

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-000330

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SC Court of Appeals

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Arguments

1. Because Clarence A. Alexander was not a party to any contract with Respondent, the Probate Court erred in its finding that a valid contract binding Mr. Alexander to its terms existed 2

2. Because Respondent’s paternity was not established by an adjudication commenced before Decedent’s death or within the later of eight months after Decedent’s death or six months after the appointment of a personal representative of Decedent’s Estate, Respondent is barred from inheriting from Decedent’s Estate 3

Conclusion 8

TABLE OF AUTHORITIES

CASES

Sauner v. Pub. Serv. Auth. of S. Carolina, 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003) 3

Smith v. Doe, 357 S.C. 303, 592 S.E.2d 322 (S.C.App. 2003) 6

Smith v. Doe, 366 S.C. 469, 623 S.E.2d 370 (S.C. 2005) 6

Phillips v. Quick, 399 S.C. 226, 731 S.E.2d 327 (S.C.App. 2012) 6

Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (S.C. 1994) 6-7

Collins v. Sigmon, 299 S.C. 464, 385 S.E.2d 835 (S.C. 1989) 7

Pinckney v. Warren, 344 S.C. 382, 544 S.E.2d 620 (S.C. 2001) 8

STATUTES

S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended) 4

S.C. Code of Laws § 62-1-103 (1976, as amended) 6

OTHER AUTHORITIES

Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37. 8

STATEMENT OF ISSUES ON APPEAL

- I. 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?

- II. Did the Circuit Court err in affirming the Probate Court’s Order which failed 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)(ii) (1976, as amended)?

STATEMENT OF THE CASE

Clarence Ceal Alexander (“Decedent”) died September 2, 2011. The Charleston County Probate Court appointed Decedent’s daughter, Tarsha Y. Alexander (herein “Appellant”), Personal Representative of Decedent’s Estate on September 8, 2011. (Application for Informal Appointment filed September 8, 2011, p. 5.). On the Application, Appellant listed her brother, Clarence A. Alexander, and herself as intestate heirs of Decedent. *Id.* at 2. Tracy Hines (herein “Respondent”) filed a Petition for Inclusion as Heir with this Court on October 9, 2012. (Summons and Petition for Inclusion as Heir filed October 9, 2012.) A hearing was held on Respondent’s Petition on January 16, 2013, resulting in a March 27, 2013, Probate Court Order.

On April 8, 2013, in the Probate Court, Appellant filed an Amended Rule 59(e) Motion to Alter or Amend the Probate Court’s March 27, 2013, Order. A hearing was held in the Probate Court on July 10, 2013, resulting in an October 3, 2013, Order. On October 11, 2013, Appellant filed the Notice

of Appeal of the Probate Court's October 3, 2013, Order and served Respondent.

On November 21, 2013, Appellant filed her brief and served Respondent. Almost one year later, on November 14, 2014, Respondent filed his brief. On November 18, 2014, Appellant filed a Motion to Strike Respondent's brief.

On November 18, 2014, the Circuit Court heard the Appeal of the Probate Court's October 3, 2013, Order. The Court denied Appellant's Motion to Strike Respondent's brief; however, the Court afforded Respondent the opportunity to file a Reply. (Tr. at 4, November 18, 2014, lines 8-10.) The Circuit Court issued its Order dated January 13, 2015. On February 13, 2015, Appellant filed the Notice of Appeal of the Circuit Court's January 13, 2015, Order and served Respondent.

ARGUMENTS

I. Because Clarence A. Alexander was not a party to any contract with Respondent, the Probate Court erred in its finding that a valid contract binding Mr. Alexander to its terms existed.

