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Sep 18 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Hon. Charles B. Simmons, Jr., Circuit Court Judge

Case No. 2025-CP-23-08229

Appellate Case No. 2026-001649

Lakeview Loan Servicing, LLC,
Respondent,

v.

Wendell Don Cooper,
Appellant,

Shellbrook Plantation HOA of SC, Inc.;
and Regions Bank,
Defendants.

**EMERGENCY MOTION TO CLARIFY OR MODIFY THE AUGUST 5, 2026, ORDER,
CANCEL OR ALTERNATIVELY LIMIT THE PROPOSED STAY HEARING, AND
DIRECT DECISION OF THE REMANDED STAY REQUEST ON THE EXISTING
WRITTEN RECORD**

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Appellant

PRELIMINARY THRESHOLD: THE TWO QUESTIONS BEFORE THE CIRCUIT COURT CAN BE DETERMINED FROM THE EXISTING RECORD WITHOUT ORAL ARGUMENT

This emergency motion presents two threshold questions that can be determined from the existing record without oral argument because Respondent filed no written opposition identifying any factual, legal, or evidentiary basis for opposing Appellant's requested stay: whether Appellant was properly served with the Summons and Complaint together, and whether the existing record establishes Respondent's compliance with the mandatory USDA conditions precedent alleged in Complaint ¶ 21.

I. CLARIFICATION OR MODIFICATION OF THE AUGUST 5 ORDER IS NECESSARY BEFORE FURTHER FORECLOSURE PROCEEDINGS

Appellant seeks clarification of a specific consequence of this Court's August 5, 2026, Order before the ordered stay hearing occurs. The Order remanded Appellant's July 26 petition for an "expedited hearing" and further stated that, "[i]f the circuit court determines a stay is not appropriate, the circuit court may immediately proceed with any other matters before it." See August 5, 2026, Order, Exhibit L.

The need for clarification is concrete rather than hypothetical. In the present procedural posture, the matters implicated by Appellant's pending appeal have not yet been determined by this Court and are not matters Appellant asks the Circuit Court to adjudicate through the limited remand. The practical matter remaining below is therefore the foreclosure itself. Read in that posture, the quoted language could place this case immediately back on the foreclosure track upon denial of the stay without first determining the threshold question Appellant has repeatedly presented: whether Respondent complied with the mandatory USDA requirements before initiating and advancing foreclosure.

The record demonstrates why that concern is real. Before the August 5 Order was entered, Appellant’s July 26 Verified Emergency Petition expressly requested an immediate written determination, before consideration of the merits, whether Respondent’s proposed August 6 summary-judgment proceeding concerned matters “affected by the appeal” within the meaning of Rule 205, SCACR. See July 26, 2026, Verified Emergency Petition, Introduction and Relief Requested, pp. 1–2. The Petition later identified among the specifically disputed foreclosure conditions “compliance with applicable USDA servicing instructions and requirements,” completion of any required review or corrective process, and the other contractual or regulatory requirements Respondent contended permitted foreclosure. *Id.* at pp. 18–20. Appellant then stated directly that “Plaintiff cannot establish a present right to accelerate the loan and foreclose without proving the occurrence, performance, excuse, or inapplicability of each condition that Defendant has specifically placed in dispute.” *Id.* at p. 20.

The August 5 Order did not decide those underlying foreclosure questions. It remanded the July 26 petition for expedited consideration of the requested stay. Nor did the Order determine that Respondent had established the conditions precedent necessary for foreclosure or that further foreclosure proceedings were matters unaffected by the appeal. The conditional sentence permitting the Circuit Court to “immediately proceed with any other matters before it” therefore should not itself be read as making those determinations.

Appellant timely reported the implementation problem to this Court in his First 30-Day Status Report. This Court’s August 5, 2026, Order expressly remanded Appellant’s July 26 petition for an “expedited hearing.” See August 5, 2026, Order, Exhibit L. The following day, however, the Administrative Docketing Coordinator advised the parties: “Per Judge Simmons, I will not be able to reschedule either the petitions nor the MSJ until we get the case back from the Court of

Appeals.” See August 6, 2026, Email, Exhibit N; First 30-Day Status Report, Section II. No ruling on the remanded stay request followed during that period. The next documented scheduling action occurred on September 17, 2026, when the Administrative Docketing Coordinator advised that Judge Simmons wanted a thirty-minute Zoom hearing on the stay. See September 17, 2026, Administrative Docketing Coordinator Email. Forty-three days had elapsed from the August 5 Order.

