

for Admissions Admitted in addition to their already pending Motion to Compel. Plaintiffs filed a *Return to Motion to Dismiss and Notice of Motion and Motion on the Pleadings or in the Alternative Motion for Summary Judgment* on February 13, 2019. Thereafter on May 6, 2019, Plaintiffs filed a *Notice of Motion and Motion to Compel Discovery Responses*. Discovery had been issued to Defendant's previous counsel, Aaron Ness, on November 5, 2018. Also on May 6, 2019, Plaintiff's filed a *Memorandum in Opposition to Defendant's Motion to Dismiss and In Support of Plaintiff's Motion for Judgment on the Pleadings or in the alternative, Summary Judgment*. The parties were to next appear before the Court the week of July 8, 2019.

At the hearing, Defendant represented to the Court that she could not move forward without representation and was struggling to find representation. In an abundance of caution, the Court continued the matter in a Form 4 Order filed July 29, 2019. The Order also required the parties to schedule mediation. Plaintiffs filed a *Motion to be Exempt from ADR* with a proposed Order, and emailed the same to the Chief Administrative Judge, explaining that a conflict existed that could cause issues with mediation. While filed, the Motion did not make it on to the docket and no filing date is available. The *Order for Exemption from ADR Requirements* was filed August 5, 2019.

This trial was then scheduled on the trial roster to come before the Court the week of September 23, 2019. Prior to this trial, David Melnyk filed a *Notice of Appearance* on behalf of Defendant on August 2, 2019. However, Defendant appeared alone and indicated she was unrepresented. Plaintiffs filed a *Notice of Motion and Motion for Sanctions* on October 8, 2019. The trial was continued once more. The parties then were called for motions roster the week of November 4, 2019. Midnight November 4, 2019, Evert Comer, Jr. filed a *Notice of Appearance* on behalf of the Defendant. At the hearing, the Defendant attempted to have the matter continued, however the motions hearing went forward. Thereafter, the parties came up on the trial roster for

the week of November 18, 2019, however both parties had conflicts and agreed to a continuance via *Consent Order of Continuance* on November 15, 2019.

On January 3, 2020, Mr. Comer filed a *Notice of Motion and Motion to be Relieved as Counsel*. The Court issued and filed an *Order* on January 10, 2020, granting summary judgment and denying all other motions. Plaintiffs filed a *Notice of Motion and Motion to Reconsider, or in the alternative Seek Damages in Probate Court* on January 16, 2020. Plaintiffs' motion was granted, see *Order Granting Motion for Reconsideration* filed on January 29, 2020. The parties were again on the trial roster for the week of March 30, 2020, however, due to a trial that took priority pursuant to SCRAC 601, the Plaintiffs filed a *Notice of Motion and Motion for Continuance* on March 2, 2020. On April 28, 2020, Mr. Comer's request to be relieved as counsel was denied by the Court.

On February 16, 2021, Plaintiffs filed a *Notice of Motion and Motion for Continuance and Leave to Contact a Represented Party* as the parties were once again on the trial roster for the week of February 22, 2021. The case was rescheduled and placed on the trial roster for the week of April 18, 2021. On April 15, 2021, Robert Phillip, Defendant's fourth attorney brought into this litigation and third attorney of record, filed a *Notice of Appearance*. Thereafter, Defendant filed a *Motion to Compel Mediation* and a *Motion to Dismiss for Lack of Jurisdiction* on April 18, 2021. Pursuant to *Order Relieving Counsel* filed April 22, 2021, both Evert Comer, Jr. and David Melnyk were relieved as counsel.

FACTUAL BACKGROUND

The parties to this action are sisters. The conflict goes back to 2009. The Decedent whose property is at issue was their mother. On June 10, 2008, Decedent executed a Last Will and Testament dividing all her property in equal portions among the sisters. The Will specifically

contemplated that should any of the sisters receive an advance or anything outside of probate, that amount, or value would be offset.¹ Similarly, on June 23, 2008, a letter indicating that the sisters were all granted Power of Attorneys and informing them how they should sign using that power, was issued from the drafting attorney.² The Decedent intended the sisters to share equally in both authority and inheritance based on the documents from that time period.

