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

---



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

---

# FINAL BRIEF OF APPELLANTS

---

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**South Carolina Rules of Civil Procedure:**



**Transcript:**

## 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, p. 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, p. 1 (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, p. 1 (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, p. 1 (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, p. 8, lines 19-22 (Transcript of Motion To Set Aside Default Hearing). The trial court took the matter under ad-

visement with the expectation that Appellants' counsel would "address more fully." *Id.*, at p. 8, lines 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 Mictronics, 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-

liams 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, the 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 reverses the judgment of the circuit court.

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

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

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

---



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

---

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

---

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

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