

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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FEB 12 2016

SC Court of Appeals

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Appeal from York County  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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Circuit Court Case No. 2015-CP-46-00466

Appellate Case No. 2016-000096

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Mary Jean Tucker Swiger (deceased), Sister of Vinton Tucker, by and through her  
Substitute and Attorney-in-Fact, Carol DeHaven .....Appellant,

v.

Ben R. Smith and Margaret P. Kelly, as  
Personal Representatives of the Estate of  
Vinton Willis Tucker ..... Respondents

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Appellants Response to Respondents' Motion to Dismiss Appeal

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Please take notice that the Appellants move the Court to dismiss the motion of the  
Respondents to Dismiss the Appeal. The Motion to Dismiss was received by the  
Appellants by post office general delivery the afternoon of February 5, 2016. Therefore,  
we are asking for the full ten days to respond to this motion. The Appellants request that  
Respondents attorney, Michael Brackett also send any legal documents to the following

facsimile number that he has on file at present: 540.972.7683 and to the Attention of Janet Loeffler, as well as by postal service.

As to Ground 1. The Respondents are attempting to prevent this case from consideration by the Court of Appeals. Page 2, line 8 states that “this precise question has not been addressed by our courts, but...”. Respondents are attempting to establish precedent by stating that a substitute cannot be the legal representative for the appellants. They have not offered any case law to establish their claim as apparently scant amounts exist. I have also not been able to find case law on this issue.

Part of the case history is as follows as to why substitution was allowed. This case has been before the Courts since May of 2013. The Respondents, through their Attorney, Michael Brackett, have delayed this matter going to trial first through making a motion to compel my mother to be brought to South Carolina for deposition and then through Summary Judgment. It took six months from the request to bring her for deposition, filing the motion to compel my mother to come for deposition, a hearing, and then the deposition itself to be complete. We filed her medical records and a letter from her neurologist to show we were acting in good faith. Nevertheless, we were ordered to bring her to South Carolina from Virginia by Judge Rogers. She never recovered from the strenuous nature of the trip. She exhibited severe neurological decline within a few hours of her time at the deposition. She was hospitalized shortly after her return and was never able to return home. It would have been to our benefit to have her give her testimony. Mr. Brackett knew from the deposition since she could only say one coherent statement (they stole my brother) and that my mother was legally incompetent. In fact, he was the one

that had my name added to the case, and I was substituted by court order from Judge Rogers per his request. Now he is trying to say I cannot act as her in this case. Case law strongly supports an appellant or respondent representing themselves. I am not going to add to the length of this response unless desired by the court as case law is well known and established on personal representation. The question now is whether I am legally going to be considered as my mother and therefore able to represent myself. My mother died on October 6, 2015.

None of the case law that is submitted by the Respondents in the motion pertains to an Appellant being dead and the court ordered substitute not being allowed to stand in for the original Appellant. We are not implementing a case; we are continuing a case already in progress. It is not the intent of the law for a case to end because one of the parties dies before the case is completed. It is also not the intent of the law for a party who can no longer pay an attorney to not be able to have their say in court. We have had legal representation prior to this appeal. However, the ability to continue this case should not depend on unlimited funds by the appellant or by the Respondents using the strategy of making legal representation so costly through court avenues that we are forced to end our cause early, therefore giving them a favorable outcome. Mr. Brackett is paid through the estate; we have paid many thousands of dollars in this case because we believe the chain of events is so unusual and questionable that it deserves a jury trial. Also of note, I am a nurse practitioner with more than 37 years experience. My mother has two more additional daughters who are registered nurses with a combined experience of almost 50 years. They have worked emergency room, intensive care, and operating room. It is one

reason we know that the events claimed by the respondents are so unusual and we desire this case to be heard by a jury.

Continuing, Rule 25 (a)(1) allows for substitution based on incompetency or death. Carol DeHaven was substituted for Mary Jean Tucker Swiger by Judge Rogers in the ruling sent with the Notice of Appeal dated January 12, 2015. Since: 1. Carol DeHaven was substituted for Mary Jean Tucker Swiger, 2. our claim is not dismissed yet by the appeals court, 3. Since I may represent myself, the charge of practicing law without a license is nullified.

In response to page 2, line 4, Rule 203(B)(ii), specifies "a copy of the order(s) and judgment(s) to be challenged on appeal". Appellants maintain that by sending a (do not know what to call it) document from Judge Rogers that pertains to the order and is very detailed about her findings serves as adequate notice of the order in dispute. Copies of the document that the respondents apparently refer to have been included in this response package. Therefore, the Probate Court Summary Judgment Order is included in this appeal.

See statements also in Ground 2, first paragraph.

Respondents are attempting to link that a Notice of Appeal and proper filing of an appeal must be done AND filed by an attorney or the appeal is not a legal document. They claim that since I am not an attorney, anything I file is not legal. First, this is not true if I am considered the legal substitute for my mother. In addition, Rule 203 does not state only a lawyer can file a Notice of Appeal in any section. Therefore, this claim should be nullified.

