

FORM 13
BREIF OF APPELANT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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.

[INITIAL] BREIF OF APPELANTS

Joanne Ahearn
Robert J. Plum
504 Forest Circle, Apt 123
Walterboro S.C. 29488
843-603-0566
Pro Se

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STATEMENT OF ISSUES ON APPEAL

1. DID RESPONDENT OFFER PROOF TO HER ATTORNEY OR THE COURT OF ANY ADDRESS OR PHONE NUMBERS OF APPELLANTS?
2. DID RESPONDENT OFFER ANY PROOF TO THE COURT CLAIMING THE RESPONDENT LACKED THE MENTAL CAPACITY ON DECEMBER 18, 2020?

STATEMENT OF THE CASE

The previous contract was conveyed to the Respondent and Appellants by property deed dated December 18, 2018. On or about April 11, 2019 Respondent, brought this action in filing a complaint, alleging the unknown whereabouts of Appellants. The Respondent also alleged she lacked the mental capacity to make that lawful decision. On April 15, 2020 the Respondent petitioned for a publication in the Colletonian on three separate dates, April 25, 2019, May 2, 2019, and May 9, 2019. The contract action was tried on October 7, 2019 and judgement was entered and granted on October 9, 2019. On November 21, 2019, Appellants served the amended notice of appeal on Respondent.

STANDARD OF REVIEW

The case of Vereen v. Bell, 1971 is an action to rescind and cancel a deed to real estate on the grounds of alleged lack of mental capacity of the grantor. This case is one of equitable jurisdiction. The respondent failed to carry the burden of proof as to mental incompetency in this case to execute a deed (Vereen v. Bell, 1971). In the case of Vererdy v. Daniels, on December 16, 1996 Vererdy, appellant brought this action to set aside the power of attorney and revocation of an earlier power of attorney (Vererdy V. Daniels, 2001), both documents

executed by her mother Doris W. Thames. Vererdy alleges that on that date her mother Doris W. Thames lacked the mental capacity. The Probate Court dismissed Veredy's action, Holding Thames was mentally competent at the time the documents were executed in favor of Daniels, the former power of attorney which appointed Vererdy her attorney in fact (Veredy V. Daniels, 2001). The Respondent in this case failed to carry the burden of proof as to lack of mental competency to execute power of attorney and revoking the former power of attorney (Vererdy V. Daniels).

STANDARD OF REVIEW

The Appellants Joanne Ahearn And Robert J. Plum were unable to locate any previous files relating to South Carolina Code 16-9-1(a). (1). It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any Court of record, Judicial, Administrative or Regulatory proceedings in this state ([www. scstatehouse.gov](http://www.scstatehouse.gov), 2020).

ARGUMENT

I BECAUSE PATRICIA E. CAMPBELL COULD HAVE DEVOLGED THE WHEREABOUTS OF APPELLANTS JOANNE AHEARN AND ROBERT J. PLUM'S CONTACT INFORMATION TO HER ATTORNEY OF RECORD AND TO THE COURTS.

At the Respondents Patricia E. Campbell's request, Appellants accompanied Respondent to an appointment made at attorney Debra B. Kane's office for the purpose of executing a new Last Will and Testament on December 18, 2018 (Exhibit 3). While at the attorney's office on the same date the Respondent decided to appoint Appellant Joanne Ahearn as health care power of attorney (exhibit 1, pg. 1, paragraph 1) and

Robert J. Plum as successor agent (exhibit 1, pg. 4, number 8, paragraph 1). Even though the Respondent claimed where abouts of the appellants were unknown as stated in the complaint (exhibit 4, pg. 1, number 2). In (exhibit 10 health care power of attorney clearly states contact information for Appellant Joanne Ahearn (exhibit 1, pg. 2, number 1), the phone number listed in the healthcare power of attorney (exhibit 1), as of today still remains in her possession. In the healthcare power of attorney (exhibit 1) appellant Robert J. Plum's address and phone number is clearly stated in (exhibit 1, pg. 4, number 8). At this appointment, the respondent unknowingly to the appellants decided to place appellant on the respondent's deeded property (exhibit 2) see legal description (exhibit A pg. 3). Respondent claimed to have exercised due diligence in searching for the where abouts of the appellants as stated in the petition for publication, dated April 15, 2019 (exhibit 10, number 3). In the execution of the healthcare power of attorney (exhibit 1) the respondent knew where abouts of the appellants prior to filing the complaint dated April 10, 2019 (exhibit 4). Under South Carolina Statute S.C. Ann. 16-9-1 (1993). It is unlawful for a person to knowingly give false, misleading, or incomplete testimony in any court of record, judicial, administrative, or regulatory proceedings in this state.

