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Nov 20 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Honorable Alex B. Hyman, Circuit Court Judge

Appellate Case No.: 2024-000599
Circuit Court Case No.: 2022-CP-26-03314

Claudia Troyer Miles, David V. King, and John M. Strasswimmer Respondents,

v.

Mary Michelle Miles Appellant.

APPELLANT MARY MICHELLE MILES' PETITION FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, Appellant Mary Michelle Miles hereby petitions this Court for rehearing of its Order filed November 5, 2025. The Order Affirmed the lower Courts' rulings that Mary Michelle Miles breached her fiduciary duty to her mother, Claudia Troyer Miles, while serving as Temporary Guardian, and is required to repay the sum of approximately \$251,000.00 to her mother, who passed away August 6, 2019.

FACTUAL AND PROCEDURAL BACKGROUND

This matter came before this Court for review of the multiple Orders issued by the Horry County Probate Court against Mary Michelle Miles for among other things, breach of fiduciary duty, and the Circuit Court Order of March 19, 2024, affirming the Probate Court Orders. Oral arguments were held in this matter on September 9, 2025. It should be noted that the only briefs filed in this matter were by Respondent David V. King, the third Spouse of Claudia Troyer

Miles, and the Appellant Mary Michelle Miles, daughter of Claudia Troyer Miles. There was no one with authority to represent the Estate of Claudia Troyer Mile at the oral arguments as to date there is no one appointed in this role. The appointment of a Personal Representative in this Estate is currently pending in Probate Court.

ARGUMENT

This Court incorrectly affirmed the lower court decisions that Mary Michelle Miles breached her fiduciary duty to her mother. The statement that she breached a duty to her mother based on purported visitation rights of Respondent King and failure to provide an accounting are simply without merit. Purported visitation rights of a Spouse are not one of the elements of breach of fiduciary duty. This Court set forth the elements of breach of fiduciary duty: (1) existence of a fiduciary duty; (2) breach of that duty; and (3) damages from the breach citing RFT Mgmt. Co., LLC v. Tinsley & Adams, L.L.P., 399 S.C. 322, 33-36, 723 S.E.2d 166, 173 (2012). It is unclear how an alleged violation of a right of Respondent King has any place in a breach of fiduciary duty action as it relates to Claudia Troyer Miles. Appellant was not in a fiduciary relationship with Respondent King. There was nobody at the lower court level or the Appellate Court representing the interests of the Decedent, so it is improper for this Court to base a breach of fiduciary finding on purported visitation rights that Respondent King has asserted. That would be a claim of his, not the Estate's. The Courts are punishing Mary Michelle Miles for alleged harm to Respondent King, which is not what this action is about. It is about Claudia Troyer Miles.

This Court states in its Order that Appellant did not file a proper accounting in this action, despite the fact that the accounting submitted was prepared by Arthur Unger, Managing Director of EisnerAmper, LLP, one of the largest accounting, tax, and business advisory firms in

the United States. The accounting submitted by Appellant was much more detailed than the Probate Court accounting forms provided by South Carolina Court Administration for fiduciaries to use in their Probate Court filings.

This Court has denied each and every argument made by Appellant Mary Michelle Miles without addressing the fact that there is nobody with authority to represent the Estate in this matter. This jurisdictional defect in and of itself is enough to remand this case back to the Probate Court until such time as there is someone with authority to speak for the Decedent and address all issues at that time. There has been no one with standing or authority to act or represent the Estate; therefore, subject matter jurisdiction is lacking. Lack of subject matter jurisdiction can be raised at any time, including for the first time on appeal, and sua sponte by the Court. McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (Ct. App. 2012). How can this Court affirm or deny a decision that affects an Estate without a properly appointed Personal Representative? How can this or any Court decide on a matter without the proper parties? Even at the Probate Court hearings in which Bess Lochocki argued for sanctions and to deny the accounting submitted by Mary Michelle Miles, Claudia Troyer Miles had already passed away, and the authority of the Guardian/Conservator ended upon the death of Claudia Troyer Miles. The Probate Court held not one, but two hearings, after the death of Claudia Troyer Miles, during which nobody had standing to argue on behalf of the Estate of Claudia Troyer Miles. The Probate Court hearings and the appellate hearings should never have proceeded without the appointment of a Personal Representative to represent the Estate of Claudia Troyer Miles.

Although the Court has concerns about how funds were spent by Mary Michelle Miles, there is nobody on behalf of the Estate to make these claims. Respondent King is not the only beneficiary of this Estate; therefore, until there is a Personal Representative appointed in this

Estate, this matter should be sent back to the Probate Court. If the Court finds that there are issues and rulings in this matter that are moot due to the death of Claudia Troyer Miles, it stands to reason that how funds were spent is not ripe for decision since Appellant is one of the beneficiaries of this Estate and there is nobody appointed in this Estate to address whether there is anything to be repaid or how assets should be distributed.

This Court's opinion suggests that it does not matter if the wrong statute was applied. However, the Probate Code and its provisions are legislative requirements that this Court is not free to disregard. Then essentially this Court is saying that the Probate Court had the right to make up statutes to fit its ruling. This Court also does not address the fact that the various Probate Court Orders were all missing the findings of incapacity required to appoint a Conservator or Guardian. The Probate Court took away an individual's rights without a finding of incapacity and without the appointment of independent counsel. The issue of personal capacity is never moot when the Court is exercising its power to limit or deny an individual's freedom and appoint a Conservator or Guardian.

This Court errs in stating that the issues are not preserved for appeal. Mary Michelle Miles was not required to file an additional repetitive Rule 59(e) Motion prior to filing a Notice of Intent to Appeal. There is nothing in South Carolina Code Annotated Section 62-1-308 or otherwise that requires the filing of Rule 59 (e) Motion prior to filing an appeal. The ruling that came from Judge Ward was after Motions for Reconsideration had already been filed for the prior Order. Therefore, this would have been a second Rule 59(e) Motion for the same matters. Counsel for Mary Michelle Miles and John Strasswimmer had both filed Rule 59(e) Motions, and those were heard at August 26, 2019, and September 16, 2019, hearings. This Court is essentially saying one Rule 59(e) from each party was not enough, and the Appellant should

have filed yet another Motion for Reconsideration. This Court erred in its finding that the issues were not preserved for review at the Probate Court level.

There are seven volumes in the Record on Appeal, and there was more than enough evidence in the record for this Court to review. Since this matter was based in equity, the review of the Probate Court matter was de novo; therefore, the Circuit Court's review was not what is definitive. This Court should be looking at the original rulings from the Probate Court, not the Circuit Court rulings. Thus, there is no need or requirement to include all the briefs from the Circuit Court, which were nearly identical to the briefs filed in this matter. Indeed, the Circuit Court essentially affirmed all the Probate Court rulings as they related to Mary Michelle Miles, and all the same arguments were made and raised with this Court as had been made to the lower courts. This Court had a voluminous record to review to make its own findings of fact.

Appellant disagrees that the remaining issues are moot since they all lead to the Probate Court's rulings. How can the denial of independent counsel be moot? If Mary Michelle Miles does not have standing to bring this before the Court, then how does David V. King have standing to bring any of this before this Court? Again, he is not the Personal Representative of this Estate. The authority of the Guardian/Conservator died with Claudia Troyer Miles. The irony of the claims made against Mary Michelle Miles are that to date there has been no Accounting filed with the Probate Court in the Guardianship/Conservatorship matter by the court appointed Guardian/Conservator despite the fact that Claudia Troyer Miles passed away in 2019; therefore, this matter still shows as open as if she were still alive.

There is no denying that Mary Michelle Miles spent funds. However, the characterization that she breached a fiduciary duty to her mother for failing to provide an accounting and interfering in visitation rights of her mother's third husband are unfair characterizations given the

circumstances at that time, and they are made in an unripe manner without full jurisdictional participation. Mary Michelle Miles was trying to care for and do what she believed was best for her mother while she was dying. She was worried about her mother's care, and she was not concerned about how much money would be left for herself, her brother, or her mother's third husband after her mother passed away. She was concerned solely about her mother. This matter should be reversed or remanded back to Probate Court.

