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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Supreme Court Case No.: 2024-001205
Court of Appeals Case No. 2021-001152
Common Pleas Case No. 2020-CP-10-04036
Probate Case No. 2017-ES-10-01946

In the Matter of: The Estate of Roy E. Mevers, Jr.

South Carolina Attorney General, Respondent,
v.
Minnie Lee Newman Mevers, Petitioner,
v.
J. James Duggan, Respondent.

RETURN OF RESPONDENT SOUTH CAROLINA ATTORNEY GENERAL TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals correctly follow established authority in vacating the circuit court's order because the orders on appeal are not final and therefore not appealable?

INTRODUCTION

This action arises from the Estate of Roy E. "Sonny" Mevers, Jr. Upon Mr. Mevers' death, Petitioner, his widow, became the Personal Representative of his Estate. She also became President and Chair of The Sonny Mevers Foundation, his charitable foundation that was the primary beneficiary of significant assets of over $19 million as the residuary beneficiary of his Estate. (R. 4-5) Petitioner was the secondary beneficiary of the residuary if the Foundation did not qualify to receive the funds. (R. 4)

This is an appeal of probate court orders which (1) granted the Attorney General's motions for temporary restraining order and temporary injunction; (2) appointed a special administrator; (3) denied Petitioner's motion to alter, amend or vacate the temporary injunction order; and (4) granted Petitioner's motion to remove the action to circuit court. None of these orders were final orders, and there is still further action that needs to be done before the rights of the parties are determined. While these matters have been on appeal, the underlying action has continued. Because these were not final orders, the Court of Appeals followed established authority in finding the circuit court did not have appellate jurisdiction, and the Court correctly vacated the circuit court orders.

There is no special or important reason to grant certiorari in this matter. First, the Court of Appeals followed established authority. Further, there are no novel questions of law. There was no dissent in the Court of Appeals. In addition, the Court of Appeals decision is consistent with

prior decisions of this Court and statutory authority. For these reasons, this Court should deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE AND FACTS

This action relates to a bequest made by Roy E. "Sonny" Mevers, Jr. ("Mr. Mevers") in his Will which was executed on November 16, 2015. Codicils were executed on April 12, 2017, ("First Codicil") and on August 4, 2017 ("Second Codicil"). The Will and Codicils are collectively referred to as the "Will." The Sonny Mevers Foundation ("Foundation"), a South Carolina nonprofit corporation Mr. Mevers established during his life for charitable purposes, was to receive Estate assets valued in excess of Nineteen Million and 00/100 ($19,000,000.00) Dollars under the residuary clause of the Will. (R. 3-7)

During his lifetime, on July 23, 2004, Mr. Mevers executed and filed with the South Carolina Secretary of State Articles of Incorporation for the Foundation. The stated purpose of the Foundation is to "receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended." (R. 104-105).

On July 21, 2005, the Internal Revenue Service ("IRS") issued a letter approving the tax-exempt status of the Foundation under section 501(c)(3) of the Internal Revenue Code. The Foundation was also "qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055 . . . of the Code." (R. 106). Over the years, the Foundation has made donations to

many charities in the Charleston area; Mr. Mevers made periodic contributions to the Foundation over the years to support the Foundation. (R. 4).

Mr. Mevers' Will dated November 16, 2015, contained a residuary clause found in Article XII. This clause provided the following:

> 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. 91-92). By way of the First Codicil dated April 12, 2017, Article XII of the Will was amended to add the following sentence at its conclusion: "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. 97). Mr. Mevers specifically added a paragraph leaving items to Petitioner, and he republished the Will in its entirety. The Second Codicil dated August 4, 2017, stated as follows:

> 3. I give all my personal and household effects, such as jewelry, clothing, automobiles, equipment, furniture, furnishings, silver, books and pictures, and any other articles of personal use or diversion, including policies of insurance thereon, to MINNIE LEE NEWMAN MEVERS, "my wife," absolutely.
>
> In all other respects I confirm and republish my Will, as modified by my Codicil dated April 12, 2017, and I confirm and republish my Codicil except as modified by this Second Codicil.

(R. 98).

