

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002417

RECEIVED

JAN 21 2016

SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown..... Petitioner below,

v.

David C. Sojourner, Jr., in his capacity
as Limited Special Administrator and
Limited Special Trustee, Deanna Brown-Thomas,
Yamma Brown, Venisha
Brown, Larry Brown, Terry Brown and
Daryl Brown..... Respondents below,

Of which Deanna Brown-Thomas, Yamma Brown, Venisha
Brown are the Appellants,

and

Tommie Ray Brown is the Respondent.

**APPELLANTS' RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL**

Appellants Deanna Brown-Thomas, Dr. Yamma Brown, and Venisha Brown
hereby submit this Return in Opposition to Respondent's Motion to Dismiss. On January
13, 2015, the circuit court entered the Order Re: Petitioner Tommie Rae Brown's Motion

for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment (the "Summary Judgment Order"), and on October 26, 2015, the circuit court entered the Order Re: Respondent's and Amici Curiae's Motions to Alter, Amend or Reconsider Order Re: Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment (the "Reconsideration Order") (collectively, the "Orders").

The Orders are immediately appealable because Respondent's Motion for Summary Judgment on the spousal issue was granted. The Summary Judgment Order finally determined the ultimate issue of whether Respondent was the valid spouse of the decedent, on the merits, and did not merely address Respondent's standing to bring her omitted spouse and elective share claims. Furthermore, the denial of Appellants' Motion for Summary Judgment was not for the purpose of developing a factual record, but because the circuit court judge already had fully determined the issue in Respondent's favor. For these reasons, Appellants respectfully request this Court deny Respondent's Motion to Dismiss Appeal.

DISCUSSION

I. The Orders are Immediately Appealable Because they Involve the Merits and Grant a Motion for Summary Judgment.

Respondent argues that the circuit court's Summary Judgment Order granting Respondent's motion for summary judgment and denying the Limited Special Administrator's (the "LSA's") motion for summary judgment is unappealable. However, Respondent's arguments are not supported by the law of this State.

The Summary Judgment Order states:

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that ***Tommie Rae Brown is the surviving spouse of James Joseph Brown.***

...

It is further ORDERED, DECREED and ADJUDGED that the ***Petitioner Tommie Rae Brown's Motion for Summary Judgment on her status as James Joseph Brown's wife and surviving spouse is granted,*** and the Limited Special Administrator's Motion for Summary Judgment is Denied.

(Summary Judgment Order, p. 46) (emphasis added).

Section 14-3-330 of the South Carolina Code (1976) governs whether an interlocutory order is immediately appealable. *See N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986) ("The right of appeal arises from and is controlled by statutory law. The jurisdiction of appellate courts is prescribed by S.C. Code Ann. § 14-3-330 (1976) and is defined in numerous decisions of this Court and the Court of Appeals."). "An order generally must fall into one of several categories set forth in [section 14-3-330] in order to be immediately appealable." *State v. Wilson*, 387 S.C. 597, 600, 693 S.E.2d 923, 924 (2010).

Section 14-3-330 allows for appeals of interlocutory orders in the following instances:

(1) ***Any intermediate judgment, order or decree in a law case involving the merits*** in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) ***An order affecting a substantial right made in an action when such order*** (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants

or refuses a new trial or (c) *strikes out an answer or any part thereof or any pleading in any action;*

* * *

S.C. Code Ann. § 14-3-330(1)–(2) (emphasis added).

The Summary Judgment Order granting the Respondent’s Motion for Summary Judgment on the spousal issue fully and finally determined, on the merits, that Respondent was the surviving spouse of the decedent and effectively struck out Appellants’ defenses regarding the validity of her marriage to the decedent. The Supreme Court has stated, “An order ‘involves the merits,’ as that term is used in Section 14-3-330(1) and is immediately appealable *when it finally determines some substantial matter forming the whole or part of some cause of action or defense*” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006) (emphasis added). Because the circuit court’s order fully and finally determined the spousal issue, because no further act is required by the circuit court regarding the determination of that issue, and because the order effectively strikes out Appellants’ defenses regarding the validity of Respondent’s marriage to the decedent, the Summary Judgment Order is an immediately appealable order under sections 14-3-330(1) and 2(c).

