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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland, Appellant,
v.
Brandy S. Culp, Respondent.

MOTION TO DISMISS APPEAL

Respondent Brandy S. Culp, through her undersigned counsel, hereby respectfully moves to dismiss this appeal pursuant to Rule 240, SCACR. The grounds for this Motion are that Appellant Athena Irland, a *pro se* litigant, has (1) failed to comply with the statutory requirements for pursuing an appeal from probate court as set forth under S.C. Code § 62-1-308; (2) failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction; (3) repeatedly failed to adhere to the South Carolina Appellate Court Rules by (a) failing to file an Initial Brief that complies with Rule 208(b), SCACR, and (b) failing to file a Designation of Matter that complies with Rule 209, SCACR; (4) failed to appeal each and every independent ground cited by the Circuit Court for dismissing the instant appeal; and (5) has filed the instant appeal for the impermissible purpose of delay.

Factual and Procedural Background

This matter originated as an appeal from the Charleston County Probate Court to the Circuit Court. The *pro se* appellant to the appeal, Ms. Athena L. Irland, is a daughter of the late Dolly Legare Coleman (hereinafter, “Decedent”) and has on two separate occasions been found by the Charleston County Probate Court to have exercised undue influence over Decedent while Decedent was incapacitated. (Orders, attached as Exhibits A and B).

Decedent died on March 21, 2019 after a long, debilitating battle with dementia. Decedent was previously adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210. During the course of that case, Ms. Irland was found to have exercised undue influence over Decedent with regard to the execution of two deeds of conveyance. (Order, Exhibit A). As a result, the Court rescinded the subject deeds by Order dated June 29, 2017, finding that Decedent lacked the requisite capacity on October 28, 2014 to execute the deeds of conveyance, and that Ms. Irland had exercised undue influence over Decedent on that date. (Ibid.).

Ms. Irland attempted to appeal this Order. However, on August 22, 2017, the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds. (COA Order, Exhibit C). Specifically, the Court of Appeals found that Ms. Irland had failed to provide proof that the parties consented in writing or on the record to directly appeal the matter to the Court of Appeals. (Ibid.). As a result, it is the law of that case that Decedent was incapacitated on October 28, 2014 and that Ms. Irland exercised undue influence over her on that date.

The present case involves the alleged revocation of Decedent’s 2009 Will at Ms. Irland’s behest on October 28, 2014, the same date that Decedent was previously found to have lacked capacity and Ms. Irland was found to have exercised undue influence. It was unknown by the

parties or the Court during the initial guardianship proceeding that Ms. Irland had engaged in these additional acts on October 28, 2014. As before, the Probate Court found, after holding *another* full hearing on the merits and hearing testimony from the parties and witnesses, that Decedent lacked capacity to revoke the 2009 Will and that Ms. Irland had exercised undue influence over Decedent. Additionally, the Court's July 13, 2022 Order reasoned:

The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by [Appellant] Irland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same date under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

(Order at Exhibit B, p. 6, ¶ 26)

Appeal to the Circuit Court¹

Ms. Irland sought to appeal the Probate Court's order by filing a Notice of Intent to Appeal with the Circuit Court on July 22, 2022, specifically naming Brandy S. Culp, Christina D. Culp, and John Psaras, as the Respondents.² (Notice of Intent to Appeal, Exhibit D). Ms. Irland, however, failed to serve the Notice of Intent to Appeal on each of the Respondents within the ten (10) day statutorily-required period of time set forth under S.C. Code § 62-1-308(a). Specifically,

¹ As set forth below, the procedural history of Ms. Irland's appeal to the Circuit Court is unusually long and, admittedly, a source of great frustration for Ms. Culp and her attorneys due to resulting delays in the administration of justice. Nevertheless, for purposes of this motion, the issues are clear: a litigant seeking an appeal from the probate court must comply with the statutory requirements set forth by the legislature. As discussed hereinbelow, it is indisputable that Ms. Irland did not comply with the requirements set forth under S.C. Code § 62-1-308, et. seq.

² Isadore John Psaras is the son of Decedent; Christina D. Culp is a daughter of Decedent; and Brandy S. Culp is the granddaughter of Decedent. (Order, Exhibit B, pp. 1 and 4). Respondents are each necessary parties to the appeal, each being a named, undismissed party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Ibid.).

Ms. Irland did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. (Proof of Service, Exhibit E; Affidavit of Christina D. Culp, Exhibit F).

Ms. Irland also failed to comply with the statutory requirements for perfecting an appeal from probate court. Specifically, Ms. Irland failed to file and serve a Statement of Issues on Appeal as required by S.C. Code § 62-1-308(b); she failed to file and serve a Designation of Matter to be Included in the Record on Appeal as required by S.C. Code § 62-1-308(c) and (d); she failed to file and serve a copy of an appellate Brief as required by S.C. Code § 62-1-308(e); and she failed to file and serve the Record on Appeal as required by S.C. Code § 62-1-308(f).

On September 26, 2022, Respondent Brandy S. Culp filed a Motion to Dismiss Ms. Irland's Appeal. (Motion, Exhibit G; Reply at Exhibit H). On October 27, 2022, a hearing on Ms. Culp's Motion to Dismiss was heard before the Honorable Bentley D. Price, wherein Ms. Culp's counsel argued that the appeal should be dismissed because: (1) Ms. Irland failed to serve all requisite parties within the statutorily-required period of time, thereby depriving the Circuit Court of jurisdiction to review the appeal, (2) Ms. Irland failed to perfect her appeal, having failed to take any of the statutorily-required steps set forth under S.C. Code § 62-1-308, and (3) Ms. Irland is precluded under the doctrine of *res judicata* from appealing an issue that has previously been adjudicated and dismissed on appeal. (H'ring Transcript, Exhibit I).

At the conclusion of the hearing on Ms. Culp's Motion to Dismiss, Judge Price informed the parties that he would take the matter under advisement and issue a ruling by the end of the day. (Ibid., 22:6-9). Two weeks later, on November 15, 2022, the Court issued a Form 4 Order, summarily denying the Motion to Dismiss, and taking the additional steps of granting Ms. Irland's appeal and remanding the matter back to the Probate Court. (Form 4 Order, Exhibit J). To be clear, the Circuit Court had never held a hearing on the merits of the appeal, nor could it have held

a hearing on the merits given Ms. Irland's complete failure to perfect the appeal pursuant to the probate statute. She did not even file an appellate brief setting forth her arguments to which Ms. Culp's counsel could respond.

Without making a single finding of fact, or setting forth a single conclusion of law, the Form 4 Order summarily stated, "This matter came before the Court on Appellant's [sic] appeal from Probate Court and Respondent's Motion to Dismiss the Appeal on October 27, 2022. The Court reviewed the record on appeal and considered arguments made by both parties. Respondent's Motion to Dismiss is DENIED and Appellant's [sic] appeal is GRANTED." (Ibid.).

On November 21, 2022, Ms. Culp timely filed a Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing with the Circuit Court. (Motion, Exhibit K). Ms. Culp moved for reconsideration on the grounds that (1) The Court had erred in granting an appeal where Ms. Irland had failed to follow any of the statutorily-required steps to pursue and/or perfect an appeal, discussed *supra*, and where the Court did not even conduct a hearing on the merits of the appeal as required by S.C. Code § 62-1-308(i); (2) The Court had erred in granting an appeal where it did not make a single finding of fact, did not set forth a single conclusion of law, did not apply the law as it is required to do so by S.C. Code § 62-1-308(i), did not certify its decision to the Probate Court as required by S.C. Code § 62-1-308(j), and remanded the case to the Probate Court without instruction; and (3) The Court erred in exercising jurisdiction over this appeal, where Appellant failed to serve a Notice of Appeal on all requisite parties as required by S.C. Code § 62-1-308(a).

On January 26, 2023, a hearing on Ms. Culp's Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing was held before Judge Price. (Hr'ng Transcript, Exhibit L). At the conclusion of the hearing, Judge Price, again, advised the parties that they would have

his decision by the end of the day. (*Ibid.*, p. 13:12-13). Unfortunately, for reasons that remain unknown, and despite repeated inquiries from counsel, the Circuit Court refrained from issuing an Order for nearly seven months, placing Ms. Culp’s counsel in the unenviable position of having to file a Petition for Writ of Mandamus with the South Carolina Supreme Court on July 12, 2023. (Pet. for Writ of Mandamus, Exhibit M).³ Ms. Culp, through her counsel, reluctantly sought a Writ of Mandamus requiring the Circuit Court to dismiss the appeal in its entirety, or in the alternative, compelling the Circuit Court to rule on the outstanding motion.” (*Ibid.*).

Two days later, on July 14, 2023, Judge Price issued an Order denying Ms. Culp’s Rule 59(e) Motion to Alter or Amend Order, but granting a rehearing “only on the issue of the appeal from Probate Court.” (Order, Exhibit N). Again, to be clear, the Circuit Court had not held a hearing on the merits of the appeal. Nevertheless, the Circuit Court stated it would hold a “rehearing” so as “to clear up any issues and understand the ongoing request from Respondents.” (*Ibid.*).

On July 17, 2023, counsel for Ms. Culp wrote the South Carolina Supreme Court a letter, advising the Court of Judge Price’s Order, and requesting that Supreme Court grant the relief set forth in the Petition for Writ of Mandamus. (Letter, Exhibit O).

On September 13, 2023, the South Carolina Supreme Court issued an Order on the Petition for Writ of Mandamus, signed by all Justices of the Court, stating as follows:

Petitioner asks this Court to issue a writ of mandamus requiring the Honorable Bentley D. Price to rule on Petitioner's Rule 59(e), SCRCR, motion to alter or amend the judgment and Rule 221(a), SCACR, petition for rehearing filed on November 21, 2022.

In his July 14, 2023 order, Judge Price denied Petitioner's motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondent's appeal from the probate court. In that order, Judge

³ The Petition for Writ of Mandamus provides a detailed account of the long and unnecessarily complicated procedural history in this case and sets forth Ms. Culp’s reasons for filing the petition.

Price also granted Petitioner's motion “for a rehearing.” Judge Price went on to conclude that he “feels it necessary to hold a rehearing to clear up any issues and to understand the ongoing requests from [Petitioner].” It appears from the materials filed with this Court that Judge Price has not yet heard and ruled upon the merits of Respondent's appeal from the probate court.

In any event, we are troubled by the delay in concluding the hearing and ruling upon all issues properly before the circuit court. Therefore, while we deny Petitioner's petition for a writ of mandamus, we direct Judge Price to convene a hearing in this case within thirty days of the date of this Order and consider all issues properly before the circuit court. We further direct Judge Price to file a written order with the Charleston County Clerk of Court within fifteen days after the hearing is concluded.

(S.C. Supreme Court Order, Exhibit P)

On September 27, 2023, a hearing was convened before Judge Price pursuant to the aforementioned Order of the South Carolina Supreme Court. As a result of that hearing, the Circuit Court entered an Order on October 2, 2023, denying and dismissing Ms. Irland’s appeal with prejudice. (Order, Exhibit Q). The Circuit Court held, “As set forth below, Ms. Irland’s Appeal is hereby DENIED and DISMISSED with prejudice pursuant to her failure to perfect her appeal in compliance with S.C. Code § 62-1-308, et seq. and failure to set forth a basis for reversal of the Probate Court’s underlying order.” (Ibid., page 1). Citing two prior South Carolina Supreme Court decisions, as well as Rule 260(a), SCACR, the Circuit Court noted the well-settled law that an appellant who fails to follow the procedural requirements strips the court of appellate jurisdiction. (Ibid., citing, *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 70, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2005); and Rule 260(a), SCACR.

The Circuit Court’s order provided five separate and independent reasons for denying and dismissing the appeal with prejudice: 1) Appellant did not file nor serve a Statement of Issues on

Appeal within the time prescribed by S.C. Code § 62-1-308(b); 2) Appellant did not file or serve a Designation of Matter to Include in the Record on Appeal on any party as required by S.C. Code § 62-1-308(d), no such Designation even appears within the public index; 3) Appellant did not file or serve an appellate brief as required by S.C. Code 62-1-308(e); 4) Appellant did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f); and, finally, 5) Appellant failed to set forth any grounds and/or caselaw warranting reversal of the probate court's underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308. (Ibid.).

Appeal to Court of Appeals

On November 29, 2023, Ms. Irland filed a Notice of Appeal with the South Carolina Court of Appeals. (Notice of Appeal, Exhibit R). Since then, this Court has issued a total of four (4) separate deficiency letters to Ms. Irland. As set forth below, each of these letters provided Ms. Irland with clear, corrective instructions and firm deadlines for compliance, which Ms. Irland has repeatedly disregarded and continues to disregard.

On December 5, 2023, this Court issued Ms. Irland a deficiency letter as to her Notice of Appeal. (First Deficiency Letter, Exhibit S). The letter notified Ms. Irland that the Notice of Appeal did not comply with Rule 267, SCACR, and that it failed to state when Ms. Irland received notice of the order she sought to appeal. The letter provided Ms. Irland with corrective instructions and advised Ms. Culp, “any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed.” (Emphasis added). Ms. Irland, however, missed the Friday, December 15, 2023 deadline set by the Court, and instead waited until Monday, December 18, 2023 to hand-deliver a corrected Notice of Appeal and Proof of Service. (Corrected Notice, Exhibit T)

On January 3, 2024, this Court issued Ms. Irland a second deficiency letter, noting that the

time for filing Appellant’s Initial Brief had expired. (Second Deficiency Letter, Exhibit U). The brief had been due on January 2, 2024. Once again, the Court provided Ms. Irland with an opportunity to correct the deficiency, stating, “Within ten (10) days from the date of this letter, you must serve and file the appellant's initial brief and designation of matter, along with a motion requesting permission to serve and file the appellant's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 of the South Carolina Appellate Court Rules (SCACR). Your appeal will be dismissed if no motion is made within ten (10) days from the date of this letter.” (Ibid., Emphasis added).

Ms. Irland did not file and serve an Initial Brief or Designation of Matter as instructed by the Court. Instead, on January 16, 2024, Ms. Irland hand-delivered a handwritten document to the Court of Appeals, simply titled “Motion for 30-day Extension” along with a purported Proof of Service. (Motion, Exhibit V). The Motion did not contain any substantive content other than its title, the address of counsel, and Ms. Irland’s address. Additionally, the Proof of Service failed to certify that Ms. Irland had actually served Ms. Culp’s counsel with the Motion, but rather merely indicated that she *planned* to mail the motion to counsel the following day, stating “will be mailed 1/17/2024.” (Ibid., at page 2). Counsel did not receive a copy of the motion in the mail.

On January 17, 2024, the Court of Appeals issued an Order granting Ms. Irland’s request for extension of time, granting her until February 15, 2024 to serve and file her Initial Brief and Designation of Matter. (Order, Exhibit W). However, on February 15, 2024, instead of filing an Initial Brief and Designation of Matter as specifically instructed by the Court, Ms. Irland filed a document, titled, “Brief in Support of Motion for Rehearing.” (Brief, Exhibit X). The document contained a “Table of Contents” denoting three short sections: (1) Table of Authorities; (2) Statement of the Issues; and (3) Statement of the Case. It also contained a fifty-seven-page

appendix composed of various uncatalogued attachments. Notably, the document did not contain a “Standard of Review” or “Arguments” section as required by Rule 208(b), SCACR.

On February 20, 2024, the Court issued Ms. Irland a third deficiency letter, noting deficiencies with the brief. (Third Deficiency Letter, Exhibit Y). Specifically, the Court noted that the caption/title of the brief did not comply with Rule 267(a), SCACR; the document was not accompanied by the requisite certificate of counsel; the initial brief was not accompanied by a designation of matter to be included in the record on appeal; and the brief did not comply with Rule 208(b), SCACR, failing to organize its content in the order prescribed by the rule. Once again, the Court provided Ms. Irland with another opportunity to correct these deficiencies, stating, “any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed.” (Ibid.). Again, Ms. Irland missed the deadline to file a corrected brief. Instead of filing a corrected brief on Friday, March 1, 2024, Ms. Irland waited until Tuesday, March 5, 2024, to mail a 314 page document, which she titled “Initial Brief of Appellant.” (Brief, Exhibit Z).

On March 12, 2024, the Court issued Ms. Irland a fourth deficiency letter, noting the ongoing deficiencies with her brief. (Fourth Deficiency Letter, Exhibit AA). Again, the Court noted that, Ms. Irland’s brief is not accompanied by the required certificate of counsel; the brief does not comply with Rule 208(b), SCACR, failing to organize its content in the order prescribed by the rule; and the brief is not accompanied by a designation of matter to be included in the record on appeal. Again, the Court provided Ms. Irland with an opportunity to correct the deficiency, stating, “any deficiency must be corrected within ten (10) days of the date of this letter or this matter **will** be dismissed.” (Ibid., Emphasis in original). The Court emphasized that it would dismiss the appeal if Ms. Irland did not correct the deficiencies contained in her brief by the deadline set forth by the Court, which computes to Friday, March 22, 2024. Once again, Ms. Irland

missed the deadline imposed by this Court, waiting until Tuesday, March 25th to mail what purports to be a corrected Initial Brief and Designation of Matter. (Brief, Exhibit BB).

Notably, in this latest filing, Ms. Irland makes substantive changes to the brief without seeking leave from the court, arbitrarily adding AI-generated cases, issues on appeal, and additional arguments. (Compare Exhibit BB, filed 03/25/25, to original brief, filed 02/15/2024, at Exhibit X). The brief does not contain a Standard of Review section as required by Rule 208(b), SCACR. Additionally, the Designation of Matter is replete with documents, which are not referenced in the brief or filed with the Circuit Court, and fails to include a certification pursuant to Rule 209(c), SCACR, indicating that the designation contains no matter, which is irrelevant to the appeal.

The brief also fails to address any of the five separate and independent grounds cited by the Circuit Court in its decision to deny and dismiss Ms. Irland's appeal with prejudice. (See Order, Exhibit Q). Instead, without making any specific references to the record, Ms. Irland makes the generalized and completely unsubstantiated statement that, "the record will show that Ms. Irland did, in fact follow correct procedure." (Exhibit BB, p. 4). Respectfully, Ms. Irland cannot point to any portion of the record demonstrating compliance with our state's statutory requirements for pursuing an appeal from the probate court. She did not even bother to file and serve an appellate brief with the Circuit Court setting forth her arguments as required by S.C. Code 62-1-308.

Having failed to follow the statutory requirements for perfecting her appeal in Circuit Court, Ms. Irland now seeks to appeal the underlying orders of the Probate Court and Circuit Court with the Court of Appeals, disregarding the express statutory limitations imposed by S.C. Code § 62-1-308(i), which states, "The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no

new evidence may be presented.” Here, Ms. Irland did not even file an Appellate Brief or Record on Appeal with the Circuit Court, thereby failing to preserve any issues for further appellate review. This Motion to Dismiss follows.

STANDARD OF REVIEW

An appeal from Probate Court is governed by S.C. Code Ann. § 62-1-308, which sets forth various procedural requirements to pursue and perfect an appeal of a probate court order. As the first sentence of the statute declares, “Except as provided in subsection (1), appeals from probate court must be to the circuit court and are governed by the following rules.” For purposes of this motion, the relevant sections of the statute include:

- § 62-1-308(a) (requiring service of the Notice of Intent to Appeal on all parties not in default within ten days of receipt of written notice of the underlying order);
- § 62-1-308(b) (requiring Appellant, within forty-five days after receipt of written notice of the order, to file and serve a Statement of Issue on Appeal with the Circuit Court, in a format described in Rule 208(b)(1)(B), SCACR, with proof of service and a copy served on all parties);
- § 62-1-308(d) (requiring, within thirty days after service of the Statement of Issues on Appeal, the filing and service of a Designation of Matter to be Included in the Record on Appeal, in a format described in Rule 209, SCACR, with proof of service);
- §62-1-308(e) (requiring Appellant to file and serve one copy of his brief on all parties to the appeal at the same time he serves his Designation of Matter to Include in the Record on Appeal, with proof of service);
- § 62-1-308(f) (requiring Appellant to file a Record on Appeal (in a format described in subsection (c), (e), (f), and (g) of Rule 210, SCACR); and

- § 62-1-308(i) (cited *supra*, stating, “The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.”)

“[T]he question of compliance with rules, regulations and statutes governing an appeal is one of appellate jurisdiction.” *Allison v W.L. Gore & Associated*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). An appellant who fails to follow the procedural requirements risks stripping the court of appellate jurisdiction. See *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004), citing *Great Games Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 70, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000); see also Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules).

Additionally, the requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses a deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice. *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.3d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep’t of Transp.*, 351 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

ARGUMENTS

1. The appeal should be dismissed because Ms. Irland failed to comply with the statutory requirements for pursuing and perfecting an appeal from the probate court, as set forth under S.C. Code § 62-1-308.

It is indisputable that Ms. Irland failed to comply with the statutory requirements for pursuing and perfecting an appeal of the underlying probate court order. Specifically, Ms. Irland failed to file or serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b) (“Within forty-five days after receipt of written notice of the order, sentence or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues

on Appeal (in a format described in Rule 208(b)(1)(B), SCACR), with proof of service and a copy served on all parties.”). Ms. Irland’s Notice of Appeal, filed with the Circuit Court on July 22, 2022, states she received written notice of entry of the probate court order on July 14, 2022. (Notice of Appeal, Exhibit D). Pursuant to subsection (b) of the statute, Appellant was required to file and serve a Statement of Issue on Appeal on or before August 29, 2022. A review of the public index in this case establishes that Appellant failed to meet these requirements. (Public Index, Exhibit CC).

Ms. Irland also failed to file and serve a Designation of Matter to Include in the Record on Appeal on *any* party as required by S.C. Code § 62-1-308(d). No such Designation even appears within the public index. (Ibid).

Ms. Irland also failed to file or serve an appellate brief with the Circuit Court as required by S.C. Code 62-1-308(e) (“At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and filed with the clerk of the circuit court one copy of the brief with proof of service. The appellant’s brief shall be in a format described in Rule 208(b)(1), SCACR.”). A review of the public index in this case establishes that Appellant failed to meet these statutory requirements. Notably, as the Circuit Court found, Ms. Irland failed to set forth any grounds and/or case law warranting reversal of the probate court’s underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308(e).

Ms. Irland also failed to file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f) (“[A]ppellant shall serve a copy of the Record on Appeal (in a format described in subsection (c), (e), (f), and (g) of Rule 210, SCACR.”).

Ms. Irland’s failure to comply with the statutory requirements for perfecting an appeal from

the probate court are fatal. Accordingly, Respondent respectfully request that this Honorable Court dismiss the appeal so as avoid further unnecessary delays to the administration of justice.

2. The Appeal should be dismissed because Ms. Irland failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher Courts of appellate jurisdiction.

In the present case, Ms. Irland sought to appeal the Probate Court's order by filing a Notice of Intent to Appeal with the Circuit Court on July 22, 2022, *specifically naming* Brandy S. Culp, Christina D. Culp, and Isadore John Psaras, as the Respondents. (Notice of Appeal, Exhibit D). As set forth above, Isadore John Psaras is the son of Decedent; Christina D. Culp is a daughter of Decedent; and Brandy S. Culp is the granddaughter of Decedent. (Order, Exhibit B, pp. 1 and 4). Respondents are each necessary parties to the appeal, each being a named, undismissed party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Order, Exhibit B at pp. 1 and 4).

However, despite expressly naming them as Respondents in her Notice of Intent to Appeal, Ms. Irland failed to serve the Notice of Appeal on each of the named Respondents within the ten (10) day statutorily-required period of time set forth under S.C. Code § 62-1-308(a). Specifically, Ms. Irland did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. (Proof of Service, Exhibit E; Affidavit of Christina Culp, Exhibit F).

The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses a deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice. *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.3d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep't of Transp.*, 351 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Further, S.C. Code § 62-1-308(A) specifically requires that all parties not in default be served with the

Notice of Intent to Appeal within ten days of receiving notice of entry of the probate court order:

Except as provided in subsection (1), appeals from the probate court must be to the circuit court and are governed by the following rules:
(a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. [Emphasis added]

Here, Ms. Irland failed to serve parties whom she specifically named and identified as Respondents in her Notice of Intent to Appeal. These parties are also specifically identified as parties to the underlying probate action in the very probate court order, which Ms. Irland sought to appeal to the Circuit Court. Mr. Psaras and Ms. Culp are also specifically identified as Respondents in the Circuit Court's Order denying and dismissing Ms. Irland's appeal. Because Ms. Irland failed to serve all necessary parties with the Notice of Appeal, the appeal must be dismissed on jurisdictional grounds pursuant to S.C. Code § 62-1-308(A). Accordingly, Respondent respectfully requests that this Honorable Court dismiss the appeal.

- 3. The Appeal should be dismissed because Ms. Irland has repeatedly failed to adhere to the South Carolina Appellate Court Rules by (a) failing to file an Initial Brief that complies with Rule 208(b), SCACR, and (b) failing to file a Designation of Matter that complies with Rule 209, SCACR.**

As set forth above, on November 29, 2023, Ms. Irland filed her Notice of Appeal with the South Carolina Court of Appeals. Since then, this Court has issued a total of four (4) separate deficiency letters to Ms. Irland, each time providing Ms. Irland with clear, corrective instructions and firm deadlines for compliance, which Ms. Irland has either disregarded and/or failed to meet. Respondent respectfully submits that the appeal should be dismissed due to Ms. Irland's repeated and continued failure to adhere to the South Carolina Appellate Court Rules.

As evidence by her latest filing with the Court, Ms. Irland made substantive changes to her previously filed Initial Brief without seeking leave from the Court, arbitrarily adding AI-generated cases, issues on appeal, and additional arguments. (Compare Exhibit BB, filed 03/25/25, to original brief, filed 02/15/2024, at Exhibit X). Additionally, the brief does not contain a Standard of Review section as required by Rule 208(b), SCACR. Further, the Designation of Matter is replete with documents, which are not referenced in the brief or filed with the Circuit Court, and fails to include a certification pursuant to Rule 209(c), SCACR, indicating that the designation contains no matter, which is irrelevant to the appeal.

Rule 260, SCACR, states in relevant part, “Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rule, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate Court.” Here, Ms. Irland has repeatedly disregarded and continues to disregard the appellate court rules as well as the statutory requirements for pursuing an appeal from probate court. She never even bothered to file an Appellate Brief or Record on Appeal with the Circuit Court as required by S.C. Code § 62-1-308. As a result, having failed to preserve *any* issues for appeal in the Circuit Court, Ms. Irland lacks a foundation upon which to base her Initial Brief or seek further appellate review. Accordingly, the appeal should be dismissed.

4. The Appeal should be dismissed because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as the basis for dismissing the instant appeal.

In the present case, the Court cites five separate, independent grounds as basis for dismissing the Appeal, specifically finding: 1) Appellant did not file nor serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b); 2) Appellant did not file or serve a Designation of Matter to Include in the Record on Appeal on any party as required by

S.C. Code § 62-1-308(d), no such Designation even appears within the public index; 3) Appellant did not file or serve an appellate brief as required by S.C. Code 62-1-308(e); 4) Appellant did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f); and, finally, 5) Appellant failed to set forth any grounds and/or caselaw warranting reversal of the probate court's underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308. (Order, Exhibit Q).

Ms. Irland's Initial Brief notably fails to address each of the aforementioned independent grounds for dismissal. (Initial Brief, Exhibit BB). "Failure to argue is an abandonment of the issue and precludes consideration on appeal." *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). "Under the two[-]issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Skywaves I Corp. v. Branch Banking & Trust Co.*, 814 S.E.2d 643 (Ct. App. 2018) (citations omitted). Because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as a basis for dismissing the instant appeal, Respondent respectfully submits that the Appeal must be dismissed.

5. The Appeal should be dismissed because it is Ms. Irland has filed the instant appeal for the impermissible purpose of delay.

It has been nearly two years since the Charleston County Probate Court found, for a second time, after holding a second full hearing on the merits, that Decedent Dolly Legare had lacked capacity on October 28, 2014, and that Ms. Irland had exercised undue influence over her on that date. Since then, Ms. Irland has taken every opportunity to delay the inevitable, filing frivolous appeals, which she then failed to pursue or perfect pursuant to the probate statute or the South Carolina Appellate Court Rules. Respondent respectfully requests that this Honorable Court bring an end to Ms. Irland's dilatory tactics and dismiss the appeal.

CONCLUSION

For each of the foregoing reasons, Respondent Brandy Culp respectfully requests that this Honorable Court dismiss the instant appeal. The appeal should be dismissed because Ms. Irland has failed to comply with the statutory requirements for pursuing and perfecting an appeal from the probate court, as set forth under S.C. Code § 62-1-308. She has also failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction. The appeal should also be dismissed because Ms. Irland has repeatedly failed to adhere to the South Carolina Appellate Court Rules by (a) failing to file an Initial Brief that complies with Rule 208(b), SCACR, and (b) failing to file a Designation of Matter that complies with Rule 209, SCACR. Additionally, the appeal should be dismissed because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as the basis for its dismissal of the instant appeal. Finally, the appeal should be dismissed because the record reflects that Ms. Irland has filed the instant appeal for the impermissible purpose of delay.

[Signatures on following page]

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT BRANDY S. CULP

April 24, 2024
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland, Appellant,
v.
Brandy S. Culp, Respondent.

