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**Aug 14 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price  
Circuit Court Judge

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Appellate Case No. 2023-001852

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Athena Irland,

Appellant,

v.

Brandy S. Culp,

Respondent.

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RESPONDENT BRANDY S. CULP'S  
MOTION TO STRIKE INITIAL BRIEF OF APPELLANT  
AND DESIGNATION OF MATTER  
TO INCLUDE IN THE RECORD ON APPEAL

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On July 15, 2024, this Honorable Court issued an Order denying Respondent's previously filed Motion to Dismiss Appeal "without prejudice to Respondent presenting these arguments in the brief or Respondent or Motion to Strike." Accordingly, pursuant to Rule 240, SCACR, Rule 208, SCACR, and Rule 209, SCACR, Respondent Brandy S. Culp, through her undersigned counsel, hereby respectfully moves to Strike Appellant's Initial Brief and Designation of Matter. The grounds for this Motion are that Appellant, having already received a total of four deficiency letters from this Court, has failed to adhere to the South Carolina Appellate Court Rules by (a) failing to file an Initial Brief that complies with Rule 208(b), SCACR, and (b) failing to file a Designation of Matter that complies with Rule 209, SCACR.

Specifically, Rule 208(b)(1)(A), SCACR, requires that Appellant’s Initial Brief include “a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the page of the brief where they are cited.” A review of Appellant’s Initial Brief, however, reveals that Appellant’s Table of Authorities cites ten cases, which are not cited anywhere in her Initial Brief and what appears to be the names two medical doctors who did not testify at the underlying hearing, held on April 7, 2022. (Initial Brief of Appellant, Exhibit A, pp. 1-2). Accordingly, Respondent moves to strike references to these cases and individuals from the “Table of Authorities” section of Appellant’s Initial Brief.

Rule 208(b)(1)(E) states that “A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party’s contentions.” Appellant’s Initial Brief contains a “Statement of Facts” which contains zero references to the Record and addresses matters not before the Court or in the Record. (Exhibit A, p. 5). Further, Appellant’s Statement of the Facts section makes reference to testimony from individuals who did not testify at the underlying April 7, 2022 hearing. Accordingly, Respondent moves to strike Appellants “Statement of Facts” section.

Rule 208(b)(1)(E) further states, “The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citation of authorities.” Here, Appellant cites what purports to be four separate issues on Appeal, but then fails to address any of these alleged issues in the Arguments section of the brief. Appellant Initial Brief makes no effort to reconcile her “Statement of Issues on Appeal” with her “Arguments” section. (Exhibit A, p. 3

and 8). Accordingly, Respondent moves to strike the “Statement of Issues on Appeal” and “Arguments” Section of Appellant’s Initial Brief.

Rule 208(b)(1)(D) states, “If all the issues are governed by the same standard of appellate review, the Brief shall contain a section with the heading ‘Standard of Review,’ which shall concisely set forth the applicable standard of review with citations to relevant case law establishing the standard. If the same standard of review is not applicable to all of the issues, a separate section with a heading of ‘Standard of Review’ shall be included at the start of the argument on each issue with citations to relevant case law establishing this standard of review.” Here, Appellant’s Initial Brief fails to include a Standard of Review section in any form as required by the Rule.

Finally, Rule 209(c), SCACR, requires that the Designation of Matter to be Included in the Record on Appeal shall be signed and that the signature constitutes a certificate that the Designation contains no matter which is irrelevant to the Appeal. (Exhibit B, Designation of Matter). Here, Appellant failed to sign the Designation of Matter so as to certify that it contains no matter which is irrelevant to the appeal and, in fact, includes irrelevant material, including several references S.C. Code sections, a 2024 Letter from the Attorney General, and medical imaging exams that were never submitted as evidence at the underlying April 7, 2022 Probate Court hearing. Accordingly, Respondent moves to strike these items from Appellant’s Designation of Matter to Include in the Record on Appeal.

#### Conclusion

For each of the foregoing reasons, Respondent respectfully requests that that this Honorable Court strike Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal. Alternatively, Respondent respectfully renews its requests that this Appeal be

dismissed in its entirety as a result of Appellant's repeated failure to adhere to the South Carolina Appellate Court rules.

Respectfully submitted,

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s/Jesse Sanchez

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ATTORNEYS FOR RESPONDENT BRANDY S. CULP

Mount Pleasant, South Carolina  
August 14, 2024

**EXHIBIT A**

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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Appeal From Charleston County  
Court Of Common Pleas

Bently Price Circuit Court Judge

\_\_\_\_\_

Case No. 2023-001852

\_\_\_\_\_

Athena Irland

Appellant

v.

