

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

Rufus Lyndell Griffin,
Plaintiff,

vs.

Thomas Mosley, Quinnie Mosley, Walter
Mosley, Timothy Mosley, and Paquita
Mosley, Individually and as Personal
Representative for the Estate of Ellec Mosley,
Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A NO: 2016-CP-19-00141

ORDER

RECEIVED

AUG 26 2019

SC Court of Appeals

This matter is before this Court on a Motion to Dismiss filed on February 18, 2019 by Defendant Paquita Mosley ("Defendant"). Rufus Griffin ("Plaintiff"), Pro Se and Palmer Freeman, Jr., Esq., counsel for Defendant, were present for the hearing conducted at the Edgefield County Courthouse on March 18, 2019.

BACKGROUND

At the hearing, Defendant sought dismissal of the complaint on two grounds:

First, Defendant averred dismissal is a proper remedy for Plaintiff's lack of compliance with Defendant's discovery requests under Rule 37(b)(2)(C), SCRCP. Defendant stated that Plaintiff had not answered the interrogatories that were sent following the previous hearing in July 2018. Plaintiff asserted that he never received any interrogatories. Following the hearing in March, this Court ordered Defendant to provide Plaintiff with an additional copy of the interrogatories. Plaintiff was ordered to respond to those interrogatories within fifteen days of receiving them. Plaintiff was also ordered to produce any documents responsive to Defendant's request for production within sixty days of the hearing. Defendant's motion for dismissal on the basis of noncompliance with discovery is now moot. *See* Order dated March 20, 2019.

Defendant also sought dismissal of Plaintiff's complaint on the basis that another action between the parties is pending in probate court. *See* Rule 12 (b)(8), SCRCP. Plaintiff stipulated there was a pending probate action, but he contends that the instant action involves a dispute over non-probate assets that is properly before this Court. At the hearing this motion was taken under advisement.

LEGAL STANDARD

A defendant may move for dismissal of an action pursuant to Rule 12(b)(8), SCRCP when another action is pending between the same parties for the same claim. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 322, 701 S.E.2d 39, 44 (Ct. App. 2010); *Capital City Ins. Co v. BP Staff, Inc.*, 382 S.C. 92, 105-106, 674 S.E.2d 524, 531-532 (Ct. App. 2009)(noting that the claim must either be substantially or precisely the same as in the other action).

DISCUSSION

Plaintiff asserted during the hearing that this case is different from the underlying probate action in that it involves funds which are/were not probate assets. However, a review of the record in this case offers insufficient evidence to draw such a conclusion. The complaint seeks damages for estate assets wrongfully converted by Defendant as well as claims for assets which were purportedly jointly owned by Plaintiff and Ellec Mosley (“the Decedent”).

The underlying probate case was appealed to the circuit court following a determination that Plaintiff had failed to prove paternity beyond a reasonable doubt.¹ The circuit court found error in this decision, noting that Plaintiff’s burden of proof under the statute was “clear and convincing” evidence. Order of J. McMahon dated Nov. 12, 2015, Docket No. 2014CP1900324. The Order of the Probate Court was reversed and remanded for further proceedings to determine paternity consistent with the statutory requirements of S.C. Code Ann. § 62-2-109(2)(ii).

This case, like the underlying probate action, involves a dispute over assets originally in the possession of the Decedent that were distributed to Defendant and other parties following Decedent’s death in December 2, 2012. *See* Complaint ¶¶ 24-25, 33-34. Defendant is also the named defendant in the underlying probate action. The complaint asserts, in part, that Plaintiff is a lawful heir to the Decedent’s estate and is therefore entitled to a share of the assets. Whether Plaintiff actually is an heir or entitled to those assets is a question that falls within the exclusive jurisdiction of the probate court. S.C. Code Ann. § 62-1-302 (2019). Section 62-1-302 provides in part that the probate court has exclusive original jurisdiction over paternity matters. S.C. Code Ann. § 62-1-302(c) (2019). The probate court may, in its discretion, remove certain matters to

¹ Originally filed in Edgefield County as Probate Case No. 2013-ES-19-0001, the case was subsequently transferred to Lexington County. The Lexington County Probate Court assigned case number 2016-ES-32-262 to the file and Judge Eckstrom was appointed special probate judge by order of the Supreme Court on January 27, 2016. Judge Eckstrom later recused himself and Judge Travis Moore of Greenwood County was appointed special probate judge on February 15, 2018. The Greenwood County Probate Court received the file in March 2018 and it retains the original Edgefield case number.

circuit court including, inter alia, issues triable before a jury and involving amounts in controversy of five thousand dollars or more. S.C. Code Ann. § 62-1-302(d)(5) (2019). An interested party may accomplish the same by filing a motion. *Id.* However, that is not the procedural posture of this case. Plaintiff initiated this action through the filing of a summons and complaint in circuit court rather than a motion for removal of the probate action to circuit court.² Accordingly, the issues raised in Plaintiff's complaint are proper for the probate court to consider as a matter of first impression.

ORDER

Therefore, based upon the foregoing, **IT IS ORDERED**, Defendant's Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.

² Plaintiff initially filed this action in Richland County on December 10, 2015 (Docket No. 2015CP4007354) after the probate matter was filed in Edgefield in 2013. Venue was transferred to Edgefield County by Order dated May 3, 2016.



Edgefield Common Pleas

Case Caption: Rufus Lyndell Griffin VS Thomas Et Al Mosley , defendant, et al
Case Number: 2016CP1900141
Type: Order/Dismissal

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge