

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 16 2023

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Judge

Case No. 2022-CP-42-2559
Appellate Case No.: 2023-000120


Antoine Lamar Robinson and Gerrick Lance Robinson.....Respondents,

vs.

Debra T. RobinsonAppellant.

MOTION TO DISMISS APPEAL

The Respondents are filing this Motion pursuant to Rule 269, and are seeking to have the appeal pending in this case dismissed. The Respondents respectfully contend that the pending appeal has no merit and is for the purpose of delay.


Richard H. Rhodes
Attorney for the Respondents
260 North Church Street
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(864) 585-8166

June 14, 2023

Other Counsel of Record:

Robert L. Gailliard
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Attorney for Appellant

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF APPEALS

Antoine Lamar Robinson and)
Gerrick Lance Robinson,)

Respondents,)

vs.)

Debra T. Robinson,)

Appellant.)
_____)

PETITION IN SUPPORT OF
MOTION TO DISMISS APPEAL
CASE NO.: 2022-CP-42-2559
APPELLATE CASE NO.: 2023-000120

FACTS OF THE CASE

Based on the attached Orders, the undisputed facts in this case are as follows:

Decedent – Gerry Robinson (Decedent) died intestate on September 22, 2018 (March 16, 2020 Order, page 1). The Appellant is the surviving wife and the Respondents are the children of the Decedent from his first wife.

Personal Representatives – After the Decedent died, the Appellant did not seek to open the estate; the Respondents petitioned the court and were appointed Personal Representatives on April 25, 2019 (June 15, 2022 Order).

Administration of Estate Delayed – The administration of this estate has been ongoing for over 4 years. The delays have been caused by the Appellant:

- (A) The Appellant has always contended that she wanted the marital home and the Respondents did not object. However, she refused for the Respondents to enter the house, and she served a trespass notice on them. The Respondents were unable to have the house inventoried and appraised so they petitioned the court (March 16, 2020, Order, page 1). After obtaining an Order to gain access to the home place, and to allow an appraisal, the Appellant still refused to allow the appraiser to enter. The Respondents again had to go into court for the appraiser to gain access. The Appellant was found in contempt (May 6, 2020, Order, page 3).
- (B) A final hearing was scheduled for October 13, 2021, but at the hearing, the Appellant requested a continuance so that she could get an attorney (June 15, 2020, Order, page 1). Therefore, the hearing had to be rescheduled.
- (C) A final hearing was held on February 9, 2022. The Appellant had an attorney but offered no testimony or evidence relating to estate assets (June 15, 2022, Order page 2).

- (D) The Appellant asked to receive the marital home and the 2004 Honda. She was awarded these. The Appellant did not object to the Respondents having the Dover Road property and the 1972 Ford, and these were awarded to the Respondents. [The Appellant implied that she wanted the 2002 Chevy, which she valued at only \$50; the court awarded this to the Respondents but used the value of \$1,500.00, so the Appellant was financially rewarded.] (June 15, 2022, Order page 8 and 9). Accordingly, there was nothing in dispute.

Appeal from Probate Court – The Appellant filed an appeal from Probate Court. The Final Order of the Probate Court was dated and filed on June 15, 2022. The Appellant acknowledged receiving the Order on June 18, 2022 but did not file an appeal until July 11, 2022 (January 9, 2023 Order, page 1). Additionally, the Appellant never did file any Statement of Issues on Appeal as required by statute. The Circuit Court dismissed the appeal because the appeal was not timely filed (Order January 9, 2023, page 2).

ARGUMENT

The Respondents respectfully submit that the appeal should be dismissed for the following reasons:

(1) **No Basis for an Appeal** – The Appellant received the assets that she asked for so there is no basis for an appeal. More importantly, the Appellant offered no testimony or evidence.

In the case of Dixon v. Dixon, 334 S.C. 222 (Ct. App. 1999), the Court held that un rebutted evidence could be binding on a party. Similarly, in the case of Honea v. Honea, 292 S.C. 456 (Ct. App. 1987), the Court held that a party had a duty to present evidence and could not sit back at a trial without offering evidence and then complain about the outcome. Our courts have consistently held that a party should not be rewarded for refusing to produce documents and places a burden on a party to make an effort to cooperate when valuing assets. Cox v. Cox, 290 S.C. 245 (Ct. App. 1986).

(2) **No Jurisdiction** – The Appellant did not timely appeal the Probate Court Order. Therefore, the Court of Common Pleas dismissed the appeal. If an appeal is not timely filed, the appellate court has no jurisdiction to hear the appeal. State v. Brown, 358 S.C. 382 (2004).

