

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2018-002187

Amy M. Bannon Zenner,
Conservator for Thomas C. Shoemaker and
Caleb M. Shoemaker,

Appellant,

v.


Sydney Bruce Shoemaker,

Respondent

RECEIVED
MAY 28 2019
SC Court of Appeals

INITIAL BRIEF OF RESPONDENT

May 22, 2019


Ben F. Mack, Bar No. 3503
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Summerville, SC 29483
843-285-7100

Attorney for Respondent

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STATEMENT OF THE ISSUE ON APPEAL

The Appellate Court should affirm the dismissal of the action as issued by the Court of Common Pleas, Ninth Judicial Circuit, Berkeley County, South Carolina on November 5, 2018 upon the finding that said Court lacked subject matter jurisdiction with regard to the issues raised in the pleadings.

STATEMENT OF THE CASE

The Appellant filed case number 2017-CP-08-1839 on August 2, 2017. The Appellant prayed for a) actual damages in amount to be determined at trial, b) punitive damages to be determined at trial, c) \$400,418.33 placed with the Defendant to be returned to the minor children T.C.S. and C.M.S., d) for all funds should be released to the conservator to be placed in a restricted account set aside for the minor children, T.C.S. and C.M.S. The Respondent filed an Answer and Counterclaim on August 31, 2017. The Respondent answered the Complaint and counterclaimed for dismissal for a) failure to allege a cause of action upon which relief may be granted, b) violation of S.C. Civil Proceeding Act and c) slander. The Appellant filed a Reply on September 6, 2017 denying the counterclaim on the Respondent.

On March 14, 2018 the Respondent moved for a dismissal based upon a lack of subject matter jurisdiction. A hearing was held on the Motion to Dismiss in the Circuit Court on October 30, 2018 and the Circuit Court issued its Order of Dismissal based upon lack of subject matter jurisdiction on November 5, 2018.

STANDARD OF REVIEW

The Court is free to decide the questions of law without deference to the trial court. *Capital City Insurance Co. v. Bp Staff, Inc.*, 382 S.C. 92, 674 S.E. 2d 524, 528 (S.C. App., 2009)

ARGUMENT

The Respondent was sued in this capacity as Trustee of the Cameron Shoemaker Life Insurance Trust. The Respondent is a resident of the State of Idaho and was served the Summons and Complaint in the State of Idaho. The trust was established in the State of Idaho by execution of a trust document on December 2, 2014 before a notary public in the Lewis County, Idaho. The trust was subsequently registered by filing of a trust registration in case number CV43851 as filed in the District Court of the Second Judicial Circuit of the State of Idaho in and for the County of Idaho. The filing of the trust registration was executed by the Respondent on December 18, 2014 and filed in the District Court of the Second Judicial Circuit in the State of Idaho on March 2, 2015. The Respondent's trust filings were in accordance with the dictates and requirements of the Idaho Uniformed Powers Act. The trust is an Idaho Trust.

The issue as raised in the Motion to Dismiss by the Respondent is whether the Circuit Court of the State of South Carolina, Berkeley County, has subject matter jurisdiction with regard to litigation concerning an Idaho trust established by a trust instrument executed in the State of Idaho and administered pursuant to the laws of the State of Idaho. The Respondent in his capacity as Trustee of the Cameron Shoemaker Life Insurance Trust has no ties or connections with the State of South Carolina, except for the fact that two of the beneficiaries of the trust were at the time of the filing of the action, minors and citizens and residents of the State of South Carolina. That subsequent to the filing of this action in this matter on appeal the beneficiaries, who are residents of the State of South Carolina, have attained the age of majority having turned eighteen on May 9,

2019. The Respondent further alleges that the Appellant lacks authority to act as conservator for T.C.S. and C.M.S. Appellant's authority expired upon their attaining the age of eighteen on May 9, 2019.

The Appellant filed the action being appealed on August 2, 2017 in case 2017-CP-08-1389. The Plaintiff is a citizen and resident of the State of South Carolina, County of Berkeley, and has resided in said county and state for a period in excess of one year prior to the commencement of this action.

