

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Nov 06 2020

Case No. 2019-001428

SC Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

Court of Common Pleas
Alison Renee Lee, Chief Administrative Circuit Court Judge

Case No. 2016-CP-19-00141

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

INITIAL BRIEF OF RESPONDENT PAQUITA MOSLEY

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STATEMENT OF ISSUES ON APPEAL

- A. DO CLERICAL ERRORS IN THE CASE CAPTION INVALIDATE THE LOWER COURT'S ORDER OF DISMISSAL?

- B. WAS THE LOWER COURT PROPER IN DISMISSING APPELLANT'S CASE AGAINST ALL RESPONDENTS WHEN THE SAME PARTIES HAVE A CASE PENDING BEFORE THE PROBATE COURT REGARDING THE PROBATE ASSETS IN QUESTION AND BECAUSE APPELLANT REFUSED TO COMPLY WITH A DISCOVERY ORDER?

- C. DID THE LOWER COURT APPLY THE CORRECT LEGAL STANDARD TO THE CORRECT FACTS OF THE CASE PROPERLY RESULTING IN ITS' ORDER FOR DISMISSAL?

- D. SHOULD THE DOCTRINE OF RES JUDICATA HAVE BARRED RESPONDENT FROM MAKING SUBSEQUENT MOTIONS TO DISMISS APPELLANT'S CASE BASED ON A LACK OF SUBJECT MATTER JURISDICTION?

- E. DOES A JUDGE MAINTAINING POSSESSION OF AN ORIGINAL COURT FILING HANDED UP DURING A HEARING CONSTITUTE A VIOLATION OF THE LOWER COURT STANDARDS PURSUANT TO S.C. CODE ANN. § 14-5-10, 14-17-510, AND 14-17-570 SUCH THAT IT CREATES THE PERCEPTION OF BIAS IN A CLOSED CASE?

FACTS OF THE CASE

Ellec Mosley, Decedent, died intestate as he transferred all his property to his only legitimate heir, Respondent Paquita Mosley, during his lifetime with the exception of one small sum of money transferred to another family member. Respondent is also the personal representative in Decedent's estate.

Appellant, alleging he is Decedent's biological child, brought the underlying civil action alleging defendants therein conspired to prevent Decedent from leaving several relatively small certificates of deposit and a track of vacant land to Appellant by forging signatures on Decedent's power of attorney and the property deed.

Respondent's position in the underlying probate matter was that if Appellant was able to prove he was Decedent's biological son, a fact that has never been verified or proven, there would be no money in Decedent's estate due to his inter vivos transfers.

As for the underlying civil case, Appellant would also be unable to recover because contrary to Appellant's allegations, Decedent personally cashed in all the certificates of deposit and his power of attorney was only used once. Moreover, all the funds from those certificates were used to pay Decedent's debts and medical bills except for a small sum he personally gave to one of his nephews. Moreover, due to Appellant's litigation and his unwillingness to cooperate, Respondent, who was sued therein as personal representative, incurred expenses for which she can seek recoupment from the estate.

Appellant ultimately alleged the power of attorney used to cash in one of Decedent's certificates of deposit was, like the deed to vacant land valued at \$16,000.00, void ab initio due to improper witnessing. This meant that unless Appellant could prove the certificates were either held by him jointly or payable upon death to him,

a fact Respondent disputes, any property resulting from the voiding of these documents would place those funds in Decedent's estate. Since he died intestate, civil court was not the proper court to distribute any recovered funds because Appellant must first be determined to be an heir and any estate property had to be identified. For that reason, Respondent asserted that the civil court was without subject matter jurisdiction to ultimately decide the issues raised by Respondent.

After numerous attempts to compel Appellant to cooperate in discovery and begin to provide the proof of his claims to no avail, Respondent renewed her previous position that the case was subject to dismissal not only due to a lack of subject matter jurisdiction but also because Appellant refused to produce any discovery and left all defendants therein unable to prepare or advance a defense. The trial court agreed.

