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THE STATE OF SOUTH CAROLINA
In the Supreme Court

SEP 10 2015

S.C. SUPREME COURT

In the Matter of the Estate of Willie Rogers Deas.
Carolyn Deas,

Petitioner,

v.

Marvadine Giles a/k/a Marvdine Giles,
Willie Deas, Jr., Michelle Deas, Rodney
Branton, Moya Branton, Whitney Beaufort,

Defendants,

Of whom Marvadine Giles a/k/a Marvdine
Giles is the Appellant.

Respondent.

Lower Court Case No. 2012-CP-22-00971
Appellate Case No. 2015-000979

PETITION FOR REHEARING

Appeal From Georgetown County
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Malcolm M. Crosland, Jr.
J. Kevin Holmes
Charles S. Goldberg
THE STEINBERG LAW FIRM LLP
No. 61 Broad Street, P.O. Box 9
Charleston, South Carolina 29402
(843) 720-2800
Attorneys for Petitioner

The Appellant, Marvadine Giles a/k/a Marvdine Giles, respectfully petitions for a rehearing under S.C.R.A.P. 221(a) on the grounds the Court misapprehended or overlooked certain facts which warrant withdrawal of the Court's opinion filed August 26, 2015, further briefing and/or oral argument, and affirmance of the lower court's Decision and Order filed February 4, 2015.

As the Court's decision filed August 26, 2015 correctly notes there is no dispute the Appellant's appeal of the Probate Court's decision dated August 29, 2012 was required to be filed and served by September 10, 2012. There is no dispute on September 6, 2012, Appellant's counsel placed a letter and Notice of Appeal in the United States mail, Certified Letter No. 7010 1870 0000 0648 5476, addressed to the Clerk of the Circuit Court, the Probate Court, and opposing counsel. (Hearing Exhibits A, B, and C) [R., pp. 36 - 38]. There is no dispute the certified letter and Notice of Intent to Appeal to the Clerk of the Circuit Court was addressed to 401 Cleland Street, Georgetown, South Carolina 29442, the address published for the Clerk of the Circuit Court in the 2012 Lawyer's Desk Book published by the South Carolina Bar. There is no dispute the certified letters and Notice of Intent to Appeal were received and signed for by the Probate Court on September 7, 2012 and by opposing counsel on September 10, 2012. (Hearing Exhibits D and E) (R., p. 42).

There is no dispute that, unbeknownst to Appellant's counsel, the Clerk of the Circuit Court instructed the Post Office to deliver all mail, even mail addressed to the Clerk's physical address, to its Post Office Drawer 479. [R., pp. 54 - 55].

There is no dispute the certified letter and Notice of Appeal were timely delivered to the Post Office Box designated by the Clerk of the Circuit Court on September 10, 2012. The Appellant obtained the tracking information for the certified letter addressed to physical address of the Circuit Court Clerk of Court. (Hearing Exhibit F) (R. p. 43]. The tracking sheet shows the letter and Notice of Intent to Appeal were delivered to the Clerk of Court's Post Office Box at 9:45 a.m. on September 10, 2012. (Hearing Exhibit F) [R. p. 43].

The Clerk of Court testified they customarily pick up the mail at Post Office Box at 9:00 a.m. and 3:30 p.m. [R., pp. 55 – 56]. The Clerk of Court speculated the certified letter could have been placed in Georgetown County's general post office box instead of the Clerk's post office box and, therefore, was not picked up with the afternoon mail on September 10, 2012. (R., pp. 55 – 56]. The Clerk of Court further speculated that, since the letter and Notice of Intent to Appeal were not actually picked up from the post office until September 11, 2012, one day late, it was not clocked in by the Clerk's Office for another three days until September 14, 2012. [R., p. 56].

The certified letter and Notice of Appeal were not delivered to the physical address of the Clerk's Office as requested. Had it been delivered as requested, there is no dispute it would have been timely. The certified letter and Notice of Appeal, however, were diverted to a Post Office box designated and requested by the Clerk of the Circuit Court. It was timely delivered to the Post Office Box designated by the Clerk of the Circuit Court at 9:45 a.m. on September 10, 2012. (Hearing

Exhibit F) (R., p. 43]. The Appellant should not be penalized and lose her right to appeal because the Clerk of Court did not pick up the certified letter and Notice of Intent to Appeal until the next day on September 11, 2012, and, thereafter did not stamp the Notice of Appeal as having been received until three days later on September 14, 2012. (Hearing Exhibit A) [R., p. 36].

CONCLUSION

The Appellant's rights should not be lost because of the Clerk failed to collect the certified letter and Notice of Appeal timely addressed to the Clerk of the Circuit Court's physical address as published in the South Carolina Bar Lawyer's Desk Book. The Appellant respectfully requests that the Court reconsider the undisputed facts that the certified letter and Notice of Appeal were timely delivered to the Post Office Box designated by the Clerk of the Circuit Court giving the Clerk at least constructive possession of the documents. The Appellant requests that the Court reconsider its decision dated August 26, 2015, allow further briefing and/or oral argument, and affirm of the Decision and Order of the court of Appeals filed February 4, 2015.



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Charleston, South Carolina
September 9th, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Petition for Rehearing complies with Rule 211(b) of the South Carolina Appellate Court Rules and served upon:

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September 9, 2015.



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