

RECEIVED

Sep 09 2025

SC Court of Appeals

IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA

Case No.: 2025-000163

Lower Court Case No.: 2024-CP-32-01682

Timothy Nunnally and Mark Nunnally, Appellants

v.

Tina Guerry, individually and in her official capacity as Lexington County Register of
Deeds, Respondent

INITIAL BRIEF OF APPELLANTS

Respectfully submitted,

Mark A Nunnally

/s/ Mark Anthony Nunnally

Timothy A Nunnally

/s/ Timothy Allen Nunnally

Appellants Pro Se

5681 Grande River Road

College Park, GA 30349

Phone: 404-980-4488

Table of Contents

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 3

STATEMENT OF FACTS..... 5

STANDARD OF REVIEW 6

SUMMARY OF THE ARGUMENT..... 7

ARGUMENT 9

 I. The Trial Court Erred in Granting Summary Judgment Despite Genuine Issues of Material Fact and Misapplied § 30-9-30(B)(1). 9

 II. The Trial Court Abused Its Discretion by Refusing to Enforce Discovery and Entering Premature Summary Judgment. 10

 III. The Court Misapprehended the CAN Irrevocable Trust’s Ownership Interest and Ignored the Ministerial Nature of the Register’s Duty. 11

 IV. The Denial of the Motion to Reconsider Without Ruling on Judicial Notice Was Erroneous. 12

CONCLUSION & RELIEF SOUGHT..... 13

SIGNATURE..... 14

CERTIFICATE OF SERVICE..... 15

TABLE OF AUTHORITIES

Cases

Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)	6, 9
Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)	6, 9
Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003)	6, 10
Doe v. Roe, 370 S.C. 208, 634 S.E.2d 573 (2006)	10
Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999)	6, 11
Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (1999)	12

Statutes

S.C. Code Ann. § 30-9-30(B)(1) (refusal to accept document)	1, 5, 9, 10, 13
S.C. Code Ann. § 30-5-90 (recording in order received; ministerial duty)	1
S.C. Code Ann. § 62-7-1013 (certification of trust)	11
S.C. Code Ann. § 62-7-709 (trustee reimbursement lien)	11
S.C. Code Ann. § 62-7-104 (knowledge defined)	11

Court Rules

Rule 56, SCRCP (summary judgment standard)	3, 6, 7
Rule 33, SCRCP (interrogatories)	1, 3, 10
Rule 36, SCRCP (requests for admission)	10, 13
Rule 37, SCRCP (discovery enforcement)	1, 10
Rule 59(e), SCRCP (alter or amend judgment)	3, 12

Rule 201, SCRE (judicial notice)

..... 12

STATEMENT OF ISSUES ON APPEAL

1. Genuine Issues of Material Fact & Statutory Misapplication:

Did the trial court err in granting summary judgment in favor of Respondent despite the existence of genuine issues of material fact—including evidence concerning ownership/capacity (trust vs. individuals), acknowledgment and notary defects, legal description, and the purpose of Appellants' filing—and where Respondent's reliance on § 30-9-30(B)(1) was based only on a one-paragraph refusal letter and conclusory affidavit that failed to demonstrate a contemporaneous "reasonable belief" of falsity? (R. p. 90–98, 131–150, 166–175, 176–180).

2. Discovery Not Enforced / Premature Summary Judgment:

Did the trial court err in refusing to enforce discovery requests and motions to compel—including unanswered Interrogatories demanding "every fact" supporting § 30-9-30(B)(1), a Motion to Enforce Discovery, and a Motion to Deem RFAs Admitted—and then entering summary judgment while such discovery disputes remained unresolved, contrary to Rules 33, 37, and 56, SCRCF? (R. p. 76–85, 111–115, 131–150).

3. Trust Ownership & Ministerial Duty Misconstrued:

Did the trial court err in disregarding evidence of the CAN Irrevocable Trust's ownership interest and treating the lien as if it were imposed on Appellants personally, while also reframing what was properly a mandamus action under § 30-5-90 (to enforce the ministerial duty to record instruments "in the order

received”) into a merits adjudication about the lien’s validity? (R. p. 90–98, 131–150).

