THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
PROBATE COURT

Hon. Dale Atkinson, Judge

Case No. 2020-000782

In the Matter of Estate of Herbert Franklin Dickson, Jr.

Milton Oakley Dickson, Appellant,

v.

Arthur B. Beasley, Jr., as Personal Representative
of the Estate of Herbert Franklin Dickson, Jr. Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether this Court has jurisdiction to consider the current appeal.

2. Whether the probate court erred in approving, with modifications, the Proposal for Distribution and Final Accounting submitted.

COUNTERSTATEMENT OF THE CASE[1]

On June 13, 2018, Respondent Arthur B. Beasley, Jr. ("Beasley"), acting as the personal representative of the estate of Herbert Franklin Dickson, Sr. ("the deceased" or "Herbert Dickson, Sr."), filed a Proposal for Distribution and Final Accounting in the Sumter County Probate Court with a Notice of Right to Demand Hearing provided to the beneficiaries of the estate. As a beneficiary of the estate, Appellant Milton Oakley Dickson ("Milton Dickson") filed a Demand for Hearing. The Demand recited the following issues to be addressed at the hearing: "CONTESTED ACCOUNTING OF ASSETS AND DISTRIBUTION OF RESIDUARY." All interested parties were notified of the hearing which was held on November 13, 2018. At the hearing, the court heard the testimony of Beasley, the Appellant, Eugene Dickson, and Herbert Dickson, Jr. No other witnesses were presented.

[1] The Statement of the Case set forth in the Initial Brief of the Appellant provides a thorough accounting of the breadth of the legal proceedings addressing the estate of Herbert Franklin Dickson, Sr. Nevertheless, Respondent provides the following counterstatement to highlight those procedural steps that directly led to the instant appeal.

Following the hearing, the probate court entered its Order on February 13, 2019. The probate court ordered the preparation of a new Proposal for Distribution to reflect three changes: (1) money paid to Sandy Beasley and used to purchase a lawn mower and HVAC unit were to be deducted from Beasley's Personal Representative reimbursements; (2) mortgage payments made on property received by beneficiary Linda Chaplin were to be deducted from her share; and (3) the Personal Representative fee was to be reduced to $8,092.00. The Proposal for Distribution and Final Accounting were otherwise approved. Following the probate court's denial of a motion for reconsideration, Milton Dickson filed a Notice of Appeal with this Court seeking to directly appeal the probate court's February 13, 2019 Order.

COUNTERSTATEMENT OF FACTS

The following evidence was presented to the probate court during the November 13, 2018 hearing:

Beasley testified that his mother, the deceased's wife Melba Beasley ("Melba") had passed some forty days before her husband, November 13, 2018 Hearing Transcript ("Tr.") at 6:12-21; (R. p 277 lines 12-21), and that he served as the personal representative of her estate. *Id.* at 7:11-18; (R. p 278 lines 11-18). Arguing that all of Melba's assets had passed to the deceased, Appellant's counsel to explain where "all" of Melba's assets appeared on the Accounting presently before the probate court. *Id.* at 8:3-22; (R. p 279 lines 3-22). Unsure where to begin, Beasley asked Appellant's counsel to

identify specific assets so that he could better answer the question. *Id.* at 9:18-20; (R. p 280 lines 18-20). Counsel refused to provide clarification, instead asking Beasley to "explain to the Judge every asset that your mother owned that you were aware of at the date of her death." *Id.* at 10:8-10; (R. p 281 lines 8-10). Beasley identified a car, an insurance policy, furniture in a home in Sumter, and jewelry in the same home. *Id.* at 10:11-11:1; (R. p 281 line 11- p. 282 line 1).

With respect to the materials located within the Sumter home, Beasley testified that those assets remained in the home, were afforded a lump sum value, and recorded as such for the purposes of the deceased's estate. *Id.* at 17:12-18:1;(R. p 288 lines 12-18). Beasley further noted that, under the terms of the will before the court, these items then passed to his sister, Linda Chaplin. *Id.* at 18:20-22; (R. p 289 lines 20-22); *id.* at 81:15-82:9 (R. p. 352 line 15- p. 353 line 9). As to the remaining assets, Beasley testified that Melba's car had been sold with the proceeds from the sale being deposited into Herbert Dickson, Sr.'s estate account, *id.* at 22:6-14; (R. p. 293 lines 6-14), and that the proceeds from the insurance policy had been used to pay for Melba's funeral and interment with the remainder deposited into Herbert Dickson, Sr.'s estate account. *Id.* at 26:2-13; (R. p. 297 lines 2-13).

