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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
Circuit Court Judge

Appellate Case No.: 2022-000592

Pamela Holliday Wallin; Mark Bennett Holliday; Kingsley K. Holliday; Sara Jane Holliday; and John C. Holliday Appellants,

vs.

Ross Samuel Holliday as Personal Representative of the Estate of Warren Phillip Holliday; Ross Samuel Holliday, individually, Warren Lea Holliday, individually; 2233 Highway 17 North, LLC; 2237 Highway 17 North, LLC; 2805 Highway 17 North, LLC; 1606 Meeting Street, LLC; Bacons Bridge Road, LLC; 4687 Franchise Street, LLC; Zeezrom Properties, LLC; John Doe Leased Vehicle; 1905 North Main Street, Summerville, LLC; 815 Folly Road, LLC; 832 Coleman Blvd., LLC; 2189 Discher Avenue, LLC; New Space Science, LLC; Pirates Plunder, LLC; Sawgrass Technologies, Inc.; Holliday Amusement Company, Inc.; and The Revocable Trust Agreement between Warren P. Holliday as Settlor and as Trustee Respondents.

RESPONDENTS’ PETITION AND MEMORANDUM FOR REHEARING

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October 9, 2025

The Respondents files this Petition for Rehearing regarding this Court’s Order filed on September 24, 2025 reversing and remanding the circuit court’s grant of summary judgment in favor of Respondents by Order dated March 3, 2022, and the Order dated April 22, 2022, which denied Appellants Motion for Reconsideration.

This Petition seeks a rehearing *en banc* on that Order for two primary reasons. First, the Court misapplied South Carolina’s Trust Code by excluding trust revocations from the scope of S.C. Code § 62-7-604(a), the statute of limitations governing actions contesting the validity of a trust. In doing so, the Court disregarded the defined statutory terms such as the definition of “terms of a trust.” The Court’s holding means that the statute of limitations applies to the creation of a trust, the amendment thereto, yet not the termination or revocation of trust. This arbitrary distinction is not only nonsensical, but it directly contradicts the Trust Code, the Reporter’s Comment to Section 604, and the many decisions of other states which have held that a revocation of trust is a “term of trust.” Second, the Court’s Order completely ignores the circuit court’s rulings on Appellants’ Intentional Interference with Inheritance claim, which the circuit court found was not a valid cause of action under South Carolina law, and the circuit court did not have subject matter jurisdiction to hear such a claim.

TRIAL COURT’S RULINGS

The circuit court granted summary judgment to Respondents on all claims regarding the validity of the revocation of trust for the following reasons:

- (1) Appellant’s claim to contest the validity of the trust is barred by S.C. Code § 62-7-604(a) because the action was not commenced within a year after Warren Holliday’s (the “Settlor”) death;
- (2) The doctrine of laches bars this action;

(3) The Settlor revoked his trust by showing a clear and definite purpose to do so; and

(4) The Settlor had capacity to, and was not subjected to undue influence, when he executed the Trust Revocation on September 15, 2016.

(R. Vol. I, pp. 17-22). In addition, the circuit court granted summary judgment to Respondents as to the constructive trust, breach of fiduciary duties, and declaratory judgment causes of action because the court found that, if the Revocation was valid, each of these causes of action must fail.

(R. Vol. I, pp. 25-26)

The circuit court also granted summary judgment as to the Intentional Interference with Inheritance cause of action for the following reasons: (1) no South Carolina appellate court has adopted this cause of action; (2) the only evidence is that Warren changed his will in 2014 and 2016, and there is no evidence that anyone influenced Warren to reduce Appellants' inheritance in those instruments; and (3) the Probate Court did not have subject matter over this tort claim that Appellants initiated in that court. (R. Vol. I, pp. 26-27). This appeal followed.

ARGUMENT AND CITATION TO AUTHORITIES

This Court's Order reversing and remanding the trial court's grant of summary judgment does not address all the material legal rulings made by the circuit court or legal arguments made by Respondents in their final brief filed with this Court on January 30, 2023, and Respondents raise again these issues and arguments submitted in its Memorandum. The Memorandum and the arguments and authorities cited therein are reiterated herein and that Memorandum is incorporated by reference for that purpose.

Without dismissing or abandoning the arguments set forth herein, the following are the salient issues which the Court of Appeals failed to address or properly consider when it issued its Order on September 24, 2025.

I. The Court of Appeals overlooked that the phrase “term of trust” is statutorily defined by the Trust Code and therefore misapprehended Respondents’ argument that a challenge to a “term of trust” (the revocation of trust) is time barred by S.C. Code Ann. § 62-7-604.

The Court’s Order ignored defined terms of the Probate Code and applied a non-sensical interpretation of section 62-7-604(a), the applicable statute of limitations regarding the validity of a revocable trust. The Order found that the “plain language of section 62-7-604(a) addresses *only* actions to contest the validity of a trust; it does not contain language incorporating actions challenging trust revocations.” Order at 5. In support of its analysis, the Court cited to the Reporter’s Comment which states that “[a] ‘contest’ is an action to invalidate all or part of the terms of the trust or of property transfers to the trustee” and “[a]n action against a beneficiary or other person for intentional interference with an inheritance or gift, not being a contest, is not subject to this section”). *Id.* The Reporter’s Comment referenced in the Order demonstrates that the statute of limitations was intended to apply to this exact action for two reasons.

First, the underlying action seeks to invalidate all or part of the “terms of the trust.” A revocation of trust is absolutely a term of the trust. The Trust Code defined “terms of a trust” as “the manifestation of the settlor’s intent regarding a trust’s provision as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.” S.C. Code Ann. § 62-7-103(17). The Court completely ignored this definition in the Order. Surely a revocation of trust is a “trust instrument” expressing “the manifestation of the settlor’s intent.” While there is not a South Carolina case addressing whether a revocation of trust is a “term of trust,” the South Carolina Trust Code explicitly states that “[t]he settlor *may revoke or amend* a revocable trust . . . [by] any other written method, other than a later will or codicil, delivered to the trustee *and manifesting clear and convincing evidence of the settlor’s intent.*” See

S.C. Code Ann. § 62-7-602(c)(2)(C) (emphasis added). Because the Trust Code requires a revocation of trust to “manifest clear and convincing evidence of the settlor’s intent,” it is impossible to reconcile the Court’s Order with the Trust Code. Other states have found that a revocation is a part of the terms of a trust. *See, e.g., In re Tr. Created by Isvik*, 741 N.W.2d 638, 645 (Neb. 2007). Because the revocation is a manifestation of the settlor’s intent to revoke, it must be a “term of the trust” and therefore, any challenge to the revocation is a “contest” subject to section 62-7-604.

Second, the Order as it stands currently, means that Section 62-7-604 applies to an action that challenges the creation of a revocable trust, but not to an action that challenges the termination of that trust. The Order does not provide any explanation, reasonable or otherwise, for such a holding. It is inconceivable that the drafters of the Trust Code intended such a result and, as explained in Respondents’ filings, is unsupported by the statutory definitions, and contradicted by every other state that has addressed whether a revocation is a term of the trust.

A simple hypothetical is illustrative of the problem with this construction of S.C. Code Ann. § 62-7-604. Suppose that instead of revoking his revocable trust, Warren decided to amend his revocable trust to reduce Appellants’ inheritance consistent with the bequeathal as set forth in the 2014 Will and 2016 Codicil. If Appellants had filed this action to contest the validity of Warren’s amendment to his trust (and therefore contested the amendment’s validity), there is no question that section 62-7-604 would bar this contest if Appellants did not commence it within one year of Warren’s death. *See* S.C. Code Ann. § 62-7-103(18) (“‘Trust instrument’ means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto”). However, according to this Court, because Warren decided to execute a revocation of

trust, as opposed to an amendment of trust which could have accomplished the same end result, there is no applicable statute of limitations contained in South Carolina's Probate and Trust Code.

In sum, the central question for the Court is whether a revocation of trust is a term of the trust, as defined by the South Carolina Trust Code. The Court completely ignored this question in its analysis. If the revocation of trust is a term of the trust under the statutory definitions, then any challenge to it would be subject to section 62-7-604 under *any* "plain" reading of the statute and would be consistent with the Reporter's Comment¹.

II. The Court of Appeals overlooked the circuit court's rulings that intentional interference with inheritance is not a valid cause of action under South Carolina law, and that the circuit court did not have subject matter jurisdiction to hear that claim.

