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**Feb 09 2021**

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge for Charleston County **SC Court of Appeals**

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Appellate Case No. 2020-000594

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Melissa Combs a/k/a Melissa Cleary.....Appellant,

v.

Carlie Elvin Cleary, Individually and as Personal Representative of the  
Estate of Scott B. Cleary & Ditech Financial, LLC

Of whom Carlie Elvin Cleary, Individually and as Personal Representative  
of the Estate of Scott B. Cleary .....Respondent,

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***APPELLANT'S REPLY BRIEF***

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Kerry W. Koon, Esq.  
147 Wappoo Creek Drive, Ste. 203  
Charleston, South Carolina 29412  
843.795.7000  
*kerrykoon@hotmail.com*  
ATTORNEY FOR APPELLANT

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I. THE MATTER WAS PROPERLY REMOVED TO THE CIRCUIT COURT BY THE PROBATE COURT'S ORDER OF MAY 13, 2019.

***ARGUMENT***

Respondent's argument that only the probate court has subject matter jurisdiction and his reliance on *Thomas v. McGriff*, 368 S.C. 485, 629 S.E. 2<sup>nd</sup> 359 (2006) is misplaced. In *Thomas*, the issue was whether the probate court or the family court had jurisdiction over the determination of an alleged common law marriage.

This case is distinguishable from *Thomas*, Id. because the action was commenced in the probate court and removed to the circuit court. Neither party has claimed that jurisdiction should be in the family court.

The issue in this case is whether or not the action was properly removed from the probate court to the circuit court under Section 62-1-302(d).

Though determination of the existence of the common law marriage is necessary in order to determine Appellant's claims including those of quieting title and setting aside the deed of distribution, removal under Section 62-1-302(d) is nonetheless mandatory.

A substantial portion of the decedent's assets were the two (2) parcels of real estate described in the Complaint and Lis Pendens (Complaint, p. 2 and Lis Pendens). Plaintiff's actions to quiet title and to set aside the deed of distribution (Complaint, pp. 3-4) are necessary to assert her title to those two (2) parcels of Charleston County real estate. Respondent cannot seek to re-define Appellant's pleadings in order to procedurally defeat its removal to the circuit court.

Curiously, in his brief, Appellant argues that Section 62-1-302(d) does not apply because "these causes of action are not actions to try title concerning property in which *the estate of a decedent* has an interest;" (Appellant's Initial Brief, p. 4). Especially since Appellant is named

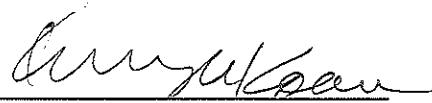
individually as well as in his representative capacity, this argument is an acknowledgement that the action is properly before the circuit court, rather than the probate court.

As an action to try title to real property, it was properly removed under Section 62-1-302(d), notwithstanding the concurrent jurisdiction of the probate court.

***CONCLUSION***

This action should be remanded to the circuit court for further proceedings to determine the issues raised by the pleadings.

February 9, 2021



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Charleston, South Carolina 29412  
843.795.7000  
*kerrykoon@hotmail.com*  
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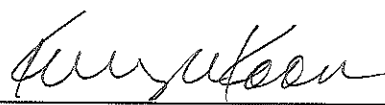
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***PROOF OF SERVICE***

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I certify that I have served a copy of the Appellant’s Reply Brief, on John Dodds,  
Attorney for Respondent Carlie Elvin Cleary, Individually & as Personal Representative of the  
Estate of Scott B. Cleary, on February 9, 2021, via electronic mail to *john@cisadodds.com*.

February 9, 2021



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Kerry W. Koon, Esq.  
147 Wappoo Creek Drive, Ste. 203  
Charleston, South Carolina 29412  
843.795.7000  
*kerrykoon@hotmail.com*  
ATTORNEY FOR APPELLANT

Telephone: Bus: (843) 795-7000  
Fax: (843) 762-5276

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**KERRY W. KOON**  
*Attorney at Law*  
147 Wappoo Creek Drive  
Wappoo Centre, Suite 203  
Charleston, South Carolina 29412

February 9, 2021

**VIA EMAIL [ctappfiling@sccourts.org](mailto:ctappfiling@sccourts.org)**

Jenny Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
PO Box 11629 (29211)  
Columbia, SC 29201


**RE: *Melissa Combs a/k/a Melissa Cleary v. Carlie Elvin Cleary, Individually & as Personal Representative of the Estate of Scott B. Cleary & Ditech Financial, LLC***  
**Appellate case #: 2020-000594**

Dear Madam Clerk,

Please find herewith the Appellant's Reply Brief together with a Proof of Service of the same for filing in the above referenced matter.

With kindest personal regards, I am

Very truly yours,

  
Kerry W. Koon

KWK:mm  
Enclosures

cc: John Dodds, Esq. (Via email: [john@cisadodds.com](mailto:john@cisadodds.com))