

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Probate Court

Amy W. McCulloch, Probate Court Judge

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

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Appellate Case No. 2019-000169 (S.C. Ct. App. Order filed April 5, 2019)

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MAY 02 2019

S.C. SUPREME COURT

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.....Petitioner.

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APPENDIX

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STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Probate Court

Amy W. McCulloch

Case No. 2017-ES-40-01330

RECEIVED  
FEB 04 2019  
SC Court of Appeals

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

v.

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

NOTICE OF APPEAL

Marilyn M. White, As Personal Representative of the Estate of Bertha Maust-Thompson  
appeals the order of the Honorable Amy W. McCulloch dated January 26, 2019. Appellant  
received written notice of entry of this Order on January 26, 2019. A copy of the Order is  
attached as Exhibit A. All parties agree to a direct appeal pursuant to S.C. Code Ann. §62-1-  
308(1). See letter from counsel for Respondents attached as Exhibit B.

February 4, 2019

  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE PROBATE COURT  
Estate Number: 2017-ES-40-1330

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., )

Applicants, )

vs. )

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

Respondent. )  
\_\_\_\_\_ )

FILED  
2019 JAN 26 P 12:06  
AMY W. MACCULLOCH  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

ORDER GRANTING APPLICATION  
FOR PERFORMANCE  
OF PERSONAL REPRESENTATIVE

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FEB 04 2019

SC Court of Appeals

This matter comes before the Court upon the Application for Performance of Personal Representative ("Application") against Respondent Marilyn M. White, as Personal Representative of the Estate of Bertha Maust-Thompson, by the above-named Applicants who are the Co-Personal Representatives of the Estate of Robert Miller Thompson, Sr., the surviving spouse of Bertha Maust-Thompson. A hearing on the Application was held on November 7 and 8, 2018, with appearances on behalf of Applicants by attorneys John W. Roberts and John M. S. Hoefer and on behalf of Respondent by attorneys Catherine H. Kennedy and W. Duvall Spruill. For the reasons set forth below, the Application is granted.

#### Summary of Case and Procedural Background

Decedent Bertha Maust-Thompson A/K/A Virginia L. Thompson ("Decedent") died on May 28, 2017, survived by her husband Robert M. Thompson, Sr. and four (4) adult children from her first marriage. On August 11, 2017, Respondent and her brother and former Co-Personal Representative, Allan Maust, filed the Application for Informal Probate of Will and Appointment with respect to the estate of the Decedent, which was granted by the Court on August 14, 2017.

Respondent and Mr. Maust were appointed as Co-Personal Representatives of the Decedent's estate.

Under 26 U.S.C.A § 2001, a tax is imposed on the transfer of the taxable estates of United States citizens and residents, which is based on the sum of the taxable value of the estate and the amount of taxable gifts made by the decedent. 26 U.S.C.A. § 2010 provides for a "unified credit against estate tax," which effectively reduces the value of the estate for purpose of calculating the estate tax. The "unified credit" includes both the "basic exclusion amount," and "in the case of a surviving spouse, the deceased spousal unused exclusion amount." 26 U.S.C.A. § 2010(c). The basic exclusion amount for 2017 was \$5,490,000.00.

In the event a first-to-die spouse has not fully used the basic exclusion amount due to the value of the first-to-die spouse's estate, a concept known as "portability" makes the unused portion available to the surviving spouse, if so elected by the deceased spouse's executor. This unused portion is the "deceased spousal unused exclusion," or DSUE, amount. See 26 U.S.C.A. § 2010(c)(4). The DSUE amount is only of value to the surviving spouse and cannot be used by any other person. 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"). However, for a surviving spouse to make use of the DSUE amount, the "executor" of the deceased spouse's estate must make a "portability" election, which is made by completing and timely filing the estate tax return (IRS Form 706). See 26 U.S.C.A. § 2010(c)(5)(A). If the "portability" election is not made through the timely filing of the estate tax return, then the DSUE is lost forever. *Id.*; also see *Vose*, 390 P.3d at 250 ("[i]f the election is not made through the timely filing of an estate tax return, then it is lost").

Decedent and Robert Miller Thompson, Sr. were married on July 17, 1993, and were still married at the time of Decedent's death. On October 11, 2017, counsel for Mr. Thompson sent a letter to counsel for the Respondent and Mr. Maust requesting confirmation that they were willing to timely file the estate tax return for Decedent's estate to elect portability. Appl. Ex. 1. Mr. Thompson also offered to pay for the costs associated with preparing and filing the estate tax return and offered to assist, or have his representatives assist, in the preparation of the return. *Id.* By letter dated October 24, 2017, then-counsel for the Respondent and Mr. Maust responded and stated that they were declining to file the estate tax return. Appl. Ex. 2.

On November 21, 2017, Mr. Thompson filed the Application pursuant to S.C. Code Ann. § 62-3-607, seeking an order of the Court requiring Decedent's Co-Personal Representatives to timely prepare and file a federal estate tax return for the Decedent's estate to elect portability of the DSUE amount in accordance with 26 U.S.C.A. § 2010. As required by S.C. Code Ann. § 62-3-607, the Court attempted to hold a hearing within ten (10) days, however, as allowed, the parties agreed to hold the hearing on December 20, 2017. During a meeting in chambers with the attorneys for the Applicant and the attorneys for the Respondent and Mr. Maust at that time, Michael Mueller and G.H. Hal Hanlin, the parties agreed that Respondent and Mr. Maust would request an extension of time to file the estate tax return, as they wanted more time for discovery and evaluation of all litigation pending at that time<sup>1</sup>. No hearing was held and an order documenting this agreement was entered on January 5, 2018. Thereafter, the parties conducted discovery and engaged in settlement negotiations.

On February 7, 2018, Respondent and Mr. Maust's then counsel filed a Motion to be relieved as counsel, citing an irreconcilable conflict between Respondent and Mr. Maust, which the Court granted on April 2, 2018. Mr. Maust resigned as Co-Personal Representative on March 21, 2018, and Respondent retained her current counsel.

On March 6, 2018, Mr. Thompson passed away. The Will/Orphans' Court Division of Allegheny County, Pennsylvania, appointed the Applicants, who are three of Mr. Thompson's children and are named as co-executors in Mr. Thompson's Will, as co-executors of Mr. Thompson's estate. Applicants filed their motion for substitution on April 6, 2018, which the Court granted on May 17, 2018.

On July 13, 2018, Respondent filed a Motion to Dismiss<sup>2</sup> seeking dismissal of the Application on the grounds that (a) Mr. Thompson, and now his estate, was not an "interested person" for purposes of S.C. Code Ann. § 62-3-607, (b) Respondent has the choice not to file the estate tax return to elect portability, and (c) Mr. Thompson relinquished his rights to the DSUE amount through an antenuptial agreement between Decedent and Mr. Thompson dated July 7,

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<sup>1</sup> At the time of the December 20, 2017 hearing, a Petition for Elective Share was pending. This action was withdrawn after the death of Robert Thompson, Sr., and matters related to attorney's fees and costs associated with the litigation have been resolved by agreement.

