

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Mar 09 2021**

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2020-001678

Michelle N. Gardner .....Respondent,

v.

Ernest J. Gardner, Jr., Individually and as Personal  
Representative of the Estate of Jason F. Gardner.....Appellant.

**APPELLANT’S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Scott W. Hutto  
Hutto Law Firm, P.A.  
PO Box 556  
Georgetown, SC 29442  
Attorney for Ernest J. Gardner, Jr.,  
as Personal Representative of the  
Estate of Jason F. Gardner

AND

Kenneth B. Wingate  
Matthew J. Myers  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, South Carolina 29211  
Attorney for Ernest J. Gardner, Jr.,  
Individually

Appellant proposes the following be included in the Record on Appeal:

**ORDERS**

Final Decree to Grant Divorce and to Approve Settlement Agreement dated December 6, 2011, with Custody, Property and Support Settlement Agreement dated December 2, 2011 (the “2011 Decree”) .....

Final Decree to Approve Settlement Agreement dated August 5, 2013, with Settlement Agreement dated August 5, 2013 (the “August 2013 Decree”) .....

Final Decree to Approve Settlement Agreement and to Seal the Record dated November 15, 2013, with Agreement dated October 2013 (the “November 2013 Decree”) .....

Order Granting Motion to Intervene, Denying Motion to Dismiss, Granting Motion for Summary Judgment and Denying Motion for Attorney’s Fees dated and filed March 8, 2019 .....

Order Granting Respondent’s Motion for Partial Summary Judgment; and In Part, and Denying, In Part, Petitioner’s Motion for Partial Summary Judgment dated and filed December 10, 2019 .....

Order Granting Motion to Consolidate Appeals dated January 27, 2020 .....

Order of the Honorable Brian M. Gibbons dated November 23, 2020.....

**PLEADINGS**

Michelle N. Gardner’s Statement of Creditor’s Claim dated June 5, 2017 and filed July 10, 2017 .....

Ernest J. Gardner’s (individually) Statement of Creditor’s Claim dated August 3, 2017 and filed August 7, 2017 .....

Notice of Disallowance of Claim of Respondent filed by Appellant Ernest J. Gardner, as Personal Representative of the Estate of Jason F. Gardner dated December 13, 2017 and filed December 15, 2017.....

Notice of Allowance of Claim of Appellant Ernest J. Gardner, individually, filed by Respondent Ernest J. Gardner, as Personal Representative of the Estate of Jason F. Gardner dated December 13, 2017 and filed on December 15, 2017.....

Michelle N. Gardner’s Summons and Petition for Allowance of Creditor Claim dated December 27, 2017 and filed January 2, 2018.....

Ernest J. Gardner’s (as PR) Answer to Petition for Allowance of Claim dated February 7, 2018 and filed February 12, 2018.....

Michelle N. Gardner’s Motion for Summary Judgment dated August 21, 2018, along with her Affidavit in Support of Motion for Summary Judgment .....

Ernest J. Gardner’s (individually) Motion to Intervene .....

Ernest J. Gardner’s (as PR) Notice of Motion and Motion to Dismiss dated and filed October 12, 2018 .....

Memorandum in Support of Ernest J. Gardner’s (as PR) Motion to Dismiss and in Opposition to Michelle N. Gardner’s Motion for Summary Judgment dated October 23, 2018 .....

Ernest J. Gardner’s Supplemental Brief Regarding Waiver of Petitioner’s Interest in Decedent’s Retirement Plan dated October 26, 2018 .....

Michelle N. Gardner’s Summons and Petition for Order Restoring Estate Assets, Determining Status of Retirement Benefits and for Payment of Allowed Claim dated April 4, 2019 and filed April 8, 2019 .....

Ernest J. Gardner’s (as PR) Answer to Petition for Order Restoring Estate Assets, Determining Status of Retirement Benefits and for Payment of Allowed Claim dated May 20, 2019 and filed May 23, 2019 .....

Ernest J. Gardner’s (individually) Answer to Petition for Order Restoring Estate Assets, Determining Status of Retirement Benefits and for Payment of Allowed Claim dated May 21, 2019 and filed May 24, 2019 .....

Ernest J. Gardner’s (individually) Amended Answer and Counterclaims to Petition for Order Restoring Estate Assets, Determining Status of Retirement Benefits and for Payment of Allowed Claim dated June 20, 2019 and filed June 24, 2019.....

Michelle N. Gardner’s Reply to Ernest J. Gardner’s (individually) Amended Answer and Counterclaims .....

Michelle N. Gardner’s Motion for Partial Summary Judgment dated July 1, 2019 .....

Ernest J. Gardner’s Motion for Partial Summary Judgment dated July 10, 2019 .....

Michele N. Gardner’s Brief in Support of Petitioner’s Motion for Summary Judgment dated August 21, 2019 and filed August 22, 2019 .....

Ernest J. Gardner’s (individually) Memorandum in Opposition to Michelle N. Gardner’s Motion for Partial Summary Judgment and in Support of the Motion for Partial Summary Judgment filed on Behalf of Ernest J. Gardner, Jr., Individually, dated August 21, 2019 and filed August 22, 2019, with Attachments: (i) Promissory Note from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 9, 2014, (ii) Letter from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 10, 2014, and (iii) Fidelity Beneficiary confirmation .....

