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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No. 2020-001587

David Wilson, individually and on behalf of Carolina Custom Converting, LLC, ...Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, ...Defendants,

v.

Carolina Custom Converting, LLC, ...Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc., ...Counterclaim Defendants,

of which Carolina Custom Converting, LLC, John Gandis, and Andrea Comeau-Shirley are the..... Appellants

and David Wilson is the.....Respondent.

RETURN TO PETITION FOR REHEARING

STATEMENT OF THE CASE

This case began on April 27, 2012. On that day, Respondent David Wilson ("Wilson"), who owned a minority ownership interest in Appellant Carolina Custom Converting, LLC ("CCC") with Appellants John Gandis ("Gandis") and Andrea Comeau-Shirley ("Shirley") filed an action alleging several causes of action against Gandis and Shirley including an action for shareholder oppression. Prior to trial, the parties agreed to waive any jury trial demands and submit all the claims to a bench trial before Circuit Judge D. Garrison Hill. A bench trial on the merits of the case was held the week of September 29 – October 4, 2014. On January 9, 2015, the trial court issued its Order and determined that Wilson had proven his claim of shareholder oppression and the court ordered and awarded a judgment against Gandis and Shirley for $347,863.23 in favor of Wilson. Gandis and Shirley appealed the judgment.

On April 16, 2016 (over a year after entry of judgment and a year after the "Buy-Out Order"), Gandis, Shirley and CCC finally posted a bond in the amount of $347,863.23 thereby staying enforcement of the judgment pending appeal (R. pp. 178-180). On February 7, 2018, the South Carolina Court of Appeals affirmed the trial court's judgment in favor of Wilson and adopted the trial judge's opinion in full (R. pp. 47-49). The Supreme Court affirmed the judgment (5-0) but modified the judgment making CCC primarily liable for the purchase of Wilson's interests and Gandis and Shirley secondarily liable after a reasonable time (R. pp. 50-75). The Supreme Court remanded the case to the circuit court on June 22, 2020.

CCC refused to tender the amount of the judgment, and on September 2, 2020, Wilson filed a Motion to Lift the Stay and to Execute on the Supersedeas Bond[1] (R. pp. 87-88). CCC, Gandis and Shirley all opposed the motion and had filed a "Motion for Remand Status Conference and Ruling Regarding the Time to Complete Purchase of Distributional Interest and Wilson's Motion to Execute on Supersedeas Bond" (R. pp. 76-78). At the hearing on these motions, CCC requested that the Court allow for a structured buy-out procedure comprised of a down payment in the $200,000 range followed by monthly payments over a period of years drawing interest at 4%. Following the hearing, the court entered an order requiring CCC to make a $250,000 payment towards judgment ($347,863.23) of Wilson's distributional interest in the company and permitted Wilson to seek the remaining balance from the supersedeas bond. (CCC ignored this order and directed the bond company to pay Wilson the entire amount of the bond). Further, the court referred the case to the Master-in-Equity to conduct supplemental proceedings to determine the amount of post-judgment interest to be awarded.

The parties submitted written arguments to the Honorable Charles B. Simmons, Jr., Master-in-Equity of Greenville County as to the Wilson's entitlement to post-judgment interest. On April 13, 2021, a hearing was held before the Master-in-Equity to determine the amount of post-judgment interest collectable on the judgment entered January 9, 2015—the Buy-Out Order (R.pp. 148-165). (CCC did not argue that posting a supersedeas bond stayed the accrual of post-judgment interest). Judge Simmons later entered an order

[1] In anticipation of this result, Wilson had requested that the supersedeas bond also secure CCC's payment in the event the judgment was modified. Wilson did not care who paid him.

on May 4, 2021 (R.pp. 33-37), finding that post-judgment interest had accrued from the date of the original judgment (January 9, 2015) in the amount of $208,930.15.

