

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Roger L. Crouch, Circuit Court Judge

Case No. 2016-CP-21-1435
Appellate Case No. 2017-002291

RECEIVED

JAN 26 2018

SC Court of Appeals

Deborah B. Harwell, ... Respondent/Appellant,

v.

Robert Bryan Harwell, individually and as the
Personal Representative of the Estate of
David W. Harwell; and the South Carolina
Department of Health and Environmental Control,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Appellant/Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, individually, ... Respondents/Appellants.

ADDITIONAL APPELLATE CAPTION ON FOLLOWING PAGE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Kenneth E. Fulp, Jr., Probate Court Judge
Roger L. Crouch, Circuit Court Judge

Case Nos. 2016-ES-07-00302, 2016-CP-21-1435, 2015-ES-21-00778
Appellate Case No. 2017-002290

Deborah B. Harwell, ... Respondent,

v.

Robert Bryan Harwell, individually and as the
Personal Representative of the Estate of
David W. Harwell; and the South Carolina
Department of Health and Environmental Control,
Division of Vital Records, Defendants,

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, individually, ... Appellant.

REPLY SUPPORTING MOTION TO CONSOLIDATE

This reply is filed pursuant to Rule 240(f) of the South Carolina Appellate Court Rules.

This Court currently has pending two separate appellate cases concerning the same award of sanctions. All parties appealed the order. This is one piece of litigation.

The Court's separate docketing of the cases may have been intentional, but it also seems possible separate docketing was the result of the Court receiving multiple notices of appeal rather than one principal notice of appeal and subsequent notices of cross-appeals.

Bryan Harwell believes consolidation of the appellate cases is sensible because it would allow the appeal to be presented as a single piece of litigation. That is how the case was presented below. Consolidation would also avoid the need of preparing two (2) records on appeal and would avoid additional, repetitive briefing.

Deborah Harwell opposes consolidation, stating she has no information on the Florence Probate case (2015-ES-21-00778) or the Beaufort Probate case (2016-ES-07-0032). She also states the cases do not concern Deirdre Edmonds.

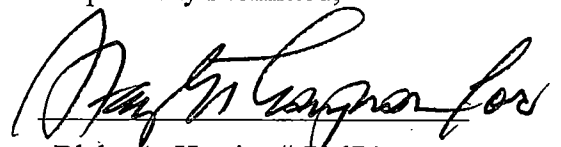
Deborah was the plaintiff in the Florence Probate case. Edmonds filed that lawsuit on Deborah's behalf, as Deborah's attorney. That case appears to have also been given a Beaufort case number after it was assigned to the Probate Judge for Beaufort County following the Florence Probate judge's recusal. The case was transferred to the Court of Common Pleas for Florence County in June of 2016. Orders confirming this are attached.

Deborah's return also argues the merits of the case and references a forthcoming request to reopen the proceedings below. These arguments are not germane to this request to consolidate.

January 26, 2018

Kevin M. Barth # 559
BARTH, BALLENGER & LEWIS, LLP
Post Office Box 107
Florence, South Carolina 29503
(843) 662-6301

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Blake A. Hewitt", written over a horizontal line.

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

Attorneys for R. Bryan Harwell

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE PROBATE COURT
CASE NUMBER: 2015-ES-21-00778

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell,

Petitioner,

vs.

Robert Bryan Harwell, Individually
and as Personal Representative of the
Estate of David W. Harwell, and South
Carolina Department of Health and
Environmental Control Division of
Vital Records,

Respondents .

SUMMONS

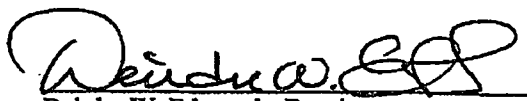
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2016 MAR -1 PM 5:23
J. HUNTER
JUDGE PROBATE OF
FLORENCE COUNTY, S.C.

TO: THE ABOVE-NAMED RESPONDENTS(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, which was filed on or about March 1, 2016, in the Florence County Probate Court. A copy of the Petition is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorney for the Petitioner within thirty (30) days after service hereof, exclusive of the day of service, at P.O. Box 16064, Surfside Beach, SC 29587.

YOU ARE GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Petition.

LAW OFFICE OF DEIRDRE W. EDMONDS, PA



Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

February 29, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE PROBATE COURT
CASE NUMBER: 2015-ES-21-00778

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell,

Petitioner,

vs.

Robert Bryan Harwell, Individually
and as Personal Representative of the
Estate of David W. Harwell, and South
Carolina Department of Health and
Environmental Control Division of
Vital Records,

Respondents .

