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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge

Appellate Case No. 2021-000141

Estate of Patricia A. Brunson.....Intervenor/Appellant,

In Re:

Elaine Mincey, as Personal Representative for
the Estate of William Alexander Brunson, Jr.....Plaintiff/Respondent,

v.

David Scott Wich and C.J. Wingerter Company, LLC.....Defendants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. Whether the trial court properly ruled that it had subject-matter jurisdiction and authority to rule on Appellant's Motion to Intervene, Vacate Settlement & Remove Personal Representative.
- II. Whether the trial court properly denied Appellant's motion to intervene for the purpose of seeking to have the Order Approving Settlement vacated pursuant to Rule 60(b), SCRPC.
- III. Whether the trial court properly denied Appellant's motion to intervene for the purpose of removing the personal representative for the estate.

STATEMENT OF THE CASE

This is an appeal from the Circuit Court's order denying Appellant's Motion to Intervene, Vacate Settlement & Remove Personal Representative, as well as a subsequent order denying Appellant's motion to reconsider. The Honorable Bentley Price denied the motion via a Form 4 Order that was entered on December 8, 2020.¹ Judge Price subsequently issued a formal Order Denying Petitioner Patricia Brunson's Motion for Reconsideration, which was entered on January 13, 2021.² On February 5, 2021, Appellant served her notice of appeal, which was entered in this Court on February 8, 2021.³

This matter arises out of a car wreck that occurred in Charleston County on November 11, 2017. Appellant Patricia Brunson was driving her vehicle in which her husband, William Alexander Brunson, Jr., was a passenger. Their vehicle collided with a commercial vehicle at an

¹ Form 4 Order, entered Dec. 8, 2020.

² Order Denying Petitioner Patricia Brunson's Motion for Reconsideration [hereinafter, "Formal Order"], entered Jan. 13, 2021.

³ Appellant's Notice of Appeal, entered Feb. 8, 2021.

intersection. Mr. Brunson, who was ninety-four years old, sustained traumatic injuries and was transported by ambulance to MUSC, where he ultimately died after a period of significant pain and suffering.⁴

Law enforcement determined that both Mrs. Brunson and the other driver were at fault in the accident.⁵ Respondent Elaine Mincey, who is the adult daughter of Mr. Brunson from a relationship that preceded his relationship with Appellant Brunson, was appointed as personal representative for her father's estate.⁶ In that capacity, she hired undersigned counsel and pursued claims for wrongful-death and survival against the insurers for both Mrs. Brunson and the commercial driver. The parties ultimately settled these claims, with Selective Insurance Company agreeing to pay \$500,000 of its \$1 million policy on the commercial driver's vehicle, and USAA agreeing to pay its policy limits of \$50,000 for the claim against Mrs. Brunson.⁷ Because of Mr. Brunson's advanced age and the significance of his survival claim, the survival claim was worth more than the wrongful-death claim, and the \$550,000 in total settlement proceeds were thus allocated as \$400,000 on the survival claim and \$150,000 on the wrongful-death claim.⁸

⁴ Petition for Settlement Approval, entered Dec. 3, 2018, at 1–2, ¶¶ 1–3; Transcript of Hearing on December 7, 2020, at 22:9–19.

⁵ Petition for Settlement Approval at 2, ¶ 4; Transcript of Hearing at 4:21–5:13 and 15:8–25.

⁶ Id. at Exhibit A (Certificate of Appointment).

⁷ Id. at 2–3, ¶¶ 5–8.

⁸ Id. at 3, ¶ 9–10; Transcript of Hearing at 22:2–19.

On December 4, 2018, the Honorable Thomas L. Hughston, Jr., presided over the hearing on Respondent's Petition for Settlement Approval. Judge Hughston approved the settlement, and the court entered his Order Approving Settlement on December 11, 2018.⁹

On February 14, 2020, Appellant filed her Motion to Intervene, Vacate Settlement & Remove Personal Representative in the South Carolina Court of Common Pleas for Charleston County.¹⁰ In her motion, Appellant sought the following relief:

1. Vacatur of the Order Approving Settlement due to alleged fraud by Respondent, pursuant to Rule 60(b)(3), SCRCP;
2. Vacatur of the Order Approving Settlement due to voidness for lack of jurisdiction, pursuant to Rule 60(b)(4), SCRCP;
3. Joinder of Intervenor/Appellant as an indispensable party, pursuant to Rule 19, SCRCP; and
4. Removal of Respondent as personal representative for the estate.¹¹

The court scheduled the motion to be heard by Judge Price on December 7, 2020. Respondent filed her brief in opposition to the motion at 11:11 a.m. on December 4, 2020.¹² At

⁹ Order Approving Settlement, entered Dec. 11, 2018.