That documented chronology does not reflect an expedited determination of the remanded stay request. The later decision to schedule a hearing does not erase the preceding record showing that the lower court had stated it would not reschedule the remanded matter until the case returned from this Court. That history matters because the August 5 Order separately provides that, if the stay is denied, the Circuit Court “may immediately proceed with any other matters before it.” Before that language is used to move this action back onto the foreclosure track, clarification is necessary as to what “other matters” may lawfully proceed while the appeal remains pending in this Court.

The August 5 Order contains two distinct procedural directions that should not be collapsed. The first directs expedited consideration of the remanded stay petition. The second is conditional: only “[i]f the circuit court determines a stay is not appropriate” may the Circuit Court “immediately proceed with any other matters before it.” The first concerns disposition of the stay request; the second concerns what may occur afterward. A determination denying a stay therefore does not, by itself, answer what particular matters remain within the Circuit Court’s authority while the appeal continues.

The need for clarification is heightened because issues already presented to this Court remain unresolved. The July 7, 2026, Order denied Appellant’s Motion for Summary Judgment because discovery had not concluded, but it simultaneously directed Respondent to provide “a new loss mitigation package,” required Appellant to complete and return that package within sixty days, and provided that failure to do so would result in denial of Appellant’s remaining claims and defenses. Appellant thereafter specifically asked this Court in his First 30-Day Status Report to address the enforceability of that requirement while its legal applicability remained disputed. See First 30-Day Status Report, Prayer for Relief ¶ 18.

The procedural consequence is important. The July 7 Order imposed a prospective sixty-day condition capable of disposing of Appellant’s remaining claims and defenses, while the subsequently entered Form 4 characterized remaining motions as “abandoned and/or denied.” Those matters remain part of the appellate posture. Thus, if denial of the stay were treated as immediate authority to resume foreclosure without determining what matters are affected by the appeal, the foreclosure could advance while this Court has not yet resolved issues concerning the treatment of Appellant’s pending claims, defenses, motions, and the disputed loss-mitigation requirement.

That distinction is critical because denial of a stay and authority to proceed with a particular matter are not the same determination. Rule 205, SCACR, provides that the appellate court has exclusive jurisdiction over the appeal while permitting the lower court to proceed with matters “not affected by the appeal.” Rule 241(a), SCACR, preserves the same limitation. Rule 241(c)(2) further requires consideration of whether relief is necessary to preserve appellate jurisdiction or prevent a contested issue from becoming moot.

Tillman v. Oakes explains the distinction directly. The existence or absence of a stay does not itself determine whether the lower court may proceed with a particular substantive matter during the appeal. The latter question turns upon whether the particular matter sought to be litigated is affected by the appeal. See *Tillman v. Oakes*, 398 S.C. 245, 255–56, 728 S.E.2d 45, 51 (Ct. App. 2012).

Maybank 2754, LLC v. Zurlo applies that same issue-specific analysis. There, the Court of Appeals considered whether the matter the circuit court proceeded to decide while another appeal was pending was actually affected by the issue on appeal. The court permitted the summary-judgment proceeding because the summary-judgment question was not affected by the separate issue then pending on appeal. *Maybank* therefore confirms that the required inquiry is not simply whether a stay exists, but whether the particular matter proposed below is affected by the appeal.

That is the inquiry that should not be displaced by the August 5 phrase “may immediately proceed with any other matters before it.” Read consistently with Rules 205 and 241, “other matters” can only mean matters the Circuit Court otherwise possesses authority to adjudicate while the appeal remains pending—matters not affected by the appeal. The sentence should not operate as an advance determination that every remaining foreclosure matter satisfies that requirement.

The USDA-compliance question was expressly presented to this Court before the present motion. In Appellant’s Memorandum Addressing Appealability, Appellant explained that “[t]his is not a conventional mortgage dispute involving only discretionary modification discussions,” identified the mandatory federal duties governing the movement of this USDA-guaranteed loan from loss mitigation into liquidation and foreclosure, and set out the applicable servicing and

documentation requirements under 7 C.F.R. §§ 3555.51(b)(1), 3555.301, and 3555.303. See Appellant’s Memorandum Addressing Appealability, pp. 4–8. The Memorandum further requested that “no summary-judgment order, foreclosure judgment, order of sale, or other liquidation relief be entered unless and until Plaintiff establishes compliance with the mandatory USDA requirements governing its asserted right to proceed from loss mitigation into foreclosure.” Id. at pp. 43–44. Respondent’s compliance with the USDA requirements governing the transition into foreclosure is therefore not a new or collateral issue raised for the first time by this motion; it is an issue already expressly presented in the pending appeal.

Complaint ¶ 21 is significant because Respondent itself alleges that the consumer right-to-cure notice “has been given or is not required” and that “all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.” See Complaint ¶ 21. In practical terms, Respondent is alleging that the steps required before it could accelerate the loan and foreclose had already been satisfied. Appellant directly disputed that allegation in his Answer. Paragraph 3 states: “Defendant denies that Plaintiff or its predecessors have complied with all contractual, statutory, and regulatory conditions precedent required to accelerate the loan or to foreclose.” See Answer ¶ 3. Appellant further denied that the loan was properly accelerated and that Respondent was entitled to foreclose. See Answer ¶¶ 4, 6.

Appellant did not leave that challenge as a bare denial. Affirmative Defense No. 4, expressly titled “Failure of Conditions Precedent,” alleges that Respondent “failed to perform all contractual, statutory, and regulatory conditions precedent required for acceleration and foreclosure, including proper notice, cure periods, and compliance with federal servicing requirements.” See Answer, Affirmative Defense No. 4. Affirmative Defense No. 3 separately alleges USDA disaster-relief noncompliance and specifically challenges whether the mandatory

USDA review was completed before acceleration or foreclosure. See Answer, Affirmative Defense No. 3. Thus, Respondent's Paragraph 21 allegation has been specifically contested from the pleadings forward.

Nor has Respondent identified competent record evidence establishing its broad Paragraph 21 allegation as it relates to the disputed USDA prerequisites. Appellant's summary-judgment record specifically identifies the USDA calculation, waterfall worksheet, complete payment-crediting history, complete arrears accounting, final loss-mitigation denial or withdrawal determination, appeal-rights notice, and foreclosure-compliance documents as requested but unproduced. See Appellant's Motion for Summary Judgment ¶¶ 70–75; Exhibit 28. The conditions-precedent allegation therefore cannot be treated as an established fact merely because it appears in the Complaint.

Rule 71(a), SCRCF, separately requires proof in a foreclosure proceeding. It provides that "proof shall be made of the facts and circumstances alleged in the pleadings." Thus, Respondent's allegation in Paragraph 21 cannot, standing alone, carry its burden of establishing that the specifically disputed prerequisites to acceleration and foreclosure were actually performed or occurred.

Those prerequisites include the mandatory requirements governing this USDA-guaranteed loan. Title 7 C.F.R. § 3555.51(b)(1) requires lenders and their agents to keep current with and comply with Agency regulations and handbooks. Section 3555.301(b) requires lenders to evaluate loans and take appropriate loss-mitigation action to resolve repayment problems and maximize the borrower's opportunity to remain a successful homeowner. Most importantly for the foreclosure sequence, § 3555.301(g) requires the lender to maintain documentation demonstrating that the

requirements of the subpart were satisfied and documenting the steps taken to save the mortgage before making the decision to foreclose.

The timing imposed by § 3555.301(g) makes the threshold question concrete. The issue is not whether Respondent can now offer a general assertion that USDA requirements were satisfied. The issue is whether Respondent complied with and documented the mandatory USDA requirements before deciding to foreclose and thereby established the conditions precedent alleged in Complaint ¶ 21. Appellant placed that issue into the written record before the August 5 Order and preserved it thereafter in his First 30-Day Status Report.

The First 30-Day Status Report then applied the USDA legal framework already presented in the Memorandum to the developed record. The Report distinguished the disaster-servicing pathway from traditional servicing and explained that “[t]he two analyses therefore should not be blended.” See First 30-Day Status Report, pp. 44–47. It further stated that Respondent “must identify which pathway it actually applied at each stage and produce the calculation and documentation required by that pathway.” *Id.* The Report identified that the present record does not show the verified gross monthly income actually used to calculate the September modification, the underlying affordability or waterfall analysis, whether the thirty-one-percent target was applied if traditional servicing governed, the treatment of arrearage under that pathway, or how a Mortgage Recovery Advance was evaluated. *Id.*

The Report also documented the later March 27, 2026 comprehensive financial-review package transmitted after foreclosure had commenced and explained why that later process did not establish what USDA pathway governed the earlier disaster review or when any transition between servicing pathways occurred. *Id.* The Report therefore did not replace or alter the legal position presented in the Memorandum. The two filings work in tandem: the Memorandum

identifies the governing USDA pre-liquidation duties, while the Report identifies the record evidence necessary to determine which USDA pathway was actually applied, whether any transition between pathways was lawful, and whether the governing requirements were completed and documented before foreclosure was advanced.

