

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**SC Court of Appeals**

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No.: 2024-000122

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U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G,  
Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,

of which Jamie Singleton is the Respondent,

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APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

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Appellant, U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G ("U.S. Bank"), responds to the motion to dismiss the appeal filed by the respondent, Jamie Singleton ("Singleton"). Singleton's motion moves for the March 28, 2023 order and the November 21, 2022 order to be dismissed from the appeal. The basis for Singleton's motion is that U.S. Bank did not file a notice of appeal for these orders within thirty days of receiving written notice of the entry of these orders.

This is an action for foreclosure of a note and mortgage. In the November 21, 2022 order, a copy of which is attached as Exhibit A, the master in equity granted U.S. Bank's motion for summary judgment as to U.S. Bank being the holder of the note and mortgage in question and as to U.S. Bank being entitled to foreclose; however, this order denied, among other things, U.S. Bank's right to interest, escrow advances and attorney's fees

and costs. U.S. Bank timely filed a Rule 59(e) motion to alter or amend the November 21, 2022 order regarding the order's holding that U.S. Bank was not entitled to interest, escrow advances and attorney's fees. A copy of U.S. Bank's Rule 59(e) motion is attached, without its exhibits, as Exhibit B. Singleton filed a return to U.S. Bank's 59(e) motion that denied U.S. Bank was entitled to the relief it sought in its motion, but Singleton did not move to alter or amend the November 21, 2022 order. A copy of Singleton's response is attached as Exhibit C. In the master in equity's order of March 28, 2023, a copy of which is attached as Exhibit D, the master in equity did not rule on the relief requested by U.S. Bank in its Rule 59(e) motion to alter or amend; instead, the judge "revisited" the facts and set aside the November 21, 2022 order in its entirety. Since the November 21, 2022 order was set aside, the master in equity stated that U.S. Bank's motion to alter or amend the order was "moot." U.S. Bank has appealed the November 21, 2022 order and the March 28, 2023 order because U.S. Bank does not believe the master in equity had subject matter jurisdiction to vacate the November 22, 2022 order.

"Issues relating to subject matter jurisdiction may be raised at any time . . . and should be taken notice of by this court on our own motion." *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002) (quoting *Bunkum v. Manor Props.*, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct. App. 1996)). In *Ness*, the court of appeals cited *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001) in holding that "[a]lthough trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e) motion is filed, after ten days that jurisdiction is lost." *Ness*, 350 S.C. at 402, 566 S.E.2d at 195.

The relevant facts in *Ness* and *Heins* are remarkably similar to the facts of this case. In *Ness*, Eckerd had filed a motion to set aside the entry of default entered against it. *Id.* at 401, 566 S.E.2d at 195. On May 28, 1998, the trial judge issued an order denying Eckerd's motion to set aside the entry of default. *Id.* "Eckerd then filed a Rule 59(e), SCRCR, motion, requesting that [the trial judge] reconsider his determination that Eckerd had not shown good cause for the default." *Id.* at 401-402, 566 S.E.2d. at 195. "In an order dated July 13, 1998, [the trial judge] stated '[he] discovered that one of [his] brothers has a relationship to [Eckerd] which was unknown [to me] at the time this Court heard the Motions in question and entered the Order of May 28, 1998.'" *Id.* at 402, 566 S.E.2d at 195. The trial judge then vacated the May 28, 1998 order and recused himself from the case. *Id.* Subsequently, a second trial judge heard Eckerd's motion and granted Eckerd's request for relief. *Id.*

*Ness* appealed both the second trial judge's order granting Eckerd's motion for relief and the first judge's "earlier order in which the circuit court judge *sua sponte* vacated his prior order denying Eckerd's relief from entry of default." *Id.* at 401, 566 S.E.2d at 194. The court of appeals stated that "[i]n this case as in *Heins*, the trial judge modified an order not as requested in a Rule 59(e) motion, but rather on his own initiative and after more than ten days had passed." *Id.* at 402-403, 566 S.E.2d at 195. The court of appeals therefore held the first trial judge lacked the jurisdiction to vacate the May 28, 1998 order. *Id.* at 403, 566 S.E.2d at 195.

In *Heins*, a wife brought an action against her husband for divorce. *Heins*, 344 S.C. at 149, 543 S.E.2d at 225. On the day of the trial, the spouses reached a settlement agreement that was, after a final hearing, incorporated into a written order issued by the

family court judge. *Id.* Some five months after issuance of the written order, the wife moved for a contempt order against her husband. *Id.* at 150, 543 S.E.2d 226. In her motion, the wife alleged that her husband had violated the settlement agreement by failing to (1) indemnify and hold her harmless for personal debt husband incurred after the separation; (2) disclose to wife before the final hearing personal debt the husband had incurred on behalf of the family business; and (3) surrender the family business assets to wife. *Id.* After a hearing, the family court issued an order holding husband in contempt for willfully failing to surrender the business assets to wife; however, the order found that husband was under no obligation to repay either the personal debt husband had incurred after the separation or the undisclosed debt incurred on behalf of the business. *Id.*

Wife moved for reconsideration of the portions of the order that found husband was under no obligation to repay either the personal debt husband had incurred after the separation or the undisclosed debt incurred on behalf of the business. *Id.* at 151, 543 S.E.2d at 226. In his return to wife's motion, husband denied wife was entitled to the relief she requested, but husband did not seek reconsideration of the portion of the order holding husband in contempt for willfully failing to surrender the business assets to wife. *Id.* The family court denied wife's motion to reconsider, and, in addition, rescinded its earlier order holding husband in contempt for willfully failing to surrender the business assets. *Id.* Wife again moved for reconsideration, but her motion was denied. *Id.* Wife then appealed. *Id.*

The court of appeals in *Heins* ruled that the family court judge did not have the authority to alter or amend the judgment once the judgment is more than ten days old. *Id.* at 157, 543 S.E.2d at 229. The family court order finding husband in contempt was filed

on January 29, 1999, and the order vacating this order was filed on June 3, 1999. *Id.* at 157, 543 S.E.2d 229-230. The court of appeals therefore reversed the June 3, 1999 order that rescinded the January 29, 1999 order. *Id.*

In the present case, as in *Ness* and *Heins*, the trial judge, *sua sponte*, vacated an earlier order more than ten days after the order was issued. The master in equity issued the order granting summary judgment in this case on November 21, 2022. After U.S. Bank filed its motion for reconsideration of certain portions of this order, the master in equity issued the May 28, 2023 order vacating the November 21, 2022 order in its entirety. Under the holdings in both *Ness* and *Heins*, the master in equity lacked the authority to issue the May 28, 2023 order. Also, under both cases, the May 28, 2023 order can be considered on appeal even though U.S. Bank did not appeal the May 28, 2023 order within thirty days of the date it was issued.

Appeal of the May 28, 2023 order is also allowed by the South Carolina Code of Laws. South Carolina Code § 14-3-330(1) provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that *if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from . . . .*

S.C. Code Ann. § 14-3-330(1) (1976, as amended) (emphasis added). This jurisdiction also extends to the court of appeals. *See* S.C. Code § 14-8-200(a) (“Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over any case in which an appeal is taken from an order, judgment or decree of the circuit court . . . .”).

For the reasons set forth above, the court of appeals should deny Singleton's motion to dismiss the November 21, 2022 order and the May 28, 2023 order from the appeal.

Respectfully submitted,

s/ Dean A. Hayes

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