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Sep 29 2026

SC 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.

**APPELLANT'S PETITION FOR REHEARING AND REQUEST FOR THREE-
JUDGE-PANEL REVIEW, WITH EMERGENCY REQUEST TO STAY THE
SCHEDULED LOWER-COURT ZOOM HEARING AND ALL FURTHER
PROCEEDINGS PENDING REVIEW**

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Appellant

I. REHEARING AND THREE-JUDGE-PANEL REVIEW ARE EXPRESSLY AUTHORIZED

The September 25 Order bears the signature of a single judge, “FOR THE COURT,” and terminated Appellant’s appeal. S.C. Code Ann. § 14-8-220 provides: “An appeal shall be allowed from decision of any one judge to a panel of the Court.” Rule 240(j), SCACR, likewise provides that “[a]ny review of an order issued by an individual judge or justice shall be by petition for rehearing.”

Rule 221(a), SCACR, requires a petition for rehearing to “state with particularity the points supposed to have been overlooked or misapprehended by the court,” and Rule 221(c) permits rehearing from a ruling having “the effect of dismissing or finally deciding a party’s appeal.”

This Petition identifies particular matters bearing directly upon the threshold determination of appealability that Appellant respectfully submits were overlooked or misapprehended.

Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (2015), confirms the procedural path. There, a single Court of Appeals judge dismissed an appeal as interlocutory, a three-judge panel denied rehearing, and the Supreme Court granted certiorari and reversed, concluding that the challenged order affected a substantial right and was immediately appealable. *Id.* at 538–40, 773 S.E.2d at 146–48.

Appellant recognizes that the notation “FOR THE COURT” does not itself establish whether other judges participated. Accordingly, if the September 25 dismissal constitutes a decision of an individual judge, Appellant requests three-judge-panel review pursuant to § 14-8-220 and Rule 240(j); if the dismissal was entered by a panel, Appellant independently seeks rehearing pursuant to Rule 221. In either event, the dismissal finally disposed of this appeal, and Appellant respectfully requests reconsideration upon the complete procedural record.

II. THE COURT SHOULD RECONSIDER THE THRESHOLD DETERMINATION THAT THE APPEAL WAS INTERLOCUTORY

The September 25 Order disposed of this appeal at the threshold by determining that the matters appealed were interlocutory and not presently appealable. Supporting Doc. A. Once the Court reached that determination, it took no action on Appellant's remaining pending requests.

Appellant recognizes that an appellate court ordinarily need not decide an issue made unnecessary by resolution of a dispositive threshold question. The problem here is that matters material to the threshold determination itself remained unresolved.

The question for rehearing therefore is not merely whether every argument Appellant presented was separately discussed. It is whether the appeal could properly be dismissed as interlocutory without considering matters bearing directly upon the nature, operation, and immediate consequences of the challenged orders and Appellant's ability to obtain meaningful appellate review after further foreclosure proceedings occur.

South Carolina law does not end the appealability inquiry merely because an order is interlocutory. Section 14-3-330 provides for immediate review of specified intermediate orders, including orders involving the merits and certain orders affecting a substantial right. In *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993), the Supreme Court explained that an intermediate order involves the merits when it finally determines a substantial matter forming the whole or part of a cause of action or defense.

Although *Mid-State* concluded that the particular order before it was not immediately appealable, its definition supplies the governing inquiry here.

The Supreme Court's decision in *Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990), further strengthens that analysis. In *Link*, the Court expressly rejected the contention that subsections (1) and (2) of § 14-3-330 are exclusive categories into which an order

must fall only once. The Court recognized that the same order may fall within both subsection (1), because it involves the merits, and subsection (2), because of its effect upon a pleading or substantial right. *Id.* at 5–6, 393 S.E.2d at 178–79. Accordingly, analysis under § 14-3-330(2) does not eliminate the separate question whether the appealed orders independently qualify for review under § 14-3-330(1).

Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (2015), is particularly instructive. There, a single judge of the Court of Appeals dismissed an appeal as interlocutory, a three-judge panel denied rehearing, and the Supreme Court granted certiorari and reversed, concluding that the challenged order affected a substantial right and was immediately appealable. *Morrow* demonstrates that appealability requires examination of the nature and effect of the challenged order rather than merely its procedural label. Thus, characterizing the July 7 Order as interlocutory did not itself complete the statutory inquiry.

Taken together, *Link* and *Morrow* demonstrate that the statutory categories in § 14-3-330 may overlap and that the actual nature and effect of the challenged order—not merely its interlocutory label—control the inquiry. Appellant respectfully submits that the threshold determination should therefore be reconsidered by a three-judge panel upon the complete procedural record.

III. THE COURT’S THRESHOLD DISMISSAL CAUSED MATERIAL ISSUES BEARING UPON IMMEDIATE REVIEW TO REMAIN UNADDRESSED

The September 25 Order dismissed the appeal as interlocutory and, on that basis, took no action on Appellant’s other pending motions or requests. Supporting Doc. A. Appellant does not contend that every contention required separate discussion. The issue is whether matters bearing directly upon immediate appealability could properly remain unresolved merely because the challenged orders were first characterized as interlocutory.

The July 7, 2026, Order denied Appellant’s Motion for Summary Judgment, required another loss-mitigation process, and provided that, if Appellant failed to return the package within sixty days, his remaining claims and defenses “shall be denied.” Supporting Doc. B. Appellant also challenges whether mandatory USDA foreclosure requirements were satisfied and whether the Summons and Complaint were properly served together—threshold matters bearing upon whether foreclosure could proceed.

As explained in Section II, South Carolina law examines the actual nature and effect of an interlocutory order. *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993), defines an order involving the merits as one finally determining a substantial matter forming the whole or part of a cause of action or defense. *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986), recognized immediate appealability where dismissal effectively struck a cause of action; *Thornton v. South Carolina Electric & Gas Corp.*, 391 S.C. 297, 303–04, 705 S.E.2d 475, 478–79 (Ct. App. 2011), examines whether a material issue is removed and effective later correction impaired; and *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017), distinguished a premature appeal where further procedural relief remained available. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015), likewise confirms that appealability turns upon the nature and effect of the challenged order rather than its procedural label.

These authorities do not automatically establish that the July 7 Order is immediately appealable; they establish that the statutory inquiry cannot end merely by labeling the Order interlocutory. Here, the July 7 Order created an express mechanism capable of eliminating Appellant’s claims and defenses before appellate review. Appellant does not contend that those claims and defenses had already been formally struck when the Order was entered. Rather, the disputed sixty-day

consequence bears directly upon whether the challenged orders involve the merits or affect a substantial right under § 14-3-330.

The certified transcript independently confirms that the unresolved matters were not voluntarily abandoned. The court stated that it would take Appellant's motions "in sequence"; Appellant stated that he wanted them "taken one at a time"; the court asked which motion he wanted heard "right now"; and, after summary judgment was denied, Appellant stated only that it was "the only one that I was prepared to present today." Certified Tr. at 20, 21, 23, 29; Supporting Doc. E. The transcript does not reflect that the court directed Appellant to select two motions or that Appellant selected two motions for adjudication. Section VI addresses Respondent's "declined to argue" characterization in detail.

Among the unresolved matters were Appellant's proposed counterclaim, his service challenge, and his defense that mandatory USDA servicing and loss-mitigation prerequisites had to be satisfied before foreclosure could proceed. Yet the Form 4 characterized the remaining matters collectively as "abandoned and/or denied." Supporting Doc. C. Significantly, the Form 4 itself states that Appellant had filed "approximately a total of ten" motions "asking that the Court rule on all of his outstanding motions," yet then deemed the other motions "abandoned and/or denied."

