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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Circuit Court

Judge George M. McFaddin, Jr.

Probate Court No.: 2019-ES-10-00394
Circuit Court Appellate No.: 2024-CP-10-00921
Circuit Court No.: 2024-CP-10-01325
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.....Respondent,

AND

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

RESPONDENT'S FINAL BRIEF

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May 21, 2025

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court, sitting in its appellate capacity, err in dismissing the probate court's February 8, 2024, Order for Appointment of Temporary Special Administrator on the basis that it was untimely filed and, alternatively, not immediately appealable?

II. Did the circuit court err in denying Appellant's Petition for Appointment of Successor Personal Representative on the basis that Appellant has an established pattern of disregarding the probate process?

III. Did the hearing held by the circuit court on Appellant's Petition for Appointment of Successor Personal Representative provide Appellant with the due process to which he was entitled?

STATEMENT OF THE CASE

These two consolidated appeals arise out of the Estate of Veronique W. Pickett (C/A No. 2019-ES-10-00394), pending in the Charleston County Probate Court. The Decedent, Veronique W. Pickett, died on December 18, 2018. Decedent was survived by her son, Appellant Bayard Scott Pickett, Jr., and her two granddaughters, Respondent Laura V. Jones and Kathleen E. Anderson. On March 1, 2019, Appellant filed an Application for Informal Testacy and Appointment of Personal Representative in the Charleston County Probate Court.

On March 11, 2019, Appellant was appointed as Personal Representative of the Estate and the Decedent's Will, dated March 31, 1999, was admitted to probate. Pursuant to the Will, the devisees of the Estate are as follows with their respected shares as indicated:

50%: Bayard Scott Pickett, Jr., Trust as established under the Will of Veronique H.W. Pickett dated March 31, 1999

25%: Laura V. Jones Trust as established under the Will of Veronique H.W. Pickett dated March 31, 1999

25%: Kathleen E. Anderson Trust as established under the Will of Veronique H.W. Pickett dated March 31, 1999

Due to Appellant's failure to file required documents after multiple demands by the probate court dating back to June 21, 2019, the probate court, pursuant to Rule 4, ultimately closed the Estate and discharged Appellant as Personal Representative by Order dated January 19, 2022. (R. pp. 5-7)

On May 19, 2023, Appellant filed an Application for Subsequent Administration in the probate court, seeking to reopen the Estate and to be reappointed as Personal Representative. (R. pp. 75-76)

On June 27, 2023, Respondent Jones filed a Verified Petition for Appointment of Special Administrator in the probate court. (R. pp. 77-142) Following a properly noticed hearing at which

all interested parties were present and/or represented by counsel, the probate court, by Order entered September 27, 2023, granted the Petition and appointed C. Mac Gibson, Esquire, as Special Administrator with all the powers of a general personal representative. (R. pp. 8-12) In the Order, the probate court found that Mr. Gibson's appointment "is necessary to preserve the estate and to secure its proper administration" and ordered that "all parties shall fully cooperate with Special Administrator". (R. pp. 8-12) On October 6, 2023, Appellant filed a Motion for Reconsideration, which was denied by Order entered January 24, 2024. (R. pp. 143-147; 15-22) By Notice of Intent to Appeal filed February 2, 2024, Appellant appealed the Order for Appointment of Special Administrator, as well as the subsequent Order Denying Motion for Reconsideration, to the Charleston County Circuit Court, where the appeal was assigned C/A No. 2024-CP-10-00598. This appeal is not directly at issue in the matters appealed and pending before this Court.

Temporary Special Administrator Appointment and Appeal to Circuit Court (C/A 2024-CP-10-00921)

Following Appellant's appeal of the probate court's Order for Appointment of Temporary Special Administrator, Respondent Jones filed an Emergency Application for Appointment of Temporary Special Administrator in the probate court on February 5, 2024, asking that a special administrator be appointed on a temporary basis "to take appropriate actions to protect Estate assets during the pendency of [Appellant's appeal of the 9/27/23 Order for Appointment of Special Administrator]". (R. pp. 149-154) By Order entered February 8, 2024, the probate court granted Respondent Jones' Emergency Application and appointed a temporary special administrator. (R. pp. 23-30) Appellant appealed the Order for Appointment of Temporary Special Administrator to the circuit court on February 20, 2024, where it was assigned C/A No. 2024-CP-10-00921, but neglected to file the Notice of Intent to Appeal in the probate court until February 21, 2024. (R. pp. 158-167) On February 27, 2024, Respondent Jones filed a Motion to Dismiss Appeal and on

