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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

The Honorable Leigh Powers Boan
Probate Court Judge

IN THE MATTER OF:
HUBERT LEON CLODFELTER, Decedent

Irene K. Clodfelter,Appellant,

v.

Karen Leigh Chappell and Lynda Faye Clinger, Respondents.

RESPONDENTS' FINAL BRIEF

s/ Davis Inabnit, Jr.
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STATEMENT OF ISSUES ON APPEAL

- i. Was the Circuit Court's affirmation of the Probate Court's finding of contempt erroneous?
- ii. Should the Petitioner be required to pay or post a bond or undertaking for the maintenance of this appeal?

STATEMENT OF THE CASE

This matter arises from litigation regarding the Estate of Hubert Leon Clodfelter (hereinafter "Decedent") who was a resident of Georgetown County at the time of his death. The Petitioner, Irene K. Clodfelter (hereinafter, "Spouse") of the Decedent initially filed an Application for Informal Appointment and Probate of the Decedent's Will, dated August 20, 2008. On July 30, 2019, Respondents, Karen Leigh Chappell and Linda Faye Clinger (hereinafter "Children") filed an Application for Informal Appointment and Probate of the Decedent's Will, dated October 1, 2014. Due to Spouse's prior appointment as Personal Representative, Children filed a formal petition for probate and appointment. (**R. p 63**). The competing petitions and corresponding defenses and counterclaims asserted by Children and Spouse were as follows:

Children, asserted the following claims: 1. Admission to Probate of the Decedent's Will dated October 1, 2014 (hereinafter "2014 Will"); 2. Appointment of Children as Personal Representatives pursuant to the 2014 Will; 3. Claims under *S.C. Code §62-2-803* "S.C. Slayer Statute"; 4. Claims for an Accounting; 5. Claims under *S.C. Code §62-3-619* "Executor de son Tort"; 6. Claims for Unjust Enrichment; and 7. Breach of Contract (arising out of an anti-nuptial agreements. (**R. pp. 1-2**).

Spouse, Irene K. Clodfelter has asserted the following claims: 1. Admission to Probate of the Decedent's Will dated August 20, 2008 (hereinafter "2008 Will"); 2. Appointment of Spouse

as Personal Representative pursuant to the 2008 Will; 3. Claims for an Accounting; 4. Claims for Recovery of Real Property to Probate Estate; 5. Claims for Recovery of Personal Property to Probate Estate; 6. Alternative Claim to have a Special Administrator and/or 3rd Party Appointed as Personal Representative; and 6. Alternative Claim for an Elective Share. **(R. pp. 1-2).**

A trial on the competing petitions occurred on December 18, 2020 and was completed on a second day of trial on January 8, 2021. **(R. p. 3).** On April 16, 2021, the Probate Court issued an Order (the “2021 Order”), which found in principle, 1.) that the 2014 Will was admitted to Probate; 2.) the Spouse be removed and Children be appointed as personal representatives; 3.) Spouse’s claims for an elective share was denied and the anti-nuptial agreement was upheld; 4.) Children’s claim under the Slayer Statute was denied; 5.) the Children’s remaining claims for an accounting, unjust enrichment, and “Executor de son Tort” were dismissed, without prejudice. **(R. pp. 21-22).** The Probate Court expressly directed Spouse and Children to perform an inventory and accounting, and if sufficient justification should then exist, the Children could maintain claims for unjust enrichment and “Executor de son Tort”. **(R. p. 21).** No appeal was taken from the 2021 Order.

Following Spouse’s failure to sufficiently inventory and account for property of the Decedent’s estate as directed by the 2021 Order, **(R. pp. 32-33)** the Children filed another Petition on September 10, 2021, asserting claims against Spouse for “Executor de son Tort”, Accounting, Breach of Contract and Unjust Enrichment. **(R. p. 31).** At the trial on the Children’s September 10, 2021 Petition (hereinafter, “2nd Trial”), the court received testimony and evidence which were considered together with the findings of fact and conclusions of law which were the basis of the 2021 Order. **(R. p. 32).** In the 2nd Trial testimony and evidence was provided to establish the existence and value of the personal property of the Decedent which went missing while in Spouse’s

possession. Additionally, Spouse testified that subsequent to the entry of the 2021 Order in November 2021 she sold their marital home for \$680,000.00 from which she netted \$400,000.00. **(R. p. 32)**. Following the 2nd Trial, on July 20, 2022 the Probate Court entered it's ("2022 Order") wherein the court found that the Spouse failed to inventory, account and safeguard personal property of the Decedent's probate estate valued at \$41,000.00 which it awarded together with \$41,287.56 in attorney's fees to the Estate and the Children. **(R. pp. 40-41)**.

After the entry of the 2022 Order, Spouse filed a Motion to Reconsider, Alter and/or Amend the 2022 Order. While Probate Court denied Spouse's Motion, the court clarified its ruling as to its award of attorney's fees and elaborated on the factors considered in awarding attorney's fees. **(R. p. 42)**. Included in the courts consideration of awarding attorney's fees was Spouses ability to pay the same. The Probate Court's ("2022 Order on Reconsideration") stated facts supporting its conclusions that the award of attorney's fees was proper as well as Spouses ability to satisfy the same. **(R. pp. 46-47)**. Therefore, the Probate court upheld its total award of \$82,287.56 provided in the 2022 Order and required payment of the same within 30 days. **(R. p. 47)**. Spouse did not appeal either the 2022 Order or the subsequent 2022 Order on Reconsideration.