The Articles of Incorporation for the Foundation vested Mr. Mevers or his nominee with the authority to appoint the members of the Foundation's Board of Directors. (R. 103). Article

XI of Mr. Mevers' Will nominates his "friend" Minnie Lee Newman as his successor with the right to appoint further successors to the Board of the Foundation. (R. 91).

Mr. Mevers passed away on November 3, 2017. Mr. Mevers' obituary stated, "In Lieu (*sic*) of flowers, donations may be made to the Sonny Mevers Foundation, CresCom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401." (R. 107). At the time of his death, the Foundation had $3.1 million in its checking account. (R. 617). These funds are not included in the $19 million in dispute in this litigation, as they were already in the Foundation when he died and were not part of Mr. Mevers' Estate. On November 12, 2017, Petitioner approved a wire transfer from the Foundation to the Berkeley Charter Education Association in the amount of $3.0 million. By this time, she was President of the Board of the Foundation. Also, several donations were made to the Foundation after Mr. Mevers' death, and they appear to be in response to the obituary. (R. 617-628). After the donation of the $3.0 million dollars to the Mevers School of Excellence, the Foundation's checking account had a balance in excess of one hundred thousand dollars ($100,000.00). (R. 617).

On November 13, 2017, Petitioner filed an Application for Informal Probate of Mr. Mevers' estate (the "Estate") in the Charleston County Probate Court. (R. 108-115). She petitioned the Court for Appointment as Personal Representative of the Estate and was so appointed. (R. 112). In the Application for Informal Probate, Petitioner specifically listed that she was Mr. Mevers' wife and that she was left a bequest of "$350,000 and all personal and household effects." She went on to list other bequests made under the Will, specifically noting the "SONNY MEVERS FOUNDATION…CHARITY-All of the Rest and Residue of the Estate." Petitioner verified these statements under oath. (R. 115).

On the date of Mr. Mevers' death, the Foundation was in existence, was recognized as a charitable organization within the meaning of Section 2055 of the Internal Revenue Code, as amended, and permitted as a charitable deduction from Mr. Mevers' estate for federal estate tax purposes. The Foundation was, therefore, entitled to the residuary of the Estate. (R. 290-291). Rather than transfer the assets to the Foundation as required by the Will and the Application for Informal Probate, Petitioner fired her deceased husband's and the Foundation's long-time counsel, Irvin Slotchiver. She then sought the advice of H. Christopher Moss, a CPA and attorney licensed in Virginia and the District of Columbia. At the hearing on March 23, 2020, Mr. Moss' professional relationship with Petitioner and the Foundation caused concern with the Probate Court. (R. 335, 352-354). At the hearing, the Probate Court ordered the Attorney General to report Mr. Moss' actions for determination regarding the unlawful practice of law. (R. 352).

On January 12, 2018, Petitioner withdrew the entire remaining balance of $102,940.11 from the Foundation checking account. (R. 618). The CresCom transaction forms show that these funds were transferred to the Estate of Roy Mevers. (R. 629). The transaction may have raised a question at the bank as it was noted on the back of the transaction form "cust[omer] died advised to close [and] put in Estate Acct by CPA." (R. 630).

Later in January 2018, Petitioner dismissed the Foundation board except for one other member. Then, based upon a telephone call from Chris Moss to Scott Myers, the one remaining board member (other than Petitioner), the Foundation was purportedly "dissolved."[1] Despite the fact that over $19 million had been left to the Foundation pursuant to Mr. Mevers' will, at the date

[1] The Articles of Incorporation and Bylaws of the Foundation require a majority of board members to constitute a quorum and require that there be at least three Board members. At the time of the attempted dissolution, there were only two Board members, in violation of the ByLaws. (R. 430-431).

of the attempted dissolution on January 24, 2018, the Foundation asserted it had no assets in its Articles of Dissolution filed with the Secretary of State. (R. 122). The Foundation did not provide notice of this dissolution to the Attorney General, although it was required to do so by statute. Significantly, the Articles filed with the Secretary of State indicated Petitioner had provided the notice to the Attorney General. (R. 7, 119). This was a false statement.

In the Proposal for Distribution of Mr. Mevers' Estate filed on November 18, 2018, the Foundation was no longer listed as receiving the residuary distribution. Rather, Petitioner was now listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to the Foundation or its entitlement to assets under the residuary clause. (R. 63). The funds in the residuary were subsequently distributed to Petitioner, not the Foundation. (R. 6, 20). None of these unilateral changes were brought to the attention of the Probate Court or the Attorney General.

