

RECEIVED

Sep 24 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2020-CP-42-02447
APPELLATE CASE NO.: 2021-000516

Larry Bright,

Appellant,

versus

Heather D. Davis and Midfirst Bank,

Respondent

APPELLANT'S FINAL BRIEF

Richard H. Rhodes, Esquire
William H. Rhodes, Esquire
Burts, Turner & Rhodes
Attorneys for the Appellant
260 North Church Street
Spartanburg, SC 29306
(864) 585-8166

Ronald G. Bruce, Esquire
P.O. Box 450
Greer, SC 29650
(864) 877-0207

Attorneys for Appellant

September 24, 2021

TABLE OF CONTENTS

Table of Citations.....ii

Issues on Appealiii

Statement of the Case.....1

Standard of Review.....4

Arguments.....

The Lower Court Erred in Granting Summary Judgment (Issues 1 through 9)5

Conclusion12

TABLE OF CITATIONS

Butler v. Lindsey, 293 S.C. 446 (Ct. App. 1987)10

Café Assoc. Ltd. v. Gerngross, 305 S.C. 6 (1991).....4,6

Charleston County DSS v. Father, 317 S.C. 2838

Kelley v. Kelley, 368 S.C. 602 (Ct. App. 2006).....6

Paschal v. State Elec. Comm., 317 S.C. 434 (1995).....9

Russell v. City of Columbia, 305 S.C. 86 (1991)4,6

Stephen v. Avis Const. Co., 324 S.C. 334 (Ct. App. 1996).....9

Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1976).....5

Wayburn v. Smith, 263 S.C. 518 (1975).....4,5

Black’s Law Dictionary 4th Ed......5

Code §15-3-3408,9

ISSUES ON APPEAL

1. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment, the error being that the facts surrounding the case were not before the court.
2. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment – the error being that the Court of Common Pleas, simultaneously with referring the case to the Master-in-Equity, ruled that the Motion for Summary Judgment relief would be deferred until discovery could be completed.
3. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment – the error being that the court did not view the pleadings in a light most favorable to the Appellant.
4. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment – the error being that the court did not view the facts in a light most favorable to the Appellant.
5. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment – the error being that the facts of this case, as shown in the 59(e) Motion, demonstrate that Summary Judgment should not have been granted.
6. The Lower Court Erred in Granting the Respondent's Motion for Summary Judgment – the error being that the unrefuted affidavits and documents filed by the Appellant showed that reformation of the deed should have been granted.
7. The Lower Court Erred in Holding that Code §15-3-340 Was a Basis for Granting the Summary Judgment – the error being that the Appellant's action was one seeking reformation of a deed.
8. The Lower Court Erred in Holding that Code §15-3-340 Was a Basis for Granting the Summary Judgment – the error being that the facts show that Code §15-3-340 was not the appropriate statute, because the Appellant has never abandoned the property.
9. The Lower Court Erred in Holding that Code §15-3-340 Was a Basis for Granting Summary Judgment – the error being that the Respondent did not raise this statute in her pleading and did not request this statute to be used.

STATEMENT OF THE CASE

The Appellant brought the subject action to reform a deed which had been executed 19 years earlier. The action was commenced by Petition dated July 22, 2020. It was later amended to include Midfirst Bank which held a mortgage on the property given by the Respondent. [The initial Petition and Answer of MidFirst Bank are not included in the Record because they are not necessary documents for the appeal.]

In September 2001, the Appellant owned Lots 10, 11 and 12 of the J. Allen Smith Property. He also owned a tract of land which abutted the three (3) lots on the north. [See aerial photo, Tr. 23.]

Lot 11 was a rental house and the back portion of the lot had a large garden plot which extended to a part of Lot 12 and also to a part of the Appellant's tract located to the north.

The Appellant's daughter, Joni Bright Wortkoetter, was deeded Lot 10. She and her family lived on Lot 10, and they were actively involved in the family garden located on the rear portion of Lot 11.

In the fall of 2001, the Respondent asked the Appellant if he would sell her the house and Lot 11. Since the back half of Lot 11 contained the family garden, the Appellant and Respondent agreed to a sale of the home and only the front portion of Lot 11. The Appellant had a survey and plat prepared which specified the agreement of the Appellant and the Respondent. The back half of the lot was being reserved for the garden and Joni Wortkoetter was given a pathway to get to the garden on the west side. [See Plat, Tr. 24.]

