

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Master in Equity Court

The Honorable Mikell R. Scarborough

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Appellant Case Number: 2023-001428

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Edward Mikell, Individually and as Personal Representative for the Estate of Estelle White,  
deceased, ..... Respondent,

vs.

Mary Ann Green, Elnora Capers, William Mikell, Eloise Chestnut, Ralph Brown, Rages Brown, Raymond Mack, Henrietta J. Mack-Barnette, Jeanette Mack Green, James Mack, Jo Nathan Mack a/k/a Nathan Mack, Ida M. Blake, Glenn Mack, Rose Mack, Elizabeth Lee a/k/a Dorothy Marie Mack Lee, Michael Mack, Harvey Mack, Carolyn McClair, Magaline E. Brown, Delores G. Mack, Charles Mack III, Alton Kirk Mack a/k/a Kirk Mack, Kendall Gibbs, Harold Mack, Walter Brown (son of Cumsey Brown), Albertha Cohen, Jessie M. Washington, Manny Dunmeyer Jr., Ruthie Brown Roper, Sylvia Dunmeyer, Francis Dunmeyer, Tammy Dunmeyer, Brandy Dunmeyer, Timothy Brown, Barbara Ann Gathers aka Barbara Ann Geathers, Clarence Smith, Jr., Lillian Middleton, Pauline Walker a/k/a Pearlina Washington, Robert Smith, Arthur Smith, Margaret Brown, Georgiana Smith, Louise Hamilton, Benjamin Smith, John Smith, Leola Smith, Michael Smith, Janet Heyward Nelson, Eric Heyward, Keith Heyward, Darrell Heyward, William Heyward, Charlene Gadsden, Richard Brown, Sr., Sharon Y. Brown, Merele J. Mack, Adrienne F. Mack a/k/a Frankie Mack, Michael Brown, Louis Mikell, Janie Mikell, Altamese Brown, LaTricia Brown-Mayfield, and Edward Littleton Brown, Melissa Mikell (daughter of Nicolas Mikell), Tamisha Mikell, Thomas Elliott Mikell, Meliss Mikell (daughter of Thomas Mikell), Les Brown, Patricia Campbell, Curtrina Ladson, if they be alive, and JOHN DOE AND JANE DOE, whose true names are unknown and fictitious names designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors, or assigns of the above-named Defendants and if any of them be dead and of Estelle White, Lizzie Mikell Green, Edward Mikell, Emily Mikell Brown, Zeebree Mikell, Marion Green a/k/a Marian Green, Walter Brown, Florence Gadsden, Ida Mack, Charles Mack Jr., Geneva Mack, Franklin Mack Cumsey Brown, Nancy Brown, James Brown, Emily Heyward, Ida Mae Smith Dunmeyer, Pamela Dunmeyer Brown, Elizabeth Dunmeyer, Charles Brown, Jr., Rena Smith, Johnny Brown, Adell Mikell, Nicolas Mikell, Jesse Mikell, Thomas Mikell, and Mary Frances Brown, all deceased; and MARY ROE AND RICHARD ROE, whose true names are unknown and fictitious names designating infants, persons under disability, incompetents, imprisoned, or those person in the military, if any; and all other persons, known or whose true names are unknown, claiming any right, title, interest in, or lien upon the real estate described in the Complaint herein, ..... Defendants,

Of whom Richard Brown, Sr. and Sharon Y. Brown are the ..... Appellants,

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**REPLY BRIEF OF APPELLANTS**

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**REPLY BRIEF**

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NOW Come Appellants who submit this Reply Brief for consideration of this Honorable South Carolina Court of Appeals.

STATEMENT OF THE CASE

Appellants rely on the Statement of Facts, And Statement of the Case Before the Master as set forth in Appellants' Brief. Appellants do not adopt Respondent's 8 pg. Counter-Statement of the Case.

ARGUMENTS IN REPLY

Appellants' Reply to the Arguments of Respondent as more fully set forth below.

1. RULE 5(b)3 SCRCF IS MANDATORY AND CANNOT BE EXCUSED BY MASTER

Respondent's failure to serve a copy of their proposed Order on counsel for Appellants as required by Rule 5(b)3 SCRCF, at the same time and by the same manner as they are provided to the Court, was not rendered cured or harmless by the August 15, 2023, Order of the Trial Court or Master Denying Appellants' Post Trial Motions.

The requirement to serve Respondent's proposed Order on Appellants at the same time and by the same means as provided to the Court is mandatory. The trial court has no authority to excuse the mandatory service requirements as urged by Respondent. *See*, Notes to Amendments of Rule 5, SCRCF, for 1994 and 2005.

Appellants were denied the opportunity to review Respondent's proposed Order prior to the Master issuing the July 10, 2023 Order. Appellants were also denied the opportunity to have their proposed Order considered by the Master, both prior and subsequent to the court issuing its ruling

in the July 10, 2023, Order.

As an example, paragraph 52, of the July 10, 2023 Order under appeal, contains a hodgepodge of statements upon which the Master's Conclusions were based to include: the sufficiency of the property description in Appellants' deed, the testimony of the witnesses as to its execution, and the testimony of Respondent's handwriting expert. Appellants addressed all the above issues in their proposed order, which the Master refused to consider.

The Master's Order of August 15, 2023, denies Appellants' post-trial Motions, as follows:

The Court requested proposed Orders be submitted within 30 days of the trial held on May 31, 2023, but only received an Order from (Respondent's) within that time frame. Having reviewed the Motion, the Court confirms the ruling and its basis.

Once again, the trial court disregarded its own instructions, "If you need some additional time, you just need to let me know." (R. p. 375, lines 5-12).

Finally, the trial court's disposition of Appellants' post-trial motions did nothing to address or change the denial of due process to Appellants.

2. THE MASTER ERRED IN GRANTING PRIORITY TO RESPONDENT'S DEED OF DISTRIBUTION AS RESPONDENT FAILED TO COMPLY WITH THE STATUTORY NOTICE PROVISIONS OF THE PROBATE CODE

The Master erred in granting priority to the Respondent Personal Representative's Deed of Distribution to himself over Appellants' deed. The Probate Court's jurisdiction is "limited" and set out in SC Code 62-1-302, see, *Seels v. Smalls*, 437 S.C. 167, 877 S.E.2d 351 (S. Ct. 2002). The Probate Court and Respondent's administration of the Estate of Estelle White is controlled by legislative enactments within the Probate Code.

It is undisputed that Appellants did not receive notice of the opening of the Estate of Estelle White. As the Deed of Distribution was issued by Respondent with no notice to Appellants, the

Deed of Distribution should be determined to be void *ab initio*, vacated and set aside.

SC Code 62-3-106 provides that in proceedings within the jurisdiction of the court where notice is required by this Court or by rule, interested persons may be bound by the orders of the court in respect to property in ... this State by notice in conformity with Section 62-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

The subject Estate of Estelle White remains open and will remain open until Respondent lawfully complies with all the obligations of administration. See S.C. Code sec. 62-3-703 (b) and 62-3-705. S.C. Code sec. 62-3-711 (a), provides that the personal representative holds in trust real property in an estate, until there is compliance with the statutory duties of the probate code.

Respondent's creative argument that the Master found that Appellants received proper notice of the hearing of May 31, 2023, has no bearing on the notice issues that have plagued all proceedings as to the Estate of Estelle White. (See, R. pp. 145-155)

### 3. APPELLANTS REPLY TO THE ADDITIONAL ARGUMENTS SET FORTH IN RESPONDENT'S BRIEF

Regarding Respondent's argument alleging the unauthorized practice of law in the preparation of Appellants' deed, Respondent attempts to introduce matters not presented to the trial court, such as a search of a South Carolina database of practicing attorneys. The person who prepared the deed was not located by Respondent and no evidence was offered as to the operations of her business. It is unknown whether the deed was reviewed by an independent attorney not associated with its preparer prior to its execution and recording.

Furthermore, *State v Buyers Serv. Co.*, 292 S.C. 426, 431-434, 357 S.E. 2d 15, 18-19 (1987), cited by Respondent, only applies to lending institutions and was later modified to clarify that a lender may prepare such documents "as long as an independent attorney reviews them...". *Doe Law*

*Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006). The record below contains no evidence regarding a loan associated with Appellants' deed nor a factual record of the process involved in the preparation of the deed.

Finally, the "double dismissal rule" and related arguments by Respondent are without merit. There has been no double dismissal of this case before the Master, 2017-CP-10-5358. Both Respondent and Appellant proceeded to trial on May 31, 2023, on the issues determined by the Master in the subject Orders under Appeal.

#### CONCLUSION

Based upon the matters raised by Appellants in their Briefs, with due regard for the Rules of Court, the statutory scheme for the proper administration of an estate by its personal representative, and the lack of notice to Appellants as set forth throughout the Record on Appeal; the Masters Orders of July 10, 2023, and August 15, 2023, should be Reversed. And the case Remanded back to the Master to enter an Order setting aside the Deed of Distribution, and to declare the deed to Appellants executed by Estelle White to Richard and Sharon Brown as valid, and for such further relief as is just and proper.

Respectfully Submitted By,



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Dated: 4.24.2024

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Of whom Richard Brown, Sr. and Sharon Y. Brown are the..... Appellants,

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**SC Court of Appeals**

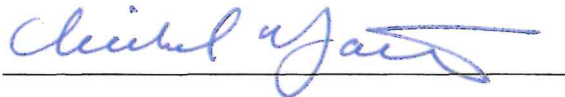
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**CERTIFICATE OF COUNSEL**

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The undersigned counsel certifies that the Reply Brief of Appellants complies with Rule 211(b).

Respectfully Submitted By,



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Of whom Richard Brown, Sr. and Sharon Y. Brown are the ..... Appellants,

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SC Court of Appeals

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PROOF OF SERVICE

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I hereby certify that I served a copy of the Reply Brief of Appellants upon Edward Mikell, Individually and as Personal Representative for the Estate of Estelle White, deceased, by emailing and via US Mail by placing a copy of same in the United States Mail, with sufficient postage attached addressed to his attorney of record, Jason Scott Luck, as follows:

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April 26, 2024

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April 26, 2024

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**SC Court of Appeals**

RE: Edward Mikell v. Richard Brown, Sr.  
Appellate Case number: 2023-001428

Dear Ms. Harrison:

Enclosed herewith for filing, please find an original and fourteen bound copies of the Final Brief and the Reply Brief regarding the referenced matter. Please file the original and return the clocked copies to me in the enclosed envelope. By copy of this letter with enclosure, I am serving Jason Scott Luck.

Thank you.

Sincerely,

Tracey O'Brien  
Assistant to Michael W. Sautter

Enclosures

cc: Jason Scott Luck, Esquire

