

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Berkeley County
Court of Common Pleas

The Honorable Kristi L. Harrington

Case No. 2011-CP-08-2315

Nancy Schaffer Turner, as Personal Representative
of the Estate of Martha L. Schaffer.....Appellant,

v.

Susan Linda Schaffer Sawadske.....Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Andrew T. Shepherd, S.C. Bar No. 76859
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Katherine H. Hyland, S.C. Bar No. 76436
kate@hartfirm.com
HART HYLAND SHEPHERD, LLC
Post Office Box 130
Summerville, SC 29484
(843) 410-0711
ATTORNEYS FOR RESPONDENT

RECEIVED
JUN 11 2013
SC Court of Appeals

APPELLANT FAILED TO TIMELY FILE HER NOTICE OF APPEAL FROM THE PROBATE COURT TO THE CIRCUIT COURT, AND THE APPELLATE PROCEEDINGS SHOULD BE DISMISSED FOR LACK OF APPELLATE JURISDICTION.

FACTS

This matter arises from the initial appeal of the July 13, 2011 Order of the Berkeley County Probate Court. (Order of the Honorable Keith W. Kornahrens, filed July 13, 2011 (**attached as Exhibit 1**)). Appellant Nancy Turner served her Notice of Appeal from the Probate Court on Respondent Susan Sawadske on July 18, 2011, which Notice was filed in the Probate Court on July 20, 2011. (*See* Proof of Service, dated July 18, 2011 (**attached as Exhibit 2**)). The Notice of Appeal from the Probate Court was dated July 18, 2011 and stated that Appellant received written notice of the entry of the Probate Order on July 16, 2011 (Notice of Appeal from the Probate Court, dated July 18, 2011 (**attached as Exhibit 3**)). The July 18, 2011 Notice of Appeal filed in the Probate Court also indicates it was carbon copied to the Berkeley County Clerk of Court but no such filing appears in the Circuit Court records. On August 24, 2011, Appellant further filed her Notice of Appeal from the Probate Court in the Berkeley County Court of Common Pleas, which Notice was dated August 11, 2011. (Notice of Appeal from Probate Court dated August 11, 2011 (**attached as Exhibit 4**)). On August 24, 2011, Appellant also filed a Proof of Service in the Court of Common Pleas dated August 11, 2011, together with her filing fee of \$150.00 in the form of a money order. (*See* Proof of Service, dated August 11, 2011, (**attached as Exhibit 5**); Receipt of the Honorable Mary P. Brown, dated August 24, 2011 (**attached as Exhibit 6**)). August 24, 2011 is also the same date the Probate Court filed its Return to the Notice of Appeal in the Court of Common Pleas (**attached as Exhibit 7**). No filing occurred in the Circuit Court until August 24, 2011.

ARGUMENT

The procedure for initiating an appeal from the Probate Court to the Circuit Court is governed by S.C. Code Ann. § 62-1-308. When appealing to the Circuit Court, “the notice of intention to appeal to the Circuit Court must be filed in the office of the Circuit Court and in the office of the Probate Court and a copy served on all parties within ten days after receipt of written notice of the appealed from order . . . of the Probate Court. *Id.* (emphasis added). By its plain language, § 62-1-308 requires both the service of the notice of intention to appeal and the dual filing in the office of the Probate Court and the Circuit Court within ten days of the entry of a final order. The requirement of dual filing can also be found in Rule 74, SCRCP, but the timeframe for such filing is governed by statute.

