

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

Dale Atkinson, Presiding Judge

Appellate Case No. 2020-000782

RECEIVED

Nov 16 2020

SC Court of Appeals

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 F. Dickson, Sr., Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

The Appellant Milton Oakley Dickson (“Appellants”) hereby replies to the brief of the Respondent Arthur B. Beasley, Jr., as Personal Representative of the Estate of Herbert Franklin Dickson, Jr (“Respondent”). Appellants have limited their Reply Brief to address certain portions of the Respondent’s Initial Brief that request further exposition and analysis. To the extent that the Reply Brief does not address each and every argument made by the Respondent, the Appellants rely upon the arguments set forth in their Initial Brief. The Appellants hereby incorporate all arguments made in their Initial Brief, as through fully set forth herein, and do not waive any of the arguments asserted in the Initial Brief.

I. THE COURT HAS JURISDICTION TO CONSIDER THE CURRENT APPEAL

a. Legal Standard

Section 62-1-308 of the Probate Code provides that “[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county...” S.C. Code Ann. § 62-1-308(a). This section further states that “[t]he circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law.” S.C. Code Ann. § 62-1-308(i). In numerous decisions, our appellate courts have held that “[a]s used in this statute, the phrase ‘according to the rules of law’ means according to the rules governing appeals.” *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005). *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254, 257 (1993). Accordingly, “a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal.” *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); see also *Howard*, 315 S.C. 356, 434 S.E.2d 254, 257 (1993) (the circuit court “must

apply the same standard that [the South Carolina Supreme Court] or the Court of Appeals would apply were the appeal taken directly to either of them.”).

In this case, the Circuit Court was required to apply the same rules of law that an appellate court (i.e., this Court) would apply on appeal. The “rules of law” that our appellate courts must apply to determine whether a particular order is appealable include the provisions of § 14-3-330. S.C. Code Ann. § 14-3-330. The types of orders that are appealable under § 14-3-330 include, inter alia, “[a] final order affecting a substantial right made in any special proceeding” and “[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction...” S.C. Code Ann. § 14-3-330(3)-(4). Therefore, for the reasons discussed in Appellant's initial brief and herein, the Probate Court's order is appealable under both of these sections.

b. Appellate Jurisdiction of Probate Court Orders

Respondent argues this court lacks jurisdiction over the matter because there is no method for direct appeal of a probate court order to this Court. The Respondent's argument fails to include that in the absence of a statute prescribing a different standard of review, a circuit court in reviewing a final order of the probate court must apply the same standard of review that either the Court of Appeals or the Supreme Court would apply in the case. *Eagles v. South Carolina Nat'l Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990). Since the probate code does not have a statute prescribing a different standard of review, then the court must apply the standard of review that the Court of Appeals or Supreme Court would apply.

Section 62-1-308 of the Probate Code provides, in part that “When an appeal is made to the circuit court from an order of the probate court the circuit court must determine the appeal “according to the rules of law”. The term “according to the rules of law,” as used in § 62-1-

308(d), means “according to the rules regulating appeals”. S.C. Code Ann. § 62-1-308(d). In an appeal from the circuit court of an equity case originating in the probate court, the Court of Appeals may make findings in accordance with its own view of the preponderance of the evidence where the probate court and the circuit court have disagreed on the material issues in the case. *Eagles v. South Carolina Nat. Bank* (S.C.App. 1990) 301 S.C. 402, 392 S.E.2d 187. On appeal from the final order of a probate court, the circuit court must apply the same rules of law as an appellate court would apply on appeal. *In Re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005).

Appellants have stated that the Courts have clearly addressed the rules concerning the standard of review of cases appealed from the probate court. *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993); *Eagles v. South Carolina Nat'l Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990). These cases hold that the determination of the standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. *Id.* To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the lower court. To determine whether a suit is legal or equitable for purposes of resolving proper standard of review, an appellate court must look to the main purpose of the action as reflected by the nature of the pleadings and proof, and the character of relief sought under them. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009).

For the reasons set forth above, the Order of the Lower Court should be reversed. If this Court finds the matter under review to be “equitable,” the Court can review the record as whole and make its own findings of fact and conclusions of law. A fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix. *Ex parte Wheeler v. Estate of Green*,

381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). A breach of fiduciary duty claim may sound in equity if the relief sought is equitable. *Id.*

The court has held in *Ex parte Wheeler v. Estate of Green* that a probate proceeding in which personal representative petitioned for approval of contract for sale of real estate, and beneficiaries counterclaimed for breach of fiduciary duty and sought injunction to disapprove the contract, was equitable in nature, and thus equitable standard of review applied, such that circuit court was to make factual findings according to its own view of the preponderance of the evidence, though breach of fiduciary duty claim was an action at law; such claim took on an equitable form because of the injunctive relief sought. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009)

The Court has also held *In re Estate of Weeks*, an action to remove a personal representative appointed pursuant to the terms of a will is equitable in character; thus, the circuit court could make findings in accordance with its own view of the preponderance of the evidence). *In re Estate of Weeks*, 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct. App. 1997).

