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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Civil Action No. 20-CP-46-01803
Appellate Case No. 2025-000032

Bobby Blakney Respondent,

v.

City of Rock Hill Petitioner,

RETURN TO THE PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

By: s/ Tyler A. Bathrick
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A

QUESTIONS PRESENTED¹

I. A Rule 59(e) motion is procedurally improper and will not stay the deadline for appeal when it is inappropriately successive of the previously filed, written post-trial motion. Respondent filed written post-trial motions, which were denied in their entirety. A Rule 59(e) motion followed, briefly summarizing the various post-trial motions and requesting the trial court to provide its reasoning and legal analysis for the denial. Did summarizing and requesting the reasoning and legal analysis render the Rule 59(e) motion appropriately successive?

STATEMENT OF THE CASE

¹ Rule 242(d)(2), SCACR, provides, “[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.” Consequently, under Rule 242(f), SCACR, Respondent restates the only question presented for review based on the three arguments Petitioner outlined in its Petition for Rehearing in the Court of Appeals (and which Petitioner earlier raised in opposition to Respondent’s Motion to Dismiss).

On February 29, 2024, a jury returned a verdict for Respondent. Five days later, Petitioner filed written post-trial motions for a JNOV, new trial absolute, new trial, and nisi remittitur. (See Appendix. January 17, 2025 Motion to Dismiss pages 6-31). The motions also specifically asked for the verdict to be reduced in a manner contrary to law and precedent. Respondent opposed the motions.

On March 21, 2024, after “review[ing], deliberat[ing], and careful[ly] consider[ing] the points raised in [Petitioner’s] post trial motions and subsequent response from the [Respondent],” Judge Gibbons issued a written Order denying “[Respondent’s] motions in their entirety.” (See Appendix. January 17, 2025 Motion to Dismiss pages 49-50). As required by law and precedent, Judge Gibbons subtracted any set-offs and comparative fault, and then reduced the verdict to the Tort Claims Act cap of \$300,000.00.² Id. Considering April 20, 2024, was a Saturday, the deadline to perfect the appeal became April 22, 2024. Rules 203(b)(1) & 263(a), SCACR.

But instead of appealing, Petitioner filed a Rule 59(e) motion, summarizing its earlier arguments and requesting the court to provide “reasoning or legal analysis for the denial of each of the grounds for relief as set forth in the [Petitioner’s] Post-Trial Motions.” (See Appendix. January 17, 2025 Motion to Dismiss pages 51-55). Respondent opposed the motion and on December 4, 2024, Judge Gibbons denied Petitioner’s motion. (See Appendix. January 17, 2025 Motion to Dismiss pages 61–63). Petitioner then appealed.

Respondent filed a motion to dismiss, arguing Petitioner filed a successive post-trial motion that did not stay the time to appeal and the appeal must be dismissed. Petitioner filed a return arguing the motion was appropriate.

² Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 219–223, 528 S.E.2d 682, ___ (Ct. App. 2000).

On April 8, 2025, the court of appeals dismissed Petitioner’s appeal because Petitioner’s Rule 59(e) motion was inappropriately successive and procedurally improper. Petitioner moved for a rehearing. The motion was denied and Petitioner petitioned for a writ of certiorari.

ARGUMENT

The court of appeals correctly dismissed Petitioner’s appeal. “[T]imely post-trial motions always stay the time for appeal unless the motion fits into one of the two ‘exceptions’ initially set forth in Coward Hund³ and Quality Trailer⁴.” Swing v. Swing, Op. No. 28266 (S.C. Ct. filed March 12, 2025) (Howard Adv. Sh. No. 11 at 18). More to the point, a Rule 59(e) motion will not stay the time for appeal when it is inappropriately successive. See id. at 17 (noting the terms “‘appropriate’ and ‘inappropriate’. . . distinguish between motions that do stay the time for appeal and those that do not.”).