Since the Court of Common Pleas had no jurisdiction, the Appellant does not have the right to appeal the Order of the Court of Common Pleas.

(3) **Delay** – When the decedent died, the Appellant did not open an estate, so, the Respondents opened the estate and were appointed Personal Representatives. After the opening of the estate, the Appellant has interfered with the administration of the estate and has created unnecessary delays.

For over four (4) years, the Appellant has had exclusive possession of the marital home, but she refuses to pay the Respondents their prorata share of the home's value. And, because of the delays, the Respondents have been denied the ownership of the Dover Road property. The Respondents cannot sell the property, and the regime fees continue to be assessed against the property every month.

RELIEF

The Respondents request the following relief:

(a) For the Court to dismiss the appeal and remand the case so that the administration of the estate can be concluded;

(b) For the Court to find that this appeal is non-meritorious and solely for the purposes of delay. The Respondents contend that they are entitled to appropriate sanctions to assist them with their on-going attorney fees and costs, and to assist with the continuing assessment of the regime fees on the Dover Road property.



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June 14, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT

Antoine Lamar Robinson and)
Gerich Lance Robinson, individually)
and as Personal Representatives of)
the Estate of Gerry Robinson,)

Petitioners,)

vs.)

Debra T. Robinson,)

Respondent .)



ORDER
2019-ES-42-00292

The above estate is currently being administered. The decedent died on September 22, 2018. At present, an Inventory and Appraisalment has not been filed.

Richard H. Rhodes, Esquire appeared representing Antoine Lamar Robinson and Gerich Lance Robinson (the court acknowledges that the correct spelling should be Gerrick Lance Robinson and from this point forward all reference shall be addressed as same), the Personal Representatives; Lauren E. Ward, Esquire appeared representing the decedent's wife, Debra T. Robinson.

After listening to statements of counsel, the court concludes that the house and lot located at 320 Weblin Street must be appraised so that administration of the estate can be completed. Both counsel agreed that Glenn Gowan would act as an appraiser. An appraisal has been completed at the condominium located 1446 D Dover Road. Accordingly,

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IT IS ORDERED that Debra T. Robinson shall make the house and premises located at 320 Weblin Street available to Glenn Gowan so that an appraisal can be completed. This shall take place on April 1, 2020 at 11:00 a.m. When this appraisal has been completed, copies of both appraisals shall be furnished to this court.

IT IS SO ORDERED.

Ponda A. Caldwell
PONDA A. CALDWELL
PROBATE JUDGE
SPARTANBURG COUNTY

Date: March 16, 2020

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT

Antoine Lamar Robinson and)
Gerich Lance Robinson, individually)
and as Personal Representatives of)
the Estate of Gerry Robinson,)

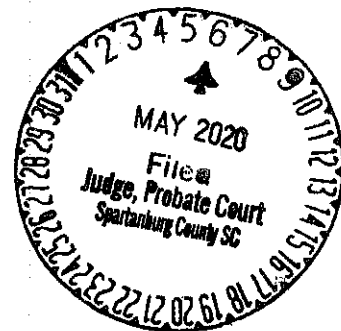
Petitioners,)

vs.)

Debra T. Robinson,)

Respondent.)

ORDER
2019-ES-42-00292



The Petitioners filed a Petition on April 3, 2020, asking the court to issue a Rule-to-Show-Cause against Debra T. Robinson. The Petitioners alleged that Debra T. Robinson refused to comply with the March 16, 2020, Order which mandated that her home located at 320 Weblin Road, Spartanburg, South Carolina, be made available for inspection by the agreed upon appraiser, Glenn Gowan.

A Rule-to-Show-Cause hearing was scheduled for May 4, 2020. The Petitioners were present and represented by Richard H. Rhodes, Esquire; the Respondent, Debra T. Robinson, was present and represented by Chelsea Rikard, Esquire.

After listening to arguments of counsel, and taking the testimony of Debra T. Robinson, the court finds that Debra T. Robinson willfully violated the March 16, 2020, Order. In making this conclusion, the court relied in part on the testimony provided by Mrs. Robinson including her answers to questions from counsel and from the bench, as well as affidavits put into the record.

