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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

Case No. 2019-CP-30-00140
Appellate Case No. 2020-001472

Vidhyaben R. Patel, Individually and as Co-Personal
Representative Of the Estate of Rameschandra Prabhudas
Patel, and Darshak Kumar Patel, Individually and as
Co-Personal Representative Of the Estate of
Rameschandra Prabhudas Patel,Appellants/Respondents,

v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC,Respondents/Appellants.

RESPONDENT/APPELLANT'S INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Additional Sustaining Ground1

Statement of the Case1

Statement of Facts5

Scope of Review15

Argument15

 ISSUES 1,2 AND 3 15

 ISSUE 4. 22

Conclusion 24

TABLE OF AUTHORITIES

CASES

All v. Prillaman,
200 S.C. 279, 20 S.E.2d 741 (1942). 19

Beneficial Finance Inc. v. Windham,
431 S.C. 256, 847 S.E.2d 793 (2020) 22

Brown v. Odom,
425 S.C. 420, 823 S.E.2d 183 (Ct.App. 2019)..... 15

Dorchester County Department of Social Services v. Miller,
324 S.C. 445, 477 S.E.2d S.E.2d 476 (Ct.App. 1996) 15

Elrod v. Cochran,
59 S.C. 467, 472, 38 S.E. 122,124 (1901) 18

Gibson v. Epting,
426 S.C. 346, 827 S.E.2d 178 (Ct.App. 2019)..... 22

Hayne Federal Credit Union v. Bailey,
327 S.C. 242, 489 S.E.2d 472 (1997). 18

Langley v. Boyter,
284 S.C. 162, 325 S.E.2d 550 (Ct.App 1984)
286 S.C. 85, 332 S.E.2d 100 (1985) 24

Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church,
421 S.C. 211, 806 S.E.2d 82 (2017) 15

State v. Washington,
431 S.C. 619, 848 S.E.2d 794 (Ct.App)..... 23

Townes Associates v. City of Greenville,
266 S.C. 81, 221 S.E.2d 773 (1976). 15

Trustees of Amherst College v. Ritch,
151 N.Y. 282, 45 N.E. 876, 877, 37 L.R.A 305. 19

OTHER AUTHORITIES

Appellate Practice in South Carolina (2d.Ed. S.C. Bar), Chapter 7, Section II(B) 15

STATEMENT OF ISSUES ON APPEAL

1. The trial court did not err in determining Appellants failed to establish facts sufficient to establish a resulting trust over real estate at issue.
2. The trial court did not err in determining Appellants failed to establish facts sufficient to establish a constructive trust over real estate at issue.
3. The trial court correctly ruled that Appellants failed to establish facts sufficient to entitle them to any relief requested by them.
4. The trial court did not err in refusing to overturn the conveyance of assets of AAHARVID, LLC pursuant to the Statute of Elizabeth.

ADDITIONAL SUSTAINING GROUND

Appellants' Default on the Counterclaims asserted by Respondents created admissions by Appellants that required denial of Appellants' prayer for equitable relief in the complaint, and serve as grounds to affirm the ruling of the circuit court.

STATEMENT OF THE CASE

Appellant Vidhyaben R. Patel (hereafter "Vidhya") is the widow of Rameshchandra Prabhudas Patel (hereafter "Ramesh") who died unexpectedly at age 63 on June 29, 2017. (Petition for Appointment, Laurens County Probate Court dated January 15, 2018, Case No. 2018-ES-30-00084). Vidhya and Ramesh are Indian nationals who immigrated to the United States and obtained their green cards in 2013. (June Tr. p. 114, line 18 – p. 115, Tr. p. 136, lines 15-17; line 5; Tr. p. 190, lines 7 – 15).

Appellant Plaintiff Darshak Kumar Patel (hereafter “Darshak”) is the younger son of Vidhya and Ramesh. (Complaint p. 1, ¶ 3). Respondent Hardik R. Patel (hereafter “Hardik”) is the oldest son of Vidhya and Ramesh and is married to Respondent Anal H. Patel (Anna) (Complaint, Page 1, ¶ 5). Hardik owns a residence in Clinton, SC, which residence was the subject of a part of this litigation. Anna owns AAHARVID, LLC, which owns real estate and operates a convenience store in Clinton, SC. (Complaint Page 1, ¶ 6; Title recorded at Book D1070, Page 120-123, Laurens County ROD).

Both Hardik and Anna are naturalized United States citizens, Hardik becoming a citizen in 2012, and Anna in 2008. (June Tr. p. 151, lines 15-18; p. 294, lines 1-2). Vidhya and Ramesh obtained their green cards in 2013, but never became citizens. (June Tr. p. 114, line 18 – p. 115, Tr. p. 136, lines 15-17; line 5; Tr. p. 190, lines 7 – 15).

The complaint by Vidhya and Darshak, individually and as co-personal representatives of the Estate of Ramesh, sought establishment of a constructive and resulting trust over one-half of the residence owned by Hardik and one-half of the business and real property owned by Anna, such trusts allegedly on behalf of the Estate of Ramesh. Per Paragraph 9 of the complaint, the imposition of a trust was sought by Appellants for:¹

- (1) A one-half interest in the residence located at 18397 Highway 72 E, Clinton

¹ Numerous paragraphs in the complaint (39, 42, 45, 48, 51, 58) seem to seek the entire interest in the identified assets, but Paragraph 9 of the complaint is clear that only one-half of assets in issue are the subject of the claims by Vidhya and Darshak. In addition, the prayer confirms the assets over which a trust is prayed for is only a one-half interest in each asset. Paragraph 1 does not specify whether the complaint seeks one-half or the entire interest in the house; Paragraphs 2, 3, 4, 5, 6, refer “for the benefit of the Plaintiffs” which has to be only one-half interest, because Darshak has no individual claims against the Defendants and he could only be seeking relief in his capacity as co-personal representative of the estate of Ramesh.

- (2) A one-half interest in the real estate located at 19278 Highway 72 E, Clinton and all “inventory, personal property, bank accounts, and other assets of the business. . .”
- (3) A one-half interest in the membership interest of the company and all assets of the company.

(Complaint dated February 26, 2019).²

The complaint did not seek title to either piece of real estate in dispute, nor did it seek a finding for relief under the Statute of Elizabeth, an issue which is raised for the first time before this Court. *Id.* See Appellants’ Initial Brief, p. 31, Issue 4, and pp. 31-32.

Respondents Hardik, Anna and AAHARVID LLC filed an answer and counterclaims seeking a declaratory judgment that Hardik owned the residence and Anna owned the business (AAHARVID, LLC) and the real estate on which the business is located. (First Amended Answer and Counterclaim dated 4.22.2019). Hardik and Anna also asserted counterclaims for conversion, and breach of fiduciary duty.³ Vidhya and Darshak defaulted on the counterclaims and default was entered against them by order filed May 28, 2019. (Entry of Default on Counterclaims).⁴

² A *lis pendens* was filed on both tracts of real estate at the commencement of this litigation. 2019-LP-30-00028. Following the final order by the circuit judge, the *lis pendens* was cancelled. (Order dated October 28, 2020).

³ A third-party complaint against a corporate entity in which deceased Ramesh owned an undivided one-fourth interest at the time of his death, designated as “Fourth Cause of Action” in the Amended Answer and Counterclaim, was not pursued and the third-party corporate entity was never served. No issue regarding ownership of the Florence hotel or its sales proceeds was before the circuit court, and the circuit court did not rule on this issue.

⁴ Vidhya and Darshak provided only a few documents in discovery, claiming they were looking for more and would produce them if located. After more than six (6) months and when no additional documents were produced, the trial court ordered that Vidhya and Darshak were prohibited from introducing documents at trial that had not been produced in discovery prior to the hearing on the motion to compel, January 31, 2020. (Order dated January 31, 2020). One of the few documents produced in discovery and introduced at trial by Vidhya and Darshak was a collection of 9 pages from Anna’s personal 2007 tax return. (Tr. p. 75, line 21 – p. 76, line 2, pointing out the pages should have totaled 82 pages). Following admission of the exhibit, it was determined that the pages from Anna’s 2007 tax return produced in discovery and introduced into evidence by counsel for Vidhya and Darshak totaled only 9 pages from the 82 pages, so the exhibit was incomplete. (Tr.p. 77, lines 19 – 25). One of the pages intentionally left out of what was represented by counsel for Vidhya and Darshak to be Anna’s 2007 tax return was a K-1 showing that Anna was the 100% owner of AAHARVID, LLC at the time it was created. Counsel for Hardik and Anna introduced the missing page showing

Trial was held non-jury before Circuit Court Judge Eugene C. Griffith Jr. over four days.⁵ Vidhya and Darshak's claims for breach of fiduciary duty and unjust enrichment were dismissed. Counsel for Vidhya and Darshak withdrew his clients' claim for fraud.

Judge Griffith issued an order on August 28, 2020 in which he denied all relief to Appellants Vidhya and Darshak, both personally and in their capacities as co-personal representatives of the estate of Ramesh. Judge Griffith addressed the counterclaims on the merits, even though Vidya and Darshak had defaulted and despite their failure to file motion to set aside the default. (Order dated October 28, 2020).

Appellants filed a notice of appeal on November 9, 2020. (Of Record).

Respondents filed a Motion for Award of Attorney Fees against Appellants. (Motion filed September 8, 2020 with exhibits). The motion was denied. (Order dated January 19, 2021). Respondents appealed the denial of the motion for an award of attorney fees. (Of Record).

By order dated March 3, 2021, this Court granted Respondents' Motion to Consolidate the Appeals. This Respondents' brief is filed by Hardik, Anna and AAHARVID, LLC in response to the issues raised by Appellant's Initial Brief of Vidhya and Darshak. A separate brief will be filed by Hardik, Anna and AAHARVID LLC as Appellants in their appeal from the denial of the motion for an award of attorney fees.

Anna's 100% ownership of AAHARVID LLC during her case in chief. (Defendant's Exhibit No. 8, introduced at June Tr. p. 133, line 25 – p. 134, line 10).

⁵ Non-jury trial was held on February 6-7, 2020 and June 16-17, 2020, the interruption caused both scheduling issues and court closures due to Covid-19.

A third appeal arising from the same facts adjudicated in this case was later filed and is also pending on appeal, but has not been consolidated with these appeals. *Patel v. Patel*, Appellate Case No. 2021-000084, appeal from York County.⁶

FACTS

Ramesh and Vidhya immigrated from India with their younger son Darshak to the United States in 2000. (February Tr. p. 118, line 17-p. 119, line 5). Their older son Hardik immigrated from India to the United States separately in 2001. (June Tr.p.150, line 13 -p. 151, line 11). Hardik was raised by various family members in India after Ramesh and Vidhya moved to Africa when Hardik was ten years old. (June Tr. p. 148, line 2 – p 149, line 10; p. 150, lines 13-18). He immigrated to the United States on his own and lived with Ramesh and Vidya briefly before taking a job in North Carolina. (June Tr. p. 150, lines 15-22).

Hardik found living with his parents difficult after “living by myself all these years” but Ramesh’s “dream [was] that we should stick together, so to make him happy, I did that for a time being. . .” (June Tr. p. 152, lines 1-7).

Hardik became a United States Citizen in 2012. (June Tr. p. 151, lines 14-20). Hardik and Anna (who is also an Indian immigrant who became a United States citizen) married in the United States in 2005, followed by a traditional “big” Indian wedding ceremony in India in 2008. (June Tr. p. 160, lines 15-20; p. 162, line 24 – p. 163, line 11; p. 296, lines 7-9; p. 45 lines 1 – 5).

