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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

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

Civil Action No. 2024-CP-22-00576
Appellate Case No. 2025-000066

Emanuel 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; ad Magic Oaks, LLC, Respondents,

AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

FINAL BRIEF OF RESPONDENT GEORGETOWN COUNTY

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STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court correctly consider and apply Rule 12(f), SCRPC to strike moot and immaterial allegations from the Appellants' Complaint?
 - a. Were the matters stricken by the circuit court causes of action alleged in Appellants' Complaint?
 - b. Did the circuit court abuse its discretion by finding the allegations regarding the public kayak launch were moot and immaterial and striking the same from Appellants' Complaint pursuant to Rule 12(f), SCRPC?

STATEMENT OF THE CASE AND FACTS¹

Appellants initiated this action against Respondents Georgetown County ("Respondent" or "Georgetown County"), Magic Oaks, LLC, ("Respondent Magic Oaks" or "Magic Oaks"), and RCB Land Holdings, LLC ("Respondent RCB" or "RCB") on June 18, 2024. (R. pp. 14, 36; Compl. 2, 24). Appellants sought declaratory judgment on multiple alleged causes of action relating to Georgetown County Council's ("County Council") approval of a rezoning application submitted by Respondent Magic Oaks and Respondence RCB for property in Georgetown County, South Carolina. (R. pp. 14, 33–35; Compl. ¶¶ 1, 74–80).

The subject property in this matter was approved to be rezoned as a flexible design district to allow for a planned residential development. Georgetown County Council approved the rezoning application on April 23, 2024. (R. p. 14; Compl. ¶ 2). Part of the plans for the development included a kayak launch. (R. pp. 41, 56; Compl. Ex. 2, 4). During the review process before County Council, it was proposed that the private kayak launch planned for could potentially benefit the surrounding community by being a public kayak launch. (R. p. 112; Neely Aff. ¶ 6). For the public kayak launch to function, however, it would require access through an adjoining landowner's property. For this reason, County Council incorporated a minor change in the development plans

¹ Respondent Georgetown County combines the statement of the case and the statement of facts to eliminate repetition due to considerable overlap between the procedural history and the facts pled in this case.

to include a public kayak launch, contingent upon permission from the adjoining landowner, and approved the rezoning application. (R. pp. 41, 56–62; Compl. Ex. 2, 4).

Appellants', taking issue with the rezoning, filed their Complaint, purporting to allege four causes of action for declaratory judgment. (R. pp. 33–35; Compl. ¶¶ 74–80). These causes of action include and are described in Appellants' Complaint as follows: (1) Appellants request that the court declare that the pre-existing zoning of the subject property was *ultra vires* because it conflicted with the South Carolina Comprehensive Planning Enabling Act (the "Planning Act"), S.C. Code Ann. § 6-29-310, *et seq.*, and Georgetown County Council did not have authority to amend those pre-existing ordinances through Ordinances 24-05 and 24-06; (2) Appellants ask the court to declare that Georgetown County Council's approval of Ordinance 24-05 and Ordinance 24-06 constituted a violation of the Planning Act as alleged in paragraphs 31 through 33 of Appellants' Complaint; (3) Appellants request that the court declare Georgetown County Council's approval of Ordinances 24-05 and 24-06 violated Georgetown County Ordinances and procedures and that they are therefore null and void as alleged in paragraphs 34 through 43 of Appellants' Complaint; and (4) Appellants request that the court declare the approval of Ordinances 24-05 and 24-06 result in adjoining landowners being in violation of other local ordinances as alleged in paragraphs 7(f) and 65(a) of Appellants' Complaint. (R. pp. 17–18, 23–26, 31, 33–35; Compl. ¶¶ 7(f), 31–43, 65(a), 74–80).

In response to the Complaint, Respondent Georgetown County filed its Answer on August 21, 2024. (R. p. 254). Respondents RCB Land Holdings and Magic Oaks filed an Answer, Counterclaims, and Third Party Complaint, along with a Motion to Strike certain allegations of the Complaint on August 23, 2024. (R. p. 254). The Motion to Strike sought only to strike allegations relating to the public kayak launch on the development plans as the adjoining landowner had refused to grant the access necessary to allow for the public launch. (R. pp. 108–09; Defs.' Mot.

