

FILED BY CERTIFIED MAIL

DEC 13 2007

CLERK COURT OF APPEALS OF GA

IN THE COURT OF APPEALS

STATE OF GEORGIA

PIERCE E. MIZE AS ADMINISTRATOR)
OF THE ESTATE OF JAMES KENNETH)
WOODALL, SR., DECEASED,)
Appellant,)
v.) CASE NO. A08A0720
JAMES KENNETH WOODALL, JR. AND)
VERONICA WOODALL,)
Appellees.)

REQUEST FOR ORAL ARGUMENT

COMES NOW Pierce E. Mize as Administrator of the Estate of James Kenneth Woodall, Sr., Appellant, and files this his Request for Oral Argument by his attorney, Truett Smith, and states as follows:

1.

The Appellant certifies that opposing counsel, Richard D. Campbell, Esq., P.O. Box 1056, Elberton, Georgia 30635, Appellees' attorney, has been notified of my intention to argue orally and that inquiry was made on December 10, 2007, as to if he intends to argue orally. Appellant further certifies that Richard D. Campbell, Esq., informed me he does not wish to argue orally.

2.

As grounds for oral argument Appellant states: there is a substantial Estate claim in this case reflected by the promissory note (R 13) and deed to secure debt to James Kenneth Woodall, Sr. from James Kenneth Woodall, Jr. and Veronica Woodall dated April 19, 2004, (R 14-18) in the original amount of \$56,606.95 plus interest. That was not finally to be due until December 20, 2021. Thus, this case pits the makers of the note and deed to secure debt, that includes a son of the decedent, whose interest is narrow-minded versus an Estate interest where the interest of the Administrator is broad-minded including a widow, heirs and creditors and oversights by the Probate Court of the Administrator's fiduciary duties.

3.

The Administrator as fiduciary has a fiduciary obligation to diligently pursue interest for the heirs and creditors of the Estate. The Complaint for Declaratory Judgment stated a dispute was that the Appellees asserted the promissory note and deed to secure debt was made in contemplation of a gift causa mortis pursuant to OCGA § 44-5-100, which the Administrator asserted to the contrary, Paragraph 7 of Appellant's Complaint (R 5-6), and counsel concedes in Paragraph 4 of his Response (R 30) that the allegations of Paragraph 7 was the assertion of legal issues and positions in the case and thus, agreed the issue of a gift causa

mortis was raised by Appellees. Appellant verified the Complaint (R 23, 26) and the Appellees verified their Responsive Pleadings (R 29, 33). The Administrator has a duty in face of the Appellees' Responsive Pleadings to diligently pursue the asserted position of the Appellees against the Estate, raised by the Appellees.

4.

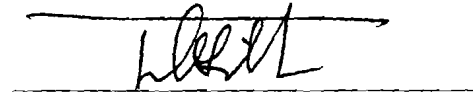
Research shows there is a limited authority in this State on the application of gift law and forgiveness of a debt. Only two cases have been found referring to this. Crotty v. Crotty, 219 Ga.App. 408, 411 (465 SE2 517) (1995); Croxton v. Barrow, 57 Ga.App. 1(1) (194 SE 24) (1937). Research shows from the history of these two cases limited scope of **gift law** versus **forgiveness, so stated**, of a debt. The Administrator maintains his fiduciary obligation required by the Probate Code of this State is to develop this point with diligence for the benefit of a widow, heirs and creditors. Thus it is, the Administrator asserts that his fiduciary obligation calls upon him to make an oral argument emphasizing the fact the Appellees in their Brief nowhere attempted to develop the law of gift causa mortis though agreeing

that was a position in Appellees' pleadings and to do this for the purpose of developing **gift law** versus **forgiveness** of an undelivered promissory note.

WHEREFORE, Appellant respectfully requests oral argument be granted.

This 13 day of December, 2007.

Respectfully submitted,



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Elberton, Georgia 30635
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Truett Smith
Attorney for Appellant
State Bar No. 663800

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Appellees with a copy of the forgoing Request for Oral Argument by depositing same in the U.S. Mail with adequate postage thereon, addressed as follows:

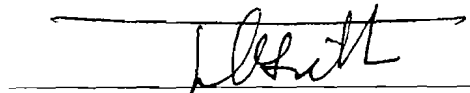
Richard D. Campbell, Esq.

Attorney at Law

P.O. Box 1056

Elberton, Georgia 30635

This 13 day of December, 2007.



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Truett Smith

Attorney for Appellant

State Bar No. 663800

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 07, 2008

The Court of Appeals hereby passes the following order:

Case No. A08A0720

**PIERCE E. MIZE AS ADMINISTRATOR OF THE ESTATE OF JAMES KENNETH
WOODALL, SR. V. JAMES KENNETH WOODALL, JR. ET AL**

The request for oral argument in the above styled case is hereby granted. If any party decides to waive oral argument, and not appear, said party shall notify opposing counsel and co-counsel of that fact in advance, and shall notify the Clerk.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 7 2008**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk

Willi L. Mat; [Signature]