

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

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James F. Chellis, Master In Equity,
Court of Common Pleas

Appeal Case Number: 2024-000122
Lower Court Case No. 2011-CP-18-00871

US 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.

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

JAMIE SINGLETON, Respondent, files and serves his Reply to Appellant's Response to Respondent's Motion to Dismiss this Appeal (hereafter the "Response"), and states:

A. Introduction and Procedural History

1. Respondent has filed a Motion to Dismiss this Appeal as two of the Orders identified in the Notice of Appeal filed by Appellant on January 29, 2024, those being the Orders of the Master-in-Equity of November 21, 2022 and May 28, 2023, were entered well beyond the 30-day time limitation to appeal those Orders to this Court per Rule 203.

2. Appellant filed its Response to the Motion to Dismiss, to which Respondent timely files this

Reply within the 5-day timeframe permitted.

B. Appellant’s Case Law Citations Are Inapplicable

3. The Response begins with an argument that the Master-in-Equity lacked jurisdiction to enter two of the Orders identified in the Notice of Appeal, citing *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (S.C. App. 2002), and *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (S.C. App. 2001). Neither case has any effect on the Motion to Dismiss, and both cases are factually and legally distinguishable from the case here and are thus not “remarkably similar” to the instant case as alleged by Appellant in its Response.

4. Unlike here, *Ness* involved an appeal of two orders entered by different judges regarding setting aside a default. The judge vacated the default order on his own initiative in connection with a recusal arising out of matters which the judge admitted that he learned of on his own, and not as the result of any motion. The Response admits that the trial judge stated that he discovered that one of his brothers had a relationship to one of the parties which was unknown to him at the time that the judge heard motions which resulted in the entry of orders. No such conflict or issue is present here.

5. Appellant’s Response admits that in *Ness*, “the trial judge modified an order not as requested in a Rule 59(e) motion, but rather on his own initiative.”, which is not the situation here.

6. Although Appellant claims in its Response that “In the present case, the trial judge, *sua sponte*, vacated an earlier order more than 10 days after the order was issued”, Appellant almost immediately thereafter admits that the master in equity issued the May 28, 2023 Order vacating the November 21, 2022 Order “After U.S. Bank filed its Motion for Reconsideration of certain portions of this Order.” It cannot be both: the Master-in-Equity below only entered the Order complained of after the filing of a motion and briefing thereon, and thus did not do anything “*sua sponte*.”

7. *Heins* also, unlike here, was another situation where there was a “sua sponte” ruling and in a divorce case, and concerned a grant of relief not requested in the pleadings. *Heins* thus also provides no support for Appellant’s position.

8. The thrust of the “loss of jurisdiction” holding in both *Ness* and *Heins* is predicated on the ability and timing of the trial judge to vacate an order “on his own initiative”. *Ness* specifically points this out: “Although trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e), SCRPC, motion is filed, after ten days that jurisdiction is lost.” 350 S.C. 402 (emphasis supplied). Thus, the specific type of jurisdiction which may be lost after 10 days is limited solely to a trial judge acting “on his own initiative”. There is nothing in either *Ness* or *Heins* which provides that a trial judge totally loses jurisdiction to rule on a motion for reconsideration or to alter or amend an order or judgment after full briefing by counsel and/or after a hearing.

9. Neither *Ness* nor *Heins* provide any support for denial of Respondent’s Motion to Dismiss this appeal.

C. Appellant’s Reliance Upon Provisions of the S.C. Code is Flawed by the Very Provisions

10. The Response next cites to S.C. Code 14-3-330(1) for the proposition that this Court may review the May 28, 2023 Order. By its very language, §14-3-330 provides that “The Supreme Court” shall have appellate jurisdiction for correction of law in law cases, etc. Appellant’s appeal is here, and not in the Supreme Court, and neither this Court nor Appellant may expand §14-3-330(1). *Worsley Companies, Inc. v. South Carolina Dept. of Health and Environmental Control*, 351 S.C. 97, 102-03, 567 S.E.2d 907 (S.C. App. 2002); *Sloan v. Sc Bd. of Physical Therapy*, 636 S.E.2d 598, 607, 370 S.C. 452 (S.C. 2006)(words in statute are to be given their plain meaning without subtle or forced construction to limit or expand the statute’s operation); *State v. Appley*, 207 S.C. 284, 289, 35 S.E.2d 835 (S.C. 1945)(court is powerless to alter or add to a statute)

11. Appellant then takes the position that “This jurisdiction [presumably provided in §14-3-330(1)] also extends to the court of appeals”, citing S.C. Code 14-8-200(a) for the proposition that this Court may review the challenged Orders. Appellant has ignored the jurisdictional limitation set forth in this Code provision as well.

