

91514

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge
Brian C. Able, Presiding Associate Probate Judge

Common Pleas Case No. 2015-CP-30-0058
Probate Case Number 2011-ES-000221
Probate Case Number 2015-GC-30-0000712

RECEIVED
NOV 25 2019
SC Court of Appeals

Appellate Case No. 2019-000906

JOHN ROSCOE STONE, III,
DIANE S. DOUGLAS, and
JONI S. WOFFORD,

Respondents,

v.

RONNIE G. STONE and S.
TYLER PATTON,
Of Whom S. Tyler Patton is

Appellant.

CONSENT MOTION TO DISMISS FOR LACK OF JURISDICTION

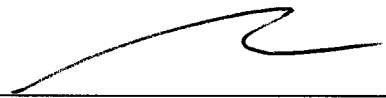
Howard W. Anderson III (#100329)
LAW OFFICE OF HOWARD W.
ANDERSON III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)

Kimberly Truluck Thomason (#79179)
Devon Marc Puriefoy (#102097)
TRULUCK THOMASON LLC
1011 E. Washington St.
Greenville, SC 29601
kim@truluckthomason.com
devon@truluckthomason.com
864-331-1751 (p)

Comes now Appellant S. Tyler Patton and, with consent of Respondents, would respectfully move this Court dismiss this appeal for lack of jurisdiction, without prejudice to the issues that may ultimately brought before this Court pursuant to the appeal currently pending in the Circuit Court styled *Patton v. Stone*, No. 2019-CP-30-00748 (Laurens County Court of Common Pleas). A supporting memorandum is being concurrently filed.

Dated this 21 day of November, 2019.

S. TYLER PATTON



Howard W. Anderson III
SC Bar No. 100329
Counsel for Appellant

I consent:

S. Michael Pack, Jr. (here - by permission)

S. Michael Pack, Jr.

SC Bar No. 0072712

Dennis, Shaw, Drennan & Pack, LLC

P.O. Box 891

Spartanburg, SC 29302

Counsel for Respondents


Proof of Service

I, the undersigned, served a copy of the foregoing on the following counsel of record this 21st day of November, 2019, by U.S. Mail, First-Class Postage prepaid:

Thomas J. Thompson
Townsend & Thompson
PO Box 215
Laurens, SC 29325

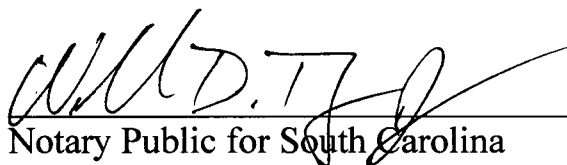
Kimberly Thomason
Devon Puriefoy
Truluck Thomason, LLC
1011 E. Washington St.
Greenville, SC 29601

S. Michael Pack, Jr.
SC Bar No. 0072712
Dennis, Shaw, Drennan & Pack, LLC
P.O. Box 891
Spartanburg, SC 29302



Howard W. Anderson III
SC Bar No. 100329
Counsel for Appellant

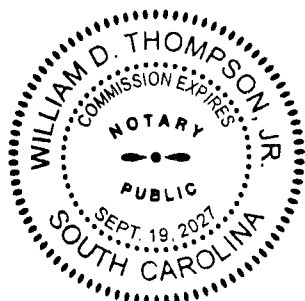
SUBSCRIBED TO AND SWORN TO
Before me this 21st day of November, 2019



(L.S.)
Notary Public for South Carolina

My commission expires: 9-19-2027

RECEIVED
NOV 25 2019
SC Court of Appeals



**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge
Brian C. Able, Presiding Associate Probate Judge

Common Pleas Case No. 2015-CP-30-00581
Probate Case Number 2011-ES-000221
Probate Case Number 2015-GC-30-0000712

Appellate Case No. 2019-000906

JOHN ROSCOE STONE, III,
DIANE S. DOUGLAS, and
JONI S. WOFFORD,

Respondents,

v.

RONNIE G. STONE and S.
TYLER PATTON,
Of Whom S. Tyler Patton is

Appellant.

