

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

APPELLATE CASE NO. 2019-000076

Case No. 2017-CP-10-03110  
(formerly Probate Court Case No. 2010-ES-10-00413)

CAROL MANIGAULT,

Appellant,

v.

MORRIS ELLISON, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF ANDREW MANIGAULT,

Respondent.

APPELLANT'S INITIAL BRIEF

Dated: May 20, 2019

By:

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### COURT RULES

SCRCP Rule 12(b)(8)

SCACR 208 (b)

**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE COURT OF COMMON PLEAS ERR BY NOT RULING ON APPELLANT'S FOREIGN JUDGMENT FILED ON NOVEMBER 17, 2010 IN THE CHARLESTON COUNTY PROBATE COURT AND, AS A MATTER OF LAW, THIS FOREIGN JUDGMENT SHOULD BE ALLOWED AS A CLAIM AGAINST THE ESTATE?**
  
- II. DID THE COURT OF COMMON PLEAS ERR IN RULING ON RESPONDENT'S ISSUES THAT WERE NOT PRESENTED BY RESPONDENT OR RULED UPON IN THE PROBATE COURT?**
  
- III. DID THE COURT OF COMMON PLEAS ERR IN ALLOWING NEW EVIDENCE TO BE SUBMITTED AT THE APPELLATE HEARING THAT WAS NOT PREVIOUSLY USED IN THE PROBATE COURT PROCEEDING?**
  
- IV. DID THE THE COURT OF COMMON PLEAS ERR IN FINDING THAT THE "REPORTER'S COMMENT" FROM AN EARLIER VERSION OF S.C. CODE ANN. 62-3-806 WAS NOT TO BE SHOWN A CONTROLLING ERROR?**
  
- V. DID THE COURT OF COMMON PLEAS ERR IN FINDING THAT RESPONDENT'S DISALLOWANCE OF CLAIM WAS VALID BECAUSE IT CITED NEW EVIDENCE THAT HAD NOT BEEN USED IN THE PROBATE COURT PROCEEDING AND IT DID NOT RULE UPON APPELLANT'S STATUTE OF LIMITATION ARGUMENT?**
  
- VI. THE COURT OF COMMON PLEAS ERRED IN ADDING A SEPARATE GROUND FOR DISMISSAL OF APPEAL FOR FAILING TO COMPLY WITH STATUTORY DEADLINE AND COURT RULES**

### STANDARD OF REVIEW

Appeal from the probate court is governed by the provisions of the Probate Code. In re Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). The Probate Code requires appeals from the Probate Court to be to the circuit court. S.C. Code Ann. 62-1-308. In reviewing an appeal from the probate court, the circuit court must apply the same rules of law as an appellate court would apply. S.C. Code An. 62-1-308(d), In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). The circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. In re Estate of Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 257 (1993).

### STATEMENT OF THE CASE

On March 5, 2010, Andrew Manigault passed away leaving a Will. A Petition was filed to appoint Morris Ellison, Esq., as Personal Representative of Mr. Manigault's Estate pursuant to the Will. On March 17, 2010, Mr. Morrison was appointed as Personal Representative of Mr. Manigault's Estate and Case No. 2010-ES-10-0413 was assigned to the probate of this estate.

On September 15, 2010, Appellant filed a Statement of Creditor's Claim in relation to New Jersey property pursuant to a New Jersey Divorce Decree. On November 17, 2010, Appellant filed a Statement of Creditor's Claim in relation to North Carolina and South Carolina properties. See Appellant's Opposition to Respondent's Motion for Summary Judgment.

In addition, a Notice of Filing of Foreign Judgment and supporting documentation was filed in the Charleston County Court of Common Pleas on November 17, 2010, Case No. 2010-CP-10-9512, and a Notice of Filing of Foreign Judgment and supporting documentation was

filed in the Charleston County Probate Court on November 17, 2010 under Case No. 2010-ES-10-0413. See Appellant's Opposition to Respondent's Motion for Summary Judgment.