<sup>2</sup> Respondent also filed a "Reply and Claim" on July 13, 2018, purportedly answering the Application, asserting a "Claim" for attorneys' fees and expenses, and demanding a jury trial. By order dated October 30, 2018, the Court dismissed the "Reply and Claim" as improper and untimely and denied the demand for a jury trial.

1993. Applicants filed and served a Response in opposition to this Motion to Dismiss on July 23, 2018.

On the same date, Applicants filed and served a Motion for Summary Judgment on the Application, in which they asserted, *inter alia*, that there was no genuine issue of material fact and a ruling in their favor was proper because Respondent's refusal to file the estate tax return or elect portability of the DSUE "jeopardizes unreasonably the interest" of Mr. Thompson and his estate as contemplated by S.C. Code Ann. § 62-3-607, and was a breach of fiduciary duty owed to Mr. Thompson and his estate by Respondent.

On August 15, 2018, Respondent filed and served a Reply to the Response in opposition to the Motion to Dismiss and a memorandum in opposition to the Motion for Summary Judgment on the Application. Respondent, as Personal Representative of the Decedent's estate, has asserted that she has a right under federal law to elect to port or not to port the DSUE to Mr. Thompson and that she has chosen not to elect the portability of the DSUE based on her belief that she was following the Decedent's intent that the tax benefits were not to be given to her husband as purportedly expressed in the antenuptial agreement, her Last Will and Testament, and statements attributed to Decedent.

On August 17, 2018, Applicants filed and served a Reply to the opposition to the Motion for Summary Judgment on the Application asserting, *inter alia*, that the question of whether a personal representative with a fiduciary duty has an obligation to file the estate tax return presented an issue of law only and the Decedent's purported intent with respect to the DSUE was immaterial.

The Motion for Summary Judgment and Motion to Dismiss the Application were heard by the Court on August 17, 2018. On September 7, 2018, the Court issued separate orders denying both motions. The Court denied the Motion to Dismiss on a number of grounds, the first of which was that Mr. Thompson was, and now his estate is, an "interested person" as defined in S.C. Code Ann. § 62-1-201 for purposes of being entitled to make the Application under S.C. Code Ann. § 62-3-607(a) because he was Decedent's spouse. Additionally, the Court ruled that the antenuptial agreement entered between Mr. Thompson and Decedent in 1993 did not preclude Mr. Thompson or his estate from using the available DSUE amount because it did not say anything about the DSUE (because DSUE did not exist in 1993) or anything about future tax benefits. The Court also concluded that the antenuptial agreement did not preclude Mr. Thompson from using the DSUE because the DSUE—which was first introduced by Congress in 2010 and only became permanent

in 2012—could not have been known to Mr. Thompson in 1993, and therefore, could not have been waived by him when the antenuptial agreement was signed. Moreover, the antenuptial agreement was found by the Court not to apply to the DSUE because the DSUE was not property of the Decedent (which Respondent conceded), and could not be controlled by the Decedent because the right to the DSUE did not exist until after her death.<sup>3</sup> The Court denied the Motion for Summary Judgment on the ground that it was not clear to the Court whether the intention of the Decedent could control the election of portability under South Carolina law and, therefore, an issue of disputed material fact might exist that bore on a determination of whether Respondent had an obligation to Mr. Thompson's estate with respect to the filing of the estate tax return and election of portability of the DSUE.

In addition to the arguments by each party's respective counsel, at the hearing, the Court heard the testimony of one of the Applicants, Robert M. Thompson, Jr., as well as the testimony of Respondent Marilyn M. White. The parties also entered into evidence during the hearing a total of 11 exhibits and published portions of the deposition testimony of six witnesses (including the corresponding deposition exhibits).

#### Findings of Facts

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, and having observed the witnesses and taking into account the credibility and accuracy of their testimony, the Court makes the following Findings of Fact:

1. Decedent and Mr. Thompson were married on July 17, 1993. At that time, she was sixty-nine (69) years old and he was seventy-one (71) years old.
2. Prior to their marriage, Decedent and Mr. Thompson signed an Antenuptial Agreement on July 7, 1993, agreeing, among other things, to waive their rights to inherit from each other.
3. Decedent died on May 28, 2017, at the age of 93 years old.
4. Mr. Thompson died on March 6, 2018, at the age of 96 years old.
5. Decedent and Mr. Thompson were still married at the time of Decedent's death, having been married twenty-three (23) years and thus, Mr. Thompson was the surviving spouse of the Decedent.

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<sup>3</sup> On September 18, 2018, Respondent filed a Motion to Alter or Amend the Order denying the Motion to Dismiss, which the Court denied by Order dated October 12, 2018.

6. Decedent and Mr. Thompson maintained their separate residences during their marriage and in the later years of their marriage lived separately and saw each other sporadically on the weekends when Mr. Thompson would travel from Pittsburgh, Pennsylvania, where he lived, to Butler, Pennsylvania, where Decedent lived.

7. Decedent's Last Will and Testament dated June 25, 2015 (the "Will"), was filed with the Court and admitted to probate and a true and correct copy of Decedent's Will was entered into evidence as Respondent's Exhibit 4.

8. Respondent, the daughter of Decedent and one of two Personal Representatives designated in Decedent's Will, is now the sole appointed Personal Representative of Decedent's estate.

9. While the Decedent's Will contains a section that the Decedent intentionally made no provision for her husband due to a pre-marital agreement, the Will does not contain any specific power or direction given to her estate's Personal Representatives directly related to the DSUE or the portability election or any other provision related to the DSUE or the portability election.

10. The deadline to file the estate tax return to elect portability is May 28, 2019.

11. Prior to his death, Mr. Thompson requested that Respondent, as Personal Representative of Decedent's estate, timely file the estate tax return for Decedent's estate to elect portability and also offered to pay for the costs associated with preparing and filing the estate tax return and to assist, or have his representatives assist, in the preparation of the return. Appl. Ex. 1.

12. Respondent declined Mr. Thompson's request, has not filed the estate tax return for Decedent's estate to elect portability, and has refused to file the estate tax return to elect portability. Appl. Ex. 2.

13. Based on the approximate size of Mr. Thompson's estate, his estate could utilize the available DSUE amount to reduce the amount his estate will owe in federal estate taxes in accordance with 26 U.S.C.A. § 2010.

14. The amount of the DSUE is approximately \$3 million, which equates to a real dollar value of approximately \$1.2 million to Mr. Thompson's estate.

15. If the portability election is not made by the timely filing of the estate tax return for Decedent's estate, Mr. Thompson and his estate will forever lose the DSUE and would thus have to pay approximately \$1.2 million more in federal estate taxes than the Internal Revenue Code would otherwise require to be paid.

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16. The testimony of Robert Shott, the attorney who assisted the Decedent in Pennsylvania with her Will, indicates that he went to law school as a second career, had no specialization in tax and estate law matters, would make house visits to meet his clients, did not have a law office, first met the Decedent in 2012, met with her forty (40) to fifty (50) times over the years, drafted five to eight Wills for the Decedent of which she signed four or five, that he did not have copies of any of them because he left them all with the Decedent, that he explained the new law of "pooling of the unified credit" to the Decedent in 2012, that Decedent stated "he is not going to get anything of mine.", and that Mr. Shott believed the article in the Will he drafted and executed with the Decedent, that excluded her husband from inheriting, resolved the matter.

