THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-33-306
Ct. App. No. 2018-002061

Anderson Brothers Bank, ... Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., S.C. Department of Revenue, and S.C. Department of Motor Vehicles, ... Defendants,

Of whom

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson and A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., are the ..... Appellants.

FINAL BRIEF OF RESPONDENT

Suzanne G. Grigg
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, SC 29202
(803) 540-2114
Attorneys for Respondent Anderson Brothers Bank

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STATEMENT OF ISSUES ON APPEAL

1. Did the Appellants file their Petition under Rule 60(b)(4), SCRCP, within a reasonable time?

2. Did the Appellants show a legal or factual basis that the underlying judgment is void under Rule 60(b)(4), SCRCP?

3. In denying the Appellants' Motion to alter or amend under Rule 59(e), SCRCP, did the lower court err in finding that its findings of fact and conclusions of law were sufficient under applicable law and judicial notice was inappropriate?

STATEMENT OF THE CASE

The string of abusive litigation tactics used by the Appellants (and their family) against Respondent Anderson Brothers Bank ("ABB") is long and arduous, but relevant to the matter before the Court. The Appellants have caused this simple foreclosure action to remain active for five years and ten months, as of the date of this brief. This history includes two prior appeals that were dismissed by the Court of Appeals and Supreme Court (three appeals counting this one), along with two additional civil actions filed in federal court and state court related to the foreclosure.

The Honorable Haigh Porter, serving as Special Referee for Marion County, filed his Special Referee's Order and Judgment of Foreclosure and Sale (the "Foreclosure Order") in this case on August 16, 2013. (R. pp. 102-113. (Foreclosure Order).) On August 28, 2013, the Appellants appealed the Foreclosure Order to the South Carolina Court of Appeals, which resulted in the Court of Appeals' dismissal of that appeal on December 18, 2014, and denial of a request for rehearing on March 12, 2015. (R. pp. 139-142 (Case No. 2013-001824, Notice of Appeal); R. pp. 15-16 (Order Dismissing Appeal); R. pp. 17-18 (Order Denying Rehearing).) The Appellants next petitioned the South Carolina Supreme Court for a writ of certiorari, which the Supreme Court denied on May 7, 2015. (R. pp. 114-125 (Appellate Case No. 2015-000761, Petition for Writ of

Certiorari); R. 19 (Order Denying Certiorari).)

Because the Appellants did not post a valid bond required by S.C. Code Ann. § 18-9-170 (1985), the trial court proceeded with the foreclosure sale of the subject property, and the Special Referee signed that certain Deed by Judicial Order of Special Referee on October 24, 2013 (the "Deed"). (R. pp. 32-36 (Deed).) ABB was the high bidder at the foreclosure sale, and therefore it was the fee simple grantee of the subject property in the Deed. After the Court of Appeals dismissed the above-referenced appeal (Case No. 2013-001824) on December 18, 2014, the trial court signed that certain Order Granting Writ of Assistance on January 5, 2015, which ordered the Marion County Sheriff's Department to evict and remove the Appellants from the subject property. (R. pp. 20-22 (Writ of Assistance).) After the Supreme Court denied certiorari on May 7, 2015, the trial court entered another Writ of Assistance on September 25, 2015, wherein the trial court directed the Marion County Sheriff's Department to again evict and remove the Appellants from the subject property. (R. pp. 23-25 (Second Writ of Assistance).)

Next, on October 30, 2015, the Appellants appealed the Second Writ of Assistance. (R. pp. 143-145 (Case No. 2015-002230, Notice of Appeal).) The Court of Appeals dismissed that appeal on January 13, 2016, and denied rehearing on June 10, 2016. (R. pp. 26-27 (Order Dismissing Appeal); R. pp. 28-29

(Order Denying Rehearing).) The Appellants again filed a writ of certiorari with the Supreme Court on July 8, 2016, which the Supreme Court denied on March 24, 2017. (R. pp. 126-138 (Case No. 2016-001441, Writ of Certiorari); R. pp. 30-31 (Denial of Writ of Certiorari).) Because the Appellants again did not post a valid bond, the Marion County Sheriff's Department evicted the Appellants pursuant to the Second Writ of Assistance on November 2, 2015.