March 6, 2024, Respondent Jones filed an Amended Motion to Dismiss. (R. pp. 168-170; 171-174) By Order entered on April 24, 2024, the circuit court dismissed the appeal, finding that it was not timely filed with the probate court and also that the probate court's appointment of a temporary special administrator was not a final order and not otherwise immediately appealable. (R. pp. 44-47) Appellant filed a Motion for Reconsideration on May 6, 2024. (R. pp. 191-197) That Motion was denied by the circuit court's August 12, 2024, Order. (R. pp. 51-53) By Notice of Appeal filed with this Court on August 16, 2024, Appellant appealed the Order Dismissing Appeal and the Order Denying Motion for Reconsideration. (R. pp. 207-209) This is one of the two Notices of Appeal at issue in this consolidated appeal.

Petition for Appointment as Successor Personal Representative (removed to Cir. Ct. as C/A 2024-CP-10-01325)

On February 16, 2024, Appellant filed a Petition for Successor Personal Representative in the probate court. (R. pp. 155-157) On March 6, 2024, Appellant filed a Motion for Removal, seeking to remove the Petition for Successor Personal Representative from probate court to circuit court. (R. pp. 175; 31) That Motion was granted by the probate court's Order entered on March 12, 2024. (Id.) As noted in the Order, the probate court retained jurisdiction as to all other matters involving the Estate. (Id.)

Following the matter's removal to circuit court, on March 26, 2024, Appellant filed an Emergency Motion to Appoint Personal Representative, seeking to have his Petition for Successor Personal Representative set for a hearing on an emergency basis. (R. pp. 176-179) Inexplicably, in this Emergency Motion, Petitioner Pickett added "Kathleen E. Anderson aka Kathleen Elizabeth Anderson, in her individual capacity" to the caption and designated Ms. Anderson as a "Party in Interest/Counterclaimant." Ms. Anderson had not, and has not, intervened in this particular action. By Order entered on April 24, 2024, the circuit court denied the Petition for Successor Personal

Representative. (R. pp. 37-43) Appellant filed a Motion for Reconsideration on May 6, 2024, which was denied by Order entered on June 11, 2024. (R. pp. 198-200; 48-50) By Notice of Appeal filed with this Court on June 25, 2024, Appellant appealed the Order Denying Petition for Appointment of Successor Personal Representative and the Order Denying Motion for Reconsideration. (R. pp. 201-203) By letter dated August 20, 2024, this Court notified the parties that the two Notices of Appeal had been consolidated. Thus, the four orders at issue in this consolidated appeal are as follows:

From C/A 2024-CP-10-00921:

4/24/24 Order Dismissing Appeal (of the Order Appointing Temporary Special Administrator)

8/12/24 Order Denying Motion for Reconsideration (of Order Dismissing Appeal)

From C/A 2024-CP-10-01325:

4/24/24 Order Denying Petition for Appointment of Successor Personal Representative

6/11/24 Order Denying Motion for Reconsideration (of Order Denying Petition for Appt.)

ARGUMENT

I. The circuit court, sitting in its appellate capacity, did not err in dismissing Appellant's appeal of the probate court's February 8, 2024, Order for Appointment of Temporary Special Administrator.

A. The circuit court correctly held that Appellant's Notice of Intent to Appeal was not timely filed.

As conceded by Appellant in his Notice of Intent to Appeal, filed in the circuit court on February 20, 2024, he received notice of the Order for Appointment of Temporary Special Administrator on February 8, 2024. (R. pp. 158-167) As such, with the President's Day holiday on February 19, 2024, the Notice of Intent to Appeal was required to be filed in both the circuit court and probate court and served on Respondent Jones by February 20, 2024. See S.C. Code Ann. § 62-1-308(a) ("The notice of intention to appeal to the circuit court must be filed in the office of the circuit court ***and in the office of the probate court*** and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.") (emphasis added); see also Witzig v. Witzig, 325 S.C. 363, 479 S.E.2d 297 (Ct. App. 1996) (holing that the specific ten-day period provided by S.C. Code Ann. § 62–1–308(a) controls over the general provisions of Rule 74, SCRCP ("Procedure on Appeal to the Circuit Court"), which allows a thirty-day period only "when no time is fixed by statute").