Upon learning of the situation, the Attorney General researched what happened. Public records established that Petitioner, upon receipt of the residuary distribution, began selling and transferring assets which belonged to the Foundation. The Attorney General made a request for various records to Petitioner on November 14, 2019, and to the Foundation's Board on February 3, 2020. (R. 398-403). A complete response was not provided. (R. 78, 404-422). Most of the assets of the Estate were real property, and these were transferred to various entities or sold outright. For example, a house on Sullivan's Island was transferred from the Estate to Petitioner, who then sold it for $1.8 million. A house on East Battery in downtown Charleston, which Petitioner is currently living in and which is valued in excess of $5 million dollars, was transferred to Ms. Grace Family, LLC. Other properties, including commercial properties, were transferred to Newman Rentals, LLC. The residuary also included a property in Murrells Inlet with a

Walgreens on it valued at over $5 million; property in North Carolina valued at $1.3 million; and property in Dorchester with a Dollar General, valued at $1.4 million. Newman Rentals, LLC, the entity that these properties were transferred to, was created on January 11, 2018, with Mr. Moss serving as registered agent. It is not clear who owns these LLCs, and the Attorney General was concerned the properties were being distributed and the money was not going to the Foundation as it should have been pursuant to the terms of Mr. Mevers' Will. (R. 286-289).

When it was unable to get satisfactory information and the Petitioner would not agree to maintain the status quo and hold the properties, the Attorney General commenced this action in the Charleston County Probate Court by filing a verified Petition pursuant to Rule 65, SCRCP, seeking various relief including an Application to Re-Open Estate, Appoint Special Administrator, Impose Constructive Trust to Protect Improperly Distributed Estate Assets, and Obtain Other Relief as Necessary ("Petition"). (R. 69-125). The Attorney General also sought a temporary restraining order relating to all assets which were claimed and taken under the residuary clause of the Will. (R. 126-130). The Petition alleges Petitioner [2] — Mr. Mevers' wife of 14 months before his death — wrongfully caused those assets to be diverted from the Foundation and distributed to herself. (R. 72-78).

As personal representative of the Estate and president of the Foundation, Petitioner had a fiduciary obligation to protect the interests of the Foundation. Judge Tamara C. Curry, Associate Probate Judge of Charleston County, issued an Ex Parte Temporary Restraining Order on March 13, 2020. (R. 2-10). In granting the Temporary Restraining Order, the Court found that Petitioner "may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the vested

[2] In the pleadings for the companion action pending in the circuit court, also referred to as the "removed case," Petitioner was designated as Respondent. In that she is the Appellant in this appeal, for ease of reference and to avoid confusion, she is referred to as Petitioner throughout this brief.

interest of the non-profit Foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit." (R. 8).

The Temporary Restraining Order restrained Petitioner related to assets distributed to her under the residuary clause of the Will, appointed J. James Duggan, Esq., as Special Administrator, and set a date for a hearing on the relief granted. On March 23, 2020, the Honorable Irvin G. Condon, Probate Judge of Charleston County, held a hearing to determine what action(s) were necessary to preserve the status quo, including whether to convert the Temporary Restraining Order into a temporary injunction. (R. 258-354). After hearing arguments from the parties, Judge Condon orally indicated he was granting a Temporary Injunction at that time and a written order would follow. (R. 350-353).

On May 12, 2020, after the hearing and the Court's rulings, but before the issuance of the written Order Granting Temporary Injunction ("Temporary Injunction"), Petitioner filed a Notice and Motion to Remove Action to Circuit Court. (R. 214-219). By Order filed June 29, 2020, Judge Condon granted the Temporary Injunction, ordered that the Estate be reopened for subsequent administration, and appointed the Duggan Law Firm, LLC, as Special Administrator of the Estate. In addition, the Court ordered that Petitioner was restrained related to the assets distributed to her under the residuary clause of the Will, ordered her to provide an accounting to the Special Administrator, and ordered her to provide to the Special Administrator information regarding asset transfers. (R. 26-28). Petitioner conceded through her counsel that some or all of the assets had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC. (R. 23). The Court found there were sufficient indications that Petitioner may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the interests of the Foundation, so as to circumvent the contents of the residuary clause for her own personal use and benefit. (R. 24).

