

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-639

Stephanie Sands Smith

Debra S. Switzer et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Ryan F. McCarty

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

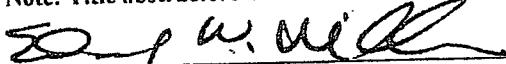
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2130
Judge Code

4/21/15
Date

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For Clerk of Court Office Use Only

This judgment was entered on the 27 day of April, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Sands Smith - Pro Se
360 Templeton Drive
Spartanburg, SC 29306
ATTORNEY(S) FOR THE PLAINTIFF(S)

Ryan F. McCarty
P. O. Box 3408
Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)
Mr. Hope Blankley / Cassie Jensen
CLERK OF COURT

Court Reporter: Pamela Faucette

2015 APR 27 PM 2:20

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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

FINAL ORDER

C.A. No.: 2014-CP-42-00639

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M. HOPE SULLIVAN

This matter came before this Court, sitting as the Appellate Court, on April 10, 2015 to hear several motions filed by each side. Appellant's motions for postponement and continuance were dismissed by the Appellant at the start of the hearing. This Court takes notice that Appellant's other motions for the recusal of two Circuit Court Judges have already been resolved. Therefore, the pending motions before the Court are Appellant's Motion for the Staying Judgment for Sale or Delivery of Possession of Real Property dated January 05, 2015, and Switzer's Motions seeking to dismiss Appellant's appeal of the Spartanburg County Probate Court's Order dated December 15, 2014 and her Motion Requiring Appellant to Vacate Home or Post Bond. Present at the April 10, 2015 hearing were Respondent Switzer and her counsel, Ryan F. McCarty. Appellant appeared *Pro Se*. Other Respondents were present for the hearing but did not make an appearance.

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BACKGROUND

By Order of the Probate Court dated February 10, 2014, the Will of the Decedent, Shirlene Kent Knowles, dated May 25, 2012 was found to be valid. As a result thereof, Debra S. Switzer is the primary beneficiary, to include a house and lot located at 360 Templeton Drive, Spartanburg, South Carolina. Subsequent to this Probate Court Order, the following events have taken place:

February 21, 2014

Appellant filed her Notice of Intent to Appeal the Probate Court's Order to the Circuit Court. By Order dated June 05, 2014, this Court dismissed Appellant's appeal because she had failed to file or serve any statements of issues on appeal and because she had not requested a transcript of proceedings within the statutory time period. This Court further ordered Appellant to vacate forthwith the house and lot located at 360 Templeton Drive.

August 13, 2014

Appellant filed a Motion to Alter or Amend Judgment seeking to have this Court to reverse its previous denial of her motions concerning her initial appeal. By way of an Order dated October 10, 2014, this Court denied Appellant's motions to alter or amend judgment. Further, this Court specifically stated that the appeal had concluded and no further matters were to be considered by the Circuit Court.

December 01, 2014

Following the dismissal of the appeal, the Probate Court conducted a hearing on Switzer's motion to enforce the terms of the February 10, 2014. By way of an Order dated December 15, 2014, the Probate Court, amongst other issues, ordered Appellant and her family to vacate the subject house and lot on or before December 31, 2014. Appellant filed her Notice

of Intent to Appeal the December 15, 2014 Probate Court Order on January 05, 2015. Within her Notice of Intent to Appeal, Appellant acknowledges that she received the Probate Court's written order on December 19, 2014.

Respondent Switzer asks this Court to dismiss Appellant's appeal for failing to follow the rules which govern appeals from the Probate Court to the Circuit Court as set forth in S.C. Code of Laws § 62-1-308 (2014). Additionally, Respondent Switzer seeks enforcement of the Probate Court Order as it relates to the Appellant vacating the Decedent's home.

LAW/ ANALYSIS

An action to contest a will is an action at law. *Johnson v. Johnson*, 235 S.C. 542, 546, 112 S.E.2d 647, 649 (1960); *Golini v. Bolton*, 326 S.C. 333, 338, 482 S.E.2d 784, 787 (Ct.App.1997). If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *In re Estate of Weeks*, 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct.App.1997). Appeals taken from the probate court are governed by the provisions of the Probate Code. *Howard v. Mutz*, 315 S.C. 356, 434 S.E.2d 254 (1993). Pursuant to S.C. Code Ann. § 62-1-308(a) (Supp.1994), an order or decree of the probate court shall be appealed to the circuit court. *Matter of Estate of Tollison*, 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995). Under the Probate Code, a Circuit Court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal. *Matter of Howard*, 315 S.C. at 360-61, 434 S.E.2d at 256-57; S.C.Code Ann. § 62-1-308 (Supp.2004); *In re Estate of*

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Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). The rules which govern appeals from the Probate Court to the Circuit Court as set forth in S.C. Code of Laws § 62-1-308 (2014).

S.C. Code Ann. §62-1-308(a) requires a party appealing an Order from the Probate Court to file Notice of Appeal in both the Probate Court and the Circuit Court within ten (10) days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. Appellant filed her Notice of Appeal with the Circuit Court on January 05, 2015, some 17 days following the receipt of written notice of the appealed from order. Appellant has failed to timely file her Notice of Intent to Appeal.

A review of the Clerk's file supports Switzer's contention that Appellant failed to file a Statement of Issues on Appeal within the 45 days after the receipt of written notice of the underlying order from the Probate Court. Appellant received the written notice of the Probate Court's Order on December 19, 2014, as evidenced by her Notice of Intent to Appeal which was filed with the Clerk of Court for the Circuit Court on January 05, 2015. Appellant *must* have filed her Statement of Issues on Appeal no later than 45 days after the receipt of the written order in order to have complied with the rules as set for in S.C. Code of Laws § 62-1-308(b) (2014). As of this hearing, Appellant had still not filed her Statement of Issues on Appeal.

