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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning

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Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-00898

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Jimmy Helms……..……..Respondent,

v.

Debbie Willing, ……..……..……Appellant.

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**REPLY TO RESPONDENT'S RETURN TO**
**APPELLANT'S MOTION TO ENFORCE AUTOMATIC STAY**

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This Court should not heed Respondent's Return to Appellant's Motion to Enforce the Automatic Stay ("Return"), which distorts the clear language of the order on appeal in an incorrect effort to put the order outside Rule 241's General Rule. Moreover, this Court should recognize that Respondent's cursory argument for lifting the automatic stay is insufficient, both procedurally and under the applicable rule. Instead, this Court should grant Appellant's Motion to Enforce the Automatic Stay and order Respondent to respect the stay, pending the disposition of this appeal.

As an initial matter, the lower court's order is legally flawed, invalid for lack of subject matter jurisdiction . . . and it has created an extraordinary mess. The civil

Complaint below—which was filed in circuit court in the wake of a Family Court action which the Respondent deliberately allowed to molder[1]—improperly asked for relief within the exclusive jurisdiction of the Family Court. The Complaint demanded that the circuit court require Appellant to "**account for the marital assets**" and "wind[] up partnership affairs." (Exhibit 5 to Motion to Stay, Complaint, filed December 4, 2015, ¶¶ 8-9) (emphasis added).

After a trial in the circuit court, which was rife with questioning and testimony about who raised whose children, who paid for those children's education, and whether the parties believed themselves to be married,[2] the circuit court then issued the erroneous order that is the subject of this appeal. The order errs as to who holds legal title to certain real property, it allocates ownership of other real property, and it purports to divide "partnership funds **during the period of co-habitation by [Respondent] and [Appellant].**" Order, p. __ (emphasis added).

It will be argued in this appeal that the trial court's entire order is void for lack of subject matter jurisdiction.[3]

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1 *See*, trial transcript, pp. 10-12, attached as Exhibit 1.

2 Respondent also called numerous witnesses (including the parties' children) to testify that they thought the Respondent and the Appellant were married. (*See* Ex. 1, for a few but not all of those witnesses and their testimony).

3 Some excerpts from the transcript are attached as Exhibit 1, and they are just a sampling of arguments and testimony in this trial which leave no question that this was a domestic matter subject to the exclusive jurisdiction of the Family Court. Lack of subject matter jurisdiction was raised to Judge Manning at the trial, and it will be raised again as grounds for reversal on appeal. Lack of subject matter jurisdiction can be raised at any time. *Hammer v. Hammer*, 399 S.C. 100, 730 S.E.2d 874 (Ct. App. 2012) ("Subject matter jurisdiction can be raised at any time and by any means.")

**IN REPLY**

Not only is the order on appeal invalid for want of subject matter jurisdiction, but it also is erroneous as a matter of law. Significantly, it mistakes legal title to at least two parcels of real property. In the "Background" section of his Return, as well as in the "Argument" section, Respondent tells this Court what Respondent perhaps *supposes* that Judge Manning's order might-should-have held: purportedly that title to 812 Meeting Street and 820 Meeting Street should be transferred or conveyed or deeded over from the Appellant to the Respondent.[4] However, the plain language of Judge Manning's order contradicts Respondent's argument. The order simply holds:

> The court finds that **[Respondent] holds legal title to** 812 Meeting Street and 820 Meeting Street.

Order, p. 3 (emphasis added). That is a finding of law by the trial court, and it is now on appeal. Respondent can certainly argue in Respondent's brief as to what he perceives Judge Manning might have meant, or intended, when he made this legal ruling. However, Rule 241 is concerned with the plain language of the order itself, and not with what the parties think the judge might have actually intended.

Indeed, the trial court's order states at the outset:

> This is an action which involves title and interest in the following real estate and property: 1900 Oceola Drive, 1904 Oceola Drive, 1905 Oceola Drive, 812 Meeting Street, 820 Meeting Street, 809 Shull Street, and 185 Harbor Watch.

(Order, p. 1). The order goes on to determine title to each of the properties listed, including 812 Meeting Street and 820 Meeting Street, making findings of law as to who

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[4] Had this indeed been Judge Manning's order, then Appellant would have moved this Court to impose supersedeas and asked this Court to suspend transfer of title pending the appeal. Supersedeas is unnecessary, however, because the General Rule applies.

holds title to each property. The order does **not** indicate that title should be transferred for equitable reasons, as Respondent argues . . . **it simply determines who holds title, as a matter of law** (specifically finding "Plaintiff holds legal title," with no mention of equitable title).

