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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master in Equity

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Appellate Case No. 2023-001519

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James Reid and Sarania Reid,

Respondents,

v.

Carrie Gaston Henderson

Petitioner/Appellant.

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**RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**INTRODUCTION**

Through her Petition for Writ of Certiorari, Petitioner, *pro se*, tries to relitigate matters that were finally decided *28 years ago* through years of protracted litigation between heirs related to their interests in a parcel of real property in Beaufort County. As explained herein, both the Master in Equity and the Court of Appeals correctly ruled that any interest Petitioner could have had in the subject real property was judicially extinguished decades ago, such that no further review of this matter is warranted.

## **QUESTIONS PRESENTED**

- I. Whether this Court should deny the Petition where the Court of Appeals properly affirmed the grant of Respondents' motion for summary judgment on the basis that Judge Kemmerlin's 1998 Order fully and finally terminated Petitioner's father's interest in the subject property, barring as a matter of law Petitioner's present claim to hold an interest in the property as his heir?**
- II. Whether this Court should deny the Petition for the additional reason that it rests on arguments that were not preserved in conformance with Rule 242(d)(1), SCACR, and which arguments afford no basis for Petitioner to survive summary judgment?**

## **STATEMENT OF THE FACTS AND PROCEDURAL HISTORY**

The correctness of the Court of Appeals' decision is driven by final, unappealable decisions stemming from years of litigation between and amongst certain of the parties' predecessors in title to the subject real estate. Therefore, we begin with a review of those prior proceedings because they are determinative of the outcome here.

Petitioner did not provide Respondents with an appendix in the manner directed by Rule 242(e), SCACR. For guidance, all citations herein are to the applicable pages of the Record on Appeal filed in the Court of Appeals, except where the context indicates otherwise.

### **A. The Decades-Old Prior Litigation that Terminated Petitioner's Interest**

This appeal concerns what today is a 22.9-acre parcel of land (the "Property") located in Beaufort County, South Carolina. Historically, the Property once formed a part of a larger, roughly 110 to 113-acre<sup>1</sup> tract of heirs property (the "Original Heirs Parcel"). Beginning in the 1980s and continuing through and beyond the 1990s,<sup>2</sup> the Original Heirs Parcel was subjected to years of

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<sup>1</sup> The acreage of the Original Heirs Property is variably described in Record and in the Court of Appeals' decision as containing 113 acres, 110.5 acres, or 110 acres. (**R. p. 72**). The precise acreage is not important, nor is it relevant to the issues on appeal. All references to the Original Heirs Parcel herein is for descriptive purposes only and is directed to the same parent tract, regardless of whether it is 113, 110.5, or 110 acres.

<sup>2</sup> The Prior Litigation bore Case No. 90-CP-7-310. There appear to have been even earlier actions filed amongst the heirs in the 1980s as well. (Petition, p. 1) (**R. p. 75, ¶ 16**).

litigation (the “Prior Litigation”) between and among the interested heirs. While it is unnecessary to retrace every step in the procedural posture of the Prior Litigation, it is essential to understand how the Prior Litigation affected—and conclusively terminated—any rights Petitioner’s father, Cecil Gadsden, Jr. (“Cecil”)<sup>3</sup> once had in the Original Heirs Parcel. This is necessary because Petitioner’s argument rests on her belief that she acquired an interest in the Original Heirs Parcel (and thus the 22.9-acre Property) through Cecil as his heir. (App. Br., p. 5).

In the Prior Litigation, the Master in Equity, Judge Kemmerlin,<sup>4</sup> ruled in 1991 that Cecil fraudulently and improperly converted timber on the Original Heirs Parcel. (**R. pp. 76-77 (¶¶ 20-30), p. 85 (¶6)**). In 1995, Judge Kemmerlin entered an order confirming the amount of the judgment against Cecil was \$151,146.27, inclusive of accrued interest as of that date. (**R. pp. 57, 64, 87-91**). This judgment remained unpaid and continued to accrue interest, such that by 1998 the judgment against Cecil had increased to \$209,718.47. (**R. pp. 3, 92**).

On February 20, 1998, Judge Kemmerlin entered an order (the “1998 Order”) terminating Cecil’s interest (and any interest of his heirs) in the Original Heirs Property. (**R. pp. 92-94**). At that time, the heirs of Cecil were represented by counsel in the action. (**R. p. 92**). Judge Kemmerlin found the debt owed under the judgment against Cecil exceeded the value of his 50% ownership interest in the Original Heirs Parcel. Accordingly, Judge Kemmerlin issued an order assigning *full*

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<sup>3</sup> Cecil has been identified in various ways, including Cecil Gaston, Jr. a/k/a Cecil J. Gaston, Jr., a/k/a Cecil J. Gadsden, Jr., a/k/a Cicil J. Gaston. All references to “Cecil” are to Petitioner’s father, through whom she claims to have acquired an interest in the Property.

<sup>4</sup> Both the 1998 Order in the Prior Litigation *and* the 2023 order at the heart of this appeal were issued by the Beaufort County Master in Equity. However, they were entered by two different judges considering the decades between them. Given the nature of Petitioner’s argument and to avoid any confusion when discussing them in this Return, Respondents from time to time reference the particular issuing judge by name.

*ownership* of the Original Heirs Parcel to the remaining heirs,<sup>5</sup> divesting Cecil—and all heirs of Cecil—of any interest in the Original Heirs Parcel. **(R. pp. 3-4, pp. 92-94).**<sup>6</sup>

#### **B. The Creation of the 22.9-Acre Parcel at Issue.**

Although Judge Kemmerlin’s 1998 Order terminated any interest Cecil and his heirs had in the Original Heirs Property, it did not fully resolve the on-going claims amongst the remaining heirs, which then owned 100% of the Original Heirs Property. However, the remaining heirs later reached a settlement resulting in an agreed upon partition and subdivision of the Original Heirs Parcel in kind. **(R. p. 100).** In 2001, Judge Kemmerlin entered an order regarding this settlement, indicating he would sign Master’s deeds to transfer title to the distributed parcels among the remaining heirs in accordance with their agreement. **(R. pp. 96-98).** Relevant to this appeal is a particular 22.9-acre parcel created through that subdivision.

In keeping with the remaining heirs’ settlement, Judge Kemmerlin issued a Master’s Deed in 2002 conveying to Carolyn Tremble and Anthony Green a roughly 22.9-acre parcel known and referred to herein as the “Harold Green” parcel. **(R. pp. 4, pp. 101-102).** In 2004, Cunningham Real Estate Management, Inc., (“Cunningham”) purchased and received record title to the Harold Green parcel, along with an adjoining parcel known as the “Doris Green” parcel. **(R. pp. 105-108, p. 110-113).** In 2016, Respondents purchased and acquired record title to the 22.9-acre Harold Green parcel, *i.e.*, the Property, from Cunningham. **(R. p. 5, pp. 114-116).**

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<sup>5</sup> Under the 1998 Order, all interests in the Original Heirs Parcel were divided as follows: Louise Floyd Williams (50%), Eliza Gaston Tremble (10%), Heirs of Emily Mitchell (10%), Alice Green Perry (10%), (10%), Lisa Roacher (2.5%), Linda Mason (2.5%), Herbert Mason (2.5%), and Hermon Gaston (2.5%). As noted, the 1998 Order terminated Cecil’s interest.

<sup>6</sup> According to Judge Kemmerlin’s 1998 order, the heirs of Cecil were present and rejected an offer of settlement that would have left them owning an acre of land. Upon rejecting this offer the 1998 Order states the heirs of Cecil were told “they would receive nothing.” **(R. pp. 92-93).**

### C. The Lawsuit Giving Rise to this Appeal.

After purchasing the 22.9-acre Property, Respondents commenced the underlying action in the Beaufort County Court of Common Pleas asserting claims against Petitioner for trespass, permanent injunction, and a writ of ejectment after Petitioner refused to remove her mobile home from the Property. **(R. pp. 32-43)**. Petitioner responded to the complaint via letter, claiming, among other things,<sup>7</sup> that she had an ownership interest in the Property as an heir of Cecil. **(Supp R. p. 191)**. Pursuant to an order entered on January 3, 2023, the matter was referred to the Master in Equity, who was by then The Honorable Marvin H. Dukes, III. **(R. pp. 15-19)**.

Respondents moved for summary judgment in the present action arguing, *inter alia*, that Cecil's entire interest in the Original Heirs Property (along with any interest claimed by his heirs, including Petitioner) was terminated long ago by Judge Kemmerlins orders in the Prior Litigation. **(R. pp. 54-69)**. Judge Dukes agreed and granted summary judgment to Respondents pursuant to an Order dated May 31, 2023. **(R. pp. 1-11)**. Judge Dukes specifically ruled,<sup>8</sup> "A valid judgment has already determined that the heirs of Cecil Gaston did not retain any property from 113-acre tract. Therefore, [Petitioner] does not own any interest in the Property by virtue of being an heir of Cecil Gaston." **(R. p. 6, ¶ 15)**. For this reason, Judge Dukes concluded the doctrines of *res judicata* and collateral estoppel were fatal to Petitioner's position. Petitioner's motion to reconsider Judge Dukes' ruling was denied on July 23, 2023, wherein Judge Dukes observed:

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<sup>7</sup> Petitioner made other "complaints" in response to the lawsuit, but those issues have been abandoned and are not raised in the Petition for Writ of Certiorari. Thus, they are not addressed here. Rule 242(d)(1), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.").

