

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2026-001100

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In the Matter of: David Edward Murday (Decedent)

SC Court of Appeals

Elsbeth Murday, Appellant,

v.

Alanna Murday, Respondent.

APPEAL FROM RICHLAND COUNTY

William W. Wheeler, III, Circuit Court Judge

Daniel Coble, Circuit Court Judge

Circuit Court Case No. 2026-CP-40-00467

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err in holding that Appellant failed to satisfy § 62-1-308(a), SCPC, where the Notice of Intent to Appeal was transmitted on January 16, 2026 to the Probate Court's own e-mail address and to Respondent's counsel on the same e-mail thread by which the Probate Court had transmitted the appealed-from order the previous afternoon, and in particular:

A. whether filing in the office of the Probate Court was complete upon the Clerk's receipt of that transmission, notwithstanding the absence of a docket entry;

B. whether the service ground was governed by the Supreme Court's Order Regarding Service by E-Mail in the Trial Courts, which expressly reaches the probate courts and expressly permits a lawyer to consent in writing to accept e-mail service from a self-represented litigant, rather than by the Amended Order of April 24, 2024 under Rule 262, SCACR, which by its own terms governs only filings and service in the Supreme Court and the Court of Appeals; and

C. whether the absence of a proof of service filed with the Probate Court was an available independent ground of dismissal under Rule 203(d), SCACR, where that rule directs the proof of service to the appellate court, attaches no dismissal sanction to its omission, and is disclaimed for probate appeals by § 62-1-308(g)?

II. Did the Circuit Court abuse its discretion in dismissing the appeal for failure to file a Statement of Issues on Appeal under § 62-1-308(b), where the statute prescribes no consequence for non-compliance, the order records no exercise of discretion and no jurisdictional holding on that ground, and a timely motion seeking an extension and leave to cure had been filed four days before the deadline and was never scheduled or ruled upon?

III. Did the Circuit Court err in never reaching the merits of Appellant's second Rule 59(e) motion, which was directed at a different and later order than the first and which contained her disability-accommodation requests?

IV. Did the Circuit Court err in dismissing the appeal without ruling on Appellant's requests for disability accommodation or on her timely February 27, 2026 motions, one ground of which sought leave to cure the very procedural defect later made a basis of dismissal?

STATEMENT OF THE CASE

Note on record references. Because the Record on Appeal has not yet been prepared, references in this initial brief are made to the transcript by page and line and to other materials by the name of the document and the page of that document as filed, including its attached exhibits, as permitted by Rule 208(b)(4), SCACR. Where an exhibit bears its own designation, that designation is given as well. These references will be revised to the pages of the Record on Appeal in the final brief as required by Rule 211(b)(1), SCACR.

This appeal concerns the dismissal of a probate appeal on procedural grounds, before any court reached its merits.

Nature of the matter and mode of trial. The underlying matter is the administration of a decedent's estate, commenced in the Richland County Probate Court in 2025 as In re Estate of David Edward Murday, Case No. 2025-ES-40-00281. The matter now on appeal is Appellant's statutory appeal to the Circuit Court from a Probate Court order, docketed as Case No. 2026-CP-40-00467 upon the filing of the Notice of Intent to Appeal on January 27, 2026. Respondent responded by moving to dismiss that appeal. There was no trial. The dismissal was decided on motion papers following a non-jury motion hearing held March 19, 2026, and the subsequent orders were entered on motion papers without further hearing, except that a hearing on

Respondent's motion for an appeal bond was held June 4, 2026. There has been no change in the parties by death, substitution, or otherwise.

Orders appealed from, and service of the notice of appeal. This appeal is taken from the Form 4 order of March 20, 2026 granting Respondent's motion to dismiss, the Order Granting Motion to Dismiss entered March 27, 2026, the Form 4 order of April 8, 2026 declining to alter or amend, and the Form 4 order of August 12, 2026 denying Appellant's motion to alter, amend, or reconsider. Appellant's Notice of Appeal was served May 6, 2026 and filed May 7, 2026. Her Amended Notice of Appeal, which designates each of the orders identified above, was served September 11, 2026, within thirty days after her receipt of written notice of entry of the August 12, 2026 order.

Relief concerning the stay and the appeal bond is sought separately. The Circuit Court's June 9, 2026 order requiring a \$50,000 supersedeas bond is recited here because it bears on the course of this appeal. Review of a lower court's ruling on a stay or supersedeas is obtained by petition under Rule 241(d), SCACR, rather than as an issue in a brief, and Appellant seeks that relief by separate petition filed contemporaneously. Nothing requested in this brief depends on the disposition of that petition, and nothing in that petition depends on the disposition of this brief.

Amount involved on appeal. The amount involved is Appellant's one-half beneficiary interest in the estate, the principal disputed asset being the real property at 828 Whaley Street, Columbia. The valuation of that property is disputed below and is not a question presented here.

David E. Murday died in 2025. His estate has two beneficiaries: Appellant Elspeth Murday and Respondent Alanna Murday. The principal asset in dispute is the real property at 828

Whaley Street, Columbia. Appellant sought to prevent its sale to a third party, rather than herself.

On November 7, 2025, a contract for sale was signed with third party buyers.

On January 15, 2026, the Richland County Probate Court entered an Order Denying Application for Restraint, which directed the Personal Representative “to continue with the sale of the Real Property.” The Clerk transmitted that order to all parties by e-mail at 4:47 p.m. that afternoon.

On January 16, 2026 at 3:09 p.m. — the following day — Appellant replied on that same e-mail thread, attaching a completed Probate Court Form #356ES, Notice of Intent to Appeal to Circuit Court. The reply went to the Clerk, to Respondent’s counsel Mr. Edwards, and to the closing attorney for the buyers. On January 27, 2026, a paper copy was file-stamped by the Circuit Court. Timeliness of the Circuit Court filing is not in dispute: the tenth day fell on January 26, 2026, when the courthouse was closed for weather.

Respondent moved to dismiss the appeal on February 5, 2026, asserting that the Notice had not been filed in the Probate Court and had not been properly served.

On February 27, 2026, Appellant filed two motions four minutes apart: a Motion for Continuance, one numbered ground of which was captioned “Request for Leave to Cure Procedural Defect,” and a Motion for Stay Pending Appeal. Neither motion was ever placed on a motion roster, scheduled for a hearing, or ruled upon in either direction.

The deadline for Appellant’s Statement of Issues on Appeal under § 62-1-308(b) fell on March 3, 2026. Appellant did not timely serve and file that statement. Her second Rule 59(e) motion, filed April 6, attached a four-page drafted statement as Exhibit A and requested a new deadline. She does not contend that attaching the draft satisfied the statutory filing-and-service requirement. (Apr. 6 motion, prayer ¶ 7 & Ex. A, as-filed pp. 10–14.)

The Motion to Dismiss was heard on March 19, 2026. It was the only motion on the roster. Judge Wheeler presided as a substitute; the certified transcript's caption names Judge Coble. Respondent's counsel raised the missed Statement of Issues deadline at the hearing. (Mar. 19 Tr. 13:1–18.) A Form 4 order entered the following day, March 20, granted dismissal “based on the Appellant’s failure to comply with the filing statutes” and directed that “[t]he prevailing party shall submit a proposed order within 10 days.” The March 27 long-form order separately identified § 62-1-308(b) as a ground for dismissal.

Appellant filed a Rule 59(e) motion on March 25, 2026 directed at the March 20 Form 4, and a second Rule 59(e) motion on April 6, 2026, signed April 3, directed at the March 27 order and containing a disability-accommodation section the first motion did not include. The April 8, 2026 order ruled, by its own terms, only on “the Appellant’s Rule 59(e) Motion to Alter or Amend Judgement, filed on March 25, 2026.” A supersedeas bond of \$50,000 was ordered on June 9, 2026. Appellant sought reconsideration on June 22, describing inadequate hearing notice and submitting a chronological exhibit series concerning her efforts to purchase the home and resolve the dispute. (June 22 motion, as-filed pp. 1–10, Exs. 3(a)–(v), as-filed pp. 19–54.) Appellant’s August 11 Motion for Ruling on Pending Motion was denied by Form 4 the following day by Judge Coble, without reaching the second dismissal-reconsideration motion’s substance or any accommodation request.