Subsequently the Charleston County Court of Commons Pleas ruled that the Charleston County Probate Court had jurisdiction to hear a divorce judgment where one of the spouses had passed away. The Charleston County Court of Common Pleas dismissed the action before it and referred the matter over to the Charleston County Probate Court, Case No. 2010-ES-10-0413.

The validity of the Notice of Filing of Foreign Judgment with supporting documentation has never been contested in the Charleston County Probate Court under Case No. 2010-ES-10-0413.

On January 20, 2016, Appellant was served with Notice of Disallowance from the Respondent on her two Creditor's Claims. See Respondent's Motion for Summary Judgment.

On February 19, 2016, Appellant filed a Summons and Petition and served same upon the Respondent's employee at the Respondent's Law Firm. See Respondent's Motion for Summary Judgment.

Appellant was petitioning the Court to approve the two claims. The Respondent filed an Answer to the Petition on March 18, 2016.

Thereafter, Respondent filed a Motion for Summary Judgment against the Appellant on the following grounds:

- I. **The Carol Manigault creditor claims are statutory barred as a matter of law under S.C. Code Ann. 62-3-806(a) and 62-3-804(5) for failure to serve her Summons and Petition for Allowance of Claims within the statutory thirty (30) day time period.**

- II. **The Carol Manigault creditor claims are barred as a matter of law for lack of service of process.**
- III. **S.C. Code Ann. 15-3-530(1) Claims Bar (3 year Statute of Limitations for enforcing contractual claims)**

See Respondent's Motion for Summary Judgment.

The Appellant filed Opposition to Motion for Summary Judgment on the following grounds:

- a) **Validity of Foreign Judgment filed in Charleston County Probate Court on November 17, 2010 was never been challenged by Respondent. (Appellant agreed that the Foreign Judgment filed in Charleston County Court of Common Pleas be dismissed and so it was ordered).**
- b) **Appellant timely filed a Summons and Petition for Allowance of Creditor's Claims with Respondent.**
- c) **Genuine issues of material facts remain unsolved in this case. Appellant alleged that she is a judgment creditor thus giving her valid claims priority over the unsecured creditors in this action.**

See Appellant's Opposition to Summary Judgment.

The court held a hearing on the motion on January, 19, 2017.

On April 7, 2017, by Order, the Court granted the Respondent's Motion for Summary Judgment as follows:

1. **Appellant's two creditor claims were timely filed within the applicable one year time period.**
2. **In a Reporter's Comments to Section 62-3-806, the Court ruled that "failure of a personal representative to mail notice of his action within thirty days after the claim filing period has expired constitutes a notice of disallowance with warning of impending bar." The Court acknowledged that the Respondent did not file a Notice of Disallowance of Appellant's two Creditor's Claims until January 25, 2016 and January 20, 2016, almost five years after the expiration of the claims period. However, the Court found that despite the Respondent not providing notice of disallowance until January, 2016, the claims were automatically disallowed by statute on April 5, 2011 and that Appellant had thirty (30) days thereafter to react accordingly. The Court ruled that the Appellant's Summons**

and Petition was not filed until almost five years after the time to commence a proceeding had run, and therefore, the Court barred Appellant's two claims.

3. **Given the ruling as cited in the preceding paragraph, the Court "need not reach Respondent's alternate arguments regarding improper service or the enforceability of the Divorce Decree as a foreign judgment.**

See Order Granting Summary Judgment.

On April 17, 2017, Appellant filed a Motion to Alter/Amend Judgment and on June 1, 2017, the Court denied the Appellant's Motion to Alter/Amend Judgment. See Appellant's Motion to Alter/Amend Judgment. See Order Denying Motion to Alter/Amend Judgment.

On June 16, 2017, Appellant filed a Notice to Appeal with the Charleston County Court of Common Pleas, Case No. 2017-CP-10-03110. See Appellant's Notice of Appeal.