The Defendant is a citizen and resident of the State of Idaho. The Plaintiff, Amy M. Bannon Zenner, filed the action in her capacity as conservator for the minor children, T.C.S. and C.M.S.

Since the filing of this action on appeal the Appellant, Amy M. Bannon Zenner, no longer has standing to bring the action as conservator for the parties of interest, T.C.S. and C.M.S. T.C.S. and C.M.S. have attained the age of eighteen on May 9, 2019 and now maintain the capacity to bring any proceeding in their own name. The Appellant is the biological mother of the former minor children, T.C.S., date of birth May 9, 2001 and C.M.S., date of birth May 9, 2001. Both T.C.S. and C.M.S. are no longer minors, having attained the age of eighteen on May 9, 2019. The Respondent is the paternal grandfather of T.C.S. and C.M.S., date of birth May 9, 2001.

That pursuant to a Final Order and Decree of Divorce as entered in case number 2004-DR-08-2062 in the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina, on February 12, 2007, the Appellant and the Respondent's son, Cameron Shoemaker, entered into an agreement in paragraph thirteen of said Order wherein

Cameron Shoemaker was required to keep and maintain his military life insurance policy for as long as he remained in the United States military, with the children named as the beneficiaries. The Order requires the Respondent to act as Trustee.

That on September 23, 2014, Cameron M. Shoemaker, died while on active duty with the United States Army. That subsequent to his death, life insurance benefits were paid pursuant to the coverage provided by the United States Military. These life insurance proceeds were subject to the provisions contained in paragraph thirteen in the parties' Final Order and Decree of Divorce between the Appellant and the now deceased Cameron Shoemaker, which required that they be held in trust by the Respondent.

That pursuant to the terms of the Final Decree of Divorce as entered into between the Appellant, and Cameron Shoemaker, the Respondent received the proceeds of the deceased, Cameron Shoemaker, military life insurance policy in the approximate amount of \$400,000.00 and placed said funds in a trust, known as The Cameron Shoemaker Life Insurance Trust, which was executed on December 2, 2014, in the State of Idaho.

The Respondent executed a trust agreement on December 2, 2014 whereby the Respondent, as a resident of the State of Idaho, established the Cameron Shoemaker Life Insurance Trust, naming the children of the deceased, Cameron Shoemaker, as the beneficiaries of the trust along with the child of the deceased Cameron Shoemaker's subsequent marriage. The Respondent was named as Trustee of said trust. The Respondent's wife, Cheryl J. Shoemaker, of Riggins, Idaho and the Respondent's son, Matthew Shoemaker of Rome, Georgia were named as alternative Trustees.

That on March 2, 2015 the Respondent, by and through his attorney, filed a trust

registration in case number CV43851, as filed in the District Court of the Second Judicial Circuit, of the State of Idaho and the county of Idaho. The filing of the trust registration was executed by the Respondent on December 18, 2014 and filed in the District Court of the Second Judicial Circuit of the State of Idaho on March 2, 2015. That said trust filing was in accordance with the dictates and requirements of the Idaho Uniformed Trustee Powers Act.

That pursuant to the execution of the Cameron Shoemaker Life Insurance Trust on December 8, 2014 and a registration of said trust in the District Court of the Second Judicial Circuit of the State of Idaho in case number CV43851 on March 2, 2015, the children of the deceased Cameron Shoemaker, to wit: C.M.S., date of birth May 9, 2001 and T.C.S., date of birth May 9, 2001 and C.M.S., date of birth January 16, 2011 are named as the beneficiaries of said trust, with a one-third beneficial interest to be distributed upon each child reaching the age of twenty-five years.

The Respondent is currently the said Trustee of said established trust pursuant to the laws of the State of Idaho and registered in the State of Idaho. The Appellant initiated litigation in this proceeding questioning the Respondent's exercise of his fiduciary duties with regard to the interest of the beneficiaries and requested an accounting of funds received and distributions made pursuant to the terms of said trust.

