

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

Appeal from RICHLAND COUNTY

Deandrea G. Benjamin, Circuit Court Judge

Court of Common Pleas

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Case No. 2018-002167

**RECEIVED**  
DEC 05 2019  
SC Court of Appeals

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Isaac Smith, Jr., .....Appellant

v.

Johnnie Mae Muller Newton, .....Respondent

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**RECORD ON APPELLANT**

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Heather M. Cairns, Esquire  
Cairns Law Firm, LLC  
2537 Gervais Street  
Columbia, SC 29204  
Telephone: (803) 771-5797

Isaac Smith, Jr, Pro Se  
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Mr. Adam Tremaine Silvermail  
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Columbia, SC 2922  
Attorney for Respondent

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF )  
 JOHNNIE MAE MULLER NEWTON )  
 )  
 IN THE MATTER OF THE )  
 RULE TO SHOW CAUSE )  
 AGAINST ISAAC SMITH, JR. )  
 \_\_\_\_\_ )

IN THE PROBATE COURT  
 Case Number: 2016-ES-40-77

2018 JAN 11 PM 1:47

FILED

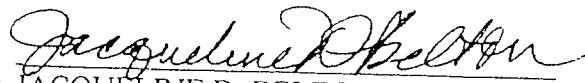
**ORDER HOLDING**  
**ISAAC SMITH JR.**  
**IN CONTEMPT OF COURT**  
**AND ORDERING DETENTION**

Isaac Smith, Jr., who previously served as the Personal Representative for his aunt Johnnie Mae Muller Newton ("Decedent"), was ordered to appear today to explain the delinquency in repayment of funds owed to the Estate of the Decedent. Isaac Smith, Jr. appeared and was not able explain the delinquency or make the required payment of the balance due pursuant to the September 5, 2017, Order which provided that he shall pay \$30,000.00 total by January 1, 2018. To date, Isaac Smith, Jr. has only paid \$6,000.00 of this amount, which leaves a remaining balance due of \$24,000.00. He states that he cannot pay the total amount due at this time.

It is the finding of this Court that Isaac Smith, Jr. is in willful contempt for his misuse of the Estate's funds and for his failure to repay these funds. Isaac Smith, Jr. was removed as Personal Representative on August 22, 2017, and has had since August 22, 2017, to repay the funds pursuant to a payment plan as laid out during the August 22, 2017, hearing and reaffirmed in the September 5, 2017, Order.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT** Isaac Smith, Jr. is held in civil contempt and will be held until the funds are repaid, or until another Order is issued by this Court. Mr. Smith is ordered incarcerated at the Alvin S. Glenn Detention Center.

**AND IT IS SO ORDERED.**

  
 JACQUELINE D. BELTON,  
 ASSOCIATE PROBATE JUDGE  
 RICHLAND COUNTY

January 11, 2018  
 Columbia, South Carolina

Isaac Smith, Jr  
PLAINTIFF(S)

Johnnie Mae Muller Newton  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

The appeal is Dismissed. Pursuant to South Carolina Code Annotated Section 62-1-308(a), the appeal from probate court was not timely filed. The Notice of Intent to Appeal was filed on February 16 and the parties were served on February 28, which is outside ten day service deadline.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/26/2018.

Isaac Smith, Jr for Isaac Smith, Jr  
Isaac Smith, Jr for Isaac Smith, Jr

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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3



Richland Common Pleas

**Case Caption:** Isaac Smith Jr VS Johnnie Mac Muller Newton

**Case Number:** 2018CP4000403

**Type:** Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-06-26 14:29:56 page 3 of 3



1 THE COURT: This is case number 2018-CP-40-403, Isaac  
2 Smith versus Johnnie Mae Muller Newton. This is an appeal  
3 from Probate Court, is my understanding?

4 MR. MOSLEY: That is correct.

5 THE COURT: All right. And this, this appeal is by  
6 Isaac Smith. Is that correct?

7 MR. MOSLEY: Yes, ma'am. Good morning.

8 THE COURT: Good morning.

9 MR. MOSLEY: How are you doing, Judge.

10 THE COURT: I am great. All right, I will be glad to  
11 hear from you.

12 MR. MOSLEY: Okay. Judge, may it please the Court.

13 THE COURT: Yes, sir.

14 MR. MOSLEY: I am Thomas Mosley, as you know.

15 THE COURT: Yes, sir.

16 MR. MOSLEY: And I recently got involved in this  
17 matter at the eleventh hour. And I have spoken to Ms.  
18 Cairns, who represents the Estate and Ms., Lawyer Dean who  
19 apparently represents a direct descendant of the deceased  
20 person.

21 THE COURT: Who is that now?

22 MR. MOSLEY: Elnora Dean. She represents the sister  
23 of the decedent. My client at this point, Mr. Smith, is a  
24 nephew and these parties have been in a very dysfunctional  
25 situation, arguing over an Estate, you know, the money and

1 a burnt house. My client, Mr. Smith, is in California and  
2 I have been communicating with him just recently. So we  
3 are asking for a, first of all, a continuance, and I did  
4 my notice of appearance and to initially ask the Court for  
5 a continuance. I note that the notices gave the parties a  
6 deadline to submit briefs to this particular appeal. I  
7 didn't have time, I guess I could have, but the late  
8 notice and so much material I didn't have time to prepare  
9 any briefs. So I am going to first ask for maybe fifteen  
10 to thirty days to present a brief subject to you looking  
11 at it and making your decision. I will say, Your Honor,  
12 that I think that the opposing counsel has done a great  
13 job to edify the Court about the background in this case  
14 by making a reply to everything to deny the, to deny the  
15 appeal sua sponte for a deficiency with regard to the ten  
16 day letter to appeal. At the time Mr. Smith, he accepted  
17 service of some orders of the Probate Judge while he was  
18 incarcerated in Richland County Detention Center back in  
19 February. Just as aside, Judge, he made a vital mistake,  
20 he come to South Carolina because it was an allegation  
21 that he had spent some Estate money paying some lawyer in  
22 California and traveling back and forth. And the parties  
23 have entered into an agreement, he was suppose to pay the  
24 money back to the Court but he has failed to meet the  
25 deadline. So as a condition of getting out of jail he,

1 you know, he had paid X amount of dollars. I think this  
2 family is fussing over about maybe \$200,000.00 dollars  
3 cash and a burnt house. I think there were some trucks  
4 and cars that were distributed to other apparent members.  
5 The unique thing about the law with regard to an Estate,  
6 which Ms. Cairns represents the Estate, there is a  
7 pecuniary interest of everybody involved including me.  
8 But primarily, you know, Courts at this particular point,  
9 especially Probate Court and its appellate power has more,  
10 more than a casual look at the designated time period to  
11 do something because as a matter of equity, equitable  
12 decisions have far reaching impact on the ability of  
13 people to attend each others funeral at the end. You  
14 know, this case is about a win/loss situation with lawyers  
15 and ultimately all of this nonsense will be trebled  
16 towards the advantage of the PR getting five percent, some  
17 money, all the lawyers get paid. And as a matter of fact  
18 of all of this, diminishes the value of the Estate and  
19 everybody gets paid. Ideally, my client, the Court in and  
20 of itself, knowing some of this stuff, when my client  
21 first appeared and was trying to probate the will the  
22 Probate Court simultaneously said, well, since nobody else  
23 is here and I will appoint you the PR. I think my  
24 opposing counsel's response to that is going to be, well,  
25 he had money that he wasn't suppose to take and other

1 family members didn't know about it. Well, on that  
2 particular regard, Your Honor, the Estate is a fictional  
3 of Western Jurisprudence and created and it really doesn't  
4 exist in and of itself. Somebody died and they are dead  
5 and the family is fussing over it. So when you look at  
6 that from a moral standpoint the nephew, how did Mr. Smith  
7 get access to everything, probably because this is a  
8 disfunctional family and, you know, he had access. Okay.  
9 So ultimately, Your Honor, I beg of you this morning to  
10 let us get some transcripts of record. I had talked to my  
11 clients earlier and I suggested to them, let's just  
12 suppose that the will is no good and you go back to the  
13 distribution and there is a hierarchy relationships  
14 without even the client of Ms. Cairns, you know, the PR in  
15 the Estate. They are more distant relatives so you have a  
16 hierarchy, ideally now, you have got to keep in mind that,  
17 it is my understanding, her client, I mean the mother,  
18 excuse me, the sister of the deceased, they are still  
19 fussing over whether or not that lady is incompetent or  
20 not. That is one issue.

21 THE COURT: Ms. Dean wasn't notified to be here?

22 MR. MOSLEY: I was curious about that. I called and  
23 spoke to her, Your Honor. And by no means, I think both  
24 counsel, Ms. Cairns and Ms. Dean have been great lawyers  
25 trying to do the best they can for their respective

1 clients, with the clients going through a lot of nonsense.  
2 I suggested, as a matter of alternative dispute  
3 resolution, which is what we are looking at now, judicial  
4 policy, that they take a look at, not in mediation but  
5 arbitration between some real good lawyers and some  
6 preachers and rather having people waiting for a dollar,  
7 have everybody show up so this family can heal and they  
8 can attend each others funeral when they die. These cases  
9 are very serious and under Western Jurisprudence I think  
10 is an obligation of this Court or any Court to sit people  
11 down like I do, I am not trying to tell Ms. Cairns' what  
12 to do, but sit people down and not let them net effect of  
13 our Jurisprudence, and the Jurist who started this system  
14 up. And I take these matters serious, Your Honor. And I  
15 have precedence with my argument going back to, my good  
16 friend, Benjamin Cardozo who was a great Jurist talking  
17 about civility in these matters. But, Your Honor, I think  
18 we need the transcript of the record. And finally, let me  
19 just say this, that I disgruntled last night and I didn't  
20 know that there was some legal issues over on the criminal  
21 side with regard to post conviction relief and a time  
22 table. And I found a word called hybrid representation of  
23 our Constitution, didn't create a right to legal  
24 representation especially inmates with regard to PCR's and  
25 their ten day notice. And this is a similar situation

1       whereby Mr. Smith was in jail, his son was his jailhouse  
2       lawyer in the ten days they missed. On the criminal side  
3       an appeal is a matter of the jurisdictional issue. But I  
4       would beg the Court's indulgence that in Probate Court an  
5       appeal to Circuit Court is more than just a notification  
6       requirement. This Court and its appellate power over  
7       Probate, my understanding of the law, is that he has a  
8       right to the facts and issues and make a decision based  
9       upon how you view things. So it is not just, boom, bam,  
10      bam, thank you, ma'am. I think it would be too  
11      conclusively to accept my opponent's argument based upon  
12      what she wrote up without the transcript of the record and  
13      without some judicial temperament. And I know--

14           THE COURT: Is there not a transcript in this case?

15           MS. CAIRNS: May I speak, Your Honor?

16           THE COURT: From the Probate -- yes, ma'am.

17           MS. CAIRNS: Thank you, Your Honor. I understand  
18      much of what Mr. Mosley speaks to. But I think it is  
19      important to understand that the matter that brings us  
20      before you today is a very simple discreet matter which  
21      was simply a motion filed to dismiss the appeal based on  
22      the untimeliness of the filings. And so the merits of the  
23      case, the facts of what occurred before, the need for  
24      transcripts or anything else are not relevant to today's  
25      hearing at all. It is completely a matter of the

1 timeliness of his ability to properly file and serve his  
2 notice of intent to appeal. The Probate code has been  
3 tuned up a few years ago to make appeals from Probate  
4 Court very clear in terms of the process. And after the  
5 receipt of the written order, which occurred on February  
6 12th, Mr. Smith was served the order while in Probate  
7 Court. Rule, well code, it is not even a Rule, it is a  
8 Code Section, 61-1-308, covers appeals from Probate Court  
9 to Circuit Court provided that he had ten days to file his  
10 notice of intent to appeal and serve. There has actually  
11 been a couple of cases, where the benefits of a couple of  
12 cases that say that that is exactly what it says, that  
13 they must be served, put them in the U.S. Mail and those  
14 things are insufficient. And so in terms of Mr. Mosley's,  
15 you know, lack of transcripts and lack of a full grasp of  
16 all the facts, it is simply not relevant for today. So I  
17 think the need for a continuance for today is not  
18 necessary. The only issue is whether or not Mr. Smith  
19 filed and served his notice of intent to appeal within the  
20 ten days required by statute. And I would offer, even his  
21 own--

22 THE COURT: When did he file this?

23 MS. CAIRNS: He filed, he was served the order on  
24 February 12th. He filed it in the court on February 16th  
25 and it was received by my office on February 28th which is

1 a full five days after the deadline necessary by the  
2 rules.

3 THE COURT: Wait a minute. You say he filed his  
4 appeal on the 16th?

5 MS. CAIRNS: He filed his notice of intent to appeal  
6 on the 16th.

7 THE COURT: That was within the ten days.

8 MS. CAIRNS: That was within the ten days. But the  
9 rule also requires service on all the parties within the  
10 ten days. And our office was not served with this until  
11 the 28th, if I accept service being received by U.S. Mail  
12 which I would offer that that would be okay.

13 THE COURT: He was detained at the Department of  
14 Corrections?

15 MS. CAIRNS: He was, he was in Alvin S. Glenn until  
16 the end of February. That is correct.

17 THE COURT: Do you have a date as to when he mailed  
18 it from Alvin S. Glenn. Because, you know, they have--

19 MS. CAIRNS: He mailed it on the 27th, it is  
20 postmarked on the 27th, received by my office on the 28th.

21 THE COURT: Okay. You know, sometimes Alvin S. Glenn  
22 has a delay.

23 MS. CAIRNS: Yes, there was an effort to actually  
24 serve on the order and the order was issued on the 8th, he  
25 was brought up to the court on the 12th. He had not



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF THE  
ESTATE OF Johnnie Mae  
Muller Newton

Isaac Smith, Jr.  
Petitioner,

VS.

Estate of Johnnie Mae Muller  
Newman, Carrie Lewis, Andrew  
Muller, Joseph Muller, Children of  
Willie Muller, and Children of  
Hebrew Muller.  
Respondents,

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
CASE NO: 2019-CP-40-00403  
8

MOTION TO SET ASIDE JUDGMENT  
ORDER DUE TO INCOMPLETE AND  
INSECIPHERABLE TRANSCRIPT

JENNIFER W. MOON  
C.C.P., G.S., & F.C.

2019 AUG 14 PM 2:28

RICHLAND COUNTY  
FILED

YOU WILL PLEASE TAKE NOTICE THAT THE PETITIONER, Isaac Smith, Jr., Pro, Se, will move this Honorable Court set aside an order rendered by the Probate Court of Richland County pursuant to a hearing held on December 1, 2016 and the decision denying admission a copy of the will of Johnnie Mae Muller for probate in Probate Case Number 2016-ES-40-00077.

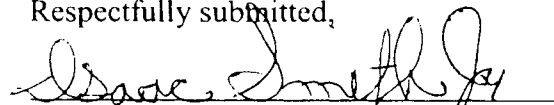
1. A hearing was held on Thursday, December 1, 2016 on the admission of a copy of the will of Johnnie Mae Newton. Petitioner, Isaac Smith, Jr. was seeking a copy of a will which he was the sole devisee to probate.
2. The hearing was held to determine if the copy would be admitted to probate. All known heirs were notified of the time date and location of the hearing.
3. Ms. Carrie Lewis, sister of Mrs. Johnnie Mae Newton was not present at the hearing. Attorney Dean appeared on her behalf. It is called into question whether Attorney Dean legally represented Ms. Carrie Lewis.
4. Attorney Dean acknowledged on Page 13- and 14 of the transcript provided by the Court (See Exhibit "A" attached,) that Mrs. Carrie Lewis was diagnosed with dementia. She further stated that she had not spoken with her but the last time she spoke with Mrs. Carrie Lewis she wanted Attorney Dean to represent her.

5. Most of Attorney Dean's testimony was (inaudible) as was most of the testimony throughout the transcript. (See Exhibit "A" attached. That included important testimony throughout the transcript.
6. The inaudible testimony was crucial to determining whether Attorney Dean could legally represent Mrs. Carrie Lewis. The inaudible portion of the transcript dealt with the mental state of Mrs. Carrie Lewis. The transcript showed that Court admitted hearsay testimony into evidence and that the hearsay testimony influenced the court's decision against the admission of the copy of the will to probate.
7. The inaudible transcript was a result of the defective equipment used to record the hearing and resulted in a compromised record that would damage the petitioner ability to have a fair appeal. The inaudible transcript denies the petitioners constitution right to due process. It prohibits the petitioner's ability to have a fair appeal.
8. The Petitioner is entitled to a fair and equitable ruling from the court and the defective recording device used by the Court prohibited the petitioner from receiving a just decision to which if unjust he has a right to appeal.
9. The missing information and inaudible portions of the transcript represent an altered official document of the Court. Altering transcripts are illegal made unusable and therefore the hearing of which the transcript was recorded is therefore null and void and a new hearing should be scheduled.

