

STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Probate Court

FEB 26 2019

SC Court of Appeals

Amy W. McCulloch

Richland County Probate Case No. 2017-ES-40-01330

Appellate Case No. 2019-000169

**In the Matter of the Estate of Bertha Maust-Thompson**

Marilyn M. White, As Personal Representative of the  
Estate of Bertha Maust-Thompson.....Appellant

v.

Terri Ann Thompson, Wendy K. Thompson, and Robert  
M. Thompson, Jr., as Co-Personal Representatives of the  
Estate of Robert M. Thompson, Sr.....Respondents.

**APPELLANT’S MOTION FOR RECONSIDERATION  
PURSUANT TO RULE 221**

The Appellant, Marilyn M. White in her capacity as Personal Representative of the Estate of Bertha Maust-Thompson, files this Motion for Reconsideration Pursuant to Rule 221.

1. The Court of Appeals issued its order on February 15, 2019 dismissing the appeal on the grounds that the Order of the Probate Court was not a final order. Appellant files this motion to reconsider the Court’s Order of February 15, 2019 because the Court misapprehended the Order of the Probate Court and its impact.

2.

In November of 2017, Respondents filed an Application in the Probate Court seeking an injunction to require Appellant to file an estate tax return and elect portability of the unused spousal tax credit to the surviving spouse. That was the full extent of the relief sought. Appellant strongly opposed that requested relief. After discovery and several motions regarding the merits of the case, a trial of all issues was held before the Probate Court on November 7 and 8, 2018. On January 26, 2019, the Probate Court issued an Order from which this appeal was timely taken. That Order determines that Respondents' positions are correct and that Appellant is required to prepare and file with the Internal Revenue Service an estate tax return including an election of portability to the estate of the surviving spouse. That determination and injunction were unequivocal and final. There is no further legal step to be taken to avoid the directive of the Probate Court but for an appeal of the Order. The order is considered final if it constitutes an ultimate decision on the merits or some substantial matter constituting the whole or some part of a cause of action. *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009); *Mungo v. Rental Uniform Services of Florence, Inc.*, 383 S.C. 70, 678 S.E.2d 825 (Ct. App. 2009).

3.

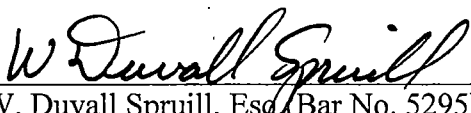
This case is unlike the two cases cited in the Order dated February 15, 2019. One of those cases, *Dorn v. Cohen*, 421 S.C. 517, 809 S.E.2d 53 (2017), simply involved the joinder of a party in ongoing litigation. The second case, *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008), related to the removal to the circuit court and failure to dismiss. Instead, the Probate Court, consolidated the two cases for further action. Neither order appealed resulted in any finality since each litigation was to proceed on its merits. Unlike the present case, neither involved an injunction requiring action by one of the parties which would render the Order appealable under South Carolina Rules of Appellate Procedure Rule 201. *Eldridge v. City of*

*Greenwood*, 308 S.C. 125, 417 S.E.2d 532 (1992); *Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 (1956); *North American Rescue Products, Inc. v. Richardson* 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011).

It is respectfully requested that the Order of February 15, 2019 be rescinded and that the Appeal be allowed to move forward.

Respectfully submitted,

February 26, 2019

  
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Marilyn M. White, As Personal Representative of the  
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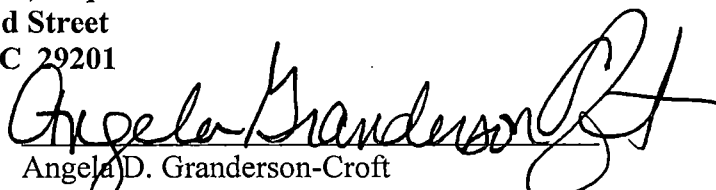
v.

Terri Ann Thompson, Wendy K. Thompson, and Robert  
M. Thompson, Jr., as Co-Personal Representatives of the  
Estate of Robert M. Thompson, Sr.....Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 26<sup>th</sup> day of February, 2019, she served a copy of  
the foregoing Motion for Reconsideration Pursuant to Rule 221 to the following counsel of  
record by via hand-delivery:

John M.S. Hoefler, Esquire  
John W. Roberts, Esquire  
930 Richland Street  
Columbia, SC 29201

  
Angela D. Granderson-Croft  
Legal Assistant

Columbia, South Carolina

# Turner | Padget

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**W. Duvall Spruill**

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February 26, 2019

**RECEIVED**

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SC Court of Appeals

**VIA HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RE: *Estate of Virginia Maust Thompson, Decedent  
Marilyn M. White, as Personal Representative of the Estate of Bertha Virginia  
vs. Maust Thompsen Terri Ann Thompson, Wendy K. Thompson and Robert  
Miller Thompson, Jr., as Co-Personal Representatives of the Estate of Robert  
M. Thompson, Sr.  
Appellant Case No.: 2019-000169  
Our File No. 15256.101***

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Appellant's Motion for Reconsideration Pursuant to Rule 221. Also, please return the extra copy with the filing reflected. This firm's check in the amount of \$50.00 is enclosed as the filing fee.

Yours truly,

  
W. Duvall Spruill

WDS/adgc

cc: John W. Roberts, Esquire (*Via Hand-Delivery*)  
John M.S. Hoefler, Esquire (*Via Hand-Delivery*)  
Catherine H. Kennedy, Esquire (*Via E-Mail Only*)