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In making this finding, the court will note that the attorney for the estate and the attorney for Mrs. Robinson, Lauren Ward, met in my court on March 10, 2020, to discuss the difficulty in getting the house and lot at 320 Weblin Road, Spartanburg, South Carolina, available for inspection by the agreed upon appraiser. After that conference, this court issued an Order directing that Debra T. Robinson make the house available for appraisal. Before signing the Order, at the request of Debra T. Robinson's attorney, additional time was given (approximately a week) so that adequate notice could be provided to Debra T. Robinson to make the house available.

At the Rule-to-Show-Cause hearing, Debra T. Robinson testified that she was not at the home at the designated time because she was fulfilling her duties as one of the primary caregivers for her grand-daughter. Debra T. Robinson had a copy of the Order requiring the house to be made available, but took no steps to advise the court or her attorney of a potential conflict. Instead, Debra T. Robinson violated the Order without giving notice to anyone. The affidavits on record with the Court during the hearing further demonstrate that a staff member from Mrs. Robinson's attorneys' office was present at the house with Mr. Gowan, the agreed upon appraiser, on the date the inspection was ordered to take place, and no one answered the door to let them in. While she was at the home, the staff member then attempted to contact Mrs. Robinson by calling her cell phone, but Mrs. Robinson didn't answer her phone, and the staff member had to leave a voicemail. During the hearing, Mrs. Robinson testified that she could make the house available on either Friday, May 8, 2020, or Monday, May 11, 2020, from 6 p.m. to 10 p.m. The hearing was recessed and efforts were made to contact Mr. Gowan to see if he would be available for either of those times. Mr. Gowan later advised the court that he would be on-site on Monday, May 11, 2020, at 6:00 p.m.

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The attorney for the estate filed an Affidavit requesting attorney fees of \$1,711.00 for time expended in trying to have the subject house appraised. The subject appraisal is essential to the administration of the estate. Said attorney fees could have been avoided had Mrs. Robinson cooperated with the appraisal of said home. The failure of the house to be appraised is inexcusable, and Debra T. Robinson has willfully refused to comply with the court Order. The court finds that the requested attorney fees shall be paid by Debra T. Robinson. Accordingly,

IT IS ORDERED that Debra T. Robinson is found to be in willful contempt of court for refusing to comply with the March 16, 2020, Order. Further,

IT IS ORDERED that Debra T. Robinson is allowed to purge herself of said contempt by making the home located at 320 Weblin Road, Spartanburg, South Carolina, available for inspection and appraisal by Glenn L. Gowan on Monday, May 11, 2020, at 6:00 p.m. The parties had previously agreed that Debra T. Robinson should pay for this appraisal because the Petitioners paid for the appraisal of the other estate property. Further,

IT IS ORDERED that if Debra T. Robinson should fail to purge herself of contempt by making the premises available as herein ordered, the Court will have no alternative but to issue a bench warrant for her arrest for said contempt. Further,

IT IS ORDERED that Debra T. Robinson shall pay the sum of \$1,711.00 to Richard H. Rhodes, Esquire within forty-five (45) days from the date of this Order.

IT IS SO ORDERED.

Given under my hand and seal of office this 6th day of May, 2020.


PONDA A. CALDWELL
PROBATE JUDGE
SPARTANBURG COUNTY

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT

Antoine Lamar Robinson and)
Gerrick Lance Robinson, individ-)
ually and as Personal Representa-)
tives of the Estate of Gerry)
Robinson,)

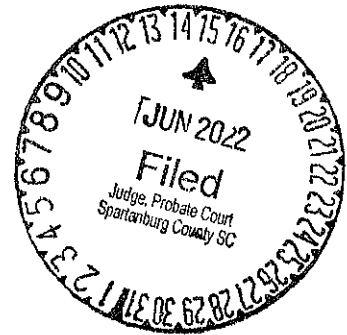
Petitioners,)

vs.)

Debra T. Robinson,)

Respondent .)

FINAL ORDER
2019-ES-42-00292



The Petitioners brought this action seeking to complete the administration of the Gerry Robinson Estate. A hearing was initially scheduled for October 13, 2021, but at that hearing, Debra T. Robinson, requested a continuance so that she could retain the services of an attorney. The matter was rescheduled for a final hearing on February 9, 2022.

At the hearing on February 9, 2022, Antoine Lamar Robinson and Gerrick Lance Robinson (Petitioners) were present and represented by Richard H. Rhodes, Esquire. Debra T. Robinson (Respondent) was present and represented by Robert L. Gailliard, Esquire. Prior to this hearing, Robert L. Gailliard filed a Motion seeking to remove the Petitioners as Personal Representatives. A Return to the Motion was filed by Richard H. Rhodes. The court directed that the Motion would be argued prior to the scheduled February 9, 2022 hearing.

