

FORM 18
PETITION FOR A WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Oct 04 2024
S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2021-000793
Circuit Court Case No. 2017-CP-10-05427

FAMILY SERVICES, INC., AS
CONSERVATOR FOR MURIEL W.
CLARKIN, RESPONDENT,

Respondent(s),

v.

PATRICIA CLARKIN SMITH AND
WELLS FARGO BANK, NA.,
DEFENDANTS, OF WHOM
PATRICIA CLARKIN SMITH IS
THE APPELLANT,

Petitioner(s).

PETITION FOR A WRIT OF CERTIORARI

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
37 Villa Road, Suite 409
Greenville, SC 29615
(833) 729-3426 t
(864) 752-1424 f

d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR PETITIONER PATRICIA
CLARKIN SMITH

Other Counsel of Record:

The Law Office David Conor Keys, LLC
D. Conor Keys, Esq.
P.O. Box 14225
Charleston, SC 29422
(843) 906-3998

ATTORNEY FOR THE RESPONDENT(S)
FAMILY SERVICES, INC., AS CONSERVATOR
FOR MURIEL W. CLARKIN

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CERTIFICATE OF COUNSEL

Petitioner Patricia Clarkin Smith filed a timely Petition to Reinstate Appeal and for a Rehearing on July 2, 2024, pursuant to the South Carolina Rules of Appellate Court Rules. Rule 240, SCACR. Counsel certifies that the South Carolina Court of Appeals issued its Order denying Petitioner Patricia Clarkin Smith's Petition to Reinstate Appeal and for a Rehearing *en banc* on September 4, 2024. This Petition for Writ of Certiorari is timely filed within thirty (30) days of the Appellate Court's final order and in compliance with the South Carolina Appellate Court Rules. Rule 242(c), SCACR. The content of this petition complies with the South Carolina Appellate Court Rules. Rule 242(d), SCACR. This petition raises issues involving substantial constitutional issues that are directly involved warranting this Court to grant a Petition for Certiorari. Rule 242(b)(4), SCACR.

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QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred dismissing this appeal when the lower court lacked subject matter jurisdiction to award Respondent(s) for claims barred by the statute of limitations and violating Petitioner's constitutional rights to Petitioner's personal property without due process?**

- II. Whether the Court of Appeals erred dismissing this appeal when the lower court awarded Respondent with rent in arrears absent any landlord-tenant relationship between Respondent and Petitioner thus improperly awarding a party who lacked justiciability for claims of rent in arrears and violating Petitioner's constitutional rights to Petitioner's real property without due process?**

STATEMENT OF THE CASE

Petitioner Patricia Clarkin Smith (“Patricia”) appeals the Circuit Court’s Order Granting Motion for Summary Judgement on June 21, 2021, and the Court of Appeals’ order dismissing this appeal on September 4, 2024. (R. 20-46).

A. FACTUAL BACKGROUND

Respondent Family Services, Inc. (“Family Services”), as the conservator for Muriel Walsh Clarkin, sued Petitioner Patricia Clarkin Smith (“Patricia”) and Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), for disputed monies and property transfer(s) pertaining to the conservatorship. (R. pp. 50-61, 63-64, 231-236, 238-250). Patricia is the daughter of Muriel Walsh Clarkin (“Mother”). (R. pp. 20-31, 50-61, 63-34, 230-236, 268-269, 285-302). In a sister probate case (Case No. 2014-GC-10-0209), the Honorable Tamara C. Curry in Charleston County Probate Court appointed Family Services as conservator for Mother on March 27, 2015. (R. pp. 24-25, 50, 66).

On or around November 1, 2012, Patricia received \$6,000.00 from Mother and her late father. (R. pp. 29, 31-33, 236). Pertaining to allegations of damages for a sum uncertain, Family Services never pled damages for this said stipulated amount of \$6,000.00 (on November 1, 2012). (R. pp. 29, 31-33, 35, 43-45, 50-61, 66-78, 373-382, 406, 477-478). Hence, an award on this amount is outside the scope of the pleadings and void. On or around August 21, 2013, Patricia received a secondary gift from Mother in the amount of \$1,500.00. (R. pp. 26, 29, 31-33, 35, 43-45, 52, 68, 135-136, 144-145, 343-346, 373-382, 477-478).¹ Both gifts occurred prior to

¹ On or around November 18, 2014, Patricia received \$6,000.00 from Mother. (R. pp. 28-29, 31-33, 35, 43-45, 69, 145, 156, 270-276, 359-362, 373-382, 517, 522-527). On or around December 23, 2014, Patricia received \$10,000.00 from Mother. (R. pp. 29, 31-33, 35, 43-45, 128, 146-147, 157, 373-382, 384-385, 389, 522-527). While Patricia claims these amounts as gifts from Mother to Patricia, Patricia concedes that challenging the said stipulated

Mother being diagnosed and declared legally incapacitated (collectively referred to as “Gifts”).

