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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No.: 2021-001413

Jacquelyn Gladden and Patricia Reed, Respondents,

v.

Cyndy Reed Stewart, Appellant.

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE CIRCUIT COURT ERRED IN DENYING DEFENDANT CYNDY REED STEWART’S MOTION TO DISMISS THE CASE DUE TO A LACK OF SUBJECT MATTER JURISDICTION.
2. WHETHER THERE WAS SUFFICIENT EVIDENTIARY SUPPORT FOR THE CIRCUIT COURT TO FIND DEFENDANT CYNDY REED STEWART WILLFULLY AND WANTONLY COMMITTED THE STATUTORY CRIME OF FORGERY AND IS THEREBY LIABLE TO RESPONDENTS FOR ATTORNEY’S FEES AND COSTS.

IRREGULARITIES IN RESPONDENTS’ “STATEMENT OF FACTS”

In the sections of their brief entitled “Statement of Facts” and “Statement of Facts Not Before the Trial Court,” Respondents raise several claims without any evidentiary support for same. Most of these unsupported factual claims are not relevant to the legal issues raised in this appeal but reflect the disingenuous nature of many of Respondents’ claims as well as their bitter disagreement with Appellant concerning their mother, Theodocia Reed (hereinafter “Decedent”). For example, Respondents claim Decedent was diagnosed with dementia in the early 2000s. *Resp’t Br. at p.2*. Respondents go onto to claim without any evidentiary support that although Appellant disputes the date of the diagnosis, “it is agreed by [Appellant]” that Decedent received such a diagnosis. *Id.* This unsupported assertion was flatly contradicted by Appellant at the trial of this matter and Respondents offered no medical records from the 2000s to rebut that testimony. Appellant explained at trial that:

[Decedent] lived with us [Appellant and her husband] here for eight years, she lived in our [Florida] home and we had – we were involved in a lot of projects ... [including] a national project that kind of tracks people with memory losses, Alzheimer’s, dementia, something called ACTs. Mom and I participated in that for, I think, about two years....

(R. p. 408, lines 3 - 10). Appellant went on to explain that Decedent was diagnosed with Parkinson’s disease, not dementia, “because she was having some trouble standing and stepping

and so I took her in to see her neurologist here [in Florida] and he diagnosed her with Parkinson's disease" in 2010 (R. p. 409, lines 1 - 10). Of course, Respondents misrepresent the diagnosis to lend credence to their other arguments.

Additionally, and without citation to any evidence or pleading, Respondent's claim Appellant mischaracterized a court order denying Respondent Gladden's application to serve as the personal representative for the Decedent's estate which described Gladden as "unsuitable." *Resp't Br. at pp.5-6*. Contrary to the Respondents protestations, the court used that exact term to describe Ms. Gladden not once, but twice: "Probate Court Judge Noel found Jacquelyn Gladden unsuitable to act as personal representative for a number of reasons" and "Judge Noel found Jacquelyn Gladden unsuitable by her failing to Answer [Appellant's] petition." (R. p. 25).

IRREGULARITIES IN RESPONDENTS' "PROCEDURAL HISTORY"

During the briefing cycle for this appeal, Appellant was forced to respond to Respondents' Motion to Strike portions of Appellant's brief and designation of material for the record. Respondents claimed Appellant was relying on documents that were not "proffered or considered" by the trial court. Appellant easily brushed aside these false claims with citations to the enumerated documents that appeared in the trial court record. However, in addition to their misrepresentations about the trial record, Respondents used their false claims to disparage Appellant and her counsel's integrity by claiming they were attempting "to obfuscate the matters before the Appellate Court" and seeking to include "inappropriate materials in the record." Respondents continue their propensity to disparage Appellant in their brief to this Court. For example, Respondents allege without any factual support that "[t]here was a significant delay between filing and service [of the civil action in Orangeburg County Circuit Court] due to

Appellant appearing to avoid service.” *Resp’t Br. at p.6* Respondents go onto bloviate about “the dilatory actions of Appellant in hiring and firing four (4) separate counsels on the eve of the trial rosters of the Orangeburg Circuit Court case.” *Id.* These idle speculations phrased as allegations lack any support in record. For example, 3 of the 4 attorneys who represented Appellant in this matter appeared in before Judge Goodstein who granted all motions to withdraw as counsel and let the case proceed to trial the next day with no mention of inappropriate conduct by the Appellant in the Order that is the subject of this appeal. While Respondents did not attend the Judge’s conference with Appellant’s former attorneys, the Order appealed from in this case contradicts Respondents claim as it reflects Appellant was struggling to “find representation” in late 2019, at the beginning of the COVID-19 Pandemic (R. pp. 45-6).

