

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Jun 25 2026

SC 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

IN THE MATTER OF:

Estate of Florence Petrak Mensch,

Sterling Raymond Mensch, III,
individually as former Personal Representative
of the Estate of Florence Petrak Mensch and
in his former capacity as Agent under a Power
of Attorney for Florence Petrak Mensch

Appellant,

v.

Shauna M. Waddell, individually and as
Personal Representative of the Estate of
Florence Petrak Mensch and John R.
Mensch

Respondents.

INITIAL BRIEF OF RESPONDENTS

s/ Tyler E. McLeod
Tyler E. McLeod (101309)
Jenna Hendricks McLeod (101236)
106 Williams Street
Greenville, South Carolina 29601
Telephone: (864) 271-7424 ext. 105
Facsimile: (864) 271-3192
tmcleod@bmemhlaw.com
jennamcleod@bmemhlaw.com
Attorneys for Respondents

TABLE OF CONTENTS

Table of Authorities.....	ii
Statutes.....	iii
Rules.....	iii
Statement of Issues on Appeal.....	1
Statement of the Case.....	2
Standard of Review.....	4
Arguments.....	4
I. As affirmed by the South Carolina Court of Appeals, the probate court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages.....	4
II. Judicial Estoppel should prevent Appellants from challenging subject matter jurisdiction after a full trial in probate court.	9
III. The wrongful death and survival action statutes, including S.C. Code Ann. § 62-1-302(b), are inapplicable to this case, as previously ruled by the South Carolina Court of Appeals.....	11
IV. The South Carolina Appellate Court Rules govern practice in the South Carolina Supreme Court and Court of Appeals, and do not apply to an appeal of a probate court action to the circuit court	12
V. Section 62-1-308(b) required Appellant to file a Statement of Issues on Appeal with the circuit court within forty-five days and Appellant failed to do so. The filing of the Statement of Issues on Appeal triggers the thirty (30) days for Respondents to file their Designation of the Matter.....	13
VI. The Circuit Court did not err in allowing Respondents brief where the Probate Code is silent as to failure to timely file a brief and Appellant was not prejudiced by a minor delay in filing the brief.....	14
Conclusion.....	15

TABLE OF AUTHORITIES

CASES

<i>City of Rock Hill v. Suchenski</i> , 374 S.C. 12, 646 S.E.2d 879 (2007).....	7
<i>Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.</i> , 347 S.C. 545, 556 S.E.2d 718, (Ct. App. 2001).....	9
<i>Compare Dunlap & Dunlap v. Zimmerman</i> , 188 S.C. 322, 199 S.E. 296 (1938)	7
<i>DeTreville v. Groover</i> , 219 S.C. 313, 65 S.E.2d 232 (1951).....	7
<i>Estate of Weeks</i> , 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).....	4
<i>Hale v. Finn</i> , 388 S.C. 79, 694 S.E.2d 51 (Ct. App. 2010).....	10
<i>Hawkins v. Bruno Yacht Sales, Inc.</i> , 353 S.C. 31, 43, 577 S.E.2d 202, 208 (2003).....	9
<i>Hayne Fed. Credit Union v. Bailey</i> , 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997)	9
<i>Hubbard v. Rowe</i> , 192 S.C. 12, 5 S.E.2d 187 (1939)	6
<i>Mensch v. Waddell</i> , Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44).....	5, 11
<i>Mensch v. Waddell</i> , Op. No. 2025-MO-037 (S.C.Sup.Ct. filed July 2, 2025).....	3
<i>Roche vs. SC Alcoholic Beverage Control Comm’n</i> , 263 S.C. 451, 211 S.E. 2d 243(1975).....	8
<i>State v. Bailey</i> , 368 S.C. 39, 626 S.E.2d 898 (Ct.App.2006), <i>cert. denied</i> , March 8, 2007	7
<i>State v. Cope</i> , 405 S.C. 317, 748 S.E.2d 194 (2013)	5
<i>State v. Freiburger</i> , 366 S.C. 125, 620 S.E.2d 737 (2005).....	5
<i>State v. Haygood</i> , 409 S.C. 420, 762 S.E.2d 69 (Ct. App. 2014)	5
<i>State v. Jennings</i> , 394 S.C. 473, 716 S.E.2d 91 (2011)	5
<i>Swing v. Swing</i> , 445 S.C. 340, 914 S.E.2d 158 (2025).....	3
<i>United Dom. Realty Trust v. Wal-Mart Stores, Inc.</i> , 307 S.C. 102, 413 S.E.2d 866 (Ct.App.1992)	6

STATUTES

S.C. Code Ann. § 62-1-103.....	14
S.C. Code Ann. § 62-1-302(b)	1, 11, 13
S.C. Code Ann. § 62-1-308.....	12, 13, 14
S.C. Code Ann. § 62-1-308(b)	1, 12, 13, 14
S.C. Code Ann. § 62-1-308(d)	12, 14
S.C. Code Ann. § 62-1-308(e)	12
S.C. Code Ann. § 62-1-308(f).....	12
S.C. Code Ann. § 62-1-308(g)	13
S.C. Code Ann. § 62-1-308(i)	4
S.C. Code Ann. § 62-1-308(l).....	13
S.C. Code Ann. § 62-8-116(a)(4)(5)(6).....	4
S.C. Code Ann. § 62-8-117.....	5, 11
S.C. Code Ann. § 62-8-401.....	4, 11, 12

RULES

Rule 59, SCRCP.....	2, 3, 7, 13
Rule 7(b)(1), SCRCP	2, 3, 13
Rule 59(e), SCRCP	3
Rule 60(b), SCRCP.....	5, 6
Rule 101(a), SCACR	12
Rule 208, SCACR.....	12, 13
Rule 208(a)(2), SCACR.....	12
Rule 208(a)(4), SCACR.....	14

Rule 208(b)(1)(B), SCACR	12, 14
Rule 209, SCACR.....	12, 13
Rule 210, SCACR.....	12, 13

STATEMENT OF ISSUES ON APPEAL

- I. Did the probate court have subject matter jurisdiction, as affirmed by the court of appeals?**
- II. Does Judicial Estoppel prevent appellant's contrary positions?**
- III. As previously ruled by the South Carolina Court of Appeals, are the wrongful death and survival statutes, including S.C. Code Ann. § 62-1-302(b), inapplicable to this case?**
- IV. Do the South Carolina Appellate Court Rules govern an appeal of a probate court action to the circuit court?**
- V. Was Appellant required to file a Statement of Issues on Appeal with the circuit court within forty-five days pursuant to South Carolina Code Section 62-1-308(b)?**
- VI. Did the Circuit Court err by allowing Respondents' brief where the Probate Code is silent as to failure to timely file a brief and Appellant was not prejudiced by a minor delay in filing the brief?**

STATEMENT OF THE CASE

Litigation between family members in this matter began years ago when Sterling Mensch, III, pursuant to a power of attorney granted to him by his mother, began to steal from his mother Florence Mensch. Florence Mensch died on April 26, 2018. (first amended complaint, paragraph 4). On May 15, 2019, Shauna M. Waddell and John R. Mensch filed a petition against Sterling Mensch, III. After Sterling Mensch, III had been removed as personal representative of the estate of Florence Mensch, an amended petition was filed against Sterling Mensch, III individually and as former personal representative of the estate of Florence Mensch alleging improper management of the decedent's assets both before and after her death. (7/29/2021 summary judgment order, page 2-3)

Summary judgment was granted to the Respondents as to breach of fiduciary duty, violation of the South Carolina Uniform Power of Attorney Act, and conversion. (probate court order). A trial was held before the probate court over four (4) days ultimately concluding in an order dated January 26, 2022 awarding \$984,763.00 in damages against Sterling Mensch, III. On February 22, 2022 appellant filed a motion to alter or amend pursuant to Rule 59 which was denied by the probate court. (probate court order dated 2/17/22). In the aforementioned order, Judge Faulkner found that appellant had failed to comply with the provisions of Rule 7(b)(1) of the South Carolina Rules of Civil Procedure and denied the motion to alter or amend after careful review of the final order. *Id.* On February 23, 2022, Sterling Mensch, III appealed the probate court order to circuit court. (Appellant's Notice of Appeal, Feb. 23, 2022).

On February 25, 2022, respondents moved to dismiss the appeal as untimely on the grounds that the time to appeal had not been stayed by the filing of a defective Rule 59 motion. (Resp'ts' Mot. to Dismiss Appeal). Following the hearing, the circuit court granted the Motion to Dismiss

the appeal finding that the appeal deadline was not tolled by the motion to alter or amend in the probate court. (Order dismissing appeal, May 16, 2022). Thereafter, Sterling Mensch, III appealed to the Court of Appeals. (Notice of Appeal to Court of Appeals dated May 27, 2022). Oral arguments were held and the Court of Appeals affirmed. The Court of Appeals denied Appellant's Petition for Rehearing. Subsequently, Sterling Mensch, III petitioned the Supreme Court for a writ of certiorari, which they granted "only as to whether the appeal to circuit court was timely...." *Mensch v. Waddell*, Op. No. 2025-MO-037 (S.C.Sup.Ct. filed July 2, 2025). Based on the newly decided case *Swing v. Swing*, the Supreme Court ruled that even though Appellant's Rule 59(e) motion was defective under Rule 7(b)(1), it tolled the time to appeal and therefore Appellant's appeal was timely. 445 S.C. 340, 351, 914 S.E.2d 158, 164 (2025). The case was then remanded to the circuit court for consideration of the merits of the appeal.

Appellant never filed a Statement of the Issues on Appeal starting the clock by which Respondents were required to file their Designation of the Matter. Counsel for Respondents believed they filed their appellate brief on August 20, 2025, but in fact filed Appellant's brief inadvertently. Counsel for Respondents realized their mistake at a virtual status conference and corrected the filing that same day, October 8, 2025. The Circuit Court accepted the brief and found that since the issues were previously briefed and argued before various appellate courts, Appellant would not be prejudiced by this late filing.

The Circuit Court ordered that the probate court's order was final, the probate court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages, the probate court properly imposed a constructive trust in this case, and the probate court's award of attorneys' fees was proper. (Circ. Ct. Order filed Jan. 5, 2026).

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (Supp. 2018). "[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them." *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). Respondents submit that this is an action at law and as such, the findings of the probate court and circuit court must be upheld if there is any evidence to support them.

ARGUMENT

I. As affirmed by the court of appeals, the probate court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages.

The Court of Appeals already ruled and sided with Respondents on this issue, stating:

Finally, as to Sterling's argument the probate court lacked subject matter jurisdiction to hear the causes of action in the case related to pre-death damages, we affirm. Claims against an agent to whom authority is designated through a power of attorney are within the probate court's subject matter jurisdiction. *See* S.C. Code Ann. § 62-8-401 (Supp. 2018) ("The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article."); S.C. Code Ann. § 62-8-116(a)(4)(5)(6) (2022) ("The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief: . . . (4) the principal's spouse, parent, or adult descendant; (5) an individual who would qualify as a presumptive heir

of the principal; [and] (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death"); S.C. Code Ann. § 62-8-117 (2022) ("An agent that violates this article is liable to the principal or the principal's successors in interest for the amount required to: (1) restore the value of the principal's property to what it would have been had the violation not occurred; and (2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.").

Mensch v. Waddell, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44).

After Mr. Mensch appealed the final order, he then took the position, apparently for strategic reasons, that the circuit court had no appellate jurisdiction because there was no “final order” from the probate court. Nowhere at the trial court level did Mr. Mensch ever challenge the jurisdiction of the probate court prior to the issuance of the final order dated January 26, 2022. While it is true that subject matter jurisdiction may be raised at any time, even on appeal, it is also true that a party may not invoke the provisions of Rule 60(b) where it is clear the issue could have been litigated at trial. Appellant may not make an argument for lack of subject matter jurisdiction for the first time to the circuit court because he failed to make that argument to the probate court. “It is axiomatic that an issue cannot be raised for the first time on appeal.” *State v. Haygood*, 409 S.C. 420, 762 S.E.2d 69, 74 (Ct. App. 2014) (quoting *State v. Cope*, 405 S.C. 317, 338-339, 748 S.E.2d 194, 205 (2013)). “For an issue to be properly preserved it has to be raised and ruled on by the trial court.” *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). “An argument advanced on appeal but not raised and ruled on below is not preserved.” *State v. Freiburger*, 366

S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Appellant’s counsel fails to acknowledge the fact that he did not raise the issue of subject matter jurisdiction with the probate court.

The dispute regarding Sterling Mensch’s breach of his duties towards Florence Mensch and her successors in interest began when he was acting as her power of attorney. Following her death, litigation ensued between the parties. In the action, Sterling Mensch litigated vigorously in the probate court of Greenville County the issues raised by the pleadings in the underlying action. After an adverse verdict against him, Mr. Mensch filed an appeal with the circuit court for Greenville County specifically asserting the jurisdiction of the circuit court. In that appeal Mr. Mensch specifically contended that the probate court order was final. It goes without saying that Mr. Mensch could not have filed an appeal of an order that was not “final”. Thereafter, apparently for strategic reasons, Mr. Mensch took the position that the circuit court had no appellate jurisdiction because there was no “final order” from the probate court. Nowhere at the trial court level did Mr. Mensch ever challenge the jurisdiction of the probate court prior to the issuance of the final order dated January 26, 2022. While it is true that subject matter jurisdiction may be raised at any time, even on appeal, it is also true that a party may not invoke the provisions of Rule 60(b) where it is clear the issue could have been litigated at trial.

“[A]ll this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court.” *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939). An argument that is not raised to an intermediate appellate court is not preserved for review by this Court. *United Dom. Realty Trust v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (Ct.App.1992). Even though subject matter jurisdiction may be raised at anytime, there is no error preservation exception allowing a party to bypass calling an erroneous ruling to the attention of the tribunal making it before appealing that ruling to a higher

court. Compare *Dunlap & Dunlap v. Zimmerman*, 188 S.C. 322, 199 S.E. 296 (1938) (once the issue of subject matter jurisdiction has been decided adversely to a party, he must preserve his exception or be barred from raising the issue later); cf. *DeTreville v. Groover*, 219 S.C. 313, 65 S.E.2d 232 (1951) (party abandoned subject matter jurisdiction issue by failing to argue it in brief). The State failed to ask the circuit judge to reconsider her subject matter jurisdiction ruling before appealing the order to this Court. Accordingly, it has failed to preserve any issue related to that ruling for our review. See *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007) (holding Rule 59 applies to circuit court sitting in appellate capacity to review criminal convictions); *State v. Bailey*, 368 S.C. 39, 626 S.E.2d 898 (Ct.App.2006), *cert. denied*, March 8, 2007 (circuit court's appellate error must be called to its attention by petition for rehearing in order to be preserved for further appellate review).

Appellant continues to try and seek the same relief while ignoring on-point adverse rulings against him. By his Order dated May 17, 2022 the Honorable Alex Kinlaw, Jr. found that Judge Faulkner's order for damages was a final order and therefore denied appellant's request that the case be remanded to the probate court. Judge Kinlaw also dismissed respondent's appeal of the probate court orders, including Judge Faulkner's final order dated January 22, 2022. No motion to reconsider was filed with the circuit court.

From a procedural perspective, up to this point the appellant Sterling Mensch has noticed an appeal from probate court to circuit court but then argued that no appellate jurisdiction exists because the probate court did not issue a "final order". (Notwithstanding the fact it was appellant who appealed this "non-final" order from probate court to circuit court.) Then, Mr. Mensch argues the probate court had no jurisdiction (yet admitted jurisdiction in his answer) to address the litigation before it. Now Mr. Mensch comes before this court continuing to attempt to advance the

same inconsistent arguments. Specifically, the arguments in this appeal illustrate the conflicting positions taken by Mr. Mensch. In this appeal he seeks a ruling from this court that the probate court lacked subject matter jurisdiction then argues that the probate court that lacked subject matter jurisdiction issued an order Mr. Mensch appealed, but that order was not final. Mr. Mensch goes on to argue that if there was jurisdiction and the probate court entered a final order, that final order was timely appealed because his motion to alter or amend tolled the deadline to appeal. Mr. Mensch cannot have his cake and eat it too. As he did in all of the underlying actions, Mr. Mensch changes his position not in accordance with the facts, but in accordance with his view of what position may be most helpful to advance at any given time. The court should not condone such conduct.

Appellant continues to misapprehend the import and application of the rules of civil procedure to his conduct in this matter versus conduct referenced in case law cited in his brief.

With regard to appellant's continuing arguments that the probate court did not have jurisdiction of various claims before it, appellant continues his incorrect analysis of the applicable law. By way of additional example, appellant cites *Roche vs. SC Alcoholic Beverage Control Comm'n*, 263 S.C. 451, 211 S.E. 2d 243(1975) for the proposition that the raised and ruled upon requirement is only a doctrine of error preservation. In point of fact, *Roche* illustrates an example where the appellate court refused to address two issues before it as neither issue was raised in the court below. Hence the inclusion in the quotation from *Roche* contained in appellant's brief "accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him." *Roche*, 263 S.C. at 245, 211 S.E. 2d at 455.

Sterling Mensch was ordered by the probate court to pay almost \$1,000,000.00 immediately to the personal representative of his mother's estate. Mr. Mensch literally destroyed

his mother's financial situation beginning while she was alive and continuing following her death. Once caught, Mr. Mensch has attempted to drag out the litigation against him in hopes of avoiding his day of reckoning. It is time to bring an end to Mr. Mensch's efforts to cheat his mother and following her death, her estate.

II. Judicial Estoppel should prevent Appellants from challenging subject matter jurisdiction after a full trial in probate court.

"Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). "Judicial estoppel comes into play when the court is forced to take a position based on a factual assertion." *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 43, 577 S.E.2d 202, 208 (2003); see also *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 554 n.6, 556 S.E.2d 718, 723 n.6 (Ct. App. 2001)

When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. . . . "[T]he truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly discovered evidence." *Hayne Fed. Credit Union*, 327 S.C. at 252, 489 S.E.2d at 477

In this case litigation initially began between the parties in probate court. In that litigation, no issue was raised disputing jurisdiction of the probate court (Respt's Answer to Am. Petition, R pp. 94-105). In fact, jurisdiction was admitted and the litigation itself related to matters which took place prior to as well as after the death of Florence Mensch. (First Am. Petition, R pp. 55-56; Respt's Answer to Am. Petition R p. 94).

Sterling Mensch specifically admitted subject matter jurisdiction of the probate court in admitting paragraphs 9 and 10 in his answer to the first Amended Petition. (First Am. Petition, R pp. 56; Respt's Answer to Am. Petition R p. 94). After affirmatively agreeing that the probate court had jurisdiction, then taking the position the probate court had no jurisdiction over matters previously litigated, Mr. Mensch yet again changes his mind. It borders on frivolity to allege that the probate court did not have jurisdiction over this matter because it involved actions Sterling Mensch took prior to the death of Florence Mensch. Such a position flies in the face of logic, reason, and the law.

Sterling Mensch, III advanced the position that the probate court had jurisdiction, admitted that jurisdiction and then following an adverse ruling had a change of heart. Mr. Mensch then took the position that the circuit court had jurisdiction to consider an appeal from probate court but then arguing that the circuit court had no jurisdiction because there was no final order. (Appellant's Notice of Appeal, Feb. 23, 2022; Appellant's Mem. in Opp'n of Mot. to Dismiss).

In this case, there has been no newly discovered evidence which would compel a change in position by Sterling Mensch, III. Rather, Mr. Mensch has attempted to assert a certain version of the facts in litigation but has attempted to change those facts when the initial version no longer suited him. This is exactly the truth-seeking function of the judicial process that is undermined by such conduct. As such, judicial estoppel precludes Mr. Mensch's appeal.

Additionally, appellate courts should defer to the trial court's award. "...[T]he discretion that must be accorded to the [special referee] compels us to affirm the award as appropriate recompense for misconduct necessitating the imposition of a constructive trust." *Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51 (Ct. App. 2010).

Appellant's argument about a lack of subject matter jurisdiction is irrelevant given that the probate court had subject matter jurisdiction, as already decided by the probate court, circuit court and South Carolina Court of Appeals. *Mensch v. Waddell*, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44).

III. The wrongful death and survival action statutes are inapplicable to this case, as previously ruled by the South Carolina Supreme Court, including S.C. Code Ann. § 62-1-302(b).

Appellant incorrectly attempts to apply S.C. Code § 62-1-302(b) which pertains to wrongful death and survival actions to this case, which is actually about the misdeeds and crimes committed by agent under a power of attorney both during and after the Decedent's death. In so doing, Appellant completely ignores the South Carolina Power of Attorney Act, even after being questioned about it during oral arguments in front of the Court of Appeals in this case. In this case, funds were removed from the same account both before and after the death of the Decedent by Appellant. Instead, S.C. Code Ann. § 62-8-117 under the South Carolina Power of Attorney Act is applicable. § 62-8-117 states that "[a]n agent that violates this article is liable to the principal **or to the principal's successors in interest** for the amount required to: (1) restore the value of the principal's property to what it would have been had the violation not occurred.." S.C. Code Ann. § 62-8-117 (emphasis added).

The violations contemplated by this act will nearly always be before the death of the principal considering a power of attorney is only applicable while the principal is alive. The inclusion in the statute of **successors in interest** clearly accounts for a principal who has passed away after the violations occurred. In addition, S.C. Code Ann. § 62-8-401 gives the probate court concurrent jurisdiction with the circuit court "over all subject matter related to the creation,

exercise, construction and termination of powers of attorney governed by the provisions of this article.” S.C. Code Ann. § 62-8-401.

IV. The South Carolina Appellate Court Rules govern practice in the South Carolina Supreme Court and Court of Appeals, and do not apply to an appeal of a probate court action to the circuit court.

Appellant incorrectly argues that Rule 208(a)(2) required Respondents to serve a copy of their brief within thirty (30) days. The South Carolina Appellate Court Rules do not apply to an appeal of a probate court action to the circuit court. Instead, Section 62-1-308 applies, which does require Respondents to file a

Rule 101(a), SCACR states that “[t]hese Rules are divided into six parts. Part I governs the applicability of these Rules and contains general provisions. Part II[, the Rules of Appellate Practice,] governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals.” Rule 101(a), SCACR. Rule 208 is contained within Part II. Because the South Carolina Appellate Court Rules specifically state that they govern practice and procedure in appeals in the South Carolina Supreme Court and Court of Appeals, these rules do not apply to an appeal of a probate court action to the circuit court.

Although section 62-1-308 of the South Carolina Code refers to Rules 208, 209 and 210 of the South Carolina Appellate Court Rules, it references these rules only to the extent that it directs the parties to comply with such rules regarding the **formatting** of briefs and the record on appeal. See S.C. Code Ann. § 62-1-308(b) (providing an appellant’s statement of issues on appeal must be filed in a **format** described in Rule 208(b)(1)(B), SCACR); § 62-1-308(d) (providing the parties’ designation of matter to be included in the record on appeal must comply with the **format** described in Rule 209, SCACR); § 62-1-308(e) (providing the appellant’s and respondent’s briefs must be in the **format** described in Rule 210, SCACR); § 62-1-308(f) (providing the record on

appeal must be in the **format** described in Rule 210, SCACR). “Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules.” S.C. Code Ann. § 62-1-308(g). “If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.” S.C. Code Ann. § 62-1-308(l).

Section 62-1-308 of the South Carolina Code refers to Rules 208, 209 and 210 of the South Carolina Appellate Court Rules, it references these rules only to the extent that it directs the parties to comply with such rules regarding the **formatting** of briefs and the record on appeal. The Probate Code explicitly states that no party is required to comply with **any other requirements** of the South Carolina Appellate Court rules. S.C. Code Ann. § 62-1-308(g). Therefore, Rule 208’s requirement that Respondents brief be filed within thirty (30) days after service of Appellant’s brief is inapplicable in appeals from probate court to circuit court. Instead, it is governed by S.C. Code Ann. § 62-1-308. *Id.*

V. Section 62-1-308(b) required Appellant to file a Statement of Issues on Appeal with the circuit court within forty-five days and Appellant failed to do so. The filing of the Statement of Issues on Appeal triggers the thirty (30) days for Respondents to file their Designation of the Matter.

Appeals from probate court to circuit court are governed by probate code section 62-1-308, not the South Carolina Appellate Court Rules which specifically governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals. Rule 101(a), SCACR. Under Section 62-1-308(b), “[w]ithin forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the

circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.” S.C. Code Ann. § 62-1-308(b).

The Supreme Court remitted the case on July 21, 2025 which would have made Appellant’s Statement of Issues on Appeal due on September 4, 2025. Appellant contends that the case was remanded to the circuit court for consideration of the merits of the appeal, yet Appellant never filed a Statement of Issues on Appeal with the circuit court as required by South Carolina law. *Id.* Pursuant to S.C. Code Ann. § 62-1-308(d), had Appellant filed the required Statement of Issues on Appeal, both the Appellant and the Respondent would then have had thirty (30) days to serve and file their Designation of Matter to be Included in the Record on Appeal. S.C. Code Ann. § 62-1-308(d). However, Appellant never filed a Statement of Issues on Appeal and therefore the clock for Appellant and Respondents to file their Designations of the Matter never started.

VI. The Circuit Court did not err in allowing Respondents brief where the Probate Code is silent as to failure to timely file a brief and Appellant was not prejudiced by a minor delay in filing the brief.

Section 62-1-308 of the Probate Code governs appeals from probate court, however that section is silent on the effect of a respondent’s failure to timely file a brief. S.C. Code Ann. § 62-1-308. Therefore, pursuant to Section 62-1-103, where the Probate Code is silent, the principles of law and equity supplement its provisions. S.C. Code Ann. § 62-1-103. In this case, the SC Appellate Court Rules could supplement the Probate Code, specifically Rule 208(a)(4). “...Upon the failure of **respondents** to timely file a brief, the appellate court may take such action as it deems proper.” Rule 208(a)(4), SCACR (emphasis added). Assuming Rule 208(a)(4), SCACR is applicable, the circuit court was able to take such action as it deemed proper upon the alleged failure of respondents to file a brief. In fact, Respondents did file a brief, they mistakenly filed Appellant’s brief rather than their own brief. The circuit court allowed Respondents’ brief and

allowed Respondents one week to file an amended brief with citations to the record on appeal in the circuit court, rather than the record on appeal that was before the court of appeals. Appellant was not prejudiced given that the issues have already been briefed and argued before the various appellate courts. (Judge Gravely Form 4). Additionally, Appellant's were still given ten (10) days to respond to Respondent's final brief. Respondents had Appellant's brief prior to the hearing on the appeal in circuit court, and as previously noted, the issues had already been briefed and argued in various appellate courts.

CONCLUSION

The family of Florence Mensch has attempted for years now to recover from Sterling Raymond Mensch, III the clear and devastating financial harm caused by his actions. Mr. Mensch has at every opportunity attempted to obscure and drag out the judicial process sought by the estate to remedy the damages caused. Sterling Mensch was ordered by the probate court to pay \$984,763.00 immediately to the personal representative of his mother's estate, his sister Shauna Waddell. (R. p. 18). Mr. Mensch literally destroyed his mother's financial situation beginning while she was alive and continuing following her death. Once caught, Mr. Mensch has attempted to drag out the litigation against him in hopes of avoiding his day of reckoning. It is time to bring an end to Mr. Mensch's efforts to cheat his mother and following her death, her estate. The court should summarily end such conduct and fully affirm the previous orders of the probate court, circuit court and this Court of Appeals.

Respectfully submitted,

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC

s/ Tyler E. McLeod
Tyler E. McLeod (101309)
Jenna Hendricks McLeod (101236)
106 Williams Street
Greenville, South Carolina 29601
Telephone: (864) 271-7424 ext. 105
Facsimile: (864) 271-3192
jennamcleod@bmemhlaw.com
tmcleod@bmemhlaw.com
Attorneys for Respondents