

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 TRACEY HINES,)
)
 Respondent.)
)
 vs.)
)
 TARSHA Y. ALEXANDER, Personal)
 Representative of the ESTATE OF)
 CLARENCE CEAL ALEXANDER,)
)
 Appellant,)
)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO: 2013-CP-10-5993

ORDER

RECEIVED
 FEB 19 2015
SC Court of Appeals
Background

FILED
 2015 JAN 16 PM 4:33
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

This matter came before this Court on appeal from a decision of the Honorable Irvin G. Condon in the Charleston County Probate Court, Case No. 2011-ES-10-1300, dated October 3, 2013. Oral Arguments were held on November 18, 2014. The Appellant was represented by Ira D. Levy, Esquire and the Respondent was represented by Ashley G. Andrews, Esquire.

Facts and Procedural History

Clarence Ceal Alexander, the decedent, died intestate on September 2, 2011. Appellant filed an informal application for appointment of a Personal Representative of the Estate of Clarence Ceal Alexander on September 8, 2011. Despite having reason to believe that Respondent was a child of the decedent, Appellant did not inform the court that he had an equal right to appointment, did not obtain a Renunciation of Right to Administration from the Respondent, and did not list the Respondent as an intestate heir of the estate. The Probate Court appointed Respondent as Personal Representative of the estate on September 8, 2011. The Probate Court administered the estate informally in accordance with S.C. Code Ann. § 63-3-301,

et seq. based on the information provided by the Appellant.

The procedural history is as follows:

1. On October 9, 2012 the Respondent filed a Summons and Petition for Inclusion as Heir.
2. An Order for Inclusion as Heir was issued by Judge Condon on March 27, 2013.
3. Appellant filed a Rule 59(e) Motion to Alter or Amend on April 8, 2013 and filed an amendment to the Motion on April 9, 2013.
4. Respondent filed a Reply to Respondent's Amended Rule 59(e) Motion to Alter or Amend on May 14, 2013.
5. An Order Affirming in Part and Denying in Part Respondent's Rule 59(e) Motion to Alter or Amend was issued by Judge Condon on October 3, 2013.

The Probate Court had before it the following evidence which was admitted without objection:

1. Funeral announcement for Clarence Ceal Alexander which listed Respondent as a child of the decedent and Respondent's children as grandchildren of the decedent. (Return, pages 281-283)
2. Undated letter from Appellant to Respondent indicating that Appellant and Clarence Alexander, the decedent's other son, would include Respondent as an heir to the estate if Respondent could provide conclusive DNA testing to show that he was a child of the decedent. (Return, page 327)
3. Laboratory Corporation of America document dated November 11, 2012 indicating that there was a 99.51% probability that John Alexander, the decedent's brother, was the paternal uncle of the Respondent. (Return, page 321)

4. Testimony of Tracy Hines. (Return, pages 280-285)
5. Testimony of John Alexander. (Return, pages 285-291)

Questions Presented

1. Did the probate court err in finding that a letter from Appellant to Respondent was “a valid and enforceable unilateral contract” that bound an estate beneficiary to its terms?
2. Did the Probate Court err in failing to dismiss respondent’s petition for inclusion as heir because that cause of action is barred by S.C. Code of Laws § 62-2-109(2)(iii) (1976, as amended)?

Standard of Review

S.C. Code Ann. § 62-1-308(a) provides that an appeal from a final order of the probate court must be to the circuit court. The standard of review in the circuit court will be determined by the nature of the action, that is, whether the action is at law or in equity. *Dean v. Kilgore*, 313 S.C. 257, S.E.2d 154 (Ct. App. 1993). When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them. See *Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (S.C. 2005). If the action is at law, then the circuit Court must determine whether there is any evidence in the record to support the factual findings of the probate court. If the action is in equity, the circuit Court is free to find facts in accordance with its own view of the preponderance of the evidence. See *Golini v. Bolton*, 326 S.C. 333, 338-339, 482 S.E.2d, 794 (Ct. App. 1997).

The Court finds that while the questions presented by Appellant are questions of law, that this case is controlled by equity.

Discussion

The Appellant has raised the issue of whether or not S.C. Code of Laws § 62-2-109(2)(iii), and the time limits contained therein, is a bar to Respondent’s Petition for Inclusion

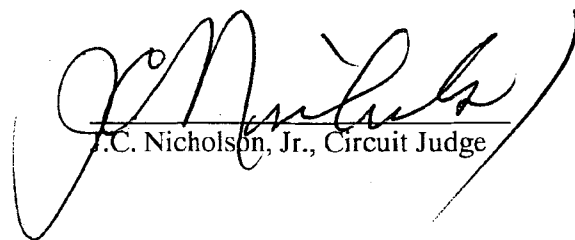
as Heir. Based on a review of the record before this Court, I find that there is substantial evidence to support the ruling of the Probate Court. The Probate Court found, and this Court agrees, that Appellant had reason to believe that Respondent was the biological child of the decedent and failed to give notice to the Probate Court or to the Respondent that the Respondent was an intestate heir to the estate. Accordingly, the Probate Court properly applied the laws of equity which bar the Appellant from prevailing on a claim that Petitioner failed to timely act upon the issue of parentage when he was not made aware that his paternity was at issue until after the time for proving such had passed.

I find that there is sufficient evidence to support the Probate Court's finding that Respondent is the biological son of the decedent and should be included as an heir to the estate of Clarence Ceal Alexander.

I find that it is not necessary to address the issue of whether or not a unilateral contract existed, because even in the absence of a unilateral contract, Respondent still has a right to inherit from the estate.

THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that the Appellant's Appeal is dismissed, and the Order of the Probate Court for Charleston County dated October 3, 2013 is hereby AFFIRMED.

AND IT IS SO ORDERED!


J.C. Nicholson, Jr., Circuit Judge

Charleston, South Carolina
January 13, 2015

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NO. 2013-CP-10-5993

RECEIVED

FEB 19 2015

Tracey Hines
 PLAINTIFF(S)

Tarsha Alexander
 DEFENDANT(S)

SC Court of Appeals

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2015 JAN 16 PM 4:33
 JULIE J. ARMSTRONG
 CLERK OF COURT
 FILED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Handwritten Signature]
 Circuit Court Judge

2117
 Judge Code

1/13/15
 Date