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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Circuit Court

The Honorable Robert E. Hood
Circuit Court Judge

Case No.: 2019-001929

Laverne Robinson..... Appellant,

v.

Martha Ann Robinson Aiken as Trustee, Ronnie Randolph Robinson,
Almeter Patricia Robinson Harris and Mary Alice Robinson Green Respondents,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- A. Did the Circuit Court err in affirming the Probate Court's order granting Respondents' motion for summary judgment against Appellant?

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STATEMENT

The Appellant and Respondents are brothers and sisters. Their parents were Willie Robinson and Almeter B. Robinson. On October 22, 1977, Willie Robinson and Almeter B. Robinson created a trust by which they appointed their daughter Respondent Martha Ann Robinson n/k/a Martha Ann Robinson Aiken as Trustee and directed the Trustee to hold certain real property in trust for the benefit of Willie Robinson and Almeter B. Robinson during their lifetimes and, upon the death of their last survivor, then distribute the real property equally to Respondents Martha Ann Robinson, Mary Alice Robinson, Ronnie Randolph Robinson, Almeter Patricia Robinson and Appellate Laverne Robinson.

On or about October 22, 1977, Almeter B. Robinson and Willie Robinson executed two (2) separate deeds; one recorded in Deed Book IJ at Page 1341 and the other recorded in Deed Book IJ at Page 1342 at the Office of the ROD of Kershaw County conveying certain real property as set forth in the above-referenced Trust to Respondent Martha Ann Robinson as Trustee under the above-described Trust agreement.

On September 18, 1981, Almeter B. Robinson, as the sole surviving donor at the time and the Respondent Martha Ann Robinson as Trustee executed an Amendment of the Trust agreement without Court authorization which modified the October 22, 1977, Trust to provide that upon the death of Almeter B. Robinson, the Trustee should distribute the five (5) acres of Trust property by a different method than originally stated in the original Trust document, giving the Appellant one (1) acre of land, giving Respondent Ronnie Randolph Robinson one (1) of land, giving Respondent Martha Ann Aiken one (1) acre of land, and giving two acres (2) of land and the homestead of Almeter B. Robinson

to Respondent Martha Ann Robinson, Mary Alice Robinson and Almeter Patricia Robinson.

On or about January 8, 2002, the Respondent Martha Ann Robinson, as Trustee, caused a plat to be prepared which is recorded in Book B48 at Page 8 in the Office of ROD for Kershaw County dividing the Trust property described above in four (4) tracts numbered one through four. On March 2, 2002, the Respondent Martha Ann Robinson, as Trustee, executed a deed conveying lots three and four of the January 8, 2002, plat to Respondent Ronnie Robinson by Deed recorded in Book 1131 at Page 67 in the ROD for Kershaw County. On March 2, 2002, the Respondent Martha Ann Robinson, as Trustee, conveyed out a 2/3 undivided interest in lots one and two on the above-referenced plat to Respondents Mary Alice Robinson Green and Almeter R. McCoy a/k/a Almeter Patricia Robinson Harrison by Deed recorded in Book 1133 at Page 279 in ROD for Kershaw County.

On February 25, 2004, Respondents Mary R. Green and Almeter R. McCoy executed a Deed conveying their 2/3 undivided interest in lots one and two on the plat prepared January 8, 2002, to Martha Ann Robinson Aiken, individually, recorded in Book 1522 at Page 276 in ROD for Kershaw County.

On November 15, 2004, Respondent Ronnie Randolph Robinson conveyed lot three of the above-referenced plat to Appellant Laverne Robinson.

That Almeter B. Robinson, the donor of the Trust, died February 25, 2017.

