THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
Court of Common Pleas
Jennifer B. McCoy, Circuit Judge
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Respondent,

versus

MINNIE LEE NEWMAN-MEVERS,
Appellant,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Respondent.

REPLY BRIEF OF APPELLANT

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
dblanchard@rosenhagood.com
ATTORNEYS FOR APPELLANT

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I. THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION TO CONSIDER APPELLANT'S APPEAL OF THE PROBATE COURT'S *EX PARTE* TEMPORARY RESTRAINING ORDER AND ITS ORDERS APPOINTING A SPECIAL ADMINISTRATOR.

Respondent South Carolina Attorney General's (SCAG) brief argues for the first time the Circuit Court supposedly lacked subject matter jurisdiction to consider Appellant Minnie Lee Newman-Mevers's (Minnie) appeal of the Probate Court's Order dated March 13, 2020 granting an *ex parte* Temporary Restraining Order (TRO) because the TRO was temporary in nature. See SCAG Final Brief p.12. The SCAG further asserts for the first time the Circuit Court purportedly lacked subject matter jurisdiction to consider the Probate Court's appointment of a special administrator. Id. pp.16-18. The SCAG asserts the TRO and orders appointing a special administrator are not immediately appealable under S.C. CODE ANN. § 62-1-308. The SCAG never raised these arguments to the Circuit Court.

Section 62-1-308 provides that "[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county ...." Id. § 62-1-308(a). This section further states that "[t]he circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." Id. § 62-1-308(i). This Court has held that "[a]s used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citation omitted); see also Matter of Howard, 315 S.C. 356, 434 S.E.2d 254, 257 (1993). "[A] circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal." In re Est. of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); see also Howard, 315 S.C. at 361, 434 S.E.2d at 257.

The Circuit Court in this case was required to apply the same rules of law that an appellate court would apply on appeal. These "rules of law" include the rule that an order granting, continuing, modifying, or refusing an injunction is immediately appealable. Atwood Agency v. Black, 374 S.C. 68, 70, 646 S.E.2d 882, 883 (2007); Eldridge v. City of Greenwood, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992); Appeal of Paslay, 230 S.C. 55, 64-65, 94 S.E.2d 57, 61-62 (1956). In Ex parte McFarlin, 2007 WL 8326605 (S.C. Ct. App. Feb. 12, 2007), although a nonbinding unpublished opinion, this Court held that a Probate Court's order freezing certain bank accounts "until a court may conduct a full hearing on the merits" was "in the nature of an injunction" and was immediately appealable even though it was temporary in nature. Id. at *2. In the present case, the fact the TRO was temporary in nature did not foreclose the Circuit Court's review of the order.

The SCAG's reliance on Est. of Boyce v. Work, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991) is misplaced.[1] In Boyce, the Court held that a Probate Court order appointing two sisters as special administrators for an estate was "clearly temporary" because the order expressly stated the sisters were appointed only "until such time as a Personal Representative(s) shall be formally appointed." The Boyce Court was never asked to—and did not—address the appealability of a Probate Court's order granting a TRO or temporary injunction, which is immediately appealable under our case law cited above notwithstanding its temporary nature.

Additionally, the Probate Court's order appointing the special administrator in this case is demonstrably different from the order in Boyce. Unlike Boyce, here the Probate Court's March 13, 2020 Order does not state the appointment of a special administrator is temporary, the appointment will expire upon some event, or the appointment will terminate when a personal representative is

[1] This Court's opinion in Boyce was appealed to the South Carolina Supreme Court. However, the parties settled before the Supreme Court could decide the matter. Boyce-Abel In re Est. of Boyce v. Work, 308 S.C. 234, 417 S.E.2d 597 (1992).

appointed. Instead, the Probate Court's March 13, 2020 Order appointed a special administrator on a permanent basis. (R. pp.2-10).[2] On that same day, the Probate Court issued Fiduciary Letters to James Duggan, Esquire of Duggan Law Firm which do not state his appointment as special administrator is temporary. (R. p.11). The Fiduciary Letters, which have never been revoked, disclose that Mr. Duggan's appointment is without restrictions. Mr. Duggan himself maintains he was appointed as special administrator "as of March 13, 2020 with no restrictions and not in a temporary capacity." (R. p.199 ¶4).

In Fisher v. Huckabee, 2016 WL 7495869, at *4 n.13 (S.C. Ct. App. Dec. 21, 2016), aff'd in part, rev' in part, 2018 WL 6528122 (S.C. Dec. 12, 2018), this Court rejected the argument that a Probate Court's order appointing a special fiduciary under S.C. CODE ANN. § 62-3-614 was interlocutory and not immediately appealable. In Fisher, this Court cited to Ex parte Small, 69 S.C. 43, 46, 48 S.E. 40, 41 (1904), where the Court held an order appointing an administrator of an estate was a final order and was immediately appealable. The appointment of a special fiduciary under § 62-7-704(e) adopts the same procedure for the appointment of a special administrator under § 62-3-614. It would be incongruent to deem the appointment of a special fiduciary under § 62-7-704(e) to be immediately appealable while holding the appointment of a special administrator under § 62-3-614 is not immediately appealable.

The SCAG's brief now makes the clever argument for the first time that the Probate Court's June 29, 2020 Order Granting a Temporary Injunction supposedly amended its prior March 13, 2020 Order to remove Mr. Duggan as special administrator and to replace him with his law firm, thus

[2] The SCAG attempts to distort the Probate Court's March 13, 2020 Order by claiming it's appointment of a special administrator "was only valid for 10 days." See SCAG Final Brief p.17. No such duration or term is stated anywhere in the Order. Although the TRO automatically expired ten days after its issuance by operation of S.C. R. CIV. PRO. 65(b), the Probate Court's appointment of a special administrator pursuant to § 62-3-614 contains no such automatic termination provision.