**WHEREFORE**, Petitioner, Isaac Smith, Jr., having fully stated the unconstitutionally of the inaudible transcript, hereby prays that this Court set aside the judgment denying the admission of a copy of the will of Johnnie Mae Muller Newton and a new hearing be held to allow the petitioner his opportunity to make a reasonable case for the admission of the copy of or the will Johnnie Mae Muller Newton be admitted for probate and prays that this Court would inquire into the allegations set forth and issue its Order.

- A. Setting aside the Order pursuant to the hearing held on December 1, 2016 Dismissing this Complaint of the Plaintiff,
- B. For such other relief that this Court may deem just and proper.

Respectfully submitted,



Isaac Smith, Jr. Pro Se, Petitioner  
2916 ¼<sup>th</sup> West Vernon Ave.  
Los Angeles CA 90008  
323-295-9500

August 13, 2019  
Columbia, South Carolina



Judge Jacqueline D. Belton at the Richland County Probate Court on the Estate of Johnnie Mae Newton. At that hearing, Attorney Elnora J. Dean represented to the Court that she was the Attorney for the Respondent, Carrie Muller Lewis. That was a false representation to the court. The official transcript of the hearing documents shows Attorney Elnora J. Dean as the Attorney for the Respondent, Carrie Muller Lewis. Later in the transcript, on page 13, the court said: "And, Ms. Dean, You're here representing, ---- you're the attorney for the Carrie Muller Lewis." Ms. Dean replied: "Correct." Attorney Dean falsely misrepresented to the Court that she was the attorney for Carrie Muller Lewis. I have supplied documentation that she was not the attorney for Carrie Muller Lewis. I have enclosed documents from the Lexington County Probate Court that show that Jesse Near, Esquire was the attorney for Carrie Muller Lewis. Attorney Elnora J. Dean (Page 13 of transcript) stated that Carrie Muller Lewis was an incapacitated person and did not have the capabilities to choose an attorney.

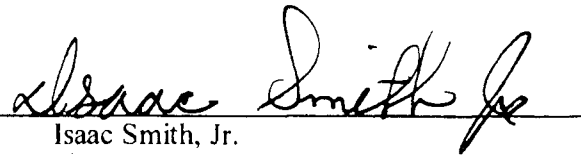
5. At the hearing held on Thursday, December 1, 2016, Attorney Dean acknowledged to the Probate Judge, "Carrie Muller Lewis' was diagnosed with dementia and that she hadn't spoken with Ms. Carrie Muller Lewis and said: "the last time she spoke with her, she wanted me to represent her today for the hearing." (Page 13 and 14 of transcript) Attorney Dean acknowledged the incapacity of Ms. Carrie Muller Lewis and further acknowledged she had not spoken with Ms. Carrie Muller Lewis recently. Despite Attorney Dean's admission to the court that "Carrie Muller Lewis' was not competent to choose a legal representative, the court allowed Attorney Dean to continue and the attorney for "Carrie Muller Lewis.

7. The Probate Court allowed Attorney Dean to Represent Carrie Muller Lewis even though Attorney Dean acknowledged at the hearing on December 1, 2016 that Carrie Muller Lewis was not competent. Attorney Dean basically admitted that she had not authority whatsoever to represent Ms. Carrie Muller Lewis.

8. Sonja L Lewis, not being an heir of Johnnie Mae Newton, had no standing in the Estate of Johnnie Mae Newton. Further, she had no authority to hire an attorney for of Carrie Muller Lewis. Sonja L. Lewis did not have power of attorney for Carrie Muller Lewis. Sonja L. Lewis had no authority to have Ms. Dean represent Carrie Muller Lewis. The Court had already appointed an attorney for Carrie Muller Lewis.

#### CONCLUSION

**Despite Sonja L. Lewis' not having any authority to hire Attorney Elnora Dean to represent Carrie Muller Lewis, Attorney Dean falsely stated she represented Carrie Muller Lewis at a hearing held on August 27, 2017. Judge Amy McCulloch refused to release the transcript from that hearing to me. Because of Attorney Dean misrepresented that she was the legal representative of Carrie Muller Lewis, the court made an adverse ruling in the Matter of Carrie Muller Lewis. These fact fall well within Rule 60(b) (3) fraud, misrepresentation, or other misconduct of the adverse party, and because upon the court this judgement should be set aside.**



Isaac Smith, Jr.  
2916 ¼ W. Vernon Ave.  
Los Angeles, CA 90008  
(323)295-9500

January 18, 2019  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF THE  
ESTATE OF  
Jonnie Mae Muller Newton

Isaac Smith, Jr.  
Petitioner,

VS.

Estate of Johnnie Mae Muller  
Newman Carrie Lewis, Andrew  
Muller, Joseph Muller, Children of  
Willie Muller, Children of Hebrew  
Muller.  
Respondents,

IN THE PROBATE COURT

CASE NO. ~~2016-ES-40-00077~~  
18-0403

CERTIFICATE OF SERVICE

RICHLAND COUNTY  
FILED

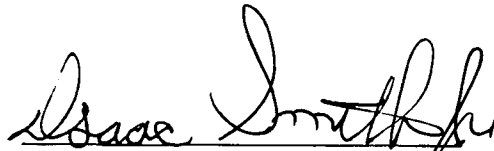
2019 AUG 14 PM 3:09

JEANETTE W. McBRIDE  
C.C.P., G.S., & F.C.

The undersigned hereby certifies that Petitioner has served a copy of his Motion To Set Aside Judgment Order Due To Unreadable Transcript by depositing the same in the United States Mail with the proper First Class Postage affixed on the 12<sup>th</sup> day of August, 2019 to:

Heather Cairns,  
Cairns Law Firm, LLC,  
2537 Gervais Street, Columbia, SC 29204

Adam T. Silvernail  
Law Office of Adam T. Silvernail  
Post Office Box 7995  
Columbia, South Carolina 29202



Isaac Smith, Jr. Pro Se, Petitioner  
2916 1/4<sup>th</sup> West Vernon Ave.  
Los Angeles CA 90008  
323-295-9500

Columbia, South Carolina

August 12, 2019

STATE OF SOUTH CAROLINA )  
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COUNTY OF RICHLAND )  
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Isaac Smith, Jr. )  
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Petitioner )  
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vs. )  
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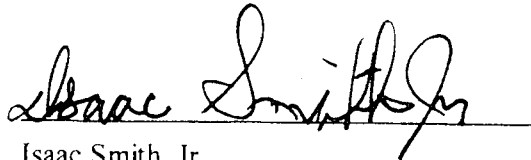
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No. 2018-CP-40-00403

2019 JAN 18 PM 3:36  
JEANETTE W. HOBBS  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

I, Isaac Smith, Jr., served upon the Plaintiff this Motion to Set Aside Judgement under Rule 60 S.C.R.C.P. by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown below this 18<sup>th</sup> day of January, 2019.



Isaac Smith, Jr.  
2916 ¼ W. Vernon Ave.  
Los Angeles, CA 90008  
(323)295-9500

Heather Carnes,  
2537 Gervais Street  
Columbia, SC 29204  
Telephone (803)-771-6979  
Attorney for Respondent

Isaac Smith, Jr  
PLAINTIFF(S)

Johnnie Mae Muller Newton  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Defendants' Motion to Reconsider is denied and the case has been dismissed. Plaintiff failed to serve the Court within ten (10) days of filing per Rules of Civil Procedure 59(g).

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/14/2018 .

Isaac Smith, Jr for Isaac Smith, Jr  
Isaac Smith, Jr for Isaac Smith, Jr

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** Isaac Smith Jr VS Johnnie Mae Muller Newton

**Case Number:** 2018CP4000403

**Type:** Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-11-15 10:46:29 page 3 of 3

IN THE STATE OF SOUTH CAROLINA  
In The Fifth Judicial Circuit Court

Appeal from the Richland County Probate Court

*Appeal case # 2018-CP-40-00403*  
Case Number 2016-ES-40-00077

Estate of Johnnie Mae Newman,


v.

