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OCT 25 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Order of Dismissal Dated 28 June 2019
No Hearing on Matter – Order Filed 28 June 2019
Petition for Rehearing Denied 27 September 2019
Appellate Case No. 2019-001808

In Re: The Estate of Hazel North

Grady North and Jean Corbett.....Respondents,

v.

Linda North and James North,Petitioners.

APPENDIX

M. Richardson Hyman, Jr. (S.C. Bar # 64867)
Peter G. McGrath (S.C. Bar # 101611)
P.O. Box 127
Charleston, South Carolina 29402
(843) 416-1047
Attorneys for Petitioners

Michael W Sautter, Esquire
Queery Sautter and Associates
147 Wappoo Creek Dr. Ste. 202
Charleston, South Carolina 29412
(843) 795-9500
Attorneys for Respondent

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No Record on Appeal
was filed as
the Case was Dismissed by
the Court of Appeals
Prior to the Time for Filing
the Initial Briefs or Designation of Matter
to be Included in the Record on Appeal

The South Carolina Court of Appeals

In Re: The Estate of Hazel North

Grady North and Jean Corbett, Respondents,

v.

Linda North and James North, Appellants.

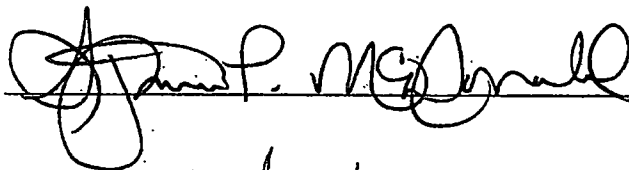
Appellate Case No. 2019-000758

ORDER

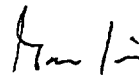
This court construes Appellants' motion to reinstate as a petition to rehear the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Melvin Richardson Hyman, Jr., Esquire

Peter Gerard McGrath, Esquire

Michael W. Sautter, Esquire

FILED

September 27, 2019

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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

2019-000758

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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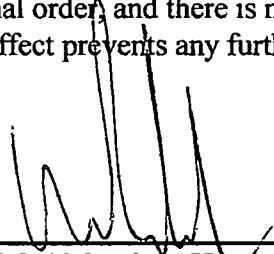
JUL 11 2019

SC Court of Appeals

MOTION TO REINSTATE

COMES NOW YOUR APPELLANTS by and through their undersigned counsel of record, and in accordance with the provisions of SCACR 260, and does respectfully pray that this Honorable Court reinstate the case to the appellate roster insomuch as the order of the circuit court which is being appealed is, in fact, a final order, and there is not only no further action to be taken on the trial level, but that the order in effect prevents any further action from being taken on the trial level.

10 July 2019



M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, SC 29402
(843) 416-1047
Attorney for Appellant James North

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Peter G. McGrath
802 Johnny Dodds Blvd
Mt. Pleasant, South Carolina 29464
843 606 2755
Attorney for Linda North

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MOTION TO REINSTATE APPEAL

The Appeal was dismissed by Order of this Court based upon a lack of appealability as the order being appealed is not a final order. COMES NOW YOUR APPELLANTS by and through their undersigned counsel of record, and in accordance with the provisions of SCACR 260, and does respectfully pray that this Honorable Court reinstate the case to the appellate roster insomuch as the order of the circuit court which is being appealed is, in fact, a final order, and there is not only no further action to be taken on the trial level, but that the order in effect prevents any further action from being taken on the trial level.

RELEVANT FACTS

1. Grady North (Respondent) filed a petition for informal probate of a will in Charleston, South Carolina along with a petition for informal appointment. (First Petition)
2. The will was admitted to informal probate and Grady North was informally appointed as Personal Representative. (First Order)
3. After the appointment and admission to probate, James North filed a separate petition for informal probate of a second will along with a petition for informal appointment in the same estate. (Second Petition)
4. The probate court granted James North's petition for probate of the latter will and appointed him as personal representative. (Second Order)
5. The probate court then terminated the appointment of Grady North and removed the prior will from probate by order of 27 March 2016. (Third Order)
6. Grady North did not appeal the order terminating his appointment. (Third Order)
7. Grady North did not appeal the withdrawal of his will from probate. (Third Order)

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8. Grady North did not appeal the order admitting the latter will (James North will) to probate. (Second Order)

9. Grady North did not appeal the appointment of James North as personal representative. (Second Order)

10. Well over a year after all of the orders in question, Grady North moved the court for relief from those orders based upon SCRPC 60(b)(4).

11. The basis for the motion was that there was a lack of due process on the because he had no prior notification of the Second and Third Orders.

12. The motion was denied.

13. Grady North appealed to the circuit court which granted the appeal.

14. The circuit court ordered:

2. The July 27, 2018 Order of the Charleston County Probate Court is hereby **REVERSED**.

3. This case is **REMANDED** back to the Charleston County Probate Court for informal probate of the 2008 will of the decedent Hazel North. (Order p. 7)

15. The rationale was that the court found and concluded

That Petitioner was not afforded the substantive due process of notice and a hearing before he was terminated as Personal Representative of the Estate of Hazel North as mandated by the S.C. Probate Code as set forth above, and guaranteed by Article 1, § 3 of the South Carolina Constitution and the 14th Amendment to [sic] the United States Constitution. (Order p. 6. Para 6).

16. That at the time of the filing of the SCRPC 60(b)(4) motion, over one year had elapsed since:

- A. The death of the Decedent.
- B. Grady North's initial appointment.
- C. James North's subsequent appointment.

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DISCUSSION

The order of the circuit court sitting in appeals is both a *de facto* and a *de jure* final order. If this matter is not heard here and now, it will never be heard at all. The circuit court voided the second order which both accepted the second will to probate and appointed James North as personal representative. It also voided the order removing Grady North as persona representative and removing the original will for probate. By voiding those orders, Grady North is appointed as personal representative and the original will is reinstated for probate. There is nothing more to be done on any of the petitions for appointment or probate. The circuit court did not remand for further proceedings. It decided the case, fully, finally and completely. The only thing left to do on the probate level is to administer the estate per the terms of the appointment and per the terms of the admission to probate. However, administration is a ministerial and not judicial action and not a part of the petitions for appointment and probate, nor a part of any order which the probate court or appellate court issued on those petitions. In short, the relief of the parties was fully and completely adjudicated by the probate court and fully and completely reversed by the circuit court in its appellate capacity. Based upon that ruling, there is nothing left to be done on the trial level. Moreover, because of a statute of repose in the probate code, Appellants are now time barred from making a contest on the probate level as a result of a year having passed since the testator's death even though they acted timely on the probate level.

In South Carolina, the laws regarding estates of decedents are generally found within the South Carolina Probate Code as codified in Title 62 of the South Carolina Code of Laws. While each decedent is given one case number in the Probate Court for all actions regarding that decedent's estate, it does not follow that all aspects of the administration of a decedent's estate are one single action. In fact, the contrary is true. "Unless administration under Part 5 [Sections

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62-3-501 et seq.] is involved, (1) each proceeding before the court is **independent of any other proceeding involving the same estate...**” South Carolina Code Annotated § 62-3-107(1)(Emphasis added). While petitions for informal or formal appointment may be combined, South Carolina Code Annotated § 62-3-107(1), other matters are independent and require independent petitions. Therefore, whether this is a final decision depends upon whether it dispositively and fully adjudicates the underlying petitions for relief, to wit: appointment and probate. In this case, it does. The appellate court ordered the probate of the original will and declared the order for probate of the second will, and the order appointing James North, and the Order removing Grady North as personal representative as being void – not voidable, but void. By declaring the latter void, Grady North was never removed as personal representative and remains the same by the holding of the circuit court. Thus, the petitions for appointment and probate have been fully and completely adjudicated as there is an order for probate and an “unterminated” appointment of Grady North.

An example of how each aspect of estate administration is separate from another within the same estate is as follows. There may be a Petition for informal probate and administration and also a formal Petition for appointment and a prayer for a finding of no will. Within that same estate there may be another petition to sell real property, and a petition by a creditor to enforce a creditor’s claim. Each is a separate action brought under the same caption but with by a separate petition and a separate filing fee. The finality of an order based upon the Petition to sell property is not delayed because the court has not ruled upon a separate petition by a creditor to enforce a creditor’s claim. This is critical to in terms of understanding the finality of the lower court orders in this matter.

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In recap, there have been several orders in this case. The first order in question was based upon a Petition by Grady North for the informal probate of a will and the informal appointment of himself as personal representative. The Court granted informal probate and appointment as prayed for in the Petition. This was the first proceeding before the court which was and is independent of any others in the same case per the express provisions of South Carolina Code Annotated § 62-3-107(1).

Subsequently, under the same caption and number as is proper practice in the Probate Courts, a **second petition** was filed for the informal probate of a later will by James North. This petition requested that the court also informally appoint James North as personal representative. The Court granted informal probate and appointment as prayed for in the Petition. This was the second proceeding before the court which was and is independent of any others in the same case per the express provisions of South Carolina Code Annotated § 62-3-107(1).

Simultaneously to granting James North's prayer in the second action in the *Estate of Hazel North*, the Court issued a third order which revoked the first will from informal probate and also dismissed Grady North as Personal Representative. This was not a third proceeding. It was a modification within the first proceeding initiated by the Petition of Grady North for informal appointment and probate.

Grady North did not appeal the order removing the first will from probate and dismissing him as personal representative. Likewise, Grady North did not appeal the order appointing James North as personal representative and admitting the second will to probate. After having fallen well over a year past the time for appeal, Grady North filed a motion for relief from the orders removing the first will from probate and dismissing him as personal representative and the order appointing James North as personal representative and admitting the second will to

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probate. This motion was denied by an order of the Probate Court. He appealed to the circuit court which reversed the decision in its appellate capacity.

When examining the appealability of the circuit court's ruling as an appellate court, we must examine what it says and what it does. The circuit court in appeals stated that:

2. The July 27, 2018 Order of the Charleston County Probate Court is hereby **REVERSED**.
3. This case is **REMANDED** back to the Charleston County Probate Court for informal probate of the 2008 will of the decedent Hazel North. (Order of the Circuit Court, emphasis in the original.)

The order being reversed was the probate court's denial of the motion for relief from the judgments which removed the first will from probate and dismissed Grady North as personal representative and appointed James North as personal representative and admitted the second will to probate.

Appealability

What has happened in this case is that the appellate court reversed two final orders of the probate court. These were the orders (1) removing the Grady North will from probate and dismissing Grady North as personal representative; and (2) admitting the James North will to probate and appointing James North as personal representative.

The appealability of an order from the Probate Court is generally governed by § 62-1-308(a) which fundamentally mirrors other South Carolina law regarding appealability. This states in relevant part "a person interested in a final order, sentence, or decree of a probate court may appeal" Therefore, for an order from the Probate Code to be appealable it must be made by an interested party and it must be a final order.

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There is but no question that the appellants were and are interested persons for purposes of appealability under South Carolina Code Annotated § 62-1-308(a). The term “interested person” as used in the Probate Code is specifically defined by the Probate Code.

“Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. South Carolina Code Annotated § 62-1-201(23).

Appellant James North is an heir of the decedent, a child of the decedent, a devisee of the subsequent will and a person “having priority for appointment as personal representative” under the subsequent will which the appellate court removed from probate. He is unquestionably an interested person as defined by the Probate Code. Likewise, Linda North is a heir, devisee and child of the decedent. By definition, she too is an interested person.

As to the finality of the orders in question, one must examine the Probate Code. The circuit court has made a formal ruling upon the both of the Petitions for probate. It ruled that “This case is **REMANDED** back to the Charleston County Probate Court for informal probate of the 2008 will of the decedent Hazel North.” (Order p. 7). It did not remand for proceedings “consistent with the order.” It **ordered the probate** of the Grady North will pure and simple. It is an adjudication of both informal petitions for probate. It denied James North’s petition and it granted Grady North’s petition. There is nothing more to do in regard to either. Because, actions under the Probate Code are a series of *in rem* actions, and because the circuit court ruled on the question of probate, the *in rem* action in regard to probate is final.

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Again, the order being appealed is the order of the circuit court which was sitting in an appellate capacity, and again, that order reversed the Probate Court's order for relief from the judgments (1) dismissing Grady North and appointing James North and (2) removing the Grady North will from probate and admitting the James North will to probate. This adjudication left Grady North as personal representative, and thus, fully and completely determined the independent issue of appointment in the *Estate of Hazel North*. Moreover, it ordered the probate court to probate the Grady North will, which fully and completely determined the independent issue of probate in the *Estate of Hazel North*.

As to James North's petitions, the appellate court reversed the trial court on the grounds of subject matter jurisdiction. "I find and conclude that Respondent James North did not commence an action for formal probate within the Court's general subject matter jurisdiction to contest the 2008 Will by filing and serving a summons and petition as mandate by S.C Code § 62-3-401. (Order page 6. para. 4). The circuit court went on to rule that James North's "should have been **declined**." (Order page 6. para. 3, emphasis in the original). There is but no question that the appellate court finalized the matter in regard to the James North petition for probate and appointment. The appellate court ruled that the probate court should not have even accepted the application and that the matter was not even within the subject matter jurisdiction of the court to hear. It does not get more final than that. On remand, the probate court cannot do anything with the James North Petition as it has no subject matter jurisdiction to do so according to the appellate court. It is over in regard to that petition. The only relief that can be had is on appeal of the circuit court's ruling that James North's application should not have been accepted because of a lack of subject matter jurisdiction. While a denial of a motion to dismiss based upon a lack of subject matter jurisdiction is not immediately appealable in South Carolina is not

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final, a finding of a lack of subject matter jurisdiction which terminates the rights of one or more of the parties, in this case Appellants, is final.

This is not akin to an order which denies an amendment or denies a motion for file a late answer or to file a third party complaint. As our courts have held, these types of orders are not immediately appealable “primarily because they may be appealed after the case has ended and final judgment entered.” *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App., 2017). The circuit court order in this case finally adjudicated the two petitions for probate and appointment in both fact and in effect. It finally adjudicated it in fact because it imposed a duty on the probate court “for informal probate of the 2008 will of the decedent Hazel North.” (Order p. 7).

Even if the order were not a final adjudication, it effectively amount to the same as it operates to immediately to terminate all of Appellants’ rights in the estate altogether. The Appellants are now time barred from either filing an informal or formal action for probate of the latter will.

Under the Probate Code,

a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later. South Carolina Code Annotated s 62-1-108(c).

This is not a statute of limitation. It is an absolute statute of repose.¹ Because it has been more than a year since the decedent died, and because it has been more than eight months since the

¹ This provision has been referred to as a statute of limitations in certain cases. See e.g., *Truluck v. Snyder*, 362 S.C. 108, 606 S.E.2d 792 (Ct. App., 2004). See also *Theisen v. Theisen*, 382 S.C. 213, 676 S.E.2d 133 (2009). However, it is in effect more of a statute of repose than it is a statute of limitations. In South Carolina, “[a] statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993), referencing the holding in *Goad v. Celotex Corp.*, 831 F.2d 508, 511 (4th Cir. 1987), cert. denied, 487 U.S. 1218, 108 S.Ct. 2871, 101 L.Ed.2d 906 (1988). On the other hand, a statute of repose is “typically an absolute time limit beyond which liability no longer exists... .”

appointment of a personal representative (regardless of whether one applies the appointment of Grady or James North) the Appellants are time barred from contesting Grady North's will or applying for formal probate of their own. There is no recourse on the trial (probate level) for Appellants as a proximate cause of the circuit court ruling. Even if the probate court wanted to grant them relief, it cannot because the time to contest has passed. The same statute bars a contest for appointment based upon the same reasons.

As this Court has noted, "[t]o determine whether an order is immediately appealable, we look to the [] court's order's effect on the proceedings" *Dorn v. Cohen*, 418 S.C. 126, 138, 791 S.E.2d 313, 319 (Ct. App., 2016) citing in turn *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). It does not get more final in effect and in name than it does in this case.

In recap, Grady North sat on his rights and did not appeal any of these orders. He waited until the time to contest had elapsed. Then he claimed that there was no subject matter jurisdiction for the orders, and that he had no due process in the matter. As a result of the order of the circuit court, the Appellants who have been diligent in the probate case are now disinherited and cannot challenge whether or not due process was or was not had, and the obscenely ridiculous question of whether or not the probate court had the subject matter jurisdiction to hear questions involving testacy and appointment. That is unless those questions can be heard now.

Id. In the case of the Probate Code limitation, it would appear to be a limit beyond which appointment or probate simply cannot be had. The distinction is important. "A statute of repose constitutes a substantive definition of rights rather than a procedural limitation provided by a statute of limitation." 313 S.C. at 404, 438 S.E.2d at 243. As a consequence, statutes of repose are not tolled for any reason. *Id.* Section 62-3-108 appears to be a statute which cannot be tolled if it is applicable.

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At it has been demonstrated that the order is final in regard to the question of probate, it is equally clear that the order is final in regard to both James North's and Grady North's petitions for appointment. Again, the order of the circuit court does not remand the question to the probate court for action. The order of the circuit court voids the order appointing James North as personal representative. It is nothing less than a final ruling on the Petition in that matter. Furthermore, by voiding the order appointing James North, and the order terminating Grady North, the court has effectively ruled that Grady North is the personal representative of the estate, as those were the orders which terminated his appointment. If those orders are void, then his appointment was never terminated. So again, the circuit court ruled that the orders are void and that the probate court had no subject matter jurisdiction to even entertain them. The question of appointment has been dispositively decided by the appellate court.

Per the Probate Code "a proceeding for appointment of a personal representative is **concluded** by an order making or declining the appointment." South Carolina Code Annotated § 62-3-107(4). (Emphasis added) That is what the circuit court did in this case. Because each action under the Probate Code is a separate proceeding within the same case file, an order granting or denying a petition for appointment is a *de facto* and *de jure* full and final adjudication of that proceeding.

