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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

South Carolina Court of Appeals Appellate Case No. 2021-001152
South Carolina Court of Appeals Order filed April 17, 2024
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,
Petitioner,

versus

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner Minnie Lee Newman-Mevers ("Petitioner") certifies the Petition for Rehearing was made and finally ruled on by the court of appeals on June 27, 2024.

QUESTION PRESENTED

I. Did the court of appeals err by holding the decision in Dorn v. Cohen, 421 S.C. 517, 809 S.E.2d 53 (2017) compels the finding the probate court's orders reopening the decedent's estate pursuant to S.C. CODE ANN. § 62-3-1008, appointing a special administrator pursuant to S.C. CODE ANN. § 62-3-614, restraining and enjoining Petitioner from using or disposing of any property or assets distributed to her as a beneficiary of the estate, and ordering Petitioner to render an accounting are not "final orders" within the meaning of S.C. CODE ANN. § 62-1-308 and thus are not appealable before the estate is again closed?

INTRODUCTION

This Petition concerns whether there are any probate court orders that are appealable before the last order is entered closing a decedent's estate. Confusion has existed since this court's decision in Dorn v. Cohen, 421 S.C. 517, 809 S.E.2d 53 (2017), which held that § 62-1-308 of the South Carolina Probate Code (SCPC) governs appeals from probate court orders and the general appellate provisions of S.C. CODE ANN. § 14-3-330 do not apply to probate court orders. Section 62-1-308 states that a "final order, sentence, or decree" of the probate court may be appealed. S.C. CODE ANN. § 62-1-308(a). This section does not explain what is meant by a "final order."

Based on Dorn, the court of appeals held a probate court's orders reopening a decedent's estate that had been fully administered, distributed, and closed for over a year, appointing a special administrator for the reopened estate, restraining and enjoining Petitioner from using or disposing of any property or assets she received as a beneficiary of the estate, and ordering Petitioner to provide an accounting are not "final orders" under § 62-1-308.[1] Petitioner respectfully submits the court of

[1] The court of appeals erroneously stated Petitioner appealed the probate court's order "granting [her] motion to remove the action to circuit court," which is false. See Opinion p.1. No party appealed the probate court's removal of the case to the circuit court. Instead, as part of Petitioner's

appeals erred because the court overlooked or disregarded the impact of Section 62-3-107 of the SCTC in determining what constitutes a "final order" for purposes of § 62-1-308.

Section 62-3-107 is taken verbatim from Uniform Probate Code (UPC) § 3-107. Section 62-3-107(4) of the SCTC provides that "a proceeding for appointment of a [special administrator] *is concluded by an order making or declining the appointment*." S.C. CODE ANN. § 62-3-107(4) (emphasis added). Consequently, such an order is "final" for appeal purposes when the appointment is made or declined. Indeed, the court of appeals's opinion in this case conflicts with prior decisions issued both before and after the SCTC's enactment which held that probate court orders appointing administrators, special fiduciaries, and special administrators *are* immediately appealable. Ex parte Small, 69 S.C. 43, 48 S.E. 40 (1904); In re Est. of Connor, No. 2009-UP-501, 2009 WL 9530096, at *4-5 (S.C. Ct. App. Oct. 29, 2009); Fisher v. Huckabee, 2016 WL 7495869, at *4 n.13 (S.C. Ct. App. Dec. 21, 2016), aff'd in part, rev'd in other part, 2018 WL 6528122 (S.C. Dec. 12, 2018).

Section 62-3-107(1) further provides that "each proceeding before the [probate court] is *independent of any other proceeding* involving the same estate." Id. § 62-3-107(1) (emphasis added). Courts applying this provision have explained it 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). Because each proceeding before the probate court is "independent" of any other proceeding involving the same estate, there needs to be finality, for

appeal of the probate court's order dated June 29, 2020, which reopened the estate, appointed a special administrator, granted a preliminary injunction, and ordered Petitioner to provide an accounting, Petitioner argued the probate court lacked subject matter jurisdiction to issue that order because it was made several weeks ***after*** Petitioner had filed and served her notice on May 12, 2020 removing the action to the circuit court in accordance with S.C. CODE ANN. § 62-1-302(d). Petitioner argued in the courts below and in the court of appeals that the probate court was required to immediately remove the case to the circuit court and it lacked jurisdiction to conduct any further proceedings or issue any further orders in the matter once the notice of removal was filed.

purposes of appealability, only for the particular proceeding being appealed, not the entire estate.

The court of appeals erred by not considering § 62-3-107's impact in determining whether the probate court's orders are appealable. Because of the novelty of this issue under state law, the conflicting appellate court decisions, and the present confusion regarding what types of probate court orders are appealable, Petitioner respectfully requests this court to issue a writ of certiorari. The court should provide clarity on these questions.

STATEMENT OF THE CASE AND FACTS

This case originated in the probate court. Petitioner is the widow of the late Roy E. Mevers, Jr ("Decedent"), who died on November 3, 2017. (R. p.167 ¶5). Petitioner was appointed as personal representative of Decedent's estate on November 13, 2017. Id.

Irvin Slotchiver, Esquire, initially served as Petitioner's counsel in her role as personal representative. On December 19, 2017, Jessica Wentworth, Esquire was substituted as Petitioner's counsel. (R. p.167 ¶5; R. pp.57-60). Ms. Wentworth is a local attorney whose practice focuses primarily on estate planning, probate administration, and real estate transactions. (R. p.166-67 ¶¶1-4). Petitioner also hired H. Christopher Moss, who is both a Certified Public Accountant (CPA) and tax attorney with over 35 years of experience, to serve as advisor on tax and Internal Revenue Service (IRS) related matters. (R. p.167 ¶5; 155 ¶6; 158 ¶17).[2]

In 2004, years before marrying Petitioner, Decedent had formed The "Sonny Mevers" Foundation ("Foundation") as a South Carolina non-profit organization. (R. pp.423-29). Via an IRS determination letter issued on July 21, 2005, the Foundation initially was granted tax-exempt status

[2] Mr. Moss is licensed as a CPA in Virginia and South Carolina as well as the District of Columbia. He is also licensed as a lawyer in Virginia and the District of Columbia. He assisted Ms. Wentworth (a lawyer licensed in this state) with her representation of Petitioner, which is expressly permitted by our rules of professional conduct. See S.C. R. PROF. RESP. 5.5(c); In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 422 S.E.2d 123 (1992).

as a private foundation under § 501(c)(3) of the IRC. (R. p.106). However, effective on November 15, 2017, the IRS revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) for the failure to file the required annual returns for three consecutive years. (R. p.433). The Foundation's tax-exempt status has never been reinstated.

On January 23, 2018, the Foundation was dissolved as an entity with the South Carolina Secretary of State with an effective date of January 24, 2018. (R. pp.119-21, 434). Statutory law provides that the Foundation could revoke its dissolution within 120 days of its effective date, which did not occur. See S.C. CODE ANN. § 33-31-1404(a). This period for the Foundation to revoke its dissolution expired on May 24, 2018. No such revocation of dissolution was applied for or occurred.

Decedent died testate while married to Petitioner. His Last Will and Testament, as well as two Codicils amending his original Will, were prepared by Mr. Slotchiver. (R. p.168 ¶6). Article XII of Decedent's original Will, which was made before he married Petitioner, provided for the disposition of his residuary estate:

> I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to THE "SONNY MEVERS" FOUNDATION, *if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever*.

(R. pp.50-51) (emphasis added). After Decedent married Petitioner on September 12, 2016, he executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

> Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me.

(R. p.43).

Under the terms of Decedent's Will, the Foundation's status as the beneficiary of Decedent's residuary estate would vest ***provided*** the Foundation was in existence at the time of Decedent's death ***and*** it satisfied the other "conditions" set forth in Article XII. (R. p.169 ¶12; 157 ¶15; 708-09 ¶12). The Will sets forth specific conditions the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate—that (a) it is an organization which is charitable within the meaning of Section 2055 of the Internal Revenue Code (IRC) and (b) that the gift is permitted as a charitable deduction from Decedent's estate for federal estate tax purposes. If either of those conditions were not satisfied either at the time of Decedent's death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Petitioner. (R. p.169-70 ¶13; 157-58 ¶16; 709 ¶13).

Decedent had created the Foundation in 2004 before he had met Petitioner. Ms. Wentworth contacted Mr. Moss, who is both a CPA and a tax attorney, to serve as advisor on tax and IRS related matters, including whether the Foundation satisfied the Will's conditions. (R. pp.167 ¶5, 170-71 ¶14; 158 ¶17). Mr. Moss investigated the matter and concluded the Foundation was a sham. (R. p.158-59 ¶¶18-19). Among other things, Mr. Moss learned the Foundation had not filed the required tax information returns (Form 990-PF) for the years 2014, 2015, and 2016 and he could find no other reporting or other documentation to the IRS or another regulatory body concerning its operations during these periods. (R. pp.158-59 ¶18; 170-71 ¶14; 709-10 ¶15). He determined the Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. Id. He learned that almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised persons with whom Decedent transacted business raising a number of concerns regarding self-dealing under IRC § 4941. Id. There were no

records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. Id. The Foundation had no bookkeeping or records, had not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. Id. In short, Mr. Moss concluded the Foundation had no substance. Id. It had no documentation that could demonstrate it had been operated by a board of directors to further exclusively charitable purposes. Id.

