

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE WALTON J. MCLEOD, IV
CIRCUIT COURT JUDGE

CASE NO. 2018-CP-32-00315

IN RE: The Estate of Leroy Fulmer

Mattie Lou Fulmer, Respondent

v.

Elizabeth S. Gainey as Personal
Representative; Elizabeth S. Gainey,
individually; and Dennis C. Gainey,

Of Which Elizabeth S. Gainey as Personal
Representative is the Appellant.

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SC Court of Appeals

AMENDED MOTION FOR LIMITED REMAND

Elizabeth S. Gainey, as Personal Representative of the Estate of Leroy Fulmer, requests this court issue a limited remand to the Court of Common Pleas for Lexington County for the sole purpose of ruling on Appellant's pending motion for reconsideration.

Appellant was the personal representative of Leroy Fulmer's estate. Appellant was Fulmer's granddaughter and cared for her grandfather in the months preceding his death. Pursuant to Fulmer's will, Appellant was named personal representative of his estate after his passing.


Respondent, Appellant's grandmother, filed a motion to remove Appellant as personal representative, asserting Appellant breached a fiduciary duty by selling certain pieces of real estate. The circuit court issued an order removing Appellant as personal representative on October 12, 2018. *See Exhibit A.* Appellant filed a timely motion to reconsider pursuant to Rule 59(e). *See*

Exhibit C. The circuit court then issued an amended order which made factual and legal findings not expressed in the October 12 order and not raised in any pleading filed by Respondent. See Exhibit B.

Appellant has filed a second motion for reconsideration. See Exhibit D; *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (noting “a second motion for reconsideration under Rule 59(e) is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration”). The circuit court has scheduled a hearing on the motion for December 18, 2018. See Exhibit E. Appellant believes this second motion for reconsideration is proper pursuant to *Elam* and the time for filing the notice of appeal is currently tolled. However, out of an abundance of caution, Appellant filed her notice of appeal prior to the circuit court’s ruling on the motion. Doing so has divested the circuit court of jurisdiction to consider the second motion to reconsider. See Rule 205, SCAR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.”).

Depending on the circuit court’s decision on the second motion for reconsideration, the issues raised by this appeal may become moot. Accordingly, Appellant requests this court stay any appellate deadlines and issue a limited remand to the circuit court to allow the court to consider Appellant’s motion. Although the motion is currently scheduled to be heard on December 18, 2018, Judge McLeod is not scheduled to hear non-jury common pleas cases that day. Appellant therefore requests this court issue an order remanding the case to Judge McLeod with instructions to hear Appellant’s motion expeditiously, if it cannot be heard as scheduled. Appellant further requests this court expedite consideration of this motion.

November 29, 2018



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Personal Representative of the Estate of Leroy
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PROOF OF SERVICE

I certify that I have served the Amended Motion for Limited Remand on Mattie Lou Fulmer by depositing a copy of it in the United States Mail, postage prepaid, on November 29, 2018, addressed to her attorney of record, Amy Hill, Esq., P.O. Box 7368, Columbia, South Carolina 29202.

November 29, 2018



Tabitha Emanuelli

Paralegal to Robert P. Wood

cc:

Carrie A. Warner, Esquire

Amy L.B. Hill, Esquire

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The Honorable Lisa M. Comer