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**Jun 06 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Hon. Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-00375

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Appellate Case No. 2025-000967

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1613 Givhans, LLC,

Respondent,

v.

Barney Wimberley,

Appellant.

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MOTION TO DISMISS

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COMES NOW Respondent, 1613 Givhans Rd, LLC, by and through undersigned counsel, and respectfully moves this Court pursuant to Rules 220 and 269, SCACR, to dismiss the appeal filed by Appellant Barney Wimberly.

As grounds for this Motion, Respondent states:

1. Appellant lacks standing to challenge the Writ of Ejectment because it merely enforces a final Default Judgment that Appellant failed to timely appeal, in violation of the jurisdictional requirements of Rule 203(b)(1), SCACR.

2. Appellant's failure to timely appeal the final Default Judgment is fatally defective and divests this Court of subject matter jurisdiction pursuant to Rule 263(b), SCACR.

3. The appeal is frivolous under Rule 269, SCACR, as it seeks to collaterally attack a final judgment through an appeal of its ministerial enforcement and serves solely to delay

enforcement of a valid court order.

WHEREFORE, Respondent respectfully prays this Court dismiss Appellant's appeal, order the Sheriff of Dorchester County to immediately execute the Writ of Ejectment issued by the trial court, impose sanctions under Rule 269, SCACR, and award such other relief as the Court deems just and proper.

This Motion is supported by a separate Memorandum filed contemporaneously herewith.

RESPECTFULLY SUBMITTED,

June 6, 2025

s/ Roman V. Hammes  
Roman V. Hammes, Esq. (SC Bar #76977)  
s/ Christian T. Wall  
Christian T. Wall, Esq. (SC Bar #106550)  
Charpia & Hammes, Attorneys at Law  
215 West 2<sup>nd</sup> South Street  
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(843) 324-1727  
*Attorneys for Respondent*

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RESPONDENT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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COMES NOW Respondent, 1613 Givhans Rd, LLC ("Respondent"), by and through undersigned counsel, and respectfully submits this Memorandum in support of its Motion to Dismiss filed contemporaneously herewith.

### **PROCEDURAL HISTORY**

This action was filed in the Dorchester County Court of Common Pleas on March 1, 2024, seeking declaratory relief and ejectment of Appellant Barney Wimberly ("Appellant") from real property located at 1613 Givhans Road, Ridgeville, SC 29472 (the "Property").

Appellant was properly served with the Summons and Complaint but failed to file any responsive pleading. Appellant was entered in default by the Clerk of Court on April 25, 2024. The Circuit Court entered a Default Judgment against Appellant on March 25, 2025, declaring Respondent the sole owner of the Property and directing Appellant to vacate within 72 hours. The

Default Judgment also provided that a Writ of Execution would issue if Appellant failed to vacate.

Appellant was served with the final Default Judgment by a process server on March 29, 2025. The Affidavit of Service is attached hereto as Exhibit "A". Under Rule 203(b)(1), SCACR, Appellant had until April 28, 2025, to file a Notice of Appeal from the Default Judgment. Appellant failed to appeal the Default Judgment within this mandatory thirty (30) day deadline.

When Appellant failed to vacate the Property as ordered, Respondent sought and obtained a Writ of Ejectment from the Circuit Court on May 6, 2025. Appellant filed his Notice of Appeal on May 19, 2025, twenty-one days after the Default Judgment became final and unappealable.

## **ARGUMENT**

### **I. THIS APPEAL IS UNTIMELY AND THIS COURT LACKS SUBJECT MATTER JURISDICTION**

"Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). "[A]n appellant's failure to serve a notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment divests the appellate court of subject matter jurisdiction and will result in the dismissal of the appeal." *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). The Supreme Court examines the finality of the appeal deadline in some detail as well in *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). It is well-settled law in South Carolina that in order to preserve the right to appeal a final judgment, notice of appeal must be served within the timeline prescribed, and failing to do so is fatally defective to an appeal.

In this case, Appellant received notice of the Default Judgment by personal service on March 29, 2025, which would have made the deadline for filing a notice of appeal April 28, 2025. Appellant filed his notice of appeal on May 19, 2025, 51 days after he received notice of the

Default Judgment and 21 days after the expiration of his appeal window. Under Rule 203(b)(1), SCACR, once the deadline to appeal passed, the judgment became final and immune from challenge. The Writ of Ejectment which Appellant purports to challenge now is merely a ministerial enforcement order implementing the final Default Judgment. Appellant cannot circumvent his missed appeal deadline by challenging the enforcement mechanism rather than the judgment itself.

Because Appellant failed to timely serve his notice of appeal, this Court lacks subject matter jurisdiction to hear his appeal.

## **II. THE WRIT OF EJECTMENT IS A MINISTERIAL ACT AND NOT AN INDEPENDENTLY APPEALABLE ORDER.**

Rule 201, SCACR, permits an aggrieved party to appeal any final judgment, appealable order or decision. South Carolina appellate courts lack jurisdiction over ministerial enforcement orders that merely implement existing judgments because such orders are non-discretionary and are merely an extension of the final judgment, and not independently appealable orders.

S.C. Code Ann. § 27-37-100 provides that writs of ejectment shall be issued following judgment - this is mandatory ministerial action implementing the judgment, not a discretionary order subject to appellate review. S.C. Code Ann. § 15-39-20 confirms that "writs of execution for the enforcement of" judgments are process implementing final judgments, not substantive orders creating new rights or obligations.

Ministerial acts are not subject to direct appeal on their merits because they are acts which involve no judicial discretion independent from the judgments they emanate from. Therefore, the issuance of such a writ does not restart the timeline for filing a notice of appeal.

## **III. THE APPEAL IS FRIVOLOUS UNDER RULE 269, SCACR.**

This appeal should be dismissed as frivolous under Rule 269, SCACR, which provides:

"Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay... the appellate court may... impose... sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

This appeal meets both objective and subjective standards for frivolous conduct. Objectively, any reasonable attorney would recognize that challenging a ministerial enforcement order while failing to timely appeal the underlying judgment lacks arguable basis in law. Subjectively, filing this appeal twenty-one days after the judgment became final serves solely dilatory purposes.

S.C. Code Ann. § 15-36-10 defines frivolous conduct as claims that are "clearly not warranted under existing law" or "interposed merely for delay." Appellant's appeal fits both criteria: South Carolina law provides no mechanism for appealing enforcement orders after missing the deadline to appeal the underlying judgment, and the timing demonstrates dilatory intent.

#### **IV. APPELLANT WAIVED HIS RIGHT TO CONTEST THE JUDGMENT THROUGH DEFAULT**

"When a party allows a judgment to be taken against him by default, he is curtailed in the remedies which the law thereafter allows him to pursue. For instance, he cannot appeal to the supreme court from such judgment." *Gillian v. Gillian*, 65 S.C. 129, 43 S.E. 386 (1903).

Appellant's failure to respond to the underlying action, resulting in a final default judgment, constitutes a fundamental waiver of substantial rights that cannot be recovered through a challenge to an enforcement order. Under South Carolina law, a default creates comprehensive waivers, including, but not limited to, the right to: present evidence related to liability; conduct discovery on contested issues; contest the factual or legal basis for the judgment; or raise affirmative defenses.

In this case, Appellant's default led to binding factual admissions regarding his lack of right to possess the property. These admissions, established by the final default judgment, are now conclusive. Allowing an appeal of the subsequent writ of ejectment - a mere ministerial act issued to enforce the judgment - would improperly grant Appellant a second opportunity to challenge issues already conclusively determined and rights irrevocably waived by his own inaction. Appellant cannot resurrect these waived rights through an appeal of an enforcement order.

### **REQUEST FOR SANCTIONS**

Pursuant to SCACR 269, Respondent respectfully requests this Court impose sanctions against Appellant for filing a frivolous appeal, including reasonable attorney's fees incurred in defending against this dilatory appeal. Appellant's conduct demonstrates a pattern of delay tactics designed to avoid compliance with court orders after defaulting, failing to timely appeal, and ignoring judicial directives.

### **CONCLUSION**

Appellant's appeal fails on multiple independent grounds requiring dismissal. He lacks standing to challenge enforcement of a judgment he failed to timely appeal, his appeal serves solely dilatory purposes warranting sanctions, judicial estoppel prevents his inconsistent positions, res judicata protects the final judgment from collateral attack, his default waived the rights he seeks to assert, and this Court lacks jurisdiction over ministerial enforcement orders.

The procedural timeline demonstrates the frivolous nature of this appeal: Default Judgment entered March 25, 2025, served March 29, 2025, appeal deadline April 28, 2025, and appeal filed May 19, 2025—twenty-one days after the judgment became final. This delay, combined with challenging enforcement rather than the underlying judgment, exemplifies abusive litigation tactics that South Carolina law prevents.

WHEREFORE, Respondent respectfully prays this Court dismiss Appellant's appeal, order the Sheriff of Dorchester County to immediately execute the Writ of Ejectment issued by the trial court, impose sanctions under Rule 269, SCACR, and award such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

June 6, 2025

s/ Roman V. Hammes  
Roman V. Hammes, Esq. (SC Bar #76977)  
s/ Christian T. Wall  
Christian T. Wall, Esq. (SC Bar #106550)  
Charpia & Hammes, Attorneys at Law  
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PROOF OF SERVICE

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I certify that on June 6, 2025, I have served the *Motion Dismiss* and *Memorandum in Support of Motion to Dismiss* on Appellant Barney Wimberly, by depositing same in the United States Mail, in an envelope with sufficient postage affixed, and addressed as follows:

Barney Wimberly  
1613 Givhans Rd.  
Ridgeville, SC 29472

June 6, 2025

s/ Christian T. Wall  
Christian T. Wall, Esq. (SC Bar # 106550)  
215 West 2<sup>nd</sup> South Street  
Summerville, South Carolina 29483  
(843) 367-8743  
*Attorney for Respondent*