RECEIVED
JUL 22 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable R. Knox McMahon

Case Nos. 2013-CP-21-1334 and 2013-ES-21-190
Appellate Case No. 2013-002810

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith,..... Appellant,

v.

Judy Smith Jones, Jacquelyn Brown, James Ervin Smith, Timothy David Smith, Jamie Smith, and Mikie Smith, Defendants

Of whom Judy Smith Jones is the..... Respondent.

INITIAL BRIEF OF APPELLANT

C. Mitchell Brown
William C. Wood, Jr.
Miles E. Coleman
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

OTHER AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

Did the trial court err by granting the drastic remedy of summary judgment because there existed genuine issues of material fact regarding undue influence and fraudulent inducement surrounding the decedent's execution of a purported will, and because it was premature to grant the motion before an opportunity for full and fair discovery had been had?

STATEMENT OF THE CASE

This appeal arises from the trial court's grant of summary judgment in a dispute alleging fraud and undue influence relating to the assets and estate of Eris Singletary Smith (hereinafter "the decedent"). On March 13, 2013, two days after the decedent's death, Eris Gail Smith ("Ms. Smith") filed a petition to probate the decedent's will and to be appointed as personal representative. Later that day, Judy Jones (Ms. Jones") filed a petition to probate a different will purportedly executed by the decedent and to appoint herself as personal representative of the estate. *See* Jones Petition.

On April 1, 2013, Ms. Smith filed a petition challenging the purported will brought forward by Ms. Jones, alleging that the purported will was a product of fraudulent inducement and undue influence and that the decedent was unaware she had signed the supposed will. *See* Smith Petition. Ms. Jones answered the petition on April 19, 2013. *See* Jones Answer. That same day, the probate court temporarily appointed a special administrator to serve until the resolution of the parties' petitions for probate of the wills and for appointment of a personal administrator. *See* Order Appointing Special Administrator. On May 14, 2013, the probate court removed the matter to the circuit court. *See* Removal Order.

Ms. Jones moved for summary judgment on May 31, 2013, arguing that Ms. Smith had failed to produce any evidence that the decedent was subject to any undue influence or was fraudulently induced to sign the purported will. *See* Jones Mot. for SJ. The circuit court held a hearing on August 7, 2013, at which Ms. Smith's attorney argued that summary judgment was inappropriate in part because Ms. Smith had not had the opportunity to complete the scheduled depositions of witnesses whose testimony would

further demonstrate the existence of genuine issues of material fact. *See* Hearing Transcript at 5, 14-15. After that hearing, Ms. Smith's counsel conducted certain examinations under oath ("EOUs") of a number of the decedent's relatives, healthcare providers, and friends. On October 8, 2013, Ms. Smith submitted the transcripts of those EOUs to the circuit court in further opposition to the motion for summary judgment. *See* Letter and Filing Letter dated October 8, 2013.

In an order signed on October 22, 2013 and filed two days later, the trial court granted Ms. Jones' motion for summary judgment and ordered the probate of the purported will and the appointment of Ms. Jones as personal representative. Ms. Smith filed a motion for reconsideration on November 11, 2013. *See* Motion to Reconsider. The court denied the motion on December 4, 2013. *See* Order Denying Motion to Reconsider. This appeal followed.

STATEMENT OF THE FACTS[1]

The decedent lived in Effingham, South Carolina, a town located about ten miles from Florence, South Carolina. Several of her children—including Ms. Smith and Ms. Jones—and grandchildren lived and worked nearby. In 2001, the decedent executed a will drafted by Robert E. Lee, an attorney in the nearby town of Marion. *See* Will dated May 30, 2001. At the same time, she executed a power of attorney and a healthcare power of attorney, both of which appointed her son—Almon Wayne Smith—as her agent to manage her affairs and to make health care decisions. *See* Power of Attorney dated May 30, 2001; Health Care Power of Attorney dated May 30, 2001.

[1] Many of the facts are disputed by the parties. Accordingly, this recitation of the facts sets forth both sides' views on any matters where the witnesses' accounts diverge. Of course, the court should construe the facts in the light most favorable to the non-movant, Appellant.

