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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2026-001061
Civil Action No. 2025-CP-07-00873

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.

APPELLANT'S INITIAL BRIEF

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III. Whether the circuit court erred in finding it lacked subject matter jurisdiction to determine a claim for liability as *executor de son tort*.

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INTRODUCTION

This appeal arises from a lawsuit brought by the estate ("Estate") of George Francis Niesar ("Decedent") against Decedent's ex-wife, Respondent Christine Nemeth ("Nemeth") as a result of Nemeth's conversion of assets belonging to the Estate and the circuit court's erroneous dismissal of Appellant's claims after the circuit court no longer had subject matter jurisdiction. Gerald Viglione Niesar ("Appellant") is Decedent's brother and, as Personal Representative of Decedent's Estate, sought damages arising from Nemeth's conversion of one half of the proceeds of the sale of real property owned by Nemeth and Decedent—at the time of Decedent's death—as tenants in common without rights of survivorship. Although she no longer had a right of survivorship after divorcing Decedent, after Decedent's death, Nemeth sold the property and retained all of the proceeds of the sale for herself, without providing the Estate its one-half share.

Appellant, a creditor appointed to serve as the Estate's Personal Representative, sued Nemeth to recover the sales proceeds, asserting claims for conversion, liability as *executor de son tort*, and constructive trust. Appellant later moved for summary judgment on all of these claims, and the circuit court granted that motion in its entirety, thereby ending the case. After the time for filing a motion to reconsider pursuant to Rule 59(e), SCRCP had passed, however, the circuit court reversed itself *sua sponte* on grounds, almost all of which Nemeth had never previously raised and which had the effect of dismissing all of Plaintiff's claims. Because the circuit court lacked subject matter jurisdiction to reverse itself on these grounds after the expiration of the time for moving to reconsider, Appellant filed a motion to reconsider that decision, which the circuit court denied. Appellant now appeals those two orders and asks this Court to reinstate the circuit court's order granting Appellant's motion for summary judgment.

STATEMENT OF THE CASE

Decedent married Nemeth on March 29, 1989. (MSJ Memo. at 2, Ex. A at 2, 19; Compl. ¶ 6; Ans. ¶ 2). During their marriage, Decedent and Nemeth purchased the property known as 1105 Bluffton Parkway, Bluffton, South Carolina 29910, with Beaufort County Tax Map Parcel Numbers R600-029-000-0034-0000 and R600-029-000-011A-0000 (the "Property") as joint tenants with rights of survivorship. (MSJ Memo. at 2, Ex. B; Compl. ¶ 8; Ans. ¶ 2). Nemeth later filed for divorce, and the Final Order of Divorce was issued by the Beaufort County, South Carolina Family Court on July 18, 2007. (MSJ Memo. at 2, Ex. A; Compl. ¶ 9; Ans. ¶ 2). The Final Order of Divorce makes no reference to the Property, and therefore, Nemeth's and Decedent's joint tenancy with rights of survivorship severed and became a tenancy in common *without* rights of survivorship by operation of law. *See* S.C. Code Ann. §§ 27-7-40(a)(vii); 62-2-507(c)(2); (MSJ Memo. at 2, Ex. A; Def.'s Return to Pl.'s MSJ ("Return") at ¶ 6).

On September 3, 2022, Decedent and Nemeth entered into a contract to sell the Property to the Beaufort County School District ("BCSD") for $886,000, with a closing date of October 31, 2022. (MSJ Memo. at 3, Ex. C; Compl. ¶ 14; Ans. ¶ 2). Through several emails on or around October 5, 2022, counsel for Decedent and Nemeth informed the BCSD that Decedent was hospitalized and his prognosis was uncertain. (MSJ Memo. at 3; Compl. ¶ 14; Ans. ¶ 2).

Decedent died on October 7, 2022. (MSJ Memo. at 3, Ex. D; Compl. ¶ 15; Ans. ¶ 2). On the day of Decedent's death, Nemeth forwarded to the BCSD a picture of a Power of Attorney (the "POA") executed in her favor by Decedent on December 17, 2018 and indicated that, because Decedent lacked capacity to close the sale of the Property, Nemeth would close for him pursuant to her authority under the POA. (MSJ Memo. at 3, Ex. E; Compl. ¶ 16; Ans. ¶ 2). On October 12, 2022, Nemeth executed and delivered to the BCSD an affidavit falsely stating the POA remained in force and that Decedent was still alive, even though Decedent died five days earlier and the POA terminated upon his death under S.C. Code Ann. § 62-8-110(a)(1). (MSJ Memo at 3, Ex. F). On or about October 31, 2022, Nemeth, as the sole grantor, sold the Property to the BCSD for $886,000.00 (the "Sale") and pocketed all of the Sale's proceeds for herself. (MSJ Memo. at 3, Exs. G, H, I). Then, on November 3, 2022, with the property transaction completed and all of the proceeds secured for herself, Nemeth recorded Decedent's death certificate. (MSJ Memo. at 3, Ex. D).

