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With the Name of Allah, Most Merciful, Most Gracious

STATE OF SOUTH CAROLINA )

IN THE COURT OF APPEALS

Case No. 2021-1028

Regina M. Hunter El )  
1165 Broad St. #16 )  
Sumter, S.C. 29150 )

**MOTION FOR LEAVE TO FILE**  
**MOTION TO SET ASIDE**  
**AN ORDER OF JUDGMENT**  
Rule 60(a), 60(b) SCRPC

Appellant(s) )

Appeal from  
Court of Common Pleas, Sumter County  
Case No. 2021-CP-43-1534  
Hon. Ferrell R. Cothran

v. )

Elijah Hunter )  
3400 Hwy. 261 North )  
Rembert, S.C. 29128 )

Appeal from  
Summary Court, Sumter County  
Case No. 2021CV4310102733  
Fred H. Gordon, Jr., Magistrate

Respondent (s) )

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**MOTION FOR LEAVE TO FILE**  
**MOTION TO SET ASIDE AN ORDER OF JUDGMENT**  
Rule 60(a), 60(b) SCRPC

SEP 12 2022

**SC Court of Appeals**

NOW COMES, the Appellant for leave to file her attached Motion to Set Aside an Order of Judgment of the Sumter County Court of Common Pleas entered on 6 October 2021 on the following grounds—1) lack of jurisdiction, 2) improper venue, 3) procedural due process; and 4) fraud.

1. The attached motion will show that the Probate Judge retained jurisdiction over a Petition for Determination of Heirs for the Estate of James Hunter as an order neither granting or denying the petition was entered;
2. The motion will show that the proper venue for this matter is the Sumter County Probate Court which has the exclusive right to proceed first on the matter;

3. The motion will show that the lower trial Clerk of Court failed to set a motion to enlarge time to the motion calendar
4. The motion will show that the lower trial Clerk of Court failed to retain records relevant to the appellate proceeding for 60 days after the judgment was entered
5. The motion will show that the exhibits were not temporarily released to the court reporter
6. The motion will show that the defendant admitted fraudulent evidence about Appellant's identity.

Therefore, for the reasons set forth, the Appellant respectfully asks the court for leave to file the attached motion to set aside an order of judgment.

Respectfully,



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for Determination of Heirs. In *Upchurch v. Upchurch*, 367 S.C. 16, 624 S.E.2d 643 (2006), the South Carolina Supreme Court held that an order needed to be filed with the Clerk to become final to fix the right of the parties to appeal. As such, the petitioners' right to appeal Judge Atkinson decision never came into existence or arose. Specifically the published opinion states:

*Generally, a judgment is effective only when so set forth and entered in the record. Rule 58(a) SCRPC. An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case. Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Cl.App.1999). However, "the moment . . . [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties." Archer v. Long, 46 S.C. 292, 295, 24 S.E. 83, 84 (1896). Stated otherwise, the effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court. Bowman, 335 S.C. at 93, 515 S.E.2d at 261.*

Here, Judge Atkinson, neither reduced his decision (oral ruling) to writing to deny the Petition for Determination of Heirs nor instructed the clerk of court to enter an order or judgment (Rule 54(a), 58(a), SCRPC) denying all the relief requested. Although, an online search of the Probate Court's records show the Estate of James Hunter as "discharged/closed" none of the parties were notified of the court's action. Thus, at the time of the appeal hearing before Judge Cothran, the Sumter County Probate Court had exclusive jurisdiction over the subject matter. S.C. Code of Laws §62-1-302 states:

*"the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court;..."*

Thus, the Appellant holds that Judge Cothran erred by not transferring the matter to the Sumter County Probate Court.

## **2. IMPROPER VENUE**

In addition, the appropriate venue for this case is the Probate Court because the Appellant was one of the original petitioners in the Probate Court along with her father and uncle (Samuel Hunter and Willie James Hunter (deceased)). Pursuant to §62-1-303(a), the Probate Court has the exclusive right to proceed first since the first hearing for the Petition for Determination of Heirs was heard on September 6, 2011. After the final hearing, in which all the petitioners were present, Judge Atkinson granted the relief sought and made an oral order for the parties to prepare a written order for signature the next day. The next day, Judge Atkinson declined to sign the order, but did not promptly prepare the form of judgment which vesting the rights of parties to appeal. It is logical that if Judge Atkinson decided asked the parties to prepare a written order for him to sign that a reversal of his decision would be reduced to writing and entered by the clerk of court likewise. Had Judge Atkinson signed and instructed the clerk of court to enter his ruling, the parties would have filed a notice of appeal which would serve as a supersedeas against any application for notice to quit premises for 'trespassing' filed by Elijah Hunter.