**MEMORANDUM IN SUPPORT OF CONSENT MOTION TO DISMISS
FOR LACK OF JURISDICTION**

Howard W. Anderson III (#100329)
LAW OFFICE OF HOWARD W.
ANDERSON III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)

Kimberly Truluck Thomason (#79179)
Devon Marc Puriefoy (#102097)
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1011 E. Washington St.
Greenville, SC 29601
kim@truluckthomason.com
devon@truluckthomason.com
864-331-1751 (p)

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Comes now Appellant S. Tyler Patton and would respectfully show the Court as follows:

Background

On May 7, 2015, John Roscoe Stone, III; Diane S. Douglas, and Joni S. Wofford (the "Remainder Beneficiaries") filed a formal petition in the Probate Court of Laurens County against Ronnie G. Stone, S. Tyler Patton, Ron Dean, and Edward Jones. The petition alleged that Ms. Stone, as personal representative, and then later Mr. Patton, as trustee, had (with the help of eventually dismissed Ron Dean and Edward Jones) improperly administered the late Everett H. Stone's testamentary trust by diversifying the 3097 shares of Aon, Inc. stock that had originally formed the trust corpus into a diversified mutual fund.

Upon timely motion, the probate court ordered the case removed to Laurens County Common Pleas. [App. 001].

After having already dismissed Ron Dean and Edward Jones, the presiding judge at the Court of Common Pleas entered an order of reference as follows:

IT APPEARING to the Court that the above entitled action is an action at law,

IT IS ORDERED that the matter be and hereby referred to Bryan C. Able, Probate Judge for Laurens, County, as Probate Judge to make find-ings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case.

Proof of Service

Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals or the South Carolina Supreme Court as appropriate.

[App. 002].

The only signature of consent on that order was that of Judge Able. [*Id.*].

On September 27, 2018—following what he interpreted as a “remov[al] from the Court of Common Pleas for Laurens County to this [Probate] Court [of Laurens County,”—the presiding Probate Judge held a bench trial on the Petition. [Appendix 006]. Because Ms. Stone passed away in 2018, all claims against her were dismissed. [Appendix 007].

The presiding probate judge found that Mr. “Patton violated his fiduciary duties to [the Remainder Beneficiaries] by selling/disposing of 2,413 shares of Aon, Inc. stock.” [Appendix 010]. For relief, the court ordered Mr. Patton to provide a written accounting of his tenure as trustee, replaced him as trustee, and ordered him to “re-store to the corpus of the Everett Stone Family Trust 2,413 share of Aon, Inc. stock....” [Appendix 010].

The orders below were signed “BRYAN C. ABLE ASSOCIATE PROBATE JUDGE,” who filed them with the Probate Clerk—not the Clerk of the Circuit Court. [Appendix 003-10].

Pursuant to the Order of Reference, Mr. Patton filed an appeal with this Court.

But, believing a direct appeal to this Court improper, he also filed a notice of appeal to the Court of Common Pleas, in the event that this Court could not yet exercise appellate jurisdiction. *See Patton v. Stone*, No. 2019-CP-30-00748 (Laurens County Court of Common Pleas).¹

Argument

I. Standard of Review

“The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties....” *Anderson v. Anderson*, 299 S.C. 110, 115 (1989). Accordingly, it can be raised “at any stage of the proceeding,” including for the first time on appeal. *Eaddy v. Eaddy*, 283 S.C. 582, 584 (1984). Whether jurisdiction exists is a question of law for the court....” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104 (Ct. App. 1993) (citation omitted).

II. The Circuit Court Must Pass on the Merits Before this Court Can Exercise Jurisdiction.

This Court only has jurisdiction to hear appeals “from an order, judgment, or

¹ That case is currently stayed pending this Court’s decision about whether this Court possesses jurisdiction.

decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission." S.C. Code § 11-8-200. At present, however, no reviewable judgment exists because the circuit court has not yet entered any reviewable judgment.

A. The Order of Reference Did Not Authorize the Presiding Probate Judge to Act as a Special Referee.

Despite the purported order of reference, the order of reference did not vest the presiding probate judge with the powers of a special referee, whose decisions are appealable to this Court.² By statute, the Circuit Court has the "authority," *Roche v. Young Bros.*, 332 S.C. 75, 80 (1998), to refer an action for which no jury has been demanded to a special referee only by agreement of the parties: "[T]he presiding circuit court judge, *upon agreement of the parties*, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity." S.C. Code §

² The presiding Probate Judge did not evidently even think he was exercising such authority. He signed his orders as probate judge and filed them with the clerk of the probate court. In Mr. Patton's Initial Brief, Mr. Patton showed how the Probate Code does not authorize a remand from Circuit Court. But given that the Circuit Court, as explained below, has not yet entered a final judgment, that issue is not yet ripe for this Court's review.

14-11-60 (emphasis added).³ Any “agreement between counsel affecting the proceedings,” to be valid, must be “reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.” Rule 43(k), SCRCPP. *See also, e.g., Long v. Ehni*, 283 S.C. 554, 554 (1983) (dismissing appeal from order of special referee for lack of written consent by the parties for the special referee to enter judgment directly appealable to the Supreme Court).

Here, no agreement of the parties within the meaning of Rule 43(k), SCRCPP appears. Consequently, no authority as a special referee ever vested. Accordingly, to the extent that the Presiding Probate Judge purported to exercise the authority of the Circuit Court, the attempt was void.

B. Even if the Presiding Probate Judge Were a Valid Special Referee, No Final Order Has Issued.

Even if the Order of Reference had been permissible, no appealable order has

³ Rule 53(a), SCRCPP, defines “special referee” as “a member of the South Carolina Bar to whom a matter has been referred *under S.C. Code Ann. § 14-11-60.*” (emphasis added). Thus, no special referee can ever be validly appointed under Rule 53 if the referee has not already met the qualifications under S.C. Code § 14-11-60.

yet issued because the presiding probate judge has not yet clocked his orders with the clerk of the Circuit Court, the court whose actions this Court reviews. The filing of the order with the clerk of the Circuit Court is critical to the commencement of the time for filing an appeal:

An order does not...confer rights which may be reviewed on appeal until it has been handed to the proper officer for filing.... "A paper is said to be filed when it is delivered to the proper officer, and by him received to be kept on file." 1 Bouv. Law Dict., 524, cited with approval in *Sternberger v. McSween*, 14 S.C. 35.... Until the paper has been delivered by the judge to the clerk of the court, to be filed by him as an order in the case, it is subject to the control of the judge, and may by him be withdrawn at any time before such delivery.

Archer v. Long, 46 S.C. 292, 294-95, 24 S.E. 83, 83-84 (1896). *See also, e.g., R. 58(a), SCRCP* ("A judgment is effective only when so set forth and entered into the record.").

Conclusion

Accordingly, this Court should dismiss this appeal for lack of jurisdiction, without prejudice to the issues that may ultimately be brought before this Court pursuant to the appeal currently pending in the Circuit Court styled *Patton v. Stone*, No. 2019-CP-30-00748 (Laurens County Court of Common Pleas).

Dated this 21st day of November, 2019.

S. TYLER PATTON



Howard W. Anderson III
SC Bar No. 100329
Counsel for Appellant

I consent:



S. Michael Pack, Jr.

SC Bar No. 0072712

Dennis, Shaw, Drennan & Pack, LLC

P.O. Box 891

Spartanburg, SC 29302

Counsel for Respondents

APPENDIX

STATE OF SOUTH CAROLINA

LYNN W. LANCASTER IN THE PROBATE COURT

COUNTY OF LAURENS

John Roscoe Stone, III, Diane S. Douglas, and
Joni S. Wofford

CASE NUMBER: 2015-GC-30-00007

2015 JUL 24 P 2:48

Petitioners,

ORDER FOR REMOVAL
TO CIRCUIT COURT

vs.

LAURENS COUNTY
CLERK OF COURT

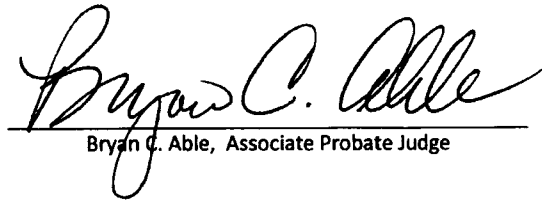
Ronnie G. Stone, S. Tyler Patton, Ron Dean, and
Edward Jones,

Respondents.

This matter is before the Court on Respondents Ron Dean and Edward D. Jones & Co., L.P. (incorrectly styled as Edward Jones), Motion for Removal filed on June 23, 2015. Pursuant to § 62-1-302 and § 62-7-201 of the South Carolina Code (2009 & Supp. 2014), Respondents seek to remove this action from Laurens County Probate Court to the Laurens County Court of Common Pleas. This action involved the trustees and third parties pursuant to § 62-7-201(c).

This Court finds that pursuant to § 62-1-302(d)(4), this matter must be removed to circuit court, and hereby GRANTS the motion and removes the case to the Laurens County Court of Common Pleas.

IT IS SO ORDERED.


