THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2012-CP-18-02583

Court of Appeals Case No. 2019-000644
Unpublished Opinion No. 2022-UP-113 (S.C. Ct. App. filed March 16, 2022)

Supreme Court Case No. 2022-000847

Jennifer McFarland and Carlton Holcombe,

Petitioners,

v.

Thomas Morris and David Hannemann,

Respondents.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Believing, most respectfully, that the merit of their position is amply set forth in their petition for a writ of certiorari, Petitioners[1] make these brief points in reply to Respondents' return.

ARGUMENT IN REPLY

1. Respondents' argument (that no special and important reasons exist to justify granting a writ of certiorari) is really no argument at all and does not undermine the merit of the instant petition.

Respondents open their return by reminding the Court that "'[a] writ of certiorari is not a matter of right, but of sound judicial discretion'"[2] and inviting it to deny the instant petition—regardless of its merit—based on its subject matter alone, which Respondents assert is not "'special'" or "'important'" enough to warrant the Court's consideration. (*Id.* (quoting *S.C. Dep't of Soc. Servs. v. Benjamin*, 430 S.C. 235, 844 S.E.2d 373 (2020).) In other words, the first thing Respondents want the Court to do is to ignore the merits. Why? Petitioners submit it is because the last thing Respondents want the Court to do is to reach them.

In essence, what Respondents are saying to the Court here is, "You know, you don't have to take this case." While this is true, it is does not constitute an actual, substantive argument against Petitioners' position on the merits, and it should not be mistaken for one.

To be sure, the Court is empowered to deny this or any other cert petition for no reason at all, regardless of the merits. In practice, however, it does not appear as though the Court is in the habit of turning a blind eye to erroneous results for no better reason than because it can. To the contrary, it appears that, where prejudicial error is duly shown, the Court will not hesitate to correct it, even when there is no precedential value in doing so. *See, e.g., Sheep Island Plantation, LLC*

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[1] Shorthand references already defined in Petitioners' petition (like referring to Mrs. McFarland and Mr. Holcombe as "Petitioners" or "Plaintiffs," collectively) are continued in this reply.

[2] (Return p. 1 (quoting Rule 242(b), SCACR).)

v. Bar-Pen Investments, LLC, Op. No. 2012-MO-055, 2012 WL 10907981 (S.C. Sup. Ct. filed Dec. 19, 2012) (reversing, via unpublished memorandum opinion, the Court of Appeals' unpublished Op. No. 2010-UP-382, 2010 WL 10080192 (S.C. Ct. App. filed Aug. 4, 2010)). The fact that this Court regularly issues unpublished memorandum opinions, which, of course, have no precedential value, and indeed the very existence of Rule 220(b)(1), SCACR (restricting unpublished memorandum opinions to circumstances where a published opinion would have no precedential value), shows that, as the ultimate custodian of our state's judicial system, the Court's interests are not confined solely to the development of our state's case law but in fact encompass a broader concern for the quality of justice that the system produces. *See, e.g., Livingston v. Simmons*, Op. No. 2022-MO-008 (S.C. Sup. Ct. filed June 15, 2022) (reversing dismissal of appeal by Court of Appeals); *State v. Mack*, Op. No. 2022-MO-003 (S.C. Sup. Ct. filed February 23, 2022) (reversing Court of Appeals' unpublished opinion); *State v. Williams*, Op. No. 2022-MO-001 (S.C. Sup. Ct. filed January 12, 2022) (affirming Court of Appeals' unpublished opinion); *Deen v. Deen*, Op. No. 2021-MO-007 (S.C. Sup. Ct. filed May 12, 2021) (reversing Court of Appeals' unpublished opinion); State v. Morales, Op. No. 2020-MO-009 (S.C. Sup. Ct. filed September 23, 2020 (reversing Court of Appeals' unpublished opinion).

The lack of reference to—or even the existence of—a reason(s) set forth in Rule 242(b)(1)–(5) does not doom a cert petition. Indeed, Rule 242(b) itself makes clear that these reasons are by no means exhaustive, as they "neither control[] nor fully measure[] the Supreme Court's discretion or power to grant review . . . ."

2. Contrary to Respondents' assertion, Petitioners are not "simply arguing that the trial court and court of appeals did not accept their version of the facts."[3] Rather, Petitioners' argument is that the trial court erred in accepting the version of the facts that it accepted (and in its pronouncement of conclusions of law upon such facts) and that the Court of Appeals erred in affirming the same, because the trial court made findings of fact (and conclusions of law) that are materially incomplete, not supported by the evidentiary record, and/or erroneous as a matter of law.

The Court of Appeals' error in failing to recognize the trial court's errors in these respects is amply set forth in the instant petition for a writ of certiorari. (*See* Petition. pp. 4–5, 8–24.)

CONCLUSION

For the foregoing reasons, along with those already set forth in their petition itself, Petitioners contend that the Court of Appeals erred in affirming the trial court and ask this Honorable Court to grant the instant petition, reverse the Subject Opinion, and file its own opinion reversing the trial court and providing for judgment in favor of Petitioners or, alternatively, if more appropriate to effectuate relief from the errors Petitioners challenge herein (or any of them), to grant the instant petition, reverse the Subject Opinion, and remand this matter to the Court of Appeals or the trial court for such further proceedings as may be necessary.

<SIGNED ON THE FOLLOWING PAGE>

[3] (Return p. 7.)

Respectfully submitted,

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