⁶ Vidhya filed suit in Laurens county against Hardik for abuse of process on July 11, 2019 arising from the same facts that were litigated (and ruled upon) in the instant action. Hardik transferred venue to York County, Hardik’s county of residence. *Patel v. Patel*, Case No. 2019-CP-46-03009. The York County case was concluded with grant of summary judgment in favor of Hardik, with the court concluding adjudication of the instant case barred a second claim seeking relief arising from the same facts that were or could have been adjudicated during the instant case. (Order dated December 29, 2020, not designated for inclusion in this Record on Appeal).

Hardik and Anna were living in an apartment in Clinton in 2007. Anna rented and then purchased the convenience store in Clinton beginning in 2007. After Anna leased the store, Hardik rented a house in Clinton, into which his father, mother and younger brother also moved. (June Tr. p. 175, lines 3 – p. 176, line 6). Hardik paid all the expenses for the rental home in which the whole family lived. *Id. See also* June Tr. p. 186, line 22 – p. 187, line 14).

Hardik's close relationship with Prakash Patel had led to the 2007 lease and eventual 2012 purchase of the convenience store. Prakash said he would only assist Hardik and/or Anna purchase the convenience store if Ramesh had no ownership in it. (June Tr. p. 186, lines 13 – 21). Prakash Patel, a one-half owner of P & P Investments (and prior owner of the store) introduced the concept of leasing and purchasing the convenience store to Hardik in 2007. (June Tr. p. 155, lines 11 – 20; p. 165, line 7-p. 166, line 4; p. 167, line 9 – p. 169, lines 21). Both Hardik and Anna visited the store before AAHARVID, LLC leased the store in 2007. (June Tr. p. 306, lines 4-19).

Anna's company AAHARVID LLC entered into a lease in 2007 for a convenience store located in Clinton that was owned by P & P Investment. (Tr. p. 44, lines 10- 14; Defendant's Exhibit 12). Anna signed the lease on behalf of AAHARVID, LLC. (Defendant's Exhibit 12). She also signed the promissory note dated August 3, 2007 which amortized the monthly payments for the lease payment. (Defendant's Exhibit 13). Anna used personal funds to pay for the appraisal from which the lease amount was determined. (Defendant's Exhibit 11).

In 2012, Ramesh negotiated the price for AAHARVID LLC for the purchase of the convenience store.⁷ Anna took out a loan in 2012 from BB&T in the name of AAHARVID, LLC to purchase the store from P&P Enterprises. (Defendant's Exhibit No. 22). AAHARVID, LLC

⁷ The sale of the store was a two-part sale, with the portion from 2007-2012 being a lease, with an outright purchase in 2012. (June Tr. p. 171, line 22- p. 172, line 7).

borrowed \$385,000.00 from BB&T to purchase the convenience store. (February Tr. p. 52, line 3). Both Anna and Hardik personally guaranteed the loan. (Defendant's Exhibits No. 23 and 24). *See also* Defendant's Exhibit 32, confirming the loan to AAHARVID, LLC for purchase of "BP station" in Clinton signed by Anna. *See also* Defendant's exhibit 2 and Exhibit 28).

Because she trusted Ramesh and she was living out of state at time of the 2012 purchase of the convenience store, Anna executed a limited power of attorney to enable Ramesh to sign the BB&T loan documents for AAHARVID LLC. (February Tr. p. 49, line 20 – p. 50, line 17; Defendant's Ex. 26, 27, and 28). Ramesh used the limited power of attorney to sign the promissory note to BB&T for the loan taken out by AAHARVID, LLC. (Defendant's Exhibit 52). The limited power of attorney reflects that Ramesh was acting on Anna's behalf (as principal of AAHARVID, LLC) when he signed the promissory note. *Id.*

Anna was and is the sole owner of AAHARVID, LLC. Her K-1 for 2007, the year the company was created, reflects her ownership interest in AAHARVID, LLC as 100%. (Defendant's Exhibit 2, p. 2).⁸ Anna's name is the only name on the articles of incorporation for AAHARVID, LLC. (Defendant's Exhibit 10).

After leasing the store in 2007, Anna found a house for sale that was near the convenience store and Hardik purchased the house in 2009. (June Tr. P. 176, lines 7 – 20). Hardik and Anna introduced all the paperwork related to the purchase by Hardik of the home. (June Tr. P. 221, line

⁸ Plaintiffs introduced selected pages from Anna's 2007 tax return in their case (Plaintiff's Exhibit 1), but as pointed out at the time, the exhibit was not complete. (February Tr. p. 77, lines 19-25). Specifically, Plaintiffs omitted the K-1 which proved Anna's 100% ownership of AAHARVID LLC, which Defendants introduced as their Exhibit 2. Plaintiff's counsel also stated that the selected pages from Anna's 2007 tax return had been "provided through discovery." (February Tr. p. 76, lines 16-17). As noted, however, Plaintiffs produced very few documents in discovery and specifically did not produce any tax returns, including the partial copy of Anna's 2007 tax returns. (Motion to Compel dated 7.11.2019 #11). There was no explanation for how Plaintiffs managed to have Anna's personal tax return.

21 – p. 177, line 8; tr. P. 177, line 21 – p. 178, line 23; Defendant’s Exhibit 14). The house was purchased solely by Hardik. *Id. See also* June Tr. P. 178, line 24 – p. 181, line 20; P. 181, line 24 – p. 182, line 21; Tr. P. 183, lines 2 - 10; Defendant’s Exhibits 16, 17 and 18).

After the 2009 purchase of the home, Hardik and Anna moved into and took over the master bedroom. They were joined by Ramesh and Vidhya, who took the second bedroom. (Tr. p. 140, lines 20-24; June Tr. p. 184, line 17- p. 185, line3; p. 184, lines 17-23). At all times Hardik paid the mortgage on the house. (Tr. p. 185, lines 4-14). Hardik and Anna didn’t live with Ramesh and Vidhya for very long, leaving the home shortly after the birth of their first child in 2010 because of difficulties with his parents. (June Tr. p. 190, lines 2-10; p. 193, line 16 – p. 194). Hardik “was ready to get them out of the house right then and there” after Anna came home with the baby. *Id.*

Hardik found living with his parents after his daughter was born was “unhealthy” and he convinced Anna to move to Augusta with the baby to live with her parents. (June Tr. p. 195, line 9 – p. 195, line 17). Ramesh and Vidhya prohibited Hardik from traveling to Augusta to visit his wife and daughter, telling him they would “lose respect” for him if he visited his wife and daughter. (June Tr. p. 195, line 18 – 25).

