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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001151

Greenville Dental Office Management Group, LLC, a limited liability company,
proceeding pursuant to 33-44-1101 by and through its member,
Bhaskar Savani, D.M.D Respondent

v.

Jon Julian, D.D.S., Blake Julian, D.D.S.,
Greenville Dental Management Group, P.A. Appellants

FINAL REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

ARGUMENT 1

 I. The trial court's failure to set forth a value for the property at issue in its order appointing a prejudgment receiver constitutes reversible error1

 II. The trial court abused its discretion by making a prejudgment appointment of a receiver where there was only a contested right at issue and no clearly established apparent right to the property.....3

 III. The trial court improperly granted the appointment of a prejudgment receiver where all property was accounted for and there was no evidence that the property was in danger of being lost, materially injured, or impaired.....6

CONCLUSION..... 8

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Collins v. Doe</i> , 352 S.C. 462574 S.E.2d 739 (20024)	2
<i>Cromey v. S.C. Dep't of Revenue</i> , 864 S.E.2d 551 (2021)	2
<i>Greenwood Loan and Guarantee Ass'n v. Childs</i> , 45 S.E. 167, 67 S.C. 251 (1903)	5
<i>Peeples v. Agricultural Loan Association</i> , 156 S. C. 429, 153 S. E. 283 (1930)	4
<i>Pelzer v. Hughes</i> , 27 S.C. 408, 3 S.E. 781 (1887)	5
<i>Richland Cty. v. S.C. Dep't of Revenue</i> , 422 S.C. 292, 811 S.E.2d 758 (2018)	5
<i>Southern Trust Co. v. Cudd</i> , 166 S.C. 108, 164 S.E. 428 (1932)	4
<i>Truesdell v. Johnson</i> , 144 S.C. 188, 142 S.E. 343 (1928)	1
 <u>Statutes</u>	
S.C. Code Ann. § 15-65-60.....	1, 2

ARGUMENT

I. The Trial Court's Failure to Set Forth a Value for the Property at Issue in Its Order Appointing a Prejudgment Receiver Constitutes Reversible Error.

Respondent does not dispute that South Carolina statutory law requires every order appointing a receiver to include a value for the property at issue. It is also undisputed that the Receivership Order¹ on appeal does not include any finding setting the value of the property at issue and, therefore, does not comply with the statutory requirements for the appointment of a prejudgment receiver. Instead, Respondent attempts to steer the Court's analysis toward an improper and unnecessary exercise in statutory interpretation. This Court should refuse to engage in such superfluous inquiry and enforce the clear mandate of our state statutes and precedential jurisprudence from this very Court.

South Carolina Code of Laws expressly requires that:

Whenever the court or judge before whom such application is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in § 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver and direct the redelivery of the property to the party from whose possession it was taken. . . .

S.C. Code Ann. § 15-65-60 (emphasis added). Our Supreme Court has also unequivocally held that an order failing to include the required valuation has no legal effect. *See Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928) (“[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void”) (emphasis added).

Recognizing that the Receivership Order requires reversal because it contravenes both statutory and case law, Respondent resorts to a bizarre argument based on a truncated recitation of the law of statutory interpretation and applies it to circumstances unsupported by any reference to

¹ Receivership Order is defined in Appellants' opening brief.

the record. As an initial matter, Respondent's brief omits substantial tenets of statutory interpretation. As this Court recently reaffirmed,

What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. In interpreting a statute, the court will give words their plain and ordinary meaning and will not resort to forced construction that would limit or expand the statute.

Cromey v. S.C. Dep't of Revenue, 864 S.E.2d 551 (S.C. Ct. App. 2021) (citations and quotation marks omitted). "Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (citations omitted).

Here, S.C. Code Ann. § 15-65-60 is not ambiguous and Respondent makes no such argument in its responsive brief. Rather, Respondent contends that this Court should overlook the reversible error in the Receivership Order because Respondent now claims for the first time on appeal that it is impossible to assign a value to the disputed property. This allegation contradicts the evidence in the record of Respondent's own statements that the property it claimed to be in danger of dissipation was the salary amounts being paid to the Julians – a total amount of \$1,000,000. *See* Hearing Transcript (R. p. 169, ll.18-19, p. 190, ll. 1-3); Affidavit of Jon Julian (R. pp. 146-47); MOU (R. pp. 65-70 at ¶¶4, 6, 9, and 16); Service Agreements (R. p. 74 at ¶ 1, p. 77 at ¶ 9); and Email Correspondence to Trial Court with Exhibits (R. pp. 194-237). Respondents made no allegations of actual misuse and did not refute Jon Julian's affidavit that he and Blake Julian were only receiving salary amounts for providing dental services consistent with the provisions of the Service Agreements, despite the parties' disagreements about the continued validity and enforceability of the Service Agreements.