PETITION

The Petitioner above named, Deborah B. Harwell, by and through her undersigned legal counsel will show unto this Court the following:

1. Petitioner Deborah B. Harwell (hereinafter "Mrs. Harwell") is a citizen and resident of the State of South Carolina, County of Horry.
2. David W. Harwell (hereinafter "Decedent") died on September 30, 2015 and, at the time of his death, the Decedent was a citizen and resident of the State of South Carolina, County of Florence. The Decedent's estate is being administered in the Florence County Probate Court in estate file number 2015-ES-21-00778. Therefore, venue is proper in this county and court.

3. Respondent Robert Bryan Harwell (hereinafter "Respondent Harwell") is a citizen and resident of the State of South Carolina, County of Florence, is the Decedent's son and is also the duly appointed personal representative of the Decedent's estate.
4. Respondent South Carolina Department of Health and Environmental Control Division of Vital Records, located in Columbia, South Carolina, is the official state agency charged with recording the birth, marriage and death records in the State of South Carolina.
5. This Honorable Court has exclusive, original jurisdiction over all subject matter related to estates of decedents, including the determination of heirs and successors of decedents, pursuant to S.C. Code Section 62-1-302. Therefore, this Court has subject matter jurisdiction over the determination of a decedent's next of kin and issues related to a decedent's death certificate.

**For a First Cause of Action
(Adjudication as Surviving Spouse)**

6. Mrs. Harwell and the Decedent were married in the County of Florence, State of South Carolina, on November 21, 2001 (See copy of Marriage Certificate attached hereto as Exhibit "A" and incorporated herein by reference).
7. Mrs. Harwell and the Decedent separated on or about February 11, 2015; however, they never divorced.

8. A Final Order granting the Decedent and Mrs. Harwell separate maintenance and support was entered by the Hon. James A. Spruill on July 21, 2015; however, such Final Order did not terminate the status of the Decedent and Mrs. Harwell as husband and wife. Thus, pursuant to S.C. Code Section 62-2-802, the decree of separate maintenance was not a divorce for purposes of said section.
9. The Decedent died on September 30, 2015 (See copy of Death Certification, commonly referred to as a "Death Certificate", attached hereto as Exhibit "B" and incorporated herein by reference).
10. S.C. Code Section 62-2-802 provides that "an individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death." Conversely, S.C. Code Section 62-2-802 provides that an individual who is married to a decedent and who is not divorced from the decedent or whose marriage to the decedent has not been annulled at the time of death is a surviving spouse.
11. At the time of his death, the Decedent and Mrs. Harwell were not divorced and their marriage has not been annulled. At the time of his death, the Decedent and Mrs. Harwell were legally married and their status as husband and wife had not been terminated. Therefore, Mrs. Harwell is the Decedent's surviving spouse

(See copy of Obituary attached hereto as Exhibit "C" and incorporated herein by reference).

12. There is clear and convincing proof to adjudicate Mrs. Harwell as the surviving spouse of the Decedent, as evidenced by Exhibits "A", "B", and "C", attached hereto and incorporated herein by reference, and as provided under S.C. Code Section 62-2-802.

13. Therefore, Mrs. Harwell asks this Court to adjudicate her as the Decedent's surviving spouse.

**For a Second Cause of Action
(Amendment of Death Certificate)**

14. The Decedent's son, Respondent Harwell was the "Informant" on the Decedent's Death Certificate. (See Exhibit "B" attached hereto and incorporated herein by reference).

15. In providing information required on the Death Certificate as to the Decedent's marital status, Respondent Harwell stated that the Decedent was "married but separated". (See Exhibit "B" attached hereto).

16. In providing information required on the Death Certificate as to the surviving spouse's name, Respondent Harwell stated the surviving spouse's name as "NA" despite having full and complete knowledge of the identity of Mrs. Harwell as

the Decedent's surviving spouse and despite having full and complete knowledge that the surviving spouse's name was not "NA". (See Exhibit "B" attached hereto).

17. S.C. Code Section 44-63-161(A)(2) provides that "it is unlawful for a person . . . to wilfully make a false statement in a certificate, record or report required to be filed . . . or to wilfully supply false information intending that the information be used in the preparation . . . of a certificate" SC Code §44-63-161(A)(2).
18. Further, S.C. Code Section 44-63-161(B) provides that "a person who violates . . . item [44-63-161(A)] (2) . . . is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both." SC Code §44-63-161(B).
19. Respondent Harwell, individually, knowingly and wilfully supplied false information in the preparation of the Decedent's Death Certificate in violation of S.C. Code Section 44-63-161(A)(2).
20. According to applicable state law and/or regulation, the South Carolina Department of Health and Environmental Control Division of Vital Records is unable to allow Mrs. Harwell to request a correction of the Decedent's Death Certificate. The Division of Vital Records has advised Mrs. Harwell that Respondent Harwell as the "informant" on the Death Certificate can request the

correction or, if Respondent Harwell is unwilling to make such request, an order of the Court is required in order for the Division of Vital Records to correct the Decedent's Death Certificate.

