

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2008ES1000409*

IN THE MATTER OF ESTATE OF)
NORMAN ROBERT KNIGHT, JR.)
_____)

ORDER DENYING MOTIONS

APR 13 2016

SC Court of Appeals

2013 JUL 29 PM 3:38
PROBATE COURT
BEAUFORT COUNTY, SC

FILED

This matter came before the Court for a hearing, following proper notice, on July 17, 2013, on Norman R. Knight, III's Amended Motions to Recuse, Dismiss and Change Venue and Second Motion to Amend Answer, both motions dated May 27, 2013.

Present at the hearing were: J. Seth Whipper, Esquire, attorney for Norman R. Knight, III ("Knight"), who also was present; Beatrice E. Whitten, Special Administrator of the decedent's estate; and C. Mac Gibson, Jr., Esquire, attorney for Chloe K. Tonney ("Tonney") and Linda Knight Jones, of whom Tonney was present. Bishop Gadsden Episcopal Home was not represented at the hearing, either by counsel or other representative, the Court having received a letter from its President/CEO, C. William Trawick, on the morning of the hearing, indicating that he would not be present and that Bishop Gadsden had not retained counsel to represent it.

No witness testimony was offered in support of, or in opposition to, the motions; only arguments of counsel, including references to the record, were heard. Except for those portions of the motions that were withdrawn or agreed to be moot, as provided below, the Court, upon consideration of the motions, arguments of counsel, record, and applicable law, ruled from the bench that the motions were denied. The purpose of this order is to formalize the Court's rulings, as follows.

* Beaufort County Probate Court Case No. 20120700998.

Motion to Recuse

This motion asks that I recuse myself because, as alleged by the motion, my "relationship with the Episcopal Church and service on the Probate Code Revision Committee raises a reasonable question regarding [my] ability to be impartial in this matter."

Section 3E(1)(a) of the South Carolina Code of Judicial Conduct, Rule 501, SCACR, provides that:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

With respect to the Episcopal Church issue, it appears from the arguments of Knight's counsel that the "relationship" alleged in the motion is based on: (a) my identification of myself, in my biography appearing on the website of the South Carolina Judicial Department, as "a long-time member of the Parish Church of St. Helena (Episcopal) in Beaufort"; and (b) Bishop Gadsden Episcopal Home, a creditor's claimant herein, allegedly being an institution of the Episcopal Church and Diocese of South Carolina, as described by Knight's counsel.

Based on that "relationship," Knight's counsel argued that a litigant might reasonably question my impartiality with respect to Bishop Gadsden's pending claim, particularly in view of the highly publicized, recent and ongoing litigation between the Episcopal Church of the United States ("ECUS") and the Diocese of South Carolina over the latter's disassociation from the ECUS. Knight's counsel asserted that Episcopalians might feel "under siege" as a result of that litigation, and feel a need to be protective of the Church and its institutions.

"It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias or prejudice." *Mallett v. Mallet*, 323 S.C. 141, 145-6, 473 S.E. 2d 804, 807 (Ct. App. 1996).

No evidence was offered or representation made that I am an officer, trustee, board member, vestryman, etc., or hold any position of executive or legislative responsibility in the ECUS, Anglican Communion, Diocese of South Carolina (Episcopal or Anglican), Bishop Gadsden Episcopal Home, or any parish church, including the Parish Church of St. Helena -- and I do not hold any such position. I am simply a parishioner of a local church.

As I stated on the record at the hearing, and confirm here in more detail, I have no personal bias or prejudice, as an Episcopalian or otherwise, concerning Bishop Gadsden or any party or lawyer in this case, and I have no personal knowledge of disputed evidentiary facts concerning the proceeding.

When a judge is resolving a motion for disqualification of which he is the subject, "as a general rule the judge, in determining whether to proceed, must accept as true the factual allegations of a motion to disqualify." *Shaw v. State*, 276 S.C. 190, 192, 277 S.E. 2d 140, 141 (1981). "However, this does not prevent the judge from exercising his right to consider the legal sufficiency of those facts." 276 S.C. at 192-3, 277 S.E. 2d at 141.

Even accepting as true the factual allegations made by Knight's counsel in his argument, as summarized above and set forth in the record of the hearing, I do not believe the facts are legally sufficient to show any bias or prejudice on my part in this case, nor do I believe that my impartiality might *reasonably* be questioned based on those facts.

On the record at the hearing, the "Probate Code Revision Committee" aspect of the Motion to Recuse was withdrawn by Knight's counsel, after it was established by my representations and those of Ms. Whitten that we had not worked together directly on the

Committee and, in fact, worked in different subcommittees on different parts of the Probate Code.

