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 REPLY BRIEF

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September 24, 2021

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ARGUMENTS

For purposes of brevity, this Reply Brief will address the Respondent's Brief in outline form:

I. **TWO JUDGE RULE** – The Respondent contends that since Master-in-Equity based its holding on §15-3-340 and on laches, and since the issue of laches was not specifically listed as an issue on appeal, the lower court order has to be affirmed. For reasons outlined below, it is respectfully submitted that the Two-Issue Rule would not act as a bar under the circumstances of this case.

The application of the Two-Judge Rule is not necessarily automatic. In the case of Anderson v. West, 270 S.C. 184 (1978), the Court upheld the recognized "Two Issue Rule", however, a reading of the Opinion indicates that the other issue has to be supported by the evidence. In the case at bar, laches is not supported by the evidence as discussed, below.

When ruling on laches, the court has discretion, but the holding must be based upon the peculiar facts of each case. Bray v. State, 366 S.C. 137 (2005). The significant facts n the case at bar are as follows:

(a) Reformation of Deed - This action was brought because it was learned that the subject deed had mistakenly conveyed more land than it should have. This mistake was confirmed by the plat that the Appellant had made prior to the deed being signed (Tr. 48).

(b) Continuous Use – After the signing of the mistaken deed, the Appellant and his family continued to occupy and use the subject property. The continuous use by the Appellant and the acceptance by the Respondent confirmed that a mutual mistake had been made (Tr. 22).

(c) No Objection – During the 19 years after the incorrect deed was signed, the Respondent never claimed to own the subject property. This confirmed that the subject deed contained a mistaken legal description. [The spirit of Code §15-3-340 should preclude the Respondent from objecting to the Appellant's action to reform the deed.]

Laches is defined as one who "abandons" or who "fails to assert" a **known** right. Strickland v. Strickland, 375 S.C. 76 (2007). In the case at bar, the Appellant did not know of the mistake until he attempted to convey the property to his grandson . He then took immediate steps to try to correct the error by filing the subject action. In order for laches to apply, it must also be shown that the Respondent was prejudiced/damaged by the delay of the inaction of the Appellant. Robinson v. Estate of Harris, 391 S.C. 114 (2008).

In the case at bar, the Appellant did not have knowledge of the error, and the Respondent was not prejudiced/damaged by the Appellant's delay. Accordingly, the trial judge's Order should not be allowed to be affirmed.

The Respondent also contends that since the Appellant did not specifically identify laches in the Statement of Issues on appeal, the issue of laches cannot be argued on appeal. It is respectfully submitted that based on the facts of this case, the issue of laches should properly be before this Court. A reading of Rule 208(b)(1)(B) SCACR states that "ordinarily", an issue which is not raised cannot be set forth on appeal. It is respectfully submitted that this equitable proceeding clearly justifies a finding that the Appellant's relief should not be barred by laches.

The Appellant's action was one seeking to reform a deed. Actions to reform a deed are equitable in nature. Wayburn v. Smith, 263 S.C. 518 (1975). Actions in equity seek to see that justice is done. Some basic tenants of equity are:

- Equity looks beneath the rigid rules of law to seek substantial justice State ex rel Daniel v. Strong, 185 S.C. 27 (1937).
- The function of equity is to supplement the law to find a remedy Harry v. Cisson, 377 S.C. 137 (Ct. 2008).

- Equity will not allow a wrong without a remedy Lane v. New York Life, 147 S.C. 333 (1928).

In an appeal involving equity, the appellate court has the authority to find facts in accordance with its own view of the evidence and to correct errors of law. SunTrust Bank v. Bryant, 392 S.C. 264 (2011). Accordingly, this Court has the authority to make a finding that laches did not apply and that the lower court erred in relying on laches to support its ruling.

II. **MASTER OVERRULED CIRCUIT COURT** – It is a fact that the 59(e) Motion did not assert that the Circuit Court had already ruled on the Respondent's Motion for Judgment on the Pleadings. Notwithstanding, the ruling of the Master-in-Equity should not be affirmed. One judge should never be allowed to overrule another. This is particularly true when there is no evidence on which to make a ruling.

In the case at bar, the Master-in-Equity dismissed the Appellant's action without giving notice and without giving the Appellant the opportunity to be heard. Therefore, it is respectfully submitted that the ruling of the Master-in-Equity should not be affirmed.

III. **15-3-340 DID NOT APPLY** – The Respondent argues that since she had title to the property, she was in constructive possession. In the case of Butler v. Lindsey, 293 S.C. 446 (Ct. App. 1987), the Court held that the person who is "*locus in quo*" has constructive possession. The Appellant was the party who was *locus in quo*.

The Respondent also argues that the word "or" in the statute requires the Appellant to seek title to the property prior to the end of 10 years. It is respectfully submitted that this argument is without merit.

In Butler, the Court held that in order to obtain relief pursuant to §15-3-340 a person must show that he was "seized or possessed" of the property.

In the case at bar, the Appellant had been in continuous possession of the property since the subject deed. When he learned of the error, he brought an action so that he could be "seized" of the property. Since the Appellant was in continuous possession, he had the right to seek to be "seized".

IV. **SUMMARY JUDGMENT/JUDGMENT ON THE PLEADING** – The Respondent argues that her Motion for Judgment on the Pleadings was improperly referred to as a Motion for Summary Judgment. It is respectfully submitted that this argument is trying to make a distinction without a difference.

If the court is issuing an Order based upon a judgment on the pleadings it is making a summary decision. The same is true when a court issues a ruling based on summary judgment.

By definition, "summary" means that the court is making a judgment or an order forthwith; it is making a decision without a jury, and doing something immediately. Black's Law Dictionary 4th Ed.

Whether the court is acting pursuant to a judgment on the pleadings or to a motion for summary judgment, the action of the court is the same. And, Rule 12(c) which governs judgment on the pleadings specifies that such motions, are treated as one for summary judgment. In addition, the Rule specifically states that the Motion "shall be treated as one for summary judgment and disposed of as provided in Rule 56".

CONCLUSION

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,

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CERTIFICATE OF COUNSEL

This is to certify that the Appellant's Final Reply Brief complies with the South Carolina Appellate Court Rule 211(b).

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Date: September 24, 2021