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**Feb 04 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr.  
Circuit Court Judge

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Civil Action No. 2020-CP-43-00734

Appellate Case No. 2021-001150

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Ronald L. Jones, Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks, Respondents.

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**MOTION TO DISMISS**

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents Gary A. Jones, Sr., Becky J. Jones, and Shelley Allsbrooks (collectively, “Respondents”), by and through the undersigned counsel, respectfully request this Honorable Court dismiss the Notice of Appeal filed by Appellant Ronald L. Jones (“Appellant”) on October 8, 2021. Should Appellant’s interlocutory appeal proceed on this minor, insignificant issue, this case would become antithetical to South Carolina’s clear disfavor of piecemeal appeals and would become the infamous “‘stop-and-start’ enterprise” consistently denounced by our appellate courts in South Carolina. *See State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018) (dismissing an appeal and holding the

issue was not immediately appealable due to the unnecessary creation of a “‘stop-and-start’ enterprise”).

### **BACKGROUND**

For purposes of Respondents’ Motion to Dismiss, it is unnecessary to delve into the underlying facts of this family land dispute initiated by Appellant. However, a brief summary of relevant portions of this lawsuit’s procedural history is appropriate to assist the Court in its quick dispense of Appellant’s interlocutory appeal prior to any additional briefing and consideration of the underlying merits.

On May 4, 2020, Appellant filed this lawsuit against Respondents Gary A. Jones, Sr., Becky J. Jones, and Ima Lee Jones, claiming Appellant was entitled to relief pursuant to an oral gift and the doctrine of promissory estoppel. On June 10, 2020, Appellant filed his First Amended Complaint, adding a cause of action for civil conspiracy directed at Respondents Gary A. Jones, Sr., and Becky J. Jones. The parties subsequently engaged in discovery, including the deposition of Respondent Shelley Allsbrooks on March 16, 2021. Appellant filed his Second Amended Complaint on April 22, 2021, adding Respondent Allsbrooks as a defendant to his claim for civil conspiracy. On May 6, 2021, Respondents filed an Answer to Appellant’s Second Amended Complaint and a Motion to Strike certain factual allegations that had been raised in the Second Amended Complaint. The circuit court heard argument on Respondents’ Motion to Strike. On September 22, 2021, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure,<sup>1</sup> the circuit court, exercising its broad discretion, ordered stricken from the Second Amended

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<sup>1</sup> Rule 12(f), SCRCP (“**Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court’s own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.”).

Complaint three purely factual allegations that it found were inappropriately included at the pleading stage of the litigation.<sup>2</sup> Appellant timely filed Rule 59(e) Motion, and the circuit court denied the same on October 8, 2021. Thereafter, Appellant filed his Notice of Appeal of the circuit court's interlocutory order the same day. Respondents now respectfully move for this Court to dismiss Appellant's Notice of Appeal for the following reasons set forth in detail below.

### **ARGUMENT**

A review of the circuit court's order and the governing appealability statute makes certain that Appellant has no foundation to support any argument that this Court should review his interlocutory appeal. To be sure, the circuit court's order is not immediately appealable, and Appellant's attempt to appeal the same is, quite frankly, an improper attempt to frustrate the ordinary pretrial procedures below. Therefore, this Court should refuse to expand the narrow construction of section 14-3-330 of the South Carolina Code and should dismiss Appellant's

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<sup>2</sup> The circuit court struck the following factual allegations from the Second Amended Complaint:

13. Defendant, Shelley Allsbrooks has also testified that Plaintiff, Ronald L. Jones has occupied the Property for a little over ten years.

30. Defendants, Gary A. Jones, Sr.[,] Becky J. Jones, and Shelley Allsbrooks combined together and acted in concert, to injure Plaintiff and cause economic loss to Plaintiff and to cause Plaintiff to incur Special Damages. Defendants' express intent was to cause economic loss to the Plaintiff, Ronald L. Jones, as best shown by Defendant, Shelley Allsbrooks demand that a "15-foot-wide recreational easement", be placed on Plaintiff, Ronald L. Jones' current Property in front of the front door of Plaintiff's residence, which would render the Property worthless as to any resale, etc. As to the 15-foot-wide recreational easement, Defendant, Shelley Allsbrooks declared, "Uncle Ronnie is going to have to like it or [he] gets nothing."