4. Motion to Reconsider & Unruled Judicial Notice:

Did the trial court err in denying Appellants’ Motion to Reconsider without properly addressing the legal arguments and affidavits presented, and by failing to rule on Appellants’ pending Judicial-Notice motion with acknowledged/notarized exhibits and proof of notary commission before granting summary judgment? (R. p. 181–195, 206–210).

STATEMENT OF THE CASE

On March 26, 2024, Appellants mailed their recording packet to the Lexington County Register of Deeds with the required \$25 fee (USPS certified-mail receipt; money-order proof) [R. p. 111]. On April 8, 2024, the Register issued a one-paragraph refusal letter stating: “will not accept documents for recording pursuant to § 30-9-30(B)(1)” and returning the packet unrecorded [R. p. 110].

The filing packet included a trustee affidavit and a notarized acknowledgment identifying the CAN Irrevocable Trust as lienholder, together with a legal description of 1759 Willow Creek Drive. Supporting record evidence included the Deed of Distribution (2023) [R. p. 112–114], the Affidavit of Acknowledgment & Acceptance of Deed (recorded Dec. 18, 2023, Bk 21085 Pg 3745–3747) [R. p. 115–118], and the Certificate of Trust with Schedule A (recorded Jan. 17, 2025, Bk 21142 Pg 5148–5151) [R. p. 119–121].

During discovery, Appellants served Interrogatories on September 5, 2024, demanding every fact constituting the Register’s “reasonable belief” under § 30-9-30(B)(1), including theories of two-witness requirement, illegible notary, and originals vs. certified copies [R. p. 41–45]. The Register did not answer. Appellants filed a Motion to Deem Requests for Admission Admitted (late Sept. 2024) [R. p. 76–80], and on October 24, 2024, a Motion to Enforce Discovery (Rule 33/37) [R. p. 101–105]. Defense counsel declined to confer in good faith, stating only “let the court decide.” The circuit court nevertheless granted summary judgment on January 23, 2025, without ruling on these discovery motions [R. p. 136–140].

On that same date, Appellants timely filed a Rule 59(e) motion to alter or amend, requesting that the court (a) apply the correct Rule 56 summary judgment standard, (b) rule on the pending Judicial-Notice request, and (c) resolve outstanding discovery [R. p. 78–82]. The circuit court (Hon. McCaslin) summarily denied the motion without addressing those issues [R. p. 141–145]. Appellants timely filed this appeal.

STATEMENT OF FACTS

Appellants, acting pro se, attempted to record a Federal Common Law Lien and Writ of Attachment to protect trust property held by the CAN Irrevocable Trust. Respondent refused to record the lien, citing S.C. Code § 30-9-30(B)(1) [R. p. 110]. Appellants consistently sought discovery to ascertain the alleged basis for Respondent's refusal [R. p. 41–45, 76–80, 101–105]. The trial court did not compel full responses and instead granted summary judgment to Respondent [R. p. 136–140]. The January 7, 2025 transcript [R. p. 121–125] reflects the court's decision to proceed to summary judgment despite pending discovery disputes

STANDARD OF REVIEW

The appellate court reviews a grant of summary judgment de novo, applying the same standard as the trial court under Rule 56, SCRPC. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is a drastic remedy, to be used cautiously so that no party is deprived of a trial on disputed facts. See *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537, 540 (1991) (“if further inquiry into the facts is desirable, summary judgment is improper”); *Osborne v. Adams*, 346 S.C. 4, 550 S.E.2d 319, 322 (2001) (all reasonable inferences must be drawn in favor of the non-movant).

Rulings on discovery are generally reviewed for abuse of discretion. However, granting summary judgment where discovery disputes remain pending is premature and warrants reversal. See *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433, 437–38 (2003) (reversing summary judgment entered before necessary discovery was completed).

Questions of statutory interpretation and mandamus are reviewed de novo. See *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106, 109 (1999) (mandamus compels performance of a purely ministerial duty).

SUMMARY OF THE ARGUMENT

The trial court committed multiple reversible errors.

