THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellants' Final Reply Brief

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STATEMENT OF THE CASE

In 2004, relations between Norman R. Knight, Jr., Mildred C. Knight, and their daughters, Chloe Knight-Tonney and Linda Jones became adversarial. In 2004, Mr. and Mrs. Knight revoked their Power-of-Attorney to their daughters. In 2004, the Charleston County Department of Social Services investigated the Knight home pursuant to allegations of elder abuse. In 2004, the investigation was terminated and the allegations were classified as unfounded.

Relations between the parties continued to deteriorate, becoming litigious and contentious. While an appeal was pending in the Circuit Court, Mr. Knight was removed from the home in 2006.

On January 20, 2009, Respondent Tonney filed a claim for reimbursement of moneys expended allegedly for the care of her father, Norman R. Knight, Jr. The Special Administrator, Beatrice E. Whitten, disallowed the claim and on or about April 20, 2009, Respondent filed a petition to allow the claim. After several years of litigation and appeals, on November 28, 2012, Beaufort County Probate Judge, Kenneth E. Fulp, Jr. was appointed Special Probate Judge for Charleston County exclusively for the Estate of Norman R. Knight Jr.

On May 29, 2013, Appellants filed a Summons and Complaint seeking the removal of the Special Administrator. On July 17, 2013 the initial set of motions were argued and an order filed on July 29, 2013. Appellants were the only movants; all motions were denied. On December 13, 2013, Appellant filed and served an Amended Complaint to Remove the Special Administrator. Numerous pre-trial motions were filed and argued. Appellant filed two series of Motions to Dismiss, Motion to Compel

Discovery with issues of redaction, Motion to Amend Complaints and other motions regarding venue, all filed in pre-trial. On December 17, 2013, a motion hearing by phone was held and an order issued on December 23, 2013. This hearing was significant because the Court held certain documents had to be unredacted to comply with Appellants' motion to Compel. A second set of pre-trial motions were argued by telephone on January 6, 2014 and an order was filed on January 17, 2014. Appellants' Motion to Amend Special Administrator's Complaint was granted. Bishop Gadsden was allowed to withdraw its claim.

On April 22, 2014, Judge Fulp quashed Appellants' subpoena duces tecum to the Morgan Stanley Company, Morgan Smith-Barney. The subpoena required Morgan Stanley to provide information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie."

This matter was tried before the bench in non-jury for two separate days, March 31, 2014 and April 28, 2014. Including post-trial proceedings, i.e. written closing arguments, a final order was filed on July 11, 2014. After post-trial motions, a Notice of Intent to Appeal was filed on September 3, 2014 by the Estate of Mildred C. Knight, and Bobby Knight. This is an appeal of the orders of Special Probate Judge for Charleston County, Kenneth E. Fulp, Jr. and Common Pleas Court Judge, J.C. Nicholson, Jr. Judge Nicholson denied a Motion to Appeal on January 27, 2016 although Appellants did not file a "motion to appeal." Post-trial motions were denied with Notice of Entry of Judgment being received by Appellants on March 11, 2016.

ARGUMENTS

I. APPELLANTS' CHALLENGE OF LOWER COURTS' AWARD OF ATTORNEY FEES IS PRESERVED FOR APPEAL

At the conclusion of the two (2) day trial, Judge Fulp directed and instructed all counsel to submit closing arguments in writing. (S.R.p.17: tr.p. 396 L. 18-tr.p. 397 L.10).

In Appellants' closing Argument filed with the Beaufort County Probate Court on June 16, 2014, page 5, in the first paragraph, Appellants argued that "the Family Court did not award attorney fees in that matter, and the case was dismissed upon the passing of Mr. Knight." In that paragraph, Appellants went on to argue that an award of attorney fees was not justified under any of the circumstances then existing, and suggested to the trial court that the claim was not plausible.

In his testimony at trial, Appellant Bobby Knight stated that there was no order to pay attorney's fees except for one involving a Rule to Show Cause. (S.R.p.10-12: tr.p. 256 L. 14 – tr.p. 258 L.2).