17. Mr. Shott testified that in an effort to protect Decedent, he prepared and had her execute an Affidavit, attached as exhibit 22 to his deposition, dated February 1, 2016. In that Affidavit, the Decedent states that she has only signed two (2) tax returns since 2000, and that she and her husband have no verbal or written agreement about the unified credit.

18. This Court finds the testimony of Mr. Shott concerning. Mr. Shott admitted that he never reviewed Decedent's assets or their values. In fact, he testified that it was none of his business. This is contrary to proper estate planning. He should have clarified that what he was explaining as "pooling of the unified credit" was the same as what the Decedent was understanding and acting upon. Additionally, if Mr. Shott believed Decedent felt as strongly as she did about the tax credits, he should have clarified it in the many versions of Wills he drafted, or attempted an agreement with her husband about the unified credit. The fact that he had Decedent sign an Affidavit stating there was no agreement about the unified credit is contrary to Respondent's argument that the 1993 Antenuptial Agreement (Resp. Ex. 1) should control Applicants right to portability.

19. The testimony of David DelFiandra, an attorney who assisted the Decedent in Pennsylvania, indicates that he tried to assist the Decedent at the request of her sons beginning in about 2016, that he met with her approximately three (3) times, that the Decedent believed she was owed money from her husband based on an agreement to pay her monthly (Resp. Ex. 2), and that he attempted to resolve owed amounts by selling her unified credit to her husband but was unsuccessful in a resolution.

20. This Court finds the testimony of Mr. DelFiandra to be an explanation of a situation in which the Decedent and her sons, who attended all meetings with the agreement of their mother,

were primarily focused on getting further lifetime support for Decedent. This is again an opportunity for a self-described estate planning attorney who testified that he too had done estate planning for the Decedent in the early 2000s, to meet with her about her Will and advise her about the additional concerns of the unused tax credits to maximize the benefit for the Decedent and her children. He never indicates in his testimony that he asked to see her current Will.

21. The testimony of Pam Steiner, cleaning lady and care giver for the Decedent, indicates that she began working for Decedent in 2011 or 2012, that she started with one (1) or two (2) days a week but later was working four (4) days a week, that she rarely saw the Decedent's husband, that Decedent complained weekly that Mr. Thompson was not giving her enough money, that the Decedent checked her bank account weekly to see if she had received a deposit from Mr. Thompson, that she did not feel that the Decedent was treated well by her husband, that she heard the Decedent talk to her husband about her tax credits, and that the Decedent said that her husband was not getting them because she was saving them for her kids.

22. While it is clear from Ms. Steiner's testimony that she believed the relationship between the Decedent and her husband was not what she would have wanted, it is not clear that the Decedent and or Ms. Steiner understood what they were discussing in regards to tax credits, as the DSUE would never benefit the Decedent's children.

23. Both Respondent and Rebecca Maust, Decedent's daughter in law, testified that the Decedent did not want Mr. Thompson notified of her death and he was not listed in her obituary.

24. The evidence presented by Respondent regarding the Decedent's intent primarily consisted of testimony by Respondent and her witnesses about conversations they each had with Decedent, which Respondent asserts demonstrated that Decedent and Mr. Thompson had a difficult relationship in the last years of their lives, that Decedent believed he had not paid her monthly as he should have, and that Decedent did not want Mr. Thompson to receive "her tax credits."

25. Respondent did not present evidence of any written document by Decedent that contained any specific direction to Respondent, or anyone else, related to the DSUE or the portability election. Attorneys for Respondent attempted to admit "notebooks" arguably written by the Decedent during Respondent's testimony; however, because a proper foundation could not be laid, the request was denied.

26. Respondent argued that the notebooks show that Decedent kept records of amounts Decedent received from her husband and that the notebooks were evidence of the broken promise to pay her certain amounts every month and that this is the reason she felt Mr. Thompson should be denied any benefit at her death.

27. Respondent did not present evidence of any agreement between Decedent and Mr. Thompson related to the DSUE or the portability election.

28. Decedent never filed for a divorce from Mr. Thompson and although legal action for an annulment was discussed with attorney DeFiandra, neither the Decedent nor her agent, at the time Respondent, under a power of attorney, authorized him to proceed. Had the marriage been dissolved, Mr. Thompson's right to DSUE would have been eliminated.

29. Robert Thompson, Jr. testified that any decline in the relationship between Decedent and Mr. Thompson, which he disputed, during the last year or so of Decedent's life would have been caused by their advanced age, deteriorating health, and loss of driving privileges, all of which prevented them from regularly seeing each other because they had maintained separate homes for the entirety of their marriage. He also asserted that the "agreement" to pay certain amounts monthly was only to take affect at his father's death, as everyone expected Mr. Thompson would be the spouse to die first because he had battled cancer during the later years of his life.

#### Conclusions of Law

Based on the preceding Findings of Fact, the Court makes the following Conclusions of Law:

A. The Court has jurisdiction over the subject matter and parties in this action pursuant to S.C. Code Ann. § 62-1-302(a)(1). Venue is proper as the Decedent was a resident of Richland County at her death.

B. S.C. Code Ann. § 62-3-607(a) provides:

Upon application of any interested person, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person.

C. Respondent argues that Applicants have improperly placed this matter before the Court because Mr. Thompson is not an interested person. As the Court previously held, Mr.

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Thompson and now his estate are interested persons for purposes of S.C. Code Ann. § 62-3-607(a). *See* S.C. Code Ann. § 62-1-201(23). Respondent continues to dispute the conclusion. Respondent argues a dissection of the definition of interested person in S.C. Code Ann. § 62-1-201(23) requires that for a spouse to be an interested person, they must also have a property right or claim and because Mr. Thompson was excluded in the will, he does not have a property right and therefore, is not an interested person.

“Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

This Court disagrees with Respondent’s argument and conclusion. Instead, this Court believes that the definition clearly recognizes a spouse by relationship, and that after all relationships are listed, then additionally anyone else who may have a property right or claim, may be an interested person. Respondent further argues that under the definition of claim in S.C. Code Ann. § 62-1-201(4), Mr. Thompson would not qualify as one with a claim against the estate because the definition specifically excludes estate or inheritance taxes. To reiterate, this Court concludes that Mr. Thompson is an interested person based solely on the relationship of spouse; however, to address the argument, the right to elect portability or the right to the DSUE is not a tax but a benefit in a taxable situation.

Going further, the last sentence of the statutory definition of “interested person” reflects the intent of the General Assembly that the term not be given a rigid but rather a flexible meaning to meet the particular situation. S.C. Code Ann. § 62-1-201(23) “The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.” Here, Mr. Thompson, and now his estate, has an interest in the DSUE amount and, correspondingly, the administration of Decedent’s estate. *See Vose, supra*, 390 P.3d at 249 (“[The surviving spouse] may have a pecuniary interest as the surviving spouse in the portability of the DSUE, independent of his ability to take as an heir.”). Indeed, Mr. Thompson, and now his estate, is the only person with an interest in the “Deceased Spousal Unused Exclusion” amount and the only person that can benefit from its use.

