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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2019-CP-3901224
Appellate Case No. 2022-001777

Christopher Young and Biotech Restorations, LLC

Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Painter, Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents/Appellants.

RESPONDENTS/APPELLANTS' FINAL REPLY BRIEF

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ARGUMENT

Cross-Appellants appeal the trial court's denial of motions for a directed verdict based on *res judicata* and the statute of limitations and the trial court's admission into evidence a General Partnership Agreement that forms the basis for all of Appellants/Respondents' causes of action. Instead of refuting the elements of *res judicata*, Appellants/Respondents attempt to collaterally attack the underlying decision of the probate court with wild claims of fraud that prevented Appellants/Respondents from having their day in court. Appellants/Respondents continue this theme by arguing, without any legal authority, that the 3-year statute of limitations did not accrue until the "closing of the fraudulently probated estate on March 25, 2019." Lastly, Appellants/Respondents argue that estoppel prevents Paynter Consulting, LLC – a corporation that had no assets, ceased to exist when Dr. Paynter died on September 4, 2017, and is not even a party to this appeal – from challenging the admissibility of the only document that forms the basis for Appellants/Respondents' claims.

According to their own rendition of the facts, "Appellants/Respondents and Paynter Consulting, LLC conducted little-to-no business under the GPA [General Partnership Agreement] after August 2015." (Appellants/Respondents' Brief, p. 5). So Appellants/Respondents could have had their day in court long before Dr. Paynter died on September 4, 2017. But they chose to wait until a month ***after*** her death to begin asserting claims against her daughters and only heirs. Appellants/Respondents ***did*** have their day court in probate court, and lost. Instead of appealing the probate court's denial of their claims, Appellants/Respondents waited 17 months before filing a new lawsuit against Cross-Appellants in Circuit Court to assert the same claims. After having their ***second*** day in court in the present lawsuit, Appellants/Respondents are still not satisfied. They have appealed the trial court's

decisions and are now lobbing unfounded fraud claims against Cross-Appellant Paynter while serving as the Personal Representative of her mother's estate over 4 years ago. At some point Appellants/Respondents' repeated efforts to gain control over Dr. Paynter's bioremediation trade secrets have to end.

I. The Trial Court Erred in Denying Cross-Appellants' Motion for a Directed Verdict based on Res Judicata

Cross-Appellants' Brief provides the undisputed facts and well-settled legal authority to establish that the prior decision of the probate court bars Appellants/Respondents' claims as a matter of law. Instead of disputing any of the elements of *res judicata*, Appellants/Respondents attempt to collaterally attack the underlying decision of the probate court with wild allegations of fraud that Appellants/Respondents have previously raised with the probate court. Appellants/Respondents' fraud arguments are procedurally barred and demonstrably false.

A. Appellants/Respondents Cannot Collaterally Attack a Final Judgment of the Probate Court

Appellants/Respondents' current allegations of fraud during probate of Dr. Paynter's Estate are Appellants/Respondents' ***second*** attempt to void the final decision by the probate court. As Appellants/Respondents briefly mention, Appellants/Respondents have previously filed a Petition for Subsequent Administration of Dr. Paynter's Estate in the Pickens County Probate Court. (R. p. 95). This petition contains the same rambling, unsubstantiated allegations of fraud now being argued, as well as many others. And while Cross-Appellants have refuted the fraud allegations and asserted other statutory and procedural bars to the petition (R. p. 118), at least Appellants/Respondents' petition to the probate court was a ***direct*** attack of the final judgment of the probate court.

Appellants/Respondents' current attempt to ***collaterally*** attack the final judgment of the Probate Court is simply not allowed. *Henry v. Cottingham*, 253 S.C. 286, 170 S.E.2d 387

(1969); *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011). In *Henry*, the South Carolina Supreme Court specifically held that an order of the probate court "was a judgment of a court of competent jurisdiction, and not subject to collateral attack." *Henry*, 253 S.C. at 291, 170 S.E.2d at 389. More recently in *Argoe*, the appellant failed to timely appeal a commitment order of the probate court and instead filed a separate lawsuit challenging the commitment – just like Appellants/Respondents have done in the present case. In affirming the trial court's grant of summary judgment against the appellant, the Supreme Court held that the appellant "was precluded from collaterally attacking the underlying commitment orders." *Argoe*, 392 S.C. at 471, 710 S.E.2d at 72. The Supreme Court additionally held that "the doctrine of *res judicata* precludes Appellant from asserting any challenge to the commitment orders." *Id.* Therefore, as the Supreme Court has repeatedly held, Appellants/Respondents may not collaterally attack a final judgment of the probate court.

