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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge
Appeal from Charleston County Probate Court
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Common Pleas Case No. 2020-CP-10-04036
Probate Case No. 2017-ES-10-01946

In the Matter of: The Estate of Roy E. Mevers, Jr.

South Carolina Attorney General, Respondent,

v.

Minnie Lee Newman Mevers, Appellant,

v.

J. James Duggan, Respondent.

RETURN OF RESPONDENT SOUTH CAROLINA ATTORNEY GENERAL TO PETITION FOR REHEARING

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Appellant's Petition for Rehearing should be denied because Appellant does not show how this Court overlooked or misapprehended any point of law or fact that would warrant rehearing. Rule 221(a), SCACR.

ARGUMENT

I. The Court did not overlook or misapprehend any point in finding that the Orders on appeal were not final orders, and the Court appropriately vacated the circuit court order.

"As a general rule, only final judgments are appealable." *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Id.* (citing *Mid–State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)). *Wilson* also cited *Good v. Hartford Accident Indemn. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942), which explains that "a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term . . . . " *Id.* at 12-13, 625 S.E.2d 208.

The orders on appeal granted the Motion for Temporary Restraining Order and Temporary Injunction; appointed a Special Administrator; denied Appellant's Motion to Alter, Amend, or Vacate the Temporary Injunction; and granted Appellant's Motion to Remove. As explained in more detail below, these orders on appeal were not final, did not determine the final rights of the parties, and are not immediately appealable.

II. The Court did not overlook or misapprehend any points in finding that S.C. Code Ann. § 62-1-308 governs appeals from the probate court and that this appeal does not involve a final order subject to appeal.

In its opinion, this Court appropriately followed *Dorn v. Cohen*, 421 S.C 517, 809 S.E.2d 53 (2017), another appeal from probate court. In *Dorn*, the Supreme Court specifically stated that

"[a]ppeals from the probate court are governed by 62-1-308 of the Probate Code . . ." *Id.* at 520, 809 S.E.2d at 54. In *Dorn*, the Court found that the Court of Appeals erred in applying section 14-3-330 in determining whether a probate court order was immediately appealable. *Id.* The Court of Appeals reiterated the law related to probate court appeals in *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 415, 827 S.E.2d 200, 204 (Ct. App. 2019). In *Swiger*, the Court cited *Dorn* and explained that "[a]ppeals from the probate court are governed by the South Carolina Probate Code." *Id.*

Longstanding law in South Carolina explains that only final orders from probate court can be appealed. *Estate of Boyce v. Work*, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991) explains that S.C. Code Ann. § 62-1-308(a) provides that only final orders of the probate court may be appealed, a probate court order that is clearly temporary cannot be appealed, and the circuit court lacks subject matter jurisdiction to entertain an appeal of a probate court's temporary order. Section 62-1-308(a) states that "[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county[.]" In addition, "[t]he circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(i). "As used in [S.C. Code Ann. § 62–1–308], the phrase 'according to the rules of law' means according to the rules governing appeals." *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (quoting *In re Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 260 (1993)). The rules of law for the present case, i.e., the rules governing probate appeals, explain that a party can only appeal a final order of the probate court. This probate court appeal is governed by the rules of law, and the orders in this matter were not final. Accordingly, the circuit court did not have jurisdiction to hear this appeal, and this Court correctly vacated the circuit court's decision.

In *Dorn*, the appellant appealed the probate court's order adding a party to the action. The party was added on the final day of the trial of multiple matters. The Court found that since this was not a final order, it was not immediately appealable. *Dorn*, 321 S.C. at 520, 809 S.2d at 54. In the present case, the Court correctly found that the appointment of a special administrator and other rulings, which happened at the first hearing on the matter and which will protect the assets which are the subject of this action – but which may not impact whether Appellant ultimately prevails – was not immediately appealable. This is consistent with applicable South Carolina law.

