THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

The Honorable Charles J. McCutchen

Appellate Case No. 2025-000705

James S. Patton,

Appellant,

v.

Kera R. Selzer and Dustin S. Selzer,

Respondent.

REPLY TO INITIAL BRIEF OF RESPONDENT

Dayne C. Phillips, Esq.
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

ARGUMENTS IN REPLY

1. RESPONDENTS FAILED TO SPECIFICALLY ADDRESS THE ARGUMENTS RAISED BY APPELLANT THAT THE CIRCUIT COURT ERRONEOUSLY AFFIRMED THE MAGISTRATE JUDGE'S RULING TO ISSUE A RESTRAINING ORDER.

Respondents failed to address Appellant's arguments in its brief. Specifically, Respondents failed to address Appellant's argument that the testimony and evidence presented at the hearing established the legitimate purpose of Appellant's property/boundary concerns as a long-time lake resident concerned about public access to the shoreline (e.g., public access to the riparian buffer, York County issuing a notice of violation regarding Respondents' fence and monitoring the lake levels). Respondents also failed to address Appellant's argument that he had a pre-existing pattern of photographing the property boundary and sitting on the seawall in January and June 2024 to monitor the water levels *prior* to Respondents moving into their residence.

Furthermore, Respondents failed to specifically address Appellant's argument that his conduct was *not* a pattern of intentional, substantial, and unreasonable intrusion into Respondents' *private life* because his actions served a legitimate purpose, and that Respondents did *not* have a reasonable expectation of privacy in their outside yard next to a *public access area* (i.e., riparian buffer and lake shoreline). Respondents also failed to address Appellant's argument that his conduct would *not* cause a *reasonable person* in the Respondents' position to suffer mental or emotional distress. Therefore, the Circuit Court erred in affirming the Magistrate Judge's ruling to issue a restraining order by finding the Respondents proved by a preponderance of the evidence that Appellant engaged in harassment, first degree. *See* S.C. Code §§ 16-3-1700 and 1750.

2. THIS APPEAL IS NOT MOOT BECAUSE RESTRAINING ORDERS ARE COMPLETED LONG BEFORE AN APPELLATE COURT CAN REVIEW THE ISSUES THEY IMPLICATE AND PRESENT ISSUES THAT ARE CAPABLE OF REPETITION, YET EVADING REVIEW.

This appeal is not moot for several reasons. Specifically, restraining orders are completed long before an appellate court can review the issues they implicate and present issues that are capable of repetition, yet evading review. *See* Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001); State v. Passmore, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005); State v. Simpson, 429 S.C. 83, 837 S.E.2d 669 (2020); Byrd v. Irmo High School, 321 S.C. 426, 431-32, 468 S.E.2d 861, 864 (1996); Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010).

Law

An opinion from 1895 is generally understood to be the first United States Supreme Court decision directly addressing the mootness doctrine. Mills v. Green, 159 U.S. 651 (1895). Interestingly, Mills involved the election of delegates to a convention to revise South Carolina's constitution. Id. at 652. A South Carolina citizen filed suit, claiming the state's voter registration statutes unconstitutionally "abridge[ed], imped[ed], and destroy[ed] the suffrage of citizens of the state and of the United States." Id. at 651-52. While the case was pending on appeal, the date of the delegate election for the convention passed, the delegates were selected, and the constitutional convention was assembled. Therefore, the Court held that "the whole object of the [plaintiff's lawsuit] was to secure a right to vote at the election." Id. at 657. The matter was therefore dismissed. Since then, however, the Supreme Court has generally *declined to deem cases moot* that present issues or disputes that are "capable of repetition, yet evading review."[1]

[1] See, e.g., Kingdomware Techs., Inc. v. United States, 579 U.S. 162, 170 (2016); Turner v. Rogers, 564 U.S. 431, 439-41 (2011); Davis v. FEC, 554 U.S. 724, 735-36 (2008); FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 462 (2007); Norman v. Reed, 502 U.S. 279, 287-88 (1992); Int'l Org. of Masters, Mates & Pilots v. Brown, 498 U.S. 466, 472 (1991); Meyer v. Grant, 486 U.S. 414, 417

The classic example of a dispute that is capable of repetition, yet evading review is a pregnant woman's constitutional challenge to an abortion regulation. See Roe v. Wade, 410 U.S. 113, 125 (1973)[2] (quoting S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911)). Once a woman gives birth, abortion is no longer an option for terminating that pregnancy. However, almost any litigation of significance, especially if it involves an appeal, can rarely be fully resolved in a mere nine months. If a challenge to an abortion regulation became moot as soon as the challenger gave birth, "pregnancy litigation seldom w[ould] survive much beyond the trial stage, and appellate review w[ould] be effectively denied." Id.

The Supreme Court has deemed certain other controversies outside of the abortion context as capable of repetition, yet evading review as well. For example, in FEC v. Wis. Right to Life, Inc., an advocacy organization claimed that restrictions on "electioneering communications" established by the Campaign Reform Act of 2002 unconstitutionally prohibited the organization from broadcasting certain political advertisements shortly before the 2004 election. 551 U.S. 449, 457-60 (2007). Even though the case did not reach the Supreme Court until long after the 2004 election had passed, the Court nonetheless concluded that the case was not moot. Id. at 462-64.