The breaking point between Hardik and Ramesh came when Ramesh insisted on naming Hardik and Anna’s daughter, until Hardik “finally put my foot down.” (June Tr. p. 196, lines 1 – 25). Hardik left the Clinton home and lived in his car for two days before managing to find a low-rent apartment so Anna and their daughter could reunite with him. (June Tr. p. 197, line 1 -p. 198 line 18). Hardik and Anna lived in the low-rent apartment for only a short period of time before moving to Virginia so Hardik could take a job away from his parents. (June Tr. p. 198, line 18 – 20; p. 199, lines 19 - 25).

Once Hardik and Anna moved to Virginia with their infant daughter, they never lived with Ramesh and Vidhya again. (June Tr. p. 200, lines 1-2; lines 12-24). Hardik made the decision to live separately from his parents because “I [didn’t] want to be abused anymore.” (June Tr. p. 100, lines 12 – 24). Hardik and Anna eventually settled in 2017 in Tega Cay, with Hardik taking a job in Charlotte, and wanting to be in the best school district for his children (there was now and daughter and a son). (June Tr. p 201, line 6 – p., 202, line 14).

Even after Vidhya and Darshak brought this action against him, Hardik allowed Vidyha to continue living in his Clinton house alone, but Hardik paid all expenses. Shortly before the June non-jury trial, Hardik required Vidhya to put the house utilities in her name, but he continued to pay the mortgage. (Tr. p. 187, line 15 – 22).

Ramesh died unexpectedly at the age of 63 on June 29, 2017. (February Tr. p. 37, lines 11-12; June Tr. p. 202, line 15 – 203, line 5). (Petition for Appointment, Laurens County Probate Court dated January 15, 2018, Case No. 2018-ES-30-00084). Ramesh and Vidhya had continued to live in Hardik’s house, even though Ramesh was working in Florence four days a week. (June Tr. p. 202, lines 15 – p. 203, line 8).

Vidhya was not prepared to assume any responsibility for her personal or business affairs after Ramesh died. (February Tr. p. 151, lines 19-21). At some point after Ramesh’s death, Vidhya did not have power and/or cable service at the Clinton house for two days. (February Tr. p. 157, lines 3-4; Tr. p. 157, lines 16-25). She attributed that to a malicious act by Hardik, but there is no evidence that supports that assertion.

Both before and after the purchase of the Clinton home in 2009, Anna and Hardik lived in various places in South Carolina and other states while both were attending school, but Ramesh and Vidhya remained in the house in Clinton, with Hardik paying the mortgage, utilities, and other

expenses for them. (June Tr. p. 186, line 23 p. 187, line 23; Tr. p. 216, lines 10-20). Hardik stayed in the house occasionally when he was working weekends at the store, but he always maintained the master bedroom in the house as his own, even after he no longer lived there. Ramesh and Vidhya were allowed to live in the house free of charge, and they paid no rent. Hardik also paid for Vidhya's cell phone and service. (June Tr. p. 216, lines 10-20).

Vidhya worked at the convenience store as an employee both before and after Ramesh's death. Vidhya denied receiving a salary for working at the store, but she identified her W-2s from AAHARVID LLC. (February Tr. p. 163, line 5– p. 167, line 3). She conceded she had no personal knowledge of the family finances and testified that Ramesh handled all the family finances and taxes. (February Tr. p. 162, line 24 – p. 163, line 4; p. 167, line 9). She acknowledged that Ramesh had handled all of the finances and taxes for her. (February Tr. p. 162, line 21 – p. 163, line 4; P. 167, line 9). She lacked any meaningful knowledge of her or Ramesh's financial affairs.⁹

While working as an employee of the convenience store, Vidhya filed for and received workers' compensation benefits for an on-the-job injury. After her employment was terminated, she filed for and collected unemployment. (February Tr. p. 168, line 7 – p. 170, line 4; Defendant's Exhibit 32 (unemployment) and Defendant's Exhibit 30 (worker's compensation claim)). The worker's compensation policy maintained for employees of the store did not provide coverage for owners. (June Tr. p. 332, line 20 – p. 333, line 2).

⁹ Vidhya's complete lack of knowledge of her family finances did not deter her from testifying that she and Ramesh had paid for everything regarding the purchase of the Clinton house, the lease and then the purchase of the convenience store. (February Tr. p. 118, lines 2-14; p. 124, line 13 - p. 125, line 25; p. 127, line 4 - p. 128, line 5; p. 130, line 7 - p. 131, line 18; p. 132, lines 10-11; p. 134, lines 11-12; p. 135, line 14 - p. 136, line 1; p. 138, line 16 - p. 139, line 22; p. 141, lines 15-18; p. 148, line 2 - p. 150, line 3; p.162, line 21-p.167, line 21). She provided no proof, and Judge Griffith found she had no knowledge of those issues. (Order dated 8.28.2020, p. 14).

In 2016, Vidhya also represented to immigration officials that she was an employee of the convenience store. (February Tr. p. 170, line 16 - p. 172, line 15; Defendant's Exhibit 2). Vidhya did not recognize the documents or recall the interaction with immigration officials but she confirmed her signature on the document. *Id.*

Following Ramesh's death in 2017, Hardik continued to allow her to reside in the Clinton home with Hardik paying all expenses, including Vidhya's cell phone. (June Tr. p. 58, lines 1- 8; p. 216, lines 3-20). Hardik assisted Vidhya with her financial matters after Ramesh died, and at her request he assisted her in changing her address to Hardik's own home address in Tega Cay on certain things for which she had requested help. (June Tr. p.213, lines 6-17). Anna allowed Vidhya to continue to work at the store. (June Tr. p. 342, line 14 – 25).

