Carol Clayton Ruff brought up any invalidity of the right of first refusal giving rise to this matter. *Id.*

Carol Clayton Ruff was substituted as the Personal Representative of the Estate of W.G. Weekley on January 17, 2017. (ROA 13-17)

As stated above, this case has been before this Court on a prior appeal.

This Court overturned Judge Buckner's Order by its Unpublished Opinion, dated May 17, 2017 (*See Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208)(ROA 10-12).

In that Order, this Court, *Per Curiam*, reversed and remanded the Order of the Honorable Perry M. Buckner, III, dated June 30, 2015, which affirmed the Order of the Honorable Shelia B. Odom dated February 6, 2015, ordering certain property to be transferred back into the Estate of Willie G. Weekley (ROA 17-20; ROA 21-44). In that Order, Judge Buckner upheld the ruling of Judge Odom granting summary judgment to Betty W. Denney, the Personal Representative of the Estate of Willie G. Weekley, Mrs. Denney's father. (ROA 17-20).

In the unpublished opinion, this Court held that the Probate Court for Hampton County had jurisdiction to hear the case. (*Op. No. 2017-UP-208, id.*). This Court also ruled that a deed transferring forty acres around the home of W.G. Weekley was valid and the unappealed law of the case. *Id.* This Court finally remanded the matter to determine issues of material fact regarding affirmative defenses of laches and estoppel. *Id.* This Court found that there were genuine issues of material fact. *Id.* This Court remanded the matter accordingly. *Id.*

Despite that ruling, Ms. Segal moved for summary judgment. (ROA 106-109)

Prior to that motion being heard, a Motion to Intervene in the case was filed by Ms. Denney. (ROA 104-105). Also joining in that motion were here daughter, Jane Denney Toles, and her nieces and nephews, William David Shinar, Elizabeth Ann Shinar, John Alexander Shinar, James Robert Shinar, Kathy Chakides Gaffos, John Chakides, Phillip Chakides, Danny Chakides, Mixon Zahler, Lisa Weekley Keller, and Lynn Weekley, all of whom are grandchildren of W.G. Weekley. *Id.* Lisa Weekley Keller, and Lynn Weekley, two of the moving intervenors are the sisters of Ms. Segal. *Id.* It is only Ms. Segal who continues to fight the return of property to the Estate of W.G. Weekley for a final determination. *Id.*

In opposition to the Motion for Summary Judgment, the Affidavits of William David Shinar and Lisa Weekley Keller were submitted for consideration by Judge Mullen. (ROA 86-91; ROA 92-103). In his Affidavit, a grandson of W.G. Weekley, set forth his extensive knowledge of his grandfather's Estate, the history of the "farm" as the family calls it, and the lack of knowledge of any the Weekley children of the improper transfers giving rise to this matter, the compliance with the will of W.G. Weekley regarding other transfers, and the fact that no compliance with the right of the first refusal could be proven, as conceded by Ms. Segal's former counsel in Probate Court. (ROA 92-103). Mr. Shinar specifically refuted the assertion that the remainder of the family had knowledge of transfers. *Id.*

Additionally, Lisa Weekley Keller, the sister of Laura Weekley Segal, also filed her affidavit in opposition to the Motion for Summary Judgment. (ROA 86-91). She was her father's former Personal Representative. *Id.* She refused to assist her father in self-dealing regarding her grandfather's Estate. *Id.* Contrary to Ms. Segal's assertions, Ms. Keller testified in her affidavit, that her aunts and uncles had no agreement to the transfers made or the proposed transfer of the remainder of her grandfather's estate. *Id.* She further testified as to inequitable conduct by her sister in connection with her father's estate. *Id.* She testified that she knew her

father would not have wanted this matter to continue in this contentious litigation these many years. *Id.* She refuted Ms. Segal's direct testimony in her affidavit filed with her motion for summary judgment. *Id.* Despite these factual disputes, Judge Mullen granted summary judgment and refused intervention.

This case that has been pending in Hampton County Probate Court for the Estate of Willie Gelzer Weekley since 2006. (ROA 56). The Estate of Willie G. Weekley was opened February 28, 1983, and remains open to this day. (ROA 21-44).

Betty Weekley Denney was the Personal Representative of the Estate of her father, Willie Gelzer Weekley. The Hampton County Probate Court appointed her as Personal Representative on July 14, 2006. (ROA 56). Mrs. Denney's father died testate in 1977 leaving his Last Will and Testament dated May 10, 1973 (the "Will"). Mr. Weekley's Estate was opened on February 28, 1983, and remains open to this day.

