

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Probate Court

NOV 21 2017

S.C. SUPREME COURT

Tamara C. Curry, Associate Probate Court Judge

Probate Court Case No. 2013-ES-10-1054

Appellate Case No. 2017-002137

Richard Stein, Sarah Stein, and Nichole Stein Jones..... Respondents,

v.

Victoria Martindale Stein, Personal Representative of the Estate of  
Paul J. Stein .....Appellant,

and

Marian Stein-Steinfeld ..... Intervening Respondent, Cross-Appellant.

**Intervening Respondent, Cross-Appellant’s Return to Appellant’s Motion to Dismiss**

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Intervening Respondent and Cross-Appellant, Marian Stein-Steinfeld (“Cross-Appellant”), respectfully submits this Return in Opposition to Appellant Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein’s (“Appellant”) Motion to Dismiss Cross-Appellant’s appeal.

Appellant’s Motion to Dismiss should be denied because the cross-appeal was filed within 5 days of the appeal. The South Carolina Rules of Appellate Procedure govern appeals in this case, not South Carolina Code section 62-1-308.

Pursuant to South Carolina Code section 62-1-308(a), probate court decisions normally are appealed to the circuit court. See S.C. Code §62-1-308(a)-(g). In addition to the statutory procedure for appeal to the circuit court, the legislature provided an alternative when “. . . the parties . . . consent . . . , a party to a final order. . . may appeal directly to the Supreme Court. . .” See S.C. Code §62-1-308(l). The statute specifically provides that “the procedure for the [direct] appeal *must* be governed by the South Carolina Appellate Court Rules.” See id. (double emphasis added).

In this case, Appellant requested that all parties, including Cross-Appellant, consent to the statutory alternative of direct appeal to the Supreme Court. See (Appellant’s Notice of Appeal). All parties (including Cross-Appellant) consented to the direct appeal to this Court. See (Consent Order for Direct Appeal to Supreme Court).

Immediately after all parties consented to an order decreeing that appeals would be to this Court rather than to the circuit court, Appellant filed her notice of appeal on October 17, 2017, specifically citing the statute that provides that “the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.” See (Appellant’s Notice of Appeal) (“This Appeal is being filed in the Supreme Court pursuant to S.C. Code Ann. §62-1-308(l)”).

South Carolina Rule of Appellate Procedure 203(c) governs cross-appeals, providing that “[a] respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties . . . within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.” Here, Cross-Appellant served a Notice of Appeal on October 19, 2017, two days after Appellant served her Notice of Appeal on October 17, 2017. See (Appellant’s Notice of Appeal; Cross Appellant’s Notice of Appeal). Because the cross-appeal was served within the 5 days provided for by the rule, Appellant’s Motion to Dismiss should be denied.

Eight days later, on October 25, 2017, Appellant filed the instant Motion to Dismiss, arguing that the South Carolina Appellate Court Rules apply *only* to her appeal and that Cross-Appellant was required to appeal directly to the circuit court. Appellant’s argument should be rejected because it is inconsistent with her own appeal pursuant to S.C. Code section 62-1-308(l), the consent order signed by the parties and the probate court, and the South Carolina Appellant Court Rules.

Appellant also argues that the cross-appeal should be dismissed because the orders from which Appellant appealed are post-trial orders and Cross-Appellant did not participate in trial.<sup>1</sup> Appellant cites no rule or case law in support of the contention that a cross-appeal must be from

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<sup>1</sup> As reflected in the Court’s order, while Cross-Appellant did not participate in trial, Cross-Appellant was a party to the order. See (Order dated September 14, 2017, at 1-2 , attached to Appellant’s Notice of Appeal) (Cross-Appellant included as a party to the order and the probate court noting that Cross-Appellant “advised the Court on the record that she would not be participating at the trial”). Prior to trial, the probate court ruled that Cross-Appellant had no interest in the disputed assets. See (Order dated April 6, 2017, at 16, attached to Cross-Appellant’s Notice of Appeal) (granting summary judgment against Cross-Appellant). As noted above, the probate court waited until after trial to decide Cross-Appellant’s Motion to Reconsider. See (Order dated September 14, 2017, attached to Cross-Appellant’s Notice of Appeal). Were Cross-Appellant no longer a party, as suggested by Appellant’s argument, Cross-Appellant’s consent to the direct appeal to this Court would not have been required. See SCACR 203(c).

