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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Circuit Court Judge

App. Case No. 2023 - 000763
COA Case No. 2022-1146

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

Reply

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RESPONDENT MISSTATES THE CASE

The other side materially misstates the case including the date this case was filed and throughout which is disputed. Highlighting his lack of meritorious defense, counsel again attempts to prejudice the case with unprofessional defamatory false claims including but not limited to, disbarment. It is fair to say that counsel on the other side should and would object if someone advertised he is disbarred. The other side's internally inconsistent, frivolous return is best characterized as harassment and bullying. It is unprofessional, unsubstantiated, and inflammatory. The petitioner's challenge herein to jurisdiction regarding the pending Family Court matter including retirement and the marital home supports dismissal of respondent's duplicitous and duplicative claim and benefits the Court while advancing ultimate resolution of the dispute. Pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02, petitioner's timely request for hearing is filed in the Family Court which is hereby requested.

Moreover, the record reflects counsel's failure to serve the other side with proposed orders, affidavits, filings, and other documents in this matter. Further, counsel's office has filed false certificates of service. Nor did counsel serve the other side with his own self-serving, conclusory, and unprofessional affidavit. This Court is cautioned regarding repeat offenders who may be exploiting the Rules of Court as a trap for the unwary, in this oncoming and ongoing public health and economic Covid crisis still unfolding. Serial offenders have a vested interest in repeatedly failing to follow the Rules of Court including but not limited to, not serving or copying parties on the other side such as heirs' property defendants and/or unrepresented parties.

The respondent and respondent's counsel cannot in good faith claim they have not caused delay with duplicitous and duplicative attempts to evade the jurisdiction of the Family Court. The respondent

has not availed himself of existing dispute resolution including but not limited to, mediation as directed in the plain language of the attached Decree of Divorce. That Decree memorialized the agreement which the Family Court attorney defendant, with decades of experience, entered into the record, which is incorporated into the Decree, from which defendant never appealed, and which is now the law of the case. When the petitioner timely filed for mediation in the Family Court, the other side responded with ambush litigation. The respondent has not claimed emergency or urgent circumstances warranting impermissible ex parte hearing in the trial court herein. Without just cause, the respondent contemptuously engages in unprofessional conduct to evade jurisdiction in the pending Family Court matter and to evade substantial rights and Constitutional and statutory protections for the other side herein. The Family Court attorney defendant has unclean hands.

Initially, before and after this case was filed, the undersigned made multiple attempts to reach out and meet with counsel on the other side. Three or more separate attempts were made. Each one was ignored or rebuffed. Counsel violated his professional responsibility to investigate the matter. Instead, counsel would not be deterred by the facts, he ignored red flags, he failed his duty of due diligence, and he failed to update case law and governing precedent, resorting to unsubstantiated personal attacks and defamation. Apparently, counsel is undeterred by the Rules of Professional Conduct in his mission to abscond with a modest family home. The undersigned's motion for sanctions should be granted.

Counsel misstates even the date this case was filed. He does not deny that he failed to copy the other side with proposed orders, affidavits, and other filings routinely engaging in direct or indirect ex parte contact. It is fair to say counsel should and would object if he were not copied by petitioner. Further, his pattern and practice is material misrepresentation: The petitioner has no smart phone or webX access. See S.C. Supreme Court Administrative Order No. 2021-09-21-01. No audio recording for transcript can be found for that impermissible ex parte hearing. Apparently, the circuit court did not receive required notice for that impermissible ex parte hearing. Neither did the petitioner.

Transparency, even-handedness, and fundamental fairness support an adversely affected party's right to the transcript or to reconstruct the record in the trial court, required for adequate record for meaningful review which is hereby requested. *See Clements v. Young*, 310 S.C. 73, 425 S.E.2d 63 (Ct. App. 1992) (appellant moved for reconstruction of the record on remand to the lower court where the hearing was unrecorded); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 378. The petitioner's timely filed motion to reconstruct the record was denied by the lower appellate court. Due process abhors counsel's irrational argument that transcripts are unnecessary for impermissible ex parte hearings or any hearing, for that matter, according to his illogical reasoning. The recurrent thread of ambush litigation persists.

