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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. 2026-000761
(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.**

PETITIONER'S REPLY TO RESPONDENTS' RETURN

Petitioner David Shealy, pursuant to Rule 242(g) of the South Carolina Appellate Court Rules, respectfully submits this Reply to the Return filed by Respondents on April 27, 2026.

PRELIMINARY STATEMENT

Rule 242(f), SCACR, defines the permissible scope of a Return to a Petition for Writ of Certiorari. It provides that a return "may rephrase the questions, offer additional sustaining grounds, and present a concise counter-statement." Respondents' Return exceeds those bounds in four material respects.

First, the Return functions as a *counter-petition* for certiorari. Respondents expressly "ask that the Court grant certiorari on that portion of the decision of the Court of Appeals that reverses the Trial Court's decision" against Siblings on the conversion and civil conspiracy claims. Return at 2, number 3. Indeed, the substantive factual and legal arguments regarding David's personal property and the tort claims are nearly identical to Respondents' Petition for Rehearing. (see Respondents Petition for Rehearing) Rule 242 does not authorize a respondent to seek affirmative review of an adverse portion of the Court of Appeals' decision through a return. A party dissatisfied with any portion of a Court of Appeals decision must file its own timely petition under Rule 242(c). Respondents did not do so.

Second, the Return's extensive "Errors of Fact" section invites this Court to make factual findings about the contents (and asserted absences) of the Record on Appeal. Return at 3–6. A petition for writ of certiorari is not a vehicle for re-litigating questions of fact, and Rule 242(f) does not authorize a respondent to seek factual revisions to the Court of Appeals' opinion through a return. Respondents have already raised these factual complaints in their petition for rehearing, which the Court of Appeals denied. They cannot now use Petitioner's certiorari proceeding to obtain a second bite at that apple.

Third, the Return's arguments about the Restraining Order, conversion, and civil conspiracy are not "additional sustaining grounds" for the portion of the Court of Appeals' decision Petitioner challenges. They are merits arguments directed at *the portion of the decision Respondents themselves now seek to have reviewed* — the reversal of summary judgment for Siblings. Those arguments do not respond to the two questions actually presented in the Petition: (i) the meaning of "pending" under S.C. Code Ann. § 62-3-804(4), and (ii) the scope of the title-dispute exception under S.C. Code Ann. § 62-1-201(4).

Fourth, Respondents' invocation of the law-of-the-case doctrine, premised on the unappealed Restraining Order, is not directed at sustaining the only ruling presently before this Court (the affirmance under the nonclaim statute). It is a freestanding merits argument going to the Siblings reversal. To the extent it is offered as an alternative ground for affirming summary judgment for the Estate, it does not appear in the Trial Court's Order, did not appear in the Petition for Rehearing to the Court of Appeals and cannot be raised for the first time in a return on certiorari.

Petitioner respectfully requests that the Court disregard the portions of the Return that exceed Rule 242(f)'s scope and decide the Petition on the questions properly presented. To the extent the Court considers any of the arguments in the Return, Petitioner addresses them below.

I. THE COURT OF APPEALS' RULING ON "PENDING" PROCEEDINGS UNDER § 62-3-804(4) PRESENTS A NOVEL AND SIGNIFICANT QUESTION WARRANTING REVIEW.

Respondents devote a single sentence to the dispositive question presented in Issue I, asserting that "the Court of Appeals followed the plain meaning of Rule 40(j)" and that "there is no novel question of law." Return at 2. That assertion does not engage the Petition.

A. Respondents do not address the meaning of "pending" under § 62-3-804(4).

The Petition demonstrated that the Court of Appeals never analyzed the operative statutory term. Section 62-3-804(4) excuses claim presentation for "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) (emphasis added). The Court of Appeals reasoned only that a struck case cannot be "simultaneously 'dismissed' and 'pending,'" Op. at 3, and relied on dicta from *Goodwin v. Landquest Development, LLC,* 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015), describing Rule 40(c)(3), the predecessor to Rule 40(j), as the "functional equivalent of a dismissal." The opinion does not interpret "pending," does not consult the legal definitions of that term, and does not

address *Robinson v. J.F. Cleckley & Co.,* 751 F. Supp. 100 (D.S.C. 1990), which directly held that a case removed from the docket under the predecessor to Rule 40(j) *remains pending* while off the docket. Respondents' Return likewise ignores all of this.

B. Respondents' "plain meaning" characterization is incorrect on its face.

Rule 40(j) does not state, in plain text or otherwise, that a case struck from the docket is "dismissed." On the contrary, *Goodwin* itself conceded that "our rules do not clearly provide that striking a case pursuant to Rule 40(j) is a dismissal." 414 S.C. at 630, 779 S.E.2d at 830. A rule whose meaning was acknowledged to be unclear by the very opinion that addressed it cannot fairly be described as having a "plain meaning" that resolves the entirely separate question of what "pending" means under § 62-3-804(4).