Again, the ramifications may not seem as far reaching upon first glance as they actual are. Again, under the Probate Code,

a proceeding to contest an informally probated will **and to secure appointment of the person with legal priority for appointment in the event the contest is successful** may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later. South Carolina Code Annotated s 62-1-108(c)(emphasis added).

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This is not a statute of limitation. It is an absolute statute of repose, and it creates a double conundrum for Appellants. (1). The informal petitions have been ruled on so there is no further action to be had in these cases. (2) Because it has been more than a year since the decedent died, and because it has been more than eight months since the appointment of a personal representative (regardless of whether one applies the appointment of Grady or James North) the Appellants are time barred from seeking appointment as persons with priority. (3) Lastly, because the circuit court ordered the probate of the original will, they have lost their priority for appointment even if they were not time barred on the matter.

CONCLUSION

The order of the circuit court in appeals is *de jure* and *de facto* final. There were two petitions for the probate of two wills. The ruling in this case fully and finally answers the question of which will shall be probated. It is a grant of one petition and a denial of the other. Those petitions are closed and there is no further action to be taken on the trial level. The matter is over unless it will be heard on appeal.

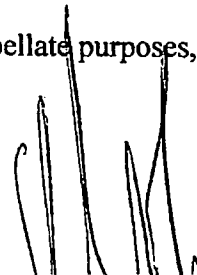
The ruling in this case fully and finally answers the question of appointment. Because the judge voided the Order of Appointment of James North as well as the Order terminating Grady North, there is nothing left to do in regard to the question of appointment. According to the order Grady North is now, and has always been, the personal representative per the original appointment. Further, the appellate court determined that the probate court did not even have subject matter jurisdiction to accept James Norths' petition for appointment and was wrong to do so.

There is nothing more to do on the trial level on any of the petitions for appointment or probate. There will be no further available proceedings upon the remand. Consequently, the

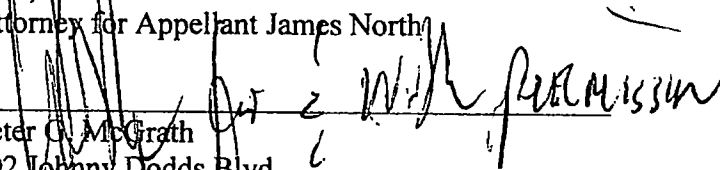
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order of the circuit court is a final order for appellate purposes, and the appeal should be reinstated.

10 July 2019



M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, SC 29402
(843) 416-1047
Attorney for Appellant James North



Peter G. McGrath
802 Johnny Dodds Blvd
Mt. Pleasant, South Carolina 29464
843 606 2755
Attorney for Linda North

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas as Appellate Court of the Probate Court

The Honorable William H. Seals, Jr., Circuit Court Judge
2019-CP-10-3889

RECEIVED

JUL 26 2019

SC Court of Appeals

IN RE: THE ESTATE OF HAZEL NORTH

GRADY NORTH AND JEAN CORBETT.....RESPONDENTS,

vs.

LINDA NORTH AND JAMES NORTH, Individually and as Personal Representative of
the Estate of Hazel North :.....APPELLANTS.

**RESPONDENTS' RETURN TO APPELLANTS'
MOTION TO REINSTATE APPEAL**

Michael W. Sautter, Esquire
SC Bar # 4944
Query Sautter & Associates, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
(843) 795-9500
Attorney for Respondents

Other counsel of Record:

M. Richardson Hyman, Jr., Esquire
PO Box 127
Charleston, SC 29402
Attorney for Appellant James North

Peter G. McGrath, Esquire
802 Johnny Dodds Boulevard
Mt. Pleasant, SC 29464
Attorney for Linda North

HISTORY OF THIS APPEAL

Appellants appealed the April 25, 2019, Order of the Court of Common Pleas which on appeal, reversed the July 27, 2018, Order of the Probate Court, and **remanded** the proceeding back to the Charleston County Probate Court to Informally Probate the 2008 Will of decedent Hazel North. (emphasis added).

By order filed June 28, 2019, this Court dismissed the above captioned appeal, as "... the order on appeal is not a final order, *See* S.C. Code Ann § 62-1-308 (2009) (providing probate appeals must be from final orders)."

Appellants filed a Motion to Reinstate the Appeal, dated July 10, 2019, which was received by undersigned counsel for Respondents on July 15, 2019.

RESPONDENTS' RETURN TO MOTION TO REINSTATE APPEAL

Respondents submit that this Honorable Court was absolutely correct in dismissing this appeal. Further, Rule 260, SCACR, provides, "A case shall not be reinstated except by leave of Court, upon good cause shown, ..."

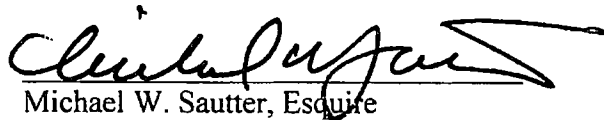
On appeal the Circuit Court reversed the order of the Probate Court and remanded, or sent the case back to the Charleston County Probate Court to take the further action of informally probating decedent's 2008 Will. The order sought to be appealed by Appellants, is therefore not a final order.

In addition, Appellants cannot show good cause for reinstating the appeal. Appellants' final order arguments as to potential prospective effects of the Circuit Court's order to reverse and remand are contrary and in direct conflict with Appellants' strategies to not commence a formal proceeding to contest the informal probate of the 2008 Will, and further elections to not present these issues for determination by the Probate Court, nor by the Circuit Court on Appeal.

Respectfully, issues raised by Appellants in their Motion to Reinstate the Appeal as to contesting the informal probate of the 2008 Will, can only be raised, heard and determined by the Probate Court. That Appellants, in their Motion to Reinstate, now concede that they are time barred from contesting the informal probate of the 2008 Will, does not extend the appellate jurisdiction of this Court.

Respondents therefore request that this Court deny Appellants' Motion to Reinstate the Appeal.

Respectfully submitted,



Michael W. Sautter, Esquire
SC Bar # 4944
Query Sautter & Associates, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
(843) 795-9500
Attorney for Respondents

July 23, 2019

Charleston, South Carolina

000017

The South Carolina Court of Appeals

In Re: The Estate of Hazel North

Grady North and Jean Corbett, Respondents,

v.

Linda North and James North, Appellants.

Appellate Case No. 2019-000758

ORDER

Because the order on appeal is not a final order, this appeal is dismissed. *See* S.C. Code Ann. § 62-1-308 (2009) (providing probate appeals must be from final orders). The remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Melvin Richardson Hyman, Jr., Esquire
Peter Gerard McGrath, Esquire
Michael W. Sautter, Esquire

FILED

June 28, 2019

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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.

BRIEF ON APPEALABILITY

M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, SC 29402
(843) 416-1047
Attorney for Appellant James North

Other Counsel of Record:
Michael W. Sautter
147 Wappoo Creek Dr. Ste. 202
Charleston, South Carolina 29412
Attorney for Respondents 843 795 9500

Peter G. McGrath
802 Johnny Dodds Blvd
Mt. Pleasant, South Carolina 29464
Attorney for Linda North 843 606 2755

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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

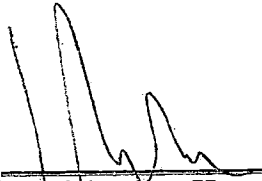
determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a).” *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). Because, the reversal is final and it affect a substantial right of the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



M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, SC 29402
(843) 416-1047
Attorney for Appellant James North

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

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Circuit Court Case Number: 2018-CP-10-3889

JUN 03 2019

Charleston County Probate Court No. 2016-ES-10-544

SC Court of Appeals

IN RE: THE ESTATE OF HAZEL NORTH

Grady North and Jean Corbett,Respondents,

vs.

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

MEMORANDUM OF RESPONDENTS AS TO APPEALABILITY

Respondents share the South Carolina Court of Appeal's concern as to the appealability of the subject Order of the Appellate Court of Common Pleas, Reversal and Remand to Charleston County Probate Court to Informally Probate decedent's 2008 Will. The Circuit Court's Order

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vacated and made void *ab initio* the March 30, 2016, Orders of the Charleston County Probate Court.¹

To challenge the informal probate of the 2008 Will, it was incumbent upon Appellants to commence a formal proceeding pursuant to the mandates of S.C. Code §§ 62-3-401, 62-3-402, 62-3-108 and 62-3-203(b) within 1 year. In their Brief on Appealability, Appellants admit that "... he (James North) is past the one year challenge time to file a formal testacy proceeding."

Appellants failure to timely commence a formal action to set aside the informal probate of the 2008 Will, also deprived Respondents of their fundamental rights to due process as guaranteed by Art. 1 § 3 of the South Carolina Constitution and the 14th Amendment to the United States Constitution.²

Appellants did not request that the trial court reconsider the Order they now appeal.