The relationship among Vidhya on the one hand and Hardik and Anna deteriorated after Ramesh's death, primarily because Vidhya began stealing money from the store. (June Tr. p. 216, line 25 – p. 217, line 5). Following Ramesh's death, Hardik was living in Tega Cay with his family but still working at the convenience store on weekends. (June Tr. p. 217, lines 14-24.).

In October, 2018, while Vidhya was in Atlanta for a wedding, Hardik discovered a large number of \$100 bills in the bedroom that Vidhya used when she was living at the Clinton home. He photographed the cash, which he counted and totaled at \$11,000.00. (June Tr. p.219, lines 18-24; Defendant's Exhibit 49).

Hardik was distressed by the discovery. There had been occasions when Vidhya had taken money from the store, claiming she had paid for store inventory with personal funds and she was simply reimbursing herself. (June Tr. p. 216, line 25 – p. 217, line 5). Those incidents had troubled Hardik, but the discovery of the cash hidden at the house convinced him that Vidhya could no

longer be trusted to pay any expenses with the AAHARVID LLC checkbook or handle company funds. (June Tr. p. 219, line 7-p. 223, line 9).

In October, 2018, after discussing the matter, Anna and Hardik removed Vidhya's name from the AAHARVID, LLC bank account, and Hardik told Vidhya that he would handle all deposits for the store going forward. (June Tr. p.221, line 25-p 222, line 12; Tr. p. 159, lines 11-20).

When Vidhya was told that her name had been removed from the AAHARVID LLC bank account, Vidhya deposited two checks for \$5,000.00 each that she had written to herself from the AAHARVID, LLC bank account. (June Tr. p. 225, line 5-. 226, line 14.). Anna and Hardik attempted to reverse the transactions, but Vidhya had closed the account into which she had deposited the funds, and thereby thwarted BB&T's attempt to trace the funds. (June Tr. p. 226, lines 15-18).

Because of the dispute about whether Vidhya's name could remain on the AAHARVID LLC bank account, BB&T asked the parties to terminate their banking relationship with BB&T. (June Tr. p. 227, line 11-p. 228, line 4.). Vidhya received \$ 235,207.26 in certified checks when BB&T cashed out her bank accounts. (Defendant's Exhibit 36).

Anna maintained security cameras in the store. In November, 2018, she and Hardik reviewed some of the security footage and saw Vidhya activating and cashing out lottery tickets for herself. (June Tr. p. 344, lines 7-9; p. 346, line 16). The court viewed a video provided by Defendants of a portion of the security camera video. There were no customers at the cash register at the time Vidhya was scanning the lottery tickets and setting aside the receipts of winning tickets. Defendant's Exhibit No. 4 is a still shot from the video that was shown to the court. Vidhya confirmed the photo was of her scanning a lottery ticket. (February Tr. p. 184, lines 1 -p. 186, line 14).

Hardik installed additional security cameras after discovering the possible theft of lottery tickets by Vidhya. (June Tr. p. 351, lines 7-13.). Anna believes Vidhya noticed the new camera and suspected her activity had been discovered. (June Tr. p. 351 line 23-p.352 line 3). Anna and Hardik sought legal advice from attorney Thomas Jeter at the end of 2018, both about the problems with the bank account and operating the business going forward. (June Tr. 352, line 7-p. 353, line 15). Mr. Jeter reviewed the lottery retailer contract agreement for the store and advised Anna she had an obligation under that contract to report any theft of lottery property to the Lottery Commission. (June Tr. p. 354, line 17-p. 355, line 10).

Anna dutifully reported the theft by Vidhya of lottery tickets to both the lottery commission and to law enforcement. (June Tr. p. 356, lines 13-23). Because Vidhya was her mother-in-law, it was a very difficult decision to make. (June Tr. p. 357, lines 5-15). After receiving legal advice from Mr. Jeter, Anna and Hardik restructured AAHARVID LLC, and invited most existing employees to continue their employment at the convenience store in 2019. (--).Vidhya was not asked to return to work at the store in 2019. (February Tr. p. 121, line 20 – p. 122, line 9; June Tr. p.359, lines 8-20).

In 2019, Vidhya applied for and received unemployment payments from the state. (Defendant's Exhibits 41 and 44).¹⁰ In applying for unemployment benefits, Vidhya stated that she had been a full-time employee of AAHARVID LLC and was not self-employed. (Defendant's Exhibit 44, page 3). Vidhya reported to the State that she had been "laid off due to lack of work – slowdown in business" and she would not be returning to the employment with AAHARVID LLC again. (Defendant's Exhibit 44, pages 4 and 8). She said she had been "laid off" by the "owner"

¹⁰ Vidhya's application for unemployment provided a mailing address of 800 Broad Street in Clinton. *Id.* On Google Maps, the location appears to be a convenience store and gas station.

of the store. *Id.* p. 12. She reported her salary from AAHARVID LLC had been \$24,000 per year. *Id.* Vidhya certified to the state that the information she submitted was “true and accurate” and acknowledged she understood the penalty for perjury if her statements in support of her unemployment request were false. *Id.* p. 11.

After Vidhya’s employment at the store ended and she realized Ramesh had not left her with any assets, she concocted a scheme to claim the house and store were really purchased by her or Ramesh. Vidhya and Darshak, “individually and as co-personal representatives of the Estate of Ramesh. . .” filed this suit in February 2020, alleging numerous false statements, all of which were disproved at trial, including their claims that Vidhya and Ramesh had paid any funds for the rental or purchase for the house or the store. The filing of the lawsuit was the first time Anna ever heard that Vidhya claimed to own the house or the store. (June Tr. p. 364, lines 12-17).

