

The South Carolina Court of Appeals

Thomas & Nicole Betancourt, Jimmy & Amie
Boatwright, Norman & Kristina Whetzel, Appellants,

v.

City Of Mullins Zoning Board and Dr. Todd Blevins Of
Blevins Dentistry, Respondents.

Appellate Case No. 2024-000868

ORDER

Appellants filed a notice of appeal from the circuit court's order affirming the City of Mullins Zoning Board of Appeals' grant of a variance for the use of real property as a parking lot. On May 29, 2024, Appellants requested clarification from this court regarding whether the filing of the notice of appeal automatically stayed the circuit court's order. On May 30, 2024, this court issued an order construing Appellants' letter as a petition for a writ of supersedeas, granting a temporary stay of the circuit court's order, and remanding the matter to the circuit court for consideration of the motion for an emergency stay pending resolution of the appeal.

On July 1, 2024, the circuit court issued an order denying the petition for a writ of supersedeas. The circuit court explained the variance was granted to allow the property owner to use the property as a parking lot to serve his non-contiguous dental office. The circuit court found as a matter of law that even if the court were to impose a supersedeas, it could only be as to the non-contiguous use of the parking area and not as to the requested prohibition of the physical completion of the concrete parking pad itself. Additionally, the circuit court found completing the concrete work would not render the appeal moot because future non-contiguous use of the parking area could always be enjoined. Finally, the circuit court concluded there had been no showing of irreparable harm because future use of the parking lot could be enjoined to address any defect in the variance process.

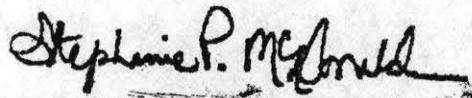
Also, on July 1, 2024, Respondents filed a return to the petition for a writ of supersedeas in this court. Respondents argued the circuit court order was not automatically stayed on appeal in light of the statutory provision explaining a decision of a local zoning board is not stayed automatically by filing an appeal to the circuit court. *See* S.C. Code Ann. § 6-29-830(B) (Supp. 2023). Respondents further argued Appellants failed to show irreparable harm from the non-contiguous use of the parking lot and that any non-contiguous use of the parking lot could be enjoined if this court were to hold there was a defect in the variance process.

On July 8, 2024, Appellants filed a reply, arguing the filing of the notice of appeal automatically stayed the circuit court's order pursuant to Rule 241(a) of the South Carolina Appellate Court Rules. Further, Appellants argued that even if the filing of the notice of appeal did not automatically stay the circuit court's order, then this court should grant a stay due to errors in the process of granting the variance and errors in the circuit court's ruling. Additionally, Appellants argued they would suffer irreparable harm if the parking lot were to be constructed due to flooding in the area.¹

After careful consideration, we find the filing of the notice of appeal did not automatically stay the circuit court's order. *See* Rule 241(a), SCACR (providing the general rule that the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order); Rule 241(b), SCACR (providing a non-exhaustive list of exceptions to the general rule); § 6-29-830(B) ("The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper."); *Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals*, 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018) (finding the issues raised in an appeal concerning the issuance of a permit to construct a non-conforming billboard were moot because the aggrieved party did not request a stay of the circuit court's order from the appellate court pending the outcome of the appeal, which allowed the non-conforming billboard to be constructed at significant cost).

¹ Appellants submitted an audio recording of an August 20, 2023 hearing. It is undisputed that this audio recording was not presented to the circuit court either during the appeal or during the hearing for the petition for writ of supersedeas. Therefore, we do not consider it for purposes of deciding this petition. However, even if we were to consider the audio recording, parts of which are spotty or cannot be heard, such would not alter our decision to deny this petition.

Further, we deny Appellants' petition for a writ of supersedeas. Here, a stay of the circuit court's order would only prevent the property from being used for parking for a non-contiguous business. A stay is not necessary in this case to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. *See* Rule 241(c)(2), SCACR ("In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.").



FOR THE COURT

Columbia, South Carolina

FILED
Sep 17 2024

cc:

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