IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 161419

STEVEN C. GRAY,

Appellant,

v.

FRANCES BINDER, et al.,

Appellees.

BRIEF OF APPELLEES JAMES A. CARLSON, WILLIAM C. CARLSON, STEVEN K. CARLSON, SANDRA C. WILLIAMS, FRANCES BINDER, MARION ATTINGER, BETTY HURLBUT, VIRGINIA L. LAMOTHE, MARY E. RADKE, ROBERT R. DAHLIN, GERALD W. TRAPP, KENNETH C. MAZZUCA, JOHN G. MAZZUCA, BARBARA J. KORN, GARY ZUMSKI, EDWARD P. ZUMSKI, JR., CHERYL L. THIELSEN, JUDY LAFOE, DEBRA L. DIRTH, BONNIE KISH, JEFFRY R. TRAPP, GREGORY J. TRAPP, ERNEST WEISHAUPT, BRIAN WEISHAUPT, JOSEPH WEISHAUPT, GARY BAHNFLETH, MICHELLE BAHNFLETH, and KEMP & ASSOCIATES, INC.

MaryEllen Willman (VSB #26046)
Whiteford, Taylor & Preston L.L.P.
8300 Stanford Boulevard, Suite 400
Columbia, Maryland 21045
(410) 347-8720 (telephone)
(410) 884-2422 (facsimile)
mwillman@wtplaw.com

Marla J. Diaz (VSB No. 46799)
Whiteford, Taylor & Preston L.L.P.
3190 Fairview Park Drive, Suite 800
Falls Church, VA 22042
703-280-9131
703-280-9139 facsimile
mdiaz@wtplaw.com

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond VA 23219 (800) 847-0477

SCV: Submitted on 05-05-2017 14:22:27 EDT for filing on 05-05-2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 1

AUTHORITIES AND ARGUMENT 4

I. The Trial Court Correctly Determined That the Commissioner Had Authority Pursuant to Va. Code Ann. § 64.2-1209 to Hear and Determine Whether the Provision Concerning Gray in the Will Lapsed and to Determine the Decedent's Heirs. 4

a. Standard of Review 4

b. Commissioners of Accounts have Broad, Concurrent Jurisdiction with the Circuit Court To Determine All Matters Related to the Settlement of Fiduciary's Accounts 5

c. The Trial Court Properly Determined that it Had Jurisdiction to Confirm the Commissioner's Reports 11

II. Gray Failed to Timely Object to the Trial Court's March 13, 2014 Order 13

CONCLUSION 16

CERTIFICATE 18

TABLE OF AUTHORITIES

CASES

Britt Const. Inc., v. Magazzine Clean, LLC, 271 Va. 58, 623 S.E.2d 886 (2006) 8

Carter's Adm'r v. Skillman, 108 Va. 204, 60 S.E. 775 (1908)..... 7, 10, 12

Coulter v. Herring, 42 Va. Cir. 308 (1997)..... 8

Glasser & Glasser, PLC v. Jack Bays, Inc., 285 Va. 358, 741 S.E.2d 599 (2013) 4

Goldman v. Landsidle, 262 Va. 364, 552 S.E.2d 67 (2001)..... 14

In re Estate of Moore, 55 Va. Cir. 78 (2001) 8

In re Trust of Southall, 49 Va. Cir. 169 (1999) 8

Nicholas v. Nicholas, 169 Va. 399, 193 S.E. 689 (1937) 6, 7, 10, 11

Parrish v. Federal National Mortgage Association, 292 Va. 44, 787 S.E.2d 116 (2016)..... 11, 12, 13

Raiford v. Raiford, 193 Va. 221, 68 S.E.2d 888 (1952)..... 10

Virginia-Pilot Media Companies, LLC, v. Dow Jones & Company, Inc., 280 Va. 464, 698 S.E.2d 900 (2010) 5

