

RECEIVED

DEC 06 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas Acting as Appellate Court to the Probate Court

The Honorable William H. Seals, Jr., Circuit Court Judge

Order of Dismissal Dated 29 June 2019
No Hearing on Matter-Order Filed 29 June 2019
Petition for Rehearing Denied 27 September 2019

Supreme Court Appellate Case No. 2019-001808

IN RE: THE ESTATE OF HAZEL NORTH

GRADY NORTH AND JEAN CORBETT.....Respondents

v.

LINDA NORTH AND JAMES NORTH.....Petitioners

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

Michael W. Sautter, Esquire (SC Bar # 4944)
Nicholas J. Brausch, Esquire (SC Bar # 104083)
Query Sautter & Associates, LLC
147 Wappoo Creek, Ste. 202
Charleston, SC 29412
843-795-9500
Attorneys for Respondents

Other Counsel of Record:

M. Richardson Hyman, Jr.
Peter G. McGrath
P O Box 127
Charleston, SC 29402
843-416-1047
Attorneys for Petitioners

INDEX

Appeals Questions Presented.....1
Statement of Case and Appeal.....1
Arguments.....5
Conclusion.....8

QUESTIONS PRESENTED

1. Should the South Carolina Supreme Court grant the Petition for Writ of Certiorari on this case to challenge the Orders of the South Carolina Court of Appeals dismissing the appeal, and denying the petition for rehearing; where the Court of Appeals unanimously determined after careful consideration of the petition for rehearing, that they were unable to discover that any material fact or principal of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing?

2. Should any appellate process in this case continue when the appellate Circuit Court reversed the Order of the Probate Court and remanded the case to the Charleston County Probate Court to re-commence informal proceedings to probate the 2008 will?

STATEMENT OF CASE AND APPEALS

This case concerns the Estate of Hazel North. She was born on November 14, 1921, and passed away on March 19, 2016, at the age of 94 while domiciled in Charleston County, South Carolina.

IN THE CHARLESTON COUNTY PROBATE COURT

Respondent Grady North filed an Application for Informal Probate of Will and Appointment in the Charleston County Probate Court to have the 12-23-2008 will of his mother, decedent Hazel North, informally probated. (App. 56-59). On March 29, 2016, the Probate Court issued an Order of Informal Probate which granted the application for informal probate of the will executed 12-23-2008 and appointed Grady North as Personal Representative of the Estate of Hazel North. (App. 60). Grady North accepted the appointment as Personal Representative to the Estate. (App. 61).

One day later, on March 30, 2016, Petitioner James North filed an Application for Informal Probate of Will and Appointment in the Charleston County Probate Court to have a will of decedent Hazel North, also his mother, dated 12-9-2014, informally probated and to be appointed Personal Representative of her Estate per the 2014 will. (App. 50-53).

On that same day, March 30, 2016, the Charleston County Probate Court issued an Order of Informal Probate which granted the application for informal probate of the will executed 12-9-2014, and appointed Petitioner James North as Personal Representative of the Estate of Hazel North. (App. 54). James North accepted the appointment as Personal Representative to the Estate. (App. 55). Also on March 30, 2016, the Charleston County Probate Court, issued an Order, terminating the appointment of Grady North as the Personal Administrator of the Estate of Hazel North effective this 30th of March 2018, for the following reason:

X A Last Will and Testament dated December 19, 2014 was filed with this Court which names James Allen North as the personal Representative of the Estate. (App. 48)

Petitioner never commenced a formal proceeding, never filed and served a summons and complaint, never provided notice and never scheduled a hearing to set aside the informal probate of the 2008 will of decedent Hazel North, and to terminate Respondent Grady North as Personal Representative of the Estate of Hazel North.

Respondents filed a Motion to Void Orders on the Setting Aside of the 2008 Will, Terminating the Appointment of Grady North as Personal Representative and Granting of Application for Probate of the 2014 Will of Decedent Hazel North Pursuant to Rule 60(b)(4), SCRPC. (App. 44-55).

On July 2, 2018, the same Associate Judge of Probate who issued the Orders of March 29 and March 30, 2016, conducted a hearing on Respondents Rule 60(b)4 SCRPC Motion. The Order of July 27, 2018, denied Respondent's Rule 60(b)(4) SCRPC Motion. (App. 36-43).

IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS

Respondent timely appealed the Order denying his Rule 60(b)4 SCRCPP Motion to the Charleston County Court of Common Pleas or appellate Circuit Court. On March 14, 2019, a hearing was conducted by Circuit Court Judge William H. Seals, Jr., which resulted in Judge Seals issuing on April 29, 2019, the subject Order of Reversal and Remand to Charleston County Probate Court to Informally Probate 2008 Will, (App. 27-34.)

