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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court Of Common Pleas
Circuit Court Case No. 2018CP0702109

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

Appellate Case No.2022-000475

Coffin Point Homeowners Association, Inc. Appellant,

v.

The State of South Carolina, Estate of Charles H. Lyman, The St. Helena Company, Its Successors or Assigns, The Estate of J.D. Cameron a/k/a J. Donald Cameron, The Estate of J.E. McTeer, Wilma Clark, Jeanine Skok, Lawrence Casler, Dean Morrissey, Carol Morrissey, Ralph Netherland, Gloria Netherland, Special Trust of William B. Fahrner, Mark heles, Beverly Heles, David Smith, Lynn Smith, LiLi, LLC; Revocable Living Trust of Thomas Walterhoefer, Ceclily Deegan McMillan, Steven Teets, Lucinda Teets, Beverly Boulware, Russell Waldon, Nicolette Waldon, David Shaffer, Delora Cook, Gerald Hartwig, Carol Hartwig, Paulette Brown, Benjamin Couch, Thomas S. Clark Family Living Trust, Eunice Teen Diggs, Janet Kathleen Reynolds Trust, Slade Family Revocable Trust, David C. Strother, Andrew Seward, Ashley Heath Madilon, Arnold Hollis, Lillian Hollis, Jennifer Allen, ZIA Exchange Company, LLC, Qualified Intermediary for Barbara J. Bailey Limited Partnership, Travis Washington, Janet Embly, Trustee and Individually, William S. Embly, Trustee and Individually, William S. Emblee, Trustee and Individually, Scott Simmons Omari Trust, Mary Hudson, Rachell Carolynne Owens Revocable Trust, Gerald Hartwig, Carol Hartwig, Gerald L. Wayne, Vivian M. Wayne, Lorrie Gaskin Germann, Grant Martin Germann, Gregory J. Giardina, Melissa Basenburg, Mark M. Hazard, Micah L. Meyers, Jennifer J. Meyers, John Joseph Edwards, Nancy Jean Edwards, Preston Ventures, LLC, Donald Lunardini, Kristina Barbara Moore Lunardini, Melissa Uhlman Revocable Trust and All Other Persons Known or Unknown Having Any Interest, Title, Estate or Interest In Or Lien Upon The Real Property Described in the Complaint Herein Through the Above Defendants or Any Other Source Being Designated Collectively as John Doe and Mary Roe Including All Persons Who May Be Deceased, Minors, Persons 'in the Armed Forces of the United States of America, insane or Incompetent Persons, and All Other Persons Under Any Other Disability Who Might Have or Claim to Have Any Right, Title or Interest in or Lien Upon the Real Property Described in the Complaint, Respondents.

**MEMORANDUM OF STATE OF SOUTH CAROLINA
AS TO JUSTICIABILITY AND APPEALABILITY**

By letter dated May 6, 2026, the Court requested that the parties provide a memorandum addressing the question of whether this case presents a justiciable controversy and if so, whether this case is immediately appealable. As discussed below, this case does not appear to present a justiciable controversy on appeal, and it is not immediately appealable.

BRIEF BACKGROUND

The Appellant Coffin Point brought this action in 2018 seeking a judgment declaring it the owner of real property below mean high water in Beaufort County and twice amended the Complaint. R. pp. 50 and 59; Second Supplemental Amended Complaint (R. Supp. p. 1). Coffin Point claims under a deed from the State of South Carolina to Charles Lyman which Appellant conveys 164 13/100 acres of “marshland” consisting of lots A and B containing, respectively 114 acres and 50 13/100 acres. R. p. 126. The grant references a plat on file in the Secretary of State’s Office at page 22 of Book 2 of Public Land Plats. Appellant has produced a plat dated August 13, 1891 for Lyman, but it does not contain the Book references in the grant and has not been identified as the same plat although the circuit court noted that it appears to be contemporaneous. R. p. 10 n. 1, (Order); p. 127 (plat). The plat describes Lot B as “a line of beach.”, and that lot is the one under which Coffin Point makes its claim (R. p. 28).

The Court issued its Order on February 2, 2022, granting summary judgment to the Defendants to the extent that the property at issue is a beach, and denying summary judgment as to any part of that property that is not a beach. R. p. 8. The Order allowed Appellant a period of time to survey any non-beach portion of the claim, and required that the survey identify which part

of the property at issue is beach and what is not, and directed that the survey should identify where the 1891 grant is located in relation to the property claimed today. R. p. 13. Coffin Point did not take that action and instead initiated this appeal.