On May 14, 2021, Appellants filed a Rule 59(e) Motion to Alter or Amend the judgment (R. pp. 102-108): Again, Defendants did not make the argument that posting a supersedeas bond stayed the accrual of post-judgment interest. However, on June 10, 2021, Appellants filed a Supplemental Rule 59(e) Motion to Alter and Amend (R. pp. 109-113) finally making several unprecedented arguments, including the newly minted argument that a supersedeas bond stayed the accrual of post-judgment interest. The Master-in-Equity denied both Rule 59 motions, and this appeal followed.

The Court of Appeals issued a percuriam order rejecting Appellant's argument and finding that the unprecedented arguments were untimely. Appellant's petition for rehearing seeks to have this court excuse its failure to timely make arguments that have no support in law or logic. It is time for this case to come to an end.

INTRODUCTION

In its Unpublished Opinion No. 2024-UP-037, this Court thoughtfully addressed the procedural and substantive issues raised by Carolina Custom Converting, LLC, John Gandis, and Andrea Comeau-Shirley (collectively, "Appellants") in their appeal from the lower court's rulings related to post-judgment interest and the application of an appeal bond. The petition for rehearing by Appellants does not meet the standards for granting rehearing as set by Rule 221 of the South Carolina Appellate Court Rules ("SCACR").

STANDARD FOR REHEARING

A petition for rehearing must articulate with specificity which points of law or fact the court allegedly overlooked or misinterpreted, as prescribed by Rule 221(a), SCACR.

The petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the court," Rule 221(a), SCACR, so as "to aid the court in deciding correctly a case heard by it." *Arnold v. Carolina Power & Light, Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). "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." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, (2001) (citation omitted). In sum, the losing party may not be granted rehearing just because it disagrees with the Court's decision; rather, the losing party must point out overlooked or misapprehended points of law or fact. The Petition does not meet this standard.

ARGUMENT

I. Appellants' Arguments that the Court Incorrectly Applied Issue Preservation and Post-Judgment Interest Principles do not Present a Valid Basis for Rehearing but Merely Rehashes Arguments Previously Advanced and Rejected.

The Court's opinion correctly applied the principles and precedent of issue preservation. The Court simply found that Appellants failed to timely raise the argument that a supersedeas bond stays the accrual of interest. Not deterred by the lack of authority or precedent for its argument, Appellants ask this court to excuse its failing to comply with the time requirments of SCRCP 59(e) and disregard established case law on issue preservation. Despite Appellants' rhetorical gymnastics, Appellants did not raise the argument that a superseadas bond stays the accrual of interest until June 10, 2021, which was after judgment had been entired and the time for a Rule 59(e) motion had lapsed.

The Court did not overlook these issues, but confronted Appellant's failure to preserve an argument for appeal. *See* Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." (emphasis added)); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Spreeuw v. Barker*, 385 S.C. 45, 69, 682 S.E.2d 843, 855 (Ct. App. 2009) (determining that an appellant failed to preserve an issue for appellate review when he did not raise the issue at trial and raised it for the first time in post-trial motions).[2]

The argument that the supersedeas bond stays the accrual of interest is without merit and would turn current authority and practice on its head. This is nothing more than a "Hail Mary" at the end of 12 years of litigation. It is quite understandable why the argument did not occur to Appellants for 10 years after the judgment because there is absolutely no precedent for such a monumental change to the law. Appellants seek to create a judicial exception to S.C. Code §34-31-20(B) that states post-judgment interest for money judgments is mandatory. Appellants' untimely argument has no merit.

II. The Appellants Fail to Demonstrate Overlooked Points of Law or Fact.

A. The Court of Appeals expressly considered and rejected that the Supreme Court created a new judgment.

Appellants' remaining arguments are nothing more than a complete rehashing of the same arguments made to the Court of Appeals and which are specifically addressed. Appellants contend in its petition for rehearing that the modification of the judgment

[2] This citation is lifted from the Court of Appeals decision, which clearly addresses the issue before it.

creates a new judgment. Advanced are the exact same arguments made to the Court of Appeals. These arguments were considered and rejected. Specifically, the Court of Appeal's opinion state's as follows:

> Although Appellants assert the supreme court created a new judgment by modifying the Buyout Order and allegedly vacating any previously accrued interest, they fail to put forth authority supporting such a proposition. To the contrary, *Calhoun* clearly states "when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward *or remains the same*, runs from *the date of the original judgment*."

