RECEIVED
Mar 22 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge

---

Appeal Case No. 2021-000434
Circuit Court Case No. 2019CP0702178

Bluffton Park Community Owners' Association, Inc., Respondent,
v.
Joseph Chakying Sun, as Trustee of The 2009 Sun's Family Trust in South Carolina, USA; Joseph Chakying Sun, Individually; Liling Sun n/k/a Liling Walsh; Oleysa Matyushevsky; Christine Varg; and Citizens Opposed to Domestic Abuse, Defendants,
of whom Joseph Chakying Sun, as Trustee of The 2009 Sun's Family Trust in South Carolina, USA and Joseph Chakying Sun, Individually, Appellants.

REPLY BRIEF OF APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

SOUTH CAROLINA COURT RULES

REPLY TO RESPONDENT'S AMENDED INITIAL BRIEF

1. The Service by Publication accomplished by the Respondent is a Fraud and Collusion using a facially defective, clearly perjured affidavit. Most of all, it is a Denial of Due Process against the Appellants. *Brown v. Malloy,* 345 S.C. 113, 118, 546 S.E.2d 195, 197 (Ct.App.2001); *see Miles v. Lee,* 319 S.C. 271, 274, 460 S.E.2d 423, 425 (Ct.App.1995) The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. *U.S.C.A. Const. Amend. 14.* A party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. *Brown v. Malloy, supra.*

Respondent filed its initial brief stating "The main thrust of the case was an action for possession of real property located at 18 Sixth Avenue, Bluffton, S.C. 29910", seeking foreclosure of various matters - a lien, breach of contract, unjust enrichment, etc. But as evidence in the entire case can show, the respondent is not entitled to have possession of any property from the Appellants. There is no merit on anything it claims and there is no documentary evidence or detail allegations anywhere in the entire case supporting its claims. As explained in more details in Appellant's Final Brief and the Record on Appeal, Respondent employed fraud and collusion with a perjured affidavit (Designation Matter Item 1, Amended Affidavit filed by Wild on January 24, 2020) which is facially defective because Counsel Wise in a sworn statement stated that:

"11. The undersigned has, after due diligence, been unable to locate a valid and reliable alternate physical address for Joseph Sun within or without the state of South Carolina."

The clerk of court based on that false statement, signed and issued an order of publication on January 31, 2020. But in the same amended affidavit filed by Counsel Wise as an attachment on the same date January 24, 2020 of a report by an investigator, where Wild used to pretentiously

show his due diligence in the search for Joseph Sun, there was an alternate address of 43 Broadview Drive, Ridgeland, S.C. in Jasper County where Sun was residing as permanent resident and Mr. Wild also has such knowledge as stated in his amended respondent's brief. (Page 15.)

In an appeal from an action in equity, such as the within case, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Horry Cty. V. Ray, 382 S.C. 76,80, 674 S.E.2d 519,522 (Ct.App. 2009).*

All record and the transcripts of the hearings (on July 17, 2020 and August 4, 2020) can show, the first time Appellants were informed of a foreclosure case filed against them was when they were noticed of a foreclosure hearing on July 17, 2020. Respondent counsel Wild tried to use his own fabrication and inadmissible hearsay as his own testimony in the hearings and his amended brief of respondent, to imply that Appellants had knowledge earlier. Appellant Sun complained to the judge to no avail. The WebEx hearings, respondent agent acknowledged record of Appellants' payments on all annual assessments except 2017 and 2018. Other claims by the respondent on violations, penalties, attorney fees and late fees were explained in Appellants' Initial Brief already filed as fabricated, illegal and barred by this courts holding in *Rawlinson Road Homeowners Association, Inc. v. Jackson, 395 S.C. 25, 716 S.E.2d 337 (2011)*.[1]

At least all fees and charges must be litigated and proven in a trial on damages. Respondent counsel told numerous lies in his respondent's brief which cannot be supported by any evidence. But he uses the trick in his entire brief by citing non-existing transcript of (Tr. 7.17.20; Tr.8.4.20; Tr.2.8.21)(R.pp.__). Counsel Wild is trying to make it appear there is transcript to be cited, and

[1] Already cited and argued in the originally filed Appellant's Initial Brief. Counsel Wild repeatedly refused to answer Appellant's inquiry on the details of all the illegal and impermissible charges at the hearings. Wild claimed Appellants had already admitted all their allegations and illegal charges because they were in default. Wild claimed the case was closed See transcript of hearing on July 17, 2020, Item 27, Designation of Matter.

