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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Judge James B. Jackson, Jr., Special Circuit Court Judge

Appellate Case No.: 2024-001266

Anne Wiggins Smith Appellant,

v.

John L. Wiggins, III, Individually and as Trustee of the John L. Wiggins, Jr.
Revocable Trust, as Trustee of the Margaret Eugenia Utsey Wiggins
Revocable Trust, and as Personal Representative of the Estate of Margaret
Eugenia Utsey Wiggins

..... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. ARE PLAINTIFF'S CLAIMS BARRRED BY THE APPLICABLE STATUTE OF LIMINTATIONS?
- II. DID THE TRIAL COURT CORRECTLY FIND THAT PLAINTIFF FAILED TO PROSECUTE HER CASE WHEN SIX YEARS AFTER FILING, PLAINTIFF HAD FAILED TO PROVIDE A CALCULATION OF HER DAMAGES OR AN EXPERT REPORT OUTLINING HER DAMAGES SUCH THAT RESPONDENT DID NOT KNOW HOW MUCH PLAINTIFF SOUGHT IN DAMAGES?
- III. DID THE LOWER COURT ABUSE ITS DISCRETION IN DISMISSING PLAINTIFF'S CASE WHEN PLAINTIFF HAD FAILED TO PROVIDE AN EXPERT REPORT OUTLINING HER DAMAGES OR A CALCULATION OF DAMAGES MORE THAN SIXTEEN MONTHS AFTER BEING ORDERED TO DO SO AND MORE THAN SIX YEARS AFTER INITIALLY FILING HER COMPLAINT?

Respondent John L. Wiggins, III, Individually and as Trustee of the John L. Wiggins, Jr. Revocable Trust, as Trustee of the Margaret Eugenia Utsey Wiggins Revocable Trust, and as Personal Representative of the Estate of Margaret Eugenia Utsey Wiggins (hereinafter “Respondent”) hereby submit their Brief of Respondent in accordance with SCRAP 208 as follows:

I. STATEMENT OF THE CASE

Appellate Anne Wiggins Smith (“Anne”) filed this lawsuit originally in the Orangeburg County Probate Court on August 24, 2017, regarding two family trusts of which she is a beneficiary. Anne’s causes of action are as follows: accounting, breach of fiduciary duty, negligence, constructive trust and attorney’s fees and costs. *See generally* Compl. (R. p. 51). Probate Court Judge Pandora Jones-Glover removed the case *sua sponte* to the Circuit Court on September 7, 2017. Respondent, represented by Attorney Adam T. Silvernail, filed an Answer and Counterclaim on November 14, 2017. *See generally* Defendant John Wiggin’s Answer and Counterclaim (R. p. 59). Anne filed a Reply to the Counterclaim on December 14, 2017. *See generally* Reply (R. p. 67). Due to Mr. Silvernail’s health concerns in 2018, Attorney Amy Hill filed a notice of appearance on behalf of the Respondent on August 15, 2018.

Respondent filed a Motion for Summary Judgment on October 4, 2018. *See generally* Def’s First Mot. Summ. J. (R. p. 69).

On December 17, 2018, Respondent moved to compel Anne’s discovery responses including the request that Anne “set forth an itemized statement of all damages claimed to have been sustained by the party.” *See* Ex. A, ¶ 4 to Def.’s Mot. To Compel. dated Dec. 17, 2018 (R. p. 87).

On February 1, 2019, this case was referred to the Orangeburg Master in Equity Judge

James B. Jackson, Jr. as Special Circuit Court Judge.

Judge Jackson held a hearing on July 29, 2019 for a variety of motions filed by both Appellate and Respondent including Respondent's Motion to Compel and Respondent's Motion for Summary Judgment. The hearing on the Motion to Compel was continued because Appellate had just responded to Respondent's discovery request and Respondent needed additional time to review the responses. Respondent's Motion for Summary Judgment was ultimately denied on October 14, 2019.

Mrs. Wiggins filed an answer and counterclaim on February 25, 2020 seeking costs and attorneys' fees from Anne related to this lengthy litigation. *See generally* Def. Mrs. Wiggins' Answer and Counterclaim (R. p. 250). Anne filed a Reply to Mrs. Wiggins counterclaim on March 5, 2020. *See generally* Plf.'s Reply to Answer & Counterclaim (R. p. 257).

On September 10, 2021, Respondent submitted a subpoena and notice of taking Anne's husband and attorney F. Glenn Smith's ("Glenn") deposition.¹ Anne filed a Motion to Quash the Deposition Notice of F. Glenn Smith on October 12, 2021. *See generally* Plf's Mot. to Quash (R. p. 334). On November 10, 2021, the trial court without holding a hearing, filed a Form 4 Order granting Anne's Motion to Quash the Subpoena Notice for F. Glenn Smith. *See* Form 4 Order dated Nov. 10, 2021 (R. p. 26). On November 22, 2021, Respondent filed a Motion to Alter or Amend the Order Quashing the Deposition Notice of F. Glenn Smith. *See* Def.'s Mot. To Alter or Amend Order Quashing Dep. Notice of F. Glenn Smith (R. p. 406).

On January 14, 2022, Respondent filed a Motion to Dismiss based on Anne's failure to prosecute for failure to provide either an expert with a calculation of damages or a calculation of

¹ F. Glenn Smith is Anne's husband but also represented Anne in this matter and with regards to the Trusts since at least 2014.

damages. *See* Def.'s Mot. To Dismiss for Failure to Prosecute (R. p. 479).

The trial court heard Respondent's Motion to Dismiss for Failure to Prosecute on February 23, 2022 as well as Respondent's Motion to Alter or Amend the Order Quashing the Deposition Notice for F. Glenn Smith. At that time, Anne represented to the Court that she would produce a damages expert report in 30 to 60 days from the date of the hearing. *See* Feb. 23, 2022 Hr'g Tr. 8:22-25 (R. p. 860).

