

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Circuit Court

The Honorable Roger E. Henderson

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SC Court of Appeals

Case Number: 2019-CP-16-00634

Mary Uptagraft on behalf of
Joshua B. Hopkins, Jacob T. Hopkins,
Jensen M. Hopkins, and Johanna S. HopkinsAppellant,

vs.

Rodney Brock HopkinsRespondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT ERR IN HOLDING THAT THE RESPONDENTS FAILURE TO TIMELY FILE THE INITIAL BRIEF IS A JUSTIFICATION TO REVERSE THE LOWER COURTS RULING?**
 - A. **DID THE TRIAL COURT ERR IN DENYING THE APPELLANTS MOTION TO EXETEND TIME TO FILE THE INITIAL BRIEF?**
 - B. **DID THE TRIAL COURT ERR IN GRANTING THE RESPONDENTS MOTION FOR SUMMARY JUDGMENT?**

STATEMENT OF THE CASE

This Appeal follows from a hearing held on November 14, 2019 (R. p. 27-42), by the Darlington Circuit Court, and from said Order (R. p. 04-11) from the Court filed on February 13, 2020.

On October 19, 2016, the Respondent filed a Petition for Intestate Estate and to be appointed Personal Representative for his late father's estate. On April 19, 2017, the Appellant filed for a formal testacy of a handwritten Will written by the Respondent's father. On January 8, 2018, the Appellant also filed a petition to remove the Respondent as Personal Representative. The Respondent then filed two Motions, one for Summary Judgment and one for Judgment on the Pleadings. The Respondents Motions were heard on December 12, 2018 (R. p. 12-26) by the Darlington County Probate Court. Said Court issued its Order (R. p. 02-03), dated May 20, 2019. The Respondent than filed a Notice of Appeal on June 10, 2019, followed by an Initial Brief, Designation of Matter and Record on Appeal (R. p. 46-59), dated August 14, 2019. The Appellant filed a Motion to extend time to file Initial Brief on September 13, 2019 (R. p. 43-45),

said Motion was mailed to the Darlington County Circuit Court. On September 18, 2019, the Appellant EFILED the Motion to Extend time to file Initial Brief (R. p. 43-45). On November 14, 2019 (R. p. 27-42), the Darlington County Circuit Court heard the Appellants Motion, as well as the Respondents Motion for Default. On November 25, 2019, the Appellant filed its Initial Brief and Designation of Matter (R. p. 60-65). On February 13, 2020, the Circuit Court issued its Order (R. p. 04-11), from which this appeal follows.

STATEMENT OF THE FACTS

On or about, September 6, 2016, Brokie Hopkins, Jr., passed away in Darlington County, South Carolina. On October 19, 2016, his son, the Respondent, filed a Petition for Intestate Estate and to be appointed as Personal Representative. On April 19, 2017, the Appellant, Respondents' ex-wife and mother of his four children, brought an action for Formal Testacy of a handwritten Last Will and Testament of Brokie Hopkins, Jr. The Appellants petition also requested that she be appointed Personal Representative. Despite numerous hearing request made to the Darlington Probate Court, the Appellant's petitions have never been heard by that Court. On January 8, 2018, with the discovery of several discrepancies in the Respondent's Accounting (R. p. 68) filed in Probate Court, the Appellant filed a Petition to remove the Respondent as Personal Representative of his father's estate. Despite numerous hearing request made, that Petition has also never been heard by the Darlington Probate Court. In response to said petitions, the Respondent filed a Motion for Summary Judgment, S.C.R.C.P. 56, as well as a Motion for Judgment on the Pleadings, under S.C.R.C.P. 12. The Respondent's above motions were heard by the Honorable Marvin I. Lawson, Darlington County Probate Court Judge on December 12, 2018 (R. p. 12-26). At that Hearing, the Probate heard arguments from both the Respondent and Appellant. More specifically, the Appellant offered a detailed Inventory and Accounting (R. p.

