

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge for Charleston County

Appellate Case No. 2020-000594

Melissa Combs a/k/a Melissa Cleary.....Appellant,

v.

Carlie Elvin Cleary, Individually and as Personal Representative of the
Estate of Scott B. Cleary & Ditech Financial, LLC

Of whom Carlie Elvin Cleary, Individually and as Personal Representative
of the Estate of Scott B. ClearyRespondent,

APPELLANT'S FINAL REPLY BRIEF

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I. THE MATTER WAS PROPERLY REMOVED TO THE CIRCUIT COURT BY THE PROBATE COURT'S ORDER OF MAY 13, 2019.

ARGUMENT

Respondent's argument that only the probate court has subject matter jurisdiction and his reliance on *Thomas v. McGriff*, 368 S.C. 485, 629 S.E. 2nd 359 (2006) is misplaced. In *Thomas*, the issue was whether the probate court or the family court had jurisdiction over the determination of an alleged common law marriage.

This case is distinguishable from *Thomas*, Id. because the action was commenced in the probate court and removed to the circuit court. Neither party has claimed that jurisdiction should be in the family court.

The issue in this case is whether or not the action was properly removed from the probate court to the circuit court under Section 62-1-302(d).

Though determination of the existence of the common law marriage is necessary in order to determine Appellant's claims including those of quieting title and setting aside the deed of distribution, removal under Section 62-1-302(d) is nonetheless mandatory.

A substantial portion of the decedent's assets were the two (2) parcels of real estate described in the Complaint and Lis Pendens (Complaint, R. p. 13 and Lis Pendens, R. p. 17). Plaintiff's actions to quiet title and to set aside the deed of distribution (Complaint, R. pp. 14-15) are necessary to assert her title to those two (2) parcels of Charleston County real estate. Respondent cannot seek to re-define Appellant's pleadings in order to procedurally defeat its removal to the circuit court.

Curiously, in his brief, Appellant argues that Section 62-1-302(d) does not apply because "these causes of action are not actions to try title concerning property in which *the estate of a*

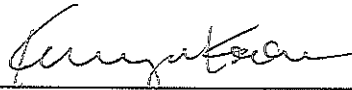
decendent has an interest;” (Appellant’s Final Brief, p. 4). Especially since Appellant is named individually as well as in his representative capacity, this argument is an acknowledgement that the action is properly before the circuit court, rather than the probate court.

As an action to try title to real property, it was properly removed under Section 62-1-302(d), notwithstanding the concurrent jurisdiction of the probate court.

CONCLUSION

This action should be remanded to the circuit court for further proceedings to determine the issues raised by the pleadings.

March 16, 2021



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief complies with Rule 211 (b) S.C.A.C.R.

March 16, 2021



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Mar 17 2021

SC Court of Appeals

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March 17, 2021

VIA EMAILctappfilings@sccourts.org **& U.S. MAIL**

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RE: *Melissa Combs a/k/a Melissa Cleary v. Carlie Elvin Cleary, Individually & as Personal Representative of the Estate of Scott B. Cleary & Ditech Financial, LLC*
Appellate case #: 2020-000594

Dear Madam Clerk,

Please find herewith the Appellant's Final Brief and Appellant's Final Reply Brief together with a Proof of Service of the same for filing in the above referenced matter. By copy of this letter, one bound copy of each brief is sent for filing with the court.

With kindest personal regards, I am

Very truly yours,



Kerry W. Koon

KWK:mm
Enclosures

cc: John Dodds, Esq. (*Via email john@cisadodds.com and U.S. Mail*)

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Mar 17 2021

SC Court of Appeals

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PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Final Brief and Appellant's Final Reply Brief, on John Dodds, Attorney for Respondent Carlie Elvin Cleary, Individually & as Personal Representative of the Estate of Scott B. Cleary, via electronic mail to john@cisadodds.com and by depositing a copy of the same in the United States Mail, postage prepaid, on March 17, 2021, addressed to Cisa & Dodds, LLP, 858 Lowcountry Blvd., Ste. 101, Mt. Pleasant, SC 29464.

March 17, 2021



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