THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-00898

Jimmy Helms .....Respondent,

v.

Debbie Willing.....Appellant.

APPELLANT'S FINAL REPLY BRIEF

FORD WALLACE THOMSON LLC
Ainsley F. Tillman
Ian S. Ford
715 King Street
Charleston, South Carolina 29403
(843) 277-2011
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitution

Rules

Other Authorities

Each and every one of the trial court's decisions should be vacated for its lack of subject matter jurisdiction, *ab initio*. That is at the crux of this appeal, and it may be the sole statement that needs to be made in Reply to Respondent's Brief. Alas, because Mr. Helms makes numerous dubious and incorrect arguments, Ms. Willing will reply with more detail:

REPLY TO RESPONDENT'S STATEMENT OF THE CASE AND FACTS

Mr. Helms' discussion of the facts seems superficially credible—until one compares it to the actual evidence and record. He writes broadly about a convenience store business, and how the parties allegedly worked together in the convenience store, "jointly" controlling its day-to-day operations, and making "mutual decisions" about the store's name, and its scope of operations, and a lawsuit that it filed over gas tanks. And then—neatly—Mr. Helms proclaims that this business was a "partnership" between Ms. Willing and Mr. Helms. **But the convenience store business was never a "partnership." . . . it was a limited liability company.** (R. pp. 508; R. p. 568 L&D Complaint). Mr. Helms briefly acknowledges this reality, but otherwise ignores the corporate form of L&D Enterprises LLC in the hope that this Court will be fooled—as the trial court was—by a sleight of legal hand.

Appellant urges this Court to read back through Mr. Helms' statement of the facts and substitute "L&D Enterprises **LLC**" for every generalized reference to the "store" or "convenience store" or "Jimmy's Mini Mart" or "business." A limited liability company is not a partnership . . . it's a limited liability company. LLC law is what applies, not partnership law.

In many other instances throughout his Brief, Mr. Helms mischaracterizes the record. As important examples:

- Ms. Willing in her answers to the family court complaint and the civil complaint ***alternatively*** denied that the family court and the circuit court had jurisdiction, which is precisely what a party ought to do when confronted with the same case, consecutively filed in two separate forums. (R. pp. 21, 31).

- The trial court **did not** appoint a forensic examiner "prior to the first witness being called." (Resp. Br. pp. 2-3). The record reflects that the court first *mentioned* that it *might* appoint a forensic accountant after both the plaintiff and the defendant had rested (R. p. 408), but it did not actually appoint Mr. Hodge until more than two months after conclusion of the trial. (Order, R. p. 6). Importantly, neither party moved for the appointment of a forensic examiner—it was erroneously ordered *sua sponte* by the trial court, after trial, in an interlocutory order that was not immediately appealable. Ms. Willing properly awaited the trial court's final order, at which point she appealed.

- There is no indication whatsoever in the record that Ms. Willing "accepted Mr. Hodge's report as a Court's exhibit." **Indeed, the report was never filed as an exhibit at all.**[1] Instead, Ms. Willing waited for the court's final order, and then she appealed it.

- There was no requirement that Ms. Willing raise in her motion for reconsideration those items that had already been ruled upon by the trial court, as they were preserved for appellate review.

Much more could be said about Mr. Helms' version of the facts of this appeal; this Court should carefully review his citations to the record. However, the facts are not paramount

[1] This Court can take judicial notice of the circuit court docket, which is devoid of any filing of the forensic report. Oddly, there is a belated order (filed by the court *sua sponte*, and not in response to any motion) that vaguely "seals" some vaguely described documents (the documents "utilized by Mark Hodge"). This order, issued simultaneously with the order denying Ms. Willing's Motion to Reconsider, is entirely contrary to Rule 41.1, SCRCP, which has a specific process for sealing documents designed to balance the right public access to court records with the privacy of parties and "to insure that the rules of court are fairly applied." Rule 41.1(a), SCRCP.

in the face of the jurisdictional error and errors of law made by the trial court, which Ms. Willing urges this Court to vacate and reverse:

I. The circuit court wrongly exercised subject matter jurisdiction over marital litigation involving an alleged marriage and alleged marital property.

