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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY

Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2026-001664

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

Beverly Hennager.....Appellant

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

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FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL.....5

INTRODUCTION.....6

STATEMENT OF THE CASE.....6

A. Early Proceedings Leading to the Personal Representative's Removal.....6

B. October 27, 2016 Order Reinstating the Personal Representative.....7

C. Probate Court's September 3, 2021 Order.....7

D. Rule 60(b) Motion Filed but Not Adjudicated.....8

E. Circuit Court's June 19, 2024 Order.....9

F. Appellant's Objections to Proposed Order Pursuant to Rule 46.....9

G. Court of Appeals.....10

H. Continued Attempts.....10

I. The United States Supreme Court.....11

J. Form 4 - "This court will not accept any more filings".....11

STANDARD OF REVIEW.....12

ARGUMENT.....13

I. Overview.....13

II. The Circuit Court Refused to Adjudicate Appellant's Rule 60(b)(4) Motions.....13

A. The Record Shows a Pattern of Non-Adjudication.....13

B. A Form 4 Administrative Closure Is Not a Rule 60(b)(4) Adjudication.....15

III. The Form 4 Created a Preservation Catch-22 and Denied Due Process.....16

A. Preservation Cannot Turn on an Order the Court Refuses to Enter.....16

B. The July 14, 2026 Form 4 Deprived Appellant of Meaningful Opportunity to Be Heard.....17

IV. The July 14, 2026 Form 4 Is Void and Must Be Vacated.....18

CONCLUSION.....19

RELIEF SOUGHT.....20

TABLE OF AUTHORITIES

South Carolina Authorities

Rule 60(b)(3)–(4), SCRCP..... 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21

Rule 46, SCRCP.....9

South Carolina Case law

Branch Banking & Trust Co. v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006).....12, 16, 18

Coon v. Coon, 353 S.C. 207, 578 S.E.2d 391 (Ct. App. 2003).....17

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004).....16

Siau v. Kassel, 369 S.C. 631, 632 S.E.2d 888, 894 (Ct. App. 2006).....16

Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659

(Ct. App. 2002).....12, 16, 18

Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998).....6, 16, 17

Federal Court Authorities

Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009).....19

Compton v. Alton Steamship Co., 608 F.2d 96 (4th Cir. 1979).....16

District of Columbia v. Murphy, 314 U.S. 441 (1941).....18

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).....18

STATEMENT OF ISSUES ON APPEAL

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 July 14, 2026 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.

3. Whether, on remand, the matter should be reassigned to a different circuit judge outside Kershaw County, where the challenged judge also acted as the administrative gatekeeper for the Rule 60 filings and would otherwise be reviewing his own prior handling of the case.

INTRODUCTION

In its June 11, 2025 opinion, the Court of Appeals held that Appellant's subject-matter jurisdiction and due-process arguments were unpreserved, citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998), which holds that an issue must be raised to and ruled upon by the trial court to be preserved for appellate review. In light of that preservation requirement, this appeal asks whether the circuit court could then refuse to adjudicate Appellant's July 9, 2026 Rule 60(b)(4) motion—the necessary vehicle to preserve those claims—and instead administratively close the case.

Due process is not satisfied by withholding the ruling needed to preserve appellate review, because without an adjudication there is no decision for appellate review, and the claim is lost before it can be heard.

As shown in the Statement of the Case, Appellant repeatedly invoked Rule 60(b) and requested written rulings before, during, and after appeal, yet the circuit court never ruled and then closed the case. Any claim of nonpreservation therefore stems from the court's failure to act, not from any failure by Appellant to raise the issues.

STATEMENT OF THE CASE

A. Early Proceedings Leading to the Personal Representative's Removal

Kay Jennings moved from Camden, South Carolina, to Virginia in 2008 and died there on March 31, 2010 (R. p. 132). The next month, Mary Dearden was appointed personal representative in Kershaw County. On June 13, 2013, the probate court removed Dearden as personal representative and appointed a special administrator, citing, among other things, her

failure to respond to discovery and to secure estate assets (R. pp. 5-6). The matter was later appealed and remanded in 2015 for more specific findings of fact and conclusions of law.

B. October 27, 2016 Order Reinstating the Personal Representative

On July 20–21, 2016, the newly appointed probate judge conducted an evidentiary hearing. The parties stipulated to a Nov. 2006 email from Katherine Dauphin regarding a promissory note owed to Decedent by Michael Jennings alleging the note was not fully paid (R. p. 8, second paragraph). In its October 27, 2016 order, the probate court found that Decedent had capacity from 2007 through 2008, but not thereafter (R. p. 13, lines 33-35). The court reinstated Dearden as personal representative, ordered Dearden and others to reimburse the estate for funds taken from joint Virginia accounts, and directed preparation of an amended accounting. Both sides appealed, and the Circuit Court affirmed in its July 10, 2020 order (R. pp. 16-32). *

C. Probate Court's September 3, 2021 Order

When the probate court's 2016 order was affirmed, the personal representative was again directed to amend the accounting. Appellant requested a hearing to address omissions and inaccuracies the personal representative had testified she would correct, in particular the unrecorded promissory note. A hearing was held in March and June 2021 (unrecorded).

On April 7, 2021, Respondent's counsel, Moultrie Burns, Esq., stated in his post-hearing memorandum: "At the Zoom hearing on March 16, 2021, the Court decided to consider whether the promissory note owed to the Decedent by Michael Jennings was satisfied prior to his mother's death" (R. p. 125, first paragraph). Burns submitted partial tax documents

* Appellant did not appeal the 2020 affirmance because it did not address jurisdiction, the promissory note, need for supplementary inventory and other unresolved issues.

reflecting payment of principal only (R. p. 126). Appellant sought complete tax records to determine whether the interest on the note was paid, as required by the note's terms.

When discovery requests were ignored, Appellant filed two motions to compel production. The Clerk did not docket either motion; instead, the presiding judge personally returned both, in letters stating they could not be accepted because there was "no pending litigation" (R. pp. 33 & 34). Approximately five weeks later, the Court issued the September 3, 2021 order stating: "Finding of Fact: 1) The promissory note of Michael Jennings was satisfied before the Decedent's death and the Inventory is correct in not listing such debt as an asset" (R. p. 35).†

D. Rule 60(b) Motion Filed but Not Adjudicated

Appellant appealed the September 3, 2021 probate order to the circuit court. On August 11, 2023, while that appeal was pending, Appellant filed a written "Waiving Oral Argument, Written Argument for Removal of PR, Motion for Relief of Judgment/Order Pursuant Rule 60(b)(3)" to place her Rule 60 arguments before the court despite misdirected and late notices. The motion alleged fraud, misrepresentation, jurisdiction voidness, and due-process violations, and asserted that the probate court's 2021 adjudication of the promissory note rendered the October 2016 order interlocutory and subject to revision (R. pp. 55-81). When the court did not respond, Appellant also filed an Agreement to Consolidate, which likewise remained unheard (R. 82-83).

† The Order did not address Appellant's pending jurisdictional objections, the need for a supplemental inventory, or inaccuracies and omissions the PR testified she intended to correct.

E. Circuit Court's June 19, 2024 Order

During the May 29, 2024 remote hearing, Appellant reiterated lack of subject-matter jurisdiction and due-process defects as grounds for Rule 60 relief. As noted on the record (R. p. 123, lines 10-11 and p. 124, lines 24-25), Respondent's presentation was inaudible to Appellant. Appellant only learned the substance of Respondent's presentation when she received Respondent's proposed order, which included findings not found in the prior record. The order under appeal—the probate court's September 3, 2021 order—expressly found that "the promissory note of Michael Jennings was satisfied before the decedent's death" (R. p. 35). Respondent's proposed order recasts that finding as an unappealable assertion first raised on appeal, stating that Appellant "attempted on this appeal to raise allegations and speculations that should have been investigated during discovery," and identifying as an example Appellant's allegation that the promissory note remained unpaid. The circuit court's June 19, 2024 order adopts that reframed language (R. p. 38, last paragraph - p. 39).

F. Appellant's Objections to Proposed Order Pursuant to Rule 46

After the court returned her motion for reconsideration unfiled, Appellant timely tendered Rule 46 objections on June 18, 2024 (tracking showing delivery R. p. 131) and when it wasn't recorded, re-sent the same objections by express mail. The clerk nevertheless failed to docket either mailing. Appellant then emailed the objections to chambers (email R. p. 84 with attached objections R. pp. 85-98); chambers acknowledged receipt. No written ruling on those objections appears in the record. The objections detailed Respondent's repeated discovery failures (including the conduct that led to her 2013 removal), renewed requests regarding the promissory

note, jurisdictional issues, alleged fraud on the court, denial of due process, and the interlocutory character of the 2016 order.

G. Court of Appeals

Appellant appealed, alleging due process violations in probate and circuit court, alteration of the findings under review by opposing counsel, and lack of subject-matter jurisdiction because Decedent was domiciled in Virginia and no South Carolina probate assets were shown on the record. On June 11, 2025, the Court of Appeals held that Appellant's void-order argument was not preserved because she did not file a Rule 60(b) motion in circuit court asserting that the 2024 order was void or that Dearden's counsel acted fraudulently (R. p. 42, 1.). The court also rejected the due process claims, stating that Appellant failed to appeal the probate court's refusal to consider her 2021 motions to compel and failed to file a Rule 60(b)(4) motion (R. p. 42, 2.). The opinion treated the 2016 probate order as law of the case and noted that the probate court "did consider the merits of her claim concerning the promissory note and found in its 2021 order the note was satisfied before M.K. Jennings's death" (R. p. 43, 3.). ‡

H. Continued Attempts

On June 24, 2025, additional Rule 60 submissions were returned unfiled (Letter from Ginger Farmer - "your case here is ended")(R. p. 45). On September 3, 2025, Appellant filed another Rule 60 motion; although it was docketed, the circuit court did not adjudicate it and

‡ The Court of Appeals' merits ruling confirms that the 2016 order was interlocutory, because the final determination of the promissory note was made in the 2021 order. It also undercuts the 2024 order's finding that the issue was first raised on appeal.

instead entered a Form 4 stating: "THERE IS NO JUDGMENT IN THIS CASE AND NO PAPERWORK WILL BE ADDED TO THIS ENDED APPEAL" (R. pp. 47-48; Returned R. p. 49). Appellant sought mandamus on September 11, 2025. After remittitur, Appellant again attempted to file Rule 60 relief in the circuit court; the clerk returned the submission stating that the case was closed and nothing further would be accepted (R. p. 52). On December 16, 2025, the Court of Appeals clerk advised that no action would be taken on Mandamus because the appeal had been remitted on November 19 (R. p. 53).

I. The United States Supreme Court

Appellant sought certiorari review in the United States Supreme Court, and certiorari and rehearing were denied on June 22, 2026.

J. Form 4 — "This court will not accept any more filings."

On July 9, 2026, Appellant filed the Rule 60(b)(4) motion at issue and a motion requesting a written ruling: "Motion to Vacate Void Orders Pursuant to Rule 60(b)(4)" (R. pp. 99-120), and "Motion for Written Order Pending Rule 60(b)(4) Motion" (R. pp. 121-122). The clerk, "per Chief Administrative Judge Daniel Coble's instruction," requested a written response before the court would rule. Respondent's counsel emailed chambers on July 13, 2026, urging closure, and Appellant replied the same day requesting adjudication on the merits (email string started by Deputy Clerk Cheryl Truesdale to counsel R. pp. 127-130). The circuit court issued no merits ruling; instead, on July 14, 2026, it entered the Form 4, relying on the Court of Appeals' June 11, 2025 opinion, stating that it would "not accept any more filings" and that "this order ends the case," thereby barring further filings without adjudicating Appellant's pending Rule 60(b)(4) motion (R. p. 54).

STANDARD OF REVIEW

The Court reviews de novo whether the July 14, 2026 Form 4 constituted a merits disposition or, in substance, a refusal to adjudicate Appellant's pending claims, because the characterization of an order is a question of law. The Court also reviews de novo whether the Form 4 violated due process and is void, because constitutional due-process questions are legal questions subject to independent appellate review. See *Branch Banking & Trust Co. v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006); *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002). Appellant's request for reassignment on remand is a remedial request grounded in the Court's supervisory authority to preserve the appearance and reality of fairness and impartiality.

ARGUMENT

I. OVERVIEW

This appeal presents a single legal question: whether the circuit court could lawfully refuse to adjudicate a timely, properly filed post-judgment Rule 60(b)(4) motion alleging lack of subject-matter jurisdiction and denial of due process, when the Court of Appeals expressly directed that such voidness claims be raised and ruled upon in the trial court. Rule 60(b)(4) is the appropriate vehicle for collateral attack on void judgments. Appellant repeatedly filed Rule 60(b)(4) motions (see Procedural Chronology below), but the circuit court never reached the merits; instead it entered an administrative Form 4 closing the file and barring further filings. Because the Form 4 did not grant, deny, or dismiss Appellant's Rule 60(b)(4) motion, it is not a merits disposition and cannot be used to insulate potentially void orders from collateral attack. The July 14, 2026 Form 4 is therefore void, and the proper remedy is vacatur and remand for an adjudication of the pending Rule 60(b)(4) motion.

II. THE CIRCUIT COURT REFUSED TO ADJUDICATE APPELLANT'S RULE 60(b)(4) MOTIONS

A. The Record Shows a Pattern of Non-Adjudication

The procedural chronology demonstrates that Appellant repeatedly invoked Rule 60(b)(4), yet never received a written ruling.

Although this appeal does not ask the Court to decide the merits of Appellant's Rule 60(b)(4) claims, the Rule 60 filings and related events are included for two limited purposes: (1) to show Appellant presented non-frivolous jurisdictional and due-process voidness grounds in the manner the Court of Appeals identified as necessary for preservation, and (2) to show the

same circuit judge — acting as supervisory/administrative judge — controlled docket access, directed clerks to refuse certain Rule 60 submissions, and then declined to adjudicate those that were accepted. That history bears directly on whether the July 14, 2026 Form 4 was a lawful disposition and on whether reassignment is appropriate on remand to ensure an impartial, reviewable adjudication.

Procedural Chronology (Rule 60(b)(4) filings and lack of adjudication)

1. 8/11/23 — Appellant filed her argument with a 60(b)(3) Motion alleging voidness/due process and fraud on the court (R. pp. 55-81). No written ruling issued.
2. 5/13/24 — Appellant filed an Agreement/Motion to Consolidate the pending Rule 60 motion with the circuit-court probate appeal hearing (R. pp. 82-83). No written ruling issued.
3. 5/29/24 — Oral argument held remotely, reasserted written argument.
4. 6/19/24 — Circuit court entered an order disposing of the probate appeal (R. pp. 37-40) by submitting a new finding. The order did not adjudicate the pending Rule 60(b) motion.
5. 6/25/24 — Appellant's "Objections to Proposed Order" were accepted by chambers after her motion for reconsideration was returned and her Rule 46 objections were not docketed (R. pp. 84-98). No written ruling issued.
6. 6/11/25 — Court of Appeals issued its opinion declining to reach Appellant's due-process and subject-matter-jurisdiction claims on preservation grounds, citing the absence of a Rule 60(b)(4) ruling below (R. pp. 41-44).
7. 6/24/25 — Clerk of Court returned Appellant's Rule 60 Motion; "Your case here is ended" (R. p. 45).
8. 9/4/25 — Circuit court entered a Form 4 in response to Appellant's 9/3/25 Rule 60(b)(4) filing, stating: "There is no judgment in this case and no paperwork will be added to this ended appeal" (R. pp. 47-48).
9. 9/9/25 — Appellant's Motion for Formal Ruling on Rule 60 Motion — was returned (R. pp. 49-51).

10. 9/11/25 — Appellant filed a petition for writ of mandamus seeking an order directing the circuit court to adjudicate the September 3, 2025 Rule 60 motion.
11. 12/9/25 — Letter from clerk of court returning Appellant's December 5 Rule 60 motion — "The case is closed … nothing else will be accepted" (R. p. 52).
12. 12/16/25 — Court of Appeals advised that no action would be taken on Appellant's motion to expedite Mandamus because the appeal had been remitted on 11/19/25, ending that court's jurisdiction (R. p. 53).
13. 7/9/26 — Appellant filed the Rule 60(b)(4) motion at issue and a motion requesting a written ruling (R. pp. 99-120 & R. pp. 121-122). No written ruling issued.
14. 7/14/26 — Circuit court entered the Form 4 at issue, stating the matter was closed "based on" the June 11, 2025 Court of Appeals opinion and that it would "not accept any more filings" (R. p. 54). The Form 4 did not grant or deny Rule 60(b)(4) relief on the merits.

