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Jun 13 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Derham Cole

Appellate Case No. 2021-001076
Trial Court Case No. 2019CP4204222

Tonji Meredith.....Appellant,

v.

Tammy Lee Glenn and Scotti Glenn.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Luther Leon Meredith (“the decedent”) passed away in Spartanburg County on July 14, 2017. The decedent was the father of the parties. On July 20, 2017, the document ultimately admitted to probate as the Last Will and Testament of the decedent dated October 3, 1996 (“the Will”) was delivered to the Probate Court for Spartanburg County (“the Probate Court”). On September 11, 2017, the Respondent Tammy Glenn, who was named in the Will as Personal Representative, applied to the court to be so appointed (ROA at _____).

On June 8, 2018, the Appellant petitioned the Probate Court contesting the Will (ROA at _____). The Petition came before the Honorable David F. Anderson, Associate Probate Judge for trial on August 26, 2019. The Appellant was represented by Spartanburg Attorney Michael Brown, and the Respondents were represented by the late Attorney Albert Smith, also of Spartanburg, whose office had apparently prepared the Will. The trial resulted in two Orders issued on September 16, 2019 (ROA at _____) and November 7, 2019 (ROA at _____).

The September 16 Order dealt with the claim of the Appellant that the Will was invalid because the individual who notarized it was not actually a notary public for South Carolina. Attached to this Order is information obtained by the court suggesting the legitimacy of the notary, and the court notes that lack of proper notary credentials does not affect the validity of the Will. The court left the record open for additional evidence in this regard, but none was received.

The November 7 Order recites that the Appellant claimed that there was an earlier Will, but produced no proof of its existence. She claimed that this Will, together with several life insurance policies, were in a box at the house which was missing. The Appellant claimed that, several days after the decedent’s passing, she noticed that someone had entered her father’s home

and had taken items. She filed a police report, but the report did not mention the box that contained the Will (ROA _____). Judge Anderson concluded that no reason existed to set aside the Will, and admitted it to probate.

The Appellant filed her Notice of Appeal to the Circuit Court on November 27, 2019. On February 27, 2020, the appeal was tried by the Honorable J. Derham Cole, resulting in his Order dated May 13, 2020 (ROA at _____). That Order dismissed the appeal on jurisdictional grounds, the court finding that the Appellant had not complied with the procedural requirements of S.C. Code Ann. Section 62-1-308. On May 26, 2020, the Appellant filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (ROA at _____). By Order of Judge Cole filed August 27, 2021, this Motion was denied because it was not timely. Judge Cole also reviewed the record and concluded that there was no basis to alter its previous decision (ROA at _____). This appeal followed by Notice of Appeal of the Appellant dated September 23, 2021.

STANDARD OF REVIEW

“In reviewing a judgment of the Probate Court, the Supreme Court is governed by the principal that the factual findings of a Probate Judge will not be set aside on appeal unless clearly or manifestly erroneous.” *O’Neill’s Estate v. Tuomey Hospital*, 254 S.C. 578, 176 S.E.2d 527 (1970). The Appellate Court “must construe the evidence presented to the trial court so as to support its decision whenever reasonably possible.” *Jordan v. Judy*, 413 S.C. 341, 776 S.E.2d 96 (Ct. of App. 2015). The court “must look at the evidence in the light most favorable to the Respondents and eliminate from consideration all evidence to the contrary.” *Id.*

ARGUMENT

I. THE CIRCUIT COURT WAS CORRECT IN DISMISSING THE APPEAL OF THE DECISION OF THE PROBATE COURT BECAUSE THE APPELLANT FAILED TO COMPLY WITH S. C. CODE SECTION 62-1-308 AND RULE 59(E), SCRPC.

