

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-00971

In the Matter of the Estate of Willie Rogers Deas

Carolyn Deas

Respondent,

v.

Marvadine Giles a/k/a Marvdine Giles,
Willie Deas, Jr., Michelle Deas, Rodney
Branton, Moya Branton, Whitney Beaufort,

Respondents/Appellants.

Of whom Marvadine Giles a/k/a Marvdine
Giles is the Appellant.

INITIAL REPLY BRIEF OF APPELLANTS

RECEIVED

JUN 12 2013

SC Court of Appeals

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 SHOULD BE DENIED BECAUSE THE PARTIES CONSENTED
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STATEMENT OF THE ISSUE ON APPEAL

Respondent's Question II raised as an addition sustaining ground:

- II. AS AN ADDITIONAL SUSTAINING GROUND, THE CIRCUIT COURT WAS CORRECT TO DISMISS THE APPELLANT'S APPEAL SINCE THE NOTICE OF APPEAL WAS NOT FILED AFTER THE PROBATE COURT'S ORDER DENYING APPELLANT'S RULE 59 MOTION AND IS ACCORDINGLY MOOT.

ARGUMENT

II. THE RESPONDENT'S ADDITIONAL SUSTAINING GROUND SHOULD BE DENIED BECAUSE THE PARTIES CONSENTED TO AN ORDER STAYING THE FILING OF THE GOUNDS FOR APPEAL UNTIL AFTER THE PROBATE COURT RULED ON THE RULE 59 MOTION.

Appellant received written notice of the Judge Maring's Order on August 29, 2012. To protect the Appellant's rights, the Appellant filed a Notice of Appeal to the Court of Common Pleas pursuant to § 62-1-308(a), S.C. Code Anno., 1976 as amended, and a Motion to Alter or Amend pursuant to Rule 59(e), S.C.R.C.P. The filing of a Notice of Appeal, however, is just the first step in the appellate process. To perfect the Appeal the Appellant must file the grounds of appeal within forty-five days under § 62-1-308(a). Realizing the Appellant would not know the grounds of appeal until after the Probate Court ruled on the Rule 59(e) motion, the Appellant proposed to stay the filing of the grounds for appeal until fifteen days after the Probate Court ruled on the motion. A Consent Order staying the filing of the grounds for appeal was signed by the parties and the Probate Judge on September 12, 2012. (Consent Order dated September 12, 2012). The Respondent forgot to mention the Consent Order in her Brief or to request that it be included in the Record on Appeal.

Thereafter, the Probate Court denied the Rule 59(e) motion. (Order Dismissing Motion undated). The Appellant filed her grounds for appeal and the Probate Court filed its return on November 9, 2012 stating:

With the filing of Grounds for Appeal and original transcript of Hearing held in Probate from the Order of the Probate Court dated August 28, 2012 and from the Order of the Probate Court denying their 59(e) motion to amend or alter the Order of the Court dated October 19, 2012 for the captioned estate, I have made my "Return" to the Circuit.

(Letter of Waldo A. Maring, Probate Judge, dated November 9, 2012).

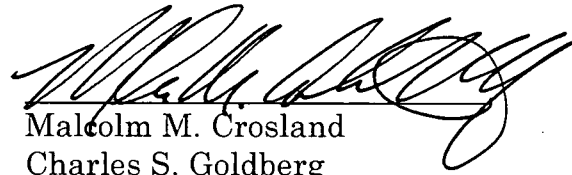
Having agreed to the sensible procedure followed below to avoid a multiplicity of actions, the Respondent now argues for the first time on appeal the Notice of Appeal should have been dismissed while the Probate Court considered the Rule 59(e) Motion. Of course, had the Respondent moved to dismiss the Notice of Appeal, the Appellant would have had known a second Notice of Appeal was required and had another opportunity to file the Notice of Appeal within ten days.

CONCLUSION

Perhaps the Notice of Appeal could have been or even should have been dismissed without prejudice because of the contemporaneous filing of a Rule 59(e) Motion but that is not what happened. See: Hudson v. Hudson (290 S.C. 215, 349, S.E.2d 341 (S.Ct. 1986)). Instead, the parties agreed to stay the appeal pending the Probate Court's decision on the Rule 59(e) Motion and a Consent Order was filed to that effect. The Respondents were estopped from objecting to the procedure they

agreed to below.

June 11, 2013



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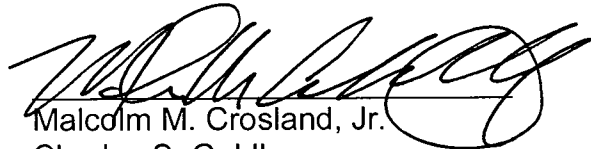
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Marvadine Giles a/k/a Marvdine Giles, Willie Deas, Jr.
Michelle Deas, Rodney Branton, Moya Branton,
Whitney Beaufort..... Respondents/Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellants on Carolyn Deas by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2013, addressed to her attorney of record, Andrew T. Shephard, 206 East 1st North Street, Summerville, SC 92485.

June 11, 2013.



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SUPPLEMENTAL

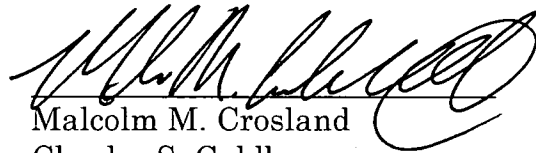
DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

The Appellant proposes the following be should also included in the Record on Appeal:

6. Consent Order dated September 12, 2012.
7. Letter of Waldo A. Maring, Probate Judge, dated November 9, 2012.

I certify that this designation contain no matter which is irrelevant to this appeal.

June 11, 2013



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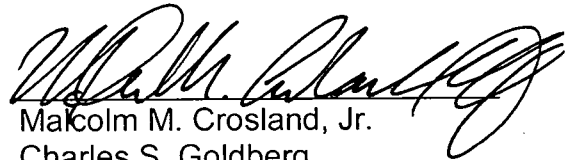
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Michelle Deas, Rodney Branton, Moya Branton,
Whitney Beaufort..... Respondents/Appellants.

PROOF OF SERVICE

I certify that I have served the Supplemental Designation of Matter To Be Included in the Record on Carolyn Deas by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2013, addressed to her attorney of record, Andrew T. Shephard, 206 East 1st North Street, Summerville, SC 92485.

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