A further review of the Clerk's file supports Switzer's contention that Appellant failed to timely order a copy of the transcript of the proceedings from the court reporter. Pursuant to S.C. Code of Laws § 61-1-308(c), Appellant shall order a transcript within ten days after the service of the notice of intention to appeal. Appellant failed to properly order the transcript as the rules direct her to do, although Appellant informed the Court that she was in possession of the transcript at this hearing.

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The South Carolina Supreme Court has held that the filing and service of the grounds of an appeal in accordance with Section 18-5-20 (the predecessor statute to Section 62-1-308) are integral parts of the right of appeal from probate court to circuit court. *Montgomery v. Keziah*, 277 S.C. 84, 85, 282 S.E.2d 853, 854 (1981). Further, the Court noted that compliance with these provisions is necessary for the orderly function of the appellate process. *Id.* In that case, the appellants served their notice of appeal but did not file or serve any grounds of appeal as required by statute. In *Montgomery*, the Chester County Court of Common Pleas dismissed Appellant's appeal for failing to follow the proper procedures when the statute uses mandatory language like "shall." In their *Per Curiam* decision, the South Carolina Supreme Court affirmed the Circuit Court's dismissal of the appeal from Probate Court for failure to file the grounds for appeal. *Id.* at 86, 854. For these reasons, this Court agrees with Respondent Switzer's position that Appellant's appeal should be dismissed.

This Court additionally notes the failure of an appellant to properly order a transcript of the proceedings in the probate court within the time frame of § 61-1-308(c). Herein again, this Court finds that where the statute uses mandatory language like "shall," compliance with that particular provision is required. For this reason too, this Court agrees with Switzer's position that Appellant's appeal should be dismissed.

Therefore, Appellant's appeal of the December 15, 2014 Probate Court Order is dismissed. Because the Probate Court has twice previously ordered Appellant to vacate the house and lot located at 360 Templeton Drive, Spartanburg, South Carolina, the parties' motions regarding the posting of a bond while the appeal is pending are now rendered moot by the dismissal of the appeal.

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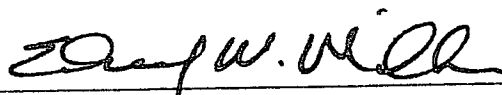
CONCLUSION

This Court finds that Appellant's failure to file or serve any statement of issues on appeal and request a transcript of the proceedings requires dismissal of the appeal when the applicable statute governing the appeal uses mandatory language such as "must" and "shall." In view of the foregoing considerations,

It is the Order of this Court that Appellant's appeal of the Probate Court's Order dated December 15, 2014 is hereby dismissed.

It is the further Order of this Court that the Probate Court's Order that Appellant vacates the house and lot located at 360 Templeton Drive, Spartanburg, South Carolina is enforced. Appellant shall vacate the premises immediately. This Court holds, as did the Probate Court, that if the premises are in reasonable condition when Appellant vacates the premises, she shall not be required to pay rent or damages.

IT IS SO ORDERED!



Hon. Edward W. Miller
Presiding Judge
Seventh Judicial Circuit, Spartanburg County

Dated: April 21, 2015

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M. HOFFER BLANCHARD

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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.)

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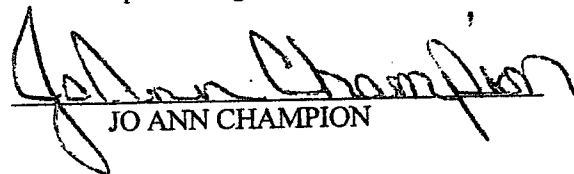
This is to certify that on the 5th day of May, 2015, the undersigned, secretary to Ryan F. McCarty, Esq. and Richard H. Rhodes, Esq., served a copy of the FINAL ORDER SIGNED BY THE HONORABLE HOWARD W. MILLER DATED APRIL 21, 2015 AND RECORDED IN THE CLERK OF COURT'S OFFICE ON APRIL 27, 2015; by depositing 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
360 Templeton Drive
Spartanburg, SC 29306

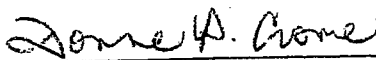
Mr. Donald E. Sands
Ms. Shirlee K. Sands
2 Dublin Court
Spartanburg, SC 29301

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

Mr. Carl Hocker
356 Templeton Drive
Spartanburg, SC 29306


JO ANN CHAMPION

SWORN to before me this 5th
day of May, 2015.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-30-2017

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BURTS TURNER & RHODES
ATTORNEYS AT LAW
260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306

MAILING ADDRESS
P.O. BOX 3408 29304
PHONE: 864-585-8166
FAX: 864-583-6927

SAM BURTS (1907 - 1982)
NOEL TURNER (1928 - 2011)
RICHARD H. RHODES
M. NOEL TURNER, III
WILLIAM H. RHODES
RYAN F. MCCARTY

May 5, 2015

Stephanie Sands Smith
360 Templeton Drive
Spartanburg, SC 29306

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

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

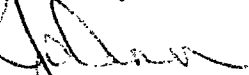
Mr. Carl Hocker
356 Templeton Drive
Spartanburg, SC 29306

SC Court of Appeals

Re: Debra S. Switzer vs. Stephanie Sands Smith
2014-CP-42-639

I am enclosing a copy of the Final Order signed by the Honorable Howard W. Miller dated April 21, 2015 and recorded in the Clerk of Court's Office on April 27, 2015, together with proof of service.

Sincerely,



JoAnn Champion
Secretary to Ryan F. McCarty

/jc
Enc.

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