I

THIS CASE IS NOT JUSTICIABLE ON APPEAL

As discussed in *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 182, 912 S.E.2d 389, 398 (Ct. App. 2024), reh'g denied (Mar. 12, 2025):

“A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.” *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct.App. 2002) (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct.App. 1998)). “Before any action can be maintained, a justiciable controversy must be present. A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character.” *Sloan v. Greenville County*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App. 2003) (citation omitted). . . .

“The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing.” *Sloan*, 356 S.C. at 547, 590 S.E.2d at 346. “A justiciable controversy is a real and substantial controversy [that] is ripe and appropriate for judicial determination” *Id.* at 552, 590 S.E.2d at 349 (quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983)). Our supreme court has “explained ripeness by defining what is not ripe, stating ‘an issue that is contingent, hypothetical, or abstract is not ripe for judicial review.’ ” *Jowers*, 423 S.C. at 353-54, 815 S.E.2d at 451 (quoting *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006)).

See also, Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995)

(“A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.”).

If this Court is asking whether the Second Amended Complaint in this case as filed presents a justiciable controversy, the answer appears to be yes. If the Court is inquiring whether this appeal presents a justiciable controversy, the answer appears to be no.

That Complaint appears to present a “real and substantial controversy” (*supra*) in seeking a declaration of ownership of property, but it otherwise fails to state facts sufficient to state a cause of action for reasons set forth in the State’s Motion for Summary Judgment. R. p. 36.

However, this appeal does not present a justiciable controversy because of the nature of the issues raised by Appellant. In general, this court may only consider cases when a justiciable controversy exists. *Spivey ex rel. Spivey v. Carolina Crawler*, 367 S.C. 154, 160, 624 S.E.2d 435, 438 (Ct. App. 2005). To be justiciable, a case must be ripe. See, *In Int. of Francis Richard G.*, 296 S.C. 185, 186, 371 S.E.2d 520, 520 (1988)(“We dismiss this appeal because it lacks a justiciable controversy and contains no issue ripe for judicial determination.”); *State v. Cooper*, 342 S.C. 389, 397, 536 S.E.2d 870, 875 (2000)(“issue was hypothetical and not ripe for appeal.”). “The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.” *Sloan v. Greenville County*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct.App.2003). The issues on appeal are not ripe and justiciable for the same reasons that it is not immediately appealable as discussed below.

II

THE ORDER GRANTING PARTIAL SUMMARY JUDGMENT WAS NOT IMMEDIATELY APPEALABLE

The State briefed this issue, but Coffin Point did not respond to it in reply. For the convenience of the Court, the State sets forth the argument from its brief below.

Generally, orders granting partial summary judgment may be immediately appealable under either the “involving the merits” or “substantial right” categories of section 14–3–330(1) and (2)(c). See *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 178–79 (1990) (holding an order granting partial summary judgment may be appealable under either category). To decide whether a particular summary judgment order fits into either subsection, however, the court must examine the order to determine

if it meets the subsection's criteria for appealability.

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). The Orders at issue do not meet these criteria for an immediate appeal. They do not involve the merits or a substantial right because Appellant did not allege in its Complaint that the property is beach, does not claim it is beach in its brief¹, and did not bring his claim under S.C. Code §48-39-220 which provides a means of adjudicating tidelands claims. Appellant also did not comply with the parts of the Order giving Appellant time to survey the property to identify which part of the property is beach and which is not and to identify where the 1891 grant is located in relation to the property claimed today. As stated by the circuit court, “Plaintiff has not provided any information about his surveyor’s opinion to show whether the property, as it exists today, is by its nature a beach or a marsh” (R. p. 10) and “we do not know if the granted land is partially or fully underwater now or whether it is aligned with the property claimed by Plaintiff.” R. p. 12, n. 2.

CONCLUSION

At this point, the appeal presents just a hypothetical question of whether, if the property is a beach and Appellant has claim to it under the grant, it can bring this quiet title action. A hypothetical question is not ripe for appeal. *See State v. Cooper, supra.* If none of the property is beach or if the 1891 grant does not include the property Coffin Point claims, then this appeal is moot. Accordingly, this Court should dismiss this appeal and remand this case to the circuit court for further proceedings.

¹ Appellant makes assumptions “for the sake of argument” that the property is “tideland” or a “beach.” Appellant’s Brief at page 6,

Respectfully submitted,

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