Upon her appointment as Personal Representative, and while marshalling the assets of her father's Estate, Mrs. Denney commissioned a title search that revealed, and which she confirmed and determined, that certain real estate assets of her father's Estate had been conveyed or sold in violation of her father's Will. (ROA 182-185; ROA 21-44). As a result of her Order, Judge Mullen has effectively ruled that the following transfers were valid according to the Will of W.G. Weekley:

These inappropriate transactions include the following:

- (a) Conveyances from L.C. Weekley to William J. Weekley the Appellant's decedent (conveying L.C. Weekley's interest in Tract 2¹ under (1) the Will of Willie Gelzer Weekley and/or; (2) the death of Jasper J. Weekley by Deed filed on 12/20/1999 in Hampton County Deed Book 236 at Page 283.
- (b) Mortgage from William James Weekley to Lucas Carroll Weekley dated 12/20/1999 and filed in Hampton County Mortgage Book 260 at Page 271.
- (c) Deed from Mary Elizabeth Weekley Saad to Mary Elizabeth Weekley Saad Trust dated 10/7/1997 (conveying her interest in Tract 2 originally the property of her father Willie Gelzer Weekley) being dated 5/8/2000 and filed in Hampton County Public Records in Deed Book 242 at Page 112.
- (d) Deed from Mary Elizabeth Weekley Saad as Trustee of the Mary Elizabeth Weekley Saad Trust dated 10/7/1997 to Laura W. Segal (conveying all the Trust interest in Tract 2 received from her father W.G. Weekley) which deed is filed in Hampton County Public Records in Deed Book 246 at Page 225.

(ROA 182-185).

On September 30, 2009, Ms. Denney filed a motion for summary judgment asking the Probate Court to determine that there were no issues of material fact that could demonstrate any compliance with the will of Willie Gelzer Weekley so that the transfers described in the Plaintiff's Complaint could be set aside. (ROA 166-168).

On October 15, 2010, the Probate Court heard the Plaintiff's Motion for Summary Judgment. In her Affidavit responding to the Motion for Summary Judgment, Ms. Segal presented no facts that would show any compliance with the Will of her grandfather as relates to the transfers complained of by Mrs. Denney. (ROA 131-161).

¹ This 'Tract 2' is reference to Tact 2 on plat by W.A. Miley dated December 17, 1938 filed in Plat Book 3, Page 135 in Hampton County Records. This plat was agreed upon division regarding Estate of J.J. Weekley, deceased. See also Deed Book 31 at Page 120(the "Plat").

On August 29, 2013, the Probate Court issued its Order partially granting Ms. Denney's Motion for Summary Judgment and granting Ms. Segal's motion to transfer the case to the Circuit Court. (ROA 45-55).

Due to some confusion with the Order, Ms. Denney filed a Motion to Reconsider on September 13, 2013. (ROA 128-130). The Court took the Motion under advisement and finally scheduled a hearing for January, 2015.

On January 5, 2015, the Probate Court held a hearing of the Motion to Reconsider and issued its final Order on February 6, 2015, by way of that Order Granting the Plaintiff's Motion for Summary Judgment upon the Motion to Reconsider and upon a Motion Hearing on January 5, 2015. (ROA 240-288; ROA 21-44).

The Respondent filed a notice of appeal on February 12, 2015.

Mrs. Denney filed a Motion to Dismiss the Appeal due to non-service and the failure to comply with the statute for appeals from Probate Court. (R. 123-127).

On June 15, 2015, Judge Buckner heard the Appeal in Hampton, South Carolina. (ROA 223-239). During that hearing, Judge Buckner asked counsel for the Appellant if there was a right first of first refusal in the Will. (ROA 226). Counsel admitted that there was a right of first refusal and that the testator created conditions precedent to the transfer of property. (ROA 226-227) Counsel also conceded that there "is no evidence in the record that the transfer was made in compliance." (ROA 228). As Judge Buckner asked

THE COURT: But she [the Probate Judge] found that the transfers were null and void and that the properties should be returned to the Estate of W.G. Weekley for distribution pursuant to the terms of the Will because there was no evidence of compliance, isn't that correct?

MS. JOLLEY: Yes, Your Honor.

THE COURT: All right. So I'm asking you now, because you're appealing to me, what evidence do I have before me in the record that there was compliance with the terms of the testator's wishes?

MS. JOLLEY: There is no evidence in the record that the transfer was made in compliance. There is also no evidence in the record that they were not.

(*Id.*)

The case was then appealed to this Court which issued its Unpublished Opinion on May 17, 2017, and remanded the matter accordingly, which led to the filing of the Motion for Summary Judgment which Judge Mullen granted, setting up this appeal.

STATEMENT OF FACTS

This matter is an appeal of the Order of the Honorable Carmen T. Mullen dated November 5, 2018. (ROA 4-9). In that Order, Judge Mullen ruled that the applicable statute of limitations had expired to recover any interest in the property that is still owned by the Estate of W.G. Weekley and that laches and estoppel applied to the attempt to return improperly transferred property back to the Estate of W. G. Weekley. *Id.* Judge Mullen's Order is in stark contradiction to this Court's prior ruling in the case of *Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208.

This was a result of the remand of the matter by this Court.