Appellant respectfully requests that this Court reverse the dismissal and remand so that the Circuit Court may reach the merits of the probate appeal.

ARGUMENT

Because “where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds,” *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903

(2010); *see also Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 728 S.E.2d 460 (2012), Appellant addresses each ground the March 27, 2026 order states, and addresses no ground by implication only.

The order rested the dismissal on grounds of two kinds. The first concerns the January 16 Notice itself and has two components — that the Notice was not filed in the office of the Probate Court, and that it was not properly served on Respondent’s counsel. Argument I addresses both, together with the order’s two subsidiary findings. The second ground is independent of the Notice: that no Statement of Issues on Appeal was filed within § 62-1-308(b)’s forty-five days. Argument II addresses that ground. Appellant does not contend that either requirement is unimportant or waivable. She contends that the first was satisfied and that dismissal on the second was not a warranted exercise of discretion.

The challenge to the later June 9, 2026 bond order presents a separate question concerning stay-related relief, and Appellant pursues it by contemporaneous petition under Rule 241(d), SCACR. Arguments I through IV support reinstatement of the probate appeal regardless of the disposition of that petition.

Statement of Facts

Appellant sets out the facts relevant to the issues presented, as permitted by Rule 208(b)(1) (E), SCACR.

A. Probate background, stated only so far as the procedural rulings require.

The merits of the probate appeal are not before this Court, and Appellant does not argue them here. Three features of the underlying proceeding bear on the rulings under review and are stated for that limited purpose.

The order on appeal is the order that directed the sale to proceed. The January 15, 2026 Order Denying Application for Restraint refused to restrain the sale of 828 Whaley Street and affirmatively directed the Personal Representative “to continue with the sale of the Real Property.” That is material to the separate stay and bond relief sought under Rule 241, SCACR: the proceeding Appellant contends was stayed by § 62-1-308(h) is the precise subject matter of the order she appealed, not a collateral matter.

The estate has two beneficiaries, and the dispute is zero-sum as between them. Appellant and Respondent are the only two beneficiaries. Relief that preserves the property for the estate is relief that affects only those two interests.

Appellant has been self-represented throughout, and is barred from electronic filing. The South Carolina Electronic Filing Policies and Guidelines define an “Authorized E-Filer” as “a licensed South Carolina attorney in good standing who has registered to E-File through the Attorney Information System” (SCEF Rule 1¹), and the Judicial Branch states without qualification that “Self-Represented Litigants, or Pro Se Litigants may NOT E-File at this time” (SCEF FAQs²). Appellant is a Traditional Filer as a consequence of the Supreme Court’s rules, not by choice. She sought counsel and was declined on February 26, 2026. She resides approximately two hours from the Richland County courthouse and cannot travel there to file in person.

B. E-mail was the working channel of this case, including for the court’s own orders.

The Probate Court conducted this matter with the parties by e-mail, and the record on that point is documentary.

¹<https://www.sccourts.org/resources/judicial-community/court-rules/e-filing/rule-1/>

²<https://www.sccourts.org/e-filing-for-attorneys/faqs/>

The Clerk instructed Appellant on August 25, 2025, referring to Attorney Edwards: “It is required that you copy him to all email correspondence to the Court.” (Aug. 11 motion, Ex. 10, as-filed p. 41.) On December 3, 2025, Respondent’s counsel’s firm supplied the Probate Court, copying all parties, with documents “requested by the Court” — including the Contracts of Sale for both estate properties — as e-mail attachments. On December 30, 2025, sixteen days before the Notice, the Clerk declined to give procedural guidance and referred Appellant to the Judicial Branch’s forms: “Subpoena forms are available at The South Carolina Judicial Branch[.] We cannot help you with this form nor tell you how to file it. It is recommended that you consult with an attorney on how to complete the subpoena request.”

On January 13, 2026, the Clerk affirmatively solicited proposed order drafts by e-mail from Appellant and from opposing counsel alike, for the presiding judge’s review.

On January 15, 2026 at 4:54 p.m., Appellant e-mailed the Senior Estate Clerk concerning a Petition to Redact and proposed order. At 4:58 p.m., the Clerk replied that “[y]our records have already been sealed with the online database,” and reported that she “did go through the Discord chats and redacted everything that appeared to be traceable.” Appellant resent the PDF at 4:59 p.m. because the earlier attachment had not worked. (Aug. 11 motion, Ex. 8, as-filed pp. 34–36.)

Seven minutes before that petition was sent, at 4:47 p.m. on the same afternoon, the Clerk had e-mailed the parties: “Attached you will find the Order Denying Application for Restraint.” The written notice that started § 62-1-308(a)’s ten-day clock was itself delivered by e-mail.

The following afternoon, the Notice of Intent to Appeal went to the same address, on the same thread.

C. Respondent's counsel used e-mail to transmit legal instruments to Appellant.

On November 13, 2025 at 4:57 p.m., Attorney Madison B. Kelly of Moore Bradley Myers, copying Attorney Edwards, e-mailed Appellant that a signed Private Agreement would be needed to transfer an estate truck to her and deduct its value from sale proceeds. The proposed agreement's paragraph 5 would ratify the Personal Representative's acts consistent with its terms. (June 22 motion, Exs. 3(s)–(t), as-filed pp. 46–50.)

On December 3, 2025, the same attorney supplied the Contracts of Sale for both estate properties to the court and all parties as e-mail attachments.

The firm served and received papers in this matter by e-mail throughout the period bracketing the ten-day window.

D. The admissions at the March 19, 2026 hearing.

Respondent's counsel placed the operative facts on the record himself.

He confirmed receipt of the January 16 Notice by e-mail on the day it was sent: "She copied me on it and copied Mr. Ed Boggs, who is the closing attorney for the buyers. She copied us with that email on January 16th" (Mar. 19 Tr. 11:15-17). He tendered the Probate Court's OnBase docket printout to show the absence of a docket entry (Mar. 19 Tr. 11:19-12:3). He confirmed that the Circuit Court filing was timely (Mar. 19 Tr. 15:11-14). And he conceded that paper service followed: "She did eventually serve it on me, but it – but it was at the – I think the beginning of this month, Your Honor, that I received it" (Mar. 19 Tr. 12:13-16).

His objection was that the January 16 transmission was "not a proper filing and it's not proper service under our rules" (Mar. 19 Tr. 11:17-18, 12:4-6). That objection was first raised in Respondent's written motion of February 5, 2026, after the ten-day period had run. The record

contains no communication, before or during that period, in which counsel advised Appellant that e-mail would not be accepted for service.

The court stated on the record that the February 27 motions could not be reached: “I think there was a motion for continuance filed on the 27th. And the motion for stay filed on the 27th. But those have not been scheduled. They’re not on this roster and I cannot . . . hear those today.”

E. The Probate Court’s form.

Appellant initiated this appeal on the Probate Court’s official instrument, Form #356ES³, and completed it as instructed. The form closes with a block captioned “IMPORTANT,” containing two numbered instructions. The first states the ten-day requirement in full particulars: “This Notice must be **filed with** the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court.” The second addresses appeals to courts other than the circuit court, citing “SCPC 62-1-308(I).”

The form describes transmission to the parties as “filing” rather than service. It nowhere uses the words “serve” or “service.” It specifies no method for any of the three transmissions. It contains no certificate-of-service block. And it makes no mention of § 62-1-308(b), of a Statement of Issues on Appeal, of a forty-five-day period, or of a proof-of-service requirement. The form’s companion instruction file contains no instructions.

