

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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FEB 22 2016

SC Court of Appeals

Appeal from York County
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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

Appellate Case No. 2016-000096

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

v.

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

**Appellants Response to Respondents Reply and Response to Respondents Response
to Motion to Dismiss Appeal (Respondents Reply dated February 12, 2016).**

Mr. Brackett contends that I cannot act as my own attorney because my mother has died
and the Power of Attorney/substitution does not transfer to another after death. The facts
are as follows: I am one of two Executrixes of my mother's estate (Will enclosed). She
wrote a legal Will, dated July 9, 2009, appointing my sisters, Janet Loeffler and Rebecca
DeHaven as Executrixes of her estate. Per page 3, Article V, the powers of the Executrix may

be transferred. On August ^{20 CP} 1, 2014, my sister Janet Loeffler transferred executorship from her to myself as we planned to move my mother to the State of Maryland, and we expected her to reside in the State of Maryland until her death (see enclosed notarized copy). My mother formally resided in the State of Maryland from December 1, 2014 until her death on October 6, 2015. As one of two Executrixes of her Will, I have the authority to act on her behalf as I see fit and can complete legal cases, financial transactions, and sign legal paperwork. Although the Power of Attorney may have ended at her death, the legal powers transferred to the Executors. I contend that I can act as her attorney because I have been substituted for her prior to her death, I am her Executrix after her death, and no legal restrictions apply to my functions after her death to act on her behalf. In fact, law and case law strongly support fiduciaries, executors, and personal representatives to act on the best interest of the testator/deceased.

Also, my mother was 84 when she died. She was well aware that she likely would not live to see this case completed. That is why she signed the documents she thought would allow this case to go forward even with her death. Again, if case law does not address these points, it is for the Court to decide. Also cited in the previous petition, substitution is allowed in incompetency or death. She fulfilled both definitions.

Mr. Brackett restates the point that I had no authority "even as attorney in fact to sign, file, and serve a Notice of Appeal". I again cite Rule 203 as no statement exists that says only attorneys can file, sign, or serve an appeal.

Conclusion

Mr. Brackett's Motion to Dismiss Appeal should be denied, including any subsequent filings in regard to the Motion and this case be allowed to continue unimpeded. I also ask that my sister, Rebecca DeHaven, Executrix, and residing at 4019 Fall Oak Terrace Indian Land, SC 29707 be legally permitted to sign, obtain, and function as part of this case.



Carol DeHaven
6600 Hawkins Gate Road
La Plata, MD 20646
240.687-0220
Daughter, Substitute and Executrix for Mary Jean Tucker Swiger

February 18, 2016

COPY

LAST WILL AND TESTAMENT OF MARY JEANNE TUCKER SWIGER

I, Mary Jeanne Tucker Swiger, of Unionville, in the County of Orange, Virginia, being of sound mind and disposing memory, realizing the uncertainty of this life, but with confidence in God and trust in His Son, my Lord and Savior, Jesus Christ, who died for my sins upon the cross, and rose again to justify me and give eternal life, do hereby make, publish and declare this to be my Last Will and Testament, and hereby revoke any and all prior Wills and Codicils made by me, desiring this to be the final disposition of the worldly possessions which God in his pleasure had entrusted to my stewardship.

Article I. Distribution of My Estate.

A. I give my tangible personal property in equal shares to my children and grandchild Shannon Lea Everett who survive me; provided that my Executor may sell any articles of my tangible personal property that my Executor may deem inappropriate for distribution in kind and add the proceeds to my residuary estate. I may leave a signed writing indicating certain items of my tangible personal property that I request be distributed to the persons specified therein. I do not intend this writing to be binding upon my Executor. Tangible personal property includes stamp or coin collections but does not include other money or stock certificates or other evidences of intangible rights or interests. Tangible personal property does not include any property that is held primarily for investment purposes or used in connection with any business in which I may be engaged or in which I may have any interest at the time of my death.

The portraits which are a part of my tangible personal property shall be distributed to the person who is the subject of the portrait or, in the case of a minor, to my descendant who is the oldest direct ascendant of the subject of the portrait. In the event that there are multiple subjects from different family groupings within a painting, my executors shall make the decision as to the painting's distribution.

B. I give the residue of my real and personal estate to my descendants who survive me.

C. Whenever property is to be distributed to the descendants of a person (the "ancestor"), such property shall be divided into equal shares, one share for each then living descendant in the first generation below the ancestor in which at least one descendant is living, and one share for each deceased descendant in such generation who has a descendant then living. Each share created for a living descendant shall be distributed to such descendant. Each share created for a deceased descendant shall be divided and distributed according to the directions in the two preceding sentences until no property remains undistributed.

D. A person who has a relationship by or through legal adoption shall take under this will as if the person had the relationship by or through birth, except that a person adopted after reaching age twenty-one and descendants of such a person shall not so take.

