

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Elaine Mincey, as Personal Representative)
 for the Estate of William Alexander)
 Brunson, Jr.,)
)
 Plaintiff,)
)
 v.)
)
 David Scott Wich and C.J. Wingerter)
 Company, LLC,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

C/A No. 2018-CP-10-05710

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FEB 08 2021

SC Court of Appeals

**ORDER DENYING PETITIONER
 PATRICIA BRUNSON'S MOTION FOR
 RECONSIDERATION**

This matter previously came before the Court on a Motion to Intervene, Vacate Settlement & Remove Personal Representative filed by Petitioner Patricia Brunson, which the Court denied via Form 4 Order entered on December 8, 2020. Petitioner filed a Motion for Consideration on December 16, 2020, which the Court hereby denies as well.

Before proceeding to the merits, the Court notes that Petitioner complains in her motion to reconsider that the Court did not enter findings in the Order denying Petitioner's motion to intervene, vacate settlement, and remove Plaintiff as personal representative. According to Petitioner, the Court was required to enter findings pursuant to Rule 52, SCRCPP, which applies to "actions tried upon the facts without a jury;" that is, bench trials. The hearing on Petitioner's motion was just that, a hearing, not a bench trial. Rule 52 is therefore inapplicable. In any event, the Court hereby addresses in more detail why Petitioner's original motion and this motion to reconsider are without merit.

RELEVANT FACTS

This civil action arose out of a car wreck that caused the death of William Alexander Brunson, Jr., who was the husband of Petitioner Patricia Brunson. Mr. Brunson was also the father of Plaintiff Elaine Mincey from a different relationship. Plaintiff was duly appointed as personal representative of her father's estate by the Charleston County Probate Court, and in that capacity Plaintiff hired William Applegate of Yarborough Applegate to represent the estate in the wreck case.

Plaintiff settled the case with the carriers for the at-fault driver for \$550,000, and petitioned this Court for approval of the settlement. On December 11, 2018, the Honorable Thomas L. Hughston, Jr., entered an Order approving the settlement, with \$400,000 of the proceeds apportioned to the survival claim and \$150,000 apportioned to the wrongful-death claim. According to Petitioner, she first learned of the settlement on March 15, 2019, when she received a check for her share of the proceeds from the wrongful-death claim, which according to law were paid outside of the probate estate. The survival proceeds were administered through the estate.

On February 14, 2020, Petitioner filed her motion to intervene for the purpose of seeking two forms of relief: (1) vacatur of the settlement that approved via the Order entered on December 11, 2018; and (2) removal of Plaintiff as personal representative of the Estate of William Alexander Brunson, Jr. Petitioner disagrees with how the settlement proceeds were apportioned between the survival and wrongful-death claims, arguing that the apportionment resulted in a lower net amount paid to her on account of how her husband's will had been drawn. According to Petitioner, the apportionment was the result of fraud committed by her stepdaughter, Plaintiff.

Plaintiff vehemently denies any fraud or other wrongdoing in settling her father's case.

LAW AND ANALYSIS

Petitioner has moved to intervene for the purpose of seeking two forms of relief that are unavailable to her: (1) vacatur of the settlement that this Court approved via order entered on December 11, 2018; and (2) removal of Plaintiff as personal representative of the Estate of William Alexander Brunson, Jr.

Petitioner bases her motion for vacatur on: (a) her claim that Plaintiff procured the settlement through fraud; and (b) a claim that the Court lacked jurisdiction “for failure to have the necessary parties before the Court.” Neither of these claims has merit.

Likewise, there is no merit in Petitioner’s motion for this Court to remove Plaintiff as the personal representative of her father’s estate. The Court of Common Pleas does not have jurisdiction to do that. Only the Probate Court does.

As a procedural matter, Petitioner claims that the Court lacks subject-matter jurisdiction to resolve this motion unless Judge Hughston, who entered the Order approving the settlement, is the one to resolve it. This argument lacks merit as well.

