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Apr 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2018-CP-10-851
Appellant Case No. 19-000728

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

v.

City of North Charleston.....Appellant/Respondent.

**REPLY OF RESPONDENT/APELLANT NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED STATES TO
THE RETURN OF CITY OF NORTH CHARLESTON TO
PETITION FOR REHEARING**

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RESPONDENT/APELLANT NATIONAL
TRUST FOR HISTORIC PRESERVATION IN
THE UNITED STATES

Pursuant to Rules 221(a) and 240(f), SCACR, Respondent/Appellant National Trust for Historic Preservation in the United States (the “National Trust”) files this Reply to the Return of City of North Charleston to the National Trust’s Petition for Rehearing of Opinion No. 5965, dated February 1, 2023.

In its Return, North Charleston seeks preemptory denial of the National Trust’s Petition on procedural grounds. North Charleston points to judicial precedent that “[t]he 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.” Herron v. Cent. BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). **Return at p. 7.** The National Trust agrees. However, this standard has no application to the Petition filed by the National Trust.

As explained by our Supreme Court in Herron, this precept merely restates the fundamental principle that an appealing party cannot raise an issue for the first time on appeal, much less for the first time in a petition for rehearing. This holding addresses South Carolina’s “issue preservation requirements.” 719 S.E.2d 643. The National Trust is not raising any issues for the first time in its Petition. In fact, North Charleston goes to great length to show that the important legal points in the National Trust’s Petition were contained in its briefs to this Court.

The National Trust also agrees that a petition for rehearing must show points supposedly overlooked or misapprehended by the Court. Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Serv., Inc., 287 S.C. 608, 612, 340 S.E.2d 549, 552 (S.C. App. 1986). The National Trust does just that in its Petition.

In its Petition, the National Trust identifies important facts and legal precedent that this Court either overlooked or misapprehended in the Opinion. Nowhere does the Opinion mention

that North Charleston reached over two properties in the City of Charleston to purportedly annex the Acre, or that no appellate court of this state has ever upheld a municipality annexing or incorporating within its limits property that is separated by other property in another municipality. As another example, the Opinion omits any reference to the Affidavit of Daniel Forsberg attesting that the annexed “territory” was TMS # 301-00-00-797 that includes 62 square feet of the National Trust Parcel or that this Affidavit creates, at a minimum, a genuine issue of material fact as to the standing of the National Trust. **R. pp. 242-5.**

The Petition also brings up dispositive legal principles that the National Trust respectfully submits this Court overlooked or misapprehended. There is no legal precedent that an annexing party, here North Charleston, can *only* annex property that it owns, regardless of whether the description of the area or territory annexed in the annexation ordinance includes property North Charleston does not own. The standing analysis turns on whether the description of the territory annexed included the property of a party challenging the annexation; here it did. Neither the circuit court nor this Court can “blue pencil” the description of the territory annexed to remove the portion of the National Trust Parcel included in TMS # 301-00-00-797.

As explained in the Petition, this Court also overlooked that there is no judicial precedent allowing the court reviewing an annexation challenge to rely on the territory it believes the annexing municipality *intended* to annex, a subjective inquiry, instead of the actual description of the territory annexed in the ordinance, an objective inquiry. The Court’s supposition as to North Charleston’s subjective intent is the extrinsic evidence the National Trust asserts should not have been considered. The National Trust is not arguing the annexation ordinance itself was improper extrinsic evidence as North Charleston mistakenly asserts in its Return. **Return at p. 4, fn. 2.**

Similarly, the Opinion overlooks that a property owner has proprietary standing if *any* of its property is described in the annexation petition or annexation ordinance. Instead, the Court decided that “although there is a four-inch deviation in the proposed plat, we find North Charleston only sought to annex the property within its proprietary rights as the proposed plat relied on the previously recorded Easement Plats in mapping the boundaries.” **Opinion at p. 6.** There is no legal precedent allowing a court determining standing to disregard property owned by the challenging party that is part of the area or territory annexed, no matter how small and no matter the intent of the annexing municipality.

Finally, on the question of standing based on public importance, the Court overlooked and never mentioned the important historical designations of the surrounding lands. All the properties in question are within the Ashley River Historic District that is listed in the National Register of Historic Places. On the opposite side of Highway 61 from the Acre sits Drayton Hall, a National Historic Landmark, that is owned by the National Trust. Nor does the Court mention that the admitted purpose of the annexation is to increase the residential density from one house per eight acres, the maximum under Charleston County’s zoning, to two houses per acre, the maximum under North Charleston’s zoning, to the detriment of this historic district. Last, the Court does not mention in its discussion of public importance standing that upholding this annexation flies in the face of a long line of precedent enforcing the important public policy prohibiting municipalities from annexing property located on the far side of properties that are in another municipality.

For the foregoing reasons and those stated in its Petition for Rehearing, the National Trust respectfully requests that the Court grant its Petition for Rehearing.

April 3, 2023



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PROOF OF SERVICE

I certify that I have served the **Respondent/Appellant National Trust for Historic Preservation in the United States' Reply to Appellant/Respondent's Reply to Petition for Rehearing** by electronic mail, on April 3, 2023, addressed to the attorneys of record via electronic mail:


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April 3, 2023

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Honorable Jenny Abbott Kitchings
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Re: National Trust & City of Charleston v. City of North Charleston
Appellate Case No. 2019-000728
WGL File No. : 8081.001

Dear Ms. Kitchings:

Attached please find the Respondent/Appellant National Trust for Historic Preservation in the United States' Reply to Appellant/Respondent's Reply to Petition for Rehearing with Proof of Service.

Thank you for filing the attachments with the Court. With kind regards, I am,

Sincerely yours,

WALKER, GRESSETTE & LINTON, LLC

A handwritten signature in blue ink, appearing to read "Trenholm Walker", is written over the typed name.

G. Trenholm Walker

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