

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

Stephanie Sands Smith,
 Plaintiff

CASE NO. 2014-CP-42-00639

vs.

Debra S. Switzer, et. al.

Defendant

check box above indicating submitting party

MOTION INFORMATION FORM
 AND COVER SHEET

RECEIVED
 APR 15 2016
 SC Court of Appeals

name, SC Bar no. and address of Plaintiff's attorney
 Stephanie Sands Smith (Pro Se)
 2 Dublin Court
 Spartanburg, SC 29301
 telephone: (864) 216-1980 fax:
 e-mail: cityfire5082@gmail.com other:

name, SC Bar no. and address of Defendant's attorney
 Ryan F. McCarty (for Debra S. Switzer)
 P.O. Box 3547
 Spartanburg, SC 29304
 telephone: 864-585-5100 fax: 864-542-2993
 e-mail: rmccarty@spartanlaw.com other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed:

Court Reporter Needed:

SECTION II: Motion Type

Written Motion attached

Form Motion -

I hereby move for relief or action by the Court as set forth in the attached proposed Order.

Attorney

Date

SECTION III: Motion Fee

PAID -

EXEMPT:
 (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status
- Sexually Violent Predator Act
- Motion for Stay in Bankruptcy
- Motion for Publication
- Proposed Order submitted at request of the Court; or, reduced in writing from motion made in open Court per Judge's instructions: Name of Court Reporter: _____
- Other: _____
- State Agency v. Indigent Party
- Post-Conviction Relief
- Motion for Execution (Rule 69, SCRCP)

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached Order

Other:

JUDGE

CODE:

DATE:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
 (print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

SPARTANBURG COUNTY
 2015 MAR - 7 PM 12: 14
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 IN THE MATTER OF:)
 SHIRLENE KENT KNOWLES)
 (Decedent))
)
 Stephanie Sands Smith,)
)
 Appellant,)
)
 vs.)
)
 Debra S. Switzer, Shirlee K. Sands,)
 Donald Edward Sands, Donald W.)
 Sands, Hannah Leigh Smith, Austin)
 William Smith, and Carl Hocker,)
)
 Respondents.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

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 SC Court of Appeals
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 7:16 AM - 7 PM 12:14

ORDER DENYING MOTION
 FOR REHEARING

2014-CP-42-00639

This court issued its Final Order on April 27, 2015 dismissing Appellant's appeal which had been filed on January 05, 2015. Appellant filed two motions with this Court. Appellant's first motion was a motion to stay the execution of judgment and allow her to remain in the decedent's home pending the final resolution of this case; however, Plaintiff subsequently moved out from decedent's home. Appellant withdraws that motion and the court finds that issue moot. Appellant's second motion is a motion to alter or amend the judgment of this Court's Final Order filed April 27, 2015.

PROCEDURAL HISTORY

Decedent Shirlene Kent Knowles passed away on August 05, 2012. Two separate Wills were submitted to the Probate Court for administration. A trial was held in the Probate Court to determine which Will was the true and correct will to be admitted for probate. The Probate Court issued its ruling in its February 10, 2014 Order. The administration of the Estate of

Shirlene Kent Knowles has not been possible for more than three years because of Appellant's repeated appeals which have all been dismissed, and because of her motions which, too, have all been denied.

Following the issuance of the Probate Court's February 10, 2014 Order, Plaintiff filed a notice of her intent to appeal the Probate Court's order to the Circuit Court. By Order dated June 05, 2014, the Circuit Court dismissed Plaintiff's appeal because she had failed to file or serve any statements of issues on appeal and had not requested a transcript of proceedings within the statutorily mandated time period. Plaintiff then brought a Petition for Rehearing and a Motion for an Extension of Time which she filed on June 27, 2014. By way of an Order dated July 25, 2014, the Circuit Court denied her motions for rehearing and extension of time. Plaintiff then filed a Motion to Alter or Amend Judgment on August 13, 2014 seeking to have the Circuit Court reverse its previous denial of her June 27th motions. By way of an Order dated October 10, 2014, the Circuit Court again denied Plaintiff's relief. Further, that Order specifically stated that the appeal had concluded and no further matters were to be considered by the Circuit Court.

Plaintiff then asserted that the Probate Court had not yet ruled on her April 23, 2014 Motion for a New Trial made pursuant to Rules 59 and 60 SCRPC. Plaintiff sought a new trial by filing for relief pursuant to Rule 59, and alternatively sought a new trial based upon newly discovered evidence pursuant to Rule 60. Defendant Debra Switzer asked that Plaintiff's motion be dismissed for procedural and factual reasons. In December 2014, the Probate Court, at the parties' agreement, heard the Plaintiff on her motions.

