

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lee County
S. Bryan Doby, Master-In-Equity

Lower Case No. 2009-CP-31-00131

United States of America, acting through the
Farmers Home Administration, United States
Department of Agriculture,

Plaintiff/Respondent,

v.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, and all other heirs at law and/or distributees
of Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, his heirs, personal representatives,
executors, administrators, successors and assigns,
and any spouses if any he has, and all persons entitled
to claim under or through him or any of them; all
persons unknown claiming any right, title, estate,
interest in or lien upon the real estate described in the
Complaint herein, any and all persons who may be in
the military service of the United States of America,
being a class designated as John Doe; and any
unknown minors or persons under a disability being
a class designated as Richard Roe, Laura Ann Toney,
and Brittany Nicole Thomas,

Defendants,

Of whom Laura Ann Toney is the Appellant.

APPELLATE CASE NO. 2016-002261

RETURN TO MOTION FOR LEAVE OF COURT AND TO FILE A LATE INITIAL
BRIEF AND DESIGNATION OF MATTER

RECEIVED
MAY 01 2017
SG Court of Appeals

The Motion for Leave of Court and to File a Late Initial Brief and Designation of Matter (the “Motion”) filed by the Appellant Laura Ann Toney (“Appellant”) is yet a further attempt to delay her appeal and for a number of reasons should be denied.

The Motion, though styled as seeking leave of this Court to “file a late initial brief and designation of matter” contains no argument or citation of authorities to support this stated purpose of the Motion. Since no grounds or citation of authorities in support are made in the Motion, Respondent United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (“Respondent”) is not certain of the exact purpose of the Motion; it would appear the Motion is only a further attempt to support her earlier Motion for Leave of Court to which Respondent filed a Return on April 6, 2017 (the “April 6 Return”). Respondent will attempt to not “rehash” the matters set forth in the April 6 Return, though some elaboration may be in order.

The Motion on its face states it is made pursuant to Rule 240, SCACR. Respondent notes that Appellant has failed to comply with Rule 240(c)—the pages of Appellant’s Motion and supporting documents are not consecutively numbered [and the Exhibits referred to in the Motion do not match the Exhibits apparently attached] and there is no memorandum with citation of authorities [which seem to be incorporated in her Motion]; her failure to comply with the requirements of the Rule make it more difficult and confusing to respond to Appellant’s Motion. Accordingly Appellant’s Motion should be dismissed pursuant to Rule 260, SCACR.

As a further matter as was pointed out in the April 6 Return it would appear this Court lacks jurisdiction over the matters referred to in the Motion, and the issues pending in the appeal (and in the lower court) are not stayed. SCACR Rule 240(b) provides “Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition”. There is no provision in the Rules and

no order has been issued by this Court, and accordingly there is no basis to stop or delay Appellant's appeal pending before this Court (or the motion pending before the lower court subsequently discussed).

Appellant has recited in her Motion "Mr. Taylor Peace (sic) never made an Appearance (sic) in this case. The Substitute (sic) of counsel referenced Mr. Donald Tyler, Jr. Mr. Taylor Peace has litigated this case for years without following court procedures." Appellant has failed to read the Consent Order of the Honorable George C. James, Jr. dated August 12, 2009 to which she makes reference (the "Order"). The Order clearly states that Donald W. Tyler, Jr., Esquire is to so substitute "and his firm as counsel for the Plaintiff in this matter". As appears from the Affidavit of Donald W. Tyler, Jr. attached as **Exhibit 1** to this Return, Donald W. Tyler, Jr., Esquire, Taylor A. Peace, Esquire, and Donald W. Tyler, Sr., Esquire, were all attorneys and members of the same lawfirm (the "Firm") and accordingly, at various times, have all been involved in representing the Plaintiff (i.e., the Respondent) in this case. On December 31, 2016 the Firm was dissolved and Taylor A. Peace, Esquire, and Donald W. Tyler, Sr., Esquire, became attorneys practicing with the firm of Harrell, Martin & Peace, P.A. They have continued to represent the Respondent with the Respondent's approval and consent. This Court and the Appellant were notified of this change and there has been no objection.

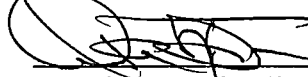
Appellant has further contended that the Order "has evidence of being a forgery" (Motion, 2nd page). As Mr. Tyler states in Exhibit 1 attached, Mr. Tyler and Gary P. Rish, Esquire, (who then represented the Respondent) prepared and signed the Order and submitted it to the Court for approval. Mr. Tyler was not present when the Order was signed by Judge James, but as will be demonstrated, there is no evidence of forgery. Judge James signed the Order as appears from the second and last copy of the Order (there is no exhibit designation to the same, but herein "Order Copy 2") attached to the Motion. The first and previous copy of the Order attached to the Motion

and labelled “Plaintiff’s Exhibit 4” (herein “Order Copy 1”) has the conformed signature (my emphasis) of Judge James, not his actual signature. As is common practice in South Carolina, apparently Judge James signed the Oder (i.e., Order Copy 2) and someone in his office or the Office of the Clerk of Court for Lee County, S.C. inserted the conformed signature on a copy of the Order (Order Copy 1). Hence the copy designated Order Copy 2 is a copy of the Order as actually signed by Judge James and the copy herein designated Order Copy 1 is a conformed copy—there is no forgery or evidence thereof.

As noted in the April 6 Return and herein, it appears Appellant is asking this Court to stay her appeal from moving forward so that the lower court can rule on Appellant’s previous Motion Rule 60(b)(2) and Rule 60(b)(3) and Motion for Sanctions and Notice of Unauthorized Practice of Law (the “Motion to Vacate”) made in the lower court; however, Appellant has failed to present a reason why this appeal should be stayed. As noted in the April 6 Return, the Motion to Vacate seeks to address various issues related to the substitution of counsel. These issues are not the subject of the present appeal (but to the extent this Court may deem them to so be by the Motion, they have been addressed herein). As a result, the lower court should not be stayed from hearing and ruling upon Appellant’s Motion to Vacate nor should this appeal be stayed.

As set forth in the April 6 Return Appellant's Motion for Leave of Court and Appellant's Motion should be denied, and the appeal should move forward without any further delay.

Respectfully submitted,



Donald W. Tyler (Sr.) (S.C. Bar No. 5664)
HARRELL, MARTIN, & PEACE, P.A.
P.O. Box 1000
Chapin, South Carolina 29036
(803) 345-3353

*Attorneys for Respondent, United States of
America, acting through the Farmers Home
Administration, United States Department
of Agriculture*

May1, 2017
Chapin, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lee County
S. Bryan Doby, Master-In-Equity

Lower Case No. 2009-CP-31-131

United States of America, acting through the
Farmers Home Administration, United States
Department of Agriculture,

Plaintiff/Respondent,

v.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, and all other heirs at law and/or distributees
of Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, his heirs, personal representatives,
executors, administrators, successors and assigns,
and any spouses if any he has, and all persons entitled
to claim under or through him or any of them; all
persons unknown claiming any right, title, estate,
interest in or lien upon the real estate described in the
Complaint herein, any and all persons who may be in
the military service of the United States of America,
being a class designated as John Doe; and any
unknown minors or persons under a disability being
a class designated as Richard Roe, Laura Ann Toney,
and Brittany Nicole Thomas,

Defendants,

Of whom Laura Ann Toney is the Appellant.

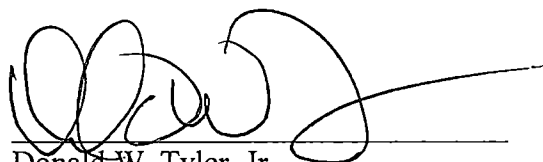
APPELLATE CASE NO. 2016-002261

**AFFIDAVIT OF DONALD W. TYLER, JR.
IN SUPPORT OF RETURN TO MOTION FOR LEAVE OF COURT AND TO FILE A
LATE INITIAL BRIEF AND DESIGNATION OF MATTER**

PERSONALLY APPEARED before me, the undersigned notary, Donald W. Tyler, Jr., who,
being satisfactorily identified to me, is sworn, deposes and says:

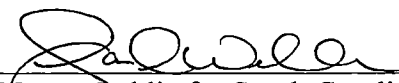
1. My name is Donald W. Tyler, Jr.; I am a resident and citizen of the State of South Carolina and am over the age of twenty-one years.
2. To my knowledge I am of sound mind and suffer from no mental deficiencies, illnesses or other defects.
3. In 2009, I was an attorney licensed to and practicing with the lawfirm of Tyler, Jackson, Peace & Silver, LLC f/k/a Tyler, Cassell, Jackson, Peace and Silver, LLP (the "Firm").
4. In such capacity as a licensed attorney practicing with the Firm, I, together with Gary P. Rish, Esquire, an attorney then representing the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, the Plaintiff in the lower court case designated above and Respondent in this appeal (the "Respondent"), prepared, signed and submitted a proposed Consent Order to the Honorable George C. James, Jr. for consideration and approval; I was not present when the proposed Consent Order was signed by Judge James, but I have no reason to believe his signature is a forgery.
5. The Consent Order was intended to substitute me and any attorney practicing with the Firm as counsel for the Respondent in this action.
6. At the time the Consent Order was issued, I and Donald W. Tyler (Sr.), Esquire, were members of and practicing with the Firm; subsequently and while I continued as a practicing attorney with the Firm, Taylor A. Peace, Esquire, joined the Firm as a practicing associate attorney.
7. I subsequently became inactive from the practice of law, but before becoming inactive I discussed this action with each of Taylor A. Peace, Esquire, and with Donald W. Tyler (Sr.), Esquire, and with the Respondent. All agreed to the continued representation of the Respondent by Taylor A. Peace, Esquire, and with Donald W. Tyler (Sr.), Esquire as members of the Firm.

FURTHER DEPONENT SAYETH NOT.



Donald W. Tyler, Jr

SWORN before me this 1st day of May, 2017.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 06/18/22

STATE OF SOUTH CAROLINA
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SC Court of Appeals

Appeal from Lee County
S. Bryan Doby, Master-In-Equity

Lower Case No. 2009-CP-31-131

United States of America, acting through the
Farmers Home Administration, United States
Department of Agriculture,

Plaintiff/Respondent,

v.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, and all other heirs at law and/or distributes
of Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas,
deceased, his heirs, personal representatives,
executors, administrators, successors and assigns,
and any spouses if any he has, and all persons entitled
to claim under or through him or any of them; all
persons unknown claiming any right, title, estate,
interest in or lien upon the real estate described in the
Complaint herein, any and all persons who may be in
the military service of the United States of America,
being a class designated as John Doe; and any
unknown minors or persons under a disability being
a class designated as Richard Roe, Laura Ann Toney,
and Brittany Nicole Thomas,


Defendants,

Of whom Laura Ann Toney is the Appellant.

APPELLATE CASE NO. 2016-002261

CERTIFICATE OF SERVICE

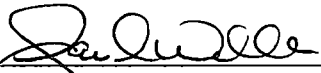
The undersigned attorney hereby certifies that a true copy of the Return to Motion for Leave of Court and to File a Late Initial Brief and Designation of Matter in the above referenced case has been served upon Laura Ann Toney, *pro se* Appellant, at Post Office Box 722, Bishopville, South Carolina 29010, on this 1st day of May, 2017.



Donald W. Tyler (Sr.) (S.C. Bar No. 5664)
HARRELL, MARTIN, & PEACE, P.A.
P.O. Box 1000
Chapin, South Carolina 29036
(803) 345-3353

Attorneys for Respondent, United States of America, acting through the Farmers Home Administration, United States Department of Agriculture

SUBSCRIBED AND SWORN TO
before me this 1st day of May, 2017.



Notary Public for South Carolina
My Commission Expires: 2018/22

HARRELL, MARTIN & PEACE, P.A.

ATTORNEYS AND COUNSELORS AT LAW

**135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
TELEPHONE 803-345-3353
FAX 803-345-9171
harrellmartin.com**

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Jennifer Dowd Nichols
Brent M. Takach
Taylor A. Peace

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III *

*Of Counsel

**Certified Mediator/Arbitrator

May 1, 2017

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
MAY 01 2017
SC Court of Appeals

RE: United States of America, acting through the Farmers Home Administration, United States Department of Agriculture v. Maxie Lee Thomas, Jr., et al.
Of Whom Laura Ann Toney is the Appellant.
Appellate Case No.: 2016-002261
Our File No.: 2518.23031/DWT

Dear Ms. Kitchings:

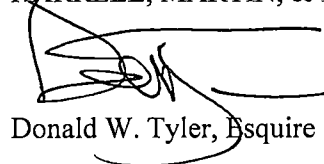
Our law firm represents the Respondent, United States of America, acting through the Farmers Home Administration (United States Department of Agriculture), in the above referenced matter. Enclosed please find an original and seven (7) copies of our Return to Motion for Leave of Court and to File a Late Initial Brief and Designation of Matter. Also enclosed is our firm's check in the amount of \$25.00 for the filing fee. Please file the original and return a clocked copy to me in the self-addressed envelope provided.

By copy of this letter, we are serving Laura Ann Toney, *pro se* Appellant, with a copy of the same.

Thank you for your assistance with this matter.

Sincerely,

HARRELL, MARTIN, & PEACE, P.A.


Donald W. Tyler, Esquire

TAP/jw
Enclosures
cc: Laura Ann Toney