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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
Court of Common Pleas
Jennifer B. McCoy, Circuit Judge
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Respondent,

versus

MINNIE LEE NEWMAN-MEVERS,
Appellant,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Respondent.

PETITION FOR REHEARING

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN HAGOOD, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
dblanchard@rosenhagood.com
ATTORNEYS FOR APPELLANT

Pursuant to SCACR 221, Appellant Minnie Lee Newman-Mevers (Minnie) respectfully petitions this court for a rehearing of its opinion filed on April 17, 2024. The Court's opinion held the probate court's orders dated March 13, 2020 and June 29, 2020, which collectively reopened the decedent's estate pursuant to S.C. CODE ANN. § 62-3-1008, appointed a special administrator pursuant to § 62-3-614, granted a temporary restraining order (TRO) and preliminary injunction against Minnie, and ordered Minnie to render an accounting are not "final orders" within the meaning of § 62-1-308 and thus are not immediately appealable.[1]

For the reasons discussed below, Minnie respectfully submits the Court overlooked controlling law showing the probate court's orders are immediately appealable.

(a) The Court's Opinion Overlooks the Impact of S.C. CODE ANN. § 62-3-107 on the Appealability of the Probate Court's Orders.

Citing to Dorn v. Cohen, 421 S.C. 517, 809 S.E.2d 53 (2017), this Court's opinion held the probate court's orders are not appealable pursuant to the appeal provisions of S.C. CODE ANN. § 14-3-330 because appeals from the probate court are governed by § 62-1-308 of the South Carolina Probate Code (SCPC) and "only final orders from the probate court are appealable pursuant to section 62-1-308." See Opinion p.2.[2] The Court's opinion overlooks the impact of S.C. CODE ANN. § 62-3-107 in determining what constitutes a "final order" for purposes of § 62-1-308.

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[1] The Court's opinion erroneously states that Minnie appealed the probate court's order "granting [her] motion to remove the action to circuit court." See Opinion p.1. That is incorrect. Minnie did not appeal the probate court's order removing the case to the circuit court. No party appealed the removal of the case to the circuit court. Rather, as part of Minnie's appeal of the probate court's June 29, 2020, order granting a preliminary injunction and ordering an accounting, Minnie argued the probate court lacked subject matter jurisdiction to issue this order because it was not rendered until several weeks ***after*** Minnie had filed and served her motion to remove the action to the circuit court pursuant to § 62-1-302(d) on May 12, 2020.

[2] The consequence of Dorn and this Court's decision is that a party may not immediately appeal any intermediate or interlocutory order issued by the probate court even though the same order would be appealable if issued by a circuit court or family court. As examples, probate court orders granting or denying a preliminary injunction, granting summary judgment as to some but not all of a party's

Section 14-3-330 "codifies the final judgment rule." Doe v. Howe, 362 S.C. 212, 216, 607 S.E.2d 354, 355–56 (Ct. App. 2004). Under this rule, "final judgment" is "a term of art referring to the disposition of all the issues in the case." Link v. Sch. Dist. of Pickens County, 302 S.C. 1, n.3, 393 S.E.2d 176, n.3 (1990). "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." Tillman v. Tillman, 420 S.C. 246, 248-49, 801 S.E.2d 757, 759 (Ct. App. 2017). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). "The rule against interlocutory appeals eliminates the delay and expense of fragmented appeals and permits the whole case to be presented for determination in a single appeal from a final judgment." Schein v. Lamar, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985).

Section 62-1-308 of the SCPC provides that "[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county ...." S.C. CODE ANN. § 62-1-308(a). The statute does not refer to a "final judgment." It also does not delineate what is meant by a "final order." The Court's opinion in this case presumed that a "final order" for purposes of § 62-1-308 means the same thing as a "final judgment" for purposes of § 14-3-330. However, neither the SCPC nor our case law compel or justify this conclusion. A "final order" within the meaning of § 62-1-308 is ***not*** equivalent to a "final judgment" as understood under § 14-3-330. Rather, there can be probate court orders that constitute a "final order" under § 62-1-308 even though they would not constitute a "final judgment" pursuant to § 14-3-330. *The reason for this is because of § 62-3-107.*

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claims, and disqualifying a party's attorney are not immediately appealable under the reasoning of Dorn and this Court's decision. These decisions create an anomaly in our law involving the appealability of orders in our unified judicial system because conflicting rules will govern depending on whether the order was issued by a probate judge rather than a circuit judge or family judge.

