

FORM 13

FINAL BRIEF TO RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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SC Court of Appeals

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.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Standard of Review.....	1
Conclusion	
Arguments	
1. Patricia E. Campbell was suffering from diminished mental capacity at the time of signing the documents listing Appellant’s address and the deed in question which supports Respondent’s lack of knowledge as to the address of the Appellants for service of process.....	2
2. The Respondent alleged the lack of mental capacity and undue influence of Appellants on December 18, 2018.....	3
Conclusion.....	4

TABLE OF AUTHORITIES

CASES

Vereen v. Bell, 256 S.C. 249, 251-252, 182 S.E. 2d 296, 297 (1971) 4

Verderv v. Daniels, 544 S.C. 564, 344 S.E. 2d 854 (2001) 4

STATUTES

S.C. CODE ANN. 44-23-41- (2012) 3

S.C. CODE ANN. 44-23-410 (2012) 3

S.C. CODE ANN. 16-9-1 (1993) 4

STATEMENT OF ISSUES ON APPEAL

1. WERE APPELLANTS PROPERLY SERVED CONCERNING THE ACTIONS TAKEN BY THE RESPONDENT REMOVING THE APPELLANTS FROM THE RESPONDENT'S DEEDED PROPERTY IN COLLETON COUNTY, SOUTH CAROLINA.
2. DID RESPONDENT DIVULGE ANY INFORMATION TO THE RESPONDENT'S ATTORNEY ON RECORD OR KENNETH A. CAMPBELL, JR., SPECIAL REFEREE PERTAINING TO THE WHEREABOUTS OF APPELLANTS, INCLUDING ANY CONTACT PHONE NUMBERS, ANY VOICEMAIL MESSAGES LEFT BY RESPONDENT, OR THE APPELLANT'S FLORIDA ADDRESS PRIOR TO, DURING OR AFTER THE RESPONDENT TAKING THE ACTION IN REMOVING APPELLANTS FROM THE RESPONDENT'S DEEDED PROPERTY IN QUESTION IN COLLETON COUNTY, SOUTH CAROLINA?
3. DID RESPONDENT OFFER ANY PROOF CLAIMING ALLEGED LACK OF MENTAL INCAPACITY DURING THE SIGNING OF THE APPELLANTS TO RESPONDENT'S DEEDED PROPERTY?
4. WHY DID RESPONDENT LIST ROBERT J. PLUM AS SUCCESSOR AGENT FOR RESPONDENT'S HEALTH CARE POWER OF ATTORNEY?
5. WAS THE RESPONDENT UNDER ANY KIND OF ALLEGED DURESS?
6. COULD DEBORAH B. KANE HAVE KNOWN OF THE MENTAL INCAPACITY OF RESPONDENT ON DECEMBER 18, 2018, DURING THE SIGNING OF THE LEGAL DOCUMENT PLACING THE APPELLANTS ON THE RESPONDENT'S DEED PROPERTY?
7. DID THE RESPONDENT MEET THE BURDEN OF PROOF DURING THE FINAL JUDGMENT TO HAVE THE DEED IN QUESTION SET ASIDE?

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. Appellants state case law for determining competency which does not address the issue of whether or not Respondent was under duress from Appellants at the time of the signing of the deed which is the subject matter of this appeal; therefore, S.C. Code Ann. 44-23-41-(1)(2011) is not applicable in this case.

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). The case of Vereen V. Bell (1971) is not applicable to this case because it does not address the issue of mental incapacity, as a result of duress and/or undue influence. This case is one of equitable jurisdiction.

STANDARD OF REVIEW

South Carolina Code 160901(1). (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).

S.S. Code Ann. 44-23-410 (212). Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

S.C. Code Ann. 44-23-41-(a)(2011). Whenever a judge of the circuit or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him, or to assist in his own, the judge shall: S.C. Code Ann. 44-23-410(1)(2011) order examination of the person by two examiners designated by the department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or both sets of examiners if the person is suspected of having both mental illness or related disability. The examination must be made within thirty (30) days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court.

ARGUMENT

1. WERE THE APPELLANTS PROPERLY SERVED CONCERNING THE ACTIONS TAKEN BY THE RESPONDENT REMOVING THE APPELLANTS FROM THE RESPONDENT'S DEEDED PROPERTY IN COLLETON COUNTY, SOUTH CAROLINA.

Appellants argue that Respondent could have divulged (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/or mental incapacity because of duress 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 also, gave Deborah Kane, Attorney who prepared the deed in question, the address of the property for all future correspondence. There is no reference at all, of the Appellants' address in Florida on the face of this deed, although, apparently, they had this address and supplied it for the Power of Attorney prepared at the same time as the deed in question. Consequently, all correspondence related to this property, including tax notices, were mailed to the property address that Appellants had abandoned and only Respondent was residing at after the preparation of the deed in question. 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.

