

ORIGINAL

No. \_\_\_\_\_

25-6744

FILED

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CE Holmes — PETITIONER  
(Your Name)

vs.

JK Holmes — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SOUTH CAROLINA SUPREME COURT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CE Holmes  
(Your Name)

PO BOX 187  
(Address)

SULL. IS. SC 29482-0187  
(City, State, Zip Code)

843.883.3010  
(Phone Number)

## **Questions Presented**

I. Jurisdiction Can be Raised at Any Time and Cannot Be Waived

II. The Trial Court Stay Should Be Sustained Pending Resolution of Jurisdiction and Denial of Substantial Rights

III. Prejudicial Lack of Due Process

IV. Data Entry Errors and Inaccurate Public Records Undermine Fair Process

V. Intervening Case Law

### LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

### RELATED CASES

LAW OF THE CASE ON PRIOR APPEAL IN 12/9/22  
ORDER OF S.C. COA APP. CASE NO. 2022-1146 (APP.D)

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IN THE  
SUPREME COURT OF THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is ?

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the S. C. COURT OF APPEALS court appears at Appendix B to the petition and is ?

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 3/17/25.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 6/25/25, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NOV. 22, 2025 (date) on SEPT. 16, 2025 (date) in Application No. 25 A 296.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Amendment I

#### Religion and Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### Amendment V

#### From the Bill of Rights

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## SOUTH CAROLINA CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. 1, § 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, no law impairing the obligation of contracts, *including family court contracts incorporated in the Decree of Divorce*, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

Art. V, § 8. Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.

The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Court of Appeals as precedents. (1985 Act No. 9.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding.

The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. They shall not, while in office

engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

S.C. Code § 14-8-80

By statute, the Legislative intent and letter and spirit of the law require that for each panel of the Court of Appeals, three judges constitute a quorum for determining appeals.

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; appeal.

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. An appeal shall be allowed from decision of any one judge to a panel of the Court.

S.C. Code § 14-8-290

In S.C. Code § 14-8-290, the powers of individual judges are specified. Significantly and materially, that statute does not authorize sua sponte ex parte summary dismissal with no jointly-filed ROA or factual support in the record herein.

S.C. Code § 14-3-350

SECTION 14-3-350. Power of individual justices at chambers; appeal.

Each of the justices of the Supreme Court shall have the same power at chambers to administer oaths, issue writs of habeas corpus, mandamus, quo warranto, certiorari and prohibition and interlocutory writs or orders of injunction as when in open court. But an appeal shall be allowed from the decision of any such justice to the Supreme Court.

Rule 220(c), SCACR

Rule 220(c), SCACR: Affirmance on any ground appearing in the record.

The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal.

## STATEMENT OF THE CASE

Out of the blue, Family Court Attorney Defendant, respondent herein, hired an 80+ year old real estate attorney with a reputation for aggressively pursuing heirs property defendants to violate the Decree of Divorce incorporating the marital agreement approved by the Family Court which the Family Court Attorney Defendant never appealed and which is now the law of the case. Pursuant to S.C. Code §§ 63-3-510 to 530, that Decree reserves and preserves jurisdiction in the Family Court over marital property herein which is respectfully invoked. Rule 12(b)(8), SCRCF, motion to dismiss includes objection based on lack of jurisdiction and is currently pending. On prior appeal including the jurisdictional issue, the civil trial court issued the attached notice of effective stay pending appeal which should be sustained. The law of the case on prior appeal, copy attached, grants reinstatement of appeal based on pending Rule 59(e), SCRCF, motion. See South Carolina Court of Appeals (SC COA) December 9, 2022, order in SC COA App. Case No. 2022-1146. The current appeal is designated SC COA App. Case No. 2024-1450.

After multiple appeal transcript requests went unanswered, the undersigned was forced to file a motion and pay the filing fee for the following response: The SCCA (South Carolina Court Administration) finds the audio for transcript is missing despite audio for the other matters heard on April 20, 2022. Curiously, SCCA, without explanation, finds the audio for the most recent Family Court hearing is missing as well. Motion to Reconstruct the Record is timely filed but not addressed. SCCA timely responded to the Family Court Attorney Defendant's

transcript request which he failed to serve on the other side. The Family Court Attorney Defendant apprised the SC COA of the missing transcript. On September 10, 2024, in SC COA App. Case No. 2024-1450, a single COA judge sua sponte ex parte summarily issued the attached opinion which is internally inconsistent with the law of the case on prior appeal, the December 9, 2022, SC COA App. Case No. 2022-1146. The record reflects there is no jointly-filed ROA (record on appeal) or other factual support. Timely S.C. Code § 14-8-220 (*supra*) appeal of that single COA judge's opinion is filed but not addressed. Timely SC COA petition for rehearing is denied.

