

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas

Richland County Probate Court

Rogers Townsend & Thomas PC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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. Dismissal); 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 _____
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on 7/16, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W McBride
Clerk of Court, Jeanette McBride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Robert J. Thomas and Rogers Townsend)
 & Thomas, PC,)
)
 Petitioners,)
)
 v.)
)
 Richland County Probate Court,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-40-6251

ORDER

RICHLAND COUNTY
 FILED
 2013 MAR -6 PM 3:58
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter came before the Court for a hearing on December 12, 2012 on Richland County Probate Court's (the "Probate Court") Motion to Dismiss pursuant to Rule 12(b)(1), SCRPC and 12(b)(6), SCRPC. Present at the hearing were Robert Wood, Esquire, counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively "the Petitioners"), and Desa Ballard, Esquire, counsel for the Probate Court.

On September 17, 2012, Petitioners filed a Writ of Mandamus or Writ of Certiorari, commanding the Probate Court to turn over certain files. Petitioners claim that they sought these files to determine whether the Probate Court had authority to issue an Order requiring Petitioners to turn over various attorney-client privileged documents. On October 18, 2012, the Probate Court, in an exercise of its discretion, issued an Order releasing certain file materials to Mr. Wood and a Protective Order regarding those materials. Mr. Wood indicated that he received the file materials on September 25, 2012, and that the matters addressed in the Writ of Mandamus were now moot. See Return to Motion to Dismiss, Dec. 11, 2012.

The Probate Court argues that Petitioner's Writ of Mandamus is inappropriate because the release of the documents was a matter of judicial discretion. The Probate Court urges this Court to dismiss the case on the merits as a matter capable of repetition yet evading review. See *Sloan v. Department of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008). This is not a case in which the matter became moot due to passage of time, but rather, because the Probate Court decided on its own volition to release the documents. The Probate Court created the mootness, yet now seeks to have the merits addressed. The only reason the matter evaded review was because the Probate Court took action.




This Court notes that pursuant to the Probate Court Order, Petitioners had notice of the July 27, 2011 Status Hearing and the opportunity to appear at the October 26, 2011 hearing to determine capacity of Petitioner's former client. Petitioners also had the opportunity to challenge the release of documents they claim were protected by attorney-client privilege. Further, Petitioners had the opportunity to request intervention in this case, as they represented the party whose documents were ordered to be produced. Additionally, Petitioners could have appealed the Orders, petitioned the Probate Court to seal the documents or protect them from review by the parties, or asked the Probate Court to clarify its Order as to whom the documents could be released. Therefore, Petitioners had a choice among remedies.

The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code. Petitioner's Writ of Mandamus did not request that the Probate Court perform a ministerial duty, but was a challenge to authority of the Probate Court to issue the Order requesting that Petitioners produce the documents of the incapacitated person to the appointed conservator. Therefore, a Writ of Mandamus is not appropriate.

ORDER

For all of the reasons set forth above, it is **ORDERED** that the action is dismissed.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 6, 2013

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