What constitutes a final order in a probate court case can require an analysis that is not seen in typical civil cases. "This is due to the unique procedural nature of the typical probate case, which usually begins with a request to admit a will to probate and appoint a personal representative to marshal and administer a decedent's assets without the court's supervision. That is the fundamental purpose of a probate matter." Jody Pilmer & Aaron Burton, "Appealing Orders in Probate Cases the Finality Question," 50 *Colo. Law.* 22, 23 (Feb. 2021) (discussing appeals from probate court in Colorado, a state that has also adopted the Uniform Probate Code). Separate proceedings can be initiated and pursued in probate court. *Id.* However, "[a]n order that leaves nothing further for the court to do to completely determine the rights of the parties as to that proceeding is final." *Id.* at 25. In the present case, the orders resolved the particular matters before the Court, as any order does, but they were not final orders subject to appeal. They did not completely determine the rights of the parties, or the ultimate issue, i.e., whether Appellant took for herself funds the decedent intended for his Foundation by dissolving the Foundation a few months after his death. Accordingly, they are not immediately appealable.

III. The Court did not overlook the impact of S.C. Code Ann. § 62-3-107(1) regarding separate proceedings.

Appellant contends that this Court overlooked the impact of section 62-3-107(1). The Court did no such thing.

Appellant first contends that section 62-3-107(1) creates a new definition for what is a final order under section 62-1-308. Section 62-3-107(1) explains that "each proceeding before the court is independent of any other proceeding involving the same estate[.]" Though Appellant contends that this language means that each order resolving a proceeding is immediately appealable, that is not the law. Further, this statute does not change the meaning of a final order or change what matters are immediately appealable from the probate court. Though a probate court proceeding can end with a final order subject to appeal, the present matter was not such a proceeding. There are multiple types of petitions and motions that come before the probate court. A review of the probate court forms available on the South Carolina courts website indicates that there are many types of petitions a party can file in probate court, and these are just the ones for which a form is available on the website. If orders on each of these matters were immediately appealable, a probate court matter might never end because there would be potentially continuous appeals.

South Carolina adopted the Uniform Probate Code in 1986, and it took effect on July 1, 1987. *See* S.C. Code Ann. § 62-1-100 and 62-1-101, *et seq*. Colorado, which has also adopted the Uniform Probate Code, has developed case law on the issue of probate court appeals. "When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority." *Bass v. Isochem*, 365 S.C. 454, 478, 617 S.E.2d 369, 381 (Ct. App. 2005). In *In Re Estate of Scott*, 151 P.3d 642 (Colo. Ct. App. 2006), the Colorado Court of Appeals considered a situation similar to the one in this case and dismissed the appeal for lack of jurisdiction. *Scott* was an appeal of an order related to trustee

accountings, and the court noted the "difficulties encountered by appellate courts in discerning whether an order of the probate court is a final, appealable order." *Id.* at 644. The court observed that "a petition frames the scope of a proceeding." *Id.* "[T]here can be more than one proceeding in the administration of an estate, and a final judgment exists when the probate court has resolved all claims in a proceeding." *Id.* The Comments to the Uniform Probate Code, on which the South Carolina Probate Code is modeled, also explain that "the scope of the proceeding if not otherwise prescribed by the Code is framed by the Petition." Unif. Probate Code § 3-107 cmt. (Unif. Law Comm'n 2019). In *Scott*, the resolution of issues on appeal would not preclude the probate court from granting the relief requested in the petition at some point in the future, and this was a key factor for the court in finding that the order was not a final appealable judgment. 151 P.3d at 645. Similarly in the present case, either Appellant or Respondent may ultimately prevail, and that is not dependent on the matters before the Court in this appeal.

