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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland,

Appellant,

v.

Brandy S. Culp,

Respondent.

INITIAL BRIEF OF RESPONDENT

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COUNTER STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY DENY AND DISMISS THE APPEAL WITH PREJUDICE BECAUSE APPELLANT FAILED TO COMPLY WITH THE STATUTORY REQUIREMENTS FOR PURSUING AND PERFECTING AN APPEAL FROM PROBATE COURT, AS SET FORTH UNDER S.C. CODE § 62-1-308 ET SEQ?
- II. SHOULD THE CIRCUIT COURT'S ORDER BE AFFIRMED BECAUSE APPELLANT FAILED TO APPEAL EACH AND EVERY INDEPENDENT GROUND CITED BY THE CIRCUIT COURT AS A BASIS FOR DISMISSING AND DENYING THE INSTANT APPEAL WITH PREJUDICE?
- III. SHOULD THE PROBATE COURT'S ORDER BE AFFIRMED BECAUSE ITS FINDINGS ARE SUPPORTED BY THE EVIDENCE?
- IV. SHOULD THE CIRCUIT COURT AND PROBATE COURT'S ORDERS BE AFFIRMED BECAUSE APPELLANT FAILED TO SERVE ALL NECESSARY PARTIES TO THE APPEAL, THEREBY DEPRIVING THE CIRCUIT COURT AND ALL HIGHER COURTS OF APPELLATE JURISDICTION?
- V. SHOULD THE INSTANT APPEAL BE DISMISSED BECAUSE APPELLANT HAS REPEATEDLY FAILED TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES AND CONTINUES TO DO SO?

STATEMENT OF THE CASE

This matter originated as an appeal from the Charleston County Probate Court to the Circuit Court. The *pro se* appellant to the appeal, Ms. Athena L. Irland, is a daughter of the late Dolly Legare Coleman (hereinafter, “Decedent”) and has on two separate occasions been found by the Charleston County Probate Court to have exercised undue influence over Decedent while Decedent was incapacitated. (Probate Court Orders dated June 29, 2017 and July 13, 2022, R.____).

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 As a result, the Court rescinded the subject deeds by Order dated June 29, 2017, finding that Decedent lacked the requisite capacity on October 28, 2014 to execute the deeds of conveyance, and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

Ms. Irland attempted to appeal this Order. However, on August 22, 2017, the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds. (Court of Appeals Order dated August 22, 2017, R.____). Specifically, the Court of Appeals found that Ms. Irland had failed to provide proof that the parties consented in writing or on the record to directly appeal the matter to the Court of Appeals. (Ibid., R.____). As a result, it is the law of that case that Decedent was incapacitated on October 28, 2014 and that Ms. Irland exercised undue influence over her on that date. (Order dated June 29, 2017, R.____).

The present case involves the alleged revocation of Decedent's 2009 Will at Ms. Irland's behest on October 28, 2014, the same date that Decedent was previously found to have lacked capacity and Ms. Irland was found to have exercised undue influence. It was unknown by the parties or the Court during the initial guardianship proceeding that Ms. Irland had engaged in these additional acts on October 28, 2014. (H'rg Transcript, April 7, 2022, p. 12, line 17 to p. 13, line 5, R. __). As before, the Probate Court found, after holding *another* full hearing on the merits and hearing testimony from the parties and witnesses, that Decedent lacked capacity to revoke the 2009 Will and that Ms. Irland had exercised undue influence over Decedent. (Probate Court Order, dated July 13, 2022, R. __; H'rg Transcript, April 7, 2022, R. __). Additionally, the Court's July 13, 2022 Order reasoned:

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

(Order, p. 6, ¶ 26, R. __).

Appeal to the Circuit Court

Ms. Irland sought to appeal the Probate Court's order by filing a Notice of Intent to Appeal with the Circuit Court on July 22, 2022, specifically naming Brandy S. Culp, Christina D. Culp, and John Psaras, as the Respondents.¹ (Notice of Intent to Appeal, R. __). Ms. Irland,

¹ Isadore John Psaras is the son of Decedent; Christina D. Culp is a daughter of Decedent; and Brandy S. Culp is the granddaughter of Decedent. (Order, dated July 13, 2022, pp. 1 and 4, R. __). As discussed below, Respondents are each necessary parties to the appeal, each being a named, undismissed party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Ibid., R. __).

however, failed to serve the Notice of Intent to Appeal on each of the Respondents within the ten (10) day statutorily-required period of time set forth under S.C. Code § 62-1-308(a). Specifically, Ms. Irland did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. (Proof of Service, R. __; Affidavit of Christina D. Culp, R. __).

