RECEIVED
Jun 21 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
B. Alex Hyman, Circuit Court Judge
Case No. 2022-CP-02-01498

Appellate Case No. 2024-000082

David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation, ... Appellants,

v.

City of Aiken; Aiken Municipal Development Commission; Aiken Design Review Board; Gary Smith, ... Defendants,

Of whom City of Aiken; Aiken Municipal Development Commission; and Aiken Design Review Board, are .... Respondents.

INITIAL BRIEF OF RESPONDENT CITY OF AIKEN

SMITH | ROBINSON

Daniel C. Plyler, SC Bar No. 72671
Austin T. Reed, SC Bar No. 102808
3200 Devine Street
Columbia, SC 29205
Daniel.Plyler@SmithRobinsonLaw.com
Austin.Reed@SmithRobinsonLaw.com

Counsel for Respondent City of Aiken

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

COUNTERSTATEMENT OF THE ISSUES ON APPEAL 1

I. Did the circuit court properly grant partial summary judgment in favor of the City of Aiken, when there was no genuine issue of material fact that the causes of action were moot? 1

II. Did the circuit court properly grant partial summary judgment in favor of the City of Aiken, when there was no genuine issue of material fact that no exceptions to the mootness doctrine were applicable to the dismissed causes of action? 1

STATEMENT OF THE CASE 1

FACTUAL AND PROCEDURAL BACKGROUND 2

STANDARD OF REVIEW 4

ARGUMENT 4

I. The circuit court did not err in granting partial summary judgment in favor of the City of Aiken because the matter is moot 5

A. There is no genuine dispute of material fact regarding the termination of Project Pascalis and its impact on this litigation, thereby entitling the City to judgment as a matter of law under the mootness doctrine as to Appellants' first and second causes of action 5

B. Even an action for declaratory judgment fails under the facts of this case to establish a justiciable controversy 8

II. The circuit court did not err in granting partial summary judgment in favor of the City of Aiken because no exception to the mootness doctrine applies 11

III. Appellants misconstrue the applicable summary judgment standard 14

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Byrd v. Irmo High School,
321 S.C. 426, 468 S.E.2d 861 (1996) 12

Collins Music Co., Inc. v. IGT,
365 S.C. 544, 619 S.C. 1 (Ct. App. 2005) 5

Croft v. Town of Summerville,
433 S.C. 473, 860 S.E.2d 352 (2021) .... *passim*

Curtis v. State,
345 S.C. 557, 549 S.E.2d 591 (2001) 11

Fields v. Melrose Limited Partnership, ... 14
312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993)

Glasscock, Inc. v. United States Fidelity & Guaranty Co., ... 14
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)

Holden v. Cribb,
349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002).. 9

Kitchen Planners, LLC v. Friedman,
440 S.C. 456, 892 S.E.2d 297 (2023) 15

Penn-America Ins. Co. v. Coffey,
368 F.3d 409 (4th Cir. 2004) 9

Power v. McNair,
255 S.C. 150, 177 S.E.2d 551 (1970) 6, 9

S.C. Pub. Interest Found. v. Calhoun Cty. Counsil,
432 S.C. 492, 854 S.E.2d 836 (2021) 4

S.C. Pub. Interest Found. v. S.C. Dep't of Transp.,
421 S.C. 110, 804 S.E.2d 854 (2017) 12

Sloan v. Friends of the Hunley, Inc.,
369 S.C. 20, 630 S.E.2d 474 (2006) 5, 8

Sloan v. Greenville Cnty.,
356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).. 5, 13

Sloan v. Greenville Cnty.,
380 S.C. 528, 670 S.E.2d 663 (Ct. App. 2009).. 5, 13

Sloan v. S.C. Dep't of Transp.,
365 S.C. 299, 618 S.E.2d 876 (2005) 13

Thomas v. Waters,
315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994)... 4

Tourism Expenditure Rev. Comm. v. City of Myrtle Beach,
403 S.C. 76, 742 S.E.2d 371 (2013) 9

Waller v. Waller,
220 S.C. 212, 66 S.E.2d 876 (1951) 9

Wise v. Wise,
394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011)... 10

Wright v. PRG Real Estate Mgmt., Inc.,
426 S.C. 202, 826 S.E.2d 285 (2019) 4

<u>South Carolina Court Rules</u>

Rule 56(c), SCRCP ……………..…………………………..…………………………….4, 14

Rule 59(e), SCRCP ……………...……………………………………………………………….2, 3

Rule 65, SCACR …………………………..…………………………………………………….12

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the circuit court properly grant partial summary judgment in favor of the City of Aiken, when there was no genuine issue of material fact that the causes of action were moot?