B. Appellants/Respondents' Allegations of Fraud are Factually Unsupported

Appellants/Respondents argue that Cross-Appellant Paynter committed fraud while serving as the Personal Representative of Dr. Paynter's Estate by not disclosing or including various assets – *i.e.*, Paynter Consulting, LLC, the Partnership/General Partnership Agreement, and Dr. Paynter's bioremediation trade secrets – during the probate of Dr. Paynter's Estate. (Appellants/Respondents' Brief, pp. 9-11). According to Appellants/Respondents, the "fraud prevented the Probate Court from properly responding to the claims made by Appellant/Respondent Chris Young in the Probate Court." (*Id.*, p. 13). Appellants/Respondents further predict that "had the assets of Paynter Consulting, LLC been disclosed to the Probate Court, the proper procedure for handling Mr. Young's claims at that time would have been to remove the claims to the Circuit Court." (*Id.*, p. 14). Appellants/Respondents' claims of fraud fail for several reasons.

First, Cross-Appellant Paynter accurately and completely identified the assets in Dr. Paynter's Estate, and those assets did ***not*** include Paynter Consulting, LLC, the Partnership/General Partnership Agreement, or Dr. Paynter's bioremediation trade secrets. Paynter Consulting, LLC had no assets and ceased to exist when Dr. Paynter died on September 4, 2017, and Cross-Appellant Paynter simply filed the Articles of Termination as suggested by the S.C. Secretary of State to document that Paynter Consulting, LLC had wound up its business and no longer existed. (R. p. 128, ¶¶ 6, 7; R. pp. 691-692, ¶ 10.1; R. p. 706). Cross-Appellant Paynter understood that the Partnership/General Partnership Agreement had ceased to exist upon Dr. Paynter's death and were therefore no longer assets to include in Dr. Paynter's Estate, and this understanding was confirmed by the trial court. (R. p. 33). Similarly, the trial court confirmed Cross-Appellant Paynter's understanding that Cross-Appellants were "the sole owners" of the bioremediation trade secrets when Dr. Paynter died. (*Id.*, p. 34). Therefore, Cross-Appellant Paynter did not fail to include any asset in Dr. Paynter's Estate, and Appellants/Respondents' claims of fraud have no factual basis.

In addition, Appellants/Respondents identified the ***exact same*** assets ***during*** probate of Dr. Paynter's Estate that Appellants/Respondents now claim were hidden from the probate court. Specifically, Appellant/Respondent Young filed a Statement of Creditor's Claim that identified Paynter Consulting, LLC, included the General Partnership Agreement, and asserted ownership of Dr. Paynter's bioremediation trade secrets. (R. pp. 698-701). The probate court was therefore very much aware of each of these assets that Appellants/Respondents claim Cross-Appellant Paynter hid from the probate court, and the probate court simply rejected Appellants/Respondents' ownership claim involving these assets. (R. pp. 704-705).

Lastly, Appellants/Respondents' suggestion that Cross-Appellant Paynter somehow prevented removal of the claims to Circuit Court attempts to blame Cross-Appellant Paynter for Appellants/Respondents' own inaction. As Appellants/Respondents note, the probate judge specifically suggested that Appellants/Respondents should file their declaratory judgment claim in Circuit Court. (R. p. 665). Cross-Appellant Paynter, as the Personal Representative of Dr. Paynter's Estate, also notified Appellants/Respondents that their disallowed claims would be forever barred unless they pursued relief in Circuit Court. (R. pp. 704-705). Appellants/Respondents had every opportunity to remove the claims to Circuit Court, and it is disingenuous for Appellants/Respondents to now suggest that Cross-Appellant Paynter somehow prevented them from doing so.

II. The Trial Court Erred in Denying Cross-Appellants' Motion for a Directed Verdict based on the Statute of Limitations

Cross-Appellants' Brief catalogs Appellant/Respondent Young's trial testimony in which he repeatedly and unambiguously admitted that he was aware of the facts giving rise to each cause of action as early as 2015 and certainly ***before*** Dr. Paynter's death on September 4, 2017. Appellants/Respondents do not dispute any of this testimony.

