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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Probate Court

The Honorable Judge George M. McFaddin, Jr.

Probate Case No.: 2019-ES-10-00394
Common Pleas Case No.: 2024-CP-10-00921/2024-CP-10-001509
Appellate Case No.: 2024-001074

In re: Veronique H.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 REPLY TO THE RESPONDENT'S BRIEF

January 9, 2025

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STATEMENT OF ISSUES IN REPLY

- I. **DOES THE COURT OF APPEALS HAVE JURISDICTION TO HEAR THIS CONSOLIDATED APPELLATE CASE?**

- II. **WERE MR. PICKETT'S DUE PROCESS RIGHTS VIOLATED WHEN THE CIRCUIT COURT DID NOT APPLY A *DE NOVO* STANDARD AND DENIED PICKETT A TESTIMONIAL EVIDENTIARY HEARING?**
 - A. ***DE NOVO* REVIEW IS A SUBSTANTIVE RIGHT REQUIRED UNDER S.C. CODE ANN. § 62-1-302(d) AND S.C. CODE ANN. § 14-3-330.**

 - B. **UNDER *DEAN*, THE CIRCUIT COURT ERRED BY NOT HOLDING AN EVIDENTIARY HEARING.**

- III. **DID THE LOWER COURTS ERR IN FAILING TO CONSIDER THE FAMILY SETTLEMENT AGREEMENT THAT WAS CONSENTED TO IN DECIDING TO DISQUALIFY MR. PICKETT FROM BEING APPOINTED PERSONAL REPRESENTATIVE?**

- IV. **DOES THE DOCTRINE OF THE LAW OF THE CASE PREVENT THE TRIAL COURT FROM DENYING MR. PICKETT'S APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE?**

ARGUMENT

I. THE COURT OF APPEALS HAS JURISDICTION TO HEAR THIS CONSOLIDATED APPELLATE CASE.

South Carolina appellate courts' jurisdiction allows them to review otherwise non-final orders when they involve appealable issues intertwined with the case. *See 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). Moreover, in *Edge* the Court acknowledged that an interlocutory order can be reviewed per the Collateral Order Doctrine if the Order 1) conclusively determines the disputed question; 2) resolves an issue completely separate from the merits of the action, and 3) would be effectively unreviewable on appeal from a final judgment. *See id.* Further, the South Carolina Supreme Court has long recognized the appealability of orders that impact substantive rights in probate and estate cases. In *Ex parte Perry*, the Court held that orders with immediate and substantial affects on a party's rights within an estate context are appealable. *Ex parte Perry*, 30 S.C.L. (1 Rich.) 146 (1844). Likewise, and more recently, in *Charleston County Sch. Dist.*, the Court affirmed that appellate jurisdiction extends to interlocutory orders where substantial rights are affected. *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993).

Moreover, S.C. Code Ann. § 14-3-330 provides an independent basis for appellate jurisdiction over probate matters. This statute governs appellate review of orders affecting substantial rights including interlocutory orders that may determine an action or involve the merits of a case. Specifically, S.C. Code Ann. § 14-3-330(1) permits appeals from "any intermediate judgment, order or decree in a law case involving the merits, which does not finally determine the cause of action but involves the merits." Additionally, S.C. Code Ann. § 14-3-330(2) authorizes appeals from orders that determine substantial rights or prevent a judgment from being final.

In the present case, the probate court's rulings clearly meet the criteria aforementioned. The appointment of a special administrator would determine the outcome of the proposal for distribution, resolve the issue of who is the general personal representative, and evade appellate review as the conduct would have occurred prior. Furthermore, the simultaneous appointment of a special administrator and denial of Pickett's reappointment as personal representative, significantly impacted his substantial right to act as personal representative and further impinges his rights as established in the Family Settlement Agreement that designated him as the personal representative. (R. at ____). Also, the appointment of a special administrator affects the administration of the estate by altering the oversight and management of the estate and unnecessarily incurring fees the estate should never have to incur. These decisions are reviewable under *Edge* and S.C. Code Ann. § 14-3-330 because they affect Mr. Pickett's substantial rights.