**EXHIBITS TO
MOTION TO DISMISS APPEAL**

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Respectfully submitted,

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ATTORNEYS FOR RESPONDENT BRANDY S. CULP

April 24, 2024
 Mount Pleasant, South Carolina

EXHIBIT A
to
Motion to Dismiss

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN RE: MATTER OF DOLLY)
 DIMPLES LEGARE COLEMAN,)
 THROUGH HER CONSERVATOR)
 W. ASHLEY THIEM,)
)
 Petitioner,)
)
 -v-)
)
 ATHENA IRLAND, ISADORE)
 PSARAS, BRANDY S. CULP, AND)
 CHRISTINA CULP,)
)
 Respondents.)

IN THE PROBATE COURT
 CASE NO.: 2014-GC-10-0210
 ORDER RESCINDING
 DEEDS

2017
P. 10/21
10/24/2017

Hearing Date:	October 18, 2016
Presiding Judge:	Lenna S. Kirchner
Petitioner's Attorney:	I. Ryan Neville, Esq.
Respondent's Attorney:	Joseph Dawson, III, Esq.
Attorney/GAL:	Lana Jamrosyk, Esq.

THIS MATTER comes before the Court upon the Verified Petition filed by Dolly Dimples Legare Coleman ("Mrs. Coleman") by and through her Conservator, W. Ashley Thiem, ("Petitioner" and/or "Conservator") on March 3, 2016. Petitioner seeks rescission of two deeds of conveyance executed by Mrs. Coleman on October 28, 2014 in favor of Respondent Athena Irland ("Respondent Irland" or "Ms. Irland") for lack of capacity, or in the alternative, for undue influence. A hearing on the matter was held on October 18, 2016. Present at the hearing were attorney Ryan Neville, appearing on behalf of Petitioner, and attorney Joseph Dawson, III, appearing on behalf of Respondent Athena Irland. Respondent Isadore "Johnny" Psaras was present and served as a witness for Ms. Irland. Respondent Brandy S. Culp was also present, but did not participate in the trial. Respondent Christina Culp was not present but served with proper

notice of the hearing. This Order is binding on all parties to the above captioned matter.

At the start of the hearing, Respondent moved, pursuant to Rule 12(b)(6), for dismissal of the petition arguing the existence of another action pending in the Berkeley County Court of Common Pleas filed prior to this present action. Rule 12(b)(6), SCRCP. On February 6, 2015, a Notice of *Lis Pendens* was filed in Berkeley County Court of Common Pleas under 2015-LP-08-00003. On March 19, 2015, the associated Summons and Complaint was filed. *See* Case No. 2015-CP-08-00719. The aforementioned captions reflect the parties as Christina Culp and Brandy S. Culp vs. Athena Irland and Dolly Dimples Legare Coleman. Rule 12(b)(6) permits dismissal where another action is pending *between the parties for the same claim*. Rule 12(b)(6), SCRCP (*emphasis added*). Due to the actions not pending between the *same* parties, as reflected in the differing captions of the two cases, this Court denied Respondent's motion and proceeded to hear this matter.

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10/29/2021

Upon review of the file and after hearing testimony of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dolly Dimples Legare Coleman ("Mrs. Coleman") is an 86 year old female adjudged to be an incapacitated person by clear and convincing evidence by this Court on February 9, 2015.¹
2. Petitioner is W. Ashley Thiem, of Thiem & McCutcheon, CPAs, P.A., the court appointed Conservator ("Conservator") for Mrs. Coleman, by Order dated September 1, 2015.
3. Respondents are the children and grandchild of Mrs. Coleman.

¹ Petitions were filed by Respondent Culp on December 22, 2014 and Respondents Irland and Psaras on January 5, 2015. Based in part on the report of a Designated Medical Examiner's finding of incapacity dated January 8, 2015, this Court issued Orders appointing a Temporary Guardian and Conservator on February 23, 2015 and a Permanent Guardian and Conservator on September 1, 2015.

- 4. During Mrs. Coleman's adult life, she acquired real property in South Carolina to include an undivided fee simple interest in certain real property located in Berkeley County described more fully as follows (hereinafter "Tract 1"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 1, 1,450,798 sq. feet, or 33.31 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, TRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

SUBJECT to right of access to Tracts 2 and 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

BEING the same property conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated May 1, 1997 and recorded May 9, 1997 in the Office of the Register of Deeds for Berkeley County in Book 1064, at Page 319.

TMS NO.: 257-00-00-007.

- 5. Mrs. Coleman also acquired an undivided one-third interest in certain real property in Berkeley County described more fully as follows (hereinafter "Tract 2"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 2, 1,655,235 sq. feet, or 38.00 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, IRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TOGETHER with right of access over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat. SUBJECT to right of access to Tracts 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

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BEING the same 1/3 interest as conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated August 2, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Book 709, at Page 40.

TMS NO.: 249-00-00-003.

(collectively Tract 1 and Tract 2 hereinafter "the Farm").

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6. On October 28, 2014, Mrs. Coleman executed two deeds conveying the Farm to Ms. Irland, each for FIVE and No/100th DOLLARS (\$5.00) and reserving a life estate in Tract 1. Said deeds were entered into evidence without objection and are incorporated by reference. Pet's Ex. 16 and 17.
7. The Conservator seeks to have these two deed rescinded arguing Mrs. Coleman lacked capacity to execute the deeds or, in the alternative, the executed deeds are the product of undue influence exerted by Mrs. Coleman's daughter, Respondent Irland, over Mrs. Coleman.
8. Prior to this action, Mrs. Coleman hired the law firm of Evans, Carter, Kunes & Bennett, P.A. ("the Firm") for estate planning purposes.
9. Mr. Andrew Chandler, Esquire ("Mr. Chandler"), an attorney at the Firm, testified on its behalf as follows:
 - a. The Firm previously prepared, and still possesses, Mrs. Coleman's original Last Will and Testament ("2008 Will"), dated October 20, 2008. A copy of said Will was entered into evidence without objection. Pet's Ex. 18.
 - b. Article 4 of the 2008 Will devises the real property in question, leaving Tract 1 to Mrs. Coleman's daughter Christina T. Culp and Tract 2 to her granddaughter Brandy S. Culp.
 - c. Respondent Irland is not a devisee of the Farm therein and therefore unable to take ownership under the terms of Mrs. Coleman's 2008 Will.

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- d. On or about the 28th and 29th day of October 2014, Mrs. Coleman and Ms. Irland appeared at the Firm without an appointment, asking to see Attorney Heyward Carter. Mr. Carter was not available, and as a result, Mr. Chandler took the meeting.
- e. According to Mr. Chandler, Mrs. Coleman was pleasant upon greeting him and proceeded to ask about his wife and children. This seemed odd to Mr. Chandler as it was his first time meeting Mrs. Coleman and she would have no reason to know whether he was married, or had children. Mr. Chandler is, in fact, married, however, he has only one child. Mr. Chandler interpreted this as a possible sign Mrs. Coleman may lack capacity.
- f. When Mr. Chandler asked Mrs. Coleman why she had come to the Firm, Ms. Irland interjected, stating the two were there to get her Mother's original 2008 Will.
- g. Mr. Chandler asked that Ms. Irland allow her mother, Mrs. Coleman to answer the question as it was Mrs. Coleman who was the Firm's client.
- h. Ms. Irland became visibly and verbally upset when Mr. Chandler asked to interact solely and directly with Mrs. Coleman without any assistance from Ms. Irland.
- i. Mr. Chandler again asked Mrs. Coleman why she had come to the Firm and Mrs. Coleman was unable to answer the question and instead stared blankly at Ms. Irland. Ms. Irland, then interjected again, stating they were there to obtain the original of Mrs. Coleman's 2008 Will, in order to destroy it, because they were going to have it changed.
- j. Mr. Chandler, on behalf of the Firm, then informed Mrs. Coleman and Ms. Irland that he did not feel comfortable giving them the original 2008 Will for them to destroy it as Mrs. Coleman could not independently state why she wished to be given the 2008 Will. However, he would be happy to provide them the 2008 Will so long as it was per the instructions Mrs. Coleman had given the Firm in her Durable Power of Attorney. Mrs.

Coleman's Durable Power of Attorney was admitted without objection as Petitioner's Exhibit 19.

k. Ms. Irland asked what the instructions were for obtaining the 2008 Will, and the Firm informed her that, per the Durable Power of Attorney, both Ms. Irland and Mrs. Coleman's granddaughter, Respondent Brandy Culp, would have to jointly sign for the release of the 2008 Will. Note: Ms. Irland testified that she had not previously seen the 2008 Will nor had knowledge of the referenced Durable Power of Attorney. *See* para 14j.

1. Mr. Chandler then offered to call Ms. Culp so that both she and Ms. Irland could sign for the release of the original 2008 Will. Ms. Irland became visibly upset, refused his offer, and the two women left the Firm.

10. The law firm of Williams & Hulst, LLC ("W&H"), more specifically, one of its owners, John B. "Jack" Williams ("Mr. Williams"), was hired to prepare the deeds conveying the Farm to Ms. Irland. Mr. Williams was not present for the hearing on October 18, 2016. However, prior to the start of the hearing, the parties met in chambers where they agreed the record would be left open until his deposition could be taken. Mr. Williams was deposed on November 14, 2016 where he testified as follows:

- a. Mr. Williams has been practicing law over forty years. Williams Dep. 5.
- b. Prior to the meeting on October 28, 2014, Mr. Williams had previously met Mrs. Coleman approximately 15 – 20 years ago in an unrelated matter. Williams Dep. 9.
- c. On October 28, 2014, Mrs. Coleman and Ms. Irland went together to W&H to discuss the preparation of deeds. Williams Dep. 13-14.
- d. Initially Mr. Williams met with both Mrs. Coleman and Ms. Irland. However, once the purpose of the meeting was made clear, Mr. Williams asked Ms. Irland to step outside in

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order for him to speak with Mrs. Coleman alone. Williams Dep. 14-15. Mr. Williams then advised Mrs. Coleman regarding the meaning and purpose of transferring the property. Williams Dep. 15.

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- e. During the discussion with Mrs. Coleman regarding the transfer of property, Mr. Williams suggested Mrs. Coleman retain a life estate rather than transfer the property, herein referred to as Tract 1, in fee simple as originally discussed when meeting with Mrs. Coleman and Ms. Irland together and Mrs. Coleman agreed. Williams Dep. 16-17. Further, the reservation of a life estate "was not discussed, except between [Mr. Williams] and Mrs. Coleman." Williams Dep. 22.
 - f. Further, there was no mention that the Farm would be sold by Mrs. Irland after she received title to the Farm. Williams Dep. 22-23.
 - g. Mr. Williams testified that although he does not remember exactly how long the meeting on October 28, 2014 lasted, generally, meetings of that type are less than an hour. Williams Dep. 19.
 - h. Mr. Williams also testified with regard to his experience determining the competency of a particular person or witness during the course of his practice as follows:

Well, that's a question of determining competency, but yeah, I mean, if someone did not appear to understand what was going on or you know, was unable to communicate or whatever, yeah, I mean, from a practical standpoint, the answer is yes, I have.

Williams Dep. 7:13-18.

- i. Regarding Mr. Williams' observations of Mrs. Coleman's understanding of their conversation, Mr. Williams also stated:

There were no --- there was nothing *at that time* that gave me concern about her state of mind, her capability, but then again, that's just an observation, certainly not in a position to pass on that as an expert.

Williams Dep. 18:23-19:2 (emphasis added). See also Williams Dep. 25.

- j. When asked if Mr. Williams believed Mrs. Coleman understood the consequences of her actions, Mr. Williams replied “I do”... “Or I did at that time.” Williams Dep. 17:7-9.
- k. During his deposition, Mr. Williams was given an opportunity to review documents entered into evidence without objection from Mrs. Coleman’s treating physician, Dr. Judith M. Rubano (“Dr. Rubano”). Williams Dep. 24-31, 35-38.
- i. Mr. Williams testified at the time the deeds were executed, he had no way of knowing of Dr. Rubano’s diagnosis or any concerns expressed by Mrs. Coleman regarding her children and grandchild trying to get her to sell her property. Williams Dep. 25, Nov. 14, 2016. Further, Mr. Williams stated “it had been years since [he] had seen Mrs. Coleman, and obviously was not aware of any type of medical condition she may have [had at that time].” Williams Dep. 27:12-15.
- ii. When asked if knowledge of Dr. Rubano’s treatment of Ms. Coleman, her concerns and diagnosis would have changed the way Mr. Williams handled the closing on October 28th, Mr. Williams stated “Had I had these reports, at least as far as I’m concerned, my thought is there would *not have been a closing* then because of the questions that would have come up...” Williams Dep. 28:1-4 (*emphasis added*).
- iii. According to Mr. Williams, if Dr. Rubano was of the opinion that Mrs. Coleman lacked capacity in 2012, and he knew of that opinion, he would not have closed the transaction. Williams Dep. 31:12-16.
- l. Mr. Williams was also presented a synopsis of Mr. Chandler’s testimony regarding his meeting with Mrs. Coleman and Ms. Irland wherein Mr. Chandler stated he believed Mrs. Coleman lacked the necessary capacity to request her 2008 Will. Williams Dep. 31-33.

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11/24/2017

- m. When asked whether Mr. Williams would reach out to an attorney that expressed concerns regarding the capacity of one who he was about to close a transaction with, Mr. Williams replied

Oh, yeah, most definitely. You know, if there's issues like that that could address the ability to process or whatever, most certainly would have contacted him. As I said, I had not had any contact with Mrs. Coleman for a while and was not aware of any prior incidence or even that she had a will.

Williams Dep. 32:20-33:1.

- n. Further, Mr. Williams added, "I would have talked with Mr. Chandler, but if it is – the situation is as its been represented, I would not have gone forward with the closing."

Williams Dep. 33:6-9.

- o. Finally, when asked if he knew then what he knows now, would he have gone forward with the closing, Mr. Williams replied, "Obviously, no." Williams Dep. 40:9-11.

11. Dr. Rubano was deposed both before and after trial,² during which time she testified regarding her interaction with, and treatment of, Mrs. Coleman. During the hearing, Dr. Rubano was admitted as an expert without objection. Her testimony is as follows:

- a. Dr. Rubano has regularly treats vulnerable adult or elderly patients. Rubano Dep. 7-8, Dec. 21, 2016.
- b. Dr. Rubano began treating Mrs. Coleman in the late 1990s or early, however, there were extended periods of time that Dr. Rubano was not actively involved in Mrs. Coleman's care. Rubano Dep. 20, Dec. 21, 2016.
- c. On January 9, 2009, Respondent Irland and Respondent Culp accompanied Mrs. Coleman

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² Prior to the hearing, the parties met in chambers and agreed to admit the video deposition of Dr. Rubano without objection despite Attorney Dawson not being present during the deposition due to a clerical error and to hold the record open for 30 days during which time Respondent would be allowed to re-notice and cross-examine Dr. Rubano under deposition and/or enter any objections.

to an appointment reestablishing care with Dr. Rubano. During the appointment, both Respondent Irland and Respondent Culp expressed concerns regarding Mrs. Coleman's memory, mood, and behavior. *See* Pet.'s Ex. 3.

- d. At a follow-up appointment with Dr. Rubano on May 29, 2009, Mrs. Coleman, unaccompanied during the visit, expressed concern stating her family was "using her" and attempting to get her to sell her [land]. Pet.'s Ex. 4. Mrs. Coleman was frustrated and upset because she did not want to sell the property. According to Dr. Rubano, Mrs. Coleman is "delightful. She's rather eccentric. And sometimes would kind of go on and talk about things, and [she] wasn't sure if there was any real validity to what she was complaining of." Rubano Dep. 12:13-17, Dec. 21, 2016.
- e. Dr. Rubano received a letter from Respondent Culp dated October 18, 2010 wherein Respondent Culp reported that Mrs. Coleman was suffering "significant problems with memory. She is sometimes disoriented and she makes up stories to compensate for her confusion over daily tasks." *See* Pet.'s. Ex. 5. According to Dr. Rubano, this is a fair representation of patients with dementia. Rubano Dep. 24:6-7, Dec. 21, 2016.
- f. During an office visit on October 18, 2010, Mrs. Coleman was prescribed Aricept for dementia based on family reports of lapses in her short-term memory. Pet.'s Ex. 6.
- g. One month later, on November 15, 2010, Mrs. Coleman, unaccompanied, met with Dr. Rubano, during which she became tearful and expressed concerns that her daughter was taking advantage of her and "had drained her accounts, etc." Pet.'s Ex. 7. These comments were documented but not acted upon because Mrs. Coleman suffered from dementia and as a result, "her perception that someone was taking advantage of her may or may not have been true." Rubano Dep. 30:19-21, Dec. 21, 2016. Note: During Respondent Irland's

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testimony, she admitted to signing checks in her mother's name in the months prior to this appointment.

- h. On April 21, 2011, Respondent Irland called stating Mrs. Coleman had stopped taking her medications and an office visit was scheduled for April 25, 2011. Pet's Ex. 10.
- i. On April 25, 2011, Dr. Rubano witnessed a shouting match between Mrs. Coleman and her daughter, Respondent Irland, regarding Mrs. Coleman's memory/dementia with Mrs. Coleman continuing to deny she suffered from any memory issues. Dr. Rubano noted a decline in Mrs. Coleman's appearance, increased her prescription for Aricept, and referred Mrs. Coleman to a memory clinic. Pet's Ex. 8 and 9.
- j. On April 4, 2012, Mrs. Coleman was accompanied to an appointment by Respondent Irland where it was reported that Mrs. Coleman was again off of her medications and noted that Mrs. Coleman's dementia was continuing to progress. Pet's Ex. 11 and 12.
- k. That Mrs. Coleman last saw Dr. Rubano in July of 2012 at which time she was still being treated for Dementia and noted reports that Mrs. Coleman's "[m]emory still poor and seems to be getting worse, she is more irritable and argumentative." Res'p Ex. 3.
- l. Dr. Rubano had the opportunity to review the Report of Designated Examiner, dated August 31, 2015³ which finds Mrs. Coleman, while pleasant, suffers from moderate dementia, able to make simple decisions but not process more complicated information as well as to have a "very dysfunctional family." Pet's Ex. 15.
- m. Dr. Rubano agreed with his report and testified to a reasonable degree of medical certainty that she would have made similar findings back in 2012, that Mrs. Coleman was not capable of disposing of property, real or personal, execute instruments, make purchases,

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³ Findings based on observations from February 26, 2015 to April 18, 2015.

enter into contractual relationships, etc. Rubano Dep. 5:19-6:12, Dec. 21, 2016.

- n. “Had I been asked, can Mom sell real estate? I would have said, no.” Rubano Dep. 36:6-7, Dec. 21, 2016. *See also* Rubano Dep. 54:7-17, 22—55:2, Dec. 21, 2016.
- o. Further, Mrs. Coleman, at the same time as lacking capacity, was also in a mental state or lack thereof, that left her susceptible to the influence of those around her, particularly one who was caring for her. Rubano Dep. 55:3-11, Dec. 21, 2016.
- p. Mrs. Coleman also maintained a level of social gracefulness which made seeing her lack of capacity difficult. Rubano Dep. 55:12-17, Dec. 21, 2016.

12. Carol Seltzer (“Ms. Seltzer”) is a Social Worker and Professional Guardian that this Court appointed as Mrs. Coleman’s Temporary Guardian on February 23, 2015. Ms. Seltzer was admitted as an expert based on her education and experience and she provided both factual and expert testimony based on her interaction with and observations of Mrs. Coleman and her family as well as her review of relevant case materials as follows:

- a. Upon first meeting Mrs. Coleman, she was well-groomed, pleasant, demonstrating very good social graces. However, Mrs. Coleman was unable to answer direct questions or recount details when asked. Instead, Mrs. Coleman would begin to tell stories of past events, often embellishing as is consistent with one lacking capacity.
- b. Information provided by Mrs. Coleman was often inaccurate, reflecting Mrs. Coleman’s ability to be easily swayed and her tendency to place special trust and confidence in those around her.
- c. A ten-day evaluation of Mrs. Coleman after attacking a caregiver in her home resulted in confirmation of dementia diagnosis as well as a diagnosis of mood disorder.
- d. Interviews with family members (Respondents) highlighted numerous problems

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between the parties with little or no communication occurring among them.

- e. Based on her observation of Mrs. Coleman which began in 2015, her experience over twenty years dealing with dementia patients, and review of Mrs. Coleman's medical records reflecting a diagnosis in 2009, she concurs with Dr. Rubano regarding the progression of the disease which would have resulted in Mrs. Coleman lacking mental capacity and resulting in susceptibility to undue influence in 2012. Further, such incapacity or susceptibility would not have been readily apparent to one not familiar with Mrs. Coleman due to her social graces.

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- 13. W. Ashley Thiem, the court appointed Conservator for Mrs. Coleman, testified regarding his interactions with Mrs. Coleman and her family:

- a. In meetings with Mrs. Coleman, he found her to be pleasant. However, the meetings were based on the facts and circumstances focused on finances rather than her medical or mental conditions.
- b. While compiling Mrs. Coleman's assets, Mr. Thiem met with various family members as each asset appeared to be controlled by a different person. During his investigation, Mr. Thiem discovered two missing assets: Tract 1 and Tract 2. Ex. 18 and 19. Mr. Thiem also found one of the properties was listed for 2.3 Million Dollars. Ex. 20.
- c. The real estate listing did not reflect the fact that Mrs. Coleman retained a life estate in the subject property, resulting in concerns around Mrs. Coleman's capacity at the time the deeds were executed.
- d. Further, Mrs. Coleman retaining the property is in her best interest as the property comprise her only assets and, as such, she would benefit from having the transfer rescinded to its prior ownership in the event the property was necessary to fund Mrs. Coleman's living and

medical expenses.

14. According to Mrs Coleman's daughter, Respondent Athena Irland:

- a. In 1995, when the time the properties in question were purchased, there were three parcels of land in total, with a one-acre parcel which she purchased and on which her home is located; the second parcel, herein referred to as Tract 2 and consisting of 38-acres was purchased by herself, her then husband, and Mrs. Coleman, and finally what is referred to herein as Tract 1 and consisting of 33.31-acres, was purchased by Mrs. Coleman alone, despite Respondent Irland being able to afford to pay half the purchase price and the prior owner being reluctant to sell to Mrs. Coleman.
- b. That in or around 1999, Mrs. Coleman moved a home onto Tract 1 and began living therein.
- c. That it was always Mrs. Coleman intent for her interest in the Farm to go to Respondent Irland, the farm "wasn't a family farm, it's Athena's Farm," and it has always been her farm.
- d. That in or around 2003, Respondent divorced and had her husband's name removed from the deed. It was around that time, her mother gave her Tract 1 but she failed to remove Mrs. Coleman's name from the property because, according to Respondent Irland, she lost the paperwork.
- e. That her mother was of sound mind and body when she signed the deeds in 2010, admitting Mrs. Coleman suffered from short-term memory problems as early as 2009 but was not incapacitated until February of 2015.
- f. That the two of them are "best friends," extremely close, and did everything together.
- g. Mrs. Coleman executed a Durable Power of Attorney on June 27, 2011 in which Athena Irland was granted the power to convey property which she never exercised. Resp's Ex. 1.

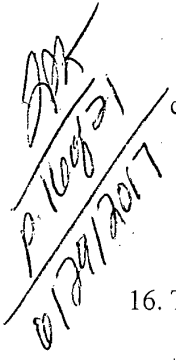
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- h. That she admits to signing her mother's name on checks and doing it in her same way absent Power of Attorney because she is Mrs. Coleman's daughter and will sign with Mrs. Coleman's permission.
- i. That she and Mrs. Coleman went to the Firm and was told that in order to get the original Will they would need to make an appointment, which they did for the following day. However, their attorney failed to show up and when Attorney Chandler would not give them the original, Mrs. Coleman got mad and they left.
- j. That she did not see a copy of the Will until 2014 and that it was also the first time she learned the Farm was not devised to her and she learned the Durable Power of Attorney had been revoked on July 24, 2013, noting that even if she still had the Durable Power of Attorney, she still would not have deeded the property to herself.
- k. That Mrs. Coleman made changes on a copy of the Will and wished to destroy the Original and to divide the property evenly between her three children, however, the Will was not changed because Mrs. Coleman was "kidnapped" by her sister in 2014 and "brainwashed."
- l. That she listed Tract 2 for sale because she ran out of money due to the costs associated with this litigation and would do anything, sell everything, for her mother, to keep her, to get her back. Respondent Irland also contends that she has always had her mother's best interest at heart and hadn't deeded it back to be used for her mother's care because it was not her intent.
- m. When asked why she simply didn't deed the property back to her mother, she replied, because its "MY FARM!" and that she would decide where the money would go.
15. Mrs. Coleman's son, Respondent Isadore Psarus ("Johnny") testified that at the time the deeds were executed, Mrs. Coleman was living with Respondent Irland, who was her primary

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caregiver.

- a. Resides in a home located at 638 Palmetto Street in the town of Mt. Pleasant which was given to him by Mrs. Coleman in 2008 for the sum of FIVE AND NO/100s DOLLARS (\$5.00).
- b. Claims Mrs. Coleman gave to him and his sisters all the time and that it was his understanding that his mother had always intended to give the Farm to Athena.
- c. Mr. Psarus was not present at the attorney's office when the meeting occurred, nor was he present when the deeds were executed and is unable testify as to anything leading up to the transaction.



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16. The Guardian Ad Litem, Lana M. Jamrosyk, Esquire, did not testify but proffered from counsel table that, in her opinion, after meeting with Mrs. Coleman and the various family members, Mrs. Coleman was easily influenced and lacked the ability to understand the consequences of her actions. Further, it is in Mrs. Coleman's best interest to have both deeds rescinded and the Farm returned to Mrs. Coleman in the event that she needs the subject property to help defray future living and/or medical expenses.

CONCLUSIONS OF LAW

- 17. Pursuant to S.C. Code of Laws Ann. Section 62-5-402, jurisdiction and venue are proper.
- 18. Where a transaction is challenged on the basis of mental incompetency, the individual's competency on the date of that transaction must be determined. *Grapner v. Atlantic Land Title Co.*, 307 S.C. 5489, 551, 416 S.E.2d 617, 618 (1992). Furthermore, the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. *Id.*
- 19. Ample evidence supports a finding that Mrs. Coleman lacked the requisite mental capacity to

execute the challenged instruments on the date in question:

- a. Petitioner offered testimony of Mrs. Coleman's treating physician, Dr. Rubano, that Mrs. Coleman suffered from memory loss as early as 2009 and was treated for dementia in 2010 which, given its progressive nature, would result in Mrs. Coleman lacking capacity at the time the deeds were executed;
- b. That Respondent Irland and other family members repeatedly expressed concerns regarding Mrs. Coleman's capacity as early as January 2009 and on numerous occasions thereafter;
- c. Testimony from Mr. Chandler regarding his interaction with Mrs. Coleman on the same day the deeds were executed regarding Mrs. Coleman's inability to clearly communicate her desire to retrieve her 2008 Will;
- d. Testimony from Mr. Williams regarding his interaction with Mrs. Coleman and the fact that in hindsight, he had not inquired as to her capacity and was not an expert in recognizing behavior associated with incapacity, particularly given the small amount of time spent interacting with her, and given her penchant for exhibiting social graces common in dementia patients;
- e. Respondent offered no evidence to rebut Petitioner's assertions regarding allegations that Mrs. Coleman lacked capacity at the time the Deeds were executed but relied solely on her assertions, which are in direct conflict with reports made by her to Mrs. Coleman's treating physician for almost two years prior to the time the deeds were executed;

20. Based on the preponderance of evidence demonstrated by the Petitioner, Mrs. Coleman lacked capacity to execute said deeds on October 28, 2014.

21. Petitioner also asserts Respondent Irland exercised undue influence over Mrs. Coleman.

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Undue Influence must be of the kind of mental coercion that destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 355 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). To void a conveyance of land, a contestant must show that the undue influence was brought directly to bear upon the conveyance. *Id.* at 219.

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22. Undue influence in the execution of an *inter vivos* conveyance is proved in the same way that undue influence is proved in the execution of a will. *Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849 (2005) citing *First Nat'l Bank of Appleton v. Nenning*, 92 Wis.2d 618, 285 N.W.2d 614, 623 (1979).

23. In contested deed cases a presumption of invalidity arises if the contestants of the deed present evidence that a confidential or fiduciary relationship existed between the grantor and the grantee. *See Middleton V. Suber*, 300 S.C. 402, 405, 388 S.E. 2d 639, 641 (1990)(recognizing that where a “confidential relationship” exists between a grantor and a grantee, the deed is presumed invalid and the burden is upon the grantee to establish the absence of undue influence); *Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986)(“A fiduciary relationship between the grantor and grantee may give rise to a presumption of undue influence thus shifting the burden of proof to the grantee to rebut the presumption”).

