

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-04-00337

RECEIVED

JUN 01 2020

SC Court of Appeals

Frances K. Chestnut, Elizabeth Diane Keese,
Sylvester Keese, Arthur B. Keese and Mary K. Taylor

Respondents,

v.

Florence Keese, Marcy Keese,
Margo Keese and Marshall Keese, *pro se*

Appellants

INITIAL BRIEF OF APPELLANTS

TABLE OF CONTENTS

	Page
I. STATEMENT OF ISSUES ON APPEAL.....	1
II. STATEMENT OF THE CASE.....	2
III. STANDARDS OF REVIEW	5
IV. SUMMARY OF THE ARGUMENT	6
V. ARGUMENTS.....	7
A. The Circuit Court Abused Its Discretion By Denying Appellants’ Motion To Open The Default Judgement	7
B. The Circuit Court Abused Its Discretion By Finding The Appellants Failed To Present A Meritorious Defense To The Respondents’ Quiet Title Action.....	9
VI. CONCLUSIONS.....	11
VII. CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

<u>Bean v. Bean</u> , 253 S.C. 340, 170 S.E.2d 654 (1969)	14
<u>Bowers v. Bowers</u> , 304 S.C. 65, 403 S.E.2d 127 (Ct.App. 1991).....	7
<u>First Carolinas Joint Stock Land Bank of Columbia v. Ford</u> , 177 S.C. 40, 180 S.E. 562 (1935).....	10
<u>Frances K. Chestnut, et al. v. Florence Keese, et al.</u> , Case No. 2019CP0400337 (CCP Anderson, Jan. 9, 2020)	4
<u>Graham v. Town of Loris</u> , 272 S.C. 442, 248 S.E.2d 594 (1978).....	5
<u>Harbor Island Owners’ Association v. Preferred Island Properties, Inc.</u> , 369 S.C. 540, 633 S.E.2d 497 (2006).....	5
<u>Hillman v. Pinion</u> , 347 S.C. 253, 554 S.E.2d 427 (Ct.App. 2001)	5, 8
<u>In re Estate of Weeks</u> , 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997)	8
<u>In re Ochoa</u> , 426 S.C. 483, 489-90, 827 S.E.2d 586, 589 (S.C. 2019)	10
<u>McDaniel v. Connor</u> , 206 S.C. 96, 33 S.E.2d 75 (1945).....	7
<u>Micronics, Inc. v. S.C. Department of Revenue</u> , 345 S.C. 506, 548 S.E.2d 223 (Ct.App. 2001)	5
<u>Mitchell Supply Company, Inc. v. Gaffney</u> , 297 S.C. 160, 375 S.E.2d 321 (Ct.App. 1988)	
<u>Roberson v. Southern Finance of South Carolina, Inc.</u> , 365 S.C. 6, 615 S.E.2d 112 (2005).....	5, 8
<u>Rodriguez v. Gutierrez</u> , 391 S.C. 323, 705 S.E.2d 94 (Ct.App. 2011).....	7
<u>Southern Railway Company v. Smoak</u> , 243 S.C. 331, 133 S.E.2d 806 (1963).....	10
<u>Sundown Operating Co. v. Intedge Industrial, Inc.</u> , 383 S.C. 601, 681 S.E.2d 885 (2009).....	7

Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d 900 (1989)..... 5

Wayburn v. Smith, 270 S.C. 38, 239 S.E.2d 890 (1977)..... 10

Williams v. Vanvolkenburg, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1993) 7-8

South Carolina Rules of Civil Procedure:

SCRCP Rule 55(b)(1)..... 3

SCRCP Rule 60(b)..... 7

Transcript:

Motion To Set Aside Default Judgment Hearing, 12/12/2019..... 3

I. STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING APPELLANTS' MOTION TO OPEN THE DEFAULT JUDGEMENT?

- II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY FINDING THE APPELLANTS FAILED TO PRESENT A MERITORIOUS DEFENSE TO THE RESPONDENTS' QUIET TITLE ACTION?

II. STATEMENT OF THE CASE

On February 20, 2019, Respondents Elizabeth Diane Keese, Frances K. Chestnut, Sylvester Keese, Arthur B. Keese and Mary K. Taylor filed an action in the Court of Common Pleas of Anderson County, South Carolina to quiet title in a tract of land that Minnie Keese (“the Grantor”) granted in equal shares to all her children and her then deceased son’s heirs, which is described in their Complaint as follows:

ALL that certain tract of land containing Eighty Seven and Forty Four One Hundredths (87.44) acres, more or less, situate in School District No. 28, called Bishop’s Branch, in Garvin Township, in Anderson County in the State of South Carolina, bounded on the North and East by land now or formerly of Emmie Norton, on the South by land known as the Old Bolt Land, and on the West by now or formerly of George Link and Joe Berry Link.