I. THE JANUARY 16, 2026 NOTICE SATISFIED § 62-1-308(a).

Standard of Review

The historical facts are undisputed and were placed on the record largely by Respondent’s own counsel: that the January 16 e-mail was sent to the Probate Court’s transmitting address

³<https://www.horrycountysc.gov/media/zb0pma1o/356es.pdf>

within the ten-day window, that counsel received it that day, that the Circuit Court filing was timely, and that paper service followed (Mar. 19 Tr. 11:13-12:4, 12:7-16, 15:11-14). What remains is the legal effect of undisputed acts under § 62-1-308(a) and the Supreme Court’s orders governing service — a question of law reviewed de novo. Appellant does not ask this Court to disturb any finding of fact. See *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018) (questions of law reviewed de novo).

At the threshold, one feature of the statute frames both components. Section 62-1-308(a) requires that the Notice be “filed” in two offices and that “a copy [be] served on all parties not in default,” but it prescribes **no method** for either act. The only other statute it incorporates, § 62-1-303, addresses venue and transfer alone and says nothing of notice, service, delivery, or method (S.C. Code § 62-1-303). And subsection (g) provides that “[e]xcept as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules” (S.C. Code § 62-1-308⁴).

The scheme therefore imposes duties of filing and service while specifying no manner of performing either, and disclaiming the appellate rules that would otherwise supply one.

A. Filing in the office of the Probate Court was complete upon the Clerk’s receipt.

South Carolina fixes the moment of filing at receipt by the clerk, not at docketing. In *Barnes v. State*, S.C. Sup. Ct. Order dated June 3, 2021, the Supreme Court held that “the filing of the application was complete upon the clerk of court’s receipt of the application,” citing *Mose v. State*, 420 S.C. 500, 507, 803 S.E.2d 718, 721 (2017) (a document is “deemed ‘filed’ when it is delivered to and received by the Clerk of Court”), and *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001).

⁴<https://www.scstatehouse.gov/code/t62c001.php>

Barnes then addressed a clerk's failure to docket a received filing in terms that speak directly to this record:

"We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. . . . This duty is not discretionary. . . . Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. . . . Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it."

Barnes, supra (official order at [sccourts.org](https://www.sccourts.org)⁵). In support of that rule, *Barnes* quoted *Hooker v. Sivley*, 187 F.3d 680, 682 (5th Cir. 1999): "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." It also cited *Gorod v. Tabachnick*, 696 N.E.2d 547, 548 (Mass. 1998): "In the absence of an order from a judge, [clerks] may not refuse to accept a notice of appeal, even if they believe that no appeal is available or that the notice is untimely or otherwise defective."

The OnBase docket printout tendered at the hearing (Mar. 19 Tr. 11:19-12:3) establishes that no docket entry was made. Under the principle applied in *Barnes* and *Mose*, that omission does not itself resolve whether a document was previously delivered and received for filing. *Barnes* separates the clerk's ministerial function from judicial evaluation of a filing's legal sufficiency. Whether delivery by e-mail satisfies the filing requirement here remains a distinct question; the absence of a docket entry neither proves receipt nor, standing alone, disproves it.

The remaining question is whether the January 16 e-mail effected "receipt" by the Clerk within the meaning of *Barnes* and *Mose*. Appellant does not overstate the authority: no South

⁵<https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2021-06-03-01>

Carolina decision has yet held that an e-mail to a probate clerk's official published address constitutes delivery to and receipt by that office. The record nevertheless shows that the Clerk solicited proposed orders by e-mail on January 13 and responded by e-mail to Appellant's redaction inquiry on January 15. The order that started the ten-day clock was itself transmitted by the Clerk by e-mail at 4:47 p.m. that afternoon. The Clerk's August instruction required Appellant to copy Edwards on court e-mails; it was not an express authorization of every formal filing by that method. These exchanges support Appellant's receipt argument without establishing that e-mail receipt and legally effective filing are necessarily identical. (Aug. 11 motion, Exs. 8–10, as-filed pp. 34–43.)

On those facts, Appellant respectfully submits that the January 16 attachment was delivered to and received by the office of the Probate Court within the meaning of *Barnes* and *Mose*, and that filing was complete on January 16, 2026, within the ten-day period. The Circuit Court's contrary conclusion rested entirely on the absence of a docket entry, which under *Barnes* does not answer the question.

Two further authorities bear on this ground, because each declined to make a document not required by statute essential to invoking the circuit court's appellate jurisdiction. In *Paschal v. Price*, 380 S.C. 419, 670 S.E.2d 374 (Ct. App. 2008), *aff'd*, 392 S.C. 128, 708 S.E.2d 771 (2011), overruled on other grounds by *Wilkinson ex rel. Wilkinson v. Palmetto State Transportation Co.*, 382 S.C. 295, 676 S.E.2d 700 (2009), a clerk returned a timely notice of appeal because it lacked a civil cover sheet required by a Supreme Court order. The Court of Appeals affirmed the refusal to dismiss: "Nowhere in that section . . . is there any mention that a cover sheet is necessary when filing an appeal," and "we decline to hold that a cover sheet, which is not required by statute, is essential to invoke the appellate jurisdiction of the circuit

court.” And in *Gordon v. Busbee*, 367 S.C. 116, 120-21, 623 S.E.2d 857, 859-60 (Ct. App. 2005), the Court of Appeals reversed the dismissal of an action for failure to file a specific **probate court** form, where the appellant’s filing accomplished precisely what the form required and to affirm would be to elevate form over substance. Both decisions were applied together, as good law, in *Chapman v. South Carolina Department of Social Services*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017), which held that an agency “may not” add requirements to a statute and that insisting on a particular form where the required substance had been supplied “elevates form over substance.” See also *Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995) (construing a **pro se letter** as satisfying a statutory notice-of-appeal requirement, where a regulation requiring a particular form “added to the statute”).

B. Service was made by a method the Supreme Court has expressly authorized in probate matters.

The March 27, 2026 order holds Appellant’s e-mail service categorically ineffective, and rests that holding on a single identified instrument: “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.”

The order applies the wrong instrument. The Supreme Court’s Order of April 24, 2024 is the *Amended Order Regarding the Methods of Electronic Filing and Service Under Rule 262*,

SCACR (S.C. Judicial Branch⁶; order text⁷). That order defines its own reach in its first subsection, and the definition is dispositive: “(a) **Purpose.** Pursuant to Rule 262(a)(3) and (c)(3) of the South Carolina Appellate Court Rules (SCACR), this Court may by order establish methods for the electronic filing and service of documents. For the purpose of this order, **‘Appellate Court’ means the Supreme Court of South Carolina or the South Carolina Court of Appeals.**” Its filing provisions are correspondingly limited — “[f]ilings with an appellate court may be made electronically using the methods listed below” — and its service provisions appear under the heading “Electronic Service Using AIS E-mail Address,” addressed to service between lawyers and to service *by an appellate court*.

By its own terms, that order does not govern service of papers in the probate or circuit courts, and it was not the instrument under which Appellant served the January 16 Notice.

Appellant is careful not to overstate this. She does not contend that the April 24, 2024 order authorized what she did; it did not, because it does not reach the probate court at all. That is precisely the error. The order was applied to a forum it excludes by definition, and the prohibition the Circuit Court drew from it — that pro se litigants may not serve lawyers by e-mail — appears nowhere in its text.

The instrument that governs service in the probate courts points the opposite way. The Supreme Court’s Order Regarding Service by E-Mail in the Trial Courts, App. No. 2022-000029

⁶<https://www.sccourts.org/about/court-news/court-news-archive/2024-04-24/amended-order-regarding-the-methods-of-electronic-filing-and-service-under-rule-262-of-the-south-carolina-appellate-court-rules/>

⁷<https://www.sccourts.org/media/courtOrders/PDFs/2024-04-24-01.pdf>

(May 6, 2022), was promulgated under Rule 613, SCACR⁸ (S.C. Judicial Branch⁹). It governs three points material here.

