

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
Court of Common Pleas, as an Appellate Court

R. Scott Sprouse, Circuit Court Judge

RECEIVED

FEB 16 2016

Circuit Court Case No. 2015-CP-46-00466 **SC Court of Appeals**
On Appeal From the York County Probate Court

Appellate Case No. 2016-000096

Mary Jean Tucker Swiger, by and through
her 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.

Respondents' Reply to Ms. DeHaven's Response to Motion to Dismiss Appeal
and Respondents' Return to Ms. DeHaven's Motion to Dismiss Respondents' Motion

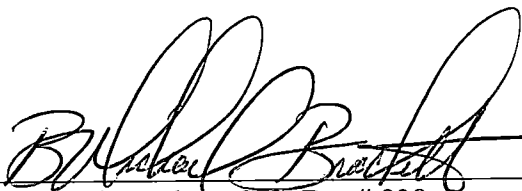
With respect to Ms. DeHaven's Motion to Dismiss the Respondents' Motion to Dismiss
Appeal (see the first paragraph in Appellant's Response) this is a pro forma Reply because the
Motion to Dismiss Respondents' Motion to Dismiss is an unnecessary procedural maneuver.

With respect to Ms. DeHaven's Response to Respondents' Motion to Dismiss Appeal, Ms. DeHaven discloses for the first time to the undersigned that Mrs. Swiger died on October 6, 2015. (Response, p. 3, l. 6-7). Attached is a copy of Mrs. Swiger's obituary obtained from Johnson Funeral Service's website. The Court may take judicial notice of information from reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014).

This fact cements the Respondents' Motion to Dismiss the Appeal. Ms. DeHaven had no authority even as an attorney-in-fact to sign, file and serve a Notice of Appeal. Ms. DeHaven especially had no authority to act when the durable power of attorney under which she purportedly acted terminated by operation of law as of the death of the principal, Mrs. Swiger. Dibble v. Thomas, 301 S.C. 314, 391 S.E.2d 729 (Ct. App. 1990).

Conclusion

Ms. DeHaven's Motion to Dismiss Respondents' Motion to Dismiss Appeal should be denied. For the reasons set forth in their Motion, and set forth hereinabove, Respondents' Motion to Dismiss Appeal should be granted.



B. Michael Brackett, S.C. Bar # 838
Adam T. Silvernail, S.C. Bar # 80219
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorneys for Respondents

February 12, 2016

(/home/index.cfm/main/default/fh_id/14925)

TERRENCE L. JOHNSON FUNERAL SERVICE, PA

Who We Are (/home/index.cfm/aboutus/default/fh_id/14925)

Contact Us (/home/index.cfm/aboutus/contact_us/fh_id/14925)

Directions (/home/index.cfm/facilities/default/fh_id/14925)

Send Flowers (http://www.ftd.com/bv14925/?enc_str=KlkcEQR4Q1Baa1Y6KzoxUBgLQBFDBSFOO1wP0AeLDU%2BFxMGXS8DBI58AH7ZntcY)

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Mary Jean Swiger of La Plata, Maryland | 1931 - 2015 | Obituary



Mary Jean Swiger

Born: April 08, 1931

Died: October 06, 2015

[Send Flowers](#) (http://www.ftd.com/bv14925/?enc_str=KlkcEQR4Q1Baa1Y6KzoxUBgLQBFDBSFOO1wP0AeLDU%2BFxMGXS8DBI58AH7ZntcY)

MARY JEAN SWIGER age 84 is survived by her loving family.

Share this obituary



SERVICES

Visitation/Viewing

Sunday, October 11, 2015

2:30 PM - 3:30 PM

Fellowship Church

9805 Faith Baptist Church Road
White Plains, Maryland 20695

[Get Directions on Google Maps](#)

Services

Sunday, October 11, 2015

3:30 PM

Fellowship Church

9805 Faith Baptist Church Road
White Plains, Maryland 20695

[Get Directions on Google Maps](#)

Burial will take place at 10 AM on
Thursday November 05, 2015 at
Arlington National Cemetery

[Send Private Condolences](#) » (/home/index.cfm/obituaries/condolence/fh_id/14925/id/3344398)

[Send Sympathy Card](#) » (https://www.expressionsofsympathycards.com/?

bccstring=RCwcNi9YSjM0NDMSOCZmaF9pZD0xNDkyNSZmYV9mbmFtZT0mZmFfbG5hbWU9JmZhX21uYW11PSZmYV9hZGRyZXNz

[View Guest Book](#) [Print Obituary](#) (/home/index.cfm?fh_id=14925&action=public:obituaries.print&id=3344398&printformat=htm)

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Sign Guest Book

Name *	<input type="text" value="Name (required)"/>
Location	<input type="text" value="Location"/>
Email *	<input type="text" value="Email (required)"/>
Personal Message	<input checked="" type="checkbox"/> Hide email
Enter Personal Message Here	
* Required Confirmation: (what is this?)	

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Mary Jean Tucker Swiger, by and through
her Attorney-in-Fact, Carol DeHaven Appellant,

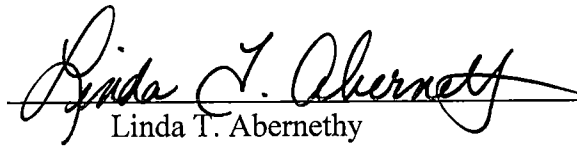
v.

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

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondents in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondents' Reply to Ms. DeHaven's Response to Motion to Dismiss Appeal and Respondents' Return to Ms. DeHaven's Motion to Dismiss Respondents' Motion** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 12th day of February, 2016 at the following address:

Carol DeHaven
6600 Hawkins Gate Rd.
La Plata, MD 20646


Linda T. Abernethy

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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B. Michael Brackett, Of Counsel
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

February 12, 2016

RECEIVED
FEB 16 2016
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

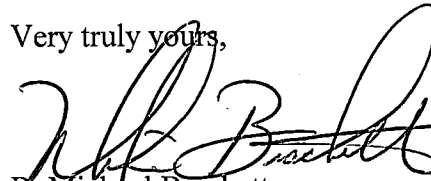
Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Respondents' Reply to Ms. DeHaven's Response to Motion to Dismiss Appeal and Respondents' Return to Ms. DeHaven's Motion to Dismiss Respondents' Motion. Also enclosed is the customary certificate of service.

By copy of this letter, copies of the enclosed Reply and certificate are being mailed to Ms. DeHaven at her address of record.

Please return a clocked copy of the face page of the Reply using the envelope provided.

Very truly yours,



B. Michael Brackett

Enclosures

cc: Margaret Kelly
Ben Smith
Carol DeHaven

Moses & Brackett, PC
Attorneys & Counselors-At-Law
P. O. Box 100261
Columbia, SC 29202-3261

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The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
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Columbia, SC 29211

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SC Court of Appeals

