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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
Court of Common Pleas
Jennifer B. McCoy, Circuit Judge
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

South Carolina Supreme Court Appellate Case No. 2024-001205
South Carolina Court of Appeals Appellate Case No. 2021-001152
Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Respondent,

versus

MINNIE LEE NEWMAN-MEVERS,
Petitioner,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Respondent.

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner Minnie Lee Newman-Mevers ("Petitioner") respectfully submits this reply in support of her petition for a writ of certiorari.

(a) The Court of Appeals Disregarded the Impact of S.C. CODE ANN. § 62-3-107 on the Appealability of the Probate Court's Orders.

The South Carolina Probate Code (SCPC) provides that a "final order" of the probate court is appealable. See S.C. CODE ANN. § 62-1-308. Unfortunately, the SCPC does not define what is a "final order." Section 62-3-107 of the SCPC, which is derived from Section 3-107 of the Uniform Probate Code (UPC), provides guidance in answering this question. Section 62-3-107(1) of the SCPC, which is taken verbatim from UPC § 3-107, makes clear that "each proceeding before the [probate court] *is independent of any other proceeding* involving the same estate." S.C. CODE ANN. § 62-3-107(1) (emphasis added). Section 62-3-107(4) further provides that "a proceeding for appointment of a personal representative *is concluded by an order making or declining the appointment*." Id. § 62-3-107(4) (emphasis added). Section 62-3-107(4) purposefully uses the term "personal representative," which is statutorily defined to include a "special administrator." Id. §§ 62-1-201(33), -201(44); see §§ 62-1-201 cmt.[1]

The SCPC mandates that our courts must "liberally construe[] and appl[y]" its provisions to effectuate its "underlying purposes and policies," which include to "make uniform the law among the various jurisdictions" which have enacted it. See S.C. CODE ANN. § 62-1-102(b)(5). As a result, decisions from other states applying the UPC are especially persuasive. See Hoover v. Hoover, 271

[1] The SCPC differentiates a "general personal representative" from a "personal representative." Whereas a "personal representative" includes a special administrator, a "general personal representative … excludes [a] special administrator." S.C. CODE ANN. § 62-1-201(33). If the legislature had intended for § 62-3-107(4) not to apply to a proceeding for the appointment of a special administrator, it would have used the term "general personal representative" in that section, which excludes a special administrator, rather than the term "personal representative," which includes a special administrator. The legislature intended for § 62-3-107(4) to apply to the appointment of a special administrator given its choice of terms used in the statute.

S.C. 177, 182, 246 S.E.2d 179, 181 (1978) (following courts of our sister states in applying Uniform Reciprocal Enforcement of Support Act given statute's mandate that its provisions "be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it").

Cases applying UPC §§ 1-308 and 3-107 show that a "final order" under the uniform statute does not simply mirror the "final judgment rule" codified at S.C. CODE ANN. § 14-3-330.[2] Unlike the final judgment rule, which requires "the disposition of all the issues in the case," Link v. Sch. Dist. of Pickens County, 302 S.C. 1, n.3, 393 S.E.2d 176, n.3 (1990), a "final order" under the uniform statute means simply an order that concludes a discrete phase of the estate administration. Estate administration may involve many discrete proceedings, each of which results in a final order that is appealable even though there has not been full administration or closing of the estate. One example of such an appealable "final order" is an order making or declining the appointment of a special administrator. See S.C. CODE ANN. § 62-3-107(4); see also Wilson v. Fritschy, 55 P.3d 997, 1004-05 (N.M. Ct. App. 2002) (UPC § 3-107 "has been interpreted … to provide that 'each petition in a probate file should ordinarily be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order.' For example, the statute provides that '[a] proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.'" (citations omitted)).

Despite § 62-3-107(4)'s explicit language that a proceeding for the appointment of a special administrator "is concluded" by an order making or declining the appointment, the SCAG argues an

[2] In Dorn v. Cohen, 421 S.C. 517, 809 S.E.2d 53 (2017), the court held that § 62-1-308 exclusively governs appeals from the probate court, thus the provisions of § 14-3-330 do not apply to probate court orders. As such, state cases adjudicating what constitutes a "final judgment" for purposes of § 14-3-330 are not necessarily dispositive of what kinds of probate court orders are appealable under § 62-1-308.

"order appointing a special administrator is not immediately appealable … because a matter can be 'concluded' but that does not mean that there is a final order that is subject to appeal, as appealability and conclusion are different." See SCAG's Return p.17. The SCAG's argument is nonsensical and contrary to the decision of every court which has examined the question. Indeed, the SCAG cites no law from any jurisdiction supporting his tortured construction of the statute.