STANDARD OF REVIEW

The standard of review for an appeal of the dismissal of a case under Rule 12(b)(8), SCRPC because another action is pending between the same parties for the same claim, the same standard of review is used as that of the circuit court. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524 (2009). In scrutinizing the application of Rule 12(b)(8), each of the components of the rule are determined as a matter of law and thus [the Court should] apply a de novo standard of review to the grant or denial of this motion based upon determining whether another action exists involving the same parties, claims (or subject matter), and remedies as a matter of law. Id.

ARGUMENT

- A. CLERICAL ERRORS IN A CASE CAPTION DO NOT INVALIDATE A COURT ORDER AND THE LOWER COURT'S ORDER OF DISMISSAL WAS PROPER DESPITE THE ACCIDENTAL OMISSION OF A PARTIES' NAME AND APPELLANT'S INTERPRETATION OF THE RESPONDENTS' DESIGNATION IN THE CASE CAPTION.

Respondent begins by pointing out Appellant's argument of this issue revolves around his assertion that a technical defect in a court filing should nullify its legal affect pursuant to Rule 60, SCACR. First, Appellant cites the incorrect rule as no Rule 60 exists under the Appellate Court Rules. Second, under the premise of his argument, Appellant's own Initial Brief, and therefore his appeal, should be dismissed based upon the clerical error he created by transposing the order of Issue Statements II and III in the Arguments section of his brief. This defect resulted in two of Appellant's arguments being improperly ordered and matched to his Statement of Issues on Appeal.

Appellant argues that a technical defect by way of an accidental omission of a Respondent's name from the case caption and his interpretation that the language used in the caption incorrectly identified the parties such that he alleges it alters their legal status should constitute grounds to invalidate the entire Order of Dismissal issued by Judge Lee on July 9, 2019.

This issue of an omission of a party in the caption raised by Appellant amounts to the presence of a clerical error in the case caption, which can be corrected upon motion of any party pursuant to Rule 60(a), SCRCP¹ . No motion to correct the case

¹ Rule 60(a), SCRCP states that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court."

caption has been filed by Appellant to date, nor has Appellant availed himself of the relief available to him by making this request to the Court of Appeals. Rather, Appellant is improperly proffering a legal argument in an attempt to invalidate a final order over a correctable error.

The issue Appellant raises as to the legal status of the parties being altered to indicate they are all listed as personal representatives of the estate of Ellec Mosley is unfounded as it rests on his personal interpretation of the wording used and does not indicate any change in the parties' legal status in the case. The case caption with respect to Respondents clearly places Paquita Mosley at the end of the list of Respondents and the designation of "Personal Representative" is singular, not plural, indicating she is the sole Personal Representative of the estate.

Pursuant to Rule 61, SCRCP, "no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Because clerical errors in the case caption do not affect the substantial rights of Appellant who has failed to properly request the relief available to him under the law to correct the issue, the Trial Court's Order of Dismissal is proper and valid and Respondent would argue that this claim is frivolous pursuant to Rule 269, SCACR. ² .

² Rule 269, SCACR states that [w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to

- B. THE LOWER COURT WAS PROPER IN DISMISSING APPELLANT'S COMPLAINT AGAINST ALL RESPONDENTS BECAUSE IT LACKED SUBJECT MATTER JURISDICTION OVER A PROBATE MATTER AND BECAUSE DISCOVERY SANCTIONS WERE PROPER PURSUANT TO RULE 37(B)(2)(C), SCRPC.

Throughout the life of Appellant's case, dismissal based on lack of subject matter jurisdiction has been periodically raised. At a hearing on November 7, 2016, the court declined to grant Respondent's Motion To Dismiss despite acknowledging that the property's legal status was yet to be determined as non-probate, may be determined at a later date, and that a probate action was pending³ involving the disposition of estate assets and paternity of Appellant directly affecting his inheritance rights to estate property, which all Respondents maintain the assets in question are.

Another hearing occurred on February 18, 2019, after which Judge Lee, taking the current facts and evidence into consideration, made a determination based on Appellant's failure to provide sufficient evidence that the assets he complained of were non-probate, and therefore issued an Order granting Respondent's Motion to Dismiss⁴ stating that the Lower Court did not have subject matter jurisdiction over the case and that the Probate Court action was the proper arena. The South Carolina Probate Code confers exclusive original jurisdiction to the probate court over all subject matter relating to estates of decedents. S.C. Code Ann. § 62-1-302 (1987). Respondents shared a

pursue an appeal or petition for writ of certiorari even though the matter may be frivolous.

³ See hearing transcript from November 7, 2016, Pg. 29 lines 23-25; Pg. 30, lines 7-13.

⁴ See Order on Respondent's Motion to Dismiss by Judge Lee filed July 9, 2019.

common interest⁵ in the litigation regarding the assets at the root of Appellant's Lower Court case because Respondents all claimed those assets to be probate property belonging solely to the legal heirs of decedent, Ellec Mosley. The Common Interest Doctrine would have extended rights of privilege to all Respondents allowing them to share any information obtained through the discovery process. As such, Respondent Paquita Mosley would have been able to provide any discovery responses and documentation produced by Appellant to her co-parties for purposes of effectively formulating a joint defense to Appellant's claims.

Appellant's failure to comply with Judge Lee's Order at the March 19, 2019 hearing compelling him to provide discovery responses to Respondent herein deprived all Respondents of the ability to defend themselves against Appellant's claims.

As a matter of law, it was within Judge Lee's discretion to sanction Appellant under Rule 37(b)(2)(C), SCRCP⁶ by dismissing his action against all Respondents for his repeated refusal to comply with the rules of discovery, thereby depriving all Respondents of the information necessary to formulate a defense.

Furthermore, because the Lower Court found there to be insufficient evidence that the assets were non-probate and therefore it lacked subject matter jurisdiction over

⁵ Under Schaefer v. Family Medicine Centers of South Carolina, LLC, Dist. Court, D. South Carolina 2019, the Fourth Circuit explains of Common Interest privilege that "[w]hether an action is ongoing or contemplated, whether the jointly interested persons are defendants or plaintiffs, and whether the litigation or potential litigation is civil or criminal, the rationale for the joint defense rule remains unchanged: persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims.

⁶ Rule 37(b)(2)(C), SCRCP provides that the court may issue sanctions against a party for that party's failure to obey a court to provide or permit discovery, to include ... dismissing the action or proceeding.

the action, Judge Lee's dismissal⁷ of the case against all Respondents was proper as the action could not have been maintained against any of the Respondents and Respondent would argue that this claim is frivolous pursuant to Rule 269, SCACR.

- C. THE LOWER COURT APPLIED THE CORRECT LEGAL STANDARD TO THE RELEVANT CASE FACTS, WHICH RESULTED IN PROPERLY ISSUING ITS ORDER OF DISMISSAL OF APPELLANT'S CASE BECAUSE A CASE INVOLVING THE SAME PARTIES AND SUBSTANTIALLY THE SAME SUBJECT MATTER IS ALREADY PENDING BEFORE THE PROBATE COURT.

Appellant is focused on alleging that potential factual errors in the record related to the background of the case should be considered in assessing whether the correct legal standard was used in dismissing his case. Whether or not there may be any errors in the record as to the factual background of the case is irrelevant to the legal standard applied in granting Respondent's Motion to Dismiss as the grounds for the dismissal were rooted in the rules of civil procedure.

As is his right, Appellant chose to proceed Pro Se rather than retaining an attorney qualified to provide proper legal guidance to pursue his claims. As such, Appellant's case was dismissed by the trial court on July 9, 2019 for lack of subject matter jurisdiction resulting from his failure to follow proper civil procedure. More specifically, Appellant failed to make a motion to remove the existing Probate Court action to the Circuit Court to address the issues he raised over presumed probate

⁷ Rule 12(h)(3), SCRCP states that "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

assets, and instead he filed a new action in the Circuit Court.⁸ A review of the case by Judge Lee showed that Appellant failed to provide sufficient evidence to the Lower Court that the assets complained of were non-probate. As such, the Lower Court determined that it lacked proper subject matter jurisdiction to make any determination as to probate assets. Lack of subject matter jurisdiction may not be waived, even by consent of the parties. Anderson v. Anderson, 299 S.C. 110, 382 SE 2d 897 (1989)⁹.

