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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
In the Administrative Law Court

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-001876

Orangeburg County Assessor..Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan.......................................Appellants

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BRIEF OF APPELLANTS

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I. Is the decision of the Administrative Law Court denying the homeowner the preferred residential tax status supported by substantial evidence?

II. Should the appeal be dismissed?

STATEMENT OF THE CASE

The appellants are Rekha Haribabu and her husband, Thiyagarajhan Vasudevan. Ms. Haribabu is the title owner of a residence in Orangeburg County, South Carolina, where she is employed as a teacher by the school district. She submitted an application for the 4% special assessment ratio accorded residential owners by state law to the Orangeburg County Assessor on December 6th, 2023. On February 14th, 2024 the assessor denied the application for the special assessment. On March 1st, 2024 the homeowner appealed the assessor's decision to the Orangeburg County Board of Assessment Appeals. The Board denied the application in a decision dated June 18th, 2024. On July 11th, 2024 the homeowner filed a request for contested hearing with the South Carolina Administrative Law Court. By consent of the parties, this court remanded the matter to the assessor for further consideration on August 23rd, 2024. After reconsideration, the assessor denied the application of the homeowner for the special assessment on October 15th, 2024. The homeowner appealed the decision to the Board of Assessment Appeals, which reversed the decision of the assessor on December 13th, 2024 finding the homeowner was entitled to the special assessment ratio. On December 19th, 2024 the assessor filed a request for contested hearing with the Administrative Law Court, which conducted the hearing on May 22nd, 2025. The Administrative Law Court reversed the decision of the Board of Assessment Appeals in a decision entered August 7th, 2025. Counsel for the homeowner received the decision of the court on that date and noticed an appeal to this court on September 4th, 2025. On September 29th, 2025, the Assessor moved to dismiss the appeal on procedural grounds. This court denied the motion and entered an order consolidating the issues for briefing on December 3rd, 2025.

STATEMENT OF FACTS

Rekha Haribabu is the owner of a residence in Orangeburg County, South Carolina, where she is employed as a teacher by the local school district. She has worked there as a science teacher for about eight years.

Ms. Haribabu is a native of India. She has been married to Thiyagarajhan Vasudevan for 28 years. He is also a native of India. Her son, Charan Rajhan Thiyagarajhan, is now 26 years old, and in college at South Carolina State. He is also a native of India.

Ms. Haribabu first came to this country to teach in 2009, after obtaining a bachelor's of science at the University of Madras in India and teaching there for about 13 years. She taught science and chemistry in Hartford, Connecticut from 2009 to 2012. She returned to India to teach for two years, then returned to the United States to teach again, at Columbia High School in Columbia, South Carolina from 2014 to 2016, and Marion High School in Marion, South Carolina for the school year 2016 – 2017. She then began teaching in Orangeburg. [ROA pp. 110-111]

Ms. Haribabu is lawfully in this country with an H-1B Visa. This is a non-immigrant visa which allows U.S. employers such as schools to hire teachers in specialized fields, with at least a bachelor's degree. She has had this visa since 2017, enabling her to reside in the United States and teach. Her current visa expires in August, 2026. She has a valid Social Security card, denominated "Valid for work only with DHS authorization," and she is subject to Social Security tax. [ROA p. 328]

Her husband, Mr. Vasudevan, is lawfully in this country with an H4 visa. This is a non-immigrant visa for spouses of H-1B visa holders to remain in the United States. This status is tied to the H-1B visa employee. Mr. Vasudevan can also work in the United States so long as he has authorization to do so, with what is known as an Employment Authorization Document, or

EAD. [ROA p. 246] Mr. Vasudevan has such an endorsement on his visa, which expires on the same date as his wife, in August, 2026. He is currently employed as a front desk agent at two motels in the Orangeburg area and earns a modest income. [ROA pp. 187-189] Just as his wife, he has a valid Social Security card, denominated "Valid for work only with DHS authorization," and he is subject to Social Security tax. [ROA p. 245]

The couple's son, Charan, is lawfully in the U.S. with an F1 visa, which entitles him to remain in the country as a college student. He is pursuing a degree in engineering, and wants to pursue a career in the automotive industry, due to the well-established presence of automotive manufacturers. [ROA pp. 132, l. 13 – 133, l. 25]

Ms. Haribabu purchased the residence at 105 Lata Palm Court, Orangeburg, South Carolina on January 31st, 2022. She had previously lived in an apartment with her husband and son. The residence is titled in her name only. At the time of the purchase, all three resided in Orangeburg and moved into the residence.

