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**Jul 03 2025**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

APPEAL FROM KERSHAW COUNTY  
District Court

Honorable Daniel Coble, Circuit Court Judge

Court of Appeals Case No. 2024-001152

In Re: Estate of M.K. Jennings 2010ES2800169

Beverly Hennager.....Appellant

Mary E. Dearden, Personal Representative of the Estate of M.K.Jennings...Respondent

**MOTION FOR RECONSIDERATION**  
**Pursuant Rule 59(e)**  
**(amended)**

**I. The Court failed to address the fact that Mary Dearden violated every statutory ground for removal pursuant to § 62-3-611(b).**

S.C. Code § 62-3-611(b) permits removal of the Personal Representative (PR) when it is in the estate’s best interest or for specific misconduct.

**A. Misrepresentation of Material Facts:**

Disregard of Court Orders:

As grounds for her removal in 2013, and not overturned by the 2016 Order, the PR repeatedly ignored discovery requests, including a court order, and failed to

properly provide court ordered amended documents to correct inaccuracies and omissions.

### **B. Mismanagement:**

The PR testified all of the S.C. assets were disbursed without any documentation (R. 129; 76-77). In addition, the Court found the PR improperly took the Decedent's funds from a joint account holder and improperly exercised authority under Power of Attorney to give herself over \$50,000 from her mother's joint accounts.

### **C. Conflict of Interest:**

The PR's financial reliance on a third party (Michael Jennings) created a conflict impairing impartial administration ( R.138; p 464). The PR did not record M. Jennings promissory note, which currently exceeds three million dollars.

## **II. Clear Factual Errors Affecting Outcome**

### **A. Factual and Procedural Background**

The Court's conclusion that payment evidence of the Promissory Note owed to the Decedent existed prior to 2021 contradicts the record. The 2016 Order addressed issues like contractual capacity and joint accounts but explicitly left unresolved: Payment of the promissory note owed by Michael Jennings (R147-148) and unrecorded SC assets. The court was informed in the 2016 hearing that the note could not be addressed because our requests for tax returns were ignored (R. 130 & 131).

The Personal Representative (PR) admitted she swore false oaths that her 2011 documents were complete and accurate, while knowing that they were not (R.137;

p457 & R.133; p415.) In spite of promises to correct her documents (R.136; p.454-457); R.137), the PR filed the same omissions and inaccuracies in her 2020 amended documents, even including the same falsely sworn oaths. The PR's 2020 omission of the promissory note and missing assets prompted the 2021 hearing.

### **B. 2021 Proceedings:**

The 2021 hearings explicitly addressed proof of payment of the Virginia promissory note owed to the decedent by Michael Jennings. The note required monthly payments “until the principal and accrued interest is fully repaid to the Shareholder”. The note waived notice of default and required the “*Maker agrees to be obligated for principal and interest due and to pay all collection costs, attorney’s fees and interest from date of default at a rate of EIGHT (8%) percent per annum*”. (R. P.147-148).

### **C. Denial of Due Process in 2021 Proceedings.**

In response to my demand, the probate court held a hearing on March 16 with a continuance on June 2. The Court agreed with Moultrie Burns that the note had not been adjudicated in previous hearings. On April 7 Burns sent a post hearing memorandum writing, “*The Court decided to consider rescheduling for evidence as to whether a debt to the decedent from Michael Jennings was satisfied prior to his mother’s death*”. (R. P. 180; paragraph 1). Attached to the memo, Burns introduced M. Jennings’ partial tax returns showing that only the principal on the note was paid. On April 13, I responded, “ Mr Burns exhibit actually provides evidence to show Michael Jennings did not pay the interest, as required”. (R. 206).

Having received no response, on June 10, 2021, I re-opened discovery requests pursuant Rule 26(e) seeking complete documents (R. 207). Still having no response I filed two motions to Compel (R.105-109 & R110). My motions to compel complete documents were intercepted and returned by the Court, with the explanation that no litigation was pending, despite ongoing proceedings (R. 38 & 41).” Five weeks later the Court issued it Order.