---

n.2 (1988); Honig v. Doe, 484 U.S. 305, 317-23 (1988); Burlington N. R.R. Co. v. Bhd. Of Maint. Of Way Emps., 481 U.S. 429, 436 n.4 (1987); Brock v. Roadway Express, Inc., 481 U.S. 252, 257-78 (1987); Press-Enter. Co. v. Super. Ct. of Cal. for Cty. Of Riverside, 478 U.S. 1, 6 (1986); Globe Newspaper Co. v. Super. Ct. for Cty. of Norfolk, 457 U.S. 596, 603 (1982); Democratic Party of U.S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 115 n.13 (1981); Gannett Co. v. DePasquale, 442 U.S. 368, 377 (1979); Bell v. Wolfish, 441 U.S. 520, 526 n.5 (1979); First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 774 (1978); United States v. N.Y. Tel. Co., 434 U.S. 159, 165 n.6 (1977); Neb. Press Ass'n v. Stuart, 427 U.S. 539, 546-47 (1976); Gerstein v. Pugh, 420 U.S. 103, 110 n.11 (1975); Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 125-27 (1974); Storer v. Brown, 415 U.S. 724, 737 n.8 (1974); Dunn v. Blumstein, 405 U.S. 330, 333 n.2 (1972); S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 514-16 (1911).

[2] While Roe v. Wade was overruled last year, mootness was not addressed by the Court in Dobbs v. Jackson Women's Health Organization,142 S.Ct. 2228 (2022).

The Court reasoned that the organization "credibly claimed that it planned on running 'materially similar' future targeted broadcast ads" in advance of future elections, and the period between elections was too short to allow the organization sufficient time to fully litigate its constitutional challenges sufficiently in advance of the election date. Id.; see also Davis v. FEC, 554 U.S. 724, 735-36 (2008) (rejecting mootness challenge in case whose facts "closely resemble[d]" those at issue in Wisconsin Right to Life).

Notably, South Carolina recognizes the "capable of repetition, yet evade review" exception. Byrd v. Irmo High School, 321 S.C. 426, 431-32, 468 S.E.2d 861, 864 (1996). For the exception to apply, "the action must be one which will truly evade review." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). The exception is most applicable in situations where the prejudice suffered by the complaining party is temporary and has ended by the time of appellate review. See Byrd, 321 S.C. at 432, 468 S.E.2d at 864 (finding short term student suspensions evade review because they are, "*by their very nature, completed long before an appellate court can review the issues they implicate*") (emphasis added).

In Byrd, a student from Lexington-Richland School District 5 was suspended for ten days after coming onto campus after having consumed alcohol. Id. at 321 S.C. 426, 429, 468 S.E.2d 861, 863. After exhausting his appeals through the district's policies, the family engaged counsel who filed suit at the circuit court.[3] Id. at 429-30, 468 S.E.2d at 863. Following the circuit court's dismissal under Rule 12(b)(1) and 12(b)(6), SCRCP, the student sought an appeal, alleging three grounds of error against the circuit court. Id.

After the notice of appeal was filed, Irmo High School moved to dismiss the case as moot.

[3] The student also petitioned our Supreme Court for supersedeas, which was denied. Id. at 430, 468 S.E.2d at 863.

Id. "It assert[ed] that Student's suspension occurred in August and September 1994, that Student has since returned to school, and that the suspension has been cleared from Student's record." Id. at 430, 468 S.E.2d at 863-64. The Byrd opinion was issued approximately eighteen months after the suspension, yet our Supreme Court declined to apply the mootness doctrine and instead found the "capable of repetition, yet evading review" exception applicable.

Our Supreme Court held that the student's case was not moot because future suspensions could be concluded before *appellate judicial review* could be accomplished:

> Applying this standard, we find that even if it is assumed that the issue in the present case is moot, it is an issue that is capable of repetition, but which will evade review. Short-term student suspensions, by their very nature, *are completed long before an appellate court can review the issues they implicate*. Therefore, we conclude that the present case clearly fits into the evading review exception of the mootness doctrine, even if it were not otherwise appropriate for the Court to address this appeal.

Id. at 432, 468 S.E.2d at 864 (emphasis added).

The short-term nature of the reincarceration has the potential for recurrence but will likely fail to last long enough to permit contemporaneous judicial review. See Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010) ("We find this issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed.").

In State v. Passmore, the appellant received a one-year sentence for criminal contempt. 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005). On appeal, Passmore alleged a constitutional violation based upon the lack of a jury trial. Id. Although she was no longer incarcerated at the time the opinion was issued, the Court of Appeals held the issue was not moot. Id. The state contended in Passmore "that even if Appellant's sentence was unconstitutional, [the Court of

Appeals] should affirm because she has served the sentence, rendering the case moot." Id. at 581, 611 S.E.2d at 280.

The Court of Appeals cited Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001) for the three primary exceptions to the mootness doctrine, including the capable of repetition but evading review exception. Id. at 582, 611 S.E.2d at 280. The Court found the "capable of repetition yet evading review" exception and another applicable and therefore refused to dismiss Passmore's appeal as moot. Id. at 582, 611 S.E.2d at 281. Applying a similar rationale as discussed above, the Court held:

> [T]he State concedes in its brief: "the sentence was in fact too brief to be fully litigated through appeal prior to its expiration…" The issue, then, is whether the constitutional violation suffered by Appellant could be inflicted on a contemnor in the future. That the unconstitutional sentence was imposed here is evidence enough a judge could make the same error in the future.

Id. at 582, 611 S.E.2d at 281 (emphasis added). *See* Seabrook v. City of Folly Beach, 337 S.C. 304, 523 S.E.2d 462 (1999) and Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E.2d 474 (2006).

In Seabrook, Appellant Folly Beach imposed conditions on land in the Lowcountry. 337 S.C. 304, 523 S.E.2d 462 (1999). Following the advent of litigation, Folly Beach "voluntarily removed the conditions and approved Respondents' plat and Respondents … abandoned their taking claim." Id. at 307, 523 S.E.2d at 463. Therefore, our Supreme Court concluded a ruling on the pending issues would have no practical effect. Id. Additionally, although the factual scenario was capable of repetition, according to our Supreme Court, "it does not evade review, and would have been clearly reviewable had Folly Beach not voluntarily removed the conditions and Respondents abandoned their taking claim." Id.

In a FOIA case, our Supreme Court held that it did not fall under the capable of repetition, yet evade review exception. Croft as Tr. of James. A. Croft Tr. v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021). In doing so, the Court nonetheless reiterated that the scope of review includes appellate review:

> The exception is most applicable in situations where the prejudice suffered by the complaining party is temporary and has ended by the time of appellate review. Even if the issues related to alleged FIOA and ordinance violations by the Board are capable of repetition, they do not evade review. Here, Petitioners' appeal became moot because the Developer decided to abandon the Project, not because Petitioners had insufficient time to challenge the Board's approval before the controversy ended.

Id. at 480-81, 860 S.E.2d 352, 356 (internal citation omitted).

Our jurisprudence is replete with recent cases where courts have relied on exceptions to the mootness doctrine to reach the merits. Three years ago, our Supreme Court addressed mootness in a case involving a sentencing question. State v. Simpson, 429 S.C. 83, 837 S.E.2d 669 (2020). The Court found the question of Simpson's sentence moot due to his completion of the home detention portion of the sentence but found that the issue was capable of repetition and would generally evade review. Id. at 89, 837 S.E.2d at 672. Our Supreme Court also concluded in S.C. Pub. Int. Found. v. S.C. Dep't of Transportation, 421 S.C. 110, 121-22, 804 S.E.2d 854, 860-61 (2017), that the issue of whether SCDOT could inspect bridges inside private, gated communities is one that is capable of repetition yet will generally evade review.

If a decision by the lower court may affect future events, or have collateral consequences, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001); see also 5 AM.JUR.2D Appellate Review § 649 (1995). In State v. Passmore, the appellant made similar contentions regarding collateral consequences:

> Although Appellant's time has been served, she may yet experience the repercussions of having been sentenced to a year in prison for contempt of court. For example, she might be obliged to indicate jail time served on an employment application. Thus, the sentence could affect her ability to obtain future employment. Likewise, she could be required to disclose the conviction on a credit application, thereby hindering her chances of securing credit. Further, drivers' license applications, voter registration applications, and other documents may mandate the divulgence of prior convictions. Hence, Appellant's unconstitutional conviction will continue to stigmatize and prejudice her. These significant collateral consequences are enough to surmount the mootness doctrine.

363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005).

Discussion

In this case, this appeal is not moot for several reasons because restraining orders are completed long before an appellate court can review the issues they implicate and present issues that are capable of repetition, yet evading review. *See* Curtis, 345 S.C. 557, 549 S.E.2d 591; Passmore, 363 S.C. at 583, 611 S.E.2d at 281; Simpson, 429 S.C. 83, 837 S.E.2d 669; Byrd, 321 S.C. at 431-32, 468 S.E.2d at 864; Nelson, 390 S.C. at 434-35, 702 S.E.2d at 370. Therefore, Appellant requests the Court deny Respondents' motion to dismiss and find the Circuit Court erred in affirming the Magistrate Judge's ruling to issue a restraining order by finding the Respondents proved by a preponderance of the evidence that Appellant engaged in harassment, first degree. *See* S.C. Code §§ 16-3-1700 and 1750.

CONCLUSION

Based on the foregoing reasons, Appellant James S. Patton respectfully requests that this Court reverse the Circuit Court's affirmance of the York County Magistrate Court's issuance of a Restraining Order.

Respectfully submitted,

s/ Dayne Phillips

_____

Dayne Phillips
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072
803-272-4503 (office)
803-807-0234 (cell)
dayne@pricebenowitz.com

March 16, 2026

ATTORNEY FOR APPELLANT