

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 IN THE MATTER OF)
 BARRY E. ROSIER)
)
 Donna M. Rosier)
)
 Petitioner.)
)
 vs.)
)
 Angelique Michelle Smith, Alexandria R.)
 Downs, individually and as Personal)
 Representative of the Estate of Barry E.)
 Rosier, and Savannah Rosier,)
)
 Respondents.)

IN THE PROBATE COURT
 Case No.: 2015-ES02-0860.2

ORDER

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 SC Court of Appeals

This matter was before the Aiken County Probate Court upon the passing of Decedent Barry E. Rosier (“Decedent”) in Case Number 2015-ES02-0860.2. Appellant Donna Rosier (“Appellant”) brought a Declaratory Judgment (“DJ”) action requesting an Order to 1) declare Appellant to be Decedent’s surviving spouse, and 2) amend Decedent’s Death Certificate to reflect Decedent’s correct marital status.

Service to Respondents Angelique Michelle Smith and Savannah Rosier was unsuccessful, to which a Motion for Service by Publication was granted. Respondents Angelique Michelle Smith and Savannah Rosier were subsequently found in default. Service upon Respondent Alexandria R. Downs (“Respondent”) was accepted by and through counsel. Respondent requested by Answer for a judgment to 1) dismiss the DJ, and 2) find that Appellant and Decedent were not married at the time of Decedent’s death.

After Appellant provided a Reply Brief, a hearing was set for January 23, 2017. Upon close of the hearing, the Probate Court provided an Order dated February 22, 2017, finding Appellant was

not the lawful wife of Decedent at the time of Decedent's death. Upon receipt of the Order, Appellant timely filed a Motion to Alter or Amend the Probate Court's Order, pursuant to Rule 59(e) SCRPC. Appellant's Motion was subsequently denied. Appellant then timely filed a Notice of Intent to Appeal to the Circuit Court, along with a Statement of the Issues on Appeal, pursuant to S.C. CODE ANN. § 62-1-308 (2014) and Rule 59(f) SCRPC.

This matter was heard before me on Wednesday, October 11, 2017. At that time, the Court heard oral arguments from both parties and reviewed the briefs of parties and the entire record.

Actions for Declaratory Judgment are neither legal nor equitable, but are determined by the nature of the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 357, 400 S.E.2d 781, 782 (1991). The nature of the underlying issue in this case concerns the validity of a marriage contract. Actions concerning contracts are actions at law. *Hofer v. St. Clair*, 298 S.C. 503, 508, 381 S.E.2d 736, 739 (1989). An Appellate Circuit Court may not disturb the Probate Court's finding of fact for proceedings concerning an action at law, unless review of the record discloses no evidence to support them. *Matter of Howard*, 315 S.C. 356 at 361.

After a close review of the record, I find that the record discloses evidence to support the finding of the Probate Court, that Appellant and Decedent were not married at the time of the death of Decedent. Therefore, the decision in the Probate Court is affirmed.

The Honorable Doyet A. Early, III
Judge, Second Judicial Circuit

Dated: _____

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October 20, 2017

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RE: Estate of Barry Eugene Rosier
Case No.: 2015-ES02-0860.2

Dear Lisa and David:

Please find enclosed herewith a proposed Order in regard to the above matter. Please review and advise me of any changes necessary or desirable.

Very truly yours,

ARTHUR W. RICH, P.C.


Arthur W. Rich, J.D. & CFP®

AWR/wmb
Enclosures
cc: Alexandria R. Downs