That disposition also conflicts with the July 7 Order, which made denial of Appellant's remaining claims and defenses a future consequence dependent upon failure to return the loss-mitigation package within sixty days—a period that had not expired when the Form 4 characterized those matters as already "abandoned and/or denied." Supporting Docs. B and C.

Appellant also argued that the July 7 Order could not impose a new sixty-day borrower obligation without first determining whether Respondent had complied with its existing USDA

duties. Because the September 25 dismissal left these threshold matters unresolved while foreclosure proceedings could advance, Appellant respectfully requests that the three-judge panel consider the challenged orders' actual nature and effect in determining whether dismissal as interlocutory should stand.

IV. THE AUGUST 5 LIMITED REMAND WAS NOT IMPLEMENTED, AND APPELLANT'S REQUESTS FOR CLARIFICATION REMAINED UNRESOLVED

On August 5, 2026, this Court expressly retained the appeal while remanding Appellant's July 26 emergency stay petition for expedited consideration pursuant to Rule 241(d), SCACR. The Order required continuing written status reports until the Circuit Court ruled and provided that, if a stay was not appropriate, the Circuit Court could "immediately proceed with any other matters before it." Supporting Doc. G.

The post-remand record shows that implementation initially began. Respondent requested that the August 6 summary-judgment hearing be continued and that the remanded petition be scheduled. The Administrative Docketing Coordinator advised that the petition had been passed to Judge Simmons and that the summary-judgment hearing would be continued, but thereafter advised Appellant: "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." Appellant's Early Status Report and Motion for Further Direction and Clarification.

Appellant promptly sought clarification from this Court, asking whether additional transmittal, administrative action, or direction was required before the Circuit Court could implement the August 5 remand. He later again requested clarification concerning implementation of the remand, the issue remaining for the proposed Zoom hearing, the permissible scope of that proceeding, and whether the stay matter could instead be determined upon the existing written

record. The September 17 scheduling communication concerning that proposed Zoom proceeding is reflected in Supporting Doc. H.

Those requests remained unresolved when the September 25 Order dismissed the appeal as interlocutory and stated that the Court would take no action on Appellant's other pending motions or requests. Supporting Doc. A.

Appellant does not ask the panel to infer motive from the lower court's communication or the absence of clarification. The objective procedural effect is the material point: this Court retained the appeal and directed expedited consideration below; the lower court stated that the matter could not be rescheduled until the case was returned from this Court; Appellant sought clarification concerning that standstill; and the clarification remained unresolved when the appeal was dismissed. Appellant respectfully submits that this sequence is material both to reconsideration of the September 25 dismissal and to the need for clear appellate protection while rehearing and three-judge-panel review are pending.

V. RESPONDENT'S MEMORANDUM WAS UNTIMELY, NO EXTENSION WAS REQUESTED OR GRANTED, YET THE SEPTEMBER 25 ORDER EXPRESSLY REFLECTS CONSIDERATION OF RESPONDENT'S SUBMISSION

By its July 30, 2026, letter, this Court directed the parties to file memoranda addressing appealability within ten days. Supporting Doc. D. Under Rule 263(a), SCACR, because the tenth day fell on Sunday, August 9, the deadline extended to Monday, August 10, 2026. Appellant timely complied. Respondent filed appealability submissions on August 19 and August 25. No motion for enlargement, motion to file out of time, or order enlarging Respondent's deadline appears on the appellate docket.

Nevertheless, the September 25 Order states that the Court acted "[a]fter carefully considering both parties' memoranda." Supporting Doc. A. Respondent's late submission therefore was

substantively considered in the decision dismissing the appeal. The submission was not ministerial; it advocated dismissal and included factual characterizations, including that Appellant had “declined to argue” matters below, which Appellant disputes.

