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**MAR 25 2019**

**SC Court of Appeals**

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

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 RECONSIDERATION PURSUANT TO RULE 221**

Respondents above-named, in accordance with the Court’s March 13, 2019 request pursuant to Rule 221(a) of the South Carolina Appellate Court Rules (“SCACR”) and pursuant to Rule 240(e), SCACR, submit this Return to Appellant’s “Motion for Reconsideration Pursuant to Rule 221.” Appellant’s Motion should be denied because this Court correctly dismissed the appeal.

Nothing in Appellant’s motion demonstrates that the dismissal was incorrect. The two primary cases relied upon by Appellant in paragraph 2 of her Motion with respect to the finality of decisions of lower courts or tribunals involved appeals from orders of the Workers’ Compensation Commission and are therefore inapposite. On the other hand, the Supreme Court

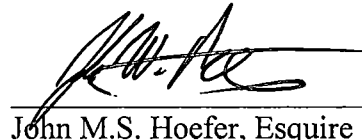
precedent cited by this Court in its February 15, 2019 dismissal order involved appeals from the Probate Court and the proper interpretation and application of S.C. Code Ann. § 62-1-308—the statute by which Appellant brought her appeal. *See* Dismissal Order at 1 (citing *Dorn v. Cohen*, 421 S.C. 517, 809 S.E.2d 53 (2017) & *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008)). The order of the Probate Court in this case simply directed the Appellant, as personal representative of the Decedent’s estate, to timely prepare and file the estate tax return to elect portability of the deceased spousal unused exclusion (DSUE) in accordance with the Appellant’s fiduciary duties as personal representative. While the filing of the estate tax return provides a tax benefit to Respondents as the personal representatives of the estate of Decedent’s spouse, the filing of the return does not harm in any way or affect any rights, let alone, substantial rights, of Appellant, the Decedent’s estate, or any other beneficiary. *See Matter of Estate of Vose*, 390 P.3d 238, 250 (Okla. 2017) (noting an executor’s acknowledgment that “the DSUE is only valuable to [a surviving spouse]” and holding that “the only person with an interest in and ability to use the DSUE, if it exists, is the surviving spouse”).

Moreover, while Appellant is correct that the order of the Probate Court enjoined Appellant to take the administrative action of preparing and filing the estate tax return in accordance with her duties as personal representative, interlocutory injunctions issued by the Probate Court are not immediately appealable, only “final orders” are appealable. *Compare* S.C. Code Ann. § 62-1-308(1) (stating “a party to a **final order, sentence, or decree of a probate court** who considers himself injured by it may appeal directly to the Supreme Court” (Emphasis supplied)) & S.C. Code Ann. § 14-3-330(4) (permitting appeals of “an interlocutory order or decree in a **court of common pleas** granting, continuing, modifying, or refusing an injunction.... (Emphasis supplied.))

The dismissal of this appeal also is required for the alternative reason that this Court does not have jurisdiction over a direct appeal from the Probate Court. *Compare* S.C. Code Ann. § 14-8-200(a) (providing for jurisdiction by the Court of Appeals in appeals directly from various lower courts and agencies, but not the Probate Court) and S.C. Code Ann. § 62-1-308 (providing for direct appeal from the Probate Court only to the circuit court or the Supreme Court).

Therefore, for the reasons set forth above and in this Court's order of dismissal, Appellant's Motion should be denied.

Respectfully Submitted,



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John M.S. Hoefer, 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

[jhoefer@willoughbyhoefer.com](mailto:jhoefer@willoughbyhoefer.com)

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

Attorneys for Respondents

Columbia, South Carolina  
March 25, 2019

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM RICHLAND COUNTY

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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 & Hoefer, P.A., have caused to be served one (1) copy of the Respondents' **Return to Appellant's Motion for Reconsideration Pursuant to Rule 221** 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 25th 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

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SC Court of Appeals

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

March 25, 2019

**VIA HAND DELIVERY**

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

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 Reconsideration Pursuant to Rule 221** 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.

Hon. Jenny Abbott Kitchings  
March 25, 2019  
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Sincerely,

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

*John*

John W. Roberts

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