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JAN 17 2017
SCCA Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP18008

VERIFIED COPY

Richard S Henson Vann Kenneth Henson Albert T Henson Jr Julian Reid Henson

PLAINTIFF(S) DEFENDANT(S)
Submitted by: *Christy Henson* Attorney for: Plaintiff Defendant
CLERK OF COURT Self-Represented Litigant
DORCHESTER COUNTY

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: Respondent's Motion to Dismiss/Granted

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Edgar Dickson 2153 12/12/2016
Circuit Court Judge Judge Code Date

*recd
12.15.16*

For Clerk of Court Office Use Only

This judgment was entered on 12/12/2016, and a copy mailed first class or placed in the appropriate attorney's box on 12/12/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Trudy Hartzog Robertson/Paul M. Lynch PO Box 22828
Charleston, SC 29413-2828

Daniel Francis Blanchard III PO Box 893 Charleston, SC
29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

cc: Dorchester County Probate Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY DORCHESTER) FIRST JUDICIAL CIRCUIT
16 DEC 12 PM 3:37 Case No. 2016-CP-18-1849

IN RE: TRUST EIP CREATED UNDER)
THE LAST WILL AND TESTAMENT OF)
EUNICE I. PAGE DATED OCTOBER 14,)
1992)

RICHARD S. HENSON and VANN)
KENNETH HENSON,)

Petitioners,)

v.)

ALBERT T. HENSON, JR. and JULIAN)
REID HENSON,)

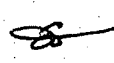
Respondents.)

APPEAL FROM PROBATE COURT)
Case No. 1994-ES-18-00147-2)

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SC Court of Appeals

ORDER

On October 26, 2016, Petitioners Richard S. Henson and Vann Kenneth Henson (collectively, "Petitioners") moved to dismiss, pursuant to S.C. Code Ann. § 62-1-308, Respondent Albert T. Henson, Jr.'s ("Respondent") appeal of the order appointing a special fiduciary as interim trustee issued by the probate court. A hearing was held before this Court on Petitioners' Motion to Dismiss Appeal on Monday, November 21, 2016. Presenting argument to this Court were Trudy H. Robertson, Esquire, for Petitioners and Daniel F. Blanchard, III, Esquire, for Respondent. After due deliberation, review of the memoranda and case law, and hearing arguments of counsel, this Court grants Petitioners' motion to dismiss Respondent's appeal of the probate court order appointing a special fiduciary as interim trustee. Based on the findings of fact and conclusions of law more fully set forth below, this Court finds that the probate court order is not appealable under S.C. Code Ann. § 61-1-308 because it provides only temporary relief and is not a final order.

1/6 

I. Findings of Fact

1. On January 26, 2015, Petitioners filed in the Probate Court for Dorchester County a Petition to Appoint a Successor Trustee of the Trust EIP Created under the Last Will and Testament of Eunice I. Page, dated October 14, 1992 (the "Trust") and filed an Amended Petition on May 4, 2015 (Probate Case Number 1994-ES-18-00147-2). Petitioners and Respondent are beneficiaries of the Trust. In the Amended Petition, Petitioners claim that the trusteeship of the Trust is vacant and they seek appointment of a successor trustee to administer the Trust.

2. According to the Amended Petition, Eunice I. Page owned certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which was transferred to the Trust by deed on July 22, 1997. Petitioners assert that the Subject Property is the sole asset of the Trust. Respondent denies that the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

3. On October 12, 2015, Petitioners filed a Motion for the Appointment of a Special Fiduciary as an Interim Trustee, and also filed a subsequent Motion for an Expedited Hearing. Under those two motions, Petitioners sought the appointment of a special fiduciary who would serve as interim trustee of the Trust and, among other things, ensure that the Subject Property is not lost to a lender who holds a note and mortgage on the Subject Property maturing on December 3, 2016. Respondent filed a memorandum in opposition to Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016.

4. Associate Probate Judge Molly D. Edwards held a hearing on June 29, 2016 on Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee. On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the

"Order"), in which she appointed Ashley Andrews, Esquire, as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. Under the Order, Ms. Andrews' powers are limited to the following: (1) negotiating with the lender and/or the parties to extend the due date of the current mortgage in order for litigation to be finalized or have the mortgage paid off prior to the December 3, 2016 due date; (2) determining if any other assets are titled to the Trust; (3) recovering all records Respondent may possess regarding the alleged transfer of the Subject Property from Ms. Page to Respondent; (4) collecting copies of all agreements Respondent, Ms. Page, or Ann Page Pittillo may have entered into with another party to lease the Subject Property; and (5) ensuring all actions taken by her are done in the interest of maintaining the *status quo* pending a final hearing on the merits in this case.