D. Respondent argues that Applicants have improperly placed this matter before the Court because S.C. Code Ann. § 62-3-607(a) titled "Order restraining personal representative" allows for only a temporary order. This Court disagrees with Respondents argument and believes that Respondent is incorrectly dissecting the statute. While the statute does state the court may issue a temporary order for restraint of a personal representative, the statute further states that the court may "make any other order to secure proper performance..." This Court is clearly within the authority of this statute to order the personal representative to perform on this issue.

E. It is undisputed, and the Court finds, that the DSUE was not property of Decedent and is not an asset of the Decedent's estate; therefore, the article in the Decedent's Will that specifically disinherits Mr. Thompson is not sufficient to control the DSUE.

F. Primarily for this reason, and that the DSUE is a right created by federal statute that does not exist until the death of the first spouse and inures to the benefit of only a surviving spouse, Applicants contend that the intent of the Decedent is not relevant. The Court disagrees on this point.

G. 26 U.S.C.A. § 2010(c)(5)(A) specifically states that "A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return."

H. Because the election must be made by the executor of the estate, as opposed to the spouse, this Court must conclude that the testator must have the ability to direct the personal representative to withhold this election.

I. The Court finds that a testator has the right to control the portability election in their will, but that it must be a specific power or direction given to the estate's personal representative in the will directly related to the portability election. When the Will is silent on the issue, and the personal representative and spouse are in agreement, then certainly this is a non-issue. Here, it is undisputed, and the Court finds, that the Decedent's Will is clear and unambiguous.

J. Decedent's Will does not contain any specific power or direction given to her estate's personal representatives directly related to the DSUE or the portability election or any other provision related to the DSUE or the portability election.

K. Decedent's Will provides only: "Within this instrument I have intentionally made NO provision for my husband, ROBERT M. THOMPSON, due to an existing Pre-marital Agreement." Resp't Ex. 5, Will, § III. This does not demonstrate that Decedent's intent was for her Personal Representative not to file the estate tax return to elect portability. This is especially so considering that, as the Court previously held and hereby finds, the antenuptial agreement between Decedent and Mr. Thompson in 1993 did not preclude Mr. Thompson or his estate from using the available DSUE amount because it did not say anything about the DSUE (because it did not exist in 1993), and the DSUE could not have been known to Mr. Thompson in 1993 and therefore, could not have been waived by him when the antenuptial agreement was signed.

L. Accordingly, although Decedent had the right to control the portability election in her Will, she had to do so through a specific power or direction given to Respondent directly related to the portability election, which Decedent did not do.

M. Therefore, the Will that disinherits the spouse, can no longer serve as a valid basis for Respondent to refuse to file the estate tax return to elect portability.

N. Because the Will is clear and unambiguous, there is no need for the Court to look outside the Will. *See Hyman*, 362 S.C. at 26 ("Only when the will's terms or provisions are ambiguous may the court resort to extrinsic evidence to resolve the ambiguity."); *Rodarte v. University of South Carolina*, 419 S.C. 592, 603 (2017) ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.").

O. Nevertheless, a review of the testimony and this Court's findings is necessary. As discussed above, Respondent presented testimony and evidence she alleges demonstrates that Decedent and Mr. Thompson had a difficult relationship in the last years of their lives and that Decedent did not want Mr. Thompson to receive "her tax credits." This Court is convinced that Decedent was extremely frustrated with her husband in the time frame beginning in 2012, primarily focused on the amounts of money he was or was not providing monthly. Further, this Court believes that Decedent clearly did not want Mr. Thompson to benefit from her estate. The Decedent was virtually surrounded by attorneys and her children advocating for her. To what degree Decedent understood the advice she was receiving, and to what degree the advice was accurate and most appropriate, is not clear. Decedent also clearly had multiple opportunities to

clarify her "agreement" with her husband or to change her Will to specifically address her "tax credits". By the testimony, Respondent moved the Decedent to South Carolina in March of 2017 during the negotiations between attorney DeFiandra and Mr. Thompson's attorneys for reimbursements of monies owed and the tax credits. Respondent, as her mother's agent, did not continue the discussions or pursue any action. Decedent and Respondent, as her agent under a Durable Power of Attorney, had many opportunities to resolve this heavily discussed issue and to put something in writing that was signed by the Decedent, notarized, and or witnessed. However, Respondent did not present evidence of any written document from Decedent that contained any specific direction to Respondent, or anyone else, directly related to the DSUE or the portability election. Respondent also did not present evidence of any agreement between Decedent and Mr. Thompson related to the DSUE or the portability election. Decedent also never filed for a divorce from Mr. Thompson nor for an annulment of their marriage, even though the evidence presented by Respondent demonstrated that Decedent contemplated both courses of action. This would have eliminated Mr. Thompson's right to the unused tax credit.

P. Respondent asserts that Mr. Thompson engaged in conduct which was unfair to Decedent which requires the application of the doctrine of "unclean hands" to bar Applicants from obtaining the relief requested. This again refers to "an agreement" to pay monthly support that the Decedent and Respondent believe Mr. Thompson had directly violated. There is no evidence before the Court that there was an agreement that was enforceable and, if there was, there is no evidence that Mr. Thompson did not meet the agreement. There is only testimony that the Decedent was extremely frustrated with what she believed was Mr. Thompson's failure to pay. However, none of the alleged conduct of Mr. Thompson with respect to the Decedent, even if true, had any relation to the DSUE or the portability election. Further, Respondent has not demonstrated that Decedent was prejudiced in any way with respect to the DSUE and cannot because, as a matter of law, the DSUE amount can only benefit Mr. Thompson and his estate. Accordingly, such alleged conduct could not as a matter of law preclude Mr. Thompson or his estate from being able to seek injunctive relief that would enable him to utilize the available DSUE amount. *Straight v. Goss*, 383 S.C. 180, 206-07 (Ct. App. 2009) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.") (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568

(Ct. App. 1998); *Wilson v. Landstrom*, 315 S.E.2d 130, 134, 281 S.C. 260, 267 (Ct. App. 1984) (“Prejudice to the defendant is a necessary element of the ‘unclean hands’ defense...”).

Q. Respondent, as Personal Representative of Decedent’s estate, is a fiduciary and owes a fiduciary duty to the estate and all interested persons to the estate. *See* S.C. Code Ann. § 62-1-201(15) (defining “fiduciary” as including “personal representative”); S.C. Code Ann. § 62-3-703(a) (titled, in part, “relation and liability to persons interested in estate,” and providing that “[a] personal representative is a fiduciary...”); S.C. Code Ann. § 62-3-711 (“[A] personal representative has the same power over the title to property of the estate that an absolute owner would have, *in trust* however, for the benefit of the creditors and others interested in the estate.”) (emphasis added); *McNair v. Howle*, 116 S.E. 279, 282–83 (S.C. 1923) (“Under the American system of administering the estates of deceased persons, the administrator is considered the deputy of the probate court, ... to whose jurisdiction is committed by statutory law the care and management of the estate for the benefit of creditors and of all who may be legally entitled thereto.”).

