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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

Eugene C. Griffith, Jr., Circuit Court Judge

Case Nos. 2019-CP-10-00846, -02131, and -02539
Appellate Case No. 2019-000903

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.

**APPELLANT'S REPLY TO THE RETURNS
TO ITS PETITION FOR REHEARING**

**Counsel identified on the following page*

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843) 724-3730

Attorneys for the City of Charleston

Pursuant to Rules 221(a) and 240(f), SCACR, in further support of its pending petition for rehearing of this matter (the “Petition”), Appellant, the City of Charleston (“Charleston”), submits this reply to the returns to the Petition filed by Respondents, the City of North Charleston (“North Charleston”) and Millbrook Plantation, LLC (“Millbrook”)¹ (collectively, “Respondents”).

Pointing to the language in Rule 221(a) that “[a] petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court,” the gist of the return is Respondents’ contention that the Petition should be denied for noncompliance with Rule 221(a), because it “doesn’t hone in on any particular point this Court got wrong” and “simply recycle[s] [Charleston’s] arguments from the original appeal.” (North Charleston Return p. 3.) Respectfully, this contention is unavailing, as it is based on a misapprehension of both Rule 221(a) and the Petition itself.

The same rules of construction used to interpret statutes apply to the interpretation of court rules. *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 435, 813 S.E.2d 288, 290 (Ct. App. 2018). Thus, court rules must be given a reasonable and practical construction and read in a sense that harmonizes with their subject matter and accords with their general purpose. *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 621–22, 611 S.E.2d 297, 301–02 (Ct. App. 2005). Additionally, with particular respect to procedural rules, they “should not be written or interpreted to create a trap for the unwary lawyer or party” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004).

Respondents’ criticism of the Petition is misplaced. Besides their reliance on an unduly narrow view of Rule 221(a), they overlook the interplay between Rule 221(a) and Rule 242,

¹ Millbrook’s return simply adopts the arguments of North Charleston’s return. (See Millbrook Return.)

SCACR (addressing certiorari to the Court of Appeals), which, in subsection (d)(2), expressly limits the questions that may be presented in a petition for a writ of certiorari to “[o]nly those questions raised in the Court of Appeals and in the petition for rehearing” Indeed, in its order limiting extensions of time in cases seeking certiorari to review a decision of the Court of Appeals, the Supreme Court specifically cites Rule 242(d)(2) in support of its reasoning for why less time should be needed to prepare a cert petition, because of the necessary overlap between the content of the cert petition and what was already argued to the Court of Appeals. (S.C. Sup. Ct. Order No. 2014-07-16-01 (filed July 16, 2014) (“Under Rule 242(d)(2), SCACR, ‘[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.’ Therefore, in most cases, the preparation of the petition and return will involve no more than taking the arguments already made in the briefs before the Court of Appeals, putting in the additional case history information, and updating and checking the citations.”).)

“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended *their argument*.” *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a)) (emphasis added). Far from being improper under the South Carolina Appellate Court Rules, the so-called “recycl[ing]” of Charleston’s appellate arguments in the Petition is indeed necessary, both for it to attempt to demonstrate to this Court that it has overlooked and/or misapprehended them and for it to preserve them for potential Supreme Court review.

Moreover, the Petition does in fact identify the points that Charleston respectfully contends the Court overlooked and/or misapprehended. (*See, e.g.*, Petition for Rehearing p. 8 ([Re: Argument I.A.] “In affirming the circuit court, this Court overlooked and/or

