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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Court of Appeals Opinion No. 5834

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, Inc.....Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for the Petitioner certifies that he timely made a petition for rehearing in this matter, which was ruled upon by the Court of Appeals on October 7, 2021.

QUESTIONS PRESENTED

I. Whether the Court of Appeals' published opinion grossly misinterpreted South Carolina law in holding the caretaker of an allegedly incapacitated individual was not entitled to notice of a petition to appoint a guardian and conservator.

II. Whether the Court of Appeals, in violation of the precedent of this Court, ignored evidence of material misrepresentations, self-dealing, and conflicts of interest properly presented to the Master-in-Equity which established a genuine issue of material fact as to claims of fraud, breach of fiduciary duty, slander of title, unclean hands, and lack of standing.

III. Whether the Court of Appeals usurped the authority of the legislature in its published opinion by judicially expanding the incidents of ownership under South Carolina's joint tenancy statute.

STATEMENT OF THE FACTS

This is an appeal of a "granny snatching" case.[1] In the summer of 2015, Appellant Bradford Jeffcoat and Sandra Perkins had been living together in a loving and committed relationship for approximately 20 years. (R 69, 155). During the course of this relationship, Jeffcoat purchased 1955 Old Fort Avenue, Charleston, in April of 2000 as the couple's home. (R 71-72, 155-156, 159, 187). Jeffcoat and Perkins intended that 1955 Old Fort would transfer outside probate to the survivor of their relationship, so Jeffcoat deeded the property to himself and Perkins "jointly with right of survivorship, and not as tenants in common" on July 1, 2000. (R 69, 151, 155-

[1] As recently noted by the Southern District of Illinois:

> Of particular concern is a tactic known as "granny snatching." The AARP has described granny snatching as "a deplorable tactic by which someone who wants control over a vulnerable individual and their assets – usually when there's a sizeable estate involved – 'snatches' that individual across state lines and immediately files for guardianship, preventing control or contact with the individual by other family members."
>
> Elder law practitioners uniformly decry the practice, arguing that it isolates and exploits vulnerable seniors; results in expensive, protracted litigation that may deplete an estate; aggravates family disputes; delays needed care; and facilitates elder abuse.
>
> In an effort to address this and other problematic practices in the field of adult guardianship, the Uniform Adult Guardianship and Protective proceedings Jurisdiction Act ("the Act") was established. The Act provides clear guidelines for determining which state has jurisdiction when guardianship disputes cross state boundaries. Typically, the senior's "home" state (where the senior has been physically present over the last six months) will have original jurisdiction.

Easterly v. Burgett, No. 3:16-cv-00288-DRH-SCW, 2016 WL 6248312 at *4 (S.D.Ill. October 26, 2016) (footnotes removed). Both Alabama and South Carolina have adopted the Uniform Adult Guardianship and Protective proceedings Jurisdiction Act, and both states' implementations of the uniform act are relevant to this appeal.

156, 159, 292). In order to contribute toward their shared home, Perkins also executed a note and mortgage in favor of Jeffcoat, which has since been satisfied. (R 69, 155-156, 195, 207). Jeffcoat and Perkins thenceforth lived together at 1955 Old Fort as a committed couple. (R 70).

In approximately 2009, Perkins began developing symptoms consistent with Alzheimer's disease. (R 69, 145, 147, 156.). Eventually, Perkins quit her job due to her worsening memory loss. (R 69, 156). Jeffcoat served as Perkins' sole caregiver until her condition deteriorated to the point he hired an in-home aide for when he was at work. (R 156, 158). In April of 2015, Jeffcoat asked Respondent Vanessa Williams, Perkins' only child, to come to Charleston to help him care for Perkins. (R 143, 156-158). Prior to this time, Williams only saw her mother once or twice each year, usually when Jeffcoat and Perkins would visit her in Alabama. (R 71, 158).

One of Williams' earliest activities when she arrived in South Carolina in April of 2015 was to add herself to Perkins' checking account. (R 143). Shortly after gaining signatory authority over Perkins' checking account, Williams wrote a draft of Perkins' funds to pay the closing costs for a mobile home in Alabama. (R 143). According to Williams, Perkins at that time was diagnosed with frontotemporal dementia, and Perkins had been exhibiting symptoms of dementia since 2009 or 2010. (R 143, 145-147). For example, Williams testified Perkins believed Jeffcoat was "cheating on her" as early as 2009 or 2010 (R 146-147), which is behavior consistent with dementia. *See In re Conservatorship of Groves*, 109 S.W.3d 317, 338-39 (Tenn. Ct. App. 2003) (setting forth the progression of Alzheimer's Disease, which includes "suspicion and

accusation" as the patient's condition deteriorates).

During her time in South Carolina, Williams would help take Perkins to her doctors' appointments. (R 69, 156). However, on June 16, 2015, Williams did not take Perkins to her doctor's appointment: instead, she, without warning, packed some of Perkins' belongings and spirited her away to Alabama, leaving Perkins' automobile and "…certain other items of personal property, including…furniture and apparel…" (R 11, 15, 65, 69, 156). After absconding with Perkins, Williams locked Jeffcoat out of his lover's life, and Williams did not respond to Jeffcoat's subsequent attempts to contact her or Perkins. (R 70, 142, 157). Williams also shut Perkins' two siblings out of her life. (R 141-142). As Perkins' only child, Williams now had exclusive access to Perkins.

On June 25, 2015, almost immediately after arriving in Alabama, Williams filed a petition for emergency guardianship and conservatorship powers over Perkins in the Baldwin County, Alabama Probate Court. (R 70, 157).[2] Williams' petition does not mention Perkins had resided with Jeffcoat at 1955 Old Fort since 2000 and that Jeffcoat was Perkin's caretaker. (R 305-308). Williams also did not notify Jeffcoat of the filing of this petition. (R 70, 157). Pursuant to this petition, the Baldwin County Probate Court issued Temporary Letters of Guardianship on July 7, 2015. (R 309).

[2] This petition and other Baldwin County Probate Court filings are being provided to this Court in the Appendix to the Record on Appeal. (R 305-318). All parties have consented to this supplementation of the record. *See* Rule 212(b), SCACR. Further, this Court may take judicial notice of these filings. *See Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) (appellate judicial notice); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

These Temporary Letters of Guardianship issued to Williams explicitly stated "said guardian does not have authority to expend any funds of said ward." (R 309). On July 17, 2015, Williams petitioned the Probate Court for a general guardianship/conservatorship, "to protect and manage the person, assets and financial affairs of [Perkins]." (R 310). This petition, which did not notify Jeffcoat, again omitted any information about Perkins' approximately fifteen years of residence with Jeffcoat in South Carolina. (R 70, 156, 310-311). The Baldwin County Probate Court issued general Letters of Guardianship/Conservatorship on September 15, 2015. (R 116).

From April of 2015 until Perkins' death seven months later, Williams used funds from Perkins' checking and retirement accounts to pay for her family's groceries, her daughter's college tuition, and any other "expenses [of] around [$2,200] or [$]2,300 a month for a family of four." (R 144-145). Perkins' income at this time (from her retirement) was only $2,200.00 a month. (R 144). When Williams took control of Perkins' checking account in April of 2015, it contained approximately $41,000.00; Williams was unable to testify as to the value of Perkins' checking account when Perkins died. (R 144). Perkins also appears to have also been the beneficiary of a trust, but the record contains few details of this instrument or how its proceeds, if any, were utilized. (R 146, 233).

On October 7, 2015, Williams, through her attorney, requested Jeffcoat purchase Perkins' interest in 1955 Old Fort, ostensibly because Perkins needed financial assistance. (R 65-66, 70-71, 157). Williams, through her attorney, also

requested at that time the return of Perkins' car, furniture, and personal property, despite having made no attempt to retrieve them since disappearing in June of 2018. (R 65-66, 71-72). Jeffcoat returned Perkins' car, but declined to purchase her interest in 1955 Old Fort. (R 157-158).

According to Williams, Perkins' health began to decline precipitously in early November of 2015. (R 83, 175). Williams knew at this time that full title to 1955 Old Fort would vest in Jeffcoat upon Perkins' death. (R 83, 175). In order to prevent Jeffcoat from assuming full ownership of 1955 Old Fort, on November 16, 2015, Vanessa Williams, acting as purported guardian/conservator of Perkins, deeded Perkins' interest in the property to Vanessa Williams, individually, for $10.00 "and love and affection".[3] (R 61). At roughly the same time, Williams authorized her South Carolina attorneys to proceed with a partition action against Jeffcoat, which was ultimately filed November 24, 2015. (R 8, 15).

Perkins died[4] on November 26, 2015. (R 142). Williams held a memorial service roughly a week later, after Perkins' remains returned from the crematory. (R 142). Williams did not notify Jeffcoat, or even Perkins' siblings, of this service. (R 70-72, 141-142, 157). Brad Jeffcoat eventually learned of the death of Sandra Perkins, his lover and companion of nearly 20 years, from a mutual friend. (R 70, 157).

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[3] On January 11, 2016, Williams made a motion before the Baldwin County Probate Court for retroactive approval of this transaction. (R 285-286, 313-315, 318). Jeffcoat was not notified of Williams' motion, though the order approving the transaction was eventually presented to the Master-in-Equity. (R 50).

[4] Jeffcoat's trial counsel alleged at a March 29, 2017, hearing the Alzheimer's-stricken Perkins died in Williams' trailer, on her couch. (R 143, 265).

STATEMENT OF THE CASE

This appeal concerns the Master-in-Equity's order directing the partition and sale of 1955 Old Fort, over Jeffcoat's defenses and counterclaims. The action was filed on November 24, 2015, by Respondent Vanessa Williams, as the daughter and purported guardian/conservator of Sandra Perkins, against joint tenant and Petitioner Bradford Jeffcoat and Blue Heron Builders, LLC, a mortgagee (Blue Heron was eventually dismissed). (R 7-15). At this time, the Complaint also asserted an action for conversion of "certain other items of personal property, including without limitation, furniture and apparel…" (this issue was eventually resolved). (R 11). Jeffcoat filed his Answer on December 29, 2015, and asserted a counterclaim against Williams for fraud. (R 17-21). Jeffcoat filed an Amended Answer and Counterclaims on February 3, 2016, adding counterclaims for breach of fiduciary duty and slander of title. (R 22-28). Jeffcoat also filed a Motion to Dismiss on February 3, 2016. (R 29-32). Williams filed a Reply to the original Answer and Counterclaim on February 16, 2016 and to the Amended Answer and Counterclaims on March 18, 2016. (R 35-38, 40-45). Williams also filed a Response to Jeffcoat's Motion to Dismiss on March 30, 2016. (R 46-49). The Motion to Dismiss was heard by Judge Markley Dennis on April 1, 2016. Judge Dennis denied the Motion to Dismiss by order dated April 6, 2016. (R 1, 253-258).

On August 3, 2016, Jeffcoat filed a Motion for Summary Judgment and an Affidavit in Support of the same. (R 51-72). Jeffcoat withdrew this motion, without prejudice, via a consent order dated January 5, 2017. (R 2).

On January 11, 2017, Williams amended her Complaint to appear as the Personal Representative of Perkins' Estate. (R 74-80, 142). On January 17, 2017, Williams filed a Motion for Partial Summary Judgment (R 81-129). On March 27, 2017, Jeffcoat filed a Response to this motion and asserted a cross-motion for Summary Judgment; he also filed another affidavit in support of his position. (R 130-159). On February 28, 2018, Jeffcoat filed a Second Amended Answer and Counterclaim (R 160-166). Williams filed a Reply on March 19, 2018. (R 167-172). Judge Thomas Hughston heard the pending Motions for Summary Judgment on March 29, 2017, and denied them by order dated May 9, 2017. (R 3, 259-272). Judge Hughston's order held: "Plaintiff's Motion…is **denied**, viewing the evidence in the light most favorable to the non-moving party [Jeffcoat] and finding a scintilla of evidence exists giving rise to a genuine issue of material fact." (R 3) (emphasis in original).

On April 2, 2018, Williams filed another Motion for Partial Summary Judgment, which was substantially similar to Williams' January 17, 2017 motion. (R 173-222). On April 17, 2018, Jeffcoat filed his own Motion for Summary Judgment. (R 223-236). Williams responded to Jeffcoat's motion on April 26, 2018. (R 237-246). Pursuant to an Order of Reference, Charleston County Master-in-Equity Mikell Scarborough heard these motions on April 30, 2018. (R 273-304).

On May 25, 2018 (after the hearing), Williams filed a Supplemental Brief in support of her motion. (R 247-250). The Master-in-Equity issued his order on June 28, 2018, compelling the partition of 1955 Old Fort and further holding: "[a]ny relief

specifically not addressed herein, is denied." (R 6). Jeffcoat timely filed his Notice of Appeal on August 3, 2018. (R 251).

The Court of Appeals affirmed the Master-in-Equity in a published opinion. *Williams v. Jeffcoat*, Op. No. 5834 (S.C. Ct. App. Filed July 14, 2021). Jeffcoat timely filed a petition for rehearing on July 20, 2021. After requesting a response from Williams, the Court of Appeals denied Jeffcoat's petition by order dated October 7, 2021.

STANDARD OF REVIEW

The interpretation of a statute is reviewed *de novo*. *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

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An order granting summary judgment is reviewed *de novo*, applying the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure. *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRCP). A material issue is one that constitutes a legal defense or that affects the result of the action. *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988).