It is also worth noting that the “Procedural History Not Relevant to the Trial” section appearing on pages 11 and 12 of Respondents’ brief consist exclusively of unsupported factual claims and has no reference to any pleading which is the traditional means of setting forth the procedural history of a case. One false claim on page 11 of this section claims Respondents have received “[n]o accounting” from the Appellant in the probate case where she serves as Personal Representative. This claim is contradicted on page 5 of Respondents own brief wherein they acknowledge receiving an Inventory and Accounting probate document filed by Appellant that alerted them to the transfer of the Orangeburg property.

As with the “Facts” sections, the false factual claims in the “Procedure” sections do little to address the issues Appellant raises in this appeal. However, one false claim in the Procedural History section on page 10 of the Respondents’ brief can be misleading. Respondents’ claim that the language in Judge Goodstein’s order finding that Appellant “breached her duty as Personal Representative” was a “scrivener’s error.” *Resp’t Br. at p.10.* No evidentiary support is given for

this claim and Respondents filed no motion asking the Judge to reconsider her ruling or that language. Respondents go on to reason that this text must be an error because “the Court specifically limited the case to issues arising during Decedent’s life.” *Id.* This claim, if true, may have some relevance to Respondents’ argument, but they offer no support for it whereas the weight of the evidence actually before this Court refutes the claim. Respondents and the Circuit Court have linked this action to the Decedent’s Estate case from the beginning. The Estate was raised in the Respondents’ complaint wherein they sought to recover the Orangeburg Property for the Estate and they claimed each Respondent was “entitled to quiet title for 1/3 interest in the Property through the Probate Court.” (R. p. 64, ¶ 71). It is only now that Respondents are asserting the alleged separate jurisdiction of the circuit court that they seek to claim the circuit court was adjudicating claims that were unrelated to the pending Estate matter before the Bamberg Probate Court. In fact, the matters were so tied in the minds of the Respondents that they filed a copy of their Orangeburg civil complaint in the Bamberg Probate Court as evidence against Appellant’s service as Personal Representative (R. p.112).

ARGUMENT

1. **WHETHER THE CIRCUIT COURT ERRED IN DENYING DEFENDANT CYNDY REED STEWART’S MOTION TO DISMISS THE CASE DUE TO A LACK OF SUBJECT MATTER JURISDICTION.**

Respondents argue they were entitled to select the forum of the Circuit Court for this dispute without seeking leave from the Probate Court based on *Tucker v. Tucker*, 264 S.C. 172, 213 S.E.2d 588 (1975). They cite *Tucker* for the proposition that “where a judge has jurisdiction to hear a matter and the matter having been heard before him, he entertains jurisdiction until his decision is rendered.” *Resp’t Br. at p.13.* *Tucker* offers no support for Respondents’ position, quite the opposite, it supports Appellant’s claim that the Orangeburg Circuit Court should NOT

have exercised jurisdiction over this dispute. In *Tucker*, an estate was opened for the deceased in the probate court. 213 S.E.2d at 588. At some point, a dispute arose between two of the Estate's co-executors with two of the deceased's sons siding with one of the executors. *Id.* An action was filed in the circuit court to remove one of the co-executors. *Id.* At the trial of the matter, a demurrer was submitted challenging the jurisdiction of the circuit court to hear the matter given the exclusive jurisdiction of the probate court. At the time of the *Tucker* action, Section 15-444 of the Code of Laws of South Carolina, 1962 established that the "[e]very judge of probate, in his county, shall have jurisdiction in all matters testamentary and of administration." 213 S.E.2d at 589. The Supreme Court framed the issue in *Tucker* as "whether the circuit court, when the administration of the estate of a deceased person has been initiated and is being processed in the court of probate, has jurisdiction to entertain an action by one co-executor to remove the other co-executor and to settle a dispute between the two by way of injunction." 213 S.E.2d 589. The *Tucker* Court found that jurisdiction lay with the probate court, not the circuit court. It supported that ruling with the language of concurrent jurisdictions cited by Respondents, but the facts in this matter fit foursquare with the facts in *Tucker*, not Respondents' contentions in this matter. As with the *Tucker* plaintiffs in circuit court, Respondents were aware that an action had been filed in probate court. At least one of the Respondents challenged Appellant's appointment as the personal representative (today's "executor") and learned of the transfer of the Orangeburg home from the Inventory filed by the Appellant in the probate court. Rather than respect the jurisdiction of the probate court, Respondents filed this civil action in the Orangeburg County Circuit Court, outside the jurisdiction of the probate judge, and now claim that jurisdiction is appropriate because it is their "chosen court." As discussed below, the modern jurisdictional statute of the probate court, S.C. Code Ann. 62-1-302 (2022) grants the probate court "exclusive original jurisdiction over all subject matter