II. The circuit court erred as a matter of law as to title to certain real property.

III. The circuit court improperly and in violation of the rules of court appointed a "court forensic examiner" to conduct post-trial discovery.

IV. The trial court erred as a matter of law in its partnership determinations.

V. The trial court actually detected but improperly ignored Respondent's failure to meet his burden of proof at trial and instead improperly undertook to attempt to assist Respondent to meet his burden by itself (*i.e.* the court) conducting fact discovery.

These are the issues of law on appeal, and Ms. Willing respectfully requests this Court to reverse and vacate.

REPLY TO RESPONDENT'S ARGUMENTS

At the outset, Respondent is wrong to describe Ms. Willing as being engaged in a "relentless effort to discredit the trial judge." (Resp. Br. pp. 21). Ms. Willing is not trying to "discredit" anyone: she is trying to get the trial court's errors reversed and its decisions vacated.

1. The circuit court did not have subject matter jurisdiction over this marital litigation.

Respondent Mr. Helms was the architect of this litigation, and he elected to file this suit first in family court as an action to determine the validity of an alleged common law marriage and for equitable division of alleged marital property. (R. p. 14, Family Court Complaint). At that moment, jurisdiction vested in the family court.[2] Ms. Willing then filed an answer to the family court Complaint, which prompted Mr. Helms to engage in belated forum-shopping. Mr. Helms' second Complaint—filed in circuit court while the family court case was pending—alleged the same factual basis and sought the same relief (*i.e.*, a determination of whether the parties had a common law marriage, as well as "an accounting requiring the Defendant to appear and to account for the **marital assets**"). (R. p. 25, Complaint (emphasis added)). The circuit court action was void *ab initi*o for lack of subject matter jurisdiction. *See Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009) (a judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment). "A void judgment is one that,

---

[2] Moreover, the family court already had exclusive jurisdiction to determine the validity of the alleged marriage and to determine the alleged rights of parties in alleged marital property. S.C. Code § 63-3-530.

from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.' . . . a judgment is void . . . if a court acts without jurisdiction." *Thomas & Howard Co., Inc. v. T.W. Graham and Co.*, 457 S.E.2d 340, 318 S.C. 286 (1995), *citing* 46 Am. Jur. 2d, Judgments, § 31 (1994).

In his Brief, Mr. Helms makes two arguments that jurisdiction was proper, which both fail. First, he argues that by sprinkling the word "business" here and there into his otherwise entirely domestic litigation, he has somehow changed the subject matter of his lawsuit. This argument fails because of Mr. Helms' own pleadings and trial tactics, which unequivocally allege a disputed marriage of the parties, as further discussed in Appellant's Brief. (*See also,* R. pp. 25, 54, 72, 564).[3]

Mr. Helms is outright wrong when he says that "[t]he matter tried before Judge Manning was not a 'domestic relations action' but an action to determine whether or not

---

[3] As one example, here is an excerpt from Mr. Helms' *Memorandum in Opposition to Ms. Willing's Motion for Summary Judgment*, filed with the circuit court, which was argued shortly before trial (R. p. 54) (emphasis added):

> **STATEMENT OF FACTS**
>
> Jimmy Helms and 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.

partnerships existed between the parties as to certain properties and businesses." (Resp. Br. p. 20). Here is just a sample of the questions asked of witnesses by Mr. Helms during his case in chief in the trial of this matter, **which case was clearly marital litigation about an alleged common law marriage** and not a business partnership:

> "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 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?"

"What do you mean by that, they managed everything together?"

> (A: "I mean, they were—in my eyes, they weren't legally married but they were married. They operated like a married couple. You know what I mean? Like, they worked together for a very long time. They both—they loved each other. The had—they raised—you know, Dad's youngest child Kaden was raised by them together . . . I mean, we all did stuff as a family.")

"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?'" [4]

The subject matter of this litigation[5] is unmistakable from the above questions, and this matter should have been heard and decided exclusively in the family court. "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).