Appellant filed a Complaint March 10, 2017, that all deeds issued by the Respondent Trustee Martha Ann Robinson Aiken, as Trustee, are void and invalid due to the amendment of the Trust modification on September 18, 1981, being invalid. Further,

that all deeds issued by the Respondent Trustee were invalid and should be set aside because they were executed prior to the donor's death. The Respondents filed a Notice of Motion and Motion for Summary Judgment on October 8, 2018. On April 24, 2019, the Probate Court ordered that the Respondents' Motion for Summary Judgment be granted and dismissed the action by the Appellant with prejudice. The Appellant filed his notice of Appeal to Circuit Court April 26, 2019. Circuit Court affirmed the Probate Court's Order granting the Summary Judgment against the Appellant October 3, 2019. Appellant filed a Notice of Motion and Motion to Reconsider October 11, 2019. The Circuit Court denied the Appellant's Motion to Reconsider on October 22, 2019. From that Order, the Appellant made a timely appeal.

ARGUMENT

I

The Circuit Court erred in affirming the Probate Court's order granting Respondent's motion for summary judgment against Appellant.

In reviewing a grant of summary judgment, this Court uses the same yard stick as the lower court: this Court views the facts in the light most favorable to the non-moving party and draws all reasonable inferences in their favor. Nations Bank v State Farm, 320 S.C. 299, 465 S.E.2nd 98 (Ct. App. 1995). ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.") Dean v Ruscon Corp, 321 S.C. 360, 468 S.E.2nd 645 (1996). ("Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is a disagreement concerning the conclusion to be drawn from those facts;") Lanham v Blue Cross and Blue Shield, 349 S.C. 356, 563 S.E.2nd 331 (2002) (Because summary judgment is a drastic remedy, it should be cautiously invoked to insure a litigant is not improperly deprived of a trial on disputed factual issues) Lord v D & J Enterprises, Inc., 407 S.C. 544, 757 S.E.2nd 695 (2014) The Circuit Court failed to follow these principles of the law in affirming the Probate Court's Order for summary judgment against the Appellant. Respondents' moved for summary judgment in the Probate Court on the grounds that the Appellant was estopped (barred by estoppel, including equitable estoppel and estoppel by deed) to challenge the validity of the deeds described in Appellant's Complaint. These were the only grounds pled in the Respondent's motion for summary judgment. The Respondents' motion for summary judgment was accompanied with affidavits. The affidavits submitted

did not challenge the dates of recording of the deeds or the parties as grantees or grantors that were set forth in the Appellant's Complaint. To prevail on the motion for summary judgment, the Respondents would have to show that the Appellant would be estopped in challenging the validity of the deeds stated in his Complaint by his actions. The Respondents' argument of estoppel fails on the facts that were before the Court. The doctrine of estoppel applies if a person, by his actions, conduct, words or silence, which amounts to a representation, or concealment of material facts, causes another to alter his position to his prejudice or injury. Hovard v Beverly, 167 S.C. 476, 15S.E.2nd 740 (1941). Prejudice to the other party is an essential element of equitable estoppel. Janasick v Farway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2nd 384 (1992), with regard to the party estopped, the elements are:

(1) Conduct amounting to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.

(2) The intention of or expectation that such conduct is acted upon by the other party; and

(3) Actual or constructive knowledge of the real facts. Southern Dev. Land and Goth Company v S. C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2nd 748 (1993). The affidavits submitted by the Respondents in support of their motion for summary judgment did not show any deceptive act by the Appellant that caused the Respondents to change their position to their detriment. The affidavits did not show conduct the Appellant did to induce or deceive any of the Respondents in receiving the deed to Lot 3 from Respondent Ronnie Robinson. The Respondent alleges no act by the Appellant to induce or persuade