In approximately 2009, the Decedent was diagnosed with Parkinson's and dementia. At that time, Ms. Gladden and Ms. Reed, the Plaintiffs, brought conservatorship and guardianship actions in the Richland County Probate Court. Ms. Stewart, the Defendant, in the instant action opposed these actions along with the Decedent. An Order was filed December 29, 2009, under action numbers 2009-GC-40-00009 and 2009-GC-40-00010 holding that the Decedent did not meet the definition of an incapacitated person and further barred any of the sisters from selling or otherwise disposing of any of the Decedent's real property.³ Thereafter, Powers of Attorneys were issued. Specifically, Defendant was granted a limited power of attorney that was intended to be used in Florida, as that is where the Defendant was living.⁴ Each sister had a different Power of Attorney, with Ms. Reed having power over the Bamberg property owned by the Decedent, and with Ms. Gladden having a springing provision for incapacity.⁵

Approximately a year after the Richland County Probate Order and several months after the new Power of Attorneys were drafted, the parties returned to the Richland County Court for a contempt action. At this time, it is Ms. Reed's and Ms. Gladden's recollection that all the sisters agreed that their mother was no longer able to care for herself or deal with her affairs. At this time,

¹ Plaintiff's Exhibit 1

² Plaintiff's Exhibit 2

³ Plaintiff's Exhibit 3

⁴ Plaintiff's Exhibit 4

⁵ Plaintiff's Exhibit 14

the Richland County Probate Court found that the Decedent met the definition of an incapacitated person. This order was filed December 2010.⁶ Following the Decedent went into the care of the Defendant and resided in Florida. Approximately four (4) years later the Defendant was responsible for the Decedent executing a new Power of Attorney granting the Defendant sole power and authority over all of Decedent's assets and property.⁷ This document was prepared by Defendant and signed June 26, 2014. However, it was not recorded until August 4, 2015. Neither Ms. Reed nor Ms. Gladden were aware of this Power of Attorney until after the Decedent's death.

Eight (8) days after this undisclosed Power of Attorney was recorded, a Quit Claim Deed ("Deed") conveying Decedent's Orangeburg Property to the Defendant was also recorded. The Deed is dated July 4, 20____. The Deed was signed August 4, 2015 when the Decedent was in the hospital/hospice care due to the end-of-life illness that caused her death.⁸ Ms. Gladden and Ms. Reed were present with the Decedent in those final days and aver that the Decedent had no capacity to sign any legal document. Decedent was in the hospital from July 28, 2015, through August 7, 2015. Ms. Reed and Ms. Gladden tried to make her comfortable at home but ended up resuscitating her and having the Decedent taken to hospice after a few hours. Decedent passed away August 15, 2015.

After Decedent's death, Ms. Gladden and Ms. Reed became aware of the Power of Attorney and the Quitclaim Deed when the Defendant filed an inventory in the Probate and the Orangeburg Property was not listed.⁹ Plaintiffs then filed this action. At trial the Defendant admitted to signing the Deed for the Decedent, without designating her signature as "agent."

⁶ Plaintiff's Exhibit 5

⁷ Plaintiff's Exhibit 6

⁸ Plaintiff's Exhibit 9

⁹ Plaintiff's Exhibit 10

TRIAL AND TESTIMONY

At the call of the case, present in the courtroom were Plaintiffs, Jacquelyn Gladden and Patricia Reed, with their counsels, Elizabeth D. Moore and Margaret A. Collins. Also, present was counsel for the Defendant, Robert Phillips. Defendant, Cyndy Reed Stewart was not present. As a preliminary matter, the Court heard the Defendant's *Motion to Compel Mediation* and *Motion to Dismiss for Lack of Jurisdiction*. These Motions were denied.

