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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
Hon. Eugene Griffith

Case No. 2018-CP-10-851
Appeal No. 2019-000728

National Trust for Historic Preservation
In the United States and The City of Charleston, Respondents/Appellants

v.

City of North Charleston, Appellant / Respondent.

**Appellant / Respondent City of North Charleston's Reply to
City of Charleston Petition for Rehearing
(Standing)**

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**Appellant / Respondent City of North Charleston's Reply to City of Charleston's Petition
for Rehearing¹**

This Court need not go further than the South Carolina Rules of Appellate Procedure to demonstrate why this Petition must be denied:

“A petition for rehearing ... shall state with particularity the points supposed to have been overlooked or misapprehended by the court.” SCAR 221(a)

Instead of doing this, the Petitioner has regurgitated its ENTIRE argument from the original appeal. In other words, Petitioner doesn't hone in on any particular point this Court got wrong, according to the Petitioner this Court got the wrong answer *to every single issue and argument* that Charleston presented in its appellate briefs and oral argument. North Charleston is reminded of the famous scene in the movie “A Few Good Men” when trial counsel's response to an overruled objection is to immediately raise the same objection, but this time “strenuously object.” There trial counsel's litigation partner talks her through the absurdity:

"I strenuously object?" Is that how it's done? Hm? "Objection, your Honor."
"Overruled" "No, no. I STRENUOUSLY object." "Oh. You strenuously object.
Then I'll take some time and reconsider." Lt. Weinberg, A Few Good Men²

¹ The City of North Charleston herein argues why the Petition for Rehearing should not be granted. A Petition for Rehearing is a procedural vehicle and North Charleston's arguments here respond on that basis. Regarding the underlying merits, the City of North Charleston would incorporate by reference as if set forth fully herein both this Court's prior opinion and North Charleston's prior appellate briefs and oral arguments.

² *Columbia Pictures ; Castle Rock Entertainment ; screenplay, Aaron Sorkin ; producers, David Brown, Rob Reiner, Andrew Scheinman ; director, Rob Reiner. A Few Good Men. Culver City, CA :Columbia TriStar Home Video, 2001*

This is exactly what Petitioner is doing here. The Petitioner has failed to identify any ground not previously presented to the Court or any position previously misapprehended. It simply restates the same points as heard on appeal, but using even more pages.

Compare:

City of Charleston Motion for Reconsideration Ground I(A)

“This Court erred in affirming the circuit court where the circuit court erred in limiting standing to challenge the Contested Ordinance to a property owner of the annexed land or the Attorney General.” P. 9

With:

Respondent / Appellant City of Charleston’s Final Appellant’s Brief Issue 1³

“Did the circuit court commit an error of law in limiting standing to challenge an annexation under Section 5-3-100 of the South Carolina Code to a property owner of the annexed land or the Attorney General?” P. iv

City of Charleston Motion for Reconsideration Ground I(B)

“This Court erred in affirming the circuit court where the circuit court erred in granting summary judgment to North Charleston where the record establishes at least a genuine issue of material fact that the Acre includes a portion of the National Trust Property, which was annexed into Charleston in 2005.” P. 12

³ Respondent / Appellant City of Charleston’s Final Appellant’s Brief at pg. iv. (Original text in all caps changed in this series of list entries to conventional capitalization for ease of reading.)

With:

Respondent / Appellant City of Charleston's Final Appellant's Brief Issue 2

"Did the circuit court commit an error of law in granting summary judgment to North Charleston based on a purported lack of standing despite record evidence establishing at least a genuine issue of material fact that the territory to be annexed includes a portion of the National Trust Property annexed by Charleston in 2005?"

P. iv

City of Charleston Motion for Reconsideration Ground I(C)

"This Court erred in affirming the circuit court where the circuit court erred in interpreting the Contested Ordinance to include only property belonging to North Charleston and lying outside Charleston's municipal limits." P. 19

With:

Respondent / Appellant City of Charleston's Final Appellant's Brief Issue 3

"Did the circuit court commit an error of law in interpreting North Charleston's annexation ordinance to include only property belonging to North Charleston and lying outside Charleston's municipal limits?" P. iv

City of Charleston Motion for Reconsideration Ground I(D)

"This Court erred in affirming the circuit court where the circuit court erred in ruling that North Charleston did not claim ownership over any portion of the National Trust Property by ignoring North Charleston's repeated allegations that North Charleston owned the entirety of the acre." P. 22

With:

Respondent / Appellant City of Charleston's Final Appellant's Brief Issue 4

"Did the circuit court commit an error of law in finding that North Charleston did not claim ownership over any portion of the National Trust's property despite North Charleston's repeated allegations that North Charleston owned the entirety of the property to be annexed?" P. iv

City of Charleston Motion for Reconsideration Ground I(E)

"This Court erred in affirming the circuit court where the circuit court erred in holding that Charleston lacked standing to challenge the contested ordinance in order to protect the integrity of its borders." P. 25

With:

Respondent / Appellant City of Charleston's Final Appellant's Brief Issue 5

"Did the circuit court commit an error of law in holding that Charleston lacked standing to challenge North Charleston's annexation ordinance in order to protect the integrity of its borders when such standing would provide future guidance to other municipalities and decrease the potential for future litigation?" P. iv

A Petition for Rehearing does not allow for this transparent effort to re-argue the appeal. Our own Supreme Court was crystal clear about this in Kennedy v. SC Retirement System, 564 S.E.2d 322, 349 S.C. 531, 532 (SC 2001):

"The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the

petition for rehearing to have the case tried in the appellate court a second time.” Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). Appellants had the opportunity to present their arguments and evidence when this case was originally heard by the trial court.”

And this rule is not changing. See Herron v. Century BMW, 719 S.E.2d 640, 643, 395 S.C. 461, 466 (SC 2011)(Citing Kennedy for the proposition “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.”)

To the extent that the arguments supporting Petitioner’s regurgitated bullet points may have changed somewhat in this most recent brief, that too is not allowed. See Kennedy, 564 S.E.2d 322, 349 S.C. 531, 532 (“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended....“ and “The argument was not considered because it was never presented to this Court.”)

Conclusion

Decisions of this Court have meaning. They are not simply “jump balls” for litigants to perpetually bat back and forth through the air with no finality. While Rule 221(a) serves an important role to allow for focused correction of points overlooked it does not allow for endless soup-to-nuts relitigation of a case already decided. Petitioner’s request must be denied.

This 28 day of March, 2023



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National Trust for Historic Preservation

In the United States and The City of Charleston, Respondents/Appellants

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City of North Charleston,

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**Certificate of Service for Reply to City of
Charleston's Petition for Rehearing**

Certificate of Service

I certify that I have served the Appellants and the Hon. Jenny Abbott Kitchings either electronically or by depositing a copy of the following documents:

Reply to Petition for Rehearing by City of Charleston

In the care of the United States Postal Service, postage prepaid, addressed either directly or to their respective attorneys of record as follows:

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Cc: Brady Hair; Neely, Kriston
Subject: National Trust for Historic Preservation and City of Charleston v. City of North Charleston (2019-000728) -- N Chas Replies to both Petitions for Rehearing
Attachments: N Chas Reply to Chas 728.pdf; N Chas Reply to Trust 728.pdf; Cert Serv N Chas Reply to Chas 728.pdf; Cert Serv N Chas Reply to Trust 728.pdf

Counsel – please find attached for electronic service North Charleston’s Reply and Certificate of Service in 2019-000728. These will be filed with the Court shortly.

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