This case has been pending before the Probate Court for Hampton County since 2006. (ROA 186-189).

On October 15, 2018, this matter came before Judge Mullen to hear Ms. Segal's Motion for Summary Judgment. (ROA 200-222).

This was a result of the remand of the matter by this Court in the case of *Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208. That appeal concerned the Honorable Perry M. Buckner, III's affirming the Probate Court's ruling that certain transfers of real property were made in contravention of the wishes of W.G. Weekley. *Id.*

At the hearing on January 5, 2015, counsel for Mrs. Denney and for Laura Weekley Segal, individually, and as Personal Representative of the Estate of William James Weekley, deceased, argued their respective positions. Also present at the hearing Thomas C. Davis, counsel for Chris Crosby, who claims to be the beneficiary of L.C. Weekley, deceased, a Defendant in default in this case. (ROA 21-44).

At the time of the January 5, 2015, hearing the Probate Court for Hampton County granted the Motion to Reconsider and the Motion for Summary Judgment. *Id.*

The February 6, 2015, Order clarified the Probate Court's Order of August 29, 2013, in which the Probate Court ruled that the Plaintiff's Motion for Summary Judgment should be granted in part. *Id.*

By its ruling the Hampton County Probate Court once again ruled, and continued to rule, that the conveyances described in Paragraph 9 of the Plaintiff's Complaint violate the Will of Willie G. Weekley dated May 10, 1973 (the "Will"). As stated on January 5, 2015, the Court further ruled that these conveyances were and are improper under the terms of the Will, that the conveyances must be voided, and that the properties must be placed back into the Estate of Willie G. Weekley for proper distribution according to the Will and which distribution would then be supervised by the Circuit Court for the Fourteenth Judicial Circuit. (ROA 21-44) The Court also clarified that the conveyance of the forty (40) acre Homesite as described in the Will was proper under the terms of the Will and clarified that ruling by the February 6, 2015, Order.

(*Id.*) The Hampton County Probate Court further ruled that the Circuit Court was to be the proper venue to handle the final issues with the Estate, including the distribution of the remaining acreage owned by the Estate of Willie G. Weekley according to the intent of the Will.

(*Id.*) The Court found that there was no evidence of compliance with what are essentially conditions precedent to a transfer as contained in the Will. (*Id.*) Judge Buckner agreed by his Order, and this Court disagreed.

Willie Gelzer Weekley died testate in on November 6, 1977, leaving that Last Will and Testament dated May 10, 1973 (the "Will). Mr. Weekley's Estate was opened on February 28, 1983, and remains open to this day. It has yet to be fully administered. (ROA 21-44). In his Will, Mr. Weekley left his property to his eight children. (Will).

The Will set forth specific mechanisms for the disposal of the real property owned Mr. Weekley at the time of his death to his heirs. (Will, Sections III, IV, VI, VII, VIII). In the Will, Mr. Weekley determined that to be "fair and equitable, I hereby, for the purpose of this instrument, divide my lands into Thirty-three (33) shares of Ten (10) acres each." (ROA 304-308). Those shares were then to have been distributed to the eight children of Willie Gelzer Weekley as follows:

I hereby give, devise and bequeath the shares above referred to under the terms and conditions hereinafter set forth, to my children in the following proportions: William J. Weekley, eight and one-half (8½) shares; Doris Weekley Zahler, five (5) shares; Lucas Carroll Weekley, eight and one-half (8½) shares; Jasper Josiah Weekley, Two and one-half (2½) shares; Margaret Weekley Shinar, one (1) share; Elizabeth Weekley Saad, one (1) share; Ruth Weekley Chakides, One and one-half (1½) shares; and Betty Weekley Denney, one (1) share.

(*Id.*)

The remaining four (4) shares were to be divided as follows:

V

I hereby further devise and bequeath four (4) shares equally to all of my surviving children located immediately east and west of Salkehatchie Road at the northern extremity of my land, including my home and home site. I further direct that no party of this forty (40) acres can be sold or divided without the unanimous consent of all surviving heirs. Taxes shall be shared equally by all surviving heirs. Maintenance, use of, and physical developments that occur on this forty (40) acres must have majority agreement of all surviving heirs. In this instance, each vote shall be by surviving heirs, rather than by shares owned. Upon the death of my last surviving child, provided this forty (40) acres has not been disposed of prior to that time by unanimous agreement of all surviving heirs, then I further direct that this forty (40) acres be divided equally among all of my surviving grandchildren or sale at auction to the highest bidder, and the proceeds of same be distributed among all of my surviving grandchildren. Regarding of the time of sale, prior to the death of my surviving children or after, the proceeds of the sale of this forty (40) acres, or any part thereof, shall be divided equally among my then surviving grandchildren.

(*Id.*)

Mrs. Denney deeded these 40 acres, also known as the Homesite acreage, to herself and her sister by way of a Deed of Distribution dated September 28, 2010. (ROA 289-291). The Court of Appeals ruled that this transfer was valid; that ruling is unappealed. *See Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208.