On May 17, 2022, having not received the promised expert report, Respondent, through their counsel, wrote to Judge Jackson asking that he execute an enclosed proposed scheduling order requiring Anne to "name an expert and provide an expert report to Defendants by June 15, 2022" and that failure to comply "will cause Plaintiff's Complaint to be dismissed for failure to prosecute." *See* Def.'s Ltr. dated May 17, 2022 to Judge Jackson (R. p. 919). Further, Respondent noted that it was impossible to hold a mediation, which pursuant to the proposed scheduling order was to be held by August 30, 2022, without any knowledge of the claimed damages. *Id.* Judge Jackson signed and filed the Scheduling Order on May 23, 2022 but changed the date for the expert report to June 30, 2022. *See* Scheduling Order dated May 23, 2022 (R. p. 34).

On June 30, 2022, Anne produced a letter from Ronny Burkett, CPA to Anne's counsel dated June 30, 2022 whereby Mr. Burkett did not provide an opinion as to damages but rather listed items that Mr. Burkett needed to review in order to provide an opinion. *See* Ex. 1 of Def.'s Second Mot. To Dismiss for Failure to Prosecute, Ltr. Dated Aug. 26, 2022, pp. 2-3 (R. pp. 592-593).

On August 26, 2022, Respondent wrote to Judge Jackson attaching the Burkett letter and asking that the Court dismiss Anne's Complaint for failure to comply with the Scheduling Order dated May 23, 2022. *See* Ex. 1 of Def.'s Second Mot. To Dismiss for Failure to Prosecute, Ltr.

Dated Aug. 26, 2022, pp. 2-3 (R. pp. 592-593). Specifically, Respondent noted that many of the items listed in Mr. Burkett's letter had either already been produced or were in Anne's possession as Anne had produced the same previously to Respondent. *See* Ex. 1 of Def.'s Second Mot. To Dismiss for Failure to Prosecute, Master Discovery Index enclosed with Aug. 26, 2022 Ltr., pp. 4-7 (R. pp. 594-597). The Master Discovery Index provided by Respondent to the trial court via the August 26, 2022 letter shows that Anne had significant financial information in her possession that Anne produced to the Defendants. *Id.*

Mrs. Wiggins died on September 4, 2022 at the age of 96.

On September 14, 2022, Respondent's counsel wrote Judge Jackson a second time asking the trial court to enforce the provisions of the May 23, 2022 Scheduling Order and dismiss Anne's claims as Anne had still failed to produce an expert report on her damages. *See* Ex. 2 of Def.'s Second Mot. To Dismiss for Failure to Prosecute (R. p. 657).

Almost a year later, Respondent filed a second Motion to Dismiss for Failure to Prosecute on July 25, 2023. On September 29, 2023, Respondent filed a Motion for Summary Judgment based on the statute of limitations. *See* Def.'s Second Mot. For Summ. Jgmt. (R. p. 659). Filed On October 10, 2023, Anne filed a Brief in Opposition to Respondent's Motion for Summary Judgment and Motion to Dismiss for Failure to Prosecute. *See* Plt.'s Mot. In Opposition to Def.'s Second Mot. For Summ. J. (R. p. 715).

The trial court filed an Order on November 28, 2023, dismissing Anne's claims for failure to prosecute and granting Respondent's Summary Judgment due to the Statute of Limitations. *See* Nov. 28, 2023 Order (R. p. 36). Anne filed a Motion for Reconsideration on December 8, 2023. *See* Plt.'s Mot. to Reconsider (R. p. 733). The trial court filed an Order denying Plaintiff's Motion for Reconsideration on July 17, 2024. *See* July 17, 2024 Order (R. p. 48).

II. FACTS

A. Overview

John L. Wiggins, Jr. (“Mr. Wiggins”) and Mrs. Margaret Eugenia Utsey Wiggins (“Mrs. Wiggins”) enjoyed a lengthy marriage raising their family in Holly Hill, South Carolina. Mr. and Mrs. Wiggins had three children: Appellant Anne Wiggins Smith (“Anne”), Respondent John L. Wiggins, III (“John”), and Jane Wiggins Thompson (“Jane”). Mr. Wiggins and Mrs. Wiggins participated in significant estate planning in 1998 with attorney David Sojourner. Mr. Wiggins died testate on June 26, 2003. *See* Compl. ¶ 5 (R. p. 51). The Wiggins’ daughter Jane died in 2016, leaving three children as her beneficiaries. Mrs. Wiggins died on September 4, 2022 during the pendency of this lengthy litigation.

This lawsuit arises from Anne’s questioning of two separate, family trusts created by Mr. and Mrs. Wiggins with the help of attorney David Sojourner. The Resulting Trusts are: the John L. Wiggins, Jr. Revocable Trust (“Wiggins Trust”) which Mr. Wiggins created on October 6, 1998, and the Margaret Eugenia Utsey Wiggins Revocable Trust (“Utsey Trust”) which Mrs. Wiggins originally created on October 6, 1998 *See* Compl. ¶¶ 3-4, and Ex. A and B to Compl. (R. pp. 893-917). In accordance with the Wiggins Trust, upon Mr. Wiggins’s death, the property held in the Wiggins Trust was divided into two shares: the Marital Trust and the Children’s Share. *See* Compl. ¶ 7 (R. p. 51). Mr. Wiggins died testate on June 26, 2003, leaving almost all of his assets to the Wiggins Trust. *See* Compl. ¶¶ 5-6 (R. p. 51). After Mr. Wiggins’ death, the Children’s Share was distributed for tax purposes to a family-owned entity, Wiggins Family Properties, LLC (“Wiggins Properties”). Jane died in 2016, leaving her assets, including her interests in Wiggins Properties,

to her three children who are not parties to this litigation.² John served as Trustee of both the Wiggins Trust and the Utsey Trust at all relevant times. At no time did Mrs. Wiggins serve as Trustee of either the Wiggins Trust or the Utsey Trust, although she was the lifetime beneficiary of the Wiggins Trust and the settlor and lifetime beneficiary of the Utsey Trust, which remained revocable until Mrs. Wiggins death on September 4, 2022. Thus, the only Trust that was at issue in this litigation is the Marital Trust, which is the only remaining portion of the Wiggins Trust.

