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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-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appeal No. 2019-000903

The City of Charleston, Appellant

v.

City of North Charleston and Millbrook
Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC Plaintiff,

v.

City of Charleston Defendant

AND

City of Charleston Plaintiff

v.

City of North Charleston and Millbrook
Plantation, LLC, Defendants.

City of North Charleston's Reply to Petition for Rehearing

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City of North Charleston's Reply to Petition for Rehearing¹

Just as in responding to the City of Charleston's Petition in the companion case 2019-000728, 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)

Charleston has simply recycled its arguments from the original appeal. Charleston here doesn't hone in on any particular point this Court got wrong. It just relitigates the very same points it raised in the original appeal. There is no avoiding that this is precisely what is happening here – the arguments raised in this Petition for Rehearing are basically a cut-and-paste, carbon-copy of the Table of Contents from Charleston's Final Briefs on Appeal. This is not an appropriate use of a SCAR 221 Petition for Rehearing.

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.

Compare:

Charleston’s Petition for Rehearing Ground I(A)²

“This Court erred in affirming the circuit court where the circuit court erred in concluding that the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine.” Petition for Rehearing, p. 7

With:

Final Brief of the Appellant City of Charleston Argument I³

“The circuit court erred in concluding that the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine.” Charleston Final Brief, pg. i.⁴

And

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument I

“North Charleston erroneously conflates the Supreme Court’s declination to reach the issue of the adoption of the prior pending proceedings rule with a refusal to adopt the rule.” Charleston Reply Brief, p. i.

² This Court’s opinion cuts the legs out from under Charleston’s argument on the merits. Charleston in its Petition seeks to draw the distinction between “declining to adopt” and “declining to reach the issue of whether to adopt”, preferring the latter. See Petition at 7. Yet, this Court actually used language analogous to Charleston’s preference to decide this case. “However, our supreme court has previously declined to address whether these common law doctrines apply in South Carolina. See *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) (“We decline to reach the issue of whether the ‘prior pending proceedings’ rule *should be adopted by this Court.*” (emphases added)). As such, the circuit court did not err in holding that Charleston lacks current or existing precedent supporting this alternative argument for standing.” 2019-00903, Part II.

³ City of Charleston Final Brief headings retyped herein using standard capitalization for ease of reading, but appears in all CAPS in the original.

⁴ Comparison is invited between Pages 6-7 of the City of Charleston’s Final Brief of Appellant and Pages 7-8 of the Petition for Reconsideration. To North Charleston’s eyes these are cut-and-paste paragraphs. This is not appropriate when the task under Rule 221 is to with particularity identify points that have been overlooked.

Charleston’s Petition for Rehearing Ground I(B)

“This Court erred in affirming the circuit court where the circuit court erred in dismissing Charleston’s claims because Charleston had standing to assert that the prior jurisdiction doctrine applies.” Petition for Rehearing, p. 9

With:

Final Brief of the Appellant City of Charleston Argument II

“The circuit court erred in dismissing Charleston’s claims because Charleston had standing to assert that the prior jurisdiction doctrine applies.” Charleston Final Brief, p. i.

And

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

“Charleston has standing to challenge North Charleston’s attempted annexations, which infringe upon Charleston’s proprietary interests and statutory rights.” Reply Brief, p. 11, and p. 13 (“Charleston’s standing is further buttressed by the prior pending proceedings rule.”)

Charleston’s Petition for Rehearing Ground I(C)

“This Court erred in affirming the circuit court where the circuit court erred in denying standing to Charleston where Charleston asserted infringement of its proprietary interest and statutory rights.” Petition for Rehearing, p. 15.

With:

Final Brief of the Appellant City of Charleston Argument III

“The circuit court committed an error of law in denying standing to Charleston based on an asserted infringement of Charleston’s proprietary interests and statutory rights.” Charleston Final Brief, P.i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

“Charleston has standing to challenge North Charleston’s attempted annexations, which infringe upon Charleston’s proprietary interests and statutory rights.” Reply Brief, p. 11

Charleston’s Petition for Rehearing Ground I(C)(1)

“This Court erred in affirming the circuit court where the circuit court misinterpreted the general standing framework in the context of annexation challenges.” P. 15

With:

Final Brief of the Appellant City of Charleston Argument III(A)

“The circuit court misinterpreted the general standing framework in the context of annexation challenges” Charleston’s Final Brief, p. i.

