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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-000666

R. Paul Benik, Jr., Rudolph Paul Benik, III., Paula W. Benik, Anton F. B. R. Poster, Sr. and Teresa L. Poster, Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds and Rasario Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of the Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert, Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Dee o, Natali D. Amaradasa,, Rosemary Long Jenrette and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,

Appellants

v.

The Arcadian Incorporated of Myrtle Beach,

Respondent

INITIAL BRIEF OF RESPONDENT

MCANGUS GOUDELOCK & COURIE, LLC

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STATEMENT OF THE ISSUES ON APPEAL

Did the circuit court act within its discretion in denying a temporary restraining order, where the preliminary record supported a finding that Appellants failed to establish a likelihood of success on the merits, immediate irreparable harm, or the absence of an adequate remedy, and the requested relief would have displaced neutrally-applied parking procedures prior to a resolution of the case on the merits?

STATEMENT OF THE CASE

Appellants commenced this action in July 2025, seeking declaratory, injunctive, and monetary relief concerning claimed easement rights over property owned by Respondent at the southeastern terminus of Arcadian Drive. (Am. Compl. pp. 1-3.) Respondent answered and disputed both the existence and the asserted scope of the claimed easement, including Appellants' contention that any easement carried an unrestricted right to park on Respondent's parcel. (Answer pp. 1-6; Order pp. 2-4.)

On August 14, 2025, Appellants separately moved for an expedited emergency temporary restraining order under Rule 65(b), SCRCP. Their requested order would have compelled Respondent to cease enforcing its existing parking procedures and to permit Appellants to park on the disputed portion of Arcadian Drive until a later hearing on temporary injunctive relief. (Pls.' Mot. for TRO pp. 1-4.) Respondent opposed the motion with evidence concerning title, the disputed scope of any easement, the availability of access, and the reasons for its parking procedures. (Curtis Aff. pp. 1-4.)

The circuit court heard the motion on September 15, 2025, and reviewed the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. (Order p. 2.) The court initially denied relief by Form 4 order on October 14, 2025, and entered a written order with findings and conclusions on January 22, 2026. (Order pp. 2-5.) The court denied Appellants' motion to reconsider, and Appellants filed their notice of appeal on March 11, 2026. (Mot. to Reconsider; Order Denying Reconsideration; Notice of Appeal.) After an administrative dismissal and issuance of the remittitur, the Court granted Appellants' motions to recall the remittitur and proceed under an amended notice of appeal. (Mots. to Recall Remittitur and Set Aside Dismissal; Am. Notice of Appeal; Orders dated May 19, 2026.)

No monetary judgment is involved in this interlocutory appeal. The declaratory-judgment, permanent-injunction, and damages claims remain pending in the circuit court. The only ruling presented for review is the denial of provisional relief prior to an adjudication on the merits.

STATEMENT OF FACTS RELEVANT TO REVIEW

Respondent owns in fee simple the southeastern terminus of Arcadian Drive, including the parcel on which Appellants have demanded unrestricted parking. (Order p. 3.) Appellants contended that references to the recorded subdivision plat and evidence of historical use created an easement which includes parking near the beach-access point. Respondent disputed that proposition and submitted evidence that the parcel left the developer's ownership before creation of the first express easement upon which Appellants relied. (Order pp. 3-4.)

The preliminary record did not identify a deed, plat, or recorded instrument expressly granting parking rights over Respondent's parcel. The circuit court found the evidence insufficient, at this preliminary stage, to show that Respondent or its predecessors consented to or accepted the particular easement burden Appellants asserted. (Order p. 4.) The record also included evidence of private-road signage inconsistent with a claim of prescriptive rights. (*Id*.)

Respondent did not bar Appellants from entering Arcadian Drive or reaching the beachfront. Its procedures required authorized users to obtain a decal, submit a short application, execute a liability waiver, and observe a no-parking area on the south side of the roadway because of an underground drainage pipe. (Order p. 3; Curtis Aff. pp. 2-4.) The court found those procedures neutral, generally applicable, and uniformly administered. (Order p. 3.) It also found no evidence that parking on Respondent's parcel was Appellants' sole means of beach access. (*Id*.)

Appellants nevertheless asked the court to compel Respondent to abandon those procedures immediately and permit unrestricted parking until the court could decide the merits of Appellant's easement claim. The circuit court declined, finding that Appellants had not shown a likelihood of success on the merits, irreparable harm, or the absence of an adequate remedy at law; and that the requested order would alter rather than preserve existing conditions. (Order pp. 4-5.)

STANDARD OF REVIEW

The grant or denial of temporary injunctive relief is reviewed under an abuse of discretion standard. *Strategic Resources Co. v. BCS Life Insurance Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). A decision constitutes an abuse of discretion only when it is unsupported by the evidence or controlled by an error of law. *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 367, 588 S.E.2d 635, 637-38 (Ct. App. 2003).

The circuit court's order did not finally resolve any issues between the parties. It denied only Appellants' Rule 65(b) request for emergency relief, while their claims for declaratory judgment, permanent injunctive relief, negligence, and damages remain pending. It is therefore interlocutory in the ordinary sense: further judicial action is necessary before the parties' rights are determined.

South Carolina makes this category of interlocutory ruling immediately appealable. Section 14-3-330(4) directs appellate review of:

> An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver." S.C. Code Ann. § 14-3-330(4).

The Court of Appeals has applied that language directly to a request for a restraining order. The underlying case ordinarily continues during an appeal under Section 14-3-330(4):

> [T]he proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below." S.C. Code Ann. § 14-3-450 (2017).

An interlocutory appeal under Rule 65 does not authorize a *de novo* determination of the merits of the underlying case. The circuit court considers the merits only to the extent necessary to determine whether the moving party made a sufficient prima facie showing for provisional relief. *Compton v. S.C. Department of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

SUMMARY OF THE ARGUMENT

The appealed order is interlocutory, but is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4) (2017). However, because Rule 65 relief is provisional, the appeal of a TRO denial does not finally adjudicate the merits nor supply a vehicle for obtaining a final declaration of the rights between the parties. The proper question on appeal is whether the circuit court abused its discretion in declining to issue temporary relief before discovery and trial.

Appellants failed to demonstrate to the trial court that they were entitled to temporary relief. Appellants bore the burden of establishing immediate irreparable harm, a likelihood of success on the merits, and the inadequacy of any remedy at law. *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d at 17 (2010). The court found each element lacking. Those findings were supported by evidence that the asserted parking right was not expressed in any recorded instrument; the parcel had been conveyed before the express easement language on which Appellants relied; Respondent had not denied ingress, egress, or beach access; neutral parking procedures were applied over the servient estate; and the

underlying property dispute could be adjudicated through declaratory relief, permanent equitable relief if warranted, and damages.

Appellants' seven issue statements largely ask this Court to accept their evidence as true, characterize disputed property rights as already established, and order unrestricted parking prior to a trial on the merits. Because these issues are already before the circuit court in the underlying proceeding, the circuit court's order should be affirmed, and the parties should return to the circuit court for the full adjudication on the merits.

ARGUMENT

I. THE CIRCUIT COURT ACTED WITHIN ITS DISCRETION IN DENYING EXTRAORDINARY PROVISIONAL RELIEF.

A. Appellants failed to carry their burden in the court below of establishing each prerequisite for temporary injunctive relief.

An injunction is a drastic remedy committed to the circuit court's sound discretion. *Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The movant must establish three elements: immediate irreparable harm without relief, a likelihood of success on the merits, and no adequate remedy at law. *Poynter*, 387 S.C. at 586-87, 694 S.E.2d at 17. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

The burden is cumulative. Failure to establish any required element warrants denial. Moreover, the injunction must be reasonably necessary to protect the claimed rights during the litigation, not merely useful or preferable to the movant. *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969). The circuit court addressed every element and found the showing insufficient. (Order pp. 4-5.)

Appellants' brief attempts to convert appellate review to a series of questions on the merits: did Appellant's deeds create an easement; whether historical parking proves its scope; and whether Respondent may impose conditions upon Appellant's easement rights. These questions bear upon the final adjudication of Appellant's claims, not whether the circuit court abused its discretion in denying temporary relief pending a decision on the merits.

B. The preliminary record supported the finding that Appellants failed to show a likelihood of success.

The preliminary record reviewed by the circuit court did not support temporary relief. The court found Appellant's evidence insufficient to establish a right to unrestricted parking on Respondent's fee-owned parcel. It then held that, even assuming an access easement existed, the servient owner could impose reasonable procedures that do not defeat the purpose of the easement. (Order pp. 3-4.)

The circuit court's order identifies four defects in Appellant's asserted parking right: (1) the disputed parcel was conveyed out of the developer's ownership before the express easement language on which Appellants rely; (2) the later quitclaim deed could not, without more, burden property already conveyed; (3) no deed, plat, or recorded instrument expressly grants "parking" rights over the parcel; and (4) the preliminary evidence did not establish the parcel owner's consent to or acceptance of that burden. (Order pp. 3-4.) Evidence of private-road signage also undermined any claim based on prescription. (Order p. 4.)

Appellants supported their motion for temporary restraining order with affidavits describing the subdivision's design, historical use, and their bespoke interpretation of the developer's intent. That evidence may create factual and legal questions for the declaratory-judgment claim, but the circuit court was not required to credit Appellants' inferences over Respondent's evidence. Temporary relief rests within the trial judge's sound discretion, and an

order denying a TRO may be reversed only if clearly erroneous. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007).

The authorities asserted by the Appellant's do not compel a different result. Decisions such as *Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime*, 306 S.C. 170, 172, 410 S.E.2d 580, 581 (Ct. App. 1991), address obstruction after the width, length, and location of an easement have been established. Here, the burden on Respondent's parcel and the inclusion of parking remain disputed. Likewise, cases discussing references to recorded plats do not resolve many of the central questions in this case: whether Appellants have an unrestricted right to park on Arcadian Drive in light of the history of use, reasonable restrictions imposed by the fee owner to reduce burden on the servient estate, and the express language of the conveying instruments.