The decedent's son, Wayne, died in July, 2010. *See* Dep. of Eris Smith at 12. The decedent questioned the validity of Wayne's will, which was also drafted by Robert E. Lee, and which differed from what Wayne had told the decedent regarding the disposition of his assets and the appointment of his personal representative. *Id.* at 48, 51; *see also* EUO of Mary Tompkins at 18 (noting the appointment of Ms. Jones as Wayne's personal representative was a "stickler point" to the decedent, who knew that Ms. Jones "was not the one that was supposed to be the personal representative"); EUO of Sharon Graham at 8-12; EUO of Rachell Pringle at 16, 18-19.

As a result, the decedent harbored suspicions of and animosity toward Robert E. Lee—views she did not change prior to her passing. *See* Dep. of Eris Smith at 92, 102, and 149-50 (discussing the decedent's dislike for Robert E. Lee and quoting the decedent as saying she would not use him for legal work); EUO of Mary Tompkins at 11-14 (noting the decedent thought Robert E. Lee had something to do with Wayne's will being changed and that Lee did not deal properly with clients); *id.* at 20 (stating the decedent thought that "conniving people" had changed her predeceased brother's will and as a result the decedent would never have relied on Robert E. Lee to prepare her own will); EUO of Sharon Graham at 17 ("You couldn't even say Robert Lee's name around Granny."); *id.* at 19 (noting the decedent harbored suspicion of Robert E. Lee until her death); EUO of Rachell Pringle at 23 (quoting decedent as having said "that she would never get Robert Lee's crooked ass to ever do anything for her" and noting that "[s]he

couldn't stand him"); *id.* at 24 (noting the decedent did not change her view of Robert E. Lee prior to her death); EUO of Janet Altman at 6-7; EUO of Hoyt Smith at 7.[2]

Because the decedent's will executed in 2001 named Wayne as her personal representative, his death necessitated a new will. Accordingly, on March 30, 2011, the decedent executed a new will. *See* Will dated March 30, 2011. This will named the decedent's daughter, Ms. Smith, as personal representative. *Id.* The will was the product of a fairly lengthy and deliberate process in which the decedent paid several visits over a period of weeks to the offices of Rick Hoefer, an attorney in Florence, South Carolina, who drafted the will. *See* Dep. of Eris Smith at 157; EUO of Sharon Graham at 20-21; EUO of Hoyt Smith at 15:19-25. The decedent kept her copy of this will hidden under her mattress. *See* EUO of Sharon Graham at 42-43.[3]

About six months later, on October 18, 2011, decedent's granddaughter, Becky, took her to Marion, South Carolina, ostensibly for brunch. *See* Dep. of Eris Smith at 76; Dep. of Pam Jordan at 7; EUO of Sharon Graham at 23. The decedent had been very recently diagnosed with cancer.[4] *See* Dep. of Eris Smith at 12 (noting that the diagnosis was made in "the early fall of 2011"). While in Marion, Becky suggested they visit the

---

[2] Ms. Jones' testimony about these facts is in start contrast to the testimony of the witnesses cited above. *See* Dep. of Judy Jones at 43-45 (stating the decedent considered Robert E. Lee to be her attorney and was never was angry about him).

[3] The decedent's copy of the March 30, 2011 will disappeared several weeks prior to the decedent's death, right around the time Ms. Jones and her associates dismantled the decedent's bed, ostensibly to make way for a hospital bed. *See* EUO of Sharon Graham at 42-43.

[4] The decedent, who at this time was in her 80s, was dependent on the assistance of paid local caregivers. *See* EUO of Sharon Graham at 3-4; EUO of Rachell Pringle at 3-4. After her diagnosis with cancer, this in-home care continued until the time of her death and was supplemented by the in-home private nursing company Nightingale's Nursing and Attendants in the final few months of decedent's life. *See* Dep. of Eris Smith at 13, 16-17.

law office of Robert E. Lee, where Becky's sister, Pam—another of decedent's granddaughters[5]—worked as a paralegal, so decedent could execute a healthcare power of attorney. *See* Dep. of Eris Smith at 119-20; EUO of Rachell Pringle at 29-30, 34. While decedent was at Robert Lee's office, Becky was allegedly called back to work, so she left the decedent—with no independent means of transportation—at Robert E. Lee's office, for Pam, the paralegal granddaughter, to take home. Dep. of Pam Jordan at 7-8.