The subject Order of the appellate Circuit Court, expressly references that, “The parties filed briefs with this Court. A Record on Appeal was prepared and submitted for this Court’s consideration, which is referenced extensively herein.” (App. 30).

IN THE SOUTH CAROLINA COURT OF APPEALS

Petitioners-Appellants then appealed to the South Carolina Court of Appeals the April 29, 2019, Order of the appellate Circuit Court.

By letter of May 14, 2019, the Court of Appeals requesting that the parties serve and file memoranda addressing the issue of appealability. (App. 26). Petitioner then had the opportunity to submit anything he felt was material and relevant to the consideration of the Court of Appeals on the issue of appealability. Petitioner filed a Brief on Appealability (App. 19-22). Respondent filed a Memorandum as to Appealability. (App. 23-25). Petitioner filed no exhibits in support of his position.

By Order filed June 28, 2019, The Court of Appeals dismissed the appeal, as “... the order on appeal is not a final order, *See* S.C. Code Ann § 62-1-308 (2009) (providing probate appeals must be from final orders).” (App. 18)

Appellants filed a Motion to Reinstate the Appeal, dated July 10, 2019. (App. 1-14) Respondent filed a Return. (App. 15-17). Petitioner's Motion to Reinstate provides in part, "... that the order in effect prevents any further action from being taken on the trial level. (App. 1). Petitioner did not include the Record on Appeal of the appellate Circuit Court, the transcript of the Probate Court hearing nor any Exhibits with his Motion.

In the Order of September 27, 2019 Order, The South Carolina Court of Appeals construed Appellants' motion to reinstate as a petition to re-hear the dismissal of the appeal; and stated as follows:

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly the petition for rehearing is denied. (App. 00).

IN THE SOUTH CAROLINA SUPREME COURT

On October 23, 2019, Petitioners filed their Petition for Writ of Certiorari to the South Carolina Supreme Court.

Contemporaneously Petitioners filed an Appendix. The Appendix did not include, the Record on Appeal filed in the appellate Circuit Court, as required by Rule 242(e) SCRPC. Petitioner did include certain pages of the Record on Appeal in the Appendix but did not include the transcript of the hearing in the Probate Court which was included in the Record on Appeal. Petitioner also failed to include the transcript of the hearing in the appellate Circuit Court. Nor did Petitioner include within the Appendix, his Memorandum in Opposition to SCRPC 60(B)4 Motion filed in the Probate Court.

Included in an unnumbered page of the Appendix is a Statement of No Record on Appeal. (App. --).

ARGUMENT

The granting of a Petition for Writ of Certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. Rule 242(b) SCACR.

The decision of the appellate Circuit Court properly sent the case back to the Probate Court to re-commence proceedings to informally probate the 2008 will of Hazel North. This case started in the Charleston County Probate Court and is now in its third tier of appellate process before the Supreme Court of South Carolina. (*See*, Statement of Case and Appeals). Prior to this Petition for Writ of Certiorari, the Court of Appeals rightly dismissed the case for lack of a final order from the lower court. Yet, Petitioner once again has submitted an unsupported appeal which does nothing more than prevent the informal probate of the 2008 will and continue to waste time for the parties, counsel and now the Supreme Court of South Carolina.

In turning to the language of Rule 242(b) SCACR, it is clear that no novel question of law exists, no dissent existed in the Court of Appeals decisions, the decisions are not inconsistent with the Supreme Court's prior decisions, no constitutional issue is directly involved, and the decisions in no way implicate a federal question or conflict between the Court of Appeals decision and any decision from the United States Supreme Court.

Respectfully, issues raised by Petitioners in this Petition for Writ of Certiorari as to contesting the informal probate of the 2008 Will, can only be raised, heard and determined by Petitioner commencing a formal action in the Probate Court, by serving a summons and petition, in which he requests the Court after notice and a hearing enter an Order probating a will, or setting aside an informal probate of a will. *See*, S.C.Code § 62-3-401. That Petitioners concede that they are

time barred from contesting the informal probate of the 2008 Will, does not create novel questions of law or extend the appellate jurisdiction of the Courts.

The order sought to be appealed by Petitioners is not a final order. On appeal the Circuit Court reversed the order of the Probate Court and remanded, or sent the case back to the Charleston County Probate Court to take the further action of informally probating decedent's 2008 Will.

Petitioner's arguments as to potential prospective effects of the appellate Circuit Court's Order to reverse and remand are contrary and in direct conflict with Petitioners' strategies to not commence a formal proceeding to contest the informal probate of the 2008 Will. Petitioners elected to not present these issues for determination by the Probate Court, and the Circuit Court on Appeal. (See Respondent's argument in his Return to Appellants Motion to Reinstate Appeal. (App. 15-17)).