Bryan C. Able, Associate Probate Judge

Laurens, South Carolina
July 17, 2015

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

John Roscoe Stone, III, Diane S. Douglas
and Joni S. Wofford,

JUN 22 P 2: 46

Petitioners,

vs.

LAURENS COUNTY
CLERK OF COURT

ORDER OF REFERENCE
15-CP-30-00581

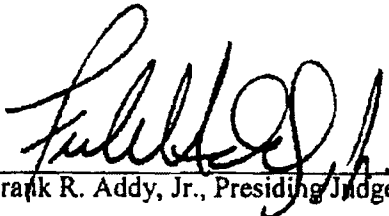
Ronnie G. Stone and S. Tyler Patton,

Respondents.

IT APPEARING to the Court that the above entitled action is an action at law,

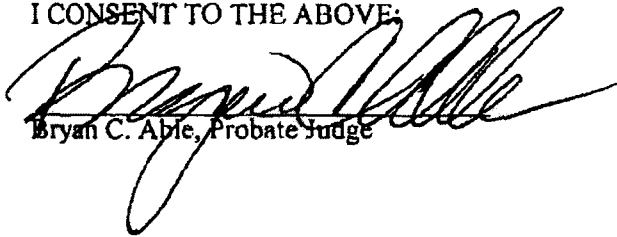
IT IS ORDERED that the matter be and the same is hereby referred to Bryan C. Able, Probate Judge for Laurens, County, as Probate Judge to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case.

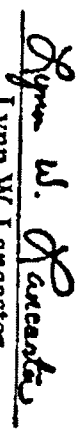
Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals or the South Carolina Supreme Court as appropriate.


Frank R. Addy, Jr., Presiding Judge

Greenwood, South Carolina
June 16, 2017

I CONSENT TO THE ABOVE:


Bryan C. Able, Probate Judge

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS

transferred to Patton.

Patton, in his second Motion to Vacate, Amend, or Alter argues that the facts and conclusions of law as contained in the Third Order are not supported by the record and/or the relief awarded to the Petitioners was not consistent with the record.

Patton, in light of his most recent motion asserts that since he was allowed to testify over Petitioners' objection that he relied on the advice of a third party (a stock broker with Edward Jones) he should not be held liable for the selling, disposal, and/or transferring of the stock, i.e. the courts finding that Patton violated his fiduciary duties was misplaced in the light of Patton's trust decisions were at the direction of his stock broker, who in Patton's opinion was an expert and experienced investor and who orchestrated the sales of the stock.

The fact that Patton was allowed to testify over Petitioners' objection does not relieve Patton of failing to comply with Rule(8)(c), SCRCP, as Petitioners were not and could not be expected to defend an affirmative defense not raised in Patton's pleadings. See *Parrish v. Allison* 376 SC 308, 656 S.E. 2d 382 Ct. of Appeals (Dec. 19, 2007).

Further, the court's allowance of the subject testimony does not *ipso facto* establish that Patton acted appropriately with respect to the fiduciary duties imposed upon him by the terms of Decedent's Last Will and Testament.

The court considered Patton's challenged testimony concerning his alleged reliance on the advice of a third party and found such testimony to be unpersuasive and even if true, did not absolve Patton from following the clear and unambiguous terms of ITEM IV of Decedent's Last Will and Testament, and further the stock broker could not have acted without Patton's consent and Patton, under the trust's terms, was not accorded the right to consent to a sale of the stock.

It is true that the South Carolina Trust Code bestows a number of powers on a trustee, that may not be specified in the trust instrument; however, Section 62-7-815(a)(2) of the 1976 South Carolina Code of Laws, as amended must be adhered to especially as this code section limits the general powers of the trustee to the terms of the trust (emphasis added).

Patton's Motion also took issue with the language of the trust provision and argued a reading of the subject article empowers the trustee to sell shares of the stock (this argument is brought up for the first time by Patton's motion to vacate, alter, and/or amend and consequently is untimely); however, the court's reading of said item does not in any sense of the word give Patton any powers, except two: 1. Hold the corpus of the trust for the remaindermen and 2. Distribute the interest and dividends generated by the trust to the life tenant. This article is clear and unambiguous and free from patent or latent ambiguities. The construction of the trust language advocated by Patton strains credulity and requests a forced interpretation of otherwise plain and uncomplicated language.

