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ORIGINAL

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUL 10 2013

SC Court of Appeals

Case No. 2012-CP-22-00971

In the Matter of the Estate of Willie Rogers Deas

Carolyn Deas

Respondent,

v.

Marvadine Giles a/k/a Marvdine Giles,
Willie Deas, Jr., Michelle Deas, Rodney
Branton, Moya Branton, Whitney Beaufort,

Of whom Marvadine Giles a/k/a Marvdine
Giles is the Appellant.

RECORD ON APPEAL

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Attorneys for Respondent

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(843) 720-2800
Attorneys for Appellant

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE MATTER OF THE ESTATE OF
WILLIE ROGERS DEAS

CAROLYN DEAS,

Petitioner,

vs.

MARVADINE GILES a/k/a MARVDINE
GILES, WILLIE DEAS, JR., MICHELLE
DEAS, RODNEY BRANTON, MOYA
BRANTON, WHITNEY BEAUFORT,

Respondents.

IN THE PROBATE COURT
CASE No. 2012-ES-22-00-035

ORDER

PROBATE COURT
2012AUG28AM9:54
GEORGETOWN SC

THIS MATTER is before the Court upon a Petition for Formal Appointment and Intestacy. On January 30, 2012, Respondent Marvadine Giles filed an Informal Application for Appointment as Personal Representative of the Estate of Willie Rogers Deas wherein she claimed priority for such appointment as the surviving spouse of the Decedent. On February 17, 2012, Carolyn Deas, who was married to the Decedent at the time of his death, filed the formal Petition from which this matter arises. A hearing was held on July 30, 2012, wherein the Petitioner was present and represented by her attorney, Andrew T. Shepherd of Summerville, South Carolina. Respondent Marvadine Giles was present represented by her attorneys, Charles Goldberg and Malcolm Crosland of Charleston, South Carolina. Also present were Respondents Willie Deas, Jr., Rodney Branton, and Moya Branton. Proof of notice to all known interested parties appears in the Court's file. This Court has subject matter jurisdiction, and venue is proper.

TRUE AND CORRECT COPY

ATTEST:

JUDGE OF PROBATE
GEORGETOWN COUNTY, SC

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Willie Rogers Deas ("Willie") died January 3, 2012 as a resident of and domiciled in Georgetown County, South Carolina.
2. Willie's death was the result of an automobile accident for which a cause of action for wrongful death may be available to the Personal Representative of Willie's Estate for the benefit of Willie's heirs.
3. On January 30, 2012, Marvadine Giles ("Marvadine") filed for informal appointment as the Personal Representative of Willie's Estate claiming she was Willie's surviving spouse on the basis she and Willie were separated but not divorced.
4. On February 17, 2012, Carolyn Deas ("Carolyn") filed for Formal Appointment and Intestacy on the basis that as Willie's current spouse she has priority for appointment as Personal Representative of his Estate.
5. Entered into evidence, and stipulated by the parties, were various marriage licenses which reflect that Marvadine and Willie were married on September 21, 1972, in Georgetown County, but that Marvadine later married Nathaniel Giles on December 2, 1994 in Horry County, South Carolina, and again married Nathaniel Giles in Horry County on December 30, 1997. Carolyn and Willie were married on March 29, 1998, in Georgetown County.
6. The parties stipulated that no record of divorce between Marvadine and Willie appears in the Georgetown County Family Court Records.

7. The evidence and testimony presented to the Court reflected a long and loving relationship between Carolyn and Willie, and a marriage between them that was entered into in good faith on March 29, 1998 which lasted until Willie's death. Carolyn Deas testified that at no point in her marriage to Willie did she ever receive information to suggest that Willie was still married to Marvadine.

8. The marriage between Carolyn and Willie was performed by the Reverend Floyd Knowlin who testified that prior to the marriage ceremony he counseled with the couple, and that during such counseling Willie stated that his marriage to Marvadine had ended by divorce. Reverend Knowlin testified that he is also Marvadine's cousin. Reverend Knowlin testified that he would not have performed the marriage ceremony between Carolyn and Willie had he suspected that Willie was still married to Marvadine.

9. Wendyl Johnson testified that he was the best man at Carolyn and Willie's wedding and had known Willie his entire life, and that Willie was one of his best friends. Mr. Johnson was aware of Willie's marriage to Marvadine and testified that he knew Marvadine left Willie shortly after their marriage in the 1970's, which fact was corroborated by Marvadine's own testimony. Wendyl testified that when Willie told him that Willie was marrying Carolyn, Wendyl inquired about Marvadine and that Willie stated he was not still married to Marvadine, that he was divorced.

10. The Court heard testimony from Paula Gasque who is Carolyn's sister. Mrs. Gasque testified that she was the matron of honor at Willie and Carolyn's wedding and that she had opportunity to speak with Willie prior to the marriage about his previous marriage to Marvadine. Mrs. Gasque testified that Willie stated he was divorced from Marvadine. Mrs.

Gasque further testified that Marvadine was present at the wedding of Carolyn and Willie, and that Marvadine was accompanied by her husband, Nathaniel Giles.

11. Selena Sanders testified that she is Carolyn's sister and that prior to Willie's marriage to Carolyn, Selena specifically asked Willie if he was married to another woman. Selena testified that Willie stated he was not married to another woman.

12. The Court heard the testimony of Lucretia "Loretta" Duncan who is Marvadine's sister. Ms. Duncan testified that she did not approve of Marvadine's attempt to claim to be the wife of Willie Deas and stated that Marvadine was married to Nathaniel Giles. Ms. Duncan further testified that Marvadine had emphatically denied that she was "a Deas" because she was married to Nathaniel Giles and that her last name was Giles.

13. The Court also heard testimony of Mrs. Beulah Duncan who is Willie's mother. Mrs. Duncan corroborated the fact that Marvadine left Willie, remarried to Nathaniel Giles, and that Mrs. Duncan considered Carolyn Deas to be her daughter-in-law and Willie's wife.

14. In support of her case, Marvadine presented no testimony, aside from her own, that she was not divorced from Willie. Marvadine admitted that she left Willie in the 1970's and moved to Connecticut where she has lived periodically until present. Marvadine stated that she personally confronted Carolyn about not being divorced from Willie but that Carolyn simply walked away without saying anything. Marvadine stated that while she did marry Nathaniel Giles in 1994 she only did so because she had eight children and Nathaniel could support her. Marvadine stated she entered into the marriage with Nathaniel Giles without divorcing Willie. However, she again married Nathaniel Giles in 1997 for the purpose, as she testified, of renewing her vows with Nathaniel. Marvadine agreed during cross examination that it was important to be forthcoming and truthful with a Court, but subsequently stated that she had lied

to the Horry County Probate Court twice in making her applications for marriage to Nathaniel Giles. When asked to explain why she filed her application with this Court as Marvadine Deas, Marvadine stated that she did so because it was her legal name and that she sometimes uses it. Marvadine could not explain to Petitioner's Counsel why she stated in her answers to discovery that she had not been a party to civil litigation. Upon cross examination it was revealed that Marvadine had been a party to civil litigation multiple times despite her claimed ignorance of what the term "civil lawsuit" meant. The testimony and evidence reveals that Marvadine has maintained civil actions in multiple jurisdictions in the past and present. Marvadine has maintained civil actions in other courts under the name Marvadine Giles. Despite her claim to this Court that her name is Marvadine Deas and that she never changed her name, Marvadine receives Social Security Disability under the name Marvadine Giles. At the time she made application to this Court Marvadine listed her address as that of the home in which she resided with Nathaniel Giles as his wife. Aside from her statement that she had told Carolyn that she was still married to Willie, Marvadine admitted that she had made no such claim to any other person until after Willie's death. When asked if she would have filed for appointment as Personal Representative had Willie died of natural causes and no wrongful death action was available to pursue, Marvadine did not answer in the affirmative. Marvadine further testified that she sought a divorce from Willie but that he denied her the request. Marvadine presented no other person or evidence to support her contention that she was still married to Willie.

15. Renunciation, nomination, and waiver of bond forms were previously filed with the Court by Willie Deas' children and accompanied Marvadine's informal application. These forms served to renounce the children's right to serve as Personal Representative and nominated Marvadine. However, no witnesses provided a basis to suggest that Carolyn Deas is not

qualified to serve as Personal Representative of Willie's Estate, and none of Willie's children offered any testimony as to the marriage between Carolyn and Willie or the marriage between Marvadine and Willie, nor did they provide a basis as to why Carolyn is not qualified. Carolyn has no criminal history or instances of bankruptcy, foreclosure, or other cause to suggest she is not qualified to serve as Personal Representative of the Estate. The Court heard testimony from multiple witnesses who spoke highly of Carolyn's character and knew her to be just and fair.

CONCLUSIONS OF LAW

16. All marriages contracted while either of the parties has a former wife or husband living shall be void. S.C. Code Ann. § 20-1-80. Thus, the question before this Court, based upon the allegations raised by Marvadine's claim of being separated but not divorced, is whether the marriage between Willie and Carolyn is valid. If Marvadine's claim is true, then the second marriage to Carolyn is void. However, Marvadine's claim of still being married to Willie requires proof, by a preponderance, from Marvadine that there was no divorce from Willie. *Yarbrough v. Yarbrough*, 280 S.C. 546 (1984).

There is a presumption under South Carolina law that where the same person enters into a conflicting marriage, the law presumes that the second marriage is valid. *Hallums v. Hallums*, 74 S.C. 407, 411, 54 S.E. 613, 614 (1905). If the law raises a presumption in favor of one party to litigation, the burden of going forward with the evidence devolves on the other party. 52 Am.Jur.2d *Marriages* Section 130 (1970). Citing South Carolina Law, the United States District Court for the District of South Carolina, has held:

Where the same person enters into a conflicting marriage, the law presumes that the second marriage is valid. *Hallums v. Hallums*, 74 S.C. 407, 411, 54 S.E. 613, 614 (1905). This presumption has been referred to as the strongest presumption known to the law, and, unless other facts or circumstances are present, it prevails over other presumptions, including

that of the validity or continuance of a prior marriage. 12 S.C.L.Q. 355, 363 (1959), citing, *Roberts v. Roberts*, 124 Fla. 116, 167 So. 808 (1936). Where the existence of a valid first marriage has been established, the presumption operates in favor of the later marriage. The law will presume that the first marriage was dissolved at the time of the second. Although he will be required to prove a negative proposition, the party who attacks the validity of a second marriage bears the burden of proof. See *Scheper v. Scheper*, 125 S.C. 89, 104, 118 S.E. 178, 183 (1923).

Day v. Secretary of Health and Human Services, 519 F.Supp. 872, 877-78 (1981)

There is no dispute as to the marriage of Willie Deas to Carolyn Deas in 1998. There is no dispute as to the marriage of Marvadine Giles to Nathaniel Giles on December 2, 1994 and again December 30, 1997 in Horry County, South Carolina. By law, both marriages are presumed valid. The burden in this case was upon Marvadine Giles to prove otherwise.