misapprehended the reason that our Supreme Court determined not to reach the issue of the efficacy of the prior pending proceedings doctrine in *Irmo*.”); *id.* at p. 14 ([Re: Argument I.B.] “The circuit court did not address how and when the prior jurisdiction rule should apply, having erroneously concluded that the Supreme Court had refused to adopt the rule, as, most respectfully, this Court should have found.”); *id.* at p. 17 ([Re: Argument I.C.(1)] “It is clear under *Quinn* and subsequent case law that Charleston has standing to challenge any annexation infringing upon its proprietary interests or statutory rights. Most respectfully, this . . . Court should have reversed the circuit court’s contrary conclusion.”); *id.* at p. 19 ([Re: Argument I.C.(2)] “The circuit court’s conclusion that only the State may challenge a 100% Annexation contradicts *St. Andrews* and subsequent decisions, requiring reversal, as, most respectfully, this Court should have found.”); *id.* at p. 20 ([Re: Argument I.C.(3)] “*Vicary* does not abrogate the general framework for standing to challenge 100% annexations set forth in *Quinn*, *St. Andrews*, and other cases, as the circuit court found. Instead, *Vicary* establishes that the public importance *exception* to the general standing requirements would apply, at the very least, when ‘nefarious conduct’ is alleged.”) (emphasis in original); *id.* at p. 23 ([Re: Argument I.C.(4)] “In affirming the circuit court, this Court overlooked and/or misapprehended the holding of *Bostick v. City of Beaufort*”); *id.* at p. 27 ([Re: Argument I.D.] “In affirming the circuit court, this Court overlooked and/or misapprehended the proven fact that the 2017 Ordinance included land already in Charleston, instead finding the 2017 Ordinance did not intend to annex what is now described [as] Parcel 006-1.”); *id.* at p. 31 ([Re: Argument I.E.] “In affirming the circuit court, this Court overlooked and/or misapprehended the posture of the cases”).

Lastly, Respondents are mistaken in suggesting that their position is supported by case law instructing 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.” (North Charleston Return pp. 9–10 (quoting *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 and *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011)).) This is simply an expression of the fundamental principle that appeals are not re-trials and an appealing party cannot raise a point for the first time on appeal, much less for the first time in a petition for rehearing. The principle is of no help to Respondents here, where, as indeed Respondents themselves go to great length to show, it is in no way violated by the Petition.

So, again, for the foregoing reasons, along with those already set forth in the Petition, Charleston asks this Honorable Court to grant the Petition, to rehear this matter, to withdraw the Subject Opinion, and to decide this appeal anew via an opinion that reverses the circuit court.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

By: s/Russell G. Hines
CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843) 724-3730

Attorneys for the City of Charleston

Charleston, South Carolina

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PROOF OF SERVICE

**Counsel identified on the following page*

CLEMENT RIVERS, LLP
Wilbur E. Johnson (SC Bar No. 3062)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
wjohnson@ycrlaw.com
rhines@ycrlaw.com
(843) 720-5488

and

Frances I. Cantwell (SC Bar No. 1121)
Julia P. Copeland (SC Bar No. 77199)
CITY OF CHARLESTON
Legal Department
50 Broad Street
Charleston, South Carolina 29401
fcantwell054@gmail.com
copelandj@charleston-sc.gov
(843) 724-3730

Attorneys for the City of Charleston

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for the City of Charleston, hereby certify that the **APPELLANT’S REPLY TO THE RETURNS TO ITS PETITION FOR REHEARING** was served on April 4, 2023, on all parties to this matter via emailing (see attached) a copy of the same to the following:

Frances I. Cantwell, Esquire
fcantwell054@gmail.com
Julia P. Copeland, Esquire
copelandj@charleston-sc.gov

Additional Counsel for the City of Charleston

J. Brady Hair, Esquire
brady@bradyhair.com
Derk Van Raalte, IV, Esquire
dvanraalte@northcharleston.org

Attorneys for the City of North Charleston

Bruce E. Miller, Esquire
bmiller@brucemillerlaw.com
Attorney for Millbrook Plantation, LLC

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for the City of Charleston

Charleston, South Carolina

April 4, 2023

Hines, Russell

From: Hines, Russell
Sent: Tuesday, April 4, 2023 4:18 PM
To: 'brady@bradyhair.com'; 'dvanraalte@northcharleston.org';
'bmiller@brucemillerlaw.com'
Cc: 'jcopeland@lawyershmp.com'; Russell, Karen; Bell, Pollyana (Polly);
'dvrpalmetto@gmail.com'; 'mdixon@brucemillerlaw.com'; 'fcantwell054@gmail.com';
'copelandj@charleston-sc.gov'; Johnson, Wilbur; Justman, Aimee
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Returns to Its Petition for Rehearing
Attachments: Charleston v. N. Chas. (2019-000903) -- Reply to Ret. to Pet. for Rehearing.pdf

Attached regarding the above-referenced matter please find the **Appellant's Reply to the Returns to Its Petition for Rehearing**.

Russell G. Hines
CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
Phone: (843) 720-5488
Fax: (843) 579-1327
Email: rhines@ycrlaw.com



CLEMENT RIVERS, LLP

25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com