IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY

Appellate Case No. 2024-000947
Lower Case No. 2021-CP-10-04257

Vicki Lynn Vergeldt, individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27,1978, Plaintiff..... Respondent,

v.

John Edward Vergeldt and Teresa Shaw-Vergeldt, Defendants,

Of whom John Edward Vergeldt is the.....Appellant.

FINAL BRIEF OF RESPONDENT VICKI LYNN VERGELDT, INDIVIDUALLY, AND AS SUCCESSOR TRUSTEE OF THE JOHN VERGELDT, JR. REVOCABLE LIVING TRUST DATED SEPTEMBER 27, 1978

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STATEMENT OF ISSUES ON APPEAL

1. As to Issue on Appeal No.1 identified in the Final Brief of Appellant, Respondent Vicki Lynn Vergeldt, individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated 1978 ("Vicki") is satisfied this is the issue Appellant John Edward Vergeldt ("John") wishes the Court to consider; however, Vicki argues below the trial court's denial of John's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP is not immediately appealable. Assuming *arguendo* it is, Vicki argues it was not an error of law for the trial court to deny the same.

2. As to Issue on Appeal No. 2 identified in the Final Brief of Appellant, Vicki is satisfied this is the issue John wishes the Court to consider; however, Vicki argues below the trial court's denial of John's Motion to Stay Proceedings is not immediately appealable. Assuming *arguendo* it is, Vicki argues it was not an error of law for the trial court to deny the same.

3. As to Issue on Appeal No. 3 identified in the Final Brief of Appellant, Vicki is satisfied this is the issue John wishes the Court to consider; however, Vicki argues below the trial court properly determined John willfully violated the Court's Order Granting Motion to Compel ("Order to Compel") filed September 28, 2023 and that John is/was in contempt of same.

4. As to Issue on Appeal No. 4 identified in the Final Brief of Appellant, Vicki is satisfied this is the issue John wishes the Court to consider; however, Vicki argues below the trial court properly applied the correct standard of proof in finding John in contempt of court and imposing sanctions related thereto.

5. As to Issue on Appeal No. 5 identified in the Final Brief of Appellant, Vicki is satisfied this is the issue John wishes the Court to consider; however, Vicki argues below the trial

court properly considered the Affidavit of Kevin Lowry in determining and finding John to be in violation of the Order to Compel.

STATEMENT OF THE CASE

Vicki is, generally, satisfied with John's Statement of the Case to the extent it conforms to and is consistent with the following Procedural History and Statement of Facts:

I. Procedural History

a. Relevant Procedural History-Appeal of Judgment

This case ("Collection Case") arises out of Vicki's attempt(s) to collect a judgment she obtained against John in the amount of Three Hundred Sixty-One Thousand Ninety-Two and 88/100 Dollars ($361,092.88) ("Judgment"). (ROA. pp. 445-457). The Judgment was issued by the Honorable Teasa Kay Weaver, Master-in-Equity for York County, in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt (C/A No.: 2016-CP-46-00820) ("Underlying Case") that was pending in the York County Court of Common Pleas. (R. pp. 16-30.)

After Judge Weaver denied his Motion to Reconsider and/or Alter or Amend ("Motion to Amend") on July 2, 2021, John filed a Notice of Appeal on August 2, 2021, and the same was given Appellate Case No.: 2021-000816. (R. pp. 31-50; R. pp. 394-444). The Court of Appeals heard oral argument on the appeal on November 8, 2023 and then issued Unpublished Opinion No. 2024-UP-052 on February 14, 2024. (R. pp. 79-82). John filed a Petition for Rehearing on February 29, 2024, and this Court requested Vicki file a Return to the Petition for Rehearing which was filed on March 15, 2024. (R. pp. 597-600; R. pp. 601-607,). The Petition for Rehearing was denied by Order filed April 11, 2024. (R. pp. 86-87).

John filed a Petition for Writ of Certiorari to the Court of Appeals ("Petition for Writ") on May 13, 2024, and the Petition for Writ was given South Carolina Supreme Court Case No.: 2024-000775. (R. pp. 655-667). Vicki filed her Return to the Petition for Writ on June 11, 2024, and a Reply to the Return to the Petition for Writ was submitted on June 27, 2024. (R. pp. 689-701, R. pp. 702-705). As of the filing of this Brief, the Supreme Court Case shows on the C-Track Public access website as being "Ready for Consideration". (https://ctrack.sccourts.org/public/caseView.do?csIID=80617).

b. Relevant Procedural History-Charleston County Case

Vicki transcribed the Judgment in the Office of the Clerk of Court for Charleston County on August 6, 2021 and instituted supplemental proceedings to collect amounts owed under the Judgment. The supplemental proceedings are captioned as Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 28, 1978 v. John Edward Vergeldt and given C/A No.: 2021-CP-10-03640 ("Supplemental Proceedings") (R. pp. 458-467). Vicki filed the Collection Case on September 14, 2021 (Vicki Lynn Vergeldt, individually and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt and Teresa Shaw-Vergeldt [C/A No.: 2021-CP-10-04257] against John and his wife, Teresa Shaw-Vergeldt ("Terry"), alleging they took certain action prior to and subsequent to entry of the Judgment to frustrate Vicki's efforts to collect amounts due thereunder. (R. pp. 445-457).

Important to this appeal are Vicki's allegations John and Terry took action to transfer John's one-half interest in his residence at 1523 Star Flower Alley, John's Island, South Carolina 29445 ("Property") to Terry while the Underlying Case was pending and only after Vicki was allowed to assert damages in the same. (R. pp. 445-457). Prior to the transfer, John and Terry

each maintained a one-half (1/2) interest in the Property. (R. pp. 445-457). The result of the transfer being John no longer maintained an interest in the Property. Vicki has alleged the transfer of John's interest in the Property to Terry violated S.C. Code Ann. §27-23-10 *et. seq.* ("Statute of Elizabeth")[1]. (R. pp. 445-457).