II. Did the circuit court properly grant partial summary judgment in favor of the City of Aiken, when there was no genuine issue of material fact that no exceptions to the mootness doctrine were applicable to the dismissed causes of action?

STATEMENT OF THE CASE

This appeal arises from the circuit court's grant of partial summary judgment in favor of Respondent City of Aiken based on the doctrine of mootness. (MSJ Order on Appeal). Appellants David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation (collectively, "Appellants") initiated this action against Respondents City of Aiken ("the City"), Aiken Municipal Development Commission ("AMDC"), Aiken Design Review Board ("DRB"), and Gary Smith (collectively, "Respondents") on July 5, 2022. (Original Compl.). In the Original Complaint, as well as its two amendments, Appellants sought declaratory judgment and injunctive relief on multiple causes of action concerning Respondents' attempt to revitalize a portion of downtown Aiken through "Project Pascalis." (Original Compl.; First Amend. Compl.; Second Amend. Compl.). Despite the myriad of legal theories presented in Appellants' extensive Second Amended Complaint, the essence of the action can be reduced down to a single purpose: Appellants aimed to prevent Respondents from proceeding with Project Pascalis. (Second Amend. Compl.).

In addition to multiple pleadings and responses thereto, numerous dispositive motions were filed, with some having been resolved and others still pending before the circuit court. Pertinent to this appeal, however, Respondent City of Aiken filed a motion for summary judgment on July

21, 2023. (Respondents' MSJ). A hearing on the motion was held before the Honorable B. Alex Hyman on September 19, 2023. (Transcript on MSJ). On November 13, 2023, Judge Hyman issued a Form 4 Order granting partial summary judgment in favor of Respondents with respect to Appellants' declaratory judgment and injunction causes of action. (MSJ Order dated Nov. 13, 2023). The circuit court denied summary judgment with respect to the remaining South Carolina Freedom of Information Act cause of action. (*Id.*). Subsequently, on November 22, 2023, Appellants filed a motion under Rule 59(e), SCRCP, seeking reconsideration of the circuit court's partial grant of summary judgment. (Appellants' MTR). On January 2, 2024, Judge Hyman issued another Form 4 Order denying Appellants' motion to reconsider. (MTR Order dated Jan. 2, 2024). Thereafter, Appellants filed and served their Notice of Appeal. (NOA).

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of the approval of Project Pascalis, a redevelopment initiative aimed at revitalizing a portion of downtown Aiken. (Second Amend. Compl.). The project was intended to encompass several land parcels in the heart of downtown, primarily centered around Hotel Aiken. (*Id.*). Despite the pressing need to redevelop the Hotel Aiken property and the surrounding area, the project has since been discontinued by decision of the developer. (Respondents' MSJ, Ex. B).

A few months following Appellants' filing of the Original Complaint, on September 14, 2022, RPM, the developer, formally terminated its agreement with the AMDC concerning the implementation of Project Pascalis. (*Id.*). This termination was acknowledged by the AMDC on September 22, 2022. (*Id.*). Shortly thereafter, on September 29, 2022, the decision to discontinue Project Pascalis was documented in the minutes of the AMDC meeting. (Respondents' MSJ, Ex. D). On November 14, 2022, the City of Aiken officially concluded Project Pascalis by passage of

a City Ordinance repealing the conveyance. (Respondents' MSJ, Ex. C). Moreover, on May 8, 2023, the AMDC was formally dissolved. (Respondents' MSJ, Ex. A).