Minnie's appeal somehow does not apply to his law firm. The SCAG never made this argument below. The Probate Court's June 29, 2020 Order nowhere states it was intended to relieve Mr. Duggan of his appointment as special administrator or that he is no longer serving as the special administrator. (R. pp.13-28).[3] At the March 23, 2020 hearing, the Probate Judge specifically acknowledged Mr. Duggan as the special administrator. (R. p.350). The June 29, 2020 Order also refers to Mr. Duggan as being the court-appointed special administrator. (R. pp.13-14). The SCAG is now splitting hairs and grasping at straws.

Notably, the Probate Court never rescinded its Fiduciary Letters issued to Mr. Duggan and never issued new Fiduciary Letters to his law firm. Indeed, the pleadings and filings made in this case show that Mr. Duggan is the special administrator. (R. pp.198-202). On June 8, 2021, nearly a year after the June 29, 2020 Order, Mr. Duggan sought an award of fees and costs in his role as the special administrator. (R. pp.570-71). The SCAG's argument that Mr. Duggan is no longer the special administrator is a creative fiction.

In any event, Minnie appealed both of the Probate Court's Orders appointing a special administrator—the March 13, 2002 Order and the June 29, 2020 Order—to the Circuit Court and to this Court. (R. pp.252-56, 440-445, 575-83). Minnie appealed the Probate Court's appointment of a special administrator, no matter who serves in that role. The SCAG's claim that Minnie did not appeal the appointment of a special administrator lacks merit.

[3] Although Minnie's counsel was not apprised of this fact at the time, the reference to Mr. Duggan's law firm apparently came about because of an e-mail exchange that Mr. Duggan had with the Probate Judge's law clerk and the SCAG's counsel on March 16, 2020 (before Minnie had been served with the suit papers) in which Mr. Duggan informally requested that his law firm be added or included in his appointment paperwork so his law partners could appear on his behalf at hearings if he personally had a scheduling conflict. (R. pp.438-39).

II. THE PROBATE COURT ERRED BY GRANTING AN *EX PARTE* TRO AND APPOINTING A SPECIAL ADMINISTRATOR WITHOUT AFFORDING APPELLANT NOTICE OR AN OPPORTUNITY TO BE HEARD.

Minnie's opening brief points out Rule 65(b)'s clear requirement that an *ex parte* TRO cannot be issued "unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." S.C. R. CIV. PRO. 65(b). Moreover, under the South Carolina Probate Code (SCPC), a special administrator may be appointed "in a formal proceeding by order of the court on the petition of any interested person and finding, ***after notice and hearing***, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act." See S.C. CODE ANN. § 62-3-614(2) (emphasis added). The requirement of notice and a hearing can be dispensed with only if "***an emergency exists***." Id. (emphasis added). An "emergency" necessitates a showing of an immediate or imminent threat to the administration of the estate if notice is given. Matter of Est. of Runyan, 557 N.E.2d 1353, 1358 (Ind. Ct. App. 1990); In re Est. of Wilson, 594 N.W.2d 695, 701 (Neb. Ct. App. 1999). The SCPC also imposes a "notice" requirement for the Probate Court to reopen an estate. See S.C. CODE ANN. § 62-3-1008.

The SCAG's brief does not cite to any "specific facts" in any "affidavit" or "verified complaint" filed with the Probate Court ***prior to*** the issuance of the *ex parte* TRO showing that immediate and irreparable damage would result to the SCAG before notice could be served on Minnie and a hearing had on the SCAG's motion or that an "emergency" existed which posed an immediate or imminent threat to the administration of the estate. Instead, the SCAG cites to his ***lawyer's arguments*** made at a hearing ***ten days after the ex parte TRO had already been issued***. See SCAG Final Brief p.15. Of course, the SCAG cannot bootstrap the arguments his lawyers made

after the *ex parte* TRO had already been granted to satisfy Rule 65(b)'s requirements that he show specific facts via affidavit or verified complaint ***before*** the *ex parte* TRO could be granted. Lawyer arguments made at a hearing are not evidence in the first place. Bowers v. Bowers, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991); S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003).

Even if the SCAG's after-the-fact lawyer arguments could be considered "evidence," the SCAG's lawyers did not claim it was impossible to give Minnie or her lawyer advance notice of a hearing on the SCAG's TRO motion before it was granted on an *ex parte* basis. The lawyers did not assert that Minnie's whereabouts was unknown or she could not be found. Such an assertion would have been frivolous because the SCAG had been actively engaged in dialogue with Minnie and her legal counsel for several months prior to the commencement of this action. Not even the SCAG suggested that Minnie or her counsel failed to promptly respond to the SCAG's inquiries on each occasion they were made or that they had refused to cooperate with the SCAG's investigation.

The SCAG also failed to show an emergency existed or that immediate and irreparable injury, loss, or damage would result to the estate before he could serve notice of a hearing on Minnie or her counsel. The SCAG cites to no evidence showing that Minnie was threatening or on the verge of disposing of or secreting any estate assets before the SCAG filed this lawsuit or that Minnie or her lawyers had notified the SCAG during their communications with him that Minnie had any intention of disposing of any estate assets. In fact, the estate assets had already been distributed and the estate had long been closed for more than a year before the SCAG even brought this lawsuit.

To try to justify his actions in procuring an *ex parte* TRO and the *ex parte* appointment of a special administrator, the SCAG again resorts to the claim that Minnie "would not agree to a stand-still agreement." See SCAG Final Brief p.15. The SCAG equates Minnie's refusal to voluntarily

agree to refrain from disposing of her assets while litigation is ongoing with a showing that she must be on the verge of disposing of or secreting the estate's assets. If such a contention were sufficient to satisfy the "immediate and irreparable injury, loss or damage" language of Rule 65(b), then the rule's protections mean nothing.