On July 10, 2020, Petitioner filed a Motion to Alter, Amend, and/or Vacate the June 29, 2020 Order granting the Temporary Injunction. (R. 220-228). On August 28, 2020, Petitioner filed another Motion to Vacate the June 29, 2020 Order. (R. 243-250). By Order filed September 10, 2020, the Probate Court denied these Motions. (R. 29-33). In this Order, the Probate Court also ordered the matter removed to Circuit Court pursuant to S.C. Code Ann. § 62-1-302(d). (R. 33). The circuit court case was assigned case number 2020-CP-10-04089. This Circuit Court matter remains pending at this time, with depositions occurring as recently as July and August 2024.

On September 11, 2020, Petitioner filed a Notice of Intent to Appeal to the Circuit Court, appealing the three probate court orders: the Temporary Restraining Order, the Temporary Injunction, and the Order denying Motions to Alter and Vacate those orders. (R. 252-253, 440-441). The appeal was assigned circuit court case number 2020-CP-10-04036. After considering the matter on briefs, the Honorable Jennifer B. McCoy affirmed the Probate Court rulings by a Form Order filed September 10, 2021. (R. 572-574). Petitioner appealed to the Court of Appeals. By Order filed April 17, 2024, the Court of Appeals vacated the circuit court order, finding the probate court orders were not final and thus the circuit court did not have appellate jurisdiction. The Petitioner filed a Petition for Rehearing, which the Court of Appeals denied on June 27, 2024.

ARGUMENT

This Court should deny the Petition for Writ of Certiorari. There is no novel issue of state law, nor are there conflicting appellate court decisions. The orders on appeal were issued within the first few months of this action, and the action has continued since then. The appeal will not finally decide the issues among the parties. The orders on appeal were not final, appealable orders, and the Court of Appeals correctly vacated the order of the circuit court because the circuit court had no appellate jurisdiction regarding the orders.

I. The Court of Appeals followed binding authority in finding that the Orders were not appealable, as they were not final and did not determine the final rights of the parties.

"As a general rule, only final judgments are appealable." *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)). "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." *Id.* (citing *Mid–State Distribs.*, *Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)). *Wilson* also cited *Good v. Hartford Accident Indemn. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942), which explains that "a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term . . . . " *Id.* at 12-13, 625 S.E.2d at 208.

The orders on appeal granted the Attorney General's Motion for Temporary Restraining Order and Temporary Injunction; appointed a Special Administrator; denied Petitioner's Motion to Alter, Amend, or Vacate the Temporary Injunction; and granted Petitioner's Motion to Remove. As explained in more detail below, these orders were not final, did not determine the final rights of the parties, and are not immediately appealable.

A. The Court of Appeals correctly applied S.C. Code Ann. § 62-1-308 which governs appeals from the probate court and provides that only final orders are subject to appeal.

In the present case, the Court correctly found that the appointment of a special administrator and other rulings were not immediately appealable. This is consistent with applicable South Carolina law and specifically S.C. Code Ann. § 62-1-308 which provides that only final orders from the probate court are appealable.

"The right of appeal arises from and is controlled by statutory law." *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d

894, 894 (2010). Although S.C. Code Ann. § 14-3-330 generally governs the right to appeal, that statute does not apply when a specialized statute governing an appeal exists. *Id.* Appeals from the probate court are governed by a specialized statute, specifically S. C. Code Ann. § 62-1-308. Because section 62-1-308 is a more specific statute than the general appeal statute of section 14-3-330, section 62-1-308, and not section 14-3-330, governs whether a probate court order is immediately appealable. *See Long v. Sealed Air Corp.*, 391 S.C. 483, 486, 706 S.E.2d 34, 35 (Ct. App. 2011) (ruling that general appealability provisions of § 14-3-330 did not apply because more specific appealability provision governs).

