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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

The Honorable J. Mark Haynes, II, Judge

Case No. 2022-CP-42-2559
Appellate Case No: 2023-000120

Antoine Lamar Robinson and
Gerrick Robinson,

Respondent,

v.

Debra T. Robinson,

Appellant.

INITIAL BREIF OF APPELLANT

January 8, 2024

s/ Robert L. Gailliard
Robert L. Gailliard
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Attorney for Appellant

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(B) Statement of Issues on Appeal

There is only one issue on appeal. The Appellant filed her appeal with thirty (30) days as is required by the court rules governing appeals. The Respondent contends that a specific probate code prescribing the time to appeal which shortens the time provided by the court rules on appeals should control. There are no cases that specifically address the conflict between the court rules and the probate court statute. This court, is therefore, called upon to resolve the conflict between the court rules and the probate statute.

(C) Statement of Issues on Appeal

This matter was commenced by the filing of the form 300 for the appointment of Antoine Lamar Robinson and Gerrick Robinson as Personal Representatives of the estate of their late father Gerry Robinson. The appointment was opposed by Debra T. Robinson, the widow of the decedent, Gerry Robinson. Debra T. Robinson opposed the appointment of Antoine Lamar Robinson and Gerrick Robinson on the grounds that, she as the widow had statutory priority under the Probate code, section 62-2-___. Code of laws of South Carolina, 1976, as amended. Respondent employed several attorneys to advance her cause but was unsuccessful in being appointed Personal Representative.

After numerous continuances, Rules to Show Cause and Motion hearings, a trial was conducted before the Probate Judge for Spartanburg County, Ponda A. Caldwell. The Judge issued her Order on 15 June 2022. confirming Antoine Lamar Robinson and Gerrick Robinson as Personal Representative of the estate of Gerry Robinson. The order of the probate court was appealed to the court of Common Pleas. Judge J. Mark Haynes dismissed the appeal of the Appellant stating that the appeal was not timely as it was filed outside of the time period prescribed by the probate code (See order of judge Haynes). This appeal to the Court of Appeals followed the date of the service of the Notice of Appeal is 11 July 2022.

The operative orders are the Order of the Probate Court and Judge Haynes' Order from the Court of Common Pleas.

(D) Standard of Review

The one issue before the appellate court is governed by a standard of “substantial evidence.” There are no cases that resolved the conflict of court rule 74 with probate code 62-2.

(E) Argument

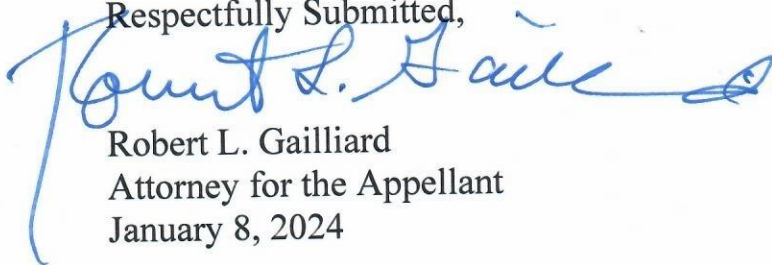
Clearly, the appellant filed her appeal within the time period prescribed by the court rule. The appeal was filed within thirty (30) days as the rule allows. The probate code restricts the time period for filing to ten (10) days.

This court must now resolve the conflict between the rule and the statute. Appellant contends that since she was timely in her filing under the rule that the court should accept her appeal. There is no prejudice to respondent for the court to accept compliance with its own rule.

(F) Conclusion

For the reasons stated above appellant prays that the order of the circuit court be reversed and the matter be remanded to the circuit court for a full hearing on the appeal.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Robert L. Gailliard", with a stylized flourish at the end.

Robert L. Gailliard
Attorney for the Appellant
January 8, 2024

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Court of Common Pleas

The Honorable J. Mark Hayes, II, Judge

Case No. 2022-CP-42-2559
Appellate Case No: 2023-0000120

Antoine Lamar Robinson and
Gerrick Robinson,

Respondent.

vs.

Debra T. Robinson

Appellant.

PROOF OF SERVICE

I certify that I have served Richard H. Rhodes, Attorney for Respondents the initial brief of Appellant by mailing the same to him by first class mail at his address 260 North Church Street, Spartanburg South Carolina, and electronically at his email address.

s/Robert L. Gailliard

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