

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge  
Robin B. Stilwell, Circuit Court Judge

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Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative  
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;  
SC Housing Corp.; and Twin Creeks Homeowners Association,  
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,  
is the Appellant.

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NOTICE AND MOTION TO RECAL REMITTITUR

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Mauldin, SC 29662



**RECEIVED**

**Apr 05 2024**

**SC Court of Appeals**

## I. MOTION TO STAY/RECALL REMITTITUR

Appellant, Michelle Hodges respectfully moves this Court for an order to stay Remittitur or alter-natively recall Remittitur, which will stay proceedings in the lower court and permit appeal to proceed.

Good cause exists for this motion Respond named a the Personal Representative as a defendent from and inactive probate case for appearance of subject matter jurisdiction without petitioning for the reopening of the probate case in this case withoutbecause, it appears that jurisdiction should not be returned to the Circuit Court, because it further appears that Judge Gravely of the Circuit Court exceeded his subject matter jurisdiction by engaging in a usurpation of the Greenville County Probate Court's sovereign power, to the derogation of the S C. Const. art. V. § 11, which provides: "The Circuit Court shall be a general court with original jurisdiction in civil and criminal cases except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law". And this Honorable Court describes usurpation as, "an improper assumption of jurisdiction". See *Berry v. Lindsay* 256 S.C. 282 S.C. 1971.

There is no prejudice to Respondent because this Honorable Court has held, "This Court has consistently adhered to the rule that the acts of a court without jurisdiction are without effect. See *Toomer v. Toomer*, 244 S. C. 399, 137 S. E. 2d 406 (1964).

Appellant, Michelle Hodges, hereby certifies that this motion complies with the following Rules 240, Rule 267 and Rule 240(c) SCACR. This Motion is additionally supported with the following Memorandum of points and authorities and evidence. See also attached, Certificate of Service.

Respectfully Submitted,

## II. FACTS

Mrs Ruth Witherspoon executed a note and mortgage in favor of NVR Finance and passed away on July 5, 2015. Respondent filed an action for foreclosure December 22, 2017 and prayed for the court to declare its mortgage was a purchase money first lien concerning the note and mortgage executed by Mrs. Witherspoon and the Probate Court has exclusive original subject matter jurisdiction over all estates of decedents. However, Respondent filed its complaint in the Circuit Court.

## III. MEMORANDUM OF POINTS AND AUTHORITIES

- A. Per the S. C. Supreme Court, "It is well-settled that issues relating to subject matter jurisdiction may be raised at any time." See *Bardoon Props., NV v. Eidolon Corp.*, 326 S. C. 166, 168, 485 S. E. 2d 371, 372 (1997).
- B. This Honorable Court has held that a Remittitur can be recalled, "...when the remittitur is sent down by mistake, error or inadvertence of the Court". See *State v. Keels* 39 S. C. 553, 17 S. E. 802 (1893). And, "An opinion of an appellate court is not final until the remittitur is filed in the lower court". See *Brackenbrook North Charleston, LP v. Cnty. of Charleston*, 366 S.C. 503, 508, 623 S.E. 2d 91, 93 (2005). (See attached Circuit Court public index and rosters showing Remittitur has not been filed in the Circuit Court)
- C. S. C. Const. art. V. § 11, which provides: "The Circuit Court shall be a general court with original jurisdiction in civil and criminal cases except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law".
- D. S. C. Probate Code Ann. § 62-1-302(a), provides "... to the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matters related to: (1) estates of decedents.....and

determination of property interests of an estate".

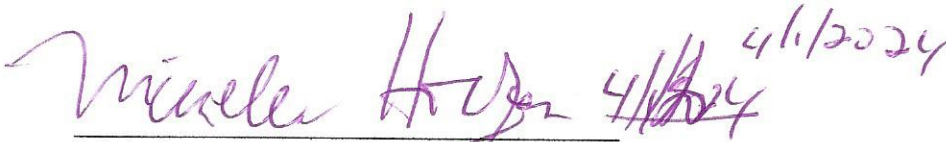
## VI. CONCLUSION

For the foregoing reasons, and any reason supported by the record, Appellant respectfully requests that the S. C. Court of Appeals grant this motion to stay or in the alternative recall the said Remittitur and change its decision to comply with the said S. C. Supreme Court precedent.

## VII. CERTIFICATION OF SERVICE

I hereby certify that this motion and has been served on opposing counsel, via first class us mail, with the correct postage, from the US Post Office located at: main Street, Mauldin, SC 29662, on April 1, 2024. And the original motion and certificate of service is being sent to the S. C. Court of Appeals.

Respectfully submitted,

 Michelle Hodges 4/1/2024

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