

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Case No. 2013-CP-18-00074
Appellate Case No. 2020-001284

RECEIVED

Nov 06 2020

S.C. SUPREME COURT

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morpew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and
Lorraine Ferro, Respondents

RETURN OF RESPONDENTS STEPHEN DUDEK AND DOREEN CROSS

SMITH | CLOSSER | WHEELER, P.A.

Samuel M. Wheeler (SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
843-552-2678

STATEMENT OF THE CASE

This appeal arises out of two separate cases brought in the Dorchester County Court of Common Pleas, *Stephen Dudek, et al. v. Thomas M. Ferro, et al.*, Case No. 2013-CP-18-00074 and *Molly M. Morpew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. Respondents Stephen Dudek and Doreen Cross (collectively referred to as the “Dudeks” or “Respondents”) entered into a purchase contract with Thomas and Lorraine Ferro (collectively referred to as the “Ferros”), under which the Dudeks agreed to buy from the Ferros a home and real property (“Home”), located in Dorchester County, South Carolina. (see R. pp. 86-97). Appellant Molly M. Morpew (“Morpew” or “Appellant”) entered into a separate and subsequent contingency contract, under which she agreed to buy the Home, if the Dudeks failed to close on the Home. (see R. pp. 98-127). A dispute then arose over whom, the Dudeks or Morpew, was entitled to purchase the Home, resulting in each the Dudeks and Morpew filing the above cases. Both the Dudeks and Morpew sought specific performance. Given that both parties were claiming the same relief, they consolidated the cases under Case No. 2013-CP-18-00183, by way of a consent order filed on or about September 18, 2013. (R. pp. 21-24).

On June 11, 2014, and June 12, 2014, the cases were tried in front of the Honorable James E. Chellis, Master-In-Equity for Dorchester County (“Lower Court”). On September 10, 2014, the Ferros filed a “Pleading Statement” in which they asserted alleged fraud perpetrated on the Lower Court at trial. (R. pp. 128-194). On November 6, 2014, the Lower Court issued an order awarding the Dudeks specific performance (“Specific Performance Order”). (R. pp. 1-20). Neither the Ferros nor Morpew filed a Rule 60, SCRPC, motion on the grounds that the Lower Court was influenced by the fraud outlined in the Pleading Statement when it issued the Specific Performance Order, as would have been their right under Rule 60, SCRPC. (see Filing History,

Case No. 2013-CP-18-00183). Instead, both Morpew and the Ferros appealed the Specific Performance Order. (see Appellate Case No. 2014-002633). On January 11, 2017, the Court of Appeals affirmed the Lower Court's award of specific performance to the Dudeks in an unpublished opinion, numbered 2017-UP-019. (R. pp. 27-30). Morpew initially petitioned for a rehearing, but she voluntarily dismissed the petition on February 9, 2017. (R. pp. 278-305). The Court of Appeals granted the dismissal and issued remittitur on February 15, 2017. (R. pp. 31-32, pp. 33).

Following remittitur, the Dudeks moved the Lower Court in March, 2017 for an order setting a schedule for them to close on the Home. (R. pp. 309-311). The Lower Court heard the motion and ultimately issued an order on April 3, 2017, setting the terms of closing ("First Closing Order"). (R. pp. 34-42). On April 6, 2017, after the First Closing Order was issued, Morpew filed an "Answer" to the Dudeks' Motion to Set Closing. (R. pp. 341-364). Out of an abundance of caution, the Lower Court considered Morpew's "Answer" a Rule 59, SCRCPP, motion to reconsider and issued a new Closing Order on May 17, 2017 ("Second Closing Order"). (R. pp. 43-54). Morpew has currently appealed the Second Closing Order in this appeal. The Dudeks then closed on the Home pursuant to the Court of Appeals affirming the Specific Performance Order and the subsequent issuance of the Second Closing Order, but Morpew, who has been in possession of the Home since trial in 2014, refused to vacate the Home. After additional hearings on this occupancy issue were held on June 12, 2017, the Lower Court issued an order on June 14, 2017, holding Morpew in contempt for failing to vacate the Home and ordering Morpew to vacate the Home by June 16, 2017 ("Contempt Order"). (R. pp. 62-75). Morpew has also appealed the Contempt Order in this appeal.

