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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William W. Wheeler, III, Presiding Judge

Case No. 2026-CP-40-00467
Appellate Case No. 2026-001100

Elsbeth Murday, Appellant,

v.

Alanna Murday, Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DISMISSING APPELLANT'S APPEAL FOR FAILING TO FILE AND SERVE THE NOTICE OF INTENT TO APPEAL AS REQUIRED BY S.C. CODE ANN. § 62-1-308(a)?**

- II. DID THE CIRCUIT COURT ERR IN DISMISSING APPELLANT'S APPEAL FOR FAILING TO FILE AND SERVE THE STATEMENT OF ISSUES ON APPEAL AS REQUIRED BY S.C. CODE ANN. § 62-1-308(b)?**

STATEMENT OF THE CASE

On or about January 9, 2025, David E. Murday (“Decedent”) died testate. (Motion to Dismiss Appeal p. 1; R. p. ____). Respondent Alanna Snow Murday, as the primary Personal Representative named in Decedent’s Will, filed the Application for Informal Appointment and Probate of Will on February 13, 2025, with the Richland County Probate Court. (*Id.*) Respondent has since resigned as the Personal Representative of the Estate and Donald A. Murday, who is named as the alternate Personal Representative in Decedent’s Will, has been appointed. (Affidavit of Don A. Murday p. 1; R. p. ____). Decedent’s Will, as amended by the Private Agreement Among Successors filed June 6, 2025, provided that his real property located at 828 Whaley Street, Columbia, SC 29201 (TMS No. R08913-08-02) (“Property”) be sold and the proceeds split equally between Decedent’s children, herein the Appellant and Respondent. (Motion to Dismiss Appeal p. 1; R. p. ____). Respondent entered into a contract for the sale of the Property for the appraised value of \$450,000.00 with a closing date of December 5, 2025. (Motion to Dismiss Appeal p. 2; R. p. ____). Appellant filed an Application for Restraint on December 2, 2025, requesting that the Richland County Probate Court restrain Respondent from selling the Property. (*Id.*) Appellant’s Application for Restraint was heard by the Honorable Amy W. McCulloch on January 12, 2026, and was denied on January 15, 2026. (*Id.*)

Appellant attempted to appeal Judge McCulloch’s Order by emailing a Notice of Intent to Appeal to Circuit Court (“Notice of Intent to Appeal”) to the Probate Court on January 16, 2026. (Motion to Dismiss Appeal p. 3; R. p. ____). Appellant also filed the Notice of Intent to Appeal with the Circuit Court on January 27, 2026, and later filed an Affidavit of Service with the Circuit Court on March 13, 2026. (Notice of Intent to Appeal; Affidavit of Service; R. p. ____). Respondent filed a Motion to Dismiss Appeal on February 5, 2026, due to Appellant failing to

follow the filing requirements of S.C. Code Ann. § 62-1-308(a). (Motion to Dismiss Appeal; R. p. ____). After the Motion to Dismiss Appeal was filed but before the hearing, Appellant also failed to timely file the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308(b). (Order Granting Respondent's Motion to Dismiss Appeal; R. p. ____). Respondent raised this issue at the hearing on Respondent's Motion to Dismiss Appeal held March 19, 2026, and the Court included this issue in its Order. (*Id.*)

The Honorable William W. Wheeler, III granted the Respondent's Motion based on Appellant's failure to comply with the statutory filing requirements by Form 4 Order filed March 20, 2025. (Form 4 Order Granting Respondent's Motion; R. p. ____). Appellant filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC, against Judge Wheeler's Form 4 Order on March 25, 2026. (Appellant's First Motion to Alter or Amend; R. p. ____). Judge Wheeler denied Appellant's Motion on April 8, 2026. (Form 4 Order Denying Appellant's First Motion to Alter or Amend; R. p. ____). Respondent filed a formal Order pursuant to Judge Wheeler's Form 4 Order on March 27, 2026, and Appellant filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC, on April 6, 2026, against the formal Order. (Order Granting Respondent's Motion; Appellant's Second Motion to Alter or Amend; R. p. ____). Judge Wheeler has not ruled on Appellant's second Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC, but the Honorable Daniel Coble ruled on August 12, 2026, that there was no "material fact or principle of law that has either been overlooked or disregarded," so it is understood that Judge Wheeler's prior denial of Appellant's Motion to Alter or Amend also applied to Appellant's second Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC. (Form 4 Order; R. p. ____).

