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**Jan 13 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
Courtney Clyburn Pope, Circuit Judge

App. Case No. 2025-001812

SP of Augusta, LLC, .....Respondent,

v.

Marilyn Kille, .....Appellant,

AND

Marilyn Kille, .....Appellant,

v.

Bradley Plumbing and Heating, Inc., Duraclean Systems Incorporated or North  
Augusta and John Does 1 Through 10, .....Respondents.

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INITIAL BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ..... 1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW ..... 12

ARGUMENT ..... 13

**I. The circuit court’s handling of the motion to dismiss violated Kille’s right to due process of law, and the order those proceedings produced is void. .... 13**

**II. Because no hearing was ever held on the motion to dismiss, the dismissal order is void and must be either vacated or reversed. .... 17**

CONCLUSION .....17

## TABLE OF AUTHORITIES

### CASES

|  |            |
|--|------------|
| <u>Arredondo v. SNH SE Ashley River Tenant, LLC,</u><br>433 S.C. 69, 856 S.E.2d 550 (2021) .....                             | 15         |
| <u>Ball v. Ball,</u><br>312 S.C. 31, 430 S.E.2d 533 (Ct. App. 1993) .....  | 15         |
| <u>Chew v. Newsom Chevrolet Inc.,</u><br>315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993) .....                                  | 12         |
| <u>Dangerfield v. State,</u><br>376 S.C. 176, 656 S.E.2d 352 (2008) .....  | 13, 16     |
| <u>Dedes v. Strickland,</u><br>307 S.C. 152, 414 S.E.2d 132 (1992) .....   | 15, 16     |
| <u>In re: Care and Treatment of Miller,</u><br>393 S.C. 248, 713 S.E.2d 253 (2011) .....                                     | 12         |
| <u>Jordan v. Hartford Fin. Grp., Inc.,</u><br>435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021) .....                             | 12         |
| <u>Koester v. Citizens Pub. Co.,</u><br>154 S.C. 154, 151 S.E. 452 (1930) .....  | 14, 16     |
| <u>LaSalle Bank Nat’l. Ass’n. v. Davidson,</u><br>386 S.C. 276, 688 S.E.2d 121 (2009) .....                                  | 13, 16, 17 |
| <u>Morris v. BB&amp;T Corp.,</u><br>438 S.C. 582, 885 S.E.2d 394 (2023) .....  | 12         |
| <u>S.C. Dep’t of Soc. Servs. v. Beeks,</u><br>325 S.C. 243, 481 S.E.2d 703 (1997) .....                                      | 14         |
| <u>S.C. Dept. of Soc. Servs. v. Meek,</u><br>352 S.C. 523, 575 S.E.2d 846 (Ct. App. 2002) .....                              | 14, 16     |
| <u>State v. Brown,</u><br>178 S.C. 294, 182 S.E. 838 (1935) .....  | 13         |
| <u>Summer Place of Myrtle Beach Homeowner’s Assn., Inc. v. Knight,</u><br>298 S.C. 241, 379 S.E.2d 724 (Ct. App. 1989) ..... | 17         |

|  |    |
|--|----|
| <u>Transportation Ins. Co. v. S.C. Second Injury Fund</u> ,<br>389 S.C. 422, 699 S.E.2d 687 (2010) ..... | 13 |
|--|----|

|   |    |
|---|----|
| <u>Universal Benefits, Inc. v. McKinney</u> ,<br>349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002) ..... | 13 |
|---|----|

|   |    |
|---|----|
| <u>Verenes v. Alvanos</u> ,<br>387 S.C. 11, 690 S.E.2d 771 (2010) ..... | 13 |
|---|----|

CONSTITUTIONAL PROVISIONS

|                              |        |
|------------------------------|--------|
| U.S. Const. amend. XIV ..... | 13, 14 |
|------------------------------|--------|

|                               |    |
|-------------------------------|----|
| S.C. Const. art. I, § 3 ..... | 13 |
|-------------------------------|----|