In part, the trial court's ruling is a result of Appellant's own failure to respond to discovery as ordered. Appellant was first served with discovery requests on December 7, 2017, to which he failed to respond. He then claimed during a hearing on March 18, 2019 that he never received interrogatories served upon him by Respondent, Paquita Mosley. It was noted during that hearing that Appellant made documents available for copying and inspection at his home, while Respondents' attorney pointed out the effort would be futile without receiving Appellant's Answers to Interrogatories to point them toward the documentation relevant to Appellant's claims¹⁰. Appellant was again ordered to provide his Answers to Interrogatories within 30 days of receipt of another copy, and to provide his Responses to Requests For Production within 60 days of that hearing. Again, Appellant refused to comply with the court's order.

The final Order of Dismissal by Judge Lee cited the reason for granting

⁸ See Pg. 3 of the Order on Respondent's Motion to Dismiss by the Honorable Alison Renee Lee filed July 9, 2019.

⁹ Father and one son ran a business together on a piece of property inherited by all children but in which father held a life estate. Once the father passed away, the land became a probate asset to be divided among all children. Some of the heirs filed a partition action in the Circuit Court to divide and sell the land. The Circuit Court relinquished certain portions of the action dealing with father's estate to the Probate Court based on subject matter jurisdiction.

¹⁰ See Hearing Transcript from March 18, 2019 hearing, Pg 6 lines 6-24.

Respondent's Motion to Dismiss as Appellant's claims arising from substantially the same claim as the Probate Court action between the same parties. This raises the legal doctrine of Res Judicata¹¹ barring Appellant from re-litigating the same issues he raised in the Lower Court.

Furthermore, the trial court's ruling properly placed subject matter jurisdiction into the hands of the Probate Court. The South Carolina Probate Code confers exclusive original jurisdiction to the Probate Court over all subject matter relating to estates of decedents. S.C. Code Ann. § 62-1-302 (1987). As Appellant failed to provide sufficient evidence that the estate property he complained of was non-probate, the Probate Court must maintain jurisdiction over the disposition of the estate assets, and Respondent would argue that this claim is frivolous pursuant to Rule 269, SCACR.

D. THE DOCTRINE OF RES JUDICATA DOES NOT BAR RESPONDENT FROM FILING SUBSEQUENT MOTIONS TO DISMISS BASED ON A LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE ISSUE OF SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME.

Appellant claims that each subsequent time a Respondent raised a Motion to Dismiss related to subject matter jurisdiction that Res Judicata should have attached barring them from doing so because it was the same claim between the same parties that had already been decided. However, questions concerning subject-matter jurisdiction may be raised at any time by either party or sua sponte by th[e] court

¹¹ Whitt v. Seterus, Inc., Dist. Court, D. South Carolina 2018. Res Judicata requires that "(1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction; (2) the parties are identical, or in privity, in the two actions; and (3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding."

(Episcopal Church In South Carolina v. Church Insurance Company of Vermont, Dist. Court, D. South Carolina 2019) because the acts of a court with respect to a matter as to which it has no jurisdiction are void. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Further, for Res Judicata to attach, it requires that (1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction; (2) the parties are identical, or in privity, in the two actions; and (3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding." Whitt v. Seterus, Inc., Dist. Court, D. South Carolina 2018.

A ruling on a motion raised during the pendency of a case is not a final judgment in the case so therefore Res Judicata would not be applicable to barring a Motion to Dismiss for subject matter jurisdiction. While some of the parties in both the Lower Court and Probate Court matters are the same, the need to subsequently raise the issue of subject matter jurisdiction again was the result of Appellant's own willful failure to provide his discovery responses in compliance with the July 9, 2019 Order of the Lower Court.