This distinction is important because the issue is not simply whether Respondent's conduct should be labeled "conventional" or "USDA." This is a USDA-guaranteed mortgage, and the state foreclosure procedure does not eliminate the federal servicing requirements applicable to that loan. The South Carolina Supreme Court has expressly stated that "nothing in this order should be read to imply that Mortgagee-plaintiffs in foreclosure actions are not required to comply with applicable federal regulations with respect to loss mitigation in foreclosure actions in South Carolina." *In re Rescission of Administrative Orders Governing Mortgage Foreclosure Actions*, S.C. Sup. Ct. Order No. 2023-05-17-01 (May 17, 2023). The present record therefore must establish which USDA servicing pathway governed and that the requirements applicable to that pathway were satisfied and documented before Respondent's Paragraph 21 allegation can support moving this USDA-guaranteed loan from loss mitigation into foreclosure.

The clarification requested here therefore does not ask this Court to decide every underlying USDA or foreclosure dispute through this motion. Nor does Appellant ask this Court to prohibit every proceeding below. The narrower request is that denial of the remanded stay not itself be treated as an automatic determination that the foreclosure is unaffected by the appeal or that Respondent has already established the prerequisites necessary to proceed.

Without that clarification, two separate determinations could effectively be collapsed into one. The Circuit Court could deny the requested stay and then treat the words "may immediately proceed" as authority to resume foreclosure without separately determining whether the

proposed foreclosure proceeding is a matter “not affected by the appeal.” That would substitute the stay ruling for the issue-specific inquiry required by Rule 205, *Tillman*, and *Maybank*.

Rule 241(c)(2) reinforces why the distinction must be preserved. The Rule expressly directs consideration of whether relief is necessary to preserve appellate jurisdiction or prevent a contested issue from becoming moot. If foreclosure judgment, an order of sale, or comparable dispositive foreclosure relief proceeds before the affected-by-the-appeal question is determined, proceedings below could overtake matters for which appellate review is still being preserved.

Accordingly, Appellant respectfully requests specific clarification that the August 5 statement permitting the Circuit Court to “immediately proceed with any other matters before it” does not itself constitute a determination that further foreclosure proceedings are unaffected by the pending appeal, does not itself establish Respondent’s entitlement to foreclosure or the conditions precedent alleged in Complaint ¶ 21, and does not authorize foreclosure to advance merely because the stay is denied without first determining whether the proposed foreclosure proceeding is a matter “not affected by the appeal” under Rule 205 and whether the existing record establishes the mandatory prerequisites upon which Respondent’s asserted right to foreclose depends.

II. THE PROPOSED ZOOM HEARING SHOULD BE CANCELED AND THE REMANDED STAY REQUEST DECIDED ON THE EXISTING WRITTEN RECORD

The proposed Zoom hearing should be canceled because the question remanded by this Court can be determined from the existing written record, Respondent filed no written opposition identifying any factual or legal basis for denying the requested stay, and no identified factual dispute requires oral testimony. The record presently before the Circuit Court contains Appellant’s verified petition, the underlying pleadings and motions, the orders and Form 4 whose

procedural effect is disputed, the documentary record concerning service and USDA compliance, and the subsequent filings preserving those issues. Nothing in the September 17 scheduling communication identifies what additional evidence or legal issue requires a thirty-minute oral proceeding.

The proposed hearing should not become the first occasion upon which Respondent supplies the factual, legal, or evidentiary basis that it never placed in the written record.

That circumstance is particularly significant because the remanded matter did not originate as an unstructured request for the Circuit Court to reconsider the entire foreclosure case. Appellant's July 26 Verified Emergency Petition requested a written determination concerning whether the proposed proceedings below involved matters affected by the pending appeal and requested a stay to preserve the status quo while appellate jurisdiction remained in this Court. This Court retained the appeal and remanded that particular petition for expedited consideration. The purpose of the limited remand therefore can be fulfilled by deciding the stay request presented in the written record; it does not require reopening the underlying controversy through an additional oral proceeding.