Appellants then argued before the Circuit Court that attorney fees were not awarded by the Family Court; attorney fees were not a reasonable expenditure of Mr. Knight's limited resources; the attorney fee expenditure did not benefit Mr. Knight; the attorney fee expenditure was not necessary for his care and sustenance; Respondent Tonney made these payments outside of the Probate Court's structure, i.e. the Conservator. The arguments were made in Appellants' Initial Brief to the Circuit Court as well.

The lower courts have had ample opportunity to rule correctly on this issue. Wilder Corp. v. Wilke, 330 S.C. 7, S.E.2d 731 (1998)

II. APPELLANTS'ARGUMENTS ON THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTRACT IS PRESERVED FOR APPEAL

At the conclusion of the two (2) day trial, Judge Fulp directed and instructed all counsel to submit closing arguments in writing. (S.R.p.17-18: tr.p. 396 L. 18-tr.p. 397 L.10).

In Appellants' Closing Argument filed with the Beaufort County Probate Court on June 16, 2014, beginning on page 2, paragraph three (3) to page 3, Appellants argued the doctrine of fraud in the inducement to enter a contract. The same was argued in the Initial Brief to the Circuit Court and in all other arguments before that tribunal.

Respondent Tonney did not tell her mother of her desire to be reimbursed (R.p.76-80). The Conservator and the Guardian did not tell Mrs. Knight of any arrangement to reimburse Tonney. The Guardian and the Conservator were ordered to discuss these kinds of matters with Mrs. Knight and they did not inform her. There was clear evidence of a dismissive attitude and contemptuousness towards Mrs. Knight. The lower courts have had ample opportunity to correctly rule on this issue. Bailey v. Segars, 346 S.C. 359, 550 S.E. 2d 910 (S.C. App. 2001).

III. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE

Appellants' motion to unredact certain documents were properly and timely filed. The Trial court granted the requests with two exceptions. The most

notable was the ruling that prevented discovery on the source of money used to pay certain expenses of Mr. Knight. The other exception involved a letter (R. p. 105) written by the decedent's attorney to Tonney and the third party.

The Appellants objected to the admission of the attorney letter because we could not prepare for trial without the information that had been redacted. The court offered no options for viewing the screened information. The fact that the letter was written to Tonney and a third party, not a co-client, mean there is no attorney- client privilege, and the letter was produced as response to discovery. Floyd v. Floyd, 365. S.C. 56, 615 S.E. 2d 465 (2005). The lower courts have incorrectly held that this letter was protected by a privilege.

The exception that was most notable involved the subpoena of information acquired from the trial court's order to unredact checks from a certain account. Respondent Tonney filed a motion to quash the subpoena, the motion was denied and Respondent Tonney withdrew her claim based on this account. The trial court then granted the motion to quash Appellants' subpoena on the grounds Tonney's withdrawal of the claim made the information irrelevant. (R.p. 19-22). The quashed subpoena requested information on the "deposit and withdrawal activity/ records including identity of depositors and payees...." The request covered only a five (5) year period. This material would have led to a relevant and influential line of inquiry for trial purposes. The information would have made the origin of funds used to pay the decedent's expenses certain, and set the records straight as to who is the true claimant. Appellant Bobby Knight testified about the wealth of Louise Reynolds. (S.R.p.13-16: tr p. 292 L. 2 – tr.p. 295 L. 16). Respondent Tonney should not be allowed to blur the lines of the trial process. Tonney did not move for a protective order.

Crawford v. Henderson, 356 S.C. 389, 589 S.E. 2d 204 (Ct. App. 2003).

The lower courts did not protect the truth-finding process. South Carolina Courts protect "trial on the merits," not guileful machinations designed to thwart the full and comprehensive examination of the facts. Knight v. Lee, 262 S.C. 17, 202 S.E. 2d 19 (1974).

