

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Marvin H. Dukes, Master in Equity

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Civil Action No. 2007-CP-07-3212  
Appellate Case No. 2013-00647

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H. Marshall Hoyler . . . . Appellant,

v.

The State of South Carolina and Merry Land Properties, LLC, . . Defendants/ Respondents,

And, Nancy Deering Carey, Trustee, etc and Spanish Point  
Personal Residence, LLC, etc. . . . . Intervenor/ Respondents.

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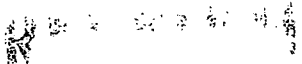
**MOTION OF STATE OF SOUTH CAROLINA  
TO DISMISS APPEAL**

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Pursuant to Rule 240, SCACR, the State of South Carolina moves for the dismissal of this appeal because it is interlocutory and not subject to appellate review before a final judgment in this suit and because the law of the case dictates that the appeal of denial of the Motion to Reconsider be dismissed.

**BACKGROUND**

The appeal is from the Master in Equity's February 15, 2013 ruling on Plaintiff's Motion to Reconsider the Master's March 17, 2011 Order for Joinder of Parties and the Motion to Intervene of Nancy Deering Carey, etc. and Spanish Point Personal Residence,



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etc. That 2013 Order granted the Motion to Intervene and denied the Motion to Reconsider except that it modified a reference to an exhibit in the 2011 Order.

Two years ago, Appellant appealed the March 17, 2011 Order, but that appeal was dismissed by the Order of the Honorable John Few, filed September 26, 2011, because the March Order was not immediately appealable. Judge Few cited *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E. 2d 377, 379 (Ct. App. 2002)<sup>1</sup>; *Mack Mfg. Co. v. Mass. Bonding Ins.*

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<sup>1</sup> As stated in *Tatnall*:

[This Court] shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas ...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action . . .

S.C.Code Ann. § 14-3-300(1)-(2) (1977). Absent some “specialized statute,” this Court is not permitted to hear a case on appeal not comporting with the requirements of this section. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242-43, 460 S.E.2d 392, 393-94 (1995); see also Rule 201, SCACR (stating an appeal may only “be taken ... from any final judgment or appealable order”); Rule 72, SCRCR (stating an appeal may only “be taken ... from any final judgment or appealable order”).

“To involve the merits,” pursuant to section 14-3-330(1), “the order must ‘finally determine some substantial matter forming the whole or part of some cause of action or defense.’ ” [citations omitted]

Pursuant to section 14-3-330(2), this Court may not review an order that “does not prevent a judgment from being rendered in the action, and [from which the] appellant can seek review ... in any appeal from [the] final judgment” . . . .

*Co.*, 108 S.C. 163, 93 S.E. 713 (1917). By Order filed November 11, 2011, this Court denied Appellant's Petition for Rehearing. Appellant then petitioned for a writ of certiorari, but the Supreme Court denied that Petition by Order dated December 20, 2012. Therefore, the instant appeal of the denial of the Motion to Reconsider presents essentially the same order to this Court for review in that it left that Order intact except for the modification of an exhibit reference.

The Motion to Intervene was filed by landowners who allege that their property abuts the marshland claimed by Appellant Hoyler and that they have constructed docks on that marsh. This motion raises essentially the same issues as were addressed by the Order joining all property owners bordering that marsh and which may have included Intervenors Carey and Spanish Point.

#### **THE ORDER AT ISSUE IS NOT IMMEDIATELY APPEALABLE**

The Order denying the Petition for Rehearing makes no material change in the 2011 Order regarding the joinder of parties which this Court and the Supreme Court have already determined is not immediately appealable. The judicial determination that the 2011 order is not appealable at this stage is the law of the case and bars review now of the 2013 Order denying reconsideration of the 2011 Order. *Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 169-70, 717 S.E.2d 603, 606 (2011) .<sup>2</sup> In other words,

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<sup>2</sup> As stated in *Sloan*: "Under the law of the case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, . . . 674 S.E.2d 151, 153 (2009) . . . ."

when the 2011 Order is not appealable, the 2013 Order denying reconsideration is also not appealable prior to final judgment.

That part of the 2013 Order denying the Motion to Intervene is also not appealable. *Duncan v. Government Employees Ins. Co.*, 331 S.C. 484, 449 S.E. 2d 580 (1994) expressly concluded that “an order granting a motion to intervene is not immediately appealable.”

This appeal is not permissible under the above authority. It should be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT D. COOK  
Solicitor General

J. EMORY SMITH, JR.  
Deputy Solicitor General

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By: 

ATTORNEYS FOR THE STATE OF SOUTH  
CAROLINA

June 3, 2013

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APPEAL FROM BEAUFORT COUNTY  
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Personal Residence, LLC, etc. . . . . Intervenor/ Respondents.

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**CERTIFICATE OF SERVICE**

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I certify that I have served the State's Motion to Dismiss by mailing copies to  
counsel for the other parties at the addresses below via the United States Mail this June 3,  
2013:

Mary D. Shahid, Esquire  
Stephen P. Groves, Esquire  
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PO Box 486  
Charleston, SC 29402

Jefferson D. Griffith, III, Esquire  
Richard L. Whitt, Esquire  
Austin & Rogers, PA  
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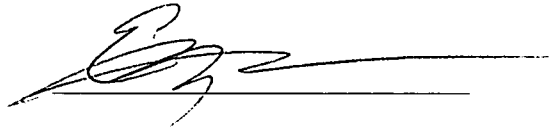
Alysoun M. Eversole, Esquire  
EVERSOLE LAW FIRM, P.C.  
1509 King Street  
Beaufort, SC 29902

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**SC Court of Appeals**

Certificate of Service  
June 3, 2013  
Page 2

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", is written over a horizontal line. The signature is stylized and cursive.

J. Emory Smith, Jr.  
Deputy Solicitor General



ALAN WILSON  
ATTORNEY GENERAL

June 3, 2013

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
HAND DELIVERY

Re: Hoyler v. State of SC, et al et al 2013-000647  
Motion to Dismiss Appeal

Dear Ms. Kitchings:

Enclosed for filing with your Office are the original and six copies of the State of South Carolina's Motion to Dismiss Appeal together with a certificate of service. Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.  
Assistant Deputy Attorney General  
Counsel for the State

cc: Jefferson D. Griffith, III, Esquire  
Richard L. Whitt, Esquire  
Mary D. Shahid, Esquire

Stephen P. Groves, Sr., Esquire  
Alysoun M. Eversole, Esquire

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