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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable David P. Caraker, Jr., Circuit Court Judge

Appellate Case No. 2025-000066

Emmanuel Stikas, Trustee of the Stikas Revocable Living Trust, dated February 1, 2023, d/b/a The Village Shops; Donald W. Reid and Katheryn W. Reid, husband and wife; Elizabeth Gattshall Hawkins Martin; and Tall House Farm, L.P.,.....Appellants,

v.

Georgetown County; David E. Tanner; RCB Land Holdings, LLC; and Magic Oaks, LLC,Respondents,

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

INITIAL BRIEF OF RESPONDENTS RCB LAND HOLDINGS, LLC AND MAGIC OAKS, LLC

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Myrtle Beach, South Carolina
April 22, 2025

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STATEMENT OF THE ISSUES ON APPEAL

- I. The stricken allegations were not essential elements of Appellants' cause of action and the Circuit Court did not dismiss Appellants' cause of action or preclude Appellants from arguing their claims. Appellants' Amended Complaint retains all of the same causes of action as the initial Complaint.
- II. The Circuit Court correctly considered and applied Rule 12(f), SCRPC to strike moot, immaterial, and impertinent allegations from Appellants' Complaint.
- III. The Circuit Court's scope of inquiry was proper, and the Circuit Court correctly struck Appellants' irrelevant allegations.

RENEWAL OF MOTION TO DISMISS APPELLANTS' APPEAL

As an initial matter, Respondents Magic Oaks, LLC ("Magic Oaks") and RCB Land Holdings, LLC ("RCB") renew their Motion to Dismiss Appellants' appeal as interlocutory and not immediately appealable. On February 18, 2025, Respondents filed a Motion to Dismiss Appeal and Memorandum in Support.¹ Appellants filed a Return to the Motion to Dismiss on March 14, 2025. Respondents filed a Reply to Appellants' Return on March 18, 2025.² On March 25, 2025, this Court issued an Order denying the Motion to Dismiss without prejudice to the parties arguing their respective positions in their briefs.³ Therefore, Respondents incorporate herein by reference their Motion to Dismiss Appeal and Memorandum in Support as well as their Reply to Appellants' Return and renew their request that the Court dismiss this appeal.

STATEMENT OF THE CASE

Appellants brought this action on June 18, 2024 challenging the rezoning of property owned by Magic Oaks.⁴ Appellants' lawsuit challenges validly passed ordinances of Georgetown County, however it is not in the form of or claiming to be an appeal. Appellants' action does not

¹ Respondents' Motion to Dismiss Appeal and Memorandum in Support. Designation No. 1.

² Respondents' Reply to Appellants' Return. Designation No. 3.

³ Order of the South Carolina Court of Appeals Denying Motion to Dismiss Without Prejudice Filed March 25, 2025. Designation No. 4.

⁴ Appellants' Summons and Complaint. Designation No. 5.

allege any bad acts on behalf of Magic Oaks or RCB, but it does have the effect of blocking Magic Oaks from developing its own property. Magic Oaks and RCB filed an Answer, Counterclaims, and Third Party Complaint⁵ along with a Motion to Strike⁶ on August 23, 2024. The Motion to Strike requested the Court strike certain allegations of Appellants' Complaint regarding a proposed public kayak launch on Magic Oaks' development plans. The Motion was based upon the fact that the contingency upon which the kayak launch was dependent did not occur, thus there will be no public kayak launch, and Appellants' allegations are now moot, immaterial, and impertinent. On September 16, 2024, Appellants filed a Memorandum in Opposition to Respondents' Motion to Strike. Also, on September 16, 2024, Magic Oaks and RCB filed an Affidavit in support of their Motion.⁷ On September 18, 2024, Respondent Georgetown County filed a Notice to Join Magic Oaks and RCB's Motion to Strike.⁸

The Honorable David P. Caraker, Jr. presided over the hearing on Respondents' Motion to Strike on September 19, 2024. On October 15, 2024, Judge Caraker signed an Order granting Respondents' Motion to Strike and Ordering Appellants to file an Amended Complaint in compliance with the Court's Order within fifteen (15) days of the issuance of the Order.⁹

On October 25, 2024, Appellants filed a Motion for Reconsideration of the Court's Order Granting the Motion to Strike. On November 6, 2024, Magic Oaks and RCB filed a Memorandum in Opposition to Appellants' Motion for Reconsideration.¹⁰

⁵ Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint. Designation No. 6.