STATUTES and RULES

Va. Code Ann. § 8.01-609..... 10

Va. Code Ann. § 64.2-550..... 5

Va. Code Ann. § 64.2-1200..... 5, 6

Va. Code Ann. § 64.2-1204..... 5

Va. Code Ann. § 64.2-1209.....*passim*

Va. Code Ann. § 64.2-1212.....11

Va. Sup. Ct. R. 5:25 13

STATEMENT OF THE CASE

The Appellees, James A. Carlson, William C. Carlson, Steven K. Carlson, Sandra C. Williams, Frances Binder, Marion Attinger, Betty Hurlbut, Virginia L. Lamothe, Mary E. Radke, Robert R. Dahlin, Gerald W. Trapp, Kenneth C. Mazzuca, John G. Mazzuca, Barbara J. Korn, Gary Zumski, Edward P. Zumski, Jr., Cheryl L. Thielsen, Judy LaFoe, Debra L. Dirth, Bonnie Kish, Jeffry R. Trapp, Gregory J. Trapp, Ernest Weishaupt, Brian Weishaupt, Joseph Weishaupt, Gary Bahnfleth, Michelle Bahnfleth, and Kemp & Associates, Inc. (collectively "Intestate Heirs") have nothing to add to the statement of the case provided by the Appellant, Steven C. Gray ("Gray").

STATEMENT OF FACTS

The Intestate Heirs offer the following statement of facts to correct and/or amplify the statement provided in the Appellant's Opening Brief:

After qualifying as Administrator of the Estate of Albert F. Bahnfleth on November 26, 2012, Richard E. Knight ("Administrator") contacted the Commissioner of Accounts Jack H. Rust, Jr. ("Commissioner") to inquire whether the Commissioner could hear issues of heir determination and will interpretation. (J.A. 156) The Commissioner responded affirmatively on December 3, 2013 and the Administrator then requested a hearing on such

issues. (J.A. 156-57) On January 21, 2014, the Commissioner sent notice of a hearing pursuant to Virginia Code § 64.2-1209, scheduled to be heard on April 9, 2014 for the purpose of receiving proof of objections and other matters of concern related to the administration of the Estate. (J.A. 157) Subsequently, the Administrator transmitted to the Commissioner, in preparation for the hearing, a number of documents, including a petition styled "Petition to Commissioner of Accounts for Aide [sic] and Direction: For Construction of the Will of Albert Frank Bahnfelth [sic], Jr., and Determination of Identity and Shares of Heirs & Beneficiaries." *Id.* The documents also included a number of evidentiary materials related to the heirs of the decedent. *Id.* The Petition was sent to the Commissioner in connection with the already scheduled April 9th hearing and the Commissioner treated all the materials as hearing correspondence. *Id.*

The Commissioner conducted the evidentiary hearing on April 9, 2014 and, on January 5, 2015, filed his Report on the evidentiary hearing, opining that the provision concerning Gray in the Will had lapsed and that Mr. Bahnfleth had died intestate, and making a determination of Mr. Bahnfleth's heirs. (J.A. 158) On January 15, 2015, Gray filed his Exceptions to the Commissioner's Report, which did not include any challenge to the subject matter jurisdiction of the Commissioner to conduct

the evidentiary hearing pursuant to Va. Code Ann. § 64.2-1209 or to make a determination regarding whether the provision concerning Gray in the Will lapsed, whether the decedent died intestate, and determining the decedent's heirs. (J.A. 25-41, 158)

On January 30, 2015, the trial court entered an order confirming the Commissioner's Report. (J.A. 158) On February 3, 2015, the Commissioner delivered exhibits and other papers for the trial court's review related to the exceptions filed by Gray. *Id.* On February 10, 2015, Gray filed a Motion for Reconsideration regarding the confirmation of the Commissioner's Report. *Id.* The Motion did not include a challenge to the subject matter jurisdiction of the Commissioner. (J.A. 43-51) After oral argument, the trial court entered an order on March 13, 2015, denying the Motion for Reconsideration. (J.A. 159) In its March 13, 2015 Order, the trial court did not limit itself to denying the Motion, but also made a finding that the provision concerning Gray in the Will lapsed, that the decedent's estate should pass pursuant to the provisions governing intestate distribution, and that Gray is not entitled to take under the Will. (J.A. 52-53)

Gray filed a notice of appeal of the trial court's March 13, 2015 Order on April 10, 2015 and a corrected notice of appeal on April 13, 2015. *Id.* On June 9, 2015, Gray filed a petition for appeal, regarding the March 13,

