THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

In the Matter of: David Edward Murday (Decedent)	Appellate Case No. 2026-001100
Elspeth Murday, Appellant,	Appeal From Richland County Court of Common Pleas
vs.	
Alanna Murday, Respondent.	Case No. 2026-CP-400-0467

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL FOR FAILURE TO PAY BOND

Appellant Elspeth Murday, appearing pro se, respectfully submits this Return in opposition to Respondent's Motion to Dismiss Appeal for Failure to Pay Bond ("Motion"), pursuant to Rule 240(e), SCACR. For the reasons below, the Motion should be denied.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondent's own Motion concedes the point that defeats it: "the non-payment of the bond only means that the underlying action is not stayed pending the appeal." (Resp. Mot. at 5.) That sentence states the entire legal consequence of nonpayment under every authority Respondent cites — Rule 241(c), SCACR; S.C. Code Ann. § 18-9-170, the exception incorporated at Rule 241(b)(4), SCACR; and Rule 65(c), SCRCP. None of those authorities contains a dismissal

remedy, yet Respondent asks this Court to impose the most severe sanction available on appeal — termination of Appellant's properly perfected appeal — on the strength of authorities that, on their face and by Respondent's own admission, provide only for the loss of a stay.

Respondent's Motion also supplies the reason dismissal would serve no purpose: Respondent's own affidavit (Ex. A to the Motion) establishes that the contracted buyers cannot obtain title insurance while the underlying probate order is on appeal, so that, in Respondent's own words, "the appeal effectively stays the sale of the Property, even without the bond." (Resp. Mot. at 5.) If the sale cannot close regardless of the bond, nonpayment creates no incremental harm that dismissal could prevent. Denial of Respondent's Motion to Dismiss is warranted, and enforcement of the bond order is properly left to the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On or about January 9, 2025, David E. Murday died testate. Respondent was initially appointed Personal Representative; Donald A. Murday is now the Personal Representative.

The Probate Court ordered the sale of real property located at 828 Whaley Street, Columbia, SC. Appellant filed an Application for Restraint; the Probate Court denied that Application.

Appellant timely filed a Notice of Appeal to the Circuit Court and thereafter to this Court. Appellant's Notice of Appeal was timely and otherwise properly perfected.

The Circuit Court granted Respondent's motion for an appeal bond under Rule 241(c), SCACR, and ordered Appellant to post a $50,000 supersedeas bond. (Ex. 1, Order Granting Respondent's Expedited Motion for Appeal Bond, filed June 9, 2026.) Exhibit 1 is offered here solely to establish the date and terms of that order; Appellant disputes certain factual recitations contained in its background discussion and reserves full argument on those disputes for her forthcoming Brief of Appellant. Appellant moved to alter or amend the bond order; the motion was denied on

July 9, 2026. (Ex. 2, Order Denying Appellant's Motion to Alter or Amend.) Appellant has not posted the bond.

Respondent filed the present Motion to Dismiss the appeal for failure to post the bond. Respondent's own affidavit (Exhibit A to the Motion) states that the contracted buyers cannot obtain title insurance while the probate order is on appeal.

Pursuant to Rule 240(c)(3), SCACR, and because the Record on Appeal has not yet been filed, Appellant attaches as Exhibit 1 the Circuit Court's Order Granting Respondent's Expedited Motion for Appeal Bond, and as Exhibit 2 the Circuit Court's Order Denying Appellant's Motion to Alter or Amend that bond order, in support of the facts recited above.

ARGUMENT

I. The only consequence the cited authorities attach to nonpayment of a Rule 241(c) bond is loss of a stay, not dismissal of the appeal.

S.C. Code Ann. § 18-9-170 — the exception listed at Rule 241(b)(4), SCACR, and the provision underlying the bond order here — provides that where a judgment directs the sale or delivery of possession of real property, "the execution of the judgment shall not be stayed unless" the appellant furnishes the specified undertaking. The statute says nothing about dismissal; its only stated consequence for an unfurnished bond is that the judgment goes unstayed, meaning the party who obtained the judgment remains free to enforce it — not that the appellate court loses the case.

That silence is significant alongside a companion provision in the same chapter. S.C. Code Ann. § 18-9-140, addressing a different circumstance — an appeal bond's sureties becoming insolvent after the bond is filed — expressly authorizes dismissal: if the appellant fails to execute a new undertaking within twenty days after being ordered to do so, "the appeal may, on motion to the court, be dismissed with costs." Where the General Assembly intended nonperformance of a bond obligation to carry a dismissal sanction, it said so in explicit terms; § 18-9-170 contains no comparable language. Under the ordinary principle that the express inclusion of a remedy in one

provision implies its exclusion from a neighboring provision that omits it, § 18-9-170's silence on dismissal cannot be read to authorize dismissal by implication.

Rule 241(c)(3), SCACR, on which Respondent also relies, states only that supersedeas or the lifting of an automatic stay "may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking . . . ." It does not say — and no provision of Rule 241 says — that failure to satisfy such a condition results in dismissal of the appeal itself. Rule 65(c), SCRCP, which Respondent cites for the proposition that security may be required "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained," addresses the purpose and amount of security; it likewise supplies no dismissal remedy for nonpayment.