On August 24, 2017, Anne filed this action with claims for Breach of Fiduciary Duty, Negligence, Constructive Trust, and Accounting against her elderly mother, Mrs. Wiggins, and her brother John, in their individual capacities and as trustees of both the Wiggins Trust and the Utsey Trust, although Mrs. Wiggins did not serve as trustee of either the Wiggins Trust or the Utsey Trust. *See* Def. John Wiggin’s Answer and Counterclaim ¶¶ 2-3 (R. p. 59). Anne claimed that her brother John misappropriated trust property and used his position as trustee to improperly benefit himself through loans made to him. *See* Compl. ¶¶ 16-23 (R. p. 51). Over seven years have passed since Anne’s lawsuit was initially filed on August 24, 2017. Notably, Respondent are still unsure of what damages Anne is seeking, as she never disclosed an expert report or calculation of damages during litigation despite multiple requests that she do so and order compelling her to do so.

B. Events Leading Up to the Lawsuit Filed August 24, 2017

Glenn, Anne’s husband and legal counsel, has been involved in the disputes regarding these trusts for years going back to at least 2014. Anne alleged that John started taking money from the Marital Trust as early as August 10, 2004, and John “continued this practice until **June 30, 2014**,

² Wiggins Properties, LLC is not party to this litigation.

after he had been **caught and confronted.**³ *See* Plf’s Resp. in Opp. to Def’s Motion to Dismiss and Mot. Summ. J., p. 3 (R. p. 717) (emphasis added). In fact, Glenn wrote a letter to attorney David Sojourner dated **July 25, 2014** requesting that Mr. Sojourner forward certain documents to Glenn and send his bill to John, “as he is in breach of his duty as fiduciary.” *See* Ex. A of Def.’s Mot. Memo. in Support of Motion to Alter or Amend Order Quashing Dep. Notice to F. Glenn Smith filed Nov. 22, 2021, p. 12 (R. p. 428).⁴ In 2014, after numerous trust-related inquiries from Anne and Glenn, John retained McGregor & Company, the public accounting firm that had handled the tax interests of the Wiggins family and the Trusts for multiple years, to prepare a breakdown of the Wiggins Trust and marital assets for Anne and Glenn’s review. *See* Cordray Aff. ¶ 10 (R. p. 665). In their report, McGregor & Company dated August 25, 2014 listed the trust assets, including the loans, referred to as “notes receivable” made to John and to Jane, as well as applicable accrued interest for each of these loans (“McGregor Report”). *See* Ex. A of Cordray Aff., McGregor Rpt. (R. pp. 668-669). The McGregor Report provided a complete listing and valuation of all of the assets. The McGregor Report also detailed the assets contained in the Utsey Trust. *Id.*

Anne and Glenn acknowledged receipt of this report on three separate occasions: September 5, 2014; September 9, 2014; and September 15, 2014. *See* Ex. B of Cordray Aff., Ltrs from Glenn, pp. 7-10 (R. pp. 670-673). In the September 5, 2014 email from Glenn to Cordray, Glenn states, “Anne has just now received what appears to be an evaluation by McGregor &

³ John adamantly denies any wrongdoing, but for purposes of this appeal and specifically the statute of limitations arguments set forth below, it is important to note the timing of when Anne and her legal counsel claim they “discovered” any alleged wrongdoing on John’s part.

⁴ Respondent sought to take Glenn’s deposition as a fact witness to the years of discussions surrounding the administration of the Trusts. However, the trial court ultimately denied Respondent’s request.

Company of the interest of Anne, Jane and Johnny in and to the estate of their mother . . .” *Id.* at 7 (R. 671). Glenn seems to be referencing the fact that Anne, Jane and Johnny are remainder beneficiaries of the Trusts. Glenn ends the September 5th email with the statement, “[John] knows whether or not he has used money from the Marital Trust and from [Mrs. Wiggins’s] estate for his benefit while occupying a fiduciary position.” *Id.*

Between November and December of 2015, Anne and Glenn sent roughly 29 letters to Cordray inquiring about the Trusts, to which Cordray replied and encouraged Glenn and Anne to seek meet with attorney David Sojourner, who drafted the Trusts. *See* Cordray Aff. ¶¶ 14-16 (R. p. 665). According to Anne’s own affidavit, she was privy to the bank records of the Wiggins Trust⁵ until **August 9, 2014**. *See* Anne Wiggins Aff., p. 5 (R. p. 713). Anne also described in her Affidavit that she called and confronted her mother, Mrs. Wiggins, on **February 13, 2016**, regarding the loan transfers made to John. *Id.* at p. 2. (R. p. 711). Mrs. Wiggins told Anne that John transferred money to the Utsey Trust, and that Mrs. Wiggins knew about this. *Id.* In summary, there are multiple documents, even from Appellant, acknowledging a potential claim against Respondent more than a year prior to Anne filing this lawsuit on August 14, 2017.

C. Events Following the Lawsuit Filed on August 24, 2017

After Anne filed her complaint in August of 2017, the parties exchanged discovery for four and a half years. *See* Ex. 1 of Def.’s Second Mot. To Dismiss for Failure to Prosecute, Master Discovery Index enclosed with Aug. 26, 2022 Ltr., pp. 4-7 (R. pp. 594-597). Respondent adamantly deny any wrongdoing, noting that the loans of which Anne complained included

⁵ Anne’s July 23, 2019 Affidavit filed on October 10, 2023 references the “Marital Trust” but this is just another name for the Wiggins Trust. The Wiggins Trust, at the death of Mr. Wiggins in 2003, was split into two portions: the Marital Trust and the Children’s Share. The Children’s Share was distributed to the Wiggins Family Properties, LLC prior to this litigation and is not a part of Anne’s lawsuit. So, the only remaining portion of the Wiggins Trust is the Marital Trust.

accruing interest and were counted as an asset to the Wiggins Trust. A significant part of Respondent's defense was that Anne had not suffered any damages related to the loans. During this lengthy time period, Anne failed to name an expert and failed to provide Respondent with a calculation of her alleged damages, which delayed additional discovery, depositions, mediation, and ultimately trial.

