

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAY 29 2019

APPEAL FROM RICHLAND COUNTY

The Honorable Amy W. McCulloch, Probate Judge

S.C. SUPREME COURT

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.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PETITION
FOR WRIT OF CERTIORARI**

John M. S. Hoefler
Chad N. Johnston
John W. Roberts
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300

Attorneys for Respondents

May 29, 2019
Columbia, South Carolina

Respondents, in accordance with Rule 240, SCACR, hereby submit the within memorandum in support of their Motion to Dismiss Petitioner's May 2, 2019, petition for writ of certiorari to the court of appeals' orders dismissing an underlying appeal from an order of the probate court of Richland County in the above-captioned matter (Petition). Respondents seek an order of this Court dismissing the Petition as moot. The underlying issue in this case was whether a federal estate tax return should be filed by the personal representative of a decedent's estate to make available to that decedent's surviving spouse a significant estate tax benefit. The probate court found in its January 26, 2019, order that this estate tax return should be filed, and subsequent to Petitioner's filing of her appeal to the court of appeals and the instant Petition, the return was filed, irrevocably vesting the surviving spouse with the right to this estate tax benefit. Accordingly, no actual controversy capable of relief currently exists and any decision by this Court would have no practical effect. The Petition is, accordingly, moot and must therefore be dismissed.

BACKGROUND

The underlying 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 surviving spouse of Bertha Maust-Thompson (Decedent). [Appx. at 4.]

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 value of taxable gifts which have been made by a decedent. [Appx. at 3.] However, 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 federal 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). [Appx. at 3.]

In the event a first-to-die spouse has not fully used the basic exclusion amount, a concept known as “portability” makes the unused portion available to the surviving spouse. This unused portion is the “deceased spousal unused exclusion” amount, or “DSUE” amount. *See* 26 U.S.C.A. § 2010(c)(4). [Appx. at 3.] 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) (stating 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 simply by completing and timely filing the estate tax return for the deceased spouse’s estate. *See* 26 U.S.C.A. § 2010(c)(5)(A). [Appx. at 3.] If the portability election is not made through the timely filing of the estate tax return, then the DSUE is lost. *Id.* Once made, the portability election becomes “irrevocable” as soon as the due date of the estate tax return has passed. 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.”). [Appx. at 12.]

In the Application, Mr. Thompson and, subsequently, Respondents¹ sought an order of the probate court directing the Decedent’s personal representative, the Petitioner, to timely prepare and file a federal estate tax return for Decedent’s estate to elect portability of the DSUE in accordance with her fiduciary duties as personal representative. [Appx. at 3-4.] Petitioner, who

¹ Mr. Thompson passed away subsequent to his filing of the Application, but the Respondents, Mr. Thompson’s children and the executors of his estate, were substituted for Mr. Thompson for purposes of the Application. [Appx. at 4.]

also is the daughter of Decedent and a beneficiary of her estate (as well as the step-daughter of Mr. Thompson), had refused to file the estate tax return to elect portability, notwithstanding that Mr. Thompson had requested that the estate tax return be filed and offered to pay for the costs of the preparation and filing of the return.

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 elect portability of the DSUE (January 26 Order). [Appx. at 3-17.] The probate court found that the approximate amount of the DSUE was \$3 million, which equates to a real dollar value of approximately \$1.2 million to Mr. Thompson's estate. [Appx. at 7, 15.] Accordingly, if the portability election was not made by the timely filing of the estate tax return for Decedent's estate, Mr. Thompson's estate would 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. [*Id.*] In contrast, the probate court found that the DSUE was of no value to Decedent's estate or any beneficiaries of the estate. [Appx. at 3, 15.] The probate court further found that neither the Decedent's will, a premarital agreement between the Decedent and Mr. Thompson, nor any other written or credible evidence demonstrated that the Decedent even understood the DSUE, let alone, provided instruction that the portability election not be made. [Appx. at 8-9, 12-14.] The probate court, therefore, concluded that, based on the evidence presented and the applicable law, there was no valid reason for Petitioner to refuse to file the estate tax return in contradiction of her fiduciary duties as the personal representative of Decedent's estate. [Appx. at 15.]

In the January 26 Order, the probate court directed Petitioner to take the following actions in order to carry out her fiduciary duties under the order:

- a. 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 probate court and Respondents within fifteen (15) days of the date of the order (*i.e.*, February 10, 2019);
- b. Provide a draft of the final estate tax return and any supporting documentation, appraisals, and valuations to the probate court and the Respondents and their counsel within forty-five (45) days of the date of the order (*i.e.*, March 12, 2019);
- c. Unless Respondents and their counsel have any comments or objections to the draft return, or the probate court shall find it insufficient, file the estate tax return to elect portability no later than sixty (60) days after the date of the order (*i.e.*, March 27, 2019).

