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
Case No. 2021-CP-10-5478

J. K. Holmes,

Respondent,

v.

C.E. Holmes,

Appellant.

MOTION FOR RECONSIDERATION, EXPEDITED MOTION TO RECONSTRUCT THE RECORD PURSUANT TO THE *PRICE* CASE (*INFRA*), AND MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

Without being disagreeable, the January 27, 2025, order misconstrues the appellant's September 20, 2024, which is incorporated in full by reference. As a threshold matter, the law of the prior appeal and 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 lack of jurisdiction, appeal of the June 9, 2022, lower court order, appeal of the July 2022 judgment entered without any final order while Rule 59(e), SCRCP, was pending, deprivation of the substantial right of a mode of trial, deprivation of the substantial right of a jury trial in a land title dispute, and binding precedent in the Supreme Court *Price* case regarding lack of any record of the impermissible ex parte hearing for the June 9, 2022, lower court order which is void/voidable lacking statutory authority. 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."). Chief Judge Bruce Williams' opinion, copy attached, expressly authorizes appeal herein of the June 9, 2022, order which is the law of the case established in the prior appeal. Further the appellant respectfully submits expedited motion to reconstruct the record for meaningful review where the audio for transcript is missing herein despite audio for all other hearings on that date. To the extent the return at that time to normal court operations after Covid interruptions contributed to loss of that transcript, multiple Covid Administrative Orders, including that dated 1.28.22, require that the judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date as well as requiring mandatory compliance with Constitutional due process protections and substantial rights which is hereby requested. In

addition, the docket shows motion to reinstate which is overlooked in the January 27, 2025, order, not addressed, and currently pending. Accordingly, reconsideration is respectfully requested.

The following statutory 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 § 14-8-80

By statute, the Legislative intent and letter and spirit of the law require that for each panel of the Court of Appeals, three judges constitute a quorum for determining appeals.

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff July 1, 1985.

S.C. Code § 14-8-290

In S.C. Code § 14-8-290, the powers of individual judges are specified. Significantly and materially, that statute does not authorize sua sponte ex parte summary dismissal herein.

Accordingly, reconsideration is respectfully requested.

DISCUSSION

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document.

I. Jurisdiction can be raised at any time and jurisdiction cannot be waived.

Jurisdiction can be raised at any time and jurisdiction cannot be waived. Pursuant to pending 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 after 30 years, after three children of the marriage, and after one grandchild 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 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. Further, legal title is not dispositive and appeal automatically stays appeal of equitable division herein which is respectfully requested. *Lassiter v. Lassiter*, 291 S.C. 136, 352 S.E.2d 486 (1987).

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 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 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 establishing the law of the prior appeal herein.

II. The Family Court attorney defendant fails to comply with the SCACR.

Significantly and materially, the record reflects the the other side has failed to comply with required notice which is a recipe for improper default. Like the proverbial recommendation that it is unwise to change horses midstream, it is not recommended to change contact information for notice in the middle of appeal. The record reflects there is no counsel of record for one of the parties. Specifically, self-represented parties are not allowed to file electronically. Under Rule 262, SCACR, a self-represented party may ask for 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 and the appellant is prejudiced thereby and hereby requests compliance with the SCACR notice requirements and full and fair due process. In reliance on the Rules of Court including Rule 262, SCACR, the party's appeal and the party are prejudiced including failure to comply with SCACR required notice. 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 multiple overreaching attempts at dismissal of meritorious appeals. To the extent there is ambiguity, the rule of lenity supports the appellant's position. Lack of required notice under the SCACR is ineffective notice under the Rules of Court and the SCACR. Accordingly, the appellant respectfully requests this Honorable Court issue its order for the other side's compliance with SCACR's usual and customary notice requirements with the same usual and customary contact information used from the inception of this appeal.

III. Threshold matter.

As a threshold matter, the September 10, 2024, order is in violation of Rule 266, SCACR, SUBSEQUENT APPLICATIONS. Case law provides that **Subsequent Applications** constitute an unauthorized request for an unauthorized revision or modification to "change, alter or reverse a

decision of a brother *(or sister)* judge." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis supplied). The law of the prior appeal is Chief Judge Bruce Williams' opinion which authorizes reinstatement of the appeal after denial of the Rule 59(e), SCRCP, motion herein. The pending motion to reinstate has been overlooked, misapprehended, and insufficiently addressed, if at all, with inadequate explanation for meaningful review which is hereby requested. By analogy, Rule 43(l), SCRCP, provides, "If any motion be made to any *appellate* 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 *appellate* 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 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 of the *Court of Appeals*... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one *appellate* judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. *Appellate judges* upon the same state of facts, have no power to change, alter or reverse a decision of a brother judge of the same Circuit." *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 *appellate judge* to that of another *appellate judge*." *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947)(emphasis supplied). It is apparent that an order by another judge on **Subsequent Application**, bearing *a later date*, is in conflict with the previous ruling of *Chief Judge Bruce Williams*, which order "will have to be reversed since one *appellate judge* has no power to review, revise or reverse the action of another *appellate 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. Accordingly, reinstatement 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).

IV. In the first sentence, the opinion materially misconstrues Chief Judge Bruce Williams' law of the prior appeal which ruled the appeal of the order of reference is reinstated after denial of Rule 59(e), SCRCP, motion herein.

The first sentence of the January 27, 2025, opinion states as follows:

"On September 10, 2024, we dismissed this appeal because the order on appeal was not immediately appealable."

As a threshold matter, mortgage foreclosures are not immediately appealable and there is no mortgage foreclosure in this case. To the extent the appeal is dismissed due to misinformation/unreliable hearsay/impermissible direct or indirect ex parte contact regarding mortgage foreclosure, the appellant objects and asserts prejudicial error which is reversible including on due process grounds. It is respectfully submitted that the first sentence is based on unreliable hearsay and must be reversed since there is no ROA or any factual support for mortgage foreclosure herein. Further, any review of public index which the opinion expressly relies on for dismissal should be documented and a copy of said index should be included in the record in order to provide objectively verifiable documentation for meaningful review which is hereby requested. It is fair to say there can be misinformation on the internet and meaningful review requires objectively verifiable factual support missing from the record herein, which is clear error of material fact and law including due process. Rule 210(h), SCACR, (an appellate court will not consider any fact that does not appear in the record). Because the order materially overlooked Chief Judge Bruce Williams' law of the case determined in the prior appeal, it is reversible based on error of material fact. Chief Judge Bruce Williams' opinion is the law of the prior appeal which ruled this matter is immediately appealable after the Rule 59(e), SCRCP, motion is denied which is hereby requested.

Further, the first sentence materially overlooks that the September 10, 2024, order is an impermissible sua sponte ex parte summary dismissal by a single individual without jointly filed ROA, any factual basis, or any factual support which violates governing Constitutional law and statutory authority requiring a panel and a quorum of State Constitutional Judicial Officers for de novo review under the facts. S.C. Code § 14-8-80; S.C. Code § 14-8-220; *State v. McMillan*, 349 S.C. 17, 561 S.E.2d 602 (2002) (the Supreme Court reversed the decision of the Court

of Appeals which was heard with only two of the three panel judges present). In S.C. Code § 14-8-290, the powers of individual judges are specified. Significantly and materially, that statute does not authorize sua sponte ex parte summary dismissal herein.

In addition, former Chief Justice Toal's Third Edition provides binding Supreme Court precedent ruling that the order on appeal is immediately appealable. Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157. One of the issues 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).

Further, the substantial State.Constitutional right to a State Constitutional Judicial Officer, not a referee/master, is asserted and requires immediate appeal because the issue is capable of repetition, capable of evading review, and incapable of vindication after-the-fact.

Pursuant to Chief Judge Bruce Williams' ruling in the prior appeal, Article V, § 16 of the South Carolina Constitution (*supra*) provides 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 referee/MOE (master of equity), who is a county employee, lack as they 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. In the second sentence, the opinion misconstrues the appellant's filing.

The second sentence provides:

"On September 20, 2024, Appellant filed a motion to reconsider which we construe as a petition for hearing."

A diligent search of the September 20, 2024, filing finds no request for petition for hearing. The opinion materially misconstrues the appellant's filing. Specifically, it requests reconsideration by the single individual who impermissibly sua sponte ex parte summarily dismissed based on error of material fact and error of Chief Judge Bruce Williams' law of the prior appeal. If denied, the Legislature enacted S.C. Code § 14-8-220 (underlying Rule 240(j), SCACR) to provide **de novo panel appeal** of a single individual's opinion under the facts. The record reflects there is no statutory authority for the January 27, 2024, opinion which fails to provide the requested Rule 240(j), SCACR, **de novo panel appeal.** The January 27, 2024, opinion is reversible as a matter of law for failure to apply the proper de novo legal standard of review. But for application of the improper standard, the outcome should and would be in the appellant's favor. Accordingly, reversal 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.

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).

VIII. The next to the last sentence confirms failure to apply the proper de novo legal standard with application of the improper legal standard instead.

The next to the last sentence states:

"After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing."

The next to the last sentence confirms reversible error in failure to apply the proper de novo legal standard with application of the improper legal standard and prejudicial error instead. The January 27, 2025, order is reversible as a matter of law by application of the improper legal standard. But for failure to apply the proper de novo standard, the outcome should and would be in appellant's favor.

Further, the next to the last sentence is disputed and to the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. For good cause and as set forth herein, principles of law including but not limited to, law of the prior appeal have been overlooked or disregarded and material facts, including but not limited to, the lack of audio though all other hearings that day were recorded, the invalid July 2022 judgment without a final order is immediately appealable, the legal counterclaims, jury demand, notice of jury demand, and/or case law supporting immediate appealability. See *Maybank 2754, LLC v. Zurlo*, 906 S.E.2d 94 (2024). Accordingly, reversal 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).

IX. The last sentence and footnote are disputed.

There is disagreement with the denial in the last sentence which is reversible as a matter of law due to failure to apply the proper de novo legal standard. But for failure to apply the proper de novo legal standard, the outcome should and would be different in the undersigned's favor which is hereby requested.

Further, the footnote is disputed. Specifically, the undersigned respectfully requests recusal due to the undersigned's reasonable belief given the totality of circumstances that Judge Vinson lacks impartiality mandated by the Rules of Court, statutory and case law as well as Constitutional law. In her appellate practice book, former Chief Justice Toal quotes the United States Supreme Court with approval from the case of *Caperton v. A.T. Massey Coal Co.*:

The difficulties of inquiring into actual bias, and the fact that the inquiry is **often a private one,** simply underscore the need for objective rules. ***Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case.*** The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by **objective standards that do not require proof of actual bias**. In defining these standards the Court has asked whether, under a realistic appraisal of

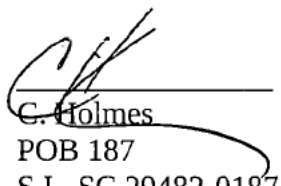
psychological tendencies and human weakness, the interest poses such a risk of *actual bias or prejudgment* that the practice must be forbidden if the guarantee of due process is to be adequately implemented. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (internal citations omitted) (internal quotation marks omitted)(emphasis supplied).
Toal *et al.*, *Appellate Practice in South Carolina*, Third Ed. (2016), p. 240-241.

It is respectfully submitted under a realistic appraisal of psychological tendencies and human weakness, the interest herein poses such a risk of *actual bias or prejudgment* that the pattern and practice of the January 27, 2025, opinion preventing a good faith response from the subject of the motion for recusal based, including but not limited to, on personal favoritism/bias must be forbidden, including as unreliable hearsay, if the guarantee of due process is to be adequately implemented. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (internal citations omitted) (internal quotation marks omitted) (emphasis supplied). Accordingly, the motion for recusal is incorporated in full by reference and recusal/disqualificationis respectfully requested. Rule 240(j), SCACR; S.C. Code § 14-8-220. "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).

CONCLUSION

For substantial justice affecting substantial rights and pursuant to the law of the prior appeal herein, the appellant respectfully requests reversal, reinstatement, recusal, and reconstruction of the record for meaningful review. In the alternative, consideration of dismissal should be deferred until final briefs and the ROA are filed.

Respectfully submitted,



C. Holmes
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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

FILED
Dec 09 2022

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

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).

VI. Material omission.

The third sentence materially omits appellant's arguments:

"Appellant argued the order on appeal is immediately appealable because it affects her mode of trial."

Specifically, the opinion materially omits appellant's other arguments including law of the prior appeal, appeal of the June 9, 2022, lower court order including lack of required notice, lack of transcript though all other hearings were recorded that day, lack of any opportunity to be heard at a meaningful time, lack of procedural and substantive due process, and lack of fundamental fairness, appeal of the July 2022 judgment entered without any final order while Rule 59(e), SCRCP, was pending, deprivation of substantial rights, including but not limited to, mode of trial, deprivation of the substantial right of a jury trial in a land title dispute, and binding precedent from the Supreme Court in the *Flagstar* case. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). Accordingly, reversal 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).

VII. The propriety of referral is challenged.

The fourth sentence states:

"However, this Court's review of the public index reveals the circuit court referred Appellant's motion for a jury trial to the master-in-equity or special referee, and no decision on the motion has been rendered yet."

Initially, Chief Judge Bruce Williams' opinion, with the same state of facts in effect, ruled the appeal is reinstated herein after denial of the Rule 59(e), SCRCP, motion which is hereby requested. A review of the public index also reveals a judgment in July 2022 which is appealable because it is not based on a final order. A review of the public index reveals jury demand and legal counterclaims. Chief Judge Bruce Williams' opinion reinstates the appeal herein after denial of the Rule 59(e), SCRCP, motion. Moreover, the propriety of referral is challenged under the facts. Further, denial of substantial rights including a State Constitutional Officer in the trial court on substantive/dispositive matters is asserted. Accordingly, reversal 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.

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2022-1146
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 2.6.25

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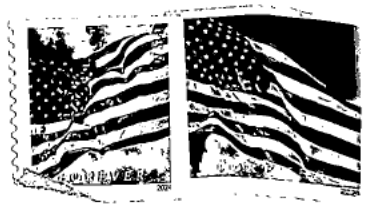

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SC Court of Appeals

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