Pursuant to Rule 263(b), SCACR, as well as In re *Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, S.C. Supreme Court Order dated July 16, 2014, and the SCACR generally, timely cert petition extension request is electronically filed, served, and paid (\$50.00 Check #3480) on Sunday, February 23, 2025, which is confirmed in the attached copy of the South Carolina Supreme Court's (SCSC's) February 24, 2025, correspondence marked received by the SC COA on February 24, 2025, and timely docketed in SC COA App. Case No. 2024-1450. Rule 263(b), SCACR (the appellate court or an individual judge or justice may extend the time fixed by the SCACR to perform any act, except the time for serving the notice of appeal under Rules 203 and 243, SCACR). The undersigned timely paid (\$250.00 Check # 3569), served, and filed the South Carolina Petition for a Writ of Certiorari electronically on March 16, 2025, before wrongful dismissal on March 17, 2025. That wrongful dismissal relies on error of material fact and data entry error of March 12, 2025, for the



filing of the cert petition extension request instead of the actual filing date of February 23, 2025. But for data entry error of March 12, 2025, instead of the actual filing date, the outcome should and would be in the undersigned's favor. Curiously, neither the party's timely filed February 23, 2025, cert petition extension request nor the confirmation of its receipt by the South Carolina Supreme Court's (SCSC's) February 24, 2025, correspondence, copy attached, appeared on the South Carolina Judicial Department's Public Index Docket Sheet for SCSC App. Case No. 2025-000486 on appeal herein. Timely S.C. Code § 14-3-350 (*supra*) appeal of a single justice's March 17, 2025, dismissal is paid (\$50.00 Check # 3523), served, and filed but not addressed. Pursuant to Section 11(d)(3), SCEF (South Carolina Electronic Filing), of the South Carolina Rules of Court, petitioner filed the SCCA Form 295, Request for Data Entry Correction. The required responsive SCCA Form 296, copy attached, is not filed. Section 11(d)(3), SCEF, of the South Carolina Rules of Court. Timely petition for rehearing is denied. Petition for a Writ of Certiorari is timely filed.

## REASONS FOR GRANTING THE PETITION

### I. Jurisdiction Can be Raised at Any Time and Cannot Be Waived

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Jurisdiction can be raised at any time and cannot be waived. *See Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994). A pending Rule 12(b)(6) motion to dismiss asserts lack of jurisdiction and another action in the Family Court between the same parties regarding the same claims. This case involves the Decree of Divorce after a 30-year marriage, including three children and one grandchild. The Family Court Attorney Defendant, with decades of experience, agreed to the terms in open court, the Family Court Judge read the terms into the record, and the Family Court Judge incorporated that agreement into the Decree of Divorce reserving and preserving jurisdiction over the marital property herein. The Family Court Attorney Defendant, respondent herein, did not object, he did not appeal, and that Decree is now the law of the case. See Rule 16, SCRFC ("The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint."...) The plain language of the Decree expressly reserves and preserves jurisdiction in the Family Court, which is subject to its confidentiality protections, now respectfully invoked.

This jurisdictional issue is critical. The opposing party's duplicative claim in civil court obstructs the transfer of clear title to marital property, which unfairly reduces its market value and undermines equitable division, a matter that is automatically stayed on appeal. *See Lassiter v. Lassiter*, 291 S.C. 136, 352 S.E.2d 486 (1987). By analogy, the Biblical story and the phrase "split the baby" has its roots in Hebrew lore in the story of two mothers claiming before King Solomon that each was the real mother of an infant son. The story from 1 Kings 3:16-28 states that two mothers living in the

same house, each the mother of an infant son, came to Solomon. One of the babies had been smothered,<sup>1</sup> and each claimed the remaining boy as her own. Calling for a sword, Solomon declared his judgment: The baby would be cut in two, each woman to receive half. It was the love of the mother that proved the truth of the matter asserted. If the Family Court Attorney Defendant's motives were pure, he too should and would object to arbitrarily and capriciously reducing market value. Instead, he elects to evade the jurisdiction of the Family Court, to evade the merits, and to evade the Decree of Divorce. Further, legal title is not dispositive and appeal automatically stays equitable division herein which is respectfully requested. *Lassiter v. Lassiter*, 291 S.C. 136, 352 S.E.2d 486 (1987). If the opposing party were acting in good faith, he would not pursue a course that reduces market value and undermines the agreement he previously entered into and never appealed.

