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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Spartanburg County Court of Common Pleas

Opinion No. J. MARK HAYES, II, CIRCUIT COURT JUDGE

Appellate Case No. 2013-001246
Opinion 2014-UP-172 (S. C. Ct. App. filed April 23, 2014)

Willie A. Rogers and Vennie Rogers..... Petitioners.

vs.

**Charles Carr, in his Individual and Official Capacity as the Personal
Representative of the Estate of Thurman L. Bomar, Deceased, Katherine
Christian and Joyce King..... Respondents.**

PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the S. C. Court of Appeals on June 25, 2014.

QUESTIONS PRESENTED

1. Did the S. C. Court of Appeals err by failing to find that the Trial Court was “Bias and Tainted” against the Petitioners when the Trial Court “interjected its own opinion and familiarity” of so-called respected local attorneys and witnesses without any evidence and testimony being presented to the Trial Court on the alleged respectability of local attorneys and witnesses?

2. Did the S. C. Court of Appeals err and deny the Petitioners a fair trial by failing to find that the Respondents committed fraud on the Trial Court by intentionally filing a false and fraudulent Petition under oath hiding the existence of the Petitioners as the only surviving heirs of the decedent Thurman Bomar and disqualifying the Respondents from inheriting from the Decedent?

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STATEMENT OF THE CASE

The Respondents, who are Step-children of the Decedent, Thurman Bomar, filed a false and fraudulent Petition for the Informal Probate of the Decedent's purported Last Will and Testament of July 27, 1988 and for their Informal Appointment on March 8, 2011 with the trial court below, the Spartanburg County Probate Court. (R. pp. 18-23). (R. pp. 209-210); (R. p. 91). Thereafter, in July, 2011, the Appellants filed a Complaint To Contest the Authenticity of the Last Will and Testament of the Decedent, Thurman Bomar, Due to Forgery and Undue Influence and an Opposing Petition for Formal Appointment. (R. pp. 31-36; R. pp. 24-30). In due course, the Respondents timely served and filed an Answer. (R. pp. 37-39).

After discovery, this Action came to trial on June 11, 2012 in the Spartanburg County Probate Court. After both parties moved for Summary Judgment and the Court reserved its Ruling on both Motions, the Respondents was directed by the court to put up the Will and their witnesses. (R. p. 60).

The first witness called was Attorney Charles Hodge who had been practicing law 31 years as of June 1, 2011. Although Mr. Hodge's main focus is medical malpractice, he draws Last Wills and Testament for people. Under questioning by Attorney Edwards,

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Attorney Hodge testified that his office used Blue Covers on Last Will and Testaments in the 1980's and like the one showed to him by Mr. Edwards of the decedent, Thurman Bomar, and his wife, and he testified that they were probably done at his direction but **“he did not remember the decedent and his wife or even recognize them from a picture showed to him by Mr. Edwards.** However, he testified that one of the witnesses on the decedent's Last Will and Testament of 1988 was his father's Nurse, a Mary Ann Kunah, and he recognized names of some of his former employees on the decedent's Last Will and Testament of July 27, 1988. (R. pp. 62-66). **Further, under cross-examination, Mr. Hodge testified “that he did not even remember the decedent, Mr. Bomar, or even the process where they signed the document.”** (R. p. 67). The Respondents next called Ms. Mary Ann Kunah as their next witness, and although she testified that she witnessed Wills for Mr. Hodge's Law Office from time to time **“when she worked for Mr. Hodge's father from 1991 to 1995, “she also testified that she had no memory of Thurman Bomar or Mary Bomar or any memory of the particular event.”** (R. pp. 68-70).

The Respondents next called Mr. Charles Carr as a witness and he testified that he met the decedent, Thurman Bomar, in New York in 1957 or 1958 when he was 11 or 12 years old. (R. p. 71). He also testified that the decedent later married his mother in 1975 and that the decedent and his mother moved to South Carolina in 1987 to take

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care of his father and mother. Charles Carr further testified that he had never seen the Last Will and Testament of Thurman Bomar or his mother before 2010 when he discussed the disposition of his mother's Estate with her (R. pp. 79-80).

