

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning

Ct. App. Case No. 2021-00898
Opinion No. 2024-UP-277

Jimmy HelmsRespondent,

v.

Debbie Willing.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

Certificate of Counsel1

Questions Presented1

Statement of the Case2

Argument5

 I. The Court of Appeals was wrong to find that the civil circuit court of common pleas had subject matter jurisdiction over this domestic litigation and alleged “marital assets,” which was first filed in family court. Properly, the order on appeal is void *ab initio*.5

 II. South Carolina Code § 33-41-210 prohibits the Court of Appeals’ opinion that Ms. Willing’s limited liability company was a common law partnership.....12

 III. The Court of Appeals was wrong as a matter of law to affirm real estate title determinations which contradict the plain language of the deeds to the property, and to look to extrinsic evidence to do so.15

 IV. The *sua sponte* post-trial appointment, by the trial court, of a forensic examiner who conducted post-trial discovery on behalf of the trial judge and participated with plaintiff’s counsel in numerous *ex parte* conversations, was deeply prejudicial error of law.18

CONCLUSION22

CERTIFICATION OF COUNSEL

Pursuant to Rule 242(d)(1) of the South Carolina Appellate Court Rules, the undersigned counsel for Petitioners certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on January 27, 2025.

QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals wrongly find that the civil circuit court had subject matter jurisdiction to divide alleged “marital assets” acquired “during the period of co-habitation”?
- II. Did the Court of Appeals wrongly ignore South Carolina Code § 33-41-210, which is clear that a limited liability company cannot also be a partnership?
- III. Did the Court of Appeals wrongly disregard the deeds’ plain language in affirming the trial court’s erroneous title determinations?
- IV. Was the Court of Appeals wrong to ignore that the *sua sponte* post-trial appointment, by the trial court, of a forensic examiner who conducted post-trial discovery on behalf of the trial court and participated in extensive *ex parte* communications with plaintiff’s counsel, only, was deeply prejudicial error of law commanding reversal?

Petitioner Debbie Willing respectfully asks this Court to grant a writ of certiorari to review the Court of Appeals’ final decision in this case (Opinion No. 2024-UP-277, the “Opinion”). **The Opinion is contrary to constitutional and statutory law, public policy, the rules of procedure, and the Record on Appeal.**

STATEMENT OF THE CASE

This is an appeal from a final order in a case that the trial court did not have jurisdiction to try. The Respondent's complaint—filed in the civil circuit court of common pleas after first filing in family court—requests an equitable division of the “marital assets,” and the determination of a domestic partnership,¹ rendering its subject matter the exclusive province of the family court. On the eve of the trial of this case—in civil circuit court—the Respondent filed Plaintiff's Pre-Trial Brief per Rule 16(c), SCRPC. Pursuant to Rule 16(c)(1), the pre-trial brief contains “*A concise, non-argumentative statement of the facts of the case,*” and that statement makes the marital, domestic character of Respondent's lawsuit instantly recognizable:

[Respondent's] concise, non-argumentative statement of the facts of the case.

[Respondent] Jimmy Helms and [Petitioner] Debbie Willing **cohabitated for approximately 13 years** and contemplated the possibility of marriage. For a number of reasons, the parties did not do an official marriage ceremony. Throughout the years, the Plaintiff and the Defendant **did hold themselves out as husband and wife**. The parties did have a stock market account together but they did file separate tax returns. For numerous purposes, the parties **held themselves out as husband and wife and the parties did consider themselves to be married**. The parties owned a business together; held property together; had property placed in the Defendant's name; and **they were generally recognized by members of the public as being husband and wife**. The parties have separated from each other in June of 2015.

Throughout the marriage, the Plaintiff invested significant amounts of money into the home where the Defendant resides. Approximately \$100,000 was invested in Defendant's home. The parties acquired jointly a parcel of real estate in Harbor Watch. The Harbor Watch property was property which the Plaintiff owned prior to the parties coming together. The understanding was the Defendant would hold the Harbor Watch property for the Plaintiff. The parties jointly maintained the lot and jointly

¹ South Carolina law does not recognize domestic partnerships.

paid taxes on the lot. The parties acquired various parcels of income producing property as well as other items which were placed in Defendant's name or which were held jointly.

R. pp. 72-73 (emphasis added); *see also, e.g.*, R. pp. 18-20 (Family Court Complaint); *see also* Appellant's Reply Brief, pp. 6-8 (questions asked at trial, which also stamp the character of this dispute as domestic).

