

FILED BY CERTIFIED MAIL
DEC 13 2007
CLERK COURT OF APPEALS OF GA

IN THE COURT OF APPEALS

STATE OF GEORGIA

PIERCE E. MIZE AS ADMINISTRATOR)	
OF THE ESTATE OF JAMES KENNETH)	
WOODALL, SR., DECEASED,)	
Appellant,)	
v.)	CASE NO. A08A0720
JAMES KENNETH WOODALL, JR. AND)	
VERONICA WOODALL,)	
Appellees.)	

REPLY BRIEF OF APPELLANT

COMES NOW the Appellant, Pierce E. Mize as Administrator of the Estate of James Kenneth Woodall, Sr., deceased, and files this his Reply Brief to the Brief of Appellees, James Kenneth Woodall, Jr. and Veronica Woodall, served on December 3, 2007, as follows:

1.

On Page 3 of Appellees Brief, it is stated: "The parties agree that the note and security deed are valid and properly executed and delivered documents. . .". This sentence is ambiguous, but be that as it may in the context of this case dealing with gift law, Appellant maintains there was no delivery citing *Redfearn, Wills, Ga. §16-3 (6th ed.)*, Page 9 of

Appellant's Brief as James Kenneth Woodall, Sr. exercised control over the note and deed to secure debt until his death.

2.

The Appellees say at Appellant's insistence the issue of gifts causa mortis in this case is perplexing and it has placed an onerous burden on the Appellees, Page 7 of Appellees Brief, by Appellant's counsel forcing unrelated and irrelevant argument. Appellees misstate the record. The issue of gift causa mortis was injected in this case not by Appellant, but by Appellees' counsel, now and earlier, which counsel knows or should know. Paragraph 7 of Appellant's verified Complaint for Declaratory Judgment (R 3,5-6,26) states that the dispute is the Appellees assert the promissory note (R 13) and deed to secure debt (R 14-18) was a gift causa mortis made by James Kenneth Woodall, Sr. in contemplation of death under OCGA § 44-5-100 such that title to the land described in the deed to secure debt became the property of James Kenneth Woodall, Jr. and Veronica Woodall on James Kenneth Woodall, Sr.'s death on May 14, 2005, and the note was no longer owed. In response to that assertion, the Appellees responded in their verified Responsive Pleadings, Paragraph 4, (R 29,30,33) that as to the allegation of Paragraph 7 was the assertion of legal issues and positions, that is, that the Appellees did not deny they had asserted the promissory note and

deed to secure debt was a gift causa mortis. The issue raised in that Paragraph 7 was Appellees asserting due to a gift causa mortis the promissory note and deed to secure debt were no longer owed. Thus, unmistakably Appellees by their own pleadings put in play the legal issues and positions of a gift causa mortis. If there is to be misspent burden in this case it is due to counsel for Appellees asserting gift causa mortis was a legal issue and position which was abandoned. The Appellees cursory pass by gifts causa mortis in their Brief citing no authority, does not address the issue and at the same time put the issues and positions on the table.

3.

The Appellees raise the specter of merger in this case asserting the Appellees did not address that issue, Pages 9 and 10 of Appellees Brief. The Appellant's position is that title to the promissory note and deed to secure debt passed to the Administrator for the benefit of the heirs and creditors of the Estate of James Kenneth Woodall, Sr., Paragraph 7 of Appellant's Complaint (R 5-6). Appellees' assert there are three heirs. Page 9 of Appellees' Brief. The issue of title by merger is not reached because the Administrator took title on the death of James Kenneth Woodall, Sr. on May 14, 2005 (R 9). Be that as it

may, the trial court stated ``The merger of title would not in and of itself extinguish the promissory note. . .''. The Court was relying upon the forgiveness language of that note (R 72).

4.

The Appellees assert that to delay the resolution of this case only depletes the assets of the decedent's estate, and transfers the corpus (emphasized by Appellees giving special attention which counsel knows is not true) of the estate from the beneficiaries to the Administrator and its counsel, Page 9 of Appellees Brief. This is a misstatement. There is no citation to the record to justify this statement. This statement seeks to go outside the record. The statement is unfounded by the record. This is not a will case. This is an Estate of intestacy (R 3,10) where the property goes to heirs and creditors, including a widow. The Appellees' focus is inward. The Appellant's focus is outward. The Administrator has a fiduciary responsibility. The Appellees do not. Moreover, it is elementary the intestate Estate is controlled in the ongoing and final analysis by the

Probate Court and is answerable to that Court. Appellees' effort is seeking to go outside the record in order to prevail and makes a groundless assertion.

Respectfully Submitted, this 13 day of December, 2007.



P.O. Box 520
Elberton, Georgia 30635
(706) 283-5543
(706) 283-6968 FAX

Truett Smith
Attorney for Appellant
State Bar No. 663800

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Appellees with a copy of the forgoing Reply Brief of Appellant by depositing same in the U.S. Mail with adequate postage thereon, addressed as follows:

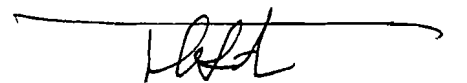
Richard D. Campbell, Esq.

Attorney at Law

P.O. Box 1056

Elberton, Georgia 30635

This 13 day of December, 2007.



P.O. Box 520

Elberton, Georgia 30635

(706) 283-5543

(706) 283-6968 FAX

Truett Smith

Attorney for Appellant

State Bar No. 663800