

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2012-CP-02-01059

RECEIVED

APR 16 2015

Jacquelyne Hollander, Appellant,

SC Court of Appeals

v.

The Irrevocable Trust Established by James Brown on August 1, 2000 and Russell L. Bauknight, as Trustee of the Irrevocable Trust established by James Brown in August 1, 2000, Defendants,

Of whom Russell L. Bauknight is the Respondent.

PETITION FOR REHEARING

April 14, 2015

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It appears from this Honorable Court's Opinion of April 1, 2015 that the dismissal Order of the Trial Court is affirmed due to the Appellant's alleged failure to challenge the Trial Court's findings that the Complaint was not filed within the time required by the statute of limitations. This is an erroneous conclusion based upon the Trial Court's unorthodox handling of the case.

The Respondent never briefed his arguments to the Trial Court before oral arguments. After oral arguments the Trial Court eschewed having the arguments actually briefed, but instead sought alternative orders to be submitted by both sides. It was in those Proposed Orders where the arguments were made for consideration by the Trial Court.

Appellant's Proposed Order stated, in relevant part:

STATUTE OF LIMITATIONS

The record indicates that Plaintiff first appeared pro se in this matter under case number 2008-CP-02-1647 on January 28, 2009. Plaintiff has filed a motion with the Court under Rule 42, SCRCF, to consolidate this action with that case.

The Court did recognize Plaintiff's interest in the litigation and her cause of action in Illinois in its Settlement Order of May 26, 2009 and entered the Settlement Order intending to effectively settle all matters before the Court, including Plaintiff's interest in the Trust.

Although this particular action was filed on March 13, 2012 after the three-year statute of limitations period expired, the continuity of this litigation related back to Plaintiff's initial appearance of January 28, 2009 which was not formally dismissed until June 17, 2013.

Plaintiff's Complaint is also replete with allegations that the conduct of the Attorney General created in Plaintiff the reasonable belief that she could not proceed with her litigation in this Court. This is further supported by her efforts in litigation through other jurisdictions based upon the same cause of action pled herein.

Taking the Complaint as true for purposes of the motion to dismiss and the facts pled in a light most favorable to Plaintiff, the Complaint alleges sufficient facts that would estop Defendants from their argument that Plaintiff commenced this action after her statutory period has run.

Therefore, the issue was raised at the Trial Court and ruled on by it before it was brought to this Honorable Court for review. It was the Trial Court that chose the means for evaluating the issues (through proposed orders rather than through briefs) but it remains that the issues were presented and ruled on accordingly.

The precedents cited by this Honorable Court did not address a similar situation. In each case the record was devoid of the issues being raised at the Trial Court prior to being raised at the Court of Appeals.

Further, Appellant asks that this Honorable Court consider the uniqueness of this case. It appearing that the Trial Court may have acted arbitrarily in its handling of important issues in this case, contrary to the prior Orders of the Supreme Court of South Carolina, the Supreme Court has sought review over all Orders issued by the Trial Court during the period since their decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E. 2d, 746 (2013) including the order in this action. (See docket entry March 13, 2013). The Trial Court has failed to give Appellant a fair hearing on the facts, which is all that she has sought herein.

CONCLUSION

For the reasons stated, this Court should provide a hearing en banc on the matters herein.

Respectfully submitted,

April 14, 2015



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