

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals  
1220 Senate St.  
Columbia, SC 29201

Re: Case No 2023-CP-32-00881  
App. Case No.

Dear Ms. Harrison:

Enclosed for filing please find Amended Notice of Appeal in the above case and the enclosed copy of request for transcript. Also, enclosed are the following:

- 1) Certificate of Service,
- 2) Copy of the order(s),
- 3) SASE for return of copies.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,



cc: Clerk of Court, Lexington County  
205 East Main St.  
Lexington, SC 29072

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Debra R. McCaslin

Case No. 2023-CP-32-00881

App. Case No.

C.E. Holmes,

Appellant,

v.

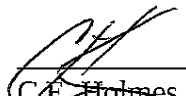
C.N. Collie,

Respondent.

AMENDED NOTICE OF APPEAL

The Appellant appeals the order entered February 12, 2024, and all intermediate orders.

Dated March 10, 2024

  
C.E. Holmes  
POB 187  
Sull. Isd., SC 29482-0187  
843.883.3010

RECEIVED

Mar 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

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APPEAL FROM LEXINGTON COUNTY  
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Counsel of Record for Respondent:

Robin Braithwaite  
759 Richland Ave. W  
Aiken, SC 29801

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Debra R. McCaslin

Case No. 2023-CP-32-00881

App. Case No.

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**Mar 11 2024**

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C.E. Holmes,

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C.N. Collie,

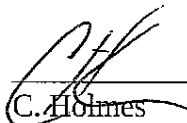
Respondent.

PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for the respondent by regular first class mail postage pre-paid on this date at this address:

Robin Braithwaite  
759 Richland Ave. W  
Aiken, SC 29801

Dated March 11, 2024

  
C. Holmes  
PO Box 187  
Sullivans Island, SC 29482  
843.883.3010

SCCA  
1220 Senate St., Ste. 200  
Columbia, SC 29201

Re: Transcript – 8/22/23  
Case No.: 2023-CP-32-00881  
*Holmes v. Collie*

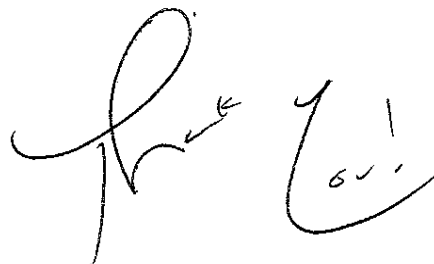
Dear Sir/Madam:

We hope this letter finds you well. Thank you for your help with this request for transcript for the above hearing. Please let us know the cost and we will promptly forward payment. Thanking you in advance and with best personal regards, I remain

Very truly yours,



C. Holmes  
POB 187  
Sull. Isd., SC 29482-0187  
843.883.3010



cc:

Robin Braithwaite  
759 Richland Ave. W  
Aiken, SC 29801

SCCOA, 1220 Senate St., Columbia, SC 29201

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
In the matter of: Naomi Hyler Collie, )  
Decedent. )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2023CP3200881

C.E. HOLMES, MD., )  
Appellant )  
v. )  
C.N. COLLIE, )  
Respondent. )

**ORDER**

**RECEIVED**  
**Mar 11 2024**  
**SC Court of Appeals**

This matter was before the Court on Respondent’s Motion to Dismiss Appeal, later amended as a Motion for Summary Judgment, seeking an Order dismissing the above captioned appeal from the Lexington County Probate Court, (“Respondent’s Motion”) and Appellant’s Amended Motion and Motion for Appointment of Special Administrator (“Appellant’s Motion”). A hearing on the pending motions was held on February 6, 2024. Present on behalf of the Respondent was attorney Robin A. Braithwaite, Esq., and Appellant C.E. Holmes, MD (a/k/a Cynthia E. Collie, Esq.) appeared *pro se*. This Court finds as follows.

**PROCEDURAL HISTORY**

The present action involves an appeal of a certificate of appointment certifying Clifford Neal Collie as duly qualified personal representative in the matter of Naomi Hyler Collie, executed January 26, 2023. Appellant represented to the Court and all parties that she received notice of the probate court order on February 27, 2023. Appellant subsequently filed a notice of intent to appeal. A copy of the notice of intent to appeal was filed with the probate court on March 7, 2023 and with the circuit court on March 8, 2023. On April 6, 2023, Appellant filed with the probate court a statement of issues on appeal. The Appellant signed the statement with an “/s/” marking, but no

actual signature of Appellant was attached to the filing.<sup>1</sup> The probate court originally stamped the statement as filed, but then marked through the stamp, apparently determining proper filing for the statement of issues on appeal was in the circuit court.<sup>2</sup>

The record does not reflect that Appellant re-filed the statement of issues with the circuit court. On July 7, 2023, Appellant filed with the circuit court a record on appeal. The record contained (1) the probate court certificate of appointment, (2) the notice of intent to appeal filed with the probate court, (3) the notice of the intent to appeal filed with the circuit court, (4) a copy of the issues on appeal filed with the probate court, (5) the notice of the motion to appeal, (6) unsigned and un-notarized Affidavits, and (7) proof of service. At all times subject to the current proceedings, Appellant acted as a “traditional filer” and did not participate in any e-filing submissions.

