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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Chester County  
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's  
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as  
attorney-in-fact for John D.  
Hinson, John C. Hinson, Jerry Hinson,  
Kathy Huffstickle, Robert H. Hinson,  
Darrell W. Hinson, Lois Hinson,  
Tina Jones, George Stanford as  
Personal Representative of the  
Estate of Linda Stanford,  
William L. Hinson, Elaine H. Hensley,  
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

**RECEIVED**

DEC 19 2018

SC Court of Appeals

MOTION TO DISMISS APPEAL

- / -

1. Rule 265, SCACR, allows for the service of a Notice of Appeal upon the attorney of record for a party, or if the party has died, (during the pendency of the litigation), the Notice of Appeal is to be served upon the party's personal representative; but, according to Rule 265(a), SCACR, "if there is no attorney of record, the time for serving the notice *shall be tolled* until a personal representative, guardian *ad litem* or committee is properly appointed."

2. The problem with this appeals case is that one of the purported "parties" is not a party at all, and never was a party to the present litigation, simply because Mrs. Elaine H. Hensley *had already died* when the present litigation was filed against appellant Mell Woods.

3. In fact, Mrs. Elaine H. Hensley did have a personal representative at one time, but by the time the present litigation was filed the Estate of Mrs. Elaine H. Hensley had been closed out, and her personal representative discharged by the Chester County Probate Court. Appellant is furnishing the documents from the probate court which show beyond any doubt that Mrs. Hensley had died, and that her estate had already closed by the time the present litigation was filed on 12/01/2014. The Probate Documents are appended to this Motion, just before the signature page.

4. The probate documents list Mrs. Hensley as: "Etta Elaine Hensley," this is the same person shown as a respondent in this appeal; Elaine H. Hensley or Etta Elaine Hensley, is the same as Elaine H. Hensley. Appellant Mell Woods has personal knowledge of the names and makes this statement after reading Rule 267(b), SCACR.

5. In order to try and invoke the jurisdiction of the Chester County Magistrate Court for this case, Robert Breakfield, a licensed South Carolina Attorney, swore to a paper in which he alleged that he was the "attorney-in-fact" for "Elaine H. Hensley" although he knew full well that Mrs. Hensley's legal name was actually Etta Elaine Hensley. How did Breakfield know about the names? For one, Breakfield is the personal representative for Mrs. Reba Hinson, and Mrs. Hensley was one of the heirs to the Hinson Estate and Robert Breakfield had at least monthly contact with all of the heirs. Mrs. Hensley died during year 2013, and on February 04, 2014, Robert Breakfield witnessed the deed of distribution for Mrs. Hensley's property, and for this reason did know that Mrs. Hensley had died. Mrs. Hensley's Estate closed on August 15, 2014, with the personal representative being discharged the same day. Around 100 days later on 12/01/2014, the present litigation was filed by Breakfield and B. Michael Brackett, also a licensed attorney.

6. An attorney's authority to act for a client ends at the client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948).

7. Elaine H. Hensley is a deceased person, present in this litigation and appeal through no fault of the appellant. According to Rule 265(a), SCACR, the notice of appeal has not been served on Mrs. Hensley since there is no attorney of record for Mrs. Hensley and the time for serving a notice of appeal has been tolled until such time as a personal representative has been appointed for Mrs. Hensley.

8. "A suit brought in a name which is not a legal entity is a nullity and the action fails." Glenn v. E. I. DuPont De Nemours & Company, Inc., 254 S.C. 128, 133, 174 S.E.2d 155, 158 (1970).

B. Michael Brackett and Robert Breakfield are each licensed attorneys in South Carolina, and should know, and do know that presenting already dead litigants to a court is a fraud upon the court, and contrary to several Bar Rules. Appellant Mell Woods is caught in the middle and has been severely prejudiced by the conduct of both Brackett and Breakfield.

9. B. Michael Brackett and Breakfield do know about these assertions of misconduct delineated in this Motion, because the same assertions were brought forth in the appellant's Return to the 154 page Motion to Dismiss filed by Brackett during September of 2016. Appellant's Return reached the Clerk's Office on October 20, 2016. However, to date, Brackett and Breakfield have done nothing to rectify the situation.

STATE OF SOUTH CAROLINA  
CHESTER COUNTY

COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's  
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as  
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Hinson, John C. Hinson, Jerry Hinson,  
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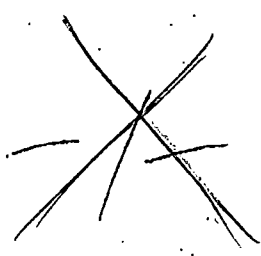
vs.