First, it applies to probate matters. E-mail service is authorized “[i]n addition to the methods of service that may be provided for in the rules governing service of pleadings and other papers in the circuit, family, **probate**, and summary courts of this state.”

Second, service is complete upon transmission. “Service by e-mail under this order is complete upon transmission of the e-mail” — placing the January 16 transmission within the ten-day window on the day it was sent.

Third, and dispositively as to the ground the order stated, subsection (d) provides that “[a] lawyer **may consent in writing to accept service by e-mail from a self-represented litigant.**”

The consequence is that the ground stated in the March 27 order — that the Supreme Court’s orders permit no route by which a pro se litigant may serve a lawyer by e-mail — is not merely unsupported by the instrument cited for it; it is contradicted by the instrument that applies. The dispositive question is therefore not whether such service is categorically forbidden, as the order assumed. It is the narrower question the order never reached: whether counsel consented in writing within the meaning of subsection (d).

C. Counsel’s own written correspondence in this matter satisfies subsection (d).

Appellant does not dispute that subsection (d) conditions her e-mail service on counsel’s written consent. Two things follow.

⁸<https://www.sccourts.org/media/5snmglsn/appellate-rule-613.pdf>

⁹<https://www.sccourts.org/about/court-news/court-news-archive/2022-05-06/order-regarding-service-by-e-mail-in-the-trial-courts/>

The first is that the Circuit Court never reached the question. Having concluded from the April 24, 2024 order that no pro se litigant may serve a lawyer by e-mail at all, it made no finding as to whether counsel had consented in writing, and the March 27 order contains none.

The second is that the Order imposes no requirement that the consent be filed with a court. It prescribes no form, no filing, no docket entry, no stipulation, and no particular words. It requires that the consent be in writing — and the writings on which Appellant relies are counsel’s own. Counsel’s firm used e-mail to discuss the required signed Private Agreement on November 13 and to supply the Contracts of Sale to the court and parties on December 3. Appellant relies on these writings as evidence of the parties’ course of dealing, not as an express stipulation consenting to service of a notice of appeal. (June 22 motion, Ex. 3(s), as-filed p. 46; Aug. 11 motion, Ex. 5, as-filed pp. 25–26.)

Appellant recognizes that no South Carolina decision has construed subsection (d)’s “consent in writing” requirement, and that whether a lawyer’s own written e-mail correspondence in a matter satisfies it is a question of first impression. She respectfully submits that the more natural reading of the text — which requires a writing and nothing more — is satisfied where the lawyer’s written communications in the same matter adopt e-mail as the channel for transmitting legal instruments to the self-represented party.

The contrary reading, stated plainly. Respondent may argue that subsection (d) speaks of consent “to accept service by e-mail,” and that a lawyer who merely corresponds by e-mail — even to transmit contracts and agreements — has consented to correspondence and not to service. Appellant answers on three points rather than disputing that the two are conceptually distinct. First, the Order requires only a writing, and conspicuously declines to prescribe any form, recital, or subject matter for that writing, though it could readily have done so. Second, the

writings here are not incidental correspondence: counsel used e-mail to transmit the central legal instruments of this matter to a party he knew to be self-represented and barred from E-Filing, in a forum where the court itself transmitted its orders by that means. Third, counsel received the January 16 Notice by that channel, said so on the record, and raised no objection to the channel until the ten-day period had run. Appellant does not contend that silence creates consent; she contends that where the writing requirement is already met by counsel's own use of the channel, counsel's contemporaneous conduct confirms rather than contradicts the reading she urges.

One clarification prevents a misreading. Appellant's reliance on the Probate Court's and counsel's own use of e-mail is **evidentiary, not equitable**. It is offered to establish what "receipt" and "consent in writing" in fact consisted of in this matter. It is not offered as estoppel, and Appellant makes no estoppel argument.

Appellant further notes that the Order's E-Filing carve-out operates in her favor: e-mail service "may not be utilized for documents that are required to be E-Filed . . . **except as to parties that are not authorized E-Filers.**" Appellant is not an authorized E-Filer and could not have been.

A note on § 62-1-308(g). Appellant does not read subsection (g) to withdraw the Supreme Court's authorization of e-mail service in probate matters, and she does not rely on Rule 613 as imposing a *requirement* on any party. Rule 613 operates by authorizing the Supreme Court to set forth the means of allowing service by electronic means in the trial courts; the May 6, 2022 Order it contemplates is directed to permitted methods of service in the probate and other trial courts, not to obligations imposed on parties in appellate proceedings. Read otherwise, subsection (g) would leave § 62-1-308(a)'s service requirement with no specified method at all

— a reading that would not assist Respondent, since it would equally remove any rule by which the January 16 transmission could be pronounced deficient.

D. What is at stake is appellate jurisdiction over this appeal, not the subject matter jurisdiction of the Circuit Court.

This characterization point is common ground, and the March 27 order states it correctly: “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).” Appellant accepts that framing and relies on it. *Brown* draws the line expressly: non-compliance “divests a court of appellate jurisdiction, not . . . subject matter jurisdiction.”

The Supreme Court has confirmed both halves of that framing in the closest available posture. In *Allison v. W.L. Gore & Associates*, 394 S.C. 185, 714 S.E.2d 547 (2011), reviewing a body sitting in an appellate capacity over a statutory appeal, the Court held that “the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction,” and expressly “overrule[d] prior decisions to the extent they pose the question of an[] . . . authority to hear an appeal as one of subject matter jurisdiction.” Accord *Great Games, Inc. v. S.C. Department of Revenue*, 339 S.C. 79, 529 S.E.2d 6 (2000); *Skinner v. Westinghouse Electric Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008) (“The failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction.”). *Skinner* is the nearest analogue on the facts: the circuit court there sat in its appellate capacity over a statutory

appeal, and the Court held that although the statute required service on the agency, “the statute, from a jurisdictional standpoint, does not mandate such service within thirty days.”

Two consequences follow, and Appellant claims no more than these two.

First, the remedy requested is coherent. Because the Circuit Court’s authority over probate appeals as a class was never in question, reversal on the perfection question does not return this matter to a court powerless to hear it. It restores appellate jurisdiction over an appeal perfected on January 16, 2026, and the Circuit Court then reaches merits it has never reached.

Second, the order’s closing sentence on this subject goes further than its own authorities, and does so without citation: “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.” Neither *Brown* nor *Cretzmeyer* is cited for that proposition, and neither supplies it. *Cretzmeyer* decided only timeliness of **filing** — “[t]he sole issue is whether the notice of appeal was timely filed in the circuit court” — and reached no question of service. More directly, in *Eberly v. D.R. Horton, Inc.*, 901 S.E.2d 273 (S.C. 2024) the Supreme Court declined to dismiss an appeal for defective electronic service of a notice of appeal, reversed the Court of Appeals’ dismissal, and remanded for consideration of the merits, because “there was no appropriate guidance with respect to this issue at the time of the service of this notice of appeal.” A service defect that admits of no relief whatever cannot be reconciled with that disposition.

Because the requirement is jurisdictional, its rigidity runs in both directions.

Compliance with § 62-1-308(a) is not a matter the parties can settle between themselves: “[t]he lack of subject matter jurisdiction may not be waived, even by consent of the parties,” *In re Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 636, 686 S.E.2d 683, 686 (2009). A court must satisfy itself of its own jurisdiction on the record before it, and it may neither acquire

jurisdiction it lacks because a party concedes it nor lose jurisdiction it possesses because a party disclaims it.

