THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Special Circuit Court Judge

Appellate Case No. 2024-001266

Anne Wiggins Smith, Appellant,

v.

John L. Wiggins, III, individually and as Trustee of the John L. Wiggins, Jr. Revocable Trust, and as Trustee of the Margaret Eugenia Utsey Wiggins Revocable Trust, and as Personal Representative of the Estate of Margaret Eugenia Utsey Wiggins, Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE and FACTS

The Statement of the Case and the Facts as stated in Appellant's Initial Brief are incorporated herein by reference.

ARGUMENT

Standard of Review

When a case originates in the Probate Court, the standard of review used on appeal depends upon "whether the underlying cause of action is at law or in equity." *In re Estate of Hyman*. 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). "If the proceeding in the probate court is in the nature of an action at law, [the Appellate Court] may not disturb the probate [court]'s findings of fact unless a review of the record discloses there is no evidence to support them." *In re Estate of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999). "In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial [court]." *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997). "If probate proceedings [are] equitable in nature, the [appellate] court, on appeal may make factual findings according to its own view of the preponderance of the evidence." *In re Howard*, 315 S.C 356, 361-62, 434 S.E.2d 254, 257-58 (1993). The claims raised in Plaintiff's Complaint are both legal and equitable in nature. This appeal stems from the lower Court's decision to grant Defendants' Motion to Dismiss for Failure to Prosecute and Motion for Summary Judgment. These decisions each have their own standard of review which is discussed in Appellant's Initial Brief.

I. THE LOWER COURT INCORRECTLY FOUND THAT PLAINTIFF FAILED TO PROSECUTE HER CASE.

In his brief, Respondent questions whether the lower Court's failure to apply the four factor test from *Hillig* has been preserved for appeal. *See Hillig v. Comm'r of Internal Revenue*, 916 F.2d 171, 174 (4th Cir. 1990). To clarify, Appellant is not arguing that the failure of the lower Court to apply the *Hillig* factors is reversible error. Appellant is arguing that when the facts in this case are examined through the framework set out by the *Hillig* factors, Appellant's actions do not constitute unreasonable neglect or warrant dismissal for failure to prosecute. The issue of whether

the facts support dismissal is preserved for appeal because it was raised before the lower Court in Appellant's Motion to Reconsider. Appellant's Motion specifically stated that "[t]he facts presented to the Court in support of Defendants' Motion to Dismiss do not support a finding of unreasonable neglect on the part of Plaintiff as required under South Carolina law." Pl.'s Mot. For Recons. #2, December 8, 2023.

"[A]ppellate courts are to be 'mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner'" and not apply the rule "in a manner that 'elevate[es] form over substance.'" *Moses v. State*, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (quoting *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)). "[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW* 395 S.C. 461, 466, 719 S.E. 2d 640, 642 (2011). "[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Id.* Appellant's Motion to Reconsider specifically raised the issue of the lack of factual support for finding unreasonable neglect, and Appellant is suggesting the *Hillig* factors as a framework for evaluating the facts. These factors are discussed in prior cases not as the sole or required test for when a case should be dismissed for failure to prosecute but as an example of how to evaluate the appropriateness of dismissal or existence of unreasonable neglect. *See eg., McComas v. Ross*, 368 S.C. 59, 64, 626 S.E.2d 902, 904 (Ct. App. 2006).

The same facts Appellant points out in connection with her discussion of the *Hillig* factors can be evaluated under the more amorphous standard of unreasonable neglect. Under both lenses, the facts show that Appellant was moving forward with her case by conducting discovery, retaining

an expert, and trying to get all the information needed by that expert to provide a full report. Appellant's actions show she was not neglecting her case.

II. THE LOWER COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER SANCTIONS LESS HARSH THAN OUTRIGHT DISMISSAL.

Respondent argues that less harsh sanctions did not need to be considered because Appellant was given adequate opportunity to comply with the Scheduling Order. However, the fact remains that the lower Court made no attempt to consider any sanctions less harsh than dismissal. At no point were any sanctions imposed prior to the decision to dismiss Appellant's case. Respondent points out that Appellant did retain an expert and was having that expert review the provided information as evidenced by the letters from Appellant's expert which were provided to the lower Court. If the reports given by Appellant's expert were insufficient, the Court should have considered the appropriateness of awarding attorney's fees and costs as a sanction for Respondent having to file the Motion to Dismiss or send follow up letters to the lower Court. In keeping with the policy that decisions on the merits are preferred to ending cases based on procedural issues, monetary sanctions instead of outright dismissal are preferred. *See eg. Mictronics. Inc. v. SC Dept. of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223 (Ct. App. 2001). The decision to start with the harshest sanctions is clearly an abuse of discretion.

III. THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN ON PLAINTIFF'S CLAIM ON SEPTEMBER 5, 2014.

Whether the statute of limitations on Appellant's claims is one year or three years, it did not begin to run on September 5, 2014, and thus Appellant filed her suit within the applicable statute of limitations. The arguments made in Appellant's Initial Brief apply whether the applicable statute of limitations is one year or three years as argued by Respondent. The actions

being taken by Respondent involved ongoing financial transactions in a situation where Appellant was on the outside looking in. Appellant had her attorney make inquiries but ultimately could not get sufficient information from Respondent who had every reason to act in his own self interest and prevent full disclosure of his actions.

CONCLUSION

Disputes between family members are by their nature messy as issues become clouded with emotions and familial relationships. The effects on all the parties involved are unfortunate and not something that anyone involved in the dispute desires. The mire of outside issues and background noise can cause litigation of the central issues, the legal and factual issues that need to come to light through the legal process, to take much longer than they otherwise should. In light of all the emotional background issues involved in this case, the lower Court could have taken a lighter hand in imposing sanctions on Appellant if they were warranted. Ultimately, the Court abused its discretion by granting the harshest of sanctions possible and dismissing Appellant's case for failure to prosecute her claims. Additionally, the Court should have denied Respondent's Motion for Summary Judgment because the Statute of Limitations on Appellant's claims did not start to run on September 5, 2014. For the foregoing reasons, the court should reverse the ruling of the Circuit Court and deny Respondent's Motion for Summary Judgment and Motion to Dismiss.

February 25, 2025

Respectfully Submitted,

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PROOF OF SERVICE

I certify that I have served Appellant's Initial Reply Brief on John L. Wiggins, III, individually and as Trustee of the John L. Wiggins, Jr. Revocable Trust, and as Trustee of the Margaret Eugenia Utsey Wiggins Revocable Trust, and as Personal Representative of the Estate of Margaret Eugenia Utsey Wiggins, Respondent, by emailing his attorney of record, Amy L. B. Hill of Richardson Thomas, LLC at her AIS email address (amy@richardsonthomas.com) on February 25, 2025.

February 25, 2025

Orangeburg, SC

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