RECEIVED
Jul 20 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough
Master-in-Equity

Court of Appeals Case No.: 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins .... Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC .... Defendants,

of whom

Bradford Q. Jeffcoat, Jr. is the .... Appellant.

APPELLANT'S PETITION FOR REHEARING AND REHEARING *EN BANC*

Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Appellant

Appellant Bradford Jeffcoat, pursuant to Rule 221, SCACR, petitions this Court for rehearing of this matter, and, pursuant to Rule 219, SCACR, suggests that this Court should rehear the matter *en banc*.

ARGUMENT FOR REHEARING

I. Jeffcoat had "care and custody" of Sandra Perkins, and was entitled to notice.

The July 14, 2021, opinion (the "Opinion") correctly notes that Jeffcoat would be due notice of the guardianship/conservatorship action under Alabama law if he was due notice under South Carolina law. (Opinion p. 6). Respondent Vanessa Williams acknowledges that Jeffcoat was never notified of the guardianship/conservatorship petition of Sandra Perkins. (R 286). If Jeffcoat did not receive his due notice, then the Alabama Probate Court lacked jurisdiction and the Master-in-Equity must be reversed. (App. Brief pp. 9-14).

The South Carolina statute in effect in 2015 provided caregivers such as Jeffcoat were entitled notice of guardianship actions:

> (A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, the following persons must be properly served:
>
> > (1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;
> >
> > (2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62-5-501 **or who has his care and custody**;
> >
> > (3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

S.C. Code § 62-5-309 (Supp. 2015) (emphasis added). Jeffcoat was Perkins' sole, then primary, caregiver prior to her removal to Alabama. (R 156, 158). As a caregiver, Jeffcoat was a person with "care and custody" of Perkins who was entitled to notice. This interpretation of this former

section of the Probate Code is entirely consistent with the secondary sources interpreting it. *See* 21 S.C. Jur. *Guardian and Conservator* § 14 (Supp. 2021) ("[N]otice shall also be given to anyone serving as the person's guardian, conservator, attorney in fact under a durable power of attorney, **or primary caretaker.**") (citing version of S.C. Code § 62-5-309 relevant to this appeal) (emphasis added); 12 S.C. Jur. *Death and Right to Die* § 41 (Supp. 2021) (health care provider with "care and custody" of allegedly incapacitated person is entitled to notice) (citing version of S.C. Code § 62-5-309 relevant to this appeal). This interpretation is also consistent with legislative intent, as revealed in subsequent amendments to the Probate Code that removed the "who has his care and custody" language and replaced it with: "a person, other than an unrelated employee or health care worker, who is known or reasonably ascertainable by the petitioner to have materially participated in caring for the alleged incapacitated individual within the six-month period preceding the filing of the petition". S.C. Code § 62-5-303(B)(4)(d); *see also Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (noting that a subsequent statutory amendment may be interpreted as clarifying statutory intent). The Opinion's interpretation of this statute (p.6), on the other hand, gives no effect to the "care and custody" language of the prior statute, which is an improper interpretation. *See CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating in reading a statute as a whole and in harmony with its purpose, the Court must read the statute in a manner such that "'no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law'" (internal citations omitted) (internal marks omitted)).

II. The Opinion impermissibly creates new decisional law.

The Opinion creates new law, allowing a joint tenant with right of survivorship to sever the tenancy in a manner not explicitly authorized by statute. (Opinion p. 11). It is inappropriate for the Court of Appeals to create new law or expand existing law. *See Rainey v. Charlotte-Mecklenburg Hosp. Auth.*, No. 2015-UP-209, 2015 WL 1880212 at *2 (S.C. Ct. App. Apr. 22, 2015) (citing Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 12-13 (2d ed. 2002) ("The Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.")). The only methods by which a statutory joint tenant with right of survivorship may sever the estate is specified in the statute, which must be strictly construed. *See* S.C. Code § 27-7-40 ("[t]his joint tenancy includes, and is limited to, the following incidents of ownership"); *South Carolina Dep't of Soc. Servs. v. Wheaton*, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App. 1996) (legislation in derogation of common law to be strictly construed); *see also Smith v. Cutler*, 366 S.C. 546, n.4, 623 S.E.2d 644, n.4 (2005) ("Joint tenancy was disfavored as a rule of construction…"). Recent scholarship, consistent with Jeffcoat's arguments, also shows the error of the Opinion's new exception:

> South Carolina Code § 27-7-40 does not specifically list as an incidence of ownership the right of unilateral alienation by one cotenant which would destroy the right of survivorship.
>
> * * *
>
> In order to convey property in an intervivos transaction involving property owned by joint tenants with a right of survivorship, all of the joint tenants must join in the deed. This is necessary in order to effectively convey or encumber the entire fee interest.

Joby C. Castine, *Deeds of Conveyance* 152-153 (S.C. Bar CLE Div. 2019).

III. Error was preserved.

The Opinion finds: "[Jeffcoat] also fails to challenge on appeal the master's conclusion of law that the conveyance [of 1955 Old Fort from Vanessa Williams to Vanessa Williams] was proper." (Opinion p. 11 n. 6). However, Jeffcoat's brief specifically challenges this finding:

> The Master-in-Equity committed reversible error in finding that the November 16, 2015 conveyance of 1955 Old Fort was lawful, and this Court must reverse his decision and award any such other and further relief it deems appropriate.

(App. Brief pp. 13-14).

The Opinion also finds the following argument was not preserved by trial counsel: "…if the conveyance severed the joint tenancy, the conveyance was void because Alabama law prevented Daughter from making a conveyance of Decedent's property to herself." (Opinion p. 11 n. 6). Jeffcoat's trial counsel made this argument in Jeffcoat's memorandum opposing Williams' motion for summary judgment:

> …[Williams'] self-serving actions, made in bad faith, are in direct contrast with her mother's intentions, and contrary to both South Carolina and Alabama law.

(R 230). Jeffcoat's trial counsel goes into greater detail later in this motion. (R 232-235). Opposing counsel also acknowledged this argument at hearing:

> MR. WENZEL: Okay. Your honor, on the next issue, [Jeffcoat] has argued that we essentially acted improperly in the way we severed the -- or in the way that we dealt with the property in another state under the Alabama probate code.

(R 284).

The Opinion also finds: "…in his motion for summary judgment, [Jeffcoat] asserted there were no issues of material fact. Additionally, at the motions hearing, the master stated no issues of material fact existed and the relevant matter was solely one of law. Jeffcoat neither objected to the master's assessment nor filed a Rule 59(e), SCRCP, motion to alter or amend the master's order." (Opinion p. 7 n. 4). Any statement by Jeffcoat's trial counsel that there were "no disputed facts"

in his motion for summary judgment referred to pure issue of law[1] regarding to the severance of a statutory joint tenancy with right of survivorship. (R 235-236). The Master-in-Equity was well aware of this qualification, and acknowledged the same at hearing:

> So I've got cross Motions for Summary Judgment. One would be -- the rule would be dispositive as to the case if the Court grants either motion as I understand it. **I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right of survivorship can be alienated.** I think that's the legal question for the Court to have to address. So I'll do that.
>
> It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?
>
> I do tend to agree with you. It's a question of law. **If we get into the trial there will be lots of questions of fact**, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

(R 302-303) (emphasis added). Further, when Williams' trial counsel began to discuss Perkins' condition in 2015, the Master-in-Equity asked: "That will be a matter for trial one day, right?" (R 301). Williams' trial counsel agreed. (R 301).

Jeffcoat's trial counsel agreeing that the severance issue was a pure issue of law does not in any way waive Jeffcoat's meritorious affirmative defenses and counterclaims, and it beggars belief that his trial attorney would abandon them. On the contrary, Jeffcoat's trial counsel asserted the counterclaims at hearing, and the Master-in-Equity acknowledged the same:

> [MS. SHAW:] So we do think she acted improperly and intentionally improperly and that she didn't – we've got counterclaims for breach of fiduciary duty among others and some discovery has been pretty horrendous[[2]] about the acts that she engaged in when [Williams] came to town and took her mother. She was spending from joint accounts for college tuition, for houses, you know. Her mother didn't need the $10 for that half of the house. That was not in the interest of her ward.

