

MOTION TO FILE RULE NO. 60(b)(3)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Kenneth A. Campbell, Jr., Special Referee

Appellate Case No. 2019-001886

Patricia E. Campbell

Respondent.

V.

Joanne Ahearn and Robert J. Plum

Appellant.

MOTION TO FILE RULE NO. 60(b)(3)

RECEIVED

JAN 15 2020

SC Court of Appeals

DISCUSSION

I. RESPONDENTS PATRICIA E. CAMPBELLS UNEXCUSABLE NEGLIGENCE AND FRAUD

The Appellants Joanne Ahearn and Robert J. Plum are requesting the Appellate Court of South Carolina to grant permission appellants Joanne Ahearn And Robert J. Plum to file rule 60 (b)(3) with the 14th Judicial Court In Walterboro, South Carolina. The reason for requesting to file this rule, the appellants Joanne Ahearn and Robert J. Plum were not given service of process. The respondent, Patricia E. Campbell even though stating the appellants whereabouts were unknown, the respondent Patricia E. Campbell was in contact with the appellants Joanne Ahearn and Robert J. Plum prior to and after filing the lawsuit to remove the appellants Joanne Ahearn And Robert J. Plum from the respondents deeded property located at 331 Turner Lane, Round O, South Carolina, Colleton County, 29474. The respondent Patricia E. Campbell also claimed to be under duress and lacked the mental capacity to lawfully make the transaction, (Exhibit C). The respondent Patricia E. Campbell also claimed to make the transaction as a result of the appellants undue influence, (Exhibit C).

II. PRESENTATION OF FACTS

The respondent Patricia E. Campbell, executed General Warranty Deed on December 18, 2018, transferring the appellants Joanne Ahearn and Robert J. Plum as shown on the title to real estate that was filed with the Colleton County Register of Deeds on the same date in Book 2702 on page 271 (Exhibit A). The transfer and filing of the deed was performed by Attorney Deborah B. Kane O'Quinn. On the same date, respondent Patricia E. Campbell instructed Attorney Deborah B. Kane O'Quinn to name appellant Joanne Ahearn as the

respondent's primary healthcare power of attorney (exhibit B), and named appellant Robert J. Plum as successor healthcare power of attorney, (exhibit B). Within the respondent's complaint dated April 10, 2019 (exhibit C, page 1, number 2), the respondent Patricia E. Campbell claimed the whereabouts of the appellants Joanne Ahearn and Robert J. Plum were unknown, even though the appellants names, addresses and cell phone numbers were written in the healthcare power of attorney (exhibit B, page 1 lines 2 and 3, page 4 number 8 successor agent) dated December 18, 2018. The respondent Patricia E. Campbell declared she was of sound mind and under no duress, fraud or undue influence (exhibit B, page 5 line 4). Legal notices were placed in the Colletonian on April 25, 2019, May 2, 2019 and May 9, 2019, exhibit C), even though the respondent knew the appellants was not residing in the state of South Carolina, and were residing in the State of Florida, which the address was recorded in the healthcare power of attorney, (exhibit B). After the appellants filed the appeal in the South Carolina Court of Appeals, appellant Robert J. Plum received a disturbing text message from respondent Patricia E. Campbell, (exhibit D), proving once again the respondent and her attorney had the means to contact the appellants prior to filing.

SUMMARY

The appellants Joanne Ahearn and Robert J. Plum were not given service of process. The respondent Patricia E Campbell was in contact with the appellants Joanne Ahearn and Robert J. Plum prior to and after the respondent filed the lawsuit. The appellants possess text messages, (exhibit D), voicemails, healthcare power of attorney, (exhibit B), and successor healthcare power of attorney, (exhibit B), proving the respondent Patricia E. Campbell and

Benjamin Cullifer Pickens Sapp made no attempt to use the preceding means to serve process on appellants Joanne Ahearn and Robert J. Plum.

CONCLUSION

For the foregoing reasons, the appellants Joanne Ahearn and Robert J. Plum respectfully ask the Appellate Court of South Carolina reverse or relieve the appellants Joanne Ahearn and Robert J. Plum from the September 7, 2019 order by Kenneth A. Campbell, Jr., Special Referee.

Respectfully submitted this 10th of January 2020

Joanne Ahearn

Robert J. Plum

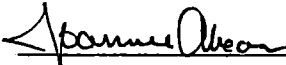
504 Forest Circle, Apt. 123

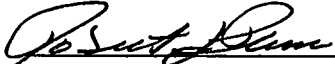
Walterboro, South Carolina 29488

843-603-0566

386-416-9561

Pro Se

 Jan. 10, 2020
Joanne Ahearn Date

 JAN. 10, 2020
Robert J. Plum Date

Colleton, South Carolina

EXHIBIT A

Exhibit A

All that certain piece, parcel or tract of land located in Colleton County, South Carolina, containing three (3) acres, more or less, and being measuring and bounded as reference to the plat prepared by W. Gene Whetsell, RLS, and recorded in Plat Book 25 at Page 50 in the Colleton County RMC Office will more fully show.

