

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Appellate Case No. 2013-000922

The Honorable Alison Renee Lee  
Trial Court Case No. 2012-CP-40-06251

---

Robert J. Thomas and Rogers Townsend & Thomas, PC, Appellants

v.

Richland County Probate Court, Respondent.

**RECEIVED**  
SEP 10 2013  
**SC Court of Appeals**

---

REPLY BRIEF OF APPELLANT  
AS TO MOTION TO REINSTATE APPEAL AND TO GRANT EXTENSION OF TIME  
TO FILE AN INITIAL BRIEF AND TO DESIGNATE MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

---

Respondent has not refuted Appellants' showing that no one will be prejudiced by this appeal being reinstated, and Respondent has mischaracterized some facts and failed to provide evidence to support its brief. Hence this reply brief.

First Page of Response

First Paragraph: Appellants did not miss "multiple deadlines." Appellant missed two.

Second Paragraph, last sentence: Appellants are not circumventing rules "to get their way." "Appellants' way" is to inquire as to Respondent's authority to issue the Production

Orders and to maintain the attorney-client-privileged documents until Respondent has shown that its Orders are authorized (which Respondent has not done).

Page 2

Respondent's recitation of the facts on this page is true, except the word "apparently" on the eighth line is not needed.

Page 3

First Paragraph: This paragraph is misleading. The statement about advising that the Probate Court's files contain a combination of public and protected information is advice from the Court on its pre-printed form and is not an admission by Appellants.

Second Paragraph: Nothing in the record supports the bald assertion that Appellant filed the Summons and Petition in this case "before the information could be produced." In fact, we believe the only inference to be drawn is that the Probate Court refused to admit it did not have an affidavit of service on the alleged incompetent person until the very day the Probate Court's answer was due in this case. It is because we brought this mandamus action that we finally learned the Court did not have jurisdiction over the alleged incompetent person. Obtaining information like this is one of the very reasons courts enter writs of mandamus. We are delighted that the Probate Court recognized the Circuit Court was going to issue the writ and that it released the documents and admitted it did not have an affidavit of service.

Third Paragraph: This paragraph is misleading. The existing of an affidavit of service is not of an "intensely personal and private nature." It is purely ministerial and administrative. And our South Carolina and United States Constitutions guarantee due process of law.

Also in regard to this paragraph, we would point out that the release of non-protected materials from the files of a court of record is a matter of right. A document in a court file might

be protected by a privacy law or privilege, but ascertaining the public nature of such material is not discretionary.

Also in this regard, the Probate Court knew we were asking about its authority to issue the Production Orders. To use the existence of personally identifiable information or private health information to decide not to turn over (or to admit the non-existence of) an affidavit of service is bewildering.

Last paragraph (“Mere days...”): The paragraph beginning at the bottom of Page 3 is likewise misleading. The undersigned certifies that on December 6, 2012, I sent the attached email to counsel for the Probate Court suggesting that the case be dismissed as moot. Counsel for the Probate Court responded by saying she wanted attorney’s fees. (She wrote: “I won’t be able to agree to a stipulation of dismissal; my clients intend to seek an award of attorney fees. Unless you want to voluntarily pay the fees they incurred in defending the action you filed, I think we need to have the hearing so the judge can rule however s/he is going to rule, then we will file our motion for attorney fees under the Act.”)

Similarly, Footnote 2 (at the very bottom of Page 3) is misleading. After the undersigned asked to see the Probate Court’s file, an employee of the Probate Court called to say the file (or portions of it) was ready to be picked up.<sup>1</sup> When the undersigned arrived, he was told he needed to sign a form saying he had received the file. I certify that I recognized that I did not know whether I was being offered the entire file, so I added handwritten language indicating that I acknowledged receipt of portions of the file.

---

<sup>1</sup> The undersigned does not recall the exact words used by the Court employee and does not intend to hold anybody to the verbiage of the telephone call. The importance is that on that date the Probate Court alerted the undersigned that the file was ready for review, and the undersigned went straight to the court to see the file.