That principle governs a statement Appellant made at the March 19, 2026 hearing. Describing her January 16 reply on the Probate Court’s own thread, she told the court: “I – I thought that was pretty official. I was wrong, but it seemed reasonable” (Mar. 19 Tr. 16:14-17). Three things about that sentence bear notice. It describes a belief, not an act; the facts of what was transmitted, to whom, and when are documentary and undisputed, and Appellant has never retracted or qualified any of them. What it concedes, if anything, is a legal conclusion — whether the January 16 transmission satisfied a statute — and that conclusion was at that moment the very question the court was convened to decide. And the clause is immediately followed by the clause that states her position: “but it seemed reasonable.” Read whole, the sentence is not a surrender of the jurisdictional question. It is a lay description of having acted in good faith on an apparent official channel.

The same answer applies to the conditional phrasing in Appellant’s February 27, 2026 Motion for Continuance, which asked in the alternative for leave to cure the defects Respondent’s motion had just asserted. A request advanced in the alternative, before any ruling, does not establish the condition it hypothesizes. Appellant does not contend — and has never contended — that a grant of leave could itself have supplied appellate jurisdiction after the ten-day period ran; authority forecloses that, and she does not ask for it. *See Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *Ex parte Sadisco of Greenville, Inc.*, 340 S.C. 57, 530 S.E.2d 383 (2000).

Nor does advancing an alternative signal a belief that the primary position is unsound. Rule 8(a), SCRCP provides that “[r]elief in the alternative or of several different types may be

demanded,” and Rule 8(e)(2), SCRCF provides that a party “may set forth two or more statements of a cause of action or defense alternatively or hypothetically,” and “may also state as many separate causes of action or defenses as he has **regardless of consistency**.” See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019). A represented party in Appellant’s position would have asked for time and, in the alternative, for leave to cure whatever the court might find, and would have written the customary reservation across it. Appellant did not know that formula existed. Its absence from her motion is a matter of drafting convention, not of position taken.

E. The proof-of-service ground rests on a rule that does not say what the order attributes to it.

The order adds that “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,” and makes that an independent basis for dismissal. Three difficulties attend that ground.

First, Rule 203(d) contains no subdivision “(B)(i)”. Subsection (d) is divided into (d)(1) (“Appeals from the Circuit Court, Family Court and Probate Court”), (d)(2) (“Appeals from Administrative Tribunals”), and (d)(3) (“Effect of Failure to Timely File”) (Rule 203, SCACR¹⁰). The proof-of-service provisions are at (d)(1)(B)(i) and (d)(2)(B)(i). Appellant assumes the order intended (d)(1)(B)(i).

Second, and decisively, that provision does not require a proof of service to be filed with the lower court. It governs what must accompany the notice filed with the **appellate** court: “The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate

¹⁰<https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-203/>

court within ten (10) days after the notice of appeal is served. **The notice filed with the appellate court** shall be accompanied by the following: (i) Proof of service showing that the notice has been served on all respondents” The obligation the order enforced — a proof of service filed *with the Probate Court* — is not the obligation the rule imposes. Nor does the rule attach dismissal to its omission: subsection (d)(3), which alone specifies that consequence, is limited to a notice of appeal that “is not timely filed or the filing fee is not paid in full.”

Third, the rule does not apply here in any event. Rule 203 is a rule of the South Carolina Appellate Court Rules governing appeals to the Supreme Court and the Court of Appeals. Section 62-1-308(g) provides that “no party is required to comply with any other requirements of the South Carolina Appellate Court Rules.” The statute prescribes a proof-of-service requirement where it wants one — in subsection (b), for the Statement of Issues on Appeal — and prescribes none for the notice of intention to appeal under subsection (a).

The order accordingly dismissed the appeal, in part, for failing to satisfy an appellate-rule requirement that the governing statute disclaims, that the rule itself directs to a different court, and to which the rule attaches no dismissal sanction. *Paschal* and *Gordon*, discussed above, are directly in point: a document not required by statute is not essential to invoke the circuit court’s appellate jurisdiction.

F. The order’s final two findings measure Appellant against obligations the statute does not impose.

Section I(b) closes: “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.” No authority is cited for either finding, and none is available.

Section 62-1-308(a) requires that the notice of intention to appeal be filed with the probate court and the circuit court and that a copy be served on each party within ten days of receipt of written notice of the order. It does not require that the particular copy bearing the Circuit Court's file stamp be separately served; a party serves *a copy of the notice*, which Appellant did on January 16, 2026. And it does not require that any proof of delivery be filed with the Circuit Court at all.

The findings also prove less than the order treats them as proving. Respondent first asserted a service defect on February 5, 2026. That Appellant thereafter served the file-stamped copy and filed a proof of delivery is not evidence that her January service was deficient; it is what a party does when an adversary asserts a defect and the party intends to leave no avenue unclosed — conduct expressly permitted by Rule 8(e)(2), SCRCP. Later compliance with a requirement that does not exist is not an admission that an existing requirement went unmet.

G. In the alternative, the governing requirements were unsettled, and the Supreme Court has permitted appeals to proceed in that circumstance.

Should this Court conclude that the January 16 transmission did not satisfy either prong, Appellant respectfully directs the Court's attention to *Eberly v. D.R. Horton, Inc.*, 901 S.E.2d 273 (S.C. 2024), in which the Supreme Court declined to dismiss an appeal for defective electronic service of the notice of appeal because "there was no appropriate guidance with respect to this issue at the time." *See also Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 810 S.E.2d 856 (2018).

The absence of guidance here is documentary, not speculative. Section 62-1-308(a) requires filing and service without specifying a method for either. Subsection (g) disclaims the appellate rules. The only cross-referenced statute is a venue provision. The method of e-mail service

resides in an administrative order that neither the statute nor the Probate Court's form mentions. And Rule 203(b)(5), SCACR still directs that "[w]hen a direct appeal is authorized by S.C. Code Ann. § 62-1-308(g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1)," although direct appeals have been governed by subsection (l) since the statute's renumbering by 2013 Act No. 100, effective January 1, 2014. The rule's cross-reference now points to the subsection disclaiming the appellate rules.

The Probate Court's own form, described in the statement of facts above, compounds rather than resolves the difficulty. Appellant does not contend that the form relieved her of any statutory duty. She notes that the form was the Probate Court's answer to her requests for procedural direction, and that the Clerk's practice, when asked how to proceed, was to decline guidance and refer her to the Judicial Branch's forms.

Appellant states plainly what she does not argue. She does not contend that her self-represented status entitles her to a relaxed standard; South Carolina holds pro se litigants to the same procedural standards as attorneys, and she does not ask otherwise. She does not invoke any doctrine of estoppel against the Probate Court, nor contend that reliance on a court form or a clerk's referral can supply jurisdiction that is otherwise absent. These matters are offered for the narrow purpose *Eberly* addresses: whether appropriate guidance existed at the time on the question the dismissal turned on.

H. This ground does not rest on actual notice.

Appellant does not argue that a defective service is cured by actual notice. She argues that filing and service were accomplished in the first instance.

Appellant makes no concession of non-service; she contends service was made by an authorized method. The argument she presents was raised to and ruled upon below.

I. Preservation.

The issue presented — whether the January 16, 2026 Notice satisfied § 62-1-308(a)’s filing and service requirements — was raised to and ruled upon by the Circuit Court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004).

Appellant raised the sufficiency of the January 16 transmission in her Rule 59(e) motion of March 25, 2026, which argued on the merits that the transmission satisfied the statute; the April 8, 2026 order ruled on that motion. She raised it again, and specifically contested the March 27 order’s requirement of a filed written consent, in her second Rule 59(e) motion filed April 6, 2026, together with the “physical copy” and pro-se-e-mail grounds expressly stated in the March 27 order.

