

STATE OF SOUTH CAROLINA
COURT OF APPEALS

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AUG 30 2023

APPEAL FROM CHARLESTON COUNTY CIRCUIT COURT

SC Court of Appeals

Honorable H. Steven DeBerry, IV, Circuit Judge

Appellate Case No. 2023-000751

In the Matter of: The Estate of Juleanne Judy Bryan

Margaret Elaine Chapman Appellant,

V.

Grady W. Dubose, Wade Wilson Judy, and Marvin Lee Judy, III Respondents,

BRIEF OF APPELLANT

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- 2. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005). 4
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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This is an appeal from the order of a 9th Circuit Judge of the Court of Common Pleas. (ROA 1). The judge presided over an appeal by the Appellant, Margaret Chapman, of the order of the Charleston County Probate Judge Enforcing the Settlement Agreement of the parties after the parties participated in the court ordered mediation of the case in which the parties reached an agreement. (ROA 2).

The circuit court judge dismissed the appeal as being untimely filed by the Appellant. (ROA 3).

This appeal is from that dismissal by the Judge of the Court of Common Pleas.

STATEMENTS OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE ERR IN FINDING THAT THE APPEAL FROM THE PROBATE COURT WAS NOT TIMELY FILED?
2. DID THE TRIAL JUDGE ERR IN FINDING THAT APPELLANT DID NOT FILE A STATEMENT OF ISSUES ON APPEAL TO THE CIRCUIT COURT AND IN THE OFFICE OF THE PROBATE COURT?
3. DID THE TRIAL JUDGE ERR IN FINDING THAT THE APPELLANT MADE NO ARRANGEMENTS WITH THE COURT OR THE COURT REPORTER FOR FURNISHING THE TRANSCRIPT?
4. THE TRIAL JUDGE ERR IN FINDING THAT THE DEFENDANT DID NOT FILE A BRIEF?

STATEMENT OF THE CASE

This case involves three claims to the estate of the decedent, Juleanne Judy Bryan. (ROA 4). The claims of Wade Wilson Jude and Marvin Lee Judy are based on the intestacy of the

decedent, the claim of Grady Dubose is based on his claim to be the common law husband of the decedent (ROA 5) and Margaret Chapman's claim is based on her claim to be the beneficiary of the estate by virtue of the will of the decedent. (ROA 6).

The parties conducted discovery to the extent that they chose to do so. The parties thereafter met at the office of attorney Bradish Waring for him to mediate the case on August 22, 2022. The parties were able to reach a settlement agreement dividing the estate of the decedent.

Thereafter Ms. Chapman sought to reconvene the mediation after learning that certain assertions made during the mediation, on which she relied, were totally false and known to be false or negligently asserted by one of the attorneys for the respondents during the negotiations at the mediation hearing. The appellant thereafter sought to resume the mediation and the parties filed a proposed orders to the probate judge resuming the mediation and enforcing the agreement. (ROA 7a and 7b).

The proposed order of the respondents was subsequently adopted by the probate judge.

The Probate Court issued its order Dated December 22, 2022, Approving and Enforcing Settlement and sent it to the Watson Law Firm using the firm's former email address (but still sometimes used to deliver emails to the firm because of its presence on certain Watson law firm older documents) during the Christmas and new years' holidays. However, The Watson Law Firm designated the email address, jewatson.lwr@gmail.com, in the state's AIS system to receive notices from the court.

Actual notice of the filing of the probate court's order was thereafter placed in the US mail on December 28, 2022, and was received by the Watson Law firm by US postal mail from an attorney for Respondent nephews sometime after the mailing on December 28, 2023. (ROA 8).

On January 5, 2023, the Appellant filed her Notice of Intent to Appeal with this Court. (ROA 9).

