

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE EDGAR W. DICKSON
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-000797
CIVIL ACTION NO. 2020-CP-08-00773

Opinion No. 2024-UP-078 (S.C. Ct. App. March 13, 2024)

Stephanie Michelle Gardner,

PETITIONER,

versus

Berkeley County Sheriff's Office and
Town of Moncks Corner,

RESPONDENTS.

**RESPONDENT TOWN OF MONCK'S CORNER'S
RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEYS FOR RESPONDENT
TOWN OF MONCK'S CORNER**

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S.C. SUPREME COURT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. Does Petitioner Gardner’s failure to challenge the Court of Appeals’ basis for affirming the Trial Court’s grant of summary judgment to the Town preclude review on certiorari because the Court of Appeals’ holding is now law of the case?

- II. Did the Court of Appeals properly hold that Gardner had not preserved for appellate review all grounds supporting the Trial Court’s grant of summary judgment to the Town?

COUNTERSTATEMENT OF THE CASE

This action arises out of Petitioner Stephanie Michelle Gardner’s allegations that she was falsely arrested on April 27, 2018 without probable cause for trafficking cocaine and methamphetamine and possession of heroin and methamphetamine when she was located on the premises and mere feet away from where such illegal drugs were discovered by law enforcement.

After initially filing a complaint in the United States District Court for the District of South Carolina against the Respondents in this appeal, the Town of Moncks Corner (the “Town”) and the Berkeley County Sheriff’s Office (the “Sheriff’s Office”), and then dismissing those claims in the District Court, Gardner filed a Complaint against the Town and the Sheriff’s Office in the Court of Common Pleas for Berkeley County on March 20, 2020. [R.pp. 30-35; Compl.] Gardner alleged false arrest and malicious prosecution claims against the Town and the Sheriff’s Office, as well as a defamation claim against the Sheriff’s Office, and sought actual damages on each cause of action. [Id.]

The Town answered the Complaint on March 24, 2020, denying its material allegations and asserting as an affirmative defense, among others, the immunities and limitations of South Carolina’s Tort Claims Act, S.C. CODE ANN. §§ 15-78-10, *et. seq.* [R.pp. 36-42; Town Answer.]

The Sheriff's Office also filed an Answer and Amended Answer to the Complaint on March 25, 2020 and November 19, 2020 respectively. [R.pp. 43-54; Sheriff's Office Answers.]

Thereafter, both the Town and the Sheriff's Office moved for summary judgment on all causes of action in Gardner's Complaint. [R.pp. 105-106; 109-120; 107-108; 121-139; Town Mtn. for Summary Judgment; Town Memo. and Exs.; Sheriff's Office Mtn. for Summary Judgment; Sheriff's Office Memo. and Exs.]

The Town argued it was entitled to the protections afforded by the Tort Claims Act, in particular immunity for loss resulting from any enforcement of the law or for any loss resulting from the performance of any act or service which is in the discretion or judgment of a governmental employee. See S.C. CODE ANN. §§ 15-78-60(4), (5). [R.pp. 111-112; Town Memo., pp. 3-4.] The Town further argued that Gardner's arrest was supported by probable cause which defeated her claims for false arrest and malicious prosecution. [R.pp. 112-119; Town Memo., pp. 4-11.] The Town additionally asserted that Gardner had no evidence proving malice or ulterior motives on the part of the Town for her arrest and had not proven damages on the malicious prosecution claim. [R.pp. 116-119; Id. at pp. 8-11.] Finally, the Town argued that Gardner could not recover monetary damages for any purported violation of the South Carolina Constitution. [R.p. 119; Id. at p. 11.]

Gardner responded to the motions for summary judgment. [R.pp. 140-145; Memo. in Opp.] In this response, Gardner did not challenge the Town's claims to immunity under the Tort Claims Act. [Id.] A hearing on the motions for summary judgment was held on April 5, 2021 before The Honorable Edgar W. Dickson. [R.pp. 55-104; Hearing Tr.] At the hearing, Gardner also did not

challenge the Town's claims to immunity under the Tort Claims Act, particularly discretionary immunity. [R.pp. 60, l. 18 – 61, l. 13; 75, l. 9 – 83, l. 3; 88, l. 1 – 91, l. 8.]

