

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2019-000169

**RECEIVED**  
MAR 22 2019  
SC Court of Appeals

In the Matter of the Estate for Bertha Maust-Thompson

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

v.

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

**RETURN TO APPELLANT’S MOTION  
FOR SUPERSEDEAS PURSUANT TO RULE 241(c)**

Respondents, above-named, submit this Return<sup>1</sup> pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (SCACR), to Appellant’s “Motion for Supersedeas Pursuant to Rule 241(c).” Appellant’s motion should not even be considered in the first place because the above-captioned appeal was dismissed by order of this Court on February 15, 2019. To the extent it is considered, it should be denied on procedural grounds because Appellant has failed to comply with the requirements of Rule 241, SCACR. The motion also should be denied because it offers no substantive basis for a supersedeas.

<sup>1</sup> In submitting this Return, Respondent does not waive, and specifically reiterates and reserves, all arguments with respect to the jurisdiction of this Court to hear this appeal. *See* S.C. Code Ann. § 14-8-200(a) (providing for *direct* appellate jurisdiction of the Court of Appeals in cases other than those arising out of the Probate Court).

## ARGUMENT

### **I. This appeal has been dismissed.**

On February 15, 2019, this Court dismissed Appellant's appeal. Appellant has sought reconsideration of the dismissal, but this Court has not reinstated the appeal, nor should it. Accordingly, because this appeal has been dismissed, this Court should not consider, and should return to Appellant, her motion.

### **II. The motion is procedurally defective.**

In addition to the motion being filed in a dismissed appeal, the motion is defective for numerous other reasons. First, Appellant did not make an application for supersedeas with the Probate Court prior to filing her "motion" with this Court and has not alleged any "extraordinary circumstances" as to why she did not do so; nor do any such "extraordinary circumstances" exist. *See* Rule 241(d)(1), SCACR (providing that "[e]xcept where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas *must* first be made to the lower court...") (Emphasis supplied.) The only purported reason Appellant states that she filed her motion in this Court is because she filed a notice of appeal and the "probate court would have no jurisdiction under these circumstances." Mot. at 2. This is a clear misstatement of the law. Rule 241(d), SCACR, expressly states that the application for supersedeas must first be made with the lower court. For this reason alone, Appellant's motion should be denied.

The motion also is defective because Appellant has not filed a "petition verified by the client" and did not contemporaneously file with her motion a certified copy of the Probate Court's order or a copy of the notice of appeal with its proof of service. Rule 241(d)(3), SCACR. For these reasons as well, Appellant's motion should be denied.

### III. There is no basis to grant a supersedeas.

Appellant also has utterly failed to allege any grounds that would support granting a supersedeas. The Probate Court's January 26, 2019 Order Granting Application for Performance of Personal Representative (Order) required Appellant to timely prepare and file the estate tax return of Decedent's estate to elect portability of the deceased spousal unused exclusion (DSUE) and established interim deadlines for Appellant to do so. In particular, the Order required Appellant to:

1. Employ "a qualified, independent certified public accountant or attorney" to prepare the estate tax return and provided proof of such employment within fifteen (15) days of the date of the Order (*i.e.*, February 10, 2019);
2. Provide a draft of the final estate tax return and any supporting documentation, appraisals, and valuations to the Court and the Respondents within forty-five (45) days of the date of the Order (*i.e.*, March 12, 2019);
3. Unless Respondents have any comments or objections to the draft return, or the Probate Court shall find it insufficient, file the estate tax return to elect portability no later than sixty (60) days after the date of the Order (*i.e.*, March 27, 2019).

On February 7, 2019, in purported compliance with the first deadline of the Probate Court's Order, Appellant filed a letter with the Probate Court stating that "the Estate of Bertha Virginia Maust-Thompson has engaged the firm of Burkett, Burkett and Burkett to prepare an estate tax return." Enclosed with this letter was a copy of email communications between Appellant and Ronald Burkett on February 1, 2019, in which Mr. Burkett stated, "Burkett Burkett Burkett Certified Public Accountants, P.A. will prepare a required Federal Estate tax return for the estate of Bertha Virginia LeRoy Maust Thompson if requested by you." These documents are attached hereto and incorporated herein by reference as Return Exhibit "A."

On the morning of March 12, 2019—the deadline for Appellant to provide the Probate Court and Respondents the draft estate tax return and its supporting documentation—counsel for

Respondents emailed counsel for Appellant to inquire as to whether they would be providing such documentation and, if so, whether Respondents could send a courier to retrieve the documentation from Appellant's counsel when it was ready. Counsel for Appellant responded and informed counsel for Respondents—for the first time—that “the accountants have informed us that there is not enough time to allow them to prepare the return in light of March 15 and April 15 deadlines which are made more burdensome by the recent tax changes” and that they “plan to file a motion for supersedeas” asking to extend the deadlines of the Probate Court's Order. These documents are attached hereto and incorporated herein by reference as Return Exhibit “B.” Appellant filed her motion later that day with this Court.

