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SC Court of Appeals

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.

Initial Brief of Appellant Sterling Raymond Mensch, III

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STATEMENT OF ISSUES ON APPEAL

- (1) Did the Probate Court Lack Subject-Matter Jurisdiction to Award Damages for Alleged Misconduct that Occurred Prior to Florence Petrak Mensch's Death?

- (2) Did the Circuit Court err in allowing Respondents to submit a brief that was both untimely and that cited materials outside of the record?

STATEMENT OF THE CASE

I. Proceedings in the Probate Court

Florence Petrak Mensch (herein also the “Decedent”) died on April 26, 2018. [R. 65-104].

¹ On January 23, 2019, Appellant Sterling Raymond Mensch, III, filed an application for admission of the decedent's Will and Codicil to the Probate Court. [R. 1-9].

Subsequently, on May 15, 2019, Shauna M. Waddell and John R. Mensch filed a Petition against Mr. Mensch. [R. 1-9]. After Mr. Mensch had been removed as Personal Representative of the Estate of Florence Petrak Mensch, an amended Petition was filed against Mr. Mensch by Shauna M. Waddell, individually and as Personal Representative of the Estate of Florence Petrak Mensch; and John R. Mensch against Appellant Mensch, alleging improper management of the Decedent's assets both before and after her death. [R. 1-9; R. 65-104]. Mr. Mensch denied the claims. [R. 105-116].

Following a summary judgment hearing held on March 17, 2021, the Probate Court entered partial summary judgment on liability, as to some claims, in favor of Ms. Waddell and John Mensch. [R. 1-9]. Specifically, the Probate Court entered summary judgment as to liability for breach of fiduciary duty, violation of the Uniform Power of Attorney Act, and conversion. [*Id.*]. The Probate Court held a hearing on the remaining claims, which concluded on September 17, 2021. [R. 10-23].

Via an order filed on January 26, 2022, the Probate Court awarded \$984,763.00 in damages to Ms. Waddell as Personal Representative of the Estate of Florence Mensch on the causes of action for breach of fiduciary duty, violation of the Uniform Power of Attorney Act

¹Appellant cites to the record from the previous appeal in this case [*Mensch v. Waddell* Appellate Case No. 2022-000731] in addition to other documents; both of which it intends to include in Appellant’s designation of matters.

conversion. [R. 10-23]. The Probate Court dismissed all other causes of action. [*Id.* at 11]. On February 2, 2022, Appellant made a motion to alter or amend under Rule 59, SCRCPP, which read in pertinent part as follows:

Respondent, 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 (“Respondent”), through his undersigned counsel, move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to alter or amend the Order granting Petitioner damages, [R. 7008-7010].

Without a hearing and without a return to Mr. Mensch's motion, the Probate Court filed an Order on February 17, 2022, stating that Appellant failed to comply with SCRCPP 7(b)(1) and denying the motion to alter or amend “[a]fter careful review of the final Order in its entirety.” [R. 24]. Thereafter, Respondent served a notice of intent to appeal to the Circuit Court on February 23, 2022. [R. 9251].

A. The Probate Court’s Findings

Included among the Probate Court's findings and conclusions are the following, which are also relevant to this appeal:

i. Misappropriation of Funds During the Decedent's Lifetime

In 2010, Decedent named the Appellant Mensch as her agent under her durable power of attorney ("POA"), which continued in effect until her death in 2018. [R. 10-23]. The Probate Court found that Appellant Mensch, during the Decedent's lifetime, had made 239 improper transfers from the Decedent's financial accounts into his own. [R. 10-23]. Those transfers totaled \$820,382.00. [*Id.*].

ii. Other Alleged Misconduct

On April 18, 2007, the Decedent purchased a home located in Greenville, South Carolina. The Decedent never intended to live at the property but intended that Appellant Mensch purchase the home at a later date. [R. 10-23]. Appellant Mensch lived in this home for twelve years and subsequently moved out of the home in September of 2020. [*Id.*]. The Estate paid \$10,000.00 for cleaning and repairs to the property so that it was presentable for potential buyers. [R. 10-23].

iii. Award of Damages

The Probate Court calculate the \$984,763.00 in damages and fees owed to the Estate as follows:

- \$546,921.00 - misappropriated funds (after credit to Appellant Mensch for the 1/3 portion of the \$820,382 that he would have inherited had the funds not been misappropriated).
- \$24,559.00 - failure to itemize Decedent's tax return.
- \$40,314.00 - 2018 taxes penalties and interest.
- \$13,820- other tax penalties and interest.
- \$163,420 - avoidable income tax due by Appellant Mensch taking more than the required minimum distributions from individual retirement accounts.
- \$30,157.00 - pension overpayment.
- \$10,000.00 - cost to estate and clean and repair of Tarleton Way.
- \$28,000.00 - annual exclusion gift to himself in 2015 and 2016.
- \$127,572.00 - attorney's fees and costs.

II. Proceedings in the Circuit Court

On appeal to the Circuit Court, Appellant Mensch sought to raise four issues: (1) that this appeal was premature in that no final order had yet been entered below; (2) that the Probate Court did not have jurisdiction to award pre-death damages; (3) that a constructive trust was improperly imposed; and (4) that the award of attorney's fees was improperly calculated. [R. 9267].

On February 25, 2022, Respondents moved to dismiss the appeal as untimely. [R. 7011-7013]. Following a hearing, the Circuit Court rejected Mr. Mensch's position that the appeal was premature, as no final order had been entered below. It also rejected his position that his motion to alter or amend in the Probate Court tolled the deadline to appeal. [R. 28- 35]. The Circuit Court's formal order of dismissal was electronically filed on May 17, 2022. [*Id.*].

III. Proceedings in the Court of Appeals and the Supreme Court.

On May 27, 2022, Appellant Mensch filed his notice of appeal from the Circuit Court's Ruling with the South Carolina Court of Appeals. (R. 9271). Appellant raised three issues on appeal: (1) whether the Probate Court's order constituted a final, appealable order; (2) if the order was final and appealable, whether the Circuit Court erred in finding that Appellant's appeal was not timely; and (3) whether the Probate Court had subject-matter jurisdiction to award damages for alleged misconduct that occurred prior to Florence Petrak Mensch's death. Thereafter, the Court of Appeals issued its ruling on, ruling against Appellant on all three of the issues that he had raised. *Mensch v. Waddell*, Op. No. 2024-UP-384 (S.C. Ct. App. Filed Nov 13, 2024).

After the Court of Appeals' ruling, Appellant filed a petition for a writ of certiorari with the South Carolina Supreme Court, which the Court, granted on July 2, 2025. *Mensch v. Waddell*,

Op. No. 2025-MO-037 (S.C. Sup. Ct. Order filed July 2, 2025). In granting Appellant's petition, the Supreme Court expressly limited the scope of its review to the issue of whether Appellant's appeal from the Probate Court was timely. *Id.* Our 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.*

IV. Proceedings in the Circuit Court after Reverse and Remand

The honorable Judge Gravely, presided over the reversed and remanded appeal. During oral arguments, Appellant asserted that that the Circuit Court had allowed Respondents to file their initial brief after the 30-day time limit prescribed by SCAR Rule 208. Tr. p.6 ¶5 – p.11 ¶11. Appellant further objected to the fact that the Circuit Court had allowed Respondents to submit an untimely initial brief that cited to matters not included in the record of appeal, when SCAR Rule 210 states that the Court may not consider matters not contained within the record. Tr. P.8 ¶20 – p.10 ¶6. While the Court acknowledged that there had been some time related defects in the filing of Respondent, brief it overruled Appellant's objection to the Court's consideration of the brief.

Following the hearing, considered the additional issues that Appellant raised: (1) Whether the Probate Court's order constituted a final, appealable order; (2) whether the Probate court had subject-matter jurisdiction to award damages for alleged misconduct that occurred prior to Florence Petrak Mensch's death; (3) whether The Probate Court properly imposed a constructive trust; and (4) whether the Probate Court's award of attorneys' fees was proper. *Mensch v. Waddell*, 2022-CP-23- 01064, Order Affirming the Probate Court, S.C. Cir. Ct. January 5, 2026. In its final order, the Court ruled against Appellant on all four issues. *Id.* At 2. Thereafter, Appellant appealed the Circuit Court's final order to this Honorable court.

ARGUMENT

ISSUE I STANDARD OF REVIEW

“The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties” *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). “Lack of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal.” *Gantt v. Selph*, 423 S.C. 333, 338, 814 S.E.2d 523, 525-526 (2018); *See also Eaddy v. Eaddy*, 283 S.C. 582, 584, 324 S.E.2d 70, 72 (1984). Whether subject matter jurisdiction exists “is a question of law for the court” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993) (citation omitted).

I. Only the Circuit Court Had Subject Matter Jurisdiction to Award Damages for the Personal Causes of Action that Arose Prior to Florence Petrak Mensch's Death.

It is well established in our state that the Probate Court’s subject matter jurisdiction is narrowly limited to issues that our legislature has expressly authorized the Probate Court to adjudicate by statute. *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011) (“the extent of the probate court's jurisdiction is defined by our legislature.”). Unlike the Circuit Court, which receives its original jurisdiction from our Constitution, the Probate Court has no jurisdiction in any proceeding but for the unambiguous, statutory authorization of our legislature. S.C. Const. art. V, § 11. *See also Id.* This being the case, our legislature sought to keep our Probate Court’s purpose narrow and limited to adjudicating claims arising within estates. Our legislature achieved this by taking legislative action to limit the Probate Court’s subject matter jurisdiction such that it cannot award relief for personal tort and statutory claims that arise before the death of a decedent, as explained below.

A. S.C. Code § 62-1-302(b) limits the Probate Court’s jurisdiction such that it cannot award damages for personal causes of action that arose prior to the death of a decedent.

In subsection (a) of S.C. Code § 62-1-302, our legislator grants the Probate Court exclusive jurisdiction over “estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons” S.C. Code § 62-1-302(a). Immediately thereafter, however, in subsection (b) of the statute, our legislator limits the Probate Court’s jurisdiction to adjudicate claims brought under the survival statute. Subsection (b) states that while the Probate Court’s jurisdiction “over matters involving *wrongful death or actions under the survival statute* is concurrent with that of the circuit court” it’s jurisdiction “*extends only to the approval of settlements* as provided in Sections 15-51-41 and 15-51-42 *and to the allocation of settlement proceeds among the parties involved in the estate.*” S.C. Code § 62-1-302(b) (emphasis added). This being the case, the legislator has limited the Probate Court’s jurisdiction such that it cannot award relief for claims brought pursuant to the survival statute, but rather may only approve settlements and allocate the proceeds therefrom.

This jurisdictional limitation came before the Court of Appeals in *Ex parte McLeod*, in which the Court affirmed that S.C. Code § 62-1-302(b) strictly limits the Probate Court’s jurisdiction over wrongful death and survival actions to approving settlements and allocating the proceeds therefrom. *Ex parte McLeod*, 323 S.C. 461, 476 S.E.2d 167 (Ct. App. 1996). In that case, this Court was faced with the question of whether the Probate Court had subject matter jurisdiction to award attorney fees earned in conjunction with a wrongful death claim where no petition to approve a settlement offer had been submitted to the Probate Court. *Id.* at 462-3, 168. The Court

began its analysis by examining the jurisdictional limitation found in subsection (b) of S.C. Code § 62-1-302. The Court highlighted the legislature's express words restricting the Probate Court's jurisdiction "*only to the approval of settlements* as provided in 15-51-41 and 15-51-42." *Id.* As the Court noted, the parties in the case before it had not petitioned the Probate Court to approve a settlement offer, as no offer had even been agreed to. *Id.* Consequently, the Court found that the Probate Court had lacked subject matter jurisdiction to award attorney's fees, or any other relief. *Id.* at 464, 168-9. The Court summed its analysis, stating:

[a] plain reading of § 62-1-302 together with § 15-41-42 reveals that it is the proper filing of a petition for the approval of a settlement offer that gives the probate court subject matter jurisdiction in a wrongful death claim *and absent such petition, the probate court is without jurisdiction to act*

Id. This Court's unambiguous ruling in *Ex parte Mcleod* serves as a guidepost for interpreting S.C. Code § 62-1-302(b), affirming that, but for a petition to approve a settlement offer, the Probate Court has no subject matter jurisdiction to award relief for wrongful death or survival claims. This interpretive ruling is directly on point here, as no settlement offer was ever submitted to the Probate Court with respect to Respondents' claims, including their claims brought pursuant to the survival statute.

B. S.C. Code § 62-1-302(b)'s limitation of the Probate Court's jurisdiction over survival claims voids the majority of the damages awarded by the Probate Court here.

Delineating what types of claims the legislator intended for S.C. Code § 62-1-302(b) to exclude from the Probate Court's general grant of subject matter jurisdiction becomes clearer when examining the survival statute. Claims under the survival statute are claims for "injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property . . . ,"

and such claims “survive” to the personal representative after the death of the injured person. S.C. Code § 15-5-90. Section 15-5-90's provision for the survival of claims for “injuries” which are “personal” naturally encompasses personal tort and statutory claims. Of course, not all personal tort and statutory claims are brought pursuant to the survival statute. The operation of the survival statute is to allow for such personal tort and statutory claims to survive the death of the injured party, as they would abate in the absence of the statute. *Page v. Lewis*, 203 S.C. 190, 193-194, 26 S.E.2d 569, 570 (1943); *see also Claussen v. Brothers*, 148 S.C. 1, 4, 145 S.E. 539, 540 (1928). Put differently, the survival statute specifically encompasses personal tort and statutory claims that arose prior to a decedent’s death but are brought thereafter. This being the case, any personal tort or statutory claims brought by a personal representative on behalf of a decedent, which arose prior to the decedent’s death, are necessarily brought forward pursuant to the survival statute.

Here, almost all of the damages awarded against the Appellant Mensch were claims that necessarily were brought by Respondent pursuant to the survival statute. Respondents’ causes of action for breach of fiduciary duty, violation of the Uniform Power of Attorney Act, and conversion, all constitute either personal torts or personal statutory claims, all of which stemmed from wrongful acts that occurred prior to the death of the Decedent in 2018. [R. 10-23]. This being the case, said causes of action arose prior to the death of Florence Petrak Mensch and survived abatement after her death only because they were necessarily brought pursuant to the survival statute. As such, said claims fall exactly within the category of claims the legislator intended to limit the Probate Court’s jurisdiction over when it enacted S.C. Code § 62-1-302(b). Moreover, no settlement offer was ever submitted to the Probate Court for approval. Consequently, the Probate Court here, as was the case *in Ex parte McLeod*, did not have any jurisdiction over said claims because there was no settlement offer ever submitted to the Court for approval. *Ex parte McLeod*,

323 S.C. 461, 464, 476 S.E.2d 167, 168 (Ct. App. 1996) (absent a petition for approval of a settlement offer, “the probate court is without jurisdiction to act . . .”).

As stated, almost all of the damages awarded here stemmed from Respondents’ claims brought under the survival statute. The Probate Court awarded \$546,921 (\$546,921 after the 1/3 credit against the \$820,382) for pre-death conversion of property, \$24,559 for failure to have itemized the Decedent's tax returns, \$13,820 for miscellaneous tax penalties, \$163,420 for avoidable income tax, and \$28,000 for annual gift-tax exclusion during the Decedent's lifetime. [R. 10-23]. Because these damages were awarded pursuant to Respondents’ survival causes of action, which the Probate Court lacked subject matter jurisdiction to award damages for, the Court’s Order awarding damages as to those claims should be found void. As such, this Court should vacate the Probate Court’s Order as to those claims and reduce the damages award by \$776,720.7.

C. The legislator intended for S.C. Code § 62-1-302 to limit the Probate Court’s scope to adjudicating estates of decedents, not to resolving personal claims better suited for adjudication in the Circuit Court.

At first glance, S.C. Code § 62-1-302(b)’s limitation of the Probate Court’s jurisdiction over wrongful death and survival claims may appear purposeless or arbitrary. However, initial confusion does not grant us the right to ignore the express words enacted by our legislator, as statutes may not be read to render any portion of them meaningless. *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (courts must “seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.”). Indeed, upon further review of sections 62-1-302 and 62-1-201, the legislature’s intended purpose and effect becomes more evident.

In S.C. Code § 62-1-201, our legislator defines "claims" in respect to estates of decedents. "Claims" in the context of a "*estates of decedents*" are those "which arise *at or after the death of the decedent.*" S.C. Code § 62-1-201(4) (emphasis added). Such claims that arise at or after the death of a decedent would include claims involving the contest and construction of wills, the determination of property in which the estate of a decedent has an interest, and determination of heirs and successors of decedents, among the other subject matters provided in S.C. Code § 62-1-302(a)'s grant of exclusive jurisdiction. Claims brought pursuant to the survival statute, to the contrary, necessarily arise prior to the death of the decedent, and thus are distinct from those associated with estates of decedents, which our Probate Courts are tasked with adjudicating. Our legislator determined that, where certain claims can be distinguished from those arising within the estate of a decedent, so too must the subject matter jurisdiction be distinct. As such, our legislator drafted S.C. Code § 62-1-302(b) with the intent to ensure that the Probate Court was focused on, and limited to, its purpose — adjudicating claims arising within estates of decedents, not those that arising elsewhere.

The pragmatic reasons for limiting the Probate Court's subject matter jurisdiction over survival claims makes sense as well. The Probate Court's jurisdiction must be limited to its narrow purpose of adjudicating claims arising within estates of decedents, and overseeing the administration of testamentary instruments, or otherwise the Probate Court would suffer an overloaded docket and a purpose entirely concurrent with that of the Circuit Court. Because survival claims are both common, and necessarily often entail jury trials, the Probate Court would risk mirroring the Circuit Court if it were to adjudicate and award damages for said claims. Such a reality would burden the Probate Court's docket, impair its efficiency, and drive it away from the narrow and important purpose the legislator gave it when it created the said court.

A careful review of S.C. Code § 62-1-302(d-f) shines further light onto the mindset of our legislator when drafting S.C. Code § 62-1-302(b). Subsection (d) of S.C. Code § 62-1-302 provides the following:

Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, . . . must be removed to the circuit court:

- (1) formal proceedings for the probate of wills and for the appointment of general personal representatives;
- (2) construction of wills;
- (3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;
- (4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a “special needs trust” as described in Article 7;
- (5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and
- (6) actions concerning gifts made pursuant to the South Carolina Uniform Transfers to Minors Act, Article 6, Chapter 5, Title 63.

S.C. Code § 62-1-302(d).

The legislator, goes on to provide guidelines for such removal of claims in subsections (e) and (f) of S.C. Code § 62-1-302, providing the following:

(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

(f) Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy.

S.C. Code § 62-1-302 (e-f).

Upon initial review, one may wonder why our legislator would include such exhaustive provisions for the removal of claims to the Circuit Court. However, when considered within the context of our legislator's limitation of the Probate Court's jurisdiction over survival and wrongful death claims in S.C. Code § 62-1-302 (b), said removal provisions make more sense.

Our legislator knew that personal tort and statutory claims under the survival statute could, from time to time, naturally become entangled with post death estate matters, as they have here. This meant that the Probate Court, by the motion of a party, or its own motion, would have to remove said survival claims to the circuit Court to ensure that they were adjudicated by the court retaining subject matter jurisdiction over them. However, said removal could, on occasion, create inefficacy by severing the survival claims from the estate claims. As such, our legislator gave the Probate Court the authority to determine whether it would "be in the best interest of the estate or in the interest of judicial economy" to remove the estate claims with the survival claims, pursuant to S.C. Code § 62-1-302 (e). Why would the legislator take such great care to grant the Probate Court the power to remove claims for which it would otherwise have exclusive jurisdiction, unless it knew that there would occasionally be a natural entanglement between the claims for which the Probate Court has subject matter jurisdiction, and those for which it does not. Put differently, the conclusion emanating from the S.C. Code § 62-1-302 (e-f) is that the legislator foresaw that the limitation it created on the Probate Court's jurisdiction in S.C. Code § 62-1-302(b) would create potential entanglement between survival claims and estate claims that may frustrate efficiency, but nonetheless maintained said jurisdictional limitation, and instead provided the Probate Court expansive removal mechanisms necessary to alleviate such potential inefficient entanglements.

This being the case, the legislator intended for S.C. Code § 62-1-302(b) to limit the Probate Court's jurisdiction such that cannot award damages from claims brought pursuant to the survival

statute, and consequently the Probate Court did not have jurisdiction to award damages for Respondents' claims for breach of fiduciary duty, violation of the Uniform Power of Attorney Act, and conversion, here.

ISSUE II STANDARD OF REVIEW

While a Court may accept “an answer or other act to be done after time has expired”, a court’s decision to do so is subject to reversal if there “a clear showing of abuse of discretion.” *Nelson v. Zeagler Auto Serv., Inc.*, 280 S.C. 88, 90, 311 S.E.2d 81, 82 (Ct. App. 1983). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

II. The Circuit Court erred in allowing Respondents to submit a brief that was both untimely, and that cited materials outside of the record.

Rule 208(a)(2) of the South Carolina Appellate Court Rules requires that, “within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.” SCAR Rule 208(a)(2). Here, Respondents did not file their brief within 30 days of Appellant serving its initial brief.

Appellant originally filed its appeal from the Probate Court’s order and served a notice of intent to appeal to the Circuit Court on February 23, 2022. [R. 9251]. Rather than filing a reply to Appellant's initial brief on appeal, however, Respondents moved to dismiss the appeal for untimeliness on February 25, 2022. [R. 7011- 7013]. Thereafter, the Circuit Court's formal order of dismissal was electronically filed on May 17, 2022. [*Id*]. Thereafter, the South Carolina Court of Appeals affirmed the Circuit Court’s order, finding that Appellant's appeal was untimely. *Mensch v. Waddell*, Op. No. 2024-UP-384 (S.C. Ct. App. Filed Nov 13. 2024). Upon Appellant's

petition to the South Carolina Supreme Court, the Court found that Appellant's appeal was timely, thus reversing the Court of Appeals as to the timeliness issue, and remanded the remaining issues for further consideration of the merits. *Mensch v. Waddell*, Op. No. 2025-MO-037 (S.C. Sup. Ct. Order filed July 2, 2025). At no point during this process did Respondents file a reply to Appellant's initial brief.

Once Appellant's Appeal returned to the Circuit Court, on remand from the Supreme Court, Respondents were obligated by SCAR Rule 208(a)(2) to file a reply to Appellant's initial brief, as the deadline was no longer stayed by the motion to dismiss no longer active motion to dismiss. The Supreme Court's Remitter was dated July 18, 2025, which is when Respondent's 30-day deadline should have begun. *Mensch v. Waddell*, Remittitur (S.C. Sup. Ct. Order filed July 18, 2025). Respondents, however, did not file an initial brief until October 21, 2025. Resp. Initial Brief, October 21, 2025.

While Respondents, did, inadvertently, file a copy of Appellant's initial brief on the 30th day of their deadline to so, this does not constitute filing of an initial brief sufficient to comply with SCAR Rule 208(a)(2). Tr. p.5 ¶11 – p.6 ¶3. Had Respondents cured their inadvertent filing of Appellant's brief instead of their own, by immediately filing their own, that the Circuit Court's discussions to consider their brief would be more understandable. But Respondents waited months before filing their actual initial brief, depriving Appellant the opportunity to receiving timely notice of Respondent's arguments, and the opportunity to file a timely brief in reply. Even worse, in their untimely initial brief, Respondent's cited numerous documents not contained within the record. As such, the Court's consideration of the brief further deprived Appellant of an opportunity to meaningfully respond to the arguments contained in said brief.

The Circuit Court's allowance of the deprivation of Appellant's opportunity to meaningfully respond by considering Respondent's untimely initial brief, citing matters beyond the scope of the record, constitutes abuse of discretion. As such, Appellant requests that if this court does not reverse the Circuit Court as to issue one on appeal, that it remands this case with instruction for the Circuit Court to reconsider its ruling without giving weight or consideration to Respondents' initial brief.

CONCLUSION

In conclusion, because the S.C. Code § 62-1-302(b) limits the Probate Court's jurisdiction such that cannot award damages for claims brought pursuant to the survival statute, the Probate Court here lacked subject matter jurisdiction to award damages for Respondents' claims for breach of fiduciary duty, violation of the Uniform Power of Attorney Act, and conversion. Consequently, the Probate Court's Order awarding damages as to those claims should be found void, and the ruling of the Circuit Court affirming said Order should be reversed.

Respectfully Submitted,

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