IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30871

In Re The Matter of the Estate of

ROGER J. CUNNINGHAM, Deceased.

Appeal from the Circuit Court
Second Judicial Circuit
Lincoln County, South Dakota
The Honorable Jennifer D. Mammenga, Presiding Judge

BRIEF OF APPELLANT

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Notice of Appeal Filed October 15, 2024

Oral Argument Requested

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JURISDICTIONAL STATEMENT

Sheila Jordan Cunningham appeals the October 4, 2024 Order granting the Estate of Roger Cunningham's motion for declaratory judgment, notice of which was served on October 8, 2024. A notice of appeal was filed on October 15, 2024.

"An order in a probate proceeding is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." *Est. of Fox*, 2018 S.D. 35, ¶ 10, 911 N.W.2d 746, 749. For unsupervised probate actions, a single action can contain multiple, discrete proceedings, each of which results in a final order. *Matter of Est. of Ager*, 2024 S.D. 55, ¶ 7, 11 N.W.3d 878, 880.

STATEMENT OF THE ISSUES

1. **Whether the court had jurisdiction to extinguish Sheila's interest in the IRA**

The circuit court held that jurisdiction over the probate was sufficient.

Engel v. Geary, 2023 S.D. 69, 1 N.W.3d 644
Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed. 2d 1283 (1958)
Walden v. Fiore, 134 S.Ct. 1115 (2014)

2. **Whether the Estate was required to file a declaratory judgment action**

The circuit court granted the Estate's motion for declaratory judgment without requiring a pleading.

Hanks v. Corson Cnty. Bd. of Cnty. Comm'rs, 2007 S.D. 10, 727 N.W.2d 296

STATEMENT OF THE CASE

The Estate of Roger J. Cunningham filed a motion for declaratory judgment in the probate action pending in Lincoln County, South Dakota, seeking a declaration that a beneficiary designation on a rollover investment retirement account be voided. Sheila Jordan Cunningham, the designated beneficiary and the decedent's ex-wife opposed the

motion due to lack of jurisdiction. The Court, the Honorable Jennifer D. Mammenga presiding, granted the Estate's motion. This appeal follows.

STATEMENT OF FACTS

This case concerns the disposition of a rollover investment retirement account. Roger and Sheila Cunningham were married on August 29, 1981 and spent the entirety of their married life in Tennessee. The couple divorced on November 19, 2015, entering into a Tennessee Marital Dissolution Agreement that was filed with the Tipton County Chancery Court in Tennessee. At the time of the divorce, Roger had an IRA, described by the Estate as the Roger J. Cunningham Rollover Investment Retirement Account #xxxx5836 ("the IRA).

Despite the divorce, Roger did not remove Sheila as the beneficiary of the IRA. While South Dakota law provides for automatic revocation of beneficiary designations upon divorce, Tennessee has not adopted Section 2-804 of the Uniform Probate Code, and Tennessee law does not provide for automatic revocation of a retirement plan beneficiary designation upon divorce.[1] Roger died on March 10, 2024 in South Dakota. Pursuant to the existing beneficiary designation, the proceeds of the account were

[1] The issue of whether Roger's designation of Sheila as beneficiary of the IRA would be upheld under Tennessee law is not before this Court, nor was it before the circuit court; the issue was neither briefed nor argued by either party below. Nonetheless, the circuit court concluded that "Tennessee law likewise revoked [Sheila's] designation as beneficiary following the divorce," citing Tenn. Code Ann. § 32-1-202. This conclusion was incorrect, as the statute in question applies only to dispositions made by will. It does not cover beneficiary designations. *See, e.g., Voya Ret. Ins. & Annuity Co. v. Johnson*, No. M201600435COAR3CV, 2017 WL 4864817, at *4 (Tenn. Ct. App. Oct. 27, 2017) (holding that marital dissolution agreement that was never provided to plan administrator did not revoke beneficiary designation for retirement plan).

transferred to a beneficiary account in Sheila's name that was not located in South Dakota. (Tr. at 6:23-25).

An application for informal probate was filed on April 2, 2024. On April 30, 2024, the Estate filed a motion for declaratory judgment in the probate, seeking a declaration that the funds should be distributed to the Estate. Sheila was given notice in Tennessee by U.S. mail, after the IRA proceeds had already been transferred to an account in her name. Sheila opposed the motion for declaratory judgment, on the grounds that it was procedurally improper and the court lacked jurisdiction over her and the funds. The circuit court held that it had jurisdiction to determine who is legally entitled to the proceeds of the IRA and, applying South Dakota law, granted the Estate's motion for declaratory judgment.

STANDARD OF REVIEW

A challenge to the court's jurisdiction is a question of law that is reviewed de novo. *Davis v. Otten*, 2022 S.D. 39, ¶ 9, 978 N.W.2d 358, 362. The Court "reviews declaratory judgments as [it does] any other order, judgment, or decree, giving no deference to a circuit court's conclusions of law under the de novo standard of review." *Duerre v. Hepler*, 2017 S.D. 8, ¶ 29, 892 N.W.2d 209, 220.

ARGUMENT

The circuit court's decision is premised on the assumption that, because it had jurisdiction over the probate, it had the power to make judgments on anything that might augment the estate, regardless of the nature of the assets, where the assets are located, whom the judgment might affect, or how the issue was presented. This is incorrect. This case involves an IRA beneficiary designation, which is a contractual arrangement that

transfers property outside of probate. The court's order purports to extinguish the interest in out-of-state assets of a nonresident with no connection to South Dakota, based on a motion for declaratory judgment that was informally mailed to the nonresident. The mere existence of a probate does not establish jurisdiction over the IRA or Sheila and does not exempt the Estate from complying with the declaratory judgment statutes and the Rules of Civil Procedure.

I. The circuit court lacked jurisdiction

When making determinations of jurisdiction, it is important to specify what type of jurisdiction is at issue. Subject matter jurisdiction is "a court's competence to hear and determine cases of the general class to which proceedings in question belong [and] the power to deal with the general subject involved in the action…" *Matter of Heupel Family Revocable Tr.*, 2018 S.D. 46 ¶ 25, 914 N.W.2d 571, 578 (quotations omitted). Personal jurisdiction involves the question of whether the court has the ability to adjudicate claims involving a nonresident. *Davis v. Otten*, 2022 S.D. 39 ¶ 12, 978 N.W.2d 358, 363. In rem jurisdiction – that is, jurisdiction over a thing – is based on the presence of the subject property within the territorial jurisdiction of the forum state. *Hanson v. Denckla*, 357 U.S. 235, 246, 78 S.Ct. 1228, 1236, 2 L.Ed. 2d 1283 (1958). Generally, a court may exercise in rem jurisdiction only over property that is "within the jurisdiction." *Riley v. N.Y. Tr. Co.*, 315 U.S. 343, 353, 62 S.Ct. 608, 86 L.Ed. 885 (1942).

Without expressly saying so, the circuit court found it had subject matter jurisdiction to hear the dispute because it involved an asset that could augment the probate estate; therefore the Court apparently found it unnecessary to determine whether the court had in rem jurisdiction or personal jurisdiction over the appellant. However, jurisdiction over the administration of an estate is not the same as jurisdiction over any

matter that could conceivably relate to, affect, or even augment the assets of the estate. The United States Supreme Court has held that courts cannot exercise in rem jurisdiction or personal jurisdiction to adjudicate the status of property unless the Due Process Clause would have permitted in personam jurisdiction over those who have an interest in the res. The court did not have in rem jurisdiction to render a decision on a disposition of out-of-state property, and it did not have personal jurisdiction over Sheila.

A. A probate court does not have jurisdiction to adjudicate the validity of dispositions of out-of-state assets

The Estate argued – and the circuit court concluded - that the IRA is an "estate asset, just like any other." However, that is not the case. An IRA beneficiary designation is not a probate transfer, but an arrangement respecting contract rights that is established during the donor's lifetime, where the property shifts outside of probate to the beneficiary at the donor's death. Restatement (Third) of Property (Wills & Don. Trans.) § 7.1 (2003). According to IRS rules, when the named beneficiary is someone other than a surviving spouse, the IRA funds must be transferred from the deceased person's IRA into an entirely new IRA beneficiary account. Indeed, prior to the Estate's motion, the funds were transferred to a beneficiary IRA account in Sheila's name without any need for intervention by the probate court. Longstanding United States Supreme Court precedent establishes that the possibility funds might augment a probate estate is not enough to confer jurisdiction. *See Hanson,* 375 U.S. at 248-50.

In *Hanson,* the United States Supreme Court definitively answered the question of whether authority over a probate is sufficient to grant jurisdiction over dispositions by means other than a will of assets located in another state. The case involved a dispute over $400,000 that had been part of the corpus of a trust established in Delaware by a

settlor who later moved to Florida. *Id.* at 238. While in Florida, the settlor executed a power of appointment appointing $200,000 to each of two different trusts established in Delaware. *Id.* at 239. The settlor died while domiciled in Florida, and her will was admitted to probate there. *Id.* The residuary beneficiaries of the will argued that the powers of appointment had not been effectively exercised and the $400,000 should go to them, filing a petition for declaratory judgment concerning what property passed under the will's residuary clause. *Id.* at 240. The Delaware trustees were not served with process, instead receiving a copy of the pleadings and a 'Notice to Appear and Defend' by ordinary mail. *Id.* at 241.

The Florida court held that authority over the probate and construction of the settlor's will, under which the assets might pass, was sufficient to confer jurisdiction. *Id.* at 247-48. The Supreme Court disagreed:

> Whatever the efficacy of a so-called 'in rem' jurisdiction over assets admittedly passing under a local will, a State acquires no in rem jurisdiction to adjudicate the validity of inter vivos dispositions simply because its decision might augment an estate passing under a will probated in its courts. If such a basis of jurisdiction were sustained, probate courts would enjoy nationwide service of process to adjudicate interests in property with which neither the State nor the decedent could claim any affiliation…The fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction in rem…Since a State is forbidden to enter judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction.

Id. at 248–50.

See also Saler v. Irick, 800 N.E.2d 960, 972 (Ind. App. 2003) (Indiana probate court did not have jurisdiction over annuities that were not in Indiana); *Matter of Estate of Ducey,* 787 P.2d 749, 422 (Mont. 1990) (probate of will in

Montana did not give Montana court jurisdiction to order disposition of assets held by Nevada trust).

This Court has similarly concluded that jurisdiction to enter orders related to out-of-state property requires personal jurisdiction over the person in possession of the property. *See Engel v. Geary,* 2023 S.D. 69, 1 N.W.3d 644. In that case, the marriage had taken place in California, and one spouse moved to South Dakota after their separation. *Id.* at ¶ 2, 1 N.W.3d at 646-47. The trial court had entered an order in a divorce case that specifically awarded items of property, debts, and obligations to the respective parties, including a personal judgment against the husband in California. *Id.* at ¶ 29, 1 N.W.3d at 653. This Court held that, despite the trial court having jurisdiction to enter a decree of divorce, it did not have jurisdiction to enter orders related to a California resident's California property. *Id.* at ¶ 31, 1 N.W.3d at 654.

While *Hanson,* like this case, involved property that was not within the forum asserting jurisdiction, the United States Supreme Court has affirmed that, even when property is present in the forum state, its presence is no longer enough to establish jurisdiction. *Shaffer v. Heitner*, 433 U.S. 186, 207, 97 S.Ct. 2569, 53 L.Ed. 2d 683 (1977). Instead, "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." 433 U.S. at 212, 97 S.Ct. at 2584. The Court explained that, historically, the presence of property in a state was a sufficient basis for the state to exercise jurisdiction over the property. 433 U.S. at 211–12, 97 S.Ct. at 2583–84. However, courts cannot exercise in rem jurisdiction to adjudicate the status of property unless the Due Process Clause would have permitted in personam jurisdiction over those who have an interest in the res. See *Shaffer,* 433 U.S. at 207, *Rush*

v. Savchuk, 444 U.S. 320, 100 S.Ct. 571, 62 L.Ed. 2d 516 (1980) (" In *Shaffer v. Heitner* we held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.")

The IRA and its proceeds, the disposition of which is contractual rather than testamentary, are not part of the estate and are not located in South Dakota. The mere possibility that the proceeds of the IRA might be added to the estate is, as *Hanson* makes clear, not enough to create jurisdiction over the present dispute. A South Dakota court cannot rely on the possibility of the IRA passing via the probate to extinguish the interest of a Tennessee resident, let alone force that Tennessee resident to take action in Tennessee.

B. There is no personal jurisdiction over Sheila

Because the circuit court could not use in rem jurisdiction to extinguish Sheila's interest in the IRA, the next question is whether there is in personam jurisdiction over her. *Hanson,* 357 U.S. at 250. "For South Dakota to exercise personal jurisdiction over a non-resident party, two conditions must be satisfied. First, the court must determine that the legislature granted the court jurisdiction pursuant to South Dakota's long arm statute, SDCL § 15-7-2. The court must then determine that the exercise of jurisdiction comports with federal due process requirements." *Davis v. Otten,* 2022 S.D. 39, ¶ 12, 978 N.W.2d 358, 363. The party seeking to establish jurisdiction has the burden of making a prima facie case for jurisdiction. *Id.*

Federal due process requires that the defendant have minimum contacts with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotations omitted). Courts differentiate between general or all purpose jurisdiction, and

specific or case-linked jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S.Ct. 2846, 2851, 180 L.Ed. 2d 796 (2011). General jurisdiction requires the "defendant's connection to the forum" state be "so continuous and systematic as to render [it] essentially at home in the forum…" *Id.* Specific jurisdiction is "confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* The Estate's motion for declaratory judgment did not contain any jurisdictional statements. In its response to Sheila's motion to dismiss, the Estate argued that specific jurisdiction existed.