The September 3, 2021 Order:

*“Ms. Hennager made issue with the accounting, particularly the absence of a promissory note from Michael Jennings to the decedent, as well as other allegations, including omissions of transaction of stopped payments and questions as to value of personal property.*

*Based upon arguments and the prior record and the zoom proceeding, I find and conclude the following:*

*Findings of Fact*

- 1) The promissory note of Michael Jennings was satisfied before the decedent’s death and the Inventory is correct in not listing such debt as an asset.*
- 2) The PR’s Amended Final Accounting as submitted to this Court is approved, as being accurate, complete and in compliance with the 2016 Order.”:*

The Court found the note “satisfied” without allowing the appellant to receive and present the necessary evidence to prove the interest was not paid (as required)—an abuse of discretion and a violation of due process.

#### **D. Error: Right to Appeal Due Process Violations**

The Court failed to recognize that denial of the right to present and receive evidence in the 2021 proceedings constitutes a fundamental due process violation, rendering any resulting judgment void. South Carolina and federal precedent hold that

when a litigant is denied the right to be heard or to present evidence, the resulting order is void ab initio and **subject to reversal at any time.**

In South Carolina, a party who believes their due process rights were violated—such as being denied the opportunity to present evidence—has the right to appeal the decision. By refusing to allow discovery of potentially exculpatory evidence and ruling on an incomplete record, the probate court deprived me of the opportunity to prove my claim. This scenario constitutes a lack of procedural due process that does not meet the constitutional standards of fairness required in civil proceedings.

Scott v. McNeal, 154 U.S. 34 (1894): Probate proceedings are void if conducted without due process.

**E. Error: The Court’s finding that the 2016 Order was final is erroneous**

**The 2016 Order’s silence on critical issues rendered it non-final.**

As disclosed in Burns April 7 memorandum, the Court and Burns agreed the note was a previously un-litigated issue. The 2021 proceedings explicitly addressed the note’s payment, confirming the 2016 Order’s interlocutory nature. The September 3, 2021 Order “finding and concluding”, demonstrates that the court litigated a previously unresolved issue

**Affirming an interlocutory order does not transform it into a final judgment (Link v. Sch. Dist. of Pickens County., 302 S.C. 1 (1990)).**

Rule 54(b) SCRPC: Orders resolving fewer than all claims are interlocutory and remain subject to revision until final judgment..

Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 7 (1980): Interprets Rule 54(b) and clarifies that a judgment must be "*an ultimate disposition of an individual*

*claim entered in the course of a multiple claims action*" to be considered final for purposes of appeal.

The order is not final when there are "*further act[s] to be done*" (Tommy Griffin Plumbing v. Jordan, 351 S.C. 459 (2002)).

A probate order must resolve all claims to be final (Ballenger v. Bown, 313 S.C. 476 (1994)).

**F. Error: The Court's assertion that the promissory note should have been appealed in 2016 is factually and legally incorrect.**

The note was first ruled on in 2021. No Evidence alleging payment of the Note Existed Prior to 2021.

As found in the 2013 Order for her removal and not overturned in the 2016 order, the PR and counsel failed to respond to multiple discovery requests. In the 2016 hearing the PR admitted she had failed to respond to discovery requests about payment of the promissory note (R.131; p283). The note could not be litigated until our discovery requests were answered. As the Court made no decision regarding the note prior to 2021, it could not be appealed from the 2016 Order..

#### **G. Impact of Correcting Errors**

**Jurisdictional Defect:** The record and procedural law make clear that the 2016 Order's interlocutory status, due to its failure to address the promissory note until 2021, invalidates the Court's conclusion that the note should have been appealed earlier. Any contrary finding is unsupported by both the record and controlling legal principles.

**Substantive Relief:** Reconsideration would permit proper adjudication of the note's payment status, missing assets, and PR misconduct under S.C. Code § 62-3-611(b).

### **III. Misapplication of Law**

## **A. Professional Misconduct Under Rule 3.3(a)(1) & Rule 60(b) (3)**

**Appellate courts have the authority and the duty to review claims of due process violations by lower courts.**

I appealed the court's 2021 decision on grounds that my due process rights were violated. During the May 29, 2024, Zoom appellate hearing, opposing counsel apologized for being unable to correct his inaudible volume, making his presentation impossible to hear (R. 139; L 10-11. I informed the court on the record that I could not hear opposing counsel, thereby preserving the issue for appeal (R. 141; L24-25).