Hardik continued to pay the mortgage throughout the litigation of this matter. (June Tr. p. 186, line 22 – p. 187, line 22). In August, 2020, Hardik stopped paying the utilities and required Vidhya to open her own utility accounts. *Id.*

Following a four-day nonjury trial, Judge Griffith entered judgment was entered in favor of Respondents Hardik, Anna and AAHARVID, LLC.

By way of correction: Appellants’ statement in its Statement of the Case that the complaint in this action sought relief as to “funds being held in escrow in Florence, South Carolina” is inaccurate. (Appellant’s Brief p. 2).¹¹ The complaint did not seek to impose a trust over any sales

¹¹ The sale of real estate located in Florence, South Carolina had not occurred at the time this lawsuit was filed and no amended or supplemental complaint was filed thereafter. The sale of real estate in Florence owned by a corporation named Shriji Hari, according to attorney Benjamin Moore, who handled the sale. The sale of the Florence real estate was made in March 2020. (June Tr. P. 127, line 13 – p. 129, line 20). Attorney Benjamin Moore testified that he was holding any funds that might be due to the Estate of Ramesh Patel pursuant to an order of the Laurens County Probate Court issued on November 25, 2019. (June Tr. P. 133, lines 2 – 16; Defendants’ Exhibit 50). Nothing regarding ownership of funds from the sale of Florence real estate was raised in the pleadings in this action or tried before Judge

proceeds of a hotel in Florence, which sale did not occur until almost a year after this action was filed.

SCOPE OF REVIEW

The complaint in this action sought only equitable relief. Therefore, on appeal to this Court is that this Court has jurisdiction to find facts in accordance with its own view of the facts. *Townes Associates v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). “However, this broad scope of review does not require the appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of witnesses.” Toal, Appellate Practice in South Carolina (2d.Ed. S.C. Bar), Chapter 7, Section II(B), citing *Dorchester County Department of Social Services v. Miller*, 324 S.C. 445, 477 S.E.2d 476 (Ct.App. 1996). See also *Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017) and *Brown v. Odom*, 425 S.C. 420, 823 S.E.2d 183 (Ct.App. 2019).

ISSUES 1, 2 AND 3

Issue 1 in Appellants’ brief assert the trial court erred in finding and “ruling as a matter of law that Appellant’s (*sic*) are not entitled to” a resulting trust “over the real estate in this case.” Issue 2 is exactly the same question except the reference to “resulting trust” is replaced with the term “constructive trust¹².” Issue 3 challenges the trial court’s order as being “not supported by the evidence presented at trial.” Thus, issues 1, 2 and 3 are the same issues and will be addressed here.

Griffith. Judge Griffith made no rulings regarding ownership of the funds being held by Mr. Moore. The issue is pending in the probate court of Laurens County. *Id.*

¹² Issues 1 and 2, therefore, relate only to title to the real estate and do not challenge the trial court’s findings regarding ownership of the convenience store business itself or any of its assets; the convenience store is located on real estate owned by AAHARVID, LLC, but Appellants do not challenge, in Issues 1 and 2, any error by the trial judge as to ownership of the business or the business assets.

Appellants are in error that the trial judge “ruled as a matter of law” regarding either their claim for resulting trust or their claim for constructive trust. Instead, the trial judge ruled that Appellants failed to prove facts to support their claim for equitable relief under either theory. There were no issues ruled on “as a matter of law.”

Appellants are appealing the trial judge’s ruling that they did not prove sufficient evidence to support their claim for establishment of a constructive trust or a resulting trust over real estate. Judge Griffith specifically ruled: “Plaintiffs Vidhya and Darshak have not established, by clear and convincing evidence, *or even by a preponderance of the evidence*” any facts that would support the imposition of a constructive or resulting trust.” (Order 8.228.2020, p. 26 – p. 27, ¶ 99) (emphasis added).

Judge Griffith also pointed out that the theory advanced by Vidhya and Darshak, *i.e.*, the house and convenience store were put in Hardik and Anna’s name respectively, as a subterfuge to skirt immigration laws, because Ramesh held a green card and could not own real property in the United States, defeated any request for equitable. *Id.* pp. 27-28, ¶ 103. He further ruled that, even if the facts alleged by Vidhya and Darshak were proven to be true, the court would not assist in perpetuating a fraudulent transaction and “equity would not provide remedy to impose a trust of any kind over the house and convenience store, even if the facts established everything the [Appellants] claim.” *Id.* ¶ 104.

The story concocted by Appellants was unsupported by any evidence. Numerous witnesses testified that Ramesh had owned real estate in North Carolina and South Carolina before the Clinton house was purchased (in 2009) or store was leased (2007) and later purchased (2012). Hardik said Ramesh had owned property in the United States as far back as he knew, when Hardik arrived in the United States in 2001. (June Tr. p. 207, lines 14-17).

The rationale advanced by Vidhya and Darshak for the immigration subterfuge (*i.e.*, putting property Ramesh purchased in the name of Hardik and Anna) was completely discredited by the testimony.

- Ramesh owned an interest in a hotel in Goose Creek, SC, in 2001 when Hardik first came to the United States in 2001 (June Tr. p. 150, line 15 – p. 151, line 11; p. 164, lines 21 – 24; p. 207, lines 20-22).
- Ramesh’s second ownership in a hotel was in Concord, North Carolina in 2001 (June Tr. p. 147, lines 12-15; p. 207, lines 20-21).
- Ramesh owned some interest in a hotel in Newberry which he gifted to Anna when she married Hardik in 2005. (June Tr. p. 173, line 21 – p. 174, line 13).¹³ Anna’s forty-percent ownership (gifted from Ramesh) was divided by Anna in 2009 when she gave Hardik half, leaving each with twenty-percent interest each. (June Tr. p. 174, lines 1-11). Vidhya did not know the details, but she knew Ramesh owned an interest in the Newberry hotel; however, he got no money when it was sold. (February Tr. p. 135, lines 14-16).
- Mr. Desai said he sold the Newberry hotel to Ramesh and Vidhya Patel, Prakash Patel and Praful Patel in 2006. (February Tr. p. 80, lines 2 – 25).

