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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

George M. McFaddin, Jr., Circuit Court Judge

Probate Court Case No. 2020-ES-40-00392
Circuit Court Case No. 2022-CP-40-00573
Appellant Case No. 2024-000234

In the Matter of the Estate of Adell Thompson Adams:

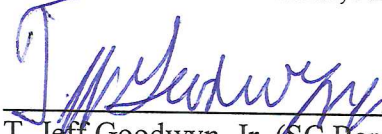
Constance Washington.....Appellant,

v.

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Probate Court err as a matter of law in finding that Appellants failed to file a Petition for Allowance of her creditor's claim when the Notice of Disallowance was not timely filed and was unsigned.**

STATEMENT OF THE CASE

This case involves the appeal of decision by the Probate Court as affirmed by the Circuit Court to dismiss Appellants' timely filed creditor's claim after the Personal Representative filed and served an unsigned Notice of Disallowance of Appellant's creditor's claim well after the deadline to file a Notice of Disallowance and any extension the court may have granted. Appellants filed a timely motion to reconsider which was denied on January 27, 2023. (R. p. ____). Appellants filed a timely Notice of Appeal to Circuit which affirmed the Probate Court's decision by an order dated February 13, 2024. (R., p. ____). This appeal follows.

STATEMENT OF FACTS

The Decedent died February 19, 2020. Appellant timely filed her creditor's claim for a judgment she had obtained against Decedent during his lifetime (see Order, ¶2; R. p. ____). The Personal Representative filed his Notice of Disallowance of Washington's creditor's claim twenty-one months after the death of the Decedent and seven months beyond the maximum time allowed by S.C. Code Ann. § 62-3-806(a). (see Order, ¶3; R. p. ____). No motion for an extension to file the Notice of Disallowance was filed by the Personal Representative and the Personal Representative made no showing in the record of good cause for such an extension. Neither Washington nor her attorney were notified by the Court or the Personal Representative of any efforts the Court made to prompt the Personal Representative to file the Notice of Disallowance or that an extension to file it was granted.

The Court informed Appellant at the hearing on December 20, 2022 that despite not filing a motion to extend the time to file a Notice of Disallowance, it had granted the

Personal Representative an extension to file “the closing documents” until July 29, 2021 due the health of the Personal Representative’s wife in an email dated April 30, 2021. (see Order, ¶9; R. p. ____). This email is not available to view on the online file. (R., p. ____). No motion for an extension to file the closing documents was filed and it is not specified whether “the closing documents” includes the Notice of Disallowance. The Court’s file does not indicate any showing of poor health of the Personal Representative’s wife.

The Personal Representative did not file a Notice of Disallowance prior to the July 29, 2021 extension deadline nor did the Personal Representative file a motion to extend the time to file the Notice of Disallowance beyond July 29, 2021 pursuant to S.C. Code Ann. §62-3-806(a). The Court prompted the Personal Representative to respond to the creditor’s claims via emails dated August 24, 2021 and September 9, 2021, (see Order, ¶12, R., p. ____), but did not specifically grant an additional extension. (see emails of 8/24/21 and 9/9/21, R. pp. ____). Again, at this time, the Personal Representative did not file a motion to extend the time to file the Notice of Disallowance pursuant to S.C. Code Ann. §62-3-806(a).

On November 8, 2021, the Personal Representative sent Appellant an unsigned Notice of Disallowance of her claim. (Order, ¶5; R., p. ____). Appellant’s counsel sent the Personal Representative a letter filed February 22, 2022 letting him know that the Notice of Disallowance form received was not signed and that it was not timely filed and that no response was required. (R., p. ____). When Appellant received notice of extensions being granted at the hearing on December 20, 2022, Washington filed a Petition to Allow the claim within 30 days on January 5, 2023, which was denied without a hearing on the grounds it was untimely filed. (see Order, ¶17; R. p. ____).

STANDARD OF REVIEW

The standard of review applicable to cases originating in the Probate Court depends upon whether the underlying cause of action is at law or in equity. *University of Southern California v. Moran*, 365 S.C. 270 (S.C. App. 2005). In the absence of a statute or rule prescribing a different standard of review in the appeal of a probate matter to the Circuit Court, the Circuit Court must apply the same standard the Court of Appeals would apply on direct appeal. *Matter of Estate of Tollison*, 320 S.C. 132 (S.C. App. 1995). An issue relating the interpretation of a statute is a matter of law for the Court to determine. *McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994).