Despite these important developments, Appellants continued to push forward with the litigation, maintaining their right to certain declaratory and injunctive relief survives and grounding their argument in various provisions of the South Carolina Freedom of Information Act, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, South Carolina Community Development Law, and the City of Aiken's Zoning Ordinance. (Second Amend. Compl.). At bottom, Appellants claim that there were issues with the groundwork and brief implementation of Project of Pascalis that needed to be litigated. (*Id.*).

Respondents disagreed with this litigious approach in light of the intervening circumstances and filed for summary judgment on July 21, 2023. (MSJ). Respondents argued that the termination of Project Pascalis rendered the matter moot in its entirety. (Respondents' MSJ). In opposition to Respondents' motion, Appellants argued that the matter was not moot, and that even if it were deemed moot, exceptions to the mootness doctrine would apply. (Appellant MSJ Memo). However, following a hearing on September 19, 2023, Judge Hyman agreed with Respondents, in part, and issued a Form 4 Order on November 13, 2023, granting summary judgment on all but one of Appellants' causes of action. (MSJ Hearing Transcript; MSJ Order dated Nov. 13, 2023). The causes of action for declaratory and injunctive relief were dismissed, but the cause of action for claimed violations of the South Carolina Freedom of Information Act remained. (*Id.*).

Shortly thereafter, on November 22, 2023, Appellants filed a motion to reconsider under Rule 59(e), SCRCP, arguing that the November 13 Order failed to articulate the grounds for the Court's decision to grant partial summary judgment. (Appellants MTR). On January 2, 2024,

Judge Hyman issued another Form 4 Order denying Appellants' motion to reconsider. (MTR Order dated Jan. 2, 2024). This appeal followed.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). "When reviewing a circuit court's order from a motion for summary judgment, appellate courts sit in the same position as the circuit court." *S.C. Pub. Interest Found. v. Calhoun Cty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In opposing summary judgment, a party "may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313 411 S.E.2d 672, 673 (Ct. App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993)).

ARGUMENT

The circuit court—armed with an understanding that the termination of Project Pascalis and dissolution of the AMDC removed the justiciable controversy between the parties—did not err in granting partial summary judgment in favor of the City. The issues resolved by the circuit court at summary judgment are moot and no exceptions to the mootness doctrine apply under the facts of this case.

I. The circuit court did not err in granting partial summary judgment in favor of the City of Aiken because the matter is moot.

Appellants—through this appeal—demand the Court resolve issues that only exist in the realm of hypotheticals, to the detriment of valuable judicial resources and the limited resources of the governmental Respondents. However, Appellants' persistence only begs the question: what can actually be achieved by further litigating these issues that were resolved at summary judgment? The answer is "nothing" because the issues addressed by the circuit court have become moot. Although Appellants' claim their "object of this lawsuit" was not limited to stopping Project Pascalis (App. In. Brief at 10), this is not the case following a review of the Second Amended Complaint. (Sec. Amend. Compl.). Appellants' insistence that they deserve to be told whether they were "right" or "wrong" constitutes nothing more than an invitation for the Court to issue an advisory opinion. Respectfully, the Court should decline Appellants' invitation.

It is well-established that a court "only considers cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "The court does not concern itself with moot or speculative questions." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). "A matter becomes moot when 'judgment, if rendered, will have no practical legal effect upon [the] existing controversy.'" *Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001)).

A. There is no genuine dispute of material fact regarding the termination of Project Pascalis and its impact to this litigation, thereby entitling the City to judgment as matter of law under the mootness doctrine as to Appellants' first and second causes of action.

Although Appellants' voluminous Second Amended Complaint presented numerous legal theories, their objective was to enjoin Respondents from proceeding with Project Pascalis. (Second Am. Compl.). However, this relief was obtained outside of the courthouse when RPM

withdrew from its agreement with the AMDC and when the AMDC was formally dissolved. (Respondents' MSJ, Ex. B and C). Appellants do not dispute that Project Pascalis and the AMDC are no longer in existence, nor could they. Therefore, the circuit court did not err in granting summary judgment in favor of the City, as any decision rendered would not have provided any practical relief to Appellants. Rather, it would have been a purely academic exercise by the circuit court. *See Power v. McNair*, 255 S.C. 150, 155, 177 S.E.2d 551, 553 (1970) ("We simply refuse to enter the field of advisory opinions.").