This being the same property conveyed to Clifford C. Campbell and Patricia E. Campbell, as joint tenants, with right of survivorship, by deed of Margaret Dianne Hill dated 25 July 2005 and recorded in Record Book 1124 at Page 174 in the Colleton County Register of Deeds Office. Clifford C. Campbell died 20 February 2015.

TMS#168-00-00-056.

STATE OF SOUTH CAROLINA

HEALTH CARE POWER OF ATTORNEY

COUNTY OF COLLETON

I, Patricia E. Campbell of 331 Turner Lane, Round O, South Carolina, do hereby appoint Joanne Ahearn of 335 Turner Lane, Round O, South Carolina, Telephone Number: 843-603-0566 as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document, I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I GRANT TO MY AGENT FULL AUTHORITY TO MAKE DECISIONS FOR ME REGARDING MY HEALTH CARE. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E, below, my agent is authorized as follows:

- A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication and the use of mechanical or other procedures that affect any bodily function, including but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such may lead to physical damage, addition, or hasten the moment of, but not intentionally cause, my death;
- C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

PEC

- D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting and waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent or to seek actual or punitive damages for the failure to comply.
- E. The powers granted above do not include the following powers or are subject to the following rules or limitations: NONE

4. ORGAN DONATION

My agents may PEC; may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agents will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

- 1. PEC GRANT OF DISCRETION TO AGENTS. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agents believe the burdens of the treatment outweigh the expected benefits. I want my agents to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

- 2. _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
 - A. If I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

2 PEC

B. If I am in a state of permanent unconsciousness.

OR

3. _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

4. _____ DIRECTIVE IN MY OWN WORDS. _____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that:

DEC I do not want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

_____ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENTS WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT, CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

8. ADMINISTRATIVE PROVISIONS

- A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.
- B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

3 DEC

8. SUCCESSOR AGENT

In the event that my daughter Joanne Ahearn is unable or unwilling to serve, then and in that event I nominate, constitute and appoint Robert J. Plum as my agent to take care of my health care decisions. His address is 418 Falcon Avenue, Edgewater, Florida 32141, Telephone Number: 386-402-5268.

9. UNAVAILABILITY OF AGENT

If, at any relevant time the agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE, I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I SIGN MY NAME TO THIS HEALTH CARE POWER OF ATTORNEY ON THE 18th DAY OF DECEMBER 2018. My current home address is 331 Turner Lane Round O, South Carolina.

Signature: Patricia E. Campbell
Name: Patricia E. Campbell

4/PEC

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that she signed or acknowledged this Health Care Power of Attorney in my presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon her decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

SIGNATURE Deborah B. Kane DATE 12-18-18
PRINT NAME Deborah B. Kane TELEPHONE (843) 549-1060
RESIDENCE ADDRESS 1832 CAVANAUGH ROAD
WALTERBORD, SC 29488

Witness No. 2

SIGNATURE Sarah Kinard DATE 12/18/18
PRINT NAME Sarah Kinard TELEPHONE 843-549-1060
RESIDENCE ADDRESS 112 Forest Hills Rd
Walterboro, SC 29488

EXHIBIT C

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF COLLETON)	CASE NO. 2019-CP-15-__
)	
PATRICIA E. CAMPBELL,)	
)	
Plaintiff,)	
)	
-vs-)	COMPLAINT
)	
JOANNE AHEARN AND)	
ROBERT J. PLUM,)	
)	
Defendants,)	
)	
)	

The Plaintiff, above named, would respectfully show unto the Court:

1. That the Plaintiff is a citizen and resident of the County of Colleton, State of South Carolina.
2. That the whereabouts of the Defendants are unknown.
3. The real property which is the subject of this lawsuit is located in Colleton County, South Carolina and is described as follows:

All that certain piece, parcel or tract of land located in Colleton County, South Carolina, containing three (3) acres, more or less, and being measuring and bounded as reference to the plat prepared by W. Gene Whetsell, RLS, and recorded in Plat Book 25 at Page 50 in the Colleton County RMC Office will more fully show.
TMS#168-00-00-056

The said tract is hereinafter referred to as the "Property".

