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ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

STATE OF SOUTH CAROLINA)
 COUNTY OF ALLENDALE)
)
 J. Morgan Kears, Personal Representative)
 of the Estate of G.H. Kears,)
)
 Appellant,)
)
 v.)
)
 The Kears Family Education Trust,)
 William Gordon Kears, Elizabeth Kears)
 Gooding, Julia Kears Sharp, Rachael)
 Kears Best, Joseph Weber Kears, and)
 John Morgan Kears, of which all are)
 named individually and as Trustees of the)
 Kears Family Education Trust U/AID)
 Nov. 05, 1992,)
)
 Respondents.)

IN THE COURT OF COMMON PLEAS
 Case No. 2017-CP-03-00244

ORDER

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MAY 29 2019

SC Court of Appeals

This order follows a Form 4 entered October 29, 2018.

*

This is an appeal from probate court. The Court heard arguments October 8, 2018.

Attorney Matthew Myers appeared at the hearing for the Appellant. Attorney Daniel Speights appeared for Respondent Julia Sharp. Attorneys Steve Slotchiver and Blake Hewitt appeared for Respondent Elizabeth Gooding. No other parties participated or appeared.

The Court took the matter under advisement at the hearing and has been provided with the Appellant's briefs, the joint brief of Respondents Gooding and Sharp, as well as the parties' joint "record on appeal." The Court entered the Form 4 after reviewing all filings and arguments.

As explained in the Form 4 and below, the appeal is dismissed. An unappealed order appoints someone other than Appellant to the office of Personal Representative. For that reason, Appellant's attempt to take this appeal "as Personal Representative" is a nullity.

The case's material facts are not disputed. G.H. Kearsé died in 2013. Item VI of his will directed his children to build a house on the family farm copied after a historic home in Virginia.

In 1992, however, Mr. Kearsé had established the Kearsé Family Educational Trust and placed the family farm into the Trust. Mr. Kearsé's children are the trustees.

Morgan Kearsé, the Appellant in these proceedings, commenced this lawsuit in April of 2016 by filing a "petition for instructions." At that time, Morgan was the estate's personal representative. He named himself and his five siblings as defendants, and he sought an order requiring the home's construction.

Two of Morgan's siblings—Respondents Sharp and Gooding—opposed the suit. None of the other siblings formally participated in the litigation.

The probate court was scheduled to hear several motions in February of 2017, but the day before the hearing, Morgan's lawyer sent the court a letter explaining the parties had reached a "global settlement." The letter said Julia's lawyer would read the agreement into the record at the hearing. The letter explained some, but not all, of the settlement's terms.

At the hearing, however, Morgan's lawyer said Morgan was "irrevocably" resigning as personal representative and that Morgan did not consent to the settlement.

Julia's lawyer then read into the record the "term sheet" constituting the parties' agreement and presented exhibits regarding the agreement the parties had reached the day before.

At the conclusion of the hearing the probate court accepted the settlement as well as Morgan's resignation as personal representative. This ruling was memorialized in a formal

order filed February 27, 2017.

On March 16, 2017, Morgan filed a motion to alter or amend the probate court's decision. He captioned this motion as being made "in his capacity personal representative" even though he had previously told the probate court he was "irrevocably" resigning.

Four days later, on March 20, 2017, the probate court appointed Harley Ruff as successor personal representative.

The probate court heard Morgan's motion to reconsider and denied the motion in a written order filed September 18, 2017. Morgan initiated this appeal October 18, 2018.

Respondents Sharp and Gooding contend this appeal is a nullity because Morgan is not the personal representative and can therefore not purport to appeal the probate court's decision as personal representative. The Court agrees.

Morgan's notice of appeal referenced two orders: the February 27, 2017 order enforcing the parties' settlement and the September 15, 2017 order denying Morgan's motion for reconsideration. Both of those orders were also attached to the notice of appeal.

The notice of appeal does not mention the March 20, 2017 order appointing Harley Ruff as personal representative. That order is accordingly the law of the case. See, e.g. *McCain v. Brightharp*, 399 S.C. 240, 251, 730 S.E.2d 916, 921-922 (Ct. App. 2012).

In his reply brief, Morgan argues that he "retracted" his resignation by filing a motion to alter or amend the probate court's decision. The Court disagrees. The motion to reconsider did not mention Morgan's resignation—a resignation his lawyer said was irrevocable.

Morgan also argues the order, when properly construed, recognizes he is still personal

representative. Here as well, the Court respectfully disagrees. The order explains Harley Ruff has been appointed personal representative and that with Ruff's appointment, Morgan's resignation "is hereby effective." The Court believes the proper interpretation of the order is that it recognized Morgan retained the limited authority to deliver and transfer the estate's assets to Ruff. That authority would not include initiating an appeal as personal representative.

The Court expresses no opinion on the arguments concerning whether the probate court erred in enforcing the settlement as well as the Respondents' additional arguments for affirming the probate court's judgment. As this order explains, the appeal is dismissed because an unappealed order recognizes the Appellant is not the personal representative. He therefore lacks standing to initiate this appeal as personal representative.

Judge R. Lawton McIntosh

December____, 2018



Allendale Common Pleas.

Case Caption: J Morgan Kears, Personal Representative Of The Estate G. H. Kears
VS William Gordon Kears , defendant, et al
Case Number: 2017CP0300244
Type: Order/Other

S/R. LAWTON McINTOSH

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