Petitioner’s Rule 59(e) motion was inappropriately successive because it fits into the Quality Trailer exception. In Quality Trailer, this Court held “a successive motion, raising issues already raised to and ruled upon by the trial judge,” does not stay the time to appeal. 349 S.C. at 119. There, the defendant filed post-trial motions after a jury returned a verdict for the plaintiff. The trial judge denied the motions. Defendant then filed a Rule 59(e) motion that was essentially identical to its first motion.

This Court found that when the judge denied the post-trial motions, it “was a ruling on all issues raised, and preserved for appellate review all issues raised therein.” Id. at 221. And because the Rule 59(e) motion failed to identify a single issue raised to but not ruled upon by the trial judge, the Rule 59(e) motion was inappropriately successive and did not toll the time to appeal. Id. This Court dismissed the appeal.

³ Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

⁴ Quality Trailer Products, Inc. v. CSL Equipment Company, Inc., 349 S.C. 216, 562 S.E.2d 615 (2002).

In Collins Music Co., Inc. v. IGT, 353 S.C. 559, 565, 579 S.E.2d 524, 527 (Ct. App. 2002), the court of appeals held defendant's Rule 59(e) motion was inappropriately successive because it (1) failed to identify an issue raised to and not ruled upon by the trial judge and (2) asked the trial judge to "make specific rulings" and provide the basis for denying each of the issues raised. Collins Music, 353 S.C. at 561. There, the defendant filed post-trial motions after a jury returned a verdict for the plaintiff. The trial judge "carefully review[ed]" the post-trial motions and denied them. Defendant then filed a Rule 59(e) motion, "merely restate[ing] the arguments it made in the . . . first post-trial motions" and requesting the trial judge to make specific rulings and provide the basis for denying each of the issues raised. Id.

The court of appeals applied Quality Trailer and found the Rule 59(e) motion was essentially identical to the post-trial motions because it restated the arguments from the post-trial motions. Collins Music, at 565. And it found further that the trial judge was not required to make specific rulings or provide the basis for denying each of the issues raised. Id. The court of appeals then concluded that the Rule 59(e) motion was inappropriately successive. The appeal was therefore dismissed.

Here, Petitioner filed post-trial motions after a jury returned a verdict for the plaintiff. Unlike Quality Trailer (where the trial judge simply denied the post-trial motions) and Collins Music (where the trial judge carefully reviewed the post-trial motions before denying them), the trial judge here "review[ed], deliberat[ed], and careful[ly] consider[ed] the points raised in [Petitioner's] post trial motions" before denying them "in their entirety." (See Appendix. January 17, 2025 Motion to Dismiss page 49). There can be no question that this "was a ruling on all issues raised, and preserved for appellate review all issues raised therein." Quality Trailer, 349 S.C. at 221.

Just like in Quality Trailer and Collins Music, Petitioner then filed a Rule 59(e) motion. Just like in Quality Trailer and Collins Music, this motion did not identify a single issue raised to but not

ruled upon by the trial judge. Just like in Quality Trailer, this “motion was, in substance, identical to the” post-trial motions. 349 S.C. at 218. Just like in Collins Music, this motion briefly summarized the post-trial motions and requested reasoning and legal analysis for denying each of the issues raised in the post-trial motions. Just like in Quality Trailer and Collins Music, this motion was inappropriately successive and thus procedurally improper.

CONCLUSION

This case presents no novel questions of law. See Swing at 18 (explaining this has been the law for twenty-one years). The court of appeals dismissed Petitioner’s appeal without dissent. The Decision of the Court of Appeals follows and does not conflict with prior decisions of the Supreme Court. See Swing and Quality Trailer. There is neither a substantial constitutional issue nor a federal question. Finally, this Court recently issued an opinion addressing this issue. See Swing.

Petitioner’s Rule 59(e) motion is procedurally improper and does not stay the deadline for appeal because it is inappropriately successive of the previously filed, written post-trial motion. Summarizing its post-trial motions and requesting the trial judge provide reasoning and legal analysis for denying the post-trial motions does not cause Petitioner’s Rule 59(e) motion to be appropriately successive. The Petition for Certiorari should be denied.

Respectfully submitted,

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