"The plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore*, 571 U.S. 277, 285, 134 S.Ct. 1115, 1122, 188 L.Ed. 2d 12 (2014). Instead, a "proper determination of personal jurisdiction rests on an examination of the defendant's – not the plaintiff's – contacts with the forum." *Kustom Cycles v. Bowyer*, 2014 SD 87 ¶ 12, 857 N.W.2d 401, 407. There must be some act by which the defendant purposefully avails herself of the privileges of the forum state. *Id.* at 408 (quotations omitted). "[P]ersonal jurisdiction is appropriate where the defendant deliberately has engaged in significant activities within a state or has created continuing obligations between himself and residents of the forum." *Id.* The minimum contacts analysis requires courts to look at "the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Walden*, 571 U.S. at 285. "[I]t is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* The defendant's "suit-related conduct must create a substantial connection with the forum State." *Id.* at 284.

It is undisputed that Sheila has never personally availed herself of the privileges of South Dakota or directed any activities at the forum. She has never lived in South Dakota, either during or after her marriage to the decedent. She has not transacted business in South Dakota and owns no property there. Nor has she entered into any contracts involving South Dakota. Her only link – if such it can be called – is the fact that her ex-husband moved to Sioux Falls after the parties separated in Tennessee.

This Court has held that one spouse's unilateral decision to move to South Dakota does not confer personal jurisdiction over the other spouse. *See Engel*, 2023 S.D. 69, 1 N.W.3d 644. Again, the parties in *Engel* were married in California; when they separated, the wife moved to South Dakota. *Id.* at ¶ 2, 1 N.W.3d at 646-47. The wife commenced a divorce action in South Dakota; the husband requested dismissal for lack of jurisdiction. *Id.* at ¶¶ 3-4, 1 N.W.3d at 647. The trial court denied the husband's request for dismissal and proceeded to enter an order that granted the divorce and divided the parties' property. *Id.* at ¶ 12, 1 N.W.2d at 648-49. This Court held that personal jurisdiction did not exist over the husband, as neither the marriage nor the divorce arose from his activities in South Dakota, and there were no activities showing a substantial connection to South Dakota. *Id.* at ¶ 25, 1 N.W.2d at 652.

In this case, there are fewer contacts between the nonresident and the forum than in *Engel*. The divorce at issue here occurred in Tennessee, and the judgment was rendered in a Tennessee court. There is no connection, substantial or otherwise, between Sheila and South Dakota. She has engaged in no activities here. The exercise of jurisdiction over her, in this matter or any other, would be inconsistent with due process.

"[T]he Due Process Clause forbids a state from asserting jurisdiction over a nonresident defendant when that defendant lacks sufficient contacts with the state itself. Neither a nonresident defendant's contacts with a resident plaintiff, nor a resident plaintiff's contacts with the forum, can compensate for such a deficiency." *Kustom Cycles* at ¶ 25, 857 N.W.2d at 413. The circuit court erred in exercising personal jurisdiction over Sheila.

There is also the question of service. It is likewise undisputed that Sheila was never served with process in this case. Instead, she received a document in the mail informing her of the pending motion. Even if there was personal jurisdiction over Sheila, which there is not, she was never properly served.

This Court has "recognized that proper service of process is no mere technicality: that parties be notified of proceedings against them affecting their legal interests is a 'vital corollary' to due process and the right to be heard." *R.B.O. v. Priests of Sacred Heart*, 2011 S.D. 86, ¶ 9, 807 N.W.2d 808, 810. The Legislature has enacted statutes that specify the means of ensuring proper service; compliance with the statutes is not discretionary. *Id.* "Actual notice will not subject defendants to personal jurisdiction absent substantial compliance with the governing service-of-process statute." *Id.* at ¶ 17, 807 N.W.2d at 813. When service is absent, "jurisdiction is totally lacking." *White Eagle v. City of Fort Pierre,* 2000 S.D. 34, ¶ 9, 606 N.W.2d 926, 929 (quotations omitted).

The Estate did not comply, substantially or otherwise, with the requirements of the South Dakota Code. Under SDCL § 15-6-4(f), service of nonresident defendants must be accomplished "in the matter prescribed by the statute." SDCL § 15-6-4(d) requires personal service upon individual defendants who are not minors. Personal service on

individual defendants is the general rule, s*ee United Nat. Bank v. Searles,* 331 N.W.2d 288, 293 (S.D. 1983) (Fosheim, J., concurring), and was required here. Merely sending a letter is not substantial compliance; even if the court had personal jurisdiction over Sheila, jurisdiction would have been totally lacking in light of the failure of service.

II. The Estate could not seek declaratory judgment via a motion

Even if there had been jurisdiction in this case, the circuit court erred by granting declaratory judgment because it allowed the Estate to completely ignore procedural requirements. Rather than filing a declaratory judgment action, the Estate filed a motion in the probate. This was not a permissible action under South Dakota's declaratory judgment statutes or the Rules of Civil Procedure; the Estate was required to plead a claim for declaratory judgment, and the circuit court should not have granted declaratory judgment based on a motion alone.

Chapter 21-24 of the South Dakota Code governs actions for declaratory judgment. The procedure for obtaining a declaratory judgment pursuant to Chapter 21-24 "shall be in accordance with" the Rules of Civil Procedure. SDCL § 15-6-57. "The declaratory judgment statutes do not abrogate the ordinary rules of pleading, practice, procedure, and evidence." *Hanks v. Corson Cnty. Bd. of Cnty. Comm'rs,* 2007 S.D. 10, ¶ 7, 727 N.W.2d 296, 300 (quotations omitted). In other words, the requirements of pleading and practice in actions for declaratory relief are exactly the same as in other civil actions, with the action to be commenced filing a complaint with the court and the issuance of a summons by the clerk. 10B Fed. Prac. & Proc. Civ. § 2768 (4th ed.).

Numerous courts have held that a party cannot merely make a motion for declaratory relief but is instead required to bring an action for declaratory judgment. *See, e.g., Thomas v. Blue Cross & Blue Shield Ass'n,* 594 F.3d 823, 831 (11th Cir. 2010);

Kam-Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA) Inc., 560 F.3d 935, 943 (9th Cir. 2009); *Int'l Bhd. of Teamsters v. E. Conf. of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995); *Bison Ints., LLC v. Antero Res. Corp.*, 244 W. Va. 391, 402, 854 S.E.2d 211, 222 (2020); *Cattle Nat'l Bank & Tr. Co. v. Watson*, 293 Neb. 943, 960–61, 880 N.W.2d 906, 922 (2016) ("[A] party may not simply move the court for a declaratory judgment."); *Zimmer v. Vander Waal*, 780 N.W.2d 730, 732 (Iowa 2010); *Price v. Leland*, 149 Vt. 518, 519, 546 A.2d 793, 795 (1988). As the Court noted in *Hanks,* even the most liberal construction that can be placed upon the declaratory judgment statutes will not allow affirmative relief without a pleading. ¶ 7, 727 N.W.2d at 300.

Neither the Estate nor the circuit court identified any authority for the proposition that declarations related to probate are somehow different from other declarations. In fact, Chapter 21-24 specifically includes questions arising in the administration of an estate as proper topics for declaratory judgment. *See* SDCL § 21-24-5. Nothing in the Code or elsewhere indicates that actions for declaratory judgment under SDCL § 21-24-5 are to be treated any differently than actions for declaratory judgment on topics other than those arising in the administration of an estate, or that the typical procedural rules do not apply merely because probate is implicated.

The Estate was not exempted from the requirement of pleading a claim for declaratory judgment merely because there was a pending probate action. As in any other dispute, the proper way to seek declaratory judgment on a question arising in the administration of an estate is to file a declaratory judgment action. *See, e.g., Grimes v. Grimes*, 879 N.E.2d 247, 252 (Ohio App. 2007) (declaratory judgment action brought in

probate court to determine the validity of inter vivos transfers where the property transferred would revert to the estate if the transfers are invalidated).

The Estate never filed a declaratory judgment action or any type of pleading seeking declaratory relief. The only filing was a motion. Despite this failure to follow the Rules of Civil Procedure, the circuit court granted affirmative relief in the Estate's favor. The judgment below must be reversed.

CONCLUSION

The circuit court granted a procedurally improper motion that dictated the rights of an individual over whom it had no jurisdiction. The decision below must be reversed.

Dated at Sioux Falls, South Dakota, this 10th day of February, 2025.

DAVENPORT, EVANS, HURWITZ & SMITH, L.L.P.

/s/ Elizabeth S. Hertz

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellant complies with the type volume limitations set forth in SDCL § 15-26A-66. Based on the information provided by Microsoft Word 365, this Brief contains 3,885 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 365.

Dated at Sioux Falls, South Dakota, this 10th day of February, 2025.

DAVENPORT, EVANS, HURWITZ & SMITH, L.L.P.

/s/ Elizabeth S. Hertz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "Brief of Appellant" was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to 500 East Capital Avenue, Pierre, South Dakota, 57501-5070, on 10th February, 2025.

The undersigned further certifies that an electronic copy of "Brief of Appellant" was emailed to the attorneys set forth below, on 10th February, 2025:

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on this 10th day of February, 2025.

/s/ Elizabeth S. Hertz
Elizabeth S. Hertz

APPENDIX

STATE OF SOUTH DAKOTA	) :SS	IN CIRCUIT COURT
COUNTY OF LINCOLN	)	SECOND JUDICIAL CIRCUIT

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

IN THE MATTER OF THE ESTATE OF ROGER J. CUNNINGHAM, Deceased.	:	41PRO24-000027 **ORDER**

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

The above-captioned matter came before the Court for hearing on Monday, June 10, 2024 on the Personal Representative's Motion for Declaratory Judgment and Sheila Cunningham's Motion to Dismiss. At the hearing, the Personal Representative of the Estate of Roger Cunningham, Susan Metz, was represented by her counsel Lucas Carr and Tom Schartz of Woods, Fuller, Shultz & Smith P.C. Sheila Cunningham was represented by her counsel, Elizabeth Hertz of Davenport, Evans, Hurwitz & Smith, LLP. The Court heard oral argument from the parties and took the Motions under advisement.

The Court, having examined all the pleadings, files, and records herein, having heard and considered the arguments of counsel, and incorporating the Court's findings of fact and conclusions of law stated in its Memorandum Decision dated September 30, 2024 and attached to this Order, hereby **ORDERS**:

1. That the Personal Representative's Motion for Declaratory Judgment is **GRANTED**.

2. That Sheila Cunningham's Motion to Dismiss is **DENIED**.

10/4/2024 8:19:06 AM

BY THE COURT:

Honorable Jennifer D. Mammenga
Second Circuit Court Judge

Attest:
Baker, Teresa
Clerk/Deputy

CIRCUIT COURT OF SOUTH DAKOTA
SECOND JUDICIAL CIRCUIT
LINCOLN & MINNEHAHA COUNTIES
425 North Dakota Avenue
Sioux Falls, SD 57104-2471

CIRCUIT JUDGES
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Douglas E. Hoffman
Susan M. Sabers
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September 30, 2024

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RE: *Estate of Roger Cunningham*, 41 PRO 24-27

Dear Counsel,

This correspondence is intended to serve as the Court's memorandum decision with respect to a motion for declaratory judgment filed by the estate of Roger J. Cunningham, and the subsequently filed motion to dismiss the action by Sheila Cunningham. The motions came before the Court for a hearing on June 10,

2024. At this hearing, the Susan Metz, acting on behalf of the estate of Roger Cunningham (hereinafter "Roger") was represented by and through her counsel, Lucas Carr and Tom Schartz. Sheila Cunningham (hereinafter "Sheila") was represented by and through her counsel, Elizabeth Hertz. The Court heard the parties' oral arguments and took the motions under advisement.

Factual and Procedural Background

Roger and Sheila married on August 29, 1981. The couple had no children together and lived in Tennessee for the duration of their marriage. At some point, Roger opened a rollover investment retirement account (the "IRA") with Schwab, as custodian, and Delta Asset Management, LLC ("Delta"), as advisor. Sheila was named beneficiary of the IRA, although this designation was not listed on any of the quarterly reports sent to Roger.

Roger and Sheila divorced on November 19, 2015. In the Marital Dissolution Agreement filed with the Circuit Court of Tennessee, Roger paid Sheila $757,473.81 from the IRA. In the agreement, the two agreed that Roger would maintain sole ownership, value and equity in all remaining funds in the account, and that Sheila relinquished and waived any claim, interest, right or title that she may have to the account, once the transfer of the funds was made. Roger and Sheila also agreed to waive all rights to share in the estate of the other under the laws of Tennessee or any other state wherein either would thereafter be domiciled or own property. (See Exhibit A, Affidavit of Counsel in Support of Motion for Declaratory Judgment, April 30, 2024).