Case law applying UPC § 3-107(4) hold that probate court orders appointing or refusing to appoint a special administrator or personal representative are final and appealable. See, e.g., Matter of Est. of Franchs, 722 P.2d 422 (Colo. Ct. App. 1986) (probate court order appointing a special administrator is final and appealable); Matter of Est. of Burshiem, 483 N.W.2d 175, 178 n.4 (N.D. 1992) (probate court order appointing a personal representative is final and reviewable based on UPC § 3-107(4)'s language stating that "a proceeding for appointment of personal representative is concluded by an order making or declining the appointment"); In re Est. of Muncillo, 789 N.W.2d 37, 41 (Neb. 2010) (order denying application for appointment of a special administrator is a final, appealable order); In re Est. of Severson, 970 N.W.2d 94 (Neb. 2022) (proceeding for appointment of a personal representative is concluded by an order making or declining the appointment and is final and appealable); In re Est. of Lakin, 965 N.W.2d 365, 378 (Neb. 2021) (order dismissing petition seeking removal of personal representatives and appointment of a special administrator is a final, appealable order); In re Est. of Newalla, 837 P.2d 1376 (N.M. Ct. App. 1992) (proceeding for appointment of a personal representative is concluded by an order making or declining the appointment, thereby implying that such an order is final and appealable).

Courts applying the UPC have remarked that its provisions reflect "a more expansive determination of the finality of probate orders than articulated in" cases adhering to the "final judgment rule." In re Est. of Geier, 809 N.W.2d 355, 357-58 (S.D. 2012). "As it concerns final

orders, unsupervised probate actions represent a special class of cases in the sense that a single action can contain multiple, discrete 'proceeding[s],' each of which results in a final order." Matter of Est. of Smeenk, 2014 WL 1666843, at ¶ 23 (S.D. Apr. 17, 2024).

Based on UPC § 3-107(1)'s directive that each proceeding before the probate court is "independent of" any other proceeding involving the same estate, "[t]he consensus among the courts that have examined this issue is that each probate petition 'should ordinarily be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order' even if there are other pending proceedings involving the same estate or if the estate has yet to be fully administered." Est. of Sheltra, 238 A.3d 234, 238 (Me. 2020) (quoting Newalla, 837 P.2d at 1377)). "Because each proceeding in an unsupervised probate is considered independent of other proceedings involving the same estate, there need be finality only as to that proceeding, not the entire estate." Schmidt v. Schmidt, 540 N.W.2d 605, 607 (N.D. 1995). "An order is final if it is dispositive as to the issues raised in the petition prompting the order." Clinesmith v. Temmerman, 298 P.3d 458, 467 (N.M. Ct. App. 2012).

It is not necessary that the probate court's order fully and finally dispose of the entire probate matter or all the issues in the case. Instead, to be immediately appealable, the order must be conclusive of the issue or controverted question for which the particular part of the proceeding was brought. In re Est. of Ketterling, 885 N.W.2d 85, 87 (N.D. 2016); In re Est. of Sanders, 750 N.W.2d 806, 813 (Wis. 2008); In re Est. of McKillip, 820 N.W.2d 868, 875-76 (Neb. 2012); In re Est. of Chess, 995 N.W.2d 675, 203-04 (Neb. 2023); Wittner v. Scanlan, 959 S.W.2d 640, 641 (Tex. Ct. App. 1995); Schmidt, 540 N.W.2d at 607; Severson, 970 N.W.2d at 100-01. "An order that resolves a request for relief ends the proceeding and is a final order which may be appealed as a matter of right." Smeenk, 2014 WL 1666843 at ¶ 23.

The probate court's orders in this case made final determinations on the SCAG's proceedings asking the probate court to reopen the estate, appoint a special administrator, enjoin Petitioner from using or disposing of any assets she received from the estate, and require an accounting from Petitioner. The probate court fully and finally adjudicated the parties' rights involving those matters or issues. The orders nowhere indicate the rulings are temporary or that the probate court will conduct future proceedings to revisit whether to reopen the estate, appoint a special administrator, enjoin the Petitioner, or compel an accounting. Instead, the probate court's rulings on those matters are final and preclusive. That is why Petitioner appealed the rulings.