The Will goes on to set forth the further disposition of the property as follows:

VI

The location of each devisees portion of land is to be determined by majority vote of the devisees. The vote of each devisee will be in proportion to their shares. It is my desire and intention that Jasper Josiah Weekley's portion be in the "Pine Thicket." His portion will be on Salkehatchie Road joining the J.F. Weekley property and going back to the swamp.

(ROA 304-308).

The next Section of the Will is the key to the current dispute before the Court. It states as follows:

VII

I hereby direct that any time after Two (2) years of my death, that the devisees agree on the location of their portion, that the property can be divided. **I further direct that any time one of the devisees desires to sell his portion of the property, that he first offer it to the remaining devisees.** Should they not be able to agree on a price for the property to be sold, then the seller would choose one appraiser and the remaining devisees another appraiser and the third appraiser [sic] would be the Bank of Hampton, South Carolina. The average of the three appraisals would be the selling price. The devisees purchasing the property would contribute to the purchase price according to the proportions they received in Paragraph IV, and the portion so purchased would likewise be divided.

(ROA 305)(emphasis added).

There is NO evidence that the transfers complained of by the Plaintiff in Paragraph 9 of her Complaint in this matter complied with this Section VII of the Will in that there is no evidence that there was a right of first refusal given to remaining devisees as required. (See ROA 17-44).

Despite that lack of evidence, this Court remanded the matter for the lower court to determine issues related to genuine issues of material fact existing regarding affirmative defenses. *Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley, et al.*, Op. No. 2017-UP-208.

The Will at issue has enumerated Section VIII which established that until such time as the entire Estate had been distributed, then all decisions regarding the management of the Estate shall be by vote of the devisees in proportion to their share, and all profits and losses shall be by proportion, too. (ROA 304-308). Section XI of the Will states that if a devisee shall predecease W.G. Weekley, then issue of the devisee shall take their parent's share *per stirpes*. (*Id.*)

The Will named William J. Weekley, Doris Weekley Zahler, and Lucas Carroll Weekley as the executors. (*Id.*) All three of these former executors are deceased. In order to continue to administer her father's Estate, Betty W. Denney became the Personal Representative accordingly by petition to the Hampton County Probate Court. (ROA186-189). Judge Mullen removed Ms. Denney as Personal Representative and appointed Carol Clayton Ruff as the Personal Representative on January 19, 2017. (ROA 13-16)

Prior to her appointment as Personal Representative, Mrs. Denney determined that since April 2, 1983, there had been no activity with her father's Estate. (ROA 186-189). After her appointment as the Personal Representative, Mrs. Denney then undertook the marshalling of the assets of the Estate in an attempt to finally close it. In doing so, Mrs. Denney hired a title abstractor to determine the status of the 330 acres owned by the Estate. (ROA 182-185) As a result of that abstract, Mrs. Denney discovered that there were several transfers from devisees to her brother W. J. Weekley, the father and decedent of the appellant, Laura W. Segal. These are the transfers that the Probate Court voided and put back in to the Estate of Willie Gelzer Weekley by its Order on February 6, 2015. (ROA 21-44).

These transfers were as follows:

1. Conveyances from L.C. Weekley to W.J. Weekley (conveying L.C. Weekley's interest in Tact 2² under (1) Will of Willie Gelzer Weekley and/or; (2) Death of Jasper J. Weekley by Deed filed on 12/20/1999 in Hampton County Deed Book 236 at Page 293;
2. Mortgage from William James Weekley to Lucas Carroll Weekley dated 12/20/1999 and filed in Hampton County Mortgage Book 260 at Page 271;

² This 'Tract 2' is reference to Tact 2 on plat by W.A. Miley dated December 17, 1938 filed in Plat Book 3, Page 135 in Hampton County Records. This plat was agreed upon division regarding Estate of J.J. Weekley, deceased. See also Deed Book 31 at Page 120. (ROA 309-311)

3. Deed from Mary Elizabeth Weekley Saad to Mary Elizabeth Weekley Saad Trust dated 10/7/1997 (conveying her interest in Tract 2 originally the property of her father Willie Gelzer Weekley) being dated 5/8/2000 and filed in Hampton County Public Records in Deed Book 242 at Page 112;
4. Deed from Mary Elizabeth Weekley Saad as Trustee of the Mary Elizabeth Weekley Saad Trust dated 10/7/1997 to Laura W. Segal (conveying all the Trust interest in Tract 2 received from her father W.G. Weekley) which deed is filed in Hampton County Public Records in Deed Book 246 at Page 225.