Roger lived in South Dakota after the divorce. On December 10, 2015, Roger updated his Last Will and Testament (the "Will"), leaving the property of his estate to his daughter, Susan Metz ("Susan"). According to Metz, she and Roger had several conversations in June of 2023, during which he stated the IRA would be left to Metz and her two siblings, Janet Cunningham Rau ("Janet") and Brian Cunningham "(Brian"). Roger died on March 10, 2024, while he was a resident of South Dakota. On April 2, 2024, Susan applied for an informal probate and appointment of a personal representative. On April 8, 2024, in response to an inquiry from Susan, Delta advised that Sheila was the IRA's beneficiary and that no changes had been made since the initial designation.

On April 30, 2024, Suan filed a motion for declaratory judgment on behalf of the estate to revoke Sheila's designation as the beneficiary of the IRA. Sheila objected and on May 29, 2024, submitted a Motion to Dismiss for Lack of Jurisdiction.

Applicable Legal Authorities and Analysis

Sheila argues that the Court does not have jurisdiction "to decide the claim adjudicating the rights of a nonresident who lacks minimum contacts with South Dakota and who is neither a beneficiary nor a creditor of the estate." Sheila also argues that a motion for declaratory judgment is procedurally improper in this probate case and that Suan should have instead brought a declaratory action in Tennessee, where the divorce decree was entered.

South Dakota circuit courts are courts of general jurisdiction, and the Constitution of the State of South Dakota Constitution "confers broad authority upon circuit courts to 'hear all civil actions.'" *Bingham Farms Tr. v. City of Belle Fourche*, 2019 S.D. 50, ¶ 14, 932 N.W.2d 916, 920 (citing *Heupel*, 2018 S.D. 46, ¶ 25, 914 N.W.2d at 578). Thus, "[t]he unlimited equity jurisdiction of circuit court in probate matters stands firm. *Spitzer v. Spitzer*, 84 S.D. 147, 154, 168 N.W.2d 718, 722 (1969). SDCL § 16-6-9 confers on the circuit court original jurisdiction "[i]n all matters of probate, guardianship, conservatorship, and settlement of estates of deceased persons[.]" SDCL § 16-6-9. SDCL § 29A-1-301, involving the Uniform Probate Code ("UPC"), is in accord:

> Except as otherwise provided in this code, this code applies to and the court has jurisdiction over (1) the estates of decedents and absentees domiciled in this state . . . .

SDCL § 29A-1-301.

Roger was a resident of South Dakota at the time of his death and, as such, this Court has jurisdiction over his estate. *See* SDCL § 29A-1-301. Anything concerning or within Roger's estate falls within the purview of this Court's authority. However, Sheila argues that the IRA is not a part of the estate and is therefore not subject to this Court's jurisdiction. She asserts that a civil action challenging her designation as the IRA's beneficiary is more appropriate than Susan's present motion for declaratory judgment.

In resolving the jurisdictional issue in this case, this Court can also answer the question as to whether Sheila is the lawful beneficiary of the IRA, as the circuit court has the power to resolve any disputes regarding the ownership of investment accounts. *Matter of Est. of Beadle*, 2023 S.D. 26, ¶ 16, 992 N.W.2d 789, 793, reh'g denied (July 18, 2023). Further, SDCL § 29A-3-105 provides in part:

> Persons interested in decedents' estates . . . may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article . . . . The court has jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, *including actions to determine title to property*, and of any action

or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

SDCL § 29A-3-105 (emphasis added).

Thus, this Court may determine who is legally entitled to the contents of Roger's IRA. As Sheila was still listed as the beneficiary of the account at the time of Roger's death, the Court's only inquiry concerns the effect, if any, that the divorce had on Sheila's designation. The South Dakota Legislature has provided a clear answer to this question in the text of SDCL § 29A-2-804, which governs the revocation of probate transfers by divorce, and states, in pertinent part:

(b) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, *the divorce or annulment of a marriage*:

(1) *Revokes any revocable (i) disposition or appointment of property made by a divorced individual to a former spouse in a governing instrument . . .*

SDCL 29A-2-804(b)(1) (emphasis added).

The only exception to this automatic revocation is if the express terms of a governing instrument state otherwise. *Id.* A governing instrument is defined in the same statute as "a will, trust, or other governing instrument executed by the divorced individual *before the divorce* or annulment of the individual's marriage to the former spouse." SDCL § 29A-2-804(a)(4) (emphasis added). Included in the definition of "[g]overning instrument" are documents such as "a . . . retirement, or similar benefit plan ...[.]" SDCL § 29A-1-201(19).

The South Dakota Supreme Court has upheld the validity of this automatic revocation by holding that a policyholder's inaction in changing a beneficiary designation does not circumvent application of the UPC's general rule that divorce revokes such designations. See *Buchholz v. Storsve*, 2007 S.D. 101, ¶ 17, 740 N.W.2d 107, 112-13. In *Buchholz*, there was no evidence that the deceased former spouse ever read the annual statements sent by the administrator of her IRA. *Id.* at ¶ 17, 740 N.W.2d at 112. Despite this, the Court held that "[h]er inaction does not equate with consent." *Id.* The surviving former spouse failed to meet his burden under SDCL § 29A-2-804 of showing that the deceased's "inaction rises to a clear indication of a contrary intent to her decree of divorce from [her former spouse] and its complete division of their marital assets." *Id.* In so holding, the Court cited with approval the reasoning of the Tenth Circuit Court of Appeals when discussing the same statute in a different jurisdiction:

> The Uniform Probate Code provision on which § [29A-2]–804(2) is modeled derives from the recognition "that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death." Revocation-upon-divorce statutes "reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention." Thus, § [29A-2]–804(2) attributes an intent to the donor based on an assessment of a typical donor's intention. We also note that this statutory attribution of intent is rebuttable. It applies "[e]xcept as provided by the express terms of a governing instrument [such as an annuity contract], a court order, or a contract relating to the division of the marital estate . . . ."

Id. at ¶ 12, 740 N.W.2d 107, 111 (quoting *Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund*, 343 F.3d 1311, 1318 (10th Cir. 2003)).

Based on South Dakota law, Sheila's designation as beneficiary of Roger's IRA was revoked upon their divorce, unless there were express terms to the contrary in a governing instrument, court order, or contract. *Id.* at ¶ 16, 740 N.W.2d at 112 (quoting *Estate of Lamparella*, 210 Ariz. 246, 109 P.3d 959, 967 (Ct. App. Div. 1 2005) ("If a divorced spouse wishes to redesignate the former spouse as the beneficiary post-dissolution, such designation must be in writing and must otherwise comply with applicable policy terms."). No such document has been presented in this case. To the contrary, the divorce decree entered by the Tennessee court addressed the IRA and portions of it were divided under the terms of the decree. Sheila received funds from the account in the Marital Dissolution Agreement, wherein she also agreed to "relinquish and waive any claim, interest, right or title she may have to [the IRA]."[1]

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[1] Even if the terms of the Marital Dissolution Agreement are not interpreted to bar Sheila from any future recovery under the IRA, Tennessee law likewise revoked her designation as beneficiary following the divorce:

> (a) If after executing a will the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator or guardian, unless the will expressly provides otherwise.

Tenn. Code Ann. § 32-1-202.

As there is no governing instrument that demonstrates Roger's intent to have Sheila receive anything from the IRA following the couple's divorce, any right that Sheila had to Roger's IRA based on her designation as the beneficiary was consequently revoked upon the couple's divorce. SDCL § 29A-2-804 further explains how to treat an appointment or a disposition over property that has been revoked in such circumstances:

> Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.
>
> SDCL § 29A-2-804(d).

Treating Sheila accordingly, the IRA would have been without a beneficiary at the time the divorce decree was entered. Without a beneficiary, the IRA became a part of Roger's estate, to be disposed of upon his death by the terms of his will or by intestate succession to his heirs, pursuant to SDCL § 29A-2-101(a).

Conclusion

For the above-stated reasons, Susan's Motion for Declaratory Judgment is granted, and Sheila's Motion to Dismiss is denied. Counsel for Susan shall prepare an order denying the motion, which shall incorporate by reference the findings and conclusions of this written decision. If the parties wish to have additional findings of fact and conclusions of law entered, they shall submit proposed findings and conclusions per SDCL 15-6-52.

Sincerely,

Jennifer D. Mammenga
Circuit Judge

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 30871

In Re the Estate of
ROGER J. CUNNINGHAM, Deceased.

Appeal from the Circuit Court
Second Judicial Circuit
Lincoln County, South Dakota

THE HONORABLE Jennifer D. Mammenga
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed October 14, 2024.

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Cases

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Preliminary Statement

The Estate of Roger J. Cunningham will be referred to as "the Estate." Appellee Susan Metz, in her capacity as personal representative of the Estate, will be referred to as "Susan." Appellant Sheila Cunningham will be referred to as "Sheila." Citations to the settled record will appear as "(SR at ___)" followed by the appropriate page designation. Citations to the Appendix, if any, will appear as "(App. at ___)" with the appropriate page designation.

Jurisdictional Statement

Sheila appeals from an Order filed October 4, 2024, by the Honorable Jennifer D. Mammenga, Second Judicial Circuit Court, which granted the Personal Representative's Motion for Declaratory Judgment and denied Sheila's Motion to Dismiss. (SR at 114). Notice of Entry of the October 4 Order was filed October 8, 2024. (SR at 122). Sheila's Notice of Appeal was filed October 14, 2024. (SR at 132). This Court has jurisdiction over this appeal pursuant to SDCL § 15-26A-3(4).

Statement of the Issues

1. Whether the circuit court had jurisdiction to determine the ownership and disposition of the Estate's individual retirement account.

   The circuit court correctly determined that the Estate's individual retirement account was the personal property of Roger J. Cunningham during his life and that his divorce from Sheila in 2015 revoked the account's beneficiary designation as a matter of law, thus rendering it an asset of the Estate over which the circuit court had jurisdiction.

   Buchholz v. Storsve, 2007 S.D. 101, 740 N.W.2d 107

   SDCL § 29A-1-301
   SDCL § 29A-3-105
   SDCL § 29A-2-804
   SDCL § 43-1-7

2. Whether the Estate's motion was procedurally improper.

   The circuit court correctly determined it had the authority to adjudicate all matters related to the probate of the Estate and, because the individual retirement account was the property of the Estate, the initiation of a separate civil action was not required.

   Matter of Est. of Smeenk, 2024 S.D. 23, 6 N.W.3d 250
   Matter of Russell I. Carver Revocable Tr., U/T/A Dated Oct. 11, 2001, as Amended, 2020 S.D. 31, 944 N.W.2d 808
   In re Est. of Ricard, 2014 S.D. 54, ¶ 14, 851 N.W.2d 753, 758

   SDCL § 21-24-5
   SDCL § 29A-1-401

Statement of the Case

Roger Cunningham, a South Dakota resident, passed away March 10, 2024. (SR at 6). Roger's will appointed his daughter Susan Metz as the personal representative of his estate. (*Id.* at 2). On April 2, 2024, Susan applied to the Second Judicial Circuit Court in Lincoln County for an informal probate of Roger's will with the intent of informally probating the estate. (*Id.* at 4–8). Susan was appointed personal representative of the estate the same day. (*Id.* at 12).

On April 30, 2024, Susan, on the Estate's behalf, filed a Motion for Declaratory Judgment with the probate court, seeking to confirm the prior revocation of the beneficiary designation of an individual retirement account maintained by Roger during his life. (*Id.* at 25). A hearing was set on the Motion for June 10, 2024. (*Id.* at 29). The pleadings and Notice of Hearing were mailed to Sheila on April 30, 2024. (*Id.* at 81).

Through her counsel, Sheila appeared in the probate action and filed an objection to the Estate's Motion as well as a competing Motion to Dismiss. (*Id.* at 87). Sheila's counsel appeared at the June 10 hearing and argued on her behalf. (*Id.* at 109). On

September 30, 2024, the Honorable Jennifer D. Mammenga issued a Memorandum Opinion granting the Estate's Motion for Declaratory Judgment and denying Sheila's Motion to Dismiss. (*Id.* at 113). An Order incorporating the Memorandum Opinion was entered on October 4, 2024. (*Id.* at 114). Sheila appeals from the October 4 Order.

Statement of Facts

Roger and Sheila Cunningham were married August 29, 1981. (SR at 44). At that time, the couple resided in Memphis, Tennessee. (*Id.* at 45). In 1996, while still married to Sheila, Roger opened an individual retirement account ("IRA"), with Charles Schwab acting as the custodian and an entity known as Delta Asset Management acting as the advisor. (*Id.* at 27; 58–59). Roger named Sheila as the primary beneficiary on the account when it was opened. (*Id.*).

In approximately 2015, Sheila filed for divorce. (*Id.* at 38–42). Prior to their divorce being finalized, Roger moved to Sioux Falls and purchased a residence there. (*Id.* at 47). During the pendency of the divorce and while living in Sioux Falls, Roger negotiated a Martial Dissolution Agreement ("MDA") with Sheila. (*Id.* at 56). Their divorce was eventually finalized on November 19, 2015, and a Final Decree of Divorce was entered pursuant to the terms of the MDA. (*Id.* at 38).

A primary purpose of the MDA was to "compromise, adjust, and settle all questions between [Roger and Sheila] as to their respective marital and separate property rights and obligations[.]" (*Id.* at 44). As part of that effort, the parties agreed to divide all their real and personal property, which included Sheila agreeing to execute a quitclaim deed on the Sioux Falls residence in favor of Roger. (*Id.* at 47).