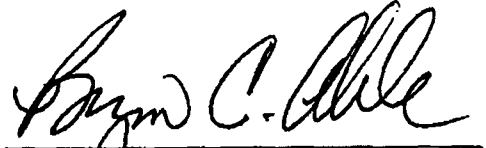
Lastly, Patton argues he cannot be held accountable for the misdeeds of his predecessor, Respondent, Ronnie G. Stone, and cites Section 62-7-812 of the 1976 South Carolina Code of Laws, as amended as authority for this proposition. The court need not address this final argument, as same was mooted when Petitioners reduced their demand that Patton be responsible for reimbursement of 2,413 shares of the stock as opposed to 3,097 shares of the stock, the reduction represents the number of shares disposed of or sold or traded by the deceased Respondent, Ronnie G. Stone, when she acted as Personal Representative and/or Trustee in the matter.

CONCLUSIONS OF LAW

Based on the foregoing, the Court denies Patton's Motion to Vacate the Third Order and grants Patton's Motion to Alter or Amend by changing the number of shares of the stock required to be replaced from 3,097 shares to 2,413 shares.

NOW, THEREFORE, the Court shall issue its Fourth Order of even date herewith reflecting that the number of shares for which Patton is responsible for replacing is reduced from 3,097 to 2,413,

AND IT IS SO ORDERED.



BRYAN C. ABLE
PRESIDING ASSOCIATE
PROBATE COURT JUDGE

August
July 13, 2019
Laurens, South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
)
John Roscoe Stone, III, Diane S. Douglas, and)
Joni S. Wofford,)
Petitioners,)
)
vs.)
)
Ronnie G. Stone and S. Tyler Patton,)
Respondents.)
)

IN THE PROBATE COURT

FOURTH ORDER

2011-ES-30-221

RECEIVED

AUG 13 2019

LAURENS COUNTY, SC
PROBATE COURT

Date of Hearing: September 27, 2018 and June 11, 2019
Presiding Judge: Bryan C. Able
Attorney for the Petitioners: Thomas J. Thompson
Attorney for the Respondents: Devon Puriefoy
Court Reporter: Nancy Sims

The Petitioners initially filed this action in the Probate Court for Laurens County; however, the matter was removed to the Court of Common Pleas for Laurens County pursuant to an Order of this Court dated July 17, 2015. Thereafter the matter was removed from the Court of Common Pleas for Laurens County to this Court by Order dated June 16, 2017.

The matter came on for a Final Hearing on Thursday, September 27, 2018 at the Laurens County Probate Court, Laurens Judicial Complex, Laurens, South Carolina. Present at the hearing were Petitioners, John Roscoe Stone, III, Diane S. Douglas, and Joni S. Wofford, hereinafter collectively referred to as "Stone"; Stone's attorney; Respondent, S. Tyler Patton, hereinafter referred to as "Patton"; Patton's attorneys and several witnesses who testified on behalf of Stone or Patton.

FACTUAL BACKGROUND

Everett H. Stone hereinafter referred to as "Decedent" on or about April 11, 2011 died testate in Laurens County, South Carolina survived by his second wife, Ronnie G. Stone, hereinafter referred to as "Wife", and three (3) children from his first marriage, the Petitioners (Stone).

Decedent's Last Will and Testament dated August 2, 1999 hereinafter referred to as "Will" was admitted to informal probate with this court on or about May 31, 2011.

The Will provided, inter alia, that Wife would serve as the Personal Representative and Patton would serve a Trustee, and contains the following pertinent provisions, to wit:

"ITEM IV: I devise to my Trustee, hereinafter named, all my shares of stock in Aon, Inc. and Piedmont Natural Gas Company, to be held and administered for the benefit of my wife, **RONNIE G. STONE**, for the term of her natural life. Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my wife during her lifetime all the dividend and interest income from the trust in convenient installments but no less frequently than quarter-annually. Upon the death of my wife, I direct that my Trustee distribute all my shares in Aon, Inc. equally to my children, **JOHN ROSCOE STONE, III, DIANE S. DOUGLAS and JONI S. WOFFORD**, and distribute all my shares of stock in Piedmont Natural Gas Company equally to my step-children, S.

TYLER PATTON and CY M. PATTON.

ITEM VII: I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament, my wife, **RONNIE G. STONE**, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint a substitute or successor Personal Representative my brother, **FRANK B. STONE**, and direct that he shall serve without bond.

ITEM IX: I hereby nominate, constitute and appoint as Trustee **S. TYLER PATTON**, and direct that he shall serve without bond. If for any reason he is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint a substitute or successor Trustee, **CY M. PATTON**, and direct that he shall serve without bond.”

