RECEIVED
Jan 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Probate Court

David L. Michel, Associate Judge of Probate
Dale Van Slambrook, Circuit Judge
Mark Hayes, Circuit Judge

Probate Case No.: 2019-ES-10-00394
Common Pleas Case No.: 2024-CP-10-00598
Common Pleas Case No.: 2024-CP-10-01509
Appellate Case No.: 2025-000194

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.

REPLY BRIEF OF APPELLANT

FERRARA LAW FIRM, PLLC

Paul B. Ferrara, III (SC Bar No. 70511)
8887 Old University Blvd.
North Charleston, SC 29406
P: (843) 569-5511/F: (843) 569-5411
paul@ferraralawfirm.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

Appellant, Bayard Scott Pickett, Jr. respectfully submits this Reply Brief in response to the Respondent's Brief. Respondent attempts to recast the issues on appeal as waived, forfeited, or merely discretionary, but the record and controlling law confirm otherwise. The Probate Court's appointment of a Special Administrator—over a qualified and priority designee and without the statutory predicates required under South Carolina law—was error, and the circuit court's affirmance should be reversed.

This appeal presents a straightforward question of statutory compliance and jurisdictional authority. Despite the absence of any finding that Appellant was unfit, unwilling, or unable to serve as the personal representative chosen by the testator, the Probate Court displaced him and appointed a special administrator without satisfying the requirements of South Carolina's Probate Code. While that appointment was pending on appeal, the Probate Court then entered a subsequent order affecting the very subject matter under review, notwithstanding the automatic stay imposed by the South Carolina Appellate Court Rules. The Circuit Court compounded these errors by failing to conduct the de novo review required by statute and by affirming the Probate Court's orders based on incorrect legal standards. The resulting orders cannot be reconciled with the governing statutes, the record, or controlling precedent, and must be reversed.

ARGUMENT

I. THE PROBATE COURT LACKED JURISDICTION TO ENTER THE MARCH 12, 2024, ORDER LIFTING THE STAY.

Respondent attempts to reframe the March 12, 2024, Order as a routine procedural act that remained within the Probate Court's authority. The law and record do not support that position.

Once Appellant filed his Notice of Appeal on February 2, 2024, the Probate Court was divested of jurisdiction over matters embraced by the appeal. Rule 205, SCACR; *See Conner v. City of Forest Acres*, 248 S.C. 454, 560 S.E.2d 609 (2002). Rule 241(a), SCACR further provides that the filing of the appeal "imposes an automatic stay pending appeal."

Respondent concedes the sequence of events: the February 2, 2024, appeal preceded the March 12, 2024, Order lifting the stay. Their attempt to characterize the March 12 Order as merely addressing a separate temporary administrator proceeding does not cure the jurisdictional defect. The relief sought and obtained, lifting the automatic stay, directly affected the very subject matter on appeal: the authority of the Probate Court to appoint and empower a special administrator.

The Supreme Court has made clear that post-appeal orders that interfere with the stay are void, not merely erroneous. *See Arnal v. Frasier*, 371 S.C. 512, 641 S.E.2d 410 (2007). The March 12 Order must therefore be vacated. Respondents reliance on Rule 241(d)(1), SCACR is misplaced. That rule presupposes that the lower court still possesses jurisdiction. Once jurisdiction has transferred, the lower court cannot create authority by entertaining motions that defeat the automatic stay.

II. RESPONDENTS' PRESERVATION ARGUMENT FAILS.

Respondent argues Appellant's argument is "not properly before this Court" due to preservation. That characterization fails for two independent reasons. First, to the extent the Probate Court lacked subject matter jurisdiction to enter the order appealed, the issue may be raised at any time, including for the first time on appeal. Second, even assuming preservation were required, Appellant's objections and arguments below sufficiently presented the statutory and jurisdictional defects attendant to the appointment of a Special Administrator over the Trust's priority nominee. Respondent's waiver argument should be rejected. Moreover, the record reflects

that Appellant consistently objected to the Probate Court's authority after the February 2 appeal and raised the issue squarely before the Circuit Court. The issue is properly before this Court.

III. THE PROBATE COURT ERRED IN APPOINTING A SPECIAL ADMINISTRATOR WITHOUT THE REQUIRED FINDINGS.

Respondent argues that S.C. Code Ann. § 62-3-614(2) permits appointment of a Special Administrator upon a generalized finding that it is "necessary to preserve the estate," and that no further predicate must be satisfied. That is not what the statute says. S.C. Code Ann. § 62-3-614 expressly governs circumstances where "a general personal representative cannot or should not act" and only then authorizes appointment of a special administrator "to exercise the powers of a personal representative." A Probate Court cannot bypass the statutory prerequisite and simply declare the appointment "necessary" as a substitute for the findings required by law.

A. SECTION 62-3-614 REQUIRES A DETERMINATION THAT THE GENERAL PERSONAL REPRESENTATIVE CANNOT OR SHOULD NOT ACT.

Section 62-3-614(2) authorizes appointment of a special administrator in a formal proceeding only upon a finding that such appointment is necessary to preserve the estate including its administration in circumstances where a general personal representative cannot or should not act.

Here, the Probate Court made no such finding. To the contrary, the court expressly stated on the record that nothing improper had been shown regarding Mr. Pickett's conduct. The absence of wrongdoing forecloses the statutory predicate for displacing the testator's chosen fiduciary.

Further, Respondent argues the Probate Court was not required to find that the priority designee was unable, unwilling, unqualified, or otherwise disqualified before appointing a Special Administrator. But § 62-3-614 does require the court to find that "a general personal representative cannot or should not act" before appointment of a Special Administrator is permissible. The

statutory language has meaning. A Special Administrator is not a default substitute whenever the court prefers an alternate person; appointment must be grounded in the predicates the General Assembly required.

B. SECTION 62-3-615 PRESERVES THE TESTATOR'S PRIORITY CHOICE.

Respondent also argues that S.C. Code Ann. § 62-3-615(a) does not apply because "there was no probate of a will pending" and therefore no appointment priority exists. That misreads the statutory scheme and its purpose. S.C. Code Ann. § 62-3-615 preserves the testator's priority by granting preference to the person nominated in the will, and that priority cannot be nullified by appointing a Special Administrator as an end-run around the orderly appointment of a general personal representative. Where a will nominates a priority designee, the court must respect that designation absent statutory disqualification or other findings recognized by law. Section 62-3-615(a) mandates that the executor named in the will "shall be appointed if available and qualified." The Probate Court never found Mr. Pickett unavailable or unqualified. The Circuit Court's conclusion that no such determination was required nullifies this statutory protection and disregards the testator's intent.

South Carolina law affords a strong deference to the testator's selection of personal representative. *See Church v. McGee*, 391 S.C. 334, 707 S.E.2d 481 (Ct. App. 2011). Removal or displacement is disfavored and requires a clear showing of necessity. That showing is entirely absent from this record.

C. RESPONDENTS RELIANCE ON SECTION 62-3-309 IS LEGALLY INCORRECT.

Respondent argues that the Circuit Court properly invoked S.C. Code Ann. § 62-3-309 to justify denial of Mr. Pickett's informal application for reappointment. That statute governs

informal proceedings. The special administrator petition was filed as a formal proceeding with summons and service. Section 62-3-309 therefore has no application. Using Section 62-3-309 to bypass the formal proceeding safeguards of §§ 62-3-614 and 62-3-615 was legal error.

IV. THE CIRCUIT COURT FAILED TO CONDUCT THE REQUIRED DE NOVO REVIEW.

The circuit court's order affirming the Probate Court fails to reflect correct application of §§ 62-3-614 and 62-3-615 and analysis required of a reviewing court on appeal. Rather than addressing the statutory prerequisites for appointment of a Special Administrator and the effects of will-based priority, the circuit court accepted the Probate Court's conclusion without resolving the threshold legal defects presented. Even under a de novo standard applicable to legal questions, the circuit court was required to evaluate whether the Probate Court correctly applied §§ 62-3-614 and 62-3-615 and whether the appointment was authorized on the record presented.

Respondent argues that the Circuit Court properly conducted a de novo review; but the record demonstrates otherwise. Whether characterized as de novo review or independent appellate review of the controlling legal issues, the Circuit Court was required to independently apply the Probate Code to the record and resolve the statutory prerequisites governing appointment of a Special Administrator. Instead, the Circuit Court made no independent findings and did not address the threshold statutory defects raised by Appellant, but simply affirmed the Probate Court's reasoning. That procedure does not satisfy the requirement of independent judicial determination. *See Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993). Because the Circuit Court failed to apply the correct standard of review to the controlling issues of law, its January 27, 2025, Order must be reversed.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the circuit court's order and remand with instructions to vacate the Probate Court's appointment of a Special Administrator entered without the statutory predicates required by law, and for such other and further relief as the Court deems just and proper.

FERRARA LAW FIRM, PLLC
/s/ *Paul B. Ferrara, III*
Paul B. Ferrara, III
(S.C. Bar No. 70511)
8887 Old University Boulevard
North Charleston, SC 29406
T: (843) 569-5511 | F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for Appellant

January 20, 2026