

The Supreme Court of South Carolina

In Re: The Estate of Hazel North

Grady North and Jean Corbett, Respondents,

v.

Linda North and James North, Petitioners.

Appellate Case No. 2019-001808

ORDER

Petitioners James and Linda North appealed a circuit court order reversing the probate court's denial of a Rule 60(b)(4) motion made by Respondents Grady North and Jean Corbett. The court of appeals concluded the circuit court order was not a final order and dismissed the appeal. We granted a petition for a writ of certiorari to review the court of appeals' decision. For the reasons set forth herein, we remand these proceedings to the probate court for further proceedings on the issue of will priority.

This case involves two competing wills said to be executed by Hazel North, who died on March 19, 2016. We refer to one will as the 2008 Will (the priority of which is advanced by Respondents) and the other as the 2014 Will (the priority of which is advanced by Petitioners). On March 29, 2016, the probate court granted Grady North's application for informal probate of the 2008 Will and appointed him as personal representative of the estate. The next day, James North appeared unrepresented before the probate court with the 2014 Will. In spite of section 62-3-302 of the South Carolina Probate Code (Supp. 2020), which provides "[i]nformal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding," (emphasis added), the probate court: (1) granted James North's application for informal probate of the 2014 Will, (2) appointed him as personal representative, (3) voided probate of the 2008 Will, and (4) canceled Grady North's appointment as personal representative.

Instead of requesting the probate court to reconsider its rulings "in favor" of the 2014 Will and "against" the 2008 Will, and instead of commencing formal testacy proceedings, Respondents waited until February 2018 (almost two years after the probate court rulings) and filed a motion pursuant to Rule 60(b)(4)¹ of the South Carolina Rules of Civil Procedure. In that motion, Respondents asked the probate court to find its four foregoing rulings were void for lack of subject matter jurisdiction and violative of their due process right to be notified and heard with respect to James North's application. The probate court denied the motion, and Respondents appealed to the circuit court. The circuit court reversed the probate court, voided the March 30 rulings, and remanded the case to the probate court for informal probate of the 2008 Will. Petitioners appealed to the court of appeals. The court of appeals dismissed the appeal, finding the circuit court order was not a final order. We granted Petitioners' petition for a writ of certiorari and convened oral argument on December 9, 2020.

As we now explain, we need not delve into the issues of whether either the circuit court or probate court orders were final orders and therefore immediately appealable. During oral argument before this Court, Respondents at first insisted the procedural merits of the case demand that the informal probate of the 2008 Will be reinstated, as section 62-3-302 clearly provides informal probate of a will "is conclusive as to all persons until superseded by an order in a formal testacy proceeding." Respondents also argued Petitioners are now time-barred from commencing formal testacy proceedings because the probate code requires formal proceedings to "be commenced within eight months from informal probate or one year from the decedent's death, whichever is later." S.C. Code Ann. § 62-3-108(A)(2)(c) (Supp. 2020). Therefore, Respondents argued, Petitioners' failure to file a petition for formal probate of the 2014 Will within the requisite one year leaves only the 2008 Will to be probated. However, Respondents had no answer to the question of why they waited almost two years to file their Rule 60(b)(4) motion, therefore bringing into question the timeliness of that motion. Respondents then withdrew any objection to this proceeding being remanded to the probate court to allow the parties to litigate the priority of the two wills. Respondents also conceded they, upon remand, would not argue Petitioners were time-barred from proceeding with a petition for formal probate of the 2014 Will. These concessions necessarily render moot Respondents' Rule 60(b)(4) motion.

¹ Rule 60(b)(4), SCRCF (providing that upon motion, a court may relieve a party from a final judgment if the judgment is void). A Rule 60(b)(4) motion "shall be made within a reasonable time" Rule 60(b), SCRCF.

Petitioners expressed concern as to whether section 62-3-108(A)(2)(c) is a statute of repose rather than a statute of limitations, thus potentially precluding them from commencing formal proceedings relative to the 2014 Will upon remand to the probate court. Petitioners initially insisted Respondents' Rule 60(b)(4) motion was wholly without merit and that both the probate court order denying the motion and the circuit court order reversing the probate court were appealable final orders. However, Petitioners agreed there is uncertainty as to the ultimate resolution of the issue of their failure to commence formal testacy proceedings within the time frame set forth in section 62-3-108(A)(2)(c). Petitioners' concern in that regard was understandably lessened in light of Respondents' agreement that they would not argue on remand that Petitioners are time-barred from commencing formal proceedings relative to the 2014 Will.

Considering the unusual procedural posture of this case and taking into account the concessions and representations of the parties through their counsel, the Court concludes the proper course of action is for this matter to be remanded to the probate court to allow the parties to litigate the priority and validity of the 2008 Will and the 2014 Will. It is therefore

ORDERED that the probate court order denying Respondents' Rule 60(b)(4) motion is vacated, and the circuit court order reversing the probate court order is vacated; it is further

ORDERED that these proceedings are remanded to the Charleston County Judge of Probate; it is further

ORDERED that Respondents' Rule 60(b)(4) motion is dismissed as moot; it is further

ORDERED that within ninety (90) days after the remittitur has been issued, Petitioners may commence formal testacy proceedings relative to the 2014 Will in the manner and form set forth in the South Carolina Probate Code and shall serve counsel for Respondents with a certified copy of the petition. Thereafter, the parties and the probate court shall follow the procedures set forth in the South Carolina Probate Code until final disposition of the proceedings. If Petitioners do not commence formal testacy proceedings within this ninety-day time frame, the 2008 Will shall continue in informal probate, and Petitioners shall have no further right to assert the superiority or validity of the 2014 Will; it is further

ORDERED that upon Petitioners' commencement of formal testacy proceedings relative to the 2014 Will, Respondents shall be barred from claiming the proceedings are time-barred, and the probate court shall not dismiss the formal testacy proceedings as time-barred under section 62-3-108(A)(2)(c) or under any other purported authority. Petitioners shall be barred from asserting Respondents failed to timely commence formal testacy proceedings after the probate court's March 30, 2016 acceptance of the 2014 Will into informal probate; it is further

ORDERED that in the event the proceedings are transferred to the circuit court, the circuit court shall follow the procedures set forth herein.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ George C. James, Jr. J.

s/ Thomas E. Huff A.J.

I would affirm the court of appeals because I agree that neither the probate court order nor the circuit court order are immediately appealable.

s/ John Cannon Few J.

Columbia, South Carolina
March 5, 2021

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