Although she claimed that she never filed for divorce or received divorce papers from Willie, Marvadine provided no other evidence to support her claim. The South Carolina Court of Appeals in *Yarbrough v. Yarbrough*, 280 S.C. 546 (1984), evaluated similar claims by a husband seeking to claim the invalidity of a latter marriage wherein his current wife sought divorce. In that case, the husband claimed that a first marriage did not end in divorce and the husband testified that he had never filed for divorce or received divorce papers from the first marriage and therefore the current marriage was not valid. However, applying *Hallums* and *Dey*, the Court held that coupled with the presumption of divorce, there was testimony from witnesses that the first spouse had divorced the husband and that both had then remarried. Against this evidence, the husband's testimony that he never received divorce papers or knew if the first spouse divorced him was unpersuasive and failed to rebut the presumption of divorce.

In the case before this Court, the presumption is that the marriage between Marvadine and Willie ended by divorce. The Court heard testimony from multiple and disinterested

witnesses that Willie had stated prior to his marriage to Carolyn that he was no longer married to Marvadine, that he was divorced from Marvadine, and that he did not have another wife. The Court received evidence that Marvadine had herself remarried twice. Although Marvadine stated she told Carolyn that Marvadine was still married to Willie, Marvadine made no other claim to be Willie's wife during the period she was married to Nathaniel Giles or the period of time that Carolyn was married to Willie. Marvadine has lived in other jurisdictions, and by her own admission sought to divorce Willie, an act which she claims Willie would not allow. Marvadine has lived her life as Marvadine Giles since 1994 and has maintained civil actions in multiple jurisdictions. A divorce case is a civil action, and although there is no record of divorce in Georgetown County between Marvadine and Willie, Marvadine has lived in various jurisdictions and has obviously availed herself of courts in other jurisdictions for various matters, including marriage. Marvadine presented no evidence, aside from her own testimony, that she had not obtained a divorce in those jurisdictions, proof of which was her burden. Furthermore, Marvadine's statements that she has lied to other courts of this State for purposes of marrying someone for financial reasons calls into question the credibility of her claims to this Court with regard to still being the wife of Willie Deas.

Marvadine had to prove, by a preponderance of the evidence, that she was not divorced from Willie Deas. Based upon Marvadine's own contradictory acts and representations, together with concerns as to the credibility of her testimony which I find unpersuasive, and further upon the credible and multiple testimonies of disinterested witnesses that Willie Deas was divorced from Marvadine, I find and conclude that Marvadine Giles failed to meet her burden of proof and that she failed to overcome the presumption that the marriage between Carolyn and Willie is valid.

I further find and conclude that, even if Marvadine had met her burden of proof to overcome said presumption, the equities of this case prevent Marvadine from asserting that she is the wife of Willie Deas. Despite her current claim to be the wife of Willie Deas, Marvadine has known of Willie's marriage to Carolyn since its outset. Marvadine was present at the wedding of Willie and Carolyn. Marvadine claims she informed Carolyn that Carolyn's marriage to Willie was not valid, yet Marvadine took no steps to tell others or rectify the alleged invalidity. Marvadine testified that she married Nathaniel Giles twice, and that she benefited from that marriage and the maintenance of that marriage since before Carolyn's marriage to Willie and until shortly after Willie's death.

Marvadine accepted the privileges, benefits and fruits of the marriage to Nathaniel Giles. Marvadine affirmed the validity of her marriage to Nathaniel Giles, by twice marrying him and subsequently cohabitating with and holding herself out as the wife of Nathaniel Giles to the Courts of this State, the Courts of other States, and the United States Government. Marvadine is estopped by record and conduct to assert the invalidity of her marriage to Nathaniel Giles for her own advantage.

"The doctrine of estoppel, being an equitable one, is essentially flexible, and therefore to be applied or denied as the equities between the parties may preponderate." *Smoak v. Smoak*, 269 S.C. 313, 237 S.E.2d 372 (1977), citing, *Peoples Nat. Bank of Greenville v. Manos Bros, Inc.*, 226 S.C. 257, 84 S.E.2d 857 (1954). The elements of equitable estoppel have been succinctly summarized in *Provident Life & Accident Ins. Co. v. Driver*, 451 S.E.2d 924 (S.C. Ct. App. 1994). As to the party estopped, there must be (1) conduct which is calculated to convey the impression that the facts are inconsistent with those which the party subsequently attempts to assert, (2) intention or an expectation that such conduct may be acted upon by the other party,

and (3) actual or constructive knowledge of true facts. As to the party asserting estoppel, there must be lack of knowledge or means to know the true facts, (2) reasonable reliance on the conduct of the other party, and (3) change of position to the extent the party would be prejudiced or injured.

In the case before me, Marvadine engaged in conduct calculated to convey the impression that she was divorced from Willie and could marry Nathaniel Giles with the intention or expectation that such conduct be relied upon by not only Carolyn but all others as well. Although I find and conclude that Marvadine failed to meet her burden of proving that her marriage to Willie did not end by divorce, I further find and conclude that even if such marriage did not end by divorce that Marvadine had actual knowledge of the falsity of her conduct when she not only married Nathaniel Giles and lived as his wife, but also when she failed to object at any time to the marriage of Willie to Carolyn. Again, although I find and conclude that Marvadine failed to meet her burden of proving her marriage to Willie did not end by divorce, I find and conclude that even if such marriage did not end by divorce that Carolyn lacked knowledge of the true facts, she reasonably relied on Marvadine's conduct, and that Marvadine's change of position prejudices and injures Carolyn. On the basis set forth herein, I find and conclude that, under the equitable doctrine of estoppel, Marvadine is estopped from asserting that she is the spouse of Willie Deas. On the basis of estoppel as to Marvadine's claim, the presumption as to the validity of Carolyn and Willie's marriage remains intact.

17. Pursuant to S.C. Code Ann. § 62-3-203, whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the order set forth therein. In the case of an intestacy, the surviving spouse has priority to serve as Personal Representative unless otherwise disqualified. As the surviving spouse of Willie Deas, I find and

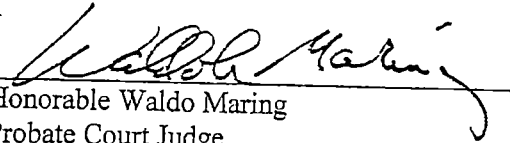
conclude that Carolyn Deas has priority for appointment as Personal Representative of the Estate of Willie Deas and upon her statement of qualification and acceptance she should be so appointed. No person has presented evidence as to why she is not qualified to serve as such.

THEREFORE, it is the Order of this Court that:

1. Carolyn Deas is the surviving spouse of Willie Rogers Deas.
2. Marvadine Deas a/k/a Marvadine Giles is not the surviving spouse of Willie Rogers Deas and she is estopped from asserting the same.
3. The informal appointment of Marvadine Deas a/k/a Marvadine Giles is dismissed and terminated.
4. Carolyn Deas is appointed as the Personal Representative of the Estate of Willie Rogers Deas subject to all conditions upon fiduciaries of estates and with all powers as set forth by the South Carolina Probate Code, and Carolyn Deas shall be issued Certificates of Appointment affirming the same.

IT IS SO ORDERED!

Georgetown, South Carolina
August 28, 2012.


Honorable Waldo Maring
Probate Court Judge

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT
CASE NO: 2012-ES-22-00035

GEORGETOWN COUNTY

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

PROBATE COURT
2012SEP28PM3:04

CAROLYN DEAS,

GEORGETOWN SC

Petitioner,

vs.

CONSENT ORDER EXTENDING
TIME TO FILE GROUNDS FOR
APPEAL

MARVADINE GILES a/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

The Respondents have filed a Notice of Intent to Appeal the Order of The Honorable Waldo Maring, Probate Judge for Georgetown County dated August 28, 2012. Simultaneously, the Respondents have filed a 59(e) motion asking the Probate Court to alter or reconsider the judgment entered.

Under Section 62-1-308(a), of the Probate Court, as amended, "The grounds for an appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court." A hearing on the 59(e) motion has been scheduled to be heard on October 19, 2012. The deadline for the grounds of appeal from the original order is October 12, 2012.

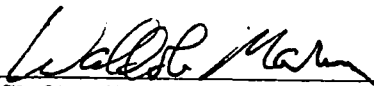
The Respondents have requested an extension of fifteen (15) days from the date of the 59 (e) ruling by the Probate Judge to file the grounds for appeal and serve all parties in the event the 59(e) motion is denied. Petitioner has consented.

TRUE AND CORRECT COPY
ATTEST *[Signature]*
JUDGE OF PROBATE
GEORGETOWN COUNTY, SC

[Signature]
[Signature]

IT IS THEREFORE ORDERED that the Respondents be granted a fifteen (15) day extension from the date of the ruling of the probate court on the 59 (e) motion filed therein to file grounds of appeal in the event the said motion is denied by the Probate Judge.

AND IT IS SO ORDERED.


JUDGE OF THE PROBATE COURT

September 28, 2012
Georgetown, South Carolina

I MOVE.


ATTORNEY FOR THE RESPONDENTS

I CONSENT.


ATTORNEY FOR THE PETITIONER

9/24/2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE MATTER OF
THE ESTATE OF:
WILLIE DEAS
Deceased

CASE NUMBER: 2012-ES-22-00035

IN THE PROBATE COURT

ORDER DISMISSING
MOTION

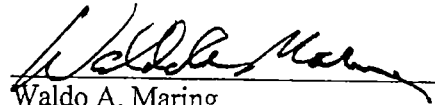
Place of Hearing:
Presiding Judge:
Date of Hearing:
Attorney for Respondent:

Attorney for Petitioner:

Georgetown County Judicial Center
The Honorable Waldo A. Maring
Friday, October 19, 2012
Malcolm Crosland, Esquire
Charles S. Goldberg, Esquire
Andrew T. Shepherd, Esquire

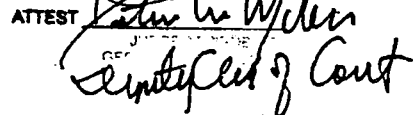
Having heard arguments to Amend or Alter the Order of this Court dated August 28, 2012, this Court finds no basis for amending or altering its Order. The Motion is therefore denied, and;

IT IS SO ORDERED.



Waldo A. Maring
Judge of Probate
Georgetown County, South Carolina

TRUE AND CORRECT COPY
ATTEST



Secretary of Court

Georgetown County Judge of Probate

WALDO A. MARING



November 9, 2012

Charles S. Goldberg, Esquire
Malcolm M. Crosland, Jr., Esquire
Post Office Box 9
Charleston, SC 29402-0009

Andrew T. Shepherd, Esquire
Hart, Hyland, & Shepherd, P. C.
Post Office Box 130
Summerville, SC 29483-0130

RE: Estate of WILLIE DEAS
 Estate Number: 2012-ES-22-00035

Dear Counsel:

With the filing of Grounds for Appeal and original transcript of Hearing held in Probate from the Order of the Probate Court dated August 28, 2012 and from the Order of the Probate Court denying their 59 (e) motion to amend or alter the Order of the Court dated October 19, 2012. , for the above captioned estate, I have made my "Return" to the Circuit Court.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Waldo A. Maring". The signature is fluid and cursive.

Waldo A. Maring
Probate Judge

Georgetown County Probate Court, PO Box 421270, 401 Cleland Street, Georgetown, SC 29442 (843) 545-3274
--

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE PROBATE COURT
CERTIFICATE OF TRANSMITTAL

TO: Alma White, Georgetown County Clerk of Court, Common Pleas

In accordance with the Grounds of Appeal filed November 2, 2012 in the Estate of Willie Deas,
dated October 31, 2012, we have enclosed the original pleadings, Orders, Transcript of Hearing
July 30, 2012, which was not received by Probate Court sealed, exhibits and all documents which
have been filed in the following case:

Carolyn Deas, Petitioner
Andrew T. Shepherd, Attorney for Petitioner

Petitioner,

vs.

Marvadine Guiles a/k/a Marvadine Giles, Willie Deas, Jr.,
Michelle Deas, Rodney Branton, Moya Branton, Whitney
Beaufort,

Respondents.

Estate Case 2012-ES-22-00035

Receipt of the above file is hereby acknowledged this 9th day of Nov, 2012

BY: Lucinda L. Sane
TITLE: Deputy Clerk

Please return signed copy of this form to:

Georgetown County Probate Court
Post Office Box 421270
Georgetown, SC 29442

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV -9 PM 1:48
ALMA A. WHITE
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2200971

Marvadine Giles Michelle Deas Moya Branton	Willie Deas Jr Rodney Branton Whitney Beaufort	Willie Rogers Deas Est Carolyn Deas
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: <u>Clerk of Court</u>	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
-------------------------------------	---

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. 2, suit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: Dismissed. See below.

FILED
2013 JAN 25 AM 8:35
ATLANTA WHITE
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
Motion To Dismiss Appeal By Attorney Shepherd Granted
- Attorney Andrew T. Shepherd is to prepare a formal order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Myra M. Culbertson
Circuit Court Judge

2148

Judge Code

1/22/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on January 25th, 2013, and a copy mailed first class or placed in the appropriate attorney's box on January 15th, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Malcolm M. Crosland Jr. PO Box 9 Charleston, SC
294020009

Charles S. Goldberg 61 Broad St. Charleston, SC 29401

Andrew T. Shepherd PO Box 130 Summerville, SC 29484

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lucinda G. Lane, Deputy
Alma Y. White - Clerk of Court

Court Reporter Grace Hurley

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE MATTER OF THE ESTATE OF
WILLIE ROGERS DEAS

CAROLYN DEAS,

Petitioner/Respondent,

vs.

MARVADINE GILES a/k/a MARVDINE
GILES, WILLIE DEAS, JR., MICHELLE
DEAS, RODNEY BRANTON, MOYA
BRANTON, WHITNEY BEAUFORT,

Respondents/Appellants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE No.: 2012-CP-22-00971

ORDER GRANTING RESPONDENT
CAROLYN DEAS' MOTION TO
DISMISS APPEAL

FILED
2013 FEB 26 AM 11:27
ALMA Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

This matter came before the Court on the Motion of Petitioner/Respondent Carolyn Deas to Dismiss the Appeal of Marvadine Giles as improperly filed. Respondent brought this Motion pursuant to S.C. Code Ann. § 62-1-308 and Rule 74, SCRCP.

The Court held a hearing on the Motion on January 22, 2013. Andrew T. Shepherd and Katherine H. Hyland of the firm Hart Hyland Shepherd, LLC were present on behalf of Respondent. Charles Goldberg and Malcolm Crosland of Steinberg Law Firm LLP were present on behalf of Appellants.

The Court has heard and considered the arguments of counsel for the parties, reviewed the pleadings in this case, and reviewed the case law and other materials presented to the Court in support of and in opposition to Respondent's Motion. For the reasons set forth below, the Court grants Respondent's Motion to Dismiss the Appeal.

BACKGROUND

The record reflects Willie Rogers Deas died as a result of an automobile accident on January 6, 2012, in Georgetown, South Carolina.

On January 30, 2012, the Appellant Marvadine Giles applied for the Informal Appointment as Personal Representative of the Estate of Willie Deas, claiming she was separated but not divorced from Willie on the basis of their marriage on September 21, 1972. Litigation ensued, the result of which was an Order of the Honorable Waldo Maring entered August 28, 2012 holding that the Respondent, Carolyn Deas, is the surviving spouse of Willie Deas and has priority for appointment as Personal Representative. Appellant sought an appeal in the circuit court.

DISCUSSION

The issue before the Court is whether or not the Notice of Appeal was timely filed in the circuit court. S.C. Code Ann. § 62-1-308(a) states:

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.

(emphasis added).

The Appellant received written notice of the entry of the probate court's Order on August 29, 2012, thereby making September 8, 2012 the deadline for filing and serving the notice of intention to appeal. Because September 8, 2012 fell on a Saturday, Appellant's notices of intention to appeal had to be filed and served in both courts no later than Monday, September 10, 2012.

mdc

During the hearing, Appellant presented evidence that the Notice of Appeal was placed in the mail on September 6, 2013, registered mail, return receipt requested. Appellant presented argument that the United States Postal Service parcel tracking information indicated the Postal Service initially misssent the mailing to Walterboro, South Carolina, on September 7, 2012. The Notice was addressed to the Georgetown Clerk of Court, at the county courthouse at 401 Cleland Street, Georgetown, South Carolina, the address published in the South Carolina Bar Directory. Unknown to Giles' counsel, the Clerk of Court does not receive mail directly at their street address, and instead has directed the U.S. Postal Service to deliver its mail to a P.O. Box in Georgetown, South Carolina. According to Appellant's timeline, the Post Office placed the Notice in the Clerk of Court's Post Office Box on September 10th. The Courier for the Clerk of Court retrieved the document from the Post Office Box on September 11th and it was stamped received by the Clerk of Court on September 14th.

Upon inquiry of the Court on the record, the Honorable Alma White, Georgetown County Clerk of Court, explained the Clerk of Court's mail is delivered to a post office box and retrieved by a courier, who typically visits the post office box two times per day, once in the morning and once in the afternoon, to pick up mail routed by the Post Office to the Clerk of Court. The parcel tracking information for Appellant's Appeal/Pleadings indicated attempted delivery of the mailing to the Clerk's post office box on September 10, 2012 in which the Postal Service left notice, indicating in the tracking information that no authorized recipient was available to sign for the mailing.

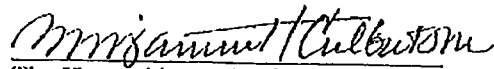
S.C. Code Ann. § 62-1-308(a) must be read for it's clear and unambiguous terms. Estate of Cretzmeier, 365 S.C. 12, 615 S.E.2d 116 (2005). This section creates a bright

line rule that the Notice of Appeal must be delivered and received by the Circuit Court by the deadline. "Our settled rules of statutory construction mandate that the notice of appeal 'must be filed' in the circuit court within the ten-day period. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." *Id* at 117. (internal citations and quotations omitted).

In response, Appellant argues that intervening factors caused the one-day delay, i.e., the post offices' initial failure to send the mailing to Georgetown and its failure to deliver the mailing to the Clerk's street address as indicated on the envelope. They further argue that because of the Clerk of Court's mailing procedures, the post office box became an extension of the Clerk's office, and filing should have been effective once it was placed in the post office box on September 10, 2012. The Court, while sympathetic to Appellant's plight, declines to make these distinctions in light of the strict interpretation of the statute.

Accordingly, the Circuit Court lacks appellate jurisdiction and the Court grants Respondent's Motion to Dismiss the Appeal. The Appeal is hereby dismissed.

IT IS SO ORDERED.


The Honorable Benjamin H. Culbertson
Circuit Court Judge

February 25, 2013
Georgetown, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE PROBATE COURT
CASE NO: 2012-ES-22-035

2012-CP-22-00971

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

CAROLYN DEAS,

Petitioner,

vs.

NOTICE OF INTENT TO
APPEAL TO THE CIRCUIT
COURT FOR GEORGETOWN
COUNTY.

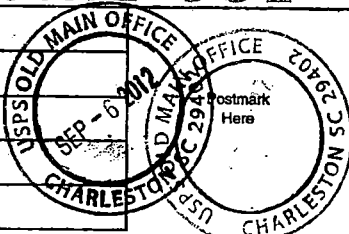
FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 14 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

MARVADINE GILES a/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

TO: ANDREW SHEPHERD, ATTORNEY FOR THE PETITIONER

NOTICE IS HEREBY GIVEN that the Respondents intend to appeal to
the Circuit Court for Georgetown County the Order signed by The Honorable Waldo Maring,
dated August 28, 2012, and received by Counsel on

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To: <i>Clerk of Court - Precinct</i>	
Street, Apt. No., or PO Box No. <i>401 Calhoun St.</i>	
City, State, ZIP+4 <i>Georgetown SC 29140</i>	
PS Form 3800, Aug. 1, 2005 See Reverse for Instructions	

THE STEINBERG LAW FIRM, LLP

By:

Malcolm M. Crosland, Jr.
Malcolm M. Crosland, Jr.

AND

Charles S. Goldberg
Charles S. Goldberg
61 Broad Street
Charleston, SC 29401
(843) 720-2800
Attorney for the Respondents

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE PROBATE COURT
CASE NO: 2012-ES-22-035

PROBATE COURT

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

2012SEP7AM11:18

CAROLYN DEAS,

GEORGETOWN SC

Petitioner,

vs.

NOTICE OF MOTION AND
AND MOTION TO
AMEND OR ALTER THE
ORDER OF THE COURT

MARVADINE GILESa/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

TO: ANDREW SHEPARD, ATTORNEY FOR THE PETITIONER:

PLEASE TAKE NOTICE that the Respondent(Marvadine) will move before
The Honorable Waldo Maring, Judge of Probate for Georgetown County, pursuant to Rule
59(e) of the South Carolina Rules of Civil Procedure, as amended, at a date and time
scheduled by the Court, to alter, amend or reconsider the Court's Order dated August 28,
2012, and received by Marvadine's attorneys on August 29, 2012, on the following
grounds:

1. The Court erred in its citing Hallums v. Hallums, 54 SE 613 (SC 1905).
In Hallums, supra, the wife who entered into a second marriage with Hallums, contended
that her first husband had been previously married when she married him making her
marriage to him void ab initio. Therefore, her second marriage was valid.

Our Supreme Court affirmed the decision of the Circuit Court and stated “The general rule is that, in order for a marriage to be established by presumption of law arising from reputation, the ‘reputation’ must be general and uniform. But when a marriage in fact has been established and it is sought to be impeached and to be made void by proof of a second marriage by reputation, the testimony should be clear and convincing; the presumption of law being in favor of ‘innocence and marriage’ and against bigamy”. This Court’s error is that it establishes a presumption automatically in favor of the second marriage. Hallums does not so hold. In Hallums, *supra*, the first marriage was being challenged by the wife and not the second.

2. The Court erred in its application of equitable estoppel and cites Smoak v. Smoak, 237 SE2nd 372 (SC 1977). In Smoak, *supra*, the husband, a lawyer, procured an invalid Haitian divorce and then represented to his wife that they were divorced. Because the husband was an attorney, the wife had no reason to doubt they are divorced. The husband’s activities seem to confirm his divorce, and likewise the wife, mistakenly believing they were divorced, committed adultery. This case can be distinguished. At no time did Marvadine tell Willie she had gotten a divorce, and it is established that Willie did not divorce Marvadine.

The essential elements of estoppel as they relate to the party claiming the estoppel (Carolyn) are (1) lack of knowledge (2) and the means of knowledge of the truth as to the facts in question; (3) reliance upon the conduct of the party estopped; (4) and action based thereon of such a character as to change her position prejudicially. The Court erred in failing to find whether these 4 elements were met by Carolyn. Carolyn certainly had the means of knowledge by simply going to the courthouse to confirm whether there was a divorce between Willie and Marvadine. It would have been convenient for her to do so at the same time she and Willie applied for the marriage license. Instead she relied on lies perpetrated by Willie, who told her that he was divorced. She had the opportunity to seek out Marvadine who lived in the same

community and to ask her if she and Willie were divorced. She did neither.

3. The Court erred in finding that it was Marvadine's duty to take steps to rectify the invalidity of the second marriage when in fact she did two years after Carolyn's marriage and twelve years before Willie's death, when the undisputed testimony in this case is that Marvadine personally told Carolyn that she and Willie were never divorced.

4. The Court erred in applying the theory of equitable estoppel in that there was no testimony that Marvadine had the intention, or at least expectation, that Willie decedent would marry without obtaining a divorce from her.

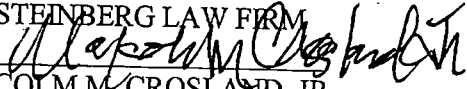
5. The Court erred in its failure to consider Willie's childrens' desire that Marvadine be appointed Personal Representative by their signed renunciations to so act and to have Marvadine serve in that capacity.

6. The Court erred in its failure to consider the testimony of Marvadine where she testified she never received divorce papers from Willie nor did she ever sue Willie for divorce. This testimony was never rebutted and in fact it was stipulated that there are no divorce records in the Georgetown County Court House. Here then is prima facie evidence which carries the required burden of proof and acknowledged by Carolyn.

7. The Court erred in its holding that because Marvadine lived in various jurisdictions, she showed no proof that any divorce was granted in any of the other jurisdictions. The Court erred in omitting from consideration the fact that no matter where Marvadine lived, she had to serve a divorce action in Georgetown County where Willie always lived, and that the proper jurisdiction for a divorce case would have been in Georgetown County, Willie's residence, and if Marvadine did bring a divorce case out of that jurisdiction without serving Willie, such a divorce would be null and void.

8. The Court erred in its application of Yarborough v. Yarborough, 314 SE2nd,16 (Ct. App. 1984). The Court in quoting from Section 20-1-80 stated: "All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of seven years, the one not knowing the other to be living during that nor to any person who shall be divorced or whose marriages shall be declared void by the sentence of a competent court."

The testimony in this case is that Marvadine and Willie saw each other frequently after their separation and that they engaged in sexual intercourse during that time and before he "married" Carolyn. In this case, the presumption was rebutted by Marvadine that the former marriage was dissolved by either death or divorce. In Yarborough, unlike in the case at bar, Tom Yarborough had the burden of persuading the Court that his first wife had divorced him, removing his impediment to a common law marriage with Martha. Yarborough also had to prove Fred had divorced Martha removing her impediment to marriage so that after removing the impediments to both marriages, Tom and Martha were able to enter into a common law marriage. The Yarborough holding was based on the fact that that Court found Tom to be unpersuasive in his testimony. In the case at bar, no one disputed the fact that Marvadine and Willie were never divorced.

THE STEINBERG LAW FIRM
By: 
MALCOLM M. CROSLAND, JR.

AND 
CHARLES S. GOLDBERG
61 BROAD STREET
CHARLESTON, SC 29401
(843) 720-2800
Attorneys for the Respondent

September 5, 2012

) IN THE COURT OF COMMON PLEAS
) CASE No.: 2012-CP-22-00971
)

NOTICE OF MOTION & MOTION TO
DISMISS APPEAL

Petitioner/Respondent,

VS.

FILED
GEORGE TOWN COUNTY, VA
2012 NOV 20 AM 11:21
ALMA Y. WHITE
CLERK OF COURT

Respondents/Appellants.

TO: CHARLES GOLDBERG, ESQUIRE, AND MALCOLM CROSLAND, ESQUIRE,
ATTORNEYS FOR MARVADINE GILES:

Please take notice that the Petitioner, Carolyn Deas, will move no earlier than ten (10) days after service of this motion or as soon thereafter as the motion may be heard, pursuant to S.C. Code Ann. § 62-1-308 and Rule 74, SCRPC, for an Order dismissing the appeal of Marvadiné Giles as it was improperly filed. The basis of said motion is that it was untimely, and alternatively, was not properly perfected on the following grounds:

1. The procedure for initiating an appeal from the probate court to the circuit court is governed by S.C. Code Ann. § 62-1-308. When appealing to the circuit court, “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 . . . of the probate court. *Id.* (emphasis added). By its plain language, § 62-1-308 requires both the service of the notice of intention to appeal and the dual filing in the office of the probate court and the

circuit court within ten days of the entry of a final order. The requirement of dual filing can also be found in Rule 74, SCRCP, but the timeframe for doing so is governed by statute.

Although appeals from probate court are governed by § 62-1-308, formal proceedings in the probate court are also subject to the South Carolina Rules of Civil Procedure, pursuant to S.C. Code Ann. § 62-1-304. Section 62-1-304 affords a party to a formal action the right to file certain post-trial motions in the same manner as in circuit court (i.e. motions pursuant to Rules 52 and 59, SCRCP). As a result, the procedures on appeal from the probate court are subject to the effect of the rules of civil procedure.

In the instant case, the Appellant received written notice of the entry of the probate court's Order on August 29, 2012, thereby making September 8, 2012 the deadline for filing and serving the notice of intention to appeal. Because September 8, 2012 fell on a Saturday, Appellant's notices of intention to appeal had to be filed and served in both courts no later than Monday, September 10, 2012. This deadline also coincided with Appellant's deadline for the service of post-trial motions pursuant to Rule 59, SCRCP, which would have stayed Appellant's deadline for filing a notice of appeal. Rule 59(f), SCRCP.

Appellant failed to meet these deadlines making her Appeal untimely. Appellant filed her Notice of Intention to Appeal in the probate court on September 7, 2012 together with a motion pursuant to Rule 59, SCRCP, seeking alteration, amendment, and/or reconsideration of the probate court's Order. Appellant served these documents under copy of a cover letter to the probate court dated September 6, 2012. Appellant further served the Notice of Intention to Appeal in the circuit court under copy of a cover letter to the circuit court dated September 5, 2012. However, a review of the circuit court file

indicates that Appellant's Notice of Intention to Appeal was not filed in the circuit court until September 14, 2012—four days after the ten-day period mandated by statute. Accordingly, Appellant's notice of intention to appeal was not timely filed in the circuit court as required by the mandatory language of the statute. Because the appeal was not perfected through timely filing of the notice, it must be dismissed and the circuit court has no appellate jurisdiction to continue proceedings.

Alternatively, because the Notice of Appeal was filed simultaneously with the Appellant's Rule 59 Motion, the Notice of Appeal is of no effect according to precedent, and the subsequent failure to file a notice of appeal following the probate court's Order denying the Rule 59 motion now renders the probate matter incapable of appeal.

A timely and permissible Rule 59 motion stays the time period for filing the notice of intention to appeal until the entry of an Order on the Rule 59 motion. *See* Rule 59(f), SCRPC. However, Appellant's late filing in the circuit court cannot be salvaged by the effect of tolling under Rule 59. Tolling of the time to file a notice of appeal does not mean that it is appropriate to do so during the tolling period when a Rule 59 motion is pending. The Supreme Court has acknowledged the effect of simultaneously filing both a Rule 59 motion and a notice of appeal:

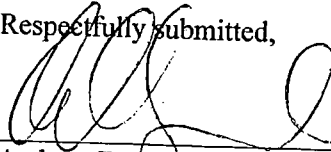
We are aware that a party may attempt to file both a Rule 59 motion and a notice of appeal. If this does occur, one or the other will be inappropriate depending on whether the motion is both timely under Rule 59 and permissible under our ruling today. *Cf. Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) (holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature). It is, of course, the party's responsibility to determine whether a Rule 59 motion or notice of appeal is appropriate under the facts of the case, and we caution parties not to attempt to avoid this responsibility by the simple expedient of filing both. *Elam v. SCDOT*, 362 S.C. 9, 602 S.E. 2d 772 (2004). (emphasis added).

There is no question that Appellant's Rule 59 Motion in the probate court was both

timely and permissible. However, the simultaneous filing of the Rule 59 motion with the notice of appeal rendered the notice of appeal a nullity. While the authority cited refers to appeals from the circuit court to the State's appellate courts, the circuit court (when sitting in an appellate capacity) should not deviate from such precedent in its application, particularly where the trial and post-trial proceedings of the probate court are subject to the same rules of civil procedure that led to the adoption of such precedent by the State's appellate courts.

Because the Appellant's Rule 59 Motion was pending, the notice of appeal should be rendered moot and the matter dismissed as there is neither a provision of law nor a rule of procedure in the State courts that allows for the ripening of a premature notice of appeal upon disposition of a pending post-trial motion. Because Appellant failed to file and serve a notice of appeal following the lower court's ruling on the Appellant's Rule 59 motion, there is no appeal properly before the circuit court. The Notice of Appeal currently before the circuit court was (1) filed late and (2) amounts to a procedural nullity according to law, and as such the appeal has not been perfected and must be dismissed for the reasons set forth above.