31. Specifically, Defendant, Shelley Allsbrooks took the lead in discussions against the economic interests of the Plaintiff, Ronald L. Jones. Defendant, Shelley Allsbrooks met and conspired with Defendant, Gary A. Jones, Sr. between five and ten times, both in person and electronically, against the economic interests of the Plaintiff, Ronald L. Jones.

appeal, thereby allowing the proper pre-trial procedures to proceed accordingly without unnecessary disruption or delay.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute,<sup>[3]</sup> an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* Section 14-3-330 is "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals." *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, "[p]iecemeal appeals" are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

No specialized statute permits Appellant's present appeal; therefore, to be immediately appealable, the circuit court's order must fit neatly into one of the categories set forth in section

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<sup>3</sup> Section 14-3-330 is not the only statute which governs appealability, "e.g., S.C. Code Ann. § 14-11-85 (direct appeals from masters); S.C. Code Ann. § 15-48-200 (arbitration orders); S.C. Code Ann. § 1-23-390 (1986) (appeals under the Administrative Procedures Act)." *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 5, 393 S.E.2d 176, 178 (1990) (cleaned up). However, this case only involves the application of section 14-3-330.

14-3-330. *See id.* at 195, 607 S.E.2d at 708. Section 14-3-330 provides for appellate jurisdiction over:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) (“Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed.”). “Our courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011).

Here—under the well-established approach to analyzing the appealability of interlocutory orders—the circuit court’s order is not immediately appealable. The effect of the circuit court’s order is clear. The circuit court granted Respondents’ Motion to Strike, which simply removed three factual allegations from Appellant’s Second Amended Complaint. The circuit court’s order

*did not* dismiss Appellant’s case; the circuit court’s order *did not* dispense of any of Appellant’s causes of action; the circuit court’s order *did not* constitute a final judgment; the circuit court’s order *does not* prevent an appeal of Appellant’s complained issue following a final judgment in this matter. Importantly, the removal of these *facts* is not akin to the dismissal of a *case* or the removal of a *pleading*.

Appellant’s three causes of action fully remain, and Appellant can still attempt to prove the stricken facts at trial. Appellant is in no way prohibited from doing so at the appropriate time through the introduction of admissible evidence. The circuit court narrowly found the factual allegations to be inappropriately presented at the pleadings stage. Nothing more.

Therefore, looking at the effect of the circuit court’s order and viewing it through the requisite “narrow” lens that disfavors piecemeal litigation, Appellant’s appeal fails to fit any subsection set forth in section 14-3-330. Because Respondents can foreshadow that Appellant’s Return to this Motion to Dismiss will present an attempt to “fit a square peg in a round hole,” Respondents will show, in turn, why this appeal plainly does not fit any of the 14-3-330 subsections.

**1. Subsection 14-3-330(1) does not apply.**

This is an interlocutory appeal and is not the appeal of a final judgment. Therefore, pursuant to subsection 14-3-330(1), the circuit court’s order must “involve the merits” in order to be immediately appealable. “An order ‘involves the merits,’ as that term is used in [subsection] 14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 (footnote omitted). “The phrase ‘involving the merits’ is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not

immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights." *Id.* at 7, 630 S.E.2d at 467–68.

Here, the circuit court's order does not "involve the merits" of this case because the circuit court has not yet determined a substantial matter affecting the parties' rights in this litigation which impacts the parties' ability to litigate this dispute over the ownership of family land. Simply put, the circuit court's order removes three factual allegations from being presented at the pleading stage. The circuit court's order in no way prohibits the very same allegations to be proven by evidence at a later stage.

There is still a lot to be done at the circuit court prior to a determination of the parties' rights. The case has not yet gone to trial, and Appellant can still introduce the stricken facts at the appropriate time and can still potentially succeed at trial on the merits of his causes of action. Should Appellant be unsuccessful at trial on the merits of his causes of action and should Appellant believe the circuit court's order was somehow prejudicial to the outcome of his case, Appellant can then appeal and launch his argument concerning the merits of the circuit court's order. *See Baldwin Constr. Co. Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) ("Petitioners have not 'arrived at the end of the road' and will be able to appeal the decision after the trial is finished." (quoting *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993))).

Again, the circuit court's order is an interlocutory order that does not "involve the merits" of this underlying lawsuit, and Appellant may appeal once a final order has been issued in the case, if even necessary. *See Hagood*, 362 S.C. at 196, 607 S.E.2d at 709 ("Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial."). The circuit court's order does not fit within the narrow and exceptional circumstances contemplated by subsection

14-3-330(1), and this Court should reject Appellant's attempt to broaden the scope of the appealability statute. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 ("The phrase 'involving the merits' is narrowly construed in modern precedent.").

