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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. McFadden, Jr., Circuit Court Judge

Estate Case No. 2020-ES-40-00392
Circuit Court Case No. 2023-CP-40-00573
Appellate 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 RESPONDENT

Dated this the 15th day of July, 2024

THE AUTONOMY GROUP, PC

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July 15, 2024
Rock Hill, South Carolina

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STATEMENT OF ISSUES ON APPEAL

NOW COMES Respondent, Adrian E. Adams, and states: the question of the Appellant before the Court is, “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.” Respondent alleges, states and avers that the Probate Court did not err in its finding, and in support hereof presents this Initial Brief of Respondent.

STATEMENT OF THE CASE

I. The History of Appellant's Claim

Appellant Constance Washington filed a Complaint on October 31, 2012 in Magistrate Court in Richland County, SC 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.

At the April 1, 2013 hearing on her complaint, testimony revealed that Constance Washington was a close family friend and neighbor of some 41 years; that Adell Adams believed Constance Washington volunteered her time to assist in her recovery following the surgery in May, 2009 and that the parties had no agreement as to any payment for her assistance; that Constance Washington was "caught stealing groceries and toiletries" from Adell Adams; and that Adell Adams' own son and grandson were available to assist Adell Adams.

The Magistrate Court ruled that there was no "contract or amount agreed upon" between the parties, and judged in favor of Constance Washington in the amount of \$500.00 plus court costs of \$80.00. Mrs. Adell Adams paid the judgment in full on April 30, 2013 to the Magistrate. Constance Washington then signed for and picked up her payment of \$580.00 on May 8, 2013 at the Magistrate's Office.

Also on April 30, 2013, Constance Washington filed an Appeal from the Magistrate Court's Order in the Richland County Circuit Court, 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." Respondent believes this portion of the Order was filed by the Magistrate in error. The remainder of the Magistrate Court Order clearly 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. The basis for the appeal

therefore is false and fraudulent, since Adell Adams was not in default; filed a timely Answer to Plaintiff's complaint on March 8, 2013, thirty days after she had been served with the Complaint; appeared at the hearing on the Complaint on April 1, 2013; and gave testimony with several witnesses. Furthermore, the basis for the appeal is false and fraudulent, since Adell Adams paid the judgment amount in full on April 30, 2013; and by accepting it on May 8, 2013, Constance Washington waived her right to pursue the matter in Appeals Court.

Upon information and belief, Mrs. Adell Adams had no knowledge of the Appeal case and was not served.

The Honorable Magistrate Judge Tomothy C. Edmond filed an Answer to the Notice of Appeal on May 31, 2013 citing all of the 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."

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, 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 and a Motion for Supplemental Proceedings on January 10, 2020, 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.

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. Adell Adams was ordered to appear and answer under oath concerning her assets, and questions propounded to her by Constance Washington, to show cause why her property should not be applied toward satisfaction of the judgment and why a Receiver should not be appointed. Constance Washington did not execute on the Circuit Court Appeals Judgment prior to Adell Adams' passing.

Adell T. Adams died on February 19, 2020.

II. The Probate Case

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

Respondent, pro se at the time, filed a Notice of Allowance/Disallowance of Creditor's Claim (the "Notice of Disallowance") on November 8, 2021, 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.

Pursuant to 62-3-806 (a):

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.

Respondent's Notice did in fact contain the required thirty day warning.

Completely disregarding the thirty day warning contained in Respondent's Notice and more than three months later, the attorney for the Appellant sent a letter to the Personal Representative, and Respondent herein, dated February 16, 2022, 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 unilaterally 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. The attorney for the Appellant further took the position that no response to the Notice of Disallowance was required. 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."

The attorney for the Appellant did not file a Petition for the Allowance of the claim within thirty days of receiving the Notice, 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 closing documents. 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, 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. 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."
- 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.
- 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."
- 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)."
- 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."

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).

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).

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.”

The attorney for Appellant filed a Petition for Allowance of Claim on January 5, 2023, 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.

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.

III. Appeal to the Circuit Court

On February 3, 2023 the Appellant filed a Notice of Appeal to the Circuit Court. Following the filing of Initial Briefs by Appellant and Respondent, and Final Briefs, the Circuit Court of Appeals affirmed the Probate Court’s January 10, 2023 Order and denied the Appeal by Order dated June 20, 2023.

ARGUMENT

Timeliness

The Probate Court’s Order is sound and reflects the intended reading of the Code. 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 burden is on the creditor to timely file a creditor’s claim and a timely petition for allowance, when a claim has been disallowed—regardless of whether the disallowance was outside of the time limit.

Time limits imposed by the code on personal representatives of estates are not meant to be punitive. They are given to keep the estate moving along, to provide for the timely administration of estates, and to prevent probate courts from becoming bogged down in cases lingering *ad nauseam*. Probate Courts have the discretion to give personal representatives informal latitude and flexibility for additional time, without the requirement of formal motions for extension that need to be circulated, signed, filed and served on multiple parties. Further, 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.

