RECEIVED
Mar 17 2025
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**

---

2 of 2

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

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 because Judge Vinson presided over this very matter in the Family Court. See attached. Specifically, t he 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 relying on unreliable hearsay and failing to provide 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 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/disqualification is 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).

**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.**

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

By analogy, Rule 265(c), SCACR, provides that the appellate court may not on its own order substitution of parties except for death or incompetency: "(F)or any reason other than death or

incompetency, substitution SHALL be by motion." Rule 265(c), SCACR. "Substitution for any other reason must be by motion to the appellate court. Rule 265(c), SCACR." Toal *et al., Appellate Practice in South Carolina* (2016), Third Ed., p. 377. Under the facts and pursuant to Rule 265(c), SCACR, "the appellate court may not on its own order substitution of parties" and, by inference, a single individual may not order sua sponte ex parte summary dismissal because Rule 240(j), *infra*, requires motion or petition with required due process including notice and meaningful opportunity to be heard at a meaningful time. Similarly, Rule 240(j), SCACR, requires "motion or petition" 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).

The record reflects there is no motion or petition for the September 10, 2024, COA sua sponte ex parte summary dismissal without jointly-filed ROA or factual support in the record and there is no required due process in compliance with Rule 240(j), SCACR, and the SCACR generally.

Further, Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law, it is an error-correcting, not law-giving court, and the decisions of the Supreme Court bind the Court of Appeals as precedents. S.C. Const. art. V, sec. 9. It is respectfully submitted that under these facts and pursuant to binding precedent, the SCACR, and/or S.C. Code § 14-8-80, the lower appellate court "may not on its own order substitution of parties" and may not on its own order sua sponte ex parte dismissal without reasonable factual support in the record or jointly-filed ROA. Chief Judge Bruce Williams' opinion, copy attached, provides for appeal of the June 9, 2022, trial court order and provides, "Referral of a case to the master-in-equity is not immediately appealable unless the petitioner is deprived of a mode of trial." The petitioner herein is deprived of a mode of

trial. As such, Chief Judge Bruce Williams' opinion which is the law of the case ruled the order is appealable. "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). The record reflects there is no motion by the other party, there is no notice, and there is no due process. With no factual support or record, the ex parte summary dismissal by a single individual is unlawful, internally inconsistent, in violation of this Honorable Court's own SCACR and statutory authority, and/or in violation of this Honorable Court's own law of the case, Chief Judge Bruce Williams' prior opinion, copy attached. At a minimum, briefing prior to dispositional decision is required and the ex parte dismissal is reversible error.

By analogy, Rule 241, SCACR, provides:

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

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

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

## 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.

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 MOE (master of equity), who is a county employee, or a referee lack and who are not nominated, vetted, and voted by the Legislature to interpret the law. It is respectfully submitted that under the facts, referral without consent is reversible error in violation of State Constitutional, statutory, and case law. Referral herein prior to response is reversible error. The petitioner is prejudiced thereby. 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 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).

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

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

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

Pursuant to S.C. Code § § 63-3-510 to 530, the Family Court has **exclusive original jurisdiction** over the domestic matters and marital property herein. Similarly, the domestic matters herein are subject to confidentiality and privacy requirements and rights in the Family Court, which are hereby requested. In the alternative, the undersigned requests case number 2021-CP-10-5478 be sealed. By analogy, the Fourth Circuit case of *Roberge* provides insight. In re *Roberge,* 188 B.R. 366 (E.D. Va. 1995) (unpublished). Footnote 5 of that case provides that the "opinion (*of the lower court*) makes frequent mention of the fact that prior to the equitable distribution suit, each of the parties held a one-half undivided interest as tenants in common. *See In re Roberge,* 181 B.R. at 857. **It cites no support for, and this Court has found no applicable law in support of, the proposition that if a tenancy by the entireties is converted to a tenancy in common, the parties are presumed to have equal undivided shares.**" In re *Roberge,* 188 B.R. 366 (E.D. Va. 1995) (emphasis supplied). Likewise, there is no South Carolina law supporting that proposition in this at-fault divorce. Legal title is not dispositive. Moreover, the *Roberge* case confirms public policy which provides protection for families, confidentiality and privacy rights in the Family Court, and preservation of the family home. In re *Roberge,* 188 B.R. 366, 370-71 (E.D.Va.1995), aff'd, 95 F.3d 42 (4th Cir. 1996). Overall, the Fourth Circuit ruled that the proper forum is the Family Court as previously determined under the facts on adequate record in Federal Court in Charleston which is issue preclusion/res judicata/collateral estoppel. Accordingly, for substantial justice affecting substantial rights including clear title for prospective third parties, the Family Court has exclusive original jurisdiction herein and reversal is hereby requested. S.C. Code § § 63-3-510 to 530 and 20–3–620.

**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.**

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. There was no 365-day benchmark rule in effect at the time. The Family Court Decree of Divorce, copy attached, unambiguously incorporates the Family Court Contract which untrustworthy Family Court attorney defendant entered into and agreed to on the record, which agreement is incorporated in the attached Decree by the Family Court Judge, which the Family Court attorney defendant did not appeal, and which Family Court Contract is now the law of the case. The family court has exclusive original jurisdiction over the Family Court Contract herein and domestic matters pursuant to S.C. Code § § 63-3-510 to 530, including but not limited to, the family home. Another action is pending in the Family Court between the same parties for the same claim. Jurisdiction can be raised at any time. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). Pursuant to the South Carolina Constitution Art. 1, § 4 (supra), and generally, there can be no impairment of the obligation of contracts, including the Family Court Contract incorporated in the attached Decree of Divorce and duly approved and ordered by the Family Court. Accordingly, reversal is respectfully requested.

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

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 attached copy of Family Court Agreement and the Decree of Divorce, copy attached, after 30 years and three children of the marriage, to which

Family Court attorney defendant, with decades of experience, agreed on the record, into which that agreement was incorporated, from which defendant never appealed, and which is now the law of the case. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..." Wazney v. Wazney (S.C. App. 2019). The plain language of the Decree in the family court matter reserves and preserves jurisdiction and is subject to family court confidentiality and privacy which is hereby requested. The family court has exclusive original jurisdiction over domestic matters pursuant to S.C. Code § § 63-3-510 to 530, including but not limited to, the family home herein. Another action is pending in the Family Court between the same parties for the same claim. Jurisdiction can be raised at any time. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (internal citation omitted). See *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). In addition, the State of South Carolina requires citizens to apply for marriage licenses, it oversees the domestic relations matters herein, and the request for hearing is timely filed in the family court according to law, including but not limited to, Covid Administrative Order No. 2021-11-8-02. Denying a citizen access to the family court with family court privacy and confidentiality rights and denying a citizen access to the family court to resolve family court matters involving the Family Court agreement signed by both parties 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 family courts, and/or discrimination against a member of a protected class. To the extent the wrongdoing, including denial of substantial rights and civil rights, constitutes violations of the First

Amendment and/or discrimination against a member of a protected class, that wrongdoing is against public policy. The plain language of the attached Decree unambiguously reserves and preserves family court jurisdiction regarding marital property herein. No one would pretend that the family court did not reserve and preserve jurisdiction of matters involving the minor children just as it did for the marital property herein. In addition, the jurisdictional issue affects ability to transfer clear title, adversely impacts the marketplace, and/or adversely impacts prospective third parties. The Legislature intended to and did enact Legislation to foreclose family court deadbeat defendants, including Family Court attorneys who are defendants, from filing in droves in the circuit court to evade jurisdiction of the family court. The September 10, 2024, opinion is completely devoid of any purported legal basis, authority, or citation. 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 (4 thCir. 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 and if denied, requests remand for Rule 240(j), SCACR, *de novo* appeal with abeyance pending resolution of appeal of the September 10, 2024, sua sponte ex parte summary dismissal by a single individual based on error of material fact and law as well as impermissible revision/reversal of Chief Judge Bruce Williams' prior opinion which is the law of the case (copy attached).

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

Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at Rule

240(j), SCACR, appeal herein, which is different than the standard of review for Rule 221, SCACR, rehearing. Ambiguity regarding the proper legal standard pursuant to Rule 240(j), SCACR, appeal is a denial of substantial rights, including but not limited to, due process. Rule 240(j), SCACR, appeal is a S.C. Code § 14-8-220 appeal of an order by an individual judge and the proper legal standard is *de novo* panel appeal. S.C. Code § 14-8-220. To the extent there is ambiguity, the rule of lenity supports petitioner's position. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Rule 27(c), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Accordingly, the legal standard of review under these facts for Rule 240(j), SCACR, appeal is *de novo*. In addition, pursuant to S.C. Code § 14-8-220, the petitioner respectfully submits Rule 240(j), SCACR, appeal herein is *de novo* review which does not include the individual judge who signed the September 10, 2024, order that is the subject of the Rule 240(j), SCACR, appeal. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not directly or indirectly

participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an order that he or she authored. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). Petitioner reasonably questions impartiality regarding the September 10, 2024, impermissible ex parte dispositional decision. In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but **a reasonable person has a reasonable basis to question the impartiality** of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* At 1117 (emphasis supplied). The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with

this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the Rule 240(j), SCACR, appeal of his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978). Moreover, in consideration of Legislative intent and the overarching principles incorporated in the State and Federal Constitutions by the framers, due process requires that the appellate court judge who individually signed the sua sponte ex parte dismissal order not participate, directly or indirectly, on appeal of his own decision which is the subject of the Rule 240(j), SCACR, *de novo* appeal. Ambiguity regarding the requirement of non-participation on Rule 240(j), SCACR, appeal is a denial of due process and the rule of lenity supports petitioner's position. Accordingly, reversal or remand for Rule 240(j), SCACR, *de novo* panel appeal and due process including non-participation by the individual judge who signed the sua sponte ex parte dismissal is respectfully requested.

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

The petitioner timely requests reversal of the September 10, 2024, opinion in violation of the SCACR, including but not limited to, Rule 220, SCACR: Specifically, a single individual "judge" sua sponte overlooks meritorious appeal timely served and filed. There is no notice, no opportunity to respond, no factual basis, no citations to authority of any kind, and sua sponte ex parte summary dismissal herein is based on unreliable hearsay and/or false claims of mortgage foreclosure. The record reflects there is no mortgage foreclosure. In fact, the law of the case provides for appeal of the June 9, 2022, trial court order and binding precedent requires immediate appeal in this case where the undersigned is deprived of a mode of trial and/or where there is disputed title to land as in this case. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). Hearsay is reversible error. On the other hand, there is an abundant body of law

mandating due process including but not limited to, meaningful opportunity to respond at a meaningful time, meaningful judicial review at a meaningful time, and facilitation of appeals with even-handedness, transparency, and fundamental fairness which is respectfully requested.

Further, in violation of the SCACR Rules, dismissal is not properly before the court: The SCACR Rules do not allow sua sponte ex parte summary dismissal based on issues that have not been raised by the parties. The SCACR do not allow judges to act as counsel of record for untrustworthy Family Court attorney defendants, undercutting appearance of a disinterested court. The SCACR do not allow sua sponte ex parte dismissal based on hearsay, impermissible direct or indirect ex parte contact, and/or pure speculation with no ROA regarding questions that have yet to be presented. There is no factual basis, much less ROA, in support of sua sponte ex parte summary dismissal. Nor is there compliance with the requirements of Rule 220(b), SCACR, which states in pertinent part, "In every decision rendered by the Court of Appeals, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR. In addition, the SCACR do not allow sua sponte ex parte summary dismissal of appeal of denial of a mode of trial to which the party is entitled on counterclaims herein which MUST be immediately appealed. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). Without jointly-filed ROA or factual support in the record, the order is reversible abuse of discretion.

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

court's disposition."). As such, adequate explanation for meaningful review is respectfully requested. Moreover, the September 10, 2024, impermissible sua sponte ex parte summary dismissal by a single individual is reversible based on denial of due process, not to mention fundamental fairness. The American judicial system is an adversary system, not based on inquisitors: In order to ensure the integrity of the judicial system, the norms of that adversarial system prohibit ex parte communications and outside factual research which undercut appearance of a disinterested court. In both civil and criminal cases, in the first instance and on appeal, the principle of party presentation is followed: The parties frame the issues for decision and the courts have the role of **neutral arbiter** of matters the parties present. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (emphasis supplied). In this case, the record reflects the author of the impermissible sua sponte ex parte summary dismissal functions as the untrustworthy Family Court attorney defendant's advocate and counsel, not as a neutral arbiter, undercutting appearance of a disinterested court. As such, the record reflects the impermissible sua sponte ex parte dismissal is reversible. Alex Murdaugh's and untrustworthy Family Court attorney defendant's "rules don't apply to me" standard-operating-procedure (SOP) is used to entice judges to rubber-stamp wrongdoing. Similarly, to the extent untrustworthy Family Court attorney defendant herein entices sua sponte ex parte wrongdoing with impermissible direct or indirect ex parte contact, that attempt to evade the merits and deny the other side's substantial rights cannot pass constitutional muster. The petitioner is prejudiced by the September 10, 2024, denial of procedural and/or substantive due process. But for the prejudicial denial of procedural and/or substantive due process, the outcome should and would be in the undersigned's favor. Even assuming, though denying, there is authority for sua sponte ex parte dispositional decision by a single individual, that dispositional decision, at a minimum, requires briefing prior. Accordingly, reversal is respectfully requested.

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

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

Moreover, reconstruction of the record below is respectfully requested for due process and substantial rights including adequate record for meaningful review. *See Clements v. Young*, 310 S.C. 73, 425 S.E.2d 63 (Ct. App. 1992) (appellant moved for reconstruction of the record on remand to the lower court where the hearing was unrecorded); Toal *et al.*, *Appellate Practice in South Carolina*, 2nd Ed. (2002), p. 265. Motion for reconstruction of the record is respectfully requested where, without explanation, the SCCA's recording for transcripts has a critical gap in the recording for this hearing despite finding recordings for essentially all other hearings on that day, one of many unexplained irregularities in this matter and time is of the essence. That trial court hearing was held ex parte without required notice to the adversely affected party, who on appeal is told that the South Carolina judicial system has a critical gap in the recording of that hearing which cannot be located and which

cannot be transcribed. Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. Intervening binding precedent, in the *Price* case, *infra*, provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. "Section 14-5-10 of the South Carolina Code (2017) provides, 'The circuit courts herein established shall be courts of record . . . .' The circuit court's hearing ... must be recorded." *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) ("(F)ailure even to have a transcript filed ... was reversible error."). Further, the Fourth Circuit case of *Navistar* ruled that a lower court hearing after-the-fact is no substitute for a pre-decision hearing. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). Overall, the lack of audio for transcription renders the trial court June 9, 2022, order void/voidable and the law of the case, copy attached, on prior appeal expressly authorizes appeal of that June 9, 2022, order. South Carolina Supreme Court Administrative Orders dated 4.22.20, 12.16.20, 3.4.21, and 8.27.21, all provide, "The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date" and requires a recording for transcript of the hearing. *See 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."); *see Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) ("(F)ailure even to have a transcript filed ... was reversible error."). Accordingly, reversal is respectfully requested.

At the same time, with lack of transparency and while being hidden from the undersigned, the untrustworthy Family Court attorney defendant failed to copy the undersigned on his transcript request which received SCCA's immediate response while the adversely affected party's requests went unanswered. The petitioner had to file a motion and pay a filing fee just to get a response. Curiously, that response was delayed until after dismissal. The record reflects direct or indirect impermissible ex

parte contacts to evade the merits by untrustworthy Family Court attorney defendant without filing the required motion to dismiss, without paying the filing fees required of other attorneys, and without due process including required notice, meaningful opportunity to be heard at a meaningful time, full, fair, adequate, and meaningful record for appeal or factual support, and full, fair, and meaningful judicial review. The Fourth Circuit ruled that overreaching attempts to dismiss and/or deny full and fair consideration on the merits are reversible as a matter of law. *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 188 (4th Cir. 2013); *see Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995) (same).

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

In addition, pursuant to Rule 203, SCACR, and the then pending Rule 59(e), SCRCP, motion, there is no jurisdiction for the July 14, 2022, entry of judgment. Rule 59(e), SCRCP ("the trial judge shall retain jurisdiction"). Unlawfully entering a judgment while timely post-trial motions are pending as in this case is appealable including because there is no jurisdiction for such unauthorized entry and because petitioner is denied substantial rights herein including but not limited to, mode of trial as well as substantial rights akin to mode of trial which must be appealed immediately. Jurisdiction and/or statutory authorization for the unauthorized July 14, 2022, entry herein is challenged and jurisdiction can be raised at any time. It is unclear how untrustworthy Family Court attorney defendant obtained

judgment in the absence of a final order. In any case, it is reversible as a matter of law. Further, the record reflects timely Rule 38, SCRCP, Jury Trial of Right Notice for transfer to the jury trial roster. Rule 39, SCRCP, Trial By Jury. Accordingly, reversal is respectfully requested. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). See also Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 TENN. L. REV. 245, 251 n.16 (2002).

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

To the extent the sua sponte ex parte dismissal out of nowhere by an "individual judge" is caused or influenced by the other side's impermissible direct or indirect ex parte contact, that contact is unauthorized. The record reflects the ex parte dismissal is based on unreliable hearsay. The case of *Burgess v. Stern, infra*, provides that orders rendered after impermissible direct or indirect ex parte contacts are void/voidable:

"South Carolina case law and rule-making authorities are well synchronized on the prohibition

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

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

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

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

The unauthorized sua sponte ex parte summary dismissal misapprehends and/or overlooks material fact and law. Petitioner respectfully objects. This matter is of great public importance. This matter involves the attached copy of the Decree of Divorce which untrustworthy Family Court attorney

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

In addition, the lower appellate court orders are reversible based on inadequate explanation for meaningful appellate review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4 thCir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct

meaningful appellate review of the court's disposition."). Accordingly, reversal is respectfully requested.

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

In sum, the jurisdictional question herein is material and the same factors supporting the previous stay, copy attached, pending appeal of jurisdictional questions and denial of substantial rights support sustaining that stay: 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. 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 which the Family Court attorney defendant did not appeal. The same factors on which the previous stay on appeal are based are the same factors which support sustaining the stay on appeal herein. Accordingly, lower appellate court (COA) reversal with stay pending resolution 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).

## CONCLUSION

For substantial justice affecting substantial rights and pursuant to law of the case on prior appeal herein, writ of certiorari is respectfully requested.

Respectfully submitted,

C. Holmes
POB 187
Sull. Isd., SC 29482-0187
843.883.3010