Family Court retains exclusive original jurisdiction over domestic matters, including real property, under S.C. Code §§ 63-3-510 to 530. As a result, this dispute remains within the jurisdiction of Family Court. South Carolina law holds that once jurisdiction is attached, it is not removed by later developments. *See Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) ("The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached."); *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983).

The State of South Carolina requires an application for license to marry and requires the Family Court to issue Decree of Divorce to end that marriage according to law. Denying a party access to Family Court and its privacy protections when the Decree explicitly incorporates the Family Court Attorney Defendant's agreement to preserve jurisdiction, violates both state and federal constitutional

rights. This includes equal protection under the Fourteenth Amendment, impairment of substantial rights, and denial of protections under the South Carolina Constitution including S.C. Const., art. I, § 4.

Further, improper jurisdictional handling of real estate title creates adverse consequences for the public and third parties. The Legislature intended to prevent duplicative actions in civil court to bypass the authority of the Family Court. The lower appellate court opinions have no jointly-filed ROA (record on appeal) or factual basis in the record, no citations to supporting authority, and no adequate explanation for meaningful review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4<sup>th</sup> Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). Legal title is not dispositive and title to real property is disputed herein. The parties are owners of an undivided equitable interest with the plain language of the Decree of Divorce reserving and preserving jurisdiction in the Family Court. Specifically, Article V, Section 11 of the South Carolina Constitution provides Jurisdiction of the civil trial court, the Circuit Court, as follows:

The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, **except those cases in which exclusive jurisdiction shall be given to inferior courts (such as the Family Court in this case)**, and shall have such appellate jurisdiction as provided by law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) Article V, Section 11 of the South Carolina Constitution (emphasis supplied).

Pursuant to S.C. Code § § 63-3-510 to 530, the Family Court has **exclusive original jurisdiction** over the domestic matters and marital property herein. Similarly, the domestic matters herein are subject to confidentiality and privacy requirements and rights in the Family Court. In the alternative, the undersigned requests civil trial court case herein number 2021-CP-10-5478 be sealed. By analogy, the Fourth Circuit case of *Roberge* provides insight. In re *Roberge*, 188 B.R. 366 (E.D. Va. 1995)(unpublished), aff'd, 95 F.3d 42 (4th Cir. 1996). Footnote 5 of that case provides

that the “opinion (*of the lower court*) makes frequent mention of the fact that prior to the equitable distribution suit, each of the parties held a one-half undivided interest as tenants in common. *See In re Roberge*, 181 B.R. at 857. **It cites no support for, and this Court has found no applicable law in support of, the proposition that if a tenancy by the entireties is converted to a tenancy in common, the parties are presumed to have equal undivided shares.**” *In re Roberge*, 188 B.R. 366 (E.D. Va. 1995), *aff'd*, 95 F.3d 42 (4th Cir. 1996) (emphasis supplied). Likewise, there is no South Carolina law supporting that proposition herein. Under the facts and on a full and fair record, Judge Duncan ruled similarly in USBC-SC Case No. 19-1644-DD which is issue preclusion, *res judicata*, or collateral estoppel. Moreover, the *Roberge* case confirms public policy which provides protection for families, confidentiality, and privacy rights in the Family Court. *In re Roberge*, 188 B.R. 366, 370-71 (E.D.Va.1995), *aff'd*, 95 F.3d 42 (4th Cir. 1996). Overall, the Fourth Circuit ruled the proper forum is the Family Court. Accordingly, for substantial justice affecting substantial rights including clear title for prospective third parties and stability in the market place, the Family Court has exclusive original jurisdiction. S.C. Code § § 63-3-510 to 530 and 20-3-620. *See, e.g., Gordon v. Lancaster*, 823 S.E.2d 173, (2018) (“a well-settled area of the law...and return to the traditional bright-line rule.” 823 S.E.2d at 175).

