THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough Master-in-Equity

Court of Appeals Case No.: 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins ..... Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC ..... Defendants,

of whom

Bradford Q. Jeffcoat, Jr. is the ..... Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING AND REHEARING *EN BANC*

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Respondent Vanessa Williams files this return at the request of this honorable court and would show the following.

ARGUMENT AGAINST REHEARING

I. Jeffcoat did not have care and custody of Sandra Perkins and was not entitled to notice.

Alabama law requires that if Alabama is not the home state of the respondent, then the petitioner must give notice to those persons who would be entitled to notice if the petition was brought in the respondent's home state. Ala. Code § 26-2B-208. At the time of the petition for guardianship the notice requirements under South Carolina Law were promulgated under S.C. Code § 62-5-309. The statute provided that notice should be provided to persons that had "care and custody" of the alleged incapacitated person. Care and custody was not a defined term in the statute and the Appellant, until now, has never framed this issue as one of statutory interpretation. The Appellant simply alleged that Jeffcoat was caring for Ms. Perkins at the time of the petition, despite the fact that Ms. Williams held power of attorney over Ms. Perkins; was caring for Ms. Perkins in the Respondent's home; and was her only living child and heir at the time of the petition for guardianship.

II. New Arguments and Authorities may not be presented for the first time in a petition for rehearing

In the petition for rehearing, the Appellant makes the new and tenuous argument that the language in the current statute can be read as a "statutory amendment" and that the court should view the language in the current statue as "clarifying statutory intent". First, and foremost, this is not the starting point for interpreting statutes under South Carolina Law. *See Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citing *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001)).

Secondly, the jurisprudence cited by the Appellant on this issue is not the general rule which is provided in the same case cited by the Appellant "[g]enerally, the legislature's subsequent acts 'cast no light on the intent of the legislature which enacted the statute being construed.'..." *CFRE LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (S.C. 2011).

Moreover, this issue was given only cursory consideration by the Appellant in the initial brief where he dedicated only two sentences to the lack of notice issue and none on the meaning of "care and custody". (App. Brief p. 12). A party may not assert new arguments or authorities for the first time in a petition for rehearing. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001); *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011). Ordinarily no point will be considered which is not set forth in the statement of issues on appeal. *Gamble v. International Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996). A short passing reference to an argument is not sufficient to preserve an issue for appellate review. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). *See also Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298, 519 S.E.2d 583, 600 (Ct. App. 1999) (holding conclusory arguments may be treated as abandoned)

III. The Opinion of the Court does not create new law

The argument that allowing a joint tenant with right of survivorship to unilaterally sever a joint tenancy advanced in the Appellant's petition for rehearing is also inappropriately late. It was open to the Appellant to raise this issue in its initial brief and arguments, but he failed to do so. Specifically, the unbinding academic work, *Deeds of Conveyance*, was published in 2019 and could have been included as part of the

Appellant's argument in earlier submissions. It would be fundamentally unfair and prejudicial to allow this appeal to be reheard in such a piecemeal manner as the Appellant discovers arguments he should have made in his appeal brief.[1] Furthermore, the Opinion does not create new law. The Opinion specifically cites *Smith v. Cutler,* 366 S.C. 546, 550-51, 623 S.E.2d 644, 656-7 (2005), *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass,* 359 S.C. 407, 410-11, 597 S.E.2d 850, 851 (Ct. App. 2004) and Section 27-7-40 as precedent for its holdings in this appeal.

IV. Error was not preserved.

An argument cannot be preserved if it is only raised in a "perfunctory and underdeveloped manner" *Kensington Rock Island L.P. v. American Eagle Historic Partners,* 921 F.2d 122, 124-25 (7th Cir. 1990). Likewise, the 5th Circuit has ruled that in preserving arguments, a party must "press and not merely intimate" an argument. *Kelly v. Foti*, 77 F.3d 819, 823 (5th Cir. 1996). It is clear that the Appellant did not press its arguments with respect to disputed facts, and actually believed that those alleged disputed facts were immaterial to the transfer of real property. If he had thought otherwise, then the Appellant would not have filed a motion for summary judgment with the Master in Equity. Unlike the superficial emphasis on counterclaims and affirmative defenses found in the motion for summary judgment, Jeffcoat now conveniently argues that the factual allegations advanced on his counterclaims were actually material underpinnings to the alleged unlawful transfer of real property. This is a different position than the one advanced in Jeffcoat's motion for summary judgment, and it is plain that Jeffcoat expected the entire matter of the transfer of real property to be decided as a question of law. Framing the issues on appeal now as questions of fact that were not

[1] *Kentner v. Gulf Ins. Co.*, 298 Or. 69, 689 P.2d 955 (1984).

considered by the Master in Equity conveniently ignores the Appellant's previous theory of the case and introduces new issues that were not pressed in the second summary judgment hearing or at best were introduced in a heedless manner. Moreover, despite the allegations made by trial counsel and the *dicta* from the Master in Equity during the hearing on Summary Judgment cited in the Appellant's petition, the Appellant failed to file a Rule 59(e) motion to preserve this issue. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 347 S.E.2d 99, 289 S.C. 483 (S.C. 1986), *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct.App.1991).

V. Williams' conveyance of the property herself was proper under Alabama and South Carolina Law.

The argument that Williams did not hold the property as a fiduciary for her mother is also not properly preserved for the same reasons outlined above. Having not raised and pressed these issues at the trial court level, it is inappropriate to entertain them now. Moreover, to whom did Ms. Williams owe a duty? She certainly owed no fiduciary duty to Jeffcoat, and he cannot bootstrap a breach of fiduciary duty claim to the partition action where there is a clear statutory right to severance. Furthermore, in this case it is undisputed that Williams was Perkins' sole heir and sole beneficiary under Perkins' estate plan. Accordingly, the issue of how she held the property would ultimately be of no assistance in determining whether the severance was proper or lawful. Since the partition action was commenced prior to Perkins' death, Williams would have inherited Perkins' half interest under either scenario.

