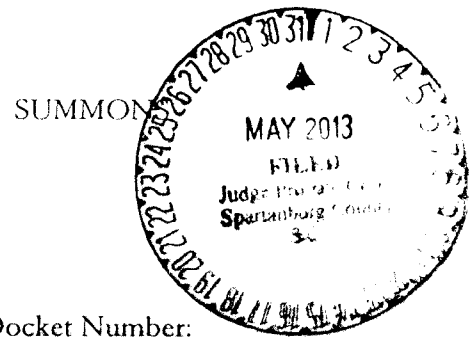


STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
LENORA WHITFIELD TUCCI,)
 Petitioner,)
 Vs.)
)
 APRIL TUCCI, Personal Representative of the)
 Estate of Francis Paul Tucci, Jr., and)
 APRIL TUCCI, Sole Beneficiary of the Estate)
 of Francis Paul Tucci, Jr.,)
 Respondents.)

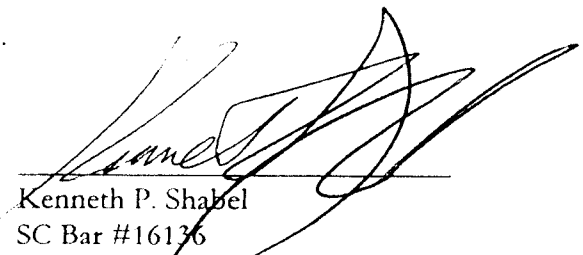
IN THE PROBATE COURT
 SEVENTH JUDICIAL CIRCUIT



Docket Number:
2012-ES-42-01144

TO THE RESPONDENT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, an Affidavit of Default will be filed in this case against you, and the Petitioner shall apply to the Court for the relief demanded in the Petition.


 Kenneth P. Shabel
 SC Bar #16136
 CAMPBELL & SHABEL, Attorneys at Law
 104 North Daniel Morgan Avenue, Suite 201
 Spartanburg, South Carolina 29306
 864.583.0001
 864.583.1199 (Fax)

Dated: May 28, 2013
 Spartanburg, South Carolina

RECEIVED
 JAN 14 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF: SPARTANBURG)
)
IN THE MATTER OF: FRANCIS PAUL TUCCI JR)
)
LENORA WHITFIELD TUCCI)
)
Petitioner

IN THE PROBATE COURT

CASE NUMBER: 2012-ES-42-01144

vs.

APRIL TUCCI, Personal Representative of the Estate of Francis Paul Tucci, Jr., and
APRIL TUCCI, Sole Beneficiary of the Estate of Francis Paul Tucci, Jr.

Respondent(s)



PETITION FOR ELECTIVE SHARE

The undersigned, Lenora Whitfield Tucci, alleges:

1. I am the surviving spouse of the decedent in this matter, who died on or about July 29, 2012.
2. I married the decedent on July 2, 2006. (A certified true copy of the marriage license may be required.)
3. I am not aware of any final order of divorce that would render me unable to make my claim for an elective share.
4. I elect to take my elective share of the decedent's estate.
5. This election is made within the later of eight months after the date of death or within six months after the probate of the decedent's Will.

Executed this twenty-fourth day of May, 2013.

Signature: *Lenora Whitfield Tucci*
 Name: Lenora Whitfield Tucci
 Address: 2 Culdass Court
Moore, SC 29369

Telephone (O): _____
 (H): 864-327-9254

Attorney: Kenneth P. Shabel, Esq.
 Address: 104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306
 Telephone: 864-583-0001

RECEIVED

JAN 14 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT
SEVENTH JUDICIAL CIRCUIT

LENORA WHITFIELD TUCCI,)
Petitioner,)

SUMMONS

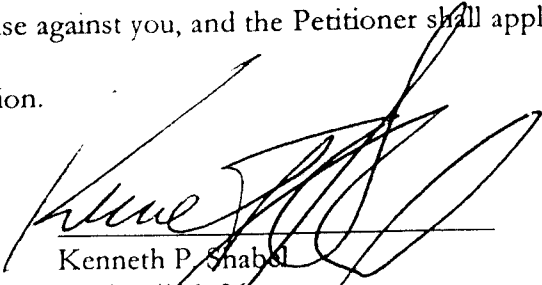
Vs.)

APRIL TUCCI and ROBERT D.)
GANYARD, Personal Representatives of (and)
on behalf of) the Estate of)
Francis Paul Tucci, Jr.,)
Respondents.)

Docket Number:
2012-ES-42-01144

TO THE RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, an Affidavit of Default will be filed in this case against you, and the Petitioner shall apply to the Court for the relief demanded in the Petition.



Kenneth P. Shabel
SC Bar #16136
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

Dated: July 9, 2013
Spartanburg, South Carolina



ORDER FOR ALLOWANCE OF CLAIM

On the basis of the within Petition and upon hearing for allowance of claims, IT IS HEREBY ORDERED that the following claims against the estate be ALLOWED DISALLOWED in the amounts set forth below:

Creditor Name and Address

Amount of Claim

Executed this day of , 20

_____, Probate Court Judge

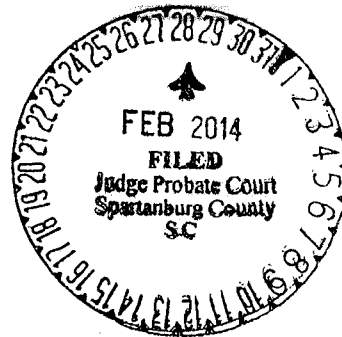
STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT

Lenora Whitfield Tucci,)
Petitioner,)
)
vs.)
)
April Tucci, Personal)
Representative of the Estate)
of Francis Paul Tucci, Jr.,)
and April Tucci, Sole)
Beneficiary of the Estate of)
Francis Paul Tucci, Jr.,)
Respondents.)
_____)

ORDER

Probate Court File No.
2012ES4201144



Trial Judge: David F. Anderson
Plaintiff's Attorney: Kenneth P. Shabel
Defendant's Attorney: James W. Shaw
Recorder: Tabitha Jackson
Trial date: February 3, 2014

Lenora Whitfield (Lenora) and Frank P. Tucci, Jr. (Frank) were married in July, 2006, and separated November 6, 2011. A family court action was begun, and a February 21, 2012 Temporary Order left wife in the marital home with the responsibility of maintaining payments. Husband executed a new Will July 10, 2012, omitting spouse and leaving all to his daughter by a prior marriage. Husband died July 29, 2012, with the domestic litigation continuing on the issue of division of marital property. One issue may have been special equity in the wife's favor in the marital home, and another perhaps the husband's efforts to seek a share of the wife's retirement funds earned during the short marriage. Regardless, the litigants did not dismiss the domestic action until March 29, 2013. This date coincides with the deadline for filing for an elective spousal share in Probate Court.

On or about May 31, 2013, Lenora filed two claims and a Petition for elective share. The Personal Representative responded by disallowing the claims and opposing the elective

DFA
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share on the grounds that it was not timely filed. These matters came for hearing before the Court on February 3, 2014.

Lenora maintains the Family Court had exclusive jurisdiction over the parties and the marital property during the pendency of that action. Accordingly, it was argued that the Probate Court's proceedings and jurisdiction over the estate of her late estranged husband were stayed, and that the statutory time limits imposed for filing the elective share petition were likewise stayed. This Court is aware of no such stay or usurpation of Probate Court jurisdiction, nor was any supporting law provided. It seems to this Court that while the contents of Frank's estate may not have been finalized until conclusion of the family court litigation, administration of that probate estate continued simultaneously. This would include the need for filing of claims and elective share petition.

A corollary argument was proffered that the Family Court action was purposely continued by the Personal Representative until the passing of the elective share deadline, at which time the Personal Representative sought dismissal. In essence, Lenora's counsel was making sort of a clean hands argument. Regardless of the Personal Representative's sanitation practices or motives, Lenora voluntarily consented to the dismissal without having timely filed for an elective share in Probate Court.

South Carolina Code 62-2-205(a) sets the time for filing of the elective share petition as being the later of eight months from date of death or six months of the opening of the estate. In the instant case, these ending dates would have been March 29, 2013 or March 21, 2013, both missed by over two months by the Plaintiff. As put forth in Simpson v. Sanders, 445 S.E.2nd 93, (S.C. 1994), the remedy of elective share is statutory and must be complied with strictly. **On that basis, the Court concludes that the Petition for elective share must be denied for failure to file timely.**

The two claims were timely filed, and actions timely brought upon notice of disallowance.

DFA

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The larger of the claims is based upon the Plaintiff having paid the bulk of the down payment when the marital home was purchased. In retrospect, she likely wishes she had not placed the home in the parties' joint names. Love is indeed blind. She was the moneyed partner in an ill fated short term marriage. The factors which would have supported a claim for special equity in Family Court may well have been present. However, that action was dismissed, and this is Probate Court. In a legal brief arguing against allowance of the claims, the counsel for the Estate cited the principle of transmutation. As noted, this is Probate Court.

The Court concurs with counsel for the Personal Representative that the down payment money on the jointly titled home constituted a gift at the time made. **As such, the claim for one half of the down payment against Frank's estate is denied.**

The smaller of the claims is based upon the monthly mortgage payments Lenora has made since her estranged husband's death. She is seeking reimbursement for one half of those payments. The argument is that she is preserving an estate asset. The Court agrees, in part. She is also living in the house rent free, which this Court finds she has a right to as a cotenant. If the heir wishes to move in with her and argue over groceries and the thermostat, have at it. She can also pay one half of the interest in that event. In the interim, Lenora is protecting the asset, paying all of the taxes and insurance, bearing the burden of the total interest payment, and is reducing the encumbrance, all to the benefit of the Estate. The Estate cannot argue that this as a gift, as in the down payment.

Lenora's claim for payments made since date of death is allowed, but only for that portion of the payments as represent one half of the taxes, insurance and reduction in the mortgage balance since that time. Based upon the documents submitted at trial, the monthly payment of \$829.92 breaks down as follows:

Principle and interest	\$665.10
Taxes	85.82
Hazard insurance	79.00

DFA
37-5-

Accordingly, the accumulated paid taxes and insurance from August 1, 2012 through the date of the hearing was \$3,131.58, one half of which is \$1,565.79. This figure will grow by \$82.41 for each payment made beginning March 1, 2014.

As to the mortgage debt, this was a \$127,500.00 mortgage on a thirty year note at 4.750 interest beginning January 1, 2010. After the July 1, 2012 payment the mortgage balance would have been \$122,220.32. After the February 1, 2014 payment, the balance would have been \$118,649.88. This is a reduction of indebtedness of \$3570.44, one half of which is \$1,785.22.

Accordingly, the claim allowed as of the February 2014 payment is \$3,351.01 (\$1,565.79 plus \$1,785.22). This is an open claim, and will accrue additional monthly increases of \$82.41 representing one half of the current monthly taxes and insurance, together with one half of the reduced principal in accordance with the attached simple amortization table, beginning with the March 1, 2014 mortgage payment. Should the escrows or mortgage balance change due to adjustments, the allowed claim will change accordingly.