Appellant filed a Notice of Appeal to the Court of Appeals on May 6, 2026, for (1) the March 27, 2026 Order Granting Respondent's Motion to Dismiss Appeal and (2) the April 8, 2026

Form 4 Order denying Appellant's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCF. (Notice of Appeal). The March 20, 2026 Order and the August 12, 2026 Form 4 Order are not listed in Appellant's Notice of Appeal and are thus not properly before the Court, though Appellant has included these Orders in the Argument of her Initial Brief.

STANDARD OF REVIEW

Issues of statutory interpretation present questions of law to be reviewed *de novo*. *Wimberly v. Barr*, 359 S.C. 414, 418, 597 S.E.2d 853, 856 (Ct. App. 2004). The circuit court must hear an appeal from the probate court “according to the rules governing appeals.” *Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 257 (1993). Thus, “if there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that this Court or the Court of Appeals would apply were the appeal taken directly to either of them.” *Id.* at 361, 434 S.E.2d at 257.

ARGUMENT

Respondent will only address whether Appellant properly filed and served the Notice of Intent to the Appeal and the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308, as these are the only two issues properly before this Court. Appellant has attempted to introduce unnecessary and irrelevant issues in this appeal, including issues from the probate proceeding and additional orders not originally included in her Notice of Appeal to the Court of Appeals. Therefore, Respondent asks that this Court disregard these unnecessary and irrelevant issues accordingly and Respondent will not address such issues unless this Court decides to address them.

I. The Circuit Court correctly dismissed Appellant's appeal for failing to file and serve the Notice of Intent to Appeal as required by S.C. Code Ann. § 62-1-308(a).

S.C. Code Ann. § 62-1-308 governs appeals from the probate court to the circuit court. S.C. Code Ann. § 62-1-308(a) specifically states that

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

If a party does not perfect service of an appeal, “the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice” because “[t]he requirement of service of the notice of appeal is jurisdictional.” *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004). In this case, once the Circuit Court determined that the appeal was not perfected, it had no jurisdiction to hear any other issues brought by Appellant.

First, Appellant did not properly or timely filed her Notice of Intent to Appeal with the Probate Court pursuant to S.C. Code Ann. § 62-1-308(a). On January 15, 2026, the Probate Court emailed Judge McCulloch's Order to the parties. On January 16, 2026, Appellant replied to the Probate Court's email with her Notice of Intent to Appeal attached. S.C. Code Ann. § 62-1-308(a) states that the notice of intention to appeal must be filed with the Probate Court within ten (10) days of receipt of the appealed from order. However, the emailed Notice of Intent to Appeal is not a proper filing with the Probate Court and the Notice of Intent to Appeal does not appear in the online database for the Probate Court. (Motion to Dismiss Appeal; R. p. ____). The Richland County Probate Court's "Estate Packet"¹ clearly states that documents must be mailed or dropped off to the Court. A filing is only proper "when delivered to and received by the proper officer." *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). Therefore, any purported filings emailed or faxed to the Court would be improper filings and would not be placed into the file or public record because the Court did not properly receive them, not because of a "potential procedural flaw[]" or lack of proper form. *Barnes v. State*, 433 S.C. 399, 859 S.E.2d 260 (2021). Further, since the Notice of Intent to Appeal does not appear in the online database, there is no public record of the Notice of Intent to Appeal being filed with the Probate Court to put third parties like the buyers of the Property or the closing attorney on notice of the appeal.

Appellant contends that the Probate Court and Respondent's counsel often emailed her with documents or responded to Appellant's emails, so she incorrectly believed email to be a proper method of filing. However, these examples used by Appellant did not involve documents

¹ Respondent asks the Court to take judicial notice of the Richland County Probate Court's website (<https://www.richlandcountysc.gov/Courts-Safety/Probate-Court/Estates>) and Word document titled "Estate Packet" because the website and Word document are not subject to reasonable dispute. Both the website and Word documents are (1) generally known within the territorial jurisdiction of this Court and (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Rule 201, SCACR.

that needed to be served by statute or rule on other parties, and Respondent's counsel had served and continues to serve Appellant with documents by mail when required. Therefore, since Appellant only emailed a copy of her Notice of Intent to Appeal to the Probate Court and a physical copy has not been filed with the Probate Court, Appellant has failed to properly or timely file the Notice of Intent to Appeal with the Probate Court within ten (10) days of the date of the Order, as required by S.C. Code Ann. § 62-1-308(a).

