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**Jan 25 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, II, Judge

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

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Antoine Lamar Robinson and Gerrick Lance Robinson.....Respondents,

vs.

Debra T. Robinson.....Appellant.

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**INITIAL BRIEF OF RESPONDENTS**

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January 25, 2024

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**ISSUE ON APPEAL**

An appeal from Probate Court to the Circuit Court is governed by Statute 62-1-308(a).

## **STANDARD OF REVIEW**

This is a case tried by the Spartanburg County Probate Court without a jury. Therefore, the appellate court may not disturb the Probate Court's findings of fact unless the review of the record disclosed that there is no evidence to support the findings by the Probate Judge. In the matter of Howard, 315 S.C. 356 (Ct. App. 1993).

The only issue on appeal is whether Code §62-1-308(a) governs the appellate process. Therefore, this matter is an action at law. In Daisy Outdoor Advertising Co., Inc. v. Abbott, 317 S.C. 14 (Ct. App. 1994), the Court held that in an action at law, tried without a jury, the findings of the trial judge will not be disturbed unless the findings are without evidence which reasonably supports the Judge's ruling.

Since the only issue on appeal is a question of law, Code §14-3-330 specifies that the appellate court has jurisdiction to correct errors of law.

## STATEMENT OF THE CASE

Gerry Robinson (Decedent) died intestate in September 2018. His heirs at law were his wife (Appellant) and his two (2) sons by a previous marriage (Respondents). The Appellant never sought to be appointed Personal Representative. The Respondents were appointed Personal Representatives on April 25, 2019 (Tr. \_\_\_\_).

After the Respondents were appointed Personal Representatives, the Appellant advised the Probate Court that she thought a third party should be appointed. However, the Appellant never filed a Petition for formal appointment as required by statute (Tr. \_\_\_\_).

During the course of the administration of the estate, the Appellant did not cooperate. The Respondents could not gain access to the marital home to have an appraisal. A hearing was required and the court ordered the Appellant to make the house available. The Appellant did not cooperate, and a Rule-to-Show-Cause had to be filed so that the Respondents could gain access to have the house appraised (Tr. \_\_\_\_).

At the time the Appellant was refusing access to the house, she was represented by an attorney who was subsequently released as counsel.

Even though the assets in the estate were limited, the Appellant would not agree to a division of the estate assets. A hearing was scheduled for October 13, 2021, but at the hearing, the Appellant sought a continuance because she wanted to obtain an attorney (Tr. \_\_\_\_). The hearing could not be rescheduled until February 9, 2022.

At the hearing on February 9, 2022, the Appellant was represented by counsel. Prior to the hearing, the Appellant filed a Motion seeking to be appointed Personal Representative of the estate because she had priority. The court denied this relief because the Appellant had not previously requested to be appointed and she had not filed a Petition as required by statute.

At the final hearing, the Appellant disagreed with several of the valuations of the assets, but she produced no evidence or substantiating documentation to show what the values should be (Tr. \_\_\_\_). Accordingly, the court used the values which were shown on the Inventory and Appraisal.

The Appellant requested to have the marital home and the Decedent's Honda automobile. The Respondents did not object. The court awarded these items to her, but the Appellant was required to pay cash to the Respondents to equal the division. The Final Order was filed on June 15, 2022.

The Appellant filed notice of intent to appeal the Probate Court Order, however the notice of appeal was filed 23 days after receipt of the Probate Court Order. The Respondents filed a Motion to Dismiss the appeal. By Order filed January 9, 2023, the Court of Common Pleas dismissed the appeal because it had not been filed timely.

## ARGUMENT

Code §62-1-308(a) specifies that an appeal from Probate Court may be taken to the Court of Common Pleas, however the notice of appeal must be filed within ten (10) days of receipt of the order being appealed.

Rule 74 SCRPC also provides that an appeal may be taken from Probate Court to the Court of Common Pleas. This Rule states that an appeal should be filed in accordance with any statute or within thirty (30) days of receiving the order.

The Appellant's attorney contends that he complied with Rule 74 because he filed notice of appeal within 23 days after receiving the Probate Court Order.