While his statements remained inaudible, opposing counsel knowingly altered the September 3, 2021 Order under appeal by changing the finding of fact from a determination that the promissory note was "satisfied" to a statement that the appellant had inappropriately raised new "*allegations and speculations under appeal*". I was unaware of this falsification at the time because I could not hear the proceedings. I only discovered the falsification after the court ruled in favor of the respondent and directed opposing counsel to draft the proposed order.

**This sequence of events demonstrates both a procedural and substantive defect: the technical failure deprived me of a meaningful opportunity to participate and object, while the falsified order materially misrepresented the factual findings to my detriment.**

Opposing counsel's conduct constitutes a clear violation of Rule 3.3(a)(1), SCRCP, which expressly prohibits a lawyer from knowingly making a false statement of material fact to a tribunal or failing to correct a false statement previously made to the

tribunal. The record demonstrates that the factual findings in the order under appeal were knowingly falsified by opposing counsel, and these falsified findings were subsequently adopted by the court as the basis for its adverse ruling against me.

This conduct amounts to fraud upon the court because it directly undermines the integrity of the judicial process, defiling the court itself. Fraud upon the court occurs when material misrepresentations or falsifications disrupt the impartiality of the proceedings and result in a judgment that is not based on the true record. The adoption of these false findings by the court not only prejudiced me but also deprived me of a fair adjudication based on the actual evidence presented.

Relief: Reconsideration is therefore warranted to correct this injustice and to ensure that the court's decision is grounded in an accurate and truthful record. The appellate court has both the authority and the obligation to set aside any judgment procured by fraud or misrepresentation in order to preserve the integrity of the judicial process and protect the rights of the parties involved

### **B. Procedural Defects in Remote Proceedings**

The May 29, 2024 Zoom hearing was conducted in a manner that prevented meaningful participation because opposing counsel's statements were inaudible. Subsequent attempts to correct the record were blocked by the clerk's refusal to docket objections R. 112-115), contravening SCRPC Rule 60(b)(3) and constituting a "fraud on the court" (*Chewing v. Ford*, 364 S.C. 305 2005). These defects denied the appellant a fair hearing and meaningful opportunity to be heard, as required by *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Technical failures in remote hearings that impede communication may invalidate proceedings (*Vilchez v. Holder*, 682 F.3d 1195 (9th Cir. 2012)).

Courts must infer prejudice when misconduct is deliberate and impacts a close case (*Leavy v. Parsell*, 188 Ariz. 69 (1997)).

These errors render the judgment "clearly erroneous" under SCRCF Rule 60(b)(1) and warrant reversal.

## **Legal Standards**

### **Right to Appeal Due Process Violations**

In South Carolina, a violation of due process rights is a recognized and reviewable ground for appeal in civil cases. If a party believes a judgment is void due to a due process violation (such as lack of opportunity to be heard), the preferred and primary method is to file a timely appeal. The U.S. Supreme Court has emphasized that if there is any arguable basis for the trial court's jurisdiction, errors—including those related to due process—should be raised on appeal, not through collateral attack.

A case that is void for lack of due process can be addressed either by direct appeal or by a Rule 60(b)(4) motion

Rule 50, SCRCF, ensures parties have the opportunity to offer evidence at trial. South Carolina and U.S. Supreme Court precedent provide that denying a party the right to present evidence or to be heard violates due process and can render the judgment void (see *Holmes v. S.C.*, 547 U.S. 319 (2006), and general due process principles).

Rule 60(b)(3), SCRCF: Relief is available for fraud, misrepresentation, or other misconduct by an adverse party.

In *Logan v. Zimmerman Brush Co* (1982), the US Supreme Court found every litigant has the right to present their case and have its merits fairly judged and this right must include the right to present evidence necessary to establish their claim.

In *Schwartz v. US* 976 R3d 213 (1992), the Fourth Circuit Court found a judgment is void under Rule 60(d) if the court acted in a manner inconsistent with due process of the law.

Prejudice should be inferred where attorney misconduct is significant and apparently successful in achieving its goals. The misrepresentation and procedural barriers in this case meet that standard.

### **Fraud Upon the Court**

The case that most closely parallels my own is:

#### ***Chewning v. Ford Motor Company*, 354 S.C. 76er 2, 579 S.E.2d 605 (SC 2003)**

Chewning was injured in a 1990 rollover involving his Ford Bronco II and filed a products liability lawsuit, which resulted in a verdict for Ford. Later, Chewning discovered that Ford had concealed critical documents and suborned perjury by its expert witness. He filed an independent action under Rule 60, alleging fraud upon the court. The circuit court dismissed his claims, finding they amounted only to intrinsic fraud and that he failed to plead fraud with sufficient specificity. However, the South Carolina Court of Appeals reversed, holding Chewning's claim was timely and sufficiently alleged fraud upon the court. The South Carolina Supreme Court affirmed this decision in 2003.

This case sets the standard for "fraud upon the court," clarifying the distinction between mere perjury (intrinsic fraud) and deliberate schemes—such as subornation of perjury or concealment of documents—that fundamentally undermine the judicial

process (extrinsic fraud). The court held that when attorneys suborn perjury or intentionally conceal evidence, such conduct can constitute fraud upon the court and justify setting aside a judgment, even years after the fact.

Similarly, in my case, I have alleged both subornation of perjury (not addressed in this appeal) and failure to produce documents that would prove my claims. Like Chewning, who spent over a decade seeking justice, I have been in litigation for more than fifteen years. As in Chewning, the courts have, so far, favored the interests of powerful parties (M. Jennings & Ford) over those with fewer resources, underscoring the importance of judicial scrutiny when allegations of fraud upon the court are raised.

Courts are required to liberally construe pro se pleadings and filings, ensuring that technical errors do not unjustly prevent a case from being heard on its merits. Strict adherence to technicalities undermines access to justice, especially for self-represented parties, and the courts' primary goal should be to resolve disputes on their merits, not on procedural grounds

The Supreme Court in *Haines v. Kerner* held that pro se pleadings are to be held to less stringent standards than those drafted by lawyers.

### **Requested Relief**

1. Vacate the June 19, 2024 and September 3, 2021 Orders for violation of due process and reliance on a materially falsified order.
2. Remove Mary Dearden as Personal Representative under S.C. Code § 62-3-611(b) and *Blackmon v. Weaver*, 366 S.C. 245 (2005).
3. Appoint a Special Administrator under S.C. Code § 62-3-614 to recover omitted assets and accounting inaccuracies.

4. Sanction opposing counsel under S.C. Code §§ 62-3-706(g), 62-3-720, and Rule 3.3, SCRPC.
5. Find that the record contains no evidence demonstrating payment of interest on the promissory note; accordingly, declare the note to be in default.
6. Order that Mary Dearden, Katherine Dauphin, and Michael Jennings are barred from receiving any benefit from the estate or any recovery in this matter, due to their participation in fraudulent conduct.
7. Remand this case for further proceedings consistent with the Court's findings.
8. Grant such other and further relief as the Court deems just and appropriate.

## **Conclusion**

The Court's opinion contains clear factual and legal errors, as well as fundamental due process violations, that require reconsideration. The judgment should be vacated, the personal representative removed, and a special administrator appointed to ensure the estate is properly administered and justice is served.

Respectfully Submitted,

S/Beverly Hennager                      date July 3, 2025

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**CERTIFICATE OF SERVICE**

I, Beverly Hennager, do hereby certify that I have served a copy of the foregoing  
MOTION FOR RECONSIDERATION (amended) to the following addresses:

Moultrie Burns, Esquire  
Savage Royal & Sheheen, LLP  
PO Drawer 10  
Camden, SC 29021  
Attorney for Respondent, Mary Dearden

South Carolina Office of Administration 1220 Senate Street, Suite 200 Columbia, SC  
29201

Enclosed is a fifty dollar motion filing fee.

Hard copies to follow.

Respectfully Submitted,

S/Beverly Hennager date July3, 2025

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