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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

The Honorable George M. McFaddin, Jr.,  
Circuit Court Judge

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Appellate Case No. 2023-001043

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Megan Scott,.....Appellant,

v.

Estate of Jonathan Bruner, .....Respondent.

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**ESTATE OF JONATHAN BRUNER’S RETURN TO APPELLANTS’ PETITION FOR  
EX PARTE ORDER OF SUPERSEDEAS**

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Pursuant to Rule 240(e), SCACR, Respondent Estate of Jonathan Bruner, hereby submits this Return in Opposition to Appellant Megan Scott’s *Petition for Ex Parte Order of Supersedeas*. For the reasons that follow, the Court should deny the Petition.

**BACKGROUND**

On May 18, 2022, the Estate of Jonathan Bruner filed an action to recover personal property in Charleston County Magistrate’s Court. Specifically, the Estate of Jonathan Bruner sought to recover the Decedent’s one-year old Golden Doodle, Evie, from his girlfriend, the Appellant. Evie was purchased by the Decedent when he was married to his ex-wife and was awarded to him via equitable division of property in their divorce. When the Respondents attempted to obtain Evie, Appellant subsequently refused to turn her over to the Executor of

Decedent's Estate. Appellant also undertook a bond to maintain possession of the subject dog of interest.

A trial was held in Charleston County Magistrate's Court on July 16, 2022, and the Court granted the Respondent's Claim for Delivery of Evie and ordered that Appellant relinquish custody of Evie within three days of the Order which was issued on July 6, 2022.

On July 7, 2022, in response to the Magistrate's Court Order granting possession of Evie to Respondents, Appellant filed a motion for reconsideration with the Magistrate Court. Appellant's motion for reconsideration was heard by the magistrate court on July 20, 2022. The Magistrate Court issued an amended Order still granting possession of Evie to Respondents.

On August 22, 2022, a Notice of Appeal was filed by the appellant in Circuit Court. For several months after the filing of the initial Notice of Appeal the original record had not been transmitted to the Clerk of Court nor had a motion to extend the time to prepare the certified record been filed.

On December 12, 2022, Respondents filed a Motion to Dismiss the Circuit Court appeal pursuant to Rule 41 SCRPC. At the time of the filing of the motion, the Appellant had not sought a Writ of Mandamus to compel the magistrate to certify and file the original record with the Circuit Court. Subsequently, on January 27, 2023, the Appellant filed a petition for Writ of Mandamus. Upon transmittal to the Magistrate, they took the appropriate steps to certify the original record. The Motion to Dismiss was heard on February 9, 2023. Given that, at that point, the original record was certified and submitted to the Circuit Court by the Magistrate, the motion was denied. The Court then attempted to move forward with hearing the Appeal at that time. While counsel for both parties conceded that they were unaware that the Court intended to hear the Appeal that day, Counsel for Respondents advised the Court that they were prepared to move forward. However,

Counsel for Appellant requested a continuance to further prepare and the Court continued the hearing to the next term of Court.

Subsequently, Appellant obtained new counsel. Her current attorney of record filed a Notice of Appearance in Circuit Court on March 31, 2023. Also on March 31, 2023, counsel for Appellant filed a Brief of Appellant in support of appeal.

At the hearing on the Circuit Court Appeal on April 5, 2023, Counsel for Respondents objected to the submission of the aforementioned brief. Counsel for Respondents detailed that this was submitted within days of the hearing, that they did not have appropriate time to respond, and that further they did not believe the submission was appropriate given that the brief contained arguments and raised issues outside the scope of the Initial Notice of Appeal. Counsel for Respondents further requested that, if the Court was inclined to consider the brief, that Respondents would like an opportunity to submit a brief in response. Accordingly, Respondents were granted ten days from the date of the hearing to submit the same.

On April 14, 2023, Respondents submitted their Brief of Respondents in Opposition to Appeal to the Court. On that same day, Counsel for Appellants requested that they be allowed to submit a short reply in response to Respondents' Brief. On April 17, 2023, the Court advised that Appellant were allowed to submit a reply by April 20, 2023. A reply brief was submitted by Appellant on that date. On April 21, 2023 Counsel for Respondents filed a Motion to Strike all briefs which were submitted pertaining to the appeal from the record.