Published and unpublished decisions of our state courts issued both before and after the SCTC's enactment have held that probate court orders appointing administrators, special fiduciaries, and special administrators *are* immediately appealable. See Ex parte Small, 69 S.C. 43, 43, 48 S.E. 40, 40 (1904) (probate court's order appointing an "administrator" for an estate is a final order and is immediately appealable); In re Est. of Connor, No. 2009-UP-501, 2009 WL 9530096, at *4-5 (S.C. Ct. App. Oct. 29, 2009) (probate court's order appointing an attorney as special administrator for an estate was a "final order" which the appellants had not timely appealed); Fisher v. Huckabee, 2016 WL 7495869, at *4 n.13 (S.C. Ct. App. Dec. 21, 2016), aff'd in part, rev'd in other part, 2018 WL 6528122 (S.C. Dec. 12, 2018) (holding probate court's order appointing a special fiduciary was immediately appealable (citing Small)); see also JEAN H. TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 165 (3rd ed. 2016) ("An order appointing an administrator in probate court is immediately appealable." (citing Small)); cf. Parkman v. Hanna, 311 S.C. 20, 426 S.E.2d 743 (1992) (reviewing probate court order terminating the appointment of a personal representative).

The SCAG erroneously claims the court of appeals's decision in Estate of Boyce v. Work, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), means the probate court's orders in this care are not

appealable. See SCAG's Return p.15. In Boyce, our court of appeals held a probate court order *temporarily* appointing two sisters as special administrators for an estate was not appealable. The court emphasized the probate court's order was "clearly temporary" and thus not a final order because it stated the sisters are appointed "until such time as a Personal Representative(s) shall be formally appointed" and it placed limitations on their authority, including forbidding them from disposing of estate assets. 305 S.C. at 44, 406 S.E.2d at 185. The court of appeals concluded appellate jurisdiction was lacking because "of the temporary order involved in this case." Id.

The present case does not involve a temporary appointment of a special administrator. The probate court's orders, *inter alia*, appointed a special administrator for the estate pursuant to S.C. CODE ANN. § 62-3-614. (R. pp.9-10; 17, 27). The probate court *permanently* appointed a special administrator. (R. pp.9-10, 17, 27). The orders also did not place any limits on the special administrator's appointment, thus he was appointed with the power of a general personal representative. (R. pp.9-10, 17, 27). The Fiduciary Letters issued to him evidence this fact. Those letters state the special administrator is "appointed and qualified as Fiduciary(ies) on the above matter by this Court, with all the authority granted to a fiduciary by law." (R_0011). They further state in bold letters and all capitals: "**RESTRICTIONS: NONE**." (R_0011). This is further confirmed by the special administrator's own pleadings in this case. The special administrator filed a formal pleading in which he represented that "the Probate Court has already appointed [him] as the Special Administrator of the Estate of Roy E. Mevers, Jr. as of March 13, 2020 *with no restrictions and not in a temporary capacity*." (R_0199 ¶3).

Unlike the order at issue in Boyce, the probate court's orders in the instant case appointed a special administrator on a permanent basis with no limitations on his authority, not a special administrator with only temporary and limited authority. Importantly, the Boyce case nowhere

mentions or even acknowledges the language of S.C. CODE ANN. § 62-3-107(4) discussed above. The court failed to address whether an order appointing a special administrator is appealable when § 62-3-107(4) expressly states that a proceeding for appointment of a special administrator "is concluded by an order making or declining the appointment." Boyce is not controlling.[3]

The SCAG relies heavily upon a Colorado bar journal article and Colorado case law to support his erroneous claim that § 62-3-107(1) "does not change the meaning of a final order or change what matters are immediately appealable from the probate court." See SCAG Return pp.12-15. The bar article and cases do not support the dismissal of Petitioner's appeal in this case.

Notably, even though the SCAG urges the court to follow Colorado case law, he inexplicably ignores the Colorado opinion in the Franchs case cited above. In Franchs, the Colorado Court of Appeals held that "since the probate court's order formally appointing the special administrator did not limit the special administrator's power, the special administrator has the power of a general personal representative." 722 P.2d at 423. "Therefore, [the court held] that *the probate court's order appointing the special administrator is final and appealable*." Id. (emphasis added). The SCAG's return simply ignores Franchs even while he claims Colorado case law is persuasive.

