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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2023-000890
Opinion No. 2023-UP-151 (S.C. Ct. App. Filed April 12, 2023)

Deborah T. Weeks, Respondent.

v.

David W. Weeks, Petitioner

In Re: Estate of James Randall Weeks, Jr.

RESPONDENT'S RETURN TO THE PETITION FOR A WRIT OF CERTIORARI

July 21, 2023

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STATEMENT OF THE CASE

This matter was before the Aiken County Probate Court pursuant a timely filed Petition for Elective Share by Deborah T. Weeks on December 21, 2017, in the Probate Court for Aiken County. Deborah T. Weeks is the surviving spouse of the Decedent, James Randall Weeks, Jr., who died on August 16, 2017. James Randall Weeks, Jr., left his Last Will and Testament that did not provide for his surviving spouse, Deborah T. Weeks. Deborah T. Weeks claims that she is entitled a one-third (1/3) elective share of the probated estate of James Randall Weeks, Jr., as the surviving spouse, pursuant to **SC Code 62-2-201(a)**, Right of elective share.

Deborah T. Weeks and James Randall Weeks, Jr., were married to each other on January 10, 1998, in Aiken County, South Carolina. James Randall Weeks, Jr., died testate on August 16, 2017, in Aiken County, South Carolina, leaving his wife out of his Last Will and Testament. David W. Weeks was appointed the Personal Representative of the Estate of James Randall Weeks, Jr., on August 30, 2017.

James Randall Weeks, Jr., executed his **Last Will and Testament** on February 9, 2011. In the Preamble of his **Will**, James Randall Weeks, Jr., acknowledges that he was still married to Debra T. Weeks. He states that, "**I am legally separated from my wife, Deborah T. Weeks.**" The **Will** goes on to provide for the children of Mr. Weeks, but it does not provide any benefit for his surviving wife, Deborah T. Weeks. It is uncontroverted that the parties were never divorced from each other and were legally married to each other at the time of James Randall Weeks, Jr.'s death on August 16, 2017.

Deborah T. Weeks filed for an Order of protection from James Randall Weeks, Jr., in

the Aiken County Family Court. On May 11, 2010, a hearing was held that resulted in the Court issuing an Order restraining the parties from disposing of marital assets. (App. p. 20, item 5).

Deborah T. Weeks filed for a divorce from James Randall Weeks, Jr., in the Aiken County Family Court on July 15, 2010. Several temporary hearings were held between the parties, but there was never a final hearing to dissolve the marriage. In pertinent part, under the Conclusions of Law, paragraph 1, in the Temporary Orders dated March 23, 2011, it states that the parties wish to **leave the case open pending a division of the marital assets and a final hearing for divorce.** (App. p. 17). There was never a final hearing between the parties to divide marital assets, and on August 5, 2012, the Aiken County Family Court issued an Order of Dismissal (Without Prejudice). The Order did not divide the marital property or divorce the parties.

On February 27, 2020, a **Merits Hearing** was held on the Petition for Elective Share filed by Deborah T. Weeks. All parties were present for the hearing and testimony was taken and numerous exhibits were entered as evidence by counsel on behalf of both parties.

On May 15, 2020, the Court issued an Order disallowing Deborah T. Weeks, the surviving spouse, an Elective Share from the Estate of James Randall Weeks, Jr. The Order was appealed to the Common Pleas Court for Aiken County.

On August 2, 2021, a hearing was held before the Honorable Courtney Clyburn Pope. After hearing the arguments of counsel and consideration of the evidence, the Circuit

Court ruled that no errors of law were found and Affirmed the Probate Court's decision.

On April 12, 2023, the Court of Appeals Reversed the Circuit Court and Remanded the case for calculation of Deborah Weeks' elective share, because there was no final order terminating the parties' marriage and no evidence that Deborah Weeks knew she was waiving her right to the elective share.

On April 27, 2023, David Weeks filed a Petition for Rehearing in the Court of Appeals. The Petition was denied by the Court of Appeals on May 4, 2023, stating that they were unable to discover any material fact or principle of law that was overlooked or disregarded. Subsequently, the Writ of Certiorari was filed by the Petitioner.

ARGUMENTS

- 1) **THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE PROBATE COURT'S CONCLUSION THAT DEBORAH WEEKS WAIVED HER CLAIM FOR AN ELECTIVE IN THE ESTATE OF JAMES RANDALL WEEKS, JR.**

The Court and the parties acknowledged that the parties were husband and wife when James Randal Weeks, Jr., died. Under the Elective Share Statute, a surviving spouse has the right to an elective share that she cannot be divested except by a written contract, agreement or written waiver. (See **S.C. Code § 62-2-204 (Supp.2001)**).

