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**Jan 27 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM OCONEE COUNTY

Court of Common Pleas

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s/ J. Cordell Maddox Jr., Circuit Court Judge

Case No: 2021-CP-37-00560

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**Appellate Case No.: 2021-001552**

Dorothy Pierce,

Appellant,

V.

Jared Adam Pierce,

Respondent.

**REPLY TO RESPONDENT'S RESPONSE TO OPPOSITION TO MOTION TO DISMISS**

**APPEAL**

Pursuant to S.C. App. Ct. R. 240(f), Appellant hereby files this reply to the respondent's response to opposition to the motion to dismiss the appeal. In further support of her opposition to Respondent's Motion to Dismiss Appeal, the Appellant would show unto the Court the following:

## LEGAL ARGUMENTS

### I. APPELLANT BROUGHT THE APPEAL IN HER OWN CAPACITY AND NOT AS THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE.

Appellant contends that the right to file a lawsuit Pro se is one of the most important rights under the constitution and laws of the United States of America. *See Elmore v. McCammon* (1986) 640 F. Supp. 905. According to 28 U.S. Code § 1654, for instance, "parties may plead and **conduct their own cases personally** or by counsel" (Emphasis added).

It is trite law that no person can be deprived of life, liberty, or property, without due process of law. *See U.S. Const. Am. V.* In the instant case, Appellant appealed the Probate Court's decision that set aside the decedent's original will, which deprived and/or interfered with Appellant's right(s) in the estate.

Appellant contends that "there can be no sanction or penalty imposed upon one because of his/her exercise of Constitutional Rights." *Sherar v. Cullen*, 481 F. 2d 946 (1973). Therefore, challenging and/or objecting to her Pro se status in the instant case amounts to a curtailment of her Constitutional rights. It should be noted that "constitutional 'rights' including the right to defend oneself would be of little value if they could be indirectly denied." *Gomillion v. Lightfoot*, 364 U.S. 155 (1966), cited also in *Smith v. Allwright*, 321 U.S. 649.644.

Besides, In re Otterness, 232 N.W. 318 (Minn. 1930) (holding executors, administrators, and guardians are authorized to conduct proceedings in probate **in matters where his personal rights as representative are concerned, as, for instance, where his/her account as representative is in question or misconduct is charged against him as representative** (Emphasis added). In this instant case, the legacy, name, and reputation of the Appellant are unfairly under attack on the infamous probate judgment. It is therefore the Appellant's right to defend herself, Pro se.

Furthermore, the Appellant's attorney in the Probate Court was compromised by the

Respondent's attorney, thus making Appellant lose the case. Before the proceedings in probate court, the Appellant's probate attorney met with Respondent's attorney Richard McDuff in a private meeting behind the Judge's Locker room and when he came back to the courtroom, his attitude had completely changed. Headed into the proceeding, the Appellant was well prepared with documents that showed the SLED report was not legitimate and had a plan with her counsel. Throughout the proceedings, the counsel to the Appellant did not utilize her arguments and ignored all her requests to object leaving the Appellant vulnerable and defenseless. Appellant's counsel clearly changed sides in his private meeting with the respondent's attorney before the Appellant ever had a chance to defend herself. As a black woman immigrant, it was not clear how the Appellant would find a representative that would stand by her and not side with the majority opposition. Appellant, therefore, lost confidence in having an attorney handling the affair of the decedent's estate which is purely being decided on the fact that Appellant is black and not white enough to be a personal representative of the estate.

## **2. THE PERSONAL REPRESENTATIVE OF AN ESTATE HAS THE STANDING TO REPRESENT THE ESTATE IN LITIGATION**

It has been held that “an ‘Estate’ is not an entity that can be a party to the litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.” *Ganske v. Spence*, 129 S.W.3d 701, 704 n.1 (Tex. App. 2004) (citations omitted); see also § 733.608, Fla. Stat. (2016) (describing the general power of the personal representative); *Reopelle v. Reopelle*, 587 So.2d 508, 512 (Fla. 5th DCA 1991) (highlighting that only the personal representative of a decedent's estate would have the right to intervene in litigation for the benefit of all the beneficiaries of the decedent's estate); 31 Am. Jur. 2d Executors and Administrators § 1141 (2016) (“Since estates are not natural or artificial persons, and they lack legal capacity to sue or be sued, an action against an estate must be brought against an administrator or executor as the representative of the estate.”); 18 Fla. Jur. 2d

Decedents' Property § 721 (2016) (same).