**2. Subsection 14-3-330(2) does not apply.**

Subsection 14-3-330(2) allows for immediate appeal of an interlocutory order whenever it affects a "substantial right" in an action which "(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action." "To appeal an order affecting a substantial right, an order must not only involve a right, but it must also 'prevent[] a judgment from which an appeal might be taken.'" *Cobb*, 310 S.C. at 305, 423 S.E.2d at 157. Respondents will address each subpart in turn.

*First*, the circuit court's order does not affect a "substantial right" which effectively determines or discontinues the action. Stricken facts are not equivalent to stricken causes of action or a stricken complaint. Appellant can still proceed on all three of his causes of action and can still present the very same allegations through evidence submitted to the jury during the evidentiary stage of trial. As noted above, if Appellant is unsuccessful at trial, and if Appellant believes this narrow issue is somehow prejudicial to the outcome of his trial, then and only then may he appeal this issue.

*Second*, the circuit court's order does not affect a "substantial right" which effectively grants or refuses a new trial. No further analysis is necessary on this point, as this is clearly not the effect of the circuit court's order.

*Third*, the circuit court's order does not affect a "substantial right" which effectively strikes out an answer or any part thereof or any pleading in any action. This portion of subsection 14-3-

330(2) is disjunctive and is triggered whenever (a) an answer or any part thereof is struck, *or* (b) a pleading is struck. Neither apply under the facts of this case. Part (a) can be quickly disposed of because this issue does not involve an Answer.

Part (b) can similarly be disposed of but requires additional explanation. Simply put, under the appealability statute, a pleading is not the equivalent of a factual allegation contained in a pleading. Black’s Law Dictionary defines a “pleading” as “[a] formal *document* in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses.” *Pleading*, Black’s Law Dictionary (11th ed. 2019) (emphasis added). Necessarily, a factual allegation is a smaller component of a pleading. To be immediately appealable, an entire pleading must be struck, not just a small component thereof. If the General Assembly intended for the striking of “any part” of a pleading to be immediately appealable, it would have said so, like it chose to do under disjunctive part (a). *See* S.C. Code Ann. § 14-3-330(2) (“An order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof **or** any pleading in any action.” (emphasis added)). Clearly, “any part thereof” only applies to an Answer.

This plain reading of the statute is buttressed by a plain reading of Rule 12(f) governing motions to strike. Rule 12(f) states in pertinent part “the court may order stricken *from any pleading* any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” This plain language makes clear that a “pleading” is not akin to a factual allegation, and pursuant to subsection 14-3-330(2)(c), interlocutory appeal is appropriate only if an actual “pleading” is struck by the circuit court.

Respondents predict Appellant will attempt to grasp firmly on the fact that subsection 14-3-330(2)(c) mentions the term “strike.” However, the use of the word “strike” in subsection 14-

3-330(2) and in the circuit court’s order granting the motion to “strike” is of no moment. To explain, the word “strike” in subsection 14-3-330(2)(c) and Rule 12(f) has completely different origins. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302, 705 S.E.2d 475, 478 (Ct. App. 2011) (explaining this distinction and holding a circuit court’s striking of class allegations is not immediately appealable simply because of the use of the word “strike” in the appealability statute). In subsection 14-3-330(2)(c), the word “strike” comes from its code pleading predecessor enacted in 1870. *See S.C. Acts Part I, tit. I, sec. 11, Gen. Assemb., Reg. Sess. (S.C. 1869-70)*. This subsection, which has not changed in over 100 years, “includes the phrase ‘strikes out an answer or any part thereof, or any pleading in any action.’” *Thornton*, 391 S.C. at 302, 705 S.E.2d at 478 (quoting *Harbert v. Atlanta & Charlotte Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1001–02 (1906)). On the other hand, a Rule 12(f) motion to “strike” originated in the Federal Rules of Civil Procedure decades after and without any reference to the use of the word “strike” in subsection 14-3-330(2)(c). *See id.* at 302, 705 S.E.2d at 478 (citing Rule 86 of the South Carolina Rules of Civil Procedure for the July 1, 1985 effective date of the Rules).

Appellant’s appeal is simply an attempt to delay this case and avoid trial on the merits of the underlying claims. It is well-established the avoidance of trial is not a substantial right. *See Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991). Further, Appellant is not prohibited from appealing this ruling, if necessary, at a later date after a final judgment in this case.

### **3. Subsection 14-3-330(3) does not apply.**

Because this appeal does not stem from a “special proceeding” or “upon a summary application in any action after judgment,” subsection (3) is a nonstarter. No further analysis is needed.

**4. Subsection 14-3-330(4) does not apply.**

Because this appeal does not stem from an order concerning injunctive relief or an order concerning a receivership, subsection (4) is likewise a nonstarter. Similarly, no further analysis is needed.