The Appellants' petition does not successfully identify any specific points of law or fact that were overlooked or misapprehended by the court. Instead, it attempts to re-litigate issues already decided, which is not the purpose of a rehearing.

B. Appellants' Argument that the Supreme Court's opinion created a new judgement is without merit.

Our Supreme Court has established a "bright-line test" for determining the date of judgments "affirmed, but modified." In *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000), the amount of the judgment had changed on appeal and one of the issues on cert before the Supreme Court was whether modification of the judgment impacted application of the §34-31-20(B). The Supreme Court held that statutory post-judgment interest runs from the date of the original judgment despite a modification. The Court found that the statute's mandatory language (shall/must) control. The Court reasoned as follows:

> The case before us is a perfect example of how complicated calculating post-judgment interest can become when a money judgment is modified at several different junctures before reaching finality and why a bright line rule for the accrual of interest needs to be established. While different jurisdictions have come up with creative and complicated methods of resolving the issue, it appears that the simplest way to resolve it is by adopting a rule that when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.

Calhoun v. Calhoun, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000)(emphasis added).

In *Calhoun*, the Court clearly stated that after a judgment is modified (even at "at several different junctures"), the judgment becomes "finalized" in the appellate court. However, post-judgment interest runs from the "date of the original judgment." Appellants suggest that there is a "new judgment" although the Supreme Court in Wilson v. Gandis affirmed the original judgment, albeit with one modification. Post-judgment interest accrues from the date of judgment's origin and not the date of the judgment's finalization. *Id.* It really is that simple.[3]

CONCLUSION

Given the analysis provided in the Court's opinion and the lack of any new or overlooked issues presented by the Appellants, the petition for rehearing does not meet the requisite standard under Rule 221(a), SCACR. The Court properly applied precedent regarding preservation of issues for appeal, and Appellants point to no error in not considering arguments not timely raised. Accordingly, the Court should deny the petition for rehearing, reaffirming its well-reasoned decision.

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[3] The other argument untimely advanced by Appellants is that the Supreme Court's opinion in Wilson v. Gandis affirming the trial court's money judgment suspended the accrual of interest because it allowed CCC a "reasonable time" to pay the original judgment before Wilson could enforce the judgment against those secondarily liable (Gandis and Shirley). There is nothing in the Supreme Court's order that even hints that it intended to create an exception to §34-31-20(B) mandate of post-judgment interest, which would have represented a significant loss to Wilson. Surely, the Supreme Court would have provided some justification or even acknowledge of such a dramatic change in the law of post-judgment interest. Our Supreme Court would not take judicial modification of a statutory requirement so cavalierly. This is another untimely argument without merit.

Respectfully submitted,

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Dated March 7, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr. Master-in-Equity

Case No.: 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND ON BEHALF OF CAROLINA CUSTOM CONVERTING,
LLC,……Plaintiff,

v.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA
CUSTOM CONVERTING,
LLC,……Defendants,

v.

CAROLINA CUSTOM CONVERTING, LLC,……Counterclaim Plaintiff,

v.

DAVE WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH
WATER SYSTEMS, Inc.…..……Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, ANDREA COMEAU-SHIRLEY are the
……..…….Appellants

and

DAVID WILSON is the ……Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent David Wilson's Return to Petition for Rehearing on Appellants John Gandis, Andrea Comeau-Shirley and Carolina Custom Converting, LLC by electronic mail, on March 7, 2024, to their attorneys of record addressed as follows:

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