

RECEIVED

Nov 22 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.

RESPONDENT BRANDY S. CULP'S
RENEWED MOTION TO DISMISS APPEAL
OR IN THE ALTERNATIVE
MOTION TO STRIKE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER

Pursuant to Rule 240 and Rule 260 of the South Carolina Appellate Court Rules, Respondent Brandy S. Culp, by and through her undersigned counsel, hereby respectfully renews her Motion to Dismiss the Instant Appeal or, in the alternative, to once again Strike Appellant's Initial Brief and Designation of Matter.

The grounds for this Motion are as follows: (1) On September 10, 2024, this Court issued an Order granting Respondent's Motion to Strike Appellant's Initial Brief and Designation of Matter, and ordering Appellant to serve and file an Amended Initial Brief and Designation of Matter, which comply with the South Carolina Appellate Court Rules; (2) Appellant has since filed

what purport to be a “Corrected” Initial Brief and Designation of Matter, which do not correct the errors contained in her previous filings and continue to violate Rule 208 and Rule 209, SCACR. Specifically, Appellant has failed to file an amended Initial Brief, which complies with Rule 208(b), SCACR, and failed to file an amended Designation of Matter, which complies with Rule 209, SCACR.

Recent Procedural History

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 of Respondent or Motion to Strike.” (Exhibit A). Pursuant to the Order, Respondent filed a Motion to Strike Appellant’s Brief and Designation of Matter on August 14, 2024. (Exhibit B).¹

With regard to Appellant’s Initial Brief, Respondent sought to (1) strike the majority of Appellant’s “Table of Authorities” section, (2) strike Appellant’s “Statement of Facts” section, (3) strike Appellant’s “Statement of Issues on Appeal” section, and (4) strike Appellant’s “Arguments” section. Respondent also noted that Appellant had failed to include a Standard of Review section in her Brief as required under Rule 208(b)(1)(D), SCACR.

With regard to Appellant’s Designation of Matter, Respondent’s Motion noted that Appellant had failed to sign the Designation of Matter so as to certify that it contained no matter which is irrelevant to the appeal and, in fact, included irrelevant material, including several references to 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

¹ Respondent’s Motion to Strike sets forth Appellant’s then failures to adhere to the South Carolina Appellate Court Rules with specificity, citing each subsection of Rule 208 and Rule 209, SCACR, which Appellant had violated. Out of an abundance of caution, Respondent also filed an Initial Brief pursuant to this Court’s written instructions, dated July 15, 2024.

hearing.

Appellant did not file a Return to Respondent's Motion to Strike.

On September 10, 2024, this Court issued an Order granting Respondent's Motion to Strike and requiring Appellant to file an Amended Initial Brief and Designation of Matter that complies with the South Carolina Appellate Court Rules within twenty (20) days of the Order (on or before Monday, September 30, 2024). (Exhibit C)

Appellant did not file her amended Initial Brief or Designation of Matter by the September 30, 2024 deadline. Instead, Appellant filed a Motion for an additional twenty (20) day extension of time to file an amended Initial Brief and Designation of Matter, specifically requesting that the deadline be extended until Monday, October 21, 2024.

On October 21, 2024, Appellant filed what purports to be a "Corrected" Initial Brief of Appellant and Designation of Matter to Include in the Record on Appeal. (Exhibit D). However, as detailed below, Appellant's most recent filings do not correct the violations contained in her previous Initial Brief and Designation of Matter, which this Court ordered her to amend, and in fact, contain additional violations of the Rules.² Each of these violations are specifically addressed below and provide this Court with sufficient grounds to dismiss the Appeal.

Still, Respondent believes it is essential to put Appellant's latest violations of the Appellate

² This is the fourth "Initial Brief" filed by Appellant in this Court since filing her Notice of Appeal in November of 2023.

As conveyed in her Statement of Issues on Appeal, Appellant seeks to appeal the underlying orders on the purported grounds that (1) the Circuit Court Judge "seemed confused"; (2) that the Circuit Court Judge was "trying to shift blame of his failure to adequately perform his duties as a Judge", presumably onto the Appellant; (3) that the Circuit Court Judge rendered his decision against Appellant "because it was the easy way out" and that "it appears it was easier for him to agree with Respondent's arguments than to create work for himself by actually examining the merits of Appellant's case"; and (4) that the underlying Probate Court Order is "not a legally enforceable document" and is, therefore, "invalid". (Exhibit D, pp. 5-6).

Court Rules in context, so that this Court, in rendering its decision, may be fully informed of the extraordinary lengths that Appellant has gone to delay the resolution of this case and avoid the administration of justice. It has been two years and four months since the Probate Court issued the underlying Order on appeal and over one year since the Circuit Court issued its Order dismissing and denying the Appeal. However, because of Appellant's dilatory tactics and repeated violations of the Appellate Court Rules, this Appeal has found itself enmeshed in the Initial Briefing phase for nearly a year with no reasonable end in sight.

Additional Relevant Factual and Procedural Background

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, Exhibit E, and July 13, 2022, Exhibit F).

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, Appellant was found to have exercised undue influence over Decedent with regard to the execution of two deeds of conveyance. (Order, Exhibit E). 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 Appellant had exercised undue influence over Decedent on that date. (Ibid.)

Appellant attempted to appeal this Order. However, on August 22, 2017, the South Carolina Court of Appeals dismissed the Appeal on jurisdictional grounds. (COA Order, Exhibit

G). Specifically, the Court of Appeals found that Appellant 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.). As a result, it is the law of that case that Decedent was incapacitated on October 28, 2014 and that Appellant exercised undue influence over her on that date.

The present case involves the alleged revocation of Decedent's 2009 Will at Appellant's behest on October 28, 2014, the same date that Decedent was previously found to have lacked capacity and Appellant was found to have exercised undue influence. It was unknown by the parties or the Court during the initial guardianship proceeding that Appellant had engaged in these additional acts on October 28, 2014. 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 Appellant had exercised undue influence over Decedent. 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 at Exhibit F, 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.³ (Notice of Intent to Appeal, Exhibit H). Appellant, 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, Appellant did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. (Proof of Service, Exhibit I; Affidavit of Christina D. Culp, Exhibit J).

Appellant also failed to comply with the statutory requirements for perfecting an appeal from probate court. Specifically, Appellant 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).

After a series of motions and hearings, the Circuit Court ultimately entered an Order on October 2, 2023, denying and dismissing Appellant's appeal with prejudice. (Order, Exhibit K). 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). 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*

³ 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, Exhibit F, pp. 1 and 4). 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.)

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).

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.*).

Appeal to the Court of Appeals

On November 29, 2023, Ms. Irland filed a Notice of Appeal with the South Carolina Court of Appeals. (Notice of Appeal, Exhibit L). Since then, this Court has issued a total of six (6) separate deficiency letters to Appellant. As set forth below, each of these letters provided Appellant with clear, corrective instructions and firm deadlines for compliance, which Appellant has repeatedly disregarded and continues to disregard.

On December 5, 2023, this Court issued Appellant a deficiency letter as to her Notice of Appeal. (First Deficiency Letter, Exhibit M). The letter notified Appellant that the Notice of Appeal did not comply with Rule 267, SCACR, and that it failed to state when Appellant received notice of the order she sought to appeal. The letter provided Appellant 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). Appellant, however, missed the Friday,

December 15, 2023 deadline set by the Court, and instead waited until Monday, December 18, 2023 to hand-deliver a corrected Notice of Appeal and Proof of Service.

On January 3, 2024—over ten months ago—this Court issued Appellant a second deficiency letter, noting that the time for filing Appellant’s Initial Brief had expired. (Second Deficiency Letter, Exhibit N). The brief had been due on January 2, 2024. Once again, the Court provided Appellant 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).

Appellant did not file and serve an Initial Brief or Designation of Matter as instructed by the Court. Instead, on January 16, 2024, Appellant hand-delivered a handwritten document to the Court of Appeals, simply titled “Motion for 30-day Extension” along with a purported Proof of Service. The Motion did not contain any substantive content other than its title, the address of counsel, and Appellant’s address. Additionally, the Proof of Service failed to certify that Appellant 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.” Counsel did not receive a copy of the motion in the mail.

On January 17, 2024, the Court of Appeals issued an Order granting Appellant’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, Appellant filed a document, titled,

“Brief in Support of Motion for Rehearing.” 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 Appellant a third deficiency letter, noting deficiencies with the brief. (Third Deficiency Letter, Exhibit O). 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 Appellant 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, Appellant missed the deadline to file a corrected brief. Instead of filing a corrected brief on Friday, March 1, 2024, Appellant waited until Tuesday, March 5, 2024, to mail a 314 page document, which she titled “Initial Brief of Appellant.”

On March 12, 2024, the Court issued Appellant a fourth deficiency letter, noting the ongoing deficiencies with her brief. (Fourth Deficiency Letter, Exhibit P). Again, the Court noted that, Appellant’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 Appellant 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 Appellant 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, Appellant missed the deadline imposed by this Court, waiting until Tuesday, March 25th to mail what purported to be a corrected Initial Brief and Designation of Matter.

Notably, in this March 2024 filing, Appellant made substantive changes to the brief without seeking leave from the court, arbitrarily adding AI-generated cases, issues on appeal, and additional arguments. (Brief at Exhibit Q). The brief did not contain a Standard of Review section as required by Rule 208(b), SCACR. Additionally, the Designation of Matter was replete with documents, which were not referenced in the brief or filed with the Circuit Court, and failed to include a certification pursuant to Rule 209(c), SCACR, indicating that the designation contains no matter, which is irrelevant to the appeal. (Exhibit R).

The brief also failed to address any of the five separate and independent grounds cited by the Circuit Court in its decision to deny and dismiss Appellant’s appeal with prejudice. (See Order, Exhibit K). Instead, without making any specific references to the record, Appellant made the generalized and completely unsubstantiated statement that, “the record will show that Ms. Irland did, in fact follow correct procedure.” (Exhibit Q at p. 4)

On April 24, 2024, Respondent filed a Motion to Dismiss, wherein she argued that the Appeal should be dismissed because Appellant had (1) failed to comply with the statutory requirements for pursuing an appeal from probate court as set forth under S.C. Code § 62-1-308; (2) failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction; (3) repeatedly 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; (4) failed to appeal each and every independent ground cited by the Circuit Court for dismissing the instant appeal; and (5) had filed the instant appeal for the impermissible purpose of delay. (Exhibit S, exhibits omitted).

On May 6, 2024, Appellant filed a one paragraph return to the Motion to Dismiss.

On May 9, 2024, Respondent filed a Reply to the Return, wherein she noted, *inter alia*, that Appellant's Return failed to set forth a single argument or provide any evidence that she complied with the statutory requirements for perfecting an appeal from probate court to the Circuit Court, and that this alone was sufficient grounds for dismissing the appeal; that *Pro Se* litigants do not have license to ignore statutory requirements set forth by our legislature; and that Appellant's Return did not address her failure to appeal each and every independent ground cited by the Circuit Court for dismissing the Appeal. (Exhibit T).

As set forth in the Recent Procedural History Section, *supra*, this Court then issued an Order on July 15, 2024, denying Respondent's previously filed Motion to Dismiss Appeal "without prejudice to Respondent presenting these arguments in the brief of Respondent or Motion to Strike." (Exhibit A). Pursuant to the Order, Respondent filed a Motion to Strike Appellant's Brief and Designation of Matter on August 14, 2024. (Exhibit B).

Appellant did not file a Return to Respondent's Motion to Strike.

On September 10, 2024, this Court issued an Order granting Respondent's Motion to Strike and requiring Appellant to file an Amended Initial Brief and Designation of Matter that complies with the South Carolina Appellate Court Rules within twenty (20) days of the Order (on or before Monday, September 30, 2024). (Exhibit C).

Again, Appellant did not file her amended Initial Brief or Designation of Matter by the September 30, 2024 deadline. Instead, Appellant filed a Motion for an additional twenty (20) day extension of time to file an amended Initial Brief and Designation of Matter, specifically requesting that the deadline be extended until Monday, October 21, 2024.

On October 3, 2024, this Court issued Appellant a fifth deficiency letter noting that Appellant had failed to submit payment of the requisite filing fee with her motion, and requiring her to remedy the deficiency within ten days, which corresponds to Monday, October 14, 2024. Respondent mailed her payment of the fee on October 18, 2024. (Exhibit U).

On October 21, 2024, Appellant filed what purports to be a “Corrected” Initial Brief of Appellant and Designation of Matter to Include in the Record on Appeal. (Exhibit D). However, Appellant’s most recent filings do not correct the violations contained in her previous Initial Brief and Designation of Matter, which this Court ordered her to amend, and in fact, contain additional violations of the Rules. Each of these violations are specifically addressed below and provide this Court with sufficient grounds to dismiss the Appeal in its entirety.

On November 5, 2024, this Court issued Appellant a sixth deficiency letter, noting that Appellant had failed to file a Proof of Service evidencing that she had served her Designation of Matter on Respondent. (Exhibit V). The letter specifically stated that “any deficiency must be corrected within ten (10) days of the date of the letter or the matter will be dismissed.” (Emphasis added). As of the date of this Motion, more than ten days have transpired since the Court’s issuance of the deficiency letter. Respondent has not received any correspondence indicating that Appellant has complied with the Court’s instructions.

This Motion follows.

ARGUMENTS

- I. **The Appeal should be dismissed because Appellant has failed to comply with this Court's Order, dated September 10, 2024. Appellant has not corrected any of the errors contained in her previously-filed Initial Brief and Designation of Matter. Appellant's "Corrected" Initial Brief and Designation of Matter do not comply with Rule 208(b), SCACR, and Rule 209, SCACR.**

Appellant has once again failed to file an Initial Brief that complies with Rule 208(b), 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 eleven (11) cases that 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. ("Corrected" Initial Brief of Appellant, Exhibit D, pp. 3-4). This is the same exact issue identified in Respondent's previously-granted Motion to Strike. Further, because said cases and medical professionals are not cited anywhere in Appellant's brief, the Table of Authorities does not contain any page references to the brief as required by the Rule.

