

RECEIVED

Dec 15 2023

SC Court of Appeals

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Emily N. Hansbarger
ehansbarger@scnlaw.com

Office – 843-760-0220
Fax – 843-552-2678
www.smithclosser.com

December 15, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Molly M. Morphew, Appellant v. Stephen Dudek, et al., Respondents
Appellate Case No. 2023-000879
SJC File No. 19-106

Dear Ms. Kitchings:

On November 22, 2023, Respondents sent their Initial Brief, Designation of Matter, and certificate of service. However, the certificate of service had an incorrect address for Appellant. As a result, Respondents' Initial Brief, Designation of Matter, and certificate of service came back to our office. I spoke with the office of the Court of Appeals and they have requested we send an amended certificate of service. In addition, Respondents' Initial Brief, Designation of Matter, and certificate of service recorded on November 22, 2023 is being sent to the address in the amended certificate of service. Please find enclosed the Respondents' letter to Appellant, Respondents' Recorded Initial Brief, Designation of Matter, certificate of service, and amended certificate of service.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Emily N. Hansbarger

Enclosures

cc: Molly M. Morphew
Stephen Dudek
Doreen Cross

RECEIVED

Dec 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2023-000879

Molly M. Morpew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I served the Respondents' Initial Brief and Designation of Matter by United States Mail, postage prepaid, on the following:

Molly M. Morpew
285 Wooden Horse Run,
Ridgeland, SC 29936
Appellant

SMITH | CLOSSER, PA

s/Emily N. Hansbarger

Zachary J. Closser—SC Bar No. 74005
Emily N. Hansbarger—SC Bar No. 105405
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
zclosser@scnlaw.com

Attorneys for the Respondents

December 15, 2023

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Emily N. Hansbarger
ehansbarger@scnlaw.com

Office – 843-760-0220
Fax – 843-552-2678
www.smithclosser.com

December 15, 2023

Molly M. Morphew
285 Wooden Horse Run,
Ridgeland, SC 29936

RE: Molly M. Morphew, Appellant v. Stephen Dudek, et al., Respondents
Appellate Case No. 2023-000879
S/C File No. 19-106

Dear Ms. Morphew:

Enclosed find the Respondents' Recorded Initial Brief, Designation of Matter, and certificate of service. In addition, attached is an updated certificate of service as the original certificate of service had an incorrect address. As a result, Respondent's Initial Brief, Designation of Matter, and certificate of service that was sent on November 22, 2023 came back to our office for not being deliverable.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Emily N. Hansbarger

Enclosures

cc: Molly M. Morphew
Stephen Dudek
Doreen Cross

RECEIVED

Nov 22 2023

SC Court of Appeals

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Emily N. Hansbarger
ehansbarger@scnlaw.com

Office - 843-760-0220
Fax - 843-552-2678
www.smithclosser.com

November 22, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Molly M. Morpew, Appellant v. Stephen Dudek, et al., Respondents
Appellate Case No. 2023-000879
S/C File No. 19-106

Dear Ms. Kitchings:

Enclosed find the Respondents' Initial Brief, Designation of Matter, and certificate of service.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Emily N. Hansbarger

Enclosures

cc: Molly M. Morpew
Stephen Dudek
Doreen Cross

RECEIVED

Nov 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2023-000879

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

INITIAL BRIEF OF THE RESPONDENTS

SMITH | CLOSSER, P.A

Zachary J. Closser (SC Bar No.: 74005)
Emily Hansbarger (SC Bar No.: 105405)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
843-552-2678

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case	1
Arguments:	
1. THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR RESPONDENTS.....	9
2. THE LOWER COURT DID NOT ERR IN DENYING APPELLANT’S SECOND AND THIRD MOTIONS TO RECONSIDER.....	11
3. RESPONDENTS PROPERLY ANSWERED THE AMENDED COMPLAINT..	13
4. APPELLANT IS BARRED FROM ARGUING ISSUES 4 AND 5 UNDER RES JUDICATA.....	14
5. APPELLANT FAILED TO PROPERLY FILE THE APPEAL.....	15
6. THIS COURT SHOULD AFFIRM THE ORDER OF THE LOWER COURT BASED ON THE GROUNDS RELIED UPON BY THE LOWER COURT.....	17
Conclusion.....	17