At no point did the circuit court issue a written order granting, denying, or even procedurally dismissing the Rule 60(b)(4) motions. The July 14, 2026, Form 4 ended the case while leaving the pending July 9, 2026 Rule 60(b)(4) motion pending and unresolved.

B. A Form 4 Administrative Closure Is Not a Rule 60(b)(4) Adjudication

Rule 60(b)(4) is the prescribed mechanism for challenging judgments as void; when a litigant properly invokes it the trial court must decide the motion — by granting relief, denying relief on the merits, or dismissing the motion on an identified legal ground (for example, untimeliness).

The July 14, 2026 Form 4 did none of those things. Instead the Form 4 states: "This matter is closed based on the Court of Appeals' opinion filed June 11, 2025, and this court will not accept any more filings" and checks the box reading "This order ends the case" (R. p. 54). A court's administrative notation that a file is "ended" cannot substitute for the reasoned,

reviewable adjudication that Rule 60(b)(4) requires. A trial court may manage its docket, but it may not evade its duty to rule on a timely, non-frivolous claim that a judgment is void by (1) refusing to docket or decide the motion, and then (2) invoking finality through an administrative closure that bars further filings.

South Carolina preservation doctrine likewise assumes the trial court will enter a ruling that can be reviewed. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (issue must be raised to *and ruled upon* to be preserved). When a party files a motion and the court fails to rule, the party may file a motion seeking a ruling to preserve the issue. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004); *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888, 894 (Ct. App. 2006). Here, however, the circuit court did not rule on the pending Rule 60(b)(4) motion and then barred further filings altogether, making it impossible to obtain the ruling preservation doctrine requires.

Because the Form 4 contains no analysis or disposition of the Rule 60(b)(4) motion, it is not a merits denial; it is, in effect, a refusal to adjudicate. Treating it as a merits disposition would nullify Rule 60(b)(4)'s protective function and preclude any meaningful appellate review of alleged jurisdictional and due-process defects. See *Compton v. Alton Steamship Co.*, 608 F.2d 96 (4th Cir. 1979); *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).

III. THE FORM 4 CREATED A PRESERVATION CATCH-22 AND DENIED DUE PROCESS

A. Preservation Cannot Turn on an Order the Court Refuses to Enter

South Carolina law requires an issue to be "raised to and ruled upon" in the trial court to be preserved for appeal. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Coon v. Coon,* 353 S.C. 207, 578 S.E.2d 391 (Ct. App. 2003). The Court of Appeals relied on that rule in its June 11, 2025 opinion. The record shows Appellant did exactly what the Court of Appeals required: she filed multiple Rule 60(b) motions and repeatedly requested written rulings. The preservation problem thus did not result from any failure by Appellant to raise the issues; it arose because the circuit court repeatedly refused to adjudicate them and then closed the case by Form 4, making compliance with the Court of Appeals' directive impossible. The record establishes:

1. Appellant filed and attempted to file several Rule 60(b) motions including August 11, 2023 and July 9, 2026 motions (R. pp. 55-81 & R. pp. 99-120).
2. Appellant expressly requested written rulings on her motions (R. pp. 49-51; R. pp. 121-122).
3. No Rule 60(b) ruling was ever entered.
4. Instead, the circuit court used Form 4 closure orders to declare the appeal "ended" and to bar further filings (R. pp. 47-48; R. p. 54).

That sequence created a preservation "Catch-22": the Court of Appeals held that voidness claims had to be preserved through a Rule 60(b)(4) motion in the trial court, but the trial court refused to rule and then relied on closure to foreclose any further effort. A litigant cannot be faulted for failing to obtain an order the court itself declined to enter.

B. The July 14, 2026 Form 4 Deprived Appellant of Meaningful Opportunity to Be Heard

Due process requires a meaningful opportunity to be heard. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (due process includes "the opportunity to be heard at a meaningful time and in a meaningful manner"). Appellant's July 9, 2026 Rule 60(b)(4) motion raised serious voidness issues, including subject-matter jurisdiction and alleged procedural irregularities, and therefore warranted a ruling rather than a blanket closure. Referencing the personal representative's accounting and the court's 2016 Order, Appellant alleged that South Carolina probate jurisdiction was lacking because Decedent was domiciled in Virginia, no South Carolina probate assets were shown, and Decedent had relocated to Virginia while still competent, but could not later form a valid intent to change domicile after she was found incompetent. See *District of Columbia v. Murphy*, 314 U.S. 441 (1941) (domicile turns on actual residence and conduct, not a "floating" intent to return). She also alleged that motions and objections concerning discovery, the hearing, and the proposed order were not properly heard or docketed. By entering the July 14 Form 4 and barring further filings instead of adjudicating the pending motion, the circuit court deprived Appellant of any meaningful opportunity to have those issues decided in the forum and manner due process requires.

IV. THE JULY 14, 2026 FORM 4 IS VOID AND MUST BE VACATED

An order entered without jurisdiction or without due process is void and subject to collateral attack under Rule 60(b)(4). See *Branch Banking*, 369 S.C. at 551, 633 S.E.2d at 502; *Universal Benefits*, 349 S.C. at 183, 561 S.E.2d at 661. The July 14, 2026 Form 4 was entered while Appellant's Rule 60(b)(4) motion remained pending, and it foreclosed any ruling on the voidness issues that motion presented. Because the Form 4 cut off Appellant's only avenue for obtaining adjudication of those claims, it is itself void and must be vacated.

The record also reflects that the judge who controlled the filing process and entered the challenged order exercised gatekeeping authority over the Rule 60 filings. On remand, Appellant respectfully requests reassignment to a different circuit judge outside Kershaw County. Reassignment will avoid any appearance that the same judge is being asked to review the propriety of his own prior refusals to accept and adjudicate the pending motion and will promote confidence in the fairness of the proceedings. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

CONCLUSION

South Carolina preservation law assumes the trial court will enter a ruling that can be reviewed and that, if a court fails to rule, a party may file a motion seeking a ruling to preserve the issue. In this case, Appellant did exactly that, yet the circuit court never adjudicated those motions and instead used Form 4 closure to declare the case "ended" and bar further filings. That practice effectively nullifies Rule 60(b)(4)'s protective function by insulating potentially void orders from any ruling and foreclosing appellate review based on the court's own refusal to act. Due process does not permit preservation to turn on an order the court will not enter, nor does it allow a litigant to be faulted for failing to obtain a ruling that the court has structurally prevented.

The July 14, 2026 Form 4 should therefore be vacated, and the case remanded with instructions to accept and adjudicate the pending Rule 60(b)(4) motion by written order. This Court need not decide the merits of Appellant's Rule 60(b)(4) claims in this appeal; it need only restore the path for those claims to be adjudicated in the trial court. Appellant also respectfully requests reassignment to a different circuit judge outside Kershaw County to ensure a fair,

impartial, and reviewable adjudication, and to avoid any appearance that the same judge is being asked to review the consequences of his own prior refusal to permit or adjudicate the motion.

RELIEF SOUGHT

Accordingly, Appellant respectfully requests that this Court:

1. Vacate the circuit court's July 14, 2026 Form 4, which closed the case and barred further filings while Appellant's properly filed July 9, 2026 Rule 60(b)(4) motion remained pending and undecided, thereby preventing any adjudication of her jurisdictional and due-process claims and depriving her of a meaningful opportunity to be heard.

2. Remand with instructions that the circuit court accept and adjudicate Appellant's pending Rule 60(b)(4) motion by written order addressing her subject-matter-jurisdiction and due-process voidness claims.

3. Reassign the matter to a different circuit judge outside Kershaw County to ensure a fair, impartial, and reviewable adjudication and to avoid any appearance that the same judge who controlled the filing process is being asked to rule on the propriety and consequences of his own prior refusal to adjudicate the motion.

4. Permit reasonable discovery and, if the circuit court deems a hearing necessary, conduct a meaningful hearing at which Appellant may participate by remote technology to accommodate her travel limitations and ensure due process.

5. Grant any other relief the Court deems just, reasonable, and necessary to ensure meaningful adjudication of Appellant's Rule 60(b)(4) claims and to vindicate her due-process rights.

Respectfully submitted, October 9, 2026

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