⁶ Magic Oaks and RCB's Motion to Strike. Designation No. 7.

⁷ Affidavit of Tripp Nealy. Designation No. 9.

⁸ Georgetown County's Notice to Join RCB's and Magic Oaks' Motion to Strike. Designation No. 10.

⁹ Order of the Circuit Court Granting Motion to Strike Filed October 15, 2024. Designation No. 12.

¹⁰ Magic Oaks and RCB's Memorandum in Opposition to Appellants' Motion for Reconsideration. Designation No. 14.

On November 15, 2024, Appellants filed an Amended Summons and Complaint.¹¹ Contrary to Appellants' contention that the Circuit Court's Order operated as a Motion to Dismiss Appellants' causes of action, **the Amended Complaint retains the exact same five causes of action as Appellants' original Complaint.** Magic Oaks and RCB filed an Answer, Counterclaims, and Third Party Complaint in response to Appellants' Amended Complaint on November 26, 2024.¹²

On December 27, 2024, Judge Caraker signed an Order denying Appellants' Motion for Reconsideration.¹³ Appellants then filed this appeal on January 10, 2025.

STATEMENT OF FACTS

This case is one in a series of lawsuits attempting to block residential development in Georgetown County. Plaintiffs are represented in this action by Keep It Green Advocacy, Inc. ("KIGA"), in-house counsel for Keep It Green, Inc. ("KIG"), a public interest group that opposes land use and zoning changes that increase residential density in Georgetown County. KIG has opposed many residential projects in Georgetown County upon virtually identical assertions as are raised in this matter. In fact, in the past three years, KIG has brought three other Georgetown County lawsuits as a named Plaintiff to stop residential development. Each of those actions have been summarily dismissed pursuant to Court Orders Granting Defendants' Motions to Dismiss.¹⁴ The gist of all of these lawsuits is the false and incorrect assertion that residential development in Georgetown County is incompatible with the Georgetown County Comprehensive Plan. This lawsuit is no different. Appellants bring the same claims that the Comprehensive Plan cannot be

¹¹ Appellants' Amended Summons and Complaint. Designation No. 15.

¹² Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint in response to Appellants' Amended Complaint. Designation No. 16.

¹³ Order of the Circuit Court Denying Appellants' Motion for Reconsideration. Designation No. 17.

¹⁴ The KIG lawsuits which have been dismissed include C/A Nos. 2022-CP-22-00912; 2023-CP-22-000007; and 2023-CP-22-00210.

amended. However, due to the fact that all of the other actions have failed, Appellants have thrown in additional claims in this lawsuit regarding allegations of changes to the development plan. This is the only difference from the prior lawsuits and the reason that Appellants cling so strongly to these claims.

The property at issue in this case is planned to be a residential neighborhood consisting of only 27 single family lots. Despite the fact that Magic Oaks has gone through the proper local, state, and federal administrative channels and procedures to secure the necessary approvals to build this neighborhood, Appellants and Third Party Defendant seek to use this action as a vehicle to hinder and delay this residential development, as they have attempted to do with numerous other developments in Georgetown County.

As set forth above, this appeal deals with a contingent public kayak launch that is no longer part of the property development plan. The development plan was submitted to Georgetown County and reviewed and recommended by Planning Commission with a private kayak launch.¹⁵ During County review, a member of County Council proposed a minor change which would make the kayak launch public, contingent upon access through the adjoining landowner's property.¹⁶ Incredibly, Appellants falsely claim the contingency is not a part of the record even though the contingency is clearly set forth on the development plan which is part of Georgetown County Ordinance No. 24-06 and **attached as an Exhibit to Appellants' Complaint**.¹⁷ The development plan was voted on and approved by Council with the contingency.¹⁸ If the contingency failed, the plan would revert back to the initially submitted plan reviewed and approved by Planning

¹⁵ Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint p. 17, par. 124 of Designation No. 6; Affidavit of Tripp Nealy p. 1, par. 6 of Designation No. 9.

¹⁶ Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint p. 17, par. 124 of Designation No. 6; Affidavit of Tripp Nealy p. 1, par. 6-7 of Designation No. 9.

¹⁷ Appellants' Summons and Complaint Ex. 2 of Designation No. 5.

¹⁸ Appellants' Summons and Complaint p. 2, par. 6 & Ex. 2 of Designation No. 5.

