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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
J. CORDELL MADDOX JR., CIRCUIT COURT JUDGE

CASE NO: 2021-CP-37-00560

APPEAL CASE NO: 2021-001552
Dorothy Pierce,

Appellant

v.

Jared Adam Pierce,

Respondent

APPELLANT'S REPLY TO FINAL BRIEF OF RESPONDENT

Appellant Dorothy Pierce, through her attorney, hereby files the following Reply Brief to the Final Brief of Respondent.

DATE: June 9, 2023

Best regards,

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I. APPELLANT DID NOT OMIT THE HANDWRITING EXAMINATION REPORT OF THE DECEASED MARVIN H. DAWSON.

Respondent frivolously claims that the appellant omitted the handwriting report of deceased handwriting report examiner Marvin H. Dawson whose report was allegedly used to file a petition for formal probate challenging the last will and testament. Marvin H. Dawson was a retired 82-year-old handwriting document examiner who passed away due to natural causes on April 21, 2021. The passing of Mr. Marvin automatically rendered his report invalid since he would not be available to appear in court to defend his report. It was the reason the respondent used the SLED Questioned document examiner John Jamieson as their alternative expert witness.

Mr. Marvin's report was never introduced by the respondent during the August 02, 2021, hearing. The respondent did not mention this report during the Motion for a New trial, nor did the respondent mention this report during the Circuit Court hearing on November 03, 2021. It should be noted that the same outdated, irrelevant, and invalid signature exemplars that the SLED questioned document examiner used to determine the authenticity of Doyle Elton Pierce's signature on the last Will and testament were the same exemplars used by deceased Marvin H. Dawson.

II. APPELLANT DULY APPEALED THE ORDER DENYING APPELLANT'S MOTION FOR NEW TRIAL.

"Clerical errors in a notice of appeal do not destroy the appeal." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct.App.1995). In *Weatherford v. Price*, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct.App.2000), the court found that although the appellant "did not 'technically' appeal from the trial court's original order by referring to it in the Notice of Appeal, the [appellant] did attach a copy of the order

to the Notice." The court found the appellant's omission was of a clerical nature only and that the Court had jurisdiction to hear the appeal. It follows; failure to specifically indicate an order in a Notice of Appeal amounts to a clerical error, which does not invalidate a Notice of Appeal.

In this case, Respondent argues that Appellant failed to specifically mention the October 1, 2021, order in the Notice of Intent to Appeal and that the failure divests this Court of jurisdiction to hear the appeal. On the contrary, Appellant avers that although the Notice of Intent to Appeal may not have specifically cited the October 1, 2021, order, she made such reference expressly in the Appeal Brief. For instance, at the statement of the case in the Appeal Brief filed at the Circuit Court, Appellant stated as follows:

> On or about October 1, 2021, the Court conducted a hearing for Appellant's Motion for New Trial. Consequently, the Court denied the said Motion. It is worth noting that the Judge was so unfair that he did not even respond to any of Appellant's emails asking for a legal explanation to his denial of Appellant's Motion. Besides, the said Judge signed an Order, which the Respondent drafted without Appellant's knowledge.
> **Appellant hereby appeals the said Order.**
>
> (*See* Appellant's Appeal Brief at the Circuit Court on amended ROA. Page 72) (Emphasis added).

Further instances within the Appeal Brief filed at the Circuit Court show the Appellant specifically challenging the Judge's decision with regard to the October 1st Order. For instance, On amended *ROA. Page 82*, Appellant argued as follows:

> In the instant action, the Judge was so unfair that he did not even respond to any of Appellant's emails asking for a legal explanation to his denial of Appellant's Motion. Besides, the said Judge signed an Order, which the Respondent drafted without Appellant's knowledge. Although it is not be express sole object of this Appeal to have the Judge disciplined, Appellant avers that the Judge's misconduct affected the validity of the Order issued by the Judge, which Order was issued without considering Appellant's case, and without giving any reason of the denial to Appellant.

The foregoing clearly shows that the intent of the appeal was to challenge the October 01, 2021, Order and that failure to expressly refer to the order in the Notice of Intent to Appeal was a clerical mistake. The Order denying Appellant's Motion for New Trial was therefore sufficiently preserved for review, and this Court has jurisdiction to consider this appeal.

III. APPELLANT RAISED A TIMELY OBJECTION TO THE SLED QUESTIONED DOCUMENT EXAMINER'S TESTIMONY DURING THE PROBATE COURT HEARING OF MOTION FOR NEW TRIAL ON OCTOBER 01, 2021.

