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Apr 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM RICHLAND COUNTY
Master-in Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc.,

Respondent,

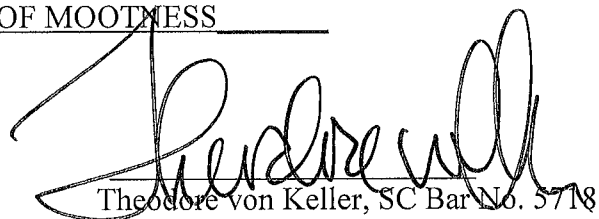
v.

Justin K. Spires, Timothy J.
Spires, Sr., South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of whom, the Estate of Justin
K. Spires and Timothy J.
Spires, Sr. are the

Appellants.

RESPONDENT'S MOTION TO DISMISS
ON GROUNDS OF MOOTNESS



Theodore von Keller, SC Bar No. 5718
Crawford & von Keller, LLC
1640 St. Julian Place
Columbia, SC 29204
(803) 790-2626
Attorney for Respondent

Pursuant to Rule 240(a) of the South Carolina Appellate Court Rules, Respondent First Citizens Bank and Trust Company, Inc. (“First Citizens”) moves to dismiss Appellants’ appeal on the grounds of standing.

FACTS

On August 31, 2006, Justin K. Spires and Timothy J. Spires, Sr. executed and delivered to First Citizens Bank and Trust Company a promissory note by which they promised to pay to First Citizens Bank and Trust Company the sum of \$99,998.00, together with interest at the rate of 6.875% per annum. (R. p. 42, ¶ 6). To secure payment of the debt, Justin K. Spires executed and delivered a mortgage of land identified as 30 Cardington Court, Columbia, SC 29209. (R. p. 43, ¶ 7).

In 2019, First Citizens declared Justin Spires in default and declared the entire balance of indebtedness due and payable. (R. p. 43, ¶12). On October 9, 2019, First Citizens filed a Summons and Complaint seeking to foreclose on the mortgage. First Citizens filed an Affidavit of Default on November 20, 2019, and an Entry of Default was entered. (R. p. 111). On February 17, 2020, the Master in Equity issued an Order and Judgment of Foreclosure and Sale concluding that Justin Spires and Timothy Spires owed \$66,710.96 to First Citizens, that First Citizens was entitled to foreclosure, and that First Citizens was entitled to a deficiency judgment after the sale. (R. p. 5-18, ¶ 21-25). The foreclosure sale was held on July 6, 2020.

Due to Justin Spires filing bankruptcy, the July 6, 2020 foreclosure sale was vacated by Order filed July 9, 2020. On November 20, 2020, the Master in Equity signed a new Judgment for Foreclosure and Sale. (R. p. 32, lines 27-29). First Citizens was the successful high bidder when the sale was completed on January 7, 2021. (R. p. 32, line 30). A Master’s Deed conveying

the property to First Citizens was filed on January 26, 2021 (Exhibit A hereto).

On May 17, 2021, Justin Spires and Timothy Spires each filed Motions for Relief and Motions to Vacate the Sale. (R. p. 95-100). At the June 21, 2021, hearing on Appellant's Motions, the Master in Equity denied Appellants' Motions. (R. p. 32-35). On July 1, 2021, Justin Spires and Timothy Spires filed a Motion to Reconsider; the Master in Equity denied this Motion on September 21, 2021. (R. p. 37-39).

Appellants filed a Notice of Appeal on November 3, 2021, appealing the Order Denying their Motion to Vacate the Sale and for Relief from the Default Judgment dated June 21, 2021. (R. p. 108).

On August 24, 2023, Appellant Justin Spires passed away. On February 14, 2024, First Citizens satisfied the deficiency judgment against Timothy Spires (see Satisfaction of Judgment attached hereto as Exhibit B). On February 26, 2024, First Citizens satisfied the deficiency judgment against Justin Spires (see Satisfaction of Judgment attached hereto as Exhibit C).

The Estate of Justin Kirby Spires, No. 2024 – ES – 40 – 00391, was opened and his daughter and only heir, Jasmine Kaylee Spires, was appointed as Personal Representative. On March 11, 2024, Jasmine Kaylee Spires, Personal Representative of the Estate of Justin Kirby Spires moved to be substituted for the deceased Justin Spires in the within appeal. By Order filed April 1, 2024, the Court of Appeals ordered the substitution of the Estate of Justin K. Spires for Justin K. Spires.

