

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2022-000369

Stephen Wilkinson, as Trustee of George B. Buchanan,
Jr. Irrevocable Family Trust Dated the 15th day of July,
2001

Respondent,

v.

Redd Green Investments, LLC; Anderson North
Augusta, LLC; Herbert Anderson, Jr.; A. Bruce Green,
Herbert Keith Anderson; and L. Cliff Redd

Defendants,

Of which Redd Green Investments, LLC; A. Bruce
Green; and L. Cliff Redd are.....

Petitioners.

Return to Motion for Substitution and in Opposition to Dismissal

The Estate of Herbert Anderson, Jr. (“Estate”) recently moved for “permission to join in the briefing and oral argument of Petitioners[] and to be added as a party to this appeal” (Mot. to Join in Args. of Pet’rs at 1) and **now** has filed a Motion for Substitution and in Opposition to Dismissal. Undersigned fully incorporates the grounds stated in its return opposing the motion for “permission to join in the briefing and oral argument” as if stated verbatim herein.

The motion for substitution should be denied for the reasons stated therein and also the reasons stated here.

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Substitution Should Be Denied

First, the parties to the matter currently on certiorari have settled. Thus, the case is moot and should be dismissed and the oral argument cancelled as requested by **all** of the parties to the above-captioned matter.¹

Second, the grounds for substitution are not supported by the procedural posture and facts of this case. The Estate did not appeal. The Estate did not seek certiorari. The Estate is subject to a final judgment that has been recognized as valid by the Lexington County Probate Court, and the Probate Court has exclusive jurisdiction over the judgment against Estate.

Third, nothing “sneaky” is occurring. Petitioners settled with what resources they have. Respondent, under order of the Probate Court recognizing its claim, is pursuing the Estate because it has assets to pay the judgment—it just chooses not to pay the judgment and instead is litigating the matter fully in Probate Court.

Fourth, the appellate court rules cannot and do not create jurisdiction. Rule 265, SCACR, is subject to the Court’s ability to entertain a matter. Here, the Court is without jurisdiction over the Estate due to its failure to appeal. Once the judgment became final, its right to appellate relief ended. The Estate’s desperate and tardy attempts to try and salvage an appellate right should not be permitted less every appeal in this state be subject to non-finality.

Jurisdiction would lack any limiting principles if the Estate’s reasoning were correct. Noteworthy is the lack of any cases cited in the motion for substitution—because none exist to support the maneuver of the Estate. In contrast, undersigned cited plenty of cases on jurisdiction and the finality of judgments in its return opposing the motion for permission to join.

¹ See Exhibit 1, wherein Counsel for Petitioners notes his agreement that the matter is fully resolved.

Conclusion

Because the matter between the parties above is settled and because the exclusive jurisdiction over the judgment against the Estate rests with the Probate Court, the motion for substitution must be denied.

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Columbia, South Carolina
December 28, 2023