Wife closed Decedent’s estate on or about August 27, 2012.

Stone upon learning Wife and Patton liquidated/sold all 3,097 shares of Aon, Inc. stock, hereinafter sometimes referred to as the “Stock” filed suit against Wife and Patton, seeking, in the main, a restoration of the 3,097 shares of the Stock.

Stone’s pleadings alleged, several causes of action, namely, an accounting, conversion, civil conspiracy, fraud and breach of fiduciary duties.

Wife and Patton timely filed and served Answers and Counterclaims and raised as affirmative defenses; failure to state a cause of action, laches and unclean hands.

Stone timely filed and served Replies to the Counterclaims of Wife and Patton.

Stone served Wife and Patton with a number of Requests to Admit (Rule 26 SCRPC) relative to their sale/disposal of the 3,097 shares of the Stock and while Wife and Patton replied in writing to the Requests to Admit they in no manner denied the fact that they had sold/disposed of all shares of the Stock and as a consequence such fact(s) were exclusively admitted at trial. See Scott v. Greenville Housing Authority 353 SC 639 597 SE 2nd 151 (App. 2003)

Wife died on or about March 16, 2018 and at trial Stone dismissed their claims as to her and/or her estate and proceeded solely against Patton.

Based on the Court’s file, Requests to Admit, testimony and Exhibits, the Court finds the following facts were proved to the satisfaction of court and the below outlined relief is appropriate under the circumstances.

FINDINGS OF FACT

I find this action was instituted pursuant to the South Carolina Trust Code Section 62-7-101, et seq. of the 1976 South Carolina Code of Laws, as amended.

I further find venue is proper in Laurens County, South Carolina pursuant to Section 62-7-204 (c) of the 1976 South Carolina Code of Laws, as amended.

I further find the Trust which is the subject matter within action was created pursuant to Section 62-7-401 (a) (1) (i) of the 1976 South Carolina Code of Laws, as amended.

I further find Wife by accepting appointment as Personal Representative of her husband’s estate solemnly agreed to perform the duties and discharge the trust of the office of Personal Representative which includes acting in the best interests of Stone pursuant to Section 62-3-703 (a) of the 1976 South Carolina Code of Laws, as amended.

I further find by accepting the appointment as Trustee, Patton became obligated by Section 62-7-804 of the 1976 South Carolina Code of Laws, as amended to administer the Trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the Trust. In

satisfying this standard Patton was required to exercise reasonable care, skill and caution so as to act in the best interest of Wife and Stone.

I further find Decedent at his death, owned 3,097 shares of the Stock and Decedent's Will provides in clear and unambiguous language as follows: "I give to my Trustees hereinafter named, all of my shares of Aon, Inc. and Piedmont Natural Gas Company, to be held and administered for the benefit of my Wife, Ronnie G. Stone for the term of her natural life. Commencing with the date of my death, my Trustee shall pay or apply for the benefit of my Wife during her lifetime all of the dividend interest income trust in convenience installments, but no less frequently than quarter annually. Upon the death of my Wife, I direct that my Trustee distribute all of my shares of the stock in Aon, Inc. stock equally to my children, John Roscoe Stone, III, Diane S. Douglas, and Joni S. Wofford.

The Will does not include any discretionary power to sell, change, distribute, convert, or otherwise deplete the shares of the Stock during Wife's lifetime.

I further find Edward D. Jones and Company, L.P. served as the brokerage house for all of the below outlined stock transactions and hereinafter is referred to as "Edward Jones".

I further find Wife, as Personal Representative of Decedent's estate transferred 3,097 shares of the stock to an account with Edward Jones bearing account number 216-14345-1-5 (the Estate Account).

I further find Wife on or about November 28, 2011 liquidated 680 shares of the Stock and purchased other securities with the proceeds, and she transferred the acquired securities to her individual account with Edward Jones, account number 216-14711-1-1, without notice to Stone.

I further find Wife on December 5, 2011 transferred the Stock remaining in the "Estate Account" (2,413 shares) to the individual account with Edward Jones mentioned in the immediately preceding paragraph.

I further find Wife on July 5, 2012 transferred the Stock (2,413 shares) from her individual account to the Edward Jones account entitled "Everett H. Stone Family Trust Account" bearing account number 216-15073-1-0, which was controlled solely by Patton and thereafter Patton sold or otherwise disposed of the Stock and he no longer holds in Trust any shares of the Stock, and all these sales/dispositions were done without notice to Stone.

