

STATE OF SOUTH CAROLINA

In The Court of Appeals

Case No. 2019-001428

APPEAL FROM EDGEFIELD COUNTY

Court of Common Pleas
Alison Renee Lee, Chief Administrative Circuit Court Judge

Case No. 2016-CP-19-00141

Rufus Lyndell Griffin, Appellant

v.

Thomas Mosley, Quinnie Mosley, Walter Mosley, Timothy Mosley,
And Paquita Mosley, Individually and as Personal Representative
of the Estate of Ellec Mosley, Respondents

**Respondent Paquita Mosley's Return to
Appellant's Motion To Vacate An Order**

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FEB 24 2020

SC Court of Appeals

Pursuant to Rule 240(e), SCACR, Respondent Paquita Mosley (hereafter "Respondent") submits the following Return to Appellant's Motion To Vacate an Order. Appellant has moved before this court to vacate the Order ("Order of Dismissal") which was entered by The Honorable Alison Renee Lee on July 9, 2019, and which granted Respondent's Motion To Dismiss.

Appellant's Brief for dismissal is styled and submitted via his Motion to Vacate. Given there is no Record on Appeal at this time, all exhibits referenced herein with alphabetical characters are those attached to Appellant's Motion to Vacate and any

exhibits referenced herein by number are attached to Respondent's Return.

APPELLANTS ALLEGED STATEMENT OF FACTS

Appellant brought the action below asserting Defendants therein conspired to convert assets belonging to Ellec Mosley, specifically a parcel of vacant real property and financial accounts alleged to be held either jointly with Appellant or naming Appellant as the payable-upon-death beneficiary.

In his Amended Complaint, Appellant alleges he is the natural son of Ellec Mosley ("Decedent"). Exhibit E, p. 2, ¶ 9. Decedent died intestate on December 2, 2012. Id., p. 5, ¶ 40. That on July 17, 2012, Attorney Thomas Mosley drafted a deed transferring sixteen acres of property in Edgefield County from Decedent to his daughter, Respondent. Id., p.2, ¶12. Appellant alleges the deed is invalid because it was not properly witnessed, Id., p.2, ¶13, p. 3, ¶ 14. Attorney Thomas Mosley also allegedly drafted a power of attorney for Decedent which was improperly executed and witnessed. Id., p. 4, ¶¶ 27 - 29.

On August 3, 2012, Respondent allegedly took Decedent to the bank where Decedent cashed in three of five certificates of deposit alleged to be jointly held with Appellant. Id., p. 3-4, ¶¶ 20 - 24. At a later date, Appellant alleges transfers of financial accounts were made using the power of attorney up and until the date of Decedent's death. Id., p. 5, ¶¶ 32 - 40. At no time after Decedent's death does Appellant allege there were any improper actions by Defendants regarding Decedent's property.

ARGUMENT

APPELLANT'S CASE WAS PROPERLY DISMISSED BECAUSE THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES REGARDING THE SAME ISSUES.

PROBATE COURT HAS EXCLUSIVE JURISDICTION TO DETERMINE PATERNITY AS WELL AS THE EXISTENCE OF OR DIVISION OF ESTATE ASSETS AND THE COURT OF COMMON PLEAS IS WITHOUT SUBJECT MATTER JURISDICTION TO HEAR APPELLANT'S CLAIMS.

Judge Lee properly issued her Order of Dismissal, see Exhibit C, pursuant to Rule 12(b)(8), SCRCP, as there is another action pending between the same parties for the same claim in the Probate Court. Judge Lee found there to be insufficient evidence in the record to determine that the assets in question are in fact non-probate assets.

Under Rule 12(b)(8), SCRCP, a defendant may move for dismissal of an action when there is a similar action pending between the same parties for the same claim. The appellate court applies the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), SCRCP. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct.App.2009). To prevail on a motion to dismiss pursuant to Rule 12(b)(8), the movant must show that the actions in question are between the same parties in their same capacities. 1 C.J.S. Abatement and Revival § 54 (2005).

Appellant filed his case in the Court of Common Pleas against the same parties in their same capacities as in the existing Probate Court action in order to litigate a claim to assets he alleges to be non-estate in character; however, Appellant's Amended

Complaint directly conflicts with this assertion. Therein Appellant alleges the instruments used to perform these alleged improper asset transfers are faulty in such a way they must be deemed void ab initio. It is the natural conclusion of Appellant's allegations, if true, that the disputed assets would then be part of Decedent's estate.

Any determination of the nature of the assets at issue was wholly thwarted by Appellant's refusal to cooperate in discovery.

Any dispute over estate assets is properly under the sole jurisdiction of the Probate Court. Because the assets are estate assets in character, they fall under the same claim to the decedent's estate property already before the Probate Court, thereby negating Appellant's alleged separate claim. See Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989). ("The South Carolina Probate Code confers exclusive original jurisdiction to the probate court over all subject matter relating to estates of decedents."); S.C. Code Ann. § 62-1-302 (1987). Moreover, the sole jurisdiction of Probate Court in this matter is an issue of subject matter jurisdiction which can be raised at anytime, can be raised for the first time on appeal, and can be raised sua sponte by the Court. State v. Brown, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002). "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Pierce v. State, 338 S.C. 139, 526 S.E.2d 222, 227 (2000). Without subject matter jurisdiction, the Court of Common Pleas has no authority to hear this case.

