THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE PROBATE COURT
NINTH JUDICIAL CIRCUIT

Tamara C. Curry, Judge

Probate Court Case No. 2013-ES-10-1054

Appellate Case No. 2017-002137

In Re: Estate of Paul J. Stein

Richard Stein, Sarah Stein, and Nichole Stein Jones, Respondents,

v.

Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein, Appellant/Respondent,

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and

Marian Stein-Steinfeld, Intervenor, Respondent/Appellant.

REPLY TO OPPOSITION TO MOTION TO DISMISS CROSS APPEAL FILED BY MARIAN STEIN-STEINFELD

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RULES

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Appellant Victoria Stein as Personal Representative of the Estate of Paul Stein hereby submits this Reply to the Opposition to the Motion to Dismiss the Cross-Appeal of Intervening Respondent Marian Stein-Steinfeld.

All of Stein-Steinfeld's claims were dismissed by probate court Order granting summary judgment to Appellant Victoria Stein on April 6, 2017. Thereafter, Stein-Steinfeld filed a timely Motion to Alter or Amend, which was eventually denied by Order dated September 14, 2017 and received by all parties on September 15, 2017. Pursuant to Probate Code section 62-1-308(a):

> A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

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The jurisdictional deadline for Stein-Steinfeld to appeal the findings in that Order passed on September 25, 2017. No appeal was filed or noticed by Stein-Steinfeld prior to this deadline. South Carolina courts have strictly construed the ten (10) day appellate deadline. See, e.g., State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction); First Carolina Nat'l Bank v. A & S Enters., Inc., 272 S.C. 339, 340, 251 S.E.2d 762, 762 (1979) (dismissing appeal for lack of jurisdiction when appellants failed to give notice of their intention to appeal within the statutory ten-day period).

Stein-Steinfeld, in her opposition to the motion to dismiss, attempts to rehabilitate her appeal by use of Appellant Victoria Stein's filing of her notice of appeal from the non-jury trial

judgment order (which did not include nor involve the claims made by Stein-Steinfeld)[1] on October 17, 2017, and the cross-appeal rule found at SCRAP, Rule 203(c). It is true that Appellant Victoria Stein opted to utilize section 62-1-308 (l) to file her appeal from the non-jury trial Order which provides the parties to an action an option to consent to the appeal being made directly to the South Carolina Supreme Court (instead of the Circuit Court pursuant to subsection (a)), and that said notice and consent was filed on October 17, 2017. Nothing Appellant Victoria Stein did after September 25, 2017, however, can restore the jurisdiction of the appellate court that was lost on September 26, 2017 by the failure of Stein-Steinfeld to appeal the order dismissing her claims. By the time Appellant Victoria Stein filed her notice of appeal, Stein-Steinfeld's appeal deadline had already expired by twenty-two (22) days.

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There is no support in the statutory language or any case which supports the claim that the timely election by Appellant Victoria Stein to utilize subsection (l) was intended to alter the applicable time limits for other parties to file an appeal from probate court. The only reasonable interpretation of the language in subsection (l) which states that the appeal (taken to the Supreme Court instead of the Circuit Court pursuant to subsection (l)) is governed by the procedure in the South Carolina Appellate Court Rules plainly applies to the appeal being filed in the Supreme Court by Appellant – here that appeal as filed by Appellant Victoria Stein. There is nothing in

[1] Stein-Steinfeld argues that the legal issues in the main appeal are sufficient intertwined with her claims that that should somehow excuse her missed filing. However, Stein-Steinfeld did not even participate in the trial between the Stein Children and Victoria Stein, nor did the issues litigated in that trial – mainly whether the emails at issue satisfied the probate code personal property memorandum statutory requirements – have anything to do with Stein-Steinfeld's claims. She claimed that German inheritance law gave her the right to the art collection, and that because of German inheritance law Paul Stein did not have adequate interest in the art collection to will it to either Victoria Stein or the Stein Children. While Stein-Steinfeld could have attempted to appeal the grant of summary judgment against her prior to the commencement of the trial between the Stein Children and Victoria Stein, she did not do so.

subsection (l) that suggests it could be used to rehabilitate an expired appeal by a different party to the case on a completely distinct order and claims. Furthermore, SCRAP, Rule 203 (c) on Cross Appeals applies to a "respondent" to an appeal. Here, Stein-Steinfeld was dismissed as a party to the case prior to the trial between Petitioners Stein Children and Respondent Victoria Stein, and therefore Stein-Steinfeld is not a respondent to this appeal. Her claims and party status were concluded by expiration of her appellate deadline of September 25, 2017.

CONCLUSION

Appellant Stein respectfully requests that the court dismiss the Stein-Steinfeld cross-appeal as not timely filed.

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CHARLESTON, SC
December 4, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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v.

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and

Marian Stein-Steinfeld, Intervenor, Respondent/Appellant.

PROOF OF SERVICE

I certify that I have served the Reply to Opposition to Motion to Dismiss Cross Appeal Filed by Marian Stein-Steinfeld by depositing a copy of it in the United States Mail, postage prepaid, on December 4, 2017, addressed to:

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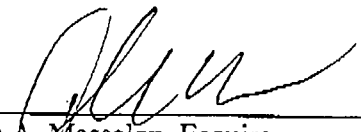
ATTORNEYS FOR INTERVENING RESPONDENT
MARIAN STEIN-STEINFELD



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VIA FACSIMILE AND U.S. MAIL- (803) 734-1839
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: The Estate of Paul J. Stein
Richard Stein, Sarah Stein, and Nichole Stein Jones v. Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein v. Marian Stein-Steinfeld
Appellate Case No.: 2017-002137
Our File No.: 905-1

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Reply to Opposition to Motion to Dismiss Cross Appeal Filed by Marian Stein-Steinfeld and Proof of Service in regard to the above-referenced matter. Please return one (1) file-stamped copy to me in the self-addressed, stamped envelope provided. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

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CFA/cb
Enclosures
cc: Ms. Victoria Stein (via e-mail)
Jack D. Cordray, Esquire (via e-mail and U.S. Mail)
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