Following the hearing, the Trial Court granted summary judgment to both the Town and the Sheriff's Office on April 27, 2021. [R.pp. 3-23; Orders Granting Summary Judgment.] The Trial Court agreed with all arguments of the Town and granted summary judgment on each ground raised by the Town in its motion for summary judgment. [R.pp. 3-12; Order.] The Trial Court noted that the Town was immune under the Tort Claims Act for discretionary acts and loss resulting from the enforcement of any law. [R.pp. 5-6; Order.] See also S.C. Code Ann. §§ 15-78-60(4), (5). The Trial Court further observed that Gardner had not addressed the Town's assertion of the Tort Claims Act's immunities and protections in her memorandum of opposition or during the hearing on the Town's motion for summary judgment. [R.p. 6; Order.]

On May 6, 2021, Gardner filed a motion and memorandum in support requesting the Trial Court to reconsider its grant of summary judgment to the Town, but Gardner did not ask the Trial Court to reconsider its ruling that the Town was immune under the Tort Claims Act. [R.pp. 146-147; 150-153; Mtn and Memorandum to Reconsider.] The Town responded to the motion for reconsideration on May 12, 2021. [R.pp. 163-168; Response.] The Trial Court denied the motion to reconsider on September 13, 2021. [R.pp. 24-28; Order.]

Gardner appealed the grants of summary judgment to the Town and the Sheriff's Office to the Court of Appeals. On March 13, 2024, the Court of Appeals affirmed the Trial Court's grant of summary judgment to the Town on Gardner's claims for false arrest and malicious prosecution because Gardner had not preserved for appellate review the Trial Court's ruling that the Town was immune under the Tort Claims Act. See Op. No. 2024-UP-078. Gardner filed a Petition for

Rehearing with the Court of Appeals on March 27, 2024, which was denied April 16, 2024. Gardner has now filed this Petition for Writ of Certiorari with this Court seeking review of the Court of Appeals' decision.

ARGUMENT

Under Rule 242 (b) of the South Carolina Appellant Court Rules, “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” The following factors indicate the character of reasons which the Court will consider in granting a petition for writ of certiorari:

- (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.
- (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.

Id.

In Gardner's Petition to this Court, none of the aforementioned factors are present because Gardner did not preserve for appeal all grounds supporting the Trial Court's grant of summary judgment for appellate review and then further did not ask this Court to review the specific basis for the Court of Appeals' affirmance of the Trial Court's ruling. Accordingly, this Court should deny Gardner's Petition.

I. Gardner failed to challenge the Court of Appeals’ basis for affirming the Trial Court’s grant of summary judgment to the Town; therefore, the Court of Appeals’ opinion as to the Town is law of the case and cannot be reviewed on certiorari.

The Court of Appeals affirmed the Trial Court’s grant of summary judgment to the Town on Gardner’s false arrest and malicious prosecution claims on the sole basis that Gardner did not preserve for appellate review any challenge to the Trial Court’s ruling that the Tort Claims Act provided immunity to the Town. See Op. No. 2024-UP-078 (S.C. Ct. App. Mar. 13, 2024). In her Petition to this Court, Gardner does not address the Court of Appeals’ holding on issue preservation.

The Court of Appeals’ unchallenged holding that Gardner did not preserve the issue of Tort Claim immunity for appellate review is now law of the case. S.C. Dep’t of Soc. Servs. v. M.R.C.L., 393 S.C. 387, 393-94, 712 S.E.2d 452, 456 (2011) (unchallenged rulings of the Court of Appeals constituted law of the case and this Court would decline to address these rulings); S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp., 353 S.C. 249, 251 n.1, 578 S.E.2d 8, 9 n.1 (2003) (noting where party fails to challenge holding by Court of Appeals, ruling is law of the case); Quesinberry v. Rouppasong, 331 S.C. 589, 596 n.9, 503 S.E.2d 717, 721 n.9 (1998) (holding unappealed ruling of the Court of Appeals as to one petitioner had become the law of the case and was dispositive of that petitioner’s appeal before this Court); State v. Barroso, 328 S.C. 268, 271, 493 S.E.2d 854, 855 (1997) (observing that where holding of the Court of Appeals was not challenged by the State, it was law of the case).

