

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
Ellis B. Drew, Master in Equity

JAN 06 2016
SC Court of Appeals

Case No. 2014-CP-37-00143
Appellate Case No.: 2015-001860

Polly Thompson,..... Respondent,
v.
Cathy Swicegood,..... Appellant.

MOTION TO STAY APPEAL

Appellant hereby moves to stay the appeal pending the resolution of the issue of marriage between the parties in (Appellate Case No.: 2014-001109).

This action involves a partition of two pieces of real property jointly owned by the parties to this action. The parties to this action are also involved in a separate appeal arising out of the family court involving a question as to the parties' marital status. (Appellate Case No.: 2014-001109).

The final ruling on the issue of marriage will be important in the present case as the issue of circuit court's subject matter jurisdiction over litigation of the parties' respective interests in jointly owned real property turns on the resolution of marriage issue. In the event that litigation ends in with a final

determination that the parties are married under the common law, then the issue of the validity of the circuit court's order is at issue on one or more grounds. In the event that the parties are determined to be married, the circuit court would lack subject matter jurisdiction and the master's order of partition and attorney fees would be void *ab initio*. Hammer v. Hammer (S.C. App. 2012) ("A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.' . . . Generally, a judgment is void only if a court acts without jurisdiction."); S.C. Const. art. V, § 11 (2009) (delineating the jurisdiction of the circuit court); Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 100, 674 S.E.2d 524, 528 (Ct. App. 2009) (defining subject matter jurisdiction as the power to hear and determine cases of the general class to which the proceedings in question belong).

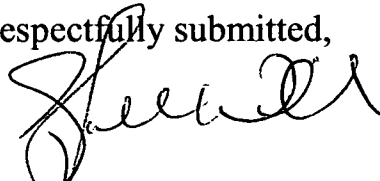
If the parties are ultimately determined to be married, then the Appellant is entitled to have her interests determined in family court under the principals of equitable division. Equitable division of the marital estate in the family court would allow full consideration of the Appellant's direct and indirect contributions to the marriage, which is a different standard than was applied by the circuit court in the present case. This would require in turn that this case be

remanded and the decision below vacated to allow the parties' marital interests in real property subject of this action to be litigated in the family court under an equitable distribution analysis.

Wherefore, as the marital status of the parties is the subject matter of pending litigation, the present case should be stayed pending the final resolution of the issue of marriage. A stay is necessary to protect the interests of the Appellant as the as the law and analysis applied by the circuit court in determining the Appellant's interest in the subject property was different than the law and analysis applied in the family court for equitable division of the marital estate.

Wherefore, Appellant moves to stay the appeal until the marital status of the parties is finally decided in (Appellate Case No.: 2014-001109).

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
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(864) 282-1292
Counsel for Appellant

December 4, 2015.

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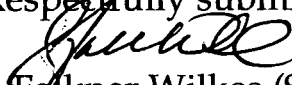
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Polly Thompson,..... Respondent,
v.
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CERTIFICATE OF SERVICE
FOR INITIAL BRIEF OF APPELLANT AND MOTION TO STAY

I certify that on January 4, 2016, I served the Initial Brief of Appellant and Motion to Stay on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

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Respectfully submitted,

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