Strike). It was asserted that these allegations relating to a public launch were no longer relevant and were now moot and immaterial because the failed contingency would cause the plans to utilize the private kayak launch as originally planned instead. (R. pp. 108–09; Defs.’ Mot. Strike). Respondent Tanner also filed an Answer and counterclaims on September 12, 2024. (R. p. 254).

Appellants filed a Memorandum in Opposition to Respondents’ Motion to Strike on September 16, 2024. (R. pp. 116–21). That same day, Magic Oaks and RCB filed an Affidavit in support of their Motion. On September 18, 2024, Respondent Georgetown County filed a Notice to Join Magic Oaks and RCB’s Motion to Strike. (R. pp. 114–15).

A hearing on the Motion to Strike was held before the Honorable David P. Caraker, Jr. on September 19, 2024. (R. p. 5; Order 1). On October 15, 2024, the Court issued an Order granting the Motion to Strike and directing Appellant to file an Amended Complaint pursuant to the Order within fifteen (15) days of the Order’s issuance. (R. p. 7; Order 3). Appellants thereafter filed a Motion for Reconsideration of the Court’s Order on October 25, 2024. (R. pp. 122–26). Magic Oaks and RCB filed a Memorandum in Opposition to Appellants’ Motion for Reconsideration on November 6, 2024. (R. pp. 127–30).

An Amended Complaint was filed by Appellants on November 15, 2024, in which they alleged the same four causes of action for declaratory judgment in addition to their alleged cause of action for attorneys’ fees as previously pled in their Complaint. (R. pp. 152–54). On December 27, 2024, Judge Caraker denied Appellants’ Motion for Reconsideration. Appellants then filed this appeal on January 5, 2025 (R. pp. 9–11).

STANDARD OF REVIEW

Upon the motion of a party, the “court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” Rule 12(f), SCRPC. A trial court’s decision to grant a motion to strike “will not be reversed absent an abuse of discretion.”

Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1970). “It is well settled that a motion to strike is addressed to the sound discretion of the trial court.” *Id.* A trial court abuses its discretion when it commits an error of law, when its ruling is based upon factual conclusions made without evidentiary support, or when the trial court is vested with discretion but fails to exercise that discretion in its ruling. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

ARGUMENT

The circuit court correctly found that allegations in the Complaint relating to the public kayak launch were moot and immaterial and that Respondents’ Motion to Strike could be granted to strike such allegations from the Complaint pursuant to Rule 12(f), SCRPC. Therefore, this Court should affirm the decision of the circuit court to grant the Motion to Strike.

I. THE CIRCUIT COURT CORRECTLY CONSIDERED AND APPLIED RULE 12(f), SCRPC, TO STRIKE MOOT AND IMMATERIAL ALLEGATIONS FROM THE APPELLANTS' COMPLAINT.

Rule 12(f) permits a court to strike matters that are immaterial or otherwise irrelevant or moot. Rule 12(f), SCRPC. When deciding a motion to strike under Rule 12(f), SCRPC, the trial court “decides whether a party should be allowed to plead a defense or other matter, not whether there are facts supporting what has been pleaded.” *Robinson v Code*, 384 S.C. 582, 587, 682 S.E.2d 495, 497 (Ct. App. 2009). A motion to strike is therefore distinguishable from a motion to dismiss where a court would examine whether sufficient facts have been pled to entitle the plaintiff to the relief they seek. As such, an abuse of discretion in the context of a motion to strike would not occur where the court merely strikes factual allegations from a pleading because they are deemed moot and therefore not relevant to determining the merits of the case or the sufficiency of the pleading under the particular theory of relief.

- (a) The matters stricken by the circuit court were not causes of action alleged by Appellants in their Complaint.**

Appellants make the argument that the matters stricken from the Complaint are “essential elements” or “substantially relevant” to their causes of action and therefore the circuit court’s ruling resulted in a cause of action being stricken from the Complaint. Apps.’ Br. 16–18. This argument is based upon an incorrect application of the law and is meritless.