ARGUMENT

I. The Probate Court erred as a matter of law in disallowing Appellant's timely filed creditor's claim because the Notice of Disallowance was not timely filed and was unsigned and therefore not effective for both reasons.

The Court found that the creditor's claim filed by Constance Washington is denied because she failed to file a Petition to Allow the claim after she received an unsigned, out of time Notice of Disallowance of the claim as required by S.C. Code Ann. §62-3-804(2). Appellant respectfully asks the Court to reverse this ruling this ruling for the following reasons.

With respect to the timeliness of Appellant's creditor's claim and the Notice of Disallowance that was filed, the Court found and concluded that the claim was timely filed (see Order ¶2; R. p. ____).

S.C. Code §62-3-806(a) reads as follows:

SECTION 62-3-806. Allowance of claims.

(a) As to claims presented in the manner described in Section 62-3-804(1) within the time limit prescribed in Section 62-3-803, within sixty days after the presentment of the claim, or within fourteen months after the death of the decedent, whichever is later, *the*

personal representative must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part. Service of such notice shall be by United States mail, personal service, or otherwise as permitted by rule and a *copy of the notice shall be filed with the probate court along with proof of delivery setting forth the date of mailing or other service on the claimant.* A notice of Notice of Disallowance or partial Notice of 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 Notice of Disallowance or partial Notice of 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 Notice of Disallowance or partial Notice of Disallowance by the personal representative. *For good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed claim.* (emphasis added).

The Personal Representative filed his Notice of Disallowance of Appellant's creditor's claim twenty-one months after the death of the Decedent on February 19, 2020 and seven months beyond the maximum time allowed by S.C. Code Ann. § 62-3-806(a). (see Order, ¶3; R. p. ____). No motion for an extension to file the Notice of Disallowance was filed by the Personal Representative and the Personal Representative made no showing in the record of good cause for such an extension. Neither Appellant nor her attorney were notified of any efforts the Court made to prompt the Personal Representative to file the Notice of Disallowance or that an extension to file it was granted.

Despite the Personal Representative not filing a motion to extend the time to file the Notice of Disallowance, the Court granted the Personal Representative an extension to file "the closing documents" until July 29, 2021 due the health of the Personal Representative's wife in an email dated April 30, 2021. (see Order, ¶9; R. p. ____). This email is not available to view on the online file meaning that Appellant would have had no way to know that an extension had been granted (see list of online records, R., p. ____). No motion for an extension to file the closing documents was filed and the Court's file

does not specify whether “the closing documents” includes the Notice of Disallowance. The Court’s file does not indicate that the Personal Representative made any showing of poor health of the Personal Representative’s wife.

The Personal Representative did not file a Notice of Disallowance prior to the July 29, 2021 extension deadline nor did the Personal Representative file a motion to extend the time to file the Notice of Disallowance beyond this July 29, 2021 extension deadline pursuant to S.C. Code Ann. §62-3-806(a). The Court prompted the Personal Representative to respond to the creditor’s claims via emails dated August 24, 2021 and September 9, 2021, (see Order, ¶12; R. p. ____), but did not specifically grant an additional extension. (see emails of 8/24/21 and 9/9/21, R. pp. ____). Again, at this time, the Personal Representative did not file a motion to extend the time to file the Notice of Disallowance pursuant to S.C. Code Ann. §62-3-806(a).

While the Court ruled that it granted an extension to file the Notice of Disallowance by a series of emails to the Personal Representative, the extension that was granted expired July 29, 2021 (R., p. ____). In addition, Appellant was not put on notice that these emails were sent or that any extension was requested or granted. None of these emails purporting to grant an extension to file the Notice of Disallowance are available to view online as a document filed in this case. (R., p. ____). Not until November 8, 2021 did the Personal Representative send Appellant an unsigned Notice of Disallowance of her claim. (Order, ¶5; R., p. ____). There is no cite in the Order indicating that any extension was granted to include November 8, 2021 or beyond. (R., pp. ____). The only extension granted was until July 29, 2021. (Order, ¶9; R. p. ____).

