

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM DARLINGTON COUNTY

Roger Henderson, Circuit Court Judge

Appellate Case No. 2020-000327

Rodney Brock Hopkins _____ Respondent

v.

Mary Uptagrafft _____ Appellant

On behalf of
Joshua B. Hopkins,
Jacob T. Hopkins,
Jensen M. Hopkins, and
Johanna S. Hopkins

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MAR 23 2020

SC Court of Appeals

MEMORANDUM OF LAW

20 March 2020

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This Memorandum of Law is submitted following directive of V. Claire Allen, Chief Deputy Clerk of the South Carolina Court of Appeals and on behalf of the Responding part, Rodney Hopkins.

Statement of the Case

This matter arises out of disputes involving the estate of Brockie Hopkins, Jr. who passed on 6 September 2016. Respondent (hereafter "Hopkins") filed an Application for Informal Appointment on 10 October 2016 and was subsequently and duly appointed Personal Representative on the same date. Hopkins' former wife, the Appellant herein (hereafter "Uptagrafft") filed a *Petition for Formal Testacy and Appointment* on 19 April 2017.

Hopkins responded to this Petition with an Answer and Counterclaim dated 28 June 2017. Uptagrafft, in turn, responded with a Reply to Counterclaim filed 21 August 2017.

On 6 December 2018, without there having been a hearing or Order following the first petition of 19 April 2017, Uptagrafft filed a second Petition for removal of Personal Representative for which Hopkins timely submitted his Answer and Counterclaims.

A hearing on the matter took place in the Probate Court of Darlington County on 6 December 2018. The Order that followed was executed 31 May 2019. Hopkins filed his Notice of Intent to Appeal on 10 June 2019.

Upon appeal, a hearing was held 14 November 2019 in the Circuit Court of Darlington County, with the Honorable Roger Henderson presiding. The Order following this appeal was filed on 13 February 2020.

The primary ruling of the Order saw the Court recognize an abandonment of Uptagrafft's defense of the appeal due to her failure to timely follow the applicable Rules of Procedure. However, the last paragraph of the Order states, "the lower court's ruling is hereby reversed and remanded with instructions for the Probate Court of Darlington County to enter an Order granting Appellant's Motions *and also permitting such post-trial and subsequent actions as Appellant would have the right to promote.*" (italics added).

The Court of Appeals has directed this Memorandum of Law respond to the question whether the lower Court's ruling is immediately appealable.

Requirements for Immediate Appeal

Rule 201 of the South Carolina Rules of Appellate Procedure (SCACR) provide as follows:

Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.... [by] a party aggrieved by an order, judgment, sentence or decision.

The response to the Court's question will require an analysis based upon further questions which are: whether Uptagrafft was aggrieved as a result of the lower court's Order; whether Uptagrafft has standing to appeal; and whether the Order is a final Order within the meaning of Rule 201.

Standard of Interpretation:

In arriving at the conclusion of an analyses and, "[in] interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). "If a rule's

language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Id.*; see also *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct.App.2004) (stating where the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning without resort to forced construction to limit or expand the rule); *Muci v. State Farm Mut. Auto. Ins. Co.*, 478 Mich. 178, 732 N.W.2d 88, 93 (2007); *Fairchild v. Dept of Transportation* 385 S.C. 344, 683 S.E.2d 818 (2009). This analysis, then, shall be straight forward, but grounded in case law.

Whether Appellant was Aggrieved by the Order

Whether one has standing to appeal is dependent upon whether Appellant is an aggrieved party. Rule 201(b) limits the ability to appeal to “[o]nly a party aggrieved by an order, judgment ... or decision...” Rule 201(b), SCACR. This court has previously explained that under Rule 201(b), “[t]he word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *Beaufort Realty Co.*, 346 S.C. at 301, 551 S.E.2d at 589. “A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.” *Id.* *Powell ex rel. Kelley v Bank of America*. 379 S.C. 437, 665 S.E.2d 237 (Ct.App.2008)

Much of the Order Uptagrafft seeks to appeal focuses on the fact that Uptagrafft was not an aggrieved party and had no standing. But the last sentence of the Order indicates the possibility of some “future denial of property right or imposition on a party of a burden or obligation.” *Id.* This language suggests Uptagrafft may realize some substantial grievance, but just what this may

prove to be, if anything, is not yet defined. The realization of such a grievance could only be a product of the trial court's later Order for which no hearing, as of the date of her Notice of Appeal, had been held. As a result, it appears Uptagrafft is not presently aggrieved by the lower Court's Order.

