

IN THE
COURT OF APPEALS
OF SOUTH CAROLINA

Appellants:

Timothy–Allen Nunally
Mark–Anthony Nunally

Respondent:

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

Appeal from Case No. 2024-CP-32-01682

Appellate Case No. 2025-000163

APPELLANTS' REPLY BRIEF

Submitted by:

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I. STANDARD OF REVIEW

Questions of statutory interpretation and the propriety of summary judgment are reviewed de novo. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The appellate court applies the same standard as the circuit court under Rule 56, SCRPC. The issue here is purely legal: whether the Register of Deeds (“ROD”) had statutory authority under S.C. Code § 30-9-30(B)(1) to refuse to record Appellants’ instrument.

Because the Register’s duties under § 30-9-30(B)(1) are ministerial and the circuit court resolved the issue on summary judgment, any claimed “reasonable belief” is reviewed de novo as a question of law, not discretionary fact.

Accordingly, this Court owes no deference to the lower court’s conclusion.

II. RESPONDENT MISSTATES THE STATUTORY QUESTION

Respondent frames this appeal as if the ROD possessed broad discretion to refuse any document she believed “should not be recorded.” That reading is contrary to the plain text of § 30-9-30(B)(1), which authorizes refusal only when the ROD “reasonably believes that the document is materially false or fraudulent or is a sham legal process.”

The statute’s purpose is narrowly drawn: to prevent false government or judicial instruments from being recorded, not to empower RODs to pass judgment on the legal sufficiency of private filings. *Ex parte County of Lexington*, 281 S.C. 555, 316 S.E.2d 400 (1984); *State ex rel. McLeod v. Seaborn*, 270 S.C. 696, 244 S.E.2d 317 (1978).

III. THE REGISTER'S REFUSAL WAS ULTRA VIRES

The ROD's authority is strictly ministerial: to receive, index, and record instruments presented in proper form with the required fees. Nothing in S.C. Code § 30-9-30 (B)(1) allows refusal based on personal evaluation of the document's purpose.

The April 8, 2024 letter from the ROD states merely that the document "does not meet requirements," without identifying any falsity or fraud. No affidavit, finding, or record supports a reasonable belief that Appellants' filing was fraudulent or a sham.

The refusal therefore exceeded the limited authority conferred by statute and was ultra vires—a void act outside the lawful power of the ROD.

IV. "SHAM LEGAL PROCESS" WAS MISAPPLIED

Respondent recites the definition of "sham legal process" from S.C. Code § 30-9-30(B)(4)(a) but applies it incorrectly. That term refers to documents "not issued lawfully and purporting to be a judgment, lien, order, or other legal process by a government entity."

Appellants' filing was not a forged court order or a counterfeit judgment; it was a self-executed notice of lien associated with rights conveyed from an estate. Such an instrument may be unconventional, but it is not a sham legal process as defined by statute.

A "sham legal process" purports to exercise governmental authority it does not possess; Appellants' document did the opposite—it asserted private rights subject to judicial review.

The legislative history of S.C. Code § 30-9-30 shows it was enacted to combat false judicial writs masquerading as court decrees, not to suppress legitimate private filings. By extending that provision to private estate-related filings, the ROD rewrote the statute and deprived Appellants of the ministerial recording process guaranteed by law.

V. GENUINE ISSUES OF MATERIAL FACT EXISTED

The circuit court erred in concluding that no genuine issue of material fact existed. At least three factual issues precluded summary judgment:

Whether the document contained any materially false statement;

Whether the ROD had a reasonable factual basis to believe fraud existed;

Whether the ROD exceeded her ministerial authority.

Where competing inferences can be drawn, summary judgment is improper. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 626 S.E.2d 1 (2005).

VI. "LIEN ON OWN PROPERTY" IS A RED HERRING

Respondent devotes substantial argument to the proposition that Appellants could not "lien their own property." This is irrelevant. The ROD is not empowered to determine whether a lien will ultimately prove enforceable in court; her duty is to record facially valid documents.

Courts, not clerks, adjudicate enforceability. *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). The Register's intrusion into substantive property-law questions underscores the overreach of her refusal.

VII. “RED FLAGS” ARE NOT EVIDENCE

Respondent repeatedly describes Appellants’ document as a “red flag.” Suspicion is not evidence, and the statute requires a reasonable belief grounded in facts. No affidavit from any official explains what facts created such belief.

A document cannot be refused for recording merely because it is unusual or inconvenient. Otherwise, the statutory exceptions swallow the ministerial duty itself.

Nothing in Appellants’ position eliminates safeguards against fraudulent filings; it merely preserves the Legislature’s choice to place adjudication with courts, not clerks.

VIII. PROCEDURAL DUE PROCESS VIOLATED

By refusing to record without notice or opportunity to respond, the ROD denied Appellants the procedural mechanism contemplated by S.C. Code § 30-9-30 (B)(1)—which expressly anticipates written notice, followed by the filer’s right to commence a court action.

Appellants properly invoked that judicial remedy. The circuit court’s grant of summary judgment before factual development deprived Appellants of due process and transformed a ministerial office into a gatekeeper of legal rights. Equal access to the recording system is guaranteed to all citizens presenting facially lawful documents.

Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977).

IX. DISCOVERY WAS RELEVANT AND NECESSARY

Respondent's complaint that Appellants' discovery was "excessive" has no legal bearing.

Discovery was directed at the central issue: what procedures and criteria the ROD used to determine the document was "not recordable."

Rule 26, SCRCR, allows discovery of any non-privileged matter relevant to a claim or defense. No motion for protective order was filed. The suggestion of overreach is rhetorical, not legal.

X. REMEDY

Appellants respectfully request that this Court:

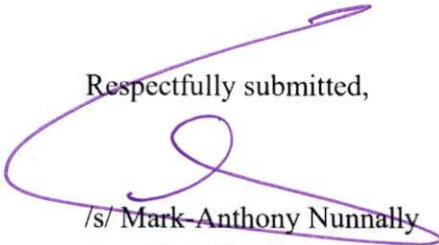
1. Reverse the circuit court's Order granting summary judgment to Respondent;
2. Declare that Respondent exceeded her statutory authority under S.C. Code § 30-9-30 (B)(1); and
3. Remand with direction that the Register of Deeds accept and record the document, or alternatively conduct a fact-finding hearing consistent with due process.

XI. CONCLUSION

The South Carolina General Assembly enacted § 30-9-30 (B)(1) to prevent fraudulent or forged government instruments, not to authorize county officials to censor lawful private filings. The Lexington County Register of Deeds exceeded that authority by refusing to record a document without any finding of falsity or fraud.

The circuit court's summary judgment stripped the statute of its limiting language and converted a ministerial duty into discretionary veto power. This Court should restore the statute to its proper scope and reverse.

Respectfully submitted,



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