

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

In Re: Estate of M.K. Jennings 2010ES 2900169

Beverly Hennager, Appellant

v.

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

Appellate Case No: 2024-001152

Appeal from Kershaw County
Daniel Coble, Circuit Court Judge

AMENDMENT TO

MOTION TO EXPEDITE RULING ON PETITION FOR WRIT OF MANDAMUS

Movant amends this motion to add clarification. Movant's first Rule 60(b), SCRPC, motions challenging the September 3, 2021 and June 19, 2024 orders as void for due process violations and fraud upon the court were filed in the lower courts on August 25, 2025. The Circuit Court refused to review those motions, stating: "This was a probate appeal which ended with the probate court being affirmed. My decision was appealed to the court of appeals where the lower court was upheld, order attached. There is no judgment in this case and no paperwork will be added to this ended appeal" (Exhibit 1). The Probate Court copied this language, refusing to act.

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When Movant's September 11, 2025 Petition for Writ of Mandamus was unanswered, Movant reasonably understood the Circuit Court's language to mean that it believed it lacked jurisdiction to consider Rule 60 relief while the appeal remained pending, and thus that Rule 60 review would become available only after the appellate process concluded.

When remittitur issued on November 19, 2025, returning jurisdiction to the lower courts, Movant submitted new Rule 60(b)(4) motions in order to obtain the post-judgment review expressly identified by the Court of Appeals as the proper vehicle for addressing fraud-on-the-court and due process claims. It is these newly submitted Rule 60 motions, tendered after remittitur, that the lower courts have refused to accept for filing or adjudication, effectively denying Movant any Rule 60 review at all despite the appellate court's directive and the post-judgment nature of Rule 60 relief.

The lower courts have fundamentally misunderstood that Rule 60 motions are post-judgment motions that cannot simply be disregarded. Their reasoning misapprehends the governing law, because Rule 60(b), SCRC, by its express terms authorizes post-judgment relief from a "final judgment, order, or proceeding" and contemplates that such motions may be filed and decided after final judgment, including after appellate review and remittitur, provided they are made within a reasonable time.

The current Rule 60 motions were mailed on December 2, 2025, and were signed for at the court by C. Branham on December 8, 2025, but were never filed (see Exhibits 2 and 3). Cynthia Branham is the same clerk who signed for Movant's 2021 motions to compel and transmitted them to the judge, who then returned them without filing (R. 38-40), underscoring

that the present non-filing is not due to any failure of delivery. State law and court rules impose on clerks a ministerial duty to accept and docket properly submitted filings, not to act as secret gatekeepers on off-the-record judicial instructions. Filing rules provide that a paper is filed by delivery to the clerk, and even arguably improper documents should ordinarily be accepted and then addressed by motion or order, not silently blocked at intake.

In this case, the clerk of the probate court—apparently at the probate judge’s behest—intercepted motions to compel that would have produced evidence disproving the erroneous finding that the promissory note was paid; the clerk of the circuit court then refused to accept Rule 46 objections that would have informed the court that it was affirming a non-existent order (R. 111); and, finally, clerks—again acting at the direction of the very judges whose orders are being challenged—now refuse to file Rule 60 motions, despite the Court of Appeals’ instruction that such motions are the required vehicle for Movant’s due process and fraud-on-the-court claims. This entrenched pattern converts nominal remedies into illusory ones, depriving Movant of any meaningful opportunity for post-judgment review and leaving her in a procedural dead end, despite strict compliance with state procedure.

Movant is preparing a petition for a writ of certiorari to the United States Supreme Court because every avenue of relief for fraud on the court and grave due process violations has been obstructed, resulting in a procedural dead end. Given that federal law provides a limited ninety-day window in which to seek certiorari review, and that professional preparation and printing of the certiorari petition will itself require several weeks, Movant will have at most one month in which any ruling below can realistically be obtained and incorporated. In these

circumstances, it is imperative that the Court of Appeals promptly address the pending writ of mandamus directing the lower court to accept and rule upon the Rule 60 motions without further delay. Otherwise, Movant's sixteen-year judicial odyssey in pursuit of relief will not be alleviated, but will instead be further compounded, thereby fortifying the existing blockade to justice.

Copies of the Rule 60 motions themselves are attached as Exhibits 4 and 5.