Respectfully submitted,



Andrew T. Shepherd, Esquire
Hart Hyland Shepherd, LLC
P.O. Box 130
Summerville, SC 29484
(843) 410-0711 (*firm*)
(843) 410-0714 (*direct*)
(843) 302-8329 (*fax*)
S.C. Bar No.: 76859
andrew@hartfirm.com

Summerville, South Carolina
November 15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE MATTER OF THE ESTATE OF
WILLIE ROGERS DEAS

CAROLYN DEAS,

Petitioner,

vs.

MARVADINE GILES a/k/a MARVADINE
GILES, WILLIE DEAS, JR., MICHELLE
DEAS, RODNEY BRANTON, MOYA
BRANTON, WHITNEY BEAUFORT,

Respondents.

) IN THE COURT OF COMMON PLEAS
) CASE No. 2012-CP-22-00971

) CERTIFICATE OF SERVICE

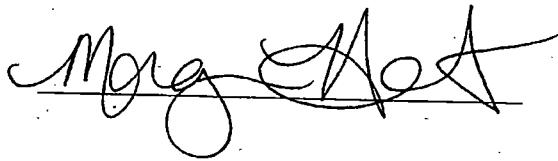
ALMA Y. WHITE
CLERK OF COURT

2012 NOV 20 AM 11:21

FILED
GEORGETOWN COUNTY

I, the undersigned, an employee of Hart Hyland Shepherd, LLC, hereby certify that I served the foregoing Notice of Motion and Motion to Dismiss Appeal, this 15th day of November, 2012, upon Respondents' attorney by placing the same in a properly addressed envelope with sufficient postage attached thereto to the following address:

Charles S. Goldberg, Esquire
Malcolm Crosland, Esquire
Steinberg Law Firm
61 Broad Street
Charleston, SC 29401



Summerville, South Carolina
November 15, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

CASE NO: 2012-CP-22-00971

GEORGETOWN COUNTY

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

CAROLYN DEAS,
Petitioner,

REPLY TO MOTION TO
DISMISS NOTICE OF APPEAL

vs.

MARVADINE GILESa/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

The Respondents would respectfully reply to the Motion to Dismiss
the Notice of Appeal:

1. Respondents agree that under Section 62-1-308 of the Probate Code that the Notice of Appeal from the probate court to the circuit court was required to be filed with the probate court, the circuit court, and to petitioner's counsel 10 days from receipt of the probate court's order. These three mailings were properly mailed in time for their receipts by the courts and opposing counsel

2. Respondents agree that the last date for filing the Notice of Appeal was on September 10, 2012. The three mailings were received by the Charleston post office on September 6, 2012 (See attached exhibits A,B,C). The stamped filing date to the Probate Court was on September 7, 2012 and signed for on that date (Exhibit D); the mailing to petitioner's counsel was signed for on September 10, 2012. (See attached Respondents' exhibit E). Respondents further submit that the post office placed the Notice of Appeal in the Clerk of Court's post office box on September 10, 2012 albeit the Notice of Appeal to the Clerk was mailed to the Clerk's city address of 401 Cleland Street in Georgetown.

3. Included in the probate court's mailing was a Rule 59 (e) motion to alter and/or amend the Probate Court's order. A 59 (e) motion is also required to be filed 10 days from date of the (Probate) court order. At this stage, both the 59 (e) motion and the notice of appeal were required to be filed on September 10, 2012.

4. The Georgetown post office's Track & Confirm document further shows that on September 10, 2012, at 9:45 a.m. that "Notice Left (No Authorized Recipient Available)". This same document notes that the mailing was "Missent" on September 7, 2012. (See Exhibit F). The postmaster has orally admitted to the undersigned counsel that the mailing was missent to Walterboro, South Carolina when it was received on the 7th. (See counsel's affidavit Exhibit I)

5. The Georgetown Clerk of Court, Honorable Alma White, has offered an explanation about procedures in the mailings to the Georgetown County Circuit Court System in which a courier picks up mail from the post office and delivers the mail to offices in the Judicial Center. She further states there is an assigned courier for mail in "this building" exclusively after 2009. She goes on to state in her e-mail to the undersigned that when the courier receives a notification in the clerk's box for certified mail, he signs and brings the mail to the office.. The Clerk further states she discussed this matter with the courier and he believes it was possible that postal mail processors may have put the certified mail notices in the County's general Post office box 421270 and not the clerk's post office box 479. (See Exhibit G)

6. As to why the stamped filing was delayed by 3 days from the receipt, the Clerk opines that this late stamping did not matter because they received the mailing on September 11, 2012, and so it would have been a late filing anyway. (See Exhibit H)

7. The Respondents further submit that the evidence above set forth creates a rebuttable presumption of receipt.

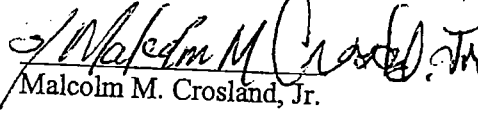
8.. Respondents' believe they complied with Section 62-1-308, and that the intervening causes above shown make this case totally distinguishable from the cases quoted by the Petitioner. Respondents' mailing was timely in both courts. Respondents would have no knowledge of the mailing procedures instigated in Georgetown County especially

in view of the fact that the envelope address of the Clerk was to its actual office and not to any post office box. Certainly there was a failure by the United States Post office first by mis-sending the Notice of Appeal to Walterboro and its failure to hand deliver the mail to the address shown. The fact that the Probate Court received the same mailing on September 7th confirms Respondents' position.

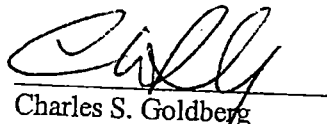
9. Respondents further submits that the term "filing" was accomplished when the post office left the notice (in the Clerk's special box) on September 10, 2012. Respondents should not be prejudiced because the courier did not either pick up the mail for whatever reasons on that crucial date or that the post office employees placed the mailing in the wrong post office box and that the post office missent the initial mailing.

THE STEINBERG LAW FIRM

BY:


Malcolm M. Crosland, Jr.

And



Charles S. Goldberg
61 Broad Street
Charleston, SC 29401
(843) 720-2800

cgoldberg@steinberglawfirm.com

Charleston, South Carolina
January 16, 2013.

TRANSMITTED/STORED : NOV. 17. 2012 10:33AM
FILE MODE OPTION

FAX HEADER 1: STEINBERG LAW
FAX HEADER 2:

5343 MEMORY TX

ADDRESS

RESULT

PAGE

1-843-302-8329

OK

1/1

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE PROBATE COURT
CASE NO: 2012-ES-22-035

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

2012-CP-22-00971

CAROLYN DEAS,

Petitioner,

vs.

NOTICE OF INTENT TO
APPEAL TO THE CIRCUIT
COURT FOR GEORGETOWN
COUNTY.

MARVADINE GILBSA/c/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 14 PM 4:24
ALMA X WHITE
CLERK OF COURT

TO: ANDREW SHEPHERD, ATTORNEY FOR THE PETITIONER

NOTICE IS HEREBY GIVEN that the Respondents intend to appeal to the Circuit Court for Georgetown County the Order signed by The Honorable Waldo Mating, Probate Judge for Georgetown County, dated August 28, 2012, and received by Counsel on August 29, 2012.

THE STEINBERG LAW FIRM, LLP

By: *Malcolm M. Crosland, Jr.*
Malcolm M. Crosland, Jr.

AND

Charles S. Goldberg
Charles S. Goldberg
61 Broad Street
Charleston, SC 29401
(843) 720-2800
Attorney for the Respondents

EXHIBIT "A"

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
Certified Fee \$
Return Receipt Fee (payment required)
Restricted Delivery Fee (payment required)
All Postage & Fees \$

TO: *Clerk of Court - Georgetown*
401 Calhoun St.
Georgetown SC 29140

SEP 14 2012
CHARLESTON SC 29401

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE PROBATE COURT
CASE NO: 2012-ES-22-035

PROBATE COURT

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

2012SEP7AM11:18

CAROLYN DEAS,

Petitioner,

GEORGETOWN SC

vs.

NOTICE OF INTENT TO
APPEAL TO THE CIRCUIT
COURT FOR GEORGETOWN
COUNTY.

MARVADINE GILES a/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

TO: ANDREW SHEPHERD, ATTORNEY FOR THE PETITIONER

NOTICE IS HEREBY GIVEN that the Respondents intend to appeal to
the Circuit Court for Georgetown County the Order signed by The Honorable Waldo Maring,
Probate Judge for Georgetown County, dated August 28, 2012, and received by Counsel on
August 29, 2012.

THE STEINBERG LAW FIRM, LLP

By:

Malcolm M. Crosland, Jr.
Malcolm M. Crosland, Jr.

AND

Charles S. Goldberg
Charles S. Goldberg
61 Broad Street
Charleston, SC 29401
(843) 720-2800
Attorney for the Respondents

Exhibit "B"

7010 1870 0000 0648 5461

U.S. Postal Service TM	
CERTIFIED MAILTM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To *Probate Court*
Street, Apt. No. *P.O. Box 421270*
or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

DAVID H. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
MICHAEL J. JORDAN
BENJAMIN AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

THE STEINBERG

L A W F I R M
L.L.P.

61 Broad Street, P.O. Box 9
Charleston, South Carolina 29402-0009
Telephone (843) 720-2800
Fax (843) 722-1190
www.steinberglawfirm.com

NORTH AREA OFFICE
118 GOOSE CREEK BLVD., SOUTH
P.O. BOX 1028
GOOSE CREEK, SC 29445
TELEPHONE (843) 572-0700
FAX (843) 572-1871

DOWNTOWN ANNEX
111 CHURCH STREET
P.O. BOX 9
CHARLESTON, SC 29402-0009
TELEPHONE (843) 720-2800
DIRECT DIAL (843) 266-1701
FAX (843) 266-1700

SUMMERVILLE OFFICE
1520 OLD TROLLEY RD., SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-6522
FAX (843) 871-8565

September 5, 2012

Andrew Shepherd, Esquire
Chellis & Frampton
PO Box 430
Summerville, SC 29484

CERTIFIED, RETURN RECEIPT REQUESTED

Re: Deas Case

Dear Andy:

I am serving you with a copy of the Notice of Motion to Amend under 59 (e) and a copy of Notice of Intent to Appeal to the Circuit Court. I am assuming you are being served on you individually and on behalf of Carolyn Deas. Once the Circuit Court and end you stamped copies of each of the pleadings.

7010 1870 0000 0648 5454

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail TM Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent to Andrew Shepherd, Esq
Street, Apt. No.,
or PO Box No. P.O. Box 430
City, State, ZIP+4[®] Summerville, SC 29484

PS Form 3800, August 2006. See Reverse for Instructions

Yours very truly,
Charles S. Goldberg
Charles S. Goldberg

Exhibit "C"

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
MICHAEL J. JORDAN
BENJAMIN AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

THE STEINBERG

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L. L. P.

