THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P. Hinson, Probate # 2008-ES-12-297, Circuit Court # 2010-CP-12-201,

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SUPREME COURT NUMBER 2013-001946

Mell Woods . . . . . Petitioner,

v.

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ... Respondent.

PETITION FOR A WRIT OF CERTIORARI

(Court Of Appeals Internal Tracking Number: 2011-201066)

Mell Woods
P.O. Box 2603
Lancaster, SC 29721
Petitioner

Other Counsel of Record:
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The Supreme Court of South Carolina

Mell Woods, Petitioner,

v.

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, Respondent.

Appellate Case No. 2013-001946

ORDER

The time for serving and filing the Petition for Writ of Certiorari and Appendix is hereby extended until October 23, 2013.

FOR THE COURT

BY Brenda F. Shealy
CHIEF DEPUTY CLERK

Columbia, South Carolina

September 17, 2013

cc.
B. Michael Brackett, Esquire
Mr. Mell Woods
The Honorable Jenny Kitchings

Certification Regarding Rehearing

Petitioner certifies that a Petition for Rehearing was ruled on by the Court of Appeals on August 22, 2013, as a final matter, with a copy of the Order attached hereto in the Appendix, Page A-004.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals and lower courts err in refusing to abide by the Decision of the South Carolina Supreme Court in the case of Howell v. Littlefield, 211 S.C. 462, 46 S.E.2d 47 (1947)?

2. Is it lawful for an applicant seeking to be a personal representative to lie under oath in order to obtain appointment as a representative of an estate in South Carolina?

3. Did the Court of Appeals and lower courts err in refusing to abide by South Carolina Probate Code §62-3-611(b) which codifies the concept that a personal representative may be removed from office where it is shown that the representative intentionally misrepresented material facts in the proceedings leading to his appointment, and in fact in this case perjured himself in such a basic way as to render any office obtained null, void and without legal standing.

4. May a probate judge interfere with the ministerial duty of his staff in issuing subpoenas, or in the words of the Court of Appeals in this case, "failing to issue Woods subpoenas upon his request."

5. May the Court of Appeals refuse to recognize the SCRCP Rule 59(e) motion filed in this case, and shown in the Record on Appeal, pages 703-705, and apply the summary verbiage listed under "2." as if there was no Rule 59(e) motion filed?

6. Where Tobias v. Rice, 386 S.C. 306, 688 S.E.2d 552 (2010), was cited in appellant's (now petitioner's) reply brief, and where Tobias directly involves the same issues ruled on in a similar case by the Honorable John Few when he was a circuit court judge which exist here, [due process] and considering that the Supreme Court reversed Judge Few just a couple of weeks before Judge Few was installed at the Court of Appeals as Chief Judge, is it proper for Judge Few to have been one of judges on the panel?

STATEMENT OF THE CASE

This case started in the Probate Court of Chester County. This case involves appellant Mell Woods, because appellant purchased some land from decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, (R.pp. 362-367). Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, (R.pp. 103-109). In Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." (R. p. 63, R. p. 107). Ned Gregory, II, is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 43 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form involved in this appeals case, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (R. p. 269, transcript of other will being admitted).

All of this involves the appellant Mell Woods because of the small amount of land appellant purchased from Mrs. Hinson. Appellant is not a Hinson, or heir, but does claim standing to try and get Mrs. Hinson's estate as she wanted it to be, because of the land purchase, (R.pp. 362-367, R. p. 78, R. p. 88, R. p. 93).

Other Information Required by Rule 208(b)(1)(c) SCACR:

The action is an appeal from the probate court, filed April 30, 2010; defense is general denial; the circuit case was first heard by the Honorable Clifton Newman on September 08, 2010, Judge Newman first upheld the probate court, then reversed himself deciding a proper return had not been made by the probate court. Then the case was returned to the circuit court and Judge Goldsmith held a hearing on July 08, 2011, and upheld the probate court in an Order signed on July 17, 2011; Notice of Appeal was served on October 01, 2011.

Argument as to Question Number 1:

The circuit court has never seen the real record in this case, (R.pp. 233-243). There have always been lost documents, wrong documents, and even now the Respondent's counsel, Mr. Brackett is kicking and screaming about having the full Record sent to the Court of Appeals.