Reason for Disallowance of Claim

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. As stated on the Form 372 ES Notice of Allowance/Disallowance of Creditor’s Claim, a reason for the disallowance is optional and not required to be given, and is certainly not a reason for it to be deemed invalid.

Unsigned Document

Appellant seems to want to make an issue of the fact that the Notice of Disallowance she received was unsigned and that, therefore, makes it invalid. As the Probate Court stated in its January 10, 2023 Order, the copy filed with the Probate Court was signed and is the controlling document.

Throughout courts today parties are served unsigned documents on a daily basis. In fact, some get filed with the courts unsigned. The Circuit Court of Appeals March 20, 2019 Order reversing the amount of the Magistrate's Judgement from \$580.00 to \$7,500.00 was filed unsigned by the Judge. No one would argue that this Order was invalid or of no effect simply by virtue of it being unsigned. Indeed, if we were to determine all unsigned court documents invalid and ineffective, the courts would be in chaos.

No Assets Available to Pay Creditors' Claims

Appellant alleges in her Initial Brief, "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."

If a reason were required to be given for disallowance of a claim, which is denied, Respondent avers that there is no "bad faith" when there are no assets of the estate from which to pay the Appellant's claim.

Section 62-3-805 provides: "(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order: (1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses."

Respondent avers that the expenses of administration, attorney fees and funeral expenses have been paid from all liquid assets of the estate, namely life insurance proceeds which are exempt from creditor's claims, and a small amount in the decedent's checking account. Actually, the expenses of the estate administration in this case have exceeded the liquid assets of the estate.

Other than a 2009 Buick Lacrosse with a blown transmission, the only asset of the estate is the decedent's residential real property. While Appellant's judgment might otherwise attach to the real property, and be required to be paid upon the sale of the property, the existing mortgage lien on the property plus the homestead exemption, if applicable to the testate heirs, total significantly more than the market value of the property and there is, therefore, no equity in the real property available to pay creditor's claims.

Appellant's Claim Is Not Valid

Contract actions in South Carolina are time-barred after three years has passed. S.C. Code Ann. § 15-3-530 provides that "an action upon contract, obligation, or liability, express or implied..." must be brought within three years of the time the cause of action accrues.

Respondent avers that Appellant's complaint for an alleged verbal contract for "home health care" was filed more than three years *after* the alleged contract occurred and should have been barred by the Statute of Limitations. Appellant alleges to have provided "home health care" to the decedent from May to August, 2009, but didn't bring her complaint until October 31, 2012.

If there was a contract, which is denied, it could only have been a verbal contract at best. However there couldn't have been a valid verbal contract where the two parties did not have a "meeting of the minds" as to its terms.

Respondent concedes that, in any case, since a Magistrate Judgment was entered, the decedent paid the Judgment in full on April 30, 2013, which was accepted by the Appellant as evidenced by her Pick Up Form dated May 8, 2013.

The filing of the Appeal from the Magistrate's Judgment was in error and barred by law, since the Judgment debt was paid. By accepting the Judgment payment of \$580.00, Appellant waived and voided her right to Appeal the amount to \$7,500.00.

The filing of the Appeal from the Magistrate's Judgment on the basis 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" was false and fraudulent, since the Defendant Adell Adams was not in default; filed a timely Answer to Plaintiff's Complaint, appeared at the hearing on the Complaint, and gave testimony.

Upon information and belief, decedent was not served with or properly served with notice of the appeal in Circuit Court, and had no knowledge of the case. Upon information and belief,

the Circuit Court of Appeals didn't have accurate facts of the Magistrate Court case, since the Appeals case was based on one page of a five page Magistrate Order, which is believed to have been an error by the Magistrate Judge. The Circuit Court of Appeals case was therefore improper and should not have been brought against Adell Adams.

Appellant's claim in Probate Court was disallowed by the personal representative. Appellant's claim then was further barred by the failure of the Appellant herself to properly present her alleged claim in Probate Court by filing a timely Petition for Allowance; and further by the Probate Court's January 10, 2023 Order forever barring the claim. Appellant's Circuit Court Appeal of the Probate Court's Order was denied by order dated June 20, 2023.

CONCLUSION

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.

Appellant's claim has been barred by the failure of the Appellant to properly present her alleged claims in Probate Court, and by the Probate Court's January 10, 2023 Order forever barring the claim. Furthermore, Appellant's appeal was denied in the Circuit Court of Appeals. Appellant has been litigating this matter for nearly fifteen years and is simply grasping at straws in the current Appeal.

The Appellant's Appeal should be denied.

Dated this the 15th day of July, 2024

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