24. A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. *Page v. Lewis* 209 S.C. at 220. The essence of the relationship is the trust and confidence. *Bullard v. Crawley*, 294 S.C. 276, 281, 363 S.E.2d 897, 900 (1987) citing 15A C.J.S. *Confidential*, pp. 351-58 (1967). Mere friendship between the parties is not sufficient. The relationship must be one implying

confidence. *Id. citing 25 Am. Jur.2d Duress and Undue Influence § 44 (1966).* A confidential relationship does not necessarily arise when the grantor depends upon the grantee for the necessities of life. Some evidence is required that the grantor actually reposed trust in the grantee in the handling of his affairs. *McIntosh v. Dowdy*, 625 S.W.2d 162 (Mo.Ct.App.1981) (holding valid deed from grantor to the operators of nursing home in which grantor lived prior to death).

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25. Here, the record shows that Mrs. Coleman was dependent upon Respondent Irland for many things. Petitioner introduced evidence that Respondent Irland was Mrs. Coleman's sole caregiver and that she took Mrs. Coleman to her appointments once she moved into her home. Further, there is also evidence that a relationship of trust and confidence existed between them. Respondent Irland had access to Mrs. Coleman's bank accounts as evidenced by her testimony in which she admitted writing checks on her mother's account and, finally, that Mrs. Coleman had designated Respondent Irland as her attorney-in fact. Petitioner has successfully shifted to the proponent the burden of rebutting the presumption.

26. Respondent failed to rebut the presumption of undue influence. Instead, the record is replete with information which belies Mrs. Coleman's intent. First, Respondent contends Mrs. Coleman always intended to give her the property and in fact did so in 2003, but that the instrument was never recorded because she lost it. However, according to her testimony, Respondent was close with Mrs. Coleman and they do everything together. Accordingly, if it was Mrs. Coleman's intent to transfer the property, she very easily could have done so in the eleven years since she purportedly executed an instrument removing her from the deed. Further, if Mrs. Coleman wished Respondent Irland to have the property in question, she would not have devised her interest in the two tracts to others under her 2008 Will.

27. Undue influence invalidates a deed procured by wrongful influence exerted over the grantor so as to destroy free agency and constrain a person to act against his will. *Page v. Lewis*, 209 S.C. 212, 39 S.E.2d 787, 799 (1946 supra). It is not material how much control is exercised, whether by physical force, threats, importunities, or any other form of mental or physical coercion, provided that it was exerted to destroy or overcome the free will of the grantor and to make the deed executed the expression not of his purpose, but that of some other person. *Baynard v. Ulmer*, 153 S.C. 100, 150 S.E. 610, 611 (1929).

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28. The evidence supports a finding that Mrs. Coleman did not wish to have the property transferred to Respondent Irland, yet the undue influence exerted over Mrs Coleman by Respondent Irland was such that Mrs. Coleman's will was overcome and she nevertheless acquiesced and executed the deeds on October 28, 2014.
29. Due to Ms. Irland's breach of fiduciary duty to Mrs. Coleman, Mrs. Coleman is entitled to an award of damages against Ms. Irland.
30. Pursuant to S.C. Code of Laws Ann. Section 62-1-111, this Court may, as justice and equity require, award costs and expenses, including reasonable attorney's fees, to any party to be paid by another party or from the estate that is the subject of the controversy. Accordingly, Respondent Irland's willful and zealous pursuit of this property and steadfast refusal to deed the property back to her mother despite her supposed commitment to her mother's well-being, warrant this measure. As such, all costs associated with this action will be assessed against Respondent Irland to include reasonable attorneys' fees.
31. This Court finds no fault in Dr. Rubano not issuing an opinion in 2012 as to Mrs. Coleman's lack of capacity or susceptibility to influence, which would have arguably prevented this matter from arising, because she was not asked to do so by Mrs. Coleman, the Court, or any person

authorized to inquire or request such a finding from Dr. Rubano.

32. Furthermore, this Court finds no fault in Mr. Williams closing the subject transaction on October 28, 2014, which would have arguably prevented this matter from arising, because he did not know, nor have reason to know of the events that transpired at the Firm and/or Dr. Rubano's treatment of Mrs. Coleman.

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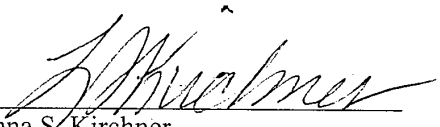
Based on the foregoing, it is hereby:

ORDERED, ADJUDGED AND DECREED the subject deeds are rescinded as Mrs. Coleman lacked the requisite capacity on October 28, 2014 to execute said deeds; it is further

ORDERED, ADJUDGED AND DECREED the subject deeds are the product of undue influence exercised by Respondent Irland over Mrs. Coleman; it is further

ORDERED, ADJUDGED AND DECREED that Respondent Irland will be assessed the costs and expenses associated with this action, including reasonable attorneys' fees, once approved by the Court.

AND IT IS SO ORDERED.


Lenna S. Kirchner
Associate Judge of Probate
Charleston County

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day of June, 2017
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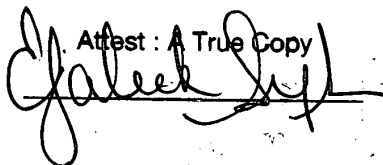
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Clerk Probate Court,
Charleston County, South Carolina

EXHIBIT B
to
Motion to Dismiss

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
IN THE MATTER OF: THE ESTATE OF DOLLY)
LEGARE COLEMAN)
)
JOHN SINCLAIRE, III, in his capacity as Personal)
Representative for the Estate of Dolly L. Coleman,)
)
Petitioner,)
)
vs.)
)
ATHENA L. IRLAND, CHRISTINA D. CULP,)
ISADORE JOHN PSARAS, and BRANDY S. CULP,)
)
Respondents.)
)

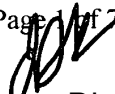
IN THE PROBATE COURT
CASE NO.: 2019-ES-10-1368

ORDER

Hearing Date: April 7, 2022
Presiding Judge: Lenna S. Kirchner
Petitioner: John a/k/a "Jack" Sinclaire, Esq.
Petitioner's Attorney: David Michel, Esq.
Respondents: Athena L. Irland
Christina D. Culp
Isadore John Psaras
Brandy S. Culp
Respondents' Attorney: Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter: Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclaire, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclaire, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,

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without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman (“Decedent”) died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.

6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
10. Respondents are Decedent's children and grandchild.
11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. It is undisputed by the parties that Decedent was taken to the office of Lynn McCants, Esq., by Respondent Athena Irland on October 28, 2014, stated that it was her intention to revoke the 2009 Will, and physically tore the 2009 Will in half in the presence of Mr. McCants.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.
22. John Lynn McCants, a lawyer in Mount Pleasant, testified that he had drafted the 2009 Will of Decedent, that he witnessed the destruction of the Will, wherein both Decedent and Ms. Irland were present at his office, that he does not dispute the purported destruction date of October 28, 2014, that he was not aware of the Court rulings about other events that occurred on that date, but had he known of the same, he would have had concern about the ability and correctness of Decedent destroying her Will.
23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.
24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.

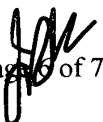
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Ireland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent Ireland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Ireland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further

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ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



EXHIBIT C
to
Motion to Dismiss

The South Carolina Court of Appeals

IN RE: Matter of Dolly Dimples Legare Coleman,
through her conservator W. Ashley Thiem, Respondent,

v.

Athena Irland, Isadore Psaras, Brandy S. Culp, and
Christina Culp, Defendants,

Of whom Athena Irland is the Appellant.

Appellate Case No. 2017-001624

The Honorable Lenna S. Kirchner
Charleston County
Trial Court Case No. 2014GC1000210

ORDER

Appellant has failed to provide proof that the parties consented in writing or on the record to appeal directly to the Court of Appeals, as set forth in S.C. Code Ann. §62-1-308(l) (Supp. 2016), and letter of this Court dated August 2, 2017. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Joseph Dawson, III, Esquire
Irish Ryan Neville, Esquire

FILED

August 22, 2017

EXHIBIT D
to
Motion to Dismiss

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Athena Ireland)
Plaintiff(s))

Isadore JOHN Psaras)
Christina D. Culp, Brandy S. Culp)
Defendant(s))

Submitted By: Athena Ireland
Address: 196 DOLLY DIMPLES TRL
HUGER SC. 29450

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2022 -CP - 10 - 3304

SC Bar #: _____

Telephone #: 843-336-4834

Fax #: _____

Other: _____

E-mail: KARMA1234@mytelco.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 ____ -NI- ____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) _____ <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input checked="" type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
|---|--|--|---|

Submitting Party Signature: Athena Ireland

Date: 7-22-2022

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 14-2-10. Exhibits to Motion to Dismiss - Page 034

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2022 JUL 22 PM 2:12
CLERK OF COURT

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

2022-CP-10-3304

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)
)
IN THE MATTER OF: Dolly L. Coleman)
)
(Decedent))
)
Athena L. Irland)
)
Appellant(s),)
)
vs Isadore John Psaras, Christina D Culp,)
Brandy S Culp)
Respondent(s).)

IN THE CIRCUIT COURT
Appeal from Probate Court for Charleston County
CASE NUMBER: 2019-ES-10-1368

**NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT**

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated July 13, 2022. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on July 14, 2022. A copy of said Final Order is attached.

SWORN to before me this 22
day of July, 2022
Shannon McManus
Notary Public for: South Carolina
My Commission Expires: 11/30/2031



Respectfully submitted,
Signature: *Athena L Irland*
Print Name: Athena L Irland
Address: 186 Dolly Dimples Trail
Huger, SC 29450
Telephone (Work): _____
(Home): 843-336-4834
(Cell): _____
Email: Karma1234@myyahoo.com
Relationship to Decedent/Estate: Daughter
Attorney: Self Representation
Address: _____
Telephone: _____
Email: _____

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.
2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(I) and the South Carolina Appellate Court Rules, as applicable.

FILED
2022 JUL 22 PM 2:12
JULIE J. ANTONIO
CLERK OF COURT

Pg 2

Case 2019-ES-10-1368
Estate of Dolly L Coleman
Order July 13, 2022
Received July 14, 2022

Notice has been served to:

1. John Sinclair III, in his capacity as Personal Representative for the Estate of Dolly L Coleman. Hand delivered
2. David Michel, Esq., Estate Attorney. Hand delivered.
3. Charleston County Probate Clerk of Court office, Presiding Judge Lenna S Kirchner. Hand delivered.
4. Circuit Court of Charleston County, Clerk of Court. Hand delivered.
5. David and Stephen Slotchiver, attorney for Brandy S Culp. Hand delivered.

Notice of Appeal on the findings and ruling of the probate court are as follows:

Pg. 2 (4)
Pg. 2 (5) cont. pg 3
Pg. 3 (6)
Pg. 3 (11)
Pg. 4 (18)
Pg. 5 (21)
Pg. 5 (22)
Pg. 5 (23)
Pg. 6 (7)
Pg. 6 (25)
Pg. 6 (26)
Pg. 6 (27)

The court erred in the undue influence by Athena Irland. The court erred in the legal standing of testamentary capacity, contractual testamentary vs. the testamentary capacity to execute, tear up or discard a will. All in accordance with South Carolina law and the precedence of the statute regarding testamentary capacity since 1807.

Therefore notice given that this matter is being appealed to the Circuit Court of Charleston County.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON	)	CASE NO.: 2019-ES-10-1368
)	
IN THE MATTER OF: THE ESTATE OF DOLLY)	
LEGARE COLEMAN)	
)	
JOHN SINCLAIRE, III, in his capacity as Personal	)	ORDER
Representative for the Estate of Dolly L. Coleman,)	
)	
Petitioner,)	
)	
vs.)	
)	
ATHENA L. IRLAND, CHRISTINA D. CULP,)	
ISADORE JOHN PSARAS, and BRANDY S. CULP,)	
)	
Respondents.)	
)	

Hearing Date:	April 7, 2022
Presiding Judge:	Lenna S. Kirchner
Petitioner:	John a/k/a "Jack" Sinclair, Esq.
Petitioner's Attorney:	David Michel, Esq.
Respondents:	Athena L. Irland Christina D. Culp Isadore John Psaras Brandy S. Culp
Respondents' Attorney:	Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter:	Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclair, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclair, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,

without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman (“Decedent”) died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

Page 2 of 7

on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.

6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
10. Respondents are Decedent's children and grandchild.
11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. It is undisputed by the parties that Decedent was taken to the office of Lynn McCants, Esq., by Respondent Athena Irland on October 28, 2014, stated that it was her intention to revoke the 2009 Will, and physically tore the 2009 Will in half in the presence of Mr. McCants.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.

22. John Lynn McCants, a lawyer in Mount Pleasant, testified that he had drafted the 2009 Will of Decedent, that he witnessed the destruction of the Will, wherein both Decedent and Ms. Irland were present at his office, that he does not dispute the purported destruction date of October 28, 2014, that he was not aware of the Court rulings about other events that occurred on that date, but had he known of the same, he would have had concern about the ability and correctness of Decedent destroying her Will.

23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.

24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.

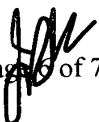
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Ireland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent Ireland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Ireland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further


Page 6 of 7

ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



Page 7 of 7

EXHIBIT E
to
Motion to Dismiss

2022-CP-10-3304

NOTICE OF PROOF OF SERVICE July 22, 2022

David L. Michel, Esq.
Attorney for P.R.

Printed name

7/22/22

Hand Delivery

NOTICE OF APPEAL

FILED
2022 JUL 22 PM 2:12
JULIE JAMIS
CLERK OF COURT

~~Ava~~ C. Mauldin 7/22/2022

Susan C. Mauldin for Daniel S. Slotchiver

Jack Gilmore 7/22/2022

EXHIBIT F
to
Motion to Dismiss

STATE OF SOUTH CAROLINA) 2022-CP-10-03304
 COUNTY OF CHARLESTON)
) AFFIDAVIT OF CHRISTINA CULP
 Estate of Dolly Lagare Coleman)
)
)

PERSONALLY APPEARED before me, who being duly sworn, deposes and says as follows:

1. My name is Christina Culp.
2. I am the daughter of Dolly Legare Coleman and a named party in both this Appeal and the underlying Probate court action (in the Matter of Dolly Lagare Coleman, case number 2019-ES-10-1368.
3. My mother died on March 21,2019
4. The Appellant in this case, Athena Irland is my sister.
5. Athena did not serve me with the Notice of Intent to Appeal within 10 days of receiving notice of the Probate Court's Order dated September 6, 2022.
6. Respondent Brandy Culp is my daughter.
7. Athena has a long documented history of taking advantage of our mother, as described in the prior Orders of the Probate Court.
8. Our mother was diagnosed with progressive debilitating dementia beginning in 2010. She was deemed incapacitated by the Charleston County Probate Court in Case number 2014-GC-10-0210. In that case, Athena had exercised undue influence over our mother by having her exercise two deeds of conveyance to Athena's benefit. As a result, the Court rescinded the deeds, and made a determination that our mother lacked capacity on October 28, 2014, to execute deeds and that Athena had exercised undue influence on that date by having those properties conveyed to her.

9. In this new case, Athena contends now that our mother revoked her 2009 Will on October 28, 2014, (the same date on which our mother was previously found to have lacked capacity and that Athena was found to have executed undue influence.) After a hearing on the matter, the Court again found that my mother lacked capacity on October 28, 2014, to revoke the 2009 Will and that Athena had exercised undue influence over her in seeking to have the Will revoked.

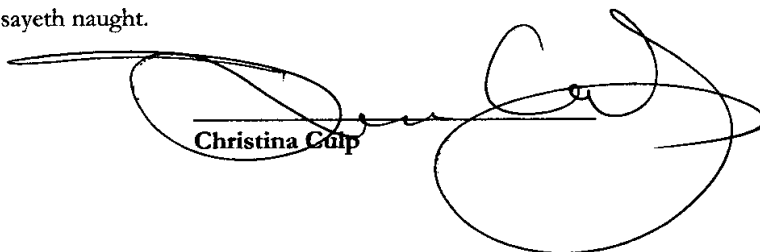
10. Athena, representing herself, now seeks to appeal the case.

11. I am still a party to the underlying case.

12. In addition, I have not settled any matters related to this litigation, with Athena, nor have I released any rights, claims and/or defenses as they relate to her.

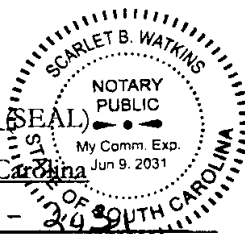
13. Athena did not serve me with the notice of Appeal within the time required by statute. Accordingly, I ask this Court to grant the motion and dismiss the appeal.

FURTHER Affiant sayeth naught.


Christina Culp

SWORN TO BEFORE ME this 18
day of October, 2022

Scarlet Watkins
NOTARY PUBLIC FOR State of South Carolina



MY COMMISSION EXPIRES: 10-9-24

EXHIBIT G
to
Motion to Dismiss

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-3304
)	
Athena Irland)	
)	
<i>Pro Se</i> Plaintiff/Appellant,)	
)	
v.	)	MOTION TO DISMISS APPEAL
)	
)	
Isadore John Psaras, Christina D. Culp,)	
Brandy S. Culp,)	
)	
Defendants/Respondents.)	
)	

Respondent Brandy S. Culp, through her undesigned counsel, hereby respectfully moves to dismiss this appeal. This motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules and S.C. Code § 62-1-308(A). The ground for this motion is that Appellant failed to serve the Notice of Appeal on all requisite parties within the statutorily required period of time. Specifically, Appellant failed to serve Respondents Christina Culp and Isadore John Psaras with the Notice of Appeal. Because the service requirement is jurisdictional, this Court lacks jurisdiction to consider the appeal and must dismiss the case.

Standard of Review

“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

In addition, S.C. Code § 62-1-308(A) sets forth the rule as to appeals from the probate court. The statute specifically requires that all parties not in default be served with the Notice of Intent to Appeal within ten days of receiving notice of entry of the order:

Except as provided in subsection (1), appeals from the probate court must be to the circuit court and are governed by the following rules: (a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. [Emphasis added]

Relevant Procedural History

Athena L. Irland brings this Appeal as a *pro se* litigant. Ms. Irland is the daughter of the late Dolly Legare Coleman (hereinafter, “Decedent”) and has on two separate occasions been found by the Charleston County Probate Court to have exercised undue influence over Decedent while Decedent was incapacitated. (Orders, attached as Exhibit A and B). Respondent Isadore John Psaras is the son of Decedent; Respondent Christina D. Culp is a daughter of Decedent; and Respondent Brandy S. Culp is the granddaughter of Decedent. Respondents are all necessary parties to this appeal, each being a party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Exhibit A at pp. 1 and 4). All Respondents are specifically identified as Respondents in Appellant’s Notice of Intent to Appeal. In addition, none of the aforementioned Respondents are in Default.

Decedent died on March 21, 2019. Decedent was previously adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210. During the course of that case, Appellant was found to have exercised undue influence over Decedent with regard to the execution of two deeds of conveyance. As a result, the Court rescinded the subject deeds by Order dated

June 29, 2017 finding that Decedent lacked the requisite capacity on the date of execution (October 28, 2014) and that Appellant had exercised undue influence. (Order at Exhibit B). Appellant attempted to appeal this Order, however, on August 22, 2017 the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds. (COA Order, attached as Exhibit C).¹

The present case involves the alleged revocation of Decedent's 2009 Will at Appellant's behest on October 28, 2014 (the same date that Decedent was previously found to have lacked capacity and Appellant was found to have exercised undue influence). As before, the Court found, after hearing testimony from the parties and witnesses, that Decedent lacked capacity to revoke the 2009 Will and that Appellant had exercised undue influence over Decedent. Specifically, the Court's July 13, 2022 Order states:

The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by [Appellant] Irland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same date under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

(Order at Exhibit A, p. 6, ¶ 26)

Appellant sought to appeal the Court's order by filing a Notice of Intent to Appeal with this Court on July 22, 2022. However, Appellant failed to serve Respondents Christina Culp and Isadore John Psaras with the Notice of Intent to Appeal. As noted above, Respondents are all necessary parties to this appeal, each being a party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Exhibit A at pp. 1 and 4). In addition, Respondents were specifically identified as Respondents in Appellant's Notice of Intent to Appeal.

¹ Specifically, the Court of Appeals found that Appellant had failed to provide proof that the parties consented in writing or on the record to directly appeal the matter to the Court of Appeals.

Discussion

Appellant's failure to serve the Notice of Intent to Appeal on all requisite parties within the statutorily required period of time is fatal to her appeal. As noted above, Appellant failed to serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. S.C. Code § 62-1-308(A) specifically requires that all parties not in default be served with the Notice of Intent to Appeal within ten days of receiving notice of entry of the order.² "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

This appeal must be dismissed because Appellant missed the statutory deadline to serve all Respondents with her Notice of Intent to Appeal. Because the service requirement is jurisdictional, this Court lacks jurisdiction to consider the appeal and must dismiss the case. Accordingly, Respondent respectfully requests that this Court grant her motion and dismiss this Appeal.

Conclusion

This appeal should be dismissed because Appellant failed to serve the Notice of Appeal on all requisite parties within the statutorily required period of time. Appellant's failure to serve the Notice of Intent to Appeal on all requisite parties within the statutorily required period of time is fatal to her appeal. Because the service requirement is jurisdictional, this Court lack jurisdiction to consider the appeal. Accordingly, the appeal must be dismissed.

² None of the Respondents in this case are in Default and, therefore, must be all be served with the Notice pursuant to the statute.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT
BRANDY S. CULP

Charleston, South Carolina
September 6, 2022

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON	)	CASE NO.: 2019-ES-10-1368
)	
IN THE MATTER OF: THE ESTATE OF DOLLY)	
LEGARE COLEMAN)	
)	
JOHN SINCLAIRE, III, in his capacity as Personal	)	ORDER
Representative for the Estate of Dolly L. Coleman,)	
)	
Petitioner,)	
)	
vs.)	
)	
ATHENA L. IRLAND, CHRISTINA D. CULP,)	
ISADORE JOHN PSARAS, and BRANDY S. CULP,)	
)	
Respondents.)	
)	

Hearing Date:	April 7, 2022
Presiding Judge:	Lenna S. Kirchner
Petitioner:	John a/k/a "Jack" Sinclaire, Esq.
Petitioner's Attorney:	David Michel, Esq.
Respondents:	Athena L. Irland Christina D. Culp Isadore John Psaras Brandy S. Culp
Respondents' Attorney:	Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter:	Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclaire, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclaire, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,

without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman (“Decedent”) died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.

6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
10. Respondents are Decedent's children and grandchild.
11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. It is undisputed by the parties that Decedent was taken to the office of Lynn McCants, Esq., by Respondent Athena Irland on October 28, 2014, stated that it was her intention to revoke the 2009 Will, and physically tore the 2009 Will in half in the presence of Mr. McCants.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.
22. John Lynn McCants, a lawyer in Mount Pleasant, testified that he had drafted the 2009 Will of Decedent, that he witnessed the destruction of the Will, wherein both Decedent and Ms. Irland were present at his office, that he does not dispute the purported destruction date of October 28, 2014, that he was not aware of the Court rulings about other events that occurred on that date, but had he known of the same, he would have had concern about the ability and correctness of Decedent destroying her Will.
23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.
24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.

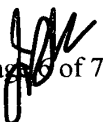
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Irland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent Irland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Irland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further

Page 6 of 7


ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



notice of the hearing. This Order is binding on all parties to the above captioned matter.

At the start of the hearing, Respondent moved, pursuant to Rule 12(b)(6), for dismissal of the petition arguing the existence of another action pending in the Berkeley County Court of Common Pleas filed prior to this present action. Rule 12(b)(6), SCRPC. On February 6, 2015, a Notice of *Lis Pendens* was filed in Berkeley County Court of Common Pleas under 2015-LP-08-00003. On March 19, 2015, the associated Summons and Complaint was filed. *See* Case No. 2015-CP-08-00719. The aforementioned captions reflect the parties as Christina Culp and Brandy S. Culp vs. Athena Irland and Dolly Dimples Legare Coleman. Rule 12(b)(6) permits dismissal where another action is pending *between the parties for the same claim*. Rule 12(b)(6), SCRPC (*emphasis added*). Due to the actions not pending between the *same* parties, as reflected in the differing captions of the two cases, this Court denied Respondent's motion and proceeded to hear this matter.

Upon review of the file and after hearing testimony of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dolly Dimples Legare Coleman ("Mrs. Coleman") is an 86 year old female adjudged to be an incapacitated person by clear and convincing evidence by this Court on February 9, 2015.¹
2. Petitioner is W. Ashley Thiem, of Thiem & McCutcheon, CPAs, P.A., the court appointed Conservator ("Conservator") for Mrs. Coleman, by Order dated September 1, 2015.
3. Respondents are the children and grandchild of Mrs. Coleman.

¹ Petitions were filed by Respondent Culp on December 22, 2014 and Respondents Irland and Psaras on January 5, 2015. Based in part on the report of a Designated Medical Examiner's finding of incapacity dated January 8, 2015, this Court issued Orders appointing a Temporary Guardian and Conservator on February 23, 2015 and a Permanent Guardian and Conservator on September 1, 2015.

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- 4. During Mrs. Coleman's adult life, she acquired real property in South Carolina to include an undivided fee simple interest in certain real property located in Berkeley County described more fully as follows (hereinafter "Tract 1"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 1, 1,450,798 sq. feet, or 33.31 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, TRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

SUBJECT to right of access to Tracts 2 and 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

BEING the same property conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated May 1, 1997 and recorded May 9, 1997 in the Office of the Register of Deeds for Berkeley County in Book 1064, at Page 319.

TMS NO.: 257-00-00-007.

- 5. Mrs. Coleman also acquired an undivided one-third interest in certain real property in Berkeley County described more fully as follows (hereinafter "Tract 2"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 2, 1,655,235 sq. feet, or 38.00 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, IRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TOGETHER with right of access over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat. SUBJECT to right of access to Tracts 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

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BEING the same 1/3 interest as conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated August 2, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Book 709, at Page 40.

TMS NO.: 249-00-00-003.

(collectively Tract 1 and Tract 2 hereinafter "the Farm"):

6. On October 28, 2014, Mrs. Coleman executed two deeds conveying the Farm to Ms. Irland, each for FIVE and No/100th DOLLARS (\$5.00) and reserving a life estate in Tract 1. Said deeds were entered into evidence without objection and are incorporated by reference. Pet's Ex. 16 and 17.
7. The Conservator seeks to have these two deed rescinded arguing Mrs. Coleman lacked capacity to execute the deeds or, in the alternative, the executed deeds are the product of undue influence exerted by Mrs. Coleman's daughter, Respondent Irland, over Mrs. Coleman.
8. Prior to this action, Mrs. Coleman hired the law firm of Evans, Carter, Kunes & Bennett, P.A. ("the Firm") for estate planning purposes.
9. Mr. Andrew Chandler, Esquire ("Mr. Chandler"), an attorney at the Firm, testified on its behalf as follows:
- a. The Firm previously prepared, and still possesses, Mrs. Coleman's original Last Will and Testament ("2008 Will"), dated October 20, 2008. A copy of said Will was entered into evidence without objection. Pet's Ex. 18.
 - b. Article 4 of the 2008 Will devises the real property in question, leaving Tract 1 to Mrs. Coleman's daughter Christina T. Culp and Tract 2 to her granddaughter Brandy S. Culp.
 - c. Respondent Irland is not a devisee of the Farm therein and therefore unable to take ownership under the terms of Mrs. Coleman's 2008 Will.

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- d. On or about the 28th and 29th day of October 2014, Mrs. Coleman and Ms. Irland appeared at the Firm without an appointment, asking to see Attorney Heyward Carter. Mr. Carter was not available, and as a result, Mr. Chandler took the meeting.
 - e. According to Mr. Chandler, Mrs. Coleman was pleasant upon greeting him and proceeded to ask about his wife and children. This seemed odd to Mr. Chandler as it was his first time meeting Mrs. Coleman and she would have no reason to know whether he was married, or had children. Mr. Chandler is, in fact, married, however, he has only one child. Mr. Chandler interpreted this as a possible sign Mrs. Coleman may lack capacity.
 - f. When Mr. Chandler asked Mrs. Coleman why she had come to the Firm, Ms. Irland interjected, stating the two were there to get her Mother's original 2008 Will.
 - g. Mr. Chandler asked that Ms. Irland allow her mother, Mrs. Coleman to answer the question as it was Mrs. Coleman who was the Firm's client.
 - h. Ms. Irland became visibly and verbally upset when Mr. Chandler asked to interact solely and directly with Mrs. Coleman without any assistance from Ms. Irland.
 - i. Mr. Chandler again asked Mrs. Coleman why she had come to the Firm and Mrs. Coleman was unable to answer the question and instead stared blankly at Ms. Irland. Ms. Irland, then interjected again, stating they were there to obtain the original of Mrs. Coleman's 2008 Will, in order to destroy it, because they were going to have it changed.
 - j. Mr. Chandler, on behalf of the Firm, then informed Mrs. Coleman and Ms. Irland that he did not feel comfortable giving them the original 2008 Will for them to destroy it as Mrs. Coleman could not independently state why she wished to be given the 2008 Will. However, he would be happy to provide them the 2008 Will so long as it was per the instructions Mrs. Coleman had given the Firm in her Durable Power of Attorney. Mrs.

Coleman's Durable Power of Attorney was admitted without objection as Petitioner's Exhibit 19.

