RECEIVED

Feb 17 2026

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.

BRIEF OF PETITIONER

David L. Morrison (Bar #4101)
GARFIELD SPREEUWERS LAW GROUP
1220 Pickens Street
Columbia, South Carolina 29201
Phone: (803) 830-5496
E-mail: david@gslawsc.com

Attorney for Petitioner

QUESTION PRESENTED

This is an appeal/ petition for writ of certiorari in a civil jury trial case. The case presents the question of whether the filing of a *single* motion to reconsider in the trial court, that stated additional grounds for relief from the original post-trial motion, stayed the time for the filing of the appeal. The Court of Appeals held that the motion was successive and did not stay the time for appeal. Therefore, the court granted the motion to dismiss the appeal. The Court of Appeals also denied a Petition for Re-hearing. This Court granted certiorari.

STATEMENT OF THE CASE

The Petitioner, City of Rock Hill, filed a Writ of Certiorari to this court seeking review of the Court of Appeals dismissal of the appeal. The Writ was granted on December 16, 2025.

By way of background, this is an appeal after a jury verdict, entered on March 6, 2024. The Petitioner's request for ten days to file post-trial motions was granted. Petitioner filed motion for JNOV, New trial absolute, new trial nisi and new trial remitter on March 11, 2024. The court denied the post-trial motions in a Form 4 order, without argument, on March 21, 2024.

The Petitioner timely filed a *single* motion to alter or amend the order and/or to reconsider, on April 1, 2024. That motion was denied on December 4, 2024.

The Petitioner filed a Notice of Appeal with the Court of Appeals on January 3, 2025. The Respondent filed a motion to dismiss the appeal on the ground of untimeliness. The parties briefed the matter. The Court of Appeals granted the motion and dismissed the appeal on April 8, 2025. The Petition for Re-hearing was timely filed and subsequently denied on June 26, 2025.

The question presented in this appeal is whether the Petitioner's Notice of Appeal was timely filed. Ultimately, that is resolved by whether the *single* motion to alter or amend the order and/or to reconsider tolled the time to appeal until after the motion was ruled upon. More

specifically, the Court of Appeals considered the motion to be successive. The Appellant contends that it was not successive because it is unlike the successive motions submitted and ruled upon in past cases. Instead, the motion consisted mostly of new argument seeking to ensure proper preservation of issues. The original post-trial motions consisted of twenty-six pages. The motion to reconsider consisted of five pages, three of which were devoted to preservation issues.

ARGUMENT

This case involves a matter of utmost importance to practitioners in South Carolina. The Appellate Courts have decided a series of cases involving similar issues, but confusion still reigns. The Court of Appeals erred in granting the motion to dismiss this appeal. The Court's reasoning, as expressed in the Order, was that the "Appellant's motion to reconsider, *which sought reasoning and legal analysis on each ground raised in its post-trial motion*, was inappropriately successive and thus procedurally improper." (Emphasis added). That specific ruling inexplicably recognizes that the motion was not successive in that it sought relief not previously sought, but then rules that the motion was successive anyway.

The most recent case from the Supreme Court addressing this critical issue is *Swing v. Swing*, 445, S.C. 340(2025); 914 S.E.2d 158, (2025), which was decided while this case was pending before the Court of Appeals. In *Swing,* this Court noted that:

> South Carolina courts applying the "stayed" provisions of Rules 203(b)(1) and 59(f) have struggled to ensure that litigants are not permitted to use inappropriately successive and thus procedurally improper post-trial motions to delay the deadline for initiating an appeal, but also to protect lawyers who conscientiously attempt to comply with the preservation requirement that certain issues must be brought to the trial court's attention before an appeal. *Compare Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 19, 602 S.E.2d 772, 777 (2004) ("Allowing subsequent motions to repeatedly toll the filing period for a notice of appeal would encourage frivolous motions and undermine a fundamental canon of our legal system, to promote the finality of judgments." (cleaned up) (quoting *Glinka v. Maytag Corp.*, 90 F.3d 72, 74 (2d Cir. 1996))), *with Elam*, 361 S.C. at 25, 602