The parties' and witnesses' testimony differs as to what happened next. According to Ms. Jones, after being left at Robert E. Lee's office, the decedent supposedly prepared and executed a new will naming Ms. Jones as personal representative, and executed a new healthcare power of attorney naming Ms. Jones as the decedent's agent to make healthcare decisions. *See* Will dated October 18, 2011; Health Care Power of Attorney dated October 18, 2011. According to Ms. Jones and the witnesses she relies upon, the decedent knowingly and intentionally executed this will. For example, Robert E. Lee testified that he spoke with the decedent, had her write down her wishes for the disposition of her assets, and then had his staff—namely, Pam, the daughter of the newly named personal representative—prepare the will. *See* Affidavit of Robert E. Lee at ¶¶ 2-6; Dep. of Pam Jordan at 6; Dep. of Cyrus Sloan at 16-17. Similarly, Ms. Jones testified that she had a discussion with the decedent in which the decedent stated she was confident in her choice of Ms. Jones as personal representatives. *See* Dep. of Judy Jones at 40.

Other testimony, however, on which Appellant relies, reveals that the decedent had no intent to sign yet another will and did not realize she had done so. When the

[5] Both Becky and Pam are Ms. Jones' daughters.

decedent returned home, she was extremely agitated, and the next day stated she had signed lots of papers but was unsure what she had signed. *See* Dep. of Eris Smith at 112 ("She didn't know she had signed a will. My mother never said she went to Marion to sign a will."); EUO of Sharon Graham at 25-26; EUO of Janet Altman at 5 ("She had no idea what she signed."). The decedent's confusion and agitation was exacerbated by the fact that Robert E. Lee's office had not and would not provide her with a copy of any of the documents she had signed. *See* EUO of Janet Altman at 5 ("[S]he was highly upset. Because she could not get a copy of it or anything for her peace of mind to know what she had signed.").

Yet again, the witnesses' testimony differs as to why no copies had been provided or were forthcoming after the decedent requested them. The decedent's caretaker testified that the decedent called Robert E. Lee's office to request copies of any documents she had signed and that Pam—who worked at that law office—promised, but failed, to provide copies of the documents. *See* EUO of Sharon Graham at 27-30, 59-60. In contrast, Pam—who drafted the will naming her mother as personal representative—testified that the decedent did not take a copy of the will when she left because she did not want anyone to know about the will. *See* Dep. of Pam Jordan at 25. In addition, Pam denied that the decedent had called to request a copy of any documents, testifying that the decedent had called to be sure Robert E. Lee's office had a copy of her will and that the disposition of her assets included distribution to two grandchildren. *Id.* at 25-26.

Over the course of the next year, the decedent made numerous statements indicating her belief that her true and effective will was the March 30, 2011 will drafted by Rick Hoefer. *See* Dep. of Eris Smith at 106:20-24; EUO of Janet Altman at 8-10; *see*

also EUO of Mary Tompkins at 8-9 (stating that in October of 2012, when the decedent explained to all the beneficiaries how her house would be disposed of, that explanation mirrored the March 30, 2011 will, not the October 18, 2011 will, and that the decedent had stated she did *not* intend for the two grandchildren to be included).

Similarly, the testimony indicates the decedent did not intend for Ms. Jones to be the personal representative of her estate and did not think that was the case. *See* Dep. of Eris Smith at 86-87 (noting that in February of 2013, when the decedent heard that Judy was claiming to be "over her estate," the decedent was furious); EUO of Sharon Graham at 19 (noting that when the decedent heard that Judy was claiming to be "over everything," the decedent stated "the H you is"); EUO of Rachell Pringle at 42 (quoting the decedent as telling Judy "I wouldn't dare put you . . . over anything with me" and "I wouldn't put you over—any damn thing over me"); *id.* at 46-47 (noting that the decedent told others that when she died, Ms. Smith was to be over her affairs); EUO of Janet Altman at 12-14. Likewise, in January of 2013, when the decedent learned that Ms. Jones and Ms. Jones' daughter, Becky, were named in her healthcare power of attorney, she became extremely upset. *See* Dep. of Eris Smith at 64-65.