The record reflects there is timely notice of non-consent to Rule 53, SCRCP, referral, there is timely notice of Rule 39, SCRCP, transfer to the jury trial docket, and jury trial has not been waived. The citizens of this great state have substantial constitutional and statutory rights to a jury trial with a judge who is nominated, vetted, and voted by the Legislature to the Bench. Coerced referral, without consent, to a second class system of so-called justice dispensed by a referee/master cannot pass statutory or constitutional muster and is challenged herein. An abundant body of law has decisively determined separate is never equal.

ARGUMENT

The petitioner timely submits reply to the other side's return. Without being disagreeable, there is disagreement with the return. As a threshold matter, the return fails to comply with Rule 242(f), SCACR. Specifically, Rule 242(f) provides, " The return *shall* include an argument on each question." Rule 242(f), SCACR (emphasis supplied). Pursuant to Rule 240(e), SCACR, "(f)ailure of a party to file a return *in compliance with these rules* may be deemed a consent by that party to the relief sought. Rule 240(e), SCACR (emphasis supplied). Moreover, as set forth more fully below, respondent fails to address petitioner's supporting authority and citations while relying on statutes that have been repealed, citing obsolete cases, and failing to disclose current precedent. The questions presented have not been denied. Accordingly, for the reasons stated and for substantial justice affecting substantial rights, this Court should issue a writ of certiorari.

I. Standard of Review in the Lower Appellate Court.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. Appeal of wrongful entry of judgment for referral and of intermediate orders is timely served and filed. Thereafter, out of nowhere and before briefs, unnoticed sua sponte dismissal is entered by a single individual lower appellate court judge without motion, without transcript, without jointly filed Record on Appeal (ROA), without factual support, and without meaningful opportunity to respond at a meaningful time. Pursuant to S.C. Code § 14-8-220, petitioner timely filed Rule 240(j), SCACR, appeal of wrongful unnoticed sua sponte dismissal by a single individual lower appellate court judge. If Rule 240(j), SCACR, appeal does not apply to wrongful unnoticed sua sponte dismissal by a single lower appellate court judge without jointly filed ROA or other factual support, then it is

rendered superfluous with no fact situation where it could apply. The underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provides for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Moreover, Rule 240(j), SCACR, stands on its own and is independent of and not restricted by Rule 240(i), SCACR. Accordingly, the Legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220 such that, "Any party aggrieved by an order of an individual judge or judge may seek review of that order by the appellate court or a panel thereof," and the standard of review is *de novo* (not the less burdensome standard of Rule 221, SCACR, petition for rehearing). See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the

Legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

This Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the Legislature, so the plain language of the statute should not be disregarded. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C. 2000). The Legislature intended to and expressly did provide appeal for orders by a single individual as, including but not limited to, protection of that individual judge, protection of the lower appellate court, protection of the general public, and protection of Constitutional and statutory mandates and substantial rights. "In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). A discerning review reveals that Rule 240(j),

SCACR, appeal would not be needed if the only time it applied is dismissal or final decision, since Rule 221, SCACR, addresses that instance. Otherwise, Rule 240(j), SCACR, would be rendered superfluous and "the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *Id.* The orders of the lower appellate court on appeal are internally inconsistent and are based on error of material fact and law because they lead to an absurd result and render S.C. Code § 14-8-220 and Rule 240(j), SCACR, superfluous. Remand for application of the lawful standard of review is hereby requested and Rule 240(j), SCACR, *De Novo* Panel Appeal should be granted.

Case law directs the Legislature enacts no superfluous statutes and our cherished Constitution mandates the following: no single individual, whether British monarch or government official shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review. In this case, out of nowhere and before briefing, unnoticed sua sponte dismissal is entered without motion, without transcript, without jointly filed Record on Appeal (ROA), without factual support, and without meaningful opportunity to respond at a meaningful time by a single individual lower appellate court judge without meaningful review and without the statutory appeal requested pursuant to S.C. Code § 14-8-220. Under the facts, S.C. Code § 14-8-220 requires de novo panel appeal to provide meaningful judicial review. The improper, less burdensome legal standard was applied. Moreover, inadequate record without transcript prevents full and fair judicial review. To the extent there is ambiguity, the rule of lenity is a tiebreaker and supports the undersigned's position. The lower appellate court orders are reversible as a matter of law.

II. The Question of Jurisdiction is a Question of Law.

Each assertion set forth in this document that is consistent with the following is incorporated

herein by reference. Another action is pending in the Family Court between the same parties for the same claim including retirement and marital property. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). This matter involves the attached copy of the Decree of Divorce to which defendant attorney, with decades of experience, agreed on the record, into which that agreement was incorporated, from which defendant never appealed, and which is now the law of the case. That Decree unambiguously reserves and preserves issues including retirement and marital property. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.). The family court has exclusive original jurisdiction over the domestic matters herein pursuant to S.C. Code §§ 63-3-510 to 530. On the record, the Family Court acknowledged the case is pending stating, "the almost seventeen years this case *has been* pending." (R. p. 25, Transc. Lines 12-14 (emphasis supplied)). It is undisputed that the family court can order child support to continue beyond eighteen years. *SCDSS Child Support v. Mangle*, 633 S.E.2d 903 (S.C. App. 2006). See S.C. Code § 20-7-420(A)(17). In *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), the Supreme Court held jurisdiction for all domestic matters, whether by decree or by agreement, vested in the Family Court. *Id.* at 353, 306 S.E.2d at 627. The Family Court attorney defendant's tax returns as well as his own affidavit attached to the return herein confirm support payments made by him pursuant to written agreement. Accordingly, the Family Court has jurisdiction over these issues. S.C. Code §§ 63-3-510 to 530. *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental

procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

III. The Order appealed from is an appealable order and must be immediately appealed or waived.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. The lower appellate court (COA) opinion is reversible based on error of material fact and law including the following. First, without factual support in the record, there is no basis for the erroneous COA ruling the circuit court opinion is not appealable. Case law directs that deprivation of a party's right to trial by jury must be immediately appealed. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975). Second, the COA's opinion fails to consider new controlling precedent cited by the petitioner. At issue is denial of the petitioner's right to trial by jury, including counterclaims at law. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E. 2d 81 (2008); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157. "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). "**These cases not only permit, but indeed require, immediate appeal.**" *Id.* (emphasis supplied). Though timely raised, the updated precedent is not addressed by respondent's counsel or applied by the

lower appellate court; that case mandates immediate appeal with "some minimal inquiry" which is prevented by lack of transcript herein. *Id.* It is respectfully submitted that reconstruction of the trial court record is required in order to comply with governing case law which is hereby requested. Third, the propriety of entering judgment while Rule 59(e), SCRCP, motion is pending is challenged: Under the facts, there is no statutory, constitutional, Rule of Court, or other authority for entering that judgment in the trial court which is void/voidable.

The petitioner asserts new precedent and controlling case law which directs that not only is the order an appealable order but the order must be immediately appealed and inquiry on appeal must be made regarding preservation of the right to trial by jury inviolate. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E. 2d 81 (2008); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157. "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). The other side materially omits jury demand for counterclaims at law and fails to address the following case supporting petitioner's position: *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (finding an order referring a matter to a master should have been immediately appealed where the party had a right to a jury trial because the litigation concerned a land title dispute); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155. Further, jurisdiction can be raised at any time and cannot be waived. In this case, the Family Court is the proper forum including pursuant to the Decree which is now the law of the case. Moreover, the Family Court is the proper forum to provide clear title without arbitrary and capricious reduction in market value. In addition, under the facts, there is no jurisdiction for entry of judgment for referral, it was not final, and that entry is void/voidable.

The respondent's case of *Hudson v. Hudson*, 349 S.E.2d 341 (1986), is distinguished; it expressly provides it is not applicable "where post-trial motions are filed before a Notice of Appeal."

In this case, the timely post-trial motion was filed before Notice of Appeal. In addition, the *Hudson, supra,* case is distinguished by new precedent in *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E. 2d 81 (2008), as the instant case is a mode of trial case which must be immediately appealed or waived; *Hudson, supra,* is also distinguished by new law enacted by the Legislature in 1986, S.C. Code § 20–3–620 (equitable apportionment of marital property; enacted by Act No. 522, 1986 S.C. Acts 3264) which codified the law in *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624, 627 (1983) (unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the family court). Accordingly, under these facts, the order must be immediately appealed or waived.