Critically, Roger's IRA was also specifically addressed in the MDA. Those provisions state: "[Roger] has a rollover IRA at Schwab, account #xxxx5836, with a value that has been disclosed to [Sheila]. The parties agree that [Sheila] is awarded $757,473.81 from this account . . . . The parties agree that [Roger] will maintain sole ownership, value and equity in all remaining funds in this account. [Sheila] relinquishes *and waives any claim, interest, right or title she may have to this account*[.]" (*Id.* at (50–51) (emphasis added).[1]

In its final paragraphs, the MDA stated that it was "effective and enforceable and will determine and fix the property rights of the parties in the event a decree of divorce is entered." (*Id.* at 54). The parties agreed the MDA was "binding upon and [would] inure to the benefit of the parties and their respective heirs, personal representatives and assigns." (*Id.*). The parties further agreed to "waive[ ], relinquish[ ], and release[ ] any right and/or claim in or to the property of the other, including . . . all rights to share in the estate of the other under the laws of the State of Tennessee or any other state wherein either party may hereinafter be domiciled or own property[.]" (*Id.* at 55).

Roger remained a resident of Sioux Falls until his death on March 10, 2024. (*Id.* at 6). According to Roger's will, dated December 10, 2015 (approximately one month after the divorce had been finalized), he appointed his daughter Susan as the personal representative of his Estate and bequeathed all his property to Susan. (*Id.* at 2). Unsurprisingly, Roger left nothing to Sheila. (*Id.*).

On April 8, 2024, less than a month after Roger's passing, Susan emailed Amy Kirshbaum, a client services manager at Delta Asset Management, to inquire about

[1] As of April 2024, Roger's IRA held approximately 2.8 million dollars in assets.

Roger's IRA. (*Id.* at 58–59). Through this conversation, Susan learned that, despite the divorce and MDA waiving Sheila's right to the IRA, Sheila remained listed as the IRA's primary beneficiary. (*Id.*). Susan then contacted Sheila and attempted to explain the situation, requesting that she disclaim her status as the primary beneficiary of the IRA so the funds could be transferred to the Estate. Despite the clear wording of the MDA, Sheila refused.

On April 30, 2024, Susan, on the Estate's behalf, filed a Motion for Declaratory Judgment with the probate court, seeking to confirm the prior revocation of the beneficiary designation in Roger's IRA pursuant to South Dakota's version of the Uniform Probate Code's "revocation-upon-divorce" statute. (*Id.* at 25); *see* SDCL § 29A-2-804 (stating the act of divorce revokes the beneficiary designation in a governing instrument). A hearing on the Estate's motion was set for June 10, 2024. (*Id.* at 29). Sheila received notice of the hearing and a copy of the relevant filings via U.S. mail. (*Id.* at 81; Appellant's Br. at 3).

In the meantime, and unbeknownst to the Estate, the funds were transferred from Roger's IRA to an inherited IRA in Sheila's name at Schwab. (Appellant's Br. at 2–3). After this initial transfer and after the Estate had filed its April 30 motion, Sheila transferred the funds from the Schwab account to a different account in her name managed by Fidelity Brokerage Services where they remain today.

After receiving the Notice of Hearing and relevant filings, Sheila retained South Dakota counsel who entered a Notice of Appearance on her behalf and filed a competing motion to dismiss the Estate's Motion for Declaratory Judgment. (SR at 85–87). In her subsequent brief, Sheila argued that Roger's IRA was "nonprobate property" and thus the

probate court lacked any authority to determine its ownership. (*Id.* at 90). Sheila also claimed that South Dakota courts lacked personal jurisdiction over her and therefore could not apply South Dakota law to determine the disposition of Roger's IRA. (*Id.* 91–93). Finally, Sheila argued that the Estate could not avail itself of the declaratory judgment powers of the probate court and must instead file a separate civil action. (*Id.* at 93).

Sheila's attorney appeared at the June 10 hearing and repeated the arguments raised in her brief, claiming (1) the probate court had no power to decide the ownership of Roger's IRA; (2) the probate court did not have personal jurisdiction over Sheila; and (3) the Estate's motion was procedurally improper. (SR 109–110).

On September 30, 2024, the probate court issued its Memorandum Opinion granting the Estate's motion. In doing so, it relied on its broad constitutional powers as a court of general jurisdiction and the legislature's specific grant of probate jurisdiction over "any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property[.]" (SR at 110 (quoting SDCL § 29A-3-105)). Using this specific grant of authority, it applied the provisions of SDCL § 29A-2-804 to the beneficiary designation in Roger's IRA and determined it had been revoked upon the couple's divorce in 2015. (*Id.* at 112). The probate court then applied the statutory disposition instructions to the IRA, which dictate that Sheila must be treated as though she "disclaimed all provisions revoked by this section" and ultimately held that "the IRA became a part of Roger's estate, to be disposed of upon his death by the terms of his will or by intestate succession to his heirs[.]" (*Id.* at 113 (quoting SDCL § 29A-2-804)).

Standard of Review

Legal conclusions reached by the circuit court in declaratory judgment rulings are reviewed de novo. *In re Pooled Advoc. Tr.*, 2012 S.D. 24, ¶ 20, 813 N.W.2d 130, 138. "However, [f]indings of fact . . . may not be set aside unless clearly erroneous[.]" *Helleberg v. Estes*, 2020 S.D. 27, ¶ 10, 943 N.W.2d 837, 841 (citation omitted) (first and second alterations original). "Jurisdiction . . . and statutory interpretation are also questions of law examined under the de novo standard of review." *In re Pooled Advoc. Tr.*, 2012 S.D. 24, ¶ 20, 813 N.W.2d at 138.

Argument

The issue in this case is whether a South Dakota court has the authority to apply South Dakota law to the personal property of a South Dakota resident, who was domiciled in South Dakota at the time of his death, as part of his South Dakota estate. Despite Sheila's objections to the contrary, the answer to that question is yes, and the probate court correctly exercised its authority in confirming the application of SDCL § 29A-2-804 and the subsequent revocation of the beneficiary designation in Roger's IRA.

Even if this Court determines personal jurisdiction over Sheila was a prerequisite to making that determination, personal jurisdiction exists here based on Sheila's purposeful contacts with the forum, one of its residents, and his personal property. And irrespective of how the Estate's request for relief was styled, the probate court properly considered and ruled upon it within the scope of the overall probate proceeding.

1. Roger's IRA was part of his estate when he died, and the probate court acted within its jurisdiction when it adjudicated ownership of the IRA.

During his life, Roger's IRA was his personal property. *See* SDCL § 43-1-3 ("Every kind of property that is not real is personal."); Tenn. Code Ann. § 67-5-501(8) ("'Personal property' includes every species and character of property that is not classified as real property"); *see also Macatawa Bank v. Wipperfurth*, 822 N.W.2d 237, 238 (Mich. Ct. App. 2011) ("[A]n IRA is intangible personal property, similar to a bank account."). "If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile." SDCL § 43-1-7.[2] At the time of his divorce and prior to his passing, Roger was domiciled in Sioux Falls and thus, his IRA was situated here, and its ownership and distribution was governed by South Dakota law.

"[I]n 1995, South Dakota adopted the Uniform Probate Code (UPC), which resulted in the enactment of SDCL 29A–2–804." *Buchholz v. Storsve*, 2007 S.D. 101, ¶ 10, 740 N.W.2d 107, 110. The relevant portion of that statute states:

> (b) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:
>
> (1) Revokes any revocable (i) disposition or appointment of property made by a divorced individual to a former spouse in a governing instrument[.]

[2] Though the Estate rejects Sheila's erroneous claim that Roger's IRA was "not located in South Dakota" (Appellant's Br. at 8), the result would not change even if the IRA was deemed "situated" in Tennessee, as Tennessee likewise recognizes that "[t]he descent and distribution of personal property, as opposed to real property, is governed by the law of the state where the decedent resided at the time of his or her death." *Horne v. Est. of Horne*, No. 01-A-019101PB00005, 1992 WL 187641, at *3 (Tenn. Ct. App. 1992). *See also Martin v. Stovall*, 52 S.W. 296, 298 (Tenn. 1899) ("[A]s to personal property, it follows the person of the owner wherever situated,—is to be governed by the laws of the domicile of the owner; and this rule applies to all questions of disposition by will as well as other means of disposition.").

SDCL § 29A-2-804.[3]

This statute applies to a broad range of testamentary and non-testamentary documents, "including a . . . retirement, or similar benefit plan" like an IRA. *Buchholz*, 2007 S.D. 101, ¶ 10, 740 N.W.2d at 111. As this Court has previously noted, its enactment was motivated by "the recognition that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death." *Id.* ¶ 12, 740 N.W.2d at 111 (citation omitted). Therefore, "[r]evocation-upon-divorce statutes reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention." *Id.*

As its moniker suggests (i.e., "revocation-*upon*-divorce" statute), and the text of the statute confirms, it is the act of divorce itself that triggers its provisions. *See id.* ¶ 5, 740 N.W.2d at 110 (affirming the circuit court's conclusion "that SDCL 29A–2–804 automatically revoked the beneficiary designation . . . upon [the couple's] divorce"); *Defender v. U.S. Dep't of Interior*, No. CIV. 08-1022, 2010 WL 1299767, at *7 (D.S.D. Mar. 30, 2010) (citing SDCL § 29A-2-804 and noting "the moment the divorce decree was entered in New Mexico, the existing will became a nullity and was revoked"). Once the divorce is finalized, the revocation is automatically effectuated and the "[p]rovisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section" and the property is then

[3] As the probate court noted, Sheila does not claim the governing instrument of Roger's IRA dictates a different result. (SR at 112).

disposed of according to terms of the decedent's will or by the laws of intestate succession. SDCL § 29A-2-804(d).

The statute also gives direction to the custodian of the property in question: "Upon receipt of written notice of the divorce . . . a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the proceedings relating to the settlement of the decedent's estate or, if no proceedings have been commenced, to or with the court located in the county of the decedent's residence." SDCL § 29A-2-804(g)(2). And finally, the statute informs the court about how to proceed: "The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination." *Id.*

Because the beneficiary designation in most "governing instruments" will be activated only upon the death of the donor, the application of a revocation-upon-divorce statute will commonly be a matter for the probate court to decide. *See, e.g., Matter of Est. of Podgorski*, 471 P.3d 693, 695 (Ariz. Ct. App. 2020) (noting the probate court determined cross-motions for summary judgment on the application of the revocation-upon-divorce statute to a will and trust of the decedent). In South Dakota, the legislature has granted this precise authority to courts sitting in probate through the text of SDCL § 29A-3-105, which states, "[t]he [probate] court has jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property[.]" *See also* SDCL § 29A-1-301 ("Except as otherwise provided in this code, this code applies to and the court has jurisdiction over (1) the estates of decedents and absentees domiciled in this

state . . . and (5) multiple-person bank accounts and other nonprobate transfers in this state.").

These statutes, and this Court's decisional law interpreting and applying them, provide the complete, self-contained roadmap for resolving this case. Under the law in both South Dakota and Tennessee, Roger's IRA was "situated" in South Dakota at the time of divorce and upon his death. As a result, ownership of the IRA is governed by South Dakota law, including SDCL § 29A-2-804. That statute, applicable here, automatically revoked Sheila's designation as the beneficiary of Roger's IRA in 2015. The legislature has specifically granted jurisdiction to courts sitting in probate to decide this question. Once the probate court determines the beneficiary designation has been revoked, as the probate court did here, it must "order disbursement or transfer in accordance with the determination." SDCL § 29A-2-804(g)(2). When these statutes are appropriately applied, they end the inquiry.

Sheila's contrary argument—that the probate court "does not have jurisdiction to adjudicate the validity of dispositions of out-of-state-assets" (Appellant's Br. at 5)—simply leapfrogs these rules. Sheila's argument ignores the law regarding where personal property is deemed situated and the law that then governs personal property. It ignores the revocation-upon-divorce statute and the consequences for ex-spouses. It ignores the fact that the automatic nullification of the beneficiary designation in 2015 changed the character of Roger's IRA from a non-probate asset to an asset of his estate. And it ignores the broad constitutional and statutory authority of South Dakota probate courts.

The United States Supreme Court's decision in *Hanson v. Denckla*, on which Sheila persistently relies, does not salvage her argument. The Court's decision in that

case was premised upon an underlying factual assumption not present here and a general statement of law not applicable in this case, namely: (1) the Court and parties agreed that the "assets that form the subject matter of th[e] action were located in Delaware and not in Florida"; and (2) that a state's power over the probate of a resident's estate does not equate to "in rem jurisdiction to adjudicate the validity of *inter vivos dispositions*" of those out-of-state assets. *Hanson v. Denckla*, 357 U.S. 235, 247–48 (1958) (emphasis added).[4] Here, as an intangible item of personal property, Roger's IRA has been legally situated in South Dakota since 2015. It is not an "out-of-state asset." And, unlike the facts in *Hanson*, there is no inter vivos transfer to adjudicate in this case because the beneficiary designation had been revoked as a matter of law in 2015, rendering the IRA an asset of Roger's estate that would pass under his will or by intestate succession. Viewed through this correct lens, the *only* court with jurisdiction to determine the disposition of Roger's IRA was the Lincoln County probate court.