Isaac Smith, Jr.,.....Appellant.

RICHLAND COUNTY  
FILED  
2018 FEB 16 PM 12:41  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

*Amended* NOTICE OF APPEAL

Isaac Smith, Jr., Appellant will appeal the Order Denying Motion for filed file June 26, 2017 and October 18, 2017 and denied February 7, 2018. Appellant received notice of Order and/or Judgment, on February 12, 2018. See exhibit "A" attached.

  
\_\_\_\_\_  
Isaac Smith, Jr. Pro Se, Appellant  
2916(1/4) W. Vernon Avenue  
Columbia, South Carolina 90008  
(323) 295-9500\

February 16, 2018

THE STATE OF SOUTH CAROLINA

In The Fifth Judicial Circuit Court

-----  
Appeal from the Probate  
Court for Richland County

Amy McCulloch, Probate Judge

-----  
Probate Court Case No. 2011-ES-40-00077

-----  
Circuit Court Case Number ~~2018-CE-40-00408~~

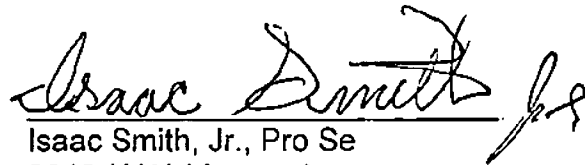
RICHLAND COUNTY  
FILED  
2018 FEB 21 PM 12:12  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

-----  
Estate of Johnnie Mae Muller Newton

v.

PROOF OF SERVICE

I, Isaac Smith, Jr., served upon the Respondents this Notice of Appeal by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown this 19<sup>th</sup> day of January, 2017.



Isaac Smith, Jr., Pro Se  
2916 ¼ W. Vernon Ave.  
Los Angeles, CA 9008  
(323)-295-9500

Heather Cairns, Esquire  
2537 Gervais Street  
Columbia, South Carolina 29204  
Telephone: (803)771-6979  
Attorney for Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE CIRCUIT COURT

C/A NO. 2016-ES-40-00077

Isaac Smith Jr., )  
Petitioner )

vs. )

Estate of Johnnie Mae Newton, Carrie Lewis )  
Andrew Muller, Joseph Muller, )  
Sandra Hopson; Children of Isaiah Muller, )  
Children of Willie Muller, Children of )  
Hebrew Muller, Cassie Muller )  
Respondents. )

NOTICE OF MOTION AND MOTION  
TO DISMISS PETITIONER'S NOTICE  
OF APPEAL(S)

2018 MAR - 1 PM 4:18  
JEANNETTE W. HOSKINS  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

TO: THE HON. ROBERT E. HOOD, CHIEF ADMINISTRATIVE JUDGE, AND THE PETITIONER, ISAAC SMITH, JR.:

Gail Hampton, Personal Representative of the Estate of Johnnie Mae Newton, through her undersigned attorney, moves before the Hon. Robert E. Hood for an Order of this Court, as follows:

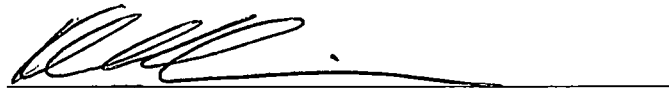
1. Dismissing the Petitioner's purported Notice of Appeal dated September 24, 2017 and filed January 19, 2018, (see Exhibit A) pursuant to section 62-1-308, South Carolina Probate Code, for the following reasons:
  - a. The Honorable Judge Belton issued her Order, *inter alia*, denying the Petitioner's Motion to Reconsider the September 5, 2017 Order of Judge McCullough on February 8, 2018 (See Exhibit B) with service on the Petitioner on February 11, 2018 (See Exhibit C).
  - b. The purported Notice of Appeal filed on January 19, 2018, preceded the issuance of the Order on February 8, 2018, and was not mailed to the attorney for Respondent Estate of Johnnie Mae Newton until February 2, 2018, as evidenced by the post mark on the envelope received by respondent's counsel on February 6, 2018, (See Exhibit D) well past the ten (10) day time frame required by statute.
2. Dismissing the Petitioner's Amended Notice of Appeal dated February 16, 2018, pursuant to

section 62-1-308, South Carolina Probate Code, for the following reasons:

- a. The Amended Notice of Appeal filed February 16, 2018, (See Exhibit E) for the Order issued on February 8, 2018 (See Exhibit B) and served on Petitioner February 11, 2018, (See Exhibit C) was not mailed to the attorney for Respondent Estate of Johnnie Mae Newton until February 27, 2018 as evidenced by the post mark on the envelope received by respondent's counsel on February 28, 2018, ( See Exhibit F) well past the ten (10) day time frame required by statute.
- b. The Amended Notice of Appeal failed to attach the Order subject to the attempted appeal as required by statute.

WHEREFORE, counsel prays for as follows:

1. The Court inquire into the matter as may be appropriate and issue its Order dismissing Petitioner's Notice of Appeal(s).
2. For such other or further relief as the Court shall deem just and proper, including an award of fees and expenses incurred in connection with this matter.



Heather Cairns, Esquire  
2537 Gervais Street  
Columbia, SC 29204  
T (803) 771-6979  
F (803) 462-5797  
Heather@cairnslawfirm.com

Columbia, South Carolina  
This 1<sup>st</sup> day of March 2018.

2018CP4000403

THE STATE OF SOUTH CAROLINA  
In The Fifth Judicial Circuit Court

Appeal from the Probate Court for Richland County, South Carolina

Amy McCulloch, Probate Judge, Probate Judge

Case No. 2016-ES-40-00077


Estate of Johnnie Mae Muller Newton,

Isaac Smith, Jr.,.....Appellant

RICHLAND COUNTY  
FILED  
2018 JAN 19 PM 4:06  
JEANNETTE W. HODBRIDGE  
C.C.P. & G.S.

NOTICE OF APPEAL

Isaac Smith, Jr., Appellant will appeal the Order Determining Heirs, Appointing Successor Personal Representative, Authorizing Sale of Personal Property, and Authorizing Sale of Real Property, of the Honorable Amy McCulloch, Probate Judge, dated September 5, 2017, and Denial of Motion dated January 11, 2018 Pursuant to Rule 11 S.C.R.C.P. Appellant received notice of Order and/or Judgment on September 15, 2013. See exhibit "A" attached.

 LS  
Isaac Smith, Jr. Pro Se, Appellant  
2916¼ W. Vernon Avenue  
Los Angeles, California 90008  
(323)-295-9500

September 24, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF THE ESTATE OF )  
 JOHNNIE MAE MULLER NEWTON )  
 Decedent. )

IN THE PROBATE COURT  
 ESTATE NUMBER: 2016-ES-40-0007

FILED  
 2017 SEP -5 PM 1:40  
 RICHLAND COUNTY, S.C.

**ORDER DETERMINING HEIRS, APPOINTING SUCCESSOR PERSONAL REPRESENTATIVE, AUTHORIZING SALE OF PERSONAL PROPERTY, AND AUTHORIZING SALE OF REAL PROPERTY**


THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Formal Testacy and Appointment on January 15, 2016, and the subsequent filing of a Petition for Allowance of Claim on March 23, 2017, by Petitioner Isaac Smith Jr. ("Mr. Smith"), a nephew of Johnnie Mae Muller Newton ("Decedent").

In his Petition, Mr. Smith asked the Court to admit a copy of what was purported to be the Last Will and Testament ("Will") of the Decedent, dated November 5, 2010, to probate and to appoint him as Personal Representative of the Estate of Johnnie Mae Muller Newton (the "Estate"). Mr. Smith alleged that this copy was mailed to him prior to the Decedent's death from a house fire on January 8, 2016, which also allegedly destroyed the original Will. The purported Will nominated Mr. Smith to serve as Personal Representative. On December 19, 2016, the Court issued an Order Denying Copy of Will to Probate and Appointing Personal Representative. In that Order, the Court determined that the "evidence presented throughout the [December 1, 2016] hearing does not rise to the level of clear and convincing evidence as required to rebut the presumption" that the testator destroyed the Will with intent to revoke it. Due to the lack of clear and convincing evidence, the Court concluded that the administration of the Estate should proceed pursuant to the laws of intestate succession. The Court did, however, appoint Mr. Smith as the Personal Representative because no other person filed a Petition for Formal Appointment.