Under Cross-Examination, Charles Carr said that he was not there when this Will was purportedly signed by Thurman Bomar and he did not know who were present. (R. .p. 84).

This Respondent, Mr. Charles Carr, also said under Cross-Examination that he met the Appellants, Willie Rogers and his brothers and sisters, when he came to South Carolina in the 70s or 80s and that he went out to dinner and socialized with the Appellants on his visits to South Carolina as he became aware at that time that the Appellants were relatives of Thurman Bomar. (R., pp. 84-87). He also testified that he was not aware that he was not mentioned in the Obituaries of Thurman Bomar's parents, Charles and Hattie Bomar and he read the Obituaries into evidence but the Appellants' mother, Laura Rogers, and Thurman Bomar were mentioned in Charles and Hattie Bomar's Obituaries as their daughter and son. (R., pp. 88-90).

Also, under further Cross-Examination, the Respondent Charles Carr testified that he filed the Petition with the Spartanburg County Probate Court to admit the decedent Thurman Bomar's Last Will and Testament to probate and that he signed the Petition under oath that the information on the Petition was true but that he did not list the

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Appellants, Willie Rogers and his brothers and sisters, as intestate heirs of the decedent, Thurman Bomar. (R., pp. 91-98).

The Respondents' next witness was Charles Carr's sister, Katherine Christian, who testified that she knew the Appellants were relatives of Thurman Bomar and even had dinners with them and went on a cruise with them too. (R., pp. 107-108.). She further testified under Cross-Examination that she was with her brother, Charles Carr, when they filed the Petition to admit Thurman Bomar's Last Will and Testament with the Spartanburg County Probate Court and that she was aware that she and her brother did not place the names of the Appellants Willie Rogers and Vennie Rogers on the Petition and that she was not in South Carolina when the Will was executed and that she did not know who was present during that time. (R., pp. 116-118).

The Appellants called a Ms. Thelma Thompson as their first witness. Ms. Thompson, a retired Teacher and Librarian, testified that she and Thurman Bomar were childhood friends and that they started attending school together at Upper Shady Grove Church School where her mother was a teacher. She further said that they became girlfriend and boyfriend and they exchanged many letters and photographs while they were

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in College and Graduate Schools and that she was familiar with Thurman Bomar's handwriting. She testified that Thurman Bomar's signature on a photograph he had sent her while he was at Voorhees College was authentic (R., pp. 122-127). However, she testified that Thurman Bomar's signature on his Last will and Testament was not Thurman Bomar's signature. (R., p. 128). Ms. Thompson also testified that she was childhood friends with the Appellants' mother, Laura, and that she and Laura served on the Trustees Board for the Church. (R. p. 131) but that she did not know Laura's mother, Lizzie, as Lizzie died at an early age (R. p. 135) but she was aware that Lizzie and Hattie, Thurman Bomar's mother, were first cousins and that Laura was always at Charlie and Hattie Bomar's house. She also testified that she and Thurman Bomar always stayed in touch but that she went to Graduate School at Indiana University in Bloomington, Indiana where she received a Master's in Librarianship in 1968.

The Appellants' next witness was Willie Rogers who testified that Lizzie Burgan was his grandmother but that she had died before he was born. (R. p. 137). He also testified that he had worked for his Grandfather, Charlie Bomar, as a teenager and that his Grandfather was a peach farmer. When he received an Honorable discharge from the Army, he testified that, around 1970, he started cutting his Grandfather's yard, tending his garden and doing anything else needed to be done around the house. After his Grandfather died, he started helping his uncle, Thurman Bomar, with the same chores.

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(R., pp. 139-140). He testified that he had a good relationship with Thurman Bomar for some time but, when he moved back to Spartanburg with his wife, Mary, their relationship changed because his uncle's wife, Mary, started keeping them apart and he was of the impression that his uncle was afraid of her. (R., p. 143).

The Appellant Willie Rogers testified that the signature on the second page of Thurman Bomar's Last Will and Testament was not the signature of his uncle's, Thurman Bomar. He also testified that he assumed that it was "Charles or Kathy" who filled out his uncle's Obituary because "they called his sister and asked her about the nieces and nephews that they had besides Vennie and myself." (R., p. 145). Thereafter, he reviewed various deeds or other documents and testified whether or not the signatures of Thurman Bomar appearing thereon were his Signatures or not.