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1520 OLD TROLLEY RD, SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-6522
FAX (843) 871-8565

September 5, 2012

Probate Court
PO Drawer 421270
Georgetown, South Carolina 29442

Certified Mail, RRR

Re: Estate of Willie Deas
2012-ES-22-00035

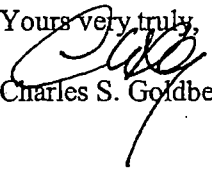
Dear Girls:

Pursuant to Section 62-1-308, I am enclosing a Notice of Motion to Amend or Alter the Order of the Court in the above matter together with our Notice of Intent to Appeal to the Circuit Court. I understand from your office that no fee is due for these filings.

Please return a stamped copy of the Notice to Amend and the Notice of Intent to Appeal in the enclosed, stamped envelope.

I am sending a copy to Andy Shepherd who represents the other side and will send him a stamped copy of each pleading once I get it back from you.

Yours very truly,


Charles S. Goldberg

CSG:ms
enclosures

CC: Andy Shepherd, Esquire
Malcolm M. Crosland, Jr., Esquire

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
MICHAEL J. JORDAN
BENJAMIN AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

THE STEINBERG

L A W F I R M
L L P.

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September 5, 2012

Andrew Shepherd, Esquire
Chellis & Frampton
PO Box 430
Summerville, SC 29484

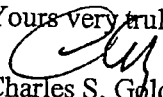
CERTIFIED, RETURN RECEIPT REQUESTED

Re: Deas Case

Dear Andy:

I am serving you with a copy of the Notice of Motion to Amend under 59 (e) and a copy of Notice of Intent to Appeal to the Circuit Court. I am assuming you are being served on you individually and on behalf of Carolyn Deas. Once the Circuit Court and Probate Court stamp my copies I will send you stamped copies of each of the pleadings.

With best regards, I am,

Yours very truly,

Charles S. Goldberg

CSG:ms
enclosures
CC: Malcolm M. Crosland, Jr., Esq.

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
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BENJAMIN AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

THE STEINBERG

L A W F I R M

L.L.P.

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SUMMERVILLE OFFICE
1520 OLD TROLLEY RD, SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-8522
FAX (843) 871-8565

September 5, 2012

Clerk of Court
attn: LUCINDA
401 Cleland Street
Georgetown, SC 29442

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Appeal from Probate Court

Dear Lucinda:

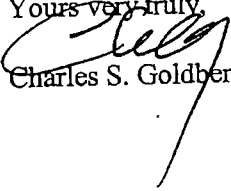
We are appealing an order signed by The Honorable Waldo Maring, and under Section 62-1-308 of the Probate Court are required to file with your office our Notice of Intent to Appeal to the Circuit Court. Please return a stamped copy to me in the enclosed envelope.

I am copying this letter to Andrew Shepherd who represents the other side of the case and will send him a stamped copy upon its receipt from your office.

Per your instructions, I am enclosing the filing fee of \$150

Thanks for your help.

Yours very truly,


Charles S. Goldberg

CSG:ms
enclosures

CC: Andrew Shepherd, Esquire
Malcolm M. Crosland, Jr., Esquire

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Andrew Shepherd, Esq.
P.O. Box 430
Summerville, SC
29484

2. Article Number

(Transfer from service label)

7010 1870 0000 0648 5454

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

James H. [Signature]

C. Date of Delivery

9-7-12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Probate Court
P.O. Drawer 431270
Georgetown, SC
29442

2. Article Number

(Transfer from service label)

7010 1870 0000 0648 5461

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

James H. [Signature]

C. Date of Delivery

9-7-12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBITS "D" + "E"

[English](#)[Customer Service](#)[USPS Media](#)[Register / Sign In](#)[Search USPS.com or Track Packages](#)[Quick Tools](#)[Ship a Package](#)[Send Mail](#)[Manage Your Mail](#)[Shop](#)[Business Solutions](#)

Track & Confirm

[GET EMAIL UPDATES](#)[PRINT DETAILS](#)**YOUR LABEL NUMBER**

7D10157000008485476

SERVICE**STATUS OF YOUR ITEM****DATE & TIME****LOCATION****FEATURES**

Delivered

September 11, 2012, 9:45 am

GEORGETOWN, SC 29440

Certified Mail™

Notice Left (No
Authorized Recipient
Available)

September 10, 2012, 8:45 am

GEORGETOWN, SC 29440

Missing

September 07, 2012, 8:51 am

Check on Another Item

What's your label (or receipt) number?

[Find](#)**LEGAL**[Privacy Policy](#)[Terms of Use](#)[FOIA](#)[No FEAR Act EEO Data](#)**ON USPS.COM**[Government Services](#)[Buy Stamps & Shop](#)[Print a Label with Postage](#)[Customer Service](#)[Site Index](#)**ON ABOUT.USPS.COM**[About USPS Home](#)[New room](#)[Mail Service Updates](#)[Forms & Publications](#)[Careers](#)**OTHER USPS SITES**[Business Customer Gateway](#)[Postal Inspectors](#)[Inspector General](#)[Postal Explorer](#)

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EXHIBIT "F"

Charles Goldberg

From: Alma White
Sent: Wednesday, January 02, 2013 12:42 PM
To: 'cgoldberg@steinberglawfirm.com'
Cc: Common Pleas
Subject: 2012-CP-22-00971 Deas vs. Giles, et al.
Attachments: 20121213150249926.pdf; 20121231090320196.pdf

Dear Mr. Goldberg:

Please accept our sincere apologies for failing to respond immediately to your first inquiry as staff worked to close out the year with court proceedings and attempting to follow through with promised vacation time through the holiday season.

In response to your question as to why a Notice of Appeal sent to the clerk's office by certified mail was possibly returned by the post office indicating, as stated in your letter, "Notice Left (No Authorized Recipient Available on September 10th). I will share the office procedure with you, which may possibly explain the post office's action, but I have no way of verifying this.

Georgetown County Circuit Court System has a courier who picks up mail from the post office and distributes the mail to offices in the Judicial Center. The courier was assigned to this building exclusively after its construction in 2009. The Clerk of Court's office mailing address for the new building is PO Box 479. Prior to July 1, 2009 the Clerk of Court's office used the same general address as the rest of county government, PO Box 421270. When the courier receives a notification in the clerks mail box for certified mail, he signs and brings the mail to the office. In discussing this particular matter with the courier, he believes it was very possible (because it has happened before) that postal mail processors may have put the certified mail notices in the county's general post office box 421270 and that courier would not have signed once he recognized it was for the court system, so it was returned to the post office. At best guess, after reprocessing, the postal mail handlers subsequently placed it in the correct mailbox, 479 and the Judicial Center courier signed and brought the mail to the clerk's office. Other than this scenario, the clerk's office has no other possible explanation since we have no way of determining what actually happened at the post office from the time it was received at Georgetown Post Office and actually being received in the Clerk of Court's office.

We certainly regret any inconvenience this situation has caused for you and we hope this doesn't happen in the future. The clerk's office understands clearly the time and date sensitivity in the court system and we strive hard to process mail and clock documents as quickly as possible.

Sincerely,

Alma White
Clerk of Court

EXHIBIT "G"

Charles Goldberg

From: Alma White
Sent: Friday, January 04, 2013 3:29 PM
To: 'cgoldberg@steinberglawfirm.com'
Cc: Jennifer Lawrence
Subject: RE: 2012-CP-22-00971 Deas vs. Giles, et al.

Good Afternoon Mr. Goldberg,

My apologies again; I didn't realize that I failed to answer a more specific question. In response to the three-day delay in receiving the document on September 11, 2012 (based on your tracking information), at this point I cannot specifically say/recall why the three-day delay in clocking. I reviewed this situation with Common Pleas staff. With the three months time lapse, at best we can only explain the office procedure for processing mail daily. Again, we strive to open every piece of mail received daily; clock what should be clocked and key the data into the Case Management System (CMS), scan and file the document. This is done daily in addition to maintaining and/or attending to basic office routines such as serving walk-ins, answering phone calls, responding to paper & electronic correspondences. Mail not processed that day (which is rare), is processed the following day. We typically try to weed through and address time sensitive mail immediately. We are sorry that there was a three day delay in receiving and clocking. During the staff meeting in an attempt to learn what may have happened with this piece of mail, it was pointed out to me (SECTION 62-1-308. Appeals) that even if it was clocked the same day we are said to have received it, the 10 days for Notice of Intention to Appeal would have expired September 9 (a Sunday). If an extra day was given, it would have been Monday the 10th and according to your tracking sheet, the clerk's office supposedly received it on the 11th, provided the courier actually delivered it to the clerk's office on the 11th. The date you stated we received it would have been two days after the 10 days deadline. This is an unfortunate situation and I'm sorry the clerk's office is in the middle, but I feel certain that the judge will properly sort this out. I've answered your question as best I could. Again, I'm sorry this happened. Please let me know if I can be of further assistance.

Sincerely,

Alma White
Clerk of Court

From: Charles Goldberg [mailto:cgoldberg@steinberglawfirm.com]
Sent: Thursday, January 03, 2013 9:16 AM
To: Alma White
Cc: mcrosland@steinberglawfirm.com
Subject: RE: 2012-CP-22-00971 Deas vs. Giles, et al.

Thanks very much for your detailed response. I need one more thing answered and that is the 3 day delay in Having the Notice of Appeal filed once you received the mail on the 11th. The reason for all of this is the other side's motion to dismiss our appeal on The grounds it was filed untimely. I need to tie down this loose end in presenting our side to the presiding Judge. If you could respond, I would again be most appreciative. The hearing On their motion is on January 22nd.

From: Alma White [mailto:awhite@gtcounty.org]
Sent: Wednesday, January 02, 2013 12:42 PM
To: 'cgoldberg@steinberglawfirm.com'
Cc: Common Pleas
Subject: 2012-CP-22-00971 Deas vs. Giles, et al.

Dear Mr. Goldberg:

EXHIBIT "H"
1

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE CIRCUIT COURT
CASE NO: 2012-ES-22-971

IN THE MATTER OF THE ESTATE
OF WILLIE ROGERS DEAS

CAROLYN DEAS,

Petitioner,

vs.

AFFIDAVIT

MARVADINE GILESa/k/a
MARVADINE GILES, WILLIE
DEAS, JR., MICHELLE DEAS,
RODNEY BRANTON, MOYA
BRANTON, and WHITNEY BEAUFORT,

Respondents.

PERSONALLY appeared before me CHARLES S. GOLDBERG, who, being
sworn, deposes and says:

1. I am one of the attorneys for the Respondents.
2. By my letter of December 31, 2012 addressed to the Postmaster in Georgetown, South Carolina, I requested an explanation of items set forth in the Track & Confirm document received by me online.
3. In response to my letter, Cheryl Washington, a Georgetown postal employee spoke to me by telephone on January 16, 2013, and explained what the term "missent" meant on the Track & Confirm document. She told me that the letter addressed to the Clerk of Court for Georgetown was missent to Walterboro, South Carolina, but that it was forwarded back to Georgetown and received on September 10, 2012. The mailing was placed in PO Box 479. The mailing was delivered to the Clerk's office on September 11, 2012, because it was not picked up on September 10, 2012. She further explained that all mailings addressed to

the Clerk of Court go directly to this post office box albeit the letter was addressed to Clerk's street address, 401 Cleland Street.


