RECEIVED
Jul 08 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.
Master in Equity

Appellate Case No. 2024-002207
Circuit Court Case No. 2017-CP-23-08016

Wells Fargo Bank, N.A., ... Respondent,

v.

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

of which Michelle Hodges, Individually . . . . …………………… Appellant.

BRIEF OF RESPONDENT

WOMBLE BOND DICKINSON (US) LLP

S. Sterling Laney, III
sterling.laney@wbd-us.com
Jason D. Wyman
jason.wyman@wbd-us.com
550 South Main Street, Suite 400
Greenville, SC 29601
(864) 255-5400

Attorneys for Respondent Wells Fargo Bank, N.A.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

1. Whether this appeal is limited to the December 12, 2024 Judgment of Foreclosure and Sale and the evidence admitted at the final foreclosure hearing, rather than issues resolved by the prior summary judgment order affirmed on appeal.

2. Whether Hodges's standing argument fails because standing was already litigated and, in any event, Wells Fargo proved standing at the final foreclosure hearing through the original note endorsed in blank, servicing testimony, and recorded assignment.

3. Whether the Master correctly entered foreclosure judgment where Wells Fargo proved the debt, default, standing, notice, and amount due through evidence admitted at the final hearing.

4. Whether Hodges established any valid defense to foreclosure.

5. Whether the Master correctly rejected Hodges's joint-tenancy/extinguishment theory because the deed conveyed title to Ruth Witherspoon, no joint tenancy with right of survivorship was created, and Ruth Witherspoon's death did not extinguish Wells Fargo's recorded purchase-money mortgage.

<u>COUNTER-STATEMENT OF THE CASE</u>

This appeal follows a final foreclosure hearing, not a new trial on issues already decided. Wells Fargo filed this mortgage foreclosure action in December 2017 to foreclose its purchase-money first mortgage on 6 Young Harris Drive in Simpsonville, South Carolina. (*See generally* Compl.) Hodges answered, asserted counterclaims and affirmative defenses, and vigorously contested the action. (*See generally* Sixth Amended Ans. and Countercl.).

In 2019, Judge Gravely granted summary judgment for Wells Fargo, struck Hodges's jury demand, and dismissed her counterclaims and affirmative defenses. (*See generally* Order Granting Summary Judgment and Wells Fargo's Motion to Strike). Hodges appealed. (Appellate Case No. 2019-001565) This Court affirmed. (Unpublished Opinion No. 22-UP-326). The South Carolina Supreme Court denied certiorari, and remittitur issued. (Appellate Case No. 2022-001724). Those rulings are final and are not before this Court again.

After remittitur, the case proceeded to a hearing on the merits of the foreclosure. The Master held that hearing on November 21, 2024. (*See generally* Order of Judgment of Foreclosure and Sale (hereinafter "JOFS")). Wells Fargo introduced the note, mortgage, recorded assignment, payment history, demand letter, and judgment figures, and Hodges did not object when those exhibits were admitted. (*Id.*; Tr. pp. 14, 16, 18–21, 25.) Wells Fargo's witness testified that Wells Fargo serviced the loan, held the note endorsed in blank, stopped receiving payments, sent the demand letter, and calculated the amount due. (Tr. pp. 9–10, 13, 20–24.)

Hodges did not prove payment or any recognized defense to foreclosure. Instead, she argued that she was not personally liable because she did not sign the note or mortgage and that Wells Fargo's lien was extinguished when Ruth Witherspoon died because Hodges claims the property was held in joint tenancy with right of survivorship. (Judgment of Foreclosure and Sale,

¶¶13, 16). The Master rejected her theories and entered the Judgment of Foreclosure and Sale on December 12, 2024.

The Judgment of Foreclosure and Sale held that Wells Fargo was the holder of the note and assignee of the mortgage, had standing to foreclose, gave any required notice, and was owed $213,656.01. (*See generally* JOFS). After later proceedings limited to updating the debt, the Master entered a Supplemental Judgment reflecting a total debt of $222,274.31 and confirming the foreclosure judgment in all other respects. (Supplemental Order).

STANDARD OF REVIEW

A mortgage foreclosure is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an appeal from an action in equity tried by a judge alone, this Court may find facts in accordance with its own view of the preponderance of the evidence. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). That broad scope of review, however, does not require this Court to disregard the findings below or ignore that the trial judge was in the better position to assess witness credibility. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). Nor is Appellant relieved of her burden to convince this Court that the Master in Equity committed error. *Id.* at 387–88, 544 S.E.2d at 623.

Preservation and finality principles also limit review. An issue must be raised to and ruled upon by the trial court to be preserved for appellate review. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009). And after remittitur, the lower court may not reopen matters resolved by the appellate decision or matters necessarily concluded by that decision. *See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). To the extent Appellant asks this Court to revisit issues resolved in the prior appeal or to review issues not ruled on at the final foreclosure hearing, those arguments are not properly before the Court.

SUMMARY OF ARGUMENT

This appeal is narrow. After remittitur from the first appeal, the case returned to the Master in Equity for a final foreclosure hearing. The issues at that hearing were whether Wells Fargo proved the remaining elements necessary for foreclosure and whether Hodges established any legally cognizable defense. Wells Fargo carried its burden. Hodges did not. Instead, she uses this appeal to revisit issues resolved years ago by Judge Gravely's summary judgment order, affirmed by this Court, left undisturbed by the South Carolina Supreme Court, and finalized by remittitur. Those issues are not before this Court again.

At the final foreclosure hearing, Wells Fargo presented competent evidence supporting foreclosure. It introduced the note, mortgage, recorded assignment, payment history, demand letter, and judgment figures, all of which were admitted into evidence, without objection. Its witness testified that Wells Fargo serviced the loan, held the note endorsed in blank, stopped receiving payments, sent the demand letter, and calculated the amount due. That evidence supported the Master's findings on the debt, default, standing, notice, and amount due.

Hodges proved no defense. She did not prove payment, lack of consideration, accord and satisfaction, or anything else that defeats foreclosure. Instead, she argued that she is not personally liable and that the mortgage vanished when Ruth Witherspoon died. None of that defeats Wells Fargo's foreclosure claim.

The prior appeal ended the litigation over the dismissed counterclaims and defenses. The final foreclosure hearing addressed foreclosure, and Wells Fargo carried its burden. The Judgment of Foreclosure and Sale should be affirmed.

ARGUMENT AND AUTHORITIES

I. This Appeal Is Limited to the Final Foreclosure Judgment, Not Issues Already Resolved by the Prior Appeal.

The threshold problem with Hodges's appeal is scope. This case returned from the first appeal for a final foreclosure hearing. It did not return for another round of litigation over counterclaims, affirmative defenses, escrow complaints, or other matters resolved by the 2019 summary judgment order and subsequent appeal. Judge Gravely granted summary judgment in Wells Fargo's favor, struck Hodges's jury demand, and dismissed her counterclaims and affirmative defenses. Hodges appealed that order. This Court affirmed. The Supreme Court denied certiorari. Remittitur issued. At that point, the issues resolved by the summary judgment order were final.

Hodges cannot use this second appeal to do what she failed to accomplish in the first. This appeal does not reopen every issue in the case. It does not permit a party to revive dismissed counterclaims, repackage rejected defenses, or impose on Wells Fargo the burden to re-litigate matters already affirmed on appeal. The only proper focus is whether the Master erred in entering the foreclosure judgment based on the evidence admitted at the November 21, 2024 hearing.

That limitation matters here because much of Hodges's brief is aimed at issues outside that narrow posture. None of those arguments provides a basis to reverse the foreclosure judgment entered after the final hearing. They are collateral attacks on final rulings.

The proper questions are therefore narrow: did Wells Fargo prove the foreclosure, and did Hodges prove a legally cognizable defense? The record answers yes to the first question and no to the second. This Court should not allow the appeal to expand beyond that record.

