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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2022-1146 and 2024-0600
Case No. 2021-CP-10-5478

J. K. Holmes,

Respondent,

v.

C.E. Holmes,

Appellant.

MOTION FOR RECONSIDERATION AND MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED, RULE 240(j), SCACR, *DE NOVO* APPEAL OF DISMISSAL WITHOUT FACTUAL SUPPORT OR RECORD ON APPEAL BY AN INDIVIDUAL, AND MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED, RULE 221, SCACR, PETITION FOR REHEARING *EN BANC*, AND MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

Without being disagreeable, the September 10, 2024, opinion is reversible due to conflict with Chief Judge Bruce Williams' law of the case in this very matter, copy attached. The plain language of Chief Judge Bruce Williams' opinion provides for the appeal herein after the lower court denial of Rule 59(e), SCRCP, motion, including appeal of the June 9, 2022, lower court order, deprivation of the substantial right of a mode of trial, and deprivation of the substantial right of a jury trial in a land title dispute. The following statute and South Carolina Constitutional protections, privileges, and immunities are pertinent:

Art. 1, § 23. Provisions of Constitution mandatory.
The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.
The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and *to petition the government or any department, including the judicial department for a redress of grievances.* (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.
The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.
No bill of attainder, ex post facto law, *no law impairing the obligation of contracts, including family court contracts incorporated in the Decree of Divorce attached*, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.
The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

Art. V, § 8. Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.
The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Court of Appeals as precedents. (1985 Act No. 9.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding.
The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972
(57) 3176; 1973 (58) 161; 1985 Act No. 9.)

S.C. Code § 14-8-220.

By statute, the Legislative intent and letter and spirit of the law require at least three judges to constitute a quorum of the Court of Appeals for *de novo* interpretation of the law and disposition of appeals. S.C. Code § 14-8-80.

Accordingly, reconsideration is respectfully requested.

INTRODUCTION

The Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in *2024*, what did we do to make sure we kept our democracy intact?" Emphasis supplied. Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of steadfast bravery and unremitting courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our state and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government.

Both state and Federal Constitutions were deliberately crafted to foreclose those abuses here. The framers did not need computers, tablets, or cell phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review.

In the instant case, appellant timely reserves, preserves, does not waive, and expressly requests fundamental fairness and substantial rights including but not limited to, meaningful opportunity to be heard at a meaningful time and full, fair, and meaningful review. There are examples of unrepresented parties and/or traditional filers subjected to a separate second-class system of so-called justice, where the South Carolina Rules of Court are gleefully and cavalierly used as a trap for the unwary. Significantly and materially, there is an abundant body of law decisively declaring separate is never equal. Systemic institutional biases are acknowledged, including but not limited to, prejudice and

unequal treatment with favoritism under Alex Murdaugh's rules of law where the so-called officer of the court enticed judges to authorize his wrongdoing. Unequal treatment and the like threaten our democracy and feed the appearance of the proverbial "rigged" system. This issue is of exceptional importance as it is capable of repetition, capable of evading judicial review, and incapable of adequate remedy on appeal. The following inscription is found at the Four Corners of Law in Charleston, SC: Where the rule of law ends, tyranny begins. The Judge J. Waties Waring Judicial Center is named for the renowned crafter of divine dissents lying in repose in Charleston, who must be turning over in his grave at the historically persistent lawlessness of the Four Corners of Law. As set forth more fully below, it is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, computers, and extraordinary and unprecedented public health and affiliated economic emergencies ongoing and still unfolding.

DISCUSSION

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. As set forth more fully below, based on the law of the case, and without being disagreeable, objection to the September 10, 2024, opinion without factual support or record by a single individual is respectfully submitted. In the alternative, consideration of dismissal should be deferred until final briefs and the ROA are filed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

I. Law of the case.

The September 10, 2024, opinion is reversible as a matter of law as an unauthorized revision or modification to "change, alter or reverse a decision of a brother judge." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880). The record reflects Chief Judge Bruce Williams' opinion, copy attached, authorizes this appeal, including appellant's appeal of the June 9, 2022, lower court order, after the denial of Rule 59(e), SCRCP, motion. Further, Chief Judge Bruce Williams' opinion herein cites and relies on binding precedent in the *Williford* case which supports the undersigned's appeal of deprivation of the substantial right to trial by jury which MUST be immediately appealed. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975). Pursuant to Rule 266, SCACR, and Rule 43(l), SCRCP, the Rules of Court provide, "If any motion be made to any judge and

be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." "This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule (*now Rule 43(l), SCRCP*) of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it shall be revoked'...(A) judgment... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one *Court of Appeals* judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One *Court of Appeals* judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis supplied); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). *See Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). "It was in substance really, an appeal from the judgment of one judge to that of another." *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). "It is apparent that the *September 10, 2024*, order, bearing *a later date*, is in conflict with the previous ruling of *Chief Judge Bruce Williams*, which order of *September 10, 2024*, will have to be reversed since one *Court of Appeals Judge* has no power to review, revise or reverse the action of another *Court of Appeals Judge*." *Steele v. Charlotte C. & A. R. Co.*, 14 S.C. 324 (S.C. 1880) (emphasis supplied); *Warren, Wallace & Co. v. Simon*, 16 S.C. 362; *Charles v. Jacobs*, 18 S.C. 598; *State v. Price*, 35 S.C. 273, 14 S.E. 490. The conflicting September 10, 2024, order, bearing a later date than Chief Judge Bruce Williams' law of the case, copy attached, is reversible as a matter of law. Accordingly, reconsideration is respectfully requested.

The impermissible ex parte September 10, 2024, opinion apparently relies on Chief Justice Toal's Second Edition of *Appellate Practice in South Carolina* which is now updated in the 3rd Edition with binding precedent which controls under the facts herein. Toal *et al.*, *Appellate Practice in South Carolina*, 2d Ed. (2002), p. 94. Due to lack of compliance with the SCACR's fundamental prerequisite of ROA and/or adequate factual support for meaningful review, the ex parte dismissal overlooks, misapprehends, and/or is badly misinformed in this case which is not a mortgage foreclosure. There is no mortgage in this case and no mortgage foreclosure. Without full, fair, and meaningful ROA, there can be no full, fair, and meaningful review which is respectfully requested. The appellant is prejudiced thereby. Referral can also be entered on consent, however, the record reflects timely notice of lack of consent to referral in this case as well as timely Rule 38, SCRCP, notice of jury demand on counterclaims and transfer to the jury docket. Rule 39, SCRCP. Chief Judge Bruce Williams' opinion, copy attached, is the law of the case: Chief Judge Bruce Williams' opinion cites the *Williford* case which supports the undersigned's appeal herein of deprivation of the substantial right to trial by jury which must be immediately appealed and which is preserved inviolate. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975). Likewise, binding precedent in the *Creed* case ruled that deprivation of the party's right to trial by jury in a land title dispute, as in this case, must be immediately appealed. *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (finding an order of referral should have been immediately appealed where the party had a right to a jury trial because the litigation concerned a land title dispute); *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978); Toal *et al.*, *Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157.

Former Chief Justice Toal's Third Edition provides updated controlling precedent. Toal *et al.*, *Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157. At issue is denial of the appellant's substantial right to trial by jury in a law case. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E. 2d 81 (2008). "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial."

Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 533 S.E.2d 331 (2000). Without ROA or factual support in the record, there can be no full, fair, and meaningful determination herein which "will always be necessary on the part of the appellate court." *Id.* "These cases not only permit, but indeed **require, immediate appeal**." *Id.*(emphasis supplied). The ex parte dismissal overlooks or misapprehends the fact that this case is not a mortgage foreclosure and should be reversed.

The September 10, 2024, ex parte dismissal is unsupported, it contains no citations to binding precedent, there is no ROA or supporting factual basis in the record, there is inadequate explanation for meaningful review, and it is unsupportable. Rule 220, SCACR. Pursuant to the SCACR, dismissal is not properly before the court: The ex parte dismissal is entered without notice or due process by a single individual "justice or judge" with no supporting factual basis, with no ROA (record on appeal), with no citations to supporting authority or binding precedent, in violation of the SCACR including Rule 220, SCACR, and in reliance on unreliable hearsay. Rules 220 and 240, SCACR. Hearsay is reversible error. Due process requires including but not limited to, notice and meaningful opportunity to be heard at a meaningful time before dismissal. Further, State and Federal case law, statutory and Constitutional laws provide each citizen with guarantees, protections, and rights which have been denied. At a minimum, briefing prior to dispositional decision is required and the ex parte dismissal is reversible error. Further, in the *Navistar* case, the Fourth Circuit ruled that reconsideration is no substitute for pre-decision opportunity to respond. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). The appellant is prejudiced thereby. But for denial of substantial rights including due process and fundamental fairness, the outcome should and would be in the undersigned's favor. Accordingly, reconsideration is respectfully requested. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657

S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

II. Threshold matter.

As a threshold matter, a citizen has the self-evident right to full and fair notice from the clerk of the COA which complies with the SCACR including Rule 262, SCACR. The clerk's failure to comply with the most basic principle of due process, that is, required notice, with the usual and customary notice requirements including Rule 262, SCACR, prejudices the parties and the undersigned is prejudiced thereby. The record reflects there is no counsel of record for the undersigned. The record reflects the appellant is self-represented. Specifically, self-represented parties are not allowed to file electronically. Under Rule 262, SCACR, a self-represented party may ask the clerk to provide notice electronically. Rule 262, SCACR. The record reflects no such request and if it did, that request is falsified. In fact, no such request has been made. This office has no access to the internet. The record reflects the clerk ignores or rebuffs timely requests for compliance with Rule 262, SCACR. In reliance on the Rules of Court including Rule 262, SCACR, the party's appeal and the party are prejudiced by the clerk's failure to comply with the SCACR including required notice. The clerk's failure to comply with basic due process, including the usual and customary notice requirements, is a recipe for improper procedural default, unequal treatment, discrimination against a member of a protected class which is against public policy, bad faith dismissals and/or the ministerial clerk's multiple overreaching attempts

to dismiss meritorious appeals. To the extent there is ambiguity, the rule of lenity supports the appellant's position. The clerk's unauthorized notice is ineffective under the Rules of Court and the SCACR. Accordingly, the appellant respectfully requests this Honorable Court issue its order for compliance with SCACR's usual and customary notice requirements and contact information as required by Rule 262, SCACR. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects againsts "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

III. S.C. Code § 14-8-80 requires a panel of at least three for interpretation of the law and disposition of appeals including the appeal herein.

Significantly and materially, the September 10, 2024, ex parte dismissal is a violation of Legislative intent as well as the letter and spirit of the statutes, S.C. Code § 14-8-80 and S.C. Code § 14-8-220. The Legislature determined that a panel of judges, not a single individual judge, should interpret the law and decide appeals. By statute, three judges are required to constitute a quorum of the Court of Appeals to interpret the law and decide appeals. S.C. Code § 14-8-80. The Legislature enacted the statutory requirement that more than one single individual decide appeals in order to protect the public as well as the Court but also to protect individual judges. Accordingly, reconsideration is respectfully requested.

Further, the ex parte dismissal with no factual support in the record violates statutory authority and the SCACR. Rule 220, SCACR; S.C. Code § 14-8-80. By statute, three judges are required to constitute a quorum of the Court of Appeals in order to decide appeals. S.C. Code § 14-8-80. In fact, the Supreme Court reversed the decision of the Court of Appeals which was heard with only two of the three panel judges present. *State v. McMillan*, 349 S.C. 17, 561 S.E.2d 602 (2002). By analogy, Rule 265(c), SCACR, provides that the appellate court may not on its own order substitution of parties except for death or incompetency: "(F)or any reason other than death or incompetency, substitution SHALL be by motion." Rule 265(c), SCACR. "Substitution for any other reason must be by motion to the appellate court. Rule 265(c), SCACR." Toal *et al.*, *Appellate Practice in South Carolina* (2016), Third Ed., p. 377. Under the facts and pursuant to Rule 265(c), SCACR, "the appellate court may not on its own order substitution of parties" and, by inference, may not on its own order sua sponte ex parte dismissal. Further, Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law, it is an error-correcting, not law-giving court, and the decisions of the Supreme Court bind the Court of Appeals as precedents. S.C. Const. art. V, sec. 9. It is respectfully submitted that under these facts and pursuant to binding precedent, the SCACR, and/or S.C. Code § 14-8-80, the lower appellate court "may not on its own order substitution of parties" and may not on its own order sua sponte ex parte dismissal without reasonable factual support in the record or ROA (record on appeal). Chief Judge Bruce Williams' opinion, copy attached, provides, "Referral of a case to the master-in-equity is not immediately appealable unless the appellant is deprived of a mode of trial." The appellant herein is deprived of a mode of trial. As such, Chief Judge Bruce Williams' opinion which is the law of the case ruled the order is appealable. "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). The record reflects there is no motion by the other party, there is no notice,

and there is no due process. With no factual support or record, the ex parte dismissal is unlawful, internally inconsistent, in violation of this Honorable Court's own SCACR and statutory authority, and/or in violation of this Honorable Court's own law of the case, Chief Judge Bruce Williams' prior opinion, copy attached. At a minimum, briefing prior to dispositional decision is required and the ex parte dismissal is reversible error.

By analogy, Rule 241, SCACR, provides:

An *ex parte* order shall issue **only if**:

(A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and (B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. Rule 241(d)(6), SCACR (emphasis supplied).

The record reflects there is inadequate factual support for the September 10, 2024, ex parte opinion and no affidavits or verified petition claims immediate and irreparable injury, loss or damage will result before the opposing party can respond. Moreover, the record reflects there is no required notice and no meaningful opportunity for the adversely affected party to respond at a meaningful time before dismissal. Significantly and materially, the record reflects there is no moving party, no motion, and there is no assertion of exigent or other circumstances to support a claim that notice should not be required. Accordingly, reconsideration is respectfully requested.

IV. Under the facts, the South Carolina Constitution and/or statutory authority provide litigants a right to a South Carolina Constitutional Judicial Officer with constitutional protections a MOE (master of equity)/referee lack.

Article V, § after the lower court denial of Rule 59(e), SCRCP, motion and 16 of the South Carolina Constitution (*supra*) provide that Circuit Court Judges and the Judges of the Court of Appeals

(COA) shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. By analogy, the U.S. Constitution provides similar protections for Article III Judicial Officers:

These protections are designed to ensure the independence and impartiality of the judicial officers authorized to decide the merits of a litigant's case. The Supreme Court has held that litigants in federal court have a personal right, conferred by Article III, to insist upon adjudication of their claims by a judge who enjoys the salary and tenure *protections afforded by Article III. Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986) ; *see Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.* , 725 F.2d 537, 542 (9th Cir. 1984) (en banc). *Roell v. Withrow*, 538 U.S. 580, 590, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003)....

Barring unusual circumstances, the named plaintiffs will have as strong an interest as the absent class members in having their claims adjudicated by an independent and impartial decisionmaker. *Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071, 1078 (9th Cir. 2017) (emphasis supplied).

The protections found in Article V, §§ 13 and 16 of the South Carolina Constitution apply to South Carolina Constitutional Judicial Officers who are nominated, vetted, and voted by the Legislature to interpret the law and decide appeals. Protections which a MOE (master of equity), who is a county employee, or a referee lack and who are not nominated, vetted, and voted by the Legislature to interpret the law. It is respectfully submitted that under the facts, referral without consent is a violation of State Constitutional, statutory, and case law and reversible error. The appellant is prejudiced thereby. Matters of great public importance have been overlooked or misapprehended. Accordingly, reconsideration is respectfully requested. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects againsts "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const.,

Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

V. The Decree, attached, reserves and preserves jurisdiction in the Family Court.

Legal title is not dispositive and title to real property is disputed herein. The parties are owners of an undivided equitable interest with the plain language of the Decree, copy attached, reserving and preserving jurisdiction in the Family Court. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). **The Family Court has exclusive original jurisdiction** over domestic matters, children of the marriage, and marital property as in this case. See S.C. Code § § 63-3-510 to 530 and 20–3–620. Specifically, Article V, Section 11 of the South Carolina Constituion provides Jurisdiction of the Circuit Court as follows:

> The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, **except those cases in which exclusive jurisdiction shall be given to inferior courts (such as the Family Court in this case)**, and shall have such appellate jurisdiction as provided by law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) Article V, Section 11 of the South Carolina Constituion (emphasis supplied).

Pursuant to S.C. Code § § 63-3-510 to 530, the Family Court has **exclusive original jurisdiction** over the domestic matters and marital property herein. Similarly, the domestic matters herein are subject to confidentiality and privacy requirements and rights in the Family Court, which are hereby requested. In the alternative, the undersigned requests case number 2021-CP-10-5478 be sealed. By analogy, the Fourth Circuit case of *Roberge* provides insight. In re *Roberge*, 188 B.R. 366 (E.D. Va. 1995) (unpublished). Footnote 5 of that case provides that the "opinion (*of the lower court*) makes frequent

mention of the fact that prior to the equitable distribution suit, each of the parties held a one-half undivided interest as tenants in common. *See In re Roberge*, 181 B.R. at 857. **It cites no support for, and this Court has found no applicable law in support of, the proposition that if a tenancy by the entireties is converted to a tenancy in common, the parties are presumed to have equal undivided shares.**" In re *Roberge*, 188 B.R. 366 (E.D. Va. 1995) (emphasis supplied). Likewise, there is no South Carolina law supporting that proposition in this at-fault divorce. Legal title is not dispositive. Moreover, the *Roberge* case confirms public policy which provides protection for families, confidentiality and privacy rights in the Family Court, and preservation of the family home. In re *Roberge*, 188 B.R. 366, 370-71 (E.D.Va.1995), aff'd, 95 F.3d 42 (4th Cir. 1996). Overall, the Fourth Circuit ruled that the proper forum is the Family Court as previously determined under the facts on adequate record in Federal Court in Charleston which is issue preclusion/res judicata/collateral estoppel. Accordingly, for substantial justice affecting substantial rights including clear title for prospective third parties, the Family Court has exclusive original jurisdiction herein which is hereby requested. S.C. Code § § 63-3-510 to 530 and 20–3–620.

VI. The attached Family Court Decree of Divorce incorporates the Family Court Contract.

Denying a citizen access to the family court with family court privacy and confidentiality rights and denying a citizen access to the family court to resolve family court matters and equitable distribution which the Decree unambiguously reserves and preserves according to law in effect at that time cannot pass constitutional muster. The Family Court Decree of Divorce, copy attached, unambiguously incorporates the Family Court Contract which untrustworthy Family Court attorney defendant entered into and agreed to on the record, which agreement is incorporated in the attached Decree by the Family Court Judge, which the Family Court attorney defendant did not appeal, and

which Family Court Contract is now the law of the case. The family court has exclusive original jurisdiction over the Family Court Contract herein and domestic matters pursuant to S.C. Code § § 63-3-510 to 530, including but not limited to, the family home. Another action is pending in the Family Court between the same parties for the same claim. Jurisdiction can be raised at any time. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley,* 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier,* 279 S.C. 348, 306 S.E.2d 624 (1983). Pursuant to the South Carolina Constitution Art. 1, § 4, and generally, there can be no impairment of the obligation of contracts, including the Family Court Contract incorporated in the attached Decree of Divorce and duly approved by the Family Court. Accordingly, reconsideration is respectfully requested.

VII. Pursuant to Rule 12(b)(8) motion to dismiss herein, another action is pending between the same parties for the same claim.

This matter involves the Decree of Divorce, copy attached, after 30 years and three children of the marriage, to which Family Court attorney defendant, with decades of experience, agreed on the record, into which that agreement was incorporated, from which defendant never appealed, and which is now the law of the case. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..." Wazney v. Wazney (S.C. App. 2019). The plain language of the Decree in the family court matter reserves and preserves jurisdiction and is subject to family court confidentiality and privacy which is hereby requested. The family court has exclusive original jurisdiction over domestic matters pursuant to S.C. Code § § 63-3-510 to 530, including but not limited to, the family home herein. Another action is pending in the Family Court between the same parties for the same claim. Jurisdiction can be raised

at any time. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). In addition, the State of South Carolina requires citizens to apply for marriage licenses, it oversees the domestic relations matters herein, and the request for hearing is timely filed in the family court according to law, including but not limited to, Covid Administrative Order No. 2021-11-8-02. Denying a citizen access to the family court with family court privacy and confidentiality rights and denying a citizen access to the family court to resolve family court matters and equitable distribution which the Decree unambiguously reserves and preserves according to law in effect at that time cannot pass constitutional muster. The unequal treatment is a violation of the Fourteenth Amendment, denial of equal protection of the laws, denial of substantial rights, denial of First Amendment rights including access to the courts, and/or discrimination against a member of a protected class. To the extent the wrongdoing, including denial of substantial rights and civil rights, constitutes violations of the First Amendment and/or discrimination against a member of a protected class, that wrongdoing is against public policy. The plain language of the attached Decree unambiguously reserves and preserves family court jurisdiction regarding marital property herein. No one would pretend that the family court did not reserve and preserve jurisdiction of matters involving the minor children just as it did for the marital property herein. In addition, the jurisdictional issue affects ability to transfer clear title, adversely impacts the marketplace, and/or adversely impacts prospective third parties. The Legislature intended to and did enact Legislation to foreclose family court deadbeat defendants, including Family Court attorneys who are defendants, from filing in droves in the circuit court to evade jurisdiction of the family court. The September 10, 2024, opinion is completely devoid of any purported legal basis, authority, or citations. That September 10, 2024, opinion falls short of the requisites under Rule 220, SCACR, and falls short of the substantial right of

adequate explanation for meaningful appellate review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4th Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). As such, adequate explanation for meaningful review is respectfully requested. Accordingly, the appellant respectfully requests reconsideration with abeyance and if denied, requests Rules 240(j), SCACR, *de novo* appeal, and 221, SCACR, petition for rehearing with abeyance pending resolution of the September 10, 2024, ex parte dismissal by a single individual based on error of material fact and law as well as impermissible revision/reversal of Chief Judge Bruce Williams' prior opinion which is the law of the case (copy attached).

VIII. Rule 240(j), SCACR, *de novo* appeal.

Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal herein, which is different than the standard of review for Rule 221, SCACR, rehearing. Ambiguity regarding the proper legal standard pursuant to Rule 240(j), SCACR, appeal is a denial of substantial rights, including but not limited to, due process. Rule 240(j), SCACR, appeal is a S.C. Code § 14-8-220 appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. To the extent there is ambiguity, the rule of lenity supports appellant's position. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Rule 27(c), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233;

Stratton v. St. Louis Southwestern Railway Co., 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Accordingly, the legal standard of review under these facts for Rule 240(j), SCACR, appeal is *de novo*.

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, appeal herein is *de novo* review which does not include the individual judge who signed the September 10, 2024, order that is the subject of the Rule 240(j), SCACR, appeal. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not directly or indirectly participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an order that he or she authored. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). Appellant reasonably questions impartiality regarding the September 10, 2024, impermissible ex parte dispositional decision. In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and

appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but **a reasonable person has a reasonable basis to question the impartiality** of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* At 1117 (emphasis supplied). The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Ríce v. McKenzíe,* 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane,* 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the Rule 240(j), SCACR, appeal of his own decision. *Ríce v. McKenzíe,* 581 F.2d 1114, 1117 (4th Cir. 1978). Moreover, in consideration of Legislative intent and the overarching principles incorporated in the State and Federal Constitutions by the framers, due process requires that the appellate court judge who individually signed the ex parte dismissal order not participate, directly or indirectly, on appeal of his own decision which is the subject of the Rule 240(j), SCACR, *de novo* appeal. Ambiguity regarding the requirement of non-participation on Rule 240(j), SCACR, appeal is a denial of due process. To the extent there is ambiguity, the rule of lenity supports appellant's position. Accordingly, Rule 240(j), SCACR, *de novo* appeal and due process require non-participation by the individual judge who signed the sua sponte ex parte dismissal.

IX. Under the facts, the September 10, 2024, prejudicial denial of procedural and/or substantive due process is reversible error.

By way of introduction, the appellant timely motions for reconsideration of the September 10, 2024, opinion in violation of the SCACR, including but not limited to, Rule 220, SCACR: Specifically, a single individual "justice or judge" overlooks meritorious appeal timely served and filed. There is no notice, no opportunity to respond, no factual basis, no citations to authority of any kind, and ex parte dismissal is based on unreliable hearsay falsely claiming referral is not immediately appealable. In fact, the law of the case provides for appeal herein and binding precedent requires immediate appeal in this case where the undersigned is deprived of a mode of trial and/or where there is disputed title to land as in this case. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). Hearsay is reversible error. On the other hand, there is an abundant body of law mandating due process including but not limited to, meaningful opportunity to respond at a meaningful time, meaningful judicial review at a meaningful time, and facilitation of appeals with even-handedness, transparency, and fundamental fairness.

Further, in violation of the SCACR Rules, dismissal is not properly before the court: The SCACR Rules do not allow ex parte dismissal based on issues that have not been raised by the parties. The SCACR do not allow judges to act as counsel of record for untrustworthy Family Court attorney defendants, undercutting appearance of a disinterested court. The SCACR do not allow ex parte dismissal based on hearsay, impermissible direct or indirect ex parte contact, and/or pure speculation with no ROA regarding questions that have yet to be presented. There is no factual basis, much less ROA, in support of the ex parte dismissal. Nor is there compliance with the requirements of Rule 220(b), SCACR, which states in pertinent part, "In every decision rendered by the Court of Appeals, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR. In addition, the SCACR do

not allow ex parte dismissal of appeal of denial of a mode of trial to which the party is entitled on counterclaims herein which MUST be immediately appealed. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). Without factual support, the order is reversible abuse of discretion.

Further, the September 10, 2024, opinion falls short of the requisites under Rule 220, SCACR, and falls short of the substantial right of adequate explanation for meaningful appellate review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4th Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). As such, adequate explanation for meaningful review is respectfully requested.

Moreover, the September 10, 2024, impermissible ex parte dispositional decision by a single individual is reversible based on denial of due process and fundamental fairness. The American judicial system is an adversary system, not based on inquisitors: In order to ensure the integrity of the judicial system, the norms of that adversarial system prohibit ex parte communications and outside factual research which undercut appearance of a disinterested court. In both civil and criminal cases, in the first instance and on appeal, the principle of party presentation is followed: The parties frame the issues for decision and the courts have the role of **neutral arbiter** of matters the parties present. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (emphasis supplied). In this case, the record reflects the author of the impermissible ex parte dismissal functions as the untrustworthy Family Court attorney defendant's advocate and counsel, not as a neutral arbiter, undercutting appearance of a disinterested court. As such, the record reflects the impermissible ex parte dismissal is reversible abuse of discretion. Alex Murdaugh's and untrustworthy Family Court attorney defendant's "rules don't apply to me" standard-operating-procedure (SOP) is used to entice judges to rubber-stamp that attorney's misconduct. Similarly, untrustworthy Family Court attorney defendant herein entices sua sponte wrongdoing with impermissible direct or indirect ex parte contact in order to evade the merits

thereby denying the other party due process including notice at a meaningful time and opportunity to be heard at a meaningful time before the predetermined outcome herein of unauthorized ex parte dismissal.

The appellant is prejudiced by the September 10, 2024, denial of procedural and/or substantive due process. But for the prejudicial denial of procedural and/or substantive due process, the outcome should and would be in the undersigned's favor. Sua sponte ex parte dispositional decision by a single individual requires, at a minimum, briefing prior to dispositional decision. Accordingly, reconsideration is respectfully requested.

X. Prejudicial lack of due process in the lower court.

Further, denial of substantial rights and impermissible irregularities in the lower court are appealed. As just one example of the misrepresentations and/or irregularities in the lower court, the June 9, 2022, order on appeal states it was heard on April 20, 2022, however, there was no required notice of that hearing to the adversely affected party, the undersigned, and no recording of that hearing for transcription can be located. Pursuant to Rule 207, SCACR, appellant timely made multiple requests for the transcript from SCCA, however, there was no response from SCCA. On or about October 17, 2022, appellant timely made another request for transcript, again without response from SCCA. Only after filing a motion and paying $50.00 filing fees did the SCCA respond stating SCCA is unable to locate a recording of this hearing though recordings for all other hearings in other cases that day were found. Neither the lower court nor the adversely affected party, the undersigned, received required notice of the impermissible ex parte lower court hearing. In addition, the record reflects unequal treatment regarding request for transcript. Despite three or more timely requests for transcript by the appellant, there was no response.

Moreover, reconstruction of the record below is required for due process and substantial rights including adequate record for meaningful review. *See Clements v. Young*, 310 S.C. 73, 425 S.E.2d 63 (Ct. App. 1992) (appellant moved for reconstruction of the record on remand to the lower court where the hearing was unrecorded); Toal *et al., Appellate Practice in South Carolina*, 2nd Ed. (2002), p. 265. Motion for reconstruction of the record is respectfully requested where, without explanation, the SCCA's recording for transcripts has a critical gap in the recording for this hearing despite finding recordings for essentially all other hearings on that day, one of many unexplained irregularities in this matter and time is of the essence. That lower court hearing was held ex parte without the required notice to the adversely affected party, who on appeal is told that the South Carolina judicial system has a critical gap in the recording of that hearing which cannot be located and which cannot be transcribed. Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. Intervening binding precedent, in the *Price* case, *infra*, provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. "Section 14-5-10 of the South Carolina Code (2017) provides, 'The circuit courts herein established shall be courts of record . . . .' The circuit court's hearing ... must be recorded." *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) ("(F)ailure even to have a transcript filed ... was reversible error."). Further, the Fourth Circuit case of *Navistar* ruled that a lower court hearing after-the-fact is no substitute for a pre-decision hearing. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). Overall, the lack of audio for transcription renders the lower court June 9, 2022, order void/voidable. South Carolina Supreme Court Administrative Orders dated 4.22.20, 12.16.20, 3.4.21, and 8.27.21, provide, "The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date" and requires a recording for transcript of any hearing. Accordingly, reconsideration is respectfully requested.

At the same time, with lack of transparency and while being hidden from the undersigned, the untrustworthy Family Court attorney defendant failed to copy the undersigned on his transcript request which received immediate response while the adversely affected party's requests were ignored. The appellant had to file a motion and pay a filing fee just to get a response. Curiously, that response was delayed until after dismissal. The record reflects direct or indirect impermissible ex parte contacts to evade the merits by untrustworthy Family Court attorney defendant without filing the required motion to dismiss, without paying the filing fees required of other attorneys, and without due process including required notice, meaningful opportunity to be heard at a meaningful time, full, fair, adequate, and meaningful record for appeal, and full, fair, and meaningful judicial review. The Fourth Circuit ruled that overreaching attempts to dismiss and/or deny full and fair consideration on the merits are reversible as a matter of law. *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 188 (4th Cir. 2013); *see Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995) (same).

In contrast, the attached copy of SCCA's response to the untrustworthy Family Court attorney defendant shows SCCA'a immediate response when he requested the transcript without timely copying the other side. The appellant respectfully submits motion for reconstruction of the lower court record of the hearing on April 20, 2022. The record reflects unequal treatment and irregularities in this matter which are material to review. Appellant is prejudiced thereby. Decades-long untrustworthy Family Court attorney defendant, so-called officer of the court, has unclean hands. In fact, after the lower court provided us with a copy of the untrustworthy Family Court attorney defendant's impermissible direct or indirect ex parte contact, Judge Roger Young had to recuse. Documentation available on request. Accordingly, reconsideration is respectfully requested.

In addition, pursuant to Rule 203, SCACR, and the then pending Rule 59(e), SCRCP, motion noted in Chief Judge Bruce Williams earlier opinion, copy attached, there is no jurisdiction for the July 14, 2022, entry of judgment. Rule 59(e), SCRCP ("the trial judge shall retain jurisdiction"). Unlawfully entering a judgment while timely post-trial motions are pending as in this case is

appealable including because there is no jurisdiction for such unauthorized entry and because appellant is denied substantial rights herein including but not limited to, mode of trial as well as substantial rights akin to mode of trial which must be appealed immediately. Jurisdiction and/or statutory authorization for the unauthorized July 14, 2022, entry herein is challenged and jurisdiction can be raised at any time. It is unclear how untrustworthy Family Court attorney defendant obtained judgment in the absence of a final order. In any case, it is reversible as a matter of law. Further, the record reflects timely Rule 38, SCRCP, Jury Trial of Right Notice with transfer to the jury trial roster. Rule 39, SCRCP, Trial By Jury. Accordingly, reconsideration is respectfully requested. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). See also Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts;* 69 TENN. L. REV. 245, 251 n.16 (2002).

The record reflects the proverbial decades-long untrustworthy Family Court attorney defendant engaged in direct or indirect impermissible ex parte contacts with the court and the SCCA while breaching professional responsibilities, including but not limited to, copying the other side. The untrustworthy Family Court attorney defendant is hereby requested to timely copy the undersigned on all contacts herein whether electronic, written, text, oral, or other and to expeditiously forward those copies to the undersigned from the date the case was filed, up to and including the present, and going forward.

To the extent the ex parte dismissal out of nowhere by an "individual judge or justice" is caused or influenced by the other side's impermissible direct or indirect ex parte contact, that contact is unauthorized. The record reflects the ex parte dismissal is based on unreliable hearsay. The case of

Burgess v. Stern, infra, provides that orders rendered after impermissible direct or indirect ex parte contacts are void/voidable:

"South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. *Id. Aiken County v. BSP Div. Of Envirotech Corp.*, 866 F.2d 661, (4th Cir.1989), evinces the Fourth Circuit Court of Appeals' disapproval of ex parte contacts of this type.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: 'A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter.' While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In re: Wisconsin Steel,* 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [311 S.C. 331] is not against "prejudicial" ex parte communications, but against ex parte communications. *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985)."

Burgess v. Stern, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

As a matter of public policy, ex parte contacts are prohibited and undermine the integrity of the judicial process. Former Justice Sandra Day O'Connor warned the public about the need for independent judges. Former Justice Sandra Day O'Connor wrote "... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." Judicial Independence and 21st Century Challenges, Sandra Day O'Connor, The Bencher, July/August 2012. As she explained, "[t]he reason why judicial independence is so important is because there has to be a safe place where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences." *Id.* (emphasis supplied). Public policy, legislative intent, statutory authority, State and Federal case law, State and Federal Rules of Civil Procedure, State and Federal Constitutional law, and fundamental fairness prohibit direct or indirect impermissible ex parte contacts.

The unauthorized ex parte dismissal misapprehends and/or overlooks material fact and law. Appellant respectfully objects. This matter is of great public importance. This matter involves the attached copy of the Decree of Divorce which untrustworthy Family Court attorney defendant did not appeal and which is now the law of the case. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..." Wazney v. Wazney (S.C. App. 2019). The family court has exclusive original jurisdiction over the domestic matters herein pursuant to S.C. Code § § 63-3-510 to 530. This matter is currently pending in the Family Court subject to confidentiality and privacy which is hereby requested. It is undisputed that the family court can order child support to continue beyond eighteen years. *SCDSS Child Support v. Mangle*, 633 S.E.2d 903 (S.C. App. 2006). See S.C. Code § 20-7-420(A)(17). Defendant's current tax returns confirm support payments made by him pursuant to written agreement and subject to S.C. Code § § 63-3-510 to 530. Legislative intent, exclusive original jurisdiction pursuant to S.C. Code § § 63-3-510 to 530, and the plain language of the Decree (copy attached) all provide exclusive jurisdiction over marital property in the Family Court, including but not limited to, the family home. The undersigned timely filed in Family Court for requested relief pursuant to the Decree. Family Court Attorney Defendant responded with ambush litigation and tactics. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). To the extent there is ambiguity, the rule of lenity supports the undersigned's position. Accordingly, the September 10, 2024, order is reversible as a matter of law based on error of material fact and law.

In addition, the lower court orders are reversible based on inadequate explanation for meaningful appellate review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4th Cir. 2020)

(remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). Accordingly, reconsideration is respectfully requested. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XI. The trial court stay pending resolution of jurisdiction and/or substantial rights should be sustained.

In sum, the jurisdictional question herein is material and the previous stay pending appeal of jurisdictional questions and substantial rights should be sustained: The Family Court attorney defendant's duplicative claim herein impairs the transfer of clear title to real property of the marriage which arbitrarily and capriciously reduces market value. By analogy, the Biblical story and the phrase "split the baby" has its roots in Hebrew lore in the story of two mothers claiming before King Solomon that each was the real mother of an infant son. The story from 1 Kings 3:16–28 states that two mothers living in the same house, each the mother of an infant son, came to Solomon. One of the babies had been smothered, and each claimed the remaining boy as her own. Calling for a sword, Solomon declared his judgment: The baby would be cut in two, each woman to receive half. It was the love of the mother that proved the truth of the matter asserted. If the Family Court attorney defendant's

motives were pure, he too should and would object to arbitrarily and capriciously reducing market value. Instead, he elects to conduct ambush litigation to evade the merits, to evade the jurisdiction of the Family Court, and to evade the Decree of Divorce, now the law of the case which the Family Court incorporated into the Decree and and which the Family Court attorney defendant did not appeal. Accordingly, reconsideration is respectfully requested.

CONCLUSION

For substantial justice affecting substantial rights and pursuant to the law of the case, the appellant respectfully submits motion for reconsideration, Rule 240(j), SCACR, appeal of ex parte dismissal by a single individual, and Rule 221, SCACR, petition for rehearing *en banc*. In the alternative, consideration of dismissal should be deferred until final briefs and the ROA are filed.

Respectfully submitted,

C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Ex. 1

The South Carolina Court of Appeals

James Kevin Holmes, Respondent,

v.

Cynthia Elaine Collie, Appellant.

Appellate Case No. 2022-001146

ORDER

This appeal arises out of a notice of entry of judgment entered July 14, 2022. A review of the public index reveals this case was referred to the master-in-equity on that date. Referral of a case to the master-in-equity is not immediately appealable unless the appellant is deprived of a mode of trial. *See N. Carolina Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986); *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964). To the extent the appellant is appealing from the order of Judge R. Markley Dennis, Jr. dated June 9, 2022, the public index shows a pending Rule 59(e), SCRCP motion. *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) (directing dismissal of an appeal in which a timely post-trial motion is pending and permitting a second appeal without an additional case initiation fee). Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

_____, C.J.
FOR THE COURT

Columbia, South Carolina

cc: Cynthia Holmes
Barry I. Baker, Esquire
Kyle T Varner, Esquire
The Honorable R. Markley Dennis, Jr.

FILED
Dec 09 2022

Ex. 2

FILED
JAN 30 2004
JULIE J. ARMSTRONG
CLERK, FAMILY COURT
By

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 03-DR-10-3935
CYNTHIA ELAINE HOLMES,)	
Plaintiff,)	
-vs-)	DECREE OF DIVORCE
JAMES KEVIN HOLMES,)	
Defendant.)	

Trial Judge:	F.P. Segars- Andrews
Court Reporter:	Sharon D. Jones
Plaintiff Attorney:	Cynthia Elaine Holmes, pro se
Defendant's Attorney:	J. Kevin Holmes, pro se
Date of Hearing:	January 30, 2004

Accepted (P) 1-29-04

This matter came to be heard before me at Charleston, South Carolina on January 30, 2004. Both parties were present at the hearing. Neither party was represented by legal counsel. The purpose of the hearing was to obtain divorce and preserve all other issues pending mediation or subsequent hearings on the merits.

The Court inquired of both parties whether there was any chance of a reconciliation of the marriage. Both parties responded that no reconciliation was possible.

Based upon the testimony of the Plaintiff and Cassandra Alberesius and the documentary evidence admitted into evidence without objection, the Court makes the following findings of fact:

FIRST: The Plaintiff and Defendant are residents of the County of Charleston, State of South Carolina and have been for more than one (1) year prior to the commencement

of this action.

SECOND: The Plaintiff and Defendant last resided together as husband and wife in the County of Charleston, State of South Carolina.

THIRD: The Plaintiff and Defendant were lawfully married on September 4, 1978, in the State of Georgia and of this marriage three (3) children have been born:

FOURTH: The Defendant has committed adultery.

FIFTH: There is no fraud or collusion between the parties in the bringing of this action.

Based upon the foregoing findings of fact, the Court concludes:

FIRST: This Court has jurisdiction of the parties and subject matter of this action.

SECOND: More than 90 days have elapsed since the filing of the Complaint.

THIRD: The Plaintiff is entitled to a divorce on the statutory grounds of adultery.

IT IS HEREBY ORDERED that the Plaintiff is hereby granted a divorce, *a vinculo matrimonii*, on the statutory grounds of adultery; and

IT IS HEREBY ORDERED that all other issues including, but not limited to, temporary and permanent custody, child support, alimony, and the equitable division of marital property and retirement accounts are reserved and preserved pending discovery, mediation, and further Court hearings, if necessary; and

IT IS HEREBY ORDERED that the parties may engage in discovery under the Rules of Civil Procedure including interrogatories, requests for production, requests for

admissions, depositions and subpoenas.

AND IT IS SO ORDERED.

F.P. Segars-Andrews, Presiding Judge
Family Court of the Ninth Judicial Circuit

Charleston, South Carolina

30 day of January, 2004.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.C.P., G.S. & F.C.
BY:
DEPUTY CLERK

Barry Baker

From: Transcripts <transcripts@sccourts.org>
Sent: Monday, October 24, 2022 12:02 PM
To: Barry Baker
Cc: Raines, Tiffany
Subject: James Kevin Holmes v. Cynthia Elaine Collie n/k/a Cynthia Elaine Holmes

Ex. 3

Mr. Baker:

It is with sincere regret that we must inform you that the hearing held on April 20, 2022 in Charleston County via WebEx cannot be transcribed as no audio recording can be located. Please let me know if you think this could have been heard on a different date.

Sincerely,

Court Reporter Section

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org

CHARLESTON COUNTY
SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
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CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
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Ex. 4

September 1, 2022

Cynthia Collie
Post Office Box 187
Sullivans Island, SC 29482

RE: 2021CP1005478
James Kevin Holmes VS Cynthia Elaine Collie

Dear Ms. Collie:

On August 19, 2022, the Clerk of Court's office sent notices of motion scheduling on the above referenced case. In total, seven motions were scheduled to be heard by Judge Jennifer McCoy during the week of September 19, 2022. A notice of appeal to the Court of Appeals has been filed placing this case into an appeal status. Due to the change in status of this case Judge McCoy has continued all scheduled motion hearings. These motions will be rescheduled when this case is no longer in an appeal status.

Thank you,

Angela Rigney
Common Pleas Docket Manager

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Thank you,

Angela Rigney
Common Pleas Docket Manager

RECEIVED
Sep 20 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 R. Markley Dennis, Jr.

App. Case No. 2022-1146 and 24-0600
Case No. 2021-CP-10-5478

J. K. Holmes,

Respondent,

v.

C.E. Holmes,

Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for the respondent by regular first class mail postage pre-paid on this date at this address: 1 Carriage Ln., Bldg. H, Chas., SC 29407.

Dated 9/20/2024

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Fax Cover:

C. Holmes, M.D.
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010

Hard copy
available
on request -

Thank You!