Respondent's failure to file written opposition makes the need for additional oral argument still less apparent. The appellate Public Index reflects Appellant's August 5, 2026, Motion to Stay, while the subsequent Respondent filings identified on that docket concern appealability. The Public Index identifies no return, response, or opposition by Respondent to Appellant's Motion to Stay. Respondent therefore has not identified in writing what factual assertion in Appellant's verified presentation it disputes, what evidence it contends defeats the requested stay, or what legal ground it contends requires denial.

Respondent has also had ample opportunity to supplement the written record if it believed additional facts, documents, affidavits, servicing records, or legal argument were necessary to oppose the requested stay. Appellant filed the Verified Emergency Petition on July 26, 2026, and this Court entered its remand Order on August 5, 2026. Forty-three days then elapsed before the September 17 scheduling communication. During that period, Respondent had notice of the requested relief and the issues presented and had the ability to place any opposing factual, evidentiary, or legal position into the record. Its failure to do so should not convert the proposed hearing into a first opportunity to create an opposition that could have been presented in writing while the remanded matter remained pending.

That absence matters for both fairness and record preservation. An oral proceeding should not become the first occasion on which Appellant learns the factual or legal basis upon which Respondent opposes relief. If Respondent is permitted to present at the hearing a factual contention, affidavit, document, or materially different legal theory that was never presented in written opposition, Appellant would be required to respond in real time to a position that the existing written record did not disclose. The proceeding would thereby change from consideration of the remanded written request into an opportunity to supplement or reshape **the** record after the time for written opposition passed.

The South Carolina Rules of Civil Procedure do not require that a motion supported by an adequate written record be resolved through live testimony. Rule 43(e), SCRPC, provides that when a motion depends upon facts outside the existing record, the court may consider affidavits submitted by the parties and may direct oral testimony or depositions when necessary. The rule therefore recognizes determination of motions upon a written evidentiary presentation. See Rule

43(e), SCRCF; *Nichols Holding, LLC v. Divine Capital Group, LLC*, 416 S.C. 327, 341, 785 S.E.2d 613, 620 (Ct. App. 2016).

Nichols Holding is instructive because the Court of Appeals expressly recognized that Rule 43(e) gives the circuit court discretion to determine a motion on affidavits in lieu of oral testimony. *Id.* Likewise, *Rawlinson Road Homeowners Association, Inc. v. Jackson*, 395 S.C. 25, 32–33, 716 S.E.2d 337, 341 (Ct. App. 2011), recognizes that the admission or exclusion of testimony in motion practice rests within the court’s discretion and specifically relies upon Rule 43(e). Those authorities establish that an additional oral evidentiary proceeding is not procedurally required merely because a motion remains for decision.

Rule 241(d), SCACR, further supports determination from the developed written record. The Rule establishes a written and verified petition procedure and requires the petition to set forth the necessary factual background, the grounds for relief, legal argument, and supporting authority, with disputed facts supported by affidavits or other sworn statements. See Rule 241(d)(3)–(4), SCACR. Appellant does not contend that Respondent’s failure to file written opposition automatically requires that the requested stay be granted. The point is narrower. Appellant presented the stay request through the verified written procedure contemplated by Rule 241(d), and Respondent has identified no competing factual or evidentiary presentation requiring oral resolution. The Circuit Court therefore can determine from the existing record whether Appellant has carried his burden without permitting the proposed hearing to become Respondent’s first opportunity to construct an opposition that was never placed before the court in writing.

Here, the reason for exercising that discretion in favor of the written record is unusually strong. Appellant is not asking the Circuit Court to resolve new factual allegations dependent upon witness credibility. The stay request concerns an existing judicial and documentary record. The

relevant pleadings, orders, motions, emails, service materials, USDA servicing materials, and procedural filings already exist. Respondent has not filed an opposing evidentiary presentation identifying a material factual dispute requiring testimony. Accordingly, there is no presently identified evidentiary gap for a hearing to fill.

Rule 6(d), SCRCF, reinforces the importance of resolving motion practice through disclosed written positions rather than permitting substantive opposition to emerge for the first time at a hearing. The Rule establishes a written framework for motions and supporting and opposing affidavits. Its notice provisions serve the fundamental purpose of allowing the opposing party to know before the hearing the matter that must be answered. Where Respondent has filed no written opposition to the stay, an oral hearing should not become a substitute for the written response Respondent elected not to provide.

More specifically, Rule 6(d) expressly requires an affidavit supporting a motion to be served with the motion and ordinarily requires additional or opposing affidavits to be served before the hearing unless the court permits otherwise. Thus, even though Rule 6(d) does not require every legal argument to be submitted in writing, it confirms the importance of advance disclosure when factual or evidentiary material is offered in motion practice. Where Respondent filed no opposing affidavit or other written evidentiary presentation, the hearing should not become the first occasion for introducing factual material that Appellant had no prior opportunity to review and answer.