Respondents seek a clarification from the Court of Appeals on the issue of Appellants' claim for Intentional Interference with Inheritance ("IIWI"). The circuit court awarded summary judgment in favor of Respondents on this claim finding that IIWI is not a cause of action in South Carolina and that the circuit court, upon removal from the probate court, did not have subject matter jurisdiction to hear this tort claim. (R. Vol. I, pp. 26-27). Although the Order reverses the decisions below, the Order does not address these rulings, which are rulings of law separate and distinct from the issues of capacity, undue influence, or the statute of limitations.

To begin, the case law is clear that South Carolina has not adopted an IIWI claim as a cause of action. See, e.g., Malloy v. Thompson, 409 S.C. 557, 762 S.E.2d 690, 692 (S.C. 2014) (clarifying that the opinion "must not be understood as either adopting or rejecting" this style of claim). Even if it was adopted, such a claim requires proof of (1) the existence of an expectancy, (2) an intentional interference with that expectancy through tortious conduct, (3) a reasonable

¹ The Order also ignores that the Reporter's Comment to 604 also cites to § 62-7-602, which is titled "Revocation or amendment of revocable trust," which further demonstrates that Section 604 was intended to apply to actions contesting a trust revocation.

certainty that the expectancy would have been realized but for the interference, and (4) damages. See, e.g., Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715, 717 & n.4 (2001).²

Assuming *arguendo* that the IIWI claim is viable under state law and that the Appellants did not have an adequate probate remedy, the circuit court lacked jurisdiction to consider the claim. This action was initiated in probate court and removed, by Respondents, to circuit court on April 25, 2019, pursuant to § 62-1-302. However, the Probate Code continues to govern an action originated in the probate court, and the circuit court derives its jurisdiction from the probate court. S.C. Code Ann § 62-1-302; Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011); see, e.g., Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992). As such, the circuit court lacks jurisdiction because the probate court does not subject matter jurisdiction over an *in personam* claim that seeks monetary damages against Respondents. Because the circuit court was exercising original jurisdiction of the probate court pursuant to the removal statute, the court properly found it lacked jurisdiction to decide Appellants' IIWI claim. The Court's Order does not address the IIWI claim, including whether the cause of action exists under South Carolina law, or whether the circuit court has subject matter jurisdiction over the claim.

² It is equally of note that this cause of action is designed for claimants who do not have an adequate remedy through probate proceedings. For claimants who do have an adequate remedy through probate proceedings, the tort claim is not allowed. See Litherland v. Jurgens, 869 N.W.2d 92, 96 (Neb. 2015) (collecting cases); Jackson v. Kelly, 44 S.W. 3d 328, 331-34 (Ark. 2001); DeWitt v. Duce, 408 So.2d 216, 218 (Fla. 1981); In re Estate of Roeseler, 679 N.E.393, 406 (Ill. Ct. App. 1997); Plimpton v. Gerrard, 668 A.2d 882, 886 (Me. 1995); Brandin v. Brandin, 918 S.W.2d 835, 840 (Mo. Ct. App. 1996); Wilson v. Fritschy, 55 P.3d 997, 1001 (N.M. Ct. App. 2002). See also, Wellin v. Wellin, 135 F. Supp. 3d 502, 517-18 (D.S.C. 2015) (finding that the South Carolina Supreme Court would likely restrict the tort cases where the plaintiff has no adequate remedy at probate, reasoning that “[t]his approach is consistent with the goal of protecting beneficiaries who would otherwise be left without a remedy, which has been a significant justification for the expansion of tort liability to protect inheritance expectancies in many jurisdictions, including South Carolina.”). The Appellants had an adequate remedy available to them in probate court as demonstrated by this action and the Court's recent Order. Thus, if South Carolina allows for an intentional interference with inheritance claim, it is inappropriate here since the Appellants have an adequate probate remedy.

CONCLUSION

For these reasons, Respondents respectfully request rehearing *en banc* and reconsideration of this Court's September 24, 2025, Order reversing and remanding the circuit court's award of summary judgment. As explained hereinabove, there are purely legal issues that were overlooked or misapprehended by the Court. Alternatively, Respondents request an order clarifying and/or answering the open questions, particularly on the Intentional Interference with Inheritance claim, a claim which does not exist under South Carolina law and which the circuit court ruled it lacked jurisdiction to hear.

Respectfully submitted,

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PROOF OF SERVICE

I do hereby certify that on October 9, 2025, I served all counsel in this action with a copy of the *Respondents' Petition and Memorandum for Rehearing* via email to the following email addresses:

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