It follows; therefore, Appellant, as the personal representative, has the standing to represent the estate in litigation over any matter affecting the estate; and rights thereof.

### **3. JUDICIAL ESTOPPEL BARS THIS COURT FROM ACCEPTING THE RESPONDENT'S MOTION TO DISMISS THE APPEAL**

Judicial estoppel is grounded in the principle of protecting the integrity of the court system by barring litigants from adopting inconsistent positions in more than one legal proceeding. The Supreme Court of South Carolina adopted the doctrine of judicial estoppel in *Hayne Federal Credit Union v. Bailey*, stating, "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997).

The Hayne court further explained, "the purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries." 327 S.C. at 251, 489 S.E.2d at 477 (relying on 31 C.J.S. Estoppel Waiver § 139, at 593 (1996)). See also *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 368, 536 S.E.2d 698, 706 (Ct.App. 2000) ("Judicial estoppel focuses on the relationship between the litigants and the judicial system. "). Judicial estoppel comes into play when the court is forced to take a position based on a factual assertion." *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 43, 577 S.E.2d 202, 208 (2003).

Appellant contends that she was permitted by the Probate Court to represent herself Pro se in the hearing of her Motion for New Trial on or about October 1, 2021.

***In the respondent's email to the Judge on September 1, 2021, He wrote: "Judge Johns..... In addition, please advise us to whether Ms. Pierce is permitted to proceed in the Motion for New Trial proceeding without legal counsel". In his response to the respondent, the judge wrote..... "I***

*do not see why she can't represent herself as a 'pro se' litigant".*

Furthermore, the Respondent is fully aware that the Oconee Court of Common Pleas Rejected his **Motion to Strike Notice of Intent to Appeal and Appellant's Appeal Brief"** based on the Pro se status of the Appellant. Respondent is therefore precluded from challenging Appellant's pro se status and must be fined for filing frivolous motions.

**4. THE APPELLANT'S RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS  
WAS TIMELY**


Pursuant to Rule 240(e), Appellate Court Rules, states that any party opposing a motion or petition shall have ten (10) days from the **date of service** thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return. The Appellant states that she read the Respondent's Motion to Dismiss Appeal on January 18<sup>th</sup>, 2022, via email and submitted an electronic response opposing the respondent's Motion immediately with the Clerk of the court of appeals on the same day. Thereafter, the Appellant received an original copy of the respondent's Motion to Dismiss Appeal on January 20<sup>th</sup>, 2022, via certified mail. The Appellant was required to file her Return with the Court no later than January 30<sup>th</sup>, 2022, but she filed her response in opposition to the Respondent's Motion to Dismiss Appeal on January 25<sup>th</sup>, 2022.

The respondent cannot Claim electronic delivery by email on January 13<sup>th</sup>, 2022, because the Appellant did not consent to Receipt of Court papers from the Respondent by Email. On the same note, the Respondent did not seek consent from the Appellant to serve Court Papers to the Appellant by email. The respondent is fully aware that all original copies of court documents related to the Estate of Doyle E. Pierce MUST be Mailed to the Appellant's mailing address on File: 750 Mourning Dove Lane Seneca, SC. 29678- **(Refer to Appellant's Notice of Appeal).**

## CONCLUSION

Based upon the foregoing arguments, and each of them, it is clear that Justice will not be properly served unless the Respondent's Motion to Dismiss is denied. Accordingly, the Appellant prays that the Court dismisses the Respondent's Motion to Dismiss; and in the interest of justice, sanction the Respondent and/or Respondent's Attorney(s) for filing frivolous and malicious Motions.

Respectfully Submitted,

  
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Dorothy Pierce, Appellant, Pro se.

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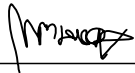
Jan 27 2022

SC Court of Appeals

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 27<sup>th</sup> Day of January 2022, a copy of the foregoing Reply to Respondent's Motion to Dismiss was filed in this court. I further certify that on the said date, a copy of the said document was delivered electronically via email to [rick@mjmlawsc.com](mailto:rick@mjmlawsc.com) and a hard copy mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following: **Richard H. McDuff, Esq. Merrell, Jahn & McDuff, P.A. 119-B Professional Park Drive, Seneca, South Carolina 29678.**

Respectfully Submitted,



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Dorothy Pierce, Appellant, Pro se.