

denies the same. A review of the court file shows that the Respondent was given notice of the Petitioners' request to be appointed Personal Representatives. The Respondent was properly served but made no appearance.

Even though it is true that the Respondent would have had priority for appointment, the court has the authority to appoint other family members if no other request has been made. The Petitioners were appointed Personal Representatives on April 25, 2019, and have been acting in that capacity since. At no time did the Respondent file a formal Petition to be appointed. On one occasion during the administration of the estate, the Respondent contended that a third party should be appointed Personal Representative, however she never pursued the replacement of the Petitioners. Section 62-3-203(b), Code of Laws of South Carolina (1976), as amended, states in part: "An objection to an appointment can be made only in formal proceedings...." Section 62-3-402(b) requires that the statements required by (1) and (4) of Section 62-3-301(a) be included in a formal petition for appointment. Said statements are found on the Petition for Formal Appointment, Form 300ES, which is a mandated form because of the statutorily required information contained therein.

When the Motion was filed, a Form 300ES was not attached to the Motion, and a Motion alone is not the proper vehicle to contest the appointment of an informally appointed personal representative. Based on all of the above, the Motion is denied.

HEARING ON COMPLETING THE ADMINISTRATION

The assets of the estate are minimal. A summary was introduced as evidence without objection. The Respondent has made statements that she disagrees with several of the valuations of the assets, but has produced no evidence or substantiating documentation for the Court's consideration. Therefore, the Court must rely on the valuations as shown on the Inventory and

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Appraisalment filed in the estate. It, and the Summary, identifies only five (5) assets in the estate.

These assets, together with their valuations, are as follows:

One-half (1/2) interest in the house at 320 Weblin Street	\$107,500.00
Unit 1466-D Dover Road (Appraisal minus lien)	\$ 26,393.00
2002 Chevy Avalanche (bad motor)	\$ 1,500.00
2004 Honda Pilot	\$ 2,500.00
1972 Ford Ltd	<u>\$ 300.00</u>
	\$138,193.00

Since Gerry Robinson died intestate, the Respondent is entitled to \$69,096.50, and the Petitioners collectively are entitled to \$69,096.50 based on the values presented to the Court.

The Court has reviewed the file, the proposed orders submitted, and has listened to the testimony presented at the hearing, and has struggled with the distribution of the assets "in kind" due to the wide variance in the values of the properties. It is difficult to distribute assets when the valuations of the properties are not comparable. In many cases of this sort, the Court simply orders all assets to be sold because the monies received can be easily divided among the parties. Since there is no cash in this estate, there is no way to distribute the assets "in kind" without payment being made from the party seeking the most valuable assets to the other parties.

The Respondent wants the house and lot located at 320 Weblin Street, and the Petitioners do not object. The Petitioners want the Unit at 1466-D Dover Road, and the Respondent does not object.

The Respondent wants the 2004 Honda Pilot and the Petitioners do not object. The Petitioners want the 1972 Ford Ltd, and the Respondent does not object. Therefore, these vehicles shall be divided accordingly.

There was some dispute concerning the value of the 2002 Chevy Avalanche and who should receive the said Avalanche. The parties acknowledge that the motor is bad, but the

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valuation is still in question. In her pleading, the Respondent contended that the value was only \$50.00. The Petitioners contend that the value is \$1,500.00. The court awards the 2002 Chevy Avalanche to the Petitioners using the value of \$1,500.00.

It was undisputed that the appraisals for both tracts of land were ordered by the court. The Petitioners have paid both invoices which totaled \$800.00. The appraisal costs should be split, so the Respondent owes the Petitioners the sum of \$400.00. According to the first and second accountings filed with this Court, the Petitioners also paid a total of \$181.20 in court costs, \$107.79 to obtain duplicate titles for the vehicles, and \$100.00 bond premium. The Respondent owes the Petitioners one half of those costs in the amounts of \$90.60, \$53.89, and \$50.00 as reimbursements for those estate expenditures.

It was also undisputed that the Respondent paid \$13,551.30 for the funeral bill. A copy of the paid funeral bill was presented to the court. Although Respondent alleges that the funeral costs exceeded \$20,000.00, no evidence was presented to the Court to substantiate the allegation. Since the Petitioners are responsible for half of the estate debts and expenses, they owe the Respondent the sum of \$6,775.65.