Pursuant to Rule 54(b) SCRPC, the Appellant action for a Determination of Heirs for the Estate of James Hunter is not terminated since none of the parties' rights were ever adjudicated. At the appeal hearing, the Appellant recalls that Judge Cothran asked Elijah Hunter whether the Appellant's father was still living to which he nodded affirmatively. In addition, Elijah Hunter spoke of the existing records in the Sumter County Probate Court. However, although the Appellant moved for additional time to present relevant information to Judge Cothran, Jr. her motion to enlarge the time was not entered upon the nonjury docket by the Clerk of the Court, nor addressed in judge's chamber.

### **3. MOTION TO ENLARGE TIME NOT PLACED ON MOTION CALENDER**

The Appellant was unable to argue the proper venue for the matter was Probate Court since her motion to enlarge time was not handled in accord with the Clerk of Court manual approved by former Chief Justice Toal, in 2014. The Clerk Court failed to place the motion on the nonjury docket as required. The Clerk of Court manual states “*All motions on the Motions Calendar and motions filed in any case shall be immediately placed on the Nonjury Docket.*” (see 1.9.5 Common Pleas Cases, Chapter 1, General Office Procedures, Rule 40(h), SCRCPP General Docket, Trial Rosters, And Call Of Cases For Trial, *(h) Nonjury Docket: Priority of Matters.*, S.C. Judicial Branch Clerk of Court Manual, 2014 At the time the dismissal order was issued on 4 October 2021, the Appellant was waiting to hear from the Court of Common Pleas regarding her motion filed on 22 September 2021. The original appeal hearing was hearing on 13 September 2021 and the parties were instructed to provide the court relevant information within 10 days. Rule 6(b)(1) , SCRCPP states the Court may enlarge such time “*(1) with or without written motion or notice order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended*”. The Appellant met the deadline to file a motion to enlarge the time, but the Clerk of Court did not set the matter to the motion calendar as required (Rule 40(h), SCRCPP)

### **4. FRAUD, CLERK'S FAILURE TO ADHERE RULE 606, SCACR**

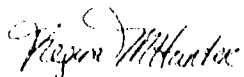
Pursuant to Rule 606(a), SCACR the Sumter County Court of Common Pleas Civil Clerk, Ms. Sherry Yow (“Yow”) had a duty to retain the exhibits submitted by the defendant pertaining to the criminal convictions of ‘*Regina Mack*’ possibly from Gainesville, Florida. The defendant, Elijah Hunter fraudulently introduced evidenece at the appeal hearing that misidentified the Appellant as another person. Upon inspection of the case jacket, the Appellant

observed a photograph and criminal history sheet for a woman named 'Regina Mack'. Although, the Appellant's former name was such, she was not the person identified by the defendant. The Appellant legally changed her name with the Sumter County Family Court 10 years ago; the order was entered on 21 May 2012.

Furthermore, Yow was required to retain those exhibits for a period of 60 days after the entry of the judgment on 4 October 2021, Rule 606 (c)(2)(B) (also see 1.12 *Exhibits: Their Acceptance, Storage, and Disposition*, Chapter 1, General Office Procedures, S.C. Judicial Branch Clerk of Court Manual, 2014). In this case, prior to the entry of the initially dismissal order, Yow indicated to the Appellant that she would contact the defendant to pick up the exhibits. This meant that any transcript prepared by Cendroski, under the direction of Court Administration, would exclude these documents. If the Clerk of Court adhered to the established procedures, pursuant to Rule 606(b), the exhibits would have been temporarily released to the court reporter to prepare the transcript. These exhibits are relevant to the appellate proceeding because the defendant sought to defame the Appellant's character and cast doubt on her family lineage to buttress his case of 'trespassing' on her family estate.

Therefore, for the reasons set forth, the Appellant respectfully asks the court to set aside the judgment of the lower trial court.

Respectfully,



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**VERIFICATION**

Executed this 12<sup>th</sup> day of September 2022, 15 Safar 1444, AH, under penalty of perjury, that the statements and facts contained herein are true and correct to the best of my knowledge and belief as to these matters.

Regina M. Hunter El



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**CERTIFICATE OF SERVICE**

I, Regina M. Hunter El, certify that I served a copy of this Motion for Leave to File a Motion Set Aside an Order of Judgment and Motion to Set Aside an Order of Judgment on Elijah Hunter by depositing a copy of the same with the United States Postal Service, with first class mail postage, to the parties in the attached service list.

Executed this 12<sup>th</sup> day of September 2022 C.E., 15 Safar 1444 A.H.

Respectfully,



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Service List:

Elijah Hunter  
3400 Hwy. 261 North  
Rembert, S.C. 29128

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Hon. Dale Atkinson, Probate Judge  
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