Whether Appellant has Standing:

Much of the hearing and Order focused upon the fact that Uptagrafft was not a proper party to the action, but in the Order's final sentence, the lower Court ordered that Hopkins retained the right to, "*such post-trial and subsequent actions as [Hopkins] would have the right to promote.*"

Only a party aggrieved by an order, judgment, or sentence may appeal. Rule 201(b), SCACR. The right of review is restricted to persons or parties aggrieved by the decision below. *Bivens v. Knight*, 254 S.C. 10, 173 S.E.2d 150 (1970). An aggrieved party is one who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly on his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. *Cisson v. McWhorter*, 255 S.C. 174, 177 S.E.2d 603 (1970). A party cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person. *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152. *First Union National Bank of South Carolina v. Soden* 333S.C. 554, 511 S.E.2d 372 (Ct.App1998).

Based upon the foregoing, one must have realized a grievance as a pre-requisite for standing. Certainly, elements of the lower Court's Order appear to be final, but Uptagrafft has not realized any impact on her property, her interests in property or some denial of a personal or property

right or an imposition of a burden or obligation. As a result, Uptagrafft cannot be considered as an aggrieved party and therefore lacks standing.

Whether the Order was Final.

Whether an Order is immediately appealable is also dependent upon whether the Order in question was a final Order as contemplated in R201 SCRCP.

As referenced hereinabove, elements of the lower Court's Order appear to be final, but those elements do not affect Uptagrafft's interest in the Estate of Brockie Hopkins, Jr., as she has none. However, there are elements of the Order that may see her personal interests affected.

South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment. *Hagood v. Sommerville*, 362 S.C. 191, 194–195, 607 S.E.2d 707, 708 (2005); S.C.Code Ann. § 14–3–330(1) (1976 and Supp.2004); Rule 72, SCRCP; Rule 201(a), SCACR. *Brunson v American Koyo Bearings* 367 S.C. 161, 623 S.E.2d (Ct.App2005).

Final judgment' is a term of art referring to the disposition of all the issues in the case. A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942). An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory. *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). *Tilman v. Tilman* 420 S.C. 246, 801 S.E.2d 757 (Ct.App2017).

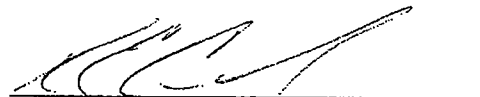
The last sentence of the lower Court's Order indicates subsequent action is possible. The Order "remands" the matter to the trial court and permits post-trial and other actions by Hopkins. Because subsequent action is permitted, the judgment, "leaves open the possibility of further action by the trial court before the rights of the parties are resolved," and therefore sees the action not final as to elements which may touch upon any personal or property rights of Uptagrafft. The Order, therefore, does not appear to be final as to Uptagrafft.

Conclusion.

It is Respondent's belief, founded upon the South Carolina Rules of Appellate Court Procedure and South Carolina case law, as cited herein, that Uptagrafft has not been personally aggrieved, lacks standing and that the Order from which she appeals is not final as to any interest she may have in the matter. The matter then, is not immediately appealable.

Respectfully Submitted

20 March 2020



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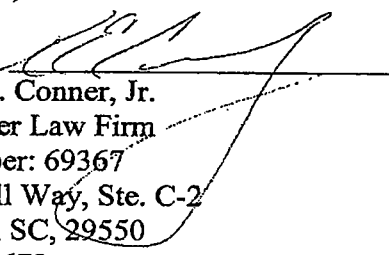
v.

Mary Uptagrafft on behalf of Joshua B. Hopkins, Jacob T. Hopkins, Jensen M.
Hopkins, & Johanna Hopkins.....Appellant.

PROOF OF SERVICE

I CERTIFY THAT I have served the Memorandum of Law on Mary Uptagrafft by depositing a copy of it in the United States Mail, postage prepaid on March 20, 2020, addressed to his attorney of record, John S. Keffer, 10 Law Range, Sumter, SC, 29150.

Executed this 20th day of March, 2020

Signature: 
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