STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

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SC Court of Appeals

The Honorable Brian M. Gibbons, Circuit Judge

Appellate Case No. 2023-000541

George William Rauton, III, Appellant,

v.

Patsy R. Lightle, Respondent.

Respondent's Initial Brief

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STATEMENT OF ISSUES ON APPEAL

I. Appellant's Complaint does not sufficiently plead facts to support his conclusion that he had an expectancy.

II. Appellant gave no indication that he could or would amend his Complaint to set forth facts sufficient to overcome a Rule 12(b)(6) motion, and the Circuit Court did not err in dismissing the Complaint.

IV. The Circuit Court correctly found that Appellant failed to sufficiently plead facts to support his claim that he had no adequate remedy at probate.

STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint on April 21, 2023. [Summons and Complaint, R.] Respondent appeared and timely filed a motion to dismiss pursuant to Rule 12(b)(3) and (6) or, alternatively, to transfer venue. [Motion to Dismiss, R.] Respondent also filed an affidavit supporting her motion to dismiss or transfer as to the improper venue. [Affidavit of P. Lightle, R.]

A hearing was scheduled for January 30, 2023. Appellant filed a memorandum opposing Respondent's motion on January 28, 2023, and Respondent filed a reply to Respondent's memorandum on January 30, 2023. [Memo. Opp., Reply Memo, R.]

After hearing the motion, the Honorable Brian M. Gibbons issued an Order granting the motion to dismiss under Rule 12(b)(6) and determining the matters relating to venue to be moot. [Order, dtd. 1/31/23, R.] The Circuit Court subsequently entered a detailed Order setting out its ruling and rationale. [Order, dtd. 2/9/23, R.] Respondent timely moved to reconsider the Orders, which were denied by Order dated March 23, 2023. [Order, dtd. 3/23/23, R.] Appellant subsequently filed this appeal.

STATEMENT OF FACTS

The sole cause of action alleged in this case is for "intentional interference with inheritance," which, as addressed below, has not been recognized by the Courts of South Carolina. Respondent admits that the Statement of Facts in Appellant's brief contains all factual allegations set out in the Complaint (misidentified as "the counterclaim" in Appellant's brief). [Complaint, R.]

Respondent nonetheless notes certain important factual matters which are *not* set forth in the complaint:

1. The names of the decedent and spouse in question.
2. The familial relationships among the parties, decedent and decedent's spouse.
3. What the nature and/or basis of Appellant's "expectation of receiving liquid assets as part of decedent's estate" may have been.
4. What the terms of the decedent's Last Will and Testament may be.
5. What accounts, funds and/or insurance policies are alleged to be the subject of Appellant's claim.
6. What dates or time period any of the alleged acts or omissions occurred.
7. Whether Respondent allegedly knew of Appellant's expectancy and, therefore, whether she could have intentionally interfered with such expectancy.

STANDARD OF REVIEW

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns* , 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "A 12(b)(6)[, SCRCP] motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.' " *Id.* (quoting *Stiles v. Onorato* , 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.*

ARGUMENT

I. Appellant's Complaint does not sufficiently plead facts to support his conclusion that he had an expectancy.

The elements of intentional interference with inheritance[1] have been addressed by South Carolina Courts, even though they have not yet recognized the cause of action:

> [4] We have adopted the closely analogous tort of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int'l Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 179, *see also Allen v. Hall*, 328 Or. 276, 974 P.2d 199 (1999) (intentional interference with inheritance closely analogous to intentional interference with economic relations). Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. *See, e.g., Nemeth v. Banhalmi*, 99 Ill. App. 3d 493, 55 Ill. Dec.14, 425 N.E. 2d 1187 (1981); *Morrill v. Morrill*, 712 A. 2d 1039(Me.1998); *Doughty v. Morris* 117 N.M. 284, 871 P. 2d 380(Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St. 3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis. 2D 426, 570 N.W. 2D 889(1997); *see also* Restatement (Second) of Torts § 774B (1979).
>
> *Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 542 S.E.2d 715 (2001).