REHEARING *EN BANC* IS UNNECESSARY

The Opinion does not *judicially* create a mechanism to sever a *statutory* joint tenancy with right of survivorship as alleged by the Appellant. There is ample common law and statutory authority for this Opinion and an *en banc* hearing is unnecessary.

CONCLUSION

The petition for rehearing should be denied.

Dated: 08/17/2021

s/ Timothy A. Domin
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Mikell Scarborough, Master-in-Equity for Charleston County

Appellate Case No. 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins.....Respondents,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.....Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN TO PETITION FOR REHEARING AND REHEARING *EN BANC*** upon the Defendants and Appellant herein by mailing same via U.S. First Class Mail, postage prepaid, on August 17, 2020, addressed to:

Jason Scott Luck
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CLAWSON AND STAUBES LLC

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August 17, 2021

File No.: 20152399.000

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Vanessa Williams and Vanessa Williams as Conservator and Guardian of Sandra P. Perkins vs. Bradford Q. Jeffcoat and Blue Heron Builders, LLC
Appellate Case No.: 2018-001464

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the Respondents' Return to Petition for Rehearing and Rehearing *En Banc* in the above-referenced case. Please file the original and return the file stamped copy to our office in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

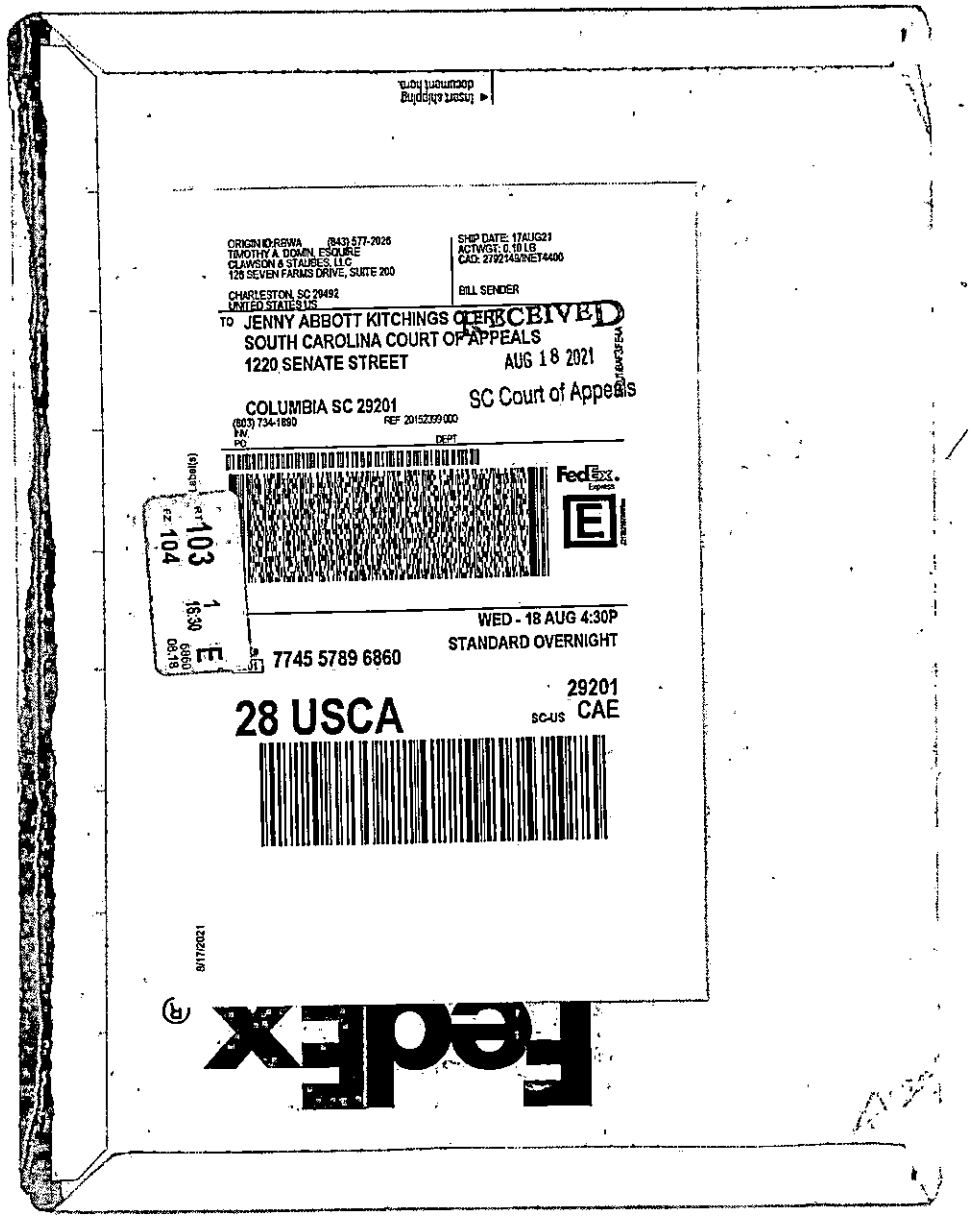
Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

s/Timothy A. Domin
Timothy A. Domin

TAD/CRK
Enclosure
cc: Jason Scott Luck
Drew Wenzel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