Section 62-3-107 of the SCPC alters the final judgment rule. This section is derived from Section 3-107 of the Uniform Probate Code (UPC). See UNIF. PROBATE CODE § 3-107; S.C. CODE ANN. § 62-3-107. Our appellate courts have not yet addressed the significance of § 62-3-107 on the appealability of probate court orders. However, the SCPC mandates that our courts must liberally construe and apply its provisions to effectuate its underlying purpose to make uniform the law of those states which have enacted it. See S.C. CODE ANN. § 62-1-102. Therefore, decisions from other states that have adopted the UPC are especially persuasive. Hoover v. Hoover, 271 S.C. 177, 182, 246 S.E.2d 179, 181 (1978); see Laymon v. Minnesota Premier Properties, LLC, 903 N.W.2d 6, 17 (Minn. Ct. App. 2017), aff'd, 913 N.W.2d 449 (Minn. 2018) (considering judicial decisions from other states that have adopted the UPC when the statute must be "applied to promote the underlying purpose and policies" of the UPC, including "to make uniform the law among the various jurisdictions").

Section 62-3-107(1) provides that "each proceeding before the [probate court] is independent of any other proceeding involving the same estate." S.C. CODE ANN. § 62-3-107(1). Section 62-3-107(4) further provides that "a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment." Id. § 62-3-107(4). The SCPC defines the term "personal representative" to include a "special administrator." Id. § 62-1-201(33) ("'Personal representative' includes … administrator, successor personal representative, *special administrator*, and persons who perform substantially the same function under the law governing their status. 'General personal representative' excludes special administrator." (emphasis added)). The SCPC also provides that "[a] special administrator appointed by order of the court in any formal proceeding *has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order*." Id. § 62-3-617 (emphasis added).

Among other relief, the probate court's orders dated March 13, 2020, and June 29, 2020, appointed a special administrator for the estate pursuant to S.C. CODE ANN. § 62-3-614. (R. pp.9-10; 17, 27). The court made a permanent appointment of a special administrator; it was not a temporary appointment. (R. pp.9-10, 17, 27). The probate court's orders did not place any limits on the special administrator's appointment or duties, thus he was appointed with the power of a general personal representative. (R. pp.9-10, 17, 27).

Under the terms of § 62-3-107(4), the probate court's appointment of a special administrator was "concluded" or final when the orders of appointment were made. See Matter of Est. of Franchs, 722 P.2d 422, 423 (Colo. Ct. App. 1986) ("Here, since the probate court's order formally appointing the special administrator did not limit the special administrator's power, the special administrator has the power of a general personal representative. Therefore, we hold that the probate court's order appointing the special administrator is final and appealable."); In re Estate of Newalla, 837 P.2d 1373, 1377 (N.M. Ct. App. 1992) ("[U]nder Section 45-3-107 itself, 'A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment,' thereby implying that such an order is final and appealable."); In re Est. of Severson, 970 N.W.2d 94, 100–01 (Neb. 2022) ("[UPC § 3-107] provides that 'a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.' Here, the probate court's order appointing Kelly as personal representative ended a discrete phase of the probate proceeding. Moreover, the appointment order coupled with the issuance of letters of personal representative imposed fiduciary duties upon Kelly. Because the order was made in a special proceeding and affected a substantial right, it was a final order." (footnotes omitted)).

Section 62-3-107(4) of the SCTC is consistent with our state law predating the SCTC's enactment. In Ex parte Small, 69 S.C. 43, 48 S.E. 40 (1904), the South Carolina Supreme Court held

that a probate court's order appointing an "administrator" for an estate is a final order and is immediately appealable. Id. at 43, 48 S.E. at 41 ("The order of Probate Judge Jones decreeing that the letters of administration should be granted to Mrs. Small was really the final order adjudicating the rights of the parties, and was therefore appealable."); see also JEAN H. TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 165 (3rd ed. 2016) ("An order appointing an administrator in probate court is immediately appealable." (citing Small)). The holding in Small is sound because to hold otherwise would mean the appointment of an administrator is not reviewable until after the estate has been fully administered and closed at which point the appellate court likely could not undo the administrator's actions that have already been completed by then.

While the decision in Small was issued many years ago, it has never been overruled and its holding is consistent with § 62-3-107(4) as discussed above. This Court has acknowledged Small's continued validity even after the enactment of the SCPC. In Fisher v. Huckabee, 2016 WL 7495869 (S.C. Ct. App. Dec. 21, 2016), aff'd in part, rev' in other part, 2018 WL 6528122 (S.C. Dec. 12, 2018), albeit an unpublished decision, this Court rejected the argument that a probate court's order appointing a special fiduciary under S.C. CODE ANN. § 62-3-614 was interlocutory and not immediately appealable. Fisher, 2016 WL 7495869 at *4 n.13 ("Huckabee argues the order appointing a special fiduciary is interlocutory and not immediately appealable. We disagree." (citing Small)). This court cited Small as support for its holding.

Courts have explained that UPC § 3-107(1) reflects "a more expansive determination of the finality of probate orders than articulated in" cases adhering to the "final judgment rule." In re Est. of Geier, 809 N.W.2d 355, 357-58 (S.D. 2012). These courts instruct that because each proceeding before the probate court is independent of any other proceeding involving the same estate, there needs to be finality, for purposes of appealability, only for the particular proceeding being appealed,

not the entire estate. To authorize an appeal in a probate matter, it is not necessary that the probate court's order fully and finally dispose of the entire probate proceeding or all the issues in the case. Instead, to be immediately appealable, the order must finally dispose or be conclusive of the issue or controverted question for which the particular part of the proceeding was brought. In short, a probate court order is a "final order" if it ends a discrete phase of the probate proceeding.

Probate court proceedings "may generate multiple 'petitions' or 'proceedings'" and these petitions "may combine various requests for relief in a single proceeding." Molenaar v. De Graaf, No. A-1-CA-35128, 2018 WL 3424978, at *1 (N.M. Ct. App. June 5, 2018). "Each petition is treated 'as instituting a separate [civil] action,' and each claim against the estate is treated as a separate proceeding." Id. "The flexibility of modern pleadings allow the litigant to present a number of matters in one document to the probate court for decision." Christensen v. Harkins, 740 S.W.2d 69, 74 (Tex. Ct. App. 1987). "A probate proceeding consists of a continuing series of events, in which the probate court may make decisions at various points in the administration of the estate on which later decisions will be based." Logan v. McDaniel, 21 S.W.3d 683, 688 (Tex. Ct. App. 2000). "The need to review controlling, intermediate decisions before an error can harm later phases of the proceeding has been held to justify modifying the 'one final judgment' rule." Id.; Christensen, 740 S.W.2d at 74 ("The nature of 'administration' contemplates decisions to be made on which other decisions will be based. There must be a practical way to review erroneous, controlling, intermediate decisions before the consequences of the error do irreparable injury.").

Additionally, a "feature of the procedures established by the [UPC] is that, in the absence of supervised administration, one cannot be certain whether any particular order entered in the probate case—such as an order admitting a will to probate or an order determining the validity of a creditor's claim—will be followed by another order regarding the estate." Newalla, 837 P.2d at 1376. This is

because "it is possible to close the estate with no order being entered after the will is admitted to probate and the personal representative is appointed." Id.