Even putting aside the SCAG's avoidance of Franchs, the SCAG further ignores the fact that while Colorado has adopted UPC § 3-107, upon which S.C. CODE ANN. § 62-3-107 is based, that state has not adopted UPC § 1-308, upon which S.C. CODE ANN. § 62-1-308 is based. Colorado declined to adopt UPC § 1-308 and instead enacted its own unique provision stating that appellate review of probate court orders "is governed by the Colorado appellate rules." See COLO. REV. STAT. ANN. § 15-10-308. Because it rejected the uniform provision, Colorado has held "the same rules of

[3] The court of appeals's decision in Boyce was appealed to this court. However, the parties settled before this court could decide the appeal. Boyce-Abel In re Est. of Boyce v. Work, 308 S.C. 234, 234-35, 417 S.E.2d 597 (1992).

finality apply in probate cases as in other civil cases." Scott v. Scott, 136 P.3d 892, 896 (Colo. 2006). This is not the law in South Carolina. Dorn, 421 S.C. at 517, 809 S.E.2d at 53.

In civil cases, Colorado's appellate rules adhere to the "one final judgment rule." Jones v. Galbasini, 299 P.2d 503, 506 (Colo. 1956). Under this rule, "[t]o constitute a final judgment the trial court's ruling must dispose of the entire litigation on the merits, and leave the court nothing to do but execute the judgment." Mission Viejo Co. v. Willows Water Dist., 818 P.2d 254, 258 (Colo. 1991) (en banc) (citing cases). "A final judgment constitutes a complete determination of the rights of the parties involved." Id. This critical difference in statutes must be considered when comparing Colorado decisions to other cases applying UPC § 1-308.[4]

The SCAG cites the Colorado case of In re Est. of Scott, 151 P.3d 642 (Colo. Ct. App. 2006), which involved extraordinary circumstances. See SCAG's Return p.13. There, the same trust beneficiary had filed two petitions in the probate court—referred to as the 2000 petition and the 2005 petition—which both sought accountings from the same trustee. The beneficiary had filed the new 2005 petition even though he had made similar claims in the 2000 petition. The probate court dismissed the 2005 petition based on its conclusion that it "is part of the same proceeding as the 2000 case and could not stand on its own as a separate proceeding." Id. at 644-45. This was nothing more than a recognition that "[w]hen the subject matter of two petitions overlap, it would generally be appropriate to consider both petitions as belonging to the same proceeding." See Newalla, 837 P.2d at 1377.

In Scott, when the beneficiary attempted to appeal the probate court's order, the Colorado court held the appeal did not involve a final judgment because the "determination of the new petition

[4] Despite the application of the final judgment rule, the Franchs court still held the probate court's order appointing a special administrator was a final, appealable order. Franchs, 722 P.2d at 423.

[2005 petition] is inextricably linked to the main probate proceeding [2000 petition], and there is no preclusive effect of the probate court's order as to the new petition." Id. at 644. There was no "final judgment" in that case because the probate court had not yet adjudicated the 2000 petition, which the court considered to be the "same proceeding" as the 2005 petition. The court held that "[u]nder the circumstances presented here, we conclude that the 2005 petition is not a 'proceeding' separate from the 2000 case." Id.

Importantly, the court emphasized that "[b]oth parties agreed at oral argument that there is no preclusive effect to the probate court's order." Id. at 645. "Counsel for petitioner conceded that the same issues raised in the 2005 petition—the sufficiency and frequency of Trustee's accountings—have been raised in the 2000 case after issuance of the order appealed from here, and that the order does not preclude the probate court from granting in the future the relief requested in the petition." Id. "Therefore, that order lacks a key characteristic of a final, appealable judgment." Id.

The Scott case clearly is distinguishable from the present case for several reasons. Unlike the present case, Scott did not involve a probate court's order appointing a special administrator. As such, the Scott case did not involve application of UPC § 3-107(4). As discussed above, Colorado's own court of appeals held in Franchs that an order appointing a special administrator is immediately appealable under UPC § 3-107(4). Moreover, unlike the situation in Scott, the SCAG in this case is claiming the probate court has issued binding and final adjudications reopening the decedent's estate and appointing a permanent special administrator. There is no other petition pending which asks the probate court to reopen the estate or to appoint a special administrator. Those matters have not been left to future adjudication. Instead, they have already been decided by the probate court with finality. Indeed, the SCAG's return conspicuously omits any statement that the probate court's orders will have no preclusive effect on Petitioner. The Scott case has no application to the present case.

