

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas  
The Honorable Perry M. Buckner, III, Circuit Court Judge

Civil Action No. 2015-001721

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Estate Of Willie G. Weekley, Deceased, By Its Personal  
Representative, Betty W. Denney,.....Respondent,

v.

L.C. Weekley, Laura Weekley Segel, Individually and as  
Personal Representative of the Estate Of William James Weekley,  
Deceased, Peter Saad as Personal Representative of Mary Elizabeth  
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth  
Saad Trust,

Of whom Laura Weekley Segel, Individually And As Personal  
Representative Of The Estate Of William James Weekley, Deceased,  
is the.....Appellant.

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**PETITION FOR REHEARING OF APPELLANT LAURA WEEKLEY SEGEL**

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**RECEIVED**  
MAY 30 2017  
SC Court of Appeals

## INTRODUCTION

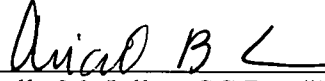
Appellant Laura Weekley Segel (hereinafter “Appellant” or “Segel”) respectfully petitions this Court for rehearing of Unpublished Opinion No. 2017-UP-208, dated May 17, 2017, pursuant to Rule 221(a) and Rule 240(i) SCACR. Appellant seeks rehearing only of that portion of Court of Appeal’s opinion upholding the Probate Court’s finding that the deed of distribution Respondent Betty W. Denney issued conveying forty acres and the Willie G. Weekley homestead to herself and her sister Margaret Shinar that conveyed forty acres and the Willie G. Weekley homestead was appropriate based on the following grounds:

- I. Appellant had no opportunity to argue jurisdiction before the Probate Court because the Probate Court’s first ruling regarding Appellant’s Petition to Set Aside Deed of Distribution was in the order granting Respondents’ motion for reconsideration that led to this appeal.
- II. By granting Appellant’s Petition to Remove all pending petitions almost six months prior to ruling on Appellant’s Petition to Set Aside Deed of Distribution, Judge Odom divested her authority to rule on the forty acre homestead.

Accordingly, Appellant respectfully requests that this Court hold that the portion of the Hampton County Probate Court’s finding regarding the deed conveying the forty acres around Willie G. Weekley’s home is not the law of the case, reverse the Hampton County Probate Court on this issue and remand to the Hampton County Circuit Court.

Respectfully submitted,

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Of whom Laura Weekley Segel, Individually And As Personal  
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**MEMORANDUM IN SUPPORT OF THE PETITION FOR REHEARING OF  
APPELLANT LAURA WEEKLEY SEGEL**

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**Attorneys for Appellant**

## INTRODUCTION

Appellant Laura Weekley Segel (hereinafter “Appellant” or “Segel”) respectfully submits this memorandum in support of her Petition for Rehearing of Unpublished Opinion No. 2017-UP-208, dated May 17, 2017, pursuant to Rule 221(a) and Rule 240(i) SCACR. Appellant seeks rehearing only of that portion of Court of Appeal’s opinion upholding the Probate Court’s finding that the deed of distribution Respondent Betty W. Denney issued conveying forty acres and the Willie G. Weekley homestead to herself and her sister Margaret Shinar that conveyed forty acres and the Willie G. Weekley homestead was appropriate. It appears that this Court upheld the Probate Court’s find regarding the Deed of Distribution because it mistakenly believed Appellant had not raised her concerns regarding the Deed of Distribution with Judge Odom in the Hampton County Probate Court and overlooked the fact that Appellant’s pending Petition to Set Aside Deed of Distribution, filed June 4, 2012, (R. pp. 158-160) had already been removed to the Circuit Court by order of Judge Odom on August 29, 2013 (R. pp. 5-11) so that the Hampton County Probate Court no longer had subject matter jurisdiction over the Deed of Distribution issue when Judge Odom ruled it was appropriate in her order dated February 6, 2015 (R. pp. 16-27).

Rehearing is warranted when the Court has overlooked or misapprehended an argument. Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). When the Court fails to address some of the arguments raised in the appeal, “a *prima facie* case for rehearing has been made.” Covar v. Sallat, 22 S.C. 265, 272 (1885). Accordingly, Appellant respectfully requests that this Court reconsider this matter and overturn the Hampton County Probate Court’s finding that the Deed of Distribution was appropriate and remand to the Circuit Court.

## ARGUMENT

- I. Appellant had no opportunity to argue jurisdiction before the Probate Court because the Probate Court's first ruling regarding Appellant's Petition to Set Aside Deed of Distribution was in the order granting Respondents' motion for reconsideration that led to this appeal.

In Unpublished Opinion No. 2017-UP-208, filed May 17, 2017, this Court held that Judge Odom's deed is the law of this case because Appellant did not raise jurisdictional issues before the Probate Court. The Court's Opinion appears to disregard Appellant's Petition to Set Aside Deed of Distribution which was filed by the Appellant with the Hampton County Probate Court on June 4, 2012 and never heard by the Probate Court. Judge Odom never scheduled nor heard arguments regarding the petition prior to ordering the removal of all pending petitions and motions at the end of her order dated August 29, 2013 granting partial summary judgment to Respondent. No mention of the petition was made in Judge Odom's order and it was removed to the Circuit Court along with all other pending Petitions. (R. p. 11). As the Petition to Set Aside Deed of Distribution was removed on August 29, 2013 to the Hampton County Circuit Court and had never been heard by the Hampton County Probate Court, there was no reason and no opportunity for Appellant to raise any jurisdictional issues before the Hampton County Probate Court.

The first and only time Judge Odom addressed the Petition to Set Aside Deed of Distribution directly was in her February 6, 2015 "Order Granting the Plaintiff's Motion for Summary Judgment Upon the Motion to Reconsider and Upon a Motion Hearing on January 5, 2015" issued almost six months after Judge Odom had already ordered the removal of all petitions to the Circuit Court. Respondent's Motion to Reconsider the Order of this Court Dated

August 29, 2013, dated September 13, 2013 (R. pp. 168-169) does not mention the Petition to Set Aside Deed of Distribution and does not dispute the Court's order removing all pending petitions except the motion for summary judgment. Neither side argued about the forty acre homestead, the Petition to Set Aside Deed of Distribution, or Judge Odom's order granting removal of all pending petitions during the motions hearing on January 5, 2017 regarding Respondent's motion to reconsider. It was entirely outside of Judge Odom's power to order *sua sponte* in her order granting Respondent's motion for summary judgment based on her motion to reconsider that "the transfer of the 40 acres by the Deed of Distribution to Denny and Shinar, Recorded in Book 266 at Page 297 in the Office of the Register of Deeds for Hampton County, was made in compliance with the Will". The Deed of Distribution was not before her based on her own order of removal and had not been argued by the parties.

Since the Probate Court addressed the Deed of Distribution for the first time in ruling on the Respondent's motion for reconsideration, Appellant's first and only opportunity to argue lack of jurisdiction has been in this appeal. Appellant timely filed a Motion to Remove to Circuit Court at which time the Probate Court no longer had jurisdiction over any of the issues ruled upon in Judge Odom's order. Therefore, since Judge Odom only addressed the appropriateness of Deed of Distribution after she removed Appellant's Petition to Set Aside Deed of Distribution to Circuit Court and only did so in her order granting Respondent's motion for reconsideration regarding Judge Odom's order granting Respondent partial summary judgment which Appellant properly and necessarily appealed, Appellant had no opportunity to raise any jurisdictional issues regarding the Deed of Distribution before this appeal. Accordingly, Appellant respectfully requests that this Court hold that the Probate Court's finding is not the law of the case and remand that issue to the Circuit Court which has jurisdiction over Appellant's still pending

Petition to Set Aside Deed of Distribution.

II. By granting Appellant's Petition to Remove all pending petitions almost six months prior to ruling on Appellant's Petition to Set Aside Deed of Distribution, Judge Odom divested her authority to rule on the forty acre homestead.


In its Opinion, this Court rejected Appellant's jurisdictional arguments regarding Judge Odom's removal of any issues regarding the Deed of Distribution six months before ruling that the Deed of Distribution is proper because the removal does not implicate subject matter jurisdiction. However, the Hampton County Probate Court, while it has broad subject matter jurisdiction over the general issues present in this matter, does not have exclusive jurisdiction. Once Judge Odom ordered the removal of all pending petitions to the Circuit Court in August, 2015, the Hampton County Probate Court no matter had jurisdiction over this matter. It is nonsensical to allow a probate judge who voluntarily relinquished her authority over a matter to continue to exercise authority to the prejudice of a party who was given no opportunity to even argue the issues at hand.

### CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Court hold that the portion of the Hampton County Probate Court's finding regarding the deed conveying the forty acres around Willie G. Weekley's home is not the law of the case, reverse the Hampton County Probate Court on this issue and remand to the Hampton County Circuit Court.

Respectfully submitted,

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Of whom Laura Weekley Segel, Individually And As Personal  
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is the.....Appellant.

**PROOF OF SERVICE**

I, Ariail B. Kirk, hereby certify that I served the Memorandum in Support of the  
Petition For Rehearing of Appellant Laura Weekley Segel and Petition For Rehearing of  
Appellant Laura Weekley Segel by depositing a copy of it in the United States Mail,  
postage prepaid, on May 30, 2017, addressed to the counsel of record, at the following  
address:

G. Hamlin O'Kelley, III, Esq.  
Buist, Byers, & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Charleston, SC 29464  
*Attorneys for Respondent*

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May 30, 2017

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