

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Debra T. Robinson,)
)
Appellant,)
)
vs.)
)
Antoine Lamar Robinson and)
Gerrick Lance Robinson,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

ORDER DISMISSING APPEAL
2022-CP-42-2559

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SC Court of Appeals

Debra T. Robinson appealed an Order from the Probate Court of Spartanburg County. Antoine Lamar Robinson and Gerrick Lance Robinson, filed a Motion seeking to have the appeal dismissed.

A hearing was scheduled for January 5, 2023. The hearing was virtual by Webex; Robert L. Gailliard, Esquire was present representing Debra T. Robinson; Richard H. Rhodes, Esquire was present representing Antoine Lamar Robinson and Gerrick Lance Robinson.

This action involves the estate of the late Gerry Robinson who died intestate on September 22, 2018. The heirs at law were his surviving spouse, Debra T. Robinson (Appellant), and his two (2) sons, Antoine Lamar Robinson and Gerrick Lance Robinson (Respondents). The Appellant is the step-mother of the Respondents.

The Order from which this appeal was taken was signed by the Honorable Ponda A. Caldwell, Probate Judge for Spartanburg County, on June 15, 2022. When the appeal was filed, the Appellant specified that she had received the Order on June 18, 2022. Her appeal was not filed until July 11, 2022.

The Respondents argue that Code §62-1-308(a) requires an appeal from Probate Court to be filed within 10 days. Since this was not done, the Respondents contend that the appeal should be dismissed.

The Appellant argues that Rule 74 of the S.C. Rules of Civil Procedure specifies that an appeal to the Circuit Court must be filed within 30 days. Therefore, she contends that the appeal was properly filed.

The Court recognizes that Circuit Court Rule 74 does allow additional time for filing of an appeal to the Circuit Court, but Code §62-1-308(a) requires the appeal to be filed within 10 days. The Court holds that Code §62-1-308(a) is controlling.

This Court's decision is based on the following:

- The right to an appeal arises from statute and is controlled by statute. Chem-Nuclear Systems v. S.C. Board of Health, 374 SE 201 (2007)
- In the case of Witzig v. Witzig, 325 S.C. 363 (Ct. App. 1996), the Court held that an appeal from Probate Court is governed by Statute 62-1-308(a) and therefore the requirements specifying how the appeal is taken supersedes Circuit Court Rule 74.
- The treatise, Appellate Practice in South Carolina, authored by the former Chief Justice Jean Toal, specifies that the 10 day filing period of 62-1-308(a) controls over a 30 day time limit provided by Rule 74. Also, the treatise specifies that if a notice of appeal is not timely filed, the appeal should be dismissed.

In the case at bar, the appeal was not timely filed, and this Court hereby dismisses the same.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Debra T. Robinson VS Antoine L. Robinson , defendant, et al

Case Number: 2022CP4202559

Type: Order/Dismissal

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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