Commission. The contingency failed when the adjoining landowner denied access through his property and the plan reverted to exclude the public kayak launch.¹⁹

Thus, the public kayak launch is no longer part of the development plan and Appellants' allegations regarding the public kayak launch are moot and immaterial.

STANDARD OF REVIEW

The Motion at issue was a Motion to Strike pursuant to Rule 12(f), SCRCF. The Motion did not challenge any theory of recovery and did not operate as a Motion to Dismiss as argued by Appellants. The Circuit Court's Order struck four allegations of Appellants' Complaint and did not dismiss any of Appellants' causes of action. Any representation by Appellants that the Court's Order operated as a Motion to Dismiss is completely false. Appellants' Amended Complaint, filed after the Circuit Court issued its Order, sets forth the exact same causes of action as its initial Complaint. Therefore, the proper standard of review is Rule 12(f), SCRCF, not Rule 12(b)(6), SCRCF. Furthermore, Appellants' reference to de novo review is misplaced and inapplicable.

Rule 12(f) allows the court to strike from any pleading redundant, **immaterial**, **impertinent** or scandalous matter. Rule 12(f), SCRCF (emphasis added). "It is well settled that a motion to strike is addressed to the sound discretion of the trial court." Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979) (citing Funderburke v. Johnson, 253 S.C. 430, 171 S.E.2d 597 (1969); J. M. S., Inc. v. Theo, 241 S.C. 394, 128 S.E.2d 697 (1962)). "The trial court's decision will not be reversed absent an abuse of discretion." Id. (citing Ellen v. King, 227 S.C. 481, 88 S.E.2d 598 (1955); Rimer v. State Farm Mutual Automobile Insurance Co., 248 S.C. 18, 148 S.E.2d 742 (1966)). A trial court abuses its discretion when it commits an error of law, makes a

¹⁹ Magic Oaks and RCB's Answer, Counterclaims and Third Party Complaint p. 10, paras. 75-76 of Designation No. 6; Affidavit of Tripp Nealy p. 2, paras. 8-9 & Ex. B of Designation No. 9.

factual finding that lacks evidentiary support, or fails to exercise any of its vested discretion. Flowers v. Giep, 436 S.C. 281, 871 S.E.2d 604 (Ct. App. 2021) (citing State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006)).

ARGUMENT

I. The stricken allegations were not essential elements of Appellants' cause of action and the Circuit Court did not dismiss Appellants' cause of action or preclude Appellants from arguing their claims. Appellants' Amended Complaint retains all of the same causes of action as the initial Complaint.

The Circuit Court's Order struck allegations of Appellants' Complaint regarding a kayak launch that is no longer part of the development plan. Efforts to frame the Circuit Court's Order as dismissing Appellants' causes of action are simply not true. If they were, Appellants would not have pled the exact same causes of action in their initial Complaint and Amended Complaint.

Appellants' Original Complaint included allegations regarding a public kayak launch as if it already existed. It did not. The development plan included a contingent kayak launch dependent upon access.²⁰ If the contingency failed, the development plan would revert to the initial plan recommended by Planning Commission. County Council voted upon and approved this plan.²¹ When the contingency failed, the development plan reverted back to the initial plan. The Circuit Court's Order removed reference to the contingent kayak launch that is not and will not be part of the property.

Appellants' argument that the Order effectively dismisses their cause of action regarding the alleged ultra vires nature of the ordinance approval is a misrepresentation of Plaintiffs' cause of action. Plaintiffs' first cause of action seeks declaratory judgment that Georgetown County

²⁰ Appellants' Summons and Complaint Ex. 2 of Designation No. 5.

²¹ Appellants' Summons and Complaint p. 2, par. 6 & Ex. 2 of Designation No. 5.

Council did not have the authority to amend the ordinances at issue because the pre-existing zoning was allegedly void as ultra vires.²² This has nothing to do with the public kayak launch.

Furthermore, Appellants' other declaratory judgment actions deal with claims of violations of the Enabling Act and Georgetown County Ordinances.²³ These actions are not dependent on the public kayak launch, but rather focus on issues with compatibility of the rezoning with the comprehensive plan and promoting the purposes of the Enabling Act such as public health and public welfare.²⁴ The striking of Appellants' allegations regarding the public kayak launch do not dismiss Appellants' causes of action.