South Carolina Statute §62-1-308(b) requires that the full, original record be sent to the circuit court on appeal. §62-1-308(b) is nothing new, the statute has been around since the 1930s, and for sure it was the 1952 Code, nearly word for word, so §7-203 of the 1952 Code is cited. There would have not been any actual typesetting of the Record on appeal for an appeal to circuit court, because it was not required, and since there were no copy machines at the time, copies were never intended; all that was meant was to box up all of the Record, take it across the hall, and deliver it to the circuit court. This procedure has been ruled on by the South Carolina Supreme Court in the case of Howell v. Littlefield, 211 S.C. 462, 46 S.E.2d 47 (1947).

There has never been a proper return of the record in this case made to the circuit court. This is a jurisdictional defect. It is the job of the probate court to transmit the record as part of the return, and not start making laws for convenience where the statute is clear as to what to do. The hearing in this case proceeded over objection by appellant, using a record hand picked by Mr. Brackett, instead of what the statute calls for, (R.pp. 273-285). State v. Jacobs (2011), and Sloan v. Hardee (2007), both stand for the proposition

that everyone needs to go by what a statute says instead of trying to twist laws to suit a present situation, or to escape a responsibility.

ARGUMENT

As to Question Number 2:

This probate case could have been over long ago if only the correct will had been offered for probate, (R.pp. 488-497, R.pp. 445-469, R.pp. 563-565).

Mrs. Hinson left a Last Will which has never been probated, and which was in the probate file, but has now been "lost" by the probate court staff even though they were instructed to lock the will in a safe, (R. p. 37, R. p. 514, near bottom). Appellant has a copy of the real will to be included in the Record on Appeal, (R.pp. 74-76, R.pp. 89-91, R.pp. 159-163).

A person who aspires to be a personal representative should be straightforward with all courts and not lie to gain an appointment in the first place. In this case the Respondent Breakfield lied under oath in order to be appointed personal representative, (R. p. 64). Ned Gregory, II, an adjucticated forger, helped and counseled the Respondent Breakfield in the various methods of forging documents, fooling and manipulating rural probate courts and judges in order to gain the desired results. (R.pp. 65-67), In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991).

In addition, the conduct of Ned Gregory, II., and Breakfield, the Respondent herein, is serious enough that there is a question if there really exists a legal entity to be a Respondent. The Record will show, (R.p. 63, R.pp. 490-497, R.p. 269 an actual transcript admitting the proper will to probate), so the forger Gregory, and Breakfield both knew there was another Will by Mrs. Hinson that was made after the Will that the two of them (Gregory and Breakfield) were able to convince the Probate Court to admit to probate.

Argument as to Question Number 3:

The Record will further show, (R.pp. 389-390 strike-through by Mrs. Hinson), that the "Will" being probated by the respondent was actually revoked by Mrs. Hinson. This being the case, coupled with the fact that a lot of lying under oath was going on, Appellant now raises the question if there is, or has there ever been an "Estate of Reba P. Hinson." It is doubtful that there ever would have been a probate case using the revoked "Will," if the Respondent had been straightforward with the Probate Court; the Record shows, (R.pp. 2-631), that Respondent has

never told the truth, and that a fraud upon the court, of the extrinsic classification, has occurred. But even more basic than any species of fraud is the failure of a legal entity, "But if there is a lack of legal entity, the whole action fails. * * * If an action is brought in the name of that which under the *lex fori* has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the Court"; "... which presents an instance of want jurisdiction." Commercial & Savings Bank of Lake City v. Ward, 146 S.C. 77, 143 S.E. 546 (1928); Proprietors of Mexican Mill v. Yellow Jacket Silver Mining Co., 4 Nev. 40, 97 Am. Dec., 510 (1868); McCullar v. Estate of Campbell, 381 S.C. 205, 672 S.E.2d 783 (2009).