II. Hodges's Standing Argument Fails Procedurally and on the Record.

Standing is Hodges's first issue, but it is not a basis for reversal. Her standing argument fails for two independent reasons. First, she cannot use this second appeal to relitigate standing after the prior summary judgment order was affirmed and remittitur issued. Second, even if standing were still an issue, Wells Fargo proved standing at the final hearing.

The procedural point is dispositive. Judge Gravely's 2019 Order Granting Summary Judgment rejected Hodges's defenses and counterclaims, including her challenge to Wells Fargo's ability to proceed. Hodges appealed. This Court affirmed. The Supreme Court denied certiorari, and remittitur issued. Hodges's attempt to go behind the prior appeal and challenge Wells Fargo's standing from the beginning of the case is outside the proper scope of this appeal.

In any event, the record defeats the standing argument on the merits. South Carolina law does not require Wells Fargo to prove standing in the manner Hodges demands. Under *Draper*, a holder or servicer has standing to foreclose. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 226–28, 746 S.E.2d 478, 485–86 (Ct. App. 2013); S.C. Code Ann. § 36-3-301. Wells Fargo satisfied both routes. It presented the original note endorsed in blank, and its witness testified that Wells Fargo held the original note and serviced the loan.

The recorded assignment also supports standing. The mortgage was assigned to Wells Fargo by assignment recorded January 20, 2017, before this action was filed. The assignment was admitted into evidence. Hodges cannot plausibly claim Wells Fargo lacked any interest in the mortgage when the record contains the recorded assignment, the original note endorsed in blank, and testimony that Wells Fargo serviced the loan.

Hodges's insistence on proof of possession at the precise moment of the filing of the Complaint does not change the result. Wells Fargo produced the original note at the final hearing, the note was endorsed in blank, and the mortgage assignment was recorded before suit. The Master in Equity therefore correctly found that Wells Fargo had standing to proceed.

Hodges did not object when the note was admitted into evidence, and she did not challenge the indorsements when Wells Fargo's witness identified them. (Tr. pp. 10–11, 13–14.) To the contrary, after reviewing the original note, she told the Master that the case "doesn't turn on the possession of the note," and confirmed she had no questions about the documents she had been shown. (Tr. p. 11.) Only later did she attack the witness's lack of firsthand knowledge, but the Master in Equity correctly rejected that objection under the business records foundation. (Tr. pp. 29–30, 40.) She cannot now convert unobjected-to admitted evidence into reversible error.

Nor does the absence of a date on the indorsements create a standing defect. S.C. Code Ann. § 36-3-204(a) provides that an indorsement is a signature placed on an instrument for purposes such as negotiating the instrument. The statute focuses on the signature, its placement on the instrument, and its purpose. It says nothing about a date. Hodges's argument therefore asks this Court to add a requirement South Carolina's Commercial Code does not impose.

The relevant facts are simple. Wells Fargo produced the original note at the final hearing, and the note bore indorsements culminating in a blank indorsement. Because S.C. Code Ann. § 36-3-204(a) defines what an indorsement is without imposing a dating requirement, the Master in Equity was not required to reject the note or disregard the indorsements merely because the indorsements did not recite dates.

Nor can Hodges manufacture a standing defect by attacking Wells Fargo's witness. The Master in Equity admitted the evidence after Wells Fargo laid the business records foundation. A witness need not have personally participated in the original loan transaction to testify from business records if the proper foundation is established. *See Deep Keel, LLC v. Atlantic Private*

Equity Group, LLC, 413 S.C. 58, 68-70, 773 S.E.2d 607, 613-14 (Ct. App. 2015). Wells Fargo's witness testified to his familiarity with Wells Fargo's recordkeeping practices and the loan records. The Master properly overruled Hodges's objection.

III. Wells Fargo Proved the Remaining Foreclosure Elements.

South Carolina foreclosure law is straightforward. The foreclosing party must prove the debt and default. Once it does, the burden shifts to the opposing party to prove a defense such as payment, lack of consideration, or accord and satisfaction. *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 376–77, 684 S.E.2d 199, 205-06 (Ct. App. 2009). Wells Fargo satisfied that burden with documentary evidence and testimony admitted at the final hearing.

The evidence established the existence of the debt. Ruth Witherspoon executed the note to finance the purchase of the property and executed the mortgage securing repayment. The mortgage was recorded. Wells Fargo introduced the loan documents, assignment, payment history, demand letter, and judgment figures, and the Master in Equity admitted them. Hodges did not introduce evidence that the note was paid, released, satisfied, or otherwise unenforceable.

The evidence also established default and the amount due. Wells Fargo's witness testified that Wells Fargo stopped receiving payments, declared the loan in default, and that the contractual default due date was May 1, 2017. (Tr. pp. 20, 22–24, 31.) The payment history and judgment figures supported the amount due. (Tr. pp. 19–20, 24–25.) The Master in Equity found $213,656.01 due in the foreclosure judgment. (JOFS ¶ 24.) The Supplemental Judgment later updated the debt to $222,274.31 and confirmed the foreclosure judgment in all other respects. (Supplemental Order at 2.)

IV. Hodges Proved No Defense to Foreclosure.

Hodges advances a collection of arguments concerning contractual notice, HUD regulations, and foreclosure intervention. Although presented as separate theories, each rests on the same flawed premise: that Wells Fargo failed to satisfy a condition precedent to foreclosure. The record does not support that contention.

A. The Master in Equity Properly Found That Wells Fargo Satisfied Any Contractual Notice Requirement

The Judgement of Foreclosure and Sale found that Wells Fargo provided the notice required by the note and mortgage before commencement of the action. (JOFS ¶ 22.) That finding is supported by the record. Wells Fargo introduced the February 16, 2017 demand letter without objection, and its witness testified concerning the letter and the opportunity to cure provided before the foreclosure action was filed. (Tr. pp. 20–21.) The Master in Equity, therefore, correctly found any contractual notice requirement had been satisfied. Hodges focuses on the fact that the Judgment of Foreclosure and Sale identifies May 1, 2017 as the contractual due date. But she does not explain how that finding renders the demand letter inadequate under any specific provision of the note or mortgage. Nor does she identify any evidence demonstrating that additional contractual notice was required.

B. Hodges Did Not Preserve a HUD Face-to-Face Defense

Hodges's HUD face-to-face argument is not preserved. An issue must be raised to and ruled upon by the trial court to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

That did not happen here. Despite filing six amended answers and counterclaims, Hodges never pleaded a HUD face-to-face defense. At the final foreclosure hearing, she did not ask the Master in Equity to decide whether any HUD regulation applied, whether Wells Fargo complied with such a regulation, or whether any alleged noncompliance barred foreclosure. The Master in Equity therefore made no ruling on HUD face-to-face compliance.

That omission is dispositive. Hodges cannot convert an unpreserved HUD theory into reversible error by recasting it on appeal as part of her contractual-notice argument. Because the issue was never raised to or ruled upon by the Master, there is nothing for this Court to review.

C. Hodges Expressly Abandoned Any Foreclosure Intervention Defense

On May 2, 2011, then Chief Justice Jean Toal issued an administrative order (the "May 2011 Administrative Order"). *In re Mortg. Foreclosure Actions*, 396 S.C. 209, 720 S.E.2d 908 (2011). The May 2011 Administrative Order created a statewide procedure for foreclosure intervention and loss mitigation in residential mortgage foreclosure cases. *Id.* It required mortgagees to provide eligible borrowers notice of the right to foreclosure intervention and, before proceeding to final hearing or sale, to certify that applicable loss-mitigation efforts had been completed or were unsuccessful. *Id.* Noncompliance with that process could prevent or delay foreclosure because a lender was not supposed to proceed to judgment or sale until the administrative-order requirements were satisfied. But the May 2011 Administrative Order operated as a procedural safeguard for eligible borrowers pursuing foreclosure intervention, not as a defense a borrower may abandon at the hearing and later revive on appeal.

At the final hearing, when Wells Fargo addressed the May 2011 Administrative Order, Hodges expressly stated: "I'm not concerned about that anymore." (Tr. p. 42.) The Master in Equity subsequently found that the issue had been abandoned. (JOFS ¶ 9.). That finding should end the inquiry. A litigant may not disclaim an issue before the trial court, permit the court to proceed on that understanding, and then seek reversal based on the very issue she elected to abandon. *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505, 812 S.E.2d 438, 441 (Ct. App. 2018) ("When an appellant expressly waives an argument at trial, it cannot be raised on appeal.").

V. Hodges's Joint-Tenancy/Extinguishment Theory Cannot Erase Wells Fargo's Recorded Purchase-Money Mortgage.

Hodges's remaining theory is not a foreclosure defense. She claims Ruth Witherspoon took title with Hodges as joint tenants with right of survivorship and that, because Hodges did not sign the mortgage, Wells Fargo's lien was extinguished when Ruth Witherspoon died. The theory fails at both steps. The deed did not create the joint tenancy Hodges claims, and even if Hodges later received an interest in the property, that interest remained subject to Wells Fargo's recorded purchase-money mortgage.

South Carolina law provides the method for creating a joint tenancy with right of survivorship. Under S.C. Code Ann. § 27-7-40, survivorship does not arise by implication; the instrument must express an intent to create a right of survivorship. Hodges cannot satisfy that requirement because the deed conveyed the property to Ruth Witherspoon, not to Hodges. The phrase "heirs and assigns" did not make Hodges a present grantee or joint tenant. It is language of limitation describing the estate conveyed to the named grantee. Because Hodges was not a grantee, there was no joint tenancy between Hodges and Ruth Witherspoon for a right of survivorship to operate upon. Hodges later received an interest as an heir or distributee, and that interest remained subject to Wells Fargo's recorded purchase-money mortgage. S.C. Code Ann. § 62-3-101 (providing that real property devolves at death to heirs, subject to the rights of creditors); *See also In re Mack*, No. CV 22-02503-DD, 2023 WL 1869211, at *4 (Bankr. D.S.C. Feb. 9, 2023) (recognizing that, under South Carolina law, an heir receives an interest in real property immediately upon the borrower's death, while the mortgage creditor retains an in rem claim secured by the property).

Nor did Ruth Witherspoon's death extinguish the mortgage. The mortgage was a recorded purchase-money lien securing the debt used to buy the property. Hodges's argument would let an heir take the property free of the purchase-money mortgage simply because the heir did not sign the loan documents. That would turn mortgage law upside down. Heirs and successors take the property subject to recorded liens unless those liens are paid, released, satisfied, or otherwise extinguished by law. None of that occurred here.

Hodges's reliance on the fact that she did not sign the mortgage confuses personal liability with lien enforcement. Wells Fargo does not contend Hodges signed the note. It does not seek a deficiency judgment against her. But the absence of personal liability does not eliminate the mortgage lien. The lien attaches to the property. That is why foreclosure is an in-rem remedy directed to the collateral, not a personal judgment against Hodges. The Master correctly rejected Hodges's attempt to erase Wells Fargo's mortgage through her joint tenancy theory.

CONCLUSION

For these reasons, Respondent Wells Fargo Bank, N.A. respectfully requests that this Court affirm the December 12, 2024 Judgment of Foreclosure and Sale.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Jason D. Wyman
S. Sterling Laney, III
S.C. Bar No. 6933
sterling.laney@wbd-us.com
Jason D. Wyman
S.C. Bar No. 100271
jason.wyman@wbd-us.com
550 South Main Street, Suite 400
Greenville, SC 29601
(864) 255-5421

Attorneys for Respondent

RECEIVED
Jul 08 2026
SC Court of Appeals

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Respondent, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below via First Class Mail at the address below:

Pleading: **BRIEF OF RESPONDENT**

Parties Served: Michelle Hodges
6 Young Harris Drive
Simpsonville, SC 29681

Pro se Appellant

By: /s/ Jason D. Wyman
Attorneys for Respondent Wells Fargo Bank, N.A.

July 8, 2026