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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Probate Court

Judge George M. McFaddin, Jr.

Probate Court No.: 2019-ES-10-00394
Appellate Case No.: 2024-001074

In re: Veronique W. Pickett

Bayard Scott Pickett, Jr.,…….. . . . . Appellant,

v.

Laura V. Jones, as Trustee of the Laura V. Jones Trust as Established by the will of Veronique H.W. Pickett Dated March 31, 1999 and as Trustee of the Kathleen E. Anderson Trust as Established under the Will of Veronique H.W. Pickett Dated March 31, 1999,…… . . . . …… Respondent,

AND

Kathleen Anderson aka Kathleen Elizabeth Anderson, in her individual capacity,….Party in Interest/Counterclaimant.

MEMORANDUM REGARDING APPEALABILITY

Pursuant to this Court's letter, dated July 9, 2024, Respondent Laura V. Jones hereby submits this Memorandum addressing the issue of appealability of the orders from which Appellant Bayard Scott Pickett, Jr., has purported to appeal.

By Notice of Appeal, dated June 21, 2024, Appellant indicated his intention to appeal two orders entered by the Charleston County Circuit Court: 1) Order Denying Petition for Appointment of Successor Personal Representative ("Order re: Appointment"); and 2) Order Denying Motion

for Reconsideration of the Order re: Appointment. Because these are not final orders, they are not immediately appealable.

Notably, the Petition for Appointment was initially filed in probate court but removed to circuit court. Thus, this is an appeal from an order of the circuit court, it is not an appeal from an order of the probate court, which calls into question whether it is governed solely by S.C. Code Ann. § 62-1-308 or not, given that S.C. Code Ann. § 62-1-308 states that it applies to appeals from the probate court to the circuit court. Regardless, the outcome is the same. Because neither of these orders are "final orders", and because they do not fall into any of the categories listed in S.C. Code Ann. § 14-3-330, they are not immediately appealable and the appeal should be dismissed.

S.C. Code Ann. § 62-1-308(a) provides that only final orders of the probate court may be appealed to the circuit court. This was confirmed in Dorn v. Cohen, 421 S.C. 517, 809 S.E.2d 53 (2017) (holding that appeals from probate court are governed solely by S.C. Code Ann. § 62-1-308 and finding that the S.C. Court of Appeals erred in applying S.C. Code Ann. § 14-3-330 to determine whether the appeal at issue was interlocutory).

Even if not governed by S.C. Code Ann. § 62-1-308, to be immediately appealable, the orders still must be final orders or fall into one of the categories listed in S.C. Code Ann. § 14–3–330. Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 708 (2005) (an order generally must fall into one of several categories set forth in S.C. Code Ann. § 14–3–330 in order to be immediately appealable).

First, the orders at issue are not final orders. They do not dispose of all issues in this Estate. They merely refused yet another of Appellant's attempts to regain control of the Estate.[1] See Doe

[1] The Charleston County Probate Court first appointed a special administrator to administer the Estate. Appellant appealed that order to the circuit court. While that appeal was pending, the probate court appointed a temporary special administrator to administer the Estate. Although Appellant also appealed that order to the circuit court, the circuit court dismissed the appeal.

v. Howe, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) ("Final judgment' is a term of art referring to the disposition of all the issues in the case."); Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942) (a final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution); Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (an order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory). Thus, if governed solely by S.C. Code Ann. § 62-1-308, that ends the inquiry.

To the extent that S.C. Code Ann. § 14–3–330 would apply, given that this was not an appeal from the probate court but rather from the circuit court, the outcome is no different. This appeal does not fall within any of the categories listed in S.C. Code Ann. § 14–3–330. The orders do not "involve the merits", as required to bring an appeal under S.C. Code Ann. § 14–3–330(1), because they do not "finally determine" anything. See Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002) (to involve merits, pursuant to S.C. Code Ann. § 14–3–330(1), an order must finally determine some substantial matter forming the whole or part of some cause of action or defense). Appellant could, and given his course of conduct thus far, likely will, submit additional petitions seeking appointment. S.C. Code Ann. § 14–3–330(2) is inapplicable because the orders does not discontinue the action nor do they prevent a judgment from which an appeal might be taken (given that Appellant will have the ability to appeal the denial of his Petition at the conclusion of this matter), they do not grant or refuse a new trial, and they do not strike out an answer or any part thereof. S.C. Code Ann. § 14–3–330(3) and (4) are inapplicable as well.

In conclusion, whichever way this inquiry is approached, the orders at issue are not immediately appealable and the appeal should be dismissed.

SAXTON & STUMP, LLC

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July 19, 2024

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AND

Kathleen Anderson aka Kathleen Elizabeth Anderson, in her individual capacity,….Party in Interest/Counterclaimant.

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PROOF OF SERVICE

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I do hereby certify that on July 19, 2024, I have served all counsel in this action with a copy of ***Respondent Laura V. Jones's Memorandum regarding Appealability via*** e-filing to the following email addresses:

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