On August 30, 2017, Appellant filed her Initial Brief which contained the following arguments:

- I. **Did the Probate Court err in denying Appellant's Motion to Alter/Amend Judgment because the Court did not rule on the Appellant's Foreign Judgment claim in its' Order granting Summary Judgment to Respondent?**
- II. **Did the Probate Court err in denying Appellant's Motion to Alter/Amend Judgment because the Court disregarded the Statute of Limitations as set forth in S.C. Code 62-3-806(a) in its' Order granting Summary Judgment to Respondent?**
- III. **Did the Probate Court err in denying Appellant's Motion to Alter/Amend Judgment because the Court cited a "Reporter's Comment" printed after S.C. Code 62-3-806 as its' primary authority in its' Order granting Summary Judgment to Respondent?**

See Appellant's Initial Brief.

On September 29, 2017, Respondent filed his Initial Brief which contained the following arguments:

- I. All Appellant creditor claims are barred as a matter of law for Appellant's failure to properly and timely serve her Summons and Petition for Allowance of Claim within the statutory thirty day deadline.**
- II. All Appellant creditor claims are barred as a matter of S.C. Code Ann. Section 15-3-530(1).**
- III. Appellant's Issue on Appeal I argument fails by virtue of the July 29, 2011 Charleston County Court of Common Pleas Order granting the Andrew Manigault Estate's Motion for Relief from Foreign Judgment (which Order dismissed Appellant's entire Foreign Judgment case based on the Court of Common Pleas' lack of subject matter jurisdiction and SCRCP(12)(b)(8), and did not refer the case to Probate Court). Appellant failed to domesticate any foreign judgment in South Carolina against the Estate of Andrew Manigault.**
- IV. Appellant's Issues on Appeal II and III arguments fail because the Personal Representative properly complied with the relevant prior version of S.C. Code 62-3-806(a) in effect at the time of the Decedent's death (which prior version did not contain the deadline for disallowance relied upon by Appellant).**

See Respondent's Initial Brief.

July 30, 2018, an appellate hearing was held before Hon. J. Mark Hayes, II in the Charleston County Court of Common Pleas. See Appellate Hearing Transcript. At the appellate hearing, Respondent submitted a Comparison of 2010 and 2014 S.C. Code 62-3-806 (three sheets). See Comparison.

On December 27, 2018, the Court issued an Order denying Appeal with the following ruling:

- A. Appellant's foreign judgment claims were dismissed by the Court of Common Pleas for lack of subject matter jurisdiction and pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.**
- B. Appellant incorrectly cites to the current version of S.C. Code Ann. 62-3-806(a), which was not in effect at the time of the Decedent's death in 2010. The relevant version of the statute did not contain the new deadline for disallowance relied upon by the Appellant.**

- C. A citation by the Probate Court to a "Reporter's Comment" from an earlier version of S.C. Code Ann. 62-3-806 has not been shown to be a controlling error.**
- D. Appellant failed to properly serve her Summons and Petition for Allowance of Claims as required under South Carolina law.**
- E. As evidenced in the very language of Appellant's creditor claims for breach of Divorce Decree and its accompanying HUD Uniform Settlement Statement for refinance, Appellant had notice of any breach well before three years prior to the decedent's death.**

See Order Denying Appeal.

On January 17, 2019, Appellant filed a Notice of Appeal with the S.C. Court of Appeals in this matter, Case No. 2019-000076. See Appellant's Notice of Appeal with the S.C. Court of Appeals.

#### **ARGUMENT**

- I. THE COURT OF COMMON PLEAS DID NOT RULE ON APPELLANT'S FOREIGN JUDGMENT FILED ON NOVEMBER 17, 2010 IN THE CHARLESTON COUNTY PROBATE COURT AND, AS A MATTER OF LAW, THIS FOREIGN JUDGMENT SHOULD BE ALLOWED AS A CLAIM AGAINST THE ESTATE.**

In its' Order Denying Appeal, the Court of Common Pleas held that Appellant's Foreign Judgment claim that was filed on November 17, 2010 with the Court of Common Pleas was properly dismissed for lack of subject matter jurisdiction and pursuant to Rule 12(b)(8) of the SCRCF. Appellant is in agreement upon that ruling. However, raised in Appellant's Opposition to Respondent's Motion for Summary Judgment and again, in Appellant's Initial Brief, is the fact that the Foreign Judgment was also filed on November 17, 2010 with the Charleston County Probate Court. Respondent has not contested these facts in its' Summary Judgment pleadings or in his Initial Brief.