First Full Paragraph: The first full paragraph of Page 4 is frustrating to Appellants.

First, Respondent claims it has been prejudiced, but it only claims attorney's fees as prejudice. We have not found a single case declaring that merely incurring attorney's fees is prejudice. And we note that the Probate Court has not cited any case law to that effect, either.

Secondly, the claim of mootness is vapid. It was the Probate Court itself that created the mootness issue and then rested on it as an excuse to go forward with a hearing that had no purpose and which Appellants had already stipulated was not necessary.

Thirdly, Appellants would point out that an appeal might not have stayed the Production Orders, and intervention here would not have been a matter of right.

Attorneys finding themselves between the rock of a court order and the hard place of the attorney-client privilege need a way to learn the authority of the court without having to have themselves held in contempt. Only because of this Petition for Writ of Mandamus did Appellants learn there was no rock (no jurisdiction and hence no valid court order), so they could avoid the dilemma.

Justice was done when the Probate Court admitted it did not have jurisdiction to issue its Production Orders. Appellants should be allowed to prosecute this appeal.



---

Robert P. Wood (SC Bar No. 6206)  
Rogers Townsend & Thomas, PC  
Post Office Box 100200  
Columbia, South Carolina 29202  
Telephone (803) 771-7900  
Fax (803) 343-7017  
robert.wood@rtt-law.com

September 10, 2013

Attorney for Appellants

**OTHER COUNSEL OF RECORD:**

Desa Ballard, Esq.  
Stephanie Weissenstein, Esq.  
Ballard Watson Weissenstein  
PO Box 6338  
West Columbia, SC 29171

**CERTIFICATE OF SERVICE BY MAIL**

Case No. 2012-CP-40-6251

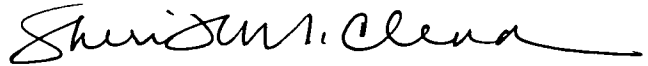
I, Sheri H. McClendon, a paralegal with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on September 10, 2013, at the following address:

**Document:**

Reply Brief of Appellant as to Motion to Reinstate Appeal

**Counsel Served:**

Desa Ballard, Esq.  
Stephanie Weissenstein, Esq.  
Ballard Watson Weissenstein  
PO Box 6338  
West Columbia, SC 29171

  
\_\_\_\_\_

ROGERS TOWNSEND & THOMAS, PC  
POST OFFICE BOX 100200 (29202)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803 771 7900 F 803 343 7017  
W RTT-LAW.COM

Robert P. Wood  
Shareholder  
Robert.Wood@rtt-law.com  
P 803 744 1275  
C 803 530 8921  
LICENSED IN SC AND US VIRGIN ISLANDS



Sheri H. McClendon  
Litigation Paralegal to Robert P. Wood  
Sheri.McClendon@rtt-law.com  
P 803-744-1930

September 10, 2013

Via Hand Delivery  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: Robert J. Thomas and Rogers Townsend & Thomas, PC v. Richland County Probate  
Our file # 910026-03214

Dear Sir or Madam:

Enclosed are an original and six copies of Reply Brief of Appellant as to Motion to Reinstate Appeal and to Grant Extension of Time to File an Initial Brief and to Designate Matter to be Included in the Record on Appeal and Certificate of Service on behalf of Robert J. Thomas and Rogers Townsend & Thomas, PC in the above referenced case. Please file the originals and return clocked copies.

Thank you for your assistance in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sheri H. McClendon".

Sheri H. McClendon  
Paralegal to Robert P. Wood

Enc.

cc:

Desa Ballard, Esq.  
Stephanie Weissenstein, Esq.  
Ballard Watson Weissenstein  
PO Box 6338  
West Columbia, SC 29171

RECEIVED

SEP 10 2013

SC Court of Appeals