MOTION

When arguing the Motion, Robert L. Gailliard contended that the Respondent had a higher priority for appointment and that the proper procedures were not followed when appointing the Petitioners. This court holds that the Respondent's Motion is without merit and

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denies the same. A review of the court file shows that the Respondent was given notice of the Petitioners' request to be appointed Personal Representatives. The Respondent was properly served but made no appearance.

Even though it is true that the Respondent would have had priority for appointment, the court has the authority to appoint other family members if no other request has been made. The Petitioners were appointed Personal Representatives on April 25, 2019, and have been acting in that capacity since. At no time did the Respondent file a formal Petition to be appointed. On one occasion during the administration of the estate, the Respondent contended that a third party should be appointed Personal Representative, however she never pursued the replacement of the Petitioners. Section 62-3-203(b), Code of Laws of South Carolina (1976), as amended, states in part: "An objection to an appointment can be made only in formal proceedings...." Section 62-3-402(b) requires that the statements required by (1) and (4) of Section 62-3-301(a) be included in a formal petition for appointment. Said statements are found on the Petition for Formal Appointment, Form 300ES, which is a mandated form because of the statutorily required information contained therein.

When the Motion was filed, a Form 300ES was not attached to the Motion, and a Motion alone is not the proper vehicle to contest the appointment of an informally appointed personal representative. Based on all of the above, the Motion is denied.

HEARING ON COMPLETING THE ADMINISTRATION

The assets of the estate are minimal. A summary was introduced as evidence without objection. The Respondent has made statements that she disagrees with several of the valuations of the assets, but has produced no evidence or substantiating documentation for the Court's consideration. Therefore, the Court must rely on the valuations as shown on the Inventory and

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Appraisalment filed in the estate. It, and the Summary, identifies only five (5) assets in the estate.

These assets, together with their valuations, are as follows:

One-half (1/2) interest in the house at 320 Weblin Street	\$107,500.00
Unit 1466-D Dover Road (Appraisal minus lien)	\$ 26,393.00
2002 Chevy Avalanche (bad motor)	\$ 1,500.00
2004 Honda Pilot	\$ 2,500.00
1972 Ford Ltd	<u>\$ 300.00</u>
	\$138,193.00

Since Gerry Robinson died intestate, the Respondent is entitled to \$69,096.50, and the Petitioners collectively are entitled to \$69,096.50 based on the values presented to the Court.

The Court has reviewed the file, the proposed orders submitted, and has listened to the testimony presented at the hearing, and has struggled with the distribution of the assets "in kind" due to the wide variance in the values of the properties. It is difficult to distribute assets when the valuations of the properties are not comparable. In many cases of this sort, the Court simply orders all assets to be sold because the monies received can be easily divided among the parties. Since there is no cash in this estate, there is no way to distribute the assets "in kind" without payment being made from the party seeking the most valuable assets to the other parties.

The Respondent wants the house and lot located at 320 Weblin Street, and the Petitioners do not object. The Petitioners want the Unit at 1466-D Dover Road, and the Respondent does not object.

The Respondent wants the 2004 Honda Pilot and the Petitioners do not object. The Petitioners want the 1972 Ford Ltd, and the Respondent does not object. Therefore, these vehicles shall be divided accordingly.

There was some dispute concerning the value of the 2002 Chevy Avalanche and who should receive the said Avalanche. The parties acknowledge that the motor is bad, but the

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valuation is still in question. In her pleading, the Respondent contended that the value was only \$50.00. The Petitioners contend that the value is \$1,500.00. The court awards the 2002 Chevy Avalanche to the Petitioners using the value of \$1,500.00.

It was undisputed that the appraisals for both tracts of land were ordered by the court. The Petitioners have paid both invoices which totaled \$800.00. The appraisal costs should be split, so the Respondent owes the Petitioners the sum of \$400.00. According to the first and second accountings filed with this Court, the Petitioners also paid a total of \$181.20 in court costs, \$107.79 to obtain duplicate titles for the vehicles, and \$100.00 bond premium. The Respondent owes the Petitioners one half of those costs in the amounts of \$90.60, \$53.89, and \$50.00 as reimbursements for those estate expenditures.