CONCLUSION

For all of the reasons stated herein together with the Record on Appeal, Appellant's briefs, and applicable law, this Court has erroneously affirmed the ruling of the lower Courts. This Court should therefore permit rehearing and allow the appeal in this matter to proceed.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

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ATTORNEYS FOR APPELLANT

November 20, 2025

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

John Strasswimmer, David Vreeland King, and Claudia
Treyer Miles, Respondents,

v.

Mary Michelle Miles, Appellant.

Appellate Case No. 2024-000599

Appeal From Horry County
B. Alex Hyman, Circuit Court Judge
Kathy G. Ward, Probate Judge

Unpublished Opinion No. 2025-UP-374
Heard September 9, 2025 – Filed November 5, 2025

AFFIRMED

Melody Joy Edelman Breeden, of Turner Padget Graham
& Laney, PA, of Myrtle Beach, for Appellant.

Marissa Noelle Drost, of The Floyd Law Firm PC, of
Surfside Beach, and Thomas Jarrett Bouchette, of Burr &
Forman LLP, of Myrtle Beach, both for Respondent John
Strasswimmer.

Reese R. Boyd, III, of Boyd Law Group, of Myrtle
Beach, for Respondent David Vreeland King.

PER CURIAM: Mary Michelle Miles (Michelle) appeals multiple orders of the probate and circuit courts regarding her service as the temporary guardian for her mother, Dr. Claudia Miles (Dr. Miles), and ordering her to repay certain expenditures to Dr. Miles's estate (the Estate). On appeal, Michelle argues the circuit court erred by (1) finding she was not an appropriate temporary guardian for Dr. Miles; (2) finding she breached her fiduciary duties to Dr. Miles by improperly disbursing Dr. Miles's assets; (3) finding she failed to submit a proper accounting; (4) granting sanctions against her; (5) ordering her to repay various expenditures totaling \$251,931.87 to the Estate; (6) finding her jointly liable, along with her brother John Strasswimmer (John), for attorney's fees incurred by Dr. Miles's husband, David King (David); and (7) admitting the testimony of attorney Clifford Tall. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. We hold the circuit court correctly found Michelle breached her fiduciary duty to Dr. Miles due to her improper expenditures of Dr. Miles's funds; we also find Michelle breached her duty based on other conduct that was not in Dr. Miles's best interest—namely, her disregard for David's visitation rights and her failure to file a complete accounting. *See Bennett v. Est. of King*, 436 S.C. 614, 621–22, 875 S.E.2d 46, 50 (2022) (“[A]n action for breach of fiduciary duty is either an action at law or in equity depending on the remedy sought.”); *Lee v. Lee*, 251 S.C. 533, 164 S.E.2d 308 (1968) (“Numerous decisions of this court are in accord with the proposition that equity has jurisdiction ‘where a fiduciary relation exists between the parties, and the duty rests upon the defendant to render an accounting.’” (quoting *Devereux v. McCrady*, 46 S.C. 133, 24 S.E. 77, 82 (1896))); *Greer v. Spartanburg Technical College*, 338 S.C. 76, 79, 524 S.E.2d 856, 858 (Ct. App. 1999) (“In reviewing a proceeding in equity, this court may find facts based on its own view of the preponderance of the evidence.”). The financial records are replete with instances of excessive spending that Michelle could not or would not explain, such as \$2,500 on restaurants and dining, \$12,000 on groceries, \$6,400 on clothing and shoes, \$800 on furniture reupholstery, \$1,500 at FedEx, and \$1,000 at The UPS Store; additionally, there was an unknown charge for approximately \$11,600. Moreover, we find the expenditures to renovate Michelle's home were inappropriate because Michelle was well aware that her appointment as guardian was temporary and heavily contested and that there was a very real possibility that Dr. Miles would ultimately return to South Carolina for care; she knew David had also filed a petition seeking to be appointed as the permanent guardian; and she was aware that a trial had been scheduled on the issue. Michelle also demonstrated a blatant disregard for the probate court's orders regarding David's visitation with

Dr. Miles in contravention of Dr. Miles's best interests. Finally, Michelle repeatedly failed to comply with the probate court's order to submit a complete accounting to justify her spending, and the "accounting" she ultimately submitted was insufficient as it did not contain any receipts or documentation to corroborate the spending she reported.¹ See *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) ("To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant."); S.C. Code Ann. § 62-1-201(15), (18) (2022) (defining "[f]iduciary" to include a "person appointed by the court as guardian"); *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004) ("Damages in an action for breach of a fiduciary duty are those proximately resulting from the wrongful conduct of the defendant.").

2. We hold the issues regarding Michelle's expenditures as temporary guardian—including the findings that she must repay the Estate in the amount of \$251,931.87, that she is responsible for paying David's attorney's fees, and the grant of sanctions against her—are not preserved for this court's review.² See *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 860 (2006) ("Under the Probate Code, final orders or decrees of the probate court may be appealed to the circuit court."); *id.* at 490, 632 S.E.2d at 860 ("In reviewing an appeal from the probate court, the circuit court

¹ Michelle also argued the probate court erred in applying section 62-5-103 of the South Carolina Code (2022) to find that the expenditures she made as guardian were in excess of her authority as temporary guardian. Section 63-5-103(A) states that "[a] person under a duty to pay or deliver money or personal property to a[n] . . . incapacitated individual may perform this duty in amounts not exceeding a net aggregate amount of fifteen thousand dollars each year." Although we agree that this statute was inapplicable to Michelle as temporary guardian, even without considering this statute in relation to Michelle's management of Dr. Miles's money, there is sufficient evidence in the record to uphold the finding that she breached her fiduciary duty and is responsible for repaying the Estate for those improper expenditures. Thus, we find no reversible error as to this issue. See *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter.").

² Michelle listed fourteen issues in her statement of issues on appeal. Our holding in this section is applicable to all issues regarding the expenditures she was ordered to repay and the calculation of those amounts, the sufficiency of the accounting, David's attorney's fees, and the grant of the Guardian ad Litem's motion for sanctions.

must apply the same rules of law as an appellate court would apply."); *id.* at 490, 632 S.E.2d at 861 ("Further, the circuit court has appellate jurisdiction over only those matters which are properly appealed."); *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) ("The South Carolina Rules of Civil Procedure are applicable in the probate court to the extent they are not inconsistent with the Probate Code or probate court rules."); *id.* (explaining that a motion to alter or amend a judgment pursuant to Rule 59(e) is not inconsistent with the Probate Code and is therefore applicable); *Nelums v. Cousins*, 304 S.C. 306, 307, 403 S.E.2d 681, 681–82 (Ct. App. 1991) (finding an issue unpreserved when "the trial court was never afforded the opportunity to rule on the clarity of its order because [the appellant] made no motion, as she was required to do, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure"). We hold Michelle was required to file a Rule 59(e) motion seeking clarification of the probate court's post-trial motion order (PTM Order) because the order is unclear as to the reasoning for its mandate that Michelle repay approximately \$251,000 to the Estate and approximately \$25,000 for David's attorney's fees—whether this was reimbursement for improper spending, a sanction for violating the court's order to submit an accounting, or some combination of the two. Although the probate court found Michelle had breached her fiduciary duty as temporary guardian in its interim and final orders, the PTM Order was the first time Michelle was mandated to repay any monies to the Estate or to pay David's attorney's fees. Moreover, the probate court did not include a detailed breakdown of the amount to be repaid to the Estate, and there is no explanation in the PTM Order as to how the court reached that number.³ Additionally, as to attorney's fees, the order initially stated that David was "entitled to reimbursement of legal fees jointly from [John] and

³ The probate court's order stated Michelle must repay the Estate for the expenses to renovate her personal home and the costs to employ Synergy HomeCare. However, the section of the PTM Order regarding the GAL's motion for sanctions states Michelle must reimburse the amount spent "on her personal residence," including "home improvements" and "furnishings not returned to the Estate," but it does not give a figure; the Final Order approximates this spending at \$70,000 for the renovations. The PTM Order does specify that Michelle spent \$179,971.99 to employ Synergy. Even if we were to assume the probate court contemplated \$70,000 for home renovations as approximated in the Final Order, the sum is only \$249,971.99, or approximately \$2,000 less than the final amount included in the PTM Order. Moreover, the GAL repeatedly stated Michelle misappropriated over \$350,000 and Michelle conceded that she disbursed \$453,474.82 in approximately five months as temporary guardian. Thus, it is unclear exactly why or how the probate court arrived at the figure of \$249,971.99 for repayment.

[Michelle];" however, in its mandate, it stated that *John* was "liable for \$77,034.00" in attorney's fees for David, without mentioning any liability or contribution from Michelle.

Further, we find the record on appeal is insufficient for us to "make an intelligent review" of these issues because it does not include the Statement of Issues on appeal to the circuit court or the briefs filed in the circuit court upon which the parties relied at the hearing; instead, the record included only the notice of intent to appeal which simply lists the orders being appealed to the circuit court, not the grounds. *Kneece v. Kneece*, 296 S.C. 28, 32, 370 S.E.2d 288, 290 (Ct. App. 1988) ("An issue either not presented to the trial court or not properly preserved by an exception presents no question before us on appeal."); *Windham v. Honeycutt*, 290 S.C. 60, 63, 348 S.E.2d 185, 187 (Ct. App. 1986) ("The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review."). The circuit court order states that "the appellate briefs of [Michelle] and [John] each contain[ed] a statement of issues on appeal," and as to Michelle, the circuit court affirmed "each and every decision made by the probate court in connection with those issues on appeal," with the exception of the finding that Michelle and John should be jointly liable for David's attorney's fees, which it remanded to the probate court for a more specific apportionment. However, the circuit court's order does not specifically set forth the issues Michelle raised to it; the transcript of the circuit court hearing contains approximately six pages of argument by Michelle, in which she reiterates her arguments that any funds expended were "used for [Dr. Miles]'s interests" and she was "working with what she was able to do under the circumstances," she had submitted a proper accounting, there was nothing "in the record that reflect[ed] harm specifically to Dr. Miles in this action," and the probate court was generally incorrect regarding its findings as to Michelle. Notably, Michelle referred the circuit court to her brief in support of her arguments raised in the appeal. Thus, without the Statement of Issues on appeal or the briefs, we cannot be sure exactly what issues were raised to the circuit court or the grounds argued. See *State v. Franks*, 432 S.C. 58, 79, 849 S.E.2d 580, 591–92 (Ct. App. 2020) (quoting *State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991)) ("Generally, this [c]ourt will not consider issues not raised to or ruled upon by the trial [court]."); *Bonaparte v. Floyd*, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987) (declining to address the appellant's claim of error because the appellant failed to furnish this court with a sufficient record on appeal to permit consideration of the issue); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (stating that "we are not precluded from finding an issue unpreserved even when the parties themselves do not argue error preservation to us").

3. We hold the remaining issues are moot because Dr. Miles has passed away and no longer needs a guardian or legal counsel, nor is there any legal issue for this court to resolve concerning her placement.⁴ *See State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005) ("A case becomes moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy, thus making it impossible for the reviewing court to grant effectual relief."); *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.").

AFFIRMED.

MCDONALD, HEWITT, and TURNER, JJ., concur.

⁴ Our holding in this section applies to all issues regarding whether Michelle was an appropriate temporary guardian, the placement of Dr. Miles at Franke Toby Jones, and the testimony of Clifford Tall.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Circuit Court Case No.: 2022-CP-26-03314

Claudia Troyer Miles, David V. King, and John M. Strasswimmer.....Respondents,

v.

Mary Michelle MilesAppellant.

CERTIFICATE OF SERVICE

I, Melody J. E. Breeden, attorney for the Appellant, hereby certify that I have this 20th day of November, 2025, served Appellant's Mary Michelle Miles' Petition for Rehearing upon Reese Boyd, Esquire, T. Jarret Bouchette, Esquire, Marissa N. Drost, Esquire, and Bess Dargan Lochocki, Esquire, by U.S. Mail and E-Mail at the addresses indicated below:

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Nov 20 2025

SC Court of Appeals

Melody J.E. Breeden

REPLY TO
E-Mail: mbreeden@turnerpadget.com

November 20, 2025

Via Online

South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: In the Matter of Claudia Troyer Miles
SC Court of Appeals Case # 2024-000599

Dear Sir/Madam:

Enclosed please find the Appellant Mary Michelle Miles' Petition for Rehearing and Certificate of Service for filing with the Court. Thank you.

Sincerely,

TURNER PADGET GRAHAM AND LANEY P.A.



Melody J.E. Breeden

MJB:hac