CONCLUSION

The underlying March 30, 2016, Orders are void *ab initio*. The Appellate Circuit Court remanded the case to the Charleston County Probate Court to informally probate the 2008 Will. Via this appeal to the South Carolina Court of Appeals, Appellants are seeking relief in a manner that is contrary to their arguments and legal filings since their filing of the informal application of March 30, 2016.

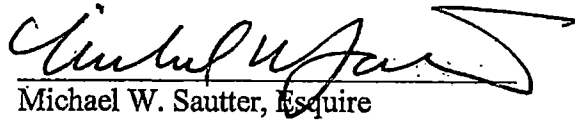
Respondents therefore request that the Court dismiss the Appeal.

¹ Order, Finding 2, p.5

² Order, Finding 6, p.7

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Respectfully submitted,



Michael W. Sautter, Esquire

SC Bar # 4944

Query Sautter & Associates, LLC

147 Wappoo Creek Drive, Suite 202

Charleston, SC 29412

(843) 795-9500

Attorney for Respondents

May 29, 2019

Charleston, South Carolina

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 14, 2019

Mr. Melvin Richardson Hyman, Jr., Esquire
PO Box 127
Charleston SC 29402

Mr. Peter Gerard McGrath, Esquire
802 Johnnie Dodds Blvd.
Mount Pleasant SC 29464

Re: In Re: The Estate of Hazel North
Appellate Case No. 2019-000758

Dear Counsel:

This Court has received your notices of appeal. A preliminary review of the orders challenged on appeal indicates they might not be appealable.

Accordingly, it is requested that the parties serve and file memoranda addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memoranda.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Kitchings". The signature is fluid and cursive.

CLERK

cc: Michael W. Sautter, Esquire

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STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Probate Court

The Honorable Tamara C. Curry, Associate Probate Court Judge
Case Number: 2016-ES-10-544
(Appellate Case Number: 2018-CP-10-3889)

IN RE: THE ESTATE OF HAZEL NORTH

GRADY NORTH AND JEAN CORBETT.....APPELLANTS-PETITIONERS,

vs.

LINDA NORTH AND JAMES NORTH, Individually and as Personal
Representative of the Estate of Hazel North.....RESPONDENTS

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**ORDER OF REVERSAL AND REMAND TO
CHARLESTON COUNTY PROBATE COURT
TO INFORMALLY PROBATE 2008 WILL**

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SC Court of Appeals

THIS MATTER came before the Court on Thursday, March 14, 2019, on Petitioners' Appeal of the Probate Court Order issued by the Honorable Tamara C. Curry on July 27, 2018, **denying** Appellant's Rule 60(b)4 SCRPC Motion to Vacate the March 30, 2016 Orders of the Court. (Order, R. p. 9-16).

The subject of Petitioners underlying Rule 60(b)4, SCRPC motion (R.p 29-33), was the March 30, 2016, Order of Informal Probate of a Will dated 12/19/14 (R.p. 39; 2014 Last Will And Testament of Hazel North (R.p. 108-111), and the Order Terminating Appointment of Grady North as Personal Representative, which provided:

X A Last Will and Testament dated December 19, 2014 was filed with this Court which names James Allen North as the Personal Representative of the estate. (R.p.1)

PETITIONER'S RULE 60(b)4 SCRCP MOTION

In the Motion before the Probate Court, Petitioner maintained as follows:

1. That the March 30, 2016 Orders of the Probate Court were void *ab initio*.
2. That in the informal proceeding (R.p. 17-22) to probate decedent's 2008 Will, (R. p. 101-107), the Probate Court was without subject matter jurisdiction to terminate him as Personal Representative and set aside the informal probate of the 2008 Will; without the **commencement** of a formal proceeding, and without notice and a hearing in contravention of the South Carolina Probate Code, S.C. Code §§ 62-3-401, 62-3-402, 62-3-108, and 62-3-203(b).
3. Finally, that the Court's Orders violated Petitioner's rights to substantive due process mandated by the Probate Code, Article 1, § 3 of the South Carolina Constitution and the 14th Amendment to the United States Constitution. (Petitioner's Rule 60(b)4 SCRCP (Petitioner's Motion, R. pp. 29-50)

RESPONDENT JAMES NORTH'S MEMORANDUM IN OPPOSITION

Respondent James North filed a Memorandum in Opposition to the SCRCP 60(b)4 Motion (R.pp. 59-63), maintaining that the Probate Court's jurisdiction was purely statutory, and that per S.C. Code § 62-1-302(a) to the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the **contest** of wills...

(R.p.59, emphasis added).

Respondents argued, "Now the concept that my client, who had a subsequent will, was required under ... Section (6)2-3-401 to come in and file a formal complaint was patent error. " (R.p. 80). His position was that James North's filing of the 2014 will for informal

probate was not a will contest. Respondent then cited SC Code § 62-3-304 which provides that,

Applications for informal probate which relate to one or more of a known series of Wills, the latest of which does not expressly revoke the earlier shall be declined. (*Id.*, emphasis added).

In his memorandum Respondent argued that, "Petitioner fails to appreciate the nuances and applications of informal probate. James North was not required to initiate a formal contest of the earlier will." He then argued that the burden was on Petitioner to challenge the 2014 will by commencing a formal proceeding, and he is now time barred from doing so, which is why the court is being faced with such, "creative motions such as this." (R.p. 60-61).

Respondent maintained *Arguendo*, if there was an error of law for the Court not following § 62-3-401, the failure would not be jurisdictional. That Petitioner had the right to appeal or challenge the subject orders, and that now he is time barred from challenging, and he cannot appeal because the appeal is untimely. (*Id.*).

Respondent maintained that the Orders of the Court were not void for want of due process. That Petitioner was given notice that he was terminated as Personal Representative, the 2008 will was not being probated, and that he had notice that James North's submission to informal probate was accepted. "Accordingly he had notice of the issue." (R.p.62).

Respondent requested the Rule 60(B) motion be denied. Respondent requested attorney fees and costs be determined, "at the end of the case after the Respondent has had the opportunity to demonstrate to the Court that all of the Petitioners' pleadings and motions are nothing more than a spurious attempt to salvage a case that is legitimately time barred." (R.p.63).

Petitioner's Rule 60(b)4 Motion was heard before Charleston County Associate Probate

Judge Curry on July 2, 2018. The transcript of the hearing is set forth in R.pp. 64-99.

THE APPEAL TO CIRCUIT COURT

The parties filed briefs with this Court. A Record on Appeal was prepared and submitted for this Court's consideration, which is referenced extensively herein. The hearing on the Appeal was held before this Court on March 14, 2019, with counsel for Petitioner and Respondent appearing and ably arguing the respective positions of their clients.

RESPONDENT'S MOTION TO DISMISS

During the pendency of the appeal, Respondent filed a Motion to Dismiss arguing the Petitioner had not timely filed his initial brief and not timely designated matters to be included in the record on appeal. The parties agreed that this Motion would be heard during the hearing of the Appeal.

After careful consideration of the record and arguments of counsel, for the reasons set forth below and upon a good faith showing by Petitioner, Respondent's Motion to Dismiss the Appeal is Denied.

Petitioner maintained that the time for filing the initial brief and designating matters to be included in the record on appeal was extended due to The Order of the Supreme Court (2018-09-17-01), as a result of disruption to South Carolina's legal system caused by the impact of Hurricane Florence, and that the appeal had been mistakenly dismissed by the Court of Common Pleas when no one appeared at a roster meeting to set the hearing date at a time when the appeal was not perfected. Upon the matter being called to the attention of the Clerk, the appeal was subsequently reinstated.

Petitioner's counsel argued that he further relied on information from the clerk's office as to the due date of the filings, and promptly filed Petitioner's Initial Brief and Designated

Matters to be included in the Record on Appeal.

Respondent-movant argued as set forth in his Motion which was carefully considered by this Court. The Court appreciates that neither side required the Motion to Dismiss be heard prior to perfecting the appeal which would have delayed the determination of the appeal in this case.

Based upon a careful review of the Motion as well as arguments of counsel the Court **Denies** the Motion to Dismiss, in the interest of justice and upon good cause shown by the Petitioner.

DECISION ON THE MERITS OF THE APPEAL

After careful consideration of all matters of record and arguments of counsel,

1. I find and conclude that by the Orders of March 29, 2016, the Charleston County Probate Court accepted for informal probate the 2008 Will of Decedent Hazel North, and appointed Grady North as Personal Representative of the Estate. (R.p.21).

2. I find and conclude the trial court erred in denying Petitioner's Rule 60(b)4 Motion to vacate or void *ab initio* the March 30, 2016, Orders of the Court (7-27-2018, Order of Associate Probate Judge Tamara Curry (R.pp: 9-16)), which set aside the informal probate of the 2008 Will and Terminated the Appointment of Grady North as Personal Representative of the Estate of Hazel North (R.p.1).