Ground 2. Please consider above information presented in Ground 1.

Page 4 lists that only “one Order was sent” from Judge Sprouse dated December 22, 2015 and that since Judge Roger’s order (first Summary Judgment Probate Court ruling) is considered a letter, it does not comply with requirements of appellate rules and the appeal should be dismissed. The motion does not identify what rule has been violated. In Appendix B of the Appeals Chart detailing the process and steps of appeal, Judge Sprouse’s ruling is the latest and last ruling in the process. Rule 203(d)(1)(B)(ii) contains no requirement that a previous judge’s ruling be included, only the rulings to be challenged on appeal. There is also no requirement that six copies be sent to the Appellant court in Rule 203. We disagree that the Notice of Appeal was improperly filed.

As to the failure to refer to the summary judgment order, I ask you to look at the Filing the Notice of Appeal number 2. The Orders/judgments are specifically listed. IF I have erred with the order of Judge Rogers, I will find the correct order that Mr. Brackett has stated exists (I do not have it) and correct it. Not submitting the correct order from Judge Rogers is a clerical error only. Update: I received the order and am enclosing it with this mailing, including six copies.

I state that I have filed the correct documents (both service and filing) and the final order from Judge Sprouse has been submitted within the thirty-day limit. Respondents’ attorney received the service and filing document by facsimile on January 15, 2016 and then by mail on January 19, 2016. The Supreme Court of South Carolina received and stamped the filings on January 20, 2016 and gave it a case number (enclosed) and then referred the case to the South Carolina Court of Appeals. Respondent are contending that

the appellant has past timely filing and is too late to correct any filing problems identified by the Respondents. Since appellants filed the correct documents in the original filing, arguments that the Appellants filings are late are not substantiated.

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What I hope will not happen is a series of motions by the Respondents attempting to find any legal loophole to keep this case from being heard in an attempt to wear us down and, as has already occurred, wear us down financially. It has been a long journey for us to get justice for our uncle. My mother charged me, and I promised her, I would see this case to the legal end. She was personally greatly hurt by the actions of the Respondents. She was "notified" of her brother's death by receiving the probate notice from the probate court. The first attempt to file the documents was done about five days after my uncle's death. They should have been having a funeral instead and honoring this man's upstanding life. They never sent a copy of the Will as she requested in writing at this first notice. After that and as she became more debilitated, every man that looked like her brother, she checked out to see if it was Vinton because he was "lost". Her last memories of him were of her looking for him and not being able to find him. I hope the court understands that much evidence has not been entered into the summary judgment proceedings because it was expected to go to trial. We did not want to subpoena people until it was time for trial. Obviously, we would not have spent a year in summary judgment if we had done so. We also want the Respondents actions to be weighed by a jury and not just through case law. A jury will determine if the actions of the Respondents were the actions of credible and honest people acting in good faith to my uncle as well as determine the legal standing of our case. If I had the money to continue this case with an

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Substitute and Attorney-in-Fact, Carol DeHaven .....Appellant,

v.

Ben R. Smith and Margaret P. Kelly, as  
Personal Representatives of the Estate of  
Vinton Willis Tucker ..... Respondents

Appellants Certificate of Service

I, Carol DeHaven, as substitute for Mary Jean Tucker Swiger, do hereby certify that I  
have served the Respondents attorney, B. Michael Brackett, with a copy of  
Appellants Response to Respondents' Motion to Dismiss Appeal by United States  
Mail, postage prepaid and return address clearly on said envelope, on this tenth day  
of February, 2016 at the following address:

B. Michael Brackett  
1333 Main Street, Suite 260 (29201)  
Post Office Box 100261  
Columbia, South Carolina 29201-3261

I also certify that the above listed Appellants Response has been sent by facsimile to  
the above listed office of Mr. Brackett at 803.461-2309 and to the Clerk of the Court ,



February 9, 2016

Carol DeHaven  
6600 Hawkins Gate Road  
La Plata, MD 20646  
240.687-02220

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of the Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Swiger/DeHaven v. Smith and Kelly, as Personal Representatives  
Appellate Case No: 2016-000096

Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Appellants Response to Dismiss Appeal, together with the Certificate of Service. I have also facsimile one copy to your office on February 9, 2016. I am also enclosing, to you only, the first summary judgment order from Judge Rogers that I received on February 9, 2016. Respondents' attorney has a copy per his motion.

By copy of this letter, copies of the enclosed motion and certificate are being mailed and sent by facsimile to Respondents attorney, Michael Brackett.

My check for the amount of \$25.00 is enclosed. Please return a clocked copy of the face page of the motion using the envelope enclosed.

Sincerely,



Carol DeHaven

Enclosures

Cc: Margaret Kelly  
Ben Smith  
Michael Brackett



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