STATEMENT OF FACTS

This matter arises out of the death of Ms. Juleanne Judy Bryan who resided in Charleston County, South Carolina on the Isle of Palms and who was owner of about 12 other rental properties all in Charleston County South Carolina at the time on her death on May 20, 2020. Her estate is valued in excess of 4.5 million dollars. (ROA 10 _____).

Ms. Judy Bryan's legal intestate heirs are her two biological nephews who are Respondents in this case; a former boyfriend who claims an intestate interest due to his claims of being the widow of the decedent by virtue of an alleged common law marriage; and the Appellant, Margaret Chapman, a friend of the decedent, who claims the estate due to a will allegedly leaving most of the estate to her.

The parties mediated their claims to the estate and reached an agreement which Appellant, Margaret Chapman, sought to invalidate due to an alleged fraud in the inducement while reaching the mediated agreement and sought to resume the mediation of the case before the Probate Judge approved the agreement. However, the probate judge, heard arguments and read the proposed orders (ROA 11 and 12) of the parties and issued its order Enforcing the Agreement along with other remedies in the case.

The Appellant thereafter appealed the order of the Probate Judge to the Circuit court.

The Circuit Court Judge found that the appeal to the circuit court was not timely and dismissed the appeal.

This appeal followed.

SUMMARY OF ARGUMENTS

The trial erred in finding that the Court lacked jurisdiction to hear the appeal due to the untimely filing of the Notice of Intent to Appeal and the failure of the appellant to perfect certain aspects of the appeal. The filing of the Notice of intent to appeal is jurisdictional but other aspects of perfecting the appeal beyond the filing of the Notice of Intent to Appeal are in the discretion of the appellate court which usually sets deadlines to comply before dismissal of an appeal as done for example in (ROA 11).

All documents needed to resolve the case on the merits were in the documents available to the court already at the time of the hearing on the merits as noted in the transcript of the virtual hearing. (ROA_13_). The circuit judge based his rulings on the wrong date of service of the order Enforcing the agreement.

ARGUMENT:

- A. THE TRIAL JUDGE ERRED IN FINDING THAT THE APPEAL FROM THE PROBATE COURT WAS NOT TIMELY FILED?

STATEMENT OF THE LAW:

An appeal from the Probate Court is governed by S.C. Code Ann. § 62-1-308 (2023), which sets forth various procedural requirements to perfect an appeal.

An appellant who fails to follow the procedural requirements strips the court of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 83 n. 5, 529 S.E. 2d 6,8 n. 5 (2000); see also Rule 260(a), SCACR.

However, Rule _____ of the SCACR only notes the filing of the Notice of Intent to appeal as jurisdictional.

APPLICATION OF THE LAW IN THIS CASE:

The trial judge found that the parties received written notice of the order on appeal on December 22, 2022, by email from the Probate Court's law clerk via email and the appellant filed her notice of appeal on January 5, 2023 making it untimely.

However, the probate court's email was sent to the Watson Law Firm's email address at watsonlawfirm@sc.twcbc.com that the firm has moved away from due to its smaller size and frequent overflows. The firm has designated another email address in its state AIS system that is available to all attorneys of this state and the state court system. That email address is jewatson.lwr@gmail.com. (ROA 12).

Actual notice of the court's order was received by the attorney for the appellant in January, 2023. The notice of appeal was therefore timely filed.

ARGUMENT:

B. THE TRIAL JUDGE ERRED IN FINDING THAT APPELLANT DID NOT FILE A STATEMENT OF ISSUES ON APPEAL TO THE CIRCUIT COURT AND IN THE OFFICE OF THE PROBATE COURT.

STATEMENT OF THE LAW:

§ 62-1-308(b) provides that "within forty five days after receipt of written notice of the order ... the appellant must file with the clerk of the circuit court a Statement of issues on Appeal ... and a copy served on all parties.

APPLICATION OF THE LAW IN THIS CASE:

The circuit court judge erred in finding that the 45 days for filing the Statement of Issues on Appeal ended on February 6, 2023. That date was calculated from the December 22, 2022

date that he used as the date of the receipt of the probate court order by the attorney for Ms. Chapman and not the date notice was legally received as outlined above. The appellant complied with this rule but the trial judge used the wrong service date in his calculations.

