

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Gail Turner, )  
Plaintiff, )  
vs )  
Henry McMaster, Governor of South )  
Carolina, )  
Defendant. )  


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AND )  
In the Matter of the Estate of James )  
Najee Karim, )  
Gail Turner, )  
Petitioner, )  
Vs )  
Harmonica Hart, Sandra Jones, Carinne )  
Byrd, Cornelius Hart, and Joann Wall, )  
Respondents, )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-01772

ORDER

THIS MATTER COMES BEFORE THE COURT upon Plaintiff's filing of a Notice of Appeal on March 29, 2018, appealing from two Orders issued by the Probate Judge of the Richland County Probate Court. The underlying matter concerns the administration of the Estate of James Najee Karim ("Estate") found in Estate Number 2017-ES-40-01510. Pro se Plaintiff Gail Turner ("Ms. Turner") is a sister of James Najee Karim ("Decedent"). Sandra Jones, Carinne Byrd, Cornelius Hart, and Joan Wall are likewise siblings of the Decedent. Harmonica Hart is the only intestate heir of the Decedent. Decedent died on August 27, 2017. Subsequently, Harmonica Hart filed an application for Informal Appointment requesting the Probate Court

appoint her as Personal Representative of the Estate. Ms. Hart was appointed informally to serve as Personal Representative on September 18, 2017. Between September 21, 2017 and January 2018, Plaintiff and Sandra Jones made a number of filings seeking to intervene in the administration of the Estate and challenging the Probate Court's determination that Decedent died intestate. Among other things, these filings alleged the existence of both a living trust and a purported will, challenged the jurisdiction of the Probate Court and the appointment of Ms. Hart as the Personal Representative, and generally took issue with the manner in which the Estate was being administered. Also, on January 26, 2018, Plaintiff filed a document styling itself both as a Complaint and a "Petition in the Nature of a Motion for a Declaratory Judgment", which named Governor Henry McMaster as the sole Defendant (hereinafter, the "Complaint"). The probate judge, sua sponte, determined to schedule a hearing in the interests of judicial economy and to organize and where possible resolve the issues being created by the pro se Plaintiff's numerous filings. This hearing was held on February 6, 2018. In attendance were Personal Representative Harmonica Hart and her attorney, Lisa Smith; the Decedent's siblings, the Decedent's father, James Hart, the Decedent's nephews, Corey Byrd and Zerrick Hart; and C. Cliff Rollins on behalf of Governor Henry McMaster. Attorney Thomas E. Mosely was also present, as he owned real property with the Decedent. At the hearing on February 6, 2018, the Probate Court heard testimony under oath by Plaintiff and others on a number of issues, including the existence and validity of the alleged living trust and will, and the Complaint.

Subsequent to the February 6 hearing, the probate court issued two Orders. The first, filed on February 12, 2018, is attached as Exhibit A to this Order, and dismissed Governor McMaster from the litigation upon a finding that the Complaint was not intended to assert any claims against the Governor, but named him solely because of his status as the head of the State's

executive branch of government. The second Order, attached as Exhibit B to this Order, was intended to indicate the Probate Court's determinations regarding the purported will and Ms. Turner's request to be named as the personal representative of the Estate. Briefly, this Order determined that the purported will was not to be admitted to probate due to the failure to observe the required formalities, and that Decedent's estate would continue to be administered pursuant to the laws of intestate succession. This Order was filed and served on the parties on March 20, 2018. As noted previously, on March 29, 2018, Plaintiff filed her Notice of Intent to Appeal and this Court scheduled the instant hearing, which was held on June 15, 2018.