¹⁰ Order Approving Settlement at 1.

¹¹ Motion to Intervene, Vacate Settlement & Remove Personal Representative at 5. On February 21, 2020, a week to the day after filing her Motion to Intervene, Vacate Settlement & Remove Personal Representative, Appellant filed a separate, independent civil action against both her late husband's Estate and Ms. Mincey. In that case, Appellant has brought causes of action for removal of Ms. Mincey as personal representative, for fraud and breach of fiduciary duty, and for intentional infliction of emotional distress. That civil action, which remains pending in Charleston County, is styled as *Patricia A. Brunson v. Estate of W.A. Brunson, Jr., and Elaine B. Mincey, P.R.*, Civil Action No. 2020-CP-10-00965.

¹² Plaintiff's Response to Petitioner Patricia Brunson's Motion to Intervene, Vacate Settlement & Remove Personal Representative, entered Dec. 4, 2020.

12:41 p.m., counsel for Appellant emailed Judge Price arguing that only Judge Hughston could hear the motion since he was the judge who had entered the Order Approving Settlement. Undersigned counsel for Respondent disagreed, and Judge Price instructed counsel to appear at the hearing as scheduled and argue that issue then.¹³

In that same email exchange, counsel for Appellant informed Judge Price that Appellant had passed away on October 27, 2020, and that counsel needed to substitute her estate as a party.¹⁴ To date, no substitution has happened.

At the hearing, Respondent took the following positions on behalf of the Estate:

1. Judge Price had jurisdiction and authority to rule on Appellant's Motion to Intervene, Vacate Settlement & Remove Personal Representative. The matter was not required to be heard by Judge Hughston.
2. Pursuant to Rule 60(b), SCRCF, Appellant's motion to intervene for the purpose of seeking vacatur of the Order Approving Settlement on the basis of fraud was required to have been filed within one year after entry of the Order. Because Appellant had failed to meet that deadline, the motion was procedurally barred.
3. The Circuit Court had not lacked personal or subject-matter jurisdiction when it entered the Order Approving Settlement in December 2018. Appellant was therefore not entitled to relief from judgment pursuant to Rule 60(b)(4), SCRCF.

¹³ Email correspondence among Judge Price and counsel, December 4, 2020.

¹⁴ Id.

4. The Court lacked subject-matter jurisdiction to remove Ms. Mincey as personal representative for the Estate. Because this matter was not a formal probate proceeding that had been removed from the Probate Court pursuant to South Carolina Code section 61-1-302(d)(1)—but rather a civil action for settlement approval—the Probate Court had retained exclusive jurisdiction over the appointment and removal of the personal representative.

The hearing proceeded with Judge Price on December 7, 2020, and as noted above the court entered his Form 4 denying Appellant’s motion on December 8, 2020. Appellant filed a motion to reconsider on December 16, 2020. On January 13, 2021, the court entered Judge Price’s Formal Order denying the motion to reconsider. Judge Price ruled as follows:

1. He had jurisdiction and authority to rule on the motion.¹⁵
2. Appellant’s motion to vacate the Order Approving Settlement fell under Rule 60(b)(3), SCRPC (fraud), and was thus subject to the requirement that the motion be filed within one year after entry of the Order. Appellant’s motion, filed more than one year after entry of the Order, was untimely and procedurally barred.¹⁶
3. The Order Approving Settlement was not void due to lack of subject-matter or personal jurisdiction.¹⁷
4. The Circuit Court lacked subject-matter jurisdiction to grant the relief requested by Appellant that Ms. Mincey be removed as personal representative. Since

¹⁵ Formal Order at 3–5.

¹⁶ Id. at 5–6.