Mell Woods,

Appellant.

AFFIDAVIT

In order to protect the Record, Mell Woods, appellant  
above, comes now and presents the following affidavit allowed  
under S.C. Statute § 18-7-180:



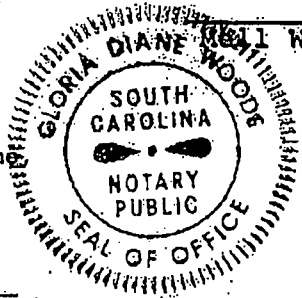
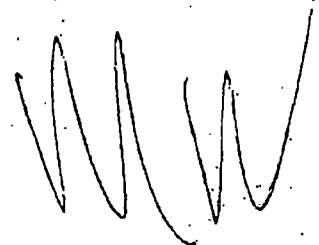
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State of South Carolina  
County of Chester

After being first deposed, Mell Woods, affiant herein, makes the following statements based upon the personal knowledge of affiant,

1. Elaine H. Hensley, a listed party above has died, and was already dead when the above case was first filed;
2. Robert H. Breakfield, one of the parties above, already knew of Mrs. Hensley's death when the case was filed, and represented to the court that Mrs. Hensley was alive instead of dead;
3. Attached to this affidavit, is certified copy of the Deed of Distribution filed in the Chester County Real Estate Records, which shows that Robert H. Breakfield was a witness to the Deed of Distribution concerning Mrs. Hensley's property, and for this reason did know that he filed suit for a dead person after her estate had been closed out, and a personal representative no longer existed;

FURTHER, affiant saith not.



Mell Woods, affiant

Sworn to, and subscribed before me

This 21 day of April, 2016.

Gloria Diane Woods

Gloria Diane Woods Notary public for South Carolina, Comm. Expires 01/08/2018

~~2~~ - 6 -

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE MATTER OF:  
ETTA ELAINE HENSLEY  
(Decedent).

County where property is located (if not above County):

The undersigned states as follows:

Decedent died on NOVEMBER 30, 2013 and probate of the Estate is being administered in the Probate Court for CHESTER County, South Carolina, in File # 2013EST200318.

I/We was/were appointed Personal Representative(s) on DECEMBER 9, 2013.

Decedent owned real property described as follows:

Tax Map Number: 202-10-15-27

Street/Property Address: 6 CHURCH STREET, GREAT FALLS, SC 29055

Legal Description: AN UNDIVIDED 1/2 INTEREST IN THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND WITH ANY AND ALL IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE TOWN OF GREAT FALLS, CHESTER COUNTY, SOUTH CAROLINA AT 6 CHURCH STREET, AND SHOWN AND DESIGNATED AS LOT NO. 10, SECTION 5, ON THE CERTAIN PLAT OF VILLAGE NO. 1 OF REBULIC COTTON MILLS DATED DECEMBER 31, 1948 AND RECORDED IN PLAT BOOK B, AT PAGE 49 AND HAS SUCH COURSES AND DISTANCES, METES AND BOUNDS AS SHOWN ON SAID PLAT WHICH SAID PLAT IS INCORPORATED HEREIN BY REFERENCE. THIS IS THE IDENTICAL REAL ESTATE CONVEYED TO W. HENSLEY & BRENDA J. HENSLEY BY DEED RECORDED IN DB 518, PAGE 188; BRENDA J. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED JANUARY 31, 1990 IN DB 679, PAGE 171; MORRIS W. HENSLEY THEN CONVEYED AN UNDIVIDED 1/2 INTEREST TO BONNIE L. HENSLEY BY DEED RECORDED IN DB 682, PAGE 319. BONNIE L. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED MAY 23, 1994 IN DB 668, PAGE 285. ALL REFERENCES BEING MADE TO THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

DERIVATION: REFERENCE IS ALSO MADE TO THAT CERTAIN DEED FROM MORRIS W. HENSLEY TO ELAINE H. HENSLEY CONVEYING A 1/2 INTEREST BY DEED DATED FEBRUARY 19, 1989 AND RECORDED FEBRUARY 25, 1989 IN DB 752, PAGE 292 IN THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

CHESTER COUNTY TAX ASSessor  
DATE 2-15-14  
TAX MAP NO. 202-10-15-27

I hereby certify that the within Deed  
has been this 7 day of  
February, A.D. 2014  
recorded in Book J of Deeds.  
Donald Wade  
AUDITOR, CHESTER COUNTY

FORM 8400ES (1/2014)  
62-3-907, 62-3-908

Page 1 of 2

True and correct copy of original paper  
on file in this office.