2015 Order. *Id.* The petition for appeal did not raise a challenge to the subject matter jurisdiction of the Commissioner to conduct the evidentiary hearing pursuant to Va. Code Ann. §64.2-1209 or to make a determination regarding whether the provision concerning Gray in the Will lapsed, whether the decedent died intestate, and determining the decedent's heirs. (J.A. 58-94)

AUTHORITIES AND ARGUMENT

I. The Trial Court Correctly Determined That the Commissioner Had Authority Pursuant to Va. Code Ann. § 64.2-1209 to Hear and Determine Whether the Provision Concerning Gray in the Will Lapsed and to Determine the Decedent's Heirs.

In this appeal, Gray challenges the subject matter jurisdiction of the trial court to construe a will, when the issues or objections to the will are first raised before a commissioner of accounts. In support of this challenge, he incorrectly contends that (1) Va. Code Ann. § 64.2-1209 does not provide a commissioner of accounts with statutory jurisdiction to determine whether will provisions have lapsed and (2) a commissioner of accounts is an inferior tribunal to the circuit court.

a. Standard of Review

In his Opening Brief, Gray correctly identifies the standard of review applicable to the assignment of error. Gray's assignment of error presents an issue of statutory interpretation, which is reviewed *de novo*. *Glasser &*

Glasser, PLC v. Jack Bays, Inc., 285 Va. 358, 369, 741 S.E.2d 599, 604 (2013).

b. Commissioners of Accounts have Broad, Concurrent Jurisdiction with the Circuit Court To Determine All Matters Related to the Settlement of Fiduciary's Accounts

Gray contends first that the statutory authority of commissioners of accounts in reviewing fiduciary accounts is limited in scope. He argues that, absent a court order, a commissioner may only conduct hearings regarding debts and demands, adequacy of a fiduciary bond, removal of a fiduciary, and objections by an interested person to a fiduciary's account. In support, he cites to Va. Code Ann. §§ 64.2-550, 64.2-1204, and 64.2-1209.

Gray's argument fails, however, for two reasons. First, the General Assembly granted broad, concurrent jurisdiction to commissioners of accounts to provide general supervision of fiduciaries pursuant to Va. Code Ann. § 64.2-1200. Second, his argument ignores the plain language of Va. Code Ann. § 64.2-1209 and disregards the statutory jurisdiction granted to commissioners of accounts by that Section.

Subject matter jurisdiction "exists in the courts only when it has been granted by a constitution or statute." *Virginia-Pilot Media Companies, LLC,*

v. Dow Jones & Company, Inc., 280 Va. 464, 467-68, 698 S.E.2d 900, 901-02 (2010).

This Court has already decided the issue of the jurisdiction granted to commissioners of accounts by the General Assembly. In *Nicholas v. Nicholas*, this Court reviewed an earlier version of Va. Code Ann. § 64.2-1200 and determined that the General Assembly granted commissioners of accounts concurrent jurisdiction with the circuit court to decide all matters related to the settlement of estates. 169 Va. 399, 403-404, 193 S.E. 689, 690-91 (1937). The Court in *Nicholas* discussed the historical problems that plagued estate administration prior to the General Assembly's adoption of the statutory scheme granting jurisdiction to commissioners of accounts to supervise administrators and stated

> Unless it was the intention of the legislature to confer upon probate courts, in the administration of a decedent's estate, concurrent jurisdiction with a court of equity, then the enactment of chapter 121 (chapter 221) was a futile gesture. The only logical conclusion to be drawn from the action of the legislature, in this regard, is that it was the intention of the law-makers to establish a less expensive method and at the same time an equally efficient method of administering estates.

Id. at 404, 193 S.E. at 691. The *Nicholas* Court confirmed an earlier decision of this Court, which made clear that the jurisdiction of commissioners of accounts, in overseeing administrators, is full and complete and "protects every interest as amply as could be done by a

formal suit in chancery." *Carter's Adm'r v. Skillman*, 108 Va. 204, 60 S.E. 775, 779 (1908)(holding that the statutory scheme granting commissioners of accounts general supervision over fiduciaries provides the commissioners with complete authority to oversee and settle the fiduciaries' accounts). Based on *Nicholas* and *Skillman*, it is well settled law in Virginia that a commissioner of accounts has concurrent jurisdiction with the circuit court over fiduciaries and can make determinations in fulfillment of his duties just as a circuit court judge can do if a formal petition is filed.