I. THE COURT HAS SUBJECT-MATTER JURISDICTION AND DOES NOT REQUIRE JUDGE HUGHSTON TO RESOLVE PETITIONER’S MOTION.

By statute, this Court has subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 order approving settlement here is therefore not void for want of subject-matter jurisdiction.

After filing her motion to intervene, Petitioner raised the argument that the Court lacks subject-matter jurisdiction unless Judge Hughston, who approved the settlement, is the judge who resolves Petitioner’s motion. That is incorrect. While it is true that one Circuit Court judge generally has no authority to overrule another Circuit Court judge, that principle is about one judge’s authority, not the Court’s subject-matter jurisdiction as alleged by Petitioner. See, e.g.,

Coon v. Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (observing that “[s]ubject-matter jurisdiction is the ‘power to hear and determine cases of the general class to which the proceedings in question belong’”) (quoting Dove v. Gold Kist, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)).

Further, the principle is not implicated when a rule or statute grants authority to judges to act upon the prior order of another judge. See, e.g., Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689, 690 (1943) (holding that “the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, *except in cases...when it is allowed by rule of court or statute*”) (emphasis added; citation omitted). Rule 60, SCRCF, allows any Circuit Court judge, not just Judge Hughston, to resolve a motion such as Petitioner’s motion here.

Rule 60(a) specifically contemplates situations in which the original trial judge must be the one to resolve the motion for relief from judgment or order. Rule 60(a), SCRCF (providing, in part, regarding clerical mistakes: “The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.”). On the other hand, Rule 60(b), SCRCF, simply provides that “*the court* may relieve a party or his legal representative from a final judgment, order, or proceeding for” reasons such as excusable neglect or fraud. Rule 60(b), SCRCF (emphasis added). In this regard, Rule 60 would permit any Circuit Court judge to resolve Petitioner’s Rule 60(b) motion. This is not the type of motion that must be heard by the Circuit Court judge who entered the original order.

This application of Rule 60 makes particular sense here, since Judge Hughston did not consider and resolve the issues that Petitioner raises now. Indeed, Judge Hughston was not even

aware of those issues, so he could not have considered them before he entered the Order approving the settlement.

For these reasons, Petitioner's motion to intervene and vacate the settlement was properly denied.

II. THE COURT CANNOT VACATE THE ORDER APPROVING SETTLEMENT.

Again, Petitioner Brunson is asking the Court to vacate the order approving settlement on the following bases: (1) fraud, pursuant to Rule 60(b)(3), SCRPC; and (2) voidness for lack of personal jurisdiction, pursuant to Rule 60(b)(4), SCRPC. Neither basis has merit.

A. Petitioner's motion was not filed in time to allege fraud under Rule 60(b)(3).

As noted above, the Court entered the order approving settlement on December 11, 2018. Petitioner did not file this motion until more than a year later, on February 14, 2020. Rule 60(b)(3), SCRPC, provides that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for...fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b) further provides, however, that any motion to vacate a judgment based on fraud, misrepresentation, or other misconduct of an adverse party must be made "not more than one year after the judgment, order or proceeding was entered or taken." The rule provides no exception to this deadline. Accord Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (describing the one-year deadline under Rule 60(b)(1)–(3) as "the absolute time limit").

Without citation to authority, Petitioner argues that the discovery rule applicable to the running of a statute of limitations also applies to the deadline in Rule 60(b)(1)–(3), SCRPC. The discovery rule is statutory, S.C. Code § 15-3-535, and specifically applies to the running of the statute of limitations in personal-injury actions. Id. (referring to S.C. Code § 15-3-530(5)). No

such statute applies to the running of the one-year period under Rule 60(b), SCRPC.¹ Consequently, Petitioner's motion to vacate the Order approving the settlement on the basis of alleged fraud is untimely, and the motion must be denied on that ground.

B. Petitioner was not an indispensable party to the settlement approval, and even if she had been her absence would not render the settlement-approval order void.

