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May 04 2026

SC Court of Appeals

In the S. C. Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
2017CP2308016

Perry H. Gravely, Circuit Court Judge
Charles B. Simmons, Jr., Master in Equity Judge

Case No. 2024-002207

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

**SECOND PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR STAY
PENDING APPEAL TO STAY FORECLOSURE SCHEDULED TODAY MAY 4, 2026
11:00 AM EXPARTE**

Michelle Hodges
6 Young Harris Dr.
Simpsonville, SC 29681
864-692-3748
Appellant Pro Se

Wells Fargo's Counsel

Mr. S. Sterling Laney, III, Esquire
Mr. Jason D. Wyman
Womble Bond Dickinson
550 South Main ST
#400
Greenville, SC 29601

**SECOND EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS AND MOTION
FOR STAY PENDING APPEAL FORCLOSURE SALE TODAY MAY 4, 2026 AT 11:00
AM - EXPARTE**

I. INTRODUCTION

Petitioner Michelle Hodges, proceeding pro se, respectfully submits this Renewed Emergency Petition for Writ of Supersedeas pursuant to Rule 241, SCACR. Petitioner previously filed a petition for writ of supersedeas in this Court which was denied at a time when no specific foreclosure sale date had been scheduled. The procedural posture has now materially changed. A foreclosure sale of Petitioner's family home is scheduled for Monday, [Exact Date]. Petitioner respectfully requests that this Court immediately impose a supersedeas staying the scheduled foreclosure sale and all further enforcement of the Judgment/Order of Foreclosure and Sale pending final resolution of this appeal, and that the Court waive any bond requirement due to exigent circumstances. S. C. Code 18-9-170; *Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander*, 414 S.C. 355, 778 S.E.2d 898 (2015).

II PROCEDURAL POSTURE

A. This appeal arises from the Circuit Court's Final Judgment of Foreclosure and Sale entered on December 12, 2024 in the amount of \$213,656.01. Petitioner timely filed a Notice of Appeal, on December 27, 2024 and the appeal is currently pending before this Court. Petitioner previously moved for a stay in the Circuit Court, which was denied on September 15, 2025 (Exhibit "D"). A certified copy of that order is attached as Exhibit A. Petitioner then filed a Petition for Writ of Supersedeas in this Court, which was denied on January 27, 2026, when no foreclosure sale date had been scheduled. A copy of that order is attached as (Exhibit "E").

B. The procedural posture has materially changed. A foreclosure sale of Petitioner's family

home is now scheduled for Monday, May 4, 2026. A certified copy of the Final Judgment of Foreclosure and Sale is attached as Exhibit C. This imminent sale creates exigent circumstances justifying emergency relief under Rule 241(d)(6), SCACR.

III. FACTUAL BACKGROUND

A. This is a foreclosure action involving Appellant's family home located at 6 Young Harris Drive, Simp-sonville, South Carolina 29681, where Appellant has lived for over 14 years. Appellant has a pending appeal, before this Court raising substantial questions of law, including Wells Fargo's standing, proper notice to proceed with acceleration and if the Special Warrant Deed was construed as a whole.

B. The Appellant has been diligent in pursuing her appeal and in filing a proposed substitute initial brief, in accordance with South Carolina appellate court rules and procedures. Approximately two weeks ago, Appellant learned that the subject property had been scheduled for foreclosure sale, Appellant immediately began seeking assistance to relocate but was unable to obtain help. Having previously sought a stay in the Circuit Court and in this Court without success, Appellant believed her stay remedies had been exhausted.

C. On April 29, 2026, Appellant noticed supersedeas was associated with her prior emergency motion for a stay and reviewed Rule 241, SCACR and gained a fuller understanding of the writ of supersedeas as a means to pause the sale pending appeal. Appellant also learned that a material change in circumstances, specifically, the subject property being placed back on the foreclosure docket after having been removed and now there is a sale date, provides an independent basis for seeking relief from this Court.

D. Foreclosure sales in Greenville County proceed on the first Monday of the month at 11:00

a.m.and upon checking the Greenville county foreclosure listing, Appellant found the subject property listed for sale for Monday, May 4, 2026. Once the sale is occurs and confirmed, Appellant will sufer irreparable harm that no subsequent ruling of this court can remedy. Appellant therefore seeks emergency relief by way of supersedeas to preserve the status quo pending resolution of the appeal.

E. Complaint Allegations

(1) Paragraph 3 of the Complaint, alleged that Wells Fargo had the legal right to enforce the negotiable instrument and that it was the real party in interest. (Exhibit "L", p. 1)

(2) Paragraph 8 of the Complaint, alleged that Ruth Witherspoon executed and delivered the Mortgage to Mortgage Electronic Registration Systems (MERS), Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns. (Exhibit "L", p. 4.

(3) Paragraph 8 of the complaint further alleged that the subject property was conveyed to Ruth Witherspoon by Deed of NVR that recorded on March 29, 2012 in Deed Book DE 2403 at Page 2222 and that the Appellant was an Heir (Exhibit "L", p. 4., line 19-20).

(4) Paragraph 12, of the Complaint alleges a default as of May 1, 2017

F. Answer Response to Complaint

(1) In response to Paragraph 3, Sixth Amended answer denied that Wells Fargo had the right to enforce the Note and asserted that Wells Fargo failed to attach a copy of the Note to the complaint demonstrating holder status at the time of filing the Complaint. (Exhibit M. p.2).

(2) In response Paragraph 5, the Sixth Amended answer asserted that the Appellant owned the subject property jointly with her Mother and Brother by virtue of the Special Warranty Deed recorded on March 29, 2012, in Deed Book DE 2403 at Pages 2222–2223 (Exhibit M. p.2).

(3) In Response to Paragraph 8, the Sixth Amended Answer denied, in part that Wells Fargo was the successor in interest to NVR, Inc., and asserted that Wells Fargo neither attached the Note to the complaint nor claimed possession of it in the complaint (Exhibit M. p.2 - 3 lines p. 3, lines 1-4).

(4) In further response to Paragraph 8. The Appellant did not deny the allegation that the subject property was conveyed to Ruth Witherspoon.

(5) In response to paragraph 12, the Sixth Amended answer disputes the basis of the default and referenced the escrow statements.

G. Summary Judgment Order

The Circuit Court issued its summary judgment order in favor of Wells.

H. Court of Appeals affirmed

The S. C. Court of Appeals affirmed Wells Fargo had standing under S. C. Code Ann. 36-2-301, based on evidence. The Court of Appeal decision does not point to any specific evidence indicating that Wells Fargo possessed the note or was entitled to enforce the note. (Exhibit "N" p. 8. second sentence to the last p. 8)

I. Final Hearing

The witness testified that Wells Fargo was in possession of the original note endorsed in blank. The Note reflects endorsements that are undated. (Exhibit "G" p. 3) Transcript reflects that the Circuit Court refused to hear the habendum clause of the Special Warranty Deed. (Exhibit I lines 11-14)

J. Final Rulings

(1) The Final Order stated, "Plaintiff is the holder of the Note and assignee of the Mortgage and

has standing to proceed” (Exhibit C p.5 line 14). The court also found that Wells Fargo possessed the original Note endorsed in blank, based on testimony at the final hearing (Final Order p. ___).

(2) The Final Order reflects that the loan is due for May 1, 2017. (Exhibit C, p.6, item 20). The Final Order also held that Demand letter satisfied the notice requirements of the Note and Mortgage and had been given to the Defendant/Appellant prior to commencement of this action. (Exhibit C, p. 6, item 22). The Final Order does not identify the notice requirements of the note and mortgage.

(3) The Final Order reflects that the Circuit Court rejected joint tenancy and held that the subject property was conveyed to "Ruth Witherspoon, her successors and assigns" and found that the lien survived Ruth Witherspoon's death. (Exhibit C items 13 & 16)

IV Governing Standard and Request Waiver

Under Rule 62(d), SCRPC, and S. C. Code Ann. § 18-9-170, a party may obtain a stay by posting a supersedeas bond, but the Court retains discretion to waive or adjust the bond where, as here, the Appellant demonstrates financial inability to post a bond and there is a risk of irreparable harm due to an imminent foreclosure sale is present.

A. Request for waiver

Request for waiver of supersedeas bond

1. Financial Hardship under S. C. Code Ann §18-9-170:.

(a) Appellant's monthly income is \$2,100.00. She previously filed for Chapter 13 Bankruptcy, which was dismissed on August 29, 2026, after she attempted to reorganize her debts, demonstrating a substantial and unsustainable financial burden. Appellant also has a outstanding

obligation to the Internal Revenue Service in the amount of \$18,907, which could not be discharged in bankruptcy and must be addressed separately.

(b) Given her limited income, Appellant is just meeting her living expenses while also servicing her IRS obligation. The imposition of a supersedeas bond would create an additional financial burden that she cannot satisfy. Based on the judgment amount of \$213,656.01 even a typical surety bond premium of approximately 1% would require an annual payment of about \$2,136.56, an amount that would not be feasible in light of Appellant's financial circumstances.

(c) Accordingly, Appellant's income is insufficient to cover her living expenses, Federal tax obligation and the costs of any bond premium, making the imposition of a bond would be a denial of access to justice, due to the inability to pay.

2. Irreparable Harm under Rule 62(d) SCRCP:

Under Rule 62(d), SCRCP, the Court may grant a stay to prevent irreparable harm and here the scheduled May 4, 2026 at 11:00am would cause irreparable injury to Appellant by depriving her of her home before appellate review is completed. A stay without security here is appropriate to preserve the status quo pending appellate review.

3. Equity Cushion Protecting Appellee's Asserted Interest:

(a) Appellant has attached is a Redfin-based estimate of the subject property's value at \$334,008.00 (Exhibit). Appellant has also attached 3 closed sale comparables, that are consistent with industry standards for residential valuation, i which value is established by providing comparable properties that are similar in design and square footage, within one mile of the subject property, and sold within the last 3-6 months. Two of these comparables slightly exceed the time sold and one exceeds mileage however, all are nonetheless acceptable, given the absence of other sales that fall strictly within the ideal range.

(b) The three comparables are as follows:

Comp.1: \$392,681.00, located at 3 Leeds Ct. Simpsonville, SC 29681, within 1 mile of the subject property and sold on sold June 23, 2025.

Comp. 2: \$330,000.00, located at 233 Sleepy River Rd. Simpsonville, SC 29681, within 1.7 miles of the subject property and sold January 9, 2026.

Comp.3: - \$348,256.00, located at 11 Penrith Ct. Simpsonville, SC 29681, within 1 mile of the subject property and sold July 11, 2025.

(c) Together, these comparables total, is \$ 1,070,937.00, yielding an average comparable value of \$356,979.00. Even using the more conservative estimate of \$334,088.00, the difference between that value and the foreclosure judgment amount of \$213,656.01, supports an equity cushion of \$120,431.99.

(d) Accordingly, there is a substantial equity cushion in the subject property, which protects Appellee's asserted interest and confirms that a stay without security would not prejudice the Appellee, but rather eemonstrates that the Appellee is remains protected should the Court stay enforcement of the judgment.

F. Likelihood of Success

1. **Standing** - Whether the Circuit Court erred by entering a final order of foreclosure and sale without properly determining that Wells Fargo held the right to enforce the note at the time the complaint was filed, either as a holder or as a servicer acting on behalf of a party entitled to enforce the note. properly addressing whether entitlement to enforce the note existed at the time the complaint was filed either as the holder or a servicer acting on behalf of a party entitled to enforce the note?

(a) This issue presents a substantial question because standing must exist at the commencement

of the action, and the record raises a material issue as to whether Wells Fargo was entitled to enforce the note at that time. The note is endorsed in blank and the endorsement are undated and do not establish when Wells Fargo became the holder or otherwise obtained the right to enforce the note.

In South Carolina, standing to sue is a fundamental requirement that must exist at the time the action is instituted. See *Blandon v. Coleman*, 285 S.C. 413 472, 475, 330 S.E.2d 298, 299 (1985). See also *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct.App.1994). In a foreclosure action, the Plaintiff must establish that it is a person entitled to enforce the Note pursuant to S. C. Code § 36-3-301. See *Bank of America, N.A. v. Draper*, 405 S.C. 214, 217, 747 S.E.2d 444, 446 (Ct. App. 2013).

(b) "Standing must be proven "with the manner and degree of evidence required at the successive stage of the litigation." in *Town of Arcadia Lakes v. S.C. Dep't of Health & Evtl. Control*, 404 S. C. 515, 529, 745 S.E.2d 385, 392 (Ct. Ap. 2013). See also, *Hollingsworth v. Perry*, 570 U. S. 693 (2013), (holding that Standing must be met at every stage of the litigation).

2. Notice of acceleration - Whether the Circuit Court erred in finding that notice required by the note and mortgage was provided prior to commencement of this action where the only evidence of notice, is the February 16, 2027 demand letter, references a default date that does not correspond the operative default, upon which is action is based?

(a) This presents a substantial question because the court treated the mailing of the letter alone as sufficient to satisfy acceleration requirements, even though acceleration requires an affirmative and unequivocal act directed to the specific default being enforced and the February 16, 2017 (Exhibit ") A letter pertains to a prior default rather than the operative default forming

the basis of this action (May 1, 2017) (Final Order, p.__). See *Allendale Furniture Co. v. Carolina Comm. Bk*, 284 S.C. 766, 325, S.E.2d 530 (1985)

(b) Because the court's finding rested entirely on the February 16, 2017 letter without determining whether that letter addressed the operative default, the finding was predicated on an erroneous view of the law and cannot stand. This ruling constitutes reversible error because the proper application of the contractual notice requirements could have led to a different result on the issue of compliance with the note and mortgage. A judgment predicated upon an erroneous view of the law cannot stand and must be reversed. *Deutsche Bank Nat'l Trust Co. v. Estate of Owens Houck*, 434 S. C. 67, 862 S. E.2d 437 (Ct. App. 2021).

3. Construction of the Special Warranty Deed - Whether the Circuit Court erred as a matter of law in failing to construe the Special Warranty Deed as a whole, where the Court rejected joint tenancy and refused to consider and harmonize the granting and habendum clauses so as to give effect to all provisions of the Deed?

(a) The record reflects that the Court refused to hear the habendum clause and harmonize it with the granting clause (Tr. p. __). This presents a substantial question because the Court's failure to harmonize both clauses, led to an erroneous result. Had the deed been properly construed as a whole, the habendum clause establishing joint tenancy would operate to extinguish Wells Fargo's claimed lien and preclude entry of the foreclosure judgment.

(b) "...the Deed must be construed as whole, and effect given to every part thereof, if such can be done consistently with law." *Wayburn v. Smith*, 269 S.C. 37, 328 S.E.2d 805 (1977):

(c) Under South Carolina law, the creation of a joint tenancy requires the four unities of time, title, interest and possession. Where a joint tenancy is properly created, survivorship rights

operate such that the interest of a deceased joint tenant is extinguished at death. *S. C. Code Ann. § 27-7-40* and *Smith v. Rucker*, 367 S. C. 100, 107, 624 S. E. 2d 827, 831 (2006). See also *Harms v. Sprague* 105 III. 2d 215, 473 N.E. 2d 930 (III 1984) (Persuasive Authority establishing that a mortgage executed by one joint tenant does not sever the joint tenancy and her interest is extinguished upon the death of that joint tenant)

B. Irreparable Harm

Irreparable harm will occur if the stay is not granted because the final order remains in full force and

the subject property is due to be sold on May 4, 2026. The Movant and her family currently occupy the subject property. South Carolina courts have recognized that losing one's primary residence constitutes a unique and irreparable harm not compensable by money damages. See *East Tower Village v. Dodson*, 323 S.C. 294, 476 S.E.2d 453 (Ct. App. 1996).

C. No Adequate Remedy at Law

No adequate remedy at law exists because monetary damages cannot fully compensate for the loss of the Movant's family home or the property rights at issue in this appeal. Real property is unique and its loss cannot be adequately remedied through money damages alone. The unique nature of the harm in this case warrants the Court's intervention to preserve the Movant's rights pending resolution of the appeal. See *East Tower Village v. Dodson*, 323 S.C. 924, 476 S.E.2d 453 (Ct. App. 1996).

D. Balance of Harms and Public Interest

There is no cognizable harm to Wells Fargo beyond a mere delay in receiving payment, as evidenced by Wells Fargo's own lack of prosecution, from March 24, 2025 through February 20, 2026. In contrast, the Movant stands to lose her only residence where she has resided for over 14

years. As the Supreme Court recognized in *Nken v. Holder*, 556 U.S. 418 (2009), the balance of equities and the public interest tip strongly in favor of individuals seeking to remain in their homes pending judicial review.

D. Exhibits

Exhibit "A" - May 4, 2026, Greenville Journaler, Foreclosure Sale List

Exhibit "B" - Estimated value of subject property with 2 closed sale comparables supporting value

Exhibit "C" - Certified copy of Order of Foreclosure and Sale

Exhibit "D" - Certified copy of the Circuit Court Order, denying Appellant's Emergency Stay request

Exhibit "E" - S. C. Court of Appeals, denial of Appellant's Emergency Stay request

Exhibit "F" - Wells Fargo's Default letter regarding acceleration of the loan

Exhibit "G" - Promissory Note

Exhibit "H" - Mortgage

Exhibit "I" - Special Warranty Deed

Exhibit "J" - Appellant's Affidavit

Exhibit "K" - Transcript Excerpt regarding Habendum clause

Exhibit "L" - Compl. p. 1 & 4

Exhibit "M" - Answer p. 2 -3

PRAYER FOR RELIEF

WHEREFORE, the movant respectfully restates and reiterates the foregoing and requests that this Honorable Court grant the relief outlined above, including:

Stay of Foreclosure

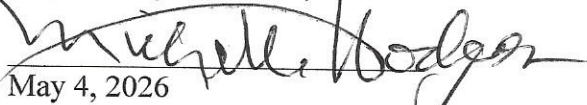
1. Staying enforcement of the order of foreclosure and sale entered on December 12, 2024, pending resolution of Appellate Case Number 2024-002207 currently pending in this Honorable Court;

Bond Waiver

2. Waiving the requirement of a supersedeas bond in light of: **(i)** The absence of Wells Fargo's standing, lack of valid notice of acceleration and the Circuit Court's failure to construe the Special Warranty Deed as a whole; **(ii)** The movant's limited financial means, such that imposition of a bond would effectively bar meaningful appellate review; and **(iii)** The irreparable harm documented herein; The appellant requests waiver, or as the deems appropriate.

3. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,



May 4, 2026

Michelle Hodges, Appellant, Pro Se

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Simpsonville, SC 29681

864-692-3748



Michelle Hodges <hodgesmiki@gmail.com>

Wells Fargo Bank v. Michelle Hodges et al 2024-002207

2 messages

Michelle Hodges <hodgesmiki@gmail.com>

To: ctappfilings@scourts.org

Mon, May 4, 2026 at 9:38 AM

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May 04 2026

SC Court of Appeals

May 4, 2026

Jenny Abbott Kitchings,
Clerk of Court, of South
Carolina Court of Appeals
1220 Senate ST
Columbia, SC 29201

RE: Wells Fargo Bank, N.A. v. Michelle Hodges
Appellate - Case No. 2024-002207

Dear: Ms. Kitchings, Clerk of Court,
I hope this letter finds you well. Attached are the following documents:

- 1. Second Petition for Writ of Supersedeas and Emergency Motion for Stay Pending Appeal - FORECLOSURE SALE TODAY AT 11:00 AM

No filing fee required

Respectfully,

/s/

Michelle Hodges, Movant Pro Se

4 attachments

5 4 26 2ND PET FOR WRIT OF SUPER & EMERGENCY MO FOR STAY.pdf
3855K

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534K

5 4 26 Exhibits for Emergency Stay.pdf
16190K

5 4 26 coa emergency stay POS.pdf
332K

Michelle Hodges <hodgesmiki@gmail.com>




To: Michelle Hodges <michellehodges938@gmail.com>

Mon, May 4, 2026 at 3:50 PM

[Quoted text hidden]

4 attachments

5 4 26 2ND PET FOR WRIT OF SUPER & EMERGENCY MO FOR STAY.pdf
3855K

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