

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

RECEIVED
SEP 06 2019
SC 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.

MOTION FOR COSTS

Respondents, above-named, pursuant to Rules 222 and 240 of the South Carolina Appellate Court Rules (SCACR), respectfully move for an order taxing costs against Appellant.

In support of its motion, Respondents would respectfully show unto this Court as follows:

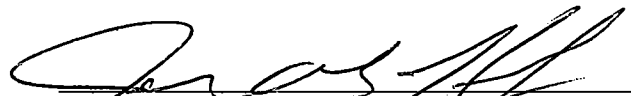
1. On February 4, 2019, Appellant filed a notice of appeal in this Court from an order of the Richland County Probate Court in the above-referenced matter.
2. On February 15, 2019, this Court dismissed the appeal on the basis that Appellant had not appealed from a final, appealable order.
3. On February 26, 2019, Appellant filed her petition for rehearing of the order dismissing her appeal.

4. Pursuant to this Court's request, Respondents filed their return to the petition for rehearing on March 25, 2019.
5. Subsequent to this Court's dismissal order, on March 12, 2019, Appellant filed a "Motion for Supersedeas Pursuant to Rule 241(c)" seeking a stay of the order of the Probate Court from which she had appealed. Appellant filed this motion with this Court even though Rule 241(d), SCACR, expressly requires any "application for supersedeas" to be made first to the lower court absent "extraordinary circumstances," the existence of which Appellant did not attempt to show in her motion to this Court.
6. Respondents filed their return to Appellant's improper supersedeas motion on March 22, 2019.
7. Also subsequent to this Court's dismissal order and even though Appellant had already filed a petition for rehearing, on March 22, 2019, Appellant filed a "Motion for Expedited Reinstatement of Appeal and Transfer to the Supreme Court" in an improper attempt to submit additional arguments in support of her petition for rehearing. Respondents filed their return to this motion on April 1, 2019.
8. On April 5, 2019, this Court denied Appellant's petition for rehearing. In this Court's order denying the petition for rehearing, this Court stated that it would take no action on Appellant's motion for supersedeas and motion to transfer the appeal.
9. On May 2, 2019, Appellant filed a petition for writ of certiorari with the Supreme Court.

10. On May 29, 2019, Respondents filed a motion to dismiss the petition for writ of certiorari with the Supreme Court on the ground of mootness. Appellant filed her return to that motion on June 10, 2019, and Respondents filed their reply in support of the motion to dismiss on June 17, 2019.
11. On August 20, 2019, the Supreme Court issued an order denying the petition of writ of certiorari and, accordingly, denying Respondents' motion to dismiss as moot.
12. This Court issued its original remittitur on August 22, 2019 and its amended remittitur on August 26, 2019.
13. Pursuant to Rule 222(a), SCACR, when an appeal is dismissed, costs shall be taxed against the appellant. The party entitled to recover costs under this Rule may, to the extent that the party actually incurred these costs, recover the following: (1) the filing fee; (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal; and (5) the cost of printing the party's final brief(s). Rule 222(b), SCACR. In addition, the party shall be entitled to recover an attorneys' fee in the amount of \$2,500. *Id.* Furthermore, additional costs may be allowed in the most extraordinary circumstances. *Id.*
14. Because this Court dismissed Appellant's appeal, and the Supreme Court denied her petition for writ of certiorari, costs should be taxed against Appellant. Rule 222(a), SCACR. During this appeal, Respondents incurred the costs shown on the sworn Itemized Statement of Costs attached hereto and incorporated herein.

15. Because of filing of this appeal with this Court was improper and because of Appellant's filing of multiple improper motions, in addition to the attorneys' fees to which Respondents are entitled, extraordinary circumstances exist that warrant the allowance of the printing costs for the returns to Appellant's motions and petitions Respondents had to prepare and file during this appeal.
16. Accordingly, this Court should tax Appellant in the amount of \$2,515.20.

Respectfully Submitted,



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

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

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Attorneys for Respondents

Columbia, South Carolina
September 6, 2019

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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 & Hoefler, P.A., have caused to be served one (1) copy of the Respondents' **Motion for Costs** and **Itemized Statement of Costs** in the above-captioned matter via first class mail delivery and addressed as follows:

W. Duvall Spruill, Esquire
Catherine H. Kennedy, Esquire
Turner Padgett Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202-1473


Elizabeth Kurtz

Columbia, South Carolina
This 6th day of September 2019.

WILLOUGHBY & HOEFER, P.A.
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September 6, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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Re: *In the Matter of the Estate of Bertha Maust-Thompson*
Marilyn M. White v. Terri Ann Thompson, et al.
Appellate Case No. 2019-000169

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondents' **Motion for Costs and Itemized Statement of Costs** in the above-referenced matter as well as a check in the amount of fifty dollars (\$50.00) representing the requisite filing fee for this motion. I would appreciate it if the originals were accepted for filing and the extra copies file-stamped and returned via my courier.

By copy of this letter, I am serving counsel of record and enclose a Proof of Service to that effect.

If you have any questions, or require additional information, please do not hesitate to contact me.

Hon. Jenny Abbott Kitchings
September 6, 2019
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Sincerely,

WILLOUGHBY & HOEFER, P.A.

John

John W. Roberts

cc: W. Duvall Spruill, Esq.
Catherine H. Kennedy, Esq.
John M.S. Hoefler, Esq.