R. Respondent, although having felt compelled to fight vehemently for what she believed were her mother’s wishes, must now recognize that there is a fiduciary duty owed to Mr. Thompson and his estate on this issue. *See* 31 Am. Jur.2d, *Executors and Administrators*, § 368 (“[The personal representative] is held to the standards of a trustee to maintain undivided loyalty to the estate and diligently represent the rights of the heirs, distributees, and creditors, and all parties who have interests in the estate.”); 33 C.J.S. *Executors and Administrators* § 3 (“Executors and administrators are agents or officers of the court, and occupy a fiduciary relation toward all parties having an interest in the estate.”).

S. It is now Respondent’s duty to prepare and timely file the estate tax return to elect portability of the DSUE amount. *See Vose*, 390 P.3d 238 (confirming fiduciary duty of executor to surviving spouse and affirming order requiring the executor of the estate to file the estate tax return and elect portability of the DSUE).

T. The interest to Mr. Thompson’s estate is valued at approximately \$1.2 million and by contrast, the DSUE amount is of no value to the beneficiaries of Decedent’s estate.

U. Any further refusal to file the estate tax return to elect portability of the DSUE amount “jeopardize[s] unreasonably the interest” of Mr. Thompson and his estate because the DSUE will be forever lost if the estate tax return is not timely filed and may be ruled to be a breach

of the Respondent's fiduciary duty, which would require a separate appointment of a fiduciary to perform this duty.

V. At the close of Applicant's case, Respondent moved for a dismissal of the Application, in part based on an assertion that Applicants were required to seek appointment of a Special Administrator to obtain the relief requested. The Court denied this motion. S.C. Code Ann. § 62-3-607(a) clearly contemplates the authority of this Court to Order the Personal Representative to perform or take action, that if not otherwise taken, would jeopardize an interested person and as defined, the Decedent's spouse is an interested person.

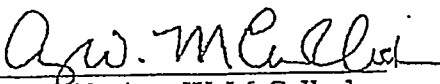
#### Conclusion

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court orders as follows:

- I. The Application for Performance of Personal Representative is GRANTED and Respondent is hereby required to timely prepare and file the estate tax return of Decedent's estate and elect portability for the benefit of Mr. Thompson and his estate;
- II. In order to carry out her duties under this order, Respondent shall employ a qualified, independent certified public accountant or attorney, who must be unrelated to the parties, any beneficiary of either of the estates which they represent, or their counsel, to prepare the estate tax return and provide proof of such employment to the Court and Applicants within fifteen (15) days of the date of this Order;
- III. Respondent shall provide a draft of the final estate tax return and any supporting documentation, appraisals, and valuations to the Court and the Applicants and their counsel within forty-five (45) days of the date of this Order;
- IV. Unless Applicants and their counsel have any comments or objections to the draft return, or the Court shall find it insufficient, Respondent shall file the estate tax return to elect portability no later than sixty (60) days after the date of this Order;
- V. Applicants shall pay for the reasonable actual costs of preparing and filing the return, which shall be paid within ten (10) days of the accepted filing of the return with the Internal Revenue Service, same to be determined by this Court in the event of any disagreement on the part of Applicants with respect to reasonableness of such costs which is raised to the Court by Applicants; and

VI. Respondent's failure to comply with the directives of this order shall result in the appointment of a Special Administrator to prepare and file the estate tax return to elect portability, the costs of which will be borne by Decedent's estate.

AND IT IS SO ORDERED.

  
The Honorable Amy W. McCulloch  
Richland County Probate Judge

January 26, 2019  
Columbia, South Carolina

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ELIZABETHANN LOADHOLT CARROLL  
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SPECIAL COUNSEL

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FEB 04 2019

SC Court of Appeals

January 28, 2019

\*ALSO ADMITTED IN TEXAS  
\*\*ALSO ADMITTED IN WASHINGTON, D.C.  
\*\*\*ALSO ADMITTED IN CALIFORNIA  
\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

VIA ELECTRONIC MAIL & U.S. MAIL

W. Duvall Spruill, Esquire  
Turner Padgett Graham & Laney, P.A.  
1901 Main Street, 17th Floor  
Columbia, South Carolina 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., Applicants, vs. Marilyn M. White, as Personal Representative of the Estate of Bertha Virginia Maust-Thompson, Respondent*; Case No. 2017-ES-40-01330

Dear Duvall:

I am writing in response to your December 19, 2018 letter and electronic mail message of today's date regarding Respondent's request that Applicants consent to any appeal being made directly to the Supreme Court pursuant to S.C. Code Ann. §62-1-308(I).

Please be advised that Applicants do consent to a direct appeal to the Supreme Court by Respondent from the Richland County Probate Court's January 26, 2019 Order Granting Application for Performance of Personal Representative in the above-referenced case. You are hereby authorized to attach this letter to the notice of appeal if you deem it necessary or appropriate.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

John

John W. Roberts

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Probate Court

Amy W. McCulloch

Case No. 2017-ES-40-01330

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FEB 04 2019  
SC Court of Appeals

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

v.

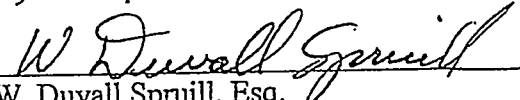
Terri Ann Thompson, Wendy K. Thompson, and Robert  
M. Thompson, Jr., as Co-Personal Representatives of the  
Estate of Robert M. Thompson, Sr.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following counsel at the  
following address by depositing a copy of it in the U.S. Mail, postage prepaid, on February 4,  
2019 to:

John M.S. Hoefler, Esq.  
John Roberts, Esq.  
Willoughby & Hoefler, P.A.  
P.O. Box 8416  
Columbia, SC 29202-8416

February 4, 2019

  
W. Duvall Spruill, Esq.  
E-mail: [dspruill@turnerpadget.com](mailto:dspruill@turnerpadget.com)  
/s/ Cathy Kennedy, Esq. (Bar No. 3391)  
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SPECIAL COUNSEL

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

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FEB 12 2019

SC Court of Appeals

February 12, 2019

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**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.

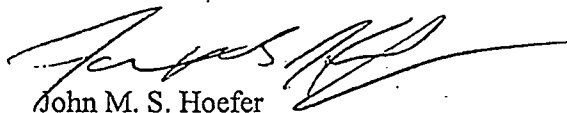
Hon. Jenny Abbott Kitchings  
February 12, 2019  
Page 2 of 2

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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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FEB 15 2019

REPLY TO:

W. Duvall Spruill

SC Court of Appeals

E-Mail: DSpruill@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4291  
Writer's Direct Fax: (803) 400-1528

February 14, 2019

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

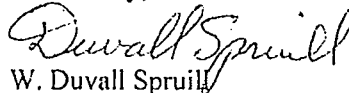
*RE: Estate of Virginia Maust Thompson, Decedent  
Marilyn M. White, as Personal Representative of the Estate of Bertha Virginia  
vs. Maust Thomspon Terri Ann Thompson, Wendy K. Thompson and Robert  
Miller Thompson, Jr., as Co-Personal Representatives of the Estate of Robert  
M. Thompson, Sr.  
Appellant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

Dear Ms. Kitchings:

We, as attorneys for Appellant, have received Respondent's letter of February 12, 2019 addressed to the Court. Our reading of S.C. Code Ann. §62-1-301(l) and Appellate Court Rule 203 lead us to file the Notice of Appeal in the Court of Appeals.