This estate has been ongoing for three+ years, and Petitioners contend that they are entitled to reasonable commissions and have requested commissions in an amount of \$13,800.00. However, pursuant to Section 62-3-719(a), personal representatives are entitled to a sum not to exceed 5% of the appraised value of the personal property of the estate. The value of the personal property as shown on the Inventory and Appraisalment totals \$4,300.00, which would make the statutory commissions \$215.00. The Court cannot justify increasing the statutory commissions by \$13,585.00. Therefore, the Court finds that the Petitioners are entitled to

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commissions in the amount of \$215.00. The Respondent is responsible for one-half (1/2) of the commission.

The Petitioners are also requesting that the attorney fees incurred in the administration of the estate be paid from estate assets. The court agrees. A summary of attorney fees as of February 9, 2022, were presented to the court showing the sum of \$5,065.50. An Affidavit outlining the fee was also presented. No objection was made to the Affidavit. The court finds that the Affidavit is in proper form and that the services performed were reasonable and customary. An attorney fee of \$1,062.50 was also requested which would include time for completing the administration, preparing and recording deeds of distribution, and closing the estate. The court finds the requested fees to be reasonable and approves the same. The Respondent shall pay half of the attorney fee (\$3,064.00) and the Petitioners shall pay the other half (\$3,064.00).

Since the estate assets, fees and costs are being divided as outlined above, and the Respondent is receiving assets which total more than half of the estate value, the Respondent will owe the Petitioners the sum of \$34,829.84 and the estate attorney \$3,064.00 for a total due of \$37,893.84. A summary of the assets awarded to the Respondent and her credit and debits is as follows:

320 Weblin Street	\$107,500.00
2004 Honda Pilot	\$ 2,500.00
Funeral Bill	\$ 6,775.65 (credit)
Appraisal Fee	\$ 400.00 (debit)
Commissions	\$ 107.50 (debit)
Court Costs	\$ 90.60 (debit)
Bond Premium	\$ 50.00 (debit)
Duplicate Vehicle Titles	\$ 53.89 (debit)
	<u>\$103,926.34</u>
1/2 of Estate Assets	<u>\$ 69,096.50</u>
Amount Owed by Respondent	\$ 34,829.84.

Figured another way:

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Estate Assets:

320 Weblin Street	\$107,500.00
Unit 1466-D Dover Road minus lien	\$ 26,393.00
2002 Chevy Avalanche	\$ 1,500.00
2004 Honda Pilot	\$ 2,500.00
1972 Ford Ltd.	<u>\$ 300.00</u>
	\$138,193.00

Estate Expenses:

Funeral Bill	\$ 13,551.30
Appraisals	\$ 800.00
Commissions	\$ 215.00
Court Costs	\$ 181.20
Bond Premium	\$ 100.00
Duplicate Vehicle Titles	<u>\$ 107.79</u>
	\$ 14,955.29

Net assets \$123,237.71.

\$123,626.70 divided by 2 = \$ 61,618.86.

Respondent entitled to:	\$ 61,618.86
Plus funeral expenses	<u>\$ 13,551.30</u>
	\$ 75,170.16

Petitioners entitled to:	\$ 61,618.86
Plus appraisal fees	\$ 800.00
Plus commissions	\$ 215.00
Plus Court Costs	\$ 181.20
Plus Bond Premium	\$ 100.00
Plus Duplicate Titles	<u>\$ 107.79</u>
	\$ 63,022.85

Under the proposal, Respondent gets:

½ int. in Webber	\$107,500.00
Honda Pilot	<u>\$ 2,500.00</u>
	\$110,000.00

Under the proposal, Petitioners get:

Dover less lien owed	\$ 26,393.00
Chevy Avalanche	\$ 1,500.00

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1/2 years since the decedent's death, and this matter needs to be resolved. Accordingly, the Respondent shall have 45 days from the date of this Order in which to place a monument on the grave, and if it has not been done, the Petitioners shall have the right to place a marker on the grave at no costs to the Respondent. Accordingly,

IT IS ORDERED that Debra T. Robinson shall receive the decedent's one-half (1/2) interest in the house and lot located at 320 Weblin Street and having Tax Map Number 6-21-15-002.00 once she has paid the Petitioners the sum of \$34,829.84 and attorney's fees to Mr. Rhodes of \$3,064.00. Then a Deed of Distribution will be signed by the Petitioners distributing the decedent's one-half (1/2) interest in said house to her. When the one-half (1/2) interest is distributed to the Respondent, she shall be responsible for the payment of any outstanding taxes and liens on the property. If the total payment of \$37,893.84 has not been paid within 45 days from the date of this Order, the Petitioners shall have the right to file an Affidavit with this court and steps will be taken to have a judgment lien filed against the Respondent in favor of the Petitioners for the sum of \$34,829.84 or for the sum of \$37,893.84 (if the Petitioners have paid the Respondent's portion of the attorney's fee). In the alternative, steps could be taken to have the decedent's one-half interest in this property sold at either public or private sale. Further,