For the sake of completeness and to fully advise the Court of the full history of this litigation, there are two additional lawsuits that derived from this case. First, on March 15, 2017, Appellant A. Tyrone Parson, Jr. filed a civil rights lawsuit in Federal District Court for the District of South Carolina against Marion County, many individuals employed by the Marion County Sheriff's Department, and one of ABB's individual agents related to the eviction that took place in November 2015. (R. pp. 155-212 (District Ct. Case No. 4:17-cv-00708-RBH-KDW, Complaint).) After the filing of a motion to dismiss for lack of subject matter jurisdiction, the District Court dismissed ABB's individual agent from that suit. (R. pp. 37-58 (Report and Recommendation); R. pp. 59-72 (Order on Report and Recommendation).) Subsequently, Mr. Parson tried to amend his Complaint in that federal case to add Anderson Brothers Bank as a defendant, and to again add the individual agent already dismissed, but the District Court sustained ABB's objection to that request. (R. pp. 73-95 (Report and

Recommendation Concerning Plaintiff's Motion to Amend); R. pp. 96-101 (Order on Report and Recommendation).)

Second, on October 20, 2017, Appellant A. Tyrone Parson, Jr.'s father filed a state court lawsuit in the Marion County Court of Common Pleas against ABB and the Marion County Sheriff's Department, alleging false imprisonment, defamation and negligence related to the November 2015 eviction. (R. pp. 146-154 (Marion County Case No. 2017-CP-33-00776, Complaint).) After ABB filed its motion to dismiss for failure to state a claim, the Circuit Court dismissed the father's claims against ABB. (R. pp. 9-14 (Order Dismissing Plaintiff's Claim against Anderson Brothers Bank).)

Lastly, and most importantly for purposes of this appeal, on June 4, 2018, the Appellants filed their Petition under Rule 60(b)(4), SCRCP, for relief from the August 16, 2013 Foreclosure Order (the "Petition"). (R. pp. 213-230 (Petition and Memorandum in Support).) On August 20, 2018, the Honorable Thomas A. Russo held a hearing on the Petition and took the matter under advisement. (R. pp. 324, lines 2-6 (Aug. 20, 2018 Hr. Tr., at 26, lines 2-6).) On October 1, 2018, the Circuit Court entered its Order Denying Defendants' Petition for Relief from Void Judgment 60(b)(4) and Challenge of Jurisdiction (the "Order Denying Petition") (R. pp. 3-8 (Order Denying Petition).) On October 10, 2018, the Appellants filed their Motion to alter or amend the Order Denying Petition (the

"Rule 59 Motion"). (R. pp. 257-270 (Rule 59 Motion).) On October 25, 2018, the Circuit Court entered its Order Denying Defendants' Motion to Alter or Amend Judgment without a hearing pursuant to Rule 59(e) and (f), SCRCP (the "Rule 59 Order"). (R. pp. 1-2 (Rule 59 Order).)

On November 19, 2018, the Appellants filed and served their Notice of Appeal of the (a) Order Denying Petition and the (b) Rule 59 Order.

STANDARD OF REVIEW

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004) (citing *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992)). Therefore, the abuse of discretion standard is applicable in this appeal. *Id.*

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY RULED THAT THE APPELLANTS' PETITION WAS NOT FILED WITHIN A REASONABLE TIME UNDER RULE 60(B), SCRCP.

Appellants contend that the Circuit Court erred in finding their Petition was not filed within a reasonable time. (Appellants' Br. p. 11.) The Special Referee entered the Foreclosure Order on August 16, 2013. (R. pp. 102-113. (Foreclosure Order).) After two unsuccessful appeals of the Foreclosure Order and Second Writ of Assistance to the Court of Appeals and Supreme Court, the Appellants filed the Petition at issue in this appeal on June 4, 2018, approximately four years and ten months after the entry of the Foreclosure Order.

Rule 60(b), SCRCP, provides that "[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken." S.C. R. Civ. P. 60(b). The Appellants based their Petition on Rule 60(b)(4), arguing the Foreclosure Order is void. (R. pp. 213-215 (Petition, at 1-3).) Therefore, the one-year absolute deadline did not apply to the Petition, but the rule clearly and unambiguously requires the Petition be filed "within a reasonable time."

In the Order Denying Petition, the Circuit Court held that the Appellants failed to file their Petition within a reasonable time. (R. p. 7 (Order Denying Petition, at 5).) The Order Denying Petition cites three South Carolina appellate

court opinions to support its conclusion that four years and ten months is not a reasonable time under Rule 60(b).