## **II. The Trial Court Stay Should Be Sustained Pending Resolution of Jurisdiction and Denial of Substantial Rights**

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The jurisdictional issues at the center of this case remain unresolved and are of central importance. The stay that was previously granted by the trial court, copy attached, should be continued, because the factual and legal circumstances that justified it still apply. Moreover, enforcement of equitable division is a matter that is automatically stayed on

appeal. See *Lassiter v. Lassiter*, 291 S.C. 136, 352 S.E.2d 486 (1987). The respondent, the Family Court Attorney Defendant, has filed a duplicative claim in the civil trial court that attempts to circumvent the jurisdiction of the Family Court. This action has impaired the transfer of clear title to marital property, which in turn has reduced the property's market value in an arbitrary and capricious way. The resulting uncertainty harms not only the parties involved but also prospective third parties. The respondent's current attempt to sidestep the Decree of Divorce through separate civil litigation violates both the agreement itself and the exclusive jurisdiction of the Family Court. If the respondent were acting in good faith, he would be expected to oppose any actions that reduce the market value of the property, that violate the terms of the agreement he made part of the Decree of Divorce, or that undermine the Family Court. His decision to instead pursue litigation in a court without jurisdiction and without addressing the merits, reflects an effort to evade both the Family Court's authority and the procedural safeguards therein. Accordingly, sustaining the stay pending resolution is respectfully requested. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043.

In sum, the reasoning that supported the original stay remains valid and unchanged. The petitioner respectfully requests the stay be upheld including regarding the jurisdictional and/or procedural due process issues.

### **III. Prejudicial Lack of Due Process**

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The petitioner respectfully submits that substantial

rights were denied during trial court proceedings, resulting in a violation of procedural due process. One notable example concerns the trial court's June 9, 2022, order, which states that a hearing occurred on April 20, 2022. However, no required notice for that hearing was provided to the petitioner and no recording of the hearing can be located by the court for transcription. This absence of notice and failure to maintain a record or transcript are both procedural violations that materially impact the petitioner's right to appeal.

Pursuant to Rule 207 of the South Carolina Appellate Court Rules (SCACR), the petitioner made several timely requests to the South Carolina Court Administration (SCCA) for a transcript of the hearing. These requests went unanswered. It was not until the petitioner filed a formal motion and paid the filing fee that SCCA responded, stating it could not locate a recording of the April 20, 2022, hearing, even though recordings of other hearings held on the same day were found. Neither the trial court nor the petitioner, who was the adversely affected party, received the notice of hearing required under due process. The SCCA's failure to timely respond to petitioner's multiple timely requests for transcript as well as lack of audio and/or transcript for the Record on Appeal underscores the irregularities that have plagued these proceedings. A motion to remand for reconstruction of the record is currently pending but not addressed. The petitioner respectfully requests that the record be reconstructed to ensure meaningful appellate review. The absence of an audio recording for transcription, despite administrative orders requiring such recording, renders the trial court's June 9, 2022, order void/voidable as well as the unauthorized judgment entered as final judgment during the pendency of the timely filed post-trial motion. Intervening case law from the state court of last resort has made clear that circuit court hearings must be recorded. Article 1, section 9 of the South Carolina Constitution provides "[A]ll courts shall be public." S.C. Const. art. I, sec. 9. Intervening binding precedent, in the *Price* case, *infra*, provides that if there is no factual record for the ex parte order it is axiomatic there can be no meaningful judicial review. "Section 14-5-10 of the South

Carolina Code (2017) provides, 'The circuit courts herein established shall be courts of record . . . .'  
The circuit court's hearing ... must be recorded." *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See State v. Jeroid J. Price*, App. Case No. 2023-000629 (Sept. 6, 2023) (This Court has stated, "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and [article I, section 9 of] the state constitution." *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006)); *see also Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) (failure to have a transcript filed is reversible error).

