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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC, ... Appellant,

v.

Town of Pawleys Island, ... Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, ... Appellant,

v.

Town of Pawleys Island, ... Respondent.

APPELLANTS' MOTION AND PETITION FOR MANDAMUS AND CERTIORARI

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I. Motion and Petition for Writ of Mandamus and Writ of Certiorari, Stating the Relief Requested, Whether by Mandamus or Certiorari

Appellants/Petitioners (the "Landowners") first respectfully request that a writ of mandamus be issued, directing that the Court of Appeals publish, as required by statute and Appellate Court Rule, its initial opinion.

Any subsequent decision this Court may direct, in which the issues presented on appeal are decided, such as the right to appellate attorney's fees, should also be published.

The Landowners further request that this Court, on certiorari, reverse the Court of Appeals' redetermination of the amount of the subject fee award. This Court should completely reverse the circuit court, and award the requested fees or other appropriate fees directly. In the alternative, the Landowners request remand to the circuit court, with appropriate instructions on determination of fees, including the award of appellate attorney's fees.

In the alternative that the circuit court is not completely reversed, or is not reversed at all, the Landowners request that this Court issue an opinion which states and decides the dispositive issues by making direct and explicit findings for all to understand, rather than leaving findings to surmise, allusion or innuendo, and by identifying which of the various conclusions of law recited are actually being applied.

II. Certification by Counsel for Petitioner that a Petition for Rehearing was Made and Finally Ruled Upon by the Court of Appeals

Counsel certifies it was made June 18, 2026 and ruled upon August 3, 2026.

III. The Questions Presented, Expressed in the Terms and Circumstances of the Case, but Without Unnecessary Detail

1. Was the Court of Appeals' designation of its opinion as unpublished legally allowed?

2. Did the Court of Appeals fail in its duty under statute and rule to decide all the dispositive issues presented on appeal?

3. Did the Court of Appeals fail in its duty under statute and rule to issue an opinion which sets forth the relevant reasoning, including the facts necessary for understanding such reasoning?

4. In making a de novo determination of the fee award in this highly significant case, was the Court of Appeals controlled by error of law and did the court misunderstand substantial portions of the case and the fee application?

IV. Concise Statement of the Case, Containing the Facts Material to the Consideration of the Questions Presented

The unpublished opinion of the Court of Appeals concerns a circuit court's fee award under one of three different standards for fee awards under the Eminent Domain Procedure Act, S.C. Code Ann. §28-2-10 et seq., two of which are mandatory and one of which is nonmandatory.

The subject condemnation attempt in this case pertained to an alleged coastal project abutting millions of dollars' worth of properties. Aspects of the matter were selectively highly publicized. The Court of Appeals' 2026 unpublished opinion and the circuit court's earlier 2021 summary judgment order both recognized conscious wrongdoing by the Respondent municipality.

Variations of the easement issues involved have arisen in coastal contexts all over the country. The facts involve repeated failed condemnation attempts by the Respondent town, and continuing, multi-year, threats by the town to sue again, for the same thing, for a third time.

The appeal to the Court of Appeals contended that the circuit court decision awarding the Petitioners attorney's fees in their challenge actions for the town's first condemnation attempts is a result of multiple errors of law, of contradictory or logically irreconcilable factual assertions or innuendo, of misperception of the record, and of nonstatement of reasoning. The fee award was as odds with the summary judgment order.

The appeal contends that the circuit court fee award, at about eight (8%) percent of the already conservative amount requested, is grossly inadequate. The appeal contends that the award grossly violated the purpose of the fee-award section of the EDPA, particularly inasmuch as the Respondent town has announced in 2026 and virtually every year previously, an intent to sue the Plaintiffs for the same thing for a third (3rd) time, again using government funds.

The EDPA subsection involved here is not the EDPA subsection for a discretionary fee award after a condemnation trial on the limited subject of determining the amount of compensation for a taking. The pertinent subsection is also not the different EDPA subsection for a fee award after a condemnor abandons a condemnation action after commencing one. The subsection involved here is a rarely-used subsection. It is the subsection for the rare instance of a successful, separately filed, landowner "challenge action," in which the landowner has contested the ability of the condemnor to condemn, and has stopped the condemnation.

The background is that, during 2019, the 5-member volunteer town council of the Town of Pawleys Island (Henry, Holliday, Green, Carter and Zimmerman) was then pursuing a joint sand-augmentation project with the U.S. Army Corps of Engineers. The joint project was to run along nearly the whole north-south length of the approximately 3 ½-mile, island oceanfront beach.

The council publicly solicited only "south-end" oceanfront owners to grant to the town, for free, substantial oceanfront portions of their oceanfront lots. This request involved the southernmost approximately 113 oceanfront homes, over a distance of about 1.2 miles.

No such request was made for the approximately 2.3 miles of island beach to the north. The 5-member council publicly proclaimed that there was time pressure and that 100% participation of south-end owners was required.