ARGUMENT

1. The Personal Representative lacks standing to prosecute the appeal.

The within appeal is an appeal of a mortgage foreclosure. The deceased Appellant, Justin Spires, is the sole signatory of the mortgage. The mortgaged property has been foreclosed upon

and sold and title placed in the name of Respondent First Citizens by Masters Deed recorded January 2021.

Appellant Justin Spires died on August 24, 2023, after the filing of the within appeal. The Estate of Justin Spires, has no legal interest in or claim to the real property that was the subject of the foreclosure as the real property was conveyed to Respondent by Master's Deed in January 2021.

South Carolina recognizes the general rule that a party must be a real party in interest to the litigation to have standing," a real party in interest for purposes of standing is a party with the real, material, or substantial interest in the outcome of the litigation" *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S. C.1,22,698 S.E.2d 612, 623(2010). The South Carolina Supreme Court has recognized 3 types of standing: (1) standing conferred by statute; (2) constitutional standing; and (3) public importance standing. None of those types of standing exist for the Personal Representative of the Estate of Justin Spires (the "P.R."). The Estate has no standing conferred by statute and, cannot show the requisite elements of constitutional standing; e.g.(1) that the Estate has suffered an invasion of a legally protected interest which is concrete and particularized and actual and or imminent; (2) that there is a causal connection between the injury and the challenge conduct; and (3) that it is likely the injury will be drew redressed by a favorable decision.

S.C. Pub. Interest Found. v. SCDOT, 421 S.C. 110, 804 S.E. 2d 854(2017).

Finally, the Estate cannot establish public importance standing as the resolution of the within foreclosure dispute is not needed for future guidance.

The Estate lacks standing to challenge the foreclosure of the property as the Estate has only a future, contingent interest in the real property as the same has been conveyed to Respondent First Citizens Bank and Trust Company.

The case of *Erickson v. Stenman*, 2023 Wash. App, LEXIS 969 (Ct. App Wash. 2023) provides guidance as it has remarkably similar facts. In *Erickson*, the mortgagor, Ryan Erickson, executed a deed of trust in 2005. A foreclosure was commenced in 2008. Ryan Erickson passed away in 2014 leaving as his sole heir Eva Erickson. Ryan Erickson's estate was submitted to probate after his death and then ordered closed for lack of prosecution in September 2018. No judgment distributing the property was entered.

On December 13, 2021, Eva Erickson sued the mortgagee bank, Nationstar Mortgage, but did not enjoin the foreclosure sale. The foreclosure sale was held on December 22, 2021.

In March 2022, Nationstar moved to dismiss Eva Erickson's Complaint contending, among other things, that she lacked standing to bring the suit because she did not have any real interest in the property. The trial court granted Nationstar's Motion to Dismiss on the basis that Eva Erickson did not have any real interest in the property and therefore lacked standing.

The Washington Court of Appeals affirmed the dismissal finding that because Eva Erickson failed to establish any real present legal interest in the property, she lacked standing to challenge the foreclosure. The Washington Court of Appeals held that to establish standing, a party must have "a specific personal interest in the controversy and a distinct interest in the outcome of the case". *E. Gig Harbor Improvement Ass'n. v. Pierce County*, 106 Wash.707,710,724 P.2d 1074(1995). A party must demonstrate that it has "a real interest in the subject matter of the lawsuit, that is, a present, substantial interest as distinguished from mere

expectancy or future, contingent interest in the party must show that a benefit will accrue it by the relief granted”. *Erickson v. Stenman*, ,2023 Wash. App, LEXIS 969 (Ct. App Wash. 2023). Based on these principles of law, the Washington Court of Appeals held that the descendant’s daughter lacked standing.

The same result should obtain here. The South Carolina Probate Court cannot convey the property to the personal representative, Jasmin Kaylee Spires, as such property has previously been conveyed by Master’s Deed to Respondent First Citizens Bank. Neither the Estate nor the Personal Representative has and cannot acquire a real, present legal interest in the property subject to the mortgage foreclosure and therefore the Estate lacks standing to advance the appeal.