Sue K. Carpenter  
Clerk of Court  
Chester County, SC

Date 4-15-16

7-

201400080616  
IN THE PROBATE COURT  
DEED OF DISTRIBUTION  
(Real Property Only)  
NOT A WARRANTY DEED  
CASE NUMBER: 2013EST200318  
201400080616  
Filed for Record in  
CHESTER COUNTY, SC  
SUE K. CARPENTER, CLERK OF COURT  
02-06-2014 At 02:31:24 PM  
DEED: 0151 10:00  
Volume 1093 Page 23 25

033 04/15/2016

Instrument  
201400080&16

Volume Page  
1095 24

This transfer is made pursuant to:

- Decedent's Will
- Intestacy Statute: SCPC 62-2-103
- Private Family Agreement: SCPC 62-3-912
- Disclaimer by: \_\_\_\_\_
- Probate Court Order issued on \_\_\_\_\_
- Other: \_\_\_\_\_

- 8 -

03/15/2016

Instrument 201400020614 Value: Face 1095 25

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of Personal Representative(s)' right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: MORRIS WILLIAM HENSLEY  
Address: 6 CHURCH STREET  
GREAT FALLS, SC 29055

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

An additional sheet is attached for names of additional beneficiaries (check, if applicable)

IN WITNESS WHEREOF, the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 4<sup>th</sup> day of FEBRUARY, 2014.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Witness: [Signature]

Print Name: PATRICIA S. DAVIS

Witness: [Signature]

Print Name: KELLY S. SUMWALT

Estate of: ETTA ELAINE HENSLEY

Signature of Personal Representative: [Signature]

Print Name: MORRIS WILLIAM HENSLEY

If applicable,  
Signature of Co-Personal Representative: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF CHESTER

I, ROBERT H. BREAKFIELD, Notary Public, a notary for the State of South Carolina do hereby certify that MORRIS WILLIAM HENSLEY, as Personal Representative(s) of the Estate of ETTA ELAINE HENSLEY, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 4 day of FEBRUARY, 2014.

[Signature] (SEAL)  
(Signature of Notary Public)  
ROBERT H. BREAKFIELD  
(Print name of Notary Public)  
Notary Public for State of SOUTH CAROLINA  
My Commission Expires: 07/25/2017

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

[Signature]

OF SOUTH CAROLINA

COUNTY OF CHESTER

LOUIS H. RODDEY  
JUDGE OF PROBATE

IN THE PROBATE COURT  
APPLICATION FOR SETTLEMENT

THE MATTER OF ETTA ELAINE HENSLEY

CASE NUMBER: 2013ES1200318

2014 AUG 15 P 1:45

The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.

The Personal Representative(s) has/have filed:

- Proof of Publication.
- an Inventory.
- a Proposal for Distribution.
- a Final Accounting.
- all required returns (including final income tax return, fiduciary income tax return, estate tax return); If not, please explain.

The time period for submission of claims has expired.

I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Co. may deem applicable and proper.

I request that the Court: (check all that apply)

- A. Consider and approve the Personal Representative's Final Accounting and the Proposal for Distribution.
- B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (Form #401PC).
- C. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
- D. (Other:)

Notice of Right to Demand Hearing and copies of the Final Accounting, the Proposal for Distribution, and this Application have been/are being sent to all interested persons as required by law.

Executed this 15 day of August, 2014.

ORN to before me this 15 day of August, 2014

Terrill B. Jean  
Clerk of Court  
Clerk of Court for South Carolina

Commission Expires: May 9, 2016

Signature: *Morris William Hensley*  
 Name: MORRIS WILLIAM HENSLEY  
 Address: 6 CHURCH STREET  
GREAT FALLS, SC 29055  
 Telephone (O): \_\_\_\_\_  
 (H): 803 374-1036

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone (O): \_\_\_\_\_  
 (H): \_\_\_\_\_

A TRUE COPY  
*Louis H. Roddey*  
JUDGE OF PROBATE  
CHESTER COUNTY, S.C.