However, under the proposed grants the council privately submitted to each south-end landowner to execute, large portions of the lots, up to a point as close as two feet from the doorstep of the house, were to be subjected to a long list of rights of the town, in perpetuity. These perpetual, nonterminable rights were not conditioned on any work being done at all, or, if done, being ever repeated.

The proposed permanent rights included the right to pile and leave sand on the subject portion of the lot, to tear down anything built there, to prohibit owner presence there, to prohibit owner activities and construction there, and to operate a "public beach" there.

Inserted amongst the permanent rights of the town were also permanent direct rights of the public. The public was granted perpetual rights to "access and use" of the whole privately owned part of the landowner's lot, including any decks, steps, porches or other improvements found in it.

To other islanders, the public, and the targeted south-end owners themselves, the council described what it solicited as an "easement," and explained that the council's purpose for the "easement" to be filed in the permanent land records was solely to put sand on the beach.

In 2019, the council collected and recorded a substantial number of the requested granting documents. Three landowners, the Plaintiffs below, disregarded private side assurances and objected to the literal terms of the requested grants.

Each of the three objecting landowners separately proposed alternative perpetual grants. These would allow the described sand-augmentation work, but without converting large portions of the landowner's private land to public land, and without other objectionable provisions. Between October 2019 and March 2020, without easements from the three objecting landowners, the town completed an island-wide, sand-augmentation project, but it was an independent, not joint, project.

During the pandemic, in 2020, with no additional project pending, after numerous public announcements that the three objecting landowners would not grant "easements" to put sand on the beach, the same council commenced three publicized condemnation actions.

Within the legally prescribed 30 days for challenges under the EDPA, each objecting landowner commenced a separate civil action, with a factually and legally extensive, separate complaint. They thereafter made amendments, engaged in discovery, made and opposed various motions, and prevailed in 2021, stopping the council's three condemnation attempts.

In granting summary judgment to the objecting landowners, the circuit court held that the property interest that the town council publicly authorized to be condemned was not the same as what the town then immediately sued to condemn. The circuit court held that the dishonest failure to fully consider the true burdens on the landowner in relation to the actual needs of the town doomed the validity of the authorization in any event.

In granting summary judgment to the objecting landowners, the order held that the condemnation notices themselves were incurably defective because a resolution and appraisals were required and, despite prior acute knowledge of the easement features to which these particular landowners objected, the town council obtained false appraisals of the easements by deliberately omitting the objected-to easement features in the description given to the town's appraiser.

The order recognized that the Town Attorney based the monetary provisions of the condemnation papers upon the false appraisals. In spite of the EDPA's requirements, the town did not provide the appraisals to the landowners before commencing the condemnations. The town also did not provide the appraisals when serving the condemnation papers. The order recognized that the town made unequivocally false certifications regarding the providing of the appraisal in the condemnation papers themselves.[1]

The town's dishonest behavior was an overlapping basis for most of the multiple theories in the objecting landowners' extensive challenge complaints. There was no ruling by any judge in the case against any of the theories presented. The objecting landowners did not lose a single motion by either party in the entire case on any subject. The Record on Appeal, alone, without considering time and work not embodied in tangible form, reflects a prodigious amount of actual, not hypothetical, work on novel or complicated, high-stakes issues.

The common facts presented by the objecting landowners included lack of necessity of the easement on two levels: (i) inclusion of more features in the easement than were necessary, namely unnecessary scope, and (ii) seeking any easement at all when no easement at all was necessary.

Under Rule 56, SCRCP, the circuit judge established as undisputed fact on summary judgment, (i) that all three objecting landowners had offered an easement with all the features stated by the town to be necessary in the town's brief opposing summary judgment (which brief, as discussed below, included no mention of "public access" as a requested feature), but that the town's condemnation attempt sought features far in excess, and (ii) that, with respect to the sand "renourishment" which had been represented to be reason for the easement, the town had long

[1] Failure to a provide a summary of appraisal, as required by statute, before negotiating, has been held to be "bad faith," invalidating condemnation. Cf. City of Marietta, 302 Ga. 645 (2017)(superseding, but not rejecting, determination of Court of Appeals that failure to provide summary of appraisal, as required by statute, before negotiating, was "bad faith," invalidating condemnation).

ago completed the renourishment without any easement at all from the objecting landowners, after "publicly determining that the easements were 'not necessary.'"

Two of the three objecting landowners, Appellants herein ("Landowners"), submitted a long fee petition, which was based on 686.9 of the hours their counsel, the third landowner, spent between dates in June 2020 and January 2021.

The fee petition, as amended, specifically segregated, and excluded from the 686.9 hours, other time attributed to a separate, additional, set of condemnation suits that the town commenced during the pendency of the instant suits.

On that matter, some time after the objecting landowners separately challenged the town's additional three suits, after summary judgment in the instant case was imminent, the town withdrew the additional suits, although simultaneously affirming an intention to sue for the same thing a third time. The additional suits then became the subject of a separate fee application under a different subsection of the EDPA.[2]

The limited 686.9 hours in the fee petition also excluded other time, which the fee petition explained.

