

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Edgefield County Court of Common Pleas
Alison R. Lee, Chief Administrative Circuit Court Judge

Appellate Case No. 2019-001428

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

MOTION TO CERTIFY CASE

Rufus L. Griffin, Appellant, hereby motions this Supreme Court to certify this case for review before it is determined by the Court of Appeals, pursuant to Rule 204(b) SCACR. There exists good cause for Appellant's motion for Supreme Court review, as this case, and the lower court Order pending appeal in the Court of Appeals, involve legal principles of major importance which affect the Fourteenth Amendment procedural due process rights of those affected.

BACKGROUND

Appellant filed a Motion to Vacate an Order (from the circuit court) to the Court of Appeals on December 23, 2019, pursuant to Rule 60(b) SCRPC and USC App. Rule 60. The discrepancies of the lower (circuit) court Order, in addition to technical errors, contain errors of law and are consistent with an abuse of discretion by the lower court. In fact, the Order, in the condition it was issued, affects and restricts Appellant's ability to even properly and fully proceed in his appeal. One's ability to appeal is recognized by the State as a necessary flow that ensures due process. It is not reasonable that an Order containing numerous inconsistencies, technically and legally, which prohibit that due process, should be upheld.

Appellant's Motion to Vacate an Order was subsequently denied by the Court of Appeals on March 27, 2020 with no opinion of the Court provided (see attached exhibit). With the denial of Appellant's Motion to Vacate the lower court Order, the Court of Appeals has solidified the said Order's validity, which if Appellant proceeds in his appeal under this lower court Order, it will set new precedent as to the standards acceptable before the Court and will impede Appellant's US Constitutional (Fourteenth Amendment) right to procedural due process throughout his appellant action for the following reasons:

On July 9, 2019, the lower (Edgefield County) circuit court errantly issued an Order to Dismiss Appellant's long-standing civil case, citing jurisdiction of a lower probate court. However, the circuit court had accepted jurisdiction initially in Richland County in December 2015. The Richland County Circuit Court affirmed its

jurisdiction on May 17, 2016 when Respondents' Motion for Change of Venue was granted to transfer case to Edgefield County, but Respondents' Motion to Dismiss, on grounds of jurisdiction of the probate court, was not granted. It was clear that the Richland County Circuit Court understood the merits of the case and conceded to the change of venue only, not jurisdiction, as that court expressed in its Order granting the Motion for Change of Venue: *'the ends of justice would be served by having Edgefield County jurors'*, (see Appellant's Motion to Vacate Order, Exh. A, pg. 2, line 11-12). The action of the Richland County Circuit Court was in accordance with the Constitution of SC, Art.5 § 11: *Jurisdiction of the Circuit Court; The circuit court shall be a general trial court with original jurisdiction in civil and criminal cases..... (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)*

Once the Edgefield County Circuit Court claimed ownership of the case, arguments were heard on November 7, 2016 to once again rule on Respondents' second Motion to Dismiss the civil case on jurisdictional grounds of the probate court. On this occasion, the circuit court again denied that motion and reaffirmed the circuit court's jurisdiction. Both circuit courts recognized that the matters of the civil case involved non-probate assets, possible theft of bank account funds, alleged fraud and conspiracy, which were civil matters and proper before the circuit court. The civil case parties included six (6) individual Respondents; each under individual litigant-specific complaints by Appellant. In contrast, the probate court case has at no time involved all six (6) Respondents; but was limited to Appellant and one (1) of

the civil case Respondents, (both had filed formal Petitions for executorship appointment over their father's estate (Dec. 2012 and Feb. 2013 respectfully).

Almost three (3) years after the circuit court affirmed jurisdiction for a second time, the Edgefield County Circuit Court, on July 9, 2019, yielded to Respondent's third Motion to Dismiss the civil case, citing jurisdiction of the probate court, and granted it.

A ruling such as this, abruptly taken by the circuit court, promotes the negative public perception that if one is persistent and 'shops around', prior rulings can eventually be invalidated. The doctrine of Res Judicata applies to issues such as this to limit litigation between parties and to promote judicial economy, as Res Judicata "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was subject of a prior action between those parties" *Plum Creek Dev. Co. v City of Conway*, 512 S.E.2d 106, 109 (S.C. 1999).