[Appx. at 16-17.] The probate court set these deadlines because the absolute deadline for the estate tax return to be filed was May 28, 2019. [Appx. at 7.] The probate court further provided that Petitioner's failure to comply with the directives of the January 26 Order would result in the appointment of a special administrator to prepare and file the estate tax return to elect portability. [Appx. at 17.]

Subsequent to the issuance of the January 26 Order, Respondents consented to Petitioner's request for consent to a direct appeal to this Court under S.C. Code Ann. §62-1-308(l). [Appx. at 18.] On February 4, 2019, Petitioner filed a Notice of Appeal with the court of appeals notwithstanding the express limitation in § 62-1-308(l) for direct appeal to this Court and Respondents' express consent to a direct appeal only to this Court. When Respondents informed Petitioner her appeal had been filed in the wrong court, Petitioner declined to take any action to address the issue and indicated that the filing of the Notice of Appeal with the court of appeals was intentional. *See* electronic mail correspondence between Respondents' counsel and Petitioner's counsel, February 11-12, 2019, copy attached hereto and incorporated herein as Mem. in Supp. Ex. A. On February 12, 2019, Respondents filed a letter with the Court of Appeals to bring to its

attention that the appeal was filed in the wrong appellate court. [Appx. at 20.] Two days later, Petitioner mailed a letter to the court of appeals providing her “consent” to a transfer of her appeal to this Court, but she did not request a transfer of her appeal. [Appx. at 22.] On February 15, 2019, the clerk of the court of appeals advised Respondents that a motion should be filed with this Court in order to have it assume jurisdiction over the appeal. [Appx. at 24.] Petitioner never filed any such motion. Nor did Petitioner file a direct appeal in this Court even though the time to do so had not yet expired. Instead, Petitioner chose to continue pursuing her appeal at the court of appeals.

Also on February 15, 2019, the court of appeals issued its order dismissing Petitioner’s appeal (“Dismissal Order”). [Appx. at 25-26.] The court of appeals found that the January 26 Order was not a “final order” and therefore could not be appealed under S.C. Code Ann. § 62-1-308, which only permits appeals of “a final order, sentence, or decree of the probate court.” [*Id.* (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)).] Petitioner filed a “Motion for Reconsideration Pursuant to Rule 221” of the Dismissal Order with the court of appeals on February 26, 2019. [Appx. 27-29.] Petitioner did not raise the issue of transfer of her appeal to this Court in her motion for reconsideration. [*Id.*]

While Petitioner pursued her improper appeal at the court of appeals, in purported compliance with the first deadline of the January 26 Order, Petitioner filed a letter with the probate court on February 7, 2019, stating that she had engaged an accounting firm to prepare the estate tax return, a copy of which is attached hereto and incorporated herein by reference as Mem. in Supp. Ex. B. However, Petitioner did not comply with the subsequent March 12, 2019, deadline under the January 26 Order for her to provide the probate court and Respondents the draft estate tax return and its supporting documentation. Because of Petitioner’s non-compliance and the quickly approaching May 28, 2019, deadline to file the tax return, Respondents moved the probate

court to appoint a special administrator in accordance with the terms of the January 26 Order and recommended the appointment of Mr. W. Steven Johnson, a highly-qualified attorney that practices in the areas of estate and probate matters. On March 15, 2019, the probate court issued an order appointing Mr. Johnson as Special Administrator to prepare the estate tax return in accordance with the terms of the January 26 Order and directing Petitioner to provide the Special Administrator and the probate court copies of all information and documentation necessary for the preparation of the return by March 18, 2019. A copy of the probate court’s March 15, 2019 order is attached hereto and incorporated herein by reference as Mem. in Supp. Ex. C (March 15 Order).

Subsequent to the appointment of the Special Administrator—and almost two months after the issuance of the January 26 Order and over one month after the issuance of the Dismissal Order—Petitioner filed with the court of appeals a “Motion for Expedited Reinstatement of Appeal and Transfer to the Supreme Court.” [Appx. at 43.] In support of this motion, Petitioner stated:

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.**

[Appx. at 44 (emphasis supplied).]

On April 5, 2019, the court of appeals denied Petitioner’s “Motion for Reconsideration Pursuant to Rule 221” of the Dismissal Order, thereby confirming its prior dismissal of Petitioner’s appeal. [Appx. at 52.] The court of appeals further stated, because the case had been dismissed, it would not be taking any action on Petitioner’s Motion for Expedited Reinstatement of Appeal and Transfer to the Supreme Court. [*Id.*]

The Special Administrator submitted a draft of the estate tax return to the probate court on April 15, 2019, and on even date the probate court issued an order directing the parties to submit any proposed changes or responses to the draft return to the Special Administrator by April 30, 2019, and authorizing him to file the final tax return prior to the May 28, 2019, deadline unless stayed by an order of a South Carolina appellate court. A copy of the probate court's April 15, 2019 order is attached hereto and incorporated herein by reference as Mem. in Supp. Ex. D (April 15 Order).