In *McDaniel v. U.S. Fidelity and Guaranty Co.*, the Court of Appeals held "[w]hether or not McDaniel made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge's sound discretion" and "[t]he special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion." *McDaniel v. U.S. Fidelity & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 870 (Ct. App. 1996).[1] In *Perry v. Heirs at Law of Gadsden*, the Court of Appeals similarly concluded that the appellant "failed to proffer an argument as to why we should find that a four-year delay is reasonable in this case." *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003). Lastly, in an unpublished opinion, the Court of Appeals held that a Rule 60(b) motion filed eighteen months after the final order was not filed within a reasonable time. *Edwards v. Edwards*, No. 2011-UP-047, 2011 WL 11733062, at *1 (S.C. Ct. App. Feb. 4, 2011).

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[1] In their Initial Brief, the Appellants argue that the Court in *McDaniel* held that the reasonable time requirement does not apply to allegedly void judgments under Rule 60(b)(4). (Appellants' Br. p. 12.) This is an inaccurate statement. In that case, the Court acknowledged that there was a split in authority at that time, and held after considering that split: "We believe we are bound to follow *Sijon* and *Hayes's* statements that the reasonable time requirement applies to Rule 60(b)(4)." *McDaniel*, 324 S.C. at 643, 478 S.E.2d at 870-71 (citing *Sijon v. Green*, 289 S.C. 126, 128 n.2, 345 S.E.2d 246, 248 n.2 (1986); *Smith Cos. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993)).

In the four years and ten months between the filing of the Foreclosure Order in 2013 and Petition in 2018, the Appellants spent significant judicial time and resources on meritless appeals of the Foreclosure Order and Second Writ of Assistance. It appears the Petition was simply the Appellants' latest attempt to circumvent the Foreclosure Order and the Court of Appeals' and Supreme Court's decisions related to the Foreclosure Order. This is not the purpose of Rule 60(b). *See Aikens v. Ingram*, 652 F.3d 496, 502 (4th Cir. 2011) ("This court has repeatedly recognized that a Rule 60(b) motion is not designed to serve as an alternative for appeal.")

Lastly, the Appellants' claim to have filed a Rule 60(b) motion in October 2015, and also refer to a January 2016 order on that motion. (Appellants' Br. p. 11-12.) Those filings are irrelevant to this appeal because the Appellants failed to obtain appellate court approval to make the motion during that time period. S.C. R. Civ. P. 60(b) ("During the pendency of an appeal, leave to make the motion must be obtained from the appellate court.").

II. THE CIRCUIT COURT CORRECTLY RULED THAT THERE IS NO LEGAL OR FACTUAL BASIS TO SUPPORT A FINDING THAT THE FORECLOSURE ORDER IS VOID UNDER RULE 60(B)(4).

In general, the Appellants argue that the Foreclosure Order is void because Haigh Porter, the Special Referee in the foreclosure action, did not provide the Appellants with an impartial adjudication. (Appellants Br. pp. 14-17.) In the

Order Denying Petition, the Circuit Court correctly held "Defendants further argue that a conflict of interest exists because Judge Porter's wife submitted a bid at the foreclosure sale. As Ms. Porter was employed with ERV, both at that time and as of [the] date of this Order, that ground is baseless." (R. p. 7 (Order Denying Petition, at 5).)

"The definition of 'void' under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). The Appellants argue that they did not receive due process because the Special Referee's spouse ("Betsy Porter") submitted ABB's bid at the foreclosure sale (in her role as an employee of ERV bidding company), and because Betsy Porter notarized the post-sale Deed to Anderson Brothers Bank. (Appellants' Br. pp. 14, 16.)

While ABB vehemently contends that Betsy Porter's submission of the bid and notarization of the Deed did not create a conflict of interest for the Special Referee, or impact the Appellants' due process in any way, it is critical to note that these events involving Betsy Porter happened after the Special Referee's filing of the Foreclosure Order. Accordingly, it is not possible that Betsy Porter's submission of ABB's bid at the foreclosure sale and notarization of the Deed

impacted the previously-recorded Foreclosure Order.

Moreover, there is no evidence of bias or prejudice by the Special Referee. *See Simpson v. Simpson*, 377 S.C. 519, 523-24, 660 S.E.2d 274, 277 (Ct. App. 2008). "The Code requires a judge to 'disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . . When disqualification is not required, however, the Code states, 'A judge shall hear and decide matters assigned to the judge . . . ." *Id.* at 523, 660 S.E.2d at 276-77 (quoting Canons 2 and 3 of the Code of Judicial Conduct, Rule 501, SCACR) (internal citations omitted).

