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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM RICHLAND COUNTY
PROBATE COURT
Amy W. McCulloch, Probate Court Judge

The Honorable George M. McFaddin, Jr. Circuit Court Judge Presiding

Estate Case No. 2020-ES-40-00392
Case No. 2023-CP-40-00573

In the Matter of the Estate of Adell Thompson Adams:
Constance Washington,
Appellant,

v.

Adrian E. Adams, as Personal Representative for the Estate of Adell T. Adams,
Respondent.

Opinion Number _____
Heard October 27, 2023, Filed _____

ORDER

Thomas Jefferson Goodwyn, Jr. of Columbia, SC, attorney for Appellant.

Soraya Martial-Wright, of Rock Hill, SC, attorney for Respondent.

THE ISSUE ON APPEAL

The question before the Court is, “Did the Probate Court err as a matter of law in finding that Appellant failed to file a Petition for Allowance of her creditor’s claim when the Notice of Disallowance was not timely filed and was unsigned.”

FACTUAL/PROCEDURAL BACKGROUND

The history of Appellant Constance Washington’s claim began when she filed a Complaint on October 31, 2012 in Magistrate Court in Richland County, SC (Defendant’s R. pp 3-9) against Adell Adams alleging money owed on an alleged verbal contract for “home health care” services from May to August, 2009, following a surgery Adell Adams had in May, 2009. Multiple attempts at service by Sheriff went unserved. A private process server served Adell Adams on February 5, 2013 and she filed her answer with the Magistrate on March 8, 2013 (Defendant’s R. pp 10-13).

A hearing on the Complaint was held on April 1, 2013. The Magistrate Court found in favor of Constance Washington in the amount of \$500.00 plus court costs of \$80.00 (Defendant’s R. pp 14-19). Mrs. Adell Adams paid the judgment in full on April 30, 2013 to the Magistrate (Defendant’s R. pp 20-22). Constance Washington then signed for and picked up her payment of \$580.00 on May 8, 2013 at the Magistrate’s Office (Defendant’s R. pp 23-24).

Also on April 30, 2013, Constance Washington filed an Appeal from the Magistrate Court’s Order in the Richland County Circuit Court (Defendant’s R. pp 25-30), citing an error in the calculation of liquidated damages, stating that the liquidated damages should be \$7,500.00, because the Magistrate Court had “ruled that Defendant was in default and as a result, Defendant admitted all of the allegations in Plaintiff’s complaint.” Constance Washington attached to her Notice of Appeal only one page of the five page Order of the Magistrate Court Judge, the Honorable Tomothy C. Edmond, which page was entitled, “Notice of Default Judgment” (Defendant’s R. pg 30). The remainder of the Magistrate Court Order states that the matter was tried on April 1, 2013 and that the Judge had ruled in favor of the Plaintiff in the amount of \$580.00 (Defendant’s R. pp 14-18).

The Honorable Magistrate Judge Tomothy C. Edmond filed an Answer to the Notice of Appeal on May 31, 2013 (Defendant's R. pp 31-34) citing facts of the Magistrate Court case, including, "It appeared that there was no contract or amount agreed upon, and based on the testimonies of all parties involved a judgment of five hundred (500) dollars was granted in favor of the plaintiff plus the court costs of eighty (80) dollars for a total of five hundred eighty (580) dollars. The Defendant paid the \$580 in full and it was received by the plaintiff on May 8, 2013" (Defendant's R. pg 34).

A hearing was held in the Circuit Court of Appeals case on March 15, 2019, nearly six years later. An Order was entered on March 20, 2019 (Defendant's R. pp 35-39), reversing the amount of the judgment and ordering Appellant be granted judgment in the amount of the liquidated damages of \$7,500.00 against Adell Adams.

An Execution was issued on November 1, 2019 (Defendant's R. pp 40-43) and a Motion for Supplemental Proceedings on January 10, 2020 (Defendant's R. pp 44-47), in an attempt to execute on Adell Adams' property. On January 14, 2020, a Rule to Show Cause and Order for Supplemental Proceedings was filed (Defendant's R. pp 48-52).

The Rule to Show Cause and Order provided that the matter be referred to Richland County Master in Equity, Joseph M. Strickland, for further proceedings and that Adell Adams appear before the said Master in Equity on February 10, 2020, at 11:30 a.m., at the Richland County Courthouse, in Columbia, South Carolina. Constance Washington did not execute on the Circuit Court Appeals Judgment prior to Adell Adams' passing.

Adell T. Adams died on February 19, 2020.

