

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Kalishwar Das, Appellant,

v.

York County, Respondent.

Appellate Case No. 2024-000269

(Unpublished Opinion No. 2026-UP-380, filed July 22, 2026)

PETITION FOR REHEARING

TO THE HONORABLE COURT OF APPEALS:

Pursuant to Rule 221(a), SCACR, Appellant Kalishwar Das, pro se, respectfully petitions for rehearing of this Court's Opinion filed July 22, 2026, and states with particularity the points believed to have been overlooked or misapprehended.

INTRODUCTION

This Court's Opinion affirmed dismissal of Appellant's case without reaching its merits, resting entirely on the two-issue rule and a res judicata finding that no party — including Respondent — ever supported with record evidence. Appellant respectfully submits that this affirmance rests on two overlooked points: first, that Appellant's brief did in fact challenge the March 29, 2023 Order in its entirety, including the res judicata rationale it contained; and second, that even if treated as unappealed, the res judicata finding itself lacks the evidentiary foundation Respondent was required to establish. A third, independently sufficient ground for dismissal — that the substitution

of York County for Magistrate Colton was never tested against the Tort Claims Act's own scope-of-duty requirement — likewise went unreviewed. The result is an affirmance that leaves unresolved allegations of serious consequence to Appellant's safety and livelihood untouched by any court on the merits. Appellant respectfully requests rehearing so that these questions may finally be addressed.

I. THE COURT'S APPLICATION OF THE TWO-ISSUE RULE OVERLOOKED THAT APPELLANT'S BRIEF DIRECTLY CHALLENGED THE SAME ORDER CONTAINING THE RES JUDICATA FINDING

This Court affirmed on the ground that Appellant "failed to appeal all the grounds upon which the circuit court based its decision," treating the res judicata finding in the March 29, 2023 Order as an unappealed, independently controlling basis under *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010).

Appellant's brief squarely challenged that same Order in its entirety. Claim 2 of the brief is captioned "Circuit Court Erred in Dismissing the Case Based on the Tort Claims Act," and argues that "[t]he Circuit Court's decision to dismiss the case based on the Tort Claims Act... appears procedurally misleading and unjust," seeking reversal of "the Circuit Court's decision to dismiss."

The March 29, 2023 Order is a single, unified ruling containing both the Tort Claims Act/12(b)(6) rationale and the res judicata rationale; Appellant's challenge to that Order's dismissal, taken as a

whole, put the entirety of its reasoning at issue, even though the brief did not separately caption a distinct heading addressing res judicata by name. To the extent the two-issue rule requires a more explicit, separately captioned challenge to each discrete rationale within a single order, Appellant respectfully submits this requirement was not apparent from the face of the rule as applied here, and requests the opportunity to be heard on the merits of the res judicata finding accordingly.

II. THE RES JUDICATA FINDING ITSELF LACKS RECORD SUPPORT FOR AN ESSENTIAL ELEMENT

Res judicata is an affirmative defense. Rule 8(c), SCRCP. The party asserting it bears the burden of establishing each required element, including a final judgment *on the merits* in the prior action. *Nelson v. Coker*, 356 S.C. 156, 590 S.E.2d 852 (Ct. App. 2003).

The circuit court's finding rested on the premise that Appellant's withdrawal of his appeal in the related matter, Case No. 2022-CP-46-01367, constituted an adjudication on the merits of claims later raised in this action. The record does not support that premise. The Withdrawal of Appeal, filed May 12, 2022, states in full:

"MOVING FORWARD, I Kalishwar Das decide to withdraw my recently filed Appeal #2022CP4601367 against the Magistrate court's erroneous order to evict without adjudicating my counterclaims. New discovery and the fact about this case is unchanged and there is no change in the unsettled claims either. But for a better reason Appeal is withdrawn."

This withdrawal contains no "with prejudice" designation and affirmatively states the underlying claims remained "unsettled" and "unchanged." Appellant's statement that "the fact about this case is unchanged and there is no change in the unsettled claims either" is properly read in context: the appeal being withdrawn concerned the magistrate's eviction ruling itself, while the "unsettled claims" Appellant referenced were the distinct grievances arising from Magistrate Colton's conduct during that proceeding — the unauthorized disclosure and Appellant's subsequent removal from the courthouse — which the withdrawal document does not purport to resolve, waive, or adjudicate.

Under Rule 41(a), SCRCP, a voluntary withdrawal, silent as to prejudice, does not operate as an adjudication on the merits of any claim — let alone claims the withdrawing party expressly identified as remaining open. Respondent's own subsequent filing demonstrates familiarity with this distinction: the Joint Stipulation of Dismissal executed July 21, 2022, between Appellant and Rawlinson Corner, LLC, expressly states it is entered "with prejudice." No comparable language appears in the May 12, 2022 withdrawal. At no point in the proceedings below did Respondent introduce, attach, or quote the withdrawal's text in support of its res judicata argument; the finding rests on an assumption unsupported by record evidence for an element Respondent bore the burden of proving.

III. THE CIRCUIT COURT'S SUBSTITUTION OF YORK COUNTY FOR MAGISTRATE COLTON WAS NOT PROPERLY TESTED AGAINST THE SCOPE- OF-DUTY REQUIREMENT THE TORT CLAIMS ACT ITSELF IMPOSES

Claim 4 of Appellant's brief argued that "the Circuit Court's decision to replace Magistrate Colton with York County as the defendant raises serious concerns about due process," and that this substitution "effectively undermines the Plaintiff's ability to address the merits of the case." This Court's opinion did not reach this argument, having affirmed solely under the two-issue rule.