If Sheila prevails on her claim that "[a] South Dakota court cannot . . . extinguish the interest of [an out-of-state] resident" (Appellant's Br. at 8) by acknowledging the effect of South Dakota's revocation-upon-divorce statute without first acquiring personal jurisdiction over the ex-spouse, the text of SDCL § 29A-2-804 would effectively be rewritten. The statute would no longer protect all South Dakota residents from their "failure to designate substitute takers[.]" *Buchholz*, 2007 S.D. 101, ¶ 12, 740 N.W.2d at 111. Instead, it would apply only to the narrower class of South Dakota residents whose

[4] Though the *Hanson* Court also appeared to cast doubt on the "fiction" that the situs of personal property is the domicile of its owner, *id.* at 249, that statement is of little concern here given this Court's acknowledgement that "[w]hat property is and the rights that attach to ownership are primarily a matter of state law." *Ehlebracht v. Crowned Ridge Wind II, LLC*, 2022 S.D. 19, ¶ 51, 972 N.W.2d 477, 492 (citation omitted). Moreover, the statement appears to be dicta considering the *Hanson* Court's earlier recognition that the undisputed situs of the property in that case was Delaware. *See* 357 U.S. at 247.

ex-spouses also live in South Dakota. Residents whose ex-spouses live outside of or choose to leave the state would be precluded from taking advantage of South Dakota's law. But there is no textual or even public policy support for a judicial narrowing of SDCL § 29A-2-804 in this way, and Sheila's argument should likewise be rejected.

In sum, Sheila's argument suffers from the faulty premise that the probate court's decision removed her as the beneficiary of Roger's IRA and, she incorrectly alleges, that the probate court needed (but did not have) personal jurisdiction over Sheila before doing so. In reality, it was Roger's residency in South Dakota, his divorce from Sheila, and the operation of SDCL § 29A-2-804 that removed Sheila as the beneficiary of Roger's IRA a decade before the probate court's decision. When Roger passed away in 2024, his estate was necessarily probated in Lincoln County and his IRA was a part of it. Once the probate court confirmed that the beneficiary designation had previously been revoked, the only thing that remained for the court to do was "order disbursement or transfer in accordance with the determination." *See* SDCL § 29A-2-804(g)(2). It did that, and correctly determined it did not need personal jurisdiction over Sheila to do so. Therefore, the probate court's Order should be affirmed on that basis.

2. <u>The probate court had the power to apply SDCL § 29A-2-804 and confirm the automatic revocation of the IRA's beneficiary designation through a motion for declaratory judgment.</u>[5]

Shelia claims the Estate's Motion for Declaratory Judgment was procedurally improper and, therefore, "[t]he judgment below must be reversed." (Appellant's Br. at 14). This argument similarly disregards the broad authority of circuit courts to order

[5] Sheila raises this argument last in her Brief. But the resolution of Sections 1 and 2 of the Argument outlined here dispense with the need to consider the personal jurisdiction claims, so the Estate will address the personal jurisdiction issues last.

appropriate relief and improperly prioritizes form over substance, a tactic this Court has discouraged. *See In re Est. of Ricard*, 2014 S.D. 54, ¶ 14, 851 N.W.2d 753, 758 ("[The petitioner's] argument exalts form over substance.").

As expressed in SDCL § 21-24-1, "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." "The philosophy behind declaratory judgment is to enable parties to authoritatively settle their rights in advance of any invasion thereof." *Hostler v. Davison Cnty. Drainage Comm'n*, 2022 S.D. 24, ¶ 16, 974 N.W.2d 415, 421. "[T]o effectuate the purpose of this remedial declaratory judgment legislation, the courts are to interpret it with liberality[.]" *Dan Nelson, Auto., Inc. v. Viken*, 2005 S.D. 109, ¶ 26, 706 N.W.2d 239, 248–49 (citation omitted).

These remedial declaratory judgment provisions apply equally in probate actions. As provided in SDCL § 21-24-5, "[a]ny person interested as or through a personal representative . . . in the administration of a trust, or of the estate of a decedent . . . may have a declaration of rights or legal relations in respect thereto: . . . (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills *and other writings*." SDCL § 21-24-5 (emphasis added).

A probate court has the power to apply these statutes regardless of how the request is styled: "The scope of a probate proceeding includes an initial petition addressing a particular subject of the probate action and any additional pleadings, motions, and petitions, however denominated, that relate to the same subject matter." *Matter of Est. of Smeenk*, 2024 S.D. 23, ¶ 23, 6 N.W.3d 250, 255; *see also In re Est. of*

Flaws, 2016 S.D. 61, ¶ 10, 885 N.W.2d 580, 583 (noting the probate court's authority to "issue[ ] a judgment declaring heirship").[6]

Here, the Estate properly availed itself of its statutory right to declaratory relief regarding the construction of a "writing,"— the IRA beneficiary designation. *See* SDCL § 21-24-5(3). The motion was couched as one seeking declaratory relief because, as a matter of law, the beneficiary designation was revoked in 2015 and Shelia contractually waived any further rights to the IRA per the MDA. If Shelia is permitted to rely on the revoked beneficiary designation, violate the terms of the MDA, and recover the assets of her ex-husband's Estate, her conduct will undoubtedly result in an invasion of the rights of Roger's heirs. *See Hostler*, 2022 S.D. 24, ¶ 16, 974 N.W.2d at 421.

To prevent that from occurring, the Estate simply sought judicial confirmation of the operation of South Dakota law on an item of personal property owned by a South Dakota resident. Applying a liberal interpretation of South Dakota's probate and declaratory judgment laws, this Court should conclude that such relief was proper in the probate action. *See Dan Nelson, Auto., Inc.*, 2005 S.D. 109, ¶ 26, 706 N.W.2d at 248–49; *see also Matter of Est. of Jones*, 2022 S.D. 9, ¶ 24, 970 N.W.2d 520, 529 (quoting SDCL § 29A-1-102) ("[T]he South Dakota Uniform Probate Code shall be liberally construed and applied to promote simplification, clarification, and efficiency in the law of decedent's estates[.]").

However, even if the Estate's motion was improvidently styled as one seeking a "declaratory judgment," Sheila's conclusion that the probate court's decision "requires"

[6] None of the cases from foreign jurisdictions cited by Sheila for the proposition that "a party cannot merely make a motion for declaratory relief" (Appellant's Br. at 12) involve the power of a South Dakota probate court or the application of SDCL § 21-24-5.

reversal is a non sequitur. As noted above, it was the divorce itself that terminated Sheila's right to inherit the IRA (which, in any event, was only a contingent benefit and never guaranteed). The probate court's judicial acknowledgement of that fact did not deprive Sheila of anything she had not already lost.

In other words, the Estate could have styled its request to apply SDCL § 29A-2-804 as any form of petition, motion, or pleading so long as it was within the scope of the probate proceeding. *Smeenk*, 2024 8.D. 23, ¶ 23, 6 N.W.3d at 255; *see also Ricard*, 2014 S.D. 54, ¶ 14, 851 N.W.2d at 758 ("[T]he character of an action is ordinarily determined by the substance of the whole statement and the nature of the grievance, rather than the form of the pleading."). "[H]owever denominated," the result would have been the same. *Smeenk*, 2024 8.D. 23, ¶ 23, 6 N.W.3d at 255. In fact, the case would have proceeded exactly as it did here: with notice of the proceeding provided to Sheila pursuant to SDCL § 29A-3-403 and SDCL § 29A-1-401; Sheila's subsequent opportunity to appear and lodge an objection; and the concomitant burden of being bound by the probate court's decision. *See In re Bickel*, 2016 S.D. 28, ¶ 26, 879 N.W.2d 741, 750 (citing SDCL § 29A-3-105 and concluding "a person notified . . . is bound"). Regardless of how the Estate may have styled its request for relief, the Estate was not required to initiate a separate civil action against Sheila.

Sheila also raises "the question of service," alleging that she was not provided service of process regarding the Estate's motion. (Appellant's Br. at 11). As an initial matter, this argument was not presented to the probate court, which made no determination in this regard and Sheila has thus forfeited the argument on appeal. *See*

Matter of Est. of Tank, 2023 S.D. 59, ¶ 31, 998 N.W.2d 109, 120 ("Ordinarily an issue not raised before the trial court will not be reviewed at the appellate level.").

More importantly however, service of process was not required. As this Court has explained, "certain types of proceedings, like those involving the administration of trusts and wills, commence upon the filing of the petition." *Matter of Russell I. Carver Revocable Tr., U/T/A Dated Oct. 11, 2001, as Amended*, 2020 S.D. 31, ¶ 33, 944 N.W.2d 808, 817. "Such proceedings are different in nature than many other types of civil actions wherein there is a clearly identified 'defendant' upon whom service of summons must be made[.]" *Id.* Such is the case here.

In this probate matter, the governing notice statute is SDCL § 29A-3-403, which states in relevant part:

> Notice shall be given to the following persons: the heirs, devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons.

The text of SDCL § 29A-1-401 further provides that "[i]f notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition, together with a copy of the petition, to be given to any interested person or the person's attorney if the person has appeared by attorney[.]" Sheila received the notice, and, through her attorney, timely raised an objection.

Moreover, upon close examination of SDCL § 29A-3-403, it is far from clear that Sheila was even entitled notice of the hearing, much less formal service of process. *See*

SDCL § 29A-3-403 (requiring notification of "heirs, devisees, and personal representatives"). In any event, Sheila was notified of the motion and the date of the hearing and must therefore be bound by the probate court's determination. *See Bickel*, 2016 S.D. 28, ¶ 26, 879 N.W.2d at 750 ("SDCL 29A–3–105 specifically provides that Gail—a person notified—is bound."). Thus, the probate court's jurisdiction is not impacted by Sheila's arguments regarding the nature of the relief sought by the Estate or her claims regarding the lack of service of a summons and complaint. The probate court's decision should therefore be affirmed.

3. Even if the Court determines personal jurisdiction over Sheila was necessary to apply SDCL § 29A-2-804, it is present here.

If none of the rules expounded above apply and if the probate court's ruling was, in effect, an adjudication of Sheila's personal property rights, Shiela argues the probate court needed personal jurisdiction over her and did not have it. However, even if the Court accepts that premise, personal jurisdiction over Sheila is present here.

"Two conditions must be met before a South Dakota court may exercise personal jurisdiction over a non-resident party: First, the court must determine that the legislature granted the court jurisdiction pursuant to South Dakota's [l]ong [a]rm [s]tatute, SDCL 15-7-2. The court must then determine that the exercise of jurisdiction comport[s] with federal due process requirements." *J & L Farms, Inc. v. Jackman Fla. Wagyu Beef, LLC*, 2024 S.D. 29, ¶ 13, 7 N.W.3d 695, 700 (citation omitted).

a. Sheila is covered by South Dakota's long arm statute.

In her Brief, Sheila does not address the applicability of South Dakota's long arm statute. But Sheila's connections with South Dakota fall under multiple subsections of SDCL § 15-7-2, thus satisfying the first prong of the personal jurisdictional analysis. *See*

Davis v. Otten, 2022 S.D. 39, ¶ 13, 978 N.W.2d 358, 364 ("South Dakota's long arm statute, SDCL 15-7-2, is to be construed broadly when evaluating jurisdiction."). For example, Sheila's actions fall within each of the following categories identified by the legislature : (3) The ownership, use, or possession of any property, or of any interest therein, situated within this state; . . . (11) Commencing or participating in negotiations, mediation, arbitration, or litigation involving subject matter located in whole or in part within the state; [and] . . . (14) The commission of any act, the basis of which is not inconsistent with the Constitution of this state or with the Constitution of the United States." SDCL § 15-7-2.

As noted above, Roger's IRA was his personal property during his lifetime. *See* SDCL § 43-1-3; SDCL § 43-1-7. Prior to his passing, Roger was domiciled in Sioux Falls. As a result, the IRA was legally situated in South Dakota at the time of his death. From April 2024, (when the funds were transferred to Sheila) until today, Sheila has been in possession of property that, according to the law governing intangible personal property, was located in South Dakota where Roger was domiciled. Her unlawful possession of the IRA funds, her improper change in custodian of the funds, and any continuing interest she asserts in the funds brings Sheila within subsection (3) and (14) of the long arm statute.

Additionally, as the couple was finalizing their divorce in 2015, Shiela negotiated with Roger, a South Dakota resident, as to the distribution of the couple's property. These negotiations are evidenced by the MDA both Shiela and Roger signed and unquestionably involved negotiations over the fate of the IRA itself—an item of personal property located within this state—and the division of real property located in Sioux

Falls. (SR at 44–56). These actions by Sheila all fall under subsection (11) and (14). Therefore, Shiela's actions are unquestionably covered by South Dakota's long arm statute.

b. The probate court's exercise of jurisdiction over Sheila would comport with due process.

"The due process inquiry requires determining whether a non-resident defendant had sufficient minimum contacts with the forum, such that assertion of personal jurisdiction does not offend traditional notions of fair play and substantial justice." *J & L Farms, Inc.*, 2024 S.D. 29, ¶ 14. This Court has established a three-part test to analyze whether this requirement is met:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state, thus invoking the benefits and protections of its laws. Second, the cause of action must arise from defendant's activities directed at the forum state. Finally, the acts of defendant must have substantial connection with the forum state to make the exercise of jurisdiction over defendant a reasonable one.

Id.