In accordance with S.C. Code 62-3-806(c) (2010), a judgment in a proceeding in another court against a personal representative to enforce a claim against the decedent's estate is an allowance of the claim. Given the fact that the Foreign Judgment filed in the Charleston County Probate Court has been uncontested by Respondent, the Appellant requests that the Court declare the Foreign Judgment as an enforceable claim against the Estate.

**II. THE COURT OF COMMON PLEAS ERRED IN RULING ON RESPONDENT'S ISSUES THAT WERE NOT PRESENTED BY RESPONDENT OR RULED UPON BY THE THE PROBATE.**

An appellate court will not consider issues on appeal that have not been preserved for appellate review. In the Interest of Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) (holding that issues must be raised and ruled upon in the trial court to be preserved for appellate review). When an appellate court rules on an issue not preserved for appellate review, the portion of the appellate court's opinion pertaining to the unpreserved issue should be vacated. Ulmer v. Ulmer, 369 S.C. 486, 632 S.E.2d 858 (2006), citing State v Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

As set forth above, Respondent filed a Motion for Summary Judgment based upon three (3) issues: 1) that Appellant's two creditor claims were barred by S.C. Code 62-3-806(1) and 804(5); 2) failure of Appellant to serve Summons and Petition within thirty (30) days; and 3) Appellant's lack of service of process.

The Probate Court, in its' Order Granting Summary Judgment to Respondent, only ruled upon the timeliness of Appellant's filing of the two creditor claims and Respondent's use of the "Reporter's Comments" as its' basis for summary judgment. The Probate Court ruled that in the "Reporter's Comments", it states that "failure of a personal representative to mail notice of his

action within thirty days after the claim filing period has expired constitutes a notice of disallowance with warning of impending bar. A claimant has thirty days to react to a disallowed claim". The Probate Court did not rule upon Appellant's alleged failure to serve Summons and Petition within thirty (30) days or Appellant's alleged lack of service of process for the Summons and Petition.

Nevertheless, Respondent's Initial Brief to the Court of Common Pleas addressed issues that were not raised in Probate Court and therefore, were not preserved for appellate review. The Court of Common Pleas erroneously ruled upon these unpreserved issues despite the objection of Appellant's attorney. These issues and the Court of Common Pleas decisions are set forth below.

**a) I of Respondent's Initial Brief-** All Appellant creditor claims are barred as a matter of law for Appellant's failure to properly and timely serve her Summons and Petition for Allowance of Claim within statutory thirty (30) day deadline.

**Court of Common Pleas** ruled that Appellant "failed to properly serve her Summons and Petition for Allowance of Claims as required under South Carolina law."

**b) II of Respondent's Initial Brief-** All Appellant creditor claims are barred by S.C. Code Ann. 15-3-530(1).

**Court of Common Pleas** ruled that "as evidenced in the very language of Appellant's creditor claims for breach of Divorce Decree and its accompanying HUD Uniform Settlement Statement for refinance, Appellant had notice of any breach well before three years prior to Decedent's death".

**c) III of Respondent's Initial Brief, last line:** Appellant failed to domesticate any foreign judgment in South Carolina against the Estate of Andrew Manigault

**Court of Common Pleas** did not address the domestication issue.

**d) IV of Respondent's Initial Brief:** Appellant's Issues on Appeal II and III arguments fail because the Personal Representative properly complied with the relevant prior version of S.C. Code 62-3-806(a) in effect at the time of Decedent's

death (which prior version did not contain the deadline for disallowance relied upon by Appellant).

**Court of Common Pleas ruled that “Appellant incorrectly cited the current version of S.C. Code Ann. 62-3-806(a) which was not in effect at the time of the Decedent’s death in 2010. The relevant version of the statute did not contain the new deadline for disallowance relied upon by the Appellant.”**

The Court of Common Pleas ruled upon these unpreserved issues and these findings should be vacated.