S.E.2d at 780 ("[C]ivil procedure and appellate rules should not be ... interpreted to create a trap for the unwary lawyer ...."), *and Elam*, 361 S.C. at 23, 602 S.E.2d at 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."); *see* David Proffitt, *Should I Stay or Should I Go? Deciding Whether to Appeal or File A Motion to Reconsider*, S.C. LAW., July 2007, at 39 (observing that our pre-*Elam* caselaw may leave attorneys "stuck between the rock of wondering whether you should promptly serve a notice of appeal to meet the drop-dead deadline to appeal and the hard place of filing of a Rule 59(e) motion to ensure you've met the drop-dead requirement of preserving an issue for appellate review"); *Elam*, 361 S.C. at 25, 602 S.E.2d at 780-81 ("We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place." (footnote omitted)). We acknowledge this balance has been quite difficult to strike, and the consequences of our difficulty have fallen primarily on the backs of conscientious lawyers trying to do the right thing when it is not at all clear what that is. This case provides another opportunity for this Court to better strike the balance and bring clarity to the uncertainty surrounding Rule 59(e).

In recent years, the Court has refocused the analysis of our Rules onto their plain language. *See Whitfield v. Schimpf*, 444 S.C. 633, 656 n.7, 911 S.E.2d 310, 322 n.7 (2025) (stating, "This Court has recently emphasized that trial courts should apply the language of the Rules," and collecting cases). Today, we bring that refocusing to the word "timely" in Rules 203(b)(1) and 59(f). Rule 203(b)(1) provides that when any party makes a "timely" Rule 59(e) motion, "the time for appeal for all parties shall be stayed." *Accord* Rule 59(f). While Rule 59 does not expressly define the term "timely," the plain language of Rule 59(e) indicates the term means "not later than 10 days after receipt of written notice of the entry of the order." Thus, we clarify today that "timely" is a temporal term, and as it is used in Rules 203(b)(1) and 59(f), it means only that the post-trial motion—in this case a Rule 59(e) motion[2]—was served on the opposing parties not later than ten days from the date of receipt of written notice of the entry of the order the merits of which the motion purports to address.

Swing v. Swing, 445 S.C. 340, 345–47, 914 S.E.2d 158, 161–62 (2025).

To be sure, the *Swing* court also addressed and preserved the rulings regarding duplicity set forth in *Quality Trailer Products Inc. v. CSL Equipment Co., Inc*. 349 S.C. 216, 562 S.E.2d 615, (2002), *Coward Hund Construction Co. Inc. v Ball Corp, et. al*., 518 S.E.2d 56 (Ct. App.

1999) and Collins Music Co. Inc. v. IGT, 579 S.E.2d 524, (Ct. App. 2002). However, the motions filed in those cases are vastly different than this one. Those cases were primarily recaptioning of the original motions. They were "virtually identical" to the original motions unlike Petitioner's motion.

Specifically, Quality Trailer involved a motion to reconsider that was almost identical to the original JNOV motion. The court stated:

> In fact, the second motion was almost a duplicate of the first motion. The only changes I Corp. made were to caption the second motion differently, and to change the relief sought to coincide with the second motion's caption. The trial court recognized that the second motion was, in substance, identical to the first motion, and by order dated February 16, 2000, and filed February 21, 2000, denied the second motion.
>
> Quality Trailer @ 617.

Here, the Petitioner was concerned regarding the lack of clarity in the rulings. While the Petitioner certainly believed in the validity of all grounds raised initially, and did request the Court to reconsider them, the majority of Petitioner's motion consisted of issues revolving around preservation – which were not in the original motion and consisted of issues that had not been addressed. Petitioner was concerned with preserving the record and requesting a more detailed response and explanation from the Court. Petitioner believed that the court had clearly misunderstood or misapplied the law in denying the original motion on a Form 4 order, without explanation. This motion was not similar in any way to those prior motions that have been found to be unduly repetitive or duplicative.

Instead, this was the first SCRCP Rule 59 motion. This court, in *Elam v. S.C. Dept. of Transportation*, 361 S.C. 9, 19, 602 S.E.2d 772, 778 (2004), held that:

> We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a

> previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court. Again, we caution a party who files post-trial motions to note carefully the exceptions to this general rule as expressed in *Coward Hund , Quality Trailer* and *Collins Music*.
>
> *Elam* @ 778.