Appellant acknowledges the principle that “one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal,” *Kennedy v. S.C. Retirement Systems*, 345 S.C. 339, 549 S.E.2d 243 (2001). That principle does not bar this argument, because the issue litigated below and the issue presented here are the same: whether the January 16 transmission satisfied § 62-1-308(a). The Circuit Court was squarely presented with, and decided, both components — it held the filing insufficient on the basis of the OnBase docket and the service insufficient for want of a filed written consent. Appellant’s identification of *Barnes* and of the May 6, 2022 Order supplies the correct authority for the proposition she advanced below; it does not substitute a different theory for a different result. She acknowledges that she framed part of her argument below in terms of actual notice and substantial compliance, and she does not renew the actual-notice contention here. Abandoning a losing characterization of a preserved issue is not the presentation of a new one.

Finally, the admissions narrow the question to one of law. Because Respondent's counsel himself established that the January 16 e-mail was sent to the Probate Court's transmitting address within the ten-day window, that counsel was a recipient of it that day, and that the Circuit Court filing was timely, there is no factual dispute for a reviewing court to defer to the Circuit Court on. The only question the March 27 order actually decided is whether those undisputed acts satisfy § 62-1-308(a) as a matter of law.

II. DISMISSAL FOR FAILURE TO FILE A STATEMENT OF ISSUES UNDER § 62-1-308(b) WAS NOT A WARRANTED EXERCISE OF DISCRETION.

Standard of Review

Argument II presents a threshold question of statutory interpretation: whether § 62-1-308(b) makes the omission jurisdictional or mandates dismissal. That legal question is reviewed without deference; if dismissal is discretionary, its exercise is reviewed for abuse of discretion. See *Ross v. Waccamaw Community Hospital*, 404 S.C. 56, 744 S.E.2d 547 (2013). Appellant contends that subsection (b) leaves room for discretion; the absence of a jurisdictional statement in the order is not itself dispositive of the statute's meaning.

Appellant concedes the missed deadline. She later attached a four-page drafted Statement of Issues as Exhibit A to her April 6 motion and expressly requested a new deadline. She does not contend that this attachment itself satisfied the statutory filing-and-service requirement or erased the default. It does, however, show a concrete effort to cure it. (Apr. 6 motion, prayer ¶ 7 & Ex. A, as-filed pp. 10–14.)

Appellant challenges both the treatment of dismissal as the consequence of noncompliance and the proportionality of that consequence on this record. Section 62-1-308(b) prescribes no consequence for noncompliance, and Section II of the order identifies no discretionary basis for

ending the appeal. Even if the order is read as exercising discretion, Appellant submits that dismissal was disproportionate to the omission in light of her pending request for time, the reasons presented in that request, and the availability of a definite deadline to complete the filing. Both arguments support the same requested relief: permission to serve and file the Statement of Issues and proceed with the probate appeal.

A. The statute states a duty and stops.

Section 62-1-308(b) provides: “Within 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.” S.C. Code § 62-1-308(b).

The subsection is silent as to consequence. It does not provide that the appeal shall be dismissed, that the circuit court’s appellate jurisdiction is conditioned on compliance, or that the forty-five days may not be extended. Contrast subsection (a), where the statute’s own terms tie the right of appeal to the act of filing and service, and contrast Rule 203(d)(3), SCACR, which states expressly what follows when a notice of appeal “is not timely filed.”

B. Ross supplies an analogy involving a statutory deadline that does not prescribe dismissal.

In *Ross v. Waccamaw Community Hospital*, 404 S.C. 56, 744 S.E.2d 547 (2013), the Supreme Court construed § 15-79-125(C), which provides that the parties “shall” participate in mediation within 120 days. The Court observed that the statute was “silent as to the consequences of failing to timely comply,” and held “that failing to comply with the 120-day

statutory time period is a **non-jurisdictional procedural defect.**” *See also* advance sheet No. 28, 2013¹¹; *Ross*.

Three passages carry the reasoning, and each maps onto this record.

On legislative silence: “the Legislature would have used more exacting language had it intended the expiration of the stated time period to forever divest the circuit court of jurisdiction.”

On the remedy: non-compliance “could result in dismissal . . . but as a function of the court’s **discretion based on the facts and circumstances, and not as a mandated one-size-fits-all result.**”

On the interpretive posture: the Court declined to “judicially engraft extra requirements” onto the statute, and quoted with approval *Schulz v. Nienhuis*, 448 N.W.2d 655 (Wis. 1989): “In the absence of express language, we are unwilling to read the harsh penalty of dismissal of the lawsuit into the mediation statute. The tenor of modern law is to avoid dismissal of cases on technical grounds and to allow adjudication on the merits.”

Appellant states the limits of *Ross* rather than leaving them to be pointed out. *Ross* construed a different statute, in a different chapter, governing a pre-suit condition rather than an appellate step. The canon that statutes in derogation of the common law are strictly construed, which the Court invoked there, does not transfer to a statutory right of appeal, which is itself a creature of statute. Appellant does not cite *Ross* as controlling § 62-1-308(b). She cites it for the interpretive method the Supreme Court applied to a materially identical textual problem: where the Legislature commands an act within a period and says nothing about the consequence of a late or

¹¹<https://www.sccourts.org/opinions/advSheets/no282013.pdf>

missing act, the omission is not filled by dismissal as of course, and any dismissal is an exercise of discretion reviewable as such.

C. *Allison* is the strongest authority against this argument, and it is distinguishable on the two features that decided it.

Appellant raises the adverse case rather than waiting for it. In *Allison v. W.L. Gore & Associates*, 394 S.C. 185, 714 S.E.2d 547 (2011), a Form 30 request for review was filed two days after the governing fourteen-day period, and the Supreme Court held that the appellate body consequently lacked appellate jurisdiction and **vacated** its decision. If *Allison* governed, a missed statutory appellate deadline would be jurisdictional notwithstanding *Ross*.

It does not govern, for two reasons that appear in the decision itself.

First, the regulation there said expressly what § 62-1-308(b) does not. The governing provision, 25A S.C. Code Ann. Regs. 67-701A, stated in terms that “the fourteen day period is jurisdictional.” *Ross* holds that legislative silence is not to be read as such a command; *Allison* involved the command itself. The distinction is not one Appellant draws — it is the distinction *Ross* itself makes turn on “more exacting language.”

Second, the deadline in *Allison* governed the act of taking the appeal. The Form 30 request for review *was* the initiating instrument; filing it late meant no appeal had been taken within the period allowed. Section 62-1-308(b)’s Statement of Issues is not the initiating instrument. The appeal in this case was taken under subsection (a), and the Statement of Issues is a subsequent step that shapes and narrows an appeal already pending. A defect in a step taken after jurisdiction attaches is of a different order from a failure to invoke jurisdiction at all. *Skinner v. Westinghouse Electric Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008), draws precisely

this line in holding that a statutory service requirement was not, “from a jurisdictional standpoint,” a condition on the thirty-day appellate period.

Allison also supports Appellant on the characterization question addressed in Argument I.D, and she relies on it there.

D. The order under review asserts no consequence, states no jurisdictional holding, and records no discretionary judgment on this ground.

This is the heart of the issue, and it is established by the structure of the March 27, 2026 order itself.

Section I of that order, addressing § 62-1-308(a), contains every jurisdictional holding and every citation in the order: *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *In re Estate of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 117 (2005); and the closing statement that “[p]rocedural 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.” Every one of those authorities and statements is tied by its own terms to the notice of appeal.

Section II, addressing § 62-1-308(b), contains none of that. It quotes the statute, finds that Appellant failed to serve and file a statement of issues within forty-five days of the order, and stops. It cites no authority. It asserts no jurisdictional consequence. It states no consequence of any kind. It contains no finding of prejudice to Respondent, no finding of bad faith, no finding of a pattern of delay, no consideration of a lesser sanction, and no weighing of any circumstance for or against dismissal.