On May 2, 2019—27 days after her motion for reconsideration under Rule 221, SCACR, was denied by the court of appeals and less than one month before the May 28, 2019, return filing deadline—Petitioner filed her Petition for Writ of Certiorari with this Court seeking review of the court of appeals' decision to dismiss her appeal. In her Petition, Petitioner acknowledged that “time was of the essence due to the IRS filing deadline” and further stated:

Additionally, any delay in an appeal would only further prejudice the parties....[T]he current deadline for filing the estate tax return to elect the DSUE is May 28, 2019, a deadline that is fast approaching....Because of the time of the Order coupled with the IRS deadline, Petitioner's only remedy is to appeal and to seek prompt consideration by this Court.

...

The present deadline for electing the DSUE is within one month and...the Probate Court is proceeding with requiring the estate tax return to be filed. The effect of a dismissal will be to render the matter moot, preventing any appeal at all.

[Petition at 5-8.] Notably, Petitioner never sought “prompt consideration by this Court” by asking for expedited review and consideration of the Petition, *cf.* Rule 263(b), SCACR, nor did she seek an order from this Court or any other appellate court staying the filing of the estate tax return by the Special Administrator. *Cf.* Ex. D, April 15 Order.

On May 24, 2019, the Special Administrator filed with the IRS via certified mail the estate tax return for Decedent's estate electing portability. *See* May 28, 2019, Affidavit of W. Steven

Johnson, copy attached hereto and incorporated herein by reference as Mem. in Supp. Ex. E. On May 28, 2019, the deadline for revoking the portability election passed. The estate tax return for Mr. Thompson's estate is planned to be filed on or about May 31, 2019, and will take into account and rely on the DSUE amount set forth on Decedent's estate tax return. See May 29, 2019, Affidavit of Julia Varholla, copy attached hereto and incorporated herein by reference as Mem. in Supp. Ex. F.

ARGUMENT

I. This case is moot.

“An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Id.* (quoting *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). “Where only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits, or consider the granting of a new trial after it has become impossible to have a new trial in the case.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 597.

In the Application, Respondents sought an order enjoining Petitioner to timely file the estate tax return for Decedent's estate to elect portability of the DSUE. The sole disputed issue in this case was whether the estate tax return should be filed to elect portability. The probate court found that the portability election should be made and the estate tax return electing portability has now been filed with the IRS. Pursuant to the Internal Revenue Code and the IRS regulations, upon the passing of the May 28, 2019, deadline to elect portability, the election became “irrevocable.”

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.”). Accordingly, because the sole relief Respondents sought has been obtained and cannot be revoked, there is no longer a justiciable issue and this matter is moot. Simply put, any future judgment by this Court or any other court would have no practical effect because the portability election cannot be undone. Therefore, the Petition should be dismissed as moot under *Curtis, supra*.

Furthermore, and as discussed above, Petitioner has previously acknowledged, and, in fact, argued, that the passing of the May 28, 2019, deadline renders this matter moot. *See* Petition at 5-6 (“the current deadline for filing the estate tax return to elect the DSUE is May 28, 2019, a deadline that is fast approaching....Because of the time of the Order coupled with the IRS deadline, Petitioner’s only remedy is to appeal and to seek prompt consideration by this Court.”) and at 7-8 (“[t]he present deadline for electing the DSUE is within one month and...the Probate Court is proceeding with requiring the estate tax return to be filed. The effect of a dismissal will be to render the matter moot, preventing any appeal at all.”). *See also* Appx. at 44 (moving for expedited consideration of her “Motion for Reconsideration Pursuant to Rule 221” at the court of appeals because this matter would “be rendered moot by the passing of the May 28, 2019 deadline.”). Having done so, Petitioner is bound by her arguments in this regard and the Petition should be dismissed for this reason as well.