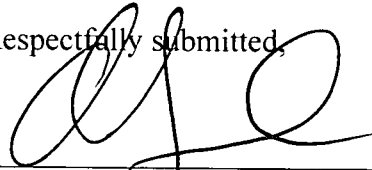
In the instant case, the Appellant received written notice of the entry of the Probate Court’s Order on July 16, 2011, thereby making July 27, 2011 the deadline for filing and serving the notice of intention to appeal in both courts. Appellant failed to meet these deadlines with regard to the Circuit Court filing, thereby making the appeal untimely. Appellant filed a Notice of Appeal in the Probate Court on July 20, 2011. However, the Appellant did not file a Notice of Appeal in the Circuit Court until August 24, 2011—twenty-eight days after the ten-day period mandated by statute. Accordingly, Appellant’s Notice of Appeal was not timely filed in the Circuit Court as required by the mandatory language of the statute. Because the appeal was not perfected through timely filing of the Notice in both courts as required by statute, the Circuit Court never acquired appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004) (holding the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction). Because the Circuit Court never acquired appellate jurisdiction, the appeal

should have been dismissed from its outset and the findings of the trial court must remain the law of the case as if the same were never appealed. *See Allison v. W.L. Gore & Associates*, 394 S.C. 185, 714 S.E.2d 514 (2011); *ML-Lee Acquisition Fund, L.P. v. DeLoitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997) (stating that an unappealed ruling is the law of the case). “It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling. Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance.” *First Union Nat. Bank of SC v. Soden*, 333 S.C. 554, 511 SE 2d 372 (Ct. App. 1998) (citing *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997), *cert. denied* (June 18, 1998) (internal citations omitted)). Upon the Appellant failing to timely file her Notice of Appeal in the Circuit Court, the Order of the trial court became incapable of challenge and is the law of the case.

The matter before the Court of Appeals ultimately derived from an untimely Notice of Appeal from an Order of the Probate Court, and as such, procedures for initiating appellate proceedings have never been perfected and the matter must be dismissed for lack of appellate jurisdiction.

[COUNSEL’S SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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Katherine H. Hyland, S.C. Bar No. 76436

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HART HYLAND SHEPHERD, LLC

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Summerville, SC 29484

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ATTORNEYS FOR RESPONDENT

Summerville, South Carolina

June 10, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE PROBATE COURT
2001 ES 08 411

IN THE MATTER OF THE ESTATE)
OF MARTHA L. SCHAFFER)

NANCY ELIZABETH SCHAFFER)
TURNER,)
Petitioner,)

Vs.)
SUSAN LINDA SCHAFFER)
SAWADSKE,)
Respondent.)

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2011 JUL 13 PM 4:42
PROBATE COURT
BERKELEY COUNTY
S.C.
ORDER

Petitioner filed an action in this matter on January 7, 2011. The Respondent did not answer or appear.

Petitioner seeks among other relief an Order of this Court setting aside a deed conveying property owned by decedent on Folly Beach which was conveyed to Susan Schaffer Sawadske and Mark Schaffer by deed of decedent dated March 13, 1997. Plaintiff also seeks the return of personal property which she had stored at decedent's residence and her share of the profits from the sale and assets of the estate.

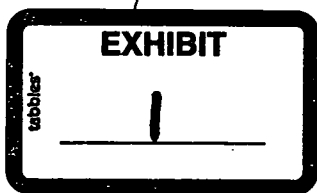
Petitioner contends that the Folly Beach deed was forged by her brother, Mark Schaffer or the respondent herein. Petitioner further contends that this Court addressed this issue at a hearing on October 25, 2001. She alleges that the Court issued an order requiring actions to be taken regarding the title.

After receiving testimony, reviewing the file and the taped recording of the October 25, 2001 hearing, I make the following findings and conclusions.

I find that the alleged fraud and the issue of the validity of the deed was not before the Court on October 25, 2001 and no ruling was made regarding the same.

Based upon the uncontroverted testimony of the Petitioner, I find that she is entitled to her personal property that was stored in her mother's house and she should retrieve the same if she can locate it.

Handwritten signature



Qualified True and Correct Copy
of Original Record

Handwritten signature
Keith W. Kornahrens, Judge of Probate
Berkeley County, SC

Based upon the uncontroverted testimony of the Petitioner, I find that she did not receive her share of the estate of her mother and she is entitled to one third of any assets that she can locate and she should be appointed Personal Representative so that she can make a diligent search for said assets.

Based upon the entire record, I find that Petitioner was informed and believed that her mother's real property had been fraudulently conveyed at the time of the October 25, 2001 hearing. I find that she took no legal action to have the deed set aside until she filed the Petition herein in January, 2011. I find that she has not only failed to establish a reason the statute of limitations should not bar her action but by her own testimony it is obvious that she knew an "alleged fraud took place" and she failed to timely bring an action against the alleged perpetrators of the fraud.

Therefore, it is

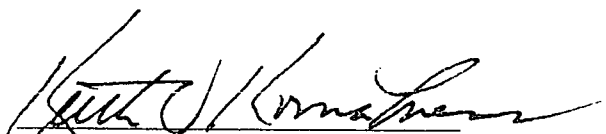
ORDERED, the Petitioner shall be entitled to her personal property which she stored at her mother's house if the same can be located and retrieved by her.

ORDERED, the Petitioner shall be appointed Personal Representative to afford her an opportunity to search for assets of decedent and if she locates and retrieves the same she shall be entitled to her share as a devisee under the will.

ORDERED, the Petitioner's cause of action to have the Folly Beach deed set aside is barred by the Statute of Limitations and same is hereby dismissed.

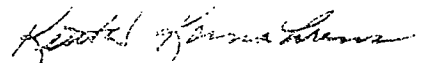
IT IS SO ORDERED.

July 13, 2011
Moncks Corner, SC



Keith W. Kornahrens

Judge of Probate verified true and correct Copy
of Original Record



Keith W. Kornahrens, Judge of Probate
Berkeley County, SC



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PROBATE COURT
BERKELEY COUNTY
S.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Probate

Keith W. Kornahrens, Probate Court Judge

Case No. 2001 ES 08 411

Susan Linda Schaffer
Sawadske,

Respondent,

v.

Nancy Schaffer Turner, as
Personal Representative of the
Estate of Martha L. Schaffer

Appellant.

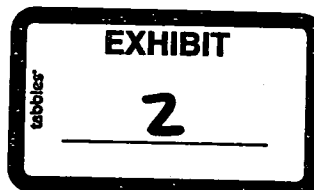
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Susan Linda Schaffer Sawadske by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2011 addressed to , Susan L. S. Sawadske, 204 West Indian Ave, Folly Beach, South Carolina 29439.

July 18, 2011

Nancy Schaffer Turner

Pro Se
Nancy Schaffer Turner
311 Claude Phillips Road
Bennett, N.C. 27208
(336) 581-4009



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PROBATE COURT
BERKELEY COUNTY
S.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Probate

Keith W. Kornahrens, Probate Court Judge

Case No. 2001 ES 08 411

Susan Linda Schaffer
Sawadske

Respondent,

v.

Nancy Schaffer Turner, as
Personal Representative of the
Estate of Martha L. Schaffer

Appellant.

NOTICE OF APPEAL

Nancy Schaffer Turner, appeals the order of the Honorable Keith W. Kornahrens, dated July 13, 2011. Appellant received written notice of entry of this order on July 16, 2011.

July 18, 2011

Nancy Schaffer Turner
Pro Se
Nancy Schaffer Turner
311 Claude Phillips Road
Bennett, N.C. 27208
(336) 581-4009

cc: Susan Linda Schaffer Sawadske
204 West Indian Ave.
Folly Beach, S.C. 29439

Mary P. Brown, Clerk of Courts, Berkeley County
300-B California Ave.
Moncks Corner, S.C. 29461



20 11 - CP - 08 - 2315

THE STATE OF SOUTH CAROLINA
Clerk of Courts

APPEAL FROM BERKELEY COUNTY
Court of Probate

Keith W. Kornahrens, Probate Court Judge

Case No. 2001 ES 08 411-2

Susan Linda Schaffer
Sawadske

Respondent,

v.

Nancy Schaffer Turner, as
Personal Representative of the
Estate of Martha L. Schaffer

Appellant.

NOTICE OF APPEAL

Nancy Schaffer Turner, appeals the order of the Honorable Keith W. Kornahrens, dated July 13, 2011. Appellant received written notice of entry of this order on July 16, 2011.

