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Jul 19 2024

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.

APPELLANT’S MEMORANDUM REGARDING APPEALABILITY

Pursuant to this Court’s letter, dated July 9, 2024, Appellant Bayard Scott Pickett hereby submits this Memorandum addressing the issue of appealability of the orders from which Appellant Bayard Scott Pickett, Jr., has appealed. This appeal is ripe for review and involves a substantial right and is governed by S.C. §14-3-330. This Court’s authority to review the Order below are established by the opinions *In Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993); *Ex Parte Small*, 48 S.E 40, 69 S.C. 43 (S.C. 1904) and S.C. Code Ann. §14-3-330 (1) and § 14-3-330 (2).

The pertinent factual and procedural history of this case, for the purposes of this memorandum, are as follows: the named personal representative in the will, Bayard Scott Pickett, Jr. is a Fifty 50% percent beneficiary of the estate; Laura Jones is a twenty-five (25%) percent beneficiary of the estate. Pickett sought informal appointment after the case was stricken pursuant to Rule 4 of the Probate Court; Jones objected and sought the formal appointment of a special administrator; the Charleston County Probate Court appointed C. Mac Gibson as special administrator; that order was appealed in the Charleston County Court of Common Pleas, fully briefed, and awaiting a final decision in case number 2024-CP-10-00598. While case number 00598 was pending review on appeal, Judge Michel issued a new order restating the authority of the special administrator despite an appeal of that Order; that matter was appealed in 2024-CP-10-00921 and is pending; thereafter the named personal representative in the will, Bayard Scott Pickett, Jr., filed a formal petition for appointment in probate case 2019-ES-10-00394 and Judge Michel removed that petition to the Charleston County Circuit Court, for a *de novo* review, in this case. Judge McFadden denied the appointment Mr. Pickett's appointment, without an evidentiary hearing, for personal representative based upon: 1) suitability; 2) disregard of the probate process by Pickett; 3) untimely filing of the inventory and appraisal; and 4) improper disbursements from the estate.¹

The denial of the appointment of a personal representative by a Circuit Court is governed by S.C. Ann. §14-3-330. "Intermediate orders involving the merits may be immediately appealed pursuant to §14-3-330." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005). An order involving the merits "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Id.* (quoting *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). "Interlocutory orders affecting a

¹ See Order dated April 24, 2024, 2024-CP-10-01325.

substantial right may be immediately appealed pursuant to §14-3-330 (2)." *Id.* "Orders affecting a substantial right 'discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.'" *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (quoting *Mid-State Distributions, Inc.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4). See *Skydive Myrtle Beach, Inc. v. Horry Cnty. & Horry Cnty. Dept of Airports*, 2024-UP-248, Appellate Case 2021-000217 (S.C. App. Jul 03, 2024).

Here, the denial of the appointment of a named personal representative is an order that affects a substantial right and forever bars the named personal representative from being appointed.² While the estate may still be open, Mr. Pickett is barred from seeking appointment based upon the doctrine of issue preclusion as a practical matter. Judge McFadden has issued a ruling and denied a motion to reconsider. The denial of the appointment of Bayard Scott Pickett, Jr. as personal representative, is in effect a final adjudication of the rights Mr. Pickett concerning the formal action seeking appointment of personal representative by Mr. Pickett. While it is true that the estate is still open, the formal proceeding of the appointment of personal representative by the person named in the Will is finally determined. The denial of the appointment of a personal representative involves the substantial fundamental right to administer distributions from the estate, the right to receive personal representative compensation, object to claims for want of standing, distributions, and the like. It is clear if this Order is not allowed to be reviewed, the legal errors of fact and law, associated with the improper denial, are forever waived and the issues are not preserved for review. See *Dorman v. S.C. Dep't of Health & Env't Control*, 350 S.C. 159, 170–71, 565 S.E.2d 119, 125 (Ct. App. 2002) Moreover, this Court Supreme Court has held that Order appointing a temporary special personal administrator is

² S.C. Code Ann. §62-1-302(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

reviewable as a substantial right is involved. *See Ex parte Small*, 69 S.C. 43, 46, 48 S.E. 40, 41 (1904) (finding an order appointing an administrator was a final order and was immediately appealable). Therefore, as the appointment of temporary special administrator involves a substantial right, it clearly follows that the denial of the appointment of the named personal representative also involves the same substantial rights. Finally, the probate code defines personal representative to include special administrator. Given the above, the substantial rights of Mr. Pickett, as the named personal representative in the will, have been abridged, and this decision is in effect a final Order as to Mr. Pickett.

Respondent asserts that the Order denying the appointment is not final and reviewable citing *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). However, *Ex Parte Wilson* is not applicable in this case as it involves a subpoena to a non-party and there was no claim of a final determination of a substantial matter or right being determined.

In conclusion, the trial court's order on appeal with this Honorable Court is reviewable as it affected a substantial right of Appellant because the order finally determined the proceeding of his appointment of personal representative, which is a final order under *Ex Parte Small* and/or is in effect a final Order determining Mr. Pickett's substantial rights.

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July 19, 2024