In *Simpson*, the Court of Appeals affirmed the trial judge's denial of a motion to recuse herself based on the fact that the trial judge's husband's law partner previously worked with counsel for the respondent. *Id.* at 526, 660 S.E.2d at 278. "The party seeking disqualification must do more than merely allege bias on the judge's behalf; the party must present some evidence of judicial prejudice or bias." *Id.* at 524, 660 S.E.2d at 524 (citing *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004)).

Here, it is apparent that the Appellants are trying to create impartiality where none ever existed. The Special Referee had no connection or relationship with either ABB or the Appellants, and the Appellants have failed to meet their burden of showing how Betsy Porter's ministerial tasks of submitting ABB's bid

and notarizing the Deed biased the Special Referee's findings and conclusions in the Foreclosure Order. The Special Referee had no reason under the law to disqualify himself, nor did the Appellants request disqualification.

The Appellants make further due process arguments related to ABB's standing to foreclose, the Special Referee's rulings at trial related to discovery and evidence presented, and the referral of the foreclosure action to the Special Referee. (Appellants' Br. pp. 12-13.) These arguments were all either previously raised by the Appellants in the prior dismissed appeals, or capable of being argued in those appeals. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (citing C.J.S. *Appeal & Error* § 991 (2008)).

III. IN DENYING THE APPELLANTS' RULE 59 MOTION, THE CIRCUIT COURT CORRECTLY RULED THAT ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE SUFFICIENT UNDER APPLICABLE LAW AND JUDICIAL NOTICE WAS NOT APPROPRIATE.

In its October 25, 2018 Rule 59 Order, the Circuit Court correctly denied the Appellants' Rule 59 Motion. (R. p. 1 (Rule 59 Order, at 1).) In their Rule 59 Motion, the Appellants argued, *inter alia*, the Circuit Court erred in (a) not including more findings of fact and conclusions of law in the Order Denying Petition related to the Appellants' arguments; and (b) not taking judicial notice of

certain matters raised by the Appellants'. (R. pp. 263-266 (Rule 59 Motion, at 7-10).)

Under Rule 52(a), SCRCP, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." S.C. R. Civ. P. 52(a). In the Order Denying Petition, the Circuit Court stated seventeen paragraphs of findings and conclusions. (R. pp. 3-7 (Order Denying Petition, at 1-5).) While findings of fact and conclusions of law are not required for orders adjudicating motions, the Supreme Court held "it is better practice . . . for a trial judge to articulate relevant findings and conclusions of law." *Woodson v. DLI Props., LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) (emphasis added). Here, the Circuit Court correctly ruled in its Rule 59 Order that it did not have to include issues in the Order Denying Petition that were raised by the Appellants, but viewed as meritless arguments with no evidentiary basis by the Circuit Court.[2] (R. p. 1 (Rule 59 Order, at 1).)

In addition, the Court correctly ruled that it did not have to take judicial

[2] The Appellants argue that S.C. Code Ann. § 1-23-380(5) (1976, as amended) requires a trial court to make certain findings and conclusions in its orders. (Appellants' Br. p. 8.) This is a misinterpretation of the statute. Section 1-23-380 applies to judicial review of a decision from a state agency, board, commission, department or officer other than the courts. S.C. Code Ann. § 1-23-310(2) (1976, as amended).

notice of certain matters raised by the Appellants. (R. p. 1 (Rule 59 Order, at 1).) "A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability." *Martin v. Bay*, 400 S.C. 140, 152, 732 S.E.2d 667, 674 (Ct. App. 2012) (quoting *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct. App. 2002)). The Circuit Court correctly found, in its discretion, that no such matters raised by the Appellants fell within this narrow definition.

For these reasons, the Circuit Court correctly denied the Appellants' Rule 59 Motion without a hearing under Rules 59(e) and (f), SCRCP.

CONCLUSION

In light of the foregoing, Respondent Anderson Brothers Bank respectfully asks the Court to affirm the Order Denying Petition.

Suzanne Taylor Graham Grigg
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Greenville, SC 29202
PHONE: 803.540.2114
FACSIMILE: 803.727.1440
Sgrigg@nexsenpruet.com
Attorneys for Respondent
Anderson Brothers Bank

May 24, 2019
Columbia, South Carolina

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CERTIFICATE OF COUNSEL

I certify that the foregoing **Final Brief of Respondent** complies with the Supreme Court of South Carolina's order of August 13, 2007.

May 24, 2019

Suzanne Taylor Graham Grigg
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202
803.540.2114
Sgrigg@nexsenpruet.com
Attorneys for Respondent
Anderson Brothers Bank