The deed conveying the property to the Respondent was executed on December 6, 2001. After the recording of the deed, the Appellant and his family used the back half of Lot 11 as shown on the plat. The Appellant erected a fence and planted a Leyland Cypress hedge on the line which separated the house from the garden (Tr. 25-27). On the land reserved for Joni, a privacy entrance was erected to separate her pathway to the garden from the property of the Respondent (Tr. 34). The family garden continued for 19 years after the execution of the deed.

In the summer of 2020, the Appellant was preparing to convey Lot 12 to his grandson, Bryan Ethan Wortkoetter, so that he could build a home. He was also going to convey the garden plot. It was at this time that he learned that the deed to the Respondent had erroneously included the garden plot.

The Appellant requested the Respondent to sign a Quitclaim Deed in order to correct the error. The Respondent refused. This action ensued.

Below, a summary of significant events is listed in outline form:

July 22, 2020	Petition to Reform Deed
September 29, 2020	Amended Petition to Reform Deed
November 9, 2020	Appellant's Motion for Declaratory Judgment
November 19, 2020	Amended Answer of Respondent
December 11, 2020	Respondent's Motion for Summary Judgment
December 11, 2020	Respondent's Motion to Disqualify Appellant's Counsel
January 13, 2021	Answer of Midfirst Bank
January 20, 2021	Order of Reference to Master-in-Equity

February 1, 2021	Order Denying Declaratory Judgment, Summary Judgment, and Disallowance of Counsel because discovery was incomplete [arguments were on 1/20/2021]
April 12, 2021	Order Granting Respondent's Motion for Summary Judgment
April 21, 2021	Appellant filed 59(e) Motion and Accompanying Affidavits and Exhibits
April 27, 2021	Order Denying 59(e) Motion
May 17, 2021	Appeal was filed.

STANDARD OF REVIEW

The Appellant filed the subject action seeking to reform a deed. Actions to reform a deed are equitable in nature. Wayburn v. Smith, 263 S.C. 518 (1975). After the Master-in-Equity granted the Respondent's Motion for Summary Judgment, the Appellant filed Affidavits and exhibits in support of his 59(e) Motion. The Respondent did not file any Affidavits or exhibits and did not dispute any of the Appellant's Affidavits. This Court has the right to find facts for itself and render a judgment which is just.

The lower court granted the Respondent's Motion for Summary Judgment. Summary Judgments should not be granted unless it is clear that there are no genuine issues of material fact. When a trial court is ruling on a Summary Judgment, the evidence and inferences which can be drawn therefrom, should be viewed in a light most favorable to the non-moving party. Café Assoc. Ltd. v. Gerngross 305 S.C. 6 (1991).

A judgment on the pleadings should not be granted if there is an issue of fact raised by the Complaint, which if resolved in favor of the Plaintiff, would entitle him to a judgment. All properly pled factual allegations are deemed admitted for purposes of considering the Motion for Summary Judgment. Russell v. City of Columbia, 305 S.C. 86 (1991).

ARGUMENT
The Lower Court Erred in Granting Summary Judgment
(Issues 1 through 9)

The Appellant brought this action seeking to reform a deed. Actions to reform a deed are equitable in nature. Wayburn v. Smith, 263 S.C. 518 (1975).

Matters in equity are treated differently. Since the days of our early common law, there have always been courts of equity. It has been said that Courts of Equity seek justice between two (2) people whose claims are in conflict. A Court of Equity is founded in justice and not embodied in legislative enactments. Courts of Equity operate by doctrines which are founded upon natural justice. Black's Law Dictionary 4th Ed.

In matters of equity, the facts are essential to a just determination. Our Supreme Court has consistently maintained that matters which are in equity are fact-specific, and appellate courts can even find facts for itself when on appeal. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1976). In the case at bar, the court issued a ruling without a hearing. There was no testimony, there were no exhibits, and there were no affidavits. Therefore, the ruling of the trial court was not based on any facts.