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[2] The Landowners did not seek rehearing of the unpublished opinion of the Court of Appeals in the companion appeal from the fee award in the "abandoned" cases of the town.

The instant appeal simply involves more time and money, and involves more overlooked matters that need to be corrected for future purposes, including the ongoing threats of the town to sue a third time.

The Landowners must still be prepared to oppose the third set of similar suits the town has announced within the month preceding the petition for rehearing in 2026.

There are significant errors in the other appeal, however. One is a statement that the landowners in Challenge II filed complaints in January and the town "swiftly" withdrew its second condemnation attempts in February.

Rather, after being sued for the second time in October, the Landowners filed complaints in November. The landowners filed amended complaints in January. The town withdrew its second condemnation attempts in February, not because the Landowners had filed complaints, but because the judge preliminarily granted summary judgment in the instant matter in December 2020, one of the "results achieved" in the instant case.

After further proceedings, including the town's motion to reconsider summary judgment and the town's extended contest of the fee petition itself, the 686.9 hours grew to 950.5.

The circuit judge made an award based on 125 hours. He apparently based this on the town's lawyer's estimates of the number, type and length of hypothetical filings and hypothetical work in a hypothetical, generic case involving a putative standard challenge to a condemnation.

Even though the Landowners proposed to divide the requested overall fees by three, and waive the third attributable to the Landowner prosecuting the case as the lawyer, the circuit judge made no enhancement of the low submitted hourly rate of $190, or any other upward adjustment. The Landowners' instant appeal therefrom was commenced about four-and-a half (4 ½) years ago as of this writing in 2026, and was ruled upon by the Court of Appeals in an unpublished opinion.

The Court of Appeals ruled in its unpublished opinion that the circuit judge's ruling was guided by error and was an abuse of discretion, as that term is defined in law. The Court of Appeals stated that its unpublished opinion "affirmed the circuit court as modified." The Court of Appeals increased the "reasonable time" component in the fee calculus by doubling it, to 250 hours.

This resulted in a fee still about sixteen (16%) percent of what was requested. The Court of Appeals stated nothing about fees for the additional time over four (4) years pursuing the appeal of the inadequacy of the fees. By any estimation, the time and fees expended in trying to recover the fees incurred has far exceeded the fees awarded.

The Court of Appeals marked the opinion "unpublished." The court left all other components of the fee calculation untouched, did not explain the basis, if any, for determining how many hours were spent, did not explain the basis for determining how many hours were reasonable, and did not explain the basis for determining that the amount of the fee the Court of Appeals prescribed was reasonable.

The decision bears the all-capitals, bold-face header, "**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**"

Both the Landowners and the Respondent Town timely petitioned for rehearing in June 2026. The Landowners explicitly moved that the Court of Appeals publish its opinion, regardless of content. Rehearing was summarily denied.

V. Direct and Concise Argument in Support of Granting Certiorari.

A writ of certiorari "will be granted only where there are special and important reasons." Rule 242 (b), SCACR. The nonexclusive reasons which will be considered include the following: (1) That "there are novel questions of law"; (2) That "the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court"; (3) That "substantial constitutional issues are directly involved"; and (4) That a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." Rule 242 (b), SCACR.

Here, there are unusual, if not novel, questions of law, and the Court of Appeals' decision, to the extent the law it applies is discernible, conflicts with multiple prior decisions of the S.C. Supreme Court.

Unusual questions include (i) why a party requesting attorney's fees would be treated less fairly when the party's attorney records his time spent than when the party's attorney estimates his time and keeps incomplete records or no records of time spent, (ii) why a party requesting attorney's fees is entitled to fees for only a fraction of the time actually spent when the party has won an important case on summary judgment instead of winning after a protracted trial taking more time, (iii) why, in awarding attorney's fees to a prevailing landowner in a challenge action, a court must err grossly in favor of a coastal municipality that unequivocally lost and that unequivocally engaged in persistent, nonrepentant, dishonest actions and vexatious repeat litigation, and (iv) what governs a decision to deemphasize, disclaim, and not publish decisions of such matters instead of make them applicable to, and binding on, all who seek fee reimbursement.

There are also other issues important to the transparent and orderly functioning of a responsible government, which are as special and important as many constitutional issues.

1. The opinion of the Court of Appeals is not allowed to be unpublished under law.

There has never been an adversarily mediated decision of the Supreme Court involving the rules governing the form and designation of decisions of the Court of Appeals.

There has been one "administrative" order. That order affirmed that the Court of Appeals must answer all the questions presented, which in this case, it did not do. There has also never been an opinion by the Supreme Court that has stated that the Court of Appeals is allowed to issue an unpublished or uncitable opinion.

It was incorrect for the Court of Appeals to designate the opinion as unpublished. Rule 220(a), SCACR (confining opinion types to either published or "memorandum"), <u>and</u> Rule 220(b)(1), SCACR (limiting issuance of memorandum opinions to only four circumstances not present here, and then only by the Supreme Court).