Mrs. Denney brought this action seeking to have the Probate Court declare the transfers invalid, to ensure compliance with the mechanisms in the Will, and, ultimately, to close her father's Estate. (ROA 182-185); *See* S.C. Code Ann. §62-1-302(1)(Probate Court granted jurisdiction of cases for the determination of property in which the estate of a decedent has an interest). Mrs. Denney alleged, and the Probate Court and Circuit Court originally agreed, that these transfers did not comply with the intent of the Will. (ROA 21-44; ROA 17-20). These transfers were conducted by Laura Segal's decedent, Mrs. Denney's brother, in direct violation of the Will. (*Id.*) There was NO evidence presented by Ms. Segal at any time that the transfers complied with the Will. (*Id.*) The Hampton County Probate Court has studied these matters for over five (5) years and could not find even the "mere scintilla" of material fact that would any way allow that Court to deny Ms. Denney's Motion for Summary Judgment. (*Id.*) Ms. Segal presented NO information in her lengthy Affidavit in opposition to the Motion for Summary Judgment that could show any compliance with her grandfather's Will. (ROA 131-161) Accordingly, the Hampton County Probate Court granted summary judgment to Mrs. Denney. (ROA 21-44).

At the final hearing of this matter on January 5, 2015, Ms. Segal's then-counsel agreed that there was no compliance with the Will and stated as follows:

MR. CARTER:

....
So as Your Honor well recognized, okay, maybe the original transfers **were not in technical compliance with the – with the will**, but very often wills can't be followed.

(ROA 260-261)(emphasis added).

At the hearing before Judge Buckner on June 15, 2015, Ms. Segal's then-counsel also agreed there was no compliance with the Will and stated as follows:

MS. JOLLEY There is no evidence in the record that the transfer was made in compliance.

(ROA 228).

After remand, from the Court of Appeals, Ms. Segal moved for summary judgment, which was granted and now this appeal is pending.

STANDARD OF REVIEW

In reviewing a motion for summary judgment, the appellant court applies the same standard of review as the trial court. *Bennett v. Carter*, 421 S.C. 374, 807 S.E.2d 197 (2017); *Companion Property & Cas. Ins. Co. v. Airborne Exp., Inc.*, 369 S.C. 388, 631 S.E.2d 915 (Ct. App. 2006); Rule 56(c) SCRPC. This Court will liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might be drawn therefrom. *Id.* In cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

The standard of review for a motion to intervene Rule 24(a)(2) as of right is whether the judge abused her discretion in granting or denying the motion. *In re Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004); *S.C. Tax Comm'n v. Union County Treasurer*, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1998). On reviewing the trial judge's decision, the Court of Appeals must appraise all of the circumstances of a particular case as to determine whether interests sufficiently overlap so as to deny intervention. *Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990). Intervention should be liberally granted, particularly where judicial economy will be promoted by declaration of rights of all parties who may be affected. *Id.*

ARGUMENT

- I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO LAURA WEEKLEY SEGAL WHERE AFFIDAVITS OF RECORD CLEARLY PRESENT GENUINE ISSUE OF MATERIAL FACT REGARDING ACTUAL AND CONSTRUCTIVE KNOWLEDGE OF DISPUTED TRANSACTIONS BY LAURA WEEKLEY SEGAL'S FATHER

There are genuine issues of material facts in this matter that preclude the granting of summary judgment, which Judge Mullen failed to take into consideration or ignored. The Respondent's Motion for Summary Judgment relied upon her Affidavit which testimony was refuted by her cousin and her sister. (ROA 106; ROA 86-91; ROA 92-103). Judge Mullen relied on Ms. Segal's sworn testimony claiming that she give notice of transactions which Mr. Shinar and Ms. Keller dispute. There are clear issues of fact, not just a mere scintilla, rendering the grant of summary judgment inappropriate. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). Both Mr. Shinar and Ms. Keller claim that what Ms. Segal stated was false and that there was no notice given to anyone of these transactions which are in dispute. (ROA 86-91; ROA 92-103) These are not "sham" affidavits or "competing" affidavits filed to contradict prior sworn testimony. *See, e.g., Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004). Instead, these are Affidavits that contradict Ms. Segal's testimony and prove that there are issues of fact. Judge Mullen clearly ignored the Affidavits. The Affidavits were filed on August 24, 2018, and October 4, 2018, more than two (2) days before the hearing on October 15, 2018. Rule 56(c) SCRPC. Viewing those facts in the light most favorable to the non-moving party, the Court should have denied summary judgment. . *Bennett v. Carter*, 421 S.C. 374, 807 S.E.2d 197 (2017); *Companion Property & Cas. Ins. Co. v. Airborne Exp., Inc.*, 369 S.C. 388, 631 S.E.2d 915 (Ct. App. 2006).

The Order granting summary judgment also relied on arguments raised for the first time orally at the time of the hearing. Generally, the practice of raising unpled issues for the first time at a summary judgment hearing is disapproved of by the Supreme Court of South Carolina. *See Resolution Trust Corp. v. Eagle Lake Condominiums*, 310 S.C. 473, 427 S.E.2d 646 (1993). The issue regarding the invalidity of the right of first refusal contained in the Will of W.G. Weekley was not raised in the Motion for Summary Judgment. (RPA 1-6-108). That motion was based on standing, laches, estoppel, and the applicable statutes of limitation. *Id.* Nowhere in that motion did Ms. Segal raise the issue of the right of first refusal being invalid or an illegal restraint on alienation. *Id.* As such, the trial court committed error in granting Ms. Segal summary judgment.

