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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2021-001296

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, LLC, Defendants, *of whom* Bradford Q. Jeffcoat, Jr. is the.....Petitioner.

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Drive
Charleston, SC 29492
Phone: (843) 577-2026
Fax: (842) 722-2867
Email:tdomin@clawsonandstaubes.com
Attorney for Respondent

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COUNTER TO QUESTIONS PRESENTED

The Respondent disagrees with the questions presented and would show unto the Court that the Court of Appeals opinion was unanimous; Petitioner is not presenting novel questions of law; and has failed to present any cases that conflict with the ruling of the Court of Appeals. Furthermore, the Petitioner's submissions regarding what it frames as ignored material evidence, are not preserved for appeal due to Petitioner's failure to comply with South Carolina Rules of Civil Procedure and because the Petitioner is precluded from presenting new arguments and authorities at this stage of the process.

COUNTER STATEMENT OF THE CASE

The Respondent agrees generally with the timeline and events under the Petitioner's heading of "Statement of the Case," but would emphasize that Bradford Jeffcoat ("Jeffcoat") failed to file a Rule 59(e) motion regarding his assertions that his counterclaims should have been preserved. The Petitioner has also taken liberties to provide a separate "Statement of the Facts" heading in an attempt to further inappropriately editorialize his petition. Describing this matter as a "granny snatching" case is a repugnant characterization that ignores the undisputed material facts on which this case turns. The Respondent in this matter, Vanessa Williams ("Williams") is the only daughter and sole heir of the late Sandra Perkins ("Perkins"). She was contacted by Jeffcoat in the summer of 2015 because her mother was suffering from dementia and he wanted help from her. Williams drove to Charleston in order to assess the situation. (R. p. 143). Upon observing her mother's condition and determining that, as Perkins' only child, she would be the most appropriate person to provide for her mother's care going forward, Williams left Charleston on or about June 16, 2015 and brought Perkins back to Alabama to live with her. (R. p. 143).

After consulting with legal counsel in Alabama, Williams concluded that the best way to provide for her mother was to become her Guardian and Conservator. Correspondingly, Williams petitioned the Probate Court of Baldwin County and was

issued permanent Letters of Guardianship/Conservatorship on September 15, 2015. (R. p. 209).

Thereafter, as fiduciary, Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, and that as conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, she consulted with the Law Firm of Clawson & Staubes, LLC in South Carolina.

In early November 2015, while counsel was working on drafting the complaint for a partition action, Williams received the unfortunate news that her mother's health had suddenly taken a turn for the worse, and death was imminent. (R. p. 83, lines 7-9; p. 175, lines 7-9). Given that the subject property was still in the names of Perkins and Jeffcoat and held as joint tenants with right of survivorship, the death of Perkins would result in Jeffcoat being the sole owner of said property. As a result, Williams, upon advice of counsel, decided that the best way to fulfil her duties was to sever her mother's joint tenancy and then pursue partition. (R. p. 83, lines 10-14; p. 175, lines 10-14).

Accordingly, pursuant to the advice of her Alabama and South Carolina counsel, Williams conveyed Perkins' interest in the subject property to herself on

November 16, 2015, severing the joint tenancy and creating a tenancy in common with Jeffcoat. (R. pp. 120-121). Perkins died on November 27, 2015. (R. p. 142). In conveying the subject property to herself, Williams acted in the only way possible to retain the asset on behalf of Perkins' estate until determining its ultimate disposition. She took this action in accordance with Ala. Code § 26-2A-152(c)1 (1975). The conveyance was approved by order of the Probate Court of Baldwin County on January 15, 2016 while applying Ala. Code § 26-2A-152(c)1 (1975). (R. p. 125). Having severed the joint tenancy with Jeffcoat by destroying the unity of time, Williams then sought judicial partition pursuant to S.C. Code Ann. § 15-61-10 et seq. (1986), by complaint filed in this Honorable Court on November 23, 2015. (R. pp. 7-16).

As Perkins' appointed Attorney-in-Fact (R. pp. 319-339), Williams acted appropriately to protect Perkins and her estate and did so with assistance and on advice of legal counsel. Likewise, although Perkins and Jeffcoat had been living together for approximately fifteen years, the two were not married and there was no legal relationship between them regarding care and custody of her or each other. Moreover, it is undisputed that Jeffcoat conveyed a half interest in the property to Perkins in exchange for a mortgage in the amount of $43,550.00. (R. p. 69, lines 2-5) (07/12/16 Jeffcoat Aff. p. 1). It is further undisputed that Perkins paid all of the principal and interest (at 7.5% fixed rate for 15 years) on the mortgage and that the

mortgage has since been released. (R. p. 102, p. 114) (07/12/16 Jeffcoat Aff. p. 1; 03/27/17 Jeffcoat Aff. pp. 1-2; 07/01/00; Mortgage; 06/20/16 Satisfaction). Accordingly, on or about June 1, 2015, Perkins held an unencumbered estate in fee simple in the subject property with Jeffcoat as joint tenants with right of survivorship and not as tenants in common. In summation, there is no dispute that Perkins fully paid for her interest in the property; that Perkins and Jeffcoat were never married; Jeffcoat never acted as Perkins' Attorney in Fact; and Jeffcoat never held guardianship over Perkins' person or estate.