21. Respondent Harwell, either individually or as Personal Representative of the Decedent's estate, should be ordered to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate since he wilfully and knowingly provided the false statement about the surviving spouse's name intending the false information to be used in the preparation of the Death Certificate.

22. In the alternative, Mrs. Harwell requests that this Honorable Court order the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate.

WHEREFORE, Petitioner respectfully prays as follows:

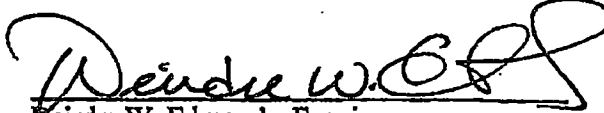
1. For an order finding the Petitioner, Deborah B. Harwell, is the surviving spouse of David W. Harwell; and
2. Ordering Respondent Harwell, individually or as Personal Representative of the Estate of David W. Harwell, to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse or,

in the alternative, ordering the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate; and

3. For such further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF DEIRDRE W. EDMONDS, PA

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", with a stylized flourish at the end.

Deirdre W. Edmonds, Esquire

S.C. Bar No.: 10201

P.O. Box 16064

Surfside Beach, SC 29587

Telephone (843) 232-0654

Facsimile (843) 232-0655

Attorney for Petitioner

February 29, 2016
Surfside Beach, South Carolina

The Supreme Court of South Carolina

ORDER

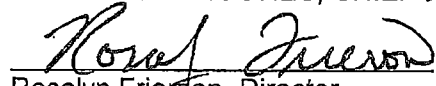
I find that the Honorable J. Munford Scott, Jr., Judge of Probate for Florence County, and the Honorable Sharon C. Davis, Associate Judge of Probate for Florence County, are disqualified from any further hearings In the Matter of David W. Harwell (Case No. 2015-ES21-778) and, therefore, are unable to sit as judge of probate in this matter in its entirety.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or, in the alternative, an Associate Probate Judge for Beaufort County be, and hereby is, appointed as special probate court judge to sit in the above matter in its entirety. As such special probate court judge, the Honorable Kenneth E. Fulp, Jr., or, in the alternative, an Associate Probate Judge for Beaufort County shall have all the powers and duties appertaining to a probate court judge for Florence County in the handling of the above matter.

COSTA M. PLEICONES, CHIEF JUSTICE

BY:



Rosalyn Frierson, Director
South Carolina Court Administration

March 21, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

IN THE PROBATE COURT

CASE NO. 2015ES2100778 (Florence)

CASE NO. 2016ES0700302 (Beaufort)

IN THE MATTER OF ESTATE OF
DAVID W. HARWELL

)
)
)

NOTICE
OF
STATUS CONFERENCE

TO: ALL COUNSEL OF RECORD SHOWN ON ATTACHED MAILING LIST:

PLEASE TAKE NOTICE that on Friday, May 27, at 11:30 a.m., a status conference will be held, by telephone, to address the Personal Representative's Motions for Removal to the Circuit Court of the formal proceedings pending in this case and any related procedural issues.

The status conference will be audio-recorded by the Court for the record.



Kenneth E. Fulp, Jr., Special Probate Court
Judge for Florence County
(Probate Judge for Beaufort County)

Beaufort, South Carolina

May 6, 2016

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF FLORENCE)

CASE NO. 2015ES2100778 (Florence)

CASE NO. 2016ES0700302 (Beaufort)

IN THE MATTER OF ESTATE OF)
DAVID W. HARWELL:)

DEBORAH B. HARWELL,)

Petitioner,)

v.)

ROBERT BRYAN HARWELL,)
individually and as Personal)
Representative of the Estate of David W.)
Harwell, and SOUTH CAROLINA)
DEPARTMENT OF HEALTH AND)
ENVIRONMENTAL CONTROL)
DIVISION OF VITAL RECORDS,)

Respondents,)

v.)

LAW OFFICE OF DEIRDRE W.)
EDMONDS, PA; and DEIRDRE W.)
EDMONDS, individually,)

Third-Party Defendants.)

