

APPELLATE CASE NO. 2018-001067

PER LETTER OF 6/11/2018

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Daniel D. Hawk,
(son)

Plaintiff,

vs.

Kenneth Howard Kurowski,
(father, decedent, estate)

Defendant.

IN THE COURT OF COMMON PLEAS

ORDER DISMISSING THE
COMPLAINT OF PLAINTIFF

Case No. 2018-CP-01-00069

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SC Court of Appeals

Date of Hearing: May 8, 2018
Presiding Judge: Frank R. Addy, Jr.
Plaintiff's Attorney: None, plaintiff *pro se* and not present
Defendant's Attorney: Curtis G. Clark, Attorney for Norma Kurowski,
personal representative of the Estate of Kenneth H.
Kurowski
Court Reporter: Tara Scott

This matter came before me on motion of the attorney for Norma Kurowski, Personal Representative of the estate of Kenneth H. Kurowski, who answered on behalf of the named Defendant, who died in 2009 and whose estate has been and currently is being administered in the Abbeville County Probate Court, (hereinafter Defendant) seeking to dismiss the Complaint of the Plaintiff. Plaintiff, Daniel D. Hawk, filed a Complaint in the Court of Common Pleas for Abbeville County on March 5, 2018. Defendant timely filed an Answer, Affirmative Defenses, and Counterclaim on April 5, 2018, along with the Motion to Dismiss which is the subject of this hearing. Plaintiff filed a pleading entitled Motion to Reject Defendant's Motion to Dismiss on May 4, 2018, which the Court will recognize as a Return to Motion. The Motion to Reject Defendant's Motion to Dismiss, filed by Plaintiff, was also set for hearing at the same date and time as Defendant's Motion to Dismiss and was addressed as part of the

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proceedings. Finally, an Affidavit of Default was filed by Mr. Clark on the morning of the hearing alleging that Plaintiff is in Default for lack of timely filing a Reply to the Counterclaim of Defendant.

Prior to the hearing the Plaintiff contacted the Abbeville Clerk of Court's office and requested that the Court allow him to participate in the hearing by telephone since he is a resident of Wisconsin. Plaintiff then contacted this judge's office with the same request. Both the Abbeville Clerk of Court and my (presiding judge's) administrative assistant informed Plaintiff that there is no telephone available in the Courtroom and therefore facilities to provide a speaker or recording capabilities are not available to the Court, and Plaintiff's request could not be accommodated. Mr. Hawk notified the Court that he would not be attending the scheduled Motion hearings.

Mr. Clark made a presentation as to why Defendant's Complaint, as well as Defendant's Motion to Reject Defendant's Motion to Dismiss, should not be dismissed. He noted:

A. Plaintiff is attempting to sue a deceased person. Kenneth Kurowski died a resident of Abbeville County, South Carolina, on August 22, 2009. Plaintiff Daniel Hawk was aware of the death of his father, Kenneth Kurowski and was named as a potential intestate heir in Norma J. Kurowski's Application for Informal Probate of decedent's Will (dated August 31, 2008)/Petition for Formal Appointment as Personal Representative of Kenneth Kurowski's estate that was filed in the Abbeville County Probate Court on November 5, 2009. Daniel Hawk's mother, Arletta Kurowski, also filed a Petition for Formal Appointment as personal representative of the estate.

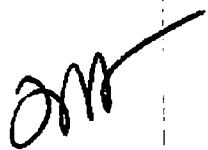
B. Kenneth Kurowski's estate was opened in, and was assigned Estate Case Number 2009 ES 01 00196 by the Abbeville County Probate Court. His Will was



admitted to Informal Probate on June 10, 2010, after a Hearing was held in the Probate Court on the competing Petitions seeking appointment as personal representative of Kenneth Kurowski's estate. Norma J. Kurowski was appointed as personal representative by Order of the Abbeville Probate Judge on June 25, 2012. A subsequent Amended Order dated October 25, 2012, corrected a scrivener's error, but confirmed her appointment. Neither Order was appealed, and Norma J. Kurowski still acts today as personal representative of the estate. She recently filed to close the estate and distribute the assets to herself as devisee, and as a partial reimbursement to herself for use of her personal funds to pay over \$80,000.00 on estate expenses and debts, per accountings filed in the estate, in an estate with assets worth only \$60,000.00 as shown on the estate Inventory.

C. Plaintiff complains that Norma Kurowski has filed a false death certificate for Kenneth Kurowski in that Norma Kurowski had herself listed as the "Surviving Spouse" on Kenneth Kurowski's South Carolina Death Certificate. Norma Kurowski would show that she has no authority to prepare or issue an official State of South Carolina death certificate, and did not participate in the preparation of the Death Certificate. Further, a review of the death certificate attached by Plaintiff to his complaint supports that the death certificate was prepared by Abbeville County Deputy Coroner Bobby Ray Fisher, based on information provided by the "Informant" listed on the death certificate; who is decedent's son, Brian L. Kurowski. Thus, this complaint lacks factual basis.

D. Daniel Hawk represents that his mother, Arletta Kurowski, was the legal wife of Kenneth Kurowski at his death because the two never were divorced prior to his later marriage to Norma Schoonober, now Norma Kurowski. Mr. Clark contends that Mr. Hawk seems to believe and promotes that Arletta Kurowski, being the surviving spouse



of decedent, is therefore also the sole heir of decedent's estate despite the fact that his deceased father left a Will dated October 30, 2008, that directed the transfer or distribution of the assets decedent owned at his death. Patricia A. Cornelius, a sister of Kenneth Kurowski who lives on the Oneida Indian tribal territory in Wisconsin, testified at the June 10, 2010, hearing that Kenneth Kurowski contacted her and another sister about preparing a will for him that left all of his estate to Norma Kurowski. Ms. Cornelius testified the sisters prepared a Will for decedent to that effect, and Kenneth's four sisters - who all are Oneida Indians and live on or near the tribal reservation in Wisconsin - brought that Will to South Carolina where Kenneth Kurowski reviewed it and signed it on October 30, 2008, before his four sisters as witnesses and before a Notary Public for South Carolina. Mr. Clark further points out that, even if decedent did not have a valid Will, the laws of intestacy for South Carolina would have not have left his entire estate to his wife since he has children. Finally, Daniel Hawk is filing to seek relief that even he alleges is due to his mother, Arletta Kurowski. Daniel Hawk therefore has no legal standing to sue for such relief.