Respectfully Submitted,



12-15-2025

/s/Beverly Hennager date: December 15, 2025
315 Wood Lane
Corvallis, MT 59828
hennagerbev@gmail.com
Pro Se

EXHIBITS

Included in hard copy to follow

1. September 3, 2025 Circuit Court Order Refusing Rule 60 Motion
2. December 8, 2025 Tracking on Rule 60 Motion to Probate Court
3. December 8, 2025 Tracking on Rule 60 Motion to Circuit Court
4. Rule 60(b)(4) Motion to Probate Court
5. Rule 60(b)(4) Motion to Circuit Court

EXHIBIT 1

September 3, 2025 Circuit Court Order Refusing Rule 60 Motion

EXHIBIT 2

December 8, 2025 Tracking on Rule 60 Motion to Probate Court

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EXHIBIT 3

December 8, 2025 Tracking on Rule 60 Motion to Circuit Court

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EXHIBIT 4

Rule 60(b)(4) Motion to Probate Court

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF KERSHAW

CASE No: 2010-ES-00169

Beverly Hennager

Petitioner

Mary Dearden

Respondent

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In the matter of :

The Estate of MK Jennings

**RULE 60(b)(3)(4) MOTION FOR RELIEF FROM VOID ORDER:
DUE PROCESS VIOLATION AND FRAUD ON THE COURT**

Movant, Beverly Hennager, appearing pro se, respectfully moves this Court pursuant to Rule 60(b)(3)(4), South Carolina Rules of Civil Procedure, for relief from the September 3, 2021 Final Order on the ground that the judgment is void for violation of procedural due process and for fraud upon the court.

On June 11, 2025, the appellate court affirmed the July 19, 2024 Circuit Court order and expressly directed that Movant’s due process and fraud-on-the-court claims be raised by a Rule 60 motion rather than by direct appeal. Accordingly, Movant now files this Rule 60(b)(3)(4) motion in the Probate Court. Movant previously tendered a similar Rule 60 motion on August 27, 2025, which the Probate Court clerk refused to file on the ground that the case was closed. After the South Carolina Supreme Court issued its remittitur on November 19, 2025, jurisdiction returned to the Probate Court, and Movant is promptly refileing.

The Court held that Movant's fraud-on-the-court and due-process claims should be presented to the lower courts through Rule 60(b) motions rather than by direct appeal. Movant tried to file the Rule 60 motions during the appeal, but they were not accepted. Movant is now filing them promptly after the appellate mandate and remittitur restored the lower court's jurisdiction, as required for proper consideration.

Moreover, a void judgment is regarded as a legal nullity that cannot be made valid by the mere passage of time, and courts have long recognized that such judgments may be challenged years after their entry because no amount of delay can transform a void judgment into a binding one. Under these facts, this motion represents Movant's first meaningful opportunity to present her void-judgment challenge in the correct procedural vehicle and cannot fairly be characterized as an untimely attempt to relitigate ordinary trial errors.

Rule 60(b)(4) permits relief from a void judgment and is not limited by the one-year period that applies to 60(b)(1)–(3); such motions may be brought after the time for appeal has run, so long as they are filed within a reasonable time, particularly where fundamental due process violations or fraud on the court are alleged.

I. GROUNDS FOR RELIEF

This motion seeks relief solely under Rule 60(b)(3)(4), SCRCP, on the ground that the September 3, 2021 order is void because the Probate Court denied Movant a meaningful opportunity to obtain and present essential evidence on the issue decided in that order: whether the promissory note owed to Decedent by Michael Jennings (Exhibit 1) was fully satisfied. The defect is jurisdictional and constitutional in nature, not a request for mere error-correction, because the Court exercised its power to adjudicate a dispositive issue while denying Movant

access to minimally necessary, plainly relevant evidence. The Probate Court's refusal to permit basic discovery and to accept Movant's motions to compel—while simultaneously adjudicating the note's payment status on an incomplete record—deprived Movant of the minimum process required by the Fourteenth Amendment and South Carolina law, and therefore rendered the judgment void.

Moultrie Burns, as an officer of the court, engaged in a deliberate pattern of withholding and concealing critical documents that had been properly requested in discovery (including defiance of a prior order compelling production of Decedent's medical records), thereby preventing Movant from obtaining the evidence necessary to prove that the promissory note was not fully paid. This sustained, intentional non-production over many years, combined with the presentation of a partial and misleading record to the Probate Court, constitutes extrinsic fraud. It goes beyond ordinary discovery disputes and amounts to deliberate concealment that prevented Movant from presenting her case, subverted the Court's ability to adjudicate the issue fairly, and deprived Movant of a true opportunity to be heard. As recognized in *Chewning v. Ford Motor Co.*, the intentional concealment of documents by an attorney during litigation can amount to fraud upon the court when it prevents the opposing party from fully presenting her case.

II. RECORD OF PROCEEDINGS

Throughout these proceedings, Movant persistently sought, through discovery, the tax returns and payment records necessary to determine whether the promissory note was satisfied. The note was introduced as an exhibit in 2012, but it was not adjudicated until 2021 because the Personal Representative ("PR") and counsel repeatedly failed to provide the requested

documentation. A year-by-year calculation of the unpaid principal, penalties, and 8% compounded interest from 1994 through 2025 is attached as Exhibit 2 (Interest Calculation Schedule) and incorporated herein by reference. These calculations are derived from documents produced by counsel for the Personal Representative, Moultrie Burns.

Moultrie Burns' concealment of material facts began at the outset of this case, when he misrepresented the Decedent's domicile. The first finding of fact in the October 27, 2016 Order states: "Decedent was a resident of Kershaw County" (Exhibit 7). In contrast, the Decedent's death certificate identifies her residence at the time of death as Virginia, not South Carolina (Exhibit 3). This inconsistency shows that the Court was provided inaccurate information on a foundational jurisdictional fact.

From the earliest stages of this case, the Court expressed concern about the PR's compliance. On May 19, 2011, Dearden and counsel were summoned to appear to show cause why she should not be removed and held in contempt for failing to respond to court correspondence and dereliction of duties (Exhibit 4). In his proposed order, Burns represented that he would supervise the PR's work to ensure that her filings were complete and accurate (Exhibit 5). However, the subsequent record reflects that he failed to do so, as the PR's accountings remained incomplete and inaccurate and critical information was still withheld.

The following points highlight the PR's persistent discovery failures and the Court's awareness of them.

- (a) As reflected in the 2013 Order and not overturned by the 2016 Order, the PR and counsel did not respond to repeated discovery requests (Exhibit 6, Probate Court 2013 Order; Exhibit 7, Probate Court 2016 Order).
- (b) In 2012, the Court granted Movant's motions to compel production of Decedent's medical records. During the ensuing hearing, Burns produced an envelope of miscellaneous receipts, which the Court initially believed to be responsive medical records (Exhibit 8). In fact, the PR never produced a single medical record in response to the Court's order; those records were obtained only later by the Special Administrator appointed after the PR's removal, shortly before the PR filed her appeal.
- (c) In January 2016, Movant served supplemental discovery requests seeking, among other things, to have the promissory note recorded (Exhibit 9).
- (d) During the 2016 hearing, it was brought to the Court's attention that the PR had failed to respond to requests for documentation of the note (Exhibit 10) and that the requested tax returns were essential to determine whether the note was fully paid (Exhibit 11).
- (e) As a result, the 2016 Order is silent regarding the promissory note and the necessary supporting evidence.
- (f) The PR admitted under oath that her 2011 accountings and inventory filed with the Court were incomplete and inaccurate, and that she intended to correct these errors (Exhibit 12).

When the 2016 Order was affirmed in 2020, the PR was instructed to produce amended accounting records, which again omitted the promissory note and retained other omissions and

inaccuracies she had testified would be corrected (Exhibit 13). Other than one minor change, the PR submitted essentially the same accounting and inventory for which she had been removed in 2013.

Movant demanded a hearing, which was held in March and June 2021. During the Zoom hearing, the Court acknowledged—alongside counsel Moultrie Burns, Esq.—that the payment status of the note had not previously been adjudicated, and agreed to finally hear arguments and evidence. In his April 7, 2021 post-hearing memorandum, Burns confirmed: “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” (Exhibit 14).

Burns submitted partial tax documents reflecting payment of principal only. On April 13, 2021, Movant responded that Burns’s exhibit actually demonstrated that Michael Jennings had not paid the interest required under the note (Exhibit 15). As shown in Exhibit 2 (Interest Calculation Schedule), even using the limited records produced by the Personal Representative, the note could not have been fully paid, and substantial interest remained outstanding.

On June 10, 2021, Movant renewed discovery requests under Rule 26, seeking the complete documentation essential to verify payment status (exhibit 16). When these were again ignored, Movant filed two motions to compel (Exhibit 17 & 18), both of which the judge personally returned, stating they could not be accepted due to “no pending litigation” (exhibit 19 & 20).

The September 3, 2021 order clearly demonstrates that additional substantive issues remained to be decided.

“I find and conclude the following:

Finding 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.” (Exhibit 21 Probate Court September 3, 2021 Order)

Failure to Distribute Estate Funds and False Statements to Court

In the PR’s 2020 final accounting, she represented that Movant’s final distribution would be \$16,734.40, demonstrating that funds remained due to Movant from the estate (Exhibit 13 , p.3). At the 2024 hearing, attorney Moultrie Burns informed the Court that everyone received a final distribution except Movant because she “refused” it (Exhibit 22). This characterization is false; Movant never refused any distribution and has at all times sought to receive the funds owed to her. In addition, Renee Jennings reports that beneficiary Louis Jennings likewise did not receive a final distribution in the amount of \$24,265.35 reflected on the PR’s accounting.