Brandy S. Culp

Respondent

\_\_\_\_\_

INITIAL BRIEF OF APPELLANT

\_\_\_\_\_

**RECEIVED**  
MAR 27 2024  
SC Court of Appeals

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

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TABLE OF AUTHORITIES  
CASES

1. In re Estate of Berg  
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783 N.W. 2d831 (S.D. 2010)
2. In re Estate of Cumbee  
Court of Appeals South Carolina  
333 S.C. 664 (S.C. Ct. App. 1999)
3. Noblin v. Burgess  
Court of Appeals Mississippi  
54 So. 3d 282 (Miss. Ct. App.2011)
4. Ellis v Davidson  
Ct. Of App. S.C.  
358 S.C. 509 (S.C. Ct. App. 2004)
5. In re Estate of Tank  
Supreme Court of South Dakota  
938 N.W. 2d 449 (S.D. 2020)
6. Hembree v Estate of Hembree  
Ct. Of Appeals South Carolina  
311 S.C. 192 (S.C. Ct. App. 1993)
7. Church v Trotter  
Supreme Court of South Carolina  
278 S.C. 504 (SC 1983)
8. Thompson v Moore  
Supreme Court of South Carolina  
227 S.C. 417 (S.C. 1955)
9. Verdery v Daniels (In re Thames)  
South Carolina Court of Appeals  
344 SC 564, 544 (Ct App. 2001)
10. Dixon v Dixon  
Supreme Court of South Carolina  
362 S.C. 388 (S.C. 2005)
11. Calhoun v Calhoun  
Supreme Court of South Carolina  
277 S.C. 527 (S.C. 1982)

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

Jonathan Raub, MD, MPH,  
Fellow in Forensic Psychiatry

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

## STATEMENT OF ISSUES ON APPEAL

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

## STATEMENT OF THE CASE

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

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

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

## STATEMENT OF FACTS

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

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

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

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

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

## ARGUMENTS

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

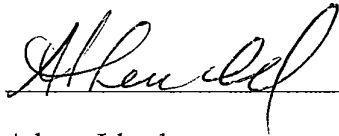
1. Pg. 4 line 25, pg 5 lines 1-6 are untrue statements by opposing counsel and does not apply.
2. Pg. 5 lines 14-20. 2 deeds were at issue. One deed transferred to me, Athena Irland. Another deed was to be transferred after the death of Dolly Coleman, my mother. I had absolutely no influence in her decision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

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

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

## CONCLUSION

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



3-25-2024

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

Date

# EXHIBIT B

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

MAR 27 2024  
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court Of Common Pleas

Bently Price, Circuit Court Judge

Appellate Case No. 2023-001852

Brandy S. Culp

Respondent

V.

Athena Irland

Appellant

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order Denying and Dismissing Appeal from Probate Court. October 2, 2023
2. Form 4. Statement of Judgement Remanded. Appeal granted November 11, 2022.
3. Order denying Appellant's Motion For Reconsideration of Appeal from Probate Court
4. Reconsideration of Dismissal of Appeal from Probate Court October 11, 2023
5. Transcript of Motion October 27, 2022
6. Notice of Intent to Appeal July 22, 2022
7. Order of Probate Court, July 13 2022
8. Transcript of Hearing, Case# 2019-ES10\_1368 April 7, 2022
9. Motion to dismiss Appeal September 6, 2022
10. Transcript of Record September 27, 2023
11. Order Dismissing Appeal August 22, 2017

12. Order Recinding Deeds September 6, 2022
13. Order denying Respondant Brandy Culp's Rule 59e Motion to Alter or amend Order and Granting Rule 221a Petition for rehearing July 14 2023 (sent prior, Appenndix A)
14. Supreme Court Order, September 3, 2023 (prior sent Appendix B)
15. SC code of Laws Title 14 Chapter 23 Probate Courts  
Section 14-23-1100. Duties of Clerk  
Section 14-23-1120 . Court of record; seal.  
Section 62-1-305 Records and certified copies  
Section 62-1-307 Probate Judge; powers. Order , Judge Lenna Kirchner, dated July 13, 2022.  
Letter from OFFICE OF THE ATTORNEY GENERAL dated February 28, 2024 to The Honorable Joe H. Jefferson, Jr., Member
16. Bon Secours St. Francis Hospital Imaging Services. Byron Bailey, MD.  
Exam Date: May 26, 2015.

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Aug 14 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price  
Circuit Court Judge

Appellate Case No. 2023-001852

Athena Irland, Appellant,

v.

Brandy S. Culp, Respondent.

**PROOF OF SERVICE**

I, the undersigned, certify that I have served the *Initial Brief of Respondent, Designation of Matter to Include in the Record on Appeal, and Motion to Strike* on Appellant Athena Irland and all Pro See parties to the underlying action via United States Certified Mail, postage prepaid, on August 14, 2024, at the addresses set forth below:

Athena L. Irland  
186 Dolly Dimples Trail  
Huger, SC 29450  
***Pro Se Respondent***

Christina D. Culp  
198 Lower Cherokee Road  
Neeses, SC 29107 Isadore  
***Pro Se Party of Record***

John Psaras  
1586 Hidden Bridge Drive  
Mount Pleasant, SC 29464  
***Pro Se Party of Record***

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez  
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(843) 814-8181

**ATTORNEY FOR RESPONDENT BRANDY S. CULP**

August 14, 2024  
Mount Pleasant, South Carolina



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)



USPS eReceipt

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(800)275-8777

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