**III. THE COURT OF COMMON PLEAS ERRED IN ALLOWING NEW EVIDENCE TO BE SUBMITTED AT THE APPELLATE HEARING THAT WAS NOT PREVIOUSLY USED IN THE PROBATE COURT PROCEEDING.**

The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

At the appellate hearing on July 30, 2018, Respondent’s attorney presented the Court with new evidence, namely, a “Comparison of 2010 & 2014 S.C. Code, Section 62-3-806-Allowance of Claims”. Appellant’s attorney objected to the introduction of this new evidence and testified on the record that Respondent had been relying upon the 2014 S.C. Code 62-3-806 for allowance of claim in Respondent’s Motion for Summary Judgment and up until July 30, 2018. Appellant’s attorney argued that the 2010 S.C. Code 62-3-806 had never been used by the Respondent and that its’ use at the hearing was inappropriate.

The Court of Common Pleas cites to the 2010 S.C. Code 62-3-806 and compares it to 2014 S.C. Code 62-3-806 in its’ruling. This new evidence should not have been allowed and should be stricken from the record. Any decision by the Court of Common Pleas that includes any portion of the “Comparison of 2010 & 2014 S.C. Code” should be vacated.

**IV . THE COURT OF COMMON PLEAS ERRED IN FINDING THAT THE "REPORTER'S COMMENT" FROM AN EARLIER VERSION OF S.C. CODE ANN. 62-3-806 WAS NOT TO BE SHOWN A CONTROLLING ERROR.**

In the Court of Common Pleas' ruling, it cites the 2010 version of the S.C. Code 62-3-806(a) in deciding that Respondent's Disallowance of Appellant's claims were untimely. However, the Respondent did not plead the 2010 S.C. Code 62-3-806(a) in its' Motion for Summary Judgment or his Initial Brief. The Court found that because Appellant incorrectly cited S.C Code 62-3-806 (in that Appellant was using the 2014 version of that statute in her pleadings, as was the Respondent), that her arguments in connection with the "incorrect statute's Reporter's Comments were in apposite and need not be considered for purposes of this Order."

Appellant argues that the "Reporter's Comment" issue has not been addressed by the Court and that its' reliance on the 2010 S.C. Code 62-3-806(a) should cause this ruling to be vacated.

**V. THE COURT OF COMMON PLEAS ERRED IN FINDING THAT RESPONDENT'S DISALLOWANCE OF CLAIM WAS VALID BECAUSE IT CITED NEW EVIDENCE THAT HAD NOT BEEN USED IN THE PROBATE COURT PROCEEDING AND IT DID NOT RULE UPON APPELLANT'S STATUTE OF LIMITATION ARGUMENT.**

Arguments II and III are repeated here as though more fully set forth herein with regard to the New Evidence argument. With regard to Appellant's Statute of Limitation argument, in her Initial Brief, Appellant noted that the Probate Court had ruled that her two (2) creditor claims were timely filed. However, the Probate Court disregarded Appellant's Statute of Limitations argument with regard to the filing date of Respondent's Disallowance of Appellant's claims. Appellant's attorney had argued at the Probate Court Motion for Summary Judgment hearing and

at the Appellate Hearing that Respondent filed his Disallowance of Claims on January 19, 2016, years past the time period set forth in S.C. Code Ann. 62-3-806(a) (2014):

**“As to claims present in the manner described in Section 62-3-804(1) within the time limited prescribed in Section 62-3-803, within sixty days after the presentment of the claim or within fourteen months after the death of decedent, whichever is later, the personal representative must serve upon the claimant a notice stating that the claim has been allowed or disallowed in whole or in part.”**

Decedent passed away on March 5, 2010. Appellant's Creditor Claims were filed on September 15, 2010 and November 17, 2010. Therefore, Respondent had until May 15, 2011 (fourteen months after date of death) to file Disallowance of Appellant's Claims.