Aug. 11, 2011

Nancy Schaffer Turner

Pro Se
Nancy Schaffer Turner
311 Claude Phillips Road
Bennett, N.C. 27208
(336) 581-4009

cc: Susan Linda Schaffer Sawadske
204 West Indian Ave.
Folly Beach, S.C. 29439

CLERK OF COURT
SECRETARY
COUNTY CLERK

2011 AUG 24 AM 9:40

FILED



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NST

THE STATE OF SOUTH CAROLINA
IN THE CLERK OF COURTS

20 11 - CP - 08 - 2315

APPEAL FROM BERKELEY COUNTY
Court of Probate

Keith W. Kornahrens, Probate Court Judge

Case No. 2001ES08-411-2

Susan Linda Schaffer Sawadske

Respondent,

v.

Nancy Elizabeth Schaffer Turner,
Representative of the Estate of
Martha L. Edgar Schaffer

CLERK OF COURTS
BERKELEY COUNTY, SC

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FILED

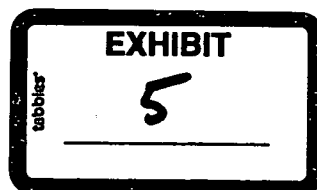
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Susan Schaffer Sawadske by depositing a copy of it in the United States Mail, postage prepaid, on July 11, 2011 addressed to Susan Schaffer Sawadske, 204 W. Indian Ave., Folly Beach S.C. 29439.

August 11, 2011

Nancy E. Schaffer Turner

Nancy E. Schaffer Turner
Pro Se
311 Claude Phillips Road
Bennett, N.C. 27208



Common Pleas
Clerk : Mary P. Brown
300 B California Avenue
Moncks Corner, SC 29461
(843) 719-4400

Received From: Turner, Nancy Schaffer
311 Claude Phillips Road
Bennet, NC 27208
Paying for: Self
Transaction Type: Payment
Payment Type: Money Order \$150.00
Total Paid \$150.00

Date : 8/24/2011
RECEIPT # 6032333
Clerk: COCENW

Reference # 50758383958
Comment:

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2011CP0802315	Nancy Schaffer Turner VS Susan Linda Schaffer Sawadske	\$150.00	\$150.00	\$0.00

Total Cases: 1 \$150.00 \$150.00 \$0.00



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 IN RE: ESTATE OF JOHN HOPKINS)
)
 Susan Linda Schaffer Sawadske,)
)
 Respondent)
)
 vs.)
)
 Nancy Shcaffer Turner as Personal)
 Representative of the Estate of)
 Martha L. Schaffer,)
)
 Appellant)

IN THE PROBATE COURT
 CASE NUMBER: 2001ES08-411

20 11 - CP - 08 - 2315

RETURN TO NOTICE OF
 INTENT TO APPEAL

CLERK OF COURT
 2011 AUG 24 AM 9:43
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TO: MARY P. BROWN, as CLERK OF COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SOUTH CAROLINA

The Petitioner filed a Motion to Remove the within action to the Berkeley County Court of Common Pleas. The Probate Court issued it's Order removing the same on July 25, 2011.

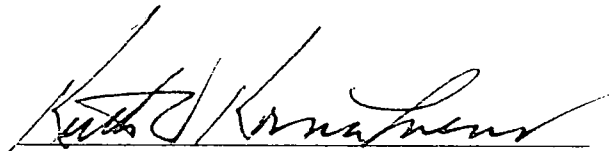
Pursuant to S.C. Code Section 62-1-302 The Probate Court for Berkeley County does hereby make this return to The Circuit Court, the following documents:

- ITEM 1: Last Will and Testament, filed September 4, 2001
- ITEM 2: Application for Appointment, filed August 5, 2001
- ITEM 3: Order of Continuance, filed September 21, 2001
- ITEM 4: Order, filed October 25, 2001
- ITEM 5: Application for Appointment, filed November 7, 2001
- ITEM 6: Fiduciary Letters, filed November 7, 2001
- ITEM 7: Certificate of Appointment, filed November 7, 2001
- ITEM 8: Affidavit of Publication, filed November 30, 2001
- ITEM 9: Proof of Delivery, filed December 7, 2001
- ITEM 10: Inventory and Appraisalment, filed February 5, 2002
- ITEM 11: Proposal for Distribution, filed September 18, 2002
- ITEM 12: Receipt and Release (Susan S. Sawadske), filed September 18, 2002
- ITEM 13: Receipt and Release (Mark D. Schaffer), filed September 18, 2002
- ITEM 14: Accounting, filed September 18, 2002
- ITEM 15: Petition for Settlement, filed September 18, 2002
- ITEM 16: Notice of Right to Demand Hearing, filed September 24, 2002
- ITEM 17: Proof of Service, filed October 2, 2002
- ITEM 18: Letter dated August 24, 2002 from Nancy Turner, filed October 23, 2002
- ITEM 19: Letter dated September 25, 2002 from Nancy Turner, filed October 23, 2002
- ITEM 20: Notice of Disallowance of Claim, filed December 6, 2002
- ITEM 21: Certificate of Service, filed January 31, 2003



- ITEM 22: Termination of Appointment, filed January 31, 2003
- ITEM 23: Exhibit #1, filed
- ITEM 24: Exhibit #2, filed
- ITEM 25: Exhibit #4, filed
- ITEM 26: Summons, filed January 4, 2011
- ITEM 27: Summons, filed January 7, 2011
- ITEM 28: Petition, filed January 4, 2011
- ITEM 29: Affidavit of Non-Service, filed March 28, 2011
- ITEM 30: Affidavit of Service, filed March 28, 2011
- ITEM 31: Motion for Service by Publication, filed March 28, 2011
- ITEM 32: Letter dated April 19, 2011, from Nancy Schaffer Turner, filed April 25, 2011
- ITEM 33: Affidavit of Publication, filed May 20, 2011
- ITEM 34: Application/Petition for Successor Personal Representative, filed January 25, 2011
- ITEM 35: Affidavit of Non-Service, filed June 15, 2011
- ITEM 36: Affidavit of Non-Service, filed June 15, 2011
- ITEM 37: Fiduciary Letters, filed June 29, 2011
- ITEM 38: Certificate of Appointment, filed June 29, 2011
- ITEM 39: Order, filed July 13, 2011
- ITEM 40: Notice of Appeal, filed July 20, 2011
- ITEM 41: The Appellate Court Clerk Notice of Appeal, filed July 20, 2011
- ITEM 42: Proof of Service, filed July 20, 2011

July 25, 2011



KEITH W. KORNAHRENS
Judge of Probate
Berkeley County, SC

2011 - CP - 08 - 2315

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGEMENT

I, Mary P. Brown, Clerk of Court of Common Pleas of Berkeley County, South Carolina, do hereby acknowledge the filing of the foregoing Return with attachments this 24th day of Aug, 2011, and said Return has been assigned Case Number _____.

Mary P. Brown/g
MARY P. BROWN
Clerk of Court
Court of Common Pleas

Moncks Corner, South Carolina
August 24, 2011

FILED
2011 AUG 24 AM 9:43
CLERK OF COURT
COUNTY OF BERKELEY, SC

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Berkeley County
Court of Common Pleas

687114

The Honorable Kristi L. Harrington

Case No. 2011-CP-08-2315

Nancy Schaffer Turner, as Personal Representative
of the Estate of Martha L. Schaffer.....Appellant,

v.

Susan Linda Schaffer Sawadske.....Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal, on the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2013, addressed to Pro Se Appellant, Nancy Schaffer Turner, 311 Claude Phillips Road, Bennett, NC 27208.



Morgan Hart, Paralegal
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Post Office Box 130
Summerville, SC 29484
(843) 410-0711
ATTORNEYS FOR RESPONDENT

Summerville, South Carolina
June 10, 2013.

RECEIVED

JUN 11 2013

SC Court of Appeals