There is no merit to the contention that the circuit court erred by treating the absence of express "parking" language as categorically dispositive. The court considered this evidence together with the conveyance chronology, the ownership of the parcel, the lack of proven acceptance of a burden, and the distinction between access and parking. (Order pp. 3-4.)

Finally, even if Appellants ultimately establish an access easement, an easement holder must use the easement in a manner that does not unreasonably burden the servient estate. *Smith v. Commissioners of Public Works*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994). The preliminary evidence showed that Respondents implemented uniform processes to lessen burden on the servient parcel: a decal process, an application, a waiver of liability, and a limited no-parking area protecting an underground drainage pipe. The record did not reveal that the road was closed to the Appellants. (Order p. 3.) The circuit court acted within its discretion in

concluding that the question of the burden on the servient estate should be reserved for a trial on the merits.

C. The record supported the finding that Appellants did not face immediate, irreparable harm.

The order found no evidence that Respondent blocked Arcadian Drive, denied ingress or egress, prevented Appellants from reaching the beachfront, or eliminated their only means of beach access. (Order pp. 3-4.) Appellants could walk or drive on Arcadian Drive and could park if they complied with the generally applicable procedures. (Order p. 3; Curtis Aff. pp. 2-4.) Thus, Appellant's motion for TRO was not aimed at preventing irreparable harm by forestalling the destruction of unique property or removal of the only access route. It sought relief from applications, decals, a waiver, parking restrictions, and associated charges. Even assuming those requirements are later found unauthorized, the temporary burdens are measurable, reversible, or remediable. The circuit court properly distinguished Appellant's claimed inconvenience and disputed administrative conditions from immediate irreparable harm.

Appellants' brief characterizes any alleged interference with Appellants' purported property right as essentially irreparable *per se*. That formulation assumes the very right in dispute and ignores the absence of an actual denial of access. The moving party still bears the burden of showing immediate harm and necessity on the record before the court.

D. The circuit court correctly concluded that the Appellants have adequate remedies at law.

Appellants chose the correct vehicle for determining the parties' property rights: a declaratory-judgment claim. That claim permits a complete adjudication of the chain of title, plat references, deed language, implied-easement theories, scope, and the reasonableness of any

conditions. If Appellants prevail, the court may then fashion permanent equitable relief directed to the rights actually proven at trial.

The circuit court also recognized that monetary relief is available for charges, towing, or other quantifiable losses shown to have resulted from wrongful interference with Appellant's easement rights. (Order p. 5.) While equity may intervene when legal remedies cannot adequately protect the moving party, the availability of monetary relief counsels strongly in favor of denying the extraordinary remedy of a TRO.

E. The requested order would have altered existing conditions rather than preserved them.

The function of temporary relief is to preserve the status quo pending a deliberate adjudication. *Poynter*, 387 S.C. at 586-87, 694 S.E.2d at 17. Respondent's decal, application, waiver, and restricted-parking procedures were in operation before Appellants filed this action and before they sought emergency relief. Appellants asked the court to compel Respondent to abandon those procedures and permit unrestricted parking on property it owns. (Pls.' Mot. for TRO pp. 2-4; Order p. 5.)

Appellants thus seek to alter the status quo by obtaining the benefit of its requested relief before any adjudication on the merits. The circuit court therefore had ample basis to find that the requested order would alter existing conditions. (Order p. 5.) *MailSource* affirmed denial of temporary relief on materially similar reasoning where the proposed injunction would change, rather than preserve, the operative status quo. *MailSource,* 356 S.C. at 370, 588 S.E.2d at 639.

F. The circuit court's additional reference to the equities supplies no basis for reversal.

Appellants correctly observe that *Poynter* eliminated a separate, fourth requirement that the movant establish a favorable balance of equities. 387 S.C. at 587, 694 S.E.2d at 17. However, the circuit court did not deny relief because Appellants failed this extra element. The court made independent findings that Appellants had not established likelihood of success, irreparable harm, or the inadequacy of ordinary remedies. (Order pp. 4-5.) Those findings fully support the result.

The court's final observation—that Respondent sought to regulate its property to prevent overburden and physical damage—was cumulative. *Poynter* states that a separate balancing step is not required; it does not forbid a court from recognizing the practical consequences of the requested order when evaluating irreparable harm, adequate remedies, necessity, or preservation of the status quo. Indeed, *Poynter* explained that equitable considerations are subsumed within the established test. 387 S.C. at 587, 694 S.E.2d at 17.

CONCLUSION

The circuit court correctly applied the governing Rule 65 principles and its findings were supported by the preliminary evidence. Therefore, Respondent respectfully requests that the Court affirm the order and remand the matter for further proceedings in the circuit court.

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