related to ... the determination of property in which the estate of a decedent ... has an interest.” 62-1-302(a)(1). That power is granted “[t]o the full extent permitted by the Constitution.” 62-1-302(a). That is not to say that the jurisdiction granted is absolute, the jurisdictional statute recognizes several specific instances of concurrent jurisdiction. For example, the probate court has concurrent jurisdiction with the family court in certain marital cases (-302(c)). The probate court also has concurrent jurisdiction with the circuit court in wrongful death matters (-302(b)), actions to determine real estate matters for “heirs and successors” that are “pending” in circuit court (-302(a)(1)); and in “actions to try title concerning property in which the estate of a decedent ... asserts an interest” if a timely motion is made by a party or the probate court to remove the dispute from the probate court to the circuit court (-302(d)(3)). Respondents meet none of these grants of concurrent jurisdiction to the circuit court. As in the *Tucker* case, there was no pending case in circuit court to determine a “real estate matter” for an “heir or successor” pursuant to section -302(a)(1). Additionally, the Respondents did not file a motion to remove their real estate and tort claims from the probate court to the Orangeburg Circuit Court as required by section -302(d)(3). This is not an insignificant failing of the Respondent’s case. The removal procedure set forth in statute is critical to the probate court’s ability to manage its cases because the statute also gives the court the power to, “in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy.” *S.C. Code Ann. §62-1-302(f)*. Respondents’ failure to respect and abide by the jurisdiction of the probate court and the procedures under which it operates removed the Bamberg Court’s ability to efficiently manage the Estate before it and creates the situation where Respondents are allowed to raise the same allegation in two separate courts based on their needs,

not the needs of the probate court. It is not too much of a leap to conclude that the drawn out proceedings in the probate case filed in 2015 were caused, to a great extent, but this failure to abide by the removal provisions of section -302(d) and (f).

“The jurisdiction of a court is determined by the sovereign creating it.” *Peterson v Peterson*, 333 S.C. 538, 547-48, 510 S.E.2d 426, 431 (Ct. App. 1998). Courts which consider the jurisdiction of a particular court must abide by the “cardinal rule of statutory construction [which] is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). This Rule was recently used in a case addressing the concurrent jurisdiction of the family and probate courts in South Carolina in *Seels v. Smalls*, Op. No.28103 (S.C. Sup. Ct filed Aug. 3, 2022). *Seels* articulated the “long-standing principle” that “implied repeal of statutes is not favored” and that statutory provisions must be “read in harmony to give effect to each whenever possible.” *Seels* at p. 7. If Respondents are allowed to remove an issue that should be before a probate court without filing the removal motion required by 62-1-302(d), it would be effectively repealing that provision and the power of the probate court to manage its docket as the Legislature has provided for in section -302(f).

Although Respondents admit they first “became aware of the conveyance” of the Orangeburg home that is the gravamen of this dispute from the Appellant’s filing of an Inventory and Appraisal with the Bamberg County Probate Court¹ they took no action to bring that dispute to the probate court trying to manage their mother’s Estate (R. p. 58, ¶15) and *Res Bf. at p.5*. The numerous causes of action brought by Respondents in the complaint they filed in the Orangeburg County Circuit Court all related to that one transfer of real property.

¹ Respondents’ brief is replete with false factual assertions that lack any citation to the record. Here is one example. While Respondents admit on page 5 of their brief to have received an Inventory and Appraisal that the Appellant filed, in her capacity as Personal Representative, in the Probate Case, they falsely claim in other portions of their brief to have not received any information from the Estate Case. Compare *Res Bf. at p.5* to *p.11*.