E. Daniel Hawk appears to seek the "disqualification" or replacement of Abbeville County Probate Judge Mark Sumner as the presiding judge over the Estate of Kenneth Kurowski. Plaintiff cites as a reason for this relief that Judge Sumner stated he knew the decedent; but his request is most strongly based on Plaintiff's statement that the "foundation of this case rests in a fraudulent death certificate" for decedent, Kenneth Kurowski, that Plaintiff alleges was falsified by Norma Kurowski. Mr. Clark presented: (1) the Probate Court has no authority over the contents or issuance of death certificates; which are issued and/or are supervised by, and filed in the Division of Vital Records of the South Carolina Department of Health and Environmental Control;



(2) that the information on the death certificate has no influence or effect over the administration of an estate and/or the transfer of the probate assets in an estate which are governed by Will of the decedent and provisions of the South Carolina probate code; (3) that the "tribal and federal death benefits" Plaintiff alleges that Norma Kurowski has illegally obtained are non-probate assets, and therefore are (a) outside of the jurisdiction of the Probate Court, and (b) Norma Kurowski can show that she does not receive any tribal benefits, and the only federal benefit she receives are social security widow's benefits that Plaintiff's mother, Arletta Hawk or Arletta Kurowski, also is believed to receive; and (4) Plaintiff has never filed any pleadings requesting Judge Sumner to recuse himself from the Kenneth Kurowski estate or to transfer the administration of this estate to another county; and upon information and belief, in that Plaintiff has not provided a copy of this lawsuit to the Abbeville Probate Judge. Mr. Clark contended that, based at least in part on these representations, Plaintiff clearly seeks relief that should have been requested years ago and does not follow or comply with any applicable statutes, requirements, or legal directives for requesting such relief; and further that this court does not have the legal authority to grant the relief sought by Daniel Hawk.

Therefore, based upon the pleadings and the arguments of counsel, I make the following

RULING OF THE COURT

1. I find that the claims of the Plaintiff are time barred because the procedural requirements for filing for a change in venue or to move the administration of his father's estate to another county have not been met, and cannot be complied with at this date; and therefore, I find that this relief is not available to the Plaintiff. Further, I



find that Plaintiff failed to plead a factual basis for the relief requested; that much of the relief requested has nothing to do with estate law and/or procedure in this State; nor has anything to do with the administration of Kenneth Kurowski's estate administration.

2. Further, the Court would direct that should the Plaintiff seek to file a new Petition or Complaint, motion, or any other new pleading, whether as an individual or as agent for Arletta Kurowski or anyone else; that the Abbeville Clerk of Court is directed to forward that pleading, along with a copy of this Order, to the Civil Administrative Judge for the Eighth Judicial Circuit, who will then review and either approve or deny the filing of the document prior to the pleading actually being filed in the Clerk's office.

3. During this hearing the attorney for Kenneth Kurowski's personal representative requested that the two Lis Pendens be dismissed by this Court which had been previously filed by Daniel Hawk, as agent for Arletta Kurowski, in the Abbeville County Clerk of Court's Office in connection with two actions filed by Arletta Kurowski, and Daniel Hawk as her agent, in the Oneida Nation Trial Court in Wisconsin. Mr. Clark argued that the content of the two Lis Pendens, which are almost identical as to contents, state that Arletta Kurowski filed actions in the Oneida Indian Trial Courts in Wisconsin alleging that the decedent has injured Arletta Kurowski by his conduct. Both Lis Pendens state that the property owned by decedent at 201 Lake Secession Road, Abbeville, South Carolina, should belong to Arletta Kurowski as his legal wife. However, I find that the Lis Pendens are connected with pleadings filed in the Oneida Nation Trial Court, and not as part of the current case. At this date, I defer to the Oneida Trial Court to address the issue of the appropriateness of the Lis Pendens filed by Daniel Hawk as agent for Arletta Kurowski in the Office of the Abbeville County Clerk of Court. If the Oneida Trial Court does not address the Lis Pendens, Defendant may



file a later Motion with this court seeking to address or dismiss these Lis Pendens.

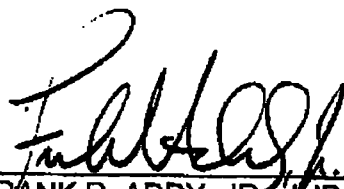
I also find that, should any new Lis Pendens be presented to the Office of the Abbeville Clerk of Court by Daniel Hawk, individually or as an agent for someone else, or Arletta Hawk, that these Lis Pendens also should be sent to the Civil Administrative Judge for review in the same manner as any additional pleadings that are attempted to be filed by the Plaintiff.

4. The Abbeville County Probate Court remains in charge of the administration of the Estate of Kenneth Kurowski, and may take such actions as the Abbeville Probate Judge deems necessary and/or appropriate to continue with the administration and ultimate closing of the estate of Kenneth Kurowski.

IT IS SO ORDERED.

May 29, 2018

Greenwood, South Carolina


FRANK R. ADDY, JR., JUDGE
EIGHTH JUDICIAL CIRCUIT

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