As recorded on August 7, 2013, the stipulated deed transfer pertains to the real property, and residence, or both of Mother and Patricia that is located on 602 Atlantic Street, Mount Pleasant, Charleston, South Carolina (Book No. 0351, Page No. 348, TMS No. 532-06-00-129) (“602 Atlantic Street”). Mother conveyed one-half (1/2) interest in said property to Patricia as joint tenants with rights of survivorship on August 7, 2013. (R. pp. 33-35, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). This deed evidenced both Mother and Patricia as landowners of said property at the time of filing this action. Also, this deed correctly identifies the subject property in dispute for the above-captioned case with respect to Family Services’s allegations of rent in arrears under different legal theories. (R. pp. 33-35, 43-45, 50-51, 66-67, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). Subsequently thereafter on or around April 1, 2014, Mother moved in with Patricia at 602 Atlantic Street. (R. pp. 329-330, 405).

Since March 27, 2015, Family Services asserted a claim of rent in arrears in the amount of \$500.00 in rent per month for Patricia to reside with Mother at 602 Atlantic Street. (R. pp. 33-36, 241-242, 305-306, 382). Despite acknowledging Patricia as a landowner of 602 Atlantic Street, Family Services extorted a total of rent in arrears for \$38,500.00 encompassing 77 monthly rent payments of \$500.00 per month since January of 2015. (R. pp. 33-36). Interest thereupon said rent in arrears amounted to \$8,255.88. (R. pp. 33-36). Total rent in arrears with interest amounted to \$46,755.88. (R. pp. 33-36, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506).

amounts of \$6,000.00 (on November 18, 2014) and \$10,000.00 (on December 23, 2014) are not preserved upon appeal. (R. pp. 29-30, 43-45).

While Mother's demise with the progressive onset of dementia was an unfortunate hardship, Family Services did not properly assess or investigate the facts concerning Patricia before taking further legal action. (R. pp. 26-27, 29-30, 37, 54, 70, 236, 268-303). However, Mother was not actually declared mentally incapacitated until on or around December 22, 2014. (R. pp. 25, 29, 37, 231, 234, 268, 306-307). The lower court invalidated transactions or declared Mother under a disability effective as of November 12, 2014. (R. pp. 22, 27, 37). Moreover, in the demands made for repayment by Family Services to Patricia, Family Services only sent requests to Patricia for these two stipulated sums concerning the \$6,000.00 (on November 18, 2014) and the \$10,000.00 (on December 23, 2014). (R. pp. 289-295). Family Services does not provide any other documentation that Family Services made a demand to Patricia for other funds such as the Gifts or rent in arrears. Family Services does not establish having a right to said personal or real property for these monetary damages.

On or around September 24, 2024, Mother passed away. Virtually penniless.²

B. PROCEDURAL HISTORY

In the Summons and Complaint filed by Family Services on October 20, 2017, the following causes of action are relevant to this appeal: (1) Declaratory Injunctive Relief related to a gift from Mother to Patricia in the amount of \$6,000.00 on or around November 18, 2014; (2) Conversion of gifts from Mother to Patricia in the amount of \$1,500.00 and \$6,000.00 on or around August 21, 2023, and November 18, 2014, respectively; (3) Unjust enrichment related to

² Outside of this appeal, investigation is ongoing regarding Family Services's serious mismanagement of Mother's finances while acting as a conservator for Mother. Family Services amassed over \$100,00.00 plus in legal fees alone yet called for emergency hearings that Mother had no money to sustain her periodically (the actual amount still being investigated). Mother had sizeable assets that would have well afforded her to die with aplenty. Essentially, in some respects over all this time, Mother's assets were liquidated to pay legal fees instead of for her care.

these gifts; (4) Money Had Money Received related to these gifts; (5) Promissory Estoppel for Patricia's rent in arrears to Mother when both Mother and Patricia owned the home and lived together as joint owners with rights of survivorship; and, (6) Quantum Meruit for said gifts. (R. pp. 56-61, 237-250). On November 28, 2017, Patricia filed an answer that denied Family Services's material allegations. (R. pp. 50-61, 63-64). Family Services filed an amended complaint. (R. pp. 56-61, 72-78).³ Family Services served Patricia requests for admissions, interrogatories, and production of documents. (R. pp. 116-71, 485-502, 513-532). Family Services deposed Patricia. (R. pp. 252-532).