The Respondent alleges that he continues to protect the interest of the three minor beneficiaries pursuant to the laws of the State of Idaho wherein said trust is registered and administered and has taken no action detrimental to the three beneficiaries. The Respondent alleged in his Motion before the trial court that the trial court lacked subject

matter jurisdiction with regard issues related to the administration of the Cameron Shoemaker Life Insurance Trust which was executed on December 2, 2014 in the State of Idaho. That said trust continues to be registered and administered pursuant to the statutes in the State of Idaho.

The Respondent maintained in the trial court, and in this court, that the courts of the State of South Carolina lack subject matter jurisdiction with regard to litigation of the issues relevant to the proper administration of said trust and at any proceedings with regard to said matter should be brought in the State of Idaho. The Respondent maintains that the State of Idaho is the proper jurisdiction to exercise subject matter jurisdiction and the determination of the proper of the administration of the trust, which shall be determined pursuant to the statutes and regulations of the trust administration rules and the state law in the State of Idaho.

Subject matter jurisdiction is defined as “the power to hear and determine cases with the general class to which the proceedings in question belong, citing *Doug v Goldkist, Inc.* 442 S.E. 2d 598 (1994). The case involves the classification, which determines the proper administration of the trust pursuant to the law for the State of Idaho. The Respondent maintains it is inappropriate for the courts of the State of South Carolina to exercise jurisdiction in determining the proper administrative of a trust established in the State of Idaho and regulated to the statutes and regulations of the State of Idaho.

The trial court in its Order resulting from the Motion To Dismiss granted the Respondent’s Motion to Dismiss for lack of subject matter jurisdiction. The trial court found that this case should be dismissed for lack of subject matter jurisdiction based upon

the fact that the case involves the determination of the issues related to the administration of the trust as registered in the State of Idaho and involves reviewing the administration of said trust pursuant to the statutes, laws and regulations of the State of Idaho. The trial court found and this court should affirm that South Carolina lacks subject matter jurisdiction to determine issues related to an Idaho resident's administration of an Idaho trust for the benefit of South Carolina beneficiaries.

CONCLUSION

The Court should dismiss the appeal and affirm the trial court's Order of November 2018 dismissing the action for lack of subject matter jurisdiction.

The Appellate Court should further find that the beneficiaries have obtained the age of majority and the Appellant lacks standing to act in her capacity as Conservator upon the beneficiaries obtaining the age of eighteen on May 9, 2019.

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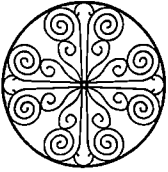
PROOF OF SERVICE

I certify that I served the attached Respondent's Initial Brief and Designation of Matter to be Included in the Record of Appeal, by depositing a copy thereof in the United States Mail, postage prepaid, on May 22, 2019, to Sean Zenner, Esquire, counsel for the Appellant, to his address at:

Counsel of Record:
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May 22, 2019

The South Carolina Court of Appeals
P.O. Box 11629
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RE: Amy M. Bannon Zenner, Conservator for Thomas C. Shoemaker and Caleb M.
Shoemaker vs. Sydney Bruce Shoemaker
Case Number: 2018-002187

Dear Sir or Madam:

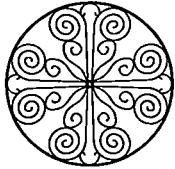
Enclosed please find the Respondent's Initial Brief, Proof of Service and Designation of the Matter to be included in the Record of Appeal in regards to the above referenced matter:

Sincerely,

Karen Johnston
Paralegal to Ben F. Mack

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cc: Sean Bannon Zenner, Esquire
171 Woodbrook Way
Moncks Corner, SC 29461

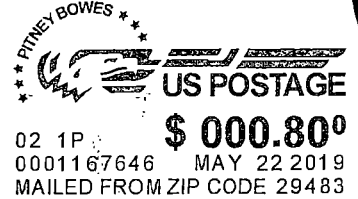
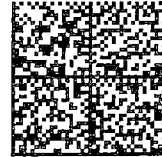


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