Appellants’ arguments, and essentially the entirety of their appeal, rely upon their assertion that the allegations struck from the Complaint amount to “theories of recovery” such that the Motion to Strike would rather be in the nature of a motion under Rule 12(b)(6), SCRCP. The “theory of recovery” in a complaint is the cause of action set forth in that complaint. *See Robinson*, at 585–87, 682 S.E.2d at 496–97. As Respondents RCB and Magic Oaks have explained at length in their brief, as well as their motion to dismiss this appeal, Appellants’ causes of action remain untouched by the circuit court’s striking of certain allegations from the Complaint. The circuit court’s order struck allegations arising from or affected by the public kayak launch in paragraphs 7(c), 7(d), 52, and 56 of the Complaint. (R. p. 7; Order 3). Three of Appellants’ declaratory judgment actions are expressly tied to the allegations contained in paragraphs 7(f), 31–43, and 65(a). (R. pp. 34–35; Compl. ¶¶ 76–80). None of those allegations pled as the basis upon which Appellants’ theories of recovery rest were stricken. For this reason, Appellants then turn to their only other cause of action for declaratory judgment and argue that the allegations stricken are essential to their *ultra vires* claim. Apps.’ Br. 17.

As an initial matter here, Appellants misapprehend what exactly the circuit court determined was moot in its Order. Appellants argue that the Order essentially made a determination as to whether a cause of action was rendered moot. Apps.’ Br. 17–18. Yet the circuit court made no determination as to whether a cause of action was moot. Rather it found that allegations relating to whether there would be a public or private kayak launch in the development plans that were part of a rezoning application were no longer an issue because the adjoining landowner had denied access for the public

kayak launch to exist. These allegations are neither related to nor supportive of Appellants' *ultra vires* claim. It is alleged in the Complaint, as the theory of relief for declaratory judgment, that the ordinances at issue in this case, Ordinances 24-05 and 24-06, are not valid because the "pre-existing zoning [] was void as ultra vires because it conflicted with the [Planning Act]" and "Georgetown County Council did not have authority to amend ordinances that were void and invalid as *ultra vires*." (R. pp. 33–34; Compl. ¶ 74) (emphasis added). The alleged facts involving a contingent amendment to the underlying development plans of a later occurring rezoning application have no bearing on whether pre-existing zoning ordinances were void as *ultra vires*. Appellants' assertion that the allegations stricken from the Complaint have anything to do with Appellants' *ultra vires* claim is completely meritless.

Furthermore, the case law cited by Appellants purportedly in support of their position on this matter are not directly on point with the situation here as claimed by the Appellants, and, in fact, support Respondents' position in this appeal. *Alladin Plastics, Inc. v. Wintenna, Inc.*, involved a motion to strike two defenses and dismiss a counterclaim brought in the defendant's responsive pleading. 301 S.C. 90, 91, 390 S.E.2d 370, 371 (Ct. App. 1990). The circuit court had granted the motion to strike but the Court of Appeals of South Carolina found that the circuit court's ruling "effectively precluded [defendant] from presenting any evidence proving the defense" where the defenses themselves had been stricken. *Id.* at 93 390 S.E.d at 372. That is not what has occurred here and the facts and holding are starkly distinguishable from this case.

The issue examined by the circuit court in this case did not involve the sufficiency of a defense but rather involved the second part of Rule 12(f) that involves matters that are "redundant, immaterial, impertinent or scandalous." Rule 12(f), SCRPC. The circuit court found that an alleged factual matter that has become moot and is not itself pled as a theory of recovery, is immaterial to the case and should be disposed of. (R. pp. 6–7; Order 2–3). This is in keeping with one of the key

purposes for which Rule 12(f) exists, as it has been opined by the federal courts relating to the federal counterpart Rule 12(f), FRCP. *See County of Dorchester, S.C. v. AT&T Corp.*, 407 F.Supp.3d 561, 565 (D.S.C. 2019) (finding that Rule 12(f) empowers courts to strike immaterial matters to promote judicial efficiency and avoid needless expenditure of time and money). Allowing an allegation that is moot to proceed when the claims for recovery are not dependent upon it would be an entirely inefficient use of judicial resources and the resources of the parties involved.