In attempts to skirt this sound mootness analysis conducted by the circuit court, Appellants inject a myriad of case law into their Appellants' Brief. None of these cases are entirely on point. Rather, more important than the cases Appellants chose to cite, is the case that Appellants chose not to cite.[1] To be sure, the South Carolina Supreme Court reached the same conclusion on a virtually identical question of mootness in *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021).

In *Croft*, the plaintiffs alleged that the Summerville Board of Zoning Appeals had violated several Freedom of Information Act provisions and various Town of Summerville Ordinances in its pursuit of a proposed development project. *Id.* at 479, 860 S.E.2d at 355. Specifically, the plaintiffs complained *inter alia*: (1) there were violations of FOIA by virtue of meetings of less than a quorum of the board; (2) the board held a meeting in a room that was too small; (3) the board failed to allow public comment at a meeting; (4) the public partnership agreement was illegal and ultra vires; and (5) the board lacked proper procedures and rules. The plaintiffs sought to have

[1] Respondents would point out that counsel for Appellants also represented the plaintiffs in *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021).

the Court "invalidate the [Board] approvals of the Project and . . . require the [Developer] to obtain new approvals following lawful procedures." *Id.* at 480, 860 S.E.2d at 481.

The Court of Appeals affirmed the circuit court's decision and upheld the Board's approval of the Project. However, at some point during the appellate process, the developer chose not to go forward with the project. *Id.* at 476, 860 S.E.2d at 354. This was brought to the Supreme Court's attention during oral argument. The Supreme Court, in a 5-0 decision, rather than reviewing the merits of Court of Appeals' decision, held that the case had become moot. The Supreme Court recognized that "[a]t its core, the fight in this case is over whether the Developer can build the project as currently approved by the Board, or whether the Developer must return to the Board and obtain new approval before building the Project." *Id.* Identifying the true nature of the controversy amongst the parties (or lack thereof following intervening events), the Court concluded that the matter was moot because the developer had decided to abandon the Project. *Id.*

Here, the Supreme Court precedent clearly established in *Croft* is dispositive of the instant appeal and underlying matter. Like the plaintiffs in *Croft*, Appellants' sought to halt an approved project and to ensure that any new project adheres to lawful procedures. Specifically, in their Second Amended Complaint, Appellants requested a permanent injunction, stating:

> Plaintiffs respectfully seek a Permanent Injunction enjoining, restraining, and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:
>
> a. Implementing in any way, including paying, directly or indirectly, any money regarding, Project Pascalis until and unless Project Pascalis becomes a valid redevelopment project pursuant to a valid redevelopment plan.

Further, like the developer in *Croft*, the developer responsible for Project Pascalis has chosen not to proceed with the project. To be sure, Project Pascalis has been terminated by the developer, the AMDC, and the City. The AMDC has even been completely dissolved by legislative

acts of the Aiken City Council. Therefore, as in *Croft*, Appellants' case against the City of Aiken is moot. *See Croft*, 433 S.C. at 480, 860 S.E.2d at 356 ("This controversy ended when the Developer decided not to build the Project."). The relief requested by Appellants, like the relief requested by the *Croft* plaintiffs, has already been obtained. *See id.* ("A decision rendered for either party would not provide any practical relief and would be a purely academic exercise by this Court."); *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477 ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").

In Appellants' Brief, Appellants contend that there are other projects taking place at the former site of Project Pascalis and that these other projects may involve laws discussed in their Second Amended Complaint. (App. Br. at 5-9). This is simply Appellants' sprinkling of red herrings and does not change the mootness analysis. The Second Amended Complaint targets Project Pascalis. Appellants cite to these "new developments" in an affidavit of Luis Rinaldini; notably, they do not cite to the "new developments" in the operative Complaint. If Appellants take issue with other development projects or future development projects, and if Appellants believe there are deviances in those projects from the applicable laws, Appellants can file a lawsuit challenging them. However, this is not that litigation, and the instant litigation is moot.