Shortly thereafter, Mr. Smith filed a Statement of Creditor's Claim with this Court for an amount of \$66,715.11 on March 6, 2017. Mr. Smith requested reimbursement for traveling expenses, maintaining the property, funds for family members to attend the Decedent's funeral, groceries and meals during the administration of the Estate, utility bills, funeral bills of the Decedent's spouse, car rentals, contribution to the Decedent's living expenses, labor and care of

- I. The Successor Personal Representative shall email a copy of the completed Settlement Statements to GallowayC@rcgov.us within ten (10) days of the closing.
- J. The Successor Personal Representative shall file the Information to Heirs and Devisees within thirty (30) days of the date of this Order.
- K. The remaining proceeds of the sales after payment of all applicable costs shall be held by the Successor Personal Representative in the Estate checking account for payment of additional expenses of administration as and disbursement to the heirs approved by subsequent Orders of the Probate Court.
- L. The Successor Personal Representative shall take all actions reasonably necessary to promptly conclude the administration of the Estate.

**IT IS SO ORDERED.**

  
Amy W. McCulloch  
Richland County Probate Judge

September 5, 2017  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF THE ESTATE OF )  
 JOHNNIE MAE MULLER NEWTON )  
 )  
 Isaac Smith, Jr., )  
 Movant. )

IN THE PROBATE COURT  
 Estate No.: 2016-ES-40-00077

RECEIVED  
 PROBATE COURT  
 RICHLAND COUNTY, SOUTH CAROLINA

2018 FEB -7 PM 3:45

FILED

**ORDER CLARIFYING THE COURT'S SEPTEMBER 5, 2017 ORDER AND DENYING RENEWED MOTION FOR RELIEF FROM ORDER DENYING COPY OF WILL TO PROBATE**

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion for Clarification of September 5, 2017 Order, and Renewed Motion for Relief from Order Denying Copy of Will to Probate, Pursuant to Rule 60, both dated October 19, 2017 (hereinafter also the "October Motions"), filed by Movant Isaac Smith, Jr. (hereinafter also "Mr. Smith"). In his October Motions, Mr. Smith requests that the Court clarify its Order Determining Heirs, Appointing Successor Personal Representative, Authorizing Sale of Personal Property, and Authorizing Sale of Real Property, dated September 5, 2017 (hereinafter also the "September 5, 2017 Order") so as to address the issues raised in the Motion for Relief from Order Denying Copy of Will to Probate, filed by Mr. Smith on June 26, 2017 (hereinafter also the "June Motion"), and requests the Court to grant the relief sought in his June Motion.

RECEIVED  
 2018 FEB 8 PM 5:14

Background

Mr. Smith filed a Summons and Petition for Formal Testacy and Appointment on January 15, 2016, in which he requested that the Court admit a copy of what was purported to be the Last Will and Testament (hereinafter "the Will") of Johnnie Mae Muller Newton (hereinafter also "the Decedent"), dated November 5, 2010 to probate and to appoint him as the Personal Representative of the Estate of Johnnie Mae Muller Newton (hereinafter "the Estate"). The Decedent died as a result of a house fire that occurred on January 8, 2016, and her original Will was allegedly destroyed in the fire. Mr. Smith alleged that the copy of the Will he presented was mailed to him prior to the Decedent's death. The purported Will would have nominated Mr. Smith to serve as Personal Representative and would have devised a large portion of the Estate to Mr. Smith. The Court held a hearing on the matter on December 1, 2016, and on December 19, 2016, the Court issued an Order Denying Copy of Will to Probate and Appointing Personal

Representative (hereinafter also the "December 2016 Order"). In its Order, the Court determined that the "evidence presented throughout the [December 1, 2016] hearing [did] not rise to the level of clear and convincing evidence as required to rebut the presumption" that the Decedent destroyed the original Will with intent to revoke it. Due to the lack of clear and convincing evidence, the Court concluded that the administration of the Estate should proceed pursuant to the laws of intestate succession. However, the Court moved forward with appointing Mr. Smith as the Personal Representative because no other person sought an appointment at that time.

The December 2016 Order was sent via ordinary first class mail to Mr. Smith and the other intestate heirs on December 20, 2016, as evidenced by a Proof of Delivery in the Court's file. The copy of the December 2016 Order mailed to Mr. Smith was never returned to the court as undeliverable. No Notice of Intent to Appeal or an appeal regarding the December 2016 Order was filed by Mr. Smith within the statutorily required time period.

On June 26, 2017, Mr. Smith filed the June Motion, an accompanying memorandum, and supporting Affidavits of Mr. Smith, Matthew Davis (hereinafter also "Mr. Davis"), and Broderick Smith, which alleged that the three (3) of them found an original Will in the Decedent's home and that the original Will should be probated. Mr. Smith did not file the purported original Will with this Court until a hearing was held.

A hearing was scheduled for and held on August 22, 2017. Present at the hearing were almost two dozen intestate heirs and/or family members. Also in attendance were Attorney Elnora J. Dean, who represented Carrie Lewis, an intestate heir and alleged incapacitated adult residing in assisted living; Mr. Smith and his attorney, Jeff Haladay (hereinafter also "Mr. Haladay"); and Barbara Gail Hampton (hereinafter also "Ms. Hampton"), spouse of John Hampton, an intestate heir.

During the hearing, instead of submitting an original Will, Mr. Smith submitted another copy of the alleged Will, which was inconsistent with the copy that Mr. Smith attempted to probate on December 1, 2016. As a result, the Court denied admitting the copy presented on August 22, 2017 for probate. Additionally, Mr. Smith submitted bank statements, which showed that he inappropriately reimbursed himself as Personal Representative a total amount of \$30,000.00. This amount included transfers of \$9,800.00, \$5,000.00, \$4,800.00, \$3,000.00, \$5,000.00, and a check to himself for reimbursement of a payment to Creel Court Reporting, Inc. for recording the December 1, 2016 hearing, in the amount of \$2,400.00, even though the invoice was for the amount of \$1,640.30. The Court found that the expenses incurred from Creel Court

Reporting, Inc. were for the personal benefit of Mr. Smith, as he used the printed transcript for the sole purpose of filing the June Motion. As such, the Court determined that the Estate should not have reimbursed either the invoice amount of \$1,640.30 or the check amount of \$2,400.00. Mr. Smith further stated that he used Estate funds to pay Attorney George Omoko \$6,000.00 for his assistance with researching and drafting the June Motion. Again, the Court found that this expense benefitted Mr. Smith and not the Estate. As a result, the Court immediately terminated Mr. Smith's appointment as Personal Representative and ordered him to pay the Estate \$1,000.00 on the day of the hearing, \$12,000.00 within sixty (60) days of the hearing, which was due October 17, 2017, and \$1,000.00 per month thereafter with the total remaining balance due to the Estate no later than January 1, 2018. This payment plan was in large part based on Mr. Smith's proposal to the Court to pay certain amounts by certain dates; the Court set other deadlines pursuant to the total amount owed to the Estate by Mr. Smith.

In the September 5, 2017 Order, the Court determined the intestate heirs of the Estate, appointed Ms. Hampton as successor Personal Representative, authorized Ms. Hampton to sell the Decedent's vehicles, and authorized Ms. Hampton to list and sell the real property owned by the Decedent. That Order also addressed the amount Mr. Smith inappropriately reimbursed himself and outlined the payment plan Mr. Smith agreed to during the hearing.

Subsequent to the hearing, Ms. Hampton discovered an invoice for title research performed by Mr. Davis d/b/a Midland Valley Title in the amount of \$1,000.00. The invoice indicated that the Decedent may have had an interest in four (4) parcels of real property, but the product of the title research was not included in the documents Mr. Smith transferred to Ms. Hampton. In an effort to recover the documents, on November 3, 2017, the Court ordered Mr. Davis to turn over any product that resulted from his research by November 15, 2017. However, the Court did not receive the requested documents until a hearing was held.

On October 2, 2017, Mr. Smith filed a Notice of Appeal with this Court in which he indicated he was appealing the September 5, 2017 Order with the South Carolina Court of Appeals. On October 18, 2017, Mr. Haladay, filed a Motion to Withdraw as Attorney, with his client's consent, and the Court granted the Motion on the same date. As indicated previously, on October 19, 2017, Mr. Smith filed the October Motions. That same day Mr. Smith also filed a Withdrawal of Appeal with the South Carolina Court of Appeals, in which he withdrew his appeal.