IT IS SO ORDERED.

Given under my hand and seal of office this 28th day of February, 2014.



David F. Anderson
Associate Probate Judge

494

2014-CP-42-1081

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE CIRCUIT COURT

Appeal from Probate Court for
Spartanburg County

CASE NUMBER: 2012-ES-42-01144

IN THE MATTER OF:)
FRANCIS PAUL TUCCI, JR.)
(Decedent))
LEONORA WHITFIELD TUCCI,)

**NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT**

Appellant(s),)

vs.)

APRIL TUCCI, Personal Representative of the)
Estate of Francis Paul Tucci, Jr., and APRIL)
TUCCI, Sole Beneficiary of the Estate of Francis)
Paul Tucci, Jr.)

Respondent(s).)

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated February 28, 2014. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on March 11, 2014. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 19th
day of March, 2014.

Signature: [Handwritten Signature]
Print Name: Kenneth P. Shabel

Notary Public for: South Carolina

Address: 104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

My Commission Expires: 6-4-2015

Telephone (Work): 864-583-0001

(Home): _____

(Cell): _____

Email: kshabel@gc-lawfirm.com

Relationship to Decedent/Estate: Attorney for Appellant (Widow of Decedent)

Attorney: Kenneth P. Shabel

Address: 104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

Telephone: 864-583-0001

Email: kshabel@gc-lawfirm.com

SPARTANBURG
CLEAN
2014 MAR 11 PM 1:00
M. HOPE
LACHEN

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(I) and the South Carolina Appellate Court Rules, as applicable.

Lenora Whitfield Tucci

April Tucci

Francis Paul Tucci Jr

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

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. See Page 2 for additional information.
- 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:

This matter is before the Court on motions of the parties to dismiss the appeal and cross-appeal for failure to perfect pursuant to S. C. Code 62-1-308. After a consideration of the record, the argument of counsel, and the applicable law, this Court finds that the motions to dismiss should be and therefore are granted. State v. Brown, 358 SC 382 (2004) (The failure of a party to comply with the procedural requirements for perfecting an appeal divests the court of appellate jurisdiction).

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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.**

2014 SEP 30 PM 2:07

Paul Hank
Circuit Court Judge

2053

Judge Code

9/30/14

Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Sept, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 1st day of Oct, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel

175 Magnolia Street, Suite 201

Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Shaw

Heather G. Hunter

PO Box 891

Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

W. Hope Beachley
CLERK OF COURT

SC

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2014 SEP 30 PM 2:07
SEP 30 2014
SEP 30 2014

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
)	
LENORA WHITFIELD TUCCI,)	
Appellant-Respondent,)	MEMORANDUM OF LAW
vs.)	OF RESPONDENT-APELLANT
)	
APRIL TUCCI and ROBERT D.)	CASE NUMBER 2014-CP-42 01081
GANYARD, Personal Representatives)	
of the Estate of Francis Paul Tucci, Jr.)	
Respondent-Appellant.)	

Statement of Facts

This matter is on appeal from the Order of the Probate Court dated February 28, 2014. Appellant-Respondent Lenora Whitfield Tucci filed a Notice of Intent to Appeal on March 19, 2014. Respondent-Appellant April Tucci and Robert D. Ganyard, as Personal Representatives of the Estate of Francis Paul Tucci, Jr., filed a cross-appeal by Notice of Intent to Appeal on March 20, 2014.

On May 23, 2014, Respondent-Appellant filed and served a Notice of Motion and Motion to dismiss Appellant-Respondent's appeal, based on failure to comply with the strict time requirements set forth in *South Carolina Code* § 62-1-308(b), which require that the appellant file the Statement of Issues on Appeal within forty-five (45) days after receipt of written notice of the Order of the Probate Court. Appellant-Respondent filed and served a Notice of Motion and Motion to dismiss Respondent-Appellant's cross-appeal on June 13, 2014.

Statement of Law

Pursuant to *South Carolina Code* § 62-1-308(b), Appellant is required to file her Statement of Issues on Appeal within forty-five (45) days after receipt of written notice of the Order of the Probate Court. Form 4 of the Probate Court indicates that written notice of the Order was mailed to attorneys for the parties on March 7, 2014. Appellant-Respondent's Notice of Motion and Motion

2014 SEP 30 PM 2:00
 HARRIS COUNTY CLERK
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reflect that she received notice of the Order on March 11, 2014. Forty-five (45) days after receipt of the Order was April 25, 2014, which is the deadline for Appellant-Respondent to have filed and served her Statement of Issues on Appeal. The Proof of Service of Appellant-Respondent states that a copy of her Statement of Issues on Appeal was mailed to Respondent-Appellant on May 15, 2014, which was sixty-five (65) days after the date that Appellant-Respondent acknowledges having received the Order of the Probate Court.

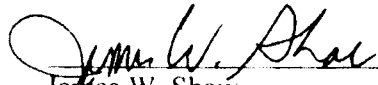
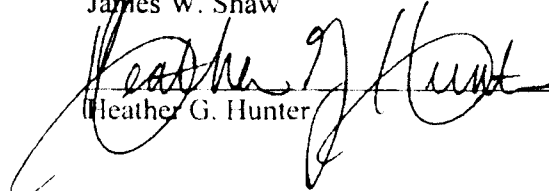
Because the appeal from the Order of the Probate Court was initiated by Appellant-Respondent, for purposes of the appeal, Respondent-Appellant is treated as the Respondent. Thus, the Respondent-Appellant timely filed its Statement of Issues on Appeal, which were filed thirteen (13) days after Appellant-Respondent filed her Statement of Issues on Appeal.