Respondents' claim that "as applied to matters of real estate conveyed by a living person and a suit against a living person for such conveyance, the probate court does not have jurisdiction." *Res Bf. at p.14*. Their sole citation of authority for this proposition is the case of *Brown v. Butler*, 347 S.C. 259, 554 S.E.2d 431 (Ct. App. 2001). *Brown* is a decision involving a transfer of marital property from the husband to his sister more than two (2) years prior to the husband's death and the wife subsequent lawsuit against the sister to recover that property. Unlike the instant matter, the husband's death and estate were not issues in the case; therefore, the *Brown* court concluded the action was not covered by the applicable version of the statute setting forth the probate court's jurisdiction. Here, Respondents claims in the Circuit Court arise from their desire for the contested property to be returned to the Estate and in fact the property was returned and is a part of the Mother's Estate at the time of the filing of this brief. *Brown* is further distinguishable from the instant matter in that Appellant, as a devisee of her Mother's will, has an interest in the property that is subject to the jurisdiction of the Probate Court, the sister against whom the action was brought in *Brown* had no probate interest and nothing in the decision suggests that any probate interest was effected or implicated by the action.

Rather than *Brown*, the Court of Appeals Decision in *Estate of Stanley v. Sandiford* is more instructive in deciding the subject matter jurisdiction at issue in this case. 287 S.C. 148, 337 S.E.2d 248, (S.C. App. 1985). *Stanley* involves a dispute over the ownership of English Stanley's passbook saving account. Mr. Stanley originally opened a joint savings account with his first wife. After her death, Mr. Stanley had his deceased wife's name removed from the account and added Lydia Sandiford to the account. As Mr. Stanley aged, his children (and devisees under his will) helped him withdraw money from the account, but he maintained control of its passbook. After Stanley's death, his children and Sandiford contested ownership of the savings account. The

children argued the account was owned by Stanley's Estate and should come to them by operation of the residuary clause of Stanley's will. On the other hand, Sandiford argued she was entitled to Stanley's savings as it was a joint account with a right of survivorship in her. 287 S.C. at 150-51, 337 S.E.2d at 249-50. The probate court heard from all parties and ruled in favor of the children, Sandiford appealed. Sandiford argued, *inter alia*, "that the probate court lacked subject matter jurisdiction to determine ownership of the disputed account." 287 S.C. at 151, S.E.2d at 250. The *Stanley* Court held that Sandiford's "argument is meritless" reasoning that "[t]he administration of an estate entails collection of the decedent's personal property and the distribution of it to those entitled to it. Plainly, under long established case law, the probate court is required to identify the assets in the estate and to distribute them pursuant to the decedent's will." *Id.*

Although *Stanley* involves a dispute over personal rather than real property, as well as an earlier version of the statute authorizing the jurisdiction of probate courts, its principles reflect the current statute and jurisdiction of a South Carolina probate court. The subject matter jurisdiction of the probate court is outlined in Section 62-1-302 of the South Carolina Code of Laws which provides in pertinent part that each probate court has "exclusive original jurisdiction" over the "estates of decedents, including . . . determination of property in which the estate of a decedent . . . has an interest". *Seels v. Smalls* (S.C. 2022) at p.11. In *Seels*, the Supreme Court held that a dispute over marital property filed in the family court remained with the family court even though one spouse passed away during the pendency of the action. Recognizing the statutory basis of the family court's concurrent jurisdiction with the probate court in certain instances, the Court reasoned that the earlier filing of the family court action was an exception to the exclusive jurisdiction of the probate court. The *Seels* Court noted the "general rule [] that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches

to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." (*citing Gilley v. Gilley*, 327 S.C. 8, 10-11, 488 S.E.2d 310, 312 (1997)). In *Seels*, no jurisdiction existed for the probate court because both parties were living. In this matter, the initial jurisdictional filing was with the Bamberg Probate Court, not the Orangeburg Circuit Court which issued the ruling at issue in this appeal. Accordingly, the order appealed from should be dismissed and this dispute returned to the Bamberg Probate Court.

CONCLUSION

For the reasons set forth above, jurisdiction over this matter is properly before the Bamberg County Probate Court in the action which has been pending since 2015 and continues without resolution as of the date of this filing. Jurisdiction over this matter by the Orangeburg Circuit Court is improper for the reasons set forth above. With regard to the other issues raised in Respondents' brief, Appellant incorporates the contentions and arguments set forth in her initial brief in reply as if repeated verbatim herein.

Respectfully submitted,

15 September 2022

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