hope that the court would give him some credit as cited evidence. All his notations of (R.pp.__) are fraud because Appellant Sun has read all the transcripts and there is nothing counsel can cite that can truthfully support his false allegations. Counsel is counting on he can fill in false and fabricated page numbers in his final brief the same time that Appellant will file his Final Brief. That way, his false and fabricated page numbers will be taken as truth and Appellant will have no means to point out his falsity and fabrication.[2]

By using a perjured affidavit signed by Counsel Wild, the respondent committed fraud and collusion, therefore, even though "the decision to order service by publication is final", after Appellants pointed that out with supporting evidence in the record in their motion to open and set aside default filed on August 7, 2020 (Designation of Matter, Item 12) and again in their motion to reconsider filed on January 25, 2021 (Designation of Matter, Item 7), Judge Dukes should not have instructed Counsel Wild to include the denial of the two motions to set aside the Master's Decree and for injunction, in the final Masters Decree of Foreclosure, without addressing the merits of Appellants' motions. Judge Dukes should not have signed the Master's Decree/Foreclosure prepared by Counsel Wild. Judge Dukes in essence committed dereliction of his duty and allowed Respondent Counsel Wild to deny Appellants' motions without proper finding of fact or conclusion of law in the Master's Decree/ Foreclosure, Sale & Judgment.[3]

On Page 15 of Respondent's Amended Initial Brief, Counsel Wild admitted he was aware that Sun's Ridgeland address was number 6 on his list of search. Whether it was number 6 or 16

---

[2] Final Briefs are the last brief Appellant can file on appeal. Respondent counsel believes that all his falsities and fabrications cannot be challenged or corrected.

[3] After repeated requests from Appellant Sun for rulings on Appellants' motions, Judge Dukes at the end of the Hearing on August 4, 2020 said he was going to rule on Appellant's motions as part of his overall ruling. But his ruling was entirely prepared by Respondent counsel Wild verbatim. The grounds of denial of Appellants' motions were irrelevant avoiding all facts and arguments in Appellants' motion, as if the order was ruling on a different unrelated motion.

or whatever, Mr. Wild knew there was an alternate address for Sun. But he chose to ignore it and file a perjured affidavit that "Sun could not be found within or without the state of South Carolina" to obtain an Order of Publication by fraud so he could claim defraud against the Appellants surreptitiously when Appellants were not aware of the entire case. In the first foreclosure hearing (July 17, 2020) Wild repeatedly alleged that by default, Appellants had admitted to all his fraudulent allegations of debts. No further question was allowed and Judge Dukes agreed.

After the within case was filed in October 2019, Counsel Wild refused to even hire a process server to easily and readily have Sun personally served with the process. Wild's affidavits for publication were signed and filed in January 2020 during the total lock-down of the pandemic. Therefore, Wild's fraudulent scheme was clear. He devised the scheme to extort money from the Suns without allowing the Suns his day in court because by the time Sun was informed of the foreclosure hearing in July when Sun's daughter was back in the Bluffton house from university for the summer and forwarded to Sun the notice of foreclosure hearing, everything would be too late. Wild had covered up all the illegal penalties of impermissible violations and attorneys fees barred by the case of *Rawlinson Road Homeowners Association, Inc.,* supra. He obtained a secret default and buried the Suns' Answer, Counterclaim and CrossClaim against him.[4]

2. Appellants have made a motion to amend their initial brief, inter alia, the addition of the paragraph on "Standard of Review" which was inadvertently omitted because appellant Sun was using the revision 2009 rule as explained in his motion to amend. Appellants can insert the paragraph here and later in their Final Brief. The additional paragraph is as follows:

[4] After Appellant received the notice of foreclosure hearing from his daughter, he downloaded the complaint from the Beaufort County Public Index and immediately filed the answer and counterclaim. Appellant was never served with the process and the service by publication was a nullity. Appellant's filing of his belated Answer and Counterclaim 3 days before the hearing could be deemed acceptance of circuit court's jurisdiction. However, Judge Dukes did not accept Appellant's filing (Transcript hearing 7-17-2020) therefore circuit court never had jurisdiction of the Appellants. There is no admissible evidence to show otherwise.