Reproduced Record, at 1(Respondents’ Complaint).

In their Complaint, the Respondents averred that Appellants Margo Keese, Florence Keese, Marcy Keese and Marshall Keese did not have an interest in the property because their interest was extinguished due to the death of Marshall B. Keese who predeceased the Grantor. See Reproduced Record, at 1. However, that

is absolutely contrary to the Grantor's intent. The Grantor, while preserving a life estate for her, devised the property to:

Frances K. Chestnut, James Keese, Jr., Sylvester Keese, Marshall B. Keese, (deceased) Arthur B. Keese, And Mary K. Taylor, *their heirs* and assigns forever all of my right title and interest to the below described property...

Reproduced Record, at 2 (Minnie Keese's Deed)(italics added).

After the Appellants failed to answer the Complaint, a default judgment was entered against them on July 1, 2019 pursuant to South Carolina Rules of Civil Procedure 55(b)(1). See Reproduced Record, at 3 (Entry of Default). On Appellants timely moved to set aside the default judgment pursuant to South Carolina Rules of Civil Procedure 60(b) on August 2, 2019. See Reproduced Record, at 4 (Motion To Set Aside Default Judgment).

On December 12, 2019, Appellants' motion was heard by The Honorable R. Scott Sprouse. The focus of that hearing was whether the Appellants had a "meritorious defense" to the quiet title action. The Respondents argued that none existed because the Appellants' title was "*void ab initio*" where their grantee predeceased his grantee. See Reproduced Record, at 5 (Transcript of Motion To Set Aside Default Hearing). The trial court took the matter under advisement with the expectation that Appellants' counsel would "address more fully." *Id.*, at 9:16-17.

On January 9, 2020, the circuit court issued a two prong decision denying Appellants' motion to set aside the default Judgment as follows: (1) "the Defendant has not shown sufficient cause for the Court to set aside the default"; and (2) "the Defendant does not have a meritorious defense based on the facts and applicable law." Frances K. Chestnut, et al. v. Florence Keese, et al., Case No. 2019CP0400337 (CCP Anderson, Jan. 9, 2020)(Sprouse, J.). See Reproduced Record, at 6 (Order Denying Motion To Set Aside Default).

Appellants timely appealed to this Court, and requested the Transcript of the December 12, 2019 hearing.

III. STANDARDS OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court. See Harbor Island Owners' Association v. Preferred Island Properties, Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)(holding the decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court); Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989).

“[T]his court will not reverse the [circuit] court absent an abuse of discretion.” Hillman v. Pinion, 347 S.C. 253, 255, 554 S.E.2d 427, 429 (Ct.App. 2001); Mitchell Supply Company, Inc. v. Gaffney, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322-23 (Ct.App. 1988). An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)(holding an abuse of discretion occurs when the” the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support”); In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)(holding an abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support).

IV. SUMMARY OF ARGUMENT

First, the Appellant showed good cause to set aside the default judgment. Second, the Appellants evidence established a meritorious defense to the entry of the default judgment because the express intent of the Grantor was to convey Marshall B. Keese's interests in property to his "heirs and assigns". Thus, the circuit court abused its discretion in denying the Appellants' motion to set aside the default judgment because its decision was based a factual error in interpreting the intent of the Grantor to convey Marshall B. Keese's interests in property to his "heirs and assigns".

V. ARGUMENTS

A. The Circuit Court Abused Its Discretion By Denying Appellants' Motion To Open The Default Judgement.

A party seeking relief from a default judgment must do so under SCRCP Rule 60(b). See Sundown Operating Co. v. Intedge Industrial, Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). Rule 60(b) requires a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. See SCRCP Rule 60(b).

In determining whether to grant a motion under Rule 60(b), the circuit court should consider: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party. See Micronics, Inc. v. S.C. Department of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App. 2001). “The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief.” Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App. 1991); Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.2d 94 (Ct.App. 2011).

The circuit court held that Appellants failed to show good cause because they failed to act upon the advice of an out-of-state attorney and cites the case of Wil-

Williams v. Vanvolkenburg, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1993) in support of its conclusion. See Reproduced Record, at 6.