On December 6th, 2023, along with her husband, Ms. Haribabu submitted her application to the Orangeburg County tax assessor for the legally qualified special assessment as their legal residence. [ROA p. 239]. Both Ms. Haribabu and Mr. Vasudevan signed the application under penalty of perjury.

Both Ms. Haribabu and Mr. Vasudevan hold valid South Carolina driver's licenses, current through August, 2026, consistent with their visas. [ROA pp. 243;248]

The couple has automobile insurance through the Government Employees Insurance Company, or GEICO, on their three vehicles here in South Carolina. Both Ms. Haribabu and Mr. Vasudevan are listed as covered insureds at the Lata Palm Court address. [ROA p. 347]

The couple pays state and federal taxes. Their federal tax filings for 2022 and 2023 list the two of them as spouses, "married, filing jointly." [ROA p. 324]

STANDARD OF REVIEW

The Administrative Procedures Act establishes this Court's standard of review for cases decided by the ALC and is set forth in Section 1-23-610(B) of the South Carolina Code (Supp.2009), which provides:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A decision of the ALC should be upheld if it is supported by substantial evidence in the record. *Risher v. S.C. Department of Health & Environmental Control*, 393 S.C. 198, 712 S.E.2d 428 (2011). "Substantial evidence" is not a mere scintilla of evidence, but is instead evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to support the decision. *Lark v. Bi-Lo Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

I. The decision of the Administrative Law Court denying the homeowner the preferred residential tax status is not supported by substantial evidence.

The exemption is governed by S.C. Code Ann. § 12-43-220(c)(1) (emphasis added):

> The legal residence and not more than five acres contiguous thereto, when owned totally . . . in fee . . . and occupied by the owner of the interest . . . are taxed on an assessment equal to four percent of the fair market value of the property. . . . <u>[F]or purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.</u>

The statute goes on to explain the qualifications for meeting the classification of "legal residence, at S.C. Code Ann. § 12-43-220(c)(2)(i):

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

To obtain the exemption, the homeowner must submit an application to the county assessor certifying that the residence is the homeowner's legal residence and domicile, and neither the homeowner nor any member of the household claims legal residence of a jurisdiction other than South Carolina for any purpose. *Id*, S.C. Code Ann. § 12-43-220(c)(2)(ii). The statute defines household member thusly:

> (iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:
>
> (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and
>
> (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

The assessor concedes that Ms. Haribabu meets the definition of legal resident, entitling her to the exemption. The assessor challenges the status of her husband, asserting he has not abandoned India as his domicile. This was the focus of the decision of the Administrative Law Court.

Tax decisions in South Carolina have long looked at the general definition of the term to determine the taxpayer's legal residence. *See, e.g. Phillips v. S.C. Tax Commission*, 195 S.C. 472, 477, 12 S.E.2d 13, 16 (1940): "The phrase, 'legal residence' is sometimes used as the equivalent of 'domicile…'" (Internal citation omitted). Indeed, the statute at issue and the regulation implementing it utilize the concept of domicile. *See*, S.C. Code Ann. § 12-43-220(c)(1), *supra*; S.C. Code Ann. Regs. 117-1800.1(2) (2012): ("For property tax purposes the term 'Legal Residence' shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.").