In addition to the egregious sudden dismissal of the civil case, Appellant then discovered on November 26, 2019 that the lower court Order granting the dismissal was defective as well. The Court of Appeals, informed Appellant that the captioning of his forthcoming Appellant brief and all future correspondence must be revised to match the captioning of the lower court Order. Discrepancies of the lower court Order were found to include: 1) Omission of one of the six (6) Respondents of the civil case, and 2) Re-titling of each Respondent to reflect them collectively as 'Individually and as Personal Representatives' of the probate estate, (a probate case of which only one(1) of the six(6) rightfully bears that title).

Further review of the lower Court Order revealed that the lower court abused its discretion in misstatement of material facts and by the misapplication of a legal standard. Appellant faces a multitude of Constitutional challenges in this appeal.

ARGUMENT

Appellate Court Rule 204(b) provides any party to a case pending before the Court of Appeals, the right to motion the Supreme Court to certify the case before it is determined by the Court of Appeals. Appellant respectfully submits the situation of this particular case, which has placed an unfair burden on Appellant who navigates in appeal with a defective lower court Order. This surpasses the scope of normal procedural due process before an Appellant Court. This unconventional scenario before the Court presents an issue that is of legal significance to Appellant and to all others to follow. *'The effect of certification'*, under Rule 204(b) *'shall be to transfer jurisdiction over the case to the Supreme Court for all purposes'*, as Appellant believes that his rights in the Court of Appeals have been compromised with the denial of his Motion to Vacate an Order.

Although the July 9, 2019 lower court Order appears to be sound, it is upon thorough examination that one uncovers defects of its substance and the magnitude of those errs. Rule 60 SCRPC, provides the Appellant court or this Supreme Court the authority to provide relief: *"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order'* even from *'mistakes, inadvertence or excusable neglect'*. Appellant's 28-page Motion

to Vacate Order, and numerous accompanying exhibits, more than satisfied Rule 60 requirements.

Appellant's right to appeal under Rule 72 SCRCF is severely affected by the 'mistakes' in the lower court Order. Appellant argues that when his Motion to Vacate Order was denied, the errors of the lower court Order were accepted 'as is' and left to be honored, even though inaccurate. Proceeding in the appellant process 'as is' adversely affects the Constitutional rights of all parties involved:

I. When the lower (circuit) court Order omitted one of the civil case Respondents in its final decision, it broke the chain of procedural due process, as Appellant has no ability to further appeal against that omitted Respondent, who technically and legally is not included in the circuit court Order of Dismissal which Appellant is appealing. The omission of any party from the lower court case, as the case progresses into appeal status, has already aggrieved not only Appellant, but that omitted party as well, as the appellate court, nor any other party of the case, is under legal obligation to include that omitted party in proper service thereafter, nor does that litigant have a right to participate in the appeal. From the moment the defective lower court Order to Dismiss was issued and upheld, the omitted party's procedural rights were also dismissed.

II. The lower court Order's captioning error does more than retitle the non-parties of a probate case to the status of 'Personal Representative' of an estate, but officially interjects each to a probate case where they were not the original

litigants and gives the appearance of bias of the lower court as this 're-titling' seems to support its position to concede circuit court jurisdiction to the probate court.

III. Appellant's Motion to Vacate Order detailed the probate estate case, of which the circuit court conceded jurisdiction to in its July 9, 2019 Order. The referenced Probate Case commenced in December 2012, ended in 2014, and was appealed by Appellant on a matter of disputed paternity between he and his half-sister, a Respondent of the civil case. This probate case, which had implied an improper standard of law, was appealed, then 'Reversed and Remanded' by the circuit court in November 2015. That Order limited litigation specifically to '*further proceedings to determine paternity consistent with statutory requirements of S.C. Code Ann. 62-2-109(2)(ii)*'. (see copy: Motion to Vacate Order, Exhibit D). Litigation in the probate matter was limited to the two original Formal Petitioners contending paternity.