In a new argument raised for the first time, the SCAG now claims the Probate Court's Orders were justified under that portion of S.C. CODE ANN. § 62-3-1008 stating that "***[i]f other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause***, the court upon application of any interested person and ***upon notice as it directs*** may appoint the same or a successor personal representative to administer the subsequently opened estate." See SCAG Final Brief p.16 (emphasis added).[4] However, this statute still requires the Probate Court to provide notice and to conduct a hearing ***before*** it grants a request to reopen an estate. In Matter of Est. of Herron, 561 N.W.2d 30 (Iowa 1997), the Iowa Supreme Court applied a statutory counterpart to § 62-3-1008 which stated that "[u]pon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court." Id. at 32. The Court ruled that a hearing "is clearly contemplated by the statutorily prescribed notice" and a hearing is "mandatory" under the statute. Id.

[4] Under the doctrine of *ejusdem generis*—which holds that general words following specific words in a statute are tied to the meaning and purpose of the specific words—the phrase "other good cause" as used in § 62-3-1008 is limited to the preceding words in that sentence—i.e., other property discovered after the estate is closed. See In re Est. of Sampson, 838 N.W.2d 663, 670 (Iowa 2013) (holding that "other proper cause" as used in Iowa statute similar to § 62-3-1008 "should be interpreted with reference to the other items in the list—i.e., other property being discovered or any necessary act being unperformed—which concern unperformed acts of administration."); Branch v. Cox, No. 4:17CV00429 JLH, 2018 WL 468284, at *3 (E.D. Ark. Jan. 18, 2018), aff'd sub nom. Branch v. Vural, 742 F. App'x 158 (8th Cir. 2018) ("The phrase 'any other proper cause' [used in Arkansas statute similar to § 62-3-1008] should be construed according to the canon of *ejusdem generis* to mean a cause similar to the two preceding causes in the list.").

The SCAG's brief also conspicuously fails to quote and altogether ignores the language in § 62-3-1008 requiring that estate property must be "discovered" after the estate is closed to warrant reopening the estate. Section 62-3-1008 applies only when estate property that was not previously administered is "discovered" after the estate is closed and it becomes necessary to reopen the estate to allow for the administration of this newly discovered property. Moultis v. Degen, 279 S.C. 1, 7, 301 S.E.2d 554, 558 (1983) ("***Where there are undistributed assets***, it is appropriate to petition the Probate Court to reopen the estate in order that ***after-discovered assets*** may be accumulated and distributed either under the statute of distribution or under the terms of a will." (emphasis added)).

Section 62-3-1008 is ***not*** an instrument for reopening an estate simply to "redistribute" assets that had already been administered before the estate was closed, even if the claimant alleges those assets were wrongfully distributed. In Est. of Sampson, for example, the Court applied the same Iowa statute quoted above in the Herron case in a lawsuit filed by the decedent's relatives who alleged they were the rightful beneficiaries under the terms of the decedent's will. 838 N.W.2d at 667-72. Like the SCAG in this case, the relatives in that case claimed the decedent's wife, who was the executor of the estate, had improperly distributed the decedent's real estate to herself rather than to them and had closed the estate without providing them notice of the proceedings. The relatives attempted to reopen the estate to have the property properly distributed to them. Id. at 667. However, the Court held the statute cannot be used to alter the distribution of property previously administered in the estate "simply because the petitioner asserts error in the prior distribution." Id. at 672. The statute applies only when property that not been administered as part of the estate was discovered after the estate's closing. Id. at 669.

Numerous other jurisdictions have reached the same result applying their versions of § 62-3-1008. See, e.g., In re Est. of McNabb, 744 N.E.2d 569, 572–73 (Ind. Ct. App. 2001) (holding

petition to reopen an estate to seek a redistribution of assets is not covered by statute similar to § 62-3-1008 notwithstanding deficiencies in the closing statement or lack of notice); In re Est. of Kalwitz, 923 N.E.2d 982, 988 (Ind. Ct. App. 2010) (holding statute similar to § 62-3-1008 cannot be used to modify a distribution of real property from the estate because it would be "an untimely attack on the decree of distribution" and the provision is not available to "seek[] a different distribution" of the estate property); Est. of Bilotti, 372 N.E.2d 122, 124-25 (Ill. App. Ct. 1978), aff'd sub nom. Com. Nat. Bank of Peoria v. Bruno, 389 N.E.2d 163 (Ill. 1979) (order reopening estate was void for lack of jurisdiction and a nullity because petition failed to allege a newly discovered asset or an unsettled portion of an estate); State ex rel. Armstrong, Teasdale, Schlafly, & Davis v. Kohn, 850 S.W.2d 86, 88-89 (Mo. 1993) (holding probate court exceeded its jurisdiction in reopening estate when petitioner failed to show that specific assets of the estate were newly discovered after the estate was closed and had not previously been administered); In re Est. of Hammond, 547 N.W.2d 36, 40 (Mich. Ct. App. 1996) ("Appellants also contend that the probate court should have reopened the Hammond estate. However, because the evidence indicates that Kirkendall fully administered the Hammond estate and appellants have failed to demonstrate the existence of any after-discovered assets, the court did not abuse its discretion in refusing to reopen the estate.").

In this case, the SCAG's petition does not seek to administer newly discovered property or assets that had not previously been administered before the estate was closed. To the contrary, the SCAG seeks to reopen the estate to seek a redistribution of assets already considered and administered in the prior estate proceeding. Section 62-3-1008 cannot be used for this purpose.

For the same reasons, the SCAG's additional new contention that the Probate Court could properly appoint a special administrator pursuant to § 62-3-614(1) without notice to Minnie "to take appropriate actions involving estate assets" misses the point that the assets the SCAG seeks to

recover were already administered and settled, had been distributed from the estate, and the estate was closed by Order filed December 31, 2018.[5] The estate had no assets over which the special administrator could "take appropriate actions" because the estate assets had already been distributed and the estate was closed. In re Est. of Martin, 860 N.W.2d 924 (Iowa Ct. App. 2014) ("There is no proper cause to reopen Helen's estate because it has no remaining interest in the property."). In the absence of a proper showing by the SCAG that there was some other asset of the estate that was newly discovered after the estate was closed and which had not previously been administered, there is no estate asset over which a special administrator can take any action.