South Carolina appellate decisions reinforce that protection. In *Dedes v. Strickland*, 307 S.C. 152, 155, 414 S.E.2d 132, 134 (1992), the Supreme Court recognized prejudice where inadequate notice wrongfully deprives a party of an opportunity to submit affidavits, documents, or testimony in opposition to a motion. In *Loftis v. South Carolina Electric & Gas Co.*, 361 S.C.

434, 604 S.E.2d 714 (Ct. App. 2004), the Court of Appeals found no reversible prejudice where the trial court afforded the surprised party additional time to submit a brief, opposing affidavits, and evidence before the court ruled. Those decisions support a basic protection applicable here: if new factual or evidentiary material is permitted, Appellant must receive a meaningful opportunity to review and answer that material before any ruling *based upon it is entered*.

The procedural history provides an additional reason to preserve a complete written record. The certified transcript of the June 24, 2026, hearing has become material precisely because it permits comparison between the matters Appellant presented in writing, the matters actually addressed orally, and the rulings subsequently entered. That experience demonstrates the importance of ensuring that the basis for any determination affecting Appellant's ability to protect his home is contained in a reviewable record rather than depending upon an oral exchange whose scope may later become disputed.

The September 17 scheduling communication states only that "Judge Simmons would like a 30-minute zoom hearing on whether a Stay shall be granted as noted in the Court of Appeals Order dated August 5, 2026." It does not identify any witness who must testify, any factual dispute requiring credibility findings, any additional evidence the court requires, or any legal issue absent from the existing submissions. Nor does it identify what Respondent contends in opposition to the stay. The proposed hearing therefore adds an oral proceeding without identifying what deficiency in the written record that proceeding is intended to cure.

The absence of an identified need for oral testimony is particularly important because the issues relevant to the stay are capable of determination from documents already before the courts. Whether Appellant was served with the Summons and Complaint together is a record question governed by the filed proof of service and the documents identified in that proof. Whether

Respondent has established the USDA conditions precedent alleged in Complaint ¶ 21 likewise turns upon the pleadings, applicable federal requirements, and the servicing and foreclosure-compliance documentation contained—or not contained—in the existing record. Neither question inherently requires witness credibility determinations merely to decide whether the status quo should remain protected while the appeal proceeds.

Appellant therefore does not seek to prevent the Circuit Court from carrying out this Court's remand. He seeks the opposite: prompt completion of the remand through the record already developed rather than further delay and an unnecessary additional oral proceeding. More than forty days passed after this Court directed expedited consideration before the September 17 communication proposed a hearing. Requiring another substantive oral proceeding where Respondent has identified no written opposition and no factual dispute requiring testimony would add another procedural layer rather than provide the expedited determination contemplated by the remand.

There is also an important distinction between deciding the stay and allowing the hearing to become a vehicle for deciding matters beyond the limited remand. This Court retained jurisdiction over the appeal. The Circuit Court's present authority derives from the specific remand for consideration of Appellant's petition. Deciding that petition from the existing written record respects that limitation. Expanding the proceeding through new oral factual or substantive presentations risks blurring the distinction between deciding whether the status quo should be preserved and adjudicating underlying matters that remain implicated by the pending appeal.

Any oral proceeding conducted pursuant to the limited remand likewise should not be expanded into adjudication of matters this Court retained within the pending appeal. Rule 205, SCACR, provides that this Court possesses exclusive jurisdiction over the appeal while permitting

proceedings below as to matters not affected by the appeal, and Rule 241(a), SCACR, preserves that same limitation. *As Tillman v. Oakes*, 398 S.C. 245, 255–56, 728 S.E.2d 45, 51 (Ct. App. 2012), explains, the existence or nonexistence of a stay does not itself determine the lower court’s power to proceed; the controlling inquiry is whether the particular matter sought to be litigated is affected by the appeal. Accordingly, if the hearing proceeds, its scope should remain confined to the matter remanded rather than becoming a vehicle for adjudicating additional matters implicated by the pending appeal.