In her motion, Appellant seeks a stay of the Probate Court Order's deadlines until April 26, 2019, on the grounds that Respondent “has been unable to comply with the [March 12 deadline] because the accounting firm is not able to devote the time necessary to complete its task since they are right in the middle of both partnership and individual tax filing season, concluding on March 15 and April 15.” Mot. at 2. Appellant also attached as Exhibit B to her motion a March 8, 2019 email communication from Mark Hendrix, a member of the accounting firm, to Appellant with the subject line: “RE: Need a letter concerning Tax Return for the Estate of Bertha Virginia LeRoy Maust Thompson.” It is evident from the subject line and the body of the email that it was sent by Mr. Hendrix in response to an email from Appellant, although the initial email from Appellant is not attached to the motion.

In the March 8 email, Mr. Hendrix states:

We understand the time constraints before both of us. We will prepare the return as agreed upon. It is now March 8, 2019 and we are under an extra tight schedule to meet the March 15, 2019 and April 15, 2019 filing deadlines due to the massive law changes related to the TAX CUTS AND JOBS ACT. The IRS has been very slow to get all required regulations and forms to us. This has resulted in a significant compression of our available time and we would ask that the court to allow us until April 26, 2019 to complete the return.

*Attached you will find a document list to guide you as you begin to gather the information, we will need to complete the return.*

See Mot. Ex. B (Emphasis supplied.)

The most notable and troubling aspect of this email is the statement emphasized above in which Mr. Hendrix states he is providing “a document list to guide you as you begin to gather the information we will need to complete the return,” thereby demonstrating that as of March 8, 2019—41 days after the Order and just four days prior to Probate Court’s deadline—Appellant had not yet provided the accounting firm the information necessary to prepare the return.

Appellant’s sole reason for requesting a supersedeas—that the accountants she hired allegedly cannot prepare the estate tax return by the Probate Court’s deadlines—is not a legitimate or legally-supported basis for a supersedeas. Appellant had the responsibility to retain a tax preparer that could prepare the return by the deadlines set forth in the Order *and* the responsibility to confirm that the preparer she selected could meet those deadlines. The Court may take notice that there are numerous certified public accountants and estate tax attorneys in South Carolina that could prepare the return. Moreover, Appellant could have selected an estate tax attorney that likely would not be facing the same “tax season” demands as a certified public accountant. Accordingly, the fact that the accountants Appellant represented that she had hired to prepare the return could not do so in a timely manner does not in any way support Appellant’s request for supersedeas.

In any event, it also is clear that Appellant made no effort to make sure the estate tax return would be timely prepared because—according to the document she submitted with her motion—as of four days prior to the deadline for the draft return to be submitted, Appellant had yet to provide the accounting firm with the information necessary to prepare the return. Accordingly, over 40 days after the Probate Court Order, Appellant essentially had done nothing

to make sure the return was timely prepared.<sup>2</sup> Apodictically, simply disregarding the requirements of an order of a court is not a basis to have it superseded.

Finally, Appellant has alleged no harm—because she cannot—to her or the Decedent’s estate if the supersedeas is not granted. Rather, the timely preparation and filing of the estate tax return is necessary to avoid irreparable harm and the loss of a substantial tax benefit to the Respondents, as the personal representatives of the estate of Decedent’s spouse, and imposes absolutely no detrimental effect or cost on Appellant, the Decedent’s estate, or any other beneficiary of the estate. *See Matter of Estate of Vose*, 390 P.3d 238, 250 (Okla. 2017) (holding that “the only person with an interest in and ability to use the DSUE, if it exists, is the surviving spouse”). The Probate Court expressly recognized this in the Order, and Appellant has not demonstrated, and cannot demonstrate, otherwise.<sup>3</sup> Therefore, in addition to the numerous procedural defects, this Court should deny Appellant’s motion because the alleged grounds supporting the motion are meritless.

### CONCLUSION

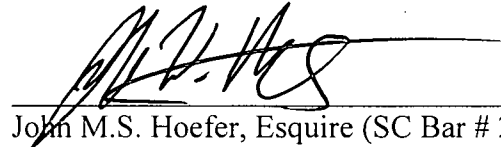
For the reasons discussed above, Appellant’s motion should be denied.

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<sup>2</sup> It is entirely unclear that Appellant even met the Order’s first interim deadline as the communication from the accounting firm identified by Appellant to the Probate Court on February 7, 2019, only reflects that Appellant consulted with the firm, specifically stating, “Burkett Burkett Burkett Certified Public Accountants, P.A. will prepare a required Federal Estate tax return for the estate of Bertha Virginia LeRoy Maust Thompson *if requested by you.*” (Emphasis supplied.) Appellant has yet to provide any proof of when—or even if—she made the request for the return to be prepared.

<sup>3</sup> Indeed, if Appellant was at risk of any harm by the filing of the estate tax return, she surely would have sought expedited consideration of this appeal and a supersedeas well-before the day of the deadline for the draft return to be completed and submitted to the Probate Court.

Respectfully Submitted,



John M.S. Hoefler, Esquire (SC Bar # 2549)

John W. Roberts, Esquire (SC Bar # 78889)

**WILLOUGHBY & HOEFER, P.A.**

Post Office Box 8416

Columbia, South Carolina 29202

(803) 252-3300

[jhoefler@willoughbyhoefler.com](mailto:jhoefler@willoughbyhoefler.com)

[jroberts@willoughbyhoefler.com](mailto:jroberts@willoughbyhoefler.com)

Attorneys for Respondents

Columbia, South Carolina  
March 22, 2019

# EXHIBIT A

# Turner | Padgett

2019 FEB -7 PM 2:52

AMY W. MCCULLOUGH  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

REPLY TO:

W. Duvall Spruill

E-Mail: DSpruill@TurnerPadgett.com

Writer's Direct Dial: (803) 227-4291

Writer's Direct Fax: (803) 400-1528

February 7, 2019

**VIA HAND DELIVERY**

Ms. Lori Elrod  
Richland County Probate Court  
1701 Main Street  
2<sup>nd</sup> Floor, Suite 207  
Columbia, South Carolina 29201

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

Dear Ms. Elrod:

As reflected in the attachment, the Estate of Bertha Virginia Maust-Thompson has engaged the firm of Burkett, Burkett and Burkett to prepare an estate Tax return. Please file with the Court and return a clocked-copy via our courier.

Yours truly,



W. Duvall Spruill

WDS/cag

Attachment as stated

cc: John W. Roberts, Esquire (*Via U.S. Mail & Email*)

TPGL 9231042v1

**Spruill, W. Duvall**

---

**From:** Marilyn White <lprush2@gmail.com>  
**Sent:** Monday, February 4, 2019 11:35 AM  
**To:** Kennedy, Catherine H.; Marilyn White; Spruill, W. Duvall  
**Subject:** Fwd: New Estate

FILED  
2019 FEB -7 PH 2:52  
AMY W. MACQUEEN  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

----- Forwarded message -----


**From:** Marilyn White <lprush2@gmail.com>  
**Date:** Fri, Feb 1, 2019 at 1:52 PM  
**Subject:** Re: New Estate  
**To:** Ronald Burkett <ronnyb@burkettcpas.com>  
**CC:** Mark Hendrix <markh@burkettcpas.com>

Dear Ronny & Mark,

Thank you for agreeing to prepare a Federal Estate Tax return for my mother's estate. And thank you, Mark, for getting right on this so quickly and helping to ease my mind on this stressful issue.

Most Sincerely,

Marilyn (Missy) White  
Personal Representative  
Estate Bertha Virginia LeRoy Maust Thompson

 Virus-free. [www.avg.com](http://www.avg.com)

On Fri, Feb 1, 2019 at 1:30 PM Ronald Burkett <ronnyb@burkettcpas.com> wrote:

Dear Mrs. White,

Burkett Burkett Burkett Certified Public Accountants, P.A. will prepare a required Federal Estate tax return for the estate of Bertha Virginia LeRoy Maust Thompson if requested by you.

Sincerely,

Ronald Burkett

**Tax Advice Disclaimer:** Pursuant to requirements related to practice before the Internal Revenue Service, Burkett Burkett & Burkett Certified Public Accountants, P.A. is required to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein.

**NOTICE:** All email sent to or from the Burkett Burkett & Burkett CPAs, P.A. as well as the Burkett Financial Services, LLC e-mail system is subject to archiving, monitoring and/or review by Burkett personnel.

FILED  
2019 FEB -7 PM 2:53  
AMY W. MCCOLLUM  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

# EXHIBIT B

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**From:** Spruill, W. Duvall <DSpruill@TurnerPadget.com>  
**Sent:** Tuesday, March 12, 2019 10:15 AM  
**To:** John Roberts  
**Cc:** Kennedy, Catherine H.; John Hoefler  
**Subject:** RE: Thompson Estate

John, The accountants have informed us that there is not enough time to allow them to prepare the return in light of March 15 and April 15 deadlines which are made more burdensome by the recent tax changes. We plan to file a motion for supersedeas asking to extend paragraph III and IV deadlines. Duvall

**Turner Padget**

Duvall Spruill  
Attorney  
PO Box 1473 | Columbia, SC 29202  
1901 Main Street, Suite 1700 | Columbia, SC 29201  
803-227-4291 | Fax 803-400-1528  
dspruill@turnerpadget.com  
[Bio](#) | [vCard](#) | [Location](#)

---

**From:** John Roberts [mailto:JRoberts@Willoughbyhoefler.com]  
**Sent:** Tuesday, March 12, 2019 9:38 AM  
**To:** Spruill, W. Duvall  
**Cc:** Kennedy, Catherine H.; John Hoefler  
**Subject:** Thompson Estate

Duvall,

Good morning. Will you have a package with the draft estate tax return and its supporting documentation for us today? If so, can we send our runner to pick it up from you when it is ready?

Thank you.

John

John W. Roberts, Esquire  
WILLOUGHBY & HOEFER, P.A.  
930 Richland Street  
Post Office Box 8416  
Columbia, South Carolina 29202  
Telephone #: (803) 252-3300  
Facsimile #: (803) 256-8062  
E-mail address: [jroberts@willoughbyhoefler.com](mailto:jroberts@willoughbyhoefler.com)

Confidentiality Notice: The information contained in this transmittal, including any attachment, is privileged and confidential information and is intended only for the person or entity to which it is addressed. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse your reasonable costs of notifying us of a transmission error. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and

cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

Click [here](#) to report this email as spam.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2019-000169

**RECEIVED**  
MAR 22 2019  
SC Court of Appeals

In the Matter of the Estate for Bertha Maust-Thompson

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

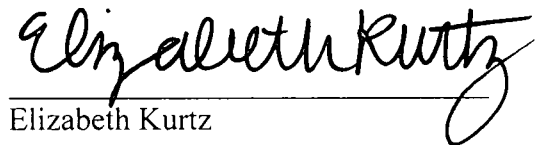
v.

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

**PROOF OF SERVICE**

This is to certify that I, Elizabeth Kurtz, a paralegal with the law firm Willoughby & Hoefler, P.A., have caused to be served one (1) copy of the Respondents' **Return to Appellant's Motion for Supersedeas Pursuant to Rule 241(c)** in the above-captioned matter via first class mail delivery and addressed as follows:

W. Duvall Spruill, Esquire  
Catherine H. Kennedy, Esquire  
**Turner Padget Graham & Laney P.A.**  
P.O. Box 1473  
Columbia, SC 29202-1473

  
Elizabeth Kurtz

Columbia, South Carolina  
This 22nd day of March 2019.

WILLOUGHBY & HOEFER, P.A.  
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL\*\*  
TRACEY C. GREEN  
BENJAMIN P. MUSTIAN\*\*  
CHAD N. JOHNSTON  
ELIZABETH ZECK\*  
ELIZABETHANN LOADHOLT CARROLL  
JOHN W. ROBERTS  
R. WALKER HUMPHREY, II\*\*\*  
ANDREW R. HAND\*\*\*\*

ELIZABETH S. MABRY  
JAMES PATRICK HUDSON  
OF COUNSEL

JOSEPH H. FARRELL, III  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TEXAS

\*\*ALSO ADMITTED IN WASHINGTON, D.C.

\*\*\*ALSO ADMITTED IN CALIFORNIA

\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

OFFICES:

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FAX 256-8062

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SUITE 200  
CHARLESTON, SC 29492

AREA CODE 843  
TELEPHONE 619-4426  
FAX 619-4430

March 22, 2019

VIA HAND DELIVERY

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

RECEIVED  
MAR 22 2019  
SC Court of Appeals

Re: *In the Matter of the Estate of Bertha Maust-Thompson  
Marilyn M. White v. Terri Ann Thompson, et al.  
Appellate Case No. 2019-000169*

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondents' **Return to Appellant's Motion for Supersedeas Pursuant to Rule 241(c)** in the above-referenced matter. I would appreciate it if the original was accepted for filing and the extra copy file-stamped and returned via my courier.

By copy of this letter, I am serving counsel of record and enclose a Proof of Service to that effect.

If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

*John*

John W. Roberts

cc: W. Duvall Spruill, Esq.  
Catherine H. Kennedy, Esq.  
John M.S. Hoefler, Esq.