Conclusion

Respondent-Appellant's Motion to Dismiss the appeal filed by Appellant-Respondent should be granted due to the failure by Appellant-Respondent Lenora Whitfield Tucci to comply with the strict time requirements set forth in *South Carolina Code* § 62-1-308(b). Appellant-Respondent's Motion to Dismiss the cross-appeal filed by Respondent-Appellant should be denied.

Respectfully submitted,

DENNIS, SHAW, DRENNAN & PACK, LLC
Attorneys for Respondent-Appellant


James W. Shaw

Heather G. Hunter

2014 SEP 30 PM 2:08

Mell Woods, Appellant,

v.

Robert H. Breakfield, as Personal Representative of
the Estate of Reba P. Hinson, Respondent.

Appellate Case No. 2011-201066

No. 2013-UP-256

Court of Appeals of South Carolina

June 19, 2013

UNPUBLISHED OPINION

Submitted May 1, 2013

Appeal From Chester County Brooks P. Goldsmith,
Circuit Court Judge.

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondent.

PER CURIAM

Mell Woods appeals the circuit court's order affirming the probate court's denial of Woods's motion to remove the personal representative, Robert H. Breakfield, for cause. Woods argues the circuit court erred in (1) proceeding with the appeal without the entire record from the probate court as required by section 62-1-308(b) of the South Carolina Code, (2) failing to remove Breakfield because he lied under oath, and (3) failing to issue to Woods subpoenas upon his request. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in proceeding without the entire probate court record: *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (stating a complainant must show error and prejudice to be entitled to relief for a procedural violation); *Cox v. Cox*, 290 S.C. 245, 248, 349 S.E.2d 92, 93-94 (Ct. App. 1986) ("The burden is on [the appellant] to demonstrate the trial court committed reversible error."); *id.* at 248, 349 S.E.2d at 94 (finding appellant was not entitled to relief when he produced no evidence showing the trial court's findings were incorrect or the alleged error prejudiced him); *id.* ("This [c]ourt will not reward a party's recalcitrant and obstructionist conduct at trial by overturning the decree for technical noncompliance with [a rule of civil procedure].")

2. As to the remaining issues: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised [to] and

ruled upon by the trial [court].") *id.* ("When a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal."); *On. L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.")

AFFIRMED [1]

FEW, C. J., and GEATHERS and LOCKEMY, JJ.,
concur

Notes:

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

2014 SEP 30 PM 2:08
M. H. H. & S. C. COURT

Page 26

362 S.E.2d 26 (S.C.App. 1987)

294 S.C. 1

Ted Alan McCall, Appellant,

v.

Alton FINLEY, Jr., and T. Walter Brashier,
Defendants,

of whom T. Walter Brashier is Respondent.

No. 1034.

Court of Appeals of South Carolina.

October 26, 1987

Page 27

Heard Sept. 16, 1987.

Page 28

[294 S.C. 3] Robert M. Ariail, Greenville, for appellant.

Ray D. Lathan, Greenville, for respondent.

James H. Cassidy, Greenville, for defendants.

SANDERS, Chief Judge:

Appellant Ted Alan McCall sued Alton Finley, Jr. and respondent T. Walter Brashier for fraud and violations of the Uniform Securities Act, Sections 35-1-10 et seq. to 1590, Code of Laws of South Carolina, 1976, as amended. The Circuit Court granted the motion of Brashier for summary judgment. McCall appeals. We affirm.

1

McCall first argues that the Circuit Court erred in denying him a continuance of the hearing on the motion for summary judgment.

McCall sought the continuance based on the fact that the grounds for the motion were not stated with particularity by the motion itself and a memorandum which the motion said would be filed setting out the grounds was not served until the day before the hearing.

The Circuit Court denied the continuance but gave McCall ten days after the hearing "to submit any additional evidence on behalf of his client." McCall did not avail himself of this opportunity, and the Circuit Court issued an order

[294 S.C. 4] granting the motion for summary judgment. McCall moved "for a reconsideration of the factual and legal conclusions in said Order." The Circuit Court heard arguments of McCall and Brashier on the motion for reconsideration and issued a further order confirming the previous order granting the motion for summary judgment.

McCall argues that reversal is required because the motion for summary judgment did not comply with the particularity requirements of S.C.R.Civ.P. 7(b).

Appellate courts recognize--or at least they should recognize--an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter. *E.g., Cox v. Cox*, 290 S.C. 245, 349 S.E.2d 92 (Ct.App.1986) (appellant has the burden of showing that an error was prejudicial). Consistent with this heretofore unstated rule, McCall must show he was somehow harmed by having been denied a continuance. He has failed to do so. Any error in not granting the continuance was rendered harmless when the Circuit Court allowed additional evidence to be submitted after the hearing on the motion for summary judgment and heard additional arguments at the subsequent hearing on the motion for reconsideration.

II

McCall further argues that the Circuit Court erred in granting summary judgment on his causes of action for fraud and violation of the Uniform Securities Act.

A motion for summary judgment should be granted forthwith where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C.R.Civ.P. 56(c). The undisputed facts necessary to our decision in the instant case can be summarized as follows.

Finley owned fifty-one percent of the stock in a corporation named Telecastics, and Brashier owned forty-nine percent of the stock. The sole asset of Telecastics was a radio station known far and wide as WMRB. Finley approached Brashier about buying his stock. Brashier agreed to sell the stock for \$50,000.