On February 11, 2020, Family Services moved the lower court to transfer the case to Master in Equity, of which the lower court granted the motion on February 12, 2020. (R. pp. 6, 210-12). On October 6, 2020, Family Services filed a motion for summary judgment. (R. pp. 230-532). On May 11, 2021, the Honorable Mikell R. Scarborough heard Family Services's motion for summary judgment and ruled in favor of Family Services in the absence of Patricia. (R. pp. 20-24, 533-534).⁴ The lower court issued an order granting Family Services's motion for summary judgment on June 21, 2021. (R. 20-46). Throughout most of this case in the lower court, Patricia represented herself pro se.

On July 22, 2021, Patricia filed this appeal timely. On January 2, 2024, Patricia filed the initial brief and designation of matter. On March 6, 2024, Family Services filed its initial brief and designation of matter. On April 18, 2024, Patricia filed record on appeal with a motion to file out of time. On April 19, 2024, Patricia filed the final brief. On April 25, 2024, Family Services

³ On May 23, 2019, Family Services and Wells Fargo entered into a consent order striking Wells Fargo from the case. (R. pp. 2-3). Wells Fargo is not involved in this appeal.

⁴ In a separate sister case (Case No. 2022-CP-08-00910), and on November 3, 2022, the Honorable Dale Van Slambrook in Berkley County entered an order withholding \$100,000.00 from Patricia in sale proceeds of another related real estate property due to the outcome of this appeal. (R. pp. 537-539).

filed a return to Patricia's motion to file out of time referencing to omissions from Family Services's designation of matters, of which many items were never part of the record in the lower court nor provided to the undersigned (see image):⁵

19. Notice of Appearance of New Counsel for Appellant, June 30, 2019;
20. Notice of Hearing and Respondent's Certificate of Service, filed December 24, 2020;
21. Notice of Hearing and Respondent's Certificate of Service, filed April 16, 2021;
22. Certificate of Service for Proposed Order Granting Summary Judgment, filed June 10, 2021;
23. Affidavit of Kelly Evans, filed June 10, 2021;
24. Email 5/10/21 5:20 p.m. from Respondent's Counsel to the Master's Office and Appellant containing a pdf copy of certified official records of the Probate Matter (2014-GC-10-0209), 50 pages including the court exemplification dated 8/15/19;
25. Copy of the Probate Matter Records a hard copy of which was provided to the Master on May 11, 2021, during the hearing on May 11, 2021, and an electronic copy of which was emailed to the Master's Office and Appellant on May 10, 2021; 50 pages including the court exemplification dated 8/15/19;
26. Email 4/1/21 11:40 AM from the Master's Office to Respondent's Counsel and Appellant informing the parties a hearing on the Motion for Summary Judgment would be held Tuesday May 11, 2021, at 12pm.
27. Email 4/16/21 10:29 AM from Respondent's Counsel to the Master's Office and Appellant, attaching a courtesy copy of the Notice of Hearing 5/11/21 Respondent Mailed to Appellant on April 16, 2021.
28. Email 5/7/21 5:07 PM from Appellant to Master's Office and Respondent's Counsel requesting a continuance of the Motion Hearing Scheduled for 5/11/21.
29. Email 5/10/21 12:09 PM from the Master's Office to Appellant and Respondent's Counsel, informing the Appellant the hearing will proceed forward as scheduled and Appellant is welcome to appear by either Web-Ex or in person, but there is no requirement for her to appear.
30. Charleston County Circuit Court Case Details Public Index for Case Number 2017-CP-10-05427, available online at:
<https://jcmsweb.charlestoncountv.org/PublicIndex/CaseDetails.aspx?CourtAgency=10002&Casenum=2017CP1005427&CaseType=V&HKey=10978122121102748772501167054100748371721038155907711310812148471021115110673113115705274117738298113119&Org=AC>