the Respondent Ronnie Robinson to execute that deed. Nothing in the Respondents' affidavits indicate that the Appellant caused the deed to be executed or recorded. The Respondents failed to show the essential elements of equitable estoppel. The Appellant would also show that the Respondents claim of estoppel by deed also fails. Estoppel by deed is a bar which precludes a party to a deed and his privies from asserting as against the other and his privies in his right or title in derogation of the deed, or from denying the truth of any material facts asserted in it. Hipps v Hipps, 288 S.C.564, 343 S.E.2nd 669 (S.C. App. 1986). The 31CJS Estoppel §10 at 295 (1964) All the deeds Appellant challenges the validity to in this action show the Appellant is not a party in any of the challenged deeds. He is neither Grantor nor Grantee in any of the challenged deeds. Therefore, the doctrine of estoppel by deed cannot apply to this case. The Appellant would further show that the Respondents also were aware that they could not meet the burden of any estoppel theory based on their remark in their brief to the Circuit Court in which they stated the following: "While none of the estoppel arguments (including equitable estoppel and estoppel by deed) quite fit this case. . ." This clearly shows the Respondents knew and were aware that their estoppel argument should fail before the Probate Court.

The Circuit Court finding that Appellant's failure to defend against Respondents' motion by serving affidavits with specific facts showing there is a genuine issue for trial, therefore, the Probate Court had no information before it with which to conclude the summary judgment motion should not be granted was in error. The affidavits presented by the Respondents did not contradict facts set forth in Appellant's Complaint. Appellant filed his brief with the Probate Court which set forth the Appellant's position in an

argument against the Respondents' summary judgment. In viewing the facts most favorable to the Appellant, the Circuit Court should have overturned the granting of the summary judgment by the Probate Court.

The Circuit Court also found that the Appellant failed to preserve his arguments for appeal. Although the Probate Court's Order is bare bones, the Probate Court had to base its ruling on the grounds set forth in Respondents' summary judgment motion. The only grounds set forth in Respondents' summary judgment motion were estoppel, equitable estoppel, and estoppel by deed. Appellant effectively set out facts sufficient to nullify the Respondents' allegations of estoppel as set forth in Appellant's brief to the Probate Court. (Tr.p 7 Line 18-22) The Appellant preserved this argument before the Probate Court as set forth in his brief filed in opposition to Respondents' summary judgment. Estate of Mims v S.C. Dept. of Disabilities & Special Needs, 422 S.C. 388, 811 S.E.2nd 807 (Ct. App. 2017). Appellate Courts apply the same standard as the Circuit Court under Rule 56(c), SCRCP, Woodson v DLI Properties, LLC, 406 S.C. 517, 753 S.E.2nd 428 (2014). In following Woodson, the record in this action that was put before the Circuit Court judge was sufficient for the Circuit Court judge to show the Appellant preserved his objections in the Probate Court. The record was sufficient for a finding that the Appellant had met his burden to show there were material facts at issue and the summary judgment was granted in error. See Porter, 272 S.C. at 568, 643 S.E.2nd at 100) stating that "not all situations require a detailed order, and the Circuit Court's form order may be sufficient if the Appellate Court can ascertain the basis for the Court's rulings from the record on appeal"). The Appellant would show that based on the record from the Probate Court that was before the Circuit Court clearly outlined what was before the

Probate Court at the summary judgment motion by what was pled and the defenses of the Appellant, therefore, the Circuit Court erred in not overturning the summary judgment granted by the Probate Court to the Respondents.

II

CONCLUSION

For reasons heretofore set forth, Appellant respectfully submits that the order of the Circuit Court affirming the Probate Court's Order granting summary judgement against the Appellant should be reversed and remanded to the Probate Court for trial.

Respectfully submitted,

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March 23, 2021

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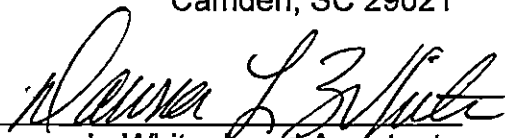
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Almeter Patricia Robinson Harris and Mary Alice Robinson Green Respondents,

PROOF OF SERVICE

I certify that I have served the Respondents' **Initial Brief of Appellant** on Respondents' counsel by depositing a copy of it in the United States Mail, postage prepaid on March 29, 2021, addressed as follows:

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