Providing for the publication of Supreme Court and Court of Appeals decisions is vested by the state constitution in the General Assembly. S.C. Const. (1895) Art. V, § 25.[3]

The state Constitution specifically contemplates the publication of the decisions of the Supreme Court and Court of Appeals. See S.C. Const. (1895) Art. V, § 9 (1985 Act No. 9), S.C. Const. Art. I, § 3, S.C. Const. Art. I, § 23, id., Art. I, § 9, id., Art. I, § 8, id., Art. I, § 7, and id., Art. V, § 25.

Pursuant to the state Constitution, the General Assembly prescribed laws pertaining to the issuance and publication of decisions. The General Assembly also prescribed laws pertaining to rulemaking and lawmaking by the Supreme Court. All judges in this state swear to preserve, protect and defend the Constitution of this State and of the United States, uphold the integrity of the judiciary, rule after careful and considerate deliberation, and seek justice, and justice alone. Rule 502.1, SCACR.

Laws pertaining to publication of decisions and rulemaking by the Supreme Court include S.C. Code Ann. § 14-3-810 (implying presumption of General Assembly that all opinions will be published), S.C. Code Ann. § 14-3-820 (same), S.C. Code Ann. § 14-3-830

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[3] Publication is part of the legal and constitutional tradition of the state. By statute, South Carolina adopted and continued "in full force and effect," "[a]ll, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State" in the same manner as before this adoption. S.C. Code Ann. §14-1-50 (1976).

Stare decisis – the doctrine of "letting the decision stand," and following it as precedent applicable to all, in future cases -- has clearly been part of the English common law for centuries. See, e.g., Bradley Stewart Chilton, "Star Trek" and *Stare Decisis*: Legal Reasoning and Information Technology," 8(1) Journal of Criminal Justice and Popular Culture, 25-36 (2001).

Stare decisis is not merely part of the common law. Stare decisis gave birth to the common law and is vital to its relevance and continued development. It was stare decisis that built, reconciled and recorded the common law, and distinguished the common law from Roman codes and civil law starting after the Norman Conquest in 1066.

These developments were later aided by publication. The combination of publication and stare decisis is what keeps the common law current, predictable, and just. Without both publication and stare decisis, the common law itself breaks down into arbitrary, unpredictable fiat. Breakdown of confidence in the common law causes loss of confidence in the courts, and in whole states.

(same), S.C. Code Ann. § 14-3-940 (setting forth allowed manner of establishing court rules with approval of General Assembly), S.C. Code Ann. § 14-3-950 (same), S.C. Code Ann. § 14-8-250 (requiring that points stated in a case to be stated in an opinion and be decided with reasons being stated), and S.C. Code Ann. § 18-9-280 (requiring that points stated in a case to be stated in the appellate opinion and be decided with reasoning stated; allowing memorandum opinions only when certain determinations are unanimously made by 5-member Supreme Court).

Rule 220, SCACR was established pursuant to the procedure of S.C. Code §§ 14-3-940 and 14-3-950. Rule 220 is partly repetitive of state statutes, S.C. Code §§ 14-8-250 and 18-9-280. Neither statute has been repealed.

With this background, under South Carolina law, there are two types of appellate judicial opinions allowed – published opinions, and, in contradistinction, memorandum opinions.

"The appellate court shall make its decisions in writing by published opinions or memorandum opinions." Rule 220(a). No provision is made for any unpublished opinion of any appellate court other than a memorandum opinion.

A "memorandum opinion" is defined in Rule 220(b)(1). It is an opinion that qualifies for exception to the rule that the decision state in writing, and decide, and state the reason for, "every point distinctly stated in the case" by the appellant. Rule 220(b), SCACR. This is the sort of opinion that, alone, is allowed to be unpublished.

For such a nondiscursive opinion to be allowed, (i) the opinion must be an opinion issued by the Supreme Court,[4] (ii) the opinion must be determined in unanimous decision of the 5-

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[4] In 1993, even the Supreme Court issued memorandum decisions only sparingly, even in the limited instances in which it was authorized to do so. In Re Memorandum Decisions by Court of Appeals (S.C. Sup. Ct. dated Dec. 18, 1993)(recognizing lack of authorization for Court of Appeals to issue memorandum decisions).

member Supreme Court to be covered by a circumstance that "is dispositive of the issues submitted to the Court for decision," (iii) the opinion must be determined by all members of the Supreme Court to involve, while being dispositive of all issues, one of the four circumstances reserved for memorandum opinions,[5] and (iv) the opinion must be determined by all five justices of the Supreme Court to be an opinion that, if published "would have no precedential value."[6] Rule 220(b)(1)(emphasis added).

In turn, only unpublished opinions – i.e., memorandum opinions -- are declared by rule to be without precedential value. Rule 220(b)(1), SCACR; Rule 268(d)(2), SCACR. This is so, not because the designating court may decide that an opinion is unfit for scholarly review, application to others, and testing under new facts, but because, in order to be a memorandum decision in the first place, the opinion had to involve such a routine fact- and legal pattern in one of the four repetitively occurring areas as to add nothing to the law in the area.

Only unpublished opinions are declared by rule to be forbidden to be cited or argued by counsel. Rule 268(d)(2), SCACR. Therefore, only memorandum opinions can be declared to be without precedential value and declared to be uncitable.

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5 These four circumstances are findings of fact in a bench trial, JNOV, findings of fact of an administrative agency, and complete absence of error of law. Rule 220(b)(1), SCACR; S.C. Code Ann. §18-9-280 (1985).

6 The task is stated in the subjunctive. The task is for the five justices to consider whether the nature of the issues, the opinion and the case is such that, if a version of the opinion written in non-"memorandum" form were to be published, the opinion would have no value as a precedent.

The precedential value, or lack thereof, is inherent and freestanding, rather than assigned, or worse, caused by poor quality. That is, the precedential value inheres in the importance of the issues and the case, and is required to be divined, rather than promulgated. There is no prerogative of the justices to simply deprive an opinion of precedential value by fiat, simply by stripping it of such value and rendering it obscure.

The opinion in the instant case in no way qualified under Rule 220(b)(1) to be a memorandum opinion. The opinion (i) was not by the "Supreme Court." The opinion also (ii) was not determined unanimously by five justices of the Supreme Court[7] to be, and was not, covered by one circumstance that was "dispositive of [all] the issues submitted to the Court for decision." As discussed below, the opinion was far from dispositive of all issues discretely submitted to the Court of Appeals for decision.

The opinion also (iii) was not determined unanimously by the five justices to involve, while being dispositive of all issues, one of the four circumstances reserved for memorandum opinions. Namely, the case did not involve findings of fact in a bench trial, JNOV, findings of fact of an administrative agency, or complete absence of error of law.

The opinion also (iv) was not issued after a determination "in unanimous decision [of the] the Supreme Court" "that a published opinion <u>would</u> have no precedential value." The case in fact involves a seldom-construed (and here, misconstrued) subsection of the EDPA and inversion or disregard of solid principles of law applicable to attorney's fee awards and our courts' prior practices and decisions with regard to other cases and other practitioners.

Thus, the Court of Appeals was unequivocally not allowed to issue a memorandum opinion, and therefore not allowed to issue an unpublished opinion.[8]

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[7] The Supreme Court, consisting of five justices, decides cases by a whole court of five; the Court of Appeals, consisting of nine judges, generally decides cases in panels of three judges.

[8] In <u>Lanham v. Blue Cross and Blue Shield</u>, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000), the ability of the Court of Appeals to issue unpublished opinions was questioned, perhaps without the analysis provided above.

The Court of Appeals defended its issuance of unpublished decisions only on the basis, stated in a footnote, that it had been issuing unpublished decisions. I.e., the Court of Appeals justified the challenge to the practice the court was engaging in on the illogical basis that the court engaged in the practice.

The opinion should therefore, regardless of its content or quality, be ordered published in accordance with bright-line South Carolina law. It should also be so regarded for purposes of this Petition.

South Carolina's judicial tradition of published, written appellate decisions, followed for all people as legal precedents, was in the vanguard of governmental transparency and responsibleness. As other jurisdictions catch up, there is no reason for South Carolina to move backwards.[9]

2. The Court of Appeals' unpublished opinion misapprehended and misstated the nature of the case.

The Court of Appeals correctly observed that what the town improperly tried to take under eminent domain was "overbroad" and "wildly broad." However, on the hot-button attribute of public access, the easements were not objectionable in appropriating, as stated by the Court of Appeals, "overly broad public access," or "wildly broad public access."

The easements were objectionable in appropriating any public access at all. The property was not previously subject to any public access. It was completely private, residential property. This was the central evil in the case that the council of Henry, Green, Holliday, Carter and

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[9] Objections to uncitability and deprivation of precedential value in other jurisdictions have been based on First Amendment grounds, due process grounds, violation of Article III powers, pure logic, public policy, and loud outcry.

United States Supreme Court has removed nonpublication and uncitability in the federal appellate judicial system. See Federal Rule of Appellate Procedure 32.1 (abolishing, in the wake of over a decade of protest, the uncitability of unpublished decisions from 2007 forward).

Protest over allowing obscure or oblique, staff-generated, summary opinions, and not requiring them to be published, not allowing citation of them, and not regarding them as law applicable to others has generated over 150 presentations, law review articles and journal articles. 155 resources can be directly accessed by links found at the URL, www.nonpublication.com/ARTICLES.HTML .

Zimmerman have tried to cloud and conceal for seven years, and that the Court of Appeals' opinion leaves clouded.

This serious public issue has caused big trouble on the west coast of Florida, the east coast of Florida, and parts of the coasts of New Jersey and North Carolina. Whether because of the cost to a private party in litigating against the government, or because of government efforts to obscure the issue, or because of timid courts, it has produced relatively few reported cases.

What the town sought to impose and appropriate was no different from imposing 50' to 70' wide perpetual easements for the general public to frolick, day-camp, dig holes, engage in other recreation, or use for any other purpose, the front yards of all five justices of this Court. The issue of public access was not a matter of degree.