5 On July 3, 2024, the undersigned submitted a letter to the Court of Appeals with a pre-prepared record on appeal based on the proposed, corrected record on appeal due to issues with Family Services's designation of matter. The undersigned summarized the issues of inclusion and omissions with respect to Respondent's designation of matter: (1) the following items in Respondent's designation of matter were properly included in Petitioner's record on appeal: 1, 2, 3, 4, 5, 7, 8, 10, 12, 13, 14, 15, 17, 18, and 23; (2) the following items in Respondent's designation of matter must be included in Petitioner's resubmission of the record on appeal: 6 (motion to be relieved as counsel), 9 (motion to continue), 11 (motion to continue), and 16 (transcript); and, (3) the following items in Respondent's designation of matter were properly omitted in the Petitioner's record on appeal: 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, and 30. While some probate records from a separate case were provided by Respondent in Respondent's Motion to Dismiss filed in Court of Appeals on February 3, 2023, it is indistinguishable as to what Respondent is referring for the actual probate records.

On June 20, 2024, the Court of Appeals dismissed this appeal. On July 2, 2024, Patricia filed a motion to reinstate the appeal and for a rehearing *en banc*. Additionally, on July 3, 2024, Patricia submitted an explanatory letter accompanying the motion to reinstate the appeal and for a rehearing with a proposed, corrected record on appeal due to the issues with Respondent’s designation of matters. However, this letter was filed by Patricia and received by the Court of Appeals, but it is not listed on the South Carolina Appellate Case Management System. Ex. A. On September 4, 2024, the Court of Appeals dismissed this appeal. Patricia petitions this Court to grant writ of certiorari and correct the errors in the Court of Appeal’s decision.

ARGUMENT

When a plaintiff lacks subject matter jurisdiction, the defendant may raise lack of subject matter jurisdiction at any time before or after the case has been adjudicated. Rule 12(a)-(b), SCRPC. Rule 12(b)(1) pertains to dismissing a case or defending any cause of action in any pleading based upon a lack of subject matter jurisdiction over the case. Rule 12(b)(1), SCRPC. A court must have subject matter jurisdiction to enforce its own decrees. *Hallums v. Bowens*, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct. App. 1993). Subject matter jurisdiction is “a court’s constitutional or statutory power to adjudicate a case.” *Johnson v. S.C. Dep’t of Prob.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007). Subject matter jurisdiction refers to the power of the court to adjudicate cases with the proceedings in question belonging to a general class. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (conferring “the power of a court to hear and determine cases of the general class to which the proceedings in question belong”); *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 599-600 (1994).

By contrast, compared to a claim for improper venue, “[a] court lacking subject matter jurisdiction, however, has no authority to act regardless of the geographical location or consent

of the litigants.” *Dove*, 314 S.C. at 238; *Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 389 n.1, 242 S.E.2d 430, 431 (1978) (opining that “consent has no bearing on the question of subject matter jurisdiction since such jurisdiction is not waivable”). While subject matter jurisdiction may not be waived by the parties or consented to by the parties, the issue of subject matter jurisdiction may be raised at any time upon the following condition as to “if it appeared that the lower court did not possess subject matter jurisdiction.” *Johnson*, 372 S.C. at 284; *Gentry*, 363 S.C. at 100.

Now, Family Services truly lacks standing and justiciability because Mother has died. Family Services is now a conservator for no one in this appeal. This case and appeal have been an absolute waste of Mother’s money that she could have used before she died to live her last days more comfortably instead.

I. Just as the lower court lacked subject matter jurisdiction over this appeal, the Court of Appeals also lacked subject matter jurisdiction to dismiss the appeal and affirm monetary damages in the amount of \$7,500.00 and interest thereupon awarded to Family Services pertaining to gifts made by Mother to Patricia that were barred from recovery under the three-year statute of limitations.

The term subject matter has a broad and various definition related to the right that one party claims against another party for the relief sought. *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121 n.10, 463 S.E.2d 600, 605 (1995) (citations omitted). First, if the defense for statute of limitations prevails, then so does the defense for lack of subject matter jurisdiction because a court’s subject matter jurisdiction rests upon whether a plaintiff is entitled to sue on a cause of action. *See McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994). The effect of the statute of limitations is substantive in nature foreclosing a claim. Because, the statute of limitations (as codified and amended) operates like a time capsule as to whether a claim is barred. Whether a claim is barred

is based upon the controlling law (for the statute of limitations) that surrounds a cause of action at the time the said cause of action accrued. The laws in effect at the moment a cause of action accrued is the controlling law over parties' legal relationships and rights. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 371, 585 S.E.2d 292, 297 (2003). A cause of action accrues at the moment when plaintiff is entitled to sue on it. *Id.* at 381.