STATUTES

|                                |   |
|--------------------------------|---|
| S.C. Code Ann. § 22-3-10 ..... | 3 |
|--------------------------------|---|

|                                |   |
|--------------------------------|---|
| S.C. Code Ann. § 22-3-30 ..... | 3 |
|--------------------------------|---|

COURT RULES

|                        |        |
|------------------------|--------|
| Rule 6(d), SCRCP ..... | 15, 16 |
|------------------------|--------|

|                           |    |
|---------------------------|----|
| Rule 7(b)(1), SCRCP ..... | 16 |
|---------------------------|----|

|                         |    |
|-------------------------|----|
| Rule 16(e), SCRCP ..... | 16 |
|-------------------------|----|

|                         |   |
|-------------------------|---|
| Rule 40(j), SCRCP ..... | 5 |
|-------------------------|---|

|                         |        |
|-------------------------|--------|
| Rule 41(b), SCRCP ..... | 11, 12 |
|-------------------------|--------|

|                        |   |
|------------------------|---|
| Rule 9(b), SCRMC ..... | 3 |
|------------------------|---|

**STATEMENT OF ISSUES**

- I. **Did the circuit court err reversibly by issuing an order granting the Respondents' motion to dismiss without holding a hearing on the motion, requiring the order to be reversed or vacated?**

## STATEMENT OF THE CASE

This is an appeal by Marilyn Kille of an order that granted the Respondents' joint motion to dismiss her answer, counterclaims, and third-party complaint. (R. pp. \_\_\_; order granting motion to dismiss.) No hearing was ever held on the motion. (R. pp. \_\_\_; order granting motion to dismiss; public index printout; email from SP of Augusta's counsel confirming no hearing held.) The basis the circuit court gave for the dismissal was Kille's failure to prosecute her case. (R. pp. \_\_\_; order granting motion to dismiss.) There were no instances of the case having been called for trial at which Kille was not present or was present but unready to proceed. (R. pp. \_\_\_; order granting motion to dismiss; public index printout.) There were no instances in which Kille had failed to attend trial roster meetings at which the case was subject to being called for trial. (R. pp. \_\_\_; order granting motion to dismiss; public index printout.)

The case began on June 8, 2022, in magistrate's court, when Respondent SP of Augusta, LLC filed suit against Kille, alleging it had not been fully paid for mold remediation services it had provided to her. (R. pp. \_\_\_; summons and complaint.) Kille answered, counterclaimed, and asserted third-party claims against Respondent Bradley Plumbing and Heating, Inc. and Respondent Duraclean Systems Incorporated of North Augusta. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint.) Kille's pleading alleged Respondent Bradley Plumbing's employees negligently broke the main water line serving Kille's home while there to repair her sink, which caused her house to flood, damaging the building and much of the items inside it. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint pp. 9-10, 13-19.) It alleged that Respondents Duraclean and SP of Augusta were hired to and undertook to make Kille's home safe from mold caused by the flooding but negligently failed

to do so, alleged that they negligently assured Kille the house was safe for her to occupy, and alleged that Respondent SP of Augusta undertook to clean Kille's personal property but returned it without having done so. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint pp. 10-12, 13-19.) Kille alleged that, because of the continued worsening mold conditions in her home, she was forced to move out of it into a motor home. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint p. 11.) Kille alleged that, as a result of the mold exposure caused by the Respondents' negligence, she sustained personal injuries in addition to the damage to her real and personal property. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint p. 13.)

At the same time she filed her pleading, Kille moved for the transfer of the case to the circuit court, with her motion supported by her affidavit setting out essentially same facts as her pleading and stating that her damages exceed \$7,500 in amount. (R. pp. \_\_\_; motion to transfer case; affidavit of Kille.) Since Kille's counterclaim alleged damages in excess of the magistrate's court's \$7,500 jurisdictional limit, S.C. Code Ann. §§ 22-3-10 & -30, the magistrate's court transferred the action to the circuit court, in accordance with Rule 9(b), SCRMC. (R. pp. \_\_\_; motion to transfer case; transfer letter; certificate of transmittal.) Following the transfer, the Respondents pled responsively to Kille's answer, counterclaims, and third-party complaint. (R. pp. \_\_\_; reply to counterclaims; Bradley Plumbing answer; Duraclean answer.)