Charleston's Petition for Rehearing Ground I(C)(2)

“This Court erred in affirming the circuit court where the circuit court misread *St. Andrews* as limiting standing to challenge 100% annexation to the state of South Carolina.” P. 17

With:

Final Brief of the Appellant City of Charleston Argument III(B)

“The circuit court also misread *St. Andrews* as limiting standing to challenge a 100% annexation to the State of South Carolina.” Final Brief, p. i.

Charleston's Petition for Rehearing Ground I(C)(3)

“This Court erred in affirming the circuit court where the circuit court *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights.” P. 19

With:

Final Brief of the Appellant City of Charleston Argument III(C)

“The circuit court likewise misinterpreted *Vicary* as implicitly abrogating the right of a party to challenge a 100% annexation that violates the party's proprietary interests or statutory rights” Charleston's Final Brief, p. i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

“Charleston has standing to challenge North Charleston's attempted annexations, which infringe upon Charleston's proprietary interests or statutory rights.” Reply Brief, p. 11

Charleston’s Petition for Rehearing Ground I(C)(4)

“This court erred in affirming the circuit court where the circuit court erred in finding Charleston lacked standing to challenge the 2017 and 2018 ordinances, both of which infringe upon Charleston’s proprietary interests or statutory rights.” P. 20

With:

Final Brief of the Appellant City of Charleston Argument III(D)

“The circuit court erred by finding Charleston lacked standing to challenge the 2017 and 2018 ordinances, both of which infringe upon Charleston’s proprietary interests or statutory rights.” Final Brief, p. i.

AND

Final Reply Brief of Appellant City of Charleston to the Brief of Respondent City of North Charleston, Argument VII

“Charleston has standing to challenge North Charleston’s attempted annexations, which infringe upon Charleston’s proprietary interests or statutory rights.” Reply Brief, p. 11

Charleston’s Petition for Rehearing Ground I(D)

“This Court erred in affirming the circuit court where the circuit court erred in interpreting the 2017 ordinance to annex only property outside Charleston’s municipal limits.” P. 24

With:

Final Brief of the Appellant City of Charleston Argument IV

“The circuit court erred in interpreting the 2017 ordinance to annex only property outside Charleston’s municipal limits.” Final Brief, p. i.

Charleston’s Petition for Rehearing Ground I(E)

“This Court erred in affirming the circuit court where the circuit court erred in construing Charleston’s allegations in a light most favorable to Millbrook.”⁵ P. 28

With:

Final Brief of the Appellant City of Charleston Argument (V)

“The circuit court erred in construing Charleston’s allegations in a light most favorable to Millbrook.” Final Brief, p. i.

A Petition for Rehearing does not allow Charleston 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

⁵ Note that Charleston’s argument also runs directly counter to the words of this Court’s opinion. This court specifically cited the “light most favorable to the plaintiff”! See *City of Charleston v. North Charleston*, Op. 5966 filed February 1, 2023 “Standard of Review.”

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 Charleston’s Petition for Rehearing grounds is this – Charleston did an admirable job raising its same arguments previously during the appeal, so much so that the arguments it seeks to raise now for Rehearing were considered by this Court before the Opinion issued. They are not ground for rehearing. 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 here is precisely the same as in its response to the City of Charleston’s sister case Petition for Rehearing. 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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Certificate of Service Appeal No. 2019-000903

City of North Charleston's Reply to Petition for Rehearing

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

Reply to Petition for Rehearing

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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Subject: City of Charleston v. City of North Charleston (2019-000903) -- N Chas Reply to Appellant's Petition for Rehearing
Attachments: Cert Serv N Chas Reply 903.pdf; N Chas Reply 903.pdf

Counsel – please find attached for electronic service North Charleston’s Reply and Certificate of Service in 2019-000903. These will be filed with the Court shortly.

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