IT IS ORDERED that the Petitioners shall receive the interest in the Condo Unit at 1466-D Dover Road and having a Tax Map Number of 6-21-01-113.00. The Petitioners shall be responsible for all regime fees and liens, if any, on the property. A Deed of Distribution shall be signed by the Personal Representatives distributing the said property to the Petitioners. Further,

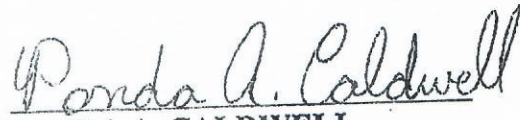
IT IS ORDERED that the Respondent shall be the owner of the 2004 Honda Pilot, and the Personal Representatives shall sign any necessary titles to accomplish this. Further,

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IT IS ORDERED that the Petitioners shall be the owners of the 2002 Chevy Avalanche and the 1972 Ford Ltd., and the Personal Representatives shall sign any necessary titles to accomplish this. Further,

IT IS ORDERED that the Respondent shall have 45 days from the date of this Order to have a marker placed on the grave site of the decedent. If this has not been done, the Petitioners shall have the right to place a marker on the grave site, and this shall be done at no expense to the Respondent. If the Petitioners are the ones placing the marker on the grave site, this Order shall serve as authority for the Petitioners to place said marker on the grave site.

IT IS SO ORDERED.


PONDA A. CALDWELL
PROBATE JUDGE
SPARTANBURG COUNTY

Date: June 15, 2022

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Debra T. Robinson,)
)
Appellant,)
)
vs.)
)
Antoine Lamar Robinson and)
Gerrick Lance Robinson,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

ORDER DISMISSING APPEAL
2022-CP-42-2559

RECEIVED
Apr 04 2024
SC Court of Appeals

Debra T. Robinson appealed an Order from the Probate Court of Spartanburg County. Antoine Lamar Robinson and Gerrick Lance Robinson, filed a Motion seeking to have the appeal dismissed.

A hearing was scheduled for January 5, 2023. The hearing was virtual by Webex; Robert L. Gailliard, Esquire was present representing Debra T. Robinson; Richard H. Rhodes, Esquire was present representing Antoine Lamar Robinson and Gerrick Lance Robinson.

This action involves the estate of the late Gerry Robinson who died intestate on September 22, 2018. The heirs at law were his surviving spouse, Debra T. Robinson (Appellant), and his two (2) sons, Antoine Lamar Robinson and Gerrick Lance Robinson (Respondents). The Appellant is the step-mother of the Respondents.

The Order from which this appeal was taken was signed by the Honorable Ponda A. Caldwell, Probate Judge for Spartanburg County, on June 15, 2022. When the appeal was filed, the Appellant specified that she had received the Order on June 18, 2022. Her appeal was not filed until July 11, 2022.

The Respondents argue that Code §62-1-308(a) requires an appeal from Probate Court to be filed within 10 days. Since this was not done, the Respondents contend that the appeal should be dismissed.

The Appellant argues that Rule 74 of the S.C. Rules of Civil Procedure specifies that an appeal to the Circuit Court must be filed within 30 days. Therefore, she contends that the appeal was properly filed.

The Court recognizes that Circuit Court Rule 74 does allow additional time for filing of an appeal to the Circuit Court, but Code §62-1-308(a) requires the appeal to be filed within 10 days. The Court holds that Code §62-1-308(a) is controlling.

This Court's decision is based on the following:

- The right to an appeal arises from statute and is controlled by statute. Chem-Nuclear Systems v. S.C. Board of Health, 374 SE 201 (2007)
- In the case of Witzig v. Witzig, 325 S.C. 363 (Ct. App. 1996), the Court held that an appeal from Probate Court is governed by Statute 62-1-308(a) and therefore the requirements specifying how the appeal is taken supersedes Circuit Court Rule 74.
- The treatise, Appellate Practice in South Carolina, authored by the former Chief Justice Jean Toal, specifies that the 10 day filing period of 62-1-308(a) controls over a 30 day time limit provided by Rule 74. Also, the treatise specifies that if a notice of appeal is not timely filed, the appeal should be dismissed.

In the case at bar, the appeal was not timely filed, and this Court hereby dismisses the same.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW