

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE MATTER OF THE ESTATE OF)
JOHNNIE MAE MULLER NEWTON)
Decedent.)
_____)

IN THE PROBATE COURT
ESTATE NUMBER: 2016-ES-40-0007

RECEIVED

OCT 02 2017

SC Court of Appeals

CLERK OF COURT
RICHLAND COUNTY, S.C.

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FILED

ORDER DETERMINING HEIRS, APPOINTING SUCCESSOR PERSONAL REPRESENTATIVE, AUTHORIZING SALE OF PERSONAL PROPERTY, AND AUTHORIZING SALE OF REAL PROPERTY

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Formal Testacy and Appointment on January 15, 2016, and the subsequent filing of a Petition for Allowance of Claim on March 23, 2017, by Petitioner Isaac Smith Jr. ("Mr. Smith"), a nephew of Johnnie Mae Muller Newton ("Decedent").

In his Petition, Mr. Smith asked the Court to admit a copy of what was purported to be the Last Will and Testament ("Will") of the Decedent, dated November 5, 2010, to probate and to appoint him as Personal Representative of the Estate of Johnnie Mae Muller Newton (the "Estate"). Mr. Smith alleged that this copy was mailed to him prior to the Decedent's death from a house fire on January 8, 2016, which also allegedly destroyed the original Will. The purported Will nominated Mr. Smith to serve as Personal Representative. On December 19, 2016, the Court issued an Order Denying Copy of Will to Probate and Appointing Personal Representative. In that Order, the Court determined that the "evidence presented throughout the [December 1, 2016] hearing does not rise to the level of clear and convincing evidence as required to rebut the presumption" that the testator destroyed the Will with intent to revoke it. Due to the lack of clear and convincing evidence, the Court concluded that the administration of the Estate should proceed pursuant to the laws of intestate succession. The Court did, however, appoint Mr. Smith as the Personal Representative because no other person filed a Petition for Formal Appointment.

Shortly thereafter, Mr. Smith filed a Statement of Creditor's Claim with this Court for an amount of \$66,715.11 on March 6, 2017. Mr. Smith requested reimbursement for traveling expenses, maintaining the property, funds for family members to attend the Decedent's funeral, groceries and meals during the administration of the Estate, utility bills, funeral bills of the Decedent's spouse, car rentals, contribution to the Decedent's living expenses, labor and care of

the Decedent, and other fees he allegedly incurred. Subsequently, Mr. Smith filed a Petition for Allowance of Creditor Claim for the same amount on March 23, 2017, although he did not file the appropriate pleadings and did not pay the required filing fee. From May 4 through May 10, 2017, eighteen (18) family members and intestate heirs filed Answers opposing Mr. Smith's Petition for Allowance of Creditor Claim. Additionally, Mr. Smith's mother and an intestate heir of the Estate, Carrie Muller Lewis, filed a Statement of Creditor's Claim for the amount of \$9,400.00 for reimbursement of funeral expenses on May 4, 2017.

On June 26, 2017, Mr. Smith filed a Motion for Relief from Order Denying Copy of Will to Probate (hereinafter "Motion"), Pursuant to Rule 60, an accompanying memorandum, and supporting Affidavits of Mr. Smith, Matthew Davis, and Broderick Smith, which alleged that the three of them found the original Will and that the original Will should be probated. Mr. Smith retained the services of a California attorney, George E. Omoko, for unrelated matters and for assistance in filing the aforementioned Motion pro se. Mr. Smith also alleged that his son, Broderick Smith, his friend, Matthew Davis, and Mr. Smith himself found an original Will in the remains of the burned home on January 12, 2017, but Mr. Smith did not file the purported original Will with this Court.

As a result, the Court determined that it was necessary to hold a hearing to resolve the above issues. In addition, after receipt of several birth certificates, death certificates, and family trees prepared by Mr. Smith, the Court found that it was also necessary to determine the intestate heirs of the Decedent for this action to proceed.

A hearing was scheduled for and held on August 22, 2017. The Court sent Notice of hearing to all known interested parties with known mailing addresses. Present at the hearing were the following intestate heirs: John Hampton; Patricia Muller, widow of Gene A. Muller; Genese Muller; Sidney Muller; Taneshia Franklin; Monica Muller; Francine Muller Jones; Cheryl Muller McClinton; Shirley Smith; Shantia Muller; Patricia Hampton; Lessie Lenora Parker; Tammy Foster; Clifton Muller; Anthony Muller; Hebrew Muller Jr.; Adrien Muller; Tracy Favor; Mildren Hook; Alfred Muller; Gene Muller II; and Attorney Elnora J. Dean, who represents Carrie Lewis, an alleged incapacitated adult in assisted living. Also in attendance were Mr. Smith and his attorney, Jeff Haladay, and Barbara Gail Hampton, spouse of John Hampton.

At the hearing, instead of submitting an original Will, Mr. Smith submitted another copy of the alleged Will, which was inconsistent with the copy that Mr. Smith attempted to probate on

December 1, 2016. As such, the Court denied admitting the copy for probate. Mr. Smith also indicated that he would like to withdraw his Petition for Allowance of Creditor Claim. Additionally, Mr. Smith submitted bank statements with missing pages. When the Court demanded the full bank statements, Mr. Smith disclosed the full statements, which showed that he reimbursed himself as Personal Representative a total amount of \$30,000.00. This amount includes transfers of \$9,800.00, \$5,000.00, \$4,800.00, \$3,000.00, \$5,000.00, and a check to himself for reimbursement of a payment to Creel Recording Company for recording the December 1, 2016, hearing for \$2,400.00, even though the invoice was for the amount of \$1,640.30. The expenses incurred from Creel Recording Company were for the personal benefit of Mr. Smith as he used the printed transcript for the sole purpose of filing his Motion to Reconsider. As such, neither the invoice amount of \$1,640.30 nor the check amount of \$2,400.00 should have been reimbursed by the Estate. Mr. Smith also used Estate funds to pay Attorney George Omoko \$6,000.00 for his assistance with researching this matter. In addition, the bank statements show unexplained discrepancies, such as a withdrawal of \$29,000.00 and a deposit of \$29,001.00 at a later date. As a result, the Court immediately terminated Mr. Smith's services as Personal Representative and ordered Mr. Smith to pay the Estate \$1,000.00 on the day of the hearing, \$12,000.00 within sixty (60) days of the hearing, which is due October 17, 2017, and \$1,000.00 per month thereafter with the total remaining balance due to the Estate no later than January 1, 2018. Furthermore, the Court instructed Mr. Smith's attorney, Jeff Haladay, to return any portion of his flat fee of \$5,000.00 that was not related to the benefit of the Estate.

Also during the hearing, the family indicated that they wished for Barbara Gail Hampton ("Ms. Hampton") to serve as the Personal Representative, and Ms. Hampton filed an Application/Petition for Successor Personal Representative with this Court; therefore, the Court appointed Ms. Hampton to serve. As such, Mr. Smith was instructed to turn the keys to the Decedent's vehicles over to Ms. Hampton so that she can arrange to have the vehicles removed from the residence of Berry Daniel, a friend of Mr. Smith's son Broderick Smith. In addition, with the assistance of the parties in attendance, the Court determined which intestate heirs were missing from the Court's records. Lastly, the parties indicated that Andrew Muller would like to buy the Decedent's 2004 Ford Ranger, valued at \$7,760.00. During the hearing, the parties agreed to let Andrew Muller purchase the vehicle from the Estate for \$862.22. This number was calculated by determining that Carrie Lewis may be incapacitated, so her one-ninth (1/9) share of

the value of the vehicle ought to be purchased. Further, Clifton Muller indicated that he would like to purchase the Ford Focus, worth \$5,540.00, from the Estate, and none of the parties in attendance objected. The Court calculated that Clifton Muller may purchase the 2008 Ford Focus for \$615.55, which is Carrie Lewis' one-ninth (1/9) share of the value of the vehicle.

Based on the filed documents, affidavits, and pleadings, and the testimony taken at the hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Johnnie Mae Muller Newton died intestate on January 8, 2016; therefore, the Probate Court has subject matter jurisdiction over these issues pursuant to S.C. Code Ann. § 62-1-302(a)(1), 1976, as amended.
2. The Decedent was a resident of Richland County at the time of her death; therefore, venue is proper for this proceeding pursuant to S.C. Code Ann. § 62-3-201(a)(1), 1976, as amended.

Determination of Heirs:

3. The Decedent's spouse predeceased her, and the Decedent had no children. The Decedent's mother, Maebell Riley Muller, and her father, Sidney Muller, both predeceased her. Therefore, pursuant to S.C. Code Ann. § 62-2-103(3), 1976, as amended, the Decedent's Estate will pass to her surviving siblings and to the children of her predeceased siblings by representation.
4. The Decedent was one of fifteen siblings. The Decedent was survived by four siblings: Carrie Lewis, Joseph Muller, Andrew Muller, and Sandra D. Hopson.
5. Sandra D. Hopson survived the Decedent but subsequently died January 2, 2017, and she has two surviving children: Tracy Favor and Carlos Hampton.
6. The Decedent was predeceased by ten siblings: Vertel Shell (Date of Death: June 8, 1998); Ruben Muller (Date of Death: February 17, 2001); Sydney Muller (Date of Death unknown; died under age ten); Priscilla Muller (Date of Death unknown; died under age ten); Kristina Muller (Date of Death unknown; died under age ten); Isaiah Muller (Date of Death: November 29, 2014); Willie Muller II (Date of Death: April 26, 2004); Gene Autry Muller Sr. (Date of Death: July 20, 2010); Hebrew Muller Sr. (Date of Death: February 13, 2007); and Cassie Mae Jeffcoat (Date of Death: May 20, 2005).

7. Ruben Muller, Priscilla Muller, Kristina Muller, Vertel Muller Shell, and Sydney Muller all died with no surviving children.
8. Isaiah Muller was survived by six children: Alfred Muller, Francine Muller Jones, Cheryl Muller McClinton, Adrien Muller, Anthony Muller, and Monica Muller.
9. Willie Muller II died with two surviving children: Mildren Hook and James Muller. Additionally, Willie Muller II was predeceased by two children: Willie Thomas Muller Jr. (Date of Death: January 22, 2013 and no issue) and Sidney Frazier Muller II (Date of Death: August 3, 2001). Sidney Frazier Muller II is survived by Sidnesha Franklin, Taneshia Franklin, Sidney J. Muller, and Zhane Muller Bailey.
10. Gene Autry Muller Sr. was survived by two children: Genese Muller and Gene A. Muller II.
11. Hebrew Muller Sr. was survived by six children: Lessie Parker, Clifton Muller, Shantia Muller, Tammy Foster, Stephone Scott, and Hebrew Muller Jr.
12. Cassie Mae Jeffcoat was survived by four children: Calvin Hampton, John Hampton, Patricia Hampton, and Shirley Smith. Additionally, Ms. Jeffcoat was predeceased by Stephone McKinley Jeffcoat (Date of Death: May 19, 2001). Stephone McKinley Jeffcoat was survived by Janarvis Jeffcoat and Stephone Jeffcoat, II.
13. Because the Decedent had a total of fourteen siblings, and there are nine siblings who either survived the Decedent or left issue to take by representation, each surviving sibling will receive a one-ninth ($1/9$) share of the Estate.
14. Carrie Lewis, Andrew Muller, Joseph Muller, and the Estate of Sandra D. Hopson are each entitled to a one-ninth share of the Estate. The children of the Decedent's siblings will equally share in the interests of their respective predeceased parents by representation. The grandchildren of predeceased children of the Decedent's children will equally share in the interest of their respective predeceased parents by representation. Therefore, the intestate heirs are entitled to receipt of the following interests in the Estate:

<u>Intestate Heir</u>	<u>Interest</u>
a. Carrie Lewis	$1/9$
b. Andrew Muller	$1/9$
c. Joseph Muller	$1/9$
d. Estate of Sandra D. Hopson	$1/9$
e. Alfred Muller	$1/54$
f. Anthony Muller	$1/54$
g. Adrien Muller	$1/54$

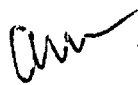
7. Ruben Muller, Priscilla Muller, Kristina Muller, Vertel Muller Shell, and Sydney Muller all died with no surviving children.
8. Isaiah Muller was survived by six children: Alfred Muller, Francine Muller Jones, Cheryl Muller McClinton, Adrien Muller, Anthony Muller, and Monica Muller.
9. Willie Muller II died with two surviving children: Mildren Hook and James Muller. Additionally, Willie Muller II was predeceased by two children: Willie Thomas Muller Jr. (Date of Death: January 22, 2013 and no issue) and Sidney Frazier Muller II (Date of Death: August 3, 2001). Sidney Frazier Muller II is survived by Sidnesha Franklin, Taneshia Franklin, Sidney J. Muller, and Zhanee Muller Bailey.
10. Gene Autry Muller Sr. was survived by two children: Genese Muller and Gene A. Muller II.
11. Hebrew Muller Sr. was survived by six children: Lessie Parker, Clifton Muller, Shantia Muller, Tammy Foster, Stephone Scott, and Hebrew Muller Jr.
12. Cassie Mae Jeffcoat was survived by four children: Calvin Hampton, John Hampton, Patricia Hampton, and Shirley Smith. Additionally, Ms. Jeffcoat was predeceased by Stephone McKinley Jeffcoat (Date of Death: May 19, 2001). Stephone McKinley Jeffcoat was survived by Janarvis Jeffcoat and Stephone Jeffcoat, II.
13. Because the Decedent had a total of fourteen siblings, and there are nine siblings who either survived the Decedent or left issue to take by representation, each surviving sibling will receive a one-ninth (1/9) share of the Estate.
14. Carrie Lewis, Andrew Muller, Joseph Muller, and the Estate of Sandra D. Hopson are each entitled to a one-ninth share of the Estate. The children of the Decedent's siblings will equally share in the interests of their respective predeceased parents by representation. The grandchildren of predeceased children of the Decedent's children will equally share in the interest of their respective predeceased parents by representation. Therefore, the intestate heirs are entitled to receipt of the following interests in the Estate:

<u>Intestate Heir</u>	<u>Interest</u>
a. Carrie Lewis	1/9
b. Andrew Muller	1/9
c. Joseph Muller	1/9
d. Estate of Sandra D. Hopson	1/9
e. Alfred Muller	1/54
f. Anthony Muller	1/54
g. Adrien Muller	1/54

h. Francine Muller Jones	1/54
i. Cheryl M. McClinton	1/54
j. Monica Muller	1/54
k. Mildren Hook	1/27
l. James Muller	1/27
m. Sidnesha Franklin	1/108
n. Taneshia Franklin	1/108
o. Sidney J. Muller	1/108
p. Zhance Muller Bailey	1/108
q. Genese Muller	1/18
r. Gene A. Muller II	1/18
s. Lessie L. Parker	1/54
t. Clifton Muller	1/54
u. Shantia Muller	1/54
v. Tammy Foster	1/54
w. Stephone Scott	1/54
x. Hebrew Muller Jr.	1/54
y. Calvin Hampton	1/45
z. John Hampton	1/45
aa. Patricia Hampton	1/45
bb. Shirley Smith	1/45
cc. Janarvis Jeffcoat	1/90
dd. Stephone Jeffcoat II	1/90

Removal of Personal Representative

15. During the Hearing, the Court received testimony from Mr. Smith that he reimbursed himself \$30,000.00 without proper Court approval. Additionally, Mr. Smith withdrew his Petition for Allowance of Claim.
16. Pursuant to S.C. Code Ann. § 62-3-611(b), 1976, as amended, a Personal Representative may be removed for cause if "removal would be in the best interests of the estate, or if it is shown that a personal representative . . . has mismanaged the estate"
17. The Court determined that Mr. Smith mismanaged the Estate and that the removal of Mr. Smith as Personal Representative is in the best interest of the Estate.
18. Therefore, pursuant to S.C. Code Ann. §§ 62-3-608, 62-3-610, and 62-3-611, 1976, as amended, the Court terminates the appointment of Mr. Smith as Personal Representative.



Appointment of Personal Representative:

19. Pursuant to S.C. Code Ann. § 62-3-203(d)(3), 1976, as amended, the Court during a formal proceeding has discretion to appoint a person who has lower priority to serve as Personal Representative if the administration of the Estate is necessary.
20. During the hearing, the Court found that the administration of the Estate is necessary because the assets of the Estate, namely the proceeds from insurance policies, may be lost if the Court does not appoint a Personal Representative to administer the Estate.
21. Also during the hearing, all the family members and intestate heirs in attendance requested that this Court appoint intestate heir John Hampton's wife, Barbara Gail Hampton, as Successor Personal Representative of the Estate. No parties objected to the appointment of Ms. Hampton, and Ms. Hampton is the most fit and suitable party to serve in that capacity.
22. In addition, Barbara Gail Hampton informally applied to the Court to serve as Successor Personal Representative on August 22, 2017, and at the discretion of the Court, the application was granted.

Authority to Sell Personal Property

23. At the time of her death, the Decedent owned a 2004 Ford Ranger, VIN 1FTYR44E54PB30519, and a 2008 Ford Focus, VIN 1FAHP35N38W218551. The Inventory and Appraisal filed with the Court on August 22, 2016, lists the 2004 Ford Ranger as an asset of the Estate with a value of \$7,760.00 and the 2008 Ford Focus as an asset of the Estate with a value of \$5,540.00.
24. The interested parties that attended the hearing agreed to let Andrew Muller purchase the 2004 Ford Ranger for \$862.22 and to let Clifton Muller purchase the 2008 Ford Focus for \$615.55, which are Carrie Lewis' one-ninth (1/9) share in the value of the vehicles, respectively.

Authority to Sell Real Property

25. At the time of her death, the Decedent owned real property located at 1145 Quiet Lane, Columbia, South Carolina 29223, bearing Richland County TMS# R16913-16-09 ("Real Property").

26. The Real Property was destroyed by a fire and is currently uninsured and uninhabitable; therefore, it should be sold immediately. It is in the best interest of the Estate and all interested parties to sell the Real Property for fair market value as soon as possible. As such, the Personal Representative shall submit an opinion letter from a real estate agent estimating the fair market value and have the Real Property appraised.

THEREFORE, IT IS ORDERED THAT:

A. The intestate heirs of Johnnie Mae Muller Newton are as follows:

<u>Intestate Heir</u>	<u>Interest</u>
a. Carrie Lewis	1/9
b. Andrew Muller	1/9
c. Joseph Muller	1/9
d. Estate of Sandra D. Hopson	1/9
e. Alfred Muller	1/54
f. Anthony Muller	1/54
g. Adrien Muller	1/54
h. Francine Muller Jones	1/54
i. Cheryl M. McClinton	1/54
j. Monica Muller	1/54
k. Mildren Hook	1/27
l. James Muller	1/27
m. Sidnesha Franklin	1/108
n. Taneshia Franklin	1/108
o. Sidney J. Muller	1/108
p. Zhane Muller Bailey	1/108
q. Genese Muller	1/18
r. Gene A. Muller II	1/18
s. Lessie L. Parker	1/54
t. Clifton Muller	1/54
u. Shantia Muller	1/54
v. Tammy Foster	1/54
w. Stephone Scott	1/54
x. Hebrew Muller Jr.	1/54
y. Calvin Hampton	1/45
z. John Hampton	1/45
aa. Patricia Hampton	1/45
bb. Shirley Smith	1/45
cc. Janarvis Jeffcoat	1/90
dd. Stephone Jeffcoat II	1/90

B. Isaac Smith Jr. shall be removed as Personal Representative, and his appointment as Personal Representative of the Estate of Johnnie Mae Muller Newton shall be terminated

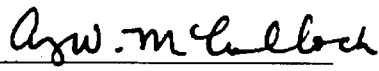
immediately. This does not relieve him of his duty to report, account, cooperate and reimburse what he has inappropriately taken from the estate.

- C. Barbara Gail Hampton shall be appointed as the Successor Personal Representative for the Estate of Johnnie Mae Muller Newton pursuant to S.C. Code Ann. §§ 62-3-203(d)(3) and 62-3-613, 1976, as amended, and she shall serve without bond.
- D. Pursuant to S.C. Code Ann. § 62-3-608, 1976, as amended, Mr. Smith's termination shall "not discharge him from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets." Mr. Smith shall still be under the same fiduciary obligation and is still accountable to the heirs of the Estate and to this Court for any potential charges brought against him for his violation of his fiduciary duties. As such, Mr. Smith is ordered to refund the Estate \$30,000.00 with the amount of \$12,000.00 due within sixty (60) days of the hearing, which is due October 17, 2017, to make monthly payments of \$1,000.00 thereafter with the total remaining balance due to the Estate no later than January 1, 2018, and he is to turn over the keys to the Decedent's vehicles to Ms. Hampton.
- E. The Successor Personal Representative, Barbara Gail Hampton, is authorized to sell the 2004 Ford Ranger, VIN 1FTYR44E54PB30519, to Andrew Muller for \$862.22 and the 2008 Ford Focus, VIN 1FAHP35N38W218551, to Clifton Muller for \$615.55.
- F. The Successor Personal Representative shall be authorized to execute any and all documents related to the sale of the 2004 Ford Ranger and the 2008 Ford Focus, including bills of sale, titles, and other related documents.
- G. The Successor Personal Representative is authorized and directed to list and sell the Real Property located at 1145 Quiet Lane, Columbia, South Carolina 29223, bearing Richland County TMS# R16913-16-09, for market value, including the execution of all documents necessary to retain the services of a real estate professional, get an appraisal of the real property, to close the sale of the real property, and to transfer the real property to the purchaser.
- H. The Successor Personal Representative is authorized to pay from the gross proceeds of the sales reasonable and customary commissions for the sale of the Real Property and other closing costs that are also reasonable and customary.

- I. The Successor Personal Representative shall email a copy of the completed Settlement Statements to GallowayC@rcgov.us within ten (10) days of the closing.
- J. The Successor Personal Representative shall file the Information to Heirs and Devisees within thirty (30) days of the date of this Order.
- K. The remaining proceeds of the sales after payment of all applicable costs shall be held by the Successor Personal Representative in the Estate checking account for payment of additional expenses of administration as and disbursement to the heirs approved by subsequent Orders of the Probate Court.
- L. The Successor Personal Representative shall take all actions reasonably necessary to promptly conclude the administration of the Estate.

IT IS SO ORDERED.

September 5, 2017
Columbia, South Carolina



Amy W. McCulloch
Richland County Probate Judge