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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2019-CP-28-00463

Appellate Case No. 2019-001929

Laverne Robinson,..... Appellant,

v.

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

[INITIAL] BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. THE ISSUES RAISED BY APPELLANT ARE NOT PRESERVED FOR APPELLATE REVIEW.
- II. APPELLANT RAISED NO GENUINE ISSUE OF FACT IN DISPUTE TO CONTRADICT RESPONDENTS' AFFIDAVITS (SERVED WITH THEIR MOTION).
- III. APPELLANT IS ESTOPPED FROM COMPLAINING ABOUT THE PARTITIONING OF THE TRUST ASSETS MORE THAN TWELVE (12) YEARS AFTER HE ACCEPTED HIS SHARE OF THE TRUST

STATEMENT OF THE CASE

The issue on appeal is whether the Hon. Debra B. Branham, Probate Judge for Kershaw County, erred in granting Respondents' Motion for Summary Judgment. Respondents asserted in the Affidavits attached to their Motion that there are no genuine issues of material fact. Appellant filed no Affidavit in opposition to the Motion. Judge Branham, in her Amended Order Granting Motion for Summary Judgment, filed on April 24, 2019, found that there are no genuine issues of material fact and granted the Motion and dismissed the suit prejudice. No specific findings of fact were made in the appealed Order. No Motion under Rule 59(e) was made to supplement the Order with any findings of fact desired by Appellant to be preserved for appeal. The Hon. Robert E. Hood, Judge, Court of Common Pleas for Kershaw County, affirmed Judge Branham's Order by Order Affirming Probate Court Order filed on October 3, 2019.

STANDARD OF REVIEW

On appeal from the final order of the Probate Court, "the circuit court must apply the same standard that [the Supreme] Court or the Court of Appeals would apply were the appeal taken directly to either of them . . . if the probate proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." *In re Howard*, 315 S.C. 356, 361-2, 434 S.E.2d 254, 257 (1993).

An appellate court reviews the grant of summary judgment using the same standard

employed by the circuit court. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment is proper where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 411 S.C. 557, 560, 769 S.E.2d 847, 848 (2015).

‘Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.’ *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case . . . Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e), SCRCP.

Lord v. D & J Enters., 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014).

STATEMENT OF FACTS

1. In 1977, Willie Robinson and Almeter B. Robinson executed a Trust, which named Martha Ann Robinson as Trustee (one of the Respondents); and pursuant to the Trust, they deeded to Martha Ann Robinson as Trustee a parcel of real property (later surveyed and described as Lots 1, 2, 3 and 4). (R.pp. ____)

2. The Trust provided that this parcel of real property was to be held for the benefit of the donors and, upon the deaths of both donors, was to be divided equally among the donors’ designated children, Martha Ann Robinson, Mary Alice Robinson, Ronnie Randolph Robinson, Laverne Robinson and Almeter Patricia Robinson – the four Respondents plus Appellant. (R.p. ____)

3. A primary purpose of the Trust was to provide a residence for the parties’ mother, Almeter B. Robinson (Willie Robinson had died in the meantime), and Almeter B. Robinson

resided on the property (specifically Lot 2) until her death in 2017. (R.p. ____)

4. The residence on Lot 2 was constructed in or about 1977. Almeter B. Robinson's twin daughters, Martha Ann Robinson and Mary Alice Robinson, caused the house to be built using exclusively their monies and financing. (R.pp. ____)

5. The Trust was amended (or was attempted to be amended) by an Amendment of Trust Agreement dated September 18, 1981, which was executed by Almeter B. Robinson and Martha Ann Robinson, as Trustee. (R.p. ____)

6. In 2002, Martha Ann Robinson as Trustee conveyed Lots 3 and 4 to Ronnie Robinson (one of the Respondents) and conveyed an undivided 2/3 interest in Lots 1 and 2 to Mary Alice Robinson Green and Almeter R. McCoy (Respondent Harrison). (R.pp. ____)

7. In 2004, Mary R. Green and Almeter R. McCoy conveyed their undivided interests in Lots 1 and 2 to Martha Ann Robinson Aiken (one of the Respondents). (R.p. ____)

