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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case No. 2022-000357

Joe L. Adams, Jr. ,Appellant

v.

Betty Ogbuneke,Respondent.

Motion to Dismiss Appeal

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Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Joe L. Adams, Jr.,)
)
 APPELLANT,)
)
 vs.)
)
 Betty Ogbuneke,)
)
)
 RESPONDENT.)
 _____)

IN THE COURT OF APPEALS
 OF THE SIXTEENTH JUDICIAL CIRCUIT
 CASE NO.: # 21-CP-46-02764

MOTION TO DISMISS APPEAL

Respondent Betty Ogbuneke, through her attorney, hereby moves to dismiss the Appellant’s Complaint pursuant to South Carolina Rules of Civil Procedure (SCRCP) Rule 260(a) as Appellant has failed to comply with the requirements of the Rules and in the alternative, a Motion for a Dismissal under 12(b)(6) for failure to state a claim under S.C. Code Ann. § 62-1-308(I). Respondent further requests for attorney fees of \$2,500.00 and costs pursuant to South Carolina Court Rule 222.

MOTION TO DISMISS
(Failing to Preserve Issues for this Appeal)

Appellant appealed an Order from Probate Court pursuant to South Carolina Code Ann. §62-1-308(b) to the Circuit Court. At the Circuit Court, Appellant failed provide a statement of the issues on appeal and failed to raise an issue of law on his first appeal; he now seeks to raise the issues here.

A statement of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

South Carolina Court Rule 208(b)(1)(B)

Appellant has failed to comply with the requirements of Rule 208(b)(1)(B) on his first appeal and failed to provide a verbal answer as to an issue of law to Judge McKinnon at the hearing for his first appeal. Therefore, the first appeal was dismissed. Appellant's Brief focuses on the idea that he is receiving a second bite of the proverbial apple, which is not a standard for appeal.

MOTION TO DISMISS PURSUANT TO

(12(B)(6) For Failure to State a Claim According to South Carolina Code Ann. § 62-1-308(I))

Pursuant to S.C. Code Ann. §62-1-308(I), "The circuit court, court of appeals or Supreme Court **shall** hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented." (Emphasis Added). The Appellant seeks to have the appeal consider evidence that he was unable to submit at the hearing. This evidence in the form of exhibits and statements in his appeal. Neither the exhibits nor the transcripts were served on the Respondent for review. Further, the Appellant fails to state an issue of law for this court to consider and for that, his appeal should be dismissed.

WHEREFORE, Respondent Betty Ogbuneke moves this court for an Order dismissing this Appeal in its entirety with prejudice including attorney fees of \$2,500.00 pursuant to Rule 222. This Motion is based on the SCRCF, statutory and case law as well as the Complaint that was submitted before the court. Due to the adversarial nature of this Motion, Counsel certifies that there is no duty to consult with the Appellant prior to filing this motion under Rule 11(a) SCRCF.

January 1, 2023

Chester, SC

s/ Cyrus Corbett

Cyrus Corbett BAR # 103156

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