At various points in between the Court of Appeals considering the original appeal and the present, Morphew has filed two separate cases in Dorchester County. In the first, Morphew sued the Dudeks and virtually every realtor, attorney and bank that touched the original transaction that would have sold the Home to the Dudeks. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706). In her complaint and proposed amended complaint, she alleges dozens of causes of action, most of which are grounded in fraud stemming from the sale of the Home to the Dudeks and occurring at the trial in June of 2014. (R. pp. 210-277). On the very day, June 12, 2014, that the Lower Court heard the motion that led it to issue the Contempt Order, Morphew filed a third case, with a corresponding *lis pendens*, against the Dudeks in which she sought ownership of the Home through constructive trust. (R. pp. 316-340). After a dismissal of that case by way of an order issued by the Honorable Diane S. Goodstein on June 20, 2018, Morphew filed Appeal No. 2018-000507. In total, Morphew has pending three cases and two appeals, all related to the Home, her alleged ownership of the Home, or alleged fraud perpetrated by the Dudeks on either Morphew or the Lower Court at trial in June, 2014.¹

QUESTIONS PRESENTED FOR REVIEW

1. Is Morphew attempting to contest the unappealed law of this case, requiring this Court to deny her Petition?
2. Does Morphew raise any special or important reasons for this Court to grant her Petition?
3. Should this Court deny the Petition for any reason found in the Record on Appeal?

¹ This Statement of the Facts was included in the Respondents' final brief to the Court of Appeals; it remains accurate. However, since that time, in Case No. 2016-CP-18-1706 was disposed of on motions for summary judgment by the various defendants. That case is now on appeal. (see Appellate Case No. 2018-002185). Further, in Appellate Case No. 2018-000507, the Court of Appeals upheld the decision of the lower court. Morphew has filed a petition for certiorari with this Court. (see Appellate Case No. 2020-001313)

ARGUMENTS

It should be noted from the onset that the brevity of this return is not intended to be dismissive of Morphew or the process. Unfortunately, for years and years, the Respondents have been defending lawsuit after lawsuit, and appeal and appeal, simply to end a very routine home purchase. They have spent tens of thousands in legal fees, again, only to defend a home purchase which has been upheld by every single court that has reviewed it. They were awarded the Specific Performance Order, which was upheld by the Court of Appeals. Morphew chose to end that appeal, which should have ended this case. But, Morphew continues to initiate frivolous collateral attacks on what has been, for years, the established law of this case. Her petition is yet another attempt to re-litigate the Specific Performance Order, which is the law of the case.

I. Morphew is attempting to contest the unappealed law of this case, requiring this Court to deny her Petition

Morphew already appealed the Specific Performance Order, and the Court of Appeals already upheld it. (R. pp. 27-30). Morphew chose to voluntarily dismiss her petition for a rehearing, leading this Court to issue remittitur. (R. pp. 31-33). It is well established that an “unappealed ruling is the law of the case and requires affirmance.” *Transp. Ins. Co. v. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687 (2010) (citing *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000)); see also *Buckner v. Preferred Mutual Insurance Company*, 255 S.C. 159, 177 S.E.2d 544 (1970); *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012); *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (1998).

Morphew tried to use an appeal of the Second Closing Order and Contempt Order as an attempt to have the Court of Appeals overturn the Specific Performance Order. Now, she is asking this Court to delve in the Specific Performance Order. In reality, the Second Closing Order and Contempt Order, which gave rise to the underlying appeal and the petition before this Court, were issued by the Lower Court after the Court of Appeals upheld the Specific Performance Order and were issued purely to give effect to the Court of Appeal's decision to affirm the Specific Performance Order. If the Lower Court did not take these actions, then the Dudeks, the parties determined by the Lower Court and the Court of Appeals as the rightful owners of the Home, would still not be in possession of the Home. Instead, Morphew would be in the possession of the Home, a result contrary to the outcome of years of litigation and a subsequent appeal.

The Specific Performance Order is the law of the case, requiring this Court to deny the petition.

II. Morphew has not raised any special or important reasons for this Court to grant her Petition

Rule 242, SCACR, states,

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242, SCACR.

Morphew's petition raises none of these reasons. Again, the original case, tried back in 2014, involves a routine area of law, specific performance. The Specific Performance Order was upheld by the Court of Appeals, a ruling that went unchallenged by Morphew. She is now trying to attack that order through a variety of frivolous and costly cases and appeals, including her current petition.

III. This Court should further uphold the orders being appealed for any ground appearing in the record.

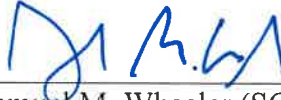
“Under the present rules, a respondent—the ‘winner’ in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.” *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). “The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR. As the prevailing party, the Dudeks would request that this Court deny the petition for any ground appearing in the record.

CONCLUSION

The underlying appeal and her petition is nothing more than her attempt to yet again complain about the Dudeks being awarded specific performance in 2014. Her actions would never be taken by a licensed attorney, for fear of being sanctioned or reprimanded. Worse yet, they are costing the Dudeks substantial sums of money in attorney's fees. They are defending multiple cases, simply because they were awarded specific performance of the Home years ago.

For all of the above reasons, this Court should deny Morphew's petition.

SMITH | CLOSSER | WHEELER, P.A.



Samuel M. Wheeler (SC Bar No.: 101008)

7455 Cross County Road, Suite 1

P.O. Box 40578

Charleston, SC 29423-0578

843-760-0220

Attorneys for Stephen Dudek and Doreen Cross

November 6, 2020