10. k. Ms. Irland asked what the instructions were for obtaining the 2008 Will, and the Firm informed her that, per the Durable Power of Attorney, both Ms. Irland and Mrs. Coleman's granddaughter, Respondent Brandy Culp, would have to jointly sign for the release of the 2008 Will. Note: Ms. Irland testified that she had not previously seen the 2008 Will nor had knowledge of the referenced Durable Power of Attorney. *See* para 14j.
1. Mr. Chandler then offered to call Ms. Culp so that both she and Ms. Irland could sign for the release of the original 2008 Will. Ms. Irland became visibly upset, refused his offer, and the two women left the Firm.

10. The law firm of Williams & Hulst, LLC ("W&H"), more specifically, one of its owners, John B. "Jack" Williams ("Mr. Williams"), was hired to prepare the deeds conveying the Farm to Ms. Irland. Mr. Williams was not present for the hearing on October 18, 2016. However, prior to the start of the hearing, the parties met in chambers where they agreed the record would be left open until his deposition could be taken. Mr. Williams was deposed on November 14, 2016 where he testified as follows:
- Mr. Williams has been practicing law over forty years. Williams Dep. 5.
 - Prior to the meeting on October 28, 2014, Mr. Williams had previously met Mrs. Coleman approximately 15 – 20 years ago in an unrelated matter. Williams Dep. 9.
 - On October 28, 2014, Mrs. Coleman and Ms. Irland went together to W&H to discuss the preparation of deeds. Williams Dep. 13-14.
 - Initially Mr. Williams met with both Mrs. Coleman and Ms. Irland. However, once the purpose of the meeting was made clear, Mr. Williams asked Ms. Irland to step outside in

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order for him to speak with Mrs. Coleman alone. Williams Dep. 14-15. Mr. Williams then advised Mrs. Coleman regarding the meaning and purpose of transferring the property. Williams Dep. 15.

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- e. During the discussion with Mrs. Coleman regarding the transfer of property, Mr. Williams suggested Mrs. Coleman retain a life estate rather than transfer the property, herein referred to as Tract 1, in fee simple as originally discussed when meeting with Mrs. Coleman and Ms. Irland together and Mrs. Coleman agreed. Williams Dep. 16-17. Further, the reservation of a life estate “was not discussed, except between [Mr. Williams] and Mrs. Coleman.” Williams Dep. 22.
 - f. Further, there was no mention that the Farm would be sold by Mrs. Irland after she received title to the Farm. Williams Dep. 22-23.
 - g. Mr. Williams testified that although he does not remember exactly how long the meeting on October 28, 2014 lasted, generally, meetings of that type are less than an hour. Williams Dep. 19.
 - h. Mr. Williams also testified with regard to his experience determining the competency of a particular person or witness during the course of his practice as follows:

Well, that’s a question of determining competency, but yeah, I mean, if someone did not appear to understand what was going on or you know, was unable to communicate or whatever, yeah, I mean, from a practical standpoint, the answer is yes, I have.

Williams Dep. 7:13-18.

- i. Regarding Mr. Williams’ observations of Mrs. Coleman’s understanding of their conversation, Mr. Williams also stated:

There were no --- there was nothing *at that time* that gave me concern about her state of mind, her capability, but then again, that’s just an observation, certainly not in a position to pass on that as an expert.

Williams Dep. 18:23-19:2 (emphasis added). *See also* Williams Dep. 25.

- j. When asked if Mr. Williams believed Mrs. Coleman understood the consequences of her actions, Mr. Williams replied “I do”... “Or I did at that time.” Williams Dep. 17:7-9.
- k. During his deposition, Mr. Williams was given an opportunity to review documents entered into evidence without objection from Mrs. Coleman’s treating physician, Dr. Judith M. Rubano (“Dr. Rubano”). Williams Dep. 24-31, 35-38.
- i. Mr. Williams testified at the time the deeds were executed, he had no way of knowing of Dr. Rubano’s diagnosis or any concerns expressed by Mrs. Coleman regarding her children and grandchild trying to get her to sell her property. Williams Dep. 25, Nov. 14, 2016. Further, Mr. Williams stated “it had been years since [he] had seen Mrs. Coleman, and obviously was not aware of any type of medical condition she may have [had at that time].” Williams Dep. 27:12-15.
- ii. When asked if knowledge of Dr. Rubano’s treatment of Ms. Coleman, her concerns and diagnosis would have changed the way Mr. Williams handled the closing on October 28th, Mr. Williams stated “Had I had these reports, at least as far as I’m concerned, my thought is there would *not have been a closing* then because of the questions that would have come up...” Williams Dep. 28:1-4 (*emphasis added*).
- iii. According to Mr. Williams, if Dr. Rubano was of the opinion that Mrs. Coleman lacked capacity in 2012, and he knew of that opinion, he would not have closed the transaction. Williams Dep. 31:12-16.
- l. Mr. Williams was also presented a synopsis of Mr. Chandler’s testimony regarding his meeting with Mrs. Coleman and Ms. Irland wherein Mr. Chandler stated he believed Mrs. Coleman lacked the necessary capacity to request her 2008 Will. Williams Dep. 31-33.

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- m. When asked whether Mr. Williams would reach out to an attorney that expressed concerns regarding the capacity of one who he was about to close a transaction with, Mr. Williams replied

Oh, yeah, most definitely. You know, if there's issues like that that could address the ability to process or whatever, most certainly would have contacted him. As I said, I had not had any contact with Mrs. Coleman for a while and was not aware of any prior incidence or even that she had a will.

Williams Dep. 32:20-33:1.

- n. Further, Mr. Williams added, "I would have talked with Mr. Chandler, but if it is – the situation is as its been represented, I would not have gone forward with the closing."

Williams Dep. 33:6-9.

- o. Finally, when asked if he knew then what he knows now, would he have gone forward with the closing, Mr. Williams replied, "Obviously, no." Williams Dep. 40:9-11.

11. Dr. Rubano was deposed both before and after trial,² during which time she testified regarding her interaction with, and treatment of, Mrs. Coleman. During the hearing, Dr. Rubano was admitted as an expert without objection. Her testimony is as follows:

- a. Dr. Rubano has regularly treats vulnerable adult or elderly patients. Rubano Dep. 7-8, Dec. 21, 2016.
- b. Dr. Rubano began treating Mrs. Coleman in the late 1990s or early, however, there were extended periods of time that Dr. Rubano was not actively involved in Mrs. Coleman's care. Rubano Dep. 20, Dec. 21, 2016.
- c. On January 9, 2009, Respondent Irland and Respondent Culp accompanied Mrs. Coleman

² Prior to the hearing, the parties met in chambers and agreed to admit the video deposition of Dr. Rubano without objection despite Attorney Dawson not being present during the deposition due to a clerical error and to hold the record open for 30 days during which time Respondent would be allowed to re-notice and cross-examine Dr. Rubano under deposition and/or enter any objections.

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to an appointment reestablishing care with Dr. Rubano. During the appointment, both Respondent Irland and Respondent Culp expressed concerns regarding Mrs. Coleman's memory, mood, and behavior. *See* Pet.'s Ex. 3.

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- d. At a follow-up appointment with Dr. Rubano on May 29, 2009, Mrs. Coleman, unaccompanied during the visit, expressed concern stating her family was "using her" and attempting to get her to sell her [land]. Pet.'s Ex. 4. Mrs. Coleman was frustrated and upset because she did not want to sell the property. According to Dr. Rubano, Mrs. Coleman is "delightful. She's rather eccentric. And sometimes would kind of go on and talk about things, and [she] wasn't sure if there was any real validity to what she was complaining of." Rubano Dep. 12:13-17, Dec. 21, 2016.
- e. Dr. Rubano received a letter from Respondent Culp dated October 18, 2010 wherein Respondent Culp reported that Mrs. Coleman was suffering "significant problems with memory. She is sometimes disoriented and she makes up stories to compensate for her confusion over daily tasks." *See* Pet.'s. Ex. 5. According to Dr. Rubano, this is a fair representation of patients with dementia. Rubano Dep. 24:6-7, Dec. 21, 2016.
- f. During an office visit on October 18, 2010, Mrs. Coleman was prescribed Aricept for dementia based on family reports of lapses in her short-term memory. Pet.'s Ex. 6.
- g. One month later, on November 15, 2010, Mrs. Coleman, unaccompanied, met with Dr. Rubano, during which she became tearful and expressed concerns that her daughter was taking advantage of her and "had drained her accounts, etc." Pet.'s Ex. 7. These comments were documented but not acted upon because Mrs. Coleman suffered from dementia and as a result, "her perception that someone was taking advantage of her may or may not have been true." Rubano Dep. 30:19-21, Dec. 21, 2016. Note: During Respondent Irland's

testimony, she admitted to signing checks in her mother's name in the months prior to this appointment.

- h. On April 21, 2011, Respondent Irland called stating Mrs. Coleman had stopped taking her medications and an office visit was scheduled for April 25, 2011. Pet's Ex. 10.
- i. On April 25, 2011, Dr. Rubano witnessed a shouting match between Mrs. Coleman and her daughter, Respondent Irland, regarding Mrs. Coleman's memory/dementia with Mrs. Coleman continuing to deny she suffered from any memory issues. Dr. Rubano noted a decline in Mrs. Coleman's appearance, increased her prescription for Aricept, and referred Mrs. Coleman to a memory clinic. Pet's Ex. 8 and 9.
- j. On April 4, 2012, Mrs. Coleman was accompanied to an appointment by Respondent Irland where it was reported that Mrs. Coleman was again off of her medications and noted that Mrs. Coleman's dementia was continuing to progress. Pet's Ex. 11 and 12.
- k. That Mrs. Coleman last saw Dr. Rubano in July of 2012 at which time she was still being treated for Dementia and noted reports that Mrs. Coleman's "[m]emory still poor and seems to be getting worse, she is more irritable and argumentative." Res'p Ex. 3.
- l. Dr. Rubano had the opportunity to review the Report of Designated Examiner, dated August 31, 2015³ which finds Mrs. Coleman, while pleasant, suffers from moderate dementia, able to make simple decisions but not process more complicated information as well as to have a "very dysfunctional family." Pet's Ex. 15.
- m. Dr. Rubano agreed with his report and testified to a reasonable degree of medical certainty that she would have made similar findings back in 2012, that Mrs. Coleman was not capable of disposing of property, real or personal, execute instruments, make purchases,

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³ Findings based on observations from February 26, 2015 to April 18, 2015.

enter into contractual relationships, etc. Rubano Dep. 5:19-6:12, Dec. 21, 2016.

n. “Had I been asked, can Mom sell real estate? I would have said, no.” Rubano Dep. 36:6-7, Dec. 21, 2016. *See also* Rubano Dep. 54:7-17, 22—55:2, Dec. 21, 2016.

o. Further, Mrs. Coleman, at the same time as lacking capacity, was also in a mental state or lack thereof, that left her susceptible to the influence of those around her, particularly one who was caring for her. Rubano Dep. 55:3-11, Dec. 21, 2016.

p. Mrs. Coleman also maintained a level of social gracefulness which made seeing her lack of capacity difficult. Rubano Dep. 55:12-17, Dec. 21, 2016.

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R. Seltzer
12/24/2017

12. Carol Seltzer (“Ms. Seltzer”) is a Social Worker and Professional Guardian that this Court appointed as Mrs. Coleman’s Temporary Guardian on February 23, 2015. Ms. Seltzer was admitted as an expert based on her education and experience and she provided both factual and expert testimony based on her interaction with and observations of Mrs. Coleman and her family as well as her review of relevant case materials as follows:

a. Upon first meeting Mrs. Coleman, she was well-groomed, pleasant, demonstrating very good social graces. However, Mrs. Coleman was unable to answer direct questions or recount details when asked. Instead, Mrs. Coleman would begin to tell stories of past events, often embellishing as is consistent with one lacking capacity.

b. Information provided by Mrs. Coleman was often inaccurate, reflecting Mrs. Coleman’s ability to be easily swayed and her tendency to place special trust and confidence in those around her.

c. A ten-day evaluation of Mrs. Coleman after attacking a caregiver in her home resulted in confirmation of dementia diagnosis as well as a diagnosis of mood disorder.

d. Interviews with family members (Respondents) highlighted numerous problems

between the parties with little or no communication occurring among them.

- e. Based on her observation of Mrs. Coleman which began in 2015, her experience over twenty years dealing with dementia patients, and review of Mrs. Coleman's medical records reflecting a diagnosis in 2009, she concurs with Dr. Rubano regarding the progression of the disease which would have resulted in Mrs. Coleman lacking mental capacity and resulting in susceptibility to undue influence in 2012. Further, such incapacity or susceptibility would not have been readily apparent to one not familiar with Mrs. Coleman due to her social graces.

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13. W. Ashley Thiem, the court appointed Conservator for Mrs. Coleman, testified regarding his interactions with Mrs. Coleman and her family:

- a. In meetings with Mrs. Coleman, he found her to be pleasant. However, the meetings were based on the facts and circumstances focused on finances rather than her medical or mental conditions.
- b. While compiling Mrs. Coleman's assets, Mr. Thiem met with various family members as each asset appeared to be controlled by a different person. During his investigation, Mr. Thiem discovered two missing assets: Tract 1 and Tract 2. Ex. 18 and 19. Mr. Thiem also found one of the properties was listed for 2.3 Million Dollars. Ex. 20.
- c. The real estate listing did not reflect the fact that Mrs. Coleman retained a life estate in the subject property, resulting in concerns around Mrs. Coleman's capacity at the time the deeds were executed.
- d. Further, Mrs. Coleman retaining the property is in her best interest as the property comprise her only assets and, as such, she would benefit from having the transfer rescinded to its prior ownership in the event the property was necessary to fund Mrs. Coleman's living and

medical expenses.

14. According to Mrs Coleman's daughter, Respondent Athena Irland:

- a. In 1995, when the time the properties in question were purchased, there were three parcels of land in total, with a one-acre parcel which she purchased and on which her home is located; the second parcel, herein referred to as Tract 2 and consisting of 38-acres was purchased by herself, her then husband, and Mrs. Coleman, and finally what is referred to herein as Tract 1 and consisting of 33.31-acres, was purchased by Mrs. Coleman alone, despite Respondent Irland being able to afford to pay half the purchase price and the prior owner being reluctant to sell to Mrs. Coleman.
- b. That in or around 1999, Mrs. Coleman moved a home onto Tract 1 and began living therein.
- c. That it was always Mrs. Coleman intent for her interest in the Farm to go to Respondent Irland, the farm "wasn't a family farm, it's Athena's Farm," and it has always been her farm.
- d. That in or around 2003, Respondent divorced and had her husband's name removed from the deed. It was around that time, her mother gave her Tract 1 but she failed to remove Mrs. Coleman's name from the property because, according to Respondent Irland, she lost the paperwork.
- e. That her mother was of sound mind and body when she signed the deeds in 2010, admitting Mrs. Coleman suffered from short-term memory problems as early as 2009 but was not incapacitated until February of 2015.
- f. That the two of them are "best friends," extremely close, and did everything together.
- g. Mrs. Coleman executed a Durable Power of Attorney on June 27, 2011 in which Athena Irland was granted the power to convey property which she never exercised. Resp's Ex. 1.

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- h. That she admits to signing her mother's name on checks and doing it in her same way absent Power of Attorney because she is Mrs. Coleman's daughter and will sign with Mrs. Coleman's permission.
 - i. That she and Mrs. Coleman went to the Firm and was told that in order to get the original Will they would need to make an appointment, which they did for the following day. However, their attorney failed to show up and when Attorney Chandler would not give them the original, Mrs. Coleman got mad and they left.
 - j. That she did not see a copy of the Will until 2014 and that it was also the first time she learned the Farm was not devised to her and she learned the Durable Power of Attorney had been revoked on July 24, 2013, noting that even if she still had the Durable Power of Attorney, she still would not have deeded the property to herself.
 - k. That Mrs. Coleman made changes on a copy of the Will and wished to destroy the Original and to divide the property evenly between her three children, however, the Will was not changed because Mrs. Coleman was "kidnapped" by her sister in 2014 and "brainwashed."
 - l. That she listed Tract 2 for sale because she ran out of money due to the costs associated with this litigation and would do anything, sell everything, for her mother, to keep her, to get her back. Respondent Irland also contends that she has always had her mother's best interest at heart and hadn't deeded it back to be used for her mother's care because it was not her intent.
 - m. When asked why she simply didn't deed the property back to her mother, she replied, because its "MY FARM!" and that she would decide where the money would go.
15. Mrs. Coleman's son, Respondent Isadore Psarus ("Johnny") testified that at the time the deeds were executed, Mrs. Coleman was living with Respondent Irland, who was her primary

caregiver.

- a. Resides in a home located at 638 Palmetto Street in the town of Mt. Pleasant which was given to him by Mrs. Coleman in 2008 for the sum of FIVE AND NO/100s DOLLARS (\$5.00).
- b. Claims Mrs. Coleman gave to him and his sisters all the time and that it was his understanding that his mother had always intended to give the Farm to Athena.
- c. Mr. Psarus was not present at the attorney's office when the meeting occurred, nor was he present when the deeds were executed and is unable testify as to anything leading up to the transaction.

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16. The Guardian Ad Litem, Lana M. Jamrosyk, Esquire, did not testify but proffered from counsel table that, in her opinion, after meeting with Mrs. Coleman and the various family members, Mrs. Coleman was easily influenced and lacked the ability to understand the consequences of her actions. Further, it is in Mrs. Coleman's best interest to have both deeds rescinded and the Farm returned to Mrs. Coleman in the event that she needs the subject property to help defray future living and/or medical expenses.

CONCLUSIONS OF LAW

- 17. Pursuant to S.C. Code of Laws Ann. Section 62-5-402, jurisdiction and venue are proper.
- 18. Where a transaction is challenged on the basis of mental incompetency, the individual's competency on the date of that transaction must be determined. *Grapner v. Atlantic Land Title Co.*, 307 S.C. 5489, 551, 416 S.E.2d 617, 618 (1992). Furthermore, the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. *Id.*
- 19. Ample evidence supports a finding that Mrs. Coleman lacked the requisite mental capacity to

execute the challenged instruments on the date in question:

- a. Petitioner offered testimony of Mrs. Coleman's treating physician, Dr. Rubano, that Mrs. Coleman suffered from memory loss as early as 2009 and was treated for dementia in 2010 which, given its progressive nature, would result in Mrs. Coleman lacking capacity at the time the deeds were executed;
- b. That Respondent Irland and other family members repeatedly expressed concerns regarding Mrs. Coleman's capacity as early as January 2009 and on numerous occasions thereafter;
- c. Testimony from Mr. Chandler regarding his interaction with Mrs. Coleman on the same day the deeds were executed regarding Mrs. Coleman's inability to clearly communicate her desire to retrieve her 2008 Will;
- d. Testimony from Mr. Williams regarding his interaction with Mrs. Coleman and the fact that in hindsight, he had not inquired as to her capacity and was not an expert in recognizing behavior associated with incapacity, particularly given the small amount of time spent interacting with her, and given her penchant for exhibiting social graces common in dementia patients;
- e. Respondent offered no evidence to rebut Petitioner's assertions regarding allegations that Mrs. Coleman lacked capacity at the time the Deeds were executed but relied solely on her assertions, which are in direct conflict with reports made by her to Mrs. Coleman's treating physician for almost two years prior to the time the deeds were executed;

20. Based on the preponderance of evidence demonstrated by the Petitioner, Mrs. Coleman lacked capacity to execute said deeds on October 28, 2014.

21. Petitioner also asserts Respondent Irland exercised undue influence over Mrs. Coleman.

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Undue Influence must be of the kind of mental coercion that destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 355 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). To void a conveyance of land, a contestant must show that the undue influence was brought directly to bear upon the conveyance. *Id.* at 219.

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22. Undue influence in the execution of an *inter vivos* conveyance is proved in the same way that undue influence is proved in the execution of a will. *Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849 (2005) citing *First Nat'l Bank of Appleton v. Nanning*, 92 Wis.2d 618, 285 N.W.2d 614, 623 (1979).

23. In contested deed cases a presumption of invalidity arises if the contestants of the deed present evidence that a confidential or fiduciary relationship existed between the grantor and the grantee. See *Middleton V. Suber*, 300 S.C. 402, 405, 388 S.E. 2d 639, 641 (1990)(recognizing that where a “confidential relationship” exists between a grantor and a grantee, the deed is presumed invalid and the burden is upon the grantee to establish the absence of undue influence); *Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986)(“A fiduciary relationship between the grantor and grantee may give rise to a presumption of undue influence thus shifting the burden of proof to the grantee to rebut the presumption”).

24. A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. *Page v. Lewis* 209 S.C. at 220. The essence of the relationship is the trust and confidence. *Bullard v. Crawley*, 294 S.C. 276, 281, 363 S.E.2d 897, 900 (1987) citing 15A C.J.S. *Confidential*, pp. 351-58 (1967). Mere friendship between the parties is not sufficient. The relationship must be one implying

confidence. *Id.* citing 25 Am. Jur.2d *Duress and Undue Influence* § 44 (1966). A confidential relationship does not necessarily arise when the grantor depends upon the grantee for the necessities of life. Some evidence is required that the grantor actually reposed trust in the grantee in the handling of his affairs. *McIntosh v. Dowdy*, 625 S.W.2d 162 (Mo.Ct.App.1981) (holding valid deed from grantor to the operators of nursing home in which grantor lived prior to death).

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25. Here, the record shows that Mrs. Coleman was dependent upon Respondent Irland for many things. Petitioner introduced evidence that Respondent Irland was Mrs. Coleman's sole caregiver and that she took Mrs. Coleman to her appointments once she moved into her home. Further, there is also evidence that a relationship of trust and confidence existed between them. Respondent Irland had access to Mrs. Coleman's bank accounts as evidenced by her testimony in which she admitted writing checks on her mother's account and, finally, that Mrs. Coleman had designated Respondent Irland as her attorney-in fact. Petitioner has successfully shifted to the proponent the burden of rebutting the presumption.

26. Respondent failed to rebut the presumption of undue influence. Instead, the record is replete with information which belies Mrs. Coleman's intent. First, Respondent contends Mrs. Coleman always intended to give her the property and in fact did so in 2003, but that the instrument was never recorded because she lost it. However, according to her testimony, Respondent was close with Mrs. Coleman and they do everything together. Accordingly, if it was Mrs. Coleman's intent to transfer the property, she very easily could have done so in the eleven years since she purportedly executed an instrument removing her from the deed. Further, if Mrs. Coleman wished Respondent Irland to have the property in question, she would not have devised her interest in the two tracts to others under her 2008 Will.

27. Undue influence invalidates a deed procured by wrongful influence exerted over the grantor so as to destroy free agency and constrain a person to act against his will. *Page v. Lewis*, 209 S.C. 212, 39 S.E.2d 787, 799 (1946 supra). It is not material how much control is exercised, whether by physical force, threats, importunities, or any other form of mental or physical coercion, provided that it was exerted to destroy or overcome the free will of the grantor and to make the deed executed the expression not of his purpose, but that of some other person. *Baynard v. Ulmer*, 153 S.C. 100, 150 S.E. 610, 611 (1929).

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01/24/2017

28. The evidence supports a finding that Mrs. Coleman did not wish to have the property transferred to Respondent Irland, yet the undue influence exerted over Mrs Coleman by Respondent Irland was such that Mrs. Coleman's will was overcome and she nevertheless acquiesced and executed the deeds on October 28, 2014.
29. Due to Ms. Irland's breach of fiduciary duty to Mrs. Coleman, Mrs. Coleman is entitled to an award of damages against Ms. Irland.
30. Pursuant to S.C. Code of Laws Ann. Section 62-1-111, this Court may, as justice and equity require, award costs and expenses, including reasonable attorney's fees, to any party to be paid by another party or from the estate that is the subject of the controversy. Accordingly, Respondent Irland's willful and zealous pursuit of this property and steadfast refusal to deed the property back to her mother despite her supposed commitment to her mother's well-being, warrant this measure. As such, all costs associated with this action will be assessed against Respondent Irland to include reasonable attorneys' fees.
31. This Court finds no fault in Dr. Rubano not issuing an opinion in 2012 as to Mrs. Coleman's lack of capacity or susceptibility to influence, which would have arguably prevented this matter from arising, because she was not asked to do so by Mrs. Coleman, the Court, or any person

authorized to inquire or request such a finding from Dr. Rubano.

32. Furthermore, this Court finds no fault in Mr. Williams closing the subject transaction on October 28, 2014, which would have arguably prevented this matter from arising, because he did not know, nor have reason to know of the events that transpired at the Firm and/or Dr. Rubano's treatment of Mrs. Coleman.

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D. Williams
10/28/2014
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Based on the foregoing, it is hereby:

ORDERED, ADJUDGED AND DECREED the subject deeds are rescinded as Mrs. Coleman lacked the requisite capacity on October 28, 2014 to execute said deeds; it is further

ORDERED, ADJUDGED AND DECREED the subject deeds are the product of undue influence exercised by Respondent Irland over Mrs. Coleman; it is further

ORDERED, ADJUDGED AND DECREED that Respondent Irland will be assessed the costs and expenses associated with this action, including reasonable attorneys' fees, once approved by the Court.

AND IT IS SO ORDERED.

[Signature]
Lenna S. Kirchner
Associate Judge of Probate
Charleston County

24th
day of June, 2017
Charleston, South Carolina

Attest : A True Copy
[Signature]
Clerk Probate Court
Charleston County, South Carolina

The South Carolina Court of Appeals

IN RE: Matter of Dolly Dimples Legare Coleman,
through her conservator W. Ashley Thiem, Respondent,

v.

Athena Irland, Isadore Psaras, Brandy S. Culp, and
Christina Culp, Defendants,

Of whom Athena Irland is the Appellant.

Appellate Case No. 2017-001624

The Honorable Lenna S. Kirchner
Charleston County
Trial Court Case No. 2014GC1000210

ORDER

Appellant has failed to provide proof that the parties consented in writing or on the record to appeal directly to the Court of Appeals, as set forth in S.C. Code Ann. §62-1-308(l) (Supp. 2016), and letter of this Court dated August 2, 2017. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Joseph Dawson, III, Esquire
Irish Ryan Neville, Esquire

FILED

August 22, 2017

EXHIBIT H
to
Motion to Dismiss

First, Appellant is not a party to the settlement agreement. Mr. Psaras and Ms. Culp have not released any rights, claims, and/or defenses as they relate to Appellant Athena Irland. In fact, the Settlement Agreement specifically states that the releases set forth therein do not apply to Athena Irland. See Exhibit C, Settlement Agreement, para. 5, stating, “This release specifically does not apply to Athena Irland.” Second, the Agreement and corresponding Order Approving Agreement do not dismiss Mr. Psaras and Ms. Culp as parties to the underlying Probate Court matter. Indeed, they continued to be clearly identified as parties and taken into account in the Court’s July 13, 2022 Order (Exhibit A, Order, pp. 1 and 4). While the Settlement Agreement provides *Respondent Brandy Culp* with certain enforceable rights as it relates to Mr. Psaras and Ms. Christina Culp, it does not remove them from the action, nor does it bar them as parties to Ms. Irland’s appeal.

Further, it is clear that Ms. Irland, a *pro se* litigant and Appellant, has not followed the statutory requirements set forth under S.C. Code § 62-1-308 for pursuing an appeal. In addition to not serving all parties with her Notice of Intent to Appeal, Appellant has failed to file and serve a Statement of Issue on Appeal in the format described in Rule 208(b)(1)(B), SCACR, within 45 days of receiving written notice of the Order as required by S.C. Code § 62-1-308(b).²

In any event, while a Court may grant pro-se litigants some latitude with certain matters, “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the

² As of the date of this filing, it’s been seventy-seven (77) days since the Court issued its Order. Respondent has not been served with a Statement of Issues of Appeal nor has Appellant filed a proof of service evidencing service as required by the rule.

notice.” *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

This appeal should be dismissed because Appellant failed to serve the Notice of Appeal on all requisite parties within the statutorily required period of time. Appellant’s failure to serve the Notice of Appeal on all requisite parties within the statutorily required period of time is fatal to her appeal. Because the service requirement is jurisdictional, this Court lack jurisdiction to consider the appeal. In addition, the appeal should be dismissed because Appellant has failed to comply with the procedural requirements set forth under S.C. Code § 62-1-208(b).

[Signature on following page]

Respectfully submitted,

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s/Jesse Sanchez

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ATTORNEYS FOR RESPONDENT

BRANDY S. CULP

Charleston, South Carolina
September 28, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON	)	CASE NO.: 2019-ES-10-1368
)	
IN THE MATTER OF: THE ESTATE OF DOLLY)	
LEGARE COLEMAN)	
)	
JOHN SINCLAIRE, III, in his capacity as Personal	)	ORDER
Representative for the Estate of Dolly L. Coleman,)	
)	
Petitioner,)	
)	
vs.)	
)	
ATHENA L. IRLAND, CHRISTINA D. CULP,)	
ISADORE JOHN PSARAS, and BRANDY S. CULP,)	
)	
Respondents.)	
)	

Hearing Date:	April 7, 2022
Presiding Judge:	Lenna S. Kirchner
Petitioner:	John a/k/a "Jack" Sinclaire, Esq.
Petitioner's Attorney:	David Michel, Esq.
Respondents:	Athena L. Irland Christina D. Culp Isadore John Psaras Brandy S. Culp
Respondents' Attorney:	Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter:	Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclaire, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclaire, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,

without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman (“Decedent”) died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

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on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.