Appellant's claim that Respondents' exercised their right to raise the issue of subject matter jurisdiction in an effort to engage in legal harassment of him is frivolous, without merit, and sanctionable under SC Code §15-36-10(A)(4)(a)(ii)-(iv)¹². A patently

¹² (4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

- (a) filing a frivolous pleading, motion, or document if:
 - (i) the person has not read the frivolous pleading, motion, or document;
 - (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
 - (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended

insubstantial complaint such as absolutely devoid of merit may be dismissed for lack of subject matter jurisdiction Additionally, Plaintiff's entire Complaint may be dismissed because it is factually frivolous. Johnson v. Apple Inc., Dist. Court, D. South Carolina 2017.

Furthermore, Respondent would allege that it is Appellant who has engaged in legal harassment of Respondents by his continued filings requiring a response from Respondents to an action Appellant refused to further over the course of the last two years of the Lower Court action. Appellant actively failed to comply with the Lower Court's Order to answer discovery¹³, which denied Respondents the right to defend themselves against his claims that the financial accounts upon which Appellant's lawsuit were based were held jointly with decedent, Ellec Mosley; that decedent did not withdraw the funds himself; or that the Power of Attorney Appellant alleged to be invalid was fraudulently obtained.

Because Respondents are permitted by law to raise the issue of subject matter jurisdiction at any time and were within their right to do so when Appellant willfully failed to provide evidence of his claims or to comply with the order of the court by responding to discovery requests, the Respondent's Motion to Dismiss was proper and Respondent would argue that this claim is frivolous pursuant to Rule 269, SCACR.

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- merely to harass or injure the other party; or
 - (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

¹³ See Letter from Appellant to Judge Lee dated March 31, 2019 stating his failure to answer discovery.

- E. REGARDLESS OF WHETHER ANY VIOLATION EXISTS OF CIRCUIT COURT STANDARDS PURSUANT TO S.C. CODE ANN. § 14-5-10, 14-17-510, AND 14-17-570, NO BIAS IS CREATED BY A JUDGE MAINTAINING POSSESSION OF AN ORIGINAL COURT FILING HANDED UP IN A HEARING THAT RESULTED IN THE DISMISSAL OF THE CASE.

Respondent would like to point out that pursuant to State v. Burroughs, 328 S.C. 489, 492 S.E.2d 408, (Ct. App. 1997), in an appeal, separate issues should be set forth and argued separately. Appellant has stated and argued two separate issues under one section by asking the court to first address whether there was a violation of the Circuit Court Standards, then subsequently address whether a violation created a perception of bias. These are two distinct issues, however Respondent will address both.

Appellant has continued to use his pro se status as a means to avoid responsibility for properly prosecuting his own case and continues to use the court to seek relief by correcting his errors for him, which he is not entitled to. Although actions by pro se plaintiffs are entitled to liberal construction, pro se plaintiffs are still required to follow the same procedural rules as counseled plaintiffs, and the Court may not act as an advocate for a plaintiff based on his pro se status. Donald Lee Sapp, Jr. v. N.C. Dep't of Corrections/Division of Prisons, et al. (W.D.N.C. 2016).

During the March 18, 2019 hearing Appellant handed up one copy of his unfiled Response to Respondent's Motion to Dismiss, never taking any steps to file the document with the Clerk of Court prior to, or after the hearing. Pursuant to a letter from Judge Lee to the Clerk of Court listed in Appellant's own Designation of Matter, Judge Lee stated that Appellant's Response Brief was in her possession along with all other case filings in order to take everything into consideration before issuing her Order dismissing Appellant's case. Appellant presumed Judge Lee would handle the

responsibility of filing his Response Brief for him rather than following the proper rules of civil procedure and filing his Response Brief with the Clerk of Court.

Respondent would argue that because the office of the Clerk of Court and the Judges' Chambers are all part of the same judicial complex, that Appellant's Response Brief in the Lower Court action never left the custody and control of the Edgefield County Clerk of Court and there was no violation of Circuit Court Standards under SC Code § 14-17-570¹⁴ , SC Code § 14-5-10¹⁵ , or SC Code § 14-17-510¹⁶ .