The Notice of Intent to Appeal was timely filed in the circuit court on February 20, 2024. However, it was not filed in the probate court until February 21, 2024. (R. pp. 158-167) Therefore, the circuit court was correct in determining that the appeal was untimely and was required to be dismissed because it lacked jurisdiction to entertain the appeal. See Gallagher v. Evert, 353 S.C. 59, 68, 577 S.E.2d 217, 221 (Ct. App. 2002) (because appellant did not timely file and serve his appeal from the probate court, the circuit court lacked jurisdiction to address the merits of the appeal); see also Witzig, 325 S.C. at 366–67, 479 S.E.2d at 298 (finding appeal from the probate

court to the circuit court not timely filed, thus, reinstatement of the probate court's order was required).

B. The circuit court correctly held that the Order for Appointment of Temporary Special Administrator was not immediately appealable.

Even if timely filed, the circuit court was further correct in dismissing the appeal of the Order for Appointment of Temporary Special Administrator on the basis that it was not a final order. Appeals from orders of the probate court are governed exclusively by S.C. Code Ann. § 62-1-308. Dorn v. Cohen, 421 S.C. 53, 809 S.E.2d 53 (2017) (finding the lower court erred in applying S.C. Code Ann. § 14-3-330 to determine whether an order of the probate court was immediately appealable because appeals from probate court are governed by § 62-1-308); Fulmer v. Cain, 380 S.C. 466, 670 S.E.2d 652 (2008) ("Appeals from the probate court are governed by S.C. Code Ann. § 62-1-308.").

Only final orders from the probate court are appealable. See S.C. Code Ann. § 62-1-803(a) ("A person interested in a ***final*** order, sentence, or decree of a probate court may appeal to the circuit court…") (emphasis added); Dorn, 421 S.C. at 520, 809 S.E.2d at 54 ("Because the probate court's order adding a party to the action was not a final order, the order was not immediately appealable pursuant to section 62-1-308."); Fulmer, 380 S.C. at 469, 670 S.E.2d at 654 (holding that only final orders are reviewable under S.C. Code Ann. § 62-1-308); Estate of Boyce v. Work, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991) (S.C. Code Ann. § 62-1-308(a) provides that only final orders of the probate court may be appealed, a probate court order that is clearly temporary cannot be appealed and the circuit court lacks subject matter jurisdiction to entertain appeal of probate court's temporary order).

In this matter, Appellant Pickett has attempted to appeal the Charleston County Probate Court's Order for Appointment of Temporary Special Administrator. However, it is firmly

established that this Order, appointing a temporary special administrator, is not a final order and not immediately appealable. This was squarely addressed in the Estate of Boyce matter, in which the appellant appealed the probate court's appointment of a temporary special administrator to the circuit court. The circuit court entertained the appeal and disqualified the special administrator. Id. at 45, 406 S.E.2d at 185. The S.C. Court of Appeals vacated the circuit court's order and remanded the matter to the probate court for further proceedings, finding that the circuit court lacked subject matter jurisdiction over the appeal because the order appointing a temporary special administrator was not a final order, and therefore was not immediately appealable. Id.

Based on well-established precedent, the circuit court lacked jurisdiction over Appellant Pickett's appeal and its dismissal of the same should be affirmed.

C. The probate court had jurisdiction to enter the February 8, 2024, Order for Appointment of Temporary Special Administrator.

