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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Judge

Appellate Case No. 2022-001655
Opinion No. 2025-UP-121, Filed April 2, 2025

James Marshall Shoemaker, III.....Petitioner,
v.
Lesley R. Moore, Esq. as Personal Representative and Trustee, Edward Sloan Shoemaker and
Jonathan Evans Shoemaker.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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Certification of Counsel

The undersigned hereby certifies that Petitioner James Marshall Shoemaker, III (“Petitioner”) filed a Petition for Rehearing with the Court of Appeals and that the Court of Appeals ruled on the petition with finality on May 8, 2025.

Questions Presented for Review

1. Did the Court of Appeals err in failing to examine the issue of judicial disqualification/recusal to determine whether or not to void the Probate Judge’s Order(s)?
2. Did the Court of Appeals err in holding that Petitioner was barred from appeal due to his being delinquent in filing his Notice of Appeal with the Circuit Court?

Statement of the Case

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, Petitioner seeks certiorari regarding the Court of Appeal decision in the case of James Marshall Shoemaker, III v. Lesley R. Moore, Esq. as personal Representative and /Trustee, and Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries and as Individuals, Op. No. 2025-UP-121 (S.C. Ct. App. Filed April 2, 2025). The issues detailed in this petition concern judicial disqualification of the trial court judge (“Probate Judge”) and the prejudicial and reversible error resulting therefrom. Granting this petition is necessary because the Court of Appeals’ opinion is in conflict with prior decisions of this Court, and to the degree this Court finds there is no conflict, this case does indeed present a novel question of law for review involving judicial disqualification/recusal and the voiding effects disqualification has upon Orders issued by disqualified judges with reference to Rule 501, SCACR, Judicial Canons 3(E)(1) and 3(E)(2).

There is little need for facts about the case itself given the issue before the court, but respectfully, Petitioner provides the following merely for context. Petitioner brought this action contesting the validity/enforceability of his deceased Father's will/trust(s). Petitioner's claim is largely based upon allegations against his siblings of undue influence upon their father due to alleged mental incapacity of the father.

In that context, it is the procedural facts which are determinative in this case. Petitioner was represented by attorney John Blincow, who was suspended from the practice of law in December 2021 (a fact of importance in Petitioner's second argument herein). Respondents were/are represented by the firm of Brown, Massey, Evans, McLeod & Haynsworth, LLC ("Brown, Massey"). Brown, Massey had filed a case-dispositive summary judgment motion which was scheduled to be heard on April 7, 2021 by the Probate Judge, a part-time judge who also maintained a private law practice. The following is a timeline of the key factual and procedural that support why a writ of certiorari should be granted by this Honorable Court. These events will show that the Probate Judge should have been disqualified/recused from presiding over the case from the date of the summary judgment motion which ultimately led to Petitioner's loss and his appeal; and that the facts of such disqualification/recusal are such that the Court of Appeals committed reversible error by failing to examine the record in order to determine whether to void the Probate Judge's summary judgment rulings.

- On April 7, 2021, the following three critical factual/procedural events occurred:
 - Probate Judge heard Brown/Massey's Motion for Summary Judgment and insinuated his inclination to grant Summary Judgment in favor of Brown, Masseys clients, but took it under advisement. (R. at 181).

- Unknown to Petitioner or his counsel, the very same day, April 7, 2021, Probate Judge entered formal Appearance as co-counsel with Brown, Massey in two unrelated civil actions from which both Probate Judge and Brown, Massey stood to gain financially (R. at 130); and
- Neither before nor during the April 7, 2021 Summary Judgment hearing did Probate Judge disclose his co-counsel/pecuniary/business relationship with Brown, Massey to Petitioner or his counsel,¹ and Petitioner remained ignorant of that fact for over five (5) months. (R. at 132).

In petitioning this Court for a Writ of Certiorari, it is Petitioner's position that on April 7, 2021, the Probate Judge failed to disqualify himself and failed to disclose pursuant to remitter procedures under the Judicial Canons; and therefore, any and all decisions issuing from April 7, 2021 forward poisoned any opportunity for full and fair administration of justice. The Court of Appeals erred in refusing to consider these issues, instead ruling simply that Petitioner failed to timely file a Notice of Appeal and affirming the lower court on that basis.

- September 16, 2021 – One day after conducting a hearing related to a request for an award of over \$112,000 in fees, the Probate Judge emailed all counsel and revealed for the first time that he had been in business as co-counsel with Brown Massey since April 7, 2021, the original summary judgment hearing date; This disclosure was 5 ½ months after the Brown, Massey relationship began.

¹ This relationship is the disqualifying event upon which the Probate Judge was either required to recuse himself or 'should' have recused himself under the Judicial Canons. Indeed, the Probate Judge recognized that many months later when he did in fact recuse himself from the case, but refused to vacate the dispositive Orders favoring Brown Massey and its client despite the fact that the disqualifying event occurred simultaneously with the original summary judgment hearing (his entering into the business relationship with Brown Massey).

- October 1, 2021 – Petitioner, after discovery of the conflict of interest, filed a Motion to Recuse and Vacate, seeking Judge Jennings’ recusal and that he vacate his Order Granting Summary Judgment. (R. at 127).
- December 15, 2021 - Probate granted Appellant’s Motion to Recuse but denied the Motion to Vacate previous Orders (R. at 25). Also on December 15, 2021, Probate Judge issued an Amended Order Granting Summary Judgment to Brown Massey’s clients. (R. at 17).
- January 7, 2021 – Petitioner files his Notice of Appeal (by that point pro se due to prior attorney’s suspension from practice occurring less than three weeks’ prior).
- February 1, 2022 – Chief Justice of the South Carolina Supreme Court, the Honorable Donald W. Beatty, disqualified all Greenville County Probate Judges from the Shoemaker cases and appointed Judge Joshua Queen of Cherokee County as special referee to handle all matters moving forward. (Exhibit I).

Concise Arguments in Support of the Petition for Writ of Certiorari

In petitioning this Court for a Writ of Certiorari, it is the Petitioner’s position that on April 7, 2021, in entering into a monetarily and mutually beneficial business relationship as co-counsel with Brown, Massey (opposing counsel against Petitioner), the Probate Judge created a mandated disqualifying event under the Judicial Canon 3(E); that the Probate Judge failed to disqualify himself and failed to disclose under remitter procedures under the Judicial Canons; and therefore, any and all decisions issuing from April 7, 2021 or any further rulings were voidable, having poisoned any full and fair administration of justice and deeply prejudiced the Petitioner in all subsequent matters thereafter.

The Court of Appeals committed reversible error by failing to consider the facts surrounding the Probate Judge's disqualifying facts and recusal in order to evaluate whether the appealed Order should be vacated; in fact, the Court committed reversible error by failing to consider the issue of judicial disqualification at all, instead ruling simply that Petitioner failed to timely file a Notice of Appeal.

A. THE COURT OF APPEALS SHOULD HAVE DETERMINED THAT THE PROBATE JUDGE WAS DISQUALIFIED FROM HEARING THE CASE AS OF APRIL 7, 2021 AND VACATED ALL SUBSEQUENT RULINGS BECAUSE THE FACTS SURROUNDING THE JUDGE'S DISQUALIFYING CAUSE SHOULD HAVE RENDERED ANY RULINGS VOID.

Under Canon 3(E), CJC, Rule 501, SCACR, a judge should disqualify himself if his impartiality might reasonably be questioned. In cases involving a violation of Canon 3, the Court will affirm a trial judge's failure to disqualify himself only if there is no evidence of judicial prejudice. Ellis v. Procter and Gamble Distributing Co., 433 S.E.2d 856, 315 S.C. 283 (S.C., 1993); see Rogers v. Wilkins, 275 S.C. 28, 267 S.E.2d 86 (1980); see also Reading v. Ball, 291 S.C. 492, 354 S.E.2d 397 (Ct.App.1987); Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct.App.1984); Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 724 (Ct.App.1984). Stated another way, the Court of Appeals should have reversed the lower court by determining that the Probate Judge's situation clearly presented evidence of prejudice.