Respondent Adrian E. Adams was named as Personal Representative in Adell Adams' Last Will and Testament, and was duly appointed in Adell Adams' Estate on May 11, 2020. Appellant Constance Washington filed a Statement of Creditor's claim in decedent's estate case on May 20, 2020 in the amount of \$7,500.00 (Defendant's R. pp 53-54).

Respondent, pro se at the time, filed a Notice of Allowance/Disallowance of Creditor's Claim (the "Notice of Disallowance") on November 8, 2021 (Defendant's R. pp 61-62), disallowing the Appellant's claim in full. Respondent also filed a Proof of Delivery on November 8, 2021 stating that he had mailed a copy of the Notice of Disallowance to the attorney for the Appellant. Respondent's Notice of Disallowance contained a thirty day warning, Pursuant to 62-3-806(a) that her claim will be barred to the extent disallowed unless the claimant

commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance.

More than three months later, the attorney for the Appellant sent a letter to the Personal Representative dated February 16, 2022 (Defendant's R. pp 63-64), acknowledging receipt of the Notice of Disallowance and Proof of Delivery. Appellant's Attorney filed this letter with the Probate Court on February 20, 2022. In his letter, the attorney for the Appellant took the position that the Notice of Disallowance was not valid since: (a) the Personal Representative had not signed the Notice of Disallowance, (b) there was no reason given for the disallowance of the claim, and (c) the Notice of Disallowance was filed outside the maximum time allowed under South Carolina Code (Defendant's R. pg 64). The attorney for the Appellant further took the position that no response to the Notice of Disallowance was required (Defendant's R. pg 64). The attorney for the Appellant stated in his February 16, 2022 letter, "Ms. Washington maintains her right to be paid in full for the judgment plus all applicable interest from the estate proceeds prior to the closing of the estate" (Defendant's R. pg 64).

The attorney for the Appellant did not file a Petition for the Allowance of the claim within thirty days of receiving the Notice of Disallowance, pursuant to Section 62-3-804(2).

The Probate Court noticed and scheduled a closing hearing for July 21, 2022.

Respondent's attorney filed a Notice of Appearance in the probate case on July 20, 2022 and requested an extension of the closing hearing date. The extension was granted with a new due date of August 22, 2022 to complete the documents to close the estate. Respondent's attorney requested a second extension which was granted with a new due date of October 14, 2022.

Respondent's attorney filed the required closing documents to complete the estate administration on October 24, 2022, including a Notice of Right to Demand a Hearing, Final Accounting, Proposal for Distribution (proposing no distribution to Appellant), Application for Settlement and Proof of Delivery of mailing the closing documents to Appellant's attorney.

On November 4, 2022 Appellant's attorney filed a Demand for Hearing and a hearing was held on December 20, 2022.

Based on documents filed in the case and submitted by all parties, testimony of the parties and the arguments of Counsel, the Probate Court's Order was filed on January 10, 2023

(Defendant's R. pp 72-76). The Probate Court denied Appellant's claim, ordering in pertinent part, but not limited to:

- a. The Respondent's Notice disallowing Appellant's claim "is not invalidated because it is not signed. Nothing in the code supports this argument." The Notice of Disallowance filed with the Court was signed and "is the controlling document" (Defendant's R. pg 75 paragraph 5).
- b. "Nothing in the code requires a reason for the Disallowance. The form itself states this is optional. Therefore, failure to state a reason does not invalidate" the disallowance of Appellant's claim (Defendant's R. pg 75 paragraph 6).
- c. "The time period for the Allowance or Disallowance of Claims in SC Code § 62-3-806(a), is a duty placed on the Personal Representative for the Court and the timely administration of the Estate. There is no available consequence for a creditor to claim or ask for as a result of the delay, other than a Petition for Performance or a Petition for Removal of the Personal Representative" (Defendant's R. pg 75 paragraph 7).
- d. "The Court is authorized to extend the time for Allowance or Disallowance of Claim for good cause shown as described in SC Code Ann. § 62-3-806(a)" and an extension was granted (Defendant's R. pp 75-76 paragraphs 8-12) (Defendant's R. pp 55-60).
- e. The Notice of Disallowance of Appellant's claim, filed "outside the time period of fourteen (14) months from the death of Decedent required by SC Code § 62-3-806(a) does not invalidate the action of Disallowance of the Claim" (Defendant's R. pg 76 paragraph 13).
- f. Code § 62-3-806(a) and the Notice of Disallowance of Appellant's claim received by Appellant's attorney, "require the filing of a Summons and Petition for Allowance of Claim with the payment of \$150.00 within thirty (30) days of the mailing of the form." (Emphasis in original Order) (Defendant's R. pg. 76 paragraph 14).
- g. Code § 62-3-806(a) and the Notice of Disallowance of Appellant's claim received by Appellant's attorney, "warn that if the creditor does not file a Summons and Petition for Allowance of Claim with the payment of \$150.00 within thirty (30) days of the mailing of the form, their claim will be forever barred." (Emphasis in original Order) (Defendant's R. pg 76 paragraph 15).

h. The attorney for the Appellant “failed to timely commence a proceeding for Allowance of the Claim in accordance with Section 62-3-804(2) and therefore the claim is forever barred” (Defendant’s R. pg 76 paragraph 16).

