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THE COURTYARD

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SC Court of Appeals

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EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

January 4, 2016

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: **Appellate Case No. 2015-000873**

*Melanie J. Newman, Melissa J. Arce, Winona M. Newman and Christopher J. Newman In
Re: Estate of John Percy Newman vs. Virginia K. Newman, Individually and Virginia K.
Newman, As Personal Representatives of The Estate Of John Percy Newman*

AND

*Virginia K. Newman, Individually and Virginia K. Newman, As Personal Representatives of
The Estate Of John Percy Newman V. Melanie J. Newman, Melissa J. Arce, Winona M.
Newman and Christopher J. Newman In Re: Estate of John Percy Newman*

Case No. 2013-CP-22-1231

Our File No. 2015-0106C

Dear Ms. Kitchings:

It is my understanding I am to provide the Court with status reports concerning this matter. I enclose a copy of the Order signed by Judge Seals which was sent for filing in the Circuit Court on December 31, 2015. As soon as I received a clocked copy of the Order I will forward it to you. It is my understanding that once I receive a clocked copy of the Order that we will have thirty (30) days to file an Initial Brief and Designation of Matter with this Court.

Sincerely yours,



Gene M. Connell, Jr.

GMC, Jr.:sm

Enclosure

cc: **Branan J. Williams, Esquire**
Charles O. Nation, II, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2013-CP-22-1231

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SC Court of Appeals

Melanie J. Newman, Melissa J. Arce,)
Winona M. Newman and Christopher J.)
Newman,)

Petitioners,)

vs.)

Virginia K. Newman, Individually and)
Virginia K. Newman, as Personal)
Representative of the Estate of John Percy)
Newman,)

Respondent.)

In re: Estate of John Percy Newman)

ORDER

Virginia K. Newman, Individually and)
Virginia K. Newman, as Personal)
Representatives of the Estate of John Percy)
Newman)

Petitioner,)

vs.)

Melanie J. Newman, Melissa J. Arce,)
Winona M. Newman, and Christopher J.)
Newman,)

Respondents,)

In re: Estate of John Percy Newman)

This matter is before the Court on a Petition for Supersedeas filed by the Petitioners Melanie J. Newman, Melissa J. Arce, Winona M. Newman and Christopher J. Newman (hereinafter "Petitioners") and a motion to set a bond filed by the Respondent, Virginia K. Newman, Individually and Virginia K. Newman, as Personal Representatives of the Estate of

John Percy Newman (hereinafter "Respondent"). The Petitioners request that the Court stay the enforcement actions in regard to this case until the South Carolina Court of Appeals may hear it. The Respondent, Virginia K. Newman, requests that the Court allow her to sell certain real property to pay administrative expenses and attorney's fees.

This matter arises from orders issued in the probate court and from orders of this court reversing the orders of the probate court. Briefly stated, John Percy Newman had four children from his first wife. Virginia K. Newman met John Percy Newman and moved in with him. Eventually John Percy Newman and Virginia K. Newman procured a marriage license and married at John Percy Newman's home in a private ceremony. Winona Newman and Melissa Arce, two of the children, filed a petition in probate court to be appointed as John Percy Newman's guardians. As a result of the filing of the guardianship action and the conservatorship action, John Percy Newman was examined on August 20, 2009, approximately six weeks after the marriage, by Dr. Romeo Nillas, an internist, who opined to a "reasonable degree of certainty John Percy Newman was an incapacitated person based on a mental deficiency and was unable to manage his own mental health." Further, on October 3, 2009, John Percy Newman was examined by Kathleen A. O'Leary, who also stated to a "reasonable degree of medical certainty that John Percy Newman was incapacitated and in need of a conservatorship/guardianship based on mental illness." A third physician, William A. Van Horn of Coastal Neuropsychiatry, offered an opinion on November 18, 2009 that John Percy Newman was competent to make legal decisions and recommended formal neuropsychological care to better clarify his cognitive capacity.

Thereafter, the Honorable Waldo Maring, Probate Judge for Georgetown County, ordered the parties mediate this matter and appointed G. Michael Smith, an attorney in Conway, South Carolina, as the mediator. On January 4, 2010, a mediation results report was executed by him

and filed with the probate court on January 8, 2010. The mediation results report reflects the guardianship action and the conservatorship action were fully settled and a consent order ending the case would be filed with the probate court. This Consent Order ending the case was filed August 9, 2010.

One year after the consent order was executed, Virginia K. Newman appealed the order of the probate court to the circuit court. The Honorable Larry B. Hyman, Jr., sitting Circuit Judge at that time, reversed the consent order of the probate court and ordered that certain personal and real property be sold to pay administrative fees, namely legal fees for Virginia K. Newman and her attorney. Currently, Virginia K. Newman lives in the cabin on the family homestead which is the property which they wish to sell. Petitioners have moved this court for a *supersedeas* pending review by the South Carolina Court of Appeals or in the alternative that Virginia K. Newman have a bond if she wishes to sell property pursuant to the Order of Judge Hyman

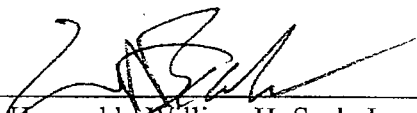
I have thoroughly reviewed the Petition for Supersedeas and the motion to sell real property which both are pending before me. I have also reviewed South Carolina Appellate Rule 241(c)(2). It provides that I must consider (a) whether such an order is necessary to preserve jurisdiction of the appeal; or (b) to prevent a contested issue from becoming moot.

I find that a supersedeas is necessary to preserve the status quo pending this appeal, especially in light of the fact that Virginia K. Newman wishes to sell real property to pay administrative fees. This is the crux of Appellants' case and if this Court were to allow this to occur then this case would become moot. See *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E. 2d 469, 470 (Ct.App. 1990) (the purpose of a supersedeas...is to...stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal...to preserve to appellant the fruits of the meritorious appeal where they may might otherwise be lost to him.”)

Here, without an order of supersedeas or the requirement of a bond to sell real property the appeal would be meaningless. I find the status quo should be preserved especially in light of S.C. Code Ann. §18-9-130(A)(2) which requires a bond with two good sureties and double the appraised value if property is to be sold pending an appeal.

Accordingly, this Court grants the Petition for Supersedeas and stays this matter pending the outcome in the South Carolina Court of Appeals. The Court finds that this case qualifies for preserving the status quo and that there is no prejudice to Virginia K. Newman as she continues to live on the property in question.

AND IT IS SO ORDERED.



The Honorable William H. Seals Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

12/2, 2015

Conway, South Carolina

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

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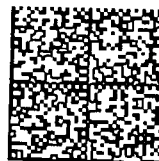
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