Next, Appellant did timely file the Notice of Intent to Appeal with the Circuit Court on January 27, 2026. (Notice). However, Appellant did not serve Respondent with her Notice of Intent to Appeal to the Probate Court or Circuit Court as required by S.C. Code Ann. § 62-1-308(a). The statute requires that Appellant serve a copy of the Notice on all parties within ten (10) days of the Order. In this case, Appellant did copy Respondent's counsel on her email to the Probate Court with the Notice, though this did not constitute proper service as explained below. Appellant also served Respondent with a copy of the Notice of Intent to Appeal filed with the Circuit Court by mail March 6, 2026, which was thirty-eight (38) days after the Notice of Intent to Appeal was filed with the Circuit Court and the Notice of Intent to Appeal should have been served on Respondent. Appellant has not filed a proof of service with the Probate Court evidencing such service, which Respondent agrees is not explicitly required by S.C. Code Ann. § 62-1-308(a), but Appellant did file an Affidavit of Service with the Circuit Court on March 13, 2026.

Respondent, in its Motion to Dismiss Appeal, cited the Supreme Court's Order Regarding Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules dated April 24, 2024, which states that only South Carolina lawyers can serve each other at the email addresses listed in the Attorney Information System, not *pro se* litigants. Appellant contends that the Supreme Court's Order Regarding Service by E-Mail in the Trial Courts dated

May 6, 2022, controls rather than the April 24, 2024 Order. The May 6, 2022 Order states that “[a] self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service” and similarly “[a] lawyer may consent in writing to accept service by e-mail from a self-represented litigant.” In this case, there is no evidence to show that either Appellant or Respondent’s counsel agreed in writing to be accept service by email, and conversely, Respondent’s counsel has served Appellant by mail throughout this matter. Therefore, regardless of which Order governs, Appellant did not properly serve Respondent by email pursuant to either Order.

Therefore, the Circuit Court was correct in dismissing Appellant’s appeal because Appellant failed to perfect her appeal by not properly or timely serving Respondent with the Notice of Intent to Appeal as required by S.C. Code Ann. § 62-1-308(a).

II. The Circuit Court correctly dismissed Appellant’s appeal for failing to file and serve the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308(b).

Even if the Court determines that Appellant properly and timely filed the Notice of Intent to Appeal and served Respondent with the Notice of Intent to Appeal, Appellant did not file the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308(b). S.C. Code Ann. § 62-1-308(b) specifically states that

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

Appellant admits in her Initial Brief that she failed to file the Statement of Issues on Appeal, but she argues that failing to file the Statement of Issues on Appeal should not be a ground for dismissal. In an unpublished case, *Tucci v. Tucci*, the Court of Appeals affirmed the Circuit Court’s dismissal of an appeal for failure to comply with S.C. Code Ann. § 62-1-308(b). No. 2016–UP–

526, 2016 WL 7407484, at *1 (Ct. App. December 31, 2016). The Court of Appeals relied on the language of the statute, as well as the Supreme Court's ruling in *State v. Brown* that "the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction . . .," 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004), and the Supreme Court's ruling in *In re Estate of Cretzmeyer* that the unambiguous terms of a statute must be followed. 365 S.C. 14, 615 S.E.2d 116, 116–17 (2005). Therefore, though unpublished, the Court of Appeals' ruling shows that dismissal of an appeal for failure to comply with S.C. Code Ann. § 62-1-308(b) is well-settled in the statute and prior case law.

Therefore, it is clear that the Circuit Court's dismissal of Appellant's appeal for failing to file and serve the Statement of Issues on Appeal was proper.

Again, Respondent believes these are the only two issues before this Court to consider for this appeal and Appellant's attempt to improperly include additional matters should be disregarded accordingly. If the Court decides to address such issues, Respondent requests leave to further brief these matters.

CONCLUSION

Accordingly, Respondent respectfully requests that this Court affirm the Circuit Court's dismissal of Appellant's appeal due to her failure to properly or timely file the Notice of Intent to Appeal with the Richland County Probate, her failure to properly or timely serve Respondent with the Notice of Intent to Appeal, and her failure to properly or timely file the Statement of Issues on Appeal as required by S.C. Code Ann. § 62-1-308.

Respectfully submitted,

s/William H. Edwards

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