First, the grant of summary judgment was improper. Appellants raised genuine issues of material fact concerning the validity and purpose of the lien, the ownership of the subject property through the CAN Irrevocable Trust, and the incomplete state of discovery. The Register's boilerplate refusal letter cited § 30-9-30(B)(1) but gave no contemporaneous reasons, and the later affidavit was conclusory rather than fact-specific [R. p. 110, 111]. Meanwhile, Appellants' exhibits — including a notarized acknowledgment, trustee affidavit, legal description, and chain-of-title documents — contradicted Respondent's post-hoc theories and created genuine factual disputes [R. p. 112–121]. Rule 56, SCRCF, forbids entry of summary judgment when factual disputes remain.

Second, the trial court refused to enforce discovery despite multiple pending motions. Appellants served Interrogatories demanding “every fact” supporting Respondent's statutory position [R. p. 41–45], filed a Motion to Deem RFAs Admitted [R. p. 76–80], and a Motion to Enforce Discovery [R. p. 101–105], backed by documented good-faith efforts. The denial of discovery before ruling on summary judgment constituted an abuse of discretion and prejudiced Appellants' ability to present their case.

Third, the trial court misapprehended the ownership structure of the subject property. By treating the lien as though Appellants attempted to encumber their personal property, the court disregarded evidence of the Trust's independent rights, including the Deed of Distribution, Affidavit of Acknowledgment, and Certificate of Trust [R. p. 112–121].

South Carolina statutory law further confirms the Trust's authority and capacity to act, including S.C. Code Ann. § 62-7-1013 (certification of trust), § 62-7-709 (trustee reimbursement lien), and § 62-7-104 (knowledge defined). These provisions reinforce that the Trust's filing was legally valid and recordable. More fundamentally, this was a mandamus case: under § 30-5-90, the Register's duty to record by date and order received is purely ministerial. Substituting a merits judgment ("not recognized") for a ministerial recording duty was legal error.

Finally, the court erred in denying Appellants' Motion to Reconsider without addressing the legal arguments, affidavits, or pending Judicial-Notice motion [R. p. 78–82, 141–145]. This summary denial deprived Appellants of meaningful review of substantive claims and violated principles of due process.

For these reasons, the Order granting summary judgment and the denial of reconsideration must be reversed, and the matter remanded for further proceedings.

ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment Despite Genuine Issues of Material Fact and Misapplied § 30-9-30(B)(1).

Summary judgment was improper where Appellants raised genuine disputes concerning the validity and purpose of the lien, the CAN Irrevocable Trust's ownership and capacity, acknowledgment and notary defects, and the adequacy of the legal description. The record contains unresolved questions of both law and fact (R. p. 131–150, 166–175). See *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991) (summary judgment improper if further inquiry into facts is desirable); *Osborne v. Adams*, 346 S.C. 4, 550 S.E.2d 319 (2001) (on summary judgment, evidence and reasonable inferences must be viewed in non-movant's favor).

Moreover, Respondent's reliance on § 30-9-30(B)(1) was insufficient. The Register's one-paragraph refusal letter and later conclusory affidavit did not establish the statute's requirement of a contemporaneous "reasonable belief" that the instrument was materially false or a sham [R. p. 110, 111]. Without such a showing, summary judgment was improper (R. p. 90–98, 131–150, 176–180).

II. The Trial Court Abused Its Discretion by Refusing to Enforce Discovery and Entering Premature Summary Judgment.

Appellants filed multiple motions to compel discovery, including a Motion to Enforce Interrogatories demanding “every fact” supporting Respondent’s § 30-9-30(B)(1) position [R. p. 41–45], and a Motion to Deem Requests for Admission Admitted [R. p. 76–80]. Appellants also filed a Motion to Enforce Discovery under Rules 33 and 37 [R. p. 101–105]. The transcript (R. p. 121–125) confirms discovery responses remained incomplete and evasive.

Granting summary judgment while these discovery disputes were pending constitutes reversible error under Rules 33, 37, and 56, SCRPC. See *Doe v. Roe*, 370 S.C. 208 (2006) (improper to grant summary judgment where discovery remains unresolved); *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003) (reversing premature summary judgment entered while discovery was outstanding).