As noted in the original Petitioner's Response to the motion to dismiss the appeal, the Petitioner contends that the trial judge erred in several specifics. By way of example, this case involved the application of the Underground Facility Damage Prevention Act, commonly known as "call before you dig." The trial judge abdicated his responsibility to inform the jury of the appropriate law by informing the jury of the statutory law but then telling them the statutory law did not apply to common law remedies, without any explanation. He allowed the parties to debate to the jury what the law was and let the jury make that determination. Plaintiff's counsel argued that the last clause of the statutory scheme meant that the law the parties had been talking about for a week did not apply to this case. The trial judge has the duty to inform the jury of the law as the sole provider of the law in the court room. The trial judge denied Petitioner's request to inform the jury of what law applied to the case. Petitioner believed that was clear error and raised that in post-trial motions. The trial judge did not address that in his post-trial order summarily denying the motions. Petitioner sought clarification or explanation believing that the trial judge misconstrued, misapplied the law or misunderstood. The Court of Appeals ruling has the effect of not allowing a party to seek clarification or explanation without being "duplicative" in its post-trial motion. Additionally, if the court indeed misconstrued a post-trial motion, the better place to correct that would be in the trial court rather than requiring an appeal to the Appellate Courts. The ruling below fails to recognize and instead prevents that. The Court of Appeals erred in not recognizing that and claiming that it was simply a successive argument case.

The Court of Appeals additionally erred in not recognizing the argument below that the City believed that the trial judge had misconstrued other issues as well. For instance, the Respondent's expert witness was improperly allowed to testify as to a national standard in the industry. His testimony was presented by deposition and was provided to the court before the trial began. He admitted in his testimony that every state had a different standard as they each have their own statutory scheme and no two are alike. He admitted that there is no national standard of care. He was allowed, over objection and a motion in limine, to testify to a national standard of care anyway. He even claimed that South Carolina law did not mean what it said when it conflicted with what he framed as the national standard. Petitioner believed that the trial judge misconstrued what was happening and should be allowed to recognize that in a motion to reconsider.

Furthermore, the motion to reconsider plainly expressed that concern. In that motion, the Appellant clearly stated its purpose in seeking reconsideration:

> In sum, the appellate case law still remains unclear when a summary order is sufficient to properly present and preserve issues for meaningful appellate review. Indeed, the Supreme Court has described a formal order as the "better practice" and "beneficial to the judicial process." *Woodson*, at 526 – 27, 753 S.E.2d at 433.
>
> In this case, unlike most where the use of a summary order may suffice, the Court did not hold a hearing on Post-Trial Motions where both sides had the opportunity to orally argue the issues and the Court could have provided oral rulings from the bench as often occurs. In other words, typically where there is a hearing, it is more likely that an adequate record is made so that a summary order is sufficient to provide the appellate court with an understanding of the trial court's rulings and to ensure that all grounds raised in the Post-Trial Motions are properly preserved for appellate review. Additionally, the summary order in this case, unlike the one in *Woodson*, gives no indication of the Court's reasoning and legal analysis on any of the grounds raised for relief. Given the absence of the Court's own analysis and reasoning as well as even an acknowledgement as to what issues were raised, the Defendant is justifiably concerned that an appellate court will conclude that there is an insufficient basis for the court to review this Court's rulings. Often when the record is inadequate and the appealing party has not sought relief under Rule 59(e), the appellate court will summarily affirm or dismiss the appeal based on an inadequate record.
>
> It is in recognition of such outcomes that the Defendant seeks to ensure, in a case of this importance, that an appeal will be decided on the merits and not on a

> preservation error. To that end, the Defendant with this motion is formally asking the Court to issue a formal order that provides its reasoning and legal analysis on the grounds raised. The Defendant seeks to meet its responsibilities to make certain the grounds for appeal are properly preserved and that the appellate courts can provide meaningful review for the benefit of all the parties.

The motion to reconsider was primarily concerned with error preservation. It was not a cut and paste or recaptioning from a past motion. The Court of Appeals erred in glossing over the arguments in the motion to reconsider related to issue preservation. Whether those arguments are correct is not relevant to the issue before the court. Whether the Petitioner could make the arguments without having the motion dismissed as duplicative is the issue. Case law cited in Petitioner's response to the motion to dismiss, indicated that a court is not required to make findings of fact and conclusions of law, particularly when the record showed the court's reasoning is clear from the order and there was a sufficient record for appellate review. However, here there was no hearing on the post-trial motions and only a Form 4 order. There was no adequate record from which to determine the reasoning for the post-trial rulings, nor to give the trial judge the opportunity to correct any mistakes.