Turning to issues directly related to the deceased's estate, Beasley testified that sums owed to the estate by Russell T. Purvis ("Purvis") were collected by monthly payments of $600 until a final cash pay-off of $30,900 was provided by Purvis. *See id.* at 22:25-24:14; (R. p. 293 line 25-p. 295 line 14). These payments were deposited in the estate account as noted in the Accounting submitted by Beasley. *See id.* at 24:22-25:5;

(R. p. 295 lines 22- p. 296 line 5); Accounting at 2 (two entries for "Dickson's Master Shoe Rebuilders" under "Inventory Probate Assets & Receipts").

Beasley testified that a Pace Arrow motor home and a number of vehicles were included in the deceased's estate. *See* Tr. at 32:10-7; (R. p. 303 lines 10-7). These assets, Beasley explained, had mainly been sold and the proceeds entered in the deceased's estate. *Id.* at 33:22-34:4; (R. p. 304 line 22-p. 305 line 4); *see also* Accounting at 2 ("Inventory Probate Assets & Receipts"). The motor home, however, had become dilapidated, Tr. at 23:15-18; (R. p. 294 lines 15-18), and had been towed away to avoid unnecessary costs to the estate. *Id.* at 48:18-22; (R. p. 319 lines 18-22).

When asked about money spent on estate property, Beasley testified that he paid for taxes, expenses, upkeep, and insurance on two pieces of real estate owned by the estate referred to by the parties as the Sumter Property and the Santee Property. *See, e.g.*, *id.* at 36:20-37:20; (R. p. 307 line 20-p. 308 line 20). Beasley explained that these payments were paid over the ten to eleven years that the estate had remained open, *id.* at 38:8-15; (R. p. 309 lines 8-15), were made while the properties remained part of the deceased's estate, and were discontinued once property had been distributed. *See id.* at 40:15-25;(R. p. 311 lines 15-25); *see also id.* at 80:23-81:14; (R. p. 351 line 23-p. 352 line 14) (Santee property remained in estate, and payments continued, because of continued legal challenges mounted by Appellant).

At the request of Appellant's counsel, Beasley then went line by line through the distributions noted in the Final Accounting. *See id.* at 54:23-75:4; (R. p. 325 line 23-p. 346 line 4); *see also* Accounting at 2 ("Inventory Probate Assets & Receipts"). Beasley

testified that these distributions included necessary maintenance, insurance, and utility fees for real estate owned by the estate, Tr. at 58:5-63:5; (R. p. 329 line 5-p. 334 line 5), and noted that his distributions were documented through checks and receipts. *Id.* at 58:5-12; (R. p. 329 lines 5-12). Among a variety of one-off distributions, Beasley testified that he had purchased an HVAC and lawn mower for the Santee Property when the existing units broke down. *Id.* at 55:18-56:12; 63:15-23; (R. p. 326 line 18-p. 327 line 12; p. 334 lines 15-23). On cross-examination, Beasley explained that these expenses were necessary as the property was being rented and, thus, generating income for the estate. *See id.* at 76:5-77:9; (R. p. 347 line 5-p. 348 line 9). Beasley's wife, Sandy, was also paid for her help in maintaining this income generating property. *Id.* at 66:5-12; (R. p. 337 lines 5-12).

With respect to proposed reimbursement for Beasley's expenses when serving as a personal representative, Beasley explained that his calculations included documented expenses for mileage and food for the over ten-year period that the estate remained open. *Id.* at 71:8-72:10;(R. p. 342 line 8- p. 343 line 10). He further noted that, despite his efforts to "piggy back" trips and limit costs, his expenses were increased by Appellant's repeated, last-minute cancellations of legal proceedings. *See id.* at 83:7-84:16;(R. p. 354 line 7- p. 355 line 16). Finally, Beasley provided testimony concerning his proposed personal representative fee of $17,715. *Id.* at 72:11-20; (R. p. 343 lines 11-20). Beasley explained that he kept a log of the hours spent working on estate matters over a decade-long period. *Id.* at 72:11-75:4; (R. p. 343 lines11-p. 346 line 4); *see also id.* at 85:20-86:8; (R. p. 356 lines20-p. 357 line 8).