Based on the foregoing, I conclude that I should not disqualify myself in this matter, and Knight's Motion to Recuse is DENIED.

Motions to Dismiss

Knight moves to dismiss: (a) "all claims as they are time-barred coming for consideration more than one-year after the death of the decedent;" and (b) the Special Administrator's Petition to Allow Sale of Real Estate, on several grounds stated in the motion.

As to (a) above, generally, claims against a decedent's estate which arose before the death of the decedent are barred unless presented within the earlier of one year after the decedent's death or eight months after the first publication of notice to creditors. *S.C. Code Ann.* §§ 62-3-801 and 62-3-804(a).

On the faces of the statements of creditors' claims filed herein, it appears that the claims of Tonney and Bishop Gadsden arose before the death of the decedent, and no argument to the contrary has been made. The record reflects that: the decedent died on March 11, 2008; notice to creditors was first published on May 21, 2008; the Bishop Gadsden claim was presented on December 1, 2008; and the Tonney claim was presented on January 20, 2009. Those dates were stated on the record at the hearing, and none was questioned by Knight's counsel.

It appears that both claims were presented within eight months after the first publication of notice to creditors and were, therefore, timely presented under the above-cited statutes. Accordingly, Knight's Motion to Dismiss the claims as being time-barred is DENIED.

With respect to the Motion to Dismiss the Petition to Allow Sale of Real Estate, the Special Administrator asserted at the hearing, in essence, that she was no longer prosecuting the

original Petition, by reason of the Circuit Court Order of July 9, 2012, which declared invalid the previous Probate Court Order approving the real estate sale. She stated that she would not determine whether to re-commence an action for the sale of real estate until this Court rules on the pending Petitions for Allowance of Claims.

Upon hearing this representation, with the assent of Knight's counsel, the Motion to Dismiss was and is deemed moot and withdrawn, subject to the proviso that Knight may assert the same defenses, by motion to dismiss or responsive pleading, should an action to sell real estate be re-commenced hereafter.

Motion to Change Venue

This motion requests a change of venue for these proceedings, presumably to Charleston County, because "all parties, witnesses, and res are sited in Charleston County." As confirmed by Knight's attorney at the hearing, the motion does not challenge my authority, as Special Probate Court Judge for Charleston County, to preside over the matter.

At the hearing, I distributed to each counsel a copy of the "Procedures for Appointment of a Special Probate Judge," issued by South Carolina Court Administration on October 23, 2012. Section 3 of the document provides that where, as here, the recusal of the original probate judge is for the entire case, including estate administration, "[a]ny hearings should be held in the special probate judge's county unless the special probate judge is willing to travel to the original probate court for said hearings."

For the convenience of the parties and their lawyers, and any potential witnesses, I exercised my discretion as Special Probate Judge to convene the hearing on the subject motions in Charleston at the Charleston County Judicial Center. I stated on the record at the hearing that I would make every effort to convene any further hearings in Charleston County, but could not

be bound to do so, for instance, in the event of an emergency, unavailability of courtroom space in Charleston County, unanticipated inability on my part to travel, etc. Therefore, I will not limit my discretion to hold a hearing in Beaufort County, if necessary.

Accordingly, the Motion to Change Venue is DENIED.

Motion to Amend Answer

This motion seeks to amend Knight's Answer to the Special Administrator's Petition to Allow Sale of Real Estate, by substantially restating his original Answer, first filed in the Dorchester County Probate Court on May 5, 2011, and purporting to assert a counterclaim against Tonney and Bishop Gadsden for "loss of consortium."

Tonney filed a response to the motion, requesting its denial based on redundancy, the statute of limitations, and, as to the counterclaim, lack of subject matter jurisdiction.

Upon the call of the motion, the Court noted that, inasmuch as the Petition to Allow Sale of Real Estate was no longer pending for action, and Knight's Motion to Dismiss the Petition deemed moot and withdrawn, as discussed above, the Motion to Amend Answer to the Petition likewise appeared moot. Moreover, the proposed counterclaim appears to be asserted against Tonney and Bishop Gadsden, not the "opposing party" (*i.e.*, the petitioner/Special Administrator) in the action to sell estate sale. *See* Rule 13, SCRPC.

Knight's attorney argued that he should be allowed to assert the counterclaim against Tonney and Bishop Gadsden because of their Petitions for Allowance of Claims. But the Motion to Amend Answer seeks leave to amend Knight's answer to the Petition to Allow Sale of Real Estate, not the Petitions for Allowance of Claims.

Because the Motion to Amend Answer seeks to amend a pleading in response to a petition that is no longer pending for adjudication, the motion is DENIED.

AND IT IS SO ORDERED.



Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

July 29, 2013

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