6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
10. Respondents are Decedent's children and grandchild.
11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. It is undisputed by the parties that Decedent was taken to the office of Lynn McCants, Esq., by Respondent Athena Irland on October 28, 2014, stated that it was her intention to revoke the 2009 Will, and physically tore the 2009 Will in half in the presence of Mr. McCants.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.
22. John Lynn McCants, a lawyer in Mount Pleasant, testified that he had drafted the 2009 Will of Decedent, that he witnessed the destruction of the Will, wherein both Decedent and Ms. Irland were present at his office, that he does not dispute the purported destruction date of October 28, 2014, that he was not aware of the Court rulings about other events that occurred on that date, but had he known of the same, he would have had concern about the ability and correctness of Decedent destroying her Will.
23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.
24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.

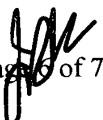
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Irland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent Irland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Irland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further

Page 6 of 7


ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



Exhibit B

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Athena Irland)

Plaintiff(s))

Isadore JOHN Psaras)
CHRISTINA D. Culp, Brandy S. Culp)

Defendant(s))

CIVIL ACTION COVERSHEET

2022 -CP - 10 - 3304

Submitted By: Athena Irland
Address: 196 DOLLY DIMPLES TRL
HUGER SC. 29450

SC Bar #: _____
Telephone #: 843-336-4834
Fax #: _____
Other: _____
E-mail: KARMA1234@myyahoo.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case # <u>20 -NI-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) _____ <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input checked="" type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature: Athena Irland

Date: 7-22-2022

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, Exhibits to Motion to Dismiss - Page 097

FILED
2022 JUL 22 PM 2:12
CLERK OF COURT

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

2022-CP-10-3304

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Charleston)
)
 IN THE MATTER OF: Dolly L. Coleman)
)
 (Decedent))
Athena L. Irland)
)
 Appellant(s),)
)
 vs)
Isadore John Psaras, Christina D Culp,)
Brandy S Culp)
 Respondent(s).)

IN THE CIRCUIT COURT
 Appeal from Probate Court for Charleston County
 CASE NUMBER: 2019-ES-10-1368

**NOTICE OF INTENT TO APPEAL TO
 CIRCUIT COURT**

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated July 13, 2022. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on July 14, 2022. A copy of said Final Order is attached.

SWORN to before me this 22
 day of July, 2022
Shannon McManis
 Notary Public for: South Carolina
 My Commission Expires: 11/30/2031



Respectfully submitted,
 Signature: [Handwritten Signature]
 Print Name: Athena L Irland
 Address: 186 Dolly Dimples Trail
Huger, SC 29450
 Telephone (Work): _____
 (Home): 843-336-4834
 (Cell): _____
 Email: Karma1234@myyahoo.com
 Relationship to Decedent/Estate: Daughter
 Attorney: Self Representation
 Address: _____
 Telephone: _____
 Email: _____

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.
2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FILED
 2022 JUL 22 PM 2:12
 JEFFREY J. ANTONIO
 CLERK OF COURT

2022-CP-10-3304

Pg 2

Case 2019-ES-10-1368
Estate of Dolly L Coleman
Order July 13, 2022
Received July 14, 2022

Notice has been served to:

1. John Sinclair III, in his capacity as Personal Representative for the Estate of Dolly L Coleman. Hand delivered
2. David Michel, Esq., Estate Attorney. Hand delivered.
3. Charleston County Probate Clerk of Court office, Presiding Judge Lenna S Kirchner. Hand delivered.
4. Circuit Court of Charleston County, Clerk of Court. Hand delivered.
5. David and Stephen Slotchiver, attorney for Brandy S Culp. Hand delivered.

Notice of Appeal on the findings and ruling of the probate court are as follows:

Pg. 2 (4)
Pg. 2 (5) cont. pg 3
Pg. 3 (6)
Pg. 3 (11)
Pg. 4 (18)
Pg. 5 (21)
Pg. 5 (22)
Pg. 5 (23)
Pg. 6 (7)
Pg. 6 (25)
Pg. 6 (26)
Pg. 6 (27)

The court erred in the undue influence by Athena Irland. The court erred in the legal standing of testamentary capacity, contractual testamentary vs. the testamentary capacity to execute, tear up or discard a will. All in accordance with South Carolina law and the precedence of the statute regarding testamentary capacity since 1807.

Therefore notice given that this matter is being appealed to the Circuit Court of Charleston County.

2022-CP-10-3304

NOTICE OF PROOF OF SERVICE July 22, 2022

David L. Michel, Esq.
Attorney for P.R.

Direct mail

7/22/22

Hand Delivery

NOTICE OF APPEAL

FILED
2022 JUL 22 PM 2:12
JULIE JAMISON
CLERK OF COURT

~~Ana~~ C. Mauldin 7/22/2022

Susan C. Mauldin for Daniel S. Slotchiver

Jack Gilmore 7/22/2022

Exhibit C

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
))
COUNTY OF CHARLESTON) 2019-ES-10-_____

In the Matter of:
Estate of Dolly Legare Coleman

SETTLEMENT AGREEMENT

Mediation was held on March 16, 2020. Present at the Mediation was Brandy Culp, Christina Culp, Athena Irland, Isadore Psaras, and Jack Sinclair. Brandy Culp, Christina Culp, and Isadore Psaras have agreed to fully and finally resolve this matter as follows:

1. Isadore Psaras, individually and on behalf of his Estate and his heirs, assigns all of his right, title and interest in the Estate of Dolly Legare Coleman to Brandy Culp in exchange for a lump sum payment of One Hundred Ninety Thousand (\$190,000) Dollars to be paid by the Estate of Dolly Legare Coleman to him upon Court approval.
2. Christina Culp, individually and on behalf of her Estate and hers heirs, assigns all of his right, title and interest in the Estate of Dolly Legare Coleman to Brandy Culp in exchange for a lump sum payment of One Hundred Ninety Thousand (\$190,000) Dollars to be paid by the Estate of Dolly Legare Coleman to her upon Court approval.
3. As a result of this Settlement, in the event that the Court is to determine that the Estate shall pass in accordance with intestacy, and Brandy Culp would be entitled to receive 2/3 of the Estate, representing the shares that would have otherwise passed to Christina Culp and Isadore Psaras. In the event the 2009 Will is upheld, then the shares that would have otherwise passed to Christina Culp and Isadore Psaras would then pass to Brandy Culp (in addition to the bequest made to her therein).
4. ~~The Personal Representative of the Estate believes the above Settlement is reasonable and further agrees to Petition the Court for authority to release the necessary distributions to Isadore Psaras and Christina Culp, and the balance of their respective shares to Brandy Culp would at that point be vested.~~ CDC *[Signature]* BSC
5. The undersigned parties further agree that in exchange for the terms as set forth herein by the undersigned parties, each intends to and hereby release each from the other, and any and all other persons, of and from any and all causes of action, demands and costs and all claims of any nature including, but not limited to, any claims of any kind whatsoever, known or unknown, which the undersigned parties have or may in the future, be entitled to have, against the other, whomsoever, on account of or in any way

BSU *CDC* *[Signature]*

related to the Estate of Dolly Legare Coleman. This Release specifically does not apply to Athena Irland.

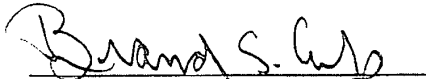
6. In consideration of the above, the undersigned agree that the counsel for Brandy Culp will draft a Consent Order, which all ~~parties~~ ^{heirs}, other than Athena Irland will execute.

7. Each of the parties shall be responsible for their own attorney fees can costs associated with this matter.

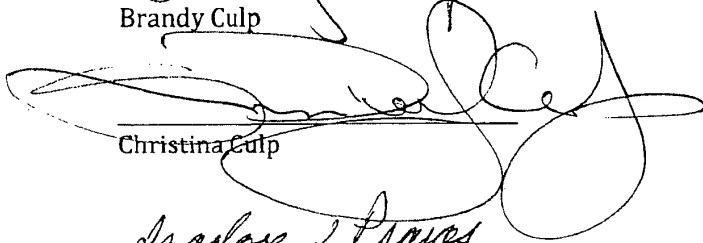
8. Each of the undersigned parties agrees that they will not, individually, jointly or in a representative capacity, initiate against any other party to this release any legal or equitable proceedings of any nature based on, account of or in any way related to the Estate. Each party further agrees to indemnify and hold harmless any party against any loss or damage, including without limitation attorney fees, in the event such party asserts any claim in violation of this release.

9. This Settlement Agreement may be submitted to the Probate Court for approval and the parties shall execute a Consent Order for submission to the Probate Judge for review and approval.

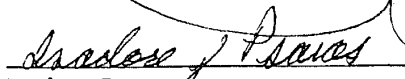
WE AGREE:



Brandy Culp



Christina Culp



Isadore Psaras

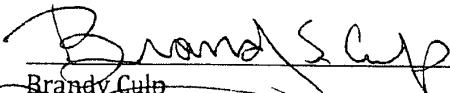
Jack Sinclair, Personal Representative

Date: March 16, 2020

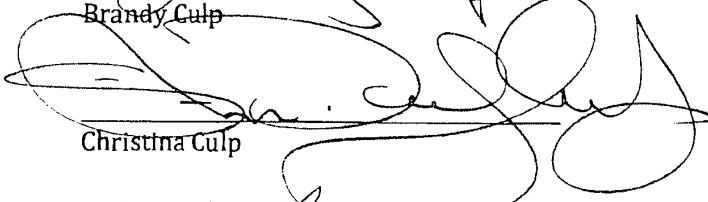
ADDENDUM TO SETTLEMENT AGREEMENT

1. It is agreed upon that the Personal Representative of the Estate will not sign the Settlement Agreement, and that Paragraph 4 of the Settlement Agreement has been stricken.
2. It is also represented and agreed that neither Christina Culp nor Isadore Psaras are represented by legal counsel. Both were advised of their right to have counsel and the mediator recommendation to be represented and both have agreed to proceed pro se.

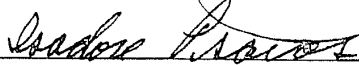
WE AGREE:



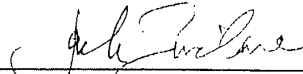
 Brandy Culp



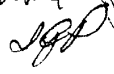
 Christina Culp



 Isadore Psaras



 Jack Sinclair, Personal Representative
 Agree that I am bound by 62-3-912 of the
 South Carolina Probate Code, and shall abide
 by the terms of the attached Settlement Agreement.

and subsequent orders of the Court.
 I take no position on the
 sufficiency of the Settlement Agreement.
 BSC CDC 

Date: 8/16/2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN THE MATTER OF: THE ESTATE OF DOLLY)
 LEGARE COLEMAN)
)
 JOHN SINCLAIRE, III, in his capacity as Personal)
 Representative for the Estate of Dolly L. Coleman,)
)
 Petitioner,)
)
 vs.)
)
 ATHENA L. IRLAND, CHRISTINA D. CULP,)
 ISADORE-JOHN PSARAS, and BRANDY S. CULP,)
)
 Respondents.)
)

IN THE PROBATE COURT
 CASE NO.: 2019-ES-10-1368

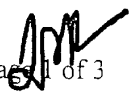
**ORDER TO APPROVE
 SETTLEMENT AGREEMENT
 REACHED AT MEDIATION**

THIS MATTER comes before this Court upon a Motion to Approve Settlement Agreement Reached at Mediation filed by Brandy S. Culp on January 25, 2021. Pursuant to the South Carolina Supreme Court's Order dated April 3, 2020, titled RE: Operation of the Trial Courts During the Coronavirus Emergency (as amended March 5, 2021) and the Memorandum issued by Chief Justice Donald W. Beatty dated September 14, 2020, this Court finds that this Motion can be ruled upon without the necessity of a hearing.

Based upon the Petition, consent of the parties, and the laws of the State of South Carolina, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Decedent, Dolly L. Coleman, died March 21, 2019, a resident of Charleston County, South Carolina.
2. Mediation was held on March 16, 2020 regarding the outstanding issues in the Estate of Dolly L. Coleman with David K. Haller, Esq. serving as Mediator.


 Page 1 of 3

3. Present at the Mediation were Brandy S. Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq., John Sinclair, III, in his capacity as the Personal Representative of the Estate, David L. Michel, Esq., as attorney for the Personal Representative, Athena L. Irland, Christina D. Culp, and Isadore John Psaras.
4. A Settlement was reached by and between Brandy S. Culp, Christina D. Culp, and Isadore John Psaras, wherein those parties executed a written Settlement Agreement. Likewise, John Sinclair, III, in his capacity as the Personal Representative of the Estate, does not take a position regarding the Settlement Agreement, but has agreed in writing to be bound by the Settlement Agreement and that he is bound by S.C. Code Ann. § 62-3-912.
5. Brandy S. Culp filed a Motion to Approve the Settlement reached at Mediation with this Court on January 25, 2021.
6. S.C. Code Ann. § 62-3-912 provides in pertinent part that “successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions.”
7. Furthermore, S.C. Code Ann. § 62-3-1102 states that “upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate, ... the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement.”
8. This Court finds that, although Athena L. Irland did not consent to the Agreement reached between Brandy S. Culp, Christina D. Culp, and Isadore John Psaras, the Settlement Agreement reached, and the transfer of rights between the parties to the Settlement

Agreement do not in any way impact Athena L. Irland's potential claims and/or her potential rights in the Estate.

- 9. This Court further finds that, having reviewed the Settlement Agreement, for good cause shown and upon the Motion to Approve Settlement Agreement Reached at Mediation filed by Brandy S. Culp, with the consent of Isadore John Psaras and Christina D. Culp, and the agreement by John Sinclair, III, in his capacity as the Personal Representative of the Estate, to be bound by the terms of the Settlement Agreement, the controversies here are settled in good faith, and the effect of the Settlement Agreement on the interest of the interested persons effected by the Settlement Agreement is just and reasonable.

Therefore, based upon the forging, it is hereby

ORDERED, ADJUDGED, AND DECREED that Motion to Approve Settlement Agreement Reached at Mediation is hereby **GRANTED**; it is further

ORDERED, ADJUDGED, AND DECREED that the Agreement is approved and made an Order of this Court; it is further

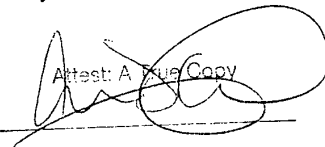
ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



 LENNA S. KIRCHNER
 Associate Judge of Probate
 Charleston County

12th
 This ___ day of March, 2021
 Charleston, South Carolina.



 Attest: A. [unclear]
 Clerk Probate
 Charleston County

EXHIBIT I
to
Motion to Dismiss

I N D E X

DESCRIPTION	PAGE
Motions	4
Certificate of Transcriptionist	14

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
------------	--------------------	-----------	-----------

(No exhibits offered.)

1 P R O C E E D I N G S

2 (Proceedings begin on the 26th day of January 2023,
3 at 9:59 a.m.)

4 THE COURT: All right. So first thing this
5 morning is we have a motion to reconsider, and the
6 parties asked for a hearing, and so we have granted
7 that request. So I'll be happy to hear from the
8 movant.

9 MR. SLOTCHIVER: Thank you, Your Honor.

10 THE COURT: All right.

11 MR. SLOTCHIVER: And we appreciate your
12 allowing us to come and present --

13 THE COURT: Sure.

14 MR. SLOTCHIVER: -- our position to you. This
15 is a motion to reconsider on a hearing -- and by
16 way of brief background, the history of the case is
17 that there was a trial to conclusion on allegations
18 of -- of undue influence, lack of capacity, breach
19 of fiduciary duty, confidential relationship
20 violations. And that was heard by Judge Kirchner
21 in the probate court, tried to conclusion, and she
22 found that a will that had been destroyed was done
23 under improper reasons; and therefore, found that
24 that will was intact and was going to probate that
25 will. After her decision, the appellate filed a

1 notice of intent to appeal.

2 And what we're here today is to assert our --
3 the basis, if nothing else, then to preserve our
4 position for appeal, hopefully to have you rule
5 with us. But regardless, we wanted to put it on
6 the record. And we view the facts in this case to
7 be based on law as opposed to judicial discretion.
8 But I'll go through it briefly. There's three
9 categories that I wanted to address. The first one
10 is the appellate statutory failures, the second is
11 we believe to be judicial errors and the third is a
12 jurisdictional argument.

13 As Your Honor is aware, the probate -- an
14 appeal from the probate court is similar to an
15 appeal from the circuit court. In fact, I've got a
16 document I'd be happy to hand up at the end going
17 through the rules on the probate court. And with
18 the appeal, the first thing you have to do is you
19 have to give a notice of appeal. We would assert
20 that in this particular case, that is the only
21 thing the appellant has done correctly.

22 After giving a notice of appeal, you have to
23 then serve it on the parties. And in this case, we
24 believe that she failed to properly serve the
25 notice of appeal on all of the parties as required

1 by the code 62-1-308(a). Not only did she not --
2 well, in this case, she did not serve Isadore John
3 Psaras or Christina Culp with the notice of the
4 intent to appeal. They are both parties to this
5 case.

6 Both Mr. Culp and Mr. Psaras are specifically
7 referenced as parties in the underlying probate
8 court record. Furthermore, even her own notice of
9 intent to appeal drafted by her identified them as
10 respondents. Nevertheless, she failed to served
11 them with the notice of intent to appeal within the
12 statutory required time. And even up until today,
13 she still has not served them with notice of the
14 intent to appeal.

15 In addition to that, Your Honor, she failed to
16 file and serve a statement of issues. The next
17 thing after filing the notice of intent, you must
18 file a statement of issues. And that is required
19 on the appeal pursuant to
20 62-1-3089(b).

21 She failed to file or serve a designation of
22 matter to be included on the record on appeal on
23 any party as required by South Carolina Code
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25 She failed to file and serve a copy of her

1 brief on any party as required by South Carolina
2 Code 62-1-308(e). She has never even drafted a
3 brief as required by the rules. And normally after
4 she drafts her brief, we would draft our brief, and
5 then we'd have the hearing.

6 She failed to file and serve the record on
7 appeal on any party as required by South Carolina
8 Code 62-1-308(f). And this Court having not
9 received any of the aforementioned required filings
10 did not and could not conduct a hearing on the
11 merits of the case as required by South Carolina
12 Code 62-1-308(f), because all of those things
13 needed to be done in order to conduct a hearing.

14 The Court at the last time we addressed
15 Your Honor on this matter did have a hearing on our
16 motion to dismiss the appeal, but not on the merits
17 of the appeal. And in that case, none of these
18 matters were before the Court properly at that time
19 other than our motion. We believe that the
20 judicial errors that we would point out and ask you
21 to reconsider are, No. 1, the Court in its ruling
22 did not make a single finding of fact. The Court
23 did not set forth a conclusion of law. The Court
24 did not apply the law as required to do so by South
25 Carolina Code 62-1-308(c) -- or excuse me, (i), and

1 the Court should have dismissed the appeal on
2 jurisdictional grounds and because of the
3 appellant's complete failure to pursue and perfect
4 an appeal.

5 The Court did not certify its decision to the
6 probate court as required by the South Carolina
7 Code Section 62-1-308(j). And the Court remanded
8 this case to the probate court without any
9 instructions whatsoever for the probate court to
10 know what the base of -- or what they were supposed
11 to do differently.

12 The third element, Your Honor, and I
13 appreciate your patience, is on a jurisdictional
14 point. We believe the Court erred in exercising
15 jurisdiction over this appeal where the appellant
16 failed to serve a notice of appeal on all of the
17 required parties as required under 62-1-308(a).

18 Appellant's failure to serve on all the
19 required parties within the statutorily required
20 period of time is fatal to her appeal. And I refer
21 the Court, there's a -- I'll quote here,
22 Your Honor. The requirement of service of the
23 notice of appeal is jurisdictional, i.e., if a
24 party misses a deadline, the appellant court lacks
25 jurisdiction to consider the appeal and has no

1 authority or discretion to rescue the delinquent
2 party by extending or ignoring the deadline for the
3 service.

4 And this case that I'm referring -- that I'm
5 referencing is *USAA Property and Casualty Insurance*
6 *Company versus Clegg*, which is 661 S.E. 3rd 791,
7 quoting from *Elam versus South Carolina Department*
8 *of Transportation*, which was 351 S.C. 9.

9 Your Honor, based on these errors that we
10 contend, we would ask that you would reconsider
11 your ruling that you would grant our motion to
12 dismiss the appeal based on the procedural defects
13 that have taken place. And thank you very much for
14 your time.

15 THE COURT: All right. Yes, ma'am.

16 MS. IRLAND: Thank you, Your Honor. The
17 granting of the appeal by this Court should stand.
18 In the opposing counsel's motion to dismiss the
19 appeal on the basis of his failure to notify the
20 party, Johnny Psaras and Christina Culp, I -- I
21 proved to this Court that through their mediation
22 and the order by Judge Kirchner that they were no
23 longer legal parties to this action.

24 Second, in my notice of appeal, the findings
25 were specifically listed with a copy of the order

1 from Judge Kirchner of April 7, 2022. The notices
2 appeal were given to each party in this action in
3 the correct time frame. Judge Kirchner's order
4 July 13, 2022; my notice of appeal filed
5 July 22, 2022, within the 10-day time frame under
6 Section 62-1-308(a).

7 And then under 62-1-308(b) within the 45 days
8 after the receipt of the written notice of the
9 order from the probate -- the decree from the
10 probate court, which was July 22, 2022, I filed
11 with the Clerk of Court Circuit Court, a statement
12 of issues on September 2. September 1, the Court
13 was closed due to Labor Day. Opposing Sanchez and
14 Daniel Steven -- and I cannot pronounce his last
15 name correctly. Slotchiver; is that right? Okay
16 -- for Brandi Culp were given notification and
17 proper paperwork.

18 Lastly, this is their motion to amend, alter
19 your decision with facts not in evidence from the
20 hearing. They should not be considered or heard.
21 It appears to be a fishing expedition on their part
22 with the rules now. Because their first -- in
23 their motion to dismiss was specifically Johnny
24 Psaras and Christina Culp, and these were not in
25 evidence.

1 THE COURT: All right. Anything further?

2 MS. IRLAND: No, sir.

3 THE COURT: All right. Anything else?

4 MR. SLOTCHIVER: Yes, Your Honor. So just to
5 be clear, the record really speaks for itself. She
6 did not serve a statement of issues. There was no
7 proof of service as required by the statute. And
8 even the statement that she listed where she did go
9 through and reference paragraphs of the Court's
10 order, that was done in an untimely manner. It was
11 never served on any of the parties and it is titled
12 a notice to appeal.

13 So in every way that we can look at it, she's
14 failed to do what she was required to do. There
15 was not a hearing before the Court on the merits of
16 it. And these are jurisdictional issues and cannot
17 be corrected. We're not bringing in evidence that
18 was heard at the trial. We're arguing on the
19 legality of what's transpired since the trial and
20 the mechanism of which to do an appeal.

21 And Your Honor, it's not her first rodeo --

22 THE COURT: But you said she didn't file a
23 notice of intent to appeal.

24 MS. IRLAND: I did.

25 MR. SLOTCHIVER: I said she did -- she did

1 file a notice of intent to appeal.

2 THE COURT: You're just asserting that she
3 didn't serve everybody correctly.

4 MR. SLOTCHIVER: I'm asserting, No. 1, she
5 didn't serve everybody correctly. No. 2
6 that --

7 THE COURT: She didn't serve the two people
8 that are no longer in the case. They settled out.

9 MR. SLOTCHIVER: They are in the case.

10 MS. IRLAND: No, sir.

11 THE COURT: How?

12 MR. SLOTCHIVER: Because --

13 THE COURT: Ma'am, I --

14 MS. IRLAND: I'm sorry.

15 MR. SLOTCHIVER: The agreement that was
16 entered between the other parties, Ms. Psaras and
17 -- between my client and the other parties, they
18 haven't resolved the issues. They resolved it
19 amongst themselves. They're all parties. They're
20 all litigants to the case.

21 What the agreement was was essentially an
22 agreement as to what would happen if they won and
23 what would happen if we won. They're all
24 litigants. When she noticed her appeal, she
25 referenced them as litigants in the case. The

1 Court's order referenced them as litigants in the
2 case. At no time were they removed as parties to
3 this case. In every single pleading, every
4 document including her own, they're listed as
5 parties to the case.

6 THE COURT: Right.

7 MR. SLOTCHIVER: Despite that, she did not
8 serve them with notice as she's required to do.

9 THE COURT: All right. Anything further?

10 MR. SLOTCHIVER: No, sir.

11 MS. IRLAND: No, sir.

12 THE COURT: All right. You'll have my
13 decision by the end of the day, as usual.

14 MR. SLOTCHIVER: Thank you, Judge.

15 MS. IRLAND: Thank you, Your Honor.

16 (Proceedings conclude at 10:10 a.m.)

17

18

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23

24

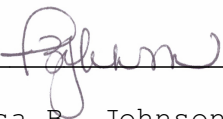
25

CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: May 5, 2023



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

EXHIBIT J
to
Motion to Dismiss

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1003304

Athena L Irland et al
PLAINTIFF(S)

Isadore John Psaras et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Appellant's appeal from Probate Court and Respondent's Motion to Dismiss the Appeal on October 27, 2022. The Court reviewed the record on appeal and considered arguments made by both parties. Respondent's Motion to Dismiss is DENIED and Appellant's appeal is GRANTED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/15/2022 .

Christina D Culp for Christina D Culp
Christina D Culp for Christina D Culp
Athena L Irland for Athena L Irland
Isadore John Psaras for Isadore John Psaras
Isadore John Psaras for Isadore John Psaras
Athena L Irland for Athena L Irland

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-11-15 11:24:11 page 3 of 3

ELECTRONICALLY FILED - 2022 Nov 15 3:15 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003304

EXHIBIT K
to
Motion to Dismiss

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Athena Irland)
)
Pro Se Plaintiff/Appellant,)
)
v.)
)
Isadore John Psaras, Christina D. Culp,)
Brandy S. Culp,)
)
Defendants/Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-3304

**RESPONDENT BRANDY CULP'S
RULE 59(e) MOTION TO ALTER
OR AMEND ORDER AND
RULE 221(a) PETITION FOR
REHEARING**

TO: The Honorable Bentley D. Price, Circuit Court Judge:

Pursuant to Rule 59(e), SCRCP, and Rule 221(a), SCACR, Respondent Brandy S. Culp, through her undesignated counsel, hereby respectfully submits this Motion to Alter or Amend Order and Petition for Rehearing as to the Form 4 Order entered by this Court on November 15, 2022, denying Respondent's Motion to Dismiss, Granting the Appeal, and Remanding the case back to the Probate Court. A copy of the Form 4 Order is attached hereto as Exhibit A. Respondent respectfully submits that the following points have been overlooked or misapprehended by the Court:

1. The Court erred in granting an appeal where the Appellant failed to follow *any* of the statutorily-required steps to pursue and/or perfect an appeal, including, but not limited to, A) failing to properly serve the Notice of Appeal on all requisite parties as required by S.C. Code § 62-1-308(a); B) failing to file and serve a Statement of Issues on Appeal on *any* party as required by S.C. Code § 62-1-308(b); C) failing to file and serve a Designation of Matter to be included on the Record on Appeal on *any* party as required by S.C. Code § 62-1-308(c) and (d); D) failing to

file and serve a copy of her Brief on *any* party as required by S.C. Code § 62-1-308(e); E) failing to file and serve the Record on Appeal on *any* party as required by S.C. Code § 62-1-308(f); and F) where the Court, having not received any of the aforementioned filings, did not even conduct a hearing on the merits of the appeal as required by S.C. Code § 62-1-308(i).¹

2. The Court erred in granting an appeal where the Court did not A) make a single finding of fact; B) did not set forth a single conclusion of law; C) did not apply the law as it is required to do so by S.C. Code § 62-1-308(i); D) did not certify its decision to the Probate Court as required by S.C. Code § S.C. Code § 62-1-308(j); and E) remanded the case to the Probate Court without instruction.

3. The Court erred in exercising jurisdiction over this appeal, where Appellant failed to serve a Notice of Appeal on all requisite parties as required by S.C. Code § 62-1-308(a). Appellant's failure to serve all requisite parties within the statutorily required period of time is fatal to her appeal. "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses a deadline, **the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice.**" *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.3d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep't of Transp.*, 351 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). (Emphasis added).

Conclusion

Because Appellant did not perfect nor pursue her appeal (as she is statutorily required to do), this Court must deny and dismiss the appeal.

¹ The Court held a hearing on Respondent's Motion to Dismiss Appeal, but not on the merits of the appeal itself (nor could it, given Respondent's complete failure to pursue and/or perfect the appeal. Appellant did not even brief the appeal).

