

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Abbeville County
Hon. Frank R. Addy, Jr, Circuit Court Judge

Appellate Case No. 2020-001212

Unpublished Opinion No. 2020-UP-145 (S.C. App. filed May 20, 2020)

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S.C. SUPREME COURT

Kenneth H. Kurowski, Respondent,

vs

Daniel D. Hawk, Petitioner.

RETURN

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

On March 5, 2018, Daniel Hawk filed a pro se complaint against Kenneth H. Kurowski in the Court of Common Pleas for Abbeville County. In the Complaint, Daniel Hawk sought relief for three things. First, he wanted Judge C. Mark Summer, the Probate judge for Abbeville County, to be disqualified. Second, he asked that the case be transferred to a county other than Abbeville or Greenwood, alleging, with no specific facts, that the Probate judge for Greenwood County had previously represented Arletta Kurowski, a former wife of Kenneth Kurowski. Third, he wanted Norma Kurowski removed as personal representative for Estate № 2009-ES-01-0096 and Daniel Hawk be appointed as personal representative. The removal request was for alleged “fraudulent moral turpitude.” Rec. on App. at 15-16. He sought no monetary relief.

On April 5, 2018, Curtis G. Clark, on behalf of Norma J. Kurowski, as personal representative of the Estate of Kenneth H. Kurowski, filed an answer, affirmative defenses, and counterclaim.¹ The general denial noted that the Will of Kenneth H. Kurowski was admitted to probate as a result of a hearing held on June 10, 2010 and by an amended order filed in 2012. In the Affirmative Defense or Counterclaim, Mrs. Kurowski, as personal representative, noted she was appointed as personal representative in 2012. The affirmative defense further noted that Daniel Hawk, the plaintiff, has been aware that the estate is still open and an active estate, but the plaintiff has not named the estate as a party to this action. In a third defense, Ms. Kurowski asked for attorney fees and costs for the action brought by Mr. Hawk.

Also on April 5, 2018, Ms. Kurowski filed a Motion to Dismiss. In the Motion to

¹ During the pendency of this appeal, Norma Kurowski died. Neither party has since moved to have the Estate of Norma Kurowski added as the proper defendant.

Dismiss, Ms. Kurowski alleged that Mr. Hawk had attempted to sue a deceased person when Mr. Hawk had known since 2010 that Ms. Kurowski had applied to be appointed as personal representative of the estate and no appeal had been taken from the formal order dated June 25, 2012 and amended on October 23, 2012. The Motion further contended that Mr. Hawk sought to disqualify Probate Judge C. Mark Summer from presiding over the estate. The Motion noted that the complaint contained no grounds as a basis for disqualifying Judge Summer. The Motion further noted that the complaint sought to allege violations of several South Carolina code sections as they relate to trusts, but no trust was set up under the will of Kenneth H. Kurowski and, therefore, there is no basis for such relief. The motion further noted that complaint alleged that Ms. Kurowski had never provided a full estate accounting. The Motion noted that Mr. Hawk had filed a Demand of Hearing with the Abbeville County Probate court but that he had failed and refused to pay the required filing fee so no hearing on any issue has ever been held. The lower court, with Judge Summer present, accepted this representation by Mr. Clark. Rec. on App. at 18, 117 to 19, 13. Finally the Motion noted that the complaint seeks, in the action originally filed in the Court of Common Pleas, to have Ms. Kurowski removed as personal representative and seeks to have himself appointed. The Motion noted that no action had even been filed pursuant to S. C. Code § 62-1-302(d) to have the matter removed to the Court of Common Pleas from the Probate Court, thus the matter is within the exclusive jurisdiction of the Probate Court and therefore jurisdiction is not proper in the Court of Common Pleas for Abbeville County.

On May 1, 2018, Mr. Hawk mailed a “Motion to Reject Defendant’s Motion to Dismiss” to Curtis Clark, the attorney for Ms. Kurowski. In the Motion, Mr. Hawk rejected the concept

that he is suing his father but the caption is just to show the relationship between the parties. In the response to the Motion Ms. Kurowski filed, Mr. Hawk raised an allegation of “Deprivation of Federal Rights” which have no bearing on the Motion to Dismiss. He does not respond to the argument of Ms. Kurowski that Mr. Hawk never filed an appeal from probate court nor did he ask for the matter to be transferred to the Court of Common Pleas.

A hearing was held on May 8, 2018 before the Honorable Frank R. Addy, Jr. At the time of the Motion, Mr. Clark also filed an affidavit of default as to his Counterclaim. Mr. Hawk acknowledged that he was aware of the hearing by contacting both the Clerk of Court for Abbeville County and Judge Addy. He requested to participate by a telephone conference, but the Court was unable to arrange such a conference. Rec. on App. at 2; 20, ll 1-14. After the hearing, Judge Addy granted the Motion to Dismiss based upon the failure to allege any grounds for the removal of the Probate Judge for Abbeville County, the failure to timely file an action in Probate Court to transfer the matter to the Court of Common Pleas and the failure to properly name the parties.

Mr. Hawk filed an appeal to the South Carolina Court of Appeals. By order dated May 20, 2020 the Court of Appeals affirmed the lower Court Ruling. On May 29, 2020 Mr Hawk filed a Notice of Appeal to the South Carolina Supreme Court. By letter of June 29, 2020, the South Carolina Court of Appeals advised Mr. Hawk that the South Carolina Rules of Appellate procedure required him to file a Petition for Rehearing before he could apply for a Petition for Writ of Certiorari. The Court gave Mr. Hawk 15 days from the date of the letter to file the Petition for rehearing. On July 8, 2020, Mr. Hawk filed his Petition for Rehearing. This Petition was denied on August 8, 2020.

Argument

Question Presented

Did the Court of Appeals properly determined that Daniel Hawk brought his action in the wrong court and that the Court of Common Pleas did not have jurisdiction over probate matters in Abbeville County?

In his petition, Daniel Hawk lists eight arguments in support of his petition. The ninth item listed is a “conclusion.” In six of the eight arguments, he refers to errors by the probate court. The other two state that bigamy is illegal, item 3, and everyone has 14th Amendment rights, item 4. Neither of these two items refer to the order or claim to argue why the court of appeals order was incorrect.

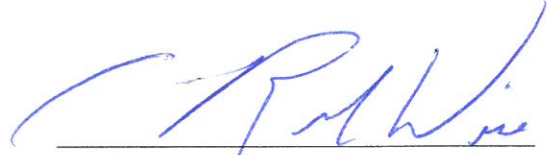
This appeal is not from a probate court order. The appeal is from an order issued by the Common Pleas Court for Abbeville County. The Court of Appeals correctly stated that the issues raised in the Common Pleas action were not within the jurisdiction of the Common Pleas Court and should have been filed in the Probate Court. S.C. Code § 62-1302(a)(1).

As to the other issues raised by Mr. Hawk, the Court of Appeals properly ruled the issues were not preserved for review. The lower court did not address his constitutional claims in its order. Mr. Hawk failed to bring this alleged error to the attention of the lower court. The failure to file a Rule 59 motion waives the issue. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 71, 497 S.E.2d 731 (1998). In addition, a review of the Complaint shows that Mr. Hawk did not request any constitutional relief. Rec. on App. at 14-6.

CONCLUSION

The decision of the Court of Appeals is based upon a proper interpretation of the law as applied to the facts of this case. The Petition for Writ of Certiorari should be denied.

September 11, 2020



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