¹⁷ Id. at 6–8.

this was not a formal probate proceeding that had been removed from the Probate Court pursuant to South Carolina Code section 61-1-302(d)(1), the Probate Court had exclusive jurisdiction over the appointment and removal of the personal representative for the Estate.¹⁸

On February 5, 2021, Appellant served her notice of appeal, which was entered in this Court on February 8, 2021.

After filing her initial brief, Appellant filed a motion to file an amended brief for the purpose of correcting a misstatement of fact in her original brief. In the original brief, Appellant claimed that she had not received notice of the entry of the Order Approving Settlement until March 15, 2019. This was important because, according to Appellant, she had one year from the date of receiving such notice before she had to file her Rule 60(b) motion to vacate the Order Approving Settlement. That is, Appellant claimed that the discovery rule applied to the one-year deadline in Rule 60(b), SCRPC. Respondent disagreed that the discovery rule applied to Rule 60(b), but in any event pointed Appellant to an email exchange from December 18, 2018, wherein Appellant's counsel received notice and a copy of the Order Approving Settlement. According to Respondent, even if the discovery rule did apply to Rule 60(b) motions, Appellant's filing her Rule 60(b) motion on February 14, 2020, was more than one year after Appellant became aware of the Order Approving Settlement on December 18, 2018.

In moving to amend her initial brief, Appellant sought leave of court to correct the "inaccurate statement" as to when she received notice of the Order Approving Settlement.¹⁹ The

¹⁸ Formal Order at 8.

¹⁹ Appellant's Motion to Withdraw Initial Brief and Substitute a Corrected Brief and Hold Briefing in Abeyance, entered July 28, 2021, at 1.

Court granted the motion, and Appellant submitted an Amended Initial Brief, which was served entered on August 6, 2021.

STANDARD OF REVIEW

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006) (citation omitted). An appellate court’s “standard of review, therefore, is limited to determining whether there was an abuse of discretion. An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” Id. at 551, 633 S.E.2d at 502–03 (citation omitted).

ARGUMENT

The order denying Appellant’s motion to reconsider should be affirmed in its entirety. When Appellant filed her motion to intervene in this matter on February 14, 2020, the case had already been closed for over a year after the trial court entered the Order Approving Settlement in December 2018 and no one appealed. Consequently, there was no case into which Appellant could intervene unless Appellant could get the case reopened through Rule 60(b), SCRCF. Thus, the trial court properly engaged in a Rule 60(b) analysis to determine, as a threshold matter, whether to reopen the case.

To that end, Judge Price properly determined that he had jurisdiction and authority to rule on Appellant’s Motion to Intervene, Vacate Settlement & Remove Personal Representative. Unlike Rule 60(a), SCRCF, Rule 60(b) provides that “the court,” not any particular judge, shall resolve a motion for relief from judgment. Judge Hughston, who had issued the Order Approving Settlement, was not required to hear and rule on Appellant’s motion.

Further, Judge Price properly ruled that Appellant’s motion was untimely pursuant to Rule 60(b), SCRCPP, because it had not been filed within one year after the Order Approving Settlement had been entered.

Furthermore, Judge Price correctly ruled that the trial court had not lacked subject-matter jurisdiction or personal jurisdiction over anyone involved in the Estate’s car-wreck claim giving rise to the Order Approving Settlement in December 2018.

Finally, Judge Price correctly ruled that the Circuit Court lacked subject-matter jurisdiction to remove Ms. Mincey as personal representative, which was one of the stated purposes for Appellant’s motion to intervene. The Probate Court had exclusive jurisdiction over that issue.

Without any basis to reopen the case, there was no basis to grant Appellant’s motion to intervene. The trial court properly ruled that it could not vacate the settlement and could not remove Respondent as personal representative for her father’s estate. This Court should affirm.

I. THE TRIAL COURT HAD SUBJECT-MATTER JURISDICTION AND AUTHORITY TO RULE ON APPELLANT’S MOTION TO INTERVENE, VACATE SETTLEMENT & REMOVE PERSONAL REPRESENTATIVE.

