

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2022-001602

Rene S. Wells and Wilson Shealy, Jr.,
as Co-Personal Representatives of
Wilson Shealy, Sr.,

Respondent,

v.

David Shealy,

Appellant.

David Shealy,

Appellant,

v.

Rene Shealy Wells, Wilson Shealy, Jr.,
Mimi Shealy,

Respondents. and

APPELLANT’S PETITION FOR REHEARING

Appellant David Shealy (“David”) hereby respectfully moves and petitions this court, pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, as well as all other applicable law, for an order granting rehearing in the above captioned matter on that portion of the court’s order filed January 14, 2026 affirming the trial court’s summary judgment that David’s claims against the Estate of William Shealy, Sr. (“estate”) are barred.

The Appellant respectfully submits the following points which were misapprehended or overlooked by the court:

1. THE COURT OVERLOOKS OR MISAPPREHENDS THAT THE ESTATE RESTORED THE CASE TO COMMON PLEAS DURING THE CLAIMS PERIOD MONTHS BEFORE THE ONE YEAR CLAIMS PERIOD EXPIRED.

While the primary arguments of counsel related to the interplay of Rule 40(j) SCRPC, S.C. Code Ann. §62-3-803(a)(1)(one year non-claim statute) and § 62-3-804(4)(the exception for actions pending on date of death), the court overlooks that the estate¹ restored the action to the active docket of the Court of Common Pleas for Lexington County during the claims period on February 25, 2021 shortly after the estate was opened on January 15, 2021.

Thus, a claim was pending between the estate and David within two months of the decedent's death and a little over a month after the estate was opened. It's not like David was filing a claim over one year after the decedent's death or over eight months after first publication of notice to creditors. The court overlooks that its ruling bars a claim even though the case was restored by the decedent's estate during the claims period and shortly after death of the decedent, well before the one year bar deadline under S.C. Code Ann. §62-3-803(a)(1) (one-year non-claim statute).

2. THE COURT UNDULY RELIES UPON THE DICTA IN GOODWIN AS CONTROLLING PRECEDENT.

The court states that this case is controlled by the precedent of *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 779 S.E.2d 826 (S.C. App. 2015). While *Goodwin* does discuss the application of Rule 40(j) it was only in dicta and was not necessary to the court's decision. In *Goodwin*, the Court of Appeals reviewed the circuit court's denial of a motion to restore a case because it was allegedly barred by the statute of limitations. The court noted that the statute of limitation was not even applicable because the action had already commenced and the case was stricken because of bankruptcy, not Rule 40(j). The *Goodwin* court did discuss the striking of a

¹ See ROA, pp. 54-56. While the movant was "the Plaintiff" at this time Wilson Shealy, Sr. had passed away on December 30, 2020, and his estate had been opened.

case under Rule 40(j) as the functional equivalent of a dismissal; however, the court also admitted that our rules do not clearly provide that striking a case pursuant to Rule 40(j) is a dismissal. *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 634, 779 S.E.2d 826 (S.C. App. 2015). The court further noted as adverse precedent, *Robinson v. J.F. Cleckley & Co.*, 751 F.Supp. 100, 105 (D.S.C.1990) (stating for purposes of calculating timely removal pursuant to 28 U.S.C. § 1446(b) (2012), “an action which has been removed from the docket pursuant to [Rule] 40(c)(3) is *pending* while it is off of the docket” and is not “commenced when it is restored to the calendar”). (*Emphasis added.*) As this is a novel issue the court should not rely on dicta in a case as controlling precedent where the rules do not clearly provide that striking a case under Rule 40(j) is a dismissal.

3. THE COURT FAILS TO APPREHEND THAT EVEN IF A CASE IS “DISMISSED” IT CAN STILL BE “PENDING” BECAUSE IT IS NOT FINALLY ADJUDICATED.

The court states in its opinion, “We do not see how a case could be simultaneously “dismissed” and “pending.” Part of the court’s misapprehension is due to focusing only on “dismissal” and not considering what “pending” means. The Appellant notes that the word “pending” is the word actually used in the statute.

Notwithstanding any other provision of this section, no presentation of a claim is required in regard to matters claimed in proceedings against the decedent which were *pending* at the time of the decedent’s death.” (*Emphasis added.*)

S.C. Code Ann. § 62-3-804(4) (2014).

The court overlooks the discussion in the Appellant’s brief about interpreting the word “pending” as used in the statute. Looking to other jurisdictions, Pennsylvania has held that, “Pendency, in practice, has been said to be ‘the state of an undetermined proceeding.’ 70 C.J.S., p. 420. Black’s Law Dictionary, 3rd Ed., p. 1345, defines the term as ‘the state of an action, etc.,

after it has been begun, and *before the final disposition of it.*” *School Dist. Of Robinson Twp. V. Houghton*, 387 Pa. 236, 241, 128 A.2d 58, 60 (Pa. 1956).

In Michigan, the Supreme Court referred to Black’s Law Dictionary (6th ed.) for the following definition of “pending”:

Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment. Awaiting an occurrence or conclusion of action, period of continuance or in determinacy. Thus, an action or suit is ‘pending’ from its inception until the rendition of final judgment.