\* \* \* \*

One final point appropriate for this Motion to Dismiss. Respondents are compelled to draw the Court's attention to a glaring defect in Appellant's appeal of the circuit court's order. Respondents stand firm that the circuit court did not err in granting their Motion to Strike.<sup>4</sup> However, assuming for sole purpose of this Motion to Dismiss, the circuit court erred, there is no harm. An elementary concept of every appeal is (1) error and (2) harm resulting from said error. *See Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993) ("An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant."). Appellant cannot—despite tortured attempts to do so—show any harm that has resulted from the circuit court's decision.

Again, three factual allegations were struck from Appellant's Second Amended Complaint. Quite tellingly, Appellant's brief is heavy on the alleged error, but is otherwise very light on the alleged prejudice resulting from said error. Appellant appears to argue prejudice flows from his inability to prove these facts and that without these facts, Respondents, *could have* moved to dismiss the Second Amended Complaint. Nevertheless, even a cursory review of the record makes clear that prejudice is nonexistent.

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<sup>4</sup> If necessary, Respondents will brief to this Court their position as to why the circuit court did not abuse its discretion in granting their Motion to Strike.

*First*, Appellant can still prove the very same stricken facts at trial to support his causes of action. *Second*, Appellant’s perception that, without the stricken facts in the Second Amended Complaint, Respondents could have moved to dismiss the Complaint is a red herring and is entirely speculative.<sup>5</sup> In fact, this provides further support to Respondents’ argument that Appellant’s appeal is not immediately appealable. Appellant speculates to hypothetical past or future harms. This speculation is inappropriate and flies in the face of decades worth of precedent holding steadfast that appellate issues must be ripe for consideration. *See Jowers v. S.C. Dep’t of Health & Env’t Control*, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018) (“We have explained ripeness by defining what is not ripe, stating ‘an issue that is contingent, hypothetical, or abstract is not ripe for judicial review.’” (quoting *Colleton Cty. Taxpayers Ass’n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006))).

Assuming Respondents convinced the circuit court to completely dismiss the Second Amended Complaint or convinced the circuit court to dismiss an entire cause of action, *then* Appellant could argue the necessity of an appeal. Until then, Appellant has only presented a non-appealable interlocutory issue with absolutely no evidence of resulting harm. Therefore, dismissal is appropriate.

### **CONCLUSION**

Based on the foregoing analysis, Respondents respectfully request the Court grant their Motion to Dismiss Appellant’s interlocutory appeal and remand this matter to the circuit court to proceed accordingly. Appellant’s attempt to create piecemeal litigation is inappropriate and conflicts with the well-established South Carolina law governing appealability. Dismissal of

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<sup>5</sup> Appellant appears to be concerned regarding his cause of action for civil conspiracy. The pleading requirements to allege civil conspiracy are not overly onerous. *See Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

Appellant's appeal best promotes the policy of our state to allow for final judgments prior to beginning the appellate process and best effectuates judicial economy by avoiding unnecessary and piecemeal appeals. To be sure, our state disfavors interlocutory appeals in order to allow our judicial system to run its course and avoid creating additional burdens that are not, and may never be, necessary. Furthermore, Appellant has completely failed to show any harm stemming out of any alleged error committed by the circuit court. Therefore, at this stage, a consideration of the merits of Appellant's appeal is unnecessary and dismissal is appropriate.

*(signature page to follow)*

Respectfully submitted,

**SMITH | ROBINSON**

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Columbia, South Carolina

February 4, 2022

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**PROOF OF SERVICE**

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I, the undersigned attorney of the law offices of Smith Robinson Holler DuBose and Morgan, LLC, do hereby certify that on February 4, 2022, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

**Documents Served:** Notice of Appearance and Motion to Dismiss

**Counsel Served:** Via E-Mail Only

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February 4, 2022

Columbia, South Carolina

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**Subject:** Jones v. Jones (Appellate Case No. 2021-001150)  
**Attachments:** 02.04.22 - Notices of Appearance - Jones v. Jones, 3.pdf; 02.04.22 - MTD - Jones v. Jones, 3.pdf; 02.04.22 - Proof of Service - Jones v. Jones, 2.pdf

Good afternoon, Counselors:

Please find attached the Respondents' Motion to Dismiss, Notice of Appearance, and Proof of Service in *Jones v. Jones*, Appellate Case No. 2021-001150, which we are electronically filing with the Court of Appeals today, served on you pursuant to Rule 262(c)(3) of the South Carolina Appellate Court Rules and section (d) of the South Carolina Supreme Court's August 25, 2021 Order discussing methods of electronic filing and service.

If you have any questions, please let me know.

Thank you,

Austin

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