That silence is the error. Under *Ross*, where a statute commands an act within a period and prescribes no consequence, dismissal is available only “as a function of the court’s discretion based on the facts and circumstances, and not as a mandated one-size-fits-all result.” An order

that dismisses without any indication that discretion was engaged does not satisfy that standard — not because the outcome was necessarily unavailable, but because the record does not show it was chosen.

South Carolina treats the failure to exercise a discretion one possesses as itself an abuse of discretion. *See Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997); *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015); *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 262 (2017); *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019).

E. Even if the order is read as exercising discretion, dismissal was disproportionate to the omission and the circumstances presented.

If this Court agrees that § 62-1-308(b) leaves room for discretion, the inquiry concerns not merely whether discretion was exercised, but whether dismissal was a warranted exercise of it. South Carolina’s discovery-sanction decisions provide a useful, expressly limited analogy. They concern Rule 37, not the statutory requirements for a probate appeal; Appellant does not contend that they resolve the jurisdictional question or establish mandatory findings under subsection (b).

In *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154–55, 399 S.E.2d 439 (Ct. App. 1990), this Court reversed on two grounds: the sanction was unduly harsh, and the judge mistakenly believed the earlier order left no choice. The Court explained that a sanction should be reasonable and should not go beyond the necessities of the situation to foreclose a decision on the merits. *Id.* at 154. The defendants there had supplied discovery only a few hours late; Appellant attached her draft after dismissal and still seeks permission to complete the statutory filing and service. The analogy concerns proportionality and the proper exercise of discretion, not equivalent delay.

The related cases reinforce that distinction. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997), required an element of bad faith, willfulness, or gross indifference before dismissal-level discovery sanctions, yet reversed an overbroad sanction despite a finding of willful noncompliance, particularly because of its effects on another party. *Griffin Grading & Clearing, Inc. v. Tire Service Equipment Manufacturing Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999), called the result “harsh medicine that should not be administered lightly.” *Griffin* nevertheless affirmed after repeated discovery violations, prior orders, a lesser sanction, and an explicit warning; *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014), likewise affirmed dismissal following sustained noncompliance with discovery orders. These decisions call for attention to the conduct and circumstances, not automatic forgiveness or automatic dismissal.

Here, Appellant’s February 27 motion affirmatively sought time to pursue the appeal. Its numbered paragraphs 2, 3, 5, and 6 described disability-related impediments, efforts to obtain counsel, and the asserted absence of substantial prejudice from the requested extension. The motion did not specifically request additional time for the Statement of Issues and did not suspend that obligation. Nevertheless, its contents bear directly on whether the ensuing omission warranted ending the appeal rather than allowing completion by a definite date. Section II of the March 27 order identifies the missed filing but addresses none of those circumstances and gives no reason why a deadline to serve and file the statement would inadequately protect Respondent.

Appellant does not equate missing written findings with missing record support. Under *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989), she bears the burden of showing a conclusion without reasonable factual support that prejudiced her rights and amounted to legal error. Her submission is that the pending request and its stated grounds, considered alongside the

specific omission to be corrected, support completion of the filing rather than loss of merits review. She therefore requests reversal with directions permitting that filing and continuation of the probate appeal, not a remand merely to reconsider dismissal.

F. The hearing and written orders do not identify a discretionary evaluation of this omission.

Respondent's counsel expressly raised § 62-1-308(b) at the March 19 hearing, explaining that the missed deadline postdated his motion and supplied another ground for dismissal. (Mar. 19 Tr. 13:1–18.) Appellant therefore does not contend that the issue first appeared in counsel's proposed order or was never presented to the court.

The March 20 Form 4 granted dismissal "based on the Appellant's failure to comply with the filing statutes" and directed the prevailing party to submit a proposed order. The March 27 order then addressed the Statement of Issues separately in Section II. The relevant distinction is not whether the omission was mentioned, but whether dismissal was evaluated as a discretionary response to it. Section II identifies the default without addressing the pending request for time, its stated reasons, or why completion by a definite deadline would be inadequate. Appellant relies on that absence of an identified discretionary evaluation, not on speculation about the court's review of counsel's draft.

G. A timely motion asking for more time was pending, unscheduled, and never ruled upon when the deadline passed.

Four days before the March 3, 2026 deadline, Appellant filed a Motion for Continuance seeking sixty days. It was never placed on a roster, never scheduled, and never ruled upon in either direction. The deadline then passed while the motion sat.

Appellant is precise about what she claims and does not claim. She does not claim that filing a motion tolled the forty-five days; it did not. She does not claim that the Circuit Court was obliged to grant it. She claims that a pending, timely, unruled-upon request for additional time is a circumstance bearing on whether dismissal was the appropriate response to the default that followed — and that it is among the “facts and circumstances” Ross requires a court to weigh before dismissing under a statute that prescribes no penalty. The March 27 order does not mention it.

The reason Appellant filed that motion when she did is on the record: she had sought counsel and been declined the previous day, February 26, 2026. She was two hours from the courthouse, barred from E-Filing by rule, and confined to certified mail.

Those circumstances — including her unsuccessful effort to obtain counsel, her mobility disability, the distance from the courthouse, and her categorical exclusion from E-Filing — are directly relevant to the facts-and-circumstances inquiry Ross identifies. The March 27 order does not indicate that any of them was weighed before dismissal.

Appellant notes one further circumstance for the same limited purpose. Her August 11, 2026 Motion for Ruling on Pending Motion was mailed by certified mail on July 20, 2026 and bears a clerk’s stamp of August 11, 2026 at 4:43 p.m. She raises the delay not as a grievance but because it illustrates the practical constraint under which a Traditional Filer two hours from the courthouse operates, and which bears on the reasonableness of her request for additional time.

H. The Legislature has provided for good-faith procedural error in appeals.

Section 18-1-100 provides that “[i]f a party, in good faith, gives notice of appeal and omits, through mistake or accident, to do any other act necessary to perfect the appeal or stay

proceedings, the court from which the appeal is taken or the appellate court may permit an amendment on such terms as may be just” (S.C. Code § 18-1-100¹²).

Appellant states the limitation candidly: she has located no decision applying § 18-1-100, and she does not represent that its scope is settled. She relies on it for one proposition, which its text supports directly: the Legislature has expressly contemplated that a party who gives notice of appeal in good faith and omits a subsequent perfecting step may be permitted to amend. That legislative judgment is a reason to read § 62-1-308(b)’s silence as *Ross* read § 15-79-125(C)’s — as leaving room for discretion rather than compelling dismissal.

I. *Mims v. Alston* does not supply the missing consequence.

Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994), affirmed the dismissal of a probate appeal. It is distinguishable on three grounds. The dismissal there followed a course of conduct over an extended period rather than a single missed step; the circuit court there made findings and exercised the discretion this order does not record; and *Mims* predates *Ross* by nineteen years and does not address the interpretive question *Ross* decided — what follows from a statute’s silence as to consequence.

J. The relief requested on this ground.

Appellant does not ask this Court to dispense with the Statement of Issues. She asks for the opportunity to complete that filing and proceed with the appeal. For the reasons set out above, Appellant respectfully requests reversal and remand with directions permitting her to serve and file the Statement of Issues and proceed with the probate appeal.

¹²<https://www.scstatehouse.gov/code/t18c001.php>

III. THE SECOND RULE 59(e) MOTION WAS NEVER REACHED.

Standard of Review

The question presented concerns the legal effect of the motions and orders, rather than the merits of a discretionary ruling on the April 6 motion. Appellant seeks de novo review of that legal question. See *Smalls*, 422 S.C. at 180–81, 810 S.E.2d at 839.

Appellant filed two motions under Rule 59(e), SCRC¹³, directed at two different orders.

The first, filed March 25, 2026, was directed at the March 20, 2026 Form 4 — the only order then in existence. The second addressed the subsequently entered long-form order.