The S.C. Supreme Court has defined "domicile" as "the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning". *See*, *Gasque v. Gasque*. 246 S.C. 423,426, 143 S.E.2d 811,812 (1965). "The true basis and foundation of domicile is the intention, the *quo animo*, of residence." *Id.* The Supreme Court has underlined the importance of intent in *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E.2d 521 (1975). There, and famously, a putative candidate for governor attempted unsuccessfully to argue his 15-year absence from South Carolina was temporary, permitting him to qualify to run for the position upon his return in 1972, despite the state constitution's requirement that any such candidate reside in the state for five years prior to the 1975 election.

The lower court placed great weight on the absence of Mr. Vasudevan's name as a spouse under a discrete section of the I-140 application filed by the school district.

The petition has a section in its Part '7' calling for information about the spouse and children of the "alien worker" (to use the title of the petition) sought to be declared a permanent resident under U.S. immigration law. Included in that section is Ms. Haribabu's son, Charan Rajhan Thiyagarajhan. Omitted is her spouse, Thiyagarajhan Vasudevan.

The purpose of the petition, however, is not to demonstrate a permanent residence for tax purposes or any other purpose, other than to qualify the employee as a permanent lawful resident of the U.S. Ms. Haribabu, as the holder of an H-1B visa, Her husband is here on an H-4 non-immigrant spousal visa, a derivative visa directly tied to hers. *See*, 8 U.S.C. § 1101(a)(15)(H). Once Ms. Haribabu is approved as a lawful permanent resident pursuant to the I-140 petition submitted by her employer, her husband will automatically be eligible to apply for the same status, e.g. the "green card." *See*, https://www.uscis.gov/family/family-of-green-card-holders-permanent-residents, As the U.S.C.I.S. site explains, once Ms. Haribabu is declared a permanent resident, she will be able to file what is known as a form I-130, "Petition for Alien Relative," to obtain the same status for her spouse. Indeed, on this record, every principal in the proceedings below acknowledged this, including the Administrative Law Court in its order, in a footnote at page nine (9) [ROA p. 9]

What's more, the I-140 petition was not authored by Ms. Haribabu, nor could she submit it. This is an application made by her employer, Orangeburg School District, with its attorney, Mr. Nettle. It was an officer of the district who signed it. [ROA pp. 258; 333] The district's attorney, Mr. Needle, signed it as preparer. [ROA p. 260] The only place Ms. Haribabu signs the document is at a section detailing her work experience, on an attachment titled E.T.A (U.S. Department of Labor Employment & Training Administration) Form 9089. She signed this section, on December 14th, 2020. The I-140 petition was executed by counsel on January 5th, 2021. Ms. Haribabu testified that she may have reviewed the petition before it was filed, but was conscious of the fact that her husband would be eligible for permanent residence along with her. [ROA pp. 137, l. 19 – 138, l. 3; pp. 151, l.1 – 152, l. 7]

Thus it was that when Ms. Haribabu bought the home at Lata Palm Court a year later, she would have had no clue that the I-140 petition would figure so prominently in the assessor's decision to deny her application for preferential tax treatment – a document having nothing to do with the question of domicile *vel non.*

The I-140 petition is a red herring, and indicative of nothing regarding Mr. Vasudevan's domicile.

At the hearing, the assessor pointed to the number of days Mr. Vasudevan had been absent from the United States, in his native country of India, as substantial evidence of his intent to establish and maintain his domicile. The Administrative Law Court credits this evidence to sustain the assessor's denial.

As *Gasque v. Gasque, supra* teaches, however, the question of domicile isn't one which is quantifiable. Mr. Gasque had been absent from South Carolina due to his government service for about 14 years prior to his seeking jurisdiction for divorce in this state. And as *Dekle v. Ravenel, supra*, points out, "citizenship" and "residence" are distinguishable. "[A] person may have more than one residence, but cannot have more than one domicile." *Id*, 265 S.C. at 379, 218

S.E.2d at 528. Mr. Vasudevan may hold citizenship in India, but his domicile – his intent to remain in South Carolina – is a separate matter.