[Number 3 continues]

The Record will show, (R. p. 45, R. p. 591), that on June 07, 2007, appellant hand-delivered a demand letter to the Judge of Probate, Chester County, South Carolina, which letter claimed an interest in the Estate of Reba P. Hinson, if any will was ever filed. The letter which will be in the Record was formal notice of the interest of appellant under §62-3-204 of the Probate Code, and required under the Probate Code §62-3-403 notice to appellant of any hearing concerning the admission to probate of Mrs. Hinson's Will. Instead of Notice to Appellant, a secret hearing was held in early 2009, nearly 18 months later, and a revoked former will of Mrs. Hinson was admitted to probate, (R.pp. 103-109, R.pp. 63-64). This procedure constitutes extrinsic fraud under Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). How is it extrinsic? It is because Gregory, II., as above, who still has a law license, suborned perjury for the reason of advancing the interests of clients who wanted Mrs. Hinson to die with a "life estate" instead of the fee simple estate which she did possess when she did die. Gregory did all recited acts knowing full well that another will existed

which revoked the will Gregory wanted probated, (R.pp. 389-390, R.pp. 63-64). And to top it all off, Gregory prepared the papers which Respondent herein signed under oath in order to admit a revoked will to probate, (R.pp. 63-64). Respondent is also a licensed attorney, and an officer of the court, so what has gone on in this case is about the same as all of the lying and cheating in the Chewning case -- with the net result of appellant being shut out of court without notice of what was being done, until it was done, and generally denied the opportunity to be heard, (R.pp. 63-64).

Argument as to Question Number 4:

Appellant would have proven the case, including Gregory's perjury, if appellant had been allowed subpoenas for the probate hearing in question. Appellant is not an attorney, and cannot issue his own subpoenas. The procedure is to obtain blank subpoenas from the court clerk, with the court's stamp on subpoenas. Appellant went to the Probate Court Clerk's office prior to the hearing in question, to obtain subpoenas, and the Judge himself intervened and would not issue any subpoenas. Rule 45(3) SCRCP authorizes the clerk of court to issue a blank subpoena "to a party requesting it." Issuing a subpoena is a ministerial matter at most. The subpoena matter was raised to, and ruled on by the Probate Judge at two times during the Probate Hearing; the rulings are in the transcript and will be included in the record on Appeal, (R. p. 329 lines 7-13, R. p. 354 lines 6-11). The trial judge had no business in the matter and committed error when he interfered, (R. p. 329 lines 7-13).

Argument as to Question 5:

Number five is self-explantory, but is supported in Number six, as follows:

Argument as to Question Number 6:

In the pleadings, in appellant's brief, and in the record itself, it is plainly set out that because appellant was not accorded his statutory right to be notified of the probate hearing in which the will in question was admitted to probate -- the entire proceeding heretofore is defective, (R. p. 45, R. p. 591).

Appellant has the statutory right to be notified of, and be present at any hearing admitting the will in question to probate because appellant had served the probate court with notice of appellant's interest in the estate, prior to the time the will hearing was held, this in and of itself gives appellant enough "standing" to contest an order which admitted a revoked will to probate. South Carolina Statute §62-3-403, requires notice of all formal proceedings, once a formal notice of interest is filed under §62-3-204, (R. pp. 150-156).

When the hearing was held, it was secret, and appellant found out about it later by reading the newspaper. This is contrary to the assertions made on page 12 of the respondent brief, (R. p. 370, R. pp. 103-109).

In Tobias v. Rice, 386 S.C. 306, 688 S.E.2d 552 (2010), it was held:

> "Accordingly, absent notice of the proceedings, Rice is entitled to relief from judgment. (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses)."

So, it can be readily seen that due process, and the right to examine witnesses, and have process issue for the production of witnesses, is such a basic right that any ruling by a judge serving to defeat due process is grounds enough for a new trial, (R. p. 329 lines 7-13, R. p. 354 lines 6-11).

Petitioner adopts by reference pages A-001 through A-026 of the Appendix attached hereto in support of this petition.

CONCLUSION

For the reasons stated petitioner asks that the Court grant and issue a writ of certiorari.

This 23 day of October, 2013.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

2ND ☐ ORIGINAL
(Court of Appeals)

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondent with a true copy of the within and foregoing *Petition for a Writ of Certiorari and also a copy of the Appendix attached hereto, pages A01-A48* by method of placing the documents in the U.S. Mail with sufficient postage addressed to the counsel of record for respondent to wit:

Moses Koon & Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 23 day of October, 2013.

Mell Woods

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