It was also undisputed that the Respondent paid \$13,551.30 for the funeral bill. A copy of the paid funeral bill was presented to the court. Although Respondent alleges that the funeral costs exceeded \$20,000.00, no evidence was presented to the Court to substantiate the allegation. Since the Petitioners are responsible for half of the estate debts and expenses, they owe the Respondent the sum of \$6,775.65.

This estate has been ongoing for three+ years, and Petitioners contend that they are entitled to reasonable commissions and have requested commissions in an amount of \$13,800.00. However, pursuant to Section 62-3-719(a), personal representatives are entitled to a sum not to exceed 5% of the appraised value of the personal property of the estate. The value of the personal property as shown on the Inventory and Appraisal totals \$4,300.00, which would make the statutory commissions \$215.00. The Court cannot justify increasing the statutory commissions by \$13,585.00. Therefore, the Court finds that the Petitioners are entitled to

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commissions in the amount of \$215.00. The Respondent is responsible for one-half (1/2) of the commission.

The Petitioners are also requesting that the attorney fees incurred in the administration of the estate be paid from estate assets. The court agrees. A summary of attorney fees as of February 9, 2022, were presented to the court showing the sum of \$5,065.50. An Affidavit outlining the fee was also presented. No objection was made to the Affidavit. The court finds that the Affidavit is in proper form and that the services performed were reasonable and customary. An attorney fee of \$1,062.50 was also requested which would include time for completing the administration, preparing and recording deeds of distribution, and closing the estate. The court finds the requested fees to be reasonable and approves the same. The Respondent shall pay half of the attorney fee (\$3,064.00) and the Petitioners shall pay the other half (\$3,064.00).

Since the estate assets, fees and costs are being divided as outlined above, and the Respondent is receiving assets which total more than half of the estate value, the Respondent will owe the Petitioners the sum of \$34,829.84 and the estate attorney \$3,064.00 for a total due of \$37,893.84. A summary of the assets awarded to the Respondent and her credit and debits is as follows:

320 Weblin Street	\$107,500.00
2004 Honda Pilot	\$ 2,500.00
Funeral Bill	\$ 6,775.65 (credit)
Appraisal Fee	\$ 400.00 (debit)
Commissions	\$ 107.50 (debit)
Court Costs	\$ 90.60 (debit)
Bond Premium	\$ 50.00 (debit)
Duplicate Vehicle Titles	\$ 53.89 (debit)
	<u>\$103,926.34</u>
1/2 of Estate Assets	\$ 69,096.50
Amount Owed by Respondent	\$ 34,829.84.

Figured another way:

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Estate Assets:

320 Weblin Street	\$107,500.00
Unit 1466-D Dover Road minus lien	\$ 26,393.00
2002 Chevy Avalanche	\$ 1,500.00
2004 Honda Pilot	\$ 2,500.00
1972 Ford Ltd.	<u>\$ 300.00</u>
	\$138,193.00

Estate Expenses:

Funeral Bill	\$ 13,551.30
Appraisals	\$ 800.00
Commissions	\$ 215.00
Court Costs	\$ 181.20
Bond Premium	\$ 100.00
Duplicate Vehicle Titles	<u>\$ 107.79</u>
	\$ 14,955.29

Net assets \$123,237.71.

\$123,626.70 divided by 2 = \$ 61,618.86.

Respondent entitled to:	\$ 61,618.86
Plus funeral expenses	<u>\$ 13,551.30</u>
	\$ 75,170.16

Petitioners entitled to:	\$ 61,618.86
Plus appraisal fees	\$ 800.00
Plus commissions	\$ 215.00
Plus Court Costs	\$ 181.20
Plus Bond Premium	\$ 100.00
Plus Duplicate Titles	<u>\$ 107.79</u>
	\$ 63,022.85

Under the proposal, Respondent gets:

½ int. in Webber	\$107,500.00
Honda Pilot	<u>\$ 2,500.00</u>
	\$110,000.00

Under the proposal, Petitioners get:

Dover less lien owed	\$ 26,393.00
Chevy Avalanche	\$ 1,500.00

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Ford Ltd.	<u>\$ 300.00</u>
	\$ 28,193.00.

Respondent's proposed assets	\$110,000.00
Minus what she is due	<u>\$ 75,170.16</u>
Respondent is overpaid by	\$ 34,829.84
Petitioner's are due	\$ 63,022.85
Minus proposed assets	<u>\$ 28,193.00</u>
Petitioners are underpaid by	\$ 34,829.85.*

*There is a penny difference due to the payment for duplicate titles ending in odd cents not divisible by 2.

