

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE ROBERT E. HOOD
CIRCUIT COURT JUDGE

CASE NO. 2019-001508

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NOV 25 2019

SC Court of Appeals

Jimmy Boykin,

Respondent,

V.

Zady Burton, individually and as Personal Representative of the Estate of Helen Burton
and Sandy Boykin a/k/a Sandy Boykin, Jr.,

Defendants

of whom

Zady Burton is the Appellant,

Appellant

INITIAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

ISSUE ONE

Did the Court err in finding Appellant in contempt of Judge Lee's Order dated may 14, 2015?

ISSUE TWO

Did the Court err in its award of attorney fees to Respondent?

ISSUE THREE

Did the Court err in its award to respondent of interest paid?

ARGUMENT

ISSUE ONE:

Did the Court err in finding Appellant in contempt of Judge Lee's Order dated may 14, 2015?

Respondent does not address his failure to admit any evidence at the hearing. As stated in Appellant's Brief, arguments of counsel are not evidence nor are affidavits. The fact that counsel's letter was discussed at the trial does not mean that it was offered much less admitted.

Assuming without conceding that the letter was properly before the Court, Judge Hood and Respondent erroneously deemed the letter as imposing conditions on acceptance of the deed. The letter neither states nor implies that acceptance of delivery of the deed is a concession or agreement as to any issue.

There is simply no clear and convincing evidence of contempt. Judge Hood may have been frustrated that the matter was not being resolved but that in and of itself does not justify holding a party in contempt.

Respondent's assertion that Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) is limited to matters involving criminal contempt is seeking a distinction without support. The case clearly states that an action for constructive contempt (contempt committed outside the presence of the Court) is initiated by a Rule to Show Cause supported by a verified Petition or affidavit. While the case is about a criminal contempt,

that fact alone is not determinative.

ISSUE TWO

Did the Court err in its award of attorney fees to Respondent?

Respondent offers no law to support his assertion that the Circuit Court could award attorneys fees for matters litigated before the Probate Court.

There is evidence admitted that would support finding the Appellant in contempt. Therefore an award of attorneys fees is not warranted.

Respondent acknowledges that he failed to meet the requirements of Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989). Respondent cannot now seek a remand on the issue of attorneys fees in order to cure his failure to meet the standard for attorneys fees.

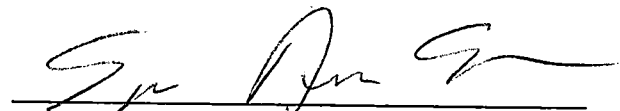
ISSUE THREE

Did the Court err in its award to Respondent for interest paid?

Respondent fails to address whether the affidavit should have been considered by the Court at all. It was filed prior to the hearing. It was not offered into evidence. With the exception of hearings for temporary relief in Family Court and Motions for Summary Judgment and other relief, affidavits are rarely considered by the Courts in trials on the merits. The Respondent did not testify and so could not be cross-examined as to the contents of the affidavit.

CONCLUSION

The finding of contempt should be reversed and the relief granted should therefore also be reversed.



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November 25, 2019

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IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE ROBERT E. HOOD
CIRCUIT COURT JUDGE

CASE NO. 2013-CP-28-00876

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Plaintiff-Respondent,

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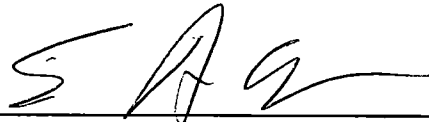
Defendants

of whom

Zady Burton is the Appellant.

PROOF OF SERVICE

I certify that I have served one copy of the Appellant's Initial Reply Brief on the Respondent by depositing it in the United States Mail, postage prepaid, on November 25, 2019, addressed to his attorney of record, Moultrie B. Burns, Jr., Savage Royall & Sheheen, P.O. Drawer 10, Camden, SC 29021.



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