By granting summary judgment, Judge Mullen failed to rely upon the clear language of the Will, as required to do, and, instead of dealing with the testator's intent, found that the intent of the testator was invalid. In construing a will, the court should strive to determine and give effect to the testator's intent. *May v. Riley*, 279 S.C. 248, 305 S.E.2d 77 (1983); *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997). Intent must be gathered from the instrument as a whole, giving consideration to the words the testator used and reading them according to established principles of law. *King v. South Carolina Tax Comm'n*, 253 S.C. 64, 173 S.E.2d 92 (1970). The court should read the testator's language to effectuate the testator's intent, unless that intent contravenes some well settled rule of law or public policy. *Mille v. Rogers*, 246 S.C. 438, 144 S.E.2d 485 (1965) Moreover, the rules of construction are of secondary importance to the need to ascertain what the testator meant by the terms used in the written instrument itself, and each provision of the will must be considered in relation to the other provisions. *Allison v. Wilson*, 306 S.C. 274, 411 S.E.2d 433 (1991). The Circuit Court

improperly upheld the Probate Court's ruling that there was no compliance with the Will and a clear violation of the intent requiring that the property had to be placed back into the Estate of Willie Gelzer Weekley regarding his desire for his children to have a right of first refusal for any sale of the property.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO LAURA WEEKLEY SEGEAL BASED UPON A RELIANCE ON AN UNPUBLISHED OPINION OF THIS COURT REGARDING THE RIGHT OF FIRST REFUSAL IN HER GRANDFATHER'S WILL WHERE THERE WAS NO NOTICE OF THAT ARGUMENT UNTIL THE HEARING OF HER MOTION WHICH ARGUMENTS WERE JOINED IN BY THE PERSONAL REPRESENTATIVE OF THE ESTATE ONLY AT THE TIME OF ORAL ARGUMENT WITHOUT NOTICE TO THE APPELLANT

Memorandum opinions and unpublished orders have no precedential value and should not be cite except in proceedings in which they are directly involved. Rule 268(d)(2) SCACR; *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). In her Order, Judge Mullen specifically cited the case of *Page v. Page*, Op. No. 2004-UP-110 (Ct. App. 2004). Judge Mullen's reliance on this unpublished opinion in contravention of this Court's Rules without notice of this argument contained in the motion and where the reliance was material and prejudicial to the rights to of the Appellant constitutes reversible error. On Pages 4-5 of her Order, Judge Mullen relies on the *Page* case and the citations in an argument regarding unreasonable restraints on alienation that was never part of the motion filed by Ms. Segal (ROA 4-9)

Ms. Segal's counsel improperly informed the Court of the holding in the *Page* case and acknowledged that it was an unpublished opinion. (ROA 209). Ms. Segal's own counsel admitted that *Page* "...is unpublished, unfortunately, but it is a South Carolina case in the Court of Appeals...." (*Id.*) Reliance on the case is improper pursuant to the Rules of this Court. Unpublished opinions have no precedential value. *Lanham v. Blue Cross & Blue Shield of South*

Carolina, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000). Even counsel for the current Personal Representative urged Judge Mullen to rely on the *Page* decision. (ROA 212) Ms. Ruff relied on *Page* to make a unilateral determination that the right of first refusal is void. Her counsel stated

At the same time, I do agree – I have thought this whole time that the right of first refusal, in our view, is void as a matter of law for the reasons stated in *Page*, which is an **unpublished opinion**, but's also instructive as to how the higher courts would look at this.

(*Id.*)(emphasis added). Ms. Ruff's own counsel acknowledged that the *Page* case has no precedential value then goes on to argue that it would be instructive as to how this Court or the Supreme Court would deal with the right of first refusal in the Will of W.G. Weekley. This was the first time that issue had been raised and the Appellant had no notice that this matter would be argued at the time of the hearing. Unlike in the *Page* case, which involved a deed, the descendants of W.G. Weekley never contested the matter, and, frankly, Ms. Segal's father knew of the mechanisms in his father's Will since he complied with them in the past. (ROA 86-91; ROA 92-103). To now argue they are invalid goes against the very conduct of the members of the family and continues a misplaced, improper reliance on an unpublished opinion in direct contravention of the Rules of this Court.

