

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
David Edward Murday)
(Decedent))

Elspeth Murday,)

Petitioner,)

v.)

Alanna Murday,)

Respondent.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No. 2026-CP-40-00467

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS APPEAL**

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SC Court of Appeals

This matter came before the Court for a hearing on March 19, 2026 on Respondent's Motion to Dismiss Appeal.

FACTUAL BACKGROUND

On or about January 9, 2025, Decedent died testate. Decedent's daughter and the Respondent, Alanna 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. 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 children. The Property was appraised and valued at four hundred fifty thousand and 00/100 (\$450,000.00) dollars.

Respondent entered into a contract for the sale of the Property for the appraised value with a closing date of December 5, 2025. Petitioner 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 filed a Notice of Appeal of Judge McCulloch’s Order with the Circuit Court.

Respondent filed this Motion to Dismiss, asserting that Petitioner failed to perfect the appeal from the Probate Court pursuant to S.C. Code Ann. § 62-1-308(a) and (b). Based upon the pleadings and evidence presented at the March 19, 2026 motion hearing, I find as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

I. I find and conclude that Petitioner failed to file and serve the Notice of Appeal as required by S.C. Code Ann. § 62-1-308(a).

S.C. Code Ann. § 62-1-308 governs appeals from the probate court to the circuit court.

S.C. Code Ann. § 62-1-308(a) specifically states that

[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

a. Petitioner failed to properly or timely file the notice of appeal with the Richland County Probate Court.

Petitioner did not properly or timely file her notice of appeal with the Probate Court

pursuant to S.C. Code Ann. § 62-1-308(a). On January 15, 2026, the Probate Court emailed Judge McCulloch's Order to the parties. On January 16, 2026, Petitioner replied to the Probate Court's email with her Notice of Intent to Appeal. S.C. Code Ann. § 62-1-308(a) states that the notice of appeal must be filed with the Probate Court within ten (10) days of receipt of the appealed from order. The emailed Notice is not a proper filing with the Probate Court. No physical signed copy has been filed with the Probate Court, the Notice does not appear in the online database for the Probate Court, and there is no public record of the Notice being filed with the Probate Court. Petitioner has failed to properly or timely file the notice of appeal with the Probate Court within ten (10) days of the date of the Order, as required by S.C. Code Ann. § 62-1-308(a).

b. Petitioner failed to properly or timely serve Respondent with the notice of appeal.

Petitioner did not notify Respondent of her Notice to the Probate Court or Circuit Court as required by S.C. Code Ann. § 62-1-308(a). The statute requires that Petitioner serve a copy of the Notice on all parties within ten (10) days of the Order. Petitioner did copy Respondent's counsel on her email to the Probate Court with the Notice. While service of a document by email is allowed pursuant to the Supreme Court's Order dated April 24, 2024, the Supreme Court's Order only allows South Carolina lawyers to serve each other at the email addresses listed in the Attorney Information System, not *pro se* litigants to serve lawyers by email. Further, even if service of the Notice by email is sufficient, Petitioner has not filed a proof of service with the Probate Court evidencing such service by email as required by Rule 203(d)(B)(i), SCACR. Petitioner also did not serve Respondent with a copy of the Notice filed with the Circuit Court until March 6, 2026, and did not file a proof of delivery of such service with the Circuit Court until March 13, 2026.

Therefore, Petitioner failed to properly or timely serve Respondent with the notice of appeal and has failed to file a proof of service, as required by S.C. Code Ann. § 62-1-308(a) and Rule 203(d)(B)(i), SCACR, and her attempted appeal is untimely and not perfected.

The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). The failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction. *In re Est. of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 117 (2005). Procedural requirements regarding filing and service of a notice of appeal are jurisdictional requirements, and the time for service may not be extended by this court.

II. Petitioner failed to file and serve the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308(b).

S.C. Code Ann. § 62-1-308(b) specifically states that

[w]ithin forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.

Petitioner failed to file or serve a Statement of Issues on Appeal with proof of service within forty-five days of Judge McCulloch's Order, and therefore, failed to comply with S.C. Code Ann. § 62-1-308(b).

ORDER

Accordingly, this Court hereby dismisses the appeal of Petitioner due to her failure to properly or timely file the notice of appeal with the Richland County Probate Court, her failure to properly or timely serve Respondent with the notice of appeal, and her failure to properly or timely file and serve the Statement of Issues on Appeal with proof of service as required by S.C. Code Ann. §§ 62-1-308(a) and (b).

AND IT IS SO ORDERED.

The Honorable William W. Wheeler, III
Court of Common Pleas for Richland County

Columbia, South Carolina
_____, 2026



Richland Common Pleas

Case Caption: Elspeth Snow Murday VS Alanna Snow Murday , defendant, et al
Case Number: 2026CP4000467
Type: Order/Dismissal

So Ordered

William W. Wheeler, III