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SC 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

SUPPLEMENTAL PETITION FOR REHEARING

Pursuant to Rule 221, SCACR

Appellant Beverly Hennager, pro se, respectfully submits this supplemental petition for rehearing to address material facts and controlling law misapprehended or overlooked in the Court's June 11, 2025 opinion (Unpublished Op. No. 2025-UP-196). These clarifications are necessary to ensure compliance with due process and preservation principles.

I. Rule 60 (b) Motion Versus Direct Appeal

Opinion, p. 1:

"As to issue one, we find this issue is not preserved for appellate review because Hennager failed to file a motion pursuant Rule 60(b) of the South Carolina Rules of Civil Procedure with the circuit court either asserting the circuit court's 2024 order was void or alleging Dearden's attorney acted in a fraudulent manner."

1. Direct appeals are for errors apparent on the record. Here, the record unequivocally shows that the finding of fact under appeal was changed—from "*the*

note was satisfied" to Appellant first raised the issue of payment in appeal. My objections to this change were received by the judge's clerk, but left unanswered (see Exhibit 1). When objections are preserved in the record, the issue is appropriately reviewable on direct appeal.

2. In response to the Court of Appeals finding, I submitted a Rule 60(b) motion to the Circuit Court for fraud on the court and due process violations (the Respondent's argument was inaudible); it was neither filed on the docket nor responded to, despite prompt payment of the filing fee. I request this Court either:

- find the record sufficient to review the claim, or
- grant leave to file the Rule 60(b) motion anew.

3. A Rule 60 motion was also sent to Probate Court and rejected. South Carolina law permits litigants to raise due process violations on direct appeal when errors are reflected in the record and appeals are timely (see, e.g., Anthony Green v. William D. Catoe, Fourth Circuit). The record shows the order was entered after depriving the Appellant of the opportunity to present evidence.

II. Material Facts Misapprehended

Opinion, p. 3:

"Hennager presented evidence regarding the promissory note at the 2012 evidentiary hearing, at the 2016 merits hearing, and in her appellate brief challenging the probate court's 2016 order."

Response:

4. The record conclusively shows the Virginia promissory note owed by Michael Jennings was mentioned in 2012 and 2016 but was never adjudicated until the probate court's September 3, 2021 order.

Correct Procedural History of Hearings and Orders

5. **2012 Hearing** (R. 128–129): The note was identified (R147-148); testimony established discovery requests for tax/payment records had not been answered (R 128; P. 57; L22-25; P58; L1); PR was removed in 2013 partly for ignoring those requests (R 7)..

6. **2016 Hearing** : Parties stipulate 2006 email from Katherine Dauphin stating the note was not fully paid (R146); PR admitted she had not provided discovery requests for tax/payment documents of the note (R131; P 283; L17-24); Appellant testified the PR was unresponsive to discovery requests asking about the note (R 130; P266). Appellant's attorney told the court he needed tax returns to "*do the calculations to see if it's actually paid off*". (R131; P284); PR admitted her documents were inaccurate and incomplete (R 136; p 455-456;); PR testified she intended to make corrections (R136, 454-457).

7. Other than brief reference to unanswered discovery requests regarding the note, the hearing and subsequent order were silent on the note. The PR was ordered to produce amended documents.

8. **2016 Appeal Brief Referenced continued failure to provide tax evidence on note payment.** (R 76; paragraph 7).

9. **2021 Proceedings**: Appellant requested hearing after PRs September 2020 amended document failed to correct omissions and inaccuracies or record the note. The probate court and counsel agreed the note's payment had never been decided: "*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*" (Burns R180); Burns produced partial tax pages showing only the principal was paid (R 181-203); Appellant responded *"Mr. Burns exhibit actually provides evidence to show Michael Jennings did not pay the interest as required*" (R 206).

10. When re-opened discovery requests were ignored, Appellant moved to compel complete tax returns (R. 105–109 & 110). The motions were intercepted and returned by the judge with letters stating, *"no pending litigation*" (R. 38 & 41). Five weeks later the Court's order found the note "satisfied" (R 42-43)..

11. The Court of Appeals mistakenly treated earlier mentions of the note and complaints of failure to respond to discovery as if the probate court had already made a final decision about it. This mistake led the court to misunderstand what stage the case was in when the denial of due process occurred.

Chewning v. Ford Motor Company, 346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001) Supreme Court Affirmed. When an attorney conceals or withholds critical documents it constitutes fraud upon the court.

III. Overlooked Due Process Principle

12. The opinion does not address that in 2021—the first time the note's satisfaction was decided—the probate court denied Appellant access to the complete tax records essential to prove nonpayment of interest.

13. Under Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), the right to present one's case includes presenting the evidence necessary to decide the claim at the proceeding in which the decision is made.

14. The Court's suggestion that earlier mentions of the note satisfied due process overlooks that the deprivation occurred when the merits were actually decided, making the 2021 order void under Schwartz v. U.S., 976 F.2d 213 (4th Cir. 1992) ("judgment void if entered in manner inconsistent wit**h due process").**

IV. Improper Reliance on Altered Finding

15. The probate court's September 3, 2021 finding was:

"The promissory note of Michael Jennings was satisfied before the decedent's death…"

The circuit court June 19, 2024 order drafted by opposing counsel—during this appeal—altered it to state:

Ms Hennager "*attempt on this appeal to raise allegations and speculation that should have been investigated during discovery…there was ample opportunity… An example is her allegation of unpaid promissory note*…"

16. This language asserts Appellant "*should have*" investigated earlier, contradicting the record that payment information was repeatedly sought from 2012

forward. It also changes an appealable issue, due process violations, to an unappealable issue. It falsely presents a previously unaddressed issue as a finding.

17. Relying on this altered, non-record finding to support affirmance violates Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286, 299 (2005), which prohibits appellate reliance on issues not raised and ruled upon below. The order is void because the substituted finding is non-existent.

V. Errors in Applying Law of the Case

18. The opinion holds that the 2016 order is "law of the case" because no appeal was taken from the 2020 affirmance.

19. However: The April 7, 2021 memorandum by opposing counsel—and the probate court's own agreement—confirmed the note was unresolved in 2016 and would now be heard. *"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"* (R180). Clearly the issue of the promissory note could not be addressed from the 2016 order when it was not adjudicated until 2021.

20. Where an issue remains pending and is later adjudicated, prior appeals on unrelated issues do not render the old orders the law of the case. See Link v. Sch. Dist. of Pickens Cnty., 302 S.C. 1 (1990); Rule 54(b), SCRCP.

21. The September 2021 order was the first adjudication of the note. Given the promissory note was decided in proceedings held in 2021, then the 2016 Order was interlocutory and subject to review. This includes the removal of the PR.

VI. Relief Requested

Appellant respectfully requests that the Court:

1. Grant rehearing and amend its opinion to correct the misstatement that the promissory note was decided in 2012 or 2016;
2. Recognize that denial of critical discovery before the 2021 merits adjudication constitutes a due process violation;
3. Disregard the altered June 19, 2024 “finding” not made by the probate court;
4. Vacate the September 3, 2021 order as void for denial of due process; and
5. Remand for a hearing with full production of tax/payment records before adjudication.
6. Reverse and remand for complete review.

Respectfully submitted

__S/Beverly Hennager_____date___August 15, 2025_____

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CERTIFICATE OF SERVICE

I. Beverly Hennager, do hereby certify that I have served a copy of the foregoing

SUPPLEMENTAL PETITION FOR REHEARING to the following addresses:

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Hard copies to follow.

Respectfully Submitted,

S/Beverly Hennager date August 15, 2025

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