3. I find and conclude that the Trial Court erred in finding that "The Court has an absolute right to act administratively upon the applications it receives." And that, "It was proper for the court to make administrative corrections in the absence of a filing for formal testacy." (R. p. 11, last paragraph). This finding is contrary to the mandates of the

Probate Code to commence a formal proceeding to set aside the informal probate of the 2008 Will.

In the case at bar where the Probate Court had previously granted application for probate of the 2008 Will, Respondent-Defendant James North's submission of the 2014 Will for informal proceedings should have been **declined**. S.C. Code § 62-3-401, provides:

A formal testacy proceeding must be commenced by an interested person filing and serving a summons and petition, ...in which he requests the Court, after notice and a hearing enter an Order probating a Will or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application.

4. I find and conclude that Respondent James North did not commence an action for formal probate within the Court's general subject matter jurisdiction to contest the 2008 Will by filing and serving a summons and petition as mandated by S.C. Code § 62-3-401.

5. I find and conclude that Court did not have subject matter jurisdiction to set aside the 2008 Will and grant application of informal probate of the 2014 Will as an action for formal probate was never commenced by Defendants.

Subject matter jurisdiction refers to a Court's constitutional or statutory power to adjudicate a case. *Earthscapes Unlimited, Inc., v. Ulbrich*, 390 S.C. 609, 614, 703 S.E.2d 499, 503 (2010); (*emphasis added*). Subject matter jurisdiction is defined as the power of a court to hear and determine cases of the general class to which the proceedings generally belong. *McCullar v. Estate of Campbell*, 381 S.C. 205, 206, 672 S.E.2d 784 (2009). (*emphasis added*).

Claims as to lack of subject matter jurisdiction can be raised at any time, subject matter jurisdiction may not be waived by filing responsive pleadings or otherwise consenting to the jurisdiction of a particular court. *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191, 196 (Ct.App. 1998).

A judgment is void if made by the Court without subject matter jurisdiction, that is, a court without power to adjudicate the matters before it or without personal jurisdiction over the parties. *Griffin v. Capital Cash*, 310 S.C. 288, 423 S.E.2d 143 (1992), cited in Flanagan, South Carolina Civil Procedure, Second Edition, p. 487.


Relief under Rule 60(b)4 SCRPC is a matter of right if the adverse party failed to comply with the requirements of the law. *Richardson Constr. Co., v. Meek Eng'g & Constr. Co.*, 274 S.C. 307, 262 S.E.2d 913 (1980), *Id.*

6. I find and conclude that Petitioner was not afforded the substantive due process of notice and a hearing before he was terminated as Personal Representative of the Estate of Hazel North as mandated by the S.C. Probate Code as set forth above, and guaranteed by Article 1, § 3 of the South Carolina Constitution and the 14th Amendment to United States Constitution.

NOW THEREFORE IT IS HEREBY ORDERED as follows:

1. Respondent's Motion to Dismiss is **DENIED**.
2. The July 27, 2018, Order of the Charleston County Probate Court is hereby **REVERSED**.
3. This case is **REMANDED** back to the Charleston County Probate Court for informal probate of the 2008 Will of decedent Hazel North.

AND IT IS SO ORDERED!


The Honorable William H. Seals, Jr.
Presiding Judge

Dated: April 25, 2019

Marion, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2016-ES-10-544

IN THE MATTER OF THE ESTATE OF)
HAZEL NORTH)

GRADY NORTH, AMY HEINS, AND)
JEAN CORBETT,)

Petitioners,)

vs.)

LINDA NORTH AND JAMES NORTH,)
Individually and as Personal Representative)
Of the Estate of Hazel North,)

Defendants.)

ORDER ON PETITIONERS'
SCRCP 60(B)(4) MOTION

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The Petitioners brought a motion to vacate an order of informal probate based solely and exclusively on a lack of subject matter jurisdiction and a lack of due process. A hearing was held on the matter and the parties appeared in person and by and through their respective counsel of record on 2 July 2018.

FACTS

The facts of the case are relatively simple. Grady North filed an application for informal probate and appointment which was granted. A subsequent application for probate of a subsequent will was made by James North. The subsequent will was in due form and was self-proved, and more importantly, revoked all previous wills. The subsequent will named James North and not Grady North as the personal representative. The court issued an order terminating the personal representation of Grady North and terminating the probate of the earlier will. The Court also admitted the latter will to informal probate, and per its express provisions, ordered the appointment of James North as personal representative.

DISCUSSION

The initial motion before the Court sought to set aside the orders based on a lack of subject matter jurisdiction, and a violation of Mr. Grady North's Constitutional due process rights. At the hearing, it was conceded by Petitioners that the admission of wills into probate and appointments of personal representatives are both within the subject matter jurisdiction of the Probate Court. As an initial matter, the Court finds that it has, and always did have, exclusive original subject matter jurisdiction over both applications for informal probate and appointment.¹ Therefore, the sole issue before this Court is whether or not the judgment was void.

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The Petitioners claim the removal of Grady North from office, and the removal of the original will from probate without notice by summons and petition as set forth in the procedures for formal hearing on the matter violated due process, and requires the orders to be set aside. The Court disagrees.

This matter is deeply rooted within the Probate Code which has multiple safe guards to insure that all interested parties in the estates of decedents are given sufficient notice and rights to participate in the procedures before the Court. The Petitioner does not deny that he was aware of his removal and the appointment of James North, nor does he deny that he was aware of the fact that the original will was removed from probate and the latter informally accepted. He asserts that he was not given formal notice as set forth in the procedures for formal proceedings.

¹ Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Majors v. S.C. Sec. Comm'n*, 373 S.C. 153, 159, 644 S.E.2d 710, 713 (2007). The subject matter jurisdiction of the Probate Court is purely statutory. South Carolina Code Annotated, § 62-1-302 states in relevant part:

- (a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills ...

In short, his contention is that Mr. James North, having a subsequent will, was required to file a formal proceeding to establish the validity of the latter will over the informally probated will.

The South Carolina Probate Code allows two distinct approaches to appointment and probate – informal and formal. There are material differences. “‘Informal proceedings’ means those commenced by application **and conducted without notice to interested persons by the court** for probate of a will or appointment of a personal representative.” South Carolina Code Annotated § 62-1-201(22)(Emphasis added). On the other hand, “‘Formal proceedings’ means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons.” South Carolina Code Annotated § 62-1-201(17).

Informal procedures are quasi-judicial in nature while formal proceedings require the same level of notice and procedural compliance as all other circuit court cases. Mr. Grady North gave no notice when he applied for probate and appointment, and Mr. James North was not required to do so either because informal procedures are “conducted without notice to interested persons by the court.” South Carolina Code Annotated § 62-1-201(22).

The Court has an absolute right to act administratively upon the informal applications it receives. When there are two wills, valid upon their face, and the latter revokes all former wills, the Court may make such orders regarding probate and appointment as would otherwise be required under the informal procedures of the Code. This is what the Court did. The more recent will revoked the former. The former will was no longer proper for probate as a result. It was proper for the court to make the administrative corrections in the absence of a filing for formal testacy.

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However, even if such were not the case, and the court were in error in having taken the action that it did, error does not render a judgment void. Unappealed error becomes the law of the case, and is not a basis for relief under SCRCP 60(b).

Based upon the Code, the Court determines that there was no procedural defect. However, assuming, *arguendo*, that there was a procedural defect, that does not automatically mean that there has been a violation of due process. For there to be a violation of due process, there must be much more than a mere procedural defect. It must be of such a level that completely voids the order from its inception and not one that is voidable. In the case of *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995), our Supreme Court has held

A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely "voidable." 46 AmJur2d Judgments § 31 (1994). Generally, a judgment is void only if a court acts without jurisdiction. *Ross v. Richland Co.*, 270 S.C. 100, 240 S.E.2d 649 (1978). Irregularities which do not involve jurisdiction do not render a judgment void. *Genobles v. West*, 23 S.C. 154 (1885). There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack on appeal. *Piana v. Piana*, 239 S.C. 367, 123 S.E.2d 297 (1961). (Internal Citations Included).

The definition of "void" under SCRCP Rule 60(b)(4) encompasses "judgments from courts which failed to provide proper due process... ." *Id.*

The only question before the Court is whether or not the failure to Grady North, prior notice and a right to be heard on the order terminating his appointment and rescinding the former will from admission to probate amounted to a deprivation of due process to the level which would render both judgments void from their inception.

The requirements of due process are simple and include (1) notice and (2) the right to be heard, and (3) judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed.

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1363 (1914). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it, and may assume that no court will enforce it against his person or property.

Tryon Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992).

However, Petitioner misunderstands the concept of notice. An order is not void merely for failure to give notice in advance. An order of which a party has been given no notice is a void order. Grady North does not complain that he received **no** notice. He complains that he did not receive **advance notice** of the Court's action which deprived him of his right to be heard. He concedes he had notice after the fact. However, that is not how the Courts view the concept of notice for purposes of due process.