Appellants' Brief cites several paragraphs of their Original Complaint they deem critical to a cause of action they incorrectly claim was dismissed. These include Paragraphs 2, 7(c), 52-55, 59, and 75-76. The Court's Order struck allegations related to the public kayak launch in only two of those paragraphs: 7(c) and 52. The remainder of these allegations were left untouched. In Paragraphs 7(c) and 52 of the Amended Complaint, Appellants still set forth allegations regarding the South Carolina Enabling Act and a development plan they incorrectly assert was improperly submitted to County Council for approval.²⁵ The only difference in these paragraphs from the Original Complaint to the Amended Complaint is that reference to the non-existent public kayak launch no longer appears.²⁶ The arguments Appellants claim are critical to their causes of action are still included in the Amended Complaint even after the Circuit Court's Order. Based on Appellants' Amended Complaint, reference to the public kayak launch is immaterial and impertinent to these allegations.

²² Appellants' Summons and Complaint p. 21-22, paras. 73-74 of Designation No. 5.

²³ Appellants' Summons and Complaint p. 22-23, paras. 75-80 of Designation No. 5.

²⁴ Id.

²⁵ Appellants' Amended Summons and Complaint p. 4, par. 7(c); p. 16, par. 52 of Designation No. 15.

²⁶ Appellants' Summons and Complaint p. 4, par. 7(c); p. 16, par. 52 of Designation No. 5; Appellants' Amended Summons and Complaint p. 4, par. 7(c); p. 16, par. 52 of Designation No. 15.

In fact, Appellants' Amended Complaint retains all of the same causes of action as the initial Complaint. Even though reference to the public kayak launch has been removed, all of Appellants' causes of action remain. Not one cause of action has been dismissed. Appellants are still pursuing the same causes of action under the same allegations.

Paragraphs 73 – 83 of Appellants' Original Complaint set forth five causes of action: I. Declaratory Judgment: Pre-existing Zoning was Void as Ultra Vires; II. Declaratory Judgment: Violations of the South Carolina Enabling Act; III. Declaratory Judgment: Violations of Georgetown County Ordinances and Procedure; IV. Declaratory Judgment: Adjoining Landowners; and V. Attorneys Fees from Georgetown County.²⁷ Paragraphs 73 – 83 of Appellants' Amended Complaint, filed after the Order to Strike, set forth the exact same causes of action.²⁸ Contrary to Appellants' assertions, the public kayak launch does not form the basis of any of their causes of action.

II. The Circuit Court correctly considered and applied Rule 12(f), SCRPC to strike moot, immaterial, and impertinent allegations from Appellants' Complaint.

Rule 12(f) allows the court to strike any immaterial or impertinent matter. Rule 12(f), SCRPC. The Circuit Court correctly found Appellants' allegations regarding the public kayak launch moot and immaterial because the contingency upon which the public kayak launch was dependent did not occur. Appellants seek to belabor this non-issue and use judicial time and resources to litigate a public kayak launch that does not, cannot, and will not exist. Rule 12(f) provides the Court the ability to handle this exact situation. "Rule 12(f) empowers courts to strike immaterial matter to promote judicial efficiency and avoid needless expenditure of time and money." Cnty. of Dorchester, S.C. v. AT & T Corp., 407 F. Supp. 3d 561 (D.S.C. 2019)

²⁷ Appellants' Summons and Complaint p. 21-23, paras. 73-83 of Designation No. 5.

²⁸ Appellants' Amended Summons and Complaint p. 21-23, paras. 73-83 of Designation No. 15.

(citing Gibson v. Confie Ins. Grp. Holdings, Inc., No. 2:16-cv-02872-DCN, 2017 WL 2936219, at *12 (D.S.C. July 10, 2017)). Here, the Circuit Court properly exercised its power under Rule 12(f) to strike Appellants' immaterial and impertinent allegations to promote judicial efficiency and avoid needless expenditure of time and money over a matter that does not exist.

Appellants' Complaint alleged that Appellants will suffer injuries due to a public kayak launch that was proposed for Magic Oaks' residential development by a County Council member. However, the inclusion of the public kayak launch was contingent upon access through adjoining property.²⁹ Appellants' contention that this contingency is not a matter of record is a complete misrepresentation of fact. The contingency was clearly identified in the development plan which is part of Georgetown County Ordinance No. 24-06 and even attached as an Exhibit to Appellants' Complaint.³⁰ Appellants ignored this and brought their claims prematurely. The necessary access through adjoining property was not provided.³¹ Thus, the contingency upon which the public kayak launch was dependent did not occur.³² The public kayak launch is not part of the plan and the injuries and issues Appellants complain of do not exist. As such, Appellants' allegations regarding the public kayak launch and the alleged failure to resubmit the amended plan to Planning Commission are moot, immaterial, and impertinent, and the Circuit Court properly ordered these allegations stricken from the Complaint.