Appellant's argument is essentially that his failure to perfect his appeal should be excused because once he appealed the September 27, 2023, Order for Appointment of Special Administrator to the circuit court (in C/A 2024-CP-10-00598), the probate court lost all power to appoint a temporary fiduciary to administer the Estate and, thus, its February 8, 2024, Order for Appointment of Temporary Special Administrator was void *ab initio*. Appellant relies on Rules 205 and 241, SCACR, to support this argument. However, this reliance is misplaced and stems from Appellant's failure to recognize the distinct nature of the two proceedings. The first proceeding was a formal proceeding, brought pursuant to S.C. Code Ann. § 62-3-614(2) and initiated by the filing of a petition; the latter, an informal proceeding brought for the purpose of securing a temporary fiduciary pursuant to S.C. Code Ann. § 62-3-614(1) and initiated by the filing of an application. Compare S.C. Code Ann. § 62-1-201(17) ("'Formal proceedings' means actions commenced by the filing of a summons and petition with the probate court and service of the

summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for circuit courts and other rules of procedure in this title.") and S.C. Code Ann. § 62-1-201(34) ("'Petition' means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.") with S.C. Code Ann. § 62-1-201(22) ("'Informal proceedings' means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.") and S.C. Code Ann. § 62-1-201(1) ("'Application' means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.").

The rules cited by Appellant explicitly permit a lower court to proceed with matters not on appeal. See Rule 205, SCACR ("Nothing in these Rules shall prohibit the lower court, commission, or tribunal from proceeding with matters not affected by the appeal."); Rule 241, SCACR ("The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal."). Also relevant is S.C. Code Ann. § 62-1-308(g), which provides that "[w]hen an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had." As explained by the S.C. Supreme Court, this section does not apply to all orders of the probate court. Ulmer v. Ulmer, 369 S.C. 486, 492, 632 S.E.2d 858, 861 (2006).

Rather, "the only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken." Id.

Here, the initial appeal arose from the probate court granting Respondent's Petition for Appointment of Special Administrator, a formal proceeding brought pursuant to S.C. Code Ann. § 62-3-614(2). The probate court retained jurisdiction to proceed on matters not affected by the appeal. The Emergency Application for Appointment of Temporary Special Administrator, an informal proceeding brought pursuant to S.C. Code Ann. § 62-3-614(1), was an entirely separate proceeding, and thus the probate court retained jurisdiction to issue an order in that matter. See S.C. Code Ann. § 62-3-107(1) ("each proceeding before the court is independent of any other proceeding involving the same estate").

There is no basis on which to conclude that the probate court's order was void *ab initio* or that Appellant was excused from perfecting his appeal of the same. The circuit court's Order dismissing the appeal of the Order for Appointment of Temporary Special Administrator should be affirmed.

II. The circuit court[1] did not err in denying Appellant's Petition for Appointment of Successor Personal Representative.

The fact that Appellant was named in the Decedent's Will as the personal representative[2] does not allow the conclusion that he is fit to serve in that capacity. The circuit court was still

[1] In his Statement of Issues, as well as his argument heading, Appellant indicates that it was the probate court that erred in denying his Petition for Appointment of Successor Personal Representative. However, Appellant removed the Petition to circuit court, and it was the circuit court that issued the order (denying the Petition) that has been appealed.

[2] In his Statement of Facts, Appellant represents to this Court that, by virtue of a Family Settlement Agreement, "[a]ll parties agreed that [Appellant] would serve as sole personal representative." (App. Brief, p. 1) The Family Settlement Agreement, dated February 21, 2019, and filed on March 1, 2019, contains no such provision. Rather, it contains the parties' agreement that a copy of the Decedent's Will should be admitted to probate. (R. pp. 356-359) While the Will does appoint Appellant to serve as personal representative, there was no agreement that Appellant would "serve

required to, and did, make an independent inquiry into Appellant's suitability. See S.C. Code Ann. § 62-3-103 ("to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters."); see also S.C. Code Ann. § 62-3-203(e)(2) ("No person is qualified to serve as a personal representative who is… a person whom the court finds unsuitable in formal proceedings."); In re McClam's Est., 245 S.C. 315, 320, 140 S.E.2d 478, 480 (1965) ("the granting of letters of administration is not automatic or mandatory as the person having the statutory priority may not be granted the administration if just cause be given").

Appellant argues that the circuit court's findings of fact were without evidentiary support. However, Appellant's own affidavit, submitted in support of his "Emergency Motion to Appoint Personal Representative", supports nearly all of those findings.

First, and perhaps most importantly, the circuit court found that "[b]ased on his established pattern of disregarding the probate process, ultimately resulting in his discharge as Personal Representative in 2022, the Court finds that [Appellant] is not qualified." (R. pp. 44-47) This finding is absolutely supported by the record and by Appellant's own affidavit.

