THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Common Pleas Case No. 2022-CP-23-01064

Appellate Case No. 2026-000267

John R. Mensch and Shauna M. Waddell
Individually and as Personal Representative
Of the Estate of Florence Petrak Mensch and
John R. Mensch *Respondents,*

v.

Sterling Raymond Mensch, III, Individually
As Personal Representative of the Estate
of Florence Petrak Mensch and in the
former Capacity as Agent under a Power
of Attorney for Florence Petrak Mensch *Appellant.*

RETURN TO RESPONDENTS' MOTION TO DISMISS APPEAL

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s/ Luke P. Smith
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Attorneys for Appellant

I. Appellant's Appeal Is Neither Frivolous nor Taken for the Purpose to Delay, and Therefore is Not Subject to Dismissal.

A. The Court of Appeals' previous ruling on the remaining issues from the previous appeal does not carry precedential weight sufficient to estop Appellant.

When this Court heard Appellant's first appeal in this matter, it affirmed the Circuit Court's ruling as to all three of Appellant's issues on appeal. *Mensch v. Waddell,* Op. No. 2024-UP-384 (S.C. Ct. App. Filed Nov 13. 2024). Thereafter, our Supreme Court granted Appellant's writ of certiorari but expressly limited the scope of its review to the issue of whether Appellant's appeal from the Probate Court was timely. *Mensch v. Waddell,* Op. No. 2025-MO-037 (S.C. Sup. Ct. Order filed July 2, 2025). The Supreme Court ultimately found that the appeal from the Probate Court was timely, thus reversing the Court of Appeals as to that issue, and remanded the case to the circuit court for further consideration of the merits. *Id*. In taking such action, our Supreme Court neither affirmed nor reversed the Court of Appeals' ruling as to whether the Probate Court had subject-matter jurisdiction to award damages for alleged pre-death misconduct, and as to whether the Probate Courts's Order was final and appealable — instead determining that further consideration of the remaining issues by the court below was necessary before the it would, if necessary, consider said merits and reach a final determination. *Id.* What remains from Appellant's original appeal for final determination is the issue of whether the Probate Court had subject-matter jurisdiction to award damages for the alleged pre-death misconduct and whether the underlying order was in fact final.

Respondents now errantly operate under the misunderstanding that because the Supreme Court did not address the two remaining issues on appeal, the Court of Appeals' previous ruling carries precedential weight sufficient to estop Appellant from raising the remaining issues on

appeal again. This is not the case. While the "law of the case" doctrine generally requires that issues that "have been decided in a prior appeal" not be "relitigated in the trial court in the same case," the doctrine only applies to issues either explicitly or necessarily decided in the prior appeal. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 572, 776 S.E.2d 397, 403 (Ct. App. 2015). Here, our Supreme Court, in granting certiorari, made it clear that it was not addressing the remaining substantive issues on appeal. Moreover, the Supreme Court did not necessarily address or decide the remaining substantive issues on appeal, as its ruling as to the timeliness of Appellant's appeal was purely procedural and did not implicate the substantive aspects of Appellant's appeal at all. Indeed, it would make little sense for our Supreme Court to impliedly adjudicate the substantive issues of Appellant's appeal, only to remand the appeal for further consideration of those very issues. As this Court acknowledged in *Flexon*, "prior adjudication does not preclude consideration on a subsequent appeal of questions expressly left open or reserved by the court." *Id.* quoting 5 C.J.S. Appeal and Error § 994 (2007). In cases, such as this one, an appellate court may "dispose[s] of only a part of the case at one term, and reserve[s] it for further and final action at another." *Id.* quoting *Searles' Adm'r v. Gordon's Adm'r*, 156 Va. 289, 157 S.E. 759, 761 (Va. 1931). This is precisely the action taken here by our Supreme Court in addressing only the procedural matter of the appeal's timeliness and remanding the remaining substantive issues for further litigation.

To give the Court of Appeals' prior ruling as to the remaining issues on appeal authority sufficient to estop Appellant, after the Supreme Court expressly reversed and remanded the appeal for further consideration of the merits, would be to nullify the operation of remand as a procedural tool, and would undermine the authority of our Supreme Court. There would be no use in our Supreme Court remanding a case only for it to fail on arrival due to the Court of Appeals' prior, unaffirmed opinion. The honorable Judge Gravely, presiding over the reversed and remanded

appeal, acknowledged this, as he took great care in reaching his final Order affirming the Probate Court that Appellants now appeal from. As he noted in his Order, the appeal has been reversed and remanded "for consideration of the merits of the appeal" and he reached his ruling only "[a]fter hearing arguments from Counsel for both parties and a complete review of the file . . . ." *Mensch v. Waddell*, 2022-CP-23- 01064, Order Affirming the Probate Court, S.C. Cir. Ct. January 5, 2026, p. 2.

Because the Supreme Court explicitly did not address the issues of the scope of the Probate Court's authority nor the finality of the underlying order, and reversed and remanded the appeal for further consideration of the merits, the issues remain undecided, and the Court of Appeals' prior ruling does not carry precedential weight sufficient to estop Appellant from raising the issues again on appeal. As such, Appellant's appeal is neither frivolous nor taken for the purpose of delay, and consequently is not subject to dismissal.

B: Appellant has new, additional issues on Appeal arising from the Circuit Court's final Order, affirming the Probate Court.

Appellant's appeal is also not frivolous or taken for the purpose of delay because Appellant has new, additional issues on appeal that have not yet been addressed by the Court of Appeals. By way of example and not limitation, Appellant intends to argue that the lower court erred in allowing Respondents to submit an untimely final brief, containing citations to matters beyond the record, as Respondents failed to submit their Designation of Matter of Appeal without having sought leave to do so, as noted in the order from which this appeal stems. As such, Respondents' assertion that, despite the Supreme Court's remand of this appeal for further consideration of the merits, and the newly arisen issues on appeal, Appellant is now somehow estopped from seeking appellate relief from this Court or the South Carolina Supreme Court, is mistaken. Dismissing Appellant's

appeal on such a basis would deprive Appellant of his opportunity to be heard on his issues on appeal. Therefore, Appellant's appeal is not subject to dismissal.

II. Appellant Complied with Rule 207.

Rule 207 of the South Carolina Appellate Court Rules (SCACR) dictates that, "[a]ppellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter." Rule 207(a)(1), SCACR. Respondents' assertion that Appellant did not supply Respondents' counsel with a copy of all correspondence between Appellant and the court reporter is confounding. Respondent' concede that Appellant delivered to Respondents' counsel the email from the court reporter, responding to Appellant's form submission requesting a copy of the circuit court transcript. Resp. Mot., p. 4. In the email, the court reporter confirms receipt of Appellant's transcript request via the digital form submission.

It is particularly confusing that Respondents contend that, despite this, Appellant did not furnish Respondents' counsel with a copy of all the correspondence between Appellant and the court reporter, because the confirmation of receipt email was the only correspondence between Appellant and the Court Reporter. There was no additional correspondence for opposing counsel to be furnished with. Perhaps Respondents' counsel is not aware that the Court of Common Pleas now accepts transcript requests via digital form submission. To the extent of Appellant's counsel's knowledge, this is the primary way, if not the exclusive way, in which transcripts are to be requested from the Court of Common Please. Because of this fact, Appellant's counsel did not email the court reporter to request a copy of the transcript. Once a party submits a request for a transcript copy via the digital form submission, such as Appellant did here, the only correspondence that takes place is an email from the court reporter confirming receipt of the form

submission. That is the only correspondence that occurred here, and per Respondents' concession, it was furnished to Respondents' counsel. Therefore, Appellant fully complied with the requirements of Rule 207, SCACR. Consequently, Appellant's appeal is not subject to dismissal.

Respectfully Submitted,

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PROOF OF SERVICE

I, the undersigned, served a copy of Appellant's Return to Respondents' Motion to Dismiss on Tyler McLeod and Jenna Hendricks McLeod by email and depositing a copy of the same in the United States Mail, postage paid, on March 9, 2026, addressed as follows:

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