In *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002), the South Carolina Court of Appeals affirmed the circuit court's denial of Universal Benefits' motion to set aside an order of dismissal pursuant to Rule 60(b)(4). *Id.* at 181, 561 S.E.2d at 660. Universal sued its former employee to enforce a covenant not to compete. *Id.* Universal failed to attend a roster meeting, and the circuit court dismissed the complaint with prejudice for failure to prosecute. *Id.* at 182, 561 S.E.2d at 661. Universal subsequently filed a Rule 60(b)(4) motion, alleging it had not received notice of the roster meeting and requesting the court set aside the dismissal. *Id.* The circuit court denied Universal's motion and the Court of Appeals agreed.

"Universal was afforded notice of Judge Lee's order. It is undisputed that on August 30, 1999, Universal received written notice of the order dismissing its action." Though the Appellant had no notice of the hearing, it had notice of the entry of the order dismissing his action, and this notice was sufficient notice to allow him the opportunity avail himself of the remedies of appeal or SCRPC 59. Likewise, in this case, Grady North had notice of the order

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terminating his representation and removing the prior will from probate – albeit after the fact. However, that notice was notice enough to afford him the right to redress the error, assuming *arguendo* as he does, that there was error. That notice alone was sufficient to satisfy due process under the *Universal Benefits* case.

The second element of procedural due process is the right to be heard. Once Grady North had notice, then the question turns to the issue of whether he had the right to be heard. He unambiguously did. Though he could have moved for reconsideration or alteration or amendment of a judgment, he did not. Though Mr. North could have appealed the orders, he did not.² However, the Probate Code provides one more level in which Mr. North could have been heard. He had the right to file a formal contest to the probate of the latter will and the appointment. However, he did not. In summary, there were multiple avenues for Mr. North to be heard on the matter. The fact that he failed to take advantage of any of them in a timely manner does not mean that he did not have the **right** to be heard; and all that due process requires is that such a right was available to the party in question.

The last element of due process is the right to judicial review. In this case, the Probate Code gave Mr. North two separate opportunities for judicial review. There is but no question that the Probate Code contains appellate remedies and procedures as are set forth in South Carolina Code Annotated § 62-1-308. Subsection (a) of that statute states that “[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county...” This means any order from the probate court which is final. This provision expressly applies to those orders which Mr. North now seeks to void. A formal

² South Carolina Code Annotated § 62-1-308 permits an appeal from any final order. It states: “[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county...” It makes no distinction between informal and formal orders, and the orders which Mr. North now seeks to void fall clearly into the class of orders which are subject to appeal.

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proceeding under the Probate Code would also judicially supersede the informal orders of which Mr. North complains.

CONCLUSION

This Court finds that the procedures complained of were, in fact, the proper procedures which the Court should have taken pursuant to the provisions of the Probate Code regarding informal probate and appointment. However, even if the procedures were not proper, the Court determines that there has been no violation of Mr. North's procedural or other due process rights. When there is no violation of due process rights, an order is not void. "A voidable judgment is nothing more than one made in error by a court with jurisdiction, as our facts can show."

Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC -- SC --, -- S.E.2d -- (Ct. App., May 2018). Absent a violation of due process, such as in this case, error is not void *ab initio*. SCRCP Rule 60(b)(4) allows the court to set aside an order if it is void. It does not permit a court to set aside an order which is merely voidable. Accordingly, this Court has no authority to set aside the orders. The failure of Mr. North to take advantage of the procedures available to him, whether by timely motion to this Court, a formal proceeding under the Probate Code, or an appeal to the Circuit Court, "is a result of [his] own inaction and not a denial of due process."

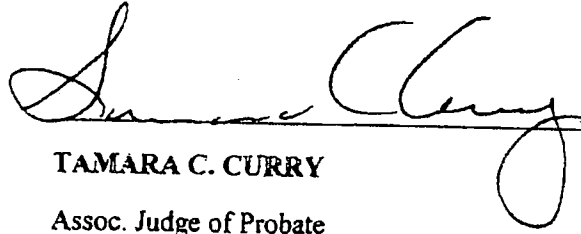
Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 184, 561 S.E.2d 659 (Ct. App., 2002).

Based on the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED that this motion to set aside Order is denied.

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AND IT IS SO ORDERED.


TAMARA C. CURRY
Assoc. Judge of Probate

July 27, 2018
Charleston, South Carolina

BCC
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7/27/18

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Grady North, Amy Heins, and)
 Jean Corbett,)
)
 Plaintiffs,)
)
 vs.)
)
 Linda North and James North,)
 Individually and as Personal)
 Representatives of the Estate of)
 Hazel North,)
)
 Defendants.)

IN THE PROBATE COURT
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2016-ES-10-00544

**MOTION TO VOID ORDERS ON
 THE SETTING ASIDE OF THE 2008 WILL,
 TERMINATING THE APPOINTMENT OF
 GRADY NORTH AS PERSONAL
 REPRESENTATIVE & GRANTING OF
 APPLICATION FOR PROBATE OF THE 2014
 WILL OF DECEDENT HAZEL NORTH
 PURSUANT TO RULE 60(b)(4), SCRPC**

NOW COMES THE PLAINTIFFS, by and through their undersigned counsel, Michael W. Sautter of Query Sautter & Associates, LLC, and moves to void and vacate the March 30, 2016, Orders of Associate Judge of Probate Tamara C. Curry, setting aside the 2008 Will of Decedent Hazel North and terminating the appointment of Grady North as Personal Representative; granting application for Probate of the 2014 Will of Hazel North and appointing James North as Personal Representative of the Estate of Hazel North pursuant to Rule 60(b)(4) SCRPC on the grounds that said Orders are void.

Plaintiffs submit that under all of the facts and circumstances the timeliness of the filing of this motion is reasonable and in the interest of justice and judicial economy.

Hazel North passed away on March 19, 2016.

Plaintiffs would show unto the Court that on March 29, 2016, in an informal proceeding, the Charleston County Probate Court appointed Petitioner Grady North as Personal Representative of the Estate of Hazel North, and accepted and filed the December 2008 Will of Hazel North.

One day later, on March 30, 2016, based upon the informal testate application of James North with no commencement of a formal action, no service of a summons and petition, no hearing or notice to Petitioners and other interested parties, the Probate Court set aside the 2008 Will and terminated Petitioner Grady North's appointment as Personal Representative and granted application for Probate of the 2014 Will of Hazel North and appointed James North as Personal Representative of the Estate of Hazel North.

THE COURT LACKED JURISDICTION AND THE ORDERS ARE VOID

The Court did not have subject matter jurisdiction to set aside the 2008 Will and grant

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 #1

application for probate on the 2014 Will, and all Orders to that effect are void.

Pursuant to S.C. Code § 62-1-302(a), to the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills,..."

Subject matter jurisdiction refers to a Court's constitutional or statutory power to **adjudicate** a case. *Earthscapes Unlimited, Inc., v. Ulbrich*, 390 S.C. 609, 614, 703 S.E.2d 499, 503 (2010); (*emphasis added*). Subject matter jurisdiction is defined as the power of a court to **hear and determine** cases of the general class to which the proceedings generally belong. *McCullar v. Estate of Campbell*, 381 S.C. 205, 206, 672 S.E.2d 784 (2009). (*emphasis added*). Claims as to lack of subject matter jurisdiction can be raised at any time, subject matter jurisdiction may not be waived by filing responsive pleadings or otherwise consenting to the jurisdiction of a particular court. *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191, 196 (Ct.App. 1998)

In the case at bar where the Probate Court had previously granted application for probate of the 2008 Will Defendant James North's submission of the 2014 Will should have been declined.

S.C. Code § 62-3-401, provides:

A formal testacy proceeding must be commenced by an interested person filing and serving a summons and petition, ...in which he requests the Court, after notice and a hearing enter an Order probating a Will or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application.

Defendant James North never **commenced** an action within the Court's general subject matter jurisdiction as to the contest of wills by filing and serving a summons and petition. The Court did not have subject matter jurisdiction to set aside the 2008 Will and grant application of probate of the 2014 Will as an action for formal probate was never commenced by Defendants. The Orders on the 2014 Will were issued before notice to Petitioners and before a hearing was ever requested to even be scheduled. Plaintiffs were denied substantive and procedural due process.

Respectfully, James' North's submission of the 2014 Will on March 30, 2016, while the Court had previously accepted the 2008 Will into probate, and appointed Grady North as the Personal Representative on March 29, 2016, mandated that that the Probate Court decline to accept the 2014 Will into probate, whereupon it was then incumbent upon Defendants and specifically James North who presented the 2014 Will to probate, in which he was named as the Personal Representative to commence a formal testacy action.

As to requirements of formal testacy proceedings to set aside a will informally probate and to terminate a Personal Representative. See the following statutes in our probate code: SC Code § 62-3-305. a declination of informal probate is not an adjudication and does not preclude formal

probate proceedings; SC Code § 62-3-309, a declination of informal probate is not an adjudication and does not preclude appointment in formal proceedings; SC Code § 62-3-108, a proceeding is required to contest an informally probated will and to secure appointment ...; SC Code § 62-3-203(b), an objection to an appointment can be made only in a formal proceeding; SC Code § 62-3-302, S.C. Code § 62-3-401, mandates that a formal testacy proceeding must be commenced by an interested person filing and serving a summons as described in SC Code § 62-3-402(a) in which he requests that the court after notice and hearing, enter an Order ... or a petition to set aside an informal probate of a will. See, SC Code § 62-3-402 for further requirements for formal testacy proceedings; petitions; contents.