Because Gardner has not sought certiorari to review the Court of Appeals’ holding as to issue preservation on the Trial Court’s grant of summary judgment based upon Tort Claim immunity, this unchallenged ruling is the law of the case on certiorari. Therefore, the Trial Court’s

ruling that the Town is immune under the Tort Claims Act for Gardner's claims of false arrest and malicious prosecution bars her entire case against the Town.

II. The Court of Appeals properly held that Gardner had not preserved for appellate review all grounds supporting the Trial Court's grant of summary judgment to the Town.

The Court of Appeals also correctly held that Gardner had not preserved for appellate review any challenge to the Trial Court's grant of summary judgment to the Town based upon immunity under the Tort Claims Act. If a trial court's decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), *abrogated on other grounds by*, Repko v. Cty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018). Here, because Gardner did not challenge the Trial Court's grant of summary judgment to the Town on the basis of immunity under the Tort Claims Act, which served as an independent ground for summary judgment on Gardner's claims, the Court of Appeals was required to affirm the grant of summary judgment to the Town.

In its motion and memorandum in support for summary judgment, the Town argued that Gardner's claims were barred under immunities and protections provided under the Tort Claims Act, including loss resulting from the enforcement of any law and any act or service in the discretion or judgment of a governmental employee. See S.C. CODE ANN. §§ 15-78-60(4), (5). [R.pp. 105, 111-112; Mtn. and Memorandum.]

In her response to the Town's motion for summary judgment, Gardner did not challenge the Town's claims to immunity under the Tort Claims Act. [R.pp. 14-145; Response.] At the summary judgment hearing, Gardner also did not challenge the Town's claims to immunity under

the Tort Claims Act, particularly discretionary immunity. [R.pp. 60, l. 18 – 61, l. 13; 75, l. 9 – 83, l. 3; 88, l. 1 – 91, l. 8.]

In her motion for reconsideration and memorandum in support, Gardner further did not ask the Trial Court to reconsider its ruling that the Town was immune under the Tort Claims Act. [R.pp. 146-147; 150-153; Mtn and Memorandum to Reconsider.] Never once did Gardner challenge the Town’s immunity under the Tort Claims Act to the Trial Court.

Therefore, the Court of Appeals properly held that Gardner could not challenge for the first time on appeal the Trial Court’s grant of summary judgment to the Town based upon the immunities of the Tort Claims Act. See McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 343, 479 S.E.2d 67, 75 (Ct. App. 1996) (“As a general rule, an issue may not be raised for the first time on appeal.”). Because Gardner did not present any argument regarding the Town’s claim to immunity under the Tort Claims Act to the Trial Court in her opposition to the motion for summary judgment, during the motion’s hearing, or in her motion for reconsideration, she “failed to safeguard these arguments for appellate review.” Kagan v. Simchon, 429 S.C. 516, 526 n.10, 839 S.E.2d 106, 111 n.10 (Ct. App. 2020) (finding arguments not preserved for appellate review when appellant neither presented arguments in the opposition memorandum to the respondent’s motion for summary judgment nor at the motion’s hearing before the circuit court); Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 652 n.12, 780 S.E.2d 263, 272 n.12 (Ct. App. 2015) (concluding issue not preserved for appeal where appellants did not make the argument in their opposition to the summary judgment or at the summary judgment hearing); Chastain v. Hiltabidle, 381 S.C. 508, 515 n.3, 673 S.E.2d 826, 830 n.3 (Ct. App. 2009) (noting where appellants had not

raised an argument to the trial court in their opposition memorandum to the summary judgment or in their motion to reconsider, the appellate court would not address the argument on appeal).

The Trial Court's grant of summary judgment to the Town pursuant to the immunity provided under the Tort Claims Act entirely bars Gardner's claims against the Town. Where Gardner did not preserve for appeal any issue with the Trial Court's grant of summary judgment to the Town on the basis of immunity under the Tort Claims Act, the Trial Court's grant of summary judgment to the Town must be affirmed on appeal.

CONCLUSION

The Trial Court's grant of summary judgment to the Town on the basis of immunity under the Tort Claims Act is law of the case. For such reason, the Town requests this Court to deny Gardner's Petition for Writ of Certiorari.

Respectfully submitted,

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