

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2016-CP-45-544

TERRY TISDALE AS GUARDIAN FOR)
AMBER LYNN BUSH AND TERRY)
TISDALE IN HER INDIVIDUAL)
CAPACITY,)

PLAINTIFFS,)

VS.)

JOHN MICHAEL MITCHUM AS)
PERSONAL REPRESENTATIVE FOR)
THE ESTATE OF SUSAN T. MITCHUM)
AND JOHN MICHAEL MITCHUM IN)
HIS INDIVIDUAL CAPACITY)

DEFENDANT.)

ORDER PURSUANT TO
DEFENDANT'S MOTION TO DISMISS
(Second Hearing)

RECEIVED
JAN 09 2018
SC Court of Appeals

HEARING DATE:
PRESIDING JUDGE:
ATTORNEY FOR PLAINTIFFS:
ATTORNEY FOR DEFENDANT:
COURT REPORTER:

September 28, 2017
George M. McFaddin, Jr.
Eleazer R. Carter
W. Evan Reynolds
Frances B. Ray

This matter comes before the Court for a second hearing upon Defendant's motion to dismiss based on SCRCP 12(b)(6), SC Code Ann. §15-78-110, collateral estoppel and res judicata. Present at the hearing was both Plaintiffs with their attorney, Eleazer Carter. Present on behalf of the Defendant was his attorney, W. Evan Reynolds.

Prior to the start of the hearing, Mr. Reynolds informed the Court that this was second hearing pursuant to the Defendant's motion to dismiss. Mr. Reynolds further informed the Court that at the first hearing, Judge Cothran dismissed the Plaintiff's second cause of action and gave Mr. Carter ninety (90) days from the date of the June 8, 2017, hearing to amend the Plaintiff's first cause of action portion of the complaint, to present evidence of Amber Lynn Bush becoming incompetent

after the 2005 probate court order, and to gather sufficient evidence to overcome the Defendant's motion to dismiss.

After hearing arguments from counsel for both parties, this Court finds that the Plaintiff has not provided sufficient evidence showing that Amber Lynn Bush had become incompetent subsequent to the 2005 probate court hearing in which she was deemed competent, within ninety (90) days of Judge Cothran's order from the first motion to dismiss hearing on June 8, 2017. As such, the Defendant's motion to dismiss is granted.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Defendant's motion to dismiss is granted as the Plaintiff had not provided sufficient evidence showing that Amber Lynn Bush had become incompetent after the 2005 probate court hearing in which she was deemed competent, within ninety (90) days of Judge Cothran's order from the first motion to dismiss hearing on June 8, 2017;
2. That this case be dismissed with prejudice; and
3. That each party is responsible for their respective attorney's fees.

IT IS SO ORDERED.

George M. McFaddin, Jr.
Circuit Court Judge
Third Judicial Circuit

December ____, 2017
Sumter, South Carolina



Williamsburg Common Pleas

Case Caption: Terry Tisdale , plaintiff, et al VS John Michael Mitchum , defendant,
et al
Case Number: 2016CP4500544
Type: Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759

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