The plain language of Va. Code Ann. § 64.2-1209 also clearly provides jurisdiction to commissioners of accounts to decide any matter related to the settlement of a fiduciary's accounts. Gray appears to suggest that Section 64.2-1209 is only intended to grant jurisdiction to commissioners to handle objections to an account absent an express referral from the Circuit Court, but this disregards the plain language of the Section. Va. Code Ann. § 64.2-1209 provides that

> Any interested person, or the next friend of an interested person, may, before the commissioner of accounts, <u>insist upon or object to anything</u> which could be insisted upon or objected to by such person if the commissioner of accounts were acting under an order of a circuit court for the settlement of a fiduciary's accounts made in a suit to which such interested person was a party.

(emphasis added). Section 64.2-1209 allows a commissioner to act upon any issue insisted upon or objected to by any interested person without a decree of reference and does not limit a commissioner to solely dealing with objections from beneficiaries.

Accepting Gray's argument that this Section is intended to grant only limited jurisdiction to commissioners of accounts requires ignoring the broad grant of jurisdiction, which allows an interested party to "insist upon or object to anything" before the commissioner. Alternatively, it requires the definition of "interested person" to be limited to beneficiaries and to exclude administrators. Various courts in the Commonwealth, however, have determined that interested person includes the fiduciary. *See, e.g., In re Estate of Moore,* 55 Va. Cir. 78 (2001)*; In re Trust of Southall,* 49 Va. Cir 169 (1999)*; Coulter v. Herring,* 42 Va. Cir. 308 (1997)*.*

As this Court is well aware, under the basic rules of statutory construction, the intent of the General Assembly is determined from the plain and natural meaning of the words used in the statute. *Britt Const. Inc., v. Magazzine Clean, LLC,* 271 Va. 58, 62, 623 S.E.2d 886, 888 (2006). When the meaning of the statutory language is unambiguous, the Court is not at liberty to give such language a construction that is other than what the plain language actually expresses. *Id.* Section 64.2-1209 is not

ambiguous and Gray does not contend that it is. The Court must, therefore, give effect to the plain language of the Section, which grants broad jurisdiction to commissioners of accounts to address any issue related to the settlement of a fiduciary's account.

In this case, the Administrator requested direction from the Commissioner regarding interpretation of the Will and determination of the heirs. With this request, the Administrator, an interested person, insisted upon direction from the Commissioner so that he could properly discharge his duties and settle the estate. The Commissioner conducted a hearing pursuant to Va. Code Ann. § 64.2-1209 and, as authorized by that Section, provided a report to the trial court, which included his finding that "all bequests in the will had lapsed . . . and the decedent's estate passes pursuant to the provisions governing intestate distribution." The plain language of Section 64.2-1209 allows such finding by the Commissioner without a referral from the trial court.

Gray concedes that a commissioner of accounts can decide any question of law or equity or any disputed fact, but argues that a commissioner only has jurisdiction to do so upon referral from a Circuit Court. This conclusion is unsupported by the plain language of Section 64.2-1209. That Section grants jurisdiction to a commissioner to decide

any issue or objection that he could have decided if referred to him by the circuit court. The circuit court can refer any matter to a commissioner that it chooses. *Raiford v. Raiford,* 193 Va. 221, 226, 68 S.E.2d 888, 892 (1952); *see, also,* Va. Code Ann. § 8.01-609. Section 64.2-1209 specifically eliminates the requirement that a decree of reference be issued before a commissioner of accounts decides any issue raised regarding the settlement of a fiduciary's accounts. Since Gray concedes that the Commissioner could have made the determination he made if such issue was referred by the trial court and since Section 64.2-1209 eliminates the need for such referral, it is axiomatic that the Commissioner had the jurisdiction, pursuant to Section 64.2-1209, to interpret the Will, determine the heirs, and issue a report to the trial court with his findings regarding the same.