B. Even an action for declaratory judgment fails under the facts of this case to establish a justiciable controversy.

To the extent that the relief sought by Appellants is, as they assert, "a declaration that the actions taken by the City were wrong," the matter remains moot. (App. Br. at 10). Appellants tortured attempt to stretch the application of the South Carolina Uniform Declaratory Judgments Act into a vehicle to obtain advisory opinions is without merit.

A court cannot "render a declaratory judgment in the absence of an actual justiciable controversy." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970); *see also Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013) (stating "it is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement"). Thus, contrary to Appellants' contention, seeking a declaratory judgment does not automatically create a justiciable controversy, as the Act itself mandates the existence of such a controversy. *Id.* A moot matter does not give rise to a justiciable controversy under the Declaratory Judgments Act. *See Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951) (stating "a declaratory judgment should not deal with moot or abstract matters or constitute merely advisory opinion"). Consequently, Appellants' declaratory judgment action must fail because it seeks a declaration on a moot issue.[2]

Adjudication of this case would contravene the scope and purpose of the Declaratory Judgments Act, which is designed to produce practical legal results. *See Power*, 255 S.C. at 154-55, 177 S.E.2d at 553; *see also Penn-America Ins. Co. v. Coffey*, 368 F.3d 409, 412 (4th Cir. 2004) (noting that "a declaratory judgment action is appropriate when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and . . . when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding" (internal quotation marks omitted)). In other words, a declaratory judgment is advisory unless it resolves some legal right or duty of the parties. *Power*, 255 S.C. at 154-55. 177 S.E.2d at 553.

---

[2] Further, the concept of justiciability not only serves as the foundation for a declaratory judgment action but also "encompasses the doctrines of ripeness, mootness, and standing." *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (citing *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997)). As a result, the absence of a justiciable controversy under one doctrine implies its absence under others. *See id.* Therefore, the termination of Project Pascalis eliminates any justiciable controversy, simultaneously rendering the matter moot and undermining the validity of Appellants' declaratory judgment action.

Here, adjudication would serve no useful purpose since Appellants do not seek a declaration of their rights or the City's duties regarding pending redevelopment projects. There is no dispute over Appellants' rights to be informed about redevelopment projects, nor is there any uncertainty surrounding the City's duty to comply with the law in approving and implementing such projects. Instead, Appellants seek a declaration that the City's actions in approving and implementing a now-defunct project were wrong, which would clearly have no practical effect. Thus, even if a declaratory judgment action were sufficient to establish a justiciable controversy, one would not exist here, as a decision on the merits would merely constitute an advisory opinion, falling outside the intended purpose and scope of the Declaratory Judgments Act.

Moreover, the plaintiffs in a companion case to *Croft—Faye P. Croft, et al. vs. Town of Summerville, et al.*, Case No. 2015-CP-18-713 and subsequently 2022-CP-18-01494, similarly sought declaratory relief.[3] (Compl. CA No. 2015-CP-18-713). That case concerned the same abandoned project at issue in the Supreme Court's *Croft* decision, and the defendants moved to dismiss the case on grounds that termination of the project rendered the matter moot. (Def.'s MTD, CA No. 2022-CP-18-01494). The defendants, like Respondents, supported their argument by citing the South Carolina Supreme Court precedent established in *Croft*. *Id.* Despite the plaintiffs' claims for declaratory relief, the circuit court agreed with the defendants and issued a Form 4 Order granting the defendants' motion to dismiss on mootness grounds. (Order dated Feb. 12, 2024, CA No. 2022-CP-18-01494).[4] Therefore, this Court, like the circuit court in the *Croft* companion case,

---

[3] The Court can take judicial notice of the filings and disposition of this suit. *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (stating "It is not error for a judge to take judicial notice of what was stated in [a] former opinion in [a] prior action of the same case" (internal quotations omitted)).

