

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable R. Knox McMahon

Case Nos. 2013-CP-21-1334 and 2013-ES-21-190
Appellate Case No. 2013-002810

RECEIVED
JAN 30 2017
SC Court of Appeals

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith, Appellant,

v.

Judy Smith Jones, Jacquelyn Brown, James Ervin
Smith, Timothy David Smith, Jamie Smith, and
Mikie Smith, Defendants

Of whom Judy Smith Jones is the Respondent.

REPLY IN SUPPORT OF THE PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Eris Gail Smith (“Ms. Smith”) files this Reply in support of her Petition for Rehearing of the Court’s opinion in *In the Matter of the Estate of Eris Singletary Smith*, Op. No. 5462 (S.C. Ct. App. filed Dec. 21, 2016) (Shearouse Adv. Sh. No. 48 at 74). Most of the arguments raised in Ms. Jones’ Return have been previously addressed and rebutted fully in Ms. Smith’s prior briefing or in the Petition itself, and thus no further rebuttal is warranted here.

Ms. Jones does, however, assert an argument which requires rebuttal. Specifically, she erroneously asserts that Ms. Smith knew the decedent intended to visit the law office of Robert E. Lee to obtain a healthcare power of attorney:

Moreover, it simply isn't accurate to say that decedent had no plan to visit an attorney's office — not only did Pam Jordan testify that her grandmother requested the opportunity to update her will with Mr. Lee (R. pp. 197-198 (Jordan deposition p. 4 line 13 to p. 6 line 2)), but *the Appellant herself admitted knowing of a plan to visit Mr. Lee's office*. R. p. 261 (Appellant's deposition p. 76 lines 1-20). Whether the decedent chose to withhold the true purpose (or full purpose) of the meeting from her ever-present daughter (the Appellant) is of no moment, the point is that she wasn't "lured" away — *and Appellant knew it*.

See Respondent's Return at 4 (emphasis in original).¹ According to Ms. Jones (and the Court's majority opinion), this fact—assuming it were true—seems to undercut Ms. Smith's arguments on appeal. The evidence relied on by Ms. Jones, however, hardly stands for the propositions that (1) Ms. Smith knew the decedent planned to visit Mr. Lee's office at all, much less on the day in question, or (2) that the decedent herself knew or wished for her trip to town on the day in question to include a stop at Mr. Lee's office.

Rather, Ms. Smith's deposition testimony merely states she was aware (1) that Pam Jordan (Ms. Jones' daughter) had *offered* to prepare a free healthcare power of attorney for the decedent at Lee's office, (2) that Ms. Smith had discouraged the decedent from taking advantage of that offer, (3) that the decedent went into town that day believing she was headed only to a brunch, and (4) that when the decedent returned from town she was confused, upset, and unsure what she had signed. *See* R. 261 (Smith's deposition page 76). This evidence, when rightly understood, demonstrates the inappropriateness of summary judgment and thus the need for rehearing.

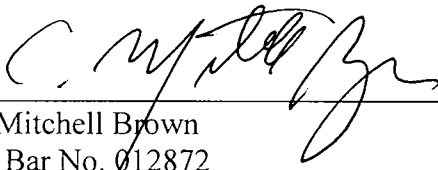
In short, Ms. Jones' continued misapprehension of the evidence does not excuse the Court's misapprehension of the evidence nor does it dispel the need for rehearing. Accordingly,

¹ The Court's majority opinion similarly misapprehended the evidence, as explained by Ms. Smith in her Petition for Rehearing. *See* Pet. for Rehearing at 2–3; *see also* Op. at 6 (“Smith stated the Testator thought she was going to Lee's office to execute a healthcare power of attorney . . .”).

Ms. Smith respectfully requests this Court grant rehearing of the case, correct the points of fact and law is overlooked or misapprehended as set forth herein and in her Petition, and adopt the cogent and correct reasoning and holding espoused by the Chief Judge's dissent.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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January 30, 2017

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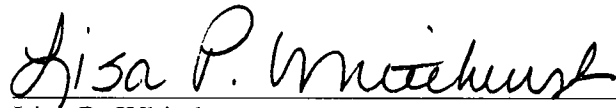
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served
all counsel in this action with a copy of the pleading(s) hereinbelow specified by
mailing a copy of the same by United States Mail, postage prepaid, to the following
address(es):

Pleadings: Reply to Return to Petition for Rehearing

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Lisa P. Whitehurst
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January 30, 2017

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January 30, 2017

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

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RE: In the Matter of the Estate of Eris Singletary Smith
Probate Roll No.: 2013-ES-21-190
Appellate Case No. 2013-002810
Our File No. 42246/01500


Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Reply to Return to Petition for Rehearing in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of this pleading.

With kind regards, I remain

Sincerely yours,



C. Mitchell Brown

CMB:lpw

Enclosures

cc: J. Rene Josey, Esquire
Jeffrey L. Payne, Esquire