The attorney for Appellant filed a Petition for Allowance of Claim on January 5, 2023 (Defendant’s R. pp 65-71), more than one year after receiving Respondent’s Notice of Disallowance containing the thirty day warning. The Probate Court dismissed this action in its January 10, 2023 Order (Defendant’s R. pg 75 paragraph 17).

The Appellant filed a Motion to Reconsider on January 20, 2023 (Defendant’s R. pp 77-84), which was denied (Defendant’s R. pp 85-86).

The attorney for Appellant did not at any time file a Petition for Performance or a Petition for Removal of the Personal Representative as a course of action for his client, the creditor, and Appellant herein, when receipt of the Respondent’s Notice of Disallowance was outside the time limit of fourteen months.

ISSUES PRESENTED

- I. Was Respondent’s Notice of Disallowance, disallowing Appellant’s claim invalidated because the copy she received was not signed?
- II. Was Respondent’s Notice of Disallowance of Appellant’s claim invalidated because a reason for the disallowance was not given?
- III. Was Respondent’s Notice of Disallowance of Appellant’s claim invalidated because it was filed outside the time period of fourteen (14) months from the death of Decedent required by SC Code § 62-3-806(a)?

LAW/ANALYSIS

I. The Notice of Disallowance Appellant received was unsigned; however, this fact does not render the Notice of Disallowance invalid. As the Probate Court stated in its January 10, 2023 Order, “Nothing in the Code supports this.” The copy filed with the Probate Court was signed, and is the controlling document (Defendant’s R. pg 75 paragraph 5).

II. Appellant cites that no reason was given for the disallowance of her claim and that there “would have been no valid reason for the Court to have disallowed a valid judgment obtained against the Decedent during the Decedent’s lifetime.” Respondent prepared and filed the Notice that disallowed the claim and it was up to the creditor to petition for its allowance. The Court didn’t disallow the claim, except to rule in its January 10, 2023 Order that the claim was, “forever barred” by the Code (Defendant’s R. pg 75 paragraphs 15-16). As stated on the Form 372 ES Notice of Allowance/Disallowance of Creditor’s Claim, a reason for the disallowance is optional (Defendant’s R. pg 62) and not required to be given, and is certainly not a reason for it to be deemed invalid.

III. While the Code does not specifically address consequences available to creditors whose claims are disallowed outside of the time limits, the Code does provide a very specific mechanism, a strict timeline, and consequences to creditors when a Notice of Disallowance is served on the creditor. The Code refers to it as a “warning.” In fact, Section 62-3-806(a) provides strong, even repetitive, language as follows (emphasis supplied):

A notice of disallowance or partial disallowance of a claim must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the personal representative.

Clearly, the Code places the burden on the creditor to timely file a creditor’s claim. The Code further places the burden on the creditor to file a timely petition for allowance, when a claim has been disallowed—regardless of whether the disallowance was outside of the time limit.

The Code doesn’t direct the Personal Representative to file a motion for extension to extend the time to file a Notice of Allowance/Disallowance outside the fourteen month timeframe.

The Code provides in § 62-3-806(a) that “for good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed

claim.” Thus, the Probate Court has discretion to extend the time for Personal Representatives to file Notices of Disallowance of claims.

Appellant’s claim in Probate Court was first disallowed by the Personal Representative. Appellant’s claim then was then barred by the failure of the Appellant herself to properly present her alleged claim in Probate Court by filing a timely Petition for Allowance. She could have done so within thirty days of receiving the Notice of Disallowance of her claim, regardless of how long the Personal Representative took to file the Notice of Disallowance to begin with. Appellant’s claim was further barred by the Probate Court’s January 10, 2023 Order forever barring the claim.

CONCLUSION

We find that the Probate Court did not err in finding that Appellant failed to file a Petition for Allowance of her creditor’s claim when the Notice of Disallowance was not timely filed, and was unsigned.

The Appellant’s Appeal is therefore denied.



Richland Common Pleas

Case Caption: Constance Washington VS Adrian E Adams , defendant, et al

Case Number: 2023CP4000573

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

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