Appellant, in his complaint, alleges that he "had an expectation of receiving liquid assets as part of the decedent's estate." [Complaint, ¶9, R.] He gives no facts or details, including the terms of the decedent's will or any statement, agreement or understanding which could give rise to an expectancy. Appellant fails to even state what, if any, familial relationship he has with the decedent (who is not identified by name in the Complaint)

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[1] This tort has not been recognized in South Carolina to date. While the Circuit Court's Order found (as Respondent agreed) that it is *likely* South Carolina Courts will eventually recognize the cause of action, Appellant did not seek a finding on that matter in his Motion for Reconsideration and has not raised the recognition of this tort in his Brief. Because he may not raise a new argument in his reply brief, it would appear that Appellant has abandoned any argument that the Circuit Court should have expressly recognized the cause of action or that this Court should do so. *See State v. Wakefield*, 232 S.C. 189, 473 S.E.2d 831 (Ct.App. 1996). Because Appellant asserted only one cause of action, abandonment of this issue would be fatal to his appeal.

which might implicitly give rise to an expectancy. He further identifies no particular asset(s) in which he may have had an expectancy.

Although Appellant argues that he has properly set forth "ultimate facts" to support his cause of action, which were defined by this Court as "fall[ing] somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions.'" *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct.App. 2001). Although Appellant cites this case in support of his argument, he points to no *facts* which support his alleged expectancy. Respondent submits that Appellant's unsupported assertion that he had an expectancy is exactly what this Court referred to as an insufficient "legal conclusion."

Appellant also relies on this Court's finding that "[a]t the pleading stage, a litigant is not required to *submit the evidence* necessary to prove its case [emphasis supplied]." *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct.App. 2002). The Circuit Court did not find, and Respondent did not argue, that Appellant should have included any evidence, but that he must plead some form of facts which could support his stated legal conclusion.

Appellant further argues that the existence of an expectancy is "Appellant's state of mind," which does not require any factual support. [Appellant's Initial Brief at 4] Recognizing Appellant's assertion of his own state of mind – without any context or reasoning – would prohibit the dismissal under Rule 12 of actions brought by total strangers to a decedent who cannot and do not plead any reasonable expectancy of an inheritance. Respondent submits that avoiding such an absurdity is exactly the reason why the appellate Courts of South Carolina have required a pleading to make *factual* allegations, rather than baldly stated legal conclusions such as Appellant's.

The Circuit Court correctly determined that Appellant had failed to state facts sufficient to support a cause of action for intentional interference with inheritance, even if such a cause of action were recognized in South Carolina, and this Court should affirm the Orders on appeal.

II. Appellant gave no indication that he could or would amend his Complaint to set forth facts sufficient to overcome a Rule 12(b)(6) motion, and the Circuit Court did not err in dismissing the Complaint.

Appellant argues that the Circuit Court erred in dismissing the case without giving Appellant an opportunity to amend the Complaint. Appellant has nonetheless made no attempt to amend his complaint or provide any indication that there were facts not set forth in his complaint which would cure the defects therein.

Respondent's motion to dismiss, which noted that Appellant had failed to state facts sufficient to support his cause of action (even if it were recognized in South Carolina), was filed on May 27, 2022. [Motion to Dismiss, R.] Over eight (8) months later, Appellant filed a memorandum opposing the motion, which does not suggest that the Circuit Court should consider allowing an amendment to the Complaint. [Memo. Opp., R.] Only in his Rule 59(e) motion did Appellant suggest that amendment should have been allowed. Respondent notes, and the record herein confirms, that Appellant never moved to amend his complaint or made any contact with Respondent regarding a potential amendment from his June 21, 2022 filing of this case to the February 9, 2023 Order of Dismissal.

Respondent notes that the Circuit Court's Order does not indicate the case was dismissed *with prejudice.* Appellant has nonetheless elected to proceed with this appeal, rather than filing an amended complaint. He has therefore waived his right to amend his Complaint herein. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006).[2]

The Circuit Court's Order correctly dismissed the case, and Respondent's own actions have waived his right to amend; the Orders should therefore be affirmed.

III. The Circuit Court correctly found that Appellant failed to sufficiently plead facts to support his claim that he had no adequate remedy at probate.