In addition, the petitioner highlights that the Family Court Attorney Defendant failed to copy the petitioner on his own transcript request, which was timely answered by SCCA, in contrast to the delays experienced by the petitioner. This uneven treatment supports the petitioner's claim of procedural irregularities and unequal access to the court. The record reflects impermissible direct or indirect ex parte contact by the Family Court Attorney Defendant, who did not follow standard procedure, failed to pay required filing fees, and bypassed the necessary notice requirements including failure to copy the other side with proposed orders. The case of *Burgess v. Stern, infra*, provides that orders rendered after impermissible direct or indirect ex parte contacts are void/voidable:

"South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. *Id. Aiken County v. BSP Div. Of Envirotech Corp.*, 866 F.2d 661, (4<sup>th</sup> Cir.1989), evinces the Fourth Circuit Court of Appeals' disapproval of ex parte contacts of this type.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: 'A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter.' While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:



It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [311 S.C. 331] is not against "prejudicial" ex parte communications, but against ex parte communications. *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985)."

*Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

As a matter of public policy, ex parte contacts are prohibited and undermine the integrity of the judicial process. Former Justice Sandra Day O'Connor warned the public about the need for independent judges. Former Justice Sandra Day O'Connor wrote "... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." *Judicial Independence and 21st Century Challenges*, Sandra Day O'Connor, The Bench, July/August 2012.

As she explained, "[t]he reason why judicial independence is so important is because **there has to be a safe place** where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences." *Id.* (emphasis supplied). Public policy, legislative intent, statutory authority, state and Federal case law, state and Federal Rules of Civil Procedure, state and Federal Constitutional law, and fundamental fairness prohibit impermissible direct or indirect ex parte contacts.

The September 10, 2024, opinion in SC COA App. Case No. 24-1450 on appeal herein misapprehends and/or overlooks material fact and law and is internally inconsistent with the law of the case on prior appeal. See attached copy of Chief Judge Bruce Williams' December 9, 2022, opinion in SC COA App. Case No. 22-1146 herein. "(A) judge's impartiality might reasonably be questioned when his factual findings are not supported by the record." *Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014). The record reflects there is no jointly filed ROA or factual support in the record for that opinion which is based on false claims and/or unreliable hearsay. Petitioner respectfully objects. This matter is of great public importance. This matter involves the Decree of Divorce which the Family Court Attorney Defendant did not appeal and which is now the law of the case. See Rule 16,

SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..."). The family court has exclusive original jurisdiction over the domestic matters herein pursuant to S.C. Code § § 63-3-510 to 530. This Family Court matter is subject to confidentiality and privacy which is hereby requested. It is undisputed that the family court can order child support to continue beyond eighteen years. *SCDSS Child Support v. Mangle*, 633 S.E.2d 903 (S.C. App. 2006). See S.C. Code § 20-7-420(A)(17). Defendant's current tax returns confirm support payments made by him pursuant to written agreement, not temporary agreement, and subject to S.C. Code §§ 63-3-510 to 530. Legislative intent, exclusive original jurisdiction pursuant to S.C. Code §§ 63-3-510 to 530, and the plain language of the Decree all provide exclusive jurisdiction over marital property in the Family Court, including but not limited to, the marital home. The undersigned timely filed for hearing in the Family Court.

Rule 220(c), SCACR, (*supra*) affirmance of the law of the case on prior appeal reinstating this appeal is respectfully requested. See attached copy of Chief Judge Bruce Williams' December 9, 2022, opinion in SC COA App. Case No. 22-1146 herein. Because the petitioner filed a timely Rule 59(e), SCRCP, motion, there is no jurisdiction for the entry of final judgment on July 14, 2022. Nevertheless, judgment was entered while that motion remained pending. The South Carolina Court of Appeals took judicial notice of the pending Rule 59(e) motion, but then failed to apply that same recognition to the improper entry of judgment. Accordingly, the entry of judgment is void as a matter of law.

Furthermore, the petitioner's timely filed demand for jury trial under Rule 38, SCRCP, and notice for transfer to the jury trial roster under Rule 39, SCRCP, are currently pending. Denial of the right to a jury trial or of comparable procedural rights is an immediate ground for appeal and must be immediately appealed or waived. The record reflects there is no record on appeal or factual support whatsoever for the September 10, 2024, opinion in SC COA App. Case No. 24-1450 on appeal herein

which is reversible as a matter of law. “[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000).

Without jointly-filed ROA or factual support in the record, there can be no full, fair, and meaningful determination in the lower appellate court which “will always be necessary on the part of the appellate court” and, therefore, no adequate record for meaningful review in the state court of last resort. *Id.*

“These cases not only permit, but indeed **require, immediate appeal.**” *Id.*(emphasis supplied).