Within the case itself, this issue of "any public access at all" remained subterranean in everything except the Landowners' arguments, because part of the town's dishonest approach was to never mention "public access" even once – not even in circuit court litigation or this appeal.

What the Court of Appeals missed was the larger sinister scheme. After cajoling over 100 other largely absentee owners to grant easements under time pressure, the council had been avoiding, at all costs, admitting definitively that those easements did impress all the subject properties with permanent public access, thus ruining the titles of those other owners forever.

3. It was error for the Court of Appeals to not identify and decide all the issues distinctly numbered and presented, and the court grossly erred.

"In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR; S.C. Code Ann. §18-9-280 (1985); id., §14-8-250

(Supp. 1992). In this case, the appeal presented eighteen (18) distinctly stated and numbered issues.

The Court of Appeals' unpublished opinion responds only to the more generally stated issues as to the circuit court's abuse of discretion in making an 8% award which was grossly inadequate on its face. The Court of Appeals' unpublished opinion determined that the circuit court's order had been influenced by errors of law and other errors, and then determined to do a de novo determination of the fee award.

The Court of Appeals avoided answering the numerous questions presented on appeal, which were framed from the plethora of more discrete errors made by the circuit court.

These included the error of admitting and considering incompetent affidavits of those not shown to have any particular fee expertise, or for that matter, any particular expertise in challenge actions.

Omitted issues also included basing time estimates on a hypothetical case, instead of on the actual activities in the actual, unusual, case before the court. The Court of Appeals' unpublished award based on 250 hours of work is a discrete doubling of the very 125 hours the court had rejected as not being based on the actual case.

Omitted issues also included failing to consider enhancing the rate. The court failed to upwardly adjust the below-market $190 hourly rate, failed to provide any rate enhancement for split of the total resulting actual fee, and failed to provide any rate enhancement for the further one-third discount incorporated in the request.

The court also did not enhance the rate for the burden and risk of handling three cases, or take into account the rare nature of the case or the singular result obtained.[10] The town moved to require the Landowners to post $30,000,000 in bonds.

The Court of Appeals did not take into account the demands placed on the lawyer representing three clients from three different towns regarding property in a fourth location, during a pandemic, with limited assistance and new court rules.

Omitted issues also included ignoring the issue of the time spent trying to recover the fees themselves, such as the "time" this Court generously awarded to other lawyers in Layman III Order.[11] This time trying to get the fees exceeded the total time the court "allowed" for everything. The Court of Appeals' refusal to rule on the discretely presented issue was directly at odds with this Court's approach in Layman III Order. "Fees for fees" on appeal was briefed and requested, and ruling on it would save large amounts of time. The Court of Appeals did not mention the issue.

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10 Few challenge cases are ever brought. Fewer are won. We are aware of none other than this one which were won on summary judgment.

11 Layman v. State, 2008-03-10-01 (S.C. Sup. Ct. dated March 10, 2008)("Layman III Order")(ordering full enhanced payment of $588,872.56 in fees for fees, despite prior substantial reduction of fees for principal case).

A statute requiring that the court award the prevailing party attorney's fees "reasonably incurred in litigating the proceedings" contemplates all the proceedings, including the portion of the proceedings devoted to pursuing attorney's fees incurred in obtaining the primary relief sought in the case. Ex parte Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008)(holding that attorney's fees for seeking attorney's fees were included in the fees required to be awarded); see Austin v. Stokes-Craven Holding Corp., 406 S.C.187, 750 S.E.2d 78 (2013)(holding that a statute mandating an award of attorney's fees included trial-level fees, subsequent appellate fees, and subsequent post-appellate fees in the trial court). See also, e.g., Tri-County Metro. Transp. Dist. of Or. v. Aizawa, 362 Or. 1, 2, 403 P.3d 753, 754 (2017)("Ordinarily, a party entitled to recover attorney fees incurred in litigating the merits of a fee-generating claim also may receive attorney fees incurred in determining the amount of the resulting fee award."); and see Crandon Capital Partners v. Shelk, 219 Or. App. 16, 42, 181 P.3d 773, __ (2008)(describing that rule as reflecting "longstanding precedent in Oregon").

Despite de novo determination, the Court of Appeals issued an "affirmed as modified" opinion. The Court of Appeals made many of the same unaddressed errors as the circuit court, but merely doubled the fee award.

The Court of Appeals treated the "time spent" as the lynchpin for the fee award calculation, but, like the lower court, never determined the actual time spent. The Court of Appeals also never determined a reduction of that time based on the things actually done in the case, or actually reasonably done in the case. Everything was based on a figure pulled from thin air, which was error.

Anecdotal recitals begged the question instead of providing an analysis or calculation. The court observed a few isolated things done in the course of the case, occasionally adding inconclusive comments about the nature or length of the things observed, accompanied by no actual finding of fact at all about the thing observed. This is unpublished fiat, not an analysis, and is not fair.