Williams v. Vanvolkenburg is distinguishable from the instant case. There, the Court of Appeals found no abuse of discretion where the husband/wife parties to the litigation failed to request that *their South Carolina licensed attorney* file an answer to the complaint. *Id.*, at 409. Here, in contrast, the person that Appellants consulted in Philadelphia, Pennsylvania was not licensed to practice law in South Carolina, nor did he conduct any law related business or provide any legal services in the State of South Carolina, which would qualify him as a lawyer in South Carolina. See, e.g., In re Ochoa, 426 S.C. 483, 489-90, 827 S.E.2d 586, 589 (S.C. 2019)(“[b]y providing legal services in South Carolina and targeting advertisements and solicitations to this state, respondent meets the definition of “lawyer” provided in Rule 2(r)”). He was merely a lay person. Therefore, circuit court abused its discretion because it misapplied the law to the facts of this case. See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)(holding an abuse of discretion occurs when the” the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support”); In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)(holding an abuse of discretion occurs when the judgment is controlled by some error of law or when

the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support).

B. The Circuit Court Abused Its Discretion By Finding The Appellants Failed To Present A Meritorious Defense To The Respondents' Quiet Title Action

A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or doubtful evidence. See Graham v. Town of Loris, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978).

The circuit court ruled that:

Even if Default [sic] were to establish good cause, to set aside the entry of the Default there must be a showing that meritorious defense exists to the Plaintiffs' Complaint. The Court finds that there is no meritorious defense in this case. The Default Judgment found the conveyance to Marshall Keese (Sr.) to be null and void based on the undisputed fact that he was dead at the time of conveyance, and thus not a life in being at the time of the conveyance.

Reproduced Record, at 6.

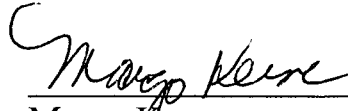
The circuit court's ruling is contrary to the express language of the deed. "One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened." Southern Railway Company v. Smoak, 243 S.C. 331, 336, 133 S.E.2d 806, 808 (1963); Wayburn v. Smith, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977); see also McDaniel v. Connor, 206 S.C. 96, 100, 33 S.E.2d 75, 76 (1945)("[a]s has many times been said, the governing principle in the construction of deeds is that the intention of the grantor, if consistent with law, shall govern"). Moreover, in ascertaining such intention the deed must be construed as a whole, and effect given to every part thereof, if such can be done consistently with law. See Wayburn, *supra*, at 42, 239 S.E.2d at 892; Bean v. Bean, 253 S.C. 340, 343, 170 S.E.2d 654, 655 (1969); see also First Carolinas Joint Stock Land Bank of Columbia v. Ford, 177 S.C. 40, 46, 180 S.E. 562, 565 (1935)("[l]arger and more sensible rules of construction require that the whole deed should be considered together, and effect be given to every part, if all can stand together consistently with law...").

Here, the Grantor, Minnie Keese knew Marshall B. Keese was deceased at the time she executed to the deed. It is clear that she intended for his "heirs and assigns" to receive his share of property because that is the exact language she used in the deed.

VI. CONCLUSIONS

For the reasons stated, this Court reverse the judgment of the circuit court.

Respectfully submitted,



Margo Keese
Margo Keese
11608 Stewart Lane, Apt. 302
Silver Spring, Maryland 20904
(484) 716-5255

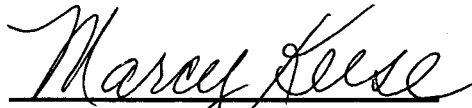
Pro Se

May 1, 2020



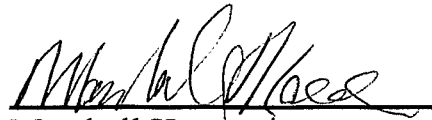
Florence Keese
Florence Keese
1035 Ridgeway Road
West Chester, Pennsylvania 19382
(215) 680-8366

Pro Se



Marcy Keese
Marcy Keese
1035 Ridgeway Road
West Chester, Pennsylvania 19382
(215) 680-8366

Pro Se



Marshall Keese
1035 Ridgehaven Road
West Chester, Pennsylvania 19382
(215) 680-8366
Pro Se

VI. CERTIFICATE OF SERVICE

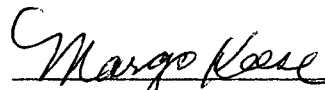
I, Margo Keese, on this 1st day of May 2020, hereby certify that attached Brief For Appellant and Reproduced Record was filed in this Court by **FIRST CLASS MAIL** and served by **FIRST CLASS MAIL** on the person noted below:

Other Counsel of Record:
Carolyn G. Baird, Esquire
JONES LAW FIRM, PA
Post Office Box 987
Anderson, South Carolina 29622
Attorney for Respondent
(864) 224-3474


RECEIVED
JUN 01 2020
SC Court of Appeals

Respectfully submitted,

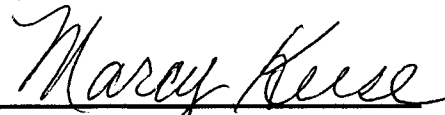
Respectfully submitted,



Margo Keese
11608 Stewart Lane, Apt. 302
Silver Spring, Maryland 20904
(484) 716-5255
Pro Se



Florence Keese
1035 Ridgehaven Road
West Chester, Pennsylvania 19382
(215) 680-8366
Pro Se



Marcy Keese
Marcy Keese
1035 Ridgehaven Road
West Chester, Pennsylvania 19382
(215) 680-8366
Pro Se



Marshall Keese
Marshall Keese
1035 Ridgehaven Road
West Chester, Pennsylvania 19382
(215) 680-8366
Pro Se

May 30, 2020

BY PRIORITY MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUN 01 2020
SC Court of Appeals

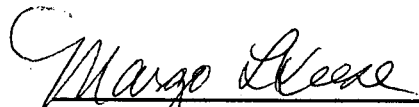
RE: Frances K. Chestnut, Elizabeth Diane Keese, Sylvester Keese, Arthur B. Keese and Mary K. Taylor, Respondents, v. Florence Keese, Marcy Keese, Marshall Keese and Margo Keese, pro se, Appellants, Case No. 2020-000263

Dear Ms. Kitchings:

Enclosed for filing is the following:

1. Designation of Matter to be Included in the Record on Appeal;
2. Motion for Leave of Court (6 Copies);
3. Memorandum of Law In Support of Motion (6 Copies); and
4. Initial of Brief of Appellants

Sincerely,



Margo Keese
11608 Stewart Lane, Apt. 302
Silver Spring, Maryland 20904
(484) 716-5255
Pro Se

cc: Carolyn G. Baird, Esquire
JONES LAW FIRM, PA
Post Office Box 987
Anderson, South Carolina 29622
Attorney for Respondent
(864) 224-3474
Attorney for Respondent

WRITE FIRMLY WITH BALL POINT PEN ON HARD SURFACE TO MAKE ALL COPIES LEGIBLE.

CUSTOMER USE ONLY

FROM: (PLEASE PRINT) **MARGO KEESSE** PHONE ()
11608 STEWART LANE, Apt 302
SILVER SPRING, MD 20904

PAYMENT BY ACCOUNT (if applicable)
 USPS® Corporate Acct. No. Federal Agency Acct. No. or Postal Service™ Acct. No.

DELIVERY OPTIONS (Customer Use Only)

SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.
Delivery Options
 No Saturday Delivery (delivered next business day)
 Sunday/Holiday Delivery Required (additional fee, where available*)
 10:30 AM Delivery Required (additional fee, where available*)
 *Refer to USPS.com® or local Post Office™ for availability.

TO: (PLEASE PRINT) **The Honorable Jenny Abbott Kitchings** PHONE ()
CLERK, SC COURT OF APPEALS
PO Box 11629
Columbia, SC 29211
 ZIP + 4® (U.S. ADDRESSES ONLY)
29211

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 insurance included.



RECEIVED

JUN 01 2028
UNITED STATES
POSTAL SERVICE®

PRIORITY
★ MAIL ★
EXPRESS™

SC Court of Appeals

ORIGIN (POSTAL SERVICE USE ONLY)

<input type="checkbox"/> 1-Day	<input type="checkbox"/> 2-Day	<input type="checkbox"/> Military		<input type="checkbox"/> DPO
PO ZIP Code 19128	Scheduled Delivery Date (MM/DD/YY) 6.1.20	Postage \$ 26.35		
Date Accepted (MM/DD/YY) 05.30.20	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input checked="" type="checkbox"/> 2:00 PM <input type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$	
Time Accepted 1:57	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$	
Weight 1.89 lbs.	<input type="checkbox"/> Flat Rate	Sunday/Holiday Premium Fee \$	Total Postage & Fees \$ 26.35	
Acceptance/Postage Initials [Signature]				

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY) 6/1	Time 6:29	Employee Signature [Signature]
Delivery Attempt (MM/DD/YY) 6/1	Time 10:38	Employee Signature [Signature]

+ Money Back Guarantee for U.S. destinations only.