Further, in the *Navistar* case, the Fourth Circuit ruled that a rehearing is no substitute for pre-determined outcome entered with no pre-decision opportunity to be heard. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). Without jointly-filed ROA or factual support in the record, the September 10, 2024, opinion in SC COA App. Case No. 24-1450 on appeal herein is based on unreliable hearsay, is patently false, is internally inconsistent with law of the case on prior appeal, and/or is reversible as a matter of law. Procedural due process under both the South Carolina Constitution and the United States Constitution requires adequate notice, an opportunity to be heard, the right to present evidence, and the ability to confront and cross-examine witnesses. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008). These rights were denied to the petitioner. The constitutional provisions implicated include S.C. Const. art. I, sections 2, 3, 4, 9,10, and 14, and U.S. Const. amends. I, IV, V, VII, and XIV.

The petitioner respectfully requests reversal based on the cumulative due process violations, lack of transparency, unequal treatment, and the failure of the court to maintain a full, fair, and accurate record with adequate explanation for meaningful review. The South Carolina Legislature and the public have an interest in correcting inaccurate and/or misleading court records. As set forth more fully below, the record reflects the South Carolina Judicial Department, which maintains the website for public access to court records, has no viable mechanism for correction of data entry errors and is

manifestly infirm. The rule of law cannot be upheld where missing recordings, procedural irregularities, and/or impermissible direct or indirect ex parte communications are permitted to stand without correction.

#### **IV. Data Entry Errors and Inaccurate Public Records Undermine Fair Process**

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The petitioner respectfully submits that ministerial errors by court staff in entering critical case data have led to inaccurate and misleading public records herein, which have, in turn, impacted the petitioner's appellate rights. Despite Section 11(d)(3), SCEF (South Carolina Electronic Filing), of the South Carolina Rules of Court and the S.C. Supreme Court offering mechanisms for correcting ministerial mistakes, petitioner's pending SCCA (South Carolina Court Administration) Form 295 is rebuffed and/or ignored. Section 11(d)(3), SCEF. Pursuant to Section 11(d)(3), SCEF, the required responsive SCCA Form 296 (copy attached) is not filed. The record reflects the state appellate courts have failed to comply with representations made to the public for safeguarding and preventing inaccurate and misleading public records.

Specifically, a manifest data entry error appears in the C-Track Public Access Case View for South Carolina Supreme Court Case No. 2025-000486 herein. The petitioner's cert petition extension request, which was timely paid, filed electronically, and served on Sunday, February 23, 2025, is incorrectly recorded as being filed on March 12, 2025. This incorrect date misrepresents the true record and directly contributed to the erroneous dismissal of the petitioner's timely certiorari petition. Attached to this filing is a copy of the state court of last resort's February 24, 2025, correspondence confirming receipt of the petitioner's timely cert petition extension request on or before February 24, 2025. Materially, it is date-stamped received on February 24, 2025, by the South Carolina Court of

Appeals (SC COA) and timely docketed in SC COA App. Case No. 24-1450 on appeal herein, thereby vesting appellate jurisdiction in the state court of last resort. The petitioner's state court petition for a writ of certiorari is timely paid, electronically filed, and served on March 16, 2025, before dismissal. The May 13, 2025, opinion on appeal errs in relying on an incomplete/conflicting/inapplicable provision of Rule 221(b), SCACR. The applicable provision provides that "the Court of Appeals SHALL NOT send the remittitur until notified that the petition has been denied." Rule 221(b), SCACR (emphasis supplied). It is respectfully submitted that once the state court of last resort notified the SC COA of the cert petition extension request, as it did in the attached copy of the court's February 24, 2025, letter, appellate jurisdiction vests with the state court of last resort such that "the Court of Appeals SHALL NOT send the remittitur until notified that the petition has been denied." Rule 221(b), SCACR (emphasis supplied). Otherwise, Rule 263(b), SCACR, as well as *In re Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, S.C. Supreme Court Order dated July 16, 2014, and the SCACR generally, would be superfluous and of no effect because essentially all extensions could be overturned by the conflicted SC COA's unauthorized return of remittitur herein even before the Petition for a Writ of Certiorari is due as in this case. Rule 263(b), SCACR (the appellate court or an individual judge or justice may extend the time fixed by the SCACR to perform any act, except the time for serving the notice of appeal under Rules 203 and 243, SCACR). The record reflects there is no such notification from the superior appellate court in this matter to the SC COA authorizing the March 5, 2025, remittitur. Rule 221(b), SCACR. *See Wise v. SC DOC*, 372 S.C. 173, 642 S.E.2d 551 (2007). The record reflects the March 5, 2025, SC COA remittitur was sent in error in violation of the express terms of Rule 221(b), SCACR, it was sent without the required notification from the state court of last resort, it was sent in violation of the timely paid, filed, and served state court of last resort petition for a writ of certiorari before dismissal herein, and/or it was sent without statutory authorization. The record reflects the certiorari extension request in the state