2. Respondent First Citizens is not required to add the Estate of Justin Spires as a party to the appeal

On February 14, 2024, Respondent satisfied the deficiency judgment against the Appellant Justin Spires (see Exhibit A hereto). It is well-established that a mortgagee is not required to make a deceased mortgagor’s estate a party to a foreclosure action unless it seeks to hold the estate liable for the debt. *United States Bank National Association v. Wiggins*, 215 Ohio 1145, 215 Ohio App LEXIS 1097, Ohio Ct. App. (2015) (emphasis added). In the present case, Respondent cannot assert a claim or hold the Estate of Justin Spires liable for the debt as the deficiency judgment has been satisfied. Consequently, Respondent First Citizens is not required to make the Estate of Justin Spires a party to the appeal.

3. The satisfaction of judgment as to Timothy Spires deprives the co-appellant Timothy Spires of standing

Appellant Timothy J. Spires, Sr. signed the note but was not a party to the mortgage. At

the conclusion of the foreclosure, a deficiency judgment was entered against Timothy J. Spires, Sr. On February 14, 2024, the deficiency judgment against Timothy J. Spires, Sr. was satisfied, (See Exhibit B hereto). Once the deficiency judgment was satisfied, Timothy J. Spires lacked standing to continue the appeal.

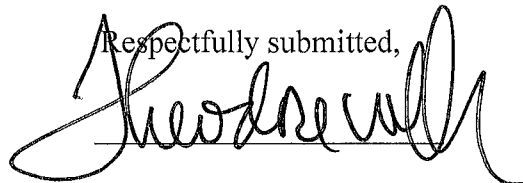
South Carolina recognizes the general rule that a party must be a real party in interest to the litigation to have standing,” a real party in interest for purposes of standing is a party with the real, material, or substantial interest in the outcome of the litigation” *Hill v.S.C. Dep’t of Health & Envtl. Control*, 389 S. C.1,22,698 S.E.2d 612, 623(2010). Once the deficiency judgment was satisfied Respondent Timothy J. Spires, Sr. lacked standing to challenge the foreclosure as he had no real, material or substantial interest in the outcome of the litigation.

The South Carolina Supreme Court has recognized 3 types of standing: (1) standing conferred by statute; (2) constitutional standing; and (3) public importance standing. None of those types of standing exist for Appellant Timothy J. Spires, Sr. Timothy J. Spires, Sr. has no standing conferred by statute and, with the satisfaction of the deficiency judgment, cannot show the requisite elements of constitutional standing; e.g.(1) that he has suffered an invasion of a legally protected interest which is concrete and particularized and actual and or imminent; (2) that there is a causal connection between the injury and the challenge conduct; and (3) that it is likely the injury will be drew redressed by a favorable decision. *S.C. Pub. Interest Found. v. SCDOT*, 421 S.C. 110, 804 S.E. 2d 854(2017). Finally, Timothy J. Spires, Sr. cannot establish public importance standing as the resolution of the within foreclosure dispute is not needed for future guidance.

CONCLUSION

In short, conveyance of the title to the subject property was completed to Respondent by the issuance and recording of the Master's Deed on January 26, 2021, prior to the filing of the within appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Theodore von Keller", written over a horizontal line.

Theodore von Keller, SC Bar No. 5718
Crawford & von Keller, LLC
1640 St. Julian Place
Columbia, SC 29204
(803) 790-2626
Attorney for Respondent



Book 2579-2647
 2021004996 1/26/2021 15:27:27:797 Master's Deed-
 Foreclosure
 Fee: \$15.00 County Tax: \$0.00 State Tax: \$0.00
 2021004996 John T. Hopkins II Richland County R.O.D.

STATE OF SOUTH CAROLINA) MASTER IN EQUITY'S DEED
)
 COUNTY OF RICHLAND) CASE NO. 2019-CP-40-05698

To all whom these Presents shall concern:

I, Joseph M. Strickland, as Master In Equity in the said State, send Greetings:

WHEREAS, THE OWNER(S) OF RECORD: JUSTIN K. SPIRES

WHEREAS, in an action in the Court of Common Pleas in Richland County between First-Citizens Bank & Trust Company, Inc., as Plaintiff, and Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor, as Defendant(s), I, as Master In Equity, by Master In Equity's Order and Judgment of Foreclosure and Sale filed on February 18, 2020, did decree that the property hereinafter described should be sold on the terms and for the purposes mentioned in said Judgment; and