The ruling from the April 5, 2023 was issued on June 12, 2023 and was based upon the entirety of the submissions presented to the Court as they pertained to the appeal. The Final Order, confirming that possession of the subject dog of interest was granted to Respondents, was filed on June 27, 2023. *Appellant's Emergency Petition for Order of Supersedeas* to the Circuit Court

followed. A *Memorandum in Opposition* was filed by the Respondents on July 3, 2023. On July 5, 2023, the Court issued its ruling and denied *Appellant's Emergency Petition for Ex Parte Order of Supersedeas*. This Petition to the Court of Appeals follows.

### **STANDARD**

“In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” *Rule 241(c)(2) SCACR*. “A supersedeas or order lifting the automatic stay may be issued *ex parte* only where exigent circumstances require that action be taken before there is time for a hearing. An *ex parte* order shall issue only if.... it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond.” *Rule 241(d)(6) SCACR*.

### **ARGUMENT**

The Circuit Court correctly denied the Appellant's *Ex Parte Petition for an Order of Supersedeas* and this Court should follow.

The Circuit Court makes a finding in the April 5, 2023 Order under appeal that “the Magistrate Court erred in allowing the admission of the evidence and testimony as both constitute impermissible hearsay pursuant to South Carolina Rule of Evidence 804 as Decedent was an unavailable witness and there was no exception which could be applied to permit the evidence and testimony into the record. Had the New Client document and Appellant's testimony been properly excluded by the trial court there would be no facts in the record which could stand to support Respondent's ownership claim of Evie, thus, rendering her claim(s) meritless.” (April 5, 2023 Order, p. 5).

The document in question, which is the basis of Appellant's evidence of ownership, was a "New Client Form" which Decedent filled out for a veterinarian's office. It is not in question that at the time that this standard, form document was completed, the Decedent and Appellant were residing together and she was helping him care for the dog. However, it is baseless to assert that when Decedent listed Appellant as a point of contact in the only space on the form Decedent could, that he intended to declare she had any form of legal ownership of the dog. Aside from the fact that there is no way to truly determine Decedent's intentions, there is no legal basis which establishes that authority should be given to a form, non-binding document with no legal effect to evidence ownership of the subject dog of interest. If the Court were to give Appellant's argument any credence in this matter, the entire purpose of the South Carolina Legislature enacting the intestate laws would be frustrated and rendered futile.

Accordingly, the Magistrate and the Circuit Court further both correctly found that the Appellant has no legal right to maintain possession of the subject dog at question in this case. Appellant argues that there will be an immediate and irreparable injury or loss due to the fact that Respondents reside out of state and Appellant contends that South Carolina will be unable to assert jurisdiction and render this appeal moot if the dog is transferred pursuant to the Circuit Court's order. This argument is flawed as the Appellant would need to have a legitimate claim to ownership of the dog for this Appeal to not already be moot.

The facts in this case differ from the decision in *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 818 S.E.2d 223 (Ct. App. 2008), reh'g denied (Sept. 20, 2018), which Appellant relies on as authority for the granting of this *ex parte*. In *Skydive*, which involved a writ of ejectment filed by Horry County to remove Skydive Myrtle Beach, Inc. from an airplane hanger they were renting from the County, there is no question that there was a point at which *Skydive*

had the right to possess the hanger in question. The question was rather whether they had the right to *continue* to occupy the hanger. In this case and, under South Carolina law and the orders of the lower court, Appellant does not and never did have any legal, possessory right to the subject dog of interest.

Appellant is merely attempting, as she has in the past by the posting of a bond at the onset of this litigation, to continue to retain possession to a dog which she does not have the legal right to possess. The only immediate and irreparable injury which would occur if Appellant's Petition were to be granted is to Respondents, who have been waiting to take possession of the subject dog and their personal property for well over a year. The Appellant has not established that there is a likelihood of success on Appeal, and delaying the transfer of possession of the subject dog of interest would only facilitate Appellant keeping possession of the dog for a currently unknown amount of additional time and further irreparable harm to the Respondents.

### CONCLUSION

Based upon the foregoing, the Court should deny Appellant's *Petition for Ex Parte Order of Supersedeas*. The Circuit Court exercised its sound discretion in denying Appellants' *Motion for Ex Parte Supersedeas* and Appellant have offered no sound basis for upsetting the status quo while Appellant's moot and meritless lawsuit makes its way through the Appellate Court.



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July 6, 2023

Charleston, South Carolina