TABLE OF AUTHORITIES

CASES

<i>Bayle v. S.C. DOT</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	12
<i>Conway Hund Constr. Co. v. Ball Corp.</i> , 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).....	19
<i>Degenhart v. Knights of Columbus</i> , 309 S.C. 114, 420 S.E.2d 495 (1992).....	12
<i>Elam v. S.C. DOT</i> , 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004).....	18
<i>Gallagher v. Evert</i> , 353 S.C. 59, 577, S.E.2d 217 (Ct. App. 2002).....	16
<i>Overland, Inc. v. Nance</i> , 423 S.C. 253, 815 S.E.2d 431 (S.C. 2018).....	14
<i>Plum Creek Dev. V. City of Conway</i> , 344 S.C. 30, 512 S.E.2d 106 (S.C. 1999).....	17
<i>Shoney's, Inc. v. Cooke</i> , 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).....	13
<i>Smith v. Fedor</i> , 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017).....	15

STATUTES AND COURT RULES

Rule 6, SCRCF.....	14
Rule 12, SCRCF.....	16
Rule 59, SCRCF.....	15
Rule 203, SCACR.....	18
Rule 208, SCACR.....	20
Rule 220, SCACR.....	20

STATEMENT OF THE CASE

On December 30, 2022, the Honorable Diane S. Goodstein, of the First Judicial Circuit in Dorchester County, granted Respondents' Motion for Summary Judgment. The Appellant filed three Motions to Reconsider under Rule 59(e) of South Carolina Rules of Civil Procedure. The Appellant filed her first Motion to Reconsider on January 13, 2023 (hereinafter "January Motion"). On January 27, 2023, Judge Goodstein denied Appellant's January Motion because Appellant did not raise any novel issues. Following Judge Goodstein's order denying Appellant's January Motion, Appellant filed her second Motion to Reconsider under Rule 59(e), S.C.R.C.P, dated February 14, 2023 (hereinafter "February Motion"). The Appellant's February Motion incorporated the same arguments in her January Motion and arguments made at the hearing on November 21, 2022. A month later, on March 15, 2023, Judge Goodstein denied Appellant's February Motion for being untimely and failure to raise any novel issues. On March 30, 2023, Appellant filed her third Motion to Amend or Correct Order from March 15, 2023 (hereinafter "March Motion"). Once again, Judge Goodstein denied Appellant's March Motion for failing to comply with Rule 59(g), S.C.R.C.P, and failure to raise any issues the court would reconsider its earlier decisions.

After the Order granting Summary Judgment and Judge Goodstein's denial of all three Appellant's Motions to Reconsiders, the Appellant has filed this appeal of all orders from the Circuit Court case, 2018-CP-18-01661. In addition, the Appellant has requested this Court to overturn a case previously adjudicated by the Honorable James E. Chellis, Master-in-Equity of Dorchester County. The Appellant has, on numerous occasions, argued the previous case, 2013-CP-18-00183, through motions, memorandums, and at hearings. In Appellant's Initial Brief to

this appeal, two of her seven issues pertain the previous case. The previous case is outside the scope of this appeal.

Respondents posit to this court that Appellant has raised this appeal for the sole purpose of delaying the resolution of the litigation that is the subject of this appeal and for the nefarious purpose of forcing the Respondents to incur additional legal fees and expenses. The duration of the instant litigation has continued for over 5 years due to Appellant's numerous motions, continuances, delays, and appeals. Appellant has maintained this litigation even after selling the property at issue in 2020. Appellant has brought these arguments before the Circuit Court and have been denied on numerous occasions.

For this Court's convenience, the following is an outline of the procedural history of this case. Omitted from the below outline are: letters, changes in address, certificates of service, roster notices, and any other filings that Respondents deem irrelevant to the matter at hand.

1. September 19, 2018 – **Appellant** filed Summons & Complaint.
2. January 25, 2019 – **Appellant** filed Affidavit in Support of Fees and Costs and Losses.
3. January 25, 2019 -- **Appellant** filed Motion for Default (*completed on April 4, 2019*).
4. February 7, 2019 – **Appellant** filed Request for Expedited Consideration.
5. April 4, 2019 – *Order denying Appellant's Motion for Default.*
6. April 17, 2019 – **Appellant** filed Motion to Reconsider (*completed on June 21, 2019*).
7. April 29, 2019 – **Appellant** filed Affidavit of Service for Respondents.