As noted by the probate court, while Appellant's counsel "asked many questions" of Beasley, *see* Order at 3, no testimony or evidence was introduced to dispute or undermine any of the testimony provided by Beasley on any of these points.[2] This was true despite the fact that "[t]he exhibits on the accounting of expenses were available for . . . review." *Id.*

The bulk of the remaining testimony presented at the November 13, 2018 hearing touched upon two topics: silver dollars and "antiques" allegedly owned by the estate. As to the coins, Beasley repeatedly testified that he was not aware of any such property existing, let alone being part of the deceased's estate at the time of his death. *See id.* at 31:9-15; (R. p. 302 lines 9-15); *id.* at 32:2-9; (R. p. 303 lines 2-9); *id.* at 75:5-15; (R. p. 346 lines 5-15); *id.* at 82:10-17; (R. p. 353 lines 10-17). In opposition, Appellant testified that coins had "stayed in my daddy's freezer for years." *Id.* at 91:3-16; (R. p. 362 lines 3-16). When pressed on cross-examination, however, Appellant testified that the last time he had seen the coins was twenty years prior (ten years before Herbert Dickson, Sr. passed away). *Id.* at 94:6-95:5; (R. p. 365 line 6- p. 366 line 5). Eugene Dickson suggested that the last time he had seen the coins was when they were removed, along with other personal belongings, from his father's shoe shop prior to the store's sale to Purvis. *Id.* at 104:15-105:21; (R. p. 375 line 15- p. 376 line 21).

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[2] Appellant testified that his brother, Eugene, had been given a Timex watch that Beasley identified as belonging to the deceased. *See* Tr. at 90:2-17; (R. p. 361 lines 2-17). While Appellant suggested that his father actually owned a Rolex watch, he offered a telling qualification that the watch was a Rolex "[a]s far as I know." *Id.* at 90:21-22; (R. p. 361 lines 21-22).

With respect to the "antiques," Beasley testified that he was aware of a variety of items that were kept in the deceased's shoe shop prior to its sale to Purvis. *See id.* at 28:10-21;(R. p. 299 lines 10-21). Beasley explained, however, that the store and its contents had been sold to Purvis years before the death of Herbert Dickson, Sr. *Id.* at 28:22-25;(R. p. 299 lines 22-25); *id.* at 30:3-31:8;(R. p. 301 line 3- p. 302 line 8). Appellant also testified that the items referenced were located in the shoe shop, *see id.* at 91:18-92:4;(R. p. 362 line 18- p. 363 line 4), but suggested that "hundreds" of items had been kept in other locations. *Id.* at 92:15-18;(R. p. 363 lines 15-18). He could not, however, provide any other details about what items supposedly existed and instead appeared to be concerned about property which was part of the contents of the Sumter and Santee Properties. *See id.* at 93:20-94:5;(R. p. 364 line 20- p. 365 line 5). No other evidence was introduced by the Appellant to provide clarification as to what, if any, items were missing and/or unaccounted for in the form submitted by Beasley.

ARGUMENT

I. THIS COURT IS WITHOUT JURISDICTION TO CONSIDER THE CURRENT APPEAL

a. Legal Standard

The issue of the court's subject matter jurisdiction may be raised at any time, *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002), and "may not be waived even with consent of the parties." *Id.* Moreover, the court "must, on its

own motion, raise the issue of subject matter jurisdiction to ensure the 'orderly administration of justice.'" *Id.* (quoting *State v. Castleman*, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951)).

b. Appellate Jurisdiction of Probate Court Orders

The jurisdiction of a court over a particular subject matter "is determined by the Constitution, the laws of the state, and is fundamental." *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). With respect to appeals from the probate court, jurisdiction is governed by the Probate Code, S.C. Code Ann. §§ 62-1-101 *et seq. Matter of Estate of Tollison*, 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995); *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 415, 827 S.E.2d 200, 204 (Ct. App. 2019). Specifically, section 62-1-308 of the Probate Code provides, in part, that "appeals from the probate court must be to the circuit court." S.C. Code Ann. § 62-1-308. A decision from the circuit court could then be appealed to this Court. *See* S.C. Code Ann. § 14-8-200. An exception to this general appellate path exists. If non-defaulting parties "consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal *directly to the Supreme Court.*" S.C. Code Ann. § 62-1-308(l) (emphasis added); *see also Fulmer v. Cain*, 380 S.C. 466, 469 n.1, 670 S.E.2d 652, 654 n.1 (2008) (noting that § 62-1-308 "allows the parties, under certain conditions, to consent to a *direct appeal to this Court*") (emphasis added).