court of last resort was timely served, filed, and paid, and that the state certiorari petition itself was timely filed on March 16, 2025, before dismissal. The public record error would not have occurred but for data entry mistakes by ministerial staff, who do not have the legal authority to make substantive determinations. The petitioner has not been reimbursed. To the extent there is ambiguity, the rule of lenity supports the position of the intended beneficiaries, the citizens of the State of South Carolina, including the petitioner. Accordingly, the Petition for a Writ of Certiorari herein should be granted.

Because the public index error is based on a factual misrepresentation and that error was relied upon in orders issued on March 17 and May 13, 2025, the petitioner respectfully submits that the resulting state court of last resort cert petition dismissal should be reversed. The certiorari extension request was timely under Rules 262 and 263(b), SCACR, and consistent with the state court of last resort's July 16, 2014, order addressing certiorari extension filings. *In re Extensions in Cases Seeking a Petition for a Writ of Cert. To Review a Decision of the SC COA*, S.C. Supreme Court Order dated July 16, 2014.

In addition to the factual error, the petitioner also highlights a broader concern: that final legal determinations appear to have been based on staff entries rather than judicial review. This undermines transparency and the appearance of fairness, especially when the legislative framework does not authorize ministerial staff to interpret the law or determine timeliness. The Legislature recognized that no system is perfect. Case law and the South Carolina Rules of Court direct that these Rules "shall be liberally construed to ensure substantial justice for all parties, and that cases are disposed of on the merits *including the timely paid, served, and filed state court of last resort's petition for a writ of certiorari herein.*" Section 11(e), SCEF, South Carolina Rules of Court (emphasis supplied). See *Miller v. State*, 659 S.E.2d 492, 377 S.C. 99 (S.C. 2008) (emphasis supplied) ("The Clerk of Court's duty is not discretionary. The Clerk of Court should not construe a *filing*.... it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is

untimely. 21 C.J.S. Courts § 338 (2006) ('[A] clerk of court cannot ordinarily determine questions of law [or] render judgments.')).

In sum, the petitioner's timely paid, served, and filed state court of last resort's certiorari petition and related filings are established in the record. The dismissal is based on inaccurate docketing which reflects neither the actual filing date for the timely cert petition extension request nor the attached evidence of the state court of last resort's February 24, 2025, correspondence confirming timely receipt of the petitioner's cert petition extension request on or before February 24, 2025. Accordingly, dismissal should be reversed to preserve the petitioner's substantial rights and ensure the integrity of the judicial process.

## V. Intervening Case Law

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The petitioner respectfully moves for a writ of certiorari on multiple grounds including intervening case law, material misapprehension of fact and law, and constitutional due process concerns. These grounds warrant reversal of the orders at issue.

Intervening case law in the *Maybank* case supports petitioner's position. *Maybank v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024) (**cert. denied April 22, 2025**). Pursuant to Rule 38(a), SCRPC, intervening case law in the *Maybank* case provides that the Reference Order on appeal herein is infirm and void from its inception because the petitioner timely requested a jury trial, the petitioner timely filed Rule 38, SCRPC, notice of jury demand, the petitioner is entitled to a jury trial including law claims on counterclaim with jury demand, the petitioner is entitled to a jury trial regarding disputed title to real estate, and/or a jury trial is to be preserved inviolate under the State Constitution. *Id.* Accordingly, the petition for a writ of certiorari should be granted. "The touchstone of due process is

protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

Moreover, intervening case law in the *Price* case supports the petitioner's position: On September 6, 2023, the South Carolina Supreme Court issued a significant ruling in *State v. Jeroid J. Price*, Appellate Case No. 2023-000629, reaffirming the mandatory requirement that all circuit court hearings must be recorded. This authority confirms that hearings without recordings, such as the April 20, 2022, purported hearing in this case without required notice and with missing audio for transcript are procedurally defective and insufficient to support valid judicial orders. As the petitioner previously demonstrated, no required notice was given for that hearing, no audio can be found, and no transcript can be produced.