Rule 263(b), SCACR, permits enlargement of most appellate filing periods, but no requested or granted enlargement appears in the record. Rule 240(e) provides that failure timely to file a return “may be deemed a consent” to the relief sought. Appellant does not contend that this consequence is automatic. He respectfully requests that the panel determine whether Respondent’s late submissions were accepted pursuant to an authorized enlargement and, if not, what procedural effect should be afforded the untimeliness when reconsidering the September 25 dismissal.

VI. RESPONDENT’S CHARACTERIZATION THAT APPELLANT “DECLINED TO ARGUE” MATERIAL MATTERS DOES NOT FAIRLY REFLECT THE CERTIFIED TRANSCRIPT

Respondent’s memorandum characterized Appellant as having “declined to argue” certain matters below. Appellant respectfully submits that the certified June 24, 2026, transcript does not support treating what occurred as abandonment or withdrawal of Appellant’s pending motions. When the discussion suggested that Appellant did not want to proceed, Appellant expressly responded, “No, that’s not what I’m saying,” and explained that he wanted his motions “taken one at a time.” Certified Tr. at 21. Immediately before that exchange, when Appellant explained that he could properly answer questions if the motions were taken “in sequence,” the lower court responded: “I will take them in sequence.” Certified Tr. at 20. Those exchanges affirmatively show Appellant’s intent to proceed with his motions individually, not to relinquish them. The court subsequently asked Appellant: “Tell me which motions you’re asking that the court hear, right now.” Appellant responded by beginning with his summary-judgment motion.

Certified Tr. at 23. The transcript does not reflect that the court directed Appellant to select two motions, nor does it reflect that Appellant selected both a counterclaim motion and a summary-judgment motion for adjudication at that time. Rather, Appellant identified summary judgment when specifically asked which motion he wanted heard “right now.”

After denying Appellant’s Motion for Summary Judgment, the court asked what other motions Appellant wished to have argued “here this morning.” Appellant responded that summary judgment was “the only one that I was prepared to present today.” Certified Tr. at 29; Supporting Doc. E. The words “right now,” “here this morning,” and “today” describe the scope and timing of argument at that particular hearing; they do not constitute withdrawal, dismissal, or abandonment of Appellant’s other pending motions. Appellant never stated that he withdrew those motions, no longer sought the relief requested in them, consented to their denial, or intended permanently to relinquish them.

Accordingly, the absence of oral argument on every pending motion at the June 24 hearing cannot fairly be converted into voluntary abandonment of those motions. There is a material distinction between not being prepared to argue every motion at one hearing and intentionally relinquishing the motions themselves. Appellant respectfully requests that the panel evaluate Respondent’s “declined to argue” characterization against the certified transcript rather than treating it as establishing abandonment or waiver.

VII. THE LOWER COURT’S FAILURE TO RESOLVE THRESHOLD MATTERS HAS PRACTICAL CONSEQUENCES FOR APPELLATE REVIEW

As demonstrated in Sections III, IV, and VI, the July 7 Order, the Form 4, the certified transcript, and the August 5 remand left material threshold matters unresolved while further foreclosure proceedings remained possible. Supporting Docs. B, C, E, and G.

Those unresolved matters include Appellant's challenges concerning the disputed sixty-day consequence, service of the Summons and Complaint, mandatory USDA foreclosure prerequisites, and the status of motions characterized as "abandoned and/or denied" despite the certified transcript. The transcript identifies the motion actually argued and adjudicated at the June 24 hearing and does not supply an oral ruling disposing of the substantive grounds presented in Appellant's remaining motions. Certified Tr. at 20, 23, 29; Supporting Doc. E. The August 5 Order further underscores the practical concern because it provided that, if a stay were not granted, the Circuit Court could "immediately proceed with any other matters before it," required continuing status reports, and expressly stated that the appeal would not be held in abeyance. Supporting Doc. G. Appellant therefore respectfully submits that the unresolved threshold matters have direct practical consequences for whether meaningful appellate review will remain available before the foreclosure proceeding materially advances.