Respectfully, Defendants did none of the above, and the March 30, 2016 Orders of the Court terminating Grady North as Personal Representative and accepting the 2014 Will into probate are void ab initio and should be vacated.

Further as no summons was served on Plaintiffs to set aside the 2008 Will, and for the Probate Court to admit the 2014 Will; the orders are void in that the Court acted without personal jurisdiction over Petitioners. A Court generally obtains personal jurisdiction by the service of a summons. *Dickert v. Taylor*, 307 S.C. 346, 334-33, 633 S.E.2d 301, 304-05 (2006).

CONSTITUTIONAL GROUNDS

The March 30, 2016, Orders setting aside the 2008 Will, terminating the appointment of Grady North as personal Representative; accepting the 2014 Will into Probate and appointing James North as Personal Representative violate Plaintiffs' rights under the Constitutions of the United States and the state of South Carolina and are therefore void.

AMENDMENT XIV TO THE CONSTITUTION OF THE UNITED STATES

Plaintiffs clearly had a property interest in the 2008 Will of Hazel North as Grady North was appointed Personal Representative of the Estate, and they are beneficiaries of the Estate of Hazel North in the 2008 Will which was admitted into probate. Their property interests were deprived by the Court's Orders of March 30, 2016, setting aside the 2008 Will, granting the application of probate on the 2014 Will, Plaintiff Grady North was terminated as Personal Representative and along with the other Plaintiffs was disinherited of the Estate of Hazel North.

In simplest form the Court's Orders setting aside the 2008 Will and granting application for probate on the 2014 Will was without any process, as there was never an action commenced to set aside the 2008 Will. Plaintiff's received no notice of any action to set aside the 2008 Will and the termination of Grady North as Personal Representative. No hearing was ever conducted on any will contest between the 2008 Will and the 2014 Will.

ARTICLE 1, SECTION 3 OF THE SOUTH CAROLINA CONSTITUTION

The Court's issuance of the Orders setting aside the 2008 Will and admitting the 2014 Will of Hazel North violated Plaintiffs' rights under Art. 1, § 3, of the South Carolina Constitution which provides in part as follows:

"The privileges and immunities of citizens of this State and of the United States shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law,..."

As set forth above there was no process commenced by Defendants, and the Court Orders to set aside the 2008 Will and admit into Probate the 2014 Will of Hazel violated Plaintiffs' due process rights as guaranteed by the Constitutions of the United States and the state of South Carolina.

CONCLUSION

In the March 30, 2016, Orders sought to be voided, this Honorable Court set aside the 2008 Will of Hazel North, terminated the appointment of Grady North as Personal Representative of the Estate of Hazel North, admitted into Probate the 2014 Will of Hazel North, and appointed James North as personal representative. No formal proceedings to set aside the 2008 Will were ever commenced. No summons and petition was ever issued or served, no notice was ever given and no hearing has ever been set or convened on the issues presented. All of the foregoing are mandated by the South Carolina Probate Code.

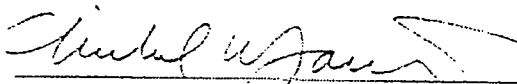
As no action to set aside the 2008 Will and admit into probate the 2014 Will was ever commenced by the filing and service of the summons and petition, no notice was provided and there was no hearing prior to the issuance of the Orders, the court had neither subject matter nor personal jurisdiction over Petitioners, and all Orders are void ab initio.

Without compliance with the substantive and procedural due process statutes, all Orders setting aside the 2008 Will and admitting the 2014 Will into probate are void ab initio.

The Orders setting aside the 2008 Will and admitting the 2014 Will of Hazel North deprived Plaintiffs of their privileges and immunities and due process rights under the Constitutions of the United States and the state of South Carolina Court and are therefore void ab initio.

Respectfully Submitted,

QUERY SAUTTER & ASSOCIATES, LLC



Michael W. Sautter, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

IN THE MATTER OF: HAZEL H. NORTH

CASE NUMBER: 2016ES10-00544

TERMINATION OF APPOINTMENT

The appointment of **GRADY NORTH, Personal Representative(s)** for the above referenced estate is hereby terminated for the following reason:

Satisfactory Completion of the Assigned Duties

A Last Will and Testament dated December 19, 2014 was filed with this Court which names James Allen North as the Personal Representative of the estate

Disability

Resignation.

Other

Effective this 30th of March, 2016.



IRVIN G. CONDON, JUDGE OF PROBATE
TAMARA C. CURRY, ASSOCIATE JUDGE OF PROBATE
LENNA S. KIRCHNER, ASSOCIATE JUDGE OF PROBATE

Form #414PC (7-87) (0016c)

IN SENATE

IN SENATE

IN SENATE
HAZEL H. NORTH

CASE NUMBER: 2016ES10-00544

X

Personal Representative
Successor Personal Representative
Special Administrator

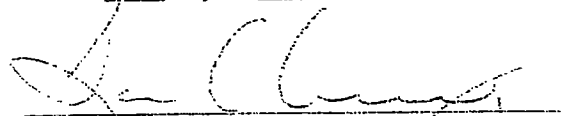
On the 30th day of March, 2016, JAMES ALLEN NORTH a qualified as Fiduciary(ies) of the above matter by this Court with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS:

None

Executed this 30th Day of March, 2016.



Irvin G. Condon, Judge of Probate
Tamara C. Curry, Associate Judge of Probate
Lonna S. Kirchner, Associate Judge of Probate

COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

Petitioner(s)

Respondent(s)

APPLICATION FOR INFORMAL

(check any that apply)

PETITION FOR FORMAL

- PROBATE OF WILL
- APPOINTMENT

- TESTACY
- APPOINTMENT

If this is a formal filing please explain on page 3 or attach pleadings pursuant to SC Rules of Civil Procedure

NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 40(1)C), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION

1. Applicant/Petitioner(s): James Allen North
 Address: 141 3rd Avenue Mount Pleasant SC 29464
 Telephone (Work): _____
 (Home): _____
 (Cell): 843-530-8667
 Email: _____
 Relationship to Decedent: Son

2. Decedent Information

Full Legal Name including all known names: Hazel Heatley North
 Date of Birth: November 14, 1921
 Date of Death: March 19, 2016
 Age at Date of Death: 94

3. Venue for this proceeding is proper in this County because

- Decedent was domiciled in this County at date of death
 Address: 141 3rd Avenue Mount Pleasant County SC State South Carolina
- Decedent was not domiciled in South Carolina but property of Decedent was located in this County at date of death at
 Address _____ County _____ State South Carolina
- Decedent has a right to have legal action in this County, because

If the above address is the address of a nursing home or similar care facility, please provide last address of the Decedent prior to entering a facility.

4(a) Names and addresses of beneficiaries (devisees) named in the Will

| Full Legal Name (including all known names) | Year of Birth | Full Address | Relationship to Decedent |
|--|---------------|---|--------------------------|
| James Allen North | Adult | 141 3 rd Avenue Mt Pleasant SC 29464 | Son |
| Linda P. North | Adult | | Daughter |
| Taylor Jade North | Adult | 141 3 rd Avenue, Mt Pleasant, SC 29464 | Granddaughter |

See attached for additional devisees (check if applicable).

4(b) Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

| Full Legal Name (including all known names) | Year of Birth | Full Address | Relationship to Decedent |
|--|---------------|--------------|--------------------------|
| Jean Corbett | Adult | | Daughter |
| Amy Heins | Adult | | Daughter |
| Robert North | Deceased | no children | Son (deceased) |
| Grady North | Adult | | Son |
| Wesley North | Deceased | 3 children | Son (deceased) |
| Wesley North, Jr. | Adult | | Grandson |
| Ronnie North | Adult | | Grandchild |
| Melody N. Facey | Adult | | Grandchild |

See attached for additional intestate heirs (check if applicable).

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

YES NO If no, please explain on page 3.

5 Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

NO YES If yes, please explain on page 3

6 To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

NO YES If yes please explain on page 3

7 Has a Guardian or Conservator ever been appointed by a Court for this person?

NO YES If yes please explain on page 3

8 Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

NO YES If yes please state details including name and address of such Personal Representative on page 3

9 Have you received or are you aware of any Demands for Notice (FORM #111-ES) or any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

NO YES If yes please state details including names and addresses on page 3

10. Have more than ten (10) years passed since the Decedent's death?

NO YES If yes, please state circumstances authorizing early probate on page 3.

11(a) Did the Decedent own probate real estate?

NO YES If yes, an approximate value of STBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b) Did the Decedent own probate personal property?