Finally, Petitioner cannot state any basis for relief from her admission that the issue presented in her Petition is moot. Petitioner had adequate time to pursue her appeal and, in any event, made no real effort to have her appeal heard prior to the filing deadline. Rather, the exact opposite occurred:

- Petitioner waited over a week after the January 26 Order to file her one-page Notice of Appeal;
- Petitioner filed her appeal with the court of appeals even though S.C. Code Ann. § 62-1-308(l) provides only for a direct appeal to this Court and Respondents only consented to a direct appeal to this Court;
- Petitioner did not seek expedited consideration when she filed her Notice of Appeal;
- Petitioner waited until 11 days after the court of appeals' order dismissing her appeal to file an approximately two-page "Motion for Reconsideration Pursuant to Rule 221" with the court of appeals;
- Petitioner did not initially seek expedited consideration of her "Motion for Reconsideration Pursuant to Rule 221" with the court of appeals, but Respondent did file a motion for an **extension of time** to file her initial brief with the court of appeals, a copy of which hereto and incorporated herein by reference as Mem. in Supp. Ex. G;
- It was not until two months after the January 26 Order, one month after the court of appeals' Dismissal Order, and a week after the probate court's March 15 Order appointing the Special Administrator that Petitioner sought any type of expedited consideration at the court of appeals; and
- Despite acknowledging that her only avenue to avoid having her appeal mooted was to seek "prompt consideration by this Court," Petitioner waited until 27 days after the court of appeals' order denying her motion for reconsideration under Rule 221, SCACR—and less than one month before the May 28, 2019, return filing deadline—to file her Petition and she never sought expedited consideration or review by this Court.

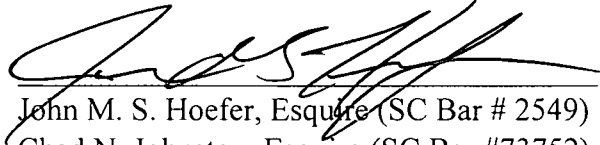
Therefore, dismissal of the Petition is warranted by Petitioner's lack of diligence in pursuing an appeal.

CONCLUSION

There are numerous grounds for denial of the Petition which, if necessary,² Respondents will address in their Return to the Petition. However, this Court need not reach those grounds or otherwise consider the Petition because it is moot and should be dismissed as such.

² Contemporaneously with the filing of the Motion to Dismiss and this Memorandum in Support, Respondents are filing a Motion for Stay Time Limits to request a stay of the deadline to file their Return to the Petition until the Motion to Dismiss has been decided.

Respectfully Submitted,



John M. S. Hoefer, Esquire (SC Bar # 2549)
Chad N. Johnston, Esquire (SC Bar #73752)
John W. Roberts, Esquire (SC Bar # 78889)

WILLOUGHBY & HOEFER, P.A.

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jhoefer@willoughbyhoefer.com

cjohnston@willoughbyhoefer.com

jroberts@willoughbyhoefer.com

Attorneys for Respondents

Columbia, South Carolina
May 29, 2019

EXHIBIT A

[REDACTED]

From: Spruill, W. Duvall <DSpruill@TurnerPadget.com>
Sent: Tuesday, February 12, 2019 1:47 PM
To: John Hoefer; Kennedy, Catherine H.
Cc: John Roberts
Subject: RE: Thompson Estate

John, We were trying to reconcile 308(l) with rule 203 which calls for appeal to the Court of Appeals. We shall not oppose any efforts to have the case transferred to the Supreme Court. Duvall

Duvall Spruill
Attorney
Turner Padget Graham & Laney P.A.
PO Box 1473 | Columbia, SC 29202
1901 Main Street, Suite 1700 | Columbia, SC 29201
803-227-4291 | Fax 803-400-1528
dspruill@turnerpadget.com

-----Original Message-----

From: John Hoefer [mailto:JHoefer@Willoughbyhoefer.com]
Sent: Monday, February 11, 2019 12:14 PM
To: Spruill, W. Duvall; Kennedy, Catherine H.
Cc: John Roberts
Subject: FW: Thompson Estate

Duvall/Cathy:

As I read §62-1-308(l), and as we indicated in our written consent attached to your Notice of Appeal, this appeal is properly brought at the Supreme Court and not the Court of Appeals.

Do you intend to bring that to the attention of the Court of Appeals and ask that the case be transferred to the Supreme Court under Rule 204 SCACR? If not, we intend to do so.

Thanks.

John Hoefer

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT B

Turner | Padgett

2019 FEB -7 PM 2:52

AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

REPLY TO:

W. Duvall Spruill

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

February 7, 2019

VIA HAND DELIVERY

Ms. Lori Elrod
Richland County Probate Court
1701 Main Street
2nd Floor, Suite 207
Columbia, South Carolina 29201

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

Dear Ms. Elrod:

As reflected in the attachment, the Estate of Bertha Virginia Maust-Thompson has engaged the firm of Burkett, Burkett and Burkett to prepare an estate Tax return. Please file with the Court and return a clocked-copy via our courier.