the same order as the appeal. Even if Appellant's position were correct and cross-appeals were limited to the issues in the original appeal, such a requirement would be satisfied in this case where the orders concern the same nucleus of facts and interrelated legal determinations.

The orders appealed by both Appellant and Cross-Appellant concern the parties' rights to a valuable collection of German artwork previously owned by Paul Stein's (decedent's) grandmother, Hanna Bekker vom Rath, who lived in Frankfurt, Germany. She acquired the collection from various Jewish and "degenerate" artists whom she had housed and supported during their persecution by the Nazi regime. See (Order dated September 14, 2017, at ¶6, attached to Appellant's Notice of Appeal); (Orders dated April 6, 2017 and September 14, 2017, attached to Cross-Appellant's Notice of Appeal). Appellant appeals the probate court's orders following trial ordering that judgment be entered in favor of Respondents Richard Stein, Sarah Stein and Nichole Stein Jones granting them the artwork that was in the possession of their deceased father. See (Orders dated September 14, 2017 and October 4, 2017, attached to Appellant's Notice of Appeal). In those orders, the probate court applied South Carolina law and found in favor of Respondents. See id.

Cross-Appellant appeals the probate court's decision refusing to apply German law to the construction of the will of Hanna Bekker vom Rath who lived and died in Germany. See (Order dated April 6, 2017, attached to Cross-Appellant's Notice of Appeal). Cross-Appellant alleged that under German law, Hanna Bekker vom Rath's grandson, the decedent, did not have legal title in the artwork at the time of his death and, consequently, it did not pass under his will. See id. Cross-Appellant also asserted that there was a question as to whether under German law the remainder interest of the decedent was subject to divestment. See id. Cross-Appellant and Appellant filed cross-motions for summary judgment on these issues. See id. Judge Curry denied

Cross-Appellant's motion and granted Appellant's motion. See id. Cross-Appellant filed a timely motion to alter or amend, which Judge Curry denied after the trial, at the same time as she issued the substantive order on the merits Appellant has appealed. See (September 14, 2017, attached to Cross-Appellant's Notice of Appeal).

The core dispute in this case is the disposition of the artwork of Hanna Bekker vom Rath - the disposition by Hanna Bekker vom Rath under her will and the purported disposition by her grandson under his will. The disposition by Hanna Bekker vom Rath determines the nature of the interest, if any, of her grandson. The grandson's interest determines whether the artwork itself was an asset of his estate or not. If the artwork was not an asset of his estate, then he could not bequeath it under his will or by written memorandum. If her grandson could not transfer title to the artwork, then the probate court order Appellant has appealed is entirely undermined. The fundamental premise of that order is that the artwork was part of his estate with the fundamental issue being whether emails signed by the decedent were sufficient to constitute a legal disposition of it. The orders appealed by Appellant and Cross-Appellant are integrally related. If Cross-Appellant prevails, Appellant cannot prevail in her claim to title to the artwork under her deceased husband's South Carolina will. Any requirement that the orders appealed and cross-appealed concern the same nucleus of facts and legal determinations is satisfied in this case.

### CONCLUSION

For the reasons discussed above, Appellant's Motion to Dismiss should be denied.

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PROOF OF SERVICE  
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I, Nancy Jane Dennis, an employee of Walker Gressette Freeman & Linton, LLC, hereby certify that I have served this 16<sup>th</sup> day of November 2017, a copy of the **Intervening Respondent, Cross-Appellant's Return to Appellant's Motion to Dismiss** on counsel of record by placing the same in the United States mail, first-class postage pre-paid, to:


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