In *Chavez v. Chavez*, 465 P.3d 133 (Colo. Ct. App. 2020), the Colorado Court of Appeals again looked at the appealability of a probate court order. In *Chavez*, the order on appeal was issued after a jury verdict but did not determine attorney fees or prejudgment interest. In finding that the order was not final and thus not appealable, the court stated as follows: "[T]he same rules of finality apply in probate cases as in other civil cases; thus, an order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." *Id.* (quoting *Scott v. Scott*, 136 P.3d 892, 896 (Col. 2006)). The orders in the present case were issued at the beginning of the action, and the rights of all parties have not been finally determined. Accordingly, the orders are not immediately appealable.

Nebraska has also adopted the Uniform Probate Code, and the Nebraska Supreme Court considered the appealability of a probate court order appointing a special administrator. The Court held that "[t]o be a final order, the substantial right affected must be of the appellant and cannot be claimed vicariously." *In re Estate of Abbott-Ochsner*, 910 N.W.2d 504, 512-13 (Neb. 2018). In *Abbott-Ochsner*, the personal representative appealed the appointment of the special administrator. The Court found that the personal representative's rights were not so substantially affected by the appointment of a special administrator as to make the order final and thus immediately appealable.

Similarly in the present case, Appellant appealed the order appointing a special administrator (among other rulings), but the Appellant is not the special administrator. Regarding the special administrator order, Appellant's rights are affected only to the extent that there is now a special administrator to protect the Estate, and she has been asked to render an accounting to the special administrator. The final outcome of this matter has not been determined. The Court explained in *Abott-Ochsner* that "[o]ther courts with similar final order jurisprudence distinguish orders appointing special administrators, which they hold are not final, from orders appointing or removing a personal representative, which they hold are final." *Id.* at 513 (citing *Guess v. Going*, 966 S.W.2d 930 (Ark. App. 1998); *Estate of Keske*, 146 N.W.2d 450 (Wis. 1966)). Again, this case is similar to the present case in that the appeal is from the appointment of a special administrator rather than a personal representative.

IV. The Court did not overlook the impact of S.C. Code Ann. § 62-3-107(4) regarding special administrators.

Appellant argues, contrary to established case law, that section 62-3-107(4) indicates that the appeal of an order appointing a special administrator is a final order subject to appeal. This is contrary to law in South Carolina.

First, specific case law addresses the issue of the appealability of the appointment of a special administrator. In *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), the Court held that that it lacked jurisdiction to hear the appeal of an order appointing a special administrator because the order was not final. Similarly in the present case, the appointment of a special administrator was not a final order. In the present case, the special administrator's authority was limited. The first Order appointing the special administrator explains that he was appointed "to take any appropriate actions involving assets of the Estate of Roy E. Mevers, Jr." (R. 10) The second Order appointing the special administrator explains that he was appointed "in order to secure [the Estate's] proper administration[.]" (R. 27) This Order also ordered Appellant to provide an accounting to the special administrator. (R. 27) Thus, the special administrator's authority was limited to taking action related to the assets and securing the Estate's administration. The petition itself alleges that Appellant wrongfully dissolved her husband's charitable Foundation, causing its assets to be diverted from the Foundation and distributed to herself. (R. 72-78). The Petition seeks a constructive trust on the funds and other related relief, and the appointment of a special administrator is not a final order related to this matter, nor is the special administrator's authority unlimited. (R. 70-80)

Second, the cases cited by Appellant - including a case from 1904 and an unpublished opinion that was overruled in part - do not indicate any relevant points were overlooked. *Ex Parte Small*, 69 S.C. 43, 48 S.E. 40 (1904) involved "the interesting question whether the widow of an intestate [estate] is entitled to the administration of his estate, without respect to her character, capacity, or purposes concerning the assets." The Court found that the probate court order appointing the personal representative was "really a final order adjudicating the rights of the parties" and therefore appealable. *Id.* at 46, 48 S.E. at 41. Even assuming *Small* remains good law