8. In 2004, Ronnie Robinson conveyed Lot 3 to Laverne Robinson (Appellant). (R.p. ____)

9. From 2004 until this suit was filed, Appellant accepted the gift of, and held title to, Lot 3. This was his exclusive property, and he paid the real property taxes thereon during said period (and presumably to the present). (R.p. ____)

10. Until 2017, when this suit was filed by Appellant, there was no complaint whatsoever about the aforesaid deeds by Appellant (or anyone else having an interest in the Trust or the trust property). Importantly, the surviving donor, Almeter B. Robinson, did not complain about the aforesaid partitioning of the said parcel by deeds exchanged among the Trustee and the designated beneficiaries of the Trust. (R.p. ____)

11. By Order filed on March 28, 2017, Judge Branham found that the purpose of the

Trust has been served. (R.p. _____)

12. In 2018, Martha Ann Robinson Aiken as Trustee finally conveyed the remaining undivided 1/3 interest in Lots 1 and 2 to herself, depleting all of the trust assets. (R.p. _____)

ARGUMENTS

I. THE ISSUES RAISED BY APPELLANT ARE NOT PRESERVED FOR APPELLATE REVIEW.

In order for an issue to be preserved for appellant review, it must have been raised to *and ruled upon* by the trial court. *Equivest Fin., LLC vs. Ravenel*, 422 S.C. 499, 505, 812 S.E.2d 438, 441 (Ct.App. 2018).

Judge Branham’s Order makes no specific findings of fact. It only states: “. . . I further find that there are no genuine issues of material fact, which would compel the Court to deny the Motion.”

Under Rule 52(a) of the South Carolina Rules of Civil Procedure, “. . . [f]indings of fact and conclusions of law are unnecessary on decisions on motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).” “. . . [P]ursuant to Rule 52(a), SCRPC, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal. Accordingly, we find the circuit court did not err in omitting findings of fact and conclusions of law from its order granting [the] motion” *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 750 (Ct.App. 2019).

Notwithstanding the foregoing, it would be impractical, if not impossible, for a judge to prove a negative (to make specific findings of fact which demonstrate somehow that no genuine issues of material fact existed).

As found by Judge Hood, Judge Branham's Order made no specific findings of fact (other than that Appellant filed no Affidavit in opposition to Respondents' Motion for Summary Judgment) and there was no Motion under Rule 59(e) to preserve other matters for appeal. (R.p. _____)

Appellant should have made a Motion under Rule 59(e) in order to preserve an issue or finding not addressed in the appealed Order.

"Error preservation requirements are intended to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments . . . It is axiomatic that for an issue to be preserved for appeal, it must be raised to and ruled upon by the trial court . . . When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a Rule 59(e), SCRCF, motion to preserve the issue for appeal." *Shirley's Iron Works, Inc. v. City of Union*, 397 S.C. 584, 598, 726 S.E.2d 208, 215 (Ct.App. 2010); affirmed in part, reversed in part, and remanded at 403 S.C. 560 (2013) (internal citations omitted).

The issues raised by Appellant are not preserved for appellate review.

II. APPELLANT RAISED NO GENUINE ISSUE OF FACT IN DISPUTE TO CONTRADICT RESPONDENTS' AFFIDAVITS (SERVED WITH THEIR MOTION).

As indicated in Judge Branham's Order, ". . . no Affidavit in opposition to the Motion was filed by or on behalf of Plaintiff." (R.p. _____)

Judge Branham's Order also states, in a footnote, that, "[a]s provided in Rule 56(e), SCRCF, . . . [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate,

shall be entered against him.” (R.p. ____)

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c), SCRPC” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct.App 2003).

Appellant has not properly raised any genuine issue of material fact warranting the denial of Respondents’ Motion.

As found by Judge Hood, “[d]ue to Appellant’s failure to defend against Respondents’ Motion by serving an Affidavit, with specific facts showing there is a genuine issue for trial, the lower court had no information before it with which to conclude that the Motion should not be granted. In that regard, Appellant failed to comply with Rule 56(c), SCRPC. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct.App. 2003).” (R.p. ____)

III. APPELLANT IS ESTOPPED FROM COMPLAINING ABOUT THE PARTITIONING OF THE TRUST ASSETS MORE THAN TWELVE (12) YEARS AFTER HE ACCEPTED HIS SHARE OF THE TRUST.

