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Aug 28 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM KERSHAW COUNTY

Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2026-001664

In Re: Estate of M.K. Jennings 2010ES2800169

Beverly HennagerAppellant

v.

Mary E. Dearden, Personal Representative of the Estate of M.K. JenningsRespondent

**APPELLANT'S RETURN IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS APPEAL**

I. INTRODUCTION

Appellant Beverly Hennager, appearing pro se, submits this Return in Opposition to Respondent Mary E. Dearden's Motion to Dismiss Appeal ("Motion"), filed August 27, 2026, pursuant to Rule 240(e), SCACR. The Motion addresses an appeal Appellant is not pursuing and identifies no basis for sanctions under Rule 269, SCACR; it should be denied. §1.

§1 The Personal Representative's name is spelled "Dearden" (in her 2011 and 2020 certified appraisals and accounting - 2024 R. 157 and 162), but has been misspelled "Deardon" in the case caption and in Respondent's filings throughout this litigation.

II. THIS APPEAL CHALLENGES A DISTINCT, LATER ORDER — NOT THE CONCLUDED 2025 APPEAL

Respondent's Motion conflates two separate matters. The first is the appeal that concluded with this Court's opinion in *Hennager v. Deardon*, Op. No. 2025-UP-196 (S.C. Ct. App. filed June 11, 2025), after which the South Carolina Supreme Court and the United States Supreme Court both denied further review, most recently on June 22, 2026. Appellant does not dispute that history and does not ask this Court to disturb it.

The second matter — the only one at issue here — is Appellate Case No. 2026-001664, challenging the circuit court's July 14, 2026 Form 4. Respondent's Motion borrows "There is no judgment in this case" language from the *earlier* September 2025 order — but the July 14, 2026 Form 4, actually under appeal here, is captioned "**JUDGMENT IN A CIVIL CASE,**" has "**Decision by the Court**" checked (not "Action Dismissed"), and has "**This order ends... the case**" checked, which is precisely why this order is appealable.

The July 14, 2026, order was entered after Appellant filed a new, timely Rule 60(b)(4) motion on July 9, 2026, together with a motion for a written ruling. Rather than granting, denying, or dismissing that motion on any stated ground, the circuit court entered the Form 4 declaring the matter closed "based on" the 2025 opinion and stating it would "not accept any more filings." That is the order Respondent's own Motion identifies as "the above Order, which Appellant now appeals." Appellant asks only that this order be vacated and the case remanded so her pending Rule 60(b)(4) motion can finally receive the written ruling South Carolina's

preservation doctrine requires — not that the concluded 2025 appeal or the underlying probate merits be relitigated.

III. THE APPEAL IS NOT FRIVOLOUS

A. It Presents a Genuine, Undecided Legal Question

This Court's June 11, 2025 opinion held that Appellant's subject-matter-jurisdiction and due-process arguments were unpreserved because she had not obtained a ruling on a Rule 60(b)(4) motion. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (an issue must be raised to and ruled upon by the trial court to be preserved for appellate review). Appellant did exactly what that opinion required when filing the July 9, 2026 motion and requesting a written ruling. Whether a circuit court may respond to such a motion with an administrative closure order rather than a reasoned ruling is a substantial, unresolved legal question, implicating both the settled rule that a party who receives no ruling may seek one to preserve an issue (see *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004); *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888, 894 (Ct. App. 2006)), and the due-process principle that a party is entitled to a meaningful opportunity to be heard on a live claim (see *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982)). An appeal raising these issues — particularly where the very court asked to rule created the preservation dilemma by declining to do so — is far from frivolous; it squarely presents a substantial, unresolved question of law that goes to the heart of appellate preservation doctrine.

B. The Circuit Court, Not Appellant, Created the Preservation Difficulty

The record shows the opposite of default: over several years, Appellant filed proper Rule 60 motions before, during, and after appeal that went unadjudicated. Her August 11, 2023 motion under Rule 60(b)(3), raising fraud, misrepresentation, and due-process claims, was never ruled upon; her June 25, 2024 objections raising related claims were likewise never ruled upon; her post-certiorari motion under Rule 60(b)(3) and (b)(4) was returned unfiled on June 24, 2025; her September 3, 2025 Rule 60(b)(4) Motion was followed by the September 6, 2025 Form 4 stating “no paperwork will be added to this ended appeal”; and her December 5, 2025 Rule 60 Motion was returned with the notation, “The case is closed...nothing else will be accepted”. Finally, her July 9, 2026 motion — the one at issue in this appeal — met the same fate, this time by way of the July 14, 2026 Form 4 closure order. A litigant cannot be held to have forfeited a claim she was affirmatively prevented from preserving.

This pattern — the circuit court’s repeated refusal, over several years and across multiple separately filed motions, to adjudicate live jurisdictional and due-process claims, culminating in an order barring further filings — raises the question whether the circuit court’s own conduct constitutes unlawful interference with Appellant’s due-process right to be heard and her right to seek post-judgment relief under Rule 60(b), SCRCP. See *Logan*, 455 U.S. at 428; *Cromer v. Kraft Foods North America, Inc.*, 390 F.3d 812, 817–820 (4th Cir. 2004). That question is squarely presented by, and central to, the appeal Respondent asks this Court to dismiss; Respondent’s Motion does not address it.

C. Rule 269, SCACR Sanctions Are Unwarranted

Sanctions under Rule 269, SCACR, require that an appeal be “frivolous or taken solely for the purposes of delay,” and then only after ten days’ notice. Consistent with that standard, a claim is frivolous only where no reasonable attorney would believe it was warranted under existing law or supported by the facts. See S.C. Code Ann. § 15-36-10; *The Father v. S.C. Dept. of Soc. Servs.*, 353 S.C. 254, 578 S.E.2d 11 (2003). This appeal presents a discrete, undecided legal question and seeks a single, discrete remedy — an order directing the circuit court to rule on the merits of a motion that has gone unanswered. Respondent has identified no evidence of a delay purpose, because none exists. On the contrary, it is the circuit court's own refusal to adjudicate multiple Rule 60 motions, filed over the course of several years, that produced the delay. This case transforms the familiar maxim that “justice delayed is justice denied” into a sharper corollary: adjudication refused is justice denied.

The court then closed the case on the ground that its June 19, 2024 order had been affirmed on appeal without addressing the merits — citing lack of preservation — even though the August 2023 Motion, which raised and preserved these very issues, was never adjudicated. Most recently, the Form 4 entered July 14, 2026 denied review of Appellant’s July 9, 2026 motion without addressing its merits, continuing the same pattern. Silence cannot mask a refusal to adjudicate, nor can it transform a void judgment into a valid one.

IV. RESPONDENT'S MOTION MISCHARACTERIZES THE RECORD

Respondent’s Motion rests entirely on the 2025 closure order and the denials of certiorari by the South Carolina Supreme Court and the United States Supreme Court. Neither

adjudicates the July 9, 2026 Rule 60(b)(4) motion or the July 14, 2026 Form 4 entered in response to it, and Respondent does not contend otherwise. By treating this appeal — which challenges the distinct July 14, 2026 Form 4 — as an untimely attempt to relitigate the concluded 2025 appeal and the subsequent denials of certiorari, Respondent’s Motion affirmatively mischaracterizes the procedural record.

Respondent's mischaracterization is not limited to the procedural posture of this appeal. It also carries forward Respondent's mischaracterization of the 2021 probate order, which had found that “the promissory note of Michael Jennings was satisfied before the decedent's death” — a finding of fact later recast, without notice or opportunity to respond, as the claim that Appellant merely raised “allegations and speculations” about an unpaid note for the first time on appeal. That silent substitution of findings — introduced by Respondent's counsel during inaudible oral argument, never disclosed to Appellant in any written order, and never subject to briefing — is the same pattern of mischaracterization Respondent now asks this Court to ratify (May 29, 2024 transcript; page 4, lines 10–11 and page 22, lines 24–25).

V. CONCLUSION AND RELIEF REQUESTED

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

1. Deny Respondent’s Motion to Dismiss Appeal in its entirety;
2. Deny Respondent’s request for sanctions under Rule 269, SCACR; and,

3. Permit this appeal to proceed on the existing briefing schedule so that the issues raised in Appellant's Initial Brief — including whether the July 14, 2026 Form 4 must be vacated and the case remanded for adjudication of her pending Rule 60(b)(4) motion — may be decided on a full record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Beverly Hennager, hereby certify that on this 28th day of August, 2026, I served a true and correct copy of the foregoing Appellant's Return in Opposition to Respondent's Motion to Dismiss Appeal upon the following counsel of record by depositing the same in the United States mail, first-class postage prepaid, and/or by email as noted below:

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