At the outset of the trial, the Petitioner's trial attorney renewed her motion to dismiss for lack of subject matter jurisdiction. (R. p. 41, fn. 1; R. p. 91). However, the trial court wrongly found – and the Court of Appeals wrongly affirmed – that the parties had consented to subject matter jurisdiction in the civil circuit court, and that the court could therefore hear the case. (R. p. 92: "Right now, I have jurisdiction. Everybody agrees."); *But see, In re Nov. 4, 2008 Bluffton Election*, 385 S.C. 632, 686 S.E.2d 683, 685-686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."). Given the plain and unmistakable domestic character of the litigation before it, the civil circuit trial court had a duty to acknowledge that it lacked jurisdiction to carve up the "marital assets" described in the (civil circuit court) Complaint . . . but instead it wrongly proceeded to divide assets based on "the period of co-habitation." (R. p. 9).

The Court of Appeals was wrong to affirm the circuit court's order – which was void *ab initio* for lack of jurisdiction and contrary to statutory law. Certiorari review is warranted not only because of the jurisdictional question but because, dangerously, the Court of Appeals' Opinion encourages forum-shopping by plaintiffs by endorsing near-simultaneous filing of common-law marriage claims in both the family and the civil

circuit court.² This is particularly troubling given apparent differing burdens of proof in family versus circuit court. The Opinion wrongly permits a plaintiff to dodge the family court's clear and convincing evidence standard for common law marriage while nonetheless pursuing in civil circuit court an entitlement to "marital assets,"³ which were acquired while the parties "lived either as husband and wife or like husband and wife."⁴ The Court of Appeals improperly allowed a civil circuit court to violate express jurisdictional prohibitions against dividing alleged marital assets. **The Legislature intentionally made such domestic determinations the exclusive realm of the family court system.** S.C. Code § 63-3-530(A)(2).

In arriving at its improper disposition of marital property, the circuit court further erred by making title determinations that contradict the plain language of the deeds before it, ignoring statutory law that governs and limits the definition of alleged partnerships, and appointing *sua sponte*—after the conclusion of the trial—a forensic accountant to conduct post-trial "discovery" on behalf of the court. (R. pp. 6-10). The trial court's order is riddled with reversible error, which the Court of Appeals' Opinion

² Respondent Mr. Helms first filed this action in family court on September 22, 2015. (R. pp. 18-20). Ms. Willing filed her answer in family court. Two months later, Mr. Helms filed a substantially similar lawsuit, concerning the identical "marital assets," in civil circuit court on December 4, 2015. (R. p. 28). Both complaints seek substantially the same relief, concerning the identical "*marital assets*." (R. p. 29 ¶). The civil circuit court went on to divide the alleged "marital assets" based on the "*period of cohabitation* by Plaintiff and Defendant." (R. pp. 9; 685-696).

Even if the Complaint had not first been filed in family court, the domestic character of the action should have prevented the trial court from hearing it, as a matter of law.

³ R. p. 29, Civil Complaint, ¶ 8.

⁴ R. p. 28, Civil Complaint, ¶ 2.

is wrong to overlook and excuse. Moreover, the order is void *ab initio* for lack of jurisdiction.⁵ *Seels v. Smalls*, 437 S.C. 167, 877 S.E.2d 351 (2022) (“A judgment from a court that does not have subject matter jurisdiction is void *ab initio*.”).

This Court should review the Opinion to void the trial court’s order.

I. The Court of Appeals erred to find that the civil circuit court of common pleas had subject matter jurisdiction over this domestic litigation and alleged marital property.

The Court of Appeals’ Opinion—finding that a civil circuit court could hear and decide a domestic dispute, first filed in Family Court, and then dispose of alleged marital property—is contrary to law, including constitutional, statutory, and Supreme Court precedent.

The family court has exclusive jurisdiction . . . in other marital litigation between the parties, **and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage.**

S.C. Code § 63-3-530(A)(2) (emphasis added), “Jurisdiction in domestic matters;” *see also* *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997) (“Subject matter jurisdiction refers to the court’s power to hear and determine cases of the general class to which the proceedings in question belong.”); *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (explaining subject matter jurisdiction may not be waived, even by consent of the parties); *Seels*, 437 S.C. at 174 (“The family court’s exclusive jurisdiction over equitable apportionment extends to marital property . . . Section 20-3-610 provides each spouse has a ‘vested’ right in the ‘marital property,’ which is defined—

⁵ Petitioner incorporates herein *Appellant’s Final Brief* and *Appellant’s Final Reply Brief* which were filed in the Court of Appeals on April 18, 2022.

and subject to apportionment 'by the family courts of this State' – at the moment the marital litigation is filed.") (emphasis added).

The Opinion errs by failing to focus on the plaintiff's allegations, which unmistakably concern "marital assets" and a common law marriage. The question of subject matter jurisdiction is a question of law. *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999). "This Court reviews all questions of law de novo." *Id.* "The **jurisdiction of any tribunal is determined by the allegations, not by the answer** to the questions raised by the allegations." *See Brown v. South Carolina Dep't of Health*, 393 S.C. 11, 709 S.E.2d 701 (Ct. App. 2011), *citing* 21 C.J.S. Courts § 17 (2006) (emphasis added).

The allegations in Respondent's Complaint and Pre-Trial Brief, filed only four days before this trial in civil circuit court, firmly and unmistakably establish that the gravamen of Respondent's claims is domestic—and therefore in the class of action over which the Family Court has exclusive jurisdiction. The Respondent characterized the facts at issue as revolving around domestic relations and alleged marital property acquired during the "marriage," explaining to the trial court at the outset that "[Respondent] Jimmy Helms and [Petitioner] Debbie Willing **cohabitated for approximately 13 years** and contemplated the possibility of marriage. For a number of reasons, the parties did not do an official marriage ceremony. Throughout the years, the Plaintiff and the Defendant **did hold themselves out as husband and wife**. . . For numerous purposes, the parties **held themselves out as husband and wife and the**

parties did consider themselves to be married.” R. p. 72-73 (emphasis added); *see also*, *e.g.*, Appellant’s Reply Brief, pp. 6-8.

Respondent Plaintiff’s Pre-Trial Brief unambiguously classifies the property in dispute as having been acquired “[t]hroughout the marriage,” making any division of that alleged marital property the exclusive jurisdiction of the Family Court. S.C. Code § 63-3-530(A)(2) (“The family court has exclusive jurisdiction . . . for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage.”); S.C. Code 20-3-610, *et seq.*

At trial, the Respondent improperly attempted to re-brand his domestic dispute (first filed in family court) as a “partnership” dispute, in an effort to shoehorn his marital claims into the civil circuit court’s jurisdiction. But when he was specifically asked about the basis for the alleged “partnership,” Respondent’s own responses under oath show that he was alleging a domestic partnership and a claim to marital assets:

ATTY. MOORE: Would you tell me how you and Debbie conducted your business affairs compared to a married couple?

MR. HELMS: I don’t quite -- what do you mean by that?

ATTY. MOORE: Compared to ---

MR. HELMS: We were partners. We were partners in everything if that’s what you’re asking me. I mean, I -- we were partners, I mean.

ATTY. MOORE: That’s what I want to get to.

MR. HELMS: If she wanted something, if she wanted something -- hell, I bought her a damn \$10,000 Rolex watch. I mean, I must have liked her some, you know? **I mean, I mean, I don’t quite understand that question really, but we**

carried ourself as man and wife. If she says not, that's okay, too, but I thought we did.

ATTY. MOORE: When you say y'all were partners, what do you mean by that?

MR. HELMS: Well, Debbie, Debbie was really smart, like I told you before. So, when the store -- I wasn't -- the store wasn't doing very well. I went through this divorce with this young girl. I was, damn, just going backwards, and **she came to my life at a good time. She helped get my ass straight. She sure did, so -- and we just fell in love, you know.**

(R. pp. 204: 18 - 206: 13) (emphasis added). Further, the Respondent's trial witness list has nothing to do with a business partnership; instead, it identifies, "People that knew we carried ourselves as Man and Wife." (R. p. 564).

The civil circuit judge wrongly announced (after hearing and rejecting jurisdictional arguments)⁶ that he would "split the baby and a watermelon," because "the course of true love never runs smooth." (R. p. 100: 7-8; p.103: 11). But this Court has recognized that a civil circuit court judge has a duty to reject such domestic claims as plainly outside of that court's jurisdiction. *Harrell*, 337 S.C. at 320, 523 S.E.2d at 769. Notably, the parenthetical case citations in Paragraph 2 of the Court of Appeals' Opinion support the conclusion that there is no jurisdiction in civil circuit court; and yet the Court of Appeals improperly reached the opposite result. *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997) ("Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings

⁶ Lack of subject matter jurisdiction may be raised at any time, and a court does not have the power to confer jurisdiction upon itself where none exists.

in question belong.”); *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (explaining subject matter jurisdiction may not be waived, even by consent of the parties); *Nix v. Columbia Staffing, Inc.*, 322 S.C. 277, 280, 471 S.E.2d 718, 719 (Ct. App. 1996) (“[L]ack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.”); *Seels*, 437 S.C. at 177-178 (“The ‘linchpin’ of its reasoning was the General Assembly’s use of the word ‘vested’ in section 20-7-471 (now codified as section 20-3-610), which states **the filing of marital litigation gives rise to a ‘vested’ equity and an ownership right in marital property that are subject to apportionment by the family court at the time the marital litigation is filed.**”).

Subject matter jurisdiction is “the power to hear and determine cases of the general class to which the proceedings in question belong.” *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598 (1994). The general class to which these proceedings – between an alleged husband and wife who “cohabitated” and “held property together” during an alleged “marriage”⁷ – belong is the class of domestic litigation. *Bell v. Progressive Direct*

⁷ R. pp. 72-73. See also the questions asked at the trial in civil circuit court: “So, you were having sex with him while married?” “Now, isn’t it true that Jimmy helped pay for some of your children’s education?” “He had an expectancy that he would be able to use that pool and that house for his children?” “Well, now, you don’t have any idea what would give him such an expectancy do you? . . . Except for the fact that you told him you loved him, right?” “And you slept with him?” “So you were pretty much a couple, right?” “Why did you consider yourself married to her?” “Would you tell me how you and Debbie conducted your business affairs compared to a married couple?” “Now, y’all lived together for how many years?” “How many times did she throw you out of the house?” “So, y’all separated after about fourteen years?” “How much did you pay for [the Rolex]?” “How much of that money did you put into her house?” “Tell me about the improvements you paid for to the home.” “What, if any money did you put in a vehicle for her daughter?” “During the time y’all were living together, y’all were having marital or sexual relations, weren’t you?” “Was there anything y’all didn’t share?” “Did you ever think they were married?” “They were living together, right?” “Did you believe they were husband and wife?” “Did they act like husband and wife?” “Why do you think she was married to

Ins. Co., 757 S.E.2d 399, 407 n.9, 407 S.C. 565 (2014) (“We note that it was the exclusive province of the family court to determine the existence of a common-law marriage in this case. . . . Therefore, Petitioner should have sought a declaration of common-law marriage in the family court, and the trial court and court of appeals erred in addressing the issue.”); *Hammer v. Hammer*, 399 S.C. 100, 109, 730 S.E.2d 874 (Ct. App. 2012) (“the family court has exclusive jurisdiction over contracts relating to property in a divorce proceeding . . . Accordingly, the circuit court did not err in finding it lacked subject matter jurisdiction to hear Appellant’s complaint.”).

A lawsuit’s subject matter is the thing in dispute (alleged “marital assets” and the disputed question of whether the couple was married), and not the answer to the question. *Brown*, 393 S.C. 11, 709 S.E.2d 701. **The Court of Appeals’ Opinion misapprehends that a circuit court cannot confer subject matter jurisdiction on itself by styling its order to skirt another court’s exclusive jurisdiction.** As a matter of constitutional and statutory law, the circuit court *ab initio*—from the outset—lacked jurisdiction to hear Mr. Helms’ alleged marital dispute over alleged “marital assets,” which had first been filed in family court. S.C. Const. art. V, § 11 (Circuit Court has jurisdiction “except in those cases in which exclusive jurisdiction shall be given to inferior courts”); S.C. Code § 63-3-530 (exclusive jurisdiction of Family Court).

Jimmy?” “Did either one of them ever refer to the other as spouse, my wife, my husband?” “You say they lived together. How did you know that?” “How did their relationship develop? What did they do? Did they move in together?” “And they lived together for a long period of time?” “Did you know their marital status, or did you believe you knew their marital status?” “What do you mean by that, they conducted themselves like they were married?” “Did [Debbie Willing] help raise you?” “Did you ever live in the home with Debbie and your dad?” “Sometimes you called her ‘Mom?’” (R. pp. 108, 131, 133-134, 204-210, 212, 321, 329, 334-335, 341-342, 362, 365-366).

The Opinion overlooks that Mr. Helms himself admitted to the class of his dispute with Ms. Willing by filing his case in Family Court, first. (R. pp. 14-20). This primary Family Court filing by Respondent was an admission as to the domestic character of his claims, and it vested jurisdiction over the alleged marital property in the Family Court. Significantly, Mr. Helms never altered that fundamental domestic character of the dispute. (e.g., R. pp. 72-73). The domestic claims between the parties were pending in Family Court – in which jurisdiction over the alleged marital property had vested – at the time Mr. Helms initiated the same domestic dispute in civil circuit court, just two months after filing in Family Court. Because jurisdiction had already vested in Family Court, his subsequent filing in circuit court was void *ab initio*. *Seels*, 437 S.C. at 181 (“Because Wife initiated this marital litigation in the family court during the parties’ lifetimes, the parameters of the marital property were already fixed and the family court acquired exclusive jurisdiction over the issue of equitable apportionment at that time.”); *Meehan v. Meehan*, 407 S.C. 471, 756 S.E.2d 398, 402 (Ct. App. 2014) (“because the jurisdiction of a court attaches to the person and subject matter of the litigation, any subsequent happenings ‘will not ordinarily operate to oust the jurisdiction already attached.’”).

Alarminglly, the Court of Appeals’ statement—that “Helms could have continued to pursue his common-law-marriage action in family court or filed a civil action in circuit court”—encourages gamesmanship, forum-shopping, and is repugnant to public policy and the economy of the court system.⁸ (Op. at p. 4). If left

⁸ Again, Mr. Helms’ fundamental factual basis for reaching into Ms. Willing’s assets is made unambiguous by his Pre-Trial Brief’s statement of the facts underlying his claims. R. pp. 72-73 (“Plaintiff and Defendant **held themselves out as husband and wife and the parties did consider themselves to be married**. The parties owned a business together; held property

to stand, the Opinion also puts defendants, facing allegations of common law marriage and claims to alleged marital property, in an unworkable and extraordinarily unfair position by both chastising a defendant for denying claims in family court (should Ms. Willing have admitted to the allegations in family court to assure its jurisdiction?), and shifting the burden onto the denying defendant to file an action to disprove a common law marriage: “Rather than filing an action of her own in family court for a common-law marriage, which notably Willing maintains never existed . . . ” (Op. p. 4). The Opinion also punitively and illogically assumes that by denying a common law marriage, Ms. Willing was somehow admitting that Mr. Helms had a civil claim, wrongly stating that “she sought to litigate in the court of her choosing.” (Op. at 4). This is akin to saying that if I deny that I am negligent, then I must be “choosing” to litigate the question of whether I acted intentionally.

First, Ms. Willing did not need to file an action “of her own” in the family court, because Mr. Helms already had done so, and she had properly answered. Subject matter jurisdiction thereby had vested in Family Court. Second, the Opinion is wrong for reasons of justice and fairness, and also because **subject matter jurisdiction cannot be waived or consented to.** *In re Nov. 4, 2008 Bluffton Election*, 686 S.E.2d at 685-686 (“The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.”); Jean Hoefler Toal *et al.*, *Appellate Practice in South Carolina*, pp. 110-111 (3rd ed. 2016); *Gilley v. Gilley*, 327 S.C. 8, 11, 488 S.E.2d 310 (1996)

together; had property placed in the Defendant’s name; and they were **generally recognized by members of the public as being husband and wife.**”). The family court therefore had exclusive jurisdiction to determine (*under a clear and convincing evidentiary standard*) whether a marriage existed, and – if so – to equitably divide the alleged marital assets.

("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."). In other words, neither Petitioner Ms. Willing, nor Respondent Mr. Helms, nor the civil circuit court itself could consent or "choose" to litigate claims – initiated in a Family Court complaint identifying the disputed property as marital – "in the court of [their] choosing." (Op. at p. 4). As a matter of law, domestic jurisdiction attached to the subject matter of this action at the time that Mr. Helms first filed it, in Family Court. *Seels*, 437 S.C. at 177-183.

The Family Court has exclusive, original jurisdiction over marital litigation and property, including the validity of an alleged common law marriage and the equitable division of alleged marital property. Mr. Helms admitted to the domestic class of his claims. The civil circuit court did not have jurisdiction to hear his claims, from the inception of the civil case – which was filed while a Family Court action was pending. This Court should review the Opinion on this issue, which is contrary to law, constitution, public policy, and the Record on Appeal, and it should render the civil circuit court's order on appeal void *ab initio*.

II. This Court should review and reverse the Court of Appeals' "partnership" decision, which erroneously disregards S.C. Code § 33-41-210 and the lack of evidence in the Record.

If the civil circuit court had jurisdiction, the Opinion errs to uphold its partnership decision, which is contrary to controlling statute. In Paragraph (1.) of the Opinion, this Court finds a "partnership" between the parties "in their operation of the Business

located at 812 and 820 Meeting Street.” (Op. pp. 2-3). Initially, as the Opinion states, this is a question of law. It therefore should have been reviewed de novo, without deference to the trial court.⁹ But the Court of Appeals mistakenly applied an “any evidence” standard, depriving Ms. Willing of appropriate appellate review. (Op. at p 2).

Further, as a matter of law and undisputed fact, the gas station business at 812 and 820 Meeting Street was **owned and operated by a limited liability company** called L&D Enterprises, LLC. (e.g., R. p. 508; R. p. 567, ¶ 1; R. p. 157:7-20; *see also* R. p. 8 “both Plaintiff and Defendant were authorized signers on L&D Enterprises accounts”). Therefore, the Opinion misapprehends the controlling law of South Carolina’s Partnership Act, which expressly defines “Partnership” to exclude other corporate forms:

However, **any association formed under any other statute** of this State [*i.e.*, the Uniform Limited Liability Company Act] or any statute adopted by authority, other than the authority of this State, **is not a partnership** under this chapter unless the association would have been a partnership in this State before the adoption of this chapter on February 13, 1950.

S.C. Code § 33-41-210 (“Partnership’ defined.”) (emphasis added). A limited liability

⁹ **The Opinion uses the wrong standard of review.** It states that the question of whether a partnership exists is a question of law (as is the question of the existence of a common law marriage), but then it insists that the trial court’s factual findings are entitled to deference and are to be reviewed under an “any evidence” standard. This is incorrect according to voluminous precedent. *See, e.g., Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 877 S.E.2d 341 (2022) (“This Court applies **de novo** review to questions of law, so it need not defer to the determination of the court below.”); *Swicegood v. Thompson*, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020) (“This Court reviews all questions of law de novo.”). Further, the Opinion’s case citations leave no doubt that the Court of Appeals is confusing an “action at law” with a “question of law.” Again, this is wrong. What constitutes a partnership here was a question of law within an action at equity. The main purpose of the civil court action was “an accounting requiring the Defendant to appear and account for the marital assets” and a corresponding equitable division of purported (marital) assets. (R. pp. 28-29). Actions for accounting and apportionment are **equitable**. *Lee v. Lee*, 251 S.C. 533, 164 S.E.2d 308 (1968); S.C. Code § 20-3-610 *et. seq.* (equitable apportionment of alleged marital property). Therefore, *if* the civil court had jurisdiction, then this was an action in equity, and this Court was empowered to find facts in accordance with its own view of the preponderance of the evidence. *Townes Assoc., Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976).

company, like L&D Enterprises, LLC, is formed under the South Carolina Limited Liability Company Act, and it therefore falls as a matter of law outside the definition of a partnership.

This statutory law renders erroneous the Opinion's application of the common law test to find a partnership, because "the parties . . . negotiated business decisions together, including the Business's sale." (Op. pp. 2-3; cf. R. p. 8). Here, the evidence is clear that the "Business's sale" went through a business broker, which negotiated the purchase of L&D Enterprises, LLC, by Chharvi Bhavya, LLC. (R. pp. 349-359). **In other words, one limited liability company was buying another limited liability company, through a business broker.** As a matter of law, these transactions are controlled by South Carolina's Limited Liability Company Act, and they cannot (and do not) indicate a "partnership." S.C. Code § 33-41-210 ("Partnership' defined"). The Record further demonstrates that the Opinion's finding that the Parties "were both authorized signatories on the Business's accounts and wrote checks¹⁰ on behalf of the Business" is flawed, because the "Disputed Income Items" were improperly based on the "Period of cohabitation," and the "commingled income" was accounted for "while the parties cohabitated." (R. p. 702-706).

Further, the Opinion's finding that the parties "negotiated" the "Business sale" is wrongly based on the testimony of Mr. Patel (a member of purchaser Chharvi Bhavya, LLC), who testified that he believed Mr. Helms and Mrs. Willing to be husband and wife:

¹⁰ Notably, bookkeepers and employees routinely sign checks on behalf of businesses. It is unrealistic and against law and public policy to hold that having such signatory power on accounts transforms such people into business partners or LLC members.

THE COURT: Based on your observation of your dealings with Mr. Helms and Ms. Willing, what was your impression, understanding of the nature of that relationship? **What was your impression of the nature of the relationship between this man and this woman when you were dealing with them in the sale of [L&D Enterprises, LLC]?**

MR. PATEL: Yeah. Like, they are like – you know, I, I, I didn't ask them personal questions but I was understanding that they had a, like, relationship, you know, like, like husband and wife.

THE COURT: A partnership or what?

MR. PATEL: **Husband, wife or like** – because when I buy – bought the business, I didn't check anything like, you know, like personal matters. **I didn't check, like, they are husband and wife or like, a boyfriend, girlfriend, nothing. But I know they were together.** That I know.

(R. pp. 357: 18 - 358).

Moreover, reviewed de novo, the Record shows that Mr. Helms entirely failed to meet his burden of proof at trial,¹¹ and any traction he gained by the unlawful fiction that a limited liability company can also be a (domestic) “partnership” led the Court of Appeals into error of statutory law. Because the Opinion's determination as to the ostensible “Business” is contrary to statutory law, this Court must review and reverse it.

III. The Court of Appeals' title determinations defy the deeds' plain language and established real property law.

If the civil circuit court had jurisdiction, the Opinion wrongly disregards the clear

¹¹ See *Appellant's Brief*, pp. 33-42. Mr. Helms did not introduce banking records, he did not present tax returns, he did not bring any deposit slips, he did not bring any insurance policies, he did not bring any deeds, or leases, or **any records of any sort** to demonstrate that he shared in the profits, losses, liabilities, and assets of a purported business partnership with Ms. Willing. Instead, Mr. Helms brought witnesses, identified as “People that knew we carried ourselves as man and wife.” (R. p. 564).

errors of the trial court's title determinations. *Myers v. Town of Calhoun Falls*, 441 S.C. 146, 892 S.E.2d 514 (Ct. App. 2023) ("The present case involves the determination of title to real property, which is a question of law."). The trial court erred as a matter of law by finding that Mr. Helms holds "legal title" to real property, when the deeds are plainly in the name of Ms. Willing. (*compare* R. p. 9, holding "the court finds that Plaintiff holds legal title to 812 Meeting Street and 820 Meeting Street," *with* the deeds at R. pp. 482-486).

The Opinion applies the wrong standard of review to the trial court's legal title determinations. The construction of a clear and unambiguous deed is a question of law for the court. *Gardner v. Mozinyo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987). "[I]f the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Hunt v. Forestry Com'm*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) (2002). The Court of Appeals did not apply this standard and erroneously looked to extrinsic evidence. Ms. Willing respectfully requests certiorari review by this Court, with the correct standard of review.

The trial court explained that it was adjudicating title to seven (7) parcels of property:

This is an action which involves **title** . . . in the following real estate . . . : [1] 1900 Oceola Drive, [2] 1904 Oceola Drive, [3] 1905 Oceola Drive, [4] 812 Meeting Street, [5] 820 Meeting Street, [6] 809 Shull Street, and [7] 185 Harbor Watch . . .

(R. p. 7) (emphasis added).¹² Specifically as to 812 Meeting Street and 820 Meeting Street,

¹² Petitioner incorporates herein her arguments on pages 26-32 of her final brief, and she maintains that the order's title determinations will come as a **big surprise** to the strangers to this litigation, who legally own most of these properties. The Opinion is wrong to find that, because Ms. Willing "did not address these [other] properties in her motion for reconsideration," "any issues related to properties other than 812 and 820 Meeting Street are not properly before this

the trial court determined that Mr. Helms “**holds legal title** to 812 Meeting Street and 820 Meeting Street.” (R. p. 9).

The Record contains the duly-recorded, general warranty deeds to both the 812 Meeting Street and 820 Meeting Street properties – and **Mrs. Willing holds legal title to both**. 820 Meeting was conveyed to Ms. Willing on August 27, 2004, by Merrilyn Hall. (R. p. 482). Ms. Willing testified that – as the deed indicates – she paid \$82,500 for the lot. (R. p. 168: 19-21). Ms. Willing also testified that she took out a loan and mortgage in her name only, to pay for the property and the cost of installing underground storage tanks and gas pumps on the lot. (R. pp. 176: 13 - 178: 19; 374: 17 - 376; 224: 14-19; 263: 14-25; 271: 11-23). Mr. Helms did not introduce *any* evidence disputing that Ms. Willing holds legal title to 820 Meeting Street.

Likewise, 812 Meeting Street was conveyed to Ms. Willing by general warranty deed on January 6, 2006, by Mr. Helms. (R. p. 484-486). Mr. Helms never claimed, nor sought to prove, that the deed from himself to Ms. Willing was invalid for any reason.¹³ Mr. Helms did not argue that the general warranty deed by which he conveyed 812 Meeting Street to Ms. Willing was ambiguous. The deed is witnessed, sealed, and notarized, and it was signed by Mr. Helms; it was duly recorded with the Register of

Court.” (Op. at issue 4., p. 5). This overlooks that the trial court did rule as to title to every one of the properties in its final trial Order, and so there was no need to raise the question in a motion to reconsider. **Moreover, if this Court does not reverse the rulings, they could gum up title held by innocent strangers to this litigation, which would be manifestly unjust and unfair.**

¹³ Mr. Helms did not file a cause of action for recovery of real property, or to set aside the deed, or to quiet title, or pursuant to the Statute of Elizabeth, or any other conventional method of establishing ownership to real property. These sorts of claims would have been necessary to invalidate the deed or prove that legal title allegedly remains vested in Mr. Helms despite a recorded instrument in which he voluntarily conveyed title to Ms. Willing.

Deeds.

The Opinion is shockingly wrong to find that the amount of consideration, or testimony at trial, could alter the validity of the deed's plain language. (Op. at p. 5) ("Helms transferred the property's title to Willing for the price of \$5.00. The nature of this transaction and Helms's testimony at trial indicate his intent to maintain an interest in the property"). In *Hunt*, this Court explained the standard for deed construction, in a case involving a conveyance for the consideration of one dollar (\$1.00):

[I]t is the duty of the court to construe deeds and determine their legal effect, where there is no such ambiguity as requires parol proof and submission to the jury. 26A C.J.S. Deeds § 168 (2001). Deeds are construed to determine the intent of the parties. To construe a deed, a court looks first at the language of the instrument because the court presumes it declares the intent of the parties. When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, will a court resort to established rules of construction to aid in the ascertainment of the grantor's intention by artificial means where such intention cannot otherwise be ascertained. 23 Am.Jur.2d Deeds § 192 (2002).

Hunt, 358 S.C. 564, 569, 595 S.E.2d 846 (emphasis added). "[I]f the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Id.* **Because the deeds to 820 and 812 Meeting are unambiguous, the Opinion errs to look to extrinsic, testimonial evidence at all.**

A reviewing court is "free to decide questions of law with no particular deference" to the trial court. *Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016). Ms. Willing respectfully requests that this Court would review the Opinion, construe the deeds according to their plain language to find that Ms. Willing indeed holds legal title to the property at 812 and 820 Meeting Street, and restore ownership to Ms. Willing.

IV. The *sua sponte* post-trial appointment, by the trial court, of a forensic examiner who conducted post-trial discovery on behalf of the trial judge was deeply prejudicial error of law. This issue is preserved for review.

The trial court's order is improperly based on a "Forensic Report" that the trial judge had no authority to procure,¹⁴ over which there were no procedural or evidentiary controls, which was tainted by partiality and prejudice, and which was not in evidence at trial.¹⁵ The Opinion cites no legal authority that would permit a trial court to appoint *sua sponte* a "Court forensic examiner," long after the plaintiff rested his case,¹⁶ several months after the trial,¹⁷ to conduct discovery into the facts¹⁸ on behalf of the judge,¹⁹ without any evidentiary safeguards,²⁰ outside of the discovery protections of the Rules of Civil Procedure,²¹ by way of numerous one-sided, partial and prejudicial *ex parte*

¹⁴ R. p. 6, order appointing forensic examiner; no motion was made to prompt this order.

¹⁵ Petitioner incorporates her Brief's Statement of the Case for detail and record citations on this issue.

¹⁶ "Nothing further, and that is our case, Your Honor." (R. p. 369: 4-5).

¹⁷ The order, issued without any motion or hearing, is dated more than two months after trial. (R. p. 6).

¹⁸ "Prior to trial relevant documentation was requested but not produced." (*Id.*).

¹⁹ Mr. Hodge was appointed as "a Court forensic examiner." (*Id.*).

²⁰ For example, the forensic examiner, on behalf of the Court, issued detailed "interrogatories" and "discovery requests" to the parties, and neither Ms. Willing nor her attorney ever saw how Mr. Helms answered those questions. In addition, the answers (whatever they may have been) were not provided under oath nor subject to cross examination. As another example, the forensic accountant, using Mr. Helms' attorney's subpoena power, issued numerous subpoenas for Ms. Willing's bank account statements, and none to Mr. Helms' banks. (R. pp. 626-635, Hodges Billing Statements).

²¹ **There is no provision within the Rules of Civil Procedure allowing *the trial court* to serve interrogatories, requests for production, and subpoenas on the parties and then to use the unverified responses as a basis for its order.**

communications.²² While there is no law in support of the Opinion's position, **there is significant law expressly forbidding the trial court's independent post-trial fact investigation**, including the Rules of Civil Procedure, the Appellate Court Rules as they pertain to the limitations of the judiciary, and the multiple scheduling orders entered in this case which mandated that discovery be conducted and concluded prior to trial. *See*, CJC, Rule 501, Canon 3, SCACR; R. pp. 1, 4.

An order based on *ex parte* communications is invalid where there is partiality or prejudice. *Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (1992). The Court forensic examiner, acting on behalf of the trial court, engaged in multiple, lengthy telephone conferences with Mr. Helms' attorney, only. (R. pp. 626-635). Because the forensic examiner was acting on behalf of the court, these conferences were prohibited *ex parte* communications. It is strikingly clear that the post-trial fact investigation by the trial court was not impartial and was highly prejudicial to Ms. Willing: the forensic examiner's first task was to study a proposed order by Mr. Helms' attorney; the court did not provide the examiner with a proposed order by Ms. Willing. (R. pp. 626-635). The ultimate result was an order by the trial court that spontaneously divested Ms. Willing of title to her property and divided in half her limited liability company. **The trial court's order must be reversed; it relies on shockingly biased, one-sided "evidence" which was improperly procured outside of discovery, after trial, by the court, and which was**

²² The accountant's billing statements show numerous communications between the accountant – acting as an agent of the court – with only Mr. Helms' attorney. However, "*ex parte* communication is defined as 'prohibited communication between counsel and the court when opposing counsel is not present.'" *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E.2d 836 at footnote 3 (2003). (R. pp. 577, 626-635).

never the subject of cross-examination or other credibility safeguards.

As to preservation: Ms. Willing properly appealed a post-trial, unilateral decision by the trial court, which was issued in an interlocutory order decided by the trial court without motion or hearing. That interlocutory decision did not have to be challenged until the final order was rendered, at which point Ms. Willing appealed. *Sullivan-Carter*, 439 S.C. at 414, 887 S.E.2d 146, 150, *citing* § 14-3-330(1) (if a party timely files a notice of appeal from a final judgment, “the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from”). The Court of Appeals was thus wrong to find that the issue was not preserved for review. (Op. at p. 4, ¶ 3). Moreover, it would be manifestly unfair to permit a trial court to violate the rules of court after trial, *sua sponte*, and without a hearing, in an effort to put itself outside of the scope of appellate review.

CONCLUSION

The Court of Appeals’ Opinion and the order on appeal must be reviewed and reversed. Those decisions are contrary to constitutional and statutory law, as well as this Court’s binding precedent, and **the Opinion wrongly encourages jurisdictional gamesmanship on the part of plaintiffs, in violation of public policy.**

For the reasons set forth above and in Ms. Willing’s appellate briefs, Ms. Willing respectfully asks this Court to review the Court of Appeals’ Opinion and to reverse or vacate the trial court’s orders as void for want of subject matter jurisdiction.

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Respectfully submitted,

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