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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY COURT OF COMMON PLEAS
Hon. William A. McKinnon, Circuit Court Judge

Appellate Case No. 2025-002217
Lower Court Case No. 2024-CP-46-02169

In the Matter of: T.J. Martin

Virginia M. Morris, individually and in her capacity as Personal Representative of the Estate of T.J. Martin, Respondent,

v.

Pamela Ligato, as Guardian/Conservator for N.M.Y. a/k/a N.Y.M., a protected person, Appellant.

FINAL BRIEF OF RESPONDENT

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ARGUMENT

I. The Conservator Lacked Authority to Exercise the Right of Election Without a Court Order

The orders appointing the conservator and guardian did not include authority to exercise the elective share right. (R. 14-26) The Probate Court’s order authorized the conservator/guardian to “prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties,” (R. 16); language mirroring S.C. Code Ann. § 62-5-422 which sets out the powers of conservators. The guardianship order quoted S.C. Code Ann. § 62-5-304(B)(11) which states that a guardian may “bring or defend an action in law or equity.” (R. 26) However, the authority to exercise a spousal elective share is not included within those enumerated powers.

S.C. Code Ann. §§ 62-5-422 and 62-5-304 outline those actions a conservator or guardian may take without a specific court order, and neither statute references the elective share. S.C. Code Ann. § 62-2-203 specifically requires a court order to exercise the right of election on behalf of a protected person:

“In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending.”

This statutory requirement is clear and unambiguous.

It is undisputed that N.M.Y. aka N.Y.M. was a protected person as of September 19, 2023, when the elective share action was filed, and equally undisputed that no court order authorized the action. Therefore, under the plain language of S.C. Code Ann. § 62-2-203, the filing was unauthorized.

II. The Statutory Scheme Confirms Court Approval Is Required for a Protected Person’s Election

Appellant contends that S.C. Code Ann. §§ 62-5-304 and 62-5-422 implicitly authorize the conservator to exercise a right of election. This interpretation disregards the

plain statutory hierarchy. The South Carolina Supreme Court has long held that a specific statute controls over a general one when both could apply. See *Wilder v. South Carolina State Highway Dep't*, 228 S.C. 448, 90 S.E.2d 635 (1955). S.C. Code Ann. §§ 62-5-304 and 62-5-422 provide general grants of authority for legal actions, while S.C. Code Ann. § 62-2-203 addresses the specific issue of exercising an elective share on behalf of a protected individual. The specific statute must therefore control.

III. Practice in Other Jurisdictions Supports Respondent's Position

Although not directly on point as the issue raised in this case, the practice in states with similar statutes to this state is for a specific court order to be obtained for the exercise of a right of election.

In *Heartland v. Kaiser-Asmus*, 295 Neb 532, 891 N.W. 2d 84 (2017), the Nebraska court dealt with a statute which states “In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending.” *Neb. Rev. Stat. 30-2315 (Reissue 2016) Neb. Rev. Stat. 30-2653 (c) (24)* provides that a conservator “may act without court order or authorization or confirmation to.... Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties.” This is the identical language of the South Carolina statute. In *Heartland*, the conservator was appointed on July 23, 2014. The conservator filed a request for the Court to allow him to exercise the right of election on April 24, 2015. The issue in *Heartland* is not the same as the present case, but it is clear from *Heartland* that the conservator was required to seek permission of the court to exercise the right of election despite the language of 30-2653(c)(24) which allows a conservator to prosecute claims without court order or authorization.

The Minnesota statute has the identical language of S.C. Code Ann. §§62-2-203 and *Neb. Rev. Stat. 30-2315*. Minnesota statute 524.5-417(c)(3) give conservators the duty to

“collect all debts and claims in favor of the person subject to conservatorship” and to “institute suit on behalf of the person subject to conservatorship.” In *Re Guardianship of Durand*, 845 N.W. 2d 821 (Minn. 2014) the conservator was appointed in October 2010. On November 12, 2010, the conservator filed a petition for court authorization to file for an elective share. Although *Heartland* and *Durand* address different issues than those raised in the present case, it is clear from those cases that in states where the statutes are similar to the South Carolina statute, there is a requirement to obtain a court order before a conservator may exercise the right to an elective share. While S.C. Code Ann. § 62-2-203 does not give the court guidance on factors to consider in whether to grant the elective share as does the Nebraska and Minnesota statutes, the important factor is that a court order is required.

IV. Conclusion

Because South Carolina Code S.C. Code Ann. § 62-2-203 expressly requires a court order before exercising a right of election for a protected person, and because the conservator failed to obtain such an order, the Circuit Court correctly reinstated the statutory safeguard. Appellant’s interpretation would render S.C. Code Ann. § 62-2-203 meaningless, contrary to established canons of statutory construction and persuasive precedent.

For these reasons, the Circuit Court’s decision should be affirmed.

Respectfully submitted,
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