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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

W.B. McCullough, Special Referee

Appellate Case No. 2018-002199

Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the
Residential Credit Opportunities Trust V,

Respondent,

v.

Leroy Hooks, II; Ford Motor Credit Company, LLC,

Defendants,

Of whom Leroy Hooks, II is the Appellant.

AND

Patricia Ann Wheeler and Maria D. Williams,

Respondents.

**RESPONDENT'S RETURN TO APPELLANT'S PETITION TO REHEARING AND
ORAL ARGUMENTS**

Chad W. Burgess, Esq.
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Attorney for Respondent

Pursuant to SCRAP Rule 240(e) and the request from the Court of Appeals dated June 21, 2021, Respondent respectfully submits this return to Appellant's Petition for Rehearing and Oral Arguments. There were no points the Court overlooked or misapprehended in affirming the Special Referee's denial of Appellant's motion for relief from the order of foreclosure and sale.

The Special Referee did not abuse his discretion in denying Appellant's motion for relief. This Court's citation of *Zaragoza v. Zaragoza*, 309 S.C. 149, 420 S.E.2d 516 (Ct. App. 1992) was well founded regarding the proposition that disability does not equate to incompetence. While Appellant's VA medical records establish his disability and illustrate his struggles with paranoia and psychosis at times, those records do not establish his incompetence. The record contains evidence, both within Appellant's VA medical records, and within the greater context of the underlying mortgage transaction that supports a finding that Appellant is competent.

For example, during briefing, Respondent highlighted evidence of Appellant's competence found in his September 12, 2018 Mental Health Status Exam:

OBJECTIVE: Mental Health Status Exam: Patient was ambulating down hallway and came to conference room for this interview. He is a short, thin small framed AA male dressed appropriately and has adequate hygiene. He appears his stated age. He is cooperative with the interview with good eye contact. He exhibits normal motor activity and speech. His mood is "good" with a constricted affect. Thought processes are more organized today. Thought content without suicidal or homicidal ideations. He does not appear to respond to internal stimuli, no overt paranoia. He is alert and oriented. He has moderately impaired insight and judgment.

(R.p. 53). Appellant's September 2018 medical records also include the following note:

Alcohol and Substance Abuse: The patient reports he drinks "about a fifth of wine" per day. He denies any drug use but says he smoked marijuana,

“a long time ago.” He denies use of cocaine, *however, his UDS is positive for cocaine*. He denies a history of substance abuse treatment.

(R.pp. 76-77) (Emphasis Added). It is a reasonable conclusion that Appellant’s drug abuse, and not incompetence, contributed to any erratic behavior noted in his medical records in September 2018.

Appellant asserts for the first time in his petition that this Court’s opinion, “misinterpreted the principle of law by actually applying a standard of proof akin to beyond a reasonable doubt, when it should have actually applied the proper standard of preponderance of the evidence.” The standard of proof required of Appellant regarding his assertion of incompetence has never been in dispute and Appellant cannot now raise this issue in a petition for rehearing. A party may not raise an issue for the first time in a petition for rehearing. *Herron v. Century BMW*, 385 S.C. 461, 719 S.E.2d 640 (2011).

Notwithstanding the untimely raising of this issue, the Special Referee and this Court applied the correct burden of proof to Appellant’s allegation that he has been incompetent throughout the duration of this case. “The party alleging incompetence must prove by a preponderance of the evidence that he was incompetent at the time of the transaction.” *Grapner v. Atlantic Land Title Co., Inc.*, 307 S.C. 549, 551, 416 S.E.2d 617, 619 (citing *Fielder & Brown v. Jennings*, 131 S.C. 256, 126 S.E. 448 (1925)). There is nothing in the record or this Court’s opinion that suggests a higher standard of proof was applied to Appellant’s competency allegations. The record contains evidence that supports the Special Referee’s finding that Appellant had not met his burden of proving incompetence by preponderance of the evidence. As such, this Court appropriately found that the Special Referee did not abuse his discretion in denying Appellant’s motion for relief from the order of foreclosure and sale.

CONCLUSION

There were no points the Court overlooked or misapprehended in affirming the Special Referee's denial of Appellant's motion for relief from the order of foreclosure and sale. Therefore, Respondent respectfully requests that the Court deny Appellant's petition for rehearing.

Respectfully Submitted,



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Dated: June 28, 2021

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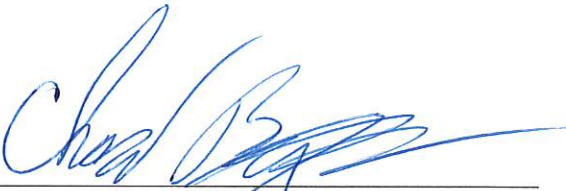
CERTIFICATE OF SERVICE

The undersigned certifies that, on June 28, 2021, Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal were served on the below-listed parties by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

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Served By:



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Date: June 28, 2021

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June 28, 2021

Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Wilmington Savings Funds Society, FSB v. Leroy Hooks, II, et al.
Appellate Case Number: 2018-002199
B&S file Number: 17-16410

Dear Sir or Madam,

Enclosed for filing in the above-referenced action please find the original and six copies of the Respondent's Return to Appellant's Petition for Rehearing and Oral Arguments together with a Certificate of Service by Mail.

Thank you in advance for your assistance in this matter.

Sincerely,



Chad W. Burgess, Esquire
Brock & Scott, PLLC

Enclosures

CC: Andrew T. Shepherd, Esquire
William Ceth Land, Esquire

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN BANKRUPTCY, AND YOU HAVE NOT REAFFIRMED THIS DEBT, THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY