

FORM 13

RESPONDENT'S INITIAL BRIEF AND DESIGNATION OF MATTER

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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 BRIEF OF RESPONDENT

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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, 2018.

STATEMENT OF THE CASE

Appellants were conveyed interest in the property owned by the Respondent by deed dated December 18, 2018. Later, Respondent brought this action to set aside the aforementioned deed, alleging that she was under duress and lacked mental capacity to make that lawful decision. The Court granted rule in favor of Respondent and set aside the deed conveying the property to the Appellants. Appellants were served by publication in The Colletonian, a newspaper in Colleton County, South Carolina, on three separate dates, April 25, 2019, May 2, 2019 and May 9, 2019. The case was tried on October 7, 2019 and judgment was entered and granted on October 9, 2019. On November 21, 2019, Appellants served the amended notice of appeal on Respondent.

STANDARD OF REVIEW

Appellants stated they 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, 2020).

ARGUMENT

I. Appellants argue that Respondent could have devolged (divulged being the correct term as used in context of the argument) the whereabouts of Appellants Joanne Ahearn and Robert J. Plum's contact information to her attorney of record and to the court. Appellants argue that

Respondent knew, or should have known, their address as it was listed on the Health Care Power of Attorney executed on December 18, 2018. This fact is supported by the Exhibits of the Appellants. However, Respondent, at the time of signing the documents, did not notice, or know this information, because she was operating under duress and mental incapacity at the time. The pleadings were published, which resulted in additional cost and time to the Plaintiff, and could have been avoided had Respondent realized the information was typed into the document executed at the same time as the deed in question. Not knowing this information is consistent with Respondent's allegations of mental incapacity and duress at the time of execution. The fact that Appellants filed this appeal to set aside the Order of the Court of Common Pleas, and grant them ownership of Respondent's property against her wishes, also support Respondent's allegations of duress at the time of the execution of documents. Appellants claim to have been living in Florida at the time of the filing of the action to set aside the deed, but now appear to have moved back to Colleton County. Appellants did not appear at the time of the hearing, did not answer the pleadings, or otherwise contest the action filed in the trial court and claim to have no knowledge of the action, in spite of their ties to the property in question located in Colleton County. Appellants did file an appeal a little over a month later, after the conclusion of the case. Appellants wish to appeal the decision of the trial court in order to establish interest in the property Respondent owns and resides upon, the same property to which she executed over to them under duress and/or mental incapacity. Appellants use 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. Respondent did not knowingly give false, misleading, or incomplete testimony as to Appellants address, because Respondent did not know the information was contained in the documents she executed under duress and/or mental incapacity.

II. Appellants stated the case of Vereen v. Bell, 1971, and Vererdy v. Daniels, 2001 as a premise for judicial review. These cases are cases of equitable jurisdiction. In each case, the burden of proof as to mental incompetency was not met by the Respondent in the original trial court. Appellants fail to state how this case is consistent with Vereen v. Bell, 1971 in that no dispute was made as to the evidence presented in the trial court as to Respondent's mental capacity at the time of the execution of the deed in question. Furthermore, Appellants fail to address or support the allegations of duress, which was also concluded as a contributing factor to the deed being set aside, and sufficient cause for the trial court's decision. Respondent affirms that she was under duress at the time of the execution of the deed, Last Will and Testament and Health Care Power of Attorney. The Health Care Power of Attorney listed the Appellant, Robert J. Plum as successor agent as shown in Appellant's Exhibit attached to Brief of Appellant. Respondent affirms, that she would never have listed Mr. Plum, a non-family member, as successor to make such grave decisions on her behalf. Appellants cite the verbiage of the documents and stated they were witnessed by Debra (Deborah) B. Kane. Upon information and belief, at the time of the execution of documents, Attorney Deborah B. Kane, could not have known of the Respondent's mental capacity or duress. Appellants stated in the Brief of the Appellant "At this appointment, the Respondent unknowingly to the Appellants decided to place Appellant on the Respondent's deed property (exhibit 2) see legal description (exhibit A pg. 3). Appellants offered text messages that occurred after the judgment of the court and are inconclusive as to whether the Respondent sent these messages, although they appear to have been sent from the Respondent's telephone. Appellants were allegedly unaware of this transaction, they became aware, and subsequently elected to challenge the Respondent's decision to set aside the deed to claim interest in the property for themselves. Respondent affirms her allegations that at the time of execution of documents, she was operating under duress and mental incapacity, and the verbiage of the documents in no way establishes mental capacity. Respondent


affirms that she would not have conveyed interest in her residential property to Appellants who would attempt to “take” interest therein by any means necessary/possible. Respondent met the burden of proof required by the trial court to have the deed in question set aside.

CONCLUSION

For the reasons stated, this Court should affirm the decision of the circuit court.

October 22, 2020

Respectfully submitted,



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PROOF OF SERVICE TO FILE MOTION UNDER RULES 208 AND 209

THE STATE OF SOUTH CAROLINA
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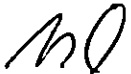
v.

Joanne Ahearn and Robert J. Plum

Appellant.

PROOF OF SERVICE TO FILE MOTION UNDER RULES 208 AND 209

I certify that I have served a notice requesting permission from the Appellate Court to file a Motion Requesting Permission to Serve and File the Respondent's Initial Brief and Designation of Matter outside of the filing deadlines as set by Rules 208 and 209 in the 14th Judicial Court in Walterboro, South Carolina on Joanne Ahearn and Robert J. Plum on October 22, 2020 by United States Postal Service.


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