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SC Court of Appeals

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM KERSHAW COUNTY

Daniel Coble, Circuit Court Judge

In Re: Estate of M.K. Jennings 2010-ES-28-00169

Opinion No. 2025-UP-196 (S.C. Ct. App. filed June 11, 2025)

Beverly Hennager.....Appellant

v.

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

PETITION FOR WRIT OF CERTIORARI OR EXTRAORDINARY RELIEF

(Due Process Violations and Fraud Upon the Court with Impact on Judicial Integrity)

Other Counsel of Record
Moultrie Burns, Esquire
Savage, Royall & Sheheen, LLP
Attorney for Respondent
PO Office Drawer 10
Camden, SC 29021
(803)432-4391

Beverly Hennager
315 Wood Lane
Corvallis, MT 59828'
hennagerbev@gmail.com
(406)361-0796
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Petition for Re-Hearing Denied August 20, 2025

JURISDICTION

Section § 18-9-20 of the South Carolina Code confers jurisdiction on the Supreme Court and the Court of Appeals over all questions of law arising from circuit court proceedings in probate matters, on the same basis as in other cases. Appeals from the Probate Court are governed by S.C. Code Ann. § 62-1-308 and the South Carolina Appellate Court Rules, establishing this Court's authority over the present matter.

STANDARD OF REVIEW

Removal of a Personal Representative and claims of fraud upon the court are equitable actions. Equitable cases are reviewed on appeal according to the appellate court's own view of the preponderance of the evidence (*Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993); *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976)). Fraud on the court must be pled with specificity in accordance with Rule 9(c), SCRCP; appellate courts address both factual and legal issues de novo in equity.

CERTIFICATE OF COUNSEL: I certify that this petition is presented in good faith and raises substantial questions for review.

QUESTIONS PRESENTED

1. Due Process & Rule 60 Motions: When all evidentiary support exists within the appellate record, did the Court of Appeals err by concluding that claims of due process violations and fraud upon the court cannot be raised on direct appeal, requiring first the pursuit of Rule 60 relief? Does refusal to afford a hearing on these constitutional claims violate United States Supreme Court precedent and the guarantee of due process under the Fourteenth Amendment?

2. Effect of Judicial Affirmation: Given that the Probate Court first addressed whether the promissory note was paid and made its factual findings in the September 3, 2021 order, does this mean the 2016 order was interlocutory because it left core claims unresolved? If so, did the Court of Appeals err in holding that appellate review should have occurred from the 2016 order—even though it did not address the payment issue and the relevant evidence was only considered 2021?

3. Procedural Due Process: Did the Court err by overlooking violations of Petitioner's procedural due process rights under the Fourteenth Amendment and South Carolina law, namely by adjudicating dispositive issues without permitting complete evidence, meaningful opportunity to be heard, or ability to timely object?

4. Fraud Upon the Court: Do actions constituting fraud upon the court—including alteration of findings and obstruction of discovery—undermine the integrity of the judicial process and deprive the public of reliable court proceedings, thereby invoking the Supreme Court's duty to safeguard the integrity of the justice system? Are such actions justification for removal of the personal representative?

I. STATEMENT OF THE CASE

A. Introduction

1. This appeal arises from the prolonged and contested administration of the Estate of M.K. Jennings, initiated in Kershaw County Probate Court, South Carolina, in 2010. The Decedent's will provided for equal division of her estate among her five children. Mary Dearden was appointed Personal Representative ("PR"). Central to the dispute is the PR's failure to respond to repeated discovery requests regarding estate assets, and specifically a promissory note owed to the Decedent by Michael Jennings.

2. Petitioner challenges the Probate Court's September 3, 2021 judgment (R. 42-43) declaring the promissory note owed to the Decedent satisfied. Although the note required payment of both principal and interest (R.147-148), the only evidence admitted by the Court demonstrated payment of principal alone, and Petitioner's discovery requests to obtain further proof were repeatedly ignored or denied.

3. During the May 29, 2024 remote appellant hearing, Respondent's counsel's audio was inaudible, preventing Petitioner's participation. During this time, counsel submitted proposed findings that materially altered the record. Petitioner's objections under Rule 46 were refused by the clerk and not docketed. The Circuit Court's June 14, 2024 order thus affirmed a non-existent order.

4. The Court of Appeals further erred by treating the 2016 interlocutory order as final, disregarding the fact that resolution of the contested promissory note was not adjudicated until 2021. Rather than addressing these substantive procedural and

constitutional violations, the appellate court held Petitioner's claims barred for failure to pursue Rule 60 relief, despite the record reflecting all relevant evidence.

B. Pertinent Facts Ignored

5. Throughout these probate proceedings, Petitioner made repeated and formal requests—via discovery and motions—for production of the tax returns and payment records necessary to determine whether the promissory note owed to the Decedent by Michael Jennings had been satisfied in full. The note required full payment of both principal and interest, with default occurring without notice and Michael Jennings liable for all collection costs. These critical facts, central to enforcing the note's terms, were left adjudicated as the Personal Representative and counsel refused to provide the requisite documentation.