M. J. T. S.
Page 1 --- Testator's Initials

E. Any beneficiary or the legal representative of any deceased beneficiary shall have the right, within the time prescribed by law, to disclaim any benefit or power under my will. When property is to be distributed to the descendants of a person and one such descendant disclaims his interest in all or a portion of such property, the disclaimed interest, determined as if the disclaimant were living at the time of distribution, shall be distributed to the then living descendants of the disclaimant; provided, however, that if the disclaimant has no descendants then living, the interest shall be distributed as if the disclaimant had predeceased the event that results in the distribution of the property.

F. Gifts of specific items of property mentioned in this will or any separate writing that is binding upon my Executor shall fail to the extent that I, or any duly authorized agent of mine, dispose of such property prior to my death. My Executor shall not substitute cash or any other assets for any such property.

Article II. Provisions for Interests Vesting in Beneficiaries Under Age Thirty-four. Notwithstanding the foregoing provisions, whenever any interest in my estate vests absolutely in a beneficiary under age thirty-four, my Trustee may retain the interest upon a separate trust and pay to the beneficiary as much of the net income or principal as my Trustee may deem appropriate to provide for the beneficiary's support, other needs or education until the beneficiary reaches certain target ages: first, at age twenty-six, when thirty three and 1/3 percent (33 1/3%) of the principal shall go outright to the beneficiary; next at age thirty when thirty three and 1/3 percent (33 1/3%) of the principal shall go outright to the beneficiary; and finally at age thirty-four when the remainder of the income and principal shall go outright to the beneficiary. If the beneficiary dies before reaching those ages, the interest shall constitute a part of the beneficiary's estate. While the beneficiary is a minor, any part of the interest may be distributed to a custodian (selected by my Trustee) for the beneficiary under the Virginia Uniform Transfers to Minors Act (21). In addition, any part or all of the interest may be distributed to the custodial trustee of any trust created for the beneficiary under the Virginia Uniform Custodial Trust Act. These are powers only and do not prevent absolute vesting of the interest in the beneficiary.

Article III. Payment of Expenses and Other Charges. I direct my Executor to pay my funeral and burial expenses (including the cost of a monument or marker over my grave). The estate, inheritance and similar taxes assessable on my death (including taxes on assets not passing under this will) shall also be paid as a cost of administering my estate and my Executor shall not request any beneficiary to pay any part of such tax.

Article IV. Miscellaneous Provisions.

A. Spendthrift Trust. To the extent permitted by law, neither the principal nor income of any trust shall be liable for the debts of any beneficiary or, except to the extent otherwise specifically provided, to alienation or anticipation by a beneficiary.

B. Matters of Interpretation. For simplicity, I have expressed pronouns and other terms in one number and gender, but where appropriate to the context these terms shall be

M. J. T. S.
Page 2 --- Testator's Initials

deemed to include the other number and genders. The underlined headings are for convenience and shall not affect interpretation.

Article V. Appointment of Fiduciaries and Powers.

A. I name my children, Janet Loeffler and Rebecca McDowell, to jointly serve as my Executor and my Trustee. If administration of my estate or trust should be necessary in any jurisdiction where my Executor or my Trustee is unable to qualify, or if my Executor or my Trustee deems it necessary for any other reason, I give to my Executor and my Trustee the power to designate any individual or corporation with trust powers to serve with my Executor or my Trustee or in my Executor's or my Trustee's stead. I request that no security be required of any Executor or Trustee, including an Executor or Trustee named pursuant to the preceding sentence. References in my will to my "Executor" and my "Trustee" are to the one or ones acting at the time, except where otherwise specifically provided.

B. Any corporate Executor or Trustee shall receive for its services the compensation for which it is willing to undertake similar services for others at the time such services are rendered, as evidenced by its published fee schedule in effect from time to time, unless it is willing to agree upon a fee that is less than its customary fee.

C. In addition to the powers granted by law, I grant my Executor and my Trustee the powers set forth in Section 64.1-57 of the Code of Virginia, as in force from time to time, and I incorporate that Code Section in my will by this reference. I hereby waive the "prudent investor" rule. I direct that my Trustee shall not be required to file annual accounts with a court as otherwise required by Virginia law. My trustee may merge any trust under this will with any trust having the same trustee and substantially the same dispositive provisions. If at any time after my death the size of any trust under this will is so small that, in the opinion of my Trustee, the trust is uneconomical to administer, my Trustee may terminate the trust and distribute the assets to the person or persons authorized to receive the trust income in such shares as my Trustee may deem appropriate. No Trustee who is also an income beneficiary of the trust at issue shall exercise any discretion granted in the preceding sentence. My Executor and my Trustee may distribute tangible personal property passing to a minor to any adult person with whom the minor resides, and that person's receipt shall be a sufficient voucher in the accounts of my Executor and my Trustee.

Article VI. The Ultimate Bequest.