The Court of Appeals' decision violates Rule 220(b), SCACR in all three particulars. (i) It does not disclose all the issues raised on appeal. (ii) It does not decide the issues raised on appeal. (iii) It obviously does not provide reasoning on the undecided issues. Rule 220 and the applicable statute required that the Court of Appeals state its reasoning on each issue.[12]

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[12] Both Rule 220(b)(2) and the applicable statute provide one exception which is available to the Court of Appeals, for "a point which is manifestly without merit." Rule 220(b)(2), SCACR; S.C. Code Ann. § 14-8-250 (Supp. 1992).

None of the distinct points presented were identified by the Court of Appeals as manifestly without merit. The court expressed "concern" over one point – "nonprevailing claims" -- but the appeal was not for the purpose of determining whether there was mere concern. All points were presented with precedent and arguments of the error by the circuit court.

The Court of Appeals stated, without any specifics, that a portion of the Landowners' counsel's time was somehow "excessive." However, the court made many mistakes of fact and content evincing a misunderstanding of the case and the work, and made no explicit finding about the propriety of any of the work, or about the connection of any particular work to the court's statement. It was vague.

The court mentioned its inability to determine the aspects of what the Landowners' attorney did at different times on a certain day, or the time spent on each definable task of many on a given day. However, the Court of Appeals never ruled on the presented issue that actual, confidential, billing records are not necessary in order to make a fee application, and the billing records that were examined set forth the time spent each day in tenths of hours, and a reasonably specific summary of tasks done that day, often with considerable detail.

Flyspecking a private billing record does not explain a rejection of 73% of all time the lawyer billed to the clients, and that the clients paid. Atomized billing records are not the sine qua non of a fee application or a fee award. Maybank v. BB&T, 416 S.C. 541, 787 S.E. 2d 498 (2016)(rejecting, in 42 single-spaced pages, argument that billing statements lacked necessary detail).

In a contingent-fee case, the attorney may keep no time records at all. Yet, without punishing or criticizing the attorney, an account of the work can be made, and estimates of time for the actual work can be considered, along with the nature of the case, the contingency of the compensation, and other factors. Numerous cases decided by this Court illustrate this fact.

Even if the Landowners' counsel's solemnly sworn account of hours devoted to the matter were to be completely disregarded, the Court of Appeals did not look at the total work in the case. The Record on Appeal is over 1475 pages, many pages of which are pregnant with time-intensive content that resulted from, or required, checking and re-checking facts, preparing citations, reading cases, composing, editing, proofing, collating, handling and filing.[13] The court did not examine the reasonableness of everything the Landowner's lawyer did, and paid no attention to the lawyer's thorough explanation in the fee petition of the case and of the work done.

The lawyer's bill is written with efficiency in mind, lest the lawyer spend more time on the bill than on the case. The bill is for the satisfaction of the client in the first instance, not that of the adversary or the court.

The court expressed anecdotal dubiousness, but no finding or conclusion, about some days on which the lawyer worked long hours. One 19.8-hour "day" was explained and affirmed in person at oral argument as a not atypical day in which the lawyer went to bed wearing the same thing he had woken up in and worked all day in.

It is eminently clear that it would have taken – and did take -- the town itself more than 250 hours in its corresponding activities, in order to <u>lose</u> the case. To arbitrarily decide, without evidence, that it took the Landowners only 250 hours in order to win is utter injustice.

The Court of Appeals also incorrectly mentioned the Landowner's "acrimony." Not only is the subject irrelevant to a fee unless it causes a waste of time or affects the result, but the term is completely misplaced here. There was no acrimony. The Landowners had a case in which dishonesty was an issue, and the only way to address it was to do so factually, which was done. There is no evidence in the record of acrimony.

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[13] The parties stipulated to not including the corresponding documents from all three cases in the Record. In these three cases, all the documents still had to be reviewed, compared, generated, filed, forwarded, managed or repetitively touched by the landowners' counsel, often operating solo during a pandemic.

The court's statement that the three cases were "essentially identical" oversimplified and incorrectly minimized the circumstances, as if there was a grasping for a rationale for reduction. The Record shows that each case had different captions and signature blocks, different associated owner names, different associated property characteristics, and other factual differences that had to be addressed. Three clients in three different cities had to be consulted and updated. The stakes and the risks to the attorney were tripled. Three bills had to be prepared (a nonbillable activity). Everything had to be received and sent three times. In short, it takes more time and costs more money to handle three cases than one. It adds up. Yet, the Landowners requested no enhancement when the Landowners submitted their petition with confidence that actual time submitted would be treated fairly.

The unpublished opinion of the Court of Appeals also fails to distinguish among the three different standards under the three different subsections of S.C. Code Ann. §28-2-510, and the Revels case decided by this Court.[14] Revels only addresses one, not applicable here. As pointed out in a discrete issue on appeal, Subsection 510(A), for challenges, is a "must award" statute, with an accompanying standard. Subsection 510(B), for nonchallenge condemnation trials, is a "may award" statute, with an accompanying standard. Subsection 510(C), for abandonments, is a "must award" statute, with an accompanying standard.

