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Reply To: Surfside Beach

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Jennifer Mullins † NC  
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Edward A. Love † GA  
Walker H. Willcox

† Additionally Licensed  
♦ Certified Mediator

April 27, 2012

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Jennifer H. Turner, Appellant vs. Francis D. Daniels, Personal Representative of the Estate of Robert Leverne Gilmore a/k/a Robert L. Gilmore, II, a/k/a Robert L. Gilmore, Jr., Francis D. Daniels a/k/a Frank Daniels individually, and Patricia C. Daniels a/k/a Patti Daniels, individually, Respondents  
Case No. 2011-CP-22-00709

Dear Mr. Shearouse:

Enclosed please find the following documents for filing:

- (1) One (1) original and two (2) copies of the Notice of Appeal.
- (2) One (1) original and two (2) copies of the Proof of Service of the Notice of Appeal on Respondents.
- (2) A copy of the Orders which are to be challenged on appeal.
- (3) Our check in the amount of \$100.00 payable to the South Carolina Supreme Court for the filing fee.
- (4) This appeal is being filed with the Supreme Court because the appeal contains a challenge to the federal constitutionality of a state statute.

**RECEIVED**

MAY 01 2012

**S.C. SUPREME COURT**


The Honorable Daniel E. Shearouse  
April 27, 2012  
Page 2

Please file the original documents and return clocked copies to me in the enclosed self-addressed sampled envelope. The above documents are being filed with the Georgetown County Clerk of Court simultaneously herewith.

With kindest regards, I am

Very truly yours,

**WILLCOX, BUYCK, & WILLIAMS, P.A.**



Tracy L. Wright

[Tracy@WillcoxLaw.com](mailto:Tracy@WillcoxLaw.com)

TWF/mmr

cc: John R. Richardson, Esquire  
McCrackin, Barnett, & Richardson, LLP  
Post Office Box 1182  
Myrtle Beach, SC 29578

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
Larry B. Hyman, Jr. , Circuit Court Judge

---

Case No. 2011-CP-22-00709

---

Jennifer H. Turner,

Appellant.

v.

Francis D. Daniels, Personal Representative of  
the Estate of Robert Leverne Gilmore a/k/a  
Robert L. Gilmore, II, a/k/a Robert L. Gilmore, Jr.,  
Francis D. Daniels a/k/a Frank Daniels individually,  
and Patricia C. Daniels a/k/a Patti Daniels, individually

Respondents.

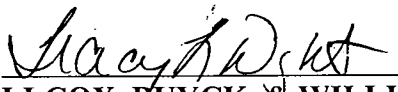
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NOTICE OF APPEAL

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Jennifer H. Turner appeals the final order and judgment of the Honorable Larry B. Hyman, Jr. entitled "Order Denying Petitioner's Appeal" executed on March 12, 2012. Appellant received written notice of this order on March 19, 2012. Thereafter Appellant timely filed its Motion to Alter, Amend or Reconsider Final Order which was heard on March 22, 2012 which motion was denied by order and judgment of the Honorable Larry B. Hyman on March 22, 2012. Appellant received written notice of entry of this judgment on March 26, 2012. This appeal is taken from the herein referenced orders of the Honorable Larry B. Hyman, Jr., Presiding Judge of Fifteenth Judicial Circuit.

April 20, 2012

By:   
WILLCOX, BUYCK, & WILLIAMS, P.A.  
Tracy W. Fisher #15212  
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[Tracy@WillcoxLaw.com](mailto:Tracy@WillcoxLaw.com)  
Attorneys for Appellant

**Notice of Appeal**  
**Case No. 2011-CP-22-00709**  
**Page 2**

Other Counsel of Record:

John R. Richardson (Attorney for Respondents)  
McCrackin, Barnett & Richardson, LLP  
Post Office Box 1182  
Myrtle Beach, South Carolina 29578  
(843) 448-5724

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
Larry B. Hyman, Jr. , Circuit Court Judge

---

Case No. 2011-CP-22-00709

---

Jennifer H. Turner,

Appellant.

v.

Francis D. Daniels, Personal Representative of  
the Estate of Robert Leverne Gilmore a/k/a  
Robert L. Gilmore, II, a/k/a Robert L. Gilmore, Jr.,  
Francis D. Daniels a/k/a Frank Daniels individually,  
and Patricia C. Daniels a/k/a Patti Daniels, individually

Respondents.

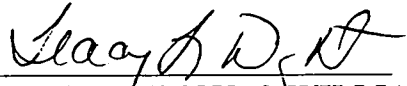
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Francis D. Daniels, Personal Representative of the Estate of Robert Leverne Gilmore a/k/a Robert L. Gilmore, II a/k/a Robert L. Gilmore, Jr., Francis D. Daniels a/k/a Frank Daniels individually and Patricia C. Daniels a/k/a Patti Daniels, individually by depositing a copy of the Notice of Appeal in the United States Mail, postage prepaid, on April 20, 2012, addressed to their attorney of record, John R. Richardson, McCrackin, Barnett & Richardson, LLP, Post Office Box 1182, Myrtle Beach, South Carolina 29578.

