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March 11, 2019

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SC Court of Appeals

South Carolina Court of Appeals
Attn: V. Clair Allen, Deputy Clerk
PO Box 11829
Columbia, SC 29211

RE: Isaac Smith, Jr. v. Johnnie Mae Muller Newton
Appellate Case No.: 2018-002167

Dear Ms. Allen:

Please allow this letter to provide some insight on the above referenced matter. It is my belief, as the attorney for the Estate of Ms. Newton, that this matter could be administratively dismissed based on the following procedural history.

This pending appeal is attempting to reverse a dismissal of an appeal filed in the circuit court. The circuit court appeal was dismissed as not being properly served on the estate. The appellant attempted a Motion to Reconsider the dismissal of the circuit court appeal which was not sent to the judge in a timely manner and was also dismissed. The circuit court appeal was filed in circuit court as this is a probate court matter and the original order the appellant is attempting to reverse is a Probate Court Order issued in December of 2016.

This estate has not been able to distribute the assets to the intestate heirs as determined by the probate court in 2017 because of the actions of Mr. Smith. This latest appeal was delayed by Mr. Smith when he failed to properly serve the circuit court judge his Motion to Reconsider. As an officer of the court, and having in my hand a Motion to Reconsider, I respectfully asked the judge to address the matter so that this estate could move forward. Without my prodding, the judge would never have known there was a pending Motion to Reconsider and would not have issued her final dismissal in November of 2018.

I have provided the case history in outline format as it can be difficult to follow in narrative form. The case history listing includes only the dates items were filed, hearings held, and court orders issued, excepting the first date:

1. January 8, 2016
    a. Ms. Newton passes in a fire that consumes her home.
2. January 15, 2016
    a. Mr. Smith files a formal proceeding to open probate with a copy of a purported unrevoked will.

3. December 1, 2016
    a. Hearing held to determine if the Copy of the purported Will can be probated.
4. December 19, 2016
    a. Order Issued by the Probate Court denying the probate of the purported will but appoints Mr. Smith as Personal Representative as no other petitions have been filed.
5. June 26, 2017
    a. Mr. Smith files a Rule 60 motion to have the order of 12/19/2016 set aside based on, *inter alia,* surprise.
6. August 22, 2017
    a. Hearing held in probate court to address the actions of Mr. Smith as Personal Representative (but not his motion filed 6/26/2017).
7. September 5, 2017
    a. Order issued for the 08/22/2017 hearing removing Smith as Personal Representative, determining the intestate heirs of Ms. Newton and ordering the return of funds to the estate by Mr. Smith.
8. September 25, 2017
    a. Mr. Smith files an appeal of the Probate Court order dated 12/19/2016 in the Court of Appeals.
    b. This appeal is dismissed as it is the wrong court and the time to appeal to the circuit court has passed.
9. October 19, 2017
    a. Mr. Smith files a Motion seeking clarification of the 09/05/2017 order, renews his Rule 60 motion filed 6/26/2017 to have the order of 12/19/2016 set aside based on, *inter alia,* surprise.
10. January 11, 2018
    a. Hearing held on the Rule 60 Motion of Mr. Smith AND a Rule to Show Cause motion initiated by the court based on the failure of Mr. Smith to pay back the required funds to the estate pursuant to the 09/05/2017 Order.
    b. Mr. Smith is found in Contempt of Court and sent to the detention center until he pays back funds due the estate based on the Order of 09/05/2017.
11. January 19, 2018
    a. Smith attempts to appeal the Order from the Hearing of 1/11/2018 however the order has not yet been issued.
12. February 7, 2018
    a. Order issued from the hearing on 01/11/2018 denying the Rule 60 Motion and finding that Mr. Smith owes additional funds to the estate. He remains detained until the additional funds are repaid.
13. February 16, 2018
    a. Mr. Smith files a Notice of Intent to Appeal the probate court order of 02/07/2018 to the Circuit Court.

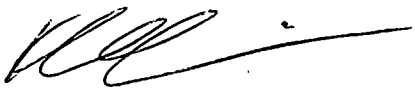
14. March 1, 2018
    a. The Estate files a Motion to Dismiss the Appeal filed in the circuit court based on failure to timely serve the appeal on the estate.
15. May 11, 2018
    a. Hearing held on the Motion to Dismiss the appeal filed 02/16/2018.
16. June 26, 2018
    a. Order issued dismissing the appeal as not timely served.
17. July 6, 2018
    a. Mr. Smith files a Rule 59(e) Motion to Reconsider the 06/26/2018 Order dismissing his appeal.
18. November 15, 2018
    a. Order issued dismissing the Motion to Reconsider as it was not timely served on the Judge.
19. December 7, 2018
    a. Mr. Smith files a Notice of Intent to Appeal the 11/15/2018 Order dismissing the Motion to Reconsider in the Court of Appeals.
20. January 18, 2019
    a. Mr. Smith files a Motion to extend the time to order the transcript

If you should have any questions, please do not hesitate to contact my office.

Thank you, in advance, for your time and attention to this matter.

I remain,

Yours Very Truly,



Heather Cairns
Attorney for the Estate of Johnnie Mae Newton
SC Bar No: 73521

C: G. Hampton, Personal Representative of the Estate of Johnnie Mae Newton
I. Smith, Appellant

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