On December 6, 2024, the Estate—acting through its Personal Representative—filed the present action in the Beaufort County Probate Court, asserting against Nemeth causes of action for conversion, liability as *executor de son tort*, and constructive trust. (Compl., Dec. 6, 2024). Upon Appellant's timely motion, the action was removed to circuit court on April 3, 2025 by Associate Probate Judge Lindsay A. Sutcliffe pursuant to S.C. Code Ann. §§ 62-1-302(d)(3) and (5). (Order of Removal, Apr. 3, 2025).

Appellant filed his motion for summary judgment ("Motion for Summary Judgment") on May 6, 2025 and a supporting memorandum of law prior to the hearing on that motion, arguing there were no issues of fact material to his three causes of action and that he was, accordingly, entitled to judgment as a matter of law under Rule 56, SCRCP. (MSJ, May 6, 2025; MSJ Memo., Oct. 24, 2025). Nemeth filed a return ("Return")—two pages in length and devoid of legal citation—arguing that "this case should be dismissed" because: (i) Decedent's and Nemeth's joint tenancy with rights of survivorship were not severed by their divorce, and (ii) that the Estate does not own one-half of the Property because "Christine was willed the property." (Return at 1–2, Oct. 7, 2025). Notably, Nemeth's Return did not take issue with any of the factual allegations upon which Appellant's claims were based, instead only disputing (without any explanation or analysis) the legal consequences of those undisputed facts. (*Id.*). Nemeth's Return also did not argue that an action for conversion cannot lie over the proceeds of the sale of real property or that the circuit court lacked subject matter jurisdiction over Appellant's claim for liability as *executor de son tort*. (*Id.*).

After a hearing held on October 28, 2025, the circuit court entered an order on December 31, 2025 (the "Final Order"), granting summary judgment on all of Appellant's claims and: (i) awarding damages to the Estate in the amount of $443,000, plus pre- and post-judgment interest; (ii) reducing the value of any distribution or payment to Nemeth from the Estate by $443,000 pursuant to S.C. Code Ann. § 62-3-619; and (iii) imposing a constructive trust over $443,000, an amount which represents the portion of the proceeds of the Sale that belong to the Estate, plus the interest awarded. (Final Order at 10, Dec. 31, 2025).

On January 6, 2026, Nemeth filed a motion to reconsider ("Nemeth's Motion to Reconsider") pursuant to Rule 59(e): (i) arguing it is unjust to award Appellant $443,000 on a claim for an unpaid loan of $24,000, (ii) asking "[w]ho does this combined total award of $559,104.45 go to?" and (iii) concluding, "the Plaintiff was not damaged by more than $24,000." (Def.'s Mot. to Reconsider at 1–2, Jan. 6, 2026). Again, Nemeth did not dispute the facts relied upon in Appellant's Motion for Summary Judgment and the circuit court's Final Order. (*Id.*).

Nemeth's Motion to Reconsider also did not contend that a conversion action cannot lie over the proceeds of the sale of real property or that the circuit court did not have jurisdiction over the claim for liability as *executor de son tort*. (*Id.*).

The circuit court held a hearing on Nemeth's Motion to Reconsider on January 14, 2026—more than ten (10) days after it entered the Final Order—during which the court, *sua sponte*, raised concerns about the soundness of the Final Order, specifically questioning whether: (i) a claim for conversion can be based upon the proceeds of the sale of real property in South Carolina; (ii) the circuit court has subject matter jurisdiction to make a finding of liability and damages as *executor de son tort*; and (iii) an issue of material fact exists as to Appellant's claim for constructive trust. (Jan. 14, 2026 Hearing Tr. at 6–7, 16). Because Nemeth never raised these issues—either in her Return or in her Motion to Reconsider[1]—Appellant did not have a prior opportunity to address these points. The court granted Appellant's request to provide briefing on these questions. (Jan. 14, 2026 Hearing Tr. at 15, 17).

On January 26, 2026, Appellant filed a Memorandum in Opposition to Nemeth's Motion to Reconsider, arguing: (1) the court should not grant reconsideration on grounds Nemeth did not raise in response to Appellant's Motion for Summary Judgment or in her Motion to Reconsider; (2) the arguments Nemeth did make in her Return and in her Motion to Reconsider do not warrant reversal of the Final Order; (3) the court properly granted summary judgment on Appellant's conversion claim because a claim for conversion can be based on the proceeds of the sale of real property, and there is no genuine issue of any fact material to that claim; (4) the court properly granted summary judgment on Appellant's claim for liability as *executor de son tort* because the

[1] Nemeth did briefly argue at the October 28 hearing that the circuit court lacked subject matter jurisdiction over Appellant's claim for liability as *executor de son tort*. (Oct. 28, 2025 Hearing Tr. at 12–14).

circuit court has subject matter jurisdiction to decide that claim and there is no genuine issue of any fact material to that claim; and (5) the court properly granted summary judgment on Appellant's claim for constructive trust because there is no genuine issue of any fact material to that claim. (Memo. in Opp. to Def.'s Mot. to Reconsider at 4–16, Jan. 26, 2026).

Also on January 26, Nemeth submitted an "Amended Notice of and Motion to Reconsider Final Order Granting Plaintiff's Motion for Summary Judgment," in which she argued the circuit court lacked jurisdiction over Appellant's claim for liability as *executor de son tort* and, for the first time, after the circuit court first raised these issues, that a conversion action cannot lie in this case because such a claim is based on real property. (Def.'s Am. Mot. to Reconsider at 2–3, Jan. 26, 2026).

On March 10, 2026, the circuit court entered an order granting Nemeth's Motion to Reconsider ("Order Granting Reconsideration"), stating, "the Court believes that there is a question of fact as to the [Appellant's] claims and reverses her December 31, 2025 order granting Summary Judgment on all causes of action." (Order Granting Reconsideration at 1, Mar. 10, 2026). As to Appellant's claim for conversion, the court held that "under South Carolina law, a cause of action for conversion cannot be sustained when the thing converted is an interest in real property." (*Id.*). The court also held that it did not have subject matter jurisdiction over Appellant's claim for liability as *executor de son tort* because such a claim falls within the Probate Court's exclusive jurisdiction. (*Id.* at 2). Finally, the court held "there are questions of fact that need to be decided by the fact finder such that summary judgment is not appropriate on whether or not a constructive trust exists." (*Id.*).

Because the court failed in its Order Granting Reconsideration to address any of the arguments Appellant raised in opposition to Nemeth's Motion to Reconsider, Appellant filed a

Motion to Reconsider and Supporting Memorandum on March 18, 2026 ("Appellant's Motion to Reconsider") pursuant to Rule 59(e), SCRCP. (Pl.'s Mot. to Reconsider, Mar. 18, 2026). Specifically, Appellant argued the circuit court did not address Appellant's arguments that: (1) the circuit court lacked subject matter jurisdiction to grant reconsideration more than ten days after the Final Order was entered on grounds the court raised *sua sponte*; (2) a conversion claim is available to recover the proceeds of the sale of real property; (3) Appellant's claim for liability as *executor de son tort* falls within the circuit court's removal jurisdiction under S.C. Code Ann. §§ 62-1-302(d)(3) and (5); and (4) neither any party nor the court had identified any genuine issues of material fact regarding Appellant's claim for a constructive trust, and that none exist. (*Id.* at 4–9).

Nemeth submitted a "Reply" to Appellant's Motion to Reconsider (Def.'s Reply to Pl.'s Mot. to Reconsider, Mar. 26, 2026), and the court denied the motion on April 21, 2026 in a Form 4 Order that still did not address any of the issues Appellant raised (the "Order Denying Reconsideration," and with the Order Granting Reconsideration, the "Appealed Orders").[2] (Order Denying Reconsideration, Apr. 21, 2026). Having exhausted his options in the circuit court, Appellant timely filed his Notice of Appeal on April 30, 2026 and now asks this Court to vacate or reverse the Appealed Orders and reinstate the circuit court's earlier Final Order. (Not. of Appeal, Apr. 30, 2026).

STANDARD OF REVIEW

The first three issues on appeal are questions of law, which this Court reviews *de novo*. *See Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022)

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[2] The Order Denying Reconsideration also stated that Appellant's Motion to Reconsider was filed on March 3, 2026. That is a scrivener's error, as Appellant filed his Motion to Reconsider on March 18. No filings were made in this case on March 3.

("This Court applies de novo review to questions of law, so it need not defer to the determination of the court below."); *State v. Alexander*, 424 S.C. 270, 274-75, 818 S.E.2d 455, 457 (2018) ("Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below."); *see also Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022) ("We review questions of statutory interpretation de novo."). Accordingly, in rendering its decision on these issues, the Court should give no deference to the circuit court's rulings below.

The Court should review the fourth issue on appeal under the language of Rule 56(c), SCRCP. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (eliminating the "mere scintilla" standard and clarifying that "the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule."); *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP). Under Rule 56(c), summary judgement is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

ARGUMENT

I. The circuit court lacked subject matter jurisdiction to reverse its Final Order on grounds that it raised *sua sponte* after the time for filing a Rule 59(e) motion to reconsider passed.

The Court should reverse the Appealed Orders because the circuit court lacked jurisdiction to reverse its Final Order on grounds that the Court raised for the first time after the period for Nemeth to file a Rule 59(e) motion to reconsider had already passed.[3] Nemeth herself never raised the Reversal Grounds to the circuit court before the January 14, 2026 hearing on Nemeth's Motion to Reconsider,[4] which was held fourteen (14) days after the Court entered the Final Order and two (2) days after Nemeth's deadline to file a Rule 59(e) motion.[5]

The circuit court lacked subject matter jurisdiction to reverse the Final Order on grounds it raised *sua sponte* more than ten days after entry of the Final Order. First, a party may not raise an issue for the first time in a Rule 59(e) motion to reconsider, *e.g.*, *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018); *C.A.H. v. L.H.*, 315 S.C. 389, 392, 434 S.E.2d

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[3] As already mentioned, the circuit court based its decision to reverse the Final Order on its conclusions that: (1) "under South Carolina law, a cause of action for conversion cannot be sustained when the thing converted is an interest in real property"; (2) a claim for liability as *executor de son tort* falls within the exclusive jurisdiction of the probate court; and (3) "there are questions of fact that need to be decided by the fact finder such that summary judgment is not appropriate on whether or not a constructive trust exists." (Order Granting Reconsideration at 1, Mar. 10, 2026). For the sake of efficiency, Appellant will refer to the first and third of these three grounds for reversing the Final Order as the "Reversal Grounds."

[4] Appellant acknowledges that Nemeth did argue the circuit court lacked subject matter jurisdiction over the claim for liability as *executor de son tort* at the October 28 hearing, that a lack of subject matter jurisdiction may be raised at any time, and that the court was accordingly free to determine it lacked subject matter jurisdiction over the claim for liability as *executor de son tort* in the procedural posture in which it did. Nevertheless, this Court should still hold, for the reasons discussed below in Section III, that the circuit court did have subject matter jurisdiction to find Nemeth liable as an *executor de son tort*.

[5] Rule 59(e), SCRCP was amended on April 30, 2026 to lengthen the time a party has to serve and file a written motion to alter or amend from ten to twenty days of receipt of notice of entry of the order. *Re: Rule Amendments*, S.C. Sup. Ct. Order dated April 30, 2026 (Howard Adv. Sh. No. 17) (effectuating *Re: Amendments to the South Carolina Rules of Civil Procedure*, S.C. Sup. Ct. Order dated January 30, 2026 (Howard Adv. Sh. No. 17)). However, at all relevant times herein, including when Nemeth filed her Motion to Reconsider, when the court held its January 14 hearing, and when the court issued its Order Granting Reconsideration, Rule 59(e)'s former ten-day limitation was still in effect. Because the tenth day after December 31, 2025—January 10—fell on a Saturday, Rule 6(a), SCRCP extended Nemeth's deadline to Monday, January 12.

268, 270 (1993); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not."), and a Rule 59(e) motion is proper only when a party believes the court has misunderstood or failed to fully consider or rule upon an argument or issue. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Likewise, circuit courts do not have jurisdiction to alter or amend an earlier order on their own initiative after the time for filing a motion to alter or amend (a.k.a. motion to reconsider) under Rule 59(e), SCRCP has passed. *Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) ("Under Rule 59(e), SCRCP, the trial judge has only ten days from entry of judgment to alter or amend an earlier order on [its] own initiative absent a 'reservation' of jurisdiction in the form order."); *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002) ("Although [circuit courts] retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e), SCRCP, motion is filed, after ten days that jurisdiction is lost."); *see Doran v. Doran*, 288 S.C. 477, 478, 343 S.E.2d 618, 619 (1986) (in appeal decided under predecessor to SCRCP, court held judge lost jurisdiction to issue supplemental order after end of term, and noted that, under Rule 59(e), the judge would have jurisdiction to alter or amend an order only for a period of ten days after the entry of judgment); *Heins v. Heins*, 344 S.C. 146, 156, 543 S.E.2d 224, 229 (Ct. App. 2001) (holding family court lacked jurisdiction to alter a judgment *sua sponte* more than ten days after it was issued); *Fairfield 132 Smith St., LLC v. Surface,* Op. No. 2025-UP-062, 2025 WL 627575, at *1 (S.C. Ct. App. filed Feb. 26, 2025) ("[T]he circuit court's jurisdiction ended ten days after it denied [defendants'] motions to reconsider"); *Branch Banking & Trust Co. v. Pickens*, No. 2004-UP-157, 2004 WL 6250805 at *1 (S.C. Ct. App. 2004) (vacating circuit court's *sua sponte* order setting aside default judgment issued after ten-day Rule 59(e) filing window had passed, holding "the trial court retains jurisdiction to reconsider or change its previous rulings for a limited time—generally for ten days after entry of judgment, or if upon motion of party, ten days after the party received written notice of the order.").[6]

The circuit court lacked subject matter jurisdiction to enter the Appealed Orders even though Nemeth timely filed a motion to reconsider. *See Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001). In *Heins*, after a divorcing husband failed to comply with several provisions of the divorce decree, the family court entered an order: (i) holding the husband in contempt of court and, as a result, ordering him to pay $4,146 to wife, (ii) ordering him to pay the wife's attorneys' fees, but (iii) finding the husband was under no obligation to repay certain personal expenses or undisclosed accounts payable. *Id.* at 149-50, 543 S.E.2d at 225-26. The wife, dissatisfied with the third finding, moved for reconsideration under Rule 59(e), arguing the family court erred in failing to require the husband to be responsible for his personal debts and the accounts payable. *Id* at 151, 543 S.E.2d at 226. The husband filed a return to the wife's motion, denying the wife was entitled to this relief but not otherwise seeking reconsideration of the court's order. *Id.* The family court denied the wife's motion but *sua sponte* reversed its prior order, which held husband in contempt. *Id.* The wife moved again for reconsideration, which the court denied. *Id.*

[6] This is also the same under the Federal Rules. *See Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1232 (11th Cir. 1984) ("[S]o long as the court acts within ten days after the entry of judgment, the court has the power on its own motion to consider altering or amending a judgment."); *see also Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (explaining Rule 59(e) motions cannot be used "to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment"); *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (holding 59(e) motions are "not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing").

The Court of Appeals reversed, explaining that while Rule 59(e) is silent on the power of a court to alter or amend a judgment on its own initiative (unlike Rule 59(d) and Rule 60(a)), this power is nonetheless time-limited, finding courts possess this inherent power only during the ten-day window during which Rule 59(e) motions are required to be filed or else waived. *Id.* at 153-57, 543 S.E.2d at 228-29. The court specifically held, "[w]e rule a Family Court judge does not have the authority to alter or amend a judgment, sua sponte, once the judgment is more than 10-days old." *Id.* at 157, 543 S.E.2d at 229. Accordingly, even though a motion for reconsideration had been timely filed, because the family court ordered relief outside the scope of issues presented in that motion, its action was considered to have been *sua sponte*—something it could have done only within ten days after entry of the prior judgment. *Id.* Because the family court's order on reconsideration fell outside of that ten-day window, the Court of Appeals found the family court exceeded its power and reversed its order as to that relief. *Id.* at 157, 543 S.E.2d at 230.

Similarly, in *Ness v. Eckerd Corporation*, the defendant filed a motion to set aside the entry of the default that had been entered against it after it failed to timely answer the plaintiff's complaint. 350 S.C. 399, 401, 566 S.E.2d 193, 195 (Ct. App. 2002). The circuit court denied the motion to set aside default, prompting the defendant to timely file a Rule 59(e) motion asking the court to reconsider its determination that the defendant had not shown good cause for the default. *Id.* at 401-02, 566 S.E.2d at 195. After the Rule 59(e) filing period passed, the court entered an order vacating the earlier order declining to set aside default, not because the court found good cause existed to set aside default (as the defendant had urged), but because the judge discovered he had a conflict of interest—an issue the defendant had never raised. *Id.* at 402, 566 S.E.2d at 195. The Court of Appeals, citing *Heins*, stated that "[a]lthough trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e), SCRCP, motion is filed, after ten days that jurisdiction is lost." *Id.* Because "the trial judge modified an order not as requested in a Rule 59(e) motion, but rather on its own initiative and after more than ten days had passed," he, therefore, "lacked jurisdiction to vacate the original order." *Id.* at 403, 566 S.E.2d at 195. Accordingly, the Court of Appeals vacated the judge's decision which had vacated his original order. *Id.* at 404, 566 S.E.2d at 196.

Here, like in *Heins* and *Ness*, because Nemeth never raised the Reversal Grounds to the circuit court, the court retained subject matter jurisdiction to decide the case on those grounds only during the ten-day Rule 59(e) filing period that elapsed on January 12, 2026. However, because the court raised the Reversal Grounds for the first time after the ten-day filing period elapsed, the court lacked jurisdiction to base its Order Granting Reconsideration on the Reversal Grounds. Therefore, as in *Ness*, the Court should vacate the Appealed Orders with respect to Appellant's claims for conversion and constructive trust on this basis alone and need not assess the remaining issues concerning those claims (discussed below in Sections II and IV). *E.g.*, *Hughes v. State*, 367 S.C. 389, 408–09, 626 S.E.2d 805, 815 (2006) (noting an appellate court need not reach remaining issues on appeal when a decision on another issue is dispositive).

II. The circuit court erred in reversing its initial grant of summary judgment on Appellant's conversion claim because conversion is an available cause of action to recover proceeds from the sale of real property.

In its Order Granting Reconsideration, the circuit court reversed its prior grant of summary judgment on Appellant's conversion claim on the basis that "a cause of action for conversion cannot be sustained when the thing converted is an interest in real property." (Order Granting Reconsideration at 1). This holding is erroneous because it mischaracterizes the nature of Appellant's conversion claim, which is not for the conversion of real property, but for the conversion of the *proceeds* of the sale of real property, a distinct and viable theory.[7] While Appellant acknowledges that a conversion action "does not lie when alleging the exercise of dominion or control over real property," *Hawkins v. City of Greenville,* 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004), Appellant's conversion claim is for the proceeds from the sale of real property, not for the property itself. (Comp. ¶¶ 20, 36–38).

Under South Carolina law, an interest in real property becomes an interest only in personal property when the owner executes a contract to sell the property. "The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor." *Brooks v. Council of Co-Owners of Stones Throw Horizontal Prop. Regime I*, 315 S.C. 474, 476, 445 S.E.2d 630, 632 (1994). Accordingly, upon entering a contract to sell real property, the seller becomes the owner of the purchase price, and the buyer is deemed to be the equitable owner of the real estate. *See In re Restivo Auto Body, Inc.*, 772 F.3d 168, 177 (4th Cir. 2014) ("[U]pon contracting to buy land, 'in equity the vendee becomes the owner of the land, the vendor of the purchase money.'" (citing *Himmighoefer v. Medallion Indus., Inc.*, 487 A.2d 282, 286 (Md. 1985)); *Meltzer v. Wendell-West*, 497 P.2d 1348, 1351 (Wash. 1972) ("An equitable conversion, therefore, takes place when a contract for the sale of real property becomes binding upon the

[7] Because the circuit court reversed summary judgment on Appellant's conversion claim solely on the basis that a conversion claim cannot lie over real property as a matter of law (which is a mischaracterization), rather than on the basis there is a genuine issue of material fact with respect to that claim, Appellant does not herein analyze the evidence in support of each element of that claim. However, to the extent such an analysis is necessary or helpful, Appellant relies on and hereby incorporates by reference the analysis of his conversion claim detailed in his Memorandum in Support of his Motion for Summary Judgment. (MSJ Memo. at 4–8). As discussed therein, the undisputed facts clearly establish that each element is satisfied.

parties. Thenceforth, the purchaser of the land is deemed the equitable owner thereof, and the seller is considered the owner of the purchase price.”).

It is undisputed that Nemeth and Decedent executed a contract to sell the property to the Beaufort County School District on September 3, 2022. (MSJ Memo. at 3, Ex. C; Compl. ¶ 14; Ans. ¶ 2). Thus, on that day, Nemeth and Decedent each became the owner of their rights to receive their portion of the agreed purchase price, and neither remained an equitable owner of the real property. Because Decedent’s only interest was in the sales proceeds when he died, and the proceeds of the sale constituted personal, not real property, Nemeth’s retention of Decedent’s share of those proceeds constituted a conversion of personal property. *See SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990) (“Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.”); *Daniel v. Post*, 181 S.C. 468, 187 S.E. 915, 917 (1936) (“Where personal property has been converted and sold, an action lies either for damages for the conversion or for the recovery of the proceeds of sale, the first being trover and the second assumpsit for money had and received.”); *Stewart v. Young*, 226 N.W. 222, 224 (Mich. 1929) (holding that when real estate is sold without permission of all parties involved, “such proceeds are not real estate, but personal property”).

Additionally, the principle that a conversion claim is specifically available to recover the proceeds of real property is well-supported in other jurisdictions, even recently.[8] *See Alisa A. Peskin-Shepherd, PLLC v. Blume*, 974 N.W.2d 835, 836 (Mich. 2022) (“It is true that proceeds of a real-estate sale are personal property and thus may be subject to conversion.”); *In re Verestar,*

[8] Although there are no reported South Carolina cases holding that a conversion cause of action is available to recover proceeds of the sale of real property, Appellant has also not located any cases—from this state or any other—rejecting that proposition.

Inc., 343 B.R. 444,467 (Bankr. S.D.N.Y. 2006) ("[T]he cash proceeds of the sale of real property can be converted."); *Asdourian v. Konstantin*, 93 F. Supp. 2d 296, 299 (E.D.N.Y. 2000) ("As the conversion cause of action concerned the proceeds of the sale of properties and not the conversion of real property itself, the Court denies the Respondent's motion for judgment as a matter of law with regard to the contention that Blue Chip may not recover in conversion for the wrongful sale of real property."); *Robert Smalls Inc. v. Hamilton*, No. 09 CIV. 7171 DAB JLC, 2010 WL 3238955, at *9 (S.D.N.Y. July 19, 2010) (finding plaintiff adequately pled a conversion claim where it was for the proceeds of the sale of real property), *report and recommendation adopted*, No. 09 CIV. 7171 DAB, 2010 WL 3238963 (S.D.N.Y. Aug. 11, 2010); *Congram v. Giella*, No. 91 CIV. 1134 (LMM), 1992 WL 349845, at *6 (S.D.N.Y. Nov. 10, 1992) (distinguishing between a claim for conversion of real property and a claim for the proceeds from the sale of real property).

Because South Carolina precedent establishes that a real property interest becomes a personal property interest when a sales contract is executed, and the sales contract here was executed on September 3, 2022, only a personal property interest remained when Decedent died on October 7, 2022. Therefore, when Nemeth kept all of the Sale's proceeds, she converted personal property to her own use, and that conduct renders her liable for conversion. For that reason, if the Court reaches this issue, the Court should reverse the Appealed Orders, hold that conversion is a viable cause of action for a plaintiff to seek the proceeds of the sale of real property, and reinstate the Final Order with respect to that claim.

III. The circuit court erred in determining it lacked subject matter jurisdiction to decide a claim for liability as *executor de son tort.*

In its Order Granting Reconsideration, the circuit court reversed its prior ruling in favor of Appellant on the claim for liability as an *executor de son tort* of Decedent's Estate and erroneously held that it lacked subject matter jurisdiction to adjudicate this claim. (Order Granting Reconsideration at 2). To the contrary, the circuit court has subject matter jurisdiction over Appellant's *executor de son tort* claim under the South Carolina Probate Code's removal statute, S.C. Code Ann. §§ 62-1-302(d)(3) and (5).[9]

It appears the circuit court's primary concern derives from the language of section 62-3-620, which provides:

> Acting *sua sponte* or upon the petition of any interested person, the *probate judge* of the county in which a deceased person was domiciled at the time of his death may order the executor de son tort to account for the property in his possession. Upon a finding that the property has been converted, wasted or otherwise damaged through improper interference, the court may assess damages including attorney's fees and costs in the amount determined by the court not to exceed the value of the property charged to the executor de son tort.

S.C. Code Ann. § 62-3-620 (emphasis added). While this section empowers the probate judge to adjudicate claims for liability as *executor de son tort*, it does not deprive the circuit court of subject matter jurisdiction to do so or to provide the specific remedy it did in this case in its Final Order.

First, section 62-3-620 is not even mentioned in the court's Final Order granting summary judgment on the *executor de son tort* claim. The Final Order did not cite section 62-3-620 or provide the remedies it enables. (Final Order at 8–9). Rather, the Final Order only applied the neighboring code section, section 62-3-619, which does not limit the finding of liability as *executor de son tort* to any particular court or judge. (*Id.*). Rather, that section provides:

[9] Because the circuit court reversed summary judgment on Appellant's claim for liability as *executor de son tort* solely on the basis that the court lacked subject matter jurisdiction over that claim, rather than on the basis there is a genuine issue of material fact with respect to that claim, Appellant does not herein analyze the evidence in support of that claim. However, to the extent such an analysis is necessary or helpful, Appellant relies on and hereby incorporates by reference the analysis of this claim detailed in his Memorandum in Support of his Motion for Summary Judgment. (MSJ Memo. at 8–9). As discussed therein, the undisputed facts clearly establish that each element is satisfied.

> Any person who obtains, receives, or possesses property of whatever kind, belonging to the Decedent, by means of fraud or without paying valuable consideration equivalent to the value of the property, shall be charged and chargeable as executor of his own wrong (executor de son tort) with respect to the goods and debts. The value of the property is charged to the executor de son tort. Likewise, the value of the property shall be deducted from any distribution or payment of any claim or commission to which the executor de son tort is entitled from the estate.

Section 62-3-619 does not specify which court or judge may determine that a person has "obtain[ed], receiv[ed], or possess[ed] property . . . belonging to the Decedent, by means of fraud or without paying valuable consideration" or to order the remedy the Final Order did in this case—the reduction of any distribution to which Nemeth may be entitled—which remedy is not provided for in section 62-3-620.

Moreover, even assuming that section 62-3-620—and its specific reference to the "probate judge"—applied to this case (which it does not), section 62-3-620 is not a jurisdictional statute. Rather, the section simply allows the court, after finding that an executor de son tort is liable, to provide the remedy of an "account[ing] for the property in his possession" and to assess damages if the property in the *executor de son tort's* possession has been converted, wasted or otherwise damaged. Importantly, section 62-3-620 uses the terms "probate judge" and "court" interchangeably. Because the probate code does not define "court" as "the probate court" but, rather, as "the court or branch having jurisdiction in matters as provided in this Code," section 62-3-620 by its own terms envisions that the circuit court can also have jurisdiction, if the probate code provides so.

The probate code does so provide. This action was removed from the probate court to the circuit court under S.C. Code Ann. §§ 62-1-302(d)(3) and (5), which provide removal jurisdiction to the circuit court over "actions to try title concerning property in which the estate of a decedent or protected person asserts an interest" and "actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value." S.C. Code Ann. §§ 62-1-302(d)(3), (5). Because this action falls in both categories, either is sufficient to confer jurisdiction.

Under § 62-1-302(d)(3), this is an "action[] to try title concerning property in which the estate of a decedent or protected person asserts an interest" because one of the issues essential to all of Appellant's claims is the Estate's ownership of the proceeds of the sale of the property. *See Builders Source Direct v. Costco Logistics (Americas) Inc.*, No. 2:07-CV-531-PMD, 2008 WL 11349731, at *11 (D.S.C. Mar. 25, 2008) ("In order to establish a cause of action for conversion, a plaintiff must prove (1) an interest by the plaintiff in the thing converted. . . ."); S.C. Code Ann. § 62-3-619 (to establish liability as *executor de son tort*, it must be shown that the property wrongfully obtained, received, or retained "belong[ed] to the decedent"); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793 (1990) ("A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it. . . .").

In addition, under § 62-1-302(d)(5), this is an "action[] in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value." S.C. Code Ann. § 62-1-302(d)(5). Section 62-1-306(a), "entitle[s]" parties to a jury trial if a jury trial is duly demanded and the action is "for the recovery of money only or of specific real or personal property." Here, Appellant's Complaint involves an amount in controversy easily in excess of $5,000, demands a jury trial, and seeks both monetary damages and a constructive trust over the specific portion of the Sale's proceeds that belongs to the Estate. (Compl. at 3–4, 9).

Therefore, pursuant to S.C. Code Ann. §§ 62-1-302(d)(3) and (5), this Court has removal jurisdiction over the entirety of this action, including Appellant's claim for liability as *executor de son tort*.

Last, the case on which the circuit court relied, *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011), does not support the circuit court's holding that "the probate court [is] the proper forum for executor de son tort claims tied to estate administration, not circuit court." *Judy* only involved the question whether the *probate court had* jurisdiction over a claim for liability as *executor de son tort*, not whether the *circuit court lacked* it. Appellant agrees that the probate court has exclusive *original* jurisdiction over an *executor de son tort* claim under S.C. Code Ann. § 62-1-302(a), but such original jurisdiction does not foreclose the possibility that the circuit court may gain *removal* jurisdiction over such claims by virtue of S.C. Code Ann. §§ 62-1-302(d)(3) and (5), as was done here.

Therefore, the circuit court erred in holding it lacked subject matter jurisdiction over Appellant's claim for liability as *executor de son tort*, and this Court should reverse that holding.

IV. The circuit court erred in finding there is a genuine issue of material fact with respect to Appellant's claim for constructive trust.

If the Court reaches this issue, it should hold the circuit court erred in reversing its prior granting of summary judgment on Appellant's constructive trust claim on the grounds that "there are questions of fact that need to be decided by the fact finder" because all elements of that claim are met and because Nemeth failed to create a factual dispute with respect to that claim.

A constructive trust arises by operation of law to remedy unjust enrichment, *Hale v. Finn*, 388 S.C. 79, 89, 694 S.E.2d 51, 57 (Ct. App. 2010), and "arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty." *SSI Med. Servs.*, 301 S.C. at 500, 392 S.E.2d at 793-94. Nemeth failed to show—in her Return, at the October 28, 2025 hearing, in her Motion to Reconsider, or anywhere else in the summary judgment proceedings below—a genuine issue of any fact pertaining to her unlawful and fraudulent retention of the full proceeds of the Sale, when one half of those proceeds belong to the Estate.

Nemeth did not dispute any of the facts upon which Appellant's constructive trust claim rests. Specifically, she did not dispute that she and Decedent divorced in 2007; that their divorce decree did not mention the property; that she and Decedent contracted to sell the property on September 3, 2022 while Decedent was alive; that Decedent died on October 7, 2022 during the closing period; that she sent a Power of Attorney to the buyer of the property on the day Decedent died; that on October 12, 2022, she executed and delivered to the buyer an affidavit stating that the Power of Attorney remained in effect (despite Decedent's death five days earlier); or that she sold the property on or around October 31, 2022 and retained all of the proceeds thereof. No additional facts are needed to resolve this claim, none of the existing facts is in dispute, and the circuit court failed to identify any specific missing or contested fact—stating only, in conclusory fashion, that "there are questions of fact that need to be decided by the fact finder."

There is, therefore, no genuine issue that Nemeth has been unjustly enriched by her unlawful and fraudulent procurement and retention of the full proceeds of the Sale, when one half of those proceeds belong to the Estate. Accordingly, the circuit court erred in holding otherwise, and this Court should reverse.

CONCLUSION

The circuit court lacked subject matter jurisdiction to reverse its Final Order on grounds that it raised *sua sponte* after Nemeth's time for filing a Rule 59(e) motion passed. Because that issue is dispositive with respect to Appellant's claims for conversion and constructive trust, the Court should vacate the Appealed Orders with respect to those two claims and reinstate the Final Order. If the Court declines to do so, it should still reverse the circuit court's dismissal of his conversion claim as a matter of law and reinstate the Final Order as to that claim. The Court should also hold that the circuit court erred in deciding it lacked subject matter jurisdiction to adjudicate Appellant's claim for liability as *executor de son tort* because the circuit court gained removal jurisdiction over the entire action, including that claim, when the case was removed from probate court under S.C. Code Ann. § 62-1-302(d)(3) and (5) and should reinstate the Final Order as to that claim. Last, the Court should hold that the circuit court erred in reversing summary judgment on Appellant's claim for a constructive trust and should reinstate the Final Order as to that claim as well.

Therefore, Appellant respectfully asks this court to either vacate or reverse the Appealed Orders and, to bring finality to this case, reinstate the Final Order.

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