Rule 208(b)(1)(E), SCACR, addresses the Statement of Facts section of Appellant's Brief, specifically stating, "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." Here, 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 D, p. 8). In addition, Appellant's Statement of the Facts section makes reference to testimony from individuals who did not testify at the underlying April 7, 2022 hearing. These are, again, the same exact issues identified in Respondent's previously-granted Motion to Strike, which Appellant has once again failed to address.

Rule 208(b)(1)(B), SCACR, addresses the Statement of Issues on Appeal section of an Appellant's Initial Brief, stating that the brief shall contain, "A statement of each of the issues presented for review. The statement shall be concise and direct to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Here, Appellant has amended her previously-filed Initial Brief by adding broad, unsubstantiated arguments under each "issue" and making sovereign-citizen-styled arguments about the legal enforceability of Court orders. These statements are neither concise nor direct as required by the Rule.

Further, Appellant's Statement of Issues on Appeal section conveys that Appellant seeks to appeal the underlying orders on the purported grounds that the Circuit Court Judge "seemed confused"; that the Circuit Court Judge was "trying to shift blame of his failure to adequately perform his duties as a Judge", presumably onto the Appellant; that the Circuit Court Judge rendered his decision against Appellant "because it was the easy way out" and that "it appears it was easier for him to agree with Respondent's arguments than to create work for himself by actually examining the merits of Appellant's case"; and that the underlying Probate Court Order is "not a legally enforceable document" and, therefore, "invalid". (Exhibit D, pp. 5-6). Respectfully, these personal attacks on our judiciary and sovereign-citizen-styled arguments against the enforceability of Court Orders do not merit a response.

Nevertheless, for purposes of the instant motion, it is sufficient to note that the Circuit Court provided five separate, independent grounds as the basis for denying and dismissing the Appeal and that Appellant has failed to address each of the aforementioned independent grounds for dismissal in her Initial Brief. As discussed below, this alone is sufficient grounds for dismissing

the Appeal. (See Argument, II, *infra*).

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.” As with her previously-filed brief, Appellant once again cites what purports to be four separate issues on Appeal, but then fails to address these alleged issues in the Arguments section of the brief. Appellant’s Initial Brief makes no effort to reconcile her “Statement of Issues on Appeal” with her “Arguments” section. (Exhibit D, pp. 5-6 and 11). This is another issue identified in Respondent’s previously-granted Motion to Strike, which Appellant has once again failed to address.

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 once again 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 D, Designation of Matter). Here, Appellant attempts to remedy the error contained in her previous brief by merely signing the Designation. However, as noted in Appellant’s Motion to Strike, which this Court expressly granted, Appellant’s Designation does in fact include irrelevant material. Specifically, the Designation includes references to S.C. Code sections, a 2024 Letter from the Attorney

General, and medical imaging exams, none of which were submitted at the underlying April 7, 2022 Probate Court hearing.

“[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). Appellant has repeatedly 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. Accordingly, because Appellant has repeatedly failed to comply with this Court’s instructions and Orders, including this Court’s most recent September 10, 2024 Order, the Appeal should be dismissed.

II. The Appeal should be dismissed because Appellant has failed to appeal each and every independent ground cited by the Circuit Court as the basis for dismissing the instant appeal.

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, Exhibit K).

Even a cursory review of the latest Initial Brief filed by Appellant (the fourth she has filed since filing her Notice of Appeal in November of 2023), demonstrates that she failed to appeal every independent ground cited by the Circuit Court as the basis for its decision. (Exhibit D, pp. 5-6). As set forth above, the Circuit Court based its decision to deny and dismiss Ms. Irland's appeal on five independent grounds. Appellant's latest 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). Appellant 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. Appellant 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, Appellant 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 Appellant has failed to appeal each and every independent ground cited by the Circuit Court as a basis for its decision, the appeal should be dismissed.

III. The Appeal should be dismissed because Appellant has filed the instant appeal for the impermissible purpose of delay.

It has been two years and four months since the Probate Court issued the underlying Order on appeal, finding 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 Appellant had exercised under influence over her on that date. It has also been over one year since the Circuit Court issued its Order dismissing and denying the Appeal on five separate and independent grounds, none of which are addressed in Appellant's now fourth (and still defective) Initial Brief.

As evidenced by the Statement of Issues on Appeal in this latest filing, Appellant does not seek to appeal any of the specific, independent grounds cited in the Circuit Court's Order for denying and dismissing her appeal, and has failed to set forth any issues challenging the basis of the Probate Court's July 13, 2022 Order. Instead, Appellant resorts to launching broad personal attacks on our judiciary and making sovereign-citizen-styled arguments against the enforceability and validity of Court Order.

As noted above, Appellant's Statement of Issues on Appeal section conveys that Appellant seeks to appeal the underlying orders on the purported grounds that the Circuit Court Judge "seemed confused"; that the Circuit Court Judge was "trying to shift blame of his failure to adequately perform his duties as a Judge", presumably onto the Appellant; that the Circuit Court Judge rendered his decision against Appellant "because it was the easy way out" and that "it appears it was easier for him to agree with Respondent's arguments than to create work for himself by actually examining the merits of Appellant's case"; and that the underlying Probate Court Order is "not a legally enforceable document" and, therefore, "invalid". (Exhibit D, pp. 5-6). None of these purported issues address any of the grounds set forth by the Circuit Court as the basis for dismissal of the case, nor do they address any of the grounds set forth in the underlying Probate

Court Order, which Appellant has appealed.

Appellant 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. Accordingly, Respondent respectfully requests that this Honorable Court bring an end to Appellant's dilatory tactics and dismiss the appeal.

CONCLUSION

For each of the foregoing reasons, Respondent Brandy Culp respectfully requests that this Honorable Court dismiss the instant appeal pursuant to Rule 260, SCACR. The appeal should be dismissed because Appellant has repeatedly 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. Further, Appellant has repeatedly failed to comply with this Court's clear and unambiguous instructions and Court Orders, including this Court's most recent September 10, 2024 Order.

The Appeal should also be dismissed because Appellant has failed to appeal each and every independent ground cited by Circuit Court as the basis for its decision, and has failed to set forth any issues challenging the basis of the Probate Court's July 13, 2022 Order. Instead, Appellant resorts to launching personal attacks on our judiciary and making arguments against the enforceability of Court Orders.

Respondent respectfully requests that this Honorable Court dismiss the instant appeal and put an end to Appellant's dilatory tactics. This case is precisely the reason why Rule 260, SCACR, exists in the first place. If, however, this Court does not dismiss this appeal as Respondent prays that it does, Respondent respectfully requests that the Court strike each section of Appellant's now fourth filed Initial Brief and Designation of Matter and require her, for a fifth time, to file an

Amended Initial Brief and Designation of Matter that complies with our Rules. Respondent prays
that this case is dismissed.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

and

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT BRANDY S. CULP

November 22, 2024
Mount Pleasant, South Carolina

Nov 22 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.

EXHIBITS TO RENEWED
MOTION TO DISMISS APPEAL

<u>EXHIBIT</u>	<u>PAGE</u>
1. Exhibit A – Court of Appeals Order, denying Motion to Dismiss Appeal, and permitting Motion to Strike.....	1
2. Exhibit B – Respondent’s Motion to Strike, without Exhibits, filed August 14, 2024.....	3
3. Exhibit C – Court of Appeals Order granting Respondent’s Motion to Strike, dated September 10, 2024.....	8
4. Exhibit D – Appellant’s “Corrected Initial Brief” and Designation of Matter, filed October 21, 2024.....	10
5. Exhibit E – Probate Court Order, finding Decedent lacked capacity and that Appellant exercised undue influence in causing Decedent to execute two deeds of conveyance, dated June 29, 2017.....	26
6. Exhibit F – Probate Court Order, finding Decedent lacked capacity and Appellant exercised undue influence in causing Decedent to revoke her will, dated July 13, 2022.....	48

7.	Exhibit G – S.C. Court of Appeals Order dismissing Appellant’s previous, related Appeal, dated August 22, 2017.....	56
8.	Exhibit H – Notice of Intent to Appeal an Order from Probate Court, filed with the Circuit Court on July 22, 2022.....	58
9.	Exhibit I – Proof of Service filed by Appellant, showing lack of service on Respondents Christina D. Culp and Isadore John Psaras, filed July 22, 2022.....	70
10.	Exhibit J – Affidavit of Christina D. Culp, dated October 18, 2022.....	72
11.	Exhibit K – Circuit Court Order Denying and Dismissing Appeal, filed October 2, 2023.....	75
12.	Exhibit L – Notice of Appeal, filed with Court of Appeals on November 29, 2023.....	80
13.	Exhibit M – First Deficiency Letter, dated December 5, 2023.....	86
14.	Exhibit N – Second Deficiency Letter, dated January 3, 2024.....	89
15.	Exhibit O – Third Deficiency Letter, filed February 20, 2024.....	91
16.	Exhibit P – Fourth Deficiency Letter, dated March 12, 2024.....	94
17.	Exhibit Q – Appellant’s since-stricken Initial Brief, filed March 25, 2024.....	97
18.	Exhibit R – Appellant’s since-stricken Designation of Matter, filed March 25, 2024.....	111
19.	Exhibit S – Respondent’s Motion to Dismiss Appeal, without Exhibits, filed April 24, 2024.....	116
20.	Exhibit T – Respondent’s Reply to Appellant’s Return to Motion to Dismiss, without Exhibits filed May 9, 2024.....	137
21.	Exhibit U – Fifth Deficiency Letter, dated October 3, 2024.....	147
22.	Exhibit V – Sixth Deficiency Letter, dated November 5, 2024.....	149

[Signatures on following page]

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

and

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT BRANDY S. CULP

November 22, 2024
Mount Pleasant, South Carolina

EXHIBIT A

to

Motion to Dismiss

The South Carolina Court of Appeals

Athena Irland, Appellant,

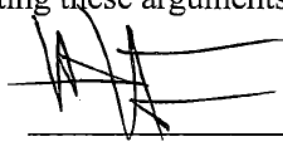
v.

Brandy S. Culp, Respondent.

Appellate Case No. 2023-001852

ORDER

On April 24, 2024, Respondent filed a motion to dismiss this appeal, arguing Appellant (1) failed to comply with the statutory requirements for pursuing an appeal from probate court under section 62-1-308 of the South Carolina Code (2022); (2) failed to serve all necessary parties to the appeal, depriving the circuit court and all higher courts of appellate jurisdiction; (3) repeatedly failed to adhere to the South Carolina Appellate Court Rules; (4) failed to appeal each and every independent ground cited by the circuit court for dismissing the appeal; and (5) filed the instant appeal for the impermissible purpose of delay. Appellant filed a return, opposing dismissal of the appeal. Respondent filed a reply. After careful consideration of the filings, we deny Respondent's motion to dismiss without prejudice to Respondent presenting these arguments in the brief of respondent or a motion to strike.



FOR THE COURT

Columbia, South Carolina

cc:

Athena L. Irland

Jesse Sanchez, Esquire

Daniel Scott Slotchiver, Esquire

Stephen Michael Slotchiver, Esquire

FILED
Jul 15 2024

EXHIBIT B
to
Motion to Dismiss

RECEIVED
Aug 14 2024
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.

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

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,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

and

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT BRANDY S. CULP

Mount Pleasant, South Carolina
August 14, 2024

EXHIBIT C
to
Motion to Dismiss

The South Carolina Court of Appeals

Athena Irland, Appellant,

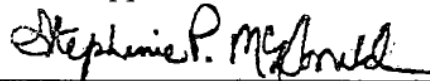
v.

Brandy S. Culp, Respondent.

Appellate Case No. 2023-001852

ORDER

On August 14, 2024, Respondent moved to strike Appellant's initial brief and designation of matter because the two documents do not comply with Rule 208(b) of the South Carolina Appellate Court Rules and Rule 209 of the South Carolina Appellate Court Rules. Appellant did not file a return. After careful consideration, we grant Respondent's motion to strike. Within twenty days of the date of this order, Appellant shall serve and file an amended initial brief and designation of matter that complies with the South Carolina Appellate Court Rules.



FOR THE COURT

Columbia, South Carolina

cc:

Athena L. Irland

Jesse Sanchez, Esquire

Daniel Scott Slotchiver, Esquire

Stephen Michael Slotchiver, Esquire

FILED
Sep 10 2024

EXHIBIT D

to

Motion to Dismiss

RECEIVED

Oct 21 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

+

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

CORRECTED INITIAL BRIEF OF APPELLANT

October 21, 2024

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF ISSUES ON APPEAL.....5

STATEMENT OF THE CASE.....7

STATEMENT OF FACTS.....8

DESIGNATION OF MATTER TO BE INCLUDED ON THE
RECORD OF APPEAL.....9

ARGUMENTS.....11

CONCLUSION.....13

TABLE OF AUTHORITIES
CASES

1. Calhoun v Calhoun
Supreme Court of South Carolina
277 S.C. 527 (S.C. 1982)
2. Church v Trotter
Supreme Court of South Carolina
278 S.C. 504 (SC 1983)
3. Dixon v Dixon
Supreme Court of South Carolina
362 S.C. 388 (S.C. 2005)
4. Ellis v Davidson
Ct. Of App. S.C.
358C. 509 (S.C. Ct. App. 2004)
5. In re Estate of Berg
Supreme Court of South Dakota
783 N.W. 2d831 (S.D. 2010)
6. In re Estate of Cumbee
Court of Appeals South Carolina
333 S.C. 664 (S.C. Ct. App. 1999)
7. In re Estate of Tank
Supreme Court of South Dakota
938 N.W. 2d 449 (S.D. 2020)
8. Haines v Kerner U.S., 404 U.S. 519 (1972)
9. Hairston v In re Estate of Normall O. Hudson
SC Court of Appeals Opinion #4657 (S.C. 2010)
10. Hembree v Estate of Hembree
Ct. Of Appeals South Carolina
311 S.C. 192 (S.C. Ct. App. 1993)
11. Noblin v. Burgess
Court of Appeals Mississippi
54 So. 3d 282 (Miss. Ct. App.2011)

12. 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

13. Thompson v Moore
Supreme Court of South Carolina
227 S.C. 417 (S.C. 1955)

14. Verdery v Daniels (In re Thames)
South Carolina Court of Appeals
344 SC 564, 544 (Ct App. 2001)

STATEMENT OF ISSUES ON APPEAL

1. Judge Bently Price seemed confused as to the subject matter before the court on September 27, 2023.

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 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 instructed 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.