It is the lower court's *title determinations* that are the basis of Appellant's Motion to Enforce Automatic Stay. Rule 241 is clear and uncomplicated in its provision that, "as a General Rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order." R. 241, SCACR. The Rule is equally clear as to the express circumstances that constitute exceptions to the General Rule—none of which are applicable here. *See* Rule 241(b), SCACR.

Respondent argues that either the exception in Rule 240(b)(3) or in Rule 240(b)(4) may apply. This is wrong. First, Rule 240(b)(3) is concerned only with "judgments directing the execution of conveyances or other instruments." But the order does not direct the parties to execute anything . . . it outright "finds that Plaintiff holds legal title to 812 Meeting Street and 820 Meeting Street." Likewise, Rule 240(b)(4) is concerned only with "judgments directing the sale or delivery of possession of real property." But the order does not direct the sale or delivery of anything . . . it just outright "finds that Plaintiff holds legal title to 812 Meeting Street and 820 Meeting Street." The lower court's order does not fall within the plain language of either exception, or the statutory law behind them.[5]

[5] The exceptions in Rule 241 reference two statutes, S.C. Code § 18-9-160 and § 18-9-170. Respondent has not argued that either of these statutes bring the order within the ambit of Rule 241's exceptions—and they do not.

Nor should this Court grant Respondent's cursory request of it "for an Order lifting any Automatic Stay pursuant to Rule 241(c) of the South Carolina Rules of Appellate Procedure." (Return, p. 4). Initially, Respondent failed to follow the proper procedure for obtaining such an order from this Court. *See* Rule 241(d), SCACR. Further, Respondent does not—and cannot—argue that lifting the automatic stay is "necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot," as required by Rule 241(c)(2), SCACR. Respondent's insufficient argument is only that it would be "unequitable for Appellant to continue to collect these rents." (Return, p. 4). Remarkably, Respondent misrepresents to this Court that "Appellant . . . is collecting rents on a piece of property that she no longer owns." (Return, p. 4). In fact, **it is Respondent's attorney, Mr. Moore, who has been collecting those rents**, ever since he called up Appellant's tenant (with whom she has a personal lease) and told the tenant that the leased property did not belong to Appellant. *See* Exhibit 4 to Motion to Enforce Automatic Stay ("I promised you during our recent phone call that I would provide you with any Order confirming the judgment in this case . . . as you can see, the property at 812 Meeting Street and 820 Meeting Street in West Columbia belonged [sic] to Jimmy Helms."); *see also* Exhibit 2, Letter from S. Jahue Moore to Tenant, dated October 7, 2021, ("As of the writing of this letter, Jimmy still owns the convenience store. You should continue making the payments [to me] as you have been.").

As set forth in detail in Appellant's Motion to Enforce Automatic Stay, and its exhibits, there is no question that Appellant Deborah Willing holds legal title to the Meeting Street property, and to the highly regulated underground storage tanks full of

gasoline that are on it. As the title holder Appellant is obligated to fulfill numerous regulatory and licensing obligations to DHEC, *inter alia*. Appellant cannot do this without the income from the rent (which Respondent's attorney has instructed Mr. Patel, the Tenant, to pay to him because of Judge Manning's order). Also importantly, if there were a leak in the underground storage tanks, Appellant would face personal liability, as the legal title holder. She must obtain (required) insurance because she holds title.

Until this appeal is resolved, legal title should remain as it is currently held, according to the public record.

**CONCLUSION**

Appellant respectfully asks that this Court would issue an order holding that Judge Manning's findings of law (as to legal title, *inter alia*) are automatically stayed pending the resolution of this appeal, pursuant to Rule 241(a), SCACR. Appellant further requests that this Court would direct Respondent and his attorney to respect the automatic stay and desist telling Tenant that Respondent "owns the property," as (wrongly) found in the order on appeal.

Until such time as this appeal is decided, and for the duration of the appeal, the order's decisions on who holds legal title should be suspended and the status quo maintained, pursuant to the General Rule of Rule 241(a), SCACR.

**[signature block appears on next page]**

Respectfully submitted,

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