This conclusion is supported by directly applicable language of Canon 3, especially Canon 3(E)(1) and (E)(2):

"E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer

(b).... a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;”

Commentary [in relevant part]:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.” Canon 3, CJC, Rule 501, SCACR.

Applying Canon 3(E)(1)(a) in this case, the Probate Judge, on the very same day as hearing the summary judgment motion of Brown, Massey against the Petitioner also entered into a co-counsel relationship on two civil cases with Brown, Massey, thus creating an inherent biased, pecuniary interest, improperly connected relationship, even if unconsciously so. At best, judicial impartiality might reasonably be questioned.

Applying Canon 3(E)(1)(b), the Probate Judge was also disqualified due to his contemporaneous practice of law WITH Brown, Massey. Canon 3(E)(1)(b) clearly states that the Probate Judge was prohibited from hearing matters involving this case because he was practicing law with Brown Massey at the same time as the matter before the court. In fact, he entered his notice of appearance to practice law with Brown Massey in two cases on the exact day as the original summary judgment hearing in this case in April 2021. (R. at 130). By serving as co-counsel in two civil cases (the ‘association’ between Brown Massey and the Probate Judge), because the co-counsel relationship existed at the same time the Probate Judge’s presided over this case for many months, he was operating under a disqualifying event under Canon (3)(E)(1)(b).

In a subsequent Order many months later, the Probate Judge did indeed recuse himself, yet failed to vacate prior Orders, which are mutually exclusive rulings. (R. at 25). In so determining his recusal was appropriate, he implicitly recognized that he was disqualified from the outset as he clearly stated his pecuniary relationship/law practice with Brown Massey beginning in April 2021. At the very least, his voluntary recusal from further involvement implicitly recognized that he should have, by legal duty, conducted the remitter procedures of disclosure of his conflict of interest, which he also failed to do. The prejudice is beyond evident, as there is an abundance of the proverbial fruit of the poisonous tree in direct contravention of Canon 3(E) in its entirety.

The ruling of the Court of Appeals is inconsistent with prior rulings of this Court. In Jeffers v. Jeffers, 89 S.C. 244, 71 S.E.810 (S.C. 1911), on a motion for a new trial, the moving party argued that a Probate Judge was disqualified and that a new trial should be granted (based on allegations of affinity or connections with a party). Id. at 244, 71 S.E. at 810. In addressing the issue, the Supreme Court quoted: “A judgment rendered by a disqualified judge in this state is ... voidable.” Id. at 248, 71. S.E. at 811; citing Ex parte Hilton, 64 S.C. 201, 41 S.E. 978 (1902).

The Jeffers Court then stated that evaluations of the facts should be conducted to determine whether or not to void a decree, indicating a clear path to when an appellate court might render a disqualified judge’s rulings void:

If the appellant in addition to showing the disqualification of the probate judge, and that he (the appellant) did not have knowledge of such [disqualifying] fact, before the decree was rendered, had also shown that the probate judge knew at that time of his relationship to one of the parties to the action, then it might with good reason be contended that there should be a new trial.

But no such fact appears in the record, and the presumption is that the probate judge was not aware of the relationship, as otherwise he would have been guilty of a willful violation of the law, which is never presumed. In the absence of testimony, showing that the probate judge had knowledge of said relationship, it has not been made to appear that there was prejudicial error in refusing the motion for a new trial. Id. at 250, 71 S.E. at 812.

In this long-standing case, the Supreme Court, while making it clear that rulings flowing from disqualified judges are merely voidable rather than void, also made clear that the appellate court is obliged to look at the facts of the case as to whether indeed such rulings should be voided. The Jeffers Court's counter-example above reads eerily similar to the case at bar. The Court stated that if an appellant (Petitioner in the present instance) 1) did not have knowledge of the disqualifying fact of the judge (Brown Massey relationship); 2) at the time of a decree (summary judgment), and 3) the disqualified judge (Probate Judge) did know of that fact at the time of the decree, then "it might be with good reason to contend" that a decree be voided. See Id. at 250, 71 S.E. 812. In the present case, Petitioner nor his counsel had any idea of the Probate Judge's disqualifying relationship with Brown, Massey at the April 7, 2021 summary judgment hearing; the Probate Judge did know of the relationship at the time; and no disclosure of such relationship was made and the Probate Judge continued to preside and make rulings until he recused himself December 15, 2021, the same date he issued an Amended Order Granting Summary Judgment in favor of Brown Massey's clients. (R. at 17).

The Jeffers Court next stated the facts it was considering in its case contained nothing in the record showing the Probate Judge was aware of the disqualifying event/fact, noting that there would have needed to be some record of the judge's knowledge in order to indicate prejudicial error that would justify voiding a decree. See Id. In the present case, as stated above, the record clearly contained substantial evidentiary support of prejudicial error sufficient to require appellate consideration of whether Orders should have been voided.

Therefore, the Court of Appeals should have considered whether the Probate Judge's voidable Orders should have been vacated as void by examining the facts on record, yet it failed to even address the issue of judicial disqualification in making its ruling. Had it done so, the

Court of Appeals would have encountered an example precisely as contemplated by the Supreme Court in Jeffers where prejudicial and reversible error could be found, and the Court of Appeals should be reversed because the Probate Judge's rulings were voidable and should have been void based upon the evidence of record.

In conclusion, the Court of Appeals erred in this case by addressing issues in a reverse order that led to an unjust, unfair, and incorrect legal conclusion. Before addressing any timeliness of appeal, the Court of Appeals should first have determined whether the Probate Judge was disqualified from presiding over the case as of April 7, 2021. If it had done so, the Court of Appeals would have determined that the Judicial Canon 3 disqualified the Probate Judge as of April 7, 2021, that the record contained evidence of prejudice to the Petitioner, and thus under the particular circumstances, should have voided any rulings then or thereafter, mandating reversal of the lower court and obviating any further inquiry into the case..

B. THE 10-DAY FILING REQUIREMENT OF S.C. CODE ANN. §62-1-308(A) IS NOT ABSOLUTE AND A GOOD CAUSE EXCEPTION COULD HAVE BEEN AFFORDED APPELLANT UNDER BOTH RULE 260, SCACR AND THE PROBATE CODE §62-1-308(g).

Notwithstanding the above argument, even if the Court properly ignored the issue of judicial disqualification/recusal, the Court of Appeals should have reversed the lower court's holding that Petitioner's Notice of Appeal was untimely, and that such timing was inexcusable under the law.

In so affirming the lower court, the Court of Appeals relied upon In re Est. of Cretzmeyer, 365 S.C. 12, 13, 615 S.E.2d. 116-117 (2005) stating that "the circuit court properly dismissed the appellant's appeal from a probate court order when the appellant failed to file the notice of appeal in the circuit court within the ten-day period provided in section 62-1-308 (a))."

The Court of Appeals' ruling in the present case suggests an absolutism of the statute under any and all circumstances, but both Rule 260, SCACR as well as S.C. Code §62-1-308(g)

support the opposing conclusion, that Mr. Shoemaker's untimely notice of appeal was excusable due to good cause shown.

It is important to first distinguish Cretzmeyer from the case at bar. In Cretzmeyer, an Appellant merely "claimed" to have timely mailed its notice of appeal to the appropriate circuit court for filing. In fact, the circuit court had absolutely no record of any filing, and it accordingly dismissed the case. Id. There was a complete absence of proof of any affirmative action and certainly nothing even arguable to good cause shown.

In the present case, good cause is abundant. Petitioner was represented by an attorney throughout the substantive portions of the underlying case, which of course included the rulings of Probate Judge Jennings that ultimately became the subject of appeal. In mid-December 2021, unbeknownst to Appellant, his lawyer was suspended from practicing law. This occurred during the time period in which the ten-day notice period began to run, which is undisputed to be December 15, 2021 upon the Probate Judge's Amended Order Granting Summary Judgment. (R. at 17). Upon Appellant's discovery of no longer being represented, he acted to the best of his ability to file his notice and statement of issues on appeal, which he indisputably did on January 7, 2022 (R. at 133, R. at 234-237).

In its opinion, the Court of Appeals in the present case relied upon Cretzmeyer and the statutory use of the word "must" when referencing the requirement of filing within 10 days. The words of "must" and "shall" appear in most, if not all, Rules governing time within which to file various pleadings, motions, affidavits, and the like. For example, Rules 208, 209, 210, 211, SCACR among others all contain the words "shall" or "must" in requiring submissions within a certain amount of days, yet it is fairly common for enlargements of time to be granted to counsel when requested, and as more fully discussed below, Rules and statutes make clear that

exceptions do apply to these otherwise hard and fast deadlines in certain circumstances and under certain standards.

Respectfully, Petitioner submits Rule 260, SCACR should in fact apply in this case due to overwhelming evidence of good cause in the record. As the Court quotes the rule in its opinion, “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal.... A case shall not be reinstated except by leave of the court, upon good cause shown....” Rule 260, SCACR. Thus, reinstatement is contemplated.

The Court of Appeals made two findings regarding Rule 260. It first held that Petitioner did not raise Rule 260 in its statement of issues in the lower court. Respectfully, this was error. The Court of Appeals’ opinion addressed Rule 260 as if it were the legal “issue” itself, rather than legal “authority” in support of the legal issue that was raised in the lower court. The legal issue was whether the circuit court erred in dismissing the appeal due to untimeliness when good cause was shown. Petitioner offered exceptional evidence of good cause. (R. at 234-237), and utilized Rule 260, SCACR as partial authority in its argument. Therefore, the legal issue of extending Appellant’s time for filing, and reasons for relief from untimely filing were in fact raised in the lower court.

Second, the Court of Appeals ruled that Rule 260 would not apply to the present case because it applies only to the Court of Appeals and the Supreme Court. The Court essentially held that in appeals from lower tribunals to Circuit Courts, there is no appellate rule of any to provide relief from untimely filing. This is anathema to both the SCACR and SCRCR. In virtually every other case of untimeliness/default, circumstances can exist by which a court may relieve a party from an untimely filing, often through a good cause standard, or possibly

excusable neglect. To hold that the probate court appeal's 10-day deadline is immovable under all circumstances is contrary to the clear purpose of the Rules and the public policy of fair administration of justice.

The Court of Appeals quotes the probate code §62-1-308(g), that “no party is required to comply with any other of the South Carolina Appellate Rules.” That conclusion does not prevent Rule 260 from applying to this case. Moreover, the Probate Code does in fact contemplate applicability of Rule 260, though not by name. Section §62-1-401(b) of the Probate Code states, “[t]he court for good cause shown may provide for a different method or time for giving notice of any hearing.” Appellant was required to give ‘notice’ of an appeal, which he did. Therefore, by statute, the lower Court had authority to accept the untimely filing of a notice of an appeal hearing. Here again, the law contemplates circumstances that would justify extension or relief from technical deficiencies based upon extenuating circumstances, or good cause. Therefore, the Court of Appeals erred in determining that Appellant's untimely filing served as an absolute bar to any extension or relief from technical noncompliance, and though this issue needn't have even been reached by the Court of Appeals, it should also be reversed.

CONCLUSION

For the foregoing reasons, this Court should grant this Petition for Writ of Certiorari. The decision of the Court of Appeals and the Orders of the trial court should be reversed.

Respectfully submitted,

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