RECEIVED

Apr 02 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 RESPONDENT

Tyler Bathrick (Bar#74944)
Stewart Law Offices
PO Box 670
Rock Hill, SC 29731
Phone: 803-328-5600
E-mail: tyler@stewartlawoffices.net
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATEMENT OF ISSUE ON APPEAL

Under Rule 203(b)(1), SCACR, a successive motion that merely reiterates issues already raised and ruled upon by the trial court does not toll the time for filing an appeal. Here, Petitioner filed written post-trial motions, which the trial court denied in full. Petitioner then filed a successive motion that simply summarized the prior motions and requested the court's reasoning and legal analysis for its denial. This appeal raises one question: did merely restating the previous arguments and requesting an explanation toll the time for filing an appeal?

STATEMENT OF THE CASE

On February 29, 2024, a jury returned a verdict for Respondent. (App. 10-12). Five days later, Petitioner filed written post-trial motions for a JNOV, new trial absolute, new trial, and nisi remittitur. (App. 15-40). The motions also specifically asked for the verdict to be reduced in a manner contrary to law and precedent. (App. 38-39). Respondent opposed the motions. (App. 41-57).

On March 21, 2024, after "review[ing], deliberat[ing], and careful[ly] consider[ing] the points raised in [Petitioner's] post trial motions and subsequent response from the [Respondent]," Judge Gibbons issued a written Order denying "[Respondent's] motions in their entirety." (App. 58-59). As required by law and precedent, Judge Gibbons subtracted any set-offs and comparative fault, and then reduced the verdict to the Tort Claims Act cap of $300,000.00.[1] Id. (App. 58). Considering April 20, 2024, was a Saturday, the deadline to perfect the appeal became April 22, 2024. Rules 203(b)(1) & 263(a), SCACR.

But instead of appealing, Petitioner filed a successive motion, summarizing its earlier arguments and requesting the court to provide "reasoning or legal analysis for the denial of each of the grounds for relief as set forth in the [Petitioner's] Post-Trial Motions." (App. 60-64). Petitioner's successive motion was essentially identical to Petitioner's original post trial motions. (App. 15-40). Respondent opposed the motion and on December 4, 2024, Judge Gibbons denied Petitioner's motion. (App. 65-66 and App 70-72). Petitioner then appealed.

Respondent filed a motion to dismiss, arguing Petitioner filed a successive post-trial motion that did not stay the time to appeal and the appeal must be dismissed. (App. 3-9). Petitioner filed a return arguing the motion was appropriate. (App. 75-84).

---

[1] Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 219–223, 528 S.E.2d 682, ___ (Ct. App. 2000).

On April 8, 2025, the court of appeals dismissed Petitioner's appeal as inappropriately successive and procedurally improper. (App. 91-92). Petitioner moved for a rehearing. (App. 94-95). The motion was denied and Petitioner petitioned for a writ of certiorari, which was granted. (App. 96-106).

ARGUMENT

THE COURT OF APPEALS CORRECTLY DISMISSED THE PETITIONER'S APPEAL BECAUSE THE PETITIONER'S SUCCESSIVE MOTION FAILED TO STAY THE TIME TO APPEAL.

In South Carolina, "timely post-trial motions always stay the time for appeal unless the motion fits into one of the two 'exceptions' initially set forth in Coward Hund[2] and Quality Trailer[3]." Swing v. Swing, 445 S.C. 340, 349, 914 S.E.2d 158, ___ (2025) (citing Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 774 (2004)). In Quality Trailer, this Court held "a successive motion, raising issues already raised to and ruled upon by the trial judge," does not stay the time to appeal. 349 S.C. at 219. There, the defendant filed post-trial motions after a jury returned a verdict for the plaintiff. Id. at 218. The trial judge denied the motions. Defendant then filed a successive motion that was in substance identical to its first motion. Id.

This Court found that when the judge denied the post-trial motions, it "was a ruling on all issues raised, and preserved for appellate review all issues raised therein." Id. at 221. And because the successive motion failed to identify a single issue raised to but not ruled upon by the trial judge, the successive motion was inappropriately successive and did not toll the time to appeal. This Court dismissed the appeal. Id.

