

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Carol Manigault,)
APPELLANT,)
vs.)
Morris Ellison, as Personal)
Representative for the Estate of)
Andrew Manigault,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-03110

2018 OCT 15 PM 3:01
CLERK OF COURT

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED. (CHECK REASON): Rule 12(b), SCRCPP; Rule 41(a), SCRCPP (Vol. Nonsuit); Rule 43(k), SCRCPP (Settled); Other _____.
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCPP; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- Other _____.

THIS ORDER:

Terminates the case. OR Does not terminate the case.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of judgment by the Court:

This matter came before this Court as an Appeal from the Charleston County Probate Court. The Probate Judge granted Respondent's Motion for Summary Judgment as to certain creditor's claims asserted by Appellant based on their being untimely. After hearing the arguments of counsels, reviewing all of the Court's file and reviewing the applicable statutory and case law, this Court requests Respondent's attorney prepare a formal ordering denying the present appeal and affirming the Probate Court's Order.

Appellant bases her appeal on three arguments: (1) that the Probate Court erred in failing to rule on the Appellant's foreign judgment claim in its order granting summary judgment to the Respondent; (2) that the Probate Court erred in disregarding the statute of limitations set forth in S.C. Code Ann. §62-3-806(a); and (3) that the Probate Court's reliance on a Reporter's Comment to S.C. Code Ann. §62-3-806 as its primary authority cannot justify its granting summary judgment to the Respondent.

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Appellant first argues that her Motion to Alter or Amend the Judgment was wrongfully denied on the grounds that the Probate Court failed to rule on Appellant's foreign judgment claims. Appellant argues that in granting the Respondent's Motion for Summary Judgment, the Probate court found it unnecessary to rule on Appellant's foreign judgment claims after it ruled against the Appellant's creditor claims; because these claims were separate and distinct, Appellant argues that the Probate Court erred. The Appellant also argues the Respondent failed to file their Disallowance of Appellant's Claim by the sixty-day deadline prescribed in S.C. Code Ann. §62-3-806(a), where the Respondent filed their disallowance six years after the sixty-day deadline. Finally, Appellant argues that the Probate Court's reliance on a reporter's comment to S.C. Code Ann. §62-3-806(a) is insufficient grounds to justify its granting of summary judgment.

Respondent replies to Appellant's first argument that the Probate Court did not fail to rule on Appellant's foreign judgment claim, because that claim had not been referred to the Probate Court in the first place – Respondent argues that the Circuit Court's dismissal of the Foreign Judgment case was based on subject matter jurisdiction and thus could not have resulted in referral to the Probate Court. Accordingly, Respondent argues, Appellant failed to domesticate any foreign judgment in South Carolina. Respondent next argues that Appellant's second and third arguments fail because the alleged statute of limitations did not contain the deadline asserted by the Appellant at the time of decedent's death – Appellant relies on a newer amendment to the statute, while Respondent argues that said amendment was not in place at the relevant time (the Decedent's death). This Court agrees with the Respondent.

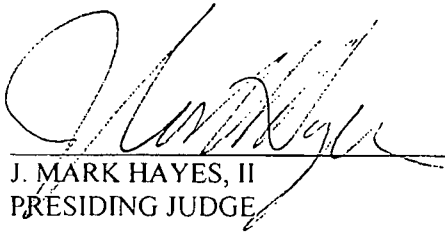
As additional sustaining grounds, Respondent argues that all Appellant creditor claims are barred for Appellant's failure to properly and timely serve her Summons and Petition for Allowance of Claim within the statutory thirty day deadline. While Appellant filed her Summons and Petition for Allowance of Claim within the deadline, Respondent argues that her service of it upon Respondent was inadequate: Appellant had a courier leave two unposted, handwritten envelopes with a receptionist unauthorized by appointment to accept service of process for the Respondent. The Probate Court found it unnecessary to address this argument, even though, from the record before this Court, Respondent appears to be correct.

Finally, as another additional sustaining ground, Respondent argues that S.C. Code Ann. §15-3-530(1), the three-year statute of limitations for enforcing contractual claims not under seal at the time of the Decedent's death. Respondent argues that, starting in 2002, Decedent's divorce decree required Decedent to make mortgage payments; Respondent argues that Decedent did not make those payments, and appellant, knowing that Decedent was not making those payments, waited eight years to make a claim, rendering the claim moot under S.C. Code Ann. §15-3-530(1). The Probate Court did not address this argument. From the record before this Court, Respondent appears to be correct.

Even though this email will be incorporated into a Form 4 for filing with the Clerk of Court's office, the formal order, once signed and filed, will be final order of this Court on this matter. Please advise as soon as possible if the formal order cannot be submitted within thirty (30) days.

Dated at Spartanburg, South Carolina, this the 8th day of October, 2018.





J. MARK HAYES, II
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2018, and a copy mailed first class this _____ day of _____, 2018 to attorneys of record or to parties (where appearing *pro se*) as follows:

CLERK OF COURT

ATTORNEYS FOR THE APPELLANT

Karen M. DeJong
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464

ATTORNEYS FOR THE DEFENDANT

Laurel R.S. Blair
Womble Carlyle, Sandridge & Rice, LLP
5 Exchange St.
Charleston, SC 29401

Graeme F. Philp
Womble, Carlyle, Sandridge & Rice, LLP
5 Exchange St.
Charleston, SC 29401