This Court may review the record and make its own determination. A fiduciary relationship existed between the Appellant and Respondent. Based on the overwhelming evidence contained in the record, Respondent breached his fiduciary duty to the Estate and should be required to make a full accounting and be removed as Personal Representative. The matter is equitable in nature because of the breach of the fiduciary duty between the parties. The present matter is equitable and the Court should therefore substitute its findings for the lower courts erroneous findings.

II. THE PROBATE COURT COMMITTED ERROR IN APPROVING, WITH MODIFICATION, THE PROPOSAL FOR DISTRIBUTION AND FINAL ACCOUNT

The Court holding jurisdiction over the present appeal and review of the record establishes that the probate court's decision is erroneous and should be reversed.

a. Standard of review

Respondent argues that even if there was jurisdiction over the matter that the probate court; decision should be affirmed. Respondent relies on *In Re Estate of Weeks*, which specifically states "if the action is at law, the receiving 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 is equitable, then the reviewing court "may make findings in accordance with its own view of the preponderance of the evidence." Since the current matter is one of equity, the court may make its findings in accordance with its own view of the preponderance of the evidence.

It is well settled in South Carolina that the burden of proof in the probate court is on the administrator, to show that he or she met the applicable fiduciary duties to the estate. *Burnside v. Robertson*, 28 S.C. 583, 6 S.E. 843 (1888). The party petitioning the court to allow the claim has the burden of proving the claim's validity. *Matter of Howard*, 315 S.C. 356 (1993). The Probate Court incorrectly applied the applicable burden of proof by placing the burden on Appellant as opposed to Respondent the Personal Representative of the Estates.

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

Respondent argues the probate court applied the correct burden of proof. Respondent alleges that the evidence presented show no inaccuracy in Beasley's calculations. Respondent argued that the order noted "questions are not evidence" and that facts appearing only in argument of

counsel will not be considered. The testimony given by the Respondent did not appear in the form of only an argument, but rather all facts were admitted through the Respondents testimony and evidence presented during trial exposing discrepancies between the Respondent's fiduciary responsibilities as personal representative of the estate.

Respondents claimed that the probate court correctly held that Beasley, as the personal representative, was empowered to ensure that financial decisions were distinguishable, under SC Code 62-3-814. Beasley's actions were outside of the personal representative's responsibility to preserve the estate in the following ways: Respondent failed to transfer the assets to the Estate of Herbert Dickson at the death of Melba Dickson; As personal representative of the Estate, Respondent continued to have the lights, cable, and water bill turned on at the property owned by Melba Beasley, even though he had a fiduciary duty to uphold; and Respondent had a duty to uphold these responsibilities as personal representative of the state, and therefore breached the required fiduciary duties. Furthermore, the Respondent could not meet the meet the required burden of proof as personal representative of the estate's by neglecting to individually list the following items belonging to Herbert Dickson's estate on the inventory and appraisal: a 1983 Pace Arrow; Jon boat; Palm Harbor; Chris-Craft; arrowroot (sp) moor; Stratos boat; Johnson boat; and Ford Explorer; none of which are listed individually under the accounting. (Rec. on App., pp. 275-296). Respondent could not meet the required burden of proof as personal representative of the Estate of Melba Beasley because respondent neglected to account for all of the Estate's assets in the inventory and appraisal, including jewelry, cars, and property.

Appellant's testimony to Beasley's testimony in which the two witnesses gave credible testimony that both the coins and antiques belonged to the estate and that Beasley as the personal

representative had a duty to preserve those items within the estate or to account for them.
Beasley did not carry his burden of proof.

Respondent had a fiduciary duty to each Estate. Based on the overwhelming evidence in the record, Respondent clearly breached that duty in the handling of the Estate of Melba Beasley and Hebert Dickson. Probate Court did not apply the proper burden of proof to require Respondent to show how did not breach the duty but instead required Appellant to “prove” that he did. This is in direct violation of well settled South Carolina Law. The Probate Court’s Order dated February 13, 2019 is clearly erroneous and should be reversed by this Court. (Rec. on App., pp. 275-296).

Respondent breached his fiduciary duty and should be removed. If a personal representative of a decedent's estate develops a conflict of interest, or breaches his or her fiduciary duty after being appointed, the personal representative may be removed by the county commission, or in certain cases by a state circuit court. *Jones v. Harper*, 55 F. Supp. 2d 530 (S.D.W. Va. 1999). The incorrect burden of proof was used by the Court and the Respondent should therefore be removed for breaching their fiduciary duty and for their failure to accurately account for the estates under the inventory and appraisal requirements.

CONCLUSION

For the foregoing reasons, the Order of the Probate Court should be reversed. In the alternative the Court should review the record, and issue its order requiring Respondent to make a full account and should be removed as the personal representative of the Estate.

Signature Page to Follow

Respectfully submitted,

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November 15, 2020

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PROOF OF SERVICE

I certify that I have served the filed Appellant’s Reply Brief to be included in the Records on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2020, to the following individuals:

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IN Re: Estate of Herbert Franklin Dickson, Sr.

CERTIFICATE OF COUNSEL

I certify that this Reply Brief of Appellant complies with Rule 211(b), SCACR.

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