5. On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County, thereby providing notice that he seeks to appeal the Order.

6. On October 26, 2016, Petitioners submitted the Motion to Dismiss Appeal addressed in this Order.

7. On November 17, 2016, Respondent submitted its Memorandum of Law in Opposition to the Petitioners' Motion to Dismiss Appeal.

8. The hearing was held on Monday, November 21, 2016, before this Court.

II. CONCLUSIONS OF LAW

1. The Order is not appealable under S.C. Code Ann. § 62-1-308 because it provides only temporary relief and is not a final order. Appeals to the circuit court from the probate court are governed by S.C. Code Ann. § 62-1-308, which provides, in pertinent part, that a "person interested in a final order, sentence, or decree of a probate court and considering himself injured

by it may appeal to the circuit court in the same county.” An order from the probate court that is not a final order is not reviewable under § 62-1-308. *Fulmer v. Cain*, 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008). Courts of common pleas lack subject matter jurisdiction over appeals of a temporary order issued by a probate court. *Boyce-Abel v. Work*, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991).

2. Here, the Order provides only temporary relief pending a final hearing on the merits, and it is not a final order subject to appeal under § 62-1-308. This Court finds that the Order is merely a temporary measure intended to preserve the Subject Property until a final hearing on the merits can be held to resolve the issues in dispute.

3. *Boyce-Abel* is controlling on the issue of whether the Order is appealable under § 62-1-308. Just as the appointment of the special administrators in *Boyce-Abel* was temporary, the appointment of the special fiduciary in this case is similarly temporary. In addition, like the special administrators appointed in *Boyce-Abel*, the interim trustee in this case is authorized only to perform certain acts to maintain the status quo until final resolution. *Boyce-Abel* dictates that the Order is not a final, appealable order under § 62-1-308. Accordingly, this Court is dismissing Respondent’s appeal for lack of subject matter jurisdiction.

4. Respondent argued, in opposition to Petitioners’ Motion to Dismiss Appeal, that the Order is appealable and that *Boyce-Abel* is not controlling because the appeal instead involves (1) a final order affecting a substantial right made in a special proceeding under S.C. Code Ann. § 14-3-330(3) and/or (2) an order that grants, continues, or refuses an injunction under § 14-3-330(4). Respondent also argued that the Probate Court’s Order is a final order because of S.C. CODE ANN. § 62-3-107, which states that “unless administration of an estate is involved, each proceeding before the [probate] court is independent of any other proceeding involving the same

estate.” Respondent argued that each petition in a probate file should be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order. The Court finds Respondent’s arguments without merit. The Order is specifically temporary, in both title and “substance, and not final, as determined above. This Court finds that § 62-1-308 and *Boyce-Abel* are controlling and, thus, it is not necessary to further address Respondent’s arguments under § 14-3-330(3). Even if the Court were to further address § 14-3-330(3), this Court finds that Respondent has not lost or had affected any “substantial right” as that term is defined by South Carolina law. *See, e.g., Mid-State Distr. v. Century Importers*, 310 S.C. 330 (1993) (an order affecting a substantial right is an order that would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense). Respondent’s claims of ownership of the Subject Property have not been discontinued or stricken and are still subject to a future, final hearing before the probate court. Respondent has neither been dispossessed of his claims, nor his physical access to the Subject Property, by the Order. The next argument of Respondent is that the Order grants, continues, or refuses an injunction. This is incorrect. The Order specifically preserves the primary disputes between the parties and only ensures that the *status quo* is maintained pending the final hearing before the probate court. The probate court, in fact, refused to grant any broader relief that was initially requested by the Petitioners and specifically limited its Order and determined that it would not dispossess the Respondent of the Subject Property in the Order. The Order was limited to actions to be taken by the special fiduciary done only in the interest of maintaining the *status quo* pending a final hearing on the merits. To say otherwise is to contradict the clear terms of the probate court’s Order, which this Court finds is not an order that grants, continues, or refuses an injunction under § 14-3-330(4).

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III. CONCLUSION

Based on the foregoing, Respondent's appeal should be **DISMISSED** in its entirety and
Petitioners' Motion to Dismiss Appeal **GRANTED**.



The Honorable Edgar W. Dickson

~~December~~
November 1, 2016

Orangeburg, South Carolina

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