I further find Wife at her death held no interest or ownership in or to the Stock.

I further find Wife, knew or should have known, that she nor Patton had any discretionary powers or authority with reference to the Stock, and could not depart from the clear and unambiguous language of the subject Trust and knew or should have known that she and Patton were obligated to keep the initial 3,097 shares of the Stock for her benefit and the benefit of Stone as provided by Section 62-7-815 (a) (2), of the 1976 South Carolina Code of Laws, as amended.

I further find Patton, knew or should have known that he lacked any discretionary powers or authority with reference to the Stock, and could not depart from the clear and unambiguous language of the subject Trust and knew Wife as well as himself were obligated to keep the initial 3,097 shares of the Stock in Trust for Wife and Stone as provided by Section 62-7-815 (a) (2), of the 1976 South Carolina Code of Laws, as amended.

I further find Patton, over the objection of Stone, testified that he sold the Stock based on the advice of his Stock Broker, who held the subject account; however, because Patton did not plead this defense in his June 8, 2015 answer to the Petition, that defense was waived, and he may not claim same now.

See Rule 8 (c) SCRPC, which provides, in part, as follows "In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of

the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.”

I further find Wife in her capacity as Personal Representative of the Estate and Patton in his capacity as Trustee owed Stone the duty of acting in the best interest Stone, and also were required to act in good faith with full disclosure to Stone of all known information that was of importance or material to Stone’s interest.

I further find Wife and Trustee withheld information related to the Stock and disposed of Stock all of which was material to Stone’s interest and their silence and disposition of the Stock constituted a breach of their fiduciary duties and Stone is entitled to damages for such breaches.

I further find the construction of the Will is a matter of law for the Court.

I further find in construing a Will, a Court should give effect to the expressed intention of the Testator. In ascertaining this intent, a Court’s first reference is always to the Will’s language itself. In construing the language of a Will, the Court must give words their ordinary, plain meaning unless it is clear the Testator intended a different sense, or unless such meaning would lead to an inconstancy with the Testator’s declared intention. In determining the Testator’s intent, the Court should read the Will as a whole in an attempt to harmonize all its provisions. An interpretation that fits into the whole scheme or plan of the Will is the most apt to be the correct interpretation of the intent of the Testator.

I further find the undisputed and unambiguous language of the Will gave Stone a vested remainder in the testator's shares of Aon, Inc stock, *itself*, and not proceeds or any equivalent or value of the stock.

I further find the Will gave Wife a life estate in the Stock. "There is no special language required for the creation of a life estate[.]" *Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005) (citation omitted). “[W]here an estate or interest is given in words of clear and ascertained legal signification, *it shall not be enlarged*, cut down, or destroyed by superadded words in the same or subsequent clauses, unless they raise an irresistible inference that such was the intention.” *Schroder v. Antipas, et al.*, 215 S.C. 552, 556, 56 S.E.2d 354, 355 (1949) (quoting *Adams, et al. v. Verner*, 102 S.C. 7, 11, 86 S.E. 211, 212 (1915) (emphasis added).

I further find Wife and Patton had no power of sale, power of alienation or power to encumber the Aon, Inc. stock. *See*, as to the Wife's lack of power as executor, e.g., *Smith v. Heyward*, 115 S.C. 145, 105 S.E. 275, 281 (1920) (Executors have only a "power to sell so much of the estate as may be necessary to raise a fund sufficient to carry out the provisions of the will. Beyond that the executors have no power to sell."). As to Wife's lack of power as life tenant: "The courts of South Carolina have traditionally followed the property rule that a purchaser cannot purchase more than his grantor owns." "A life tenant [Wife] can convey no more than his life estate." *F.C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) (citations omitted); *Hutto v. Ray*, 192 S.C. 364, 6 S.E.2d 747 (1940); *Belue v. Fetner*, 251 S.C. 600, 164 S.E.2d 753 (1968). "Therefore, [this] restraint imposed is a restraint that exists inherently in every life estate." *Wise v. Poston*, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). As to Trustee's lack of power, see, e.g., *Estate of Stevens v. Lutch*, 365 S.C. 427, 617 S.E.2d 736 (Ct.App.2005) (relying on the trust language as most persuasive of settlor's intent regarding existence of any discretionary power of trustee). Extrinsic evidence is not admissible to alter the plain language of a trust instrument. *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 485 (Ct. App. 2006).