South Carolina's appellate courts have declined to treat noncompliance with bond-related procedural conditions as a jurisdictional defect requiring dismissal of an otherwise properly perfected appeal. In *Town of Mt. Pleasant v. Roberts,* 393 S.C. 332, 713 S.E.2d 278 (2011), the Supreme Court held that an appellant's failure to satisfy a bond-related condition did not divest the appellate court of jurisdiction where the notice of appeal was otherwise timely and properly served, because such requirements are collateral to, not a condition of, the existence of the appeal. Appellant's Notice of Appeal here was properly and timely filed; the bond dispute is a collateral matter bearing on the availability of a stay, not on the existence of the appeal.

II. Respondent's own submission establishes that nonpayment of the bond causes no incremental harm.

Respondent's Motion states that "the appeal effectively stays the sale of the Property, even without the bond," because the contracted buyers are unable to obtain title insurance while the probate order remains on appeal. (Resp. Mot. at 5, citing Ex. A.) By Respondent's own account, the sale cannot close while this appeal is pending regardless of whether the bond is furnished. The premise of Respondent's Motion — that the Estate is exposed to uncompensated risk because the bond is unpaid — is negated by Respondent's own evidence that the identical risk exists independent of the bond and would exist even if the bond were paid in full. There is accordingly no harm before this Court that dismissal of the appeal is needed to prevent.

III. Dismissal of the entire appeal would be a disproportionate response, and the circuit court's continuing authority over its own bond order is an adequate remedy.

Dismissal would terminate Appellant's right to any appellate review of the merits of the orders on appeal — a result far more severe than anything required to address a collateral security dispute. The circuit court "retains jurisdiction over matters not affected by the appeal," Rule 241(a), SCACR, including the bond itself, which remains within that court's own continuing authority. Respondent identifies no reason the circuit court's continuing authority over the bond it ordered is an inadequate remedy such that this Court should instead extinguish the appeal. Nor has Appellant treated the bond order as something to disregard: Appellant timely moved to alter or amend it, and that motion was denied on July 9, 2026. (Ex. 2.) Denial of the present Motion, rather than dismissal of the appeal, is the proportionate outcome; any remaining dispute over the bond stays with the circuit court, not this Court.

CONCLUSION

For the foregoing reasons, and because Respondent's own Motion and evidence confirm that nonpayment of the bond affects only the availability of a stay — not the existence of the appeal — and that dismissal would prevent no incremental harm, denial of Respondent's Motion to Dismiss Appeal for Failure to Pay Bond is warranted.

Any remaining dispute over the bond order stays within the circuit court's own continuing jurisdiction under Rule 241(a), SCACR, and Appellant respectfully requests that this appeal be permitted to proceed on the merits.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
IN THE MATTER OF:	)	Case No. 2026-CP-40-00467
David Edward Murday	)	
(Decedent)	)	
Elspeth Murday,	)	
	)	**ORDER GRANTING**
Petitioner,	)	**RESPONDENT'S EXPEDITED**
	)	**MOTION FOR APPEAL BOND**
v.	)	
	)	
Alanna Murday,	)	
	)	
Respondent.	)	

Exhibit #1

This matter came before the Court for a hearing on June 4, ted Motion for Appeal Bond.

FACTUAL BACKGROUND

On or about January 9, 2025, David E. Murday ("Decedent") died testate. Respondent Alanna Snow Murday, as the primary Personal Representative named in Decedent's Will, filed the Application for Informal Appointment and Probate of Will on February 13, 2025, with the Richland County Probate Court. Respondent has since resigned as the Personal Representative of the Estate and Donald A. Murday, who is named as the alternate Personal Representative in Decedent's Will, has been appointed. Decedent's Will, as amended by the Private Agreement Among Successors filed June 6, 2025, provided that his real property located at 828 Whaley Street, Columbia, SC 29201 (TMS No. R08913-08-02) ("Property") be sold and the proceeds split equally between Decedent's daughters, Petitioner and Respondent. Petitioner and Respondent discussed the possibility of Petitioner buying the Property, but Petitioner refused to purchase the Property at half (1/2) of the appraised value of $450,000.00 and instead wanted to purchase the Property for

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$1.00 or, at most, at the tax appraised value of $261,200.

Therefore, Respondent entered into a contract for the sale of the Property for the appraised value with a closing date of December 5, 2025. On or about November 19, 2025, the currently contracted buyers of the Property informed Respondent that Petitioner began texting them in an effort to convince them to not buy the Property, wherein Petitioner stated that she has substantial health problems and that it would end her life if they proceeded with the purchase of the Property. Petitioner also filed an Application for Restraint ("Application") on December 2, 2025, requesting that the Richland County Probate Court restrain Respondent from selling the Property "due to substantial, likely life-threatening medical harm." Petitioner's Application for Restraint was heard by The Honorable Amy W. McCulloch on January 12, 2026. Judge McCulloch denied Petitioner's Application by her Order Denying Application for Restraint ("Order") on January 15, 2026, finding that Petitioner did not show that Respondent "jeopardize[d], unreasonably" Petitioner's interest in the Property; that Petitioner "did not provide evidence showing a causal link between the sale of the Real Property and life-threatening harm to her health;" and that Respondent was "directed to continue with the sale of the Real Property."