8. April 29, 2019 – **Respondents** filed Motion to Dismiss (*hearing on October 2, 2019, but no Order was given*).
9. May 28, 2019 – **Appellant** filed Motion to Dismiss and Default Judgment (*hearing on October 2, 2019, but no Order was ever given because Appellant filed an Amended Complaint on March 12, 2020*).
10. June 24, 2019 – Order denying Appellant's Motion to Reconsider dated April 12, 2019.
11. August 12, 2019 – **Appellant** filed Motion and Injunction to Compel Respondents to Return Water or Water Easement to Property (*completed on October 2, 2019*).
12. August 12, 2019 – **Respondents** filed Memorandum in Support of Motion to Dismiss (*hearing on October 2, 2019, but no Order was given*).
13. October 2, 2019 – Hearing on Respondents Motion to Dismiss, Appellant's Motion and Injunction to Compel Respondents to Restore Water or Water Easement, and Appellant's Motion to Dismiss and Default Judgment.
14. March 12, 2020 – **Appellant** filed Amended Complaint.
15. March 26, 2020 – **Respondents** filed Motion to Dismiss Amended Complaint (*hearing on May 26, 2021*).
16. April 13, 2020 – **Respondents** filed Motion to Dismiss (*hearing on May 26, 2021*).
17. April 14, 2020 – **Appellant** filed Response to Respondents' Motion to Dismiss Amended Complaint dated March 26, 2020.
18. April 27, 2020 – **Appellant** filed Response to Respondents Motion to Dismiss dated April 13, 2020.

19. May 6, 2020 – **Appellant** filed Motion to Strike Respondents’ Motion to Dismiss, Sanctions, and Default Judgment (*hearing May 26, 2021*).
20. June 5, 2020 – **Respondents** filed Motion for Protection from Discovery Requests (*hearing on May 26, 2021*).
21. July 27, 2020 – **Appellant** filed Response to Respondents’ Motion for Protection from Discovery Requests.
22. August 4, 2020 – **Appellant** filed Motion to Deem Admissions Admitted (*hearing on May 26, 2021*).
23. May 26, 2021 – Hearing on Respondents Motion to Dismiss, Appellant’s Motion to Strike, Respondents Motion for Protection from Discovery Requests, and Appellant’s Motion to Deem Requests for Admissions Admitted.
24. June 3, 2021 – **Respondents** filed Memorandum in Support of Motion for Protection from Discovery Requests.
25. June 14, 2021 – **Appellant** filed Motion to Compel Discovery Responses (*completed November 21, 2022*).
26. July 23, 2021 – **Appellant** filed Request for Order of Protection (*completed on August 9, 2021*).
27. August 23, 2021 – *Order issued from May 26, 2021 hearing; denying Respondents Motion to Dismiss Amended Complaint, denying Appellant’s Motion to Strike Respondents Motion to Dismiss, granting Respondents Motion for Protection on Discovery Requests, and denying Appellant’s Motion to Requests for Admissions Admitted.*
28. September 3, 2021 – **Respondents** filed Answer to Amended Complaint.

29. September 7, 2021 – **Appellant** filed Motion to Reconsider order issued on August 23, 2021 (*completed on March 8, 2022; dismiss Appellant's Motion*).
30. September 13, 2021 – **Appellant** filed Motion for Default Judgment (*completed November 21, 2022*).
31. October 6, 2021 – **Appellant** filed Motion for Extension to Respond to Discovery Requests (*completed on November 21, 2022*).
32. October 13, 2021 – **Respondents** filed Memorandum in Opposition of Motion to Reconsider Order issued on August 23, 2021.
33. February 4, 2022 – **Respondents** filed Motion to Compel Discovery Responses (*completed on November 21, 2022*).
34. February 4, 2022 – **Appellant** filed Motion for Protection Order (*completed on February 7, 2022; granting Appellant's Motion until March 31, 2022*).
35. February 16, 2022 – **Appellant** filed Motion for Rule to Show Cause and Continuous (*completed on November 21, 2022*).
36. February 16, 2022 – **Appellant** filed memorandum in Support of Motion for Extension to Respond to Discovery Requests and Answer Respondents' Motion to Compel Discovery Responses.
37. February 17, 2022 – *Order granting Appellant's Protection.*
38. February 23, 2022 – *Order granting respondents' Protection.*
39. March 8, 2022 – *Order dismissing Appellant's September 7, 2021 Motion to Reconsider.*

40. March 18, 2022 – **Appellant** filed Motion 59(e) to Alter or Amend March 8, 2022 Order dismissing Appellant’s Motion to Reconsider (*completed March 25, 2022, dismissing Appellant’s Motion*).
41. March 23, 2022 – **Appellant** filed Memorandum in Support of September 13, 2021 Motion for Default.
42. March 23, 2022 – **Appellant** filed Memorandum in Support of March 18, 2022 Motion to Reconsider.
43. March 25, 2022 – *Order dismissing Appellant’s March 18, 2022 Motion to Reconsider.*
44. March 30, 2022 – **Respondents** filed Motion for Summary Judgment and Affidavits (*completed on November 21, 2022*).
45. April 1, 2022 – **Respondents** filed Memorandum in Support for Motion for Summary Judgment.
46. April 4, 2022 – **Appellant** filed Notice of Appeal.
47. June 2, 2022 – *Order from Court of Appeals dismissing Appellant’s Appeal.*
48. June 13, 2022 – **Appellant** filed a Request for Protection (*completed on June 28, 2022*).
49. June 27, 2022 – Remittitur from Court of Appeals.
50. August 18, 2022 – *Form 4 granting Appellant’s Continuance Request.*
51. September 8, 2022 – **Appellant** filed a Request for Protection from Court Appearance (*completed on October 4, 2022*).
52. October 4, 2022 – *Order granting Appellant’s Request for Protection.*

53. October 11, 2022 – **Respondent** filed a Motion to Reconsider October 4, 2022 Order.
54. October 11, 2022 – *Order granting Respondents Motion for Summary Judgment.*
55. October 13, 2022 – *Order adjudicating Order granting Respondents Motion for Summary Judgment.*
56. November 18, 2022 – **Appellant** filed Motion for Declaratory Judgment (*completed on November 21, 2022*).
57. November 21, 2022 – Hearing of Appellant’s Motion to Compel Discovery Responses, Appellant’s Motion for Extension to Respond to Discovery Requests, Appellant’s Motion for Default and Default Judgment, Appellant’s Motion for Rule to Show Cause and Continuance, Respondents’ Motion to Compel Discovery Responses, and Respondents’ Motion for Summary Judgment.
58. November 30, 2022 – **Respondents** filed Motion in Limine and Trial Brief.
59. December 2, 2022 – *Form 4 Continuance of Trial.*
60. December 12, 2022 – **Appellant** filed Response to Respondents Motion in Limine.
61. December 30, 2022 – *Order granting Respondents Motion for Summary Judgment.*
62. January 9, 2023 – **Respondents** filed a Motion for Sanctions (*completed on April 6, 2023*).
63. January 13, 2023 – **Appellant** filed Motion to Alter or Amend Order granting Summary Judgment (*completed January 27, 2023, denied*).
64. January 27, 2023 – *Order denying Appellant’s Motion to Alter or Amend Order granting Summary Judgment.*

65. February 14, 2023 – **Appellant** filed a second Motion to Reconsider Order granting Summary Judgment (*completed on March 15, 2023, denied*).
66. March 15, 2023 – *Order denying Appellant's second Motion to Reconsider Order granting Summary Judgment.*
67. March 30, 2022 – **Appellant** filed a third Motion to Reconsider (*completed on April 28, 2022, denied*).
68. April 6, 2023 – Hearing on Respondents Motion for Sanctions.
69. April 28, 2022 – *Order denying Appellant's third Motion to Reconsider.*
70. May 22, 2023 – **Respondents** filed Affidavit of Attorney's Fees.
71. May 24, 2022 – *Order granting Respondents Motion for Sanctions.*
72. May 30, 2023 – **Appellant** filed Notice of Appeal.