Respondent argues that the appellant did not raise a timely objection to the SLED Questioned Document examiner's testimony prior to the probate court's Judgment. Appellant disagrees. According to the Probate Court hearing of Appellant's amended motion for a New Trial dated October 01, 2021, on ***pages 212-216 and 247 of ROA.*** Appellant argued that her counsel was already compromised by the respondent at the time of the August 02, 2021, hearing. The attorney was, therefore, not in a position to raise any objection to respondent's witness.

Consequently, appellant filed her motion for a new trial, and during the hearing of her amended motion for a New Trial on October 01, 2021, the appellant raised an objection to the testimony of the SLED Questioned examiner John Jamieson and categorically stated that the testimony was unreliable, Irrelevant, and Invalid due to the Updated signature exemplars used by the purported Examiner. ***See Appellant's ROA. pages 188-195.*** During this presentation, the appellant stated to the Probate court judge that her counsel was compromised by the respondent's attorney, who then bragged that he did not know he was

that good of a lawyer since he could compromise the attorney for the appellant. **See ROA. page 247.**

VI. THERE IS AN EXCEPTION TO THE OMISSION OF THE RULE OF PLAIN ERROR IN SOUTH CAROLINA.

Appellant does not contest the settled law that the rule of plain error contained in the federal rule is inconsistent with the law in South Carolina. *See* S.C. R. Evid. 103. Therefore, in South Carolina, one must make an objection, which objection preserves the issue on appeal. However, Courts have recognized an exception to the foregoing, where the tone and tenor of the trial judge's remarks are such that any objection would have been futile. *See State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994) (finding "[a]s to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile. ").

In this case, Respondent argues that Appellant failed to raise an objection to the admission of Mr. Jamieson's testimony as evidence when Appellant filed her *pro se* Motion for New Trial. On the contrary, Appellant asserts that she raised the said objection in her Motion for New Trial, as already discussed in No. III above. On Appellant's brief to the Oconee County Circuit Court, the Appellant also further raised the Objection to the relevancy, reliability, and authenticity of the SLED Question Document examiner Jamieson's report but was not given the opportunity to discuss legal errors by the Presiding Judge, Cordell Maddox because she was not an attorney. See ***ROA. pages 77-79.***

Judge Maddox restricted the appellant to discuss only one item on her Appeal brief to the Circuit court related to her removal as Personal Representative of the estate. Having had no opportunity to argue the objection, Judge Maddox affirmed the ruling of the Oconee County Probate court to Appellant's detriment. Judge Maddox's conduct at the Circuit Court

made it impossible for Appellant to raise and/or argue said objection again. See the Circuit Court hearing transcript on ***ROA pages 254-257***.

V. SOUTH CAROLINA'S APPROACH TO EXPERT TESTIMONY IS EXTRAORDINARILY SIMILAR TO THE *DAUBERT* STANDARD.

Respondent argues that the *Daubert* standard is not applicable in South Carolina. However, in *State v. Warner*, No. 2017-001313, 2020 WL 1696716, at *3 (S.C. Ct. App. Apr. 8, 2020), the Court observed that although South Carolina has not adopted the *Daubert* test by name, or revised S.C. R. Evid. 702, it has taken an approach that is extraordinarily similar to the federal test. *Id. See* also Young, *How Do You Know What You Know?*, 15 S.C. Law. Rev. 28, 31 (2003).

It follows, as it turns out, South Carolina's test is not that different from the *Daubert* test. The Supreme Court of South Carolina noted in *State v. Council*, 515 S.E.2d 508, 517 (S.C. 1999), noted that South Carolina applies a test derived from *State v. Jones*, 259 S.E.2d 120 (S.C. 1999):

> In considering the admissibility of scientific evidence under the Jones standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

The court in *Jones* then used this test to conclude that DNA evidence was admissible in a trial for the offenses in the case.

It follows, contrary to Respondent's assertions, it does not matter whether South Carolina adopts the name *Daubert* in its laws. What matters is that the test used in South Carolina is similar to *Daubert.* Besides' the respondent claims that the standard for determining whether scientific evidence is admissible is governed by South Carolina Rules of evidence Id., 335 S.C. at 20. On the contrary, there is no such rule under Id., 335 S.C. at 20.

In fact, South Carolina does not have Rule 335. RULE 702 SCRE. only states that "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise". This rule does not address the admissibility of the Evidence by the Expert witness.