After filing her motion to intervene but before the hearing, Appellant incorrectly asserted that the trial court lacked subject-matter jurisdiction unless Judge Hughston, who had approved the settlement, was the judge assigned to resolve Petitioner’s motion. While one Circuit Court judge generally has no authority to overrule another Circuit Court judge, that principle is about one judge’s authority, not the court’s subject-matter jurisdiction as alleged by Appellant. See, e.g., Coon v. Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (observing that “[s]ubject-matter jurisdiction is the ‘power to hear and determine cases of the general class to which the proceedings in question belong’”) (quoting Dove v. Gold Kist, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)).

Further, the principle is not implicated when a rule or statute grants authority to judges to act upon the prior order of another judge. See, e.g., Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689, 690 (1943) (holding that “the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, *except in cases...when it is allowed by rule of court or statute*”) (emphasis added; citation omitted). Pursuant to Rule 60, SCRPC, any Circuit Court judge, not just Judge Hughston, had the authority to resolve Appellant’s motion.

Rule 60(a) specifically contemplates situations in which the original trial judge must be the one to resolve the motion for relief from judgment or order. With respect to clerical errors in an order, the rule provides that “[t]he ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion *to the judge* within ten (10) days after the filing of the motion.” Rule 60(a), SCRPC (emphasis added). In short, only the judge who has ruled on a matter has authority to correct clerical errors in the order.

Conversely, Rule 60(b), SCRPC, provides that “*the court* may relieve a party or his legal representative from a final judgment, order, or proceeding for” reasons such as excusable neglect, fraud, or voidness. Rule 60(b), SCRPC (emphasis added). In this regard, Rule 60 permits any Circuit Court judge to resolve a Rule 60(b) motion. Otherwise, the rule would refer to the judge who had issued the original order instead of “the court.”

In addition, as a practical matter, the nature of Rule 60(b) motions does not require resolution by the judge who entered the order or judgment from which relief is sought. Rule 60(b) motions implicate new evidence or information that was not presented to the original judge in the first place. Such new evidence or information must be of a type that calls into doubt the basis for the order or judgment, regardless of which judge entered the order or judgment.

This is illustrated by the facts of this case. When he issued the Order Approving Settlement, Judge Hughston had not considered or resolved the issues of alleged fraud that Appellant has raised in her motion, because those issues had not been raised to him. Any Circuit Court judge would have been perfectly capable of evaluating whether Appellant's Rule 60(b) motion alleging fraud and jurisdictional issues had merit. There was no practical need to have the original judge review the motion.

And again, the wording of Rule 60(b) specifically provides that "the court," not the original judge, has the authority to rule on a motion for relief from judgment.

For these reasons, Judge Price correctly ruled that he had jurisdiction and authority to rule on Appellant's Motion to Intervene, Vacate Settlement & Remove Personal Representative.

II. THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO INTERVENE FOR THE PURPOSE OF SEEKING TO HAVE THE ORDER APPROVING SETTLEMENT VACATED PURSUANT TO RULE 60(b), SCRCP.

Appellant moved the trial court to vacate the Order Approving Settlement on the following grounds: (1) fraud, pursuant to Rule 60(b)(3), SCRCP; and (2) voidness for lack of jurisdiction, pursuant to Rule 60(b)(4), SCRCP.²⁰ The trial court properly ruled that neither ground has any merit. Further, in failing to argue the issue on appeal, Appellant has abandoned the claim that the Order Approving Settlement is void for lack of jurisdiction.

²⁰ In her brief, Appellant claims that she is not actually trying to vacate the settlement, but only the allocation of the proceeds of the settlement. Appellant's Brief at 27. Appellant misapprehends that even if she wants the gross settlement amount to remain the same and wants only for the allocation to be changed, the trial court still would have had to vacate the entire Order Approving Settlement pursuant to Rule 60(b). The trial court could not simply go back and re-allocate the proceeds. The court would have to vacate the order and require the parties to re-start the approval process from scratch.

A. The trial court correctly ruled that Appellant’s motion was procedurally barred because she had not filed it by the one-year deadline set forth in Rule 60(b)(3).

As noted above, the Court entered the order approving settlement on December 11, 2018. Appellant did not file her Motion to Intervene, Vacate Settlement & Remove Personal Representative until more than a year later, on February 14, 2020. Because Appellant failed to file her motion within one year after entry of the Order Approving Settlement, Appellant’s motion was time-barred pursuant to Rule 60(b), SCRPC.

Rule 60(b)(3) provides that “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for...fraud, misrepresentation, or other misconduct of an adverse party.” Rule 60(b) further provides, however, that any motion to vacate a judgment based on fraud, misrepresentation, or other misconduct of an adverse party must be made “not more than one year after the judgment, order or proceeding was entered or taken.” The rule provides no exception to this deadline. See Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (describing the one-year deadline under Rule 60(b)(1)–(3) as “the absolute time limit”).

In the proceeding at the trial court, Appellant claimed that she had not received notice of the Order Approving Settlement until March 2019—still nine months before the one-year deadline—and that she should have been allowed one year from the date of that notice to file her motion to intervene. As noted above, after filing this appeal, Appellant acknowledged to this Court that she had, in fact, received notice of the Order Approving Settlement back on December 18, 2018.²¹ In her Amended Initial Brief, however, Appellant makes the unreasonable claim that the

²¹ Appellant’s Motion to Withdraw Initial Brief and Substitute a Corrected Brief and Hold Briefing in Abeyance, entered July 28, 2021, at 1.

emailed notice on December 18, 2018, was not “sufficient notice” of entry of the Order because the email contained a statement that the Order—which had already been entered in the Circuit Court (the court that had approved the settlement)—was being forwarded to the Probate Court for filing there as well.²² Whether the Order had yet been filed in the Probate Court was, of course, irrelevant to the date of entry of the Order in the Circuit Court for purposes of Rule 60(b), SCRCF. There is no legitimate dispute that Appellant had notice of entry of the Order in the Circuit Court as of December 18, 2018.

In any event, Rule 60(b) provides that any motion pursuant to the rule must be filed within one year of “entry” of the order from which relief is sought. The one year runs from the date on which the order “was entered or taken,” not from the time that the party receives “notice of entry.” *Compare* Rule 203(b)(1), SCACR (providing that a notice of appeal must be served within thirty days after receipt of written “notice of entry” of the order from which appeal is to be taken).

Moreover, contrary to Appellant’s assertion, the discovery rule applicable to the running of a statute of limitations does not apply to the deadline in Rule 60(b)(1)–(3), SCRCF. The discovery rule is statutory, S.C. Code § 15-3-535, and specifically applies to the running of the *statute* of limitations in personal-injury actions. *Id.* (referring to S.C. Code § 15-3-530(5)). No such statute or rule extends the discovery rule to the running of the one-year deadline set forth in Rule 60(b), SCRCF.²³

²² Appellant’s Amended Initial Brief at 13. Appellant also claims that she did not receive notice of the allocation of the settlement proceeds until March 15, 2019. That is incorrect. The Order Approving Settlement, which was provided to Appellant on December 18, 2018, specifically provides for the allocation of the settlement proceeds between the survival and wrongful-death claims. Order Approving Settlement at 2.

²³ Appellant further misapprehends that she did not file a complaint against Respondent pursuant to Rule 7(a), SCRCF, which would have required an answer or other responsive pleading pursuant to Rule 12. Appellant filed a motion, and in response to Appellant’s motion, there was no need

For this reason, the trial court properly ruled that it should not even reach the merits of Appellant’s motion to intervene for the purpose of vacating the Order Approving Settlement based on the allegation of fraud. The trial court properly held that Appellant’s motion on that basis was procedurally barred by the one-year deadline in Rule 60(b).

B. The trial court properly denied Appellant’s motion pursuant to Rule 60(b)(4) based on the alleged voidness of the Order Approving Settlement.

Without citing Rule 60(b)(4), SCRPC, specifically, Appellant sought the following relief in her motion to intervene: “Vacating the Order Approving Settlement filed December 11, 2018, for fraud and void for lack of jurisdiction under Rule 60, South Carolina Rules of Civil Procedure.”²⁴ Related to that request for relief, Appellant also sought to have herself declared an “indispensable party” pursuant to Rule 19, SCRPC.²⁵

When the trial court entered the Order Approving Settlement in 2018, the court did not lack subject-matter jurisdiction or personal jurisdiction over any party. Further, Judge Price correctly ruled that Appellant had not been indispensable to the settlement approval process, and that even if she had been, that issue did not implicate jurisdiction such that it could give rise to relief from judgment pursuant to Rule 60(b)(4).

for Respondent to raise an affirmative defense based on any statute of limitations. In fact, the statute of limitations in tort actions is not even implicated here. As Judge Price ruled, Appellant’s motion to intervene and vacate the settlement implicated the one-year deadline in Rule 60(b), which Appellant failed to meet.

²⁴ Appellant’s Motion to Intervene, Vacate Settlement & Remove Personal Representative at 5, *ad damnum* clause, ¶ A.

²⁵ *Id.* at ¶ C.

i. By failing to raise the issue in her brief, Appellant has abandoned the request for relief from judgment pursuant to Rule 60(b)(4), SCRCP.

The Court should not even reach the merits of the Rule 60(b)(4) and Rule 19 issues, because Appellant has abandoned these issues by not raising them in her opening appellate brief, either in her statement of issues on appeal or in her argument. See Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); Barr v. Barr, 287 S.C. 13, 14, 336 S.E.2d 481, 482–83 (Ct. App. 1985) (observing that “failure to argue issue in brief deemed abandonment of exception”) (citations omitted).

ii. Appellant was not an indispensable party to the settlement approval, and even if she had been her absence would not render the settlement-approval order void.

The only person allowed to seek court approval of a wrongful death or survival claim is the personal representative of the estate. South Carolina Code section 15-51-42(A) provides: “Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions.” Since Appellant was not the personal representative, she had no statutory or other right to intervene or participate in the original settlement-approval proceeding. She was certainly not *indispensable* pursuant to Rule 19.

Likewise, Appellant’s lack of personal participation in the settlement-approval proceeding did not deprive the trial court of personal jurisdiction over anyone. “On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding” if “the judgment is void.” Rule 60(b)(4), SCRCP.²⁶ “A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” Belle Hall Plantation

²⁶ Unlike a motion for relief from judgment pursuant to Rule 60(b)(1)–(3), SCRCP, a motion pursuant to Rule 60(b)(4) does not have a one-year deadline.

Homeowner's Assn. v. Murray, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (2017) (quotation omitted). “The definition of void under the rule *only* encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” Id. (quotation omitted) (emphasis added). “Generally, a person *against whom* a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.” Id. at 618, 799 S.E.2d at 316 (quotation omitted) (emphasis added).

Appellant’s absence from the settlement-approval proceeding did not deprive the trial court of subject-matter jurisdiction. By statute, the circuit court had subject-matter jurisdiction to approve wrongful-death and survival settlements. S.C. Code § 15-51-42(B)–(C). The 2018 Order Approving Settlement is therefore not void for want of subject-matter jurisdiction.

Further, Appellant had no statutory or other right to notice of the settlement, notice of the petition for settlement approval, or notice of the settlement-approval hearing. Consequently, there was no failure “to provide proper due process” that could render the Order Approving Settlement void or voidable.

Furthermore, while Appellant was a statutory beneficiary of the wrongful-death settlement and apparently a legal heir under her husband’s will for purposes of the survival settlement, the Order Approving Settlement was not a judgment or order *against* Petitioner Brunson.²⁷ She was

²⁷ The Formal Order contains a note that the Order Approving Settlement “could be viewed as a judgment against the at-fault driver who caused the wreck that killed [Appellant’s] husband, but it was not an order or judgment against her.” Formal Order at 7. This is incorrect. Neither Appellant nor the at-fault commercial driver was ordered to do anything pursuant to the Order Approving Settlement. Rather, the two liability insurance carriers, not the at fault commercial driver or his employer, were ordered to fund the approved settlement. Order Approving Settlement at 5, ¶¶ 3–4 (ordering Selective Insurance and USAA to fund the settlement as agreed and approved).

not ordered to do anything. Consequently, Appellant’s claims do not fit any of the scenarios that might render a judgment void pursuant to Rule 60(b)(4).

In sum, even if Appellant’s assertions about what happened or should have happened with the settlement approval had any factual support—they do not—they would fall solely under Rule 60(b)(3). As discussed above, however, to make those arguments Appellant would have had to file her motion within one year after the trial court entered its Order Approving Settlement. Appellant did not meet that deadline, and therefore her claim is procedurally barred. The trial court properly denied Appellant’s Motion to Intervene, Vacate Settlement & Remove Personal Representative on that basis.

