

The South Carolina Court of Appeals

In the Matter of: George Francis Niesar (Decedent),

Gerald Viglione Niesar, Individually and as Personal
Representative of the Estate of George Francis Niesar,
Appellant,

v.

Christine Nemeth, Respondent.

Appellate Case No. 2026-001061

ORDER

On April 30, 2026, Appellant filed a notice of appeal from three circuit court orders. The first order, which was filed on December 31, 2025, granted Appellant's motion for summary judgment on all three of Appellant's causes of action, including conversion, liability as executor de son tort, and constructive trust. The second order, which was filed on March 10, 2026, reversed the court's December 31, 2025 order in full. Regarding Appellant's cause of action for conversion, the circuit court found that "under South Carolina law, a cause of action for conversion cannot be sustained when the thing converted is an interest in real property." Regarding Appellant's cause of action for liability as executor de son tort, the circuit court found South Carolina case law and statutory law "strongly support the principle that probate courts are the appropriate forum for such claims." Finally, regarding Appellant's cause of action for a constructive trust, the circuit court concluded there were "questions of fact that need to be decided by the fact finder." The third order, which was filed on April 21, 2026, the circuit court denied Appellant's motion to reconsider the March 10, 2026 order. On May 4, 2026, Respondent filed an "objection to notice of appeal," stating the orders appealed were interlocutory, not final orders. On May 5, 2026, this court requested the parties provide this court with memoranda addressing the appealability of the orders on appeal.

On May 12, 2026, Respondent filed her memorandum, arguing the orders on appeal were not immediately appealable because the circuit court "merely dismissed two of [Appellant]'s causes of action while exercising continuing jurisdiction [over Appellant]'s remaining causes of action." On May 13, 2026, Appellant filed her memorandum, arguing the orders on appeal are immediately appealable "because they have the effect of striking Appellant's causes of action for conversion and liability as executor de son tort." Appellant posited that when the circuit court found "a cause of action for conversion cannot be sustained when the thing converted is an interest in real property," the circuit court "effectively grant[ed] summary judgment to [Respondent] on that claim." Further, Appellant stated the circuit court "held that it lacked subject matter jurisdiction over Appellant's claim for liability as executor de son tort." Thus, Appellant contended the orders "in effect, grant summary judgment to [Respondent] on two of Appellant's claims," and as such, "involve the merits" and "affect a substantial right." On May 27, 2026, Respondent filed a "supplemental return to notice of appeal," arguing the orders on appeal deny summary judgment and are not subject to immediate appeal.

After careful consideration, we allow this appeal to proceed without prejudice to the parties arguing regarding the appealability of the order on appeal in their briefs. *See* S.C. Code Ann. § 14-3-330(1) (2017) (defining appellate jurisdiction to include "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions"); S.C. Code Ann. § 14-3-330(2) (2017) (further defining appellate jurisdiction to include "[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action"); *Link v. School District of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (allowing a party to appeal an intermediate order granting partial summary judgment because it had the effect of striking a pleading).


_____ J.

FOR THE COURT

Columbia, South Carolina

FILED
Jun 01 2026

cc:

Charles Russ Keep, III, Esquire

John Perry Bozeman, Esquire

Robert H. Brunson, Esquire