

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE MATTER OF ESTATE OF SUMTER COUNTY, S.C.
HERBERT FRANKLIN DICKSON, JR.

Milton Oakley Dickson,

Petitioner,

v.

Arthur B. Beasley, Jr., as Personal
Representative of the Estate of
Herbert F. Dickson, Sr.,

Respondent.

IN THE PROBATE COURT

2018 FEB 13 AM 8:15

2008-ES-43-00411

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SC Court of Appeals

ORDER

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Theresa A. Duggan
Theresa A. Duggan, Associate Judge of Probate
Sumter County
South Carolina

This matter comes before me on an Application for Settlement filed by the Personal Representative on June 13, 2018, with a Notice of Right to Demand Hearing to the beneficiaries. The Petitioner timely requested a hearing on July 13, 2018. All interested parties were notified. It was originally scheduled for August 29, 2018, and rescheduled to September 11, 2018, and then subsequently rescheduled to November 13, 2018, and heard at 2:00 p.m. on that date.

Present at the hearing were Milton Oakley Dickson, the Petitioner, and his attorney S. Jahue Moore, Esq. of the Lexington County Bar; Arthur B. Beasley, Jr., as Personal Representative, and his attorney, J Cabot Seth, Esq., of the Sumter County Bar. Unrepresented, but present, were the following: Finley Mylo Dickson, Byron Eugene Dickson and Sandy Beasley, wife of the Respondent. The only missing interested party was Linda Chapman, and she was properly served with notice of the hearing.

The Demand for Hearing contested the Final Accounting of the assets and distribution of the residuary without any further detail.

FINDING OF FACTS

1. **Venue.** Under South Carolina Code § 62-3-201, this Court has proper venue in Sumter County as the Decedent was domiciled in Sumter County at the time of his death.
2. **Jurisdiction.** Under South Carolina Code § 62-1-302, this Court has jurisdiction as the Decedent was a resident of Sumter County.
3. The Petitioner first called Respondent, inquiring into the detail of the final accounting. Of the questions raised by the various witnesses, the Court finds the following facts:

- a. **Money paid to Sandy Beasley.** The testimony established that the Personal Representative paid his wife, Sandy Beasley, for assistance in the maintenance of the Santee property in the amount of \$2,481.86.
- b. **Mortgage on the Sumter Property.** Uncontroverted testimony was that the mortgage was paid out of the Estate in the amount of \$2,481.86. The Will of the Decedent does not provide that the distributee is entitled to exoneration.
- c. **Money Paid on Lawnmower at Santee Property.** The testimony established that the property, at the time of the Decedent's passing, had a lawnmower to maintain the property. The Personal Representative purchased a new one when the original was no longer functional.
- d. **Money Paid on HVAC for Lake House.** The testimony established that the property at the time of the Decedent's passing had a functioning HVAC which had to be replaced in order to rent the property to aid in the expenses of the Estate.
- e. **Personal Representative Fee.** The Personal Representative had requested approval of the fee of \$17,715.00 based on the extraordinary time and effort required in the litigation caused by the Petitioner and the length of time required in attending hearings and depositions as well as the maintenance of the Estate property.
- f. **Palm Harbor Mobile Home.** The testimony established that the Palm Harbor home was billed by the tax office as personal property, i.e. a mobile home; however, it was permanently affixed to the real property by two (2) additions and could not be moved.

CONCLUSIONS OF LAW

4. **Section 62-3-709.** The Code makes statutory the common law rule that upon the death of a South Carolina Decedent, title to his real property passes at death to his devisees and/or heirs. As contrasted with the common law, however, the Code grants to the Personal Representative broad powers to possess and maintain the real property during administration. (S.C. Code Ann. §62-3-709)
 - a. Except as otherwise provided by a Decedent's Will, every Personal Representative has a right to, and shall take possession or control of, the Decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the Personal Representative, possession of the property by him will be necessary for purposes of administration. The Personal Representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the Estate in his possession.
 - b. If the Estate's real property contains residences or buildings, the Personal Representative must consider insurance and, if the structures on the real property have become vacant, whether existing insurance, by its terms, continues to cover vacant structures. It is important for the Personal Representative to deal with the

insurance coverage immediately upon taking office so that losses on improvements to real property are covered by insurance at all times.

5. **SECTION 62-3-814 - Encumbered Assets.** If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.
6. **Section 62-3-719 - Personal Representative Fee.** The Probate Court has broad discretion to approve fees in excess of the statutory amount of five percent (5%).
7. **Burden of Proof is on the Moving Party.** Generally, the burden of proof rests upon the party who asserts the affirmative of an issue - the moving party. Am. Jur. 2d, Evidence Section 127. Mr. Moore asked many questions. The exhibits on the accounting of expenses were available for Mr. Moore to review. He chose not examine or review the available evidence. Further, questions are not evidence. The answers are uncontroverted unless proof was presented otherwise. The proof offered on other allegations or issues was inconclusive. For example, his witnesses could not identify when or where an alleged group of coins were last seen or accounted for by their father to them.

ORDER

THEREFORE, it is ordered as follows:

1. Mr. Seth will prepare a new Proposal for Distribution allowing for the following changes
 - a. The moneys paid to Sandy Beasley, for the lawn mower and HVAC shall be deducted from the reimbursements to the Personal Representative.
 - b. The mortgage for the Sumter property shall be deducted from Linda Chaplin's share.
 - c. The Personal Representative fee shall be reduced to \$8,092.00.
2. Otherwise, the Application for Settlement, Proposal for Distribution and Final Accounting are approved.

AND, IT IS SO ORDERED!

Date: Jan 23, 2019
Sumter, South Carolina

S/ Dale Atkinson
Dale Atkinson, Judge
Sumter County Probate Court