In October of 2017, the Court was made aware that Mr. Smith failed to abide by the payment plan as ordered by the Court and that he had not made the monthly \$1,000.00 payment or the \$12,000.00 payment due October 17, 2017. Additionally, neither Mr. Smith nor Mr. Haladay contacted the Court seeking to modify the payment plan. On November 4, 2017, the Court issued a Rule to Show Cause for Mr. Smith to explain his delinquency in refunding the Estate, to address recently discovered expenditures from the Estate, and to address his October Motions. On December 18, 2017, the Court received a check from Mr. Smith in the amount of \$5,000.00 with no explanation as to why he had failed to adhere to the previously ordered payment schedule.

**Rule to Show Cause and October 2017 Motions**

A hearing on the Rule to Show Cause and the October Motions was scheduled for and held on January 11, 2018. Present at the hearing were Movant Isaac Smith, Jr.; Barbara Gail Hampton, the Personal Representative, and her attorney, Heather Cairns (hereinafter also "Ms. Cairns"); and several intestate heirs and/or family members: La'Chell Bodrick, Lessie Lenora Muller Parker, James E. Muller, Mildren Hook, Cheryl Muller, Patricia A. Hampton, John T. Hampton, and Gene Muller II. Also present were Mr. Smith's son, Broderick J. Smith, and Matthew Davis, who at Mr. Smith's request conducted title research on behalf of the Estate.

Because the October Motions request, in part, clarification of the Court's ruling on the June Motion, the Court started the hearing by addressing the June Motion. The Court noted that Mr. Smith did not timely file an appeal or any motions pursuant to Rule 59, SCRCP, so his motions pursuant to Rule 60, SCRCP were the only remaining options available to Mr. Smith to contest the Court's rulings. According to Rule 60(b), SCRCP, Mr. Smith's June Motion was timely filed as it had not been one (1) year since the December 19, 2016 Order Denying Copy of Will to Probate. Likewise, Mr. Smith's October Motions were also the only remaining options available to contest the September 5, 2017 Order, and these were also timely filed pursuant to Rule 60(b), SCRCP. When asked to argue his June Motion, Mr. Smith stated that he was "surprised" by attorney Elnora Dean's presence at the December 1, 2016 hearing. The Court informed Mr. Smith that when a party comes to Court, he or she is expected to be ready to argue the issues and that it was not the Court's duty to make sure he knew which points of law to argue. The Court further noted that Mr. Smith was unprepared and that he failed to meet the required elements to admit the copy of the Will to probate. Attorney Dean's presence did not change the elements of law that needed to be satisfied or Mr. Smith's burden of proof. Mr.

Smith also stated that Attorney George Omoko, who is licensed in California but not South Carolina, assisted Mr. Smith by drafting the June Motion and the October Motions. As a result, the Court cautioned Mr. Smith that he should not ask Attorney Omoko to provide any more assistance by preparing pleadings to be filed in these matters, unless Mr. Omoko is admitted to practice *pro hac vice* regarding this case or he obtains a license to practice law in the State of South Carolina.

When asked to make his argument regarding the October Motions, Mr. Smith stated that the October Motions speak for themselves and that he was seeking clarification as to why the document he claimed was the original Will, presented at the August 22, 2017 hearing, was not admitted to probate. The Court informed Mr. Smith that the document he sought to have admitted to probate in 2017 as the original Will was not identical to the copy he sought to have admitted in 2016, the document presented in 2017 was itself a copy, and he failed to meet the burden of proof required to admit the copy of a will to probate. For those reasons, it was determined that the document submitted on August 22, 2017 could not be admitted to probate and administered as if it were the original Will.

The parties then discussed the invoice from Mr. Davis indicating that he conducted title research for real properties in which the Decedent may have had an interest. Mr. Davis was called to the stand and stated that his research indicated the Decedent may have an interest in four (4) real properties and that he had turned over documents reflecting his research to Ms. Hampton and the Court. The Court notes that those documents were filed on the day of the hearing. When asked why he failed to submit the documents by November 15, 2017, as he was ordered to do, Mr. Davis testified that the original file was stolen when his vehicle was broken into and that he was only able to obtain copies at a later date.

Ms. Cairns questioned Mr. Davis and then argued that \$1,000.00 for Mr. Davis' services seemed excessive based on her experience with working with title abstractors and the minor benefit the research would have on the Estate. The parties agreed that Mr. Smith paid Mr. Davis from his personal funds and then reimbursed himself from the Estate. Ms. Cairns offered that a portion of this expense should be credited to Mr. Smith as a legitimate expense of the Estate and agreed to submit a memorandum for the Court's consideration outlining what she believed were legitimate expenses regarding the Estate. Ms. Cairns also indicated that there are additional expenses she believed Mr. Smith should be held accountable for. However, Ms. Cairns suggested that Mr. Smith should not be held liable at the time of the hearing for any more than

the \$24,000.00 he was previously ordered to pay, until the Court can determine a final figure Mr. Smith is responsible for paying, after a review of her memorandum and supporting documentation. Mr. Smith was agreeable to this proposal.

During the January 11, 2018 hearing, Mr. Smith also asked the Court for clarification as to the payment plan laid out in the September 5, 2017 Order. As of January 11, 2018, Mr. Smith had reimbursed the Estate \$6,000.00 and still owed the Estate the additional amount of \$24,000.00, which became delinquent after January 1, 2018. Mr. Smith stated that he asked his attorney, Mr. Haladay, to request a modification in the payment plan, in September or October of 2017. Mr. Smith also presented to the Court certain documents attempting to show that he asked Mr. Haladay to request that the Court modify the payment plan. However, the Court never received a request from either Mr. Smith or Mr. Haladay asking to modify the payment plan.

While the hearing was in session, at the Court's direction and with the knowledge of Mr. Smith and Ms. Cairns, the senior estate clerk sent copies of the documents to Mr. Haladay via e-mail and inquired as to whether he actually received these documents from Mr. Smith. Mr. Haladay confirmed by return e-mail that he received only one (1) of the relevant documents regarding a specific request for a modified payment plan, but he stated that he received it January 8, 2017 and not in October of 2017 as the document suggested.

Ms. Cairns inquired of Mr. Smith as to whether he had confirmation receipts from the faxed documents. Mr. Smith stated that he did not track the documents or receive confirmation receipts when he faxed the documents to Mr. Haladay. The Court noted that although Mr. Haladay was relieved as counsel as of October 18, 2017, Mr. Smith knew that his attorney was seeking to withdraw as counsel as early as October 15, 2017, which was two (2) days before the due date of the \$12,000.00 payment. Mr. Smith acknowledged that he did not have a conversation at that time with his attorney about what he characterized as his inability to make the \$12,000.00 payment by the October 17, 2017 deadline. The Court also took note of the fact that Mr. Smith did not seek clarification as to the payment plan in his October Motions. Mr. Smith countered that Mr. Haladay was still acting as the attorney for other matters, so he believed that he was confused. However, the Court did not accept Mr. Smith's explanation as a permissible excuse to fall delinquent on his payment plan. Therefore, the Court reasoned that Mr. Smith failed to take sufficient action to request a modification of the payment plan and was still bound by the payment plan. As a result, the Court issued an Order dated January 11, 2018

holding Mr. Smith in contempt of Court. The Court ruled that Mr. Smith will not be released until he pays the \$24,000.00 or there is another order from the Court ordering his release.

**Additional Money Owed to the Estate or Credits Due to Isaac Smith, Jr.**

On January 18, 2018, the Court received a memorandum from Ms. Cairns outlining what she believed to be both legitimate and inappropriate Estate expenses incurred by Isaac Smith, Jr. while he served as Personal Representative. Ms. Cairns pointed out that during the August 22, 2017 hearing the Court recognized that the payment of Attorney George Omoko's fees in the amount of \$6,000.00, for his work in preparing Mr. Smith's motions, was not a reasonable Estate expense. However, the Court was not clear in directing whether Mr. Smith was required to reimburse the Estate for these expenses. Ms. Cairns also alleged that Mr. Smith should have deposited funds that were due to Estate but did not do so. These funds include: \$10.35 representing the balance of an account the Decedent held at AllSouth Federal Credit Union; \$102.38 representing a refund from Transamerica Premier Life Insurance Company; and \$1,036.00 representing the final Social Security payment due to the Decedent after her passing. These amounts total \$1,148.73.