Charles S. Goldberg

SWORN to before me this
16th day of January, 2013.

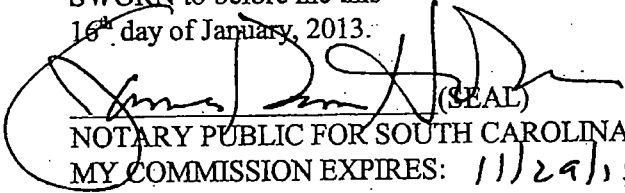
 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11/29/15

Exhibit "I"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2012-CP-22-00971

Carolyn Deas,)

Plaintiff,)

vs.)

Marvadine Giles, et al.,)

Defendants.)

Transcript of Record

Hearing

January 22, 2013

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

Andrew T. Shepherd, Esquire
Katherine H. Hyland, Esquire
Attorneys for Plaintiff

Charles S. Goldberg, Esquire
Malcolm M. Crosland, Jr., Esquire
Attorneys for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, January 22, 2013.)

2 THE COURT: 2012-CP-22-971, In the matter of the
3 Estate of Willie Roger Deas, Carolyn Deas versus Marvadine
4 Giles and others. According to my roster we have a motion to
5 dismiss and an appeal; is that correct?

6 MR. SHEPHERD: That's correct, Your Honor.

7 MR. GOLDBERG: That's correct.

8 THE COURT: All right, please give the court reporter
9 your names and who you represent.

10 MR. SHEPHERD: Okay, Andrew Shepherd. I'm here on behalf
11 of Carolyn Deas.

12 THE COURT: All right.

13 MS. HYLAND: I'm Kate Hyland, here on behalf of Carolyn
14 Deas.

15 MR. GOLDBERG: Charles Goldberg representing the
16 Respondents, especially Marvadine Giles, also known as
17 Marvadine Deas.

18 MR. CROSLAND: Malcolm Crosland for Marvadine Giles,
19 Marvadine Deas.

20 THE COURT: All right, and ma'am, I apologize. Your
21 name again?

22 MS. HYLAND: It's Kate Hyland.

23 THE COURT: Can you spell your last name, please?

24 MS. HYLAND: H-Y-L-A-N-D.

25 THE COURT: Thank you.

1 THE COURT: All right, I guess we need to address
2 first the motion to dismiss; is that correct?

3 MR. SHEPHERD: Yes, Your Honor.

4 MR. CROSLAND: Yes.

5 THE COURT: All right, Mr. Shepherd, it's your motion?

6 MR. SHEPHERD: Thank you, Your Honor. This matter arises
7 out of a recent case that we had in the Georgetown County
8 Probate Court right down the hall here. What occurred is the
9 Appellants filed their appeal simultaneously with their Rule
10 59 in the Probate Court. When they filed that appeal it
11 appears that myself, I did receive, I was served with a notice
12 of intent to appeal within the timeframe required by statute
13 and I do believe that the Probate Court received a copy of its
14 notice of appeal within the timeframe required by statute.
15 However, the notice of intent to appeal in the Circuit Court
16 was not received in this court within the ten-day timeframe.
17 Section 62-1-308 of the code mandates that a notice of intent
18 to appeal be filed and served in the Probate Court and in the
19 Circuit Court within ten days of an Appellant's receipt of the
20 order and in this particular instance the notice of intent to
21 appeal was due to be filed no later than September 10th and
22 unfortunately this one was not clocked in until the 14th of
23 September of 2012, and in this regard it is out of time and I
24 would direct the Court's attention to Rule 6 with regards to
25 computation of time, I believe it's 6(B) specifically that

1 states that the notice of intent to appeal is jurisdictional
2 and may not be waived or extended by consent or by order and
3 in this situation the filing does require that it be filed
4 meaning that it be received by the proper officer and in this
5 particular case it was not and this appeal must be dismissed
6 because this Court does lack appellate jurisdiction.

7 THE COURT: All right.

8 MR. GOLDBERG: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. GOLDBERG: We've got a real mailing nightmare here,
11 Judge. These are the facts: under Section 62-1-308 we were
12 required to do three mailings, one to opposing counsel, one to
13 the Probate Court and one to the Circuit Court. As Andy
14 truthfully says the probate - we mailed this notice of intent
15 to appeal on September 6th by registered mail, certified,
16 return receipt requested and as one of our exhibits we show
17 you that the Charleston Post Office received it on September
18 6th. Well, guess what happened? Charleston Post Office sent
19 the mailing to the Circuit Court to Walterboro, South
20 Carolina. It was then rerouted to Georgetown. Now, Judge,
21 the Probate Court received and stamped our September 6th
22 mailing on September 7th, the very next day in this very same
23 building. Our address was to the Clerk of Court's Office at
24 401 Cleland Street in Georgetown, which is the address. What
25 we didn't know and thank you to the Clerk of Court's

1 explanation which is another exhibit, there is no direct
2 mailing to the street address here, instead and I would hope
3 that the clerk would correct me, but her explanation is that
4 all mail to the this court goes into a post office box at the
5 Georgetown Post Office and on September 10th and we've put it
6 as an exhibit our tracking confirm. On September 10th which
7 was a Monday our mail was left in the post office box.
8 According to the Clerk of Court's explanation to me there is a
9 courier from this building I understand that picks up mail
10 from that box. Well, it was not picked up and as the tracking
11 confirm statement from the post office says it was left there
12 in the post office box and we'll get this, I know we've got so
13 many exhibits, here's what it says and I'll be glad to show it
14 to the Court, September the 10th, 2012, at 9:45 a.m. notice
15 left (no authorized recipient available). Our basic position
16 is number two, number one it was diverted to Walterboro, that
17 cost us one day, and number two, our position is when it
18 landed in the box designated by the Clerk of Court that was an
19 extension of her office, and therefore, we felt that we were
20 on time. Now, when was it actually delivered to the clerk's
21 office physically, September 11th. I then asked the Clerk of
22 Court and she's been very cooperative and nice, "Why was it
23 stamped three days after September 11th?" Her explanation in an
24 e-mail to me, which is another exhibit, is that the staff felt
25 that since it was a day late there was no rush to stamp it. We

1 personally cannot accept that explanation. Well - excuse me.

2 THE COURT: All right, wait, let's get your name, put
3 your name on the record. If this is part of argument let's
4 give the court reporter your name and your position.

5 MS. WHITE: Alma White, Clerk of Court. Your Honor,
6 I'd like to read a part of my reply in an e-mail to Mr.
7 Golberg, "Mail not processed that day, which is rare, is
8 processed the following day. We typically try to weed through
9 and address time sensitive mail immediately. We are sorry
10 that there was a three-day delay in receiving and clocking.
11 During the staff meeting in an attempt to learn what may have
12 happened with this piece of mail it was pointed out to me
13 section 62-1-301, appeal, 308 appeals, 308, it was pointed out
14 that section that even if it was clocked the same day we are
15 said to have received it, which he is saying on the 11th, then
16 ten days for notice of intention to appeal would have expired
17 September the 9th, which was a Sunday. If an extra day was
18 given it would have been Monday the 10th, and according to Mr.
19 Goldberg's tracking sheet the Clerk's Office supposedly
20 received it on the 11th, provided the courier actually
21 delivered it in the Clerk's Office on the 11th the date you,
22 meaning Mr. Goldberg, stated we would - we received it would
23 have been two days after the ten days deadline. This is an
24 unfortunate situation and I'm sorry the Clerk's Office is in
25 the middle, but I feel certain that the Judge would probably

1 sort this out. I've answered your question to the best I
2 could. Again I'm sorry this happened. Please let me know if
3 I can be of further assistance." I want to make sure, Your
4 Honor, that the Court understands that the clerk didn't take
5 the position that, you know, it didn't matter or whatever in
6 the term and the tone in which he said it because the Clerk of
7 Court is very concerned about processing the mail as it should
8 be. What I also shared with him, Judge, is that this judicial
9 center building has a courier specifically for the court and
10 that the county, Georgetown County has a separate courier.
11 Prior to 2009 I explained to Mr. Goldberg that all of
12 Georgetown County used the same P.O. Box Number 421270. Some
13 judicial mail sometimes still go to that old post office box
14 because some attorneys sometimes still put the wrong box
15 number on there, but sometimes when the post office just see
16 Clerk of Court they know it's the county or if they put it in
17 that old box number and perhaps that's where and this is what
18 the courier explained to me, perhaps there's a possibility
19 that when the courier for the general county post office box
20 if he gets a certified notice that he got to sign for and it
21 says Clerk of Court they're not going to sign it. They take
22 it back or they leave it at the post office so that the
23 courtier here can get that, sign it and bring it to this
24 building. The courier for this building goes to the post
25 office twice a day. They will go over there at nine in the

1 morning and empty the mailbox and bring that mail here and
2 then they will go back over in the evening at 3:30 to take
3 outgoing mail from this building and pick up anything else
4 that would be in that box to bring back here. So, if it was,
5 in fact, delivered from Walterboro County to this Georgetown
6 post office on the 10th and not picked up the question would be
7 what time was it in the box. If it was in the box after 3:30
8 in the evening the courier for this building would not have
9 gotten it until the next morning, which would have been the
10 11th according to all of his tracking information. So, when it
11 got in here on the 11th, that Tuesday, what I shared with him
12 was the dialogues he's been having with me during the month of
13 December up until now and me meeting with the Common Pleas
14 staff, nobody could tell me, well, what happened to this piece
15 of mail that we got it here on the 11th according to his
16 tracking record and it didn't get clocked until the 14th. I
17 wish I could tell him why and I wish my staff could remember
18 back to September but they couldn't, but my point that I was
19 trying to make in the correspondence is that even if they had
20 a gotten it clocked the day that they said we received it, the
21 11th, he was still already outside of that statute frame. That
22 was the point I was making.

