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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

THOMAS A. RUSSO, CIRCUIT COURT JUDGE

Case No. 2013-CP-33-306

Appellate Case No. 2021-001049

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., S.C. Department of Revenue,
and S.C. Department of Motor Vehicles, Defendants,

Of whom

Dazarhea Monique Parson and
A. Tyrone Parson, Jr., are the Petitioners.

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**COUNTER-STATEMENT OF
QUESTION PRESENTED FOR REVIEW**

1. Whether the Court of Appeals correctly ruled that the Circuit Court did not abuse its discretion when it found that the petition for relief was not filed within a reasonable time?

COUNTER-STATEMENT OF THE CASE

This appeal arises out of a foreclosure action (the “Foreclosure Action”) instituted by Respondent Anderson Brothers Bank (“ABB”), on April 26, 2013. The Foreclosure Action was referred to Haigh Porter, the Special Referee for Marion County. The Special Referee conducted a hearing on July 29, 2013, at which counsel for ABB appeared and Petitioners Dazarhea Parson and Tyron Parson (the “Parsons”) appeared on their own behalf. (R. p. 102.)

Following the hearing, the Special Referee granted judgment in favor of ABB and entered his Special Referee’s Order and Judgment of Foreclosure and Sale (the “Foreclosure Order”). (R. pp. 102-113.) The Parsons appealed the Foreclosure Order to the Court of Appeals on August 28, 2013, but failed to obtain a satisfactory bond; thus, the trial court proceeded with the foreclosure sale of the subject property, and the Special Referee signed that certain Deed by Judicial Order of Special Referee on October 24, 2013. (R. pp. 32-36.)

After the Court of Appeals dismissed the above-referenced appeal on December 18, 2014, the trial court signed that certain Order Granting Writ of Assistance on January 5, 2015, which ordered the Marion County Sheriff’s Department to evict and remove the Parsons from the subject property. (R.

pp. 20-22.) After this Court denied certiorari on May 7, 2015, the trial court entered another Writ of Assistance (the “Second Writ of Assistance”) on September 25, 2015, wherein the trial court directed the Marion County Sheriff’s Department to again evict and remove the Parsons from the subject property. (R. pp. 23-25.)

The Parsons then appealed the Second Writ of Assistance. (R. pp. 143-145.) The Court of Appeals dismissed that appeal on January 13, 2016, and denied rehearing on June 10, 2016. (R. pp. 26-29.) The Parsons again filed a writ of certiorari with this Court on July 8, 2016, which this Court denied on March 24, 2017. (R. pp. 30-31; R. pp. 126-138.) Because the Parsons again did not post a valid bond, the Marion County Sheriff’s Department evicted the Parsons pursuant to the Second Writ of Assistance on November 2, 2015.

On June 4, 2018, the Parsons filed their Petition for Relief from Void Judgment 60(b)(4) & Challenge of Jurisdiction, for relief from the August 16, 2013 Foreclosure Order (the “Rule 60 Motion”). (R. pp. 213-230.) On August 20, 2018, the Honorable Thomas Russo held a hearing on the Rule 60 Motion and took the matter under advisement. (R. p. 324.) On October 1, 2018, the Circuit Court entered its Order Denying Defendants’ Petition for Relief from Void Judgment 60(b)(4) and Challenge of Jurisdiction (the “Rule 60 Order”). (R. pp. 3-8.) On October 10, 2018, the Parsons filed their Motion to alter or

amend the Rule 60 Order (the “Rule 59 Motion”). (R. pp. 257-270.) On October 25, 2018, the Circuit Court entered its Order Denying Defendants’ Motion to Alter or Amend Judgment without a hearing pursuant to Rule 59(e) and (f), SCRCP (the “Rule 59 Order”). (R. pp. 1-2.)

On November 19, 2018, the Parsons filed and served their Notice of Appeal of the (a) Rule 60 Order and the (b) Rule 59 Order. The Court of Appeals affirmed the Circuit Court’s decision on May 19, 2021, finding that (i) the Circuit Court did not abuse its discretion in entering the Rule 60 Order, and (ii) the untimely filing of the petition was dispositive of the appeal. The Court of Appeals denied rehearing on August 23, 2021. The Parsons then petitioned this Court for a writ of certiorari on September 20, 2021 (the “Petition”).

ARGUMENT

I. The Parsons have not established any basis for granting their Petition for Certiorari under Rule 242(b), SCACR.

The Parson's Petition fails to present any reason for this Court to issue a writ of certiorari. South Carolina Appellate Court Rule 242(b) provides that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons," such as those enumerated in subparts (1) through (5). Rule 242(b), SCACR. Here, there are no "special and important reasons" meriting the exercise of this Court's discretion, nor do the Parsons identify any of the enumerated reasons in Rule 242(b), SCACR. Rather, the Petition merely restates arguments previously presented to the Court of Appeals and properly rejected by that court.

II. The Court of Appeals correctly held that the Circuit Court did not abuse its discretion in finding that the Rule 60 Motion was not filed within a reasonable time, as required by Rule 60(b), SCRCP.

The Parsons raise one question for this Court to review: whether the Court of Appeals erred in affirming the Circuit Court's Rule 60 Order. Rule 60(b), SCRCP, provides that "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding" for any of the reasons enumerated in subparts (1) through (5).

Rule 60(b), SCRCP. However, “[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.” *Id.* In the Rule 60 Motion, the Parsons argue the Foreclosure Order is void. (R. pp. 213-215.) Although the one-year absolute deadline did not apply to the Rule 60 Motion, the rule clearly and unambiguously requires that it be filed “within a reasonable time.”

The Court of Appeals correctly found that the Circuit Court did not abuse its discretion by denying the Rule 60 Motion because it was not filed within a reasonable time. The Special Referee entered the Foreclosure Order on August 16, 2013. (R. pp. 102-113). Although the Parsons filed two unsuccessful appeals of the Foreclosure Order and Second Writ of Assistance to the Court of Appeals and this Court, the Parsons did not file the Rule 60 Motion until June 4, 2018, or approximately four years and ten months after the entry of the Foreclosure Order. Relying on *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003), and *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996), the Court of Appeals properly held that four years and ten months is not a reasonable time under Rule 60(b).

In *McDaniel*, the Court of Appeals held “[w]hether or not McDaniel

made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge's sound discretion" and "[t]he special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion." *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 870. In *Perry*, the Court of Appeals similarly concluded that the appellant "failed to proffer an argument as to why we should find that a four-year delay is reasonable in this case." *Perry*, 357 S.C. at 48, 590 S.E.2d at 505.

Thus, this Court should deny the Petition because there are no "special and important reasons" warranting the exercise of this Court's Discretion and the Court of Appeals correctly affirmed the Circuit Court's Rule 60 Order.

CONCLUSION

In light of the foregoing, Respondent Anderson Brothers Bank respectfully asks the Court to deny the petition for writ of certiorari.

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