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Nov 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge
(Common Pleas Case No. 2022-CP-23-01064)

Appellate Case No. 2022-000731

IN THE MATTER OF:
ESTATE OF FLORENCE PETRAK
MENSCH,

Appellant,

Sterling Raymond Mensch, III, in-
dividually as former Personal Rep-
resentative of the Estate of Flor-
ence Petrak Mensch, and in his
former capacity as Agent under a
Power of Attorney for Florence
Petrak Mensch,

v.

SHAUNA M. WADDELL,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF FLROENCE PETRAK MENSCH,
AND JOHN R. MENSCH,

Respondent.

Petition for Rehearing

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Rules

Rule 7(b)(1), SCRCP

R. 54(b), SCRCP

Statutes

S.C. § 62-8-401

S.C. § 62-3-302

Appellant Sterling Raymond Mensch respectfully petitions this Court for rehearing pursuant to R. 221, SCACR.

ARGUMENT

I. The Appeal of the Probate Court's Order Was Premature

In affirming the Court of Common Pleas' finding that the probate court order constituted a final order, citing *Olson v. Fac. House of Carolina, Inc.*, 344 S.C. 194, 213, 544 S.E.2d 38, 48 (Ct. App. 2001) (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1883), the Opinion did not consider what remained to be done in the event the Internal Revenue Service revised and reduced the previously issued imposition of penalties and interest. Appellant would argue, respectfully, that the Opinion incorrectly found that the parties rights were so completely fixed that the court had nothing left to do if a reduction to the probate court's award of the IRS imposed penalties and interest was deemed appropriate as this would have necessarily required a recalculation of Respondent's damage award. South Carolina, however, takes a strict view of finality. "If there is some further act which must be done by the court prior to determination of the rights of the parties, then the order is interlocutory [rather than final]. If a judgment determines the applicable law *while leaving open question of fact*, it is not a final judgment. *Mid-State Distribs. V. Century Imps.*, 3210 S.C. 330, 335 (1993) (quotation omitted). Here, potential questions of fact remain.

For example, if the Estate loses the tax appeal due to the Estate's failure to prosecute the appeal or negligence in its argument, then Respondent may be entitled to an equitable offset. To the extent that the Court expressed concern at argument about the time required for the IRS to resolve the tax appeal, Appellant would respectfully submit that the Estate could waive its claim to recover the relatively small tax amount, at which point the judgment below would become final and the time to appeal would begin. Additionally, pre-death claims, such as for taxes, belong in the Circuit Court, where partial final judgments can issue. R. 54(b), SCRCP.

II. If the Probate Court Entered a Final Order, Mr. Mensch Timely Appealed It Because His Motion to Alter or Amend Told the Time to Appeal.

Appellant would respectfully submit that the Opinion erred in concluding that *Nexstar Media Grp., Inc. v. Davis Roofing Grp., LLC*, 431 S.C. 593, 598 (Ct. App. 2020) and *Camp v. Camp*, 386 S.C. 571, S.E.2d 634 (2010) meant that Appellant's motion to alter or amend lacked the necessary particularity. Motions that fail to comply with R. 7(b)(1) can still toll the time for appeal. *Camp v. Camp*, 386, S.C. 571, 576 (2010). "When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1) SCRPC." *Id.* No articulable prejudice exists; the Estate has not explained what, if anything it would have done differently,

given that the Probate Court summarily denied the motion without a hearing.

III. The Probate Court Lacked Jurisdiction to Award Damages for Predeath Actions Because the Estate Could only Bring the Claims Under the Survival Statute

The Opinion incorrectly considered the relationship between S.C. Code §62-8-401 and S.C. Code §62-3-302(a)-(b). If S.C. Code §62-3-302(a) already conferred jurisdiction over pre-death claims, then even the concurrent jurisdiction conferred under §62-3-302(b) for pre-death claims would be superfluous. Statutes, however, must not be read to render any portion of them meaningless. *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128 (2012). That rule should apply with even stronger force where, as here, jurisdiction is at stake. The better way to reconcile the statutes is to say that pre-death claims belong in the Circuit Court, our state's court of general jurisdiction. But for the survivorship statute, the claims would have abated and thus must be filed in circuit court, like actions for wrongful death.

CONCLUSION

This Court should grant Panel rehearing and vacate or reverse the judgment below.

Dated this 27th day of November, 2024.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned, served a copy of the **Petition for Rehearing** to the following counsel at their email addresses of record this 27th day of November, 2024 to the following:

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