

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAY 29 2019

APPEAL FROM RICHLAND COUNTY

S.C. SUPREME COURT

The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2019-000727

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,.....Petitioner.

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI

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Attorneys for Respondents

May 29, 2019
Columbia, South Carolina

Respondents hereby move, in accordance with Rule 240, SCACR, to dismiss the petition for writ of certiorari to the court of appeals' orders dismissing Petitioner's direct appeal in the above-captioned matter (Petition). For the reasons set forth below, and as further explained in their Memorandum in Support submitted contemporaneously herewith, Respondents submit that the issues raised in the Petition and any underlying appeal are moot. In support thereof, Respondents would respectfully show as follows:

1. The appeal in this matter arose from proceedings on an Application for Restraint or Performance of Personal Representative (Application) pursuant to S.C. Code Ann. § 62-3-607 filed with the Richland County Probate Court on November 21, 2017, by Robert Miller Thompson, Sr. (Mr. Thompson), the then surviving spouse of Bertha Maust-Thompson (Decedent). [Appx. at 4.]

2. The underlying issue in this case was whether a federal estate tax return should be filed by Petitioner, as the personal representative of the Decedent's estate, to make available to Mr. Thompson a significant estate tax benefit. [Appx. at 2-4.] Mr. Thompson died on March 6, 2018, and the executors of his estate were substituted in the proceeding at the probate court. [Appx. at 4.]

3. The probate court held a hearing on the Application on November 7 and 8, 2018, and thereafter, on January 26, 2019, issued an order granting the Application and requiring Petitioner to timely prepare and file the estate tax return of Decedent's estate to make available the estate tax benefit to Mr. Thompson's estate. (January 26 Order). [Appx. at 3-17.]

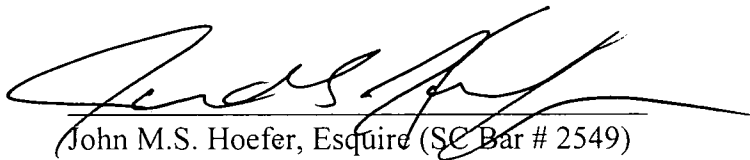
4. Subsequent to Petitioner's filing of her appeal of the January 26 Order to the court of appeals, the dismissal of which is the subject of the instant Petition, the estate tax return was filed. *See* Ex. E to Resp. Mem. in Supp.

5. Pursuant to federal law, the right of Mr. Thompson's estate to the estate tax benefit irrevocably vested upon the passing of the deadline to file the return, which, in this case, was May 28, 2019. [Appx. at 7;] 26 U.S.C.A. § 2010(c)(5)(A) ("Such election, once made, shall be irrevocable."); 26 CFR § 20.2010-2(a)(4) ("The portability election, once made, becomes irrevocable once the due date of the estate tax return, including extensions actually granted, has passed.").

6. Because the underlying issue in this case was whether the estate tax return should be filed to make available an estate tax benefit to Mr. Thompson's estate, and the return now has been filed irrevocably vesting Mr. Thompson's estate with the right to this benefit, this matter is moot and the Petition and any underlying appeal should be dismissed.

WHEREFORE, having fully set forth their motion, supporting memorandum, and exhibits, Respondents respectfully request that the Court dismiss the Petition.

Respectfully Submitted,



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PROOF OF SERVICE

This is to certify that I, a paralegal with the law firm of Willoughby & Hoefler, P.A., have caused to be served this day one (1) copy each of the Respondents' **Motion to Dismiss Petition for Writ of Certiorari, Memorandum in Support of Motion to Dismiss Petition for Writ of Certiorari, and Motion to Stay Time Limits** via hand-delivery to the following:

Catherine H. Kennedy, Esquire
Duvall Spruill, Esquire
TURNER PADGET GRAHAM & LANEY P.A.
1901 Main Street, Suite 1700
Columbia, SC 29201


Elizabeth Kurtz

Columbia, South Carolina
This 29th day of May 2019