Spouse again failed to comply with the 2022 orders of the Probate Court and in December of 2022, the Children requested guidance from the Probate Court, whether it would consider Children's Petition requesting the issuance of a Rule to Show Cause or wished to enroll its 2022 Order as a civil judgement. **(R. pp. 111-112)**. In March of 2023 the Probate Court issued a Summons to Show Cause to Spouse for her failure to comply with the Court's 2022 orders. **(R. pp. 48-49)**. The Summons to Show Cause was heard on April 18, 2023. Due to transportation issue with the South Carolina Department of Correction, spouse attended the hearing remotely. At

the April 18, 2023 hearing, Spouse provided testimony admitting that she was aware of the Probate Court's 2022 Order and was not incarcerated on July 20, 2022 when the 2022 Order was issued or at the time the 2022 Order on Reconsideration was issued. **(R. pp. 52 and 126-127).**

The court further found that Spouse was unable to provide any reason or justification for her non-compliance and that she had placed her funds from the sale of her home in a joint account she owned with her daughter. **(R. p. 52).** Ultimately the Court found Spouse to be in civil contempt due to her without justification, intentionally and with a bad purpose, failed to comply with the Court's Order. **(R. pp. 52-53).**

ARGUMENT

Respondents/Children would assert that the only matter that is before the court on appeal is whether the Probate Court's holding Petitioner/Spouse in civil contempt lacks evidentiary support or the Probate Judge abused her discretion. While the Court may consider its findings of fact and conclusions of law that are conclusive and which are relevant to the issues presently before the court, those facts and conclusions are no longer subject to appellate review. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding that an unappealed ruling is the law of the case).

Even though the Petitioner appears to try to relitigate prior rulings, the contention that there is no evidentiary support in the record is without merit. Based upon the exhibits entered into evidence, and testimony as found and determined in the 2021 Order, 2022 Order and 2022 Order on Reconsideration provide ample and specific evidentiary support for the award of \$82,287.56 to the Estate and Respondents. The only relevant facts or conclusion that need to be considered at this juncture is whether evidentiary support exist that Petitioner was aware of the Probate Court's ruling requiring the payment of the \$82,287.56 award; whether the Petitioner had the ability to pay

the award; and whether the Petitioner's failure to pay the award was willful. **(R. p. 51)**. Petitioner testified at the contempt hearing that she was both aware of the monetary award and had sufficient funds to pay the same. **(R. pp. 52-53 and 126-127)**.

(Inabnit) I mean, 82,287.56. I assume you received a copy or saw a copy of that order once it was issued.

(Clodfelter) Yes, I did.

(Inabnit) Okay. And did you also note in that -- or see in that order where it provided a timeframe of 30 days within which to make or pay those funds as the court ordered?

(Clodfelter) Yes. And -- and I was under the assumption that my attorney was doing the legal matters concerning this, so that's where we are.

(Hearing Transcript: April 18, 2023, Pg. 3, Ln. 4 – Ln. 14) **(R. p. 123)**.

(Inabnit) Did you have sufficient funds to pay 82,000 dollars and -- or \$82,287.56 as of September 26th, 2022 in your account?

(Clodfelter) Did I have that in my account, again, yes, sir. But I don't know what's in my account now.

(Inabnit) So you did have those funds --sufficient funds though on September 26th of 2022?

(Clodfelter) Yes, sir.

(Hearing Transcript: April 18, 2023, Pg. 6, Ln. 22 – Pg. 7, Ln. 6) **(R. pp. 126-127)**.

The Petitioner's testimony further supports the Courts finding that Petitioner's failure to pay was willful or intentional when she was asked "is there any reason after September 26th, 2022 that you have failed to comply with the court's order from that point in time? (Clodfelter) "No."*(Hearing Transcript: April 18, 2023, Pg. 11, Ln. 11 – Ln. 15)*. **(R. p. 131)**.

"A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting." *Brown v. Allstate Ins. Co.*, 542 S.E.2d 723, 344 S.C. 21 (S.C. 2001). It is the trial judge's job as the fact finder to review said evidence and to make findings of fact and conclusions of law, as was done in the case at bar. As stated hereinabove and in the Probate Court's 2021 Order, 2022 Order and 2022 Order on Reconsideration, factual findings were made based on

exhibits and witness testimony, both of which constitute evidence in this case. Furthermore, by the Petitioner's own admission she satisfies all elements and/or factors which must be shown for a finding of civil contempt.

CONCLUSION

While the Petitioner requests the Court to second guess its previous findings and conclusion, evidentiary support exists for the Court's ruling. Based upon the above arguments, the Petitioner's appeal should be denied.

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May 30, 2025

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PROOF OF DELIVERY

I, Davis Inabnit, Jr. do hereby certify that on June 5, 2025, I served a copy of the foregoing Respondent's Final Brief upon counsel for Respondents, via email only, addressed as follows:

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