The Probate Court had no evidentiary grounds on which to grant an *ex parte* TRO, reopen the estate, or appoint a special administrator without first affording Appellant notice and an opportunity to be heard. The Circuit Court likewise had no basis upon which to affirm the Probate Court's Order. This Court should reverse the Probate Court given its failure to provide Minnie with advance notice of the SCAG's motion or an opportunity to be heard prior to issuance of its Order.

III. THE PROBATE COURT ERRED BY EXTENDING THE TRO BEYOND TEN DAYS AND BY PRELIMINARY ENJOINING APPELLANT FOR AN INDEFINITE DURATION AND ORDERING HER TO ACCOUNT WHEN THE SCAG DID NOT MOVE FOR SUCH RELIEF AND NO HEARING WAS NOTICED ON SUCH A MOTION.

Minnie's opening brief shows the SCAG's TRO motion nowhere asked the Probate Court to extend or enlarge the TRO beyond the time limitations imposed by Rule 65(b), thus the TRO expired

[5] Section 62-3-614(1) applies only to "informal" proceedings while § 62-3-614(2) governs "formal proceedings." As defined in the SCPC, a "formal proceeding" means an action "commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons." S.C. CODE ANN. § 62-1-201(17). In this case, the SCAG commenced his action in the Probate Court by filing a Summons and Petition, thus this is a "formal proceeding" within the meaning of the SCPC. Section 62-3-614(1) does not govern; rather, § 62-3-614(2) applies including its "notice" requirements. Additionally, under the SCPC, "[f]ormal proceedings are governed by and subject to the rules of civil procedure adopted for circuit courts and other rules of procedure in this title." S.C. CODE ANN. § 62-1-201(17).

after ten days by operation of the rule. The SCAG's opposition brief does not dispute that he did not file any motion in the Probate Court requesting a preliminary or temporary injunction. He also fails to show anywhere in the record where the Probate Court noticed a hearing on any motion for a preliminary or temporary injunction. The SCAG's response to the forgoing is that the Probate Court can nevertheless issue a temporary injunction without prior notice to Minnie based on language in Rule 65(b) and under the Court's "inherent power to do all things reasonable and necessary to ensure that just results are reached to the fullest extent possible." See SCAG Final Brief p.22 (citing Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011) and Ex parte Cannon, 385 S.C. 643, 657, 685 S.E.2d 814, 822 (Ct. App. 2009)).

The Probate Court's Orders themselves do not state the Court granted a temporary injunction pursuant to any "inherent powers." Thus, the SCAG's purported justification for the Probate Court's temporary injunction is not one the Court itself espoused or utilized. Even assuming *arguendo* the Probate Court granted the temporary injunction based on "inherent powers," the Regions Bank and Cannon cases did not involve a Court granting injunctive relief ***without first affording proper notice to the parties***. Neither of those cases excuses the failure to give a party proper and adequate notice before the Court exercises any power to grant a temporary injunction.

The language in Rule 65(b) likewise did not allow the SCAG to obtain a temporary injunction without timely notifying Minnie prior to the March 23, 2020 hearing that he was seeking such relief. Although the SCAG selectively quotes some of Rule 65(b)'s language, he ignores other language in the rule stating that "[i]n case a temporary restraining order is granted without notice, ***the motion for a temporary injunction*** shall be set down for hearing …." S.C. R. CIV. PRO. 65(b) (emphasis added). Rule 6(d) further mandates that "[a] written motion other than one which may be heard ex parte, ***and notice of the hearing thereof,*** shall be served not later than ten days before

the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court." S.C. R. CIV. PRO. 6(d) (emphasis added). The rules obviously contemplate that a motion for a temporary injunction has been made, the Court is setting a hearing on that motion, and the hearing notice is served not later than ten days before the hearing date. United States v. Kaley, 579 F.3d 1246, 1264 (11th Cir. 2009) (concurring) ("TROs expire after a fixed period of time set by the court that can be no longer than ten days…. Immediately after the TRO is granted, therefore, the applicant must move for a preliminary injunction, which requires prior notice and a hearing.").

In this case, the SCAG did not make a motion for a temporary injunction before the March 23, 2020 hearing. The SCAG's motion filed on March 13, 2020 merely requested an *ex parte* TRO "effective from the date and time of issuance and for a period of 10 days thereafter." (R. p.128). The SCAG's motion nowhere asked the Probate Court to extend or enlarge the TRO beyond the time limitations imposed by Rule 65(b) or to grant a temporary injunction. The SCAG's Petition filed on March 13, 2020 also did not request a temporary injunction. (R. pp.70-82).

Because the SCAG never made a motion for temporary injunction prior to the March 23, 2020 hearing, the Probate Court's hearing notice dated March 13, 2020 (which was not served on Minnie until March 17, 2020) could not have constituted timely notice of any hearing on a motion for temporary injunction. The Probate Court erred by extending the *ex parte* TRO for a duration beyond that authorized by Rule 65(b) and by granting a temporary injunction and ordering an accounting when such relief had not been sought in the SCAG's motion and the Court had not noticed any hearing on such a motion.

The Probate Court compounded its error by refusing Minnie's request for leave to file additional affidavits in response to matters which the SCAG raised for the first time at the March 23, 2020 hearing. The SCAG incorrectly claims that Minnie's counsel simply "decided not" to submit

additional affidavits after being granted the opportunity to do so. See SCAG Final Brief p.40. To the contrary, the June 29, 2020 Order makes very clear that although the Court "initially was inclined to accommodate" Minnie's request at the March 23, 2020 hearing for leave to submit additional affidavits, the Court changed its mind, denied her request, and "decided to immediately announce its decision at the conclusion of the hearing…." because Minnie would not agree to an extension of the TRO. (R. pp.26, 345-51). As a result, the Probate Court ruled "the submission of additional affidavits … would serve no purpose." Id.

On July 10, 2020, Minnie timely moved to alter or amend the June 29, 2020 Order and requested that she be granted leave to file additional affidavits. (R. p.226). On August 28, 2020, Minnie also moved to vacate the Order on the same grounds. (R. p.249). However, the Probate Court denied these motions. (R. pp.29-33).