Respondent filed his Disallowance of Appellant's Claims on January 19, 2016, almost five years later. The Court of Common Pleas did not address this argument and instead, skipped over it and ruled that the Appellant had thirty (30) days to file a Summons and Petition with regard to the Disallowance of the Claim and that Appellant failed to do so based upon the 2010 version of S.C. Code 62-3-806(a).

It is important to note that the statute of limitations with which Respondent had to file a Notice of Disallowance of a creditor's claim was enacted in 2014. Respondent knew or should have known that there was now a deadline with which to file a Disallowance of Claim in an estate matter. Yet, Respondent did not file a Disallowance of Appellant's claim for another two years, well past the statute of limitations.

If the Court finds that Respondent did not file his Disallowance of Appellant's Claim within the statutory time period set forth in the 2014 version of S.C. Code 62-3-806(a), the Appellant's creditor claims are allowed and the remaining issue of timely service of Appellant's Summons and Petition re: Disallowance of claim is moot.

**VI. THE COURT OF COMMON PLEAS ERRED IN ADDING A SEPARATE GROUND FOR DISMISSAL OF APPEAL FOR FAILING TO COMPLY WITH STATUTORY DEADLINE AND COURT RULES.**

Court of Common Pleas added a separate ground in order to deny Appellant's Appeal.

The Court argues that the appellate documents were filed out of time and that the Initial Brief did not comply with Rule 208(b)(4) of the SCACR.

Respondent's counsel did not raise an objection to either of these grounds during the course of this case. In fact, Respondent's counsel and Appellant's counsel have given each other extensions on deadlines as a professional courtesy. This appeal was unusual in that there was no specific rule regarding extension on deadlines when a case is appealed from Probate Court to the Court of Common Pleas.

Also, Appellant is unaware of any legal means by which the Court of Common Pleas can insert a separate ground to deny an appeal without showing a bias toward Appellant. Therefore, Appellant respectfully requests that this ruling be vacated.

**CONCLUSION**

Appellant asks that the S.C. Court of Appeals find that the Foreign Judgment filed by Appellant in the Charleston County Probate Court be declared a valid claim against the estate; that the portions of the Charleston County Court of Common Pleas' Order Denying Appeal that addressed issues not preserved for appeal be vacated, that the evidence known as the Comparison sheets submitted at the July 30, 2018 hearing that was new evidence be stricken from the record and any reference to said evidence in the Order Denying Appeal be vacated; that Respondent's Disallowance of Claim be barred due to non-compliance with the statute of limitations; that

Appellant's two Creditor Claims be allowed; and that the independent and separate ground of appeal dismissal by the Charleston County Court of Common Pleas be vacated.

May 20, 2019

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

APPELLATE CASE NO. 2019-000076  
Case No. 2017-CP-10-03110  
(formerly Probate Court Case No. 2010-ES-10-00413)

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MORRIS ELLISON, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
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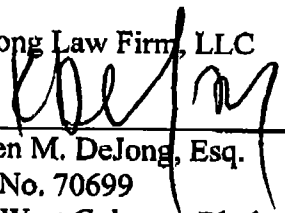
PROOF OF SERVICE

I certify that I have served Appellant's Initial Brief, Appellant's Designation of Matter to be Included in the Record on Appeal on Respondent Morris Ellison, by fax and depositing a copy of it via commercial delivery on May 20, 2019, addressed to his attorney of record, James D. Myrick, Esq., Womble Bond Dickinson, LLP, 5 Exchange Street, Charleston, SC 29402.

May 20, 2019

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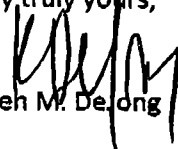
Re: Carol Manigault v. Morris Ellison, Personal Representative of the Estate of Andrew Manigault  
Case No. 2019-000076  
Formerly Case No. 2017-CP-10-03110

Dear Hon. Kitchings:

Enclosed please find original and one copy of Appellant's Initial Brief, Appellant's Designation of Matter to be Included in the Record on Appeal and Proof of Service in connection with the above captioned matter.

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

Very truly yours,



Karen M. DeJong

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