III. THE CIRCUIT COURT ERRED IN FAILING AND REFUSING TO CONSIDER THE MOTION TO INTERVENE BY THE APPELLANT, HER DAUGHTER, AND A NUMBER OF HER NIECES AND NEPHEWS WHO CLEARLY HAVE AN INTEREST IN THE OUTCOME OF THIS MATTER AS BEING DESCENDANTS AND POTENTIAL BENEFICIARIES OF THE ESTATE OF THEIR GRANDFATHER AND WHICH WAS DENIED BASED UPON MOOTNESS WITHOUT A WRITTEN ORDER

The Circuit erred in failing and refusing to allow intervention by other heirs of W.G. Weekley. William David Shinar, Elizabeth Ann Shinar, John Alexander Shinar, and James Robert Shinar, who are the heirs of Margaret Weekley Shinar, who died in 2017 and was entitled

to one share of the Land under Mr. W.G. Weekley's Will. (ROA 304-308; ROA 92-103). Jane Denney Toles is the daughter of Betty W. Denney, who is entitled to one share of the Land under Mr. W.G. Weekley's Will. (ROA 304-308). Kathy Chakides Gaffos, John Chakides, Phillip Chakides, and Danny Chakides are the children of Ruth Weekley Chakides, who died in 2002 and was entitled to one and a half shares of the Land under Mr. W. G. Weekley's Will. (*Id.*) Mixson Zahler is the heir of Doris Weekley Zahler, who died in 1995 and was entitled to five shares of the Land under Mr. W.G. Weekley's Will. (*Id.*) Lisa Weekley Keller, and Lynn Weekley are the heirs of Jim Weekley, who died in 2004 and was entitled to receive 8 ½ shares of the Land under Mr. W.G. Weekley's Will. (*Id.*) As these unjoined descendants are heirs to the Estate of Mr. W. G. Weekley, they have an interest in the outcome of this suit and are therefore proper parties to be joined. Counsel for the Personal Representative acknowledged as much at the hearing of these motions on October 15, 2018, when he admitted they have standing to argue and to participate and the right to do so. (ROA 213).

The appeal of this denial of intervention is also made where Judge Mullen failed to make any ruling other than the motion was moot as set forth in a Form Order. The Appellant filed a motion to reconsider, which was also denied by Form Order, without a hearing (ROA 1-3).

Rule 24(a) of the South Carolina Rules of Civil Procedure and the accompanying Note provide that:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Note:

This is the same as Federal Rule 24(a). Intervention of right under this Rule is a counterpart to Rule 19(a) on joinder of persons needed for a just

adjudication; where, upon motion of a party in an action, an absentee should be joined so that he may protect his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion. The Rule expands intervention of right as provided by Code § 15-5-200, and Circuit Court Rule 22.

The Supreme Court, in *Ex parte Reichlyn*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993), held that a party seeking to intervene under Rule 24(a)(2), SCRPC must establish four elements. The intervening party must: “1) establish timely application; 2) assert an interest relating to the property or transaction which is the subject of the action; 3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and 4) demonstrate that its interest is inadequately represented by other parties”. *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990).

These parties satisfy all of the elements required for intervention.

1. Timely Application

This suit was originally filed in 2006 by Betty W. Denney, as the Personal Representative of Mr. Weekley’s Estate for a determination as to whether distribution of certain property from the Estate was made improperly. Since then, numerous counterclaims, motions, settlement negotiations, orders, and appeals and have been occurred. The Motion for Summary Judgment filed by Laura Weekley Segel on May 10, 2018, alleging that the transfer of certain property from the Estate was proper and that all interested parties had notice of these transactions. Adding additional parties at this point in the suit would not prejudice any other party as the motion to intervene was filed prior to the hearing of the motion for summary judgment (Motion, ROA 104-105) and was made in order to protect the interests of parties who were formerly protected by the Personal Representative, Betty W. Denney.

2. An interest relating to the property or transaction which is the subject of the action

The intervenors have an interest in the outcome of this suit as they are the grandchildren of Mr. Weekley and are the heirs of his children. The property which is the subject matter of this suit may belong, in part, to these parties. William David Shinar, Elizabeth Ann Shinar, John Alexander Shinar, and James Robert Shinar are the heirs of Margaret Weekley Shinar, who died in 2017 and was entitled to one share of the Land under Mr. W.G. Weekley's Will. Jane Denney Toles is the daughter of Betty W. Denney, who is entitled to one share of the Land Mr. W.G. Weekley's Will. Kathy Chakides Gaffos, John Chakides, Phillip Chakides, and Danny Chakides are the children of Ruth Weekley Chakides, who died in 2002 and was entitled to one and a half shares of the Land under Mr. W. G. Weekley's Will. Mixson Zahler is the heir of Doris Weekley Zahler, who died in 1995 and was entitled to 5 shares of the Land under Mr. W.G. Weekley's Will. Lisa Weekley Keller, and Lynn Weekley are the heirs of Jim Weekley, who died in 2004, and who are entitled to the shares [8 ½] left to their father, Jim Weekley. The contested transfers by Elizabeth Weekley Saad and L.C. Weekley to Jim Weekley should have resulted in distribution of those additional shares among all the devisees based upon their proportionate sharing in the Will of Mr. W.G. Weekley rather than as transferred by the then appointed Personal Representative Jim Weekley.

