

ELECTRONICALLY FILED - 2024 Sep 26 10:13 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1004111

RECEIVED

OCT 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE CHARLESTON COUNTY
PROBATE COURT

David L. Michel, Probate Court Judge

Case No. 2023-CP-10-04111

Morteza ("Mory") Ejabat, as Sole Legal Guardian for C.E., a minor,

Respondent,

v.

James Lloyd Barlage, Personal Representative of the Estate of Stephanie Barlage Marver, et al,

Appellant.

ORDER DISMISSING APPEAL

This matter came before this Court on a Motion to Dismiss filed by Respondent Morteza Ejabat as Sole Legal Guardian for C.E. a minor seeking to dismiss the appeal of the Charleston County Probate Court's Order Appointing J. James Duggan as Special Administrator dated August 7, 2023 ("Order"). Based on the various pleadings, documents and oral arguments, the Court makes the following findings:

- I. The Order Appointing J. James Duggan as Special Administrator is an interlocutory order and is not immediately appealable.**

Appellant has sought to appeal an Order Appointing J. James Duggan as Special Administrator of the Charleston County Probate Court. Rule 72, SCRCP, provides that appeals

“may be take, as provided by law, from any final judgment or appealable order.” Further, S.C. Code § 14-3-330 provides additional guidance as to the matters that may be appealable. The Court finds that an Order Appointing a Special Administrator is not immediately appealable under Rule 72, SCRCF or S.C. Code § 14-3-330. The circuit court may only review final orders issued by the probate court. *See Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008). The Order Appointing a Special Administrator is not a final order and therefore is not subject to an appeal. As a result, the appeal must be dismissed. As a result, the appeal must be dismissed.

II. The Notice of Intent to Appeal was not timely filed.

The Order was submitted by the Charleston County Probate Court via e-mail to all parties on August 7, 2023. According to *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 219, 810 S.E.2d 856, 860 (2018), “email sent from the court, an attorney of record, or a party that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes”. Under S.C. Code § 62-1-308(a), Appellant was required to file the Notice of Intent to Appeal “within ten days after receipt of written notice.” Based on the statute, the Notice of Intent to Appeal deadline was August 17, 2023. The Appellant did not file the Notice of Intent to Appeal until August 22, 2024. The Notice of Intent to Appeal was not timely filed.

Rule 203(d)(3), SCAR titled “Effect of Failure to Timely File,” states “if the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed...” Rule 203(d)(3), SCAR. Based on the fact Appellant received written notice of the Order on August 7, 2024, the Order was not timely appealed and must be dismissed.

Additionally, Rule 260(a), SCAR states “[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Rule

260(a), SCAR. "An appellant who fails to follow the procedural requirements strips the court of jurisdiction over their appeal. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). As a result of Appellant's failure to timely file the

Therefore, based on the above findings of fact,

IT IS ORDERED that the appeal of the Order Appointing Special Administrator is dismissed because it is an interlocutory order not subject to appeal.

IT IS ORDERED that the appeal of the Order Appointing Special Administrator is dismissed because the Notice of Intent to Appeal was not timely filed in accordance with S.C. Code § 62-1-308(a).

IT IS SO ORDERED.

Judge Jessica Ann Salvini



Charleston Common Pleas

Case Caption: James Lloyd Barlage , plaintiff, et al VS Morteza Mory Ejabat ,
defendant, et al
Case Number: 2023CP1004111
Type: Order/Dismissal

So Ordered

Jessica A. Salvini

Electronically signed on 2024-09-26 10:03:52 page 4 of 4