

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

John Strasswimmer; Mary Michelle Miles,

Petitioners / Appellants,

v.

Mary Michelle Miles, David Vreeland King,
and Claudia Troyer Miles,

Respondents / Appellants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Docket No.: 2022-CP-26-03314

ORDER

RECEIVED

Apr 11 2024

SC Court of Appeals

Background

This matter comes before the court on appeal from the Horry County Probate Court. There was a hearing, in this court, on December 19, 2023, at which time the court heard oral arguments. After the hearing, the court took this matter under advisement in order to enter more completely into the details of this case and to review the record in its entirety. The case arises out of the alleged incapacitation, due to a glioblastoma brain tumor, of the late Dr. Claudia Troyer Miles—the mother of Appellants Mary Michelle Miles (Ms. Miles) and Dr. John Michael Strasswimmer (Dr. Strasswimmer) and the husband of Respondent David Vreeland King (Mr. King)—upon the petitions of Dr. Strasswimmer, in November of 2018, seeking his appointment as conservator and the appointment of his sister as temporary guardian over Dr. Miles. The probate court issued an order appointing Ms. Miles temporary guardian. Respondent King subsequently filed a petition for the removal of Ms. Miles as temporary guardian and for the appointment of himself as the successor guardian of his wife, Dr. Miles. This matter then proceeded to trial in April of 2019. On April 26, 2019, the probate court issued an **Interim Order**; on May 7, 2019 it issued a **Final Order**; and in May of 2022, an **Order on Post-Trial Motions**. This appeal followed.

Standard of Review

“Under the Probate Code, a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal.” In re Estate of Cumbee, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999). *See also* S.C. Code Ann. § 62-1-308(i) (Supp. 2019) (“The circuit court, Court of Appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.”). Thus, the circuit court cannot disturb the probate court’s findings of fact “unless a review of the record discloses [that] there is no evidence to support them.” In re Cumbee, 333 S.C. at 670, 511 S.E.2d at 393. “[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them; if the action is equitable, the circuit court may make findings in accordance with its own view of the preponderance of the evidence.” Wellin v. Wellin, 427 S.C. 15, 22, 828 S.E.2d 767, 770–71 (Ct. App. 2019). With respect to each issue on appeal considered in detail by the court in this order, the court will determine whether that issue is one at law or in equity.

Issues on Appeal

A. Appellant Mary Michelle Miles

The appellate briefs of Ms. Miles and Dr. Strasswimmer each contain a statement of issues on appeal. The court considers first the issues Ms. Miles set forth in her appellate brief. The court hereby affirms each and every decision made by the probate court in connection with those issues on appeal, with the sole exception of whether the probate court erred in finding Ms. Miles jointly responsible for paying the attorney fees of Mr. King, which the court will consider in Section B(3) below.

B. Appellant John Michael Strasswimmer

With respect to the issues on appeal set forth in the appellate brief of Dr. Strasswimmer, the court, with the exception of those issues specifically considered below, hereby affirms each and every decision made by the probate court.

1. Whether the probate court erred in finding that Dr. Strasswimmer had engaged in conduct such that he should be subject to the equitable remedies of restitution and disgorgement.

The probate court, invoking S.C. Code Ann. 62-5-105 which empowers the probate court to “award costs and expenses” “as justice and equity may require,” found that the acts and omissions of Dr. Strasswimmer “warrant his personal liability for his sister’s actions.” **Order on Post-Trial Motions** at 14. Additionally, the probate court found that Dr. Strasswimmer had “engaged in egregious, sanctionable conduct” such that he should be “subject to the equitable remedies of restitution and disgorgement” because Dr. Strasswimmer (1) petitioned for his sister to be appointed as Temporary Guardian and Permanent Guardian of their mother and (2) “supported and defended his sister’s actions.” *Id.* The court reverses the probate court’s decision with respect to this issue.

First, because the probate court invokes equitable principles to support its finding that Dr. Strasswimmer is personally liable, the court finds that the issue of personal liability is equitable in nature and is therefore free to make findings in accordance with its own view of the preponderance of the evidence. Wellin v. Wellin, 427 S.C. 15, 22, 828 S.E.2d 767, 770–71 (Ct. App. 2019). The fact that the probate court ruled on this issue pursuant to S.C. Code Ann. 62-5-105 does not change the court’s characterization of this issue as one in equity as the language of that statute includes the word “equity.” Second, as the probate court notes, Ms. Miles, during her temporary guardianship, “had *complete control* over Dr. Claudia Mile’s assets.” **Order on Post-Trial Motions** at 14. (emphasis added). It follows, thus, that any improper disbursements on the part of Ms. Miles cannot

reasonably be imputed to Dr. Strasswimmer. Third, and most important, the equitable doctrines on which the probate court bases, at least in part, its decision to impose personal liability upon Dr. Strasswimmer do not apply to the facts of this case.