In administering this test, this Court has "rejected any talismanic jurisdictional formulas; the facts of each case must [always] be weighed in determining whether personal jurisdiction would comport with fair play and substantial justice." *Id.* ¶ 27 (citation and internal quotation marks omitted); *see also Daktronics, Inc. v. LBW Tech Co.*, 2007 S.D. 80, ¶ 10, 737 N.W.2d at 418 ("[W]e look at all of the contacts between an out-of-state resident and the forum, not one single factor."). Thus, "even a single act can support jurisdiction if it creates a substantial connection with the forum." *Daktronics, Inc.*, 2007 S.D. 80, ¶ 14, 737 N.W.2d at 419 (citation omitted).

"[W]hile physical presence can be an important consideration for personal jurisdiction, 'it is an inescapable fact of modern commercial life that a substantial amount

of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.'" *J & L Farms, Inc.*, 2024 S.D. 29, ¶ 20 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, (1985)). Therefore, while the defendant may never be physically present within the state, "ongoing relationships between citizens of two different states may create the minimum contacts necessary to satisfy the Due Process Clause." *Id.* ¶ 22. And where that ongoing relationship is a contractual one, "the nature and subject matter of the contract [can] create[ ] a substantial connection to . . . South Dakota." *Daktronics, Inc.*, 2007 S.D. 80, ¶ 14, 737 N.W.2d at 419.

Here, Sheila purposefully availed herself of the privilege of acting within South Dakota by negotiating a lengthy and detailed Marital Dissolution Agreement with Roger, a South Dakota resident. Sheila knew Roger was a resident of South Dakota during the negotiations and before the Final Decree of Divorce was entered. As evidenced by the notary stamp affixed under Roger's signature on the MDA, Roger was already residing in South Dakota at the time the MDA was executed. (SR at 56).

The MDA divided the couple's assets, which included Roger's IRA and real property located in Sioux Falls. (*Id.* at 47). Sheila executed a waiver and release not only of any claims to Roger's IRA, but also to "any and all claims" against Roger's estate. (*Id.* at 53). And finally, the parties agreed to waive and release "all rights to share in the estate of the other under the laws of the State of Tennessee *or any other state wherein either party may hereinafter by domiciled or own property*[.]" (*Id.* at 55) (emphasis added). This provision clearly indicates the parties contemplated the possibility of having to enforce the agreement under the laws of a different state—which

Sheila undoubtedly knew at the time would be South Dakota, where Roger was domiciled and his property was located. *See Zhi Gang Zhang v. Rasmus*, 2019 S.D. 46, ¶ 24, 932 N.W.2d 153, 161 (finding personal jurisdiction existed where the defendant's contacts were "purposeful, indisputably directed at South Dakota, and closely related to the reasons for which [the plaintiff] seeks personal jurisdiction").

The MDA involved the division of real and personal property located in South Dakota. It was negotiated with a resident of South Dakota. It was executed by Roger in South Dakota. And it imposes ongoing legal obligations on both Roger and Sheila that survive its execution, including a waiver of the claim Sheila now asserts to Roger's IRA. *See J & L Farms, Inc.*, 2024 S.D. 29, ¶ 19, 7 N.W.3d at 701 (citation omitted) ("[W]here the defendant . . . has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there[.]").

At the time the MDA was executed by Sheila, she should have anticipated being haled into court in South Dakota if she asserted rights to Roger's property, as she has done now. While she may not have been physically present in South Dakota, she purposefully availed herself of the privilege of acting within this state by negotiating a binding contract with one of its residents. Those negotiations were indisputably directed to a resident of South Dakota and his South Dakota property, making this Court's exercise of personal jurisdiction over Sheila a reasonable and foreseeable consequence of her actions. *See Rothluebbers v. Obee*, 2003 S.D. 95, ¶ 28, 668 N.W.2d 313, 323 (holding "jurisdiction could be imposed upon the defendant if the defendant's conduct and connections with the forum were enough to foresee being hauled into court in the

forum"); *In re Guardianship & Conservatorship of Miles*, 2003 S.D. 34, ¶ 45, 660 N.W.2d 233, 242 (holding personal jurisdiction was "supported by the fact that . . . trustee, could have reasonably anticipated being brought into a South Dakota court after he refused to make payments from the Trust to [the South Dakota beneficiary]"); *Smith v. Lanier*, 998 S.W.2d 324, 335 (Tex. App. 1999) (finding personal jurisdiction over foreign personal representative when her "activities . . . resulted in the removal from the state of the property that is the basis of the dispute . . . [and] she was on notice that the property might be subject to the jurisdiction of the Texas probate court.").

In sum, Sheila is subject to personal jurisdiction in South Dakota. She negotiated a divorce settlement with Roger, a South Dakota resident; she agreed to relinquish any rights to his real property located here; she agreed to make no further claims against Roger's estate or his IRA; she took purposeful action to effectuate the transfer of the IRA funds (legally located in South Dakota) from Roger's name to hers; she transferred the funds from Schwab to Fidelity after receiving notice of the disputed nature of the funds; and she continues to interfere with the Estate's enjoyment of its South Dakota property by refusing to convey it to the Estate. By any measure, these purposeful actions are sufficient to subject her to the jurisdiction in South Dakota. Sheila's denial of these consequences notwithstanding, "the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." *Burger King Corp.*, 471 U.S. at 474. Therefore, even if the Court determines that personal jurisdiction over Sheila was necessary, it was present here, and the probate court was empowered to act as it did.

Conclusion

When Roger moved to South Dakota in 2015, he expected and was entitled to the protection of its laws. A straightforward application of South Dakota's Uniform Probate Code, which recognizes the Estate's exclusive right to Roger's IRA, provides that protection and resolves this dispute in the Estate's favor. To accomplish this, the probate court did not need personal jurisdiction over Sheila—a legal stranger to the Estate. Therefore, the Estate respectfully requests that the probate court's Order be affirmed in all respects.

Respectfully submitted this 26th day of March, 2025.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Thomas P. Schartz

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), I certify that this reply brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 2013, Times New Roman (12 point) and contains 7,041 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, and certificates of counsel. I have relied on the word and character count of the word-processing program to prepare this certificate.

Respectfully submitted this 26th day of March, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2025, a true and correct copy of the foregoing *Appellees' Brief* was electronically filed and served via Odyssey File and Serve or U.S. Mail upon the following individuals or attorneys, with an original mailed to the clerk of the Supreme Court at 500 East Capitol Avenue, Pierre, South Dakota 57501.:

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APPENDIX

CIRCUIT COURT OF SOUTH DAKOTA
SECOND JUDICIAL CIRCUIT
LINCOLN & MINNEHAHA COUNTIES
425 North Dakota Avenue
Sioux Falls, SD 57104-2471

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[Sent by email and not by U.S. Mail]

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RE: *Estate of Roger Cunningham*, 41 PRO 24-27

Dear Counsel,

This correspondence is intended to serve as the Court's memorandum decision with respect to a motion for declaratory judgment filed by the estate of Roger J. Cunningham, and the subsequently filed motion to dismiss the action by Sheila Cunningham. The motions came before the Court for a hearing on June 10,

2024. At this hearing, the Susan Metz, acting on behalf of the estate of Roger Cunningham (hereinafter "Roger") was represented by and through her counsel, Lucas Carr and Tom Schartz. Sheila Cunningham (hereinafter "Sheila") was represented by and through her counsel, Elizabeth Hertz. The Court heard the parties' oral arguments and took the motions under advisement.

Factual and Procedural Background

Roger and Sheila married on August 29, 1981. The couple had no children together and lived in Tennessee for the duration of their marriage. At some point, Roger opened a rollover investment retirement account (the "IRA") with Schwab, as custodian, and Delta Asset Management, LLC ("Delta"), as advisor. Sheila was named beneficiary of the IRA, although this designation was not listed on any of the quarterly reports sent to Roger.

Roger and Sheila divorced on November 19, 2015. In the Marital Dissolution Agreement filed with the Circuit Court of Tennessee, Roger paid Sheila $757,473.81 from the IRA. In the agreement, the two agreed that Roger would maintain sole ownership, value and equity in all remaining funds in the account, and that Sheila relinquished and waived any claim, interest, right or title that she may have to the account, once the transfer of the funds was made. Roger and Sheila also agreed to waive all rights to share in the estate of the other under the laws of Tennessee or any other state wherein either would thereafter be domiciled or own property. (See Exhibit A, Affidavit of Counsel in Support of Motion for Declaratory Judgment, April 30, 2024).

Roger lived in South Dakota after the divorce. On December 10, 2015, Roger updated his Last Will and Testament (the "Will"), leaving the property of his estate to his daughter, Susan Metz ("Susan"). According to Metz, she and Roger had several conversations in June of 2023, during which he stated the IRA would be left to Metz and her two siblings, Janet Cunningham Rau ("Janet") and Brian Cunningham "(Brian"). Roger died on March 10, 2024, while he was a resident of South Dakota. On April 2, 2024, Susan applied for an informal probate and appointment of a personal representative. On April 8, 2024, in response to an inquiry from Susan, Delta advised that Sheila was the IRA's beneficiary and that no changes had been made since the initial designation.

On April 30, 2024, Suan filed a motion for declaratory judgment on behalf of the estate to revoke Sheila's designation as the beneficiary of the IRA. Sheila objected and on May 29, 2024, submitted a Motion to Dismiss for Lack of Jurisdiction.

Applicable Legal Authorities and Analysis

Sheila argues that the Court does not have jurisdiction "to decide the claim adjudicating the rights of a nonresident who lacks minimum contacts with South Dakota and who is neither a beneficiary nor a creditor of the estate." Sheila also argues that a motion for declaratory judgment is procedurally improper in this probate case and that Suan should have instead brought a declaratory action in Tennessee, where the divorce decree was entered.

South Dakota circuit courts are courts of general jurisdiction, and the Constitution of the State of South Dakota Constitution "confers broad authority upon circuit courts to 'hear all civil actions.'" *Bingham Farms Tr. v. City of Belle Fourche*, 2019 S.D. 50, ¶ 14, 932 N.W.2d 916, 920 (citing *Heupel*, 2018 S.D. 46, ¶ 25, 914 N.W.2d at 578). Thus, "[t]he unlimited equity jurisdiction of circuit court in probate matters stands firm. *Spitzer v. Spitzer*, 84 S.D. 147, 154, 168 N.W.2d 718, 722 (1969). SDCL § 16-6-9 confers on the circuit court original jurisdiction "[i]n all matters of probate, guardianship, conservatorship, and settlement of estates of deceased persons[.]" SDCL § 16-6-9. SDCL § 29A-1-301, involving the Uniform Probate Code ("UPC"), is in accord:

> Except as otherwise provided in this code, this code applies to and the court has jurisdiction over (1) the estates of decedents and absentees domiciled in this state . . . .

SDCL § 29A-1-301.

Roger was a resident of South Dakota at the time of his death and, as such, this Court has jurisdiction over his estate. *See* SDCL § 29A-1-301. Anything concerning or within Roger's estate falls within the purview of this Court's authority. However, Sheila argues that the IRA is not a part of the estate and is therefore not subject to this Court's jurisdiction. She asserts that a civil action challenging her designation as the IRA's beneficiary is more appropriate than Susan's present motion for declaratory judgment.

In resolving the jurisdictional issue in this case, this Court can also answer the question as to whether Sheila is the lawful beneficiary of the IRA, as the circuit court has the power to resolve any disputes regarding the ownership of investment accounts. *Matter of Est. of Beadle*, 2023 S.D. 26, ¶ 16, 992 N.W.2d 789, 793, reh'g denied (July 18, 2023). Further, SDCL § 29A-3-105 provides in part:

> Persons interested in decedents' estates . . . may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article . . . . The court has jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, *including actions to determine title to property*, and of any action

or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

SDCL § 29A-3-105 (emphasis added).

Thus, this Court may determine who is legally entitled to the contents of Roger's IRA. As Sheila was still listed as the beneficiary of the account at the time of Roger's death, the Court's only inquiry concerns the effect, if any, that the divorce had on Sheila's designation. The South Dakota Legislature has provided a clear answer to this question in the text of SDCL § 29A-2-804, which governs the revocation of probate transfers by divorce, and states, in pertinent part:

(b) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, *the divorce or annulment of a marriage*:

(1) *Revokes any revocable (i) disposition or appointment of property made by a divorced individual to a former spouse in a governing instrument . . .*

SDCL 29A-2-804(b)(1) (emphasis added).

The only exception to this automatic revocation is if the express terms of a governing instrument state otherwise. *Id.* A governing instrument is defined in the same statute as "a will, trust, or other governing instrument executed by the divorced individual *before the divorce* or annulment of the individual's marriage to the former spouse." SDCL § 29A-2-804(a)(4) (emphasis added). Included in the definition of "[g]overning instrument" are documents such as "a . . . retirement, or similar benefit plan ...[.]" SDCL § 29A-1-201(19).