II. THE RESPONDENT ALLEGED THE LACK OF MENTAL CAPACITY AND UNDUE INFLUENCE OF APPELLANTS ON DECEMBER 18, 2018. On April 10, 2019 the respondent claimed "at all times was under duress and lacked the mental capacity to lawfully make the transaction complained of herein. The respondent made the conveyance complained of herein to the respondents as a result of the appellants undue influence. As a result of the respondent's lack of capacity and/or defendants' action" (exhibit 4, pg. 2 numbers 6, 7, and 8). On December 18, 2018, the respondent executed title to real estate (exhibit 2) adding the

appellants to the deeded property (exhibit 2) as joint tenants with the right of survivorship, not joint tenants with the right of in common (exhibit 2, pg. 2, lines 3 and 4). The respondent also on December 18, 2019 executed a last will and testament (exhibit 3). In the last will and testament, the respondent of 331 Turner Ln., Round O' South Carolina, states the respondent, being of sound and disposing mind and memory (exhibit 3, paragraph 1, lines 1 and 2). The signing of the last will and testament was witnessed by Debra B. Kane and Sarah Kinard (exhibit3, last paragraph).

The respondent then alleges at all times she was under duress and lacked the mental capacity to lawfully make the transaction complained of herein (exhibit 4, pg. 2, number 6). The respondent also alleges her lack of mental capacity in the record of hearing where the respondent claims she was under duress and lacked the mental capacity to lawfully make the transaction complained of herein (exhibit 7, pg. 2, line). Again, in the order quieting title to mentioned property, the respondent claims the lack of mental capacity and at all times hereto the respondent was under duress at the time of executing the title to real estate on December 18, 2018 (exhibit 8, pg. 2, line 14).

The respondent executed a healthcare power of attorney with the effective date and durability which states, "by this document, I intend to create a durable power of attorney effective upon and only during and period of mental incompetence" (exhibit 1, pg 1, number 2). Was the respondent lacking the mental capacity before or after the signing of these documents (exhibit 1, pg. 4, signature)? In the healthcare power of attorney, Debra B. Kane "declares, on the basis of information and belief, that the person who signed or acknowledged this document (principal) is personally known to me, that she signed or acknowledged this healthcare power of attorney in the presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence" (exhibit 1, pg. 5 lines 1, 2, 3 and 4). On October 7, 2019, a confirmatory deed was

granted (exhibit 9). On November 7, 2019 after the appellants filed an appeal; the respondent's action was a text message was sent to appellant Robert J. Plum (exhibit 6, pg. 1 and 2). Where a transaction is challenged on the grounds of mental in compacity, the individual's competency on the date of that transaction must be determined. The respondent is alleging lack of mental capacity which bears the burden of proof on the respondent at that time by a preponderance of the evidence.

CONCLUSION

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

Respectfully submitted,

August 10, 2020

Joanne Ahearn

Robert J. Plum

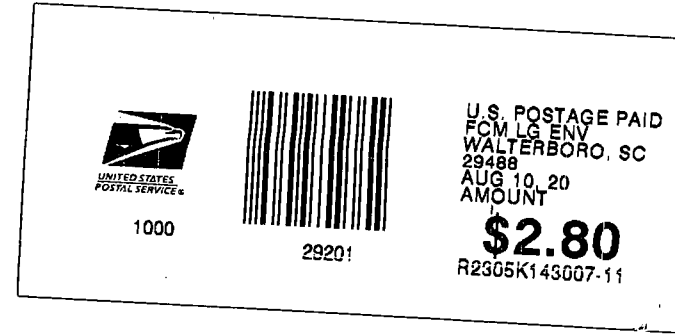
504 Forest Circle, Apt. 123

Walterboro, S.C. 29488

843-603-0566

Pro Se

ROBERT J. PLUM
604 FOREST CIRCLE
APT 123
WALTERBORD, SC. 29488



THE SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, S.C. 29201

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