Also, the appellant Willie Rogers testified that both Charles Carr and his sister, Kathy, knew that he and his sisters and brothers were nieces and nephews of their uncle, Thurman Bomar. (R., p. 151).

The Appellant's final witness was Charles Turner, a cousin of Thurman Bomar who testified that he was born and lived right beside Thurman Bomar growing up. He also said that, when he retired from the North Oceanic Atmosphere Administration or the National Weather Station, he moved back home to Spartanburg. He testified that,

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when he was growing up, the Appellants' mother, Laura, was always in and out of Charles and Hattie Bomar's home quite often and Laura was always in their home until Charles and Hattie Bomar died. (R., p. 165).

Thereafter, the Trial Court, relying very heavily on **“its own opinion about all of the respected attorneys and trusted court employees whose names appeared on either Thurman Bomar's Last will and Testament or various deeds,”** ruled that Thurman Bomar's signature on his Last Will and Testament was authentic and not a forgery especially in view of the fact that, since Thurman Bomar's Last Will and Testament, was self-proving and that it was not necessary for the respondents or Mr. Edward's to produce any witnesses at all to prove that Thurman Bomar's Last Will and Testament was valid. (R., pp. 172-178.). Also, in his ruling, the Trial Court ruled that it is not necessary for the trial court to rule on whether the Appellants' mother, Laura, was blood related and was barred by Section 62-2-109 S. C. Code of Laws, 1976, as Amended. (R., p. 177).

Thereafter, the Appellants timely appealed the decision of the Trial Court to Spartanburg County Circuit Court (R., pp. 40-44) and timely filed their Grounds of Appeal (R. pp. 40-44). After an Appeals Hearing in Spartanburg Circuit Court on January 22, 2013 before Judge J. Mark Hayes, II, in which the Appellants argued that the Trial Court committed reversible error because a lot of the Order was based on the

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court interjecting its own opinion on its familiarity with attorneys, that they knew the attorneys, that the court knew the attorneys, that these were fine attorneys and these attorneys were not doing anything wrong” but there was never any testimony in the record about these attorneys, from the attorneys or about the attorneys (R. pp. 187-188, and that the Respondents (Step-children of the decedent) filed a Petition to probate the estate but that they intentionally omitted the existence of the Appellants who were the only surviving relatives of the decedent and that this omission was intentional and was basically perjury and an obstruction of justice and that the Respondents’ wrong-doing should not be rewarded by dismissing the Appellants’ objections to this Will, Judge Mark Hayes issued his Order on April 19, 2013 affirming the Trial Court’s decision dismissing the Appellants’ appeal. Thereafter, the Appellants timely served and filed their Notice of Appeal to the S. C. Court of Appeals and this appeal follows.

The S. C. Court of Appeals affirmed the judgment of the Spartanburg County Circuit Court, Willie A. Rogers and Vennie Rogers v. Charles Carr, in his Individual and Official Capacity as Personal Representative of the Estate of Thurman L. Bomar et. al., Opinion No. 2014-UP-172 (S. C. Ct. App. filed April 23, 2014). The Petitioners seek a Writ of Certiorari to review that decision.

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ARGUMENT

I.

THE S. C. COURT OF APPEALS SHOULD HAVE HELD THAT THE TRIAL COURT WAS “BIAS AND TAINTED” AGAINST THE PETITIONERS WHEN THE TRIAL COURT “INTERJECTED ITS OPINION” OF ITS FAMILIARITY OF SO-CALLED RESPECTED LOCAL ATTORNEYS IN REACHING ITS TAINTED AND BIAS FINDINGS THAT THE SIGNATURE OF THE DECEDENT ON HIS LAST WILL AND TESTAMENT WAS AUTHENTIC EVEN THOUGH THERE WAS NO TESTIMONY BY OR ABOUT THESE SO-CALLED RESPECTED OR LOCAL ATTORNEYS AND WITNESSES TO JUSTIFY SUCH FINDINGS.