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire
SC Bar #: 101906
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, South Carolina 29401
(843) 814-8181 (Phone)
(843) 284-3953 (Fax)
jesse@jessesanchezlaw.com

And

SLOTCHIVER & SLOTCHIVER, LLP
Daniel S. Slotchiver, Esquire
Stephen M. Slotchiver, Esquire
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
(843) 577-6531 (Phone)
(843) 577-0261 (Fax)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT
BRANDY S. CULP

Charleston, South Carolina
November 21, 2022

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1003304

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PLAINTIFF(S)

Isadore John Psaras et al
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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Appellant's appeal from Probate Court and Respondent's Motion to Dismiss the Appeal on October 27, 2022. The Court reviewed the record on appeal and considered arguments made by both parties. Respondent's Motion to Dismiss is DENIED and Appellant's appeal is GRANTED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

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NAMES OF TRADITIONAL FILERS SERVED BY MAIL

FILED ELECTRONICALLY FILED -- 202222 Nov 21 5:12:22 PM -- CHARLESTON -- COMMON PLEAS -- CASE# 2022CP1003304

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ELECTRONICALLY FILED -- 2022 Nov 21 12:22 PM -- CLERK'S OFFICE -- COMMERCIAL -- CASE#2022CP1003304



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-11-15 11:24:11 page 3 of 3

ELECTRONICALLY FILED -- 2022 Nov 15 11:28 AM -- CHARLESTON -- COMMON PLEAS -- CASE#2022CP1003304

EXHIBIT L
to
Motion to Dismiss

I N D E X

DESCRIPTION	PAGE
Motions	4
Certificate of Transcriptionist	14

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(No exhibits offered.)

1 P R O C E E D I N G S

2 (Proceedings begin on the 26th day of January 2023,
3 at 9:59 a.m.)

4 THE COURT: All right. So first thing this
5 morning is we have a motion to reconsider, and the
6 parties asked for a hearing, and so we have granted
7 that request. So I'll be happy to hear from the
8 movant.

9 MR. SLOTCHIVER: Thank you, Your Honor.

10 THE COURT: All right.

11 MR. SLOTCHIVER: And we appreciate your
12 allowing us to come and present --

13 THE COURT: Sure.

14 MR. SLOTCHIVER: -- our position to you. This
15 is a motion to reconsider on a hearing -- and by
16 way of brief background, the history of the case is
17 that there was a trial to conclusion on allegations
18 of -- of undue influence, lack of capacity, breach
19 of fiduciary duty, confidential relationship
20 violations. And that was heard by Judge Kirchner
21 in the probate court, tried to conclusion, and she
22 found that a will that had been destroyed was done
23 under improper reasons; and therefore, found that
24 that will was intact and was going to probate that
25 will. After her decision, the appellate filed a

1 notice of intent to appeal.

2 And what we're here today is to assert our --
3 the basis, if nothing else, then to preserve our
4 position for appeal, hopefully to have you rule
5 with us. But regardless, we wanted to put it on
6 the record. And we view the facts in this case to
7 be based on law as opposed to judicial discretion.
8 But I'll go through it briefly. There's three
9 categories that I wanted to address. The first one
10 is the appellate statutory failures, the second is
11 we believe to be judicial errors and the third is a
12 jurisdictional argument.

13 As Your Honor is aware, the probate -- an
14 appeal from the probate court is similar to an
15 appeal from the circuit court. In fact, I've got a
16 document I'd be happy to hand up at the end going
17 through the rules on the probate court. And with
18 the appeal, the first thing you have to do is you
19 have to give a notice of appeal. We would assert
20 that in this particular case, that is the only
21 thing the appellant has done correctly.

22 After giving a notice of appeal, you have to
23 then serve it on the parties. And in this case, we
24 believe that she failed to properly serve the
25 notice of appeal on all of the parties as required

1 by the code 62-1-308(a). Not only did she not --
2 well, in this case, she did not serve Isadore John
3 Psaras or Christina Culp with the notice of the
4 intent to appeal. They are both parties to this
5 case.

6 Both Mr. Culp and Mr. Psaras are specifically
7 referenced as parties in the underlying probate
8 court record. Furthermore, even her own notice of
9 intent to appeal drafted by her identified them as
10 respondents. Nevertheless, she failed to served
11 them with the notice of intent to appeal within the
12 statutory required time. And even up until today,
13 she still has not served them with notice of the
14 intent to appeal.

15 In addition to that, Your Honor, she failed to
16 file and serve a statement of issues. The next
17 thing after filing the notice of intent, you must
18 file a statement of issues. And that is required
19 on the appeal pursuant to
20 62-1-3089(b).

21 She failed to file or serve a designation of
22 matter to be included on the record on appeal on
23 any party as required by South Carolina Code
24 62-1-308(c) and (d).

25 She failed to file and serve a copy of her

1 brief on any party as required by South Carolina
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3 brief as required by the rules. And normally after
4 she drafts her brief, we would draft our brief, and
5 then we'd have the hearing.

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7 appeal on any party as required by South Carolina
8 Code 62-1-308(f). And this Court having not
9 received any of the aforementioned required filings
10 did not and could not conduct a hearing on the
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13 needed to be done in order to conduct a hearing.

14 The Court at the last time we addressed
15 Your Honor on this matter did have a hearing on our
16 motion to dismiss the appeal, but not on the merits
17 of the appeal. And in that case, none of these
18 matters were before the Court properly at that time
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20 judicial errors that we would point out and ask you
21 to reconsider are, No. 1, the Court in its ruling
22 did not make a single finding of fact. The Court
23 did not set forth a conclusion of law. The Court
24 did not apply the law as required to do so by South
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1 the Court should have dismissed the appeal on
2 jurisdictional grounds and because of the
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4 an appeal.

5 The Court did not certify its decision to the
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7 Code Section 62-1-308(j). And the Court remanded
8 this case to the probate court without any
9 instructions whatsoever for the probate court to
10 know what the base of -- or what they were supposed
11 to do differently.

12 The third element, Your Honor, and I
13 appreciate your patience, is on a jurisdictional
14 point. We believe the Court erred in exercising
15 jurisdiction over this appeal where the appellant
16 failed to serve a notice of appeal on all of the
17 required parties as required under 62-1-308(a).

18 Appellant's failure to serve on all the
19 required parties within the statutorily required
20 period of time is fatal to her appeal. And I refer
21 the Court, there's a -- I'll quote here,
22 Your Honor. The requirement of service of the
23 notice of appeal is jurisdictional, i.e., if a
24 party misses a deadline, the appellant court lacks
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4 And this case that I'm referring -- that I'm
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9 Your Honor, based on these errors that we
10 contend, we would ask that you would reconsider
11 your ruling that you would grant our motion to
12 dismiss the appeal based on the procedural defects
13 that have taken place. And thank you very much for
14 your time.

15 THE COURT: All right. Yes, ma'am.

16 MS. IRLAND: Thank you, Your Honor. The
17 granting of the appeal by this Court should stand.
18 In the opposing counsel's motion to dismiss the
19 appeal on the basis of his failure to notify the
20 party, Johnny Psaras and Christina Culp, I -- I
21 proved to this Court that through their mediation
22 and the order by Judge Kirchner that they were no
23 longer legal parties to this action.

24 Second, in my notice of appeal, the findings
25 were specifically listed with a copy of the order

1 from Judge Kirchner of April 7, 2022. The notices
2 appeal were given to each party in this action in
3 the correct time frame. Judge Kirchner's order
4 July 13, 2022; my notice of appeal filed
5 July 22, 2022, within the 10-day time frame under
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7 And then under 62-1-308(b) within the 45 days
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21 It appears to be a fishing expedition on their part
22 with the rules now. Because their first -- in
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25 evidence.

1 THE COURT: All right. Anything further?

2 MS. IRLAND: No, sir.

3 THE COURT: All right. Anything else?

4 MR. SLOTCHIVER: Yes, Your Honor. So just to
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20 the mechanism of which to do an appeal.

21 And Your Honor, it's not her first rodeo --

22 THE COURT: But you said she didn't file a
23 notice of intent to appeal.

24 MS. IRLAND: I did.

25 MR. SLOTCHIVER: I said she did -- she did

1 file a notice of intent to appeal.

2 THE COURT: You're just asserting that she
3 didn't serve everybody correctly.

4 MR. SLOTCHIVER: I'm asserting, No. 1, she
5 didn't serve everybody correctly. No. 2
6 that --

7 THE COURT: She didn't serve the two people
8 that are no longer in the case. They settled out.

9 MR. SLOTCHIVER: They are in the case.

10 MS. IRLAND: No, sir.

11 THE COURT: How?

12 MR. SLOTCHIVER: Because --

13 THE COURT: Ma'am, I --

14 MS. IRLAND: I'm sorry.

15 MR. SLOTCHIVER: The agreement that was
16 entered between the other parties, Ms. Psaras and
17 -- between my client and the other parties, they
18 haven't resolved the issues. They resolved it
19 amongst themselves. They're all parties. They're
20 all litigants to the case.

21 What the agreement was was essentially an
22 agreement as to what would happen if they won and
23 what would happen if we won. They're all
24 litigants. When she noticed her appeal, she
25 referenced them as litigants in the case. The

1 Court's order referenced them as litigants in the
2 case. At no time were they removed as parties to
3 this case. In every single pleading, every
4 document including her own, they're listed as
5 parties to the case.

6 THE COURT: Right.

7 MR. SLOTCHIVER: Despite that, she did not
8 serve them with notice as she's required to do.

9 THE COURT: All right. Anything further?

10 MR. SLOTCHIVER: No, sir.

11 MS. IRLAND: No, sir.

12 THE COURT: All right. You'll have my
13 decision by the end of the day, as usual.

14 MR. SLOTCHIVER: Thank you, Judge.

15 MS. IRLAND: Thank you, Your Honor.

16 (Proceedings conclude at 10:10 a.m.)

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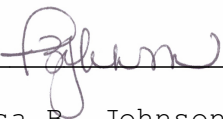
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CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: May 5, 2023



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

EXHIBIT M
to
Motion to Dismiss

THE STATE OF SOUTH CAROLINA
In The Supreme Court
In its Original Jurisdiction

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Case No. 2022-CP-10-3304
Appellate Case No. 2023-000758

IN THE MATTER OF: THE ESTATE OF
DOLLY LEGARE COLEMAN

Athena Irland,

Pro Se Plaintiff,

v.

Isadore John Psaras, Christina D. Culp,
Brandy S. Culp,

Defendants,

Of whom Brandy S. Culp is the Petitioner and Athena Irland is the Respondent,

And Bentley Price in his official capacity as Charleston County Circuit Court Judge
In re: Civil Action No. 2022-CP-10-3304, is also a Respondent.

PETITION FOR WRIT OF MANDAMUS

Pursuant to Rule 240 and Rule 245, SCACR, Petitioner Brandy S. Culp, through her undersigned counsel, hereby respectfully petitions this Honorable Court for a Writ of Mandamus requiring the Honorable Bentley D. Price, Circuit Court Judge, to rule on Appellant's Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing, filed November 21, 2022, and heard on January 26, 2023. It has been nearly eight (8) months since the motion was filed, and nearly six (6) months since it was heard. As set forth below, both Petitioner's counsel and the

South Carolina Court of Appeals have corresponded with Judge Price's office about the pendency of the order, which has yet to be issued.

PROCEDURAL HISTORY

This matter originated as an appeal from Charleston County Probate Court to the Circuit Court. The *pro se* appellant to that appeal, Ms. Athena L. Irland, filed a Notice of Intent to Appeal with the Circuit Court on July 22, 2022. (Notice of Appeal, Exhibit A). Ms. Irland, however, failed to serve the Notice on all requisite parties within the ten (10) day statutorily-required period of time set forth under S.C. Code § 62-1-308(a). Specifically, she did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp, whom are named respondents on the Notice of Appeal and parties to the underlying probate court proceedings. (Proof of Service, Exhibit B; Affidavit of Christina Culp, Exhibit C). Ms. Irland also failed to perfect her appeal. Specifically, Ms. Irland failed to file and serve a Statement of Issues on Appeal as required by S.C. Code § 62-1-308(b); she failed to file and serve a Designation of Matter to be Included in the Record on Appeal as required by S.C. Code § 62-1-308(c) and (d); she failed to file and serve a copy of an appellate Brief as required by S.C. Code § 62-1-308(e); and she failed to file and serve the Record on Appeal as required by S.C. Code § 62-1-308(f).

On September 26, 2022, Brandy S. Culp filed a Motion to Dismiss Ms. Irland's Appeal. (Motion, Exhibit D). On October 27, 2022, a hearing on Ms. Culp's Motion to Dismiss was heard before the Honorable Bentley D. Price, wherein Ms. Culp's counsel argued that the appeal should be dismissed because: (1) Ms. Irland failed to serve all requisite parties within the statutorily-required period of time, thereby depriving the Circuit Court of jurisdiction to review the appeal, (2) Ms. Irland failed to perfect her appeal, having failed to take any of the statutorily-required steps set forth under S.C. Code § 62-1-308, and (3) Ms. Irland is precluded under the doctrine of *res*

judicata from appealing an issue that has previously been adjudicated and dismissed on appeal.¹ (H'rng Transcript, Exhibit E).

At the conclusion of the hearing on Ms. Culp's Motion to Dismiss, Judge Price informed the parties that he would take the matter under advisement and issue a ruling by the end of the day. (Id., 22:6-9). Two weeks later, on November 15, 2022, the Court issued a Form 4 Order, denying the Motion to Dismiss, and taking the additional steps of granting Ms. Irland's appeal and remanding the matter back to the Probate Court. (Form 4 Order, Exhibit F). To be clear, the Circuit Court had never held a hearing on the merits of the appeal, nor could it have held a hearing on the merits given Ms. Irland's complete failure to perfect the appeal. She did not even file an appellate brief setting forth her arguments.

Without making a single finding of fact, or setting forth a single conclusion of law, the Form 4 Order summarily stated, "This matter came before the Court on Appellant's [sic] appeal from Probate Court and Respondent's Motion to Dismiss the Appeal on October 27, 2022. The Court reviewed the record on appeal and considered arguments made by both parties. Respondent's Motion to Dismiss is DENIED and Appellant's [sic] appeal is GRANTED." (Form 4 Order, Exhibit E).

On November 21, 2022, Ms. Culp timely filed a Rule 59(e) Motion to Alter or Amend

¹ As set forth in greater detail below, the Decedent in this matter, Ms. Dolly Legare, was previously adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210. During the course of that guardianship action, Ms. Irland was found to have exercised undue influence over Decedent on October 28, 2014 with regard to the execution of two deeds of conveyance. As a result, the deeds of conveyance were rescinded by the Probate Court. Ms. Irland then attempted to appeal the Order. However, on August 22, 2017, the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds. Ms. Irland now seeks to appeal a subsequent Order by the Probate Court finding that Ms. Irland had, again, exercised undue influence over Decedent on October 28, 2014, the same date as before, by also causing Decedent to tear up her will on that date. It was unknown by the parties during the initial guardianship proceeding that Ms. Irland had engaged in these acts.

Order and Rule 221(a) Petition for Rehearing with the Circuit Court. (Motion, Exhibit G). Ms. Culp moved for reconsideration on the grounds that (1) The Court had erred in granting an appeal where Ms. Irland had failed to follow any of the statutorily-required steps to pursue and/or perfect an appeal, discussed *supra*, and where the Court did not even conduct a hearing on the merits of the appeal as required by S.C. Code § 62-1-308(i); (2) The Court had erred in granting an appeal where it did not make a single finding of fact, did not set forth a single conclusion of law, did not apply the law as it is required to do so by S.C. Code § 62-1-308(i), did not certify its decision to the Probate Court as required by S.C. Code § 62-1-308(j), and remanded the case to the Probate Court without instruction; and (3) The Court erred in exercising jurisdiction over this appeal, where Appellant failed to serve a Notice of Appeal on all requisite parties as required by S.C. Code § 62-1-308(a).

On January 26, 2023, a hearing on Ms. Culp's Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing was held before Judge Price. (Hr'ng Transcript, Exhibit H). At the conclusion of the hearing, which lasted only eleven minutes, Judge Price, again, advised the parties that they would have his decision by the end of the day. (Id., p. 13:12-13).

On February 14, 2023, having not received a ruling from the court, counsel for Ms. Culp forwarded Judge Price an Order he had come across from a similar case wherein the Circuit Court had dismissed an appeal from Probate Court because of the appellant's failure to perfect the appeal pursuant to the probate statute. (Email with Order, Exhibit I).

On April 6, 2023, having still not received a ruling, counsel for Ms. Culp forwarded Judge Price yet another order from a more recent case wherein the Circuit Court had dismissed an Appeal from Probate Court for lack of jurisdiction and the appellant's failure to perfect her appeal pursuant to the probate statute. (Second Email with Order, Exhibit J).

On April 7, 2023, Counsel for Ms. Culp received notice that an order had been e-filed on the subject Motion. However, instead of an actual order, the filing consisted of a copy of Ms. Culp's Motion to Alter or Amend Order and Petition for Rehearing, with an electronic signature page attached to it, signed by Judge Price, simply stating "It is So Ordered." (Filing, Exhibit K). The signature page notably did not state whether the Motion to Alter or Amend and Petition for Rehearing had been granted or denied. Despite the lack of a clear decision, the Charleston County Clerk of Court's Office marked this "Order" as "denying" Ms. Culp's Motion in the public index. (CourtPlus Entry, Exhibit L).

Confused by the inconclusive nature of this filing, Counsel for Ms. Culp immediately emailed Judge Price's office, requesting clarification. (Email, Exhibit M). Three days later, on April 10, 2023, Counsel received a response from Judge Price's law clerk, stating, "Apologies for any confusion – this was a mistake. The Court will e-file a separate Order *when necessary*." [Emphasis added] (Email, Exhibit N).

By April 18, 2023, the purported Order had still not been withdrawn or retracted. The Clerk of Court's designation of the Order as being "denied" was still listed in the public index. As a result, counsel for Ms. Culp, again wrote the Court, requesting clarification of the Court's intent with regard to the Order. (Letter, Exhibit O). Judge Price's law clerk responded, indicating that the filing was a mistake and that "the Court has not made a decision on your motion at this time and as previously indicated, will prepare an order *when necessary*." [Emphasis added] (Email, Exhibit P).

Mindful of preserving his client's right to an appeal, Ms. Culp's counsel voiced his concern that the public index still showed the Motion had been denied and asked the Court if it could retract the filing, so as to avoid an unnecessary appeal. (Email, Exhibit Q). Judge Price's law clerk then

emailed the Clerk of Court's office, inquiring as to the procedure for retracting the filing, stating, "Mr. Slotchiver has brought to my attention that it was marked as denied by the clerk's office. Can this be undone? If I need to do a Form 4 Order for clarification, I can, but an Order was never signed. Please let me know the best resolution." (Email, [Exhibit R](#)).

A week later, the filing showing denial of Ms. Culp's Motion had yet to be withdrawn by the Clerk's office or removed from the public index. Accordingly, Counsel for Ms. Culp wrote the Clerk of Court's office on April 25, 2023, inquiring if the denial had been withdrawn. (Email, [Exhibit S](#)). In response, Judge Price's law clerk informed the parties that, "The Court has not yet completed the documentation needed by the clerk's office yet [sic] for them to make the change. It will be done ASAP." (Email, [Exhibit T](#)).

A week later, on May 2, 2023, the filing had still not been withdrawn. Accordingly, Counsel for Ms. Culp, again, wrote Judge Price's office voicing his concern as to the approaching deadline to file a Notice of Appeal, stating, "I apologize for reaching out again, but I am concerned about the fact that the Clerk of Court still lists the Motion to Reconsider as being Denied. While I certainly am in receipt of your communication stating that the Order was filed in error, it alone does not change the timely requirement to file a Notice of Intent to Appeal within 30 days of receipt of the Order. Please know that the last thing we want to do is to file a Notice of Intent to Appeal, but if we do not file the same by Monday of next week we will have failed to preserve our clients rights. Under the circumstances, anything the Court can do to assist in a timely manner would be greatly appreciated." (Email, [Exhibit U](#)).

A week later, the filing had not been withdrawn. Accordingly, out of abundance of caution, Ms. Culp's counsel filed a Notice of Appeal with the South Carolina Court of Appeals on May 8, 2023, explaining the circumstances surrounding the filing. (Notice of Appeal, [Exhibit V](#)). On May

10, 2023, two days *after* the deadline for filing the Notice of Appeal, Judge Price issued a Form 4 Order, retracting the erroneous filing, and stating, “A formal Order is forthcoming responding to the Motion originally filed November 21, 2022.” (Form 4, Exhibit W).

On May 11, 2023, the South Carolina Court of Appeals issued a letter, copying Judge Price, stating, “A review of the Charleston County Public Index indicates there is a pending motion to alter or amend in this appeal. Accordingly, this appeal will be held in abeyance pending the resolution of the motion. You must promptly notify the Court upon receipt of a ruling on the motion to alter or amend so that we may set the appropriate timelines.” (Letter, Exhibit X).

On May 30, 2022, Judge Price’s law clerk sent Ms. Culp’s counsel an email stating that they were aware that an appeal had been filed, and inquiring as to what Order Ms. Culp was appealing. (Email, Exhibit Y). To be clear, the Notice of Appeal was filed with both the Circuit Court and the Court of Appeals, identified the Orders being appealed, and attached the orders as required by the Rules. (Notice of Appeal, Exhibit V). In response, Ms. Culp’s counsel noted that it had previously emailed the Court on May 2, 2022 about the looming deadline to file the Notice of Appeal, and that having not received a response, he filed the Notice of Appeal out of an abundance of caution and to ensure preservation of Ms. Culp’s right to an appeal. (Email, Exhibit Z).

It has now been nearly eight (8) months since the motion was filed, and nearly six (6) months since it was heard. Still, no Order has been entered on Ms. Culp’s Motion to Alter or Amend Order. Accordingly, it is with great reluctance that the undersigned files the instant Petition for a Writ of Mandamus requiring Judge Price to issue an Order on the Outstanding Motion. Given Ms. Irland’s failure to perfect her appeal as required by the probate statute, Ms. Culp also respectfully requests that this Court require the Circuit Court to dismiss the appeal in its

entirety. In the alternative, Ms. Culp respectfully requests that this Court issue a Writ of Mandamus, requiring the Court to rule on the outstanding Motion.

FACTUAL BACKGROUND

As noted, *supra*, this matter originated as an appeal from Charleston County Probate Court to the Circuit Court. The *pro se* appellant to that appeal, Ms. Athena L. Irland, is a daughter of the late Dolly Legare Coleman (hereinafter, “Decedent”) and has on two separate occasions been found by the Charleston County Probate Court to have exercised undue influence over Decedent while Decedent was incapacitated. (Orders, attached as Exhibits AA and BB). Respondent Isadore John Psaras is the son of Decedent; Respondent Christina D. Culp is a daughter of Decedent; and Respondent Brandy S. Culp is the granddaughter of Decedent. (Order, Exhibit BB, pp. 1 and 4). Respondents are all necessary parties to Ms. Irland’s appeal, each being a party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Order, (Id. pp. 1 and 4). All Respondents are specifically identified as Respondents in Ms. Irland’s Notice of Intent to Appeal. (Notice of Appeal, Exhibit A). In addition, none of the aforementioned Respondents are in Default.

Decedent died on March 21, 2019. Decedent was previously adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210. During the course of that case, Ms. Irland was found to have exercised undue influence over Decedent with regard to the execution of two deeds of conveyance. (Order, Exhibit AA). As a result, the Court rescinded the subject deeds by Order dated June 29, 2017, finding that Decedent lacked the requisite capacity on October 28, 2014 to execute the deeds of conveyance, and that Ms. Irland had exercised undue influence over Decedent on that date. (Id.). Ms. Irland attempted to appeal this Order, however, on August 22, 2017, the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds.

(COA Order, Exhibit CC). Specifically, the Court of Appeals found that Ms. Irland had failed to provide proof that the parties consented in writing or on the record to directly appeal the matter to the Court of Appeals. (Id.). As a result, it is the law of that case that Decedent was incapacitated on October 28, 2014 and that Ms. Irland exercised undue influence over her on that date.

The present case involves the alleged revocation of Decedent's 2009 Will at Ms. Irland's behest on October 28, 2014, the same date that Decedent was previously found to have lacked capacity and Ms. Irland was found to have exercised undue influence. As before, the Probate Court found, after holding another full hearing on the merits and hearing testimony from the parties and witnesses, that Decedent lacked capacity to revoke the 2009 Will and that Ms. Irland had exercised undue influence over Decedent. Specifically, the Court's July 13, 2022 Order states:

The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by [Appellant] Irland and that Decedent lacked capacity to execute deeds of conveyance on October 28, 2014, which has not been overturned or amended, would logically extend to the alleged revocation of the 2009 Will on that same date under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

(Order at Exhibit AA, p. 6, ¶ 26)

Ms. Irland, a pro se Appellant, sought to appeal the Court's order by filing a Notice of Intent to Appeal with this Court on July 22, 2022. However, Ms. Irland failed to serve Respondents Christina Culp and Isadore John Psaras with the Notice of Intent to Appeal. (Proof of Service, Exhibit B; Affidavit of Christina D. Culp, Exhibit C). As noted, *supra*, Respondents are all necessary parties to this appeal, each being a party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Order, Exhibit BB at pp. 1 and 4). In addition, Respondents were specifically identified as Respondents in Appellant's Notice of Intent to Appeal. (Notice of Appeal, Exhibit A).

Ms. Irland also failed to take the requisite steps to perfect her appeal: She failed to file and serve a Statement of Issues on Appeal as required by S.C. Code § 62-1-308(b); she failed to file and serve a Designation of Matter to be Included in the Record on Appeal as required by S.C. Code § 62-1-308(c) and (d); she failed to file and serve a copy of an appellate Brief as required by S.C. Code § 62-1-308(e); and she failed to file and serve the Record on Appeal as required by S.C. Code § 62-1-308(f).

LEGAL STANDARD

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. *Littlefield v. Williams*, 343 S.C. 212, 540 S.E.2d 81 (2000); *Willimon v. Greenville*, 243 S.C. 82, 132 S.E.2d 169 (1963). A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999). The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. *Littlefield*, supra. Mandamus may lie to compel a judicial officer to perform a ministerial duty. *State v. Barbee*, 280 S.C. 3328, 313 S.E.2d 297 (1984). The Supreme Court has the authority to direct a judge to rule on a pending motion because the act of ruling is ministerial in nature. *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101 (2002). “Where discretion of court can be legally exercised in only one way, mandamus will lie to compel court to so exercise it.” *Id.*, citing 5 C.J.S. Mandamus § 83 (1998).

To obtain a writ of mandamus requiring the performance of an act, the petitioner must demonstrate: (1) the respondent has a duty to perform the act; (2) the ministerial nature of the act (3) the petitioners' specific legal right necessitating the discharge of the duty; and (4) the petitioner lacks any other legal remedy. *Porter v. Jedziniak*, 34 S.C. 16, 512 S.E.2d 497 (1999).

ARGUMENT

A writ of Mandamus is necessary to ensure the timely administration of justice in the present case. The underlying Probate Court Order, finding (for a second time) that Decedent lacked capacity on October 28, 2014, and that Ms. Irland had exercised undue influence over Decedent on that date was entered exactly one year ago on July 12, 2022. (Order, Exhibit BB). Since that time, Ms. Irland has not taken any steps to perfect her appeal as required by S.C. Code § 62-1-308.

As set forth above, the Circuit Court erred in granting Ms. Irland's appeal where the Circuit Court (1) did not even conduct a hearing on the merits of the appeal as required by S.C. Code § 62-1-308(i); (2) did not make a single finding of fact, did not set forth a single conclusion of law, did not apply the law as it is required to do so by S.C. Code § 62-1-308(i), (3) did not certify its decision to the Probate Court as required by S.C. Code § 62-1-308(j), and (4) remanded the case to the Probate Court without instruction.

Ms. Culp timely filed her Motion to Alter or Amend and Petition for Rehearing with the Circuit Court on November 21, 2022. It has now been nearly eight (8) months since the motion was filed, and nearly six (6) months since it was heard. Still no Order has been issued in this matter. Petitioner respectfully requests that this Honorable Court issue a Writ of Mandamus commanding Judge Price to issue an Order on the Outstanding Motion. Given Ms. Irland's complete failure to perfect her appeal as required by the probate statute, Ms. Culp also respectfully requests that this Court require the Circuit Court to dismiss the appeal in its entirety. In the alternative, Ms. Culp respectfully requests that this Court issue a Writ of Mandamus, requiring the Court to rule on the outstanding Motion.

The requirements for a Writ of Mandamus are clearly met:

I. Judge Price, the Circuit Court judge assigned to this appeal from the Probate Court, has a duty to rule and issue an order on Ms. Culp’s Motion to Alter or Amend Order and Petition for Rehearing.

Rule 501, SCACR, Code of Judicial Conduct, Cannon 3, sets forth the relevant adjudicative responsibilities required of Judges in this State, which includes hearing and deciding matters and disposing of all judicial matters, promptly, efficiently and fairly:

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. [...]

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Rule 501, SCACR, Cannon 3 [Emphasis added]

The Commentary to Rule 501(B)(8) provides further guidance as to these adjudicative responsibilities, stating:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Here, as the Circuit Court judge assigned to an Appeal from the Probate Court, Judge Price has an adjudicative duty to rule on Petitioner's Motion and issue an Order. Accordingly, Petitioner satisfies the first requirement for obtaining a Writ of Mandamus.