These unjoined descendants' interest in the property would be materially and irreversibly affected if they are not permitted to intervene and this suit seeks to impact their rights in the property without their being party to the suit, in violation of Due Process.

3. Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest.

As the Judge Mullen effectively ended this matter where there are still issues of fact regarding the transfers, by not allowing these parties to intervene, she has cut off their ability to

protect their interest in the ultimate disposition of the Estate. Due to the sheer passage of time, the generation of W.G. Weekley's grandchildren are now of more advancing ages themselves. To not allow them to participate in the action when they were formerly aligned with the former Personal Representative would be to cut off their ability to protect themselves.

4. Demonstrate that its interest is inadequately represented by other parties

The initial parties to the lawsuit were:

1. Betty W. Denney, as the heir of her Father,
2. L.C. Weekley as one of the original devisees.
3. Laura Weekley Segel, individually and as the personal representative of the estate of William James Weekley.
4. Peter Saad, as personal representative of Mary Elizabeth Weekley Saad and as Trustee of the Mary Elizabeth Saad Trust.

Laura Weekley Segel stands to benefit if the transfers of land about which the Plaintiff complained are permitted by this Court. As such, Ms. Segel, even though she is of the same generation, does not share the goals of the parties who wish to intervene. She is the only person in that generation who stands to benefit from her father's improper transactions. The unjoined parties are inadequately represented as they are not of the same generation or inheritance structure as the currently named parties.

IV. THE CIRCUIT COURT ERRED IN NOT FOLLOWING THE DIRECTIVES OF THIS COURT IN ITS ORDER DATED MAY 17, 2017, IN THE CASE OF *ESTATE OF WILLIE G. WEEKLEY, DECEASED BY ITS PERSONAL REPRESENTATIVE BETTY W. DENNEY V. L.C. WEEKLEY, ET AL.*, OP. NO. 2017-UP-208, IN WHICH THIS COURT FOUND THAT THERE WERE GENUINE ISSUES OF MATERIAL FACT REGARDING AFFIRMATIVE DEFENSES OF LACHES AND ESTOPPEL WHICH THE CIRCUIT COURT IGNORED

As a result of the prior appeal of the Order of Judge Perry M. Buckner, III, upholding a grant of summary judgment by the Honorable Sheila Odom, this Court issued its order in the case of *Estate of Willie G. Weekley, Deceased by its Personal Representative Betty W. Denney v. L.C. Weekley*, Op. No. 2017-UP-208. In the Order, which reversed and remanded Judge Buckner's ruling, this Court stated

2. The circuit court erred in granting summary judgment when genuine issues of a material fact existed regarding Appellants' [Ms. Segal's] affirmative defenses of laches and estoppel.

(Op. No. 2017-UP-208)

This Court remanded the case for further proceedings. *Id.* The Court made a ruling that there were genuine issues of material fact, and, then, Judge Mullen ignored that ruling and issued her order granting summary judgment. The remand from this Court conclusively established that there are genuine issues of material fact. No one sought a Writ of Certiorari to the Supreme Court of South Carolina, and, accordingly, that is the law of the case. Judge Mullen's Order ignores that law of the case and effectively makes this Court's ruling ineffective, which she cannot do.

CONCLUSION

The Circuit Court improperly granted summary judgment where there was more than a mere scintilla of evidence in dispute, where there was reliance on unpublished opinions, where there was a failure to allow and intervention, where this court found that there were genuine issues of material fact in dispute

For these reasons, the decision of the Circuit Court should be REVERSED.

Respectfully submitted:

Mt. Pleasant, South Carolina
Aug. 30, 2019



G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen
Presiding Judge

Case No. 2013-CP-25-00295

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SFP 10 2019
SC Court of Appeals

Estate of Willie G. Weekley, Deceased, by its Personal
Representative, Betty W. DennyAppellant,

v.

L.C. Weekley, Laura Weekley Segal, Individually and as
Personal Representative of the Estate of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

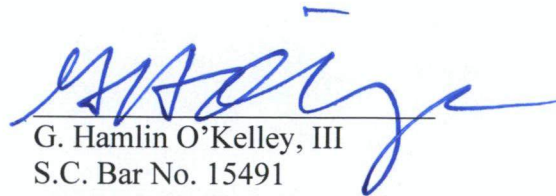
Of whom

Laura Weekley Segel, Individually and as Personal
Representative of the Estate of William James Weekley,
Deceased, is theRespondent.

**CERTIFICATION OF COUNSEL
PURSUANT TO RULE 211(b) SCACR**

I certify that I have served the Respondent's Final Brief and that it is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

Mt. Pleasant, South Carolina
August 30, 2019

A handwritten signature in blue ink, appearing to read "G. Hamlin O'Kelley, III", written over a horizontal line.

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorney for the Appellant