In Appellant's Initial Brief, she argued, as provided in her January and February Motion, along with the transcripts ordered by Appellant, summary judgment was improper due to alleging Respondents did not answer discovery, summary judgment was improper because there was a genuine issue of material fact, lack of subject matter jurisdiction, contract was terminated, court abused its discretion denying Appellant's February and March Motions, and Respondents did not file a proper motion to dismiss to toll the time to answer the amended complaint. All of these issues have been previously ruled upon in the instant litigation or the previous case.

ARGUMENT

Respondents have been named to several other litigation matters brought by the Appellant. Respondents have been defending litigations against the Appellant for nearly a decade. Respondents have spent an excessive amount of money through the process. Appellant has continuously delayed these proceedings from going forward, requiring Respondents to spend more

money and delaying the outcome of this matter. Appellant has had it out for Respondents since the first complaint against Respondents in 2012, which has given rise to Appellant's current claims against Respondents in this case and arguments made in this appeal.

Bases on the history between the parties, and the years of litigation, Respondents would ask this Court to affirm the order of the lower court and deny Appellant's appeal for the lower court to amend or reconsider the order granting Respondents summary judgment.

I. THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR RESPONDENTS.

In *Bayle v. S.C. DOT*, the Court heard an appeal regarding the circuit court's granting of S.C. DOT's motion for summary judgment. One of the issues in *Bayle* pertaining to summary judgment being granted was discovery was not completed. The court stated "the ruling of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. An abuse of discretion occurs when the trial judge's ruling is based upon an error of law or, when based on factual conclusions, is without evidentiary support." 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Cl. App. 2001). In *Bayle*, the Court found the discovery issue was not preserved as Bayle failed to move for a continuance in which to pursue further discovery. *Id.* To support the Court's findings, it quotes *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992), "stating whether court erred in granting summary judgment while appellants had moved to compel outstanding was not preserved when appellants failed to move for a continuance and did not request motion for summary judgment be held in abeyance until after ruling on discovery motion." *Id.* The Court, in *Bayle*, further found, even if the issue had been preserved, it would not have altered the outcome of the circuit court. *Id.*

Appellant argues the lower court improperly granted Respondents Motion for Summary Judgment because she alleges discovery was not completed. However, in the transcript from the hearing dated November 21, 2022, Appellant states “first, the discovery that I requested from the Defendants and they were ordered to provide over a year ago is still pending. I haven’t received it. It was, actually, request for production. They provided everything else.” Mot. Summ. J. Hr’g Tr. 7:25-8:3. Appellant admits she has received Respondents discovery responses. The requests for production Appellant has not received from Respondents do not have to be produced.

Further, Appellant contends she is entitled to the discovery requests that were protected under the protective order dated August 23, 2021, issued by Judge Maite Murphy (hereinafter “August Order”). The August Order protected Respondents from responding to interrogatories and producing documents unrelated to this instant litigation. After the August Order, Appellant filed two motions to reconsider the order, which were dismissed. Appellant filed an appeal to overturn the dismissal of the motions to reconsider, which was dismissed from this Court. Thus, Appellant is not entitled to the discovery requests protected by the August Order.

Appellant has not shown an abuse of discretion as it relates to discovery, as identified in *Bayle*, nor has she preserved the issue for this appeal. Appellant has not shown the circuit court ruling was based on error of law or was without evidentiary support. In addition, Appellant failed to move for a continuance so discovery could be completed before ruling on Respondents Motion for Summary Judgment.

Even if Appellant requested a continuance to complete discovery, the ruling from the circuit court would not have changed. For Appellant to succeed on the merits of claims against Respondents, she must establish damages. At the hearing on November 21, 2022, Appellant admits she is no longer the owner of the property at issue. Mot. Summ. J. Hr’g Tr. 36:8-10 and

42:16-18. Further, the lower court, *sua sponte*, ruled the deed did not identify the easement under the merge doctrine. To support the lower court's ruling, it quotes *Shoney's, Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d 300, 303 (S.C. Ct. App. 1987), "the execution, delivery, and acceptance of a deed varying from the terms of [an] antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed." Finally, the lower court found the easement would violate Dorchester County Code of Ordinances, Chap. 44, Art. 3, Div. 2, Sect. 44-60, which reads in part, "no water or sewer service shall be furnished to any lot from an existing service on another lot except as herein provided or by special authorization, in writing, of the County Council. Any unapproved/unmetered connection to a new system, not yet approved for operation, shall be defined as illegal... Therefore, if Appellant requested a continuance to complete discovery, it would not alter the lower court's ruling.