The SCAG also cites Chavez v. Chavez, 465 P.3d 133 (Colo. Ct. App. 2020). See SCAG's Return p.13. In that case, a Colorado jury rendered a verdict that a conservator had breached his fiduciary duties owed to the protected person, his mother. Id. at 136-37. The probate court subsequently issued an order finding the conservator's interest in his mother's estate should be surcharged. However, the court had not yet determined the amount of attorneys' fees and prejudgment interest to be awarded as damages. Under Colorado law, prejudgment interest and attorneys' fees are components of damages. Id. at 139-40. The court applied the principle that "an order establishing liability without determining damages is not final or appealable." Id. at 140 (citations omitted). The court followed the rule that "if attorney fees and costs are a component of damages for a statutory claim ..., a judgment for damages on such a claim is not appealable until the amount of the attorney fees and costs has been set." Id. at 140.

The present case is easily distinguishable from Chavez. Here, Petitioner is not attempting to appeal from a probate court establishing liability, but which has not yet determined the damages to be awarded. Rather, she is appealing from the probate court's orders, *inter alia*, reopening the decedent's estate, appointing a permanent special administrator, enjoining her, and ordering her to render an accounting. Those issues have been decided by the probate court with finality. There is nothing left for future determination by the probate court.

Finally, the SCAG cites to the Nebraska case of In re Est. of Abbott-Ochsner, 910 N.W.2d 504 (Neb. 2018), as supposed support for his position that an order appointing a special administrator is not appealable. See SCAG's Return p.17. In that case, the probate court had appointed the decedent's son as personal representative for the estate based on the provisions of the decedent's will. After the personal representative's siblings later filed a will contest, the court also appointed a special administrator for the estate, but it did not remove the personal representative

from his position. Id. at 507. On appeal, the appellate court held the order was not appealable because it had not affected a substantial right of the personal representative. Id. at 510.[5]

The Abbott-Ochsner case is not controlling for an important reason which the SCAG glosses over—it did not involve application of UPC § 3-107(4). Section 3-107(4) is not mentioned or discussed anywhere in the court's opinion. The court did not confront appealability of an order appointing a special administrator in the face of the UPC's provisions expressly stating that a proceeding for appointment of a special administrator "is concluded by an order making or declining the appointment."

(b) The Probate Court's Rulings to Reopen the Estate, Grant a TRO and Preliminary Injunction, and Order an Accounting are Appealable Because There is an Appealable Issue Before The Court.

Settled state law holds an order which is not directly appealable can be considered on appeal if there is an appealable issue before the court. Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 623 S.E.2d 387 (2005); Briggs v. Richardson, 273 S.C. 376, 256 S.E.2d 544 (1979); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001); Se. Hous. Found. v. Smith, 380 S.C. 621, 636 n.14, 670 S.E.2d 680, 688 n.14 (Ct. App. 2008); Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002).

The SCAG does not quarrel with these cases. Instead, he makes the naked claim that their reasoning "is not applicable to appeals from a probate court which are governed exclusively by S.C. CODE ANN. § 62-1-308, and its mandate that only 'final orders' may be appealed." See SCAG's

[5] It is notable the court in Abbott-Ochsner pointed out the personal representative "is not appealing the commencement of formal proceedings, and he is not appealing his removal as personal representative, because no such order has been made." 910 N.W.2d at 510. In contrast, in the present case, Petitioner is appealing the probate court's order formally reopening the decedent's estate because that decision was improperly made on an *ex parte* basis without prior notice to Petitioner or opportunity to be heard.

Return p.18. The SCAG claims "the appellate court does not have discretion to entertain appeals of non-final orders when they are coupled with a final order" because of § 62-1-308(a). Id.

Of course, the cases cited above involved the appellate court's review of orders that otherwise were not "final judgments" under S.C. CODE ANN. § 14-3-330. Despite this fact, the courts still considered the nonfinal orders on appeal. For the appellate court to have jurisdiction, it was necessary only that at least one appealable order be before the court. For the reasons discussed above, the probate court's order in this case appointing a special administrator is a final order that is immediately appealable under §§ 62-3-107(4) and 62-1-308(a). Given that an appealable order is before the court, which gives the appellate court jurisdiction, the court can resolve other issues accompanying the appealable final order.

In conclusion, the court of appeals erred by not considering § 62-3-107's impact in determining whether the probate court's orders are appealable. Because of the novelty of this issue under state law, the conflicting appellate court decisions, and the present confusion regarding what types of probate court orders are appealable, Petitioner respectfully requests this court to issue a writ of certiorari to review and reverse the court of appeals's decision involving appealability of the probate court's and circuit court's orders and to remand the matter so the court of appeals may address the merits of Petitioner's appeal.

Respectfully submitted,

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