We consent to your transferring this matter to the Supreme Court, as requested by the February 12, 2019 letter.

Yours truly,

  
W. Duvall Spruill

WDS/adgc

cc: John Roberts, Esquire (Via E-Mail & U.S. Mail)  
John M.S. Hoefler, Esquire (Via E-Mail & U.S. Mail)  
Catherine H. Kennedy, Esquire (Via E-Mail Only)

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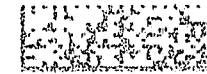
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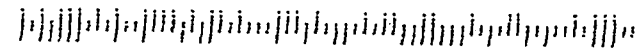
SC Court of Appeals



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The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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February 15, 2019

Mr. John Marion S. Hoefler, Esquire  
PO Box 8416  
Columbia SC 29202-8416

Re: In the Matter of the Estate of Bertha Maust-Thompson  
Appellate Case No. 2019-000169

Dear Counsel:

We have received your letter dated February 12, 2019. You must file a motion pursuant to Rule 240 of the South Carolina Appellate Court Rules if you would like to ask the Supreme Court to assume jurisdiction over this appeal. You must make the appropriate motion in the Supreme Court.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

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

# The South Carolina 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.

Appellate Case No. 2019-000169

---

## ORDER

---

This notice of appeal arises out of an order of the probate court directing the appellant to timely prepare and file the estate tax return of the decedent's estate. The parties consented in writing to appeal directly to this Court as required by section 62-1-308(l) (Supp. 2018); however, the order on appeal is not a final order of the probate court. *See* S.C. Code Ann. § 62-1-308(a) (Supp. 2018) ("A person interested in a final order, sentence, or decree of the probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303."); *Dorn v. Cohen*, 421 S.C. 517, 520, 809 S.E.2d 53, 54 (2017) (dismissing as interlocutory a probate court order that was not a final order); *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (declining to allow an appeal from a probate court order that was not a final order). Therefore, section 62-1-308(l) is inapplicable and this matter is governed by section 62-1-208(a) regarding the finality requirement for appeals from the probate court. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 J.  
FOR THE COURT

**FILED**

*February 15, 2019*

APP. 25

Columbia, South Carolina

cc:

W. Duvall Spruill, Esquire

Catherine H. Kennedy, Esquire

John Marion S. Hoefler, Esquire

John William Roberts, Esquire

89150

STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Probate Court

FEB 26 2019

SC Court of Appeals

Amy W. McCulloch

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

Appellate Case No. 2019-000169

**In the Matter of the Estate of Bertha Maust-Thompson**

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

v.

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

**APPELLANT'S MOTION FOR RECONSIDERATION  
PURSUANT TO RULE 221**

The Appellant, Marilyn M. White in her capacity as Personal Representative of the Estate of Bertha Maust-Thompson, files this Motion for Reconsideration Pursuant to Rule 221.

1. The Court of Appeals issued its order on February 15, 2019 dismissing the appeal on the grounds that the Order of the Probate Court was not a final order. Appellant files this motion to reconsider the Court's Order of February 15, 2019 because the Court misapprehended the Order of the Probate Court and its impact.

2. In November of 2017, Respondents filed an Application in the Probate Court seeking an injunction to require Appellant to file an estate tax return and elect portability of the unused spousal tax credit to the surviving spouse. That was the full extent of the relief sought. Appellant strongly opposed that requested relief. After discovery and several motions regarding the merits of the case, a trial of all issues was held before the Probate Court on November 7 and 8, 2018. On January 26, 2019, the Probate Court issued an Order from which this appeal was timely taken. That Order determines that Respondents' positions are correct and that Appellant is required to prepare and file with the Internal Revenue Service an estate tax return including an election of portability to the estate of the surviving spouse. That determination and injunction were unequivocal and final. There is no further legal step to be taken to avoid the directive of the Probate Court but for an appeal of the Order. The order is considered final if it constitutes an ultimate decision on the merits or some substantial matter constituting the whole or some part of a cause of action. *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009); *Mungo v. Rental Uniform Services of Florence, Inc.*, 383 S.C. 70, 678 S.E.2d 825 (Ct. App. 2009).

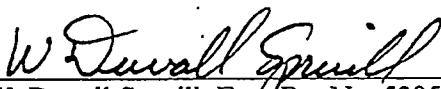
3. This case is unlike the two cases cited in the Order dated February 15, 2019. One of those cases, *Dorn v. Cohen*, 421 S.C. 517, 809 S.E.2d 53 (2017), simply involved the joinder of a party in ongoing litigation. The second case, *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008), related to the removal to the circuit court and failure to dismiss. Instead, the Probate Court, consolidated the two cases for further action. Neither order appealed resulted in any finality since each litigation was to proceed on its merits. Unlike the present case, neither involved an injunction requiring action by one of the parties which would render the Order appealable under South Carolina Rules of Appellate Procedure Rule 201. *Eldridge v. City of*

*Greenwood*, 308 S.C. 125, 417 S.E.2d 532 (1992); *Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 (1956); *North American Rescue Products, Inc. v. Richardson* 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011).

It is respectfully requested that the Order of February 15, 2019 be rescinded and that the Appeal be allowed to move forward.

Respectfully submitted,

February 26, 2019

  
W. Duvall Spruill, Esq. (Bar No. 5295)  
E-mail: [dspruill@turnerpadget.com](mailto:dspruill@turnerpadget.com)  
Cathy Kennedy, Esq. (Bar No. 3391)  
E-mail: [ckennedy@turnerpadget.com](mailto:ckennedy@turnerpadget.com)  
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STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Probate Court

Amy W. McCulloch

RECEIVED  
FEB 26 2019  
SC Court of Appeals

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

Appellate Case No. 2019-000169

In the Matter of the Estate of Bertha Maust-Thompson

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

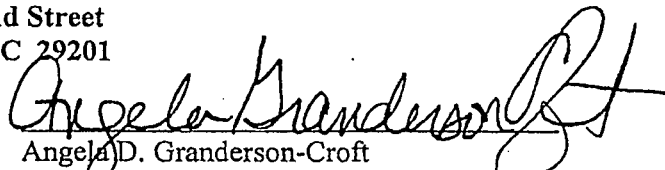
v.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 26<sup>th</sup> day of February, 2019, she served a copy of  
the foregoing Motion for Reconsideration Pursuant to Rule 221 to the following counsel of  
record by via hand-delivery:

John M.S. Hoefler, Esquire  
John W. Roberts, Esquire  
930 Richland Street  
Columbia, SC 29201

  
Angela D. Granderson-Croft  
Legal Assistant

Columbia, South Carolina



## The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN  
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March 13, 2019

Mr. W. Duvall Spruill, Esquire  
PO Box 1473  
Columbia SC 29202-1473

Hon. Catherine H. Kennedy, Esquire  
PO Box 1473  
Turner Padgett Graham & Laney, PA  
Columbia SC 29202-1473

Re: In the Matter of the Estate of Bertha Maust-Thompson  
Appellate Case No. 2019-000169

Dear Counsel:

This will acknowledge receipt of your petition for rehearing.