For the foregoing reasons, this Court has jurisdiction under the above relevant case law, precedent of this Court in *Edge*, and S.C. Code Ann. § 14-3-330, to review the probate and circuit courts' rulings. The denial of the personal representative order was final and the interlocutory order appointing the special administrator involved substantial rights that are intertwined with appealable matters. This Court should proceed to review the merits of the Appellant's claims to ensure proper application of the law and the fair administration of this estate.

II. MR. PICKETT'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE CIRCUIT COURT DID NOT APPLY A *DE NOVO* STANDARD AND DENIED AN EVIDENTIARY HEARING.

The South Carolina Code unequivocally mandates that cases that are removed from probate court and reviewed in circuit court must be reviewed *de novo*. See S.C. Code Ann. § 62-1-302(d). This section of the Probate Code provides that, "in such cases, the circuit court shall proceed upon the matter *de novo*." *Id.* *De novo* review requires the circuit court to act as the fact-finder, which

necessitates the independent review of evidence, hearing of testimony, and making its own factual and legal determinations. *See Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d (2020). A review of the record makes it clear that the Circuit Court did not conduct a *de novo* review. The circuit court's failure to comply with this requirement here constitutes a fundamental denial of Mr. Pickett's due process rights.

A. DE NOVO REVIEW IS A SUBSTANTIVE RIGHT REQUIRED UNDER S.C. CODE ANN. § 62-1-302(d) AND S.C. CODE ANN. § 14-3-330.

De novo review for South Carolina probate matters under review is well established. The South Carolina Supreme Court held in *Ex parte Small* that *de novo* review is a safeguard to ensure litigants receive an impartial and independent assessment of their claims in. *Ex parte Small*, 69 S.C. 43, 48 S.E. 40 (1904). Similarly, in *Eagles* the court emphasized that *de novo* review allows the circuit court to correct errors in the probate court's findings and conclusions. *Eagles v. S.C. Nat'l Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990).

Here, the circuit court failed to independently evaluate the evidence or hold a full evidentiary hearing, instead deferring to the probate court's findings without any proper scrutiny. This failure undermined the integrity of this proceeding and deprived Mr. Pickett of his procedural protections guaranteed under S.C. Code Ann. § 62-1-302(d). The statutory requirement for a *de novo* review is not a mere procedural formality, but a substantive right that ensures litigants such as Mr. Pickett, receive a fair hearing before an impartial tribunal. The circuit court failed to hear this matter under a *de novo* standard, therefore violating the due process rights of Mr. Pickett.

Moreover, in review of Judge McFaddin's order in case 2024-CP-10-00921, S.C. Code Ann. § 14-3-330 further provides that appellate jurisdiction extends to orders "involving the merits" or "affecting a substantial right." This statute ensures that litigants are afforded a meaningful opportunity to challenge decisions rather than have significant legal or factual issues

on appeal. Furthermore, failure to conduct a proper review and adjudicate independently of the lower court's opinions violates this statutory framework.

Therefore, the circuit court failed here to fulfill its obligations under both S.C. Code Ann. § 62-1-302(d) and S.C. Code Ann. § 14-3-330 when the circuit court did not conduct a fully independent analysis and instead relied on the probate court's determinations without critically examining the evidence or making its own factual findings. This failure to apply the required standard of review deprived Mr. Pickett of his right to due process.

B. UNDER *DEAN*, THE CIRCUIT COURT ERRED BY NOT HOLDING AN EVIDENTIARY HEARING.

A central component of *de novo* review is the right to an evidentiary hearing. *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993). The South Carolina Constitution and common law recognize that cross-examination and the presentation of live testimony are essential to resolving disputed issues of fact. *Id.* In *Dean*, the Court of Appeals held that circuit courts in probate matters must conduct evidentiary hearings to resolve factual disputes. *Id.*

In the present case, the failure to hold an evidentiary hearing is particularly egregious given the substantial factual disputes that exist, as elicited hereunder.