It is undisputed that the Appellant in the case at bar did not appeal the probate court's February 13, 2019 Order to the circuit court as mandated by the Probate Code. *See* Br. of Appellant at 3 (Statement of Case provides that a motion to reconsider was filed in the probate court and, upon denial, a notice of a direct appeal was filed with this Court); *see also* Notice of Appeal (identifying case as an appeal from Sumter County Probate Court). The parties did not agree to a direct appeal pursuant to section 62-1-308(l). Moreover, even if the Appellant sought to employ this exception, jurisdiction for a direct appeal would exist for the Supreme Court alone. *See* S.C. Code Ann. § 62-1-308(l); *Fulmer*, 380 S.C. at 469 n.1, 670 S.E.2d at 654 n.1.

The Probate Code provides no method for direct appeal of a probate court order to this Court. Jurisdiction for such appeals resides, with a single exception inapplicable to the case at bar, with the circuit court. Accordingly, given the absence of jurisdiction, this Court must dismiss the present appeal with prejudice.

II. THE PROBATE COURT COMMITTED NO ERROR IN APPROVING, WITH MODIFICATION, THE PROPOSAL FOR DISTRIBUTION AND FINAL ACCOUNTING SUBMITTED

Even if this Court were to assume, arguendo, that it possessed jurisdiction over the present appeal, a review of the record establishes that the probate court's decision would still need to be affirmed.

a. Standard of Review

In appeals from the probate court, if the action is at law, the reviewing court (normally a circuit court) "should uphold the findings of the probate court if there is any evidence to support them." *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). If the action below is equitable, the reviewing court "may make findings in accordance with its own view of the preponderance of the evidence." *Id.* In doing so, however, the reviewing court "still affords a degree of deference to the trial court because it was in the best position to judge the witnesses' credibility." *Matter of Estate of Kay*, 423 S.C. 476, 480, 816 S.E.2d 542, 544-45 (2018), *reh'g denied* (Aug. 2, 2018). Challenges to compensation and distribution of an estate can be equitable in nature. *Id.* at 480, 816 S.E.2d at 544.

b. The Probate Court Applied the Correct Burden of Proof to the Evidence Presented

The Appellant's first challenge, though repeatedly couched in accusations of a breach of fiduciary duty, is essentially that the probate court "incorrectly applied the applicable burden of proof by placing the burden on the Appellant as opposed to Respondent . . . ." Br. of Appellant at 12. A review of the probate court's order, however, reveals that no burden shifting occurred.

The Order notes that "[g]enerally, the burden of proof rests upon the party who asserts the affirmative of an issue – the moving party." Order at 3. This is a simple, accurate statement of long-standing South Carolina law. *See, e.g., S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 665, 667 S.E.2d 7, 18 (Ct. App. 2008) (burden is on a party pleading a fact to prove it); *Jackson v. Frier*, 146 S.C. 322,

144 S.E. 66, 68 (1928) (same); *see also Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963) ("burden of proof is upon the party who by the pleadings has the affirmative on the issue").

Given that the probate court correctly stated the law, the Appellant's challenge would seemingly focus on the remaining language contained within the section of the Order addressing the burden of proof. Specifically, the probate court held that:

> [Appellant's counsel] asked many questions. The exhibits on the accounting of expenses were available for [counsel] to review. He chose not to examine or review the available evidence. Further, questions are not evidence. The answers are uncontroverted unless proof was presented otherwise. The proof offered on other allegations or issues was inconclusive. For example, his witnesses could not identify when or where an alleged group of coins were last seen or accounted for by their father to them.

Order at 3. While these comments are related to the burden of proof, they do not evince an inappropriate shifting of burdens between the parties; rather, they merely reflect the probate court's observation that the vast majority of evidence presented by Beasley was uncontroverted by competent evidence. These observations remain true upon review.

While the Appellant accuses Beasley of a failure to account throughout his brief, *see* Br. of Appellant at 14-16, these accusations ignore the evidence and testimony presented at the probate court's hearing. Beasley provided a detailed accounting of assets owned by both his deceased mother and Herbert Dickson, Sr. In response to questions from Appellant's counsel, he engaged in a line by line dissection of each distribution claimed and pointed to documentary evidence to support his testimony. *See, e.g.*, Tr. at

54:23-75:4; ;(R. p. 326 line 23- p. 346 line 4); Accounting at 2 ("Inventory Probate Assets & Receipts"); *see also* Tr. at 58:5-63:5;(R. p. 329 line 5- p. 334 line 5).

