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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court Of Common Pleas

The Honorable William C. McMaster, III, Circuit Court Judge

Case No.: 2024-CP-32-00809, Circuit Court
Appeals Court Docket No.: 2024-001668

Isaac Smith, Jr., Appellant,

v.

Estate of Carrie Muller Smith Lewis.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATUTES

S.C. Code Ann. § 62-1-308

STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court properly dismiss Appellant's Appeal of the Order of the Lexington County Probate Petition Contesting the Last Will and Testament of Ms. Carrie Muller Smith Lewis?

II. Did the Circuit Court properly deny Appellant's Motion to Stay Action Until Completion of Richland County Malpractice Action?

STATEMENT OF THE CASE

The primary issue before the Court is whether the Richland County Circuit Court (the “Court”) erred in dismissing Appellant’s Appeal of the Order of the Lexington County Probate Petition Contesting the Last Will and Testament of Ms. Carrie Muller Smith Lewis (the “Order”), and whether it was proper for the Court to deny Appellant’s Motion to Stay Action Until Completion of Richland County Malpractice Action (the “Motion”). Moreover, Respondents will show that the Court did not err in dismissing Appellant’s appeal of the Order and denying Appellant’s Motion.

This case originated in the Lexington County Probate Court (the “Probate Court”). This matter was before the Probate Court on July 25, 2023 and February 7, 2025 for a hearing on Appellant’s Petition Contesting the Last Will and Testament of Carrie Muller Smith Lewis (the “Will”). The Honorable Daniel R. Eckstrom filed an Order Approving the Will on March 1, 2024. In his Order, Judge Eckstorm found that Carrie Muller Smith Lewis properly executed a will on March 18, 2010 and later executed a will on January 13, 2016 which replaced the original will. Judge Eckstorm also found that there was no evidence of undue influence or a lack of testamentary capacity by Carrie Muller Smith Lewis; thus, the Will was valid.

Appellant appealed the Probate Court’s decision to the Lexington County Circuit Court (the “Circuit Court”) on February 7, 2024. In his certificate of service attached to the Notice of Appeal, Appellant indicated Notice to Respondent’s counsel was mailed to 270 Stoneridge Drive and counsel’s address is 220 Stoneridge Drive. Respondent filed a Motion to Dismiss Appellant’s Appeal on July 31, 2024 due to the Circuit Court’s lack of subject matter jurisdiction because of improper service of process. The Judge William C. McMaster, III filed an Order granting Respondent’s motion on October 2, 2024.

Appellant has also initiated proceedings in the Richland County Circuit Court. Appellant filed a Motion to Stay Action Until Completion of Richland County Malpractice Action (the “Motion”). Judge McMaster denied Appellant’s Motion on October 2, 2024.

Appellant filed the present appeal on October 2, 2024 following Judge McMaster’s October 2, 2024 Order.

STANDARD OF REVIEW

The standard of review for cases originating in the probate court is determined by whether the underlying cause of action was at law or in equity. *Moore v. Moore (In re Estate of Moore)*, 435 S.C. 706, 709 (Ct. App. 2022). An action to construe a will is an action at law. *In re Estate of Hyman*, 362 S.C. 20, 25 (Ct. App. 2004). Because the underlying action was an action to construe a will, the circuit court’s review in this action is limited to a correction of legal errors.

ARGUMENT

I. THE COURT PROPERLY DISMISSED APPELLANT’S APPEAL OF THE ORDER OF THE LEXINGTON COUNTY PROBATE PETITION CONTESTING THE LAST WILL AND TESTAMENT OF MS. CARRIE MULLER SMITH LEWIS.

The Circuit Court properly dismissed Appellant’s Appeal of the Order of the Lexington County Probate Petition Contesting the Last Will and Testament of Ms. Carrie Muller Smith Lewis because Appellant failed to properly serve Respondent resulting in the Appellate Court lacking jurisdiction over the appeal.

S.C. Code 62-1-308 governs an appeal from an order of a probate court. In relevant part, it provides “[t]he 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 form order, sentence, or decree of the probate court.”

The Appellate Court may not extend the time for service of the Notice of Appeal as service is jurisdictional. Failure to comply with the procedural requirements for an appeal divests the Appellate Court of appellate jurisdiction. *State v. Devore*, 416 S.C. 115 (S.C. App. 2015). Whether the court has subject matter jurisdiction may be raised at any time. *Tatnall v. Gardner*, 564 S.E.2d 377, 378 (S.C. App. 2002).

There is no indication on the Certificate of Service attached to the Notice of Appeal as to whether the Notice was sent to or filed in the Probate Court as required by Section 62-1-308. Additionally, the certificate of service lists the address for Respondent's counsel of record as 270 Stoneridge Drive; Counsel's address is 220 Stoneridge Dr.¹

Appellant states in the Factual Background of the Initial Appellant's Brief that counsel for Respondent "acknowledges timely receipt of the Plaintiff's motion." Appellant misrepresents the record with this statement. The hearing transcript clearly indicates the following statement by Respondent's counsel: "we've never got the appeal." Transcript page 6, line 5. Further, Respondent's counsel states in the hearing "I think he attempted to serve it, but, you know, off of his certificate of service the addresses are incorrect. Transcript page 3, lines 8-10. Appellant further alleges that the address included the Post Office Box address. However, Counsel for Respondent states at the hearing that "the P.O. Box doesn't match that zip." Transcript page 6, lines 4-5.

Thus, the Circuit Court properly dismissed Appellant's Appeal due to lack of subject matter jurisdiction based on the improper service of the Notice of Appeal.

II. THE COURT PROPERLY DENIED APPELLANT'S MOTION TO STAY ACTION UNTIL COMPLETION OF RICHLAND COUNTY MALPRACTICE ACTION.

¹ Appellant continues to improperly serve Respondent as the Initial Brief was served to Suite 200 rather than Suite 100. Respondent received the Brief by reviewing the Court files.

The Circuit Court properly denied hearing Appellant's Motion to Stay Action Until Completion of Richland County Malpractice Action as the Motion to Stay is moot upon the dismissal of the Appeal.

A case is moot when judgment will have no practical legal effect on the case. *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). A case may also be moot when an event makes it impossible for the reviewing court to grant relief. *Id.*


Appellant filed the Motion to Stay the Action for the Appeal of the Probate Court's Order. The Circuit Court's dismissal of the Appeal for lack of subject matter jurisdiction made it impossible for the Court to also hear the Motion to Stay the Action because there was no longer an action to stay. Thus, Appellant's Motion to Stay the Action became moot upon the dismissal of the Appeal.

CONCLUSION

For the aforementioned reasons, Respondent respectfully requests this Court affirm the Circuit Court's ruling dismissing Appellant's Appeal of the Order of the Lexington County Probate Petition Contesting the Last Will and Testament of Ms. Carrie Muller Smith Lewis and denying Appellant's Motion to Stay Action Until Completion of Richland County Malpractice Action.

Respectfully Submitted,

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PROOF OF SERVICE

I certify that I have served the **INITIAL BRIEF OF RESPONDENT** on the *Pro Se* Appellant listed below, by mailing a copy of same on June 20, 2025, addressed to:

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