An action to set aside a Will is an action at law, In re Estate of Cumbee, 333 S. C. 664, 511 S. E. 2d 390. S. C. Ct. of App., 1999). “If the proceeding in the probate court is in the nature of an action at law, the circuit court....may not disturb the probate judge’s finding of fact unless a review of the record discloses there is no evidence to support them.” Also, in a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge.” Golini vs. Bolton, 326 S. C. 333, 482 S. E. 2d 784 (S. C. App. 1997) (S. C. Ct. of App. 1997).

However, an Appellate Court may decide “questions of law with no particular deference to the trial court,” Dreher v. Dreher, 370 S. C. 75, 634 S. E. 2d 646 (2006).

(Emphasis added.)

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Here, in the case at bar, this case on appeal concerns only questions of law as to whether a Trial Court can allow its biasness to cause it to interject its own opinion on the facts in the case below in its findings when there was no testimony under oath to give rise to the court's own opinions.

In this case below, the Appellants challenged the decedent's Last Will and Testament in the Trial Court basely on the grounds that the decedent's signature was a forgery. (R., pp. 31-36; R, pp. 24-30). In the trial below, the Respondents produced the testimony of the attorney who "**purportedly**" prepared the Decedent's Will, Mr. Charles Hodge, and a "**purported witness**" to the Decedent's Will, , a Mary Ann Kunah, in its Case-in-Chief to prove that the Decedent's signature was authentic, "**but Mr. Hodge did not remember the decedent and his wife or even recognize them from a picture showed to them by the Respondents' attorney** and Mr. Hodge testified that one of the witnesses on the Decedent's Last Will and Testament of July 27, 1988 was his Physician father's Nurse, a Mary Ann Kunah. (R., pp. 62-66). **Further, under cross-examination, Mr. Hodge, the attorney, testified "that he did not even remember the decedent, Mr. Bomar , or even the process where they signed the document."** (R., p. 67). Also, even though the Respondents' next witness, Ms. Mary Ann Kunah testified that she witnessed Wills for Mr. Hodge's Law Office from time to time **when she worked from Mr. Hodge's father**

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from 1991 to 1995, “she testified that she had no memory of Thurman Bomar or Mary Bomar or any memory of the particular event,” (R. pp. 68-70).

However, please note that **this purported witness, Mary Ann Kunah, who testified that she was a Nurse for Mr. Hodge’s father’s Doctor’s Office from 1991 to 1995, could not have witnessed the decedent’s Last will and Testament on July 27, 1988 because this Mary Ann Kunah did not even work for Mr. Hodge’s father at his Doctor’s office until 1991 to 1995.**

However, the Trial Judge allowed his opinion of his familiarity of the local attorneys and/or court employees whose names appeared connected to and/or on the decedent’s Last Will and Testament of July 27, 1988 and to various deeds, (R. pp. 172-178). **without any testimony being offered under oath on the competence or respectability of these so-called local respected attorneys to cloud and taint his judgment** and caused him to form a biasness against the Appellants and their case down below **in violation of the law** that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United State Constitution, Mallett vs. Mallett, 473 S. E. 2d 804 (S. C. Ct. of App., 1996); In re Murchison, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed 942 (1955).

Also, this S. C. Supreme Court, in the case of In The Matter of Betsey Campbell et. al. vs. Campbell, 666 S. E. 2d 908 (S. C., 2008), found a clear bias on

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on the part of the Probate Judge when the Probate Judge expressed his own opinions. (Emphasis added). The trial judge down below in this case has shown the exact same clear bias by interjecting his own opinions in his Findings. (R., pp. 172-178).

However, the S. C. Court of Appeals failed to uphold or follow the ruling of the South Carolina Supreme Court in the above case of Campbell vs. Campbell, supra., and, accordingly, the present case of Rogers vs. Carr before this Court should be summarily and immediately reversed on this point alone.

Further, **due to the trial court's aforesaid biasness**, the trial judge (The Probate Judge) completely over-looked the testimony by **Dr. Hodge's nurse's which raised serious questions as to whether she was a witness for the Decedent Thuman Bomar's Last Will and Testament on July 27, 1988 "when, by her testimony, she served as witnesses from time to time for Mr. Charles Hodge's Law Office from 1991 to 1995 when she worked as a Nurse for the Doctor's Office of Mr. Hodge's father.** (R., pp. 68-70).