[4] This order has also been appealed and is currently pending before this Court. App. Case No. 2024-000438.

should take no issue with Appellants' claim for declaratory relief in deciding to affirm the circuit court's grant of partial summary judgment.

II. The circuit court did not err in granting partial summary judgment in favor of the City of Aiken because no exception to the mootness doctrine applies.

Without much analysis, Appellants appear to claim that any of the exceptions to the mootness doctrine apply. (App. Br. at 10-15). However, Appellants are mistaken.

"In the civil context, there are three general exceptions to the mootness doctrine." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). First, an appellate court may address an issue that is "capable of repetition but evading review." *Id.* Second, an appellate court may resolve "questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* Third, if a trial court's decision could "affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* Appellants, invoking all three exceptions to the mootness doctrine, contend that the circuit court should have addressed the merits of the case despite deeming it moot. (App. Br. at 10-15). However, none of these exceptions are applicable to the present case. Respondents will address these mootness exceptions in turn.

Regarding the first exception—capable of repetition yet evading review—*Croft* is decisive of this issue. The Supreme Court in *Croft* emphasized that for this exception to apply, "the action must one which will truly evade review." 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021) (quoting *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006)). Thus, the Supreme Court observed that "[t]he exception is most applicable in situations where the prejudice suffered by the complaining party is temporary and has ended by the time of appellate review." *Id.* (citing *Byrd v. Irmo High School*, 321 S.C. 426, 432, 468 S.E.2d 861m 864 (1996)). Consequently, the Court concluded that the issues, even if capable of repetition, did not evade

review because the case became moot due to the developer's decision to abandon the project, not because the plaintiffs lacked sufficient time to challenge the board's approval before the controversy ended. *Id.*

Here, as in *Croft*, the case became moot due to the developer's decision to abandon Project Pascalis, not because the Appellants lacked sufficient time to challenge the Project's approval. In fact, Appellants filed their initial Complaint on July 5, 2022, over two months before the developer terminated its agreement with the AMDC on September 14, 2022. Additionally, the substantial length of Appellants' Complaint indicates that they had ample opportunity to present their challenges to the Project's implementation. Moreover, if the alleged violations persist under a new redevelopment project, as Appellants claim, they have the option to file a *new lawsuit* to challenge the legality of the *new project*. The creation of development projects and implementation thereof is a time intensive endeavor, and there is sufficient time for a plaintiff to bring and litigate a challenge. Therefore, approval of Project Pascalis, along with any alleged violations arising from its approval and implementation, does not evade review.[5]

The cases cited by Appellants in support of their argument are inapposite to the case at bar. Take first *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). That case involved the invocation of this mootness exception because the issue before the court involved short-term school suspensions that "by their very nature" are completed long before an appellate court can review the issues implicated. *Id.* at 432, 468 S.E.2d at 864. Take next *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 804 S.E.2d 854 (2017). That case involved the invocation of this mootness exception because the issue before the court involved the inspection of bridges

---

[5] Of course, should Appellants believe a violation occurs in future projects, they can always move for temporary injunctive relief or a temporary restraining order. Rule 65, SCRCP.

inside private gated communities and was one that will typically become moot before it can be reviewed. *Id.* The Supreme Court, in its reasoning, highlighted—"[H]ere, the inspection took only one day to complete." *Id.* at 122, 804 S.E.2d at 860. Appellants' citations to *Sloan v. Greenville Cnty*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) and *Sloan v. S.C. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005), fare no better.

In regard to the public interest exception, *Croft* is again decisive. In *Croft*, the Court noted that for this exception to apply, "the issue must present a question of imperative and manifest urgency requiring the establishment of a rule for future guidance in matters of important public interest." 433 S.C. at 481, 860 S.E.2d at 356. While the Supreme Court acknowledged the importance of citizens staying informed about the activities of public bodies, it declined to apply to the public interest exception, finding no *imperative* or *manifest urgency* necessitating a ruling on the case's merits. *Id.* at 433 S.C. 481, 860 S.E.2d at 357. Given the virtually identical factual scenario in this case, the public interest exception likewise does not apply. Appellants have failed to raise any issues, novel or not, that create a question of imperative and manifest urgency that would necessitate future guidance.