The various versions of facts from Vidhya, Darshak and their witnesses of when Ramesh owned different interests in real estate dates don’t always match up from one witness to another. But everyone confirmed he owned real estate before the convenience store was leased in 2007, rendering the concocted story of putting Ramesh’s property in Hardik’s name in 2009 (purchase

¹³ The record reflected that Ramesh may have owned some stock in the Newberry hotel until there were some accounting discrepancies in approximately 2005, which led to Ramesh transferring his shares to Anna. (June Tr. p. 208, line 11 – p. 209, lines 14). When a second accounting discrepancy arose while Ramesh was managing the hotel, Anna and Hardik returned their shares in the hotel to Prakash so Prakash would not prosecute Ramesh. (Defendant’s Exhibit 19, June Tr. P. 18 – p. 211, line 21; p. 274, lines 2-25).

of the Clinton house) and 2012 (purchase of the convenience store) completely lacking in credibility.

At no point prior the filing of this lawsuit did Vidhya (or Ramesh, before his death) claim to own any portion of the house or the store. (June Tr. p. 207, lines 11-17). Only when Vidhya realized Ramesh had not left her anything following his death did she concoct the story that Hardik and Anna owed her something, so it must be the house and store. (June Tr. p. 368, line 21-p. 369, line 17.)

Under Vidhya and Darshak's theory that either the house or the convenience store were purchased by Hardik and/or Anna for the benefit of Ramesh or Vidhya, Vidhya and Darshak had to prove the facts supporting their claim by clear and convincing evidence. As noted by the trial judge, not only did they not establish their claim by clear and convincing evidence, they didn't even establish the facts they alleged by a preponderance of the evidence. (Order dated 8.28.2020).

"Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is placed in the name of another . . . The general rule is that when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised. . . the presumption, however, may not be in accord with the truth. It may be rebutted, and the actual intention shown by parol evidence." *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). "Fraud can defeat a resulting trust." *Id.*, citing *Elrod v. Cochran*, 59 S.C. 467, 472, 38 S.E. 122, 124 (1901).

A resulting trust may not be imposed when the transaction is undertaken to defraud other persons or to violate the law. *Id.* “The law will not permit a party to deliberately put his property out of his control for a fraudulent purpose, and then, through intervention of a court . . . regain the same after his fraudulent purpose has been accomplished.” *Id.*

“It is well settled in this state that the facts from which the court would infer a resulting trust may be established by parol testimony, but it is also settled that such testimony, to warrant such inference, must be clear and convincing. *All v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741 (1942). “[T]o establish a . . . resulting trust against one holding the legal title, the evidence must be clear and convincing. *Id.*

Similarly, proof required to establishing a constructive trust must be “clear, satisfactory, convincing, full, free, received with great caution, definite, unequivocal, precise, decisive, indubitable, overwhelming, strong, unmistakable, capable of but one conclusion, a greater weight than a mere preponderance.” *Id.*

“It is recognized that there is a distinction between legal and moral obligations in this respect.” *Id.* , citing *Trustees of Amherst College v. Ritch*, 151 N.Y. 282, 45 N.E. 876, 877, 37 L.R.A 305.

When it clearly appears that no trust was intended, even if it is equally clear that the testator expected that the gift would be applied in accordance with his known wishes, the legatee, if he has made no promise, and none has been made in his behalf, takes an absolute title, and can do what he pleases with the gift. Whatever moral obligation there may be, no legal obligation rests upon him. *Id.* (emphasis added).

All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741 (1942).

Anna testified that Vidhya never said anything about wanting to own the house or the convenience store until after Ramesh died, when Vidhya complained that Ramesh did not leave

her anything. (June Tr. p. 368, line 21-p. 369, line 17.) Not even Vidhya or Darshak offered any testimony that the house or store was supposed to belong to Ramesh and/or Vidhya.

It is without doubt that the theories of “resulting” or “constructive” trusts were made up, and Vidhya’s and Darshak’s evidence which attempted to establish the trusts was entirely verbal. To the contrary, Hardik and Anna produced documents which clearly established Hardik purchased the house and Anna purchased the store. Hardik and Anna allowed his parents to live in the house (although they left as soon as they could to escape the toxic atmosphere), and allowed both of Hardik’s parents to work at the store.

There was never a single discussion about “pre-planning” or even suggesting that Hardik and/or Anna intended to benefit Vidhya or Ramesh by their real estate purchases. To the contrary, the hears following Hardik and Anna’s marriage taught them both that Ramesh and Vidhya lived in an ancient culture, and they wanted to keep Hardik and Anna in it. Hardik was very clear that he wanted out and wanted to be an American and raise his children as Americans. (June Tr. p. 156, line 1 – 24).

As Judge Griffith ruled “none of the exhibits introduced . . . at trial support Vidhya’s testimony that she and Ramesh paid for the house or the convenience store.” (Order dated 8.28.2020, p. 15 ¶ 56).¹⁴ Failing to produce any evidence in support of their claim falls far short of the heightened burden of proof of clear and convincing.

This lawsuit was filed to try to “guilt” Hardik and Anna into continuing to support Vidhya, and, viewed differently, to use the courts to steal from them. Judge Griffith’s observations

¹⁴ Very few exhibits were introduced by Vidhya and Darshak. Instead, all of the financial documents related to the purchase of the house, as well as the lease and purchase of the convenience store, were introduced by Hardik and Anna. Judge Griffith noted that, as co-personal representatives, Vidhya and Darshak had the means to obtain any documents of Ramesh’s that may have supported their theory of the case, but they produced none. (Order dated August 28, 2020, page 15, ¶ 57. *See also* footnote 19 on page 15, *supra*.)

regarding the behavior of Darshak and spectators who were supporters of Vidhya and Darshak's position verify the testimony of Hardik that his parent's "cult" banded together to support her, even when it was obvious she was merely regurgitating what someone told her say on the stand. (Order dated 8.28.2020, p. 21, ¶83). Judge Griffith noted that Ramesh and Vidhya's failure to integrate themselves into American society likely added to the discord between Ramesh and Vidhya on the one hand, and Hardik and Anna on the other. (Order dated 828.2020 p. 20, ¶79-80). Both Hardik and Anna consider themselves Americans, want to live as Americans and raise their children as Americans. (Order dated 8.28.2020, page 21, ¶ 84).