II. The act of ruling and issuing an Order on Ms. Culp's Motion is ministerial in nature.

As set forth by this Court in *City of Rock Hill v. Thompson*, the South Carolina Supreme Court has authority to "direct a judge to rule on a pending motion because the act of ruling is ministerial in nature." *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101 (2002). In the instant case, Petitioner is seeking that this Honorable Court issue a Writ of Mandamus compelling the Circuit Court to perform an act that is ministerial in nature, namely to rule and issue an Order on Petitioner's outstanding motion. Accordingly, Petitioner satisfies the second enumerated requirement for obtaining a Writ of Mandamus.

III. Ms. Culp has a specific legal right necessitating the discharge of the duty.

Ms. Culp exercised her legal right to file a Rule 59(e) Motion to Alter or Amend and Rule 221(a) Petition for Rehearing. As a litigant and party to an Appeal from the Probate Court to the Circuit Court, Ms. Culp has a legal right to employ the procedural mechanisms afforded to her (and every other litigant in this State) under the South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules. Rule 1, SCRPC, specifically states, "these rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action." Additionally, because the Circuit Court sits in an appellate capacity in matters appealed from the Probate Court, Ms. Culp has a legal right to seek a Petition for Rehearing pursuant to Rule 221(a), SCACR. *See also* S.C. Code § 62-1-308, addressing the appellate jurisdiction of Circuit Courts in matters appealed from the Probate Court.

Without a ruling and corresponding Order from the Circuit Court, Ms. Culp lacks the ability to pursue her appeal, a legal right, which necessitates that the Circuit Court discharge of its duty. Accordingly, Petitioner satisfies the third enumerated requirement for obtaining a Writ of Mandamus.

IV. Petitioner lacks any other legal remedy for obtaining the relief sought—a ruling and order from Judge Price.

Ms. Culp has no other legal remedy other than obtaining a Writ of Mandamus to compel the Circuit Court to make a ruling on her Motion. As set forth above, she has already on numerous occasions corresponded with Judge Price’s office to check the status of the pending Order, only to be met with a general acknowledgement that “the Court will e-file a separate Order *when necessary.*” (Emails, Exhibits N and P). [Emphasis added]. Respectfully, it has been nearly eight (8) months since the motion was filed, and nearly six (6) months since it was heard. An Order is necessary to ensure the disposition of this matter. At the hearing on January 26, Judge Price said he would render a decision at the end of the day. (Exhibit H, p. 13:12-13).

Additionally, “This State has a long-standing rule that one judge of the same court cannot overrule another.” *Shirley's Iron Works, Inc. v. City of Union, S.C.*, Gilbert Grp. LLC, 403 S.C. 560, 743 S.E.2d 778 (2013), citing *Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). Accordingly, Petitioner is unable to seek a legal remedy from another Circuit Court judge, and cannot pursue an appeal with the South Carolina Court of Appeals—should it be necessary—without an Order from Judge Price on the outstanding Motion. Accordingly, Petitioner satisfies the fourth and final enumerated requirement for obtaining a Writ of Mandamus.

V. The Circuit Court should be compelled to grant Ms. Culp’s Motion and dismiss Ms. Irland’s appeal because the discretion of the Circuit Court, under the present circumstances, can be legally exercised in only one way.

Generally, “[i]ssuance of a *particular* decision by a judge is typically a matter of discretion and, therefore, not proper for mandamus.” *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101 (2002), citing 55 C.J.S. Mandamus § 83 (1998) [Emphasis added]. However, “[w]here discretion of court can be legally exercised in only one way, mandamus will lie to compel court to so exercise it.” *Id.*, again citing 5 C.J.S. Mandamus § 83 (1998).

Here the discretion of the Circuit Court can be legally exercised in only one way: dismissing Ms. Irland’s Appeal. The reason is made clear by the procedural posture of this case. Even if the Court were to assume, *arguendo*, that Ms. Irland’s properly served all requisite parties with the Notice of Appeal—which she did not—the Appeal would *still* have to be dismissed because Ms. Irland failed to perfect it. Specifically, Ms. Irland failed to file and serve a Statement of Issues on Appeal as required by S.C. Code § 62-1-308(b); she failed to file and serve a Designation of Matter to be Included in the Record on Appeal as required by S.C. Code § 62-1-308(c) and (d); she failed to file and serve a copy of an appellate Brief as required by S.C. Code § 62-1-308(e); and she failed to file and serve the Record on Appeal as required by S.C. Code § 62-1-308(f).

An appellant who fails to follow the procedural requirements strips the court of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games, Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000); see also Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules). Here, Ms. Irland did not comply with any of the requirements set forth under S.C. Code Ann. § 62-1-308. Accordingly, the discretion of the Circuit Court can only be exercised in one way: Dismissing Ms. Irland’s Appeal.

VI. In the alternative, the Circuit Court should be compelled to make a ruling and issue

an order on Ms. Culp's outstanding Motion.

In the alternative, Ms. Culp respectfully requests that this Court issue a Writ of Mandamus, requiring the Circuit Court to rule on the outstanding Motion. As set forth above, Ms. Culp meets all of the enumerated requirements for obtaining a Writ of Mandamus, demonstrating that (1) the respondent has a duty to perform the act; (2) the ministerial nature of the act (3) the petitioners' specific legal right necessitating the discharge of the duty; and (4) that the petitioner lacks any other legal remedy. *Porter v. Jedziniak*, 34 S.C. 16, 512 S.E.2d 497 (1999).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that that this Honorable Court issue a Writ of Mandamus compelling the Circuit Court to issue an Order on Petitioner's Outstanding Motion, filed on November 21, 2022, and heard on January 26, 2023. Additionally, because Ms. Irland failed to perfect her appeal as required by the probate statute, S.C. Code §62-1-308, Ms. Culp also respectfully requests that this Court require the Circuit Court to dismiss the appeal in its entirety. Given the statutory requirements for perfecting the appeal, the discretion of the Circuit Court cannot be exercised in any other way. In the alternative, Petitioner respectfully requests that this Court issue a Writ of Mandamus, requiring Judge Price to rule on Petitioner's outstanding Motion and issue an Order so as to allow Petitioner to seek an appeal if deemed necessary.

[Signature on following page]

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

and

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

ATTORNEYS FOR PETITIONER BRANDY S. CULP

July 12, 2023
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court
In its Original Jurisdiction

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Case No. 2022-CP-10-3304
Appellate Case No. 2023-000758

IN THE MATTER OF: THE ESTATE OF
DOLLY LEGARE COLEMAN

Athena Irland,

Pro Se Plaintiff,

v.

Isadore John Psaras, Christina D. Culp,
Brandy S. Culp,

Defendants,

Of whom Brandy S. Culp is the Petitioner and Athena Irland is the Respondent,

And Bentley Price in his official capacity as Charleston County Circuit Court Judge
In re: Civil Action No. 2022-CP-10-3304, is also a Respondent.

VERIFICATION

I, Brandy S. Culp, the Petitioner in the above-captioned matter verify that, to the best of my knowledge and belief, the facts set forth in the foregoing Petition for Writ of Mandamus, dated June 12, 2023, are accurate.

[Signature on following page]

Verification
Page 1 of 2

Brandy S. Culp
Brandy S. Culp, *Petitioner*

FURTHER AFFIANT SAYETH NOT.

Sworn and Subscribed before Me This 12th day of July, 2023.

Susan C. Mauldin Signature

Susan C. Mauldin Print Name

Notary Public for the State of South Carolina

My Commission Expires: June 23, 2024

Susan C. Mauldin Signature



EXHIBIT N
to
Motion to Dismiss

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-003304

Athena Irland,

Plaintiff/Appellant,

vs.

Isadore John Psaras, Chrstina D. Culp, Brandy
S. Culp,

Defendants/Respondents.

**ORDER DENYING RESPONDENT
BRANDY CULP’S RULE 59(e) MOTION
TO ALTER OR AMEND ORDER AND
GRANTING RULE 221(a) PETITION
FOR A REHEARING**

The Respondents, Isadore John Psaras, Christina D. Culp, and Brandy S. Culp, filed a Motion to Alter or Amend and Petition for Rehearing pursuant to Rules 221(a) and 59(e), SCRCF, filed November 21, 2022, as to the Court’s Order filed November 15, 2022, denying Respondents’ Motion to Dismiss, Granting the Appeal, and Remanding the case back to the Probate Court.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After a delay from inadvertently signing the incorrect document in the e-filing system (previously noted in the Court’s Form 4 Order filed May 10, 2023), consideration of the issues raised in Respondents’ Motion, and arguments previously made on the record, the Court hereby DENIES the Motion to Alter or Amend the Court’s previous Order and GRANTS the Petition for a rehearing. A rehearing will be held only on the issue of the appeal from Probate Court as the Court has already ruled on Respondents’ Motion to Dismiss and is hereby denying the related Rule 59(e) Motion. This is, in part, due to the confusion and continued miscommunications between the Court and Respondents since the original hearing on October 27, 2022, and the Court feels it necessary to hold a rehearing to clear up any issues and to understand the ongoing requests from Respondents.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-07-13 09:44:42 page 3 of 3

ELECTRONICALLY FILED - 2023 Jul 14 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003304

EXHIBIT O
to
Motion to Dismiss



July 17, 2023

VIA ONE DRIVE ELECTRONIC SUBMISSION

The Honorable Patricia A. Howard
Clerk, Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RE: PETITION FOR WRIT OF MANDAMUS
IN THE MATTER OF: The Estate of Dolly Legare Coleman
Brandy S. Culp, Petitioner v. Athena Irland, Respondent,
with the Hon. Bentley D. Price, in his official capacity as Charleston County
Circuit Court Judge In re: Civil Action No. 2022-CP-10-3304, also as a
Respondent - Appellate Case No. 2023-000758

Dear Ms. Howard:

On July 12, 2023, we filed a Petition for Writ of Mandamus and Exhibits with this Court regarding the above-captioned matter. The Petition requested that this Court compel the Honorable Bentley Price to enter an Order on Petitioner's motion, which had been filed on November 21, 2022, and styled as *Respondent Brandy Culp's Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing*.

On July 14, 2023, Judge Price entered an Order Denying Respondent Brandy Culp's Rule 59(e) Motion to Alter or Amend Order and Granting [sic] Rule 221(a) Petition for Rehearing. A copy of the Order is attached. The Circuit Court expressly denied Ms. Culp's request for reconsideration of an earlier Order denying Ms. Culp's Motion to Dismiss Appeal, said motion having been filed September 6, 2022. As set forth in the Petition, Ms. Culp had sought dismissal of the appeal on jurisdictional grounds, because Ms. Athena Irland had failed to serve all parties to the appeal and because Ms. Irland had also failed to take the statutorily-required steps to perfect her appeal as required by S.C. Code § 61-1-308.

The Court has now granted a rehearing "only on the issue of the appeal from Probate Court" despite the fact that no hearing has ever been held on the merits of the appeal in the first place, but rather only on Ms. Culp's Motion to Dismiss Appeal. As noted in the Petition, it was impossible for the Circuit Court to hold a hearing on the merits, because Ms. Irland, a *pro se* appellant, did not perfect her appeal. She has not even filed an appellate brief, to which we could respond.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953

jesse@jessesanchezlaw.com jessesanchezlaw.com
Exhibits to Motion to Dismiss - Page 174

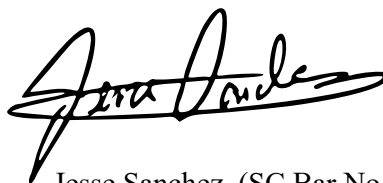
Letter to Supreme Court
July 17, 2023
Page 2

Given Ms. Irland's failure to serve all parties to the appeal and her undisputed failure to perfect her appeal, Petitioner respectfully requests that this Honorable Court grant the relief sought in her Petition for Writ of Mandamus and compel the Circuit Court to Issue on Order dismissing the Appeal. Generally, "[i]ssuance of a *particular* decision by a judge is typically a matter of discretion and, therefore, not proper for mandamus." *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101 (2002), citing 55 C.J.S. Mandamus § 83 (1998) [Emphasis added]. However, "[w]here discretion of court can be legally exercised in only one way, mandamus will lie to compel court to so exercise it." *Id.*, again citing 5 C.J.S. Mandamus § 83 (1998).

Here, Ms. Irland cannot circumvent the statutory requirements set forth by S.C. Code §61-1-308. Accordingly, as set forth in her Petition, Petitioner respectfully requests that the Circuit Court be compelled to Dismiss the Appeal.

Finally, Petitioner requests that this Court rule on the Petition so that the parties can avoid years of unnecessary costs and delay. Ms. Irland's appeal of the underlying probate court order will already be one (1) year old by the end of this week, and she has yet to perfect her appeal, having failed to even file and serve a brief in support of her appeal. Petitioner is mindful that if the Writ is not granted, this appeal may stall for an additional couple of years before it is resolved, causing the estate to incur the fees of the special administrator and depriving Ms. Culp of assets, which the decedent intended would pass on to her.

Respectfully submitted,



Jesse Sanchez. (SC Bar No. 101906)

Enclosures (as stated)

Cc: The Honorable Bentley D. Price (Via Email)
Daniel S. Slotchiver, Esq. (Via Email)
Stephen M. Slotchiver, Esq. (Via Email)
John Sinclair, III, Esq. (Via Email)
Athena L. Irland (Via U.S. Mail and Email)
Christina D. Culp (Via U.S. Mail and Email)
John Psaras (Via U.S. Mail and Email)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-003304

Athena Irland,

Plaintiff/Appellant,

vs.

Isadore John Psaras, Chrstina D. Culp, Brandy
S. Culp,

Defendants/Respondents.

**ORDER DENYING RESPONDENT
BRANDY CULP’S RULE 59(e) MOTION
TO ALTER OR AMEND ORDER AND
GRANTING RULE 221(a) PETITION
FOR A REHEARING**

The Respondents, Isadore John Psaras, Christina D. Culp, and Brandy S. Culp, filed a Motion to Alter or Amend and Petition for Rehearing pursuant to Rules 221(a) and 59(e), SCRCPP, filed November 21, 2022, as to the Court’s Order filed November 15, 2022, denying Respondents’ Motion to Dismiss, Granting the Appeal, and Remanding the case back to the Probate Court.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After a delay from inadvertently signing the incorrect document in the e-filing system (previously noted in the Court’s Form 4 Order filed May 10, 2023), consideration of the issues raised in Respondents’ Motion, and arguments previously made on the record, the Court hereby DENIES the Motion to Alter or Amend the Court’s previous Order and GRANTS the Petition for a rehearing. A rehearing will be held only on the issue of the appeal from Probate Court as the Court has already ruled on Respondents’ Motion to Dismiss and is hereby denying the related Rule 59(e) Motion. This is, in part, due to the confusion and continued miscommunications between the Court and Respondents since the original hearing on October 27, 2022, and the Court feels it necessary to hold a rehearing to clear up any issues and to understand the ongoing requests from Respondents.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-07-13 09:44:42 page 3 of 3

ELECTRONICALLY FILED - 2023 Jul 14 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003304

EXHIBIT P
to
Motion to Dismiss

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Athena Irland)
)
 Pro Se Plaintiff/Appellant,)
)
 v.)
)
Isadore John Psaras, Christina D. Culp)
Brandy S. Culp,)
)
 Defendants/Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-3304

**ORDER DENYING AND DISMISSING
APPEAL FROM PROBATE COURT**

THIS MATTER CAME before the Court pursuant to Respondent Brandy S. Culp’s Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing, filed November 21, 2022 and subsequently heard on January 26, 2023. On July 14, 2023, this Court issued an Order granting Respondent’s request for a hearing on the appeal. As set forth below, Ms. Irland’s Appeal is hereby DENIED and DISMISSED with prejudice pursuant to her failure to perfect her appeal in compliance with S.C. Code § 62-1-308, et seq. and failure to set forth a basis for reversal of the Probate Court’s underlying order.

1. An appeal from Probate Court is governed by S.C. Code Ann. § 62-1-308, which sets forth various procedural requirements to perfect an appeal.

2. An appellant who fails to follow the procedural requirements strips the court of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 70, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2005); see also Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules).

3. Here, the Court finds that appellant did not comply with the statutory requirements of S.C. Code Ann § 62-1-308, et seq., based on each of the following, independent grounds:

(a) Appellant did not file nor serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b) (“Within forty-five days after receipt of written notice of the order, sentence or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR), with proof of service and a copy served on all parties.”). Appellant’s Notice of Appeal, filed July 22, 2022, states Appellant received written notice of entry of the probate court order on July 14, 2022. Pursuant to subsection (b) of the statute, Appellant was required to file and serve a Statement of Issue on Appeal on or before August 29, 2022. A review of the public index in this case establishes that Appellant failed to meet either of these requirements.

(b) As a separate and independent basis for dismissal, Appellant did not file nor serve a Designation of Matter to Include in the Record on Appeal on any party as required by S.C. Code § 62-1-308(d). No such Designation even appears within the public index.

(c) As a separate and independent basis for dismissal, Appellant did not file nor serve an appellate brief as required by S.C. Code 62-1-308(e) (“At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and filed with the clerk of the circuit court one copy of the brief with proof of service. The appellant’s brief shall be in a format described in Rule 208(b)(1), SCACR.”) A review of the public index in this case establishes that Appellant failed to meet any one of these statutory requirements.

(d) As a separate and independent basis for dismissal, Appellant did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f) (“[A]ppellant shall serve

a copy of the Record on Appeal (in a format described in subsection (c), (e), (f), and (g) of Rule 210, SCACR.”).

4. Finally, as a separate and independent basis for denial of the appeal, this Court finds that Appellant has failed to set forth any grounds and/or caselaw warranting reversal of the probate court’s underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED:

Appellant Athena Irland’s Appeal from Probate Court is hereby DENIED and DISMISSED WITH PREJUDICE.

The Honorable Bentley D. Price
Circuit Court Judge

September____, 2023
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-10-02 14:43:04 page 4 of 4

ELECTRONICALLY FILED - 2023 Oct 02 2:48 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003304

EXHIBIT Q
to
Motion to Dismiss

The Supreme Court of South Carolina

In the Matter of the Estate of Dolly Legare Coleman,

Athena Irland, Respondent,

v.

Isadore John Psaras, Christina D. Culp, Brandy S. Culp,
Defendants,

Of whom Brandy S. Culp is the Petitioner,

And Bentley Price in his official capacity as Charleston
County Circuit Court Judge In re: Civil Action No. 2022-
CP-10-3304, is also a Respondent.

Appellate Case No. 2023-001120




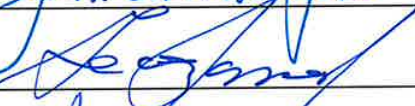

ORDER

Petitioner asks this Court to issue a writ of mandamus requiring the Honorable Bentley D. Price to rule on Petitioner's Rule 59(e), SCRCPP, motion to alter or amend the judgment and Rule 221(a), SCACR, petition for rehearing filed on November 21, 2022.

In his July 14, 2023 order, Judge Price denied Petitioner's motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondent's appeal from the probate court. In that order, Judge Price also granted Petitioner's motion "for a rehearing." Judge Price went on to conclude that he "feels it necessary to hold a rehearing to clear up any issues and to understand the ongoing requests from [Petitioner]." It appears from the materials filed with this Court that Judge Price has not yet heard and ruled upon the merits of Respondent's appeal from the probate court.

In any event, we are troubled by the delay in concluding the hearing and ruling

upon all issues properly before the circuit court. Therefore, while we deny Petitioner's petition for a writ of mandamus, we direct Judge Price to convene a hearing in this case within thirty days of the date of this Order and consider all issues properly before the circuit court. We further direct Judge Price to file a written order with the Charleston County Clerk of Court within fifteen days after the hearing is concluded.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
September 13, 2023

cc:
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire
Jesse Sanchez, Esquire
Christina D. Culp
Isadore John Psaras
Athena Irland

EXHIBIT R
to
Motion to Dismiss

November 21, 2023

Appeal From Circuit Court of South Carolina
Charleston County before Judge Bentley
Price CASE# 2022-CP-10-3304

My Appeal From Circuit Court was granted
on Nov. 15, 2022

The Appeal was denied on Reconsideration
and confusion on October 2, 2023

Reconsideration denied October 25, 2023

Athena Island
Appellate in case
186 Dolly Dimple Str /
Huger, SC 29450

8436973631

RECEIVED

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SC Court of Appeals

100431

November 21, 2023

Appeal From Circuit Court of South Carolina
Charleston County before Judge Bentley
PRICE CASE # 2022-CP-10-2304

My Appeal From Circuit Court was granted
on Nov. 15, 2022

The Appeal was denied on Reconsideration
and confusion on October 2, 2023

Reconsideration denied October 25, 2023

Athena Island
Appellate in call
186 Dolly Dimple Str 1
Huger, SC 29450

8436973631

RECEIVED

NOV 29 2023

SC Court of Appeals

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NOV 29 2023

SC Court of Appeals

PROOF OF SERVICE OF A
Notice of Appeal

The State of South Carolina

Appeal From Charleston County
Court of Common Pleas

Bentley Price Circuit Court Judge

Athena Ireland Appellate

v.
Brandy S. Culp Respondent

PROOF OF SERVICE

I certify that I have served
Notice of the Appeal to Respondent's
attorneys Dan and Steve Slotchiver
and Jesse Sanchez

751 Johnnie Dodds

Mt Pleasant, SC 29464

Switz 100,200 same of fice
through US Postal Service

November 21, 2023

CASE# 2022-CP-10-3304

RECEIVED
NOV 29 2023
SC Court of Appeals

Letter to The Appellate Court Clerk
Filing Notice of Appeal

The Honorable Jenny Abbott Kitchings,
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: The Estate of Dolly L. Coleman

Appellate Athena Ireland vs
Respondent Brandy S. Culp
Case # 2022-CP-10-3304 (of the Court
of Common Pleas)

Enclosed for filing:

- 1) Proof of Service of the Notice of Appeal to the Respondent's Attorneys.
- 2) a copy of the order(s) / judgement which is (are) to be challenged on Appeal
- 3) A Filing Fee of \$250⁰⁰

Sincerely

November 21, 2023

Athena Ireland
186 Dolly Dimple Rd
Huger SC 29450
Appellate

Athena Ter Sand
Appeal Date
186 Dr. J. J. Dimpkus Jr.
Auger SC 29945

The Honorable Jenny Abbott Kitchings
PO Box 11629
Columbia SC 29211

RECEIVED
NOV 29 2023
SC Court of Appeals

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U.S. POSTAGE PAID
FCM LG ENV
MOUNT PLEASANT
SC 29464
NOV 21, 2023
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EXHIBIT S
to
Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 5, 2023

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The notice of appeal does not comply with Rule 267, SCACR. Specifically, the notice of appeal is not correctly formatted. You must serve and file an amended notice of appeal substantially in the format shown by Form 1 in Appendix C to part II of the SCACR. A copy of this form has been enclosed for your convenience.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.

Very truly yours,

Catherine Hannibal, deputy

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT T
to
Motion to Dismiss

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

The Honorable Bentley Price, Circuit Court Judge

DEC 18 2023

SC Court of Appeals

Case No. 2022-CP-10-3304

In the matter of the Estate of Dolly Coleman

Athena Irland, Appellate
v.
Brandy S. Culp, Respondent

NOTICE OF APPEAL (CORRECTION)

Athena Irland, Appellant, appeals the order (judgement) by the Honorable Bentley Price dated October 2, 2023. Appellant received written notice of the entry of this order on October 6, 2023 via the US Postal Service.

Motion for Reconsideration filed October 11, 2023 and granted on November 15, 2023.

Order denying said Motion for Reconsideration signed electronically October 25, 2023, was received October 30, 2023 via the US Postal Service.

December 18, 2023

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

Other Counsel of Record:
Daniel S. Slotchiver, Steven S. Slotchiver
751 Johnnie Dodds Blvd ste.100
Mt. Pleasant, SC 29464
(843) 577-6531

Jessee Sanchez
751 Johnnie Dodds Blvd ste.200
Mt. Pleasant, SC 29464
(843) 814-8181

THE STATE OF SOUTH CAROLINA
- In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

Bentley Price, Circuit Court Judge

Case No. 2022-CP-10-3304

Athena Irland,

Appellant

v.

Brandy S. Culp

Respondent

PROOF OF SERVICE

I certify that I have served a Corrected Notice Of Appeal to the Attorneys for Brandy S. Culp through the US Postal Service on December 18, 2023. Attorneys: Stephen Slotchiver, Daniel Slotchiver, (843) 577-6531 and Jesse Sanchez (843) 814-8181 at 751 Johnnie Dodds Blvd. Mt. Pleasant, SC 29464.

December 18, 2023

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

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DEC 18 2023

SC Court of Appeals

EXHIBIT U
to
Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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January 03, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Our records indicate that the time for serving and filing the appellant's initial brief and designation of matter has expired. Within ten (10) days from the date of this letter, you must serve and file the appellant's initial brief and designation of matter, along with a motion requesting permission to serve and file the appellant's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 of the South Carolina Appellate Court Rules (SCACR). Your appeal will be dismissed if no motion is made within ten (10) days from the date of this letter.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT V
to
Motion to Dismiss

100806

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JAN 16 2024

SC Court of Appeals

Appeal From Charleston County

COURT OF COMMON PLEAS

Bentley Price, Circuit Court Judge

CASE # 2023-001852

Athena Irland, Appellate

v

Brandy S. Culp, Respondent

MOTION FOR 30 day Extension

Slotchiver & Slotchiver
Jesse Sanchez
751 Johnnie Dodds Blvd
Mt Pleasant, SC 29464
843-577-6531
843-814-8181

Athena Irland
186 Dolly Dimple Trl
Huger, SC 29450
843-697-3631
Appellate

PROOF OF SERVICE

PROOF OF SERVICE: Counsel for respondent
Brandy S. Culp
Slotchiver & Slotchiver, Jesse Sanchez
751 Johnnie Dadds Blvd Mt. Pleasant SC 29469
Will Be Mailed 1/17/2024 U.S. Postal Service

CASE # 2023-001852

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JAN 16 2024

SC Court of Appeals

Athena Ireland
Athena Ireland
Appellate
186 Dolly Dimples Tr
Huger, SC 29450

EXHIBIT W
to
Motion to Dismiss

The South Carolina Court of Appeals

Athena Irland, Appellant,

v.

Brandy S. Culp, Respondent.

Appellate Case No. 2023-001852

The Honorable Bentley Price
Charleston County
Trial Court Case No. 2022CP1003304

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until February 15, 2024.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

FILED
Jan 17 2024

cc:

Athena L. Irland

Jesse Sanchez, Esquire

Daniel Scott Slotchiver, Esquire

Stephen Michael Slotchiver, Esquire

EXHIBIT X
to
Motion to Dismiss

THE STATE OF SOUTH CAROLINA
In The Court Of Common Pleas

Rehearing of Motion to Deny Appeal
Probate Court

Bently Price Circuit Court Judge

Case No. 2023-001852

Athena Irland Appellant

v.

Brandy S. Culp Respondent

BRIEF IN SUPPORT OF MOTION FOR A REHEARING

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

RECEIVED

FEB 15 2024

SC Court of Appeals

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STATEMENT OF THE ISSUES

1. Judge Price seemed confused as to the subject matter before the court.
2. In his order dated September 13, 2023, Judge Price cited reasons for denying Petitioner's motion to reconsider but failed support his decision granting Respondant's motion for a rehearing thereby prompting opposing counsel to Petition The Supreme Court of South Carolina.

STATEMENT OF THE CASE

Before the court was the issue of Judge Price's Order dated July 14, 2023 (Appendix A) wherein he denied Petitioner's (Brandi Culp) motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondant's (Athena Irland) appeal from Probate Court. In that same order, Judge Price granted Respondant's Petition for a rehearing.

However, Judge Price began the proceedings by asking, "All right, specifically, what motions are outstanding that need to be ruled on?" When, in fact, there were no motions before the court. The subject matter before the court was an Order from The Supreme Court of South Carolina (Appendix B) wherein Judge Price was directed to convene a hearing to, "consider all issues properly before the circuit court." Instead Judge Price argued that he had already ruled on Petitioner's motion (Transcript of Record September 27, 2023. (Appendix C) , pg.2 lines 9-11, pg3. lines 2-4, pg.4 lines 18-22) and was very agitated that he had to repeat himself in hearing a case that he had already ruled on. It seemed as though Judge Price was reinforcing the correctness his ruling. The fact is that Judge Price was not being asked to make a ruling, he was being told by the Supreme Court to support his existing ruling. Instead, it seems Judge Price was trying to shift blame of his failure to adequately perform his duties as a judge (possibly contributing to his being deemed unqualified according to a report released October 6, 2023 from the South Carolina Bar). Pg.5, lines 16-23 of the same transcript illustrates Judge Price's frustration of opposing counsel petitioning the Supreme Court to get an answer supporting his ruling.

Opposing counsel (Mr. Sanchez) went on to misrepresent facts in the case claiming Ms. Irland failed to follow procedures required for an appeal (pg8. lines 1-25, pg.9 lines 1-13). Keeping in mind Haines v. Kerner where pro se litigants are afforded some leeway in court proceedings, the record will show that Ms. Irland did, in fact follow correct procedure. Though it may not be recognized as such Ms. Irland filed a notice of appeal with a statement of issues and notices on July 22, 2022 (Appendix D).

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Order of September 1, 2000

[Set out entire order including caption and signature.]

Order of December 1, 1990

[Set out entire order including caption and signature.]

Complaint

[Set out entire complaint including caption and signature.]