Ms. Cairns agreed that Mr. Smith should receive credit for certain reasonable expenses that benefitted the Estate. These include: \$406.08 to Writing Horses as advertising for the initial hearing to open the Estate; \$67.98 as payment to the City of Columbia for the Decedent's final water bill; \$186.42 as payment to SCE&G for the Decedent's final power bill; \$34.65 as payment to East Richland County Public Service district as payment for the Decedent's final bill; \$135.77 to Time Warner Cable as payment for the Decedent's final bill; and \$335.28 as payment to U.S. Bank as final payment on a credit card debt of the Decedent. These credits total \$1,166.18. Ms. Cairns also offered that an expense that initially appeared to be legitimate, a payment in the amount of \$151.62 to the Richland County Treasurer, was apparently not necessary. The Court was informed that Ms. Hampton contacted the Richland County Treasurer's Office and discovered that the Decedent did not own any assets in Richland County that required a payment at that time.

Additionally, Ms. Cairns offered that an amount of \$605.00 as funds Mr. Smith wired from his personal funds to Mr. Davis for his title research should also be credited to Mr. Smith. Ms. Cairns elaborated that although the invoice would suggest that \$1,000.00 was paid, only \$645.50 has been proven to be paid. The Court has copies of receipts from Mr. Smith showing the following: on February 8, 2016, Mr. Smith transferred money by wire to Mr. Davis in the

amount of \$400.00 and paid a wire transfer fee in the amount of \$11.50 (receipt reference number 70784088); on February 11, 2016, Mr. Smith transferred money by wire to Mr. Davis in the amount of \$100.00 and paid a wire transfer fee in the amount of \$11.50 (receipt reference number 24470534); on November 17, 2016, Mr. Smith transferred money by wire to Mr. Davis in the amount of \$60.00 and paid a wire transfer fee in the amount of \$12.50 (receipt tracking number 096-290-5688); and on March 30, 2017, Mr. Smith transferred money by wire to Mr. Davis an amount of \$45.00 and paid a wire transfer fee in the amount of \$5.00 (receipt reference number 20682355). Ms. Cairns did not credit the wire fees as it was her opinion that those costs did not benefit the Estate. However, the Court has adjusted the credits to reflect that the Estate should be responsible for the wire fees for payment to Mr. Davis, which would result in a credit to Mr. Smith for wiring the funds of \$645.50, instead of \$605.00. Therefore, Mr. Smith's credits total \$1,811.68.

In conclusion, Ms. Cairns argued that Mr. Smith should be held accountable for the \$24,000.00 still due to the Estate from the September 5, 2017 Order, the \$6,000.00 the Estate paid for Attorney George Omoko's assistance to Mr. Smith regarding his motions, and the total amount for the All South account, Transamerica refund, and Social Security check, in the total amount of \$1,148.73. Mr. Davis should receive an offset against that amount for the credits due to him, in the amount of \$1,811.68. Therefore, the total amount owed by Isaac Smith, Jr. to the Estate is \$29,337.05. As a result, Mr. Smith owes the Estate an amount of \$5,337.05 after he pays the \$24,000.00 required to be released from his contempt.

Therefore, based on the testimony, filed pleadings, motions, memoranda, and other documents, the Court finds the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Decedent died intestate on January 8, 2016; therefore, this Court has subject matter jurisdiction over this proceeding pursuant to S.C. Code Ann. § 62-1-302(a)(1), 1976, as amended.
2. The Decedent was a resident of Richland County at the time of her death and her Estate was opened and is being administered in Richland County; therefore, all subsequent proceedings are to be held in Richland County, pursuant to S.C. Code Ann. § 62-3-201(b), 1976, as amended.

3. The first part of Mr. Smith's October Motions requests clarification by the Court regarding the omission of findings of fact and conclusions of law regarding his June Motion filed pursuant to Rule 60(a), SCRCP.
4. The second part of Mr. Smith's October Motions requests relief from the December 19, 2016, Order due to "surprise," pursuant to Rule 60(b)(1), SCRCP.
5. Pursuant to Rule 60(a), SCRCP the Court may correct clerical mistakes in an order. Rule 60(b)(1), SCRCP provides that the Court may relieve a party from a final judgment or order based on "mistake, inadvertence, surprise, or excusable neglect". Pursuant to Rule 81, SCRCP, the *South Carolina Rules of Civil Procedure* apply to the Probate Court.
6. Much of Mr. Smith's legal arguments found in his October Motions were not raised during the August 22, 2017, hearing. The South Carolina Court of Appeals has held that a party may not use a "post-trial motion" to raise an issue that could have been raised during a trial. Gainey v. Gainey, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct. App. 2009) (citing Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995)). Therefore, the Court declines to address any legal arguments that were not raised during the August 22, 2017 hearing.
7. Based on the first part of Mr. Smith's October Motions pursuant to Rule 60(a), SCRCP, the Court is clarifying its September 5, 2017 Order. Although the September 5, 2017 Order did not outline the Court's bench order denying the alleged original Will to probate in its Findings of Fact and Conclusions of Law, it did provide a synopsis of the Court's ruling on the topic. To reiterate why the alleged original Will was not admitted to probate, the Court found that the purported original Will was not an original but was another copy. When a testator has created a will but the will cannot be found at the time of his or her death, "the law presumes that the testator destroyed the will animo revocandi, but this is merely a presumption of fact and may be rebutted by evidence to the contrary." Davis v. Davis, 214 S.C. 247, 255-56, 52 S.E.2d 192, 195-96 (1949). During the August 22, 2017 hearing, Mr. Smith failed to supply sufficient evidence to rebut the presumption that the Decedent destroyed the will. Mr. Smith's assertion that the Court may admit more than one Will in this case is incorrect. Pursuant to S.C. Code Ann. § 62-3-410, 1976, as amended, "[i]f two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated . . .". (Emphasis added). Here, Mr. Smith attempted to probate another

*zdk*

copy of the alleged Will after the Court issued a final order on testacy on December 19, 2016.

8. The Court is also clarifying that Mr. Smith's June Motion was denied.
9. In the second part of Mr. Smith's October Motions, pursuant to Rule 60(b)(1), SCRCP, he argued that he was "surprised" when his then attorney, Trasha N. Hickman, reportedly stated that she would not attend the December 1, 2016 hearing. Mr. Smith also argued that he was "surprised" when Attorney Elnora Dean appeared on behalf of Mr. Smith's mother and questioned him about the copy of the alleged Will. Those facts do not constitute "surprise" as contemplated by Rule 60(b)(1), SCRCP. Rather, the Court finds that Mr. Smith came to Court on December 1, 2016 unprepared and unable to sufficiently make his case and argue the relevant points of law. The Court further finds that Mr. Smith has failed to provide any legal or factual basis that entitles him to the relief sought in the second part of his October Motions.
10. Therefore, the Court finds that Mr. Smith's Renewed Motion for Relief from Order Denying Copy of Will to Probate should be denied.
11. Isaac Smith, Jr. is currently detained at the Alvin S. Glenn Detention Center, pursuant to an "Order Holding Isaac Smith, Jr. in Contempt of Court and Ordering Detention," filed on January 11, 2018. The Order found that Mr. Smith was in willful contempt for misuse of the Estate's funds and for his failure to repay those funds. The Order further stated that Isaac Smith, Jr. was in civil contempt and would be held until the funds he owes were repaid or until another order was issued by this Court.
12. Mr. Smith may be released from the Detention Center upon the payment of a minimum of \$24,000.00 and the issuance of an order from the Court for his release. Even though the Court finds that the minimum amount due for Isaac Smith, Jr. to be released from his contempt is the currently delinquent amount of \$24,000.00, Mr. Smith is also responsible for payment of the additional amount of \$5,337.05, which is due to the Estate.
13. Once Isaac Smith, Jr. has paid the \$24,000.00 in certified funds, a hearing will be scheduled and held prior to his release to discuss and put an agreement on the record regarding payment of the remaining \$5,337.05 he owes the Estate. After the hearing, an order can be filed for Mr. Smith's release from the Alvin S. Glenn Detention Center.