WHEREAS, I, the undersigned, as Master In Equity, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the manner of auction, offer for sale and sell the said property on December 7, 2020, for the sum of, sixty-nine thousand four hundred seven and 20/100 dollars (\$69,407.20) being the highest amount bid at said sale and having been made by the Plaintiff; and WHEREAS, the bid has been complied with to the satisfaction of the Court; and

NOW, KNOW ALL MEN, that, I, the undersigned, as Master In Equity pursuant to the foregoing and also in consideration of the said bid paid as aforesaid by the said hereinbelow-named Grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release the following-described property unto the Grantee, **First-Citizens Bank & Trust Company, Inc.**

All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "V" on a plat of Waterbury, Phase 2, a/k/c East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat Book "Y, at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc., dated May 21, 1983. Said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.

This being the same property heretofore conveyed to Justin Spires by Deed of Ruth S. Bloom recorded at the Register of Deeds Office for the County of Richland September 1, 2006 in Book R1224 at Page 3742.

TMS# 19213-01-45

Physical Address: 30 Cardington Ct., Columbia, SC 29209

TOGETHER with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in anywise incident or appertaining, and the reversions and remainders,

rents, issues and profits thereof; and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all persons who might rightfully claim the same, or any part thereof, by, from or under them, or either of them.

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges and appurtenances, unto the First-Citizens Bank & Trust Company, Inc., its successors and assigns, for their own use, benefit and behoove, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master In Equity, under and by virtue of the said Judgment, have hereunto set my Hand and Seal this 14th day of January, 2021

SIGNED, SEALED AND DELIVERED
in the Presence of:

Justin K. Spires
Andria Dreher

Joseph M. Strickland
Joseph M. Strickland, Master In Equity for
Richland County

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me Sabrina Sheffield and made oath that s/he saw Joseph M. Strickland, Master In Equity sign, seal and deliver the within Master In Equity's Deed; and that deponent together with Andria Dreher signed their names as witnesses thereto; and witness is not a party or beneficiary to the transaction; and that the deponent is not a party to or beneficiary of the transaction.

Justin K. Spires

SWORN to before me this

14th day of January, 2021

Andria Dreher (L.S.)
Notary Public for South Carolina

My Commission Expires: Sept 2028

- ENTER IN GRANTOR INDEX: 1. Master In Equity
2. Joseph M. Strickland
3. Justin K. Spires
- GRANTEE'S ADDRESS: 100 East Tryon Street
Raleigh, NC 27603

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT FOR EXEMPT
TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.

2. The property being transferred is located at 30 Cardington Ct., Columbia, SC 29209, bearing Richland County Tax Map Number 19213-01-45, was transferred by Joseph M. Strickland, Master In Equity to First-Citizens Bank & Trust Company, Inc. on January 14, 2020.

3. Check one of the following: The deed is

- n) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth,
- b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- c) X exempt from the deed recording fee because (See Information section of affidavit): #13- deed executed pursuant to foreclosure proceedings.

(If exempt, please skip items 4-7 and go to item 8, of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
- b) _____ The fee is computed on the fair market value of the realty which is _____
- c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer) If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

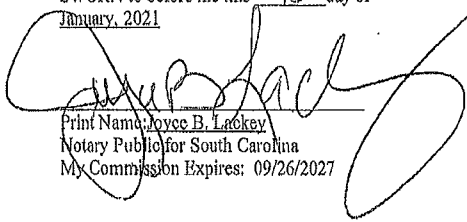
- a) Place the amount listed in item 4 above here: _____
- b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
- c) Subtract Line 6(b) from Line 6(a) and place result here: _____

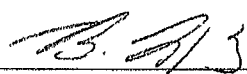
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for grantee.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 25 day of January, 2021


Print Name: Joyce B. Lackey
Notary Public for South Carolina
My Commission Expires: 09/26/2027



B. Lindsay Crawford, III/Theodore von Keller/B. Lindsay Crawford, IV and Christopher B. Lusk
Email: court@crowfordvk.com



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 First-Citizens Bank & Trust Company,)
)
 Plaintiff,)
)
 vs.)
)
 Justin K. Spires, Timothy J. Spires, Sr.,)
 South Carolina Department of Probation,)
 Parole and Pardon Services and Warren B.)
 Giese as Solicitor,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2019-CP-40-05698
 SATISFACTION OF JUDGMENT

TO: CLERK OF COURT, RICHLAND COUNTY:

YOU ARE HEREBY DIRECTED to satisfy Judgment Roll Number 2019-CP-40-05698, filed and entered on November 5, 2021 as to Timothy J. Spires Sr. ONLY.

