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Jan 13 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY PROBATE COURT  
Case Number 2019-ES-22-0397  
Appellate Case Number 2024-001808

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The Honorable Leigh Powers Boan  
Probate Court Judge

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IN THE MATTER OF:  
HUBERT LEON CLODFELTER, Decedent

Irene K. Clodfelter, .....Appellant,

v.

Karen Leigh Chappell and Lynda Faye Clinger, ..... Respondents.

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**APPELLANT’S INITIAL BRIEF**

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*s/ J. Clay Hopkins*  
J. Clay Hopkins, Esquire  
Hopkins Law Firm, LLC  
171 Church Street, Suite 160  
Charleston, SC 29401  
(843) 314-4202  
[Clay@hopkinsfirm.com](mailto:Clay@hopkinsfirm.com)

*Attorney for the Appellant*

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Was the Probate Court's finding of contempt erroneous?

### **STATEMENT OF THE CASE**

On July 22, 2019, pursuant to a Will that was initially probated by Appellant, the Georgetown County Probate Court appointed Appellant Personal representative of the Estate of Hubert Leon Clodfelter (hereinafter "Decedent").

On July 30, 2019, Respondents filed a petition with the Probate Court, asserting causes of action for Executor de son Tort," Accounting, Breach of Contract, and Unjust Enrichment. Appellant filed a competing petition on September 13, 2019 (collectively referred to as the "2019 Petitions").

The 2019 Petitions were tried on December 18, 2020, with a second day of trial on January 8, 2021. On April 16, 2021, the Probate Court issued an Order (the "2021 Order"), which found, among other things, that Appellant and Decedent jointly owned, with rights of survivorship, a home in Murrells Inlet, South Carolina. (The 2021 Order also validated certain marital agreements that precluded any right of Appellant to claim property of Decedent acquired before the marriage and after the marriage unless the item was purchased in joint names or the appropriate declarations evidencing joint ownership was made in writing concerning property). The 2021 Order removed Appellant as Personal Representative and appointed Respondents to serve in that role. Thus, Appellant received nothing from Decedent's Estate – the subject of the subsequent 2021 action. However, the 2021 Order required, in part, an accounting to be completed for items belonging to the Estate, including real and personal property that was in the possession of Appellant and Respondents, respectively. The 2021 Order also dismissed the claims for "Executor de son Tort" and for Unjust Enrichment with leave to restore.

Thereafter, on September 10, 2021, Respondents filed their 2021 Petition, asserting the same causes of action. In their 2021 petition, Respondents requested an accounting of Estate property (none of which Appellant was entitled to according to the 2021 Order). At the trial of that petition, Appellant argued Respondents' 2021 claims were barred by *res judicata* and issue preclusion.

On July 20, 2022 (the "2022 Order"), the Probate Court held the claims were expressly preserved by the 2021 Order, and although ordered to account for Decedent's assets, found that Appellant – without any evidence whatsoever – allowed certain items to be sold or taken from the Estate, including, but not limited to, a golf cart, a Model A Ford vehicle, and oriental rugs. In fact, at least two (2) of those items – the Model A Ford and the oriental rugs – were last seen at least three (3) years before the estate was opened and there was no testimony they were last in Appellant's possession, custody, or control. However, the Probate Court awarded Respondents (not the Estate) \$41,000.00 and an additional \$41,287.56 in attorney's fees. Notably, no judgment was entered and there was no finding regarding Appellant's ability to pay the award.

Thereafter, on August 1, 2022, Appellant filed a Rule 59(e), SCRPC, motion to reconsider, and Respondents filed a reply on August 23, 2022. On September 26, 2022, the Probate Court issued an order denying Appellant's motion, addressing its failure to make factual findings regarding its award of attorney's fees, and for the first time, stated: "On the other hand, the record reflects that [Appellant] has the ability to pay these fees and costs, as well as her own out of the jointly owned home in Georgetown County that she received after the death of Decedent," and ordered Appellant to pay the prior sums within 30 days. When she did not, Respondents filed a Petition for a Rule to Show Cause, which the Court issued on January 6, 2023. The contempt hearing was held on April 18, 2023, and on June 20, 2023, the Probate Court issued an order

holding Appellant in contempt. Appellant filed another Rule 59(e) motion to reconsider, and on September 26, 2023, the Probate Court issued an order denying Appellant's motion. Appellant timely appealed, and on September 23, 2024, the Georgetown County Court of Common Pleas issued its Order on Appeal. This appeal timely followed.

### **STANDARD OF REVIEW**

All courts have inherent power to punish for contempt. *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982). This power is essential to the preservation of order in judicial proceedings and the due administration of justice. *Id.* The determination of contempt ordinarily resides in the sound discretion of the trial judge." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). An appellate court should reverse a decision regarding contempt only if it is without evidentiary support or the trial judge has abused his discretion." *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004) (internal quotation and citation omitted). An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks evidentiary support." *Townsend v. Townsend*, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct. App. 2003).

### **ARGUMENT**

#### **I. THE TRIAL COURT ABUSED ITS DISCRETION IN HOLDING APPELLANT IN CONTEMPT.**

The Probate Court's contempt order requires reversal for two (2) reasons: (1) the Probate Court abused its discretion because its decision is controlled by an error of law in that its 2021 Order and 2022 Order are inconsistent insofar as the 2022 Order on Appellant's motion to reconsider determined that Appellant should have used the proceeds from the sale of the house the Probate Court awarded her outside of the Estate assets for payments regarding Estate assets; and (2) the contempt order lacked evidentiary support that Appellant had the present ability to pay the

2022 Order at the time of the contempt hearing. For these reasons, reversal is warranted.

“Res judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action.” *Duckett v. Goforth*, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007). “Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies.” *Id.* at 464, 649 S.E.2d at 81-82 (quoting *Nelson v. QHG of S.C. Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003)).

“Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999) (quoting *Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). “To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Id.* Thus, a subsequent action between the same parties for the same claim will be barred by a judgment on the merits in a prior action pursuant to res judicata.

The doctrine of collateral estoppel, or issue preclusion, provides that issues finally determined on the merits in one action precludes relitigation of those issues in a subsequent action based on different claims between the same parties or their privies. *See Carrigg v. Cannon*, 347 S.C. 75, 79-80, 552 S.E.2d 767, 770 (Ct. App. 2001) (“Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.”); *see also Shelton*

*v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 251, 481 S.E.2d 706, 708 (1997) (noting collateral estoppel prevents a party from "relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action").

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013) (quoting *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004)).

In both Respondent's contempt action and their 2021 petition, Respondents and Appellant were the real parties in interest. Both actions raised the claim that Appellant misappropriated Estate property. A final ruling, however, was issued in 2021, awarding the marital home to Appellant, and specifically finding the home was not Estate property. The Court's 2022 Order and its contempt order, respectively, did the opposite – finding the Estate was entitled to proceeds from the marital home under Respondents' same theory of liability. The most pressing question to be had is whether Appellant would be in contempt had she not sold the marital property – a fact neither Respondents nor the Probate Court argue she was not entitled to as owner of the property.

However, the Probate Court lost its jurisdiction over the proceeds of the marital home property the moment it determined the property was Appellant's. *See* S.C. Code Ann. § 62-1-302, *et seq.* (amended 2022); *see also Mobley v. Sewell*, 487 S.E.2d 398, 226 Ga. App. 866 (Ga. App. 1997) (Beasley, J., dissenting) ("Her argument is that the superior court did not have jurisdiction of the particular case of partitioning because the probate court had already taken jurisdiction of her property and had gone further and ordered that the deed purporting to create a tenancy in common was void. The earlier deed, creating the right of survivorship, was the foundation for the probate

court order finding the husband in contempt.”)<sup>1</sup>; cf. *In re Conservatorship of Gobernatz*, 603 N.W.2d 357, 360 (Minn. App. 1999) (“We hold that at the time of Gobernatz's death, Luke was no longer a joint holder of the certificate of deposit and had no power to cash the certificate. As a result, the district court had subject matter jurisdiction over the proceeds of the certificate of deposit because the money was part of the probate estate.”).

"In an action for contempt, the burden of proof is on the moving party." *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986). "A party seeking a contempt finding for violation of a court order must show the order's existence and facts establishing the other party did not comply with the order." *Noojin v. Noojin*, 417 S.C. 300, 306, 789 S.E.2d 769, 772 (Ct. App. 2016) (quoting *Abate v. Abate*, 377 S.C. 548, 553, 660 S.E.2d 515, 518 (Ct. App. 2008)). "In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order." *Hawkins v. Mullins*, 359 S.C. 497, 501, 597 S.E.2d 897, 899 (Ct. App. 2004). "Once the movant makes a *prima facie* showing by pleading an order and demonstrating noncompliance, ‘the burden shifts to the respondent to establish his defense and inability to comply.’" *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001) (quoting *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)).

First, the question is whether Appellant intentionally failed to pay the funds when they were funds of the sale of property specifically awarded to her by the Probate Court. That question alone begs reconsideration of this issue as the underlying Orders are inconsistent. "[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001).

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<sup>1</sup> Respondents did not contest the 2021 Order, file a Rule 59(e) motion, or appeal it.

"A finding of contempt ... must be reflected in a record that is 'clear and specific as to the acts or conduct upon which such finding is based.'" *Tirado v. Tirado*, 339 S.C. 649, 654, 530 S.E.2d 128, 131 (Ct. App. 2000) (quoting *Curlee*, 277 S.C. at 382, 287 S.E.2d at 918). "[C]ontempt results from willful disobedience of a court order; ... before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217). "A willful act is ... one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *Id.* at 607-08, 567 S.E.2d at 520 (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217).

Next, the question here is whether Appellant intentionally failed to pay the funds. The answer was unequivocally "no," but certainly did not rise to the level of clear and convincing evidence. In fact, the only evidence of Appellant's failure to comply was she believed her attorney was filing an appeal or motion to reconsider, which was done. And, additionally, it was not until the order regarding the motion to reconsider came out that a determination regarding her ability to pay was made by the Probate Court. After that, the evidence was clear she did not know if she had the funds to pay the order at the time she was incarcerated.

Courts around the country have determined the ability to pay question must be resolved at the time of the contempt proceeding. *See Sickler v. Sickler*, 293 Neb. 521, 878 N.W.2d 549 (Neb. 2016); *see also Teachey v. Teachey*, 46 N.C. App. 332 (1980); *Adkins v. Adkins*, 82 N.C. App. 289, 292 (1986); *In re Lawrence*, 279 F.3d 1294 (11th Cir. 2002); *In re Falck*, 513 B.R. 617 (Bankr. S.D. Fla. 2014); *Taylor v. Johnson*, 764 So.2d 1281 (Ala. Civ. App. 2000); *McVay v.*

*Johnson*, 727 P.2d 416 (Colo. App. 1986); *Ponder v. Ponder*, 438 So.2d 541 (Fla. App. 1983); *Jones v. State*, 351 Md. 264, 718 A.2d 222 (1998); *Gonzalez v. Gonzalez*, 121 Mich. App. 289, 328 N.W.2d 365 (1982); *Newell v. Hinton*, 556 So.2d 1037 (Miss. 1990); *Calloway v. Calloway*, 406 Pa. Super. 454, 594 A.2d 708 (1991); *In re Gawerc*, 165 S.W.3d 314 (Tex. 2005); *Krochmalny v. Mills*, 186 Vt. 645, 987 A.2d 318 (2009); *In re King*, 110 Wash. 2d 793, 756 P.2d 1303 (1988); *State Dept. of Family Services v. Currier*, 295 P.3d 837 (Wyo. 2013); 27C C.J.S. Divorce § 1132 (2005). For these reasons, the Probate Court's contempt order should be vacated or reversed and remanded with instructions to enter judgment in favor of Appellant because the Probate Court abused its discretion in making errors in law and issuing an order that lacked evidentiary support.

### **CONCLUSION**

Based on the forgoing, Appellant respectfully submits the Probate Court's contempt order should be vacated or reversed and remanded with instructions to enter judgment in favor of Appellant. Additionally, Appellant would ask that the judgment be reversed for any other reason appearing in the record of the case.

*s/ J. Clay Hopkins*  
J. Clay Hopkins, Esquire  
Hopkins Law Firm, LLC  
171 Church Street, Suite 160  
Charleston, SC 29401  
(843) 314-4202  
[Clay@hopkinsfirm.com](mailto:Clay@hopkinsfirm.com)

January 13, 2025

*Attorney for the Appellant*

Other Counsel of Record:

E. B. Davis Inabnit, Jr., Esquire  
Law Office of Davis Inabnit, Jr. LLC  
1004 Buck Street  
Conway, SC 29526  
[davis@inabnitlaw.com](mailto:davis@inabnitlaw.com)

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\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, J. Clay Hopkins, hereby certify that on January 13, 2025, I caused a true and correct copy of **Appellant’s Initial Brief** in the above captioned action to be served on all counsel of record addressed as follows:

E. B. Davis Inabnit, Jr., Esquire  
Law Office of Davis Inabnit, Jr. LLC  
1004 Buck Street  
Conway, SC 29526  
[davis@inabnitlaw.com](mailto:davis@inabnitlaw.com)

*s/ J. Clay Hopkins*  
\_\_\_\_\_  
J. Clay Hopkins

Charleston, South Carolina