

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas Acting as Appellate Court to the Probate Court

The Honorable William H. Seals, Jr., Circuit Court Judge

Circuit Court Case No. 2018-CP-10-3889
Charleston County Probate Court No. 2016-ES-10-544

In Re The Estate of Hazel North
Grady North and Jean Corbett,

Respondents,

v.

Linda North and James North
Individually and as Personal
Representative of the Estate of Hazel
North,

Appellants.

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MAY 28 2019
SC Court of Appeals

BRIEF ON APPEALABILITY

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BACKGROUND

This matter comes before the Court on the directive of the Court per its May 14, 2019 letter requesting a brief on the issue of appealability.

RELEVANT FACTS

This matter originated in the Probate Court for the County of Charleston.

Respondent in that case applied for and was granted informal probate and appointment by the Probate Court.

A later application for informal probate of a subsequent will was made along with a separate application for informal probate.

The second applicant was appointed and the second will was accepted for probate.

The Respondent was removed from being personal representative by order of the Court.

Several years later, the Respondent moved the Probate Court to grant relief from the orders (1) removing Respondent as personal representative; (2) removing the original will from probate; (3) appointing Appellant as personal representative; and (4) admitting the subsequent will to probate.

The Probate Court denied the motion and Respondent appealed to the Circuit Court.

The circuit court heard the appeal and issued an order reversing the Probate Court.

The circuit court's reversal was certified to, filed with, and remanded to the Probate Court.

The Appellant subsequently filed a timely appeal of the circuit court order to this Honorable Court.

“Before an order can support an appeal, it must be a final judgment. The issue of whether a judgment is final is jurisdictional, which means that if the reviewing court determines that the

judgment appealed from is not final, that court is obligated to dismiss the appeal on its own motion.” *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) citing *Hardy v. State ex rel. Chambers*, 541 So.2d 566, 567 (Ala.Civ.App.1989).

The order in question is properly before this Court. The trial court in this case was the Charleston County Probate Court. It issued four orders as stated above. It issued a fifth order denying the Respondents SCRCP Rule 60 motion for relief from a judgment.

The appeal in question was to the Circuit Court. South Carolina Code of Laws § 62-1-308 states that “appeals from the probate court must be to the circuit court and are governed by the following rules:” Whether or not Respondents made a proper appeal to the circuit court was in question, but it is not in question that they did make an appeal to the circuit court. Equally not in question is the fact that the circuit court issued a complete and final order in its capacity as an appellate court.

The circuit court (in appellate capacity) reversed the decision of the Probate Court and ordered the reinstatement of the original will which revokes the former. The remand has been given back to the Probate Court.

The original orders of the Probate Court which were appealed by Respondents were final orders. The order denying relief from those judgments which was also appealed was a final order. *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008). The circuit court’s order on appeal is a final order. It reversed the previous orders. It removes the Appellant from his position as personal representative, and it dispositively once and forever disinherits him as he is named in the latter will but not in the will that was reinstated by the circuit court. Moreover, he is past the one year challenge time to file a formal testacy proceeding. Thus, even if the order were interlocutory, “[a]n interlocutory order which affects a substantial right, and either in effect

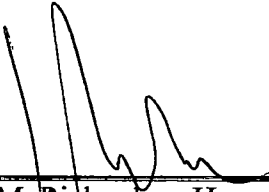
determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a).” *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). Because, the reversal is final and it affect a substantial right of the Appellant, the matter is appealable.

Lastly, when an appeal originates from a probate court, and the decision being appealed is the determination of the circuit court sitting as an appellate court, the proper forum is the South Carolina Court of Appeals.

CONCLUSION

For the foregoing reasons, the matter is appealable at this time.

21 May 2019



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PROOF OF SERVICE OF A NOTICE OF APPEAL

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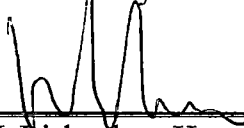
MAY 28 2019

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Grady North and Jean Corbett by depositing a copy of it in the United States Mail, postage prepaid, on 22 May 2019, addressed to their attorney of record Michael J. Sautter, attorney of record, 147 Wappoo Creek Drive, Ste 202, Charleston, SC 29412 and Peter G. McGrath at 802 Johnny Dodds Blvd, Mount Pleasant, South Carolina 29464.

22 May 2018


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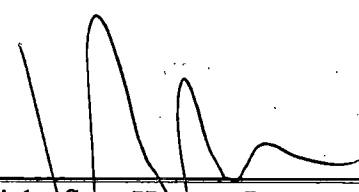
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: In Re: The Estate of Hazel North, Grady North and Jean Corbett Respondents v. Linda North and James North, Individually and as Personal Representative of the Estate of Hazel North, Case No. 2019-00758

Dear Ms. Kitchings:

Enclosed for filing is the requested Brief on Appealability and the certificate of service.

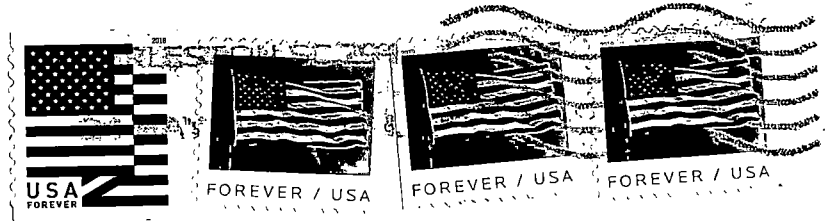


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