The Probate Court found that Plaintiff failed to meet her burden of proof to satisfy that she could not have discovered her newly discovered evidence through due diligence prior to trial. Further, with regard to Plaintiff's motion to seek a new trial pursuant to Rule 59 SCRPC,

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CLERK OF PROBATE COURT
STANFORD COUNTY

the Probate Court found that Defendant failed to timely file her motion within the 10-day time period following the receipt of the written notice of the entry of judgment [Plaintiff acknowledged in her Notice of Intent to Appeal that she received written notice of the entry of judgment on February 14, 2014].

Plaintiff filed her Notice of Intent to Appeal the Probate Court's December 15, 2014 Order on January 05, 2015. This court issued its Final Order on April 27, 2015 dismissing Plaintiff's appeal which was filed on January 05, 2015. Subsequent to this Order, this Court issued a Writ of Assistance on July 21, 2015 ordering Plaintiff and her family to vacate the decedent's home.

FINDINGS

Appellant's pending motion is to alter or amend the judgment of this Court's Final Order filed April 27, 2015. Appellant's motion seeks relief pursuant to Rule 59 SCRPC. The Court has considered the factors set forth in Appellant's motion and finds that Appellant's motion is without merit. This matter is decided without the need for oral argument.

It is settled law that pursuant to Rule 59(f) SCRPC, a Rule 59(e) motion, may, in the discretion of the court, be determined on the briefs filed by the parties without oral argument. *See Pollard v. County of Florence*, 314 S.C. 397; 444 S.E.2d 534 (Ct. App. 1994), *rehearing denied, certiorari denied*.

Therefore, it is the Order of this Court that Appellant's May 15, 2015 Motion to Alter or Amend Judgment is dismissed with prejudice. This appeal has concluded and no further matters shall be considered by this court.

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SOUTH CAROLINA COUNTY

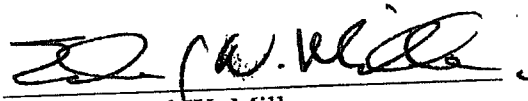
CONCLUSION

Therefore, having resolved all matters at issue before this court:

IT IS ORDERED that the May 25, 2012 Last Will and Testament of Shirlene Kent Knowles be admitted to probate as a valid and properly executed and witnessed Will showing the clear intent of the Testatrix. Debra S. Switzer shall be appointed Personal Representative and she shall begin the administration of the estate forthwith. Further,

IT IS FURTHER ORDERED that all matters related to the above-captioned case are now resolved and this matter is hereby ended, and therefore, the administration of estate in Probate Court should commence forthwith. This Order ends this case.

IT IS SO ORDERED.



Hon. Edward W. Miller
Presiding Judge
Seventh Judicial Circuit

Date: 3-3, 2016
Greenville, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2016 MAR -7 PM 12:15
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

IN THE MATTER OF:)
SHIRLENE KENT KNOWLES)
(Decedent))
Stephanie Sands Smith,)

Appellant,)

vs.)

Debra S. Switzer, Shirlee K. Sands,)
Donald Edward Sands, Donald W.)
Sands, Hannah Leigh Smith, Austin)
William Smith, and Carl Hocker,)

Respondents.)

AFFIDAVIT OF MAILING
2014-CP-42-639

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SPARTANBURG COUNTY
2016 APR 14 AM 11:29
M. HOPE BLACKLEY

This is to certify that on the 7th day of March, 2016, the undersigned served a copy of the **Order**

Denying Motion for Rehearing filed March 7, 2016 by depositing a copy of the same into the United States


Mail, postage pre-paid and in the correct amount to the following:


Stephanie Sands Smith
Individually and as Legal Guardian
for Hannah Leigh Smith and Austin William Smith
2 Dublin Court
Spartanburg, SC 29301

Mr. Donald E. Sands
Ms. Shirlee K. Sands
2 Dublin Court
Spartanburg, SC 29301

Mr. Donald. W. Sands
2 Dublin Court
Spartanburg, SC 29301

Mr. Carl Hocker
356 Templeton Drive
Spartanburg, SC 29306


Michele McKelvey

SWORN to before me this 7th
day of March, 2016.
 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____
MY COMMISSION EXPIRES JANUARY 22, 2016