ARGUMENT

I. Jeffcoat did not have care and custody of Perkins and was not entitled to notice under Alabama law or S.C. Code § 62-5-309 (Supp. 2015).

The argument Jeffcoat was entitled to notice of the Alabama Guardianship and Conservatorship hearing amounts to an attack on subject matter jurisdiction of the Alabama court. The law is clear that a court in another state may explore the jurisdictional basis of a foreign court's order, but only in a limited way. It is well established law that where "the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or the record itself." *Millikin v. Meyer*, 311 U.S. 457 (1940); *V.L. v. E.L.*, 577 U.S. 404 (2016).

Alabama law requires that if a guardianship petition is filed in Alabama and Alabama is not the home state of the respondent, then the petitioner must give notice to those persons who would be entitled to notice if the petition was brought in the respondent's home state. Ala. Code § 26-2B-208. At the time of the petition for guardianship the notice requirements under South Carolina Law were set by S.C. Code § 62-5-309 (Supp. 2015). The statute provided:

> (A) In a proceeding that is properly commended 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 on can be found.

S.C. Code § 62-5-309 (Supp. 2015).

Jeffcoat only gave this issue superficial consideration in the initial brief where he dedicated only two sentences to the lack of notice issue and none on the meaning of "care and custody". (App. Brief p. 12). After failing to persuade the Court of Appeals, the Petitioner now seeks to explicate the meaning of "care and custody" by pointing to a new statute which provides an entirely different criteria for determining who receives notice. The Petitioner cites a variety new authorities that were not cited in his initial brief including those published after the new amendment. South Carolina jurisprudence is clear that a party may not assert new arguments or authorities for the first time in a petition for rehearing. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001); *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011). Ordinarily no point will be considered which is not set forth in the statement of issues on appeal. *Gamble v. International Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996). This argument about a lack of notice to Petitioner, which was only advanced in a glancing manner to the Court of Appeals

has now become the central theme of the Petitioner's case. South Carolina law unequivocally provides that a short passing reference to an argument is not sufficient to preserve an issue for appellate review. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298, 519 S.E.2d 583, 600 (Ct. App. 1999); *Solomon v. City Realty Co.*, 262 S.C. 198, 203 S.E.2d 435 (1974); *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct.App.1993) (holding conclusory arguments may be treated as abandoned).

Further, Jeffcoat's fresh assertions on notice rely solely on a subsequent amendment to the South Carolina Probate Code that was not in effect at the time the Alabama proceedings were conducted. Citing *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006), Jeffcoat argues that the amendment should be read as "clarifying statutory intent." However, there is no indication that this was a statutory clarification; it was a change in the statute. The general rule with respect to the effect of subsequent amendments is that they are presumed to change existing law rather than clarifying it. *Cotty v. Yartzeff*, 309 S.C. 259, 422 S.E.2d 100 (1992). The new statue (S.C. Code § 62-5-303(B)(4)(d)) provides that service shall be executed on "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 for a six-month period preceding the filing

of the petition." It is unreasonable to argue Williams and the Alabama probate court should have applied a notice criteria that the Legislature had not enacted at the time.

Applying the proper criteria of persons entitled to notice, Jeffcoat was clearly not entitled to notice. The statute at the time of the probate petition provided that a person who has care and custody is entitled to notice. This statutory provision at the time contained no look-back period. It did not state that a person who had care and custody during the prior six months is entitled to notice. Clearly, at the time of the Probate petition, Jeffcoat did not have care or custody of Perkins. Even if the statute provision for notice were applied to a person who "had" care and custody, Jeffcoat would still not meet this criteria. The statute requires care and custody, not care or custody. Whatever the relationship between Jeffcoat and Perkins, they were not married; he did not hold power of attorney; they kept separate bank accounts; Jeffcoat required Perkins to pay for her own share of household expenses; and he further required her pay for her own interest in the property in issue even as she suffered through her terminal illness. (R. 146-147). These undisputed material facts suggest more of a role as a common occupant of a property than a "caretaker" and in no way connote someone who has "care and custody" of Perkins. In fact, when Perkins condition deteriorated, it was Jeffcoat who requested that Williams come to take care of her mother. Moreover, to the extent Jeffcoat claims to have had "care

and custody" of Perkins, his actions after Perkins left South Carolina suggest otherwise. Perkins left South Carolina with Williams on June 16, 2015. Perkins resided with Williams in her home in Alabama from June 16, 2015 until her death on November 26, 2015. During this five-month period, Jeffcoat did nothing to assert he had any legal right to take care of Perkins. Jeffcoat never challenged the guardianship or conservatorship in any way until the appeal of this matter when his counsel advanced a subject matter jurisdiction challenge to the actions of the Alabama Probate court.

