

Civil Procedure, the Motions proceeded on a hearing before the Court pursuant to Rule 59(e) Motion to Alter or Amend a Judgment. Respondents' Motions for Reconsideration are hereby **DENIED**.

The filing of motions and other pleadings in the Probate Court are governed by the South Carolina Probate Code and, where not inconsistent, the South Carolina Rules of Civil Procedure, including Rule 59(e). *In re: Estate of Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment but were not. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

Pursuant to Rule 59, SCRPC this Court has proper jurisdiction, and this Court issues its ruling on the Respondents' Motions to Reconsider after careful review of the Pleadings and after a hearing on same.

Under South Carolina law, a motion to reconsider is appropriate when “[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Background

1. Decedent passed away on December 18, 2018 and she was predeceased by her husband, Bayard Scott Pickett, Sr.
2. Decedent was survived by her son, Respondent Bayard Scott Pickett, Jr. and her two granddaughters, Petitioner Laura V. Jones and Respondent Kathleen Elizabeth Anderson.

Decedent's daughter, and mother of Laura and Kathleen, passed away on December 24, 2003, predeceasing Decedent.

3. Respondent Pickett filed an Application for Informal Probate of Will and Appointment as Personal Representative on or about March 4, 2019. Without objection, the Will dated March 31, 1999 was admitted to Probate and Respondent was appointed as Personal Representative.
4. On June 21, 2019, the Court issued statutory compliance letter #1 to Respondent Pickett that the Inventory and Appraisement should be filed within (20) days.
5. On September 21, 2020, the Court issued statutory compliance letter #2 to Respondent Pickett that the Inventory and Appraisement along with closing documents should be filed within (20) days.
6. On November 2, 2020, Respondent Pickett filed a Deed of Distribution with the Court but had not yet filed an Inventory and Appraisement as required by the South Carolina Probate Code.
7. On March 25, 2021 the Court issued statutory compliance letter #3 to Respondent Pickett that the Inventory and Appraisement along with closing documents should be filed within (20) days.
8. On April 13, 2021 the Court issued statutory compliance letter #4 to Respondent Pickett that the Inventory and Appraisement along with closing documents should be filed within (20) days.
9. On May 12, 2021 the Court issued statutory compliance letter #5 to Respondent Pickett that the Inventory and Appraisement along with closing documents should be filed within (20) days.

10. On November 24, 2021 the Court issued statutory compliance letter #6 to Respondent Pickett that the Inventory and Appraisement along with closing documents should be filed by December 29, 2021 or the Estate **shall be administratively closed**.
11. On January 19, 2022 the Court sent a Notice of Non Filing and Rule 4 letter to Respondent Pickett with a copy of the Order administratively closing the Estate.
12. On May 19, 2023 Respondent Pickett filed an Informal Application/Petition for Subsequent Administration.
13. On May 31, 2023 Petitioner Jones filed an Objection to the Appointment of Respondent Pickett as Personal Representative and requested that the Court appoint a Special Administrator.
14. On June 26, 2023 Petitioner Jones filed a Summons and Petition for the Appointment of a Special Administrator.
15. On June 26, 2023 Petitioner Jones filed an Amended Summons and Petition for the Appointment of a Special Administrator. On July 5, 2023 Petitioner Jones filed Respondent Pickett's Acceptance of Service regarding the same.
16. On August 4, 2023 Respondent Pickett filed an Answer and Requested a Jury Trial. (However, the appointment of a Special Administrator is the exclusive jurisdiction of the Court not a matter before a jury.)
17. On August 18, 2023 Respondent Anderson filed a Motion to Intervene and filed an Answer / Counterclaim / Crossclaim on August 21, 2023.
18. On September 22, 2023, the Court held a hearing regarding the Petition for Formal Appointment of a Special Administrator filed by Petitioner Jones.

19. On September 27, 2023 the Court issued an Order for Appointment of Special Administrator.

Arguments of Respondents

1. That the Court, in considering the formal petition of Petitioner Jones to appoint a special administrator, failed to make a required finding of malfeasance as required by S.C. Code Ann. § 62-3-611(b) and elicited by *Church v. McGee*, 391 S.C. 334, 705 S.E. 2d 481 (Ct. App. 2011).

