

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2011-CP-10-2026

Jerome Myers and Gloria Myers,

Appellants,

v.

Shelly K. All, Cezar E. McKnight, Ms.
Willie O.W. McFadden-Myers and
Latonya Hobson,

Respondents.

INITIAL BRIEF OF RESPONDENT

Shelly K. All
Dennis J. Christensen, P.A.
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SC Court of Appeals

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TABLE OF AUTHORITIES

Cases

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Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) 2

Rules

Rule 208(b)(1)(B), SCACR. 2

STATEMENT OF THE CASE

This action was brought by Appellants for conversion, and on May 4, 2011, Respondent Shelly K. All and Dennis J. Christensen filed a motion to dismiss under Rule 12(b)(6), for lack of standing, and for failure to file the action within the statute of limitations. On August 22, 2011, Appellants filed a motion to amend their complaint to more clearly state their causes of action and removing certain parties as Defendants, including Respondent Shelly K. All and Dennis J. Christensen. (Motion to Amend).

After a hearing on the above motions on September 9, 2011, the Circuit Court issued an Order dated October 26, 2011, granting Appellants' motion to amend their complaint and finding that Respondent's motion to dismiss was moot, as Appellants dismissed Respondent Shelly K. All and Dennis J. Christensen from the action. (10/26/11 Order pp. 2 and 3).

On November 7, 2011, Appellants filed a motion for reconsideration and relief from error alleging the following: That the attorneys, as Defendants, were behind the closed doors with the Court; that the last sentence of the first paragraph of the order should be changed to read "the Plaintiffs as having been excluded from the contents and conversations held the closed doors meeting that the Plaintiffs were not privy to"; and that the order referred to "their incompetent father" although he was not deemed incompetent by the US Department of Veterans Affairs. (Motion for Reconsideration p. 1).

By Order dated April 24, 2012, the Circuit Court denied Appellants' motion to reconsider.

ARGUMENT

Respondent Shelly K. All was dismissed in the Circuit Court action by Order dated October 26, 2011. The statement of issues on appeal contained in Appellants' Informal Brief, pertain to actions which took place in the Circuit Court subsequent to the dismissal of Respondent All. The only issue raised in the Appellants' Brief that pertains to Respondent All is set forth in Appellants' conclusion as follows:

The Appellants pray for the Court of Appeals to correct the Stipulation reducing the original Defendants as SCRCP 40j required 'all the parties to sign for a consent order' which it being signed by only the two Appellant's and Attorney Dennis Christensen - a lawyer - does not meet the prerequisite 'all' of the SCRCP 40j. The other defendant did not sign any stipulation.

Issues not set forth in the statement of issues should not be considered on appeal. Rule 208(b)(1)(B), SCACR; *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000).

Moreover, Respondent All was dismissed in the Circuit Court because Appellants filed a motion to amend their complaint, removing Respondent All as a party to the action. The Circuit Court granted Appellants' motion to amend and found that Respondent All and Dennis J. Christensen's motion to dismiss was moot because they were no longer parties to the action. (10/26/11 Order pp. 2 and 3).

In their motion for reconsideration, the Appellants did not raise an argument under SCRCP 40(j). Because Appellants did not move the Circuit Court to address this argument under SCRCP 59(e), this Court should not now address this issue. The lower court must rule upon an issue for it to be preserved for review. *Wilder*

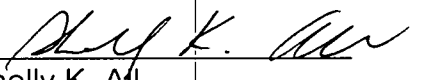
Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). Issues not raised are deemed waived on appeal. *State v. Powers*, 331 S.C. 453, 458 S.E.2d 427 (1995).

CONCLUSION

Appellants did not raise an argument in the Circuit Court under SCRCP 40(j) and failed to raise this argument in their motion for reconsideration. Thus, Appellants failed to preserve the issue that Appellants now argue to this Court.

August 21st, 2013

Respectfully submitted,



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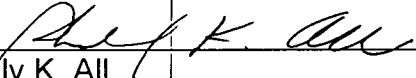
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent Shelly K. All proposes the following be included in the Record on Appeal:

1. Motion to Amend Complaint filed August 22, 2011;
2. Order Granting Plaintiffs' Motion to Amend Their Complaint and Denying Plaintiffs' Motion for Summary Judgment dated October 26, 2011;
3. Notice of Motion and Motion for Reconsideration and Relief from Error in the Court's Order filed November 7, 2011;
4. Order Denying Plaintiffs' Motion to Reconsider and/or to Vacate Order Under Rule 59(e) and 60 SCRPC dated April 24, 2012.

I certify that this Designation contains no matter which is irrelevant to this appeal.

August 21st, 2013.


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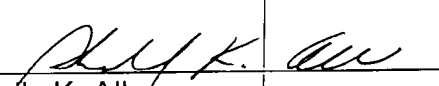
PROOF OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2013, I have served the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal by depositing a copy of said Brief and Designation of Matter in the United States Mail, postage prepaid, addressed to the parties of record, or their attorneys, as follows:

Jerome Myers and Gloria Myers
2321 Taylor Street
N. Charleston, SC 29406-6232

Cezar E. McKnight, Esq.
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Lake City, SC 29560

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