Answer

[Set out entire answer including caption and signature.]

Testimony of Stephen L. Doe

[Set out testimony including entire page of trial transcript where a portion of the page is to be included.]

Deposition of John B. Doe

[Set out testimony including entire page of trial transcript where a portion of the page is to be included.]

Testimony of Louise M. Miller

[Set out testimony including entire page of trial transcript where a portion of the page is to be included.]

Testimony of Jane C. Roe

[Set out testimony including entire page of trial transcript where a portion of the page is to be included.]

1

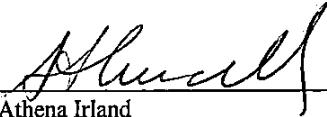
Testimony of Mark N. Brown

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Therefore, Appellant respectfully moves the court to uphold the order issued on July 14, 2023 for a rehearing and rescind the subsequent order issued October 2, 2023.


Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631
Pro Se Litigant

2-15 2024
Date

RECEIVED

FEB 15 2024

THE STATE OF SOUTH CAROLINA
In the Circuit Court

SC Court of Appeals

BRIEF IN SUPPORT OF MOTION FOR A REHEARING
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

v.

Brandy S. Culp

Respondent

PROOF OF SERVICE

I certify that I have served the Respondents Brief In Support For A Rehearing and all other related materials to the appeal. Copy sent through US Post Office

Slotchiver & Slotchiver
Jesse Sanchez, Esq
751 Johnnie Dodds Blvd,
Mt. Pleasant, SC 29464
(843) 577-6531
Attorneys for Respondant, Brandi S. Culp

Athena Irland
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Huger, SC 29450
(843) 697-3631

EXHIBIT Y
to
Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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February 20, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your brief in support of motion for a rehearing, which this Court construes as your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the document must be titled "Initial Brief of Appellant".
- The document is not accompanied by the required certificate of counsel.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. The designation of matter may only propose to include any material relevant to this appeal to be included in the Record on Appeal. Therefore, the designated material provided in the brief is being returned to you.
- The brief does not comply with Rule 208(b), SCACR. Specifically, the brief must contain the content in the following order: table of contents and cases, statement of issues on appeal, statement of the case, standard of review, argument, and conclusion.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Hannisai, deputy". The signature is written in a cursive style with a large initial 'C'.

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT Z
to
Motion to Dismiss

The South Carolina Court Of Appeals
March 4, 2024
Case No. 2023-001852

I received the letter dated February 20, 2024 on Saturday the 24th of February. I have corrected the paperwork to the best I am able to understand. I pray it is correct. Thank you for your patience helping those of us that can not afford legal assistance.

Athena Irland
Appellant
186 Dolly Dimples Trl
Huger, SC 29450
843-697-3631

Athena Irland 3/4/2024

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MAR 06 2024

SC Court of Appeals



The South Carolina Court of Appeals

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February 20, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your brief in support of motion for a rehearing, which this Court construes as your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the document must be titled "Initial Brief of Appellant".
- The document is not accompanied by the required certificate of counsel.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. The designation of matter may only propose to include any material relevant to this appeal to be included in the Record on Appeal. Therefore, the designated material provided in the brief is being returned to you.
- The brief does not comply with Rule 208(b), SCACR. Specifically, the brief must contain the content in the following order: table of contents and cases, statement of issues on appeal, statement of the case, standard of review, argument, and conclusion.

RECEIVED

MAR 06 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From Charleston County
Court Of Common Pleas

Bently Price Circuit Court Judge

Case No. 2023-001852

Athena Irland

Appellant

v.

Brandy S. Culp

Respondent

INITIAL BRIEF OF APPELLANT

Athena Irland
186 Dolly Dimples Trl
Huger, SC 29450
(843) 697-3631
Appellant

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2. In re Estate of Cumbee
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3. Noblin v. Burgess
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54 So. 3d 282 (Miss. Ct. App.2011)
4. Ellis v Davidson
Ct. Of App. S.C.
358 S.C. 509 (S.C. Ct. App. 2004)
5. In re Estate of Tank
Supreme Court of South Dakota
938 N.W. 2d 449 (S.D. 2020)
6. Hembree v Estate of Hembree
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8. Thompson v Moore
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9. Verdery v Daniels (In re Thames)
South Carolina Court of Appeals
344 SC 564, 544 (Ct App. 2001)
10. Dixon v Dixon
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11. Calhoun v Calhoun
Supreme Court of South Carolina
277 S.C. 527 (S.C. 1982)

12. Hairston v In re Estate of Normall O. Hudson
SC Court of Appeals Opinion #4657 (S.C. 2010)
13. Haines v Kerner U.S., 404 U.S. 519 (1972)
14. Testamentary Capacity

Jonathan Raub, MD, MPH,
Fellow in Forensic Psychiatry

J. Richard Ciccone, MD
Professor of Psychiatry and Law Program
University of Rochester Medical Center, Rochester, NY

ARGUMENTS

Transcript of Motion October 27, 2022 Court of Common Pleas Case# 2022-CP-10-03304

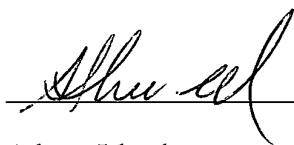
1. Pg. 4 line 25, pg 5 lines 1-6 are untrue statements by opposing counsel and does not apply.
2. Pg. 5 lines 14-20. 2 deeds were at issue. One deed transferred to me, Athena Irland. Another deed was to be transferred after the death of Dolly Coleman, my mother. I had absolutely no influence in her decision to transfer any property. I took her to the office of Attorney Jack Williams, whose services she had used before. I left the two of them to conduct business in private. When I returned to pick up my mom, Mr Williams invited me into a conference room where I was first informed of what was decided.
3. Pg. 5 lines 6-20. South Carolina has defined contractual capacity as a person's ability to understand at the time the contract is executed. A mere infirmity of mind, if it does not amount to an incapacity to understand at the time of execution of a contract, the nature of the act done and the effect thereof, does not render a person incapable of executing a valid and binding contract.
Verdery v Daniels (In re Thames) 344 S.C. 564. (Ct App. 2001)
4. Pg. 5 lines 16-22. Dr. J. Rubano had not seen Dolly Coleman as a patient for two and a half years. She based her opinion on what she believed to be the natural progression of the disease. No restrictions were placed on Ms. Coleman. Dr. Rubano stated that her short term memory was affected, not her long term memory; her long term memory was intact. Attorney Jack Williams testified that he observed nothing about Ms. Coleman gave him concern about her state of mind or mental capacity. It was made clear that I did not accompany my mom, Dolly Coleman, during her consult with Attorney Jack Williams wherein she conveyed 1/3 interest in the 38 acre parcel and a retention of a life estate in the 33 acre parcel.

5. Pg. 5 lines 21-22. The law was misapplied when Athena Irland was accused of exercising undue influence over Dolly Coleman regarding the properties and the 2009 will. There is no evidence on record to support this accusation. Athena Irland was not present during Ms. Coleman's meetings with Attorney Jack Williams or Attorney Lynn McCants.
6. Pg.5 line 25, pg.6 lines 1-3. Opposing counsel, Sanchez, misled the court when he claims I did not file an appeal in time. He knew my attorney at the time, Joseph Dawson filed in the wrong court causing it to be dismissed. Mr. Dawson then filed in the correct court but it was too late and subsequently denied under Section 62-1-308(a)
7. Pg.7 lines 9-25. False premises, conjecture and baseless facts. The testamentary capacity of a person making contractual decision is quite different from executing a Will or destroying one. The testamentary capacity referring to an individual's ability to make or destroy a Will and the testator is presumed competent until proven otherwise. In the matter of The Estate of Berg 783 N.W. 2d 831 (S.D. 2010)
8. Pg.8 lines 6-18. All parties involved were served. Judge Bently Price was given evidence of the following:
 - A) Settlement Agreement reached at Mediation on March 16, 2020 between Brandi Culp, Christina Culp and Isadore John Psaras.
 - B) Letter (dated April 8, 2021) from Attorney David Michael stating that the Order from the Court reiterates that said Settlement be followed.
 - C) Order to Approve Settlement Agreement reached at mediation Case # 2019-ES-10-1368 by Probate Judge Lenna Kirchner, March 22, 2021. (Courts closed due to covid crisis)
9. Pg.9 lines 17-25. Though I am not an attorney, I did take steps, to the best of my ability, to follow applicable court rules in filing a Notice of Appeal and gave proper notice of service and am given some leeway in this matter according to Haines v

Kerner U.S. 404 U.S. 519 (1972) wherein the U.S. Supreme ruled that a Pro Se litigant is held to less stringent standards than formal pleadings drafted by lawyers.

CONCLUSION

Therefore, Appellant respectfully moves the court to uphold the order issued on July 14 2023 for a rehearing and rescind the subsequent order issued October 2, 2023. Or, in the alternative, remand the entire case back to the Probate Court for a rehearing.



3/4/2024

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

Date

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

Brandy S. Culp

Respondent

PROOF OF SERVICE

I certify that I have served the Respondent an Initial Brief Of Appellant and all other related materials to the appeal. Copy sent through US Post Office on March 5, 2025.

Slotchiver & Slotchiver
Jesse Sanchez, Esq
751 Johnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843)577-6531 attorneys
For Brandy Culp

Athena Irland
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Athena Ireland
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Case # 2023-001852

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EXHIBIT AA
to
Motion to Dismiss



The South Carolina Court of Appeals

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March 12, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter **will** be dismissed:

- The document is not accompanied by the required certificate of counsel.
- The brief does not comply with Rule 208(b), SCACR. Specifically, the brief must contain the content in the following order: table of contents and cases, statement of issues on appeal, statement of the case, standard of review, argument, and conclusion. You must serve and file an amended appellant's initial brief substantially in the format shown by Form 13 in Appendix C to part II of the SCACR.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. The designation of matter may only propose to include any material relevant to this appeal to be included in the Record on Appeal. You must serve and file a designation of matter substantially in the format shown by Form 14 in Appendix C to part II of the SCACR. The designated material provided in the brief is being returned to you.

Very truly yours,

Catherine Hannigan, deputy

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT BB
to
Motion to Dismiss

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From Charleston County
Court Of Common Pleas

Bently Price Circuit Court Judge

Case No. 2023-001852

Athena Irland

Appellant

v.

Brandy S. Culp

Respondent

INITIAL BRIEF OF APPELLANT

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

RECEIVED
MAR 27 2024
SC Court of Appeals

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11. Calhoun v Calhoun
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277 S.C. 527 (S.C. 1982)

12. Hairston v In re Estate of Normall O. Hudson
SC Court of Appeals Opinion #4657 (S.C. 2010)
13. Haines v Kerner U.S., 404 U.S. 519 (1972)
14. Testamentary Capacity

Jonathan Raub, MD, MPH,
Fellow in Forensic Psychiatry

J. Richard Ciccone, MD
Professor of Psychiatry and Law Program
University of Rochester Medical Center, Rochester, NY

STATEMENT OF ISSUES ON APPEAL

1. Judge Bently Price seemed confused as to the subject matter before the court on September 27, 2023.
2. Order dated September 13, 2023 Judge Bently Price reversed his decision granting the Appeal and ruled in favor of the Respondent dismissed Appellant's instead of gathering evidence supporting his original ruling granting the Appeal as instructed by the Supreme Court.
3. The Circuit erred in allowing arguments for motions during the hearing on September 27, 2023 not entered into evidence at the first hearing on October 27, 2022.
4. The Order issued by the Probate Court dated the 13th day of July 2022 signed by Lenna S. Kirchner is invalid pursuant to Section 14-23-1120.

STATEMENT OF THE CASE

Before the court was the issue of Judge Price's Order dated July 14, 2023 (Appendix A) wherein he denied Petitioner's (Brandi Culp) motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondant's (Athena Irland) appeal from Probate Court. In that same order, Judge Price granted Respondant's Petition for a rehearing.

However, Judge Price began the proceedings by asking, "All right, specifically, what motions are outstanding that need to be ruled on?" When, in fact, there were no motions before the court. The subject matter before the court was an Order from The Supreme Court of South Carolina (Appendix B) wherein Judge Price was directed to convene a hearing to, "consider all issues properly before the circuit court." Instead Judge Price argued that he had already ruled on Petitioner's motion (Transcript of Record September 27, 2023. (Appendix C) , pg.2 lines 9-11, pg3. lines 2-4, pg.4 lines 18-22) and was very agitated that he had to repeat himself in hearing a case that he had already ruled on. It seemed as though Judge Price was reinforcing the correctness his ruling. The fact is that Judge Price was not being asked to make a ruling, he was being told by the Supreme Court to support his existing ruling. Instead, it seems Judge Price was trying to shift blame of his failure to adequately perform his duties as a judge (possibly contributing to his being deemed unqualified according to a report released October 6, 2023 from the South Carolina Bar). Pg.5, lines 16-23 of the same transcript illustrates Judge Price's frustration of opposing counsel petitioning the Supreme Court to get an answer supporting his ruling.

Opposing counsel (Mr. Sanchez) went on to misrepresent facts in the case claiming Ms. Irland failed to follow procedures required for an appeal (pg8. lines 1-25, pg.9 lines 1-13). Keeping in mind Haines v. Kerner where pro se litigants are afforded some leeway in court proceedings, the record will show that Ms. Irland did, in fact follow correct procedure. Though it may not be recognized as such Ms. Irland filed a notice of appeal with a statement of issues and notices on July 22, 2022 (Appendix D).

STATEMENT OF FACTS

I, Athena Irland, am the youngest child of the decedent Dolly Coleman. Dolly Coleman lived solely with me at 186 Dolly Dimples Trail Huger, SC 29450 for approximately 10 years. Parcels of land measuring 38 acres and 1 acre were purchased by me in 1995. Included on the Deed was my husband at the time, Daniel Irland, and my mom Dolly Coleman.

In 1997 Dolly Coleman purchased an additional parcel of land measuring 33 acres. Collectively, the three parcels of land are referred to as “the property” located in Berkeley County.

Since 1995 I, Athena Irland, have lived on the the property, uncontested, managing a farm including but not limited to cows, goats, horses, and chickens. I fenced in the entire property.

Isadore John Psaras testified that the home he lived in on Palmeto St. In Mt. Pleasant was given to him by Dolly Coleman in 2008. He also testified that it was his understanding that Ms. Coleman intended to give me her interest in “the property”.

Even though Dr. Judith Rubano diagnosed Ms. Coleman with short term memory loss, she placed no restrictions on her and testified that her long term memory remained intact. Dr. Rubano also testified that she had no reason to believe that Ms. Irland was taking advantage of or otherwise abused, neglected or exploited.

ARGUMENTS

Transcript of Motion October 27, 2022 Court of Common Pleas Case# 2022-CP-10-03304

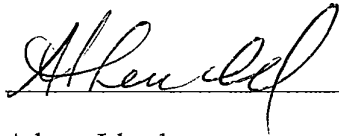
1. Pg. 4 line 25, pg 5 lines 1-6 are untrue statements by opposing counsel and does not apply.
2. Pg. 5 lines 14-20. 2 deeds were at issue. One deed transferred to me, Athena Irland. Another deed was to be transferred after the death of Dolly Coleman, my mother. I had absolutely no influence in her decision to transfer any property. I took her to the office of Attorney Jack Williams, whose services she had used before. I left the two of them to conduct business in private. When I returned to pick up my mom, Mr Williams invited me into a conference room where I was first informed of what was decided.
3. Pg. 5 lines 6-20. South Carolina has defined contractual capacity as a person's ability to understand at the time the contract is executed. A mere infirmity of mind, if it does not amount to an incapacity to understand at the time of execution of a contract, the nature of the act done and the effect thereof, does not render a person incapable of executing a valid and binding contract.
Verdery v Daniels (In re Thames) 344 S.C. 564. (Ct App. 2001)
4. Pg. 5 lines 16-22. Dr. J. Rubano had not seen Dolly Coleman as a patient for two and a half years. She based her opinion on what she believed to be the natural progression of the disease. No restrictions were placed on Ms. Coleman. Dr. Rubano stated that her short term memory was affected, not her long term memory; her long term memory was intact. Attorney Jack Williams testified that he observed nothing about Ms. Coleman gave him concern about her state of mind or mental capacity. It was made clear that I did not accompany my mom, Dolly Coleman, during her consult with Attorney Jack Williams wherein she conveyed 1/3 interest in the 38 acre parcel and a retention of a life estate in the 33 acre parcel.

5. Pg. 5 lines 21-22. The law was misapplied when Athena Irland was accused of exercising undue influence over Dolly Coleman regarding the properties and the 2009 will. There is no evidence on record to support this accusation. Athena Irland was not present during Ms. Coleman's meetings with Attorney Jack Williams or Attorney Lynn McCants.
6. Pg.5 line 25, pg.6 lines 1-3. Opposing counsel, Sanchez, mislead the court when he claims I did not file an appeal in time. He knew my attorney at the time, Joseph Dawson filed in the wrong court causing it to be dismissed. Mr. Dawson then filed in the correct court but it was too late and subsequently denied under Section 62-1-308(a)
7. Pg.7 lines 9-25. False premises, conjecture and baseless facts. The testamentary capacity of a person making contractual decision is quite different from executing a Will or destroying one. The testamentary capacity referring to an individual's ability to make or destroy a Will and the testator is presumed competent until proven otherwise. In the matter of The Estate of Berg 783 N.W. 2d 831 (S.D. 2010)
8. Pg.8 lines 6-18. All parties involved were served. Judge Bently Price was given evidence of the following:
 - A) Settlement Agreement reached at Mediation on March 16, 2020 between Brandi Culp, Christina Culp and Isadore John Psaras.
 - B) Letter (dated April 8, 2021) from Attorney David Michael stating that the Order from the Court reiterates that said Settlement be followed.
 - C) Order to Approve Settlement Agreement reached at mediation Case # 2019-ES-10-1368 by Probate Judge Lenna Kirchner, March 22, 2021. (Courts closed due to covid crisis)
9. Pg.9 lines 17-25. Though I am not an attorney, I did take steps, to the best of my ability, to follow applicable court rules in filing a Notice of Appeal and gave proper notice of service and am given some leeway in this matter according to Haines v

Kerner U.S. 404 U.S. 519 (1972) wherein the U.S. Supreme ruled that a Pro Se litigant is held to less stringent standards than formal pleadings drafted by lawyers.

CONCLUSION

Therefore, Appellant respectfully moves the court to vacate the order issued on July 13 2023. and remand the entire case back to the Probate Court for a rehearing. Or, in the alternative, grant my appeal as initially granted on November 11, 2022.



3-25-2024

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
(843) 697-3631

Date

SOUTH CAROLINA COURT OF APPEALS

Case No.2023-001852
Hon. Bently Price

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SC Court of Appeals

Athena Irland

Appellant

V

Brandy Culp

Respondent

Certificate of Counsel
Pro Se Litigant

I certify that all paperwork of Initial Brief is relevant to the appeal.

Athena Irland 3/25/2024

Athena Irland, Appellant
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Huger, SC 29450
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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

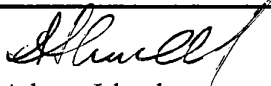
Brandy S. Culp

Respondent

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I certify that I have served the Attorneys for the Respondent an Initial Brief Of Appellant. Copy sent through US Post Office on March 25, 2024

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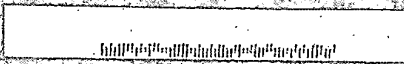
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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL **RECEIVED**

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

MAR 27 2024
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

Bently Price, Circuit Court Judge

Appellate Case No. 2023-001852

Brandy S. Culp Respondent

V.

Athena Irland Appellant

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order Denying and Dismissing Appeal from Probate Court. October 2, 2023
2. Form 4. Statement of Judgement Remanded. Appeal granted November 11, 2022.
3. Order denying Appellant's Motion For Reconsideration of Appeal from Probate Court
4. Reconsideration of Dismissal of Appeal from Probate Court October 11, 2023
5. Transcript of Motion October 27, 2022
6. Notice of Intent to Appeal July 22, 2022
7. Order of Probate Court, July 13 2022
8. Transcript of Hearing, Case# 2019-ES10_1368 April 7, 2022
9. Motion to dismiss Appeal September 6, 2022
10. Transcript of Record September 27, 2023
11. Order Dismissing Appeal August 22, 2017

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12. Order Recinding Deeds September 6, 2022
13. Order denying Respondant Brandy Culp's Rule 59e Motion to Alter or amend Order and Granting Rule 221a Petition for rehearing July 14 2023 (sent prior, Appenndix A)
14. Supreme Court Order, September 3, 2023 (prior sent Appendix B)
15. SC code of Laws Title 14 Chapter 23 Probate Courts
Section 14-23-1100. Duties of Clerk
Section 14-23-1120 . Court of record; seal.
Section 62-1-305 Records and certified copies
Section 62-1-307 Probate Judge; powers. Order , Judge Lenna Kirchner, dated July 13, 2022.
Letter from OFFICE OF THE ATTORNEY GENERAL dated February 28, 2024 to The Honorable Joe H. Jefferson, Jr., Member
16. Bon Secours St. Francis Hospital Imaging Services. Byron Bailey, MD.
Exam Date: May 26, 2015.

THE STATE OF SOUTH CAROLINA
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INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

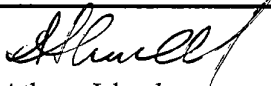
Brandy S. Culp

Respondent

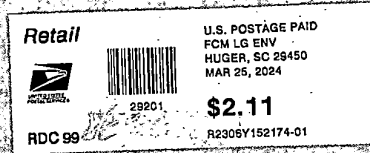
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Athens, Inland
L.B. Dolly Dimples br/1
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APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

Bently Price, Circuit Court Judge

Appellate Case No. 2023-001852

Brandy S. Culp

Respondent

V.

Athena Irland

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Exhibits to Motion to Dismiss - Page 254

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INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

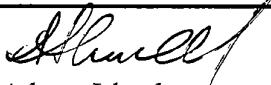
Brandy S. Culp

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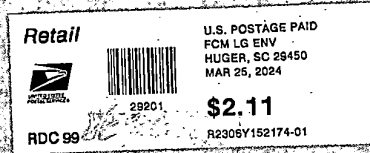
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Athens, Inland
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to
Motion to Dismiss



Julie J. Armstrong
Charleston County Clerk of Court

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Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al					
Case Number:	2022CP1003304	Court Agency:	Common Pleas	Filed Date:	07/22/2022
Case Type:	Appeal	Case Sub Type:	Probate Court 940	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	10/02/2023	Disposition Judge:	Price, Bentley
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
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Slotchiver, Daniel Scott	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Slotchiver, Daniel Scott	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Slotchiver, Stephen Michael	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Slotchiver, Stephen Michael	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Irland, Athena L	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Irland, Athena L	10/24/2022_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/03/2022-08:47	11/15/2022-08:47	
Irland, Athena L	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Irland, Athena L	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Slotchiver, Stephen Michael	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Slotchiver, Stephen Michael	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Slotchiver, Daniel Scott	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Slotchiver, Daniel Scott	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Culp, Christina D	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Culp, Christina D	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Sanchez, Jesse	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Sanchez, Jesse	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Michel, David Lawrence	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Michel, David Lawrence	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Psaras, Isadore John	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Psaras, Isadore John	10/24/2022_MOTIONS_Roster/Notice of Motions Roster Publicati	Action		09/28/2022-16:50	11/15/2022-16:50	
Culp, Brandy S	NEF(09-28-2022 09:27:38 PM) Service/Certificate of Servi...	Filing		09/28/2022-13:38	11/15/2022-13:38	

Culp, Brandy S	Certificate Of Service Certified Mail on Athena L Irland	Filing		09/28/2022-13:27	11/15/2022-13:27	
Culp, Brandy S	NEF(09-28-2022 09:05:19 AM) Reply/Other	Filing		09/28/2022-09:11	11/15/2022-09:11	
Culp, Brandy S	Reply To Appellants Return To Motion To Dismiss	Filing		09/28/2022-09:05	11/15/2022-09:05	
Irland, Athena L	Return To Motion To Dismiss Appeal	Filing		09/16/2022-13:57	11/15/2022-13:57	
Culp, Brandy S	NEF(09-06-2022 03:55:33 PM) Service/Certificate Of Servi...	Filing		09/06/2022-16:08	11/15/2022-16:08	
Culp, Brandy S	Certificate Of Service Certified Mail As To The Defendants o	Filing		09/06/2022-15:55	11/15/2022-15:55	
Irland, Athena L	Notice Of Appeal As To Judgment Of Probate Judge	Filing		09/06/2022-15:15	11/15/2022-15:15	
Culp, Brandy S	NEF(09-06-2022 12:59:16 PM) Motion/Dismiss	Filing		09/06/2022-13:16	11/15/2022-13:16	
Culp, Brandy S	Motion/Dismiss Appeal	Motion		09/06/2022-12:59	10/27/2022-12:59	
Culp, Brandy S	NEF(09-06-2022 12:57:43 PM) Notice/Notice of Appearance	Filing		09/06/2022-12:59	11/15/2022-12:59	
Culp, Brandy S	Notice/Notice of Appearance	Filing		09/06/2022-12:57	11/15/2022-12:57	
Irland, Athena L	Appeal/Notice of Appeal (Workflow)	Action		08/01/2022-14:09	11/15/2022-14:09	
Irland, Athena L	Motion/Appeal	Motion		07/22/2022-14:09	10/27/2022-14:09	
Irland, Athena L	Appeal/Notice of Appeal	Filing		07/22/2022-14:07	11/15/2022-14:07	

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Apr 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland, Appellant,

v.

Brandy S. Culp, Respondent.

PROOF OF SERVICE

I, the undersigned, certify that I have served Respondent Brandy *Culp's Motion to Dismiss Appeal and Exhibits* on all *Pro Se* parties to this Appeal via United States Certified Mail, postage prepaid, on April 24, 2024, at the addresses set forth below.

Parties Served:

Athena L. Irland
186 Dolly Dimples Trail
Huger, SC 29450
Pro Se Respondent

Christina D. Culp
198 Lower Cherokee Road
Neeses, SC 29107 Isadore
Pro Se Party of Record

John Psaras
1586 Hidden Bridge Drive
Mount Pleasant, SC 29464
Pro Se Party of Record

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

ATTORNEY FOR RESPONDENT BRANDY S. CULP

April 24, 2024
Mount Pleasant, South Carolina



USPS eReceipt

DoNotReply@ereceipt.usps.gov <DoNotReply@ereceipt.usps.gov>
To: JESSE@jessesanchezlaw.com



MOUNT PLEASANT
1050 JOHNNIE DODDS BLVD
MOUNT PLEASANT, SC 29464-9998
(800)275-8777

04/24/2024 04:31 PM

Product	Qty	Unit Price	Price
Priority Mail® Columbia, SC 29201 Weight: 3 lb 1.00 oz Expected Delivery Date Fri 04/26/2024 Tracking #: 9505 5124 6922 4115 1841 69	1		\$12.20
Insurance Up to \$100.00 included			\$0.00
Total			\$12.20
Priority Mail® Huger, SC 29450 Weight: 2 lb 15.20 oz Expected Delivery Date Thu 04/25/2024 Insurance Up to \$100.00 included Certified Mail® Tracking #: 9589 0710 5270 1705 8171 05	1		\$10.80
Insurance Up to \$100.00 included			\$0.00
Certified Mail®			\$4.40
Total			\$15.20
Priority Mail® Neeses, SC 29107 Weight: 2 lb 15.30 oz Expected Delivery Date Fri 04/26/2024 Insurance Up to \$100.00 included Certified Mail® Tracking #: 9589 0710 5270 1705 8170 99	1		\$10.80
Insurance Up to \$100.00 included			\$0.00
Certified Mail®			\$4.40
Total			\$15.20
Priority Mail® Mount Pleasant, SC 29464 Weight: 2 lb 15.50 oz Expected Delivery Date Thu 04/25/2024 Insurance Up to \$100.00 included Certified Mail® Tracking #: 9589 0710 5270 1705 8170 82	1		\$10.80
Insurance Up to \$100.00 included			\$0.00
Certified Mail®			\$4.40
Total			\$15.20
Grand Total:			\$57.80
Debit Card Remit Card Name: VISA Account #: XXXXXXXXXXXX0500 Approval #: 013461 Transaction #: 295 Receipt #: 053763 Debit Card Purchase: \$57.80 AID: A000000980840 Chip AL: US DEBIT PIN: Verified			\$57.80

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Clerk: 65

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SC Court of Appeals

April 24, 2024

VIA ONEDRIVE ELECTRONIC SUBMISSION AND
U.S. CERTIFIED MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Athena Irland, Appellant v. Brandy S. Culp, Respondent
App. Case No. 2023-001852

Dear Ms. Kitchings:

Enclosed for filing, please find the following:

1. Respondent Brandy S. Culp's Motion to Dismiss Appeal;
2. Separately-filed Exhibits to the Motion to Dismiss Appeal;
3. And Proof of Service, evidencing service on all parties of record.

A check for the fifty dollar (\$50.00) filing fee has been deposited in today's outgoing mail. Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Enclosures (as stated)

Cc: Daniel S. Slotchiver, Esq.
Stephen M. Slotchiver, Esq.
Athena L. Irland
Christina D. Culp
Isadore John Psaras

THE LAW OFFICE OF JESSE SANCHEZ, LLC

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