

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
PROBATE COURT

Hon. Dale Atkinson, Judge

Case No. 2020-000782

RECEIVED
JAN 30 2023
SC Court of Appeals

In the Matter of Estate of Herbert Franklin Dickson, Jr.

Milton Oakley Dickson,

Appellant,

v.

Arthur B. Beasley, Jr., as Personal Representative
of the Estate of Herbert Franklin Dickson, Jr.,

Respondent.

**RESPONSE IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING
OR REMAND TO CIRCUIT COURT**

Respondent, Arthur B. Beasley, Jr. as Personal Representative of the Estate of Herbert Franklin Dickson, Jr., and through undersigned counsel, respectfully submits this response in opposition to the petition filed by Appellant, Milton Oakley Dickson, and would show this honorable court the following:

ARGUMENT & AUTHORITY

As noted by the Appellant, this court dismissed the present appeal "for lack of appellate jurisdiction on the basis that Appellant failed to file with the circuit court prior to appeal to this court." Appellant's Pet. at 1; *see also In re Estate of Dickson*, No. 2022-UP-455, 2022 S.C. App. Unpub. LEXIS 592, at *1 (Ct. App. Dec. 14, 2022) ("Because Milton

failed to file an appeal with the circuit court prior to appealing to this court, we dismiss this appeal for lack of appellate jurisdiction”). Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, a petition for rehearing on this Order would require the Appellant to “state with particularity the points supposed to have been overlooked or misapprehended by the court.” SCACR 221(a). Initially, while the Appellant’s petition delineates sixteen separate points that he suggests this court “overlooked and/or misapprehended”, Appellant’s Pet. at 1-2, each of the points relates to the supposed merits of the Appellant’s appeal, not to the failure to file an appeal with the circuit court or the lack of appellate jurisdiction as a result. *See id.* at 2-4. Following the delineation of these wholly irrelevant points, the Appellant offers a variety of arguments, theories, and unrelated statutes in a thinly veiled attempt to have this court salvage the Appellant’s case despite its admitted failure to file an appeal in the circuit court as dictated by South Carolina law. As outlined below, however, none of the theories offered permit this court to save the Appellant from its own failure to comply with statutory requirements.

Appellant begins by suggesting that dismissal for lack of appellate jurisdiction is merely permissive. *See* Appellant’s Pet. at 5 (focusing on use of word “may” in decisions such as *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008)). The Supreme Court of South Carolina has rejected a loose interpretation of the statute governing appeals from probate court. *See In re Estate of Cretzmeier v. Bloch*, 365 S.C. 12, 615 S.E.2d 116 (2005). In *Estate of Cretzmeier*, the appellant attempted to comply with § 62-1-308(a) by mailing notices of appeal to the circuit court. *Id.* at 13, 615 S.E.2d at 116. While the appellant had mailed the notice to the correct court “there was no record

that a notice of appeal had been filed in the circuit court within ten days [of the probate court order,” *id.*, and the case was dismissed for lack of appellate jurisdiction. *Id.* On appeal, the Supreme Court of South Carolina “decline[d] Appellant’s invitation to construe [§ 62-1-308] in a manner inconsistent with its unambiguous terms, *id.* at 14, 615 S.E.2d at 116, holding instead that “the statute is clear that the notice of appeal ‘must be filed’ in the circuit court within the ten-day period.” *Id.* at 14, 615 S.E.2d at 117.

While the Appellant in the present case “contends that *In re Cretzmeyer* is distinguishable on its facts” Appellant’s Pet. at 5, he follows this suggestion up by freely admitting that he did not file a notice of appeal in the circuit court. *Id.* at 6 (Appellant “filed the notice of intention to appeal in the court of appeals”). As explained by the Supreme Court of South Carolina, “the statute is clear that the notice of appeal ‘must be filed’ *in the circuit court* within the ten-day period.” *In re Estate of Cretzmeyer*, 365 S.C. at 14, 615 S.E.2d at 117 (emphasis added). Given the Appellant’s admitted failure to comply with this requirement, there can be no question that appellate jurisdiction under § 62-1-308 no longer exists.

Seeking to avoid the express terms of § 62-1-308 and its strict construction by South Carolina courts, the Appellant suggests both (1) that the preemption of “Rule 5(a) of the South Carolina Rule of Civil Procedure is a matter of first impression”, Appellant’s Pet. at 6, and (2) that a strict interpretation of § 62-1-308(a) would render the possibility of direct appeal to the Supreme Court meaningless. *See* S.C. Code Ann. § 62-1-308(1) (“If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself

injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.”) The Appellant offers no explanation or argument of how Rule 5(a) is implicated by the failure to file timely notice in the circuit court or how § 62-1-308 would be rendered meaningless in the present case where there is no evidence that the parties consented to direct appeal to the Supreme Court.