2. Order dated September 13, 2023 Judge Bently Price reversed his decision granting the Appeal and ruled in favor of the Respondent instead of gathering evidence supporting his original ruling granting the Appeal as instructed by the Supreme Court.

It seems Judge Price reversed his decision because it was the easy way out. Judge Price was instructed by the Supreme Court to have a rehearing to gather information to support his original decision in favor of the Appellant. But, it appears it was easier for him to agree with Respondent’s arguments than to create more work for himself by actually examining the merits of Appellant’s case to support remanding it back to the Probate Court.

3. The Circuit Court 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. Said motion was based solely on the allegation that Appellant failed to serve her Notice Of Appeal on

Christina Culp and Isadore John Psaras within the required time limit. Christina Culp and Isadore John Psaras were not served because they were no longer parties to the case pursuant to a Settlement Agreement signed between them and Respondent dated March 16, 2020.

4. The Order issued by the Probate Court dated the 13th day of July 2022 signed by Lenna Kirchner is invalid pursuant to Section 14-23-1120 which specifically states, “The court of probate shall be a court of record and shall have a seal bearing the name of such court, which seal shall be impressed upon all orders, decrees and licenses issued by such court.” Said Order bears no such seal. Without the seal of the Probate Court, said Order is not a legally enforceable document because it does not follow the rule. Since Respondent has incessantly argued that Appellant’s motions be denied for failure to follow court rules, it stands to reason that Judge Kirchner’s Order is invalid on its face because it does not comport with South Carolina Code Of Laws 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 Respondent's (Athena Irland) appeal from Probate Court. In that same order, Judge Price granted Respondent'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 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 Palmetto 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.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The 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 July22, 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 Rescinding Deeds September 6, 2022
13. Order denying Respondent Brandy Culp's Rule 59e Motion to Alter or amend Order and Granting Rule 221a Petition for rehearing July 14 2023 (sent prior, Appendix 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.

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, mislead 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 Bently 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.

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

October 21, 2024

RECEIVED

Oct 21 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

+

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

Certificate of Counsel
Pro Se Litigant

Athena Irland
186 Dolly Dimples Trail
Huger, SC 29450
Appellate Pro Se
843 697-3631

October 21, 2024

RECEIVED

Oct 21 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

+

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

Proof Of Service

I certify that I have served the Attorneys for the Respondent a CORRECTED
INITIAL BRIEF OF APPELLANT. Copy sent through US Post Office on October
22, 2024

Slotchiver & Sloychiver
Jesse Sanchez, Esq
751 Johnie Dodds Blvd.
Mt. Pleasant, SC 29464
843 577-6531
Attorney for Brandy Culp

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

EXHIBIT E

to

Motion to Dismiss

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: MATTER OF DOLLY)
DIMPLES LEGARE COLEMAN,)
THROUGH HER CONSERVATOR)
W. ASHLEY THIEM,)

Petitioner,)

-v-)

ATHENA IRLAND, ISADORE)
PSARAS, BRANDY S. CULP, AND)
CHRISTINA CULP,)

Respondents.)

IN THE PROBATE COURT

CASE NO.: 2014-GC-10-0210

ORDER RESCINDING
DEEDS

Hearing Date:
Presiding Judge:
Petitioner's Attorney:
Respondent's Attorney:
Attorney/GAL:

October 18, 2016
Lenna S. Kirchner
I. Ryan Neville, Esq.
Joseph Dawson, III, Esq.
Lana Jamrosyk, Esq.

THIS MATTER comes before the Court upon the Verified Petition filed by Dolly Dimples Legare Coleman ("Mrs. Coleman") by and through her Conservator, W. Ashley Thiem, ("Petitioner" and/or "Conservator") on March 3, 2016. Petitioner seeks rescission of two deeds of conveyance executed by Mrs. Coleman on October 28, 2014 in favor of Respondent Athena Irland ("Respondent Irland" or "Ms. Irland") for lack of capacity, or in the alternative, for undue influence. A hearing on the matter was held on October 18, 2016. Present at the hearing were attorney Ryan Neville, appearing on behalf of Petitioner, and attorney Joseph Dawson, III, appearing on behalf of Respondent Athena Irland. Respondent Isadore "Johnny" Psaras was present and served as a witness for Ms. Irland. Respondent Brandy S. Culp was also present, but did not participate in the trial. Respondent Christina Culp was not present but served with proper

2017
P. 1 of 21
10/29/2017

notice of the hearing. This Order is binding on all parties to the above captioned matter.

At the start of the hearing, Respondent moved, pursuant to Rule 12(b)(6), for dismissal of the petition arguing the existence of another action pending in the Berkeley County Court of Common Pleas filed prior to this present action. Rule 12(b)(6), SCRCP. On February 6, 2015, a Notice of *Lis Pendens* was filed in Berkeley County Court of Common Pleas under 2015-LP-08-00003. On March 19, 2015, the associated Summons and Complaint was filed. *See* Case No. 2015-CP-08-00719. The aforementioned captions reflect the parties as Christina Culp and Brandy S. Culp vs. Athena Irland and Dolly Dimples Legare Coleman. Rule 12(b)(6) permits dismissal where another action is pending *between the parties for the same claim*. Rule 12(b)(6), SCRCP (*emphasis added*). Due to the actions not pending between the *same* parties, as reflected in the differing captions of the two cases, this Court denied Respondent's motion and proceeded to hear this matter.

Upon review of the file and after hearing testimony of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dolly Dimples Legare Coleman ("Mrs. Coleman") is an 86 year old female adjudged to be an incapacitated person by clear and convincing evidence by this Court on February 9, 2015.¹
2. Petitioner is W. Ashley Thiem, of Thiem & McCutcheon, CPAs, P.A., the court appointed Conservator ("Conservator") for Mrs. Coleman, by Order dated September 1, 2015.
3. Respondents are the children and grandchild of Mrs. Coleman.

¹ Petitions were filed by Respondent Culp on December 22, 2014 and Respondents Irland and Psaras on January 5, 2015. Based in part on the report of a Designated Medical Examiner's finding of incapacity dated January 8, 2015, this Court issued Orders appointing a Temporary Guardian and Conservator on February 23, 2015 and a Permanent Guardian and Conservator on September 1, 2015.

4. During Mrs. Coleman's adult life, she acquired real property in South Carolina to include an undivided fee simple interest in certain real property located in Berkeley County described more fully as follows (hereinafter "Tract 1"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 1, 1,450,798 sq. feet, or 33.31 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, TRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

SUBJECT to right of access to Tracts 2 and 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

BEING the same property conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated May 1, 1997 and recorded May 9, 1997 in the Office of the Register of Deeds for Berkeley County in Book 1064, at Page 319.

TMS NO.: 257-00-00-007.

5. Mrs. Coleman also acquired an undivided one-third interest in certain real property in Berkeley County described more fully as follows (hereinafter "Tract 2"):

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Berkeley, State of South Carolina, shown and designated as "Tract 2, 1,655,235 sq. feet, or 38.00 acres" as shown on plat entitled: "PLAT SHOWING A RE-SURVEY AND SUBDIVISION OF A 72.31 ACRE TRACT OF LAND INTO TRACTS 1, 2, AND 3, SITUATED AS SHOWN ON HALFWAY CREEK ROAD NEAR GUERINS BRIDGE ROAD, IN BERKLEY COUNTY, SOUTH CAROLINA. THIS PROPERTY IS PRESENTLY OWNED BY CHARLES S. WILLIAMS, TRACTS 2 AND 3 ARE ABOUT TO BE CONVEYED TO ATHENA L. IRLAND, DANIEL J. IRLAND AND DOLLY L. COLEMAN," prepared by Charles F. Dawley, Jr., RLS, dated July 18, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Plat Cabinet L, Page 199. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TOGETHER with right of access over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat. SUBJECT to right of access to Tracts 3 over Tract 1 through the "50' INGRESS-EGRESS EASEMENT" as shown on the above referenced plat.

BEING the same 1/3 interest as conveyed to Dolly L. Coleman by Deed of Charles S. Williams dated August 2, 1995 and recorded August 4, 1995 in the Office of the Register of Deeds for Berkeley County in Book 709, at Page 40.

TMS NO.: 249-00-00-003.

(collectively Tract 1 and Tract 2 hereinafter "the Farm").

6. On October 28, 2014, Mrs. Coleman executed two deeds conveying the Farm to Ms. Irland, each for FIVE and No/100th DOLLARS (\$5.00) and reserving a life estate in Tract 1. Said deeds were entered into evidence without objection and are incorporated by reference. Pet's Ex. 16 and 17.
7. The Conservator seeks to have these two deed rescinded arguing Mrs. Coleman lacked capacity to execute the deeds or, in the alternative, the executed deeds are the product of undue influence exerted by Mrs. Coleman's daughter, Respondent Irland, over Mrs. Coleman.
8. Prior to this action, Mrs. Coleman hired the law firm of Evans, Carter, Kunes & Bennett, P.A. ("the Firm") for estate planning purposes.
9. Mr. Andrew Chandler, Esquire ("Mr. Chandler"), an attorney at the Firm, testified on its behalf as follows:
- The Firm previously prepared, and still possesses, Mrs. Coleman's original Last Will and Testament ("2008 Will"), dated October 20, 2008. A copy of said Will was entered into evidence without objection. Pet's Ex. 18.
 - Article 4 of the 2008 Will devises the real property in question, leaving Tract 1 to Mrs. Coleman's daughter Christina T. Culp and Tract 2 to her granddaughter Brandy S. Culp.
 - Respondent Irland is not a devisee of the Farm therein and therefore unable to take ownership under the terms of Mrs. Coleman's 2008 Will.

- 7/13
P.50821
01/24/2017
- d. On or about the 28th and 29th day of October 2014, Mrs. Coleman and Ms. Irland appeared at the Firm without an appointment, asking to see Attorney Heyward Carter. Mr. Carter was not available, and as a result, Mr. Chandler took the meeting.
 - e. According to Mr. Chandler, Mrs. Coleman was pleasant upon greeting him and proceeded to ask about his wife and children. This seemed odd to Mr. Chandler as it was his first time meeting Mrs. Coleman and she would have no reason to know whether he was married, or had children. Mr. Chandler is, in fact, married, however, he has only one child. Mr. Chandler interpreted this as a possible sign Mrs. Coleman may lack capacity.
 - f. When Mr. Chandler asked Mrs. Coleman why she had come to the Firm, Ms. Irland interjected, stating the two were there to get her Mother's original 2008 Will.
 - g. Mr. Chandler asked that Ms. Irland allow her mother, Mrs. Coleman to answer the question as it was Mrs. Coleman who was the Firm's client.
 - h. Ms. Irland became visibly and verbally upset when Mr. Chandler asked to interact solely and directly with Mrs. Coleman without any assistance from Ms. Irland.
 - i. Mr. Chandler again asked Mrs. Coleman why she had come to the Firm and Mrs. Coleman was unable to answer the question and instead stared blankly at Ms. Irland. Ms. Irland, then interjected again, stating they were there to obtain the original of Mrs. Coleman's 2008 Will, in order to destroy it, because they were going to have it changed.
 - j. Mr. Chandler, on behalf of the Firm, then informed Mrs. Coleman and Ms. Irland that he did not feel comfortable giving them the original 2008 Will for them to destroy it as Mrs. Coleman could not independently state why she wished to be given the 2008 Will. However, he would be happy to provide them the 2008 Will so long as it was per the instructions Mrs. Coleman had given the Firm in her Durable Power of Attorney. Mrs.

Coleman's Durable Power of Attorney was admitted without objection as Petitioner's Exhibit 19.

k. Ms. Irland asked what the instructions were for obtaining the 2008 Will, and the Firm informed her that, per the Durable Power of Attorney, both Ms. Irland and Mrs. Coleman's granddaughter, Respondent Brandy Culp, would have to jointly sign for the release of the 2008 Will. Note: Ms. Irland testified that she had not previously seen the 2008 Will nor had knowledge of the referenced Durable Power of Attorney. *See* para 14j.

1. Mr. Chandler then offered to call Ms. Culp so that both she and Ms. Irland could sign for the release of the original 2008 Will. Ms. Irland became visibly upset, refused his offer, and the two women left the Firm.

10. The law firm of Williams & Hulst, LLC ("W&H"), more specifically, one of its owners, John B. "Jack" Williams ("Mr. Williams"), was hired to prepare the deeds conveying the Farm to Ms. Irland. Mr. Williams was not present for the hearing on October 18, 2016. However, prior to the start of the hearing, the parties met in chambers where they agreed the record would be left open until his deposition could be taken. Mr. Williams was deposed on November 14, 2016 where he testified as follows:

- a. Mr. Williams has been practicing law over forty years. Williams Dep. 5.
- b. Prior to the meeting on October 28, 2014, Mr. Williams had previously met Mrs. Coleman approximately 15 – 20 years ago in an unrelated matter. Williams Dep. 9.
- c. On October 28, 2014, Mrs. Coleman and Ms. Irland went together to W&H to discuss the preparation of deeds. Williams Dep. 13-14.
- d. Initially Mr. Williams met with both Mrs. Coleman and Ms. Irland. However, once the purpose of the meeting was made clear, Mr. Williams asked Ms. Irland to step outside in

order for him to speak with Mrs. Coleman alone. Williams Dep. 14-15. Mr. Williams then advised Mrs. Coleman regarding the meaning and purpose of transferring the property. Williams Dep. 15.