The South Dakota Supreme Court has upheld the validity of this automatic revocation by holding that a policyholder's inaction in changing a beneficiary designation does not circumvent application of the UPC's general rule that divorce revokes such designations. See *Buchholz v. Storsve*, 2007 S.D. 101, ¶ 17, 740 N.W.2d 107, 112-13. In *Buchholz*, there was no evidence that the deceased former spouse ever read the annual statements sent by the administrator of her IRA. *Id.* at ¶ 17, 740 N.W.2d at 112. Despite this, the Court held that "[h]er inaction does not equate with consent." *Id.* The surviving former spouse failed to meet his burden under SDCL § 29A-2-804 of showing that the deceased's "inaction rises to a clear indication of a contrary intent to her decree of divorce from [her former spouse] and its complete division of their marital assets." *Id.* In so holding, the Court cited with approval the reasoning of the Tenth Circuit Court of Appeals when discussing the same statute in a different jurisdiction:

> The Uniform Probate Code provision on which § [29A-2]–804(2) is modeled derives from the recognition "that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death." Revocation-upon-divorce statutes "reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention." Thus, § [29A-2]–804(2) attributes an intent to the donor based on an assessment of a typical donor's intention. We also note that this statutory attribution of intent is rebuttable. It applies "[e]xcept as provided by the express terms of a governing instrument [such as an annuity contract], a court order, or a contract relating to the division of the marital estate . . . ."

Id. at ¶ 12, 740 N.W.2d 107, 111 (quoting *Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund*, 343 F.3d 1311, 1318 (10th Cir. 2003)).

Based on South Dakota law, Sheila's designation as beneficiary of Roger's IRA was revoked upon their divorce, unless there were express terms to the contrary in a governing instrument, court order, or contract. *Id.* at ¶ 16, 740 N.W.2d at 112 (quoting *Estate of Lamparella*, 210 Ariz. 246, 109 P.3d 959, 967 (Ct. App. Div. 1 2005) ("If a divorced spouse wishes to redesignate the former spouse as the beneficiary post-dissolution, such designation must be in writing and must otherwise comply with applicable policy terms."). No such document has been presented in this case. To the contrary, the divorce decree entered by the Tennessee court addressed the IRA and portions of it were divided under the terms of the decree. Sheila received funds from the account in the Marital Dissolution Agreement, wherein she also agreed to "relinquish and waive any claim, interest, right or title she may have to [the IRA]."[1]

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[1] Even if the terms of the Marital Dissolution Agreement are not interpreted to bar Sheila from any future recovery under the IRA, Tennessee law likewise revoked her designation as beneficiary following the divorce:

> (a) If after executing a will the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator or guardian, unless the will expressly provides otherwise.

Tenn. Code Ann. § 32-1-202.

As there is no governing instrument that demonstrates Roger's intent to have Sheila receive anything from the IRA following the couple's divorce, any right that Sheila had to Roger's IRA based on her designation as the beneficiary was consequently revoked upon the couple's divorce. SDCL § 29A-2-804 further explains how to treat an appointment or a disposition over property that has been revoked in such circumstances:

> Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.
>
> SDCL § 29A-2-804(d).

Treating Sheila accordingly, the IRA would have been without a beneficiary at the time the divorce decree was entered. Without a beneficiary, the IRA became a part of Roger's estate, to be disposed of upon his death by the terms of his will or by intestate succession to his heirs, pursuant to SDCL § 29A-2-101(a).

Conclusion

For the above-stated reasons, Susan's Motion for Declaratory Judgment is granted, and Sheila's Motion to Dismiss is denied. Counsel for Susan shall prepare an order denying the motion, which shall incorporate by reference the findings and conclusions of this written decision. If the parties wish to have additional findings of fact and conclusions of law entered, they shall submit proposed findings and conclusions per SDCL 15-6-52.

Sincerely,

Jennifer D. Mammenga
Circuit Judge

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30871

In Re The Matter of the Estate of
ROGER J. CUNNINGHAM, Deceased.

Appeal from the Circuit Court
Second Judicial Circuit
Lincoln County, South Dakota
The Honorable Jennifer D. Mammenga, Presiding Judge

REPLY BRIEF OF APPELLANT

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Notice of Appeal Filed October 15, 2024

Oral Argument Requested

Filed: 4/22/2025 10:34 AM CST Supreme Court, State of South Dakota #30871

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I. There is no jurisdiction over Sheila in South Dakota

The Estate argues that because Roger, and thus the IRA, were located in Sioux Falls at the time of his death, the court had personal jurisdiction over Sheila. This argument reflects a profound misunderstanding of this Court's and the United States Supreme Court's jurisdictional case law. *Hanson v. Denckla* explicitly holds that "[t]he fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction in rem…" 357 U.S. 235, 248-50, 78 S.Ct. 1228, 1236, 2 L.Ed. 2d 1283 (1958). But, more critically for the Estate's SDCL § 43-1-7 argument, the Supreme Court has long held that a court cannot exercise jurisdiction over a thing unless the Due Process Clause would have permitted in personam jurisdiction over those who have an interest in the thing. Even if the IRA is assumed to be South Dakota property, its presence in this state would not confer jurisdiction over Sheila. All assertions of state court jurisdiction, including those based on the presence of property in the forum, "must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer v. Heitner*, 433 U.S. 186, 212, 97 S.Ct. 2569, 2584, 53 L.Ed.2d 683 (1977).

"[T]he phrase 'judicial jurisdiction over a thing' is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing. This recognition leads to the conclusion that in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient for exercising jurisdiction over the interests of persons in a thing. The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard..." *Id.* at 207. "The fiction that an assertion of jurisdiction over property is anything but an

assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. Its continued acceptance would serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant." *Id.* at 212. Simply pointing to a thing and saying that it is located within the forum has not been sufficient to confer jurisdiction for decades. Linking the IRA to South Dakota does not and cannot confer jurisdiction over Sheila. Instead, the question must be whether the exercise of jurisdiction over Sheila was consistent with the Due Process Clause.

The Estate's assumption that the IRA is South Dakota property is both jurisdictionally irrelevant and wrong.[1] The argument that intangible property follows the owner and that jurisdiction follows with it echoes back to the doctrine set forth in *Harris v. Balk,* in which the Court held that "the obligation of a debtor to pay his debt clings to and accompanies him wherever he goes." 198 U.S. 215, 222, 25 S.Ct. 625, 625, 49 L.Ed. 1023 (1905). However, *Harris* was repudiated by *Shaffer.* As the Supreme Court recognized in *Rush v. Savchuk,* the "fictitious presence of [intangible property in the forum] does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense…" 444 U.S. 320, 329–30, 100 S.Ct. 571, 578, 62 L.Ed.2d 516 (1980). To say that property follows the owner "is simply to say that intangible property has no actual situs, and a debt may be sued on wherever there is jurisdiction over the debtor." *Id.* at 330 (holding that insurer's obligation to defend and indemnify insured was not a contact of any jurisdictional significance, and the insurer's presence in

[1] It is also factually incorrect. Prior to the Estate making its motion for declaratory judgment, Schwab, as the custodian of the IRA, honored the existing beneficiary designation and transferred the IRA's assets into a new inherited IRA in Sheila's name. Sheila subsequently transferred the assets from the Schwab inherited IRA to an inherited IRA held by Fidelity as custodian.

forum state could not be imputed to the insured). All that Roger's interest in the intangible property means is that the IRA could have been seized from him wherever he lived. But, just as the forum connection created by the defendant driver's insurance company in *Rush* could not be imputed to the driver, Roger's interest cannot be imputed to Sheila. The only lesson to be derived from SDCL § 43-1-7 is that, under South Dakota law, Sheila's interest in the IRA remained with her in Tennessee.

The Estate goes on to conflate jurisdiction and ownership by asserting that Sheila cannot have an interest in the IRA at all because it was automatically dissolved pursuant to SDCL § 29A-2-804 at the time of the divorce in 2015. This argument assumes the result - namely that a South Dakota court had the power to exert jurisdiction over Sheila and apply South Dakota law to a Tennessee divorce decree to divest her of her interest in the IRA. In short, the Estate is arguing there is jurisdiction because there is jurisdiction. Even if the Tennessee divorce decree did not expressly state that "this cause be and it is hereby retained in this Court with respect to all matters relating to the enforcement and/or modification of this Decree" (SR at 42), this would beg the question.

Moreover, Tennessee law dictates the exact opposite of what the Estate claims. Although the trial court concluded that Tennessee law and South Dakota law are the same, this is not the case. Tennessee has not adopted revocation-on-divorce laws like SDCL § 29A-2-804. "Unlike the [Uniform Probate Code], Tennessee law fails to extend the revocation-upon-divorce doctrine to will substitutes such as life insurance policies, retirement plans, or annuities…The Tennessee opinions surrounding the treatment of life insurance, retirement accounts, annuities, and trusts consistently use the same analysis and reasoning implied in one seminal case…in which the Tennessee Supreme Court held

that the revocation-upon-divorce doctrine did not apply to insurance policies." *Furtsch v. O'Dell*, No. M2024-00025-COA-R3-CV, 2025 WL 586551, at *20 (Tenn. Ct. App. Feb. 24, 2025) (quotations omitted). As a result, Tennessee courts have repeatedly held that a former spouse is entitled to the proceeds of retirement accounts to which he or she remains the designated beneficiary, despite language in an MDA awarding the accounts to the other spouse. *See Id.* at *20; *Voya Ret. Ins. & Annuity Co. v. Johnson, No.* M201600435COAR3CV, 2017 WL 4864817, at *3 (Tenn. Ct. App. Oct. 27, 2017). In fact, Tennessee courts have done so even when there is evidence that the deceased spouse unsuccessfully tried to revoke the beneficiary designation during his lifetime. *See Furtsch,* 2025 WL 586551 at *1 (husband's power of attorney submitted multiple documents attempting to change beneficiary designation from ex-wife to estate). Sheila has, in the very least, a litigable interest in the property, particularly when the divorce decree was issued by a Tennessee court that expressly retained the power of enforcement. Therefore, the question that must be answered – and was never answered at all by the circuit court – is whether Sheila has minimum contacts with South Dakota "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)

"The plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore*, 571 U.S. 277, 285, 134 S.Ct. 1115, 1122, 188 L.Ed. 2d 12 (2014). Instead, a "proper determination of personal jurisdiction rests on an examination of the defendant's – not the plaintiff's – contacts with the forum." *Kustom Cycles v. Bowyer,* 2014 SD 87 ¶ 12, 857 N.W.2d 401, 407. There must be some act by which the defendant purposefully avails herself of the privileges of the forum state. *Id.* at 408 (quotations

omitted). "[P]ersonal jurisdiction is appropriate where the defendant deliberately has engaged in significant activities within a state or has created continuing obligations between himself and residents of the forum." *Id.* The minimum contacts analysis requires courts to look at "the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Walden,* 571 U.S. at 285. "[I]t is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* The defendant's "suit-related conduct must create a substantial connection with the forum State." *Id.* at 284.

The Estate argues that "Sheila purposefully availed herself of the privilege of acting within South Dakota by negotiating a lengthy and detailed Marital Dissolution Agreement with Roger, a South Dakota resident." (Br. at 21). This argument was never made before the trial court, and no proof was ever offered. It is also contrary to long-established precedent.

The "purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed. 2d 528 (1985) (quotations omitted). By completing her divorce from Roger, Sheila did not purposefully avail herself of the privilege of conducting activities in South Dakota or invoke the benefits and protections of its laws. *See Engel v. Geary*, 2023 S.D. 69, ¶ 25, 1 N.W.3d 644, 652. Neither the marriage nor the divorce arose from Sheila's activities in South Dakota. *Id.* The spouses were married in Tennessee, commenced divorce proceedings in Tennessee, were represented by the same Tennessee lawyer, and entered into a Tennessee MDA that

resulted in the issuance of a divorce decree by a Tennessee court. (SR at 53). The only connection to South Dakota was Roger's unilateral decision to move. Acquiescence to a family member's desire to move to another state is not purposeful availment of the benefits and protections of that state's laws. *Kulko v. Superior Ct. of California In & For City & Cnty. of San Francisco*, 436 U.S. 84, 94, 98 S.Ct. 1690, 1698, 56 L.Ed.2d 132 (1978) (holding that father, who was a resident of New York did not purposefully avail himself of the benefits and protections of California law by consenting to allow his daughter to live with her mother in California for the school year).

"[P]ersonal jurisdiction over a defendant does not vest in a forum simply because the defendant is party to a contract formed in the forum." *Kustom Cycles, Inc. v. Bowyer*, 2014 S.D. 87, ¶ 14, 857 N.W.2d 401, 408, *citing Marschke v. Wratislaw*, 2007 S.D. 125, ¶ 16, 743 N.W.2d 402, 408. "[A] forum cannot assert personal jurisdiction over an absent, nonresident defendant simply because the defendant knew the plaintiff was a resident of the forum, or because the defendant knew the plaintiff's performance would occur in the forum." *Kustom Cycles* at ¶ 14, 857 N.W.2d at 408.

This Court's opinion in *Kustom Cycles* illustrates how and why the mere presence of one negotiating party within the forum does not create jurisdiction over the other party. The plaintiff in that case was a South Dakota corporation that agreed to customize a motorcycle for a resident of North Carolina. ¶¶ 2-3, 857 N.W.2d at 404. Although the North Carolina defendant knew the plaintiff was a South Dakota resident and that performance would occur in South Dakota, had repeated communications with the plaintiff while the plaintiff was in South Dakota, and even sent his motorcycle to South Dakota on two separate occasions, this Court held that these contacts did not meet the

minimum requirements of due process. *Id.* at ¶ 11, 857 N.W.2d at 407. The communications "did not establish jurisdiction because they in no way change the quality and nature of [the defendant]'s contact with this forum – this was nothing more than a 'one-shot deal.'" *Id.* at ¶ 16, 857 N.W.2d at 409.