As this Court previously determined in *Nicholas* and *Skillman* and pursuant to the plain language of Va. Code Ann. § 64.2-1209, the General Assembly granted broad, concurrent jurisdiction to commissioners of accounts to determine all issues related to the settlement of fiduciaries' accounts. For these reasons, the Commissioner had the jurisdiction to act upon the Administrators demand for assistance with the interpretation of the will and determination of the heirs.

c. The Trial Court Properly Determined that it Had Jurisdiction to Confirm the Commissioner's Reports.

The final part of Gray's argument is that the trial court's jurisdiction in this matter was solely derivative and, since he argues that the Commissioner lacked jurisdiction, the trial court lacked jurisdiction to confirm the Commissioner's Reports. Gray bases this argument on this Court's recent decision in *Parrish v. Federal National Mortgage Association,* 292 Va. 44, 787 S.E.2d 116 (2016). This argument is unsound for several reasons.

First, there are material differences between the *Parrish* case and this case. The *Parrish* case was an appeal from a general district court unlawful detainer action to the circuit court. *Id.* at 48, 787 S.E.2d at 119. In the circuit court appeal, one party challenged the unlawful detainer by contesting the underlying foreclosure that led to the unlawful detainer. *Id.* This Court held that, on appeal from the general district court, the circuit court's jurisdiction is derivative and it has no more jurisdiction than the general district court on appeal. *Id.* at 54, 787 S.E.2d at 123.

Unlike the *Parrish* court, the trial court here, in confirming the Commissioner's Report, was not acting as an appellate court and its jurisdiction was not derivative of the Commissioner's or existing solely by virtue of Va. Code Ann. § 64.2-1212. As stated in the *Nicholas* and

Skillman cases, commissioners of accounts share concurrent jurisdiction with the circuit courts. Commissioners are not lower tribunals from which appeals are taken to the circuit courts. Circuit courts appoint commissioners of accounts to assist them in performing their duties and the General Assembly has granted them certain statutory duties and responsibilities. Neither the circuit courts nor the General Assembly created a lower tribunal through these acts.

Further, unlike the general district court in *Parrish*, commissioners of accounts have no limit on their jurisdiction in all matters related to the settlement of fiduciary accounts. The General Assembly invested commissioners of accounts with broad authority to resolve any issue or objection raised as part of the settlement of a fiduciary's accounts. Va. Code Ann. § 64.2-1209. Absent a petition being filed in the circuit court, which would remove such issue to the circuit court for decision, a commissioner is intended by the General Assembly to be the arbiter of all issues regarding the settlement of an estate. Therefore, even if the circuit court's jurisdiction was derivative, the jurisdiction of a commissioner of accounts regarding the settlement of a fiduciary's accounts is so broad that the circuit court's derivative jurisdiction would be broad enough to allow it to decide any estate issues presented to it at an exception hearing.

For these reasons, this Court's decision in *Parrish* is not applicable and does not limit the jurisdiction of the trial court in confirming the findings of the Commissioner in the case at issue.

II. Gray Failed to Timely Object to the Trial Court's March 13, 2014 Order

Understanding that the lack of subject matter jurisdiction may be raised at any time, Gray's failure to challenge subject matter jurisdiction until May 19, 2016, when Gray no longer qualified as an interested person in the Bahnfleth Estate, is an abuse of the judicial process and a violation of Rule 5:25 of the Virginia Supreme Court.

Rule 5:25 provides in relevant part that "[n]o ruling of the trial court, . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice." Gray's subject matter jurisdiction argument is based entirely on the Commissioner's hearing held on April 9, 2014 and the Commissioner's Report dated January 5, 2015. It was at the April hearing that evidence was presented to the Commissioner on the issue of the will interpretation and the heir distribution, and the Commissioner's determinations on these issues are reflected in the January 5, 2015 Report.

After the issuance of the January 5, 2015 Report, Gray filed exceptions to the Report, a Motion for Reconsideration, argued before the trial court on the Motion for Reconsideration, filed a Notice of Appeal, filed a Corrected Notice of Appeal, filed a Petition for Appeal to this Court, made an oral argument in support of the Petition, and filed a Petition for Rehearing, all related to the January 5, 2015 Commissioner's Report. In none of those documents nor during the hearing on the Motion for Reconsideration or the oral argument on the Petition, did Gray raise a challenge to subject matter jurisdiction.