Hardik's testimony about the courage it took to tear himself away from his parent's cult was heartbreaking.

Q. Now that you have been living without your mother and father for quite some time, what difference do you see in yourself?

A. I'm free. This is how you're supposed to live. . .
(June Tr. p. 153, lines 15-18).

The verbal and physical abuse he endured at the hands of his parents "affected my brain." (Tr. p. 153, line 25 – p. 154, line 21). His parents opposed his marriage to Anna because she was not from the same culture as Hardik was. (June Tr. p. 158, line 19 – p. 160, line 14). When Hardik met Anna and her family "[t]hat's when I saw freedom for the first time." (June Tr. p 160, line 5).

Q. What the – the reason for the hostility between the two?

A. I have no idea. It's almost like black people, white people. They're not ours, they're not ours. I don't understand why they are not ours, you know? They are ours, they are same."

(June Tr. p. 161, lines 3-8).

Q. What have you found for yourself – after pulling yourself away from this cult, what have you found about yourself individually as a person?

A. As a person, I slowly, slowly became a better person in the sense that I grew a conscience that not only your family is your family or your culture, but there is saying called Vasudhaiva Kutambakam.¹⁵ Make like the whole world is your family. Learn to love and accept everybody as a person, not as a color. Not as a black, white, X, Y, Z. No. Everybody's human."

(June Tr. p. 164, line 2 – 11).

Vidhya and Darshak are simply wrong that they introduced clear and convincing evidence that the house in Clinton or the convenience store were supposed to have been theirs. As Judge Griffith said, the evidence in support of their request for imposition of a trust was "none". (Order dated 8.28.2020, p. 15 ¶ 56). Judge Griffith's order should be affirmed.

ISSUE 4

Vidhya and Darshak argue on appeal that Judge Griffith "erred in not finding that the transfer from AAHARVID LLD to Hardik's new business in late 2019 was fraudulent and in violation of the Statute of Elizabeth. The argument is not a strenuous one, taking up less than a page in Appellant's Brief. (p. 30-31).

Judge Griffith made no such ruling, and there was a good reason for him not doing so. No prayer for that relief was made in the complaint, and no amended or supplemental complaint was filed.

The appellate court will not address an issue that was not raised to or decided by the trial judge. *Beneficial Finance Inc. v. Windham*, 431 S.C. 256, 847 S.E.2d 793 (2020); *Gibson v. Epting*, 426 S.C. 346, 827 S.E.2d 178 (Ct.App. 2019).

This argument is apparently made because of the testimony of Thomas Jeter, the lawyer who was consulted by Hardik and Anna in late 2018 and early January 2019 concerning their

¹⁵ The term is "a Sanskrit phrase that mean the whole world is one single family. <https://vasudaikakutumbam.wordpress.com>. Swami Vvekandanda (1863-1902) "All differences in this world are of degree, and not of kind, because oneness is he secret of everything." *Id.*

responsibilities as to reporting Vidhya's theft to the lottery commission and law enforcement and related issues concerning Vidhya's conduct which caused the AAHARVID LLC bank accounts to be frozen. (June Tr. p. 7, line 21 – p. 11, line 5).

Based on Mr. Jeter's advice, Hardik established a new corporation for future operations of the convenience store with Mr. Jeter's assistance on December 18, 2018. Mr. Jeter also provided him advice about inviting employees they wished to retain in the new store to apply for employment with the new company. (June Tr. p. 11, lines 6 – 25). Mr. Jeter also investigated Anna's obligations as a licensee of the South Carolina Lottery Commission and advised her she was required to notify the Lottery Commission of the theft of lottery tickets by Vidhya. (June Tr. p. 12, line 1 – p. 15, line 24).

The real estate owned by AAHARVID LLC remains owned by AAHARVID LLC, which was recommended by Mr. Jeter. (June Tr. p. 16, lines 2 – 12).

This testimony was offered, at least in part, to counter vague allegations made by Vidhya that Hardik had her arrested because she filed a lawsuit against him in February, 2019. (Tr. p. 161, lines 10-20; p. 181, line 15 – p. 182, line 2). Mr. Jeter's consultation and advice were provided from October to December, 2018, clearly establishing the folly of Vidhya's argument that her arrest (1) was caused by Hardik; and (2) was in retaliation for her filing this lawsuit.

Darshak testified that Hardik had his mother arrested for lottery fraud in April, 2019. Darshak's testimony on that issue, like most of his other testimony, was found by Judge Griffith to lack credibility. (Order 8.28.2020, p. 13, ¶ 46; p. 16, ¶ 60).

This court may decline to address issues that were not presented to or ruled on by the trial judge. *State v. Washington*, 431 S.C. 619, 848 S.E.2d 794 (Ct.App), citing to Retired Chief Judge

Alex Sanders’ oft-cited statement in *Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550 (Ct.App. 1984), *reversed on other grounds* 286 S.C. 85, 332 S.E.2d 100 (1985) that “appellate courts in this state, like well-behaved children, do not speak unless spoken to and to not answer questions they are not asked” *Id.* at 561.

Appellants Vidhya and Darshak are not entitled to any relief on Issue 4.

CONCLUSION

“Develop enough courage so that you can stand up for yourself and then stand up for somebody else.” Maya Angelou (1928 – 2014).

It is respectfully requested that the order of Judge Griffith be affirmed by this Honorable Court.

Respectfully submitted,

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