> Perhaps there will be a later order regarding a creditor's claim; perhaps the personal representative will petition for an order of complete settlement of the estate. But perhaps not. If an order is not final and appealable until the last order entered concerning the estate, one often will not be able to know with any degree of certainty at the time an order is entered whether the order is final and appealable, because one cannot predict whether further orders will be sought.

Id.

Due to the unique nature of the administration of estates, "[t]he 'one final judgment' rule has been modified in probate cases." Christensen, 740 S.W.2d at 72. Specifically, the purpose of § 62-3-107 is to render probate court orders "final" even before there has been full administration or closing of the estate. Newalla, 837 P.2d at 1377 (noting the Chief Reporter of the UPC "has indicated that one purpose of [UPC § 3-107] is to avoid the result under the Model Probate Code that no order in a probate case was final until there had been full administration and closing of the estate" (citing Richard V. Wellman, The Uniform Probate Code: Blueprint for Reform in the 70's, 2 CONN. L. REV. 453, 464-65 n.47 (1970)); see also Matter of Est. of Petrik, 963 N.W.2d 766, 770 (S.D. 2021) (court adopted a "more expansive determination of the finality of probate orders" based on state enactment of UPC § 3-107 and recognized the drafters of the UPC sought to "avoid the result ... that no order in a probate case was final until there had been full administration and closing of the estate" (citation omitted)); Geier, 809 N.W.2d at 358.

"Because the probate of an estate may consist of a series of special proceedings, unlike other forms of litigation, probate can result in a series of potentially final orders." In re Estate of Sanders, 750 N.W.2d 806, 813 (Wis. 2008); Estate of Marsh, 2016 WL 6581173, at *5 (Cal. Ct. App. Nov. 7, 2016) ("The administration of a decedent's estate can involve several 'independent collateral proceedings,' and the 'final orders' entered in each such proceeding are independently appealable

and can be the basis for a *res judicata* defense." (citations omitted)). "[M]ultiple judgments final for purposes of appeal can be rendered on certain discrete issues" in a single estate. In re Guardianship of Glasser, 297 S.W.3d 369, 372 (Tex. App. 2009) (citation omitted).

"Because each proceeding [before the probate court] is independent, there needs to be finality, for purposes of appealability, only for the proceeding being appealed." In re Estate of Ketterling, 885 N.W.2d 85, 87 (N.D. 2016); see Schmidt v. Schmidt, 540 N.W.2d 605, 607 (N.D. 1995) ("Because each proceeding in an unsupervised probate is considered independent of other proceedings involving the same estate, there need be finality only as to that proceeding, not the entire estate."). "[I]n order to authorize an appeal in a probate matter, it is not necessary that the decision, order, decree, or judgment referred to therein be one which fully and finally disposes of the entire probate proceeding." Kelley v. Barnhill, 188 S.W.2d 385, 386 (Tex. 1945); White v. Pope, 664 S.W.2d 105, 107 (Tex. Ct. App. 1983). Instead, "[t]he order must finally dispose or be conclusive of the issue or controverted question for which the particular part of the proceeding was brought." Wittner v. Scanlan, 959 S.W.2d 640, 641 (Tex. Ct. App. 1995); see also Kelley, 188 S.W.2d at 386. Stated differently, a probate court order that "end[s] a discrete phase of the probate proceeding" is "a final order." In re Est. of Severson, 970 N.W.2d 94, 100-01 (Neb. 2022); see also In re Estate of McKillip, 820 N.W.2d 868, 875-76 (Neb. 2012).

In the case at bar, in addition to granting a TRO and preliminary injunction, the probate court's orders also reopened the decedent's estate pursuant to S.C. CODE ANN. § 62-3-1008, appointed a special administrator pursuant to S.C. CODE ANN. § 62-3-614, and ordered Minnie to render an accounting. Section 62-3-107 means that each of these rulings disposes of an independent proceeding or a discrete phase of the probate proceeding before the probate court and is final and appealable. As noted above, § 62-3-107(4) specifically provides that "a proceeding for appointment

of a personal representative is concluded by an order making or declining the appointment." S.C. CODE ANN. § 62-3-107(4).

The probate court's orders made final determinations about whether to reopen the estate, appoint a special administrator, or require an accounting. Nothing in the orders indicates the probate court's rulings are temporary or that the probate court will conduct proceedings in the future to determine whether to reopen the estate, appoint a special administrator, or compel an accounting or that the probate court will revisit these rulings in the future. Instead, the probate court's rulings on those matters are permanent and final.[3]

The orders are not dependent upon the outcome of the SCAG's other claims. The probate court's decisions to reopen the estate, appoint a special administrator, and order Minnie to render an accounting are discrete from the SCAG's claims seeking an order to recover estate assets that were distributed to Minnie as part of the estate administration. It is unnecessary for the circuit court to revisit the probate court's rulings to reopen the estate, appoint a special administrator, or order an accounting for it to dispose of the SCAG's remaining claims.

The probate court's orders also fully and finally adjudicated the parties' rights involving the reopening of the estate, appointment of a special administrator, and an accounting, which involve discrete claims in the probate court proceeding. In re Est. of Chess, 995 N.W.2d 675, 203-04 (Neb.

[3] The appointment of a permanent special administrator is distinguishable from the temporary appointment at issue in Estate of Boyce v. Work, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991). In Boyce, this Court held a probate court order appointing two sisters as special administrators for an estate was "clearly temporary" and thus not a final order because it stated the sisters are appointed "until such time as a Personal Representative(s) shall be formally appointed" and placed limitations on their powers. The court said appellate jurisdiction was lacking because "of the temporary order involved in this case." Id. at 44, 406 S.E.2d at 185. In concluding the appointments did not involve a final order, it would have made no sense for the Court to emphasize the temporary nature of the appointments even if the permanent appointment of a special administrator could not be appealed. In the present case, the probate court's order appoints a permanent special administrator with no limitations, not a temporary special administrator with temporary and limited authority.

2023) (probate court order "terminated a distinct portion of the estate proceedings" by removing a personal representative and appointing a successor personal representative). The orders are "final" because no further action is required in the probate court to determine the parties' rights with respect to those discrete issues. The probate court's orders do not advise that any further hearings or proceedings will occur on whether to reopen the estate, appoint a special administrator, or require an accounting. There is nothing left for the probate court to do involving those issues. Instead, the probate court has already decided those discrete issue.

For purposes of appealability under § 62-1-308, there needs to be finality only for the proceeding being appealed. Because the probate court has entered "final orders" involving these independent claims, the orders are immediately appealable under § 62-1-308. At the very least, § 62-3-107(4) and the decision in Small show that the probate court's appointment of a permanent special administrator is immediately appealable as a final order. This Court overlooked or disregarded authority holding the probate court's orders are immediately appealable.

(b) The Probate Court's Rulings to Reopen the Estate, Grant a TRO, Grant a Preliminary Injunction, and Order an Accounting are Appealable Because There is an Appealable Issue Before This Court Even if Those Other Rulings Would Not Otherwise be Appealable by Themselves.

Even if the Dorn case means all of the probate court's rulings are not appealable under § 62-1-308, the probate court's order appointing a special administrator undoubtedly is a final order that is immediately appealable for the reasons discussed above. Well-settled law further holds this Court can consider the probate court's other rulings to reopen the estate, grant a TRO, grant a preliminary injunction, and order Minnie to account because there is an appealable issue before the court.

Section 62-1-308 states that "[t]he circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. CODE ANN. § 62-1-308(i). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing

appeals." Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citation omitted); see also Matter of Howard, 315 S.C. 356, 434 S.E.2d 254, 257 (1993). "[A] circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal." In re Est. of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); see also Howard, 315 S.C. at 361, 434 S.E.2d at 257.