Moreover, the other side fails to address the plain language of the attached Decree of Divorce which incorporates the party's agreement entered into the record and memorialized in that Decree; it unambiguously reserves and preserves issues including retirement and marital property. Counsel of record has no personal knowledge of the Family Court matter which is currently pending on appeal and which was not administratively dismissed nineteen years ago. The Family Court Benchmark Order (FCBO) was not even in existence at the time the Decree was entered and the plain language of the Decree provides the issues are preserved, reserved, and not subject to retroactive application of the FCBO enacted years later. Significantly and materially, the transcript includes the Family Court Judge's statement on the record the case is pending. Further, pursuant to S.C. Code §15-3-120, partial payment or a written promise to pay a debt serves to toll the statute of limitations. Further, the respondent introduced the June 6, 2023, affidavit attached to the return herein which evidences ongoing support pursuant to written agreement, therefore, the statute of limitations is tolled. Lack of prosecution was not raised below and respondent's own affidavit rebuts lack of prosecution. The other side materially omits and fails to disclose judgment for referral was wrongfully entered after impermissible ex parte hearing while Rule 59(e), SCRCP, motion was pending. Accordingly, a writ of certiorari is respectfully requested.

IV. Another action is pending in the Family Court between the same parties for the same claim.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. Another action is pending in the Family Court between the same parties for the same claim including retirement and marital property. The other side's reliance on *Gilley* is misplaced. *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996). First, the Gilley case ruled "the prenuptial agreement precluded any claims for equitable apportionment." *Gilley v. Gilley*, 327 S.C. 8, 12 (S.C. 1997). There is no prenuptial agreement herein precluding equitable apportionment. Further, *Gilley, supra*, supports the petitioner's position and provides: "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Id.* at 10 (internal citation omitted). "In the present case, the parties were properly in family court at the time the ...action in circuit court *was filed*. Thus, the family court maintained jurisdiction." *Conits v. Conits*, 417 S.C. 127, 789 S.E.2d 51 (S.C. App. 2016) (emphasis supplied). Accordingly, the pending Family Court matter and the Decree of Divorce unambiguously reserve and preserve jurisdiction in the Family Court for issues including custody of the minor children of the marriage, support, retirement, and marital property.

The other side's return is internally inconsistent claiming there is no pending Family Court action while acknowledging on page 3 the appeal is pending in that matter and acknowledging on page 5 the effect of appeal. The respondent wrongfully filed this duplicative action while the Family Court matter is pending. He materially omits the transcript from the Family Court (excerpt attached) documenting the Family Court Judge's acknowledgment the case is pending stating on the record, "the almost seventeen years this case *has been* pending." (R. p. 25, Transc. Lines 12-14 (emphasis supplied)). It is undisputed that the family court can order child support to continue beyond eighteen

years. *SCDSS Child Support v. Mangle*, 633 S.E.2d 903 (S.C. App. 2006); S.C. Code § 20-7-420(A)(17); *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). Though Section 15-61-10 provides partition is compellable between some joint tenants and tenants in common, the Family Court has jurisdiction herein pursuant to the Decree including custody of the minor children of the marriage, support, the marital home, and/or retirement issues. *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983).

Significantly and materially, respondent's counsel has no personal knowledge of the Family Court proceedings, lack of prosecution was never raised below in that matter or herein, and the Family Court made no finding of lack of prosecution. The Family Court overlooked activity within 365 days, overlooked that the FCBO was inapplicable because the Decree was entered before its effective date, and granted relief to the petitioner within 365 days which in itself confirms the case is pending in the Family Court with recent activity. Moreover, the hearing in the Family Court on the Rule 59(e), SCRCP, motion was suspended due to Covid. Thereafter, the Rule 59(e), SCRCP, motion was wrongfully denied without a hearing on March 17, 2020, however, Chief Justice Beatty's April 22, 2020, Covid Administrative Order No. 2020-4-22-01 rescinded that adverse action taken after March 13, 2020. Pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02 petitioner's timely request for hearing is filed in the Family Court. That November 8, 2021, Covid Administrative Order No. 2021-11-8-02 provides: *This action was required because in-person proceedings in non-emergency matters in the family court had been suspended due to an increase in COVID-19 cases in South Carolina.* Covid Administrative Order No. 2021-11-8-02 (emphasis supplied). Accordingly, pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02, petitioner timely filed notice for hearing in the Family Court which is hereby requested.

