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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM KERSHAW COUNTY

The Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2026-001664

In Re: Estate of M.K. Jennings 2010ES2800169

Beverly Hennager……Appellant

v.

Mary E. Deardon, Personal Representative of the Estate of M.K. Jennings……Respondent

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

The dispositive fact in this appeal is undisputed. Respondent does not contend that the circuit court ruled on Appellant's Rule 60(b)(4) motion. To the contrary, Respondent's brief quotes the circuit court's September 4, 2025 order stating that "there is no judgment in this case" (DM 11) and its July 14, 2026 Form 4 stating that the court "will not accept any more filings" (DM 13). Respondent thus concedes the central premise of this appeal: the motion was never adjudicated. The July 14, 2026 Form 4 did not decide Appellant's motion; it refused to hear it.

Respondent offers two principal arguments in response: that this Court's 2025 opinion, *Hennager v. Deardon*, Op. No. 2025-UP-196 (S.C. Ct. App. filed June 11, 2025), already addressed the Rule 60(b)(4) issues, and that the motion was filed in the wrong court. The 2025 opinion refutes both. It held that "this issue is not preserved for appellate review because Hennager failed to file a motion pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure with the circuit court . . . ." (DM 7 #1). Appellant's August 11, 2023 Rule 60 motion (DM 14) was not included in the record on appeal, but it would not have changed the outcome: that motion was never ruled upon, and without a ruling the issues could not be preserved. A preservation ruling is not a ruling on the merits, and the opinion itself identified the circuit court as the forum.

The circuit court never reached the jurisdictional and due-process grounds of Appellant's motion, and Respondent does not answer the arguments in Appellant's Amended Initial Brief. The Form 4 should be vacated and the matter remanded for adjudication of Appellant's motion before a different circuit judge.

II. REPLY ARGUMENT

A. Respondent Omits the Finding Appellant Appealed in the 2021 Order

Respondent's Statement of the Case says the September 3, 2021 probate order approved the estate closing documents. Respondent omits the finding Appellant appealed: that "the promissory note of Michael Jennings was satisfied before the Decedent's death" (9/3/21 Order, Finding of Fact 1) (DM 5).

The probate court made that finding after its judge personally returned Appellant's two motions to compel production of the complete tax records, stating there was "no pending litigation" (DM 3, 4). The finding was therefore made on a record Appellant was prevented from completing.

The circuit court's June 19, 2024 order then recast that finding. Instead of reviewing the probate court's determination that the note was satisfied, the order treated the note's payment status as a new allegation Appellant raised for the first time on appeal (DM 6). This Court's 2025 opinion confirmed otherwise: "the probate court did consider the merits of her claim concerning the promissory note and found in its 2021 order the note was satisfied. . . ." (DM 7 #3). The June 19, 2024 order, which replaced an adjudicated finding with a preservation bar, is the order Appellant's Rule 60(b)(4) motion challenges.

B. Appellant's Issues on Appeal Are Specific, and Respondent Does Not Answer Them

Respondent asks the Court to disregard Issues 1 and 2 as vague. The Amended Initial Brief states each issue in a single sentence, as Rule 208(b)(1)(B), SCACR requires:

1. Whether the July 14, 2026 Form 4 constituted a merits disposition or, in substance, a refusal to adjudicate Appellant's pending Rule 60(b)(4) claim.
2. Whether the Form 4 violated due process and is void because it closed the case and barred further filings without affording Appellant a meaningful opportunity to be heard.

Each issue names the order, the date, and the error. Respondent offers no substantive response to either. Respondent does not contend the Form 4 ruled on the motion, and does not address *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982), or the other authorities Appellant cites.

C. The 2025 Opinion Did Not Decide the Rule 60(b)(4) Issues; It Declined to Reach Them

Respondent argues that the June 11, 2025 opinion addressed "the Rule 60(b)(4) issues Appellant now tries to resurrect." It did not. The opinion held that Appellant's void-order argument was not preserved for appellate review (DM 7 #1). A finding that an issue is not preserved is not a ruling on its merits. Moreover, preservation requires that an issue be both raised to and ruled upon by the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Appellant raised these issues. She filed a Rule 60 motion in the circuit court on August 11, 2023 (DM 14), with an argument addressing jurisdiction, due process, fraud on the court, and

the interlocutory nature of the 2016 order. The circuit court never ruled. Following the 2025 opinion, Appellant submitted Rule 60 motions in the circuit court at each stage of further review, from remittitur through the United States Supreme Court's denial of certiorari (DM 9, 10, 12). When those motions went unadjudicated, she filed motions asking the court to rule. None was ruled upon.

On July 9, 2026, Appellant filed her final Rule 60(b)(4) motion, together with a motion asking the court to issue a written order ruling on it (DM 17–18). The court responded with a Form 4 declaring that it "will not accept any more filings" (DM 13). What is missing is not a filing but a ruling, and only the circuit court can supply it. Appellant is not resurrecting issues this Court decided. She is asking this Court to require the circuit court to decide them.

Respondent cannot argue both that the issues were never ruled upon below and that they have already been adjudicated. Nor does the finality of the 2025 appeal answer this appeal. Rule 60(b)(4) exists to address judgments that are otherwise final. See *Branch Banking & Trust Co. v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006); *Universal Benefits, Inc. v. McKinney,* 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). The order on appeal is the July 14, 2026 Form 4, a separate order entered after the 2025 appeal ended. This Court has already denied Respondent's motion to dismiss this appeal.

D. The Rule 60(b)(4) Motion Was Properly Filed in the Circuit Court

Respondent argues the motion should have been filed in "the trial court" rather than the circuit court. That argument fails for three reasons.

1. **This Court identified the circuit court.** The 2025 opinion identified the circuit court as the forum for a Rule 60(b) motion (DM 7). Appellant filed her motion there.
2. **The circuit court entered the order challenged.** The June 19, 2024 order that recast the note finding is a circuit court order, entered in its appellate capacity under S.C. Code § 62-1-308. A motion for relief from that order belongs in the court that entered it.
3. **The circuit court never said otherwise.** Respondent claims the circuit court's 2025 and 2026 orders "make clear" the motion was in the wrong court. The language Respondent quotes says no such thing. It says only that the case is closed and no filings will be accepted. No court below has ruled that the motion was filed in the wrong forum.

E. Wilder Supports Appellant, Not Respondent

Respondent relies on *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998): an issue must be "raised to and ruled upon by the trial judge" to be preserved. That is Appellant's point. Appellant raised the issues, repeatedly, and asked for written rulings (DM 10, 14, 16, 17, 18). The circuit court refused to rule and then barred further filings. Respondent's own brief confirms this. It describes the motions as "rejected," not denied, and quotes the court's statement that "there is no judgment in this case."

Under **Wilder**, Appellant cannot preserve these issues without a ruling. Under the Form 4, she cannot obtain one. Respondent's brief offers no answer to that dilemma, and the due-process violation it creates is the reason the Form 4 must be vacated.

III. CONCLUSION

Respondent does not dispute that the circuit court never ruled on Appellant's Rule 60(b)(4) motion. The 2025 opinion declined to reach the issues that motion raises, and the circuit court is where that opinion said they belonged.

For these reasons and those in the Amended Initial Brief, Appellant respectfully requests that this Court grant the relief sought there: vacate the July 14, 2026 Form 4, remand with instructions to adjudicate the pending Rule 60(b)(4) motion by written order, and reassign the matter to a circuit judge outside Kershaw County.

Respectfully submitted,

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