III. The Court Misapprehended the CAN Irrevocable Trust's Ownership Interest and Ignored the Ministerial Nature of the Register's Duty.

The lien was filed by the Trustee to secure fiduciary duties relating to trust property. By treating the lien as though Appellants were attempting to encumber their own property, the court misstated the facts and disregarded the Trust's independent legal rights. Record evidence included the Deed of Distribution [R. p. 112–114], the Affidavit of Acknowledgment & Acceptance of Deed [R. p. 115–118], and the Certificate of Trust with Schedule A [R. p. 119–121].

South Carolina statutory law further confirms the Trust's legal capacity and authority. See S.C. Code Ann. § 62-7-1013 (permitting a certification of trust to serve as evidence of the trust's existence and powers); § 62-7-709 (granting a trustee a lien against trust property for reimbursement of expenses properly incurred in administration); and § 62-7-104 (defining "knowledge" for purposes of trust administration). These provisions underscore that the CAN Irrevocable Trust operated under recognized statutory authority and that its instruments were recordable as a matter of law.

Further, this proceeding arose in mandamus to enforce the ministerial duty under § 30-5-90, which requires the Register of Deeds to record instruments "in the order received." See *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999) (mandamus compels performance of a purely ministerial duty). The trial court erred by converting this ministerial-duty action into a merits adjudication of the lien's substantive validity, exceeding its proper scope.

IV. The Denial of the Motion to Reconsider Without Ruling on Judicial Notice Was Erroneous.

Appellants presented a Memorandum of Law with supporting affidavits in their Motion to Reconsider [R. p. 78–82]. Their pending Judicial-Notice motion asked the court to recognize notarized instruments, acknowledgments, and proof of notary commission already in the record. The trial court nevertheless denied reconsideration summarily, without addressing either the arguments or the Judicial-Notice motion. See Rule 201, SCRE (judicial notice).

This constitutes reversible error. See *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1 (1999) (a Rule 59(e) motion to reconsider cannot be denied without meaningful consideration of substantive issues). See also Rule 59(e), SCRPC (alter or amend judgment). The Order denying reconsideration is at [R. p. 141–145].

CONCLUSION & RELIEF SOUGHT

For the foregoing reasons, Appellants respectfully request that this Court reverse the Order granting Summary Judgment, vacate the denial of the Motion to Reconsider, and remand for further proceedings.

On remand, this Court should direct the circuit court to:

Rule on Appellants' pending Judicial-Notice and discovery motions;

Compel complete answers to the September 5, 2024 Interrogatories and allow discovery targeted at the § 30-9-30(B)(1) predicate; and

Reconsider any motion for summary judgment only after a complete and accurate record has been developed.

Alternatively, this Court should direct the circuit court to treat evasive or untimely RFAs as admitted under Rule 36 and reconsider Respondent's summary-judgment motion accordingly.

Appellants further request such other and further relief as this Court deems just and proper.

SIGNATURE

Respectfully submitted,

Mark A Nunnally

Mark Anthony Nunnally, Appellant Pro Se

5681 Grande River Road

College Park, GA 30349

Phone: 404-980-4488

Type text here

Timothy A Nunnally

Timothy Allen Nunnally, Appellant Pro Se

RECEIVED

Sep 09 2025

SC Court of Appeals

CERTIFICATE OF SERVICE

We hereby certify that we have this day served a true and correct copy of the foregoing Initial Brief of Appellants, together with the Record on Appeal and Designation of Matter, on counsel for Respondent by electronic mail, in accordance with Rule 262, SCACR (service by electronic mail), addressed as follows:

Jeffrey M. Anderson, Esq.

Davis Frawley, LLC

Email: janderson@davisfrawley.com, jeffanderson@oldcourthouse.com

This service was made on the 29 day of August, 2025, at:10pm

AM/PM.

Mark A Nunnally
Mark Anthony Nunnally, Appellant Pro Se

Timothy A Nunnally
Timothy Allen Nunnally, Appellant Pro Se

Appellate Case No. 2025-000163