Further, respondent's reliance on *Thompson v. Brunson*, 283 S.C. 221, 225, 321 S.E.2d 622 (Ct. App. 1984), is misplaced because that case is governed by the law in South Carolina prior to the decision of *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). In *Moseley*, the Supreme Court decreed that thereafter "jurisdiction for all domestic matters, whether by decree or by agreement, will vest in the family court." *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624, 627 (1983)(unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the family court). See *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (S.C. 2011). S.C. Cod e § 20–3–620 (equitable apportionment of marital property; enacted by Act No. 522, 1986 S.C. Acts 3264); S.C. Code § 63–3–530 (family court jurisdiction; enacted by Act No. 690, 1976 S.C. Acts 1859). The Decree herein unambiguously reserves and preserves Family Court jurisdiction, including for equitable division of marital property. Legal title is not dispositive. The equitable marital property interests are undivided subject to equitable distribution in the pending Family Court matter. Even if it were not pending, which is denied, the Family Court is the proper forum. The Family Court has the authority to modify any order issued by the Family Court. S.C. Code Ann. § 63-3-530(A)(25) (2010) (stating the family court has exclusive jurisdiction to modify or vacate any order issued by the family court). *Thompson v. Thompson*, 428 S.C. 142 (S.C. Ct. App. 2019). The equitable marital property interests are undivided subject to equitable distribution in the Family Court pursuant to exclusive original jurisdiction in the Family Court, which is the proper forum. S.C. Code §§ 63-3-510 to 530. It is undisputed that neither the agreement nor the Decree herein unambiguously deny the Family Court jurisdiction. Under these facts, the petitioner disputes that the circuit court has jurisdiction and even if it did, which is denied, the petitioner objects as the circuit court case arbitrarily and capriciously reduces market value.

As for counsel's reliance on S.C. Code § 20-7-420, that Section provides no assistance as it has been repealed. Similarly, the *Eichor* case is distinguished by new law enacted by the Legislature in

1986, S.C. Code § 20–3–620 (equitable apportionment of marital property; enacted by Act No. 522, 1986 S.C. Acts 3264) which codified the law in *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624, 627 (1983) (unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the family court). *Eichor v. Eichor*, 290 S.C. 484, 488 (S.C. Ct. App. 1986). The *Eichor* case is further distinguished because that case involved military retirement benefits and at that time military retirement benefits were not treated as marital property to be divided in equitable distribution. *Id.* Accordingly, another action is pending in the Family Court between the same parties for the same claim including retirement and marital property.

V. The ex parte hearing was held without required notice.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. As a threshold matter, counsel does not cite any case law in the return's Section III which should be disregarded for failure to provide supporting authority. The appellate court will decline to consider an argument where there is no citation of authority. *See Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010); *S.C. Dept. of Prob., Parole, & Pardon Servs. v. Reynolds*, 343 S.C. 465, 540 S.E.2d 480 (2000); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 432.

Ex parte orders are reserved for those rare occasions when no adverse interest exists or exigent circumstances dictate that action be taken prematurely. *Herring v. Credit Bureau of Columbia*, 272 S.C. 368, 252 S.E.2d 123 (1979); Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 146. The respondent has not claimed exigent circumstances or that no adverse interest exists.

Counsel is badly misinformed and fails to disclose he introduced an affidavit of service he knew or should have known was patently false, then sought improper default on the false affidavit of service, and failed to copy the other side with proposed orders. Answer and Counterclaims were timely filed

along with notice to the circuit court that petitioner has no webX access. No required notice was received thereafter. The SCCA is unable to locate any audio recording for transcript in the case. Apparently, neither the circuit court nor petitioner received required notice. Accordingly, though denied in the lower appellate court, motion to reconstruct the record in the trial court is timely served and filed at the first opportunity and is hereby requested.

VI. There has been denial of due process.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. As a threshold matter, counsel does not cite any case law in the return's Section IV which should be disregarded for failure to provide supporting authority. The appellate court will decline to consider an argument where there is no citation of authority. *See Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010); *S.C. Dept. of Prob., Parole, & Pardon Servs. v. Reynolds*, 343 S.C. 465, 540 S.E.2d 480 (2000).

