

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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MAY 11 2016

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

SC Court of Appeals

R. Scott Sprouse, Circuit Court Judge

Circuit Court Case No. 2015-CP-46-00466
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' Return to Purported Appellant's
Motion for Extension

Respondents object to the purported Appellant's Motion for Extension, dated and served May 10, 2016 on the following grounds:

1. Rule 240(e), SCACR, allows a ten-day period to file a Return. The motion gives absolutely no reason why ten days is insufficient in this case.

2. The Motion asks for a 30-day extension. This is facially excessive. The Appellant has managed to delay the appeal far too long already. The following is from Respondents' Statement of the Case in Respondents' Brief to the Circuit Court in the first stage of Appellant's appeal:

Following pretrial discovery, Respondents moved for summary judgment on all causes of action. Respondents' amended motion for summary judgment was heard by the Probate Court on December 30, 2014. At the hearing, Appellant withdrew her second cause of action. By Order dated February 2, 2015 the Probate court granted summary judgment in favor of the Respondents on the remaining four causes of action and formally admitted the January 14, 2012 last will to probate.

Appellant did not file a Rule 59(e), SCRCF, motion for reconsideration. Appellant filed and served her Notice of Appeal on February 12, 2015. On March 27, 2015 Respondents moved to dismiss the appeal on the ground that Appellant had not by then filed and served the statutorily mandated Statement of Issues on Appeal. On April 2, 2015 Appellant filed and served a Motion for Extension of Time to File Statement of Issues on Appeal accompanied by her Statement of Issues on Appeal. By Order dated June 22, 2015, the Circuit Court denied Appellant's motion for extension and dismissed the appeal. On July 10, 2015, Appellant filed and served a Motion to Reinstate Appeal. By Order dated July 27, 2015 the Circuit Court granted the Appellant's motion and restored the appeal to active status.

3. Following the Circuit Court's December 22, 2015 Order affirming the Probate Court's Summary Judgment, Appellant's time-consuming bumbling and stumbling and failure to timely manage the business of prosecuting this appeal continued, as evidenced in and by the Respondents' motions to dismiss the appeal, one decided by a recent order and one now pending. Seemingly at every turn, Appellant is doing something outside of the law and rules governing appeals and is asking for more time to fix it.

At what point do the interests of the Respondents get considered? Two courts have ruled in Respondents' favor. There are devisees in this estate, to whom the Respondents as personal representatives owe duties, and it is not fair that Appellant be allowed to continually string this along

thereby unnecessarily preventing the devisees from possession and enjoyment of the property to which two courts have ruled belong to them. Based on the history of this appeal, if Appellant can give no ground or reason for needing an extension at present, another extension is unwarranted.

Conclusion

The Motion for Extension should be denied, or alternatively, be limited to no more than 10 days.

A handwritten signature in black ink, appearing to read "B. Michael Brackett", written over a horizontal line.

B. Michael Brackett, S.C. Bar # 838
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondents

May 11, 2016

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IN THE COURT OF APPEALS

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

R. Scott Sprouse, Circuit Court Judge

Circuit Court Case No. 2015-CP-46-00466
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SC Court of Appeals

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

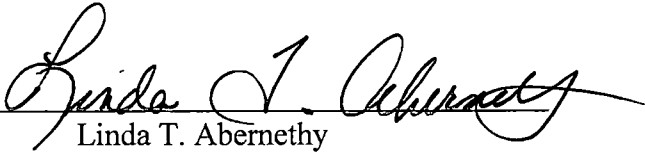
v.

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 Attorney for Appellant with a copy of **Respondents' Return to Purported Appellant's Motion for Extension** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 11th day of May, 2016 at the following address:

Syretta R. Anderson, Esquire
124 Oakland Avenue
Rock Hill, SC 29730
and syretta@srandersonlawfirm.com
Attorney for Appellant


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

May 11, 2016

HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of 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

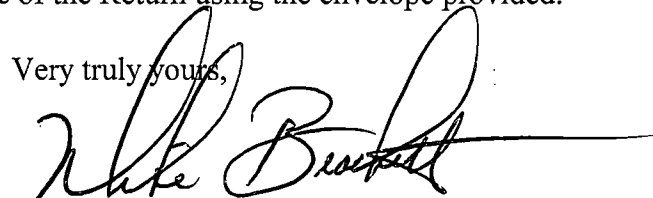
Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Respondents' Return to Purported Appellant's Motion for Extension. Also enclosed is the customary certificate of service.

By copy of this letter, a copy of the enclosed Return is being mailed and emailed to Appellant's attorney of record.

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

Very truly yours,



B. Michael Brackett

BMB/Ita
Enclosures

cc: Margaret Kelly
Ben Smith
Syretta R. Anderson, Esquire (email and U.S. mail)