ARGUMENT:

C. THE TRIAL JUDGE ERRED IN FINDING THAT THE APPELLANT MADE NO ARRANGEMENTS WITH THE COURT OR THE COURT REPORTER FOR FURNISHING THE TRANSCRIPT.

STATEMENT OF THE LAW:

§ 62-1-308(c) provides that (c) Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript.

APPLICATION OF THE LAW IN THIS CASE:

As indicated to the circuit court judge, no transcript was requested because the appellant saw no need for a transcript since the actions of the respondents' attorney during the course of the mediation was at issue not what occurred in the course of the probate judge issuing any of its orders. There is no record of the mediation proceedings at issue.

ARGUMENT:

D. THE TRIAL JUDGE ERRED IN FINDING THAT THE DEFENDANT DID NOT FILE A BRIEF.

STATEMENT OF THE LAW:

§ 62-1-308(e) provides that "within 30 days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of

Matter to be included in the Record of Appeal and file with the clerk of the circuit court one copy of the Designation of Matter to be included in the Record of Appeal with proof of service.”

APPLICATION OF THE LAW IN THIS CASE:

As indicated by the trial judge, Appellant filed her Designation of Matter to be included in the Record on Appeal on _____, 2023. This filing by the appellant was timely and done prior to the filing of the respondent and did not delay the proceedings. Again, the wrong date of service of the Notice of Intent to Appeal was used by the circuit judge.

CONCLUSION:

None of the parties in this case would be prejudiced with the resumption of mediation in this case as requested by the appellant.

Beyond the technical aspects of this filing, at issue is whether ‘anything goes’ during the course of conducting a mediation and no matter how grievous the behavior of the parties to the mediation, an agreement cannot be questioned if the parties signed a written agreement or whether the parties agreement is bound by the law of contracts as it is a contract of agreement.

Also at issue is the role of the probate judge in enforcing an agreement when one of the signatories to the agreement said it is unfair before it is approved.

One of the respondents’ attorneys mislead the appellant into believing that there was no notary public in South Carolina with the notary date of the person who notarized the agreement as to have a profound impact on the way the mediation was conducted which the appellant now know to have been untrue. In fact, the opposite was true. The appellant’s attorney was able to locate the notary public who witnesses the execution of the will after the mediation hearing but before the enforcing of the agreement.

The appellant only seeks to resume the mediation without the appellant being deliberately misled as she was during the mediation by the respondents' attorney.

Respectfully submitted,



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V.

Grady W. Dubose, Wade Wilson Judy, and Marvin Lee Judy, III Respondents,

CERTIFICATE OF SERVICE OF BRIEF AND
DESIGNATION OF MATTERS TO BE INCLUDED
IN THE RECORD ON APPEAL

I, Johnny E. Watson, attorney for the Appellant, above-named, hereby certify that I have served the individual named below with a copy of the document described herein by hand delivery, email and/or by depositing it in the US Mail, postage prepaid, at the address listed below on the date listed herein below.

TO: 9 TH Circuit Clerk of Court	9 th Circuit Clerk of Court
Court of Common Pleas	Probate Court
100 Broad Street, Rm 106	100 Broad Street #469
Charleston, South Carolina 29401	Charleston, S. C. 19401

Daniel S. Slotchiver, Esq.	Stafford McQuillin, Esq.
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Mt. Pleasant, SC 29464	Charleston, SC 29402-0340

Email: dan@slotchiverlaw.com mmcquillin@hsblawfirm.com

DOCUMENT: **DESIGNATION OF MATTERS TO BE INCLUDED IN THE
RECORD ON APPEAL**

DATE SERVED: August 30, 2023.



S/Johnny E. Watson

Johnny E. Watson, Document Server