Petitioner attempted to appeal Judge McCulloch's Order by emailing a Notice of Intent to Appeal to Circuit Court to the Probate Court and filing such Notice with the Circuit Court on January 27, 2026. Respondent filed a Motion to Dismiss the Appeal on February 5, 2026, due to Petitioner failing to follow the filing requirements of S.C. Code Ann. § 62-1-308(a). After a hearing held March 19, 2026, the Honorable William W. Wheeler, III granted the Respondent's Motion based on Petitioner's failure to comply with the statutory filing requirements by Form 4 Order filed March 20, 2025. Petitioner filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, against Judge Wheeler's Form 4 Order on March 25, 2026. Judge Wheeler

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denied Petitioner's Motion on April 8, 2026. Respondent filed a formal Order pursuant to Judge Wheeler's Form 4 Order on March 27, 2026, and Petitioner filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, on April 6, 2026, against the formal Order. Judge Wheeler has not ruled on Petitioner's second Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, but Respondent believes that Judge Wheeler would similarly dismiss the second Motion as it makes fundamentally the same arguments as the first Motion.

Petitioner filed a Notice of Appeal to the Court of Appeals on May 6, 2026. The Property still has not been sold, though the contracted buyers still wish to purchase the Property. Respondent filed an Expedited Motion for Appeal Bond on May 21, 2026.

Based upon the pleadings and evidence presented at the June 4, 2026 motion hearing, I find as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

Petitioner filed a Notice of Appeal to the Court of Appeals on May 6, 2026, however, pursuant to Rule 241(a), SCACR, the Court of Common Pleas "retains jurisdiction over matters not affected by the appeal," including the grant or denial of a bond and the determination of the amount of the bond. Generally, civil matters are automatically stayed upon service of a notice of appeal. Rule 241(a), SCACR. However, there are some exceptions to the automatic stay, including "judgments directing the execution of conveyances or other instruments" and "judgments directing the sale or delivery of possession of real property." Rule 241(b), SCACR.

In this case, the Probate Court's Order directed the Personal Representative for the Estate of David E. Murday to "continue with the sale of the Real Property." Therefore, the exceptions in Rule 241(b) apply to this case and the matter is not automatically stayed. However, as stated in the Affidavit of Edward C. Boggs, the contracted buyers have been unable to obtain title insurance

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while Judge McCulloch's Order is under appeal and have thus been unable to close on the Property, which puts the Estate of David E. Murday at risk of breaching its contract with the contracted buyers, exposed to further carrying costs, and loss of the sale of the Property at the appraised value. Thus, this Court agrees with Respondent that an appeal bond is proper in this case.

Rule 241(c), SCACR, allows this Court to condition supersedeas upon terms such as the filing of bond. Rule 65(c), SCRCP, states that the Court may require in the amount it deems proper "the giving of security by the applicant . . . for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." After considering the sale price of the Property and the expenses incurred by the Estate due to the sale of the Property essentially being stayed by the appeal itself as stated by Respondent, this Court sets the appeal bond at $50,000.00.

ORDER

Accordingly, this Court hereby requires Petitioner to post an appeal bond in the amount of $50,000.00 within ten (10) days of the filed date of this Order.

AND IT IS SO ORDERED.

_____
The Honorable Daniel Coble
Court of Common Pleas for Richland County

Columbia, South Carolina
_____, 2026

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Richland Common Pleas

Case Caption: Elspeth Snow Murday VS Alanna Snow Murday , defendant, et al

Case Number: 2026CP4000467

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2026CP4000467

Elspeth Snow Murday
PLAINTIFF(S)

Alanna Snow Murday et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is before the Court on Appellant's Motion for Reconsideration pursuant to Rule 59(e) SCRCP ("the Motion"), which was timely filed on June 22, 2026. The Motion asks this Court to alter, amend, or reconsider its Order, entered June 9, 2026.
After reviewing the applicable law and considering arguments raised in the Motion, the court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Therefore, the Motion to Alter, Amend, or Reconsider is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/09/2026 .

Elspeth Snow Murday for Elspeth Snow Murday
Elspeth Snow Murday for Elspeth Snow Murday

Exhibit #2

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

Case Caption: Elspeth Snow Murday VS Alanna Snow Murday , defendant, et al

Case Number: 2026CP4000467

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Respectfully submitted,

Elspeth S. Murday Appellant, *Pro Se* September 2, 2026

217 Hall Rd.
Westminster, SC 29693
425.435.0607
emurday@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2026, I served a true and correct copy of the foregoing Appellant's Return to Respondent's Motion to Dismiss Appeal for Failure to Pay Bond upon the following via U.S. mail:

William H. Edwards, Esq.
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard
West Columbia, SC 29169
will@mbmlawsc.com
Attorney for Respondent

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Elspeth Murday

The Nature Conservancy
Protecting nature. Preserving life.

Ms. Elspeth S. Murday
217 Hall Rd.
Westminster, SC 29693-1505

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