Appellant never made a request to inspect or copy any documents. He simply continued to contact the Clerk's Office about the fact that his Response Brief was not showing on the system as being filed despite the fact that Appellant never took steps to file his Response Brief. Further, nothing could have been removed from the Clerk's Office when Appellant never provided the Clerk's Office with the document he complains of. Appellant's Response Brief remained in the possession of Judge Lee who did exactly what Appellant intended, which was to consider his position when making her decision on Respondent's Motion to Dismiss his case.

¹⁴ SC Code § 14-17-570. The clerk shall not in any case permit either the books or records to be removed from his office, though he shall at all times permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto without charge or to furnish on application certified copies thereof on payment of fees per copy sheet.

¹⁵ SC Code § 14-5-10. The circuit courts herein established shall be courts of record, and the books of record thereof shall, at all times, be subject to the inspection of any person interested therein.

¹⁶ SC Code § 14-17-510. The clerk shall make a full, fair and correct entry and record of the proceedings of the courts and other matters pertaining to his office in the various books required to be kept, conforming to the mode prescribed by law, order of the court or usage of the office. He shall file in their proper order original papers in causes instituted or other authorized proceedings and preserve with care all papers, books and furniture pertaining to or connected with his office.

Further, Appellant alleges that there was some attempt at hiding his opposition to the Motion To Dismiss by Judge Lee failing to provide his Response Brief to the Clerk of Court, which would have had the effect of creating bias among other judges who would have been in the dark as to his feelings about the dismissal of his case. Again, Appellant made no attempt during the time he complained of his document being missing to actually file his document with the Clerk of Court, which he had every opportunity to do. Instead, he placed the responsibility solely on the Lower Court rather than himself.

A court reporter was present at the final hearing where Appellant's opposition to the Motion to Dismiss was discussed. Appellant included portions of that transcript in his Designation of Record on Appeal, which shows his objection to Respondent's Motion to Dismiss the Lower Court action clearly indicating there was no intent by the Lower Court to hide his objection, which negates his allegation.

Furthermore, Appellant's Lower Court case was dismissed so no bias could have been held by other judges going forward as no other proceedings were to occur. Appellant has made his Response Brief a part of his Designation of Matter to be Included in The Record on Appeal, which serves to notify this Court of his objection to the Lower Court action, again eliminating any claimed perception of bias, and Respondent would argue that this claim is frivolous pursuant to Rule 269, SCACR.

CONCLUSION

Because technical errors in a case caption are curable and not fatal to a case, the Order of Dismissal of Appellant's complaint issued by the lower court should remain valid.

Further, Appellant's case was properly dismissed against all parties pursuant to sanctions under Rule 37(b)(2)(C), SCRCP as a result of his refusal to comply with the

Lower Court's order to provide discovery responses to allow all Respondents to formulate a defense to his claims, and based upon the Lower Court's lack of subject matter jurisdiction over probate assets when the same parties and substantially the same claims were already properly before the Probate Court.

Further, Res Judicata is not a bar to raising the issue of subject matter jurisdiction at any time a party or judge believes it to be a relevant issue because without proper jurisdiction the court's decisions would be void.

Further, Appellant's failure to comply with the rules of civil procedure does not translate to a violation of the Circuit Court Standards, nor does an unfiled document in the custody and control of the Lower Court equate to any intent to create bias.

In light of the facts contained herein, Respondent respectfully requests this court affirm the Order of Dismissal issued by the lower court on July 9, 2019 and dismiss Appellant's appeal as frivolous pursuant to Rule 269, SCACR.

November 6, 2020

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Alison Renee Lee, Chief Administrative Circuit Court Judge

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Appellant

v.

Thomas Mosley, Quinnie Mosley, Walter Mosley, Timothy
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Representative of the Estate of Ellec Mosley,

Respondents

CERTIFICATE OF SERVICE

These documents are filed and served upon Counsel by email pursuant to the April 22, 2020, Amended Order of the South Carolina Supreme Court for Trial Operations During the Coronavirus Emergency (2020-04-22-01)

I did transmit the following document(s) in the manner described below:

Date: **November 6, 2020**

Enclosed: **Respondent's Designation of Matter and Certificate of Counsel
Initial Brief of Respondent**

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Thanking you in advance,

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