By copy of this letter, opposing counsel are requested to file a return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: John Marion S. Hoefler, Esquire  
John William Roberts, Esquire

RECEIVED

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

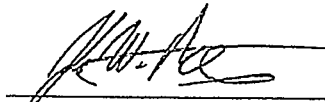
precedent cited by this Court in its February 15, 2019 dismissal order involved appeals from the Probate Court and the proper interpretation and application of S.C. Code Ann. § 62-1-308—the statute by which Appellant brought her appeal. *See* Dismissal Order at 1 (citing *Dorn v. Cohen*, 421 S.C. 517, 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,



---

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

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

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

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

Attorneys for Respondents

Columbia, South Carolina  
March 25, 2019

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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  
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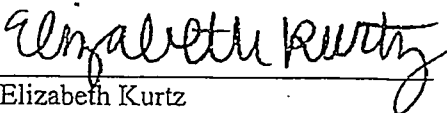
v.

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.

STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
MAR 28 2019  
SC Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Probate Court

Amy W. McCulloch

---

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

---

Appellate Case No. 2019-000169

---

In the Matter of the Estate of Bertha Maust-Thompson

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 REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION  
PURSUANT TO RULE 221

---

Appellant, Marilyn M. White as Personal Representative of the Estate of Bertha Maust-Thompson, files this Reply in support of her Motion for Reconsideration Pursuant to Rule 221.

The Probate Court issued the appealed order on January 26, 2019 (the "Order"). Appellant timely filed her Notice of Appeal on February 4, 2019. On February 15, 2019, the Court of Appeals dismissed the appeal on the grounds that the Order was not a final order. 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. Respondents filed their Return on March 25, which was received by Appellant on March 27. Appellant now files her Reply.

In its order dismissing the appeal, the Court of Appeals looked to S.C. Code Ann. § 62-1-308(a) which governs appeals from the probate court and which provides that a person interested in a final order of the probate court may appeal. The Court of Appeals cited *Dorn v. Cohen*, 421 S.C. 517, 809 S.E.2d 53 (2017) and *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008) in determining that the Order was not a final order. While both cases interpreted S.C. Code Ann. § 62-1-308(a), both involved interlocutory orders. *Dorn v. Cohen* simply involved the addition of a party in ongoing litigation. No final order ending the litigation had been issued by the probate court. *Fulmer v. Cain* related to the probate court's order denying the appellant's motion to remove the matter to circuit court and denying appellant's motion to dismiss the litigation. Clearly neither denial ended the case. The order denying the motion to remove and denying the motion to dismiss just meant that the litigation continued and it continued in the probate court. The cited cases are inapposite to the present case. Neither order resulted in any finality since each litigation was to proceed on the merits.

In the present case, the relief sought by Respondents was for the probate court to require that Appellant file an estate tax return and elect portability of the Decedent's unused federal estate tax exclusion amount for the benefit of Decedent's husband, Robert Thompson. It is clear from the Order that many motions including motions to dismiss and motions for summary judgement were made and ruled upon by the probate court. None of those orders was appealed

as they were interlocutory in nature. Ultimately a trial on the merits was had and the probate court issued the Order granting Respondents' request. The Order required Appellant to file the estate tax return to elect portability, exactly what Respondents sought, and further gave Appellant a deadline to comply. The Order was an ultimate decision on the merits, unequivocal and final. There is no further legal step to be taken as Respondents have received exactly what was sought in their Application; no further legal action can be taken to avoid the directive of the probate court but to appeal the Order. Respondents themselves thought the Order was final since on January 28, 2019, two days after the Order was entered, they agreed to a direct appeal to the Supreme Court. (See Exhibit B to the Notice of Appeal.)

Respondents now seize upon the Court of Appeals' dismissal to advocate that Appellant has no right to appeal, suggesting that Appellant is not harmed by the Order nor does the Order affect her rights. S.C. Code Ann. § 62-1-308(a) states that "A person interested in a final order, sentence, or decree of a probate court may appeal. . ." Certainly Appellant, being the person who was required by the Order to file the estate tax return to elect portability, was interested in the Order. S.C. Code Ann. § 62-1-308(l) does allow for a party to a final order, sentence or decree of a probate court who considers himself injured by it to appeal directly to the Supreme Court. Federal law in 26 U.S.C. Code Ann. § 2010(c) places the right to elect to file the estate tax return upon the executor, the Appellant. She is therefore manifestly interested in and considers herself injured when that right of election is taken from her.

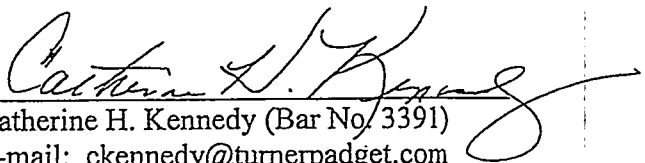
Respondents also request dismissal since the appeal was filed with the Court of Appeals rather than the Supreme Court. The Notice of Appeal filed on February 4, 2019, states that "All parties agree to a direct appeal pursuant to S.C. Code Ann. § 62-1-308(l)." S.C. Code Ann. § 62-1-308(l) authorizes a direct appeal to the Supreme Court if the parties not in default consent

in writing. Respondents did consent as shown by Exhibit B attached to the Notice of Appeal. Dismissal is not warranted if the appeal is filed in the wrong 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). 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) [sic], SCACR, and S.C. Code Ann. § 14-8-260.” (See attached Exhibit A). Appellant concurs and has previously moved that the appeal, once reinstated, be transferred to the Supreme Court.

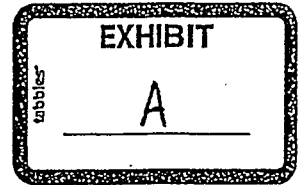
Appellant respectfully requests that the Order of February 15, 2019 be rescinded and that the appeal be allowed to move forward and be transferred to the Supreme Court.

Respectfully submitted,

March 28, 2019

  
Catherine H. Kennedy (Bar No. 3391)  
E-mail: [ckennedy@turnerpadget.com](mailto:ckennedy@turnerpadget.com)  
W. Duvall Spruill (Bar No. 5295)  
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ATTORNEYS & COUNSELORS AT LAW



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TRACEY C. GREEN  
BENJAMIN P. 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

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FEB 12 2019

SC Court of Appeals

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FAX 619-4430

February 12, 2019

\*ALSO ADMITTED IN TEXAS  
\*\*ALSO ADMITTED IN WASHINGTON, D.C.  
\*\*\*ALSO ADMITTED IN CALIFORNIA  
\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

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(I), 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.

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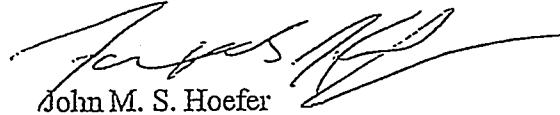
Hon. Jenny Abbott Kitchings  
February 12, 2019  
Page 2 of 2

---

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.