Ernest J. Gardner’s (as PR) Memorandum in Opposition to Michelle N. Gardner’s Motion for Partial Summary Judgment and in Support of the Motion for Partial Summary Judgment filed on Behalf of Ernest J. Gardner, Jr., Individually, dated August 22, 2019 and filed August 22, 2019, with Affidavit of Ernest J. Gardner, Jr. dated August 20, 2019 with Attachments: (i) Promissory Note from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 9, 2014, (ii) Letter from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 10, 2014, (iii) Fidelity Beneficiary confirmation, and (iv) Letter from Jason F. Gardner to Brittany Atella (written shortly before death) .....

Ernest J. Gardner’s Amended Affidavit dated August 22, 2019 with the following attachments: (i) Promissory Note from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 9, 2014, (ii) Letter from Jason F. Gardner to Ernest J. Gardner, Jr. dated January 10, 2014, and (iii) Fidelity Beneficiary confirmation, and (iv) Letter from Jason F. Gardner to Brittany Atella (written shortly before death) .....

Michelle N. Gardner’s Supplemental Summary Judgment Brief with Attachments dated September 20, 2019 and filed September 23, 2019 .....

Ernest J. Gardner’s (Individual) Reply to Michelle N. Gardner’s Supplemental Summary Judgment Brief dated September 27, 2019 .....

Ernest J. Gardner’s (PR) Responsive Brief to Michelle N. Gardner’s Supplemental Summary Judgment Brief dated September 27, 2019 .....

Letter from John R. Chase, Esq., attorney for Michelle N. Gardner, to the Honorable Leigh Powers Boan dated September 30, 2019.....

Letter from Matthew J. Myers, Esq. to the Honorable Leigh Powers Boan dated September 30, 2019 .....

Michelle N. Gardner’s Notice of Intention to Appeal filed December 19, 2019 in the Probate Court and December 20, 2019 in the Circuit Court with Exhibit A .....

Ernest J. Gardner’s (Individually and as PR) Notice of Intention to Appeal filed December 20, 2019 with Exhibit A .....

Appellant’s Statement of Issues on Appeal dated and filed January 24, 2020 .....

Brief of Appellant Ernest J. Gardner, Jr. dated and filed February 24, 2020 .....

Brief of Appellant Michele N. Gardner dated and filed February 24, 2020.....

Brief of Respondent Ernest J. Gardner, Jr. dated and filed March 25, 2020.....

Brief of Respondent Michelle N. Gardner dated and filed March 25, 2020.....

Joint Record on Appeal filed June 10, 2020.....

Notice of Appeal dated and filed December 21, 2020.....

**TRANSCRIPTS**

Transcript of Hearing dated October 23, 2018.....

Transcript of Hearing dated August 22, 2019.....

Transcript of Hearing on October 30, 2020.....

**OTHER MATERIALS AND DOCUMENTS**

Last Will and Testament of Jason Gardner dated November 16, 2015 and filed  
November 2, 2016.....

Inventory and Appraisement, Amended, dated August 31, 2018 and filed  
August 31, 2018.....

Accounting, Interim 1, dated August 31, 2018 and filed August 31, 2018.....

Letter from Matthew J. Myers, Esq., as Attorney for Ernest J. Gardner, Individually, to  
the Honorable Leigh Powers Boan dated October 29, 2018.....

**CERTIFICATE OF COUNSEL**

I certify that this designation contains no matter which is irrelevant to this appeal.

HUTTO LAW FIRM, P.A.

*s/Scott W. Hutto*

Scott W. Hutto, SC Bar 15582

Hutto Law Firm, P.A.

PO Box 556

Georgetown, SC 29442

Attorney for Ernest J. Gardner, Jr.,

as Personal Representative of the

Estate of Jason F. Gardner

AND

SWEENEY, WINGATE & BARROW, P.A.

*s/Matthew J. Myers*

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Attorney for Ernest J. Gardner, Jr.,

Individually

Columbia, South Carolina

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v.

Ernest J. Gardner, Jr., Individually and as Personal  
Representative of the Estate of Jason F. Gardner.....Appellant.

**PROOF OF SERVICE**

I certify that I have served a copy of the Appellant’s Designation of Matter to be Included in the Record on Appeal in the above referenced matter by e-mailing a copy of same to the attorneys of record, on March 9, 2021, as allowed by section (g)(3) of South Carolina Supreme Court Order No. 2020-000447, with a copy of such e-mail included with this Proof of Service.

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Respectfully submitted,

HUTTO LAW FIRM, P.A.

*s/Scott W. Hutto*

Scott W. Hutto, SC Bar 15582

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Georgetown, SC 29442

Attorney for Ernest J. Gardner, Jr.,

as Personal Representative of the

Estate of Jason F. Gardner

AND

SWEENEY, WINGATE & BARROW, P.A.

*s/Matthew J. Myers*

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Post Office Box 12129

Columbia, South Carolina 29211

Attorney for Ernest J. Gardner, Jr.,

Individually

Columbia, South Carolina  
March 9, 2021

## Matthew J. Myers

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**From:** Matthew J. Myers  
**Sent:** Tuesday, March 09, 2021 1:46 PM  
**To:** Chase, John; 'Spruill, Sarah'  
**Subject:** Appeal No. 2020-001678; Gardner v. Gardner  
**Attachments:** Gardner designation.pdf

John & Sarah,

Please find attached the Appellant's designation of matter for record on appeal and proof of service in the above referenced matter.

Best regards,



Matthew J. Myers | *Member*  
Sweeny, Wingate & Barrow, P.A.  
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Tel ■ 803-256-2233 Fax ■ 803-256-9177

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