STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF EDGEFIELD	)	**CASE NO. 2022-CP-19-0114**
	)	
George William Rauton, III,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING**
vs.	)	**MOTION TO DISMISS**
	)	
Patsy R. Lightle,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER COMES BEFORE THE COURT on motion of Defendant Patsy R. Lightle to dismiss this action pursuant to Rules 12(b)(3) and 12(b)(6). A hearing was held on January 30, 2023. Present were Plaintiff's counsel, D. Randolph Whitt, Esquire, Defendant, and Defendant's counsel, Adam T. Silvernail, Esquire. Based on the arguments presented by the parties, the court **GRANTS** the motion to dismiss in light of Plaintiff's failure to state facts sufficient to support a cause of action, as set forth below, and finds the remainder of Defendant's motion to be **MOOT**.

RULE 12(B)(6) STANDARD

A 12(b)(6) Motion may not be granted if the pleadings, viewed in the light most favorable to the Plaintiff, and the inferences drawn therefrom, show that the Plaintiff could prevail on any theory of the case. *Gray v. State Farm Auto Ins. Co.,* 491 S.E 2nd 272, 274-75 (Ct. App. 1995). "In deciding a motion to dismiss pursuant to Rule 12(b)(6), the trial court should consider only the allegations set forth on the face of the" complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

DISCUSSION

This action was commenced by the filing and service of a summons and complaint asserting a single cause of action, titled "Intentional Interference with Inheritance." Defendant was served and filed the instant motion in lieu of an answer. She seeks dismissal under Rule 12(b)(6) based on the fact that the South Carolina Supreme Court has to date declined to recognize Intentional Interference with Inheritance as a cause of action, but she further asserts that Plaintiff has failed to set forth facts sufficient to support the cause of action, even if it were recognized.

Specifically, Defendant argues that, although the Supreme Court has discussed the law on Intentional Interference with Inheritance in other jurisdictions, it has noted that the cause of action is not specifically recognized in South Carolina law. *See Douglass ex rel. Louthian v. Boyce,* 344 S.C. 5, 542 S.E.2d 715 (2001). Defendant's argument, in part, is that no facts could be plead to support a cause of action which does not exist in South Carolina, thereby justifying dismissal under Rule 12(b)(6).

Plaintiff counters, first, that the existence of this potential cause of action is a novel issue which should not be disposed of on a Rule 12(b)(6) motion, but instead allowed to proceed to a developed record for any appellate review at a later time. *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 226, 456 S.E.2d 907, 909 (1995) ("[A] novel issue . . . should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss.").

Second, Plaintiff noted that, while the South Carolina Supreme Court has not yet recognized Intentional Interference with Inheritance, the Court appears likely to do so when presented with the proper case.

Plaintiff relies on the Federal District Court case of *Wellin v. Wellin*, 135 F. Supp.3d 502 (D.S.C. 2015) to support his assertion that his claim would be recognized by the South Carolina Supreme Court. Defendant agrees that Judge Norton's prediction is well-reasoned and that the South Carolina Supreme Court would likely recognize Intentional Interference with Inheritance.

Despite the likelihood of the Supreme Court's recognizing Intentional Interference, Defendant argues that the case is still ripe for dismissal because Plaintiff fails to plead the required elements identified by South Carolina and other Courts. The Supreme Court in *Louthian* noted*:*

> [4] We have adopted the closely analogous tort of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int'l Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 179, see also Allen v. Hall, 328 Or. 276,974 P.2d 199(1999) (intentional interference with inheritance closely analogous to intentional interference with economic relations). Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. *See, e.g., Nemeth v. Banhalmi*, 99 Ill. App. 3d 493, 55 Ill. Dec.14, 425 N.E. 2d 1187 (1981); *Morrill v. Morrill*, 712 A. 2d 1039(Me.1998); *Doughty v. Morris* 117 N.M. 284, 871 P. 2d 380(Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St. 3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis. 2D 426, 570 N.W. 2D 889(1997); *see also* Restatement (Second) of Torts § 774B (1979). *Louthian, supra* at n. 4.

Defendant argues that Plaintiff's allegation that he had an expectancy is made in such a conclusory manner that it is not a "properly pleaded factual allegation" which is deemed admitted for review under Rule 12. *See Hambrick v. GMAC Mortg. Corp*., 634 S.E.2d 5, 7 (Ct.App. 2006). Defendant argues that this fails to meet the first element of Intentional Interference with Inheritance which both the *Louthian* and *Wellin* Courts identified. This Court agrees.

Defendant further argues that the *Wellin* Court also found that the "South Carolina Supreme Court would likely adopt [the] prerequisite" that a Plaintiff must have no remedy at probate in order to pursue a claim for intentional interference with inheritance. *Wellin* at 517.

Plaintiff makes the bald allegation that he has no remedy at probate, allegedly because Defendant "converted 100% of the funds in question to nonprobate assets," but offers no explanation for this statement. *See* Complaint, ¶13. The Court agrees with Defendant that this allegation is insufficient to support his cause of action, even if it were recognized in South Carolina Courts. The only basis offered for this conclusory statement is that Defendant somehow converted assets into non-probate assets, and Plaintiff does not offer an explanation for why conversion of assets evades the Probate Court's jurisdiction. Elsewhere in the Complaint, Plaintiff asserts that Defendant somehow retitled bank accounts and/or inappropriately deposited the proceeds of a sale of real estate into accounts which were non-probate. These matters are squarely within the Probate Court's jurisdiction, as established in S.C. Code Ann. §62-1-302(a)(1):

> **SECTION 62-1-302. Subject matter jurisdiction; concurrent jurisdiction with family court.**
>
> (a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:
>
> (1) estates of decedents, including the contest of wills, construction of wills, **determination of property in which the estate of a decedent or a protected person has an interest**, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court. . . [emphasis supplied]

Plaintiff alleges Defendant acted improperly under a Power of Attorney for their deceased father, and the Probate Court also has jurisdiction to address any alleged loss(es) caused by an Agent under a Power of Attorney – either under the above-quoted statute or under the following statute:

> **SECTION 62-8-401. Jurisdiction.**
>
> The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article.

Plaintiff's allegations could have been brought more naturally in the form of one or more actions in the Probate Court to try title to any asset(s) allegedly retitled or misappropriated and/or to address any alleged breach(es) of fiduciary duty by Defendant.

Finally, Plaintiff is a co-Personal Representative of the Estate of George William Rauton, Jr., and he has authority in that capacity to try title to and/or recover any asset which may have been converted to non-probate property.

> **SECTION 62-3-709. Duty of personal representative; possession of estate.**
>
> Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property. . . **He may maintain an action to recover possession of property or to determine the title thereto.** [emphasis supplied]

Plaintiff argues that his allegation that property has been converted to non-probate property would leave the Probate Court without jurisdiction to entertain the matter, but this Court finds that the above-quoted statutes demonstrate that Plaintiff could have brought one or more actions in the Probate Court to address the allegations made in this case.

CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff has failed to set forth facts sufficient to support his cause of action. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant's motion to dismiss pursuant to Rule 12(b)(6), *SCRCP*, is **GRANTED**, and this case is dismissed. Because of the result reached, the Court finds that Defendant's motion to dismiss pursuant to Rule 12(b)(3) or, alternatively, to transfer venue, is **MOOT**.

AND IT IS SO ORDERED.

_____
Brian M. Gibbons, Presiding Judge

February , 2023

Edgefield Common Pleas

Case Caption: George William Rauton III VS Patsy Rauton Lightle

Case Number: 2022CP1900114

Type: Order/Dismissal

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge