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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
MASTER IN EQUITY

The Honorable Stephanie N. Lawrence, Master-in-Equity

Appellate Case No. 2025-001444

South Carolina Department of Transportation, Respondent,

v.

McGee Still (deceased) and Sara Still, Landowners,
of whom Sara Still is the Appellant, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether issues I, II, V and VI – as they are numbered in Appellant’s brief – are preserved for appellate review.
- II. Whether the Lower Court erred by proceeding with the valuation hearing after the death of record owner McGee Still without *sua sponte* substituting a party pursuant to Rule 25(a), SCRCP.
- III. Whether the Lower Court erred to the extent it relied upon a power of attorney or informal family participation to represent the interests of McGee Still’s estate.
- IV. Whether the Lower Court abused its discretion by granting in part and denying in part Respondent’s motion *in limine* to exclude evidence.
- V. Whether the Lower Court abused its discretion by denying Appellant’s request for a continuance.
- VI. Whether the cumulative effect of the Lower Court’s rulings deprived Appellant of due process.
- VII. Whether the Estate of McGee Still was a necessary party under Rule 19, SCRCP, and whether the Lower Court erred by proceeding in their absence.

COUNTERSTATEMENT OF THE CASE

The South Carolina Department of Transportation (“SCDOT”) initiated this action on October 2, 2020. The parcel at issue was owned by McGee Still and Sara Still, husband and wife. In addition to the two landowners named in this action, their two daughters were meaningfully involved in the case pursuant to their powers of attorney. Summer Still was Sara Still’s attorney-in-fact. Susan Fusco was McGee Still’s attorney-in-fact. The sole issue for the Lower Court to decide was the amount of just compensation.

On May 12, 2023, SCDOT sent standard discovery requests to McGee and Sara Still. (exhibit 12 to final order). Counsel for SCDOT was subsequently contacted by Summer Still who demanded that she be included on any communications with her parents. In accordance with Summer Still’s demands, on June 5, 2023, SCDOT sent their discovery requests to Summer Still. (exhibit 14 to final order). At no point did the landowners or Summer Still ever respond to these discovery requests. (Transcript, P.7, L.4-11). A final hearing was ultimately scheduled for January 21, 2025. However, this hearing was continued at the request of Summer Still, who argued on behalf of Sara Still. On January 23, 2025, SCDOT made their third attempt to conduct discovery, sending their discovery requests to McGee Still, Sara Still, Summer Still and Susan Fusco. (exhibit 18 to final order). For a third time, the landowners and their attorneys-in-fact failed to respond to discovery. (Transcript, P.7, L.12-22). The final hearing was ultimately rescheduled for April 30, 2025. About two weeks prior to the final hearing, McGee Still passed away.

The parties making an appearance at the final hearing were counsel for SCDOT, and Sara Still, although not physically present, appeared through her attorney-in-fact, Summer Still. (Transcript, P.2). The estate of McGee Still did not make an appearance, either through his attorney-in-fact or through a duly appointed estate representative. Seated in the audience were all

of the landowner's remaining children, Michael Still, Steven Still, Susan Fusco, and Susan's husband, Pete Fusco. After learning that Susan Fusco was McGee Still's attorney-in-fact, the Lower Court invited Susan to sit at counsel's table. However, Susan explained her power of attorney terminated upon McGee's death, and she declined to sit at counsel's table (Transcript, P.10, L.18 – P.11, L.5) Thereafter, Susan's participation in the hearing was limited only to being called as a witness by Summer Still. At no point did Susan argue on behalf of McGee.

Counsel for SCDOT made a motion *in limine* to exclude all documentary and testimonial evidence that Sara Still or McGee Still may intend to offer, due to their failure to respond to discovery. (exhibit 19 to final order). This motion was granted in part and denied in part. The Lower Court granted the motion as to documentary evidence, prohibiting Summer Still, on behalf of Sara Still, from introducing materials or exhibits that she failed to provide in response to discovery. (Transcript P.36, L.18 – P.37, L.10). In doing so, the Lower Court noted that Sara and Summer had multiple opportunities to respond over the course of nearly two years. The Lower Court denied SCDOT's motion *in limine* as it related to testimonial evidence solely because Summer Still, on behalf of Sara Still, emailed SCDOT's counsel a list of potential witnesses (Transcript P.37, L.10-20).

Summer Still also requested a continuance, citing the following grounds: (1) McGee Still's recent death and the accompanying stress; (2) internal family strife; (3) to plan and hold a funeral for McGee; (4) to obtain an appraisal; (5) Summer was bitten by a poisonous spider and was sick for five days; (6) to "have things in a more succinct manner"; and (7) they have not found McGee's last will and testament. (Transcript P.31, L.14-25; P.34, L.22 – P.35, L.16; and P.39, L.20-23).¹ The

¹ Respondent strongly objects to the Statement of the Case portion of Appellant's brief on page 2 wherein they allege party substitution was a basis of the continuance request. After multiple reviews of the Lower Court's record, Respondent is unable to find anything suggesting that anyone raised or even mentioned party substitution, whether in connection with a continuance request or otherwise.

Lower Court asked Summer Still if it were to grant a continuance, what her plan would be in the interim. (Transcript P.34 L.14-21). Appellant stated they would obtain an independent appraisal, and plan and hold McGee’s funeral service. (Transcript P.35, L.5-10). Respondent had previously informed the Lower Court that the January final hearing was continued on some of the same grounds, primarily that Summer Still said she was going to obtain her own appraisal. (Transcript, P.7, L.12-18; and P.9, L.15 – P.10, L.15). The Lower Court ultimately declined to grant a continuance, stating, “I’ve not heard anything today that a delay would help in terms of information coming before the Court.” (Transcript P.38 L.4-10).

After considering the parties’ arguments, testimony from SCDOT’s two witnesses, Summer Still’s testimony, Susan Fusco’s testimony, and the exhibits in evidence, the Lower Court issued an Order finding that Landowners were entitled to just compensation in the amount of \$7,100.00.

STANDARD OF REVIEW

The standard of review for an appellate court over a trial court’s grant or denial of a motion for a continuance is abuse of discretion.² “The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’”³ The standard of review for the grant or denial of a motion to substitute a party is abuse of discretion.⁴

² *Bridwell v. Bridwell*, 279 S.C. 111, 302 S.E.2d 856 (1983).

³ *Burke v. Republic Parking Sys., Inc.*, 421 S.C. 553, 808 S.E.2d 626 (Ct. App. 2017) citing *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)).

⁴ *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 165, 536 S.E.2d 380, 383 (Ct. App. 2000) (providing that an appellate court will not reverse the master’s denial of a motion to substitute absent an abuse of discretion).

ISSUE 1: Whether Appellant preserved for appellate review issues I, II, V and VI – as they are numbered in Appellant’s brief.

“To be preserved for appellate review, an issue must have been: (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity.”⁵ “[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector”⁶ “When an issue or argument has been raised to but not ruled upon by the circuit court, a party must file a Rule 59(e) [, SCRCP] motion in order to preserve it for appellate review.”^{7,8} Additionally, if an appellant fails to comply with Rule 208(b)(4), SCACR that failure will result in a finding that the issue is not preserved for appellate review.⁹ Here, Appellant failed to comply with Rule 208(b)(4), SCACR because Appellant’s brief lacks citations to the transcript showing where relevant objections and rulings occurred.

Respondent will first address Appellant’s failure to comply with Rule 208(b)(4), SCACR before returning to address the traditional requirements of issue preservation. The “Statement of the Case” portion of Appellant’s brief contains no references to the transcript. In the “Arguments” section of Appellant’s brief, under the “Issue I” heading, Appellant references the Lower Court’s Final Order and transcript pages 4, 5, 32, 142, and 144. However, these references merely support the salient facts alleged and do not reference where objections were made, issues were raised, or where rulings occurred in the transcript. Under the “Issue II” heading, Appellant cites transcript

⁵ *Lapp v. S.C. Dep’t of Motor Vehicles*, 387 S.C. 500, 507, 692 S.E.2d 565, 569 (Ct. App. 2010).

⁶ *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1997); see also *Broom v. Southeastern Highway Contracting Co.*, 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986) (“[An] objection must be specific enough... to show the opposite party the point of the objection, so that he may have an opportunity to obviate the error, if possible.” “An objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.”).

⁷ *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011).

⁸ *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) (*pro se* litigants are held to the same standard as an attorney, and their failure to understand the legal process is not excusable neglect).

⁹ *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344-45, 479 S.E.2d 67, 75-76 (Ct. App. 1996) (finding an issue not preserved for appellate consideration because, “nowhere does Cleckley point to specific objections and rulings as required under [the South Carolina Appellate Court Rules]. We are left to ‘grope in the dark’ concerning the specific allegations of error.”); see also *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 72-73, 777 S.E.2d 176, 197 (2015).

pages 5, 10, 11, and 27. Again, these citations only support the salient facts alleged, and do not show where relevant objections were made, or issues raised, or where relevant rulings occurred. As to the “Issue III” and “Issue IV” headings in Appellant’s brief, Appellant does include the required citations to the transcript. Under the “Issue V” heading in Appellant’s brief, Appellant cites transcript pages 38-41. However, nothing on those pages of the transcript show where a due process objection was made, where a due process issue was raised, or where a ruling on due process occurred. Lastly, the “Issue VI” heading in Appellant’s brief contains zero references to the transcript. Accordingly, as to issues I, II, V and VI – as they are numbered in Appellant’s brief – this Court and Respondent “are left to ‘grope in the dark’ concerning the specific allegations of error.” *McKissick*, 325 S.C. at 344-45 (Ct. App. 1996). Therefore, these issues are not preserved for appellate review.

Under the traditional issue preservation requirements, the same four issues alleged on appeal are similarly unpreserved for appellate review. Although Respondent contends Appellant failed to raise those four issues at all, or at minimum failed to raise those issues with sufficient specificity, Respondent believes the easiest failure to spot is the lack of a ruling and a failure to file a Rule 59(e) motion. Aside from rulings on Respondent’s evidentiary objections – for which Appellant does not allege any errors – the Lower Court issued a total of three rulings. First, the Lower Court ruled on Respondent’s motion *in limine*. (Transcript P.36, L.18 – P.38, L.2). Second, the Lower Court ruled on Appellant’s request for a second continuance. (Transcript P.38, L.4-14).¹⁰ Third, after taking the matter under advisement, the Lower Court ruled that Appellant was entitled to receive \$7,100 as just compensation for the taking. (Final Order P.9-10). Absent from the transcript are any rulings regarding issues I, II, V and VI – as they are numbered in Appellant’s

¹⁰ Following the Lower Court’s rulings on Respondent’s motion *in limine* and on Appellant’s request for a continuance, Appellant continued to dispute the matter which prompted the Lower Court to expand on its earlier rulings. (Transcript P.38 L.11 – P.42 L.4).

brief. Since Appellant did not file a Rule 59(e) motion, those issues are not preserved for appellate review.

Lastly, when an appellant fails to cite case law in support of an argument and/or makes only conclusory arguments in support thereof, the issue is deemed abandoned on appeal.¹¹ Appellant's fifth issue on appeal, regarding a deprivation of due process, is supported only by conclusory arguments and Appellant failed to cite case law in support. The case law Appellant did cite in support is unrelated to the issue of due process. Therefore, it should be deemed abandoned on appeal. Appellant's sixth issue on appeal, regarding whether McGee Still was a necessary party, has been similarly abandoned on appeal. In support of this issue Appellant cites Rules 17(a) and 19, SCRCP and includes a citation to *Fisher v. Huckabee*, 422 S.C. 234, 811 S.E.2d 739 (2018). The United States Supreme Court, interpreting Rule 17(a), FRCP, issued a unanimous opinion, stating, "Rule 17(a) directs that '[e]very action shall be *prosecuted* in the name of the real party in interest.' (*emphasis added*). That Rule, as its text displays, speaks to joinder of *plaintiffs*, not defendants."¹² Accordingly, Appellant's reliance on Rule 17(a), SCRCP is misplaced. Appellant's lone case citation, *Fisher* (2018), does not analyze Rule 19, SCRCP and instead analyzes only Rule 17(a), SCRCP. Therefore, Appellant's reliance on *Fisher* is also misplaced. Accordingly, Appellant failed to cite case law in support of this issue and this Court should deem it abandoned on appeal.

ISSUE 2: The Lower Court cannot substitute a party *sua sponte*, and even if the Lower Court did commit an error, it was harmless.

As an alternative to this issue not being preserved for appellate review, Respondent believes Appellant's brief misstates and misapplies the South Carolina Rules of Civil Procedure. Given that Appellant failed to raise this issue with sufficient specificity, as evidenced by the lack of a ruling

¹¹ *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006); see also *Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct.App.2005)

¹² *Lincoln Property Co. v. Roche*, 126 S.Ct. 606, 163 L.Ed.2d 415, 546 U.S. 81 (2005).

on this issue, combined with Appellant’s brief stating “[t]he court failed to comply with Rule 25, SCRCF,” the only logical conclusion is that Appellant is arguing the Lower Court should have ordered substitution of a party *sua sponte*.

When read in isolation, the first sentence of Rule 25(a)(1), SCRCF seems to suggest a court may order substitution of a deceased party *sua sponte*. However, case law and practical implications show otherwise.

As an initial matter, Rule 25(a)(1), SCRCF is substantially identical to Rule 25(a)(1), FRCP, except for the different time requirements within which a motion must be made before a court may dismiss the action as to the deceased party. A court can dismiss an action as to the deceased party *sua sponte* if substitution is not made within a reasonable time because a failure to substitute is akin to a failure to prosecute, and courts have always had the inherent power to dismiss an action for want of prosecution *sua sponte*.¹³ However, it would place a court in a difficult predicament if they were also permitted to order party substitution *sua sponte*. In other words, a court would have to choose which party to assist. Either a court would assist the deceased party by ordering substitution *sua sponte*, or assist the opposing party by dismissing the action as to the deceased party *sua sponte* if substitution was not sought within a reasonable time.

When read in isolation, the first sentence of Rule 25(a)(1), SCRCF seems to suggest the court can order substitution of the proper parties on the court’s own initiative. However, when that sentence is read alongside the rest of the rule, it is clear the first sentence does not authorize courts to act *sua sponte*. The second sentence of Rule 25(a)(1) contains two parts. The first part identifies which people may bring a motion for substitution. The second part requires that the motion for substitution, and notice of hearing, be served as provided in Rules 4 and 5, SCRCF. If the court

¹³ *Saylor v. Bastedo*, 623 F.2d 230 (2nd Cir. Ct. App. 1980).

could order substitution *sua sponte*, there would be no requirement for a party to serve a motion. Further, the rule explicitly provides that a hearing must be held, which runs contrary to the court having the power to substitute on their own initiative. In fact, the requirement that a hearing be held puts the first sentence of Rule 25(a)(1) into context. When Rule 25(a)(1) says, “the court may order substitution,” it means a court should exercise sound discretion when deciding a motion for substitution.¹⁴

Although Respondent has been unable to find any binding precedent, an opinion rendered by the U.S. District Court for the Eastern District of Texas is instructive.¹⁵ *Bradford* analyzed Rule 25(a), FRCP before and after the 1963 amendment to that Rule. The pre-1963 version of Rule 25(a), FRCP was interpreted to provide the courts *sua sponte* power to order substitution, however, courts were under no duty to do so.¹⁶ *Bradford*, after quoting the advisory committee’s note to the 1963 amendment, determined that, “the 1963 amendment removed courts’ *sua sponte* power to substitute deceased parties and limited the courts’ power under Rule 25 to solely decide parties’ motions for substitution.” Since Rule 25(a)(1), SCRCF is substantially similar to the post-1963 Rule 25(a)(1), FRCP, this Court should adopt the findings of *Bradford*.

ISSUE 3: The Lower Court did not rely upon a power of attorney or informal family participation to represent McGee Still’s estate.

This alleged issue is premised upon an assertion that the Lower Court did in fact, to some extent, rely upon a power of attorney or informal family participation to represent the interests of McGee Still’s estate. Which leaves this Court to determine whether that reliance was an error.

¹⁴ *Saylor*, 623 F.2d at 236-37 (“A motion to substitute... will ordinarily be granted, but under the permissive language of the first sentence of the amended rule (“the court may order”) it may be denied by the court in the exercise of a sound discretion...”).

¹⁵ *Jerri D. Bradford v. Diebold Nixdorf*, Civil Action 4:22-cv-219-SDJ-KPJ, pages 3-4 (Feb. 23, 2023).

¹⁶ *Bradford* (2023) citing *Anderson v. Yungkau*, 329 U.S. 482, 484-85 (1947).

However, the very premise of this alleged issue is false because there is nothing in the transcript which supports a finding that the Lower Court did in fact rely on either of those things.

The references to the transcript contained in Appellant's brief actually support Respondent's position that the Lower Court did not rely on a power of attorney to represent estate interests. Appellant's brief references page 5 of the transcript, wherein Respondent states to the Lower Court, "[i]t's my understanding that Summer Still, ... has the power of attorney for Ms. Sara Still. Mr. McGee Still's power of attorney *was* with Susan Fusco..." Respondent's use of the past-tense "was" shows that from the outset of the hearing the Lower Court was aware that Summer Still remained Sara Still's attorney in fact, but that Susan Fusco was no longer McGee Still's attorney in fact. On pages 10-11 of the transcript, the Lower Court invited Susan Fusco to sit at counsel's table and asked whether she held a power of attorney for McGee Still. Ms. Fusco then informed the Lower Court that when her dad died, her power of attorney ended too, and, although not indicated in the transcript, Ms. Fusco declined the invitation to sit at counsel's table. The Lower Court responded, thanking Ms. Fusco and stating they were just "trying to keep all the names straight." On page 27 of the transcript, the Lower Court asks, "to make sure I'm following, Ms. Fusco is the person who *had* the power of attorney." Again, the use of the past-tense "had" illustrates the Lower Court understood Ms. Fusco was no longer McGee Still's attorney in fact. Accordingly, the references to the transcript contained in Appellant's brief actually support Respondent's argument that the premise of this alleged issue is false.

Further, page 2 of the transcript lists all of the people who appeared for the hearing, and the only person listed as appearing for the landowners is Summer Still, *pro se*, pursuant to her power of attorney for Sara Still. Therefore, this page shows the Lower Court treated the situation as if McGee Still did not appear for the hearing. Nothing in the transcript indicates the Lower

Court relied on Summer Still's power of attorney or Susan Fusco's then-expired power of attorney to represent the interests of McGee Still's estate.

Lastly, portions of the transcript disprove Appellant's assertion that the Lower Court relied on informal family participation to represent estate interests. During recross examination of Respondent's witness, Mr. Crider, Appellant asked a question about a piece of property located in the "Belmont Estates" neighborhood. Two unidentified members of the Still family shouted from the back of the courtroom, "Dutch Brook," in an apparent attempt to correct Appellant's question. The Lower Court immediately responded, stating "[s]o the yelling out from the back is – is not acceptable at all. Let's not do that again." (Transcript P.115, L.21 – P.116, L.5). Other than this, the Still family's participation was limited only to Susan Fusco being called as a witness by Appellant. Accordingly, the Lower Court did not rely on informal family participation to represent estate interests, and in fact, the Lower Court explicitly halted the Still family's attempts to do so.

ISSUE 4: The Lower Court appropriately exercised its discretion by excluding Appellant's proposed exhibits, but allowing Appellant to call witnesses.

Rule 37, SCRPC permits the court to impose sanctions for failing to respond to discovery. Further, South Carolina case law has established that a court may impose sanctions without a motion to compel having been filed.¹⁷ A trial court's decision on whether or not to impose discovery sanctions is reviewed for abuse of discretion.¹⁸ An affirmative duty does exist to answer interrogatories and respond to requests to produce. *See* Rule 33(a), SCRPC ("Each interrogatory *shall* be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer." (emphasis added)); Rule 34(b), SCRPC ("The party upon whom the request is served *shall* serve a written response" (emphasis

¹⁷ *Richardson v. Twenty One Thousand Dollars (\$21,000.00) U.S. Currency*, 430 S.C. 594, 846 S.E.2d 14 (Ct. App. 2020).

¹⁸ *Jamison v. Ford Motor Co.*, 373 S.C. 248, 270, 644 S.E.2d 755, 767 (Ct. App. 2007);

added)); *see also Samples v. Mitchell*, 329 S.C. 105, 109–10, 495 S.E.2d 213, 215–16 (Ct. App. 1997) (stating parties must disclose all evidence, or at least the existence of evidence, that relates to the case, not only evidence which they intend to use at trial). The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial, and when these rights are not accorded, there is a rebuttable presumption that the party entitled to receive discovery responses has been prejudiced.¹⁹ “Exclusion of testimonial or documentary evidence offered by a party is a remedy available to a trial court for the party’s failure to comply with discovery.”²⁰

As previously explained in greater detail, Respondent served standard discovery requests on various members of the Still family three separate times, and as early as May of 2023. Respondent presented its motion *in limine* to exclude evidence and testimony. (Transcript P.6, L.8 – P.10, L.15). Before issuing a ruling on Respondent’s motion *in limine*, the Lower Court thoroughly questioned Appellant, and directed a few questions toward Respondent (Transcript P.11-31). It was determined that the documents brought by Appellant to the final hearing included items sourced through the Richland County Tax Assessor’s Office, items given to Appellant by the SCDOT at public meetings, items given to Appellant by counsel for Respondent, and an estimate to rebuild a basketball court that Appellant obtained the morning of the final hearing (Transcript P.23, L.10-16). It was also determined that Appellant did send an email to Respondent’s counsel naming witnesses that Appellant intended to call at trial, although Appellant’s email did not describe what those witnesses were expected to testify to. (Transcript P.24, L.20 – P.25, L.3; and P.17, L.9-11). Appellant stated that of the witnesses named in her email, only Susan Fusco was present in court (Transcript P.27 through P.28, L.8). Appellant stated that she did not bring the other witnesses because she, “knew they wouldn’t have to come.” (Transcript P.28, L.7-8). The

¹⁹ *Downy v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

²⁰ *Hilton Head Beach and Tennis Resort v. Sea Cabin Corp.*, 305 S.C. 517, 409 S.E.2d 434 (Ct. App. 1991).

Lower Court ultimately issued its ruling on Respondent's motion to exclude, granting the motion as to any exhibits, but denying the motion as to witness testimony (Transcript P.36, L.18 – P.37, L.25).

The practical effect of this ruling was that Appellant was prevented from introducing two items into evidence; McGee's handwritten notes as to his opinion on valuation, and the estimate to rebuild a basketball court, both of which Appellant obtained the morning of the final hearing (Transcript P.13 L.8-11; P.21, L.9-15; and P.23, L.10-16). Even if the Lower Court did not exclude those two items, they are both objectionable and likely to be excluded pursuant to the Dead Man's Statute and hearsay rules because McGee was deceased and Appellant failed to secure the attendance of whoever prepared the quote to rebuild the basketball court. The Lower Court denied Respondent's motion to exclude, thereby permitting Appellant to call any witness listed in her email; however, Appellant failed to secure the attendance of all but one of those witnesses because Appellant "knew they wouldn't have to come." (*Id.*, P.28, L.7-8). The Lower Court denied this portion of Respondent's motion to exclude because Respondent had an opportunity to depose the witnesses and failed to do so (*Id.*, P.37, L.16-20). However, it was later revealed that Appellant did not disclose their witnesses more than ten days prior to the final hearing, meaning under the Rules, Respondent could not have deposed them (*Id.*, P.130, L.22-25 through P.131, L.1-5). Additionally, any prejudice Appellant suffered was mitigated by Respondent's choice to introduce the appraisal performed by Charles Crider, rather than the appraisal performed by Bruce DeHaven. This choice mitigated any prejudice because Mr. Crider's appraisal valued the property higher than Mr. DeHaven's appraisal (*Id.*, P.25, L.21 through P.26, L.11), and valuation was the sole issue being decided (*Id.*, P.32, L.13 through P.33, L.14). Lastly, one of the bases of the January hearing being continued was for Appellant to obtain an appraisal. Meaning that Appellant had nearly three

months to obtain an appraisal and produce it to Respondent; however, Appellant waited to obtain one until the eve of the final hearing (*Id.*, P.19, L.1-5) and did not disclose it to Respondent until after the hearing began.

Based on the above, the Lower Court clearly exercised its discretion in sanctioning Appellant's failure to comply with the discovery rules. Precedent cited above establishes that the exclusion of documentary or testimonial evidence is an appropriate remedy for failing to respond to discovery, and Respondent contends that the facts of this case justified such sanctions. In *Downy* (Ct. App. 1987), this Court held that the trial court erred by fining a defendant but allowing him to testify at trial when the defendant had not answered interrogatories or appeared for a scheduled deposition because a monetary fine was not "a meaningful deterrent to those who might fail to submit to discovery in the future." Here, following the logic of *Downy*, the Lower Court's exclusion of documentary evidence was an appropriate sanction to deter future litigants from ignoring discovery requests for nearly two years.

ISSUE 5: The Lower Court appropriately exercised its discretion by denying Appellant's request for a continuance.

"The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record... Moreover, the denial of a motion for a continuance on grounds that counsel has not had time to prepare is rarely disturbed on appeal."²¹

As context, the final hearing was originally scheduled to proceed on January 21, 2025 (Final Order P.2 and P.4), however, that hearing was continued at the request of Appellant. (Transcript P.7, L.12-15). At the April hearing, the Lower Court inquired as to why the January

²¹ *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007).

hearing was continued. (Transcript P.9, L.15-19). Respondent's counsel explained his understanding was that the judge did not base the January continuance on a singular ground, just that Appellant made several arguments that day, including: (1) obtaining an appraisal; (2) needing more time; and (3) McGee's poor health (Transcript P.9, L.20 – P.10, L.8). Appellant also stated her understanding of why the January hearing was continued, although it is very difficult to ascertain with specificity what the Appellant alleges. (*Id.*, P.15, L.18 – P.17, L.6). To the best of Respondent's ability, it appears Appellant was referring to settlement negotiations, both before and after the continuance was granted, as well as learning new information in November of 2024. (*Id.*). The Lower Court did not issue an order memorializing their reasonings for continuing the January hearing.

At the final hearing in April of 2025, Appellant requested a continuance on the following grounds: "...the extraordinary circumstances of losing our father" and the accompanying stress since then (*Id.*, P.31, L.14-17), miscommunication within the Still family (*Id.*, P.31, L.17-25), Summer wanted to hold a funeral service for McGee (*Id.*, P.34, L.22-25; and P.35, L.5-6), a desire to obtain an appraisal (*Id.*, P.35, L.7-10), Summer was bitten by a poisonous spider which left her sick for five days (*Id.*, P.35, L.11-12), a desire to "have things in a more succinct manner" (*Id.*, P.35, L.12-14), and that Appellant had not yet found McGee's last will and testament, so Summer was unsure how the money for just compensation would be disbursed (*Id.*, P.39, L.20-23).

Before deciding the continuance issue, the Lower Court asked Appellant, if it were to grant a continuance, what the Appellant's plans would be in the interim (*Id.*, P.34, L.14-21). Summer replied, mentioning the need to hold a funeral service for McGee, that for the last seven years she could not afford to obtain an independent appraisal, that she was bitten by a poisonous spider, and that she would like to have more things in a succinct manner (*Id.*, P.35, L.5-15). Respondent replied

to Appellant's request for a continuance and cited the fact that the January hearing was continued on some of the same grounds (*Id.*, P.35, L.16, through P.36, L.11). The Lower Court ultimately declined to continue the final hearing because the Lower Court did not believe a continuance was appropriate in light of the fact that Summer was the primary spokesperson at the January hearing (Final Order, P.6), and because the Lower Court found that a continuance would not contribute in terms of information coming before the court (Transcript, P.38, L.4-10). Summer then attempted to re-argue for a continuance, stating she wanted to be able to introduce the estimate for building a basketball court and wanted to obtain an independent appraisal (*Id.*, P.38, L.15-17). The Lower Court replied, stating Appellant was "time-barred" from doing those things, and that Appellant had missed multiple opportunities to obtain that information and provide it to Respondent (*Id.*, P.38, L.18-24).

Based on the above, Respondent contends the trial judge acted appropriately and the decision to deny a second continuance was well within the judge's discretion. While Respondent is sympathetic to the Still family for the loss of McGee, as well as Summer's financial constraints, Respondent believes the Lower Court was correct in stating that a continuance would not contribute in terms of additional information or evidence coming before the court. The Still family had nearly five years from the date this action was initiated to compile the necessary funds and obtain an independent appraisal, but they failed to do so. The need to obtain an independent appraisal was cited by Appellant in support of continuing the January hearing, and there is no indication Appellant even took the steps to contact an appraiser before the final hearing in April. Even if Appellant's did obtain an appraisal, they still would have needed to convince a court to overlook the fact that for nearly two years they failed to respond to discovery. Further, McGee's poor health was cited as a reason to continue the January hearing, meaning McGee's death did not

come as a surprise. Accordingly, Appellant had ample time to make funeral arrangements prior to McGee's death, and a continuance on this ground certainly would not have contributed in terms of additional evidence coming before the court. Lastly, locating McGee's last will and testament had no bearing on the just compensation issue being decided. The Lower Court and Respondent's counsel explained to Appellant the process of how the money will be paid into the court and that McGee's half of the money will be distributed in accordance with the Probate Court's directives (Transcript P.39, L.20 through P.42, L.4). Respondent does not believe that the other grounds offered by Appellant in support of a continuance merit a response.

ISSUE 6: The Lower Court's rulings did not deprive Appellant of due process.

"If the taking of property under eminent domain proceedings accords the landowner a reasonable opportunity to be heard on the question of damages, then the essentials of due process are met."²² "As far as due process... [is] concerned, no particular procedure is guaranteed. The constitutional requirements are satisfied if the condemnee has: (1) reasonable notice; (2) reasonable opportunity to be heard and present the claim or defense; and (3) reasonable compensation for the property taken."²³ "If the trial accords the landowner the guarantee of adequate compensation under equitable rules, then the requirements of due process are met."²⁴ Although Respondent firmly believes this issue is not preserved for appellate review, Respondent contends in the alternative that Appellant received adequate due process.

Appellant contends she was denied due process as a result of the combined effect of three rulings, to wit: (1) proceeding without substitution of a deceased party; (2) denying a continuance

²² *Timmons v. South Carolina Tricentennial Commission*, 254 S.C. 378, 175 S.E.2d 805 (1970).

²³ *Timmons*, (1970), citing 27 *American Jurisprudence (2d)*, p. 242 Eminent Domain No. 376.

²⁴ *Timmons*, (1970).

needed to address estate issues²⁵ and prepare for trial; and (3) denying Appellant the ability to secure valuation evidence. Since Appellant's desire to obtain valuation evidence, specifically an independent appraisal, was mentioned only as a ground in support of her continuance request (Transcript P.35, L.6-9), Respondent re-frames Appellant's alleged issue as whether proceeding without substitution, combined with denying a continuance, deprived Appellant of due process.

As to the denial of a continuance prong of Appellant's alleged issue, "[t]he grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record... Moreover, the denial of a motion for a continuance on grounds that counsel has not had time to prepare is rarely disturbed on appeal."²⁶ "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied."²⁷

Here, the sole issue for the Lower Court to decide at the final hearing was the issue of just compensation. (Transcript P.32, L.6 – P.33, L.21). Therefore, it follows that a continuance would be warranted if the Lower Court determined that additional time would assist a party in presenting evidence on the issue of just compensation. The Lower Court explicitly questioned Appellant on this point (Transcript P.34, L.14-21), and the Lower Court heard arguments from both sides (Transcript P.34-41). The Lower Court denied Appellant's continuance request, stating, "I've not heard anything today that a delay would help in terms of information coming before the Court." (Transcript P.38, L.4-10). The Lower Court's finding that a continuance would not help in terms

²⁵ Appellant's use of "estate issues" is misleading. The only "estate issues" specifically mentioned to the Lower Court were a desire to locate McGee's last will and testament (P.39, L.20-23), Appellant's desire to plan a funeral service for McGee (P.34, L.22-25; and P.35, L.5-6), and Appellant's question about the division of money since a will had not come forth (P.39, L.20-23).

²⁶ *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007).

²⁷ *State v. Brewer*, Appellate Case No. 2017-002563, Unpublished Opinion No. 2020-UP-255 (Ct. App. Aug 26, 2020) (quoting *Ungar v. Sarafite*, 376 U.S. 575, 84 S.Ct. 841 (1964)).

of information coming before the court illustrates that denying a continuance was based on an appropriate exercise of discretion. Further, after the Lower Court indicated it was denying a continuance, Appellant reasserted that she wanted to get an appraisal. (Transcript P.38, L.15-17). The Lower Court responded stating she was “time-barred” from doing that. (Transcript P.38, L.18-24). This further indicates the Lower Court considered the implications of Appellant’s failure to comply with discovery rules and concluded, even if Appellant did secure an appraisal, it would still be excluded at a future hearing. Lastly, Respondent informed the Lower Court that the January hearing was continued, at least in part, because Appellant stated she would get an appraisal, she needed more time, and her father’s poor health. (Transcript P.9, L.15-25; and P.35, L.17-19). Appellant reasserted these grounds in support of a second continuance. In sum, the Lower Court refused to grant a continuance because it found that more time would not lead to more evidence coming before the court, and because Appellant sought a continuance on some of the same grounds that Appellant secured a continuance roughly three months prior. When looking at the reasons presented to the Lower Court, it is clear the denial of a continuance was not arbitrary, and therefore did not deprive Appellant of due process.

As to the other prong of Appellant’s alleged issue, regarding proceeding without substitution for a deceased party, Respondent would first point out that because the Lower Court could not order substitution *sua sponte*, it appears Appellant is now arguing that due to her failure to move for substitution, Appellant deprived herself of due process. Such an argument would be a logical impossibility.

Alternatively, Appellant’s brief fails to establish that she has standing on appeal to allege a deprivation of due process rights that belonged to McGee Still’s estate. This Court sent a letter on July 30, 2026, which indicates Sara Still is the Appellant, not McGee Still’s estate. Accordingly,

Appellant Sara Still must prove she suffered an actual or imminent injury fairly traceable to the lack of participation by McGee Still's estate.²⁸ Appellant only alleges that proceeding without substitution and denying a continuance deprived her of a meaningful opportunity to participate and present valuation evidence. However, proceeding without substitution for McGee Still's estate did not impact Summer Still on behalf of Sara Still's ability to participate in the hearing and present valuation evidence. Only the Lower Court's ruling on Respondent's motion *in limine* – for which Appellant does not allege error – and the denial of a continuance could have possibly impacted Appellant's ability to be meaningfully heard and present valuation evidence. In other words, Appellant has alleged a potential injury regarding the denial of a continuance, but has failed to allege an injury resulting from the lack of participation by McGee Still's estate. Accordingly, Appellant lacks standing to assert this issue on appeal.

In the alternative, even if the Lower Court erred and deprived Appellant of due process, the error was harmless. Assuming the Lower Court had granted a continuance and *sua sponte* ordered substitution for McGee Still's estate, the landowners' opportunity to be heard would have been limited to the exact same extent as it was limited at the April hearing. Appellant would have needed to convince the Lower Court to overlook nearly two years of failing to respond to discovery. The Lower Court's repeated use of the words "time-barred" indicates the Lower Court's ruling on Respondent's motion *in limine* to exclude would have been the same after granting a continuance. Further, the Lower Court likely would have excluded any documentary evidence and testamentary evidence offered by a representative of McGee's estate. The Lower Court only permitted Summer Still on behalf of Sara Still to call witnesses because Summer Still emailed a potential witness list to Respondent. (Transcript P.37, L.10-20). McGee Still, nor Susan Fusco

²⁸ *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149–150, 130 S.Ct. 2743, 177 L.Ed.2d 461 (2010).

when McGee Still was alive, sent an email to Respondent identifying potential witnesses. Therefore, it is very likely that with or without a continuance and/or with or without party substitution, the landowners' opportunity to be heard and ability to present valuation evidence would have been restricted to the same extent.

ISSUE 7: The Estate of McGee Still was not a necessary party requiring joinder, and even if it was a necessary party, any error was harmless.

Appellant cites Rules 17(a) and 19, SCRCP, as well as S.C. Code Ann. § 62-3-614, and “*Fisher v. Huckabee*, 419 S.C. 292, 797 S.E.2d 703 (2018)”²⁹ [sic] in support of her argument that the estate of McGee was a necessary party, and whose absence necessitates reversal. In spite of this issue not being preserved for appellate review, Respondent offers the following arguments as an alternative.

Rule 17(a) and Rule 19, SCRCP, both address party joinder, and both rules are identical to the Federal Rules of Civil Procedure.³⁰ The United States Supreme Court, interpreting Rule 17(a), FRCP, issued a unanimous opinion, stating, “Rule 17(a) directs that ‘[e]very action shall be *prosecuted* in the name of the real party in interest.’ (*emphasis added*). That Rule, as its text displays, speaks to joinder of *plaintiffs*, not defendants.”³¹ Rule 17(a), SCRCP contains the same language, “[e]very action shall be *prosecuted* in the name of the real party in interest.” (*emphasis added*). Accordingly, Respondent will not address Rule 17(a) because it does not apply to the issue of Defendant-McGee’s death. Similarly, *Fisher* (2018), analyzes only whether the plaintiff met the real party in interest requirement of Rule 17(a), SCRCP.

²⁹ Respondent believes Appellant may have incorrectly cited *Fisher*, and instead believes Appellant is citing *Fisher v. Huckabee*, 422 S.C. 234, 811 S.E.2d 739 (2018).

³⁰ “This Rule 19(a) is the same as the Federal Rule.” Notes under Rule 19, SCRCP; “This Rule 17(a) is current Federal Rule 17(a).” Notes under Rule 17, SCRCP.

³¹ *Lincoln Property Co. v. Roche*, 126 S.Ct. 606, 163 L.Ed.2d 415, 546 U.S. 81 (2005).

As to Rule 19, SCRCP, Appellant's argument seemingly jumps to two conclusions without any analysis or nuance. First, Appellant argues any time a party possesses a direct ownership or financial interest in real property that is at-issue in a case, that party must be considered a necessary party under Rule 19(a). Second, Appellant seems to argue that every time a necessary party under Rule 19(a) is absent from a proceeding, their absence undermines the proceeding's validity and fairness, which necessitates the order be vacated and matter remanded. However, Rule 19 explicitly lays out a nuanced analysis, and this analysis is absent from Appellant's initial brief. Therefore, this issue should be deemed abandoned on appeal as Appellant's brief contains only conclusory arguments.

Rule 19(a), SCRCP describes two scenarios when a person should be joined as a party, if feasible. If joinder of a person described in Rule 19(a)(1)-(2) is not feasible, Rule 19(b) provides four factors for the court to analyze in determining whether to proceed in that person's absence or whether the action should be dismissed. If the court determines the action should be dismissed, only then is the absent person considered indispensable. The notes under Rule 19 provide some insight, stating, "Dean Lightsey, in *Code Pleading*, notes that the number of cases in which there is truly an 'indispensable party' in whose absence the court should not proceed are very rare. *Id.* at 109-110."

At the time of the final hearing, a Personal Representative for McGee's Estate had not been identified or proposed. As a result, it is impossible to determine the threshold questions in Rule 19(a), whether that person is subject to service of process and whether they would deprive the court of jurisdiction. For the sake of the analysis, Respondent will assume the fictional representative was subject to service and would not destroy jurisdiction.

Rule 19(a)(1) does not apply because complete relief was in-fact accorded among those already parties. Here, “complete relief” simply means just compensation because just compensation was the sole issue in dispute (Transcript P.32, L.6 – P.33, L.21) and therefore was the only relief Appellant could receive. Further, any estate issues were collateral to the issue of just compensation because just compensation could be, and was, determined without first resolving the estate issues.

Rule 19(a)(2)(i) does not apply because disposition of the action in the absence of McGee’s estate did not impair the estate’s ability to protect its interests. The estate of McGee’s ability to protect that interest was impaired solely by McGee’s, and his attorney-in-fact’s, failure to respond to discovery. As previously argued, the Lower Court’s ruling prohibiting Sara Still’s attorney-in-fact from introducing exhibits would have applied to a representative of McGee’s estate. An estate representative would have further been prohibited from calling witnesses because the only reason the Lower Court allowed Sara’s attorney-in-fact to call witnesses was because she emailed a potential witness list to Respondent (Transcript P.37, L.10-20), which McGee and his attorney-in-fact failed to do. Therefore, the absence of an estate representative would not have impaired their ability to protect that interest any more than their failure to respond to discovery impaired it.

Rule 19(a)(2)(ii) does not apply because disposition of the action in the absence of an estate representative did not present a substantial risk of inconsistent obligations. In fact, disposition of the action imposed zero obligations on the landowners, and minimal obligations on Respondent. Respondent’s only obligation was to pay \$7,100 into the court. (Transcript P.39, L20 – P.40, L22). How that money would be distributed would have been adjudicated by the Probate Court. (*Id*). Appellant’s only obligation was to handle estate matters in the Probate Court, which she would

have needed to do regardless of this action. Therefore, that obligation was not imposed by disposition of the action.

Assuming for argument's sake that Respondent's analysis of Rule 19(a) is incorrect, Respondent will analyze the four factors in Rule 19(b). First, a judgment rendered in the absence of an estate representative was not prejudicial because, as mentioned above, the Lower Court would have prevented the estate representative from offering testimonial and documentary evidence. Meaning the judgment would have been rendered based on the same amount of evidence regardless of whether an estate representative was present or absent. Second, any prejudice was lessened or avoided by Respondent's counsel informing Appellant of their right to request a subsequent hearing in Circuit Court following the Probate Court's adjudication of McGee's estate, if some dispute still existed as to the division of the just compensation monies. (Transcript P.40, L.9-16). Third, the judgment rendered was adequate because the amount of the judgment exactly equaled a licensed appraiser's expert opinion as to valuation. (Transcript P.76, L7-10; and P.77, L10-13). Further, Respondent had two separate appraisals and used the one which assigned a higher value to the subject property (Transcript P.97, L.7-11). Fourth, if the action was dismissed for nonjoinder, Respondent would have had a remedy, albeit not an adequate remedy. Respondent's remedy would have been to re-file the action. However, this is inadequate because the value of just compensation must be determined as of the date the action was filed. (S.C. Code Ann. § 28-2-440). Therefore, the amount of just compensation paid by Respondent would have been substantially inflated due to five years of appreciation in the property's value, and Respondent would have been required to pay for another appraisal. Accordingly, the remedy would not have been adequate.

If Respondent's analysis above is incorrect and McGee's estate was a truly indispensable and necessary party, and the Lower Court erred by failing to order joinder *sua sponte*, then in the

alternative, that error was harmless. Respondent's motion *in limine* sought to exclude documentary and testamentary evidence offered by Sara and McGee Still. The Lower Court's ruling prohibited Sara's attorney-in-fact from introducing documentary evidence but allowed witness testimony. That ruling also provides insight into what the Lower Court's ruling would have been if a representative of McGee's estate were present. The Lower Court repeatedly told Sara's attorney-in-fact that she was "time-barred" from introducing documentary evidence. (Transcript P.36, L18 – P.37, L10). McGee received Respondent's first discovery requests at the same time as Sara and neither responded (Transcript P.7, L.4-9), and McGee's attorney-in-fact received further attempts at discovery at the same time as Sara's attorney-in-fact and neither responded (Transcript P.7, L.12-22). Thus, to the extent Sara and her attorney-in-fact were "time-barred," McGee, his attorney-in-fact, and an estate representative would also be "time-barred." The Lower Court denied the testamentary evidence part of Respondent's motion *in limine*, thereby allowing Sara's attorney-in-fact to call witnesses, solely because Sara's attorney-in-fact emailed Respondent's counsel a list of potential witnesses. (Transcript P.37, L.10-20). However, McGee and his attorney-in-fact failed to send a similar email. Therefore, it is highly likely a representative of McGee's estate would have been prohibited from calling witnesses in addition to introducing exhibits. Any error was therefore harmless because an estate representative would not have been allowed to introduce any evidence and therefore would not have meaningfully contributed to the hearing.

CONCLUSION

Issues numbered I, II, V and VI – as they are numbered in Appellant's brief – were not preserved for appellate review. Appellant failed to raise those issues or object, or at minimum failed to do so with sufficient specificity. The lack of sufficient specificity is apparent from the

lack of rulings on those issues. Further, Appellant failed to file a Rule 59(e) motion which is required to preserve issues whenever the Lower Court fails to rule on them.

As to the denial of a continuance, the transcript evidences the Lower Court exercised ample discretion. The Lower Court questioned Appellant regarding her plans in the interim, if a continuance were granted, and heard arguments from both sides. Ultimately, a continuance was denied for two reasons. First, Appellant sought a second continuance on same grounds used to secure a continuance three months prior. Second, even if Appellant obtained an appraisal, it would have been excluded at a subsequent hearing due to Appellant's outright failure to respond to discovery for nearly two years, or as the Lower Court put it, Appellant was simply "time-barred."

As to Respondent's motion *in limine*, the Lower Court appropriately exercised its discretion by denying it in part and granting it in part. By partially granting the motion, the Lower Court imposed an appropriate sanction to deter future parties from committing similar discovery misconduct. An outright failure to respond to discovery over the course of two years is egregious. Accordingly, it was well within the Lower Court's sound discretion to impose a harsh sanction.

Lastly, as an alternate harmless error argument applicable to all issues on appeal, Appellant simply misunderstood the "highest and best use" concept used to value parcels.³² If Appellant and a representative of McGee's estate were allowed to offer any and all evidence, their valuation would have been less than Respondent's valuation. It is apparent Appellant attributed sentimental value to the concrete slab or "basketball court" on the property, for which Respondent is truly sympathetic, but it remains a fact the parcel's value as a basketball court was less than its value as a developable lot. In other words, the issues Appellant now complains of on appeal served to thwart Appellant's unknowing attempts to reduce the just compensation award for the taking.

³² The entire exchange regarding highest and best use is found on transcript pages 83-119. Specifically, see P.83, L.2 – P.84, L.19; P.90, L.3 – P.92, L.15; P.98, L.2-22; P.108, L.15 – P.109, L.13; and P.118, L.5 – P.119, L.8.

Lexington, South Carolina
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Respectfully submitted,

s/ S. Murry Kinard

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