<sup>8</sup> Judge Dukes also ruled against Petitioner's other attempted arguments, but she has not raised any of them in her Petition for Writ of Certiorari and they are not before this Court. Rule 242(d)(1).

[Petitioner's] motion seeks to have this Court set aside and/or vacate at least two cases from the 1990s which divested her (would be) predecessor in title from ownership. Because of that divestiture, [Petitioner] does not have title. Ms. Henderson seeks to re-establish her interest by having this Court rule adverse to the prior rulings.

This Court has no authority to reconsider or set aside prior Orders of other Courts.

**(R. pp. 12-13).**

Petitioner appealed Judge Dukes' denial of her motion to reconsider. **(R. pp. 24-31).** In a *per curium* decision issued pursuant to Rule 220(b), SCACR, the Court of Appeals affirmed, issuing Opinion No. 2026-UP-158, filed April 4, 2026. The Court of Appeals then denied Petitioner's petition for rehearing, leading to the filing of her Petition for Writ of Certiorari.

### **STANDARD OF REVIEW**

Subject to meeting the requirements established by Rule 242(b), SCACR, the applicable standard of review of an order granting summary judgment is the same standard employed by the Master in Equity. *Charles Blanchard Constr. Corp. v. 480 King St., LLC*, 447 S.C. 295, 300, 926 S.E.2d 235, 238 (2026). "Rule 56(c) . . . provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRCP).

### **ARGUMENT AND CITATION OF AUTHORITY**

A writ of certiorari is not a matter of right, and will be granted only in the event of special and important reasons such as: (1) a novel question of law; (2) a dissent from the Court of Appeals; (3) where the decision of the Court of Appeals conflicts with a prior decision of this Court; (4) where a substantial constitutional right is implicated; (4) where the decision on a federal question

conflicts with a decision of the United State Supreme Court. Rule 242(b), SCACR. None of these considerations exist here. Judge Dukes granted summary judgment based on the application of firmly-established legal principles. Petitioner is effectively trying to relitigate matters that were finally decided decades ago, hoping to turn ages-old decisions on their head. This Court should summarily reject her Petition.

**I. Summary judgment was proper because Judge Dukes and the Court of Appeals both correctly determined as a matter of law that Petitioner cannot claim an ownership interest in the Property as Cecil's heir, because Cecil's interest in the Property was long ago fully and finally terminated by Judge Kemmerlin's 1998 Order.**

Judge Dukes correctly observed that in 1998, Judge Kemmerlin entered an order divesting Cecil of any interest in the Original Heirs Property, from which the lands comprising 33-acre Property were derived. Simply put, if Cecil had no interest, Petitioner cannot claim an interest by virtue of being his heir. Petitioner has never asserted (nor can she) that the 1998 Order was later reversed on appeal. Thus, 1998 Order represents the final order which fully adjudicated—and terminated—Cecil's interest, along with any interest his heirs might claim through him. For this reason alone, Respondents were entitled to summary judgment.

Perhaps focusing too narrowly on the “unappealed ruling” language often used in cases discussing the law of the case doctrine, Petitioner relies on the notion that an appeal was apparently initiated from the 1998 Order, as evidenced by Judge Stillwell's issuance of a supersedeas order in 1998. (Petition for Rehearing, p. 5). Petitioner first called attention to this supersedeas order in her petition for rehearing to the Court of Appeals.<sup>9</sup> Respectfully, she misses the point.

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<sup>9</sup> Rule 210(h), SCACR, provides that the facts which the appellate court shall consider on appeal are limited to those contained in the Record on Appeal. While Respondents do not consent to Petitioner's improper inclusion of previously unprovided materials from Case No. 90-CP-7-310 that are outside the Record on Appeal, we nonetheless address the supersedeas order herein.

Whether an appeal was *initiated* is not determinative. Rather, it is the *final outcome* of the appeal that matters to whether an issue has been fully and finally decided. Certainly, if an appellate court reverses, the order on appeal would lose its effect. Conversely, if an appeal is dismissed after it is filed, or the challenged ruling is affirmed on appeal, in either case the matters at issue would then be decided with finality. Thus, it is of no consequence that an appeal of Judge Kemmerlin's 1998 Order terminating Cecil's interest was *initiated*, nor does it matter that Judge Stillwell granted a supersedeas.<sup>10</sup> All that matters is that the findings of the 1998 Order were unaffected by any appellate decision *on the merits*, and Petitioner has offered no evidence to the contrary.

Since March 7, 2023, Petitioner knew that Respondents sought summary judgment on the basis that Judge Kemmerlin's 1998 Order was fatal to her position. Yet, at no point did Petitioner offer any evidence to rebut the finality of the 1998 Order as to the termination of Cecil's interest. "The Appellant bears the burden of providing a sufficient record on appeal from which [the Court of Appeals] can make an intelligent review."<sup>11</sup> *Moore v. Moore*, 435 S.C. 706, 715, 869 S.E.2d 868, 872-873 (Ct. App. 2022); *see Bonaparte v. Floyd*, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987) (declining to address the appellant's claim of error because the appellant failed to furnish this court with a sufficient record on appeal to permit consideration of the issue).

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<sup>10</sup> Judge Stilwell's supersedeas order was interim in nature. It plainly states "the petition is **GRANTED until further order of this court.**" (Petition for Rehearing, p. 5) (emphasis added). Therefore, it decided nothing on the ultimate issue.

<sup>11</sup> Although the Petitioner bears this burden, Respondents investigated Judge Stillwell's supersedeas order and is informed of an appeal identified as "1998-0074584" which is associated with Case No. 90-CP-7-310, which may be the appeal during which the supersedeas was issued. Respondents suspect, but have not confirmed given the age of the matter and the fact many of the appellate files from this action apparently have been warehoused by the Court of Appeals, that this appeal may have been dismissed for failure to perfect on January 8, 1999, with the Remittitur being issued on January 29, 1999. The timing fits, especially in light of the fact that no dispositional decision from the Court of Appeals has been found.

There was a later Hail Mary effort in the Prior Litigation to overturn Judge Kemmerlin's 1998 Order. *More than four years* after the 1998 Order was entered, the heirs of Cecil sought to reopen the 1998 Order pursuant to Rule 60(b), SCRCP. This motion was denied, which the Court of Appeals later affirmed, demonstrating its finality. *See Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 590 S.E.2d 502, (Ct. App. 2003). But there is another important point to be made here. Rule 60(b) provides in relevant part, "On motion and upon such terms as are just, the court may relieve a party or his legal representative **from a final judgment, order, or proceeding . . .**" (all emphasis added). Thus, by filing a motion under Rule 60(b) over two decades ago the heirs of Cecil necessarily acknowledged that the 1998 Order was, in fact, *final*. This failed, last-ditch effort cements that Cecil and his heirs (including Petitioner), have no ownership interest in the Property. There is more.

Because the only evidence in the record is that Judge Kemmerlin's 1998 Order fully and finally terminated Cecil's interest along with any interest of his heirs, there is no basis upon which to justify revisiting that 28-year-old final decision. Accordingly, Respondents request that this Court deny the Petition for Writ of Certiorari, which seeks to do just that.

**II. This Court should not consider unpreserved arguments that were not raised to the Court of Appeals in Petitioner's Petition for Rehearing, none of which warrant further review.**

Rule 242(d)(2), SCACR, provides that, "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." To preserve an issue for review by this Court, this means "(1) the issue must have been raised in the initial arguments to the Court of Appeals, and (2) the issue must have been raised in the petition for rehearing before the Court of Appeals." Toal J., *Appellate Practice in South Carolina*, p. 210 (3d Ed., 2016).

In her Petition for Rehearing before the Court of Appeals, Petitioner essentially raised only *one* issue. In first argument section, Petitioner complained that the Court of Appeals overlooked the fact that an appeal of Judge Kemmerlin’s 1998 Order was at least initiated when it applied the law of the case doctrine. The merits of issue are addressed above, *surpa*. Regardless, the Court of Appeals should not be criticized for overlooking a point that Petitioner never brought to its attention prior to filing per petition for rehearing.

Petitioner’s second and third enumerated arguments in her petition for rehearing before the Court of Appeals can only be described as mere extensions of her first issue, *to wit*, that the Court of Appeals should not have applied the law of the case doctrine. *See* Rule 242(d)(2), SCACR (“A question presented will be deemed to include every subsidiary question fairly comprised therein.”). Properly viewed, the *only* issue raised in the petition for rehearing concerns Petitioner’s belief that it was improper to apply the law of the case doctrine, despite the clear finality of the 1998 Order terminating Cecil’s interest and that of his heirs. Because this is the only issue raised in her petition for rehearing, it is the only issue conceivably preserved<sup>12</sup> for review before this Court.

Section II of the Petition for Writ of Certiorari attempts to raise arguments that are not preserved. For example, Petitioner assigns error, once again, to *Judge Kimmerlin’s* 1998 Order for divesting Cecil of his entire interest, seemingly based a distinction she draws between void and voidable judgments. Within this argument, she also asserts the termination of Cecil’s interest (by

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<sup>12</sup> It would be generous to find even *this* issue preserved, because Petitioner’s brief in the Court of Appeals did not actually assign error to *Judge Dukes’* grant of summary judgment based on the finality of the 1998 Order. (App. Br., Argument Sections I and II). Instead, Petitioner argued in her brief that *Judge Kemmerlin erred in his 1998 Order* when he divested Cecil of his interest in the Original Heirs Property. In other words, Petitioner utterly failed to offer any argument whatsoever as to why Judge Dukes’ grant of summary judgment was error *in the instant case* on appeal, opting instead to attack *Judge Kemmerlin’s 1998 Order* by asking the Court of Appeals to travel back in time *27 years* to reverse it.

Judge Kemmerlin) violated procedural due process. These issues were litigated and lost decades ago. Further, neither of these “issues” is raised in the petition for rehearing before the Court of Appeals. (Petition for Rehearing). Therefore, they are not preserved for review and should not be considered. *See* Rule 242(b)(2), SCACR; *Camp v. Springs Mfg. Corp.*, 310 S.C. 514, 426 S.E.2d 304 (1993) (noting an issue is not preserved for appeal where the Court of Appeals did not address the issue and the issue was not raised in a petition for rehearing before the Court of Appeals).

Regardless, neither of these issues warrants attention. As noted, Petitioner’s efforts to revisit and find error in *Judge Kemmerlin’s* 1998 Order not only ignores its finality as discussed, *supra*, but, more importantly, Petitioner neglects to offer any argument whatsoever for how the Court of Appeals erred by affirming Judge Dukes *in the present action on appeal* for granting summary judgment and giving full faith and credit to the 1998 Order, as he must. *See Charleston Cty. Dep’t of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) (“There is a long-standing rule in this State that one judge of the same court cannot overrule another.”); *Sellers v. Nicholls*, 432 S.C. 101, 114, 851 S.E.2d 54, 60 (Ct. App. 2020) (“[T]he prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge.”).

Equally unavailing is the notion that terminating Cecil’s rights in 1998 constitutes a violation of due process that somehow affects the outcome of *this independent action against Petitioner*. At the risk of sounding blunt, it is hard to imagine that *Cecil* was denied due process, considering the two decades-worth of litigation and numerous appeals that transpired with the benefit of counsel during the Prior Litigation. Regardless, *this appeal* is limited to whether the Court of Appeals correctly affirmed Judge Dukes’ grant of summary judgment against Petitioner. Petitioner has had every opportunity to present her case however she deemed fit. For certain, *she* has been afforded due process.

Finally, Petitioner's suggestion that Cecil somehow owned 56 acres that were not a part of the Original Heirs Parcel and thus unaffected by Judge Kemmerlin's 1998 Order appears nowhere in her petition for rehearing and it is not preserved. Regardless, Petitioner seems to believe that Cecil owned "(approximately 56 acres)" because "Cecil J. Gadsden, Jr. owns a one-half interest in the real property[.]" As this Court knows, Cecil's "half interest" did not mean he at one point separately owned half of the *acreage* forming a part of the larger Original Heirs Parcel. Rather, Cecil at one point held a 50% *shared* interest in the entire 113-acre Original Heirs Property together with the remaining heirs. It seems Petitioner misunderstands this, leading her to make an argument that is unsupported in fact or law.

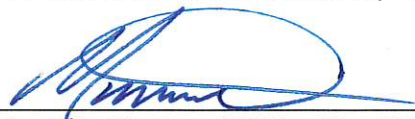
Having failed to articulate any assignable error to Master in Equity in the present action, or the Court of Appeals for affirming Judge Dukes' grant of summary judgment, there is effectively nothing for this Court to review and no reason for this Court to grant the Petition.

### **CONCLUSION**

For the reasons stated above, Respondents' respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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