12. §14-8-200(a) by its very terms limits appeals to orders, judgments, or decrees of the Circuit Court, Family Court, a final agency decision, a final decision of an administrative law judge, or a final decision of the Workers Compensation Commission. The appeal here is from Orders issued by a Master-in-Equity, which is not identified in §14-8-200(a), and neither counsel nor the Court may expand §14-8-200(a) to include decisions of Masters in Equity issued in the Court of Common Pleas. *Worsley Companies, Inc. v. South Carolina Dept. of Health and Environmental Control, SUPRA*; *Sloan v. Sc Bd. of Physical Therapy, supra*; *State v. Appley, supra*.

13. S.C. Code 14-3-330(1) and 14-8-200(a) are thus inapplicable and provide no support for Appellant’s position.

D. Conclusion

14. The Response relies on inapplicable decisional law, is self-contradicting; and erroneously attempts to rely on provisions of the South Carolina Code while ignoring the jurisdictional restrictions thereof which are in the very Code provisions cited.

15. The Response fails to cite a single case which provides that a trial judge cannot rule on a Motion directed to an Order where and after the Motion is fully briefed, and where the trial judge rules after briefing.

16. The Response is thus legally infirm and provides no basis for denial of Respondent’s Motion to Dismiss this appeal, which appeal is based in significant part (50%) on an attempt to appeal two Orders entered well beyond the 30-day timeframe to have appealed the subject Orders.

WHEREFORE, Respondent JAMIE SINGLETON moves for the entry of an Order dismissing

this appeal for the reasons set forth, and for any other and further relief which is just and proper.

February 16, 2024

/s/ Jeff Barnes, Esq.

Jeff Barnes, Esq.
PHV counsel for Respondent Jamie Singleton
W.J. Barnes, P.A.
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067
e-mail: jeff@wjbarneslaw.com

s/William H. Sloan

William H. Sloan, Jr., Esq.
Attorney for Respondent Jamie Singleton
Sloan Law Firm, P.A.
P.O. Box 85
Summerville, South Carolina 29484
Tel: (843) 873-7531
e-mail: whs@sloanlawfirm.com

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

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James F. Chellis, Master In Equity,
Court of Common Pleas

Appeal Case Number: 2024-000122
Lower Court Case No. 2011-CP-18-00871

US 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.

**PROOF OF SERVICE OF REPLY BRIEF IN
SUPPORT OF MOTION TO
DISMISS APPEAL**

I certify that I have served the Reply Brief in Support of Motion to Dismiss Appeal by depositing a copy of the subject Motion in the United States Mail, postage prepaid, on February 16, 2024, addressed to active counsel of record for Appellant.

Dean A. Hayes, Esq.,

McCabe, Trotter & Beverly, P.C.,

4500 Fort Jackson Boulevard, Suite 250,

Columbia, South Carolina 29209

January N. Taylor, Esq.,

McMichael Taylor Gray LLC,

3550 Engineering Drive, Suite 260,

Peachtree Corners, Georgia 30092,

and by e-mailing a copy of the Motion to Dismiss Appeal to Mr. Hayes and Ms. Taylor as well.

February 16, 2024

/s/ Jeff Barnes, Esq.

Jeff Barnes, Esq.

PHV counsel for Respondent Jamie Singleton

W.J. Barnes, P.A.

1515 North Federal Highway, Suite 300

Boca Raton, Florida 33432

Tel: (561) 864-1067

e-mail: jeff@wjbarneslaw.com

s/William H. Sloan

William H. Sloan, Jr., Esq.

Attorney for Respondent Jamie Singleton

Sloan Law Firm, P.A.

P.O. Box 85

Summerville, South Carolina 29484

Tel: (843) 873-7531

e-mail: whs@sloanlawfirm.com