These "rules of law" include the rule that an order which is not directly appealable will be considered if there is an appealable issue before the court. Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). In Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 623 S.E.2d 387 (2005), our state supreme court held that "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court." Id. at 516-17, 623 S.E.2d at 390 (citing Cox and Briggs v. Richardson, 273 S.C. 376, 256 S.E.2d 544 (1979)). Even though the denial of a motion to dismiss ordinarily is not immediately appealable, the court in Edge nevertheless held it would consider the appeal of such an order because another order had granted a motion to dismiss "which is appealable" and it would "avoid another appeal in the future and potentially narrow the issues for trial (*i.e.* judicial economy)" if the court considered the appeal of the order denying the motion to dismiss.

Similarly, in Se. Hous. Found. v. Smith, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008), this Court considered an appeal from an interlocutory order granting a motion pursuant to SCRCP 60(b) because the court "may review an interlocutory order when the order is coupled with an appealable issue." Id. at 636, 670 S.E.2d at 688 (citing numerous cases). Citing the holding in Edge as well as other cases, the Smith court held that "[b]ecause the trial court's grant of summary judgment on the Foundation's legal malpractice claim is a final determination that is properly before this Court, we believe judicial economy argues for the resolution of Smith's arguments on the 60(b)

motion at this time." Id. This Court also observed in Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002), "that the courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable." Id. at 338, 574 S.E.2d at 511; see Morris v. Anderson County, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (stating an appellate court "may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation").

Even if the probate court's rulings to reopen the estate, grant a TRO and preliminary injunction, and compel Minnie to provide an accounting are not by themselves appealable under § 14-3-330 because that section does not apply to appeals from the probate court, this Court should still consider Minnie's appeal of those rulings because there is an appealable issue before this court. The probate court's permanent appointment of a special administrator pursuant to § 62-3-614 is an appealable issue under § 62-3-107(4) and Small.

The probate court's ruling to reopen the estate was a necessary predicate to its order appointing a special administrator for the estate. It could not have appointed a special administrator if it did not first reopen the estate. Additionally, it will promote judicial economy to consider all of the probate court's rulings as part of this appeal. This Court's review of the probate court's orders reopening the estate, granting a TRO and preliminary injunction, and requiring Minnie to account may avoid another appeal in the future and narrow the issues for trial because those orders ruled on, *inter alia*, whether the probate court erred by granting *ex parte* relief (including reopening the estate) without prior notice to Minnie, whether the probate court had subject matter jurisdiction to grant the relief sought by the SCAG, and whether as a matter of law the SCAG has standing to assert the

claims brought against Minnie in this case. Resolution of these questions will narrow the issues going forward and potentially avoid unnecessary litigation in the trial court.

For the forgoing reasons, Minnie respectfully submits this court has overlooked or disregarded authority showing the probate court's orders are immediately appealable. Minnie respectfully submits a rehearing should be granted and the probate court's orders should be reversed.

Respectfully submitted,

ROSEN HAGOOD, LLC

By:*/s/ Daniel F. Blanchard, III*

Daniel F. Blanchard, III (SC Bar 65342)
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
dblanchard@rosenhagood.com

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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on the Respondents by mailing copies to their attorneys of record on April 29, 2024, by United States first-class mail, with sufficient postage affixed thereto, and addressed as follows:

Alan Wilson, South Carolina Attorney General
W. Jeffrey Young, Chief Deputy Attorney General
Robert D. Cook, Solicitor General
C. Havird Jones, Senior Assistant Deputy Attorney General
Kristin M. Simons, Assistant Attorney General
Mary Frances G. Jowers, Assistant Deputy Attorney General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

C. Michael Branham, Esquire
Stephen L. Brown, Esquire
Clement Rivers, LLC
Post Office Box 993
Charleston, South Carolina 29402

J. James Duggan, Esquire
Special Administrator of the Estate of Roy E. Mevers, Jr.
Duggan Law Firm, LLC
44 Markfield Drive, Suite E
Charleston, SC 29407

ROSEN HAGOOD, LLC

By:*/s/ Daniel F. Blanchard, III*
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR APPELLANT