- 1036-
1279/21
0129/2017
- e. During the discussion with Mrs. Coleman regarding the transfer of property, Mr. Williams suggested Mrs. Coleman retain a life estate rather than transfer the property, herein referred to as Tract 1, in fee simple as originally discussed when meeting with Mrs. Coleman and Ms. Irland together and Mrs. Coleman agreed. Williams Dep. 16-17. Further, the reservation of a life estate "was not discussed, except between [Mr. Williams] and Mrs. Coleman." Williams Dep. 22.
 - f. Further, there was no mention that the Farm would be sold by Mrs. Irland after she received title to the Farm. Williams Dep. 22-23.
 - g. Mr. Williams testified that although he does not remember exactly how long the meeting on October 28, 2014 lasted, generally, meetings of that type are less than an hour. Williams Dep. 19.
 - h. Mr. Williams also testified with regard to his experience determining the competency of a particular person or witness during the course of his practice as follows:

Well, that's a question of determining competency, but yeah, I mean, if someone did not appear to understand what was going on or you know, was unable to communicate or whatever, yeah, I mean, from a practical standpoint, the answer is yes, I have.

Williams Dep. 7:13-18.

- i. Regarding Mr. Williams' observations of Mrs. Coleman's understanding of their conversation, Mr. Williams also stated:

There were no --- there was nothing *at that time* that gave me concern about her state of mind, her capability, but then again, that's just an observation, certainly not in a position to pass on that as an expert.

Williams Dep. 18:23-19:2 (emphasis added). *See also* Williams Dep. 25.

- j. When asked if Mr. Williams believed Mrs. Coleman understood the consequences of her actions, Mr. Williams replied "I do"... "Or I did at that time." Williams Dep. 17:7-9.
- k. During his deposition, Mr. Williams was given an opportunity to review documents entered into evidence without objection from Mrs. Coleman's treating physician, Dr. Judith M. Rubano ("Dr. Rubano"). Williams Dep. 24-31, 35-38.
- i. Mr. Williams testified at the time the deeds were executed, he had no way of knowing of Dr. Rubano's diagnosis or any concerns expressed by Mrs. Coleman regarding her children and grandchild trying to get her to sell her property. Williams Dep. 25, Nov. 14, 2016. Further, Mr. Williams stated "it had been years since [he] had seen Mrs. Coleman, and obviously was not aware of any type of medical condition she may have [had at that time]." Williams Dep. 27:12-15.
- ii. When asked if knowledge of Dr. Rubano's treatment of Ms. Coleman, her concerns and diagnosis would have changed the way Mr. Williams handled the closing on October 28th, Mr. Williams stated "Had I had these reports, at least as far as I'm concerned, my thought is there would *not have been a closing* then because of the questions that would have come up..." Williams Dep. 28:1-4 (*emphasis added*).
- iii. According to Mr. Williams, if Dr. Rubano was of the opinion that Mrs. Coleman lacked capacity in 2012, and he knew of that opinion, he would not have closed the transaction. Williams Dep. 31:12-16.
- l. Mr. Williams was also presented a synopsis of Mr. Chandler's testimony regarding his meeting with Mrs. Coleman and Ms. Irland wherein Mr. Chandler stated he believed Mrs. Coleman lacked the necessary capacity to request her 2008 Will. Williams Dep. 31-33.

- m. When asked whether Mr. Williams would reach out to an attorney that expressed concerns regarding the capacity of one who he was about to close a transaction with, Mr. Williams replied

Oh, yeah, most definitely. You know, if there's issues like that that could address the ability to process or whatever, most certainly would have contacted him. As I said, I had not had any contact with Mrs. Coleman for a while and was not aware of any prior incidence or even that she had a will.

Williams Dep. 32:20-33:1.

- n. Further, Mr. Williams added, "I would have talked with Mr. Chandler, but if it is – the situation is as its been represented, I would not have gone forward with the closing."

Williams Dep. 33:6-9.

- o. Finally, when asked if he knew then what he knows now, would he have gone forward with the closing, Mr. Williams replied, "Obviously, no." Williams Dep. 40:9-11.

11. Dr. Rubano was deposed both before and after trial,² during which time she testified regarding her interaction with, and treatment of, Mrs. Coleman. During the hearing, Dr. Rubano was admitted as an expert without objection. Her testimony is as follows:

- a. Dr. Rubano has regularly treats vulnerable adult or elderly patients. Rubano Dep. 7-8, Dec. 21, 2016.
- b. Dr. Rubano began treating Mrs. Coleman in the late 1990s or early, however, there were extended periods of time that Dr. Rubano was not actively involved in Mrs. Coleman's care. Rubano Dep. 20, Dec. 21, 2016.
- c. On January 9, 2009, Respondent Irland and Respondent Culp accompanied Mrs. Coleman

² Prior to the hearing, the parties met in chambers and agreed to admit the video deposition of Dr. Rubano without objection despite Attorney Dawson not being present during the deposition due to a clerical error and to hold the record open for 30 days during which time Respondent would be allowed to re-notice and cross-examine Dr. Rubano under deposition and/or enter any objections.

to an appointment reestablishing care with Dr. Rubano. During the appointment, both Respondent Irland and Respondent Culp expressed concerns regarding Mrs. Coleman's memory, mood, and behavior. *See* Pet.'s Ex. 3.

- ADA
P. 1003304
01/24/2017
- d. At a follow-up appointment with Dr. Rubano on May 29, 2009, Mrs. Coleman, unaccompanied during the visit, expressed concern stating her family was "using her" and attempting to get her to sell her [land]. Pet.'s Ex. 4. Mrs. Coleman was frustrated and upset because she did not want to sell the property. According to Dr. Rubano, Mrs. Coleman is "delightful. She's rather eccentric. And sometimes would kind of go on and talk about things, and [she] wasn't sure if there was any real validity to what she was complaining of." Rubano Dep. 12:13-17, Dec. 21, 2016.
 - e. Dr. Rubano received a letter from Respondent Culp dated October 18, 2010 wherein Respondent Culp reported that Mrs. Coleman was suffering "significant problems with memory. She is sometimes disoriented and she makes up stories to compensate for her confusion over daily tasks." *See* Pet.'s. Ex. 5. According to Dr. Rubano, this is a fair representation of patients with dementia. Rubano Dep. 24:6-7, Dec. 21, 2016.
 - f. During an office visit on October 18, 2010, Mrs. Coleman was prescribed Aricept for dementia based on family reports of lapses in her short-term memory. Pet.'s Ex. 6.
 - g. One month later, on November 15, 2010, Mrs. Coleman, unaccompanied, met with Dr. Rubano, during which she became tearful and expressed concerns that her daughter was taking advantage of her and "had drained her accounts, etc." Pet.'s Ex. 7. These comments were documented but not acted upon because Mrs. Coleman suffered from dementia and as a result, "her perception that someone was taking advantage of her may or may not have been true." Rubano Dep. 30:19-21, Dec. 21, 2016. Note: During Respondent Irland's

testimony, she admitted to signing checks in her mother's name in the months prior to this appointment.

- h. On April 21, 2011, Respondent Irland called stating Mrs. Coleman had stopped taking her medications and an office visit was scheduled for April 25, 2011. Pet's Ex. 10.
- i. On April 25, 2011, Dr. Rubano witnessed a shouting match between Mrs. Coleman and her daughter, Respondent Irland, regarding Mrs. Coleman's memory/dementia with Mrs. Coleman continuing to deny she suffered from any memory issues. Dr. Rubano noted a decline in Mrs. Coleman's appearance, increased her prescription for Aricept, and referred Mrs. Coleman to a memory clinic. Pet's Ex. 8 and 9.
- j. On April 4, 2012, Mrs. Coleman was accompanied to an appointment by Respondent Irland where it was reported that Mrs. Coleman was again off of her medications and noted that Mrs. Coleman's dementia was continuing to progress. Pet's Ex. 11 and 12.
- k. That Mrs. Coleman last saw Dr. Rubano in July of 2012 at which time she was still being treated for Dementia and noted reports that Mrs. Coleman's "[m]emory still poor and seems to be getting worse, she is more irritable and argumentative." Res'p Ex. 3.
- l. Dr. Rubano had the opportunity to review the Report of Designated Examiner, dated August 31, 2015³ which finds Mrs. Coleman, while pleasant, suffers from moderate dementia, able to make simple decisions but not process more complicated information as well as to have a "very dysfunctional family." Pet's Ex. 15.
- m. Dr. Rubano agreed with his report and testified to a reasonable degree of medical certainty that she would have made similar findings back in 2012, that Mrs. Coleman was not capable of disposing of property, real or personal, execute instruments, make purchases,

³ Findings based on observations from February 26, 2015 to April 18, 2015.

enter into contractual relationships, etc. Rubano Dep. 5:19-6:12, Dec. 21, 2016.

- n. "Had I been asked, can Mom sell real estate? I would have said, no." Rubano Dep. 36:6-7, Dec. 21, 2016. *See also* Rubano Dep. 54:7-17, 22—55:2, Dec. 21, 2016.
- o. Further, Mrs. Coleman, at the same time as lacking capacity, was also in a mental state or lack thereof, that left her susceptible to the influence of those around her, particularly one who was caring for her. Rubano Dep. 55:3-11, Dec. 21, 2016.
- p. Mrs. Coleman also maintained a level of social gracefulness which made seeing her lack of capacity difficult. Rubano Dep. 55:12-17, Dec. 21, 2016.

12. Carol Seltzer ("Ms. Seltzer") is a Social Worker and Professional Guardian that this Court appointed as Mrs. Coleman's Temporary Guardian on February 23, 2015. Ms. Seltzer was admitted as an expert based on her education and experience and she provided both factual and expert testimony based on her interaction with and observations of Mrs. Coleman and her family as well as her review of relevant case materials as follows:

- a. Upon first meeting Mrs. Coleman, she was well-groomed, pleasant, demonstrating very good social graces. However, Mrs. Coleman was unable to answer direct questions or recount details when asked. Instead, Mrs. Coleman would begin to tell stories of past events, often embellishing as is consistent with one lacking capacity.
- b. Information provided by Mrs. Coleman was often inaccurate, reflecting Mrs. Coleman's ability to be easily swayed and her tendency to place special trust and confidence in those around her.
- c. A ten-day evaluation of Mrs. Coleman after attacking a caregiver in her home resulted in confirmation of dementia diagnosis as well as a diagnosis of mood disorder.
- d. Interviews with family members (Respondents) highlighted numerous problems

between the parties with little or no communication occurring among them.

- e. Based on her observation of Mrs. Coleman which began in 2015, her experience over twenty years dealing with dementia patients, and review of Mrs. Coleman's medical records reflecting a diagnosis in 2009, she concurs with Dr. Rubano regarding the progression of the disease which would have resulted in Mrs. Coleman lacking mental capacity and resulting in susceptibility to undue influence in 2012. Further, such incapacity or susceptibility would not have been readily apparent to one not familiar with Mrs. Coleman due to her social graces.

13. W. Ashley Thiem, the court appointed Conservator for Mrs. Coleman, testified regarding his interactions with Mrs. Coleman and her family:

- a. In meetings with Mrs. Coleman, he found her to be pleasant. However, the meetings were based on the facts and circumstances focused on finances rather than her medical or mental conditions.
- b. While compiling Mrs. Coleman's assets, Mr. Thiem met with various family members as each asset appeared to be controlled by a different person. During his investigation, Mr. Thiem discovered two missing assets: Tract 1 and Tract 2. Ex. 18 and 19. Mr. Thiem also found one of the properties was listed for 2.3 Million Dollars. Ex. 20.
- c. The real estate listing did not reflect the fact that Mrs. Coleman retained a life estate in the subject property, resulting in concerns around Mrs. Coleman's capacity at the time the deeds were executed.
- d. Further, Mrs. Coleman retaining the property is in her best interest as the property comprise her only assets and, as such, she would benefit from having the transfer rescinded to its prior ownership in the event the property was necessary to fund Mrs. Coleman's living and

medical expenses.

14. According to Mrs Coleman's daughter, Respondent Athena Irland:

- a. In 1995, when the time the properties in question were purchased, there were three parcels of land in total, with a one-acre parcel which she purchased and on which her home is located; the second parcel, herein referred to as Tract 2 and consisting of 38-acres was purchased by herself, her then husband, and Mrs. Coleman, and finally what is referred to herein as Tract 1 and consisting of 33.31-acres, was purchased by Mrs. Coleman alone, despite Respondent Irland being able to afford to pay half the purchase price and the prior owner being reluctant to sell to Mrs. Coleman.
- b. That in or around 1999, Mrs. Coleman moved a home onto Tract 1 and began living therein.
- c. That it was always Mrs. Coleman intent for her interest in the Farm to go to Respondent Irland, the farm "wasn't a family farm, it's Athena's Farm," and it has always been her farm.
- d. That in or around 2003, Respondent divorced and had her husband's name removed from the deed. It was around that time, her mother gave her Tract 1 but she failed to remove Mrs. Coleman's name from the property because, according to Respondent Irland, she lost the paperwork.
- e. That her mother was of sound mind and body when she signed the deeds in 2010, admitting Mrs. Coleman suffered from short-term memory problems as early as 2009 but was not incapacitated until February of 2015.
- f. That the two of them are "best friends," extremely close, and did everything together.
- g. Mrs. Coleman executed a Durable Power of Attorney on June 27, 2011 in which Athena Irland was granted the power to convey property which she never exercised. Resp's Ex. 1.

AM
P. 14/21
10/29/2017

- h. That she admits to signing her mother's name on checks and doing it in her same way absent Power of Attorney because she is Mrs. Coleman's daughter and will sign with Mrs. Coleman's permission.
- i. That she and Mrs. Coleman went to the Firm and was told that in order to get the original Will they would need to make an appointment, which they did for the following day. However, their attorney failed to show up and when Attorney Chandler would not give them the original, Mrs. Coleman got mad and they left.
- j. That she did not see a copy of the Will until 2014 and that it was also the first time she learned the Farm was not devised to her and she learned the Durable Power of Attorney had been revoked on July 24, 2013, noting that even if she still had the Durable Power of Attorney, she still would not have deeded the property to herself.
- k. That Mrs. Coleman made changes on a copy of the Will and wished to destroy the Original and to divide the property evenly between her three children, however, the Will was not changed because Mrs. Coleman was "kidnapped" by her sister in 2014 and "brainwashed."
- l. That she listed Tract 2 for sale because she ran out of money due to the costs associated with this litigation and would do anything, sell everything, for her mother, to keep her, to get her back. Respondent Irland also contends that she has always had her mother's best interest at heart and hadn't deeded it back to be used for her mother's care because it was not her intent.
- m. When asked why she simply didn't deed the property back to her mother, she replied, because its "MY FARM!" and that she would decide where the money would go.
15. Mrs. Coleman's son, Respondent Isadore Psarus ("Johnny") testified that at the time the deeds were executed, Mrs. Coleman was living with Respondent Irland, who was her primary

caregiver.

- a. Resides in a home located at 638 Palmetto Street in the town of Mt. Pleasant which was given to him by Mrs. Coleman in 2008 for the sum of FIVE AND NO/100s DOLLARS (\$5.00).
- b. Claims Mrs. Coleman gave to him and his sisters all the time and that it was his understanding that his mother had always intended to give the Farm to Athena.
- c. Mr. Psarus was not present at the attorney's office when the meeting occurred, nor was he present when the deeds were executed and is unable testify as to anything leading up to the transaction.

16. The Guardian Ad Litem, Lana M. Jamrosyk, Esquire, did not testify but proffered from counsel table that, in her opinion, after meeting with Mrs. Coleman and the various family members, Mrs. Coleman was easily influenced and lacked the ability to understand the consequences of her actions. Further, it is in Mrs. Coleman's best interest to have both deeds rescinded and the Farm returned to Mrs. Coleman in the event that she needs the subject property to help defray future living and/or medical expenses.

CONCLUSIONS OF LAW

17. Pursuant to S.C. Code of Laws Ann. Section 62-5-402, jurisdiction and venue are proper.
18. Where a transaction is challenged on the basis of mental incompetency, the individual's competency on the date of that transaction must be determined. *Grapner v. Atlantic Land Title Co.*, 307 S.C. 5489, 551, 416 S.E.2d 617, 618 (1992). Furthermore, the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. *Id.*
19. Ample evidence supports a finding that Mrs. Coleman lacked the requisite mental capacity to

execute the challenged instruments on the date in question:

- a. Petitioner offered testimony of Mrs. Coleman's treating physician, Dr. Rubano, that Mrs. Coleman suffered from memory loss as early as 2009 and was treated for dementia in 2010 which, given its progressive nature, would result in Mrs. Coleman lacking capacity at the time the deeds were executed;
- b. That Respondent Irland and other family members repeatedly expressed concerns regarding Mrs. Coleman's capacity as early as January 2009 and on numerous occasions thereafter;
- c. Testimony from Mr. Chandler regarding his interaction with Mrs. Coleman on the same day the deeds were executed regarding Mrs. Coleman's inability to clearly communicate her desire to retrieve her 2008 Will;
- d. Testimony from Mr. Williams regarding his interaction with Mrs. Coleman and the fact that in hindsight, he had not inquired as to her capacity and was not an expert in recognizing behavior associated with incapacity, particularly given the small amount of time spent interacting with her, and given her penchant for exhibiting social graces common in dementia patients;
- e. Respondent offered no evidence to rebut Petitioner's assertions regarding allegations that Mrs. Coleman lacked capacity at the time the Deeds were executed but relied solely on her assertions, which are in direct conflict with reports made by her to Mrs. Coleman's treating physician for almost two years prior to the time the deeds were executed;

20. Based on the preponderance of evidence demonstrated by the Petitioner, Mrs. Coleman lacked capacity to execute said deeds on October 28, 2014.

21. Petitioner also asserts Respondent Irland exercised undue influence over Mrs. Coleman.

Undue Influence must be of the kind of mental coercion that destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 355 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). To void a conveyance of land, a contestant must show that the undue influence was brought directly to bear upon the conveyance. *Id.* at 219.

22. Undue influence in the execution of an *inter vivos* conveyance is proved in the same way that undue influence is proved in the execution of a will. *Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849 (2005) citing *First Nat'l Bank of Appleton v. Nenning*, 92 Wis.2d 618, 285 N.W.2d 614, 623 (1979).

23. In contested deed cases a presumption of invalidity arises if the contestants of the deed present evidence that a confidential or fiduciary relationship existed between the grantor and the grantee. *See Middleton V. Suber*, 300 S.C. 402, 405, 388 S.E. 2d 639, 641 (1990)(recognizing that where a "confidential relationship" exists between a grantor and a grantee, the deed is presumed invalid and the burden is upon the grantee to establish the absence of undue influence); *Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986)("A fiduciary relationship between the grantor and grantee may give rise to a presumption of undue influence thus shifting the burden of proof to the grantee to rebut the presumption").

24. A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. *Page v. Lewis* 209 S.C. at 220. The essence of the relationship is the trust and confidence. *Bullard v. Crawley*, 294 S.C. 276, 281, 363 S.E.2d 897, 900 (1987) citing 15A C.J.S. *Confidential*, pp. 351-58 (1967). Mere friendship between the parties is not sufficient. The relationship must be one implying

confidence. *Id.* citing 25 Am. Jur.2d *Duress and Undue Influence* § 44 (1966). A confidential relationship does not necessarily arise when the grantor depends upon the grantee for the necessities of life. Some evidence is required that the grantor actually reposed trust in the grantee in the handling of his affairs. *McIntosh v. Dowdy*, 625 S.W.2d 162 (Mo.Ct.App.1981) (holding valid deed from grantor to the operators of nursing home in which grantor lived prior to death).

25. Here, the record shows that Mrs. Coleman was dependent upon Respondent Irland for many things. Petitioner introduced evidence that Respondent Irland was Mrs. Coleman's sole caregiver and that she took Mrs. Coleman to her appointments once she moved into her home. Further, there is also evidence that a relationship of trust and confidence existed between them. Respondent Irland had access to Mrs. Coleman's bank accounts as evidenced by her testimony in which she admitted writing checks on her mother's account and, finally, that Mrs. Coleman had designated Respondent Irland as her attorney-in fact. Petitioner has successfully shifted to the proponent the burden of rebutting the presumption.

26. Respondent failed to rebut the presumption of undue influence. Instead, the record is replete with information which belies Mrs. Coleman's intent. First, Respondent contends Mrs. Coleman always intended to give her the property and in fact did so in 2003, but that the instrument was never recorded because she lost it. However, according to her testimony, Respondent was close with Mrs. Coleman and they do everything together. Accordingly, if it was Mrs. Coleman's intent to transfer the property, she very easily could have done so in the eleven years since she purportedly executed an instrument removing her from the deed. Further, if Mrs. Coleman wished Respondent Irland to have the property in question, she would not have devised her interest in the two tracts to others under her 2008 Will.

27. Undue influence invalidates a deed procured by wrongful influence exerted over the grantor so as to destroy free agency and constrain a person to act against his will. *Page v. Lewis*, 209 S.C. 212, 39 S.E.2d 787, 799 (1946 supra). It is not material how much control is exercised, whether by physical force, threats, importunities, or any other form of mental or physical coercion, provided that it was exerted to destroy or overcome the free will of the grantor and to make the deed executed the expression not of his purpose, but that of some other person. *Baynard v. Ulmer*, 153 S.C. 100, 150 S.E. 610, 611 (1929).

28. The evidence supports a finding that Mrs. Coleman did not wish to have the property transferred to Respondent Irland, yet the undue influence exerted over Mrs Coleman by Respondent Irland was such that Mrs. Coleman's will was overcome and she nevertheless acquiesced and executed the deeds on October 28, 2014.

29. Due to Ms. Irland's breach of fiduciary duty to Mrs. Coleman, Mrs. Coleman is entitled to an award of damages against Ms. Irland.

30. Pursuant to S.C. Code of Laws Ann. Section 62-1-111, this Court may, as justice and equity require, award costs and expenses, including reasonable attorney's fees, to any party to be paid by another party or from the estate that is the subject of the controversy. Accordingly, Respondent Irland's willful and zealous pursuit of this property and steadfast refusal to deed the property back to her mother despite her supposed commitment to her mother's well-being, warrant this measure. As such, all costs associated with this action will be assessed against Respondent Irland to include reasonable attorneys' fees.

31. This Court finds no fault in Dr. Rubano not issuing an opinion in 2012 as to Mrs. Coleman's lack of capacity or susceptibility to influence, which would have arguably prevented this matter from arising, because she was not asked to do so by Mrs. Coleman, the Court, or any person

authorized to inquire or request such a finding from Dr. Rubano.

32. Furthermore, this Court finds no fault in Mr. Williams closing the subject transaction on October 28, 2014, which would have arguably prevented this matter from arising, because he did not know, nor have reason to know of the events that transpired at the Firm and/or Dr. Rubano's treatment of Mrs. Coleman.

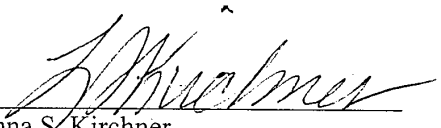
Based on the foregoing, it is hereby:

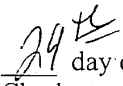
ORDERED, ADJUDGED AND DECREED the subject deeds are rescinded as Mrs. Coleman lacked the requisite capacity on October 28, 2014 to execute said deeds; it is further

ORDERED, ADJUDGED AND DECREED the subject deeds are the product of undue influence exercised by Respondent Irland over Mrs. Coleman; it is further

ORDERED, ADJUDGED AND DECREED that Respondent Irland will be assessed the costs and expenses associated with this action, including reasonable attorneys' fees, once approved by the Court.

AND IT IS SO ORDERED.


Lenna S. Kirchner
Associate Judge of Probate
Charleston County


day of June, 2017
Charleston, South Carolina

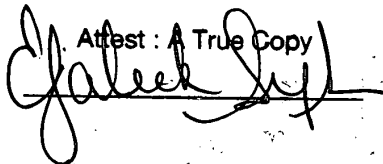

Attest : A True Copy
Clerk Probate Court,
Charleston County, South Carolina

EXHIBIT F

to

Motion to Dismiss

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2019-ES-10-1368
	)	
IN THE MATTER OF: THE ESTATE OF DOLLY	)	
LEGARE COLEMAN	)	
	)	
JOHN SINCLAIRE, III, in his capacity as Personal	)	ORDER
Representative for the Estate of Dolly L. Coleman,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
ATHENA L. IRLAND, CHRISTINA D. CULP,	)	
ISADORE JOHN PSARAS, and BRANDY S. CULP,	)	
	)	
Respondents.	)	
	)	

Hearing Date:	April 7, 2022
Presiding Judge:	Lenna S. Kirchner
Petitioner:	John a/k/a "Jack" Sinclair, Esq.
Petitioner's Attorney:	David Michel, Esq.
Respondents:	Athena L. Irland
	Christina D. Culp
	Isadore John Psaras
	Brandy S. Culp
Respondents' Attorney:	Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter:	Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclair, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclair, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,

Page 1 of 7


without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman ("Decedent") died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

Page 2 of 7



- on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.
6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
 7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
 8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
 9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
 10. Respondents are Decedent's children and grandchild.
 11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. 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.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

Page 40 of 77


had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.

22. 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 date 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.

23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.

24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.

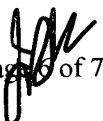
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Irland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent 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 day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Irland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further

Page 6 of 7


ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



Page 7 of 7

EXHIBIT G

to

Motion to Dismiss

The South Carolina Court of Appeals

IN RE: Matter of Dolly Dimples Legare Coleman,
through her conservator W. Ashley Thiem, Respondent,

v.

Athena Irland, Isadore Psaras, Brandy S. Culp, and
Christina Culp, Defendants,

Of whom Athena Irland is the Appellant.

Appellate Case No. 2017-001624

The Honorable Lenna S. Kirchner
Charleston County
Trial Court Case No. 2014GC1000210

ORDER

Appellant has failed to provide proof that the parties consented in writing or on the record to appeal directly to the Court of Appeals, as set forth in S.C. Code Ann. §62-1-308(l) (Supp. 2016), and letter of this Court dated August 2, 2017. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Joseph Dawson, III, Esquire
Irish Ryan Neville, Esquire

FILED

August 22, 2017

EXHIBIT H

to

Motion to Dismiss

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Athena Ireland

Plaintiff(s)

Isadore JOHN Psaras
Christina D. Culp, Brandy S. Culp

Defendant(s)

Submitted By: Athena Ireland
Address: 196 DOLLY DIMPLES TR
HUGER SC 29450

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2022 - CP - 10 - 3304

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

KARMA1234@myyahoo.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Incapacitated Adult Settlement
(790)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☒ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: Athena Ireland

Date: 6 7-22-2022

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA 1224 (02/2019)

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

2022-CP-10-3304

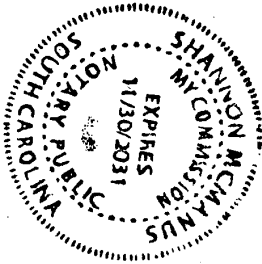
STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
IN THE MATTER OF: Dolly L. Coleman)
(Decedent) Athena L. Irland)
Appellant(s),)
vs Isadore John Psaras, Christina D Culp,)
Brandy S Culp)
Respondent(s).)

IN THE CIRCUIT COURT
Appeal from Probate Court for Charleston County
CASE NUMBER: 2019-ES-10-1368

**NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT**

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated July 13, 2022. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on July 14, 2022. A copy of said Final Order is attached.

SWORN to before me this 22
day of July, 2022
Notary Public for: South Carolina
My Commission Expires: 11/30/2023



Relationship to Decedent/Estate: _____

Respectfully submitted,
Signature: Athena L. Irland
Print Name: Athena L. Irland
Address: 186 Dolly Dimples Trail
Huger, SC 29450
(Home): 843-336-4834
(Cell): _____
Email: Karma1234@myyahoo.com
Attorney: Self Representation
Address: _____
Telephone: _____
Email: _____

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.
2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FILED
2022 JUL 22 PM 2:12
CLERK OF COURT

Pg 2

Case 2019-ES-10-1368
Estate of Dolly L Coleman
Order July 13, 2022
Received July 14, 2022

Notice has been served to:

1. John Sinclair III, in his capacity as Personal Representative for the Estate of Dolly L Coleman. Hand delivered
2. David Michel, Esq., Estate Attorney. Hand delivered.
3. Charleston County Probate Clerk of Court office, Presiding Judge Lenna S Kirchner. Hand delivered.
4. Circuit Court of Charleston County, Clerk of Court. Hand delivered.
5. David and Stephen Slotchiver, attorney for Brandy S Culp. Hand delivered.

Notice of Appeal on the findings and ruling of the probate court are as follows:

Pg. 2 (4)
Pg. 2 (5) cont. pg 3
Pg. 3 (6)
Pg. 3 (11)
Pg. 4 (18)
Pg. 5 (21)
Pg. 5 (22)
Pg. 5 (23)
Pg. 6 (7)
Pg. 6 (25)
Pg. 6 (26)
Pg. 6 (27)

The court erred in the undue influence by Athena Irland. The court erred in the legal standing of testamentary capacity, contractual testamentary vs. the testamentary capacity to execute, tear up or discard a will. All in accordance with South Carolina law and the precedence of the statute regarding testamentary capacity since 1807.

Therefore notice given that this matter is being appealed to the Circuit Court of Charleston County.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2019-ES-10-1368
	)	
IN THE MATTER OF: THE ESTATE OF DOLLY	)	
LEGARE COLEMAN	)	
	)	
JOHN SINCLAIRE, III, in his capacity as Personal	)	ORDER
Representative for the Estate of Dolly L. Coleman,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
ATHENA L. IRLAND, CHRISTINA D. CULP,	)	
ISADORE JOHN PSARAS, and BRANDY S. CULP,	)	
	)	
Respondents.	)	
	)	

Hearing Date:	April 7, 2022
Presiding Judge:	Lenna S. Kirchner
Petitioner:	John a/k/a "Jack" Sinclair, Esq.
Petitioner's Attorney:	David Michel, Esq.
Respondents:	Athena L. Irland
	Christina D. Culp
	Isadore John Psaras
	Brandy S. Culp
Respondents' Attorney:	Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq. for Brandy S. Culp
Court Reporter:	Ashley Manini

THIS MATTER came before the court upon the filing of a Summons and Petition for a Declaratory Judgment filed by David Michel, Esq. on behalf of Personal Representative John, a/k/a "Jack" Sinclair, Esq, on September 8, 2021.

Present were John, a/k/a "Jack" Sinclair, Esq. as Personal Representative of the Estate, as well as his counsel, David Michel, Esq.; Athena Ireland, without legal counsel; Christina Culp,



without legal counsel; and Brandy Culp, represented by Daniel S. Slotchiver, Esq. and Stephen M. Slotchiver, Esq.

Prior to the presentation of testimony, Daniel Slotchiver, Esq., on behalf of Brandy S. Culp, moved for Summary Judgment on the issue of reinstating the Last Will and Testament drafted by John Lynn McCants based on the argument that this Court had previously determined and ruled in an Order dated June 29, 2017, from a hearing held on October 18, 2016, that 1) Athena Irland had exercised Undue Influence on the same day of the alleged destruction of her Last Will (October 28, 2014), in the presence of John Lynn McCants, 2) Athena Irland owed a fiduciary duty to the Decedent under a Confidential Relationship, which was breached, and that on that same date the Decedent was medically incapacitated prior to the tearing up of said Will, and as such would not have had the Capacity to destroy said Will, thus rendering said will her testamentary desire. This Motion was denied.

Upon review of the file and after hearing testimony of the parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code Ann. §§62-1-302 and 62-3-201(a)(1).
2. This Court finds that proper notice was given to all parties with an interest in this matter pursuant to S.C. Code Ann. § 62-1-401.
3. Dolly Dimples Legare Coleman (“Decedent”) died on March 21, 2019.
4. Decedent was adjudicated as incapacitated in Charleston County Probate Court Case No. 2014-GC-10-0210.
5. During a hearing in the Guardianship and Conservatorship case on October 18, 2016, the Court heard arguments regarding allegations of undue influence by Athena Irland

Page 2 of 7



on Decedent in regard to the execution of two deeds of conveyance on October 28, 2014. This Court takes judicial notice of the file and proceedings from the Guardianship and Conservatorship case (2014-GC-10-0210) of Decedent.

6. On June 29, 2017, the Court issued an Order from the October 18, 2016 hearing rescinding the subject deeds due to lack of requisite capacity by Decedent on the date of execution (October 28, 2014) and undue influence exercised by Respondent Athena Irland on Decedent. The Order included excerpts from extensive live testimony and/or testimony from depositions taken from several professionals, including Decedent's treating physician, Guardian, and Conservator.
7. Respondent Athena Irland filed a Notice of Appeal in regard to the June 29, 2017 Order with the South Carolina Court of Appeals on July 27, 2017. The South Carolina Court of Appeals dismissed the matter on August 22, 2017 due to Appellant's failure to provide proof that the parties consented in writing or on the record to appeal directly to said court as set forth in S.C. Code Ann. §62-1-308(l). No additional appeals or Motions for Reconsideration regarding the June 29, 2017 Order have been filed.
8. John, a/k/a "Jack" Sinclair, Esq. ("Petitioner"), previously served as Decedent's Guardian and was appointed as the Personal Representative of her Estate on August 8, 2019, with the consent of the Respondents.
9. Petitioner filed a Summons and Petition seeking a Declaratory Judgment from the Court on September 8, 2021.
10. Respondents are Decedent's children and grandchild.
11. Decedent executed a Last Will and Testament on October 20, 2008 ("2008 Will"), and executed a subsequent Last Will and Testament on August 31, 2009 ("2009 Will").

12. Respondent Athena Irland is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
13. Respondent Christina D. Culp is a daughter of Decedent, an intestate beneficiary, and a listed devisee under both the 2008 Will and the 2009 Will.
14. Respondent Isadore John Psara is a son of Decedent, and intestate beneficiary, and a listed devisee under the both the 2008 Will and the 2009 Will.
15. Respondent Brandy S. Culp is a granddaughter of Decedent and a listed devisee under both the 2008 Will and the 2009 Will.
16. The 2008 Will was executed by Attorney Heyward Carter and the 2009 Will was executed by Attorney Lynn McCants.
17. The 2009 Will revokes all Wills and Codicils that Decedent had previously made.
18. 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.
19. Petitioner originally sought a ruling from the Court that Decedent died intestate due to the destruction of the 2009 Will, which had revoked the 2008 Will, and the lack of any subsequent Last Will and Testament. After learning of additional information to be presented by counsel for Respondent Brandy S. Culp at the hearing, Petitioner informed the Court that he was no longer taking a position as the validity of the 2009 Will and/or the possibility that Decedent died intestate and would instead allow the Court to hear the arguments of the Respondents on those issues.
20. During arguments presented by Respondent Brandy S. Culp, an original transcript wherein Andrew Chandler, an estate planning attorney in Charleston, South Carolina,

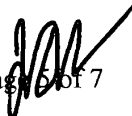
had previously testified at the October 18, 2016 hearing, was handed to the Court for its review and made a part of the Record as Exhibit 1. Mr. Chandler testified and that he had reviewed the transcript of his testimony from the last hearing regarding Decedent and confirmed that it was truthful and accurate.

21. John, a/k/a "Jack" Sinclair was then called to testify. He testified that in his investigation as to the facts surrounding the destruction of the 2009 Last Will and Testament, drafted by Lynn McCants, he was advised by attorney McCants that the destruction took place on October 28, 2014. This Court takes notice of the fact that this is the same day on which this Court previously determined the invalidity of a deed based on Undue Influence, breach of a Confidential Relationship, and lack of capacity of Decedent.

22. 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 date 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.

23. Mr. McCants presented the actual torn will, as well as a living will, healthcare power of attorney and a general durable power of attorney, all likewise destroyed on that same date. Mr. McCants also testified that Decedent told him "I'll get back with you, we'll do another Will...", but this act never took place.

24. When asked if it was customary for a client to create a new Will before destroying an old one, Mr. McCants testified that it was not.


Page 5 of 7

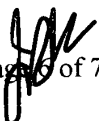
25. Mr. McCants further testified that he did not have medical training to assist in determining capacity or undue influence and that with regard to Decedent, that he was "surprised" when he learned that Decedent had gone to another lawyer regarding an attempted deed transfer, an action later explained by Ms. Irland when she testified that "...it was my decision to go to Jack Williams." This Court notes that Mr. Williams is the lawyer who drafted the vacated deed and notes the representation of "my decision" in the testimony provided as evidence that Ms. Ireland had exerted control over Decedent.

26. The Court finds that its ruling on June 29, 2017, that Decedent was unduly influenced by Respondent 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 day under similar circumstances. The case law and statutory law cited in the June 29, 2017 Order are equally applicable here.

27. The Court therefore finds that Decedent lacked the capacity to revoke the 2009 Last Will and Testament and that the 2009 Will represents the Decedent's testamentary desires.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent executed on August 31, 2009 was not effectively revoked due to lack of capacity of the Decedent and undue influence at the hands of Respondent Irland. It is ordered that the Last Will and Testament of the Decedent executed on August 31, 2009 shall be re-assembled, copied, and admitted to the Court as an original Last Will and Testament of Dolly Legare Coleman; it is further


Page 6 of 7

ORDERED, ADJUDGED AND DECREED that the Estate of Dolly Legare Coleman shall be administered as a testate estate in accordance with the South Carolina Probate Code; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



Lenna S. Kirchner
Associate Judge of Probate
Charleston County

This 13th day of July, 2022
Charleston, South Carolina.



Page 7 of 7

EXHIBIT I

to

Motion to Dismiss

2022-CP-10-3304

Notice OF PROOF OF Service July 22, 2022

David L. Michel, Esq.
Attorney for P.R.

Daniel Michel

7/22/22

Hand Delivery

Notice of Appeal

FILED
2022 JUL 22 PM 2:12
JULIE JAMIS
CLERK OF COURT

Susan C. Mauldin 7/22/2022

Susan C. Mauldin for Daniel S. Slotchiver

Jack Jilane 7/22/2022

EXHIBIT J

to

Motion to Dismiss

STATE OF SOUTH CAROLINA)	2022-CP-10-03304
COUNTY OF CHARLESTON)	
)	AFFIDAVIT OF CHRISTINA CULP
Estate of Dolly Lagare Coleman)	
)	
)	

PERSONALLY APPEARED before me, who being duly sworn, deposes and says as follows:

1. My name is Christina Culp.
2. I am the daughter of Dolly Legare Coleman and a named party in both this Appeal and the underlying Probate court action (in the Matter of Dolly Lagare Coleman, case number 2019-ES-10-1368.
3. My mother died on March 21,2019
4. The Appellant in this case, Athena Irland is my sister.
5. Athena did not serve me with the Notice of Intent to Appeal within 10 days of receiving notice of the Probate Court's Order dated September 6, 2022.
6. Respondent Brandy Culp is my daughter.
7. Athena has a long documented history of taking advantage of our mother, as described in the prior Orders of the Probate Court.
8. Our mother was diagnosed with progressive debilitating dementia beginning in 2010. She was deemed incapacitated by the Charleston County Probate Court in Case number 2014-GC-10-0210. In that case, Athena had exercised undue influence over our mother by having her exercise two deeds of conveyance to Athena's benefit. As a result, the Court rescinded the deeds, and made a determination that our mother lacked capacity on October 28, 2014, to execute deeds and that Athena had exercised undue influence on that date by having those properties conveyed to her.

9. In this new case, Athena contends now that our mother revoked her 2009 Will on October 28, 2014, **(the same date on which our mother was previously found to have lacked capacity and that Athena was found to have executed undue influence.)** After a hearing on the matter, the Court again found that my mother lacked capacity on October 28, 2014, to revoke the 2009 Will and that Athena had exercised undue influence over her in seeking to have the Will revoked.

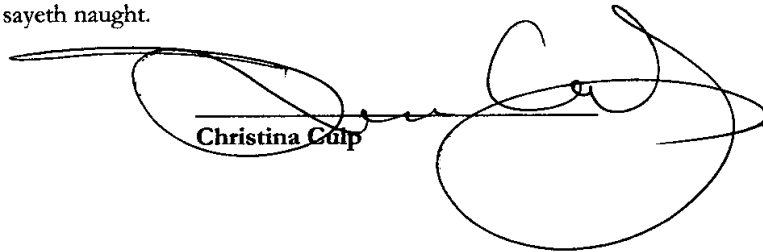
10. Athena, representing herself, now seeks to appeal the case.

11. I am still a party to the underlying case.

12. In addition, I have not settled any matters related to this litigation, with Athena, nor have I released any rights, claims and/or defenses as they relate to her.

13. Athena did not serve me with the notice of Appeal within the time required by statute. Accordingly, I ask this Court to grant the motion and dismiss the appeal.

FURTHER Affiant sayeth naught.


Christina Culp

SWORN TO BEFORE ME this 18

day of October, 2022

Scarlet Watkins

NOTARY PUBLIC FOR State of South Carolina

MY COMMISSION EXPIRES: 10-9-24

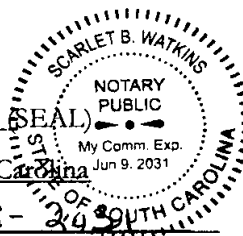


EXHIBIT K

to

Motion to Dismiss

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-3304
	)	
Athena Irland	)	
	)	
<i>Pro Se</i> Plaintiff/Appellant,	)	ORDER DENYING AND DISMISSING
	)	APPEAL FROM PROBATE COURT
v.	)	
	)	
Isadore John Psaras, Christina D. Culp	)	
Brandy S. Culp,	)	
	)	
Defendants/Respondents.	)	
_____	)	

THIS MATTER CAME before the Court pursuant to Respondent Brandy S. Culp's Rule 59(e) Motion to Alter or Amend Order and Rule 221(a) Petition for Rehearing, filed November 21, 2022 and subsequently heard on January 26, 2023. On July 14, 2023, this Court issued an Order granting Respondent's request for a hearing on the appeal. 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.

1. An appeal from Probate Court is governed by S.C. Code Ann. § 62-1-308, which sets forth various procedural requirements to perfect an appeal.

2. An appellant who fails to follow the procedural requirements strips the court of appellate jurisdiction. *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); see also Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules).

3. Here, the Court finds that appellant did not comply with the statutory requirements of S.C. Code Ann § 62-1-308, et seq., based on each of the following, independent grounds:

(a) Appellant did not file nor 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.”). Appellant’s Notice of Appeal, filed July 22, 2022, states Appellant received written notice of entry of the probate court order on July 14, 2022. 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 either of these requirements.

(b) As a separate and independent basis for dismissal, Appellant did not file nor 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.

(c) As a separate and independent basis for dismissal, Appellant did not file nor serve an appellate brief 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 any one of these statutory requirements.

(d) As a separate and independent basis for dismissal, Appellant did not 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.”).

4. Finally, as a separate and independent basis for denial of the appeal, this Court finds that Appellant has 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.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED:

Appellant Athena Irland’s Appeal from Probate Court is hereby DENIED and DISMISSED WITH PREJUDICE.

The Honorable Bentley D. Price
Circuit Court Judge

September____, 2023
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Athena L Irland , plaintiff, et al VS Isadore John Psaras , defendant, et al
Case Number: 2022CP1003304
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-10-02 14:43:04 page 4 of 4

ELECTRONICALLY FILED - 2023 Oct 02 2:48 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003304

EXHIBIT L
to
Motion to Dismiss

November 21, 2023

Appeal From Circuit Court of South Carolina
Charleston County before Judge Bentley
Price CASE # 2022-CP-10-3304

My Appeal From Circuit Court was granted
on Nov. 15, 2022

The Appeal was denied on Reconsideration
and confusion on October 2, 2023

Reconsideration denied October 25, 2023

Athena Ireland
Appellate in case
186 Dolly Dimple Str /
Huger, SC 29450

8436973631

RECEIVED

NOV 29 2023

SC Court of Appeals

100431

November 21, 2023

Appeal From Circuit Court of South Carolina
Charleston County before Judge Bentley
PRICE CASE # 2022-CP-10-3304

My Appeal From Circuit Court was granted
on Nov. 15, 2022.

The Appeal was denied on Reconsideration
and confusion on October 2, 2023

Reconsideration denied October 25, 2023

Athena Tr (and
Appellate in call
186 Dolly Dimple Str /
Huger, SC 29450

843 697 3631

RECEIVED

NOV 29 2023

SC Court of Appeals

RECEIVED

NOV 29 2023

SC Court of Appeals

PROOF OF SERVICE OF A
Notice of Appeal

The State of South Carolina

Appeal From Charleston County
Court of Common Pleas

Bentley Price Circuit Court Judge

Athena Ireland Appellate

v.

Brandy S. Culp Respondent

PROOF OF SERVICE

I certify that I have served
Notice of the Appeal to Respondent's
attorneys Dan and Steve Slotchiver
and Jesse Sanchez

751 Johnnie Dodds

Mt Pleasant, SC 29464

Switz 100,200 same of fice
Through US Postal Service

November 21, 2023

CASE# 2022-CP-10-3304

RECEIVED
NOV 29 2023
SC Court of Appeals

Letter to The Appellate Court Clerk
Filing Notice of Appeal

The Honorable Jenny Abbott Kitchings,
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: The Estate of Dolly L. Coleman

Appellate Athena Ireland vs
Respondent Brandy S. Culp
Case # 2022-CP-10-3304 (of the Court
of Common Pleas)

Enclosed for filing:

- 1) Proof of Service of the Notice of Appeal
to the Respondent's Attorneys.
- 2) a copy of the order(s) / judgement which
is (are) to be challenged on Appeal
- 3) A Filing Fee of \$250⁰⁰

Sincerely

November 21, 2023

Athena Ireland
186 Dolly Dimple St
Huger SC 29450
Appellate

Athena Island
Appealate
186 De la Dimples M
Hager SC 29450

The Honorable Jenny Abbott Kitchings
PO Box 11629
Columbia SC 29211

RECEIVED
NOV 29 2023
SC Court of Appeals

Retail



RDC 99



29211

U.S. POSTAGE PAID
FCM LG ENV
MOUNT PLEASANT
SC 29464
NOV 21, 2023
\$3.99
R2304W11898-65

EXHIBIT M

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 5, 2023

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The notice of appeal does not comply with Rule 267, SCACR. Specifically, the notice of appeal is not correctly formatted. You must serve and file an amended notice of appeal substantially in the format shown by Form 1 in Appendix C to part II of the SCACR. A copy of this form has been enclosed for your convenience.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.

Very truly yours,

Catherine Hannigan, deputy

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT N

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 03, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Our records indicate that the time for serving and filing the appellant's initial brief and designation of matter has expired. 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.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT O

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 20, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your brief in support of motion for a rehearing, which this Court construes as your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the document must be titled "Initial Brief of Appellant".
- The document is not accompanied by the required certificate of counsel.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. The designation of matter may only propose to include any material relevant to this appeal to be included in the Record on Appeal. Therefore, the designated material provided in the brief is being returned to you.
- The brief does not comply with Rule 208(b), SCACR. Specifically, the brief must contain the content in the following order: table of contents and cases, statement of issues on appeal, statement of the case, standard of review, argument, and conclusion.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Hammar, deputy". The signature is written in a cursive style with a large initial 'C'.

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT P

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 12, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter **will** be dismissed:

- The document is not accompanied by the required certificate of counsel.
- The brief does not comply with Rule 208(b), SCACR. Specifically, the brief must contain the content in the following order: table of contents and cases, statement of issues on appeal, statement of the case, standard of review, argument, and conclusion. You must serve and file an amended appellant's initial brief substantially in the format shown by Form 13 in Appendix C to part II of the SCACR.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal. The designation of matter may only propose to include any material relevant to this appeal to be included in the Record on Appeal. You must serve and file a designation of matter substantially in the format shown by Form 14 in Appendix C to part II of the SCACR. The designated material provided in the brief is being returned to you.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Hannissaw, deputy". The signature is written in a cursive style with a large initial 'C'.

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT Q

to

Motion to Dismiss

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES	1
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS.....	5
DESIGNATION OF MATTER TO BE INCLUDED ON THE RECORD OF APPEAL.....	6
ARGUMENTS.....	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

CASES

1. In re Estate of Berg
Supreme Court of South Dakota
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 13th 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

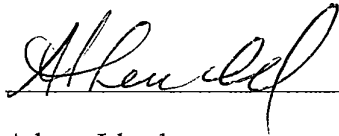
1. Pg. 4 line 25, pg 5 lines 1-6 are untrue statements by opposing counsel and does not apply.
2. Pg. 5 lines 14-20. 2 deeds were at issue. One deed transferred to me, Athena Irland. Another deed was to be transferred after the death of Dolly Coleman, my mother. I had absolutely no influence in her decision 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, mislead 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 Bently 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

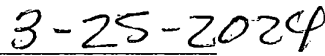
Kerner U.S. 404 U.S. 519 (1972) wherein the U.S. Supreme ruled that a Pro Se litigant is held to less stringent standards than formal pleadings drafted by lawyers.

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.



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



Date

SOUTH CAROLINA COURT OF APPEALS

Case No.2023-001852
Hon. Bently Price

RECEIVED

MAR 27 2024
SC Court of Appeals

Athena Irland

Appellant

V

Brandy Culp

Respondent

Certificate of Counsel
Pro Se Litigant

I certify that all paperwork of Initial Brief is relevant to the appeal.

Athena Irland 3/25/2024

Athena Irland, Appellant
186 Dolly Dimples Trl.
Huger, SC 29450
(843) 697-3631

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED
MAR 27 2024
SC Court of Appeals

INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

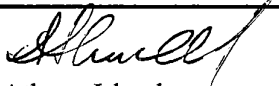
Brandy S. Culp

Respondent

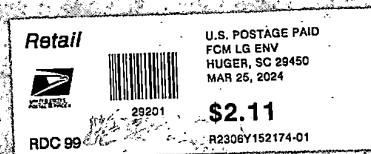
PROOF OF SERVICE

I certify that I have served the Attorneys for the Respondent an Initial Brief Of Appellant. Copy sent through US Post Office on March 25, 2024

Slotchiver & Slotchiver
Jesse Sanchez, Esq
751 Johnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843)577-6531 attorneys
For Brandy Culp


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

Athena Inland
186 Dolly Dimples Trl
Huger SC 29450



RECEIVED
MAR 27 2024
SC Court of Appeals

South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
Jenny Abbott Kitchings
Clerk



EXHIBIT R

to

Motion to Dismiss

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

RECEIVED

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.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED
MAR 27 2024
SC Court of Appeals

INITIAL BRIEF OF APPELLANT
Appellate Court

Case No. 2023-001852

Athena Irland

Appellant

V.

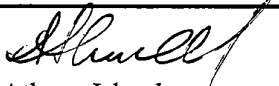
Brandy S. Culp

Respondent

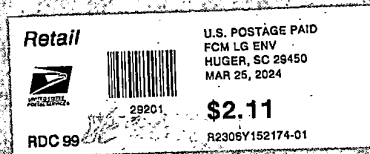
PROOF OF SERVICE

I certify that I have served the Attorneys for the Respondent an Initial Brief Of Appellant. Copy sent through US Post Office on March 25, 2024

Slotchiver & Slotchiver
Jesse Sanchez, Esq
751 Johnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843)577-6531 attorneys
For Brandy Culp


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

Athena Inland
186 Dolly Dimples Trl
Huger SC 29450



RECEIVED

MAR 27 2024
SC Court of Appeals

South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
Jenny Abbott Kitchings
Clerk



EXHIBIT S

to

Motion to Dismiss

RECEIVED

Apr 24 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.

MOTION TO DISMISS APPEAL

Respondent Brandy S. Culp, through her undersigned counsel, hereby respectfully moves to dismiss this appeal pursuant to Rule 240, SCACR. The grounds for this Motion are that Appellant Athena Irland, a *pro se* litigant, has (1) failed to comply with the statutory requirements for pursuing an appeal from probate court as set forth under S.C. Code § 62-1-308; (2) failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction; (3) repeatedly 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; (4) failed to appeal each and every independent ground cited by the Circuit Court for dismissing the instant appeal; and (5) has filed the instant appeal for the impermissible purpose of delay.

Factual and Procedural Background

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. (Orders, attached as Exhibits A and B).

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. (Order, Exhibit A). 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.).

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, Exhibit C). 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.). 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.

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. 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. 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 at Exhibit B, p. 6, ¶ 26)

Appeal to the Circuit Court¹

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.² (Notice of Intent to Appeal, Exhibit D). Ms. Irland, 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,

¹ As set forth below, the procedural history of Ms. Irland's appeal to the Circuit Court is unusually long and, admittedly, a source of great frustration for Ms. Culp and her attorneys due to resulting delays in the administration of justice. Nevertheless, for purposes of this motion, the issues are clear: a litigant seeking an appeal from the probate court must comply with the statutory requirements set forth by the legislature. As discussed hereinbelow, it is indisputable that Ms. Irland did not comply with the requirements set forth under S.C. Code § 62-1-308, et. seq.

² 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, Exhibit B, pp. 1 and 4). 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.).

Ms. Irland did not serve her Notice of Intent to Appeal on Respondents Isadore John Psaras and Christina D. Culp. (Proof of Service, Exhibit E; Affidavit of Christina D. Culp, Exhibit F).

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, Exhibit G; Reply at Exhibit H). 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, Exhibit I).

At the conclusion of the hearing on Ms. Culp's Motion to Dismiss, Judge Price informed the parties that he would take the matter under advisement and issue a ruling by the end of the day. (Ibid., 22:6-9). Two weeks later, on November 15, 2022, the Court issued a Form 4 Order, summarily denying the Motion to Dismiss, and taking the additional steps of granting Ms. Irland's appeal and remanding the matter back to the Probate Court. (Form 4 Order, Exhibit J). To be clear, the Circuit Court had never held a hearing on the merits of the appeal, nor could it have held

a hearing on the merits given Ms. Irland's complete failure to perfect the appeal pursuant to the probate statute. She did not even file an appellate brief setting forth her arguments to which Ms. Culp's counsel could respond.

Without making a single finding of fact, or setting forth a single conclusion of law, the Form 4 Order summarily stated, "This matter came before the Court on Appellant's [sic] appeal from Probate Court and Respondent's Motion to Dismiss the Appeal on October 27, 2022. The Court reviewed the record on appeal and considered arguments made by both parties. Respondent's Motion to Dismiss is DENIED and Appellant's [sic] appeal is GRANTED." (Ibid.).

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, Exhibit K). 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, Exhibit L). At the conclusion of the hearing, Judge Price, again, advised the parties that they would have

his decision by the end of the day. (*Ibid.*, p. 13:12-13). Unfortunately, for reasons that remain unknown, and despite repeated inquiries from counsel, the Circuit Court refrained from issuing an Order for nearly seven months, placing Ms. Culp’s counsel in the unenviable position of having to file a Petition for Writ of Mandamus with the South Carolina Supreme Court on July 12, 2023. (Pet. for Writ of Mandamus, Exhibit M).³ Ms. Culp, through her counsel, reluctantly sought a Writ of Mandamus requiring the Circuit Court to dismiss the appeal in its entirety, or in the alternative, compelling the Circuit Court to rule on the outstanding motion.” (*Ibid.*).

Two days later, on July 14, 2023, Judge Price issued an Order denying Ms. Culp’s Rule 59(e) Motion to Alter or Amend Order, but granting a rehearing “only on the issue of the appeal from Probate Court.” (Order, Exhibit N). Again, to be clear, the Circuit Court had not held a hearing on the merits of the appeal. Nevertheless, the Circuit Court stated it would hold a “rehearing” so as “to clear up any issues and understand the ongoing request from Respondents.” (*Ibid.*).

On July 17, 2023, counsel for Ms. Culp wrote the South Carolina Supreme Court a letter, advising the Court of Judge Price’s Order, and requesting that Supreme Court grant the relief set forth in the Petition for Writ of Mandamus. (Letter, Exhibit O).

On September 13, 2023, the South Carolina Supreme Court issued an Order on the Petition for Writ of Mandamus, signed by all Justices of the Court, stating as follows:

Petitioner asks this Court to issue a writ of mandamus requiring the Honorable Bentley D. Price to rule on Petitioner's Rule 59(e), SCRCp, motion to alter or amend the judgment and Rule 221(a), SCACR, petition for rehearing filed on November 21, 2022.

In his July 14, 2023 order, Judge Price denied Petitioner's motion to reconsider the circuit court's denial of Petitioner's motion to dismiss Respondent's appeal from the probate court. In that order, Judge

³ The Petition for Writ of Mandamus provides a detailed account of the long and unnecessarily complicated procedural history in this case and sets forth Ms. Culp’s reasons for filing the petition.

Price also granted Petitioner's motion "for a rehearing." Judge Price went on to conclude that he "feels it necessary to hold a rehearing to clear up any issues and to understand the ongoing requests from [Petitioner]." It appears from the materials filed with this Court that Judge Price has not yet heard and ruled upon the merits of Respondent's appeal from the probate court.

In any event, we are troubled by the delay in concluding the hearing and ruling upon all issues properly before the circuit court. Therefore, while we deny Petitioner's petition for a writ of mandamus, we direct 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. We further direct Judge Price to file a written order with the Charleston County Clerk of Court within fifteen days after the hearing is concluded.

(S.C. Supreme Court Order, Exhibit P)

On September 27, 2023, a hearing was convened before Judge Price pursuant to the aforementioned Order of the South Carolina Supreme Court. 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, Exhibit Q). 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). 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.

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.).

Appeal to Court of Appeals

On November 29, 2023, Ms. Irland filed a Notice of Appeal with the South Carolina Court of Appeals. (Notice of Appeal, Exhibit R). Since then, this 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, Exhibit S). 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 a corrected Notice of Appeal and Proof of Service. (Corrected Notice, Exhibit T)

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, Exhibit U). 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).

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, Exhibit V). 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). 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. (Order, Exhibit W). 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, Exhibit X). 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, Exhibit Y). 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, Exhibit Z).

On March 12, 2024, the Court issued Ms. Irland a fourth deficiency letter, noting the ongoing deficiencies with her brief. (Fourth Deficiency Letter, Exhibit AA). 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, Exhibit BB).

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 Exhibit BB, filed 03/25/25, to original brief, filed 02/15/2024, at Exhibit X). 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, Exhibit Q). 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." (Exhibit BB, p. 4). Respectfully, Ms. Irland 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.

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. This Motion to Dismiss follows.

STANDARD OF REVIEW

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 motion, 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).

ARGUMENTS

1. **The appeal should be dismissed because Ms. Irland 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.**

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, Exhibit D). 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, Exhibit CC).

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. 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.”).

Ms. Irland’s failure to comply with the statutory requirements for perfecting an appeal from

the probate court are fatal. Accordingly, Respondent respectfully request that this Honorable Court dismiss the appeal so as avoid further unnecessary delays to the administration of justice.

2. The Appeal should be dismissed because Ms. Irland 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, Exhibit D). 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, Exhibit B, pp. 1 and 4). 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. (Order, Exhibit B at pp. 1 and 4).

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, Exhibit E; Affidavit of Christina Culp, Exhibit F).

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. Because Ms. Irland failed to serve all necessary parties with the Notice of Appeal, the appeal must be dismissed on jurisdictional grounds pursuant to S.C. Code § 62-1-308(A). Accordingly, Respondent respectfully requests that this Honorable Court dismiss the appeal.

3. **The Appeal should be dismissed because Ms. Irland has repeatedly 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.**

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 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 Exhibit BB, filed 03/25/25, to original brief, filed 02/15/2024, at Exhibit X). 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. 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, the appeal should be dismissed.

4. The Appeal should be dismissed because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as the basis for dismissing the instant appeal.

In the present case, the 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, Exhibit Q.).

Ms. Irland's Initial Brief notably fails to address each of the aforementioned independent grounds for dismissal. (Initial Brief, Exhibit BB.). "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 as a basis for dismissing the instant appeal, Respondent respectfully submits that the Appeal must be dismissed.

5. The Appeal should be dismissed because it is Ms. Irland has filed the instant appeal for the impermissible purpose of delay.

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 respectfully requests that this Honorable Court bring an end to Ms. Irland's dilatory tactics and dismiss the appeal.

CONCLUSION

For each of the foregoing reasons, Respondent Brandy Culp respectfully requests that this Honorable Court dismiss the instant appeal. The appeal should be dismissed because Ms. Irland 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. She has also failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction. The appeal should also be dismissed because Ms. Irland has repeatedly 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. Additionally, the appeal should be dismissed because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as the basis for its dismissal of the instant appeal. Finally, the appeal should be dismissed because the record reflects that Ms. Irland has filed the instant appeal for the impermissible purpose of delay.

[Signatures on following page]

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

and

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT BRANDY S. CULP

April 24, 2024
Mount Pleasant, South Carolina

EXHIBIT T

to

Motion to Dismiss

RECEIVED
May 09 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.

REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS

Respondent Brandy S. Culp, through her undersigned counsel, hereby respectfully submits this Reply to Appellant's Return to the Motion to Dismiss Appeal. In addition to the enumerated grounds set forth in Respondent's Motion, the appeal should be dismissed for each of the following reasons:

1. Appellant's Return 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 dismissing the appeal. As reflected by the unresponsive nature of Appellant's Return, Ms. Irland did not serve or file a Statement of Issues on Appeal with the Circuit Court within the time prescribed by S.C. Code § 62-1-308(b). She did not serve or file 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 did not serve or file an Appellate Brief with the Circuit Court as required by S.C. Code 62-1-308(e). Ms. Irland did not file and serve a Record on Appeal on any party as required by S.C. Code § 62-1-308(f). Most importantly, having failed to file an Appellate Brief with the Circuit Court as required by S.C. Code § 62-1-308(e), Ms. Irland failed to preserve any issues for further appellate review; she did not even brief a single argument to which Ms. Culp’s counsel could respond or on which the Court could rule. Ms. Irland’s failure to comply with the statutory requirements enacted by our legislature are the very reasons why the Circuit Court dismissed and denied Ms. Irland’s appeal with prejudice. (Order, Exhibit A).

“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 indisputable that Ms. Irland did not comply with the statutory requirements for perfecting her appeal from the Probate Court. Accordingly, the appeal must be dismissed.

2. Appellant's Return incorrectly states that John Psaras and Christina Culp are not parties to this appeal.

As set forth in the Motion to Dismiss Appeal, Ms. Irland sought to appeal the Probate Court's order, dated July 13, 2022, by filing a Notice of Intent to Appeal with the Circuit Court on July 22, 2022. Respondents Brandy S. Culp, Christina D. Culp, and Isadore John Psaras are specifically identified and as parties in the Order and taken into account by the Court. (Probate Court Order, Exhibit B, pp. 1 and 4). Further, **Ms. Irland specifically named Brandy S. Culp, Christina D. Culp, and John Psaras, as Respondents in her Notice of Intent to Appeal.** (Notice of Intent to Appeal, Exhibit C). Ms. Irland, 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, Exhibit D; Affidavit of Christina D. Culp, Exhibit E).¹

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. Ms. Irland contends 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, Exhibit F). 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,

¹ As set forth in Respondent's Motion, 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, Exhibit B, pp. 1 and 4). 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.).

the Settlement Agreement specifically states that the releases set forth therein **do not apply to Athena Irland**. See Exhibit F, Settlement Agreement, para. 5, stating, “This release specifically does not apply to Athena Irland.” 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, Exhibit B, pp. 1 and 4). 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.

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, Exhibit A). 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, Exhibit G).

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.²

3. *Pro Se* litigants do not have license to ignore statutory requirements set forth by our legislature.

Ms. Irland's Return cites *Haines v. Kerner*, a 1972 United States Supreme Court case, for the generalized proposition that "a *pro se* litigant is not held to the same strict standards as a licensed attorney." (Return, p. 1, citing *Haines v. Kerner*, 404 U.S. 519 (1972)). *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. 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

² Curiously, 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, Exhibit H). 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, Exhibit I). 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. 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.

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.”

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 in Respondent’s Motion, 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. 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, Exhibit B).

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 respectfully requests that this Honorable Court bring an end to Ms. Irland's dilatory tactics and dismiss the appeal. Her status as a *pro se* litigant does not confer special privileges which allow her to ignore the statutory requirements enacted by our legislature or skirt the South Carolina Appellate Court Rules.

4. The Appeal should be dismissed because Appellant failed to appeal each and every independent ground cited by the Circuit Court for dismissing the instant appeal.

Ms. Irland's Return contends that "Counsel for Respondent falsely claims that I have failed to address each independent ground cited," and that, "The Initial Brief of Appellant received by the Court on March 27, 2024 answers these 'grounds.'" (Return, p. 1). Respectfully, even a cursory review of the latest Initial Brief filed by Appellant demonstrates this is false. (App. Initial Brief, Exhibit J). With regard to the five *independent* grounds for dismissal cited by the Circuit Court as basis for its denial and dismissal of the appeal, Ms. Irland summarily states, "the record will show that Ms. Irland did, in fact follow correct procedure." (Exhibit J, p. 4). She 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.

“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 as a basis for dismissing the instant appeal, Respondent respectfully submits that the Appeal must be dismissed.

Conclusion

Respondent Brandy Culp respectfully requests that this Honorable Court dismiss the instant appeal. The appeal should be dismissed because Ms. Irland 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. She has also failed to serve all necessary parties to the appeal, thereby depriving the Circuit Court and all higher courts of appellate jurisdiction. The appeal should also be dismissed because Ms. Irland has repeatedly 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. Additionally, the appeal should be dismissed because Ms. Irland has failed to appeal each and every independent ground cited by the Circuit Court as the basis for its dismissal of the instant appeal. Finally, the appeal should be dismissed because the record reflects that Ms. Irland has filed the instant appeal for the impermissible purpose of delay.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

and

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver, Esquire (SC Bar No. 15129)
Stephen M. Slotchiver, Esquire (SC Bar No. 65477)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 (Phone)
dan@slotchiverlaw.com
steve@slotchiverlaw.com

ATTORNEYS FOR RESPONDENT BRANDY S. CULP

May 10, 2024
Mount Pleasant, South Carolina

EXHIBIT U

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 03, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your motion for extension of time to serve and file the amended appellant's initial brief and designation of matter, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your filing will not be considered:

- The required filing fee has not been submitted. The correct filing fee is \$50.00.

Very truly yours,


CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

EXHIBIT V

to

Motion to Dismiss



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 05, 2024

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your designation of matter, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,


CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

SC Court of Appeals

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)

751 Johnnie Dodds Boulevard, Suite 200

Mount Pleasant, SC 29464

jesse@jessesanchezlaw.com

(843) 814-8181

ATTORNEY FOR RESPONDENT BRANDY S. CULP

November 22, 2024

Mount Pleasant, South Carolina



Jesse Sanchez <jesse@jessesanchezlaw.com>

USPS eReceipt

1 message

DoNotReply@ereceipt.usps.gov <DoNotReply@ereceipt.usps.gov>

To: JESSE@jessesanchezlaw.com



OAKBROOK
10070 DORCHESTER RD
SUMMERVILLE, SC 29485-9998
(800)275-8777

11/22/2024

12:22 PM

Product	Qty	Unit Price	Price
Priority Mail®	1		\$10.75
Huger, SC 29450			
Weight: 1 lb 12.70 oz			
Expected Delivery Date			
Sat 11/23/2024			
Tracking #:			
9502 8066 2221 4327 9471 57			
Insurance			\$0.00
Up to \$100.00 included			
Certified Mail®			\$4.85
e-Return Receipt			\$2.62
Total			\$18.22
Forever® Postage Stamp	1	\$0.73	\$0.73
Grand Total:			\$18.95

Credit Card Remit \$18.95
Card Name: VISA
Account #: XXXXXXXXXXXX0500
Approval #: 000587
Transaction #: 886
Receipt #: 000886
AID: A0000000980840 Chip
AL: US DEBIT
PIN: Not Required

Use Tracking # for inquiry on Return
Receipt (Electronic).

For Return Receipt (by email), visit
USPS.com, click on Track & Manage and
enter Tracking number; click on drop-down
arrow under Return Receipt Electronic;
enter name and email address and click on
Request Email.

Text your tracking number to 28777 (2USPS)
to get the latest status. Standard Message
and Data rates may apply. You may also
visit www.usps.com USPS Tracking or call
1-800-222-1811.

Save this receipt as evidence of
insurance. For information on filing an
insurance claim go to
<https://www.usps.com/help/claims.htm>
or call 1-800-222-1811

Preview your Mail
Track your Packages
Sign up for FREE @
<https://informedelivery.usps.com>

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: <https://postalexperience.com/ssk?mt=13>

UFN: 458481-9551

Receipt #: 840-12900497-1-6525105-1

Clerk: 00

Privacy Act Statement: Your information will be used to provide you with an electronic receipt for your purchase transaction via email. Collection is authorized by 39 USC 401, 403, and 404. Providing the information is voluntary, but if not provided, we will be unable to process your request to receive an electronic receipt. We do not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a U.S. Postal Service auditor; to entities, including law enforcement, as required by law or in legal proceedings; to contractors and other entities aiding us to fulfill the service (service providers); to process servers; to domestic

11/22/24, 12:26 PM

The Law Office of Jesse Sanchez Mail - USPS eReceipt

government agencies if needed as part of their duties; and to a foreign government agency for violations and alleged violations of law. For more information on our privacy policies visit www.usps.com/privacypolicy.

This is an automated email. Please do not reply to this message. This message is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you have received it in error, please delete. Any other use of this email by you is prohibited.



November 22, 2024

VIA ONEDRIVE ELECTRONIC SUBMISSION AND
UNITED STATES MAIL

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

RECEIVED

Nov 22 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. Respondent Brandy S. Culp's Renewed Motion to Dismiss Appeal or, in the Alternative, Motion to Strike Appellant's Initial Brief and Designation of Matter;
2. Separately-filed Exhibits to the Motion; and
3. Proof of Service.

A check for the fifty-dollar (\$50.00) filing fee 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)

Enclosures (as stated)

Cc: Athena L. Irland
Daniel S. Slotchiver, Esq.
Stephen M. Slotchiver, Esq.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com