IV. THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A PRELIMINARY INJUNCTION OR TO REQUIRE APPELLANT TO ACCOUNT AFTER A NOTICE OF REMOVAL TO THE CIRCUIT COURT HAD BEEN FILED AND SERVED.

The Probate Court entered its June 29, 2020 Preliminary Injunction and ordered Minnie to render an accounting ***after*** Minnie had already filed and served a Notice of Removal and Motion to Remove Action to Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d) on May 12, 2020. The SCAG argues the notice of removal did not divest the Probate Court of jurisdiction to issue its June 29, 2020 Order because the Probate Judge had orally advised the parties at the March 23, 2020 hearing what he intended to rule. See SCAG Final Brief p.37-39.

Section 62-1-302(d) of the SCPC mandates that the action "***must be removed*** to the circuit court and in these cases ***the circuit court shall proceed upon the matter de novo***." S.C. CODE ANN. § 62-1-302(d) (emphasis added). The fact the Probate Judge had orally announced his intended ruling is not a final ruling. Until a written order is entered, a binding ruling has not been issued by the

Court. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999).

Once Minnie filed her notice of removal, the Probate Court should have immediately ceased its consideration of the case and removed the action to the Circuit Court. Our state Supreme Court addressed a similar circumstance in Cotty v. Yartzeff, 309 S.C. 259, 422 S.E.2d 100 (1992). In that case, after a formal petition was filed in the Probate Court and the Probate Court had begun but not yet finished a hearing on the petition, the appellant filed a motion to remove the matter to the Circuit Court. The Probate Court nevertheless went forward with the hearing and denied the appellant's removal motion. On appeal, the Supreme Court held the probate court should have granted the appellant's motion for removal to the Circuit Court. Id. at 262-63, 422 S.E.2d at 102.

Other states with similar statutes have held that once a contestant makes a *prima facie* showing that he or she has the right to remove or transfer the case, "the probate court '*must* enter an order transferring the contest to the circuit court'" and "a probate court confronted with a proper and timely transfer demand … can do nothing but comply with the mandate of the legislature and refer the contest to the appropriate circuit court." Hodges v. Hodges, 72 So. 3d 687, 691 (Ala. Civ. App. 2011) (citing Ex parte McLendon, 824 So. 2d 700, 705 (Ala. 2001)).

Minnie filed her removal notice pursuant to § 62-1-302(d) on May 12, 2020. As such, the Probate Court no longer had subject matter jurisdiction to issue a preliminary injunction on June 29, 2020. The June 29, 2020 Order is void for lack of subject matter jurisdiction and must be reversed.

V. THE PROBATE COURT ERRED BY FINDING THAT THE SCAG SATISFIED THE NECESSARY REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION.

The Probate Court erred by finding that the prerequisites for the issuance of a preliminary injunction were satisfied; namely, (1) that irreparable harm will be suffered if the injunction is not

granted; (2) the SCAG will likely succeed on the merits of the litigation; and (3) there is not an adequate remedy at law. Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

(a) Irreparable Harm.

The SCAG's opposition brief simply alleges that "irreparable harm" is present because "Appellant has taken possession of $19 million (sic) dollars which the Attorney General asserts she is not entitled to receive," but this is clearly insufficient to satisfy the irreparable harm element. See SCAG Final Brief p.24. The mere fact that Minnie has possession of and could use the assets in controversy does not warrant injunctive relief. In Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151 (1st Cir. 2004), an investor in a company suing for breach of contract moved for a preliminary injunction to prevent the company from disposing of its assets (i.e., the invested funds) pending adjudication of the investor's claims. The Court denied the injunction because the investor failed to show irreparable harm—it could recover an award of pecuniary damages against the company at end of the case. Id. at 162; see also Professional Wiring Installers, Inc. v. Sims, 2008 WL 9840409, *3 (S.C. Ct. App. 2008) ("pure economic loss is not sufficient to satisfy the requirement of showing an irreparable harm where an adequate remedy is available at law").

In its attempt to show irreparable harm, the investor in Charlesbank argued that "a denial of preliminary injunctive relief will allow '[the company] to enjoy the fruits of [the investor's] investment in the company without any reciprocal obligations.'" 370 F.3d at 162. However, the Court rejected the argument and said "[t]his assertion begs the question" because the investor had "not yet proven its mettle," "[i]f and when it does (by prevailing on the merits of its claim), it will be entitled to execute upon the judgment entered against [the company]," and "[u]nless and until that

happens, [the investor] must identify some *independent* reason why it will be irreparably harmed without the imposition of interim relief." Id.

The same situation exists here. The SCAG has not prevailed on its claims—i.e., he has not proven his mettle. If and when he does prevail on the merits of his claims, then he could recover monetary damages. Unless and until that occurs, the SCAG must identify some independent reason why he will be irreparably harmed without the imposition of interim relief. The SCAG failed to make that showing, thus the Probate Court erred in granting injunctive relief.

The SCAG now makes the claim that irreparable harm exists because Minnie allegedly "does not have sufficient funds to cover any monetary judgment that may be imposed against her." See SCAG Final Brief p.26. The SCAG did not make this argument to the Probate Court. However, even so, his belated allegation—devoid of any factual support in the record—is insufficient as a matter of law. "A fear of speculative or remote future injury cannot constitute irreparable harm." Hodges v. Abraham, 253 F. Supp. 2d 846, 864 (D.S.C. 2002). "There must be a likelihood that immediate irreparable harm will occur." Id. "[T]he irreparable harm must be concrete; that is, it 'must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store.'" Surplec, Inc. v. Maine Pub. Serv. Co., 495 F. Supp. 2d 147, 150 (D. Me. 2007) (quoting Charlesbank, 370 F.3d at 162).