Elam clearly allows a party to request a court to revisit an argument already raised:

> First, it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. ***Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.*** *See, e.g., Arnold v. State,* 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.,* 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474–475 (2d ed. 1996). ***There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.***

The motion in issue clearly sought exactly that relief. Specifically, the court was asked to provide its reasoning so that the parties and the appellate courts could easily identify areas where the law had been misconstrued or so that the trial court could correct its mistakes. The Petitioner did not believe there was a proper basis for many of the court's rulings. The relief sought was appropriate under those circumstances.

Elam also recognized that our rules provide two basic situations in which a party should consider filing a Rule 59 motion.

> [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. ***A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider,*** or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.
>
> *Elam*, 602 S.E.2d @ 780.

The relief sought is permitted under a plain reading of Elam.

The Court of Appeals erred in determining that this was simply a successive motion. In Elam, followed by Swing, this court limited the exceptions from *Coward Hund*, *Collins Music* and *Quality Trailer.* In *Swing,* this court stated that it had been careful not to extend these exceptions to all procedurally improper Rule 59(e) motions. For example, the court noted that in *Camp v. Camp*, 378 S.C. 237, 772 S.E.2d 458 (Ct. App. 2008), the court of appeals granted a motion to dismiss because the Appellant's Rule 59 motion was "insufficient" and therefore did not stay the deadline for filing an appeal. This court reversed, despite the fact that the motion was procedurally improper since it failed to state with particularity the grounds therefor.

Here, the Rule 59(e) motion was clearly not a recaptioning from an earlier motion. Instead, the Rule 59(e) motion sought additional relief in an effort to ensure matters were preserved and/or

to allow the lower court to correct its mistakes. Certainly, the Appellant believed in the validity of its earlier grounds. However, that belief should not be fatal to this appeal. In granting the motion to dismiss, the court of appeals stated that those additional grounds (which made up the majority of the motion) failed because the courts have typically not required specific rulings in order to preserve a matter for appeal. The issue for dismissal is not whether the court believes that Appellant's preservation grounds and concerns were properly made in a motion, but instead whether the Rule 59(e) motion was duplicative in that it was ***virtually identical*** to the previous post-trial motion. The Rule 59(e) motion itself recites a vastly different ground. Preservation and the opportunity to correct the perceived errors were the moving force behind filing the motion.

The Appellant's Rule 59(e) motion dedicated the better part of two pages illustrating uncertainty in what was required for preservation. Appellant still believes that the case law cited there demonstrates that uncertainty. Whether correct or incorrect, the belief in that uncertainty and the presentation of that issue in a Rule 59(e) motion, should not result in the dismissal of an appeal. The motion is unlike the ones in *Coward Hunt* or *Quality Trailer* that were verbatim regurgitation of the issues already decided. While certain grounds were repeated, there were multiple other grounds, namely issue preservation, that were not presented in the original motion. Those grounds were adequately explained in the motion itself and properly presented. Therefore, pursuant to *Elam* and *Swing*, the motion to dismiss this unique appeal should be denied. This court should accept certiorari to decide that issue.

In the Writ for Certiorari, the Petitioner relied upon the Court's April 30, 2024, Order # 2024-04-30-02 which suspends the requirement of filing an Appendix as set forth in Rule 242(e), SCACR. As the writ has been granted, Petitioner is filing this brief and an Appendix. The Appendix does not include the documents filed before this court in seeking the Writ as they are

not probative to the issues in this appeal. If the court wishes for any such documents to be filed, the Petitioner will provide whatever is necessary.

Respectfully submitted,

GARFIELD SPREEUWERS LAW GROUP

By: *s/ David L. Morrison*

David L. Morrison (Bar #4101)
1220 Pickens Street
Columbia, South Carolina 29201
Phone: (803) 830-5496
E-mail: david@gslawsc.com

Attorney for Petitioner

Columbia, South Carolina

February 17, 2026

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.

PROOF OF SERVICE

I certify that I have served Brief of Petitioner and Appendix on Bobby Blakney by depositing a copy of it in the United States Mail, postage prepaid, on February 17, 2026, addressed to his attorney of record, Tyler Bathrick, Post Office Box 670, Rock Hill, South Carolina 29731 and via e-mail on February 17, 2026, at tyler@stewartlawoffices.net.

David L. Morrison (Bar #4101)
GARFIELD SPREEUWERS LAW GROUP
1220 Pickens Street
Columbia, South Carolina 29201
Phone: (803) 830-5496
E-mail: david@gslawsc.com

Attorney for Petitioner