It would appear that this was the same biasness on the part of the Probbatel Judge which caused him to overlook and reject the testimony of Ms. Thelma Thompson who was the only person who was familiar with and had first hand knowledge of the Decedent Thurman Bomar. Ms. Thompson was very familiar with the Decedent's handwriting as they not only grew up together but they exchanged letters and cards down

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through the years and she testified that the purported signature of the decedent **Thurman Bomar on his Last Will and Testament “was not his signature.** (R., pp. 122-128).

In its attempt to refute the testimony of Ms. Thompson that “**the decedent Thurman Bomar’s signature on his Last Will and Testament was not his signature,**” the Probate Judge, in his Order, made a “**speculative or outlandish Finding**” that the decedent’s handwriting changed over years from “**a left hand slant to a right hand slant and/or vice versa**” which is, in itself, is unlawful and illegal biasness against the Appellants (Petitioners).

Accordingly, **if this bias and tainted decision of the Probate Judge below is allowed to stand and the South Carolina Court of Appeals is going to be allowed “to disregard the holding/ruling of the South Carolina Supreme Court in its case of Betsy Campbell vs. Campbell et. al., supra., then the doctrine of “Stare Decisis” or legal precedents in this State of South Carolina will lose its importance and will be undermined or mortally wounded. Blacks Law Dictionary, pp. 1577-1578 (1968).**

Therefore, the S. C. Court of Appeals’ decision in affirming the “bias and tainted” decision of the Probate Judge below in disregarding the clear mandate and “Legal Precedents” of this S. C. Supreme Court in the Campbell case, Supra., should not be allowed to stand and should be reversed.

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II.

THE S. C. COURT OF APPEALS SHOULD HAVE HELD THAT THE RESPONDENTS COMMITTED FRAUD IN THE PROBATE COURT BY INTENTIONALLY FILING A FALSE AND FRAUDULENT PETITION UNDER OATH HIDING THE EXISTENCE OF THE PETITIONERS AS THE ONLY SURVIVING HEIRS OF THE DECEDENT THURMAN BOMAR WHICH SHOULD HAVE DISQUALIFIED THE RESPONDENTS FROM INHERITING FROM THE DECEDENT.”

Section 62-3-705 entitled “Duty of Personal Representatives, information to heirs and devisees” states as follows:

“Not later than thirty days after his appointment every personal representative.....shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees.....The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative.....The information must include the name and address to the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relative to the estate are on file. **“The personal representative’s failure to give this information is a breach of duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.”** (Emphasis added).

According to this above Statute, the Respondent Charles Carr’s failure to list the Appellants so he could give information to the heirs who have an interest in Thurman Bomar’s Estate was and is a breach of his duty to the person concerned, to-wit: to all persons who have an interest in Thurman Bomar’s Estate.

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Here, the Respondents, Charles Carr and his sister, Katherine Christian, filed a Petition with the Spartanburg County Probate Court to probate Thurman Bomar's purported Last Will and Testament and sought an informal appointment **but the Respondents failed to list the existence of the Appellants,** (R., pp. 18-23), **apparently with the intent to mislead and perpetrate a fraud upon the court since both Respondents, Charles Carr and his sister Katherine Christian, knew that they had omitted the names and existence of the Appellants and they both knew that the Appellants were the only surviving nieces and nephews of the decedent. (R., pp. 84-87; 91-98; 107-108; 116-118).**

On the issue of Fraud relative to an Estate or probate proceeding, Section 62-1-106 of the S. C. Code of Laws, 1976, as Amended, states as follows:

"Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of the commission of the fraud....."
(Emphasis added).

Accordingly, it is clear that, under this above Statute, the Respondents have perpetrated a fraud upon the court by omitting and hiding the existence of the Appellants and, accordingly, any benefits or inheritance received by the Respondents from the Estate

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of Thurman Bomar should be forfeited and transferred to the Appellants, Gordon vs. Busbee, 723 S. E. 2d 822 (S. C. Ct. of App. 2011).