The decedent passed away on March 11, 2013. Immediately thereafter, Ms. Jones recruited several friends to go into the store adjacent to the decedent's home, which was previously operated by the decedent and her late husband. *Id.* at 66-67. This group did not call Ms. Smith—the only person with a key to the store—but instead went to great lengths to remove the store's security measures and to gain access into locked containers

within the store.[6] *Id.* at 69-71. Ms. Jones conducted this operation without calling Ms. Smith because Ms. Jones wished "to show her that I'm in charge now." *Id.* at 71. This store contained a large number of valuable objects, including numerous old Federal Reserve notes and other items. *See* Dep. of Eris Smith at 96-97; *see also id.* at 51-52; Dep. of Judy Jones at 74-82; EUO of Hoyt Smith at 13-15.

On March 13, 2013, Ms. Smith filed a petition to probate the March 30, 2011 will and to appoint herself as the personal representative of the estate. On that same date, Ms. Jones filed a petition to probate the October 18, 2011 will and to appoint herself as personal representative of the estate. This litigation followed.

STANDARD OF REVIEW

"Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)). A trial court may properly grant a motion for summary judgment only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Madison*, 371 S.C. at 134, 638 S.E.2d at 655 (2006).

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light

[6] Ms. Smith had previously installed those security measures at the decedent's request, because the decedent did not wish for the Joneses and Browns to have access to the store. *See* EUO of Mary Tompkins at 19-20; *see also* EUO of Hoyt Smith at 10.

most favorable to the non-moving party." *Madison*, 371 S.C. at 134, 638 S.E.2d at 655 (citing *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988)). In a dispute alleging that a will was the product of fraud or undue influence, summary judgment is not appropriate if there is conflicting evidence or testimony regarding the influence exerted on the testator or the circumstances surrounding the will. *See Howard v. Nasser*, 354 S.C. 279, 291, 613 S.E.2d 64, 70 (Ct. App. 2005).

ARGUMENT

The Trial Court Erred in Granting Summary Judgment because such was Premature and because there Existed Genuine Issues of Material Fact Precluding Summary Judgment.

Summary judgment is a "drastic remedy" that should not be used to deprive a litigant of his or her day in court to resolve disputed factual issues. *Madison*, 371 S.C. at 134, 638 S.E.2d at 655. Here, despite the numerous material factual disputes presented to the trial court, and despite the fact that Ms. Smith's counsel explained that further discovery was needed to flesh out these factual disputes, the trial court nevertheless imposed the drastic remedy of summary judgment to deprive Ms. Smith of the opportunity for a jury to determine whether the October 18, 2011 will was a product of fraudulent inducement or undue influence.

In the Order granting summary judgment, the trial court concluded there were no issues of material fact as to whether any acts exerted on the decedent destroyed her free will, amounted to force or coercion, or fraudulently induced her to sign the supposed will. *See* Order at 4-5. This ruling ignores the glaring factual disputes over the critical questions of whether the decedent wished to execute a new will, whether she was tricked

into signing the purported will, whether she even knew what she had signed, and whether the document she signed actually reflected her wishes.

As to the question of whether the decedent actually wished to execute a will on October 18, 2011 or whether she was compelled to do so, the witnesses' testimony is irreconcilably conflicting and raises unavoidable questions of material facts. According to attorneys Robert E. Lee and Cyrus Sloan, the decedent intended to execute a will, deliberately did so, and was aware of what she was doing. *See* Affidavit of Robert E. Lee at 1-2; Dep. of Cyrus Sloan at 4-6. The decedent's granddaughter, Pam Jordan, who worked for Robert E. Lee, likewise stated that the decedent approached her shortly before October 18, 2011 with the desire of changing her will. *See* Dep. of Pam. Jordan at 4-5.

