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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

S. Ct. Appellate Case No. _____ (not yet assigned)
(Ct. App. Case No. 2022-001602)

Rene S. wells and Wilson Shealy, Jr., as Co-Personal Representatives of Wilson Shealy, Sr., and
Renee Shealy Wells, Wilson Shealy, Jr., and Mimi
Shealy.....Respondents,

v.

David Shealy,Petitioner,

AND

David Shealy,Petitioner,

v.

Rene S. wells and Wilson Shealy, Jr., as Co-Personal Representatives of Wilson Shealy, Sr., and
Renee Shealy Wells, Wilson Shealy, Jr., and Mimi
Shealy.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This petition arises from Unpublished Opinion No. 2026-UP-008 of the South Carolina Court of Appeals, filed January 14, 2026, in which the court affirmed in part, reversed in part, and remanded the decision of the Honorable Walton J. McLeod, IV, Circuit Court Judge for Lexington County. This Court’s review is sought pursuant to Rule 242, SCACR, on the portion of the Court of Appeals’ decision that affirmed the grant of summary judgment against Petitioner David Shealy on his claims against the Estate of Wilson Shealy, Sr., under the Probate Code nonclaim statute.

This case involves an intrafamily dispute over personal property. Wilson Shealy, Sr. (“Father”) initiated suit against his son David Shealy on March 13, 2018, alleging, among other things, breach of fiduciary duty and conversion of Father’s funds. (R. 398-407). Father also sought a determination of David’s interest in personal property stored on real property (the “Real Property”) that Father leased from Dominion Energy (formerly SCE&G). (R. 407).

On October 2, 2018, David Shealy filed an Answer, Counterclaim, and Third Party Complaint against Father and his siblings—Rene Shealy Wells, Wilson Shealy, Jr., and Mimi Shealy (collectively “Siblings”)—alleging that David’s extensive personal property stored on the Real Property had been converted. (R. 358-360). On February 19, 2020, David filed an Amended Answer, Counterclaims, and Third Party Complaint, asserting claims for conversion, civil conspiracy, breach of fiduciary duty, and negligence. (R. 325-330). At all relevant times, Father was alive and the named plaintiff when David’s claims were asserted.

On February 28, 2020, the parties agreed to strike the case from the docket pursuant to Rule 40(j), SCRCPC, through a Consent Order that expressly provided the striking was “without prejudice to the restoring of the case to the active roster.” (R. 26). Father passed away on December 30, 2020. His probate estate (the “Estate”) was opened on January 15, 2021. The case was restored

to the active docket on February 25, 2021, within the one-year claims period, and assigned a new civil action number. (R. 23).

Rene Shealy Wells and Wilson Shealy, Jr., as co-personal representatives of the Estate, were substituted as plaintiff. (R. 17). The Estate filed a Motion for Summary Judgment on March 21, 2022, arguing that David's claims against the Estate were barred by S.C. Code Ann. § 62-3-803(a)(1), the Probate Code nonclaim statute, because David had not filed a claim with the Estate within one year of Father's death.(R. 269-275).

The circuit court granted summary judgment in the Estate's favor. (R. 4). On appeal, the Court of Appeals affirmed, holding: (1) David's claims were not "pending" at the time of Father's death because they had been struck under Rule 40(j), which the court treated as the functional equivalent of a dismissal, relying on *Goodwin v. Landquest Development, LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015); and (2) David's claims were not "title disputes" exempt from the nonclaim statute under S.C. Code Ann. § 62-1-201(4), because his pleadings sought money damages rather than a declaration of title. *See Wells v. Shealy*, Unpublished Opinion No. 2026-UP-008. The Court of Appeals, however, reversed the grant of summary judgment on David's conversion and civil conspiracy claims against Siblings, finding genuine issues of material fact. *See id.*

Petitioner timely filed a Petition for Rehearing, which was denied. This petition follows.

CERTIFICATE OF COUNSEL

The Court of Appeals issued its opinion in this case on January 14, 2026. Counsel for the Petitioners certify that the petition for rehearing was served and filed on January 29, 2026. The petition for rehearing was finally ruled on by the Court of Appeals by an order filed on February 24, 2026.

This petition for a writ of certiorari is timely served and filed on March 26, 2026.

QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in holding that claims struck from the docket by consent under Rule 40(j), SCRCP without final adjudication and expressly without prejudice were not “pending” proceedings for purposes of the exception to the Probate Code nonclaim statute set forth in S.C. Code Ann. § 62-3-804(4), where the court relied on dicta in *Goodwin v. Landquest Development, LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015), and failed to give effect to the legislative intent of the pending-proceeding exception?

- II. Whether the Court of Appeals erred in holding that Petitioner’s conversion claims which, at their core, assert disputed ownership of specific items of personal property constitute “claims” subject to the nonclaim statute under S.C. Code Ann. § 62-3-803(a)(1), rather than “disputes regarding title of a decedent . . . to specific assets alleged to be included in the estate,” which are expressly excluded from the definition of “claims” under S.C. Code Ann. § 62-1-201(4), notwithstanding this Court’s holding in *In re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993)?

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS ERRED IN HOLDING THAT CLAIMS STRUCK FROM THE DOCKET UNDER RULE 40(j), SCRPC WERE NOT “PENDING” FOR PURPOSES OF THE PROBATE CODE NONCLAIM STATUTE

The Court of Appeals held that David Shealy’s claims were not “pending” at the time of Father’s death because the case had been struck from the docket by consent under Rule 40(j), SCRPC. The court stated that it could not “see how a case could be simultaneously ‘dismissed’ and ‘pending,’” relying on *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015), for the proposition that striking a case under Rule 40(j) is the functional equivalent of a dismissal. *Wells v. Shealy*, Unpublished Opinion No. 2026-UP-008 at 3. This holding is erroneous for multiple reasons and raises a significant, unresolved question of South Carolina law that warrants this Court’s review.

A. The Court of Appeals Improperly Elevated Dicta to Controlling Precedent.

The Court of Appeals’ reliance on *Goodwin* is misplaced. In *Goodwin*, the Court of Appeals reviewed a circuit court’s denial of a motion to restore a case that had been struck from the docket. The central issue was whether a federal bankruptcy tolling statute governed the time to restore the case. *See Goodwin v. Landquest Dev., LLC*, 414 S.C. 623 at 625–26, 779 S.E.2d at 828. The court’s discussion of Rule 40(j)’s effect as the “functional equivalent of a dismissal” was not necessary to the holding and was acknowledged as such. The *Goodwin* court itself conceded that “our rules do not clearly provide that striking a case pursuant to Rule 40(j) is a dismissal.” *Id.* at 630, 779 S.E.2d at 830. A novel question of statutory interpretation should not be resolved by reliance on dicta from a Court of Appeals opinion that acknowledged the ambiguity of the very rule it was interpreting.

B. The Court of Appeals Failed to Interpret the Word “Pending” as Used in the Statute.

The Court of Appeals focused exclusively on whether a stricken case has been “dismissed,” without independently analyzing the meaning of “pending” as that word is used in S.C. Code Ann. § 62-3-804(4). The statute provides:

Notwithstanding any other provision of this section, no presentation of a claim is required in regard to matters claimed in proceedings against the decedent which were *pending* at the time of the decedent’s death.

S.C. Code Ann. § 62-3-804(4) (2022) (emphasis added). The primary rule of statutory construction is to ascertain the intent of the Legislature. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The word “pending” has a well-established legal meaning. Other jurisdictions have defined it as “the state of an undetermined proceeding,” *School Dist. of Robinson Twp. v. Houghton*, 387 Pa. 236, 241, 128 A.2d 58, 60 (Pa. 1956), and as an action that has “begun, but not yet completed . . . unsettled; undetermined . . . ‘pending’ from its inception until the rendition of final judgment.” *Grievance Adm’r v. Fieger*, 476 Mich. 231, 249, 719 N.W.2d 123, 136 (Mich. 2006) (quoting Black’s Law Dictionary (6th ed.)).

Under these widely accepted definitions, David Shealy’s claims were “pending” at the time of Father’s death. The claims had been asserted against a living plaintiff. No final judgment had been rendered. The Consent Order expressly preserved the right to restore the case. The mere striking of the case from the active docket did not resolve the underlying dispute on the merits. A case that remains subject to restoration on any party’s motion is, by definition, “unsettled” and “undetermined,” that is, pending.

C. The Court of Appeals’ Holding Defeats the Legislative Intent of § 62-3-804(4).

The Legislature enacted § 62-3-804(4) to create a carve-out from the claims-presentation requirement when a claimant had already asserted a claim against the decedent during the

decedent's lifetime that remained unresolved. The purpose of the nonclaim statute is to ensure the personal representative is aware of all potential claims so that the estate can be settled efficiently. *See Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194 at 212, 754 S.E.2d 875 at 884. (2014). Here, the personal representatives, David's own siblings, were not only aware of David's claims but were themselves parties to the very lawsuit. Indeed, the Estate itself restored the case to the active docket on February 25, 2021, well within the one-year claims period. There is no risk of a "stale" or unknown claim in this case.

The Court of Appeals' holding produces an absurd result: a claimant who filed suit against a decedent during the decedent's lifetime, whose case was struck only by mutual agreement and without prejudice, and whose case was restored by the estate itself within the claims period, is nonetheless barred because the mechanical operation of Rule 40(j) is treated as a "dismissal." This Court has held that it will reject the plain meaning of statutory words if they would lead to an absurd result and will "construe the statute so as to escape the absurdity and carry the intention into effect." *Ray Bell Constr. Co. v. Sch. Dist. of Greenville County*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998). The statute must be read as a whole, and "sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

D. Federal Precedent Supports the View That a Stricken Case Remains "Pending."

The *Goodwin* court itself acknowledged adverse authority: *Robinson v. J.F. Cleckley & Co.*, 751 F. Supp. 100, 105 (D.S.C. 1990), which held that for purposes of federal removal jurisdiction, "an action which has been removed from the docket pursuant to [Rule] 40(c)(3) is pending while it is off of the docket" and is not "commenced when it is restored to the calendar."

This federal authority directly supports the interpretation that a case stricken from the docket under the predecessor to Rule 40(j) retains its “pending” status.

E. This Is a Novel and Significant Question Warranting This Court’s Review.

Whether a case struck by consent under Rule 40(j) constitutes a “pending” proceeding for purposes of the Probate Code’s nonclaim statute is a question of first impression in South Carolina. The Court of Appeals resolved this novel question by relying on dicta and without engaging in meaningful statutory construction. Given the frequency with which cases are struck by consent under Rule 40(j) and the significance of the nonclaim statute in probate administration, this question will recur and affect numerous litigants. This Court should grant certiorari to provide authoritative guidance on the interplay between Rule 40(j) and S.C. Code Ann. § 62-3-804(4).

II. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER’S CLAIMS SEEKING RETURN OF OR DAMAGES FOR PERSONAL PROPERTY ARE “CLAIMS” SUBJECT TO THE NONCLAIM STATUTE RATHER THAN TITLE DISPUTES EXEMPT UNDER § 62-1-201(4)

The Court of Appeals also erred in holding that David Shealy’s conversion claims constitute “claims” subject to the nonclaim statute. In doing so, the court adopted an unduly narrow reading of the title-dispute exception in S.C. Code Ann. § 62-1-201(4) that conflicts with this Court’s precedent in *In re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993), and effectively renders the statutory exception a nullity for conversion plaintiffs.

A. The Statutory Text Excludes Title Disputes from the Definition of “Claims.”

The Probate Code defines “claims” as including “liabilities of the decedent . . . whether arising in contract, in tort, or otherwise.” S.C. Code Ann. § 62-1-201(4) (2025). However, the statute expressly provides that “[t]he term does not include . . . demands or disputes regarding title

of a decedent or protected person to specific assets alleged to be included in the estate.” *Id.* This exclusion reflects the Legislature’s recognition that disputes over who owns specific property are fundamentally different from debts or liabilities that must be paid from the general funds of the estate. The nonclaim statute is designed to bar the latter, not the former.

B. The Court of Appeals’ Holding Conflicts with This Court’s Decision in In re Howard.

In *In re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993), this Court held that a dispute over the ownership of a gun was not subject to the nonclaim statute. The Court wrote that “[t]he definition of ‘claims’ in the Probate Code expressly excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate.” *Id.* at 356 n.8, 434 S.E.2d at 259 n.8 (citing S.C. Code Ann. § 62-1-201(4)). The Court further held that even if the estate had asserted an interest in the gun, “the result would be the same” because such a dispute would still fall outside the definition of “claims” under the Probate Code. *Id.*

The Court of Appeals’ decision in this case cannot be reconciled with *In re Howard*. David Shealy’s claims are fundamentally ownership disputes. He asserts that specific, identifiable items of personal property, including vehicles for which he holds titles, firearms described by model, caliber, and serial number, aircraft, tools, and equipment, belong to him and were wrongfully taken or sold by the Estate and Siblings. The Court of Appeals itself acknowledged that the record reflected genuine disputes about who owned the disputed items, as Father’s original complaint affirmatively stated that David owned some of the items stored on the Real Property.

C. The Court of Appeals Erroneously Elevated Form Over Substance.

The Court of Appeals distinguished David’s claims from title disputes by observing that his “original and amended pleadings did not seek a declaration of title” and that he “consistently sought money damages against the estate.” This distinction elevates the form of the pleading over

its substance. The *In re Howard* exception does not turn on whether the plaintiff styled his claim as a “declaration of title” or sought money damages. Rather, it turns on whether the substance of the claim involves disputed ownership of specific assets, which David’s claims undeniably do.

A conversion claim, by its nature, is a claim asserting ownership of specific personal property and alleging that another has wrongfully exercised dominion over it. The very first element a conversion plaintiff must establish is that the property belongs to him. The fact that the plaintiff seeks damages rather than, or in addition to, return of the property does not transform an ownership dispute into a generic monetary “claim” against the estate. Indeed, where property has already been sold at auction (as much of David’s property was), money damages are the *only* available remedy. It would be an absurd result to hold that the title-dispute exception applies only so long as the disputed property has not been disposed of and ceases to apply the moment a wrongful sale makes return impossible.

D. The Court of Appeals’ Holding Is Inconsistent with In re Estate of Tims.

In *In re Estate of Tims*, No. 2021-UP-281, 2021 WL 3076685 (S.C. Ct. App. July 21, 2021), the Court of Appeals itself reaffirmed that “actions for specific assets are not barred because they are not actions or liabilities against Decedent’s estate, but disputes over ownership of specific assets in the hands of the personal representative(s).” *Id.* at 8. David Shealy’s claims fall squarely within this principle: he asserts ownership of specific, identifiable items of personal property that were in the possession of the personal representatives and Siblings and were sold without his consent.

E. The Court of Appeals’ Ruling Denies Petitioner Any Forum for His Ownership Claims.

The practical effect of the Court of Appeals’ ruling is to deny David any forum for his ownership claims. He cannot seek return of property that Siblings have already sold at auction,

and he cannot seek damages from the Estate because the nonclaim statute has now been held to bar those claims. The title-dispute exception of § 62-1-201(4) was plainly intended to prevent exactly this inequitable outcome: stripping a non-estate claimant of all recourse simply because a decedent had possession of the claimant's property at the time of death.

This Court should grant certiorari to clarify the scope of the title-dispute exception in § 62-1-201(4) and correct the Court of Appeals' unduly narrow reading that effectively renders the exception a nullity for conversion plaintiffs.

CONCLUSION

The Court of Appeals' decision raises two significant and unresolved questions of South Carolina probate and civil procedure law: (1) whether a case stricken by consent under Rule 40(j), SCRCPP, without final adjudication, constitutes a "pending" proceeding for purposes of the Probate Code's pending-proceeding exception, and (2) whether a conversion claim asserting ownership of specific personal property is a "dispute regarding title" exempt from the nonclaim statute under § 62-1-201(4), notwithstanding that the plaintiff seeks money damages. The Court of Appeals' resolution of both questions conflicts with the plain statutory text, this Court's precedent in *In re Howard*, and principles of fairness that the Legislature sought to protect through these statutory exceptions.

Petitioner respectfully submits that the petition for writ of certiorari should be granted, the decision of the Court of Appeals affirming summary judgment in favor of the Estate should be reversed, and the case should be remanded to the circuit court for further proceedings on David Shealy's claims against the Estate.

Respectfully submitted,

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