The Probate Court ruled *sua sponte* in its March 27, 2013, Order that "the letter delivered to Petitioner on or about November 8, 2012, was a Private Agreement, pursuant to S.C. Code Ann. § 62-3-912." (Order, October 3, 2013, p. 4.) The Court then states that it "accepts the Respondent's argument that the letter does not fully comply with" the statute. Id. But

again *sua sponte*, the Court goes on to rule that it “still finds the letter to be a valid and enforceable unilateral contract,” Id., even though an estate beneficiary, Clarence A. Alexander, was not a party and despite citing Sauner v. Pub. Serv. Auth. of S. Carolina, 354 S.C. 397, 405, 581 S.E.2d 161, 165-66 (S.C. 2003) for authority that “[a] unilateral contract exists when there is only one promisor . . .”

Most alarming, the sentence in the Court’s Order, “In the case at hand, Respondent and Clarence A. Alexander offered to include Petitioner as an heir to the Estate,” (Id. at p. 5) is factually incorrect. There is no evidence that Clarence A. Alexander made any such offer. Moreover, there is no statute or other law in South Carolina that grants a Personal Representative the authority to bind an estate beneficiary to a contract with a third party.

II. Because Respondent’s paternity was not established by an adjudication commenced before Decedent’s death or within the later of eight months after Decedent’s death or six months after the appointment of a personal representative of Decedent’s Estate, Respondent is barred from inheriting from Decedent’s Estate.

A. PRELIMINARY MATTERS

Subsequent to Decedent’s death but prior to Appellant’s opening of Decedent’s Estate and her appointment as Personal Representative, Respondent was listed in Decedent’s obituary as a child of Decedent’s. However, argument was proffered without objection at hearing on January 16, 2013, that Appellant “was not interested . . . in disagreement at that time

in the funeral home when they were coming up with that.” (Tr. at 29, lines 4-6, January 16, 2013.)

Furthermore, John Alexander, Decedent’s brother, provided testimony at hearing on January 16, 2013, that Decedent acknowledged Respondent as his son during his lifetime. Appellant’s attorney reminded the Court at the July 10, 2013, Motion Hearing that Decedent was incapacitated for at least the last thirty-five years of his life, and Decedent referred to other people as his child who were not actually his child. (Tr. at 18, lines 13-16, July 10, 2013.) Additionally, addressing the DNA evidence that states a probability that John Alexander is the uncle of the child, Appellant’s attorney reminded the Court at the January hearing “that the Decedent had seven or eight siblings.” (Tr. at 28, lines 24-25, January 16, 2013.)

B. S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended)

S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended), in pertinent part, states that

[i]f, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, . . . a person born out of wedlock is . . . a child of the father if . . . paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate.

Since Respondent filed his Petition for Inclusion as Heir on October 9, 2012, over thirteen months after Decedent's death and appointment of personal representative, attorney for the Appellant at the January 16, 2013, hearing cited § 62-2-109(2)(ii), moved the Court to dismiss the Petition (Tr. at 27, lines 9-11, January 16, 2013), and stated that "the claim is clearly barred." (Tr. at 29, lines 13-15, Jan. 16.)

In response, the Probate Court stated that it would take the issue of the statute raised by Appellant's attorney under advisement. (Tr. at 29, lines 20-21, Jan. 16.) The Court stated, "The issue we have is we've got a statute that requires you to bring your action within a period of time." (Tr. at 30, lines 2-4, Jan. 16.) Finally, the Court stated that it would research the issue and issue an opinion. (Tr. at 30, lines 24-25, Jan. 16.)

The issue that the Probate Court indicated at trial that it would conduct further research on was whether § 62-2-109 was a statute of limitation. If the statute was a statute of limitation, the Court reasoned, then Appellant needed to raise the statute as a defense in an Answer, or the defense would be waived. However (and inexplicably), the Probate Court made no mention of § 62-2-109 in its March 27, 2013, Order, or in its October 3, 2013, Order.

Regarding the Probate Court's query, whether § 62-2-109 might be a statute of limitation that Appellant had to raise in an Answer, else waive,

South Carolina's courts have spoken clearly. South Carolina's Probate Code does not provide a statute of limitations for determining paternity. Smith v. Doe, 357 S.C. 303, 307 n.3, 592 S.E.2d 322, 325 n.3 (S.C.App. 2003). "[W]e affirm the court of appeals, but hold that there is no statute of limitations that is applicable for an action to determine paternity." Smith v. Doe, 366 S.C. 469, 623 S.E.2d 370, 372 (S.C. 2005). Therefore, § 62-2-109 is a mandatory statute that cannot be waived. The statute's time requirements must be strictly complied with.

Regarding whether Appellant should have provided any notice to Respondent upon her appointment as Personal Representative, Respondent has cited S.C. Code of Laws § 62-1-103 (1976, as amended) for its proposition that "the principles of law and equity supplement" the Probate Code. Pet.'s Memo. in Support of Pet.'s Reply filed May 14, 2013, p.3. In response, Appellant cited Phillips v. Quick, 399 S.C. 226, 731 S.E.2d 327, 329 (S.C.App. 2012) for its proposition that "[w]hile equitable principles may extend the time for commencing an action under statutes of limitation, [the Probate Code's] nonclaim statutes . . . are not subject to equitable exceptions." Tr. at 19, lines 23-25, at 20, line 1, July 10, 2013. Stated differently, there are statutes in the Probate Code that are not subject to equitable exceptions.

"Commonly, the illegitimate heir must raise the issue to be included in the intestate succession of the father." Parker v. Parker, 313

S.C. 482, 486, 443 S.E.2d 388, 390 (S.C. 1994). To inherit, § 62-2-109's provisions must be strictly adhered to. If equitable remedies were available to Respondent, then equitable defenses would be available to the Appellant, and Appellant raised them at the July 10, 2013, Motion Hearing, namely that equity aids the vigilant and the diligent. Tr. at 22, lines 5-6, July 10, 2013. See generally, Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837-38 (S.C. 1989) (applying the ancient maxim "equity aids the vigilant and diligent" and not those who sleep on their rights). Appellant further remarked at the July 10, 2013, hearing that "[h]ere the Petition[er] was not lulled into inaction." Tr. at 21, lines 1-2, July 10, 2013. "[H]e telephoned . . . the Personal Representative for six or eight months, and she would never call him back. He didn't want to bother and stopped bothering her. [One] would think that would set off alarm bells and set a fire under him to act. There's a statute that controls [when] you can petition the court to be included as an heir." Id. at lines 4-14. The applicable statute requires that an adjudication of paternity must be filed no later than eight months after the Decedent's death or six months after the initial appointment of a personal representative, and, in the case at bar, Respondent's Petition for Inclusion as Heir was filed October 9, 2012, over one year after Decedent's death and appointment.

Professor Alan S. Medlin from the University of South Carolina School of Law, a recognized authority on probate law, states that § 62-2-109 “requires the adjudication to be commenced by the later of eight months after the father's death or six months after the probate of his estate. **If the adjudication is not commenced in time, the illegitimate child cannot inherit under intestacy.**” Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37. (Emphasis provided.) In fact, Professor Medlin goes on to state that even when an illegitimate child is acknowledged by the father, South Carolina’s Probate Code does not permit inheritance by an illegitimate child for whom paternity has not been adjudicated. Id.

Citing the United States Supreme Court, South Carolina’s Supreme Court remarked that “certain children will not be able to inherit from their biological fathers even [when] paternity is not disputed.” Pinckney v. Warren, 344 S.C. 382, 393, 544 S.E.2d 620, 626 (S.C. 2001). “While this may be unfortunate, the United States Supreme Court found the strict paternity requirement was necessary, as a matter of public policy.” Id.

CONCLUSION

For the reasons stated, this Court should reverse the judgements of the Circuit Court and the Probate Court, since Respondent/Petitioner’s claim for Inclusion as Heir was brought outside of the statutory time frame.

Respectfully submitted,



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