When the undersigned timely requested mediation in the Family Court pursuant to the Decree, the Family Court attorney defendant responded with ambush litigation in that case and herein denying due process and denying meaningful opportunity to be heard at a meaningful time. But for the Family Court attorney defendant's ambush litigation, the matter should have and likely would have been resolved in the Family Court by now. This Court is cautioned regarding untrustworthy attorneys' ambush litigation tactics against the unwary, unrepresented parties, heirs' property defendants, others, and/or lay persons unfamiliar with ambush litigation tactics. The record herein reflects denial of due process including but not limited to, impermissible ex parte hearing without required notice, without meaningful opportunity to be heard at a meaningful time, and without adequate record for meaningful review. Accordingly, there has been denial of due process and equal protection. *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process

is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

VII. False statements including defamation.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. As a threshold matter, counsel does not cite any case law in the return's Section V which should be disregarded for failure to provide supporting authority. The appellate court will decline to consider an argument where there is no citation of authority. *See Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010); *S.C. Dept. of Prob., Parole, & Pardon Servs. v. Reynolds*, 343 S.C. 465, 540 S.E.2d 480 (2000).

Respondent's counsel knew or should have known his claim of disbarment is false and defamatory. The petitioner requests the false claims made in this matter, or elsewhere, be withdrawn, as previously requested in the petitioner's motion.

The petitioner disputes counsel's frivolous claims of frivolity and respectfully submits the attached supporting affidavit.

Without motion to dismiss, without payment of the filing fee for motion to dismiss, without transcript, without jointly filed ROA or other factual support, after the SCCA failed to timely respond to petitioner's three or more timely transcript requests, after respondent's counsel contacted the SCCA

without timely copying the petitioner, and after learning from respondent that the SCCA is unable to locate the audio recording for the transcript, a single individual lower appellate court judge sua sponte dismissed the appeal without notice and without meaningful opportunity to respond at a meaningful time. The record reflects there is no denial of direct or indirect ex parte contact regarding dismissal by the other side which provides support.

The other side overlooks or misapprehends the context for disparaging Alex Murdaugh and his 'rules of law' used to entice judges to sign off on his wrongdoing. In addition, the context for recognizing some of this country's great statesmen is their shared and lived belief in the importance of fundamental fairness in a democracy which is just as important, if not more so, in these uncertain times.

It is fair to say the other side should and would object if someone advertised the false defamatory claim respondent's counsel is disbarred. It is fair to say the other side would object if respondent were denied the right to trial by jury, denied required notice and other substantial rights, denied the right to follow the South Carolina Rules of Court, and denied the right to appeal. Respondent has not claimed he is unable to proceed in Family Court. He simply thinks he can "get a better deal." Legal title is not dispositive. The Family Court Bar should and would have a public interest in Family Court defendants who evade the jurisdiction of the Family Court simply by filing a duplicitous and duplicative claim in the court of common pleas. Respondent has not and cannot in good faith claim he has not caused delay. Pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02, petitioner's timely request for hearing is filed in the Family Court which is hereby requested. *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct.

1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

VIII. Judge Dennis recused himself.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference. The other side attached a copy of Judge Dennis' impermissible ex parte June 9, 2022, order. As a threshold matter, Judge Dennis recused himself pursuant to the attached supporting affidavit which voids that order. *See Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992). Moreover, there is precedent because Judge Dennis has previously recused himself for the same or similar reasons in other cases. Citations available on request. In her appellate practice book, Former Chief Justice Toal quotes with approval regarding recusal from the United States Supreme Court case of *Caperton v. A.T. Massey Coal Co.*:

> The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on **appellate review of the judge's determination** respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias. In defining these standards the Court has asked whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (internal citations omitted) (internal quotation marks omitted).

Toal *et al.*, *Appellate Practice in South Carolina*, Third Ed. (2016), p. 240-241 (emphasis supplied).

Accordingly, the impermissible ex parte June 9, 2022, order is void/voidable. *See Hicks v. Feiock*, 108

S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

CONCLUSION

WHEREFORE petitioner prays this Court issue a writ of certiorari.

Respectfully submitted,

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