Yet, the Circuit Court's July 9, 2019 Order to Dismiss used a non-applicable Legal Standard that '*A Defendant may move for dismissal of an action pursuant to Rule 12(b)(8) SCRCF when another action is pending between the same parties for the same claim*', and cited authorities: '*that the claim must either be substantially or precisely the same as in the other action*'. It is plainly clear that the probate matter is not '*substantially or precisely the same*' as Appellant's civil actions against multiple individuals who have never claimed to be a child of the decedent of the probate case.

IV. The Circuit Court, in dismissing Appellant's civil complaint by

conceding its jurisdiction to the probate court, severely interfered with Appellant's due process pertaining to the four (4) other Respondents. The probate court cannot decide Appellant's civil actions against those who are 'non-parties' of the probate 'Reversed and Remanded' case. Although SC Code 62-1-302(a)(1) provides for the probate court to have '*exclusive original jurisdiction*' over estate matters, it also acknowledges that the '*circuit court also has jurisdiction.... in other actions pending in the circuit court*'. And in this case, the probate court does not have jurisdiction in civil matters against those parties who were never Petitioners in the original 2012 probate case or in its 2015 appealed decision. The lower court Order forces Appellant to pursue civil action against Respondents in a probate court venue where they have no standing.

V. Appellant's Motion to Vacate Order further asked the Court to consider whether a court Order should or can be upheld if it can be shown that an abuse of discretion occurred. "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Tri-County Ice Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). Appellant contends that in his case the opinion of the lower court was supported by misstatement of material fact and/or a legal standard that was not applicable to the situation of the case of which it was applied. According to SCACR 501 Preamble, "*The judge is an arbiter of facts and law for resolution of disputes.*" With this assurance, there is an unquestioned authority and respect given to any court Order when it is issued. We firmly rely on

the premise that the opinion and decision of the court in which that Order was derived, was indeed based on and supported by the facts of the case. Therefore, an error by the court in misstating those facts and using those misstated facts to support its applied legal standard greatly diminishes the credibility and weight of that Order. Thus, the rights of those who have suffered an adverse outcome of such a flawed Order should not be compelled to bear the weight of it. It is not the duty of a court to misconstrue facts to support a legal standard, but to use a legal standard that supports the facts. To do anything less than what is proper promotes a perception of bias and destroys public trust.

VI. Lastly, Respondents' Motion to Dismiss and argument on jurisdiction of the probate court had been presented on two occasions, prior to the third motion, and already decided by the circuit court that its jurisdiction was proper. Appellant argues that the lower court erred in not barring Respondents' third motion, presented on the same grounds, per doctrine of Res Judicata.

CONCLUSION

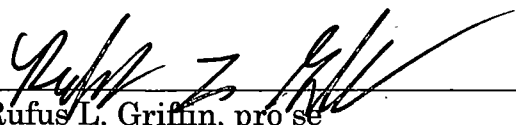
If a lower court Order fails to adhere to the Courts' own legal rules and standards, whereas that Order does not substantively represent all of the case parties, titles the parties improperly, fails to quote a legal standard that is applicable to the case record, inaccurately states material facts, denies due process in its own court's jurisdiction, should an Order such as this still be honored? When one or more parties are omitted from the case Order, that party has also been

removed from legal protections. When parties of a case find their titles altered to burden them with responsibility they should not own, this deepens those parties' legal obligations. When a party of a case suffers case-dismissal with jurisdiction abandoned by the only court where his actions are proper, this impedes his procedural right to due process.

By vacating the unsound lower court's Order to Dismiss and reversing its erroneous decision, this high Court will restore the civil case to its normal and proper progression in the jurisdiction of the circuit court, where it has been for approximately five (5) years prior to its errant dismissal, thus protecting the rights of all litigants as afforded by the U.S. Constitution's Fourteenth Amendment. It will also definitively affirm once and for all the integrity of the circuit court's original position on jurisdiction, dissuade future litigants from the process of frivolous filings that attempt to subvert the court, and support the principle of Res Judicata hereafter. This action is proper according to Rule 60 SCACR and wholly within the authority of this high Court to decide Constitutional matters.

WHEREFORE, the undersigned Appellant respectfully asks this Court to grant his Motion to Certify this case for review pursuant to Rule 204(b) for expediency of the appellate courts and for protection of the rights of those involved.

May 4, 2020
Date


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