The Court then inquired of the parties regarding exhibits and how long each side anticipated they needed to present their case. Plaintiffs raised the issue that they had received no discovery from Defendant, and therefore, would be objecting to any and all documents proffered, beyond the discovery that they themselves had provided to the Defendant. Defendant's counsel argued that Defendant was protected from having to answer the discovery and therefore, Plaintiff's objections would be improper. The Court ruled that Defendant had no basis for failing to comply with discovery. The Court provided Defendant 24 additional hours in which to provide discovery to Plaintiffs.

Because the Defendant failed to appear in person for the trial the Court provided that she could appear telephonically or virtually. The issue of Defendants three (3) separate counsels was raised as well. Plaintiffs explained what their understanding of the situation was, stating that Mr. Melnyk filed an appearance but failed to appear. According to Mr. Melnyk this failure to appear was because of a stomachache. However, according to Defendant, Mr. did not appear because he did not represent her. Mr. Comer sought relief, but was denied. When Plaintiff's counsel informed Mr. Comer of this denial he asked Plaintiff's counsel how the court could do that.

After these preliminary matters were discussed, including approval for Defendant to appear telephonically and virtually, the parties were dismissed for the day to resume 9:30 am the following

day.

Testimony was taken for the next two (2) days. Both Plaintiffs testified. Pursuant to their testimony, it was established that a 2009 Court Order existed that restrained the sale or disposition of any of the Decedent's property, along with the fact that a year later, the Decedent met the definition of an incapacitated person. Ms. Reed and Ms. Gladden testified that the Defendant has supported and provided testimony at the 2010 hearing in which the Decedent was found to be incompetent.

Ms. Reed and Ms. Gladden testified regarding Decedent's declining health that continued to worsen with time. With regards to execution of the August 4, 2015 deed, Plaintiff, Ms. Gladden testified that her mother, the Decedent was dying and incapable of signing anything. There was an attempt to admit doctor's notes, however, there was an objection and that objection was sustained. Through testimony, Ms. Gladden indicated that she obtained the notes in order to activate her springing power of attorney and make sure that the Decedent's affairs were attended to during her final illness.

Ms. Gladden also testified to discovering the Florida Power of Attorney created by Defendant and signed in 2014. Finally, Ms. Gladden testified to discovering the Quit Claim Deed.

Both Ms. Reed and Ms. Gladden testified as to damages, using the current tax value of the property, and stating that if the Orangeburg property had been sold, instead of conveyed to Defendant. Plaintiff's counsel rested after the sisters' concerning damages.

Defendant proceeded with her case attempting to show that Ms. Gladden and Ms. Reed had taken money. During Defendant's case, Defendant testified extensively about how the Orangeburg property was a legacy property and she was trying to protect the legacy property. On cross examination, Defendant testified that she had not sought legal counsel for the drafting or

preparation of the Florida Power of Attorney or the Deed. Rather, she claimed to have executed the Florida Power of Attorney based on advice from a health care worker and claimed to have signed the Deed as instructed by a notary.

RULING

Based on the testimony of the parties, the evidence submitted, and the arguments of counsel, this Court finds that the Defendant willfully and wantonly forged the Deed to the Orangeburg property; breached her duty as Personal Representative; and attempted to defraud Ms. Gladden and Ms. Reed. The Court finds that the Defendant intentionally executed the Florida Power of Attorney to obfuscate the South Carolina Power of Attorney and intentionally transferred the property to herself for her own benefit.

Based on this willful and wanton conduct, the continual delays and prolonging of this litigation as well as considering statutory provisions of *S.C. Code Ann. 62-8-117(2)* and *16-13-10 et. seq.* the Court hereby sanctions the Defendant and awards Ms. Gladden and Ms. Reed attorney's fees and costs. The attorney for the Plaintiffs shall prepare an Affidavit of Attorney Fees provide the Affidavit of Attorney Fees to counsel for the Defendant and the matter scheduled by the Clerk of Court to allow for the cross examination by Defendant regarding the attorney fees request. Likewise, an Affidavit for Costs will be prepared and distributed and subject to examination.

AND IT IS SO ORDERED!

Honorable Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

_____, South Carolina



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart
Case Number: 2018CP3800874
Type: Order/Judgment and Form 4

It is so Ordered!

s/Diane S. Goodstein