66-71), which clearly showed questionable expenditures made by the Respondent himself. Said expenditures included liquidating \$1,200.00 from his father's estate account, paying over \$4,000.00 to his attorney, after the Appellant's petition was filed, and misappropriating funds received from an accident settlement involving one of the Respondent's father's vehicles, as well as other personal expenses, including his personal utilities. Based upon the arguments of counsel, the Probate Court issued its Order (R. p. 3) denying both of the Respondent's Motions through his Order (R. p. 3) dated May 20, 2019. Neither party filed any post-trial Motions, including any Motion for Reconsideration. The Respondent then filed a Notice of Intent to Appeal on June 10, 2019, which was followed by the Respondent's Initial Brief, Designation of Matter on Appeal and Record on Appeal (R. p. 60-65). On September 13, 2019, the Appellant filed a Motion to Extend Time to File Initial Brief with the Darlington County Circuit, said Motion was mailed (R. p. 43-45). On or about September 18, 2019, the Appellant efiled said Motion with the Darlington County Circuit. On or about October 7, 2019, the Respondent efiled an Affidavit of Default, which apparently was entered as an Order of Default by the Darlington County Circuit Court on October 14, 2019. On November 14, 2019, the Darlington County Circuit Judge Roger E. Henderson heard the Appellant's Motion for Extension to File Initial Brief as well as the Respondents Motion for Default (R. p. 27-42). The Appellant informed the Court he was not aware Darlington was an efile County but that the initial brief could be filed by the end of the month. (R. p. 28, Line 21-22) In response to the Respondent's Motion for Default, it was again brought to the Court's attention of the questionable expenditures made by the respondent using the estate account. On November 25, 2019, the Appellant efiled her initial brief and designation of matter (R. p. 60-65). On February 13, 2020, the Darlington County Circuit issued its Order (R. p. 04-11), from which this appeal follows. Said Order effectively

dismisses the Appellant's Petitions for Formal Testacy of the Will and Petition to remove the Respondent as Personal Representative.

ARGUMENT

THE TRIAL COURT DID ERR IN DENYING THE APPELLANT'S MOTION TO EXTEND TIME TO FILE INITIAL BRIEF.

A Circuit Court, Hearing an appeal from the Probate Court, has its authority under S.C.Code Ann 62-1-308, which itself makes several references to the South Carolina Appellate Court Rules. Noticeably, however, S.C.Code Ann 62-1-308 (g) specifically states the following:

“Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules.” In the present case, however, the trial court did rely specifically on the South Carolina Rules of Appellate Court, rule 240(B) when it denied the Appellants motion to extend time to file the initial brief, in part stating that the mere filing of said motion does not stay the specific time limits. In the present case, the Appellant did timely file a motion with the Circuit Court requesting an extension to file the initial brief. However, the Appellant did not wait for the trial court's decision or ruling on said motion and in fact filed the initial brief *80 days* prior to the court's ruling. The trial court's explanation that the “rules time limits are so firmly set” do not sufficiently take into consideration the basis for the Appellant's motion.

On September 13, 2019, the Appellant did file a Motion to Extend Time to File Initial Brief with the Clerk of Court's office in Darlington County (R. p. 43-45). At the time, the Appellant was unaware that Darlington is an EFILE County and once the Appellant became aware, he did properly EFILE the Motion. At the hearing held on November 14, 2019, the Appellant offered to the Court that his workload, specifically with Federal Court had taken up a

significant amount of time and that he was unaware that Darlington County was an EFILE County (R. p. 39). The Appellant offered to the Court his letters, motion and certificate of service showing said motion was mailed on September 13, 2019. In its Order, the Circuit Court states simply, that because the time limits are so “firmly set, the Motion cannot be granted”. The Court takes no consideration of the fact that the Motion was mailed within the proper time limits and merely states that “attorney’s workload and unfamiliarity of the States’ EFILE requirements seems insufficient to grant an extension”. The Court also failed to take into consideration that the Appellant did EFILE his Designation of Matter and Initial Brief on November 25, 2019 (R. p. 60-65). The Court did not issue its Order (R. p. 04-11) until February 13, 2020, some *89 days* after the Hearing, and *80 days* after the Appellant had filed the Initial Brief. The Court could have considered the brief, and more importantly could have resolved the issues applying the applicable law of the issues on appeal, rather than rely on a rule to dismiss the Appellants response to the Respondent’s appeal. Moreover, the Respondent has not articulated in any fashion how he would be prejudiced by allowing the extension to file the Initial Brief, or even to consider the Initial Brief in its ruling. Importantly, the Respondent never filed any objection to the Appellant’s Initial Brief.

ARGUMENT

THE TRIAL COURT DID ERR IN GRANTING THE APPELLANTS MOTION FOR DEFAULT WHICH EFFECTIVELY GRANTED THE RESPONDENTS MOTION FOR SUMMARY JUDGMENT AND JUDGMENT ON THE PLEADINGS.