If this Court determines that its August 5 Order requires the 30-minute hearing to proceed, Appellant respectfully requests that the scope of that hearing be expressly confined to the threshold foreclosure question already presented in Appellant’s July 26 Verified Emergency Petition and remanded by this Court: whether Respondent complied with the governing USDA requirements before initiating and advancing foreclosure and whether the existing documentary record establishes Respondent’s Paragraph 21 allegation that the conditions precedent to acceleration and foreclosure were satisfied.

If Respondent nevertheless seeks to introduce at the hearing factual material, affidavits, documents, servicing records, or other evidence not previously disclosed in opposition to the stay request, Appellant respectfully requests that no ruling based upon such material be entered unless Appellant is first afforded a meaningful opportunity to review and respond to it and, where necessary, to supplement the written record. The hearing should not operate simultaneously as Respondent’s first disclosure of new material and Appellant’s only opportunity to answer it. *See Rule 6(d), SCRCF; Dedes*, 307 S.C. at 155, 414 S.E.2d at 134; *Loftis*, 361 S.C. 434, 604 S.E.2d 714.

If the hearing nevertheless proceeds, Appellant further respectfully requests that an official court reporter be present and that a verbatim record of the entire proceeding be made and preserved. Given the procedural history of this case and the significance of the certified transcript of the June 24, 2026, hearing in establishing what was presented, what was considered, and what was ruled upon, preservation of a complete record is necessary to permit meaningful appellate review of the remanded proceeding and any resulting ruling.

Appellant further requests that every document, exhibit, affidavit, servicing record, or other evidentiary material considered by the Circuit Court be expressly identified on the record so that the complete basis for the resulting ruling is preserved for appellate review.

The need for a defined written record is independently reinforced by Rules 58, SCRCp, and 210(c) and (h), SCACR. Rule 210(c) provides that matter not presented to the lower court may not be included in the Record on Appeal, and Rule 210(h) provides that, subject to the Rule's stated exceptions, the appellate court will not consider facts that do not appear in that record. See Rule 210(c), (h), SCACR. South Carolina law likewise recognizes the controlling importance of a written and entered ruling. Rule 58, SCRCp, provides that a judgment is effective only when set forth in writing and entered in the record, and the Supreme Court has recognized that the written order, rather than an earlier oral pronouncement, constitutes the court's final ruling. *See Ford v. State Ethics Commission*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001). *South Carolina appellate authority further recognizes that the acts of a court of record must be established through the record itself. See Spartanburg Buddhist Center of South Carolina v. Ork*, 417 S.C. 601, 790 S.E.2d 430 (Ct. App. 2016) (discussing the necessity of a formal court order and quoting *State v. Gaskins*, 263 S.C. 343, 346, 210 S.E.2d 590, 591 (1974)). Where Respondent has filed no written opposition, permitting substantive opposition to arise for the first time orally and

then resolving the stay without a defined written ruling would create uncertainty concerning what Respondent presented, what material the Circuit Court considered, and what grounds actually formed the basis of the decision—precisely the matters that must later be ascertainable from the record for meaningful appellate review.

Accordingly, if the hearing proceeds and the Circuit Court grants or denies the requested stay, Appellant respectfully requests that the resulting ruling be reduced to a written order sufficiently identifying the grounds for the decision and the documents, exhibits, affidavits, or other evidentiary material upon which the court relied. Appellant does not request findings beyond those required by law; he requests only a record sufficient to establish what was presented, what was considered, and the basis upon which the remanded stay request was decided. That protection is particularly important where Respondent has filed no written opposition that could otherwise establish its position in the record.

Accordingly, Appellant respectfully requests that this Court cancel the proposed hearing and direct the Circuit Court to decide the remanded stay request promptly upon the existing written record. The existing record identifies the relief requested, the documentary basis supporting it, and the threshold matters bearing upon whether foreclosure should be permitted to advance while the appeal remains pending. Respondent filed no written opposition identifying a contrary factual, evidentiary, or legal basis requiring oral resolution. Respondent has had ample notice and ample opportunity to supplement the record, submit opposing evidence, identify a factual dispute, or state the legal basis upon which it contends the stay should be denied. It did none of those things through a written opposition to the stay request. The proposed hearing therefore should not provide Respondent with an additional procedural opportunity to present for the first time material that could have been placed in the record during the substantial period in which the

remanded matter remained pending. Under those circumstances, determination upon the written record provides the most direct means of implementing the August 5 remand while preserving a clear and reviewable record of the basis for the resulting decision.