On June 21, 2019, the probate court notified Appellant that the Inventory and Appraisement was overdue and Appellant was given 20 days to file the same. (R. p. 360) On September 21, 2020, the probate court notified Appellant that a number of required filings, including the Inventory and Appraisement, Proposal for Distribution, and Final Accounting, were overdue and Appellant was given 20 days to file the same. (R. p. 361) On April 13, 2021, and May 12, 2021, the probate court again notified Appellant that these filings were overdue and Appellant was given 20 days to file

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as sole personal representative" and Appellant's contention that the Family Settlement Agreement contains such a provision is inaccurate.

the same. (R. pp. 363-364) On June 15, 2021, the probate court granted Appellant an extension (until August 16, 2021) to file the outstanding documents. (R. p. 2) Additional extensions were ordered on August 17, 2021, and September 20, 2021. (R. pp. 3-4) On November 24, 2021, the probate court gave Appellant notice that mandatory documents were overdue and that "[t]hese documents are required to be filed with this Court by [December 29, 2021] or this Estate shall be administratively closed." (R. p. 365) Appellant failed to comply.

The probate court ultimately discharged Appellant as personal representative and closed the Estate by Order dated January 19, 2022. (R. pp. 5-7) The cover letter accompanying the "Notice of Non Filing and Rule 4 Order" specifically states: "Enclosed is a copy of the Rule 4 Order the judge issued, ***a result of non compliance/inactivity with regards to the directives issued by this Court***." (R. pp. 5-6) (emphasis added). To now argue there is a lack of evidentiary support for the circuit court's finding that Appellant had an established pattern of disregarding the probate process, ultimately resulting in his discharge as personal representative, is patently disingenuous.

Appellant argues the circuit court erred in finding that Appellant received $84,963.38 in cash belonging to the Estate, received $1,760,423.15 in proceeds from the sale of real property, disbursed $2,830,909.27 as "expenses and advancements", was still in possession of $1,430,447.39 belonging to the Estate, and had never filed an Initial or Final Inventory, an Accounting, or Proposal for Distribution while serving as personal representative. However, as correctly noted by the circuit court, Appellant's own affidavit provides the factual basis for these findings. (R. pp. 388-394) As to the finding that Appellant failed to file an Inventory while personal representative, Appellant submits that he did so in September 2023, during the hearing on Respondent's Petition for Appointment of Special Administrator. However, he was not personal representative in September 2023, having previously been discharged in January 2022. His

submission of an "Inventory" at that point in time was a day late and a dollar short and just further supports the circuit court's determination that Appellant has an established pattern of disregarding the probate process.

Appellant further attempts to justify his possession of, and disbursement of, Estate assets. However, the circuit court's finding was based on Appellant's failure to account for his possession and disbursement of those assets while he was personal representative, not the propriety of his possession and disbursements of those assets after he was personal representative.

Here, the preponderance of the evidence supports the circuit court's determination that Appellant is not qualified to serve as an appointed fiduciary of the Estate. See Howard v. Mutz, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993) (if the probate proceeding is equitable in nature, the appellate court, on appeal, may make factual findings according to its own view of the preponderance of the evidence).

III. The hearing held by the circuit court on Appellant's Petition for Appointment of Successor Personal Representative afforded Appellant all the due process to which he was entitled.

Appellant argues that the circuit court, "failed to set a hearing whereby Appellant could have a meaningful evidentiary hearing". (App. Brief, p. 14) This is a rather befuddling argument given that the transcript of the April 5, 2024, hearing clearly establishes that Appellant was given a hearing, during which he had an opportunity to present evidence, on his Petition for Appointment of Successor Personal Representative. (R. pp. 299-327) Additionally, Appellant argues that the "only evidence before the court was the affidavit of [Appellant] [and] while there was a memorandum in opposition filed by [Respondent] on April 8, 2024, it did not contain an affidavit of [Respondent]." This is not true. Respondent's memorandum attached her ***Verified*** Petition for Appointment for Special Administrator. (R. pp. 180-190)

Regardless, Appellant was afforded all the "due process" to which he was entitled and the circuit court's decision was based on competent, admissible evidence.

CONCLUSION

For the above reasoning and law, Respondent Jones respectfully requests that the circuit court's orders be affirmed.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

[SIGNATURE ON FOLLOWING PAGE]

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