John and Terry timely responded to Vicki's allegations in the Complaint, and the Collection Action and the Supplemental Proceedings were consolidated and referred to the Honorable Mikell Scarborough, as Master in Equity for Charleston County, by Order of Reference filed August 19, 2022. (R. pp. 51-55). After the exchange of written discovery and the filing and hearing of several motions, Terry was dismissed from the Collection Action by Stipulation of Dismissal filed August 4, 2023 (R. pp. 527-528).

Vicki was granted leave to amend her pleadings to assert a cause of action foreclosure by Order Granting Motion to Amend Complaint filed September 28, 2023 as a result of Terry transferring all of her right, title and/or interest in the Property to John. (R. pp. 56-60). Judge Scarborough also issued an Order on Motion to Compel ("Order to Compel") on September 28, 2023, the enforcement of which is subject of this appeal. (R. pp. 61-65). Vicki filed her Amended Complaint on October 13, 2023 seeking enforcement of the Judgment through the foreclosure of John's interest in the Property. (R. pp. 529-535).

Approximately ten (10) days later and following the events of October 24, 2023, John filed his Motion to Stay Proceedings on October 25, 2023, and his Answer and Motion to Dismiss were

[1] In support of her allegations related to the claim under the Statute of Elizabeth, Vicki alleged Terry filed an action against John in the Charleston County Family Court seeking separate maintenance and support from John and to have their marital property equitably apportioned in the case of Teresa A. Shaw-Vergeldt v. John Edward Vergeldt (C/A No.: 2021-DR-10-02081) ("Family Court Case"). Of note is that Terry did not ask to be divorced from John. The Family Court Case has been resolved without the entry of a divorce decree. The only relief that has been granted relates to alimony, separate support and maintenance, and equitable division.

filed on October 30, 2023. (R. pp. 536-549; R. pp. 550-554). Vicki filed her Motion for Contempt and Sanctions ("Motion for Contempt") on November 3, 2023 arising from John's failure to comply with the Order to Compel as described below. (R. pp. 555-558).

The Motion to Dismiss, Motion to Stay Proceedings, and Motion for Contempt and Sanctions were all heard January 8, 2024. The hearing was attended by Vicki's counsel and Kevin C. Lowry.[2] The January 8, 2024 hearing resulted in Judge Scarborough entering the subject Order on Plaintiff's Motion for Contempt and Sanctions, Defendant's Motion to Stay Proceedings, and Defendant's Motion to Dismiss ("Contempt Order") on February 2, 2024. (R. pp. 66-78). The Contempt Order denied the Motion to Dismiss and Motion to Stay and granted the Motion for Contempt. (R. pp. 66-78).

John filed a Motion to Reconsider on February 12, 2024 which was heard on March 28, 2024 and decided the same day as shown on the Form 4 Order entered by Judge Scarborough on March 28, 2024. (R. pp. 559-596, R. pp. 83-85). John filed a second Motion to Reconsider on April 8, 2024 which was denied by Form 4 Order filed May 6, 2024, and this appeal followed. (R. pp. 640-643; R. pp. 88-90).

II. Statement of Facts

While the Collection Case has been pending since September, 2021, the relevant facts involved in this appeal took place between September 28, 2023 and March 28, 2024.

As identified *supra*, Judge Scarborough entered the Order to Compel on September 28, 2023. (R. pp. 61-65). Vicki was required to file a Motion to Compel on May 3, 2023 after John

[2] Unbeknownst to Vicki's counsel or the Court, John's counsel suffered an unexpected medical emergency that prohibited her from attending the January 8, 2024 hearing.

objected to Plaintiff's Second Set of Requests for Production to Defendant John Edward Vergeldt requesting the Property be made available for inspection and/or appraisal. (R. pp. 468-483).

Under the Order to Compel, John was required to make the Property and all areas of the interior and exterior of the single-family residence located thereon and other attendant and appurtenant improvements available to an agreed upon South Carolina licensed real estate appraiser and/or home inspector at a date and time convenient to said appraiser and/or inspector. (R. pp. 61-65). The Order to Compel required the appraisal and/or inspection was to take place within forty-five (45) days of the entry of the Order to Compel, which time could be extended upon a showing of good cause. (R. pp. 61-65). The Court reserved the right to appoint an appraiser and/or home inspector if John and Vicki could not reach an agreement related thereto. (R. pp. 61-65).

An agreement was reached to have Kevin C. Lowry, a South Carolina licensed real estate appraiser, go to the Property on October 24, 2023 at 9:00 A.M for the purposes of having the Property appraised. (R. pp. 536-549, R. pp. 555-558, R. pp. 66-78). Unfortunately, Mr. Lowry was delayed due to traffic on the morning of October 24, 2023 and informed Vicki's counsel at or around 9:43 A.M. he would be arriving at the Property in approximately ten (10) minutes (R. p. 538, ¶12). According to the Affidavit of John Edward Vergeldt ("John's Affidavit") filed on January 5, 2023 in opposition to the Motion for Contempt and/or Sanctions, Mr. Lowry's delay and the reasons therefore were communicated to John's counsel at 9:45 A.M. (R. p. 538, ¶¶12-13; R. p. 868, ¶¶6-7, Jan. 5, 2024). John's Affidavit also indicates he and Terry, his wife and purported real estate professional, had been waiting for Mr. Lowry at the Property since 8:45 A.M, and he had contacted his counsel several times prior to determine Mr. Lowry's location. (R. pp. 867-870). John's Affidavit does not indicate he told his counsel of a purported medical appointment

he had at 10:30 A.M., and it appears he only made this disclosure after he became aware of Mr. Lowry's delay. (R. pp. 867-870).