Both Ms. Haribabu and Mr. Vasudevan explained their journeys in the hearing before the court. The taxpayers here have been married for 28 years. There is no evidence they desire a separation, legal or otherwise. On into in their 28-year marriage, Ms. Haribabu came to this country to teach, with her husband, the father of their child, remained behind in India to rear him. This pattern continued until their son graduated from high school, and they began to establish residence in South Carolina as a family. After several years in South Carolina, Mr. Vasudevan returned to India to look after their son, while he was unable to return to the U.S., and his elderly parents, one of whom was recuperating from major surgery and needing his assistance. Once his son was able to return to college in South Carolina, and his mother was stabilized, he returned to this state to be with his wife and adult son.

Their son is now grown, attending college in South Carolina pursuing a degree in mechanical engineering, and a career here. Ms. Haribabu wants to become a permanent resident of the United States, here in South Carolina, and has a home here. When Ms. Haribabu achieves permanent resident status, she will apply for the same status for her husband, as permitted by U.S. law. Her husband shares that home with her. The couple does not want to live separate and apart. The conclusion of the Administrative Law Court would have Mr. Vasudevan living a separate life from his wife and child, traveling freely between South Carolina and India to remain with his parents. This defies logic, if not life experience.

Under South Carolina law, taxpayers seeking the preferred residential tax rate must submit certain documents to establish grounds for the application, including their most recently filed tax returns and motor vehicle registrations in the name of the owner-occupant, registered at the same address of residence in question. *See*, S.C. Code Ann. § 12-43-220(c)(2)(iv). They have done so. [ROA pp. 324;347] They are therefore deemed by statute to have met their burden of proof in obtaining the preferential tax assessment. *See*, *Id*, at § 12-43-220(c)(2). The assessor may ask for "other proof," but she may not be arbitrary about it.[1] And they were entitled to the preferential rate for the years beginning in 2023, as they had met their burden under the statute.[2]

The evidence underlying the decision of the Administrative Law Court denying these taxpayers the preferential tax rate on grounds one of the spouses is domiciled elsewhere is supported by insubstantial evidence, and should be reversed.

II. The omission of a post-trial motion is not grounds for dismissal of this appeal.

The assessor has moved for dismissal of this appeal on grounds the appellants did not file a motion for reconsideration under Rule 29(D) of the Rules of the S.C. Administrative Law Court. The assessor insists that the rules of error preservation require such a motion before the appellants can proceed here.

As a threshold matter, the Administrative Law Court judge did not fail to consider an argument or issue, nor failed to rule on one. Nor did the judge overlook or misapprehend any point raised by the parties at trial. The assessor has identified none in the motion. The issues have been joined and this matter is ripe for decision.

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[1] As evidence of the assessor's arbitrariness in denying the couple's application, the assessor's first denial was based on the fact that Ms. Haribabu was not a permanent U.S. resident – a "green card" holder. [ROA p. 55] It was only after remand that the assessor denied the application on the basis of the husband's status. Hence the assessor's testimony about the omission of the husband's name "triggering" her second denial suggests she was searching for reasons to deny the application.

[2] The Administrative Law Court judge was careful in her decision to distinguish her decision denying the rate for the years 2023 and 2024, suggesting that if Mr. Vasudevan remained in the household longer, the couple might then qualify for the preferential rate by improving his case for domicile. But this suggests that domicile is established by a quantifiable formula, which is contrary to South Carolina law.

a. The adoption of the rule is contrary to the South Carolina Constitution and is therefore ultra vires.

The Administrative Law Court is authorized to adopt rules of procedure by statute, at SC Code § 1-23-650 (Supp. 2024). The statute authorizes the Court to adopt rules governing practice and procedure which are consistent with civil actions in the court of common pleas. *Id*, at § 1-23-650(B)(1).

The rule adopted by the Court requires what it deems a "motion for reconsideration," which *must* be made as a predicate to appeal. The motion must "state with particularity the points supposed to have been overlooked or misapprehended by the Court." S.C. Administrative Law Court Rule 26(D). The rule adopts the language of S.C. Appellate Court Rule 221 regarding rehearing on appeal, and which must be heard and decided as a predicate for a petitioner for certiorari under Rule 242 of the Appellate Court Rules of Practice.