Finley contacted McCall about selling him forty-nine percent of the stock in Telecastics. McCall and Finley agreed

[294 S.C. 5] that McCall would buy the stock for \$60,000, and they signed a written agreement, styled "Loan and Future Ownership Agreement," and "This agreement provided that:

1. Mr. McCall will advance a loan to Mr. Finley on this date in the amount of fifteen thousand dollars (\$15,000).

2014 SEP 30 PM 09 08

CLERK OF COURT
SOUTH CAROLINA

2. Mr. Finley will utilize funds to bind the purchase of forty nine percent (49%) of the stock in Telecastics, Inc

Page 29

3. Mr. McCall agrees to, by the end of the business day June 7th of this year, to advance to Mr. Finley an additional forty five thousand dollars (\$45,000) to be used in securing the sale of the forty nine percent stock in Telecastics, Inc.

4. Mr. Finley agrees to pay, via WMRB Radio, interest on these notes monthly, in the amount that Mr. McCall must remit to the bank originating the loan to him.

5. Mr. Finley agrees to sell to Mr. McCall forty nine percent of the stock in the above mentioned corporation no later than July 15th of this year, or another date mutually agreed to by the two parties involved.

6. Mr. McCall and Mr. Finley agree that all stock-holder investments shall be repaid in the future by WMRB Radio with monthly interest payments made by the company.

7. Mr. McCall agrees to accept the stock in lieu of this personal note for the amounts referred to above

McCall knew Finley and Brashier owned all of the stock in Telecastics and had been in business together for some time. He assumed Finley was handling the sale for Brashier.

McCall never questioned or investigated the authority of Finley to act for Brashier.

The payment for the stock involved five checks. McCall delivered a \$15,000 cashier's check to Finley on the same day the written agreement was signed. Finley immediately negotiated this check, delivered a \$10,000 cashier's check to Brashier and retained \$5,000. Two days later, McCall delivered two checks to Finley in the amounts of \$5,000 and \$40,000. These checks were drawn on the personal account of another person and made payable to McCall, who endorsed them to Finley. Finley retained the \$5,000 check and endorsed the \$40,000 check to Brashier as "Payment in full"

[294 S.C. 6] 49% stock in Telecastics. Either Brashier or Finley obtained a cashier's check to replace the \$40,000 check, and Brashier deposited both this check and the \$10,000 check he had previously received from Finley. McCall had the \$15,000 cashier's check made payable to Finley and endorsed the \$5,000 check and the \$40,000 check to Finley because Finley asked him to make the payments in this way.

Brashier and McCall met for the first time several months later and signed a document styled "Memorandum of Assignment of Stock". This document recited that it embodied a previous oral

agreement between them whereby Brashier had agreed to transfer his stock to McCall "in consideration for the sum of Fifty Thousand (\$50,000.00) Dollars." McCall told Brashier that he had paid Finley \$60,000 for the stock. Brashier responded that he had received \$50,000 and McCall would have to talk to Finley about "the rest of it."

Brashier also signed an endorsement on the stock certificates selling, assigning and transferring the stock to McCall "for value received."

A

The cause of action of McCall for fraud is based on allegations that Finley made certain representations to him which "were false, fraudulent, incomplete and misleading." McCall concedes that Brashier made no such representations but argues that there is an issue of fact as to whether an agency relationship existed between Finley and Brashier.

A party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts. *Paramount Fund, Inc. v. Cusac*, 282 S.C. 497, 319 S.E.2d 354 (Ct.App.1984).

"[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939). McCall did not ascertain the authority of Finley to act for Brashier.

"The test to determine [actual] agency is whether or not the purported principal has the right to control the conduct of his alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424.

Page 30

426 (1982).

[294 S.C. 7] There is no evidence that Brashier had the right to control Finley.

To establish apparent agency, a party must prove that the purported principal has represented another to be his agent by either affirmative conduct or conscious and voluntary inaction. *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 352 S.E.2d 284 (Ct.App.1986). There is no evidence that Brashier represented Finley to be his agent by either affirmative conduct or conscious and voluntary inaction. A party must also prove a reliance on the representation of agency by the purported principal and a change of position as a result of such a reliance. *ZIV Television Programs, Inc. v. Associated Grocers, Inc. of South Carolina*, 236 S.C. 448, 114 S.E.2d 826 (1960). McCall could not have relied on any representation of agency by Brashier in agreeing to buy the stock because he had no contact with Brashier until several months after he agreed

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to do so

B

Section 35-1-1490 of the Uniform Securities Act provides that any person who:

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission;

Is liable to the person buying the security from him....

McCall argues that, even though Brashier made no statements to him, he is liable for omissions to state a material fact."

Section 35-1-1490(2) applies by its terms to persons who sell or offer to sell a security. Finley, not Brashier, sold the stock to McCall. Brashier offered to sell the stock to Finley, not McCall. Nevertheless, McCall argues that, under Section 35-1-20(10)(a) of the Act, the transfer of the stock to him by Brashier was a "sale." This section provides that the terms

[294 S.C. 8] " [s]ale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value." We are aware of no South Carolina cases construing this section of the Act for the purpose of deciding when a person who participates in a sale is a "seller."

The Act is similar to the Federal Securities Act of 1933, 15 U.S.C. Section 77a to 77aa (1981). In the absence of South Carolina authority, we look to federal cases for guidance. *Carver v. Blanford*, 288 S.C. 309, 342 S.E.2d 406 (1986). Two basic tests may be gleaned from the various federal cases.