Williams v. South Carolina Nat'l Bank, cited by the Appellants, also involved the sufficiency of affirmative defenses pled as well as a redundant matter, neither of which scenarios are involved here. 284 S.C. 346, 347–48, 326 S.E.2d 187, 188 (1985). The Court's findings in the *Williams* case as to how the circuit court applied Rule 12(f) are not comparable to the underlying motion in this case. Again, the circuit court in this matter struck moot factual allegations that are not in themselves theories of recovery and the result of those allegations being struck from the Complaint do not preclude Appellants from pursuing any of its causes of action as pled in the Complaint.

For all these reasons, the standard of review to be applied in this case is whether the circuit court abused its discretion in granting the Motion to Strike. Any and all of Appellants' arguments that a *de novo* review should be applied are not supported by the record and are based upon incorrect and unfounded interpretations and applications of the law. No causes of action have been stricken from the Complaint and Appellants are not precluded from pursuing their theories of recovery by the circuit court's Order.

(b) The circuit court did not abuse its discretion by finding the allegations regarding the public kayak launch were moot and immaterial.

All of Appellants' arguments whether the circuit court exceeded its authority are based and reliant upon Appellants' assertions that the allegations stricken relate to the merits of their claims and effectively dismisses a cause of action. As has been extensively explained above, the matters

stricken do not result in any dismissal of any of Appellants' causes of action. Appellants' causes of action in this case, as they are pled in the Complaint, are not precluded or barred by the striking of the alleged facts involving the kayak launch. The issue of the kayak launch ultimately involves a minor change in a development plan that was dependent upon a rezoning application being granted. Appellants' causes of action, as expressly pled in the Complaint, are based upon other facts and theories of law, and the striking of the allegations relating to the kayak launch does not preclude those causes of action from being pursued in the Amended Complaint.

Appellants fail to point to how exactly the circuit court's Order constitutes an abuse of discretion. They instead rely on this Court finding that the Motion to Strike was effectively a motion to dismiss. There is no basis for that reliance and the abuse of discretion standard should therefore be applied in this case. Appellants have not articulated what error of law the circuit court purportedly has committed, let alone shown how that type of error occurred in the circuit court's Order. Nor have Appellants provided explanations or other information to show the circuit court made factual findings without sufficient evidentiary support, or that the circuit court failed in some way to exercise a form of vested discretion. Therefore, this appeal does not present a cognizable theory as to how the circuit court abused its discretion in granting the Motion to Strike. A circuit court's decision cannot be disturbed for some unarticulated abuse of discretion. Such a finding would undercut the purpose of having such a standard of review. The circuit court's Order should therefore be affirmed.

CONCLUSION

Therefore, for the reasons set forth herein, this Court should affirm the Order of the circuit court granting RCB and Magic Oaks' Motion to Strike which was joined by Georgetown County.

(signature page follows)

RESPECTFULLY SUBMITTED,

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AND

Magic Oaks, LLC, Third Party Plaintiff,

v.

Keep It Green, Inc., Third Party Defendant.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that this brief complies with the provisions of Rule 211(b), SCACR.

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v.

Keep It Green, Inc.,

..... Third Party Defendant.

PROOF OF SERVICE

I, the undersigned paralegal for the law offices of Smith Robinson Holler DuBose & Morgan, LLC, do hereby certify that I have served all parties in this action with a copy of

Respondent Georgetown County's Final Brief and Certificate of Counsel by emailing a copy of these documents to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262(c)(3), SCACR and section (d)(1) of the Supreme Court of South Carolina's April 24, 2024 Amended Order.

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Attachments: Final Brief of Respondent Georgetown County.pdf; Certificate of Counsel - Respondent GC.pdf; Proof of Service - GC RFB CC.pdf

Good morning,

Please see the attached Final Brief, Certificate of Counsel, and Proof of Service of Respondent Georgetown County which will be filed with the Court of Appeals this morning.

Thank you,
Sherry



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