Dorn v. Cohen, 421 S.C 517, 809 S.E.2d 53 (2017), confirms that this analysis applies to probate court appeals. In *Dorn*, the Supreme Court specifically stated that "[a]ppeals from the probate court are governed by section 62-1-308 of the Probate Code . . ." *Id.* at 520, 809 S.E.2d at 54. *See also Fulmer v. Cain*, 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008) ("Appeals from the probate court are governed by S.C. Code Ann. § 62-1-308."). In *Dorn*, the appellant appealed the probate court's order adding a party to the action. The party was added on the final day of the trial of multiple matters. The Court found that since this was not a final order, it was not immediately appealable; the Court of Appeals had erred in applying section 14-3-330 in determining whether a probate court order was immediately appealable. *Dorn*, 321 S.C. at 520, 809 S.2d at 54. The Court of Appeals reiterated the law related to probate court appeals in *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 415, 827 S.E.2d 200, 204 (Ct. App. 2019). In *Swiger*, the Court cited *Dorn* and explained that "[a]ppeals from the probate court are governed by the South Carolina Probate Code." *Id.*

Section 62-1-308(a) states 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[.]" In addition, "[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 [S.C. Code Ann. § 62–1–308], 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) (quoting *In re Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 257 (1993)). The rules of law for the present case, i.e., the rules governing probate appeals, confirm that a party can only appeal a final order of the probate court.

Estate of Boyce v. Work, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991), explains that S.C. Code Ann. § 62-1-308(a) "provides that only final orders may be appealed." *Boyce* further explains that the circuit court lacks subject matter jurisdiction over a probate court appeal of a non-final order. *Id.* Accordingly, the Court of Appeals followed appropriate authority in vacating the circuit court's decision.

B. In finding that the orders on appeal are not final orders, the Court of Appeals correctly applied S.C. Code Ann. § 62-3-107(1) regarding separate proceedings.

Section 62-3-107(1) explains that "each proceeding before the [probate] court is independent of any other proceeding involving the same estate[.]" Though Petitioner contends that this language means that each order resolving a proceeding is immediately appealable, that is not the law. Further, this statute does not change the meaning of a final order or change what matters are immediately appealable from the probate court. Though a probate court proceeding can end with a final order subject to appeal, the present matter was not such a proceeding. There are multiple types of petitions and motions that come before the probate court. If orders on each of these matters were immediately appealable, a probate court matter might never end because there would be potentially continuous appeals.

South Carolina adopted the Uniform Probate Code in 1986, and it took effect on July 1, 1987. *See* S.C. Code Ann. § 62-1-100 and 62-1-101, *et seq*. Colorado, which has also adopted the Uniform Probate Code, has developed case law on the issue of probate court appeals. "When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority." *Bass v. Isochem*, 365 S.C. 454, 478, 617 S.E.2d 369, 381 (Ct. App. 2005). In *In Re Estate of Scott*, 151 P.3d 642 (Colo. Ct. App. 2006), the Colorado Court of Appeals considered a situation similar to the one in this case and dismissed the appeal for lack of jurisdiction. *Scott* was an appeal of an order related to trustee accountings, and the court observed that "a petition frames the scope of a proceeding." *Id.* at 644. "[T]here can be more than one proceeding in the administration of an estate, and a final judgment exists when the probate court has resolved all claims in a proceeding." *Id.* The Comments to the Uniform Probate Code, on which the South Carolina Probate Code is modeled, also explain that "the scope of the proceeding if not otherwise prescribed by the Code is framed by the Petition." Unif. Probate Code § 3-107 cmt. (Unif. Law Comm'n 2019). In *Scott*, the resolution of issues on appeal would not preclude the probate court from granting the relief requested in the petition at some point in the future, and this was a key factor for the court in finding that the order was not a final appealable judgment. 151 P.3d at 645. Similarly in the present case, either Petitioner or Respondent may ultimately prevail, and that is not dependent on the matters before the Court in this appeal.

In *Chavez v. Chavez*, 465 P.3d 133 (Colo. Ct. App. 2020), the Colorado Court of Appeals considered an order issued after a jury verdict that did not determine attorney fees or prejudgment interest. In finding that the order was not final and thus not appealable, the court stated as follows: "[T]he same rules of finality apply in probate cases as in other civil cases; thus, an order of the

probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." *Id.* (quoting *Scott v. Scott*, 136 P.3d 892, 896 (Col. 2006)). The orders in the present case were issued at the beginning of the action, and the rights of all parties have not been finally determined. For these reasons, the orders are not final and therefore not immediately appealable.