STANDARD OF REVIEW

A foreclosure action is an action in equity. *Hayne Fed. Credit Union v. Bailey, 327 S.C.242, 248, 489 S.E.2d 472,475 (1997).* See also, *U.S. Bank Trust National Association v. Bell, 385 S.C. 364, 684 S.E.2d 199 (2009)*. In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Horry Cty. V. Ray, 382 S.C. 76,80, 674 S.E.2d 519,522 (Ct.App. 2009).*

"The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court." *Bloody Point Property Owner's Ass'n v. Ashton,* 410 S.C. 62, 66, 762 S.E.2d 729 (Ct. App. 2014). However, "An abuse of discretion occurs when the conclusion of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* Review of the denial of Appellants motions to set aside on P.15 of 18, of the Master's Decree/Foreclosure can show that the conclusion of the Master was controlled by an error of law and based on unsupported factual conclusion because Appellant was complaining the respondent counsel used a perjured affidavit in obtaining an order of publication (See Items 7 and 12 of Designation of Matter). When the Master allowed Respondent counsel to include the denial of the motions, counsel completely looked at a wrong motion.

Generally, unless there exists fraud or collusion, "once the issuing officer is satisfied with the supporting affidavit, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit. *Brown v. Malloy,* 345 S.C. 113, 546 S.E.2d 195 (Ct.App.2001); *see Miles v. Lee,* 319 S.C. 271, 460 S.E.2d 423, (Ct.App.1995) Appellants will show respondents employed fraud and collusion with a facially defective affidavit.

An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as

distinguished from legal conclusions, is without evidentiary support. The standard for granting relief from an entry of default is good cause under rule governing default judgments, while the standard is more rigorous for granting relief from a default judgment under rule governing relief from judgment. *Rules Civ.Proc., Rules 55©, 60(b)*. *Roberson v. Southern Finance of South Carolina,* 365 S.C. 6, 615 S.E.2d 112 (2005)

3. Appellant Sun found the copy of Amended Initial Brief of Respondent and motion to dismiss stamped filed by the respondent on March 2, 2022 on this court's website "C-Track for Public Access" and immediately prepared the Appellants' Reply Brief for filing.

Respondent's Initial Responsive Brief contains many false facts which cannot be supported by any evidence or record in the case. Appellant Sun will point them out specifically the false statements made by Counsel Scott Wild was intentional and knowingly made as a fraudulent scheme to employ fraud upon the court to extort money from the Appellants.

The specific fraudulent scheme is as follows: Mr. Wild knew the address of Suns residence in 43 Broadview Drive all the time. But a lawful personal service would not achieve a default judgment and Counsel Wild would have to litigate against the truth where he would lose because the Suns had paid all the assessments therefore all the penalties and attorneys fees were illegal. By employing fraud and collusion to obtain an order of publication, Counsel Wild can obtain a secret fraudulent default judgment during a total "lock down" due to the pandemic in January-March, 2020. Wild would obtain a default judgment because the Suns had no knowledge of the default in fact they did not even know anything about the lawsuit. (See the transcript of hearing on July 17, 2020). Therefore the Respondent can fabricate a large amount of charges without proof as their money to extort from the Suns.

There was no trial on the damages, no discovery allowed in violation of *Rules 55(b) and*

71. It is clear pursuant to the Beaufort County Public Index (Item 1, Designation of Matter) the first hearing was a foreclosure hearing when Appellant was notified of the foreclosure action for the first time. He was not allowed any questions, only allowed to verify that the Respondent Bluffton Park had received all annual assessment payments which payments were received. The two payments that Respondent claimed missing were found by Appellant in his bank record after the hearing and made copies and filed at the Beaufort County Public Record (Item 10, Designation Matter, Affidavit Joseph Sun, 12/16/2020). Therefore, Appellants have proven that they do not owe the Respondent any annual assessment fees or anything legally permissible.

DENIAL OF DUE PROCESS - Respondent has not filed a motion or notice of hearing for default judgment or for actual trial for damages, Appellant knew nothing about the default. (See Transcript of hearing July 17, 2020). Without obtaining a default judgment, Respondent hastily scheduled a foreclosure hearing on July 17, 2020. Appellants filed a motion to open and set aside default (Item 12, Designation of Matter) and again in their Motion to Reconsider pursuant to Rule 59, SCRCP (Item 7, Designation of Matter). As aforesaid in their initial brief, the Master allowed the Respondent counsel to include his denial in the proposed Master Decree over Appellants' objection and signed it on January 13, 2021. (Designation of matter, Item 8.)