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Amy W. McCulloch, Probate Court Judge

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

Appellate Case No. 2019-000169

RECEIVED  
MAR 28 2019  
SC Court of Appeals

In the Matter of the Estate of Bertha Maust-Thompson

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

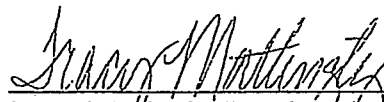
v.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28<sup>th</sup> day of March, 2019, she served a copy of the foregoing *Reply in Support of Motion for Reconsideration Pursuant to Rule 221* to the following counsel of record via first class mail:

John M.S. Hoefler, Esquire  
John W. Roberts, Esquire  
930 Richland Street  
Columbia, SC 29201

  
Tracy Mattingly, Legal Assistant

Columbia, South Carolina

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

RECEIVED

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(1).

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.

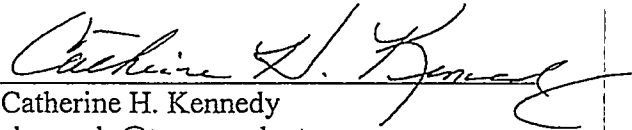
Furthermore, the transfer to the Supreme Court is not contested. By correspondence dated February 12, 2019 to the Honorable Jenny Abbot Kitchings, Clerk of Court for the Court

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.

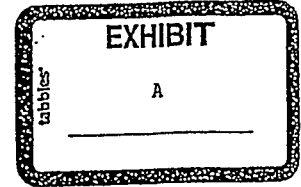
Respectfully submitted,

March 22, 2019



Catherine H. Kennedy  
ckennedy@turnerpadget.com  
W. Duvall Spruill, Esq. (Bar No. 5295)  
E-mail: [dspruill@turnerpadget.com](mailto:dspruill@turnerpadget.com)  
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WILLOUGHBY & HOEFER, P.A.  
ATTORNEYS & COUNSELORS AT LAW



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OF COUNSEL

JOSEPH H. FARRELL, III  
SPECIAL COUNSEL

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FEB 12 2019

SC Court of Appeals

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FAX 619-4430

February 12, 2019

\*ALSO ADMITTED IN TEXAS  
\*\*ALSO ADMITTED IN WASHINGTON, D.C.  
\*\*\*ALSO ADMITTED IN CALIFORNIA  
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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:

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Pursuant to S.C. Code Ann. §62-1-308(I), 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

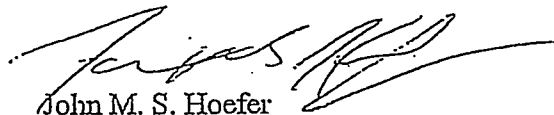
Page 2 of 2

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Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M. S. Hoefer

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

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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MAR 22 2019

APPEAL FROM RICHLAND COUNTY  
Probate Court

SC Court of Appeals

Amy W. McCulloch

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

Appellate Case No. 2019-000169

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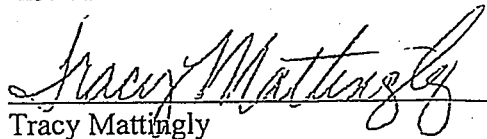
v.

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

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY

The Honorable Amy W. McCulloch, Probate Judge

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Appellate Case No. 2019-000169

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In the Matter of the Estate for Bertha Maust-Thompson

Terri Ann Thompson, Wendy K. Thompson, and Robert  
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---

**RETURN TO APPELLANT'S MOTION  
FOR EXPEDITED REINSTATEMENT OF APPEAL  
AND TRANSFER TO SUPREME COURT**

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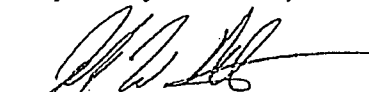
Respondents above-named, pursuant to Rule 240(e) of the South Carolina Appellate Court Rules ("SCACR"), submit this Return to Appellant's "Motion for Expedited Reinstatement of Appeal and Transfer to Supreme Court" (the "Motion"). Appellant's Motion should be denied because this Court lacks jurisdiction, the Motion is an improper attempt to submit additional arguments in support of her petition for reconsideration that is already pending before this Court, and is procedurally defective.

On February 26, 2019, Appellant filed a "Motion for Reconsideration Pursuant to Rule 221" seeking to have reinstated her appeal that this Court dismissed by order dated February 15, 2019. By request of this Court, on March 25, 2019, Respondents filed their return to the petition

for reconsideration, asserting that it should be denied because the dismissal of the appeal was correct because this Court does not have jurisdiction. Appellant filed her reply on March 28, 2019. Accordingly, Appellant's petition for reconsideration has been fully briefed in accordance with Rule 240, SCACR.

Notwithstanding this, Appellant now raises additional arguments in support of her petition for reconsideration and seeks the exact same relief sought therein, only now on an "expedited" basis. For the reasons set forth in Respondent's return to the petition for reconsideration, this Court lacks jurisdiction and the Motion should be denied for that reason alone. Further, because it is an improper attempt to submit further argument in support of her petition for reconsideration, the Motion should be denied for that reason as well. Finally, Appellant's attempt to combine three motions—a motion for expedited treatment, a motion for reinstatement, and a motion for transfer—in a single motion is procedurally improper, warranting denial of the Motion for this reason as well.<sup>1</sup>

Respectfully Submitted,



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Attorneys for Respondents

Columbia, South Carolina  
April 1, 2019

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<sup>1</sup> Cf. Rule 240(d), SCACR.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY

The Honorable Amy W. McCulloch, Probate Judge

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Appellate Case No. 2019-000169

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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.

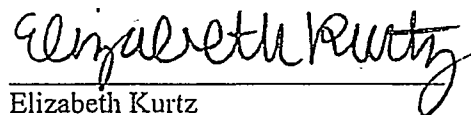
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**PROOF OF SERVICE**

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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 Expedited Reinstatement of Appeal and Transfer to Supreme Court 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 1st day of April 2019.

rec'd 4-8-19

# The South Carolina 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.

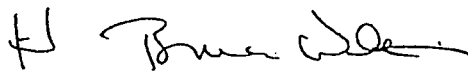
Appellate Case No. 2019-000169

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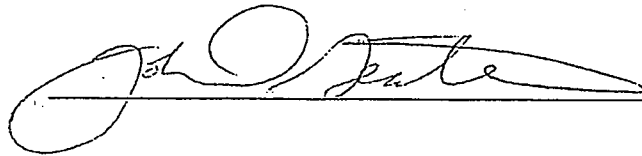
## ORDER

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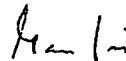
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.<sup>1</sup>



J.



J.



J.

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<sup>1</sup> Because the order on appeal is not immediately appealable and this case has been dismissed, this court will take no action on Appellant's motion for supersedeas and motion to transfer the appeal to the Supreme Court of South Carolina.

Columbia, South Carolina

cc:

W. Duvall Spruill, Esquire

Catherine H. Kennedy, Esquire

John Marion S. Hoefler, Esquire

John William Roberts, Esquire

FILED

April 5, 2019