VIII. THE COURT SHOULD CONSIDER WHETHER DISMISSAL BEFORE RESOLUTION OF THESE MATTERS DEPRIVES APPELLANT OF MEANINGFUL REVIEW

The question is whether postponing appellate review will leave Appellant with an adequate remedy. This action seeks foreclosure of Appellant's home. If the disputed sixty-day consequence is enforced, or foreclosure judgment, sale, or transfer of possession occurs while review is postponed, later review may not provide the same protection available before those events occur.

In *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012), the Supreme Court reversed dismissal of an interlocutory appeal because the challenged order affected a substantial right, examining what the order actually accomplished; there, it effectively discontinued the plaintiff's action against the defendant it had chosen to sue. *Hagood v. Sommerville*, 362 S.C.

191, 607 S.E.2d 707 (2005), likewise recognized immediate appealability where later review could be inadequate or resulting prejudice difficult to reconstruct. Together with *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015), these authorities demonstrate that the theoretical availability of a later appeal does not itself resolve whether immediate review is required.

Here, the July 7 Order created an express sixty-day consequence affecting Appellant's claims and defenses. Supporting Doc. B. If that consequence becomes operative before appellate review, the question is not merely whether Appellant may later appeal a final foreclosure judgment, but whether those claims and defenses will remain meaningfully available in the same posture. Appellant therefore respectfully requests reconsideration of whether postponing review would impair meaningful appellate relief.

IX. S.C. CODE ANN. § 14-8-250 FURTHER SUPPORTS REVIEW OF POINTS NECESSARY TO THE DISMISSAL

S.C. Code Ann. § 14-8-250 provides: "In every decision rendered by the Court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the Court must be stated in writing and must, with the reason for the Court's decision, be preserved in the record of the case; provided, that the Court need not address a point which is manifestly without merit."

The matters identified in this Petition were not collateral to dismissal; they bear directly upon the threshold determination of immediate appealability. Appellant therefore respectfully requests review of whether the September 25 Order addressed the points necessary to that determination and whether rehearing is required upon the complete record.

X. EMERGENCY RELIEF IS NECESSARY TO PRESERVE THE STATUS QUO PENDING REHEARING AND PANEL REVIEW

This request seeks preservation, not adjudication of the underlying foreclosure. Rule 241(c)(2), SCACR, directs the Court to consider whether relief is necessary to preserve appellate jurisdiction or prevent a contested issue from becoming moot; Rule 241(c)(3) permits additional affirmative relief when an ordinary stay is insufficient to afford complete relief; and Rule 241(d)(2) authorizes an individual appellate judge to grant temporary relief and refer the matter to the full appellate court.

Nken v. Holder, 556 U.S. 418, 428–29, 434 (2009), explains that a stay holds judicial action in abeyance while review proceeds and identifies the traditional considerations as the applicant’s showing on the merits, irreparable injury absent relief, injury to the opposing party, and the public interest. Those considerations support temporary relief here because Appellant presents statutory grounds for rehearing; continued foreclosure proceedings could materially alter the status quo before review; a temporary stay postpones rather than adjudicates Respondent’s foreclosure claim; and orderly appellate review is served by preventing proceedings below from overtaking rehearing and panel review.

Appellant previously sought emergency stay relief below. This Court’s August 5, 2026, Order retained the appeal and remanded Appellant’s July 26 emergency petition for expedited consideration by the Circuit Court, providing that, if a stay was determined not to be appropriate, the Circuit Court “may immediately proceed with any other matters before it.” Supporting Doc. G. Appellant therefore did not bypass the lower court before seeking appellate protection. Rule 221(b), SCACR, provides that a timely petition for rehearing withholds the remittitur while rehearing remains pending. But withholding the remittitur does not itself expressly identify which proceedings below must cease. Because disagreement has already arisen concerning what proceedings may continue, Appellant respectfully requests an express temporary stay eliminating

that uncertainty and preserving the status quo while this Court considers rehearing and three-judge-panel review.