As enacted on January 1, 2019, the South Carolina Probate Code does not abridge the effect of other statutes on rights acquired, extinguished, or barred. S.C. Code Ann. § 62-5-100(C). Once the probate court adjudicates an individual to be incapacitated, a conservator will be granted powers to assist managing the incapacitated individual's physical and financial well-being. S.C. Code Ann. § 62-5-101(1) to -(19). With respect to standing for collections purposes and asset tracing for the incapacitated person's estate, conservators must adhere to the appropriate statute of limitations under the circumstances as to when the right of action accrued. S.C. Code Ann. §§ 15-3-40 (tolling statute of limitations for persons with disability), 15-3-50 (limitations on tolling statute of limitations based on when disability existed at the time of when the right accrued). The statute of limitations is three years for "an action upon a contract, obligation, or liability, express or implied." S.C. Code Ann. §§ 15-3-530(1), 15-3-530(4) (three-year statute of limitations for claim and delivery). For older promises to pay from more than three years ago, acknowledgments or renewed promises to pay will not be charged against the promisor unless signed in writing by the promisor or the promisor pays a part of the debt or interest thereon. S.C. Code Ann. §§ 15-3-120, 15-3-130.

The Court of Appeals erred dismissing this appeal because both the Court of Appeals and the lower court lack subject matter jurisdiction while Family Services lacks standing to assert claims on disputed funds after the statute of limitations tolled. The statute of limitations abridges

Family Services's rights to exercise its powers as conservator for Mother; and, at the time of and after Family Services filed this lawsuit, the statute of limitations still governed under these circumstances in conjunction with the South Carolina Probate Code as codified and amended. Here, Mother was only diagnosed as mentally incapacitated on or around November 26, 2014. However, the probate court made findings that the mental incapacitation for Mother was identified at the earliest on November 14, 2014. Hence, all repossessions of Mother's assets prior to November 14, 2014, are not subject to the statute of limitations tolling for a person under disability. Prior to November 14, 2014, the conservator must adhere to when the right accrued to pursue said assets or disputed sums.

As a matter of law, Family Services *is not* entitled to collect Mother's Gifts to Patricia (instead of loans) *after* the statute of limitations has tolled and *before* Mother was declared legally incapacitated. Prior to November 14, 2014, Mother only had three years statute of limitations for Family Services's other allegations pertaining to Patricia's promises to pay or conversion of the Gifts in the amounts of \$6,000.00 (on November 1, 2012) and \$1,500.00 (on August 21, 2013) ("Gifts"). Family Services only filed the lawsuit against Patricia on October 20, 2017. When Family Services filed its complaint against Patricia on October 20, 2017, Family Services's allegations of claims on these Gifts occurred well after the three-year statute of limitations tolled. The statute of limitations for these Gifts tolled under the three-year statute of limitations on November 1, 2015, and August 21, 2016, respectively. Family Services did not present any documentation in writing of Patricia assuming the debt after the statute of limitations was tolled. Family Services did not present any evidence or written documentation that Family Services made a demand for repayment of these Gifts. Thus, Family Services is not entitled to these Gifts in the amount of \$7,500.00 and said interest thereupon.

Thus, the three-year statute of limitations barred Family Services's claims related to Patricia's Gifts. At the time Patricia received these Gifts from Mother, Mother's rights accrued at that time with no tolling of the statute of limitations for a person with disability. Family Services cannot seek to enlarge its rights beyond what the South Carolina code allows for Mother. Family Services's self-perceived rights to these Gifts were extinguished before Family Services ever filed this lawsuit against Patricia. If Family Services lacked standing to bring claims against Patricia for these Gifts at the time of filing this lawsuit, then Family Services also lacked standing to receive an award from the lower court for said claims because the lower court lacked subject matter jurisdiction to do so.

II. Just as the lower court lacked subject matter jurisdiction over this appeal, the Court of Appeals also lacked subject matter jurisdiction to dismiss the appeal and affirm monetary damages in the amount of \$46,755.88 awarded to Family Services pertaining to rent in arrears and interest thereupon when Family Services lacked justiciability to claim said rent in arrears in the absence of a landlord-tenant relationship between Patricia Clarkin Smith and Muriel Walsh Clarkin.

A party must have justiciability to bring forth a claim and have standing to do so for a court to have subject matter jurisdiction. *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 769-70 (2016). As a question of law, the court may construe the statutes in question for determining a plaintiff's justiciability without deference to the lower court. *Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011); *see also McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) (discussing court's construction of legislative intent permissible for substantive due process). A party must have a personal stake in the lawsuit in which said claim, of which is the subject matter of the lawsuit, is ripe to be heard. *Joseph*, 417 S.C. at 449. The plaintiff must establish three required elements to meet the prerequisites to have standing in a lawsuit: (1) the plaintiff

suffers an injury in fact; (2) a causal connection exists between the injury in fact and the conduct complained of that is traceable to the defendant; and, (3) the likelihood is high that a decision by the court will favorably redress the plaintiff's injury that is not merely speculative in nature.

Joseph, 417 S.C. at 449; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992). An injury in fact is the defendant's invasion of plaintiff's legal right, or interest, which is concrete and personalized harm whether actualized or imminent in nature. *Lujan*, 504 U.S. at 560-61; *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639-40, 528 S.E.2d 647, 649-50 (1999) (explaining that the injury in fact must be ripe or plaintiff faces imminent danger of sustaining injury). The injury must be of a personal nature that directly impacts the plaintiff and is not generalized in nature with the common public. *Joytime Distribs.*, 338 S.C. at 639-40.

Compliance with South Carolina law is mandatory by landlords and tenants alike, unless the statute expressly allows for private agreement to preempt the statute. *Compare Burbach v. Inv'rs Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (holding landlords and tenants to statutory duties), with S.C. Code Ann. § 27-35-100 ("unless there be an express agreement to the contrary"), and S.C. Code Ann. § 27-35-110 ("[w]hen there is an express agreement, either oral or written"). The South Carolina Residential Landlord-Tenant Act governs the residential use of the real estate leased. S.C. Code Ann. § 27-40-210(3). If no lease exists, or a lease is silent on the subject, then South Carolina law applies as a gap-filling function. S.C. Code Ann. §§ 27-40-30 (supplemental law permissible), 27-40-110 (governing rights, obligations, and remedies under a lease agreement for a residential dwelling), 27-40-310 (governing terms and conditions of lease agreements), 27-40-330 (prohibiting certain lease provisions), 27-40-920 (preempting inconsistent provisions for residential leasing or renting of any real property in other South Carolina codes). The South Carolina Residential Landlord-

Tenant Act does not apply when a person's occupancy of real property precedes a conveyance of the same to said person, whether in part or in full. S.C. Code Ann. § 27-40-120; *see also* S.C. Code Ann. § 27-7-40 (creation of joint tenancies with rights of survivorship or in common).

When a lease—as a contract—is not involved in the landlord-tenant dispute, determining the status of the landlord-tenant relationship is a prerequisite before referring to the parties as the landlord and tenant and creating the duty of a tenant to pay rent. *See Simon v. Kirkpatrick*, 141 S.C. 251, 257-65, 139 S.E. 614, 616-19 (1927). Failure to pay rent by the tenant upon demand by the landlord terminates the tenant's possessory interest in the real estate, and the tenant must vacate the real estate. S.C. Code Ann. § 27-35-140 (leaving right of entry and remainderman fee simple to landowner). South Carolina law separates legal title to the land from the possession of the land in a leasehold estate, protecting one in possession of the land from “one who enters and takes lands from the possession of another.” *See State v. Bates*, 87 S.C. 527, 530-31, 70 S.E. 170, 171 (1911). The South Carolina Code is clear establishing that owners are in possession of real estate being used or occupied by a tenant whereas the tenant is merely holding the real estate thereunder. S.C. Code Ann. § 27-35-30.

The tenant occupies the lands, or premises, of the landlord with the landlord's assent, whether express or implied, in a manner that is subordinated to the landlord's title to the lands or premises. *Columbia R., G. & E. Co. v. Jones*, 119 S.C. 480, 490, 112 S.E. 267, 271 (1922). The South Carolina Code defines a tenant as “[a] person *other than the owner* using or occupying real estate” whether under a written or oral agreement. S.C. Code Ann. §§ 27-33-10(3) to -(8) (emphasis added). The South Carolina Residential Landlord-Tenant Act defines a tenant as “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). By contrast, the South Carolina Code defines a landlord “to

include the owner or person in possession or entitled to possession of the real estate used or occupied by the tenant. . . .” S.C. Code Ann. § 27-33-10(8). The South Carolina Residential Landlord-Tenant Act defines a landlord as the owner of the premises who comprises of “one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.” S.C. Code Ann. § 27-40-210(8) (owners); *see also* S.C. Code Ann. §§ 27-40-210(6) (landlord), 27-40-210(10) (premises).

Regardless of whether a lease governs the landlord-tenant relationship, South Carolina law governs landlords and tenants separately from the lease itself as mutually independent. *Burbach*, 326 S.C. at 497. The lease for the premises is both a contract and a transfer of estate, which are mutually independent:

While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves. *Id.*

A written lease is not always relevant in a landlord-tenant dispute because the written lease may be invalid, expired, or nonexistent. *E.g.*, *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989) (expired lease and unenforceable, oral contract); *Barksdale v. Hinson*, 212 S.C. 1, 3, 46 S.E.2d 170, 171 (1948) (oral lease); *Wilson v. McAbee*, 256 S.C. 211, 217, 182 S.E.2d 313, 315 (1971) (defective, written lease). A breach of contract under the lease will not permit the tenant to vacate as the leasehold estate exists independently and is mutually exclusive from the characterization of the lease as a contract. *See Rowland & Sons v. Bock*, 150 S.C. 490, 493, 148 S.E. 549, 550 (1929). In the absence of a written lease agreement, no oral lease agreement may exceed one year or said oral lease will be void as a matter of public policy. S.C. Code Ann. §§

27-35-10, 27-35-20. Hence, the South Carolina Residential Landlord Tenant Act trumps any legal analysis under promissory estoppel for the recovery of rent for residential homes. While conservators are empowered to enter into a lease agreement and manage real property as rental property for the residential use on behalf of the incapacitated person, conservators must adhere to the South Carolina Residential Landlord-Tenant Act and accompanying law accordingly. S.C. Code Ann. §§ 27-40-920 (application of law), 62-5-101(1)-(19) (definitions), 62-5-107, 62-5-422 (B)(5) (powers).

The Court of Appeals erred dismissing this appeal because both the Court of Appeals and the lower court lack subject matter jurisdiction while Family Services lacks standing to assert claims for rent in arrears because no landlord-tenant relationship exists to warrant an award to Family Services for rent in arrears pursuant to its cause of action for promissory estoppel. For Family Services to recover rent in arrears from Patricia pertaining to 602 Atlantic Street, Family Services must determine the existence of a landlord-tenant relationship between Mother and Patricia. Here, Patricia resides in 602 Atlantic Street as her personal residence and dwelling. Patricia entered and took possession of 602 Atlantic Street on or just before the time Mother conveyed one-half (1/2) of her full interest in said property to Patricia. Hence, Patricia was entitled to occupy 602 Atlantic Street without paying rent when Mother concomitantly granted conveyance to Patricia as joint tenants with rights of survivorship. Patricia is entitled to the possession of 602 Atlantic Street. Patricia has vested legal title in said real property, whether in part or in full; beneficial ownership of said property; and, the present use and enjoyment of said real property. Patricia is an owner—not a tenant. By contrast, Patricia has a fee simple interest in 602 Atlantic Street with a remainderman of a right of reentry on the real property as a landowner instead of merely having a tenant's possessory interest. Furthermore, because Mother is now

deceased, Patricia is the sole landowner, or owner, of 602 Atlantic Street.

Additionally, Family Services may not impose rent in arrears onto Patricia in excess of a year (or twelve months) without a written lease agreement. No written or oral lease agreement exists between Mother and Patricia for 602 Atlantic Street. Therefore, Family Services may not impose rent in arrears of 77 monthly rent payments of \$500.00 per month since January of 2015 that directly violates the statute of frauds and is void against public policy. Liability for rent in arrears does not apply to owners of the premises who reside on the premises. Failure to pay rent will not terminate Patricia's possession of 602 Atlantic Street. Patricia is not required to pay rent in exchange for possessing 602 Atlantic Street thereunder her vested right of legal title to and present use and enjoyment of said property. Because no landlord-tenant relationship exists, Family Services lacks standing under the South Carolina Residential Landlord-Tenant Act with respect to claims of monetary loss from rent in arrears. Family Services lacks a concrete and particularized injury for so-called rent in arrears in the woeful absence of a landlord-tenant relationship. Family Services lacks standing to bring forth any legal claims related to the South Carolina Residential Landlord-Tenant Act or to landlord-tenant law applying to leasehold estates because no landlord-tenant relationship exists. As a matter of law, the lower court grossly erred by awarding Family Services \$46,755.88 for rent in arrears that is based on a legal impossibility and without merit.

III. Just as the lower court violated Patricia's substantive due process rights, the Court of Appeals also violated Patricia's substantive due process rights by dismissing this appeal and depriving her of her valid legal interest in her personal and real property because no court may award Family Services approximately \$54,255.88 with interest thereupon for Family Services's lack of subject matter jurisdiction and justiciability.

The lower court violated due process under the Fourteenth Amendment of the Federal

Constitution, and corollary rights under South Carolina law, which stands for the proposition that:

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form of procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur. *State v. Owens*, 346 S.C. 637, 664, 552 S.E.2d 745, 759 (2001) (citing *S.C. Nat'l Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (internal citations omitted)).

Both the Federal Constitution and the South Carolina Constitution extend protection to individuals from any state actor who deprives any citizen of the United States “under [the] color of any statute, ordinance, regulation, custom, or usage, of any State.” 42 U.S.C. § 1983; U.S. CONST. amend. 1, XIV; S.C. CONST. art. I, § 2; *see also Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004). The Fourth Amendment vests to the people “[t]he right . . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV. The physical trespass of property by the government is not necessary to affect a seizure of property because unlawful seizure may occur “a seizure of property occurs, not when there is a trespass, but “when there is some meaningful interference with an individual's possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 1656, 80 L. Ed. 2d 85 (1984).

Under a substantive due process claim, the aggrieved party must show the unlawful, arbitrary, and capricious deprivation of a cognizable property interest under South Carolina law. *Denene, Inc.*, 359 S.C. at 96; *Worsley Cos. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000) (discussing that the aggrieved party must have a legitimate claim or entitled to a property interest in a benefit with respect to agencies). To use other law that is not

controlling based on when the cause of action accrued may result in harsh and oppressive results that violates a party's substantive due process rights. *See Tilley*, 355 S.C. at 370-72. The standard of review for substantive due process claims under the color of state law is whether the state law or ordinance "ordinance bears a reasonable relationship to any legitimate interest of government." *Denene, Inc.*, 359 S.C. at 96.

Here, Family Services is court-appointed by the probate court and acting under the color of the law with respect to tracing, collecting, and repossessing assets of protected persons adjudicated as legally incapacitated. The application of retrospective civil legislation may produce harsh and oppressive outcomes when a conservator, in fact, does not limit its activities in asset tracing, collections, or repossession within the same scope and manner as prescribed by the statute of limitations or applicable law under the circumstances as an equitable matter. Family Services must have subject matter jurisdiction and justiciability over its claims against Patricia—in any court. Family Services does not. Thus, no court in South Carolina may award Family Services approximately \$54,255.88 with interest thereupon related to the Gifts and rent in arrears. The role of conservators is not to go on a wild goose chase to nickel and dime any potential party in possession of or owing funds. Such conduct is a cost-ineffective endeavor for the protected person and eats up precious resources for said protected person. At some point, the conservator's efforts fail to represent the best interests of the protected person under these circumstances. Such a result is harsh and oppressive to victims harangued by Family Services as well as to protected persons left with little to no funds due to Family Services capricious management of funds allocated to protected persons in unnecessary litigation and legal fees. The outcome does not bear a reasonable relationship to the original intent of protecting legally incapacitated persons physically and financially.

CONCLUSION

An award to Family Services for claims barred by the statute of limitations and rent in arrears from a landowner is a sham legal process thwarting justice and absolutely violates public policy. Family Services never had standing to pursue collections on gifts made from Mother to Patricia more than three years before Family Services filed a lawsuit and Mother was declared legally incapacitated. Family Services never had standing to pursue rent in arrears from a landowner residing on the real property in question, and in possession of the same, because the prerequisite landlord-tenant relationship is necessary to charge for rent in a residential home. Thus, charging an owner of real property rent to live on said real property is an obsequious, legal impossibility. Ultimately, Family Services’s collections on \$54,255.88 violate Patricia’s substantive due process rights. No court has jurisdiction to abide by such an award. Patricia seeks relief from the Court to grant this petition for a writ of certiorari to reverse, remand, and modify the lower court’s order granting Family Services motion for summary judgment. To uphold substantive due process rights for Patricia under these circumstances, Patricia is entitled to the reduction of Family Services’s award for monetary damages with total damages in the amount of only \$16,000.00 with the appropriate interest thereupon. However, the case must now be turned over to the executor of the estate—not Family Services.

Respectfully submitted this 3 day of October , 2024 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis

Deborah D. Davis, Esq.

SC Bar No.: 102942

37 Rutherford Street, Suite 409

Greenville, SC 29615

(833) 729-3426 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR PETITIONER