- 1) Whether Pickett was qualified to serve as personal representative;
- 2) The circumstances surrounding the administration of the estate;
and
- 3) The enforceability of the Family Settlement Agreement.

Here, the circuit court's decision to rely on the probate court's findings concerning Mr. Pickett without conducting an evidentiary hearing deprived Mr. Pickett of the opportunity to challenge evidence, present witnesses, and cross-examine the Respondents. This failure constitutes a substantial violation of his due process rights and necessitates reversal.

III. THE LOWER COURTS ERRED IN FAILING TO CONSIDER THE FAMILY SETTLEMENT AGREEMENT THAT WAS CONSENTED TO.

Under South Carolina law, family settlement agreements are enforceable as binding contracts when they meet the basic elements of a contract hereby listed; mutual consent, consideration, and adherence to public policy. Family settlement agreements are strongly favored as a means to avoid prolonged litigation, preserve family harmony, and ensure the efficient administration of the estate. *See Duncan v. Alewine*, 273 S.C. 275, 255 S.E.2d 841 (1979); S.C. Code Ann. § 62-3-1101. Moreover, the South Carolina Supreme Court has long emphasized that family settlement agreements in estate matters promote compromise, finality, and stability. In the *Matter of Howard*, the Court highlighted the critical public policy interest in upholding such family settlement agreements due to their value in reducing litigation and fostering the efficient administration of estates. *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Similarly, the Court of Appeals in *Estate of Dennis*, held that the intent of the parties expressed in a valid settlement agreement must be respected because these agreements serve to resolve disputes and provide a clear framework for estate administration. *Estate of Dennis*, 323 S.C. 67, 448 S.E.2d 548 (Ct. App. 1994).

The Family Settlement Agreement in the present case satisfies all of the legal requirements for enforceability. (R. at ____). It was voluntarily executed by all interested parties, all of which freely negotiated and consented to its terms. The agreement resolved disputes regarding the administration of the estate of Veronique H.W. Pickett, designated Mr. Pickett as the personal representative, and established a comprehensive plan for the distribution of the estate's assets. The parties' consent is undisputed, which should reflect their intent to avoid litigation and ensure a stable and efficient process for administering the estate. Consideration was also present because

mutual promises were exchanged, the agreement provided benefits to all parties and should have ensured the stability and predictability of the administration of this estate.

Moreover, there is no evidence in the record to suggest that the Family Settlement Agreement was procured through fraud, duress, or any undue influence. Absent such evidence, South Carolina law favors that the courts enforce the Family Settlement Agreement as a binding contract. *See Duncan*, 273 S.C. at 282. Despite these precedents, the probate and circuit courts have declined to enforce the agreement and disregarded the intent of the parties which is in opposition to our public policy that favors private resolution of estate disputes. Therefore, by failing to honor this Family Settlement Agreement, the lower courts not only disregarded the parties' negotiated resolution but also undermined South Carolina's statutory and judicial support for family settlement agreements, as codified in S.C. Code Ann. § 62-3-1101.

The lower courts' failure to enforce this agreement has significant negative ramifications. Firstly, it disrupts the public policy that favors finality and compromise in estate disputes, as expressed in *Wilson*. The courts' decision signals to future litigants that family settlement agreements may not be reliable, which would potentially discourage families from resolving disputes privately and increasing the burden on our judiciary systems. Secondly, the refusal to enforce this agreement has prejudiced Mr. Pickett, by depriving him of his agreed-upon role as personal representative and undermining his ability to administer the estate effectively. The decisions to not enforce the Family Settlement Agreement have left the estate in legal and procedural limbo, damaging the estate's assets through attorney's fees and costs. Finally, the lower courts' actions create uncertainty, inefficiency, encourage unnecessary litigation, and undermine confidence in the enforceability of valid family settlement agreements.

Moreover, the Family Settlement Agreement here was designed to promote efficiency, fairness, and finality in the administration of the estate, being consistent with S.C. Code Ann. § 62-3-1101. By ignoring this Agreement, the probate and circuit courts have disregarded the principles established in *Duncan* and *Estate of Dennis*, disrupting the intent of the parties here. Furthermore, Courts have a duty to interpret and enforce agreements in a manner that respects the negotiated resolution of the parties and promotes finality in estate administration. *See Wilson*, 403 S.C. at 436. The lower courts' refusal to honor this agreement constitutes a significant error that undermines the foundational principles of South Carolina probate law.

Therefore, due to the binding nature of the Family Settlement Agreement, its voluntary execution, and the absence of any evidence that would invalidate it, this Court should reverse the lower courts' decisions, and the case should be remanded with instructions to enforce the Family Settlement Agreement according to its terms, including holding a hearing to determine the current qualifications of Bayard Scott Pickett to serve as personal representative.

IV. UNDER THE DOCTRINE OF THE LAW OF THE CASE, MR. PICKETT IS QUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE BASED UPON THE ORDERS OF JUDGE CONDON AND JUDGE MICHEL.

The law of the case doctrine is a well-established principle that prohibits one circuit court judge from overturning the findings of another judge in the same case absent new evidence, a change in the law, or appellate intervention. *See Ex parte McMillan*, 319 S.C. 331, 461 S.E.2d 43 (1995); *State v. Allen*, 343 S.C. 119, 539 S.E.2d 54 (2000).

Here, Judge Condon found that Pickett was qualified on March 11, 2019. (R. at ____). Further, Judge Michel's Order, on April 15, 2024, held that Pickett was qualified to serve as temporary special administrator (R. at ____). These rulings are binding because it is the law of the case. Judge Michel's findings were based on evidence presented during prior proceedings,

including Pickett's qualifications and prior performance as personal representative. Judge McFaddin's subsequent determination that Mr. Pickett was unqualified represents an impermissible attempt to relitigate issues that were already decided by Judge Michel. (R. at ____). The inconsistency here is not permitted under the law of South Carolina.

Allowing successive judges to overturn prior rulings without justification invites judicial inconsistency and disrupts the orderly administration of procedure. This Court should reaffirm the law of the case doctrine and reverse Judge McFaddin's improper ruling that found that Mr. Pickett is not qualified to act as personal representative, even though he priorly was the personal representative and was found to be qualified to serve as temporary special administrator by Judge Michel.

CONCLUSION

For the foregoing reasons, this Court should reverse the circuit court's rulings, remand the matter back to the Circuit Court for findings consistent with the family settlement agreement and the law of the case. Furthermore, remand the matter to the probate court for further proceedings consistent with the law of South Carolina and as directed by this Court.

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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,

Respondents.

AND

Kathleen Anderson aka Kathleen Elizabeth Anderson, in her individual Capacity, Party in Interest/Counterclaimant.

CERTIFICATION BY COUNSEL

I, the undersigned counsel, do hereby certify that the Appellant's Final Reply Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted this 9th day of January 2025.

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AND

Kathleen Anderson aka Kathleen Elizabeth Anderson, in her individual Capacity,

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PROOF OF SERVICE

I certify that I have served the Appellant's Reply Brief on Elizabeth J. Palmer, Esq., via email to ep@saxtonstump.com and Eric Laquiere, Esq. to eric@laqlaw.com on January 9, 2025.

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January 9, 2025

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Re: *Bayard Scott Pickett, Jr. v. Laura V. Jones*
Probate Case No.: 2019-ES-10-00394
Common Pleas Case No.: 2024-CP-10-00921/ 2024-CP-10-01509
Appellate Case No.: 2024-001074

Dear Ms. Kitchings:

Please find the original and a copy of the Appellant's Reply to the Respondent's Brief, along with proof of service regarding the same.

Please file the original and return a clocked copy to our office via email.

Sincerely,

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