Instead, Appellants/Respondents argue that they timely asserted a claim during probate of Dr. Paynter's Estate and leap to the unfounded conclusion that the 3-year statute of limitations therefore did not begin to run until after the "closing of the fraudulently probated estate on March 25, 2019." (Appellants/Respondents' Brief, pp. 17-18). Appellants/Respondents provide no legal authority to support the proposition that filing their claim in probate court – which Appellants/Respondents argue did not involve the same parties or issues – had any impact on when the statute of limitations began to run for the claims asserted in the present lawsuit. Accordingly, Appellants/Respondents have failed to identify either facts or law to refute Cross-

Appellants' statute of limitations defense. *See State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

III. The Trial Court Erred in Admitting into Evidence the General Partnership Agreement Shown in Plaintiff's Exhibit 3

As discussed in Cross-Appellants' Brief, Appellants/Respondents relied exclusively on Appellant/Respondent Young's testimony to authenticate the General Partnership Agreement admitted into evidence as Plaintiff's Exhibit 3. Instead of explaining how Appellant/Respondent Young's testimony is admissible under the Dead Man's Statute, Appellants/Respondents now argue that estoppel prevents Paynter Consulting, LLC – a corporation that had no assets, ceased to exist when Dr. Paynter died on September 4, 2017, and is not even a party to this appeal – from challenging the admissibility of the only document that forms the basis for Appellants/Respondents' claims.

According to Appellants/Respondents, the General Partnership Agreement admitted into evidence is the same partnership agreement described by Paynter Consulting, LLC in paragraph 6 of its 2015 Complaint against Appellants/Respondents. (Appellants/Respondents' Brief, p. 3, fn. 4; p. 19). The General Partnership Agreement admitted into evidence as Plaintiffs' Exhibit 3 is certainly a partnership agreement bearing a notary subscription dated May 30, 2006. However, that evidence falls far short of proving that the exhibit is the same partnership agreement described by Paynter Consulting, LLC in its 2015 Complaint. Moreover, Appellants/Respondents denied Cross-Appellants' very simple request to admit that the General

Partnership Agreement admitted into evidence is the same May 30, 2006, partnership agreement described in paragraph 17 of the Complaint that forms the basis for all of Appellants/Respondents' claims.

Appellants/Respondents also refer to an email purportedly sent by Dr. Paynter to Appellant/Respondent Young on May 23, 2006, that included an unsigned, draft document bearing the title GENERAL PARTNERSHIP AGREEMENT to argue that Dr. Paynter did not challenge the contents of the document during the previous litigation. (Appellants/Respondents' Brief, p. 19). As with Appellant/Respondent Young's trial testimony, the email constitutes a communication and/or transaction between Appellant/Respondent Young and decedent Dr. Paynter that could affect Appellants/Respondents' interest in this lawsuit and is therefore inadmissible pursuant to South Carolina's Dead Man's Statute. In addition, Cross-Appellants have access to all of Dr. Paynter's emails and produced all communications between Dr. Paynter and Appellants/Respondents. Dr. Paynter's emails do not include the email purportedly sent by Dr. Paynter to Appellant/Respondent Young on May 23, 2006. Moreover, Cross-Appellants requested the production of the native file for this email, and Appellants/Respondents responded that they could not locate the original or native/electronic copy of this email. (R. p. 723, ¶ 23). Therefore, Cross-Appellants have every reason to question the authenticity of the email purportedly sent by Dr. Paynter to Appellant/Respondent Young on May 23, 2006.

CONCLUSION

For the foregoing reasoning and analysis, the trial court erred in failing to grant a directed verdict to Cross-Appellants on all causes of action based on *res judicata* and/or the statute of limitations. Alternately, or in addition, the trial court erred in admitting into evidence the General Partnership Agreement shown in Plaintiffs' Exhibit 3. Therefore, this Court should

affirm the Judgment in favor of Cross-Appellants and declare as moot or vacate the trial court's construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Respondents/Appellants Final Reply Brief complies with Rule 211(b), SCACR.

August 1, 2023

Respectfully submitted,

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