The “Doctrine of Stare Decisis” requires that the principles of law established in prior cases must be adhered to and followed in the future in similar cases, Black Law Dictionary, pp. 1577-1578 (1968).

However, the S. C. Court of Appeals does not follow this “**Principle of law**” and it “cherry picks” what Principles of law in prior cases it will follow.

Even in this case, the S. C. Court of Appeals refuses to follow the Legal Precedent of this S. C. Supreme Court in the above case of Betsy Campbell vs. Campbell, 666 S. E. 2d 908 (S. C. 2008), that it is improper and inappropriate for a Judge to express his/her own opinions on the facts and this fact alone cries out for the rulings of the S. C. Court of Appeals, the Spartanburg County Circuit Court sitting as an Appellate Court and the Probate Court to be reversed.

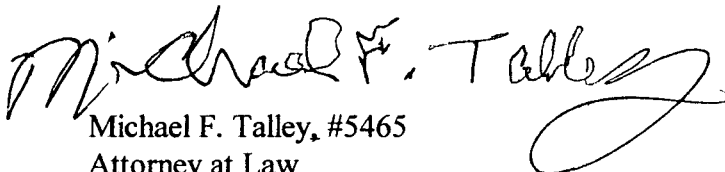
CONCLUSION

For the reasons stated above, the Petitioners ask this S. C. Supreme Court to grant this Petition for a Writ of Certiorari.

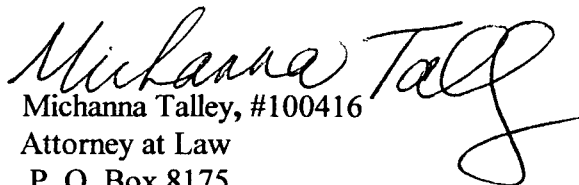
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Respectfully Submitted,



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Dated: July 23, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Spartanburg County Court of Common Pleas
J. MARK HAYES, II, CIRCUIT COURT JUDGE

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Willie A. Rogers and Vennie Rogers.....Petitioners,

v.

Charles Carr, in his individual and Official Capacity as Personal Representative
of the Estate of Thuman L. Bomar, Deceased, Katherine Christian and Joyce
King,Respondents.

PROOF OF SERVICE

I certify that I, as the Appellants' undersigned attorney, have served a copy of the
Petitioners' Writ of Certiorari upon the Respondents, Charles Carr, in his Individual and
Official Capacity as the Personal Representative of the Estate of Thurman L. Bomar,
Deceased, Katherine Christian and Joyce King , by depositing a copy of same in the
United States Mail, postage pre-paid, on July 23, 2014, addressed to the Respondents'
attorney of record, Mr. Charles P. Edwards, 200 Library Street (Upstairs) P. O. Box
2552, Spartanburg, South Carolina, 29304 and upon the S. C. Court of Appeals.
at 1015 Sumter Street, Columbia, S. C. 29201.



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SC Court of Appeals

RE: Willie A. Rogers and Vennie Rogers vs. Charles Carr, in his individual and
Official Capacity as Personal Representative of the Estate of Thurman L.
Bomar et. al.

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Dear Mr. Shearouse::

Enclosed please find the original and six (6) copies of Writ of Certiorari
for filing on behalf of the Petitioners, Willie A. Rogers and Vennie Rogers, along with
the Appendix and the original and two 2) copies of our Proof of Service of the
Petitioners' Writ of certiorari upon the Respondents' attorney, Mr. Charles P.
Edwards on July 23, 2014. We are also enclosing our office check of \$100.00 for the
filing. fee.

Along with this letter and a copy, we are filing a copy of the Petitioner's
Writ of Certiorari upon the S. C. Court of Appeals and a copy of our Proof of
Delivery.

After filing, please forward our office a filed copy of our Proof of Service
in the enclosed self-addressed-stamped envelope.

Thank you.

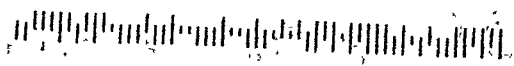
Yours truly

Michael F. Talley

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Enclosures::

cc: The S. C. Court of Appeals
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