

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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May 13 2020

APPEAL FROM THE COURT OF COMMON PLEAS

SC Court of Appeals

The Honorable Roger E. Henderson, Circuit Court Judge

Darlington County Docket No: 2019-CP-16-00634

Rodney Brock Hopkins.....Respondent.

v.

Mary Uptagraft on Behalf of Joshua B. Hopkins, Jacob T. Hopkins, Jensen M. Hopkins, &
Johanna S. Hopkins,

.....Appellant.

MEMORANDUM OF LAW

May 13, 2020

John S. Keffer, Esquire
10 Law Range
Sumter, SC 29150
803-774-1004
Attorney for Respondent
S.C. Bar No.: 67910

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

Statement of the Case

This matter arises out of disputes involving the Estate of Brockie Hopkins, Jr., who passed away on September 6, 2016. Respondent (hereafter “Hopkins”) filed an Intestate Application for Informal Appointment on October 10, 2017 and was subsequently and duly appointed Personal Representative on the same date. Hopkins’s former wife, the Appellant herein (hereafter “Uptagrafft”) filed a Petition for Formal Testacy and Appointment on April 19, 2017. Hopkins responded to this Petition with an Answer and Counterclaim filed June 28, 2017. Uptagrafft, in turn, responded with a Reply to Counterclaim file August 21, 2017. On February 2, 2018, Hopkins submitted his Answer, Motion and Counterclaim, which submissions were amended on February 9, 2018. The Motions and Counterclaims were based on his assertions that the Respondent lacked standing due to her not being an heir or possible beneficiary of decedent’s estate, was without authority to bind the other listed parties, failure to allege any facts upon which relief might be granted and sought Judgement on the Pleadings or, in the alternative, Summary Judgement. In addition, the Hopkins sought an award of attorney fees and finding of Abuse of Process. Hopkins Motion for Summary judgement was heard on December 12, 2018 before honorable Marvin I. Lawson, Judge of Probate for Darlington County. The court issued its Order on May 31, 2019 denying the entirety of Hopkins’ Motion. Uptagrafft filed a Summons and Petition for Removal of Personal Representative under the grounds Hopkins mismanaged the estate, failed to perform a required duty, fraud, misrepresentation, and misappropriation of

assets. Hopkins attorney filed a Motion to Dismiss and Motion for Summary Judgement. Uptagrafft filed a Motion to Extend Time for Filing of Initial Brief which the court declined and was not considered. A hearing on the matter took place in the Probate Court of Darlington County on December 6, 2018. The Order that followed was executed May 31, 2019 denying entirety Motion to Extend Time and Motion/Default Judgement leaving Uptagrafft no court available to be heard.

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

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 judgement, 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 Hopkins is using funds from the Estate for his personal use and to pay his attorney's fees; whether Hopkins misrepresentation of funds from the Estate.

Whether Appellant was Aggrieved by the Order

Whether one has standing to appeal is dependent upon whether Appellant is aggrieved party. Rule 201(b) limits the ability to appeal to "[o]nly a party aggrieved by an order, judgement... 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 judgement 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).


The appellant was aggrieved because the circuit court order ended the Petition for Formal intestate and removal of Personal Representative.

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 Rule 201 SCRPC.

The Courts Order granting Motion for Dismissal effectively took away Uptagrafft’s Application for Formal Appointment and Petition to Remove Hopkins as Personal Representative therefore Appellant has no other circuit court to rely on. Under Rule 56 SCRPC, the trial court may treat a motion under Rule 12(b)(6) as a motion for summary judgement and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and € of the Rules of Civil Procedure *Brown v Leverette* (1987) 291 S.C 364, 353 S.E.2d 697. The court granting in favor of Hopkins dismissing to its entirety leaving Uptagrafft with no other options to be heard. As referenced hereinabove, elements of the lower Court’s Order appeal to be final.

Respectfully Submitted,



John S. Keffer, Esquire SC Bar No. 67910
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Attorney for Appellant

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PROOF OF SERVICE

I CERTIFY THAT I have served the Memorandum of Law on Rodney Brock Hopkins by depositing a copy of it in the United States Mail, postage prepaid on May 13, 2020, addressed to his attorney of record, Richard E, Conner, Jr., The Conner Law Firm, 115 Cargill Way, Ste. C-2, Hartsville, SC 29550. Also sending by the following email address to his attorney of record: rec@connerlawsc.com

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Sumter, SC 29150

803-774-1004

Attorney for Respondent

S.C. Bar No.: 67910