If the lower court proceeds before that review occurs, the foreclosure proceeding may materially advance and impair meaningful appellate relief. Appellant therefore respectfully requests an immediate stay preserving the status quo until this Court resolves the Petition and requested three-judge-panel review.

XI. SPECIFIC EMERGENCY RELIEF REQUESTED

Appellant respectfully requests that the Court immediately stay all proceedings in the underlying foreclosure action, Case No. 2025-CP-23-08229, pending disposition of this Petition for Rehearing and request for three-judge-panel review, including the presently scheduled lower-court Zoom hearing; further summary-judgment proceedings; enforcement of the disputed sixty-day consequence contained in the July 7, 2026, Order; entry or enforcement of any foreclosure judgment; scheduling or conducting any foreclosure sale; transfer of title or possession; and any other proceeding that would materially advance the foreclosure action or alter the status quo before this Court completes review. Appellant requests only the temporary relief necessary to preserve meaningful appellate review.

XII. REQUEST FOR EXPEDITED CONSIDERATION

Rule 221(a), SCACR, provides that no return to a petition for rehearing may be filed unless requested by the appellate court and that rehearing ordinarily will not be granted without a return. Appellant therefore requests an expedited return addressing: **(1)** whether § 14-3-330(1) independently permits immediate review; **(2)** what procedural avenue remained for matters the Form 4 characterized as “abandoned and/or denied”; **(3)** whether Respondent’s August 19 and August 25 submissions were authorized by an enlargement of time and, if so, under what

authority; **(4)** what portion of the certified June 24 transcript supports the assertion that Appellant “declined to argue” or abandoned his motions; **(5)** why the July 7 Order and Form 4 do not satisfy § 14-3-330(1) or an applicable provision of § 14-3-330(2); and **(6)** why a temporary stay should not issue to prevent the scheduled Zoom hearing and further foreclosure proceedings from materially advancing during rehearing and panel review.

Under Rule 240(e), SCACR, Appellant requests that any return be filed within three (3) days, or such shorter period as the Court determines appropriate, and requests immediate temporary relief under Rule 241(d)(2), SCACR, while the Petition and return are considered.

XIII. RELIEF REQUESTED

WHEREFORE, Appellant respectfully requests that this Court: **(1)** ACCEPT this Petition as timely under Rule 221, SCACR, and, if the September 25, 2026, dismissal was entered by an individual judge, REFER it for three-judge-panel review under S.C. Code Ann. § 14-8-220 and Rules 221 and 240(j), SCACR; **(2)** GRANT rehearing, reconsider the interlocutory-dismissal determination, VACATE the September 25 dismissal, and restore the appeal to the active docket; **(3)** GRANT the stay described in Section XI and maintain the status quo through rehearing and panel review; **(4)** REQUEST the expedited return described in Section XII under Rule 240(e), SCACR, and ENTER temporary relief under Rule 241(d)(2), SCACR, while the Petition and return are considered; and **(5)** GRANT other relief necessary to preserve the Court’s jurisdiction and meaningful appellate review.

Respectfully submitted,

s/ Wendell Don Cooper
Wendell Don Cooper
Appellant, Pro Se

September 29, 2026

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Sep 29 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2026, I served a true and correct copy of the foregoing APPELLANT'S PETITION FOR REHEARING AND REQUEST FOR THREE-JUDGE-PANEL REVIEW, WITH EMERGENCY REQUEST TO STAY THE SCHEDULED LOWER-COURT ZOOM HEARING AND ALL FURTHER PROCEEDINGS PENDING REVIEW upon counsel for Respondent by email and by United States Mail, first-class postage prepaid, addressed as follows

Alan Martin Stewart, Esquire
Foundation Legal Group
240 Stoneridge Drive, Suite 400
Columbia, South Carolina 29202-8237

s/ Wendell Don Cooper
Wendell Don Cooper
Appellant, Pro Se

September 29, 2026