**STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT**

**)**

**COUNTY OF CHARLESTON ) CASE NO.: 20XX-ES-10-0000**

**)**

**IN RE: )**

**ESTATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )**

**)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ) ORDER FOR DISTRIBUTION**

 **Petitioner, ) OF ASSETS**

**)**

 **v. )**

**)**

**A, B, and C, )**

 **Respondents.**  )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**Hearing Date:**

**Presiding Judge:**

**Petitioner:**

**Attorney for Petitioner:**

**Respondents:**

**Attorney for Respondents:**

**Court Reporter:**

**SAMPLE**

**THIS MATTER** comes before the Court based upon a Petition filed by the Personal Representative of the Estate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Petitioner requests that the Court, pursuant to Section 62-3-914 of the Code of Laws of South Carolina, approve the distribution of the assets of the Estate of \_\_\_\_\_\_\_\_\_\_\_\_\_ as if C had predeceased the Decedent. Present at the hearing were Petitioner, along with his/her counsel, \_\_\_\_\_\_\_\_\_\_\_\_\_, A, and B. C did not appear despite proper notice of the hearing. After consideration of all filed pleadings and the testimony at the hearing, the Court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Decedent died intestate on \_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_ a resident of Charleston County, South Carolina.
2. Decedent died survived by a spouse and three children. There has been no question raised regarding the whereabouts of the surviving spouse, the Petitioner, and two of the three children, A and B. However, the Petitioner has been unable to locate the third child of the Decedent, C. The Petitioner, A and B believe that C’s last known address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. The Petitioner was appointed the Personal Representative of the Estate of \_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_.
4. On \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, the Petitioner filed with the Court a Petition to Distribute Assets under Section 62-3-914 and a Petition to Publish Notice.
5. On \_\_\_\_\_\_\_\_\_, \_\_\_\_, this Court directed the Petitioner to publish once a week for three successive weeks in the (local newspaper) and the (foreign newspaper), a notice which called on C, his Personal Representatives, or heirs or devisees to appear before the Court on \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ and show cause why the Petitioner should not be ordered to distribute the assets of the Estate of \_\_\_\_\_\_\_\_\_\_\_\_\_ as if C had died before the Decedent.
6. On \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, the Petitioner filed with the Court copies of the newspaper notices and affidavits of the publication of the notices by the newspapers.
7. At the hearing, the Court heard testimony from the Petitioner, A, and B. Each party testified that the last occasion any party contacted C was at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
8. Petitioner further testified that she believes that C’s last known address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. However, neither the Petitioner nor A nor B have been able to contact or learn the whereabouts of C since \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**CONCLUSIONS OF LAW**

1. Section 62-3-914 of the Code of Laws of South Carolina provides a mechanism by which the assets of an Estate may be properly distributed despite the Personal Representative and the heirs and devisees of the Estate not knowing the whereabouts of a certain heir or devisee. Section 62-3-914(a) provides that this mechanism may commence no earlier than eight months after the appointment of a Personal Representative. Section 62-3-914(a) further provides that this mechanism may commence by the filing of a Petition for Distribution of Assets and a Petition for Notice by Publication.
2. Section 62-3-914(b) provides that a notice of the hearing must be published once a week for three successive weeks in a newspaper located within the county in which the Court resides. In the Court’s discretion, the Court may order the publication of an additional notice of hearing in a newspaper most likely to provide notice to any interested parties.
3. Section 62-3-914(a) provides that the notice of the hearing should be published and mailed to all persons interested in the Estate as heirs or devisees calling on the person whose whereabouts or the fact of whose death is unknown, his Personal Representatives, or heirs or devisees, to appear before the Court on a certain day and hour as specified in the notice and to show cause why the Personal Representative should not be ordered to distribute the Estate as if the person whose whereabouts or the fact of whose death is unknown predeceased the Decedent, and notifying all persons entitled to the Estate as heir or devisee, or otherwise, to appear on a designated day and time before the Court to intervene for their interest in the Estate.
4. Section 62-3-914(c) requires that the publication of the notice of the hearing must be proved at or prior to the hearing by filing copies of the newspaper notices and affidavits of the publication by the respective newspapers.
5. Section 62-3-914(d) provides that if no person appears at the designated date and time at the Court to provide any information regarding the whereabouts of the missing or possibly deceased person, the Court must decree that the assets of the Estate shall be distributed as if the missing person predeceased the Decedent.
6. Alternatively, Section 62-3-914 provides that if an individual appears at the hearing claiming to be the missing heir or devisee or claims to have knowledge of the whereabouts of the missing heir or devisee, the Court must proceed to determine the controversy.\

Based upon the foregoing, it is now, hereby

**ORDERED, ADJUDGED AND DECREED** that Petitioner has filed due proof of publication and notice with the Court; it is further

**ORDERED, ADJUDGED AND DECREED** that neither C nor any other person appeared on behalf of C at the hearing; and it is further

**ORDERED, ADJUDGED AND DECREED** that pursuant to Section 62-3-914(d) of the Code of Laws of South Carolina, the Court orders that the Petitioner as Personal Representative of the Estate of \_\_\_\_\_\_\_\_\_\_\_\_\_ shall distribute the assets of the Estate as if C had predeceased the Decedent.

**IT IS SO ORDERED.**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Irvin G. Condon, Judge of Probate

Charleston County

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.