"[C]onclusory assertions of defendants' financial weakness do not demonstrate a likelihood of irreparable harm." Gladstone v. Waldron & Co., 1998 WL 150982, at *2 (S.D.N.Y. Mar. 31, 1998) (citing cases); Fluor Daniel Argentina, Inc. v. ANZ Bank, 13 F. Supp. 2d 562, 564 (S.D.N.Y. 1998) ("[A]s to the likelihood of irreparable harm, plaintiff contends that 'it is highly unlikely that [Minera] will have assets which FDA can reach to satisfy any final judgment it may obtain in its favor.' But its showing in support of this contention is neither legally nor factually sufficient….

[E]ven in those unusual circumstances where monetary loss may support a finding of irreparable harm, such as 'where insolvency threatens to frustrate a damage award,' 'conclusory assertions of [a] defendant['s] financial weakness do not demonstrate a likelihood of' such harm. Yet here FDA offers little more than speculation and surmise in support of its claim of inordinate financial risk.") (internal citations omitted); SAS Inst., Inc. v. World Programming Ltd., No. 5:10-CV-25-FL, 2016 WL 3475281, at *5 (E.D.N.C. June 17, 2016), aff'd, 874 F.3d 370 (4th Cir. 2017) (irreparable harm element not satisfied when plaintiff failed to show defendant "is or faces imminent insolvency").

In this case, the SCAG has made nothing other than conclusory and unsubstantiated claims that Minnie would be unable to satisfy a judgment against her. The SCAG also grossly overstates what he can hope to achieve in this litigation. Roy E. Mevers, Jr.'s (the Decedent) estate had a "total probate estate value" of $18,862,700.00 according to the Amended Inventory and Appraisement filed in the Probate Court. (R. p.62). As Decedent's surviving spouse, Minnie is entitled to an elective share of Decedent's entire probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 et seq. even if the SCAG prevails in this case. The elective share is provided by law and includes a one-third (1/3) share of the probate estate, thus Minnie is entitled to receive at least $6,287,566.67 from Decedent's estate even if the SCAG has a meritorious claim, which has not yet been proven. The SCAG made no showing that Minnie spent or dissipated more than $6.287 million. He has offered nothing more than conjecture that Minnie is insolvent.

(b) Inadequacy of Remedy at Law.

In MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003), this Court held that "[a]n injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole." Id. at 369-70, 588 S.E.2d at 639; see also Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 907 (reversing

preliminary injunction and finding that the plaintiff had adequate remedy at law). In MailSource, which involved an employer's action to enforce a non-compete agreement executed by the defendants, this Court pointed out that in addition to seeking an injunction, the plaintiff also should be able to prove money damages from any breach of the agreement by the defendants. 356 S.C. at 369, 588 S.E.2d at 639. As a result, this Court affirmed the trial court's denial of the plaintiff's motion for a preliminary injunction because of the availability of an adequate remedy at law—an award of monetary damages.

SCAG likewise failed to show an inadequate remedy at law in this case. Any harm to SCAG can be remedied by an award of money damages. Because the SCAG has an adequate remedy at law, the Probate Court erred in granting a preliminary injunction in the SCAG's favor.

(c) Likelihood of Success on Merits.

Finally, the SCAG is not "likely" to succeed on the merits of the litigation. Minnie's opening brief shows the SCAG's claims fail on the merits because (i) he is improperly seeking to pursue the rights of The "Sonny Mevers" Foundation ("Foundation"), which was a private foundation that was dissolved over 2½ years ago, no longer exists, and no longer has the right, power, or ability to pursue any claims; (ii) he lacks standing or capacity to sue on the Foundation's behalf to enforce any rights it may have to receive Decedent's residuary estate—any such claims belong to the Foundation, not to the SCAG; and (iii) the Foundation—even assuming *arguendo* the SCAG can sue to enforce its rights—did not have any right to receive any portion of Decedent's estate because the Foundation did not meet the express conditions or qualifications set forth in his Will and Codicils.

In response, the SCAG's opposition brief argues that "[t]he claims brought here are not claims of the Foundation," "this is not a corporate derivative matter as [Minnie] claims," and the SCAG "is acting on behalf of the potential beneficiaries of the Foundation, not on behalf of the

Foundation itself." See SCAG Final Brief p.29. The SCAG's brief cites absolutely no law to support his arguments on these points. His arguments are contrary to the law.[6]

In In re Gebbie's Will, 307 N.Y.S.2d 1002 (N.Y. Sup. Ct. 1970), the New York court discussed the attorney general's standing to sue as follows:

> We agree with appellant Rogerson that the Attorney-General in his capacity as supervisor of charitable trusts has no direct right to sue in behalf of a charitable trust such as the Gebbie Foundation, Inc., and has only a derivative right which he may pursue upon alleging that the trustee of such trust, namely the Gebbie Foundation, Inc., has failed to act to protect the rights of the beneficiaries of the trust after notice and demand for action therefor. The petition lacks such allegations, and so the Attorney-General has no standing to institute this proceeding.

Id. at 1002 (citations omitted); Est. of Vanderbilt, 441 N.Y.S.2d 153, 159 (N.Y. Sur. Ct. 1981) ("The attorney general, on the other hand, does not have the direct right to sue but his right to maintain an action is merely a derivative right which he may pursue only after he has first made a demand upon the trustees [of charitable trust] to commence an appropriate action and which demand has been refused.").

Despite the SCAG's protestations to the contrary, his claims in this case are derivative in nature. The SCAG's lawsuit is attempting to enforce *the Foundation's rights* as a putative beneficiary of the Decedent's Will and Codicils. The Foundation's "unspecified charitable beneficiaries" are not named as beneficiaries of the Decedent's Will or Codicils and have no rights under those documents. Indeed, although the SCAG states that he represents the Foundation's "unspecified charitable beneficiaries" and not the Foundation itself, he points to nothing in the

[6] The SCAG's brief is also replete with numerous factual allegations against Minnie that are untrue and completely devoid of any support in the record, including that the Foundation did not have any board members or representatives who could have brought an action against Minnie on the Foundation's behalf if they thought such was justified (which they did not), that Minnie "controlled" the Foundation, and that the Foundation "had no independent counsel." This Court obviously cannot decide this appeal based on assertions by the SCAG lacking evidentiary support in the record. Minnie points out that many of the SCAG's purported facts are not facts at all.