On June 7, 2023, Respondent filed a Motion to Dismiss. A hearing on the matter was held on August 22, 2023, where the Court held Respondent’s Motion would be more properly brought as a Motion for Summary Judgment. Thereafter, Respondent filed a Motion for Summary Judgment on November 22, 2023. Appellant also moved to file a motion for appointment of special administrator on August 22, 2023, amended December 15, 2023.

#### **STANDARD OF REVIEW**

As a general rule, the jurisdiction of the circuit court in matters coming from the court of probate is strictly appellate and review is had on the record made in the probate court without additional evidence. *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct. App. 1985). The Probate Code provides that a final order or decree of the probate court may be appealed to the circuit court.

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<sup>1</sup> /s/ on a signature line signifies that a conformed signature is being utilized for electronic purposes in lieu of a traditional handwritten signature.

<sup>2</sup> The probate clerk’s office marked a large “X” over the probate court stamp, indicating a withdrawal of the clerk’s office accepting the filing.

S.C.Code Ann. § 62–1–308(a) (Supp.1992). The circuit court must hear and determine the appeal “according to the rules of law.” § 62–1–308(d). If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. *Adams v. B & D, Inc.*, 297 S.C. 416, 377 S.E.2d 315 (1989); *cf. May v. Hopkinson*, 289 S.C. 549, 347 S.E.2d 508 (Ct.App.1986) (appeal from final judgment of master); *In re Estate of Krueger*, 235 Neb. 518, 455 N.W.2d 809 (1990). On the other hand, if the probate proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence. *Eagles v. South Carolina National Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990).

### ANALYSIS

#### **I. Appellant Failed To Comply With Appellant Procedures of S.C.Code Ann. § 62-1-308.**

Respondent argues several procedural shortcomings of the Appeal of the probate court order and moves for a full dismissal of the Appeal by the circuit court. Respondent asserts Appellant failed to comply with S.C.Code Ann. § 62-1-308, which outlines the rules governing an appeal from the probate court to the circuit court. S.C.Code Ann. § 62–1–308(a) provides that notice of intention to appeal from the probate court 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 thereof served on all parties within ten days after receipt of written notice of the decision appealed from order, sentence, or decree of the probate court.” Further, § 62–1–308(b) provides that within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal with proof of service and a copy served on all parties.

Appellant complied with § 62–1–308(a), but she failed to meet the obligations of § 62–1–308(b). In reviewing the Appellant’s file, the Court sees no record of a statement of issues filed with the circuit court within forty-five days, nor any proof of service. The statement of issues is first received by the circuit court on July 7, 2023, when Appellant includes the statement in the record on appeal submitted to the Court. The inclusion of the statement of issues in the July 7th filing of the record on appeal does not satisfy the statutory requirement of the statement of issues being filed within forty-five days of February 27, 2023, the date Appellant certifies she received the Probate Court Order. *See Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (“when a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.”). Here, Appellant’s actions fail to comply with the appellate procedure set forth in § 62–1–308 of the South Carolina Code.

Appellant’s failure to comply with appellate procedure limit this Court as “no point will be considered which is not set forth in the statement of the issues on appeal.” Rule 208(b)(1)(B), SCACR. Of greater significance, however, is that Appellant’s failure to comply with appellate procedure divests this Court of jurisdiction. *See State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (“[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction ....”); *In re Estate of Cretzmeyer*, 365 S.C. 12, 13–14, 615 S.E.2d 116, 116–17 (2005) (affirming the circuit court’s dismissal of an appeal from the probate court because the appellant failed to comply with the procedural requirements of § 62–1–308). To be clear, the Court’s finding here applies only to the Appeal of the probate court appointment of personal representative and does not impact further appealable grounds Appellant may seek.

This Court’s determination as to Appellant’s failure to conform with § 62–1–308(b) is dispositive of the appeal and leaves no need for the Court to address the remaining issues raised

by both parties. However, the Court finds that the additional issues raised present serious concerns of proper Court procedure and warrant being addressed.

