

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch

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

Appellate Case No. 2019-000169

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MAR 22 2019

SC Court of Appeals

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

v.

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

APPELLANT’S MOTION FOR EXPEDITED REINSTATEMENT OF APPEAL AND
TRANSFER TO THE SUPREME COURT

Appellant Marilyn M. White as Personal Representative of the Estate of Bertha Maust-Thompson files this Motion for Expedited Reinstatement of Appeal and for Transfer to the Supreme Court pursuant to Rules 240 and 204(a) and S.C. Code Ann. § 62-1-308(l).

This matter involves Respondents’ attempt to require Appellant to elect portability of the deceased spousal unused exclusion pursuant to 26 U.S.C.A. § 2010(c)(4) (the “DSUE”). The deadline established by the IRS by which to file the estate tax return to elect or not elect portability of the DSUE is May 28, 2019 (Order ¶ 9). However, the Order appealed from dated January 26, 2019 (the “Order”) sets more stringent deadlines.

Appellant timely filed her Notice of Appeal with this Court on February 4, 2019. The Court of Appeals *sua sponte* summarily dismissed the Appeal by Order filed February 15, 2019. On February 26, 2019, Appellant timely filed her Motion for Reconsideration Pursuant to Rule 221 of the South Carolina Appellate Court Rules. By correspondence dated March 13, 2019, the Clerk of Court for the Court of Appeals requested Respondents' counsel to file a return to the Motion for Reconsideration within ten (10) days, making March 23, 2019, the final date for Respondents to respond.

If the estate tax return is not filed by the May 28, 2019 deadline established by the IRS, the DSUE is forever lost. *See* Order ¶ 15. Given that this deadline is now approximately two (2) months away, Appellant respectfully moves this Honorable Court for an expedited reinstatement or hearing on Appellant's Motion for Reconsideration Pursuant to Rule 221 of the South Carolina Appellate Court Rules, in order to avoid the potential for this Appeal to be rendered moot by the passing of the May 28, 2019 deadline.

Additionally, Appellant moves pursuant to Rule 204(a) of the South Carolina Appellate Court Rules for an Order transferring this appeal to the Supreme Court. Rule 204(a) of the South Carolina Appellate Court Rules provides, "[i]n the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed **shall** issue an order transferring the case to the appropriate court." (emphasis added). S.C. Code Ann. § 62-1-308(l) provides that, where the parties consent in writing, a party to a final order who considers himself injured may appeal directly to the Supreme Court. Respondents consented to the direct appeal to the Supreme Court as is evidenced by their counsel's correspondence attached to the Notice of Appeal as Exhibit B.

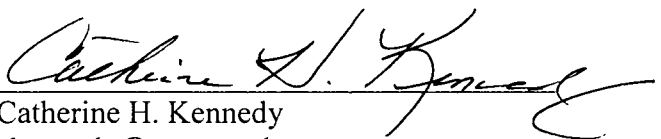
Furthermore, the transfer to the Supreme Court is not contested. By correspondence dated February 12, 2019 to the Honorable Jenny Abbot Kitchings, Clerk of Court for the Court

of Appeals, Respondents' counsel indicated that the "appeal has been filed in the wrong appellate court and should be transferred to the Supreme Court to Rule 204(A), SCACR, and S.C. Code Ann. § 14-8-260." (See attached Exhibit A)

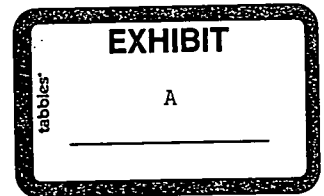
Accordingly, Appellant moves this Court for an expedited decision on her Motion for Reconsideration and for transfer of the appeal to the Supreme Court pursuant to Rule 204(a) of the South Carolina Appellate Court Rules.

Respectfully submitted,

March 22, 2019


Catherine H. Kennedy
ckennedy@turnerpadget.com
W. Duvall Spruill, Esq.(Bar No. 5295)
E-mail: dspruill@turnerpadget.com
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200
Fax: (803) 799-3957

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



MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN F. MUSTIAN**
CHAD N. JOHNSTON
ELIZABETH ZECK*
ELIZABETH ANN LOADHOLT CARROLL
JOHN W. ROBERTS
R. WALKER HUMPHREY, II***
CHRISTOPHER M. CAMPBELL
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

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SC Court of Appeals

February 12, 2019

OFFICES:

COLUMBIA
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SC 29202-8416

AREA CODE 803
TELEPHONE 252-3300
FAX 256-8062

CHARLESTON
133 RIVER LANDING DRIVE
SUITE 200
CHARLESTON, SC 29492

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

VIA HAND DELIVERY

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

Re: *Marilyn M. White v. Terri Ann Thompson; Appellate Case No. 2019-000169*

Dear Ms. Kitchings:

I am writing to bring to the Court's attention that the above-captioned appeal has been filed in the wrong appellate court and should be transferred to the Supreme Court pursuant to Rule 204(A), SCACR, and S.C. Code Ann. §14-8-260.

Pursuant to S.C. Code Ann. §62-1-308(l), only the Supreme Court has jurisdiction in a direct appeal from an order of the Probate Court where written consent has been given not to have the appeal heard in the circuit court in the first instance. As reflected in Exhibit B to appellant's February 4, 2019, notice of appeal in this matter, respondents have consented to a direct appeal to the Supreme Court pursuant to this statutory provision. See also S.C. Code Ann. §14-8-200(a) (providing for direct appellate jurisdiction of the Court of Appeals in cases not including appeals from Probate Court).

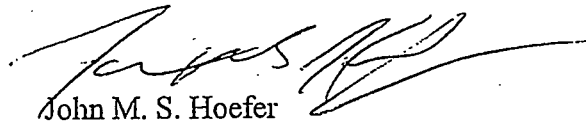
Counsel for appellant has been consulted regarding this issue but appears disinclined to act to correct the erroneous filing. Hence, I am bringing the matter to your attention via this letter.

Hon. Jenny Abbott Kitchings
February 12, 2019
Page 2 of 2

If you have any questions, or require additional information, please do not hesitate to contact me. Thanking you for your attention to and consideration of the foregoing matter, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M. S. Hoefer

cc: W. Duvall Spruill, Esq.
Catherine H. Kennedy, Esq.
John W. Roberts, Esq.

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APPEAL FROM RICHLAND COUNTY
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Appellate Case No. 2019-000169

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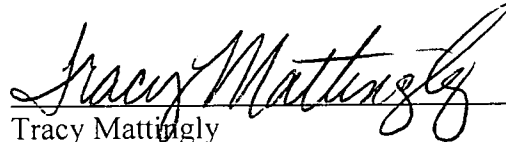
v.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Friday, March 22, 2019, a copy of the foregoing
**Appellant's Motion for Expedited Reinstatement of Appeal and Transfer to the Supreme
Court** was served upon the following counsel via hand delivery to:

John M.S. Hoefler, Esquire
John Roberts, Esquire
Willoughby & Hoefler, P.A.
930 Richland Street
Columbia, SC 29201



Tracy Mattingly
Legal Assistant

Columbia, South Carolina

Turner | Padget

REPLY TO: COLUMBIA OFFICE

Catherine H. Kennedy
Certified Specialist in Estate Planning and Probate Law

E-Mail: CKennedy@TurnerPadget.com
Writer's Direct Dial: (803) 227-4367
Writer's Direct Fax: (803) 400-1567

March 22, 2019

VIA HAND DELIVERY

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

**Re: *Terri Ann Thompson, Wendy K. Thompson and Robert Miller Thompson, Jr.,
as Co-Personal Representatives of the Estate of Robert M. Thompson, Sr., vs.
Marilyn M. White, as Personal Representative of the Estate of Bertha Virginia
Maust-Thompson***
Appellant Case No. 2019-000169
Our File No. 15256.00101

Dear Ms. Kitchings:

We enclose for filing Appellant's Motion for Expedited Reinstatement of Appeal for Transfer to the Supreme Court along with a Certificate of Service, a check for \$50.00 and seven copies of the motion. We request that a filed copy of the Motion be returned to our courier.

Thank you for your assistance in this matter.

Sincerely yours,

TURNER PADGET GRAHAM & LANEY P.A.


Catherine H. Kennedy

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SC Court of Appeals

CHK/tlm
Enclosures

Cc: John M.S. Hoefler, Esq. (*Via Hand-Delivery*)
John W. Roberts, Esq. (*Via Hand-Delivery*)