Based on his experience in the field of taxation and with tax audits by the IRS, Mr. Moss concluded the Foundation could not withstand an IRS audit, it could not qualify as a charitable organization within the meaning of IRC § 2055, and a devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. (R. p.159 ¶19; 171-72 ¶15; 711 ¶18). The IRS confirmed Mr. Moss's finding about the Foundation when it revoked its federal tax-exempt status under IRC § 501(c)(3) effective on November 15, 2017. (R. p.159 ¶21; 172 ¶16). As of that date, the Foundation was a taxable c-corporation. Id. This occurred a mere two days after Petitioner was appointed as personal representative for the estate.

On January 23, 2018, the Foundation was dissolved for the reasons pointed out by Mr. Moss. (R. p.159-60 ¶22). Articles of Dissolution were filed with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. Id.

Decedent's estate was administered based on the determinations the Foundation had not satisfied the conditions in the Will, the devise or gift to the Foundation had lapsed or was canceled, and Petitioner was the residuary beneficiary under the Will. (R. p.172 ¶17; 160 ¶23). With Ms. Wentworth's assistance, Petitioner filed a Proposal for Distribution (Form #410ES) with the Probate

court on November 21, 2018, along with a Final Accounting (Form #361ES), Application for Settlement (Form #412ES), and Notice of Right to Demand Hearing (Form #416ES), clearly disclosing that Petitioner would receive the residuary estate. (R. pp.63-68; 172 ¶17). Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Decedent's Will.

All of the 28 beneficiaries who received distributions from the estate signed a Receipt and Release with Waiver (Form #403ES) and none responded to the notice of right to demand a hearing, or filed any objection to the Proposal for Distribution or Application for Settlement. (R. p.172 ¶18; 160 ¶24). None of the purported directors or officers of the Foundation contested the probate process, its revocation of exempt status on November 15, 2017, or the subsequent dissolution of the Foundation. (R. p.173 ¶19; 160-61 ¶25).

The probate court issued an order closing the estate on December 31, 2018. (R. p.1). The probate court expressly found that "[t]he asset(s) has/have been administered according to the laws of South Carolina." Id. The estate assets were distributed in accordance with the terms of the Will and Codicil as shown on the Proposal for Distribution. (R. p.173 ¶20). Deeds of distribution involving the various real estate owned by Decedent were duly executed and recorded with the Registers of Deed for the appropriate counties. Id. The assets of the estate were distributed in accordance with the terms of Decedent's Will and Codicil. Id.

On March 13, 2020, notwithstanding the dissolution of the Foundation and the forfeiture of its charter, the SCAG filed the instant action in the probate court in his *parens patriae* capacity purportedly on behalf of the Foundation's beneficiaries, even though the Foundation no longer exists and lacks the right to sue. (R. pp.69-125). The SCAG's lawsuit alleges the Foundation was a beneficiary under the terms of Decedent's Will and it should have been distributed the Decedent's

residuary estate. The SCAG's action asked the probate court to reopen Decedent's estate, appoint a special administrator in place of Petitioner, and impose a constructive trust for the benefit of the Foundation over the assets previously distributed from the estate to Petitioner.

On the very same day the SCAG filed the action, and without prior notice to Petitioner or opportunity to be heard and despite the fact the SCAG had been engaged in active dialogue with Petitioner's counsel for several months,[3] the SCAG obtained an *ex parte* temporary restraining order (TRO) from Associate Probate Judge Tamara Curry based solely on the SCAG's uncontested submissions to the court. (R. pp.2-12; 126-30; 435). On March 13, 2020, Judge Curry temporarily reopened Decedent's estate and appointed a special administrator for the estate without notice or hearing. Judge Curry also set a hearing to take place on March 23, 2020. The hearing notice merely states the hearing is "Per Temporary Restraining Order Dated March 13, 2020." (R. p.12). Petitioner and her counsel were served with the SCAG's Petition, *ex parte* TRO, and Notice of Hearing on March 17, 2020. (R. p.176-77).

Probate Judge Irvin G. Condon conducted a hearing six days later on March 23, 2020. (R. pp.258-355). Petitioner and her counsel appeared and opposed the continuation of the TRO. Judge Condon verbally indicated at the hearing his preliminary finding that he would continue the TRO in effect, but also stated he would issue a written order setting forth his final findings and rulings on a future date to be determined.