Yours truly,



W. Duvall Spruill

WDS/cag

Attachment as stated

cc: John W. Roberts, Esquire (*Via U.S. Mail & Email*)

TPGL 9231042v1

Spruill, W. Duvall

From: Marilyn White <lprush2@gmail.com>
Sent: Monday, February 4, 2019 11:35 AM
To: Kennedy, Catherine H.; Marilyn White; Spruill, W. Duvall
Subject: Fwd: New Estate

FILED
2019 FEB -7 PM 2:52
AMY W. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

----- Forwarded message -----

From: Marilyn White <lprush2@gmail.com>
Date: Fri, Feb 1, 2019 at 1:52 PM
Subject: Re: New Estate
To: Ronald Burkett <ronnyb@burkettcpas.com>
CC: Mark Hendrix <markh@burkettcpas.com>

Dear Ronny & Mark,

Thank you for agreeing to prepare a Federal Estate Tax return for my mother's estate. And thank you, Mark, for getting right on this so quickly and helping to ease my mind on this stressful issue.

Most Sincerely,

Marilyn (Missy) White
Personal Representative
Estate Bertha Virginia LeRoy Maust Thompson

 Virus-free. www.avq.com

On Fri, Feb 1, 2019 at 1:30 PM Ronald Burkett <ronnyb@burkettcpas.com> wrote:

Dear Mrs. White,

Burkett Burkett Burkett Certified Public Accountants, P.A. will prepare a required Federal Estate tax return for the estate of Bertha Virginia LeRoy Maust Thompson if requested by you.

Sincerely,

Ronald Burkett

Tax Advice Disclaimer: Pursuant to requirements related to practice before the Internal Revenue Service, Burkett Burkett & Burkett Certified Public Accountants, P.A. is required to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein.

NOTICE: All email sent to or from the Burkett Burkett & Burkett CPAs, P.A. as well as the Burkett Financial Services, LLC e-mail system is subject to archiving, monitoring and/or review by Burkett personnel.

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2019 FEB -7 PM 2:53
AMY W. MACQUELLOTT
PROBATE JUDGE
RICHLAND COUNTY, S.C.

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-ES-40-01330

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.)

ORDER APPOINTING
SPECIAL ADMINISTRATOR

FILED
2019 MAR 15 PM 4:33
AMY M. HICOURT
PROBATE JUDGE
RICHLAND COUNTY, S.C.

This matter comes before this Court on the March 12, 2019 Motion of Applicants Terri Ann Thompson, Wendy K. Thompson, and Robert M. Thompson, Jr., Personal Representatives of the Estate of Robert Miller Thompson, Sr., to appoint a Special Administrator of the Estate of Bertha Maust-Thompson to prepare and file the federal estate tax return for Decedent's Estate to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount pursuant to 26 U.S.C.A. § 2010 and requiring that the cost of such preparation and filing be borne by Decedent's Estate. The Order of this court, dated January 26, 2019, required Marilyn M. White, as Personal Representative of the Estate of Bertha Maust-Thompson, to:

1. Employ an accountant to prepare the estate tax return and provide proof of such employment by February 10, 2019. (MS. WHITE HAS PROVIDED PROOF THAT SHE HAS EMAILED BURKETT, BURKETT, BURKETT CERTIFIED PUBLIC ACCOUNTANTS AND THAT THEY HAD AGREED TO PREPARE THE RETURN IF REQUESTED. HOWEVER, THEY NOW ARE UNABLE TO ASSIST.);
2. Provide a draft of the estate tax return to the court and Applicants by March 12, 2019. (THIS HAS NOT BEEN PROVIDED); and,

3. File the return by March 27, 2019.

Ms. White filed her Notice of Appeal to the Court of Appeals with this Court on February 5, 2019. This Court is advised that Respondent's appeal to the Court of Appeals was dismissed on February 15, 2019; however, Ms. White filed a Motion for Re-hearing on February 26, 2019.

On March 12, 2019, the deadline for the draft return, Respondent filed a "Motion for Supersedeas Pursuant to Rule 241(c)" with the Court of Appeals, asking the Court of Appeals to stay the deadlines listed above, issued in this court's order of January 26, 2019.

It appears that the parties attempted to agree to a direct appeal from the Probate Court as allowed by S.C. Code Ann. § 62-1-308 (I), (see attached Spruill and Roberts letters attached as Exhibit A); however, this direct appeal must be to the Supreme Court, not the Court of Appeals; therefore Mr. Spruill has incorrectly filed his appeal.

It is clear that Ms. White has not hired an accounting firm that can complete the return by the deadline, has not provided any firm or accountant with the necessary information to complete the return, and the mandatory and final deadline for the Decedent's Estate to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount pursuant to 26 U.S.C.A. § 2010 is **MAY 28, 2019**. After this date, the election is lost forever and the appeal will be moot.