Decedent's Will or Codicils devising any assets or property to the Foundation's beneficiaries. Instead, the Foundation itself (not its beneficiaries) was named as the initial residuary beneficiary in the Will and Codicils conditioned upon its satisfaction of requirements specified in those instruments. The loss, if any, is to the Foundation, thus any recovery belongs to the Foundation. It is the Foundation that must bring the claim, not the SCAG. Lefkowitz v. Lebensfeld, 408 N.Y.S.2d 216, 219 (N.Y. Sup. Ct. 1978) ("[N]ot-for-profit corporations … have the right to prosecute an action in their own names for the protection of their ultimate beneficiaries … and thus no need exists for the Attorney General to act in their behalf.").

The SCAG is attempting to pursue claims belonging to the Foundation, which was dissolved on January 24, 2018. A dissolved entity cannot pursue claims on its own behalf.[7] Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc., 436 S.E.2d 207, 208 (Ga. 1993); Pacesetter Real Est., Inc. v. Fasules, 767 P.2d 961, 964-65 (Wash. 1989); Abrams v. Porter, 920 P.2d 386, 388-89 (Idaho 1996); Bio-Thrust, Inc. v. Div. of Corps., 80 P.3d 164, 166 (Utah 2003). It necessarily follows that the SCAG cannot sue derivatively on behalf of a dissolved entity which itself cannot sue. In fact, the SCAG's opposition brief fails to cite a single case in which an attorney general was authorized to file suit to recover assets belonging to a dissolved corporation.

[7] While the SCAG does not dispute the Foundation was dissolved on January 24, 2018, he argues the corporate code barred Minnie from transferring assets belonging to the Foundation. The code states that "[n]o assets may be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the Attorney General or until the Attorney General has consented in writing to the dissolution, or indicated in writing that he will take no action in respect to the transfer or conveyance, whichever is earlier." S.C. CODE ANN. § 33-31-1403(b). The SCAG's argument hinges on the validity of his claim that the Foundation was a beneficiary of Decedent's Will and that his residuary estate rightfully belongs to the Foundation. If incorrect, the Foundation had no assets to transfer once dissolved. Minnie's opening brief shows the Foundation did not have any rights to any assets in Decedent's estate, thus it had no assets to transfer as part of the dissolution process. Section 33-31-1403(b) is irrelevant.

Even if the Foundation had not been dissolved, the SCAG still cannot bring this lawsuit against Minnie because he has failed to comply with the necessary predicates for bringing a derivative claim on the Foundation's behalf. The SCAG has no direct right to sue on behalf of a private foundation such as the Foundation. He only has a derivative right which he may pursue upon alleging that the Foundation itself failed to act to protect the rights of its beneficiaries after notice and demand for action therefor were made. No such allegation or showing has been made in this case. The SCAG does not allege he made any demand upon the Foundation's board to pursue any claims against Minnie or that the board refused his demand.[8] In the absence of such a showing, the SCAG has no standing to institute this proceeding. State ex rel. Butterworth v. Anclote Manor Hosp., Inc., 566 So. 2d 296, 298-99 (Fla. Dist. Ct. App. 1990); Lefkowitz v. Lebensfeld, 68 A.D.2d 488, 417 N.Y.S.2d 715 (1979), aff'd, 51 N.Y.2d 442, 415 N.E.2d 919 (1980).

The SCAG again resorts to the common-law *parens patriae* doctrine to argue he has authority to bring this action as part of his duty "to represent the interests of unspecified charitable beneficiaries and the interests of the public at large." See SCAG Final Brief p.30-33. *Parens patriae* is a standing doctrine that allows states to bring suit on behalf of their citizens in certain limited contexts by asserting a "quasi-sovereign interest," such as the safety, health, or welfare of its citizens. *Parens patriae*, which literally means "parent of the country," began as a common-law doctrine that allowed the sovereign (originally the King, later state governments) to assume legal responsibility (including the right to sue or defend suits) over those who are legally incapable of protecting their own rights. Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592,

[8] Our state Supreme Court has emphatically stated it "has never held that the Attorney General's authority [in his capacity as chief legal officer of the State to institute actions involving the welfare of the State and its citizens] is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure." Condon v. State, 354 S.C. 634, 641-42, 583 S.E.2d 430, 434 (2003).

601, 607 (1982); Chapman v. Tristar Prod., Inc., 940 F.3d 299, 305 (6th Cir. 2019); People ex rel. Spitzer v. Grasso, 893 N.E.2d 105, 107 n.4 (N.Y. 2008).

To invoke the doctrine, the SCAG must prove a quasi-sovereign interest distinct from that of a particular party and injury to a substantial segment of the state's population. The doctrine of *parens patriae* derives from the common-law principle that a sovereign, as "parent of the country," may step in on behalf of its citizens to prevent "injury to those who cannot protect themselves." Snapp, 458 U.S. at 600 (citation and internal quotation marks omitted). The State can, as *parens patriae*, maintain an action on behalf of its citizens to seek compensation for sovereign or quasi-sovereign claims, but it may not represent its citizens' private interests. Brown & Williamson Tobacco Corp. v. Gault, 627 S.E.2d 549, 551 (Ga. 2006).

Minnie's opening brief sufficiently explains the various reasons why the *parens patriae* doctrine does not apply to this case, including, *inter alia*, because the doctrine is inapplicable when the Foundation itself was capable of filing suit to protect its own interests; the SCAG's lawsuit seeks to recover the damages claim of the Foundation, which was a private foundation fully entitled to sue in its own right; and the award of money damages would not compensate the State for any harm done to its quasi-sovereign interests, but would compensate the Foundation (a private foundation). The SCAG's opposition brief does not discuss or respond to any of these points. He ignores them.