First, the South Carolina Rules of Civil Procedure permit similar motions under Rule 59(e) of the Rules, as the motion adverts to. Such motions are not mandatory, however, nor are they a necessary predicate for appeal, as some practitioners seem to believe. *Elam v. S.C. Department of Transportation*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004) explains that such a motion is discretionary when the party believes the court has misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. The motion is required, however, when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. It has been said that the Administrative Law Court may employ its authority to adopt its own rules as a "gap-filler," to augment existing rules of procedure to meet its own discrete needs. Yet the Rules of Civil Procedure already permit post-trial motions, without requiring them.

Furthermore, the language of Rule 26(D) is distinctly different from Rule 59, adopting an appellate court rule which exists to ensure appellate decisions are fully and finally decided. Moreover, a motion under the rule is mandatory, despite the fact that the administrative law court judge may not rule on it. See, Rule 26((D)(2). In those regards, the Rule is inconsistent with the S.C. Rules of Civil Procedure.

Article V, Section One of the South Carolina Constitution establishes a unified court system with lower courts of uniform jurisdiction. This Article therefore contemplates uniformity upon which lawyers and litigants can rely. *Cf., Spartanburg Co. Department of Social Services v. Padgett*, 296 S.C. 79, 370 S.E.2d 872 (1988) striking a local rule of family court, stressing the need for uniformity amongst courts so as to avoid confusion and a factionalized court system. The requirement of a mandatory "motion for reconsideration' is at variance with the rules of practice in the state's other lower courts and leads to confusion. While the amended Rule was approved by the legislature, the General Assembly cannot approve an unconstitutional rule.

b. Requiring reconsideration by the Administrative Law Court would be a futile act.

At the close of the hearing below, the Administrative Law Court judge asked for the submission of proposed orders by the taxpayers and the assessor. The lawyers complied with the request and submitted detailed orders. They are included for the record. [ROA PP. 359; 372]

It is clear that the Administrative Law Court judge had the benefit of the proposed orders to craft her own decision, which addressed each and every argument of the respective parties. The judge overlooked nothing.

Appellate courts do not require parties to engage in futile actions in order to preserve issues for appellate review. *See, Staubes v. City of Folly Beach*, 339 S.C. 406, 414, 529 S.E.2d 543 (2000) (Internal citations omitted). Indeed Rule 26(D) of the Administrative Law Court implies a motion for "reconsideration" may be a futile act, by permitting a judge to simply quiesce for 30 days before the court's decision becomes final.

Any request – requirement - for reconsideration would be futile, and unnecessary for a final determination of the issues for this court.

c. The remedy is remand, not dismissal.

Unilateral dismissal of their appeal is too harsh. South Carolina's judicial policy favors "the disposition of issues on their merits rather than on technicalities." *Mictronics, Inc. v. S.C. Department of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Outright dismissal of a case is a harsh sanction that is generally resorted to "only in the face of a clear record of delay or contumacious conduct by the plaintiff." *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904 (Ct. App. 2006).

The latter is not present here. If anything, appellate counsel was overzealous in serving notice of appeal from the decision below to protect the rights of the clients. Dismissal outright would be an injustice to the appellants, contravening the spirit, if not the letter of Rule 86(a) of the South Carolina Rules of Civil Procedure cited by the assessor in her motion to dismiss, discussing the prospective or retroactive application of a new rule of procedure.

If, indeed, the issues before this court are not ripe for review, the remedy is remand.

CONCLUSION

This case is ripe for decision and need not be remanded to the Administrative Law Court. The decision of the lower court denying the taxpayers the preferential residential tax rate is not supported by substantial evidence, and should be reversed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Counsel certifies that the opening brief and reply brief comply with Rule 211(b) of the South Carolina Appellate Court Rules.

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July 14th, 2026