III. CONCLUSION

The clarification requested is narrow but necessary. This Court retained jurisdiction over the appeal while remanding Appellant's July 26, 2026, Verified Emergency Petition for expedited consideration. The August 5 Order did not determine that further foreclosure proceedings are unaffected by the appeal, did not establish Respondent's entitlement to foreclosure, and did not determine that the disputed conditions precedent alleged in Complaint ¶ 21 had been satisfied. Clarification is therefore necessary before the conditional language permitting the Circuit Court to "immediately proceed with any other matters before it" is treated as authority to place this case back on the foreclosure track.

The remanded stay request can also be determined from the existing written record. Respondent has had ample notice and ample opportunity to identify any factual, evidentiary, or legal basis for opposing the requested stay, yet filed no written opposition doing so. The proposed hearing should not become Respondent's first opportunity to supply an opposition that was never placed in the record. If a hearing nevertheless proceeds, its scope should remain confined to the threshold matter already presented in the July 26 petition, and the proceeding should be fully preserved through an official transcript, identification of the materials considered, and a written ruling sufficient for meaningful appellate review.

The requested relief therefore preserves rather than enlarges the limited remand: it asks this Court to define the effect of its August 5 Order, prevent unresolved appellate issues from being

overtaken by foreclosure proceedings, and ensure that the remanded stay request is decided upon a clear, fixed, and reviewable record.

PRAYER FOR RELIEF

WHEREFORE, Appellant respectfully requests that this Court:

1. Clarify or modify its August 5, 2026, Order to provide that the statement that the Circuit Court “may immediately proceed with any other matters before it” does not itself constitute a determination that further foreclosure proceedings are unaffected by the pending appeal, does not establish Respondent’s entitlement to foreclosure or the conditions precedent alleged in Complaint ¶ 21, and does not authorize foreclosure to advance merely because the requested stay is denied;
2. Clarify that, while this Court retains jurisdiction over the appeal, any further proceeding below remains subject to Rule 205, SCACR, and Rule 241(a), SCACR, and therefore may proceed only as to matters not affected by the pending appeal;
3. Cancel the proposed thirty-minute hearing and direct the Circuit Court to determine Appellant’s remanded stay request promptly upon the existing written record;
4. In the alternative, if this Court determines that the hearing should proceed, expressly limit the scope of that hearing to the threshold foreclosure question already presented in Appellant’s July 26, 2026 Verified Emergency Petition and remanded by this Court: whether Respondent complied with the governing USDA requirements before initiating and advancing foreclosure and whether the existing documentary record establishes Respondent’s allegation in Complaint ¶ 21 that the conditions precedent to acceleration and foreclosure were satisfied;

5. Direct that the hearing not become Respondent's first opportunity to supply a factual, legal, or evidentiary basis for opposing the stay that was not previously placed in the written record;
6. If Respondent seeks to introduce new factual material, affidavits, documents, servicing records, or other evidence at the hearing, direct that no ruling based upon such material be entered until Appellant has been afforded a meaningful opportunity to review and respond to that material and, where necessary, supplement the written record;
7. If the hearing proceeds, direct that an official court reporter be present, that a verbatim record of the entire proceeding be made and preserved, and that every document, exhibit, affidavit, servicing record, or other evidentiary material considered by the Circuit Court be expressly identified on the record;
8. Direct that any ruling granting or denying the remanded stay request be reduced to a written order sufficiently identifying the grounds for the decision and the material relied upon so that the basis of the ruling is preserved for meaningful appellate review;
9. Preserve the status quo pending disposition of the remanded stay request and this Court's clarification of the scope and effect of its August 5, 2026, Order; and
10. Grant such other and further relief as this Court determines necessary to preserve its jurisdiction, protect meaningful appellate review, and effectuate the limited remand.

Respectfully submitted,

Wendell Don Cooper
Appellant, Pro Se

September 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2026, I served a true and correct copy of the foregoing EMERGENCY MOTION TO CLARIFY OR MODIFY THE AUGUST 5, 2026, ORDER, CANCEL THE PROPOSED ZOOM HEARING, AND DIRECT DECISION OF THE REMANDED STAY REQUEST ON THE EXISTING WRITTEN RECORD upon counsel for Respondent by depositing the same in the United States Mail, first-class postage prepaid, properly addressed as follows:

Alan M. Stewart, Esq.
Foundation Legal Group, LLP
240 Stoneridge Drive, Suite 400
Columbia, South Carolina 29210
A courtesy copy was also transmitted by electronic mail to:
alan.stewart@thefoundationlegalgroup.com

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SC Court of Appeals

Wendell Don Cooper
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September 18, 2026