In granting the Respondent’s Motion for Default, the trial court reversed the Probate Court’s Order (R. p. 03) of May 20, 2019 which denied the Respondent’s Motion for

Summary Judgement and Judgement on the pleadings. In doing so, the trial Court completely ignored the transcript (R. p. 12-26) of that hearing and the accounting as provided by the Respondent. For the below stated reasons, this Court should reverse the trial Court's Order. In ruling upon Motions to Dismiss and or Motions for Judgment on the Pleadings, the Appellate Court can consider the following:

“A Motion to dismiss for failure to state cause of action, as filed by the Appellant, was converted to a Motion for Summary Judgment where the Respondent submitted an exhibit and the Appellant did not object to the inclusion of these documents and the trial Court specifically mentioned it relied on the documents submitted.” Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861, S .C. Court of App 2003. Moreover, our Court's have specifically stated that a Motion to Dismiss would be converted to a Motion for Summary Judgment if the Court relied upon and looks beyond the pleadings in making its ruling. In Pitts. v. Jackson Nat. Life Ins. Co., the Court specifically converted Motions to Dismiss for failure to state a cause of action into Summary Judgment Motions by considering matters outside the pleadings, and by issuing an Order of dismissal six months after the evidence of outside matters was filed. 352 S.C. 319, 574 S.E.2d 502. (2002).

In the present case, the Respondent filed a Motion to Dismiss under S.R.C.P. 12(B)(6), as well as a Motion for Summary Judgment under S.C.R.C.P 56 (C). In the present case, the Appellant filed a Petition to remove the personal representative based upon fraud and misrepresentation. At the hearing, the Court specifically heard matters outside of the pleadings, i.e. the Inventory and Appraisement, Accounting and Disbursement sheets (R. p. 68-72). The Respondent did not object to the introduction

of said documents and moreover, *the Court Order did specifically state that the Court did consider all “all testimony, evidence, motions, exhibits, accounting and arguments of counsel in its ruling (R. p. 04-11). Respondent did not file a Motion for Reconsideration or Motion to Clarify the Court’s ruling, and therefore, the Appellant would request that this Court affirm the Probate Court’s decision and have this matter immediately placed on the Probate Court’s Docket for a proper Hearing on the merits. In the present case, the trial Court failed to take into consideration any of the evidence presented to the Probate Court, either the transcript (R. p. 04-11) or the accounting (R. p. 68), and completely reversed the Probate Court without offering a scintilla of fact for doing so, other than stating that the Appellant failed to timely file the Initial Brief.*

CONCLUSION

In the present case, the trial Court completely failed to take into consideration anything regarding the law or issues presented at the Probate Court Hearing in its Order (R. p. 04-11). Indeed, in its Order, the trial Court states, “As a result of the above listed factors, this Court does rely upon Respondent’s (Appellants) failure to timely file his Initial Brief as justification to reverse the lower Court’s ruling.” In doing so, the Court fails to address its own complacency in issuing an Order for a Hearing held *over 89 days* prior to its ruling (R. p. 04-11). Moreover, the trial Court also fails to address that it had in the Court’s file, unopposed by the Respondent, the Appellant’s Initial Brief for over *80 days* prior to the issuance of its order. And yet, even with the Initial Brief, the trial Court failed to take into consideration anything related to the Initial Briefs, either that of the Appellant (R. p. 46-59) or the Respondent (R. p. 60-65), and instead merely

stated that it had the authority to completely reverse the Probate Court's Order due to the fact that the Initial Brief was untimely filed. For the above stated reasons, the Appellant would request this Court find that the trial Court abused its discretion in ruling upon the Appellants Motion and abused its discretion in reversing the Probate Court Judge. The Appellant would therefore request that this Court reverse the trial Court in all of its particulars, and remand the case to the Probate Court for proper adjudication of the Appellants Petition for Formal Testacy and Probate of the Will, and Petition to remove the Respondent as Personal Representative. The underlying case involves the validity of a Will and the distribution of estate assets to the decedent's grandchildren. In such cases, this Court has previously stated that the "law abhors intestacy and will indulge every presumption in favor of the validity of a Will. (Abrams v. Templeton, 320 S.C. 325 Ct. App. 1995). Thus, when one makes a will, there is a presumption that he or she intends to dispose of the entire estate, and not to die intestate as to any part of it." (Bahan v. Citizens and Southern Nat. Bank of South Carolina, 267 S.C. 303, (1976). By reversing the Probate Court Judge, the trial Court effectively dismissed not only the validity of the Will, but the corpus of said estate to be distributed the decedent's grandchildren.

Respectfully Submitted

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November 6, 2020

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The Honorable Roger E. Henderson, Circuit Court Judge

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Rodney Brock
Hopkins.....Respondent.

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

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