

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Dec 09 2020

APPEAL FROM CHARLESTON COUNTY

SC Court of Appeals

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2020-001599

Churchill Park,

Respondent,

v.

Alan G. Nix and the Estate of Norma J. Nix,

Appellants,

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent, Churchill Park, moves this Court to dismiss this appeal because: (1) the Master's Order on Sale and Disbursements is not a final judgment subject to appeal; (2) the remaining orders listed in Appellants' Notice of Appeal were entered more than thirty days before the Notice of Appeal was filed; and (3) Appellant Estate of Norma J. Nix is not represented by a licensed South Carolina attorney. In support of the motion, the Respondent shows the following unto the court:

This appeal arises out of a foreclosure action initiated by Respondent against Appellants for unpaid homeowners' association dues. Trial was held before the Master in Equity for Charleston County on September 26, 2017. The trial court ruled in favor of Respondent and issued its final order on November 9, 2017. Appellant Alan Nix appealed the trial court decision in Appellate Case Number 2018-000056. This appeal was ultimately dismissed by this Court for Appellant's failure to file the initial brief. Thereafter the South Carolina Supreme Court declined to grant certiorari and the matter was remitted to the trial court on January 21, 2020.

The trial court held a supplemental damages hearing on August 20, 2020 and issued its Supplemental Order on August 21, 2020. The Supplemental Order granted additional attorney's fees and costs to Respondent and set October 6, 2020 as the foreclosure sale date. Appellants served their Notice of Appeal from the Supplemental Order on September 21, 2020 in Appellate Case Number 2020-001304. Appellants did not obtain a Writ of Supersedeas or post a surety bond and the subject property was sold at the October 6, 2020 foreclosure sale to State Street Holdings, LLC. Thereafter, on November 2, 2020, The Honorable Mikell R. Scarborough issued his report on sale and disbursements as required by Rule 71(b), SCRPC.

On November 24, 2020, case 2020-001304 was dismissed by this Court because Appellants failed to timely order the transcript. On December 1, 2020 Appellants served their Notice of Appeal in this matter seeking a reversal of: (1) the Master's Order on Sale and Disbursements filed November 2, 2020; (2) Order of Judge Maite Murphy in civil action number 2018-CP-10-3315 dated September 27, 2019; and (3) Order of Reference in filed November 18, 2014.

The Master's Order on Sale and Disbursements is not a Final Judgment Subject to Appeal

“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”
Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). A final judgment is

one that “finally determines some substantial matter forming the whole or part of some cause of action or defense.” Id., 369 S.C. at 7, 630 S.E.2d at 467-68.

Here, Appellants attempt to appeal the Master’s Order on Sale and Disbursements. Rule 71(b), SCRPC requires the “officer conducting the sale [to] file a report with the court as to the sale and the receipts and disbursements made.” The Order on Sale does not determine any matter related to any cause of action or defense of the foreclosure matter. Instead, it is merely an administrative report wherein the Master in Equity lists the proceeds received by his office and lists the disbursements made after the sale. For this reason, the appeal should be dismissed as to the Master’s Order on Sale and Disbursements.

Appeal of Judge Murphy’s Order and the Order of Reference Are Untimely

“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCRPC. Judge Murphy’s Order was originally filed September 27, 2019. Appellant Alan Nix attempted to appeal this order in Appellate Case Number 2020-001304. By letter dated October 6, 2020 this Court informed Mr. Nix that it would not consider that order. The Court should do the same for this appeal for the same reasons.

The Order of Reference was filed November 18, 2014¹. Appellant Alan Nix’s first appearance in the foreclosure case was by letter to the Master in Equity filed with the Charleston County Clerk of Court on December 3, 2014. Thereafter Mr. Nix actively participated in the case before the Master in Equity through his counsel, William Sloan, or *pro se*. It is clear he had notice of the filing of the Order of Reference well before 30 days of the filing of this appeal. For that reason, the appeal should be dismissed as to the Order of Reference.

¹ Appellants’ Notice of Appeal states the Order of Reference was filed “18 November 2020,” however the order itself, as attached to Appellants’ Notice of Appeal, shows it was filed November 18, 2014.

Appellant Estate of Norma J. Nix Must be Represented by Licensed South Carolina Counsel in Order to Continue this Appeal.

South Carolina limits the practice of law to licensed lawyers. In re Lexington County Transfer Court, 334 S.C. 47, 512 S.E.2d 791 (1999). “No person may practice or solicit the cause of another in a court of this State unless he has been admitted and sworn in as an attorney.” S.C. Code § 40-5-310. Our Supreme Court has previously held that a personal representative of an estate who is not a licensed lawyer is prohibited from filing and maintain an appeal on behalf of the estate. Brown v. Coe, 616 S.E.2d 705, 365 S.C. 137 (S.C. 2005).

Here, the Notice of Appeal is signed by “Alan Nix as co-PR for Estate of Norma J. Nix” and Alan Nix “with permission from Ethan Nix, co-PR for Estate of Norma J. Nix.” Neither Alan Nix nor Ethan Nix can represent the Estate of Norma J. Nix in this appeal because neither are an attorney licensed to practice law in the state of South Carolina. For this reason, the Estate of Norma J. Nix should be removed as an appellant in this case.

CONCLUSION

This appeal should be dismissed because the orders Appellants’ complain of were either entered more than thirty day before the appeal was filed and served or because the order is not appealable. Additionally, Alan Nix should not be allowed to represent the Estate of Norma J. Nix in this or any other appeal because he is not licensed to practice law in this state.

December 9, 2020

/s Stephanie Trotter Kellahan

Stephanie Trotter Kellahan (SC Bar 77680)
McCabe, Trotter & Beverly, P.C.
Attorney for Respondent

PO Box 212069
Columbia, SC 29221
(803) 724-5000
Stephanie.Kellahan@mccabetrotter.com
Attorney for Respondent

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PROOF OF SERVICE

I certify that I served Respondent's Motion to Dismiss on Alan G. Nix and the Estate of Norma J. Nix by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2020 as follows:

Alan G. Nix, individually and on behalf of the Estate of Norma J. Nix
1401 Densmore Circle
Mount Pleasant, South Carolina 29466

/s Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd, Suite 250
Columbia, SC 29209
(803) 724-5000
Stephanie.kellahan@mccabetrotter.com
Attorney for Respondent