NO YES If yes, an approximate value of STBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

NO YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II IF A WILL EXISTS PLEASE COMPLETE THIS SECTION

1. Regarding the Decedent's Will:

- The original is attached.
- The original is in the Court's possession.
- An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
- An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
- The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: December 19, 2014
Codicil(s) _____

3. Is there a memorandum that disposes of tangible personal property?

NO YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

YES NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

NO YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(if more space is required, use additional sheets.)

3. The Petitioner was advised this morning that an older will had been presented to the Court for probate on March 29, 2016, wherein Grady North was appointed as Personal Representative. The Decedent updated her Last Will and Testament on December 19, 2014, wherein she appointed the Petitioner as her Personal Representative (rather than Grady North).

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT PLEASE COMPLETE THE FOLLOWING

1. If the Applicant/Petitioner is not the proposed Personal Representative(s) list name and address of the person you are proposing be appointed as the fiduciary

N/A

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- named as Primary Personal Representative in Will
- named as Alternate Personal Representative in Will
- nominee of Primary Personal Representative in Will
- nominee of Alternate Personal Representative in Will
- surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- other devisee of Decedent (describe): _____ or nominee of said devisee
- surviving spouse of Decedent or nominee of said spouse
- other heir of Decedent (describe): _____ or nominee of said heir
- creditor (forty-five (45) days after death must have passed) or nominee of creditor: written statement of claim, FORM 371ES, is attached
- other (describe): _____

3. List below the names of any other persons, if any, having an equal or higher priority for appointment than the proposed Personal Representative

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 7 day
of March, 2016

Signature of
Applicant/Petitioner: _____

Notary Public for South Carolina
My Commission Expires _____

SWORN to before me this _____ day
of _____, 20____

Signature of Co-
Applicant/Co-Petitioner: _____

Notary Public for South Carolina
My Commission Expires _____

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QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate

Signature: _____
Print Name: James Allen North
Address: 141 3rd Avenue
Mount Pleasant, SC 29464
Telephone (Work): _____
(Home) _____
(Cell) _____
Email _____

Signature: _____
Print Name _____
Address _____
Telephone (Work) _____
(Home) _____
(Cell) _____
Email _____

*Attorney: _____
Address: _____
Telephone: _____
Email: _____

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

COUNTY OF CHARLESTON

IN THE MATTER OF:

HAZEL NORTH

(Decedent)

CASE NUMBER.

COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

GRADY NORTH, AMY H. HEINS, AND JEAN CORBETT, Petitioner(s)

vs.

JAMES NORTH AND LINDA NORTH, Respondent(s)

APPLICATION FOR INFORMAL

(check any that apply)

[X] PROBATE OF WILL

[X] APPOINTMENT

PETITION FOR FORMAL

[] TESTACY

[] APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to SC Rules of Civil Procedure.

NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SC-001 (1/03)) AND PAY THE STATUTORY FILING FEE OF \$125.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): GRADY NORTH

Address: 2739 RIVERLAND DRIVE, CAYCEE, SOUTH CAROLINA 29033

Telephone (Work): 803-796-4002

(Home): 803-739-9293

(Cell):

Email: SAN06@scdmh.org

Relationship to Decedent: SON

2. Decedent Information.

Full Legal Name

(including all known names): HAZEL NORTH

Date of Birth: 11/14/1921

Date of Death: 3/19/2016

Age at Date of Death: 94

3. Venue for this proceeding is proper in this County because.

[X] Decedent was domiciled in this County at date of death:

Address: 141 THIRD AVE County: CHARLESTON State: South Carolina.

[] Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death at:

Address: County: State: South Carolina

[] Decedent has a right to take legal action in this County because:

if the above address is the address of a nursing home, prison, or other residential facility please give the last address of the Decedent prior to entering a facility:

Names and addresses of beneficiaries devisees named in the Will:

| Full Legal Name (including all known names) | Year of Birth | Full Address | Relationship to Decedent |
|--|---------------|---|-----------------------------|
| AMY HEINS | 2/17/1944 | 1659 LAUDA DRIVE, MT PLEASANT, SC 29464 | DAUGHTER |
| GRADY NORTH | 3/01/1953 | 2739 RIVERLAND DR., CAYCEE, SC 29033 | SON |
| JEAN CORBETT | 3/17/1941 | 1654 EMBREE RD., BAMBERG, SC 29003 | DAUGHTER |
| LINDA NORTH | 7/27/1951 | 141 THIRD AVE, MT. PLEASANT, SC 29464 | DAUGHTER |

See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

| Full Legal Name (including all known names) | Year of Birth | Full Address | Relationship to Decedent |
|--|---------------|--------------|-----------------------------|
| | | | |
| | | | |
| | | | |

See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

YES NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

NO YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

NO YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

NO YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

NO YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

NO YES If yes, please state details, including names and addresses on page 3.

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10. Have more than ten (10) years passed since the Decedent's death?

NO YES If yes, please state circumstances authorizing tardy probate on page 3

11. Did the Decedent own probate real estate?

NO YES If yes, an approximate value of \$_____ (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

NO YES If yes, an approximate value of \$_____ (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

NO YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- The original is attached.
- The original is in the Court's possession.
- An exemplified (authenticated) copy of a will probated in another jurisdiction is attached.
- An exemplified (authenticated) copy of a will not probated in another jurisdiction is attached.
- The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

The execution date of the Will was: 12/23/2008
Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property?

NO YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

YES NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

NO YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

4(a): JAMES NORTH 11/11/1963 141 THIRD AVE. MT. PLEASANT, SC 29464 SON
ROBERT A. NORTH 01/22/1949 2739 RIVERLAND DR., CAYCEE, SC 29033 SON

4(b): Robert A. North died on October 29, 2015

7 Please see Consent Order attached to this document.

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III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- named as Primary Personal Representative in Will
- named as Alternate Personal Representative in Will
- nominee of Primary Personal Representative in Will
- nominee of Alternate Personal Representative in Will
- surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- other devisee of Decedent (describe): _____ or nominee of said devisee
- surviving spouse of Decedent or nominee of said spouse
- other heir of Decedent (describe): _____ or nominee of said heir
- creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative.

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 23 day of March 2016

Signature of Applicant/Petitioner: Grady C. North

[Signature]
Notary Public for South Carolina

JAMES GRADY WERNDON JR
Notary Public - State of South Carolina
My Commission Expires May 30, 2023

My Commission Expires: 5/30/2023

SWORN to before me this _____ day of _____ 20 _____

Signature of Co-Applicant/Co-Petitioner: _____

Notary Public for South Carolina

My Commission Expires: _____

010059

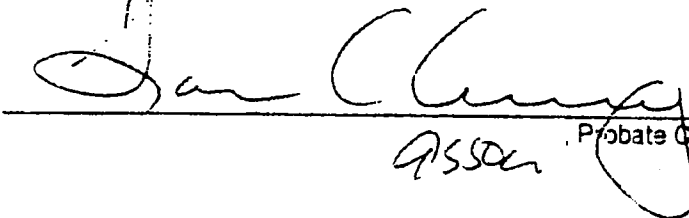
ORDER OF INFORMAL PROBATE

122508

IT IS HEREBY ORDERED that the above application for probate of a Will executed _____ and
 Codicil executed _____ and
 Memorandum

be informally, GRANTED DENIED.

Executed this 29 day of April 2016



ASSOC. Probate Court Judge

For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

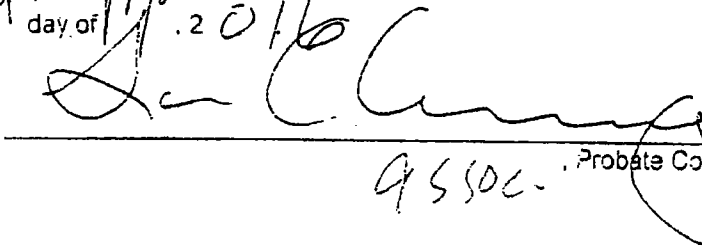
Bond

- Fiduciary Bond in the amount of \$ _____
- Bond not required for Personal Representative nominated by Will
- Bond not required as Personal Representative is sole heir or sole devisee
- Bond not required as Personal Representative is state agency, bank, or trust company
- Bond waivers filed
- See order dated _____
- Other: _____

Notice to Creditors

- Required
- Not Required

Executed this 29 day of April 2016



ASSOC. Probate Court Judge

For formal appointment of Personal Representative, see separate order executed _____.

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QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: Grady C. North

Print Name: GRADY NORTH

Address: 2739 RIVERLAND DRIVE

CAYCE, SOUTH CAROLINA 29033

Telephone (Work): 803-796-4002

(Home): 803-739-9293

(Cell): _____

Email: SANOS@SCDMH.ORG GNorth3@SC. RR.com

Signature: _____

Print Name: _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____

Attorney: ELIZABETH BROOKE HURT

Address: 147 WAPPOO CREEK DRIVE, SUITE 202

CHARLESTON, SOUTH CAROLINA 29412

Telephone: 843-795-9500

Email: BHURT@QLAWSC.COM

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

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