The law is well-settled that an order *granting* summary judgment is appealable. *See, e.g. Grimsley v. S.C. Law Enf’t Div.*, No. 2014-001059, 2015 WL 9315569, at *3 (S.C. Dec. 23, 2015); *Azar v. City of Columbia*, 414 S.C. 307, 310, 778 S.E.2d 315, 316 (2015), *reh’g denied* (Nov. 19, 2015); *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). It is entirely appropriate for Appellants to appeal the circuit court’s *grant* of summary judgment on the spousal issue and to ask the appellate court to

consider whether the circuit court's final judgment on that issue was erroneous. Accordingly, Respondent's motion to dismiss this appeal must be denied.

Respondent's position is that granting summary judgment for one party on an issue and denying the other parties' motions on the same issue is unreviewable. Such a position leads to an absurd result and does not find support in the law. The cases cited by the Respondent that the denial of summary judgment is never appealable are inapposite here because what is being appealed is the circuit court's *grant* of summary judgment on the spousal issue. The LSA and Respondent filed cross-motions for summary judgment on the same legal issue: whether the Respondent is the surviving spouse of the decedent. The circuit court fully and finally determined that issue, and this Court will be considering the same facts and the same law considered by the circuit court in making an ultimate determination of the issue.

This is not a situation where the lower court granted summary judgment on one legal issue and denied summary judgment on an entirely separate legal issue. Nor is this a situation where the circuit court denied summary judgment altogether because there were genuine issues of material fact, leaving the issue open to be raised later in the proceedings. *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) ("the denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings.").

The circuit court denied the LSA's motion and *granted* Respondent's motion because it found as a matter of law that Respondent was the valid spouse of the decedent. By granting summary judgment to Respondent on the spousal issue, the circuit court's

ruling clearly precludes Appellants and the LSA from raising the issue later in the proceedings. In reviewing whether the circuit court erroneously granted summary judgment to Respondent, this Court will necessarily have to consider the arguments advanced both in opposition to the Respondent's motion and in support of the LSA's motion. Accordingly, Appellants must be able to appeal the grant of summary judgment, and Respondent's Motion to Dismiss this appeal should be denied.

Additionally, although the rule generally is that a denial of a motion for summary judgment is unappealable, that rule is not the bright-line jurisdictional bar the Respondent suggests it to be. As the Supreme Court stated, an appellate court "may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation." *Morris v. Anderson Cty.*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002). That is particularly true where, as here, the reason for denying the LSA's motion for summary judgment is that the circuit court granted Respondent's motion for summary judgment on the same issue.

Finally, if the appealing parties were to prevail on the spousal issue, then the remaining issues before the circuit court will be rendered moot. Judicial economy is best served by hearing the spousal issue now, instead of waiting until a full trial has been held on questions relating to the rights of a "surviving spouse," a characterization that remains hotly disputed.

II. The Orders Did Not Address Respondent's Standing to Bring Her Claims and No Party Argued She Lacked Standing.

Respondent argues for the first time to the appellate courts that the parties' summary judgment motions and arguments made before the circuit court should be

decided under a Rule 12(b) standing analysis.¹ Respondent's view of the proceedings below as relating solely to her standing to bring any claims is not supported by the motions and Orders below or by the established law of this State.

Nothing in the motions and Orders below supports the Respondent's contention that the Orders "merely" determined that Respondent has standing to pursue her claims and that the challenges to the alleged marriage were raised in the context of a standing argument. To the contrary, no party asserted that Respondent lacked standing to pursue her omitted spouse and elective share claims, and the circuit court never once addressed her standing. The motions, transcripts, and Orders are clear that the parties instead challenged a material element of her omitted spouse and elective share claims—whether she is in fact the surviving spouse—not her standing to bring any claims. The circuit court granted summary judgment to Respondent on the surviving spouse issue, finding as a matter of law that "Tommie Rae Brown is the surviving spouse of James Joseph Brown." (Summary Judgment Order, p. 46.) It is disingenuous for Respondent to come before this Court now and characterize the proceedings before the circuit court as merely concerning Respondent's "standing."

Respondent's arguments, if accepted by this Court, would, in a feat of legal alchemy, contort the analysis of the substantive elements of claims into unappealable interlocutory orders on standing. Respondent's approach would mean that any determination of the elements of a legal claim would go towards that party's standing, not to the viability of their primary claim. This result is not supported by the law of this State.

