

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS)
FIRST JUDICIAL CIRCUIT)

Michael C. Fox, as Personal)
Representative of the Estate of Doris)
Duane Colucci,)

Circuit Court No.: 2019-CP-18-0677)
Probate Court No.: 2017-ES-18-00294)

Appellant,)

Order Denying Appellant's)
Emergency Petition for)
Writ of Supersedeas)

vs.)

Andrew Chandler, in his capacity as)
Special Administrator of the Estate of)
Doris Duane Colucci, Michael C. Fox,)
Successor Trustee of the Colucci Living)
Trust, dated February 24, 2005, Ivo)
Francesco Colucci, Michael Frederick)
Antonio Colucci, John Martin Antonio,)
Henry Burkes, and Richard M. Hyman,)
Jr,)

Respondents.)

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JUN 28 2019

SC Court of Appeals

THIS MATTER comes before this Court on an Emergency Petition for Writ of Supersedeas submitted by the Appellant Michael C. Fox pursuant to Rule 241, SCACR. The Appellant filed this writ requesting the Circuit Court to suspend proceedings in the lower court.

On February 13, 2019, the Dorchester County Court of Common Pleas initially found the Appellant qualified on the sole basis of being one of the individuals the Decedent nominated in her Last Will and Testament to be the Personal Representative of her estate. Following the issuance of this order, also on February 13, 2019, the Dorchester County Probate Court issued two *ex parte* orders: one that re-appointed the Respondent on an emergency basis as Special Administrator; and a second that totally restrained the Appellant in all capacities for ten (10) days pending an evidentiary hearing.

On April 17, 2019, the Dorchester County Probate Court issued a third order reincorporating the terms of the two February 13, 2019 orders. This order would last for at least

six (6) months and included language that completely barred Appellant from prosecuting all claims on behalf of the Estate of Doris Duane Colucci, and empowering the Respondent with authority to settle the same, and to execute releases on behalf of the Estate, its devisees, and its statutory beneficiaries, pursuant to orders approving any settlement of those claims.

On April 18, 2019, the Appellant filed his Notice of Appeal from Dorchester County Probate Court, staying the proceedings in Probate Court. Following the service of the Notice of Appeal, on May 1, 2019, Respondent moved the Probate Court to lift the automatic stay. On May 10, 2019, the Dorchester County Probate Court granted the Respondent's Motion to Lift Stay. On May 15, 2019, the Appellant filed the writ of supersedeas which this order addresses.

The Appellant contends that the following issues exist:

- 1.) The wrongful death and "slayer action" will be settled without knowledge or approval by the Personal Representative of [sic]¹ the Trustee of the Colucci Living Trust.
- 2.) The "Edisto House" is a unique piece of real property that cannot be replaced if the stay is reinstated and the home is sold.
- 3.) The Respondent's Motion to Lift Stay was fatally deficient.
- 4.) The Probate Court improperly granted Respondent's Motion to Lift Stay
- 5.) It is necessary to file this petition in the Circuit Court

This Court will only address the Appellant's fifth point, in detail.²

As to the Appellant's fifth point, that it was necessary to file this petition in the Circuit Court. The Appellant contends that, "except where extraordinary circumstances make it

¹ The use of "Personal Representative of the Trustee of the Colucci Living Trust" is an incorrect term of art. The Court surmises that this is a scrivener's error on the part of Appellant and should have read as "Personal Representative or the Trustee of the Colucci Living Trust"

² The appellant's first, second, third, and fourth points are not ripe for review due to the appellant not giving the Probate Court an opportunity for corrective action as the rule, which they used as a basis for the writ, requires.

impracticable, application for an order....for supersedeas must first be made to the lower court” Rule 241(d)(1), SCACR. Appellant argues that, due to the time sensitive nature of property contained within the estate, it would be impracticable to move the probate court that ordered the lift of the “automatic stay for a writ of supersedeas.

This Court disagrees. This Court’s opinion is that there are no extraordinary circumstance that exist. Issues are being brought to the Circuit Court that have not been fully addressed or brought before the Probate Court. Should there be any part of this estate that is under a true time constraint, then this Court would not continually be put in a position of seemingly being used against the Probate Court and that the Probate Court is in turn being used against the Circuit Court. The very fact that this Court is forced to address the issue of the apparent utilization of one court against the other illustrates that, had there been actual concern with time constraints or had there been an actual issue of whether extraordinary circumstances exist, there would not be a continuous barrage of issues being filed when one party presumably is not happy with either the Probate Court’s decision or the Circuit Court’s decision. Especially when both parties agreed that the Circuit Court has limited jurisdiction to overturn the actions of the Probate Court except on appeal. “A Circuit Court’s jurisdiction over matters related to the estates of decedents is limited to those distinct issues removed to it from the Probate Court and most appeals from decisions of the Probate Court”. S.C. Code Ann. § 62-1-302(d), (f); S.C. Code Ann. § 62-1-308 (appeals from probate court).

Further, the Appellant partially quoted Rule 241(d)(1) SCACR. The complete rule states, “Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay *or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision* on appeal. Here, the lower court that instituted the

order which the Appellant is attempting to appeal is the Probate Court. While the Appellant labeled their emergency petition as an appeal from the Probate Court's decision, the Appellant made it abundantly clear in their emergency petition that they did not give the Probate Court a chance for corrective action prior to filing the appeal. Since, this Court is of the opinion that there are no extraordinary circumstances that made it impracticable for supersedeas to be requested from the Probate Court, a required part of the writ of supersedeas step was bypassed unnecessarily. As a result, the writ of supersedeas to Circuit Court fails on procedural grounds. Accordingly,

IT IS THEREFORE ORDERED that, the Appellant's Emergency Petition for Writ of Supersedeas be and is DENIED.

IT IS FURTHER ORDERED that the issue be remanded back to Probate Court to allow the Probate Court the opportunity for corrective action should it be inclined to do so.

IT IS FURTHER ORDERED that this estate is to remain in the complete jurisdiction of the Probate Court until a final order is issued by the Probate Court disposing of all matters before it. At that point, should any appeals be necessary, only then can parties petition the Circuit Court in an appellate fashion. No appeals to the Circuit Court may be had or filed until this case is completed in Probate Court.

IT IS SO ORDERED.

St. George, South Carolina

Edgar Dickson
Circuit Court Judge



Dorchester Common Pleas

Case Caption: Michael C. Fox , plaintiff, et al VS Andrew W. Chandler , defendant,
et al
Case Number: 2019CP1800677
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153