Respondents also neglect to cite to anything in the record supporting its statements that Appellants would have been unable to post bond had their right to do so been set forth as required in the Receivership Order. Notably, the statute is silent as to any consideration of Appellants' ability to post bond. At bottom, Respondent's arguments regarding the difficulty of ascertaining a value for the disputed property and Appellants' ability to post bond are inaccurate, uninformed, and irrelevant to the questions before the Court. Accordingly, Respondent's arguments regarding such matters should be disregarded in their entirety.

Notwithstanding the Respondent's flawed and inapposite valuation arguments, Respondents do not dispute that the Receivership Order fails to include any valuation for the disputed property. The controlling statute unequivocally provides that "there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given." S.C. Code Ann. § 15-65-60 (emphasis added). Therefore, this Court need not engage in any statutory interpretation but merely determine whether the Receivership Order complies with the mandatory provisions of the statute. It does not. Therefore, the trial court's omission of this required finding constitutes an abuse of discretion and the Receivership Order must be reversed.

II. The Trial Court Abused its Discretion by Making a Pre-judgment Appointment of a Receiver Where There was Only a Contested Right at Issue and No Clearly Established Apparent Right to The Property.

In its responsive brief, Respondent asserts that the trial court correctly found that Respondent met its burden to demonstrate an apparent right to the property at issue – that is, J. Julian's and B. Julian's income from their own labor – by solely relying on language in paragraph 4 of the MOU purporting to assign collections from the Julians' practices to Respondent. This argument is flawed.

First, it presumes that the assignment provision of the MOU stands alone. However, assignment under the MOU is conditioned on other provisions of the document including Savani's obligation to meet his capital contribution commitments. *See* MOU at ¶ 1 (R. p. 65). Respondent also selectively cites only a portion of paragraph 4, conveniently omitting the portion providing for the transfer of revenue to the Management Company only after payment of the Clinical Company's payroll and compensation of dental professionals. *See* MOU at 4 (R. p. 67). Additionally, Respondent falsely contends that Appellants concede the validity and enforceability of the MOU, when the record reflects that Appellants have consistently alleged, in their counterclaims in this case and their federal lawsuit, that, if the MOU is a binding agreement, Respondent's and Savani's prior material breaches invalidated the MOU. The trial court's disregard of the underlying circumstances and competing claims regarding the validity of the MOU constituted abuse of discretion and requires reversal.

South Carolina courts have long held that the appointment of a receiver is an equitable matter requiring the court to examine the totality of the circumstances. *See Southern Trust Co. v. Cudd*, 166 S.C. 108, 164 S.E. 428 (1932); *see also Peeples v. Agricultural Loan Association*, 156 S. C. 429, 153 S. E. 283, 285 (1930) (endorsing consideration of the answer to a complaint when determining whether to impose a receivership). In *Southern Trust Co.*, our South Carolina Supreme Court reversed the trial court's grant of a request to appoint a receiver. In so ruling, the Court explained that "[t]he books are full of cases holding that the appointment of a receiver is a drastic remedy and should be exercised with caution and circumspection." *Southern Trust Co. v. Cudd*, 166 S.C. at 114, 164 S.E. at 430. The Court further endorsed the consideration of the answer of the defendant in addition to the allegations of the complainant and recognized the importance of considering the totality of the circumstances in determining whether it is prudent and just to

appoint a receiver. *Id.* at 115, 164 S.E. at 430. Our courts have consistently denied requests for a pre-judgment receivership under circumstances where the movant's alleged apparent right to the property was doubtful, and the trial court erred in this case by ruling contrary to prevailing law. *See* Appellants' Brief at pp. 12-13 (citing *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 78 (1887), *Hardin v. Hardin*, 34 S.C. 77, 80, 12 S.E. 936 (1890), *Greenwood Loan and Guarantee Ass'n v. Childs*, 45 S.E. 167, 67 S.C. 251 (1903), and *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (all finding a pre-judgment receivership to be inappropriate where there was no clear establishment of an apparent right)).

In the instant case, Appellants asked the trial court review Respondent's request for the appointment of a receiver in light of Appellants' Answer and Counterclaims in this state court action and also to take judicial notice of the pleadings in the related federal action. *See* Hearing Transcript (R. p. 171, l. 9 –19); *see also* Amended Complaint and Exhibits in State Court Action (R. pp. 56-96); Answer and Counterclaims in State Court Action (R. pp. 97-111); Complaint in Federal Court Action (R. pp. 112-118). Viewing the complete record of the competing allegations and in consideration of the significant dispute regarding the validity of the MOU, Respondent has nothing more than a contingent or contested right to certain amounts collected by Appellants and the trial court abused its discretion by disregarding Appellants' answer and counterclaims. Accordingly, this Court should reverse the trial court's Order and dissolve the receivership.²

² In attempting to persuade this Court of its apparent right under the MOU, Respondent alleges that the parties operated in accordance with the MOU and that this conduct evidences the enforceability of the MOU. However, these allegations are not supported by any citation to anything in the record. Moreover, Appellants have repeatedly cited portions of the MOU that expressly provide that parties intent to memorialize their final agreements in specific agreements that would include all essential terms. *See* MOU (R. p. 65-70 at Preamble and ¶ 3, 9, 11, 16). Appellants also noted multiple ways in which the parties' conduct actually deviated from the

III. The Trial Court Improperly Granted the Appointment of a Pre-Judgement Receiver Where All Property was Accounted For and Respondent Presented No Evidence that the Property Was in Danger of Being Lost, Materially Injured, or Impaired.

