

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
In the Administrative Law Court

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-001876

Orangeburg County Assessor.....Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan.....Appellants

**RETURN TO RESPONDENT’S MOTION TO DISMISS
AND MOTION TO REMAND**

The respondent has moved to dismiss this appeal on grounds the appellants did not comply with a procedural rule of the Administrative Law Court in seeking reconsideration of the order on appeal before noticing this appeal. The appellants move for an order remanding the case for that purpose.

In proceedings below, the appellants were granted a favorable real estate tax assessment on their residence in Orangeburg, South Carolina by the Orangeburg County Board of Assessment Appeals. The county assessor challenged that decision in a contested case before the Administrative Law Court, and a hearing was held on that challenge by the court on May 22nd,

2025. The court entered judgment in favor of the assessor on August 7th, 2025 and the homeowners noticed their appeal to this court on September 4th, 2025.¹

Shortly before the hearing in the Administrative Law Court, the court published new rules of procedure in that court on April 14th, 2025. Though most of the changes were styled by the court as clerical or grammatical, the court did adopt a new rule requiring that a party move for reconsideration of a final order entered by the court. Rule 29(D) of the Rules of the S.C. Administrative Law Court now requires a party to file a motion for reconsideration of an order pointing “with particularity the points supposed to have been overlooked or misapprehended by the Court” in its order as a prerequisite for pursuing appeal.

The respondent correctly recites that rule in support of its motion to dismiss, and as well, correctly recites that the new rule controls this case.

Dismissal is too harsh a sanction, however. Appellant’s counsel overlooked the new rule, to be sure. But the rule by comparison is brand-new, and represents a significant departure from practice under rules of procedure. Rule 59 of the South Carolina Rules of Civil Procedure has come to be known, somewhat erroneously, as a motion for “reconsideration.” See, *Elam v. S.C. Department of Transportation*, 361 S.C. 9, 21-22, 602 S.E.2d 772, __ (2004) for a discussion of the etiology of the term as applied by Rule 59. Adopted 40 years ago in 1985, a motion for new trial or altered or amended judgment under that rule need be made only if the trial court misapprehended or failed to rule on an issue (in which case such a motion is discretionary), or the court failed to rule on an issue or argument (in which case the motion is mandatory). *Id.*, at 361 S.C. 24.²

¹ It should be noted that the court below entered judgment after both parties submitted comprehensive proposed orders to the Administrative Law Court judge.

² The language of Rule 29(D) regarding the issues to be addressed in such a motion are derived from Rule 221 of the South Carolina Appellate Court Rules governing petitions for rehearing.

Counsel for the appellants made a mistake, but it was an honest one. Counsel was focused on perfecting the clients' right to appeal by meeting the jurisdictional deadline required by the Rules of Appellate Procedure under Rule 203(b)(6) of the S.C. Appellate Court Rules. If anything, counsel was overzealous in attending to the rights of the clients, not neglecting them.

Unilateral dismissal of their appeal is too harsh. South Carolina's judicial policy favors "the disposition of issues on their merits rather than on technicalities." *Micronics, Inc. v. S.C. Department of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Outright dismissal of a case is a harsh sanction that is generally resorted to "only in the face of a clear record of delay or contumacious conduct by the plaintiff." *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904 (Ct. App. 2006).

Completely absent here is any showing of bad faith or dilatory conduct by appellants' counsel. Moreover, there will be no prejudice to the respondent. Nor will there be any prejudice or deleterious effect on the orderly process of this court or the court below, as the transcript of the proceedings below should be forthcoming soon, avoiding any inertia in the appellate process.

Appellant's counsel therefore respectfully requests remand to the S.C. Administrative Law Court for purposes of making a motion under Rule 29(D) of the S.C. Administrative Court Rules for reconsideration of the decision below. Counsel will make the motion before that court timely, withing ten (10) days of the appellate court's remand, consistent with Rule 29(D)(1) of the lower court's rule.

Respectfully submitted,

JOHN D. ELLIOTT
P.O. Box 607
2927 Devine Street – Suite 120
Columbia, SC 29202
Phone: 803.252.9236
E-Mail: jayel@mindspring.com

ATTORNEYS FOR APPELLANT

By: *John D. Elliott*
JOHN D. ELLIOTT

October 7th, 2025