Shortly after the filing of pleadings, both parties sought summary relief (Tr. 14, 16). The circuit court ruled that the Motions should be denied because discovery had not yet been complete (Tr. 11). The circuit court then referred the matter to the Master-in-Equity. The Master-in-Equity, without the request of either party, and without any evidence, granted the Respondent's Motion for Summary Judgment.

A. It is respectfully submitted that the lower court erred in granting the Respondent's Motion for Summary Judgment.

1. **No Facts Before the Court**

The trial court did not have any evidence on which to base its ruling. The only documents before the court were the pleadings. The lower court focused only on the length of time which had taken place since the execution of the subject deed. Since the court used "the delay" as the basis of its ruling, the case law surrounding the Doctrine of Laches is essential.

When a delay is used as a basis to grant or deny the relief requested, our Courts have consistently held that the decision needs to be based on a "highly fact-specific inquiry". Kelley v. Kelley, 368 S.C. 602 (Ct. App. 2006). In cases involving laches, our Courts have continually held that the unique facts of each case must be considered when making a ruling.

In the case at bar, there were no specific facts which would justify a ruling on laches or delay.

2. **Viewing Facts/Pleadings in a Light Most Favorable to Appellant**

A Motion for Summary Judgment cannot be granted if there are any material facts in dispute. Café Assoc. Ltd., supra. And, in addition, if a Complaint alleges a factual allegation, it must be deemed admitted as fact for purposes of a summary judgment. Russell, supra.

In the case at bar, the Appellant's Complaint alleged that he had continuously used the subject property as a garden since the signing of the subject deed (Tr. 47). Accordingly, for purposes of Summary Judgment Motion, the Appellant's continuous use of the property is deemed to be a fact. Therefore, summary judgment should have been denied.

When the 59(e) Motion was filed, the trial court was presented with Affidavits and documents which showed that the Appellant had fenced-in the property and had maintained a garden plot. Notwithstanding, the trial court refused to consider the actions of the Appellant which validated that he had maintained continuous dominion and control of the subject property.

The Doctrine of Laches, and the case law surrounding prejudicial delays, should not apply to the Appellant. Instead, this Doctrine should apply to the actions of the Respondent. For 19 years after the subject deed was signed, she agreed for the Appellant and his family to fence in and use the subject property. She also enjoyed the harvest of the garden yielded by the Appellant's labors. More importantly, the Respondent took no steps to assert her purported right to own the subject property.

3. **Overruling Another Judge**

Since the circuit court had previously ruled that the Motions for Summary Judgment were not appropriate because discovery had not been completed, it was improper for the Master-in-Equity to grant the summary judgment. This Order of

the Master-in-Equity reversed the Order of the circuit court. Our courts have long recognized that one judge of the same court may not overrule another judge Charleston County DSS v. Father, 317 S.C. 283 (1995). Since the circuit judge had already ruled that discovery must be completed before summary relief could be granted, that ruling constituted the law of this case and should have been complied with by the Master-in-Equity.

4. **§15-3-340 Was Not Appropriate**

When the Master-in-Equity made its ruling, it used Code §15-3-340 as the authority for dismissing the Appellant's action. It is interesting to note that the Respondent never injected Code §15-3-340 and did not contend that it was the proper remedy for having the Appellant's action dismissed. A review of the Respondent's pleading showed that she contended the Appellant's action was not timely. She argued that laches, estoppel, and waiver would constitute a defense.

She also asserted that the Statute of Limitations would prevent the Appellant's action, but she did not specify which Statute of Limitation.

If this Court should determine that it was proper for the lower court to inject Code §15-3-340, it is respectfully submitted that the statute is not applicable to the facts of this case.

The Code Section addresses situations where individuals are attempting to reclaim property ownership. The statute is designed to assist in the recovery of real property, and does not apply to a person who has had continued use of the property.

The Code Section reads as follows:

No action for the recovery of real property or for the recovery of possession of real property may be maintained unless it appears that the Plaintiff, his ancestor, predecessor, or grantor, was ceased or possessed of the premises in question within ten (10) years before the commencement of the action.

Code §15-3-340 is short. The title is “Action By Individual For Recovery Of Real Property”. The wording in the short statute specifically refers to actions being brought for the recovery of property or for the possession of property.