As Judge Cole pointed out in his Order filed May 13, 2020, the South Carolina Probate Code requires the Circuit Court hearing an appeal from the Probate Court to “apply the same rules of law as an appellate court would apply on appeal.” *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993). Judge Cole further noted that “the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction.” *In Re Estate of Cretzmeyer*, 365 S.C. 12 615 S.E.2d 116 (2005). A review of the filings in the appeal from Probate Court reveals that the Appellant failed to comply with all of the requirements of S.C. Code Ann. Section 62-1-308 regarding appeals from Probate Court except for the filing of the Notice of Appeal itself.

Accordingly, at the Circuit Court level, the Respondents were not apprised of the grounds for appeal and thus had no ability to respond. As a result, the law is clear that the Circuit Court had no jurisdiction to entertain the appeal, and properly dismissed it.

Judge Cole also had no choice but to deny Appellant’s attempted motion pursuant to Rule 59(e) of the SCRPC. This rule clearly states that the motion must be filed within ten days of written notice of entry of the Order. Counsel of record for the Appellant received electronic notice of the court’s Order on May 13, 2020, and the Rule 59(e) motion was filed on May 26, 2020. As the motion was not filed within ten days, the Circuit Court had no jurisdiction to reverse its Order. This court should note that the Appellant does not

challenge, in her Statement of Issues on Appeal, the finding of the Circuit Court that its jurisdiction was denied by the failure of the Appellant to timely file the Rule 59(e) motion.

II. ALTHOUGH NOT REQUIRED TO DO SO, THE CIRCUIT COURT CORRECTLY CONCLUDED THAT NO BASIS EXISTED TO REVERSE THE DECISION OF THE PROBATE COURT.

The primary basis for this appeal appears to be the refusal of the Probate Court to accept another Last Will and Testament of the decedent. It should go without saying that the Probate Court cannot be expected to rule on the validity of a Last Will and Testament that is not presented to the court to review. The Appellant testified that this Will was located in a box at her father's house, together with several life insurance policies (ROA at _____). The Appellant also testified that she moved into her father's home during his last illness, and presumably remains there almost six years later. The box supposedly containing "the later dated last will and testament" was allegedly stolen, but when she reported the burglary to the police, she failed to mention the existence of the box or its alleged contents (ROA at _____).

In response to the Appellant's other issues, the Respondents are simply unaware of what the Appellant is referring to when she states that the "deed search ordered by the Probate Judge David Anderson was never rendered." Neither of the Orders issued by Judge Anderson refers to a "deed search". Respondents assume that the Appellant is referring to her attack on the notarization of the Will. It should be noted that the Will was prepared and witnessed by Respondents' trial counsel, the late attorney Albert V. Smith. He advised the court that the notary was a long-time employee of his, and Judge Anderson made a substantial effort to satisfy the Appellant that the Will was, in fact, notarized by a valid South Carolina

notary public. Documentation is attached to and made a part of Judge Anderson's September 16, 2019 Order (ROA at _____).

It should also be noted, however, that even if the credentials of the notary failed, rendering the Will not self-proving pursuant to S.C. Code Section 62-2-503, the Will should still have been admitted to probate as complying with the requirements of Section 62-2-502. The Appellant does not challenge the validity of the signatures of the two witnesses, which renders the Will valid even if it is not self-proving. There is simply no basis in the record to support a conclusion that the Will is not the genuine Last Will and Testament of the decedent.

CONCLUSION

The Appellant in this matter has failed to comply with the requirements of the law regarding appeals from the Probate Court to the Circuit Court, and from the Circuit Court to this court. As such, the Circuit Court correctly ruled that it had no jurisdiction to consider the claims by the Appellant that the Probate Court erred in admitting the Last Will and Testament of the decedent to probate. Nevertheless, the Circuit Court gave due consideration to all substantive claims by the Appellant that the Probate Court erred in its denial of her claims. The Respondents are entitled to title, use and possession of the property willed to them by the estate of the decedent, to which they have been denied since the death of their father in July of 2017. The Respondents respectfully request that this appeal be dismissed.

Respectfully submitted,

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