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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Case No. 2017-CP-10-5426  
App. Case. No. 2020-001132

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Family Services, Inc., as Conservator for Muriel W. Clarkin.....Appellant,

v.

Bridget D. Inman, Muriel C Kennedy, and Patricia Clarkin Smith..... Respondents,

And

Bruce A. Berlinsky, Intervenor.

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FINAL REPLY BRIEF OF APPELLANT  
TO PATRICIA CLARKIN SMITH'S RESPONSE

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July 5, 2021

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## INTRODUCTORY STATEMENT

In this Reply Brief, Appellant addresses and replies only to those allegations and issues raised directly in the substance of Respondent Patricia Smith's (hereinafter "Smith") initial Brief. Appellants would assert that any issue or allegation raised in Appellants' Initial Brief, but not address by Respondent Smith in the body of her initial brief or addressed with only conclusory remarks is deemed conceded to and abandoned. *First Savings Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) ("issues not argued in the brief are deemed abandoned"); *R& G Construction, Inc. v. Lowcountry Regional Transportation Authority*, 343 S.C. 424, 437, 540 S.E.2d 113 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory."); *Fields v. Fields*, 342 S.C. 182, 536 S.E.2d, 684 (Ct. App 2000) (fn. 8: "she fails to argue the issue in the body of the brief and it is therefore deemed abandoned."); *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003) (fn. 3: "Since the County failed to argue this issue in the body of its brief, the issue deemed abandoned."); *Muir v. CR Bard, Inc.*, 336, S.C. 266, 519 S.E.2d 583 (Ct. App.1999) (conclusory arguments are deemed abandoned); *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) (an issue is deemed abandoned on appeal and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority). In this case, Smith in her response brief did not address any of the issues or allegations raised by Appellant in its initial brief including whether the court erred in granting Smith's motion under Rule 24(a) or (b), SCRCF; whether Rule 12(b)(8), SCRCF precluded Smith from intervening in this matter; whether Smith lacked standing to intervene; whether Smith's motion to intervene was untimely; whether the disposition of this matter would actually impede Smith's ability to protect her interest; and whether 602 Atlantic St., is the subject of this action.

## ARGUMENT

### **I. THOUGH THE ORDER GRANTING SMITH’S MOTION TO INTEREVENE IS AN INTERLOCUTORY ORDER IT IS STILL REVIEWABLE BY THIS COURT BECAUSE THE ORDER DEALS WITH COMPANION ISSUES TO THE IMMEDIATELY APPEALABLE MOTION TO DISMISS GRANTED IN THE SAME FORM FOUR ORDER AS THE MOTION TO INTERVENE.**

“An order that is not directly appealable may be considered if there is an appealable issue before the court. Here, an order in this case which is appealable is before the Court and, in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy), we will consider State Farm's cross-appeal.” *Edge v. State Farm Mut. Ins. Co.* 366 S.C. 511, 517, 623 S.E.2d 387 (2005) [T]his Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation . . .” *Morris v. Anderson County*, 349 S.C. 607, 610, 564 S.E.2d 649 (2002). “[T]he courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable.” *Pitts v. Jackson Nat. Life Ins.* 352 S.C. 319, 338, 574 S.E.2d 502 (Ct. App. 2002); *See. Brown v. County of Berkeley*, 366 S.C. 354 n.5, 622 S.E.2d 533, 538, n. 5 (2005) (holding that interlocutory orders may be considered on appeal when they are companion to reviewable issues but finding the motions to dismiss unreviewable because they lacked a sufficient "nexus or companionship" to justify the exercise of immediate appellate review). “The provisions of section 14-3-330 have been construed by this Court to serve the underlying policy favoring judicial economy by avoiding "piecemeal appeals." By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Morrow v. Fundamental Long-Term Care*, 412 S.C. 534, 537-38, 773 S.E.2d 144 (2015).

In this case a sufficient nexus or companionship exists between the order granting defendant Kennedy's motions to dismiss, which is immediately appealable, and the order granting Smith's Motion to Intervene. The Honorable Bentley Price granted both orders by the same form four order filed July 9, 2020, though the order states no factual or legal basis for granting or denying any of the five orders addressed in the form four order. However, in the very first section, section (a), of Kennedy's motion to dismiss she asserts as grounds for dismissal that "Plaintiff has no standing to claim the proceeds from a home equity line of credit (HELOC) alleged in the Amended Complaint, because neither the Plaintiff Conservator, nor Muriel Clarkin, has an interest in the mortgaged property [602 Atlantic St.] which is titled solely in the name of Patricia Clarkin Smith." Likewise, Smith asserts the basis for her grounds to intervene in this matter, as stated in her brief before this court and initially in her motion to intervene that the mortgaged property 602 Atlantic St., is the subject of this action. Appellant asserted in its brief and initially in its memorandums in opposition to Kennedy's Motion to Dismiss and Smith's Motion to Intervene that 602 Atlantic St., is not the subject of this action. None of Appellant's causes of action in this matter seek any relief from the court regarding 602 Atlantic St. Whether or not, 602 Atlantic St., is the subject of this action is clearly an issue before this Court on appeal regarding the order granting Kennedy's Motion to Dismiss. Further it is the only ground Smith has asserted as giving her a right to intervene in this matter. If 602 Atlantic St., is not the subject of this action then Smith lacks standing to intervene. This matter has, thanks to the actions of defendants and the intervenor, become a protracted litigation, impeding Appellant's ability to prosecute this matter to a conclusion on the merits. Appellant would respectfully assert that if this Court were to decline to review the order granting the motion to intervene such inaction would not serve judicial efficiency and economy. The decline of such discretion would not serve to narrow the issues of a future trial

and would further delay Appellant's ability to prosecute this action to conclusion as soon as reasonably is feasible and could potentially result in a subsequent appeal of the issue of intervention in the future. Though the order granting Smith's intervention is an interlocutory order, this Court has the discretion to review such an order where doing so would serve the interest of judicial economy and efficiency, where review would narrow the issues at trial and in order to address companion issues to matters directly appealable before the Court. In this instance Appellant would respectfully assert that issue of whether 602 Atlantic St., is the subject of this action, as both Kennedy and Smith contend it is, creates a sufficient nexus of issues between Kennedy's Motion to Dismiss and Smith's Motion to Intervene, such that is appropriate to review the order granting Smith's intervention in this appeal.

### **CONCLUSION**

Based upon the foregoing arguments, the arguments contained in Appellant's Initial Brief and the lack of arguments set forth in Smith's initial response brief, Appellant would respectfully assert that this Court should undertake appellate review of the order granting Smith's intervention and reverse the lower court's order granting Smith's Intervention.

RESPECTUFLY SUBMITTED,

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