The lack of a damages number prompted Respondent to file their first Motion to Dismiss for Failure to Prosecute on January 14, 2022. *See* Def.'s Mot. To Dismiss for Failure to Prosecute filed on Jan. 14, 2022 (R. p. 479). On February 23, 2022, a hearing was held on this issue. During that hearing, Judge Jackson acknowledged that the case had been ongoing for four and a half years, yet Anne still had no damages expert. *See* Feb. 23, 2022 Hr'g Tr. 8:4-8 (R. p. 860). When asking when Anne anticipated having a report, her attorney responded: "I'm hoping to have a report from [damages expert] in the -- you know, the **next 30 to 60 days.**" (*Id.* at 8:22-25) (emphasis) (R. p. 860).

Following the hearing, the trial court issued a Scheduling Order commanding Anne to name an expert and provide an expert report by **June 30, 2022** to prevent any further delays. *See* May 23, 2022 Scheduling Order (R. p. 34). The Scheduling Order explicitly stated:

1. Plaintiff shall name an expert and provide an expert report to Defendants by **June 30, 2022. Failure to comply will cause Plaintiff's Complaint to be dismissed for failure to prosecute.**

(*Id.* at ¶ 1) (emphasis added) (R. p. 34).

Anne did not heed the court's warning. No expert report was provided by the court-mandated deadline. Instead, Anne submitted a letter to Respondent stating that her retained expert could not generate a report without additional documentation. *See* Ex. 1 of Def.'s Second Mot. To Dismiss for Failure to Prosecute, Ltr. Dated June 30, 2022, pp. 40-42 (R. pp. 631-632). On August

26, 2022, Respondent notified the court via letter that almost all requested documents, which exceeded thousands of pages, had previously been produced to Anne. *See* Ex. 1 of Def.’s Second Mot. To Dismiss for Failure to Prosecute, Ltr. Dated Aug. 26, 2022 and Index (R. pp. 592-597). Despite the notification, Anne continued to fail to provide an expert report. Shortly after, Mrs. Wiggins passed away on September 4, 2022. Following Mrs. Wiggins death, Respondent again notified the trial court on September 14, 2022, and asked it to enforce its Scheduling Order and require Anne to provide the promised expert report. *See* Ex. 2 of Def.’s Second Mot. To Dismiss for Failure to Prosecute (R. p. 657).

On July 25, 2023, more than a year after Anne’s deadline to file an expert report, John filed his second Motion to Dismiss for Failure to Prosecute as Anne had still **not** provided an expert report or any further explanation of her damages. *See* Def.’s Second Mot. To Dismiss for Failure to Prosecute (R. p. 586). On September 29, 2023, John also filed a Motion for Summary Judgment. *See* Def.’s, Mot. Summ. J. (R. p. 659). On October 10, 2023, a hearing was held on these motions. *See* Oct. 10, 2023 Hr’g Tr. (R. p. 872). On November 28, 2023, the trial court granted Respondent’s Motion to Dismiss for Failure to Prosecute and Motion for Summary Judgment. *See* Nov. 28, 2023 Order (R. p. 36). Anne filed a Motion to Reconsider on December 8, 2023, which was denied on July 17, 2024. (R. p. 48). Anne filed her Notice of Appeal on July 31, 2024. Anne filed her Initial Appellate Brief December 3, 2024. This response now follows.

III. STANDARD OF REVIEW

South Carolina courts are equipped with the power to dismiss a case so they can “control and efficiently manage [their] ever-expanding docket.” *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902 (Ct.App. 2006) *quoting* *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983). Dismissal is generally permitted only in the face of

a clear record of delay or contumacious conduct by the plaintiff. *Id.* However, “[w]hether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and his decision will not be disturbed, **except upon a clear showing of an abuse of discretion.**” *Jackson v. Henry*, No. 2019-000953, 2023 WL 1431735, at *2 (S.C. Ct. App. Feb. 1, 2023) (quoting *McComas* 368 S.C. at 62, 626 S.E.2d at 904 (Ct. App. 2006)) (emphasis added).

“An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56(c), SCRPC.” *Graham v. Welch, Roberts and Amburn, LLP* 404 S.C. 235, 238, 743 S.E.2d 860, 862 (Ct.App. 2013) citing *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (S.C. 2009). “Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations.” *Allwin v. Russ Cooper Associates, Inc.*, 426 S.C. 1, 12, 825 S.E.2d 707, 712 (Ct.App. 2019) (citing *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App. 2014)); see *Kreutner v. David*, 320 S.C. 283, 286-87, 465 S.E.2d 88, 90 (1995). Summary judgment should be granted where it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Mayer v. M.S. Bailey & Son*, 347 S.C. 353, 358, 555 S.E.2d 406, 408-409 (Ct.App. 2001); Rule 56(c), SCRPC; *Mosteller v. County of Lexington*, 336 S.C. 360, 362, 520 S.E. 2d 620, 621 (1999). A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and the admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether a triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Mayer*, 347 S.C. at 358, 555 S.E.2d at 409 (citing *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 61, 504 S.E. 2d 117, 121 (1998)). The

purpose of a summary judgment ruling is to expedite disposition of cases that do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868, 874 (2001).

IV. ARGUMENT

As detailed above, this litigation involves a family dispute regarding two trusts and the maintenance of those trusts. The Wiggins Trust was irrevocable upon Mr. Wiggins's death and the Children's Share portion was distributed a number of years ago to the Wiggins Family Properties, LLC pursuant to agreement of the three children: Anne, Jane, and John. The Utsey Trust was a revocable trust at the time this litigation started as Mrs. Wiggins was the settlor and had the ability to change the Utsey Trust or revoke it altogether up to the point of her death. *See* Ex. B of Compl., Utsey Trust (R. p. 905). Thus, the only Trust that was at issue in this litigation is the Marital Trust, which is the only remaining portion of the Wiggins Trust.

