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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Judicial Circuit Court Judge

App Case No. 2025-000486
COA Case No. 24-1450 and 22-1146
Circuit Court Case No. 2021-CP-10-05498

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

PETITION FOR REHEARING AND MOTION FOR RULE 220(c), SCACR, AFFIRMANCE OF LAW OF THE CASE ON PRIOR APPEAL

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The petitioner respectfully submits Petition for Rehearing including based on application of intervening case law in the *Maybank* case and Motion for Rule 220(c), SCACR, Affirmance of Law of the Case on Prior Appeal, copy attached). *Maybank v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024) (cert. denied April 22, 2025). Moreover, as set forth more fully below, the May 13, 2025, opinion relies on error of material fact. But for reliance on error of material fact, the outcome should and would be different in petitioner's favor. Due to outage of the Supreme Court's service for electronic submission, the Public Index is inconsistent with record evidence herein and inadvertently shows error of material fact with belated filing date for the cert petition extension request. Pursuant to Rule 262, SCACR, documented interruption at the Supreme Court in Rule 262's designated method for electronic submission to file petitioner's cert petition extension request caused inadvertent error of material fact with the Public Index posting a false, belated filing date instead of petitioner's timely February 23, 2025, filing date. The record corroborates timely filing on or before February 24, 2025, in the date-stamped copy attached as Exhibit A, and within 30 days after the January 27, 2025, Court of Appeals' denial of petition for rehearing in COA App. Case No. 2024-1450. To the extent there is ambiguity, the rule of lenity supports the position of the intended beneficiary, the petitioner. Accordingly, the May 13, 2025, opinion is reversible as a matter of law.

Specifically, the record reflects petitioner's request for cert petition extension is timely served, filed, and paid herein and corroborated by this Honorable Court's February 24, 2025, notice to the Court of Appeals (COA), copy attached as Exhibit A, which vests appellate jurisdiction with the superior appellate court in that COA App. Case No. 2024-001450 on February 24, 2025. Further, this Honorable Court's timely February 24, 2025, notice to the Court of Appeals of timely request for cert petition extension is reflected in the attached copy of the Court of Appeals Public Index in COA App. Case No. 2024-001450. The petitioner timely filed the request for cert petition extension, copy attached, on Sunday, February 23, 2025, however, due in whole or in part to interruption at the

Supreme Court in Rule 262's designated method for electronic submission, the Public Index herein reflects a filing date of March 12, 2025, an erroneous material fact relied upon by this Honorable Court in the March 17, 2025, and May 13, 2025, orders. But for reliance on error of material fact, the outcome should and would be in the undersigned's favor. The record reflects the cert petition extension request is timely filed on or before February 24, 2025, and within 30 days after the COA's denial of the petition for rehearing on January 27, 2025. Rule 262, SCACR. Accordingly, pursuant to Rule 263(b), SCACR, and *In re Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, the record reflects the attached petition for writ of cert is timely filed and served on Sunday, March 16, 2025, before dismissal. Rules 262 and 263, SCACR, and generally; *In re Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, S.C. Supreme Court Order dated July 16, 2014. See attached supporting affidavit.

As a threshold matter, we apologize for any ambiguity or inconvenience and without being disagreeable, the May 13, 2025, opinion overlooks or misapprehends that the petitioner has filed only one, not three motions, as the most recent amended motion supersedes (amended to reflect additional facts previously unavailable). As such, the record reflects one motion for reconsideration directed to the single justice who signed the March 17, 2025, opinion including based on inadvertently erroneous material fact. It is respectfully submitted that the SCACR generally and Rule 240, SCACR, specifically provide for petitioner's timely served and filed motion for reconsideration directed to that single justice. See Toal *et al.*, *Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 379 ("Because motions are used in the appellate courts to seek specific relief, there is no limit to the type of motion that could be filed in the appellate courts."). Further, intervening case law in the *Maybank* case and Rule 38(a), SCRCP, provide that the Reference Order on appeal herein is infirm and void from its inception because the petitioner timely requested a jury trial, the petitioner timely filed Rule 38, SCRCP, notice of jury demand, the petitioner is entitled to a jury trial including law claims on counterclaim with jury demand, the petitioner is entitled to a jury trial regarding disputed title to real

estate, and/or a jury trial is to be preserved inviolate under the State Constitution. *Maybank v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024) (cert. denied April 22, 2025). Accordingly, petitioner seeks reconsideration directed to the single justice who signed the March 17, 2025, opinion based on inadvertent error of material fact with material omission.

Again, we apologize for any ambiguity or inconvenience: If motion for reconsideration is denied, pursuant to S.C. Code § 14-3-350, the petitioner respectfully submits Rule 240(j), SCACR, appeal, timely served, filed, and paid. It is respectfully submitted the statute, S.C. Code § 14-3-350, anticipates and requires *de novo* review by the court without participation of the individual justice who signed the order that is the subject of the Rule 240(j), SCACR, individual justice appeal. S.C. Code § 14-3-350 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single justice. S.C. Code § 14-3-350 ("But an appeal shall be allowed from the decision of any such justice to the Supreme Court."). Legislative intent, statutory authority, case law, and/or meaningful review require that a justice not participate in that appeal of his or her own order, as opposed to the motion for reconsideration filed first herein and addressed to the individual justice who signed the March 17, 2025, order. As such, pursuant to S.C. Code § 14-3-350, non-participation by the individual justice who signed the March 17, 2025, order was respectfully requested and that request is reiterated for the instant petition. Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). Petitioner reasonably questions impartiality regarding the May 13, 2025, decision. In the *Rice* case, then Chief Judge Haynsworth ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but **a reasonable person has a reasonable basis to question the impartiality** of a

judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* At 1117 (emphasis supplied). The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. The May 13, 2025, opinion fails to comply with the plain language and express terms of the appeal provision in S.C. Code § 14-3-350 and misconstrues the motion for reconsideration addressed to the individual justice who signed the March 17, 2025, order. Accordingly, the May 13, 2025, opinion is reversible as a matter of law including failure to apply the proper *de novo* standard of review, lack of statutory authority due to participation of the individual justice who signed the March 17, 2025, order, and/or because the May 13, 2025, opinion is misconstrued.

Moreover, the petitioner respectfully requests Rule 220(c), SCACR, affirmance of law of the case on prior appeal, copy attached. *Huggins v. Winn-Dixie Greenville, Inc.*, 252 353, 166 297 (1969); *Ackerman v. McMillan*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996). Based on *Hudson v. Hudson*, COA Chief Judge Bruce Williams' order reinstates the COA appeal herein including expressly reinstating the appeal of the June 9, 2022, trial court order. *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Further, intervening new case law in the *Maybank* case supports our position as well. *Maybank v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024) (**cert. denied April 22, 2025**). Pursuant to Rule 38(a), SCRCP, intervening case law in the *Maybank* case provides that the Reference Order on appeal herein is infirm and void from its inception because the petitioner timely requested a jury trial, the petitioner timely filed Rule 38, SCRCP, notice of jury demand, the petitioner is entitled to a jury trial including law claims on counterclaim with jury demand, the petitioner is entitled to a jury trial regarding disputed title to real estate, and/or a jury trial is to be preserved inviolate under the State Constitution. *Id.* Accordingly, the motion and petition are respectfully submitted. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*,

418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

Significantly and materially, the extension request is timely served and timely filed in the superior appellate court on February 23, 2025, and timely docketed in the Court of Appeals App. Case No. 2024-1450 on February 24, 2025, copy attached as Exhibit A. Due in whole or in part to interruption in the Supreme Court's service for electronic submission pursuant to Rule 262, C-Track Public Access in the instant case did not timely capture the timely filed extension request on February 23, 2025, which instead contains inadvertent error showing March 12, 2025. Rule 262, SCACR. The Court of Appeals date-stamp on Exhibit A shows the superior appellate court's notice of the extension request to the COA in COA Case No. 2024-1450 was received and docketed by the COA on February 24, 2025, in COA Case No. 2024-1450 thereby vesting appellate jurisdiction in the superior appellate court on February 24, 2025. Under Rule 263(b), the appellate court or an individual judge or justice may extend the time fixed by the SCACR to perform any act, except the time for serving the notice of appeal under Rules 203 and 243, SCACR. Rule 263(b), SCACR. The clerk of the appellate court is authorized to grant the initial request for extension herein. See attached correspondence with extension request dated and filed on February 23, 2025. "Initial requests *as in this case* for extensions may be obtained by letter to the clerk, without a formal motion." Toal *et al., Appellate Practice in South Carolina*, Third Ed. (2016), p. 375 (emphasis supplied). The petition for a writ of certiorari is timely served and filed on March 16, 2025. The May 13, 2025, opinion errs in relying on an

incomplete/conflicting/inapplicable provision of Rule 221(b), SCACR. The applicable provision provides that "the Court of Appeals SHALL NOT send the remittitur until notified that the petition has been denied." Rule 221(b), SCACR (emphasis supplied). It is repectfully submiitted that once this Honorable Court notified the COA of the cert petition extension request, as it did in Exhibit A on February 24, 2025, appellate jurisdiction vests with the superior appellate court such that "the Court of Appeals SHALL NOT send the remittitur until notified that the petition has been denied." Rule 221(b), SCACR (emphasis supplied). Otherwise, Rule 263(b), SCACR, as well as *In re Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, S.C. Supreme Court Order dated July 16, 2014, would be superfluous and of no effect because essentially all extensions could be overturned by unauthorized return of remittitur even before the Petition for a Writ of Certiorari is due as in this case. Rule 263(b), SCACR (the appellate court or an individual judge or justice may extend the time fixed by the SCACR to perform any act, except the time for serving the notice of appeal under Rules 203 and 243, SCACR). The record reflects there is no such notification from the superior appellate court in this matter to the COA authorizing the March 5, 2025, remittitur. Rule 221(b), SCACR. *See Wise v. SC DOC*, 372 S.C. 173, 642 S,E.2d 551 (2007). The record reflects the March 5, 2025, remittitur was sent in violation of the express terms of Rule 221(b), SCACR, it was sent without the required notification from the superior appellate court, it was sent in violation of the timely filed and served Petition for a Writ of Certiorari herein, and/or it was sent without statutory authorization due in whole or in part to the Supreme Court's service outage interrupting electronic submission. To the extent there is ambiguity, the rule of lenity supports the position of the intended beneficiary, the petitioner. Accordingly, the petition and motion are respectfully submitted.

This matter involves another action pending between the same parties for the same cause in the Family Court. By way of analogy, the Fourth Circuit case of *Roberge* provides insight. In re *Roberge*, 188 B.R. 366 (E.D. Va. 1995)(unpublished). Footnote 5 of that case provides that the "opinion (*of the lower court*) makes frequent mention of the fact that prior to the equitable distribution suit, each of the

parties held a one-half undivided interest as tenants in common. *See In re Roberge*, 181 B.R. at 857. **It cites no support for, and this Court has found no applicable law in support of, the proposition that if a tenancy by the entireties is converted to a tenancy in common, the parties are presumed to have equal undivided shares.**" In re *Roberge*, 188 B.R. 366 (E.D. Va. 1995) (emphasis supplied). Likewise, there is no South Carolina law supporting that proposition in this at-fault divorce. *See Chris v. Chris*, 287 S.C. 161, 337 S.E.2d 209 (1985). Legal title is not dispositive. Moreover, the *Roberge* case confirms public policy which provides protection for families, preservation of the family home, a different standard of review, and/or **confidentiality and privacy rights in the Family Court**, which is hereby requested. In re *Roberge*, 188 B.R. 366, 370-71 (E.D.Va.1995), aff'd, 95 F.3d 42 (4th Cir. 1996). Overall, the Fourth Circuit ruled that the proper forum is the Family Court as previously determined under the facts on full and fair record in Federal Court which is issue preclusion/res judicata/collateral estoppel. The record reflects there is no record on appeal or factual support whatsoever for the COA opinion which is reversible as a matter of law. "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). Without jointly-filed ROA or factual support in the record, there can be no full, fair, and meaningful determination in the lower appellate court which "will always be necessary on the part of the appellate court" and, therefore, no adequate record for meaningful review in the superior appellate court. *Id.* "These cases not only permit, but indeed **require, immediate appeal.**" *Id.* (emphasis supplied). Without jointly-filed ROA or factual support in the record, the COA order on appeal herein is based on unreliable hearsay and reversible as a matter of law which is hereby requested. Binding precedent in the *Price* case provides that lack of audio or transcript of the impermissible ex parte trial court hearing herein is another reason the record is inadequate for meaningful review rendering the trial court orders reversible as a matter of law and without statutory authority. *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023.

Article A, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. Binding precedent in the *Price* case provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. *State v. Jeroid J. Price,* S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. "Section 14-5-10 of the South Carolina Code (2017) provides, 'The circuit courts herein established shall be courts of record . . . .' The circuit court's hearing ... must be recorded." *Id. See Orpiano v. Johnson,* 687 F.2d 44 (4th Cir. 1982) ("(F)ailure even to have a transcript filed ... was reversible error."). Similarly, the Fourth Circuit has ruled that overreaching attempts to dismiss and/or deny full and fair consideration on the merits are reversible as a matter of law. *Centro Tepeyac v. Montgomery County,* 722 F.3d 184, 188 (4th Cir. 2013); *see Pillay v. INS,* 45 F.3d 14 (2nd Cir. 1995) (same). The petitioner respectfully submits the lower appellate court's sua sponte ex parte summary dismissal without any factual support in the record is reversible as a matter of law including based on Chief Judge Bruce Williams' law of the case in the prior appeal, copy attached. Accordingly, for substantial justice affecting substantial rights including clear title for prospective third parties, stability in the real estate market place, and/or prevention of Family Court deadbeats from flooding the circuit court with duplicitous, duplicative claims to evade the jurisdiction of the Family Courts, the Family Court has exclusive original jurisdiction herein and reversal is hereby requested. S.C. Code § § 63-3-510 to 530 and 20–3–620.

In addition, the Biblical story and the proverbial phrase "split the baby" have roots in Hebrew lore in the story of two mothers claiming before King Solomon that each was the real mother of an infant son. The story from 1 Kings 3:16–28 states that two mothers living in the same house, each the mother of an infant son, came to Solomon. One of the babies had been smothered, and each claimed the remaining boy as her own. Calling for a sword, Solomon declared his judgment: The baby would be cut in two, each woman to receive half. It was the love of the mother that proved the truth of the matter asserted. If the Family Court attorney defendant's motives were pure, he too should and would object

to arbitrary and capricious reduction in market value.

CONCLUSION

For substantial justice affecting substantial rights, the petitioner respectfully requests petition for rehearing and/or Rule 220(c), SCACR, affirmance of law of the case on prior appeal, copy attached, wherein COA Chief Judge Bruce Williams orders reinstatement pursuant to *Hudson v. Hudson* including appeal of the June 9, 2022, trial court order. *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986).

Respectfully submitted,

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