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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2022-000369

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001 ……Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
And L. Cliff Redd, ……Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
And L. Cliff Redd are……Petitioners.

REPLY TO RESPONDENT'S RETURN

Before this Court on appeal is a judgment "in favor of [Respondent]." This Court may reverse it, which would mean that Respondent no longer has a judgment in its favor. The Estate of Herbert Anderson, Jr. (the "Estate") hereby respectfully replies to the Respondent's Return to the Estate's Motion to Join in Arguments of Petitioners. The Respondent's arguments boil down to an assertion that this Court does not have jurisdiction to decide the Estate's Motion. Respondent is wrong as a matter of law, for the reasons discussed herein. Moreover, many of Respondent's factual statements betray the reality that Respondent is engaging in gamesmanship designed to isolate the Estate

as a target for collection of Respondent's (precarious) judgment and to thwart this Court from deciding to reverse the lower court's errors.

Shortly before filing its Return to the Estate's Motion, Respondent alone filed a letter with this Court announcing that the parties "have reached a settlement," notifying the Court "that the writ of certiorari is withdrawn," and requesting that the oral argument be cancelled. (*See* Letter of A. Mattison Bogan, filed December 15, 2023). But both Respondent's letter and its Return demonstrate that the purported settlement is not at all final. For example, the Return refers to "Respondent's **offer** to settle the appeal" and to "the settlement **offer**." Return, p. 6 (emphasis added). The letter states that "the parties *will* proceed to complete the settlement" and that Respondent "*will* satisfy the judgment"—both statements in the future tense, indicating a settlement not yet complete. **This Court should not dismiss the appeal**, and certainly not before it hears from Petitioners.[1] Because the Estate is not certain whether Respondent will succeed in its efforts to settle with Petitioners, the Estate filed a Motion for Substitution, in the alternative to this Motion to Join, and it incorporates all its arguments herein.

Argument

Regardless of whether the posture of the Estate's motion is for joinder or for substitution, **Respondent's claim that this Court "is without jurisdiction over the final judgment as it pertains to Mr. Anderson" is technically wrong and it does not matter.** This Court has appellate jurisdiction over the trial court's orders. The ***purpose*** of the Estate's motions is to respectfully ***ask*** this Court to exercise its discretion and ***to allow***

[1] The Estate has been informed by one source that not all Petitioners have agreed to settle.

the Estate of Herbert Anderson Jr. to participate as a party to the appeal. The standard and arguments are not much different for joinder or substitution—**this Court has discretion under the rules and at law to permit a movant to participate as a party in an ongoing appeal.** This discretion is typically tempered by considerations such as prejudice and judicial economy. *But the discretion is there*, and it should be exercised in this case, where the inclusion of the Estate as a party would not make a substantial difference to anyone — except the Estate.

In its Return, Respondent offers no argument whatsoever that this Court should not exercise its discretion and permit the Estate to participate as a party. Respondent does not claim it would be prejudiced. Respondent does not argue that this Court would be burdened. Respondent does not assert that there would be some material change to the issues on appeal. Instead, Respondent argues that this Court does not have jurisdiction because (a) the Estate did not appeal; and (b) the probate court is alone vested with jurisdiction. Neither of these arguments is right.

First, the Estate was not required to file a separate notice of appeal.[2] When Petitioners filed their Notice of Appeal with the Court of Appeals, they appealed the trial court's orders in their entirety. Appendix p. 372- 80. Because the orders on appeal were indivisibly "in favor of Plaintiff" (as opposed to uniquely against a particular defendant), the relief requested by Petitioners from the outset has been reversal of the trial court's

[2] It may have been better practice for Herbert Anderson, Jr., to appear in the appeal as a party (although he has been on the caption for the duration), but—again—Mr. Anderson was in the process of dying at the time of trial and appeal, and it is not difficult to sympathize with the reality that his wife/widow was focused on other things. Even so, Mr. Anderson has always been on the caption, and his attorney was identified as "other counsel of record" within the Notice of Appeal and on the Petition for a Writ of Certiorari to this Court.

decisions in their entirety. **Put another way: the relief sought has always been reversal of Respondent's judgment.** Importantly, the Court of Appeals had appellate jurisdiction—for correction of errors of law—over the trial court's decision to rule "in favor of [Respondent]" from the moment the Notice of Appeal was filed. *See* S.C. Code § 14-3-330.

Further, ***this*** Court's jurisdiction is original and discretionary. S.C. Code § 14-3-310. This Court chose to grant a writ of certiorari as to the lower court's rulings. From the moment it chose to grant the writ, this Court has had the jurisdictional authority to correct the lower court's errors and to reverse the judgment "in favor of [Respondent]." S.C. Code § 14-3-330. Significantly, this Court's power over the orders on appeal is extensive—the Court has the statutory capacity to "make complete restitution of all property and rights lost by the erroneous judgment." S.C. Code § 18-1-140. This authority pertains to the "judgment or order" on appeal; the statute contains no language limiting the power as being over appealing parties. *Id*. **Therefore, this Court undoubtedly has power and jurisdiction to grant relief to the Estate, if it should reverse the orders on appeal**.

Respondent's argument that appellate jurisdiction somehow does not extend to the judgment as it affects Mr. Anderson is wrong. Error of law is error of law, and the very purpose of an appellate court is to correct it. In this case, because the legal error is embodied in an indivisible judgment ("in favor of Plaintiff"), it may be corrected only by reversal of the whole. Respondent is the Plaintiff, and a reversal of the judgment "in favor of Plaintiff" would mean, quite simply, that Respondent no longer has an

enforceable judgment. Indeed, even after this appeal is over—if this Court reverses or voids the order or judgment—the Estate could move for relief pursuant to Rule 60(b)(4) or (5), SCRCP.[3]

Second, the probate court does not have jurisdiction over the order on appeal. The Respondent makes the strawman argument that "jurisdiction over the probate action lies with the probate court." *Return*, p. 5. But the Estate does not contest that the probate court has jurisdiction over the probate action. It does. And the Estate also does not dispute that a prevailing party may proceed to collect on a money judgment, even while an appeal is ongoing, including in probate court. Those are the rules. *See* Rule 241, SCACR; S.C. Code § 18-9-130. Even so, the probate court is subordinate to this appellate Court. If this Court reverses Respondent's judgment, which Respondent is attempting to collect in probate court, then the probate court obviously must defer to this Court's decision as to the legality of the order. An invalid judgment is an invalid judgment, and particularly in this case where the judgment is purely "in favor of [Respondent]" and not unique or divisible as to any one defendant. **In other words, the question is not so much whether the Estate has a judgment against it, but whether the Respondent has a valid judgment in its favor.** For this reason, this Court's decision will necessarily affect the

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[3] The probate court has acknowledged that Rule 60 is possible recourse for the Estate. *See* Respondent's *Return to Estate's Motion to Join*, filed Dec. 15, 2023, Ex. A, p. 2. Rule 60(b), SCRCP, allows:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . **(4)** the judgment is void; **(5)** the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Estate, the Respondent, and the proceedings in probate court.

Conclusion

This Court has appellate jurisdiction and the authority to permit the Estate to participate in the appeal, either by joinder or substitution.[4]

Because this Court's ultimate decision inextricably affects the Estate's rights and obligations, as much as it affects the Respondent's rights and obligations, the Estate is a proper party to this appeal. The Estate therefore respectfully moves this Court to permit the Estate to participate as a party and to join in and/or adopt the arguments and briefing of Petitioners.

Respectfully submitted,

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[4] *See* the Estate's *Motion to Join* and its *Motion for Substitution*, which each cite the law and rules behind this Court's authority.