The court notes first that restitution is an equitable remedy for unjust enrichment. Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (2010). Thus, restitution is proper only after proving unjust enrichment. Sauner v. Pub. Serv. Auth. Of S.C., 294 S.C. 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). One seeking to recover under the theory of unjust enrichment must show: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make inequitable for him to retain it without paying it value. 12 S.C. Jur. Equity § 23 (citing Chase Home Finance, LLC v. Risher, 405 S.C. 202, 212, 746 S.E.2d 471, 476 (Ct. App. 2013)). With regard to the first element, the probate court fails to articulate which benefit has actually been conferred to Dr. Strasswimmer. Assuming the funds expended by Ms. Miles during her temporary guardianship were improper—and the court does not disturb the probate’s court finding that they are improper—these were benefits, at least in theory, conferred to Ms. Miles, not to Dr. Strasswimmer. With regard to the third element, the probate court fails to demonstrate in which way Dr. Strasswimmer has actually retained such benefits or any value flowing from them. Thus, because Dr. Strasswimmer neither received nor retained any benefit, the court finds that that the equitable remedy of unjust enrichment simply does not apply to the facts of this case and therefore cannot alone support the decision by the probate court to find Dr. Strasswimmer personally liable for the financial decisions of his sister during her temporary guardianship. The court notes that its discussion of unjust enrichment does not in any way affect the probate court’s finding that Ms. Miles had breached her fiduciary duty.

Finally, the court does not perceive any meaningful distinction between the equitable remedy of restitution and that of disgorgement. In any case, because disgorgement, like restitution, is a remedy for unjust enrichment—which does not apply to the facts of this case—the court finds that the probate court erred in basing its decision to impose personal liability upon the theory of disgorgement. See Liu v. Sec. & Exch. Comm’n, 140 S. Ct. 1936, 207 L. Ed. 2d 401 (2020).

The court next considers the fact, which the probate court considered relevant to its finding that Dr. Strasswimmer is personally liable for the actions of his sister, that Dr. Strasswimmer “supported and defended the actions of his sister.” **Order on Post-Trial Motions** at 14. The simple fact that Dr. Strasswimmer supported the actions of his sister does not change the more essential fact that ultimately Ms. Miles, by virtue of her temporary guardianship, alone had “complete control over her mother’s assets.” *Id.* Thus, the probate court erred in basing its decision to impose personal liability upon Dr. Strasswimmer.

2. Whether the probate court erred in finding Dr. Strasswimmer and Ms. Miles jointly and severally liable for \$251,931.87 to be repaid directly to the Estate of Claudia T. Miles as “misappropriated disbursements.”

As noted above, because the court finds that during her temporary guardianship Ms. Miles alone had complete control of her mother’s assets, the probate erred to the extent that it found Dr. Strasswimmer jointly and severally liable for the misappropriated disbursements on the part of his sister, Ms. Miles. The court does not disturb any factual findings made by the probate court regarding the value of the misappropriated funds.

3. Whether the probate court erred in holding that Respondent King is entitled to reimbursement of legal fees jointly from Dr. Strasswimmer and Ms. Miles.

Under § 62-5-105 of the South Carolina Probate Code—which provides that the probate court, “as justice and equity may require,” “may award costs and expenses, including reasonable attorney’s fees, to any party . . . to be paid by another party”—and upon the motion of Respondent King for attorney fees, the probate court ordered Dr. Strasswimmer and Ms. Miles jointly to pay the attorney fees of Respondent King. During its discussion of the award of attorney fees in this matter, the probate court evaluated, “in the interest of justice and equity,” the ability of each party to pay. **Order on Post-Trial Motions** at 8. Therefore, the court considers the issue of awarding attorney fees as one sounding in equity. The court finds that the probate court erred in holding the Appellants in this case jointly responsible for Respondent King’s attorney fees. Because the court finds that Ms. Miles is alone responsible for the improper disbursements during her temporary guardianship, the court remands the issue of attorney fees to the probate court in order for that court to allocate the fees between the Appellants in this case. As a general principle, Ms. Miles shall be responsible for any legal fees incurred by Respondent King that relate to the improper disbursements on the part of Ms. Miles during her temporary guardianship; Dr. Strasswimmer shall be responsible for any fees incurred by Respondent King that relate to any petitions that he, Dr. Strasswimmer, filed with the probate court. Beyond that general principle of apportionment, the court gives the probate court broad discretion in choosing how best to allocate the legal fees of Respondent King between Ms. Miles and Dr. Strasswimmer.

AND IT IS SO ORDERED.

The Honorable B. Alex Hyman
Presiding Judge for the 15th Judicial Circuit

Conway, South Carolina
Dated: _____, 2024



Horry Common Pleas

Case Caption: Mary Michelle Miles , plaintiff, et al VS Claudia Troyer Miles ,
defendant, et al
Case Number: 2022CP2603314
Type: Order/Amend

15th Circuit Resident Judge

s/ B. Alex Hyman