June 13, 2013 Order

6. In 2013, the Probate Court removed the PR (R. 6-7), in substantial part for ignoring discovery requests, failing to obey a court order, and failing to properly record estate assets; reflecting a pattern of disregard for her fiduciary duties and the procedural rights of the parties. PR appealed.

October 27, 2016 Order

7. After remand, Petitioner filed new discovery requests in January 2016 for documentation of the promissory note (R.142-145). During the July 2016 hearing, the PR admitted under oath that her 2011 accounting and inventory were incomplete and inaccurate, expressing the intent to correct them (R.136;p454-457). Petitioner advised

the court that the Personal Representative did not respond to requests for documentation needed to determine whether the note had been fully paid (R131;p 283.17-23 & p284). The resulting 2016 Order remained silent on the note and lacked the necessary evidentiary findings. The PR was ordered to produce amended documents.

8. When the Probate Court's 2016 Order was affirmed in 2020, the PR was directed to amend the accounting, but again omitted the promissory note and other corrections. Petitioner requested a hearing, which was held in March and June 2021.

September 3, 2021 Order

9. On April 7, 2021, Respondent's counsel, Moultrie Burns, Esq., confirmed in his post-hearing memorandum: *"At the Zoom hearing on March 16, 2021, 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 ¶1). Burns submitted partial tax documents indicating **payment only of principal**. Petitioner's response highlighted how these documents actually proved non-payment of the interest required by the terms of the note (R.205-206).

10. When the Personal Representative ignored additional discovery requests for complete documentation, Petitioner submitted two motions to compel. However, the judge intercepted and returned both motions with letters stating they could not be accepted because there was "no pending litigation." Five weeks later the judge issued the September 3, 2021 Order stating,

"I find and conclude the following:

Finding of Fact: 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". (R. 42-43)

Petitioner appealed.

June 19, 2024 Order

11. On appeal, further procedural errors increased the prejudice to Petitioner. During the May 29, 2024 remote hearing, the audio from Respondent's counsel was so low that Petitioner was unable to hear his oral argument. While the argument was inaudible, counsel proceeded to propose substantial changes to the findings of fact. Because Petitioner could neither hear nor object, these changes went unopposed (R 139.10-11). Petitioner noted her inability to properly respond to the inaudible presentation, thus preserving the record (R141.24-25). It was not until Petitioner received Respondent's proposed order that she discovered Respondent had silently altered the finding of fact from "the note — was satisfied..." to "*Petitioner attempted on this appeal to raise allegations and speculations that should have been investigated during discovery... An example is her allegation of unpaid promissory note*" (R.44-47).

12. This change materially misrepresents the essential issue under review, transforming an adjudicated finding into an unappealable procedural assertion, which directly prejudices Petitioner's rights, and is an obvious contradiction of the record. The Petitioner attempted to file a motion for reconsideration, which was returned by clerk. Following this, the clerk failed to docket Petitioner's timely objections pursuant Rule 46 (express mailed twice). Petitioner then emailed her Objections to the judge's clerk, who acknowledged receipt, but there was no response from the judge.

C. Court of Appeals

13. Respondent offered no substantive objections or contrary evidence to any of Petitioner's claims, instead repeatedly asserting that "*Appellant's statement is so vague it should be disregarded.*" The Court of Appeals appears to have adopted Respondent's position and dismissed Petitioner's arguments without substantive review. Faced with uncontested due process lapses and credible allegations of fraud, the Court of Appeals declined meaningful appellate oversight and directed Petitioner should have sought Rule 60 relief, disregarding clear evidence in the record. The court further treated unresolved, interlocutory findings from 2016 as binding "*law of the case,*" despite contrary procedural history; notably, it concluded that payment of the note should have been appealed from the 2016 order even though the matter was not adjudicated until 2021, leading to significant error in its resolution.

II. ARGUMENT - RULE OF LAW

A. Due Process Violations and Fraud on the Court May Be Raised on Appeal When the Record is Complete

14. The U.S. Supreme Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), reaffirms that due process demands a meaningful opportunity to be heard; rights may not be extinguished by arbitrary error or technicality. Denying review where the record fully supports the claim violates both due process and equal protection.

15. South Carolina precedent confirms direct appellate review of fraud on the court: *Chewning v. Ford Motor Co.*, 354 S.C. 72 (2003): Appellate review is mandated where the record contains irrefutable evidence of fraud.

Thames v. Daniels, 344 S.C. 564 (2001): Appellate courts can resolve due process violations and unreliable fact-finding on direct appeal if the record is complete.

South Carolina Community Bank v. Washington: Fraud claims may be raised on direct appeal without mandatory recourse to Rule 60 motions.

B. The Promissory Note was Adjudicated in 2021

16. The 2016 Order did not address or resolve the issue of the promissory note; it remained unadjudicated until the 2021 proceeding and order. This is clearly demonstrated by Respondent's counsel Moultrie Burns's April 2021 post-hearing memorandum, which notes that "*the Court decided to consider rescheduling for evidence*" regarding satisfaction of the note (R.180). The 2021 Order specifically contains new findings: "*I find and conclude,*" referencing evidence and determinations made for the first time on this issue (R.8). Likewise, the issue of falsification of the 2021 Order, which was erroneously affirmed in the 2024 Order, could not logically have been raised in an appeal from the earlier, silent 2016 Order.

C. The Probate Court's 2016 Order is Interlocutory

17. Appellate courts erred in treating the 2016 order as final. Rule 54(b), SCRCP: Orders resolving fewer than all claims are interlocutory and remain subject to revision until final judgment. A probate order must resolve all claims to be final (Ballenger v. Bowen, 313 S.C. 476, 438 S.E.2d 674 (1994)). An order is not final if "further acts remain to be done" (Tommy Griffin Plumbing, Inc. v. Jordan, 351 S.C. 459, 570 S.E.2d 230 (2002)).

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

D. Due Process Right to Obtain and Present Evidence

18. The Court’s findings were not grounded in relevant evidence or testimony contained in the record. Although the note expressly required payment of interest, the evidence produced only showed principal. Due process requires that litigants be permitted to present relevant evidence. Logan held states may not arbitrarily deny the opportunity to prove one’s claim. Chewing found deliberate concealment of material evidence constitutes “fraud on the court.” Judgments made without full evidentiary presentation are void and subject to reversal.

19. The restrictive evidentiary hearing in 2021 allowed only partial documentation, denying Petitioner the chance to show nonpayment of interest as required by the note. Rule 26(b)(1), SCRPC mandates broad discovery; denial is inherently prejudicial (Samples v. Mitchell, 329 S.C. 105 (1997)).

E. Findings Must Be Supported by the Record

20. Findings unsupported by, or contrary to, the undisputed record are reversible error (Thames v. Daniels, 332 S.C. 639 (1998)). Undisputed evidence shows only principal payment; the refusal to allow additional proof denied Petitioner a fair contest.

F. Appellate Review Limited to the Record; Findings Cannot Be Changed Without Notice

21. Appellate review must be confined to the hearing record; findings made off the record or without notice are inherently prejudicial (Rule 15, SCRPC; Parker v.

Spartanburg Sanitary Sewer Dist., 362 S.C. 276 (2005)). “Law of the case” cannot apply to findings not made or notified. There is no record of the court finding “*Ms Hennager - attempted to raise allegations and speculations that should have been investigated during discovery*”.

G. Removal of the Personal Representative

Under S.C. Code Ann. § 62-3-611, removal is appropriate when a Personal Representative fails to perform required duties or when conduct demonstrates unfitness, breach of trust, or persistent failure to administer the estate effectively.

III. Conclusion

22. Supreme Court review is urgently required because courts’ failure to safeguard against fraud—including factual misrepresentation, concealment of evidence, and alteration of findings without notice—not only violates the Due Process Clause but disproportionately harms pro se litigants, who are often dismissed and denied full participation while more affluent parties leverage their resources to influence outcomes. These abuses threaten the integrity of judicial decision-making and erode public trust, precisely the dangers highlighted by the Supreme Court in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); and *United States v. Throckmorton*, 98 U.S. 61 (1878).

IV. PRAYER FOR RELIEF

Petitioner respectfully requests the South Carolina Supreme Court:

1. Vacate the judgment/orders entered by the lower courts for violations of due process and fraud upon the court.
2. Declare the affected orders interlocutory and void, and remand the case to another judge for a full evidentiary hearing with proper procedural safeguards.
3. Alternatively, as the record demonstrates that there is no evidence the interest on the promissory note was paid, Petitioner asks the Court to declare the note in default and to order recovery of all accumulated interest to date. If complete recovery is impossible, Petitioner requests that the Personal Representative and her counsel, Moultrie Burns, Esquire, be held responsible for the deficiency.
4. In the best interests of the estate, remove Mary Dearden as PR pursuant Section 62-3-611 and appoint a special administrator pursuant Section 62-3-614.
5. Order any further relief necessary to restore public confidence, sanction fraudulent conduct, and ensure court proceedings advance the public interest in transparent and reliable justice.

Respectfully Submitted,

_____ date _____

Beverly Hennager
315 Wood Lane
Corvallis, MT 59828
406-361-0796
hennagerbev@gmail.com
PRO SE

AFFIRMATION OF SERVICE

I, Beverly Hennager, do hereby certify that I have served Petition for Certiorari to the following addresses:

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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

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

Enclosed is a \$250 filing fee.

Respectfully Submitted,

_____ date

Beverly Hennager
315 Wood Lane, Corvallis, MT 59828
hennagerbev@gmail.com
406-361-0796
PRO SE