In contrast, numerous witnesses testified exactly the opposite—that the decedent had no intention to execute a new will, was unaware she had signed a will, and thought that her prior will from March 30, 2011 was still in effect. *See, e.g.*, Dep. of Eris Smith at 106:20-24 ("Granny had kept telling me and Sharon since January . . . Granny says, oh, no. My – my will is at Mr. Hoefer's office."); *id.* at 112 ("She didn't know she had signed a will. My mother never said she went to Marion to sign a will."); *id.* at 147:12-20 (testifying that the decedent did not know what she signed); *id.* at 149:9-15 (recounting decedent's insistence that Ms. Jones was not, in fact, the personal representative named in her will); EUO of Sharon Graham at 26:12-20 (recounting conversation with decedent immediately after she returned from Robert E. Lee's office and was confused about what papers she had signed); EUO of Janet Altman at 5 ("She had no idea what she signed."); *id.* at 8:25-9:11 ("[B]ottom line was, she didn't know what she'd signed. . . . She did not

know that it was a will or what document. She just told me, I don't know what documents I signed. . . . She just knowed that – that her will was in Mr. Hoefer's office.").

Similarly, the testimony is hopelessly divided on the question of whether the purported will the decedent signed on October 18, 2011 actually reflected her wishes for the disposition of her assets and the administration of her estate. *See* EUO of Mary Tompkins at 8-9 (stating that in October of 2012, when the decedent explained to all the beneficiaries how her assets would be disposed of, that explanation mirrored the March 30, 2011 will); Dep. of Eris Smith at 86-87 (noting that when the decedent heard that Ms. Jones was claiming to have been named personal representative, the decedent was furious); EUO of Sharon Graham at 19 (same); EUO of Rachell Pringle at 42 (same); *id.* at 46-47 (noting that the decedent told others that when she died, Ms. Smith was to be over her affairs).

In addition, the circumstances around the execution of the purported will—the decedent was lured to brunch with no plan to visit an attorney's office and was then left at an attorney's office with no means of transportation—at *minimum* give rise to issues of material fact, if not a presumption, regarding undue influence. *See Howard v. Nasser*, 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005) ("'A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of the donative transfer . . . .'") (quoting Restatement (Third) of Property: Wills and Other Donative Transfers § 8.3 cmt. f (2003)). Indeed, one of the supposed witnesses to the purported will cannot even recall whether she did, in fact, witness the decedent sign that will. *See* Dep. of Brittany Hooks at 6.

Similarly, the facts surrounding the execution of the October 18, 2011 will, when combined with the fact that it did not reflect the decedent's wishes, gives rise to issues of material fact as to whether the will was fraudulently induced:

> A will procured by a fraud may be deemed invalid. The elements of fraud in the procurement of a testamentary instrument are the same as those required to vitiate a contract. The fraud sufficient to invalidate a will exists only when it is shown that a testator relied on a misrepresentation and was deceived. The type of fraud that will invalidate a will must be a fraud which operates upon the testator, such as in the procurement of the execution of a will by misrepresentations made to the testator.

79 Am. Jur. 2d Wills § 379 (citations omitted); *see also id.* at § 381 ("If it can be shown that a will was induced by the fraudulent representation made by a person benefiting from the will, the will may be set aside.") (citation omitted). In sum, the numerous issues of material fact make summary judgment inappropriate.

In addition, the grant of summary judgment was premature. The trial court noted in its Summary Judgment Order that the other witnesses identified by Appellant's counsel as ones he wanted to depose prior to the court's consideration of summary judgment were irrelevant because "none of them were present at the time of the Will was signed." *See* Order at 2. There is no requirement that a witness observe the actual execution of a will to provide evidence respecting questions of undue influence or fraudulent inducement. *See Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d 788 (1983) (relying on testimony of witnesses not present at execution of will regarding facts and statements made long before and after execution of will and holding there was sufficient evidence of undue influence to submit question to the jury); *see also Dyer v. Souther*, 528 S.E.2d 242, 244-45 (Ga. 2000) (reversing trial court's grant of directed verdict in light of factual disputes

