

RECEIVED
Oct 05 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-002002

Estate of Patricia B. Holliday.....Appellant,

v.

Ross S. Holliday.....Respondent.

APPELLANT’S REPLY TO RETURN TO EMERGENCY MOTION FOR RELIEF FROM
AUTOMATIC STAY TO FILE RULE 60 MOTION FOR RELIEF FROM JUDGMENT IN
LOWER COURT

Appellant hereby replies to Respondent’s return to the Appellant’s Motion for Relief from Automatic Stay to File Rule 60 Motion. The standard for granting a motion for relief from the automatic stay pursuant to Rule 241(c) is clear – “the appellate court must consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. In this matter, the Circuit Court incorrectly granted summary judgment as to the June 18, 2004 note made by Respondent Ross Holliday in favor of his parents, Warren P. and Patricia B. Holliday (“Note”). The ruling is based solely on the incorrect conclusion that the Appellant¹ assigned her interest in the Note and released her claim in a Marital Settlement Agreement between the Appellant and Warren P. Holliday. At the

¹ For ease of reference, the Appellant’s decedent will be referenced as the “Appellant” in this brief.

time of the hearing, and at the time the order granting summary judgment was issued, the only evidence before the Circuit Court was that the Note could not be located. The Circuit Court must be given the opportunity to revisit the order in light of the fact that the Note has been discovered. Otherwise, that contested issue will become moot.

1. The Circuit Court granted summary judgment on one basis – the alleged release of Note claims in the Marital Settlement Agreement – and the discovery of the original Note is likely to alter that ruling.

The Circuit Court bases its incorrect ruling on one lone legal conclusion – that the Appellant released her claims against the Respondent in a Marital Settlement Agreement with Warren Holliday, a third party to this lawsuit. Indeed, the Circuit Court expressly held:

When Warren and Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia.

(R. p. 5). This ruling was incorrect and is a misreading of the Marital Settlement Agreement. Regardless, the Circuit Court clearly based its order on the assumption that the Note was not given to Patricia. Now that there is evidence that Patricia was in possession of the Note, the Circuit Court must be allowed to revisit its ruling to determine if the extreme remedy of summary judgment remains appropriate. If the Circuit Court is not given that opportunity – and this Court affirms the judgment – that contested issue will become moot.

2. The Circuit Court must determine whether the Appellant has satisfied the requirements of Rule 60, SCRPC.

In addition to the above, certain of Respondent’s contentions must be addressed. First, the Circuit Court clearly declined to address the merits of Respondent’s argument that the Appellant’s claim is barred by the statute of limitations. (R. p. 7). Therefore, the Circuit Court did not base its rulings on “multiple grounds” as the Respondent contends.

Further, the Note is clearly “newly discovered evidence.” The Appellant testified that she had seen the original Note, but did not have it in her possession. (R. pp. 53-53). It has now been determined that the Appellant had the original Note in a box that was in an area of her house she could not physically access. Therefore, since the Appellant never thought that she possessed the original Note, it is clearly “newly discovered evidence.”

Finally, the determination of whether the Appellant could have discovered the Note by due diligence is an issue for the Circuit Court to decide in ruling on the Rule 60, SCRPC motion. As noted above, the Appellant was not aware that the original Note was in her possession, so she would have had no reason to search for it. As it turns out, she did possess the original Note, in an area that was certainly not obvious. Therefore, the Appellant will satisfy the due diligence element before the Circuit Court.

CONCLUSION

For the reasons set forth above, the Appellant requests an expedited order lifting the automatic stay in the trial court and permitting Appellant to file a motion for relief from summary judgment pursuant to Rule 60, SCRPC.

WOMBLE BOND DICKINSON (US) LLP

S://Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellant

Charleston, South Carolina
October 5, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Oct 05 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-002002

Estate of Patricia B. Holliday.....Appellant,

v.

Ross S. Holliday.....Respondent.

PROOF OF SERVICE

I do hereby certify that on the 5th day of October, 2020, I served a copy of the within **APPELLANT’S REPLY TO RETURN TO EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY TO FILE RULE 60 MOTION FOR RELIEF FROM JUDGMENT IN LOWER COURT** on all counsel of record via electronic mail, addressed as follows, as evidenced by Exhibit “A” attached hereto:

F. Truett Nettles, II, Esq.
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
tnettles@finkellaw.com

Attorneys for Defendant

Alice F. Paylor, Esq.
Bijan Ghom, Esq.
Rosen Hagood, LLC
P.O. Box 893
Charleston, SC 29402
apaylor@rosenhagood.com
bghom@rosenhagood.com

Attorneys for Defendant

WOMBLE BOND DICKINSON (US) LLP

S://Matthew Tillman
Matthew E. Tillman
Womble Bond Dickinson (US) LLP
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400

Attorneys for the Appellant

October 5, 2020

EXHIBIT A

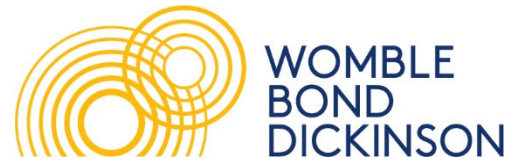
From: [Casey, Carol](#)
To: ["tnettles@finkellaw.com"](#); ["apaylor@rosenhagood.com"](#); ["Bijan Ghom"](#)
Cc: [Tillman, Matthew \(Matthew.Tillman@wbd-us.com\)](#)
Bcc: ["Holliday Patricia 101682 0001 1 Patricia Holliday Marital Trust and Other Matters Email"](#)
Subject: Holliday - Appellate Case No. 2019-2002 - Appellant's Reply to Return to Motion for Relief from Stay
Date: Monday, October 5, 2020 1:00:26 PM
Attachments: [Letter to Counsel serving Reply to Return to Motion.pdf](#)
[Appellant's Reply to Return to Motion for Relief from Judgment.pdf](#)

Dear Counsel:

Attached for service, please find Appellant's Reply to Return to Emergency Motion for Relief from Automatic Stay to File Rule 60 Motion for Relief from Judgment in Lower Court and letter from Matt Tillman of this date.

Thank you,

Carol Casey
Paralegal
Womble Bond Dickinson (US) LLP



October 5, 2020

Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400

f: 843.723.7398

Matthew E. Tillman

Direct Dial: 843-720-4629

Direct Fax: 843-410-2329

E-mail: Matthew.Tillman@wbd-us.com

VIA E-MAIL

ctappfilings@sccourts.org

Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

1220 Senate Street

Columbia, SC 29201

Re: Patricia B. Holliday v. Ross S. Holliday
Appellate Case No. 2019-002002
WBD Ref. 101682.0001.1

RECEIVED

Oct 05 2020

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find *Appellant's Reply to Return to Emergency Motion for Relief from Automatic Stay to File Rule 60 Motion for Relief from Judgment in Lower Court*, with Proof of Service. Please file the same and return a filed copy to me via email.

Thank you for your assistance.

Sincerely,

Womble Bond Dickinson (US) LLP

s/Matthew Tillman

Matthew E. Tillman, Esq.

cbc

Enclosures

cc via email: F. Truett Nettles, II, Esq.
Alice F. Paylor, Esq.
Bijan Ghom, Esq.