In *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006), The South Carolina Supreme Court held that @566,

"Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. *Elam v. S. Carolina Dep't of Trans.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion"when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review"). However, an exception to this rule exists where an issue is raised but not ruled upon at a Rule 59(e) hearing. In *Coward Hund*, the court of appeals explained:"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment [,] is to request the trial judge to'reconsider matters properly encompassed in a decision on the merits.'"*Arnold v. State*, 309 S.C. 157, 172, 420S.E.2d 834, 842 (1992) *566 (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)). As one authority has noted,

"Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised." *James F. Flanagan South Carolina Civil Procedure 475* (2d ed.1996). *Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1,4, 518 S.E.2d 56, 58 (Ct.App.1999) (emphasis added); see also *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002) (quoting *Coward Hund*). In *Pressley v. Lancaster County*, 343 S.C. 696, 542 S.E.2d 366 (Ct.App. 2001), the court of appeals, citing *Coward Hund*, applied this principle when the court addressed the merits of an argument which Pressley raised at trial and in a Rule 59(e) motion, but which the trial court"summarily denied." See *Pressley*, 343 S.C. at 706 n. 4,542 S.E.2d at 371 n. 4."

Professor Flanagan further edifies: One commentator noted: "Lawyers cannot force a trial judge to address a disputed **511 issue." Moreover, the Supreme Court identifies two ways to preserve the issue: "a ruling by the trial judge or a post-trial motion." The language implies that a properly requested ruling under Rule 59 is sufficient without a specific judicial decision on the matter. *South Carolina Civil Procedure* 475–76 (2nd ed.1996) (footnotes omitted) (quoting *Charles E. Carpenter, Jr.* Preserving Error for Appeal, *South Carolina Lawyer*, 15,18 (Mar./Apr.1995) and *Pelican Bldg. Ctrs. v. Dutton*, 311S.C. 56, 427 S.E.2d 673 (1993).

Therefore, all Appellants motions were preserved on appeal regardless whether the Master had ignored them or signed the order after respondent counsel denied them groundlessly or fraudulently. Appellants filed their verified Answer, Counterclaim and CrossClaim four (4) days before the first foreclosure hearing. Appellants' Answer and Counterclaim were disallowed with no reason given, and no verbal or written order was issued. The other two (2) motions for Temporary Restraining Order filed on August 5, 2020 and to Open and Set Aside Default filed on August 7, 2020 were actually denied by the respondent counsel as the Master in Equity allowed the Respondent counsel to include them in its proposed Master Decree for denial without any finding of facts and conclusion of law. Therefore, All proceedings are preserved on appeal.

RESPONDENT'S MOTION TO DISMISSED SHOULD BE DENIED

Respondent's insertion of a motion to dismiss in its Brief in Response on Appeal is a violation of South Carolina Appellate Procedure as its attempt to avoid paying the filing fee and trying to litigate an issue which should have been and had already been addressed at the circuit court. Appellant had already paid the full amount of the required bond on appeal pursuant to the

Order of Master in Equity. Respondent chose to continue to "beat on a dead horse" as its harassment against the Appellants who have already suffered tremendous unnecessary losses due to respondent's malicious fraudulent scheme of extortion. Evidence has already shown that it is not entitled to any additional money from the Appellant and Counsel Wild knows that.

CONCLUSION

For the foregoing reasons, the Master's Decree of Foreclosure, Sale & Judgment issued on January 13, 2021 and the subsequent Form 4 Order issued on April 7, 2021 should be reversed and vacated, including all the liens and lis pendens and all other documents against the Appellants and their properties. The service by publication should be declared null and void and respondent's foreclosure action should be dismissed. The Respondent should be required to reimburse the Appellants all the fees and expenses they incurred in this entire case on appeal and in the circuit court. Appellants' Counterclaim and CrossClaim should be allowed to proceed.

Respectfully submitted

This 12th day of March, 2022.

JOSEPH C. SUN, pro se
P. O. Box 2543
Bluffton, SC 29910
854-345-0501

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Respondent a copy of Appellant's Reply Brief, by sending a copy of same to:

Scott M. Wild, Esq. P. O. Box 6867, Hilton Head Island, SC 29938
and by email to: scott@wildlawfirm.com

This 12th day of March, 2022.

_____
JOSEPH C. SUN