Grievance Adm’r v. Fieger, 476 Mich. 231, 249, 719 N.W.2d 123, 136 (Mich. 2006).

In this case, these definitions of “pending” support a reading that David action was pending even though it was stricken from the active docket under Rule 40(j), as a final judgment had yet to be rendered on the claims. (See next point).

4. THE COURT OVERLOOKS LEGISLATIVE INTENT IN INTERPRETING S.C. CODE ANN. § 62-3-804(4) (2014).

In deciding to bar David’s claims based on its interpretation of S.C. Code Ann. § 62-3-804(4) (2014), the court focused on Rule 40(j) and not the legislative intent in interpreting the statute. The primary purpose in interpreting statutes is to ascertain the intent of the Legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In this case, S.C. Code Ann. § 62-3-804(4) (2014) is listed as a subsection of the overall section concerning the “Manner of presentation of claims.” S.C. Code Ann. § 62-3-804(4) (2014) is listed as an exception to the claim presentation requirements, prefaced with the phrase, “Notwithstanding any other provision of this section,”. Thus, the Legislature intended to provide a carve out from the presentation of claims requirement when a person had already filed a claim against the decedent at the time of his death which remains unresolved. When viewed in context with the S.C. Code Ann. §62-3-803(a)(1) (one-year non-claim statute), the Legislature wanted all claims against a decedent not filed or pending one year from date of death to be barred. ‘The statute

must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.’ *S.C. State Ports Auth. V. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). “We therefore should not concentrate on isolated phrases within the statute.” *Id.* “Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.” *Id.* Here, it is undisputed as set forth in point 1, that the estate restored the action to the active docket of the Court of Common Pleas for Lexington County during the claims period on February 25, 2021, shortly after the estate was opened on January 15, 2026. Therefore, a claim was pending against the estate almost ten (10) months before the end of the one year claim barring period, yet the court still held these claims are barred. This appears to be an absurd result and contrary to the intent of the Legislature. The Court will reject the plain meaning of the words used in a statute if it would lead to an absurd result and will “construe the statute so as to escape the absurdity and carry the intention into effect.” *Ray Bell Constr. Co. v. Sch. Dist. Of Greenville County*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998).

5. THE COURT OVERLOOKED THE SUBSTANTIAL OWNERSHIP ISSUES ENTWINED IN DAVID’S COUNTERCLAIMS WHICH PRECLUDE THEM FROM BEING “CLAIMS” UNDER THE PROBATE CODE.

The court overlooked the substantial ownership issues in ruling that David Shealy’s claims against the estate were barred by the nonclaim statute due to their nature as tort claims, for the recovery of money. His claims include substantial disputes regarding ownership of assets. In its opinion, the court notes,

David submitted an affidavit and an itemized list identifying the things he says were his. His submission included titles to several vehicles. He also described multiple firearms by model, caliber, distinguishing features, and even a serial number in one instance. Although Siblings contest David's ownership claims, Father's original complaint affirmatively stated that David owned some of the items stored on the family property.

Disputes regarding the title of assets are not “claims against a decedent’s estate” covered under § 62-3-803 of the South Carolina Probate Code. S.C. Code Ann § 62-2-803(a)(1) In

addition, § 61-1-201(4) of the South Carolina Probate Code specifically defines “claims” to not include “... demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.” S.C. Code Ann. § 62-1-201(4) (2014). Therefore, David Shealy’s claims are not “claims” under the nonclaim statute or any other provision of the Probate Code.

Additionally, South Carolina case law supports the proposition that David Shealy’s claims are not “claims” for the purpose of the § 62-3-803 nonclaim statute or other Probate Code Provisions. *See In re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993); see also *In re Estate of Tims*, No. 2021-UP-281, 2021 WL 3076685 (S.C. Ct. App. July 21, 2021). In *In re Howard*, the South Carolina Supreme Court rules that a dispute over the ownership of a gun was not subject to the nonclaim statute. 315 S.C. 356, 364, 434 S.E.2d 254, 259 (1993). The court wrote, “The definition of ‘claims’ in the Probate Code expressly excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate. S.C. Code Ann. § 62-1-201(4) (1986).” *Id.* at 356 n. 8., 434 S.E.2d at 259 n. 8. Furthermore, in *In re Estate of Tims*, the South Carolina Court of Appeals reaffirmed that, in regard to the § 62-3-803 nonclaim statute, “actions for specific assets are not barred because they are not actions or liabilities against Decedent’s estate, but disputes over ownership of specific assets in the hands of the personal representative(s).” *In re Estate of Tims*, No. 2021-UP-281, 3, 2021 WL 3076685, 1 (S.C. Ct. App. July 21, 2021).

The Probate Code and South Carolina courts have made clear that title disputes such as David Shealy’s are not “claims” under the nonclaim statute. The South Carolina Court of Appeals erred in determining that these were tort claims seeking damages from the estate, and that the nonclaim statute applied.

CONCLUSION

For the reasons set forth herein, the Appellant respectfully requests this court to grant this petition for rehearing and rehear this case or alter or amend its decision based on the points raised herein which were overlooked or misapprehended by the court.

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s/ J. Derrick Jackson

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