4. This Court has both personal and subject matter jurisdiction and venue is proper in Colleton County, South Carolina.
5. On or about December 18, 2018 the Plaintiff executed a general warranty deed

transferring the Property to her daughter, Joanne Ahearn, and her daughter's boyfriend, Robert J. Plum as shown on the Title to Real Estate that was filed with the Colleton County Register of Deeds Office on the same date in Book 2702 at Page 271.

6. At all times hereto the Plaintiff was under duress and lacked the mental capacity to lawfully make the transaction complained of herein.

7. The Plaintiff made the conveyance complained of herein to the Defendants as a result of the Defendants undue influence.

8. As a result of the Plaintiff's lack of capacity and/or Defendants actions, the Plaintiff is entitled to an order setting aside and annulling the conveyance of real estate complained of herein.

WHEREFORE, Plaintiff prays that this Court:

(a) Issue an order setting aside and annulling the conveyance recorded with the Colleton County Register of Deeds Office on December 18, 2018 in Book 2702 at Page 271.

(b) Issue an order requiring that the Defendants pay reasonable attorney's fees and costs to the Plaintiff's attorney along with such and further relief as the Court deems necessary.

Walterboro, South Carolina

10th day of April, 2019

s/Benjamin C.P. Sapp
Benjamin C.P. Sapp, Attorney for the Plaintiff
Sapp Law Firm
Post Office Box 258
Walterboro, South Carolina, 29488
(843) 549-5923
(843) 549-3269 Facsimile

Details

Type: Text message

From: Patricia E. Campbell

Sent: Nov 7, 1:32 AM

CLOSE





Patricia E. C...

+1 843-599-0606



Nov 7



you after I die
well I told her
I would like to
see it burn you
are acting like
the biggest
asshole walking
I should have
knowen.. all the
time you said

1:32 AM

What are you

Enter message



Send



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THE STATE OF SOUTH CAROLINA

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APPEAL FROM COLLETON COUNTY

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Respondent.

V.

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Appellant.

PROOF OF SERVICE TO FILE MOTION UNDER RULE 60(b)(3)

I certify that we have served a notice requesting permission from the Appellate Court to file a motion under rule 60(b)(3) in the 14th Judicial Court in Walterboro, South Carolina on Patricia E. Campbell January 10, 2020 by United States Postal Service a copy of it to Kenneth A. Campbell

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JAN 15 2020
SC Court of Appeals

Jr., Special Referee of record. The proof of service was mailed to Kenneth A. Campbell Jr.,
Special Referee on January 10, 2020 at 1337 Green Pond Highway, Walterboro, South Carolina,
29488

January 10, 2020

Joanne Ahearn

Robert J. Plum

504 Forest Circle Apt. 123

Walterboro, South Carolina, 29488

386-416-9561

Pro Se

Joanne Ahearn Jan. 10, 2020

Joanne Ahearn

Date

Robert Plum Jan. 10, 2020

Robert J. Plum

Date

PROOF OF SERVICE TO FILE MOTION UNDER RULE 60(b)(3)

THE STATE OF SOUTH CAROLINA

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V.

Joanne Ahearn and Robert J. Plum

Appellant.

PROOF OF SERVICE TO FILE MOTION UNDER RULE 60(b)(3)

I certify that we have served a notice requesting permission from the Appellant Court to file a motion under rule 60(b)(3) in the 14th Judicial Court in Walterboro, South Carolina on Patricia E. Campbell on January 10, 2020 by United States Postal Service a copy of it to her attorney of record, Benjamin Culliffer Pickens Sapp, Esquire, at his office at 125 S. Jefferies Blvd.,

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JAN 15 2020
SC Court of Appeals

Walterboro, South Carolina 29488. The proof of service was mailed to Respondent's attorney of record, Benjamin Culliffer Pickens Sapp, Esquire at P.O. Box 258, Walterboro, South Carolina 29488.

January 10, 2020

Joanne Ahearn

Robert J. Plum

504 Forest Circle Apt. 123

Walterboro, South Carolina, 29488

386-416-9561

Pro Se

Joanne Ahearn Jan. 12, 2020

Joanne Ahearn

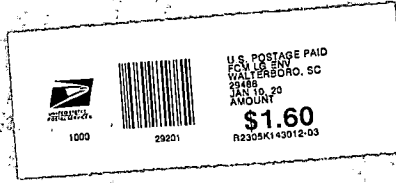
Date

Robert J. Plum Jan. 10, 2020

Robert J. Plum

Date

ROBERT J. FLUM
504 FOREST CIRCLE APT 123
WALTERSBORO, SOUTH CAROLINA, 29488



SOUTH CAROLINA
COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA, 29201

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