Accordingly, this Court should affirm the lower court's judgment granting Respondents Motion for Summary Judgment. Appellant has admitted to received Respondents discovery responses, failed to preserve the issue for this appeal, and completing discovery would not alter the lower court's ruling for summary judgment.

II. THE LOWER COURT DID NOT ERR IN DENYING APPELLANT'S SECOND AND THIRD MOTIONS TO RECONSIDER.

In *Overland, Inc. v. Nance*, the South Carolina Supreme Court held that the ten-day deadline in Rule 59(e) of the South Carolina Rules of Civil Procedure is an absolute deadline. 423 S.C. 253, 256, 815 S.E.2d 431, 433 (S.C. 2018). The South Carolina Supreme Court clarified confusion relating to the issue of filing a motion to reconsider pursuant to Rule 59(e). *Id* at 255. The South Carolina Supreme Court states "Rule 6(b) of the South Carolina Rules of Civil

Procedure gives trial courts limited authority to extend deadlines set forth in the Rules. However, Rule 6(b) explicitly excludes Rule 59 and certain other rules from that authority.” *Id.* Under Rule 6(b), it states “the time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. *Id.* In *Nance*, the South Carolina Supreme Court stated “Rule 59(e) does not have an “conditions stated” which would allow such an extension.” *Id.* at 256. Thus, the South Carolina Supreme Court rule that “failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party’s only recourse is to file a notice of intent to appeal.” *Id.* at 257.

In regards to Appellants February and March Motions, or her second and third motions to reconsider, the motions were untimely filed. The lower court stated in their orders the motions were untimely. As addressed in *Nance*, the ten-day deadline is an absolute deadline. The lower court’s order denying Appellant’s January Motion was filed on January 27, 2023. Appellant filed her February Motion on February 14, 2023. The time between the lower court’s order and Appellant’s February Motion was 18 days. In Appellant’s Initial Brief, she argues she has an extra five days under Rule 6(e) of the South Carolina Rules of Civil Procedure. If Appellant did have 5 days for mailing, Appellant still failed to file her February Motion within 10-days pursuant to Rule 59(e). In addition, Appellant’s March Motion was untimely filed under Rule 59(e). The lower court filed its order denying Appellant’s February Motion on March 15, 2023. Appellant filed her March Motion on March 30, 2023. There was 15 days between the date of the order and the time Appellant filed her March Order. Therefore, the lower court was proper in denying Appellant’s February and March Motion for being untimely.

The lower court, further, addressed Appellant's failure to serve the judge with a copy of her motions pursuant to Rule 59(g), S.C.R.C.P. Rule 59(g) states "a party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." In the lower court's order date April 24, 2023, the lower court quoted *Smith v. Fedor*, 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017) to support its denial of Appellant's February and March Motions. In *Smith*, this Court determined the trial court properly denied Smith's motion for consideration because he failed to provide a copy to the judge within ten days of filing. *Id.* This Court stated "Rule 59(g) would lack any purpose if trial court committed error by denying the motion for failure to comply with the rule." *Id.* In addition, this Court supported its ruling by the language in *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577, S.E.2d 217, 219 (Ct. App. 2002), which "implied a trial court may deny the motion solely on the basis of the rule." *Id.* Pursuant to Rule 59(g) and *Smith*, the lower court denial of Appellant's February and March Motions were proper.

Therefore, this Court should affirm the lower court's ruling for denying Appellant's February and March Motions. Appellant failed to timely file her motions pursuant to Rule 59(e) and failed to comply with rule 59(g) by serving a copy of the filing on the judge.