Mr. Lowry continued to the Property where he was met by John at the front porch of the single-family residence of the Property. (R. pp. 868-869, ¶ 12, ¶13, R. p. 871-875). John was, apparently, taking or attempting to take his dog(s) for a walk despite his purported medical appointment being fifteen (15) to twenty (20) minutes away. (R. p. 872-873, ¶¶ 8-9, 12-14, Jan. 5, 2024). While there is/was a dispute over what occurred during their interaction, it is undisputed John denied Mr. Lowry access to the interior of the Property and its single-family residence and demanded Mr. Lowry leave. (R. pp. 868-869; R. p. 871-875). John's Affidavit also indicates he informed Mr. Lowry the appraisal would need to be rescheduled; however, the Motion to Stay and John's Affidavit indicate John's belief Mr. Lowry is not capable of performing the appraisal due to bias and/or partiality. (R. pp. 868-869, ¶ 12, 16, and 17; R. pp. 536-549,). The exhibits to John's Memorandum in Opposition to Motion for Contempt and/or Sanctions also indicate John, contemporaneous with his interaction with Mr. Lowry, appears to have told his counsel he would call his own appraiser and Vicki could pay for it. (R p. 613). Vicki attempted to reschedule the appraisal and determine the identity of John's appraiser without receiving a substantive response. (R. p. 613). Rather than seeking the trial court's guidance on how best to proceed with the Order to Compel, John filed the Motion to Stay. (R. pp. 536-549).

Prior to the January 8, 2024 hearing on the Motion to Dismiss, Motion to Stay, and Motion for Contempt, John filed John's Affidavit on January 5, 2024 and Vicki filed the Affidavit of Kevin C. Lowry ("Lowry Affidavit") after John's Affidavit on the same day. (R. pp. 867-870, R. pp. 871-875). Mr. Lowry affirmed the events in the Lowry Affidavit at the January 8, 2024 hearing, and the Contempt Order was filed February 2, 2024. John filed his Motion to Reconsider on

February 12, 2024, ("February 12, 2024 Motion to Reconsider") where he, for the first time, disclosed to Vicki and the trial court that he, on his own and without consultation with Vicki, had the Property appraised on December 21, 2023 after the Motion for Sanctions was filed. (R. pp. 559-596).

Judge Scarborough granted the February 12, 2024 Motion to Reconsider as to reconsideration, and the Motion to Dismiss, Motion to Stay, and Motion for Contempt were reheard on March 28, 2024 with Judge Scarborough coming to the same result as seen in the Form 4 Order filed March 28, 2024. (R. pp. 83-85). John filed a second Motion to Reconsider, which Judge Scarborough denied on May 6, 2024. (R. pp. 88-90). This appeal followed.

STANDARD OF REVIEW

Vicki argues *infra*. Judge Scarborough's denial of the Motion to Dismiss and Motion to Stay Proceedings are interlocutory and therefore not immediately appealable; however, the standards of review the Court should use in determining whether they were error, along with the Motion for Contempt and/or for Sanctions, are set forth below.

I. Motion to Dismiss

Concerning the standard of review for John's Motion to Dismiss, "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard as the trial court." Rice-Marko v. Wachovia Corp., 398 S.C. 301, 307, 728 S.E. 2d 61, 64 (Ct. App. 2012). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegations set forth in the complaint." Doe v. Marion, 373, S.C. 390, 395, 645 S.E. 2d 245, 247 (2007). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable

to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Baird v. Charleston County, 333 S.C. 519, 511 S.E. 2d 69 (1999). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373, S.C. 390, 395, 645 S.E. 2d 245, 247 (2007). "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E. 2d 8, 9 (1987).

II. Motion to Stay Proceedings

Concerning the review of Judge Scarborough's denial of the Motion to Stay, "The granting of a motion to stay proceedings rests entirely within the discretion of the trial Jjudge." City of Spartanburg v. Belk's Dept. Store of Clinton, 199 S.C. 458, 20 S.E. 2d 167 (1942). Accordingly, the appropriate standard of review is abuse of discretion. Id. "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." Sundown Operating Co., Inc. v. Intedge Industries, Inc. 383 S.C. 601, 607, 681, S.E. 2d 885, 888 (2009).

III. Motion for Contempt

With regard to a review of Judge Scarborough's grant of the Motion for Contempt, "A determination of contempt ordinarily rests within the sound discretion of the [circuit court] ....On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the [circuit] court has abused its discretion." Gulfstream Café, Inc. v. Lawhon, 437 S.C. 445, 454, 879 S.E. 2d 15, 29 (Ct. App. 2022). "An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon the findings of fact, lacks evidentiary support." Id. (citing Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 434, 673 S.E. 2d 448, 457) (2009). "Civil contempt must be proved by clear and convincing evidence."

Miller v. Miller, 375 S.C. 443, 456, 652 S.E. 2d 754, 761 (Ct. App. 2007) (internal citations omitted). "In a criminal contempt proceeding, the burden of proof is beyond reasonable doubt." Id. "Before a court may find a person in contempt, the record must clearly and specifically reflect contemptuous conduct." Widman v. Widman, 348 S.C. 97, 119, 557 S.E. 2d 693, 705 (Ct. App. 2001).

IV. Admission of Lowry Affidavit

Concerning the review of Judge Scarborough's decision to consider the Lowry Affidavit, "The admission of evidence is within the sound discretion of the trial court, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal." Campbell v. Jordan, 382 S.C. 445, 452-53, 675 S.E. 2d 801, 805 (Ct. App. 2009). "An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon the findings of fact, lacks evidentiary support." Gulfstream Café, Inc., 437 S.C. 445, 454, 879 S.E. 2d 15, 29 (Ct. App. 2022).

ARGUMENT

Neither the Motion to Dismiss nor Motion to Stay Proceedings are immediately appealable, and it is improper for this Court to consider same at this time. Assuming *arguendo* the trial court's rulings on these motions are immediately appealable, the same were properly determined. Similarly, the trial court did not abuse its discretion in finding John to be in contempt of the Order to Compel as he willfully violated the same under any standard, and he was properly sanctioned as a result.

I. The trial court's denial of the Motion to Dismiss is not immediately appealable, and, if it is/was the trial court properly determined same.

a. The trial court's denial of the Motion to Dismiss is not immediately appealable.

Judge Scarborough's denial of the Motion to Dismiss is not immediately appealable. Under S.C. Code Ann. §14-3-330 (1976), as amended,

> "The Supreme Cout shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; (2) an order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action; (3) a final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and (4) an interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver. S.C. Code ann. §14-3-330 (1976), as amended.

The provisions of the statute governing appeals are narrowly construed and serve the underlying policy favoring judicial economy and avoiding piecemeal appeals. See Stone v. Thompson, 426 S.C. 291, 826 S.E. 2d 868 (2019); Tillman v. Tillman, 420 S.C. 246, 801 S.E. 2d 757 (Ct. App. 2017). Only final judgments and certain interlocutory orders are appealable. See Watson v. Underwood, 407 S.C. 443, 756 S.E. 2d 155 (Ct. App. 2014); Hagood v. Sommerville, 362 S.C. 191, 607 S.E. 2d 707 (2005). "An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." Burkey v. Noce, 398 S.C. 35, 37, 726 S.E. 2d 229, 230 (Ct. App. 2012). The order must be final meaning there is nothing left for the Court to do and all issues have been disposed. See Good v. Hartford Accident & Indemn. Co., 201 S.C. 32, 41-42, 21 S.E. 2d 209, 212 (1942). An order that effectively forecloses a party from contesting the case on the merits affects a substantial right and is immediately

appealable; however, avoidance of trial is not a substantial right entitling a party to immediate appeal of an interlocutory order. McLaughlin v. Strickland, 279 S.C. 513, 309 S.E. 2d 787 (Ct. App. 1983); Shields v. Martin Maritta Corp., 303 S.C. 469, 402 S.E 2d 482 (1991). Generally, the denial of a motion to dismiss under Rule 12(b)(6), SCRCP, is not immediately appealable. See Huntley v. Young, 319 S.C. 559, 560, 462 S.E. 2d 861 (1995); Moyd v. Johnson, 289 S.C. 482, 347 S.E. 2d 97 (1986).

However,

> An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation…Generally, '[t]his [c]ourt reviews interlocutory orders when they contain other appealable issues….However, this court has declined to consider interlocutory issues even when accompanied by an appealable order, such as the grant of summary judgment, when the court found the issue to be novel and relating to the sufficiency of the allegations, when the trial court has not had an opportunity to rule….The supreme court has noted 'if the question involved will be inherent in the final judgment and can be presented on appeal from that judgment, it will be treated as an interlocutory order, review of which can only be had upon the general appeal. Watson v. Underwood, 407 S.C. 443, 459, 756 S.E. 2d 155, 163-164 (Ct. App. 2014).

In this matter, John claims the Collection Case should be dismissed under Rule 12(b)(6), SCRCP, based upon Vicki's failure to comply with S.C. Code Ann. §18-9-130(A)(1), SCRCP. John misinterprets this statute, but, even so, the Collection Case should not be dismissed as argued below. However, fact remains denial of the Motion to Dismiss does not establish the law of the case and does not foreclose John's rights to contest Vicki's allegations, and, as a result, the issues he has raised can be revisited at a later date making denial of the Motion to Dismiss interlocutory.

As a result, it is improper for the Court to review the trial court's denial of the Motion to Dismiss at this juncture and any issue on appeal related thereto should be dismissed.

b. Assuming *arguendo*, the trial court's denial of Motion to Dismiss is immediately appealable, the trial court properly denied same.

If this Court determines denial of the Motion to Dismiss is immediately appealable, no error occurred as John's reliance on S.C. Code Ann. §18-9-130 (1976), as amended, is misplaced and the Amended Complaint states facts sufficient to constitute a cause of action for foreclosure.

Under Rule 241, SCACR,

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.
>
> The exceptions to the general rule are found in statutes, court rules, and case law. Where specific grounds must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all of the exceptions to the general rule is: (a) Money judgments as provided in S.C. code Ann. §18-9-130. Rule 241 (a)-(b), SCACR.

S.C. Code §18-9-130(A)(1) provides,

> A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or....(b) one million dollars, whichever is less, for all other entities or individuals." S.C. Code Ann. §18-9-130(A)(1) (1976), as amended.

S.C. Code Ann. §18-9-130(A)(2) (1976), as amended goes on to provide,

> A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendants, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendants may sustain by reason of the sale in case the judgment was reversed. S.C. Code Ann. §18-9-130(A)(2) (emphasis added).

In this matter, it is uncontested John is appealing the Judgment, and it does not appear he has sought a stay of execution from Judge Weaver, the presiding judge before whom the Judgment

was obtained, and, as a result, the stay contemplated by Rule 241, SCACR is inapplicable[3]. Regarding S.C. Code Ann. §18-9-130(A)(2) (1976), as amended, it only applies to a plaintiff who wishes to, by its own clear and unambiguous language and terms, enforce a sale of property. S.C. Code Ann. §18-9-130 (A)(2) (1976), as amended. The Collection Case is not yet in a procedural posture where Vicki would be enforcing a sale of the Property as the final hearing is scheduled on December 10, 2024. As a result, Vicki is not required, at this point, to post the bond required by S.C. Code Ann. §18-9-130(A)(2) (1976), as amended. The requirement of the issuance of a bond only becomes applicable if Vicki were to obtain an order allowing her to foreclose the alleged lien on the Property represented by the Judgment and seek to enforce same by selling the Property.

Until John obtains a stay from Judge Weaver or Vicki is awarded a judgment of foreclosure and order for sale and seeks to enforce her rights thereunder, the stays provided for in Rule 241, SCACR and S.C. Code Ann. §18-9-130 (1976), as amended, are inapplicable, and Vicki is not prohibited from proceeding with the Collection Case.

c. The Amended Complaint states a cause of action for foreclosure against John.

Aside from the questions of whether Rule 241 SCACR and S.C. Code Ann. § 18-9-130 are applicable, the Amended Complaint alleges facts sufficient to state a cause of action for foreclosure such that the trial court's denial of the Motion to Dismiss was proper and not an error of law.

Rule 12(b)(6), SCRCP, provides, "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim shall be asserted in the

[3] John's Initial Brief indicates his counsel requested a stay from Judge Weaver; however, no motion or application has been filed in the Court of Common Pleas for York County, and no stay was requested at the hearing on the Motion to Reconsider and Alter or Amend in the Underlying Case, a copy of the transcript of which is included in Vicki's Designation of Matter to be Included on Appeal. (Pp. 1132-1198, ROA, S.C. Court of Appeals Case No.: 2021-000816 (Tr. of March 17, 2021 hearing on Defendant's Amened Motion to Reconsider).

responsive pleading thereto if one required, except that the following defenses may at the option of the pleader be made by motion.....(6) failure to state fact sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegations set forth in the complaint." Doe v. Marion, 373, S.C. 390, 395, 645 S.E. 2d 245, 247 (2007). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Baird v. Charleston County, 333 S.C. 519, 511 S.E. 2d 69 (1999). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved on his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373, S.C. 390, 395, 645 S.E. 2d 245, 247 (2007). "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E. 2d 8, 9 (1987).

In this matter, the allegations of the Amended Complaint clearly demonstrate Vicki has pled entitlement to foreclosure of the lien against the Property encumbered by the Judgment. This is seen in the fact the allegations show: (1) Vicki has obtained and holds the Judgment in the Underlying Case, (2) the Judgement was transcribed in the Office of the Clerk of Court for Charleston County, (3) Vicki is informed and believes the Judgment constitutes a lien on the Property[4], (4) John has made no payments toward the Judgment, (5) Vicki is entitled to have the

[4] John's Initial Brief appears to argue Vicki needs to obtain an order declaring the Property can executed against to be applied to or satisfy the Judgment, but S.C. Code Ann. §15-35-810 (1976), as amended, provides, "Final judgments and decrees entered in any circuit or district court...shall be declared to create a lien, shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered....the lien to begin from the time of such entry upon the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree." In other words, the Judgement, by being transcribed in Charleston County, automatically constitutes a lien on the Property against which Vicki can foreclose.

trial court determine the amount of the lien represented by the Judgment, and (6) Vicki is entitled to foreclose the lien to collect the amounts owed thereunder. (R. pp. 529-535). In other words, Vicki has alleged facts sufficient to state cause of action for foreclosure of the lien against the Property to collect amounts due under the Judgment when the allegations are viewed in a light most favorable to her. This is all that is required under the applicable standard even if the trial court or this Court has doubts about the allegations in the Amended Complaint[5].

As a result, it was proper for the trial court to deny the Motion to Dismiss and the same is not an error of law.

d. John claims Vicki does not have standing to pursue collections against him, but he fails to provide analysis related thereto.

In the Motion to Dismiss and John's Initial Brief, there is some argument Vicki lacks standing to pursue collections against John. This argument is based on Vicki's purported failure to comply with S.C. Code Ann. §18-9-130 (1976), as amended, and does not include an analysis of Vicki's standing; however, a brief analysis is worth making.

"Standing refers to a party's own right to make a legal claim or seek judicial enforcement of a duty or right." Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 444, 665 S.E. 2d 237, 241 (Ct. App. 2008). "Standing is....that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." Bank of America, N.A. v. Draper, 405 S.C. 214, 219, 746 S.E. 2d 478, 481 (Ct App. 2013). "It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." Id. "Standing is a fundamental requirement for instituting an action.

[5] It is worth noting John addresses the standard of review used to determine whether Vicki has failed to state a cause of action but does not provide an analysis of same (*ie.* he does not address her allegations) instead relying on the provisions of S.C. Code Ann. §18-9-130 (1976), as amended, which, as argued *supra* provide him no relief.

Generally, a party must be a real party in interest to the litigation to have standing." Id. 405 S.C. at 220; 746 S.E. 2d at 480 (Ct. App. 2013). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation. It is ownership of the right sought to be enforced which qualifies one as a real party in interest." Id.

In this matter, Vicki has standing to seek collection of the Judgment against John. This is because the Judgment was awarded to Vicki. (R. pp. 16-30, Feb. 2, 2021 Order). She still holds the Judgment and the right to enforce the Judgment. John does not appear to contest this conclusion since he only relies on the arguments related to S.C. Code Ann. §18-9-130 (1976). It also does not appear an argument related to standing as described herein was raised to or ruled upon by the trial court. Wilder v. Wilke Corp, 330 S.C. 71, 497 S.E. 2d 732 (1998).

Accordingly, Vicki has standing to bring the Collection Action and to seek enforcement of the Judgment. Any other argument related thereto is not preserved for appeal.

II. The trial court's denial of the Motion to Stay is not immediately appealable, and, if it is/was, the trial court properly determined same.

As with the Motion to Dismiss, the trial court's denial of the Motion to Stay is not immediately appealable, and, even if it is/was, the trial court's denial was proper and/or not an error of law.

a. The trial court's denial of the Motion to Stay is not immediately appealable.

As discussed *supra.*, "only final judgments and certain interlocutory orders are immediately appealable." See Watson v. Underwood, 407 S.C. 443, 756 S.E. 2d 155, (Ct. App. 2014); Hagood v. Sommerville, 362 S.C. 191, 607 S.E. 2d 707 (2005). "An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." Burkey v. Noce, 398 S.C. 35, 37, 726 S.E. 2d 229, 230 (Ct. App. 2012). An order that effectively

forecloses a party from contesting the case on the merits and/or affects a substantial right and is immediately appealable; however, avoidance of trial is not a substantial right entitling a party to immediate appeal of an interlocutory order. See McLaughlin v. Strickland, 279 S.C. 513, 3909 S.E. 2d 787 (Ct. App. 1983); Shields v. Martin Maritta Corp., 303 S.C. 469, 402 S.E 2d 482 (1991). Generally, an order denying or granting a stay is not immediately appealable as it does not affect the merits of the case. See Edwards v. Suncom, 369 S.C. 91, 631 S.E. 2d 529 (2006).

The Motion to Stay is not a final judgment as it does not address the merits of Vicki's Amended Complaint nor does it affect any substantial right related thereto. (R. pp. 529-535, pp. 66-78). All of Vicki's allegations in the Amended Complaint and rights sought to be enforced therein have yet to be determined. (R. pp. 529-535). She still has the right to prosecute the case and John has the right to defend and contest same. The only issue John raised in the Motion to Stay concerned the undue burden the Collection Case was having on him while the Judgment was on appeal; however, the Motion to Stay does not indicate with particularity what undue burden John is under. (R. pp. 536-549).[6] This is made more glaring by John's apparent failure to take action to strictly comply with Rule 241, SCACR and S.C. Code Ann. §18-9-130 (1976), as amended, which would afford him the stay of the proceedings he seeks. Rule 241, SCACR; S.C. Code Ann. §18-9-130 (1976), as amended. It would relieve him of the undue burden which he claims to suffer. As a result, it appears the only goal in bringing the Motion to Stay is the avoidance of trial, which is not a substantial right. Shields v. Martin Maritta Corp., 303 S.C. 469, 402 S.E 2d 482 (1991).

[6] The timing of the Motion to Stay is also interesting as John filed the same only after the events of October 24, 2023.

Accordingly, the denial of the Motion to Stay is not immediately appealable, and it is not proper for the Court to consider same.

b. The trial court's denial of the Motion to Stay was proper and/or was not an abuse of discretion.

As identified above, the trial court's denial of the Motion to Stay was proper, not an abuse of discretion, and, as a result, no error of law occurred.

As more fully set forth above, Rule 241, SCACR and S.C. Code Ann. §18-9-130 (1976), as amended, specifically set forth the conditions under which John could (and still can) obtain a stay of the Collection Case (ie: stay execution of the Judgment). He would need to apply to or make a motion before Judge Weaver, as trial judge who issued the Judgment, to stay execution of same and post a bond in an amount determined not to exceed the amount of the Judgment that would be determined by her. See S.C. Code Ann. § 18-9-130 (1976). John has not done so instead relying on the purported undue burden the Collection Case is having on him while the Judgment is on appeal when such a showing is not one of the requirements to be strictly complied with under Rule 241(a)-(b), SCACR, and S.C. Code Ann. §18-9-130 (1976), as amended. (R. pp. 536-549). It also strain(ed) credibility that John is and/or was suffering an undue burden because of this matter, as any purported undue burden is consistent with any other judgment debtor from whom payment is being sought.

Relatedly, John's Initial Brief argues the grant of the Motion to Stay would not prejudice Vicki, and this argument does not appear to have been ruled upon by the trial court. However, the South Carolina Supreme Court's ruling in Gordon v. Lancaster, 425 S.C. 386, 823 S.E. 2d 173 (2018) raises questions of when a judgment creditor should take action to collect amounts owed on a judgment while it is on appeal. In this matter, Judge Weaver entered the Judgment on

February 2, 2021, and John has been exercising his appellant rights over the past three years leaving seven (7) years for Vicki to collect under the bright light test set forth in Gordon. Id. This point is being made for the sole purpose of indicating Vicki's ten (10) year period of time to collect the Judgment is running with seven (7) years left indicating that a stay of the proceedings may affect Vicki's ability to collect the Judgment after John's appellate rights related thereto have been exhausted resulting in prejudice.

As a result, the evidence before the trial court did not indicate a stay would be proper, and, based on the lack thereof, the trial court did not abuse its discretion in denying the Motion to Stay.

III. The record is clear John willfully violated the Order to Compel.

The record on appeal shows it is clear it was proper for the trial court to determine John willfully violated the Order to Compel and to hold him in contempt of same.

"Contempt is an extreme measure; this power vested in a court is not lightly asserted." Ex parte Kent, 379 S.C. 633, 637, 666 S.E. 2d 921, 923 (Ct. App. 2008). "A party is guilty of contempt when he willfully disobeys a court order." Brantley v. Brantley, 441 S.C. 284, 299, 893 S.E. 2d 349, 358 (Ct. App. 2023) (internal citations omitted). "A willful act is one 'done voluntarily and intentionally with the specific intent…to fail to do something the law requires to be done." Noojin v. Noojin, 417 S.C. 300, 306 789 S.E. 2d 769, 772 (Ct. App. 2016) (internal citations omitted). "Prior to invoking this power, the court must necessarily consider the ability of the defendant to comply with the order." Id. "A party seeking contempt for a violation of a court order must show the order's existence and establish the other party did not comply with the order." Abate v. Abate, 377 S.C. 548, 554, 660 S.E. 2d 515, 518 (Ct. App. 2008) (internal citations omitted). "Once the party seeking a contempt finding makes a prima facie showing by pleading

the order and demonstrating noncompliance, the burden shifts to the respondent to establish his defense and inability to comply." Noojin v. Noojin, 417 S.C. 300, 789 S.E. 2d 769 (Ct. App. 2016).

"Contempt can either be civil or criminal". Ex parte Cannon, 385 S.C. 643, 662, 685 S.E. 2d 814, 824 (Ct. App. 2009). "The major factor in determining whether contempt is civil or criminal depends on the purpose of the contempt ruling....The purpose of civil contempt is to coerce the defendant to the thing required by the order for the benefit of the complainant. The primary purpose of criminal contempt is to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial...But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the Court." Miller v. Miller, 375 S.C. 443, 456, 652 S.E. 2d 754, 761 (Ct. App. 2007) (internal citations omitted). "An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature....If the sanction is a fine, it is punitive when paid to the court." Id. 375 S.C. at 457. "If the sanction is a fine, it is remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine..." Id.

"The distinction between civil and criminal contempt is critical...." Id. 375 S.C. at 457. "Civil contempt must be proved by clear and convincing evidence; however, criminal contempt must be proved beyond a reasonable doubt." Id. "Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence." Id. "Courts, by exercising their contempt power, can award attorney's fees under a compensatory contempt theory....The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding." In the Matter of the Estate of Combis, 439 S.C. 485, 488, 888 S.E. 2d 1, 7 (Ct. App. 2023) (citing Poston v. Poston, 331 S.C. 106, 502 S.E. 2d 86 (1988)). "Compensatory contempt seeks to

reimburse the party for the costs it incurs in forcing the non-complying party to obey the court orders." Id. In this matter, it is clear, and the record contains evidence beyond a reasonable doubt, John willfully violated the Order to Compel under the standards for civil contempt and criminal contempt. This is evident from events beginning at 9:41 A.M. on October 24, 2023 and thereafter. (R. pp. 555-558).

Under the Order to Compel, John and Vicki were required 1) to agree upon a licensed South Carolina real estate appraiser and/or home inspector who would inspect and/or appraise the Property, 2) that John was to make the Property and the interior and exterior of the single family residence located thereon and other attendant and appurtenant improvements available to the agreed upon South Carolina licensed real estate appraiser and/or home inspector for inspection and/or appraisal, 3) the availability of the Property was to be at a time and date convenient to the appraiser and/or inspector, and 4) the appraisal and/or inspection was to take place within forty five (45) days of the entry of the Order to Compel except upon good cause shown to the trial court. (R. pp. 61-65).

As to the first instruction/requirement in the Order to Compel, John willfully violated same. Initially, it is undisputed John and Vicki agreed, explicitly and/or implicitly, to have Mr. Lowry appraise the Property, the Property would be made available for appraisal on October 24, 2023 at 9:00 A.M., Mr. Lowry did not appear at the scheduled time, there was a confrontation between John and Mr. Lowry at the Property when Mr. Lowry arrived, and John denied Mr. Lowry access to the interior of the single family residence on the Property and told him to leave. (R. pp. 867-870; R pp. 871-875; R pp. 559-596). The record is also clear John appears to have communicated to his attorney that he was done waiting, would call his own appraiser and Vicki could pay for it.

(R. p. 613). This stands in contrast to John's subsequent claims he believed Mr. Lowry could not be unbiased and/or impartial. (R. pp. 867-870).

Despite requests being made for other dates and times when Mr. Lowry could appraise the Property and/or the identity of John's appraiser, the record is clear the same was not disclosed to Vicki or her counsel. (R. pp. 614-615). The first time John's appraiser became known to and/or was disclosed to Vicki and/or her counsel was on February 12, 2024 when John filed his Motion to Reconsider after the trial court determined John violated the Order to Compel and was in contempt of same. (R. pp. 559-596). Based on the appraisal filed with the Motion to Reconsider, it was performed on December 21, 2023, almost a month and a half after Vicki filed the Motion for Contempt and without any consultation with or disclosure to Vicki or her counsel. (R. pp. 559-596). The record contains no explanation or reason why John failed to disclose the identity of the appraiser or produce the appraisal until after he was held in contempt and sanctioned when disclosure would have created the possibility of making the January 8, 2024 hearing unnecessary. Id. As argued to the trial court, it is almost as if John commissioned his own appraisal, kept the identity of that appraiser to himself, and only chose to disclose same once it became clear he was being sanctioned and held in contempt; all of which must have been considered under both the clear and convincing and beyond a reasonable doubt standards to have concluded same had been done willfully. (R. pp. 617-626; R pp. 644-654).

As to the second and third instructions, it is beyond a reasonable doubt John willfully violated the same and/or it is proved by clear and convincing evidence. Again, it is undisputed John and Vicki scheduled a date and time for Mr. Lowry to perform the appraisal and he appeared close to an hour late to perform same. (R. pp. 867-870; R. pp. 871-875). It is also undisputed John denied Mr. Lowry access to the interior of the single-family residence located on the Property

while leaving to take his dogs for a walk at approximately 9:50 A.M. when he purportedly had a doctor's appointment at 10:30 A.M. approximately fifteen (15) to twenty (20) minutes away.[7] Id. The record is also clear Vicki and/or her counsel requested other dates and times during which the Property could be available and for the identity of John's appraisal and neither were provided leaving the only conclusion to be, beyond a reasonable doubt and/or by clear and convincing evidence, John was refusing to make the Property available to Mr. Lowry or any other appraiser in willful violation of the Order to Compel and only attempted to remedy same after Vicki filed the Motion for Contempt. (R. pp. 613-616).

As to the fourth instruction, it is clear no appraisal of the Property was performed within forty-five (45) days of the entry of the Order to Compel because of John's actions. This is seen in the fact that, after the events of October 24, 2023, John failed and refused to cooperate with Vicki to reschedule the Property's appraisal or disclose the identity of the appraiser he previously contacted. (R. pp. 613-616). It is also seen in the fact that, instead of seeking to extend the time for the appraisal or indicating that no agreement could be reached as to a second appraiser, John filed the Motion to Stay seeking to stop the action in its entirety indicating his intent not to comply with the Order to Compel. (R. pp. 536-549). To the extent John argues he attempted to comply with the Order to Compel by obtaining his own appraisal, this argument fails as the appraisal he obtained is dated December 21, 2023, approximately ninety (90) days from the date the Order to Compel was entered. (R. pp. 559-596).

As a result of the above, the evidence is both clear and convincing and beyond a reasonable doubt John willfully violated the Order to Compel.

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[7] Despite the doctor's appointment being the primary reason for Mr. Vergeldt' s refusal to allow Mr. Lowry access to the single-family residence, the record contains no proof or evidence of a doctor's appointment other than John's statements in his affidavit (ie: there is no record of a doctor's note).

IV. The Court applied the proper standard of proof when finding John in contempt for his violation of the Order to Compel.

Concerning the standard of proof applied by the trial court, the same was properly applied. As identified *supra*, civil contempt must be shown by clear and convincing evidence while criminal contempt must be shown beyond a reasonable doubt. Miller v. Miller, 375 S.C. 443, 456, 652 S.E. 2d 754, 761 (Ct. App. 2007) (internal citations omitted). In determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Id. Where civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. Id. The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience. Id. An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature. Id.

As to whether the fines and/or penalties are civil or criminal in nature, there does not appear to be much disagreement. Vicki does not contest payment of the attorneys' fees is civil contempt and the fine to be paid to the Charleston County Clerk of Court is criminal. In the Matter of the Estate of Combis, 439 S.C. 485, 488, 888 S.E. 2d 1, 7 (Ct. App. 2023) (citing Poston v. Poston, 331 S.C. 106, 502 S.E. 2d 86 (1988)). Vicki does, however, dispute John's contention that payment of Mr. Lowry's fees is criminal in nature, but, under either standard, there is clear and convincing evidence to support a finding of civil contempt and/or criminal contempt as there is evidence to find John willfully violated the Order to Compel beyond a reasonable doubt. Id. Under both standards, there is clear and convincing evidence and/or evidence beyond a reasonable doubt John willfully violated the Order to Compel as described above and the only conclusion that can be reached is John took Mr. Lowry's failure to appear at the appointed time as an opportunity to willfully disregard and violate the Order to Compel by not cooperating further with Vicki, by not

providing any additional dates and times when the Property could be made available to Mr. Lowry, or disclosing the appraiser with whom he communicated. (R. pp. 867-870; R pp. 871-875). He also failed to seek the trial court's intervention except in an attempt to stay the proceedings, and only disclosed the identity of any appraiser and/or appraisal after the Court sanctioned him. (R. pp. 536-549; R pp. 559-596). The record is clear these willful violations took place beyond a reasonable doubt and without much explanation other than Mr. Lowry allegedly could not justify his delay and/or is not impartial. As a result, the trial court, under either standard of proof, properly determined John willfully violated the Order to Compel, and it was not an abuse of discretion to hold as such.

V. The trial court properly considered Mr. Lowry's affidavit, and it was not error for the trial court to consider same.

Concerning the trial court's consideration of the Lowry Affidavit, the same was not in error.

It is undisputed the Motion for Contempt was filed on November 3, 2023, that John's Affidavit was filed on January 5, 5024, and that Mr. Lowry's Affidavit was filed the same day after John's Affidavit. (R. pp. 555-558 ; R. pp. 867-870; and R. pp. 871-875,). It is also undisputed that Rule 6(d), SCRCP provides, "When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served no later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences." Rule 6(d), SCRCP. It is also clear that, "The admission of evidence is within the sound discretion of the trial judgment, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal." Campbell v. Jordan,

382 S.C. 445, 452-53, 675 S.E. 2d 801, 805 (Ct. App. 2009). Further, South Carolina law is clear "Issue preservation rules are designed to give the [circuit] court a fair opportunity to rule on the issues, and thus provide the [appellate c]ourt with a platform for meaningful appellate review." Wilder v. Wilke Corp, 330 S.C. 71, 497 S.E. 2d 732 (1998). "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the [circuit] judge." Id.

The issue of whether the trial court's consideration of Mr. Lowry's Affidavit was proper does not appear to have been specifically ruled upon by the trial court, and, as a result, it is not preserved for appellate review. (R. pp. 66-78; R. pp. 83-85). Also, while Mr. Lowry's Affidavit supports the finding of contempt and/or sanctions, this does not mean it needed to be filed with the Motion for Contempt since it provides context and serves as a reply to John's recitation of the events of his and Mr. Lowry's encounter as well as Mr. Lowry's qualifications and abilities in light of John's claims of bias and partiality. (R. pp. 871-875). For the trial court to have ruled otherwise and/or for this Court to find an abuse of discretion would result in a portion of Rule 6(d), SCRCP to be without meaning. Additionally, there is no evidence Mr. Lowry's Affidavit was not filed in response to John's Affidavit.

As a result, the issue of the trial court's consideration of Mr. Lowry's Affidavit was not preserved for appellate review, and, even if it was, its consideration by the trial court was not an abuse of discretion.

CONCLUSION

For the foregoing reasons, the Order for Contempt filed February 2, 2024, Form 4 Order filed March 28, 2024, and Form 4 Order entered May 6, 2024 should be affirmed.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY

Appellate Case No. 2024-000947
Lower Case No. 2021-CP-10-04257

Vicki Lynn Vergeldt, individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27,1978..... Respondent,

v.

John Edward Vergeldt and Teresa Shaw-Vergeldt, Defendants of whom John Edward Vergeldt is the .....Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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PROOF OF SERVICE

I, Tracy Slice Moore, an employee with the firm of Harrell, Martin & Peace, P.A., do hereby certify, that on December 11, 2024, I served a copy of the Final Brief of Respondent of Respondent Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust Dated September 27, 1978 in the above captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

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Tracy Slice Moore, Paralegal

December 11, 2024