The instant case is a §510(A) case. The companion appeal is a §510(C) case. Revels was a §510(B) case.

The Court of Appeals, erroneously issuing innuendo of fee overreach to the effect of inexplicably favoring the Respondent and shorting the Landowners, stated that Stanton (both one

[14] South Carolina Department of Transportation v. Revels, 411 S.C. 1, 766 S.E.2d 700 (2014).

of the Landowners and the attorney of record) "later clarified" that he was not seeking a one-third share of fees for himself. This, too, is incorrect. Stanton declined the fee in the thorough 1/25/21 fee petition at the inception, carefully explaining the measure's conservative effect upon the overall request. (R.p. 932.)

Inexplicably marshalling incorrect information which underrepresents the time and work actually involved, the Court of Appeals also got the date of the complaint and amended complaint wrong in the appeal of the fee award in the other set of cases, heard at the same time. There, the court consequently suggests an incorrect timeline in those cases, incorrectly attributes promptness and causation of action on the part of the town in dismissing the additional vexatious litigation it brought, and omits the substantial intervening work done by the Landowners' counsel entirely. These almost AI-like misapprehensions and biases likely bled into the instant opinion and the correction should be borne in mind.

The Court of Appeals' unpublished opinion also cursorily describes the Landowners' notice of deposition of Fabbri (the now-former town administrator, R.p.1038) as if it were issued at a time that did not make sense. Again hastily scrounging for incorrect innuendo to somehow balance the result instead of making findings or statements of fact, the court failed to notice that the notice was sent for <u>both</u> sets of condemnation challenge actions, not only one. Both sets of actions were pending at the time the deposition was pursued and there was nothing wrong with seeking the deposition of the wrongdoing employee, who now no longer works for the town.

Similarly, as if to balance the opinion in favor of the dishonest municipality with innuendo regarding isolated items in the case, the Court of Appeals' unpublished opinion refers to a "43-page memorandum" of the Landowners (R.p.1047) as if it was primarily for the purpose of addressing the aforementioned Fabbri deposition.

Rather, it had nothing to do with the deposition; its main actual subject was opposing the town's own poorly couched "discovery" requests and proposed orders for attorney-client privileged and other confidential billing materials, while the town's threats of repeated lawsuits remained pending. The town's motion for reconsideration of summary judgment also remained pending.

The brief sought to straighten out the stampeding procedural mess created by the town doing things in the wrong order and then seeking judicial action without proper notice. Much of what was briefed was implemented by the circuit court. The Court of Appeals made no finding or statement in its unpublished opinion as to the content or quality of the filing, whether the "43-page" filing was reasonable or not, or excessive or not. What is a fact is that everything in the brief was nearly perfectly prophetic, no caution was unwarranted, and, to this day, years later, the council threatens a third attempt to condemn the same thing.

The Court of Appeals also overlooked the circuit court's previous reliance on the town's assertion that the Landowners' second set of three challenge actions should be dismissed as moot, because all the relief sought in the first set of challenges was achieved. In the instant case, after receiving the judicially estopping benefits of the circuit court's acceptance of this argument, the town argued in opposing the fee application, that only temporary relief, and thus, limited success, was achieved in the instant case.

The unpublished opinion also states, without a point, that the fee petition was "amended multiple times." The Record reveals that the primary occasions for the amendments were to update the amount sought, because it continued to increase as a result of further proceedings by the town.

The Court of Appeals' unpublished decision also "noted concern" regarding the circuit court's order's uses of the town's illegitimate construct, "non-prevailing claims," a discrete issue on appeal. But the Court of Appeals never clarified that the illegitimate construct is not based in any law, and provides no basis whatsoever for reducing hours or otherwise reducing a fee.

The Court of Appeals also overlooked the circuit court's previous reliance on the town's assertion that the availability of attorney's fees excused and deterred repetitive lawsuits by fully compensating the landowner. In the instant case, subsequent to receiving the benefits of the circuit court's acceptance of this argument, the town opposed attorney's fees to the Landowners, both categorically, and in amount.

VI. Conclusion

The Landowners request the relief set forth in section I, above.

Respectfully submitted,

s/M. Baron Stanton
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ATTORNEY FOR APPELLANTS
Franklin D. Beattie as trustee and Sunset Lodge, LLC

Date: 9-1-26

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC, ... Appellant,

v.

Town of Pawleys Island, ... Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, ... Appellant,

v.

Town of Pawleys Island, ... Respondent.

CERTIFICATE OF SERVICE

I, M. Baron Stanton, do hereby certify that I have, on this date, served the foregoing **Petition for Mandamus and Certiorari** upon the Respondent by causing a copy to be e-mailed in accordance with current rules to will@belserpa.com. The postal mailing address of the above addressee is:

William C. Dillard, Jr., Esquire
Post Office Box 96
Columbia, SC 29202

s/M. Baron Stanton
M. Baron Stanton

Date: 9-1-26