

IN 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 29 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 RESPONDENTS

Carolyn G. Baird
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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT JUDGE ABUSE HIS DISCRETION BY NOT SETTING ASIDE THE ENTRY OF THE DEFAULT JUDGMENT.

STATEMENT OF THE CASE

This matter came before the Honorable Scott R. Sprouse on December 12, 2019 on the Appellants' Motion filed on August 2, 2019 to Set Aside the Entry of the Default Judgment. The Default Judgment was entered based on the Complaint filed by the Respondents on February 20, 2019 and served on all of the Appellants on April 10, 2019. An Affidavit of Default was filed on May 17, 2019 and the Default Order was signed on July 1, 2019 by Judge Sprouse.

The Complaint involves a quiet title action brought by the Respondents to adjudicate and terminate the putative interest of the Appellants in the real property. Given the failure to answer, the only issues before Judge Sprouse at the Motion Hearing concerned the issues pertinent to the entry of the Default Judgment.

The Notice of Appeal was filed and served February 19, 2020. The Appellants' Brief was filed on May 30, 2020.

The Respondents in their Statement of the Case seek to argue the case substantively. The Respondents reiterate that the case now on appeal deals only with the Circuit Court's decision to uphold the entry of the Default Judgment.

STANDARD OF REVIEW

The Respondents agree that the matter of the entry of the default is a matter that lies solely within the sound discretion of the Trial Court. Harbor Island Owners' Association v. Preferred Island Properties, Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). Therefore, the Circuit Court's decision will not be overturned absent a clear showing of an abuse of discretion. Richardson v. PV, Inc., 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009).

ARGUMENT

I. FAILURE TO ESTABLISH GOOD CAUSE TO SET ASIDE DEFAULT

This case involves the appeal of the January 22, 2020 Order of the Honorable Scott R. Sprouse (Circuit Court) which denies the Appellants' Motion to Set Aside the Entry of the Default Judgment in this case.

The only inquiry is whether the Trial Judge exercised sound discretion in denying the Appellants' Motion. The Appellants themselves in their brief cite the necessity of the party seeking relief (the Appellants) to make a "particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party" pursuant to South Carolina Rule of Civil Procedure 60(b). A showing of any of these factors can constitute what is termed good cause to set aside the default.

Circuit Court Judge Sprouse signed the default order on July 1, 2019, and he sat as Judge at the Motion hearing. He very specifically inquired of the Counsel representing the Appellants at the Motion hearing concerning their failure to answer. As the record shows, the Appellants consulted with attorney Richard Margolis, and conferred with him about this case and the necessity of answering. Attorney Margolis in fact told them they needed a South Carolina attorney because he had been unable to locate one to represent them. Judge Sprouse found that the Appellants knew or were accountable for the knowledge of the need to answer. Williams v. Vanvolkenburg, 312 S.C. 373, 440 S.E.2d 408, 409 (S.C. App 1994).

Since there was no good cause to set aside the Default Judgment, there is no need to reach issue of a Meritorious Defense albeit the Court ruled there was none.

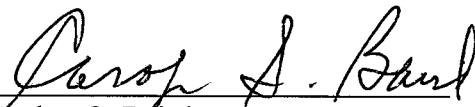
There is no inference of an abuse of discretion, much less a clear showing of same.

CONCLUSION

The Circuit Court's ruling to refuse to Set Aside the Entry of the Default Judgment was a sound exercise of his discretion. Therefore, the Circuit Court's ruling must be upheld.

June 26, 2020

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carolyn G. Baird", written over a horizontal line.

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Case No. 2019-CP-04-00337

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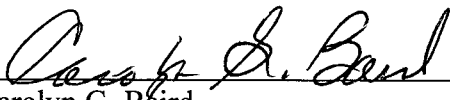
v.

Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, pro se, Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on Florence Keese, Marcy Keese, Margo Keese and Marshall Keese, pro se Appellants, by depositing a copy of same in the United States Mail, postage prepaid, on June 26, 2020, addressed to Florence Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382; Mary Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382; Margo Keese, 11608 Stewart Lane, Apt 302, Silver Spring, Maryland 20904 and Marshall Keese, 1035 Ridgehaven Road, West Chester, Pennsylvania 19382.

June 26, 2020



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1984-2017

June 25, 2020

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Also Admitted to Kentucky
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SC Court of Appeals

Jenny Abbott Kitchings
Clerk
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211


RE: Frances K. Chestnut v. Florence Keese
Appellate Case No. 2020-000263

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal along with my Proof of Service. Please file the original of these documents, stamp the file copies and return same to me in the envelope provided.

Should you have any questions, please let me know.

Sincerely yours,


Carolyn G. Baird

CGB/pcm

Enclosures

cc: Florence Keese
Marcy Keese
Margo Keese
Marshall Keese

FedEx Express Package US Airbill

8160 5791 6195

Form 0215 Express Package Service Packages up to 150 lbs. For packages over 150 lbs, use the FedEx Express freight US Airbill.

1 From
Date 10/31/20
Sender's Name [Redacted]
Company WONES OF MIDORHEAD & BALNE
Address 315 N MAIN ST
City ANDERSON State SC ZIP 29621-5614

2 Your Internal Billing Reference 1511001

3 To
Recipient's Name [Redacted]
Company The South Carolina Court of Appeals
Address 1300 Senate Street
City Columbia State SC ZIP 29301

4 Express Package Service
Next Business Day (next business day)
FedEx First Overnight
FedEx Priority Overnight
FedEx Standard Overnight
FedEx 2Day by AM
FedEx 2Day
FedEx Express Saver

5 Packaging
FedEx Envelope
FedEx Pak
FedEx Box
FedEx Tube
Other

6 Special Handling and Delivery Signature Options
Saturday Delivery
No Signature Required
Direct Signature
Indirect Signature
Does this shipment contain dangerous goods?
No Yes
Dry Ice
Cargo Aircraft Only

7 Payment Bill to:
Sender Recipient Third Party
Total Packages Total Weight
611



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