S.C. Code Section § 62-2-204, provides the only methods for which Respondent Deborah Weeks can be divested of her right to an elective share of the Estate of James Randal Weeks, Jr. There must be a written contract, agreement, or waiver voluntarily signed by the

waiving party after fair and reasonable disclosures to the waiving party of the other party's property and financial obligations have been given in writing.

In the Probate Court Judge's Order of May 15, 2020, the Judge stated that the "Petitioner (Deborah Weeks) is entitled to nothing for her Elective Share Claim against the Estate of James Randal Weeks, Jr., due to the fact that here was essentially and for all practical purposes, a Family Court Order terminating all marital rights and equitable distribution between the spouses."

There is no evidence in the record to support her finding and the subsequent ruling that a Family Court Order terminated all marital rights and equitable distribution between the spouses or Deborah Weeks knowingly waived her right to the elective share.

There were two Temporary Hearings held in the Family Court for Aiken County related to the parties in this case. The Temporary Hearings were held on February 15, 2010, and September 8, 2010. There was also an Order of Protection held in between the two Temporary hearings on May 11, 2010.

In both Temporary Hearings the parties agreed to cooperate with the identification and appraisal of all marital property and further agreed to be restrained from transferring, disposing of, devaluing, moving, hiding, or in any way interfering with the orderly identification and placing value on the said property. They also agreed in both hearings to conduct discovery in accordance with the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure. They also agreed in both hearings to address

marital property after the Plaintiff's truck payments are completed.

In the Order of Protection Hearing, the parties were restrained from disposing of marital assets, assets acquired during the marriage, and all assets specifically mentioned in the Order of Protection. The items mentioned in the Order of Protection were basically personal effects.

In each hearing the parties anticipated further litigation. They agreed to a restraining order and discovery, seeking full disclosure and discovery. There was never a **Final Hearing** between the parties to divide marital assets, and on August 5, 2012, the Aiken County Family Court issued an **Order of Dismissal (Without Prejudice)**. The Order of Dismissal specifically states that "that this case is dismissed without prejudice and any orders previously issued in this case shall be of no further effect, shall no longer be subject to enforcement."

There is no final agreement, or final decree between the parties wherein the parties completed a final division of marital assets. Likewise, there is no written waiver in the record signed by Deborah Weeks wherein she knowingly after a full disclosure waived her right to the elective share.

The Respondent respectfully submits that the Court of Appeals was correct in holding that the Circuit Court erred by affirming the Probate Court disallowance of Deborah Weeks elective share of the estate of James Randal Weeks, Jr., because there was no final order terminating the parties' marriage and there was no evidence that Deborah Weeks knew that she

was waiving her right to the elective share.

- 2) **THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE EVIDENCE DOES NOT SUPPORT THE CIRCUIT COURT'S AFFIRMATION OF THE PROBATE COURT UTILIZATION OF A 2011 REAL ESTATE APPRAISAL TO VALUE ESTATE PROPERTY.**

Under **South Carolina Code Section 62-3-706 (A)**, within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, **shall:** (1) prepare an inventory and appraisal of probate property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, **its fair market value as of the date of the decedent's death**, and the type and amount of any encumbrance that may exist with reference to any item.

The Probate Court allowed the Personal Representative to use an appraisal (\$670,000.00) that was approximately 8 years old to value a substantial piece of real property partially owned by the estate of James Randal Weeks, Jr. Deborah Weeks objected to the property being valued at \$670,000.00, because the value was not around the time James Randal Weeks, Jr., died. Around the time he died the Aiken County Tax Assessor's Office assessed the fair market value of the same property to be \$1,003,000.00. The 2011 appraisal clearly did not comply with that portion of the statute that requires the Personal Representative to prepare an inventory and appraisal of probate property owned by the decedent **at the time of his death**. The Probate Court committed an error when it allowed the Personal Representative to value a substantial piece of real property at \$670,000.00, when there was evidence that it should have been valued at \$1,003,000.00.

The Probate Court committed further error on this issue by allowing the Personal Representative to apply a 40% marketability or minority discount to the 2011 appraisal amount. The case dealt with property being transferred to Deborah T. Weeks by operation of law, via the elective share. There is no evidence in the record to support the 40% discount applied to the property. The Personal Representative unilaterally applied a 40% discount to property without benefit of an expert evaluation. An expert should be used to calculate a discount if it is applicable. The Personal Representative did not produce any evidence or reasons as to why the discount applies to that piece of real property. The inventory and appraisal should reflect the fair market value of the property **at the time of the death** of James Randal Weeks, Jr., and not a discounted value arbitrarily set by the Personal Representative.

CONCLUSION

Based on the forgoing reasons, the Respondent respectfully asks that the Petitioner's Writ of Certiorari in this matter be denied.

Respectfully Submitted,
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