April 20, 2012

By:   
**WILLCOX, BUYCK, & WILLIAMS, P.A.**  
Tracy W. Fisher #15212  
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Attorneys for Appellant

**RECEIVED**

MAY 01 2012

**S.C. SUPREME COURT**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GEORGETOWN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2011CP2200709

Jennifer H Turner	Francis D Daniels  Frank Daniels Patti Daniels Robert L Gilmore Jr	Robert Laverne Gilmore Est Patricia C Daniels Robert L Gilmore II
PLAINTIFF(S)	DEFENDANT(S)	

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:  
**Motion to Reconsider Pursuant to SCRPC 59(e)/Wright - Denied**

GEORGETOWN COUNTY, S.C.  
 2012 MAR 22 PM 3:17  
 ALISA WHITE  
 CLERK OF COURT

ORDER INFORMATION

This order  ends  does not end the case. Additional Information for the Clerk:

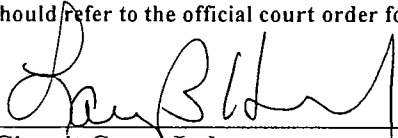
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
 Circuit Court Judge

2152 Judge Code      3/22/2012 Date

**For Clerk of Court Office Use Only**

This judgment was entered on 22nd day of March, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 22nd day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Tracy Wright Fisher Willcox, Buyck & Williams PA 1991  
Glenns Bay Road Surfside Beach, SC 29575  
Jennifer Ann Mullins Willcox, Buyck & Williams, P.A.  
1991 Glenns Bay Road Surfside Beach, SC 29575

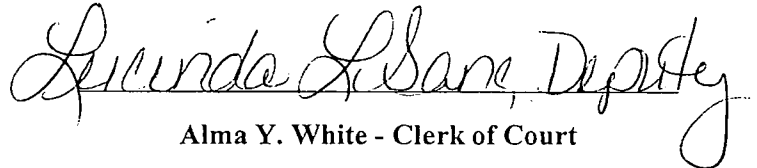
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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

John Robert Richardson McCrackin Barnett Richardson,  
LLP P.O. Box 1182 Myrtle Beach, SC 29578

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

  
Alma Y. White - Clerk of Court

**Court Reporter: Brenda R. Babb**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2011-CP-22-709

IN THE MATTER OF ESTATE )  
OF ROBERT LEVERNE GILMORE, )  
A/K/A ROBERT L. GILMORE II, )  
A/K/A ROBERT L. GILMORE, JR. )

Jennifer H. Turner, )  
 )  
Petitioner, )

vs. )

Francis D. Daniels, Personal Representative )  
of The Estate of Robert Leverne Gilmore, )  
a/k/a Robert L. Gilmore, II a/k/a Robert )  
L. Gilmore, Jr., Francis D. Daniels, a/k/a )  
Frank Daniels, individually, Patricia C. )  
Daniels, a/k/a Patti Daniels, individually, )  
 )  
Respondents. )

ORDER DENYING  
PETITIONER'S APPEAL

This matter came before me on a Notice of Appeal From Probate Court filed by Petitioner, Jennifer H. Turner on May 26, 2011. Petitioner appealed the ORDER GRANTING RESPONDENTS' MOTION TO DISMISS IN ACCORDANCE WITH SCRPC 12(b)6 signed by Waldo A. Maring, Probate Judge for Georgetown County on May 24, 2011.

I conducted a hearing in this matter on September 8, 2011 in the Court of Common Pleas for Georgetown County. Petitioner's attorneys, Tracy Wright Fisher and Jennifer A. Mullins, appeared at this hearing. John R. Richardson, attorney for Respondents, was also present at the hearing.

**BACKGROUND**

Petitioner alleged in her petition filed February 23, 2011 in the Georgetown County Probate Court that:

1. She is the surviving child of Robert Laverne Gilmore (the decedent) who died testate on August 6, 2010.
2. Decedent did not know that petitioner may have been his only child.
3. Decedent died testate leaving his entire estate to non-relatives, Francis D. Daniels and Patricia C. Daniels with Francis D. Daniels being Personal Representative of decedent's estate.
4. Decedent did not provide for petitioner or any child in his Will as he had no knowledge of the existence of any children.
5. Had decedent realized petitioner was his child, he would have left his estate to Petitioner.
6. Petitioner made a claim against decedent's entire estate as sole surviving heir.
7. Petitioner's biological mother and decedent were never husband and wife; however, they had an intimate relationship which resulted in the mother's pregnancy.
8. Petitioner was born on November 8, 1972.
9. Petitioner never knew decedent was her father and lived under the presumption that her mother's husband was her biological father.
10. Upon decedent's death, her mother informed her that either decedent or her mother's husband was her biological father.
11. DNA testing proved the mother's husband was not petitioner's biological father.
12. Petitioner requested an Order from the Court authorizing the release of decedent's DNA from Grand Strand Regional Medical Center so that a DNA paternity test could be conducted.