On April 10, 2020, before Judge Condon issued a final ruling, Petitioner filed her Return to the SCAG's Petition along with Counterclaims, Cross-Claims, and Third-Party Claims. (R. pp.178-97). Petitioner raised several defenses and asserted counterclaims and cross-claims involving the

[3] Petitioner's legal counsel had been actively communicating with the SCAG and providing information to the SCAG in response to his inquiries concerning these subject matters for several months before the SCAG initiated *ex parte* proceedings. (R. p.356-422).

construction of Decedent's Will and Codicils. In the same pleading, Petitioner also petitioned for an elective share of Decedent's probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 *et seq.* and requested attorneys' fees under § 62-1-111. Id.

By Reply dated May 4, 2020, the Special Administrator answered the Counterclaims, Cross-Claims, and Third-Party Claims. (R. pp.198-202). By Reply dated May 8, 2020, the SCAG answered the Counterclaims, Cross-Claims, and Third-Party Claims. (R. pp.203-10).

On May 12, 2020, fifty days after the TRO hearing, Petitioner timely filed and served a Notice of Demand for Jury Trial. (R. pp.211-13). On that same day, in accordance with S.C. CODE ANN. § 62-1-302(d), Petitioner timely filed and served a Notice of Removal and Motion to Remove Action to Circuit Court. (R. pp.214-19). Section 62-1-302(d) mandates that the action "***must be removed*** to the circuit court and in these cases ***the circuit court shall proceed upon the matter de novo***." S.C. CODE ANN. § 62-1-302(d) (emphasis added).

On June 29, 2020, notwithstanding the prior removal notice, Judge Condon entered another written order reopening the estate, appointing a special administrator, granting a preliminary injunction restraining and enjoining Petitioner from using or disposing of any property or assets she received as a beneficiary of the estate, and ordering Petitioner to render a "complete accounting." (R. pp.13-28). On July 10, 2020, Petitioner filed and served a motion to alter, amend, and/or vacate the probate court's orders pursuant to Rule 59(e). (R. pp.220-30). On August 28, 2020, Petitioner also filed and served a motion to vacate the probate court's orders pursuant to Rule 60(b). (R. pp.243-51). Petitioner requested a hearing on her motions. (R. pp.436-37). However, on September 10, 2020, Judge Condon entered an order denying Petitioner's motions without a hearing. (R. pp.29-33).

On September 11, 2020, Petitioner filed a Notice of Intent to Appeal to the circuit court involving all of the probate court's Orders. (R. pp.252-57, 440-45). Petitioner's appeal was assigned

Case No. 2020-CP-10-04036 in the circuit court. On September 15, 2020, the probate court then filed a removal of the remainder of the action not subject to the prior appeal to the circuit court, which action is pending in the circuit court as Case No. 2020-CP-10-04089. (R. pp.29-33). Thus, there were two actions pending in the circuit court at that time.

On September 16, 2020, the SCAG filed a motion for continuance of the TRO issued by the probate court or, in the alternative, issuance of a temporary injunction in Case No. 2020-CP-10-04089. (R. pp.595-662). On September 22, 2020, following a hearing, the circuit court denied the SCAG's motion via a Form 4 order. (R. pp.589-91).

On September 10, 2021, in the appeal from the probate court pending in the circuit court as Case No. 2020-CP-10-04036, the circuit court entered a Form 4 order affirming the probate court's orders without analysis. (R. pp.572-74). On October 8, 2021, Petitioner filed and served a notice of appeal to the court of appeals. (R. pp.575-83). On April 17, 2024, the court of appeals issued an unpublished opinion vacating the circuit court's order which had affirmed the probate court's orders on the basis the probate court's orders are not appealable. On April 29, 2024, the Petitioner filed a Petition for Rehearing. On June 27, 2024, the court of appeals denied this petition.

ARGUMENTS

The court of appeals erred by holding the probate court's orders reopening the decedent's estate pursuant to S.C. CODE ANN. § 62-3-1008, appointing a special administrator pursuant to S.C. CODE ANN. § 62-3-614, restraining and enjoining Petitioner from using or disposing of any property or assets she received as a beneficiary of the estate, and ordering Petitioner to render an accounting are not "final orders" within the meaning of § 62-1-308. See Opinion p.2. Notwithstanding Dorn, the orders are appealable as "final orders" under § 62-1-308 because of the impact of S.C. CODE ANN. § 62-3-107. This section is derived from Section 3-107 of the Uniform Probate Code (UPC). See UNIF.

PROBATE CODE § 3-107. This uniform provision shows the probate court's orders "concluded" the proceeding for the appointment of a special administrator with finality and disposed of other "independent" proceedings in the probate court with finality, thus the orders are appealable.

Our courts have yet to address § 62-3-107's significance with respect to the appealability of probate court orders, thus this is a novel issue under state law. 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").

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

"Final judgment" refers "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).

South Carolina's general appellate statute found at § 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). It also codifies exceptions to this rule for various types of non-final, interlocutory, or intermediate orders which are

deemed immediately appealable, such as orders "involving the merits" or affecting a "substantial right." Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005).

In comparison, § 62-1-308 of the SCPC simply provides that "[a] person interested in a final order, sentence, or decree of a probate court may appeal ...." S.C. CODE ANN. § 62-1-308(a). The SCPC does not define what is meant by a "final order." It also makes no mention of interlocutory or intermediate orders. Based on Dorn, the court of appeals concluded 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 this court's decision in Dorn compel or justify this conclusion.

A "final order" within the meaning of § 62-1-308 is *not* the same thing as a "final judgment" as understood under § 14-3-330. Rather, there can be probate court orders that qualify as a "final order" under § 62-1-308 even though they would not constitute a "final judgment" pursuant to § 14-3-330. ***Section 62-3-107 is the reason for this.*** Case law applying UPC § 3-107, upon which § 62-3-107 is derived, show that it alters the final judgment rule in probate court proceedings.

Section 62-3-107(4), which is taken verbatim from UPC § 3-107, states 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) (emphasis added). Section 62-3-107(1) further provides that "each proceeding before the [probate court] is *independent of any other proceeding* involving the same estate." Id. § 62-3-107(1) (emphasis added).

While § 62-3-107(4) uses the term "personal representative," the SCPC makes clear that this section also applies to a proceeding for the appointment of a "special administrator." Section 62-1-201 contains definitions for various terms that are used throughout the SCPC. The official comments state that "[t]he definitions set out in this section are applicable throughout this Code." See S.C. CODE ANN. § 62-1-201 cmt. Section 62-1-201(33) defines the term "personal representative" to

include a "special administrator." Specifically, § 62-1-201(33) states that throughout the SCPC, "'[p]ersonal representative' includes … [an] administrator, successor personal representative, *special administrator*, and persons who perform substantially the same function under the law governing their status." S.C. CODE ANN. § 62-1-201(33) (emphasis added); see also Fisher on behalf of estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018) ("Under the Probate Code …, the terms 'executor' and 'administrator' do not have separate meaning, but are included within the defined term 'personal representative.'" (citing S.C. CODE ANN. § 62-1-201(33))).

Section 62-1-201(44) of the SCPC also states that a "'[s]pecial administrator' means a personal representative as described by Sections 62-3-614 through 62-3-618." See S.C. CODE ANN. § 62-1-201(44). Sections 62-3-614 through 62-3-618 set forth the probate court's authority to appoint a special administrator. The probate court's orders in this very case cited to those sections as the basis for its authority to appoint a special administrator. (R_0009, 0027). Section 62-1-201(33) of the SCPC differentiates a "general personal representative" from a "personal representative." Whereas the term "personal representative" includes a special administrator, the term "general personal representative … excludes [a] special administrator." Id. § 62-1-201(33). 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).

These definitions are imported into § 62-3-107(4). Section 62-3-107(4) uses the term "personal representative," which is statutorily defined to include a special administrator appointed under § 62-3-614, rather than the term "general personal representative," which is defined to exclude such a special administrator. The legislature intended for § 62-3-107(4) to apply to a proceeding for the appointment of a special administrator through its choice of the terms used in those statutes. If

the legislature had intended for § 62-3-107(4) not to apply to a proceeding for the appointment of a special administrator, then it would have utilized the term "general personal representative" in that section, which excludes a special administrator, rather than the term "personal representative," which includes a special administrator. The plain language of § 62-3-107(4) compels the conclusion that "a proceeding for appointment of a [special administrator] is concluded by an order making or declining the appointment." Id. § 62-3-107(4).

Case law applying the uniform provision are in accord with this conclusion. In Matter of Est. of Franchs, 722 P.2d 422 (Colo. Ct. App. 1986), the Colorado court applied UPC § 3-107 and held that "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." Id. at 423. "Therefore, [the court held] that *the probate court's order appointing the special administrator is final and appealable*." Id. (emphasis added); see also In re Est. of Muncillo, 789 N.W.2d 37, 41 (Neb. 2010) (order denying application for appointment of a special administrator is a final, appealable order); In re Est. of Lakin, 965 N.W.2d 365, 378 (Neb. 2021) (order dismissing petition seeking removal of personal representatives and appointment of a special administrator is a final, appealable order).

In In re Est. of Severson, 970 N.W.2d 94 (Neb. 2022), a probate court's order appointing a personal representative for an estate was considered a "final order." The court said:

> In the context of multifaceted special proceedings that are designed to administer the affairs of a person, an order that ends a discrete phase of the proceedings affects a substantial right because it finally resolves the issues raised in that phase. Thus, a consideration regarding the finality of orders in probate cases is whether the order ended a discrete—that is, separate and distinct—phase of the proceedings. *A statute provides that "a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment."* [NEB. REV. STAT. ANN. § 30-2407(4)] 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.

Id. at 100-01 (footnotes omitted and emphasis added).

In In re Estate of Newalla, 837 P.2d 1376 (N.M. Ct. App. 1992), the court observed that "[a]lthough it may sometimes be difficult to determine the scope of a proceeding, we are not without guidance from the [UPC] in determining whether proceedings are independent." Id. at 1377. "For example, … under [UPC § 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." Id.; see Edery v. Edery, 73 A.3d 1229, 1239 n.13 (Md. Ct. App. 2013) ("[I]t is well-established that an order appointing a Personal Representative is a final order for purposes of appealability."); In re Est. of Chess, 995 N.W.2d 675, 203-04 (Neb. 2023) (probate court's order terminating a personal representative's appointment was a final, appealable order).

In this case, the probate court's orders, *inter alia*, 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 also 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). The Fiduciary Letters issued to him evidence this fact. Those letters state the special administrator is "appointed and qualified as Fiduciary(ies) on the above matter by this Court, with all the authority granted to a fiduciary by law." (R_0011). They further state in bold letters and all capitals: "**RESTRICTIONS: NONE**." (R_0011). This is further confirmed by the special administrator's pleadings in this case. On May 4, 2020, the special administrator filed a formal response in which he represented that "the Probate Court has already appointed [him] as the Special

Administrator of the Estate of Roy E. Mevers, Jr. as of March 13, 2020 *with no restrictions and not in a temporary capacity*." (R_0199 ¶3).

Section 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). Because the SCPC treats a special administrator as equivalent to a personal representative, § 62-3-107(4) necessarily means that a probate court order making or declining the appointment of a special administrator concludes that particular proceeding. Under the SCPC's plain language, such an order is appealable as a "final order" pursuant to § 62-1-308.

South Carolina cases decided both before and after the SCPC's enactment have held that probate court orders appointing administrators, special fiduciaries, and special administrators for an estate are immediately appealable. See Small, 69 S.C. at 43, 48 S.E. at 40; Fisher, 2016 WL 7495869 at *4 n.13; Connor, 2009 WL 9530096 at *4-5. In Small, this court held that a probate court's order appointing an "administrator" for an estate is a final order and is immediately appealable. 69 S.C. at 43, 48 S.E. at 41; 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 could not undo the administrator's actions already 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). Small's continued validity has been acknowledged after the SCPC's enactment. In Fisher, albeit an unpublished decision, the court of appeals 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. 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)). The court cited Small as support for its holding.

The court of appeals's unpublished decision in Connor further illustrates that a probate court order appointing a special administrator is a "final order" for appeal purposes. In that case, the probate court entered an order on August 24, 2004, which appointed an attorney as special administrator for an estate because the court had determined the decedent's two daughters were incapable of serving. 2009 WL 9530096 at *1. The daughters did not immediately appeal the probate court's order. In a subsequent order issued on January 30, 2007, the probate court denied the daughters' request to remove the special administrator as well as their petition to appoint a family friend as personal representative. Id. at *1-2. As part of its ruling, the probate court held that its prior order appointing the attorney as special administrator was a "final order" which the daughters had not timely appealed, thus their objections to the special administrator were "time-barred." Id. at *2.

The court of appeals affirmed the probate court's order on appeal, stating "[b]oth the probate court and the circuit court found the probate court's initial orders adjudicating the issues listed above were final and appealable." Id. at *4. "Additionally, both the probate and circuit courts found Appellants' challenges to those orders were procedurally barred due to Appellants' failure to appeal within the time allotted by statute." Id. "We affirm the circuit court's conclusion that appeal of these rulings is untimely and therefore procedurally barred." Id.; see also id. at *5 ("Because the appeal of the issues relating to … the appointment of the special administrator was untimely, these issues are not properly before this court.").

When the appellants in Connor did not immediately appeal the probate court's order appointing a special administrator, the court of appeals held their subsequent appeal was untimely. In the present case, even though Petitioner has immediately appealed the probate court's orders

appointing a special administrator, the court of appeals held those orders are not immediately appealable. The court of appeals has issued contradictory decisions on this point. In light of these conflicting decisions, litigants in the probate court cannot be sure when an appeal must be filed.

Other courts applying UPC § 3-107(1) have explained it reflects "a more expansive determination of the finality of probate orders than articulated in" cases adhering to the "final judgment rule." Geier, 809 N.W.2d at 357-58. "As it concerns final orders, unsupervised probate actions represent a special class of cases in the sense that a single action can contain multiple, discrete 'proceeding[s],' each of which results in a final order." Matter of Est. of Smeenk, 2014 WL 1666843, at ¶ 23 (S.D. Apr. 17, 2024).

Based on UPC § 3-107(1)'s directive that each proceeding before the probate court is "independent of" any other proceeding involving the same estate, "[t]he consensus among the courts that have examined this issue is that each probate petition 'should ordinarily be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order' even if there are other pending proceedings involving the same estate or if the estate has yet to be fully administered." Est. of Sheltra, 238 A.3d 234, 238 (Me. 2020) (quoting Newalla, 837 P.2d at 1377)). "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." Schmidt v. Schmidt, 540 N.W.2d 605, 607 (N.D. 1995). "An order is final if it is dispositive as to the issues raised in the petition prompting the order." Clinesmith v. Temmerman, 298 P.3d 458, 467 (N.M. Ct. App. 2012).

It is not necessary that the probate court's order fully and finally dispose of the entire probate matter or all the issues in the case. Instead, to be immediately appealable, the order must be conclusive of the issue or controverted question for which the particular part of the proceeding was

brought. In re Estate of Ketterling, 885 N.W.2d 85, 87 (N.D. 2016); In re Estate of Sanders, 750 N.W.2d 806, 813 (Wis. 2008); In re Estate of McKillip, 820 N.W.2d 868, 875-76 (Neb. 2012); Wittner v. Scanlan, 959 S.W.2d 640, 641 (Tex. Ct. App. 1995); Schmidt, 540 N.W.2d at 607; Severson, 970 N.W.2d at 100-01; Chess, 995 N.W.2d at 203-04. "An order that resolves a request for relief ends the proceeding and is a final order which may be appealed as a matter of right." Smeenk, 2014 WL 1666843 at ¶ 23.

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 1377. 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 v. Harkins, 740 S.W.2d 69, 72 (Tex. Ct. App. 1987). 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." Sanders, 750 N.W.2d at 813; 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, 540 N.W.2d at 607 ("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, 959

S.W.2d at 641; 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." Severson, 970 N.W.2d at 100-01; see also McKillip, 820 N.W.2d at 875-76.

In addition to concluding a proceeding by appointing a special administrator, the probate court's orders in this case also reopened the decedent's estate, enjoined Petitioner from using or disposing of any assets she received from the estate, and ordered Petitioner 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.

The probate court's orders fully and finally adjudicated the parties' rights involving the reopening of the estate, appointment of a special administrator, injunctive relief, and an accounting, which involve discrete claims or proceedings in the probate court. Chess, 995 N.W.2d at 203-04 (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, require an accounting, or enjoin the Petitioner. There is nothing left for the probate court to do involving those issues. The rulings on those matters are final.

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, order Petitioner to render an accounting, and enjoin the Petitioner are discrete from the SCAG's claims seeking a constructive trust over the assets that were distributed to Petitioner as part of the estate administration. It is

unnecessary for the court to revisit its rulings to reopen the estate, appoint a special administrator, order an accounting, or enjoin Petitioner for it to dispose of the SCAG's remaining claims.

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 decisions applying the uniform provision show that the probate court's appointment of a permanent special administrator is immediately appealable as a final order. This court of appeals erred by holding the probate court's orders are not appealable.

(b) The Probate Court's Rulings to Reopen the Estate, Grant a TRO and Preliminary Injunction, and Order an Accounting are Appealable Because There is an Appealable Issue Before The Court.

The law in this state has long been that an order which is not directly appealable can be considered on appeal if there is an appealable issue before the court. See Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 623 S.E.2d 387 (2005); Briggs v. Richardson, 273 S.C. 376, 256 S.E.2d 544 (1979); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001); Se. Hous. Found. v. Smith, 380 S.C. 621, 636 n.14, 670 S.E.2d 680, 688 n.14 (Ct. App. 2008). The court of appeals has noted "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." Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002).

It is also an accepted principle that "[a] properly taken appeal from a final order or judgment generally authorizes the appellate court to review any interlocutory order involving the merits of the case or affecting the judgment, regardless of whether the order itself is appealable." See 5 AM. JUR. 2D *Appellate Review* § 577 (2024); see also S.C. CODE ANN. § 18-1-130 ("Upon an appeal from a

judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment."). Thus, if the court determines that at least one of the probate court's rulings is final and immediately appealable for the reasons discussed above, the court can also consider and review the probate court's other rulings.