Appellant further asserts that Respondent failed to raise this objection at the Probate and the Oconee County Circuit Court courts, hence failing to preserve the matter. Notably, during the hearing for the amended motion for a new trial, Respondent admitted and said that "the South Carolina Supreme Court has adopted the Daubert standard, and it talks about when courts can admit the testimony of an expert on a particular issue." During the Hearing for the Appellant's appeal with the Oconee Court of common pleas before Judge Maddox on Nov 03, 2021, Respondent did not present or raise any objection to appellant's *Daubert* argument. Respondent cannot, therefore, renege on their initial acquiescence to the applicability of *Daubert* to South Carolina. (*Emphasis added*) See ROA. Page.234

VI. THERE WAS JUDICIAL MISCONDUCT

Respondent argues that there is nothing in the records to show that there was misconduct by Probate Judge. Respondent further avers that there is no evidence that either Appellant or her attorney raised an objection to the alleged ex parte communication that evidences the Judge's misconduct. Respondent further argues that there is nothing in the records showing the Probate Judge's bias.

Contrary to Respondent's averments, Appellant raised the issue of judicial misconduct on the part of the Probate court in her Amended Motion for a New Trial. *See amended ROA. pages 63-65.* Appellant further raised issues of judicial misconduct during

her motion for a new trial hearing on October 01, 2021, on ***pages 205-212 of ROA***. In appellant's appeal Brief to the Circuit Court; appellant raised the issue of judicial misconduct on the part of Probate Judge Kenneth Johns on *pages **80-83 of amended ROA***. Appellant again raised the Judicial misconduct during the Circuit Court hearing on November 03, 2023. *See court transcript on amended **ROA. Pages 258-262.*** Respondent has all these records but frivolously states to the court that these records do not exist.

VII. APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED

Respondent argues that Appellant's due process rights were not violated, and that the Probate Court did not err when it failed to provide Appellant reasons for denial of her Motion for New Trial. Respondent also argues that there is nowhere in the law requiring the Court to give reasons for its decisions.

Contrary to Respondent's assertions, Appellant's due process rights were violated by the Probate Court and the Circuit Court. The probate court Judge refused to give reasons for denying Appellant's Motion for New Trial. It is axiomatic that giving reasons for a court's decision provides an opportunity to probe the Court's analysis of the issues and to provide grounds for appeal. Appellant maintains that failure to give reasons curtails the constitutional safeguards against depriving persons of life, liberty, and property, without the due process of law. *See amended **ROA. pages 84.***

Furthermore, on ***ROA. Pages 63-65,*** On the Amended Motion for New Trial, appellant categorically stated how the respondent's fraudulent communication with the probate court Judge Violated her due Process right and changed the outcome of the ruling in the respondent's favor. This is also argued on ***ROA. Pages 206- 112.***

Likewise, the Circuit Court Judge denied Appellant opportunity to properly present her case. The Court violated the fundamental requirement of due process to give opportunity

to be heard at a meaningful time and in a meaningful manner. *S.C. Dep't. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). It is for this reason that pertinent objections to the SLED Document examiner testimony were not mentioned during the Circuit Court hearing, though the objections were on the Appellant's Appeal Brief.

VIII. APPELLANT WAS IMPROPERLY REMOVED AS PERSONAL REPRESENTATIVE

Respondent is frivolous in his brief that appellant failed to preserve the issue of her removal when she failed to appeal the August 18, 2021, Judgment. See Notice of intent to appeal dated August 23, 2021, on ***ROA. Page 66.***

"The Courts have ever been reluctant to take the management of an estate from those to whom it has been confided by the testator, for to that extent the intention expressed in his will would be defeated." *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920). The power to remove a personal representative "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." *Id.* at 164-65, 105 S.E. at 282.

Respondent argues that Appellant was properly removed as Personal Representative because she failed to explain how she came in possession of a forged Will.

Contrary to Respondent's assertions, it is notable from Respondent's Brief that Respondent avoids addressing the fact that Mr. John Jamieson could not make any conclusions as to whether the signature on the 10th page of last will and testamentof Doyle Elton Pierce, dated July 7th, 2020, was that of the Appellant.

Respondent also fails to appreciate the reality that Appellant had no intent whatsoever to deceive or defraud the estate. Appellant was already included in the Will as a beneficiary,

and she would receive the residue of the estate. Appellant could therefore have no motive to commit fraud, as alleged by Respondent.

CONCLUSION

Based upon the foregoing arguments, and each of them, Appellant prays this Court denies the arguments in Respondent's Reply Brief. Appellant further prays that this Court grant further relief it deems just.

Respectfully Submitted,

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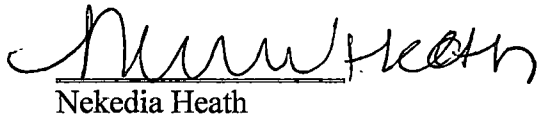
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Final Brief of Appellant in this matter complies with Rule 211(b), SCACR.



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