The June 15, 2018, hearing was attended by Plaintiff, her siblings, and Attorney Rollins as counsel for Governor McMaster. The Court made a determination that Plaintiff/Appellant had provided Governor McMaster's counsel with notice of the hearing, but had failed to give notice to the Personal Representative or her attorney. Having heard the arguments of those present at the hearing and having reviewed the record from the Probate Court as well as the briefs submitted by the parties on appeal, this Court makes the following Findings of Fact and Conclusions of Law:

1. Although Plaintiff's Notice of Appeal expresses an intent to appeal from both the Probate Court's Order of February 12, 2018 (dismissing Governor McMaster from the case), and the second Order of March 20, 2018 (dismissing the purported will and confirming Harmonica Hope as the Personal Representative of the intestate Estate), the Personal Representative and/or her counsel were not given proper notice of the instant hearing. Therefore, this hearing is continued with regards to Plaintiff's appeal of the Order of March 20, 2018, pending a rescheduling of the hearing and provision of proper notice of same to the interested parties by the Plaintiff.

2. With regards to Plaintiff's Notice of Appeal of the Probate Court's Order of February 12, 2018, this Court finds that S.C. Code Ann. § 62-1-308 deals with appeals from Probate Court to circuit court, and provides in pertinent part:

A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after the receipt of written notice of the appealed from order, sentence, or decree of the probate court.

S.C. Code Ann. § 62-1-308(a).

3. Pursuant to Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, 810 S.E.2d 856, 2018 WL 1075861 (February 28, 2018), the South Carolina Supreme Court has ruled that an email providing written notice of entry of an order or judgment triggers the time to appeal from an action of this nature as long as the email is received from the court, an attorney of record, or a party.

4. The Probate Court's Order dismissing the claim against McMaster was emailed to Plaintiff by the Probate Court on February 12, 2018; further, in response to an email inquiry from Plaintiff on February 14, 2018, Plaintiff was again informed of the existence of the February 12, 2018 Order and the date of its filing.

5. On March 29, 2018, Plaintiff filed two documents with this Court. The first is styled as a Notice of Appeal and indicates Plaintiff's intent to appeal the Order of the Probate Court dated March 20. The second indicates an intent to appeal the Probate Court's Order of "February 6, 2018", the same being the Order which dismissed Plaintiff's Petition.

6. Although Plaintiff has given notice of an intent to appeal both the Order of February 12, 2018, and the Order of March 20, 2018, by operation of law her ten-day window to

give notice of the intent to appeal for the Order of February 12 began to run on February 12, 2018, and lapsed on February 23, 2018. Therefore her appeal as to the first Order is not timely, and should be dismissed on that basis alone.

7. Further, the Court finds that Plaintiff's grounds for appeal as to the Order of February 12, 2018, are without merit and that appeal should be dismissed as it is based on Plaintiff's impression that Governor McMaster, as the head of the executive branch of the government of the State has both the power and the duty to intervene in the function of the Probate Court and direct a particular result therein. This is in error, as the State's executive branch has neither the duty nor the power to intervene in the matters within the province of the judiciary.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Plaintiff's Appeal of the Order of the Richland County Probate Court of February 12, 2018, is dismissed as untimely, and outside of the requirements of S.C. Code Ann. § 62-1-308(a).

2. The Plaintiff's Appeal of the Order of the Richland County Probate Court of February 12, 2018, is dismissed on the grounds that the appeal is without merit, as the Governor of the State of South Carolina is neither a proper nor a necessary party to a probate court controversy over a contested will where the parties otherwise have no connection to the Governor.

3. Governor Henry McMaster is hereby dismissed from any further proceedings in this matter.

4. Plaintiff's hearing on the appeal of the Order of the Probate Court dated March 20, 2018, is continued pending a rescheduling of the hearing with proper notice of all parties having an interest.

AND IT IS SO ORDERED.

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The Honorable DeAndrea G. Benjamin  
Judge of the Fifth Judicial Circuit

June \_\_\_\_\_, 2018  
Columbia, South Carolina



Richland Common Pleas

**Case Caption:** Gail Turner , plaintiff, et al VS Henry McMaster , defendant, et al  
**Case Number:** 2018CP4001772  
**Type:** Order/Dismissal

So Ordered

s/DeAndrea Gist Benjamin, #2161