"On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below." *Id.* (quoting *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)). Summary judgment should not be granted if further development of the facts would assist in the application of the law. *Mosteller v. Cty. of Lexington*, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. *Id.*

"Matters subject to judicial notice are properly considered on a summary judgment motion." 11 *Moore's Federal Practice* § 56.95 (2016); *c.f. Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014) (Courts may take judicial notice of facts when considering a Rule 12(b)(6) motion).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). This Court has defined a "scintilla" as "'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'" *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935); *see also Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 588 S.E.2d 87 (2003) (Burnett, J., dissenting) ("A scintilla is defined as 'a trace' of evidence.") (citing *Black's Law Dictionary* 1347 (7th ed. 1999)). In cases requiring a heightened burden of proof (*e.g.* fraud), the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock* at 330-31, 673 S.E.2d at 803.

ARGUMENT

I. The Court of Appeals' interpretation of S.C. Code § 62-5-309 (Supp. 2015) runs counter to the plain language of, and all commentary on, the statute.

The July 14, 2021, opinion of the Court of Appeals (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). South Carolina was Perkins' "home state" under the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. *See* Ala. Code § 26-2B-201(a)(2) ("home state" is where the ward was physically present for six consecutive months before the filing of petition). Accordingly, Alabama law requires notice of proceedings be given to "those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state". Ala. Code § 26-2B-208; *see also*

The Court of Appeals fundamentally misinterpreted the South Carolina Probate Code in its opinion, finding Jeffcoat was not entitled to notice of proceedings if they had been filed in South Carolina. (Opinion p. 6). The South Carolina statute in effect in 2015 clearly and unambiguously mandated caregivers such as Jeffcoat receive 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 plain meaning of the statute, and with the secondary sources interpreting the statute. *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 South Carolina Probate Code which 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 Court of Appeals' interpretation of this statute (Opinion p.6) gives no effect to the "care and custody" language of the prior statute, which is an incorrect interpretation. *See CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (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).

Williams acknowledges Jeffcoat was never notified of her guardianship/conservatorship petition. (R 286). Williams' fraudulent omission of the existence of Jeffcoat from her petitions, and their consequential lack of jurisdiction, can be considered by this Court.[5] *E.g. Peoples Nat'l Bank of Greenville v. Manos Bros., Inc.*, 226 S.C. 257, 275, 84 S.E.2d 857, 866 (1954) ("It is well settled that want of jurisdiction over either the person or the subject matter is open to inquiry where a judgment rendered in one state is challenged in another."). This Court must grant a writ of certiorari and reverse the Court of Appeals, dismissing Williams' action with prejudice, voiding the November 16, 2015, deed, and allowing Brad Jeffcoat to remain in the house he and his lover intended to age together in.

[5] Williams' fraudulent omission of the existence of Jeffcoat also had the effect of preventing the Baldwin County Probate Court from considering Jeffcoat's allegations of fraud, unclean hands, self-dealing, and other matters properly considered as "unjustifiable conduct" allowing that court to decline jurisdiction and/or sanction Williams. *See* Ala. Code § 26-2B-207.

II. The Court of Appeals' refusal to consider Jeffcoat's counterclaims and runs counter to this Court's law on preservation of error.

The Court of Appeals found Jeffcoat only preserved the issue of whether a statutory joint tenant may unilaterally several the tenancy, and not his multiple affirmative defenses and counterclaims (*e.g.*, unclean hands, fraud, breach of fiduciary duty, slander of title). (Opinion p. 7 n. 4; R 17-28). This holding ignores the precedent of this Court, which recognizes issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). "'[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.'" *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) (quoting *Atl. Coast* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring in result in part and dissenting in part)); *see also Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000) (holding issue preserved where alleged in complaint that was dismissed with prejudice). This holding also ignores the fact that Sandra Perkins was *non compos mentis*. *See Caughman v. Caughman*, 247 S.C. 104, 109, 146 S.E.2d 93, 95 (1965) ("[T]he duty to protect the rights of incompetents has precedence over procedural rules otherwise limiting the scope of review.").