The Second and Third Circuits require strict privity, absent scienter or some special relationship, for a person to be a "seller." See *Akerman v. Oryx Communications, Inc.*, 810 F.2d 336, 344 (2d Cir.1987) (strict privity absent scienter); *Collins v. Signetics Corp.*, 605 F.2d 110, 112 (3d Cir.1979) (strict privity absent special relationship). Under this test, Brashier is clearly not a "seller."

The Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits hold generally that a person who is either in privity with the buyer or significantly participates in a sale is a "seller." See *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 363-64 (4th Cir.1986) and *Stokes v. Lokken*, 644 F.2d 779, 785 (8th Cir.1981) (participation equals substantial factor causing

transaction to occur); *Junker v. Crory*, 650 F.2d 1349, 1360 (5th Cir.1981) (persons who are a motivating force behind the sale; direct and proximate causation of buyer's injury); *Davis v. Avco Financial Services, Inc.*, 739 F.2d 1057, 1067 (6th Cir.1984) and *SEC v. Rogers*, 790 F.2d 1450, 1456 (9th Cir.1986) (persons whose acts are necessary to and substantial factor in transaction; direct and proximate causation of buyer's injury); *Foster v. Jesup and Lamont Securities Co., Inc.*, 759 F.2d 838, 843-44 (11th Cir.1985) (participation equals substantial causative factor directly and proximately causing buyer's injury). Even under

Page 31

the more expansive test recognized in these circuits, Brashier is not a "seller." His only participation in the sale of the stock was the transfer of the stock certificate. This purely ministerial act does not constitute significant participation in the sale.

[294 S.C. 9] Moreover, the argument of McCall fails even if Brashier is a "seller." Section 35-1-1490(2) imposes liability for "any omission to state a material fact." However, such liability is imposed only where the material fact omitted is "necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading." Since Brashier did not make any statements himself and there is no evidence he was aware of any statements made by Finley, he cannot be liable for any omission.

For these reasons, the order of the Circuit Court is

AFFIRMED

GARDNER and GOOLSBY, JJ., concur.

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365 S.C. 12
Supreme Court of South Carolina.

In re ESTATE OF Charles H. CRETZMEYER, Jr.
Stacy Cretzmeyer, as Personal Representative of
the Estate of Charles H. Cretzmeyer, Jr., Appellant,
v.

Anne C. Bloch, Regan Cretzmeyer, and
Watts B. Stroman, Trustee, Respondents.

No. 26003. | Heard April 7,
2005. | Decided June 20, 2005.

Synopsis

Background: Appeal was taken from probate court order by mailing notice of appeal to circuit court on day after the order. The Circuit Court, Georgetown County, James H. Locking, J., dismissed appeal as untimely. Appeal was taken.

Holding: The Supreme Court, Kittredge, Acting J., held that the notice of appeal had to be filed in the circuit court within ten days.

Affirmed.

West Headnotes (1)

[1] **Appeal** — **Notice of Intent to Appeal** — **Timing** — **Statute** — **Code 1976 § 62-1-308(a)**

Appeal of probate court order was not timely filed in the circuit court by mailing notice of appeal to circuit court on day after the order; the notice had to be filed in the circuit court within ten days. Code 1976 § 62-1-308(a).

See also the text of this headnote.

Attorneys and Law Firms

****116** **Attorneys:** Atty. Gen. J. J. of Conway, and Robert N. of Newberry, for Appellant.

Susan Taylor Wall and J.W. Nelson Chandler, both of Parker, Poe, Adams & Bernstein, of Charleston, and William S. Duncan, of Georgetown, for Respondents.

Opinion

Acting Justice KITTREDGE:

***13** This is an appeal from a circuit court order that dismissed Appellant's appeal from an order of the probate court. The circuit court held that Appellant failed to file her notice of appeal in the circuit court within ten days of receiving the probate court order, as required by South Carolina Code section 62-1-308(a) (Supp.2004). We affirm.

FACTS

Appellant received the probate court order on December 19, 2002. According to Appellant, on December 20, she mailed original notices of appeal to the probate court and the circuit court and mailed copies to Respondents' attorneys.¹ Because there was no record that a notice of appeal had been filed in the circuit court within ten days of December 19, the circuit court held that Appellant failed to timely file her notice of appeal under South Carolina Code section 62-1-308. The circuit court therefore dismissed the appeal.

The sole issue is whether the notice of appeal was timely filed in the circuit court.

***14 ANALYSIS**

South Carolina Code section 62-1-308 governs an appeal from a probate court order to the circuit court. The statute provides in pertinent part:

A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice

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1710 MARKET STREET
COLUMBIA, SC 29201

*of the appealed from order, sentence,
or decree of the probate court.*

§ 17-1-10(a) (Supp.2004) (emphasis added).

We decline Appellant's invitation to construe the statute in a manner inconsistent with its unambiguous terms. Our settled rules of statutory construction mandate the ****117** result we reach, for the statute is clear that the notice of appeal "must be filed" in the circuit court within the ten-day period. See *State v. ...* (2005) 365 S.E.2d 116. ("When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer."); see also *State v. ...* 358 S.C. 382, 387 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction).

Footnotes

The evidence of mailing is an affidavit of Appellant's attorney's secretary. December 30, 2002, was the last day for filing. See Rule 6 and 7 E.S.C.R.P.

CONCLUSION

The circuit court properly dismissed Appellant's appeal from the order of the probate court. The judgment of the circuit court is

AFFIRMED.