Appellants spill much ink discussing the alleged "public importance" of these issues. Adopting Appellants' untenable viewpoint, every single action by every single public governmental body would constitute "public importance" and satisfy this exception to the doctrine of mootness. This is not and cannot be the law. Our courts have acknowledged this by explaining that the test is two pronged. Not only must the issue be of "public interest," but must also be an issue of "imperative and manifest urgency." Here, even if the first prong is satisfied, the second prong clearly fails. *See Sloan v. Greenville Cnty*, 380 S.C. 528, 537, 670 S.E.2d 663, 668 (Ct. App. 2009) ("Therefore, the second prong of the public interest exception was never satisfied.").

Similarly, the third exception—that a decision by the trial court may affect future events—does not apply.[6] For one, the City of Aiken recognizes its duty to comply with the law in executing redevelopment projects and fully intends to adhere to all applicable laws in future endeavors. Secondly, enjoining respondents from proceeding with Project Pascalis has no impact on future events since the City has already voluntarily ceased the Project. Likewise, a declaration that the City's actions were wrongful will not affect future events because Appellants do not contend that the City's procedures for such projects are inherently unlawful, only the City failed to adequately follow them in approving and implementing this *specific project*. This, of course, entails a fact intensive inquiry and would need to be considered by a lower court with the benefit of a record of facts applicable to the challenge of any future development projects. Therefore, a decision on the merits would not impact future redevelopment projects, as it would not alter the procedures for approving and implementing them.

In summary, no exceptions to the doctrine of mootness apply, and the Court should affirm the circuit court's decision.

III. Appellants misconstrue the applicable summary judgment standard.

Insofar as Appellants contend that they need only present a "mere scintilla" of evidence to withstand a motion for summary judgment, Appellants are mistaken as to the applicable standard

---

[6] The City addresses this issue despite it likely not being preserved for appeal and lacking substantive argument for its applicability by Appellants. Although Appellants listed this is as one of the exceptions to the mootness doctrine, they made no substantive argument regarding its applicability in their memo in opposition to summary judgment or at the summary judgment hearing. (Appellants MSJ Memo at 5; MSJ Hearing Transcript at 14). Nevertheless, Appellants, in their Initial Brief, elected to include a single, conclusory sentence asserting that the exception applies. (App. Br. at 15). *See Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993) ("an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority"); *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (same).

in South Carolina. (App. Br. at 3) (claiming a non-moving party must only submit a "mere scintilla" of evidence to survive a motion for summary judgment); (App. Br. at 11) ("Even if there was some evidence before the Court, at the summary judgment stage, a mere scintilla of evidence from the Plaintiffs should have precluded a grant of summary judgment.").

The South Carolina Supreme Court has explicitly rejected the "mere scintilla" standard. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) ("We now clarify that the 'mere scintilla' standard does not apply under Rule 56(c)"). Instead, the Supreme Court made clear that the correct standard in our State is whether there exists a "genuine issue of material fact." *Id.* As previously discussed, Appellants have failed to meet this standard. There is no genuine dispute of material fact regarding the termination of Project Pascalis, rendering the matter moot and entitling Respondents to judgment as a matter of law.

{The remainder of this page is left blank intentionally for formatting purposes.}

CONCLUSION

Based on the foregoing, the City respectfully requests the Court to affirm the circuit court's decision to grant partial summary judgment in its favor. The issues resolved by the circuit court are moot, and no exceptions to the mootness doctrine apply. Appellants' prayer for an advisory opinion should be denied.

Respectfully submitted,

SMITH | ROBINSON

*/s/ Daniel C. Plyler*____
Daniel C. Plyler, SC Bar No. 72671
Austin T. Reed, SC Bar No. 102808
3200 Devine Street
Columbia, SC 29205
Daniel.Plyler@SmithRobinsonLaw.com
Austin.Reed@SmithRobinsonLaw.com

Counsel for Respondent City of Aiken

June 21, 2024
Columbia, South Carolina