

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173
Supreme Court No. 2024-00797

Stephanie Michelle Gardner, Petitioner,

v.

Berkeley County Sheriff's Office
and Town of Moncks Corner Respondents.

BERKELEY COUNTY SHERIFF'S OFFICE RETURN TO PETITION

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TABLE OF CONTENTS

Table of Authorities i

QUESTIONS PRESENTED..... iii

STATEMENT OF THE CASE..... 1

STANDARD OF REVIEW 1

ARGUMENT 2

I. THE COURT OF APPEALS RULED THAT PETITIONER FAILED TO PROPERLY PRESERVE HER ARGUMENTS FOR APPEAL.

CONCLUSION..... 4

CERTIFICATE OF COUNSEL5

CERTIFICATE OF SERVICE6

TABLE OF AUTHORITIES

Cases

Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E. 2d 282, 284
(2012)..... 3

Dreher v. S.C. Dep’t of Health and Envtl. Control, 412 S.C. 244, 249-50, 772 S.E. 2d 505, 508
(2015)..... 3

Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). 1

George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) 1

Jones v. Lott, 387 S.C. 339, 346, 692 S.E. 2d 900, 903 (2010)..... 3

Kagan v. Simchon, 429 S.C. 516, 526 N. 10, 839 S.E. 2d 106, 111, n. 10 (Ct. App. 2020). 3

McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 343, 479 S.E. 2d 67, 75 (Ct. App. 1996) 3

Repko v. County of Georgetown, 424 S.C. 494, 818 S.E. 2d 743 (2018) 3

Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560 573, 743 S.E. 2d 778, 785 (2013) 3

State v. Dunbar, 356 S.C. 138, 142, 587 S.E. 2d 691, 694 (2003) 3

Summersell v. S.C. Dep’t of Pub. Safety, 337 S.C. 19, 22, 522S.E. 2d 144, 145-46 (1999) 3

Rules

Rule 56(c), SCRCP 1

QUESTIONS PRESENTED

I. THE PETITIONER FAILED TO PRESERVE HER ARGUMENTS FOR APPEAL IN THE COURT OF APEALS, AND THEREFORE, THERE WAS NO RULING ON THE MERITS OF THE ISSUES THEMSELVES.

STATEMENT OF THE CASE

The original Summons and Complaint was filed in the U.S. District Court on November 15, 2019, followed by an Amended Summons and Complaint on December 31, 2019. Defendants filed Motions to Dismiss. Petitioner thereafter voluntarily dismissed all parties except Sheriff Lewis and Randy Demory. The Motion to Dismiss on behalf of Lewis and Demory was granted on April 2, 2020. Petitioner filed a Notice of Appeal on May 4, 2020. The Fourth Circuit Court of Appeals affirmed the grant of Motion to Dismiss on November 24, 2020.

On March 20, 2020, Petitioner filed a Summons and Complaint in Berkeley County Court of Common Pleas. In her Complaint, Petitioner alleged three different causes of action. Berkeley County Sheriff's Office filed a Motion for Summary Judgment on February 19, 2021, and the court granted the motion on April 27, 2021. Petitioner filed a Motion to Reconsider on May 6, 2021, which was denied on September 13, 2021. Petitioner filed a Notice of Appeal on October 8, 2021, and an amended Notice of Appeal on October 19, 2021. On March 13, 2024, after briefing and oral arguments, the Court of Appeals affirmed. Petitioner filed a petition for re-hearing on March 27, 2024, which was denied on April 16, 2024.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, the court of appeals applied the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the nonmoving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

A writ of certiorari is not a matter of right, but sound judicial discretion and will be granted only where there are special and important reasons. The character of reasons which will be considered include: (1) Where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Where none of these matters is at issue in a case, this court should properly decline to grant certiorari.

ARGUMENT

Respondent Berkeley County Sheriff's Office asserts that none of the reasons that the Supreme Court would consider a matter apply to this case. There is no novel question of law. There was no dissent in the Court of Appeals. There is no conflict between the Court of Appeals and the Supreme Court of South Carolina or the Supreme Court of the United States, nor are there any federal issues or constitutional questions involved. This is a matter where the plaintiff, who became the appellant who now becomes the petitioner, is making the same argument over and over and over again, hoping that a different audience will take notice. However, these matters are not property before this Court, based on the clear opinion of the South Carolina Court of Appeals.

I. THE COURT OF APPEALS RULED THAT PETITIONER FAILED TO PROPERLY PRESERVE HER ARGUMENTS FOR APPEAL.

Petitioner has filed a brief that makes the exact same argument that she made in the trial court and the court of appeals. However, the Court of Appeals issued a four-page ruling setting out clearly that the grounds for affirming the decision of the lower court was the failure of the

Petitioner to have properly preserved the arguments for appeal. *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 343, 479 S.E. 2d 67, 75 (Ct. App. 1996); *Kagan v. Simchon*, 429 S.C. 516, 526 N. 10, 839 S.E. 2d 106, 111, n. 10 (Ct. App. 2020). There were no rulings on the merits of the arguments themselves.

While the court of appeals did set out the elements of the cause of action for defamation, it went on to address the two-issue rule. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E. 2d 282, 284 (2012), quoting *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E. 2d 900, 903 (2010), abrogated on other grounds by *Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E. 2d 743 (2018); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E. 2d 691, 694 (2003) (“No point will be considered [that] is not set forth in the statement of issues on appeal.”(citing Rule 208(b)(1)(B), SCACR)); *Dreher v. S.C. Dep’t of Health and Env’tl. Control*, 412 S.C. 244, 249-50, 772 S.E. 2d 505, 508 (2015). If the appealing party fails to raise all grounds on which the lower court’s decision was based, the unappealed findings become the law of the case. *Id.*; *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560 573, 743 S.E. 2d 778, 785 (2013); *Summersell v. S.C. Dep’t of Pub. Safety*, 337 S.C. 19, 22, 522S.E. 2d 144, 145-46 (1999).

Here, the arguments in the Petition are almost verbatim from Petitioner’s brief to the Court of Appeals. Question I contains one additional sentence; Question III has two additional sentences; Questions II and VI are verbatim. The Court of Appeals determined that these arguments were not properly preserved for review. With no new information and no portion of the Petition addressing the Court of Appeals ruling that the issues were not properly preserved, there is nothing for this court to decide.

CONCLUSION

For all of the reasons stated herein, Respondent Berkeley County Sheriff's Office respectfully requests that this Court find that Petitioner did not preserve her arguments for appeal; for costs and fees; and for all other measures of relief as this Court deems just and proper.

Respectfully submitted,

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