Arguably, this Petition for Writ of Certiorari is defective in that Petitioner elected not to include within the Appendix for this Court's consideration, the Record on Appeal filed in the appellate Circuit Court, as required by Rule 242(e) SCRCF. The Appendix does not include the transcript of the hearing in the Probate Court which was included in the Record on Appeal. Petitioner also failed to include the transcript of the hearing in the appellate Circuit Court. Nor did Petitioner include within the Appendix his Memorandum in Opposition to SCRCF 60(B)4 Motion filed in the Probate Court.

The net effect of not including the Record on Appeal filed in the appellate Circuit Court and including a transcript of the hearing in the appellate Circuit Court, is Petitioners' tasking this Court to consider his Petition for Writ of Certiorari, without presenting to the Court of Appeals or preserving for this Court's review, Petitioner's arguments contained within the transcripts of the two hearings in the Probate and Circuit Courts.

Certainly the burden is Petitioner to include within the Appendix any documents relevant to the dismissal of the appeal by the Court of Appeals as required by Rule 242(e)2. Petitioner had the opportunity to submit anything he felt was material and relevant to the Court of Appeals upon receipt of their letter of May 14, 2019, requesting that the parties serve and file memoranda addressing the issue of appealability. (App. 26). As set forth above in response to the inquiry of the Court of Appeals, Petitioners filed no exhibits in support of their positions.

Respondent submits that the June 28, 2019 Order of the Court of Appeals should have been the end of the appellate road in this case with remittitur being sent as required by Rule 221(b)SCACR. (App. 18).

However once the Appeal was dismissed, Petitioner continued along the appellate path by filing a Motion to Reinstate the Appeal which was later construed by the Court of Appeals as a petition to rehear the dismissal of this appeal. (App. 0).

Petitioner's Motion to Reinstate is included within the Appendix as 1-14, and states, "... that the order in effect prevents any further action from being taken on the trial level. (App. 1). Once again, Petitioner did not include the Record on Appeal, the transcript of the Probate Court or any Exhibits with his Motion. As argued above by Respondent, it was Petitioners' strategy and elections to not timely commence a formal proceeding in the Probate Court and failure to preserve the ultimate issue for determination by the Circuit Court on Appeal, which bars Petitioner from contesting the informal probate of the 2008 will. (App. 15-17).

Petitioner's strategies and elections in this case culminated in the Order denying the Petition to Rehear the Dismissal of the Appeal. (App. 0).

CONCLUSION

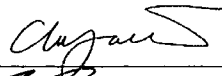
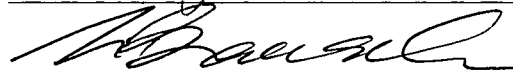
The South Carolina Court of Appeals was absolutely correct in dismissing this appeal and in denying the petition for rehearing. Petitioner failed to provide the Court of Appeals anything other than unsupported argument which culminated in the Court of Appeals determining, “after careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has either been overlooked or disregarded, and hence there is no basis for granting a rehearing.” (Id.).

Petitioner assigns error to the subject appellate Circuit Court Order and the Orders of the Court of Appeals based on his strategies and elections to never commence a formal proceeding to contest the informal probate of the 2008 will of decedent Hazel North.

Petitioner has failed to make any showing of special and important reasons for this Court to grant a Writ of Certiorari to review the final decision of the Court of Appeals denying their petition for rehearing. Petitioner has not supported his arguments with the case record in an Appendix to provide a factual or procedural basis of the elements in consideration governing review as set forth in Rule 242(b) SCACR.

Respondents therefore request, that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

Michael W. Sautter, Esquire (S.C. Bar # 4944)
Nicholas J. Brausch, Esquire (S.C. Bar # 104083)
Query Sautter & Associates, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
(843) 795-9500
Attorney for Respondents

November 21, 2019
Charleston, South Carolina

RECEIVED

DEC 06 2019

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas Acting as Appellate Court to the Probate Court

The Honorable William H. Seals, Jr., Circuit Court Judge

Order of Dismissal Dated 29 June 2019
No Hearing on Matter-Order Filed 29 June 2019
Petition for Rehearing Denied 27 September 2019

Supreme Court Appellate Case No. 2019-001808

IN RE: THE ESTATE OF HAZEL NORTH

GRADY NORTH AND JEAN CORBETT.....Respondents

v.

LINDA NORTH AND JAMES NORTH.....Petitioners

PROOF OF SERVICE

The undersigned attorney for the Respondents hereby certify that a true copy of the Respondent's Return to Petition for Writ of Certiorari in the above referenced matter has been served on all counsel of record by sending a copy via U.S. Mail on this 22nd day of November 2019 to the following:

M. Richardson Hyman, Jr.
Peter G. McGrath
P O Box 127
Charleston, SC 29402



Michael W. Sautter, Esquire
Nicholas James Brausch, Esquire
Query Sautter & Associates, LLC
147 Wappoo Creek, Ste. 202
Charleston, SC 29412
843-795-9500
Attorneys for Respondent