In sum, neither the extrinsic evidence nor the record from the Probate proceedings in Alabama rebut the presumption of Alabama jurisdiction over Perkins as required by *V.L. v. E.L.*, 577 U.S. 404 (2016).

II. Jeffcoat's counterclaims were not properly preserved for Appeal.

Jeffcoat now argues the factual allegations advanced on his counterclaims were actually material underpinnings to the alleged unlawful transfer of real property. This is a different position than the one advanced in Jeffcoat's motion for summary judgment, and it is plain that Jeffcoat expected the entire matter of the transfer of real property to be decided as a question of law. (R. pp. 235-236). Framing the issues on appeal now as questions of fact that were not considered by the Master in Equity is not proper as Jeffcoat must advance those arguments to the lower court.

Moreover, regardless of any reference to the lower court's and counsel's discussion of other potential issues at the time of the hearing on the motion for summary judgment, Jeffcoat failed to file a Rule 59(e) motion to preserve any claims that the counterclaims were material to the issue of the property transfer. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 347 S.E.2d 99, 289 S.C. 483 (S.C. 1986); *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct.App.1991) (a matter is not preserved for appellate review where they trial court was never "afforded the opportunity to rule on the clarity of its order" pursuant to Rule 59(e)). Thus, the counterclaims are not preserved for appellate review.

III. The Opinion of the Court of Appeals does not create new law and the Court's methodology was not unprincipled.

The Court of Appeals Opinion specifically cites *Smith v. Cutler*, 366 S.C. 546, 550-51, 623 S.E.2d 644, 656-7 (2005), *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass*, 359 S.C. 407, 410-11, 597 S.E.2d 850, 851 (Ct. App. 2004) and Section 27-7-40 as precedent for its holdings in this appeal. Chief Justice Toal in a unanimous holding by the South Carolina Supreme Court opined in *Smith v. Cutler*, that "unlike a tenancy in common with right of survivorship, a joint tenancy with right of survivorship is capable of being defeated by the unilateral act of one joint tenant." Moreover, contrary to Jeffcoat's contentions, the Court of Appeals is clearly interpreting the law rather than creating new law or expanding the current law. The Petitioner's authorities suggesting that the Court of Appeals

applied an unprincipled approach are being taken out of context. There is nothing in the ruling by the Court of Appeals that suggests or intimates that it was interpreting a statute "according to a sense of justice and right" rather than legislative intent. Petitioner cites *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) and bolds the sentence "**Courts do not have that power.**" The next sentence in that very same opinion states that "courts must employ recognized principles of statutory interpretation with the purpose of discerning legislative intent". *Id.* The Court of Appeals opinion in the current case explicated the purpose of Section 27-4-40 through an analysis of learned treatises; common law precedent; and similar acts of other state legislatures. *Williams v. Jeffcoat*, 863 S.E.2d 822 at 828 (S.C. 2021).[1] Far from issuing a ruling based on a "sense of justice and right", the Court of Appeals provided a careful and principled analysis of how it arrived at its conclusions by citing guiding principles of statutory interpretation as well as pointing to similar acts by other jurisdictions.

CONCLUSION

Therefore, contrary to Jeffcoat's submissions, the petitioner was not entitled to notice of the Alabama hearing, and the Alabama Court appropriately took jurisdiction. Jeffcoat's submissions regarding his counterclaims are equally

[1] The opinion cites John V. Orth, *The Perils of Joint Tenancies*, 44 Real Prop, Tr. & Est. L.J. 427, 431 (2009) for its authority for the manifest purpose of the South Carolina statue being to do away with the intervening strawman conveyance to satisfy the four unities of title.

unreviewable due to his failure to file appropriate post-trial motions. Moreover, there is nothing in the Opinion of the Court of Appeals that creates new law or expands the existing law. The Justices followed a principled approach in arriving at their conclusions which were based on the principles of statutory construction as well as the common law precedents that are almost identical to this case. There are no errors of law in this matter; there are no novel questions law; no dissents in the Court of Appeals; and no conflicting prior Supreme Court decisions. The petition for writ of certiorari should be denied.

s/ Timothy A. Domin
Timothy A. Domin
Bar Number.: 5828x
Clawson and Staubes
126 Seven Farms Drive
Charleston, SC 29492
Phone: (843) 577-2026
Fax: (842) 722-2867
tdomin@clawsonandstaubes.com

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