Perhaps recognizing the weakness of its request for a rehearing, the Appellant “moves that this matter be remanded to the Circuit Court.” Appellant’s Pet. at 6. In making this request, however, the Appellant cites to no authority for this court to remand any case, let alone the present case, to a court which has never been involved at any stage of the proceeding. Instead, the Appellant cites to a variety of authority for general principles without explaining how or why they would apply to the case at bar. Appellant offers no authority suggesting that SCACR 204 applies to direct appeals from a probate court, nor does he explain how such application would not run afoul of the dictate of § 62-1-308 that “appeals from the probate court must be to the circuit court and *are governed by the following rules.*” S.C. Code Ann. § 62-1-308 (emphasis added). While S.C. Code Ann. § 62-1-308 references application of some of the SCACR, *see, e.g.*, § 62-1-308(d), Rule 204 is not mentioned. A review of South Carolina law by Appellee has revealed only a single published instance of Rule 204 being applied in a probate case, but only to transfer a case to the Supreme Court after it was first properly appealed from the probate court to circuit court. *See Turner v. Daniels*, 404 S.C. 430, 431, 746 S.E.2d 40, 41 (2013) (The probate court dismissed Appellant’s claim pursuant to Rule 12(b)(6), SCRCR, finding the allegations in Appellant’s petition did not fit within the clear language of the statute. On

appeal, the circuit court affirmed. Appellant's appeal from the circuit court was certified to this Court. Rule 204, SCACR”).

Equally unhelpful to Appellant is § 62-1-303(c) which is considered with venue, not appellate jurisdiction, and provides that if a probate court “finds that, in the interest of justice, a proceeding or a file should be located in *another court of probate* in South Carolina, the court making the finding may transfer the proceeding or file to the other court.” S.C. Code Ann. § 62-1-303(c). This court did not dismiss the present appeal for improper venue and is not a probate court. Accordingly, § 62-1-303 is wholly inapposite.

Appellant’s final discussion is begins with a brief discussion of subject matter jurisdiction, an issue not raised by this court’s Order, before citing a handful of cases that predate the adoption of § 62-1-308. *See* Appellant’s Pet. at 7-8. The Appellant offers neither explanation or argument, however, as to how any of these cases could possible alter the requirements of § 62-1-308 or the Appellant’s admitted failure to comply with the requirements of that code section.

CONCLUSION

At its core, the Appellant’s petition is either a request that this court ignore South Carolina statutory law with respect to appeals from a probate or a plea for this court to rescue Appellant from its own failures to comply with the statutory requirements. Appellant fails to offer support for either proposition, however, and its Petition for

Rehearing and/or Remand must therefore be denied.

Dated: January 22, 2023

/s/ Kenneth R. Young, Jr. Esquire
Kenneth R. Young Jr., Esquire
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Telephone: (803) 773-4371

Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

Dale Atkinson, Presiding Judge

RECEIVED

JAN 30 2023

SC Court of Appeals

Case No. 2008-ES-43-00411

Appellate Case No.: 2020-000782

In the Matter of Estate of Herbert Franklin Dickson Jr.

Milton Oakley Dickson Appellant

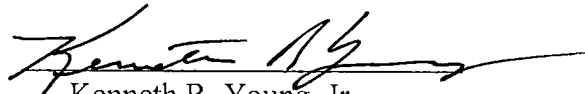
v.

Arthur B. Beasley, Jr., as Personal Representative

of the Estate of Herbert F. Dickson, Sr., Respondent

PROOF OF SERVICE

I certify that on the 25th day of January, 2022, the undersigned served counsel for the Appellant with a copy of the Response In Opposition To Appellant's Petition For Rehearing Or Remand To Circuit Court by depositing the same in the United States Mail, postage prepaid, to S. Jahue Moore, 1700 Sunset Boulevard, P.O. Box 5709 West Columbia, SC 29171.



Kenneth R. Young, Jr.
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Young & Associates, PA
23 West Calhoun Street
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Attorney for Respondent

January 25, 2023.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
PROBATE COURT

Hon. Dale Atkinson, Judge

Case No. 2020-000782

In the Matter of Estate of Herbert Franklin Dickson, Jr.

Milton Oakley Dickson,

Appellant,

v.

Arthur B. Beasley, Jr., as Personal Representative
of the Estate of Herbert Franklin Dickson, Jr.,

Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing Response in Opposition to Appellant's Petition for Rehearing or Remand to Circuit Court on Milton Oakley Dickson by depositing a copy of it in the United States Mail, postage prepaid, and addressed to his attorney of record at the following address:

S. Jahue Moore
MOORE TAYLOR LAW FIRM, P.A.
P.O. Box 5709
West Columbia, S.C. 29171

Dated: January 23, 2023

/s/ Kenneth R. Young Jr., Esquire
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Attorney for Respondent

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* CERTIFIED FAMILY COURT MEDIATOR
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** LICENSED IN SC & NC
** STATE AMBASSADOR,
AMERICAN ASSOCIATION
OF PREMIER DUI ATTORNEYS

January 23, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JAN 30 2023

SC Court of Appeals

Re: In the Matter of Estate of Herbert Franklin Dickson, Jr., Milton Oakley Dickson vs.
Arthur B. Beasley, Jr., as Personal Representative of the Estate of Herbert F. Dickson,
Sr.

Case No.: 2008-ES-43-00411 Appellate Case No.: 2020-000782
My File Number: Y20-2674

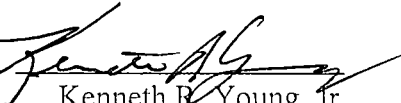
Dear Ms. Kitchings:

I am enclosing an original and six copies of my Response In Opposition To Appellant's
Petition For Rehearing Or Remand To Circuit Court dated today, January 23, 2023. I am also
enclosing a self-addressed, postage pre-paid envelope to return the copies.

With kind regards, I am

Sincerely yours,

YOUNG & WARR, LLC.

By: 
Kenneth R. Young, Jr.

KRYjr/mcd

Enclosures

cc: Arthur B. Beasley, Jr.

S. Jahue Moore, Esquire

What God requires - - to seek justice; to love kindness; and to walk humbly with God
Micah 6:6-8 (KJV)