**ORDER OF REMOVAL TO
FLORENCE COUNTY CIRCUIT
COURT**

FILED
2016 JUN 10 AM 11:34
DEBORAH B. HARWELL

Numerous actions involving two or more of the above named parties have been filed in the Estate of David W. Harwell. The decedent was a resident of Florence County at the time of his death and his estate was originally being probated in the Florence County Probate Court. The Petitioner filed Motions for Recusal on the first three actions she filed in this estate. As a result of those Motions an order was issued on March 21, 2016 transferring the entire administration of

the Estate of David W. Harwell, and all litigation in the Estate, to the Beaufort County Probate Court.

During the course of the pending actions the Respondents, Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell filed a Motion to Remove several pending actions to the Circuit Court, on the grounds that the movants have a right to a trial by jury in the actions, which, based on the pleadings, involve an amount in controversy of more than \$5,000.00. *See S. C. Code Ann. § 62-1-302(d)(5)*. Third-Party Defendants, Deirdre Edmonds and the Law Office of Deirdre W. Edmonds opposed the removal on the grounds that the third-party claims asserted against them are tort claims and therefore not within the subject matter jurisdiction of this Court. The Petitioner joined in this objection, both by the Petitioner herself on her pro se claim, and by and through her attorney of record, on the claims in which the Petitioner is represented by counsel. This argument is preserved and may be raised in the Circuit Court along with any other objections or defenses to the third-party claims.

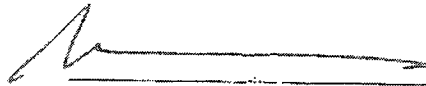
S. C. Code §62-1-302(d) provides that certain actions filed in the probate court, including those in which a party has a right to a jury trial and involve an amount in controversy of more than \$5,000.00, "on motion of a party or by the court on its own motion, made not later than ten days following the date on which all responsive pleading must be filed, must be removed to the circuit court" In addition, §62-1-302(f) provides that if an action described in subsection (d) is removed to the circuit court, "the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such other related matter or matters would be in the best interest of the estate or in the interest of judicial economy."

After a review the estate file, I find that all pending formal proceedings involve common questions of law or fact. I further find that for purposes of judicial economy and to avoid the possibility of inconsistent rulings by separate forums on similar questions, the motions of Respondents, Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell, to remove these actions to the Circuit Court should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all pending formal proceedings in this estate are hereby removed to the Florence County Circuit Court. This Court will retain jurisdiction over the routine administration of the estate. Therefore, I further

order that all attorneys of record in any pending formal proceeding be served with copies of all administrative documents subsequently filed in this estate.

AND IT IS SO ORDERED.



Kenneth E. Fulp, Jr., Special Probate Court
Judge for Florence County
(Probate Judge for Beaufort County)

Beaufort, South Carolina

June 10, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Roger L. Crouch, Circuit Court Judge

Case No. 2016-CP-21-1435
Appellate Case No. 2017-002291

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JAN 26 2018

SC Court of Appeals

Deborah B. Harwell, ... Respondent/Appellant,

v.

Robert Bryan Harwell, individually and as the
Personal Representative of the Estate of
David W. Harwell; and the South Carolina
Department of Health and Environmental Control,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Appellant/Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, individually, ... Respondents/Appellants.

ADDITIONAL APPELLATE CAPTION ON FOLLOWING PAGE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Kenneth E. Fulp, Jr., Probate Court Judge
Roger L. Crouch, Circuit Court Judge

Case Nos. 2016-ES-07-00302, 2016-CP-21-1435, 2015-ES-21-00778
Appellate Case No. 2017-002290

Deborah B. Harwell, ... Respondent,

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SC Court of Appeals

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, individually, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the
pro se party Deborah Harwell and counsel of record with a copy of the *Reply Supporting
Motion to Consolidate* by mailing copies of the same by United States Mail with first
class postage prepaid to the following addresses:

Barbara J. Wagner
M. Dawes Cooke, Jr.
Barnwell Whaley Patterson & Helms, LLC
PO Drawer H
Charleston, SC 29402-0197

Deborah B. Harwell
P.O. Box 7769
Myrtle Beach, SC 29572

January 26, 2018


Erin Bridges

January 26, 2018

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

JAN 26 2018

SC Court of Appeals

Re: Deborah Harwell v. Robert Harwell
Case Tracking No. 2017-002291

Deborah Harwell v. Robert Harwell
Case Tracking No. 2017-002290

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Reply Supporting Motion to Consolidate* in reference to the above referenced matters. I have also enclosed a proof of service of this document on the *pro se* party and counsel of record. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges
Paralegal to Blake A. Hewitt
Bluestein Thompson Sullivan, LLC

/emb

Enclosures

cc: Kevin Barth, Esquire

Gena Phillips Ervin, Esquire
Barbara J. Wagner, Esquire
M. Dawes Cooke, Jr., Esquire
Deborah B. Harwell