The South Carolina Tort Claims Act shields an individual employee from personal liability, and substitutes the governmental entity as defendant, only where the employee's conduct falls within the scope of official duty. S.C. Code Ann. § 15-78-70(c). Whether Magistrate Colton's conduct on April 18, 2022, fell within that scope was never adjudicated on the merits below.

Appellant's Second Amended Complaint alleges that on April 18, 2022, Appellant submitted a petition addressed to the Court and its clerk — not to Magistrate Colton individually, and not in connection with any hearing then scheduled or pending, the prior hearing having already concluded on April 14, 2022. (Second Am. Compl. ¶¶ 7–8.) The order directing Appellant's removal and the disposal of his motion issued not from any docketed proceeding, but from an informal, out-of-courtroom review of a filing never addressed to the Magistrate. A judicial officer's intervention in a matter not before her, disposing of a filing never submitted to her and ordering

a litigant's physical removal absent any pending proceeding, is not self-evidently an exercise of official judicial duty merely because the actor holds judicial office. The propriety of substitution under the Tort Claims Act necessarily depends on this scope-of-duty determination — a fact-bound inquiry the circuit court did not undertake before ordering substitution and later dismissing on that basis.

Notably, the substitution mechanism itself is instructive: had Magistrate Colton's conduct plainly fallen within the scope of her official duties, no substitution would have been necessary — the Act's immunity would have applied to her directly. The procedural necessity of substituting York County as defendant is, at minimum, consistent with an unresolved question as to whether her conduct fell within that scope at all.

IV. THIS COURT SHOULD REACH THE MERITS RATHER THAN TREAT UNTESTED GROUNDS AS CONCLUSIVE

The two-issue rule presupposes that each relied-upon ground is independently sufficient. *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010). Where, as here, the res judicata ground lacks record support for an essential element, and the Tort Claims Act substitution underlying the alternative ground was never tested against its own scope-of-duty requirement, neither ground has been shown to independently and soundly support dismissal. Appellant respectfully submits that

affirmance without reaching either issue on the merits works a manifest injustice under these circumstances.

V. THE UNDERLYING RECORD ESTABLISHES SUBSTANTIAL, UNADDRESSED ALLEGATIONS OF ENDANGERMENT THAT NO COURT BELOW EVER REACHED ON THE MERITS

Beyond the procedural defects above, this Court should be aware that affirmance on procedural grounds alone leaves entirely unaddressed allegations of a serious and specific character. Appellant's Second Amended Complaint and appellate brief allege that on April 14, 2022, during a hearing, Magistrate Colton disclosed on the record that Appellant had reported matters to federal authorities in connection with a terror-related investigation, and separately discussed Appellant's unrelated pending litigation in North Carolina, including a reference to opposing counsel in that matter in terms suggesting personal familiarity between them. (Second Am. Compl. ¶¶ 5–6; Br. of Appellant at 19–20.) The relevance of that reference to any matter properly before the Magistrate has never been explained. Appellant further alleges that the certified transcript of that hearing — Transcript-1, Page 7, Lines 1–5 — reflects an omission at precisely the point these statements were made, and that Respondent, when provided this transcript excerpt as evidence, declined to address it. (Br. of Appellant at 19, 27.)

Appellant has since been informed, through inquiry with federal authorities, that no information regarding any such investigation was shared with Magistrate Colton by those authorities. (Br. of Appellant at 12–13.) The source and accuracy of the Magistrate's statements accordingly remain unexplained on this record — a matter Appellant has attempted, without success, to resolve through repeated motions to compel discovery and to preserve electronic recordings, each of which was denied or left unaddressed below. (Second Am. Compl. ¶¶ 24–25; Pet. to Strike Abeyance, Feb. 27, 2023, ¶¶ 5.1–5.11.)

These allegations — public disclosure of Appellant's purported cooperation with federal authorities in a terror-related matter, in open court, by a sitting judicial officer, followed by Appellant's forcible removal from the courthouse days later — implicate Appellant's personal safety in a manner this Court's disposition on purely procedural grounds has not addressed. Since that disclosure, Appellant has been unable to resume the public-facing aspects of his livelihood, having lived continuously under the apprehension that his safety remains at risk, with material and ongoing impact on his work and income. (Br. of Appellant at 26–27; Second Am. Compl. ¶¶ 14–15.) An affirmance that forecloses any merits review of these circumstances leaves Appellant bound to this state of apprehension indefinitely, implicating his right to pursue his livelihood and daily life free from unresolved threat — an interest this Court's own precedent recognizes as protected. *Cf. Board of Regents v. Roth*, 408 U.S. 564 (1972); *Paul v. Davis*, 424 U.S. 693 (1976).

Appellant does not ask this Court to resolve the truth of these allegations on the present petition; he asks only that this Court recognize that its affirmance, resting entirely on the two-issue rule and an unexamined res judicata finding, has left these allegations — and the question of whether Magistrate Colton's conduct fell within the protection the Tort Claims Act affords — entirely unreviewed. Given what is at stake for Appellant's safety and his right to be heard, Appellant respectfully submits that rehearing, and reaching the merits, is warranted.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant rehearing, withdraw its Opinion of July 22, 2026, and address the merits of Appellant's appeal, including the sufficiency of the res judicata finding and the propriety of the Tort Claims Act substitution.

Respectfully submitted,

Dated: July 29, 2026

-/s/- Kalishwar Das

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Jul 28 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Kalishwar Das, hereby certify that on this 29 day of July, 2026, I caused the service of a true and correct copy of the foregoing Petition for Rehearing upon Respondent's counsel of record by depositing the same in the United States mail, postage prepaid, via Certified Mail, addressed as follows:

Todd Russell Flippin, Esquire
Holcombe Bomar, P.A.
Post Office Box 1897
Spartanburg, South Carolina 29304

Dated: July 29, 2026

-/s/- **Kalishwar Das**

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