III. RESPONDENTS PROPERLY ANSWERED THE AMENDED COMPLAINT.

Pursuant to Rule 12(a) of the South Carolina Rules of Civil Procedure, it states "a defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e)..." Appellant filed her Amended Complaint on March 12, 2020. Based on the filing date, Respondents had 30 days from March 12, 2020 to file their answer, which make their answer due on April 11, 2020. However, April 11, 2020 was on a Saturday. Under Rule 6(a), S.C.R.C.P., it states:

In computing any period of time prescribed or allowed by these rules, by order of court, or by an applicable statute, the day of the act, event, or default after which the designed period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor such holiday.

Based on Rule 6(a), Respondents had until the next day that was not a Saturday, Sunday, or federal holiday to answer the amended complaint. The new date for Respondents to file their answer was Monday, April 13, 2020, which is when Respondents filed their motion to dismiss pursuant to Rule 12(b)(6), S.C.R.C.P. In addition, Appellant has admitted to receiving Respondents answer after their motion to dismiss was heard on May 26, 2021 and an order was filed on August 23, 2021. Respondents filed their answer to the amended complaint on September 3, 2021. Mot. Summ. J. Hr'g Tr. 13:24-14:1. Therefore, this Court should affirm the lower court's ruling denying Appellant's Motion for Default and Default Judgment. Respondents properly filed their motion to dismiss as required by Rules 12(a) and 6(a).

IV. APPELLANT IS BARRED FROM ARGUING ISSUES 4 AND 5 UNDER RES JUDICATA.

The issues raised in Appellant's Initial Brief regarding jurisdiction from the original action and contract are barred under res judicata. In *Plum Creek Dev. V. City of Conway*, the South Carolina Supreme Court addresses res judicata. 344 S.C. 30, 512 S.E.2d 106 (S.C. 1999). In *Plum Creek Dev.*, the Supreme Court states;

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata [a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identify of the subject matter; and (3) adjudication of the issue in the former suit. *Id* at 34.

Appellant has raised issues relating to an action from 2012, which was ruled upon and dismissed. The action was brought by Respondents against previous homeowners and sellers, Thomas and Lorraine Ferro (hereinafter “Ferros”), seeking specific performance of the purchase agreement. Appellant filed a separate suit against Respondents and Ferros to seek enforcement she had with Ferros for the property at issue. Both actions consolidated and had the case number 2013-CP-18-00183 in Dorchester County Common Pleas Court (hereinafter “2013 Action”). Ultimately, Respondents prevailed in their action against Ferros and were granted specific performance of the purchase agreement.

This instant litigation was brought by Appellant arising from the purchase agreement between Respondents and Ferros. The subject matter of this action is similar to the 2013 Action as it is the same contract. Appellant, in her Initial Brief, is seeking this Court to overturn the orders from the 2013 Action after it has been adjudicated. As identified in *Plum Creek Dev.*, Appellant is barred to seek this Court to overturn the 2013 Action by res judicata. Appellant and Respondents were parties to the 2013 Action. The subject matter to this instant litigation arises from the 2013 Action because it is the same contract at issue. Finally, this Court affirmed the mater-in-equity’s ruling in the 2013 Action.

Thus, this Court should find Appellant is barred from arguing issues 4 and 5 of her Initial Brief due to res judicata. Appellant’s issues 4 and 5 are not issues relating to this instant litigation but the 2013 Action. This Court does not have the authority to rule on those issues.

V. APPELLANT FAILED TO PROPERLY FILE THE APPEAL.

In *Elam v. S.C. DOT*, the Supreme Court of South Carolina reaffirmed the principles set in *Coward Hund Constr. Co. v. Ball Corp.* 361 S.C. 9, 31, 602 S.E.2d 772, 782 (S.C. 2004). The Supreme Court of South Carolina stated “an appeal may be barred due to untimely service of the

notice of appeal when a party – instead of serving a notice of appeal – files a successive Rule 59(e) motion, where the trial judge’s ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment.” *Id* at 20. Pursuant to Rule 203(b)(1) of the South Carolina Appellate Court Rules, “the notice of appeal be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment.” In *Conway Hund Constr. Co. v. Ball Corp.*, the Court further state “the rule provides, however, that when a timely...motion to alter or amend the judgment (Rules 52 and 59, SCRCPP) ... has been made, the time of appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. 336 S.C. 1, 2-3, 518 S.E.2d 56, 57 (Ct. App. 1999).