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

On September 26, 2022, Respondent Brandy S. Culp filed a Motion to Dismiss Ms. Irland's Appeal. (Motion, R. __; Reply dated 9/28/22 at R. __). On October 27, 2022, a hearing on Ms. Culp's Motion to Dismiss was heard before the Honorable Bentley D. Price, wherein Ms. Culp's counsel argued that the appeal should be dismissed because: (1) Ms. Irland failed to serve all requisite parties within the statutorily-required period of time, thereby depriving the Circuit Court of jurisdiction to review the appeal, (2) Ms. Irland failed to perfect her appeal, having failed to take any of the statutorily-required steps set forth under S.C. Code § 62-1-308, and (3) Ms. Irland is precluded under the doctrine of *res judicata* from appealing an issue that has previously been adjudicated and dismissed on appeal. (H'rng Transcript, dated October 27, 2022, R. __).

On November 15, 2022, the Court issued a Form 4 Order, summarily denying the Motion to Dismiss. (Form 4 Order, R. __). The Order also took the additional step of erroneously

granting Ms. Irland’s appeal and remanding the matter back to the Probate Court. As set forth below, however, the Circuit Court would later correct these errors by way of subsequent order.

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

On January 26, 2023, a hearing on Ms. Culp’s Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing was held before Judge Price. (Hr’ng Transcript, R. __). Thereafter, on July 14, 2023, the Circuit Court issued an Order granting a rehearing “on the issue of the appeal from Probate Court.” (Order, R. __).²

² The Circuit Court held this hearing following an Order issued by the South Carolina Supreme Court on Appellant’s Petition for Writ of Mandamus. (Supreme Court Order, September 13, 2023, R. __). Specifically, the Supreme Court directed Judge Price to convene a hearing in this case within thirty days of the date of this Order and consider all issues properly before the Circuit Court. The Order further directed Judge Price to file a written order with the Charleston County Clerk of Court within fifteen days after the hearing is concluded. (Ibid, R. __). The Petition for Writ of Mandamus provides a detailed account of the procedural history in this case and sets forth, in detail, Respondent’s reasons for filing the petition, including the Circuit Court’s seven-month delay in ruling on the issues before it. (Petition for Writ of Mandamus, R. __).

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

The Circuit Court's order provided five separate and independent reasons for denying and dismissing the appeal with prejudice: 1) Appellant did not file nor serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b); 2) Appellant did not file or serve a Designation of Matter to Include in the Record on Appeal on any party as required by S.C. Code § 62-1-308(d), no such Designation even appears within the public index; 3) Appellant did not file or serve an appellate brief as required by S.C. Code 62-1-308(e); 4) Appellant did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f); and, finally, 5) Appellant failed to set forth any grounds and/or caselaw warranting reversal of the probate court's underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308. (Ibid., R. ___).

Appeal to Court of Appeals

On November 21, 2023, Ms. Irland filed a Notice of Appeal with the South Carolina Court of Appeals. (Notice of Appeal, R. ___). Since then, this Honorable Court has issued a total of four (4) separate deficiency letters to Ms. Irland. As set forth below, each of these letters provided Ms. Irland with clear, corrective instructions and firm deadlines for compliance, which Ms. Irland has repeatedly disregarded and continues to disregard.

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

On January 3, 2024, this Court issued Ms. Irland a second deficiency letter, noting that the time for filing Appellant’s Initial Brief had expired. (Second Deficiency Letter, R. ___). The brief had been due on January 2, 2024. Once again, the Court provided Ms. Irland with an opportunity to correct the deficiency, stating, “Within ten (10) days from the date of this letter, you must serve and file the appellant's initial brief and designation of matter, along with a motion requesting permission to serve and file the appellant's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 of the South Carolina Appellate Court

Rules (SCACR). Your appeal will be dismissed if no motion is made within ten (10) days from the date of this letter.” (Ibid., Emphasis added. R. __).