In the circuit court, a consent scheduling order (marked "proposed consent scheduling order" but electronically signed by the Honorable Courtney Clyburn Pope) was filed on February 28, 2023. (R. pp. \_\_\_; "proposed" consent scheduling order filed Feb. 28, 2023.) The very same document, with no changes, was signed and filed by Judge Pope again on March

2, 2023. (R. pp. \_\_\_; “proposed” consent scheduling order filed March 2, 2023.) That order provided for mediation to be held before December 4, 2023, and that the case was not to appear on a jury trial roster before January 29, 2024. (R. pp. \_\_\_; “proposed” consent scheduling order(s) filed Feb. 28, 2023 & March 2, 2023.) On August 16, 2023, Judge Pope entered an amended consent scheduling order that moved the mediation deadline to February 1, 2024, and directed that the case would not appear on a trial roster before April 15, 2024. (R. pp. \_\_\_; amended consent scheduling order filed Aug. 16, 2023.) On August 24, 2023, the parties made a joint motion for the entry of a consent confidentiality order, and that order was filed the same day. (R. pp. \_\_\_; consent motion for confidentiality order; consent confidentiality order.)

On April 12, 2024, the court entered a second amended consent scheduling order, this one providing for the completion of mediation on or before November 16, 2024, and that the case would not appear on a trial roster before March 16, 2025. (R. pp. \_\_\_; second amended consent scheduling order filed April 12, 2024.)

Seventeen days later, Kille’s counsel filed what was styled as a “Consent Motion to Allow Counsel for Defendant and Third-Part [sic] Plaintiff Kille to Withdraw” as Kille’s attorney in this case. (R. pp. \_\_\_; consent motion to withdraw as counsel.) The motion stated that Respondents’ attorneys consented to the withdrawal and bore their e-signatures. (R. pp. \_\_\_; consent motion to withdraw as counsel.) The motion did not address whether Kille consented to the withdrawal and did not bear her signature. (R. pp. \_\_\_; consent motion to withdraw as counsel.) The day after the motion was filed, without a hearing being held, Judge Pope signed and filed what was styled as a “consent order” granting the motion to withdraw. (R. pp. \_\_\_; “consent order” granting motion to withdraw as counsel.) Though Kille’s pleading on file had noted that she had moved out of her house due to the condition of it, both her

attorney's motion and the "consent order" allowing his withdrawal stated that Kille's mailing address for sending notices was the house she no longer lived in. (R. pp. \_\_\_; "consent order" granting motion to withdraw as counsel p. 2; consent motion to withdraw as counsel p. 2.)

On June 5, 2024, Kille, now *pro se*, wrote to the clerk of court asking that the court "consider that I am extremely ill, 77 yo [sic: years old], and without a lawyer as this matter proceeds." (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) The letter was critical of her former counsel. (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) Kille stated in the letter that, after the entry of the order for his withdrawal, her lawyer secured the Respondents' consent to the case being stricken from the active docket under Rule 40(j), SCRCPC, and mentioned that one of Respondents' counsel acknowledged the same in an email but then followed it with an email stating that Respondent SP of Augusta's counsel did not consent to a Rule 40(j) order. (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) She described the reversal of what she had believed was all counsel's position on striking the case under Rule 40(j) as "[a] huge problem for me." (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) Kille outlined her difficulty in finding replacement counsel. (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) She also noted that "[a]t present I am being treated by multiple critical care experts . . . at George Washington University School of Medicine" in Washington, D.C. (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.) Kille ended her letter by telling the court that, "[n]eedless to say, I'm frightened; remain homeless since 11/01/2021; and would welcome any recommendations that may lead me to qualified legal help." (R. pp. \_\_\_; Kille ltr to clerk filed June 6, 2024.)

Kille again wrote the clerk of court on August 22, 2024. (R. pp. \_\_\_; Kille ltr to clerk filed Aug. 23, 2024.) She advised in that letter that she had communicated with 104 different attorneys or firms since her former counsel withdrew and had sought assistance, to no avail,

from the director of the South Carolina Bar Association. (R. pp. \_\_\_; Kille ltr to clerk filed Aug. 23, 2024.) Ending the brief letter, she noted that her “health continues to fail, the direct consequence of harm caused by the defendants. I’m exhausted, bedridden, and can do no more but chose to alert the Court as to why.” (R. pp. \_\_\_; Kille ltr to clerk filed Aug. 23, 2024.)

In October of 2024, a scheduling assistant for a proposed mediator sent two emails to Kille about scheduling mediation, asking for Kille’s availability. (R. pp. \_\_\_; Emails exh to joint motion to dismiss, etc.) Kille responded, stating “I have no intention of disregarding such or to prolong related legal matters” but also noting that “I have been and remain extremely ill” and “it’s impossible for me to reliably commit to anything in the future other than to my ongoing medical care.” (R. pp. \_\_\_; Emails exh to joint motion to dismiss, etc.)

No motions were filed concerning the unsuccessful attempt at mediation scheduling or about anything else. (R. pp. \_\_\_; public index printout.) Instead, the next thing that the court’s file reflects happened is that, per the second amended consent scheduling order into which Kille’s counsel entered just before his withdrawal, the case was placed on the jury trial roster for the week of April 14, 2025. (R. pp. \_\_\_; emails filed April 4, 2025; public index printout.) On March 14, 2025, one of Respondent SP of Augusta’s attorneys began an email chain, including Kille, with a deputy clerk of court, noting that that “[w]e have requested a status conference from the clerk’s office and the administrative judge to set mediation and enter into a new scheduling order that would reflect this delay in the case [concerning mediation scheduling] but that status conference has yet to be scheduled.” (R. pp. \_\_\_; emails filed April 4, 2025.) He asked that the case be removed from the trial docket until a status conference was held and mediation occurred. (R. pp. \_\_\_; emails filed April 4, 2025.) The deputy clerk replied, copying Kille, and advised Kille and Respondents’ counsel that “Judge Clyburn Pope

will hold a status conference in this case on April 14<sup>th</sup>. I will make a note on the docket that this case shall remain on the roster for status conference purposes only and will not be called for trial during that week.” (R. pp. \_\_\_; emails filed April 4, 2025.)

Kille, copying all counsel, the deputy clerk, and Judge Pope’s law clerk, sent an email in response on March 25, 2025, in which she advised the court of the following:

I wish to notify the Court that (a) I remain without legal representation, though not for want of trying; (b) and *have been near death multiple times and am facing death at this time . . .*

. . .

[That an attorney she had engaged to represent her in this case] failed to acknowledge – after three months – our contractual agreement regarding such.

. . .

. . . per the CDC, I am presently at the 85% Mortality Level.

IN SUMMARY, I cannot physically appear on 14 April 2025 and I remain at a loss to know how to protect my interests. Otherwise, I continue to seek legal representation . . .

Herewith I beseech the Court to postpone the 14 April 2025 status hearing. In turn, I remain committed to securing substitute counsel as soon as possible and to notifying the Court and all parties as soon thereafter as is reasonable.

(R. pp. \_\_\_; emails filed April 4, 2025) (emphasis in original).

The record does not reflect that any action was taken on Kille’s request that the status conference be continued. (R. pp. \_\_\_; public index printout.) On April 14, 2025, Kille did not appear at the status conference, but Respondents’ counsel did. (R. pp. \_\_\_; transcript of April 14 status conference.) Respondent Bradley Plumbing’s counsel told the court that Kille had “told us that she’s not able to participate . . . [s]o we’re just looking for some structure . . . we’re looking for some structure on our side.” (R. pp. \_\_\_; transcript of April 14 status

conference p. 4 ln. 21-22, 24-25, p. 5 ln. 1-2.) He told the court “[w]e’re ready to file a motion to dismiss for failure to prosecute[,]” but again said that “we just want to have some structure so we’re not penalized down the road by her asking for more time or asking for a lawyer when she’s had plenty for both.” (R. pp. \_\_\_; transcript of April 14 status conference p. 5 ln. 7-8, 9-12.) Respondent SP of Augusta’s counsel said “[w]e would ask the Court to strike her answer and enter judgment in favor of Serv Pro on the original matter. If not, Judge, we’d be happy to file a motion if the Court would prefer that, but that’s our stance at this time.” (R. pp. \_\_\_; transcript of April 14 status conference p. 5 ln. 16-20.) Respondent Duraclean’s attorney told Judge Pope that, “[a]s far as the disposition is concerned, I do think it’s a case for summary judgment. . . . Really, the case just needs to be dismissed, whether today on a motion to strike or later on a motion for summary judgment or failure to prosecute.” (R. pp. \_\_\_; transcript of April 14 status conference p. 5 ln. 25, p. 6 ln. 1, 4-6.) Judge Pope responded as follows:

THE COURT: All right. This is what I would like to do. I do want to entertain a brief motion to dismiss. That can be filed and that way it will allow her to -- is it Kille?

MR. DAVIES: I believe it's Kille.

THE COURT: That will give Ms. Kille the opportunity to respond to that. But what I would like to do is have that motion within the next ten days.

MR. DAVIES: We can do that, Your Honor.

THE COURT: The Court will entertain that and will allow her an opportunity to respond to that. Then I will take a judgment based on the motions -- well, I'm going to bring y'all back for a hearing.

MR. DAVIES: Your Honor, would the Court allow us to, also, serve summary motions at the same time so we can have the evidentiary part of that hearing in relevance to the motion to dismiss?

THE COURT: I will.

(R. pp. \_\_\_; transcript of April 14 status conference p. 6 ln. 12-25, p. 7 ln. 1-4.)

The court did not bring anyone back for a hearing. Rather, ten days after the status conference, Respondents filed a “Joint Motion to Dismiss for Lack of Prosecution or, in the Alternative, for Summary Judgment.” (R. pp. \_\_\_; joint motion to dismiss, etc.) Respondent SP of Augusta made attempts to use regular and certified mail to send a copy of the motion to Kille, but those attempts failed. (R. pp. \_\_\_; certificates and affidavits of “service” of motion to dismiss, etc., on Kille.) All attempts at mail service were to the house Kille had advised the court and all parties she was not occupying due to its condition and another address on the same road. (R. pp. \_\_\_; answer, counterclaims, and third-party complaint; certificates and affidavits of “service” of motion to dismiss, etc., on Kille; Kille ltr to clerk filed June 6, 2024.) The record does not indicate why attempts at mailing to the other address on the same road were undertaken. (R. pp. \_\_\_; certificates and affidavits of “service” of motion to dismiss, etc., on Kille.) These documents were returned to their sender by the postal service. (R. pp. \_\_\_; certificates and affidavits of “service” of motion to dismiss, etc., on Kille.) On July 2, 2025, Respondent SP of Augusta filed a document labeled “affidavit of service” that stated that the attempts at service had not been successful and noted that a copy of the motion was emailed that day to Kille. (R. pp. \_\_\_; affidavit of “service” of motion to dismiss, etc., on Kille.)

Nothing in the motion filed by Respondents or otherwise filed with the court indicates that Kille was ever advised that the court intended to rule on the motion without holding a hearing. (R. pp. \_\_\_; joint motion to dismiss, etc; public index printout.)

Now that Kille had received the Respondents' motion, she wrote to the court on July 15, 2025, in response, again stating she had diligently pursued obtaining counsel, without success, and advising, among other things, that "(a) I have been homeless since November 2021; (b) experts representing State and Federal government, universities and private contractors have concluded that (i) my home 'cannot be reliably remediated' and 'should be razed[.]'" (R. pp. \_\_\_; ltr from Kille filed July 16, 2025, p. 1). Kille ended her letter by stating that to dismiss her case "would be an egregious miscarriage of justice" and that "I remain committed to continuing to pursue legal representation and shall apprise the Court routinely of my related efforts." (R. pp. \_\_\_; ltr from Kille filed July 16, 2025, p. 2.)

On July 17, 2025, Respondents filed a joint reply memorandum, stating that, as a *pro se* litigant, Kille is held to the same standard as an attorney. (R. pp. \_\_\_; joint memorandum in reply filed July 17, 2025.)

The next day, July 18, 2025, without a hearing on the Respondents' motion having been held and without the court having ruled that it would consider the motion without a hearing, Judge Pope filed the order that is now on appeal, in which she granted Respondents' motion to dismiss for failure to prosecute and struck Kille's pleading altogether, including her answer to Respondent SP of Augusta's complaint. (R. pp. \_\_\_; order granting motion to dismiss.) The heart of Judge Pope's order reads as follows:

Kille has proceeded *pro se* since April 30, 2024. Kille has repeatedly represented to the Court and to Parties that she cannot find representation but that she cannot participate in or schedule the events needed to prosecute this matter. Kille refused to participate in scheduling mediation. Kille refused to attend the status conference scheduled on April 14, 2025 and ignored the notice she received of the status conference. Based on the foregoing, the Court finds that Kille has failed to carry her burden in prosecuting her claims. The Court finds that, by refusing to mediate or appear in front of this Court, Kille's

conduct constitutes unreasonable neglect and pursuant to Rule 41(b), S.C.R.C.P., requires dismissal of all claims asserted by Kille. The Court further finds that Kille has had multiple opportunities to proceed with this case since it was originally filed in June 2022 but her refusal to do so has prolonged unnecessarily the time, effort, and costs of the defending parties, showing an indifference to the rights of the defending parties. Accordingly, the Court finds that Kille has failed to prosecute her Counterclaim and Third-Party Complaint.

(R. pp. \_\_\_; order granting motion to dismiss pp. 3-4.)

On July 29, 2025, Kille was provided with a copy of the order by email. (R. pp. \_\_\_; certificate of service filed July 29, 2025.)

On August 11, 2025, Respondent SP of Augusta filed a motion for judgment on its complaint, including for attorneys' fees. (R. pp. \_\_\_; motion for judgment and for attorney fees.)

On August 18, 2025, Kille served Respondent's counsel with notice of her appeal of the order. (R. pp. \_\_\_; notice of appeal document filed with Aiken clerk on Aug. 25, 2025.)

The motion for judgment on the complaint and for attorneys' fees was calendared for hearing on September 15, 2025. (R. pp. \_\_\_; public index printout.) That hearing was the first one set or held since the Respondents' joint motion to dismiss was filed. (R. pp. \_\_\_; public index printout.) Not realizing that the hearing was to be conducted via WebEx, Kille came to the courthouse for the hearing, transported by someone giving her wheelchair assistance. (R. pp. \_\_\_; transcript of Sept. 15, 2025, hearing.) The Honorable Walter J. McLeod, IV, conducted the hearing with Respondent SP of Augusta's counsel participating by WebEx and Kille present in the courtroom. (R. pp. \_\_\_; transcript of Sept. 15, 2025, hearing.) Judge McLeod observed that, during the hearing, Kille was breathing heavily and appeared to be experiencing "some sort of medical issue[.]" (R. pp. \_\_\_; transcript of Sept. 15, 2025, hearing,

p. 3 ln. 19-25.) Kille noted the pendency of the appeal and that the circuit court lacked jurisdiction of the matter. (R. pp. \_\_\_\_; transcript of Sept. 15, 2025, hearing, p. 7 ln. 25, p. 8 ln. 1-2.) As the hearing was ending, Kille advised the court that she needed immediate medical attention, a sheriff's deputy called an ambulance, and Kille left in one. (R. pp. \_\_\_\_; transcript of Sept. 15, 2025, hearing, p. 19 ln. 9-25, p. 20 ln. 1.) Judge McLeod issued an order ruling that it is inappropriate to hear Respondent SP of Augusta's motion while this appeal is pending. (R. pp. \_\_\_\_; order filed Oct. 10, 2025.)

### **STANDARD OF REVIEW**

“When reviewing a motion to dismiss for failure to prosecute pursuant to Rule 41(b), SCRPC, an appellate court may reverse the trial court's decision upon an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011). Our Supreme Court has observed that “no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law.” Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394 (2023). “The American tradition of rule of law has recognized from its earliest days that a motion to a court's discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.” Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021).

Whether an order is void is a question of law. See Chew v. Newsom Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631 (Ct. App. 1993) (“question of subject matter jurisdiction is a question of law for the court”). An appellate court reviews all questions of law *de novo*.

Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

## **ARGUMENT**

### **I. The circuit court's handling of the motion to dismiss violated Kille's right to due process of law, and the order those proceedings produced is void.**

Judgments rendered without due process are void. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002). "Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." Id.

"[D]ue process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property." LaSalle Bank Nat'l. Ass'n. v. Davidson, 386 S.C. 276, 279, 688 S.E.2d 121, 122-23 (2009) (quoting State v. Brown, 178 S.C. 294, 300, 182 S.E. 838, 841 (1935)).

Due process considerations apply in contested cases or hearings which affect an individual's property or liberty interests as contemplated by the federal and state constitutions. See U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.

Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 353-54 (2008).

The Fourteenth Amendment to the Constitution of the United States provides that no person shall be deprived of his liberty or property without due process of law, and a like provision is contained in the Constitution of South Carolina. This provision as to due process has been uniformly construed by the courts to require that, before any action can be taken by any court

injuriously affecting the property rights of a person, such person must, in advance of the adjudication, have due notice of such proposed action and a reasonable opportunity to appear and defend against it, if he be so inclined.

...

That to condemn without a hearing is repugnant to the due process clause of the Fourteenth Amendment needs nothing but statement. Every man is entitled to his day in court before his rights can be finally disposed of, and he cannot be divested of this right by any act of the Legislature. Due process of law requires an orderly proceeding adapted to the nature of the case, in which proceeding the citizen has a right and an opportunity to be heard, and to defend, protect, and enforce his rights, by establishing any fact which, under the law, would be a protection to him or to his property. The object of notice, which is an essential element of due process, is to afford an opportunity to appear and be heard, and if a hearing is denied the notice is ineffectual for any purpose.

...

The opportunity to be heard is an essential requisite of due process of law in judicial proceedings[.]

...

A hearing or an opportunity to be heard, prior to judgment, is absolutely essential. One of the essential elements of due process of law is the opportunity to be heard.

Koester v. Citizens Pub. Co., 154 S.C. 154, 151 S.E. 452 (1930) (internal quotation marks omitted).

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” S.C. Dept. of Soc. Servs. v. Meek, 352 S.C. 523, 533, 575 S.E.2d 846, 851 (Ct. App. 2002) (quoting South Carolina Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997)).

Judge Pope deprived Kille of due process of law in the proceedings that produced the appealed order. No hearing on Respondent’s motion to dismiss Kille’s complaint was ever held. (R. pp. \_\_\_; public index printout.) Judge Pope’s order deprived Kille of property, since it dismissed her causes of action, her claims. (R. pp. \_\_\_; order granting motion to dismiss.) The term “‘chose in action’<sup>[1]</sup> generally means ‘cause of action.’” Arredondo v. SNH SE Ashley River Tenant, LLC, 433 S.C. 69, 77, 856 S.E.2d 550, 555 (2021). “A ‘chose in action’ is a type of property interest or a proprietary right to a claim or debt.” Id.

South Carolina courts construe the term “property” very broadly. The term “property” is a general term that is used to designate a right of ownership and it includes every subject of whatever nature upon which the right of ownership can legally attach, including choses in action. The term is employed to signify any valuable right or interest that the law protects and the subject matter or things in which rights or interests exist.

...

This right of action is a chose in action, an interest which, as we noted, South Carolina courts include in the definition of the term “property.”

Ball v. Ball, 312 S.C. 31, 33, 34, 430 S.E.2d 533, 534-35 (Ct. App. 1993).

Rule 6(d), SCRCF, provides that “[a] written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court.” South Carolina’s Supreme Court has held that “we construe the rule to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing unless the exceptions stated in Rule 6(d), SCRCF, apply.” Dedes v.

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<sup>1</sup> The term “chose in action” has been criticized for its antiquity and shifting, imprecise meaning over the years. Arredondo, 433 S.C. 86-89 (Few, J., concurring). The author of this brief tends to agree with that criticism, but “chose in action” is the term our precedent uses.

Strickland, 307 S.C. 152, 154, 414 S.E.2d 132, 134 (1992). When the notice requirements of Rule 6(d) are not met, that ordinarily deprives the non-moving party of the opportunity to meaningfully oppose the motion, *even when the motion is heard*, and it prejudices the non-moving party, requiring reversal. See id. at 155. The prejudice is even greater, of course, when there is no hearing held at all. Cf. id.

The circuit court granted a motion that was made in writing, not in open court. Rule 7(b)(1), SCRCRP. None of the exceptions to the notice requirements of Rule 6(d), SCRCRP, were present; thus, Kille was entitled to notice of when Respondent’s motion would be heard, and, naturally, to a hearing on the motion. Dedes, 307 S.C. at 154. That is what due process of law required, in any event, as noted in the authorities cited above. LaSalle Bank, 386 S.C. at 279; Dangerfield, 376 S.C. at 179; Koester, 154 S.C. 154; Meek, 352 S.C. at 533.

Nor does the fact that the status conference was held breathe the life of constitutionality into Judge Pope’s order. Kille was anything but on notice that the court would hear argument at the status conference about whether her claims would be dismissed or her answer stricken. She was told that the purpose of the status conference was “to set mediation and enter into a new scheduling order[.]” (R. pp. \_\_\_; emails filed April 4, 2025.) She was certainly not on notice that the court would hear argument on a motion that had yet to be made. (R. pp. \_\_\_; joint motion to dismiss, etc.) Rule 16(e), SCRCRP, permits the court to dispose of “any *pending* motions” at a status conference, not motions that had never been made when the conference was held. Id. (emphasis added).

Indeed, this court has heard and rejected the argument that the more formal pre-trial conference is an appropriate time to hear dispositive motions that have not been previously

made. Summer Place of Myrtle Beach Homeowner’s Assn., Inc. v. Knight, 298 S.C. 241, 243-44, 379 S.E.2d 724, 725-26 (Ct. App. 1989).

Simply put, there was no hearing held on Respondents’ motion to dismiss, and Kille was not afforded an opportunity for one. (R. pp. \_\_\_\_; order granting motion to dismiss, etc.; public index printout.)

The circuit court erred reversibly in ruling on the motion without a hearing, which deprived Kille of due process of law.

**II. Because no hearing was ever held on the motion to dismiss, the dismissal order is void and must be either vacated or reversed.**

When there are proceedings that do not provide due process of law, “the resulting order must be vacated.” LaSalle Bank, 386 S.C. at 281. As discussed above, there is no question: Judge Pope’s dismissal order is infected with the absence of due process. See, e.g., id. Under state Supreme Court precedent in LaSalle Bank, the order must be vacated. Id. Under this court’s precedent in Summer Place, 298 S.C. at 244, the order must be reversed.

The absence of due process in the lower court’s proceedings that led to the appealed order mean that it must be reversed, vacated, or both. LaSalle Bank, 386 S.C. at 281; Summer Place, 298 S.C. at 244.

**CONCLUSION**

Precedent provides that the appealed order should be reversed or vacated. It was rendered in disregard of Kille’s due process rights under the federal and state constitutions.

Respectfully submitted,

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