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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court

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

Appellate Case No. 2015-000330

Tracy Hines,

Respondent,

v.

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

Appellant.

FINAL BRIEF OF RESPONDENT

July 22, 2015

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Probate Court correctly find that Appellant was barred by equity from prevailing on a claim that Respondent 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?
- II. Did the Probate Court correctly find that a letter, signed by the Appellant who was personal representative of the Decedent's estate and who had the authority to make an offer of settlement on behalf of the estate, was a valid and enforceable unilateral contract?

STATEMENT OF THE CASE

Clarence Ceal Alexander ("Decedent") died intestate on September 2, 2011. (R. p. 2) Decedent's obituary stated that he was survived by three children, to wit: Appellant, Clarence A. Alexander, and Respondent. (R. p. 183) Appellant filed an Application for Informal Appointment in the Matter of: Clarence Ceal Alexander on September 8, 2011 in the Probate Court for Charleston County as Case No. 2011-ES-10-1300. (R. pp. 16-21) Appellant did not list Respondent as an intestate heir of the estate. (R. p. 17) The Probate Court appointed Respondent as Personal Representative of the estate on September 8, 2011. (R. p. 20) On October 9, 2012 the Respondent filed a Summons and Petition for Inclusion as Heir ("Petition") alleging he was the biological son of the Decedent and had not been provided with required notice by the personal representative of Decedent's estate. (R. pp. 22-24) Appellant was personally served with a copy of the Summons and Petition on October 16, 2012. (R. p. 25) Appellant did not file an answer or other responsive pleading to the Petition. (R. p. 98, lines 6-10) A hearing on the Petition was held on January 16, 2013 and an Order for Inclusion as Heir was issued by the Honorable Irving G. Condon on March 27, 2013. (R. pp. 2-4) As it pertains to this appeal, the Probate Court found that Respondent was the biological son of the Decedent and should

be included as an heir to Decedent's estate. (R. p. 3) It should be noted that Appellant was the Respondent in the Probate Court and Respondent was the Petitioner. Appellant filed an amended Rule 59(e) Motion to Alter or Amend; Memorandum in Support of Motion to Alter or Amend on April 9, 2013. (R. pp. 26-31) Respondent filed a Reply to Appellant's Amended Rule 59(e) Motion to Alter or Amend on May 14, 2013. (R. pp. 32-39) 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. (R. pp. 5-10) As it pertains to this appeal, the Probate Court 1) affirmed its finding that Respondent was the biological son of the Decedent and should be included as an heir of the Decedent's estate, and 2) found that a letter written by Appellant on or about November 5, 2012 created a valid and enforceable unilateral contract to include Respondent as an heir to the Decedent's estate. (R. pp. 6-10)

Appellant then filed a Notice of Appeal to the Circuit Court on October 11, 2013. (R. p. 40) The Notice of Appeal was served on Respondent on October 11, 2013. (R. p. 44) Appellant's brief was filed on November 21, 2013. (R. pp. 45-51) The Probate Court's Return was filed on September 5, 2014. (R. p. 53) Respondent's brief was filed on November 14, 2014. (R. pp. 54-58) Appellant's Final Reply Brief was filed on December 14, 2014 (R. pp. 62-67) After oral arguments were heard on November 18, 2014, the Honorable J.C. Nicholson, Jr. issued an Order dismissing Appellant's appeal. (R. pp. 12-15) Appellant filed a Notice of Appeal to the Court of Appeals on February 13, 2015. (R. p. 187) Respondent was served with a copy of the Notice of Appeal to the Court of Appeals on February 13, 2015. (R. p. 189)

ARGUMENT

- I. The Probate Court was correct in finding that Appellant was barred by equity from prevailing on a claim that Respondent 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.

The operative fact in this case is that Respondent knew, or had reason to know, that Appellant was the biological child of Decedent, and still did not provide Respondent or the Probate Court with notice that Respondent was an intestate heir of the estate. Respondent presented both testimony and evidence at the January 16, 2013 hearing to support the allegations set forth in the Petition. (R. p. 75, line 11-p. 78, line 6; R. p. 79, line 8-p. 80, line 8; R. p. 82, line 15-p. 85, line 1; R. p. 86, line 14-p. 87, line 18) Decedent's obituary, which listed Respondent as Decedent's son, was entered into evidence. (R. pp. 182-183) John Alexander, brother of Decedent, gave testimony that Respondent was the son of Decedent and that Respondent attended family reunions and family functions with Decedent. (R. p. 82, line 15-page 85, line 1; R. p. 86, line 14-p. 87, line 18) Also admitted into evidence was a picture. John Alexander testified that the picture was taken approximately twenty years before and that the people in the picture were John Alexander, John Alexander's son, John Alexander's brother Eddie, Respondent, and Decedent. (R. p. 184) Demetira June also testified at the hearing. (R. p. 89, line 20-p. 91, line 14) She testified that Appellant acknowledged that Respondent's daughter was Decedent's granddaughter when Decedent's funeral was being planned and that Clarence A. Alexander gave no indication that that Respondent was not his brother. Appellant did not file any responsive pleadings and did not provide testimony or evidence at the hearing to support a claim that she did not believe Respondent was Decedent's son. While Appellant's counsel did argue that Appellant did not want to have

not want to have any disagreement at the funeral home, counsel's statements do not constitute evidence. *See Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (arguments of counsel are not evidence). Likewise, counsel's statements regarding Decedent's capacity and the number of siblings of Decedent are mere statements and not evidence to be considered in this appeal.

Appellant argues that S.C. Code Ann. § 62-2-109(2)(ii) should be a bar to Respondent's inclusion as an heir. The statute begins with the word "if." In the case of *Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388 (1994) the Supreme Court of South Carolina noted that the circuit court relied on the preamble to the statute, the word "if," to conclude that "an adjudication of paternity under S.C. Code Ann. § 62-2-109 was necessary only in those cases where paternity was questioned" (emphasis added). The Supreme Court of South Carolina went on to state, "The circuit court reasoned, and we agree, that if paternity is questioned by either the personal representative or other interested party ... then such action must be brought within the statutory time frame of six months after the death of the father." *Id.* at 390. Further, the Court found, "The plain meaning of the statute does not delineate which party must raise parentage as an issue; however, obviously that burden must rest with any party with an actual dispute about the parentage." *Id.* In the instant case, Respondent never questioned his parentage. He was only made aware that the Appellant questioned his parentage on or about November 8, 2012 at which time he promptly provided proof that he was Decedent's son. (R. p. 177) If Appellant's argument that S.C. Code Ann. § 62-2-109(2)(ii) is a statute of limitations is to be believed, then by her own argument, Appellant was time barred from raising the question of parentage in November of 2012.

While Appellant has cited case law and an article written in 1990 by Alan S. Medlin, the cases and the article do not apply to the facts of this case, the most glaring fact being that a personal representative failed to give notice to an heir that an estate was being probated and then sought to exclude the heir arguing that the heir was time barred from presenting his claim. It should be noted, that by excluding the Respondent from the estate that Appellant would benefit monetarily. Further it was a breach of Appellant's fiduciary duty as personal representative not to provide Respondent with notice of her appointment pursuant to S.C. Code Ann. § 62-3-705.

- II. The Probate Court was correct in finding that a letter, signed by the Appellant, personal representative of the Decedent's estate, was a valid and enforceable unilateral contract.

S.C. Code of Ann. § 62-3-715(8) allows a personal representative to satisfy and settle claims and distribute the estate as provided in the Probate Code. After being served with Respondent's Petition, Appellant wrote Respondent a letter on or before November 5, 2012. (R. p. 177) A copy of the letter was also provided to the Charleston County Probate Court and to Clarence A. Alexander. The letter stated, in part, "Clarence A. Alexander and I will gladly oblige and include Mr. Hines as an heir to the Estate of Clarence C. Alexander, upon being provided conclusive DNA testing from a licensed DNA lab showing that you, Mr. Tracy Hines, are the biological child of Clarence C. Alexander." On November 19, 2012, Respondent and John Alexander, brother of the Decedent, had blood drawn by LabCorp and on November 29, 2012 Michael W. Schmiederer, Ph.D., MT, and Director certified that the probability that John Alexander was the uncle of Respondent was 99.51%. (R. p. 179)

"The necessary elements of a contract are offer, acceptance, and valuable

acceptance in the offeree.” Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 584 S.E.2d 161, 166 (2003) (quoting Carolina Amusement Co. v. Conn. Nat’l Life Ins. Co., 313 S.C. 215, 437 S.E. 2d 122 (Ct. App. 1993)) “A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance.” Id. at 405, 165-66. In the case at hand, the personal representative, acting under the authority granted to her, made a promise to include the Respondent as an heir to the Decedent’s estate if Respondent would provide conclusive DNA evidence that Respondent was Decedent’s son. Respondent provided said DNA evidence and accepted Appellant’s offer through his performance.

CONCLUSION

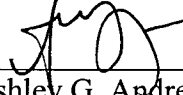
Based upon the evidence of record and the reasons stated herein, the Court of Appeals should affirm the Probate Court’s ruling that Respondent is the biological son of Clarence Ceal Alexander, the decedent, and should be included as an heir to the estate of Clarence Ceal Alexander and that it would be a gross inequity for Appellant to prevail based on a claim that Respondent failed to timely act upon the issue of parentage when he was not made aware that it was an issue until after the time for proving such had passed.

Pursuant to Rule 208(b)(2) and Rule 220(c), SCACR, Respondent requests that the Court affirm the Probate Court’s ruling that Respondent is the biological son of Clarence Ceal Alexander, the decedent, and should be included as an intestate heir to the estate of Clarence Ceal Alexander.

(Signature page to follow.)

July 22, 2015

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Ashley G. Andrews', written over a horizontal line.

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Tarsha Y. Alexander, Personal Representative
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Appellant.

CERTIFICATION OF COMPLIANCE WITH RULE 211(b), SCACR

I certify that I the Final Brief of Respondent, filed simultaneously herewith,
complies with Rule 211(b), SCACR.

July 22, 2015



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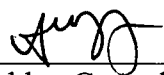
Tarsha Y. Alexander, Personal Representative
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Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Tarsha Y. Alexander, Personal Representative of the Estate of Clarence Ceal Alexander, by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2015, addressed to her attorney of record, Ira D. Levy, PO Box 31304, Charleston, SC 29417.

July 23, 2015



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