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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2021-00898

Jimmy Helms ..... Respondent,

v.

Debbie Willing ..... Appellant.

APPELLANT'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

For the reasons herein and in Appellant's briefs on appeal, Appellant respectfully requests that this Court would rehear its Opinion No. 2024-UP-277 (the "Opinion"), which is contrary to constitutional and statutory law, public policy, and the Record on Appeal. Because the jurisdictional and legal questions are of exceptional importance, Appellant respectfully requests oral argument and rehearing *en banc* pursuant to Rule 219, SCACR.

Dangerously, the Opinion's decision encourages forum-shopping by plaintiffs, by sanctioning near-simultaneous filing of common-law marriage claims in both the family and the civil circuit court.[1] **This is particularly troubling given the 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

[1] Plaintiff filed in family court on September 22, 2015. Two months later, Plaintiff filed in civil circuit court on December 4, 2015. Both complaints seek substantially the same relief, concerning the identical "***marital assets***." (R. pp. 18-20; 28-29). 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).

alleging in civil circuit court an entitlement to "marital assets,"[2] which were acquired while the parties "lived either as husband and wife or like husband and wife."[3] The Opinion does this by permitting a civil circuit court to violate express jurisdictional prohibitions against dividing alleged marital assets. The Opinion overlooks that the Legislature has intentionally made such domestic determinations the exclusive realm of the family court system.

This Court cannot look the other way while a civil circuit court carves up property that its own order describes as having been acquired "during the period of co-habitation." (R. p. 9). Debbie Willing is a woman who worked hard her entire life to amass real estate, a business, and savings, in her own name—notwithstanding the fact that she had a live-in boyfriend. She testified that she had **no intent** to be married or partnered to Respondent, that she recognized him as a financial liability who was involved in drugs, gambling, and tax fraud,[4] and she therefore kept her finances and her property ownership entirely separate from his—for the purpose of protecting her assets. But this Court's Opinion allows ***zero*** documentary evidence and one day's worth of self-serving testimony by Respondent—which testimony revolved around alleged marital relations—to strip Ms. Willing of a lifetime of her own investments under the theory that the "period of cohabitation" amounted to a domestic "partnership."

The trial court's order is riddled with reversable error, which the Opinion is wrong to overlook and excuse. Moreover, the order is void *ab initio* for lack of jurisdiction.[5] This Court must rehear the Opinion and reverse/void the trial court's order.

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[2] R. p. 29, Civil Complaint, ¶ 8.
[3] R. p. 28, Civil Complaint, ¶ 2.
[4] Respondent admitted to each of these dishonest items, and yet the trial court and this Court shockingly found him to be more credible than Ms. Willing. (R. pp. 205-207, 274-282).
[5] Appellant incorporates herein *Appellant's Final Brief* and *Appellant's Final Reply Brief* which were filed April 18, 2022.

I. The Opinion errs in finding that the civil circuit court has subject matter jurisdiction over marital litigation.

This Court's Opinion, Paragraph (2.), is contrary to law, including, constitutional, statutory, and Supreme Court precedent. "If the existence of a common-law marriage is itself the ultimate issue, then the family court has exclusive jurisdiction." *Thomas v. McGriff*, 629 S.E.2d 359, 360 (2006). The Opinion errs by not focusing 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.* Importantly, **with the question** of subject matter jurisdiction **comes a duty on the part of this Court**, which duty the Opinion overlooks. "[T]his Court has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *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). Only four days before this trial in civil circuit court, Respondent Plaintiff filed a Pre-Trial Brief, making the following factual allegations, which firmly establish that the gravamen of Plaintiff's claims was domestic—the existence of a common-law marriage—and therefore in the class of action over which the Family Court has exclusive jurisdiction:

1. A concise, non-argumentative statement of the facts of the case.

> 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. 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 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. 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 "Throughout 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). At trial, the Plaintiff was specifically asked about the basis for the alleged partnership, and his own responses under oath demonstrate that he was alleging a domestic partnership (as opposed to a business 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). Further, the Plaintiff'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). Our Supreme Court has recognized that the trial judge had a duty to reject these claims as plainly outside of his jurisdiction, and he had a duty—as does this Court—to recognize that the civil circuit court was without authority to "split the baby and a watermelon," even if "the course of true love never runs smooth." (R. p. 100: 7-8; p.103: 11); *Harrell*, 337 S.C. at 320, 523 S.E.2d at 769. Notably, the parenthetical case citations in Paragraph 2 of the Opinion support the conclusion that there is no jurisdiction in civil circuit court; and yet the Opinion improperly reaches the opposite result.

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"—belong is the class of domestic litigation. *Bell v. Progressive Direct 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 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." 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).

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—significantly—Mr. Helms never altered that fundamental character. (*e.g.*, R. pp. 72-73). The domestic claims between the parties were pending in Family Court—in which jurisdiction 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*. *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.").

The Opinion's 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.[6] (Op. at p. 4). If left to stand, the Opinion also puts defendants, facing allegations of common law marriage, in an unworkable and extraordinarily unfair position by both chastising a defendant for denying claims in family court (should Ms. Willing have admitted the allegations?), 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

[6] 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 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.

of justice and fairness, and also because **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."); Jean Hoefer 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) ("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 Ms. Willing, nor Mr. Helms, nor the civil circuit court 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.

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. 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 rehear the Opinion on this issue, which is contrary to law, constitution, public policy, and the Record on Appeal.

II. This Court should rehear and reverse its partnership finding, which erroneously overlooks 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. 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." Initially,

as the Opinion states, this is a question of law. It therefore should be reviewed de novo, without deference to the trial court.[7] 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."). A limited liability 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 statement that "the parties . . . negotiated business decisions together, including the Business's sale." (Op. at p. 2; cf. R. p. 8). Here, the evidence is clear that the "Business's sale" occurred in 2014 (a year before

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[7] The Opinion 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 wrong 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."). The Opinion's case citations leave no doubt that it 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 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*, 266 S.C. 81, 221 S.E.2d 773 (1976).

Plaintiff filed his two complaints, in family and circuit court). The 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 checks[8] on behalf 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 Chharvi Bhavya, LLC), who testified that he believed Mr. Helms and Mrs. Willing to be husband and wife:

> 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

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

> 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).

The Record shows that Mr. Helms entirely failed to meet his burden of proof at trial,[9] and any traction he gained by the unlawful fiction that a limited liability company can also be a "partnership" led this Court into error of statutory law. Because the Opinion's determination as to the ostensible "Business" is contrary to statutory law, this Court must rehear and reverse the trial court.

III. The Opinion errs to uphold the trial court's title determinations.

If the civil circuit court had jurisdiction, the Opinion overlooks the clear 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 to find that Mr. Helms holds "legal title" to properties, when the deeds are plainly in the name of Ms. Willing. 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 Opinion did not apply this standard and erroneously looked

[9] *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).

to extrinsic evidence. Ms. Willing respectfully requests rehearing, pursuant to 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 . . .

(Order, R. p. 7) (emphasis added).[10] Specifically as to 812 Meeting Street and 820 Meeting Street, the trial court determined that Mr. Helms "**holds legal title** to 812 Meeting Street and 820 Meeting Street." (Order, 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

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[10] Appellant incorporates herein her arguments on pages 26-32 of her final brief, and she maintains that the order's title determinations 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 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 will gum up title held by innocent strangers to this litigation, which would be manifestly unjust and unfair.**

prove, that the deed from himself to Ms. Willing was invalid for any reason.[11] 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 Deeds. **The Opinion is shockingly wrong to find that the amount of consideration negates the validity of the deed.**

In *Hunt*, this Court explained the standard for deed construction, in a case involving a conveyance for the consideration of one dollar:

> [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). Appellant respectfully requests that the Opinion would be withdrawn and corrected to construe the deeds according to their plain language to find that Ms. Willing holds legal title to the property at 812 and 820 Meeting Street.

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[11] 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 himself despite a recorded instrument conveying title.

IV. The Opinion is wrong to overlook that the 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,[12] over which there were no procedural or evidentiary controls, which was tainted by partiality and prejudice, and which was not in evidence at trial.[13] 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,[14] several months after the trial,[15] to conduct discovery into the facts[16] on behalf of the judge,[17] without any evidentiary safeguards,[18] outside of the discovery protections of the Rules of Civil Procedure,[19] by way of numerous one-sided, partial and prejudicial *ex parte* communications.[20] 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

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[12] R. p. 6, order appointing forensic examiner; no motion was made to prompt this order.
[13] Appellant incorporates her Brief's Statement of the Case for detail and record citations on this issue.
[14] "Nothing further, and that is our case, Your Honor." (R. p. 369: 4-5).
[15] The order, issued without any motion or hearing, is dated more than two months after trial. (R. p. 6).
[16] "Prior to trial relevant documentation was requested but not produced." (*Id.*).
[17] Marcus Hodge was appointed as "a Court forensic examiner." (*Id.*).
[18] 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).
[19] **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**.
[20] R. p. 577, 626-635, Hodge billing statements, show 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).

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. p. 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. p. 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 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 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"). 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 Opinion must be withdrawn and reheard. It is contrary to constitutional and statutory law, as well as binding precedent, and it wrongly sanctions 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 ask this Court to rehear its decision, and to reverse or vacate the trial court's orders as void for want of subject matter jurisdiction.

Respectfully submitted,

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Charleston, South Carolina
October 15, 2024

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SC Court of Appeals

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.

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc* on Respondent by sending the same to his attorney of record S. Jahue Moore, Esquire, at his email address of record with AIS:

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Respectfully submitted,

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