CRAWFORD AND VON KELLER LLC

BY: s/ Theodore von Keller
SC Bar #5718
 B. Lindsay Crawford III
 Theodore von Keller
 B. Lindsay Crawford IV
 Charley F. MacInnis
 Post Office Box 4216
 Columbia, South Carolina 29240
 Telephone: (803) 790-2626
 Attorney for Plaintiff

Columbia, South Carolina
February 14, 2024



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 First-Citizens Bank & Trust Company,)
)
 Plaintiff,)
)
 vs.)
)
 Justin K. Spires, Timothy J. Spires, Sr.,)
 South Carolina Department of Probation,)
 Parole and Pardon Services and Warren B.)
 Giese as Solicitor,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2019-CP-40-05698

SATISFACTION OF JUDGMENT

TO: CLERK OF COURT, RICHLAND COUNTY:

YOU ARE HEREBY DIRECTED to satisfy Judgment Roll Number 2019-CP-40-05698,
filed and entered on November 5, 2021 as to Justin K. Spires ONLY.

CRAWFORD AND VON KELLER LLC

BY: s/ Theodore von Keller
SC Bar #5718
 B. Lindsay Crawford III
 Theodore von Keller
 B. Lindsay Crawford IV
 Charley F. MacInnis
 Post Office Box 4216
 Columbia, South Carolina 29240
 Telephone: (803) 790-2626
 Attorney for Plaintiff

Columbia, South Carolina
February 14, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM RICHLAND COUNTY
Master-in Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc.,

Respondent,

v.

Justin K. Spires, Timothy J.
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Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of whom, the Estate of Justin
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Spires, Sr. are the

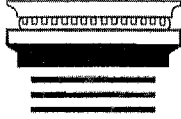
Appellants.

Proof of Service

I certify that I have served the Respondent's Motion to Dismiss on Grounds of Mootness and Proof of Service by depositing a copy of it in the United States Mail, postage prepaid, addressed to Appellants' attorney of record listed below.

Shawn M. French
1476 Ben Sawyer Blvd, Ste. 3
Mount Pleasant, SC 29464


Theodore von Keller, SC Bar No. 5718



CRAWFORD & VON KELLER, LLC

RECEIVED

Apr 02 2024

SC Court of Appeals

SOUTH CAROLINA
B. Lindsay Crawford, III *
Theodore von Keller
B. Lindsay Crawford, IV***

NORTH CAROLINA
Benjamin A. Barco**
William A. Kibbe
Gregory P. Cowan**

Charley F. MacInnis
Jason M. Hunter
Eric H. Nelsosn

Lawrence W. Johnson, Jr.* - Special Counsel

* Certified Specialist in Bankruptcy
and Debtor-Creditor Law in SC

**Admitted in North Carolina, Tennessee, and Texas
***Admitted in South Carolina and North Carolina

April 2, 2024

Email: ctappfilings@sccourts.org
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: First Citizens Bank and Trust Company, LLC, Respondent vs.
Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon
Services, and Warren B. Giese as Solicitor
Of Whom Justin K. Spires and Timothy J. Spires, Sr. are the Appellants
Appellant Case No. 2021-001219
Case No. 2019-CP-40-05698
Our Case No. 4000-0142

Dear Sir or Madam:

Enclosed please find Respondent's Motion to Dismiss on Grounds of Mootness and Proof of Service in the above referenced matter.

The \$50.00 filing fee will be mailed to your office via regular mail. Please contact me with any questions.

Sincerely,

Crawford & von Keller, LLC

Theodore von Keller

/tdd
cc: Shawn M. French, Sr.
1476 Ben Sawyer Blvd, Suite 3
Mt. Pleasant, SC 29464

WE ARE A DEBT COLLECTOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

P.O. Box 4216, Columbia, SC 29240 • 1640 St. Julian Place, SC 29204 • 803-790-2626 • Facsimile 803-790-1277
1017 Ashes Drive, Suite 106, Wilmington, NC 28405 • 910-363-1637 • Facsimile 910-363-1652