---

2 Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

3 Quality Trailer Products, Inc. v. CSL Equipment Company, Inc., 349 S.C. 216, 562 S.E.2d 615 (2002).

Similarly, in Collins Music Co., Inc. v. IGT, 353 S.C. 559, 565, 579 S.E.2d 524, 527 (Ct. App. 2002)[4], the court of appeals held defendant's Rule 59(e) motion was inappropriately successive because it (1) failed to identify an issue raised to and not ruled upon by the trial judge and (2) asked the trial judge to "make specific rulings" and provide the basis for denying each of the issues raised. Collins Music, 353 S.C. at 561. There, the defendant filed post-trial motions after a jury returned a verdict for the plaintiff. Id. at 560. The trial judge "carefully review[ed]" the post-trial motions and denied them. Id. Defendant then filed a Rule 59(e) motion, "merely restat[ing] the arguments it made in the . . . first post-trial motions" and requesting the trial judge to make specific rulings and provide the basis for denying each of the issues raised. Id. at 561.

Applying the Quality Trailer rule, the court of appeals found the Rule 59(e) motion was essentially identical to the post-trial motions because it restated the arguments from the post-trial motions and the trial judge was not required to make specific rulings or provide the basis for denying each of the issues raised. Id. at 565. The court of appeals then concluded that the Rule 59(e) motion was inappropriately successive and the appeal was therefore dismissed. Id. at 566.

Here, Petitioner filed post-trial motions after a jury returned a verdict for the plaintiff. Unlike Quality Trailer (where the trial judge simply denied the post-trial motions) and Collins Music (where the trial judge carefully revied the post-trial motions before denying them), the trial judge here "review[ed], deliberat[ed], and careful[ly] consider[ed]the points raised in [Petitioner's] post trial motions" before denying them "in their entirety." (App. 58). There can be no question that this "was a ruling on all issues raised, and preserved for appellate review all issues raised therein." Quality Trailer, 349 S.C. at 221.

---

[4] Swing v. Swing, 445 S.C. 340, n.4, 914 S.E.2d 158, n.4 (2025) ("For simplicity, from here on we will refer to the two situations the Elam Court called 'exceptions' as the Coward Hund and Quality Trailer situations or exceptions because, as we said in Elam, Collins Music is similar to Quality Trailer."

Just like in Quality Trailer and Collins Music, Petitioner then filed a successive motion. Just like in Quality Trailer and Collins Music, this motion did not identify a single issue raised to but not ruled upon by the trial judge. Just like in Quality Trailer, this "motion was, in substance, identical to the" post-trial motions. 349 S.C. at 218. Just like in Collins Music, this motion briefly summarized the post-trial motions and requested reasoning and legal analysis for denying each of the issues raised in the post-trial motions. Just like in Quality Trailer and Collins Music, this motion was inappropriately successive and thus procedurally improper.

Elam does nothing to change this analysis.[5] In Elam, the Supreme Court held the 59(e) motion tolled the time to perfect the appeal because it preserved an issue for appeal. Elam brought a claim against SCDOT for damages sustained in a car wreck. Elam, 361 S.C. at 13. "SCDOT asserted that notice of a hazard [was] 'interrupted' by responsive action to correct the defect," and the trial court adopted this standard of notice and instructed the jury to apply it. Id. at 25. After trial, SCDOT brought a motion for JNOV. Id. at 13. In a written order, the trial judge denied SCDOT's motion for JNOV. Id. But in the written order, the trial court applied a completely different notice standard from the one it instructed the jury to apply. Id. at 25–6. Believing the motion would have been granted if the proper standard was applied, SCDOT filed a 59(e) motion. Id.

At the heart of all of these cases is the question of preserving an issue for appeal. That is indeed the purpose of post-trial motions. Bailey v. Segars, 346 S.C. 359, 365, 550 S.E.2d 910, ___ (Ct. App. 2001) ("Post-trial motions are . . . used to preserve [issues for appeal] that have been raised to the

