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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Judicial Circuit Court Judge

App Case No. 2025-000486
COA Case No. 24-1450 and 22-1146
Circuit Court Case No. 21-CP-10-05498

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

Petition for a Writ of Certiorari

C. Holmes
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INDEX

CERTIFICATION

A petition for rehearing was made and finally ruled upon by the Court of Appeals.

ISSUES PRESENTED

I. Affirmance of law of the case in the prior appeal, copy attached, is respectfully requested.

II. Neither S.C. Code § 14-8-80 (*supra*) nor Rule 240(j), SCACR, (*infra*), provides authority for a single individual to sua sponte ex parte summarily dismiss or finally decide a party's appeal which requires a COA panel of three judges with the concurrence of two or more judges. S.C. Code § 14-8-80.

III. Failure of the lower appellate court to apply the proper legal standard is reversible as a matter of law.

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

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

VI. Threshold matter.

VII. In the first sentence, the January 27, 2025, opinion materially misconstrues Chief Judge Bruce Williams' law of the case in the prior appeal, copy attached, which ruled the appeal of the June 9, 2022, order is reinstated after disposition of Rule 59(e), SCRCP, motion herein.

VIII. Material omission.

IX. The propriety of referral is challenged.

X. The January 27, 2025, opinion's last sentence and footnote are disputed.

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

XII. 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.

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

XIV. The attached Family Court Decree of Divorce incorporates the Family Court Contract entered into the record and incorporated into the Decree by the Family Court Judge.

XV. Denying access to the Family Court regarding the attached copy of Family Court Agreement signed by both parties cannot pass constitutional muster.

XVI. Rule 240(i), SCACR, *de novo* appeal.

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

XVIII. Prejudicial lack of due process in the trial court.

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

TABLE OF AUTHORITIES

Cases

Other

FACTS

The undersigned requests affirmance of the law of the case in the prior appeal herein, copy attached, which authorizes appeal of the June 9, 2022, trial court order after disposition of Rule 59(e), SCRCP, motion. Reversal of the lower appellate court September 10, 2024, opinion is respectfully requested. Another action is pending in the Family Court between the same parties for the same claim. The family court has exclusive original jurisdiction over domestic matters pursuant to S.C. Code § § 63-3-510 to 530. The petitioner timely appeals impermissible ex parte hearing in the trial court without required notice and without meaningful opportunity to be heard at a meaningful time. The petitioner timely made three or more requests for transcript from the South Carolina Court Administration (SCCA). Without benefit of transcript for the impermissible ex parte trial court hearing, a single individual judge entered sua sponte ex parte dismissal before jointly-filed Record on Appeal (ROA) or ny factual support in the record, without notice, and without meaningful opportunity to respond at a meaningful time. After the petitioner filed motion herein for SCCA to respond to the transcript requests, the SCCA's out-of-time response stated, without explanation, that the SCCA's audio for transcripts has a critical gap in the recording of the impermissible ex parte hearing despite finding recordings for essentially all other hearings on that day, one of many unexplained irregularities in this matter. The petitioner timely filed motion to reconstruct the record in the trial court. *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*, 3rd Ed. (2016), p. 378. The petitioner filed Rule 240(j), SCACR, appeal of wrongful sua sponte ex parte dismissal by a single individual. The improper, less burdensome legal standard was wrongfully applied. Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at

Rule 240(j), SCACR, appeal. The lower appellate court opinions are reversible as a matter of law. Petition for a writ of certiorari is timely served and filed. These are matters of great public importance including but not limited to, uniformity in application of the SCACR and/or Covid interruptions in normal court operations which inadvertently, impermissibly denied substantial rights. But for impermissible ex parte hearing in the trial court with unexplained critical gap in the audio preventing transcript, preventing Record on Appeal, and preventing adequate record for meaningful judicial review, the outcome should and would be in petitioner's favor. The petitioner is prejudiced thereby. The petitioner timely appeals lack of jurisdiction/authority in the trial court to provide clear title to real estate thereby arbitrarily and capriciously reducing market value. Accordingly, the trial court order is void/voidable as a matter of law.

DISCUSSION

By way of introduction and without being disagreeable, there is disagreement with the inferior appellate court (COA) opinions. One COA judge does not have authority to revise, alter, and/or revoke Chief Judge Bruce Williams' prior order, copy attached, which takes precedence and expressly authorizes appeal of the June 9, 2022, trial court order after disposition of Rule 59(e), SCRCP, motion. Further, pursuant to Rule 38(a), SCRCP, intervening case law in the *Maybank*case provides that the Reference Order on appeal herein is infirm because the petitioner timely requested a jury trial, the petitioner is entitled to a jury trial including law claims in the counterclaim, the petitioner is entitled to a jury trial regarding disputed title to real estate, and a jury trial is to be preserved inviolate under the State Constitution. *Maybank 2754, LLC v. Zurlo*, 906 S.E.2d 94 (Ct. App. 2024). Law of the prior appeal has been overlooked or disregarded and material facts, including but not limited to, the lack of audio for transcript (though all other hearings that day were recorded), the invalid July 2022 judgment without a final order due to Rule 59(e), SCRCP, motionis immediately appealable, the legal counterclaims, jury demand, notice of jury demand, and/or case law all support, if not require, immediate appeal. Motion to reconstruct the record.in the trial court is respectfully requested and time is of the essence regarding reconstruction for meaningful review. B inding 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. Under the facts, legal title is not dispositive. At issue is denial of the petitioner'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 jointly-filed ROA or factual support in the record, there can be no full, fair, and meaningful determination in the lower appellate court which "will always be necessary on the part of the appellate court" and, therefore, no adequate record for meaningful review herein. *Id.* "These cases not only permit, but indeed **require, immediate appeal**." *Id.*(emphasis supplied). Without jointly-filed ROA or factual support in the record, the COA order on appeal herein is based on unreliable hearsay and reversible as a matter of law which is hereby requested. Binding precedent in the *Price* case provides that lack of audio or transcript of the ex parte trial court hearing herein is another reason the record is inadequate for meaningful review rendering the trial court orders reversible as a matter of law without statutory authority. *State v. Jeroid J. Price,* S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. 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 provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. *State v. Jeroid J. Price,* S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. "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." *Id. See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) ("(F)ailure even to have a transcript filed ... was reversible error."). For the reasons stated and for good cause, the petitioner respectfully submits the lower appellate court's sua sponte ex parte summary dismissal is reversible as a matter of law including Chief Judge Bruce Williams' law of the case in the prior appeal,

copy attached.

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 branch 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. Thc 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).

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 with no factual support in the record or jointly-filed ROA herein.

Accordingly, reversal is respectfully requested.

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

I. Affirmance of law of the case in the prior appeal, copy attached, is respectfully requested. Rule 220(c), SCACR.

Rule 220(c), SCACR, provides as follows:

Rule 220(c), SCACR: Affirmance on Any Ground Appearing in the Record. The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. Rule 220(c), SCACR (**bold** in original).

The lower appellate court judge in the September 10, 2024, COA opinion does not have authority to revise, alter, and/or revoke Chief Judge Bruce Williams' prior order, copy attached, which takes precedence and expressly authorizes appeal of the June 9, 2022, trial court order after disposition of Rule 59(e), SCRCP, motion. "A finding by the appellate court contained in a decision in a previous appeal in the same case is the law of the case. *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 166 S.E.2d 297 (1969); *see Barth v. Barth*, 293 S.C. 305, 360 S.E.2d 309 (1987)." Toal *et al.*, *Appellate Practice in South Carolina*, 2nd Ed. (2002), p. 81. Further, pursuant to Rule 38(a), SCRCP, intervening case law in the *Maybank*case provides that the Reference Order on appeal herein is infirm because the petitioner timely requested a jury trial, the petitioner is entitled to a jury trial including law claims in the counterclaim, the petitioner is entitled to a jury trial including disputed title to real estate, and/or a jury trial is to be preserved inviolate under the State Constitution. *Maybank 2754, LLC v. Zurlo*, 906 S.E.2d 94 (Ct. App. 2024). Accordingly, affirmance of law of the case, copy attached, with reversal of the COA opinions is respectfully requested.

II. Neither S.C. Code § 14-8-80 (*supra*) nor Rule 240(j), SCACR, (*infra*), provides authority for a single individual to sua sponte ex parte summarily dismiss or finally decide a party's appeal which requires a COA panel of three judges with the concurrence of two or more judges. S.C. Code § 14-8-80.

Pursuant to S.C. Code § 14-8-80, three COA judges constitute a quorum and a quorum is required for disposition with the effect of dismissing or finally deciding a party's appeal, including dismissal herein. The concurrence of two or more members of an appellate court is required to finally decide or effectively dismiss a party's appeal. S.C. Code § 14-8-80. By definition, the September 10, 2024, order by a single individual is not issued by the appeal panel after hearing. Binding precedent in the *McMillan* case requires reversal of a COA decision effectively finally deciding or dismissing with less than three panel judges including the September 10, 2024, dismissal herein. 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 and 14-8-220, the powers of individual judges are specified. Significantly and materially, those statutes do not authorize a single individual to sua sponte ex parte summarily dismiss herein; even assuming, though denying, a single individual is so authorized, S.C. Code § 14-8-220 provides that the timely request herein for de novo panel appeal SHALL be allowed. S.C. Code § 14-8-220. The record reflects the timely request for S.C. Code § 14-8-220 panel appeal was not allowed. It is respectfully submitted these SCACR rules require the concurrence of two or more members at de novo panel hearing for dismissing or finally deciding the party's appeal herein. Accordingly, the September 10, 2024, sua sponte ex parte summary dismissal by a single individual without jointly-filed ROA or factual support in the record is reversible as a matter of law in violation of S.C. Code § 14-8-80, S.C. Code § 14-8-220, and/or the SCACR generally.

Notably, pursuant to S.C. Code § 14-8-220, Rule 240(j), SCACR (*infra*), specifies authority of an individual COA judge. **Rule 240(j) Authority of an Individual Judge** is limited to "motion or petition" which requires due process including notice and meaningful opportunity to be heard at a meaningful time. Specifically, Rule 240(j), SCACR, does not authorize an individual judge to sua sponte ex parte dismiss without "motion or petition" and/or without due process. Significantly and materially, **Rule 240(j) Authority of an Individual Judge** does not provide a single individual COA judge with sua sponte ex parte authority without jointly-filed ROA or factual support in the record to dismiss herein. Rule 240(j), SCACR, provides as follows:

> **Rule 240(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court**, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Rule 240(j), SCACR (emphasis supplied).

Under the facts, it is respectfully submitted Rule 240(j) is inapplicable because "these rules require the concurrence of two or more members of an appellate court" to finally decide or effect dismissal of a party's appeal and the statutory scheme as a whole requires the concurrence of two or more members of an appellate court to finally decide or effect dismissal herein. Rule 240(j), SCACR. Accordingly, the September 10, 2024, sua sponte ex parte summary dismissal by a single individual without jointly-filed ROA or factual support in the record is reversible as a matter of law in violation of S.C. Code § 14-8-220, Rule 240(j), SCACR, and the SCACR generally.

Even assuming, though denying, a single individual is authorized to sua sponte ex parte summarily dismiss without jointly-filed ROA or factual support in the record, S.C. Code § 14-8-220 provides de novo panel appeal SHALL be allowed as follows:

> **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).

The record reflects the undersigned's timely request for de novo panel appeal pursuant to S.C. Code § 14-8-220. The record reflects that request for S.C. Code § 14-8-220 panel appeal was not allowed. But for arbitrary and capricious denial of S.C. Code § 14-8-220 panel appeal herein, the outcome should and would be in the undersigned's favor. Accordingly, the September 10, 2024, sua sponte ex parte summary dismissal by a single individual without jointly-filed ROA or factual support in the record is reversible as a matter of law in violation of S.C. Code § 14-8-220.

In addition, it is respectfully submitted that the January 27, 2025, COA opinion is internally inconsistent stating:

"On September 20, 2024, Appellant filed a motion to reconsider which we construe as a petition for hearing." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

Specifically, that January 27, 2025, opinion is internally inconsistent including because it states the petitioner filed a petition for S.C. Code § 14-8-220 hearing but then failed to provide that S.C. Code § 14-8-220 panel appeal hearing. A single judge issuing an order is, by definition, not a hearing and a petition for rehearing, where the required panel hearing was not held, is inconsistent because there is no hearing to rehear as a condition precedent. Further, in the *Navistar* case, the Fourth Circuit ruled that a rehearing is no substitute for a pre-determined outcome with no pre-decision opportunity to be heard. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). Accordingly, the lower appellate court opinions are inconsistent and reversible as a matter of law.

III. Failure of the lower appellate court to apply the proper legal standard is reversible as a matter of law.

As set forth more fully below, uniformity in the lower appellate court and consistency of interpretation of the SCACR is respectfully requested. Ambiguity in the lower appellate court regarding the proper legal standard is prejudicial denial of due process. But for failure to apply the proper de novo legal standard to sua sponte ex parte summary dismissal by a single individual without jointly-filed ROA or factual support in the record, the outcome should and would be in the undersigned's favor.

Specifically, the lower appellate court misconstrued petitioner's filing regarding the dispositive sua sponte ex parte summary dismissal by a single individual without jointly-filed ROA or factual support in the record:

"On September 20, 2024, Appellant filed a motion to reconsider which we construe as a petition for hearing." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

Though acknowledging the undersigned's request for hearing (not rehearing), the record reflects the petitioner's request for S.C. Code § 14-8-220 de novo panel appeal hearing was not allowed which is reversible error of law. A single individual issuing the September 10, 2024, opinion is, by definition, not a hearing. Under the facts, the timely requested S.C. Code § 14-8-220 panel appeal is a required hearing that "shall be allowed," and the lower appellate court's unauthorized denial of that panel "appeal" hearing, not rehearing which has a different legal standard, impermissibly renders duly enacted Legislative statutory authority superfluous in S.C. Code § 14-8-220 and the SCACR generally. S.C. Code § 14-8-220. If S.C. Code § 14-8-220 panel appeal of a single individual's order under these facts is not allowed, there is no factual setting where it applies. The record reflects there is no hearing

to re-hear and the petitioner timely requested S.C. Code § 14-8-220 panel hearing. From the January 27, 2025, opinion, COA Case No. 2024-1450, the next to the last sentence provides as follows:

"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." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

That sentence is disputed and is inconsistent with the opinion's first sentence acknowledging the undersigned's request for hearing. Specifically, the petitioner requested a S.C. Code § 14-8-220 de novo panel appeal hearing. That January 27, 2025, opinion is internally inconsistent based on error of material fact and law: That opinion relies on a prior hearing, however, the record reflects there is no prior hearing. As such, that January 27, 2025, opinion is reversible as a matter of law. Further, that opinion confirms the requirement under the facts of "the concurrence of two or more members" at a dispositive appeal panel hearing. S.C. Code § 14-8-80 (*supra*). The record reflects a single individual signed that September 10, 2024, summary dismissal without the required "concurrence of two or more members" a dispositive appeal panel hearing. S.C. Code § 14-8-80 (*supra*). 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). Pursuant to S.C. Code § 14-8-220 (*supra*) and petitioner's timely Rule 240(j), SCACR, request for de novo panel appeal, the improper legal standard was applied. Failure to apply the proper legal standard pursuant to S.C. Code § 14-8-220 (*supra*) at a dispositive appeal panel hearing renders the September 10, 2024, COA opinion void/voidable and without statutory authority. *See intervening case Maybank 2754, LLC v. Zurlo*, 906 S.E.2d 94 (Ct. App. 2024) (September 17, 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).

IV. 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 in the Family Court 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 same factors supporting the previous stay, copy attached, pending appeal of jurisdictional questions and substantial rights supports sustaining that stay which is hereby requested: 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 and equitable division is automatically stayed on appeal herein. 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, COA 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 (4thCir. 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 petitioner respectfully requests reversal.

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

Significantly and materially, the record reflects 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 from inception in the trial court. Under Rule 262, SCACR, a self-represented party may ask for notice electronically. Rule 262, SCACR; South Carolina Supreme Court App. Case No. 2020-000447. The record reflects no such request herein and if it did, that request is falsified. In fact, no such request has been made and the petitioner is prejudiced thereby and hereby requests compliance with the SCACR notice requirements and full and fair due process with required SCACR notice. 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 petitioner's position. Lack of required notice under the SCACR is ineffective notice under the Rules of Court and the SCACR. Accordingly, the petitioner 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. "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).

VI. 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 disposition of Rule 59(e), SCRCP, motion. The COA public docket shows pending motion to reinstate which 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, 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, 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. In the first sentence, the January 27, 2025, opinion materially misconstrues Chief Judge Bruce Williams' law of the case in the prior appeal, copy attached, which ruled the appeal of the June 9, 2022, order is reinstated after disposition 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." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

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 lack of jointly-filed ROA, lack of factual support in the record, and/or misinformation/unreliable hearsay/impermissible direct or indirect ex parte contact regarding mortgage foreclosure, the petitioner objects and asserts reversible prejudicial error 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 dated 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 as well as denial of 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 and law. Chief Judge Bruce Williams' opinion is the law of the case in the prior appeal which ruled this matter is immediately appealable after disposition of the Rule 59(e), SCRCP, motion which is hereby requested. s

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 in the record 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 §§ 14-8-220 and 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 petitioner'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 petitioner is prejudiced thereby. But for referral without consent in a law case with disputed title to real estate, the outcome should and would be in the undersigned's favor. Matters of great public importance have been overlooked or misapprehended. 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 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).

VIII. Material omission.

The third sentence materially omits petitioner's arguments:

"Appellant argued the order on appeal is immediately appealable because it affects her mode of trial." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

Specifically, the opinion materially omits petitioner'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) ("[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.") 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 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." Lower appellate court January 27, 2025, opinion in COA Case No. 2024-1450.

Initially, Chief Judge Bruce Williams' opinion, with the same state of facts in effect, ruled the appeal is reinstated herein after disposition of the Rule 59(e), SCRCP, motion. 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 due to Rule 59(e), SCRCP, motion. A review of the public index reveals jury demand, legal counterclaims, lack of consent, and no mortgage foreclosure. Chief Judge Bruce Williams' opinion reinstates the appeal herein after disposition of the Rule 59(e), SCRCP, motion which is hereby requested. Moreover, the propriety of referral is challenged under the facts. Further, denial of substantial rights including a State Constitutional Officer for 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. 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).

X. The January 27, 2025, opinion's 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 legal standard at dispositive appeal panel hearing. But