Therefore, pursuant to this court's order dated January 26, 2019, paragraph VI of the Conclusions and S.C. Code Ann. § 62-3-614, this Court shall appoint a Special Administrator to secure the proper performance of the duty of the Personal Representative of the Decedent's Estate to file the estate tax return to elect portability. Mr. Johnson is a partner in the law firm of Todd and Johnson, L.L.P., practices in the areas of estate planning and probate matters, and is a specialist in trust and estate planning certified by the Supreme Court. While his fees and costs will be paid by the Applicants, upon proper Motion and hearing, this court will consider whether or not these fees and costs should be reimbursed by the Estate of Bertha Maust-Thompson. Mr. Johnson will submit to the jurisdiction of this Court and agree to perform the duties as Special Administrator by executing and providing to the Court the Qualification and Statement of Acceptance attached as Exhibit B to this order.

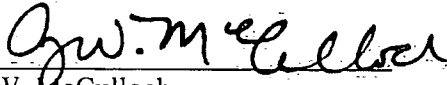
Marilyn M. White is required, no later than **Monday, March 18, 2019 by 5:00 PM**, to submit to Mr. Johnson at his offices located at 609 Sims Avenue, Columbia, South Carolina, 29205, or via electronic mail addressed to wsj@toddandjohnson.com all documents or other information required to prepare the tax return and shall file a copy of such submission with this

Court within that same time frame. If she shall fail to do so, she is required to appear for a Rule to Show Cause hearing before this this Court on **Tuesday March 19, 2019 at 4:00 PM** for this court to determine if she should be held in contempt and removed as Personal Representative.

THEREFORE, IT IS HEREBY ORDERED that Applicants' Motion to appoint a Special Administrator pursuant to the Order is **GRANTED** and attorney W. Steven Johnson is hereby appointed to serve as same without bond. Mr. Johnson will prepare the estate tax return on behalf of Decedent's Estate to elect portability of the DSUE for Applicants' benefit and file the draft with the Court for approval and filing by separate order.

IT IS FURTHER ORDERED THAT Respondent shall provide to the Special Administrator and this Court copies of all information and documentation necessary for the preparation of the estate tax return to elect portability of the DSUE for Applicants' benefit by **Monday, March 18, 2019 by 5:00 PM.**

AND IT IS SO ORDERED.



Amy W. McCulloch
Richland County Probate Judge

March 15, 2019
Columbia, South Carolina

EXHIBIT A

4 of 8 a

RECEIVED

DEC 20 2018

Turner | Padget

Willoughby & Hoefler, P.A.

W. Duvall Spruill

REPLY TO:

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

December 19, 2018

John M.S. Hoefler, Esquire
John W. Roberts, Esquire
Willoughby & Hoefler, P.A.
930 Richland Street
Columbia, SC 29201

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

Dear Gentlemen:

According to S.C. Code Ann. §62-1-308(L), appeal may be made to the appellate court rather than the circuit court if the parties consent. Would you consent to a direct appeal?

Yours truly,



W. Duvall Spruill

WDS/adgc

cc: Catherine H. Kennedy, Esquire (Via E-Mail Only)

588 a

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
CHAD N. JOHNSTON
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
JOHN W. ROBERTS
R. WALKER HUMPHREY, II***
CHRISTOPHER M. CAMPBELL
ANDREW R. HAND****

ELIZABETH S. MABRY
JAMES PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS

**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

****ALSO ADMITTED IN NORTH CAROLINA

OFFICES:

COLUMBIA
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SC 29202-8416

AREA CODE 803
TELEPHONE 252-3300
FAX 256-8062

CHARLESTON
133 RIVER LANDING DRIVE
SUITE 200
CHARLESTON, SC 29492

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

January 28, 2019

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(1).

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

608 a

EXHIBIT B

7980

STATE OF SOUTH CAROLINA)	
)	IN THE PROBATE COURT
COUNTY OF RICHLAND)	
)	CASE NO: 2017-ES-40-01330
)	
IN THE MATTER OF THE ESTATE)	
FOR BERTHA MAUST-THOMPSON)	

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept appointment and agree to perform the duties and discharge the trust of the office of Special Administrator of the foregoing Estate and submit to the jurisdiction of the Court in this matter. I understand and acknowledge I am being appointed to prepare and file the federal estate tax return for the Decedent's Estate to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount pursuant to 26 U.S.C.A. § 2010.

Signature: _____

Print Name: _____

Address: _____

Telephone: _____

Email: _____

898a

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-ES-40-01330

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.)