¹ Respondent first presented this incorrect contortion of the proceedings below to the Supreme Court in her Return to the LSA's Motion to Certify, filed on December 14, 2015.

Standing has always been analyzed separately from the merits of a claim. *See Freemantle v. Preston*, 398 S.C. 186, 192-93, 728 S.E.2d 40, 43 (2012) (“To establish constitutional standing, a plaintiff must first show he has suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.”) (internal quotation omitted). Further, probate and appellate courts in this State treat the determination of whether a petitioner is the surviving spouse as an element of the claim that must be proven by the petitioner. *See Lovett v. Lovett*, 329 S.C. 426, 432, 494 S.E.2d 823, 826 (Ct. App. 1997); *Matter of Patrick*, 303 S.C. 559, 561, 402 S.E.2d 664, 665 (1991). Because no party made a Rule 12(b) motion before the circuit court, Respondent’s arguments on the appealability of Rule 12(b) motions are irrelevant and should be disregarded by this Court.

Under South Carolina law, the probate court, and by extension the circuit court in this case, has the authority to determine whether the alleged marriage underlying the Respondent’s omitted spouse and elective share claims is a valid marriage. In *Thomas v. McGriff*, 368 S.C. 485, 489, 629 S.E.2d 359, 360 (2006), the Supreme Court stated that the jurisdiction of a probate court to determine the existence of a common law marriage depends upon the ultimate issue. If the ultimate issue in the case is the existence of the marriage, then the family court has exclusive jurisdiction. However, if the existence of the marriage is a threshold issue and the ultimate issue is within the probate court’s jurisdiction (for example, whether an individual is an heir), then the probate court can determine the existence of the marriage. In the instant case, the validity of Respondent’s alleged marriage is a threshold issue that must be determined before turning to the

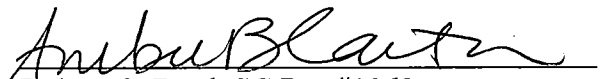
ultimate issues: whether she is entitled to a portion of the decedent's estate. As such, it was an appropriate issue for the summary judgment motions, and the circuit court did not exceed its authority in ruling on legal issue presented in those motions.

CONCLUSION

In conclusion, the Orders are immediately appealable under section 14-3-330 of the South Carolina Code. Further, Appellants are entitled under the law to appeal a grant of summary judgment, even though the circuit court also denied a motion for summary judgment on the same legal issue. Finally, Respondent's late assertion that the Orders addressed Respondent's standing are wholly unsupported by any motion, argument, or Order in the circuit court below. For all of these reasons, Appellants respectfully request this Court deny Respondent's Motion to Dismiss Appeal.

January 21, 2016

Respectfully submitted,



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SC Court of Appeals

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002417

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown..... Petitioner below,

v.

David C. Sojourner, Jr., in his capacity
as Limited Special Administrator and
Limited Special Trustee, Deanna Brown-Thomas,
Yamma Brown, Venisha
Brown, Larry Brown, Terry Brown and
Daryl Brown.....

Respondents below,

Of which Deanna Brown-Thomas, Yamma Brown, Venisha
Brown are the

Appellants,

and

Tommie Ray Brown is theRespondent.

PROOF OF SERVICE

The undersigned hereby certifies that on January 21, 2016, s/he has caused a copy of the Appellants' Return to in Opposition Respondent's Motion to Dismiss to be served upon all parties of record by mailing a copy of the Appellants' Return in Opposition to Respondent's Motion to Dismiss addressed as follows:

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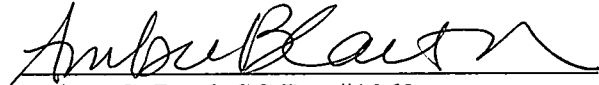
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January 21, 2016

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *In Re: The Estate of James Brown a/k/a James Joseph Brown, Tommie Rae Brown v. David C. Sojourner, Jr., et al.*
Appellate Case No. 2015-002417

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Appellants' Return in Opposition to Respondent's Motion to Dismiss Appeal and the Proof of Service in the above-referenced appeal. Please file the original and six (6) copies pursuant to Rule 240, SCACR, and return the extra copy to me via the courier.

By copy of this letter, we are serving all parties of record with a copy of the Motion. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Amber B. Carter

Enclosures

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