Respondents contend, as they did before the trial court, that Appellants’ payment of compensation to the Julians “at or below the amounts set forth in the Services Agreement” somehow demonstrates that the property was in danger of being lost, materially injured, or impaired. In quoting only a portion of J. Julian’s Affidavit, Respondent takes the statement out of context and alleges that Appellants wrongfully paid such salary amounts. However, there is no evidence in the record that the compensation was wrongfully paid or that such payments constituted waste of assets that might otherwise be available to Respondent as damages in the future.

Section 9 of the Service Agreements provide:

Effective as of the Commencement Date, Contractor shall receive annual compensation of [Four Hundred Thousand Dollars (\$400,000.00) or Six Hundred Thousand Dollars (\$600,000.00), as applicable] payable on a monthly basis, on or about the 7th working day of each month, provided, however, that Service Recipient has sufficient working capital available to pay three (3) months of ordinary expenses and payroll expenses. . . .

Service Agreements (R. pp. 77 and 88 at ¶ 9).

Appellants presented evidence by affidavit that they used the revenue generated from their two offices to pay expenses for their two offices, which included their compensation, as allowed under the Service Agreements. *See* Jon Julian Affidavit (R. p. 147 at ¶ 4) (“Blake and I continue

language of the MOU. *See* Hearing Transcript (R. p. 171, l. 9 – p. 177, l. 2); Appellants’ Brief at pp. 5-8. For example, the MOU contemplated the formation of two limited liability companies with ownership split amongst Savani, J. Julian, and B. Julian. Despite such language in the MOU, only one entity was formed as a limited liability company with Savani as a member and the other was formed as a professional association without Savani having any interest in the entity. *Compare* MOU (R. p. 65 at ¶ 1) *with* Amended Complaint (R. p. 57-58 at ¶¶ 1-4) (defining the roles of Greenville Dental Office Management Group, LLC and Greenville Dental Management Group, P.A. contrary to the MOU). This does not meet the requirement for Respondent to show an apparent right to the property.

to operate our own dental practices and only use the revenue from our practices to pay expenses and payroll, including our own salaries at or below the amounts set forth in the Services Agreement, despite our disagreement with Savani’s interpretation of its terms.”) Appellants further presented evidence that they were already preserving all excess revenue in a bank account and that Appellants had provided Respondent with Bank Statements detailing all expenses and revenues. *Id.* at ¶¶ 4 and 5 (“Revenue amounts in excess of the actual amounts incurred for expenses and payroll are reserved in a bank account. [Respondents] have been provided with bank statements, which show our revenues and expenses in detail.”). Moreover, before the trial court, Respondent’s argument primarily focused on alleged damages it was accruing due to its inability to access the revenue generated by the Julians’ two dental practices, yet Respondent never presented any evidence that Appellants were not in compliance with the compensation provisions of the Service Agreements or that the excess amounts set aside in the bank account did not meet the three months’ working capital threshold for payment of their compensation. Appellants further noted, and Respondents did not refute, that Respondents had complete control of Savani’s dental practices and was capable of staffing those offices to mitigate any damages.

Despite Respondent’s arguments to the contrary, there was no evidence presented to the trial court and there is no evidence in this record to support the allegation that Appellants’ payment of compensation to themselves for their work was wrongful in any way or that such payments dissipated amounts that might be payable to Respondent at the conclusion of the litigation. *See* Motion to Appoint Receiver; Memorandum in Support of Motion to Appoint Receiver; Affidavit of Bhaskar Savani. The only evidence presented to the trial court demonstrated that Appellants made transparent disclosures to Respondent about the revenue and expenses of their practices, demonstrating that all funds were properly accounted, and that compensation was appropriately

paid to Appellants. *See* Hearing Transcript (R. p. 180, ll. 10-11) (counsel for Respondent conceding that the Julians are “the dentists. They’re entitled to compensation.”); *see also* Motion to Alter or Amend Order Appointing Receiver and Memorandum in Support (R. pp. 150-52); Affidavit of Jon Julian (R. pp. 146-47). In the absence of any evidence that the property at issue was in danger of being lost, materially injured, or impaired, the appointment of a pre-judgment receiver was not warranted. Accordingly, this Court should reverse the trial court’s order.

CONCLUSION

For the reasons set forth herein, Appellants Jon Julian, D.D.S., Blake Julian, D.D.S., and Greenville Dental Management Group, P.A asks the Court to reverse the trial court’s Order and dissolve the receivership.

Respectfully submitted,

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