This litigation was filed on August 24, 2017, almost seven and a half years ago. At the time this litigation was initiated, Mrs. Wiggins was 91 years old. The litigation involved a very contentious fight initiated by Anne. The tone of the litigation was such that the trial court issued restraining orders against Anne and Glenn restraining them from discussing the allegations in the lawsuit with any third parties after Glenn sent multiple letters to the bank, founded by the Wiggins Family and to the church the Wiggins family has attended for over 150 years, describing Anne's allegations against her brother and elderly mother. *See* July 19, 2019 TRO (R. p. 8); June 16, 2021 TRO (R. p. 19). This litigation drove a wedge between Anne and the rest of the Wiggins family. Despite her desire that this litigation end during her lifetime, Mrs. Wiggins died on September 4, 2022 – shortly after the fifth anniversary of the filing of this lawsuit. As will be set forth below, Anne has had years to prove her case but has failed to at the very least set forth her alleged

damages, most likely because there are none.⁶ Further, and most importantly, Anne's claims are barred by the applicable Statute of Limitations. For the reasons set forth below, the Respondent respectfully request that the Appellate Court uphold the trial court's rulings.

A. The Lower Court Correctly Ruled that Anne's Claims are Barred by the Applicable Statute of Limitations.

At all relevant times, John served as trustee of the Wiggins Trust and the Utsey Trust. Anne's causes of actions all center around loans made to John from the Wiggins Trust. *See* Compl. ¶ 19 (R. p. 51). This Court has made clear that "actions concerning the administration of trust accounts fall squarely within the Probate Code statute of limitations." *Mayer*, 347 S.C. at 358-59, 555 S.E.2d at 409 (citing S.C. Code Ann. § 62-1-302(a)(3) (Supp. 2000)). The probate court "has exclusive original jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts...administration and distribution of trust the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts...." S.C. Code Ann. § 62-1-302(a)(3). Most importantly for this litigation, the administration of trusts are controlled by Article 7 of the Probate Code, "which establishes either a one or three year statute of limitations, depending on the extent of disclosure, within which a beneficiary is required to initiate a lawsuit against the trustee for mismanagement of the trust accounts." *See Mayer*, 347 S.C. at 359-360, 555 S.E.2d at 409. This rule ensures that trustees have the freedom to manage trusts without fear of litigation being initiated years after the fact.

⁶ John has always denied any wrongdoing on his part. He admitted he received loans from the Wiggins Trust, which included interest to be repaid to the Trust. However, for purposes of this motion, the question is not whether John breached his duty but whether 1) Anne initiated this lawsuit in time or 2) prosecuted this lawsuit in a timely manner.

i. Anne's Claims Are Barred by the Probate Code's One-Year Statute of Limitations.

The S.C. Code Ann. § 62-7-1005 of the Probate Code limits claims against a trustee to one year after a beneficiary, in this case Anne, received a report that “adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or **should have inquired into its existence.**” *See* § 62-7-1005(a)(b). (emphasis added). **Documents that “detail the status” of a trust are sufficient to put a beneficiary on notice of a potential claim.** *See Mayer* 347 S.C. at 360, 555 S.E.2d at 409-410 (dismissing a beneficiary’s claims against a trustee according to both a one and a three-year statute when the suit was initiated more than three years and one year after receiving the trust bank statements).

The loan transactions complained of by Anne have been fully disclosed in previous reports supplied to her more than a year prior to her filing this lawsuit on August 24, 2017. First, Anne admits in her affidavit dated July 23, 2019 (but filed with the trial court immediately prior to the summary judgment hearing) that she received the bank account statements for the Wiggins Trust (Marital Trust) every month **until August 9, 2014.** *See* A. Wiggins Aff. dated July 23, 2019, p. 5 (R. p. 244). However, most importantly, Anne received a full report of the Wiggins Trust (Marital Trust) as well as the assets owned by Mrs. Wiggins prepared by the accounting firm McGregor & Company dated August 25, 2014 (“McGregor Report”). *See* Ex. A of Cordray Aff., McGregor Rpt., pp. 4-6 (R. pp. 667-669). The McGregor Report was prepared pursuant to Anne and Glenn’s request. *See* Cordray Aff. ¶10 (R. 665). Glenn and Anne acknowledged receipt of the McGregor Report at least by **September 5, 2014**, when Glenn emailed Cordray and referenced having “just received what appears to be an evaluation by McGregor and Company of the interest of Anne, Jane and Johnny in and to the estate of their mother at the time of her death.” *See* Ex. B of Cordray

Aff., Ltrs from Glenn, pp. 7-8 (R. pp. 670-671). The McGregor Report listed in detail all the assets owned by the Wiggins Trust as well as the Utsey Trust assets and life insurance policy values. *See* Ex. A of Cordray Aff., McGregor Rpt., pp. 4-6 (R. pp. 667-669). As the trial court recognized, “[t]he McGregor Report specifically lists notes receivable to John L. Wiggins, III as well as accrued interest receivable to John L. Wiggins, III, and a note receivable to Jane W. Thompson.” *See* Nov. 28, 2023 Order, p. 6 (R. p. 36). The report also valued the Trust at \$1,525,167, and it even listed the assets contained in the Utsey Trust, including stock owned in First National Bank. *See* Ex. A of Cordray Aff., McGregor Rpt., pp. 4-6 (R. pp. 667-669).

The McGregor Report is exactly the type of report that the probate code contemplates as the start of a one-year statute of limitations. After receiving the McGregor Report, Anne and Glenn continued to make inquiries regarding the loans from the Trust. After receiving the McGregor Report, Anne conceded she “*began to seek more information to assist her in determining what action she needed to take.*” (App.’s Initial Br., p. 15) (emphasis added). Thus, even by her own words, the McGregor Report put Anne on notice that she needed to make an inquiry. Pursuant to the terms of South Code Ann. § 62-7-1005(a)(b), Anne’s receipt of the McGregor Report by at least September 5, 2014 put her on notice of the potential claim **or** at least that Anne **should have inquired into its existence.** *See* § 62-7-1005(a)(b). In fact, the receipt of the McGregor Report clearly put Anne on notice that she should make additional inquiries – because that is exactly what she did by and through her husband and attorney, Glenn. Yet, Anne did not file a complaint until many years later.