It is respectfully submitted that the time constraints of Code §62-1-308(a) controls. Therefore, an appeal must be filed within ten (10) days.

The right to an appeal did not exist in common law. Instead, it is a right which has been granted by statute. Therefore, appeals are controlled by statute. Chem-Nuclear Systems v. Board of Health, 374 S.C. 201 (2007).

In the case of Witzig v. Witzig, 325 S.C. 363 (Ct. App. 1996), the Court was asked to decide whether the ten (10) day requirement of the statute was superior to the thirty (30) day rule provided by the Circuit Court Rule. The Court held that the statutory provision was controlling. In making its decision, the Court held:

It is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedent over earlier legislation. (Citation omitted) Thus, the specific ten (10) day filing period provided by Code §62-1-308(a) controls over the general provisions of Rule 74 SCRPC. id at p. 376.

In Witzig, the Court pointed out that Rule 74 specifically states that "the notice of initiation to appeal shall be filed.... within the time provided by statute or by this rule when no other time is fixed by statute.... id at p. 366.

Based on the holding in Witzig, it is clear that an appeal from Probate Court must be filed within ten (10) days of receiving the Probate Court Order. The Appellant did not do this.

The Appellant also failed to comply with Code §62-1-308(b). That provision requires an Appellant to present a Statement of Issues on Appeal no later than 45 days after the receipt of the written Order. This was never done by the Appellant.

In the case of State v. Brown, 358 S.C. 382 (2004), the Supreme Court held that the failure to comply with the procedural requirements for an appeal divest a Circuit Court of appellate jurisdiction. [Accord, Appellant Practice in South Carolina 1999, page 7.]

Based on the above, it is respectfully submitted that the Appellant's appeal should be dismissed.

## CONCLUSION

The administration of the decedent's estate started in 2019. The estate had modest assets and only three (3) heirs at law. Such an estate should have completed administration in less than one year.

A review of the Orders in this case shows that the Appellant has been dilatory and has delayed the administration. The Respondents were the ones who opened the estate and sought to be appointed. The Appellant never objected. Over a year after being appointed Personal Representatives, the Respondents were still unable to gain access to the Decedent's house for purposes of completing the Inventory and Appraisement. A hearing was required to gain access, however, the Appellant still refused to allow an appraiser in the home and she was found in contempt of court.

The Appellant sought to keep the marital home which was the largest asset and she also wanted the Decedent's Honda automobile. The Respondents never objected to this and this is what was ultimately given to her.

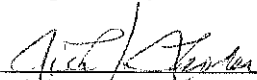
The Appellant would not agree to a division of the estate assets and a formal hearing had to be held. At that hearing, the Appellant asked for a continuance so that she could get an attorney. This delayed the hearing for several more months.

At the final hearing, the Appellant did not present any specific information relating to assets or values and her wishes of her being given the home place and the car were granted. [The bulk of the argument at the final hearing was the Appellant's contention that she had priority to serve as the Personal Representative.]

The Appellant did not file an appeal timely to the Circuit Court, and the appeal was dismissed. This appeal has now ensued. During all of these delays, the Appellant continues to live in the home place and have exclusive possession, but she has not been required to pay the Respondents' their interest in the home. Conversely, the Respondents have been awarded the Decedent's condominium. It had unpaid regime fees which increase each month. And, because of the pendency of the appeal, the Respondents cannot sell the condominium.

The Respondents contend that this appeal is non-meritorious and ask the Court to dismiss the same.

Respectfully submitted,

  
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Attorneys for the Respondents

January 25, 2024

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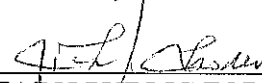
**PROOF OF DELIVERY**

This is to certify that on the 25<sup>th</sup> day of January, the undersigned, secretary to Richard H. Rhodes, Esq., served a copy of the **RESPONDENTS' INITIAL BRIEF** by emailing a copy to the following:

Robert L. Gailliard  
Attorney for Appellant  
Via Email: [rlgailliardlaw@outlook.com](mailto:rlgailliardlaw@outlook.com)

  
JO ANN CHAMPION

SWORN to before me this 25<sup>th</sup>  
day of January, 2024

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12-10-2025