C. Respondents' brief treatment confirms that the question is unresolved.

Tellingly, the Return cites no South Carolina decision — from this Court or the Court of Appeals — holding that a case struck by consent under Rule 40(j) is *not* "pending" for purposes of § 62-3-804(4). The reason is that no such decision exists. The question is one of first impression, it arises from the intersection of two distinct bodies of law (Rule 40(j) and the Probate Code), and it will recur whenever a party who filed suit during a decedent's lifetime had her case struck by consent before the death. The Court should grant review to resolve it.

II. THE COURT OF APPEALS' RULING ON THE TITLE-DISPUTE EXCEPTION CONFLICTS WITH THIS COURT'S DECISION IN IN RE HOWARD.

Respondents' Return offers no substantive response to Issue II. The Return states only that the Petition "cites no prior decision in conflict and there is none." Return at 2. That statement is incorrect: the Petition cites and discusses *In re Howard,* 315 S.C. 356, 434 S.E.2d 254 (1993), at length. Pet. at 7–9. Respondents do not mention *In re Howard* anywhere in the Return.

A. In re Howard is on point and directly conflicts with the decision below.

In *In re Howard,* this Court held that a dispute over ownership of a gun was not a "claim" within the meaning of the Probate Code because "[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." 315 S.C. at 356 n.8, 434 S.E.2d at 259 n.8 (citing S.C. Code Ann. § 62-1-201(4)). The Court of Appeals' decision below cannot be reconciled with that holding. Petitioner's claims, like the claim in *In re Howard,* assert ownership of specific, identifiable items of personal property. The fact that money damages are sought — in some cases necessarily, because Siblings sold the property — does not transform an ownership dispute into a generic monetary claim.

B. Respondents' silence on the conflict is itself dispositive of the certiorari standard.

Rule 242(b)(3) identifies a conflict with prior Supreme Court precedent as a paradigmatic ground for certiorari. The Petition demonstrated such a conflict. The Return does not address the conflict at all. The Court should grant review to harmonize the Court of Appeals' decision with *In re Howard* and to clarify, for the bench and bar, that the title-dispute exception turns on the substance of the asserted ownership interest rather than the form of the prayer for relief.

III. RESPONDENTS' RETURN EXCEEDS THE SCOPE OF RULE 242(f) AND IMPROPERLY ATTEMPTS TO OBTAIN AFFIRMATIVE RELIEF WITHOUT FILING THEIR OWN PETITION.

A. The Return is, in substance, an untimely cross-petition.

Most of the Return is devoted to attacking the portion of the Court of Appeals' decision that reverses the grant of summary judgment in favor of Siblings on the conversion and civil conspiracy claims. Return at 6–9. Respondents expressly request that this Court "grant certiorari on that portion of the decision of the Court of Appeals that reverses the Trial Court's decision." *Id.* at 2. That is a request for affirmative review.

Rule 242 does not contemplate a return as a vehicle for cross-certiorari. Rule 242(f) authorizes only three things — rephrasing of questions, additional sustaining grounds, and a concise counter-statement. Where a party wishes to obtain Supreme Court review of an adverse portion of a Court of Appeals decision, it must serve and file its own petition for writ of certiorari within thirty days after the petition for rehearing is finally decided. Rule 242(c), SCACR. Respondents did not. The Court of Appeals denied the petition for rehearing on February 24, 2026; Respondents' deadline to file their own petition expired thirty days later. They cannot resurrect that deadline by labeling a counter-petition as a "Return."

B. The Return's "Errors of Fact" section is procedurally improper and incorrect.

The Return's "Errors of Fact" section, Return at 3–6, asks this Court to delete or modify factual statements in the Court of Appeals' opinion regarding (a) titles to several vehicles, (b) the sale of disputed property, and (c) the sale of "junk cars." Those are the same complaints Respondents raised in their petition for rehearing, which the Court of Appeals denied. Rule 242 contemplates discretionary review of legal questions, not appellate fact-finding. To the extent Respondents wish to challenge factual statements in the Court of Appeals opinion, the proper vehicle was rehearing under Rule 221(a) — a vehicle Respondents already used and exhausted.

Furthermore, the allegations about facts not in the record are not correct. Respondent claims that "The list of Claimed Property filed on July 25, 2018, is nowhere to be found in the Record on Appeal. It is simply absent." (Return p. 3). This list is in the Record on Appeal at pp. 367-371. Indeed, it is included twice as Shealy's former attorney William Walker attached it to his Answer and Counterclaims. R. pp. 363-366. Also, the Record on Appeal includes a List of Property by Map as part of Mr. Walker's motion to have an independent inventory. (R. 337-341). Finally, as it directly relates to the trial court's order, David Shealy filed a lengthy, detailed affidavit as to his personal property which included records and titles as to vehicles. (R. pp. 66-212)

C. Respondents' conversion and civil conspiracy arguments are not "sustaining grounds" for the affirmance Petitioner challenges.

An additional sustaining ground must be just that — a ground that, if accepted, sustains the lower-court ruling under review. *See I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000) (a respondent raising additional sustaining grounds urges the appellate court "to affirm the lower court's ruling for a reason other than one primarily relied upon by the lower court"). The ruling Petitioner challenges is the Court of Appeals' affirmance of summary judgment for the Estate under the nonclaim statute. Whether the Restraining Order bars conversion against Siblings, or whether civil conspiracy fails for absence of an unlawful act, has nothing to do with whether Petitioner's claims were "pending" under § 62-3-804(4) or fall within the title-dispute exception of § 62-1-201(4). Those arguments do not sustain affirmance; they attack the reversal.

D. The law-of-the-case argument is also misplaced.

Respondents argue that the unappealed Restraining Order is "the law of the case" and bars Petitioner's conversion claims. Return at 4–7. That argument was not the basis of the Trial Court's grant of summary judgment for the Estate (which rested entirely on the nonclaim statute, R. 4), was not adopted by the Court of Appeals as a basis for affirming the Estate's summary judgment, and is therefore not properly before this Court as a sustaining ground for the affirmance Petitioner challenges. Moreover, the Restraining Order — a status-quo order entered in 2018 to govern access to real property pending litigation — does not by its terms or by operation of law extinguish ownership claims to personal property, and certainly does not relieve Siblings of liability for what they did with that property after Father's death.

IV. EVEN IF THE COURT WERE TO REACH RESPONDENTS' OUT-OF-SCOPE ARGUMENTS, THEY ARE WITHOUT MERIT.

Petitioner addresses Respondents' merits arguments briefly and only in the alternative. Their inclusion in this Reply should not be construed as a waiver of Petitioner's position that the arguments are outside the proper scope of a Rule 242(f) return.

A. The Restraining Order does not insulate Siblings from conversion liability.

The Restraining Order entered on July 23, 2018, *at Father's request and before Siblings were parties,* governed access to the real property leased by Father from Dominion Energy. (R. 54.) It did not adjudicate ownership of any item of personal property, did not authorize the sale or disposition of that property, and certainly did not authorize Siblings — who were not yet parties — to do anything with it. Respondents' reliance on *Richardson's Restaurants v. National Bank of S.C.,* 304 S.C. 289, 403 S.E.2d 669 (Ct. App. 1991), is misplaced. In *Richardson's,* the bank had a contractual right of setoff against the funds at issue. Here, no judicial or contractual authority permitted Siblings to sell Petitioner's property at auction.

B. Respondents' internal-inconsistency argument is itself a basis for granting certiorari.

Respondents argue that the Court of Appeals decision is internally inconsistent because it treats Siblings' acts as personal acts (for purposes of the nonclaim statute) while relying on their actions as co-personal representatives (for purposes of conspiracy). Return at 8. Whatever the merits of that argument as applied to the reversal of summary judgment for Siblings, it has no bearing on the questions presented in the Petition. To the contrary, an internally inconsistent decision is itself a strong reason for this Court to take review and provide clarification.

C. Respondents' § 62-3-803(a) argument is incomplete.

Respondents quote § 62-3-803(a) for the proposition that all claims against the estate, personal representatives, heirs, and devisees are barred unless timely presented. Return at 8. The

Petition does not contend otherwise. Petitioner's position is that his claims fall within *two* exceptions to that bar: (i) the pending-proceeding exception of § 62-3-804(4), and (ii) the title-dispute exclusion from the definition of "claims" in § 62-1-201(4). Respondents do not engage either exception. Their reliance on the general rule of § 62-3-803(a), without addressing the exceptions, simply assumes the conclusion.

CONCLUSION

Respondents' Return does not engage the two questions actually presented by the Petition. Instead, it asks this Court to review the portion of the Court of Appeals' decision Respondents lost — something they did not request through their own timely petition under Rule 242(c), and now cannot. The Court should disregard those portions of the Return that exceed the scope of Rule 242(f), and should grant the Petition on the two questions presented:

(1) whether claims struck from the docket by consent under Rule 40(j), SCRCP, without final adjudication and expressly without prejudice are "pending" for purposes of S.C. Code Ann. § 62-3-804(4); and

(2) whether Petitioner's conversion claims, which assert ownership of specific, identifiable items of personal property, are excluded from the definition of "claims" under S.C. Code Ann. § 62-1-201(4) as "disputes regarding title of a decedent . . . to specific assets alleged to be included in the estate."

On both questions, the Court of Appeals' decision conflicts with controlling authority and presents issues of recurring importance. The petition for writ of certiorari should be granted.

Respectfully submitted,

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