The trial court's March 13, 2015 Order confirmed the January 5, 2015 Commissioner's Report and made findings that the Gray bequest had lapsed and that the decedent's estate should pass pursuant to the provisions governing intestate distribution. This Court refused to grant a writ of certiorari on Gray's Petition for Appeal of this March 13, 2015 Order, at which point Gray was no longer an interested party in the Bahnfleth Estate because any possibility of Gray receiving a distribution from the Estate had been eliminated. As of February 5, 2016, therefore, Gray had no further standing to challenge the actions of the Administrator. *See, e.g., Goldman v. Landsidle*, 262 Va. 364, 371, 552 S.E.2d 67, 71 (2001)(holding that "the purpose of requiring standing is to make certain that a party who

asserts a particular position has the legal right to do so and that his rights will be affected by the disposition of the case.")

Despite his failure to timely raise a challenge to subject matter jurisdiction while he still had standing, Gray for the first time raises the issue of jurisdiction as part of his exceptions to the Commissioner's Report on the debts and demands hearing. This Report included neither facts nor opinions regarding either the interpretation of the will or determination to heirs, yet Gray raises a jurisdiction exception to this Report based on the will interpretation and heir determination opinions reflected in the Report from January 5, 2015.

These issues, the January 5, 2015 Report, and the March 13, 2015 Order were fully litigated and appealed to this Court without the issue of jurisdiction being raised. Gray no longer had standing as a party interested in the Estate as of February 5, 2016 and he still had not raised a challenge to jurisdiction. He cannot, therefore, be said to have timely objected to the March 13, 2015 Order with reasonable certainty as required by Rule 5:25. If he is allowed now, after any interest he had in the Estate was foreclosed and this Court dismissed an appeal, to challenge the March 13, 2015 Order, it will open the door to collateral attacks and re-litigation of all manner of cases by persons, even those without standing, wanting to raise

issues of jurisdiction. Understanding that this Court has held that the issue of subject matter jurisdiction can be raised at any time, it cannot be that "any time" includes times after entry of a final order by persons lacking standing to participate in the case.

CONCLUSION

For the foregoing reasons, Appellees, James A. Carlson, William C. Carlson, Steven K. Carlson, Sandra C. Williams, Frances Binder, Marion Attinger, Betty Hurlbut, Virginia L. Lamothe, Mary E. Radke, Robert R. Dahlin, Gerald W. Trapp, Kenneth C. Mazzuca, John G. Mazzuca, Barbara J. Korn, Gary Zumski, Edward P. Zumski, Jr., Cheryl L. Thielsen, Judy LaFoe, Debra L. Dirth, Bonnie Kish, Jeffry R. Trapp, Gregory J. Trapp, Ernest Weishaupt, Brian Weishaupt, Joseph Weishaupt, Gary Bahnfleth, Michelle Bahnfleth, and Kemp & Associates, Inc., respectfully request that the Virginia Supreme Court dismiss the Appellant's appeal, uphold the March 13, 2015 July 8, 2016 and June 9, 2016 Orders pursuant to which the Estate may be distributed and the administration completed, , and for such other relief as the Court deems appropriate.

Respectfully submitted,

James A. Carlson, William C. Carlson, Steven K. Carlson, Sandra C. Williams, Frances Binder, Marion Attinger, Betty Hurlbut, Virginia L. Lamothe, Mary E. Radke, Robert R. Dahlin, Gerald W. Trapp, Kenneth C. Mazzuca, John G. Mazzuca, Barbara J. Korn, Gary Zumski, Edward P. Zumski, Jr., Cheryl L. Thielsen, Judy LaFoe, Debra L. Dirth, Bonnie Kish, Jeffry R. Trapp, Gregory J. Trapp, Ernest Weishaupt, Brian Weishaupt, Joseph Weishaupt, Gary Bahnfleth, Michelle Bahnfleth, and Kemp & Associates, Inc.