Appellant would also note that there is no reason for the disallowance of the claim cited in the Notice of Disallowance. While a reason is not required, 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. The Personal Representative is also a beneficiary of the Decedent's estate and Appellant believes that attempting to disallow a clearly valid creditor's claim such as this was a bad faith effort on his part to keep more of the estate for himself.

Washington's counsel sent the Personal Representative a letter dated February 22, 2022 letting him know that the Notice of Disallowance form received was not signed and that it was not timely filed and that no response was required. (R., p. ____). Instead of informing Appellant or her counsel that he believed the Court had granted him an extension to file the Notice of Disallowance through a series of emails that Appellant had not been served with, the Personal Representative made no response at all. Then, at the hearing on the issue on December 20, 2022, he argued that the claims should be dismissed because Appellant failed to file a petition to allow the claim. (See Hearing Transcript; R., p. 7 ____). Once Appellant received notice of extensions being granted on December 20, 2022, Washington filed a Petition to Allow the claim within 30 days on January 5, 2023, which was denied without a hearing on the grounds it was untimely filed. (see Order, ¶17; R. p. ____).

Appellant contends that the Notice of Disallowance that was filed is not effective as being both unsigned and not timely filed. The proper action would be for the Personal Representative to file a motion for an extension of time to file the Notice of Disallowance pursuant to S.C. Code Ann. §62-3-806(a) and if the court grants the motion believing good

cause has been shown, then file a timely Notice of Disallowance and properly serve Appellant. In the alternative, the Court could have removed and replaced the Personal Representative with one that will make a motion to extend the time to file the Notice of Disallowance and/or timely file the Notice of Disallowance.

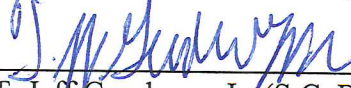
A reasonable practitioner should be able fairly conclude and rely on the fact that an untimely filed Notice of Disallowance will not be effective. Every filing deadline in law generally means that the late filing is not effective unless the court grants an extension or leave to accept it as untimely. In this case, no motion to extend the deadline had been filed and no extension had been granted past July 29, 2021. The emails dated August 24, 2021 and September 9, 2021 were not orders granting an extension, they were simply prompts to the Personal Representative to submit the closing documents. Even if these emails were orders granting an extension to file the Notice of Disallowance, they were not served on the creditor and were not posted on the online case file meaning the creditor had no way to know if an extension had been granted.

Forcing creditors to file a Petition for Allowance when the Notice of Disallowance has not been timely filed will force practitioners to have their clients spend the attorney's fees and filing fee required to petition for an allowance just in case the Court had granted motions to extend the time to file that were not served on him and that are not available to view on the court's file. This is not a reasonable expectation on parties or their counsel. For the above reasons, this Court should reverse dismissal of Appellant's timely filed creditor's claim or in the alternative, rule that the Petition for Allowance filed in January 2023 was timely filed since Appellant first learned of the purported grant of extension at the December 20, 2022 hearing.

CONCLUSION

S.C. Code §62-3-806(a) requires a Notice of Disallowance to be filed within 30 days of the filing of the creditor's claim or 14 months of the date of death or later if the Court finds that good cause is shown for an extension to be granted. No extensions were granted past July 29, 2021. The unsigned Notice of Disallowance was not filed until November 8, 2021 and should not have been considered effective due to being both unsigned and not timely filed. Counsel for Appellant sent a letter to the Personal Representative and copying the Court letting him know that it was unsigned and untimely. Neither the Court nor the Personal Representative made an effort to inform Appellant that either one of them believed an extension to file the Notice of Disallowance had been granted. Appellant would ask the court to reverse the dismissal of her creditor's claim, find that the unsigned Notice of Disallowance that was filed November 8, 2021 was untimely and ineffective and either require the Personal Representative to move for an extension to file the Notice of Disallowance and re-file it, or replace the Personal Representative with one that will re-file it timely. In the alternative, Appellant would ask the Court to rule that that since Appellant learned of the purported extensions to file the Notice of Disallowance for the first time at the December 20, 2022 hearing and then timely filed her petition to allow her claim within 30 days, her petition to allow the claim was timely filed and remand the case to the Probate Court to hold a hearing on the validity of Appellant's creditor's claim.

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