in testimony and evidence from before and after execution of purported will and noting that "an attack on a will as having been obtained by undue influence may be supported by a wide range of testimony" and "the question of undue influence is generally for the factfinder"); *In re Will of Jones*, 669 S.E.2d 572 (N.C. 2008) (reversing trial court's grant of summary judgment and holding a jury should resolve question of undue influence in light of testimony and evidence relating to the testator's statements and abilities *after* execution of his will); *Cook v. Huff*, 552 S.E.2d 83, 85-86 (Ga. 2001) (holding that trial court rightly submitted issue of undue influence to the jury in light of the disputed questions of fact regarding actions and occurrences both before and after execution of will); *Bishop v. Kenny*, 466 S.E.2d 581 (Ga. 1996) (noting that when analyzing a claim of undue influence, the fact-finder had properly considered testimony regarding interactions with testator months after execution of will); *In re Duke's Will*, 85 S.E.2d 332, 336 (N.C. 1955) (analyzing challenge to validity of a will on basis of undue influence and noting that "'the general rule is that in the absence of some other reason for the exclusion of the declaration, the mere fact that it was made after the execution of the will does not render it inadmissible'") (citation omitted); 79 Am. Jur. 2d Wills § 422 ("The rule that a testator's declarations are admissible where undue influence is in issue to show a state of mind and susceptibility to influence is applicable *whether the declarations were made before or subsequent to the execution of the will* for the purpose of showing the state of the testator's mind.") (citations omitted; emphasis added); 79 Am. Jur. 2d Wills § 411 ("An attack on a will as having been obtained by undue influence may be supported by a wide range of evidence and testimony. Indeed, any evidence which shows opportunity or a result indicative of undue influence is relevant or admissible in a will contest.

Circumstantial evidence may be admissible; since fraud and undue influence are subtle things, ordinarily operating in secrecy, they can rarely be established by direct proof and must necessarily be susceptible of proof by circumstances from which they may be inferred.") (citations omitted).

In addition, the court precluded Appellant from discovering and submitting her complete evidence by prematurely ruling on summary judgment. South Carolina's courts recognize that a grant of summary judgment is premature where a plaintiff has not yet had the chance to complete discovery necessary to establish its claims. *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543-54 (1991) ("Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' [] This means, among other things, that *summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.* [] Under the circumstances, we agree with Plaintiffs that the grant of partial summary judgment on the personal injury claims was premature.") (emphasis added) (citations to numerous treatises and cases omitted).

Here, the trial court granted summary judgment prematurely, improperly weighed evidence, and failed to acknowledge the existence of genuine issues of material fact. The drastic step of summary judgment was thus improperly taken by the trial court to deprive the Appellant of her discovery rights and of her day in court. This Court must reverse.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse the trial court's Order granting summary judgment.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
William C. Wood, Jr.
SC Bar No. 015111
E-Mail: bill.wood@nelsonmullins.com
Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

July 22, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable R. Knox McMahon

Case Nos. 2013-CP-21-1334 and 2013-ES-21-190
Appellate Case No. 2013-002810

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith, ... Appellant.

v.

Judy Smith Jones, Jacquelyn Brown, James Ervin Smith, Timothy David Smith, Jamie Smith, and Mikie Smith, Defendants

Of whom Judy Smith Jones is the, ... Respondent,

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Initial Brief of Appellant

Counsel Served:

Gary I. Finklea, Esquire
Finklea Law Firm
P.O. Box 1317
Florence, SC 29503

Robert E. Lee, Esquire
P.O. Box 1096
Marion, SC 29571
(843) 423-1313

Jeffrey L. Payne, Esquire
Turner Padget Graham & Laney
P.O. Box 5478
Florence SC 29502
(843)656-4432

Lisa P. Whitehurst
Administrative Assistant

July 22, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

Miles E. Coleman
Tel: 803.255.5549
miles.coleman@nelsonmullins.com

July 22, 2014

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

RE: In the Matter of the Estate of Eris Singletary Smith
Appellate Case No. 2013-002810
Our File No. 42246/01500

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Appellant Eris Gail Smith and Appellant's Designation of Matter for the Record on Appeal in regard to the above-referenced matter. We ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with copies of these pleadings.

Sincerely,

Miles E. Coleman

Enclosures

cc: Jeffrey L. Payne, Esquire
Robert E. Lee, Esquire
Gary I. Finklea, Esquire