In Edge, even though the denial of a motion to dismiss ordinarily is not immediately appealable, this court 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)." 366 S.C. at 516-17, 623 S.E.2d at 390 (citing Briggs and Cox); see Morris v. Anderson County, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (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"). The holdings in Edge and similar cases show the courts resolved other issues accompanying appealable issues in the interest of judicial economy to avoid another appeal in the future, narrow issues for trial, and eliminate unnecessary litigation.

Even if all of the probate court's rulings by themselves would not be appealable under § 62-1-308, the probate court's order appointing a special administrator clearly is a final order that is immediately appealable under § 62-3-107(4) for the reasons discussed above. The SCPC explicitly provides that "each proceeding before the [probate court] is independent of any other proceeding involving the same estate" and that "a proceeding for appointment of a [special administrator] is concluded by an order making or declining the appointment." S.C. CODE ANN. § 62-3-107(1) & (4). Settled law further holds this court can consider the probate court's other rulings to reopen the estate, to restrain and enjoin Petitioner, and to mandate an accounting because there is an appealable issue before the court.

In addition to resolving the question of whether the probate court properly appointed a special administrator on an *ex parte* basis without notice to Petitioner, resolution of the other issues accompanying that appealable issue would be in the interest of judicial economy to avoid another appeal in the future, narrow issues for trial, and eliminate unnecessary litigation. The probate court's *ex parte* ruling to reopen the estate without notice to Petitioner was a necessary predicate to its rulings to appoint a special administrator for the estate, enjoin the Petitioner, and require Petitioner to provide an accounting. The probate court could not have appointed a special administrator, enjoined Petitioner, or ordered an accounting if it did not first reopen the Decedent's estate.

Additionally, it will promote judicial economy to consider all of the probate court's rulings as part of this appeal. The court's review of the probate court's orders reopening the estate, enjoining the Petitioner, and requiring Petitioner to provide a complete accounting 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 Petitioner, whether the probate court had subject matter jurisdiction to grant the relief sought by the SCAG, whether as a matter of law the SCAG has standing to assert the claims brought against Petitioner in this case, and whether as a matter of law the Foundation satisfied the conditions in the Decedent's Will to qualify as a beneficiary. Resolution of these questions will narrow the issues going forward and potentially avoid unnecessary litigation in the trial court.

CONCLUSION

For the reasons stated, Petitioner respectfully requests that this Court grant her Petition for a Writ of Certiorari.

Respectfully submitted,

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July 23, 2024.

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Jul 23 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

South Carolina Court of Appeals Appellate Case No. 2021-001152
South Carolina Court of Appeals Order filed April 17, 2024
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,
Petitioner,

versus

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

PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on the Respondents by mailing copies to their attorneys of record on July 23, 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
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July 23, 2024

VIA E-MAIL FOR ELECTRONIC FILING:
The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: In re Estate of Roy E. Mevers, Jr.
South Carolina Attorney General v. Minnie Lee Newman Mevers
SC Court of Appeals Appellate Case No. 2021-001152

Dear Ms. Howard:

Please find enclosed for electronic filing the following:

1. Petition for a Writ of Certiorari, and
2. Proof of Service.

We are also mailing you a filing fee check in the amount of $250.00 in today's mail. In accordance with the South Carolina Supreme Court's Order dated April 30, 2024, we understand that the requirement under SCACR 242(e) that the Petitioner file an Appendix at the same time the Petition is filed has been suspended. Instead, the necessary documents to comprise the Appendix will be obtained by the Clerk of the Supreme Court from the electronic records of the case before the Court of Appeals. Of course, if we have misunderstood the Order or if the Court would like for us to file an Appendix, please let us know so that we may take steps accordingly.

We would greatly appreciate your filing the enclosures on our behalf.

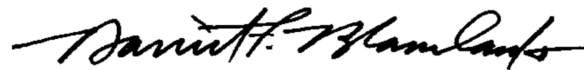
Under copy of this letter, we are filling copies of these documents with the Clerk of Court for the South Carolina Court of Appeals and are also serving copies on counsel for the Respondents.

Of course please do not hesitate to contact us if you have any questions about the above.

With best regards, I am

Sincerely,

ROSEN HAGOOD, LLC



Reviewed and Approved for Electronic Transmission

Daniel F. Blanchard, III

Encls.

cc: The Honorable Jenny Abbott Kitchings, Clerk of Court for SC Court of Appeals (w/ encls.)
Alan Wilson, South Carolina Attorney General
W. Jeffrey Young, Chief Deputy Attorney General/Robert D. Cook, Solicitor General
C. Havird Jones, Sr. Assistant Deputy Attorney General
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