On **September 9, 2014**, Glenn, noted that the report also referenced loans payable to John and his sister Jane and that he was making additional inquiries into those loans. *See* Ex. B of Cordray Aff., Ltrs from Glenn, p. 9 (R. p. 672). Anne further admits that what Cordray attests to

in his affidavit – Glenn sent Cordray at least 29 letters beginning in November 2014. *See* Cordray Aff. ¶¶ 13-16. (R. p. 665).

The record, even in the light most favorable to Respondent, shows that Anne received the McGregor Report by September 5, 2014, and that upon receiving the McGregor Report, Anne began making further inquiries as to any claims she might have regarding the loans to John and Jane from the Wiggins Trust. To the extent legitimate claims existed related to these loans, Anne failed to initiate the same within one year of receiving the McGregor Report. For this reason, the trial court correctly granted Respondent’s Motion for Summary Judgment as to the one-year statute of limitations.

ii. Anne’s Claims Are Barred by the Three-Year Statute of Limitations.

Even if the one-year statute of limitations does not apply to Anne’s claims, then a three-year statute comes into play pursuant to S.C. Code Ann. § 15-3-530. Anne conceded she was aware of potential issues with John’s role as trustee as early as **June 30, 2014**, when John “had been caught and confronted” by Anne. *See* Plf’s Memo in Opp. to Mot. for Summ J., p. 3 (R. p. 717). On **July 25, 2014**, Glenn sent a letter to attorney David Sojourner, as attorney for the Trusts, seeking additional information but noting that John “is in breach of his duty as fiduciary.” *See* Ex. A of Def.’s Mot. Memo. in Support of Motion to Alter or Amend Order Quashing Dep. Notice to F. Glenn Smith filed Nov. 22, 2021, p. 12 (R. p. 428). Further, Anne noted in her own affidavit that her concerns about the trust’s management date back to at least **August 5, 2014**, three years before this suit was filed. *See* A. Wiggins Aff. dated July 23, 2019, p. 3 (R. p. 242).

Anne was, according to her own words, clearly on notice that she may have claims regarding Respondent alleged breaches of fiduciary duty more than three years before filing her lawsuit on August 24, 2017. The discovery rule requires that the statute of limitations begins to

run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. *See Graham* 404 S.C. at 239, 743 S.E.2d at 862 (Ct.App. 2013) (citing *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997)). Courts have interpreted “the exercise of reasonable diligence” to mean that the injured party must with some promptness if the facts and circumstances would have placed a reasonable person of common knowledge and experience on notice that a claim against another party might exist. *Id.* (citing *Dean v. Ruscon Corp.*, 321 S.C 360, 363-64, 468 S.E.2d 645, 647 (1996)). In this case, Anne was already employing the use of her attorney husband who claimed that John had been “caught and confronted” on June 30, 2014. *See* Plf’s Memo in Opp. to Mot. for Summ J., p. 3 (R. p. 717). Certainly, that declaration by Anne indicates that she was aware or should have been aware that she had an alleged potential claim against Respondent as of June 30, 2014. Anne’s lawsuit was filed later than three years after June 30, 2014. For this reason, even if Anne’s claims are not barred by the one-year statute of limitations, Anne’s claims are barred by the three-year statute of limitations as set forth in S.C. Code Ann. § 15-3-530.

B. The Lower Court Correctly Found that Anne Failed to Prosecute Her Case.

The lower court correctly found that Anne failed to prosecute her case because, despite this case being ongoing since 2017, Anne never provided a calculation of damages, a claimed damages amount, or an expert report which caused numerous delays and explicitly violated the lower court’s June 30, 2022 Scheduling Order. In fact, the trial court gave Anne an additional **sixteen months** from the time the trial court originally said it would dismiss her case – and yet Anne still failed to provide any damages numbers, calculations, or expert reports. As previously stated, the standard of review for a motion to dismiss for failure to prosecute is “a clear showing of an abuse of discretion.” *Jackson v. Henry*, No. 2019-000953, 2023 WL 1431735, at *2 (S.C. Ct. App. Feb. 1,

2023). Given the lengthy litigation, the lower court’s repeated warnings and even additional sixteen months past the June 30, 2022 original court-mandated deadline, Anne cannot show a clear abuse of discretion. For this reason, the trial court’s dismissal must be affirmed.

Anne raises a four-factor test to determine the validity of a Motion to Dismiss for Failure to Prosecute. *See* App.’s Initial Brief, pp. 8-9. As the South Carolina Supreme Court explained in *I’On, L.L.C. v. Town of Mt. Pleasant*,

In contrast, different preservation rules apply to an *appellant*—the losing party in the lower court. An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. **This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.** *E.g., Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) (**appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court**); *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); *Sumter Building & Loan Ass’n v. Winn*, 45 S.C. 381, 23 S.E. 29 (1895) (same).

338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (bold emphasis added).

Here, Anne never argued in her Motion for Reconsideration that the lower court failed to apply the four-factor test she now alleges should apply. Her 2-page Motion for Reconsideration does nothing more than ask the court to reconsider its prior ruling. *See* Plf’s Mot. to Reconsider (R. p. 733). Nonetheless, even if Anne had preserved this issue for appeal, she cannot satisfy any of the factors set forth in *Hillig v. Comm’r of Internal Revenue*, 916 F.2d 171, 174 (4th Cir. 1990).

i. Factor #1: The plaintiff’s degree of personal responsibility

To support this factor, Anne argues “there is nothing in the record that shows Plaintiff personally took any action or failed to take any action that prevented this case from moving to final hearing and being decided on the merits.” *See* App.’s Initial Br., p. 11. To the contrary, the lower court relied on several indicators. Anne commenced this lawsuit on August 24, 2017.

Despite her claim that she has been “actively pursu[ing] her case” for the past seven years, the record reveals the opposite. *Id.* In January of 2022, Respondent filed their Motion to Dismiss for Failure to Prosecute because as of that date—nearly four and a half years after the commencement of this lawsuit—Anne had **still** failed to provide damages information or an expert report necessary for Respondent to depose Anne and adequately prepare for trial. Any blame attributable to Anne’s attorney, her own husband, is equally attributable to Anne as there is little doubt Anne was fully aware of Glenn’s actions prior to and during litigation. Since 2014, the record reflects that Anne and Glenn were acting in tandem. It is a well-established legal principle that the plaintiff is the master of her complaint. *See, e.g., Chavis v. Fid. Warranty Servs., Inc.*, 415 F. Supp. 2d 620, 627 (D.S.C. 2006). Here, Anne alleges in her complaint that she has been harmed by John’s conduct as trustee. Anne has been in possession of the trust bank records, which were provided and continually have been supplemented, since 2018. In fact, Anne received hundreds of financial documents over the course of the litigation. *See* Ex. 1 of Def.’s Second Mot. To Dismiss for Failure to Prosecute, Master Discovery Index enclosed with Aug. 26, 2022 Ltr., pp. 4-7 (R. pp. 594-597). Yet, despite Respondent’s multiple discovery requests asking Anne to provide a calculation of the damages she is alleged owed or should be returned to the trust(s), Anne continuously failed to provide this information.

ii. Factor #2: The amount of prejudice caused to the defendant

Anne argues “the difficulty of going through litigation is what parties in a lawsuit have to endure and is not caused by the alleged failure on the part of the Plaintiff to actively pursue her case.” *See* App.’s Initial Br., p. 11. While it is true that all parties must endure litigation, it is unreasonable to expect a defendant to engage in discovery for nearly six years without receiving the basic element of a calculation of damages. A request for damages is included in the basic,

standard interrogatories for the South Carolina Rules of Civil Procedure. SCRCPP, Rule 33(b). Yet, years after filing this litigation, Anne failed to provide this basic information.

The trial court said it best when it included in its November 28, 2023 Order:

Tens of thousands of dollars have been spent on legal fees to defend this matter, not to mention the emotional toll this has taken on a family. It is now more than 16 months past the June 30, 2022 deadline the [trial court] set for the Plaintiff's expert damages report. The [trial court] has given [Anne] every chance to put up a damages number, which she continues to fail to do.

See Nov. 28, 2023 Order, p. 4 (R. p. 36).

It is undisputed that Respondent have endured significant legal fees from Anne's persistent delay. It is undisputed that trial and depositions were repeatedly pushed back because Anne had failed to name an expert witness and failed to provide an expert report of her alleged damages. Further, it is undisputed that at the hearing on February 23, 2022, the court inquired into Anne's delay and acknowledge the case had been ongoing for four and a half years without so much as depositions being taken. *See* Feb. 23, 2022 Hr'g Tr. 8:4-8 (R. p. 860). Anne's attorney assured the court that an expert report would be submitted in the **next 30 to 60 days.**" (*Id.* at 8:22-25) (emphasis) (R. p. 860).

It is undisputed that the lower court's scheduling order warned again:

1. Plaintiff shall name an expert and provide an expert report to Defendants by June 30, 2022. **Failure to comply will cause Plaintiff's Complaint to be dismissed for failure to prosecute.**

See May 23, 2022 Scheduling Order ¶ 1 (R. p. 34) (emphasis added).

Anne did not provide an expert report by this date. In fact, over a year later when Respondent filed their **second** Motion to Dismiss for Failure to Prosecute, Anne still failed to provide an expert report. To date, Respondent have still not received the requested information.

While every party must endure litigation and legal costs, a party should not be expected to

litigate and incur costs indefinitely due to a plaintiff's failure to prosecute her own case. Respondent have wasted time, money, and judicial resources preparing their Motions to Dismiss and numerous letters to the court addressing Anne's failure to cooperate. *See* Exs. 1 & 2 of Def.'s Second Mot. To Dismiss for Failure to Prosecute (R. pp. 591-658). Mrs. Wiggins even died during the course of litigation awaiting resolution. As such, this factor weighs strongly in favor of Respondent.

iii. Factor #3: The presence of drawn out history of deliberately proceeding in a dilatory fashion

As explained above, this case does not involve a one-off instance of disobedience or misconduct. Anne not only violated the trial court's initial warning at the February 2022 hearing and the explicit warning in the May 23, 2022 Scheduling Order, but she continued to violate the Order for well over a year. By the time the lower court dismissed Anne's case, no expert report was provided, and Respondent are still unsure of the alleged damages Anne sought to collect. This case had been ongoing for over six years before the lower court ultimately decided to dismiss it. It is therefore evident this factor weighs in favor of Respondent.

iv. Factor #4: The effectiveness of sanctions less drastic than dismissal

A less drastic sanction would not have remedied Anne's misconduct. Reversal is only appropriate when a party has not repeatedly engaged in misconduct that adversely affects the opposing party. *See McComas v. Ross*, 368 S.C. 59, 64, 626 S.E.2d 902, 905 (Ct. App. 2006) (reversing dismissal only when plaintiff was merely late for trial and "did not have a history requesting continuances or abusing court rules to evidence a clear record of delay and contemptuous conduct"). Repeated misconduct warrants dismissal.

Anne erroneously relies on this Court's holding in *S.C. Pub. Int. Found. v. Richland Cnty.*, 436 S.C. 271, 278, 871 S.E.2d 599, 603 (Ct. App. 2021) to support her argument that dismissal is

inappropriate. This case, however, is inapposite. In *S.C. Pub. Int. Found.*, the appellant filed suit in 2016. According to the court’s Scheduling Order, all discovery and dispositive motions were to be filed by the following year.” *Id.* at 274, 871 S.E.2d at 600. Neither party “requested any extensions, engaged in any formal discovery, or scheduled any depositions.” *Id.* When the respondent filed a motion to dismiss for failure to prosecute shortly after the deadline had passed, the circuit court dismissed the case with prejudice. On appeal, the Court of Appeals reversed because appellant showed that it had requested discovery via FOIA requests, it was awaiting the Supreme Court’s ruling on a nearly identical case prior to moving forward, the deadlines in the scheduling order were the only “warnings” appellant had received, and the case had been going on for only eighteen months. *See id.* at 278, 871 S.E.2d at 603. Despite reversing the case, the Court of Appeals noted “a scheduling order ‘is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril’” and “[a]s the circuit court observed, courts must have the authority to dismiss a case in the event a plaintiff unreasonably neglects to prosecute if courts are to maintain control of their dockets.” *Id.* at 279, 871 S.E.2d at 603.