today, it is unlike the present case in which a special administrator was appointed to preserve assets, as *Small* involved the appropriateness of a personal representative and did not involve a special administrator. Significantly, the case was decided many years before the current probate code was enacted. *Fisher v. Huckabee*, Op. No. 2016-UP-528, 2016 WL 7495869 (S.C. Ct. App. filed December 21, 2016) is an unpublished Court of Appeals opinion for which certiorari was granted but which the Supreme Court ultimately did not opine on because the issues were moot by the time it was before the Supreme Court. *Fisher*, Op. No. 2018-MO-041, 2018 WL 6528122 (S.C. Sup. Ct. filed December 12, 2018). Appellant's contention that the court should have relied on this case is incorrect. Appellant also cites cases from other jurisdictions, including Nebraska and New Mexico, that relate to the appealability of an order appointing a personal representative. Of note, the definition of a personal representative as set forth in S.C. Code Ann. § 62-1-201(33) includes a special administrator along with other appointed positions. However, a special administrator is excluded from the definition of general personal representative at the end of this section.

Third, by its plain language, section 62-3-107(4) does not impact the appealability of this Order related to a special administrator, despite Appellant's contention. Section 62-3-107(4) states that "a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment." This language relates to the appointment of a personal representative. Even if the definition of personal representative can include a special administrator under section 62-1-201(33), section 62-3-107(4) states that the matter is concluded which is different from that matter being a final order subject to appealability. Every order by its nature concludes the matter before the Court, but that does not mean that every matter is appealable. For

example, an order denying a motion for summary judgment concludes the matter, but that does not mean the order is appealable.

V. The court properly vacated the circuit court order because all of the probate court's rulings are not immediately appealable.

Appellant contends that this Court should find that the order appointing a special administrator is immediately appealable and then find that the probate court's other rulings can be heard as related cases. Because there were no final orders appealed from in this action, this Court correctly vacated the circuit court order. Even if this Court determines that one or more of the rulings or orders are final and subject to appeal, it only has jurisdiction as to the final orders, not all of the matters before it.

Appellant contends that *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001) indicates that all orders on appeal can be considered if there is one appealable issue before the court However, the reasoning of *Cox* regarding appellate court discretion to entertain appeals of interlocutory orders when coupled with a final order is not applicable to appeals from a probate court which, again, are governed exclusively by S.C. Code Ann. § 62-1-308, and its mandate that only "final orders" may be appealed. As recently as 2017, the South Carolina Supreme Court "reiterate[d] that a party may appeal from a decision not amounting to a final judgment only where provided by statute." *State v. Looper*, 421 S.C. 384, 390, 807 S.E.2d 203, 206 (2017). Since the statute does not allow for an interlocutory appeal in the present case, the order is not appealable.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Rehearing.

Respectfully submitted,

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South Carolina Attorney General, Respondent,

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Minnie Lee Newman Mevers, Appellant,

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J. James Duggan, Respondent.

PROOF OF SERVICE

I, Mary Frances Jowers, certify I served the within **Return to Petition for Rehearing** on Appellant and all counsel of record by email and by depositing a copy in the United States mail, postage prepaid, addressed to:

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The Return to Petition for Rehearing has also been e-mailed to the Court of Appeals for electronic filing.

I further certify that all parties required by Rule to be served have been served.

This 28th day of May, 2024.

s/Mary Frances Jowers_
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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

May 28, 2024

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
By efiling only

Re: In the Matter of: The Estate of Roy E. Mevers, Jr.
Appellate Case No. 2021-001152

Dear Ms. Kitchings:

Please find enclosed for electronic filing the South Carolina Attorney General's Return to the Petition for Rehearing, along with the Certificate of Service. We appreciate your filing these and returning clocked-in copies to us.

Thank you for your assistance. If you need anything further, please let me know.

Sincerely yours,

Mary Frances Jowers

Mary Frances Jowers
Assistant Deputy Attorney General

Enclosures
cc with enclosures (via US Mail and email):
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