2019 APR 15 PM 1:58
AMY MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

**ORDER DIRECTING THE
FILING OF THE ESTATE
TAX RETURN**

THIS MATTER COMES BEFORE THE COURT upon the filing of the completed draft tax return of the Estate of Bertha Maust-Thompson (hereinafter "the Estate") by attorney W. Steven Johnson, as Special Administrator for the Estate on April 15, 2019. The court directs that all proposed changes, amendments, and responses to the draft tax return be submitted to W. Steven Johnson, by Tuesday April 30, 2019, copying the court and all other parties. After receipt and review of any proposed changes, the Special Administrator shall be authorized to file the final tax return of the Estate on May 27, 2019, unless stayed by an order of an appellate court of South Carolina. The court is ever mindful of the ultimate deadline to file the tax return of the Estate by **May 28, 2019**, after which the ability for the Estate to elect portability of the deceased spousal unused exclusion (DSUE) shall forever be lost. The court further brings this deadline to the attention of all parties involved as well as any court with appellate jurisdiction over this matter within the State of South Carolina, so as to not jeopardize the filing of the Estate's tax return by this deadline.

IT IS SO ORDERED.

April 15, 2019
Columbia, South Carolina

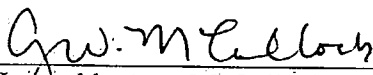

The Honorable Amy McCulloch
Judge, Richland County Probate Court

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

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.

AFFIDAVIT OF W. STEVEN JOHNSON

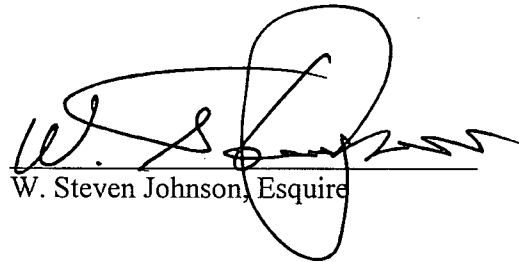
PERSONALLY APPEARED BEFORE ME **W. Steven Johnson**, who deposes and says
as follows:

1. I am over 18 years of age, and I am qualified and competent to make this affidavit.
2. I make this affidavit based upon my personal knowledge, except as to those matters stated upon information and belief and, as to those matters, I believe them to be true.
3. I am an attorney with the law firm of Todd & Johnson, L.L.P., and am licensed to practice in South Carolina.
4. On March 15, 2019, the Richland County Probate Court issued an order appointing me as special administrator to prepare the federal estate tax return for the estate of Bertha Maust-Thompson (the Decedent) to elect portability of the Deceased Spousal Unused Exclusion (DSUE)

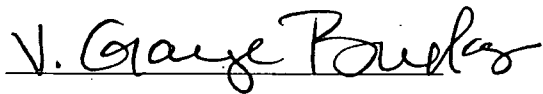
amount for the benefit of the estate of Robert Miller Thompson, Sr. I also was directed to file a draft of the estate tax return with the Probate Court for approval.

5. On April 15, 2019, I provided a draft of the estate tax return to the Probate Court and Petitioner and Respondents. On that same date, the Probate Court issued an order directing the parties to submit any proposed changes or responses to the draft return to me by April 30, 2019, and authorizing me to file the final estate tax return with the Internal Revenue Service (IRS) prior to the May 28, 2019 return filing deadline unless stayed by an order of a South Carolina appellate court.

6. On May 24, 2019, I filed with the IRS via certified mail the estate tax return for Decedent's estate electing portability of the DSUE. A copy of the proof of mailing receipt is attached hereto as Exhibit 1.


W. Steven Johnson, Esquire

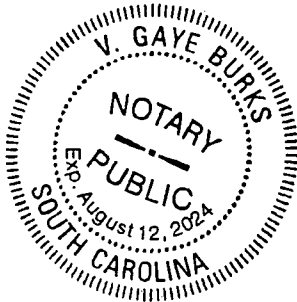
SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28 DAY OF
MAY 2019.



Notary Public for the State of South Carolina

My commission expires 8/12/2024

[SEAL]



CERTIFIED MAIL

Law Offices of
Todd & Johnson, L.L.P.
Post Office Box 11262
Columbia, South Carolina 29211



7018 0680 0000 8799 9707



US POSTAGE
\$08.65⁰
First-Class
Mailed From 29205
05/24/2019
032A 0061821433

EXHIBIT 1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Department of the Treasury
Internal Revenue Service Center
Estate Tax Division
Cincinnati, Ohio 45999



9590 9403 0166 5120 1641 22

2. Article Number (Transfer from service label)

7018 0680 0000 8799 9707

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail[®]
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express[®]
- Registered Mail[™]
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation[™]
- Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-8053

Domestic Return Receipt

7018 0680 0000 8799 9707

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee \$ [redacted]

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ [redacted]
- Return Receipt (electronic) \$ [redacted]
- Certified Mail Restricted Delivery \$ [redacted]
- Adult Signature Required \$ [redacted]
- Adult Signature Restricted Delivery \$ [redacted]

Postage \$ [redacted]

Total Postage and Fees \$ **8.65**

See Reverse for Instructions

Postmark: COLUMBIA, SC MAY 24 2019 FIVE POINTS STATION

Department of the Treasury
Internal Revenue Service Ctr.
Estate Tax Division
Cincinnati, Ohio 45999

Department of the Treasury
Internal Revenue Service Center
Estate Tax Division
Cincinnati, Ohio 45999

EXHIBIT F

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

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.

