

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY CIRCUIT COURT & PROBATE COURT

Letitia H. Verdin, Circuit Court Judge  
Deborah A. Faulkner, Probate Judge

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Case No. 2016-00215

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Wilson Garner, Jr., et al.

Appellants

vs

The Estate of Nell Gaines, et al.,

Respondents

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RETURN TO MOTION TO DISMISS APPEAL

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Appellants filed their Initial Brief with this Court on December 28, 2016. It now appears that the Initial Brief accepted for filing omitted page iii, which is identified in the Table of Contents as the "Statement of Issue on Appeal." The Table of Contents lists that page as being numbered separately as "iii." That entry is a clear indication that the page was intended but inadvertently omitted. Appellants attach the omitted page and ask the Court to consider the submission *nunc pro tunc*. Appellants ask the court to do

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so in order to avoid any confusion going forward, not to correct any error. Appellants do not believe they violated the rules of this court for the following reasons.

While it appears that Appellants counsel failed to include the intended page iii, SCACR 208(b)(1)(B), does not require that such statement be submitted on a separate page. While it was Appellants' intention to do so, the rule does not require it. The issue on appeal is clearly stated on page 6 of the Appellants' Brief as follows:

"Did the lower court err in applying the common law doctrine of Dependent Relative Revocation to the facts of this case in light of S.C. Code Ann. § 62-2-504(a) (1986)?"

By the common parlance and practice of the bar, each issue on appeal is typically restated in the argument section of the brief. Appellant's counsel followed that practice. While the undersigned acknowledges he intended to have a separate page number iii, the sole issue on appeal is clearly stated in the argument section, and therefore part of the Initial Brief.

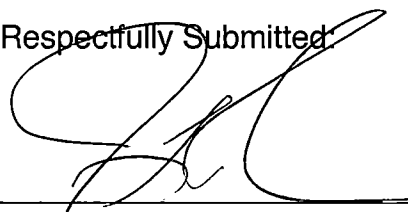
The issue on appeal is one that has not been addressed by the appellate courts of this state at least since 1942. The question to be decided is not only important to the litigants before this court, but to the public at large. The impact of our legislature's statute on the common law of Dependent Relative Revocation is an open question of law that needs to be addressed so that the public and the bar may have understanding

and guidance on how the law should be applied. Cases ought to be decided on their merits, rather than technicalities. While the Respondent's citation of *Henning v. Kay*, 307 S.C. 436, 436, 415 S.E.2d 794, 794 (1992) is a correct statement of the law, Appellants' counsel contends that the rules of this court have not been violated. The intended page was simply not included as indicated in the Table of Contents, but the Statement of Issue on Appeal is clearly provided at page 8 of the Initial Brief.

### CONCLUSION

Appellants respectfully request that Respondents' Motion to Dismiss the Appeal be DENIED for the reasons stated herein.

Respectfully Submitted:



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March 16, 2017

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in applying the common law doctrine of Dependent Relative Revocation to the facts of this case in light of S.C. Code Ann. § 62-2-504(a) (1986)?

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PROOF OF SERVICE

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The undersigned certifies that he has served the within Return to Motion to Dismiss Appeal upon opposing counsel in this case by depositing a copy of the same with the United States Postal Service with sufficient postage and addressed as follows:

Marcus W. Meetze  
PO Box 81118  
Simpsonville, SC 29680

This 16 day of March, 2017



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