As indicated in the Statement of Facts, Appellant delayed from 2004 to 2017, a period of more than twelve (12) years, before complaining that the partition of the subject real property was improper, during which time he enjoyed the benefit of ownership of the lot gifted to him while being fully aware of the claims of ownership of the other lots by certain of his siblings. (R.pp. ____)

Importantly, Almeter B. Robinson, the parties’ mother, who created the Trust (with her husband) and for whose benefit the Trust was maintained, did not complain about the partition of the subject real property among the designated beneficiaries in 2002 and 2004 or at any time

thereafter before her death in 2017. This partition was, in fact, Mrs. Robinson's desire. (R.p. ____)

Appellant's tardy argument is that the Trustee improperly followed the 1981 Amendment of Trust Agreement, rather than the 1977 Trust, in partitioning the parcel (the trust assets) in 2002. (A. Brief, pp. 1-2) Under the 1977 Trust, Appellant was to receive 1/5 of the parcel (4.2 acres) or approximately 0.84 acre, while under the 1981 Amendment of Trust, Appellant was to receive 1 acre. He ultimately received 1 acre. (R.pp. ____)

Appellant's complaint goes to the fact that he didn't receive a share of the house situated on Lot 2. The house went, instead, to Respondents Green and Harrison and ultimately to Respondent Aiken. (R.pp. ____) This was clearly the intention of Almeter B. Robinson (who resided in the house from 1977 to 2017). She did not object to the partition in 2002, or thereafter, and the 1981 Amendment of Trust Agreement supported this partition. She recognized that the house was built by Respondents Green and Aiken, her twin daughters, using their own monies (R.pp. ____) and that the house was always theirs.

Appellant complains about, among other deeds, the deed to Respondent Ronnie Robinson, which is the source (derivation) of the deed to Appellant of Lot 3, making a point that "Appellant is not a party in any of the challenged deeds." (A. Brief, p. 6) Interestingly, he challenges all of the deeds, except the one to him, conveying his share of the trust assets, which share he maintained as his exclusive property for over twelve (12) years before finally objecting to the deeds involving the other three lots. He still considers Lot 3 to be his exclusive property.

By accepting and holding title to Lot 3 for over twelve (12) years before finally objecting to the partition of the trust assets, Appellant is estopped from making this untimely claim.

The Court of Appeals, in *Hipps v. Hipps*, 288 S.C. 564, 568, 343 S.E.2d 669, 672 (Ct.App. 1986), quoted, with approval, from (1) the North Carolina case of *Tunnell v. Berry*, 73 N.C. App.

222, 326 S.E. (sic) 288, 291 (1985), *review denied*, 313 N.C. 612, 332 S.E. (2d) 184 (1985): “the principle of estoppel will apply when the deed shows that the grantor intended to convey and the grantee expected to acquire a particular estate” (emphasis added); and (2) *31 C.J.S. Estoppel* §10 at 295 (1964): “Estoppel by deed is a bar that precludes a party to a deed and his privies from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it.”

CONCLUSION

For the reasons set forth hereinabove, Respondents respectfully submit that the Amended Order Granting Motion for Summary Judgment and the Order Affirming Probate Court Order should be affirmed.

Respectfully submitted,

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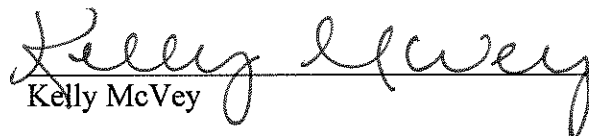
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PROOF OF SERVICE

I, Kelly McVey, of Jordan Law Firm, attorney for Respondent, Martha Ann Robinson Aiken as Trustee, hereby certify that I have, this 27th day of April, 2021, served the [Initial] Brief of Respondents upon John W. Wells, Esquire, attorney for Appellant, Laverne Robinson, by mailing a copy thereof, postage prepaid, to the address indicated below:

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