III. THE TRIAL COURT PROPERLY RULED THAT IT LACKED JURISDICTION TO REMOVE THE PERSONAL REPRESENTATIVE AS REQUESTED BY APPELLANT.

Finally, Appellant requested the following relief in her motion to intervene: “Removing the Personal Representative for fraudulent acts and failure to act in a fiduciary manner and appointing some appropriate person or entity to act as Personal Representative in her stead.”²⁸ The Circuit Court properly held that it did not have jurisdiction to grant such relief, as the Probate Court had exclusive jurisdiction over that issue.

The Court of Common Pleas obtains subject-matter jurisdiction over “formal proceedings...for the appointment of general personal representatives” only when such formal proceedings have been removed from the Probate Court upon motion of a party or the Probate Court’s own motion. S.C. Code § 62-1-302(d)(1). That did not happen in this case. In fact, it could not have happened in this case, because this case did not involve formal proceedings. It was not even a probate matter, but rather a civil claim for damages arising out of a car wreck. The

²⁸ Appellant’s Motion to Intervene, Vacate Settlement & Remove Personal Representative at 5, *ad damnum* clause, ¶ D.

separate action over the probate estate, which remains pending in Charleston County between Appellant, Respondent, and their families, was the proper forum for this request by Appellant.

Here, the Circuit Court properly ruled that it lacked subject-matter jurisdiction to entertain Appellant's request to have Respondent removed as the personal representative, and thus properly denied Appellant's Motion to Intervene, Vacate Settlement & Remove Personal Representative on this basis.

CONCLUSION

The Court should affirm the trial court's Order Denying Petitioner Patricia Brunson's Motion for Reconsideration of her Motion to Intervene, Vacate Settlement & Remove Personal Representative. As a threshold matter, the trial court properly ruled that it had jurisdiction and authority to rule on the motion. The motion was not required to be heard and ruled upon by the trial judge who had entered the Order Approving Settlement.

Further, the trial court properly ruled that Appellant's motion was untimely and procedurally barred pursuant to Rule 60(b), SCRPC. Appellant failed to file the motion within one year after the trial court's Order Approving Settlement had been entered, as required under the rule.

Furthermore, the trial court properly ruled that the Order Approving Settlement was not void for lack of either subject-matter or personal jurisdiction. The trial court had jurisdiction over the settlement approval pursuant to statute, and the parties to the proceeding were properly before the court.

Finally, the trial court properly ruled that it did not have jurisdiction to grant Appellant's request to remove the personal representative of the estate and appoint someone new.

For these reasons, Respondent respectfully requests that the Court affirm the trial court's order *in toto*.

Respectfully submitted,

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Attorneys for Respondent

September 7, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge

Appellate Case No. 2021-000141

Estate of Patricia A. Brunson.....Intervenor/Appellant,

In Re:

Elaine Mincey, as Personal Representative for
the Estate of William Alexander Brunson, Jr.....Plaintiff/Respondent,

v.

David Scott Wich and C.J. Wingerter Company, LLC.....Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I have served the Initial Brief of Respondent by email upon counsel for Appellant, addressed to his AIS email, tgoldstein@cobblaw.net. A copy of the email is enclosed.

September 7, 2021

s/ Reynolds H. Blankenship, Jr.
Reynolds H. Blankenship, Jr.

Reynolds Blankenship

From: Reynolds Blankenship
Sent: Tuesday, September 7, 2021 8:14 AM
To: tgoldstein@cobblaw.net
Cc: William Applegate (YA); Shene Hawk
Subject: Appellate Case No. 2021-000141 (Brunson)
Attachments: Initial Brief of Respondent.pdf; Cert of Serv - Initial Brief of Respondent.pdf; Respondents Designation of Matter for ROA.pdf; Cert of Serv - Respondents Designation of Matter for ROA.pdf

Hi Tommy. Pursuant to the Supreme Court's August 25, 2021 Order re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find attached for service upon you: (1) Initial Brief of Respondent; (2) Certificate of Service of Initial Brief of Respondent; (3) Respondent's Designation of Matter for Record on Appeal (with Rule 209(c) certification); and (4) Certificate of Service of Respondent's Designation of Matter.

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