This Court went on to note that "nothing in the Complaint or written submissions…suggests [that the defendant] sought out a South Dakota customizer of motorcycles and incidentally found Kustom Cycles; rather, [the defendant] met a customizer of motorcycles that, incidentally, operates in South Dakota. Thus, the motorcycle's first trip into South Dakota is nothing more than an attenuated contact resulting from [the defendant's] interaction with Kustom Cycles, and the second trip is even more attenuated than the first." *Id.* at ¶ 20, 857 N.W.2d at 410. This portion of the opinion makes a point of considerable significance to the present case: for purposeful availment, the defendant must do something to seek out the forum, even when there is a property connection in addition to the contract.

The connection to South Dakota in this case is even more attenuated than in *Kustom Cycles* because Roger, the person with a connection to South Dakota, did not have that connection at the time the divorce began. Sheila did not seek out negotiations with a person who happened to live in South Dakota; instead, she finished what had already begun in Tennessee with a person who had, incidentally, moved to South Dakota. Roger – not Sheila – chose to move to South Dakota. His decision to move was his own; as decades of precedent make clear, one party's actions cannot be imputed to another.

Divorce creates an additional problem for the Estate's claims of purposeful availment. If a defendant were seeking a contract with a South Dakota resident or was in

the process of negotiating a contract with someone who moved to South Dakota before the contract was signed, the defendant would have the choice of terminating negotiations and seeking the product or service elsewhere in order to avoid "reaching out" to a South Dakota resident. But a party to a divorce cannot terminate negotiations and divorce someone else. There is nothing voluntary or purposeful about selecting the opposing party for your divorce. The Estate's argument is essentially that, if Sheila did not want to submit herself to jurisdiction in South Dakota, she could not complete the divorce after Roger's move. Sheila did not seek out a South Dakota resident to divorce; rather, she divorced her husband, a Tennessee resident, who, incidentally, moved to South Dakota before the proceeding was complete.

Nor can it be said that Sheila created continuing obligations between herself and a South Dakota resident. The divorce was a *termination* of obligations, not the creation of a continuing one. The Tennessee divorce decree was a one-shot deal that cannot create jurisdiction. *See Kustom Cycles* at ¶ 16, 857 N.W.2d at 409.

Finally, there is the issue of foreseeability. A defendant's conduct and connection with the forum must be such that he could reasonably anticipate being haled into a forum court. *Marschke v. Wratislaw*, 2007 S.D. 125, ¶ 14, 743 N.W.2d 402, 406. "[T]he foreseeability that is critical to due process analysis is…that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there….The Due Process Clause…gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62

L.Ed. 2d 490 (1980). Again, the Tennessee divorce decree expressly states that "this cause be and it is hereby retained in this Court with respect to all matters relating to the enforcement and/or modification of this Decree." (SR at 42). Sheila could not have reasonably anticipated that she would be haled into court in South Dakota over a dispute about the significance of the Tennessee divorce.

Nor can the Estate justify jurisdiction by accusing Sheila of waiving her rights via contract or "unlawful possession" of the IRA. The MDA waives Sheila's spousal rights under ERISA, not her rights *as a beneficiary* – a distinction recognized by Tennessee law. *See Furtsch* at *19. *Furtsch* also demonstrates that Sheila's possession is not unlawful but is supported by extensive Tennessee precedent. The Estate once again begs the question.

The Estate tries to salvage its argument by pointing out that the MDA disposed of real property located in South Dakota. But, as the Estate admits, Roger moved to South Dakota and purchased the property *while the divorce was pending*. (Br. at 3). Sheila had – and the Estate alleges – no role in the transaction. Once again, this 'contact' is purely coincidental, brought about by the opposing party rather than the person over whom jurisdiction is sought. Sheila's disclaimer of Roger's unilateral purchase made as part of his unilateral move is not a concession to, but rather an avoidance of, South Dakota jurisdiction.

The Estate wrings its hands over the possibility of 'narrowing' SDCL § 29A-2-804 so that "residents whose ex-spouses live outside of or choose to leave the state would be precluded from taking advantage of South Dakota's law." This argument is beside the point. First, the issue before the Court is personal jurisdiction; we are not addressing the

territorial reach of SDCL § 29A-2-804, but the question of whether the court's exercise of jurisdiction over Sheila was consistent with due process. Sheila's position is not without 'textual and public policy support.' It is premised on the constitutional right to due process. Moreover, the Estate's concerns are overblown. This case does not raise and cannot answer the question of what would happen if a couple divorced in South Dakota. In fact, by the Estate's own logic, it would only be right for the result in this theoretical situation to be whatever was dictated by the law of the departing spouse's new domicile, since that is exactly what they are asking to do here. The Estate's argument is, at best, a two-edged sword, because it means that Tennessee residents whose ex-spouses chose to leave the state are precluded from taking advantage of Tennessee law, or from having their interests decided by the court that issued the divorce decree and "retained… all matters relating to the enforcement and/or modification of this Decree." (SR at 42). Tennessee and its residents have just as much interest in the enforcement of Tennessee's decision *not* to enact revocation-upon-divorce laws as South Dakota and its residents have in the decision to do otherwise. The answer cannot be South Dakota law always controls because it is South Dakota law.

The critical – and only – question here is whether the exercise of jurisdiction over Sheila was consistent with due process. Sheila is a Tennessee resident who entered into a Tennessee divorce decree with a South Dakota resident who moved there from Tennessee midway through the divorce proceeding. She does not have minimum contacts with South Dakota "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316 (1945).

II. South Dakota law requires commencement of an action for declaratory judgment

The Estate insists that it did noting procedurally wrong because the declaratory judgment statutes "apply equally in probate actions." But this is exactly why the Estate could not proceed as it did. If the declaratory judgment provisions apply equally in probate actions, then so must the rules that govern them. Sheila has possession and control of the IRA, and the Estate is seeking to deprive Sheila of her interest by claiming that she wrongfully obtained possession of the assets. In South Dakota, a declaratory judgment action is initiated by filing a complaint – that is, a pleading – with the relevant court, seeking a declaration of rights. There is no authority for the proposition that the probate court could issue a declaratory judgment determining Sheila's interest or lack thereof in the assets without filing a complaint naming her as a defendant and serving her with a copy of the complaint and a duly issued summons.

As Sheila has previously argued, the Code and precedent makes clear that declaratory judgment actions are subject to the Rules of Civil Procedure. *See* SDCL § 15-6-57; *Hanks v. Corson Cnty. Bd. of Cnty. Comm'rs,* 2007 S.D. 10, ¶ 7, 727 N.W.2d 296, 300. Even the most liberal construction that can be placed upon the declaratory judgment statutes will not allow affirmative relief without a pleading. *Hanks* at ¶ 7, 727 N.W.2d at 300 (quotations omitted).

There was no pleading in this case, only a motion. A motion is not a pleading. Rule 7(a) states that "there shall be a complaint and answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint…and a third-party answer, if a third-party complaint is served. *No other pleadings shall be allowed…*" SDCL § 15-6-7(a) (emphasis added). Motions are

defined in Rule 7(b) as an "application to the court for an order." SDCL § 15-6-7(b). Probate notwithstanding, the Estate was obligated to file a pleading requesting declaratory judgment; a motion was procedurally insufficient.

As the Estate acknowledges, a probate court has the power to apply Chapter § 21-45. What it does not have is the power to apply only those portions that are convenient. The court could have heard "additional pleadings" that sought declaratory judgment. But no such pleadings were filed. Instead, the court granted judgment to the Estate based on a motion. If Sheila's position is nothing more than an exaltation of form over substance, then so are the Rules of Civil Procedure. *In re Est. of Ricard* does not hold that pleadings are unnecessary in probate; it merely concludes that the content of the pleading determine the character of the action, not the title at the top. 2014 S.D. 54, ¶ 14, 851 N.W.2d 753, 758 (when title of pleading referred to informal probate, but contents of pleading indicated a request for formal probate, contents of pleading would control). The Estate was required to file a pleading – not a motion – in order to seek declaratory judgment.

Further, SDCL § 21-24-7 requires that "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." So what do the Rules of Civil Procedure (which, again, are applicable to all declaratory judgment actions pursuant to SDCL § 15-6-57) require to make a person a party? "An action is commenced as to each defendant when the summons is served on him…" SDCL § 15-2-30. A mere mailing is not sufficient to commence an action against an individual. *See Spiska Eng'g, Inc. v. SPM Thermo-Shield, Inc.*, 2011 S.D. 23, ¶ 9, 798 N.W.2d 683, 686.

The situation in *Spiska,* while not identical to the issues presented here, provides a useful analogy. In that case, the plaintiff filed a breach of contract action against a corporation; the plaintiff obtained a money judgment against the corporation and attempted to satisfy it by liquidation of the corporation's assets. *Id.* at ¶ 1, 798 N.W.2d at 684-85. The receiver appointed to satisfy the judgment mailed a motion and notice of intent to sell to the corporation's CEO, who objected. *Id.* The receiver also included language enacting a permanent injunction against the CEO, despite the fact that no claim for injunctive relief had been made. *Id.* at ¶ 5, 798 N.W.2d at 685. The CEO appealed the order, on the grounds that he was not a party and there was no in personam jurisdiction. *Id.* The Court concluded there was "no dispute that the CEO was not designated as a party. Further, although the receiver mailed [the CEO] a copy of the notice of hearing on the motion for approval of the sale, that mailing was not sufficient to commence an action against [the CEO]." *Id.* at ¶ 9, 798 N.W.2d at 686.

In this case, as in *Spiksa,* we have a judgment on a claim that was never pleaded, against a person who received nothing more than a mailed copy of the notice of hearing on a motion. The declaratory judgment statutes and the Rules of Civil Procedure require that a person be made a party by having an action commenced against him or her. These requirements do not go away merely because the declaration is being sought in a probate.

The Estate nonetheless argues that probate is different. First, the Estate claims that the applicable notice statute is SDCL § 29A-3-403. However, the notice described by SDCL § 29A-3-403 is the notice given for a hearing upon commencement of a formal testacy proceeding. The Estate was not commencing a formal testacy proceeding; it was seeking a declaration concerning a nonprobate asset. Even if the previously discussed

requirements for a declaratory judgment action are ignored, the contents of SDCL § 29A-3-403 confirm that it does not address situations such as this. The only parties to whom the statute requires notice are heirs, devisees, and personal representatives; while it is permissible to give notice to other persons, it is not required. Rather than acknowledge it is trying to shove a square peg in a round hole, the Estate instead makes the absurd argument that Sheila was not entitled to any notice whatsoever that the Estate intended to deprive her of her property. But, as this Court has made clear, "service is no mere technicality: that parties be notified of proceedings against them affecting their legal interests is a 'vital corollary' to due process and the right to be heard." *R.B.O. v. Priests of Sacred Heart*, 2011 S.D. 86, ¶ 9, 807 N.W.2d 808, 810. Probate or no probate, Sheila had the right to proper notice.

The Estate also claims that probates are simply different from other proceedings, and therefore the rules don't apply. In support of this proposition, the Estate cites to *Matter of Russell I. Carver Revocable Tr., U/T/A Dated Oct. 11, 2001, as Amended*, 2020 S.D. 31, 944 N.W.2d 808. However, that case has nothing to say about this one. That dispute arose out of a petition for judicial supervision of a trust under Chapter 21-22 that alleged the invalidity of several amendments to the trust. *Id. at* ¶ 7, 944 N.W.2d at 811. In any event, the allegation was pleaded in the petition, not made via motion. Further, the justification for the failure to personally serve does not exist here, because the interested party was known.

Nor may the Estate escape the consequences of its errors by arguing that Sheila did not argue the lack of service below. Sheila did, in fact, argue that the Estate was required to follow the rules of pleading and practice that applied to all other cases and to

take the actions necessary to commence a declaratory action, including filing a complaint and the issuance of a summons. *See* SR at 93. The lack of service is part of the overall failure to follow the Rules of Civil Procedure as required by SDCL § 15-6-57. Service of process, like pleading, is a requirement created by the Rules of Civil Procedure. While the Estate did not explicitly name service, it did specifically reference commencing the action and issuance of a summons. SDCL § 15-6-3 (which applies to declaratory judgment actions) states that an "action is commenced as provided in §§ 15-2-30 and 15-2-31." SDCL §§ 15-2-30 and 15-2-31 concern service of process. The issue of service was raised as part of Sheila's argument about the Estate's failure to follow the Rules of Civil Procedure.

CONCLUSION

The lower court granted declaratory judgment without a pleading against a Tennessee resident whose sole connection to South Dakota was having divorced the decedent in Tennessee in 2015. This ruling was in contravention of the Rules of Civil Procedure, longstanding state and federal precedent, and, most importantly, Sheila's right to due process. The decision must be reversed.

Dated at Sioux Falls, South Dakota, this 22nd day of April, 2025.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellant complies with the type volume limitations set forth in SDCL § 15-26A-66. Based on the information provided by Microsoft Word 365, this Brief contains 4,612 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 365.

Dated at Sioux Falls, South Dakota, this 22nd day of April, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "Reply Brief of Appellant" was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to 500 East Capital Avenue, Pierre, South Dakota, 57501-5070, on 22nd day of April, 2025.

The undersigned further certifies that an electronic copy of "Reply Brief of Appellant" was emailed to the attorneys set forth below on the 22nd day of April, 2025:

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