23 THE COURT: All right, I understand. Mr. Goldberg, go
24 ahead.

25 MR. GOLDBERG: Judge, it must be pointed out again, of

1 course we get the address from the Lawyers' Desk Book and it
2 said 401 Cleland Street. We had no knowledge of the system.
3 We're not here blaming the Clerk of Court. I think she
4 misinterpreted my remarks. I'm not here to do that. I'm just
5 saying that the circumstances just avoided that coming in but
6 we again say that that P.O. Box was an extension of her office
7 and the track from the post office shows that it was in the
8 box on September 10th, and you may be right, Ms. White, that
9 the courier might have picked it up at 3:30 and it wasn't
10 picked up put in the box till 4:00 o'clock or 4:30. We don't
11 know. Now the curious thing, and I've learned this, to try to
12 get the postmaster in here is an impossibility. There are all
13 kind of federal rules say they don't have to answer to a
14 subpoena. They don't have to give a deposition or an affidavit
15 or anything and the only one that can make the postmaster do
16 that is the Inspector General, and by God, we wrote the
17 Inspector General of the United States about three weeks ago.
18 We hadn't heard a word from him. They, what they basically
19 says if the post office got involved in every case involving
20 mail they would be inundated and I understand that, but that's
21 basically our position, Judge. Several things we didn't know
22 about was that post office box, and it's not the Clerk's
23 fault. I'm not blaming her. We just took it from the
24 Lawyers' Desk Book and that's what we thought, quite frankly,
25 by sending it to this building it would eliminate going to a

1 P.O. Box or whatever.

2 THE COURT: Well, I mean, this can't be a novel issue.
3 Is there an excusable neglect exception or is it a hard line
4 rule? I mean, I've got to believe that somewhere with all of
5 the appeals there has to have been a notice of intent to
6 appeal that got lost in the mail and the Appellate Court has
7 addressed whether or not it's jurisdictional and you can't go
8 forward or there is an excusable neglect and you can go
9 forward.

10 MR. GOLDBERG: Yes, sir, as a matter of a fact there is
11 and it originated in this very county. It's In Re:
12 Cretzmeyer, but in that case they basically said too bad and
13 the reason was and that's different from my case. The people
14 like me who could not prove that it was sent out, they could
15 not prove so they got the secretary of the law office to sign
16 an affidavit said, "Well, she knows she mailed it," but the
17 court said that's not good enough, it wasn't received and too
18 bad. That's the leading case on this. It's about a page and
19 a half case, Judge.

20 THE COURT: Okay, so, they're saying because it was
21 never received, I mean, but then did it more or less insinuate
22 that if it had been received then the appeal would have gone
23 forward? I haven't read the case and I don't know what it
24 says.

25 MR. GOLDBERG: Yes, sir, yes, sir, yes, sir, it's a very

1 short case, Judge, and it basically said and it also said the
2 stamping delivery, I mean, stamping doesn't mean a thing, it's
3 when it was delivered. Of course, we've got here the word
4 delivered on September 11th, but you know, Judge, to put it to
5 the very basic we did everything we were supposed to do per
6 the statute.

7 THE COURT: Well, and according, I'm assuming that
8 according to the case you just cited that that was their
9 argument, too, that they did everything that they were
10 supposed to do according to the statute and the post office
11 just lost it; and so, that's my question is it can't be a
12 novel issue, what is the answer?

13 MR. GOLDBERG: Well, like I say I think the difference in
14 our case is that we, we've got a stamp showing delivery to the
15 Charleston Post Office, that's an exhibit that we have
16 provided the Court and Mr. Shepherd. It shows the stamp
17 September 6th delivered.

18 THE COURT: All right, anything in reply?

19 MR. SHEPHERD: Yes, Your Honor, I would direct the
20 Court's attention to Fox v. Union-Buffalo, that is 86 S.E.2d
21 253, when a statute requires the filing of a paper or document
22 it is filed when delivered to and received by the proper
23 officer. The Cretzmeyer case, Mr. Goldberg is correct, it
24 originated straight out of our probate court here, came out of
25 this courtroom on appeal and it was a similar situation. We

1 don't have all of the details in the, in the actual decision
2 but an attorney's office allegedly filed a notice of intent to
3 appeal, there was no record of it having been filed in time in
4 the Clerk's Office and our Supreme Court said that they
5 declined to construe the statute in a manner inconsistent with
6 its unambiguous terms. Our settled rules of statutory
7 construction mandate the result we reach, for the statute is
8 clear that the notice of appeal must be filed in the Circuit
9 Court within the ten-day period and the really, you know, we
10 did a lot of researching. There's nothing directly on point
11 as to is the post office box an extension of the Clerk's
12 Office or is it received when it's placed there, but there is
13 quite a large amount of federal authority on this and one of
14 those is Thompson v. DuPont and it is 76 F.3d 530. It's out
15 of the Fourth Circuit, that and it's dealing with pro se
16 prisoners filing for appeals and those sorts of things and
17 they sort of adjusted the federal rules in that regard to say,
18 "Well, once they've placed it with the warden that's filing
19 because they don't have the other luxuries that private
20 litigants do." We have the luxury of a certified mailing with
21 a tracking number. We have the luxury of being able to see if
22 that has reached the Clerk's Office to be filed. We have the
23 luxury if it hasn't been filed by five p.m. on September 10th
24 of physically appearing at the Clerk's Office and insuring for
25 our clients and our case that our notice of appeal is timely

1 filed within the statute and it takes us right back to Rule 6
2 that this is a jurisdictional issue and it cannot be extended
3 by consent or by order.

4 THE COURT: All right, do you have a copy of that case

5 ---

6 MR. SHEPHERD: I do, Your Honor, I have, I have copies.

7 THE COURT: --- the Cretzmeyer or whatever case it is.

8 MR. GOLDBERG: I do, Judge.

9 THE COURT: You do? Let me see that for a second.

10 MR. GOLDBERG: Spilled some coffee stains on it.

11 THE COURT: No, sir, that's all right. I'm going to
12 give it right back to you. Thank you.

13 All right, all right, Mr. Shepherd, I'm going to grant
14 your motion to dismiss. If I could get you to prepare an
15 order I'm basing it straight on this Cretzmeyer case. Make
16 sure you put in the order everything that they have argued,
17 that it was - they've got - because I acknowledge it, they've
18 got proof that it was put in the mail. They've got proof that
19 it went to Walterboro. They've got proof that it was received
20 in Georgetown on such and such a date but that it was not
21 actually - the closest that they can show a receipt by this
22 Clerk of Court as I understand is on the 11th ---

23 MR. SHEPHERD: Yes, sir.

24 THE COURT: --- which is a day late; and so, based
25 upon that this case says it's just a hard line rule when it is

1 delivered to and received by the proper officer. Now, they've
2 got proof that it was in the post office box on the 10th, but I
3 mean, I want it to be clear so when they appeal it then the
4 Appellate Court can say, "Well, if it was in the post office
5 box that's sufficient, if it wasn't in," you know, and so they
6 can address this issue. So, put all of those in. My ruling
7 is I'm granting your motion to dismiss because it was not in
8 the Clerk of Court's Office on the 10th or they have not shown
9 that it was in the Clerk of Court's Office on the 10th which
10 was within, and I don't even know if the 10th day falls on a
11 Sunday does that give them till Monday?

12 MR. GOLDBERG: Till Monday, Judge.

13 THE COURT: Okay, all right, well, then put that they
14 have not shown that it was in the Clerk of Court's Office on
15 the 10th but it was in the post office box for the Clerk of
16 Court. I want all that wording in there so that there's a
17 hard line and they can make a decision.

18 MR. CROSLAND: Your Honor, Malcolm Crosland for the
19 Plaintiff, can we also make sure that the order includes our
20 argument that the post office box is an extension essentially
21 of the Clerk's Office?

22 THE COURT: Well, you - put in there that that's their
23 argument.

24 MR. SHEPHERD: Absolutely, yes, sir.

25 THE COURT: And that I am ruling against that

1 argument.

2 MR. CROSLAND: I understand.

3 THE COURT: Yeah.

4 MR. CROSLAND: Just want to make sure it's preserved in
5 the order.

6 MR. SHEPHERD: And I'll exchange it with them to make
7 sure, no problem.

8 THE COURT: Yeah, yeah, I mean you can put it in there
9 that they - put every facet of their argument in there and
10 that I'm just basing it based upon this case it's a hard line
11 rule. When they put it in the mail and when it gets into
12 their office that's ---

13 MR. SHEPHERD: Where do we draw the line, correct.

14 THE COURT: --- that's the hard line rule, okay. All
15 right, sir.

16 MR. SHEPHERD: Thank you.

17 MR. GOLDBERG: Thank you, Judge.

18 MR. CROSLAND: Your Honor, there was a - you'll see on
19 the roster there's a subsequent ---

20 THE COURT: Appeal?

21 MR. CROSLAND: --- appeal, yes, sir, but I think your ---

22 THE COURT: That, I guess, yeah, put in there that
23 because of my granting the motion to dismiss then that renders
24 the appeal moot I guess would be it ---

25 MR. CROSLAND: At this time, yes, sir.

1 THE COURT: --- would that be the proper wording?

2 MR. CROSLAND: I think so, Your Honor, or it would be
3 held in abeyance, I guess, until the issue on appeal is
4 resolved assuming - I don't want to waive it obviously.

5 THE COURT: Well, I mean, assuming you appeal it. I
6 guess I don't know what the proper ruling. I'm granting your
7 motion to dismiss the appeal. So, therefore, I guess that
8 would take care of it. The appeal, I don't hear the appeal
9 since the action's dismissed.

10 MR. CROSLAND: Yes, sir.

11 THE COURT: Yeah, that would be it, that the matter
12 came before the Court on an appeal, pending was a motion to
13 dismiss. I grant the motion to dismiss. So, the appeal is
14 therefore dismissed.

15 MR. CROSLAND: I presume if an Appellate Court ---

16 THE COURT: Yeah.

17 MR. CROSLAND: --- then reversed then we're back to,
18 back, back ---

19 THE COURT: Reverse, they would remand it for a
20 hearing on the appeal.

21 MR. CROSLAND: --- for a hearing on the, on the merits of
22 our underlying appeal.

23 THE COURT: Sounds good.

24 MR. GOLDBERG: Thank you, Judge.

25 THE COURT: All right, thank you very much. Good to

1 see you.

2 (Adjourned.)

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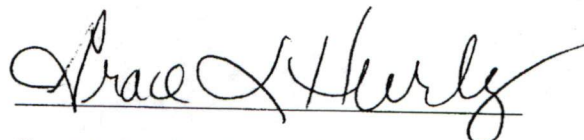
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Carolyn Deas versus Marvadine Giles, et al., held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on January 22, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

April 5, 2013.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-00971

In the Matter of the Estate of Willie Rogers Deas

Carolyn Deas

Respondent,

v.

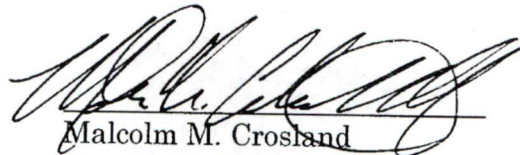
Marvadine Giles a/k/a Marvdine Giles,
Willie Deas, Jr., Michelle Deas, Rodney
Branton, Moya Branton, Whitney Beaufort,

Respondents/Appellants.

Of whom Marvadine Giles a/k/a Marvdine
Giles is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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SC Court of Appeals