In making this Last Will and Testament, I recognize the fleeting nature of my fleshly existence and, having earlier given my life to our Savior, Jesus Christ, I praise him for having given me eternal life with him. It is my fervent belief that the most valuable bequest I can make with this Last Will and Testament is to urge all the beneficiaries of my will to use the occasion of my going home to Jesus as a time for them to strengthen their own relationship with Him.

M. J. T. S.

IN TESTIMONY WHEREOF, I have set my hand and seal to this my last will and testament consisting of five (5) typewritten pages, and on all pages of which I have placed my initials for security and identification this 7th day of July, 2009.

Mary Jean Tucker Swiger (SEAL)
Mary Jeanne Tucker Swiger

Signed, sealed, published and declared for and as her last will and testament by the testator in our presence, we all being present at the same time; and we, in her presence and at her request and in the presence of each other, have subscribed our names as witnesses whereof, all on the date last above written.

[Signature] OF Culpeper, Virginia
[Signature] OF Culpeper, Virginia

COMMONWEALTH OF VIRGINIA

COUNTY OF CULPEPER, to wit:

Before me, the undersigned authority, on this date personally appeared Mary Jeanne Tucker Swiger, J. Michael Sherman and Lynn Linberger, known to me to be the testator and witnesses, respectively, whose names are signed to the foregoing instrument and, all of these persons being by me first duly sworn, Mary Jeanne Tucker Swiger, the testator, declared to me and to the witnesses in my presence that said instrument is her last will and testament and that she had willingly signed and executed it in the presence of said witnesses as her free and voluntary act for the purposes therein expressed, that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as her last will and testament in the presence of said witnesses who in her presence and at her request and in the presence of each other did subscribe their names thereto as attesting witnesses on the day of the date of said will and that the testator, at the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.

Sworn and acknowledged before me by Mary Jeanne Tucker Swiger, the testator, J. Michael Sherman, witness, and Lynn Linberger, witness, this 7th day of July, 2009.

Mary Jean Tucker Swiger
Mary Jeanne Tucker Swiger

[Signature]
Witness

[Signature]
Witness

Kristi Kramer Fox
Notary Public #7197844



My commission expires: May 31, 2012

August 20, 2014

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**RE: Will of Mary Jean Tucker Swiger, dated July 9, 2009
Transfer of Executorship from Janet R. Loeffler to eldest sister, Carol J. DeHaven**

SC Court of Appeals

I, Janet R. Loeffler, residing at 28302 Burrell Drive, Unionville, Virginia, do hereby assign my executorship of our mother, Mary Jean Tucker Swiger, (Mother), to my eldest sister, Carol J. DeHaven, residing in LaPlata, Maryland, as our Mother will be in Carol's care from henceforth.

Janet R. Loeffler (Seal)
Janet R. Loeffler

NOTARY
STATE OF VIRGINIA
COUNTY OF ORANGE

Janet R. Loeffler, signed before me this day of August 20, 2014, this instrument.

Melissa Ann Brown
Notary Signature

My Commission Expires: 6/30/2018

SEAL:



STATE OF SOUTH CAROLINA

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Appeal from York County
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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

Appellate Case No. 2016-000096

Mary Jean Tucker Swiger (deceased), Sister of Vinton Tucker, by and through her
Substitute, Attorney-in-Fact, and Executrix, CarolDeHaven.....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 Reply and Response to Respondents
Response to Motion to Dismiss Appeal (Respondents Reply dated February 12,
2016)** by United States Mail, postage prepaid and return address clearly on said
envelope, on this eighteenth 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, South Carolina Court of Appeals, The Honorable Jenny Abbott Kitchings at 803.734.1839.

Carol DeHaven

2/18/2016

Carol DeHaven
6600 Hawkins Gate Road
La Plata, MD 20646
240.687-0220

Date

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B. Michael Brackett
1333 Main Street, Suite 260
P.O.Box 100261
Columbia, South Carolina 29202-3261

FEB 22 2016

SC Court of Appeals

Carol DeHaven
6600 Hawkins Gate Road
La Plata, MD 20646
240.687-0220

February 18, 2016

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

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SC Court of Appeals

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 **Appellants Response to Respondents Reply and Response to Respondents Response to Motion to Dismiss Appeal (Respondents Reply dated February 12, 2016)**. Also enclosed is the Certificate of Service.

A copy of this letter, copies of the enclosed Response and certificate are being mailed to B. Michael Brackett at his address of record.

Please return a clocked copy of the face page of the Response using the envelope enclosed.

Sincerely,



Carol DeHaven

*I have included my mother's Will
& transfer of executorship from
my sister to myself dated 8/20/14.
Mr. Brackett has also received
these documents. Thank you,
Carol DeHaven*

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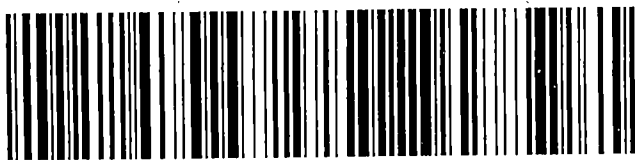
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Clerk of the Court of Appeals
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