The Court of Appeals based its preservation finding on Jeffcoat's trial counsel's agreement with the Master-in-Equity that there were no genuine issues of material fact. (Opinion p. 7 n. 4). Any statement in hearing by Jeffcoat's trial counsel that there were "no disputed facts" in his motion for summary judgment referred to the

severance of a statutory joint tenancy with right of survivorship, a pure issue of law. (R 235-236). Jeffcoat's prior motion to dismiss also acknowledges the severance issue was one of law. (R 32). The Master-in-Equity understood this qualification 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). Finally, Jeffcoat's trial counsel specifically mentioned the existence of Jeffcoat's counterclaims at hearing and in his written motion for summary judgment. (R 235-236, 293-294)

The Master-in-Equity's order recognized Jeffcoat's counterclaims and affirmative defenses remained before him after his decision on joint tenancy, because he disposes of them: "Any relief not specifically addressed herein, is denied." (R 6).

***

Dismissal of Jeffcoat's affirmative defenses and counterclaims was contrary to law and terribly premature; the record contains substantial evidence of Williams'

misconduct, well in excess of that necessary to create a genuine issue of material fact (or a scintilla). Williams misrepresented her intention to take Perkins to her doctor on June 16, 2015, when she truly intended to abscond with Perkins to Alabama. (R 69, 156). Perkins filed petitions before the Baldwin County, Alabama, Probate Court that omitted or misrepresented material facts, such as Perkins' "home state" and the existence of Jeffcoat. (R 69-71, 155-157, 286, 305-308). Williams used her mother's assets to pay a down payment for a mobile home, pay her daughter's college tuition, and generally support Williams' family, instead of supporting Perkins. (R 143-145). Williams was aware that Jeffcoat would assume full title to 1955 Old Fort upon Perkins' death. (R 83, 225). In order to further enrich herself (and contrary to the intent of her mother), she misused her putative authority as a conservator to transfer 1955 Old Fort to herself for $10.00 "and love and affection" while her mother was in her final illness. (R 69, 71-72, 155-156, 159, 213-214, 292). This transfer was made free and clear of any encumbrance, trust, or any legal obligation to use 1955 Old Fort for the benefit of Perkins.

This evidence is material to Jeffcoat's claims and defenses (*see generally* App. Brief pp. 13-24). Partition is an action in equity. *Zimmerman v. Marsh*, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). Not only would unclean hands bar such equitable relief, courts may deny partition when it becomes an instrument of fraud and oppression. *E.g. Holland v. Shaffer*, 178 P.2d 235 (Kan. 1947). (App. Brief pp. 16-18). Further, these acts (particularly her self-dealing land transfer) serve as violations of Williams' fiduciary duties under the Alabama Probate Code. *See* Ala. Code §§ 26-2A-

150, 26-2A-152, & 26-2A-155. (App. Brief pp. 18-22; R 284, 230). Her fraudulent assertion of title over 1955 Old Fort also slander's Jeffcoat's valid title. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 21-22, 567 S.E.2d 881, 892 (Ct. App. 2002) (elements of slander of title) (App. Brief p 23). Finally, Williams never established her standing, via jurisdiction over Perkins or under S.C. Code § 62-5-716, to even bring her action. (App. Brief pp. 23-24). This Court must grant a writ of certiorari and reverse the Court of Appeals and Master-in-Equity's premature award of summary judgment, void the November 16, 2015 deed, and allow Brad Jeffcoat to present his evidence of misconduct to the trier of fact.

III. The Court of Appeals and Master-in-Equity impermissibly wrote law.

The Court of Appeals created new law, allowing a statutory joint tenant with right of survivorship to sever the tenancy in a manner not explicitly authorized by S.C. Code § 27-7-40. (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.")). As three justices of this Court recently noted: "If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.**" *Buchanan v. S.C. Prop, & Cas. Ins. Guar. Ass'n.*, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

The only methods by which a statutory joint tenant with right of survivorship may sever the estate are 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…"); Joby C. Castine, *Deeds of Conveyance* 152-153 (S.C. Bar CLE Div. 2019) ("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.").

Accordingly, a statutory joint tenant with right of survivorship may not unilaterally alienate his or her interest. This interpretation is entirely consistent with the intent of section 27-7-40, which provides: "The provisions of this section must be liberally construed to carry out the intentions of the parties." S.C. Code § 27-7-40(c). The record contains substantial evidence, whether in the deed in question or in the testimony of Jeffcoat, of Sandra Perkins' intent to allow her interest in 1955 Old Fort to pass to Brad Jeffcoat upon her death. (R 61, 69, 71-71, 155-156, 159, 292).

This Court must grant a writ of certiorari and reverse the Court of Appeals and Master-in-Equity's erroneous interpretation of South Carolina law and overreach of power, void the November 16, 2015 deed, and allow this action to be considered by the trier of fact.

CONCLUSION

The petition should be granted.

Dated: 11/08/2021

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