The SCAG again cites to Watson v. Wall, 229 S.C. 500, 93 S.E.2d 918 (1956), which involved a decedent's bequest in his will that a portion of his estate be used for specific charitable purposes. That case did not involve a bequest to an already existing charitable organization conditioned on the devise being eligible for a charitable deduction. In Watson, and unlike the present case, there was no trustee or other person in place who was a more appropriate party capable of bringing suit to enforce the charitable bequest. The SCAG was allowed to intervene in Watson

because the decedent's will had created a charitable trust for specific charitable purposes, the litigation involved the determination of the charitable trust's rights under the will, and there was no trustee or other representative in place who could represent the interests of the charitable trust in the litigation.

The present case is not like Watson. Here, the Foundation had no rights to the Decedent's estate (i.e., no charitable devise was made) unless the Foundation satisfied certain express conditions in Decedent's Will. There was an already existing Foundation in place that was fully capable of asserting a claim on its own behalf in Decedent's estate if it chose to do so. But the Foundation did not choose to bring such a claim. The *parens patriae* doctrine is inapplicable when there is "the presence of a more appropriate party or parties capable of bringing suit." In re Tobacco/Governmental Health Care Costs Litig., 83 F. Supp. 2d 125, 134 (D.D.C. 1999); Com. of Pa., by Shapp v. Kleppe, 533 F.2d 668, 675-76 (D.C. Cir. 1976). It is telling that the SCAG fails to cite a single case involving a scenario, like the present case, where he was authorized to sue in place of a previously created private foundation fully capable of protecting its own rights and to leap-frog or skip the foundation's own board and officers so as to prosecute the foundation's putative rights or claims even though the foundation itself chose not to pursue any such action.

Finally, Minnie's opening brief shows that the SCAG's lawsuit altogether fails on the merits because the Foundation was disqualified from taking as a residuary beneficiary under the terms of Decedent's Will. At the time of Decedent's death and when the Estate was distributed (a) the Foundation could not qualify as a charitable organization within the meaning of IRC § 2055 and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under Article XII of Decedent's Will. See Appellant's Brief pp. 40-48.

On July 21, 2005, the IRS initially granted the Foundation tax-exempt status as a private foundation under IRC § 501(c)(3) and stated it was "qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code." (R. p.106). However, through no fault of Minnie, the IRS later revoked the Foundation's tax-exempt status via letter effective on November 15, 2017, only twelve days after Decedent's death. (R. p.433). The Foundation's tax-exempt status has never been reinstated. Despite this fact, the SCAG makes the following bare claims:

> The IRS issued an Auto-Revocation for the Foundation's 501(c)(3) status included (sic) a stated revocation date of November 15, 2017, and a revocation posting date of March 12, 2018. (Order of 3/ 13/2020, p. 5, Auto Revocation List). Even assuming that the date of distribution is the relevant date to determine whether the devise to the Foundation would be permitted as an estate tax deduction, the Foundation's loss of its 50l (c)(3) tax exempt status did not prevent the gift to the foundation from being a deduction from the value of the taxable estate under 26 USC § 2055. Even after auto-revocation, the Foundation continued to be charitable within the definition of § 2055 governing estate tax deductions for charitable transfers. There is simply no requirement in § 2055, or anywhere else in the Internal Revenue Code or corresponding regulations that estate distributions be made to a 501(c)(3) tax exempt organization in order to qualify for an estate tax charitable deduction.

See SCAG Final Brief p.37.

The SCAG cites no case law or IRS ruling supporting his claims. A Tax Court decision and the IRS website directly contradict him. See Est. of Clopton v. Comm'r, 93 T.C. 275 (1989) (contribution to educational organization which had its tax-exempt status revoked was not entitled to an estate tax deduction under IRC § 2055); https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf p.3 No. 4 ("Will a 501(c)(3) organization on the list of automatically revoked organizations (Auto-Revocation List), be eligible to receive tax-deductible charitable contributions? No. A 501(c)(3) organization that is automatically revoked is not eligible to receive tax-deductible contributions."). The IRS revocation letter itself refutes the SCAG. It clearly states: "You [the Foundation] are no longer tax-exempt. ***In addition, if you were eligible to receive tax deductible contributions, you are***

no longer permitted to do so." (R. p.433) (emphasis added). In short, the IRS communicated to the Foundation its position; namely, once tax-exempt status was revoked, the Foundation was no longer eligible to receive a tax deductible contribution.

In the trial court, Minnie also offered uncontradicted affidavits from three different attorneys—two of which are tax attorneys—showing the Foundation's loss of its tax-exempt status caused it to fail to satisfy the conditions in Article XII of Decedent's Will for it to receive the residuary estate. (R. pp.161 ¶¶26-27; 173-74 ¶¶21-23; 711 ¶18). Because the Foundation failed to satisfy these conditions, the devise to the Foundation either did not vest or, if it vested, lapsed or was cancelled and instead devolved to Minnie pursuant to S.C. CODE ANN. § 62-3-101. The SCAG offered no evidence or testimony to contradict these affidavits. In sum, the Probate Court erred in finding the SCAG is "likely" to prevail in this action.

CONCLUSION

For the reasons stated above and in Minnie's opening brief, this Court should reverse the Orders of the Probate Court and Circuit Court.

Respectfully submitted,

ROSEN HAGOOD, LLC

By:*/s/ Daniel F. Blanchard, III*
Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
dblanchard@rosenhagood.com
ATTORNEYS FOR APPELLANT

April 7, 2022.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
Court of Common Pleas
Jennifer B. McCoy, Circuit Judge
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Respondent,

versus

MINNIE LEE NEWMAN-MEVERS,
Appellant,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Respondent.

CERTIFICATE OF COUNSEL

I certify that the Brief of Appellant and Reply Brief of Appellant comply with Rule 211(b), SCACR, and the South Carolina Supreme Court's Order dated April 15, 2014.

ROSEN HAGOOD, LLC

By:*/s/ Daniel F. Blanchard, III*

Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
dblanchard@rosenhagood.com

April 7, 2022.

ATTORNEYS FOR APPELLANT