Further, affirmance of law of the case on prior appeal, the December 9, 2022, opinion in SC COA App. Case No. 22-1146, is respectfully requested pursuant to Rule 220(c), SCACR. Rule 220(c), SCACR (The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal.). This case presents a fact pattern where the petitioner's timely Rule 59(e) motion remained pending at the time judgment was entered. Entry of final judgment during the pendency of a post-trial motion is reversible as a matter of law, as recognized under precedent in *Hudson v. Hudson* by the South Carolina Court of Appeals (SC COA) in the attached copy of law of



this case on prior appeal. *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). See attached copy of Chief Judge Bruce Williams' December 9, 2022, opinion in SC COA App. Case No. 22-1146 herein. The respondent's reliance on that void judgment, despite its jurisdictional defect, calls into question the procedural fairness of the trial court's actions and supports granting the writ of certiorari. Pursuant to Rule 220(c), SCACR, reinstatement affirms the law of the case on prior appeal including reinstating appeal of the June 9, 2022, order and/or unauthorized entry of judgment during the pendency of the timely post-trial motion.

In addition, due process requires adequate record including transcript and adequate explanation for meaningful judicial review. See, e.g., *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4<sup>th</sup> Cir. 2020) (remanded for lack of adequate explanation for meaningful review). The lower appellate courts' opinions in this matter are reversible as a matter of law including lack of transcript, lack of citations, lack of adequate explanation or reasoning, and/or lack of supporting Record on Appeal or other factual basis. Accordingly, the opinions of the state appellate courts do not meet the statutory requirements of Rule 220(b), SCACR, S.C. Code § 14-8-250, and/or S.C. Code § 18-9-280.

As set forth above, the petitioner also reasserts the argument that the Family Court retains exclusive jurisdiction under S.C. Code §§ 63-3-510 to 530. The Family Court's Decree in this case, based on a negotiated agreement entered on the record, was never appealed and explicitly preserved jurisdiction for enforcement and post-decree matters. That Decree remains binding under South Carolina law, the Family Court retains jurisdiction, and the duplicative civil court action is void/voidable.

As outlined in earlier sections, the petitioner has been deprived of substantial rights without required notice or access to the procedural protections or privacy rights for Family Court matters that are guaranteed under the law. A writ of certiorari is warranted to correct legal, factual, and data entry errors, to restore jurisdiction to the appropriate forum, and to preserve the integrity of the judicial

process. Accordingly, the petition for a writ of certiorari should be granted and the petitioner respectfully requests reversal including based on intervening authority, procedural defects, and/or unresolved jurisdictional issues.

### CONCLUSION

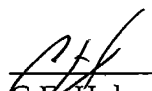
For the reasons stated, the petitioner respectfully requests that this Court grant the relief sought. The cumulative effect of jurisdictional defects, due process violations, procedural irregularities, and ministerial errors has deprived the petitioner of full, fair, and lawful adjudication. The petitioner has acted diligently, including timely filings, proper service, and consistent efforts to preserve rights under the applicable rules and statutes.

Overall, the Family Court has exclusive original jurisdiction over the issues raised in this matter, including real property equitable division, post-decree enforcement, and domestic support. That jurisdiction is preserved in the unappealed Decree of Divorce, which remains binding and enforceable. The duplicative civil court proceedings initiated by the Family Court Attorney Defendant, respondent herein, fall outside the scope of lawful jurisdiction and should be dismissed.

The orders entered without required notice, without recordings for transcripts, or while post-trial motions remained pending are void or voidable as a matter of law. Lower appellate court opinions based on inaccurate docket entries and/or inadequate explanation for meaningful judicial review further compound the prejudice suffered by the petitioner and warrant corrective action.

In the interest of justice, and to ensure compliance with constitutional and statutory requirements, the petitioner respectfully asks this Court to reverse the challenged orders, sustain the stay, and remand the matter for proceedings within the jurisdiction of the proper forum, the Family Court, with confidentiality rights and requirements.

Respectfully submitted,

  
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