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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT
APPEALS OF PROBATE COURT

Hon. William A. McKinnon Circuit Court Judge
Hon. Caroline Woodruff, Probate Judge

Appellate Case No. 2022-00357
Case No. 2021-CP-46-02764
2021-ES-46-00777

Joe L. Adams Jr.,

Appellant,

v.

Betty Ogbuneke,

Respondent.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Whether Mr. Adam's failure to comply with S.C. Code 62-1-308(i) and Rule 208 constitutes as a proper grounds for dismissal.
2. Whether Mr. Adam's failure to properly preserve issues on the Circuit Court appeal allows the appellant to bring the issues before the Court of Appeals.

STATEMENT OF THE CASE

After the death of her father, Ms. Betty Ogbunke proffered the will of her father to the probate court. The will appointed her as the Personal Representative and granted her half of his estate, along with her brother, Joe Adams Jr. The siblings have apparently not spoken in a number of years. Mr. Adams acknowledged the will and petitioned the court to remove the Personal Representative.

At the hearing, Mr. Adams appeared pro-se and presented his case in chief. He called two witnesses and, due to not being familiar with the rules of evidence, he was unable to put forward any of his 13 documents. After calling the Respondent (Ms. Ogbunke) and her husband as witnesses, the Petitioner, Joe Adams Jr. closed his case in chief without realizing he could call himself to the stand. Upon a proper motion for directed verdict, the judge dismissed Mr. Adam's petition.

Mr. Adams subsequently appealed pursuant to S.C. Code 62-1-308(i). Filing a brief consisting of all the reasons he disagrees with the Probate Judge. (Circuit Brief for the Petitioner). In his brief, Mr. Adams fails to state a single legal issue to which he seeks to base his appeals; he failed to follow the procedural requirements of 62-1-308(i); and he failed to provide a statement of issues within 45 days, rendering his appeal untimely. (Tr. 11:15-20). Petitioner instead argues that the facts and exhibits that he was unable to properly admit onto the record should be considered by the Circuit Court. (Circuit Brief for the Petitioner. 1-2). At the Circuit Court Appeal, Mr. Adams submitted 13 exhibits consisting of documents that he failed to properly admit into evidence at the probate hearing.

Respondent, through her counsel, filed a motion to dismiss on the grounds that Mr. Adams failure to provide a proper brief to the Court of Appeals and failure to state a legal issue for the court to consider. The Honorable Judge McKinnon, after reviewing his brief and hearing from the parties, dismissed the appeal on the merits since he did not comply with the rules or present a legal issue for the court to consider. (Tr.16:18-24).

STANDARD OF REVIEW

Pursuant to the appellant rules of court, the brief of the appellant must conform with the specific format found in SCACR 208(b)(1)(A-F). Within the Statement of Issues on Appeal, a statement of each issue on appeal shall be concise and direct, and broad general statements of issues may be disregarded by the appellate court. SCACR 208(b)(1)(B). Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal. Rule 208(b)(1)(B), SCACR.

Under S.C. Probate Code, 62-1-308(l), a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal.” *In re Estate of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999). The appeals brought forward by the Appellant must be preserved in order to be reviewed by the appellate level courts. *State v. Crocker*, 366 S.C. 394, 399 , 621 S.E.2d 890, 893 (Ct. App. 2005). An argument advanced on appeal that is not raised and ruled on below is not preserved for review. *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E. 2d 737, 741 (2005). Conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review. *Crocker*, 366 S.C. at 399, 621 S.E.2d at 893. Appealed orders come to the appellate court with a presumption of correctness, with the burden on appellant to demonstrate reversible error, and the appellate court is obliged to reverse when error is called to its attention, but it is not in the business of figuring out on its own whether error exists. *McCall v. IKON*, 380 S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DISMISSED PETITIONERS COMPLAINT FOR NONCOMPLIANCE WITH S.C. CODE 62-1-308 AND RULE 208 SCACR.

This matter comes by a way of a probate court appeal to the Circuit Court pursuant to S.C. Code 62-1-308. Circuit Court appeals from the probate court are held to the rules and requirements of the Court of appeals. *See, Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393. This Court, along with the lower appeal conducted at the Circuit Court before the Hon. W. McKinnon are governed by Rule 208 SCACR. *See, Id.*

Rule 208 requires the brief of Appellant to include a statement of issues on appeal. Rule 208(b)(1), SCACR. Appellant at his first appeal did not submit a statement of issues on appeal before the hearing and did not have a properly formatted brief thus justifying the dismissal of his appeal. *See*, Rule 208(b)(1), SCACR.

II. THE PETITIONERS FIRST APPEAL DID NOT IDENTIFY AN ISSUE ON APPEAL, THUS PETITIONER HAS NOT PRESERVED HIS ISSUES FOR REVIEW.

Appellant has failed to preserve his issues on appeal by failing to argue his listed points before the Circuit Court Appeal. *See, Freiburger*, 366 S.C. at 134, 620 S.E. 2d at 741. Appellant's brief fails to cite any error of law that was attributable to the court, nor case precedent providing authority for his arguments; thus, his issues on appeal are not properly preserved for this review. *See, Crocker*, 366 S.C. at 399, 621 S.E.2d at 893. Petitioner's failure to familiarize himself with the rules of evidence mirror the age-old legal concept of *maxim ignorantia juris non excusat* (Ignorance of the law is not an excuse).

Appellant further fails to challenge the dismissal of the Circuit Court appeals anywhere in his brief presented for review. (See Brief pg 3-4). The dismissal is presumed correct as a

manner of law, and the Petitioner is unable to overcome that presumption to demonstrate reversible error without addressing it in his brief to this court. *See, IKON*, 380 S.C. at 659-60, 670 S.E.2d 701.

CONCLUSION

Based on the foregoing discussion and analysis, Respondent Ms. Betty Ogbunke respectfully requests that this Appellate Court uphold the dismissal of the first appeal by the Circuit Court so that the Probate Estate can be concluded.

Respectfully submitted,

s/Cyrus Corbett

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