2. DID RESPONDENT DIVULGE ANY INFORMATION TO THE RESPONDENT'S ATTORNEY ON RECORD OR KENNETH A. CAMPBELL, JR., SPECIAL REFEREE PERTAINING TO THE WHEREABOUTS OF APPELLANTS, INCLUDING ANY CONTACT PHONE NUMBERS, ANY VOICEMAIL MESSAGES LEFT BY RESPONDENT, OR THE APPELLANT'S FLORIDA ADDRESS PRIOR TO, DURING OR AFTER THE RESPONDENT TAKING THE ACTION IN REMOVING APPELLANTS FROM THE RESPONDENT'S DEEDED PROPERTY IN QUESTION IN COLLETON COUNTY, SOUTH CAROLINA?

Appellants now wish to offer voicemail message transcripts that was not initially offered at the time of the filing of this appeal. Appellants could and should have offered this information at the inception of filing but failed to do so. In addition, these messages make no indication that Appellants provided any information as to their address at the time of the filing of the case setting aside the original deed. Respondent restates and reaffirms the fact that the Appellants intention to own the property belonging to her, is the reason for this appeal and the great lengths to which Appellants have been willing to go in order to get the property. Respondent has no ability to serve documents, or know the address of the Appellants, just by having a telephone number in possession. In *Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (S.C. App. 2020) the issue of fraud was addressed as follows:

"See Rule 60(b), SCRCP. "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers* , 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). A claim of fraud upon the court requires proof by clear and convincing evidence. See *Chewning* , 354 S.C. at 86, 579 S.E.2d at 612. "Fraud upon the court is a narrow and invidious species of fraud that 'subvert[s] the integrity of the [c]ourt itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.' " *Perry* , 357 S.C. at 47, 590 S.E.2d at 504 (first alteration in original) (quoting *Chewning* , 354 S.C. at 78, 579 S.E.2d at 608). "Like

all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud." Id. at 47, 590 S.E.2d at 504-05.

Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (S.C. App. 2020). The Respondent did not act fraudulently in this case, as the Appellants clearly alleged in their Brief that they were living with the Respondent. When Appellants left the property, and did not return, otherwise they would have known of the action that was published in the Colletonian newspaper in the County which Appellants listed as their address on the face of the deed.

3. DID RESPONDENT OFFER ANY PROOF CLAIMING ALLEGED LACK OF MENTAL INCAPACITY DURING THE SIGNING OF THE APPELLANT'S TO REPENDENT'S DEEDED PROPERTY?

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/or mental incapacity as a result of duress, and the verbiage of the documents in no way establishes mental capacity.

4. WHY DID RESPONDENT LIST ROBERT J. PLUM AS SUCCESSOR AGENT FOR RESPONDENT'S HEALTH CARE POWER OF ATTORNEY?

Appellants alleges that Respondent listed Robert J. Plum, a non-family member, as successor agent because he resided with the Respondent and assisted in daily care. This fact, in and of itself, does not support why Respondent would vest this ability to act in her stead. The number of years the Appellants have been together, whether married, or unmarried, also would not support her willingness to rely on him to perform every act that she, herself, would perform.

5. WAS THE RESPONDENT UNDER ANY KIND OF DURESS?

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. The fact that Appellants state they were preparing meals, helping the Respondent with bills, housework, mowing the yard, grocery shopping and taking the Respondent to and from doctor's appointments, does not prove that duress was not present. Appellants left after Respondent signed over the

property, went to Florida, and left Respondent to assume full responsibility for her own care after they acquired title. Respondent affirms her allegations that she was under duress at the time.

6. COULD DEBORAH B. KANE HAVE KNOWN OF THE MENTAL INCAPACITY OF RESPONDENT ON DECEMBER 18, 2018, DURING THE SIGNING OF THE LEGAL DOCUMENT PLACING THE APPELLANTS ON THE RESPONDENT'S DEED PROPERTY?

Upon information and belief, Deborah Kane could not possibly have known if the Respondent was acting under duress as the Appellants came to the appointment for signing. The fact that she was present, without any credentials to assess mental capacity other than asking the question, does not lend proof to whether the Respondent was acting under duress. Deborah B. Kane did refuse to act as Special Referee because it was a conflict of interest because of her former involvement.

7. DID THE RESPONDENT MEET THE BURDEN OF PROOF DURING THE FINAL JUDGMENT TO HAVE THE DEED IN QUESTION SET ASIDE?

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.

May 12, 2021

Respectfully submitted,



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CERTIFICATE OF COUNSEL IN FINAL BRIEF

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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