Conversely, this case is more aligned with the holding in *King v. King*, No. 2007-UP-132, 2007 WL 8327374 (S.C. Ct. App. Mar. 28, 2007). In *King*, this Court upheld a motion to dismiss for failure to prosecute due to the appellants’ “‘willful violation and total disregard of [court orders]’ and repeated failure to litigate this matter.” *Id.* at *2. In upholding dismissal, this Court explained:

In this case, we find the circuit court did not commit an abuse of discretion in dismissing Appellants’ case for failure to prosecute **because the dismissal came after repeated warnings, Appellants had infinite opportunities to move the case forward, Appellants unreasonably neglected to proceed with their cause of action, and Appellants demonstrated an indifference to Respondent’s rights.** The circuit court instructed Appellants numerous times to comply with discovery and file an amended complaint. **The circuit court also warned Appellants that further illegitimate delays in discovery could lead to dismissal.**

The record fails to demonstrate that Appellants complied with all of the court's requests. In addition, the only reason this case has not moved forward is because Appellants have neglected to file an amended complaint; therefore, Appellants had unlimited opportunities to proceed to trial. **Further, from the June 2001 hearing through Respondent's filing of the motion to dismiss, Appellants failed to demonstrate that they took any steps toward moving this case forward, and thereby demonstrated an extreme indifference to the rights of the Respondent.** Based on these facts, we cannot find the circuit court abused its discretion in dismissing this case.

Id. at *3 (emphasis added).

Like the appellant's misconduct in *King*, the lower court only dismissed Anne's complaint after repeated warnings to name an expert and disclose a report or calculation of damages. This disclosure was crucial because, as in *King*, Respondent could not proceed without first knowing the damages Anne was claiming. Despite Anne arguing on appeal that dismissal was unfair because the lower court "makes no mention of alternative sanctions or whether they may have been effective," the court did not need to make this argument. The trial court was explicit in its Scheduling Order that failure to disclose an expert and report by June 30, 2022—a year prior—would result in dismissal. Anne should not be able to argue that a lesser sanction was later appropriate when it was her own failure to comply for well over a year that caused the dismissal. Further, unlike in *S.C. Pub. Int. Found.*, this case had been ongoing for six years at the time it was dismissed, not merely 18 months. While neither party in *S.C. Pub. Int. Found.* had engaged in discovery prior to dismissal, Anne's failure to disclose her damages was the sole reason the parties could not move forward with depositions or trial. Like in *King*, the court gave ample opportunity for Anne to comply with its order to provide an expert report. It did not grant Respondent's first Motion to Dismiss, it warned of dismissal in its Scheduling Order, it had two hearings on Anne's failure to provide a report, and it allowed Anne the opportunity to rectify her misconduct for over a year after its court-imposed deadline and despite Respondent's numerous letters to the court.

Furthermore, Anne’s argument that she could not provide an expert report without additional documentation is meritless. As demonstrated in the Production Index attached to Respondent’s Second Motion to Dismiss for Failure to Prosecute, Anne had received hundreds if not thousands of financial documents from both Respondent and third-party banks to whom Anne had sent subpoenas. *See* Ex. 1 of Def.’s Second Mot. To Dismiss for Failure to Prosecute, Master Discovery Index enclosed with Aug. 26, 2022 Ltr., pp. 4-7 (R. pp. 594-597). The trial court repeatedly told Anne that she needed to file an expert report before the court would address any additional discovery issues. *See* Feb. 23, 2022 Hr’g Tr. 17:5-11 (R. p. 869). Regardless, counsel for Respondent wrote the court on two separate occasions to notify it that almost all the requested documents—which included thousands of pages—had already been produced to Anne in the years prior. *See* Exs. 1 and 2 of Def.’s Second Mot. To Dismiss for Failure to Prosecute, Ltrs dated Aug. 26 and Sept. 14, 2022 (R. pp. 591-658). Even after additional account statements were provided to Anne in December of 2022, no expert report was provided to Respondent. At a minimum, Respondent have a right to know the damages number Anne contends she is owed, yet they were robbed of this information even six years after this lawsuit began. Without damages calculations, it was impossible to move forward with depositions and most importantly impossible to participate in meaningful mediation. This factor, consequently, weighs strongly in favor of Respondent.

C. The Lower Court Did Not Abuse Its Discretion by Failing to Consider Sanctions Less Harsh than Outright Dismissal.

For the reasons set forth in Part IV. B. iv *supra*, Anne’s argument that the trial court abused its discretion in dismissing her case is meritless. Anne had more than sixteen months since the trial court ordered her to produce an expert report on damages, and more than five years since she was served Respondent’s initial requests seeking the standard calculation of damages. The trial court did not abuse its discretion.

V. CONCLUSION

This long and drawn-out family dispute has been quite personal at times. There were allegations repeated in the Wiggins' small community. Most importantly, it weighed heavily on the last years of Mrs. Wiggins' life. It is time for the entire Wiggins Family to put this behind them. Respondent respectfully ask that this Court uphold the trial court's rulings dismissing Anne's claims in their entirety for failure to prosecute and/or dismissing Anne's claims in their entirety because they are barred by the applicable statute of limitations. Respondent would like to conclude this difficult chapter in their family history and be able to remember Mr. and Mrs. Wiggins and their legacies without the weight of this litigation clouding that memory.

Respectfully submitted,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Judge James B. Jackson, Jr., Special Circuit Court Judge

Appellate Case No.: 2024-001266

Anne Wiggins Smith..... Appellant,

v.

John L. Wiggins, III, Individually and as Trustee of the John L. Wiggins, Jr.
Revocable Trust, as Trustee of the Margaret Eugenia Utsey Wiggins
Revocable Trust, and as Personal Representative of the Estate of Margaret
Eugenia Utsey Wiggins

.....Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief on the Appellant, Anne Wiggins Smith, via electronic mail, upon her respective attorney of record as properly addressed below this
1st day of May 2025:

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May 1, 2025