AFFIDAVIT OF JULIA VARHOLLA

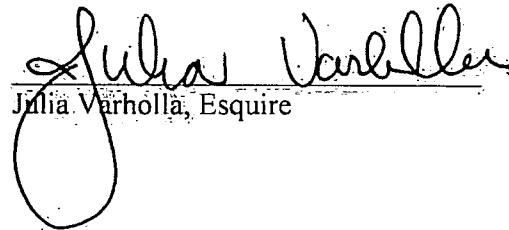
PERSONALLY APPEARED BEFORE ME **Julia Varholla**, who deposes and says as follows:

1. I am over 18 years of age, and I am qualified and competent to make this affidavit.
2. I make this affidavit based upon my personal knowledge, except as to those matters stated upon information and belief and, as to those matters, I believe them to be true.
3. I am an attorney with the law firm of Lovett Bookman Harmon Marks LLP, and am licensed to practice in the Commonwealth of Pennsylvania.
4. I have been hired by the Estate of Robert Miller Thompson, Sr., to assist in the administration of the Estate and to prepare and file the federal estate tax return for Mr. Thompson's Estate.

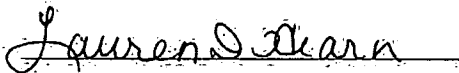
5. On May 24, 2019, I received a copy of the federal estate tax return that was filed on behalf of the Estate of Bertha Maust-Thompson electing portability of the deceased spousal unused exclusion (DSUE) and providing the calculation of the DSUE amount.

6. I plan to file with the Internal Revenue Service the federal estate tax return for Mr. Thompson's Estate on or about May 31, 2019.

7. The filed return will take into account and rely on the DSUE amount set forth on the federal estate tax return filed on behalf of the Estate of Bertha Maust-Thompson because Mr. Thompson was the surviving spouse of Mrs. Maust-Thompson.


Julia Varholla, Esquire

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 27th DAY OF
MAY 2019.



Notary Public for the Commonwealth of Pennsylvania

My commission expires June 29, 2022

[SEAL]

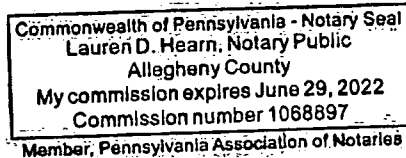


EXHIBIT G

89208

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch, Probate Court Judge

Case No. 2017-ES-40-01330

RECEIVED

MAR 05 2019

SC Court of Appeals

Appellate Case No. 2019-000169

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.

MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF OF APPELLANT

Appellant respectfully requests this Court to allow five days following the Court's
decision on the pending Motion for Reconsideration to file Appellant's Initial Brief in this case.

In this regard, we would show unto the Court the following:

1. On February 4, 2019, a Notice of Appeal was filed appealing from the Order of the Probate Court dated January 26, 2019.

2. On February 15, 2019, the Court of Appeals issued its Order of Dismissal of the appeal on the grounds that the Order of January 26, 2019 from Richland County Probate Court was not a final Order.
3. On February 26, 2019, Appellant filed her Motion to Reconsider the February 15, 2019 Order of Dismissal, pointing out that the Order of the Probate Court was, in fact, a final and appealable Order.
4. The Court of Appeals has not yet ruled on the Motion to Reconsider.
5. But for the Order of Dismissal, the Initial Brief of Appellant would be due on March 6, 2019.
6. Appellant hereby requests that the deadline for filing its Initial Brief be extended for a reasonable period to include five business days after receiving the order from the Court on the pending Motion to Reconsider.
7. This request is appropriate in light of the uncertainty arising from the Order of Dismissal.


W. Duvall Spruill, Esq. (Bar No. 5295)
E-mail: dspruill@turnerpadget.com
Catherine H. Kennedy, Esq. (Bar No. 3391)
E-mail: ckennedy@turnerpadget.com
TURNER PADGET
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200
Fax: (803) 799-3957
ATTORNEYS FOR APPELLANT

March 5, 2019
Columbia, South Carolina