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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. Brian M. Gibbons, Circuit Judge

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

George William Rauton, III, Appellant,

vs.

Patsy R. Lightle, Respondent.

FINAL APPELLANT'S BRIEF

October 27, 2023

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN CONCLUDING THAT APPELLANT HAD NOT SUFFICIENTLY PLEAD AN EXPECTANCY
2. DID THE TRIAL COURT ERR IN DISMISSING THE COMPLAINT WITHOUT AN OPPORTUNITY TO AMEND
3. DID THE TRIAL COURT ERR IN CONCLUDING THAT AN ADEQUATE REMEDY EXISTED IN PROBATE COURT AS TO THE BANK ACCOUNTS
4. DID THE TRIAL COURT ERR IN CONCLUDING THAT AN ADEQUATE REMEDY EXISTED IN PROBATE COURT AS TO LIFE INSURANCE POLICIES NOT PAYABLE TO THE ESTATE

STATEMENT OF THE CASE

This action was commenced by the Appellant's filing of a Summons and Complaint on April 21, 2023.(R. p.11) Respondent filed a motion to dismiss under SCRCP Rule 12(b)(6) on May 27, 2023. (R. p.15) Appellant filed a memorandum in opposition to the motion on January 27, 2023. (R. p. 20)A hearing was held on January 30, 2023. (R. p. 34)

The Circuit Court granted the motion to dismiss on February 9, 2023(R. p. 1). A timely motion to reconsider was filed on February 20, 2023. (R. p. 28) An Order denying reconsideration was filed March 3, 2023, (R. p. 8) A notice of appeal was filed and served on March 30, 2023(R. p. 32) .

STATEMENT OF FACTS

In this Appeal of a ruling under SCRCP Rule 12(b)(6), the following allegations from the counterclaim are deemed to be true:

Plaintiff had an expectation of receiving liquid assets as part of the decedent's estate. (Complaint ¶ 9 , R. p. 13)

Defendant's actions and omissions interfered with the realization of this expectancy through the following tortious conduct:

- (a) Alienating both of Plaintiff's from him by isolating them and controlling the information they were provided
- (b) Taking advantage of the parent's declining health to take total control of their financial affairs
- (c) Altering or causing the alteration of the beneficiaries of life insurance policies
- (d) Altering or causing the alteration of the holders of bank accounts to insure that they passed outside of the probate process and in the manner the defendant desired.
- (e) Forcing the Plaintiff to buy real estate, that should have passed to him under the decedents will, by threatening a sale on the open market.
- (f) Causing the proceeds of such sale to be transferred to accounts that prevented any scrutiny of how these funds were spent and preventing any part of them from becoming part of the Decedent's Estate.(Complaint ¶ 10 , R. p. 13)

But for Defendant's interference, there is a reasonable certainty that the expectancy would have been realized.(Complaint ¶ 11 , R. p. 14)

Plaintiff has suffered damages as a direct and proximate result of defendant's conduct. (Complaint ¶ 12 , R. p. 14)

As defendant's actions converted 100% of the funds in question to nonprobate assets, no adequate remedy exists in the probate court.(Complaint ¶ 13, R. p. 14)

STANDARD OF REVIEW

Respondent sought dismissal of the complaint pursuant to Rule 12(b)(6) for failure to state

facts sufficient to constitute a cause of action. In ruling on such a motion, the inquiry does not proceed beyond the four corners of the complaint. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999)

The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint." *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted). Moreover, the factual allegations of the complaint must be deemed to be true for purposes of this motion. "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (S.C. Ct. App. 2006).

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). See also *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Finally, the motion should not be granted solely because of doubts that the claimant will prevail at trial. *Gentry*, 337 S.C. at 5, 522 S.E.2d at 139.

This appeal is subject to the same standard of review implemented by the circuit court. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (S.C. Ct. App. 2001).

ARGUMENT 1

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

One of the elements of Appellant's cause of action for intentional interference with inheritance is the existence of an expectancy. See *Douglass ex rel. Louthian v. Boyce*, 344 S.C.5, 542 S.E.2d 715(2001)(Footnote 4). 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. 13)

The trial court's conclusion that this is insufficient, as a matter of pleading, is erroneous in several regards. Fundamentally, and expectancy is Appellant's state of mind, and his assertion as to his own state of mind should be sufficient as a matter of pleading. As part of the proof in a trial on the merits, or a motion for summary judgment under Rule 56 SCRPC, 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)

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, SCRPC, 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." See also *Brown v. Inv. Mgmt. & Research, Inc.* 323 S.C. 395, 400 n. 3, 475 S.E.2d 754, 756 n.3 (1996) ("[U]nder our current pleading rules only ultimate facts are required to be stated in pleadings. Ultimate facts are those which the evidence upon trial will prove, and not the evidence which will be required to prove those facts.") As noted in *Food Lion, INC., v. United Food & Commercial Workers International Union* 351 S.C. 65, 567 S.E.2d 251(S.C. Ct. App. 2002):, "At the pleadings stage, a litigant is not required to submit the evidence necessary to prove its case. "

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

Even if there was a pleading deficiency, the dismissal without an opportunity to amend was erroneous. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court."). "When a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a)[, SCRCP,] before filing the final order of dismissal." *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019) (quoting Rule 12(b)(6), SCRCP); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating when a complaint is dismissed pursuant to Rule 12(b)(6), leave to amend should be freely given).

A trial court does not have discretion to "dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a)." *Skydive*, 426 S.C. at 189, 826 S.E.2d at 592. Therefore, it was erroneous to "dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted." *Id.* "Rule 15(a) 'strongly favors amendments and the court is encouraged to freely grant leave to amend.'" *Id.* at 180, 826 S.E.2d at 587 (quoting *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017)).

ARGUMENT 3

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

The conclusion that an adequate remedy existed in probate court as to the bank accounts is erroneous. The bank accounts referenced in Paragraph 10(d) of the Complaint (R. p. 13) could not be transformed into probate assets, subject to the jurisdiction of the Probate Court or any remedy in that court.

Article 6 of the S.C. Probate Code is titled Nonprobate Transfers. Section 62-6-101 contains the following definition:(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements. Section 202 of Article 6 provides for payment to the surviving party on a survivorship account.

Article 6 of the probate code also contains 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 trial court did not cite any evidence of clear and convincing evidence of a contrary intent. Indeed it is not possible for such evidence to have been introduced in the context of a Rule 12(b)(6) motion.

The general provisions cited by the Trial Court cannot overcome this very specific and carefully tailored provision excluding the bank accounts referred to in the Complaint (Complaint ¶ 10(d) , R. p. 13) from any jurisdiction, or remedy in the probate court.

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. 13) are not probate assets. 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.

Moreover, the S.C. Probate Code Section 623-706(b) 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...” In this probate court case, counsel for Respondent filed such a list identifying 4 bank accounts and 3 life insurance policies.

The citation of the Probate Court's authority related to powers of attorney is inapposite to the question of the adequacy of remedy. The sole import of the power of attorney is to show Defendant's connection with Edgefield county for venue purposes, No subsection of Paragraph 10 of the Complaint is based on misuse of a power of attorney.

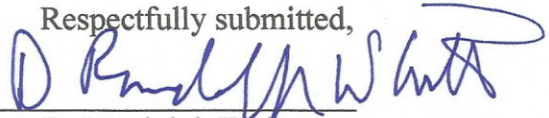
Nothing in the probate code allows the probate court to obtain jurisdiction over a financial institution or insurance company and order them to perform in a manner inconsistent with the account agreement or contract of insurance.

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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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Appellant's Brief complies with Rule 211(b), SCACR.

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