13. Decedent failed to provide for Petitioner as his only child because he did not know of her existence which is tantamount to believing she is dead and therefore, pursuant to §62-2-302(b), Code of Laws of South Carolina (1976) as amended, Petitioner further alleged that she is entitled to receive a share of the estate equal to the total value of the estate.
14. Petitioner further requested an Order from the Court restraining and adjoining the Personal Representative from selling, transferring, conveying or otherwise disposing of any of the assets of decedent's estate.

#### **ISSUE**

The sole issue raised by petitioner in her grounds of appeal is:

Did the Probate Court err in dismissing Appellant's petition pursuant to Rule 12(b)(6) based upon the Court's interpretation of Section 62-2-302(b) of the South Carolina Code of Laws (1976, as amended)?

#### **STATUTORY LAW**

The applicable portion of Section 62-2-302(b) PRETERMITTED CHILD reads as follows:

- (a) Not applicable.
- (b) If, at the time of execution of the Will the testator fails to provide in his Will for a living child solely because he believes that the child to be dead, the child, upon compliance with subsection (d), receives a share in the estate equal to the value to that which he would have received if the testator had died intestate.

(c) Not applicable.

(d) Not applicable.

### APPLICATION

Petitioner alleged in her petition that “decedent failed to provide for Petitioner as his only child because he did not know of her existence which is tantamount to believing she is dead...”

Petitioner seeks to have this Court interpret Section 62-2-302(b) in a way which is outside of the plain meaning of the statute.

The South Carolina Supreme Court in the case, *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007) stated, “The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000). When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a Court must apply the statute according to its literal meaning. [371 S.C. 499] *Carolina Power and Light Company v. The City of Bennettesville*, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E. 2d 899 (1998); *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991).

Petitioner argued in her **FOUNDATIONS OF APPEAL** (page 7) that “the Probate Court’s interpretation of Section 62-2-302(b) of the Code is violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution which provides that ‘no state shall....deny any person within its jurisdiction the equal protection of the laws’ ”. Petitioner argued in her **MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS** (page 5) the Equal Protection Clause of the Fourteenth Amendment as supportive of the Petitioner’s

argument that she should be included as a pretermitted child under Section 62-2-302 of the Code of Laws of South Carolina (1976 as amended).

Petitioner also argued at oral argument before Judge Maring the same Equal Protection argument which she argued in her memorandum (transcript of hearing regarding Motion to Dismiss Petition in Case No. 2010-ES-22-0037, page 6, lines 5-12).

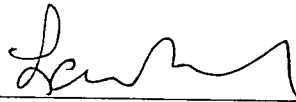
Judge Maring's **ORDER GRANTING RESPONDENT'S MOTION TO DISMISS** did not address or rule on Petitioner's Equal Protection Ground for Appeal. Petitioner did not file a Motion for Reconsideration. Therefore, Petitioner's argument regarding the Equal Protection issue was not preserved for appellate review. The South Carolina Supreme Court in *South Carolina Department of Transportation v. First Carolina Corporation of S.C.*, 372 S.C. 295, 641 S.E. 2d 903 (S.C. 207) stated, "It is well settled that an issue may not be raised for the first time in a post-trial motion." *McGee v. Bruce Hospital Systems*, 321 S.C. 340, 347, 468 S.E. 2d 633, 637 (1996). Further, it is a litigant's duty to bring to the Court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E. 2d 129, 134 (1965). Additionally, "[i]t is axiomatic that an issue can not be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for the appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E. 2d 731, 733 (1998).

Judge Maring's Order did address Petitioner's claim for inheritance based upon Section 62-2-302(b) of the Code of Laws of South Carolina, 1976, as amended. The Judge concluded that "not knowing of a person's existence is not the same or tantamount to believing that a person is dead". Thus the allegation was an insufficient statement of fact to constitute a cause of action under the statute. Judge Maring's conclusion was that the Petitioner sought to have the Court interpret Section 62-2-302(b) in a way which is outside the plain meaning of the statute.

After my hearing arguments of Petitioner's counsel and Respondent's counsel, and after my review of the documents filed in this case, including but not limited to the Probate Judge's Order and transcript of hearing, I concur with the Probate Court Judge's rationale and ruling that Petitioner's allegations were an insufficient statement of facts sufficient to constitute a cause of action. Additionally, for the reasons stated hereinabove, Petitioner's argument regarding the equal protection issue was not preserved for appellate review.

**THEREFORE, IT IS SO ORDERED** that the Probate Court Judge's Order granting Respondent's Motion to Dismiss in accordance with SCRPC 12(b)6 is **AFFIRMED**.

**IT IS SO ORDERED THIS 12 DAY OF <sup>March</sup>~~FEBRUARY~~, 2012 .**



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Larry B. Hyman, Jr., Presiding Judge  
for the Fifteenth Judicial Circuit

Conway, SC



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COLUMBIA, SC 292  
 SAT APR 27 2012 PM

Willcox, Buyck &  
 Williams, P.A. Since 1895

1991 Glenn's Bay Road  
 Surfside Beach, SC 29575

To:

The Honorable Daniel E. Shearouse  
 Clerk, Supreme Court of South Carolina  
 Post Office Box 11330  
 Columbia, South Carolina 29211

**FIRST CLASS MAIL**