---

[5] Appellant disagrees. It contends the "general rule" recognized in Elam and reaffirmed in Swing governs here, to the exclusion of the "exceptions" or "situations" those decisions also acknowledged. 361 S.C. at 21; 445 S.C. at 348–9 & n.4. Yet Elam and Swing both make clear that a 59(e) or successive motion does not preserve an issue for appeal and is "inappropriately successive and thus procedurally improper" when it (1) restates arguments previously made in a written post-trial motion and (2) asks the judge to provide legal reasoning or analysis for the denial of the motion. Collins Music, 336 S.C. at 561; Elam, 361 S.C. at 21; Swing, 445 S.C. at 347–9 & n.4. Appellant's successive motion fits squarely in that prohibited category. (App. 60–64).

trial court but not ruled upon."); Hubbard v. Rowe, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939) ("In matters of appeal, so far as it appears, all that this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised in the lower Court and passed upon by that Court."); Doe v. Doe, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) ("To preserve an issue for appellate review, the issue . . . must have been raised to and ruled upon by the trial court.").

The question of tolling then turns on preserving issues for appeal—if the successive motion preserves an issue for appeal, then the time to appeal is tolled. To be sure, Elam held the 59(e) motion tolled the time to perfect the appeal because the motion raised an issue that came to light because of the order denying the post-trial motion. Id. And the court pointed out why this is important: a party should have the opportunity or a "single bite at the apple" to preserve in writing issues for appeal. Id at 21. In that vein, it created a general rule: "a party usually is free to file an initial 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." Id. at 21.

But that general rule is subject to exceptions. Id. Here, after a jury trial, Petitioner filed a 25-page post-trial motion (which aptly argued its points), laying out every issue it determined needed to be preserved for appeal. (App. 15-40). This is not in dispute. Nor is there a dispute that the trial court reviewed, deliberated, and carefully considered the points raised in Petitioner's post-trial motions before denying the motions in their entirety. (App. 58). The issues Petitioner raised in its post-trial motions are necessarily preserved for appeal.

But the successive motion does not work to preserve anything for appeal. To be sure, in its successive motion, Petitioner points to no issue that was raised to but not ruled on by the trial court. And Petitioner points out no new issue that came to light as a result of the trial court's treatment of the post-trial motion. See Elam at 25–6. Not satisfied with the trial court's conclusion,

Petitioner submitted a successive motion with virtually the same arguments as it submitted in its post-trial motions and asked the trial court to make detailed findings of fact and conclusions of law to support its denial of the post-trial motions.

Removing all doubt, in its Response to Respondent's Motion to Dismiss, Petitioner clarifies that the successive motion was filed solely to ask the trial court to "consider and provide its legal reasoning for its" denial of Petitioner's post-trial motion so Petitioner could be sure that "the issues were preserved for appeal and to prod the trial court to examine the issues in greater detail so that the trial court could discern its manifest errors and correct them." (App. 79).

The trial judge had just presided over the four-day trial and was intimately aware of the issues. In that context, the motions were denied.

Petitioner put itself squarely into the Quality Trailer and Collins Music Co., Inc. v. IGT exceptions to the general rule Elam created. Elam is clear in its specific warning parties to carefully consider these exceptions before filing successive motions following post-trial motions. Elam at 21.

This was the law for over twenty years at the time of this trial. And it was recently affirmed in Swing.

CONCLUSION

This case presents no novel questions of law. See Swing at 18 (explaining this has been the law for twenty-one years). The court of appeals dismissed Petitioner's appeal without dissent. The Decision of the court of appeals follows and does not conflict with prior decisions of the Supreme Court. See Swing and Quality Trailer. There is neither a substantial constitutional issue nor a federal question. Finally, this Court recently issued an opinion addressing this issue. See Swing.

Petitioner's second motion is procedurally improper and does not stay the deadline for appeal because it is inappropriately successive of the previously filed, written post-trial motion. Summarizing

its post-trial motions and requesting the trial judge provide reasoning and legal analysis for denying the post-trial motions does not cause Petitioner's successive motion to be appropriately successive. See Collins Music. This appeal should be dismissed as improvidently granted or in the alternative the court of appeals should be affirmed.

Respectfully submitted,

By: s/ Tyler A. Bathrick
Tyler Bathrick (Bar #74944)
Stewart Law Offices
1242 Ebenezer Rd., Rock Hill, SC 29732
PO Box 670, Rock Hill, SC 29731-6670
Phone: 803-328-5600
Email: tyler@stewartlawoffices.net

Attorney for Respondent

Rock Hill, South Carolina
April 2, 2026