Here, Appellant filed her first motion to reconsider under Rule 59(e), S.C.R.C.P, on January 13, 2023. Based on *Conway Hund*, Appellant’s January Motion stayed the time for appeal to be filed. However, after the denial of Appellant’s January Motion on January 27, 2023, Appellant filed a successive Rule 59(e) motion, instead of filing a notice of appeal. The January 27, 2023 order did not substantially alter the order for summary judgment. Since Appellant filed her February Motion, instead of serving a notice of appeal, this appeal is barred due to untimely service. After the January 27, 2023 order, the time to file an appeal is no longer stayed and filing a successive Rule 59(e) motion does not continue to stay the appeal. Appellant should have filed her notice of appeal on or before February 26, 2023. Instead, Appellant served her notice of appeal on May 30, 2023.

Accordingly, this appeal is barred for being untimely and this Court should affirm the lower court’s order for summary judgment. Appellant failed to service a notice of appeal after the lower court’s January 27, 2023 order and filed her February Motion instead. Thus, Appellant’s appeal is untimely.

VI. THIS COURT SHOULD AFFIRM THE ORDER OF THE LOWER COURT BASED ON THE GROUNDS RELIED UPON BY THE LOWER COURT.

“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR. “Respondent’s brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).” Rule 208(b)(2), SCACR. As the prevailing parties, the Respondents would request that this Court affirm the lower court’s order for summary judgment for any grounds appearing in the record, whether they based on collateral estoppel, mootness, statute of limitations, or any other legal theory.

Appellant has been heard regarding the issues raised on this appeal, or are outside the scope of this appeal. Appellant has delayed the lower court from disposing this instant litigation by filing this frivolous appeal. The lower court has acted proper in its orders and rulings. This Court has the authority to affirm the lower court’s order granting Respondents Motion for Summary Judgment and is requested to do so.

CONCLUSION

For the reasons Respondents argue above, this Court should deny Appellant’s appeal on the grounds the lower court was improper in granting summary judgment while Appellant alleges discovery has not been completed, denying Appellants motions to reconsider, Respondents failed to file their Rule 12(b)(6) motion timely, and issues relating the 2013 Action. This Court should affirm the lower court’s ruling to grant Respondents Motion for Summary Judgment as Appellant could not prove damages, pursuant to the merger doctrine, and the easement violates Dorchester County Code of Ordinances.

SMITH | CLOSSER, PA

s/Zachary J. Closser

Zachary J. Closser—SC Bar No. 74005
Emily N. Hansbarger—SC Bar No. 105405
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
zclosser@senlaw.com

Attorneys for the Respondents

November 22, 2023

RECEIVED

Nov 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2023-000879

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

DESIGNATION OF MATTER OF THE RESPONDENTS

In addition to the documents and filings that the Appellant has designated, the Respondents request that the Appellant include the following in the Record on Appeal:

1. Respondents' Memorandum in Support of Motion for Summary Judgment, April 1, 2022, Case No. 2018-CP-18-1661
2. Respondents' Affidavits, March 30, 2022, Case No. 2018-CP-18-1661
3. Entire transcript, October 2, 2019, Case No. 2018-CP-18-1661
4. Order granting Summary Judgment, October 11, 2022, Case No. 2018-CP-18-1661
5. Order from Chief Administrative Judge, October 13, 2022, Case No. 2018-CP-18-1661

I certify that this designation contains no matter which is irrelevant on this appeal.

SMITH | CLOSSER, PA

s/Zachary J. Closser

Zachary J. Closser—SC Bar No. 74005
Emily N. Hansbarger—SC Bar No. 105405
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)

zclosser@scnlaw.com

Attorneys for the Respondents

November 22, 2023

RECEIVED

Nov 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2023-000879

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I served the Respondents' Initial Brief and Designation of Matter by United States Mail, postage prepaid, on the following:

Molly M. Morphew
285 Wooden Horse Run,
Rincon, GA 31326
Appellant

SMITH | CLOSSER, PA

s/Zachary J. Closser

Zachary J. Closser—SC Bar No. 74005
Emily N. Hansbarger—SC Bar No. 105405
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)

zclosser@scnlaw.com

Attorneys for the Respondents

November 22, 2023