Appellant based his argument that the South Carolina Supreme Court would likely recognize his cause of action on the Federal District Court's findings in *Wellin v. Wellin*, 135 F. Supp.3d 502 (D.S.C. 2015). The *Wellin* Court had found that, in addition to the elements set forth by the Supreme Court in *Douglass*, a plaintiff in an intentional interference with inheritance case would also need to show that he had no adequate remedy at probate.

The Circuit Court in this case found that Appellant had failed to plead facts sufficient to show that he had no remedy in the Probate Court. Appellant alleged that he had no remedy in Probate Court because Respondent's alleged "actions converted 100% of the funds in question to nonprobate assets." On appeal, Appellant argues that this broad and opaque statement (which has little to no context in the Complaint) is sufficient to demonstrate that he has no remedy at probate. In support of his argument, Appellant cites Probate Code Statutes which define certain assets as nonprobate. He does not attempt to confront the Circuit Court's clear and correct finding that the Probate Court would have had jurisdiction to try title to any asset in which the decedent's estate may have had an interest under S.C. Code Ann. §62-1-302(a)(1). The relevant portions of that statute are:

SECTION 62-1-302. Subject matter jurisdiction; concurrent jurisdiction with family court.

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[2] *Spence* includes an extensive discussion of dismissal with and without prejudice in the context of Rule 12(b)(6) motions, including that a Plaintiff who believes he should be allowed to amend must bring forth some proposed facts which would cure the defect in the Complaint.

(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, **determination of property in which the estate of a decedent or a protected person has an interest**, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court... [emphasis supplied]

It is important to note that Appellant's sole claim was based on his alleged "expectation of receiving liquid assets *as part of the decedent's estate*." [Complaint, ¶9, R. (emphasis supplied)] If there were in fact any potential claim that assets Appellant expected to receive *from the decedent's estate* had been inappropriately converted to nonprobate assets, the Probate Court's jurisdiction to entertain such a matter is clear.

A review of South Carolina caselaw turns up several published opinions deciding matters related to multi-party accounts which began in the Probate Court. *See, e.g., Abernathy v. Latham,* 345 S.C. 105, 545 S.E.2d 848 (Ct.App. 2001); *Matthews v. Nelson*, 303 S.C. 489, 401 S.E.2d 669 (2000); and *Estate of Chappell v. Gillespie*, 327 S.C. 617, 491 S.E.2d 267 (Ct.App. 1997). All of these cases turn on analysis of an earlier version of the Probate Code section quoted in Appellant's brief in support of his erroneous argument that the Probate Court does not have jurisdiction over disputes involving multi-party accounts.

Although Appellant includes a separate argument that alleged issues with life insurance policies could not be brought before the Probate Court, he fails to cite any statute[3] or caselaw in support of that argument and arrives at the same false conclusion as

[3] Appellant does cite one statute regarding a personal representative's duty to prepare an inventory of nonprobate assets upon request. This statute has no relevance to the issues in

for the alleged bank account issues. As noted above, the Probate Court has jurisdiction to determine an estate's interest in any property, and Appellant could have brought an action in the Probate Court regarding any assets he believed were "converted" from probate to nonprobate. He therefore does not meet the prerequisite set forth in *Wellin* to bringing an action for intentional interference with inheritance, even if such a claim were recognized in South Carolina.

The Circuit Court correctly concluded that Appellant had failed to plead that he had no adequate remedy at probate, and the Orders on appeal should be affirmed.

CONCLUSION

For the foregoing reasons, Respondent submits that this Court should affirm the Orders appealed from and bring this matter to an end.

Respectfully submitted,

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September 11, 2023

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this appeal, and the facts Appellant includes regarding a nonprobate inventory are not in the Complaint (or the record) in this case.

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v.

Patsy R. Lightle, Respondent.

Proof of Service

The undersigned counsel for Respondent certifies that he has served the Respondent's Initial Brief and Designation of Matter on counsel for Appellant by mailing a copy of each document to him on the date shown below, addressed as follows:

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Respectfully submitted,

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September 11, 2023