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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
National Trust's Petition for Rehearing**

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

Just as in responding to the City of Charleston's Petition in this case, this Court need not go further than the South Carolina Rules of Appellate Procedure to demonstrate why the National Trust's Petition must also 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 National Trust has simply recycled its arguments from the original appeal. Just as with the City of Charleston Petition, the National Trust here doesn't hone in on any particular point this Court got wrong. It simply relitigates the key points on which it lost previously. That this Petition is a re-hash is inescapable:

Compare:

National Trust's Petition for Rehearing Ground 1

“The legal precedent that a property owner can convey title only to property owned by it is not controlling. The question is what was the exact property described in North

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.

Charleston's annexation ordinance, not whether North Charleston had legal title to all the property described in the annexation ordinance which clearly it did not." P. 5

With:

Reply Brief of Respondent / Appellant National Trust on Appeal

"Contrary to the arguments of North Charleston, the National Trust does not contend that North Charleston acquired legal title to a portion of its property because the deed conveying the Acre to it referred to a plat that showed its eastern boundary extending into the National Trust Parcel. North does the National Trust's standing turn on the question of legal title as found by the lower court and argued by North Charleston on appeal. ... What is material is the description of the area purportedly annexed by North Charleston in the contested ordinance."² P. 1.

National Trust's Petition for Rehearing Ground 2

"Consideration of extrinsic evidence of North Charleston's subjective intent³ is without precedent in annexation law of South Carolina and should not have been relied upon to determine the boundaries of the land annexed were different than those in the legal description in North Charleston's annexation ordinance." P. 7

² Internal footnote omitted.

³ North Charleston notes with some amusement that the so-called "extrinsic evidence" is the actual Contested Ordinance. The ordinance being challenged is not "extrinsic", it is the subject of the entire dispute.

With:

(Final) Brief of Respondent / Appellant National Trust's Argument II

“The circuit court erred in determining that the area annexed depended on record title rather than the description of the area annexed and in finding that the subjective intent of North Charleston overrode its description of the property annexed.” P. ii

And

Reply Brief of Respondent / Appellant National Trust on Appeal

“[T]he lower court erred in considering the intent of North Charleston to annex only property it legally owned to take priority over the description of the area annexed in the Contested Ordinance.” P. 3.

National Trust's Petition for Rehearing Ground 3

“The Plat of the Acre (R. p. 269) as well as the Affidavit of Forsberg (R. pp. 244-5) established that the National Trust owns a portion of the property within the legal description of the annexation petition sufficient to confer standing on the basis of its proprietary interest.” P. 9.

With:

(Final) Brief of Respondent / Appellant National Trust's Argument

“This proof [the Affidavit of Forsberg] established the National Trust's standing or, at a minimum, a genuine issue of material fact as to its standing.” National Trust Final Brief, p. 12.

AND

Reply Brief of Respondent / Appellant National Trust on Appeal Heading I

“There is a genuine issue of material fact as to whether North Charleston annexed a portion of the National Trust Parcel in the City of Charleston, thereby creating a genuine issue of material fact as to the standing of the National Trust.” P. 1

National Trust Petition for Rehearing Ground 4

“Even if the National Trust’s proprietary interest did not bestow standing on it, which it does, the National Trust and Charleston demonstrated a basis for public importance standing, given North Charleston’s gross violation of the laws governing annexation and the need for future guidance on whether a municipality may cross over properties in another municipality to annex property. The public importance exception is not limited to instances involving deceitful conduct as suggested in the Opinion.” P. 10

With:

(Final) Brief of Respondent / Appellant National Trust’s Argument

“The fact that North Charleston ... leapfrogged illegally over the City of Charleston’s municipal wall ... and attempted an annexation ... with a legally flawed definition of contiguity creates an undisputed incentive for other municipalities to follow North Charleston’s lead.... North Charleston’s conduct, therefore, creates a dangerous incentive for a messy patchwork of annexations statewide, as well as harm to the private property and statutory rights of South Carolina residents and property owners.... Respectfully, these are the type of ‘unique facts’ Justice Hearn suggested in Vicary merited recognition of public importance standing....” PP. 20-21.

AND

Reply Brief of Respondent / Appellant National Trust on Appeal Heading II

“The National Trust has standing under the public importance exception given the historic significance of the area and the unique facts present that give rise to the need for future guidance.” P. 5.

A Petition for Rehearing does not allow a litigant to re-argue the appeal as attempted here. 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.”)

So the most basic response to the National Trust’s Petition for Rehearing grounds is this – the National Trust did an admirable job briefing the matter below, so much so that the arguments it seeks to raise now for Rehearing were considered by this Court before the Opinion issued. To the extent that the arguments supporting Petitioner’s arguments 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

North Charleston’s position in response to the National Trust here is precisely the same as in its response to the City of Charleston. 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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Certificate of Service for Reply to National Trust'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 National Trust

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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This 28 of March, 2023



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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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