The second, signed April 3 and filed April 6, 2026, was directed at the March 27 long-form order. It addressed the § 62-1-308(b) Statement of Issues ground, the requirement of a written consent to e-mail service, and the “physical copy” and proof-of-delivery findings. It attached the drafted Statement of Issues and requested a new deadline. It also contained a disability-accommodation section not included in the first motion and was filed with a separate Notice of Request for Reasonable Accommodation.

The April 8, 2026 order ruled, by its own terms, only on “the Appellant’s Rule 59(e) Motion to Alter or Amend Judgement, filed on March 25, 2026.” It did not mention the motion filed April 6. Appellant’s August 11, 2026 Motion for Ruling on Pending Motion, which asked the Circuit Court to reach it, was denied by Form 4 on August 12, 2026 by Judge Coble, without reaching its substance and without addressing the accommodation requests.

The consequence is structural rather than merely procedural. The grounds added by the March 27 order were never tested by any post-trial motion that a court reached. Appellant respectfully submits that where a long-form order adds a ground not contained in the order it

¹³<https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-59/>

supersedes, and a timely motion directed at that added ground is never ruled upon, the added ground has not received the consideration the Rules contemplate. She raises it here to preserve it and to identify a matter the Circuit Court may address on remand.

IV. THE UNADDRESSED ACCOMMODATION REQUESTS AND THE UNRULED FEBRUARY 27, 2026 MOTIONS.

Standard of Review

The legal questions concerning notice and access to the court are reviewed de novo. See *Smalls*, 422 S.C. at 180–81, 810 S.E.2d at 839. To the extent these grounds challenge discretionary procedural rulings, Appellant bears the burden of establishing an abuse of discretion. See *Dunn*, 298 S.C. at 502, 381 S.E.2d at 735.

Appellant raises the following grounds in support of reinstatement and to preserve them for the Circuit Court on remand.

A. The accommodation requests. Appellant filed a Notice of Request for Reasonable Accommodation on April 6, 2026, dated April 3, together with the accommodation section of her second Rule 59(e) motion, and renewed the request thereafter. No order has addressed any accommodation request on its merits. See *Tennessee v. Lane*, 541 U.S. 509 (2004). She raises this to preserve it and to identify it as a matter the Circuit Court may address on remand.

B. The unaddressed February 27, 2026 motions. The Motion for Continuance and the Motion for Stay Pending Appeal were filed timely, were never scheduled, and were never ruled upon in either direction. Appellant preserves the contention that a timely motion bearing directly on the default later made a ground of dismissal warranted a ruling before the appeal was dismissed on that default.

CONCLUSION

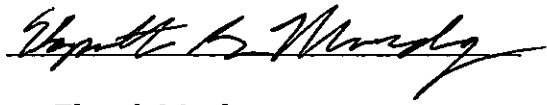
The January 16, 2026 Notice of Intent to Appeal was transmitted, on the Probate Court's own official form, to the Probate Court's own e-mail address and to Respondent's counsel on the same e-mail thread by which the Probate Court had sent the appealed-from order the preceding afternoon. Counsel confirmed on the record that he received it that day. The Circuit Court filing was timely, and Respondent conceded as much. Filing was complete on the Clerk's receipt under *Barnes and Mose*, and the absence of a docket entry reflects an unperformed ministerial duty rather than an unmade filing. Service by e-mail in probate matters is authorized by the Supreme Court's Order Regarding Service by E-Mail in the Trial Courts, is complete upon transmission, and is permitted from a self-represented litigant where the lawyer has consented in writing — a question the Circuit Court never reached, because it applied instead an order that by its own definition governs only the Supreme Court and this Court. The proof-of-service ground rests on a rule that directs the proof to a different court, attaches no dismissal sanction to its omission, and is disclaimed by § 62-1-308(g).

On the Statement of Issues, Appellant acknowledges the missed deadline and seeks permission to complete statutory filing and service, having attached a drafted statement to her April 6 motion. She asks to proceed with the probate appeal rather than lose review of the merits because of that omission. The statutory text and circumstances addressed in Argument II support that relief.

No court has reached the merits of this appeal.

For the foregoing reasons, Appellant respectfully requests that this Court reverse the orders dismissing her probate appeal and remand with directions permitting her to serve and file the Statement of Issues on Appeal and to proceed with the probate appeal in the Circuit Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elspeth Murday", written over a horizontal line.

Sept. 18, 2026

Elspeth Murday

Appellant, *pro se*

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2026-001100

In the Matter of the Estate of David Edward Murday, Deceased

Elsbeth Murday, Appellant,

v.

Alanna Murday, Respondent.

Appeal from Richland County

Court of Common Pleas

Circuit Court Case No. 2026-CP-40-00467

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SEP 28 2026
SC Court of Appeals

PROOF OF SERVICE

The undersigned certifies that on the date stated below she served one copy of each of the following documents on Respondent's attorney of record, by depositing the same in the United States mail, first-class postage prepaid, addressed as shown below:

1. Appellant's Initial Brief;
2. Appellant's Designation of Matter to Be Included in the Record on Appeal; and
3. Appellant's Petition for Review of the Circuit Court's Supersedeas Ruling (Rule 241(d), SCACR), with attachments.

Served upon:

William H. Edwards, Esq.

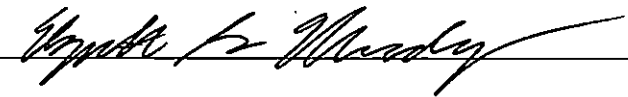
Moore Bradley Myers Law Firm, P.A.

1700 Sunset Boulevard

West Columbia, SC 29169

Attorney for Respondent Alanna Murday

Service by United States mail is complete upon mailing. Rule 262(c), SCACR.

 Elspeth Murday

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Westminster, South Carolina

Dated: Sept. 18, 2026

Elsbeth Murday

217 Hall Road

Westminster, SC 29693

425.435.0607

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Dated: September 18, 2026

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South Carolina Court of Appeals

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SC Court of Appeals

Re: In the Matter of the Estate of David Edward Murday, Deceased

Elsbeth Murday v. Alanna Murday

Appellate Case No. 2026-001100

Lower Court Case No. 2026-CP-40-00467 (Richland County)

Dear Clerk of Court:

Enclosed for filing in the above-captioned appeal are the following, each unbound:

1. Appellant's Initial Brief (one copy);
2. Appellant's Designation of Matter to Be Included in the Record on Appeal (one copy);
3. Appellant's Petition for Review of the Circuit Court's Supersedeas Ruling under Rule 241(d), SCACR, with its verification and Attachments A through E (one copy); and

4. Proof of Service showing service of items 1 through 3 on Respondent's attorney of record by United States mail.

One copy of each of items 1 through 3 has been served on Respondent's attorney of record, William H. Edwards, Esq., Moore Bradley Myers Law Firm, P.A., 1700 Sunset Boulevard, West Columbia, SC 29169, by first-class United States mail.

Appellant notes for the Court's convenience that her second Motion for Extension of Time to serve and file her Initial Brief, filed August 27, 2026, and Respondent's motions to dismiss the appeal, filed July 31 and August 24, 2026, appear on the docket without a ruling. Appellant serves and files these documents now so that the appeal may proceed, and without waiver of the positions taken in her filings addressing those motions.

Appellant is self-represented and files by mail. She respectfully requests that any deficiency or other notice in this appeal be sent to her at the address above, and, where the Court finds it appropriate, by phone call (425-435-0607) rather than or in addition to email (emurday@gmail.com). Please do call if an email is sent as Appellant is not presently able to check email unless prompted, due to documented disability.

Thank you for your assistance.

Respectfully,

 Elspeth Murday

Appellant, pro se

Enclosures

cc: William H. Edwards, Esq. (by U.S. mail, with enclosures 1-3)

Mr. Elmer S. Murday
217 Hall Rd.
Westminster, SC 29883-1505

CERTIFIED MAIL



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