---

[1] Jeffcoat's prior motion to dismiss also acknowledges the severance issue was one of law. (R 32).

[2] Jeffcoat's trial counsel also alleged in a prior hearing that the Alzheimer's-stricken Perkins died in Williams' trailer, on her couch. (R 143, 265).

> That was in [Williams'] interest. So she certainly wasn't securing it for the benefit of her ward.
>
> THE COURT: Your position is she was acting as fiduciary? She was self-dealing, right?
>
> MS. SHAW: Oh, completely. Completely self-dealing, I mean, on its face. If she intended it to be for the benefit of the ward, she would have transferred it to herself as conservator or some other -- into a trust or something along those lines. She just gave it straight to herself for $10. She did this 11 days before her mother's death.

(R 293-294). The breach of fiduciary duty, and the violation of Alabama probate law, is also set forth in Jeffcoat's motion for summary judgment. (R 235-236). Ultimately, the Master-in-Equity recognized that Jeffcoat's counterclaims and affirmative defenses remained after his decision on joint tenancy, and he disposed of them in his order: "Any relief not specifically addressed herein, is denied." (R 6). *See Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (implicit denial of relief sufficient to preserve error for appeal).

IV. Williams gifted the property in question to herself.

The Opinion finds Williams conveyed 1955 Old Fort to herself "in her capacity as Decedent's guardian and conservator". (Opinion p. 11). The deed (R 213-216) does not support this finding – Williams received this property in her name, completely unencumbered and under no qualifications or conditions. Williams, not Perkins' estate, would be the sole beneficiary of any eventual sale of the one-half interest in 1955 Old Fort. As was argued by Jeffcoat at hearing and on appeal, such a self-dealing transaction is wholly inappropriate under South Carolina and Alabama law, and must be undone.

SUGGESTION FOR REHEARING *EN BANC*

As is set forth in Argument II, the Opinion *judicially* creates a mechanism to sever a *statutory* joint tenancy with right of survivorship. To the extent such an exception is consistent with legislative intent (it is not), this is the role of the South Carolina Supreme Court (or potentially the General Assembly), and the Opinion should be reheard *en banc* in order to maintain uniformity with the law of South Carolina.

CONCLUSION

The petition for rehearing should be granted, and this rehearing should be held *en banc*.

Dated: 07/20/2021

s/ Jason Scott Luck
Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Appellant

RECEIVED
Jul 20 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell Scarborough
Master-in-Equity

Case No. 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins .... Respondents,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. .... Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is .... Appellant.

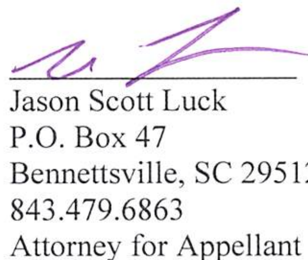
CERTIFICATE OF SERVICE

I certify that I have served the Petition for Rehearing and Rehearing *En Banc* by depositing a copy of it in the United States Mail, postage prepaid, on the date below to the following persons:

Timothy Domin
Clawson and Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492

Drew Wenzel
Caldwell Wenzel & Asthana, PC
218 N. Alston St.
Foley, AL 36535

Date: 7/20/21



Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863
Attorney for Appellant

JASON SCOTT LUCK
ATTORNEY AT LAW

P.O. BOX 47 (107 S. PARSONAGE ST.)
BENNETTSVILLE, SC 29512
843.479.6863

RECEIVED
Jul 20 2021
SC Court of Appeals

20 July 2021

S.C. Court of Appeals
ATTN: Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: *Williams v. Jeffcoat*, 2018-001464

Dear Clerk:

Please find enclosed one unbound paper copy of the Appellant's Petition for Rehearing and Rehearing *En Banc*, a certificate of service of the same, and check # 242 for $50.00.

Please do not hesitate to contact me with any questions.

With Highest Regards,

Jason Scott Luck

/JSL
Enclosures
Cc: Timothy Domin, Esq. (via email & U.S. Mail) (w/enc)
Drew Wenzel, Esq. (via email & U.S. Mail) (w/enc)
ctappfilings@sccourts.org