While Appellant may not have liked the answers that Beasley provided, no testimony, document, or other evidence was produced suggesting any inaccuracy in Beasley's calculations. Instead, Appellant's counsel peppered his questions with subtle, and not-so-subtle, accusations and bald statements of alleged facts. As noted by the probate court, however, "questions are not evidence." Order at 3; *see also Landry v. Landry*, 430 S.C. 153, 843 S.E.2d 491, 496 (2020) ("it is well settled that statements by counsel are not evidence"); *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("[a]rguments made by counsel are not evidence"); *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933) ("[t]his court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered").

To the extent that Appellant does not agree with certain choices made by Beasley, the probate court correctly held that Beasley was empowered to make such decisions. *See* Order at 2-3; *see also* S.C. Code Ann. § 62-3-709 ("personal representative has a right to, and shall take possession or control of, the decedent's property . . . [and] shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession"); S.C. Code Ann. § 62-3-814 ("If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor

in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate."). Where the probate court felt that equitable adjustments to the accounting were appropriate based upon the uncontroverted testimony, such adjustments were made. *See* Order at 3 (deducting (1) payments to Sandy Beasley and for lawn mower and HVAC unit from Beasley's reimbursements, and (2) mortgage payments from share of party receiving the property).

Finally, as to the supposed coins and "antiques," Appellant cannot reasonably dispute that the existence and inclusion of such items in the subject estate was a fact alleged by the Appellant. Given that the Appellant alleged the existence of the fact of existence and inclusion of such items, the burden as to this fact would rest with the Appellant. *See M & T Enters.*, 379 S.C. at 665, 667 S.E.2d at 18; *Jackson*, 146 S.C. 322, 144 S.E. at 68; *Hoffman*, 242 S.C. at 39, 129 S.E.2d at 760. The appellant failed to produce any evidence, however, that such items were part of the deceased's estate.

While the allegation was hammered at by Appellant's counsel throughout his questioning of Beasley, the latter repeatedly testified that no such items were part of the estate. *See* Tr. at 31:9-15;(R. p. 302 lines 9-15), 32:2-9, (R. p. 303 lines 2-9), 75:5-15,(R. p. 346 lines 5-15), 82:10-17, (R. p. 353 lines 10-17), (coins were not part of the estate); *see also id.* at 28:22-25; (R. p. 299 lines 22-25), and 30:3-31:8; (R. p. 301 line 3-p. 302 line 8), ("antiques" in the shoe shop remained with the property when it was sold to Purvis). Appellant, in turn, merely testified that he had seen the coins a decade or more before his father passed, *id.* at 94:6-95:5; (R. p. 365 line 6-p. 366 line 5), with Eugene

Dickson suggesting only that the last time he had seen the coins was when they were removed, along with other personal belongings, from his father's shoe shop prior to the store's sale to Purvis. *Id.* at 104:15-105:21(R. p. 375 line 15-p. 376 line 21). Appellant corroborated Beasley's testimony that the antiques had been part of the deceased prior-owned shoe shop, *id.* at 91:18-92:6; (R. p. 362 line 18-p. 363 line 6), before simply alleging that items were "all over" without identifying any particular item. *Id.* at 92:13-20;(R. p. 363 lines 13-20). Far from establishing that such items were part of the estate, this testimony is not even logically opposed to the testimony offered by Beasley.

As observed by the probate court, Beasley presented extensive testimony and exhibits on his accounting that went uncontroverted by the Appellant. In the face of such uncontested evidence, the court reasonably concluded that Beasley carried any burden that could be ascribed to him. In contrast, the Appellant alleged the existence of unidentified, unseen items while seemingly demanding that Beasley prove that such items did not exist. The law of South Carolina does not place such an insurmountable burden on any party, nor does it permit a party to meet its own burden with baseless statements and arguments of counsel presented in lieu of testimony. Accordingly, a review of the record reveals that the probate court applied the correct burden of proof to the evidence which was actually put before it.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed for lack of jurisdiction. In the alternative, the probate court's Order approving, with modifications, the Proposal for Distribution and Final Accounting should be affirmed.

Dated: December 15, 2020

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CERTIFICATE OF COUNSEL

I certify that this final Brief of Respondent Complies with Rule 211(b), SCACR.

Dated: December 1, 2020

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