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

On January 17, 2024, the Court of Appeals issued an Order granting Ms. Irland’s request for extension of time, granting her until February 15, 2024 to serve and file her Initial Brief and Designation of Matter. However, on February 15, 2024, instead of filing an Initial Brief and Designation of Matter as specifically instructed by the Court, Ms. Irland filed a document, titled, “Brief in Support of Motion for Rehearing.” (Brief, R. __). The document contained a “Table of Contents” denoting three short sections: (1) Table of Authorities; (2) Statement of the Issues; and (3) Statement of the Case. It also contained a fifty-seven-page appendix composed of various uncatalogued attachments. Notably, the document did not contain a “Standard of Review” or “Arguments” section as required by Rule 208(b), SCACR.

On February 20, 2024, the Court issued Ms. Irland a third deficiency letter, noting deficiencies with the brief. (Third Deficiency Letter, R. __). Specifically, the Court noted that the caption/title of the brief did not comply with Rule 267(a), SCACR; the document was not

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

On March 12, 2024, the Court issued Ms. Irland a fourth deficiency letter, noting the ongoing deficiencies with her brief. (Fourth Deficiency Letter, R. __). Again, the Court noted that, Ms. Irland’s brief is not accompanied by the required certificate of counsel; the brief does not comply with Rule 208(b), SCACR, failing to organize its content in the order prescribed by the rule; and the brief is not accompanied by a designation of matter to be included in the record on appeal. Again, the Court provided Ms. Irland with an opportunity to correct the deficiency, stating, “any deficiency must be corrected within ten (10) days of the date of this letter or this matter **will** be dismissed.” (Ibid., Emphasis in original). The Court emphasized that it would dismiss the appeal if Ms. Irland did not correct the deficiencies contained in her brief by the deadline set forth by the Court, which computes to Friday, March 22, 2024. Once again, Ms. Irland missed the deadline imposed by this Court, waiting until Tuesday, March 25th to mail what purports to be a corrected Initial Brief and Designation of Matter. (Brief, R. __).

Notably, in this latest filing, Ms. Irland makes substantive changes to the brief without seeking leave from the court, arbitrarily adding AI-generated cases, issues on appeal, and

additional arguments. (Compare Brief, filed 03/25/25, R. ___, to original brief, filed 02/15/2024, at R. ___). The brief does not contain a Standard of Review section as required by Rule 208(b), SCACR. Additionally, the Designation of Matter is replete with documents, which are not referenced in the brief or filed with the Circuit Court, and fails to include a certification pursuant to Rule 209(c), SCACR, indicating that the designation contains no matter, which is irrelevant to the appeal.

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

Having failed to follow the statutory requirements for perfecting her appeal in Circuit Court, Ms. Irland now seeks to appeal the underlying orders of the Probate Court and Circuit Court with the Court of Appeals, disregarding the express statutory limitations imposed by S.C. Code § 62-1-308(i), which states, "The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented." Here, Ms. Irland did not even file an Appellate Brief or Record on Appeal with the Circuit Court, thereby failing to preserve any issues for further appellate review.

On April 24, 2024, Ms. Culp filed a Motion to Dismiss Appeal, wherein she set forth five (5) separate grounds for dismissal of the appeal. (Motion, R.__). On July 15, 2024, the Court of Appeals issued an Order denying Ms. Culp’s Motion to Dismiss without prejudice to Ms. Culp presenting these arguments in the Brief of Respondent or in a Motion to Strike. (Order, R. __).

This Brief follows.

STANDARD OF REVIEW

An appeal from Probate Court to Circuit Court as to the validity of a will is a case at law. *Estate of Weeks, In re*, 495 S.E.2d 454, 329 S.C. 251, 262 (Ct. App. 1997), citing *Johnson v. Johnson*, 235 S.C. 542, 112 S.E.2d 647 (1960). If the proceeding in the Probate Court is in the nature of an action at law, the Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. *Id.*, citing *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993).

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

- § 62-1-308(a) (requiring service of the Notice of Intent to Appeal on all parties not in default within ten days of receipt of written notice of the underlying order);
- § 62-1-308(b) (requiring Appellant, within forty-five days after receipt of written notice of the order, to file and serve a Statement of Issue on Appeal with the Circuit Court, in a format described in Rule 208(b)(1)(B), SCACR, with proof of service and a copy served on all parties);

- § 62-1-308(d) (requiring, within thirty days after service of the Statement of Issues on Appeal, the filing and service of a Designation of Matter to be Included in the Record on Appeal, in a format described in Rule 209, SCACR, with proof of service);
- § 62-1-308(e) (requiring Appellant to file and serve one copy of his brief on all parties to the appeal at the same time he serves his Designation of Matter to Include in the Record on Appeal, with proof of service);
- § 62-1-308(f) (requiring Appellant to file a Record on Appeal (in a format described in subsection (c), (e), (f), and (g) of Rule 210, SCACR); and
- § 62-1-308(i) (cited *supra*, stating, “The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.”

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

Additionally, the requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses a deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice. *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.3d 791, 795, 377 S.C.

643 (2008), quoting *Elam v. S.C. Dep't of Transp.*, 351 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

ARGUMENT

I. The Circuit Court's Order should be affirmed because Appellant failed to comply with the statutory requirements for pursuing and perfecting an appeal from Probate Court, as set forth under S.C. Code § 62-1-308 et seq.

It is indisputable that Ms. Irland failed to comply with the statutory requirements for pursuing and perfecting an appeal of the underlying probate court order. Specifically, Ms. Irland failed to file or serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b) (“Within forty-five days after receipt of written notice of the order, sentence or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR), with proof of service and a copy served on all parties.”). Ms. Irland’s Notice of Appeal, filed with the Circuit Court on July 22, 2022, states she received written notice of entry of the probate court order on July 14, 2022. (Notice of Appeal, R.__). Pursuant to subsection (b) of the statute, Appellant was required to file and serve a Statement of Issue on Appeal on or before August 29, 2022. A review of the public index in this case establishes that Appellant failed to meet these requirements. (Public Index, R.__).

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

Ms. Irland also failed to file or serve an appellate brief with the Circuit Court as required by S.C. Code 62-1-308(e) (“At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties

to the appeal, and filed with the clerk of the circuit court one copy of the brief with proof of service. The appellant’s brief shall be in a format described in Rule 208(b)(1), SCACR.”). A review of the public index in this case establishes that Appellant failed to meet these statutory requirements. (R. __). Notably, as the Circuit Court found, Ms. Irland failed to set forth any grounds and/or case law warranting reversal of the probate court’s underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308(e).

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

As a result, the Circuit Court properly determined that Appellant had failed to perfect her appeal in compliance with S.C. Code § 62-1-308, et seq. and failed to set forth a basis for reversal of the Probate Court’s underlying order. (Order, p. 1, R. __). Appellant’s [Initial] Brief notably fails to set forth a single argument or provide *any* evidence that she complied with the statutory requirements for perfecting an appeal from probate court. This alone is sufficient grounds for affirming the underlying Orders.

“It is well-established that ‘[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.’” *Grier v. Amisub of S.C., Inc.*, 397 S.C. 532, 725 S.E.2d 693, 695 (2012), quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, **the courts are bound to give effect to the expressed intent of the legislature.** Id. (quotation omitted). Thus, we must follow the plain and unambiguous language in a statute and have ‘no right to impose another meaning.’” Id. [Emphasis added]. Further, where the statute is unambiguous, “we are confined to what the statute says, not what it ought to say, for we have

no right to modify a statute's application 'under the guise of judicial interpretation.'" Id. at 725 S.E.2d 698, citing, *Coker v. Nationwide Ins. Co.*, 251 S.C. 175, 182, 161 S.E.2d 175, 178 (1968).

Here, it is clear that Appellant did not comply with the statutory requirements for perfecting her appeal from the Probate Court. Faced with this dilemma, Appellant now asks this Honorable Court for "some leeway," ignoring that *Pro Se* litigants do not have license to ignore statutory requirements set forth by our legislature and that Court's do not have the right to modify a statute's application under the guise of judicial interpretation. (Appellant's [Initial] Brief at pp. 9-10, R.__).

In support of her request to be excused from complying with our State's enacted laws, Mr. Irland's [Initial] Brief points to *Haines v. Kerner*, a 1972 United States Supreme Court case, arguing, "the U.S. Supreme ruled that a Pro Se litigant is held to less stringent standards than formal pleadings drafted by lawyers." (Initial Brief at pp 9-10).

Appellant's argument is unavailing for several reasons. *Haines* is a 1972 United States Supreme Court case arising out of a lawsuit filed by a *pro se* inmate who had been placed in solitary confinement after striking another inmate in the head with a shovel. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). The U.S. Supreme Court considered whether the lower court had erred in dismissing a civil rights lawsuit filed by Mr. Haines against the Governor, state officers, and other penitentiary officials, in which Mr. Haines had complained of alleged physical injuries resulting from the solitary confinement he received following the shovel incident. Citing the since-abrogated cases of *Conley v. Gibson*, the Supreme Court found that given the allegations contained in Mr. Haines' complaint, it was error for the lower court to dismiss the complaint under Rule 12(b)(6), FRCP, without first providing Mr. Haines an opportunity to offer evidence in support of the allegations. In rendering its

decision, the Supreme Court noted that *complaints* drafted by *pro se* litigants are generally held to “less stringent standards than formal pleadings drafted by lawyers.” *Id.* at 404 U.S. at 521.

Unlike *Haines*, however, the instant appeal does not concern the sufficiency of pleadings or a 12(b)(6) dismissal of a *pro se* litigant’s complaint, but rather the dismissal of Ms. Irland’s appeal due to her indisputable failure to comply with the **statutory requirements** for perfecting an appeal from Probate Court pursuant to S.C. Code § 62-1-308, et seq. While *pro se* parties may be granted some leeway with regard to construction of their pleadings, this leeway does not extend to a party’s failure to comply with statutory requirements enacted by our legislature.

Further, a litigant’s *pro se* status does not afford her the right to abuse the judicial process. See *City of Columbia v. Assa'ad-Faltas*, 800 S.E.2d 782, 420 S.C. 28 (2017), noting, “Appellant's unrelenting inappropriate conduct in the South Carolina courts necessitated that certain restrictions be placed upon Appellant's pro se access to the courts to curb her abuse of the judicial process.”

Here, Ms. Irland withheld information from the Probate Court and other parties, resulting in the unnecessary expenditure of time, money, and judicial resources. Specifically, as noted above, the present case involves the alleged revocation of Decedent’s 2009 Will at Ms. Irland’s behest on October 28, 2014, the same date that Decedent was previously adjudicated to have lacked capacity and Ms. Irland was found to have exercised undue influence. It was unknown by the parties or the Probate Court during the initial guardianship proceeding that Ms. Irland had engaged in these additional acts on October 28, 2014. (H’rg Transcript, April 7, 2022, p. 12, line 17 to p. 13, line 5, R. __). As before, the Probate Court found, after holding *another* full hearing on the merits and hearing testimony from the parties and witnesses, that Decedent lacked

capacity to revoke the 2009 Will and that Ms. Irland had exercised undue influence over Decedent. (Order, R. __).

Since then, Ms. Irland has taken every opportunity to delay the administration of justice, filing frivolous appeals, which she then failed to pursue or perfect pursuant to the probate statute or the South Carolina Appellate Court Rules. Accordingly, Respondent respectfully requests that this Honorable Court bring an end to Ms. Irland's dilatory tactics and affirm the Probate Court and Circuit Court's orders. Contrary to Appellant's contention, her status as a *pro se* litigant does not confer special privileges which allow her to ignore the statutory requirements enacted by our legislature.

II. The Circuit Court's Order should be affirmed because Appellant failed to appeal each and every independent ground cited by the Circuit Court as a basis for dismissing and denying the appeal with prejudice.

In the present case, the Circuit Court cites five separate, independent grounds as basis for dismissing the Appeal, specifically finding: 1) Appellant did not file nor serve a Statement of Issues on Appeal within the time prescribed by S.C. Code § 62-1-308(b); 2) Appellant did not file or serve a Designation of Matter to Include in the Record on Appeal on any party as required by S.C. Code § 62-1-308(d), no such Designation even appears within the public index; 3) Appellant did not file or serve an appellate brief as required by S.C. Code 62-1-308(e); 4) Appellant did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f); and, finally, 5) Appellant failed to set forth any grounds and/or caselaw warranting reversal of the probate court's underlying order, having failed to even brief her appeal as required by S.C. Code 62-1-308. (Order, R. __).

Even a cursory review of the latest Initial Brief filed by Appellant demonstrates that she failed to appeal every independent ground cited by the Circuit Court as the basis for its decision.

As set forth above, the Circuit Court based its decision to deny and dismiss Ms. Irland's appeal on five *independent* grounds. Ms. Irland's [Initial] Brief offers no argument or evidence that she properly filed a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties as prescribed by S.C. Code § 62-1-308(b). Ms. Irland also offers no argument or evidence that she filed a Designation of Matter to Include in the Record on Appeal on any party as required by S.C. Code § 62-1-308(d), no such Designation even appears within the public index. Ms. Irland offers no argument or evidence that she filed and served a Record on Appeal on any party as required by S.C. Code § 62-1-308(f). Most importantly, Ms. Irland offers no argument or evidence that she even filed an Appellate Brief with the Circuit Court as required by S.C. Code § 62-1-308(e); she did not even brief a single argument to which Ms. Culp's counsel could respond or on which the Court could rule.

“Failure to argue is an abandonment of the issue and precludes consideration on appeal.” *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). “Under the two[-]issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.” *Skywaves I Corp. v. Branch Banking & Trust Co.*, 814 S.E.2d 643 (Ct. App. 2018) (citations omitted). Because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court and Probate Court in their respective Orders, this Honorable Court should affirm the Orders on Appeal.

III. The Circuit Court and Probate Court Orders should be affirmed because Appellant has failed to demonstrate that the Probate Court's order was unsupported by the evidence.

An appeal from Probate Court to Circuit Court as to the validity of a will is a case at law. *Estate of Weeks, In re*, 495 S.E.2d 454, 329 S.C. 251, 262 (Ct. App. 1997), citing *Johnson v. Johnson*, 235 S.C. 542, 112 S.E.2d 647 (1960). If the proceeding in the Probate Court is in the nature of an action at law, the Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. *Id.*, citing *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993).

Here, the Probate Court found, after holding *another* full hearing on the merits and hearing testimony from the parties and witnesses, that Decedent lacked capacity to revoke the 2009 Will on October 28, 2014 and that Ms. Irland had exercised undue influence over Decedent on that date. (Order, R. __; H'rng Transcript, April 7, 2022, R. __). In reaching its decision, the Court noted, "It is undisputed by the parties that Decedent was taken to the office of Lynn McCants, Esq., by Respondent Athena Irland on October 28, 2014, stated that it was her intention to revoke the 2009 Will, and physically tore the 2009 Will in half in the presence of Mr. McCants." (Order, page 4, para 18, R. __),

Appellant's [Initial] Brief attempts to attack Court's factual findings regarding undue influence, stating, "Athena Irland was not present during Ms. Coleman's meeting with Attorney Jack Williams or Attorney Lynn McCants." (Initial Brief at p. 9, para 5, R. __). However, Ms. Irland's contention is directly contradicted by the record. (H'rg transcript, p. 35 line 8 to p. 38, line 5, R. __). John Lynn McCants, a lawyer in Mount Pleasant, testified that he had drafted the 2009 will of Decedent, that he witnessed the destruction of the Will, **wherein both Decedent and Ms. Irland were present at his office**, that he does not dispute the purported destruction of October 28, 2014, that he was not aware of the Court rulings about other events that occurred on that date, but had he known of the same, he would have had concern about the ability and

correctness of Decedent destroying her Will.” (Order, p. 5, para 22, R. ___, See also testimony of Andrew Chandler, Esq., 10/18/16 Hr’g Transcript, R. ___).

Further, Ms. Irland provided zero evidence at the hearing to support her contention that Decedent possessed the necessary mental capacity to revoke the subject will on October 28, 2014. Instead, Appellant attempted to argue that the Probate Court had simply made a mistake with regard to its previous, unappealed Order dated July 29, 2017, which found that Decedent lacked capacity and that Ms. Irland had exercised undue influence over decedent on October 28, 2014, and blamed her then-lawyer for the outcome. (Hr’g Transcript, p. 15, lines 1-13, R. ___). Because Appellant’s Brief fails to demonstrate that the Probate Court’s Order was unsupported by the evidence, Respondent respectfully requests that this Honorable Court affirm the Orders of the Probate Court and Circuit Court.

IV. As an additional sustaining ground, the Circuit Court and Probate Court’s Orders should be affirmed because Appellant failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher Courts of appellate jurisdiction.

In the present case, Ms. Irland sought to appeal the Probate Court’s order by filing a Notice of Intent to Appeal with the Circuit Court on July 22, 2022, *specifically naming* Brandy S. Culp, Christina D. Culp, and Isadore John Psaras, as the Respondents. (Notice of Appeal, R. ___). As set forth above, Isadore John Psaras is the son of Decedent; Christina D. Culp is a daughter of Decedent; and Brandy S. Culp is the granddaughter of Decedent. (Order, July 13, 2022, pp. 1 and 4, R. ___). Respondents are each necessary parties to the appeal, each being a named, undismissed party to the underlying probate action as well as intestate beneficiaries and listed devisees under the subject wills. (Ibid., at pp. 1 and 4, R. ___).

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

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

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

Here, Ms. Irland failed to serve parties whom she specifically named and identified as Respondents in her Notice of Intent to Appeal. These parties are also specifically identified as parties to the underlying probate action in the very probate court order, which Ms. Irland sought

to appeal to the Circuit Court. Mr. Psaras and Ms. Culp are also specifically identified as Respondents in the Circuit Court's Order denying and dismissing Ms. Irland's appeal.

Having failed to serve Mr. Psaras and Ms. Christina Culp within the statutorily required period of time, and realizing that this failure is fatal to her appeal, Ms. Irland now seeks exclude them from the appeal altogether. Specifically, Appellant's [Initial] Brief intimates that Mr. Psaras and Ms. Christina Culp are not parties to this appeal because they entered into a private settlement agreement with Respondent Brandy Culp. (Agreement, R. __). Ms. Irland's arguments are unavailing for several reasons:

First, Ms. Irland is not a party to the settlement agreement. Mr. Psaras and Ms. Culp have not released any rights, claims, and/or defenses as they relate to Appellant Athena Irland. In fact, the Settlement Agreement specifically states that the releases set forth therein **do not apply to Athena Irland**. See Settlement Agreement, para. 5, stating, "This release specifically does not apply to Athena Irland." (R. __). While the Settlement Agreement provides Respondent Brandy Culp with certain enforceable rights as it relates to Mr. Psaras and Ms. Christina Culp, it does not remove them from the action, nor does it divest them as parties to the appeal.

Second, the Agreement and corresponding Order Approving Agreement do not dismiss Mr. Psaras and Ms. Christina Culp as parties to the underlying Probate Court matter. Indeed, Mr. Psaras and Ms. Christina Culp continued to be clearly identified as parties and taken into account in the Probate Court's subsequent July 13, 2022 Order (Order, pp. 1 and 4, R. __). Ms. Irland sought to appeal this Order, specifically naming Mr. Psaras and Ms. Christina Culp as Respondents on her Notice of Intent to Appeal, but then failed to serve them with the Notice as required by the statute. (Notice of Intent to Appeal, R. __).

Mr. Psaras and Ms. Christina Culp were also specifically identified as Respondents in the Circuit Court’s Order Denying and Dismissing Appeal from Probate Court, entered October 2, 2023. (Order, R. __). Despite the clear identification of Mr. Psaras and Ms. Christina Culp as Respondents and parties to the appeal, Ms. Irland once again failed to serve a Notice of Appeal on either of them. (Notice of Appeal and Proof of Service, R. __).

Ms. Irland’s repeated failure to serve Mr. Psaras and Ms. Christina Culp with Notices of her Appeals is fatal to her appeal. “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses a deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.3d 791, 795, 377 S.C. 643 (2008), quoting *Elam v. S.C. Dep’t of Transp.*, 351 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Because Ms. Irland has failed to serve all necessary parties to the appeal, including parties which she *specifically identified* as Respondents in her Notice of Intent to Appeal and who are *specifically identified* as parties in the Court’s underlying orders, the appeal must be dismissed.³

³ As set forth above, this is not the first time that Ms. Irland has run into jurisdictional issues. During a related guardianship action involving the parties, Ms. Irland was found to have exercised undue influence over Decedent with regard to the execution of two deeds of conveyance. (Order, R. __). As a result, the Probate Court rescinded the subject deeds by Order dated June 29, 2017, finding that Decedent lacked the requisite capacity on October 28, 2014 to execute the deeds of conveyance and that Ms. Irland had exercised undue influence over decedent on that date. (Ibid).

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

Because Ms. Irland failed to serve all necessary parties with the Notice of Appeal as required by S.C. Code § 62-1-308(a), Respondent respectfully requests that the appeal be dismissed on jurisdictional grounds. and affirm the orders of the Circuit Court and Probate Court.

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

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

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

Rule 260, SCACR, states in relevant part, "Whenever it appears that an appellant or petition has failed to comply with the requirements of these Rule, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate Court." Here, Ms. Irland has repeatedly disregarded and continues to disregard the appellate court rules as well

as the statutory requirements for pursuing an appeal from probate court. She never even bothered to file an Appellate Brief or Record on Appeal with the Circuit Court as required by S.C. Code § 62-1-308(e). As a result, having failed to preserve *any* issues for appeal in the Circuit Court, Ms. Irland lacks a foundation upon which to base her Initial Brief or seek further appellate review. Accordingly, Respondent respectfully request that this Honorable Court deny Ms. Irland's appeal and affirm the Orders of the Probate Court and Circuit Court and dismiss and/or otherwise deny this appeal.

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

CONCLUSION

For each of the foregoing reasons, Respondent Brandy Culp respectfully requests that this Honorable Court affirm the Probate Court and Circuit Court's Orders. The underlying orders should be affirmed because Appellant has failed to comply with the statutory requirements for pursuing and perfecting an appeal from the probate court, as set forth under S.C. Code § 62-1-308 et seq. She has also failed to appeal each and every independent ground cited by the Circuit Court as a basis for dismissing and denying the instant appeal with Prejudice. Additionally, Appellate failed to demonstrate that the Probate Court's order was unsupported by the evidence.

As an additional sustaining ground, the Circuit Court and Probate Court's Orders should be affirmed because Appellant failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher Courts of appellate jurisdiction. Alternatively, the appeal should be dismissed because Appellant has repeatedly failed to adhere to the South Carolina Appellate Court Rules and continues to do so.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT BRANDY S. CULP

Mount Pleasant, South Carolina
August 14, 2024

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Aug 14 2024

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland,

Appellant,

v.

Brandy S. Culp,

Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Initial Brief of Respondent complies with Rule 211(b),
SCACR.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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Attorney for Respondent Brandy S. Culp

Mount Pleasant, South Carolina

August 14, 2024



August 14, 2024

VIA ONEDRIVE ELECTRONIC SUBMISSION AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

Aug 14 2024

SC Court of Appeals

RE: Athena Irland, Appellant v. Brandy S. Culp, Respondent
App. Case No. 2023-001852

Dear Ms. Kitchings:

Enclosed for filing, please find the following:

1. Initial Brief of Respondent;
2. Respondent's Designation of Matter to Include in Record on Appeal;
3. Respondent's Motion to Strike; and
4. Proof of Service.

A check for the fifty dollar (\$50.00) filing fee associated with the Motion to Strike has been deposited in today's mail. Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Cc: Daniel S. Slotchiver, Esq.
Stephen M. Slotchiver, Esq.
Athena L. Irland (Via Certified Mail)
Christina D. Culp (Via Certified Mail)
Isadore John Psaras (Via Certified Mail)

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