In figuring "in kind" distribution, if you took the straight values of both parcels of real estate, without taking into account any reimbursements, liens, costs, or expenses of administration, the numbers are as follows:

Appraisal of ½ interest in Weblin	\$107,500.00
Appraisal of 100% interest in Dover	<u>\$ 39,000.00</u>
Total Appraised Values	\$146,500.00

\$146,500.00 divided by 2 = \$73,250.00 in value each

	\$73,250.00 each
Petitioners take Dover appraised at \$39,000.00	<u>\$39,000.00</u>
Petitioners due an additional	\$34,250.00

based strictly on the appraised values of the two parcels or real estate.

The attorney's fees and costs of \$6,128.00 should have been paid out of the estate and are due and owing. Therefore, both the Petitioners together and the Respondent owe to Mr. Rhodes the sum of \$3,064.00.

The last issue to be resolved was the placement of the marker on the grave of Gerry Robinson. The Petitioners presented documentation to show that they can have a marker placed by the Veterans Association at no costs. The Respondent agrees that a marker should be placed on the grave site, but she contends that she should be the party to have it done. It has been over 3

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1/2 years since the decedent's death, and this matter needs to be resolved. Accordingly, the Respondent shall have 45 days from the date of this Order in which to place a monument on the grave, and if it has not been done, the Petitioners shall have the right to place a marker on the grave at no costs to the Respondent. Accordingly,

IT IS ORDERED that Debra T. Robinson shall receive the decedent's one-half (1/2) interest in the house and lot located at 320 Weblin Street and having Tax Map Number 6-21-15-002.00 once she has paid the Petitioners the sum of \$34,829.84 and attorney's fees to Mr. Rhodes of \$3,064.00. Then a Deed of Distribution will be signed by the Petitioners distributing the decedent's one-half (1/2) interest in said house to her. When the one-half (1/2) interest is distributed to the Respondent, she shall be responsible for the payment of any outstanding taxes and liens on the property. If the total payment of \$37,893.84 has not been paid within 45 days from the date of this Order, the Petitioners shall have the right to file an Affidavit with this court and steps will be taken to have a judgment lien filed against the Respondent in favor of the Petitioners for the sum of \$34,829.84 or for the sum of \$37,893.84 (if the Petitioners have paid the Respondent's portion of the attorney's fee). In the alternative, steps could be taken to have the decedent's one-half interest in this property sold at either public or private sale. Further,

IT IS ORDERED that the Petitioners shall receive the interest in the Condo Unit at 1466-D Dover Road and having a Tax Map Number of 6-21-01-113.00. The Petitioners shall be responsible for all regime fees and liens, if any, on the property. A Deed of Distribution shall be signed by the Personal Representatives distributing the said property to the Petitioners. Further,

IT IS ORDERED that the Respondent shall be the owner of the 2004 Honda Pilot, and the Personal Representatives shall sign any necessary titles to accomplish this. Further,

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IT IS ORDERED that the Petitioners shall be the owners of the 2002 Chevy Avalanche and the 1972 Ford Ltd., and the Personal Representatives shall sign any necessary titles to accomplish this. Further,

IT IS ORDERED that the Respondent shall have 45 days from the date of this Order to have a marker placed on the grave site of the decedent. If this has not been done, the Petitioners shall have the right to place a marker on the grave site, and this shall be done at no expense to the Respondent. If the Petitioners are the ones placing the marker on the grave site, this Order shall serve as authority for the Petitioners to place said marker on the grave site.

IT IS SO ORDERED.


PONDA A. CALDWELL
PROBATE JUDGE
SPARTANBURG COUNTY

Date: June 15, 2022

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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

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

Electronically signed on 2023-01-09 15:58:25 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jun 16 2023

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Judge

Case No. 2022-CP-42-2559
Appellate Case No.: 2023-000120

Antoine Lamar Robinson and Gerrick Lance Robinson.....Respondents,

vs.

Debra T. RobinsonAppellant.

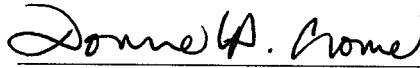
PROOF OF DELIVERY

This is to certify that on the 16th day of June, 2023, the undersigned, secretary to Richard H. Rhodes, Esq., served a copy of the **MOTION TO DISMISS APPEAL** by emailing a copy to the following:

Robert L. Gailliard
Attorney for Appellant
Via Email: rlgailliardlaw@outlook.com


JO ANN CHAMPION

SWORN to before me this 16th
day of June, 2023

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-19-2027