III. ERRORS REGARDING FINALITY OF ORDERS

Under the final-judgment rule, an order that does not resolve all material issues in dispute is interlocutory rather than final. When the Probate Court later took up a new issue—the alleged payment of the note—this confirmed the earlier order was interlocutory and not a final adjudication of all claims.

None of the prior Orders—June 13, 2013; October 27, 2016; July 19, 2020—addressed the promissory note. The September 3, 2021 Order contains the Court’s first “finding and conclusion” on this issue, which had previously been unresolved. The record contains no order or transcript indicating that any previous hearing determined the payment status of the note or payment of interest. Because the September 3, 2021 Order resolved an issue that remained open in prior interlocutory orders, it is properly subject to challenge under Rule 60(b)(4) notwithstanding earlier appeals.

Affirming an interlocutory order does not convert it to 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.

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

Finality requires disposition of all claims (*Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7 (1980)).

An order is not final if “further acts remain to be done” (*Tommy Griffin Plumbing v. Jordan*, 351 S.C. 459 (2002)).

IV. DUE PROCESS VIOLATIONS & FRAUD ON THE COURT

The Probate Court explicitly recognized in 2021 that the payment status of the promissory note had not previously been adjudicated and agreed to hear evidence on that issue, yet the Court simultaneously prevented Movant from obtaining and presenting the very discovery needed to test Respondent’s partial tax submissions. Movant’s renewed discovery requests and motions to compel, directed at complete tax returns and related records necessary to

determine whether interest was paid, were rejected on the ground that there was “no pending litigation”. At the same time the Court proceeded to enter a new finding of fact and conclusion that the note was “satisfied.” As a result, the Court adjudicated a previously unresolved claim while denying Movant any effective mechanism to secure and introduce the evidence required to contest Respondent’s position.

A judgment entered under these circumstances is not simply erroneous; it is void. **A court may not resolve a dispositive issue while blocking a party’s reasonable efforts to obtain plainly relevant records and then rely on the absence of that evidence to find in favor of the opposing party.** Because the September 3, 2021 order rests on an evidentiary record that the Court itself prevented Movant from completing, it lacks the fundamental attributes of an adversarial, fair hearing and cannot stand as a valid final judgment.

- Due Process Standards:

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), the Supreme Court held that states cannot arbitrarily deny proper procedure and a meaningful opportunity to be heard.

- Fraud on the Court:

In *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003), the South Carolina Supreme Court affirmed that the deliberate concealment or withholding of critical evidence meets the threshold for “fraud on the court.”

- Both authorities support the principle that a judgment entered without allowing a party to present material evidence is incompatible with due process and cannot stand.

The Court did not base its findings on relevant evidence or testimony on the record. The note clearly required the payment of interest, yet the only evidence submitted shows payment of

principal only. South Carolina courts recognize that refusal to permit production or presentation of relevant evidence is a fundamental due process violation rendering the judgment void.

- Under Rule 26(b)(1), SCRPC, parties may obtain discovery regarding any matter that is not privileged and is relevant.
- As held in *Samples v. Mitchell*, 329 S.C. 105, 113–14, 495 S.E.2d 213, 217 (Ct. App. 1997), denial of discovery is inherently prejudicial; discovery exists to ensure trials are resolved by revealed, not concealed, facts.
- Rule 60(b)(4), SCRPC, authorizes relief where a judgment is void, including for denial of due process. The inability to obtain and present complete tax records demonstrating nonpayment of interest directly prejudiced Movant’s rights and denied a true contest as required by law.

V. RELIEF SOUGHT

Movant respectfully requests limited relief tailored to the voidness defect identified above:

1. Entry of an order vacating the September 3, 2021 finding and conclusion that the promissory note was “satisfied” and any related determination premised on that finding.
2. Reopening of the proceedings solely for the narrow purpose of adjudicating the payment status of the promissory note after Movant and Respondent have been afforded a meaningful opportunity to obtain and present relevant discovery, including complete tax returns and payment records related to principal and interest.
3. Entry of such further procedural orders as are necessary to ensure that the renewed determination regarding the note is made on a complete evidentiary record in compliance with constitutional due process.
4. An order directing the immediate release and payment to Movant of her final distribution in the amount shown on the PR’s 2020 final accounting of \$16,734.40.

CONCLUSION

South Carolina courts have consistently emphasized that discovery rules exist to ensure trials are decided on the facts as revealed—not those concealed. Such protections advance both private justice and public trust in the courts.

Respectfully submitted,

/S/ Beverly Hennager date: December 2, 2025

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

EXHIBITS

- Exhibit 1. Promissory Note
- Exhibit 2. Interest Calculation Schedule
- Exhibit 3. Death Certificate of MK Jennings
- Exhibit 4. 2011 Summons
- Exhibit 5. Burns Proposed Order Accepted by Court
- Exhibit 6. Probate Court 2013 Order
- Exhibit 7. Probate Court 2016 Order
- Exhibit 8. 2012 Hearing - Deception
- Exhibit 9. January 2016 Discovery Requests
- Exhibit 10. Hearing informing Court of PRs unresponsiveness
- Exhibit 11. Counsel informing Court tax documents needed to determine status
- Exhibit 12. PR admitted to inaccuracies and testified she would make corrections
- Exhibit 13. 2020 Amended Accounting
- Exhibit 14. Burns' April 7, 2021 Post Hearing Memorandum
- Exhibit 15. Partial Tax Documents submitted by Burns
- Exhibit 16. Renewed Discovery Requests seeking more information
- Exhibit 17. First Motion to Compel
- Exhibit 18. Second Motion to Compel
- Exhibit 19. Letter Returning First Motion
- Exhibit 20. Letter Returning Second Motion
- Exhibit 21. September 3, 2021 Order
- Exhibit 22. Burns 2024 Hearing alleging Movant refused distribution

AFFIRMATION OF SERVICE

I, Beverly Hennager, do hereby certify that I have served a copy of the foregoing Motion by Rule 60(b)(4) for Relief from the Order to the following addresses:

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

Kershaw County Probate Court, Attn: Judge Debbie Branham
1121 Broad Street, Room 225
Camden, SC 29020

Filing fee of twenty-five dollars is enclosed.

Respectfully Submitted,

/S/ Beverly Hennager date: December 2, 2025

315 Wood Lane
Corvallis, Mt 59828
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PRO SE

EXHIBIT 5

Rule 60(b)(4) Motion to Circuit Court

STATE OF SOUTH CAROLINA

In the Circuit Court

APPEAL FROM KERSHAW COUNTY

Probate Court

Honorable Debra Branham, Probate Judge

Probate Court Case No 2010-ES-28-00169
Circuit Court Case No. 2021-CP-28-00795

Beverly Hennager.....Appellant

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

**MOTION UNDER RULE 60(b)(4) TO VACATE VOID JUDGMENT FOR
DUE PROCESS VIOLATIONS AND FRAUD UPON THE COURT**

On June 11, 2025, the Court of Appeals held that relief for alleged due process violations and fraud by Respondent’s counsel must be sought by motion under Rule 60 rather than on direct appeal (Exhibit 1). The court held that Issue One was not preserved for appellate review because Movant “failed to file a motion pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure” in the circuit court. The court explained that such a motion could have asserted that the circuit court’s 2024 order was void and/or that Dearden’s attorney engaged in fraudulent conduct. It then quoted Rule 60(b)(3)–(4), SCRCF, which permits relief from a final judgment

based on fraud, misrepresentation, or other misconduct by an adverse party, or when “the judgment is void.

Accordingly, Movant now files this Rule 60 motion in the Circuit Court, seeking relief from the June 19, 2024 Circuit Court order. The June 19, 2024 order is void due to Moultrie Burns’s lack of authority to change the finding under appeal to a false, unappealable issue, and his concealment of these actions by lowering the volume of his argument so that he could not be heard. This followed his years-long failure to comply with discovery obligations seeking payment information. Rule 60(b)(4) permits relief from a void judgment and is not limited by the one-year period that applies to Rule 60(b)(1)–(3); such motions may be brought after the time for appeal has run, so long as they are filed within a reasonable time, particularly where fundamental due process violations or fraud on the court are alleged.

This motion is filed within a reasonable time. The Court of Appeals, in its June 11, 2025 opinion, directed Movant to seek relief under Rule 60. Movant promptly submitted a Rule 60 motion on August 27, 2025, which was refused. Following remittitur on November 19, 2025, Movant now refiles this motion as jurisdiction has returned to the Circuit Court. Final relief is sought on the ground that the judgment is void for lack of meaningful notice and a meaningful opportunity to be heard regarding the alteration of the order under appeal. This motion does not seek to relitigate the merits; it is limited to whether the judgment is void for fundamental due process defects under Rule 60(b)(4). A void judgment is regarded as a legal nullity that cannot be made valid by the mere passage of time.

STATEMENT OF THE CASE

This matter arises from the contested administration of the Estate of M.K. Jennings in Kershaw County, South Carolina, which has been in dispute since 2010. The central issue is a Virginia promissory note owed to the Decedent by Michael Jennings, which by its terms required payment of both principal and 8% interest (Exhibit 2).

2012: During the November 29, 2012 hearing, the promissory note was introduced. Louis Jennings (now deceased) testified that the hearing was necessary because the PR had failed to respond to discovery requests, including requests for tax records needed to determine the payment status of the note (Exhibit 3).

2013: Judge Pierce removed Mary Dearden as Personal Representative in part for her repeated failure to respond to discovery and her failure to properly record all estate assets—including the promissory note and all South Carolina assets, which she admitted disbursing without appraisals and without listing them in the inventory (Exhibit 4). Dearden appealed.

2015–2016: After remand, a merits hearing was held before Judge Branham in July 2016. Five months before the hearing, Movant served supplemental discovery requests seeking payment information on the promissory note (Exhibit 5). Because the PR again failed to provide the requested information, the court could not determine the note's status. As a result, the 2016 order did not adjudicate whether the note had been satisfied. In its October 27, 2016 order, the probate court directed the PR to file an amended accounting, which allowed her another opportunity to record the note. Both parties appealed.

2020: When the circuit court affirmed the 2016 probate order, the personal representative submitted an amended accounting but again failed to list the note as an estate asset (Exhibit 6). The movant then requested a hearing on the status of the note and other omitted assets.

2021: In an April 7, 2021 post-hearing memorandum, Respondent's counsel acknowledged that the promissory note issue remained unresolved: "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" (Exhibit 7). Counsel attached partial tax documents reflecting only principal payments (Exhibit 8). Movant noted that no interest payments were shown and served renewed discovery seeking complete payment records (Exhibit 9). When those requests were ignored, Movant filed two motions to compel (Exhibits 10 and 11), both of which were returned by Judge Branham with the notation "no pending litigation" (Exhibits 12 and 13).

On September 3, 2021, the probate court nevertheless entered an order adjudicating the note's status, finding and concluding: "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" (Exhibit 14). Movant appealed to the circuit court, alleging due process violations and asserting that the 2016 order was interlocutory because it did not decide all issues, including the note.

At the May 29, 2024 oral argument by video before Judge Coble, Respondent's counsel's presentation was inaudible. Before responding, Movant advised the court that she could not hear what Respondent's counsel, Mr. Burns, was saying, thereby preserving the issue (Exhibit 15). Unknown to Movant, the court designated Respondent's counsel to draft the proposed order

(Exhibit 16). When Movant later received the June 19, 2024 order, she discovered that the finding in the September 3, 2021 probate order had been recast from:

“The promissory note of Michael Jennings was satisfied before the decedent’s death...”

to:

“Ms. Hennager 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....”

Objections under Rule 46 sent by express mail were not filed, so Movant emailed a copy to the judge’s clerk, who acknowledged receipt (Exhibit 18), but there was no response from the judge. Movant appealed to the Court of Appeals, arguing that the circuit court had effectively affirmed a non-existent factual finding, rendering the judgment void and compounding the due process violations. In the June 19, 2024 order, the probate court’s express finding that “[t]he promissory note of Michael Jennings was satisfied before the decedent’s death” was recast as a suggestion that Movant merely raised “allegations and speculations” about an unpaid note on appeal. No order ever vacated or modified the probate court’s September 3, 2021 ‘satisfied’ finding on the note, further underscoring that the circuit court’s affirmance rests on a materially altered and unsupported characterization of the record.

On June 11, 2025, the Court of Appeals held that Movant’s claims were not preserved because they had not been raised in a Rule 60(b)(3)–(4) motions in the probate and circuit courts (Exhibit 17).

Movant sought review in the South Carolina Supreme Court, which dismissed the appeal, leaving Rule 60(b)(4) as the only available vehicle for relief (Exhibit 18) prior to any potential appeal to the United States Supreme Court. This effort occurs during a period when many South Carolina legislators and members of the public are actively seeking judicial oversight and reform, underscoring the importance of careful appellate review in cases involving due process and fundamental rights

I. Fraud on the Court

The probate court's assertion that there was 'no pending litigation' is directly contradicted by Respondent's counsel's own acknowledgment that "[t]he Court decided to consider rescheduling for evidence" on the promissory note, as well as by the court's September 3, 2021 order containing new findings and conclusions on that very issue. Together, these show that the note's payment status remained an active matter before the court notwithstanding the "no pending litigation" notation.

By taking up the new substantive issue of the note's payment status, the court effectively opened the 2016 order to revision and brought into focus evidence of unpaid interest. Realizing this, Burns attempted during the appeal to the Circuit Court to cure his mistake by effectively "taking another bite at the apple"—recasting the procedural history to treat the 2016 order as final, erase the evidence he had submitted that the interest was never paid, and reframe the court's 2016 ruling as an unappealable issue raised for the first time on appeal.

Movant respectfully asserts that the Circuit Court order issued under appeal contains a materially mischaracterized finding of fact. This change materially misrepresents the essential

issue under review—transforming an adjudicated factual finding into an unappealable procedural assertion—and directly prejudices Movant’s rights. As described in the Statement of the Case, the September 3, 2021 “satisfied” finding was later recast on appeal as mere “allegations and speculations” about an unpaid note, without any order vacating the original finding, effectively insulating the probate finding from meaningful review..

The Circuit Court’s June 19, 2024 order effectively affirms a non-existent finding. There is no finding anywhere in the record that Movant failed to seek discovery on the payment status of the promissory note. To the contrary, the record reflects a long-standing pattern of the PR’s noncompliance and Movant’s repeated, unsuccessful discovery requests for payment information on the note from 2012 through 2021, as detailed in the Statement of the Case. The 2013 order’s findings regarding discovery noncompliance and omitted assets were never overturned by the 2016 order or by any subsequent appellate affirmance.

At the conclusion of the hearing, Burns stated that he had made a final distribution to all beneficiaries except Movant, asserting that Movant refused to accept the distribution. In fact, Movant did not refuse any distribution.

Consistent with *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003), opposing counsel’s repeated refusal over many years to provide complete payment and interest records on the note, coupled with seeking a dispositive “satisfied” finding in their absence, is the kind of discovery-related misconduct that undermines the court’s truth-seeking function and qualifies as fraud upon the court. This pattern matches the type of attorney-driven discovery

concealment that the Supreme Court in *Chewing* identified as warranting extraordinary relief because it corrupts the judicial process itself.

II. Due Process Violation During Remote Hearing

Movant further asserts that the process by which this alteration was effected violated her constitutional right to due process. As outlined in the Statement of the Case, during the May 29, 2024 remote (Zoom) hearing Respondent's counsel's argument was inaudible. Movant advised the Court she could not hear (Exhibit 15), after which the Court directed opposing counsel to draft the order, and that order incorporated a material change to the critical finding. As a result, Movant never had a meaningful opportunity to hear and challenge the altered finding, which is the core of Movant's void-judgment claim under Rule 60(b)(4). Movant's objections were never filed or addressed.

LEGAL AUTHORITY

I. Fraud on the Court

1. Findings Must Be Supported by the Record

Golini v. Bolton, 326 S.C. 341, 482 S.E.2d 785 (Ct. App. 1997):

The courts are required to ensure that findings of fact are supported by the record; appellate courts may disturb probate findings if the record reveals no supporting evidence.

Thames (Verdery) v. Daniels, 332 S.C. 639, 506 S.E.2d 110 (Ct. App. 1998):

The probate court's findings are subject to review, and a judgment based on unsupported findings or findings contrary to the undisputed evidence of record is erroneous.

2. Appellate Court Review is Limited to the Record

Doe v. S.B.M., 327 S.C. 352, 488 S.E.2d 878 (Ct. App. 1997). On appeal, the Court of Appeals held that, as a general rule, an issue may not be raised for the first time on appeal and issues not raised in the trial court will not be considered on appeal.

S.C. Code Ann. § 62-3-611:

The findings of fact must be based on evidence adduced at the hearing, and parties must have notice and opportunity to respond. The hearing record is essential for any final order.

3. Findings Cannot Be Changed Outside the Record or Without Notice

Rule 15, SCRCP – Amended Pleadings and Notice:

Amendments to pleadings or findings require notice and opportunity for all parties to address new issues. Courts may not change issues or findings without giving parties due process (notice and a chance to respond).

Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005):

The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Changing findings or presenting new ones without notice is inherently prejudicial.

4. Due Process Requires Reliable Fact-Finding and Accurate Record

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982):

The opportunity to address critical issues and respond to findings is a core element of due process. Judgment entered without affording a party an opportunity to present evidence is void.

5. Fraud Upon the Court and Prejudicial Alterations of Findings

Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003):

Deliberate misrepresentation or concealment of material facts, or alteration of findings in a way that prejudices a party and undermines the integrity of the process, meets the threshold for “fraud on the court.”

II. Due Process Violation During Remote Hearing

1. Fundamental Right to Be Heard

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)

The Supreme Court confirmed that procedural due process requires a meaningful opportunity to be heard, including the chance to present evidence and respond to opposing argument. If technical failures or procedural defects prevent participation, any resulting judgment entered without such opportunity is void and requires reversal.

2. Notice and Opportunity to Object; Judgment Prepared by Opposing Counsel

Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002), explains that “the definition of void under [Rule 60(b)(4)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” Judgments entered without notice or a meaningful opportunity to participate or object are therefore void. Likewise, constitutional commentary on the Fourteenth Amendment’s Due Process Clause confirms that notice of hearing and an opportunity to be heard must be afforded at a meaningful time and in a meaningful manner, and that it violates due process for a state to enforce a judgment against a party who was not given an opportunity to be heard before final judgment.

3. Ethical Duties of Candor and Non-Fraudulent Conduct

Rule 3.3, Rules of Professional Conduct (Candor Toward the Tribunal)

Attorneys may not knowingly make false statements or submit altered findings to the court; they must correct false or misleading statements of material fact or law previously made.

In *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003), the South Carolina Supreme Court held that suborning perjury and intentionally concealing documents during discovery may constitute fraud upon the court. Here, as in *Chewning*, opposing counsel

repeatedly refused to provide the key documents—complete payment records and interest information on the Virginia note—despite years of discovery requests, and then invited the Probate Court to find the note “satisfied” without that evidence ever being produced or tested. This pattern of deliberate discovery noncompliance and concealment of critical financial records falls squarely within the type of litigation misconduct that Chewning recognizes as fraud upon the court and supports relief under Rule 60(b)(4).

CONCLUSION

Due process and South Carolina law require that parties receive notice, a meaningful opportunity to be heard, and a fair opportunity to object to material findings. Any judgment entered without these protections—including one entered after an inaudible hearing or where opposing counsel alters a critical finding of fact without notice—is void under Rule 60(b)(4). When due process is circumvented, as Movant alleges here, the judicial process risks serving private interests rather than the public and its legitimacy is seriously compromised.

AND RELIEF SOUGHT

For the foregoing reasons, Movant respectfully requests that the Circuit Court vacate the June 19, 2024 affirmance and the altered finding of fact in the underlying order, and remand for a new hearing at which Movant is afforded a full opportunity to hear, object, and present evidence regarding the payment status of the promissory note, with all essential documents produced in discovery. In the alternative, Movant respectfully requests that the Court, at a minimum, (a) hold an evidentiary hearing on the due process and fraud-on-the-court issues raised in this motion, and (b) order Respondent to produce complete payment and interest records for the promissory note.

Movant further requests that the Court impose appropriate sanctions against Respondent or counsel for any conduct that has impeded a fair adjudication or obstructed discovery, as the interests of justice require. Finally, Movant requests an immediate final distribution of \$16,734.40.

Respectfully Submitted,

/S/Beverly Hennager date: December 2, 2025
315 Wood Lane
Corvallis, MT 59828
hennagerbev@gmail.com
PRO SE

EXHIBITS

1. June 11, 2025 Court of Appeals Opinion
2. Virginia Promissory Note
3. Louis Jennings Testimony Regarding Failed Discovery
4. 2013 Order Removing PR and Appointing Special Administrator
5. Jan. 2016 Supplementary Discovery Requests
6. PR's 2020 Amended Accounting
7. Burns' April 7, 2021 Post Hearing Memorandum
8. Partial Tax Document Showing Principal Only
9. Movant's Response
10. First Motion to Compel
11. Second Motion to Compel
12. Judge Branham Return of First Motion to Compel
13. Judge Branham Return of Second Motion to Compel
14. September 3, 2021 Order Finding the Note "satisfied"
15. Movant Advises the Court she Could Not Hear
16. June 19, 2024 Order with Altered Finding
17. SC Supreme Court
18. Judges Clerk - Acknowledgement of Objections

AFFIRMATION OF SERVICE

I, Beverly Hennager, do hereby certify that I have served a copy of the foregoing Motion by Rule 60(b)(4) to Vacate Judgment to the following addresses:

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

\$25 Filing Fee in Hard copy

Respectfully Submitted,

/S/Beverly Hennager date: December 2, 2025
315 Wood Lane
Corvallis, MT 59828
hennagerbev@gmail.com
PRO SE

AFFIRMATION OF SERVICE

RECEIVED

DEC 22 2025

SC Court of Appeals

I, Beverly Hennager, do hereby certify that I have served a copy of the foregoing A Amendment to Motion to Expedite Ruling on Petition for Writ of Mandamus to the following addresses:

The fifty dollar filing fee is included in the hard copy.

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

Respectfully Submitted,

 12-15-2025

/S/Beverly Hennager date: December 15 2025
315 Wood Lane
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Pro Se



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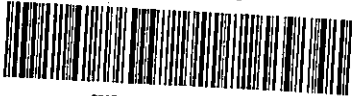
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