By counsel

/s/ MaryEllen Willman

MaryEllen Willman (VSB #26046)
Whiteford, Taylor & Preston, LLP
8300 Stanford Boulevard, Suite 400
Columbia, Maryland 21045
(410) 347-8720 (telephone)
(410) 884-2422 (facsimile)
mwillman@wtplaw.com

/s/ Marla J. Diaz

Marla J. Diaz (VSB #46799)
WHITEFORD, TAYLOR & PRESTON L.L.P.
3190 Fairview Park Drive, Suite 800
Falls Church, Virginia 22042
(703) 280-9131 (telephone)
(703) 280-8946 (facsimile)
mdiaz@wtplaw.com

CERTIFICATE

I hereby certify that rule 5:26 has been complied with and, pursuant to this Rule, a PDF version of this brief has been filed through VACES and three paper copies delivered to the Clerk's Office. An electronic version has also been delivered to opposing counsel via electronic mail on this 5th day of May, 2017, to:

Joseph W. Stuart
10427 North Street, Suite 200
Fairfax, Virginia 22030
703.352.1200 (telephone)
703.352.1201 (facsimile)
stuart@will-trust.estate

Richard E. Knight, Esq.
2300 Wilson Boulevard, Suite 240
Arlington, Virginia 22201
richard@richardeknight.com

Dick L. Williams, Esq.
Williams, Williams, & Loeffel, P.C.
139 East Washington Street
East Peoria, Illinois 61611-2548
dick@WWTLawOffice.com

and by U.S. Mail to the following unrepresented appellees:

Barbara M. Buescher
6019 North Sherwood Ave.
Peoria, Illinois 60614

Terry L. Cox
12896 SE 91st Court
Summerfield, FL 34491-9427

Vicki Cox
100 Michael Court
East Peoria, Illinois 61611

David Cresswell
726 34th Place
Fort Madison, Iowa 52627

Donald Cresswell
2017 West Wilson Ave.
Peoria, Illinois 61604

Barbara Messer Duke
103 Terrace Lane
East Peoria, Illinois 61611

Carol Hope Elmore
2412 Hillview Drive
Manhattan, Kansas 66502

Daniel Irion
1201 McDuffie St., Apt. #117
Houston, Texas 77019

Robert Eldon Irion
1923 Castle Bay Court
Oldsmar, FL 34677-2622

James S. Irion
2202 Deer Run Court
Katy, Texas 77493

Steven C. Irion
4640 Main Street
Apt. 447

Lynette Lemon
1131 Oakwood Road, Apt. 1
East Peoria, Illinois 61611

Donald Messer
2604 Foxglove Street
Naperville, IL 60564

George R. Messer
21491 Miramar
Mission Viejo, California 92692

William E. Cresswell
1102 48th Street, Apt. D-20
Fort Madison, Iowa 52627

Earl Lee Smith
1141 Allen Street
West Plains, Missouri 65775

Earl Eugene Smith
2330 West Marquette Street
Peoria, Illinois 61601

Casie Smith
1718 Springfield Rd., Apt. 6
Bloomington, Illinois 61701

Michael Stein
216 North West Street
Tremont, Illinois 61568

Freida Williams
1303 Arthur Street
Pekin, Illinois 61554

Arthur R. Stein
416 Lakeview Drive, Apt. 124
Margate Florida 33063

David L. Messer
116 Rue Vue Du Lac, Apt. 116
East Peoria, Illinois 61611

Houston, TX 77002
Richard C. Messer, II
111 Winter Court
East Peoria, Illinois 61611

Juanita I. Reynolds
230 Court Street, Apt. 409
Pekin, Illinois 61554

Nanette Ringenberg
329 Shadoway Drive
East Peoria, Illinois 61611

Estate of Ruth Schwartz
c/o Gary W. Schwartz, Executor
5340 Elizabeth Avenue
St. Louis, Missouri 63110

Albert James Cresswell, Jr.
1432 37th Street
Fort Madison, Iowa 52627

Cindy Lynn Cresswell
2281 Easy Avenue
Long Beach, California 90810

Carol Neely
6055 Fulcher Ave.
North Hollywood, California 91606

/s/ Marla J. Diaz
Marla J. Diaz