²⁹ Magic Oaks and RCB's Answer, Counterclaims, and Third Party Complaint p. 17, par. 124 of Designation No. 6; Affidavit of Tripp Nealy p. 1, par. 6-7 of Designation No. 9.

³⁰ Appellants' Summons and Complaint Ex. 2 of Designation No. 5.

³¹ Magic Oaks and RCB's Answer, Counterclaims and Third Party Complaint p. 10, paras. 75-76 of Designation No. 6; Affidavit of Tripp Nealy p. 2, paras. 8-9 & Ex. B of Designation No. 9.

³² Id.

III. The Circuit Court's scope of inquiry was proper, and the Circuit Court correctly struck Appellants' irrelevant allegations.

Appellants argue that the Circuit Court does not have the right to consider evidence that would answer the question of why allegations are immaterial or impertinent. Appellants argue the Circuit Court cannot consider the facts set forth in the record. Despite Appellants' questioning of the Circuit Court's understanding of the applicable law, the Circuit Court properly considered the evidence before the Court and correctly applied the law to strike Appellants' irrelevant allegations.

If a motion to strike raises merely a doubtful question or the issue is such that justice may be promoted by trial on the merits, the court should exercise a fair, judicial discretion to that end. Mayes v. Paxton, 313 S.C. 109, 115, 437 S.E.2d 66, 69 (1993) (citing Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 138, 153 S.E.2d 184, 188 (1967)). However, this rule is followed only in instances where there is either real cause for doubt, or it is clear that the ends of justice may well be promoted by a trial of the issue on the merits. Id. In Mayes v. Paxton, the Supreme Court affirmed the trial court's striking of certain defenses because the facts regarding the defenses were clear and undisputed. Id. The Court held that further development of these matters was not necessary to determine the sufficiency of the defenses. Id. Similarly, in the case at hand, it is clear and undisputed that the public kayak launch is no longer part of the property development plan.³³ Appellants argue that there exists some sort of dispute regarding the public kayak launch and the contingency upon which it was dependent. Appellants are wrong. There can be no dispute. The contingency upon which the kayak launch was dependent is clearly set forth on the development plan for the property. Appellants' assertion that the contingency is not a matter of record is false. The contingency on the development plan is part of Georgetown County Ordinance

³³ Id.

No. 24-06 and even included as an Exhibit to Appellants' Complaint.³⁴ The fact that the contingency did not occur is clearly set forth in Respondents' Answer and the Affidavit of the owner of the property.³⁵ Further development of facts regarding the public kayak launch is unnecessary. The contingency upon which the public kayak launch was dependent did not occur and thus there cannot and will not be a public kayak launch. The issue is clear and there are no disputed facts. The Circuit Court properly considered the evidence and struck these allegations.

Furthermore, Appellants claim that their allegations regarding the public kayak launch should not have been stricken because they are relevant to their declaratory judgment cause of action. They are not. A declaratory judgment action must show the existence of a justiciable controversy defined as a real and substantial controversy appropriate for judicial determination. Carolina All. for Fair Emp. v. S.C. Dep't of Lab., Licensing, & Regul., 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999) (internal citations omitted) (emphasis added). Plaintiffs allege that the public kayak launch raises various issues that directly impact neighboring landowners and the public and even allege that Plaintiffs will be injured due to the public kayak launch and public access on adjoining property.³⁶ None of these issues can come to fruition and are irrelevant since there will be no public kayak launch.

The public kayak launch will not be put on the property, thus no real and substantial controversy exists regarding the public kayak launch. Allegations regarding the public kayak launch are irrelevant to an action for declaratory judgment.

³⁴ Appellants' Summons and Complaint Ex. 2 of Designation No. 5.

³⁵ Magic Oaks and RCB's Answer, Counterclaims and Third Party Complaint p. 10, paras. 75-76 of Designation No. 6; Affidavit of Tripp Nealy p. 2, paras. 8-9 & Ex. B of Designation No. 9.

³⁶ Appellants' Summons and Complaint p. 4, par. 7(c); p. 16, par. 52; p. 17, par. 56 of Designation No. 5.

CONCLUSION

Based on the foregoing, the Circuit Court Order granting Respondents' Motion to Strike should be affirmed.

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