In arguing that she was an indispensable party to the settlement approval and has a right to intervene for that reason, Petitioner overlooks that the *only* person allowed to seek court approval of a wrongful death or survival claim is the personal representative of the estate. South Carolina Code section 15-51-42(A) provides: "Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions." Since Petitioner was not the personal representative, she had no right to intervene or participate at all. She was certainly not *indispensable*.

Petitioner's absence from the settlement-approval proceeding did not deprive the Court of personal jurisdiction over anyone. "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding" if "the judgment is void." Rule 60(b)(4), SCRPC.² "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Belle Hall Plantation Homeowner's Assn. v. Murray, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (2017) (quotation omitted). "The definition of void under

¹ The Court notes that Petitioner admits she received notice of the settlement as early as March 2019 when she received the check for her share the wrongful-death proceeds. This was approximately nine months before the one-year deadline passed under Rule 60(b)(3), SCRPC. Petitioner has provided no explanation for why she did not timely file her motion during those nine months.

² Unlike vacatur under Rule 60(b)(1)–(3), vacatur under Rule 60(b)(4) does not have a one-year deadline for the movant to file for relief.

the rule *only* encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Id.* (quotation omitted) (emphasis added). “Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.” *Id.* at 618, 799 S.E.2d at 316 (quotation omitted).

By statute, this Court has subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 Order approving settlement is therefore not void for want of subject-matter jurisdiction.

Further, Petitioner Brunson had no statutory or other right to notice of the settlement, notice of the petition for settlement approval, or notice of the settlement-approval hearing. Consequently, there was no failure “to provide proper due process” that could render the order approving settlement void or voidable.

Furthermore, while Petitioner Brunson was a statutory beneficiary of the wrongful-death settlement and apparently a legal heir under her husband’s will for purposes of the survival settlement, the Order approving settlement was not a judgment or order *against* Petitioner Brunson. The Order could be viewed as a judgment against the at-fault driver who caused the wreck that killed Petitioner’s late husband, but it was not an order or judgment against her. Consequently, Petitioner’s claims do not fit any of the scenarios that might render a judgment void pursuant to Rule 60(b)(4).

In sum, even if Petitioner’s assertions about what happened or should have happened with the settlement approval had any factual support—they do not—at best they would fall under Rule 60(b)(1) (“mistake, inadvertence, surprise, or excusable neglect”) or Rule 60(b)(3) (“fraud, misrepresentation, or other misconduct of an adverse party”). As discussed above, however, to

make those arguments Petitioner would have had to file her motion within one year after the Court entered its Order approving the settlement. Petitioner did not meet that deadline, and therefore her arguments are procedurally barred. She cannot get around that procedural problem by misclassifying her claim as one that triggers Rule 60(b)(4). That subsection of the rule does not apply, and the Court has properly denied Petitioner’s motion on that basis.

III. THE COURT LACKS JURISDICTION TO REMOVE THE PERSONAL REPRESENTATIVE.

This Court obtains subject-matter jurisdiction over “formal proceedings...for the appointment of general personal representatives” only when such formal proceedings have been removed from the Probate Court upon motion of a party or the Probate Court’s own motion. S.C. Code § 62-1-302(d)(1). That has not happened here, so the Court lacks subject-matter jurisdiction to entertain Petitioner Brunson’s request to have Plaintiff removed as personal representative in this case. The Probate Court has exclusive subject-matter jurisdiction over the appointment and removal of the personal representative in this matter. Plaintiff’s motion to intervene and have the Court remove Plaintiff as personal representative was therefore properly denied.

CONCLUSION

Petitioner Brunson’s motion to intervene, vacate the order approving settlement, and remove Plaintiff as personal representative is without any merit and was properly denied. Petitioner’s motion to reconsider is also denied.

AND IT IS SO ORDERED.

[signature page follows]



Charleston Common Pleas

Case Caption: Elaine Mincey , plaintiff, et al VS David Scott Wich

Case Number: 2018CP1005710

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766