What constitutes a final order in a probate court case can require an analysis that is not seen in typical civil cases. "This is due to the unique procedural nature of the typical probate case, which usually begins with a request to admit a will to probate and appoint a personal representative to marshal and administer a decedent's assets without the court's supervision. That is the fundamental purpose of a probate matter." Jody Pilmer & Aaron Burton, "Appealing Orders in Probate Cases: The Finality Question," 50 *Colo. Law.* 22, 23 (Feb. 2021) (discussing appeals from probate court in Colorado, a state that has also adopted the Uniform Probate Code). Separate proceedings can be initiated and pursued in probate court. *Id.* However, "[a]n order that leaves nothing further for the court to do to completely determine the rights of the parties as to that proceeding is final." *Id.* at 25. In the present case, the orders resolved the particular matters before the Court, as any order does, but they were not final orders subject to appeal. Looking at the Petition, which frames the scope of the proceeding, shows that the Attorney General seeks to impose a constructive trust to protect improperly distributed assets. At this time, this has not been imposed, and there are still no protections for the assets, nor is there a determination as to who was entitled to the residuary of the Estate – the Foundation or the Petitioner. This is the fundamental question, and the non-final orders which are the subject of this appeal occurred at an early stage of the litigation that remains pending today. The orders did not completely determine the rights of the parties, or the ultimate issue, i.e., whether Petitioner took for herself funds the decedent

intended for his Foundation by dissolving the Foundation a few months after his death. Accordingly, they are not final orders and not immediately appealable.

II. The Court of Appeals followed binding authority related to the appeal of the order appointing a special administrator and did not overlook the impact of S.C. Code Ann. § 62-3-107(4).

Petitioner focuses on the appealability of the Order appointing a special administrator, arguing this was a final order subject to appeal. However, the Court of Appeals followed binding authority in finding that an order appointing a special administrator is not immediately appealable.

First, specific case law addresses the issue of the appealability of the appointment of a special administrator. In *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), *supra,* the Court held that that it lacked jurisdiction to hear the appeal of an order appointing a special administrator because the order was not final. Similarly in the present case, the appointment of a special administrator was not a final order. Like the special administrators appointed in *Boyce*, the special administrator in this case is authorized only to maintain the status quo until final resolution. The first Order appointing the special administrator explains that he was appointed "to take any appropriate actions involving assets of the Estate of Roy E. Mevers, Jr." (R. 10). The second Order appointing the special administrator explains that he was appointed "in order to secure [the Estate's] proper administration[.]" (R. 27). This Order also ordered Petitioner to provide an accounting to the special administrator. (R. 27). Thus, the special administrator's authority was limited to taking action related to the assets and securing the Estate's administration. Because the appointment here was not final, *Boyce* directly controls the determination of the issue presented in this case, and the Court of Appeals correctly found the order was not appealable.

Cases cited by Petitioner related to the appeal of the appointment of a special administrator – including a case from 1904 and an unpublished opinion that was overruled in part – do not

support Petitioner's argument. *Ex Parte Small*, 69 S.C. 43, 48 S.E. 40 (1904) involved "the interesting question whether the widow of an intestate [estate] is entitled to the administration of his estate, without respect to her character, capacity, or purposes concerning the assets." The Court found that the probate court order appointing the personal representative was "really a final order adjudicating the rights of the parties" and therefore appealable. *Id.* at 46, 48 S.E. at 41. That is not the situation in the present case, as the special administrator was appointed to protect the assets, but his appointment is not the ultimate issue in the case. Further, even assuming *Small* remains good law today, it is unlike the present case in which a special administrator was appointed to preserve assets, as *Small* involved the appropriateness of a personal representative and did not involve a special administrator. Moreover, the case was decided many years before the current probate code was enacted. *Fisher v. Huckabee*, Op. No. 2016-UP-528, 2016 WL 7495869 (S.C. Ct. App. filed December 21, 2016) is an unpublished Court of Appeals opinion for which certiorari was granted but which the Supreme Court ultimately did not opine on because the issues were moot by the time it was before the Supreme Court. *Fisher*, Op. No. 2018-MO-041, 2018 WL 6528122 (S.C. Sup. Ct. filed December 12, 2018). Petitioner's contention that the court should have relied on this case is incorrect, as the case is not on point. Petitioner cites another unpublished opinion, *In re Esate. of Connor*, No. 2009-UP-501, 2009 WL 9530096, (S.C. Ct. App. Oct. 29, 2009), and it is also not on point. In *Connor*, the Court of Appeals simply did not address arguments related to the appealability of the appointment of the special administrator.

