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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas

R. Lawton McIntosh, Circuit Judge

Case No. 2023-CP-37-00794
Appellate Case No. 2024-000455

Dorothy Pierce,

Appellant,

v.

Donna Carol Moore, Gregory Allan Pierce,
and Jared Adam Pierce,

Respondents.

INITIAL BRIEF OF RESPONDENTS GREGORY ALLAN PIERCE
AND JARED ADAM PIERCE

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE APPEAL SHOULD BE DISMISSED BECAUSE THE APPELLANT FAILED TO TIMELY APPEAL THE APRIL 2, 2024, JUDGMENT OF THE CIRCUIT COURT.
2. WHETHER THE CIRCUIT COURT PROPERLY AFFIRMED THE PROBATE COURT'S AMENDED ORDER AFFIRMING PRIVATE FAMILY AGREEMENT PURSUANT *S.C. CODE ANN.* § 62-3-912.
3. WHETHER THE CIRCUIT COURT WAS DIVESTED OF APPELLATE JURISDICTION DUE TO THE APPELLANT'S FAILURE TO COMPLY WITH THE APPELLATE PROCEDURES SET FORTH IN *S.C. CODE ANN.* § 62-1-308.

STATEMENT OF THE CASE

This present matter before the Court is the latest chapter in the endless litigation and appeals by the Appellant involving the Estate Doyle Elton Pierce (“the Decedent”). An appeal concerning the August 18, 2021, judgment of the Oconee County Probate Court invalidating the Last Will and Testament of the Decedent as a forgery remains pending before this Court (Case No. 2021-001552).

The Appellant appeals a March 19, 2024, Form 4 Order of the Court of Common Pleas, acting as the appellate court, affirming the Probate Court’s October 17, 2023, Amended Order Confirming Private Family Agreement, or, in the alternative finding that the Circuit Court was divested of appellate jurisdiction as a result of the Appellant’s failure to comply with the strict requirements of *S.C. Code Ann.* § 62-1-308. (March 19, 2024, Form 4 Order of Judge R. Lawton McIntosh.) The Circuit Court’s Form 4 Order directed counsel for the Respondents to “file a formal order.” (March 19, 2024, Form 4 Order of Judge R. Lawton McIntosh.) The Appellant filed her Notice of Intent to Appeal the March 19, 2024, Order on that same day.

On April 2, 2024, the Circuit Court entered its formal Order affirming the Probate Court’s October 17, 2023, Amended Order Affirming Private Family Agreement. (April 2, 2024, Formal Order of Judge R. Lawton McIntosh.) The Appellant never filed a Notice of Intent to Appeal the April 4, 2024, Formal Order of the Circuit Court.

STATEMENT OF THE FACTS

On August 26, 2022, then Acting Oconee County Probate Judge Ashley Rice entered an Amended Order Appointing Adam Lee, Esquire, to act as Special Administrator of the Estate of Doyle Elton Pierce. (August 26, 2022, Amended Order Appointing Special Administrator.) On October 11, 2023, Mr. Lee gave his written notice of resignation as Special Administrator and a status conference was held before the Oconee County Probate Court Judge Danny Singleton on that same day to discuss the resignation.

After the status conference concluded, the Respondents and the Appellant engaged in discussions about settling all probate matters. An agreement was reached between the Respondents and the Appellant whereby all probate matters would be resolved, and the Appellant would dismiss her pending appeals. By agreement of all parties, the settlement agreement was placed on the record pursuant to Rule 43(k), SCRPC, with the understanding that the terms of the settlement agreement would be confirmed by an Order affirming the Private Family Agreement pursuant to *S.C. Code Ann.* § 62-3-912. (GoTranscript of Proceedings of October 11, 2023.) The agreement was placed on the record and all parties acknowledged their assent to the terms and that it was a binding agreement pursuant to Rule 43(k), SCRPC. (GoTranscript of Proceedings of October 11, 2023.)¹

On October 12, 2023, and in accordance with the terms of the settlement placed on the record on October 11, 2023, pursuant to Rule 43(k), SCRPC, the Probate Court

¹ Respondent Jared Adam Pierce participated in the settlement process via video conference from his residence in the country of Finland.

entered an Order Affirming Private Family Agreement which set forth all the terms of the settlement and division of estate assets. (Order Affirming Private Family Agreement dated October 12, 2023.) On October 12, 2023, by email to Judge Singleton, the Appellant began voicing objections to the October 12, 2023, Order Affirming Private Family Agreement. On October 13, 2023, the Appellant filed a Notice of Appeal of the Order Affirming Private Family Agreement with the Circuit Court. (Notice of Appeal dated October 13, 2023.) To address the Appellant's objections, Judge Singleton held a telephone conference with the parties on October 17, 2023. During the telephone conference, the Appellant stated that she was unable to meet the deadlines to which she had agreed in the agreement placed on the record on October 11, 2023. All parties agreed to the extension of certain deadlines sought by the Appellant and the Appellant agreed that she would dismiss her appeals. Pursuant to the revised agreement of the parties, the Probate Court entered and Amended Order Affirming Private Family Agreement. (Amended Order Affirming Private Family Agreement dated October 17, 2023.)

On October 19, 2023, pursuant to the provisions of the parties' settlement agreement, Judge Singleton reappointed the Appellant as the Personal Representative of the Estate of Doyle Elton Pierce. The Certificate of Appointment stated, "Restrictions: None at this time of Appointment except those required by law and the Personal Representative must abide by the Amended Order Affirming Private Family Agreement dated October 17, 2023." (Certificate of Appointment

dated October 19, 2023.) The Appellant accepted the terms of the Certificate of Appointment. (Affidavit of Personal Representative dated October 19, 2023.)

On October 24, 2023, the Appellant filed an Amended Notice of Appeal with the Circuit Court as to the October 17, 2023, Amended Order Affirming Private Family Agreement. (Amended Notice of Appeal dated October 24, 2023.) On that same day, the Appellant sent an email to Judge Singleton wherein she stated:

“[o]ur last conversation was the best I have ever had in a long time. I didn’t want to think about going against the agreement. Above all, it was that moment in your office that I didn’t want to betray. It still kills me to think that I’m going against it. It’s your trust that matters to me. Not an order. Nothing else matters as long as you trust me. The parties left me no choice. . . . Hear me out first, as a father. Not as a judge.” (Email from Appellant to Judge Singleton dated October 24, 2023.)

On November 1, 2023, Judge Singleton conducted an emergency hearing to determine whether the Appellant should be removed as Personal Representative for violating the Amended Order Affirming Private Family Agreement. On November 1, 2023, Judge Singleton terminated the Appellant’s appointment as Personal Representative for failing to abide by the Amended Order Affirming Private Family Agreement entered pursuant to the settlement agreement placed on the record on October 11, 2023, pursuant to Rule 43(k), SCRCF. (Termination of Appointment dated November 1, 2023.)

On November 2, 2023, Judge Singleton held the Appellant in contempt of court due to her conduct during the November 1, 2023, emergency hearing. (Order of Civil Contempt dated November 2, 2023.) On that same date, the Appellant filed her Second Amended Notice of Appeal to the Circuit Court wherein she challenged the

Order of Civil Contempt. (Second Amended Notice of Appeal dated November 2, 2023.)

On November 29, 2023, the Appellant filed a 66-page Appeal Brief of Appellant, wherein she argued, among another of other things, that there is no binding settlement agreement pursuant to Rule 43(k), SCRCF, because the Probate Court was not an “open court” at the time the agreement was placed on the record.² (Appeal Brief of Appellant dated November 29, 2023.)

On November 30, 2023, the Respondents filed a Motion to Dismiss the appeal because the Appellant failed to abide by the probate appeal procedural requirement set forth in *S.C. Code Ann.* § 62-1-308. (Motion to Dismiss Appeal dated November 30, 2023.) Specifically, the Respondents asserted that the Appellant (1) failed to comply with section 62-1-308(c) by failing to make satisfactory arrangements for the furnishing of the transcripts of the Probate Court proceedings within ten (10) days of filing her Notice of Intention to Appeal, and (2) for failing to file and serve a Stated of Issues on Appeal and Designation of Matter to be Included on Appeal in violations of sections 62-1-308(b) and (d). (Motion to Dismiss Appeal dated November 30, 2023.)

On March 14, 2024, a hearing was held in the Circuit Court before Judge R. Lawton McIntosh on the appeal from the Probate Court. On March 19, 2024, Judge McIntosh entered a Form 4 Order ruling that (1) the parties entered into a binding settlement agreement, and, in the alternative, (2) that the Circuit Court lacked

² The Appellant also asserts that Judge Singleton has a close personal relationship with the Respondents because they attended the same schools and that Judge Singleton’s father and the Respondents’ family shared a “pasteurizer.”

jurisdiction because the Appellant failed to strictly comply with the appellate procedures set forth in *S.C. Code Ann.* § 62-1-308. The Form 4 Order directed the undersigned to prepare a formal order. (Form 4 Order dated March 19, 2024.) On March 19, 2024, the Appellant filed her Notice of Appeal with this Court as to the Form 4 Order. (March 19, 2024, Notice of Appeal.) On April 2, 2024, Judge McIntosh signed the formal order and remanded the matter back to the Probate Court. The Appellant did not file a Notice of Appeal as to the Formal Order entered by Judge McIntosh on April 2, 2024.³

STANDARD OF REVIEW

“The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity.” University of Southern Cal. v. Moran, 365 S.C. 270, 274, 617 S.E. 2d 135, 137 (Ct. App. 2005). Settlement agreements are viewed as contracts and an action to construe a settlement agreement is an action at law. Kinghorn v. Sakakini, 426 S.C. 147, 151, 825 S.E. 2d 748, 749-50 (Ct. App. 2019). “If a proceeding in the probate court is in the nature of an action at law, review by this court extends merely to the correction of legal errors.” In re Estate of Paradeses, 426 S.C. 388, 391, 826 S.E. 2d 871, 873 (Ct. App. 2019). In addition, a judge’s findings will not be disturbed unless there is absolutely no evidentiary support. Kinghorn v. Sakakini, 426 S.C. at 151, 825 S.E. 2d at 750.

³ The Appellant filed a Seconded Amended Notice of Appeal on November 3, 2023, as to the Order of Civil Contempt dated November 2, 2023. She did not pursue that appeal as the matter was rendered moot by the payment by her of the \$500.00 fine.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE THE APPELLANT FAILED TO TIMELY APPEAL THE APRIL 2, 2024, JUDGMENT OF THE PROBATE COURT.

On March 19, 2024, the Circuit, acting in its appellate capacity, entered a Form 4 Order affirming the Probate Court's Orders Affirming Private Family Agreement because (a) the Appellant and the Respondents entered into a binding settlement agreement made in open court and noted upon the record in accordance with Rule 43(k), SCRPC, and (b) because the Appellant failed to comply with the strict procedural requirements set forth in *S.C. Code Ann.* § 52-1-308. The Form 4 Order directed the undersigned to file a formal Order setting forth the Court's ruling.

In South Carolina, as a general rule, only final orders are appealable. Culbertson v. Clemens, 322 S.C. 20, 23, 417 S.E. 2d 163, 164 (1996). When "there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory" and not appealable. Mid-State Distributors, Inc. v. Century Imports, Inc., 310 S.C. 330, 335, 426 S.E. 2d 777, 780 (1993). Pursuant to South Carolina law, the March 19, 2024, Form 4 Order is not, by its own terms, a Final Order of the Circuit Court that is appealable to this Court. Judge McIntosh's Form 4 Order expressly directed counsel for the Respondents to prepare and file a formal order, which was then entered by the Court on April 2, 2024.

The deadline for the Appellant to file a Notice of Appeal from the April 2, 2024, Order was May 2, 2024. The Appellant did not file a Notice of Appeal within the deadline and, as a result, her appeal should be dismissed.

II. THE CIRCUIT COURT PROPERLY AFFIRMED THE SETTLEMENT BETWEEN AND THE ORDERS AFFIRMING THE PRIVATE FAMILY AGREEMENT.

The Appellant challenges the Circuit Court's ruling that she entered into a binding settlement agreement on October 11, 2023, in accordance with Rule 43(k), SCRPC, to settle all issues involving the Estate of Doyle Elton Pierce. Without record evidence or support, the Appellant argues that the agreement was not made in "open court" because Judge Singleton had not formally convened the Probate Court and that he was acting in the capacity of a mediator rather than judge.

Rule 43(k), SCRPC, provides that enforceable agreements may be made between the parties to litigation when made in open court and noted upon the record. Rule 43(k) is applicable to settlement agreements. Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 494, 458 S.E. 2d 533, 534 (1995). A settlement agreement read into the record in open court is enforceable under Rule 43(k) when the material terms of the agreement are present. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 603-604, 567 S.E. 2d 514, (Ct. App. 2002).

The record in the present case clearly establishes that the Appellant entered into a binding settlement agreement on October 11, 2023, pursuant to Rule 43(k), SCRPC, when the Appellant and the Respondents read an agreement into the record before Judge Danny Singleton in his capacity as Oconee County Probate Judge. It is beyond cavil that all material terms related to the division of the estate property between the heirs, the responsibility for the payment of any estate obligations, and the dismissal of all probate-related appeals was placed onto the record. (GoTranscript

of October 11, 2023, p._____) ⁴ The parties clearly and unequivocally agreed upon the division of real property, personal property, vehicles, firearms, farm implements, and the payment of estate creditors. (GoTranscript of October 11, 2023, p._____) It was plainly expressed on the record that the settlement was be placed onto the record pursuant to Rule 43(k), and the Appellant expressed her assent to the terms. During the October 11, 2023, proceeding, Judge Singleton directly asked the Appellant the following question and the Appellant gave the following response:

Judge Singleton: We've already established that your brother [sic], by video, was in agreement. Ms. Pierce, are you in agreement?

Appellant: Yes, I am.

(GoTranscript of October 11, 2023, p._____)

As a result, the settlement agreement placed onto the record on October 11, 2023, is binding and enforceable, the litigation has ended, and the Appellant's issues on appeal are moot. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. at 603.

III. THE CIRCUIT COURT PROPERLY FOUND THAT IT WAS DIVESTED OF JURISDICTION BECAUSE OF THE APPELLANT'S FAILURE TO COMPLY WITH THE APPELLATE PROCEDURES SET FORTH IN S.C. CODE ANN. § 62-1-308.

Appeals from an order of the Probate Court are governed by *S.C. Code Ann.* § 62-1-308(a). Pursuant to section 62-1-308(b), the Appellant was required to file a Statement of Issues on Appeal with the clerk of the circuit court within forty-five (45) days of receipt of the order from which an appeal is taken. In her Notice of Appeal,

⁴ The "GoTranscript" is, ostensibly, a transcription the Appellant had prepared by Amazon Web Services from the Probate Court audio recording and made a part of the Record on Appeal on February 2, 2024. The Appellant never obtained an official transcription prepared by a court reporter.

the Appellant states that she received the order from which she appeals on October 12, 2023. Consequently, she was required to file her Statement of Issues on Appeal by November 27, 2024, but failed to do so. Instead, she filed her Appeal Brief with the Circuit Court on November 29, 2023.

Section 62-1-308(d) required the Appellant, within thirty (30) days after service of her Statement of Issues on Appeal, to serve upon all other parties a Designation of Matter to be Included in the Record on Appeal. The Appellant did file a Designation on December 11, 2023, but did so without having first complied with the mandates of section 62-1-308(b). Likewise, the Appellant failed to make “satisfactory arrangements” for the furnishing of the transcript of the October 11, 2023, proceeding within ten (10) days of service of her Notice of Appeal as required by section 62-1-308(c). Instead, on February 2, 2024, the Appellant submitted a “GoTranscript” version of a transcript of proceedings for October 11, 2023.

The mandatory language contained in section 62-1-308 is clear and unequivocal. Each provision in the statute states the appellant or the parties “must” or shall.” The Appellant’s failure to strictly comply with the procedural requirements set forth in *S.C. Code Ann.* §§ 62-1-308(b), (c), and (d) divested the Circuit Court of appellate jurisdiction. *In re Estate of Cretzmeyer*, 365 S.C. 12, 615 S.E. 2d 116 (2005) (appellant’s failure to comply with the procedural requirements for an appeal under *S.C. Code Ann.* § 62-1-308 divested the court of appellate jurisdiction).

IV. CONCLUSION

For the reasons set forth above, the Respondents, Gregory Allan Pierce and Jared Adam Pierce, respectfully request this Court to affirm the judgment of the Circuit Court rendered on April 2, 2024, and to dismiss the appeal. The Appellants do not respond to the remainder of the numerous issues raised by the Appellant as they are spurious and without record support.

Respectfully submitted this 22nd day of July 2024.

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PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Initial Brief has been sent this 22nd day of July 2024 via Regular U.S. Mail, Postage Prepaid, to: **DOROTHY PIERCE, APPELLANT *PRO SE***, 750 Mourning Dove Lane, Seneca South Carolina 29678, and **DONNA CAROL MOORE, RESPONDENT *PRO SE***, 149 Flat Rock Church Road, Liberty, South Carolina 29657.



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