Mr. Helms' Complaint pleads that the parties "lived either as husband and wife or like husband and wife," and that they either had a "marriage" or a "partnership," and that the "marital assets" should be accounted for. (R. p. 28, Complaint ¶¶ 1-9). Mr. Helms's Brief is wrong that jurisdiction was proper because the trial court ultimately did not make an explicit ruling that there was a common law marriage.[6] This is backwards; the 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. *Id*. A circuit court cannot confer subject matter jurisdiction on itself by styling its order to skirt another court's exclusive jurisdiction—especially not when the jurisdiction had already been implicated by the pleadings and questions presented. As a matter of constitutional and statutory law, the circuit court *ab initio* lacked jurisdiction to hear Mr. Helms' alleged marital dispute over alleged "marital assets." S.C. Const. art. V,

---

[4] (R. p. 108, 131, 133-134, 204-210, 212, 321, 329, 334-335, 341-342, 362, 365-366).

[5] "Subject matter" is defined as "The issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." "Subject of an action" is defined as "The right or property at issue in a lawsuit; the basis of a legal claim." *Black's Law Dictionary*, pp. 1723–1724 (11th ed. 2019).

[6] The trial court implicitly answered the disputed question of whether there was a marriage in the negative.

§ 11 (the Circuit Court has jurisdiction "except in those cases in which exclusive jurisdiction shall be given to inferior courts").

As a second tactic in his Brief, Mr. Helms attempts to blame Ms. Willing for his own jurisdictional snafu. To do this, Mr. Helms ignores the allegations of his own Complaint in the circuit court (which was never amended and which was ultimately tried). Instead, Respondent criticizes Ms. Willing for the way that she defended against his allegations, ruminating that "one wonders which court the Appellant would concede has jurisdiction over the issues between the parties." (Resp. Br. p. 15).

Frankly, it does not really matter whether Ms. Willing "would concede" or consent to the circuit court's jurisdiction. Subject matter jurisdiction **cannot be waived or consented to**. *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."). "[J]ust as subject matter jurisdiction cannot be waived or conferred by agreement of the parties to an action, it cannot be conferred at the direction of a county official. Furthermore, subject matter jurisdiction may also be raised at any time, and it is properly contested in this appeal even if it was not raised below." *Id*. at 687. Retired Chief Justice Toal summarizes the law in this area nicely:

> Subject matter jurisdiction . . . refers to a court's power to hear and determine cases of the general class to which the proceedings belong. The subject matter jurisdiction of a court over a particular proceeding is determined by the state constitution and statutory law. . . . a court without subject matter jurisdiction does not have authority to hear the case at all. For this reason, **a party may raise want of subject matter jurisdiction at any stage of a proceeding, even for the first time on appeal before the Supreme Court**, and both trial and appellate courts may raise the issue of

> subject matter jurisdiction *sua sponte* at any point in time. **Subject matter jurisdiction may not be waived, even with the parties' consent.** A judgment of the court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment.

Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina*, pp. 110-111 (3rd ed. 2016) (internal citations omitted; emphasis added).

The circuit court lacks jurisdiction "in any case where exclusive jurisdiction has been conferred to a subordinate court." Toal, p. 30, *citing* S.C. Const. art. V, § 11. The family court has exclusive, original jurisdiction over marital litigation, including the validity of an alleged common law marriage and the equitable division of alleged marital property. Toal, p. 32. Mr. Helms wrongly filed an action in circuit court as to a disputed marital relationship, and the circuit court did not have jurisdiction to hear it, ***from the inception of the case***.

This Court should find that every decision and order in this case is void from inception, from the moment of the improper commencement of this marital case in circuit court.

II. The circuit court erred as a matter of law as to title to certain real property.

Respondent's Brief makes no argument in opposition to Ms. Willing's Issue II on appeal (pages 26–33 of Appellant's Brief), which is that the trial court erred as a matter of law as to title to certain real property. This issue is conceded, and this Court should

reverse the trial court's legal error as to title to the four properties, as discussed in Appellant's Brief.[7]

---

2. Respondent's Argument on partnership law and the facts is wrong.

Mr. Helms had three causes of action against Ms. Willing, but the trial court granted relief on the first one, only. His first cause alleged: "Plaintiff and Defendant lived either as husband and wife or like husband and wife," having a personal and "business relationship," and the "parties recently separated," so "assuming there was no common law marriage, then the parties had a partnership." The relief sought, as to the alleged partnership, was (1) "an accounting requiring the Defendant to appear and to account for the marital assets," and (2) "a winding up of the partnership affairs [and] . . . the division of partnership property." (R. p. 25, ¶¶ 2-9).

Mr. Helms arrived at trial with no evidence whatsoever to prove his claim of a business partnership nor to entitle him to the relief that he sought. This failure to prove a statutory partnership, in which "two or more persons carry on as co-owners a business for profit," is discussed at length in Appellant's Brief. *See also* S.C. Code § 33-41-210.

---

[7] This ruling is particularly critical as to the properties at 812 Meeting Street and 820 Meeting Street. As further discussed in Ms. Willing's Motion to Enforce the Automatic Stay, Ms. Willing has a personal lease agreement with a tenant as to those properties. Based on the trial court's order, which has not been enrolled as a judgment, Mr. Helms communicated with the tenant and demanded that the tenant write all rent checks to Mr. Helms instead of to Ms. Willing, and mail them to Mr. Helms' attorney. The tenant has been mailing the rent checks to Attorney Moore since August of 2021. This has been an enormous hardship to Ms. Willing.

But in his Brief, Mr. Helms argues that there was indeed a "business": it was the convenience store. Mr. Helms' chief argument is summed up by him mid-way through his brief: "The parties both *operated Jimmy's Mini Mart and Jimmy's Citgo* as partners." (Resp. Br. p. 22) (emphasis added). To support this premise, Respondent writes at length about the convenience store business, discussing how the parties allegedly worked side-by-side in the convenience store, "jointly" controlling its day-to-day operations, stocking the shelves together, and making "mutual decisions" about its name, and its scope of operations, and a lawsuit that it filed over gas tanks, and its sale in 2014 to Chharvi Bhavya, LLC.[8] (Resp. Br. pp. 5-12, 22-27). Mr. Helms waxes for pages about the money that the convenience store business made, and how that money was spent, and whose idea it was to transform it from a struggling lottery ticket emporium to a thriving gas station. (*Id.*) And then—deftly—Mr. Helms proclaims that this convenience store business was a "partnership" between Ms. Willing and Mr. Helms. **But the convenience store business was never a partnership—it was a limited liability company entirely owned by Ms. Willing.** (R. p. 508; R. p. 568, Corrected Amended Complaint, *L&D Enterprises, LLC d/b/a Jimmy's Mini Mart and Debra Willing vs. MECO, Inc. of Augusta*, Case. No. 12-CP-32-2135, ¶ 1, "**The Plaintiff L&D Enterprises, LLC is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina and does business as Jimmy's Mini Mart** in the County of Lexington. Plaintiff Debra Willing is the owner of L&D Enterprises LLC and is the owner of the lots upon which the

[8] The trial court wrongly found that the parties must divide the proceeds from the sale of the limited liability company to Chharvi Bhavya LLC and from the lawsuit filed by the company. (R. p. 9, Order).

store and gas pumps for the store are located." (emphasis added)) (R. p. 157: 7-20) ("I was the sole owner of L&D Enterprises"). Mr. Helms' Brief treads carefully around the corporate form of L&D Enterprises LLC in the hope that this Court will be fooled—as the trial court apparently was—by his corporate bait and switch.

Appellant urges this Court to read back through Mr. Helms's statement of the facts and substitute "L&D Enterprises, **LLC**" for every occurrence of the word "store" or "convenience store" or "Jimmy's Mini Mart" or "business." A limited liability company cannot be a partnership . . . because it is a limited liability company.

As discussed in Appellant's Brief, one error of law by the trial court was its failure to apply the South Carolina Uniform Partnership Act to the facts of this case, to the extent that Mr. Helms alleged a purported partnership. The Partnership Act reveals that the facts argued by Mr. Helms in his Brief about L&D Enterprises LLC d/b/a Jimmy's Mini Mart are entirely irrelevant and inapplicable. The Act defines "Partnership" strictly, 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; application to limited partnerships."). A limited liability company like L&D Enterprises LLC is formed under the South Carolina Limited Liability Company Act, and it thus falls as a matter of law outside of the definition of a partnership. Mr. Helms's claim in his Brief that "The evidence clearly

establishes that the parties operated Jimmy's Mini Mart as a partnership" is entirely contrary to the law. (Resp. Br. p. 22).

At one point in the trial, Mr. Helms' improper and misleading tactic of (1) blurring the lines between alleged common law marriage and alleged partnership collided with his other improper and misleading tactic of (2) disregarding the distinction in corporate form between a limited liability company and a partnership. Pages 269 through 278 of the trial transcript contain the examination of Mr. Viral Patel, a member of Chharvi Bhavya LLC, which bought L&D Enterprises LLC in 2014 through a business broker. (R. pp. 349-359). In examining Mr. Patel, Mr. Helms seems to be attempting to show two things: (1) that Mr. Patel thought Mr. Helms and Ms. Willing were married or otherwise a couple; and (2) that Mr. Patel thought Mr. Helms and Ms. Willing might have owned the business together. **Both of these lines of questioning were legal nonsense.**[9] Here, one limited liability company was buying another, through a business broker, and what Mr. Patel might have perceived to be a marital relationship or the scope of corporate ownership is utterly immaterial. Nonetheless, the trial court was confused. At the conclusion of the examination of Mr. Patel by counsel for the parties, the trial court interjected with its own question:

THE COURT: I have a question for you, Mr. Patel. Mr. Patel, I have a question.

MR. PATEL: Uh-huh.

[9] Mr. Helms did not bring a cause of action to pierce the corporate veil as to L&D Enterprises LLC, nor did he allege or try to prove that he was a member of the limited liability company, nor did he seek in discovery nor introduce into evidence any corporate documents pertaining to L&D Enterprises LLC. This is very simply because he was not a member of the company.

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 Jimmy's Citgo**?

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). Mr. Patel was buying an entity: L&D Enterprises LLC. It was not a "partnership." **It was a limited liability company**.

Mr. Helms' conflation of the operation of a limited liability company with a business partnership confused the trial court. Ms. Willing introduced into evidence the agreement whereby she purchased the limited liability company, and she testified that she was the sole owner. (R. p. 508, 157: 7-17, *e.g.*). But the trial order reflects the court's confusion: "both Plaintiff and Defendant were authorized signers on L&D Enterprises accounts and that when the property was sold to Viral Patel, Mr. Patel believed the seller to be both Plaintiff and Defendant." (R. p. 8). Obviously, it does not matter what Mr. Patel believed about a limited liability company; Mr. Helms had made no claim in this

lawsuit to be a member of it. The trial court was confused by and misapprehended the testimony about the convenience store. **This Court should not be similarly misled.**

As discussed in Ms. Willing's Brief, Mr. Helms entirely failed to meet his burden of proof at trial, and any traction he apparently gained by the legal fiction that a limited liability company can also be a partnership led the trial court into error of law.

3. The post-trial appointment by the trial court of a forensic accountant to conduct post-trial discovery on behalf of the trial court was improper and error of law.

In his Brief, Mr. Helms cites zero legal authority that would permit a trial court to appoint *sua sponte* a "Court forensic examiner,"[10] long after the plaintiff had rested his case[11] and several months after the conclusion of trial,[12] to conduct discovery into the facts[13] on behalf of the judge,[14] without any evidentiary safeguards,[15] outside of the

---

10 (R. p. 6, Order appointing forensic examiner).

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

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

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

14 Marcus Hodge was appointed as "a Court forensic examiner." (*Id.*).

15 For example, the forensic examiner issued detailed "interrogatories" and "discovery requests" on the facts 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). Neither Ms. Willing nor her attorney ever saw the documents produced in response to those subpoenas.

discovery protections of the Rules of Civil Procedure,[16] by way of numerous one-sided, partial and prejudicial *ex parte* communications.[17]

While there is no law in support of Mr. Helms' position, there is significant law expressly forbidding the trial court's 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, e.g.*, CJC, Rule 501, Canon 3, SCACR; R. pp. 1, 4, Scheduling Orders.

Moreover, 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 Court forensic examiner's first task was to study for an hour a proposed order by Mr. Helms' attorney (we do not know what this order said); the court did not provide the examiner with a proposed order by Ms. Willing. (R. p. 626-635). The examiner reviewed Ms. Willing's bank account statements, but not those of Mr. Helms. Moreover, the Court forensic examiner, acting on behalf of the trial court, engaged in numerous, lengthy telephone conferences with Mr. Helms' attorney only (we do not know what was said on these calls). (*Id.*). Because the forensic examiner was acting on behalf of the court, these

---

[16] 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.

[17] R. p. 577, 626-635, Hodge billing statements, showing numerous communications between the accountant acting as an agent of the court with only Mr. Helms' attorney; ("*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).

conferences were prohibited *ex parte* communications. (R. p. 6). The ultimate result was an order by the trial court that spontaneously divested Ms. Willing of title to her property and divided in half the money she made from the sale of her limited liability company. Remarkably, none of Mr. Helms' resources were divvied up, perhaps because none of the contents of his bank accounts were subpoenaed. 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). Further, the trial court's order should be reversed because it relies on shockingly partial, biased, one-sided "evidence" which was improperly procured outside of discovery, after trial, by the trial court, and which was never the subject of cross-examination or other credibility safeguards.

Lacking legal support for his position, Mr. Helms in his Brief attempts an emotional argument to the effect that, by citing to rules of court and calling into question the trial court's error of law, Ms. Willing has "engaged in rampant speculation, conjectures and suppositions . . . as to the actions of a well-respected senior Circuit Court Judge and Mr. Hodge." (Resp. Br. p. 33). To the contrary, the function of the Court of Appeals is to reverse error by the trial court, and that is the purpose of Ms. Willing's appeal. Trial judges and their decisions are reversed not uncommonly, which is not a "discredit" to them; it is a legal safeguard to be performed based on the applicable law.

As to Mr. Helms' preservation argument: Ms. Willing has properly appealed a post-trial, unilateral decision by the trial court issued in an interlocutory order decided by the trial court without motion or hearing. That interlocutory decision could not have been challenged until the final order was rendered, at which point Ms. Willing appealed.

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

In sum, Mr. Helms filed this marital litigation to divide alleged "marital assets." It should never have been heard in circuit court, which lacked subject matter jurisdiction over it. The circuit court's decisions are void and they should be vacated by this Court. Moreover, the circuit court's decisions were so tainted by error of law and procedure that this Court must reverse them. Ms. Willing respectfully asks this Court to grant her that relief and to remand to the circuit court on her counterclaim under the Frivolous Civil Proceedings Act.

For the reasons set forth above and in Ms. Willing's Brief, this Court should reverse the lower court's errors of law, remand on Ms. Willing's counterclaim, and vacate the trial court's decisions as void for want of subject matter jurisdiction.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman
Ainsley F. Tillman
Ainsley.Tillman@FordWallace.com
Ian S. Ford
Ian.Ford@FordWallace.com
715 King Street
Charleston, South Carolina 29403
(843) 277-2011
Attorneys for Appellant Debbie Willing

Charleston, South Carolina
April 18, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-000898

Jimmy Helms……..……..Respondent,

v.

Debbie Willing, ……..……..……Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

FORD WALLACE THOMSON LLC

s/ Ainsley F. Tillman
Ainsley F. Tillman, SC Bar No. 70551
Ainsley.Tillman@FordWallace.com
715 King Street | Charleston, SC 29403
(843) 277-2011
Attorneys for Appellants

April 18, 2022