MORRIS, A.C.J., WALLER, BURNETT, JJ., and Acting Justice JAMES R. BARBER, III, concur.

Parallel Citations

615 S.E.2d 116

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325 S.C. 363
Court of Appeals of South Carolina.

Terese Gagnon WITZIG, Respondent,
v.

Wendy A. WITZIG, Individually and as Personal
Representative of the Estate of Fred Witzig,
and the Estate of Fred Witzig, Appellants.

No. 2601. | Submitted Oct.
1, 1996. | Decided Dec. 9, 1996.

Application to remove personal representative of decedent's estate was denied and the Circuit Court, Aiken County, Robert A. Smoak, Jr., Master-In-Equity, denied motion to dismiss appeal and reversed decision of probate court denying removal application. Appeal was taken, contesting timeliness of appeal from probate court order. The Court of Appeals, Hearn, J., held that: (1) ten-day statutory period for appealing probate court order applied, rather than default rule providing 30 days for appealing when no time is fixed by statute, and (2) pleadings rule providing an additional five days to respond to paper served by mail did not apply.

Reversed.

West Headnotes (3)

1. Statutes

→ General and specific statutes

Statutes

→ General and specific statutes

Specific laws prevail over general laws and later legislation takes precedence over earlier legislation when construing statute.

→ Cases that cite this headnote

2. Courts

→ Review and vacation of proceedings

Rule requiring service of notice of appeal within 30 days after receipt of written notice of judgment when no other time is fixed by statute did not apply to appeal from probate court order; statute required that notice of intention to appeal

be filed and served within ten days after receipt of written notice of order. Code 1976, § 62-1-308(a); Rules Civ. Proc., Rule 71.

→ Cases that cite this headnote

(3) Appeal and Error

→ Time for filing

Rule permitting additional five days to respond when notice or paper is served by mail did not provide additional five days to file notice of intent to appeal; rule was pleadings rule that applied only when service was effective upon mailing and deadline for filing notice of intent to appeal did not begin to run until receipt of notice of order appealed from. Code 1976, § 62-1-308(a); Rules Civ. Proc., Rule 6(c).

→ Cases that cite this headnote

Attorneys and Law Firms

**298 *364 Jacob L. Scheff, Aiken, for appellants.

Richard L. Pearce, Toole & Toole, Aiken, for respondent.

Opinion

HEARN, Judge:

Respondent, Terese Gagnon Witzig, commenced this action to remove Appellant, Wendy Witzig, as the personal representative of the estate of her father, Fred Witzig. The probate court denied the removal and the master-in-equity reversed the decision of the probate court. We reverse and reinstate the order of the probate court.

FACTS

Respondent and Fred Witzig were married on May 24, 1986. On May 24, 1994, the Circuit Court of Madison County, Alabama, issued a Final Judgment of Divorce from Bed and Board to Fred and Terese Witzig. That order incorporated an agreement between the deceased and Respondent which equitably divided their property and allegedly resolved all issues relating to the dissolution of their marriage.

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Fred Witzig resided in Aiken County at the time of his death on December 24, 1994. His daughter, the Appellant, was appointed personal representative of his estate on January 10, 1995. Thereafter, Respondent sought to remove Appellant and have herself appointed personal representative on the ground that she was the wife of the deceased.

The probate court, relying on S.C. Code Ann. § 62-2-802(b), held that Respondent was not the surviving spouse of Fred Witzig. Pursuant to that provision of the probate code, "a surviving spouse does not include... (3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses." Therefore, by order dated April 25, 1995, the probate court denied Respondent's application to remove Appellant as personal representative.

Respondent's attorney received a copy of the probate court's order on May 1, 1995. The appeal was referred, with finality, to the master-in-equity for Aiken County. Respondent filed a notice of appeal to the circuit court dated May 15, 1995. Thereafter, Appellant filed a motion to dismiss the appeal, asserting the appeal was not timely filed.

****299** By order dated December 15, 1995, the master-in-equity, sitting as special circuit judge, denied Appellant's motion to dismiss the appeal and reversed the decision of the probate court, holding that the Alabama decree did not terminate all property rights and that S.C. Code Ann. § 62-2-308(a) was thus inapplicable.

DISCUSSION

On appeal, Appellant asserts, *inter alia*, that the master erred in failing to dismiss the appeal because it was not timely filed. We agree.

The master found Respondent filed her appeal within fifteen days of the mailing of the probate court order. Although he recognized that S.C. Code Ann. § 62-2-308(a) (1987) requires that the notice of intention to appeal from probate court to circuit court must be filed and served within ten days after receipt of written notice of the order, he held that, because the order was mailed, Respondent was afforded five additional days due to mailing. The master also held that Rule 71, SCRCP, allowed an appellant thirty days in which to appeal to circuit court.

Section 62-2-308(a) provides that notice of intention to appeal from the probate court to the circuit court "must be filed in the office of the circuit court and in the office of the probate court and a copy thereof served on all parties within *ten* days after receipt of written notice of the decision appealed from order, sentence, or decree of the probate court." (emphasis added). Rule 60, SCRCP, states: "Whenever a party has the right or is required to do some act ***366** or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail ... five days shall be added to the prescribed period." Rule 71, SCRCP, imposes a general thirty-day deadline for filing notice of appeal to the circuit court from the order of an inferior court. While it requires service on all parties of notice of appeal "within thirty (30) days after receipt of written notice of the judgment, order, or decision appealed from," Rule 71 applies only "when no time is fixed by statute." Rule 71, SCRCP.