Finally, there has been no finding as to the paternity of Appellant to ascertain any inheritance rights under intestate succession in the pending Probate Court action. "The preamble of § 62-2-109 provides that: [i]f, for purposes of intestate succession, a

relationship of parent and child must be established to determine succession by, through, or from a person: ... The relevant portion of § 62-2-109 provides: [i]n cases not covered by [adoption], a person born out of wedlock is a child of the mother. That person is also a child of the father if: ... the paternity is established by an adjudication commenced before or within six months after the death of the father and, if after his death, by clear and convincing proof ...” Parker v. Parker, 443 S.E.2d 388, 313 S.C. 482 (1994). Since there is no evidence the assets are not probate in nature, Appellant must first prove he is Decedent's heir which is also not the province of the Court of Common Pleas. Without an affirmative determination of paternity proving Decedent is Appellant's biological father, Appellant lacks proper standing to seek relief to claim a share of any estate assets.

Because the same parties in their same capacities involved in the case before the Court of Common Pleas already have an action pending before the Probate Court of Edgefield County over the same estate assets, Judge Lee has ample and valid grounds to dismiss Appellant's case under Rule 12(b)(8), SCRCP.

The Probate Court's exclusive jurisdiction over adjudication of paternity and the existence and division of estate assets deprives the Court of Common Pleas with subject matter jurisdiction to hear Appellant's claims.

APPELLANT'S CASE WAS PROPERLY DISMISSED FOR HIS REPEATED FAILURE TO PARTICIPATE IN DISCOVERY INCLUDING HIS FAILURE TO COMPLY WITH AN ORDER TO COMPEL DISCOVERY PRODUCTION.

Rule 37(b)(2)(C), SCRCP provides that the court may issue sanctions against a party for that party's failure to obey a court to provide or permit discovery, to include ... dismissing the action or proceeding.

Pursuant to the record and attachments contained in Appellant's Motion To Vacate, during a March 18, 2019, hearing before the Honorable Alison Renee Lee, Appellant was ordered for a second time to respond to Respondent's discovery requests. see Exhibit A attached hereto. This order, in effect, provided Appellant with a 15-day extension to respond after having failed to answer discovery under an initial order resulting from a Motion to Compel.

Respondent's Amended Motion to Dismiss, Motion to Declare Case Complex and Assign a Special Judge, Motion to Amend Pleadings, and Motion to Compel Discovery and Request for Protection, see Exhibit I, documents the record to the trial court of Appellant's ongoing failure to produce discovery responses after initial service of discovery request such that Respondent filed a Motion to Compel Discovery and received an order compelling Appellant to produce responses. Appellant failed to comply with that Order having never responded to discovery as shown by the Transcript of Record for the hearing held March 18, 2019. see Exhibit N, p. 10, l. 12-20.

By way of a letter dated March 31, 2019, to Judge Lee, see Exhibit F, Appellant admits he again failed to comply with the second Order issued directing him to answer

Respondent's discovery requests. In that letter, Appellant stated he had not begun the 15-day countdown to answer discovery and debated the fairness of the length of the extension given to him to comply by Judge Lee.

Additionally, Appellant's consistent refusal to comply with discovery has made it impossible to determine whether he has any ownership rights to the assets in dispute.

Appellant has failed to obey two (2) court orders compelling Appellant to provide discovery. Pursuant to Rule 37(b)(2)(C), SCRPC providing the court with the authority to dismiss an action or proceeding when there has been a failure to obey a court order to provide discovery, Judge Lee properly dismissed Appellant's case.

Furthermore, by failing to comply with the court's orders compelling discovery responses, Respondent's refusal makes it impossible to determine whether he has any ownership rights in any of the assets in dispute.

CONCLUSION

The laws used by Judge Lee to issue her Dismissal Order are clear and justly imposed.

Respondent concurs with Appellant's acknowledgment that his arguments to invalidate (appeal) the Dismissal Order are set forth fully in his Motion to Vacate which he fashioned as if it were a brief. Respondent further agrees with and joins Appellant in requesting that the resulting order of this motion be dispositive of this appeal. As Appellant stated in his motion, there is no need to further "[burden] the Court and all involved in a cumbersome appeal ... and thereby not persevere into appeal action [sic]."

For the reasons set forth above, Respondent respectfully requests that Appellant's Motion to Vacate be denied and that this appeal be concluded.

Columbia, SC
February 24, 2020

Respectfully submitted,

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Appellant

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Representative of the Estate of Ellec Mosley,

Respondents

CERTIFICATE OF SERVICE

Dear Clerk: Please file this Certificate of Service and any other enclosed documents, then conform and clock any copies inside of the self-addressed, stamped envelope for return to me.

I did transmit the following document(s) in the manner described below:

Date: **February 24, 2020**

Enclosed: **Respondent's Return to Motion to Vacate**

HAND DELIVERY:

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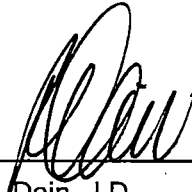
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Thanking you in advance,



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