**THEREFORE, IT IS HEREBY ORDERED THAT** Isaac Smith, Jr.'s Motion for Clarification of September 5, 2017 Order, Pursuant to Rule 60, dated October 19, 2017, is


**GRANTED** and that this Order sufficiently clarifies Mr. Smith's questions concerning the Court's September 5, 2017 Order.

**IT IS FURTHER ORDERED THAT** Isaac Smith, Jr.'s Motion for Relief from Order Denying Copy of Will to Probate Pursuant to Rule 60, dated June 26, 2017, and his Renewed Motion for Relief from Order Denying Copy of Will to Probate, Pursuant to Rule 60, dated October 19, 2017, are **DENIED**.

**IT IS FURTHER ORDERED THAT** Isaac Smith, Jr. shall reimburse the Estate in the total amount of \$29,337.05. However, Isaac Smith, Jr. need only pay the Estate the amount of \$24,000.00 to be released from his contempt under the January 11, 2018 Order.

**IT IS FURTHER ORDERED THAT** once Isaac Smith, Jr. has paid the \$24,000.00 in certified funds, a hearing shall be scheduled and held prior to his release to discuss and put an agreement on the record regarding payment of the remaining \$5,337.05 he owes to the Estate. An order shall be filed at that time converting the agreement to an order of the Court. After the hearing and filing of the order regarding the remaining amount due, an order can be filed for Mr. Smith's release from the Alvin S. Glenn Detention Center.

**AND IT IS SO ORDERED.**

  
Jacqueline B. Belton, Associate Judge  
Richland County Probate Court

February 7, 2018  
Columbia, South Carolina

*Nunc Pro Tunc to January 11, 2018*

FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE PROBATE COURT  
CASE NUMBER: 2016 ES40 00077

2018 FEB 12 AM 10:18

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

IN THE MATTER OF  
Johnnie Mae Muller Newton )

ACCEPTANCE OF SERVICE

\_\_\_\_\_ )

I, Isaac Smith, Jr., declare that I have received on  
February 12, 2018 and accepted service of the Order Clarifying the Court's  
September 5, 2017 Order and Denying Renewed Motion for Relief from Order  
Denying Copy of Will to Probate issued on February 7, 2018 in the above  
referenced matter.

ISAAC SMITH, JR.

Print Name: Isaac Smith Jr.

Sworn to before me this 12<sup>th</sup> day  
of February, 2018

Mary D. Huffman  
Notary Public for South Carolina  
My Commission Expires: 11/3/2025

Isaac Smith, Jr.  
2916 1/4 W. Vernon Ave.  
Los Angeles, CA 90008

COLUMBIA SC 290

02 FEB 2018 PM 1 L



Heather Cairns, Esquire  
2537 Gervais Street  
Columbia, South Carolina 29204

hh ~~87~~

29204-237537



EXHIBIT 11

Isaac Smith, Jr.  
2916 1/4 W. Vernon Ave.  
Los Angeles, CA 90008

COLUMBIA SC 290

27 FEB 2015 PM 4 L



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Heather Cairns  
2537 Gervais Street  
Columbia, SC 29204

29204-237537

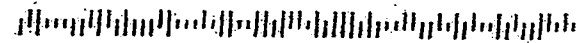


EXHIBIT F

Grounds for Reconsideration Based On Exceptions  
To Particular Statements, Findings, and Conclusions in the Order

Defendants raise the following exceptions to particular statements, findings, and conclusions in the Order and Defendants respectfully request that the Court reconsider the same based on the record and the evidence and arguments identified herein. The Order does not address the unconstitutionality of granting a dismissal for failure to timely serve the opposing attorney when the Petitioner was incarcerated by order of the court and unable to exercise his constitutional right to an appeal. The lower court to which the Petitioner is appealing order the incarceration of the Petitioner and was well aware of the restraints on his ability to effectively pursue his appeal. The court in granting the motion for dismissal denied the Petitioner his right to due process as guaranteed by the Constitution of the United States. Petitioner's incarceration should have stayed the time to serve the opposing counsel. Even with the Petitioner's incarceration, the Respondent contend she was served one day later. She will acknowledge that all other parties name in the action was timely served despite the Petitioner's handicaps.

The Respondent's motion addresses none of these raised by the Petitioner. The Court, however must be the last arbiter to the rule of law. It behooves the court to Reconsider and deny the Respondents motion to dismiss.

Grounds for Reconsideration Based on the Order's  
Failure to Address Defendants Contentions Regarding  
The Nature of This Dispute, the Procedural History,  
The Evidence Presented, the Relevant and Determinative Facts,  
The Applicable Legal Analysis, And the Proper Relief

Petitioner was not given his day in court to deal with the reality of the dispute which involved a conflict of interest from the Respondents and the failure of the court to address these conflicts. Because of the granting of the Order, the Petitioner was not given an opportunity to address the concerns in court. Throughout the procedural history of this matter, legitimate issues of the Petitioner were not addressed. The court has an opportunity to address these inequities and make the Petitioner whole by denying the Respondents motion to dismiss.

The evidence presented by the Respondent was a copy of the post mark on a letter. The postmark in no way evidences the day the service was put in the mail. The postmark only evidences when the Post Office put its stamp on the letter. The service was timely despite the severity of the handicaps to the incarcerated Petitioner.

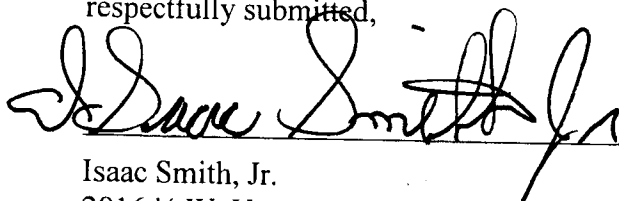
The Petitioner was not given an opportunity to produce determinative fact and give and applicable legal analysis and therefore proper relief was not granted.

The Order does not adequately address the legal arguments and authorities advanced by Defendants prior to and during trial. Defendants request that the Court reconsider all legal arguments and authorities contained in the record in this matter.

THREFORE , as set forth herein, Defendants respectfully submit that the Court reconsiders its Order, reverse its rulings, and enter judgment in favor of Defendants on all claims and defenses at issue in this case

Dated: July 6, 2018

respectfully submitted,

A handwritten signature in black ink, appearing to read "Isaac Smith, Jr.", written over a horizontal line.

Isaac Smith, Jr.  
2916 ¼ W. Vernon Ave.  
Los Angeles, CA 90008  
(323)295-9500

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Isaac Smith, Jr. )  
 )  
 Petitioner )  
 )  
 vs. )  
 )  
 )  
 )  
 Estate of Johnnie Mae Newton, Carrie Lewis )  
 Andrew Muller, Joseph Muller, Sandra )  
 Hampton; children of Isaiah Muller )  
 Children of Willie Muller, Children of )  
 Children of Hebrew Muller, Cassie Muller )  
 )  
 Respondents. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

DEFENDANTS' NOTICE AND MOTION FOR  
 RECONSIDERATION OF FINAL ORDER

Case No. 2018-CP-40-00403

2018 JUL -6 PM 12:39  
 JEANNETTE W. MOBRIDGE  
 C.C.P. & G.S.  
 RICHLAND COUNTY  
 FILED

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRPC, Petitioner, Isaac Smith, Jr., hereby submit this motion for reconsideration of the Court's Final Order dated and entered on June 26, 2018(the "Order") This motion for reconsideration is divided into several sections as set forth below.

Each section provides multiple grounds for reconsideration of the Court's Order. Collectively, pursuant to these grounds for reconsideration, Petitioner seek rulings on matters that the Court did not address in its Order; Petitioner seek the Court's reasons for deciding certain matters where no reasons are given; and Petitioner seek for the Court to reconsider its findings and correct its errors based on the record and the law.

Section I


Grounds for Reconsideration Based On Exceptions to Particular Statements, Findings, and Conclusions In The Order

Section II.

Grounds for Reconsideration Based on the Order's Failure to Address Defendants Contentions Regarding The Identity Of The Parties, The Nature Of This Dispute, The Procedural History, The Evidence Presented, The Relevant And Determinative Facts, The Applicable Legal Analysis, And The Proper Relief

**Certificate of Counsel**

The undersigned hereby certifies that the Initial Briefing complies with Rule 211(b), SCACR.



Isaac Smith, Jr., Pro Se  
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Telephone: (323) 295-9500

December 3, 2019

**RECEIVED**  
DEC 05 2019  
SC Court of Appeals