[1] [2] It is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation. *Flanagan v. State*, 243 S.C. 401, 408, 418 S.E.2d 243 (1995). Thus, the specific ten-day filing period provided by S.C. Code Ann. § 62-2-308(a) controls over the general provisions of Rule 71, SCRCP. Moreover, although Rule 71, which was adopted prior to the enactment of the amended version of section 62-2-308(a), provides thirty days for appeals to circuit court, it specifically states "the notice of intention to appeal shall be filed ... within the time provided by the statute, or by this rule when no time is fixed by statute...."

[3] Rule 60, SCRCP, does not provide an additional five days to file a notice of intent to appeal. Unlike Rule 71, SCRCP, and S.C. Code Ann. § 62-2-308(a), which pertain to appeals, Rule 60 is a pleadings rule and applies only when service is effective upon mailing. The extra five days provided by Rule 60(e) compensates for the time notice is in the mail. James F. Flanagan, *South Carolina Civil Procedure* 27 (2d ed. 1996). Even though an order is effective when filed and may be served by mail, the deadline for filing notice of intent to appeal does not begin to run until receipt of the notice of the order appealed from, as opposed to the date the notice of the order was mailed. S.C. Code Ann. § 62-2-308(a) (requiring notice of intention to appeal within ten days after receipt of notice of probate court's order).

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COURT OF COMMON PLEAS

Witzig v. Witzig, 325 S.C. 363 (1996)
479 S.E.2d 297

Because of our disposition of this issue, it is not necessary for us to reach the remaining grounds for appeal raised by Appellant. Respondent's appeal from the probate court order *367 was not timely filed; therefore, the master's order must be reversed and the order of the probate court reinstated.

REVERSED.

CONNOR and STEWELL, JJ., concur.

Parallel Citations

479 S.E.2d 297

Footnotes

We decide this case without oral argument pursuant to Rule 213, S.C.A.R.

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CLERK OF COURT
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2014 SEP 30 PM 2:08
M. J. [illegible]

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-1081

Lenora Whitfield Tucci

April Tucci

PLAINTIFF(S)

Francis Paul Tucci Jr

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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. See Page 2 for additional information.
- 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:

This matter is before the Court on motion of the plaintiff, pursuant to Rule 59(2), SCRPC, to alter or amend the judgment entered on September 30, 2014, dismissing an appeal from the Probate Court for failure to perfect pursuant to S. C. Code Section 62-1-308.

This Court finds that the grounds stated in the motion have previously been argued and considered by the Court in its decision to dismiss the appeal and therefore further oral argument is not now necessary. Having considered the grounds, the previous argument of counsel, and the applicable law, this Court finds that the plaintiff's motion to alter or amend its previous judgment should be and is therefore denied.

ORDER INFORMATION

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

CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 20 PM 3:29
M. HOPE BLACKLE

INFORMATION FOR THE JUDGMENT 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.**

William D.
Circuit Court Judge

2053
Judge Code

11-20-14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 20th day of Nov., 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of Nov., 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel
175 Magnolia Street, Suite 201
Spartanburg, SC 29306
ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Shaw and Heather G. Hunter
PO Box 891
Spartanburg, SC 29304
ATTORNEY(S) FOR THE DEFENDANT(S)
M. Hope Slackley
CLERK OF COURT

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 20 PM 3: 29
M. HOPE SLACKLEY

Shawn M. Campbell
Kenneth P. Shabel

Campbell & Shabel

ATTORNEYS AT LAW

OF COUNSEL:
Sean Giovannetti

Sender's Email: kshabel@gc-lawfirm.com

January 9, 2015

VIA FACSIMILE (cover only) AND REGULAR MAIL

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211,
Fax: 803-734-1839

RE: Lenora Whitfield Tucci v. April Tucci and Robert D. Ganyard, Personal
Representatives of the Estate of Francis Paul Tucci
Appellate Case Number 2014-002726

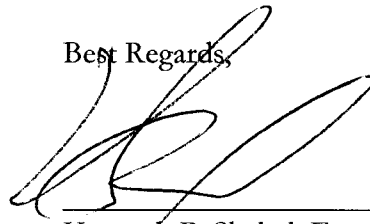
Dear Ms. Kitchings:

I have received your letter dated December 31, 2014. This case began as a Probate Case and was appealed to the Court of Common Pleas. Therefore, to ensure you have everything you need, I am enclosing the following six documents:

1. Summons and Petition for Elective Share (filed May 31, 2013)
2. Summons and Petition for Allowance of Claim (filed July 9, 2013)
3. Probate Court Order on Petitions (filed February 28, 2014)
4. Notice of Intent to Appeal to Circuit Court (filed March 13, 2014)
5. Order dismissing appeals (filed September 30, 2014)
6. Order denying Motion for Reconsideration (filed November 20, 2014)

Do not hesitate to contact me if you need additional documentation.

Best Regards,



Kenneth P. Shabel, Esq.
Campbell & Shabel, LLC
175 Magnolia Street, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Appellant

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JAN 14 2015

SC Court of Appeals

*Shawn M. Campbell
Kenneth P. Shabel*

Campbell & Shabel

ATTORNEYS AT LAW

*OF COUNSEL:
Sean Giovannetti*

Sender's Email: kshabel@gc-lawfirm.com

\Enclosures

cc: James W. Shaw, Esq. (Cover Letter only)

CAMPBELL & SHABEL, LLC
175 MAGNOLIA STREET, SUITE 201
SPARTANBURG, SC 29306

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The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
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