IV. THE LAW OF AUTOMATIC STAY IS APPLICABLE TO THIS CASE

The automatic stay is clearly applicable to this matter. The language of the controlling statute is very direct: "When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had." The power and authority to stay proceedings are automatic and does not require special application or motion. The statute says "all proceedings in pursuance." The litigants cannot parse the orders for items that are not implicated. See, S.C. Code 62-1-308 (c) (1999). This section under the present statute is section 62-1-308 (h).

Appellants listed several bases for desiring a new trial: Tonney's Motion to Dismiss cases 2603 and 2569 was not timely filed nor properly raised; the Court did not consider Probate Court's failure to give due accord to the rights and interest of Mrs. Knight and Mr. Knight, Jr. as joint tenants of the UBS account; the Court did not secure an accounting or return listing the devolution of assets according to the agreements on the individual assets of N.R. Knight, Jr. and Mildred Knight; the record does not contain a finding that N.R. Knight, Jr. desires visitation with his

daughters. These grounds have implications for any of the challenged Probate Court orders and Judge Goode's order.

Further, as a practical concern, Respondent Tonney and colleagues moved Mr. Knight, Jr. before the period for appeal ended. At the time they moved Mr. Knight, there was no appeal filed for them to determine what was an unappealed ruling. Consistent with past behavior, Tonney was looking to act surreptitiously and avoid accountability because seeking relief through Judge Goode and the Circuit Court required notification to Mrs. Knight and Bobby Knight—hence, Tonney's unsubstantiated allegations of abuse ex parte to the Probate Court. The restrictions of the automatic stay are intended to stop this kind of turmoil.

Respondent Tonny's arguments regarding mootness and distinction between a conservatorship and a decedents estate are not applicable to the issue of the automatic stay in this matter. Tonney was appointed conservator in 2007. Mr. Knight, Jr. died in 2008. Any acts by Tonney during the appeal of her appointment are void. Any acts by Walter Kaufman during the appeal are void. It is axiomatic that an automatic stay may not be lifted where a court is considering whether to grant a new trial. See Rule 225, and In re Steenstra, 280 B.R. 560 (Bankr. Mass., 2002). This New Trial motion and a contemporaneous Rule to Show Cause still await argument.

V. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS

The requirement of a Summons in formal proceedings predates the statutory clarification of July, 2010. The standards and directions of S. C. Code Sections 14-23-280 (1962), 62-1-304 (1986), and SCRCP Rules 1 and 81(1985) were applicable to the subject petition in 2008 and 2009.

Summons Subcommittee, Probate, Estate Planning and Trust Section, Summons in Probate Court, p. 7 (January 21, 2010). (R.p. 286).

As noted by the Summons Subcommittee Report "the Constitution of this State, and the United States, require due process of law." Id. p.4. The clear implication is that the practice of not providing a summons was unconstitutional. Violations of constitutional rights are injuries that must be vindicated. Dixon v. Coburg Diary, Inc., 369 F. 3d 811 (4th Cir. 2004).

VI. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS SPECIAL JUDGE

S. C. Code Section 14-23-1040 sets out the qualifications of the probate court judge in South Carolina. S.C. Code section 14-23-1080 establishes the criteria for when these "judges shall not sit in certain cases."

"The Special Judge, in appropriate circumstances, must substitute for these judges. In the probate court of South Carolina, the statute [14-23-1040] determines what qualifications these substitute judges must possess. There is no statutory requirement that the Special Judge be an elected judge of the probate court from another county. There is a statutory requirement that judges in the probate court are qualified electors of the county where they preside.

Appellants did not waive or concede any argument regarding their venue objections relative to assigning this case to nonresident judges. (S.R.p. 4-5: 44 L.12 - p.45 L. 19). Judge Fulp recognized the propriety of Appellants' position in light of the convenience to parties, court personnel, witnesses, and the law applicable to where a probate matter is located, and who tries the matter.

However, he did not relinquish his assignment. Venue is proper in formal/informal probate proceedings in the county where the decedent resided and died. S.C. Nat. Bank of Charleston v. May, 211 S.C. 290, 44 S.E. 2d 836 (1947).

CONCLUSION

The Lower Courts' decisions should be reversed and the Respondent's claim denied in full.

Respectfully Submitted
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January 20, 2017

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