

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Sep 21 2023**

**SC Court of Appeals**

APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas

Hon. Brian M. Gibbons, Circuit Judge

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Case No. 2022-CP-19-0114  
Appellate Case No. 2023-000541

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George William Rauton, III, Appellant,

vs.

Patsy R. Lightle, Respondent.

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INITIAL REPLY BRIEF OF APPELLANT

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September 21, 2023

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## ARGUMENT 1

### THE TRIAL COURT ERRED IN CONCLUDING THAT APPELLANT HAD NOT SUFFICIENTLY PLEAD AN EXPECTANCY

As noted in *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (S.C. Ct. App. 2001) "The purpose of a pleading is fair notice to the opponent and the court." In this state, Rule 8, SCRCP, mandates that a pleading contain "ultimate facts" rather than "evidentiary facts" to state a cause of action. "Ultimate facts fall somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions.'" The complaint here gave fair notice of Watts's claim, alleging as it did what we consider to be "ultimate facts."

Respondent's brief raises that the complaint does not state Appellant's familial relationship to the decedent and that the decedent is not identified by name. The assertion that respondent needs more explicit notice of her brother's relationship to their deceased father is simply disingenuous.

Respondent's assertion that the terms of the will should have been plead is also unavailing in light of the fact that it is what is not contained in the will that forms a part of Appellant's claim. Also, as the one who belatedly filed the will in the probate court, Respondent does not need a pleading to give her fair notice of the terms of the will.

Finally, Respondent conjures up a single horrible, rather than a parade. "Total strangers to the decedent" might assert claims, which would not be dismissed under Rule 12(b) on the expectancy element. However, such claims would be easily dispatched under Rule 56, and would also be deterred by the liability for filing frivolous claims.

Appellant's complaint contains the following allegation "Plaintiff had an expectation of receiving liquid assets as part of the decedent's estate. ( Complaint ¶ 9 , R. p. \_\_\_ )

As part of the proof in a trial on the merits, or a motion for summary judgment under Rule 56

SCRCF, Respondent will have an opportunity to cross examine Appellant and offer such proof as she desires to persuade the trier of fact on her view of Appellant's state of mind.

However, Appellant has done enough to put this issue in dispute as a matter of pleading, especially in light of rulings such as “ (a) 12(b)(6) Motion may not be granted if the Pleadings, viewed in the light most favorable to the Plaintiff, and the inferences drawn therefrom, show that the Plaintiff could prevail on any theory of the case. *Gray v. State Farm Auto Ins. Co.*. 491 S.E 2nd 272, 274-75 (S.C. Ct. App. 1995). (Emphasis added).

Therefore, the Trial Court's conclusion that the expectancy element was not sufficiently plead was erroneous.

## ARGUMENT 2

### THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT WITHOUT AN OPPORTUNITY TO AMEND

Respondent asserts that the dismissal in the trial court was without prejudice, and that Appellant could simply have refiled his action. This assertion cannot be reconciled with the language of SCRCF Rule 41(b) which provides: “Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.” The language of Rule 41(a)(1) regarding stipulations of dismissal makes a clear contrast between dismissals without prejudice and adjudications on the merits : “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is **without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed** in any court of the United States or of any state an action based on or including the same claim.

Respondents argument regarding waiver of the right to amend misses the fact that an opportunity to amend was the first item of relief sought in Appellants Rule 59(e) motion. The trial courts denial of this motion foreclosed Appellant from filing a new action, or an amended complaint and left this appeal as the only choice.

### ARGUMENT 3

#### THE TRIAL COURT ERRED IN CONCLUDING THAT AN ADEQUATE REMEDY EXISTED IN PROBATE COURT AS TO THE BANK ACCOUNTS

Appellant's argument relies on Section 62-6-204 which provides:

**SECTION 62-6-204. Transfers not testamentary.**

A transfer resulting from the application of Section 62-6-202 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Articles 1 through 4 (estate administration) unless there is clear and convincing evidence that the deceased party did not intend for the account to be joint with right of survivorship.

The effective date of Section 62-6-204 was January 1, 2014. Therefore, the three cases cited by Respondent have no relevance, given that they were decided in 2001 and earlier, and cannot shed any light on the impact of a statute that was enacted more than a decade later.

Likewise, as noted in Appellant's initial brief, general statutory provisions cannot abrogate the specific and carefully tailored provisions contained in 62-6-204.

### ARGUMENT 4

#### THE TRIAL COURT ERRED IN CONCLUDING THAT AN ADEQUATE REMEDY EXISTED IN PROBATE COURT AS TO LIFE INSURANCE POLICIES NOT PAYABLE TO THE ESTATE

As with the bank accounts addressed above, the insurance policies which are payable to a named beneficiary that are addressed in Paragraph 10(c) of the Complaint (R. p. \_\_) are not probate assets. Respondent does not address the fact that the official South Carolina form for the Inventory and Appraisal, which is designated as Form 350ES includes life insurance in Schedule D. Part 1 includes policies payable to the estate. Part 2, which is optional, includes life insurance payable to a beneficiary, and the Recapitulation at the end of this form also makes it clear that both survivorship

bank accounts and insurance policies payable to a beneficiary other than the estate are nonprobate assets.

Respondent asserts that S.C. Probate Code Section 62-3-706(b) which requires a personal representative to : “prepare a list of the property owned by the decedent at the time of his death that is not probate property...” is irrelevant, without contesting the accuracy of the assertion in the Rule 59(e) motion that in the probate court case, counsel for Respondent filed such a list identifying 4 bank accounts and 3 life insurance policies.

Respondent's citation of the Probate Court's general powers is no more successful here than it was related to the survivorship accounts.

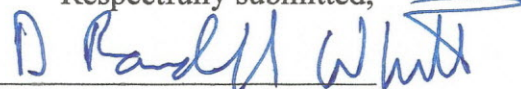
Nothing in the probate code allows the probate court to obtain jurisdiction over a financial institution or insurance company and order them to perform in a manner inconsistent with the account agreement or contract of insurance.

The trial Court's contrary conclusions are erroneous.

#### CONCLUSION

For the foregoing reasons, the Order of the Circuit Court should be reversed and the case remanded to Edgefield County, for further proceedings on Appellant's Complaint.

Respectfully submitted,



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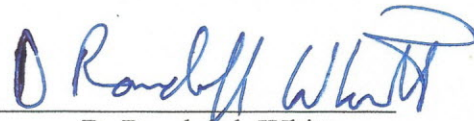
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**PROOF OF SERVICE**

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I certify that I have served Appellant's Initial Reply Brief and on Respondent listed above via emailing a copy of it on September 21, 2023, addressed to her attorney of record as follows:

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