By the terms of paragraph IV of Will person or persons to take the Aon, Inc. Stock were certain and the event on which they were to take was bound to occur. Enjoyment of the estate was postponed for no other purpose than to provide for Wife during her lifetime, and the existence of the preceding estate was the only impediment to the enjoyment of the estates as remainder. When the Will took effect, Stone had the

present capacity to take the instant the life estate ended. Therefore, Stone's remainder was vested.

I further find Wife and Patton are further bound by their admissions that they disposed of the Stock.

I further find it is a general rule of law that when a Trustee departs from the directives contained in the Trust Instrument, he is liable for any loss occasioned irrespective of good faith or his best judgement. See Beacham v. Ross, et al. 187 SC 398, 198 S.E. 369 (1938).

I further find Stone is entitled to a restoration by Patton of 2,413 shares of the Stock.

I further find that the per share value of the Stock was \$145.97 per share on March 16, 2018, the date of Wife's death.

CONCLUSIONS OF LAW

Based on the facts herein above set forth, I conclude as follows:

- a. This Court has jurisdiction of the parties and the subject matter of the within action;
- b. All necessary parties are before the Court and the matter is ready for a final disposition;
- c. Patton violated his fiduciary duties to Stone by selling/disposing of 2,413 shares of Aon, Inc. stock;
- d. Wife and/or Wife's estate having been dismissed as a party respondent and has no obligation to Stone; and
- e. The remedy for Patton's breach of his fiduciary duties is to require Patton to deliver 2,413 shares of Aon, Inc. stock to Stone, as below outlined.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Patton by selling/disposing of 2,413 shares of Aon, Inc. stock breached his fiduciary duties to Stone and Stone is entitled to the relief setforth below.
2. Patton is hereby ordered to render a full, complete and accurate written accounting of his management of the subject Trust for the entire period since he became involved with same, and he shall within thirty (30) days of the within Order file same with the Court.
3. Patton is removed from his position of Trustee with regard to the Everett Stone Family Trust and is immediately replaced by Petitioner, Joni S. Wofford, and a certified copy of this Order shall serve as his authority to so act.

Patton shall restore to the corpus of the Everett Stone Family Trust 2,413 shares of Aon, Inc. stock not later than September 30, 2019

AND IT IS SO ORDERED.



BRYAN C. ABLE
ASSOCIATE PROBATE JUDGE

August
July 13, 2019
Laurens, South Carolina

PROOF OF SERVICE

I, the undersigned, served a copy of the foregoing on the following counsel of record this 21st day of November, 2019, by U.S. Mail, First-Class Postage prepaid:

Thomas J. Thompson
Townsend & Thompson
PO Box 215
Laurens, SC 29325

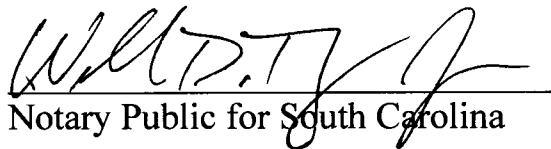
S. Michael Pack, Jr.
SC Bar No. 0072712
Dennis, Shaw, Drennan & Pack, LLC
P.O. Box 891
Spartanburg, SC 29302

Kimberly Thomason
Devon Puriefoy
Truluck Thomason, LLC
1011 E. Washington St.
Greenville, SC 29601



Howard W. Anderson III
SC Bar No. 100329
Counsel for Appellant

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Before me this 21st day of November, 2019

 (L.S.)
Notary Public for South Carolina

My commission expires: 9-19-2027



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SC Court of Appeals

Proof of Service

LAW OFFICE OF
HOWARD W. ANDERSON III, LLC

Howard W. Anderson III
Managing Attorney
Licensed in AK, GA, IL, IN, NC, SC, & TN
SC Supreme Court Certified Mediator & Arbitrator
Howard@hwalawfirm.com

November 21, 2019


Clerk's Office
Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *John Roscoe Stone III v. S. Tyler Patton*, No. 2019-001473
Consent Motions

Ladies and Gentlemen:

Enclosed, please find an original and six copies of two consent motions: a motion to stay appeal and a motion to dismiss for lack of jurisdiction. I have enclosed a check for \$100 for the filing fees.

Sincerely,


Howard W. Anderson III
(S.C. #100329)

CC:

Thomas J. Thompson, Esq.
210 West Laurens Street
Post Office Box 215
Laurens, SC 29325

S. Michael Pack, Jr.
Dennis, Shaw, Drennan & Pack, LLC
P.O. Box 891
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