In this case, the Court's Order of September 27, 2023 did not remove Respondent Pickett as Personal Representative. The Court filings speak for themselves. More specifically, this Court's Order dated January 19, 2022 clearly states that:

Pursuant to the authority granted unto this Probate Court by and in Probate Court Rule 4, as adopted and made effective by the Supreme Court on March 8, 1983, and upon and after due and appropriate compliance with the purport and purview of Law and Statute herein and hereto relevant and appertaining, the above captioned Case and/or Cause is closed and final discharge entered, with leave to restore upon good cause being shown provided that the subject Fiduciary shall be and is fully responsible and liable to the full extent of Law for any and all acts and doings, commissions and/or omissions, prior to the date hereof; but this Order does not alter or release any and all liabilities on and under said Bond prior to the date hereof.

Therefore, the Estate was closed, and Respondent was no longer serving as Personal Representative as of January 19, 2022. This Order was not appealed by Respondent Pickett.

2. The Respondents further argue that the Court only found the inventory and appraisement and accounting were not filed. This act alone does not justify removal of the Personal Representative citing S.C. Code Ann. § 62-3-1001.

Again, the September 22, 2023 hearing was not a removal hearing, it was a hearing regarding Petitioner Jones' Formal Petition for Appointment of a Special Administrator. In this case, Respondent Pickett failed to file an Inventory and Appraisement within ninety days after his appointment. Per S.C. Code Ann. § 62-3-706 it clearly states:

(A) Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall:

- (1) prepare an inventory and appraisal of probate property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item;
- (2) file the original of the inventory and appraisal with the court; and
- (3) mail a copy of the filed inventory and appraisal to interested persons who have filed a demand for notice of the filing of the inventory pursuant to Section 62-3-204.

It is clear from the Court record that Respondent Pickett did not file an Inventory as required by the South Carolina Probate Code and as a result the Estate was closed per the January 19, 2022 Order which was not appealed by Respondent Pickett. Respondents mistakenly cite S.C. Code Ann. § 62-3-1001 which addresses the Personal Representative's duties regarding the closing documents, more specifically, a full accounting, proposal for distribution, application for settlement, right to demand hearing, and proof of delivery. Respondent Pickett argues that he was not given an opportunity to fully explain the reason for delay in filing an Inventory and Appraisal. Again, this point is moot because the January 19, 2022 Order was not appealed.

3. Respondents argue that the probated Will of Decedent does not authorize the Court to appoint a special administrator.

Respondents argue that a "Court may not by juridical construction make a will for the decedent that he has not made for himself" citing *Guaranty Bank Trust Co. v. Byrd*, 292 S.C. 187, 189, 355 S.E.2d 529, 530 (S.C., 1986) That case concerns the construction of a Will regarding the distribution of estate assets, not the appointment of a special administrator. As per this Court's previous Order the law is clear:

Pursuant to S.C. Code Ann. § 62-3-614(2), a special administrator may be appointed "in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act."

Again, the Court found that the appointment of a Special Administrator was necessary to preserve the estate and to secure its proper administration.

4. That Respondent Pickett filed a Summons and Petition for Subsequent Administration on May 18, 2023 and the Court did not make a finding as to why Respondent was not reappointed in the Order dated September 27, 2023.

Respondent Pickett's argument is a misstatement of the filings. The record is clear that Respondent Pickett filed an "Informal Application/Petition for Subsequent Administration" on May 19, 2023. On May 31, 2023 Petitioner filed an Objection to the Respondent's Informal Application. First, the Court would note S.C. Code Ann. § 62-3-309 regarding informal appointment proceedings. Second, this matter became a formal action, and a hearing was set regarding Petitioner's filed Objection along with Petitioner's subsequent Summons and Petition for Formal Appointment of a Special Administrator. Respondent Pickett argues that S.C. Code Ann. § 62-3-611 governs a removal of a personal representative, which is correct. As stated previously, the January 19, 2022 Order closing the Estate was not appealed and therefore Respondent Pickett was not the personal representative. Respondent Pickett contends that the September 22, 2023 hearing required his "removal as Personal Representative" before a Special Administrator could be appointed. That argument fails.

The Court would also reference Item 1 of Petitioner Jones' Memorandum in Opposition to Motions to Reconsider that was filed on October 23, 2023. As addressed earlier, Respondents failed to properly serve the Motions for Reconsideration as required by the South Carolina Rules of Civil Procedure. As a matter of law, these Motions were not properly before the Court. Nevertheless, the Court proceed with the hearing and consideration of the Motions.

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motions filed raise no new argument and present no new evidence, therefore, the Court respectfully **DENIES** the Motions.

Based upon the foregoing, it is now therefore, hereby:

ORDERED, ADJUDGED, AND DECREED that Respondents' Motions to Reconsider Order dated September 27, 2023 are respectfully **DENIED**.

IT IS SO ORDERED.



David L. Michel
Associate Judge of Probate

This 24 day of January, 2024
Charleston, South Carolina



Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina