

The South Carolina Court of Appeals

South Carolina Department of Transportation, Respondent,

v.

Katherine Gettys, as Personal Representative of the Estate of McGee  
Still, and Sara Still, Appellants.

Appellate Case No. 2025-001444

The Honorable Stephanie N. Lawrence  
Richland County  
Trial Court Case No. 2020CP4004683

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APPELLANT SARA STILL'S INITIAL BRIEF

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Stephen C. Hucks  
HUCKS LAW FIRM  
9610 Two Notch Road, Suite 5  
Columbia, South Carolina 29223  
*stephen@huckslawfirm.com*  
Telephone: (803) 865-6370  
Attorney for Appellant Sara Still

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## STATEMENT OF THE ISSUES ON APPEAL

- I Did the Trial Court err by proceeding with the valuation hearing after the death of record owner McGee Still without first substituting a proper party pursuant to Rule 25(a), SCRCP?
- II Did the Trial Court err to the extent it relied upon a power of attorney or informal family participation to represent the interests of the deceased owner's estate?
- III Did the Trial Court abuse its discretion by granting a motion in limine to exclude evidence after the death of a party?
- IV Did the Trial Court abuse its discretion by denying a continuance after the death of a co-owner approximately eleven days before the valuation hearing?
- V Did the cumulative effect of the Trial Court's rulings deny Appellants due process of law?
- VI Was the Estate of McGee Still a necessary party whose absence rendered the valuation proceedings fundamentally defective?

## THE STANDARD OF REVIEW

The standard of review for an appellate court over a trial court's grant or denial of a motion for a continuance is abuse of discretion. *Bridwell v. Bridwell*, 302 S.E.2d 856, 279 S.C. 111 (S.C. 1983)

The standard of review is de novo when reviewing questions of law, including those of jurisdiction and statutory or rule interpretation. *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 354 (2022).

## STATEMENT OF THE CASE

The South Carolina Department of Transportation initiated this condemnation action in connection with the Carolina Crossroads Project in Richland County, South Carolina. The property at issue, identified as Tract 300, consisted of an approximately 0.32-acre vacant lot owned by McGee Still and Sara Still, husband and wife. Because both owners held interests in the condemned property, the valuation proceeding directly affected their respective property rights and their entitlement to just compensation.

McGee Still, one of the co-owners and named defendants, died on April 19, 2025, eleven days before the scheduled valuation hearing. His death materially altered the procedural posture of the case because his ownership interest did not disappear; rather, any surviving interest had to be protected through a legally authorized estate representative. No personal representative, successor, or other proper party was substituted for Mr. Still before the hearing proceeded.

Following Mr. Still's death, the Still family requested a continuance of the trial. The request was based on the recent death of a co-owner, the need to address proper substitution of parties, the need to determine who could lawfully represent the deceased owner's estate, and the need to obtain and present evidence concerning the value of the property. The family also sought additional time to respond to discovery and to obtain an independent appraisal. Despite those circumstances, the Trial Court denied a continuance and required the matter to proceed as scheduled.

Summer Still, the daughter of the owners, attempted to participate in the proceedings. She held a power of attorney for Sara Still and attempted to assist her mother and the family in responding to the condemnation action. However, to the extent any party or the court treated a power of attorney as authority to act for the deceased co-owner or his estate, that authority could not continue after death. South Carolina law provides that a power of attorney terminates when the principal dies and that an agent's authority terminates when the power of attorney terminates.

The Trial Court nevertheless proceeded with the valuation hearing without first requiring substitution of a proper party for the deceased co-owner. Rule 25(a)(1), SCRPC, provides that when a party dies and the claim is not extinguished, the court may order substitution of the proper parties, and any motion for substitution must be served on the parties and on nonparties as required by the rule. The court's decision to proceed without substitution left the deceased owner's estate

without a legally recognized representative before the court at the time the property valuation was determined.

The court also denied the Appellant additional time for discovery and granted SCDOT's motion to exclude evidence and witnesses that had not previously been disclosed. Those rulings prevented the family from presenting additional valuation evidence at the same time the case was proceeding only days after McGee Still's death without substitution of an estate representative. As a result, the valuation hearing went forward primarily on SCDOT's evidence, while the Stills were limited in their ability to present proof bearing on just compensation.

The combined effect of these events was that the Trial Court determined compensation for the condemned property after the death of a necessary owner, before appointment or substitution of a personal representative, without allowing additional time to address the death and resulting procedural issues, and after excluding evidence the Stills sought to present. Those facts form the basis of Appellant's arguments that the court violated Rule 25, improperly proceeded despite the termination of any power-of-attorney authority upon death, abused its discretion in denying continuance and discovery-related relief, and deprived Appellant of a meaningful opportunity to be heard on the issue of just compensation.

This appeal followed.

## **ARGUMENTS**

### **ISSUE I      The Trial Court erred by proceeding after the death of a record owner without substituting a proper party pursuant to Rule 25(a), SCRPC.**

The South Carolina Constitution provides that the Supreme Court shall make rules governing the practice of law and procedure in all South Carolina courts. *S.C. Const. art. V, § 4.*

The South Carolina Rules of Civil Procedure provide the procedure for continuation of litigation when a party dies and the claim survives. *Rule 25(a)(1), SCRPC*. The rule requires substitution of the proper party to ensure that the deceased party's interests are represented before adjudication continues. South Carolina courts recognize Rule 25 as the mechanism by which litigation may proceed following the death of a litigant. *Bell v. Bentley*, 438 S.C. 619, 885 S.E.2d 409 (Ct. App. 2023).

McGee Still was a record owner of the condemned property and a named party to this action. (*Final Order, filed June 5, 2025.*) McGee died on April 19, 2025, eleven days before the valuation hearing. (*Final Order, filed June 5, 2025; Transcript pg. 4, pg. 5, pg. 142, pg. 144.*) The court even acknowledged the same and offered condolences. (*Transcript pg. 32.*) Nevertheless, no personal representative, executor, administrator, special administrator, or successor representative was substituted before the court adjudicated compensation. The court failed to comply with *Rule 25, SCRPC*.

The Eminent Domain Procedure Act defines a condemnee as a person or entity having a record interest in condemned property. *S.C. Code Ann. § 28-2-30(6)*. Upon Mr. Still's death, his ownership interest became an estate asset requiring representation through a lawful fiduciary. *S.C. Code Ann. § 62-1-201(37)*. The South Carolina Rules of Civil Procedure require actions to be prosecuted by the real party in interest. *Rule 17(a), SCRPC*. Our caselaw similarly contemplates the assertion of estate rights by a duly appointed representative. *Fisher v. Huckabee*, 419 S.C. 292, 797 S.E.2d 703 (2018); *S.C. Code Ann. § 62-3-614*.

Because the valuation proceeding directly affected property rights belonging in part to Mr. Still's estate, representation by a lawful estate representative was required before adjudication.

Fundamental due process requires notice and a meaningful opportunity to be heard before property rights may be adjudicated. *U.S. Const. amend. XIV*; *S.C. Const. art. I, § 3*; *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). An estate cannot meaningfully participate in litigation when no authorized representative exists to speak, testify, conduct discovery, retain experts, or otherwise protect its interests. *See Bell v. Bentley*, 438 S.C. 619, 885 S.E.2d 409.

Because no representative of the estate had been appointed or substituted, the estate was effectively excluded from proceedings determining compensation for property in which it possessed a direct financial interest. The failure to substitute a proper party before adjudication constituted reversible error. The valuation order should be vacated and the case remanded for proceedings following appointment and substitution of an authorized estate representative.

**ISSUE II      The Trial Court erred to the extent it relied upon a power of attorney or informal family participation to represent the deceased owner's estate.**

South Carolina law expressly provides that a power of attorney terminates upon the death of the principal. S.C. Code Ann. § 62-8-110(a)(1), (b)(4). Accordingly, any authority previously granted by McGee Still under a power of attorney ceased immediately upon his death. (Transcript pg. 5, pg. 10–11, pg. 27.) After that point, only a duly appointed estate fiduciary possessed legal authority to act on behalf of the estate.

Summer Still's participation and efforts to represent both McGee Still and Sara Still may have been well-intentioned, but they could not confer legal standing to represent McGee Still's estate interests. Similarly, informal participation by family members does not satisfy Rule 25, SCRPC, nor does it satisfy the real-party-in-interest requirements of Rule 17(a), SCRPC.

The absence of a substituted representative remained a legal defect regardless of family participation. The valuation order should be vacated and remanded for a new trial.

**ISSUE III     The Trial Court abused its discretion by excluding relevant valuation evidence in a proceeding to determine just compensation.**

The purpose of a condemnation valuation hearing is to determine just compensation. S.C. Code Ann. § 28-2-370; *S.C. Dep't of Transp. v. Powell*, 424 S.C. 206, 818 S.E.2d 433 (2018).

Mr. Still's death shortly before trial dramatically altered the circumstances of the case. Appellant requested additional time to obtain an appraisal and complete preparation. (Transcript pg. 38–39.) Instead, the court denied additional discovery and granted a motion in limine excluding all evidence not previously disclosed. (Transcript pg. 6, pg. 35–36.) Those rulings limited Appellant's ability to present any evidence bearing directly on property value—the central and controlling issue before the court.

Because the excluded evidence related to just compensation itself, the resulting prejudice cannot be considered harmless. The restrictions materially affected Appellants' ability to present their case and warrant a new valuation hearing.

**ISSUE IV     The Trial Court abused its discretion by denying a continuance following the death of a co-owner.**

McGee Still died eleven days before the valuation hearing. His death created multiple significant procedural complications, including:

- Appointment of an estate representative;
- Compliance with Rule 25, SCRCP, substitution requirements;
- Completion of discovery;

- Retention of valuation experts; and
- Preparation for presentation of evidence.

The Appellant asked for a continuance. (Transcript pg. 31, pg. 32.) Despite these developments, the court required the hearing to proceed. (Transcript pg. 38.) The resulting prejudice was substantial. Appellant lacked adequate time to secure lawful estate representation, complete discovery, obtain appraisal evidence, and fully prepare for a proceeding determining constitutional compensation rights.

Under these circumstances, the denial of a continuance exceeded the bounds of reasonable judicial discretion and requires reversal.

#### **ISSUE V      The combined effect of the Trial Court's rulings denied appellant due process.**

Due process requires fundamental fairness and a meaningful opportunity to be heard before property rights are determined. U.S. Const. amend. XIV; S.C. Const. art. I, § 3; *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002).

Here, the Trial Court:

1. Proceeded without substitution of a representative for the deceased co-owner;
2. Denied a continuance needed to address estate issues and prepare for trial (Transcript pg. 38–41); and
3. Denied the ability of the Appellant to secure valuation evidence directly relevant to compensation by denying the continuance.

Viewed collectively, these rulings deprived Appellants of a meaningful opportunity to participate in the proceeding and present evidence regarding the value of the property.

The cumulative effect of these rulings denied fundamental fairness and requires a new hearing.

**ISSUE VI     The estate of the deceased co-owner was a necessary party to the valuation proceeding.**

The valuation determination directly affected compensation attributable to property owned by McGee Still. His estate therefore possessed a direct financial interest in the outcome. Following Mr. Still's death, any rights requiring protection could be asserted only through a duly authorized estate representative. Rule 17(a), SCRCPP; S.C. Code Ann. § 62-3-614; *Fisher*, 419 S.C. at 292, 797 S.E.2d at 703.

Rule 19, SCRCPP, seeks to ensure that persons possessing material interests are before the court. Because the estate possessed a direct ownership interest in the property and no representative appeared on its behalf, the valuation proceeding occurred without a necessary interested party. That absence undermines the validity and fairness of the adjudication.

Accordingly, the order should be vacated, and the matter remanded.

**CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Vacate the valuation order, remand this matter for a new valuation hearing following appointment and substitution of a lawful estate representative and after providing Appellant a full and fair opportunity to complete discovery and present admissible valuation evidence.

\*\*\*\* Signature Page Attached\*\*\*\*

Respectfully submitted,

*s/ Stephen C. Hucks*

Stephen C. Hucks  
HUCKS LAW FIRM  
9610 Two Notch Road, Suite 5  
Columbia, South Carolina 29223  
*stephen@huckslawfirm.com*  
Telephone: (803) 865-6370  
Attorney for Appellant Sara Still

Columbia, South Carolina  
July 16, 2026