When interpreting a statute, our courts have consistently held that the words must be given their plain and ordinary meaning. Stephen v. Avis Const. Co., 324 S.C. 334 (Ct. App.1996). And, our courts have held that words and terms must be given their literal meaning. Paschal v. State Elec. Comm., 317 S.C. 434 (1995).

In the case at bar, since the Appellant was not bringing the action to seek recovery of the property, the Code Section does not apply. The Appellant had been in continuous possession of the property since the subject deed had been executed. The Complaint specifically alleged that the Appellant had been continually using the property for a family farm. In her Answer, the

Respondent does not specifically deny that the Appellant was using the land for a farm. So, the Appellant was not seeking to recover possession or to recover property. Instead, he was seeking to reform a deed which had erroneously described the property and had not shown the proper lines specified on the plat.

If this Court should find that the lower court had the authority to inject Code §15-3-340, it is respectfully submitted that the statute would not prevent the Appellant from bringing this action. The Appellant has had continuous possession of the property. In the case of Butler v. Lindsey, 293 S.C. 466 (Ct. App. 1987), our Court held that even “occasional use” would prevent the statute from being used as a bar to recover.

When the Appellant conveyed title to the Respondent, he believed that the deed transferred only the front half of Lot 11. He planted a hedge of Leyland Cypress Trees and erected a fence to establish the line between the property sold to the Respondent and the property being kept as a garden (Tr. 25). The unrefuted Affidavits and exhibits filed by the Appellant in support of his 59(e) Motion, documented that after the conveyance of the deed to the Respondent, the land in question was used consistently by the Appellant and his family as a family garden.

For the 19 years after the conveyance, the family farmed the property. They had a spring garden, a summer garden, and a fall garden. The harvest from the garden was shared with neighbors, to include the Respondent (Tr. 22, 31). The Appellant had continuous use and control of the subject property. The affirmative actions of the Appellant and the acquiescence by the Respondent document that the family garden was intended to be owned by the Appellant.

B. It is respectfully submitted that the lower court erred in denying the Appellant's 59(e) Motion.

When the 59(e) Motion was filed, the Appellant filed three (3) Affidavits. The Affidavits detailed the agreement reached between the Appellant and the Respondent when the portion of Lot 11 was agreed to be sold. The Affidavits also outlined the actions of the Appellant and his family: fences and hedges were built by the Appellant to mark the lines of the Respondent's property. And, for 19 years, the Appellant and his family cultivated and planted a spring, summer and fall garden.

The Respondent did not refute the Affidavits and Exhibits of the Appellant. In fact, the Respondent did not file anything in opposition to the Appellant's 59(e) Motion. Accordingly, all of the evidence documents that the subject deed should be reformed and that the land shown on the subject plat should be deeded back to the Appellant.

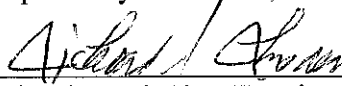
CONCLUSION

The Appellant respectfully contends that the trial court's order was erroneous for the following reasons:

- The Appellant's Affidavits, pictures, and plat presented unrefuted evidence which justified the reformation of the subject deed.
- The matter was not ready for trial because the facts surrounding the case were not before the court.
- The circuit court, prior to the Order of Reference, had directed that the Motions for Summary Judgment were not to be addressed until discovery was completed.
- The applicability of Code §15-3-340 had not been raised by any party.
- Code §15-3-340 did not apply to the facts of this case because the Appellant had been in continuous possession of the property since the deed had been executed.

The Appellant respectfully requests this Court to exercise its equity powers and find that the undisputed facts of this case mandate that the subject deed should be reformed. Alternatively, the Appellant requests this Court to remand the case to the lower court so that a trial on the merits can be conducted.

Respectfully submitted,



Richard H. Rhodes, Esquire
William H. Rhodes, Esquire
260 North Church Street
Spartanburg SC 29306
(864) 585-8166

Ronald G. Bruce, Esquire
P.O. Box 450
Greer, SC 29650
(864) 877-0207

September 24, 2021

Attorneys for Appellant



RECEIVED

Sep 24 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

This is to certify that the Appellant's Final Brief complies with the Supreme Court's Rule
210(b).



Richard H. Rhodes
William H. Rhodes
Ronald G. Bruce
Attorneys for Appellant

Date: September 24, 2021