- / D -

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# The NEWS & REPORTER



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Thursday, December 13, 2018

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## Etta Elaine Hensley

### Obituary

Mrs. Elaine Hinson Hensley, 59, died Saturday, Nov. 30, 2013, at her residence.

A service is scheduled for 11 a.m. Wednesday, Dec. 4, 2013, at Mahaffey Chapel, McLean Funeral Directors. Rev. Barry Wayne Howell will officiate. Interment will follow at Lancaster Memorial Park.

Mrs. Hensley was born July 31, 1954, in Union. She was a daughter of the late Calvin Hinson and Juanita Lear. She was a former employee of Springs Industries and F. Shumacher. She was a member of Fort Lawn Church of God.

In addition to her parents, she was preceded in death by sister, Linda Stanford.

Mrs. Hensley is survived by her husband, Morris W. Hensley; sons, Danny Hensley and fiancé Stephanie Farrow and Thomas Hensley, both of Lancaster; brother, Bill Hinson of Chester, SC, six brothers, Danny Hinson of Fort Lawn, Harold Hinson of McConnells, Jerry Hinson of Florence, Wayne Hinson of Fort Lawn and William Hinson of Sanford, N.C.; and five grandchildren, Brian, D.J., Madison, Kenley and Kaleb.

Memorials may be made to the church of your choice.

Remembrances may be sent to the family at [www.mcleanfuneral.com](http://www.mcleanfuneral.com).

McLean Funeral Directors is assisting the family of Mrs. Hensley.

Published in The News & Reporter on Dec. 11, 2013

### Guest Book

The Guest Book is expired.

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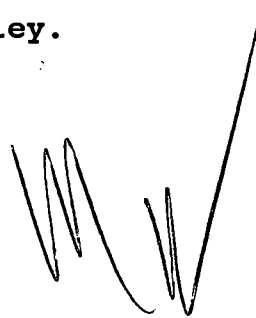


pg. 11

10. Appellant Mell Woods moves that this appeal be remanded to the circuit court for the purpose of substituting a party to take the place of Mrs. Elaine H. Hensley, who has died.

WHEREFORE, appellant Mell Woods asks that the Honorable Court of Appeals of South Carolina dismiss this Appeal as presently filed and without prejudice in order to allow time for a proper party to be substituted for Mrs. Elaine H. Hensley.

This 15 day of December, 2018.



Mell Woods

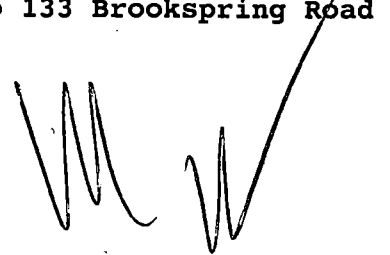
**RECEIVED**

DEC 19 2018

CERTIFICATE OF SERVICE **SC Court of Appeals**

I hereby certify that I have served Mr. B. Michael Brackett with a copy of the within and foregoing Motion by depositing a copy of the Motion in the U.S. Mail postage prepaid to 133 Brookspring Road Columbia, SC 29223.

This 15 day of December, 2018.

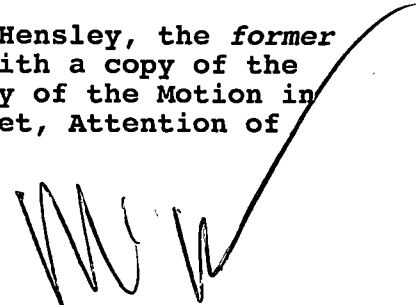


MELL WOODS

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY that I have served Mr. Morris Hensley, the former personal representative for Elaine H. Hensley with a copy of the within and foregoing Motion by depositing a copy of the Motion in the U.S. Mail postage prepaid to #6 Church Street, Attention of Mr. Morris Hensley Great Falls, SC 29055.

This 15 day of December, 2018.



Mell Woods

- 12 - - 0 -

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vs.

Mell Woods,

Appellant.

- Cover Letter - December 15, 2018

RE: Case Number: 2016-002016  
Breakfield V. Woods

Clerk's Office Court of Appeals of South Carolina

Dear Sir, or Madam:

Enclosed for filing is a Motion to Dismiss the above Appeal  
for the reasons stated in the Motion. An Original and six  
copies are furnished. Also, the \$50.00 Motion fee is included.

Sincerely,



Mell Woods

Copies to Mr. Brackett, and Morris Hensley.

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DEC 19 2018

SC Court of Appeals