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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

+

Appeal From Charleston County
Court Of Common Pleas

Bently Price Circuit Court Judge

Case No. 2023-001852

Athena Irland

Appellant

v.

Brandy S. Culp

Respondent

CORRECTED INITIAL BRIEF OF APPELLANT

October 21, 2024

Athena Irland
186 Dolly Dimples Trl
Huger, SC 29450
(843) 697-3631
Appellant

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TABLE OF AUTHORITIES
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1. Calhoun v Calhoun
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278 S.C. 504 (SC 1983)
3. Dixon v Dixon
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362 S.C. 388 (S.C. 2005)
4. Ellis v Davidson
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358C. 509 (S.C. Ct. App. 2004)
5. In re Estate of Berg
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8. Haines v Kerner U.S., 404 U.S. 519 (1972)
9. Hairston v In re Estate of Normall O. Hudson
SC Court of Appeals Opinion #4657 (S.C. 2010)
10. Hembree v Estate of Hembree
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311 S.C. 192 (S.C. Ct. App. 1993)
11. Noblin v. Burgess
Court of Appeals Mississippi
54 So. 3d 282 (Miss. Ct. App.2011)

12. Testamentary Capacity

Jonathan Raub, MD, MPH,
Fellow in Forensic Psychiatry

J. Richard Ciccone, MD
Professor of Psychiatry and Law Program
University of Rochester Medical Center, Rochester, NY

13. Thompson v Moore
Supreme Court of South Carolina
227 S.C. 417 (S.C. 1955)

14. Verdery v Daniels (In re Thames)
South Carolina Court of Appeals
344 SC 564, 544 (Ct App. 2001)

STATEMENT OF ISSUES ON APPEAL

1. Judge Bently Price seemed confused as to the subject matter before the court on September 27, 2023.

Judge Price began the proceedings by asking, “All right, specifically, what motions are outstanding that need to be ruled on?” When, in fact, there were no motions before the court. The subject matter before the court was an Order from The Supreme Court of South Carolina wherein Judge Price was directed to convene a hearing to, “consider all issues properly before the circuit court.” Instead Judge Price argued that he had already ruled on Petitioner’s motion (Transcript of Record September 27, 2023. (Appendix C) , pg.2 lines 9-11, pg3. lines 2-4, pg.4 lines 18-22) and was very agitated that he had to repeat himself in hearing a case that he had already ruled on. It seemed as though Judge Price was reinforcing the correctness his ruling. The fact is that Judge Price was not being asked to make a ruling, he was being instructed by the Supreme Court to support his existing ruling. Instead, it seems Judge Price was trying to shift blame of his failure to adequately perform his duties as a judge (possibly contributing to his being deemed unqualified according to a report released October 6, 2023 from the South Carolina Bar). Pg.5, lines 16-23 of the same transcript illustrates Judge Price’s frustration of opposing counsel petitioning the Supreme Court to get an answer supporting his ruling.

2. Order dated September 13, 2023 Judge Bently Price reversed his decision granting the Appeal and ruled in favor of the Respondent instead of gathering evidence supporting his original ruling granting the Appeal as instructed by the Supreme Court.

It seems Judge Price reversed his decision because it was the easy way out. Judge Price was instructed by the Supreme Court to have a rehearing to gather information to support his original decision in favor of the Appellant. But, it appears it was easier for him to agree with Respondent’s arguments than to create more work for himself by actually examining the merits of Appellant’s case to support remanding it back to the Probate Court.

3. The Circuit Court erred in allowing arguments for motions during the hearing on September 27, 2023 not entered into evidence at the first hearing on October 27, 2022. Said motion was based solely on the allegation that Appellant failed to serve her Notice Of Appeal on

Christina Culp and Isadore John Psaras within the required time limit. Christina Culp and Isadore John Psaras were not served because they were no longer parties to the case pursuant to a Settlement Agreement signed between them and Respondent dated March 16, 2020.

4. The Order issued by the Probate Court dated the 13th day of July 2022 signed by Lenna Kirchner is invalid pursuant to Section 14-23-1120 which specifically states, “The court of probate shall be a court of record and shall have a seal bearing the name of such court, which seal shall be impressed upon all orders, decrees and licenses issued by such court.” Said Order bears no such seal. Without the seal of the Probate Court, said Order is not a legally enforceable document because it does not follow the rule. Since Respondent has incessantly argued that Appellant’s motions be denied for failure to follow court rules, it stands to reason that Judge Kirchner’s Order is invalid on its face because it does not comport with South Carolina Code Of Laws Section 14-23-1120.

STATEMENT OF THE CASE

Before the court was the issue of Judge Price's Order dated July 14, 2023 (Appendix A) wherein he denied Petitioner's (Brandi Culp) motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondent's (Athena Irland) appeal from Probate Court. In that same order, Judge Price granted Respondent's Petition for a rehearing.

However, Judge Price began the proceedings by asking, "All right, specifically, what motions are outstanding that need to be ruled on?" When, in fact, there were no motions before the court. The subject matter before the court was an Order from The Supreme Court of South Carolina (Appendix B) wherein Judge Price was directed to convene a hearing to, "consider all issues properly before the circuit court." Instead Judge Price argued that he had already ruled on Petitioner's motion (Transcript of Record September 27, 2023. (Appendix C) , pg.2 lines 9-11, pg3. lines 2-4, pg.4 lines 18-22) and was very agitated that he had to repeat himself in hearing a case that he had already ruled on. It seemed as though Judge Price was reinforcing the correctness his ruling. The fact is that Judge Price was not being asked to make a ruling, he was being told by the Supreme Court to support his existing ruling. Instead, it seems Judge Price was trying to shift blame of his failure to adequately perform his duties as a judge (possibly contributing to his being deemed unqualified according to a report released October 6, 2023 from the South Carolina Bar). Pg.5, lines 16-23 of the same transcript illustrates Judge Price's frustration of opposing counsel petitioning the Supreme Court to get an answer supporting his ruling.

Opposing counsel (Mr. Sanchez) went on to misrepresent facts in the case claiming Ms. Irland failed to follow procedures required for an appeal (pg8. lines 1-25, pg.9 lines 1-13). Keeping in mind Haines v. Kerner where pro se litigants are afforded some leeway in court proceedings, the record will show that Ms. Irland did, in fact follow correct procedure. Though it may not be recognized as such Ms. Irland filed a notice of appeal with a statement of issues and notices on July 22, 2022 (Appendix D).

STATEMENT OF FACTS

I, Athena Irland, am the youngest child of the decedent Dolly Coleman. Dolly Coleman lived solely with me at 186 Dolly Dimples Trail Huger, SC 29450 for approximately 10 years. Parcels of land measuring 38 acres and 1 acre were purchased by me in 1995. Included on the Deed was my husband at the time, Daniel Irland, and my mom Dolly Coleman.

In 1997 Dolly Coleman purchased an additional parcel of land measuring 33 acres. Collectively, the three parcels of land are referred to as “the property” located in Berkeley County.

Since 1995 I, Athena Irland, have lived on the property, uncontested, managing a farm including but not limited to cows, goats, horses, and chickens. I fenced in the entire property.

Isadore John Psaras testified that the home he lived in on Palmetto St. In Mt. Pleasant was given to him by Dolly Coleman in 2008. He also testified that it was his understanding that Ms. Coleman intended to give me her interest in “the property”.

Even though Dr. Judith Rubano diagnosed Ms. Coleman with short term memory loss, she placed no restrictions on her and testified that her long-term memory remained intact. Dr. Rubano also testified that she had no reason to believe that Ms. Irland was taking advantage of or otherwise abused, neglected or exploited.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

Bently Price, Circuit Court Judge

Appellate Case No. 2023-001852

Brandy S. Culp

Respondent

V.

Athena Irland

Appellant

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Order Denying and Dismissing Appeal from Probate Court. October 2, 2023
2. Form 4. Statement of Judgement Remanded. Appeal granted November 11, 2022.
3. Order denying Appellant's Motion For Reconsideration of Appeal from Probate Court
4. Reconsideration of Dismissal of Appeal from Probate Court October 11, 2023
5. Transcript of Motion October 27, 2022
6. Notice of Intent to Appeal July 22, 2022
7. Order of Probate Court, July 13 2022
8. Transcript of Hearing, Case# 2019-ES10_1368 April 7, 2022
9. Motion to dismiss Appeal September 6, 2022

10. Transcript of Record September 27, 2023
11. Order Dismissing Appeal August 22, 2017
12. Order Rescinding Deeds September 6, 2022
13. Order denying Respondent Brandy Culp's Rule 59e Motion to Alter or amend Order and Granting Rule 221a Petition for rehearing July 14 2023 (sent prior, Appendix A)
14. Supreme Court Order, September 3, 2023 (prior sent Appendix B)
15. SC code of Laws Title 14 Chapter 23 Probate Courts
Section 14-23-1100. Duties of Clerk
Section 14-23-1120 . Court of record; seal.
Section 62-1-305 Records and certified copies
Section 62-1-307 Probate Judge; powers. Order, Judge Lenna Kirchner, dated July 13, 2022.
Letter from OFFICE OF THE ATTORNEY GENERAL dated February 28, 2024 to The Honorable Joe H. Jefferson, Jr., Member
16. Bon Secours St. Francis Hospital Imaging Services. Byron Bailey, MD.
Exam Date: May 26, 2015.

ARGUMENTS

Transcript of Motion October 27, 2022 Court of Common Pleas Case# 2022-CP-10-03304

1. Pg. 4 line 25, pg 5 lines 1-6 are untrue statements by opposing counsel and does not apply.
2. Pg. 5 lines 14-20. 2 deeds were at issue. One deed transferred to me, Athena Irland. Another deed was to be transferred after the death of Dolly Coleman, my mother. I had absolutely no influence in her decision to transfer any property. I took her to the office of Attorney Jack Williams, whose services she had used before. I left the two of them to conduct business in private. When I returned to pick up my mom, Mr Williams invited me into a conference room where I was first informed of what was decided.
3. Pg. 5 lines 6-20. South Carolina has defined contractual capacity as a person's ability to understand at the time the contract is executed. A mere infirmity of mind, if it does not amount to an incapacity to understand at the time of execution of a contract, the nature of the act done and the effect thereof, does not render a person incapable of executing a valid and binding contract.
Verdery v Daniels (In re Thames) 344 S.C. 564. (Ct App. 2001)
4. Pg. 5 lines 16-22. Dr. J. Rubano had not seen Dolly Coleman as a patient for two and a half years. She based her opinion on what she believed to be the natural progression of the disease. No restrictions were placed on Ms. Coleman. Dr. Rubano stated that her short term memory was affected, not her long term memory; her long term memory was intact. Attorney Jack Williams testified that he observed nothing about Ms. Coleman gave him concern about her state of mind or mental capacity. It was made clear that I did not accompany my mom, Dolly Coleman, during her consult with Attorney Jack Williams wherein she conveyed 1/3 interest in the 38 acre parcel and a retention of a life estate in the 33 acre

parcel.

5. Pg. 5 lines 21-22. The law was misapplied when Athena Irland was accused of exercising undue influence over Dolly Coleman regarding the properties and the 2009 will. There is no evidence on record to support this accusation. Athena Irland was not present during Ms. Coleman's meetings with Attorney Jack Williams or Attorney Lynn McCants.
6. Pg.5 line 25, pg.6 lines 1-3. Opposing counsel, Sanchez, mislead the court when he claims I did not file an appeal in time. He knew my attorney at the time, Joseph Dawson filed in the wrong court causing it to be dismissed. Mr. Dawson then filed in the correct court but it was too late and subsequently denied under Section 62-1-308(a)
7. Pg.7 lines 9-25. False premises, conjecture and baseless facts. The testamentary capacity of a person making contractual decision is quite different from executing a Will or destroying one. The testamentary capacity referring to an individual's ability to make or destroy a Will and the testator is presumed competent until proven otherwise. In the matter of The Estate of Berg 783 N.W. 2d 831 (S.D. 2010)
8. Pg.8 lines 6-18. All parties involved were served. Judge Bently Price was given evidence of the following:
 - A) Settlement Agreement reached at Mediation on March 16, 2020 between Brandi Culp, Christina Culp and Isadore John Psaras.
 - B) Letter (dated April 8, 2021) from Attorney David Michael stating that the Order from the Court reiterates that said Settlement be followed.
 - C) Order to Approve Settlement Agreement reached at mediation Case # 2019-ES-10-1368 by Probate Judge Lenna Kirchner, March 22, 2021. (Courts closed due to covid crisis)

9. Pg.9 lines 17-25. Though I am not an attorney, I did take steps, to the best of my ability, to follow applicable court rules in filing a Notice of Appeal and gave proper notice of service and am given some leeway in this matter according to Haines v Kerner U.S. 404 U.S. 519 (1972) wherein the U.S. Supreme ruled that a Pro Se litigant is held to less stringent standards than formal pleadings drafted by lawyers.

CONCLUSION

Therefore, Appellant respectfully moves the court to vacate the order issued on July 13, 2023 and remand the entire case back to the Probate Court for a rehearing. Or, in the alternative, grant my appeal as initially granted on November 11, 2022.

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Certificate of Counsel
Pro Se Litigant

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Proof Of Service

I certify that I have served the Attorneys for the Respondent a CORRECTED INITIAL BRIEF OF APPELLANT. Copy sent through US Post Office on October 22, 2024

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