## **II. Appellant Failed to Comply with South Carolina Procedural Policies.**

Respondent further argues that Appellant failed to comply with the South Carolina Electronic Filing Policies and Guidelines.<sup>3</sup> The Electronic Filing Policies define an authorized e-filer as “a licensed South Carolina attorney in good standing who has registered to E-File through the Attorney Information System.” The Policies and Guidelines further require that “unless otherwise excluded by these Policies and Guidelines or by Order of the Supreme Court or the Chief Justice, filings in all civil cases commenced or pending in any E-Filing county. . . shall be E-Filed if the party is represented by an attorney. The Clerk of Court will not accept Traditional filings submitted by attorneys except in excluded cases.” Traditional filings are defined as the physical filing of paper documents bearing the original signature of the party or the attorney.

Appellant is a South Carolina licensed attorney of good standing status at the time this appeal was initiated. Lexington County is an e-filing county. Throughout these proceedings, Appellant has refused to participate in e-filing and has elected to proceed through traditional filing methods. The Court further notes that Appellant has also failed to satisfy the requirements of Traditional filings as many of the filings do not bear an original signature of the party nor have the affidavits filed been properly notarized. Appellant does not qualify under any of the exclusions as provided for by the Policies and Guidelines, and she has not produced an Order from the Supreme Court excusing her from participating in e-filing. In fact, Appellant is on notice by Supreme Court

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<sup>3</sup> Pursuant to Art. V., § 4 of the South Carolina Constitution, the Electronic Filing Policies and Guidelines were adopted by the South Carolina Supreme Court on October 28, 2015. These Policies and Guidelines governed E-Filing during the Pilot Program in the Court of Common Pleas, and became effective upon the adoption of E-Filing on a county-by-county basis. Lexington County formally adopted the Electronic Filing Policies and Guidelines on September 5, 2017.

Order that she is to comply with electronic policies required of South Carolina licensed attorneys. By Order, dated October 17, 2013, the South Carolina Supreme Court directed Appellant that she was required to comply with Rule 410, SCACR, in relevant part requiring Appellant to maintain updated information in the Attorney Information System (AIS). *In re Collie*, 749 S.E.2d 522 (S.C. 2013).

One should not be able to evade the guidelines set forth for attorneys in some manners and abide by them in others. This Court respectfully finds no merits in Appellant's argument that because she is appearing *pro se* Appellant is relieved from the policies and guidelines of a practicing attorney. Appellant's *pro se* status in these proceedings do not exceed her oath taken as a South Carolina licensed attorney. For reasons of uniformity and efficiency, the South Carolina Supreme Court has ordered those who wish to practice law in South Carolina to abide by South Carolina Electronic Filing Policies and Guidelines. Therefore, Appellant is Ordered to comply with such policies and guidelines and further failure to comply may result in sanctions.

**III. Appellant's Motion and Amended Expedited Motion for Appointment of Temporary Personal Representative is Not Proper Before this Court.**

Appellant seeks an Order from this Court appointing Appellant as personal representative for the Estate of Naomi Hyler Collie. Appellant has previously moved before this Court with similar motions seeking appointment of a new personal representative. This Court previously held, by Order filed January 30, 2024, that such a motion is improper as any issue concerning appointment of a new personal representative should be referred to the Probate Court and is not a matter to be taken up on appeal. "Although service of notice of an intent to appeal divests the lower court of jurisdiction over the order appealed, the lower court retains jurisdiction over matters not affected by the appeal." SC Code Ann Regs 61-12; *Gattis v. Murrells Inlet VFW #10420*, 353 S.C. 100, 576 S.E.2d 191 (Ct. App. 2003).

Before this Court is the appeal of the appointment of Respondent, Collie, as personal representative and Respondent's reciprocal Motion for Summary Judgment as to the Appeal. The appointment of a temporary representative does not fall within these considerations and is not disturbed by these appellant proceedings. Thus, this Court reaches the same conclusion that Appellant's motion is improperly before this Court and should be referred to the probate court.

**CONCLUSION**

**IT IS THEREFORE ORDERED, AJUDGED, AND DECREED** that:

1. Appellant's appeal from the order of the probate court is **DISMISSED** for failure to conform with § 62-1-308(b).
2. Appellant is **ORDERED** to comply with the South Carolina Electronic Filing Policies and Guidelines in further proceedings before this Court.
3. Appellant's Motion for Appointment of Temporary Personal Representative is **DENIED** with Leave for Appellant to refile in the appropriate court.

**IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

Hard copy  
available  
on request -

Thank you!

Fax Cover:

*C. Holmes, M.D.*  
*P O Box 187*  
*Sullivan's Island, SC 29482-0187*  
*843.883.3010*