Case law in other jurisdictions supports the decision of the Court of Appeals. Nebraska has also adopted the Uniform Probate Code, and the Nebraska Supreme Court considered the appealability of a probate court order appointing a special administrator. The Court held that "[t]o be a final order, the substantial right affected must be of the appellant and cannot be claimed

vicariously." *In re Estate of Abbott-Ochsner*, 910 N.W.2d 504, 512-13 (Neb. 2018). In *Abbott-Ochsner*, the personal representative appealed the appointment of the special administrator. The Court found that the personal representative's rights were not so substantially affected by the appointment of a special administrator as to make the order final and thus immediately appealable.

Similarly in the present case, Petitioner appealed the order appointing a special administrator (among other rulings), but the Petitioner is not the special administrator. Regarding the special administrator order, Petitioner's rights are affected only to the extent that there is now a special administrator to protect the Estate, and Petitioner has been asked to render an accounting to the special administrator. The final outcome of this matter has not been determined. The Court explained in *Abott-Ochsner* that "[o]ther courts with similar final order jurisprudence distinguish orders appointing special administrators, which they hold are not final, from orders appointing or removing a personal representative, which they hold are final." *Id.* at 513 (citing *Guess v. Going*, 966 S.W.2d 930 (Ark. App. 1998); *Estate of Keske*, 146 N.W.2d 450 (Wis. 1966)). Again, this case is similar to the present case in that the appeal is from the appointment of a special administrator rather than a personal representative.

In addition, by its plain language, section 62-3-107(4) does not impact the appealability of this Order related to a special administrator, despite Petitioner's contention. Section 62-3-107(4) states that "a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment." An order appointing a special administrator is not immediately appealable, regardless of whether the definition of personal representative in this section includes a special administrator. This is because a matter can be "concluded" but that does not mean that there is a final order that is subject to appeal, as appealability and conclusion are different. Every order by its nature concludes the matter before the Court, but that does not mean

that every matter is appealable. For example, an order denying a motion for summary judgment concludes the motion, but that does not mean the order is appealable. Accordingly, the Court of Appeals correctly found the order appointing a special administrator is not final and therefore not appealable.

III. The Court of Appeals properly vacated the circuit court order because all of the probate court's rulings are not immediately appealable. Even if one order is appealable, all of the orders cannot be considered.

Petitioner contends that this Court should find that the order appointing a special administrator is immediately appealable and then find that the probate court's other rulings can be heard as related cases. Because there were no final orders appealed in this action, the Court of Appeals correctly vacated the circuit court order. Even if this Court determines that one or more of the orders are final and subject to appeal, it only has jurisdiction as to the final orders, not all of the matters before it, due to section 62-1-308(a).

Petitioner contends that all orders on appeal can be considered if there is one appealable issue before the court, following the reasoning of *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001). However, the reasoning of *Cox* and other cases regarding appellate court discretion to entertain appeals of interlocutory orders when coupled with a final order is not applicable to appeals from a probate court which are governed exclusively by S.C. Code Ann. § 62-1-308, and its mandate that only "final orders" may be appealed. *See* S.C. Code Ann. § 62-1-308(a) ("A person interested in a final order, sentence, or decree of a probate court may appeal . . .").

Because of section 62-1-308, the appellate court does not have discretion to entertain appeals of non-final orders when they are coupled with a final order because section 62-1-308 mandates that only "final orders" are appealable in probate court, and probate court appeals are

governed exclusively by this section. As recently as 2017, the South Carolina Supreme Court "reiterate[d] that a party may appeal from a decision not amounting to a final judgment only where provided by statute." *State v. Looper*, 421 S.C. 384, 390, 807 S.E.2d 203, 206 (2017).

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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